

**Agenda Bill**

Date Prepared: May 22, 2023

For Meeting Date: June 6, 2023

To: Rory Bialostosky, Mayor  
West Linn City Council

Through: John Williams, City Manager *JRW*

Through: Darren Wyss, Planning Manager *DSW*

Subject: Appeal of WAP-23-01/WRG-23-01/FMA-23-01

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**Purpose**

To hold a public hearing and consider the appeal ([AP-23-02](#)) by Karie Oakes and Terri Cummings of the Planning Director approval of a Water Resource Area permit, Tualatin River Greenway permit, and Flood Management Area permit ([WAP-23-01/WRG-23-01/FMA-23-01](#)) to construct street improvements to Willamette Falls Drive along Fields Bridge Park (821 Willamette Falls Drive).

**Question(s) for Council:**

Should the Council approve the appeal AP-23-02 or deny the appeal and uphold the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01?

**Public Hearing Required:**

Yes

**Background & Discussion:**

The Applicant (City of West Linn) applied on January 5, 2023 for a Water Resource Area permit, Tualatin River Greenway permit, and Flood Management Area permit (WAP-23-01/WRG-23-01/FMA-23-01) to construct street improvements to Willamette Falls Drive along Fields Bridge Park (821 Willamette Falls Drive). The proposed improvements will complement the street improvements to be installed on the north side by the West Linn-Wilsonville School District as a result of the City's approval of the new middle school that is currently under construction. The proposed street improvements would provide increased safety for pedestrians and cyclists along one of the City's busiest minor arterials. The proposed improvements would include grade-separated sidewalks and cycle-tracks to improve safety for all users.

Portions of the proposed street improvements will impact water resource areas associated with riparian wetlands, will impact the 100-year floodplain, and will impact the Tualatin River Greenway in West Linn. These impacts are required to be reviewed and mitigated per Chapters 27, 28, and 32 of the Community Development Code (CDC). The initial review and decision-making authority is assigned to the Planning Director by CDC Chapter 99.060.A(o,r,t).

The application was found incomplete on February 3, 2023. Additional information was submitted by the Applicant on February 22, 2023 and March 9, 2023. Planning staff deemed the application complete on March 14, 2023. Planning staff provided notice as required by Community Development Code (CDC) Chapter 99, with the 20-day comment period ending on April 4, 2023.

Planning staff received a total of seven written comments from four individuals and one organization and provided written responses (see Agenda Bill Attachment 1 pages 3 to 7). Planning staff reviewed the application against the applicable criteria, provided written findings, and approved the application on April 20, 2023 with 15 Conditions of Approval.

The Appellants submitted a timely appeal of the decision on May 4, 2023. No specific reason or applicable criteria was identified as the grounds for the appeal, simply the application failed to meet certain criteria for approval (see Agenda Bill Attachment 2).

#### Appeal Hearing Responsibility

The City Council is assigned the responsibility to hear an appeal of a Planning Director decision by CDC 99.060.C(2).

#### Appeal Applicable Criteria

The applicable criteria for this appeal are CDC Chapters 11, 13, 27, 28, 32, and 99. Agenda Bill Attachment 1 is the Planning Director Decision approving the application. Attachment 1 contains all applicable criteria, staff findings, and conditions of approval that support the approval.

#### Appeal Hearing Process

Appeal hearings in the City of West Linn are de novo, meaning new information can be submitted for consideration (CDC 99.280). An application for appeal also does not require the Appellant to identify the grounds for appeal or the applicable criteria that were misapplied. (CDC 99.250) These are the rules this appeal hearing must follow, but the Council may wish to revisit the rules in the near future. The current process has inefficiencies in that the Council, and staff, is placed in a position of potentially not knowing why an appeal has been filed until the public hearing has been opened and testimony taken. This eliminates the ability of staff to prepare a report outlining the information that is important for the Council to consider.

The Appellant's appeal application (Agenda Bill Attachment 2) did not identify specific reasons or applicable criteria as grounds for the appeal, but the Appellants both submitted written comment, which can be found in (see Agenda Bill Attachment 1 pages 3 to 7).

