

**STAFF REPORT
FOR THE CITY COUNCIL**

FILE NUMBER: AP-20-03

HEARING DATE: September 5, 2020

REQUEST: Appeal by Jason and Jessica Harra of a Planning Commission decision to approve the 2-year extension of a previously approved 34-lot subdivision at 18000 Upper Midhill Drive (MISC-20-04)

APPLICABLE CRITERIA UNDER APPEAL: Community Development Code (CDC)
99.325 Extensions of Approval

STAFF REPORT PREPARED BY: Jennifer Arnold, Associate Planner

Planning Manager Review DSW

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GENERAL INFORMATION

APPELLANT: Jason and Jessica Harra
17701 Hillside Drive
West Linn, OR 97068

PUBLIC NOTICE: Public notice was mailed to all property owners within a 500 foot radius of the property, all persons with standing, and all neighborhood associations on September 15, 2020. Notice was published in the Tidings newspaper on September 24, 2020. The site was posted with a sign on September 24, 2020. The notice requirements of CDC Chapter 99 have been met.

SITE LOCATION: 18000 Upper Midhill Drive

LEGAL DESCRIPTION: Clackamas County Assessor's Map 2S-1E-14CA, Taxlot 200

SITE SIZE: 6.1 acres

ZONING: R-4.5, Single-Family Residential Attached and Detached/Duplex, 4,500 square foot minimum lot size for single family detached homes)

COMP PLAN DESIGNATION: Medium-Density Residential

OWNER: Upper Midhill Estates , LLC
735 SW 20th Place, STE: 220
Portland, OR 97205

APPLICANT: Emerio Design, LLC (Steve Miller)
6445 Fallbrook Place, STE: 100
Beaverton, OR 97008

120-DAY PERIOD: The application became complete on June 11, 2020. The 120-day period would have ended on October 8, 2020, but at the Planning Commission's July 15, 2020 the applicant granted a 7 day extension to this requirement, therefore the 120-day period ends on October 15, 2020.

BACKGROUND

Upper Midhill LLC submitted a land use application on October 21, 2015, to develop a 34-lot subdivision (“Chene Blanc”) at 18000 Upper Midhill Drive. The 6.1 acre site is zoned R-4.5. After a denial by the West Linn Planning Commission (Commission), an appeal was heard by West Linn City Council (Council). Council upheld the denial and the decision was subsequently appealed to LUBA. The City voluntarily remanded the decision. The Commission held another public hearing and approved the subdivision proposal. The decision was once again appealed and Council denied the appeal and upheld the Commission approval. The Council Final Decision and Order became effective on July 19, 2017. An appeal was again made to LUBA and the City’s approval was affirmed.

West Linn Community Development Code 85.090 requires that the subdivision plat is recorded with the County within three years from the date of approval (July 19, 2017). Emerio Design, on behalf of the owner, submitted an application for a 2-year extension per CDC 99.325, which was deemed complete on June 11, 2020.

At its meeting on July 15, 2020, the Commission held the initial evidentiary public hearing to consider the request by Emerio Design, LLC, applicant on behalf of Upper Midhill Estates, LLC (owners), to approve a two-year extension to a previously approved 34-lot subdivision at 18000 Upper Midhill Drive. The approval criteria for an extension of approval are found in Chapter 99.035, of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99.170.

The initial evidentiary hearing commenced with a staff report presented by Jennifer Arnold, Associate Planner. Steve Miller, Planning Consultant, Michael Robinson, Schwabe Williamson & Wyatt, and Matt Bell of Kittelson & Associates presented on the applicant’s behalf. John Robins, Jason Harra, Scarlett and Chris Harris, and Oren and Keren Barkan all provided oral testimony. James and Amy McNeely, David Goldenberg, Allison and Seth Olson, Chris and Scarlett Harris, Christine Steel, Kathie Halicki on behalf of the Willamette Neighborhood Association, Peter Lang, Dorianne and Doug Palmer, Jason Harra, Bob and Terry Jordan, Xuejun Wang and Juan Shen, John and Cheryl Robins, and Anne Beltman all submitted written testimony. The primary concerns raised during testimony included:

- The intersection safety of Arbor Drive and HWY 43/Willamette Drive
- Habitat removal
- Pedestrian safety
- Traffic on existing streets

Applicant representatives provided rebuttal and answered questions using statements or reports found in the land use application. The applicant requested a continuance as to develop a more detailed final written argument with no new information. The record was left open for 7

additional days for the applicant to submit the final written argument and the Commission set a date certain of August 19, 2020 for the continuance.

At its meeting on August 19, 2020 the Commission opened the hearing with City Attorney Ramis addressing the preliminary legal matters, the hearing was closed, and the Commission deliberated. A motion was made by Vice Chair Mathews and seconded by Commissioner Pellett to approve the application as presented with the staff proposed conditions of approval. The motion passed 4-3.

On September 8, 2020 Jason and Jessica Harra filed a timely appeal of the Commission decision. Both established standing by submitting written testimony into the record. Mr. Harra also testified at the July 15, 2020 hearing. Mr. Harra notes a number of deficiencies in the MISC-20-04 application, but filed an appeal to the Planning Commission's decision "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 paged surface area".

ANALYSIS

In this analysis, staff has provided the provisions of the West Linn Community Development Code the appellant contends were unsatisfied, with a summary of the record regarding each provision, including appellant arguments and associated findings or a reference to where the information can be found in the record.

The following staff findings address the grounds for appeal.

STAFF FINDINGS

Staff Finding 1. (Relating to Appellant's Grounds for Appeal 1: "Material Misrepresentation" (Attempted construction activity without approval))

Staff finds that this item is not associated with the approval criteria found in CDC 99.325. The land use approval process and construction activities are separate processes. It appears that the applicant notified neighbors of construction start dates prior to the expiration of the land use decision.

Per CDC Chapter 99.325 Extensions of Approval, the only criteria applicable to the decision on an extension application is 99.325(A) 1-3. The process is described in 99.325(E) 1-5. These procedures were followed and appropriate criteria addressed. Many of the public comments and testimony presented to the Planning Commission related to criteria outside of the extension provisions.

The Appellant also notes that the applicant submitted a traffic study that was not stamped by a licensed professional. A traffic study is not required for this application based on the criteria of CDC 99.325. However, the applicant submitted a letter stamped by a licensed engineer regarding the changes in planter strip/ parking locations on the extension of Upper Midhill within the development. The applicant also submitted a letter from Kittelson and Associates to address changes in traffic conditions since the 2017 approval. This letter was signed by a Senior Principal Engineer with Kittelson and Associates.

Staff recommends that City Council deny this ground for appeal.

Staff Finding 2. (Relating to Appellant’s Grounds for Appeal 2: “Material Errors”)

The Appellant argues that communications between City Staff and the Applicant and traffic study source data were not provided to the Appellant. It is unclear what emails the Appellant is referring to between the applicant and Staff. Staff is unaware of any outstanding public records request related to this application (MISC-20-04 or AP-20-03). Also, as noted in Staff Finding 1, a traffic study was not a requirement of the extension provisions of CDC 99.325.

Staff recommends that City Council deny this ground for appeal.

Staff Finding 3 (Relating to Appellant’s Grounds for Appeal 3: “Material Omissions.”)

Staff finds that a new traffic study was not required to be submitted for an extension application. An application for a 2-year extension is not a re-review of a previously approved subdivision. The Applicant applied for additional time to satisfy conditions of approval in order to record the subdivision plat approved in 2017. The Applicant had a Traffic Engineer at the July 15, 2020 public hearing to answer traffic related issues. At the hearing the Applicant’s Traffic Engineer orally addressed traffic impacts on HWY 43 associated with neighboring/nearby development projects and referenced the letter from Kittelson and Associates addressing changes in traffic conditions since the 2017 approval.

The applicant submitted final written argument which addressed the Appellant’s grounds for appeal 3:

2. Applicant’s Response to Issues Raised and Questions Asked.

A. Traffic Safety.

Several persons argued that traffic conditions will be made unsafe by the subdivision’s construction. The Planning Commission must reject this contention for the following reasons.

a. The July 13, 2020 letter from Matt Bell of Kittelson and Associates (Kittelson”) on Page 1 states that there have been no material changes in, among other factors, crash history since the 2017 decision, thus satisfying CDC 99.325.A.2 because traffic safety facts have not changed in a way that directly impacts the project. The letter’s conclusion is supported

by Chart 2, “Crash History – Willamette Drive/Arbor Drive Intersection (2016-2018),” showing a decline in reported vehicle crashes since 2017.

b. Opponents to the Application submitted no contrary substantial evidence to the Kittelson letter.

c. The information submitted by Mr. Harra is not a “change of facts” because it was submitted and rejected by the City Council in 2017 and by LUBA in 2018.

d. Mr. Wyss told the Planning Commission that the future intersection of Willamette Drive and Arbor Drive will have protected and dedicated turn lanes, thus improving traffic safety.

e. LUBA considered and rejected this issue in its 2018 decision when it found that the City Council’s decision addressed safety. *Harra, Slip Op* 18-21.

B. New Traffic from the Duplexes and Marys Woods.

Commissioner Farrell asked if the Applicant had considered new vehicle trips from these two projects. Because the Applicant has done so for the following reasons, the Planning Commission can find that CDC 99.325.A.2 is satisfied.

a. This issue was decided in favor of the Applicant by the City Council when it found the Applicant had done so in 2017.

b. LUBA considered this issue and rejected Mr. Harra’s argument that the Applicant had not properly considered vehicle trips from these two developments. *Harra, Slip Op* 16 and 17.

c. Mr. Bell and Mr. Robinson testified to this fact at the July 15, 2020 hearing.

d. Finally, as Mr. Robinson testified and as LUBA found in *Harra, Slip Op* 17, the Marys Woods project is not built, so it is not a fact but only a projection.

C. Vehicle Trip Growth Rates.

Mr. Harra argued that the Applicant’s original traffic study used the wrong growth rates. First, this is not a “change of facts directly impact[ing] the project,” so it is not relevant to CDC 99.325.A.1. Second, LUBA rejected this argument in its decision. *Harra, Slip Op* 14-19.

Staff recommends that City Council deny this ground for appeal.

Staff Finding 4. (Relating to Appellant’s Grounds for Appeal 4: “*Material Changes in Facts*”)

The Appellant asserts that wetlands were identified on the subject property after the subdivision was approved. A Water Resource Protection Area permit was required in 2015 with the original 34-Lot subdivision application. That application ran with the subdivision application congruently and ultimately approved in 2017. This permit is required to protect natural resources such as streams and wetlands.

The Appellant also notes a change in traffic since the application was approved. It is unclear if the Appellant is speaking to a traffic change on HWY 43 or Upper Midhill Drive near the subject property. Change in the area is inevitable, and as the applicant testified to at the July 15, 2020 hearing, no significant change has occurred. The applicant also addressed this point in their final written argument (see Staff Finding 3).

The Appellant states that the application has changed since the original approval in 2017. Staff did not find that the application had changed from what was approved in 2017 to the 2020 extension application. Staff Finding 8 of the July 15, 2020 staff report for MISC-20-04 reads: ***“Since the 2017 City Council approval of this 34-lot subdivision, the applicant has removed three planter strips along the frontages of lot 11, Tract C, and lot 9 to provide for a 28-foot wide street widths. This also allows for the possibility of on-street parking. The applicant did not make any changes to the right-of-way width. Staff has not found any material misrepresentation, errors, omissions, or any changes of facts in the review if this application.”***

Pandemic was also a “Change in Facts” mentioned by the Appellant. The current pandemic situation does not change or impact a subdivision approval. The Community Development Code does not require an applicant to address pandemics in the required application materials.

The Appellant asserts procedural errors regarding CDC 99.325(E), but does not provide enough detail of the specific error for Staff to address. Staff Finding 10 of the July 15, 2020 staff report for MISC-20-04 reads: **Staff Finding 10: No modifications to the approved tentative plan (see Exhibit PC-4) have been proposed with this application. The extension proposal retains the 34-lot subdivision with the same lot sizes and dimensions and the same right-of-way widths and locations. No pre-application conference was required. Since the approval in 2017, the applicant has removed a portion of the planter strip in five locations (described in applicant’s supplemental submittal found in Exhibit PC-3 and dated June 10, 2020) to allow for a 28-foot wide street. No changes to the right-of-way width are proposed. The criteria are met.**

Staff recommends that City Council deny this ground for appeal.

Staff Finding 5. (Relating to Appellant’s Grounds for Appeal 4: “There are not adequate public facilities available, particularly transportation facilities to meet the demand for the project”)

The Applicant was not required to address the adequacy of the public facilities, specifically transportation, for this application request for a 2-year extension. Adequate public facilities is

not an approval criteria of CDC 99.325. Although not criteria applicable to this application, adequate public facilities was addressed by City Council and LUBA in 2017.

See Staff Finding 4 addressing modifications to the approved tentative plan.

Staff recommends that City Council deny this ground for appeal.

Recommendation

Staff recommends denial of the appeal and affirmation of the Planning Commission decision and the conditions of approval as approved by the Planning Commission on August 19, 2020:

- 1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15. Street widths will be per Road Section History Exhibit last revised October 2019 (see MISC-20-04, Exhibit PC-3).**
- 2. Engineering Standards. All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations shall comply with all applicable City standards. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.**
- 3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the-issuance of a grading permit or site development permit for the development site-, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017, memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.**
- 4. Storm water Tract C. Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn.**
- 5. Mutual Maintenance and Easements. Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and**

Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.

6. No Parking Signs. The applicant shall install signs reading "No Parking- Fire Lane" on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. In the event that the geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.

9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

10. Hillside Drive Off-Site Sidewalk Improvements. The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).

11. Traffic Management Plan (TMP). Construction vehicles for the project shall be subject to the following traffic management restrictions.

- a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
- b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
- c. Flaggers shall direct construction related traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.

- d. On-site vehicle noise will be mitigated by the modifying vehicle “backup beepers”.
- e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.
- f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.

12. Crosswalk on Highway 43. The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets and develop the building sites. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.

14. Tri-Met Bus Stops. The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.

15. Subdivision Construction Management Plan (CMP). The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work.
- b. The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area.
- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood.
- e. No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site.

- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles.
- g. No employee parking at the bottom of College View Drive in the turnaround area.
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.

16. Pedestrian Way Finding Signs. The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.

17. Pedestrian Route. The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive to establish a safety zone for pedestrian traffic. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane for vehicles approximately 12 feet wide. Signs shall be installed at each end of Upper Midhill Drive identifying the area east of the line as a pedestrian route.

18. Community Outreach. The applicant shall provide updates at the monthly meetings of the Robinwood Neighborhood Association, from pre-construction phase to the commencement of the final plat phase.

EXHIBIT CC-1 APPELLANT SUBMITTAL

DEVELOPMENT REVIEW APPLICATION

For Office Use Only

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

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.

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

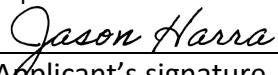

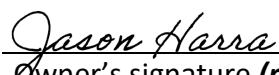
Applicant Name: Jason & Jessica Harra <small>(please print)</small> Address: 17701 Hillside Drive City State Zip: West Linn, OR 97068	Phone: 503-420-1052 , 503-889-6184 Email: jharra@gmail.com jessica.harra@gmail.com
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Owner Name (required): Jason & 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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Consultant Name: <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 7th, 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 19th 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.

EXHIBIT CC-2 RECORD OF MISC-20-04

**STAFF REPORT
FOR THE PLANNING COMMISSION**

FILE NUMBER: MISC-20-04

HEARING DATE: July 15, 2020

REQUEST: Two-year extension of approval for a 34-lot Subdivision: SUB-15-03/AP-17-01

APPROVAL CRITERIA: Community Development Code (CDC) Chapter 14: R-4.5, Single-Family Residential Attached and Detached/Duplex; Chapter 48, Access, Egress and Circulation; Chapter 85 Land Division General Provisions; Chapter 92, Required Improvements; Chapter 99, Procedures for Decision-Making: Quasi-Judicial.

STAFF REPORT PREPARED BY: Jennifer Arnold, Associate Planner

Planning Manager Initials DSW

Development Review Engineer Initials AP

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GENERAL INFORMATION

APPLICANT/ CONSULTANT:	Emerio Design, LLC (Steve Miller) 6445 Fallbrook Place, STE: 100 Beaverton, OR 97008
OWNER:	Upper Midhill Estates , LLC 735 SW 20 th Place, STE: 220 Portland, OR 97205
SITE LOCATION:	18000 Upper Midhill Drive
SITE SIZE:	6.12 acres
LEGAL DESCRIPTION:	Tax Lot 200 of Clackamas County Assessor's Map 21E 14CA
COMP PLAN DESIGNATION:	Medium-Density Residential
ZONING:	R-4.5 Single-Family Residential Attached and Detached/Duplex (4,500 sq. ft. min. lot size)
APPROVAL CRITERIA:	Community Development Code (CDC) Chapter 14: R-4.5, Single-Family Residential Attached and Detached/Duplex; Chapter 85: Land Division; Chapter 92: Required Improvements; and Chapter 99.325: Extensions of Approval
120-DAY RULE:	The application became complete on June 11, 2020. The 120-day period therefore ends on October 8, 2020.
PUBLIC NOTICE:	Notice was mailed to property owners within 500 feet of the subject property and to all neighborhood associations on June 24, 2020. A sign was placed on the property on June 24, 2020. The notice was also posted on the City's website on June 23, 2020 and published in the West Linn Tidings on July 2, 2020. Therefore, public notice requirements of CDC Chapter 99 have been met.

EXECUTIVE SUMMARY

This application is a request for a two-year extension to a previously approved 34-lot subdivision (SUB-15-03/AP-17-01) at 18000 Upper Midhill Drive. West Linn Community Development Code Chapter 85.090 requires the final subdivision plat be recorded with the County within three years from the date of approval, unless an extension is granted. The City Council Final Decision and Order became effective on July 19, 2017 (see Exhibit PC-3, pages 8 to 29). The applicant is requesting the extension in order to complete the conditions of approval and record the final subdivision plat.

The applicant has not requested any modifications to the original subdivision tentative plan (see Exhibit PC-4). The applicant has proposed five locations where the previously approved 24-foot pavement width will be extended to 28-feet wide to provide additional on-street parking. Staff has recommended the same conditions of approval from the City Council Final Decision and Order for AP-17-01, with an addition to condition of approval 1 recognizing the five locations referenced above.

Public comments:

See Exhibit PC-5 for Public Comments.

Recommendation

Staff recommends approval of application MISC-20-04, based on: 1) the findings submitted by the applicant, which are incorporated by this reference, 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval below. With these findings, the applicable approval criteria are met. The conditions are as follows:

- 1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15. Street widths will be per Road Section History Exhibit last revised October 2019 (see MISC-20-04, Exhibit PC-3).**
- 2. Engineering Standards. All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations shall comply with all applicable City standards. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.**

3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the-issuance of a grading permit or site development permit for the development site-, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017, memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.

4. Storm water Tract C. Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn.

5. Mutual Maintenance and Easements. Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.

6. No Parking Signs. The applicant shall install signs reading "No Parking- Fire Lane" on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. In the event that the geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.

9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

- 10. Hillside Drive Off-Site Sidewalk Improvements.** The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).
- 11. Traffic Management Plan (TMP).** Construction vehicles for the project shall be subject to the following traffic management restrictions.
- a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
 - b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
 - c. Flaggers shall direct construction related traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.
 - d. On-site vehicle noise will be mitigated by the modifying vehicle “backup beepers”.
 - e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.
 - f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.
- 12. Crosswalk on Highway 43.** The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.
- 13. Supplemental Geotechnical Analysis.** The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets and develop the building sites. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.
- 14. Tri-Met Bus Stops.** The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.
- 15. Subdivision Construction Management Plan (CMP).** The Applicant shall prepare a

Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work.**
- b. The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area.**
- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477**
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood.**
- e. No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site.**
- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles.**
- g. No employee parking at the bottom of College View Drive in the turnaround area.**
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.**

16. Pedestrian Way Finding Signs. The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.

17. Pedestrian Route. The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive to establish a safety zone for pedestrian traffic. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane for vehicles approximately 12 feet wide. Signs shall be installed at each end of Upper Midhill Drive identifying the area east of the line as a pedestrian route.

18. Community Outreach. The applicant shall provide updates at the monthly meetings of the Robinwood Neighborhood Association, from pre-construction phase to the commencement of the final plat phase.

**ADDENDUM
APPROVAL CRITERIA AND FINDINGS
MISC-20-04**

This decision adopts the findings for approval contained within the applicant’s submittal, with the following exceptions and additions:

Chapter 14: SINGLE-FAMILY RESIDENTIAL ATTACHED AND DETACHED/DUPLEX, R-4.5

14.030 PERMITTED USES

The following are uses permitted outright in this zoning district:

1. *Single-family detached residential unit.*

Staff Finding 1: The applicant was approved for a 34-lot subdivision for single-family homes in July 2017 (SUB-15-03/AP-17-01). The applicant has requested an extension in order to complete the conditions of approval. No proposed changes from the original application of a 34-lot subdivision for single-family homes. The criteria are met.

14.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

A. *The minimum lot size shall be:*

1. *For a single-family detached unit, 4,500 square feet.*

(...)

B. *The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.*

C. *The average minimum lot width shall be 35 feet.*

D. *Repealed by Ord. 1622.*

E. *The minimum yard dimensions or minimum building setback areas from the lot line shall be:*

1. *For a front yard, 20 feet; except for steeply sloped lots where the provisions of CDC [41.010](#) shall apply.*
2. *For an interior side yard, five feet.*
3. *For a side yard abutting a street, 15 feet.*
4. *For a rear yard, 20 feet.*

(...)

Staff Finding 2: The applicant proposes no changes to approved lot sizes or dimensions. All lots exceed 4,500 square feet. All lots have front lot line dimensions and average widths greater than the required 35 feet. The 20-foot wide shared private access drive for Lots 13-15 exceeds the minimum accessway width of 15 feet. Floor Area Ratios (FAR), building height,

driveway placement, lot coverage and setbacks will be reviewed prior to issuance of a building permit. The criteria are met.

Chapter 48: Access, Egress, and Circulation

48.030 MINIMUM VEHICULAR REQUIREMENTS FOR RESIDENTIAL USES

(...)

B. *When any portion of any house is less than 150 feet from the adjacent right-of-way, access to the home is as follows:*

(...)

2. *Two to four single-family residential homes equals a 14 to 20 foot-wide paved or all-weather surface. Width shall depend on adequacy of line of sight and number of homes.*

Staff Finding 3: The applicant was approved for a shared private access drive to Lots 13-15. No changes are proposed. The criteria are met.

Chapter 85: General Provisions

85.090 EXPIRATION OR EXTENSION OF APPROVAL

The final plat map shall be submitted to the Planning Director and recorded with the County within three years from the date of approval of the tentative plan, or as approved under CDC 99.325. If the final plat is not recorded by that time, the approval expires.

Staff Finding 4: The applicant received final approval on the 34-lot subdivision with the City Council Final Decision and Order effective on July 19, 2017 (see Exhibit PC-2, pages 8-29). Therefore, the three-year time frame expires on July 19, 2020. The applicant has requested approval for a two-year extension as allowed per CDC Chapter 99.235. Please see Staff Findings 6-10.

Chapter 99: Procedures for Decision-Making: Quasi-Judicial

99.060 APPROVAL AUTHORITY

This section explains the authority of the Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

(...)

B. Planning Commission authority. *The Planning Commission shall have the authority to:*

(...)

2. *Approve, deny, or approve with conditions the following applications:*

(...)

f. *Subdivision (Chapter 85 CDC).*

Staff Finding 5: The West Linn Planning Commission was the original approval authority for SUB-15-03. The first Planning Commission public hearing was held on April 20, 2016. The criteria were met.

99.325 EXTENSIONS OF APPROVAL

A. *An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC [99.060](#)(A), (B), (C), (D) or (E), as applicable, upon finding that:*

Staff Finding 6: The West Linn Planning Commission was the original decision-making body (see Staff Finding 5) and will hold a public hearing to make a decision on granting the extension proposal. The criteria are met.

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*

Staff Finding 7: The Final Decision and Order (pages 8-29 of the Applicant’s Submittal) approving the 34-lot subdivision (AP-17-01) demonstrates that all applicable code criteria has been satisfied. The applicant has not proposed any changes to this approved subdivision, therefore all CDC provisions relevant to the approval criteria have been satisfied.

2. *There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or*

Staff Finding 8: Since the 2017 City Council approval of this 34-lot subdivision, the applicant has removed three planter strips along the frontages of lot 11, Tract C, and lot 9 to provide for a 28-foot wide street widths. This also allows for the possibility of on-street parking. The applicant did not make any changes to the right-of-way width. Staff has not found any material misrepresentation, errors, omissions, or any changes of facts in the review if this application. This criterion is met.

3. *The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC.*

Staff Finding 9: The original subdivision application (SUB-15-03/AP-17-01) was found to be in conformance with the provisions of CDC Chapter 14, 85, 92 and 99, and was subsequently approved in July 2017. Staff finds that the application continues to be in conformance with the applicable CDC provisions. Per the letter dated June 10, 2020 in the applicant’s supplemental submittal, the planter strip was removed to allow for a 28-foot wide street along the frontages of lot 11, Tract C, and lot 19. The criteria are met.

- B. *Repealed by Ord. 1675.*
- C. *Repealed by Ord. 1675.*
- D. *Repealed by Ord. 1635.*
- E. *Extension procedures.*

1. *The application for extension of approval with modifications to the original approval may be submitted only after a pre-application meeting under CDC [99.030\(B\)](#). If no modifications are made to the original approval, a pre-application conference is not required.*

Staff Finding 10: No modifications to the approved tentative plan (see Exhibit PC-4) have been proposed with this application. The extension proposal retains the 34-lot subdivision with the same lot sizes and dimensions and the same right-of-way widths and locations. No pre-application conference was required. Since the approval in 2017, the applicant has removed a portion of the planter strip in five locations (described in applicant’s supplemental submittal found in Exhibit PC-3 and dated June 10, 2020) to allow for a 28-foot wide street. No changes to the right-of-way width are proposed. The criteria are met.

PC-1 AFFADAVIT AND NOTICE PACKET

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. MISC-20-04 Applicant's Name Emerio Design
Development Name Upper Midhill / Chene Blanc
Scheduled Meeting/Decision Date _____

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 6-24-20 (signed) JS
B. Affected property owners (date) 6-24-20 (signed) JS
C. School District/Board (date) n/a (signed) _____
D. Other affected gov't. agencies (date) n/a (signed) _____
E. All Affected neighborhood assns. (date) 6-24-20 (signed) JS
F. All parties to an appeal or review (date) n/a (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 7-2-20 (signed) _____
City's website (posted date) 6-23-20 (signed) Ann Swade

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

~~**NOTICE:** Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)~~

~~TYPE B _____~~

- ~~A. The applicant (date) _____ (signed) _____
B. Affected property owners (date) _____ (signed) _____
C. School District/Board (date) _____ (signed) _____
D. Other affected gov't. agencies (date) _____ (signed) _____
E. Affected neighborhood assns. (date) _____ (signed) _____~~

~~Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____~~

~~**STAFF REPORT** mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.~~

~~(date) _____ (signed) _____~~

~~**FINAL DECISION** notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.~~

~~(date) _____ (signed) _____~~

**CITY OF WEST LINN
NOTICE OF UPCOMING
PLANNING COMMISSION HEARING
FILE NO. MISC-20-04**

The West Linn Planning Commission will hold a virtual public hearing on **Wednesday, July 15, 2020, starting at 6:30 pm** to consider a request for a two-year extension of approval for a 34-lot Subdivision: SUB-15-03/AP-17-01 at 18000 Upper Midhill Drive.

The decision by the Planning Commission to approve or deny this request will be based upon the applicable criteria found in Chapters 14, 85, 92, and 99 of the Community Development Code (CDC). The approval criteria from the CDC are available for review at <https://www.codepublishing.com/OR/WestLinn/#!/WestLinnCDC/WestLinnCDCNT.html>
At the hearing, comments must relate specifically to the applicable criteria.

You have received this notice because County records indicate that you own property within 500 feet of this property (Tax Lot 200 of Clackamas County Assessor Map 21E 14CA) or as otherwise required by Chapter 99 of the CDC.

All relevant materials for this application are available for inspection at no cost at City Hall, and on the City website, <https://westlinnoregon.gov/planning/18000-upper-midhill-drive-extension-34-lot-subdivision-approval-appeal>. Alternatively, copies may be obtained for a minimal charge per page.

Anyone wishing to present written testimony for consideration on this matter shall submit all material before 12:00 pm on July 15, 2020. Persons interested in party status should submit their letter and any concerns about the proposal by the comment deadline. Written comments may be submitted to jarnold@westlinnoregon.gov or by clicking on the eComment link on the meeting page: www.westlinnoregon.gov/meetings. All comments must be received before 12:00 pm on the meeting day.

To speak during the meeting, complete the form located at <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> (the form only needs to be completed the first time). After completing the form, register to speak by clicking on the eComment link on the meeting page: www.westlinnoregon.gov/meetings. After clicking on the eComment link, click on the Register to Speak link. A WebEx invitation will be sent to you before the meeting starts. You can access the meeting to speak from the WebEx meeting invitation. All requests to speak must be received before 12:00 pm on the meeting day. For further information, please contact Jennifer Arnold, Associate Planner, City Hall, 22500 Salamo Rd., West Linn, OR 97068, (503) 742-6057, jarnold@westlinnoregon.gov.

