

Memorandum

Date: December 23, 2009

To: Chris Jordan, City Manager

From: Tom Soppe, Associate Planner

Subject: AP-09-05- Suncrest PUD new submittals since December 2

Attached are the new submittals and correspondence regarding this appeal that have been received or written since the publication of the City Council packet. Also included are the draft minutes of the October 21 Planning Commission meeting. October 21 was the only Planning Commission meeting where PUD-09-01/SUB-09-01/WAP-09-02 was addressed for which the previous City Council packet did not include draft or final minutes.

P:/generalp/memos08-09/Memo AP-09-05 new submittals Dec 23

Soppe, Tom

From: Soppe, Tom
Sent: Monday, December 21, 2009 4:19 PM
To: [REDACTED]
Subject: RE: Renotice Suncrest to Jan. 4

Karie,

Here is the timeline for the 120 period for this project, complete with the corresponding page in the CC packet showing that each extension of it was agreed to. The original 120-day deadline was **September 3** (completeness letter on page 517 of CC packet, aka p 48 of original PC staff report). The hearing was scheduled for June 3. On May 29 Mike Robinson wrote to the city (page 466 of City Council packet) requesting a continuance to the hearing date of June 17, with an equivalent 2 week extension of the 120 (which was granted at the June 3 PC, see p 461 of CC packet for the 6-3 minutes). So then the deadline was **September 17**. At the end of the June 17 hearing when the PC wanted to continue it to July 29, Robinson agreed to the continuance and agreed to an appropriate extension. At that point the deadline became **October 29**. I rewatched the June 17 video to confirm that he said 42 days. On July 28 Robinson wrote a letter requesting the continuance to September 2, 2009 (p. 255 of CC packet) and giving a 35 day extension which therefore made the deadline **December 3**. On September 2, Robinson extended the 120 day period by 35 days as he requested to continue the hearing to October 7 (p. 182 of City Council packet). This meant the 120 period ended **January 7**.

99.280(A)(2) as cited in your email below says that the Council "may" continue if someone requests a continuance. It does not say the Council "shall" or "must" continue due to such a request. It leaves it to the discretion of the Council. Therefore the Council is not automatically beholden to breach the current 120 day deadline with a continuance regardless of whether there is a request for one. This is different from 99.170(E) which regards the first evidentiary hearing at the PC level, where the code says such a request "shall be granted...".

My answer to your question 1 in my previous email was simply to say that the 120 days got extended to January via multiple agreements between City and applicant to extend it, regardless of who initiated the request for continuance or extension in each instance. In that answer I happened to not remember or discuss that one continuance in October occurred without an extension of the 120. I am surprised this detail could cause a person to conclude that I was spinning for the applicant. Please be assured that was not the case.

I also did not state or even imply that the applicant did not benefit from the extensions, nor did I state or even imply that none of the extensions or continuations were asked for by the applicant. Nor did I state or imply anything about whether the applicant or anyone else is or isn't being generous. The sentence "i.e. if the PC was continuing it for x days, the applicant has granted x days extension of the 120-day period" was meant to be one example of how such extensions can (and in this case at least once did) happen, as seems clear to me due to how I phrased it.

I agree that the 120 day period should always be extended for continuances. I did think of this when continuance came up at the October 7 hearing but unfortunately did not have a chance to bring this up (without speaking out of turn) before the hearing was closed shortly afterwards.

Tom

From: [REDACTED]
Sent: Thursday, December 17, 2009 11:23 AM
To: Soppe, Tom
Subject: Re: Renotice Suncrest to Jan. 4

Tom,

12/21/2009

Soppe, Tom

From: [REDACTED]
 Sent: Thursday, December 17, 2009 11:23 AM
 To: Soppe, Tom
 Subject: Re: Renotice Suncrest to Jan. 4



Tom,

Thank you for your reply. I know how the 120-day rule works. I was asking for confirmation that Jan. 7, 2010 is correct, since the Planning Department is notorious for errors. The recent notification error causing the hearing to be rescheduled to Jan. 4 leaves a very small margin. I am most disappointed that it forces the City Council to make its decision on Jan. 4 to avoid a writ of mandamus. **It effectively diminishes the authority of the City Council in its decision making process pursuant to CDC 99.280(A)(2).** I believe this is the applicable code for the appeal hearing and not the code that I cited in my previous email. It appears that you are not aware of this code, for I would have expected you to cite it in your explanation to my question numbered 2.

99.280 TYPE OF APPEAL OR REVIEW HEARING AND SCOPE OF REVIEW

A. All appeals and reviews shall be de novo.

1. The record of the previous application, hearing, and decision shall be incorporated and considered as part of the appeal procedure.
2. If any party requests a continuance of the appeal or review hearing, the City Council may grant a continuance to allow a further hearing or may allow only written submissions. The City Council may limit the scope of any additional testimony or argument after the initial hearing on appeal or review.
(ORD. 1474, ORD 1568)

The record for Suncrest does not have documents to support calculation of the 120-day deadline. I know the file that you keep for Suncrest may, so I was hoping you would review your calculations for me. Below is what I have.

May 7, 2009 application complete, Sept. 7 set as deadline for 120-days.

June 3 hearing continued to June 3 **at applicants request** and extends 14 days.

June 17 hearing continued to July 29 **at applicants request** and extends **unknown amount of days** per the PC meeting minutes 6/17, "the applicant would agree to extend the 120 day rule period to July 29."

July 29 hearing continued to Sept. 2 **at applicants request** and extends 35 days.

Sept. 2 hearing continued to Oct. 7 **at applicants request** and extends 35 days.

Oct. 7 continued to Oct. 21 by the PC **due to new evidence submitted by the applicant** on Oct 8.

Oct. 21 PC closed hearing and made its final decision.

This documents that the PC did not request the applicant to extend the 120-day rule as you state below. **The applicant requested 4 extensions and caused the PC to continue the Oct. 7 hearing when she submitted new evidence.** I do not appreciate the inaccuracy and bias of your explanation to my question numbered 1, that implies that the applicant generously offered to extend the 120 day rule by numerous PC requests. The applicant was the sole beneficiary of the extensions.

In addition, I find it ironic that when the applicant submitted new evidence, the applicant did not offer to extend the 120 day rule, nor did the Planning Commissioners, City Planner, or City Attorney think to request an extension. It seems a reasonable request, and it should be the responsibility of any of these persons to preserve the maximum number of days in the 120-day rule in order to protect the process and assure adequate time for the best decision.

In the future, please consider including the 120-day deadline in your Staff Memos to the PC and CC.

I look forward to knowing the information that you can provide to confirm that the 120-day rule expires on January 7, 2010.