#### **Budget Impact:**

None

#### **Sustainability Impact:**

None

#### **Council Goal/Priority:**

Not related to a Council goal

**Council Options:**

1. Uphold the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 by denying the appeal (AP-23-02).
2. Modify the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 and deny the appeal (AP-23-01).
3. Overturn the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 by approving the appeal (AP-23-01), thus denying the proposal.

**Staff Recommendation:**

Staff recommends denial of the appeal (AP-23-02) based on the findings contained in Agenda Bill Attachment 1 (WAP-23-01/WRG-23-01/FMA-23-01).

**Potential Motion:**

1. Move to tentatively deny the appeal AP-23-02 and **uphold** the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 and direct staff to bring back findings for adoption.
2. Move to tentatively deny the appeal AP-23-02 and **uphold** the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 with the following modifications (***list modifications***), and direct staff to bring back findings for adoption.
3. Move to make a tentative decision to approve the appeal AP-23-02, thereby **overturning** the Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01 for the following reasons (***list reasons***), and direct staff to bring back findings for adoption.

**Attachments:**

1. [Planning Director approval of WAP-23-01/WRG-23-01/FMA-23-01, dated April 20, 2023](#) (hyperlink)
2. Appellant application AP-23-02, dated May 4, 2023.
3. AP-23-02 Affidavit and Notice Packet.



Planning & Development • 22500 Salamo Rd #1000 • West Linn, Oregon 97068  
Telephone 503.656-3535 • westlinnoregon.gov

### DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>D. WYSS</i>	PROJECT NO(S). <i>AP-23-02</i>	PRE-APPLICATION NO.
NON-REFUNDABLE FEE(S) <i>\$400</i>	REFUNDABLE DEPOSIT(S) <i>-</i>	TOTAL <i>\$400</i>

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

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Annexation (ANX)               | <input type="checkbox"/> Final Plat (FP)                        | <input type="checkbox"/> Subdivision (SUB)                               |
| <input checked="" type="checkbox"/> Appeal (AP)         | <input type="checkbox"/> Flood Management Area (FMA)            | <input type="checkbox"/> Temporary Uses (MISC)                           |
| <input type="checkbox"/> CDC Amendment (CDC)            | <input type="checkbox"/> Historic Review (HDR)                  | <input type="checkbox"/> Time Extension (EXT)                            |
| <input type="checkbox"/> Code Interpretation (MISC)     | <input type="checkbox"/> Lot Line Adjustment (LLA)              | <input type="checkbox"/> Right of Way Vacation (VAC)                     |
| <input type="checkbox"/> Conditional Use (CUP)          | <input type="checkbox"/> Minor Partition (MIP)                  | <input type="checkbox"/> Variance (VAR)                                  |
| <input type="checkbox"/> Design Review (DR)             | <input type="checkbox"/> Modification of Approval (MOD)         | <input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP) |
| <input type="checkbox"/> Tree Easement Vacation (MISC)  | <input type="checkbox"/> Non-Conforming Lots, Uses & Structures | <input type="checkbox"/> Water Resource Area Protection/Wetland (WAP)    |
| <input type="checkbox"/> Expediated Land Division (ELD) | <input type="checkbox"/> Planned Unit Development (PUD)         | <input type="checkbox"/> Willamette & Tualatin River Greenway (WRG)      |
| <input type="checkbox"/> Extension of Approval (EXT)    | <input type="checkbox"/> Street Vacation                        | <input type="checkbox"/> Zone Change (ZC)                                |

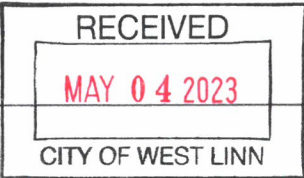
Pre-Application, Home Occupation, Sidewalk Use, Addressing, and Sign applications require different forms, available on the website.

<b>Site Location/Address:</b> 823 Willamette Falls DR West Linn, OR 97068 Project ID WAP-23-01/WRG-23-01/FMA-23-01	Assessor's Map No.:
	Tax Lot(s):
	Total Land Area:

**Brief Description of Proposal:**  
Roadway improvements to Willamette Falls Drive along Fields Bridge Park, extension of the park trail to Brandon Place, and construction of a new stormwater facility in the park.