Any appeals to this decision must be filed within 14 days of the final decision date with the Planning Department. **It is important to submit all testimony in response to this notice.** Failure to raise an issue in person or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes the raising the issue at a subsequent time on appeal or before the Land Use Board of Appeals.



**NOTICE OF UPCOMING
PLANNING COMMISSION DECISION**

**PROJECT # MISC-20-04
MAIL: 06/24/20 TIDINGS: 07/02/20**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets and land use application notice, and to address the concerns of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

PC-2 COMPLETENESS LETTER



CITY OF
West Linn

June 11, 2020

Emerio Design, LLC
ATTN: Steve Miller
6445 SW Fallbrook PL. STE: 100
Beaverton, OR 97008

SUBJECT: MISC-20-04 application for a two year time extension of approval for a 34-lot
Subdivision: SUB-15-03/AP-17-01

Dear Mr. Miller:

Your initial application submitted on May 13, 2020 and supplemental letter (submitted on June 10, 2020) has been deemed **complete**. The city has 120 days to exhaust all local review; that period ends October 8, 2020.

Please be aware that determination of a complete application does not guarantee a recommendation of approval from staff for your proposal as submitted – it signals that staff believes you have provided the necessary information for the Planning Commission to render a decision on your proposal. A tentative public hearing date before the West Linn Planning Commission is scheduled for August 5, 2020, but subject to change if necessary.

Please contact me at 503-742-6057, or by email at jarnold@westlinnoregon.gov if you have any questions or comments.

Sincerely,

Jennifer Arnold
Associate Planner

PC-3 APPLICANT SUBMITTAL

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT Arnold	PROJECT NO(S). MISC-20-04	
NON-REFUNDABLE FEE(S)	REFUNDABLE DEPOSIT(S) \$5750.00	TOTAL \$ 5,750.00

Type of Review (Please check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation (ANQ) | <input type="checkbox"/> Historic Review | <input type="checkbox"/> Subdivision (SUB) |
| <input 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 checked="" 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.

Site Location/Address: 18000 UPPER MIDHILL DR, WEST LINN, 97068	Assessor's Map No.: 21E14CA
	Tax Lot(s): 200
	Total Land Area: 6.12 Acres

Brief Description of Proposal: EXTENSION OF CITY FILE NO. AP-17-01 – CHENE BLANC 34-LOT SUBDIVISION AND WATER RESOURCE AREA PERMIT

Applicant Name: EMERIO DESIGN, LLC / ATTN: STEVE MILLER <small>(please print)</small>	Phone: (541) 318- 7487 Cell
Address: 6445 SW FALLBROOK PL., STE. 100	Email:
City State Zip: BEAVERTON, OR 97008	stevem@emeriodesign.com

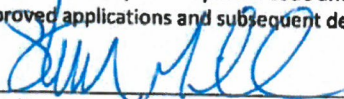
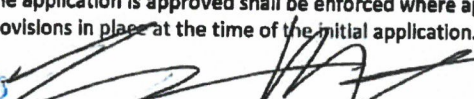
Owner Name (required): UPPER MIDHILL ESTATES, LLC <small>(please print)</small>	Phone:
Address: 735 SW 20 TH PLACE, SUITE 220	Email:
City State Zip: PORTLAND, OR 97205	

Consultant Name: EMERIO DESIGN, LLC / ATTN: STEVE MILLER <small>(please print)</small>	Phone: 541 318-7487 Cell
Address: 6445 SW FALLBROOK PL., STE. 100	Email:
City State Zip: BEAVERTON, OR 97008	stevem@emeriodesign.com

- All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
- The owner/applicant or their representative should be present at all public hearings.
- A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
- Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application. One (1) complete set of digital application materials must also be submitted on CD in PDF format. If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed

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 _____ Date 5/13/2020 Owner's signature (required) _____ Date 5/13/2020

May 13, 2020

Michael C. Robinson

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

VIA E-MAIL

City of West Linn Planning Department
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

RE: Application by Upper Midhill Estates, LLC for Two-Year Extension of the Chene Blanc Subdivision Located at 18000 Upper Midhill Drive; City of West Linn File No. AP-17-01

To Whom It May Concern:

This law firm represents Upper Midhill Estates, LLC, the Applicant. This Application requests a two-year extension of City of West Linn File No. AP-17-01 from July 19, 2019 to July 19, 2021 pursuant to West Linn Community Development Code (“CDC”) 99.325. This Application contains the following information:

1. A completed and signed City of West Linn “Development Review Application.”
2. A check made payable to the City of West Linn in the amount of \$5,500.00.
3. Three complete hard-copy sets (single-sided) of the Application materials. A CD is not required.
4. Neither a neighborhood meeting nor a pre-application meeting is required prior to submittal of this Application.

Please provide me with notice of the completeness review, notice of the public hearing, a copy of the Staff Report and copies of all documents received by the Planning Department concerning this Application.

City of West Linn Planning Department

May 13, 2020

Page 2

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive style with a large, stylized 'M' and 'R'.

Michael C. Robinson

MCR/jmhi

Enclosures

cc: Mr. Tim Ralston (*via email*) (*w/enclosures*)
Mr. Eric Evans P.E. (*via email*) (*w/enclosures*)
Mr. Steve Miller (*via email*) (*w/enclosures*)

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BEFORE THE WEST LINN PLANNING COMMISSION

In the Matter of an Application by Upper)
Midhill Estates, LLC for an application to) City of West Linn File No. AP-17-01
extend the time in which to submit the final)
plat for City of West Linn File No. AP-17-) FINDINGS OF FACT AND
01, the Chene Blanc Subdivision located at) CONCLUSIONS OF LAW
18000 Upper Midhill Drive.)

I. INTRODUCTION.

This Application requests a two-year extension of the tentative plat approval.

The effective date for the West Linn City Council’s (the “City Council”) approval of City of West Linn (the “City”) File No. AP-17-01 (the “Decision”) was July 19, 2017 (**Exhibit 1**, Notice of Final Decision for City File No. AP-17-01). The Decision approved the tentative plat. West Linn Community Development Code (“CDC”) 99.230.B provides that the effective date of the Decision is 21 days from the date of mailing of the notice of the final decision. **Exhibit 1** shows that the City mailed notice of the Decision on June 28, 2019, making an effective date of July 19, 2017.

CDC 85.090 provides that that the final plat shall be submitted within 3 years of the approval of the tentative plat unless an extension is granted under CDC 99.325. CDC 99.325.A. provides for a two-year extension of the tentative plat approval, which, if approved, extends the three year period for submitting and recording the final plat until July 19, 2022.

The Applicant cannot complete 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. The requested extension does not include any modifications to the original application approved in the Decision.

Neither a pre-application meeting nor a neighborhood meeting is required before the submittal of this extension application because the Applicant does not request a modification to the Decision. CDC 99.325.E.1 and 2. This Application includes the appropriate Community Development Department deposit and the completed and signed City application form. CDC 99.325.E.3.

2. RESPONSE TO APPROVAL CRITERIA.

a. CDC 99.325, Extensions of approval.

“A. An extension may be granted by the original decision-making body by an additional two years from the effective date of approval pertaining to applications listed in CDC 99.060(A), (B), (C), (D) or (E), as applicable, upon finding that:

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;*”

RESPONSE: The Planning Commission can find that this standard is satisfied. **Exhibit 2** is a letter from Mr. Steve Miller of Emerio Design confirming that there have been no changes to the applicable CDC provisions and relevant approval criteria since the application was approved in 2017.

b. “2. *There are no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage; or*”

RESPONSE: The Planning Commission can find that this standard is satisfied.

There have been no demonstrated material misrepresentations, errors, omissions, or changes in facts that directly impact the project, including, but not limited to, existing conditions, traffic, street alignment and drainage since the 2017 Decision.

c. “3. *The applicant has modified the approved plans to conform with current approval criteria and remedied any inconsistency with subsection (A)(2) of this section, in conformance with any applicable limits on modifications to approvals established by the CDC.*”

RESPONSE: This standard is not applicable because the Applicant has satisfied subsections a.A.1 and 2.

d. E. *Extension procedures.*

“1. *The application for extension of approval with modifications to the original approval may be submitted only after a pre-application meeting under CDC 99.030(B). If no modifications are made to the original approval, a pre-application conference is not required.*

2. *The application for extension of approval with modifications to the original approval shall satisfy the neighborhood meeting requirements of CDC 99.038 for those cases that require compliance with that section. If no modifications are made to the original approval, no neighborhood meeting is required.*”

RESPONSE: The Applicant has not modified the application as approved in the Decision. Therefore, a pre-application meeting and a neighborhood meeting are not required.

e. **“3. Applications for extensions must be submitted along with the appropriate deposit to the Community Development Department.”**

RESPONSE: The required deposit has been made to the Community Development Department with this application.

f. **“4. Notice of the decision shall be issued consistent with CDC 99.080.”**

RESPONSE: The Applicant understands that notice of the decision will be issued pursuant with CDC 99.080.

g. **“5. The decision shall not become effective until resolution of all appeal periods, including an opportunity for City Council call-up pursuant to this chapter.”**

RESPONSE: The Applicant understands that the Planning Commission’s decision on this Application will not become effective until after all required appeal periods have been exhausted.

3. CONCLUSION.

The Planning Commission can find the applicable standards for an extension of the Decision are satisfied.

EXHIBIT LIST

Exhibit 1 AP-17-01 Decision

Exhibit 2 Current relevant CDC provisions and last date of amendment

WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
AP-17-01

**IN THE MATTER OF THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL ON
RECONSIDERATION OF THE CHENE BLANC 34-LOT SUBDIVISION AND WATER RESOURCE AREA
PERMIT AT 18000 UPPER MIDHILL DRIVE**

Overview

The City filed an Amended Notice of Withdrawal of Decision with LUBA on January 17, 2017. On January 19, 2017, LUBA issued its order granting the request with a deadline of June 1, 2017 to issue the decision on reconsideration.

On February 6, 2017, the City Council ("Council") returned the Chene Blanc application (AP-16-02) to the Planning Commission ("Commission") for reconsideration in a *de novo* public hearing. The Council adopted the motion "*...to approve the reconsideration process set forth in the City Attorney's January 24, (2017) Memorandum and focus the scope of the reconsideration to adequate public facilities including traffic impact and influences and pedestrian improvements and safety.*" The motion relates to the approval criteria of West Linn Community Development Code ("CDC") 85.200.A. The Council did not authorize reconsideration of any other criteria or issues.

The City provided notice of the Commission hearing in compliance with the CDC as follows:

"Public notice was mailed to all persons with standing from the original application, all property owners within 500 feet of the site, and all neighborhood associations on March 2, 2017. Notice was published in the Tidings newspaper on March 9, 2017. The site was posted with a sign on March 10, 2017. The notice requirements of CDC Chapter 99 have been met."

March 22, 2017 Staff Report to the Commission at 3.

At the Commission's March 22, 2017, meeting, the Commission held a *de novo* public hearing to reconsider the applications for compliance with CDC 85.200.A.1. No Commission members identified any disqualifying conflict of interest, bias, or *ex parte* communications. Commissioner Metlen declared a site visit. No one challenged the impartiality of any Commissioner to participate in the case. During the hearing, no one alleged that the Commission committed any prejudicial procedural errors. The Commission subsequently approved the applications with 11 conditions of approval.

On April 7, 2017, Jason and Jessica Harra filed a timely appeal of the Commission decision. Both established standing by submitting written testimony into the record. Mrs. Harra also testified orally at the March 22, 2017 hearing.

The City provided notice of the May 8, 2017 Council hearing in compliance with the CDC as follows:

“Public notice was mailed to all property owners within a 500 foot radius of the property, all persons with standing on April 19, 2017 and all neighborhood associations. Notice was published in the Tidings newspaper on April 27, 2017. The site was posted with a sign on April 27, 2017. The notice requirements of CDC Chapter 99 have been met.” May 8, 2017 staff report at 2.

At the appeal hearing on May 8, 2017, all members of Council were present. Mayor Axelrod introduced the item and explained the order of proceedings. City Attorney Tim Ramis then discussed then substantive and procedural parameters of the hearing, including that the appeal was on the record, and no new evidence was allowed. When prompted, no members of Council identified any disqualifying conflicts of interest or bias. Councilor Sakelik declared that he visited the site two months ago. Councilor Martin declared that he had a conversation with Jim O’Toole regarding an agreement negotiated between the applicant and Robinwood Neighborhood Association regarding construction routes. He also declared that he attended the Commission meeting as a Council liaison. Councilor Cummings stated that she attended a meeting at the fire station where the issue was mentioned. Mayor Axelrod stated that he had received emails and process questions from members of the public and these were referred to City staff. No one challenged the jurisdiction of the Council as a whole to hear and decide the matter. A member of the public challenged Councilor Martin’s impartiality based upon an alleged conversation he had with a Commission member during a break at the March 22, 2017 Commission meeting. Councilor Martin stated that he did not recall the conversation and that he was not biased but he was happy to recuse himself. The Council discussed the matter and passed a motion authorizing Councilor Martin to participate in the proceedings. The member of the public did not renew her objection.

The Council accepted only testimony and argument at the appeal hearing that related 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.” CDC 99.280.B limits appeals of Commission decisions to: “1) Those issues set forth in the request to appeal; and 2) the record of the proceedings as well as the oral and written arguments presented which are limited to those issues clearly and distinctly set forth in the notice of appeal.”

The appellants’ four grounds for appeal are summarized as follows: 1) failure to address the timeframe for development; 2) the need for geological studies; 3) inadequate consideration of the impact of the proposed off-site mitigation on existing bike lanes on Willamette Drive; and 4) long term responsibility to address congestion, drainage, lighting, and related issues that may arise after the development is complete. Whether or not testimony was within the scope of the “on the record” hearing was determined by the Council at the hearing.

At the meeting on May 8, 2017, the Council held a public hearing on the appeal. The hearing commenced with a staff report presented by Peter Spir, Associate Planner. Attorneys Seth King and Michael Robinson of Perkins Coie, Planning Consultant Andrew Tull of 3J Consulting, and

Matt Bell of Kittelson and Associates, Inc. ("KAI") presented for the Applicant. The appellants represented themselves.

The Council then accepted public testimony in support of the appeal, from neutral party, and in favor of the application. The Council continued the hearing to May 18, 2017 for staff to determine the admissibility of oral and written testimony and for applicant's oral rebuttal. Applicant was permitted to submit a final written argument by May 11, 2017. The Council did not authorize any other additional evidence.

The Council held the continued hearing on May 18, 2017. Councilor Cummings was absent, but the other members of Council were present. When prompted, no members of Council declared any actual or potential conflicts of interest. Councilor Perry declared that a member of the public asked her a procedural question outside of the hearing. Mayor Axelrod declared that he received emails that had been transmitted to City staff. No one challenged the jurisdiction of the Council or any of its individual members to hear and decide the appeal. The Council then accepted statements from one of the appellants and appellants' representative regarding the scope of the appeal. The applicant then provided rebuttal and answered questions. The Council then approved a motion to accept and reject argument and evidence offered into the record, consistent with the recommendations set forth in two staff memos dated May 17, 2017. The Council also voted to include in the record a letter dated May 16, 2017 letter from Jennifer Bragar, attorney representing the appellants, and its redacted Exhibit 2. The Mayor closed the public hearing. After deliberations, the Council approved a motion to tentatively deny the appeal and approve the applications by a 4-0 vote, with the Council directing staff to prepare findings and conditions. The conditions were to include the 11 conditions adopted by the Commission, the six proposed by the applicant, with modifications, as necessary, to meet the Council's intent as expressed during deliberation.

I. Scope of the Appeal

The Council finds that three different provisions limit the scope of this appeal.

First, the Council finds that the scope of the appeal must necessarily fall within the limited scope of the reconsideration. As explained above, the Council adopted a motion on February 6, 2017, limiting the scope of the reconsideration to "adequate public facilities including traffic impacts and influences and pedestrian improvements and safety." Therefore, the scope of the appeal must not exceed these subjects.

Second, appeals of Commission decisions are limited to "[t]hose issues set forth in the request to appeal." CDC 99.280.B.1. *See also* CDC 99.280.D ("Review shall be limited to the issues clearly identified in the notice of appeal."). This matter is an appeal of a Commission decision. Therefore, the scope of this matter is limited to issues clearly identified in appellants' appeal statement.

Third, in order to be preserved, appeal issues must have been raised with specificity before the Commission: "No issue may be raised on appeal that was not raised before the Planning Commission with sufficient specificity to enable the Commission and the parties to respond."

CDC 99.280.D. Based upon this provision, the Council finds that the scope of appeal is limited to issues raised with specificity before the Commission.

Together, these provisions limit the scope of this appeal to issues that are: (1) within the scope of the reconsideration; (2) identified in the appeal statement; and (3) raised with sufficient specificity before the Commission. As explained below, the Council finds that three issues meet these criteria, and the appeal is limited accordingly.

Appellants have identified four appeal issues in their appeal statement:

“We are appealing the approval and ask that this be taken up by the West Linn City Council for further review. Our reasons are as follows:

“1. The Planning Commission has not sufficiently addressed the timeframe for this development. The application only applies to the creation of lots to eventually be sold to construction companies. We are requesting that some sort of timeline be applied to the development to keep it from becoming a long drawn out process that would have a negative impact on the surrounding homeowners, especially those considering the sale of their homes.

“2. 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.

“3. The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor. Nothing has been stated about how this will affect the existing bike lanes. We would like to see this addressed in a more substantial way. There is very little room to retain bike lanes in both directions and carve out a turn lane.

“4. We do not believe that a sufficient plan is in place to determine who addresses issues that arise after the developer walks away from the lots, once they are carved out. Is the City of West Linn responsible for any and all congestion, drainage, lighting, etc. issues?”

See appellants’ “Appeal of Planning Commission approval decision for File No. AP-16-02.” The Council finds that Appeal Issue 4 does not fall within the scope of reconsideration because it does not concern CDC 85.200.A, and it was not raised with specificity before the Commission. Therefore, the Council finds that Issue 4 falls outside the scope of the appeal.

The Council finds that the remaining three issues (Issues 1, 2, and 3) fall within the scope of the reconsideration, were included on appellants’ appeal statement, and were raised with sufficient specificity before the Commission to allow a response by the Commission. Therefore, the Council finds that Issues 1, 2, and 3 fall within the scope of the appeal. However, as further explained below, the Council finds that not all arguments and evidence presented by the

parties fall within the scope of these three issues. Accordingly, the Council rejects those arguments and evidence described below.

II. The Record

The Council settled the record at the May 18, 2017, hearing. The record includes the entire file from AP-17-01 and AP-16-02 (which includes the original application), except as excluded by the Council below.

The Council finds that the record in this matter is limited in two ways. First, for the reasons explained above, the scope of appeal is limited to Issues 1, 2, and 3 identified in appellants' appeal statement. Accordingly, all arguments on appeal must relate to one or more of these issues.

The Council further finds that the Council may only accept new evidence on appeal in limited circumstances, and those circumstances are not present in this case. The Council may only accept new evidence on an appeal from the Commission in one of the following circumstances (CDC 99.280.C):

"1. A procedural error was committed that prejudiced a party's substantial rights, and reopening the record before the Council is the only means of correcting the error; or

"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."

In this case, no one has alleged that the Commission committed a procedural error that prejudiced their substantial rights. Further, although appellants stated their intent to submit new evidence to Council, they did not couple that request with a specific allegation that the Commission committed a relevant and material factual error. The appellants also did not demonstrate that any factual error that did occur was not their fault. In fact, the Council finds that appellants had ample opportunity to present evidence and respond to Applicant's evidence before the Commission, which could have affected the Commission's Findings the appellants now take issue with. However, appellants failed to do so. Although appellants contend that they did not identify some factual issues until after the Commission closed the record, they did not object or allege a prejudicial procedural error. Further, the Council finds that appellants had approximately three weeks' time to review the applicant's materials before the Commission hearing, which Council finds to be an adequate time period to allow appellants to review and present argument and evidence in response to the application materials. Therefore, the Council finds that there is no legal basis to accept new evidence in conjunction with this appeal.

City staff submitted two memoranda dated May 17, 2017 into the record, one with subject line "AP-17-01 Review of Oral Testimony for Admissibility" and one with subject line "AP-17-01 Review of Submitted Comments for Admissibility," which identify testimony that consists of

new evidence and/or argument outside the scope of the appeal. The Council finds that these memos correctly address the limitations on argument and evidence summarized above. Accordingly, the Council must reject and excludes from the record the oral and written testimony identified as inadmissible in these two staff memos.

III. Applicable Approval Criteria

The Council finds that the following CDC criteria fall within the scope of this reconsideration:

85.200 APPROVAL CRITERIA

“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.

A. Streets.

1. General. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to the generalized or reasonable layout of streets on adjacent undeveloped lots or parcels, to topographical conditions, to public convenience and safety, to accommodate various types of transportation (automobile, bus, pedestrian, bicycle), and to the proposed use of land to be served by the streets. The functional class of a street aids in defining the primary function and associated design standards for the facility. The hierarchy of the facilities within the network in regard to the type of traffic served (through or local trips), balance of function (providing access and/or capacity), and the level of use (generally measured in vehicles per day) are generally dictated by the functional class. The street system shall assure an adequate traffic or circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried. Streets should provide for the continuation, or the appropriate projection, of existing principal streets in surrounding areas and should not impede or adversely affect development of adjoining lands or access thereto.

(....)”

2.030 SPECIFIC WORDS AND PHRASES

“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.”

IV. Incorporated Findings

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

1. Commission Final Decision and Order of March 22, 2017, which incorporated the March 22, 2017 Staff Report for AP-16-02, with attachments (including without limitation the 2016 Commission decision and the 2016 Council decision pertaining to the applications), and the Applicant's submittals, including without limitation the narratives, for all criteria;
2. Staff Report to the Council for May 8, 2017; and
3. The Applicant's March 1, 2017 application narrative; and letters from Perkins Coie LLP dated March 22, 2017; April 19, 2017; and May 11, 2017.

In the event of a conflict between these incorporated documents and these findings, these findings shall control. The Council finds that, in the incorporated findings in Item 1 above, the City found that the applications comply with all applicable approval criteria with the exception of CDC 85.200, as it pertains to public transportation facilities. This findings document explains how the applications satisfy CDC 85.200, as it pertains to public transportation facilities.

V. Findings in Response to Appeal Issues

A. APPEAL ISSUE 1 – “The Planning Commission has not sufficiently addressed the timeframe for this development. The application only applies to the creation of lots to eventually be sold to construction companies. We are requesting that some sort of timeline be applied to the development to keep it from becoming a long drawn out process that would have a negative impact on the surrounding homeowners, especially those considering the sale of their homes.”

Findings: The City Council finds that appellants' contention does not provide a basis to deny or further condition the applications. Applicant has a three-year time period to implement the tentative subdivision by constructing on-site streets, utilities, and infrastructure and recording the final plat. CDC 85.090. This time frame for implementing the tentative subdivision will apply. However, the City Council finds for two reasons that there is no basis to establish a time period for constructing homes on the platted lots on the site in a future project. First, neither the CDC nor any other City standard requires that construction of homes on platted lots occur within a specific period of time. Thus, there is currently no legal mechanism for the City to impose a deadline. Second, as stated in the May 8 staff report, there are many vacant platted

lots throughout the City, and some of these have been unbuilt for decades. Thus, the City Council finds that the uncertainty about if or when homes are constructed on infill lots is a common circumstance and one the City and its residents are able to manage. Therefore, the City Council denies this appeal issue.

B. APPEAL ISSUE 2 – “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.”

Findings: The Council finds that it is geotechnically feasible to develop and construct the proposed on-site public streets identified on applicant’s plans, subject to incorporating the recommendations of applicant’s professional geotechnical engineer, GeoPacific Engineering, Inc. (“GeoPacific”). As support for this conclusion, the City Council relies upon the testimony of GeoPacific in “Preliminary Geotechnical Engineering Report & Landslide Hazard Study” dated August 6, 2015 (“Geotechnical Study”), which is included in the record. GeoPacific prepared the Geotechnical Study by reviewing geologic mapping for the site and literature in the field and by analyzing excavations from 11 test pits from the site. At least three of these test pits are from locations where applicant is proposing to install public streets. Based upon its analysis, GeoPacific concluded that it is geotechnically feasible to develop the proposed project on the site. In its analysis, GeoPacific identified three main issues for project completion.

The first issue is the presence of ancient debris flow materials on the site. To address this issue, GeoPacific recommended that site grading be planned in such a way as to unload or completely remove the ancient debris flows. The second main issue is the presence of undocumented fill material and buried topsoil. The third issue is presence of expansive clay on the site. GeoPacific recommended that the expansive clay be removed and replaced with compacted fill; however, GeoPacific also stated the no such removal was recommended within the locations of the proposed public streets because they would be comprised of flexible pavements that are not significantly impacted by expansive soils.

GeoPacific further opined that, subject to adequate soil compaction and installation of pavement sections of specified thicknesses, the on-site public streets would be suitable to support the anticipated levels of traffic. GeoPacific’s recommendations included both wet-weather and dry-weather pavement construction techniques.

Finally, the Geotechnical Study recommended that GeoPacific be consulted to review the final grading and development plans and to provide any additional recommendations prior to any construction.

Although appellants have expressed concerns about geotechnical conditions on the site, they have not raised any questions or issues that undermine or call into question GeoPacific’s recommendations and conclusions. Further, appellants have not presented an alternative geotechnical analysis presented by a professional geotechnical engineer that reaches different conclusions or makes different recommendations than GeoPacific.

Applicant has voluntarily agreed to submit a supplemental geotechnical analysis for review by the City in conjunction with plan review for the site. The Council accepts this voluntary condition and imposes it as modified below:

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets and develop the building sites. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.

For these reasons, the Council finds that there is substantial evidence in the whole record to support the conclusion that it is geotechnically feasible to develop the project on the site, subject to compliance with GeoPacific's recommendations in the Geotechnical Study. The Council denies this appeal issue.

C. APPEAL ISSUE 3 – “The Planning Commission approval incorporates an Off-Site Traffic Mitigation with the addition of a north-bound left turn lane onto Arbor. Nothing has been stated about how this will affect the existing bike lanes. We would like to see this addressed in a more substantial way. There is very little room to retain bike lanes in both directions and carve out a turn lane.”

Findings: KAI stated that it is feasible to incorporate bicycle lanes into the design of the interim improvements. See KAI memorandum dated March 1, 2017, page 3. The drawing of the proposed Willamette Drive interim improvements depicts bicycle lanes that are between approximately 5.5 and 8.5 feet wide on each side of the street. See Figure 9 of KAI's March 1, 2017 memorandum. For approximately a quarter of the length of the interim improvements (125 feet), the proposed bicycle lanes will exceed the six-foot wide standard. See May 8, 2017 Staff Report, page 6.

The Oregon Department of Transportation (“ODOT”) has jurisdiction over this segment of Willamette Drive and has stated that, as needed, it will consider deviations from design standards for Applicant's interim improvements that are consistent with design deviations granted for the Highway 43 Multimodal Transportation Project as a whole. See ODOT memorandum dated February 3, 2017, page 2. To the extent ODOT approves a design exception that affects bicycle lanes for the interim improvements, it will be the final decision of the agency with jurisdiction over this highway segment on the need for/sufficiency of bicycle lanes associated with the interim improvements. Accordingly, based upon the testimony from Applicant's transportation engineer and ODOT, the Council finds that, subject to a condition requiring completion of the interim improvements (including bicycle lanes), as reviewed, modified, and approved by ODOT, this appeal issue is addressed.

Further, the Council finds that the interim improvements will be temporary in nature and may only accommodate development-related traffic for two years (between 2018, the earliest year of occupancy, and 2020, the date KAI testified to the Commission that the long-term improvements for Willamette Drive are anticipated to be completed). Further, the Council

finds these long-term improvements will incorporate bicycle lanes. See ODOT memorandum dated February 3, 2017, page 1. Commission Condition 3 requires Applicant to make its fair-share contribution to these long-term improvements, which will necessarily constitute Applicant's fair-share contribution to bicycle lanes associated with these long-term improvements. In order to ensure compliance with this requirement, the Council imposes the same condition below.

Although a resident contended that the proposed bicycle lanes would be less than five feet wide, the Council denies this contention because it is refuted by the scaled drawings in the record of the proposed improvements. Another resident contended that the road width was narrower than Applicant stated. The Council denies this contention on the same grounds and for the additional reason that the resident did not adequately substantiate its alternate measurement techniques and results.

Although residents contended that the proposed bicycle lanes would be less safe for bicyclists than current conditions, the Council denies these contentions for four reasons. First, these contentions are speculative and not supported by evidence. Second, the Council finds that the proposed bicycle lanes are, in some cases the same or nearly the same width, as existing bicycle lanes along this stretch of Willamette Drive. For example, existing bicycle lanes on the west side of Willamette Drive are only 5.5 feet for approximately 163 feet in the area where the interim improvements are proposed. Third, the Council finds that Matt Bell of KAI testified at the public hearing that ODOT may approve design exceptions to allow bicycle lanes as narrow as five feet wide in constrained areas, and the proposed bicycle lanes are, even at their narrowest point, expected to be six inches wider than that. Fourth, as stated above, the interim improvements are only temporary in nature and will be replaced as early as 2020.

