

**WEST LINN CITY COUNCIL  
FINAL DECISION AND ORDER  
AP-21-02**

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION  
APPROVAL OF A CONDITIONAL USE PERMIT TO CONSTRUCT A NEW  
ATHEY CREEK MIDDLE SCHOOL AT 840/945 DOLLAR STREET. THE  
PROPOSAL INCLUDES A CLASS II DESIGN REVIEW, TUALATIN RIVER  
GREENWAY REVIEW, FLOOD MANAGEMENT AREA REVIEW, TWO  
CLASS II VARIANCES, AND A LOT CONSOLIDATION REVIEW  
CUP-21-02/DR-21-04/WRG-21-02/MISC-21-04/VAR-21-01/VAR 21-  
06/LLA-21-02**

**I. Overview**

On March 18, 2021, Remo Douglas, on behalf of the West Linn-Wilsonville School District, filed a land use application. The application was deemed complete on April 30, 2021. The proposal is to construct a new Athey Creek Middle School at 840 and 945 Dollar Street. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 28, 32, 41, 42, 44, 46, 48, 52, 54, 55, 60, 75, 92, 96, and 99.

The Planning Commission held the initial evidentiary hearing on July 7, 2021. The hearing commenced with a staff report presented by Chris Myers, Associate Planner. Remo Douglas, applicant, and Mercedes Serra, 3J Consulting, presented on the applicant's behalf. The initial hearing was continued to August 4, 2021 in order to receive the correct Geo-Technical report. The applicant was given until July 14, 2021 at 5 p.m. to produce the report. A further 7 days through July 21, 2021 at 5 p.m. was granted for review and comments about the Geo-Technical report. Lastly, another 7 days were granted to the applicant for final written rebuttal.

After closing the public hearing on August 4, 2021, the Planning Commission entered into deliberations. After deliberations a motion was made by Commissioner Mathews and seconded by Commissioner Metlen to approve the application with three additional conditions of approval. The motion failed on a 3-3 vote. Then a motion was made by Commissioner Pellett and seconded by Commissioner King to deny the application, the motion failed on a 3-3 vote. Chair Walvatne made a motion and Commissioner Erwin seconded, to postpone the vote until the August 18, 2021 Planning Commission meeting. The motion passed with a 5-1 vote.

The Planning Commission entered into deliberations on August 18, 2021. After deliberations, a motion was made by Commissioner Mathews and seconded by Commissioner Carr to approve the application with 3 additional conditions of approval. The motion passed on a 4-3 vote.

On September 2, 2021 the Willamette Neighborhood Association (WNA) filed an appeal of the Planning Commission's decision. The letter attached to the appeal form stated the grounds for the appeal include, but are not limited to, failure to meet applicable Community Development Code and the West Linn Comprehensive Plan.

The appeal hearing for AP-21-02 was held by the City Council on October 4, 2021. The meeting began with the legal proceedings read by Mayor Walters and the City Attorney, Bill Monahan. Various issues related to bias and ex parte contact were raised, discussed and addressed. Citizen challenges were raised on bias against the participation of Mayor Walters and Council-President Relyea. The Council Rules process was followed and the challenges to their participation were denied. After the legal proceedings were complete Associate Planner, Chris Myers presented the staff report. Next, the Willamette Neighborhood Association, represented by Laura Wirth, presented as the appellant. After the appellant presentation, the West Linn-Wilsonville School District presented as the applicant. Remo Douglas, Mercedes Serra, and Scott Mansur represented the applicant.

At the completion of the presentations, the public testimony portion of the hearing commenced. Eleven individuals commented. There were approximately 95 written comments submitted for the record. After nearly 6 hours of deliberations, the City Council postponed the remainder of the hearing due to the length of the meeting and time of day. The hearing was continued to 6 p.m. on Thursday, October 7, 2021.

On October 7, 2021 the hearing was reopened. Prior to the continuation of deliberations Mayor Walters and City Attorney Monahan read the legal proceedings. As part of the legal proceedings, there is an opportunity for anyone to challenge the impartiality of any member of the City Council. Ms. Teri Cummings challenged the impartiality of Mayor Walters. Following Council Rules, Mayor Walters was given a chance to respond to the challenge. Council Rules then require a vote of the Council to accept or deny the challenge. Councilors Baumgardner, Bialostosky, and Relyea all expressed that they did not feel Mayor Walters could remain impartial for this decision. Councilor Jones expressed that he did not have any concern about Mayor Walters' impartiality. A vote was taken as to whether or not Mayor Walters should be disqualified from the proceedings. By a 3-1 vote, Mayor Walters was disqualified from the proceedings, so she turned the meeting over to the Council -President Relyea to chair the meeting.