<b>Applicant Name*:</b> Address: Karie Oakes City State Zip: 1125 Marylhurst DR West Linn, OR 97068	Phone: Email: 503-675-9697 kariookee@aol.com 503-515-4751 teric518@gmail.com
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<b>Owner Name</b> (required): Address: City State Zip:	Phone: Email:
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<b>Consultant Name:</b> Address: City State Zip:	Phone: Email:
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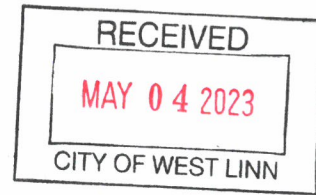
- Application fees are non-refundable (excluding deposit). Applications with deposits will be billed monthly for time and materials above the initial deposit. **\*The applicant is financially responsible for all permit costs.**
- The owner/applicant or their representative should attend all public hearings.
- A decision may be reversed on appeal. The decision will become effective once the appeal period has expired.
- Submit this form, application narrative, and all supporting documents as a single PDF through the [Submit a Land Use Application](https://westlinnoregon.gov/planning/submit-land-use-application) web page: <https://westlinnoregon.gov/planning/submit-land-use-application>

The undersigned property owner authorizes the application and grants city staff the **right of entry** onto the property to review the application. Applications with deposits will be billed monthly for time and materials incurred above the initial deposit. The applicant agrees to pay additional billable charges.

*Karie Oakes*  
*Shawn Manning* 05/04/2023  
 Applicant's signature Date

Owner's signature (required) Date

Teri Cummings  
2190 Valley CT  
West Linn, OR 97068



Karie Oakes  
1125 Marylhurst DR  
West Linn, OR 97068

City of West Linn Planning and Development  
22500 Salamo RD  
West Linn, OR 97068  
May 4, 2023

This is notice of an appeal to City Council of the Planning Director decision for Project ID: WAP-23-01/WRG-23-01/FMA-23-01, otherwise identified as 821 Willamette Falls Drive Willamette River Greenway, Water Resource Area Protection, and Flood Management Area Permits for Improvements to Willamette Falls Drive.

The Planning Director decision is appealable to the City Council pursuant to West Linn Community Development Code Chapter 99.250.

We each submitted written comments to the Planning Director that are in the record of this application. Karie provided her name and address in her comments and Teri provided her name and email address in her comments. This qualifies each of us as a person with standing to appeal.

We appeal the decision because certain criteria for approval of the permits were not met.

The required \$400 fee to appeal is attached hereto, along with the application form submitted before the deadline to appeal on this day, May 4, 2023, at 5:00 pm.

**AFFIDAVIT OF NOTICE  
TYPE A  
CITY COUNCIL DECISION**

We, the undersigned, 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-23-02

Applicant's Name: **Karie Oakes and Teri Cummings**

Development Address: Appeal of WAP/WRG/FMA for improvements to WFD near 821 Willamette Falls Drive

**City Council Decision no earlier than**

**MAILED NOTICE**

Notice of Upcoming Hearing was mailed at least 20 days before the hearing, per Section 99.080 of the CDC to:

Karie Oakes, appellant	5/17/23	<i>Lynn Schroder</i>
Teri Cummings, appellant	5/17/23	<i>Lynn Schroder</i>
City of West Linn, Erich Lais	5/17/23	<i>Lynn Schroder</i>
Pacific Habitat Services	5/17/23	<i>Lynn Schroder</i>
Property owners within 500ft of the site perimeter	5/17/23	<i>Lynn Schroder</i>
All Neighborhood Associations	5/17/23	<i>Lynn Schroder</i>
Parties of Record for WAP-23-01	5/17/23	<i>Lynn Schroder</i>
Tualatin Riverkeepers	5/17/23	<i>Lynn Schroder</i>
John McCabe	5/17/23	<i>Lynn Schroder</i>
West Linn-Wilsonville School District	5/17/23	<i>Lynn Schroder</i>
Betty Reynolds	5/17/23	<i>Lynn Schroder</i>
US Army Corps of Engineers	5/17/23	<i>Lynn Schroder</i>
Oregon Division of State Lands	5/17/23	<i>Lynn Schroder</i>
Clackamas County Planning Department	5/17/23	<i>Lynn Schroder</i>
Oregon Dept of Fish & Wildlife	5/17/23	<i>Lynn Schroder</i>
Metro	5/17/23	<i>Lynn Schroder</i>

**EMAIL Notice to Appellant, Applicant and PC Agenda List 5/17/23**

**EMAILED NOTICE**

Notice of Upcoming Planning Manager Decision was emailed at least 20 days before the decision date to:

All Neighborhood Associations	5/17/23	<i>Lynn Schroder</i>
City of West Linn, applicant	5/17/23	<i>Lynn Schroder</i>
Karie Oakes, appellant	5/17/23	<i>Lynn Schroder</i>
Teri Cummings, appellant	5/17/23	<i>Lynn Schroder</i>

**WEBSITE**

Notice was posted on the City's website at least 20 days before the hearing.