For these reasons, and subject to the referenced condition of approval, the Council finds that Applicant's proposed interim improvements along Willamette Drive will provide for adequate bicycle lanes, subject to final review, modification, and approval by ODOT.

Finally, although appellants contend that they intended for this appeal issue to incorporate broader "traffic concerns," the Council finds that the plain language of the appeal statement, which expressly mentions concerns about bicycle lanes but no other specific transportation issues, does not support the appellants' contention. Nevertheless, the Council addresses the appellants' additional transportation-related contentions in Section VI of this findings document.

The City Council denies this appeal issue.

D. APPEAL ISSUE 4 – "We do not believe that a sufficient plan is in place to determine who addresses issues that arise after the developer walks away from the lots, once they are carved out. Is the City of West Linn responsible for any and all congestion, drainage, lighting, etc. issues?"

Findings: For the reasons explained in Section I ("Scope of the Appeal") of these findings, the Council finds that this issue does not fall within the scope of the reconsideration and was not

raised below with sufficient specificity to allow the Commission to respond. Therefore, the Council denies this appeal issue.

VI. Findings in Response to Additional Issues

The Council finds that residents raised additional issues that are outside the scope of the appeal issues and for that reason alone, they are denied. In order to be comprehensive, the Council addresses these issues on the merits below.

A. Adequacy of Interim Intersection Improvements.

In conjunction with its development, Applicant proposed to construct off-site transportation facilities, to include restriping Willamette Drive with a northbound left turn pocket on the south leg of the Willamette Drive/Arbor Drive intersection and a left-turn refuge storage area on the north leg of the intersection, as depicted in Figure 9 of KAI's March 1, 2017 memorandum. These improvements are referred to as the "interim improvements" to distinguish them from long-term improvements that the City and ODOT have planned for this location. The purpose of the interim improvements is to mitigate traffic impacts of the development.

The Council finds that these interim improvements will render the intersection of Arbor Drive and Willamette Drive, which is currently failing, "adequate." For a transportation facility that is failing to be "adequate" for purposes of CDC 85.200, a development must avoid further degradation of the facility. CDC 2.030 (definition of "adequate public facilities"). Further, any mitigation measures required to bring the facility standard to existing conditions must be in place at the time of occupancy. *Id.*

The interim improvements will meet both aspects of this definition. First, the intersection improvements are projected to improve safety and operational performance of the intersection:

"The proposed mitigation measures will significantly decrease the delay associated with the left-turn movement from Arbor Drive to OR 43 by allowing for two-stage left turns. The proposed mitigation measures will also provide separation between slowed or stopped motorists on OR 43 waiting to make a left-turn onto Arbor Drive; the separate lane will reduce the potential for rear-end crashes at the intersection."

KAI memo dated March 1, 2017 at 3. The Council further relies upon the results of KAI's analysis, which show that, upon implementation of Applicant's interim improvements, the performance of this intersection is projected to improve from LOS "F" to LOS "D." See KAI memo dated March 1, 2017 at 1 and its Appendix B, Figure 8.

Second, to ensure that the interim improvements are in place before occupancy of the development, the Council imposes a condition requiring their completion before issuance of any grading or site development permits for the project:

“3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit or site development permit for the development site, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates’ March 1, 2017, memorandum (‘KAI Memorandum’) (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant’s proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.”

For these reasons, the Council finds the interim improvements will render the intersection of Arbor Drive and Willamette Drive “adequate.”

The Council finds that appellants’ contentions to the contrary do not undermine this conclusion. First, although appellants contend that the interim intersection improvements may be unsafe or create other hazards, the Council denies these contentions because they are speculative; they are not based upon any evidence in the record. Further, they ignore the fact that three separate transportation engineers—KAI, ODOT, and the City’s contract engineer at DKS—reviewed and concurred with the recommended improvements. Finally, they do not refute KAI’s detailed explanation at the Council public hearing of the modeling software (Synchro) used by KAI in its analysis, which is commonly used for such purposes. Likewise, the Council finds that a resident’s contention that Applicant’s development will worsen congestion on Willamette Drive and thus impede response time for emergency vehicles is speculative and is refuted by the substantial evidence that the intersection will experience less delay upon completion of the interim improvements than it currently does.

Further, although appellants contend that the proposed improvements are inadequate because they will likely require that ODOT approve a design exception, the Council denies this contention for three reasons. First, nothing in CDC 85.200 prohibits the City from finding that a transportation improvement is “adequate” simply because it requires ODOT to approve a design exception. Second, the Council finds that ODOT has jurisdiction over this issue and has adopted procedures and criteria for evaluating design exception requests. Compliance with these procedures and criteria will ensure that applicable ODOT standards are met. Third, the Council finds that, as stated by KAI, the interim improvements are consistent with the long-term improvements for Willamette Drive, which have themselves been subject to design exceptions.

Finally, although appellants contend that the intersection barely meets applicable performance standards with the improvements, the Council finds that improvements will make the intersection operate more safely and with fewer delays than it does under current conditions, according to KAI’s testimony in its March 1, 2017 memorandum and ODOT’s findings. Therefore, the proposed improvements are expected to meet, and may go beyond the

requirements of CDC 85.200 and the definition of “adequate public facilities” in CDC 2.030, which only require that a development not worsen existing conditions at a failing intersection.

B. Impacts to Local Streets.

The Council also finds that local streets between the site and Willamette Drive can be modified to serve the proposed development. As support for this conclusion, the Council relies upon the testimony of KAI, who explained that, upon build-out of the proposed development, these local streets would still carry significantly fewer trips than their design capacity:

“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.” KAI Memo dated March 1, 2017 at 4.

The Council also relies upon the fact that Applicant will improve local street connections by completing a new connection between Upper Midhill Drive and Hillside Drive and by providing road widening and sidewalk improvements along Hillside Drive south of the site.

Although residents expressed particular concerns about a narrow stretch of Upper Midhill Drive, the Council finds that this roadway segment is adequate to serve existing traffic and the limited additional traffic generated by the development. As support for this conclusion, the Council relies upon testimony from KAI, who opined that there was adequate capacity on Upper Midhill Drive to serve existing and expected traffic:

“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.” *Id.*

Although a resident contended that Upper Midhill Drive is inadequate because it is narrower than City standards for a local street, the Council finds that this contention does not provide a basis to deny or further condition the applications. The narrow nature of Upper Midhill Drive is an existing condition, not one created by the development, and the neighborhood has adjusted to it. As support for this conclusion, the Council relies upon the low levels of traffic utilizing this segment of Upper Midhill Drive, the fact that motorists in the neighborhood are accustomed to

slowing to accommodate other traffic along this segment of the roadway, and the fact that there have been no reported crashes along Upper Midhill Drive over the five-year period ending December 31, 2015. Finally, although residents contend that many local streets in the area lack adequate sidewalks, the Council recognizes that many neighbors are resistant to the placement of sidewalks. The Council acknowledges there are sidewalks and paths linking the site and Willamette Drive:

“The existing sidewalk network is also sufficient to accommodate existing pedestrian traffic and pedestrian traffic generated by the proposed development. There is a continuous network of sidewalks and paths that connect the proposed development to OR 43 at the OR 43/Marylbrook Drive intersection, which is served by local transit service and is also the main entrance to Marylhurst University. While there are gaps in the sidewalk network that connect the proposed development to the OR 43/Arbor Drive intersection, as well as other destinations along OR 43 and Upper Midhill Drive, the existing network of sidewalks and shoulders is sufficient to accommodate pedestrians.”
KAI Memo dated March 1, 2017, at 4.

No one has disputed the existence of this continuous sidewalk/path network. Applicant has also volunteered to install pedestrian way-finding signage in accordance with the Manual on Uniform Traffic Control Devices and City requirements. The Council finds that this signage will enhance safety. The Council accepts this offer and imposes the requirement in the following condition:

16. Pedestrian Way Finding Signs. The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.

C. Adequacy of KAI Transportation Analysis.

The Council finds that the KAI transportation analysis is credible. The Council reaches this conclusion for three reasons.

First, KAI conducted its transportation analysis in accordance with industry and City standards and correctly identified the type of use and applied the correct trip rates for the Development. The City requires that an applicant utilize the latest edition of the Institute of Transportation Engineers’ Trip Generation Manual to determine average daily vehicle trips. CDC 85.170.B.2.b. KAI utilized the 9th Edition of ITE’s *Trip Generation*, which is the latest edition of this manual, to determine trip generation from the development. *See* KAI Memo dated March 1, 2017, at 2. Further, the Council finds that KAI utilized the correct use category (ITE Land Use Code 210 – Single-Family Detached Housing) in conducting its analysis. *Id.* Finally, KAI applied the trip rates for ITE Land Use Code 210 in its analysis. *Id.* By identifying the correct use and the correct trip

rate for that use, the Council finds that KAI correctly projected the trip generation from the development.

Second, the Council finds that KAI correctly accounted for trips from in-process developments and adjusted its counts to consider school year trips. To account for trips from in-process developments and additional growth in regional and local traffic in the study area, KAI assumed a two percent (one percent per year for each of two years) in its traffic counts. See KAI Memo dated March 1, 2017, at 2. KAI testified that this adjustment was sufficient to account for trips from 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. Further, to account for school year trips, KAI conducted supplemental traffic counts at the affected intersections in October 2016 and seasonally adjusted these counts. *Id.* This type of seasonal adjustment is industry standard and consistent with the ODOT Analysis Procedures Manual. *Id.* KAI re-ran its analyses with the adjusted October 2016 counts and found that, subject to implementing the identified mitigation measures, all affected intersections would operate consistent with applicable performance standards. KAI Memo dated March 1, 2017, at 2-3.

Although appellants contended that KAI's analysis failed to account for trips from in-process developments (including new duplexes on Willamette Drive and the expansion of Mary's Woods), the Council denies the appellants' contention for the reasons stated above. The Council further finds that, as explained in KAI's March 1, 2017 memorandum, the Mary's Woods development is not expected to occur until after full build-out of the development; therefore, the Council finds that trips associated with the Mary's Woods expansion would not actually affect the system in 2018, the occupancy date for applicant's development in KAI's analysis. Stated within the terms of the CDC 2.030 definition of "adequate public facilities," there will be no "projected demand" from Mary's Woods in the year the subject development opens. Therefore, these trips need not be part of the analysis. On a related point, the Council denies the appellants' contention that KAI erred in its assumed distribution of trips from Mary's Woods. Appellants did not cite to any alternative trip distribution in the record. Moreover, the Council finds that, as stated, the Mary's Woods expansion is not expected to occur until later, meaning that any trip distribution is not part of the "projected demand" that must be considered in determining whether there are "adequate public facilities."

The Council finds that two other transportation engineers—at the City and ODOT— independently reviewed and concurred with the findings and conclusions of KAI's transportation analysis. The Council finds these independent reviews to lend further credence to KAI's findings.

Although appellants contend that KAI's transportation analysis is deficient because it does not include the actual traffic counts from 2016 or specifically state the number of trips associated with pending developments, the Council denies the appellants' contention for two reasons. First, it is well-settled that a local government may rely upon an expert's opinion even if the record does not include all of the evidence the expert relied upon in reaching that opinion. This is particularly the case when the appellants do not adequately explain why the missing data

undermines KAI's analysis or its conclusions, and when appellants do not cite to any evidence that casts doubt upon KAI's testimony. Second, the Council finds that the data, while not separately reported, is adequately accounted for in the analysis: KAI testified that the traffic counts were reflected in the trip figures reported in the analysis. Further, KAI testified that the one percent annual growth rate discussed below included trips from in-process developments. Appellants have not cited to any evidence that undermines these statements. Accordingly, the Council denies appellants' contention on this issue.

Appellants contended that KAI's March 1, 2017 analysis is deficient because it is not stamped by a professional transportation engineer. The Council denies this contention. The Council finds that while the lack of a stamp does not undermine the reliability of KAI's testimony, the record reflects that KAI's analytical team included a transportation engineer, and appellants do not contend otherwise.

Although appellants contended that KAI's assumption of a one percent annual growth rate (two percent overall for the 2017-18 time period) was not supported by any evidence, the Council denies the appellants' contention. Matt Bell, Transportation Planner with KAI, testified during the public hearing that the one percent annual growth rate is common throughout the Portland area and was coordinated with the transportation engineers at both the City and ODOT. Although appellants disagree with the selected growth rate, they do not cite to any substantial evidence in the record that conflicts with or undermines the selected growth rate nor do they contend that it is not an acceptable industry standard.

Finally, although appellants contend that Applicant's transportation analysis is deficient because it does not address CDC 85.170.B.2.e.1.C, the Council denies this contention because this issue is outside the scope of the appeal. It was not included in the appeal statement, and it was not raised with sufficient specificity to allow the parties to address the issue before the Commission closed the evidentiary record.

For these reasons, the Council finds KAI's analysis to be credible and to be based upon reasonable assumptions and industry practices.

D. Need for Crosswalk on Willamette Drive.

Residents requested that Applicant install a crosswalk on Willamette Drive at the intersection with Arbor Drive. Applicant has not identified a crosswalk on its interim improvements but has agreed to propose the crosswalk to ODOT. Council accepts Applicant's proposed condition and imposes it as follows:

"12. Crosswalk on Highway 43. The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval."

Subject to this condition, the Council finds that Applicant has addressed this concern.

E. Construction Traffic.

Residents expressed concern about impacts from construction traffic. Applicant contended that impacts from short-term traffic associated with construction of the approved use were outside the scope of CDC 85.200.A. The Council found that the introduction of construction truck traffic to local streets in the vicinity of the proposed subdivision site could pose a safety concern given the limited number of routes, the limited street widths, current conditions at the intersection of Highway 43 and Arbor Drive and the need to share the streets with other transportation modes (e.g., school buses, bicycles, and pedestrians).

The Council finds that there are two streets available to provide access to the site from the main commercial truck corridor of Highway 43 (also known as Willamette Drive). One is Arbor Drive; the second is Upper Midhill Drive connecting with Marylhurst Drive. The intersection of Willamette Drive and Arbor Drive has no traffic signal. The intersection of Marylhurst Drive and Willamette Drive has a traffic signal.

The Council anticipates that the use of a loop route, which uses of all those streets, may provide for a more efficient and safer circulation of temporary truck traffic. The loop route was also expected to be safer in that school buses, bicycles and pedestrians will only encounter trucks coming from one direction and be better able to anticipate that traffic activity. Flaggers will be required, as a condition of approval, during school bus pick up and drop off to minimize potential conflicts.

To address these concerns, Applicant proposed both a Traffic Management Plan ("TMP") and a Construction Management Plan ("CMP"). The Council finds that Applicant's TMP and CMP will minimize adverse impacts from construction traffic generated by the development and will ensure that there are adequate public facilities for this purpose. The Council imposes conditions requiring compliance with the TMP and CMP as follows:

- 11. Traffic Management Plan (TMP).** Construction vehicles for the project shall be subject to the following traffic management restrictions.
 - a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
 - b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
 - c. Flaggers shall direct construction related traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.
 - d. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers".
 - e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.

- f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.

15. Subdivision Construction Management Plan (CMP). The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work
- b. The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area;
- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477;
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood;
- e. No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site;
- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles; and,
- g. No employee parking at the bottom of College View Drive in the turnaround area.
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.

F. Accessible Bus Stops.

Residents expressed concern that Applicant’s interim improvements would adversely affect the ability of residents to gain access to and from Tri-Met buses at the existing bus stops. Applicant has proposed to coordinate with Tri-Met and ODOT to ensure provision of bus stops meeting applicable standards in this location. Council accepts Applicant’s proposed condition and imposes it as follows:

“14. Tri-Met Bus Stops. The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.”

Subject to this condition, the Council finds that Applicant has addressed this concern.

G. Request to Rezone.

Several residents requested that the City consider downzoning the site to a lower density designation. Applicant's representatives stated on the record that Applicant was not interested in a downzoning. The Council finds that it is required to consider the applications based upon the approval criteria in effect when the applications were submitted and thus, even if the City proceeded with a downzoning, it would not affect the pending applications or provide the City any additional authority to deny or condition the application to modify the zoning.

VII. Conditions of Approval

The Council imposes the following conditions of approval prepared by the Commission, many volunteered by the Applicant and modified further by the Council:

- 1. Site Plan.** With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C 111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15.
- 2. Engineering Standards.** All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations shall comply with all applicable City standards. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.
- 3. Off-Site Traffic Mitigation.** To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit or site development permit for the development site, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017, memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.
- 4. Storm water Tract C.** Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn.
- 5. Mutual Maintenance and Easements.** Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.
- 6. No Parking Signs.** The applicant shall install signs reading "No Parking- Fire Lane" on

one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. In the event that the geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.

9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

10. Hillside Drive Off-Site Sidewalk Improvements. The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).

- 11. Traffic Management Plan (TMP).** Construction vehicles for the project shall be subject to the following traffic management restrictions.
- a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
 - b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
 - c. Flaggers shall direct construction related traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.
 - d. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers".
 - e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.

f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.

12. Crosswalk on Highway 43. The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets and develop the building sites. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.

14. Tri-Met Bus Stops. The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.

15. Subdivision Construction Management Plan (CMP). The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work.
- b. The Developer shall distribute a “flyer” door to door to the neighbors’ houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors’ houses which will be impacted by the construction and development activities. The “flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area.
- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood.
- e. No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site.
- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles.
- g. No employee parking at the bottom of College View Drive in the turnaround area.
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.

16. Pedestrian Way Finding Signs. The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of

"way finding" signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.

17. Pedestrian Route. The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive to establish a safety zone for pedestrian traffic. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane for vehicles approximately 12 feet wide. Signs shall be installed at each end of Upper Midhill Drive identifying the area east of the line as a pedestrian route.

18. Community Outreach. The applicant shall provide updates at the monthly meetings of the Robinwood Neighborhood Association, from pre-construction phase to the commencement of the final plat phase.

VIII. Order

Based upon these findings of fact and the above-referenced evidence, the Council concludes that the applications satisfy all applicable approval criteria and that the appeal issues have not demonstrated that the Commission erred. Accordingly, the Council approves the applications, subject to the above-listed conditions of approval. This order supersedes the Council's findings pertaining to CDC 85.200 and the denial of the applications in the order for Case No. AP-16-02.



RUSSELL AXELROD, MAYOR

6/26/17

DATE

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

Mailed this 28th day of June, 2017.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m.,
July 19, 2017.

Devrev/projects folder/projects/AP-17-01/CC final decision and order-ps-n

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



CITY OF West Linn

22500 Salamo Road
West Linn, OR 97068

STAFF REPORT FOR THE PLANNING COMMISSION

FILE NUMBER: SUB-15-03/WAP-16-03

HEARING DATE: April 20, 2016

REQUEST: 34-lot Subdivision and Water Resource Area Permit at 18000 Upper Midhill Drive

APPROVAL CRITERIA: Community Development Code (CDC) Chapter 14, Single-Family Residential Attached and Detached/Duplex, R 4.5; Chapter 85, Land Division General Provisions; Chapter 32, Water Resource Area Protection.

STAFF REPORT PREPARED BY: Peter Spir, Associate Planner

Planning Manager's Initials AB Development Review Engineer's Initials KQL

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GENERAL INFORMATION

OWNER: 18000 Upper Midhill Drive, LLC
1235 N Dutton Ave. #E
Santa Rosa, CA 95401
Contact: David Chiddix

APPLICANT: Upper Midhill Estates, LLC
931 SW King Ave.
Portland, OR 97205
Contact: Ryan Zygar

CONSULTANT: 3J Consulting, Inc.
5075 SW Griffith Drive, Suite 150
Beaverton, OR 97005
Contact: Andrew Tull

SITE LOCATION: 18000 Upper Midhill Drive

LEGAL DESCRIPTION: Clackamas County Assessor's Map 2S1E14CA0200

SITE SIZE: 6.1 acres

ZONING: R-4.5, Single-Family Residential Attached and Detached/Duplex, 4,500 square foot minimum lot size for single family detached homes)

COMP PLAN DESIGNATION: Medium-Density Residential

120-DAY PERIOD: This application became complete on February 11, 2016. The 120-day maximum application-processing period initially ended on June 10, 2016. The applicant subsequently provided a 30-day waiver of the 120 day rule. Therefore, the 120 plus 30 day period lapses on July 10, 2016.

PUBLIC NOTICE: Public notice was mailed to the all neighborhood associations and affected property owners on March 31, 2016. The property was posted with a notice sign on April 7, 2016. The notice was published in the West Linn Tidings on April 7, 2016. The notice requirements of CDC Chapter 99 have been met. In addition, the application was posted on the City's website March 31, 2016.

EXECUTIVE SUMMARY

The applicant seeks approval of an application for Subdivision Preliminary Plat for the development of 34 residential lots (Chene Blanc Subdivision) on the 6.1 acre site. All lots will exceed 4,500 square feet in size per the underlying R-4.5 zone, with the smallest lot being 4,615 square feet and the largest being 11,705 square feet. The majority of lots exceed 6,000 square feet. The lots will be occupied by single family detached homes. *(The 34 lots represent the minimum allowed to be in compliance with the City's minimum density requirement of 70 percent of maximum density (see CDC 85.200(J) (7) and staff finding 39.)*

The properties to the south are also zoned R-4.5 and developed with single family homes. Two streets: Upper Midhill Drive and Hillside Drive stub into the subject property from the south and will provide access to this subdivision. These two streets are proposed to extend onto the site and connect with one another to provide access to the lots. Properties to the north, east and west are in the City of Lake Oswego and occupied by single family homes. There is no means of vehicular access to the site from Lake Oswego. The property is within the Robinwood Neighborhood Association boundary.

The site comprises a tree covered hillside that slopes down from west to east at a fairly constant 14 percent. The trees have been cataloged (number, type, size and condition) by an arborist and those findings have been reviewed by the City's Arborist. Trees considered significant by the City Arborist total 169. The applicant proposes to save 50 of the significant trees plus an additional 62 non-significant trees.

The applicant provided a Jurisdictional Wetland Delineation, by Schott and Associates, which examined two small isolated wetlands at the north portion of the site and a small drainage ditch located in Tract D which is off-site and located in the City of Lake Oswego. Tract D is owned by the Marylhurst Homeowner's Association. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and the City of Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) regarding the two wetlands and found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8).

GeoPacific Engineers conducted geologic and soil testing and analysis at the site. (See applicant's Technical Reports)

Transportation Engineers, Kittelson and Associates, have provided a Traffic Impact Analysis (TIA) with the scope of work including projected impacts at "build out" for nearby intersections including Arbor Drive and Marylhurst Drive. The Kittelson TIA was then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA. (See applicant's Technical Reports) Kittelson followed up the TIA with a subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" which was found acceptable by the City Engineer and DKS and consistent

with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures.

The applicable approval criteria include:

- Chapter 14, R-4.5, Single-Family Residential Attached and Detached/Duplex;
- Chapter 85, Land Division General Provisions;
- Chapter 32, Water Resource Area Permit

Public comments: As of the publication date of this report, staff had received written comments from 22 individuals in opposition to the application. The written comments may be found in Exhibit PC-5.

RECOMMENDATION

Staff recommends approval of application SUB-15-03/WAP-16-03, based on: 1) the findings submitted by the applicant, which are incorporated by this reference, 2) supplementary staff findings included in the Addendum below, and 3) the addition of conditions of approval below. With these findings, the applicable approval criteria are met. The conditions are as follows:

1. **Site Plan.** With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C 111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet L1 (landscaping) dated 10/14/15.
2. **Engineering Standards.** All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations are subject to the City Engineer's review, modification, and approval. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.
3. **Off-Site Traffic Mitigation.** Prior to approval of the final plat, the applicant shall pay the cost of improvements for off-site traffic mitigation, as determined and approved by the City Engineer and ODOT, on Willamette Drive between Arbor Drive and Shady Hollow Way. (See Staff Finding No. 22 and 42.)

4. **Storm water Tract C.** Prior to approval of the final plat, the applicant shall dedicate Storm water Tract C to the City of West Linn. (See Staff Finding No. 37.)

5. **Mutual Maintenance and Easements.** Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement. (See Staff Findings No. 33 and 43)

6. **No Parking Signs.** The applicant shall install signs reading “No Parking – Fire Lane” on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). (See Staff Finding No. 5)

7. **Fire Flow.** Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present. (See Staff Finding No. 31)

8. **Significant Tree Mitigation.** Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City’s arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. (See Staff Finding No. 41)

9. **Access During Construction.** Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

ADDENDUM
PLANNING COMMISSION STAFF REPORT
March 25, 2016

**STAFF EVALUATION OF THE PROPOSAL'S COMPLIANCE
WITH APPLICABLE CODE CRITERIA**

CHAPTER 14, SINGLE-FAMILY RESIDENTIAL ATTACHED AND DETACHED/DUPLEX, R-4.5

14.030 PERMITTED USES

The following are uses permitted outright in this zoning district:

1. *Single-family detached residential unit.*
2. *Duplex residential units.*
3. *Family day care.*
4. *Single-family attached residential units.*
5. *Community recreation.*
6. *Residential home.*
7. *Utilities, minor.*
8. *Manufactured housing.*
9. *Transportation facilities*

Staff Finding 1: The applicant's subdivision proposes to accommodate 34 single-family detached homes. Per CDC 14.030(1), single family detached homes are permitted outright in this zone. This criterion is met.

14.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are the requirements for uses within this zone:

- A. *The minimum lot size shall be:*
 1. *For a single-family detached unit, 4,500 square feet.*
 2. *For each attached single-family unit, 4,000 square feet.*
 3. *For a duplex, 8,000 square feet or 4,000 square feet for each unit.*
 - B. *The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.*
 - C. *The average minimum lot width shall be 35 feet.*
- (....)

Staff Finding 2: All lots exceed 4,500 square feet. All lots have front lot line dimensions and average widths greater than the required 35 feet. The 20-foot wide shared private access drive for Lots 13-15 exceeds the minimum accessway width of 15 feet. These criteria are met.

The remaining criteria of 14.070 (E-J) are not applicable at this time since they only apply at the time of the construction of homes. At such time that building permits are applied for, the home plans will be reviewed by the Planning and Building Departments for compliance with these standards.

Regarding 14.090, Chapters 34: "Accessory Structures" and Chapter 35: "Temporary Structures" do not apply since no accessory or temporary structures are proposed. Chapters 38: "Additional Yard Area", Chapter 40: "Building Height", Chapter 41: "Structures on Steep Lots", and Chapter 42: "Clear Vision Areas" apply to structures and would only be applicable at such time that building permits are applied for. Chapter 44: "Fences" will only apply at such time that fences are proposed to be built. Chapter 46: "Parking" requires one off street parking space per home. This criteria will be met at such time that a building permit is applied for. Chapter 48: "Access" is addressed in Staff Findings No. 41-61. Chapter 52: "Signs" does not apply since no signs are proposed. Chapter 54: "Landscaping" does not apply to the development of detached single family residential development. Per Chapter 54.020(E) (1-3), landscaping requirements only apply to non-residential uses and all non-single family residential uses and are therefore not applicable.

II. CHAPTER 85, GENERAL PROVISIONS

85.200 APPROVAL CRITERIA

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.

A. Streets.

1. *General. The location, width and grade of streets shall be considered in their relation to existing and planned streets, to the generalized or reasonable layout of streets on adjacent undeveloped parcels, to topographical conditions, to public convenience and safety, to accommodate various types of transportation (automobile, bus, pedestrian, bicycle), and to the proposed use of land to be served by the streets.*

(....)

Staff Finding 3: This subdivision's ROW dedications provide for a looping road between Upper Midhill and Hillside Drives. This road is necessary to provide direct access to the lots and to provide TVFR and other emergency access. (A non-looping road would yield a cul de sac design which would violate cul de sac standards of 85.200(A)(11) (b): "New cul-de-sacs and other closed-end streets ... shall not exceed 200 feet in length or serve more than 25 dwelling units" as well as compromise TVFR and other emergency access.) The street width of 24 feet is consistent with local street standards (see staff findings 4 and 5). Six foot wide sidewalks and planter strips are also proposed to meet the dimensional requirements of this chapter. This criterion is met.

There is no opportunity to extend or connect streets in this subdivision to streets in adjacent subdivisions to the north, west or east since all surrounding properties are fully built out. The exception is two tracts “B” and “D” next to lot 34 which are owned by the Marylhurst Place Homeowner’s Association and located in the City of Lake Oswego. Tract “B” is occupied by a storm water facility for the Lake Oswego subdivision. Tract “D” is occupied in part by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by other uses, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place.

2. *Right-of-way and roadway widths. In order to accommodate larger tree-lined boulevards and sidewalks, particularly in residential areas, the standard right-of-way widths for the different street classifications shall be within the range listed below. But instead of filling in the right-of-way with pavement, they shall accommodate the amenities (e.g., boulevards, street trees, sidewalks). The exact width of the right-of-way shall be determined by the City Engineer or the approval authority. The following ranges will apply:*

<i>Street Classification</i>	<i>Right of Way (from West Linn TSP)</i>
(....)	
Collector	48-72 feet
Local Street	48-56 feet
(....)	

Additional rights-of-way for slopes may be required. Sidewalks shall not be located outside of the right-of-way unless to accommodate significant natural features or trees.