After the recusal vote, Council President Relyea took over as presiding officer in charge of the meeting. There was a question as to whether or not the public hearing was ever closed at the end of the October 4 hearing. The City Attorney noted that the prior hearing went through public testimony followed by rebuttal by both the applicant and appellants. As the applicant, the District is entitled to the final word and it had that opportunity. After the rebuttal was

completed the issue of postponement was raised. At that point, in accordance with the script being followed for that meeting, the public testimony portion of the hearing had been concluded and no further public comments would be taken unless the City Council determined it necessary to reopen the public testimony portion. That included comments received by staff after the close of the October 4, 2021 hearing. Deliberations continued.

After asking questions of staff and reopening the record for a single question, to which all parties had the opportunity to answer. Councilor Baumgardner made a motion to deny the appeal and approve the application with revised conditions. This motion was seconded by Councilor Bialostosky, the motion failed to receive any affirmative votes. Next, Councilor Jones moved to deny the appeal and approve the application with a modified series of conditions. This motion died for lack of a second. In the alternative, Councilor Bialostosky moved to uphold the appeal and deny this application. The motion was seconded by Councilor Baumgardner and resulted in a tied 2-2 vote. As discussed in greater detail below, consistent with the CDC requirements, where a decision on appeal results in a tie, the Planning Commission's decision was affirmed.

## **II. The Record**

The record was complete at the close of the October 4, 2021 appeal hearing. It includes the application and all of the written and oral testimony submitted to the Planning Commission as part of its proceedings. Other than the testimony presented during the hearing on October 7, including the written testimony submitted by Teri Cummings relating to the Mayor Walters bias challenge, no additional testimony was considered. Written testimony submitted by Mr. Russ Axelrod, Planning Commission Chair Walvatne, and any other written testimony received after the close of the October 4, 2021 hearing was rejected from the record and was not considered by the Council in making this decision.

## **III. 120-Day Period**

The applicant extended the 120-day period in ORS 227.178(1) from September 25, 2021 to October 9, 2021 in writing on September 30, 2021. The applicant extended the 120-day period on ORS 227.178(1) from October 9, 2021 to October 19, 2021 in writing on October 7, 2021. The City Council's final decision was issued within the extended 120-day period.

## **IV. Findings of Fact**

### **A. Procedural issues raised in City Council hearings.**

Findings addressing legal and procedural issues raised during the two City Council de novo hearings on the appeal of the Planning Commission's approval of CUP-21-02/DR-21-04/WRG-21-02/MISC-21-04/VAR-21-01/VAR-21-06/LLA-21-02 filed by the Willamette Neighborhood Association include the following:

- a. Notice for the City Council appeal hearing of October 4, 2021** - The City Council finds that although the notice for the October 4, 2021 appeal hearing contained flaws that were not consistent with local requirements of the West Linn Community Development Code (CDC) 99.270, Contents of Public Notice of Appeal Hearing, the actual notice did not prejudice the substantial rights of any party. The notice was flawed by: 1. not stating the appellant's name (the Willamette Neighborhood Association), 2. Not listing any grounds for appeal stated in the appeal (although the hearing was de novo and the grounds raised were general in nature – "failure to meet applicable Community Development Code and the West Linn Comprehensive Plan"), and 3. The notice referred to CDC 99.325 as a review criteria, an inaccurate statement, although the notice went on to say: "This review will examine if the applicant has demonstrated conformance with applicable Community Development Code provisions based on the approval of CUP-21-02/DR-21-04/WRG-21-02/MISC-21-04/VAR-21-01/VAR-21-06/LLA-21-02." Other issues raised about the notice alleged that notice content failed to have other elements required by CDC 99.090 which do not apply to appeal hearings, but to initial hearings on land use matters. All other requirements of CDC 99.260 were met in the notice. Further, the Council finds that the record shows that all requirements of ORS 197.763 were addressed in the notice for the initial review at the Planning Commission level where the applications were first considered.

