

## WEST LINN PLANNING COMMISSION

### FINAL DECISION NOTICE

PUD-09-01/SUB-09-01/WAP-09-02

#### **IN THE MATTER OF THE PROPOSAL OF A SIX-LOT SINGLE-FAMILY PUD SUBDIVISION, WITH A WATER RESOURCES AREA PERMIT DUE TO FERN CREEK ON SITE, AT 19650 SUNCREST DRIVE**

At their meeting of June 17, 2009, the West Linn Planning Commission held a public hearing to consider the request by Icon Construction to approve a 6-lot planned unit development (PUD) subdivision at 19650 Suncrest Drive. This required PUD and subdivision permits and also required a Water Resources Area permit due to the presence of Fern Creek on site. The approval criteria for PUD are found in Chapter 24 of the CDC. The approval criteria for Water Resources Area permit are found in Chapter 32 of the CDC. The approval criteria for subdivision are found in Chapter 85 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing commenced with a staff report presented by Tom Soppe, Associate Planner. Kirsten Van Loo of Emerio Design presented for the applicant. Alice Richmond spoke in favor of the application. Tom Neff and Daria Knowles provided neutral testimony. Karie Oakes, Brandy Sarget, Mike Gokey, Matthew Knowles, and Lynn Fox spoke against the application. Michael Robinson of Perkins Coie, representing the applicant, agreed to do a rebuttal at the continued hearing if the hearing was to be continued.

A motion was made and approved to continue the application to the hearing date of July 29, 2009. After two subsequent cancellations and renoticings, the hearing reconvened on October 7, 2009.

At the October 7 hearing, Mr. Soppe again gave the staff presentation. Ms. Van Loo again presented for the applicant. Ms. Richmond spoke in favor of the application. Ms. Fox and Lynn Pettitt provided neutral testimony. Ms. Sarget and Ms. Oakes testified against the application. A motion was made and approved to close the public hearing and continue to the Planning Commission meeting of October 21, 2009, giving the public one week in the meantime to comment on the new map showing tracts B and C and giving the applicant one week to rebut public comments on this matter.

At the October 21 meeting, Chair Babbitt opened the hearing. Ms. Van Loo gave the applicant's rebuttal. Mr. Soppe gave the staff presentation. The hearing was closed. Motions were passed to approve the application with three additional findings, the conditions of approval as presented in the October 21 staff memo, additional modifications to two existing conditions, and one additional condition.

The additional findings are as follows:

Additional Finding 1. Condition of Approval 4 should be modified to specify that it is the dry utilities that need to be undergrounded, and that it is along the project frontage and within the project that this needs to occur, along with any nearby areas where the utilities are directly affected by the development. This will avoid interpretations resulting in the applicant inappropriately being made to underground utilities further away from the site that are not directly affected by the development. Also, there may be nearby areas where the undergrounding of site utilities compels the undergrounding of nearby utilities for practical reasons. The modifications to this condition will ensure these utilities are undergrounded also. The condition shall specify dry utilities, as wet utilities are already located underground or under pavement.

Additional Finding 2. For aesthetic reasons Condition of Approval 15 shall specify that the applicant shall construct a split rail fence along the border of Tract C, rather than giving the applicant a choice between this and a 6-foot wooden fence.

Additional Finding 3. Due to the need for the homeowners' association to successfully maintain Tract C and other shared aspects of the development, it is necessary to have a condition that ensures CC&R language legally meets the requirements of all conditions in this decision.

The approved conditions of approval are as follows:

1. Tract A and the storm water facility in Tract A shall be private, and the applicant shall enter into a maintenance agreement with the City for the facility. The storm water line under the private street shall be private.
2. A 20-foot wide public trail easement extending north-to-south through the site shall be provided on the final plat within Tract B, east of Fern Creek. The exact location of the easement shall be determined cooperatively between the applicant and the City. The city shall be responsible for maintenance of the trail easement.
3. The applicant shall mitigate for the loss of the 5 trees determined to be significant by the City Arborist that are proposed for removal. These trees shall be mitigated for on an inch per inch basis per CDC Section 55.100(B) (2) (f), preferably on site. The City Arborist shall determine preferred on-site locations. If on site mitigation is not possible for all mitigation planting, the applicant shall work with the Parks and Recreation Department to mitigate at an appropriate city-owned site. Street trees shall not count towards the mitigation required in this condition.
4. All new and existing dry utilities along the project frontage, and that are affected by the development, shall be placed underground.
5. Houses on lots 1-3 shall have front facades oriented to Suncrest Drive. This requirement shall be recorded on the deed for lots 1-3
6. Turning radii on the private street/shared driveway turnaround shall be at least 25 feet.