Staff Finding 4: The interior street is classified as a local street. Local streets require a ROW width ranging from 48-56 feet. The proposed right of way width is 50 feet for the south section of Upper Midhill Drive. The width then transitions to a 48 foot until the portion of Hillside Drive along the west property line where the ROW width returns to 50 feet. These widths meet the required 48-56 foot dimension. The criteria is met.

3. *Street widths. Street widths shall depend upon which classification of street is proposed. The classifications and required cross sections are established in Chapter 8 of the adopted TSP.*
(...)

Staff Finding 5: The applicant proposes a curb to curb street width of 24 feet. This agrees with the minimum required width for a local street per the adopted Transportation System Plan (TSP). (Table 8-1 of the TSP requires two 12 foot wide travel lanes for local streets.) This street width will require that the applicant install signs reading “No Parking – Fire Lane” on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). See Condition of Approval 6. Therefore, the criteria is met.

4. *The decision-making body shall consider the City Engineer's recommendations on the desired right-of-way width, pavement width and street geometry of the various street types within the subdivision after consideration by the City Engineer of the following criteria:*

a. *The type of road as set forth in the Transportation Master Plan.*

(...)

Staff Finding 6: The City's Development Engineer has reviewed the proposal finds the proposed ROW and street widths to be consistent with the City standards, the TSP and this code. The criteria is met.

5. *Additionally, when determining appropriate street width, the decision-making body shall consider the following criteria:*

a. *When a local street is the only street serving a residential area and is expected to carry more than the normal local street traffic load, the designs with two travel and one parking lane are appropriate.*

b. *Streets intended to serve as signed but unstriped bike routes should have the travel lane widened by two feet.*

c. *Collectors should have two travel lanes and may accommodate some parking. Bike routes are appropriate.*

d. *Arterials should have two travel lanes. On-street parking is not allowed unless part of a Street Master Plan. Bike lanes are required as directed by the Parks Master Plan and Transportation Master Plan.*

Staff Finding 7: Hillside Drive and Upper Midhill Drive are local streets in that they exist only to provide local access to the 34 lots within this subdivision. The remaining criteria does not apply since these streets are not collectors or arterials nor are any bike lanes required. The criteria is met.

6. *Reserve strips. Reserve strips or street plugs controlling the access to streets are not permitted unless owned by the City.*

Staff Finding 8: No reserve strips are proposed so this criterion does not apply.

7. *Alignment. All streets other than local streets or cul-de-sacs, as far as practical, shall be in alignment with existing streets by continuations of the centerlines thereof. The staggering of street alignments resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the centerlines of streets having approximately the same direction and otherwise shall not be less than 100 feet.*

Staff Finding 9: Both Hillside Drive and Upper Midhill Drive extend the alignment of the existing sections of those respective streets. There are no "T" intersections. This criterion is met.

8. *Future extension of streets. Where necessary to give access to or permit a satisfactory future subdivision of adjoining land, streets shall be extended to the boundary of the subdivision and the resulting dead-end streets may be approved without turnarounds. (Temporary turnarounds built to Fire Department standards are required when the dead-end street is over 100 feet long.)*

Staff Finding 10: There is no opportunity to extend or stub out streets from this subdivision since all surrounding properties are fully built out with no reasonable expectation of future connection. The exception is two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied in part by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by other uses, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place. This criterion is met.

9. *Intersection angles. Streets shall be laid out to intersect angles as near to right angles as practical, except where topography requires lesser angles, but in no case less than 60 degrees unless a special intersection design is approved. Intersections which are not at right angles shall have minimum corner radii of 15 feet along right-of-way lines which form acute angles. Right-of-way lines at intersections with arterial streets shall have minimum curb radii of not less than 35 feet. Other street intersections shall have curb radii of not less than 25 feet. All radii shall maintain a uniform width between the roadway and the right-of-way lines. The intersection of more than two streets at any one point will not be allowed unless no alternative design exists.*

Staff Finding 11: The only intersection within this subdivision is where Upper Midhill Drive which intersects Hillside Drive in the vicinity of Tract C. This is a right angle intersection. The criterion is met.

10. *Additional right-of-way for existing streets. Wherever existing street rights-of-way adjacent to or within a tract are of inadequate widths based upon the standards of this chapter, additional right-of-way shall be provided at the time of subdivision or partition.*

Staff Finding 12: Portions of Upper Midhill Drive and Hillside Drive (with different names) were platted in the 1923 Robinwood subdivision plat with ROW widths of 50 feet. Some of these ROWs will be extinguished through the platting of this subdivision. Portions of these ROW will be used to accommodate streets in this application plus a shared 16 foot wide private driveway to serve lots 13-15. For the remainder of the site, the applicant is providing new ROW ranging from 48-50 feet in width, which is consistent with City and TSP ROW standards. The criterion is met.

11. *Cul-de-sacs.*

a. *New cul-de-sacs and other closed-end streets (not including stub streets intended to be connected) on sites containing less than five acres, or sites accommodating uses other than residential or mixed use development, are not allowed unless the applicant demonstrates that there is no feasible alternative due to:*

1) *Physical constraints (e.g., existing development, the size or shape of the site, steep topography, or a fish bearing stream or wetland protected by Chapter 32 CDC), or (...)*

Staff Finding 13: There are no cul de sacs within this subdivision. The criteria does not apply. (Staff notes that lots 13-15 will be accessed from a portion of a public ROW using a shared private 16 foot wide driveway. This use of this driveway will be pursuant to Condition of Approval 5 which also prohibits lot 12 from accessing this driveway.)

12. *Street names. No street names shall be used which will duplicate or be confused with the names of existing streets within the City. Street names that involve difficult or unusual spellings are discouraged.*

Staff Finding 14: The applicant will use the names of existing streets that stub out to this property. This criterion is met.

13. *Grades and curves. Grades shall not exceed 8 percent on major or secondary arterials, 10 percent on collector streets, or 15 percent on any other street unless by variance. (...)*

Staff Finding 15: The interior streets are local streets with a maximum allowed grade of 15 percent. The grade is 15 percent for a 60 foot long section of Hillside Drive and another 30 foot long section of that street reaching 13.5 percent. Most of the street grades are between six and eight percent. The criterion is met.

14. *Access to local streets*

(...)

15. *Alleys*

(...)

Staff Finding 16: All lots have access to local streets with the exception of lots 13-15 which will access Upper Midhill Drive via a shared private 16 foot wide driveway. This use of this driveway will be pursuant to Condition of Approval 5. The criteria is met. There are no arterials or alleys within this subdivision. Therefore, this criteria does not apply.

16. *Sidewalks. Sidewalks shall be installed per CDC 92.010(H), Sidewalks. The residential sidewalk width is six feet plus planter strip...or to match existing sidewalks or right-of-way limitations.*

Staff Finding 17: The applicant proposes to install six-foot sidewalks along all sections of Upper Midhill and Hillside Drives. (See sheets 201 (cross section) and 210 (site plan).) In response to slope conditions and to minimize grading adjacent to an existing retaining wall, the west section of Hillside Drive adjacent to double frontage lots on Woodhurst Place will have sidewalks placed adjacent to the curb with the planter strips behind the sidewalk. The City Engineer approves this configuration. The criterion is met.

17. Planter strip. The planter strip is between the curb and sidewalk providing space for a grassed or landscaped area and street trees. The planter strip shall be at least 6 feet wide...or in response to right-of-way limitations.

Staff Finding 18: The applicant proposes to install six-foot planter strips along all sections of Upper Midhill and Hillside Drives. In response to slope conditions, and to minimize grading adjacent to an existing retaining wall, the west section of Hillside Drive adjacent to double frontage lots on Woodhurst Place will have sidewalks placed adjacent to the curb with the planter strips and street trees behind the sidewalk. (See sheets 201 (cross section) and 210 (site plan).) The City Engineer approves this configuration. The criterion is met.

18. Streets and roads shall be dedicated without any reservations or restrictions.

Staff Finding 19: The applicant proposes to dedicate the streets without any reservations or restrictions. The criterion is met.

19. All lots in a subdivision shall have access to a public street. Lots created by partition may have access to a public street via an access easement pursuant to the standards and limitations set forth for such accessways in Chapter 48 CDC.

Staff Finding 20: All lots have access to public streets with the exception of lots 13-15 which will access Upper Midhill Drive via a shared private 16 foot wide driveway. The criterion is met.

20. Gated Streets

(...)

21. Entryway treatments and street isle design

(...)

Staff Finding 21: The subdivision will not be gated. The applicant is not proposing any subdivision monument/entry treatment. These criteria are met.

22. Based upon the determination of the City Manager or the Manager's designee, the applicant shall construct or cause to be constructed, or contribute a proportionate share of the costs, for all necessary off-site improvements identified by the transportation analysis

commissioned to address CDC 85.170(B)(2) that are required to mitigate impacts from the proposed subdivision. The proportionate share of the costs shall be determined by the City Manager or Manager's designee, who shall assume that the proposed subdivision provides improvements in rough proportion to identified impacts of the subdivision. Off-site transportation improvements will include bicycle and pedestrian improvements as identified in the adopted City of West Linn TSP.

Staff Finding 22: The applicant's Transportation Impact Analysis (TIA) was prepared by Kittelson and Associates. Those findings were then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA and the proposed mitigation measures. The City Engineer and DKS found Kittelson's TIA findings and their subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" to be acceptable and consistent with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures on Willamette Drive between Arbor Drive and Shady Hollow Way.

The criterion is met by condition of approval 3.

B. Blocks and lots.

1. General

(...)

2. Sizes

(...)

3. Lot size and shape

Staff Finding 23: Staff incorporates the applicant's findings regarding blocks. All lots meet and exceed the 4,500 square foot minimum lot size and dimensional standards of the underlying R-4.5 zone. (Lot sizes range from 4,615 to 11,705 square feet.) All lots are sized to reasonably accommodate a detached single family home. These criteria are met.

4. Access. Access to subdivisions, partitions, and lots shall conform to the provisions of Chapter 48 CDC, Access, Egress and Circulation.

Staff Finding 24: Please see staff findings 42-56 for discussion of the "Access" criteria. The criterion is met.

5. Double frontage lots and parcels.

(...)

6. Lot and parcel side lines

Staff Finding 25: There are no double frontage lots within this subdivision. (There are double frontage lots in the City of Lake Oswego between Woodhurst Place and Hillside Drive that are adjacent to this subdivision. They are not part of this application. Also, whereas lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15,

Condition of Approval 5 will prohibit it.) All lot lines generally run at right angles or perpendicular to the abutting ROW except for three lots on curves where the lot lines radiate from the curve. These criteria are met.

7. *Flag lots. Flag lots can be created where it can be shown that no other reasonable street access is possible to achieve the requested land division. A single flag lot shall have a minimum street frontage of 15 feet for its accessway. Where two to four flag lots share a common accessway, the minimum street frontage and accessway shall be eight feet in width per lot. Common accessways shall have mutual maintenance agreements and reciprocal access and utility easements. The following dimensional requirements shall apply to flag lots:*

a. *Setbacks applicable to the underlying zone shall apply to the flag lot.*

(...)

e. *As per CDC 48.030, the accessway shall have a minimum paved width of 12 feet.*

Staff Finding 26: There are no flag lots in the subdivision. This criteria does not apply.

8. *Large lots or parcels.*

Staff Finding 27: Staff finds that lots 23 (9,583 square feet) and 28 (11,705 square feet) are large enough to be partitioned in the future to create one additional lot each given that the minimum lot size is 4,500 square feet. Any further development would require a minor partition and review of that application in the context of CDC Chapter 85. This criterion is met.

C. *Pedestrian and bicycle trails.*

(...)

Staff Finding 28: The sidewalks along all lot frontages will provide the necessary pedestrian facilities while the interior street will allow for bike circulation.

There are no opportunities available for the development of connective trails to adjoining subdivisions. The exception are two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by another use and located on a steep 27 percent slope effectively removes the option of constructing a pedestrian or bike path from this subdivision to connect with Woodhurst Place.

The footpath connecting the Hillside Drive ROW with Woodhurst Place in the City of Lake Oswego near the southwest corner of this site has the potential to provide a useful pedestrian link. The path is off-site, owned by the City of Lake Oswego and therefore outside of the purview of this application.

D. Transit Facilities.
(...)

Staff Finding 29: There are no transit facilities or service in this area so this criteria does not apply.

E. Grading. Grading of building sites shall conform to the following standards unless physical conditions demonstrate the propriety of other standards:

1. All cuts and fills shall comply with the excavation and grading provisions of the Uniform Building Code and the following:

a. Cut slopes shall not exceed one and one-half feet horizontally to one foot vertically (i.e., 67 percent grade).

b. Fill slopes shall not exceed two feet horizontally to one foot vertically (i.e., 50 percent grade). Please see the following illustration.

2. The character of soil for fill and the characteristics of lot and parcels made usable by fill shall be suitable for the purpose intended.

3. If areas are to be graded (more than any four-foot cut or fill), compliance with CDC 85.170(C) is required.

4. The proposed grading shall be the minimum grading necessary to meet roadway standards, and to create appropriate building sites, considering maximum allowed driveway grades.

(....)

Staff Finding 30: The applicant's submittal included a stamped geotechnical report by GeoPacific. The City's Development Engineer has reviewed the applicant's plans (Sheet C230) and geotechnical report and finds the grading and fill plans meet the criteria.

The grading plan is the minimum necessary to meet the allowable/maximum local street grade of 15 percent and provide appropriate building sites. Fill placed on lots to facilitate home construction may be required to undergo further geotechnical review as directed by the City Building Official based on individual lot conditions.

The criteria is met.

F. Water.

1. A plan for domestic water supply lines or related water service facilities shall be prepared consistent with the adopted Comprehensive Water System Plan, plan update, March 1987, and subsequent superseding revisions or updates.

2. Adequate location and sizing of the water lines.

3. Adequate looping system of water lines to enhance water quality.

4. For all non-single-family developments, there shall be a demonstration of adequate fire flow to serve the site.

5. A written statement, signed by the City Engineer, that water service can be made available to the site by the construction of on-site and off-site improvements and that such water service

has sufficient volume and pressure to serve the proposed development's domestic, commercial, industrial, and fire flows.

Staff Finding 31: Water is available in Upper Midhill and Hillside Drives. These waterlines will be looped through the subdivision. The City Engineer has confirmed the water system has sufficient water volume and pressure to serve the subdivision (see Sheet C300). The applicant shall submit a fire flow test for review and approval by TVFR per Condition of Approval 7. The criteria are met.

G. Sewer.

- 1. A plan prepared by a licensed engineer shall show how the proposal is consistent with the Sanitary Sewer Master Plan (July 1989). Agreement with that plan must demonstrate how the sanitary sewer proposal will be accomplished and how it is gravity-efficient. The sewer system must be in the correct basin and should allow for full gravity service.*
- 2. Sanitary sewer information will include plan view of the sanitary sewer lines, including manhole locations and depth or invert elevations.*
- 3. Sanitary sewer lines shall be located in the public right-of-way, particularly the street, unless the applicant can demonstrate why the alternative location is necessary and meets accepted engineering standards.*
- 4. Sanitary sewer line should be at a depth that can facilitate connection with down-system properties in an efficient manner.*
- 5. The sanitary sewer line should be designed to minimize the amount of lineal feet in the system.*
- 6. The sanitary sewer line shall avoid disturbance of wetland and drainageways. In those cases where that is unavoidable, disturbance shall be mitigated pursuant to Chapter 32 CDC, Water Resource Area Protection, all trees replaced, and proper permits obtained. Dual sewer lines may be required so the drainageway is not disturbed.*
- 7. Sanitary sewer shall be extended or stubbed out to the next developable subdivision or a point in the street that allows for reasonable connection with adjacent or nearby properties.*
- 8. The sanitary sewer system shall be built pursuant to DEQ, City, and Tri-City Service District sewer standards. The design of the sewer system should be prepared by a licensed engineer, and the applicant must be able to demonstrate the ability to satisfy these submittal requirements or standards at the pre-construction phase.*
- 9. A written statement, signed by the City Engineer, that sanitary sewers with sufficient capacity to serve the proposed development and that adequate sewage treatment plant capacity is available to the City to serve the proposed development*

Staff Finding 32: The applicant proposes to install a sanitary sewer lines to service all lots within this subdivision (see Sheet C300). The system will be built to appropriate standards and the City Engineer has confirmed the sufficient capacity of the sanitary system and sewage treatment facility. These criteria are met.

I. Utility easements.

Subdivisions and partitions shall establish utility easements to accommodate the required service providers as determined by the City Engineer. The developer of the subdivision shall make accommodation for cable television wire in all utility trenches and easements so that cable can fully serve the subdivision.

Staff Finding 33: The applicant proposes to place all utilities within the public right of way or within appropriately dimensioned utility easements and tracts to serve the subdivision. Per Condition of Approval 5, the applicant shall provide the City of West Linn a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access, utilities and maintenance of the shared drive in perpetuity. This criterion is met.

J. Supplemental provisions.

- 1. Wetland and natural drainageways.*
- 2. Willamette and Tualatin Greenways.*

Staff Finding 34: There are two small non-stream fed wetlands on the north portion of the site totaling 3,920 square feet. The City required a wetland delineation, which was prepared by Schott and Associates and is included in the applicant's submittal. (See also the outlined wetlands at northwest portion of the site on sheet C100.) The wetland delineation was confirmed by the Oregon Department of State Lands (DSL) in a concurrence letter which is part of the record.

In order to satisfy the City's requirement for street connectivity and TVFR emergency access and meet the allowable street grades, Hillside Drive connects with Upper Midhill Drive in the vicinity of the wetlands. The associated grading means that the wetlands will be filled and mitigated for, consistent with Chapter 32: Water Resource Areas. (See staff findings 72-77.)

Schott and Associates also identified a small non-jurisdictional drainage ditch on the north edge of the property. The ditch is located in Tract D which is in Lake Oswego and owned by the Marylhurst Homeowner's Association. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) and found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8). (According to the City of Lake Oswego Planning Department, the ditch was removed from the 1-B list of their Sensitive Lands Map and is not designated for resource protection. This means that there is no buffer or other resource requirement for it. The ditch is not on the City of West Linn's WRA map.)

City of Lake Oswego Storm water maps show two City of Lake Oswego storm water catch basins feeding 12-inch storm lines in Tract D which are intended to collect discharge from the ditch.

The development of this subdivision will result in a reduction of cross property storm water flow since storm water runoff from all impervious surfaces (streets, sidewalks, roofs, driveways, patios, etc.) will be intercepted and directed to the storm water lines on the streets in front of the subdivision's homes. Storm water will then be directed to the detention/treatment facility and then to the main storm water line near lot 23.

The property is not within the Willamette or Tualatin Greenways.
The criteria is met.

3. *Street trees.*

Street trees are required as identified in the appropriate section of the municipal code and Chapter 54 CDC.

Staff Finding 35: Street trees shall be installed as required in the West Linn Public Works Standards (see Sheet L1). These criteria are met.

4. *Lighting.*

To reduce ambient light and glare, high or low pressure sodium light bulbs shall be required for all subdivision street or alley lights. The light shall be shielded so that the light is directed downwards rather than omni-directional.

Staff Finding 36: The applicant's Photometric Plan (Sheet C280) identifies LED street lights which will produce no off site illumination. This criterion is met.

5. *Dedications and exactions.*

The City may require an applicant to dedicate land and/or construct a public improvement that provides a benefit to property or persons outside the property that is the subject of the application when the exaction is roughly proportional. No exaction shall be imposed unless supported by a determination that the exaction is roughly proportional to the impact of development.

Staff Finding 37: The applicant will dedicate right of way (ROW) for internal streets. The applicant will be dedicating to the City Tract C, which is the storm water treatment and detention pond for this subdivision. Dedication to the City is appropriate since it will allow for unrestricted access by City of West Linn Public Works crews for the maintenance of the storm water facility. The dedication is declared in Condition of Approval 4. There are no other dedications proposed or requested. This criterion is met.

6. *Underground utilities.*

All utilities, such as electrical, telephone, and television cable, that may at times be above ground or overhead shall be buried underground in the case of new development.

Staff Finding 38: The applicant shall underground utilities to meet the West Linn Public Works Standards. This criterion is met.

7. *Density requirement.*

Density shall occur at 70 percent or more of the maximum density allowed by the underlying zoning. These provisions would not apply when density is transferred from Type I and II lands as defined in CDC 02.030. Development of Type I or II lands are exempt from these provisions. Land divisions of three lots or less would also be exempt.

Staff Finding 39: The R-4.5 zone permits a maximum density of 9.6 dwelling units per net acre. Net acre is defined as “The total gross acres less the public right-of-way (ROW) and other acreage deductions, as applicable”.

The gross site comprises 265,860 square feet. The ROW comprises 34,637 square feet. Type II lands are an applicable deduction. The two small wetlands in the north part of the site constitute Type II lands. The wetlands will be filled and mitigated for off-site. The larger wetland comprises 3,086 square feet. 2,344 square feet of this larger wetland falls within the proposed street ROW so it has already been deducted from the “developable net area”. The remaining 742 square feet plus the smaller 877 square foot wetland total 1,619 square feet. After deducting the 1,619 square feet and the ROW dedication from the gross site area, the net site area is 5.2 acres.

5.2 net acres yields a maximum of 49 dwellings/lots (9.6 dwellings/lots per acre X 5.2 acres). Applying the 70 percent density requirement means that the minimum number of dwellings/lots allowed in the subdivision is 34 (49 X .7).

The applicant is proposing 34 dwellings/lots which is the minimum number of lots allowed. The criteria is met.

8. *Mix requirement.*

The “mix” rule means that developers shall have no more than 15 percent of the R-2.1 and R-3 development as single-family residential. The intent is that the majority of the site shall be developed as medium high density multi-family housing.

Staff Finding 40: The property is not zoned R-2.1 or R-3 so these provisions do not apply. This criterion is met.

9. *Heritage trees/significant tree and tree cluster protection.*

All heritage trees, as defined in the Municipal Code, shall be saved. Diseased heritage trees, as determined by the City Arborist, may be removed at his/her direction. All non-heritage trees and clusters of trees (three or more trees with overlapping dripline; however, native oaks need not have an overlapping dripline) that are considered significant by virtue of their size, type, location, health, or numbers shall be saved pursuant to CDC 55.100(B)(2). Trees are defined per the municipal code as having a trunk six inches in diameter or 19 inches in circumference at a point five feet above the mean ground level at the base of the trunk.

Staff Finding 41: The site comprises no heritage trees. There are 169 significant trees on the site (see C110-C114). Of these trees, 50 will be retained with a canopy totaling 77,863 square feet which translates to 33 percent of the existing tree canopy. Many of the trees scheduled for retention are along the north and east edges of the site which will increase the buffering to the adjacent Lake Oswego neighborhood. This amount exceeds the maximum 20 percent retention requirement.

Nineteen significant trees with a total DBH of 434 inches are proposed for removal due to street construction and associated grading. The applicant is proposing to mitigate by planting street 434 inches of DBH of trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the Applicant will pay a fee in lieu to the City for trees which cannot be planted on site per Condition of Approval 8.

This criterion is met.

III. CHAPTER 48, ACCESS CONTROL

48.025 ACCESS CONTROL

B. Access Control Standards

1. Traffic impact analysis requirements. The City or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also CDC 55.125, Traffic Impact Analysis.)

Staff Finding 42: A traffic impact analysis (TIA) was required since the criteria of 85.170(B) (2) are met. (Per the TIA, prepared by Kittelson and Associates, the projected Average Daily Trip count (ADT) of 389 trips exceeds the TIA threshold of 250 trips.) The TIA identified the existing and projected trip generations, trip distributions, turn movements plus levels of service and volume to capacity ratio of affected intersections. The study concluded with recommendations to address the projected impacts.

Those findings were then reviewed by DKS Engineering who work for the City of West Linn to provide an independent third party review. ODOT engineers also reviewed Kittelson's TIA and the proposed mitigation measures. The City Engineer and DKS found Kittelson's TIA findings and their subsequent April 5, 2016 "*Chene Blanc Estates Development Supplemental Letter*" to be acceptable and consistent with ODOT recommendations, including their discussion of appropriate off-site traffic mitigation measures on Willamette Drive between Arbor Drive and Shady Hollow Way.

The criterion is met by Condition of Approval 3.

2. The City or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access

easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system. Access to and from off-street parking areas shall not permit backing onto a public street.

Staff Finding 43: Access to lots 13-15 will be consolidated in a shared 16 foot wide private driveway. The City will require a reciprocal access easement, per Condition of Approval 5, for this driveway. Whereas lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15, Condition of Approval 5 will prohibit it. The criterion is met by condition.

3. Access options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods (planned access shall be consistent with adopted public works standards and TSP). These methods are "options" to the developer/subdivider.

a) Option 1. Access is from an existing or proposed alley or mid-block lane. If a property has access to an alley or lane, direct access to a public street is not permitted.

b) Option 2. Access is from a private street or driveway connected to an adjoining property that has direct access to a public street (i.e., "shared driveway"). A public access easement covering the driveway shall be recorded in this case to assure access to the closest public street for all users of the private street/drive.

c) Option 3. Access is from a public street adjacent to the development lot or parcel. If practicable, the owner/developer may be required to close or consolidate an existing access point as a condition of approving a new access. Street accesses shall comply with the access spacing standards in subsection (B) (6) of this section.

Staff Finding 44: The applicant proposes access to the majority of lots via Option 3 (above) which is access from a public street. The exception would be lots 13-15 which will be accessed via a "shared driveway" (Option 2). An access easement covering the shared driveway shall be recorded to ensure access to the public street for all users of the shared driveway per Condition of Approval 5. These criteria are met.

4. Subdivisions fronting onto an arterial street.

(...)

5. Double-frontage lots.

(...)

Staff Finding 45: This subdivision does not front on an arterial. There are no double frontage lots proposed within this subdivision; however lot 12, which fronts on Hillside Drive, could be accessed off the private driveway that will serve lots 13-15. Condition of Approval 5 will prohibit lot 12 from accessing that driveway.) These criteria do not apply.

6. Access spacing.

- a. *The access spacing standards found in Chapter 8 of the adopted Transportation System Plan (TSP) shall be applicable to all newly established public street intersections and non-traversable medians.*
- b. *Private drives and other access ways are subject to the requirements of CDC 48.060.*

Staff Finding 46: The proposal does not create any new intersections or non-traversable intersections. Access to all lots will be via a continuous local street (Hillside/Upper Midhill Street) with no intersecting streets. These criteria are met.

7. *Number of access points.*
8. *Shared driveways.*

Staff Finding 47: Staff incorporates applicant findings and references Staff Finding No. 44. These criteria are met.

- C. *Street connectivity and formation of blocks required.*
In order to promote efficient vehicular and pedestrian circulation throughout the City, land divisions and large site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, in accordance with the following standards:
 1. *Block length and perimeter.*
The maximum block length shall not exceed 800 feet or 1,800 feet along an arterial.

Staff Finding 48: Staff finds that no block length exceeds 800 feet. Hillside Drive connects to Hillside Drive less than 800 feet from where it turns 90 degrees to connect with Upper Midhill Drive. Upper Midhill Drive connects to College View Drive less than 800 feet from where it turns 90 degrees to connect with Hillside Drive.

There is no opportunity to connect streets from this subdivision to streets within adjacent subdivisions to the north, west or east since all surrounding properties are fully built out. The exception is two tracts "B" and "D" next to lot 34 which are owned by the Marylhurst Place Homeowner's Association and located in the City of Lake Oswego. Tract "B" is occupied by a storm water facility for the adjacent subdivision. Tract "D" is occupied by a drainage ditch. Together, these tracts comprise 47 feet of frontage on Woodhurst Place. The fact that these tracts are privately owned, located in another city, already substantially occupied by another use, located on a steep 27 percent slope (which would violate the maximum 15 percent local street grade) and would offer inadequate width to construct a local street effectively removes the option of extending a street from this subdivision to connect with Woodhurst Place.

This criterion is met.

2. *Street standards. Public and private streets shall also conform to Chapter 92 CDC, Required Improvements, and to any other applicable sections of the West Linn Community Development Code and approved TSP.*

Staff Finding 49: All street designs and improvements shall be consistent with the provisions of CDC Chapters 92 and 85, and the West Linn Transportation System Plan (see Findings 3-7). This criterion is met.

48.030 MINIMUM VEHICULAR REQUIREMENTS FOR RESIDENTIAL USES

A. Direct individual access from single-family dwellings and duplex lots to an arterial street (...)

B. When any portion of any house is less than 150 feet from the adjacent right-of-way, access to the home is as follows:

- 1. One single-family residence, including residences with an accessory dwelling unit as defined in CDC 02.030, shall provide 10 feet of unobstructed horizontal clearance. Dual-track or other driveway designs that minimize the total area of impervious driveway surface are encouraged.*
- 2. Two to four single-family residential homes equals a 14- to 20-foot-wide paved or all-weather surface. Width shall depend upon adequacy of line of sight and number of homes.*

Staff Finding 50: No lots access arterials. All lots will have direct access to a public street with the exception of lots 13-15 which will access Upper Midhill Drive via a shared 16 foot wide private driveway dimensioned to meet the standards of this chapter. These criteria are met.

3. Maximum driveway grade shall be 15 percent. The 15 percent shall be measured along the centerline of the driveway only. Variations require approval of a Class II variance by the Planning Commission pursuant to Chapter 75 CDC. Regardless, the last 18 feet in front of the garage shall be under 12 percent grade as measured along the centerline of the driveway only. Grades elsewhere along the driveway shall not apply.

