


Memorandum

Date: April 28, 2009

To: Chris Jordan, City Manager

From: Chris Kerr, Acting Planning Director 

Subject: City Council call-up of the Holiday Inn Express application AP-09-02; May 11, 2009 hearing

AP-09-02 is a City Council call-up of the Planning Commission approval of DR-08-01/VAR-08-01/WAP-08-01, a Class II Design Review, Water Resources Area permit, and Class II Variance application for a Holiday Inn Express at 2400-50 Willamette Falls Drive. This item was continued at the March 30, 2009 City Council hearing to the May 11, 2009 meeting. After the call-up was initiated, staff determined that the transient lodging use requires a Conditional Use Permit in the General Commercial (GC) zone. Although the Conditional Use Permit application was not heard by the Planning Commission, the City Council determined at their March 30 meeting that they have the authority to consolidate review under the provisions of CDC 99.070 Consolidation of Proceedings. The City Council will be the initial hearing body for the CUP application.

The May 11 City Council hearing will be a consolidated de novo public hearing on both CUP-09-01 and AP-09-02, but the Council will be voting on each application separately. Because the CDC requires a CUP for the proposed use, the Council will be voting on CUP-09-01 first, and will then vote on the call-up application AP-09-02 under review. Currently staff continues to recommend approval for AP-09-02 and recommends approval for CUP-09-01 as well. However, it is the City's position that the hotel cannot be approved without a CUP. Therefore, regardless of staff's recommendation on either individual application, if the City Council does not grant approval of the requested CUP, staff will subsequently recommend the AP-09-02 be denied as well.

Conditions of Approval:


Staff is recommending the same 11 conditions of approval that were approved by the Planning Commission, with one additional condition related to the mitigation plan. One of the concerns related to staff by Councilor Kovash regarded how the required sidewalk installation from Condition of Approval 2 "...extends into the WRA. If that is the case additional WRA would be disturbed..." In the original November 2008 staff report for DR-08-01/VAR-08-01/WAP-08-01, Conditional of Approval 6 required that the final mitigation plan be based on the square footage of developed transition area and water resource area in the final site plan. This condition was not included in subsequent iterations of the staff report due to an updating of the mitigation plan after the November 5 Planning Commission meeting. However because of subsequent modifications to the site plan, including but not limited to the required sidewalk installation, a new version of the above condition of approval is now recommended to ensure the final mitigation plan is based on the final approved site plan. The proposed conditions are as follows:

1. The applicant shall plant only native plants in the stormwater treatment facility proposed on site and in the raingarden between the sidewalk and street (see Condition 2).
2. The applicant shall install an 8-foot wide sidewalk along Willamette Falls Drive, with a minimum 6-foot wide raingarden swale strip between the sidewalk and the street. The sidewalk shall be connected to the existing sidewalk to the east. Appropriate street trees and street lighting shall be planted in the raingarden swale strip. Applicant shall provide half-street improvements to the satisfaction of the Engineering Department. The infield implementation of the actual half-street construction shall be determined by the City Engineer.
3. A 6 foot wide sidewalk shall be installed connecting the building to Willamette Falls Drive.
4. The existing drainageway culvert under the existing driveway shall be replaced to the satisfaction of the Sewer and Storm Division of the Public Works Department.
5. The water line shall be installed to allow for eventual looping west to 8th Court. This and other aspects of connecting the site to the water system shall be done to the satisfaction of the Water Division of the Public Works Department.
6. The gravel parking spaces at the southwest corner of the site shall no longer be used for parking, as these areas will be occupied partly by vegetative buffer restoration area and partially by right of way improvements. Up to 9 spaces at the west end of the proposed parking lot may be shared with the law office currently using the gravel parking area to be abandoned. Any parking sharing agreed to in the future by the applicant must conform to the provisions of the CDC, including Chapter 46.
7. All pervious pavement in the parking lot shall be constructed of hard-surfaced materials, not gravel.
8. All areas of the site not proposed for development that are within the drainageway, wetlands, and their 100-foot transition areas shall be placed in a conservation easement protecting them from further development.
9. Alternate methods of construction mitigating the limited fire access shall be approved by the Building Official and the TVFR Fire Marshal at the time of building permit issuance. The building permit shall not be issued unless all alternative methods deemed necessary by the Building Official and the Fire Marshal are proposed by the applicant in the building permit submittal.
10. The section of the driveway between Willamette Falls Driveway and the fork in the driveway shall be 24 feet wide. The driveway approach shall be designed and constructed per the current City of West Linn Public Works standards.
11. The applicant shall provide the Engineering Department a drainage plan showing that runoff from the sidewalk on Willamette Falls Drive will sufficiently drain to the raingarden in the planter strip.
12. **The mitigation plan implemented at the building permit stage shall be based on the square footage of disturbed water resource area and disturbed water resource transition area in the final approved site plan.**

Memorandum

Date: April 28, 2009

To: Chris Jordan, City Manager

From: Chris Kerr, Acting Planning Director 

Subject: Holiday Inn Express applications (AP-09-02 and CUP-09-01) new correspondence and final Conditions of Approval list

NOTE: THIS IS THE SAME CORRESPONDENCE AND RECOMMENDED CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT CUP-09-01

The previous memo with attached new correspondence regarding AP-09-02 was dated March 27, 2009. Therefore this memo introduces all correspondence received or relayed regarding AP-09-02 and/or the new conditional use application for Holiday Inn Express, CUP-09-01, since March 27. All such correspondence is attached.

As can be seen in the attached correspondence, one of the concerns related by Councilor Kovash regarded how the required sidewalk installation from Condition of Approval 2 of AP-09-02 "...extends into the WRA. If that is the case additional WRA would be disturbed..." In the original November 2008 staff report for DR-08-01/VAR-08-01/WAP-08-01, Conditional of Approval 6 required that the final mitigation plan be based on the square footage of developed transition area and water resource area in the final site plan. This condition was not included in subsequent iterations of the staff report due to an updating of the mitigation plan after the November 5 Planning Commission meeting. However because of subsequent modifications to the site plan, including but not limited to the required sidewalk installation discussed by Councilor Kovash, the above condition of approval should be brought back to ensure that the final mitigation plan is based on the final approved site plan.

Therefore, below is the final recommended list of conditions of approval for AP-09-02, including a new version of the above discussed condition as Condition of Approval 12 :

1. The applicant shall plant only native plants in the stormwater treatment facility proposed on site and in the raingarden between the sidewalk and street (see Condition 2).
2. The applicant shall install an 8-foot wide sidewalk along Willamette Falls Drive, with a minimum 6-foot wide raingarden swale strip between the sidewalk and the street. The sidewalk shall be connected to the existing sidewalk to the east. Appropriate street trees and street lighting shall be planted in the raingarden swale strip. Applicant shall provide half-street improvements to the satisfaction of the Engineering Department. The infield implementation of the actual half-street construction shall be determined by the City Engineer.

3. A 6 foot wide sidewalk shall be installed connecting the building to Willamette Falls Drive.
4. The existing drainageway culvert under the existing driveway shall be replaced to the satisfaction of the Sewer and Storm Division of the Public Works Department.
5. The water line shall be installed to allow for eventual looping west to 8th Court. This and other aspects of connecting the site to the water system shall be done to the satisfaction of the Water Division of the Public Works Department.
6. The gravel parking spaces at the southwest corner of the site shall no longer be used for parking, as these areas will be occupied partly by vegetative buffer restoration area and partially by right of way improvements. Up to 9 spaces at the west end of the proposed parking lot may be shared with the law office currently using the gravel parking area to be abandoned. Any parking sharing agreed to in the future by the applicant must conform to the provisions of the CDC, including Chapter 46.
7. All pervious pavement in the parking lot shall be constructed of hard-surfaced materials, not gravel.
8. All areas of the site not proposed for development that are within the drainageway, wetlands, and their 100-foot transition areas shall be placed in a conservation easement protecting them from further development.
9. Alternate methods of construction mitigating the limited fire access shall be approved by the Building Official and the TVFR Fire Marshal at the time of building permit issuance. The building permit shall not be issued unless all alternative methods deemed necessary by the Building Official and the Fire Marshal are proposed by the applicant in the building permit submittal.
10. The section of the driveway between Willamette Falls Driveway and the fork in the driveway shall be 24 feet wide. The driveway approach shall be designed and constructed per the current City of West Linn Public Works standards.
11. The applicant shall provide the Engineering Department a drainage plan showing that runoff from the sidewalk on Willamette Falls Drive will sufficiently drain to the raingarden in the planter strip.
12. The mitigation plan implemented at the building permit stage shall be based on the square footage of disturbed water resource area and disturbed water resource transition area in the final approved site plan.

Soppe, Tom

From: Kerr, Chris
Sent: Monday, April 27, 2009 1:42 PM
To: Soppe, Tom
Subject: FW: 120 day clock confirmation

For the record – and especially- any response from them

From: Kerr, Chris
Sent: Monday, April 27, 2009 1:42 PM
To: 'vipul patel'; 'David@meadsmith.com'
Cc: bill.monahan@jordanschrader.com
Subject: 120 day clock confirmation

Vic: For the record, I need to clear up a point regarding the 120 day clock:

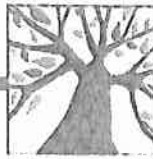
Upon reviewing the DVD of the City Council meeting of March 30th, we have confirmed that the 120 day clock was extended to May 22, 2009 (not May 21st). This was offered by the applicant and agreed to by the Council at the hearing. We have traded previous correspondence and had discussions stating that the date was May 21, 2009. For the record, and to make certain that there are no misunderstandings about this - I will need you to confirm that the 120 day clock was extended to May 22nd in writing (this can be an email stating that you agree).

Thanks – call me if you disagree and cannot provide an email to confirming that this is correct date.

Chris Kerr
Senior Planner

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

MAILED
4-23-09 wj



West Linn

April 23, 2009

Mr. David P. Smith
Mead Smith PC
1672 SW Willamette Falls Drive, Suite D
West Linn, OR 97068

RE: Holiday Inn Express, AP 09-02 and Conditional Use Application

Mr. Smith:

In reference to your letter dated April 20, 2009 addressed to me, I wanted to confirm for you that your extension of the 120 day clock at the March 30th Council meeting did not waive any rights or claims against the City that you might have.

However, I do want to clarify the City's position on two points made in your letter:

1. You ask that I, "let you know if there are any materials the City will require in connection with the CUP submittal that has not already been provided". I have issued a letter stating that the application was deemed 'complete' for processing purposes and that the CUP application will be advertised and scheduled for the May 11th Council meeting. But please be aware that the burden of proof is always on the applicant, not City Staff, to address all approval criteria and to place evidence into the record showing that the approval criteria have been met to the satisfaction of the decision making body. The Council is an independent decision maker and may require more details to be convinced that the evidence demonstrates that the application can be approved. I have provided your clients, in writing, with a summary of questions and concerns provided by the City Council as well as a letter with specific concerns raised by the Deputy Fire Marshall of TVF&R; I also strongly recommended that they provide a detailed response to these since they may expect to hear these concerns raised at the public hearing. I have not received a response to either of these items.
2. With regard to your position that, "the January 22, 2009 final decision is in fact final, and has not been appealed, or called up for review, according t the CDC"; we respectfully disagree. The call up for review was accomplished in accordance with the CDC by the City Council within the timeframe afforded to them following an established process.



CITY OF
West Linn

I am always happy to discuss via telephone or a meeting any items related to the application.

Sincerely,

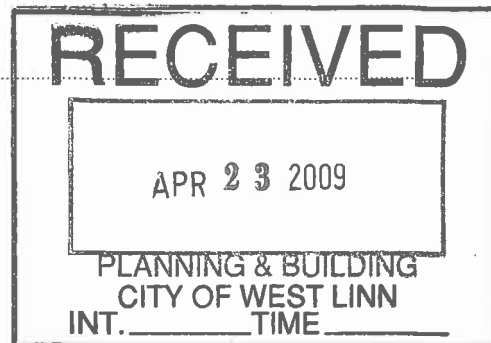
A handwritten signature in black ink, appearing to read 'CK', is written over a light blue horizontal line.

Chris Kerr, AICP
Acting Planning Director

cc: Vic Patel; VK Northwest, Inc. 12700 SE McLoughlin Blvd., Milwaukie, OR 97222
Brad Kaul; Steven P. Elkins Architects, Inc., 11000 NE 33rd Pl., Ste. 101, Bellevue, WA 98004
Chris Jordan; City Manager, City of West Linn

Soppe, Tom

From: GARY [REDACTED]
Sent: Thursday, April 23, 2009 9:48 AM
To: Kerr, Chris; Soppe, Tom; Planning Commission
Cc: City Council; 'Karie Okee'; Jordan, Chris; Galle, Patti
Subject: RE: Concerns on Consolidated Hearing for Holiday Inn Express



My intent was to inform the City of my concerns and was not necessarily sent for the official record. I assume that in sending this email to the City Council and yourself that it needs to go into the official record because you are compelled to do so? My intent has always been that this application would have been settled by now through earnest collaboration and discussion.