The City Council finds that the mailed and posted notice was provided or available to the appellant Willamette Neighborhood Association and others at least 20 days prior to the hearing and published in the West Linn Tidings at least 10 days prior. Council finds that the appellant did not challenge the adequacy of the notice. Further, the notice was posted on the city's website 20 days prior to the hearing and a sign was posted on the property at least 10 days prior. The Council finds that notice was adequate to inform the appellant and public resulting in the appellant and interested parties having sufficient notice to prepare for, submit written testimony for, attend, and testify at the October 4, 2021 hearing. Public testimony was received in multiple forms and parties afforded adequate time to speak at the initial hearing which lasted in excess of five hours. Besides the appellant, fourteen citizens presented testimony either in favor or opposed to the appeal. The Council finds that the flaws in notice were minor, parties were aware of the applicable criteria, and had adequate time and opportunity to address the applicable criteria.

- b. Bias** – The City Council finds that the process followed to address legal matters prior to moving to the public testimony portion of the two hearings conformed to local and state requirements. The script used at the hearings provided each council member an opportunity to declare a bias. Council also finds that the requirements of its City of

West Linn Council Rules, adopted on June 24, 2019, applicable to quasi-judicial land use matters, were followed correctly. At both hearings, after councilors were given an opportunity to comment and cite issues which could raise community questions about bias, all council members stated that they were not biased and would base their decision on the facts before the council and the testimony to be received. At the initial hearing, Mayor Jules Walters and Council-President Bill Relyea were challenged by members of the audience for their earlier comments and support of the West Linn – Wilsonville School District general obligation bond process that secured financing for various projects including the proposed school that is the subject of the land use application. Both Mayor Walters and Council Relyea declared that they had attended meetings where the bond was discussed but did not feel their involvement in the process influenced their ability to make a decision without bias. Council finds that in accordance with Council Rule Section D. 1. A., the prescribed process was followed where the presiding officer, Councilor Rory Bialostosky, conducted a vote of those councilors permitted to vote on the challenge to an individual council member. In both votes, the Council denied the challenge. Council interprets its Rules and finds that the challenges raised were properly denied following the Council Rules.

At the second hearing, dated October 7, 2021, during the time allocated for bias challenge, a citizen challenged Mayor Jules Walters and distributed documents from the period of time when the School District bond process was underway. The citizen alleged that the additional information not available to the Council at the initial hearing should illustrate bias. The Council again followed Council Rule Section D.1.a. After Mayor Walters responded to the challenge by stating that while she participated in the bond election process, she felt she could participate without bias in the hearing, with Council - President Relyea presiding, the Council by a 3-1 vote accepted the challenge and by majority vote disqualified Mayor Walters from further participation in a decision. Council interprets its Rules and finds that by following the process in its Council Rules, the issue of bias was correctly addressed, and the decision was rendered fairly by those remaining Council members qualified to make a decision.

- c. **Ex Parte Contacts** – The City Council finds that the process utilized at the appeal hearings on the requirement of declaration of ex parte contacts was properly carried out in compliance with Council Rules and state law. Ex parte correspondence received or initiated by Council members were forwarded to staff and included in the land use record, in accordance with Council Rule Section 4.D.3. At both hearings all council members were allowed an opportunity to declare ex parte contacts with each Councilor relating their personal experience. Council finds that no challenges were made by members of the public to the ex parte disclosures of Council members at either hearing.

Prior to the second hearing, conducted three nights after the initial hearing, some ex parte contacts were initiated by email between members of the public and each Council member. Council finds that at the appropriate time prior to reopening the continued hearing on October 7, 2021, each Council member except Councilor Jones noted the content of ex parte email contacts, identifying the other person involved in the contact, and stated that the contacts did not bias them. Councilor Jones noted that although emails may have been sent to him, as some emails were directed to all Council members, he did not have ex parte contacts since he did not access his emails and did not see them. Council finds that the declaration of ex parte contacts made at the hearings were properly made and no challenges were made by members of the public when the opportunity was afforded to them during the legal matters portion of the hearing.