4. The driveway shall include a minimum of 20 feet in length between the garage door and the back of sidewalk, or, if no sidewalk is proposed, to the paved portion of the right-of-way.

C. When any portion of one or more homes is more than 150 feet from the adjacent right-of-way, the provisions of subsection B of this section shall apply in addition to the following provisions.

- 1. A turnaround may be required as prescribed by the Fire Chief.*
- 2. Minimum vertical clearance for the driveway shall be 13 feet, six inches.*
- 3. A minimum centerline turning radius of 45 feet is required unless waived by the Fire Chief.*
- 4. There shall be sufficient horizontal clearance on either side of the driveway so that the total horizontal clearance is 20 feet*

Staff Finding 51: The applicant proposes a shared private 16 foot wide driveway for Lots 13-15. Homes built on those lots will be less than 150 feet from the public ROW per TVFR standards. The access drive will have a 20 foot wide all weather surface with no vertical impediments. These criteria are met.

D. Access to five or more single-family homes shall be by a street built to full construction code standards. All streets shall be public. This full street provision may only be waived by variance.

Staff Finding 52: All access will be via streets built to City construction code standards with the exception of lots 13-15 which will access via a shared driveway built to meet Chapter 48 standards and TVFR requirements. This criterion is met.

E. Access and/or service drives for multi-family dwellings shall be fully improved with hard surface pavement:

- 1. With a minimum of 24-foot width when accommodating two-way traffic; or*
 - 2. With a minimum of 15-foot width when accommodating one-way traffic. Horizontal clearance shall be two and one-half feet wide on either side of the driveway.*
 - 3. Minimum vertical clearance of 13 feet, six inches.*
 - 4. Appropriate turnaround facilities per Fire Chief's standards for emergency vehicles when the drive is over 150 feet long. Fire Department turnaround areas shall not exceed seven percent grade unless waived by the Fire Chief.*
 - 5. The grade shall not exceed 10 percent on average, with a maximum of 15 percent.*
 - 6. A minimum centerline turning radius of 45 feet for the curve.*
- F. Where on-site maneuvering and/or access drives are necessary to accommodate required parking, in no case shall said maneuvering and/or access drives be less than that required in Chapters 46 and 48 CDC.*
- G. The number of driveways or curb cuts shall be minimized on arterials or collectors. Consolidation or joint use of existing driveways shall be required when feasible.*
- H. In order to facilitate through traffic and improve neighborhood connections, it may be necessary to construct a public street through a multi-family site.*
- I. Gated accessways to residential development other than a single-family home are prohibited.*

Staff Finding 53: The provisions of 48.030(E) do not apply since this is not a multi-family project. The provisions of 48.030(F) do not apply since no multi-family or non-residential on-site maneuvering or on site drives are proposed. The provisions of 48.030(G) do not apply since there are no arterials or collectors within the project site. The provisions of 48.030(H) do not apply since this is not a multi-family project. The provisions of 48.030(I) do not apply since no gated accessway is proposed and this is a single family residential development. All access will be via streets built to City construction code standards with the exception of lots 13-15 which will access via a shared driveway built to meet Chapter 48 standards and TVFR requirements. This criterion is met.

48.060 WIDTH AND LOCATION OF CURB CUTS AND ACCESS SEPARATION REQUIREMENTS

- A. Minimum curb cut width shall be 16 feet.*
- B. Maximum curb cut width shall be 36 feet, except along Highway 43 in which case the maximum curb cut shall be 40 feet. For emergency service providers, including fire stations, the maximum shall be 50 feet.*

C. *No curb cuts shall be allowed any closer to an intersecting street right-of-way line than the following:*

1. *On an arterial when intersected by another arterial, 150 feet.*

(...)

6. *On a local street when intersecting any other street, 35 feet.*

D. *There shall be a minimum distance between any two adjacent curb cuts on the same side of a public street, except for one-way entrances and exits, as follows:*

1. *On an arterial street, 150 feet.*

2. *On a collector street, 75 feet.*

3. *Between any two curb cuts on the same lot or parcel on a local street, 30 feet.*

E. *A rolled curb may be installed in lieu of curb cuts and access separation requirements.*

F. *Curb cuts shall be kept to the minimum, particularly on Highway 43. Consolidation of driveways is preferred. The standard on Highway 43 is one curb cut per business if consolidation of driveways is not possible.*

Staff Finding 54: All curb cuts will be reviewed at the time of building permit applications and shall be required to comply with these setbacks and standards. (Given the frontage of the proposed lots and the minimum separation requirements for curb cuts on one lot ((D) (3) above), only one curb cut per lot is expected.) No rolled curbs are proposed. These criteria are met.

G. *Adequate line of sight pursuant to engineering standards should be afforded at each driveway or accessway.*

Staff Finding 55: All curb cuts will be reviewed at the time of building permit applications and shall be required to comply with the clear vision area standards of CDC Chapter 42. This criterion is met.

48.070 PLANNING DIRECTOR'S AUTHORITY TO RESTRICT ACCESS APPEAL PROVISIONS

(...)

48.080 BICYCLE AND PEDESTRIAN CIRCULATION

(...)

Staff Finding 56: Bicycle and pedestrian circulation is provided for by the interior street and adjacent sidewalks. These criteria are met.

IV. CHAPTER 55, DESIGN REVIEW

55.100 APPROVAL STANDARDS – CLASS II DESIGN REVIEW

- B. *Relationship to the natural and physical environment.*
 - 1. *The buildings and other site elements (...)*
 - 2. *All heritage trees (...)*
 - a. *Non-residential and residential projects on Type I and II lands (...)*

Staff Finding 57: Staff incorporates applicant findings. The City Arborist finds that there are no heritage trees at the site. The wetlands are Type II lands (the only on-site Type I or II land) and are addressed in staff findings 67-72. These criteria are met.

b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this “dripline plus 10 feet” measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B) (2) (c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.

Staff Finding 58: There are a total of 169 trees identified as significant on this site. The significant tree canopy area on site totals 238,212 square feet or 5.4 acres. Of these trees, 50 significant trees will be retained through the site development and homebuilding process. A total of 77,863 square feet of significant canopy will be retained or 1.7 acres (see Sheets C110-C114). The proposed retention represents 33 percent of the site’s existing canopy which exceeds the required retention of up to 20 percent. In addition to the trees determined to be significant, 62 additional non-significant trees have been proposed for retention.

The value of the proposed tree retention is increased by the fact that many of the trees are on the north and east perimeter of the development site which should provide buffering and screening to the neighboring homes.

There are no heritage trees. This tree inventory has been reviewed and affirmed by the City Arborist.

There are no trees on Type I or II lands. (The only Type I or II lands comprise the two small wetlands in the north part of the site. The wetlands will be filled in as part of the WRA application and subsequently mitigated off-site.)

This criterion is met.

c. Where stubouts of streets occur on abutting properties, and the extension of those streets will mean the loss of significant trees, tree clusters, or heritage trees, it is understood that tree loss may be inevitable. In these cases, the objective shall be to minimize tree loss. These provisions shall also apply in those cases where access, per construction code standards, to a lot or parcel is blocked by a row or screen of significant trees or tree clusters.

Staff Finding 59: No street stubouts occur on abutting properties. This criterion does not apply.

d. For both non-residential and residential development, the layout shall achieve at least 70 percent of maximum density for the developable net area. The developable net area excludes all Type I and II lands and up to 20 percent of the remainder of the site for the purpose of protection of stands or clusters of trees as defined in subsection (B)(2) of this section.

Staff Finding 60: The R-4.5 zone permits a maximum density of 9.6 dwelling units per net acre. Net acre is defined as “The total gross acres less the public right-of-way (ROW) and other acreage deductions, as applicable”.

The gross site comprises 265,860 square feet. The ROW comprises 34,637 square feet. Type II lands are an applicable deduction. The two small wetlands in the north part of the site constitute Type II lands. The wetlands will be filled and mitigated for off-site. The larger wetland comprises 3,086 square feet. 2,344 square feet of this larger wetland falls within the proposed street ROW so it has already been deducted from the “developable net area”. The remaining 742 square feet plus the smaller 877 square foot wetland total 1,619 square feet. After deducting the 1,619 square feet and the ROW dedication from the gross site area, the net site area is 5.2 acres.

The R-4.5 zone allows 9.6 dwellings/lots per acre. That translates to a maximum of 49 dwellings/lots (9.6 dwellings/lots per acre X 5.2 acres). Applying the 70 percent density requirement means that the minimum number of dwellings/lots allowed in the subdivision is 34 (49 X .7).

The applicant is proposing 34 dwellings/lots which is the minimum number of lots allowed. The criteria is met.

Staff finds that the applicant has set aside of 33 percent of the significant tree canopy, which exceeds the required 20 percent. The value of the proposed tree retention is increased by the fact that many of the trees are on the north and east perimeter of the development site

which should provide buffering and screening to the neighboring homes. This criterion is met.

e. For arterial and collector street projects, including Oregon Department of Transportation street improvements, the roads and graded areas shall avoid tree clusters where possible. Significant trees, tree clusters, and heritage tree loss may occur, however, but shall be minimized.

Staff Finding 61: There are no arterials or collectors within this project area; therefore the criteria does not apply.

f. If the protection of significant tree(s) or tree clusters is to occur in an area of grading that is necessary for the development of street grades, per City construction codes, which will result in an adjustment in the grade of over or under two feet, which will then threaten the health of the tree(s), the applicant will submit evidence to the Planning Director that all reasonable alternative grading plans have been considered and cannot work. The applicant will then submit a mitigation plan to the City Arborist to compensate for the removal of the tree(s) on an "inch by inch" basis (e.g., a 48-inch Douglas fir could be replaced by 12 trees, each four-inch). The mix of tree sizes and types shall be approved by the City Arborist.

Staff Finding 62: The interior street alignment was determined by a combination of existing ROW, the need to loop and connect Upper Midhill Drive and Hillside Drive for circulation, lot access and TVFR emergency access and the need to keep the interior road grade under 15 percent. As a result of the alignment and associated grading, the applicant will mitigate for the removal of 434 inches of DBH by planting "on an inch by inch basis" street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. This criterion is met by Condition of Approval 8.

V. CHAPTER 92, REQUIRED IMPROVEMENTS

92.010 PUBLIC IMPROVEMENTS FOR ALL DEVELOPMENT

The following improvements shall be installed at the expense of the developer and meet all City codes and standards:

- A. Streets within subdivisions.*
- B. Extension of streets to subdivisions*
- C. Local and minor collector streets*
- D. Monuments*

Staff Finding 63: The applicant shall install improvements to meet the West Linn Public Works Standards. These criteria are met.

E. Surface drainage and storm sewer system. A registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no

adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements

Staff Finding 64: The applicant has submitted a Preliminary Storm Water Report that complies with City of West Linn Public Works Standards. The applicant shall install improvements to meet the Standards, including the proposed storm water facility.

Staff notes that there is a ditch, in Tract D which is owned by the Marylhurst Place Homeowners Association and within the City of Lake Oswego. The ditch intrudes onto the northeast corner of the site for approximately 120 feet before returning to Tract D and Lake Oswego. The Oregon Department of State Lands (DSL) has provided a concurrence letter (December 7, 2015) which declared, after a site visit, that the drainage ditch is a “non-jurisdictional drainage ditch” and exempt per OAR 141-085-0515 (8).

City of Lake Oswego Storm water maps show two City of Lake Oswego storm water catch basins feeding 12-inch storm lines in Tract D which are intended to collect discharge from the ditch.

The development of this subdivision will result in a reduction of cross property storm water flow since storm water runoff from all impervious surfaces (streets, sidewalks, roofs, driveways, patios, etc.) will be intercepted and directed to the storm water lines on the streets in front of the subdivision’s homes. Storm water will then be directed to the detention/treatment facility and then to the main storm water line near lot 23. This criterion is met.

F. Sanitary sewers

(...)

Q. Joint mailbox facilities

Staff Finding 65: The applicant shall comply with the requirements and install improvements to meet the West Linn Public Works Standards. These criteria are met.

92.030 IMPROVEMENT PROCEDURES

(...)

Staff Finding 66: The applicant shall comply with the requirements and install improvements to meet the West Linn Public Works Standards. These criteria are met.

WATER RESOURCE AREA

32.060 APPROVAL CRITERIA

No application for development on property containing a WRA shall be approved unless the approval authority finds that the proposed development is consistent with the following approval criteria, or can satisfy the criteria by conditions of approval:

- A. WRA protection/minimizing impacts.
 - 1. Development shall be conducted in a manner that will avoid or, if avoidance is not possible, minimize adverse impact on WRAs.
 - 2. Mitigation and re-vegetation of disturbed WRAs shall be completed per CDC 32.090 and 32.100 respectively.

Staff Finding 67: The applicant's wetland consultant, Schott and Associates, inventoried and delineated the two small wetlands in the north portion of the site comprising 877 square feet and 3,086 square feet for a combined area of 3,963 square feet or .09 acres. (See also the outlined wetlands at northwest portion of the site on sheet C100.) The delineation received a letter of concurrence (December 7, 2015) from Oregon Department of State Land (DSL).

The applicant is proposing to fill the wetlands and mitigate off-site through the purchase of DSL mitigation credits, which is allowed by 32.090(C) (3). Review of alternatives determined that filling the wetlands is necessary to accommodate grading for the alignment of the looping street since it (a) follows the existing plat ROW, (b) provides access to all lots, (c) avoids an illegal non-connective cul de sac design, (d) achieves street grades of 15 percent or less; and (e) provides TVFR and other emergency responders with access to the subdivision. The criteria is met.

Schott and Associates inventoried the small drainage ditch along the north property line, primarily in Tract D, owned by the Marylhurst Homeowners Association and located in Lake Oswego. The ditch intrudes onto the northeast corner of the project site for approximately 120 feet before returning to Tract D and Lake Oswego.

Schott and Associates determined there were no wetlands associated with it. DSL's concurrence letter found, after a site visit, that the drainage ditch is a "non-jurisdictional drainage ditch" and exempt per OAR 141-085-0515 (8). According to the City of Lake Oswego Planning Department, the ditch was removed from the 1-B list of their Sensitive Lands Map and is not designated for resource protection: there is no buffer or other resource requirement for it. The ditch is not on the City of West Linn's WRA inventory.

- B. Storm water and storm water facilities.
 - 1. Proposed developments shall be designed to maintain the existing WRAs (...)

Staff Finding 68: The applicant has inventoried and delineated the two isolated wetlands and is proposing to fill them and mitigate off-site for the reasons outlined in Staff Finding No.67. Even if the wetlands were not removed, they are not associated with a stream so there is no opportunity to use the wetlands for storm water discharge. Storm water will instead be

intercepted from all impervious surfaces and directed into an approved storm water facility. The criteria is met.

C. Dedications and easements. The City shall request dedications of the WRA to the City when acquisition of the WRA by dedication or easement would serve a public purpose. When such a dedication or easement is mutually agreed upon, the applicant shall provide the documentation for the dedication or easement. Nothing in this section shall prohibit the City from condemning property if:

1. The property is necessary to serve an important public purpose; and
2. Alternative means of obtaining the property are unsuccessful.

Staff Finding 69: The applicant has inventoried and delineated the wetlands and is proposing to fill them in and mitigate off-site. There are no easements or dedications proposed. The criteria is met.

D. WRA width. Except for the exemptions in CDC 32.040, applications that are using the alternate review process of CDC 32.070, or as authorized by the approval authority consistent with the provisions of this chapter, all development is prohibited in the WRA as established in Table 32-2 below: (...)

Staff Finding 70: The applicant has inventoried and delineated the wetland and is proposing to fill them in and mitigate off-site. Consequently, no WRA transitions or setbacks are required. The criteria is met.

E. Roads, driveways and utilities.

1. New roads, driveways, or utilities shall avoid WRAs unless the applicant demonstrates that no other practical alternative exists. In that case, road design and construction techniques shall minimize impacts and disturbance to the WRA by the following methods (...)

Staff Finding 71: Filling the two small wetlands is necessary to accommodate the alignment of the looping street since it (a) follows the existing plat ROW, (b) provides access to all lots, (c) avoids an illegal non-connective cul de sac design, (d) achieve street grades of 15 percent or less, and (e) provides TVFR and other emergency responders with access. After filling the wetlands, the applicant will mitigate off-site through the purchase of DSL mitigation credits. The criteria is met.

F. Passive recreation. (...)

G. Daylighting Piped Streams (...)

H. The following habitat friendly development practices shall be incorporated into the design of any improvements or projects in the WRA to the degree possible (...)

Staff Finding 72: There are no proposals for passive recreation facilities at this site. There are no existing piped streams on this property. This criteria is not applicable.

June 10, 2020

Michael C. Robinson

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

VIA E-MAIL

Ms. Jennifer Arnold, Associate Planner
City of West Linn Planning Department
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

RE: Application by Upper Midhill Estates, LLC for Two-Year Extension of the Chene Blanc Subdivision Located at 18000 Upper Midhill Drive; City of West Linn File No. AP-17-01; Response to May 29, 2020 Email from Jennifer Arnold Regarding Changes to Tentative Subdivision Plan

Dear Ms. Arnold:

This law firm represents Upper Midhill Estates, LLC, the Applicant. This letter responds to your email dated May 29, 2020 to Steve Miller of Emerio Design. Your email explained that the Applicant has changed some areas on the proposed local street Upper Midhill Drive to increase its width to 28 feet. You asked the Applicant to address West Linn Community Development Code (“CDC”) 99.325.A.2 and 3. Your email was not a formal incompleteness determination under ORS 227.178(3) but instead was a courtesy to the Applicant to allow it to address the issue prior to the expiration of the completeness review period on June 12, 2020.

Exhibit 1 shows the increased street widths requested by, proposed to and approved by the City of West Linn City Engineer (the “City Engineer”). The exhibit shows that the street width has been increased to 28 feet in five places adjacent to Lots 11 and 19, near Lot 1 and Tract C. The increased street width occurs within the existing right-of-way width so that the right-of-way is not increased and the abutting lots’ and the tract’s dimensions are not decreased. The street widths were increased in these five locations by removing the planter strip and providing additional on-street parking spaces.

CDC 99.325.A.1-3 contains the approval criteria for a two-year extension of the limited land use decision. CDC 99.325.A.2 and 3 concern changes to the approved plans. The Applicant’s May 13, 2020 Application addressed these criteria at Application Narrative Page 2 by stating that the Applicant had made no changes to the approved plans. This letter modifies those responses as shown below. The responses in the Application remain the same except as expressly modified in this letter.

- 1. CDC 99.325.A.2. RESPONSE:** The Applicant has changed the street widths in five locations at the request of the City Engineer. Although the Applicant has changed the street improvements in five locations, the changes do not “directly impact...traffic... [or] the street alignment and drainage...” because the change provides additional on-street parking which is a benefit to the new subdivision and the surrounding dwellings. The removal of the landscaping strip in these five areas does not directly impact traffic or drainage. Therefore, the Planning Commission can find that this standard is either not applicable or is satisfied.
- 2. CDC 99.325.A.3. RESPONSE:** The changes shown in **Exhibit 1** are not a result of requirements to comply with current approval criteria. Because the changes shown in **Exhibit 1** are not a requirement of changes to the CDC, a pre-application meeting and neighborhood meeting are not required.
- 3. CDC 85.080.A. RESPONSE:** The changes shown in **Exhibit 1** are necessary to meet accepted engineering practices due to site conditions. The changes are not a substantial deviation from the approved tentative subdivision plan.
- 4. CDC 89.050.A.5. RESPONSE:** The approved tentative subdivision plan remains in substantial conformity with provisions of the approved tentative plan.

Please confirm that the additional evidence contained in this letter will allow you to deem the application complete.

Very truly yours,

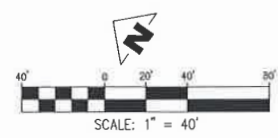
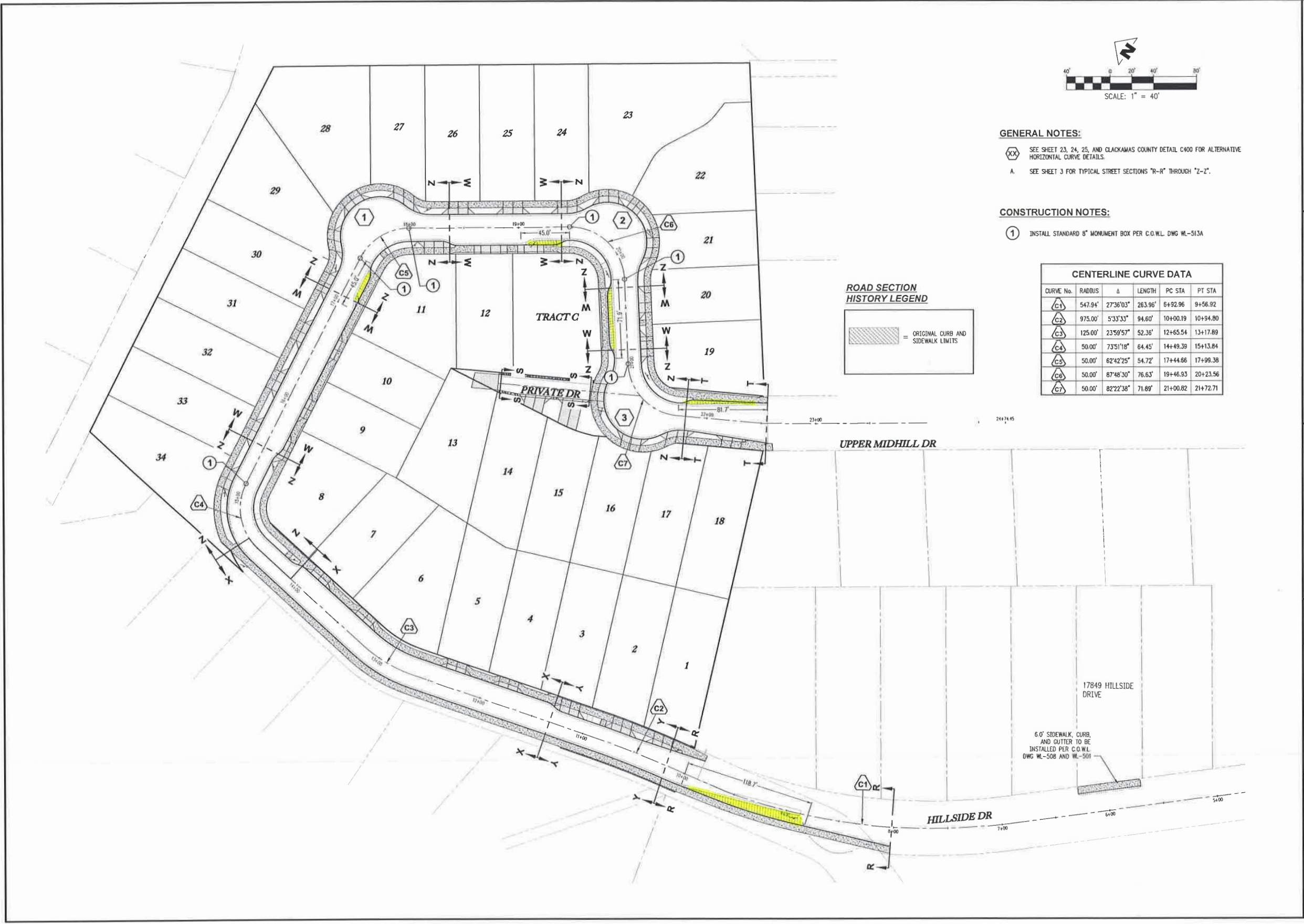


Michael C. Robinson

MCR/jmhi
Enclosure

cc: Mr. Tim Ralston (via email) (w/enclosure)
Mr. Lucas Ralston (via email) (w/enclosure)
Mr. Eric Evans P.E. (via email) (w/enclosure)
Mr. Pete DeWitz (via email) (w/enclosure)
Mr. Steve Miller (via email) (w/enclosure)
Mr. Tim Ramis (via email) (w/enclosure)

PDX\134673\248389\MCR\28128995.1



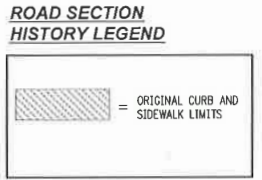
GENERAL NOTES:

(XX) SEE SHEET 23, 24, 25, AND CLACKAMAS COUNTY DETAIL C400 FOR ALTERNATIVE HORIZONTAL CURVE DETAILS.

A. SEE SHEET 3 FOR TYPICAL STREET SECTIONS "R-R" THROUGH "Z-Z".

CONSTRUCTION NOTES:

(1) INSTALL STANDARD 8" MONUMENT BOX PER C.O.W.L. DWG WL-513A



CENTERLINE CURVE DATA					
CURVE No.	RADIUS	Δ	LENGTH	PC STA	PT STA
(C1)	547.94'	27°36'03"	263.96'	6+92.96	9+56.92
(C2)	975.00'	5°33'33"	94.60'	10+00.19	10+94.80
(C3)	125.00'	23°59'57"	52.36'	12+65.54	13+17.89
(C4)	50.00'	73°51'18"	64.45'	14+49.39	15+13.84
(C5)	50.00'	62°42'25"	54.72'	17+44.66	17+99.38
(C6)	50.00'	87°48'30"	76.63'	19+46.93	20+23.56
(C7)	50.00'	82°22'38"	71.89'	21+00.82	21+72.71

CHENE BLANC SUBDIVISION
 34 LOT SUBDIVISION
 TAX MAP 251E14CA
 TAX LOT 200
 WEST LINN, OREGON

ROAD SECTION HISTORY EXHIBIT

NO.	DATE	DESCRIPTION
1	05/2018	1ST SUBMITTAL
2	09/2018	2ND SUBMITTAL
3	09/2019	NO FACILITY REVISION
4	10/2019	SURVEY MONUMENT REVISION

EMERIO
Design

6445 SW FALLBROOK PLACE, SUITE 100
 WEST LINN, OREGON 97136
 TEL: (503) 745-8812
 FAX: (503) 639-9552
 www.emeriodesign.com



SHEET
1
 OF
1

FILE:P:\353-001 Chene Blanc Subdivision [org] [Exhibit] [2020-06-01] Road Width Exhibit, Layout: ROAD SECTION HISTORY Exhibit, Plot Date: 6/2/2020 9:26 AM, by: Tyler Kern

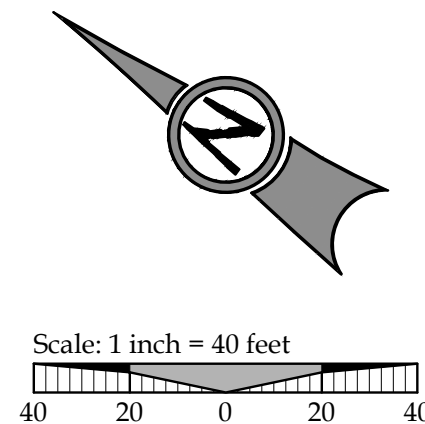
PC-4 SUB-15-03 APPROVED TENTATIVE PLAN

NOT FOR CONSTRUCTION

P:\15266-UPPER MIDHILL ESTATES (REESMAN)\CAD\C210 SITE PLAN.DWG



A PORTION OF "ROBINWOOD"
 TAX LOT 200, MAP 2-1E-14CA
 NE 1/4 SW 1/4 SEC. 35, T.2S., R.1E., W.M.
 CITY OF WEST LINN,
 CLACKAMAS COUNTY, OREGON



LEGEND

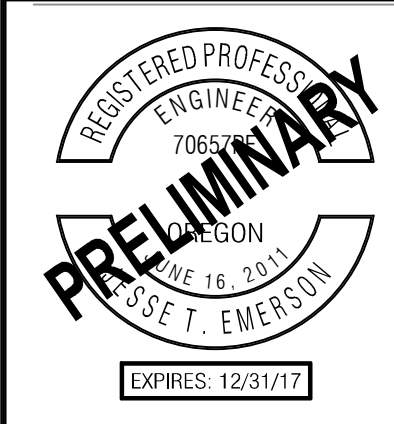
	PROJECT BOUNDARY LINE
	RIGHT OF WAY LINE
	PROPOSED PROPERTY LINE
	ROADWAY CENTER LINE
	ADJACENT PROPERTY BOUNDARY
	EASEMENT LINE
	EXISTING CONCRETE
	EXISTING CURB
	EXISTING FENCE LINE
	PROPOSED CURB FACE
	PROPOSED CURB BACK
	PROPOSED LIP OF GUTTER
	PROPOSED LOT LINE
	PROPOSED EASEMENT LINE
	PROPOSED RIGHT OF WAY
	PROPOSED ASPHALT
	PROPOSED CONCRETE
	EXISTING ROCK WALL
	PROPOSED RETAINING WALL
	PROPOSED STREET SECTION - SEE SHEET C201
	PROPOSED ON-STREET PARKING

- SITE NOTES**
- CONSTRUCT STANDARD CURB & GUTTER PER CITY OF WEST LINN STANDARD DETAIL WL-501 (TYPICAL CURBS).
 - CONSTRUCT 6 FT WIDE DETACHED SIDEWALK PER CITY OF WEST LINN STANDARD DETAIL WL-508 (CONCRETE SIDEWALK CROSS SECTION).
 - CONSTRUCT 6 FT CURB TIGHT SIDEWALK PER CITY OF WEST LINN STANDARD DETAIL WL-508 (CONCRETE SIDEWALK CROSS SECTION).
 - INSTALL ASPHALT SECTION. SEE TYPICAL SECTIONS A-A' AND B-B' ON SHEET C201.
 - INSTALL ACCESS DRIVE. SEE TYPICAL SECTION C-C' ON SHEET C201.
 - INSTALL RETAINING WALL.
 - NOT USED.
 - ROADWAY TAPER PER AASHTO STANDARDS TO MEET EXISTING ROAD WIDTHS ON UPPER MIDHILL DRIVE. STA: 1+12 TO 2+28.
 - ROADWAY TAPER PER AASHTO STANDARDS TO MEET EXISTING ROAD WIDTHS ON HILLSIDE DRIVE. STA: 14+10 TO 14+91.
 - TRANSITION SIDEWALK TO CURB TIGHT. MATCH EXISTING CURB TIGHT SIDEWALK AS SHOWN.
 - PROVIDE CORNERING "EYE BROW" PER CLACKAMAS COUNTY ROADWAY STANDARD DRAWING C400.
 - INSTALL STREET SIGN "UPPER MIDHILL DRIVE" AND "HILLSIDE DRIVE".