The applicant appears to have really messed this up and took the risk; unwittingly or not, it doesn't matter. Sending this back through the process as stipulated by Chapter 60 would save the Council much headache and grief. I think this Planning Commission is well equipped to deliberate AFTER the applicant has decided to enter into this project in good faith.

Again, how many hotels has this client done? In how many cities has this client built successful projects? Any unsuccessful projects?

And how many has West Linn done?

As with every project, economics are driving this opportunity and the applicant appears to have tried to save money on the front end by cheating on the requirements and playing "dumb". The consultants they hired are professionals and very adept and skilled at what they do. I don't believe for a second that the applicant was cheated out in any meaningful way. This is now an issue of enforcement. The way the City is going about this is wrong and obscene because of the precedent it is setting.

Since we appear to be jumping ahead on economic hardship, how will the City factor the \$100,000 dollar investment on the property? Who will pick up the tab on added congestion in the streets, added pollution into the Willamette, and lost property values of nearby homes IF the project turns out to be an abysmal failure? These are the real issues, partly because 32.090 is poorly contrived and was adopted hastily. How will economic burdens that are taken on by the City Council be factored into our collective tax burden? The potential problems will be costly and the money for this will not come from the nearby trees.

With such an important issue at stake, why are we allowing anybody to leap frog over other well written and proven codes? In this case, not only is staff unwilling to enforce the codes, the City Council is aiding and abetting.

THIS can go into the record, please.

Respectfully, Gary Hitesman

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Thursday, April 23, 2009 9:10 AM
To: GARY; Soppe, Tom; Galle, Patti
Cc: City Council; Karie Okee; jneill@wftvmedia.org; Jordan, Chris
Subject: RE: Concerns on Consolidated Hearing for Holiday Inn Express

Gary - Thanks for your comments-

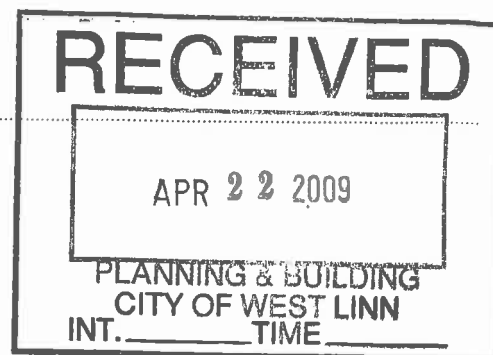
I'll put these into the official record.

(8)

4/23/2009

Soppe, Tom

From: GARY [REDACTED]
Sent: Wednesday, April 22, 2009 3:39 PM
To: Kerr, Chris; Soppe, Tom; Galle, Patti
Cc: City Council; 'Karie Okee'; jneill@wftvmedia.org
Subject: Concerns on Consolidated Hearing for Holiday Inn Express



I recieved notice for the upcoming schedule Appeal No. AP-09-02 & No. CUP-09-01. The questions are mostly rhetorical.

As I have stated, Chapter 19 and Chapter 60 were ignored by applicant and the application is incomplete. It appears that the applicant reviewed the code for compliance and continued with the process at their own risk. The applicant's latest response and inability to submit a bonafide submittal appear to willingly subvert the process in a disengenuous fashion.

I would have hoped that the City had scheduled the May 11 hearing as it did in an effort to afford the applicant the necessary time to meet Chapter 60 and provide the public an opportunity to comment on the applicant's response to the conditional use criteria. Assuming that the process as stated in the CDC was not followed, the discussion will be the first time the public has a chance to comment. With the apparent lack of due process and lack of City oversight and review, I am baffled that the application is being allowed to move forward as advertised.

Although I would like to hold the applicant solely responsible for meeting the burden of proof in this application, I am perplexed at the apparent fluidity and obfuscations that emanate from untimely posted signs and letters in the mail from the City.

I believe the applicant still needs to meet the burden of proof. Is the City willing to waive this requirement? Where in the code does language give such authority to the City Council? Without a Planning Director, does the Interim Planning Director carry all the authority and responsibilities for enforcement? Is the City truly fulfilling all its' obligations in a responsible manner? The application and this "consolidated hearing" appears to push the boundaries of prudent and effective municipal governance and protections to the welfare of West Linn citizens.

Aside from the incomplete application which does not satisfy Chapters 19, 32, 55, 60, and 75, the City's last announcement that the hearing would now be consolidated under new interpretations of Section 99 appears without precedent. A disregard towards Oregon Goal One objectives is also apparent. How come the March 11 meeting was not broadcast at the same time the meeting took place? Will the May 11 meeting be similarly blacked out?

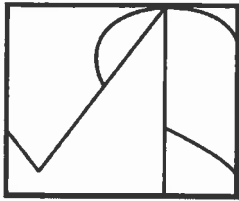
I find the proceedings as advertised without precedent and potentially undermines the appearance of fairness from the City Council. I assume this will all be water under the culvert when the May 11 meeting is continued due to "additional information"? As the notice states; "If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing". Will such a request be honored? Is knowing that the meeting will need to be continued meet the intent of public comment and involvement? Are the previous sins and misinterpretations of legal counsel obsolved in this action?

I hope someone shows up who will know what it is that they are doing. So far, I do not expect that from the City, legal counsel, the applicant, or the public at large, including me. I am relying on the collective council for proper jurisprudence.

Your Planning Commission appears to me to be the only equitable and regulated body that should be hearing this application. Anything else, at best, is a stretch.

(9)

4/22/2009



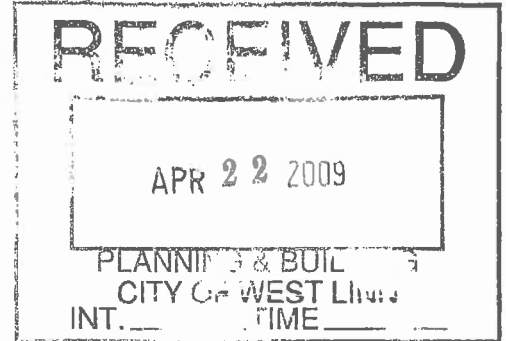
MEAD
SMITH
P.C.

1672 WILLAMETTE FALLS DRIVE, SUITE D
WEST LINN, OREGON 97068
503-636-3660
FAX: 503-636-2797

ATTORNEYS AT LAW

David P. Smith
Admitted: Oregon and Washington
David@meadsmith.com

April 20, 2009



Chris Kerr, Interim Planning Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express Application
2400 Willamette Falls Dr., West Linn, OR 97068

Dear Mr. Kerr:

I am receipt of your April 1, 2009 letter in connection with the above-referenced matter. Thank you for clarifying the City's position in connection with the March 30, 2009 City Counsel hearing. But, for purposes of clarifying your letter, please also note that my client voluntarily granted an extension of the 120-day clock only on the condition that any and all claims against the City were not waived by the voluntary extension, and that my client will not be estopped from pursuing any future claims should they be filed.

Thank you for your offer to meet with me and my client in connection with the CUP submittals. I have discussed this matter with my client, and I understand that they have met with you several times in connection with the CUP submittal, and that from their end, they have been informed that all of the relevant materials required under CDC Chapter 60 have either recently been submitted, or are already part of the original application. In this regard, please let me, and more importantly, my client, know if there are any materials the City will require in connection with the CUP submittal that has not already been provided by VKNW.

Finally, the only note I would have in connection with your letter is that once again, it is my client's position that the January 22, 2009 final decision is in fact final, and has not been appealed, or called up for review, according to the CDC. Accordingly,

4/20/2009

should either one of the applications not be approved, my client may proceed forward with either a mandamus action to compel the City to acknowledge the final decision, or a suit for damages based on the City's mishandling of the applications.

Very truly yours,

A handwritten signature in black ink, appearing to be "David P. Smith", written over a horizontal dashed line.

David P. Smith

DPS:wrr

Soppe, Tom

From: Kerr, Chris
Sent: Friday, April 17, 2009 9:51 AM
To: vipul patel; kaul931@hotmail.com
Cc: bradkaul@spe-architects.com; Soppe, Tom
Subject: FW: File Review CUP-09-01
Attachments: CUP 09-01 HEX.doc

Vic/Brad – I am forwarding you the response I received from TVFR on the Conditional Use application. She has included the same comment letter that was previously provided and is still identifying areas of concern. I believe this question was included in the letter I provided to you that includes Council concerns. You have previously indicated that the plans are in compliance with the Fire Code. I would encourage you to clarify, in writing on the record, how you are addressing TVFR's issues. If you can provide them prior to the 22nd, I can include them in my Staff Report.

Also, can you confirm which email address is appropriate for Brad K.

Thanks

*Chris Kerr
723-2538*

From: Mohling, Karen A. [mailto:Karen.Mohling@tvfr.com]
Sent: Thursday, April 16, 2009 6:28 PM
To: Kerr, Chris
Subject: RE: File Review CUP-09-01

Chris,

Attached is my fire plan review letter which I updated to reflect latest submittal reference.

In summary, the major deficiencies of this proposal include: there are not two points of access to the site; the fire access road is not within 150' of the back of the building; and there is no access for aerial truck operations.

As proposed, it would be difficult to stage a fire fighting or rescue effort on this project site.

Karen
503-612-7012

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, April 13, 2009 9:57 AM
To: Mohling, Karen A.
Subject: FW: File Review CUP-09-01

Karen – For some history: The Planning Commission approved this plan already. It is being reviewed by the council. As part of their review, the Conditional use permit application needed to be submitted. This plan is the same one that was approved by the Planning Commission previously– but I need to send out the plans again anyway. All of the previous conditions approval still apply. Call me with any questions or if you have any new comments. Thanks

(12)

4/22/2009

Chris K.
723-2538

From: Zak, Teresa
Sent: Monday, April 13, 2009 9:26 AM
To: Karen Mohling
Cc: Kerr, Chris
Subject: File Review CUP-09-01

Good Morning Karen,
In lieu of a hard copy I am sending you the link for CUP-09-01, the conditional use permit for the Holiday Inn, can you please respond with any comments to Acting Planner Director Chris Kerr at ckerr@westlinnoregon.gov (Cc'd) by Friday 11/17/09. Thank you very much, if you need any additional info please call.

*Teresa Zak
City of West Linn
Planning Department Administrative Assistant
503.723.2533
tzak@westlinnoregon.gov*

Kerr, Chris

From: Mohling, Karen A. [Karen.Mohling@tvfr.com]
Sent: Thursday, April 16, 2009 6:28 PM
To: Kerr, Chris
Subject: RE: File Review CUP-09-01

Chris,

Attached is my fire plan review letter which I updated to reflect latest submittal reference.

In summary, the major deficiencies of this proposal include: there are not two points of access to the site; the fire access road is not within 150' of the back of the building; and there is no access for aerial truck operations.

As proposed, it would be difficult to stage a fire fighting or rescue effort on this project site.

Karen
503-612-7012

From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, April 13, 2009 9:57 AM
To: Mohling, Karen A.
Subject: FW: File Review CUP-09-01

Karen – For some history: The Planning Commission approved this plan already. It is being reviewed by the council. As part of their review, the Conditional use permit application needed to be submitted. This plan is the same one that was approved by the Planning Commission previously– but I need to send out the plans again anyway. All of the previous conditions approval still apply. Call me with any questions or if you have any new comments. Thanks

*Chris K.
723-2538*

From: Zak, Teresa
Sent: Monday, April 13, 2009 9:26 AM
To: Karen Mohling
Cc: Kerr, Chris
Subject: File Review CUP-09-01

Good Morning Karen,
I lieu of a hard copy I ma sending you the link for [CUP-09-01](#), the conditional use permit for the Holiday Inn, can you please respond with any comments to Acting Planner Director Chris Kerr at ckerr@westlinnoregon.gov (Cc'd) by Friday 11/17/09. Thank you very much, if you need any additional info please call.

*Teresa Zak
City of West Linn
Planning Department Administrative Assistant*

(14)

4/17/2009

503.723.2533

tzak@westlinnoregon.gov



Rec'd 4-17-09

April 16, 2009

Chris Kerr
Planning Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: CUP 09 – 01 Holiday Inn Express Site Plan – Exhibit B

Dear Mr. Kerr;

Thank you for the opportunity to review the proposed site plan surrounding the above named development project. Tualatin Valley Fire & Rescue does not endorse this proposal until the following items have been addressed and approved:

- 1) **FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDING AND TURNAROUNDS:** Provide an access road(s) that is within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. (IFC 503.1.1)
- 2) **ADDITIONAL ACCESS ROADS – COMMERCIAL:** Where buildings exceed 30 feet in height or three stories in height **shall have at least two separate means of fire apparatus access.** Buildings or facilities having a gross area of more than 62,000 square feet shall be provided with at least two separate means of fire apparatus access. Buildings up to 124,000 square feet provided with fire sprinklers may have a single access. (IFC D104)

Please provide building height information for review.

- 3) **AERIAL FIRE APPARATUS ACCESS:** Buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway. Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building. (IFC D105)

Requiemment depends on building height - buildings over 30 feet are required to provide access for Aerial Fire Fighting Apparatus.