- d. Decision by the Planning Commission that was appealed to City Council** – The Planning Commission made its decision on the application on August 18, 2021. Its Final Decision and Order notes that at the close of deliberations on August 4, 2021, Commissioner Mathews moved, seconded by Commissioner Metlen, a motion to approve the application with additional conditions. The motion failed on a 3 to 3 vote. A motion was then made by Commissioner Pellett, seconded by Commissioner King, to deny the application. That motion failed on a 3 to 3 vote. The Council Rules, Section C.13., which apply to all city boards and commissions, and Robert’s Rules require concurrence of a majority of those present to decide any question. Without a majority vote, nothing in city regulations or Robert’s Rules indicate that a tie vote has the summary legal consequence of denying the application. Thus, the Planning Commission had to reach a majority vote in order to move the matter forward. The only action that received a majority vote was to continue the deliberation to a date certain of August 18, 2021, which passed by a vote of 5 to 1. Further, the Council notes that CDC 99.300.B., although directed at appeals, does provide for deferred decision-making as a means to break a tie. Given the lack of other directly applicable guidance along with the language of CDC 99.300.B., the Council finds that the Planning Commission’s decision to continue its deliberation until August 18, 2021 was appropriate and the vote to approve the application by a vote of 4 to 3 on August 18, 2021 was not in error.
- e. Decision by City Council** – The City Council finds that the decision that it made at the October 7, 2021, continuation hearing in the matter of the appeal complied with CDC 99.300 Participation by Members of Approval Authority in Decision and Voting. The Council closed the public hearing and deliberated on the question of approving or denying the appeal. Several motions were initiated. The first motion to approve the application with additional conditions failed to receive a majority. The second motion to approve the application without conditions died for lack of a second. The third motion

to deny the application similarly resulted in a two-to-two tie vote. Again, Council Rules require a majority of those present in order to decide any question. As a result, the Council finds that in a tie vote on a quasi-judicial land use appeal hearing CDC 99.300 applies. Code section CDC 99.300 A.1. states that: "A majority of the qualified voting members of the approval authority must vote affirmatively to affirm, affirm with conditions, or reverse or remand the decision. If no majority is in favor of any motion, then the previous decision shall be considered affirmed." In addition, Section A.2. states: "Unless a decision be deferred, in the event of a tie, the decision which is the subject of appeal or review shall stand." In consideration of the CDC language that provides procedures for quasi-judicial decision making in West Linn, the Council finds that since no majority was in favor of any motion made during Council deliberations, and since a tie occurred, both sections of CDC 99.300 apply and the previous decision, the decision of the Planning Commission on August 18, 2021, which was the subject of the appeal, stands and is affirmed. The decision of the Planning Commission along with the conditions imposed by the Planning Commission is affirmed and adopted by the City Council as its own.

**B. City Council Findings of Fact Approving the Application and Rejecting the Appeal.**

The City Council hereby adopts the following Findings supporting approval of the Application and rejecting the appeal based on the Incorporated Findings and the Application's Substantial Evidence.

- a. The City Council incorporates the Staff Report to the City Council (the "City Council Staff Report") prepared in advance of the Oct. 4, 2021 hearing the Planning Department staff report Power Point presentation (the "Power Point") presented at the October 4, 2021 appeal hearing and
- b. The West Linn Planning Commission Final Decision and Order from the Planning Commission signed by Vice Chair Mathews added August 23, 2021 and
- c. The Final Written Argument dated July 28, 2021, that was submitted by the District to the Planning Commission as offering additional explanation for the Planning Commission's approval and
- d. The Staff Report for the Planning Commission (the "Planning Commission Staff Report") prepared in advance of the first Planning Commission hearing on July 7, 2021.

The Incorporated Planning Commission Decision, Staff Report and Final Argument submitted in advance of the Planning Commission's decision along with the Staff Report

and PowerPoint prepared as part this appeal review are collectively referred to as the “Incorporated Findings”.

If there is a conflict between these Findings and the Incorporated Findings, these findings shall control.

### **C. Findings in Response to the Substantive Appeal Issues.**

#### **a. Site does not provide adequate acreage for school needs and mitigation of school impacts.**

The City Council considered all of the oral and written testimony of the Appellant and members of the community on this issue and finds the evidence supports a conclusion that the relevant approval standards of CDC 60.070(A)(1-2) are satisfied is believable and substantial.

The development site is 21.4 acres and supports a capacity of 850 students. The school design includes a 110,972 square foot building with 25 classroom spaces, entry plazas, soft and hard surface play areas, a running track, turf athletic fields, outdoor learning areas including a greenhouse, separated bus/staff and parent drop off zones, extra on-site queuing space for buses/parents, walking trails, and habitat and tree canopy preservation areas. The total building lot coverage is 8.5%, below the 35% lot coverage requirement set forth in CDC 11.070. The total impermeable surfaces are 32.4% of the site area.

