

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER
AP-22-01**

**IN THE MATTER OF AN APPEAL OF THE PLANNING DIRECTOR’S DENIAL OF A
HOME OCCUPATION PERMIT TO OPERATE A SWIM LESSON BUSINESS IN AN
OUTDOOR, ABOVE-GROUND SWIMMING POOL AT
2245 MICHAEL DRIVE (MISC-22-01)**

I. Overview

On behalf of Ly & Lierman Enterprise, Luan Ly applied for a home occupation permit to operate a swim lesson business in an outdoor, above-ground swimming pool at 2245 Michael Drive. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 37, and 99.

The West Linn Planning Director (Director) reviewed the home occupation application for compliance with the home occupation criteria and found the proposal did not comply with all thirteen (13) criteria found in CDC Chapter 37.020. The proposed outdoor swim school is not allowed because CDC criteria 37.020.A(3) prohibits outdoor use or storage of materials or mechanical equipment that is not part of the residential use. The Director denied the home occupation permit on February 8, 2022 (MISC-22-01).

On February 17, 2022, Luan Ly, on behalf of Ly & Lierman Enterprise (Appellant), filed a timely appeal of the Director’s decision. The appeal hearing was noticed per CDC Chapter 99 and held by the West Linn City Council (the “City Council”) on March 14, 2022. The hearing commenced with a staff presentation and oral argument from the Appellant and Ted Brindle, the Appellant’s attorney. Public testimony followed and the Appellant and Appellant’s attorney rebutted. The City Council closed the public hearing and deliberated. Councilor Jones moved to deny the appeal and uphold the Director’s decision to deny the home occupation permit (MISC-22-01). Councilor Relyea seconded the motion and the motion passed three (3) votes in favor and two (2) opposed.

II. The Record

The record was finalized at the March 14, 2022 appeal hearing. The record includes the entire file for MISC-22-01 and AP-22-01.

III. Procedural Issues and Scope of Review

The Appellant agreed that the scope of the hearing was de novo.

IV. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is Luan Ly on behalf of Ly & Lierman Enterprise
- 3) The Appellant is Luan Ly on behalf of Ly & Lierman Enterprise
- 4) The Council finds that it has received all information necessary to make a decision based on the Agenda Report; appeal application; the Appellant's oral argument; oral argument by the public; and evidence in the whole record.

1. Introduction

A. Denial of the Application by the West Linn Planning Director.

The West Linn Planning Director denied the Application (the "Decision") on February 8, 2022.

B. Filing of Timely Appeal of the Decision.

Luan Ly, on behalf of Ly & Lierman Enterprise, (the "Appellant") filed a timely appeal (the "Appeal") of the Decision on February 17, 2022 meeting the requirements to file an appeal under West Linn Community Development Code (the "CDC") Chapter 99.240 and 250.

C. Scheduling and Notice of the Appeal Hearing.

The City scheduled a *de novo* quasi-judicial appeal hearing before the City Council on March 14, 2022 after providing timely notice of the public hearing to those persons entitled to notice on February 22, 2022.

D. Appeal Hearing Announcements and Disclosures.

The City Council's five members were present, constituting a quorum, and all five members participated in the public hearing.

The Mayor opened the public hearing, described the quasi-judicial hearing process, and described the particular hearing process and time allowed for testimony.

The City Attorney read the notice required by ORS 197.763(5) for quasi-judicial hearings. The City Attorney asked the City Council members to disclose potential or actual conflicts of interest, bias, site visits and *ex parte* contacts. No City Councilor disclosed a conflict of interest or bias. City Councilor Baumgartner disclosed an *ex parte* contact via an email from the Appellant. Mayor Walters disclosed an *ex parte* contact via an email from the Appellant. The City Attorney stated the email is part of the record and available for review. The City Attorney asked if anyone wanted to challenge the City Council's jurisdiction to hear the appeal or rebut the site visits or *ex parte* disclosures. No one disputed the *ex parte* contacts.

E. No Procedural Issues Raised or Continuance or Open Record Period Requested Before the Close of the Public Hearing.

No one raised any procedural issues regarding the conduct of the public hearing. No one requested that the public hearing be continued or the written record held open.

F. Conduct of the Appeal Hearing.

The City Council followed its announced hearing procedure and testimony timelines. After hearing the staff report and all persons who wished to testify (the Appellant and two members of the public) and the Appellant's rebuttal, the City Council closed the public hearing and record and deliberated to a decision.

G. The Record.

The record consists of all documents physically before the City Council prior to the close of the hearing on March 14, 2022. The City Council did not reject any document from the record.

2. City Council Decision on the Appeal.

Following the close of the appeal hearing and record, Councilor Jones moved to reject the appeal, thus affirming the Planning Director's denial of the home occupation permit dated February 8, 2022.

Councilor Relyea seconded the motion.

The City Council adopted the motion by a vote of three (3) to two (2).

3. City Council Findings 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 City Council Agenda Bill and its three attachments ("Agenda Bill") available on March 3, 2022, the supplemental public comment memorandum dated March 10, 2022, the supplemental public comment memorandum dated March 14, 2022, and the Power Point presentation (the "Power Point") presented at the March 14, 2022 appeal hearing.

The incorporated Agenda Bill, the two Supplemental Public Comment Memorandums, and the Power Point are collectively referred to as the "Incorporated Findings."

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

B. Findings on the Appeal Issues.

a. No outdoor use or storage of materials not part of the residential use.

The City Council finds based in the Incorporated Findings and the Application's substantial evidence that the relevant approval criteria in the West Linn Community Development Code does not allow the outdoor use or storage of materials as part of a home occupation. The City Council finds that substantial evidence in the record demonstrates that the proposed swim lesson business in an outdoor, above-ground pool violates this prohibition of no outdoor use associated with the home occupation business.

4. Conclusion.

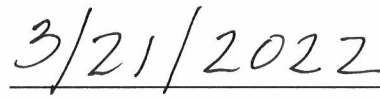
For the reasons contained herein, the City Council hereby rejects the appeal, affirms the Planning Director decision and denies the home occupation application based on the findings and substantial evidence in the record.

V. Order

The Council concludes that AP-22-01 is denied. The Council upholds the Planning Director denial of MISC-22-01 based on the entire Record, Findings of Fact, and Findings above.



JULES WALTERS, MAYOR
WEST LINN CITY COUNCIL



DATE