- 4) **REMOTENESS:** Where two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses. (IFC D104.3)
- 5) **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Where fire apparatus roadways are less than 26 feet wide, "NO PARKING" signs shall be installed on both sides of the roadway and in turnarounds as

needed. Where fire apparatus roadways are more than 28 feet wide but less than 32 feet wide, "NO PARKING" signs shall be installed on one side of the roadway and in turnarounds as needed. Where fire apparatus roadways are 32 feet wide or more, parking is not restricted. (IFC 503.2.1)

- 6) **FIRE APPARATUS ACCESS ROADS WITH FIRE HYDRANTS:** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet. (IFC D103.1)
- 7) **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background. (IFC D103.6)
- 8) **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 75,000 pounds live load (gross vehicle weight). You may need to provide documentation from a registered engineer that the design will be capable of supporting such loading. (IFC D102.1)
- 9) **TURNING RADIUS:** The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point. (IFC 503.2.4 & D103.3)
- 10) **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red and marked "NO PARKING FIRE LANE" at approved intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background. (IFC 503.3)
- 11) **GATES:** Gates securing fire apparatus roads shall comply with all of the following: (IFC D103.5)
 - Minimum unobstructed width shall be 16 feet, or two 10 foot sections with a center post or island.
 - Gates shall be set back at minimum of 30 feet from the intersecting roadway.
 - Gates shall be of the swinging or sliding type
 - Manual operation shall be capable by one person
 - Electric gates shall be equipped with a means for operation by fire department personnel
 - Locking devices shall be approved.
- 12) **COMMERCIAL BUILDINGS - REQUIRED FIRE FLOW:** The required fire flow for the building shall not exceed 3,000 gallons per minute (GPM) or the available GPM in the water delivery system at 20 psi, whichever is less as calculated using IFC, Appendix B. A worksheet for calculating the required fire flow is available from the Fire Marshal's Office. (IFC B105.2)

Please provide a completed Fire Flow calculation worksheet for approval - instructions are available on our website: www.tvfr.com. Also, please provide a current fire flow test of the nearest fire hydrant demonstrating available fire flow at 20 psi residual pressure.

- 13) **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system. (IFC 508.5.1)

Please provide hydrant locations for approval.

- 14) **FIRE HYDRANT NUMBER AND DISTRIBUTION:** The minimum number and distribution of fire hydrants available to a building shall not be less than that listed in Appendix C, Table C 105.1.

Considerations for placing fire hydrants may be as follows:

- Existing hydrants in the area may be used to meet the required number of hydrants as approved. Hydrants that are up to 600 feet away from the nearest point of a subject building that is protected with fire sprinklers may contribute to the required number of hydrants.

- Hydrants that are separated from the subject building by railroad tracks shall not contribute to the required number of hydrants unless approved by the fire code official.
 - Hydrants that are separated from the subject building by divided highways or freeways shall not contribute to the required number of hydrants. Heavily traveled collector streets only as approved by the fire code official.
 - Hydrants that are accessible only by a bridge shall be acceptable to contribute to the required number of hydrants only if approved by the fire code official.
- 15) **FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway. (IFC C102.1)
 - 16) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (IFC 508.5.4)
 - 17) **FIRE HYDRANT/FIRE DEPARTMENT CONNECTION:** A fire hydrant shall be located within 100 feet of a fire department connection (FDC). Fire hydrants and FDC's shall be located on the same side of the fire apparatus access roadway. FDCs shall normally be remote except when approved by the fire code official. (IFC 912.2) ***Show FDC location for approval.***
 - 18) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (IFC 1410.1 & 1412.1)
 - 19) **KNOX BOX:** A Knox Box for building access may be required for this building. For gates securing an emergency access road a Knox box or Knox padlock will be required; a Knox switch will be required for electrically operated gates. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement. (IFC 506)
 - 20) Complete the Building Survey Form prior to the issuance of the Building Permit:
http://www.tvfr.com/Dept/fm/brochures/document_files/building_survey_form_ifc.pdf
 - 21) Resubmit plans for final approval.

If you have questions, please call me at (503) 612-7012.

Sincerely,

Karen Mohling

Karen Mohling
Deputy Fire Marshal

**CITY OF WEST LINN
LAND USE APPLICATION COMMENT FORM**

Type of review (check box): Completeness check Review comments

To Attention of: ^{Khai Le} Mike Perkins
~~Karen Mobley~~ - via Os-mae Date sent: 4/11/09 Date due: 4/17/09 am

Project Name: Holiday Inn Express File No. CUP 09-01

Type of Land Use Application: Conditional Use Permit

Project Planner: Chris Kerr Phone No.: 1538

Date of staff review meeting (if applicable): _____ Time: _____

Staff review meetings, if scheduled, will be held in the Willamette Conference Room, City Hall, 22500 Salamo Road, in the Planning & Building Department. Contact the project planner for more information.

.....
PLEASE SUBMIT ALL COMMENTS IN WRITING. Comments can also be e-mailed to the project planner.

The following does not apply to completeness checks. Your comments, if relevant to the application, will be addressed in the staff report. Include conditions of approval relating to such issues as sanitary sewer, water, storm drainage, streets, dedication, and resource protection. Please justify why the conditions of approval are needed.

SAME CONDITIONS AS REQUIRED FOR LAND USED APPLICATION
WITH PERMIT NO. AP-09-02, OR-08-01, VAR-08-01, WAP-08-01

KQL. 04-15-09

(Continue comments on next page if needed.)

Kerr, Chris

From: Kerr, Chris
Sent: Wednesday, April 15, 2009 10:14 AM
To: 'vipul patel'
Subject: RE: cover letter

Vic- attached is the required completeness letter from the City – please forward to Brad as well. Thanks

Chris Kerr

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, April 14, 2009 3:12 PM
To: Kerr, Chris
Subject: cover letter

Rediscover Hotmail®: Get quick friend updates right in your inbox. [Check it out.](#)



West Linn

April 15, 2009

Mr. Brad Kaul
Steven P. Elkins Architects, Inc.
11000 NE 33rd Place, suite 101
Bellevue, WA 98004-1460

**SUBJECT: Conditional Use Permit application (CUP-09-01)- Holiday Inn Express:
Willamette Falls Dr. lots 2400-2450**

Dear Mr. Kaul:

The Planning and Engineering departments find that the CUP application is complete as of the date of this letter. The City now legally has 120 days (August 13, 2009) to exhaust all local review per state statute. However, as you are aware, this application is being consolidated with your current related applications and are scheduled for a City Council hearing on May 11, 2009. Please contact me at 503-723-2538, or by email at ckerr@westlinn.gov if you have any questions or comments.

Sincerely,

Chris Kerr
Acting Planning Director

Soppe, Tom

From: Kerr, Chris
Sent: Monday, April 13, 2009 3:05 PM
To: vipul patel
Cc: bradkaul@spe-architects.com; Soppe, Tom
Subject: cover letter for CUP application

Vic – Per your call –

My strong suggestion is that you, or Brad, write a short letter to the City clarifying that you have submitted a complete CUP application and that it includes:

1. A narrative addressing how the application satisfies the Conditional Use criteria; and
2. Copies of the site plan that was reviewed and approved by the Planning Commission. You should state this plan depicts the development for which you are seeking CUP approval.

I would also recommend that you include a statement that explains that all of the other submittal requirements for a CUP (Chapter 60) have already been submitted and are part of the file of record under your current application.

You can email me this letter to my attention – or call me with any questions.

Thanks –

Chris K.
723-2538



Memorandum

Date: April 7, 2009

To: Vic Patel, VK Northwest, Inc.
Brad Kaul; Steven P. Elkins Architects, Inc.

From: Chris Kerr, Acting Planning Director 

Subject: Requests for clarification related to the Holiday Inn Express application

Please find below several requests for clarification/information for your attention which I assembled from members of the City Council. I am forwarding these to you to allow you the opportunity to provide supplemental information into the record to address these issues. Most of these questions can be addressed by providing more detailed information on the specific elements in your application and plans. While you are under no obligation to respond to these items, I would expect these questions to be asked during your May 11, 2009 public hearing. I will include any responses that you would like to provide to the Council upon receipt; and will of course, include them into the official public record, along with this Memorandum. Please call me with any questions.

1. Section 32.090 specifically requires that the applicant provide evidence that the strict application of Chapter 32 would deprive the owner of, "*all economically viable use of the land*". Additional evidence that could be provided to support this would include information related to the sale price and true value of the property. Particularly as the value of the property relates to the zoning designation of the site.
2. Section 32.090.B(1): As evidence that without the reduction the owner would be denied "economically viable use of the property" of the site, this Section requires that no other application could result in "permission for an economically viable use of the subject property." It clearly states that the application shall "include a list of uses allowed on the subject property." The record lists only three carefully chosen uses. The applicant then contends that these alternative uses have "virtually identical impacts" to the applicant's hotel. Additional economic viability information, such as calculations of additional alternative businesses located in the area would be helpful. Detailed comparables, which could include return on investment analysis and. Note the Code is specific that if evidence cannot be provided to demonstrate this, the request must be denied.
3. It should be understood that all development applications are reviewed against the CDC at the time that the application is submitted, not when the pre-application is submitted. Your application was reviewed pursuant to the requirements of Chapter 32 at the time of your submittal, which includes a 100 foot setback from the creek.

This setback is specifically noted in your pre-application meeting summary notes of March 14, 2007. You have indicated in the record that you believe the “zoning changed without notice to the applicant”, you may want to clarify this statement.

4. It appears that the eight foot sidewalk along Willamette Falls Drive, which will include a six foot wide rain garden swale strip will extend into the designated water resource area. You may want to confirm that, if so, this will not result in an alteration of the water course. Additionally, this additional impact would have to be included into your mitigation plan.

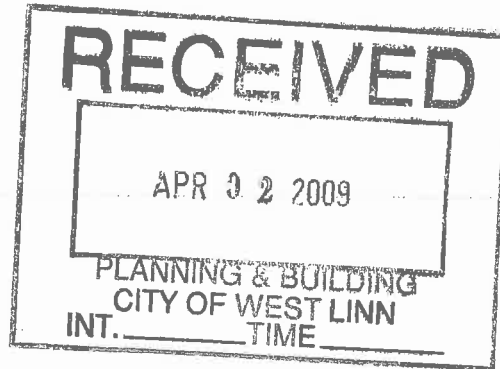
CC: Chris Jordan, City Manager

Soppe, Tom

From: Kerr, Chris
Sent: Thursday, April 02, 2009 4:09 PM
To: Soppe, Tom
Subject: FW: Holiday Inn

Tom -for the file

From: Kovash, John
Sent: Thursday, April 02, 2009 8:37 AM
To: Kerr, Chris
Cc: Jordan, Chris; Kovash, John
Subject: FW: Holiday Inn



Hi Chris,
This the second draft and the Mayor would like to see this as soon as you and I take a first look.
Thanks,

John

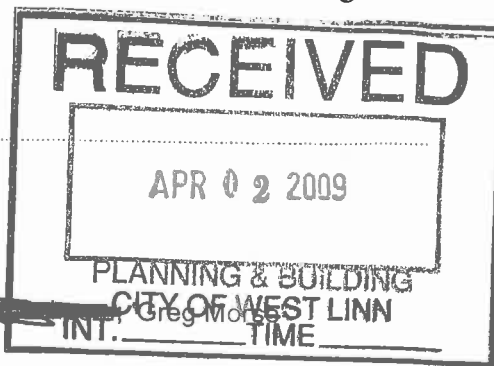
Issues of concern with Holiday Inn application.

1. Present a concise list of all variances requested for the application.
2. Price paid for the land should be disclosed as this has a bearing on the economically viable use of the property.
3. Economically viable use of the property (32.09B) Applicant must show that no other application could result in permission for an economically viable use of the property. To show "economic viability" the application simply lists three uses, evidently of the applicants' choice. The applicant then declares that these alternatives have "virtually identical impacts" to the applicant's hotel. No economic viability information or calculations are presented nor are alternatives presented that are comparable to other business in the area that are much smaller but seem economically viable. It seems reasonable to require comparables, which include return on investment analysis and it should be emphasized that the applicant **MUST SHOW THAT NO OTHER APPLICATION COULD RESULT IN PERMISSION FOR AN ECONOMICALLY VIABLE USE OF THE PROPERTY.** If such viability cannot be shown, the application fails.
4. The Mayor, you and I discussed Metro's setback policy and you thought their approach might be helpful.
5. The application did not specifically state that the code at the time of application is the code that is applicable to the application.
6. Staff should have an analysis of the relevance of applicant's discussion of setbacks and references to economic impact of what the applicants refers to as "the zoning changed without prior notice to the applicant."
7. When the code changed, the applicant did not alter plans to have a smaller footprint: For example design a parking garage.
8. Site plan statistics are by lot without totals, thereby masking the impact of proposed development.
9. Condition of approval 2 requires an 8 foot wide sidewalk along Willamette Falls Drive, plus a 6 foot wide rain garden swale strip between the sidewalk and the street. It does appear that this 14 foot development extends into the WRA. If that is the case additional WRA would be disturbed and the water course would have to be altered.
10. Is the City of West Linn liable for replacing the culvert that was washed out?