The school is similar in size, intensity, and type to Rosemont Ridge Middle School, located in West Linn. Rosemont Ridge Middle School has a site area of 20.61 acres and a learning space capacity for 713 students.

The development has adequate area for aesthetic design treatment to mitigate adverse effect from the use on surrounding properties. Mitigation measures include increased setbacks, lowered site improvements, the location and separation of driveways, extra on-site queuing capacity, residential architecture features, retaining walls for sound insulation, tree retention, habitat conservation and restoration, and enhanced landscaping.

The school building has been set back from Brandon Place and Dollar Street beyond the minimum yard requirements to provide additional buffering and enhanced landscaping. The existing landscaping and topography of the site has been utilized to provide natural buffering. Tree retention on the site has been primarily focused along Willamette Falls Drive and along the eastern property line adjacent to neighboring homes.

The building and track will be sunken into the grade along Dollar Street to reduce the building height adjacent to the residential neighborhood. Enhanced landscaping has been provided along the frontage to provide additional visual buffering and to mitigate for any adverse



impacts. Retaining walls have been utilized at the children's play area and the waste and recycling storage area to provide additional noise buffering on site. Two of the four LED field light poles will be located north of the track, approximately 30 feet from the school property line and approximately 90 feet from the neighboring property lines north of Dollar Street. The lighting on site has been located to prevent light trespass on adjacent properties.

The school building will be two-stories in height and will incorporate gabled roof forms and a mix of wood and brick materials. The orientation and massing of the building will fan along the hillside which will provide for views of the surrounding landscape from the interior of the building while breaking up the building massing to reduce the overall impact of the building on the site. The building utilizes both flat and pitched roof forms to provide a residential style to the building.

The development will include right-of-way improvements to Dollar Street and Willamette Falls Drive, and an extension of Brandon Place from Dollar Street to Willamette Falls Drive. The proposed extension of Brandon Place will provide a needed secondary emergency access route to the neighborhood. Sidewalks will be installed along the property frontage on Dollar Street and Willamette Falls Drive which will increase neighborhood connectivity. The configuration of access points on the site and the emergency access only restricted access on Brandon Place (Condition of Approval 9)<sup>1</sup> has been designed to encourage out-of-neighborhood traffic using Willamette Falls Drive and Brandon Place to access the school, with the District's use of Dollar Street limited to buses and staff access only. Disconnecting Brandon Place to all but emergency access will minimize the traffic impact on Dollar Street and the adjacent neighborhood.

On-site Pedestrian pathways will connect the main school building with site facilities and surrounding pedestrian infrastructure, including Fields Bridge Park. On-site pathway facilities have been designed to meet the needs of the school, while also providing a path for use by the surrounding community.

The Planning Commission Decision added three additional conditions of approval as part of the motion to approve. The City Council finds these conditions in addition to the mitigation treatments utilized in the proposal adequately mitigate the school impacts.

For these reasons, the City Council affirms the Planning Commission's decision, including the conditions of approval, and rejects this basis for Appeal.

**b. The site does not have adequate parent access points.**

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<sup>1</sup> The Planning Commission decision included 10 conditions but Conditions Nos 3 and 7 were duplicates. Thus, Condition 3 was deleted, leaving 9 conditions. The substance of the conditions, as they were adopted by the Planning Commission remains unchanged.

The City Council considered all of the oral and written testimony of the Appellant and members of the community, the Applicant's presentation, and Staff's presentation on Condition of Approval 9 to restrict access on Brandon Place Drive and what effect this closure will have on accessibility. The City Council finds based on the Incorporated Findings and the Application's substantial evidence that this development, within Condition 9, will meet the relevant approval standards of CDC 48.020, CDC 48.025, CDC 48.040, and CDC 48.060 with the closure of Brandon Place at Dollar Street.

Access to the proposed school will be provided through Dollar Street and Brandon Place, both classified as local streets. The configuration of access points on the site has been designed to encourage out-of-neighborhood traffic using Willamette Falls Drive and Brandon Place to access the school from Brandon Place, with buses and staff access from Dollar Street. The two access drives to the school building have been designed with extra queuing areas for drop-off and pick-up to allow for the continuous flow of traffic on site.