Thank you,

Karie Oakes

12/17/2009

Soppe, Tom

From: Kirsten Vanloo [kirsten@emeriodesign.com]
Sent: Monday, December 14, 2009 5:03 PM
To: Soppe, Tom
Cc: Handris@aol.com
Subject: Further Extension of the 120 day decision timeframe - Suncrest PUD

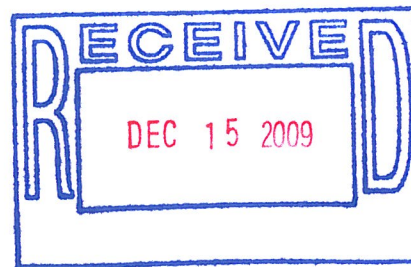
Tom:

Mr. Handris is not willing to grant any further extensions of the 120 day land use decision timeframe for the referenced project.

Since the city council appeal hearing is a de novo process – all of the presented information will be “new information” for the council members.

I will prepare my presentation in advance – would you like a copy of my materials for the City Council packet so members have time to review it before the public hearing?

Kirsten Van Loo



Soppe, Tom

From: Soppe, Tom
Sent: Friday, December 11, 2009 3:46 PM
To: 'Hidden Springs Neighborhood Assoc.'
Subject: RE: 19650 Suncrest Conservation Easement
Attachments: final decision PUD-09-01.doc; CC Memo AP-09-05.doc

Lynn,

I've attached an electronic copy of the final decision which you would have also received after it was signed by the PC chair (this is the word version but is the same as the one he signed and we copied to send to all with standing). I have attached this and the staff memo from Dec 2 because they answer some of the questions below.

1. All we have at this time is the final decision of the PC (which could of course be changed by council in the meantime if they do uphold the PC decision to approve) in which conditions 14 and 15 outline the basics of how the conservation easements restrict those areas of the property. The 6th page of the attached memo contains a possible rewording of Condition 14 that addresses the concern about City maintenance responsibilities.
2. Again, the COAs from the PC decision (and the possible rewording of one of those) are all we have at this time.
3. It is permanent.
4. As stated in 3, yes.
5. No.
6. Yes.
7. See condition 15 in the final decision regarding Tract C which is up against the homes, this prohibits this for this area. For the possible rewording of Condition 14 (which would give maintenance responsibility to the HOA), the same prohibition is outlined.
8. The policy in 32.050(D) preferring dedication has not been changed at any public meeting or otherwise.

Also, as you may already know, the meeting has been rescheduled for the 4th of January due to a noticing error discovered recently and the subsequent need to re-notice for a date at least 20 days out. You will be receiving this notice shortly if you haven't already.

Have a good weekend,
Tom

From: Hidden Springs Neighborhood Assoc. [mailto:WLHSNA@msn.com]
Sent: Wednesday, December 09, 2009 7:00 PM
To: Soppe, Tom
Subject: 19650 Suncrest Conservation Easement

Hello Tom,

- 1.) Would it be possible to view the terms of the terms of the proposed conservation easement?
- 2.) What conditions have been placed on the document and on the property?
- 3.) What is the duration of the conservation easement?
- 4.) Can such an easement be made perpetual?

12/11/2009

Soppe, Tom

From: Soppe, Tom
Sent: Friday, December 11, 2009 3:46 PM
To: [REDACTED]
Subject: RE: Renotice Suncrest to Jan. 4

Karie,

To answer your numbered questions,

- 1) When the application was declared complete, the 120-day deadline was then established 120 days ahead of the day it was declared complete. Since then the applicant has offered (or responded affirmatively to the City's request for) continuances every time this got postponed or continued. I.e. if the PC was continuing it for x days, the applicant has granted x days extension of the 120-day period. Through multiple instances like that, we have arrived at a current 1-7-10 deadline.
- 2) 99.170(E) regards the initial evidentiary hearing. The first PC hearing was the initial evidentiary hearing, so any subsequent PC or CC hearings are not the initial evidentiary hearing. Therefore the decision can be made within the 120-day period, even if that period ends a few days after the upcoming CC hearing.
- 3) As I touched on in 2 above, we won't have to continue without the applicant's consent to extend the 120-day period, since the CC hearing isn't the first evidentiary hearing. Therefore a decision should be able to be made within the 120-day period, precluding the writ of mandamus. The applicant has not indicated, to my knowledge, if they intend to file a petition if somehow that situation does occur.
- 4) Yes, the applicant can continue to ask for extensions until the "120-day period" has reached a year in length total. Beyond that they cannot extend it.

Have a good weekend,
Tom

From: [REDACTED]
Sent: Thursday, December 10, 2009 2:19 PM
To: Soppe, Tom
Cc: Burgess, Scott; Carson, Jody; Cummings, Teri; Kovash, John; Galle, Patti
Subject: Renotice Suncrest to Jan. 4

Hello Tom,

I was on the City web site this morning and see the CC appeal hearing has been rescheduled to Jan. 4, 2010 due to a notification error. Would you please tell me the error the City has made that constitutes rescheduling?

I also have a few questions and would appreciate some clarifications about the process.

- 1) I understood the 120-day deadline is Jan. 7, 2010, as you stated in an email to me on Nov. 25, 2009. I would like to confirm that that is indeed the correct date. Would you please provide your methodology for computing the date?
- 2) I do not understand how the City will meet the required quasi-judicial process pursuant to **99.170.E**. and avoid a writ of mandamus. if the CC continues the hearing or leaves the record open until Jan. 11. Please provide an explanation.
- 3) I am concerned that the notification error jeopardizes the opportunity of the HSNA and persons of standing to appeal the CC final decision to LUBA, an authority that is preferable to the Circuit Court, which will have jurisdiction if a petition for writ of mandamus is filed by the applicant pursuant to **ORS 227.179**. Has the applicant indicated that he will not file a petition and if so, is it legally binding?
- 4) I understand that the applicant can not be compelled to extend the 120-days pursuant to **ORS 227.127.10**, but

12/11/2009

AFFIDAVIT OF NOTICE

RE-NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. AP-09-05 Applicant's Name HSNA
Development Name Appeal Supercrest PC Decision for 6-lot PUD
Scheduled Meeting/Decision Date January 4, 2009

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A X

- A. The applicant (date) 12/10/09 (signed) SR
B. Affected property owners (date) 12/10/09 (signed) SR
C. School District/Board (date) (signed)
D. Other affected gov't. agencies (date) 12/10/09 (signed) SR
E. Affected neighborhood assns. (date) 12/10/09 (signed) SR
F. All parties to an appeal or review (date) 12/10/09 (signed) SR

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 12/24/09 (signed)
City's website (posted date) 12/10/09 (signed)

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) 12/10/09 (signed)

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B

- A. The applicant (date) (signed)
B. Affected property owners (date) (signed)
C. School District/Board (date) (signed)
D. Other affected gov't. agencies (date) (signed)
E. Affected neighborhood assns. (date) (signed)

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting. Date: (signed)

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) (signed)

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) (signed)

**CITY OF WEST LINN
CITY COUNCIL
PUBLIC HEARING RE-NOTICE
Appeal of the Approval of the Suncrest PUD- FILE NO. AP-09-05**

Due to a notification error the **public hearing scheduled on this item for December 14, 2009 has been cancelled** and the public hearing has been re-scheduled for the **West Linn City Council for Monday, January 4, 2010, starting at 6:30 p.m.** in the Council Chambers of City Hall (located at 22500 Salamo Road, West Linn, OR.). The public hearing will be regarding AP-09-05, the Hidden Springs Neighborhood Association's appeal of the Planning Commission's approval of PUD-09-01/SUB-09-01/WAP-09-02, commonly known as the Suncrest Planned Unit Development (PUD). This project consists of a 6-lot PUD subdivision at 19650 Suncrest Drive requiring a Water Resources Area permit due to the presence of Fern Creek and its transition area on site.