11. Staff might review the essence of land use planning in Oregon and its relationship to code, purchase price and economic viability. Prior to Measure 37 current code took precedent over superseded code or the code at the time of purchase. Measure 37 allowed development under the code at the time of purchase. Measure 37 was quickly overturned by Measure 57 which reverted back to applications being required to conform to current code.
12. Applicant states "Due to hardship – applicant requests a variance to build a parking lot and building structure within the Water Resource Protection Area to Retain Economic Viability of Land that has been lost due to the increased setback from the wetland/drainageway from 35 feet to 100 feet. This is the essence of the request for variance and leads to the question: is the City of West Linn prepared to grant variances for declarations of economic loss, or further, for alleged economic loss that is undocumented, and if so, to what extent? It would seem reasonable to ask for the extent of the "hardship" being claimed as "hardship" is the stated reason for declaring certain code provisions (such as structural setbacks) not applicable to this application.
13. What design criteria was used to make the Holiday Inn compatible with the architecture of the Willamette area?
14. I think it would be helpful to have an opinion on some of these issues (particularly items 11 and 12) from a knowledgeable planner outside of West Linn.
15. 32.090 requires the applicant to "include a list of uses allowed on the subject property." If this requirement had been met, the applicant, staff, Planning Commission and public would have known that a hotel was not an allowed use in the commercial zone.
16. Has TVFR approved site plan?

Soppe, Tom

From: GARY [REDACTED]
Sent: Thursday, April 02, 2009 10:38 AM
To: Soppe, Tom
Cc: Kerr, Chris; City Council; Galle, Patti; Teri Cummings; [REDACTED]
Subject: RE: Holiday Inn Express application comment _Chp 60 Process



Tom,

Thank you. My interpretation of the code also shows that the LCDC and Fire Marshal should approve the site layout prior to meeting with the council. With or without approvals in place, please allow enough time to give your public an opportunity to review and comment.

I also thought Peter Spir's original suggestion about entering the site from the east has more validity today. Peter Spir is one sharp cookie. Especially since the water runoff from Salamo Road and I-205 caused the existing soils on their property to be washed further down stream. I strongly recommend the City include the LCDC into the conversation and use the agency to broker an equitable solution with the applicant. A crude diagram indicates that there is available area to maintain setbacks while providing for "adequate areas" for the project. Using the TSP, the City could quickly incorporate the new roadway into 8th Court with a "river walk" that uses erosion control mechanisms to slow down future torrential rains. BECAUSE the riparian area has been destroyed by poor engineering practices upstream and Mother Nature, I believe the impacted riparian corridor can be sculpted to meet both City, LCDC, and applicant needs while meeting intent and upholding the applicant's hardship clause. However, instead of cheap mitigation measures in Willamette Park, which do NOTHING, mitigation should occur along the same stream, across Willamette in the ravine that was also damaged in the recent storm. With LCDC approval, any area of water retention lost on the proposed site would be applied with a multiplier on the other side. Instead of paying the ensuing costs of litigation, the money would be better spent on implementing a REAL mitigation effort. As Michael Scott from the Office would say; "This is a Win-Win-Win."

Gary

To: Soppe, Tom
Cc: Kerr, Chris; City Council; Galle, Patti; Planning Commission; karieokee@aol.com; 'Teri Cummings'; 'Greg Morse'
Subject: Holiday Inn Express application comment _Chp 60

In greater clarity, because 3 minutes is not enough time to explain my observations, is what I was saying last Monday night.

Goal: To allow the Council the opportunity to discuss CDC 32.090, CDC 75, and 55 in relationship to the Holiday Inn Express Application.

Problems:

1.) Applicant was approved without Planning Staff or the Planning Commission adequately enforcing

(27)

4/2/2009

process. This is not really a missed responsibility or due to poor management. An accidental oversight (thus the inadequacy) that everybody missed and was unfortunately recognized later than sooner. (A dot was forgotten over one 'i', which is still less than the number of apparent shortcomings in the application .)

2.) Applicant apparently submitted an incomplete application, provided incomplete mitigation plans, and either willfully or ignorantly did not provide enough work that addressed all relevant sections of the CDC. Shared burden discussions aside, the applicant did a woeful job of providing the burden of proof. (It is almost silly to conceive that a prominent and EXPERIENCED applicant whose business it is to build and manage many successful hotels claims they were misled. How many hotels have they done and how many has our Planning Department done? One 'wonders' if the applicant is complicit in leading our City astray to seek added advantages towards economics and/or favorable decisions on reducing site improvement costs that adequately address the existing riparian corridor. Although not a crime, the level of disingenuousness appears suspiciously high.)

Insult to Injury: The City's obstinacy in heading down a wrong procedural path. (I do **not** believe Counsel's instructions to Council at the last meeting will find merit in an appeal to LUBA.)

Solution:

The May 11 date allows sufficient time to coordinate with the applicant and perform the required steps as listed in CDC 60.060 A through F.

Once those steps have been completed and in order, there will be sufficient discussion and proof that the conditions of CDC 60 are met.

Planning staff should facilitate a schedule to expedite the applicant through the process without taking a leadership position or taking responsibility.

Once CDC 60 is affirmed then the real debate regarding CDC 32.090, 55, and 75 can be conducted.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.0.238 / Virus Database: 270.11.35/2033 - Release Date: 04/01/09 06:06:00

Received by email
from Gary Hitesman, 4-1-09

PROJECT LEAD A HORSE TO WATER

Statement: Planning is not rocket science but a symbol of how a government self regulates and an outward sign of how the organization manifests itself towards its constituents.

Goal: To allow the Council the opportunity to discuss CDC 32.090, CDC 75, and 55 in relationship to the Holiday Inn Express Application.

Problems:

- 1.) Applicant was approved without Planning Staff or the Planning Commission adequately following process. (I suggest a checklist be developed, as this would have prevented this mess in the first place.)
- 2.) Applicant submitted an incomplete application, provided incomplete mitigation plans, and either willfully or ignorantly did not provide enough work that addressed all relevant sections of the CDC. Shared burden discussions aside, the applicant did a woeful job of providing the burden of proof. Actually, the client failed in proving burden. (It is almost silly to conceive that a prominent and EXPERIENCED applicant whose business it is to build and manage many successful hotels claims they were misled. How many hotels have they done and how many has our Planning Department done? One 'wonders' if the applicant is complicit in leading our City astray to seek added advantages towards economics and/or favorable decisions on reducing site improvement costs that adequately address the existing riparian corridor. Although not a crime, the level of disingenuousness appears suspiciously high.)

Insult to Injury: The City's obstinacy in heading down a wrong procedural path. (I do not believe Counsel's instructions to Council at the last meeting will find merit in an appeal to LUBA.)

Solution: Stop handicapping these proposals and applicant by the metaphorical equivalent of "sitting on your hands." The May 11 date allows sufficient time to coordinate with the applicant and perform the required steps as listed in CDC 60.060 A through F. Once those steps have been completed and in order, there will be sufficient discussion and proof that the conditions of CDC 60 are met. Planning staff should facilitate a schedule to expedite the applicant through the process without taking a leadership position or taking responsibility. **Once CDC 60 is affirmed then the real debate regarding CDC 32.090, 55, and 75 can be conducted.**

END.

Appendix I: Following below is a copy of the relevant code sections and requirements. I respectfully disagree with Councilor Burgess's contention that the criteria have been met. Listen carefully and do the opposite of what he says. (His work trends to more problems and backwards thinking than any other force of nature I have ever studied.) His intent appears to approve the project and castigate neighborhood advocates when the appeal is made to LUBA or any other subsequent opportunity.

Appendix II: Applicant shall provide documents for Planning Staff review that conditions have been met. (See next page.)

A. A conditional use application shall be initiated by the property owner or the owner's authorized agent. *This needs to be done. The City has initiated the process and that is the first mistake the City made in allowing this issue to be heard.*

B. A prerequisite to the filing of an application is a pre-application conference at which time the Director shall explain the requirements and provide the appropriate forms as specified in Section 99.030(B) and (C). *A pre-application is required so that approval standards are vetted by the local neighborhoods*

C. A pre-requisite to the filing of an application is a meeting with the respective City recognized neighborhood association, per CDC Section 99.038, at which time the applicant will present his/her proposal and receive comments. (ORD. 1401) *If adequately met, then check this off and place into the record.*

D. An application for a conditional use shall include the completed application form and:
1. A narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; *(This is a requirement that the public should be able to review and comment on.)* and,
2. A site plan as provided by Section 60.080. One original application form must be submitted. Three copies at the original scale and three copies reduced to 11 X 17 or smaller of all drawings and plans ***must*** be submitted. Three copies of ***all other items must be submitted***. When the application submittal is determined to be complete, additional copies may be required as determined by the Planning Department. (ORD. 1442)

E. Names and addresses of all who are property owners of record within 300 feet of the site shall be determined by the Director.

F. The applicant shall pay the requisite fee.

!! Then the public has the right to see the applicants' response AND be given the right to address comment per Chapter 99.

60.070 APPROVAL STANDARDS AND CONDITIONS

A. the Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in Section 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide:
 - a. Adequate area for the needs of the proposed use; and,
 - b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses. (ORD. 1291)
2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.
3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

4. Adequate public facilities will be available to provide service to the property at the time of occupancy. (ORD. 1544)
 5. The applicable requirements of the zone are met, except as modified by this chapter.
 6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.
 7. The use will comply with the applicable policies of the Comprehensive Plan.
- B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55. *This is important because this step is a pre-requisite to Chapter 55*
- C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following: (City Council)
1. Limiting the hours, days, place, and manner of operation.
 2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.
 3. Requiring additional setback areas, lot area, or lot depth, or width.
 4. Limiting the building height, size or lot coverage, or location on the site.
 5. Designating the size, number, location and design of vehicle access points.
 6. Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan. (ORD. 1544)
 7. Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a condition use application for the property) indicates the application should contribute toward. (ORD. 1544)
 8. Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.
 9. Limiting the number, size, location, height, and lighting of signs.
 10. Limiting or setting standards for the location and intensity of outdoor lighting.
 11. Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.
 12. Requiring and designating the size, height, location, and materials for fences.
 13. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.
- D. Aggregate extraction uses shall also be subject to the provisions of ORS 541.605. (I will advocate that applicant, City and Council look up relevant ORS sections.)

CONCLUSION of APPENDIX:

Everyone we hold accountable for following and enforcing these requirements have either acted ignorantly, feigned ignorance, overlooked, or just plain acted unprofessional. Since I deal with Staff at an irregular basis, this is not a staff complaint. Staff consistently does an outstanding job given what they are FORCED to work with. This is a complaint about the apparent shoddy work of a supposedly experienced applicant and manifestation of poor leadership, apparently from the **former** Planning Director. Since the Planning Director is still on the payroll, I feel the position is fair game for comment. It is unfortunate that he was not given a fair shake to provide a better transition than the one we are all suffering through.

The appeal from the applicant appears to be unhelpful and lacks apparent knowledge about process and requirements, which suggests the real reason why this application is having problems.

Soppe, Tom

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 1:49 PM
To: vipul patel; bradkaul@spe-architects.com; jayrpatel@comcast.net; kaul931@hotmail.com
Cc: Jordan, Chris; Bill Monahan; Soppe, Tom
Subject: FW: Conditional Use Narrative
Attachments: Conditional_Use_Letter_3-31-09.doc

Thanks Vic –

Obviously, we will formally respond to the actual submittal when it comes in – but I do have some informal comments based on what you provided that I hope are helpful to you. Generally, keep in mind that the intent of the narrative is to provide responses that indicate specifically how your application meets the standards in this chapter. The more detail that you can provide, the better. Remember, the burden of proof always remains with the applicant to show that the standards are met, this narrative is your opportunity to do so. Note 60.070 A.7 below in particular.

60.070A.3. - I think you should expand in your answer to clarify how the hotel is needed in this particular community. Such as market analysis, demonstrated need, etc.

A.4 – I would not recommend stating 'as far as we know', please state if, and how, adequate public facilities will be available at c/o.

A.6 – be specific about what the supplementary requirements are that are discussed and how this application satisfies them.

***A.7 – I think this is the item that your should definitely address in much more detail. Our Comp. plan includes many Policies that are germane to a new hotel use near our Will. District. These include Policies related to environmental protections, economic development, location policies, compatibility of comm. uses, etc. In order to demonstrate compliance with Policies of the Plan - you will need to cite specific Policies in our Plan and then discuss how this application complies with them. The link to our Comp. Plan is here:
<http://westlinnoregon.gov/planning/comprehensive-plan>***

60.070.C. – there is no for you to comment on this item.

Lastly, I can't emphasis enough the importance of making certain that you submit an application that exactly meets our CDC submittal requirements. Since we are under a tight timeline for the review –I don't want us to waste any time or miss a requirement under the Code that will inadvertently cause an issue later. The requirements for submittal are clearly specified in chapt. 60 –

I would recommend forwarding this to your attorney and to Brad as well since it appears that my response may not reach him –

Thanks – call me with any questions.