The development can be safely and proximately accessed by students travelling on foot or by bike, and also offers arterial adjacency for convenient vehicle access. The location next to Fields Bridge Park will provide enhanced park amenities in the form of sports field, track and playground available to the public during non-school hours.

The City Council rejects this basis for the Appeal.

**c. The site is not centrally located.**

The City Council considered all of the oral and written testimony of the Appellant and members of the community on this issue and finds that the largest portion of the population served by the school is located within the Athey Creek attendance boundary and the majority is located in the City of West Linn. The proposed location is found to be centrally located to the greatest extent possible and the evidence supporting the conclusion that the relevant approval standards of CDC 60.100 are satisfied is believable and substantial.

The CDC does not provide a definition of "centrally located" as this term is used in CDC 66.100. CDC Chapter 2.010 Interpretation provides that words not specifically defined shall have the meaning specified in Webster's Third New International Dictionary of the English Language, Unabridged. Webster's Third New International Dictionary of the English Language, Unabridged provides the following definitions of "central:" *"situated at, in, or near the center and easily accessible from outlying districts."* Additional provisions of this section provide helpful context for determining the scope and extent of the "central location obligation." Schools must be "centrally located relative to the majority of the population that they will serve." Therefore, the question before the Planning Commission and City Council was whether the school will be sited near the center and with easy access by those students to be served by the school. This provision does not require that a majority of the students live in West Linn,

although the evidence submitted by the District suggests that is the case. The map *Middle School Residence-based 2018-28 Enrollment Forecasts* shows the Athey Creek Middle School service boundary and illustrates that the school is located near the center and, as other findings explain, it will be easily accessed by students travelling by all modes.

The City Council rejects this basis for the Appeal.

**d. The school is not an overall benefit to the City.**

The City Council considered all of the oral and written testimony of the Appellant and members of the community on this issue and finds the evidence supporting the conclusion that the relevant approval standards of CDC 60.070(A)(4) are satisfied is believable and substantial.

The existing Athey Creek school does not have adequate capacity to meet the projected enrollment numbers. The new school building will provide capacity for 850 students, enough to address anticipated middle school enrollment growth. The existing Athey Creek school building has learning space capacity for 669 students. The 2019 West Linn-Wilsonville Long Range Facility Plan shows the total enrollment at Athey Creek for the 2018/2019 school year was 702 students. The existing school building does not have capacity to meet the projected enrollment growth. The new school building will provide capacity for 850 students, which can accommodate the projected enrollment growth.

According to the West Linn-Wilsonville School District Long Range Facility Plan 2019 Edition, the 2018-2019 student attendance of Athey Creek Middle School was 702 students. In the 2018-2019 school year, that the 432 students which attended Athey Creek Middle School from the Athey Creek, Rosemont Ridge, and Athey Creek-Rosemont Ridge Choice attendance areas, which are located almost wholly in the City of West Linn, made up 61.5 percent of the total attendance of Athey Creek Middle School. In the 2018-2019 school year, 202 students attended Athey Creek Middle School from the Meridian Creek-Athey Creek Choice attendance area, primarily of students living in Clackamas County, or 28.6 percent of the total attendance of Athey Creek. In the 2018-2019 school year, 39 students attended Athey Creek from out-of-district attendance areas, or 5.5 percent of the total attendance of Athey Creek. In the 2018-2019 school year, 24 students attended Athey Creek from Inza Wood and Meridian Creek or Wilsonville attendance areas, or 3.4 percent of the total attendance of Athey Creek.

From this evidence, the City finds that at least 61 percent of the existing Athey Creek student body lives in West Linn. It is reasonable to assume that these students will contribute to the same degree of growth in the future. Therefore, the City of West Linn and its students will directly benefit from the additional capacity benefits realized by the new school construction. The City rejects any suggestion that current enrollment reductions resulting from the pandemic are temporary and will not impact enrollment projections over the long term. School districts across the state and nation are experiencing lower than expected enrollment. Regardless, residential construction continues in West Linn as well as Wilsonville. The District will continue

to rely on the study conducted by Flo Analytics, and expects that enrollment will bounce back into line with the 10-year projections in the record and the Council finds these representations reliable.