This will be a *de novo* hearing, meaning that new testimony and information may be submitted for the City Council's consideration in addition to the Planning Commission's record. No specific grounds for appeal were stated by HSNA, and all relevant issues may be considered in a *de novo* hearing. Approval or disapproval of the request by the City Council will be based upon the following criteria: PUD criteria found in Chapter 24 of the Community Development Code (CDC); Subdivision criteria found in CDC Chapter 85; and Water Resource Area protection criteria found in CDC Chapter 32. At the hearing, it is important that comments relate specifically to the applicable criteria listed above.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the site located at tax lot 6700 of Clackamas County Assessor's Map 2-1E-23BD, and/or because you have established standing for application PUD-09-01/SUB-09-01/WAP-09-02 or application AP-09-05, and/or as required by Chapter 99 of the West Linn Community Development Code.

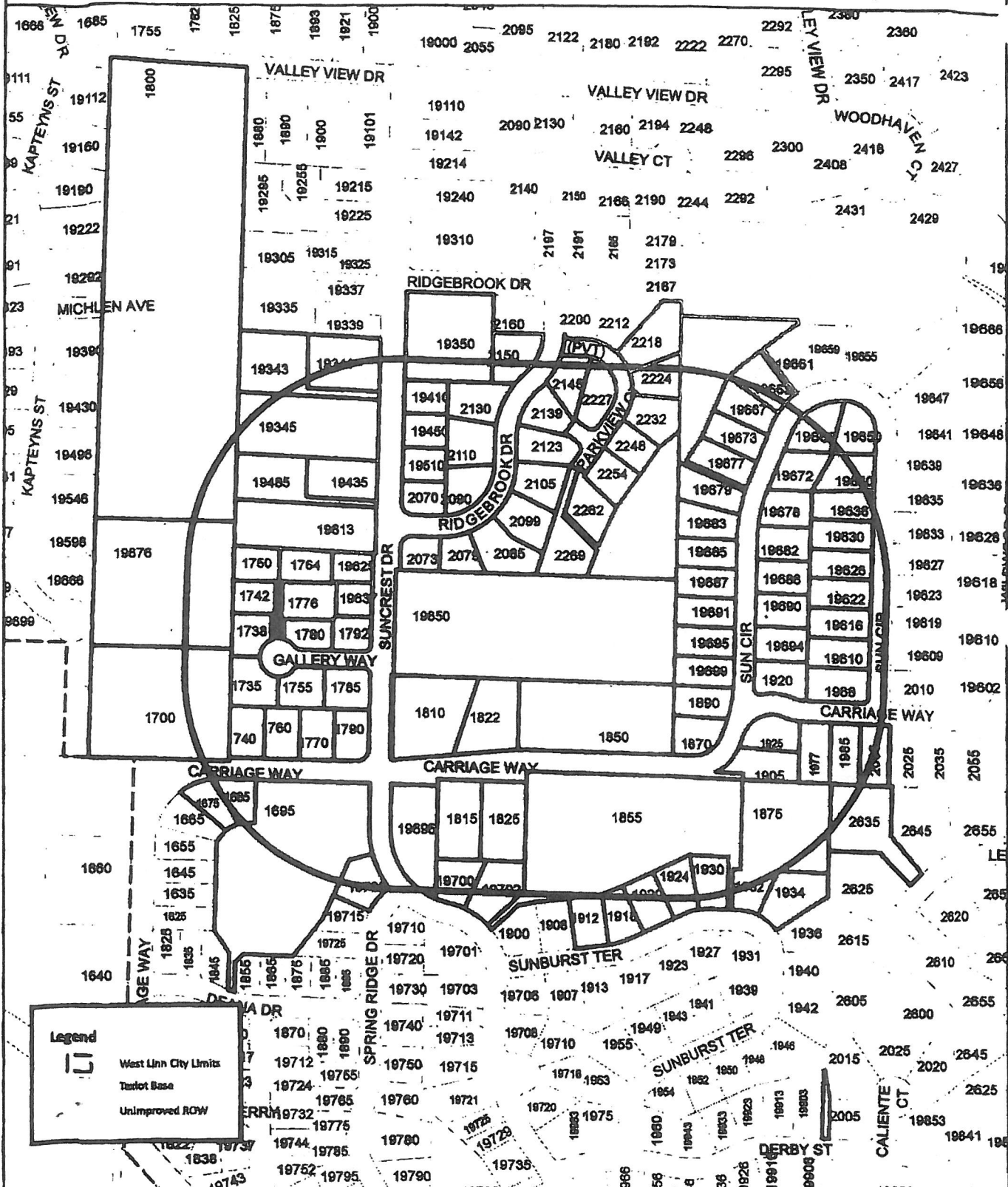
The complete application in the above noted file is available for inspection at no cost and also on the City web site, or copies can be obtained for a minimal charge per page. Ten days prior to the hearing, a copy of the staff report will be available for inspection. For further information, please contact Tom Soppe, Associate Planner, at City Hall, 22500 Salamo Road, West Linn, OR 97068, tsoppe@westlinnoregon.gov, or 503-742-8660.

The hearing will be conducted in accordance with the rules of Section 99.170 of the Community Development Code, adopted December 14, 1987, Ordinance 1129. Anyone wishing to present written testimony on this proposed action may do so in writing prior to, or at the public hearing. Oral testimony may be presented at the public hearing. At the public hearing, the City Council will receive a staff report presentation from the City Planner; and invite both oral and written testimony. The City Council may continue the public hearing to another meeting to obtain additional information, or close the public hearing and take action on the application. If a person submits evidence in support of the application, any party is entitled to request a continuance of the hearing. If there is no continuance granted at the hearing, any participant in the hearing may request that the record remain open for at least seven days after the hearing. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

TERESA ZAK
Planning Administrative Assistant

AP-09-05 19650 Suncrest Drive 6-Lot PUD

printed on recycled paper



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.
 Taxdot Base Source: Metro RLIS