5/17/23	<i>Lynn Schroder</i>
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**TIDINGS**

Notice was posted in the West Linn Tidings at least 10 days before the hearing, per Section 99.080 of the CDC.

5/24/23	<i>Lynn Schroder</i>
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**SIGN**

A sign was posted on the property at least 10 days before the hearing, per Section 99.080 of the CDC.

5/25/23	<i>Darren Wyss</i>
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**STAFF REPORT**

The staff report was posted on the website and provided to the applicant and Planning Commissioners at least 10 days before the hearing, per Section 99.040 of the CDC.

5/25/23	<i>Darren Wyss</i>
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**FINAL DECISION**

Notice of Final Decision was mailed to the applicant, all parties with standing, and posted on the City's website, per Section 99.040 of the CDC.

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**CITY OF WEST LINN CITY COUNCIL  
PUBLIC HEARING NOTICE  
FILE NO. AP-23-02**

The West Linn City Council will hold a hybrid public hearing on **Tuesday, June 6, 2023 at 6:00 pm** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider an appeal by Karie Oakes and Terri Cummings of WAP-23-01/WRG-23-01/FMA-23-01, a Planning Director decision to approve Water Resource Area, Tualatin River Greenway, and Flood Management Area permits for transportation improvements along Fields Bridge Park (821 Willamette Falls Drive).

The appellant stated grounds for appeal is certain criteria for approval of the permits were not met.

The City Council will decide the appeal based on applicable criteria in Community Development Code (CDC) Chapters 11, 13, 27, 28, 32, and 99. The CDC approval criteria are available for review on the City website <http://www.westlinnoregon.gov/cdc> or at City Hall and the library.

The appeal is a de novo hearing and not limited to the stated grounds for the appeal. The City Council may consider all relevant issues. All evidence presented to the lower authority shall be considered and given equal weight as evidence presented on appeal. The City Council may affirm, reverse, or modify the decision which is the subject of the appeal.

You have been notified of this appeal as required by CDC Chapter 99.140 and 99.260.

The appeal is posted on the City's website, <https://westlinnoregon.gov/planning/821-willamette-falls-drive-appeal-willamette-river-greenway-water-resource-area-protection> The appeal application and record are available for inspection at City Hall at no cost. Copies may be obtained at a reasonable cost. The staff report will be posted on the website and available for inspection at no cost, or copies may be obtained at a reasonable cost, at least ten days before the hearing.

The hearing will be conducted according to CDC Section 99.170 in a hybrid format with some Councilors, staff, presenters, and members of the public attending remotely via Webex and others attending in-person at City Hall. The public can watch the meeting online at <https://westlinnoregon.gov/meetings> or on Cable Channel 30.

**Anyone wishing to present written testimony for consideration shall submit all material before 12:00 pm on June 6, 2023.** Written comments may be submitted to [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) or mailed to City Hall.