Chris K. 723-2538

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, March 31, 2009 1:01 PM

To: Kerr, Chris; manish patel; jayrpatel@comcast.net; katenpatel@aol.com
Subject: FW: Conditional Use Narrative

please read attachment, i will be turning this in with are application today.

To: Vcp16@hotmail.com
Subject: Fwd: Conditional Use Narrative
Date: Tue, 31 Mar 2009 14:45:56 -0400
From: vcp16@aol.com

-----Original Message-----
From: Brad Kaul <kaul931@hotmail.com>
To: vcp16@aol.com; spe_architects@msn.com
Sent: Tue, 31 Mar 2009 11:37 am
Subject: Conditional Use Narrative

Vic,
Attached is the conditional use narrative. Please review and let me know what you think.

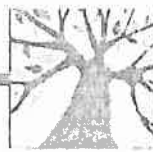
My office e-mail is not working. Please respond to my hotmail with any comments.

Brad

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West Linn

April 1, 2009

Mr. David P. Smith
Mead Smith PC
1672 SW Willamette Falls Drive, Suite D
West Linn, OR 97068

Re: Holiday Inn Express, AP 09-02 and Conditional Use Application

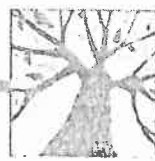
Mr. Smith:

The purpose of this letter is to clarify in writing Staff's understanding of the City Council's actions related to the above referenced application taken at the March 30, 2009 meeting and to make clear the process that Council will follow in reviewing your anticipated Conditional Use Permit (CUP) application. The Council's actions at the meeting were based on Staff's recommendation, along with your conditional concurrence as noted on the record, to allow for an expeditious review of a CUP application in full accordance with all requirements of the City's Community Development Code (CDC). That review will take place at a public hearing on May 11, 2009 along with the review of AP 09-02.

Specifically, at their March 30, 2009 meeting, the City Council continued the hearing until May 11, 2009 at 6:30 PM. During the hearing, you, on behalf of the applicant, voluntarily granted an extension of their 120 day clock to May 21, 2009. Additionally, the Council determined that at the May 11, 2009 de novo hearing it will consolidate the application currently under review (AP 09-02) with the pending CUP application. The Council further determined that it has authority to consolidate the review under CDC 99.070 to be the initial decision making body for the CUP.

As you know, in order to schedule a CUP application for review at the May 11th Council meeting, a complete CUP application must be provided to the City in order to allow for all mandatory public notice requirements to be met. Assuming the May 11th Council hearing, Staff must have a complete CUP application by April 17, 2009 at the latest. I would be pleased to meet with you in advance of that date to review the CUP submittal requirements and approval criteria (see CDC Chapter 60) in more detail or to discuss any other elements of the review process.

Regarding the May 11th Council meeting, we intend to hold a consolidated de novo public hearing on the two items as described, but be aware that the Council will be voting on each



West Linn

application (CUP and AP 09-02) separately. Because the CDC requires a CUP for the proposed use, the Council will be voting on the CUP request first, and will then vote on the appeal under review. Therefore, regardless of Staff's recommendation on the CUP application, if the Council does not grant approval of the requested CUP on May 11th Staff will recommend that the review of the Planning Commission decision lead to a denial since the hotel application cannot be approved without a required CUP.

Please let me know if you disagree with any items in this letter or would like to discuss them further.

Sincerely,

Chris Kerr, AICP
Acting Planning Director

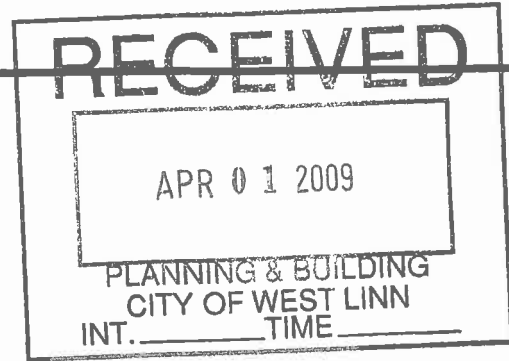
cc: Vic Patel; VK Northwest, Inc. 12700 SE McLoughlin Blvd., Milwaukie, OR 97222
Brad Kaul; Steven P. Elkins Architects, Inc., 11000 NE 33rd Pl., Ste. 101, Bellevue, WA 98004
Chris Jordan; City Manager, City of West Linn



11000 NE 33rd Place, Suite 101
Bellevue, WA 98004-1460

425.827.3252 phone
425.889.9174 fax
e-mail: steve@spe-architects.com

Draft, not actual app. submitted



March 31, 2009

Planning Department
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express – Willamette Falls Dr. lots 2400-2450

Dear City Staff;

This is the required narrative for the conditional use.

Conditional Use Narrative:

According to the West Linn CDC Transient Lodging Facilities (Hotels) are not permitted in the General Commercial Zone without a Conditional Use. An application for a conditional use shall include the completed application form and a narrative which addresses the approval criteria set forth in Section 60.070 and which sustains the applicant's burden of proof; and, a site plan as provided by Section 60.080.

Approval Standards and Conditions are provided below. The applicant narrative describing how the development meets these conditions follows each standard in italics:

60.070.A.1. The site size and dimensions provide:

- a. Adequate area for the needs of the proposed use; and,
- b. Adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses.

- (applicant response) Adequate area is provided for the proposed use. This includes the code required parking, landscaping, street access and building. We do not foresee any adverse effects on the surrounding properties or uses. The nature of the site separates the development from the road by a creek and revegetated water resource area. This provides a generous landscaped buffer. This buffer along with the great width of Willamette Falls Drive, provides adequate area between the development and single family residences that mitigates possible noise or light that may escape the property. Also, the proximity to I-205 and Willamette Falls Drive will provide white noise that will drown out most noise created by the day to day operation of this hotel. Therefore,

adequate area has been provided on this site to buffer adverse effects that may have been caused by this development.

60.070.A.2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

- (applicant response) This provision seems similar to that of the previous condition requiring adequate area for the needs of the proposed use (size and shape). As for location, this is a very good location for a hotel due to it's proximity to I-205, businesses and amenities in the area. The topography is not a problem. We are building on top of an old road grade and we have situated the parking and building to take advantage of the existing slopes. There are few natural features present. Bennet Creek flows along the southern portion of the site. The drainage channel is not natural and has been rerouted and altered a few times in its life due to the construction of Willamette Falls Drive and I-205. This proposed use will upgrade the condition of the existing natural features through revegetation with native species and the eradication of invasive species. Also, the old culvert will be replaced with a new bottomless culvert.

60.070.A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.

- (applicant response) The community does not yet have a hotel facility. This community needs a hotel.

60.070.A.4. Adequate public facilities will be available to provide service to the property at the time of occupancy.

- (applicant response) Yes, as far as we know, adequate fire, police, water, sewer and electrical services are available to service this facility.

60.070.A.5. The applicable requirements of the zone are met, except as modified by this chapter.

- (applicant response) Yes, all other requirements of the general commercial zone have been addressed.

60.070.A.6. The supplementary requirements set forth in Chapters 52 to 55, if applicable, are met.

- (applicant response) Yes, all of the supplementary requirements of Chapters 52 and 55 have been addressed.

60.070.A.7. The use will comply with the applicable policies of the Comprehensive Plan.

- (applicant response) Yes, we are not aware of any policies of the comprehensive plan that we do not comply with.

60.070.B. An approved conditional use or enlargement or alteration of an existing conditional use shall be subject to the development review provisions set forth in Chapter 55.

- (applicant response) The development review provisions of Chapter 55 have been addressed.

60.070.C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity.

- (applicant response) The city staff has imposed conditions on approval. Most conditions have been outlined in the staff report.

60.080. SITE PLAN AND MAP

- (applicant response) A site plan complying with all provisions of this section has been submitted for review.

Sincerely,

Brad Kaul
Steven P. Elkins Architects Inc PS PC

Kerr, Chris

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 8:55 AM
To: Soppe, Tom
Subject: RE: Conditional Use Narrative

Thanks

From: Soppe, Tom
Sent: Wednesday, April 01, 2009 8:49 AM
To: Kerr, Chris
Subject: RE: Conditional Use Narrative

Looks pretty good- they could go through the comp plan and address which policies they think this specifically helps fulfill, but we can do that discussion in our staff report instead.... They do provide a response to A7 so it's not like it's "incomplete" per se.

Also it's "Bernert" Creek, so that's just a spelling error. I think the rest is all right.

Tom Soppe
Associate Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068

From: Kerr, Chris
Sent: Wednesday, April 01, 2009 7:45 AM
To: Soppe, Tom
Subject: FW: Conditional Use Narrative

Tom – please review this and let me know your comments.

From: vipul patel [mailto:vcp16@hotmail.com]
Sent: Tuesday, March 31, 2009 1:01 PM
To: Kerr, Chris; manish patel; jayrpatel@comcast.net; katenpatel@aol.com
Subject: FW: Conditional Use Narrative

please read attachment, i will be turning this in with are application today.

To: Vcp16@hotmail.com
Subject: Fwd: Conditional Use Narrative
Date: Tue, 31 Mar 2009 14:45:56 -0400
From: vcp16@aol.com

-----Original Message-----

From: Brad Kaul <kaul931@hotmail.com>

To: vcp16@aol.com; spe_architects@msn.com

Sent: Tue, 31 Mar 2009 11:37 am

Subject: Conditional Use Narrative

Vic,

Attached is the conditional use narrative. Please review and let me know what you think.

My office e-mail is not working. Please respond to my hotmail with any comments.

Brad

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Kerr, Chris

From: Kerr, Chris
Sent: Monday, March 30, 2009 9:30 AM
To: 'David@meadsmith.com'
Cc: Jordan, Chris; 'Bill Monahan'
Subject: Holliday Inn Express

Mr Smith – Per our request, this is to follow-up to our phone conversation this morning.

Your letter 3-27-09 requests that we advise you about whether, *“the City seeks to have VKNW’s entire team....in attendance”* at the hearing this evening. For the record, I would advise bringing anyone to the meeting that you think is required to present your case to the City Council.

You also stated that your client was never informed about the content of the meeting. At a minimum, they were provided written notice of the hearing within all State and local required timeframes for such notice. Additionally, the appeal hearing has been discussed via several emails and verbally with your clients by me personally.

Please call me if you are having any questions about the meeting this evening.

Chris Kerr, AICP
Acting Planning Director

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

CC = noy
Dena
CC Cummy

City of West Linn
PRE-APPLICATION CONFERENCE MEETING
SUMMARY NOTES
March 14, 2007

SUBJECT: Holiday Inn Express at 2400 and 2450 Willamette Falls Drive

ATTENDEES: Applicants: Bob Wright, Cindy Hovind, Vic Patel, Katen Patel, Manish Patel
Staff: Dennis Wright (Engineering), Peter Spir (Planning) David Davies (Building)
Willamette Neighborhood Association: Fran Peake

The following is a summary of the meeting discussion provided to you from staff meeting notes. Additional information may be provided to address any "follow-up" items identified during the meeting. These comments are PRELIMINARY in nature. Please contact the Planning Department with any questions regarding approval criteria, submittal requirements, or any other planning-related items. Please note disclaimer statement below.

Project Details

The proposal would create about a four story Holiday Inn Express at 2400/2450 Willamette Falls Drive with about 65 units. The 42,162 square foot property is zoned "General Commercial".

The dominant natural feature of the site is a wetland and the Bennett Creek riparian corridor. It occupies the southern half of the properties. The wetland is 30-65 feet wide in the north-south dimension. The wetlands are well defined by a four-foot tall slope that runs around the edge of the area. The wetland is sustained by Bennett Creek, which, at the west end, emerges from a culvert under an old vacated section of Willamette Falls Drive. From the point that it daylights, the creek is an open channel all the way through the wetlands to the extreme east edge of the site where it goes into another culvert and under the Willamette Falls Drive. Also, there is another tributary of Bennett Creek on the property to the west whose transition and setback have to be contended with.

City Council recently changed the Community Development Code for Water Quality Resource Areas (WRA). Bennett Creek is identified in City inventories as a riparian area. Thus the standards for riparian areas will apply as shown in table below: 100 feet from the thread of the creek or 50 feet from the edge of the wetland boundary, whichever is greater, plus structural setback of 7.5 feet. Either way you calculate the transition and setback the applicant's proposed site plan shows the driveway and parking areas in the transition zone and one corner of the building intrudes into the setback. This represents an initial assessment and would have to be verified in the field by wetland delineation and by survey. The other creek on the property to the west is not a riparian corridor so it has a 50-foot transition plus structural setback.

Table 32-1. Required Widths of Setback and Transition Area.