NOT TO SCALE



SNAPNOTIFY.MXD / AHA APP 6-16-09

User Name: T Zak
 Map Creation Date: Nov 18, 2009

ADAMS PAUL A TRUSTEE
1790 CARRIAGE WAY
WEST LINN OR 97068

AGEE MIKE EARL & GAYLE KOSKA
2090 RIDGEBROOK DR
WEST LINN OR 97068

ALLEN KENNETH L & PHYLLIS M
19450 SUNCREST DR
WEST LINN OR 97068

ANDERSON MICHAEL R
19637 SUNCREST AVE
WEST LINN OR 97068

ART ROBERT & KAREN
19702 SUNCREST DR
WEST LINN OR 97068

ATYEH ROBERT V & DEBRA C
19341 SUNCREST DR
WEST LINN OR 97068

BAKER ALLAN L & MARSHA L
2224 PARKVIEW CT
WEST LINN OR 97068

BISCHEL BRETT & ANNALISE
19435 SUNCREST DR
WEST LINN OR 97068

BLANCHARD DALE C & SALLY R
19683 SUN CIR
WEST LINN OR 97068

BOCK PETER A & LAURA A
19410 SUNCREST DR
WEST LINN OR 97068

BROWN BEN & REBECCA
2212 PARKVIEW CT
WEST LINN OR 97068

BURKE W ROMNEY & MARY SUSAN
2635 LEXINGTON TER
WEST LINN OR 97068

BURNETT KENNETH E & JUNE D
19687 SUN CIR
WEST LINN OR 97068

CHARGOIS PARRIS & JAN
18880 NIXON AVE
WEST LINN OR 97068

CIRAULO STANLEY R & VICKI B
2200 LOUIS HOLSTROM DR
MORGAN HILL, CA 95037

CLUBB STUART M
1776 GALLERY WAY
WEST LINN OR 97068

COXEN STEPHEN ALLEN
19510 SUNCREST DR
WEST LINN OR 97068

CROMWELL SPENCER L & MAURINE L
2150 RIDGEBROOK DR
WEST LINN OR 97068

CUNDALL OSWALD R & VERNA A
2218 PARKVIEW CT
WEST LINN OR 97068

DAMIANO ALBERT & PRISCILLA
1890 CARRIAGE WAY
WEST LINN OR 97068

DASWICK GREGORY PHILLIP TRUSTEE
2099 RIDGEBROOK DR
WEST LINN OR 97068

DAVIDSON ANDREW & MARGOT NELLE
2123 RIDGEBROOK DR
WEST LINN OR 97068

DAVIS DANIEL JAY & WINIFRED
1932 SUNBURST TER
WEST LINN OR 97068

DEPAULA JULIO & VALERIE A
1780 GALLERY WAY
WEST LINN OR 97068

DOEL JOHN & MICHELLE M
3529 SOUTH RD
WEST LINN OR 97068

DUCHENE JOSEPH A & ARLYNN R
1760 CARRIAGE WAY
WEST LINN OR 97068

EGGSPUEHLER PETE ROMAN
19685 SUN CIR
WEST LINN OR 97068

EINSTEIN PETER M TRUSTEE
1850 CARRIAGE WAY
WEST LINN OR 97068

ELSAHILI ISSAM H & LINA N
19662 SUN CIR
WEST LINN OR 97068

ESSER MORGAN
19625 SUNCREST AVE
WEST LINN OR 97068

ETESAMI FARYAR
19630 SUN CIR
WEST LINN OR 97068

FALLS WM DAVID & MARSHA
1977 CARRIAGE WAY
WEST LINN OR 97068

FENIMORE JILL ANNE
1755 GALLERY WAY
WEST LINN OR 97068

FIELDHOUSE JEFFREY A & KARA
1203 NW NEWPORT AVE
BEND OR 97701

FISCHER PHIL & MARCIA
2269 PARKVIEW CT
WEST LINN OR 97068

FOSES SHARON
PO BOX 388
WELCHES OR 97067

FRIEND THOMAS F
19686 SUN CIR
WEST LINN OR 97068

GALLEY MICHAEL G
2254 PARKVIEW CT
WEST LINN OR 97068

GIRARD DAVID T & ELIZABETH
19636 SUN CIR
WEST LINN OR 97068

GOE SEAN W
19695 SUN CIR
WEST LINN OR 97068

GOKEY MICHAEL G & LYNN PETTITT
2085 RIDGEBROOK DR
WEST LINN OR 97068

HORNER WAYNE G & DIANNE
2079 RIDGEBROOK DR
WEST LINN OR 97068

HUGHES JOHN C JR & SANDRA L
19663 SUN CIR
WEST LINN OR 97068

HUNT KAROL J
1685 CARRIAGE WAY
WEST LINN OR 97068

ICON CONSTRUCTION & DEVELOP.
1980 WILLAMETTE FALLS DR
WEST LINN OR 97068

JONES CLIFFORD T & JANICE C
1785 GALLERY WAY
WEST LINN OR 97068

JONES DAVID D & BRANDY A SARGENT
19667 SUN CIR
WEST LINN OR 97068

JONES ZCHON & KIMBERLY
2232 PARKVIEW CT
WEST LINN OR 97068

JONES-BROUDY BARBARA E
19678 SUN CIR
WEST LINN OR 97068

KILSTROM APRIL K
19640 SUN CIR
WEST LINN OR 97068

KNOWLES MATTHEW P & DARIA
1810 CARRIAGE WAY
WEST LINN OR 97068

LAIRD LINDSAY A
19696 SUNCREST DR
WEST LINN OR 97068

LARLEE DANIEL C & WENDY C
1918 SUNBURST TER
WEST LINN OR 97068

LARSEN KENNETH E
1792 GALLERY WAY
WEST LINN OR 97068

LAWRENCE ROBERT & LINDA G
1925 CARRIAGE WAY
WEST LINN OR 97068

LESLIE DAVID A & LEIGH M
1920 CARRIAGE WAY
WEST LINN OR 97068

LICHTENBERG STEPHEN & LAYLA
1920 SUNBURST TER
WEST LINN OR 97068

LIE GWAN ENG TRUSTEE
2073 RIDGEBROOK DR
WEST LINN OR 97068

LUNDBERG PHILIP B & RACHEL M
19694 SUN CIR
WEST LINN OR 97068

MACKRILL NOLAN N
2005 CARRIAGE WAY
WEST LINN OR 97068

MARSHALL CHARLES A & NANCY
19345 S SUNCREST DR
WEST LINN OR 97068

MARTINEZ JUDITH J & ANTONIO
19691 SUN CIR
WEST LINN OR 97068

MARTO ISAAC P & VERGINIE I
19682 SUN CIR
WEST LINN OR 97068

MCBRIDE SHANNON W
19350 S SUNCREST DR
WEST LINN OR 97068

MORRIS CHARLOTTE A
19616 SUN CIR
WEST LINN OR 97068

MURRAY SUSAN W
19690 SUN CIR
WEST LINN OR 97068

NELSON GORDON K & KIMBERLY
2145 RIDGEBROOK DR
WEST LINN OR 97068

OLSON JUNE F TRUSTEE
1930 SUNBURST TER
WEST LINN OR 97068

OREGON DEPT OF TRANSPORTATION
885 AIRPORT RD BLDG 35
SALEM OR 97310

OSBURN EVERT D & NOZOMI I
19626 SUN CIR
WEST LINN OR 97068

PANOW NAIMA S TRUSTEE
19699 SUN CIR
WEST LINN OR 97068

PARNELL GAIL E
19672 SUN CIR
WEST LINN OR 97068

PARRISH MARK
1968 CARRIAGE WAY
WEST LINN OR 97068

PHAN ANDREW KYANH
19679 SUN CIR
WEST LINN OR 97068

PIERSON J CHRISTOPHER & LYNETTE
1825 CARRIAGE WAY
WEST LINN OR 97068

PONTI CRISTINE C
19610 SUN CIR
WEST LINN OR 97068

POWELL RICHARD L & LISA J
2248 PARKVIEW CT
WEST LINN OR 97068

PRUZEK JOSHUA WILLIAM & LIISA
1764 GALLERY WAY
WEST LINN OR 97068

QUINN DAVID G & LAURA A
18993 WALLING CIR
WEST LINN OR 97068

REUTTER-HARRAH JOHN M & SUSAN
1770 CARRIAGE WAY
WEST LINN OR 97068

~~REYNDERS FRANCISCO
2015 CARRIAGE WAY
WEST LINN OR 97068~~

RTND

RIVERA BENJAMIN & MARY J
19613 S SUNCREST DR
WEST LINN OR 97068

ROYSE LARIANN E
2130 RIDGEBROOK DR
WEST LINN OR 97068

SAWCHUK LEONARD & TAMMI
19700 SUNCREST DR
WEST LINN OR 97068

SCHAUER JAMES H S & AMY E S
19650 SUN CIR
WEST LINN OR 97068

SCHNEIDER RICHARD R & KELLY
1870 CARRIAGE WAY
WEST LINN OR 97068

SCHRAGE ALEX M TRUSTEE
