

January 11, 2021

Michael C. Robinson

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

VIA E-MAIL

Ms. Jules Walters, Mayor
West Linn City Council
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

RE: City of West Linn File No. AP-20-05 (SUB-20-01), Appeal of the West Linn Planning Commission's Approval of a Six-Lot Tentative Subdivision (the "Application") in the R-10 Single Family Zoning District Located at 4096 Cornwall Street; Applicant's Letter in Support of the Planning Commission Approval and Against the Appeal

Dear Mayor Walters and Members of the West Linn City Council:

This office represents Icon Construction and Development ("Icon"), the Applicant. This letter explains why the West Linn City Council (the "City Council") can approve the Application, as did the Planning Commission (the "Planning Commission"), and reject the Appeal. The Applicant requests that the City Council approve the Application with the Planning Commission's Conditions of Approval (providing that Landis Street will not be extended for vehicle trips to Cornwall Street). If the City Council adopts the Staff Report's recommendation (including recommended condition of approval 2) requiring the extension of Landis Street to Cornwall Street, recommended Condition of Approval 2.a should be slightly modified as shown below in Part 2.C of this letter.

1. Introduction.

The Planning Commission, after two public hearings, approved the Application with Conditions of Approval satisfactory to the Applicant. The Barrington Heights Neighborhood Association (the "Appellant") filed the Appeal thereafter. The hearing on the Appeal is a *de novo* hearing allowing new argument and evidence to be presented to the City Council.

The three principal issues, in addition to other issues, before the Planning Commission in its two public hearings were (1) whether Landis Street should be extended through the subdivision site to connect with Cornwall Street, thereby introducing additional vehicle trips onto Cornwall Street, or whether it should be gated, thereby allowing only emergency access vehicles, pedestrian trips and bicyclist trips to connect with Cornwall Street, (2) whether the subdivision stormwater plan was adequate and satisfied West Linn Community Development Code (the CDC) 85.200 and whether the stormwater can drain downhill into a private, off-site stormwater

facility, and (3) whether the Applicant has properly examined geotechnical issues associated with the subdivision site development.

The Planning Commission decided in favor of the Application on each of the three principal issues after hearing and considering all of the relevant argument and evidence, finding that (1) Landis Street should not be extended to Cornwall Street and that the CDC does not prohibit a gated connection, (2) that the Applicant's stormwater study meets the City's "Public Works Construction Standards" and CDC 85.200 and because Oregon law provides that, as is this case with this proposed tentative subdivision plan, that an uphill property owner may discharge stormwater over and across downhill properties provided that the amount and velocity of the stormwater does not damage the downhill properties as demonstrated by the Applicant, and (3) the Applicant's geotechnical evidence demonstrates that the subdivision site can be developed consistent with CDC 85.200 and a third party peer review of the Applicant's geotechnical evidence commissioned by the City validates the Planning Commission's decision.

This Application is a "Limited Land Use" application as defined in ORS 197.015(12) because it requests approval of a land division within an Urban Growth Boundary (the "UGB"). Because the Application is for a residential subdivision within a UGB, it is also subject to ORS 197.307(4), which applies to residential subdivisions, and ORS 197.522, which applies to Needed Housing as defined in ORS 197.303(1), including single family detached dwellings.

The Applicant's team will be available during the public hearing to answer any questions by the City Council and the public, including the Applicant's civil engineer, geotechnical engineer, and traffic engineer and land use planner.

Finally, the Applicant has proposed that Landis Street not be extended in order to avoid adding additional vehicle trips on Cornwall Street, although the Applicant's evidence demonstrates that the local street is capable of accommodating the reasonably expected number of additional vehicle trips. The Applicant has attempted to work with the neighbors to prevent this local street connection because it is unneeded and will require the expenditure of public funds to improve Cornwall Street, a fact recognized by recommended Condition of Approval 2.a.

2. The City Council can decide the issues presented in the Staff Report to the City Council in favor of the Application and against the Appeal.

A. The Applicant's stormwater evidence demonstrates that the relevant approval criteria are satisfied and a third-party peer review of the record confirms this conclusion.

CDC 85.170.F requires a stormwater report and 85.170.H requires that the report be consistent with the Public Works Design Standards and that the discharged stormwater not cause adverse impacts to downstream properties. The Applicant's evidence includes such a report, which the Staff Report finds meets the approval criteria. Condition of Approvals 2 and 8 require a final

review by the City Engineer. The Staff Report at Pages 5 and 6 recommends that the City Council reject the Appeal on the stormwater issue.

The City staff commissioned a third-party peer review of the Applicant's stormwater and geotechnical evidence and public comments by GRI (the "GRI Report"). The GRI Report, dated January 5, 2021, after reviewing the record on these issues, concludes at Page 2 that the Applicant's stormwater and geotechnical evidence "adequately addresses the geotechnical development, slope stability, and groundwater risks for the project" and recommends at Page 3 that the City Engineer consider if a subdrainage report or other drainage improvement feature is needed in the northern part of the subdivision site, as recommended in the Applicant's report. Mr. Darren Wyss, Planning Manager, issued a memorandum dated January 7, 2021 in which he described the GRI Report and the recommendation in the GRI Report. The Applicant agrees with the GRI Report and its recommendation.