Protected Water Feature Type (see CDC Chapter 2 Definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Setback and Transition Area on each side of the water feature
--	---	--	--

Wetland, Major Drainageway, Minor Drainageway	0% - 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	50 feet plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	≥ 25% to a distinct top of ravine ¹	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	Distance from starting point of measurement to top of ravine ¹ (30 foot minimum), plus an additional 50-foot setback, plus structural setback.
Wetland, Major Drainageway, Minor Drainageway	≥ 25% for more than 30 feet, and no distinct top of ravine for at least 150 feet	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of wetland 	200 feet, plus structural setback
Riparian Corridor	any	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	100 feet or the setback required under major and minor drainageway provisions, whichever is greater., plus structural setback
Formerly Closed Drainage Channel Reopened (see 32.050(N))	n/a	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level 	Variable: See CDC 32,050(N)



Per code, roads, driveways, utilities, or passive use recreation facilities may be built in and across water resource areas when no other practical alternative exists. Construction shall minimize impacts. Construction to the minimum dimensional standards for roads is required. Full mitigation and revegetation is required, with the applicant to submit a mitigation plan pursuant to CDC Section 32.070 and a revegetation plan pursuant to CDC Section 32.080. To this end a one way in and one way out option would be the minimum dimensional intrusion into the WRA. That way the eastern 23-foot wide driveway could be reduced to 15 feet wide.

But the bottom line is that the applicant has two options:

1) redesign the building and parking areas to keep out of the transitions and setbacks and use the existing point of ingress/egress; or,

2) apply for a Class II variance to allow intrusion into the transition and setback area. Mitigation is required either on-site or off-site.

MITIGATION PLAN

A mitigation plan shall be required if any portion of the water resource area is proposed to be permanently disturbed by development.

- A. *All mitigation plans must contain an alternatives analysis demonstrating that:*
1. *No practicable alternatives to the requested development exist that will not disturb the water resource area; and,*
 2. *Development in the water resource area has been limited to the area necessary to allow for the proposed use; and,*
 3. *An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to the water resource area will be avoided and/or minimized.*
- B. *A mitigation plan shall contain the following information:*
1. *A description of adverse impacts that will be caused as a result of development.*
 2. *An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, the revegetation provisions of CDC Section 32.050(K).*
 3. *A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.*
 4. *A map showing where the specific mitigation activities will occur.*
 5. *An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife water work periods.*
 6. *Assurances shall be established to rectify any mitigation actions that are not successful. This may include bonding or other surety.*
 7. *Evidence that a Joint Permit Application (to the U.S. Army Corps and OR DSL) if impacts to wetlands are greater than 0.10 acres, has been submitted and accepted for review.*
- C. *Mitigation of any water resource areas that are not wetlands that are permanently disturbed shall be accomplished by creation of a mitigation area equal in size to the area being disturbed. Mitigation areas may be land that is either*

1. *On-site, not within the water resource area, and is characterized by existing vegetation qualifying that does not meet the standard set forth in CDC Section 32.050(K), or*
2. *Off-site, and is characterized by existing vegetation that does not meet the standard set forth in CDC Section 32.050(K).*

The applicant shall prepare and implement a revegetation plan for the mitigation area pursuant to CDC Section 32.080, and which shall result in the area meeting the standards set forth in CDC Section 32.050(K). Adequacy of off-site mitigation areas on city property must be consistent with and meet approval of the City Department of Parks and Recreation. Any off-site mitigation occurring on privately-owned land shall be protected with a conservation easement.

The limited site size suggests that on-site mitigation is unlikely. Off site mitigation seems to be the most reasonable. Mitigation does not have to be in the same drainageway corridor. Past applications have used Willamette Park for mitigation. The challenge is will be how the Planning Commission interprets section (A)(1) above: *No practicable alternatives to the requested development exist that will not disturb the water resource area.* With that in mind, the 23 foot wide east entryway may need to be reduced to a one-way driveway 15 feet wide. Engineering however does not want to have two driveways next to each other and the property to the east already has its driveway near to the proposed driveway location. Engineering suggested that the applicant contact the owner of the property to the east and see if he will agree to your using his parking lot/driveway for access. Another option would be to have a single point of ingress/egress at the west end. Turnarounds and all other TVFR standards would have to be met.

Putting aside the WRA issue, there are architectural concerns with this building. Given its location at the gateway to the Willamette Historic area, the design should be deferential to the architecture along that street. A stock design will not do. Typically, large corporations like Holiday Inn have a wide variety of designs in their architectural portfolios that would work well. Staff would encourage the applicant to visit the Willamette Falls Drive Commercial area or the Willamette Historic residential district and try to incorporate some of the design elements in this design. Fran Peake, representing the Willamette Neighborhood Association, proposed a design similar to a Holiday Inn in Astoria. It showed a lot of variations (pop outs/indents) on the front elevation. The applicant stated that they had done the Cannery Hotel in Astoria and were expecting to put similar effort into the design of this hotel. Fran Peake also noted that there is a need for a center turn lane so traffic won't back up on Willamette Falls Drive behind a car waiting to turn into the hotel driveway.

There are very few trees on the property. Nonetheless, the applicant must map the trees, number them in the field and identify them on the map by location, type and size (DBH). The City Arborist then visits the site to determine if the trees are significant or not. If the trees are significant, the applicant may be required to redesign the site plan to save some or all of them. The applicant is reminded that

no trees may be removed prior to review of this application otherwise it will be very prejudicial to the application.

A noise study conducted by an acoustic engineer will be required for “previously unused commercial property” to demonstrate compliance with noise standards in CDC Chapter 55.

This site is not able to take advantage of the provisions of CDC 52.300 regarding signs for business centers near I-205 since the site would have to be four acres in size. A Class II variance would be required to achieve the height of I-205 travel lanes. Staff would not support such an application.

Parking standards of CDC chapter 46 require one space per guest room. Parking may exceed the minimum standard by just 10%. Landscaping requires 20% of the gross site to be landscaped and 10% of the interior area of the parking lot is to be landscaped. Please see also table CDC 54.070.

Engineering Comments

Streets:

- Frontage improvements: Additional pavement width may be required. Half-street improvements required including 6-foot sidewalk, 6-foot planter strip, and 5-foot bike.
- Right-of-way (ROW), width: 120-foot, no additional ROW required.
- No access on east border of property as possible traffic conflict with business to the east. Possible to coordinate joint access/driveway at east property line?
- Street illumination plan required along property frontage to ensure development’s improvements provide street lighting to City standards.
- Applicant should provide a traffic study highlighting impact of the development both upon the intersections within the 10th Street corridor and the intersection of WFD and Willamette Drive (Hwy 43).
- Street SDC based upon Trip Generation Manual.

Storm:

- Treatment and detention will be required. Impervious area from frontage improvements must be included in calculations. Alternative designs from City of Portland Stormwater Manual (as allowed by City codes) to mitigate storm drainage impact must be approved by City Engineer prior to construction. May want to consider pervious pavement for parking lot to minimize new impervious area.
- Easement or dedication may be required for Goal 5 wetlands on property.
- Public stormwater facility shall be constructed by developer to treat and detain stormwater to City standards (available on line).
- Stormwater discharge location to open drainageway in a location and method as approved by the City Engineer most likely along property frontage.
- Stormwater SDC

Water:

- Water pressure zones: Willamette zone.
- Water service available via 18-inch ductile iron line across WFD from property.
- While water transmission is satisfactory, water storage not available for build-out. Water meters available on a first come-first serve basis.
- Water SDC \$\$

Sanitary Sewer:

- System capacity sufficient to serve development.
- Service available via manhole located on tax lot 2400 (15-inch line).
- 20-foot easement for sanitary sewer line traversing tax lots 2000 and 2400 must be provided or sanitary sewer line relocated at developer's expense.
- SS SDC \$\$

Other Utilities:

- Underground existing overhead utilities entering property from across WFD. All new utilities shall be undergrounded.

All public improvements must be constructed in accordance with City of West Linn Public Works Design and Construction Standards.

Dave Davies, Building Official, commented on the SDC charges and noted that mechanical and structural code changes are due April 1, 2007 and would apply.

Process

Schedule and conduct a neighborhood meeting pursuant to CDC Section 99.038. Follow the code requirements exactly. The Willamette Neighborhood Association meets on the second Wednesday of the month. Contact Ruth Offer, President, at 657-1350.

Then complete the design review, water resource area protection permit application forms and submit them to the Planning Department with deposit/fees based upon the fee schedule. Accompanying this will be a full and complete submittal and full response to the approval criteria per the requirements of Design Review and WRA chapters: CDC Chapters 55 30 and 32 respectively. (specifically 32.040, 32.050, 55.070, and 55.100) A Class II Variance will require response to CDC Chapter 75.

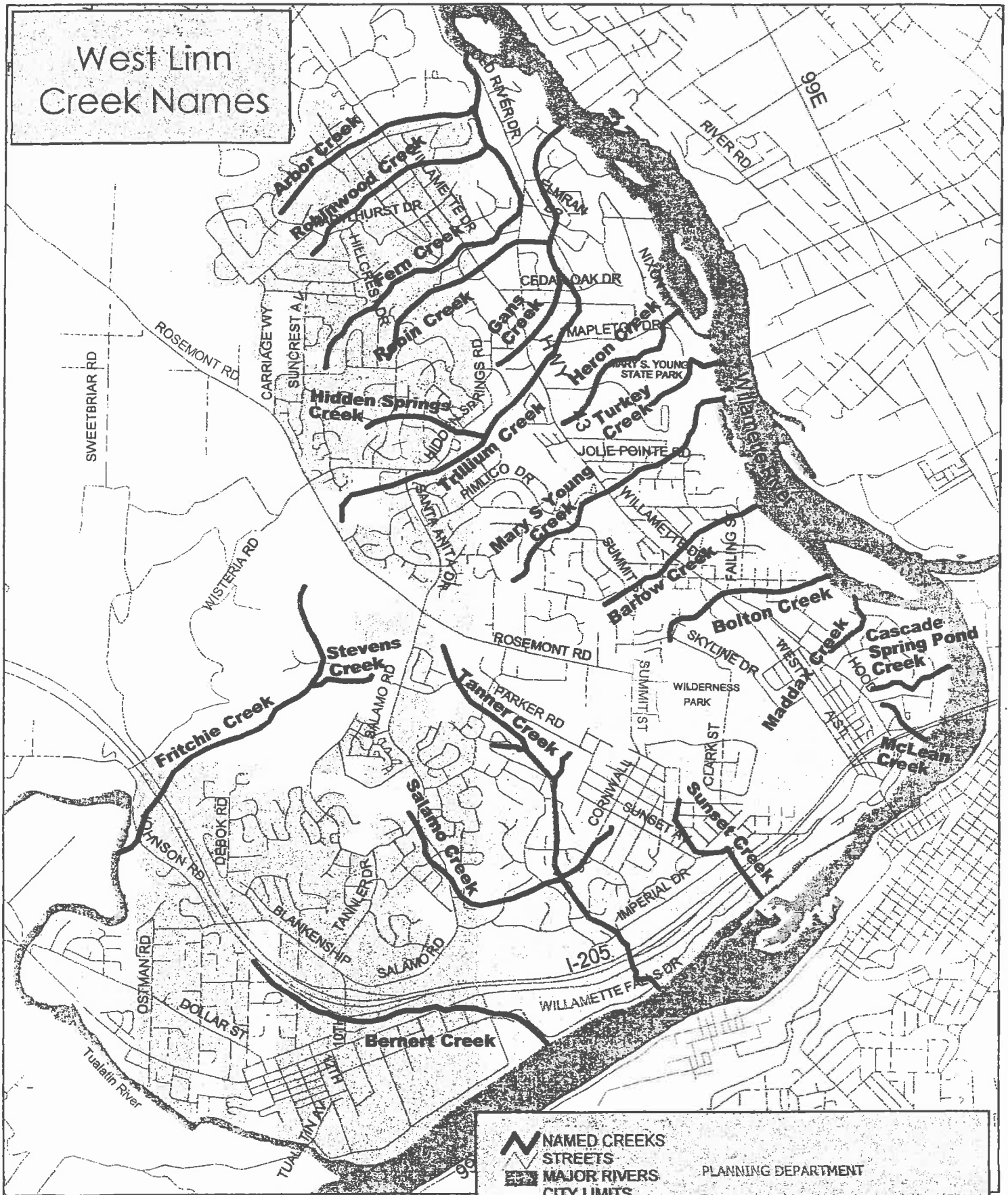
The City has 30 days to determine if the application is complete or not, 21 days if an expedited land division is submitted. Most applications are incomplete, usually due to inadequate responses to approval criteria or stating "NA" in response to submittal requirements or approval criteria. The applicant has 180 days to make it complete, although usually it is complete within three months of the original submittal. Once complete, the City has 120 days to exhaust all local review and appeals, 63 days if an expedited land division is submitted.

Typical land use applications can take 6-10 months from beginning to end.

DISCLAIMER: This summary discussion covers issues identified to date. It does not imply that these are the only issues. The burden of proof is on the applicant to demonstrate that all approval criteria have been met. These notes do not constitute an endorsement of the proposed application. Staff responses are based on limited material presented at this pre-application meeting. New issues, requirements, etc. could emerge as the application is developed. Also, these notes have a limited "shelf life" in that future code language changes could modify staff's position or the approval criteria.

p:/devrvw/pre-apps/pre ap sumry.3-14-07-HolidayInn

West Linn Creek Names



NAMED CREEKS
 STREETS
 MAJOR RIVERS
 CITY LIMITS

PLANNING DEPARTMENT

0 0.25 0.5 Miles

This map and other information have been compiled for preliminary and general purposes. They are not intended to be complete and accurate for any other purposes. Specifically, this information is not intended to be complete for purposes of land use restriction, zoning, title, size, and suitability of the property for specific uses.