13215 SE MILL PLAIN BLVD STE C8
VANCOUVER WA 98684

SCHWARZENBERGER PETER A & MARY E
19343 SUNCREST DR
WEST LINN OR 97068

SEELEY PETER T & KATHERINE
1675 CARRIAGE WAY
WEST LINN OR 97068

SEXTON MICHAEL B & COLLEEN
1905 CARRIAGE WAY
WEST LINN OR 97068

SHRUM JACQUELINE M
3433 NE 44TH AVE
PORTLAND, OR 97213

SIMMONS STEVEN F
19677 SUN CIR
WEST LINN OR 97068

SIMPSON TERRY LEE
1924 SUNBURST TER
WEST LINN OR 97068

SKOGMO RICHARD B & NANCY SNIDER
2139 RIDGEBROOK DR
WEST LINN OR 97068

SUNBURST II HOMEOWNERS ASSN
19363 WILLAMETTE DR #139
WEST LINN OR 97068

TSIKAYI AMOS & CHRIS
1815 CARRIAGE WAY
WEST LINN OR 97068

VERMEULEN YASMIN & PETER
48560 URSA DR
FREMONT, CA 94539

WANG XIONG
19485 SUNCREST DR
WEST LINN OR 97068

WANNARKA SCOTT D & ANDREA
2105 RIDGEBROOK DR
WEST LINN OR 97068

WEITMAN JAY P & GAREN L
2110 RIDGEBROOK DR
WEST LINN OR 97068

WENDLING SUE E
340 OSWEGO POINTE DR STE 208
LAKE OSWEGO OR 97035

WHITE STEVEN L
1912 SUNBURST TER
WEST LINN OR 97068

WILSON BRENDA RASHELLE
1735 GALLERY WAY
WEST LINN OR 97068

WILSON DEAN R
19705 SPRING RIDGE DR
WEST LINN OR 97068

WOOD STEVE N & KRISTEN K
1742 GALLERY WAY
WEST LINN OR 97068

YOUNG CLINTON C
1738 GALLERY WAY
WEST LINN OR 97068

DOUG MCCLAIN, SECTION MANAGER
CLACKAMAS COUNTY PLANNING
150 BEAVERCREEK RD
OREGON CITY OR 97045

TAMI HUBERT
OREGON DEPT OF STATE LANDS
775 SUMMER ST NE
SALEM OR 97301

BILL DAVIS
US ARMY CORPS OF ENGINEERS
PO BOX 2946
PORTLAND OR 97208

KIRSTEN VANLOO
C/O EMERIO DESIGN
6107 SW MURRAY BLVD STE 147
BEAVERTON OR 97008

~~Carrie Pellett (no address given)~~

ICON CONSTRUCTION
1980 WILLAMETTE FALLS DR STE 200
WEST LINN OR 97068

ROGER WOehl, SUPERINTENDENT
WEST LINN/WILLSONVILLE SCHOOL DIST
PO BOX 35
WEST LINN OR 97068

~~Jerry Grates (no address given)~~

LYNN FOX
CHUCK LYTLE
2006 CONESTOGA LN
WEST LINN OR 97068

SANDRA HUGHES *Pop*
19663 SUN CIR
WEST LINN OR 97068

RICHARD BURKHARTSMEIER
2444 PIMLICO DR
WEST LINN OR 97068

NANCY G MARQUETTE
6104 CHIRCHILL DOWNS DR
WEST LINN OR 97068

DONNA BAKER
1925 AZTEC CT
WEST LINN OR 97068

HELEN RINGELSPAUGH
19820 SPRING RIDGE DR
WEST LINN OR 97068

ALICE RICHMOND
3939 PARKER RD
WEST LINN OR 97068

BRANDY SARGENT
DAVID JONES & LORI PETERSON
19667 SUN CIR
WEST LINN OR 97068

ROBERT MCCARTHY
1535 BURNS ST
WEST LINN OR 97068

MICHAEL GOKEY AND LYNN PETTITT
2085 RIDGEBROOK DR
WEST LINN OR 97068

TOM NEFF
671 MARYLHURST CIR
WEST LINN OR 97068

GARY HITESMAN
2188 CLUBHOUSE DR
WEST LINN OR 97068

DARIA AND MATTHEW P KNOWLES
1810 CARRIAGE WAY
WEST LINN OR 97068

BRIAN EASTMAN
MARYLHURST NA
1827 SYLVAN WAY
WEST LINN OR 97068

KARIE OAKES
MARYLHURST NA REPRESENTATIVE
1125 MARYLHURST DR
WEST LINN OR 97068

LARRY HOLT
2305 TANNLER DR
WEST LINN OR 97068

JOELLEN HAGERTY
2237 ST MORITZ LP
WEST LINN OR 97068

KATHRYNE ELLIOT
2355 TANNLER DR
WEST LILNN OR 97068

ED AND ROBERTA SCHWARZ
2206 TANNLER DR
WEST LINN OR 97068

DAVID GRELEWICZ
BHT NA PRESIDENT
3806 FAIRHAVEN DR
WEST LINN OR 97068

BILL RELYEA
PARKER CREST NA PRESIDENT
3016 SABO LN
WEST LINN OR 97068

TROY BOWERS
SUNSET NA PRESIDENT
2790 LANDCASTER
WEST LINN OR 97068

SALLY MCLARTY
BOLTON NA PRESIDENT
19575 RIVER ROAD # 64
GLADSTONE OR 97027

KEVIN BRYCK
ROBINWOOD NA PRESIDENT
18840 NIXON AVE
WEST LINN OR 97068

DAVID RIITTENHOUSE
TANNER BASIN NA PRESIDENT
2101 GREENE ST
WEST LINN OR 97068

LYNN FOX
HIDDEN SPRINGS NA PRESIDENT
PO BOX 236
MARYLHURST OR 97036

DEAN SUHR
ROSEMONT SUMMIT NA PRESIDENT
21345 MILES DR
WEST LINN OR 97068

ELIZABETH KIERES
WILLAMETTE NA PRESIDENT
1852 4TH AVE
WEST LINN OR 97068

JEFF TREECE
MARYLHURST NA PRESIDENT
1880 HILLCREST DR
WEST LINN OR 97068

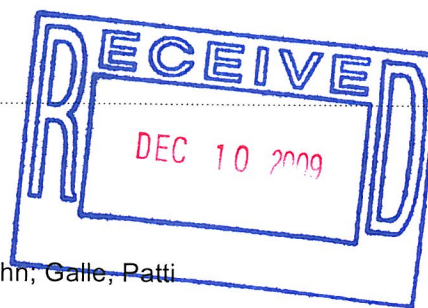
KRISTIN CAMPBELL
SKYLINE RIDGE NA PRESIDENT
1391 SKYE PARKWAY
WEST LINN OR 97068

144
3
-
141

30
30
30
27
24
-
141

Soppe, Tom

From: [REDACTED]
 Sent: Thursday, December 10, 2009 2:19 PM
 To: Soppe, Tom
 Cc: Burgess, Scott; Carson, Jody; Cummings, Teri; Kovash, John; Galle, Patti
 Subject: Renotice Suncrest to Jan. 4



Hello Tom,

I was on the City web site this morning and see the CC appeal hearing has been rescheduled to Jan. 4, 2010 due to a notification error. Would you please tell me the error the City has made that constitutes rescheduling?

I also have a few questions and would appreciate some clarifications about the process.

1) I understood the 120-day deadline is Jan. 7, 2010, as you stated in an email to me on Nov. 25, 2009. I would like to confirm that that is indeed the correct date. Would you please provide your methodology for computing the date?

2) I do not understand how the City will meet the required quasi-judicial process pursuant to **99.170.E.** and avoid a writ of mandamus. if the CC continues the hearing or leaves the record open until Jan. 11. Please provide an explanation.

3) I am concerned that the notification error jeopardizes the opportunity of the HSNA and persons of standing to appeal the CC final decision to LUBA, an authority that is preferable to the Circuit Court, which will have jurisdiction if a petition for writ of mandamus is filed by the applicant pursuant to **ORS 227.179**. Has the applicant indicated that he will not file a petition and if so, is it legally binding?