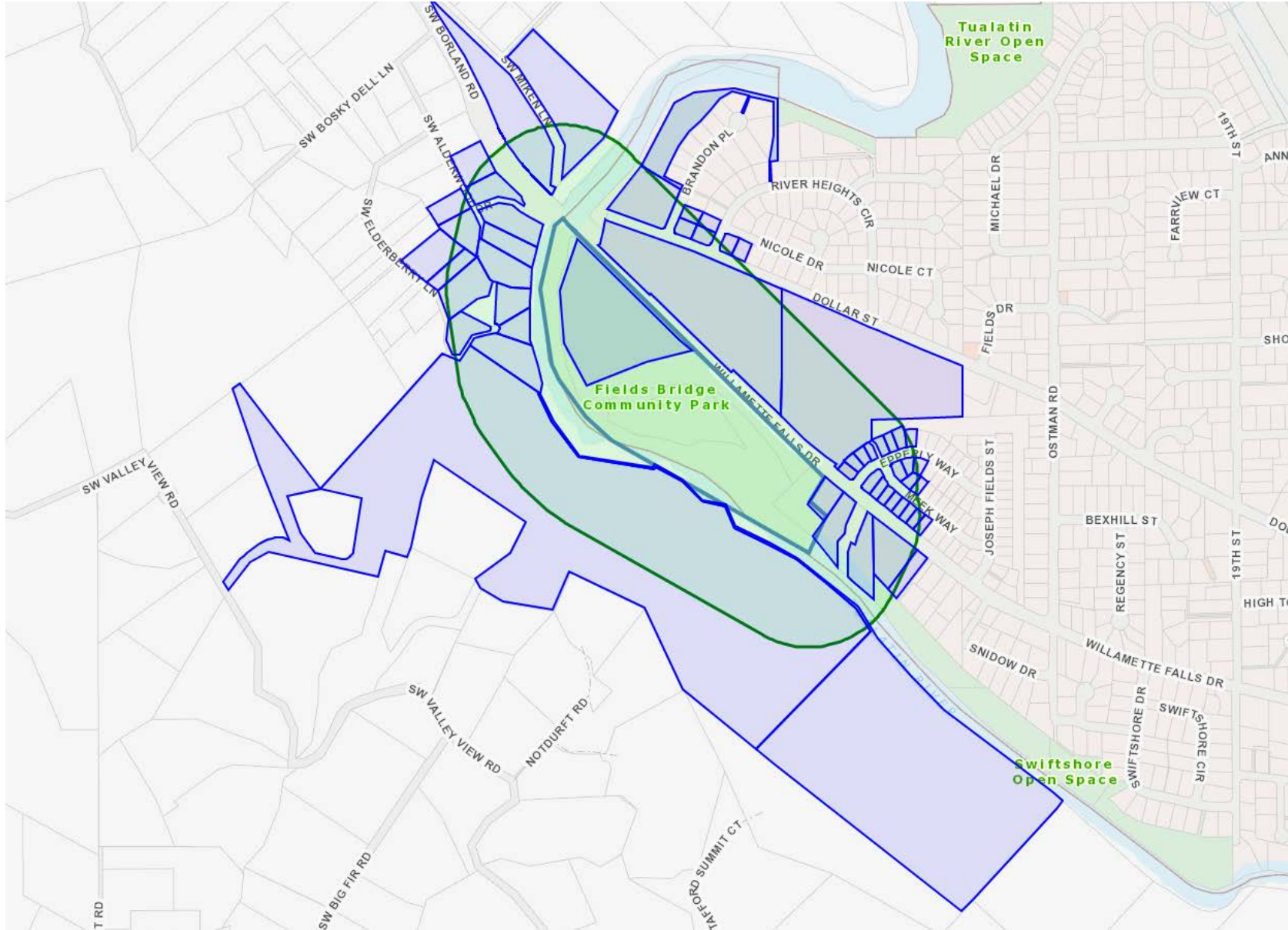
Those who wish to participate remotely should complete the speaker form at <https://westlinnoregon.gov/citycouncil/meeting-request-speak-signup> before 4:00 pm on the meeting day to receive an invitation to join the meeting. Virtual participants can log in through a computer, mobile device, or call in.

**It is important to submit all testimony in response to this notice.** All comments submitted for consideration of this appeal should relate specifically to the applicable criteria. Failure to raise an issue in a hearing, in person, or by letter, or failure to provide sufficient specificity to afford the decision-maker an opportunity to respond to the issue, precludes appeal to the Oregon Land Use Board of Appeals based on that issue.

For additional information, please contact Darren Wyss, Planning Manager, City Hall, 22500 Salamo Rd., West Linn, OR 97068, 503-742-6064 or [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) for additional information.



AP-23-02 NOTIFIED PROPERTIES WITHIN 500 FEET





**NOTICE OF UPCOMING  
CITY COUNCIL APPEAL HEARING**

**PROJECT # AP-23-02  
MAIL: 5/17/23 TIDINGS: 5/24/23**

**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.