7. The applicant shall be responsible for funding waterline upsizing along the subject site's frontage. The upsizing requirement is a Capital Improvement Project in the 2008 Water System Master Plan and SDC eligible at 56%. It shall be the City's option whether to contract directly for the improvement or have the developer contract for the work. If the City decides to upsize a greater length of water line replacement than the site frontage, the applicant will still only be responsible for funding the portion along the site frontage.
8. The private street/shared driveway depict on the applicant's site plan dated October 8, 2009 shall be built to City street structural standards.
9. The applicant shall commission a lighting study of the project's frontage, and provide this to the Engineering Department who will use it to determine the street lighting needed to meet the City's lighting standards. If needed, the applicant will install street lights that meet City lighting standards.
10. The applicant shall perform fire flow tests, install hydrants, and install "No Parking" signs to the satisfaction of TVFR.
11. Prior to recording of the subdivision plat, the applicant shall remove all Himalayan Blackberry, Garlic Mustard and English Ivy on the ground within proposed Tracts B and C.
12. The front yard setbacks of lots 1-3 shall be those of the underlying base zone R-10, which is 20 feet (15 feet to a porch) as measured from the front property line after the 10-foot ROW dedication.
13. The applicant shall provide 5-foot utility easement along the front and rear of each lot in areas not already covered by the proposed utility easements overlaid on the proposed private street.
14. On Tract B, a conservation easement, in a form approved by the Planning Director, shall be established, subject to the requirements of ORS Chapter 271, for the benefit of the City of West Linn which forbids all development of any kind, except for a trail within the trail easement described in Condition of Approval 2. The City will be responsible for the maintenance of the area contained in the conservation easement. This conservation easement and the use limitation in this condition shall be placed on the final plat. In the event the City does not accept the conservation easement, this condition shall be satisfied by dedication of a conservation easement in favor of the homeowners' association, which shall be responsible for maintenance outside of the trail easement, and subject to the use restriction in this condition. Tract B shall be dedicated to the homeowner's association.
15. A conservation easement, in a form approved by the Planning Director, shall be established for Tract C, identified on the proposed plat map dated October 8, 2009, for the benefit of the homeowners' association. This conservation easement shall forbid development of any kind, with the exception of the construction and maintenance of the fence required below, and require the homeowners' association to maintain the area consistent with City standards.

Homeowners shall be prohibited from storing materials, cutting or removal of trees (except hazard trees) or native vegetation and dumping yard waste or other debris in Tract C. The City shall have the right to enter and maintain the easement area, and/or to place a lien on the property, in the event the homeowners' association fails to maintain the area to City standards. A split-rail fence shall be constructed along the western boundary of Tract C. One or more signs, as necessary to be readily visible to the owners of abutting lots 4-6, shall be attached to the fence identifying the use restriction specified above. The homeowners association shall be responsible for the maintenance of the fence and any signs. This conservation easement and prohibition of development of any kind within Tract C shall be placed on the final plat. Tract C shall be dedicated to the homeowner's association.

16. The applicant shall preserve the laurel hedge along the border of the subject property and 1810 Carriage Way, and shall protect the health and root systems as best as possible throughout the construction process.
17. This approval shall expire 3 years from the effective date of this decision.
18. Half-street improvements shall include on-street parking on the east side of Suncrest Drive in lieu of a bike lane, without changing the proposed width of the street pavement.
19. The final plat shall be consistent with the approved preliminary plat dated October 8, 2009, except as modified to comply with these conditions.
20. CC&R language shall be reviewed by the City Attorney to ensure it meets all requirements of the conditions of approval.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.



MICHAEL BABBITT, CHAIR  
WEST LINN PLANNING COMMISSION

10-27-2009  
DATE

Mailed this 30 day of October, 2009.

Therefore, this decision becomes final at 5 p.m., November 13, 2009.