4) I understand that the applicant can not be compelled to extend the 120-days pursuant to **ORS 227.127.10**, but can the applicant voluntarily ask that the 120-days be extended? This seems a reasonable action by the applicant if the City error was minor and unintentional and also given that the PC gave the applicant two extensions, each for the benefit of the applicant. It gave me the impression that the applicant does not feel that time is of the essence.

Thank you. I look forward to your reply and I would appreciate any additional input you have. Please see below for the codes I cited.

Sincerely,

Karie Oakes

99.170 AN ADMINISTRATIVE ACTION - HEARING PROCEDURE

E. Prior to the conclusion of the initial evidentiary public hearing on the application, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The request shall be granted through one of the following means: (ORD 1568)

1. Continuation of the public hearing to a date, time, and place certain at least seven days from the date of the initial evidentiary public hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to submit additional written evidence, arguments, or testimony for the purpose of responding to the new written evidence.

2. Leaving the record open for at least seven days for the presentation of additional written evidence, arguments, or testimony. At the conclusion of this period, any participant may file a request for an opportunity to respond to any additional written evidence, arguments, or testimony. Such a request shall be granted with an additional seven days (at minimum) to file such a written response.

F. If requested an applicant shall be granted an additional period of at least seven days after the record is

12/10/2009

closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. Any such time period granted to the applicant shall not be subject to the time limit provisions of ORS 215 regarding local government decision making on quasi-judicial applications. (ORD 1568)

227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees. (1) Except as provided in subsections (3) and (5) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment. [1983 c.827 §27; 1989 c.761 §16; 1991 c.817 §15; 1995 c.812 §3; 1997 c.844 §8; 1999 c.533 §8; 2003 c.150 §1; 2003 c.800 §31]

227.179 Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days; jurisdiction; notice of petition. (1) Except when an applicant requests an extension under ORS 227.178 (5), if the governing body of a city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the county where the application was submitted to compel the governing body or its designee to issue the approval.

(2) The governing body shall retain jurisdiction to make a land use decision on the application until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be with the circuit court.

(3) A person who files a petition for a writ of mandamus under this section shall provide written notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any person who participated orally or in writing in any evidentiary hearing on the application held prior to the filing of the petition. The notice shall be mailed or hand delivered on the same day the petition is filed.

(4) If the governing body does not take final action on an application within 120 days of the date the application is deemed complete, the applicant may elect to proceed with the application according to the applicable provisions of the local comprehensive plan and land use regulations or to file a petition for a writ of mandamus under this section. If the applicant elects to proceed according to the local plan and regulations, the applicant may not file a petition for a writ of mandamus within 14 days after the governing body makes a preliminary decision, provided a final written decision is issued within 14 days of the preliminary decision.

(5) The court shall issue a peremptory writ unless the governing body or any intervenor shows that the approval would violate a substantive provision of the local comprehensive plan or land use regulations as those terms are defined in ORS 197.015. The writ may specify conditions of approval that would otherwise be allowed by the local comprehensive plan or land use regulations. [1999 c.533 §10; 2003 c.150 §2]

Soppe, Tom

From: Hidden Springs Neighborhood Assoc. [WLHSNA@msn.com]
Sent: Wednesday, December 09, 2009 7:00 PM
To: Soppe, Tom
Subject: 19650 Suncrest Conservation Easement

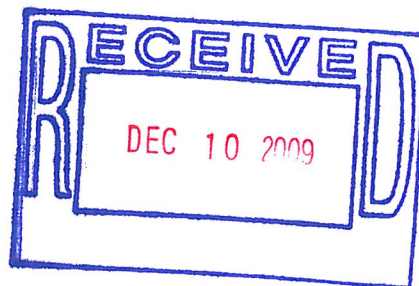
Hello Tom,

- 1.) Would it be possible to view the terms of the terms of the proposed conservation easement?
- 2.) What conditions have been placed on the document and on the property?
- 3.) What is the duration of the conservation easement?
- 4.) Can such an easement be made perpetual?
- 5.) Is there a public policy requirement that the conservation easement be limited to a certain number of years?
- 6.) Will the conservation easement prohibit the building of any structure on the area subject to the easement?
- 7.) Will the conservation easement prohibit the storage of materials or vehicles on the area subject to the easement?
- 8.) It is my understanding the city policy prefers a dedication to an easement because the situation is more permanent, and the rights and responsibilities of the parties more clear. The Council was elected to create public policy. Please tell me the date of the public meeting when the City policy requiring preference for dedication was changed.