GIS / STREAMNAME / FAHA 5-10-01 PDF 7-24-03





Oregon

Theodore R. Kulongoski, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 378-3805
FAX (503) 378-4844
www.oregonstatelands.us.

05 JAN 21 AM 11:40

CITY OF WEST LINN

January 19, 2005

State Land Board

Norm King

David Dodds, Mayor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Theodore R. Kulongoski
Governor

Bill Bradbury
Secretary of State

Randall Edwards
State Treasurer

Re: Approval of the City of West Linn Local Wetlands Inventory and Assessment

Dear Mayor Dodds:

I am pleased to notify you that the Department of State Lands (DSL) has approved your Local Wetlands Inventory (LWI) and assessment. We appreciate your planning staff and the wetland consultant working with our staff to ensure that the inventory meets state LWI requirements (OAR 141-86-180 to 240) and the city's needs. The final inventory requirement is for the city to notify property owners with wetlands mapped on their property within 120 days of this approval. Please provide us with a copy of the landowner notification, indicating the date of notification when notification has been completed.

Approval by DSL means that the LWI becomes part of the Statewide Wetlands Inventory. The LWI must now be used by the city instead of the National Wetlands Inventory for the Wetland Land Use Notification Process (ORS 227.350). The LWI and functional assessment also form the foundation for your wetland planning under Statewide Planning Goal 5, and the LWI must be adopted by the city per the Goal 5 requirements. Please note when significant wetlands are designated by the city, "non-significant" wetlands may be coded to distinguish them from "significant wetlands" but must not be removed from the approved LWI maps. These wetlands are still subject to state and federal permit requirements.

While considerable effort has been made to identify accurately most wetlands within the study area, DSL's approval does not guarantee that all regulated wetlands have been mapped. The mapped wetland boundaries are estimated boundaries, they have not been surveyed, and there are inherent limitations in mapping accuracy. DSL advises persons proposing land alteration on parcels containing mapped wetlands first to contact DSL or to obtain a wetland boundary delineation by a qualified consultant and submit it to DSL for approval prior to the land alteration.

It will be important to annotate your map (and associated database, if any) as new wetland delineations are completed and approved by DSL in order to keep your LWI updated. A few approved delineations have been completed since the LWI review draft(s). We will forward

copies of the delineations to the city planning department and recommend the DSL file number be noted on the affected tax lots. Future wetland delineation approvals will be provided to the planning department.

We are pleased that the City of West Linn has conducted a thorough wetlands inventory and has made wetland planning a high priority. We look forward to working with you and your staff as you continue on the Goal 5 wetland planning effort. Please feel free to contact Kathy Verble at extension 295 with any questions you may have about the LWI or its use.

Sincerely,



Ann Hanus
Director

c: Kristi Crowell, Associated Planner, City of West Linn (enclosure)
Kevin Cronin, DLCD
Tim Brooks, Winterbrook Planning
Yvonne Vallette, EPA
Jim Goudzwaard & John Barco, Corps of Engineers (enclosure)
John Marshall, FWS, Portland Field Office
Patty Snow, ODFW
Tom Melville, DEQ
Jon Hall, FWS Regional Office
Steve Morrow, DSL
John Lilly, DSL

Kerr, Chris

From: Jordan, Chris
Sent: Monday, March 30, 2009 1:45 PM
To: Kerr, Chris; 'Bill Monahan'
Subject: RE: Holliday Inn Express

I might have the Council change the order and approve the IGA with ODOT first. That won't take longer than about 1 minute.

From: Kerr, Chris
Sent: Monday, March 30, 2009 12:56 PM
To: Jordan, Chris; Bill Monahan
Subject: FW: Holliday Inn Express

I spoke with Dave – he simply wanted to confirm that their item will be first on the agenda.

From: David Smith [mailto:David@MEADSMITH.COM]
Sent: Monday, March 30, 2009 11:17 AM
To: Kerr, Chris
Cc: Jordan, Chris; Bill Monahan
Subject: RE: Holliday Inn Express

Could you please advise on the order of issues for the Council. My clients would like to go first, if at all possible.

David P. Smith
MEAD SMITH, P.C.
1672 Willamette Falls Dr., Suite D
West Linn, Or. 97068
503.636.3660 ph
503.636.2797 fx

email: david@meadsmith.com

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From: Kerr, Chris [mailto:ckerr@westlinnoregon.gov]
Sent: Monday, March 30, 2009 9:30 AM
To: David Smith
Cc: Jordan, Chris; Bill Monahan
Subject: Holliday Inn Express

Mr. Smith – Per our request, this is to follow-up to our phone conversation this morning.

Your letter 3-27-09 requests that we advise you about whether, "*the City seeks to have VKNW's entire team....in attendance*" at the hearing this evening. For the record, I would advise bringing anyone to the meeting that you think is required to present your case to the City Council.

You also stated that your client was never informed about the content of the meeting. At a minimum, they were provided written notice of the hearing within all State and local required timeframes for such notice. Additionally, the appeal hearing has been discussed via several emails and verbally with your clients by me personally.

Please call me if you are having any questions about the meeting this evening.

Chris Kerr, AICP
Acting Planning Director

City of West Linn
22500 Salamo Road, Suite 1000
West Linn, OR 97068
503-723-2538
fax-503-656-4106

Soppe, Tom

From: Kerr, Chris
Sent: Monday, March 30, 2009 9:55 AM
To: Soppe, Tom
Subject: FW: Holliday Inn Express

*Tom – for the record
Thanks*

From: Kerr, Chris
Sent: Monday, March 30, 2009 9:30 AM
To: 'David@meadsmith.com'
Cc: Jordan, Chris; 'Bill Monahan'
Subject: Holliday Inn Express

Mr Smith – Per our request, this is to follow-up to our phone conversation this morning.

Your letter 3-27-09 requests that we advise you about whether, "*the City seeks to have VKNW's entire team....in attendance*" at the hearing this evening. For the record, I would advise bringing anyone to the meeting that you think is required to present your case to the City Council.

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Chris Kerr, AICP
Acting Planning Director

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503-723-2538
fax-503-656-4106

Kerr, Chris

From: ~~XXXXXXXXXXXX~~
Sent: Friday, March 27, 2009 12:47 PM
To: Kerr, Chris; City Council
Cc: Wyatt, Kirsten; Jordan, Chris
Subject: Re: Holiday Inn Express

Mr. Kerr;

Thank you for your reply and the CC email address. I could not find an address for the entire CC on the City web site, so I made a logical stab at it. I would suggest that you post it on the CC page. I appreciate that each individual councilor's email is posted. Also, I think that citycouncil@westlinnoregon.gov better identifies the recipients, whereas ccouncil@westlinnoregon.gov implies it is the address of an individual with the first initial C and last name Council; the format the City uses for individuals.

Thank you for correcting the contents of the web site Project Files, for the CC file and the PC file regarding the Holiday Inn, to contain their respective documents.

However, **I find a very important change to the web site** that needs to be made as soon as possible. See <http://westlinnoregon.gov/planning/cc-call-pc-decision-holiday-inn-2400-willamette-falls-drive> This web page, which has the Project Files of AP-09-02 CC review of Holiday Inn, should be accessed from the "Public Meetings and Notices" web page. Most likely, Joe Public, will seek to find more information about the CC meeting on Mar. 30 by clicking "Agendas" from the Home page and "View Meeting Details".

Currently, this web page is accessed from the "City Land Use=2 0Cases and Projects" web page. It is unlikely that Joe Public, who is interested in more info on Mar. 30 meeting, will click on "Land Use" from the Home page.

To summarize, both the PC file (<http://westlinnoregon.gov/planning/2400-willamete-falls-drive>) and the CC file (<http://westlinnoregon.gov/planning/cc-call-pc-decision-holiday-inn-2400-willamette-falls-drive>) for the Holiday Inn should be listed to access under "Land Use Cases and Projects On This Meeting Agenda" for CC Meeting on Mar. 30, 2009.

It is not like the City does not know how these meeting details should be posted. See <http://westlinnoregon.gov/citycouncil/council-call-planning-commission-decision-holiday-inn-2400-willamette-falls-drive> This page is accessed by "View Meeting Details" for CC Meeting on 03/09/09, the original date of the Holiday Inn hearing. You will see that this page lists both files for access as I summarized above.

This is a unfortunate error, because as I know from my experience in land use issues, Joe Public has it difficult enough in understanding these issues, without the added frustration of not being able to find simple meeting details.

At best, Joe Public would not have the information to effectively participate in land-use decisions and at=2 0worst, Joe Public would be deterred from any participation.

I am interested in knowing your plan to avoid such an error in the future. Would it possible that the City

Planner check that his projects are correctly posted on the City web site? I would appreciate it if the City would exercise more diligence in it's review of the City web site.

Thank you very much,
Karie Oakes

-----Original Message-----

From: Kerr, Chris <ckerr@westlinnoregon.gov>
To: ~~XXXXXXXXXXXX~~; City Council <CCouncil@westlinnoregon.gov>
Cc: Wyatt, Kirsten <kwyatt@westlinnoregon.gov>; Jordan, Chris <cjordan@westlinnoregon.gov>
Sent: Thu, 26 Mar 2009 5:08 pm
Subject: FW: Holiday Inn Express

Karie – The email you had for the Council was not correct – use this one ccouncil@westlinnoregon.gov – in the future.

When I 'replied to all' from your email it bounced it back to me. I am resending this to them with the corrected email to make sure that the Council receives it.

*Thanks again.
Chris*

From: Kerr, Chris
Sent: Thursday, March 26, 2009 5:00 PM
To: ~~XXXXXXXXXXXX~~; Jordan, Chris; citycouncil@westlinnoregon.gov
Cc: Soppe, Tom
Subject: RE: Holiday Inn Express

Karie- thanks, my comments are below. I always welcome your diligent review and comments on the website – (to be frank, we don't get as much=2 0feedback on it as I would like) they have helped us improve the site tremendously over the past 6 months. Please keep in mind that the official file is always kept in the planning office, rather than online.

Call me with any other comments at 723-2538.

Chris Kerr

From: ~~XXXXXXXXXXXX~~ [mailto:~~XXXXXXXXXXXX~~]
Sent: Thurs day, March 26, 2009 3:24 PM
To: Kerr, Chris; Jordan, Chris; citycouncil@westlinnoregon.gov
Subject: Holiday Inn Express

Dear Chris Kerr:

Your memo to Chris Jordan recommending denial of the Holiday Inn application should be posted on the City web site in the "Project Files" for ID #AB-09-02: City Council Call Up of Planning Commission Decision of Holiday Inn Express at 2400 Willamette Falls Drive. [Kerr, Chris] thanks – I'll have them post it there as well asap.

It is presently found at: http://westlinnoregon.gov/files/projects/2009-2-18_Staff_memo_to_City_Manager.pdf, in the "Project Files" for when the application was before the Planning Commission as ID #DR-08-01 / VAR-08-01 / VAR-08-09 / WAP-08-01.

(55)

3/27/2009

It is imperative that the PC files and the CC files for this application be kept accurate. It is also important that the public be given reasonable opportunity to access information regarding this application. It is likely the public is not aware that you recommend denial because the applicant has not satisfied the criteria for a conditional use permit.

Please include my comment and your reply in the public record for ID #AB-09-02. *[Kerr, Chris]* I will.

Also, please confirm that the City Council will hold a public hearing for #AB-09-02, where it will receive public testimony, on March 30, 2009 at 6:30 PM. *[Kerr, Chris]* Yes, they will.

Thank you,
Karie Oakes

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Kerr, Chris

From: [REDACTED]
Sent: Friday, March 27, 2009 12:52 PM
To: Kerr, Chris; City Council
Cc: Wyatt, Kirsten; Jordan, Chris
Subject: Web site Posting of Holiday Inn

Dear Chris Kerr:

I have found, again, where the web site posting of information regarding the CC review of the Holiday Inn decision should be improved. I emailed you and copied you an email to Tom Soppe regarding the others yesterday.

See http://westlinnoregon.gov/files/projects/2009-2-18_Staff_memo_to_City_Manager.pdf
While this is listed in the "Project Files" for AP-09-02 as "**2009-03-18 Staff Memo to City**" **it contains the 1 page memo and 10 pages of other information, including coorespondance and affidavit of notice.** I would have overlooked the other information had I not opened this page and noticed the total page numbers on my computer was eleven. A person looking in the Project Files for public comments would not have found them.

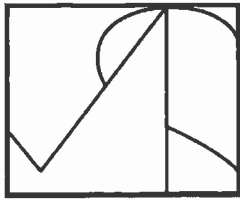
It would be most helpful if the listings in the project file accurately described the documents they contain.