DESIGN REVIEW 01/11/2016

REVISION SUMMARY	BY	DATE

PRELIMINARY SITE PLAN
CHÈNE BLANC ESTATES
 LAND USE DOCUMENTS
 1800 UPPER MIDHILL DRIVE, LLC
 WEST LINN, OR



3J CONSULTING, INC

 CIVIL ENGINEERING
 WATER RESOURCES
 LAND USE PLANNING
 5075 SW GRIFFITH DRIVE, SUITE 150, BEAVERTON, OR 97005
 PHONE & FAX: (503) 946-5385

3J JOB ID #	15266
LAND USE #	TBD
TAX LOT #	251E14CA 00200
DESIGNED BY	JTE, CKW, JCP
CHECKED BY	JTE

SHEET TITLE
SITE PLAN

SHEET NUMBER
C210



PC-5

PUBLIC COMMENTS

Arnold, Jennifer

From: Tama Tochihara <ttochihara@gmail.com>
Sent: Saturday, June 27, 2020 3:16 PM
To: Arnold, Jennifer
Subject: Planning Commission Hearing File NO. MICS-20-04

Follow Up Flag: Follow up
Flag Status: Completed

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July 15, 2020 6:30PM 34-Lot Subdivision 18000 Upper Midhill Drive

I am a resident at 2455 College Hill Pl, West Linn, OR 97068. I would like to express concern with the anticipated additional traffic with a 34 lot subdivision. Has a traffic study been conducted to predict the impacts of the additional traffic on the neighborhood? Lake Oswego has not allowed streets to connect through from West Linn to Lake Oswego neighborhoods. This signifies the additional subdivision vehicles will likely be traveling down Arbor to access the 43 multiple times a day.

The intersection of 43 and Arbor Drive is a high incident, high accident intersection because of the lack of signage, the nearby merge point, high speeds of through traffic and lack of street lines or traffic indicators. As a nearby resident that uses this access point, it is always dangerous. When I am turning onto Arbor off of the 43 and slow down to make a safe turn, other vehicles will honk or go illegally around. There is pressure to take that turn at a dangerous speed to placate other drivers or to move to the side of the road so they can go around, but this is unsafe. Also in peak use hours, it is very difficult to make a safe turn onto the 43. There is no existing signage to illustrate what is illegal or legal at this intersection. This intersection is a stress point for many local drivers and there are multiple accidents a year here.

There are very few sidewalks in the Midhill neighborhood and it is unsafe for pedestrians and bikers whose available option is to walk or bike in the street. Most residents drive slow for dog walkers and kids, but more traffic will exacerbate these unsafe conditions. There are many young families and small children in the neighborhood.

Two neighborhood concerns that are existing issues and should be rectified if this subdivision is approved or if it is not approved:

- Traffic light installed at Arbor and 43
- Neighborhood sidewalks

Thank you very much,
Tama Tochihara



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)

On July 5, 2020 Staff received written testimony from James and Amy McNeely expressing concerns regarding the safety of Arbor Drive and HWY 43, traffic, and the safety of pedestrians.

On July 6, 2020 Staff received written testimony from David Goldenberg expressing concerns regarding the safety of Arbor Drive and HWY 43, traffic in the neighborhood, general safety, and passing cars on narrow streets.

On July 13, 2020 Staff received written testimony from Allison and Seth Olson expressing concerns regarding increased traffic, a turn lane at Arbor Drive and HWY 43, habitat removal, and would like to see the property designated as a City Park.

On July 13, 2020 Staff received written testimony from Chris and Scarlett Harris expressing concerns regarding increased traffic congestion, safety of Arbor Drive and HWY 43 intersection, habitat removal, and would also like to see the property designated as a City Park.

On July 13, 2020 Staff received written testimony from Christine Steel expressing support for the two-year time extension for a number of reasons, including the date discrepancy between when the final approval by City Council was issued (July 2017) and when the final LUBA appeal was completed (January 2018). In addition, Ms. Steel includes some background from her time on the Planning Commission when the extension code provision was added to CDC Chapter 99.

On July 13, 2020 Staff received written testimony from Kathie Halicki, on behalf of the Willamette Neighborhood Association expressing concerns regarding the need for a time extension and the standard an approval of this application type sets for future developers.

On July 14, 2020 Staff received written testimony from Peter Lang expressing support for the testimony submitted by Chris and Scarlett Harris. Mr. Lang also noted that the property had



CITY OF West Linn

previously been used as a dumping site for medical waste and suggested that a soils test be conducted prior to any issuance of permits.

Arnold, Jennifer

From: James McNeely <jmcneely@pps.net>
Sent: Sunday, July 5, 2020 7:00 PM
To: Arnold, Jennifer
Subject: 34 lot subdivision Upper Midhill Drive

Follow Up Flag: Follow up
Flag Status: Flagged

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Ms. Arnold,

As a resident of Upper Midhill Dr.(18180), I strongly object to beginning the subdivision project under the current conditions. The intersection of Arbor Dr. & Hwy 43 is not equipped to safely accommodate the increase in traffic. Neither is the intersection of Arbor & Upper Midhill which, by the way , sees a large amount of pedestrian traffic which frequently includes primary school aged children.

Expansion is inevitable, but it should be done responsibly.

Sincerely,

James & Amy McNeely

Arnold, Jennifer

From: David A. Goldenberg <lilcarlover@aol.com>
Sent: Monday, July 6, 2020 4:34 PM
To: Arnold, Jennifer
Subject: 18000 Upper Midhill Drive

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Hello,

I got the notice regarding this property, which is a block from my home. I have so many concerns regarding the development of this property, but the biggest ones concern traffic overload, and safety. The traffic coming in and out of our neighborhood via Arbor Drive is already at a high volume, and we truly need a traffic light installed at the intersection of Arbor Drive and Highway 43, along with appropriate turn lanes on Highway 43 and on Arbor Drive, along with a widening of Arbor Drive. In addition, Upper Midhill Drive is a fairly narrow street; and two vehicles passing one another have difficulty under the current circumstances, especially down by Midhill Park. One vehicle must pull over to let the other pass, and this gets even more challenging when it is an oversized vehicle like a truck or school bus. The addition of 34 homes at the subject property will only compound these issues. We have a lot of little kids in the neighborhood as well, so safety is a concern. On a personal note, I have concern about the affects of our property values, should this project go forth. I think ultimately it will make the neighborhood less desirable...I actually do not know one of my neighbors who is in support of this project. It sounds like the city has already made up its mind and ok'd the project, but I thought I would voice my concerns none the less.

Regards,

David A. Goldenberg
18127 Upper Midhill Drive
West Linn, OR 97068

Arnold, Jennifer

From: Allison Olson <allison.christine.olson@gmail.com>
Sent: Monday, July 13, 2020 3:31 PM
To: Arnold, Jennifer
Cc: Seth Olson
Subject: FILE NO. MISC-20-04 / 18000 Upper Midhill Dr

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Hello City of West Linn Planning Committee,

I am reaching out to ask the city deny this request based upon the following criteria found in Chapter 85 of the Community Development Code:

85.010

“The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources.”

A two year extension will increase traffic in the streets and decrease street safety especially during COVID-19 when more children are outside playing; this is contradictory to 85.010.

85.010 Section B3

“To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists.”

In order for this development to happen there needs to be a left turn lane at hwy 43 and Abor. The road is not wide enough, so if that lane goes in it would eliminate 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 is in direct violation of this ordinance. It is currently the wooded habitat for deer, owls, birds, and many other animals. This land is a watershed and should be protected. All of this is in direct contradiction to 85.010 B4

Our neighbors and I 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.

Thanks for taking our concerns seriously!

Allison and Seth Olson
18233 Upper Midhill Dr
West Linn, OR 97068

Arnold, Jennifer

From: Scarlett Harris <scarlettharris@gmail.com>
Sent: Sunday, July 12, 2020 11:05 PM
To: Arnold, Jennifer
Subject: Planning Commision Hearing File NO. Misc-20-04 / 18000 Upper Midhill Dr

Follow Up Flag: Follow up
Flag Status: Completed

July 11, 2020

TO: City of West Linn

RE: Planning Commision Hearing File NO. Misc-20-04

I recommend the city deny this request based upon the following criteria found in Chapter 85 of the Community Development Code:

1. 85.010
 - a. *"The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources."*
 - b. This development if implemented within the existing approval time frame will increase congestion in the streets and decrease street safety. A two year extension of approval for this development will further increase congestion in the streets and further decrease street safety; this is contradictory to the clearly stated purpose of 85.010
2. 85.010 Section B3
 - a. *"To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists."*
 - a. 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
3. 85.010 Section B4
 - a. *"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."*
 - a. 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.

Best Regards,

Chris and Scarlett Harris
Upper Midhill Dr, West Linn

TO: West Linn Planning Commission
FROM: Christine Steel
DATE: July 12, 2020
RE: Hearing MISC-20-04, Two-Year Extension of Approval for Subdivision at 18000 Upper Midhill Drive
CC: John Boyd, Jennifer Arnold, John Williams, City Council Members, Robinwood Neighborhood Association

Dear Planning Commission Members,

I am sending this memo to support approval of a two-year extension for the above-referenced subdivision application for the following reasons:

1. The developer has not had the benefit of a full three year development period. This is because the "clock" started running, per the CDC, from the City Council's approval of the application in July 2017. However, the City Council's decision was subsequently appealed to LUBA, which did not publish its decision until January, 2018.
2. The application meets all criteria for the extension, per the staff report.
3. In light of the recent passing of HB 2001, failure to grant the extension for this particular application will most likely result in a future development which is more densely occupied and therefore less compatible with the existing surrounding neighborhoods.
4. The application incorporates a construction management plan, which is novel for West Linn, and which was discussed and drafted by members of the Robinwood Neighborhood Association in hopes of coordinating with the developer and mitigating foreseeable construction activity impacts to the extent possible.
5. The extension request meets the intent of the CDC extension language. I was on the planning commission in 2008/2009, which was when the extension opportunity was added to the CDC. As I recall, a group of local contractors and developers met with the planning staff and planning commission to request this option based on the extenuating circumstances caused by the recession that the country was undergoing at the time. Due to the COVID-19 pandemic, we are experiencing extenuating circumstances again. Conducting business has been and is continuing to be very difficult. I believe the present circumstances in this case are comparable to those in effect at the time the two-year extensions were introduced into the CDC.

Please consider these factors in making your decision. Personally, I would like to see the area remain natural for perpetuity -- I live only two houses away from the project entrance. However, short of this area turning into a park or permanent green space, I believe the development as previously approved and currently modified is the best outcome for the acreage and for the surrounding neighborhoods.

Thank you.

Christine Steel

18100 Upper Midhill Dr., West Linn
503-697-3119
steelc123@gmail.com

From: [Willamette Neighborhood Association President](#)
To: [Wyss, Darren](#)
Subject: 7/15 Planning Commission meeting
Date: Monday, July 13, 2020 11:51:35 AM

Please add these to the public comment.

The Willamette Neighborhood Association discussed this topic per the city's request. The conclusions we came to are:

- 1). We don't have enough information as to why an extension is needed.
- 2). We are cautious of agreeing to the extension for a couple of reasons. Real estate is a gamble, it has ups and downs, as a developer he should know better (and be prepared) for the downs. If this extension is granted it could set a precedent, what you do for one you must do for all. That would mean that any land use could request (and would then need to be granted) an extension, thus bringing our city to a 2 year halt (land use wise).

Thus without more information and the obvious need (other than financial) for an extension , we are not in favor.

Kathie Halicki, WNA president

Willamette Neighborhood Association President

President

Neighborhood Association Presidents

<#>



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Peter D. Lang
2312 College View Dr.
West Linn, OR – 97068-1229

Eve: (503) 636-4006
Cel: (503) 780-9201
e-mail: peterd1776@comcast.net

12-July-2020

City of West Linn

Re: Planning Commission Hearing File No. Misc.20-04

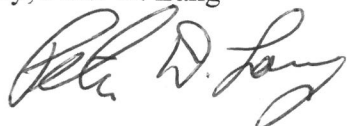
I am writing in support of the letter, copy attached, dated 11.July.2020 and submitted by Mr.and Mrs. Harris on the above referenced matter.

Specifically, I would like to support paragraph 2 in the Harris letter, citing 85.010 Section B3. This has been a difficult six months for the residents of this area of West Linn. There have been two homes under construction proximate to the intersection of Arbor Dr. and Upper Midhill.. Had it not been for the corona virus interruptions to anything like a normal life in this area of the city, City officials would have had something approaching a true crisis on their hands. There is no way school buses, rubbish pick-up trucks and emergency vehicles would have been able to access our neighborhood in a timely fashion using Upper Midhill nor Arbor Drive. We have lived with an unsafe situation at that intersection for six or eight months.

It would be an extreme case of poor judgement for City officials to agree to allow this clearly unsafe condition to be repeated or to continue. Clearly this circumstance is not at all aligned with the requirements of 85.010.

I am going to raise another issue now that has troubled me for years and about which I have never said anything. In the late 1990's someone was using the property as a dump site. Specifically, the area just beyond the paved end of Upper Midhill and to the east, someone was dumping medical waste. I never observed any dumping there. I did notice for a period of perhaps a year or more, that in that waste there was quite a large number of mercury thermometers, most of them broken. I think that was during the time when mercury thermometers were being discontinued in medical offices. Perhaps it would be wise to test the soil in that area before permits are issued.

Sincerely, Peter D. Lang



July 11, 2020

TO: City of West Linn

RE: Planning Commission Hearing File NO. Misc-20-04

I recommend the city deny this request based upon the following criteria found in Chapter 85 of the Community Development Code:

1. 85.010

- a. *"The purpose of the land division provisions of this code is to implement the Comprehensive Plan; to provide rules and standards governing the approval of plats of subdivisions (four lots or more) and partitions (three lots or fewer); to help direct the development pattern; to lessen congestion in the streets; to increase street safety; to efficiently provide water, sewage, and storm drainage service; and to conserve energy resources."*
- b. This development if implemented within the existing approval time frame will increase congestion in the streets and decrease street safety. A two year extension of approval for this development will further increase congestion in the streets and further decrease street safety; this is contradictory to the clearly stated purpose of 85.010

2. 85.010 Section B3

- a. *"To reduce pedestrian/vehicle conflicts and create a safe and attractive environment for pedestrians and bicyclists."*
- b. 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

3. 85.010 Section B4

- a. *"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."*
- b. 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.

Best Regards,

Chris and Scarlett Harris
Upper Midhill Dr, West Linn



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

CAUTION: This email originated from an External source. Do not click links, open attachments, or follow instructions from this sender unless you recognize the sender and know the content is safe. If you are unsure, please contact the Help Desk immediately for further assistance.

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)

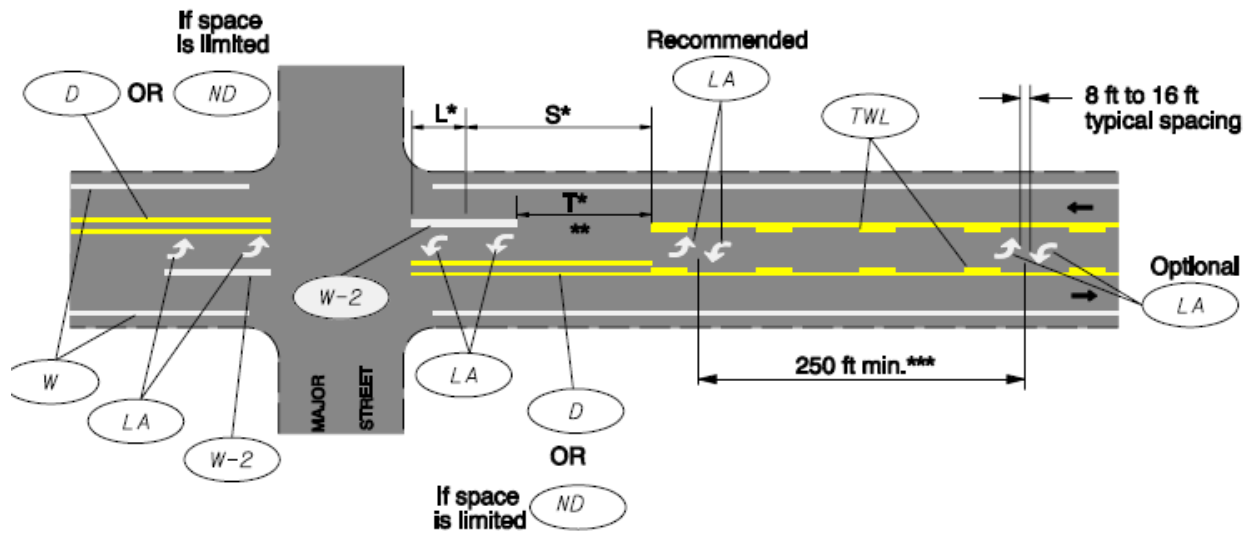
³ “Supplemental traffic counts were conducted at the study intersections in October 2016, while school was in session. The traffic counts were balanced and seasonally adjusted in accordance with the methodologies identified in the ODOT Analysis Procedures Manual (APM) to reflect peak traffic conditions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

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

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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.”

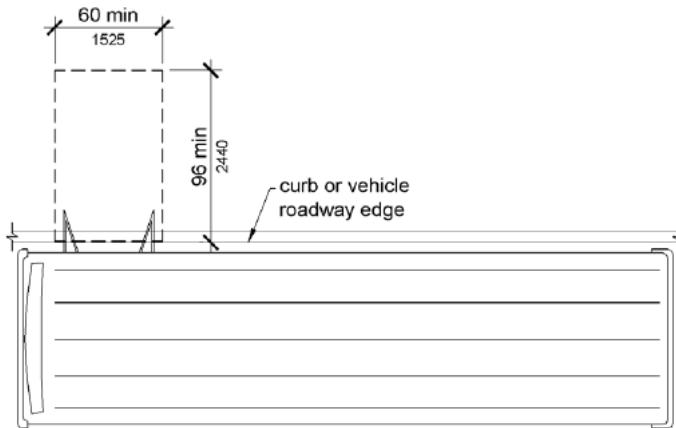


Figure 810.2.2 Dimensions of Bus Boarding and Alighting Areas

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

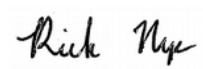
The March 1, 2017 Kittelson letter references traffic counts that were collected in October 2016. However, the letter fails to include evidence of the raw traffic counts nor the calculations that were utilized in seasonally adjusting the raw traffic counts as reported.

Conclusion

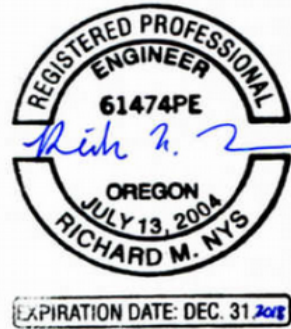
The land use application fails to provide substantial evidence, or in some cases any evidence at all, to support the conclusion that the applicant demonstrated compliance with the transportation related requirements necessary to approve this land use application.

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	*	370		34	265	111	122	145	387
06:15	*	251	*	120	*	371	*	371		33	218	170	123	203	341
06:30	*	239	*	112	*	351	*	351		55	166	258	112	313	278
06:45	*	190	*	88	*	278	*	278		59	139	273	102	332	241
07:00	*	132	*	81	*	213	*	213		95	128	272	86	367	214
07:15	*	100	*	96	*	196	*	196		107	130	284	64	391	194
07:30	*	96	*	98	*	194	*	194		94	94	258	50	352	144
07:45	*	104	*	80	*	184	*	184		110	83	246	66	356	149
08:00	*	134	*	46	*	180	*	180		124	94	219	66	343	160
08:15	*	100	*	62	*	162	*	162		107	112	214	59	321	171
08:30	*	96	*	58	*	154	*	154		132	97	242	58	374	155
08:45	*	92	*	54	*	146	*	146		102	104	246	56	348	160
09:00	*	99	*	46	*	145	*	145		114	62	183	56	297	118
09:15	*	88	*	43	*	131	*	131		109	70	198	52	307	122
09:30	*	82	*	45	*	127	*	127		116	74	157	38	273	112
09:45	*	52	*	31	*	83	*	83		144	66	168	26	312	92
10:00	*	48	*	26	*	74	*	74		109	64	133	18	242	82
10:15	*	30	*	26	*	56	*	56		116	26	141	24	257	50
10:30	*	28	*	14	*	42	*	42		124	23	156	18	280	41
10:45	*	22	*	9	*	31	*	31		138	20	136	14	274	34
11:00	*	19	*	6	*	25	*	25		120	25	114	10	234	35
11:15	*	11	*	10	*	21	*	21		143	17	125	12	268	29
11:30	*	14	*	6	*	20	*	20		134	18	158	8	292	26
11:45	*	18	*	7	*	25	*	25		148	13	148	11	296	24
Total	0	2297	0	1282	0	3579		3579		2709	7282	4969	5094	7678	12376
Day Total		2297		1282		3579		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	-	06:00	-	11:00	04:30	06:30	03:00	07:00	03:00
Vol.	-	- 932	-	438	-	1370	-	1370	-	545	1113	1087	861	1466	1939
P.H.F.		0.925		0.913		0.923		0.923		0.921	0.950	0.957	0.763	0.937	0.893

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)																									
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	Seasonal Trend Peak Period Factor
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	1.2875	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: jrobbins@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*

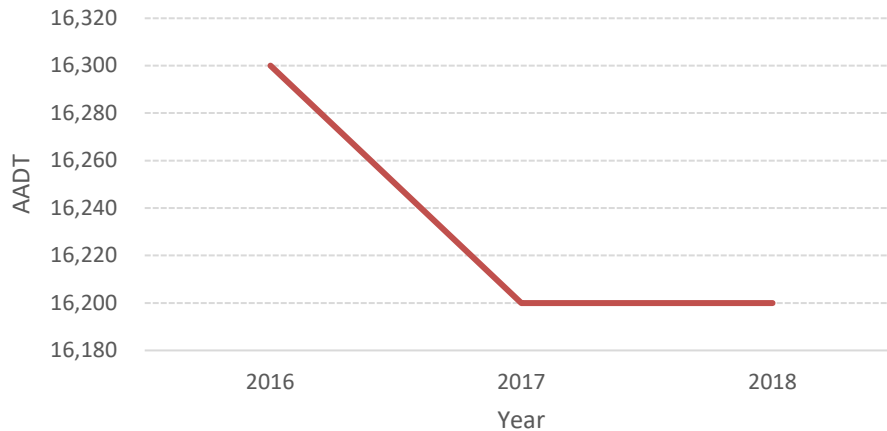
Dear Gary,

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)



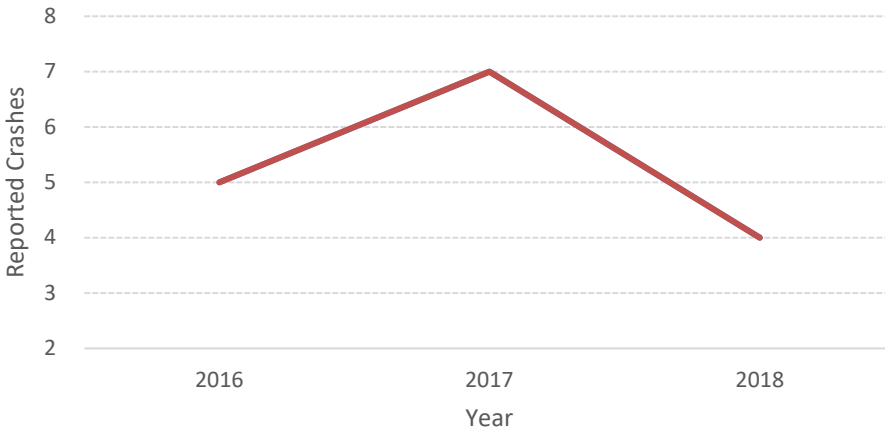
Travel Patterns

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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CITY OF
West Linn

Memorandum

Date: July 22, 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)

On July 22, 2020 Staff received the final written argument from the Applicant's representative, Michael Robinson. This submittal was received prior to the 5pm deadline July 22, 2020 and does not contain any new information for the record.

July 22, 2020

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

**VIA E-MAIL (SUBMITTED TO PLANNER JENNIFER ARNOLD
BEFORE 5:00 P.M. ON JULY 22, 2020)**

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; Applicant's Final Written Argument

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

This law firm represents the Applicant, Upper Midhill Estates, LLC. This eight-page letter with one exhibit is the Applicant's final written argument allowed under ORS 197.763(6)(e) and without new evidence as defined in ORS 197.763(9)(b). The one exhibit is the Oregon Land Use Board of Appeals ("LUBA") decision in *Harra v. City of West Linn*, 77 Or LUBA 136 (2018) affirming the City Council's approval of the decision.¹

I. Introduction.

A. Status.

The Applicant submitted this Application on May 13, 2020. The City deemed this Application complete on June 11, 2020. The City provided a correct and timely public notice of the Planning Commission hearing.

The Planning Commission opened the public hearing on July 15, 2020 at 6:30 p.m. The City Attorney read the announcements required by ORS 197.763(5), including the right of anyone to ask that the public hearing be continued or the written record held open. The Planning Commission heard the Staff Report, the Applicants' presentation, public testimony and the Applicant's rebuttal. No one asked that the hearing be continued or the written record held open. The Applicant did not waive final written argument under ORS 197.763(6)(e). The Planning Commission closed the public hearing and evidentiary record and set July 22, 2020 at 5:00 p.m. as the due date for submittal of final written argument without new evidence. The

¹ The references to LUBA's page numbers in this letter are from LUBA's Slip Opinion ("*Slip Op*") in *Harra v. City of West Linn*.

Planning Commission scheduled its deliberation on August 19, 2020 at 6:30 p.m. without new public testimony or new argument and evidence at the deliberation.

B. Procedural Issues.

The Applicant understands and appreciates the feelings of the neighbors and perhaps of the Planning Commission about construction of the approved subdivision. However, the West Linn City Council (the “City Council”) approved the Application in 2017 and LUBA affirmed the City Council’s approval. The fact that the Applicant has requested an extension of the approval is not an opportunity to revisit the original approval, as Planner Jennifer Arnold said in her Staff Report to the Planning Commission. The sole approval criteria for the extension Application are found in West Linn Community Development Code (“CDC”) 99.325.A.1-3. Further, the timing of the submittal of this Application is not a factor in the Planning Commission’s review of the Application.

Additionally, the Applicant would appreciate the Planning Commission considering the following points as it deliberates on the Application.

- While the Applicant has the burden of proof on the approval criteria in CDC 99.325.A.1-3, that burden of proof is met by the Applicant’s substantial evidence in support of the Application, when compared to the lack of compelling evidence directly related to the approval criteria submitted by opponents. The approval criteria do not include a demonstration of good cause or need for the extension.
- Issues raised and resolved by LUBA may not be considered in this Application. The City Council’s 2017 decision is **Exhibit 1** to the Applicant’s May 13, 2020 submittal. The Applicant’s evidence includes oral and written testimony by Emerio Design and Kittelson and Associates.
- The only evidence that may be considered by the Planning Commission is evidence in the record at the close of the public hearing. Evidence contained in an *ex parte* contact, if any, following the closure of the record may not be considered by the Planning Commission. The Applicant would appreciate the Planning Commission not considering *ex parte* contacts.
- Evidence obtained through the Planning Commission members’ own research or knowledge of local conditions is another form of *ex parte* contact and should also not be considered, including post-hearing site visits or communications to Planning Commission members by other than City staff.
- Oregon state law controls certain aspects of the decision of this Application. For example, ORS 92.040(2) prohibits the application of local government laws governing construction of the subdivision adopted after the submittal of the 2016 subdivision application. ORS 197.303(1)(a) and 197.307(4) together prevent local governments from applying subjective

approval standards, conditions and procedures to residential applications, or imposing such provisions that cumulatively or individually have the effect of discouraging needed housing through unreasonable cost or delay. This Application to extend a residential subdivision for single-family detached housing is subject to these statutory provisions.

- Finally, everyone participating in this proceeding has a right to a full and fair hearing and the opportunity to make their case before an unbiased Planning Commission. No matter how strongly felt opinions may be about the subdivision and the Applicant and its representatives, the decision can only be made by applying evidence to the approval criteria and making a fair and unbiased decision.