Thank you for your assistance.

Cordially,

Lynn Fox, President
Hidden Springs NA



Soppe, Tom

From: [redacted]
Sent: Wednesday, December 09, 2009 12:42 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal



Tom,

Thanks for following up on this and correcting the problem. I am glad to know the problem didn't affect others less involved than me who likely wouldn't have known about the appeal. I knew that the code protected the process from the City's mistake.

Karie

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

From: Soppe, Tom <tsoppe@westlinnoregon.gov>
To: [redacted]
Sent: Tue, Dec 8, 2009 12:29 pm
Subject: RE: Suncrest Appeal

Karie,

We have figured out what happened with the notice. As you know, Sherrie has replaced Wendy and is very new at doing notices. After reading your email below, we noticed that she had sent you the notice but had sent it to the MNA president's address since you were on the list as a rep of MNA. This has been cleared up with her and she knows the correct procedure now. So due to this error it wasn't sent to you at your home address until now, but this does not cause any legal problems since 99.100(B) states "The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice." We are sorry however that you didn't receive the notice when we intended for you to receive it, and for any confusion this caused.

Thanks for letting us know,

Tom

City of
West Linn
Tom Soppe
tsoppe@westlinnoregon.gov
Associate Planner
22500 Salamo Rd
West Linn, OR, 97068
P: (503) 742-8660
F: (503) 656-4106
Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: [redacted]
Sent: Monday, December 07, 2009 5:36 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal

Tom,

Thank you for your reply. I want to inform you that I did not receive official notice of the appeal to CC of the final decision for 19650 Suncrest DR. I met with Teresa Zak on Dec. 4 to review the mailing list used in an effort to

12/9/2009

Soppe, Tom

From: Soppe, Tom
Sent: Tuesday, December 08, 2009 12:29 PM
To: [REDACTED]
Subject: RE: Suncrest Appeal

Karie,

We have figured out what happened with the notice. As you know, Sherrie has replaced Wendy and is very new at doing notices. After reading your email below, we noticed that she had sent you the notice but had sent it to the MNA president's address since you were on the list as a rep of MNA. This has been cleared up with her and she knows the correct procedure now. So due to this error it wasn't sent to you at your home address until now, but this does not cause any legal problems since 99.100(B) states "The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice." We are sorry however that you didn't receive the notice when we intended for you to receive it, and for any confusion this caused.

Thanks for letting us know,

Tom

From: [REDACTED] [mailto:kariookee@aol.com]
Sent: Monday, December 07, 2009 5:36 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal

Tom,

Thank you for your reply. I want to inform you that I did not receive official notice of the appeal to CC of the final decision for 19650 Suncrest DR. I met with Teresa Zak on Dec. 4 to review the mailing list used in an effort to determine this oversight. On the mailing list, it was noted that I and two others were mailed notice on Nov. 23, later than the rest of those on the mailing list.

In my experience in numerous land use cases, I have received the required notices, so it concerns me as to why I did not this time.

I am also concerned that others may not have received notice.

Would it be possible for another notice to be mailed to me?

Thank you,

Karie Oakes

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

From: Soppe, Tom <tsoppe@westlinnoregon.gov>
To: [REDACTED]
Sent: Wed, Nov 25, 2009 8:03 am
Subject: RE: Suncrest Appeal

Karie,

The appeal file is on line here:

<http://westlinnoregon.gov/planning/19650-suncrest-drive-6-lot-pud-appeal-planning-commission-decision>. The appeal application is on there; if you can't print it out or otherwise still need a copy from me, let me know.

12/8/2009

Soppe, Tom

From: Soppe, Tom
Sent: Tuesday, December 08, 2009 11:12 AM
To: [REDACTED]
Subject: RE: Suncrest Appeal

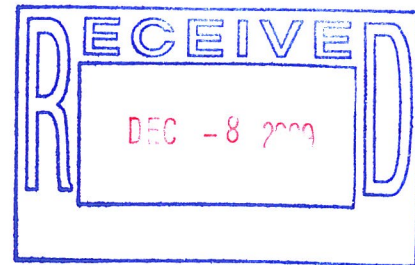
Okay, I will today.

Tom

From: [REDACTED] [mailto:[REDACTED]]
Sent: Tuesday, December 08, 2009 11:07 AM
To: Soppe, Tom
Subject: Re: Suncrest Appeal

Yes, please mail me a copy.

Thanks,
Karie



-----Original Message-----
From: Soppe, Tom <tsoppe@westlinnoregon.gov>
To: [REDACTED]
Sent: Tue, Dec 8, 2009 10:44 am
Subject: RE: Suncrest Appeal

Karie,

Here is a scanned version. Would you like me to mail a paper version also?

Tom

City of West Linn
Tom Soppe
tsoppe@westlinnoregon.gov
Associate Planner
22500 Salamo Rd
West Linn, OR, 97068
P: (503) 742-8660
F: (503) 656-4106
Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: [REDACTED] [mailto:[REDACTED]]
Sent: Monday, December 07, 2009 5:36 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal

Tom,

Thank you for your reply. I want to inform you that I did not receive official notice of the appeal to CC of the final decision for 19650 Suncrest DR. I met with Teresa Zak on Dec. 4 to review the mailing list used in an effort to

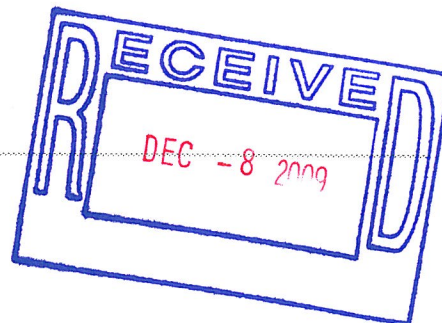
Soppe, Tom

From: Soppe, Tom
Sent: Tuesday, December 08, 2009 10:44 AM
To: [REDACTED]
Subject: RE: Suncrest Appeal
Attachments: SPWKonica09120810320.pdf

Karie,

Here is a scanned version. Would you like me to mail a paper version also?

Tom



From: [REDACTED]
Sent: Monday, December 07, 2009 5:36 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal

Tom,

Thank you for your reply. I want to inform you that I did not receive official notice of the appeal to CC of the final decision for 19650 Suncrest DR. I met with Teresa Zak on Dec. 4 to review the mailing list used in an effort to determine this oversight. On the mailing list, it was noted that I and two others were mailed notice on Nov. 23, later than the rest of those on the mailing list.

In my experience in numerous land use cases, I have received the required notices, so it concerns me as to why I did not this time.

I am also concerned that others may not have received notice.

Would it be possible for another notice to be mailed to me?