In your email on 3/09/09 (found on pgs 10-11 on link above,) to Vic Patel, your original message is truncated to the point that there is no message. Mr. Patel's reply requests an extention of the 120 days. I would like to know what you communicated to him to elicit such a reply.

Please send me a copy of your email message, post it on the web site and include it in the record for AP-09-02.

Thank you,
Karie Oakes

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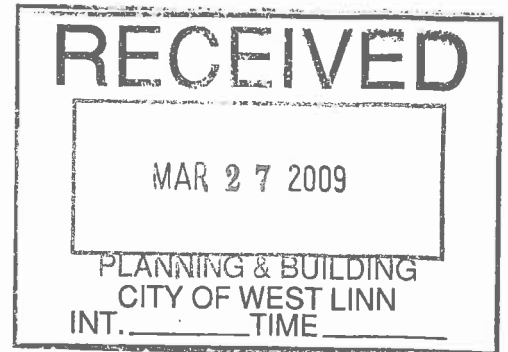


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SMITH
P.C.**

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503-636-3660
FAX: 503-636-2797

ATTORNEYS AT LAW

David P. Smith
Admitted: Oregon and Washington
David@meadsmith.com



March 27, 2009

VIA HAND DELIVERY

Chris Jordan, City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Mayor Patti Galle
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Jody Carson, City Council President
City of West Linn
22500 Salamo Road
West Linn, OR 97068

John Kovash, City Councilor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Scott Burgess, City Councilor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Teri Cummings, City Councilor
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Chris Kerr, Interim City Planner
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Re: Holiday Inn Express Application
2400 Willamette Falls Dr., West Linn, OR 97068

We represent VK Northwest, Inc. (VKNW”) in connection with the above-referenced matter. We are in receipt of a March 19, 2009 memorandum from Chris Kerr, the interim planning director, to Chris Jordan indicating that the City is attempting to reverse the West Linn Planning Commission’s Final Decision Notice, which was approved, with conditions (the “Final Notice”). The purpose of this letter is to notify the City of West Linn of VKNW’s position in advance of the hearing scheduled for March 30, 2009, which is that the City must retract its call to review, and acknowledge the Final Notice. Otherwise, my client will file suit.

The Final Notice was issued on January 22, 2009, which was adopted with a unanimous vote, with a few conditions approving the variance was met to be economically viable for the site. A few days after the notice became final, Tom Soppe advised my client that two city council members wanted to look over the approval of the planning commission regarding the project, but did not provide any specific concerns regarding the application or the process, a written notice of the call-up or appeal, or the two e-mails written by the counsel members. In fact, other than the March 19, 2009 memorandum, my client has received no notice or correspondence to indicate that the Final Notice is not enforceable.

On March 7, 2009, two days prior to the March 9, 2009 City Council meeting, Mr. Kerr, erroneously told my client that there was no land use application filled out and according to West Linn law, having no land use application would mean that they would have to start the entire process all over and it would be an immediate denial by the city council on this project. Mr. Kerr also erroneously advised my client that if the City Council denied our project that we would have to wait another 12 months in order for our application to be reviewed again.

It was not until March 12, 2009, that my client obtained, by having gone to City Hall, the two e-mails purportedly calling the matter up for counsel review, one from Mayor Patti Galle, and the other from new councilman John Kovash, but once again, the e-mails provided no specific reason for the review. Furthermore, the calls for review were never served on VKNW.

On March 23, 2009, my clients were provided with the March 19, 2009 memorandum from Mr. Kerr. In the memorandum, Mr. Kerr states that Conditional Use Permit Application was never submitted and "regrettably, was never previously requested by City Staff." He goes on to note his personal disappointment in the City for failing to identify the oversight earlier. While I am encouraged to see that he believes that matter can be resolved before the March 30, 2009 hearing, he, once again, erroneously states that "staff must recommend denial of the application as currently submitted." Mr. Kerr's error suggests that the staff has any authority or standing to reverse its previous unanimous Final Notice.

Given that the City has failed to provide any notice or further information to my client, other than Mr. Kerr's March 19, 2009 memorandum, my client can only assume that the only purported dispute with the application relates to the nature of the conditional use of the property.

To say that the application is not a "Conditional Use" application, and was not processed by the City in such a way as to comply with the "applicable provisions of the CDC" is a gross misstatement. In fact, each of the criteria set forth in Chapter 60 of the CDC have been complied with by VKNW, as discussed in more detail below.

While I will endeavor to limit the discussion below to only the conditional use issue, I cannot overlook the grossly negligent handling of this process by the City.

Discussion

In October 2004, VKNW purchased the subject property for the intention of developing in the City of West Linn. The site was chosen because at that time there was plenty of space to build an 80 to 90 unit plus hotel, which would be an excellent addition to both the West Linn residential and business community, since no hotel existed in the city and there was an overwhelming need.

In November 2006, VKNW met with City advisers on proposing a hotel on the commercial land on Willamette Falls Drive asking the planners to let us know what applications were needed and what the buffer zone was at the time being told it was 35ft. The pre-application conference was held in March 2007 with Mr. Spir, the staffs contact for the City of West Linn, and other city engineers to meet and discuss the surveys, plans and City requirements to develop the site on Willamette Falls Drive. After meeting and talking with the City, additional land was purchased in April 2007 from the neighbors of the property to properly develop the site and have ample parking for the hotel.

1. Pre-application Meeting.

At the conclusion of the March 2007 pre-application conference, the city required that the development provide: 1) wetland study; 2) traffic study; 3) acoustical analysis; 4) civil engineering; 5) a design that adheres to the city's design review guidelines and per the Neighborhood Association, specifically referencing a design that was similar to that of the Astoria Holiday Inn Express; and 6) a complete redesign due to the lack of feasibility in the pre-application site plan, which did not comply with multiple City restrictions.

2. March 2007 – September 2007.

During the time period the City was involved in multiple substantive decisions regarding the design, all of which related to the applicable zoning and site specific requirements. The Site plan was redesigned and coordinated with city staff. Proposals for wetland, traffic, and acoustical studies received and signed by VKNW, in reliance on the City's multiple indications of ultimate approval. Also, in reliance on the representations by the City, Permit drawings were initiated by all disciplines. The Wetland area was identified and the site plan was solidified through coordination with the City of West Linn, wetland biologist, civil engineer and architect.

The City also made several blatant mistakes during this period including when my client's architect asked the City if design review is required. The City erroneously stated that design review is not required.

3. December 2007.

By December 2007, based on the City's intimate participation in the project, the application process was finally nearing end and the Permit drawings were completed and ready

to be submitted to the Building Department. But the Building Department denied submittal since VKNW was required to submit for design review, despite the erroneous statements above. The Building Department informed VKNA that this process will take 6 months to review.

VKNW, its owners, advisors, architects, and engineers repeatedly sought the City's input regarding City requirements to develop on this vacant commercial site and were never notified by City Planners that the buffer zone had changed from 35ft at the end of December 2007 to 100ft in the beginning of January 2008. If this information had been provided, their application would have been submitted in December 2007 instead of January 2008 having the use of 35ft buffer zones.

4. January 2008 – July 2008 (Design Review Process)

As a result of the City's errors, the design review process occurred during this period, and once again, VKNW worked intimately with the City to move the process along as quickly as possible. The City provided VKNW with a virtual exhaustive list of items required for submittal, and VKNW timely provided each and every item. Despite VKNW's compliance, after City review, multiple additional items were required by the City in addition to the original list. But this did not just happen once, it happened over and over again, which caused the process to be delayed 6 more months.

In June 2008, the City accepted the design review submittals and wrote a letter to the Planning Commission with a recommendation of approval. The Planning Commission meeting was then set with a date in July 2008. But once again, to the surprise of VKNW, one week before the meeting to approve the project, the City required that the project meet with approval of the Neighborhood Association and removed the development from its scheduled Planning Commission meeting, despite never even discussing this phase with VKNW earlier.

5. August 2008 – present.

By this time the review process had already taken well over a year, grossly longer than it should have. The Neighborhood Association meeting scheduled a meeting at their earliest convenience which was August 27, 2008. The Neighborhood Association approval process actually moved along in a timely manner, and meeting minutes were approved and submitted to the City.

It was not until October 2008, four days before a meeting with the Development Commission, that VKNW received notice by Tom Soppe that the planners had discovered one significant tree on the property and advised VKNW to postpone the meeting with the Commission to a later date so as to accommodate necessary changes to the site plans moving the entire building. VKNW was also advised that they would need to prepare a variance waiver form or Mr. Soppe would recommend denial on the basis that the tree is significant and does not meet code. The meeting was postponed to November 2008 with the necessary changes made by their engineers. VKNW's architect asked Tom Soppe if there was anything else needed before

going to the Planning Commission, and he did not advise their architect of anything or whether we needed our scientists for the variance portion.

In November 2008, the City held the first Planning Commission meeting. Mr. Soppe presented on our behalf to the commission. The new fire marshal presented stating that changes needed to be made to the plans from which the prior fire marshal had already recommended, despite their previous review. Mr. Soppe presentation was very poorly done to the point the Commission was not able to have their questions answered effectively. The Commission also thought his write up was poorly written, unorganized and ultimately asked that he rewrite the findings. Once again, the board decided to extend the meeting to a later date.

In November 2008, the new fire marshal wanted changes done to the building fire codes and parking lot to accommodate their fire rescue vehicles. VKNW was told that the previous fire marshal over looked the hotel plans and for that reason there were no codes given until the new marshal was elected. All fire codes and parking lot adjustments where made to compliance.

In December 2008, City Planning Commission met, once again, to review the application. We advised Mr. Soppe that we will have are own team present consisting of our civil engineer, wetland scientist and architect. The Commission, once again, asked to extend the meeting to January 2009 to look over all the information provided to them and make a final decision at the next meeting with no more testimony needed. The City Planning Commission then scheduled a new meeting, and issued its final notice of approval in January 2009.

VKNW complied with additional information required by City Planners giving them the proper information on a timely manner whether it was a traffic survey, wetland survey, topography survey, soil samples and etc. Again, as noted by Mr. Kerr, at no time did the City advise my client that the application was in any way incomplete or defective. VKNW relied on the many members of the City staff during the over two-year process, seemingly to their detriment. Consequently, the City has either waived any further requirements it may assert, or will be estopped from arguing non-compliance on the part of VKNW. Frankly, they say that my client's application should be denied at this stage because a box on the application that was submitted a year and half ago is absurd. As acknowledged by Mr. Kerr, and corroborated by the City's file, this was an error by the City, and given the massive amount of review by the City, the City's oversight should not interfere with my client's intended development of the property.

The City's handling of the application has already caused significant damage to my client. When my client began the application process, they had exclusive territorial rights with Holiday Inn which spanned Oregon City and Clackamas. Based on the City's delays, they have already lost their territorial rights with Clackamas and Oregon City, which have caused the value of their franchise to drop dramatically. Furthermore, the City's delays have put their remaining rights in the franchise in jeopardy of being lost altogether. If they do not break ground by June 2009, which is already impossible, they will be in default of the Franchise Agreement, and may lose any right to build the hotel, or additional territory rights. Obviously, this will cause significant additional damages. If the City acknowledges the Final Decision, and withdraws any

3/27/2009

appeal rights, my client is optimistic that they can negotiate an extension. But if the City does not, they will have little to no bargaining position with the franchise, particularly in light of the fact that the City has delayed so long that even if a mandamus suit is successful, it will come after the franchise is in default.

Finally, it should also be noted that during the entire process there were multiple errors committed by the City staff, Planning Commission, and the City Council. Most notably, for purposes of the hearing on March 30, 2009, the City failed to follow its own procedures adopted in Chapter 99 of the CDC. In particular, the City violated the appeal and review procedures found in section 99.080, 99.090, 99.160, 99.240, 99.250, 99.260, 99.270. To date, VKNW has received no written notice of the City Council's appeal or review, or the specific basis, nor does it appear that there is any such document in the City's file. As a result, it would appear that the appeal or review was untimely, and failed to comply with the applicable notice provisions. There may be additional errors as well.

It is the policy of my client, and this firm, to resolve matters, if at all possible, prior to litigation. That being said, the City has delayed, both intentionally, and through its gross mismanagement of the review process, for far too long. During the entire process, something of a significant nature always came up at the last minute delaying the process and costing a lot of money to VKNW. Now that the project was unanimously approved by the City Planning Commission, on a process that took over two years, and once again, the City is attempting to delay the project again, my client's patience is at an end. Accordingly, if the City does not acknowledge in writing the validity of the Final Notice at the meeting on March 30, 2009, my client will file suit, as such please consider this letter my client's demand.

Finally, the scope of the issues to be addressed at the Monday hearing are extremely vague. As a result, please advise no later than Monday morning at 9 a.m. whether the City seeks to have VKNW's entire team, including their architect and engineer in attendance, as it is an additional cost and expense to my client. If we do not hear otherwise, my client will assume that the scope of the hearing is limited to the City's errors in the application process, and that there is no need to have their entire team attend.

Very truly yours,



David P. Smith

DPS:wrr
cc: client