C. Issues Addressed in this Letter.

The remainder of this letter addresses issues raised by hearing participants or questions asked by the Planning Commission that generally fall into these categories.

- Traffic safety.
- New traffic from the duplexes and Marys Woods.
- Vehicle trip growth rates.
- Adequate street capacity.
- Stormwater.
- Procedural issues.
- Off- and on-street parking adequacy.
- Stormwater impacts by added on-street parking areas.
- Ownership.
- Soils issue.
- Expiration of 2017 decision.

As explained above, the Applicant's responses to each of these issues is in the context of the approval criteria in CDC 99.325.A.1-3.

2. Applicant's Response to Issues Raised and Questions Asked.

A. Traffic Safety.

Several persons argued that traffic conditions will be made unsafe by the subdivision's construction. The Planning Commission must reject this contention for the following reasons.

- a. The July 13, 2020 letter from Matt Bell of Kittelson and Associates (Kittelson") on Page 1 states that there have been no material changes in, among other factors, crash history since the 2017 decision, thus satisfying CDC 99.325.A.2 because traffic safety facts have not changed in a way that directly impacts the project. The letter's conclusion is supported

by Chart 2, “Crash History – Willamette Drive/Arbor Drive Intersection (2016-2018),” showing a decline in reported vehicle crashes since 2017.

- b. Opponents to the Application submitted no contrary substantial evidence to the Kittelson letter.
- c. The information submitted by Mr. Harra is not a “change of facts” because it was submitted and rejected by the City Council in 2017 and by LUBA in 2018.
- d. Mr. Wyss told the Planning Commission that the future intersection of Willamette Drive and Arbor Drive will have protected and dedicated turn lanes, thus improving traffic safety.
- e. LUBA considered and rejected this issue in its 2018 decision when it found that the City Council’s decision addressed safety. *Harra, Slip Op* 18-21.

B. New Traffic from the Duplexes and Marys Woods.

Commissioner Farrell asked if the Applicant had considered new vehicle trips from these two projects. Because the Applicant has done so for the following reasons, the Planning Commission can find that CDC 99.325.A.2 is satisfied.

- a. This issue was decided in favor of the Applicant by the City Council when it found the Applicant had done so in 2017.
- b. LUBA considered this issue and rejected Mr. Harra’s argument that the Applicant had not properly considered vehicle trips from these two developments. *Harra, Slip Op* 16 and 17.
- c. Mr. Bell and Mr. Robinson testified to this fact at the July 15, 2020 hearing.
- d. Finally, as Mr. Robinson testified and as LUBA found in *Harra, Slip Op* 17, the Marys Woods project is not built, so it is not a fact but only a projection.

C. Vehicle Trip Growth Rates.

Mr. Harra argued that the Applicant’s original traffic study used the wrong growth rates. First, this is not a “change of facts directly impact[ing] the project,” so it is not relevant to CDC 99.325.A.1. Second, LUBA rejected this argument in its decision. *Harra, Slip Op* 14-19.

D. Adequate Street Capacity.

Several persons argued that street capacity is inadequate for subdivision vehicle trips. The Planning Commission must reject this argument for the following reasons.

- a. The City Council found that street capacity was adequate and LUBA affirmed this finding. *Harra, Slip Op* 11-14, 17-18.
- b. Mr. Bell's July 15, 2020 letter demonstrates that no changes in traffic facts that directly impact the project have occurred since 2017. Letter, Page 1. In fact, traffic conditions improved through 2018.
- c. The opponents submitted no credible contrary evidence.
- d. Mr. Harra's evidence consists of three-year old evidence expressly rejected by the City Council and LUBA. Mr. Harra did not appeal LUBA's decision, so complaining about the outcome almost three years later is irrelevant to the approval criteria and does not constitute new facts under CDC 99.325.A.2.
- e. Commissioner Metlin asked about the impact of tolling of traffic conditions. Because tolling has not been established, it is not a relevant fact under CDC 99.325.A.2.

E. Stormwater.

One of the opponents argued that stormwater would drain to his property. The Planning Commission must reject this argument for the following reasons.

- a. The approved subdivision plan shows that stormwater will drain to Tract C and then to City of West Linn stormwater facilities. Testimony of Mr. Robinson and Mr. Miller on July 15, 2020. The evidence shows that stormwater will not drain to adjacent lots.
- b. The opponent did not assert that this was a new fact, or that the stormwater plan has changed since the 2017 approval.

F. Procedural Issues.

Several persons raised procedural issues.

- a. Mr. Harra raised procedural issues related to the original decision. The City Council and LUBA rejected these issues. *Harra, Slip Op* 11, 14 and 20.
- b. One person argued that the mailed hearing notice was inadequate because of failure to notify a homeowners association (the "HOA"). The Planning Commission must

reject this argument because he presented no evidence that the HOA was entitled to notice and as a legal matter, he may not raise procedural arguments related to other persons' rights. Planner Arnold testified that the City mailed notice to all property owners within a 500-foot radius of the project, including properties in Lake Oswego.

c. Mr. Robins challenged the Planning Commission's jurisdiction to hold the public hearing because of persons not being advised of the rationale for the Application. City Attorney Ramis advised the Planning Commission that it had jurisdiction to hear the Application.

The Planning Commission can reject this challenge. The entire Application file is available for public inspection. The notice of the public hearing advised persons of how to view the file. Mr. Robins had the opportunity to review the Application.

d. None of these arguments relate to the approval criteria.

G. Off- and On-Street Parking Adequacy.

Commissioner Kelly asked about off-street parking. Mr. Miller testified that each lot would accommodate at least four off-street parking spaces but that the Applicant has not designed the dwellings. The Planning Commission can find that there have been no changes to off-street parking.

The Applicant added five areas for additional on-street parking by removing the landscaping strip in these areas at the request of the City Engineer. The landscaping strip areas are not stormwater facilities. This change did not increase the right-of-way width, or decrease the lots' widths. This change does not violate CDC 99.325.A.2.

H. Stormwater Impacts by Five Added On-Street Parking Areas.

Commissioner Pellett asked if the Applicant would address added stormwater impacts because of the added paving area in the five areas. The Applicant said it would agree to a condition of approval requiring it to do so. In any event, this small area of additional paving will not directly impact the project.

I. Five Added On-Street Parking Areas and Compliance with CDC 99.325.A.1.

Commissioner King asked if this change was required to comply with a policy requiring wider streets. City Attorney Ramis said that CDC 99.325.A.1 is very narrow and only considers changes to applicable CDC standards "enacted" since the 2017 decision. He further explained that the policy change was not "enacted." A policy change is not an enactment. In any event, a new construction standard may not be applied to this Application under ORS 92.040(2). Additionally, Mr. Miller testified that while these five areas increased the street width from twenty-four feet to twenty-eight feet that most, but not all, of the street is twenty-eight feet wide.

J. Ownership.

Chair Walvatne asked if the project ownership has changed. The Applicant testified that the ownership had not changed since the 2017 decision.

K. Soils Issue.

One person testified that medical waste had been disposed of on the project. The Applicant, who is in the best position to know, testified that it was unaware of such waste. Further, it is highly likely that if such waste is actually on the site, it would have been observed before now. Nevertheless, the Applicant agreed to a condition of approval requiring it to examine the site for such waste.

L. Construction Traffic on Upper Midhill Drive.

Commissioner Farrell asked about this issue. The City Council imposed Condition of Approval 11 requiring a Traffic Management Plan, including truck traffic. LUBA addressed and rejected arguments about this issue. *Harra, Slip Op* 18-21. Further, there is no evidence that a fact has changed regarding this issue.

M. Expiration of 2017 Decision.

Commissioner Matthews asked if the decision would expire before the Planning Commission made its decision on the Application. City Attorney Ramis said extending past the three-year date does not prevent the Planning Commission from deciding the Application because it was complete before the expiration date.

3. Conclusion.

The Applicant respectfully requests that the Planning Commission approve this Application for a two-year extension of the 2017 Decision because:

- The Staff found that the Applicant has met its burden of proof to demonstrate that CDC 99.325.A.1-3 are satisfied.
- The Applicant's substantial evidence shows that the approval criteria are met, including Mr. Miller's May 12, 2020 letter stating that no CDC approval criteria have changed, Mr. Evan's July 8, 2020 letter explaining the only changes to the project and Mr. Bell's July 13, 2020 letter stating that traffic facts have not changed.
- The record contains no substantial evidence to the contrary.

Mr. Gary Walvatne, Chair
July 22, 2020
Page 8

For all of these reasons, the Planning Commission can approve this Application because the Applicant has satisfied the approval criteria. The Applicant does not waive the application of ORS 92.040(2), 197.303(1) or 197.307(4) unless expressly so stated.

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosure

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

PDX\134673\248389\MCR\28617575.1

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 JASON HARRA and JESSICA HARRA,
5 *Petitioners,*

6
7 vs.

01/23/18 PM12:05 LUBA

8
9 CITY OF WEST LINN,
10 *Respondent,*

11
12 and

13
14 UPPER MIDHILL ESTATES, LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2017-074

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from City of West Linn.

23
24 Jennifer M. Bragar, Portland, filed the petition for review and argued on
25 behalf of petitioners. With her on the brief was Tomasi Salyer Martin PC.

26
27 Timothy V. Ramis, Lake Oswego, filed a joint response brief on behalf
28 of respondent. With him on the brief was Jordan Ramis PC.

29
30 Seth J. King, Portland, filed a joint response brief and argued on behalf
31 of intervenor-respondent. With him on the brief were Michael Robinson and
32 Perkins Coie LLP.

33
34 RYAN, Board Chair; BASSHAM, Board Member; HOLSTUN Board
35 Member, participated in the decision.

36
37 AFFIRMED

01/23/2018

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a decision by the city approving a 34-lot subdivision.

REPLY BRIEF

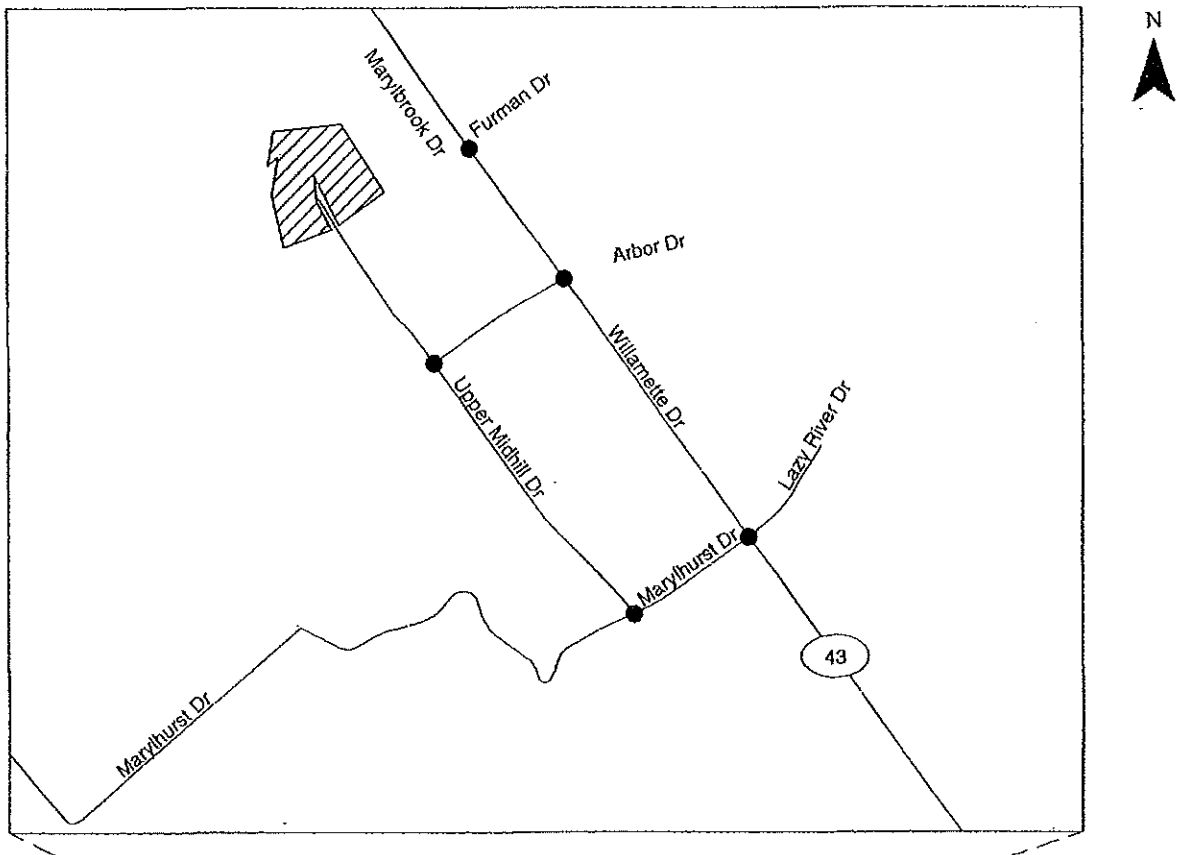
Petitioners move for permission to file a reply brief to respond to alleged new matters raised in the response brief. Intervenor-respondent Upper Midhill Estates, LLC (intervenor) objects to the portions of the reply brief at Reply Brief 3-4, arguing that these portions do not respond to “new matters” within the meaning of OAR 661-010-0039. Because resolving the dispute would lengthen an already lengthy opinion, we decline to address the parties’ arguments and we allow the reply brief without further discussion.¹

FACTS

Intervenor applied to subdivide an approximately 6.1-acre parcel into 34 lots. Upper Midhill Drive is a local street that currently dead ends at the property. Upper Midhill Drive intersects with other local streets that eventually connect to Oregon Highway 43, known as Willamette Drive. Record 2206-07.

¹ In their third assignment of error, petitioners allege that the city committed a procedural error. The petition for review, however, does not explain how that procedural error prejudiced petitioners’ substantial rights, and the response brief points that out. In their Reply Brief, petitioners take the position that the alleged procedural error prejudiced their substantial rights “to meaningful participation in the local government’s land use proceedings, including the right to respond to material evidence submitted after the close of the evidentiary record.” Reply Brief 3.

1 As part of its application, intervenor submitted a Transportation Impact
2 Analysis (TIA) prepared by intervenor's consultant Kittleson & Associates
3 (Kittleson) in January 2016 (January 2016 TIA). A figure from the January
4 2016 TIA at Record 1436 showing the location of the subject property and
5 affected transportation facilities is set out here:



6
7 The January 2016 TIA explains the street layout adjacent to and nearby the
8 subject property:

9 "Willamette Drive is the major north-south arterial within the City
10 of West Linn providing access to the cities of Lake Oswego and
11 Portland to the north, and Oregon City to the south. Marylhurst
12 Drive is an east-west collector, which provides access to
13 Willamette Drive via a signalized intersection. Arbor Drive is an
14 east-west local street that provides access to Willamette Drive via

1 a two-way stop-control intersection. Upper Midhill Drive is a
2 north-south local street that connects the proposed development to
3 Arbor Drive and Marylhurst Drive. The segment of Upper Midhill
4 Drive located south of Arbor Drive is relatively narrow; however,
5 two vehicles can pass each other on the roadway. * * *” Record
6 2210.

7 Upper Midhill Drive between Arbor Drive and Marylhurst Drive is constructed
8 with two travel lanes that meet the width standard for local streets, except for
9 an approximately 200-foot section adjacent to Upper Midhill Park. When the
10 city developed Upper Midhill Park, the planning commission granted a
11 variance to the requirement to complete half-street improvements along the
12 park frontage. Record 614. In that section, the paved width of the road narrows
13 to approximately 16 to 20 feet with one to four-foot gravel shoulders on each
14 side. Record 867.

15 The January 2016 TIA concluded that with the traffic from the proposed
16 subdivision, all affected intersections would operate within the applicable level
17 of service or volume to capacity ratios, except the Arbor Drive approach to the
18 Willamette Drive/Arbor Drive intersection.² That intersection currently

² The March 2017 TIA explains:

“A Traffic Impact Analysis (TIA) was prepared for the proposed Chene Blanc Estates development in January 2016. The TIA provides an evaluation of traffic operations at several study intersections under year 2016 existing traffic conditions, year 2018 background traffic conditions (without the proposed development), and year 2018 total traffic conditions (with full build-out and occupancy of the proposed development) during the weekday a.m. and p.m. peak hours.” Record 663.

1 operates at a level of service “F,” and above capacity during the weekday p.m.
2 peak hour.³ Record 2213. In October 2016, Kittleson conducted supplemental
3 traffic counts at the affected intersections to account for traffic generated
4 during the school year, and in March 2017, intervenor submitted a
5 supplemental TIA (March 2017 TIA) that found again that all affected
6 intersections would operate within acceptable levels except the Willamette
7 Drive/Arbor Drive intersection. Record 663-70.

8 The city and ODOT have planned long-term improvements to the
9 Willamette Drive/Arbor Drive intersection, proposed to be constructed in 2020.
10 Intervenor proposed interim mitigation to that intersection between the time the
11 subdivision is developed and the time the long-term improvements are
12 completed, and the city imposed a condition of approval (condition 3) that
13 requires intervenor to restripe Willamette Drive with a northbound left turn
14 pocket on the south leg of the intersection, and a left turn/refuge storage area
15 on the north leg of the intersection, to allow for two-stage left turns. Record 12,
16 20. The interim mitigation is referred to by the parties as the “Interim
17 Improvement.”

18 The planning commission considered intervenor’s application at a March
19 22, 2017 hearing, and at the conclusion of the hearing, a majority of the

³ Oregon Department of Transportation (ODOT) performance standards require all signalized and unsignalized intersections with state highways to maintain a volume to capacity ratio of .99 or less. City performance standards require a level of service “D” or better for all intersections. Record 2213.

1 planning commission voted to approve the application with conditions,
2 including condition 3. Petitioners appealed the decision to the city council.
3 Record 493. The city council held an on-the-record hearing on the appeal and
4 at the conclusion voted to approve the application with additional conditions to
5 address construction-related traffic and pedestrian safety on Upper Midhill
6 Drive. This appeal followed.

7 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

8 West Linn Community Development Code (CDC) 85.200 provides the
9 following criterion for land divisions:

10 “No tentative subdivision or partition plan shall be approved
11 unless adequate public facilities will be available to provide
12 service to the partition or subdivision area prior to final plat
13 approval and the Planning Commission or Planning Director, as
14 applicable, finds that the following standards have been satisfied,
15 or can be satisfied by condition of approval.”⁴

16 CDC 2.030 defines “adequate public facilities” as:

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

⁴ Various subsections of CDC 85.200 further require an applicant to satisfy standards such as requirements for streets, the length of blocks and lots, pedestrian and bicycle trails, grading, water, sewers, and storm detention.

1 “For purposes of evaluating discretionary permits in situations
2 where the level-of-service or volume-to-capacity performance
3 standard for an affected City or State roadway is currently failing
4 or projected to fail to meet the standard, and an improvement
5 project is not programmed, the approval criteria shall be that the
6 development avoids further degradation of the affected
7 transportation facility. Mitigation must be provided to bring the
8 facility performance standard to existing conditions at the time of
9 occupancy.” (Emphases added).

10 Thus, CDC 85.200 and the definition of “adequate public facilities” together
11 require the city to find (1) that “on-site facilities” meet city standards, and (2)
12 that “off-site facilities” have sufficient capacity to meet existing demand plus
13 demand from projects with existing approvals and the demand created by the
14 land division. For off-site facilities that are failing or projected to fail, and for
15 which an improvement to the failing facility is not programmed, the city must
16 find that the land division “avoids further degradation of the affected
17 transportation facility.” The definition requires mitigation to bring the facility
18 into compliance with performance standards. Against that backdrop, we
19 address petitioners’ first and second assignments of error together.

20 **A. Intervenor’s TIAs**

21 As explained above, intervenor submitted into the record the January
22 2016 TIA and the March 2017 TIA (the TIAs), both conducted by Kittleson.
23 Intervenor also submitted into the record a memorandum from ODOT stating
24 that ODOT had reviewed the January 2016 TIA and recommended that
25 intervenor be required to (1) construct the Interim Improvement and (2)
26 contribute a proportionate share of funding for the long-term improvements to

1 Willamette Drive and the intersection that ODOT and the city have planned to
2 fund. Record 718-19. Based on that evidence, the planning commission
3 concluded that CDC 85.200 was satisfied. Record 285-87, 319-25.

4 The city council's decision incorporates as findings: (1) the planning
5 commission's decision, which incorporated as findings a March 22, 2017 staff
6 report; (2) all of intervenor's submittals, including the January 2016 TIA and
7 the supplemental March 2017 TIA; (3) the May 8, 2017 city council meeting
8 staff report; and (4) intervenor's March 1, 2017 supplemental narrative; and (5)
9 March 22, April 19 and May 11, 2017 letters from intervenor's counsel. The
10 city council's decision also adopted additional findings in support of its
11 decision, which we discuss below.

12 **a. CDC 85.170(B)(2)(e)(1)(C)(1)-(5)**

13 In portions of their first and second assignments of error, petitioners
14 argue that intervenor's proposal fails to meet the requirements of CDC
15 85.170(B)(2)(e)(1)(C)(1)-(5). Petition for Review 10, 14-15, 24-25, 27-28.
16 Further, petitioners argue that these CDC provisions provide that when a traffic
17 impact analysis is required for a land division, the site, traffic and circulation
18 design and facilities for all transportation modes, including mitigation
19 measures, must be designed to meet certain standards.⁵

⁵ CDC 85.170 requires supplemental submittals for subdivisions. CDC 85.170(B)(2)(e)(1)(C)(1)-(5) provide that when a traffic impact analysis is required:

1 The provisions of the CDC governing appeals that applied at the time the
2 city council’s decision was adopted, provided that an appeal of a planning
3 commission decision is “confined to * * * [t]hose issues set forth in the request
4 to appeal[;]” that “[r]eview shall be limited to the issues clearly identified in
5 the notice of appeal[;]” and that “[n]o issue may be raised on appeal that was
6 not raised before the Planning Commission with sufficient specificity to enable
7 the [Planning] Commission and the parties to respond.” CDC 99.280(B)(1) and

“(C) 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.”

1 (D)(2014). Intervenor and the city (jointly respondents) respond by pointing to
2 findings adopted by the city council that:

3 “[A]lthough appellants contend that Applicant’s transportation
4 analysis is deficient because it does not address CDC
5 85.170.B.2.e.1.C, the Council denies this contention because this
6 issue is outside the scope of the appeal. It was not included in the
7 appeal statement, and it was not raised with sufficient specificity
8 to allow the parties to address the issue before the [Planning]
9 commission closed the evidentiary record.” Record 17.

10 Because petitioners do not assign error to the above-quoted findings,
11 those unchallenged findings mean that any assignments of error presented in
12 the petition for review that argue that the TIAs fail to meet the requirements of
13 CDC 85.170(B)(2)(e)(1)(C)(1)-(5) are outside the scope of issues that the city
14 found were properly raised and provide no basis for reversal or remand of the
15 decision. *Citizens for Responsible Development v. City of The Dalles*, 59 Or
16 LUBA 369, 375 (2009).

17 **b. October 2016 Traffic Counts**

18 LUBA is required to reverse or remand the city’s decision if, as relevant
19 here, the decision is not supported by substantial evidence in the whole record.⁶
20 ORS 197.835(9)(a)(C). In their first assignment of error, petitioners argue that
21 “intervenor’s traffic analysis is not supported by substantial evidence.” Petition
22 for Review 12. That is so, petitioners argue, because the supplemental traffic

⁶ The challenged decision is a “limited land use decision” as defined in ORS 197.015(12). However, no party argues that our standard of review is the standard at ORS 197.828 for review of limited land use decisions.

1 counts that Kittleson conducted in October 2016 and relied on to prepare the
2 March 2017 TIA are not included in the record. As a result, petitioners argue,
3 the challenged decision is not supported by substantial evidence in the whole
4 record.

5 In findings the city council adopted in response to the issue when it was
6 raised by petitioners for the first time during the proceedings before the city
7 council, the city council found that it could rely on the January 2016 TIA as
8 supplemented by the March 2017 TIA even though the October 2016 traffic
9 counts were not included in the March 2017 TIA, because the counts were
10 reflected in the trip figures that are derived from those traffic counts and
11 included in the March 2017 TIA. Record 16-17. The city council found that the
12 March 2017 TIA provided evidence in the record, submitted by experts, to
13 support a city council conclusion that CDC 85.200 is met and that all
14 transportation facilities are adequate or will be adequate with mitigation.
15 Petitioners do not explain why the city council's decision — that adequate off-
16 site transportation facilities exist — is not supported by substantial evidence in
17 the record, namely the TIAs, when the March 2017 TIA includes trip figures
18 that are derived from the October 2016 traffic counts. Record 664-65 (Kittleson
19 letter explaining how the October 2016 traffic counts were applied and used to
20 update the January 2016 TIA). Petitioners also do not point to any other
21 evidence in the record that undermines the trip figures that are based on the
22 October 2016 traffic counts, or argue that the trip figures are incorrect.

1 In reviewing a substantial evidence challenge, LUBA's role is not to
2 reweigh the evidence, but rather to determine if a reasonable person, viewing
3 the whole record, could reach the conclusion that the decision maker reached.
4 *1000 Friends of Oregon v. Marion County*, 116 Or App 584, 587-88, 842 P2d
5 441 (1992). We agree with the city and intervenor that a reasonable person
6 could rely on the TIAs to conclude that CDC 85.200 is satisfied; *i.e.*, that with
7 mitigation off-site transportation facilities are adequate to serve the proposed
8 subdivision. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262
9 (1988). The March 2017 TIA explains that it includes trip figures that
10 "illustrate the supplemental traffic counts and summarize the results of the
11 updated traffic analysis." Record 665, 674, Figure 4. In essence, the included
12 trip figures are a refinement of the raw traffic counts and a reasonable person
13 could rely on those trip figures to conclude that CDC 85.200 is satisfied, even
14 if the raw traffic counts are not separately included in the record.

15 In another portion of their first assignment of error, petitioners argue
16 that "the [p]etitioners were prejudiced because they did not have the
17 opportunity to review the underlying data." Petition for Review 13 (citation
18 omitted). Petitioners further argue that:

19 "[p]etitioners were not provided a full and fair opportunity to
20 analyze whether the Applicant's traffic study is correct.
21 Respondent's reliance on the incomplete TIA requires remand to
22 allow the petitioners and the public to have a full and fair
23 opportunity to review and analyze the October 2016 traffic count
24 data, and the TIA's conclusions about [the] adequacy of
25 transportation facilities." Petition for Review 15.

1 Although their argument is barely developed, we understand petitioners to
2 argue that the city committed a procedural error in relying on the March 2017
3 TIA when that TIA did not include the October 2016 traffic counts, and that
4 alleged procedural error prejudiced petitioners' right to an opportunity to
5 review the October 2016 traffic counts. We reject that argument for a few
6 reasons. First, as noted, the city council adopted findings responding to the
7 argument when it was presented for the first time during the on-the-record
8 proceedings before the city council. Second, in order to prevail on a claim of
9 procedural error, a petitioner must identify the procedure allegedly violated.
10 *Stoloff v. City of Portland*, 51 Or LUBA 560, 563 (2006). Petitioners do not
11 explain how the absence of the October 2016 traffic counts in the record is a
12 procedural error, or identify any CDC or other provision that requires the city
13 to include the October 2016 traffic counts in the record. Accordingly,
14 petitioners have failed to establish a basis for reversal or remand.

15 **c. Assumed Growth Rate**

16 CDC 2.030's definition of "adequate public facilities" provides that "off-
17 site facilities must have sufficient capacity to (1) meet all existing demands,
18 [and] (2) satisfy the projected demands from projects with existing land use
19 approvals, plus the additional demand created by the application[.]" The TIAs
20 used the traffic counts collected in June 2015 (Record 1439)
21 and October 2016, and applied a two percent growth rate "[t]o account for
22 trips from in-process developments and additional growth in regional and local

1 traffic in the study area[.]” Record 16 (city’s findings explaining traffic
2 projections); *see also* 664-65 (Kittleston letter explaining traffic projections
3 used an assumed growth rate to “reflect growth in regional and local traffic
4 within the study area between 2016 and the year the proposed development is
5 expected to be fully built, 2018”).

6 In their second assignment of error, petitioners argue that the city’s
7 decision is not supported by substantial evidence because intervenor failed to
8 provide evidentiary support for using a two percent growth rate to estimate
9 existing demands from growth in traffic in the area. Petition for Review 14.
10 Also according to petitioners, in order to account for projected demand from
11 approved but not yet built developments, CDC 2.030 requires “input of actual
12 trip generation, not a growth rate.” Petition for Review 15.

13 The city council adopted findings that conclude that the assumed growth
14 rate of two percent is consistent with CDC 2.030’s requirement to calculate “all
15 existing demands” under CDC 2.030:

16 “Although appellants contended that [Kittleston’s] assumption of a
17 one percent annual growth rate (two percent overall for the 2017-
18 18 time period) was not supported by any evidence, the Council
19 denies the appellants’ contention. Matt Bell, Transportation
20 Planner with [Kittleston], testified during the public hearing that
21 the one percent annual growth rate is common throughout the
22 Portland area and was coordinated with the transportation
23 engineers at both the City and ODOT. Although appellants
24 disagree with the selected growth rate, they do not cite to any
25 substantial evidence in the record that conflicts with or
26 undermines the selected growth rate nor do they contend that it is
27 not an acceptable industry standard.” Record 17.