The Appeal raises the issue of downstream drainage to a private stormwater facility. The evidence in the record shows that the downhill stormwater discharge can be done without adversely affecting downhill properties because it will be discharged at pre-development rates. Oregon common law allows an uphill property owner to discharge stormwater over and across downhill properties as long as the stormwater does not damage such properties. Were a property owner's consent necessary for downhill discharge of stormwater, then the necessity to drain stormwater downhill would be thwarted. The City Council can find that the evidence shows that the stormwater discharge will be consistent with both the relevant CDC provisions and Oregon common law.

Finally, Mr. William House submitted argument and evidence to the contrary. Aside from the fact that Mr. House's documents lack a current state of Oregon stamp, his argument and evidence have been rejected by staff, the Planning Commission and the GRI Report. Only the Applicant's evidence and the GRI Report contain a current state of Oregon stamp. The Planning Commission, after hearing all the argument and evidence, chose to find the Applicant's submittals most credible and the City Council can do likewise.

B. The Applicant's geotechnical evidence satisfies the relevant approval criteria.

CDC 85.170.C.3.a and b require a geologic report and assessment and 85.200.E.5 and 6 require that the evidence show that that known or potential hazards are mitigated.

The Planning Commission found that the Applicant's evidence satisfied these standards. The GRI Report reached the conclusion that the Applicant's evidence was satisfactory, after reviewing that evidence and the public comments. Mr. House's testimony is not persuasive, fails to address the relevant approval criteria and does not contain a current state of Oregon stamp.

C. The City Council should adopt the Planning Commission decision not requiring the extension of Landis Street, but if it adopts the Staff Report recommendation it should modify Condition of Approval 2.a.

The Planning Commission, after hearing argument and evidence by the Applicant and the public, did not require that Landis Street be extended to Cornwall Street. The Staff Report at Pages 6-8 finds that Landis Street should be extended based on CDC 85.200.A.1 and 48.025.C and the City of West Linn Transportation System Plan (the "TSP").

The City Council can find, as did the Planning Commission, that CDC 85.200.A.1 does not prohibit the gated street allowing for emergency vehicles, pedestrians and bicyclists to connect between Landis Street and Cornwall Street for the following reasons. First, both CDC 85.200.A.1 and 48.025.C contain subjective language where state law allows only clear and objective approval criteria to be applied to residential applications under ORS 197.307(4). Second, CDC 48.025.C provides for an exception to connected local streets where pedestrian and bicyclist connections are provided regardless of topographic connections. Finally, ORS 197.195(1) requires that the TSP be properly incorporated into order to be applied to the Application. The TSP is not properly incorporated into the CDC as required by the Oregon Court of appeals decision in *Paterson v. City of Bend (2005)*, requiring that specific plan (including the TSP) standards be incorporated into a City's land use regulations under ORS 197.195(1). The specific TSP provisions cited in the Staff Report are not specifically incorporated into the CDC and may not be applied to the decision. Therefore, the local street connection may not be required. The City Council can interpret these CDC provisions in a way consistent with state law.

Alternatively, if the City Council requires the local street connection, the Applicant requests that it slightly modify Condition of Approval 2.a by requiring that the City and the Applicant must both agree on the terms of the cost of and improvements to Cornwall Street.

D. Condition of Approval 9 does not require *both* a fee-in-lieu payment and the vacation of the unimproved right-of-way and the Applicant may pursue both street vacation methods in ORS Chapter 271.

Condition of Approval 9 allows the Applicant, at its discretion, to either make a fee-in-lieu payment or initiate a street vacation. The Applicant wishes to be clear that either is an acceptable satisfaction of Condition of Approval 9 and which to do is the Applicant's choice. Further, ORS Chapter 271 allows two methods of vacating a street and either may be used by the Applicant.

3. Conclusion.

For the reasons contained in this letter and the other argument and evidence submitted by the Applicant, the Applicant respectfully requests that the City Council reject the Appeal and approved the six-lot subdivision as approved by the Planning Commission but if the City Council follows the Staff Report's recommendation, the City Council should amend Condition of Approval 2.a as described above.

Ms. Jules Walters, Mayor
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Very truly yours,



Michael C. Robinson

MCR:jmhi

cc: Mr. Mark Handris (*via email*)
Mr. Darren Gusdorf (*via email*)
Mr. Rick Givens (*via email*)
Mr. Bruce Goldson (*via email*)
Mr. Jim Imbrie (*via email*)
Mr. Mike Ard (*via email*)
Mr. Darren Wyss (*via email*)
Mr. Tim Ramis (*via email*)

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