The relocation of Athey Creek Middle School students to Dollar Street makes room for a new Third Option High School to move into the existing Athey Creek school building, from the commercial space in Wilsonville and centrally locating it for easier access by West Linn high school students. West Linn High School is currently over capacity and this larger, enhanced-opportunity Third Option high school will relieve this enrollment pressure. Further, this Third Option high school will give West Linn students equal access to on-site sports and field amenities that are sorely missing from its current converted commercial space within Wilsonville Town Center.

The relocation of Athey Creek Middle School to the Dollar Street site will provide a school that is more centrally located to the school population, within walking and cycling distance to a large portion of the community, all allowing for safer accessibility to City-resident students and parents. Located outside of the city limits, the current Athey Creek Middle School lacks Safe Routes to School and has no walking boundary. The traffic study assumes that somewhere between 100-250 students will walk or bike to school. The new Dollar Street campus will allow for safe pedestrian and bicycle access for City-resident students and parents. Public street improvements will improve bike and pedestrian access to and through the site.

Benefiting the larger community beyond just school-age students, the Dollar Street campus will offer on-site facilities that are available for public use during non-school hours, including walking paths, playground, premium outdoor recreation facilities, and indoor recreation and meeting spaces. The facility includes emergency generator power capacity that will be available to serve city residents in the event of emergency. The project will also include right-of way improvements that will calm traffic and enhance pedestrian-focused connections to Fields Bridge Park.

The project will also include right-of-way improvements such as street paving of drive lanes and parking, traffic calming, landscaping, bicycle and pedestrian paths. Furthermore, system development fees associated with the project will provide the City with additional funding for further improvement and maintenance of public facilities.

The City Council rejects this basis for the Appeal.

**e. The site lacks adequate walking infrastructure.**

The City Council finds based on the Incorporated Findings and the Application's substantial evidence that the frontage improvements along Dollar Street, Brandon Place, and Willamette Falls Drive associated with the development and the identification of Safe Routes to School improvements in the vicinity of the proposed school meet the relevant approval standards of CDC 92.010 as well provisions of the West Linn Transportation System Plan. The City Council

finds Planning Commission Condition of Approval 7 will increase pedestrian safety at the proposed roundabout at Brandon Place and Willamette Falls Drive and Condition of Approval 8 will improve the pedestrian safety on Willamette Falls Drive, Brandon Place, and Dollar Street.

The location of the development will provide a school that is centrally located to the school population, within walking and cycling distance to a large portion of the community, all allowing for safer accessibility to City-resident students and parents. The traffic study assumes that somewhere between 100-250 students will walk or bike to school. Public street improvements will improve bike and pedestrian access to and through the site for the benefit of the school community as well as the public.

The City Council rejects this basis for the Appeal.

**f. The proposal does not meet the policies of Goal 7 of the West Linn Comprehensive Plan.**

In addition to the Staff Report, the City Council also adopts these Findings. The City Council also finds that the Application satisfies the relevant approval standards in CDC 60.070.4 and Goal 7 of the Comprehensive Plan based on the October 20, 2020 GeoDesign Report.

The City Council has considered all of the oral and written testimony of the Appellant and others on these issues and finds that the evidence supporting the conclusion that the relevant approval standards are satisfied is believable and substantial. The City Council appreciated the neighborhood's testimony but concludes that a review of the substantial evidence in the whole record supports its decision on this point, including the Applicant's geotechnical reports and its oral and written testimony on the geotechnical issues that any identified geotechnical hazards can be mitigated with the recommended actions in the GeoDesign Report.

A geological assessment of the subject site was performed by Geodesign, a licensed geotechnical engineer. The Geotechnical Report provides a site-specific analysis of the potential risk from seismic hazards referenced in the *Earthquake Hazards Area Map*. This report represents the only qualified expert testimony of the existing site conditions based on on-site survey work, along with review of agency maps and survey work.

The Statewide Landslide Information Database for Oregon prepared by the Oregon Department of Geology and Mineral Industries (DOGAMI) maps steeper slopes at the site. Overall, the building has been placed so as to avoid all of the steep slopes. That said, the central wing of the school building as planned is mapped as having moderate to high susceptibility to shallow landslides (less than 15 feet below ground surface) based on the slope gradients and the mapped geologic units. DOGAMI maps the site as having low susceptibility for deep landslides and does not map any past or current landslides at the site. Landslides in this area were not observed at the site during site reconnaissance and explorations detailed in the Geotechnical Report. Although on-site evaluation is more reliable than regional mapping, the report provides site-specific recommendations for cut and fill slopes, structural fills, benching for new structural fills into existing slopes, slope setbacks for structures and fills, drainage, and

managing surface runoff to meet slope stability requirements resulting in no adverse impact on the stability of the slopes at the site and to ensure the safety and stability of the site consistent with Goal 7 Policies 1, 2, 3, 4, 5 and 12.