1 The city council also adopted findings that conclude that intervenor properly
2 relied on that growth rate to project demand from both the project and from
3 approved projects, consistent with CDC 2.030:

4 “[T]he Council finds that Kittleson correctly accounted for trips
5 from in-process developments and adjusted its counts to consider
6 school year trips. *To account for trips from in-process*
7 *developments and additional growth in regional and local traffic*
8 *in the study area*, Kittleson assumed a two percent (one percent
9 per year for each of two years) in its traffic counts. * * * *Kittleson*
10 *testified that this adjustment was sufficient to account for trips*
11 *from in-process developments such as the new duplexes on*
12 *Willamette Drive and the expansion of Mary's Woods*. * * * Stated
13 another way, if Kittleson had separately added in trips from in-
14 process developments and assumed a two percent growth in area
15 traffic, it would have resulted in double-counting of these
16 background trips. Further, to account for school year trips,
17 Kittleson conducted supplemental traffic counts at the affected
18 intersections in October 2016 and seasonally adjusted these
19 counts. * * * This type of seasonal adjustment is industry standard
20 and consistent with the ODOT Analysis Procedures Manual. * * *
21 Kittleson re-ran its analyses with the adjusted October 2016 counts
22 and found that, subject to implementing the identified mitigation
23 measures, all affected intersections would operate consistent with
24 applicable performance standards.

25 “Although appellants contended that Kittleson’s analysis failed to
26 account for trips from in-process developments (including new
27 duplexes on Willamette Drive and the expansion of Mary’s
28 Woods), the Council denies the appellants’ contention for the
29 reasons stated above. The Council further finds that * * * the
30 Mary’s Woods development is not expected to occur until after
31 full build-out of the development; therefore, the Council finds
32 that trips associated with the Mary’s Woods expansion would not
33 actually affect the system in 2018, the occupancy date for
34 applicant’s development in Kittleson’s analysis. Stated within the
35 terms of the CDC 2.030 definition of ‘adequate public facilities,’
36 there will be no ‘projected demand’ from Mary’s Woods in the

1 year the subject development opens. Therefore, these trips need
2 not be part of the analysis. On a related point, the Council denies
3 the appellants' contention that Kittleson erred in its assumed
4 distribution of trips from Mary's Woods. Appellants did not cite to
5 any alternative trip distribution in the record. Moreover, the
6 Council finds that, as stated, the Mary's Woods expansion is not
7 expected to occur until later, meaning that any trip distribution is
8 not part of the 'projected demand' that must be considered in
9 determining whether there are 'adequate public facilities.'" Record
10 16-17 (emphases added).

11 The findings explain that the city accepted intervenor's traffic expert's
12 explanation that a one percent per year growth rate is a commonly used
13 assumption, and also relied on the agreement of ODOT and the city's engineers
14 with using that assumption. Moreover, as we understand it, the two approved
15 developments are not yet built, so any trip projections from those approved but
16 not constructed developments will be just that – projections, rather than actual
17 trip counts. Accordingly, petitioners' argument that CDC 2.030 requires "input
18 of actual trip generation, not a growth rate," simply makes no sense for
19 approved but not yet built developments. Petition for Review 15. Stated
20 differently, if a project is not yet built, no actual trips are associated with that
21 project, and any projections about future trips must necessarily rely on some
22 assumptions about growth. Petitioners do not point to any evidence in the
23 record that undercuts the TIAs' reliance on an assumed two percent growth rate
24 to calculate existing demand and to project future demand from existing
25 approved projects and the proposed subdivision. Accordingly, we think that a

1 reasonable person could rely on the TIAs' assumed growth rate to conclude
2 that CDC 85.200 is satisfied.

3 The first and second assignments of error are denied.

4 **THIRD ASSIGNMENT OF ERROR**

5 During the proceedings below, participants raised concerns about
6 construction-related traffic on affected streets, including Upper Midhill Drive.
7 The planning commission imposed a condition of approval that prohibited
8 truck traffic on Upper Midhill Drive between Arbor Drive and Marylhurst
9 Drive. Record 288.

10 The city council disagreed with the planning commission that a
11 condition prohibiting truck traffic on Upper Midhill Drive was necessary, but
12 found that use of a loop route for inbound and outbound truck traffic "may
13 provide for a more efficient and safer circulation of temporary truck traffic[.]"
14 Record 18. The city adopted two conditions of approval that require (1) a
15 Traffic Management Plan (TMP) that routes inbound truck traffic from
16 Willamette Drive up Arbor Drive to Upper Midhill Drive, and outbound truck
17 traffic down Upper Midhill Drive to Marylhurst Drive to Willamette Drive
18 (condition 11); and (2) intervenor to install a paint stripe four feet from the
19 eastern edge of Upper Midhill Drive, between Arbor Drive and Marylhurst
20 Drive, to establish a safety zone for pedestrian traffic (condition 17). Record
21 18, 23.

1 The arguments in petitioners’ third assignment of error are difficult to
2 follow, but we understand petitioners to argue that the record does not include
3 substantial evidence that the TMP and pedestrian striping are sufficient to
4 support the city’s determination that the subdivision complies with CDC
5 2.030’s definition of “adequate public facilities.” Specifically, petitioners argue
6 the TMP and the pedestrian striping requirements do not meet “city engineering
7 standards.” Petition for Review 31; Reply Brief 4. If that is petitioners’
8 argument, we reject it. The CDC 2.030 definition provides that to be
9 “adequate,” off-site facilities must have sufficient *capacity* to “remain
10 compliant with all applicable standards.” CDC 2.030 does not require a
11 demonstration that an off-site facility complies with engineering standards.

12 In other portions of their third assignment of error, we also understand
13 petitioners to argue that the record does not include substantial evidence that
14 CDC 85.170(B)(2)(e)(1)(C)(1)-(5) is met by the TMP and the pedestrian
15 striping. We reject that argument. First, for the reasons explained above in our
16 resolution of the first and second assignments of error, challenges to the
17 proposal’s compliance with CDC 85.170(B)(2)(e)(1)(C)(1)-(5) are outside of
18 the scope of review in this appeal and the decision includes a finding not
19 challenged by petitioners to that effect. Second, petitioners’ arguments
20 regarding CDC 85.170(B)(2)(e)(1)(C)(1)-(5), a lengthy and detailed CDC
21 provision set out in n 5, are not sufficiently developed for our review.
22 *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

1 Finally, we understand petitioners to argue that the city committed two
2 procedural errors that prejudiced their substantial rights. First, citing *Dodds v.*
3 *West Linn*, __ Or LUBA __ (LUBA No. 2016-071, January 12, 2017),
4 petitioners argue that the city committed a procedural error when it included
5 conditions 11 and 17 in the final decision, without providing petitioners an
6 opportunity to raise concerns about the TMP and pedestrian striping
7 requirements that are required by those conditions.

8 In *Dodds*, the city council concluded that the applicant's drainage plan
9 failed to satisfy various approval criteria that applied to drainage from the
10 property. __ Or LUBA __ (slip op at 7). However, in spite of that conclusion,
11 the city council approved the application, and imposed a condition of approval
12 that required the applicant to submit a revised drainage plan for review, without
13 any evidence in the record that the revised drainage plan would meet the
14 applicable approval criteria and without public review of that revised drainage
15 plan. *Id.* (slip op at 11-12).

16 In the present case, as far as we can tell, conditions 11 and 17 do not
17 relate to any approval standards. For example, the city did not impose the
18 conditions to ensure that Upper Midhill Drive has the *capacity* to meet existing
19 standards, pursuant to CDC 2.030. The evidence in the record is that Upper
20 Midhill Drive has capacity to meet the standards that apply to a local street.
21 Record 363. Rather, the city imposed conditions 11 and 17 in order to address
22 concerns raised by neighbors during the proceedings below about construction-

1 related traffic. In any case, the issue in *Dodds* was the total lack of evidence
2 supporting the conditions imposed, not the fact that the city imposed the
3 conditions without allowing participants to review them. The city did not err in
4 imposing conditions 11 and 17 in the final decision.

5 Second, petitioners argue that the city committed procedural error when
6 it accepted new evidence into the record after the record was closed, in the
7 form of staff testimony during the city council's deliberations at its June 19,
8 2017 city council meeting. Respondents respond, and we agree, that the
9 transcript of the city council hearing that is attached to the petition for review
10 demonstrates that the city council did not accept new evidence during the
11 meeting. Petition for Review Appendix A 49. In fact, in their reply brief
12 petitioners concede that, after being advised by the city's attorney that in order
13 to consider new testimony it had to re-open the record, the city did not re-open
14 the record to accept the new testimony. Reply Brief 1. Accordingly, petitioners'
15 arguments provide no basis for reversal or remand.

16 The third assignment of error is denied.

17 **FOURTH ASSIGNMENT OF ERROR**

18 Intervenor submitted a geotechnical study and a grading plan.⁷ Record
19 1774-1877. The study was prepared based on geologic mapping for the site and
20 on excavations from eleven test pits on the property. Record 9.

⁷ No party identifies the approval criteria implicated in this assignment of error. However, in a staff report to the planning commission, the city relied on

1 In response to petitioners’ second appeal issue, the city council adopted
2 additional findings that concluded that “it is geotechnically feasible to develop
3 the proposed project on the site.”⁸ Record 9. At intervenor’s suggestion, the
4 city imposed a condition of approval (condition 13) that requires intervenor to
5 prepare and submit to the city engineer for review and approval “a
6 supplemental geotechnical analysis addressing the soils conditions across the
7 property and in the areas of the local streets within the subdivision, including
8 an estimate of the amount of soil to be removed in order to construct the streets
9 and develop the building sites.” Record 10.

10 In their fourth assignment of error, petitioners argue that condition 13
11 lacks a future public review process that petitioners argue is required under
12 *Gould v. Deschutes County*, 216 Or App 150, 159-60, 171 P3d 1017 (2007).⁹

the geotechnical study and grading plan to find that CDC 85.200(E) was met.
Record 1280. Accordingly, we understand that the geotechnical study and
grading plan were submitted in order to demonstrate compliance with CDC
85.200(E).

⁸ Petitioners’ second appeal issue was:

“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.” Record 9.

⁹ Although petitioners do not identify a standard of review for the fourth
assignment of error, we understand petitioners to argue that the city committed
a procedural error that prejudiced their substantial rights to participate in the
proceeding by deferring review of supplemental geotechnical studies to a
future proceeding that lacks public participatory rights. ORS 197.835(9)(a)(B).

1 Petitioners argue that LUBA should remand the decision in order to amend
2 condition 13 to allow public review of the supplemental geotechnical analysis.

3 In response, respondents argue that the city council adopted a current
4 finding that the geotechnical study addresses all geotechnical issues, and that
5 condition 13 does not defer a finding of compliance on that issue to a later
6 stage proceeding. Having concluded that the geotechnical study supported the
7 city council's conclusion that it is geotechnically feasible to develop the
8 subdivision, respondents argue, the city's decision is consistent with *Meyer v.*
9 *City of Portland*, 67 Or App 274, 678 P2d 741, rev den 297 Or 82 (1984). In
10 *Meyer*, the court of appeals held that a city's determination that the property
11 could be safely developed and that there were suitable methods of storm water
12 and groundwater disposal was supported by a detailed geotechnical study of the
13 area and extensive testimony from the city's experts, and the city could defer to
14 the city's experts the selection of a particular solution to identified problems. In
15 contrast, under *Gould* a local government may defer a final decision about
16 whether one or more development standards is satisfied to a future date,
17 assuming the public retains participation rights in that future decision making.

18 We agree with respondents that what the city council did here is identical
19 to what the city council did in *Meyer*. Here, the city council adopted a current
20 finding that the property can feasibly be developed from a geotechnical
21 standpoint, and that finding is supported by the geotechnical study. The city

1 council imposed condition 13 at intervenor’s suggestion, not as a deferral of
2 finding compliance with applicable approval criteria.

3 The fourth assignment of error is denied.

4 **FIFTH ASSIGNMENT OF ERROR**

5 In their fifth assignment of error, petitioners argue that conditions of
6 approval 3, 12, and 14 unconstitutionally delegate to ODOT authority to
7 modify the approved application, in violation of the Delegation Clause of the
8 Oregon Constitution.¹⁰ Article 1, section 21 of the Oregon Constitution
9 prohibits passing any law, “the taking effect of which shall be made to depend
10 upon any authority, except as provided in this Constitution[.]” The Delegation
11 Clause prohibits laws that delegate the power to amend those laws to another

¹⁰ Condition 3 requires construction of the Interim Improvement, as described above in our resolution of the first and second assignments of error.

Condition 12 provides:

“**Crosswalk on Highway 43.** The Applicant shall propose to construct a crosswalk with pedestrian activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.” Record 22 (bold in original).

Condition 14 provides:

“**Tri-Met Bus Stops.** The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.” *Id.* (bold in original).

1 entity. *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292,
2 981 P2d 368 (1999).

3 Respondents respond that the city council’s decision, including its
4 conditions of approval, is not a “law” for purposes of Article 1, section 21. We
5 agree. The challenged decision approving a subdivision is not an amendment of
6 the CDC, was not adopted by ordinance, and was the result of a quasi-judicial,
7 rather than legislative process. Accordingly, any delegation that has occurred is
8 not a delegation of the city’s legislative authority to make or amend laws, and
9 petitioners’ arguments provide no basis for reversal or remand of the decision.

10 The fifth assignment of error is denied.

11 The city’s decision is affirmed.

WEST LINN PLANNING COMMISSION

FINAL DECISION AND ORDER

MISC-20-04

IN THE MATTER OF A PROPOSAL FOR A TWO-YEAR EXTENSION OF APPROVAL FOR A 34-LOT SUBDIVISION: SUB-15-03/AP-17-01

I. Overview

At its meeting on July 15, 2020, the West Linn Planning Commission ("Commission") held the initial evidentiary public hearing to consider the request by Emerio Design, LLC, applicant on behalf of Upper Midhill Estates, LLC (owners), to approve a two-year extension to a previously approved 34-lot subdivision at 18000 Upper Midhill Drive. The approval criteria for an extension of approval are found in Chapter 99.035, of the Community Development Code (CDC). The hearing was conducted pursuant to the provisions of CDC Chapter 99.170.

The initial evidentiary hearing commenced with a staff report presented by Jennifer Arnold, Associate Planner. Steve Miller, Planning Consultant, Michael Robinson, Schwabe Williamson & Wyatt, and Matt Bell, Kittelson & Associates, presented on the applicant's behalf. John Robins, Jason Harra, Scarlett and Chris Harris, and Oren and Keren Barkan all provided oral testimony. James and Amy McNeely, David Goldenberg, Allison and Seth Olson, Chris and Scarlett Harris, Christine Steel, Kathie Halicki on behalf of the Willamette Neighborhood Association, Peter Lang, Dorianne and Doug Palmer, Jason Harra, Bob and Terry Jordan, Xuejun Wang and Juan Shen, John and Cheryl Robins, and Anne Beltman all submitted written testimony. The primary concerns raised during testimony included:

- The intersection safety of Arbor Drive and HWY 43/Willamette Drive
- Habitat removal
- Pedestrian safety
- Traffic on existing streets

Applicant representatives provide rebuttal and answered questions using statements or reports found in the land use application. The applicant requested a continuance to develop a more detailed final written argument with no new information. The hearing was closed; however, the record was left open for 7 additional days for the applicant to submit the final written argument. The Planning Commission set a date certain of August 19, 2020 for the continuance.

At its meeting on August 19, 2020, City Attorney Ramis addressed the preliminary legal matters. Chair Walvatne and Commissioner Farrell both disclosed site visits and ex parte contacts, but determined they could still make an unbiased decision on the application.

The Planning Commission deliberated, including a discussion on alterations and additions to the Staff-recommended conditions of approval. A motion was made by Vice Chair Mathews and

seconded by Commissioner Pellett to approve the application as presented with the staff proposed conditions of approval. The motion passed 4-3.

II. The Record

The record was finalized at the August 19, 2020 public hearing with the acceptance of the Applicant's final written argument, which did not introduce any new information. The final written argument was received before 5:00 p.m. on July 22, 2020. The record includes the entire file from SUB-19-03.

III. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Steve Miller of Emerio Design, LLC.
- 3) The Commission finds that it has received all information necessary to make a decision based on the Staff Report and attached findings; public comment; and the evidence in the whole record, including any exhibits received at the hearing.

IV. Findings

The Commission adopts the Staff Report for July 15, 2020, with attachments, as its findings, which are incorporated by this reference with the 18 Staff-recommended conditions of approval from the original subdivision approval (SUB-15-03/AP-17-01). The Commission concludes that all of the required approval criteria are met subject to the following conditions of approval:

1. Site Plan. With the exception of modifications required by these conditions, the project shall conform to all submitted Plan Sheets dated 1/11/2016 (C000, C100, C105, C110, C 111, C112, C113, C114, C130, C200 (Preliminary Plat), C201, C210, C220, C230, C280, C300) and sheet LI (landscaping) dated 10/14/15. Street widths will be per Road Section History Exhibit last revised October 2019 (see MISC-20-04, Exhibit PC-3).

2. Engineering Standards. All public improvements and associated facilities including street improvements (per sheets C201, C210, C220), utilities (per sheet C300), grading (per sheet C230), onsite storm water design (per sheet C230 and C300), street lighting (per sheet C280), easements (per sheet C200), and easement locations shall comply with all applicable City standards. These improvements must be designed, constructed, and completed prior to final plat approval or secured by instruments acceptable to the City Engineer.

3. Off-Site Traffic Mitigation. To mitigate the traffic impacts from the proposed subdivision until the Highway 43 Multimodal Transportation Project is constructed, and prior to the issuance of a grading permit or site development permit for the development site-, the applicant shall construct their proposed interim solution as depicted in Figure 9 of Kittelson Associates' March 1, 2017 memorandum ("KAI Memorandum") (Exhibit PC-5B) that includes restriping the highway with a northbound left turn pocket on the south

leg of the intersection and a left turn refuge/storage area on the north leg of the intersection, subject to ODOT review, modification, and approval. The applicant shall also pay a proportionate fee to the City of West Linn in the amount of \$11,600 as Applicant's proportionate share contribution toward the long-term Highway 43 Multimodal Transportation Project.

4. Storm Water Tract C. Prior to approval of the final plat, the applicant shall dedicate Storm Water Tract C to the City of West Linn.

5. Mutual Maintenance and Easements. Prior to approval of the final plat, the applicant shall provide the City of West Linn, along with the final plat, a Mutual Maintenance and Reciprocal Access and Public Utility Easement for platted Lots 13-15 to ensure continued access and necessary maintenance of the shared drive in perpetuity. Lot 12 shall be excluded from using this easement.

6. No Parking Signs. The applicant shall install signs reading "No Parking- Fire Lane" on one side of Hillside Drive. The signs shall be designed and installed in accordance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD).

7. Fire Flow. Prior to approval of the final plat, the applicant shall perform a fire flow test and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present.

8. Significant Tree Mitigation. Prior to approval of the final plat, the applicant will mitigate for the removal of 434 inches of DBH by planting street trees and landscape trees on the project site. The remaining trees which are not able to be planted on site will be mitigated for either in off-site plantings in a location chosen by the City's arborist or the applicant will pay a fee in lieu to the City for trees which cannot be planted on site. In the event that the geotechnical findings, as required by Condition of Approval 13, require modification of the final grading plan which, in turn, requires additional tree removal, the applicant shall mitigate for the additional tree loss on an inch by inch basis.

9. Access during Construction. Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction.

10. Hillside Drive Off-Site Sidewalk Improvements. The applicant shall construct Hillside Drive road widening and tapering plus approximately 90 feet of sidewalk on the north side of the street in front of 17849 Hillside Drive and 150 feet of sidewalk on the west side of the street commencing at the south edge of the proposed subdivision boundary to fill in gaps in the pedestrian facilities (as shown in Exhibit PC-5, pages 5 and 6).

11. Traffic Management Plan (TMP). Construction vehicles for the project shall be subject to the following traffic management restrictions.

- a. Inbound project vehicle traffic shall be routed up Arbor Drive from Willamette Drive to the site and outbound project vehicle traffic shall be routed out along Upper Midhill Drive and down Marylhurst Drive to Willamette Drive.
- b. Project vehicles shall be restricted to a maximum speed of 20 miles per hour west of Highway 43 (Willamette Drive).
- c. Flaggers shall direct construction related traffic, both exiting the site and at local intersections to be determined and on Upper Midhill Drive during school bus pickup and drop off periods as determined in consultation with the West Linn Wilsonville School District/First Student Bus Company.
- d. On-site vehicle noise will be mitigated by the modifying vehicle "backup beepers."
- e. The loop route for project vehicles, which is a loop using Arbor Drive-Upper Midhill Drive-Marylhurst Drive, will be modified to an out and back route relying exclusively on Arbor Drive if there are two filed collision reports, such as an Oregon Traffic Accident and Insurance Report or a Traffic Crash Report, in which a project vehicle was determined to be at fault.
- f. The TMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with this Plan.

12. Crosswalk on Highway 43. The Applicant shall propose to construct a crosswalk with pedestrian-activated warning lights across Highway 43 at Arbor Street, subject to ODOT review, modification, and approval.

13. Supplemental Geotechnical Analysis. The Applicant shall prepare a supplemental geotechnical analysis addressing the soils conditions across the property and in the areas of the local streets within the subdivision, including an estimate of the amount of soil to be removed in order to construct the streets and develop the building sites. The Applicant shall submit the supplemental geotechnical analysis to the City Engineer for review and approval prior to approval of construction plans.

14. Tri-Met Bus Stops. The Applicant shall coordinate with Tri-Met, and subject to ODOT review, modification, and approval, assure that bus stops meeting applicable standards are available on Highway 43 near Arbor Street.

15. Subdivision Construction Management Plan (CMP). The Applicant shall prepare a Construction Management Plan to be valid during the subdivision development until acceptance of public improvements. The Construction Management Plan shall include:

- a. A truck wash shall be installed prior to beginning of on-site construction work.
- b. The Developer shall distribute a "flyer" door-to-door to the neighbors' houses adjacent to the Chene Blanc Subdivision Site, and to those neighbors' houses which will be impacted by the construction and development activities. The

“flyer” shall contain information pertaining to start and potential ending dates of the project, days and hours of operation, a brief description of activities planned for the site, a description of the boundaries of the site, the name and telephone number of a resource/question line, and any other information the Developer feels relevant to homeowners residing in the impacted area.

- c. Dust control/dust abatement procedures and/or plans pursuant to West Linn Municipal Code 5.477.**
- d. A plan to minimize, to the extent practical, the constant idling of engines and subsequent spread of exhaust fumes into the neighborhood.**
- e. No construction equipment, including “porta potties”, shall be located outside the exterior boundaries of the construction site.**
- f. Off-site employee street parking shall not block driveways, mailboxes, and/or collection-day trash receptacles.**
- g. No employee parking at the bottom of College View Drive in the turnaround area.**
- h. The CMP shall be amended, as necessary, to meet any new conditions realized during the planning and implementation phases of the project. Applicant shall be responsible for ensuring compliance with the plan.**

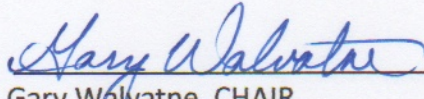
16. Pedestrian Way Finding Signs. The Applicant shall coordinate with the Neighborhood Association, and subject to the approval of the City Engineer, shall establish a series of “way finding” signs to guide pedestrians to the intersection of Oregon Highway 43 and Marylbrook Drive to reach the Tri-Met bus stop located at that intersection in accordance with Manual on Uniform Traffic Control Devices and City requirements.

17. Pedestrian Route. The applicant will install a paint stripe along Upper Midhill Drive between Arbor Drive and Marylhurst Drive to establish a safety zone for pedestrian traffic. The stripe shall be four feet from the generalized east edge of the paved street section leaving a travel lane for vehicles approximately 12 feet wide. Signs shall be installed at each end of Upper Midhill Drive identifying the area east of the line as a pedestrian route.

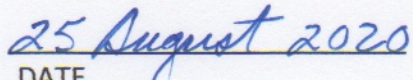
18. Community Outreach. The applicant shall provide updates at the monthly meetings of the Robinwood Neighborhood Association, from pre-construction phase to the commencement of the final plat phase.

V. Order

The Commission concludes that MISC-20-04 is approved based on the Record, Findings of Fact and Findings above.



Gary Walvatne, CHAIR
WEST LINN PLANNING COMMISSION



DATE

This decision may be appealed to the City Council pursuant to the provisions of Chapter 99 of the Community Development Code and any other applicable rules and statutes. This decision will become effective 14 days from the date of mailing of this final decision as identified below.

Mailed this 25th day of August 2020. _____

Therefore, this decision becomes effective at 5 p.m., September 8, 2020 _____

EXHIBIT CC-3 AFFIDAVIT AND NOTICE PACKET

**AFFIDAVIT OF NOTICE
Type A**

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

PROJECT

File No.: AP-20-03

Applicant's Name: Jason Harra

Development Name: 18000 Upper Midhill Drive

Scheduled Decision Date: City Council decision on October 5, 2020

MAILED NOTICE

Notices were mailed at least 20 days prior to the decision date per Section 99.080 of the Community Development Code to:

1	Jason Harra, Applicant	9/15/20	<i>Lynn Schroder</i>
2	Upper Midhill Estates LLC	9/15/20	<i>Lynn Schroder</i>
3	Emerio Design LLC	9/15/20	<i>Lynn Schroder</i>
4	Schwabe Williamson & Wyatt	9/15/20	<i>Lynn Schroder</i>
5	Kittelsohn & Assoc	9/15/20	<i>Lynn Schroder</i>
6	Property Owners within 500 feet	9/15/20	<i>Lynn Schroder</i>
7	All Neighborhood Associations	9/15/20	<i>Lynn Schroder</i>
8	COWL Engineering	9/15/20	<i>Lynn Schroder</i>

TIDINGS

Notice was posted in the West Linn Tidings at least 10 days prior to the decision date.

9/24/20	<i>Lynn Schroder</i>
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WEBSITE

Notice was posted on the City's website at least 10 days prior to the decision date.

9/15/20	<i>Lynn Schroder</i>
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SIGN

At least 10 days prior to the decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

9/24/20	<i>Janis Asold</i>
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STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the decision date.

9/24/20	<i>Janis Asold</i>
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FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

date***	Signature***
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**CITY OF WEST LINN
NOTICE OF UPCOMING
PLANNING COMMISSION HEARING
FILE NO. AP-20-03**

The West Linn City Council will hold a virtual public hearing on **Monday, October 5, 2020, starting at 2:00 pm** to consider an approval by the West Linn Planning Commission for a two-year extension of a 34-lot Subdivision: SUB-15-03/AP-17-01 at 18000 Upper Midhill Drive (Tax Lot 200 of Clackamas County Assessor Map 21E 14CA).

The City Council will review the Planning Commission's decision based on the criteria in Chapter 99.325 of the Community Development Code. This review will examine if the applicant has demonstrated conformance with applicable Community Development Code provisions based on the approval of MISC-20-04 at 18000 Upper Midhill Drive.

The appeal is a de novo hearing and not limited to the stated grounds for the appeal. All relevant issues may be considered. All evidence presented to the lower approval authority shall be considered and given equal weight as evidence presented on appeal. The criteria applicable to the Extension of approval, approved by the Planning Commission and under review by City Council are in Chapter 99.325 of the Community Development Code (CDC). The approval authority may affirm, reverse, or modify the August 25, 2020 decision.

You have been notified of this hearing because City records indicate that you had standing for MISC-20-04 or because notice is required by CDC 99.140 and 99.260.

All relevant materials in the above-noted file are available on the City website, <https://westlinnoregon.gov/planning/18000-upper-midhill-drive-appeal-misc-20-04-extension-approval-34-lot-subdivision>, or for inspection at no cost at City Hall. Alternatively, copies may be obtained for a minimal charge per page.

Anyone wishing to present written testimony for consideration on this matter shall submit all material before 12:00 pm on October 5, 2020. Persons interested in party status should submit their letter and any concerns about the proposal by the comment deadline. Written comments may be submitted to jarnold@westlinnoregon.gov or mailed to City Hall. All comments must be received before **12:00 pm on the meeting day.**

To speak during the meeting, go to <https://westlinnoregon.gov/citycouncil/meeting-request-speaker-signup> to **complete the speaker sign-up form before 12:00 pm on the day of the meeting**. Instructions on how to access the virtual meeting will be emailed before the meeting. If you do not have email access, please call 503-742-6061 for assistance 24 hours before the meeting.

At the public hearing, the City Council will receive a staff presentation and then invite both virtual oral and previously written testimony from the public. The City Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the review as provided by CDC 99.290. Failure to raise an issue during the hearing or in writing before the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals based on that issue.

Contact Jennifer Arnold, Associate Planner, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6057 for additional information.

Properties with 500 feet - AP-20-03 18000 Upper Midhill Drive Appeal of Extension



Legend

- City Limit
- ⋯ Unimproved ROW
- Parks and Open Space
- City Owned Property

0 0.06 0.12 Miles



1: 4,800



Notes

This map was automatically generated using Geocortex Essentials.



**NOTICE OF UPCOMING
CITY COUNCIL DECISION**

**PROJECT # AP-20-03
MAIL: 09/15/20 TIDINGS: 09/24/20**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets and land use application notice, and to address the concerns of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.