A wetland delineation was prepared by Pacific Habitat Services which mapped the ordinary high-water mark of the Tualatin River adjacent to the project area. The proposed development will not include any work within the 100-year floodplain. The development meets Goal 7 Policies 6, 7, 8 and 9.

Policies 10, 11, 13, and 14 are not applicable to the proposed development.

The City Council rejects this basis for the appeal.

**g. The proposal does not meet the policies of Goal 12 of the West Linn Comprehensive Plan.**

The Planning Commission approved the Applicant's plan with Condition of Approval 9 restricting the connection of Brandon Place to Dollar Street. Condition 9 will ensure that Dollar Street is not used as a pass-through traffic street, adversely affecting livability of the neighborhood. Although the City's Transportation System Plan does call for the connection of Brandon Street, both the Comprehensive Plan and CDC confer significant discretion to the Planning Commission to determine the appropriate timing for conditioning development to require such connections. The Comprehensive Plan allows for Level of Service (LOS) D intersection conditions during the peak commute hours in the case of minor arterials, collectors, and neighborhood streets. As discussed in the testimony, the school afternoon peak occurs outside of the normal peak commute hours on Willamette Falls Drive and Ostman Road. The District does not contribute traffic to the current failure experienced at Willamette Falls Drive and Ostman Road.

As such, there is no mandatory trigger requiring the Brandon Place connection. Livability concerns raised by the neighbors along Dollar Street regarding the increase in diverted traffic, justify the connection be restricted for emergency vehicle access only. The City Council affirms the Planning Commission's decision on this issue and finds that with Condition 9 the application satisfies CDC 60.070.A.4 and CDC 2.030 and meets General Policies 1.a and 1.d., Street Policies 2, 4, 6, 12.e of the West Linn Comprehensive Plan.

The City Council rejects this basis for the Appeal.

**h. Loss of Open Space.**

Some citizens expressed concerns that plan policies, including Plan Goal 2, Policy 3, required the protection of the site in its existing state for open space. Although the City acknowledges that the vacant site now, in its natural state, offers some environmental and recreation amenities, only lands that have been planned and zoned as natural resource or open space may be protected for these purposes. The school campus will offer on-site recreational amenities for

public use during non-school hours, including walking paths, playground, premium outdoor recreation facilities, and indoor recreation and meeting spaces. On-site natural resource areas will be preserved and enhanced as part of the development.

#### **IV. Conclusion.**

For the reasons contained herein, the City Council hereby rejects the Appeal, affirms the Planning Commission Decision and approves the Application based on the Incorporated Findings, the findings set forth herein and subject to the following nine conditions of approval.

1. Site Plans. With the exception of modifications required by these conditions, the project shall substantially conform to all Tentative Plan Sheets.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to conformance with the City Municipal Code and Community Development Code. These must be designed, constructed, and completed prior to the issuance of occupancy permits for each phase of the project.
3. Erosion Control. The applicant shall submit an Erosion Prevention and Sediment Control Plan prior to issuance of site development permit.
4. Curb Cuts. The applicant shall redesign the two vehicle accessways to comply with the maximum curb cut requirements of 36 feet, per Staff Finding 128, and to also meet West Linn Public Works Standards.
5. Street Improvements. The applicant shall complete half street improvements, including pavement improvements, curbs, planter strips, street trees, streetlights, sidewalks, pedestrian crossings, cycle tracks where required, and street storm drainage for those portions of Dollar Street and Willamette Falls Drive abutting the subject properties. The applicant shall complete full street improvements on the extension of Brandon Place. The City may partner with the applicant to fund additional improvements as part of the project.
6. Landscaping Installation. All landscaping improvements, including but not limited to planting of trees and shrubs, are subject to the conformance with the City Municipal Code and Community Development Code. Landscaping must be installed prior to the issuance of occupancy permits. (Staff Findings 62 and 73)
7. Roundabout Pedestrian Safety. At the proposed roundabout at Brandon Place and Willamette Falls Drive the applicant will have construct appropriate marked pedestrian crossings.