Thank you,

Karie Oakes

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

From: Soppe, Tom <tsoppe@westlinnoregon.gov>
To: [REDACTED]
Sent: Wed, Nov 25, 2009 8:03 am
Subject: RE: Suncrest Appeal

Karie,

The appeal file is on line here:

<http://westlinnoregon.gov/planning/19650-suncrest-drive-6-lot-pud-appeal-planning-commission-decision>. The appeal application is on there; if you can't print it out or otherwise still need a copy from me, let me know.

The appeal has been accepted and the date of the hearing is Dec 14. You will be getting a copy of the notice in the mail soon, if you haven't already at this time.

The 120 day deadline is Jan 7, 2010.

99.250 specifies what an appeal application needs to include. Like other applications the project manager of the

12/8/2009

Soppe, Tom

From: Soppe, Tom
Sent: Tuesday, December 08, 2009 9:03 AM
To: [REDACTED]
Subject: RE: Questions re: Suncrest

Karie,

- 1) The storm water facility would be privately owned and maintained. Condition 1 makes the applicant enter into a maintenance agreement with the City which requires them to maintain it properly and allows the City access for inspections. Engineering has a standard agreement for developments with this condition to sign.
- 2) In the past, developments in this general area of town were asked to pay a contribution, independent of SDCs, towards this signal. This was done because funding for this signal was not yet in the master plan in the Transportation System Plan. As you may recall this was done via a condition of approval. In the new Transportation System Plan, the signalization of this intersection is in the Master Plan, meaning the funding is coming from SDCs. So this development will contribute automatically via its SDCs. The Master Plan starts on Page 8-28 of the Transportation System Plan. This intersection is listed at the top of the table on Page 8-29. The plan can be seen at this link:
<http://westlinnoregon.gov/publicworks/transportation-master-plan>. Click on the Transportation System Plan 2008 pdf.

You're welcome,

Tom

From: [REDACTED] [mailto:[REDACTED]]
Sent: Monday, December 07, 2009 5:22 PM
To: Soppe, Tom
Subject: Questions re: Suncrest

Hi Tom,

I have a couple of questions regarding 19650 Suncrest approved application.

- 1) Is the storm water facility private or public and who is responsible for its maintenance?
- 2) How is this development financially contributing to the future traffic signal at the intersection of Rosemont Road/Salamo/Santa Anita?

Thanks in advance,

Karie Oakes



Soppe, Tom

From: [redacted]
Sent: Monday, December 07, 2009 5:36 PM
To: Soppe, Tom
Subject: Re: Suncrest Appeal



Tom,

Thank you for your reply. I want to inform you that I did not receive official notice of the appeal to CC of the final decision for 19650 Suncrest DR. I met with Teresa Zak on Dec. 4 to review the mailing list used in an effort to determine this oversight. On the mailing list, it was noted that I and two others were mailed notice on Nov. 23, later than the rest of those on the mailing list.

In my experience in numerous land use cases, I have received the required notices, so it concerns me as to why I did not this time.

I am also concerned that others may not have received notice.

Would it be possible for another notice to be mailed to me?

Thank you,

Karie Oakes

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

From: Soppe, Tom <tsoppe@westlinnoregon.gov>
To: [redacted]
Sent: Wed, Nov 25, 2009 8:03 am
Subject: RE: Suncrest Appeal

Karie,

The appeal file is on line here:

<http://westlinnoregon.gov/planning/19650-suncrest-drive-6-lot-pud-appeal-planning-commission-decision>. The appeal application is on there; if you can't print it out or otherwise still need a copy from me, let me know.

The appeal has been accepted and the date of the hearing is Dec 14. You will be getting a copy of the notice in the mail soon, if you haven't already at this time.

The 120 day deadline is Jan 7, 2010.

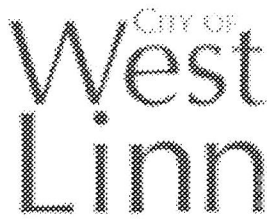
99.250 specifies what an appeal application needs to include. Like other applications the project manager of the application on the planning staff reviews it for completeness. This appeal application appears to have all that is listed.

The attached pdf contains scans of the communications with the applicant since 10-21.

Thanks
Tom

Tom Soppe
tsoppe@westlinnoregon.gov
Associate Planner
22500 Salamo Rd
West Linn, OR, 97068
P: (503) 742-8660

12/8/2009



F: (503) 656-4106
Web: westlinnoregon.gov

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: [REDACTED] [mailto:kariookes@aol.com]

Sent: Sunday, November 22, 2009 10:05 AM

To: Soppe, Tom

Subject: Suncrest Appeal

Hello Tom,

I hear the Hidden Springs Neighborhood Association appealed the PC final decision for 19650 Suncrest DR. I can not find anything about it on the City web site, either on the Planning or CC pages.

Can you please tell me if the appeal was accepted and the date of the CC hearing? Also, please what is the 120-day date?

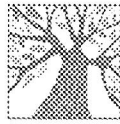
I can not find who has the authority to determine an appeal application complete in our CDC. Do you know of it?

I would appreciate a copy of the appeal application. I request that the web site be updated with this new information as soon as possible in order to allow the most prompt notification of the public.

Please also send me any communications you may have had with the applicant since the PC hearing on October 21, 2009.

Thank you in advance.

Karie Oakes



CITY OF
West Linn

PLANNING COMMISSION

Minutes of October 21, 2009

- Draft -

Members present: Chair Michael Babbitt, Vice Chair Robert Martin and Commissioners Laura Horsey, Michael Jones, Charles Lytle, Christine Steel and Dean Wood

Staff present: John Sonnen, Planning Director; Tom Soppe, Associate Planner; Khoi Le, Civil Engineer; and William Monahan, City Attorney

Members absent: None

CALL TO ORDER

Chair Babbitt called the Planning Commission meeting to order in the Council Chambers of City Hall at 7:00 p.m.

APPROVAL OF MINUTES

Jones **moved** to approve the Minutes of September 16, 2009. Lytle **seconded** the motion and it **passed** 5:0. Martin and Wood abstained.

PUBLIC COMMENTS

Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, representing the Hidden Springs Neighborhood Association, asked if the City Attorney applied substantive due process whenever he advised the City Council, Planning Commission and the staff. Monahan confirmed he gave the City Council advice regarding due process and when he did so he considered the US Constitution, the laws of the State of Oregon and the local code. He suggested that if she wanted an in-depth review she could submit her question in writing to the City Manager. Fox then submitted a letter.

Wayne Horner, 2079 Ridgebrook Drive, had submitted a Testimony Form that indicated he wished to offer testimony regarding PUD-09-01/SUB-09-01/WAP-09-02, however, Chair Babbitt explained the public hearing was closed. Alice Richmond, 3939 Parker Road, had submitted a Testimony Form on which she had checked the box In Support of that application.

PUBLIC HEARINGS

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

PUD-09-01/SUB-09-01/WAP-09-02 6-Lot PUD, Subdivision and Water Resources Area Permit at 19650 Suncrest Drive. Continued from June 17 to July 29, 2009 (July meeting cancelled). Re-advertised for September 2, 2009 (September meeting cancelled). Re-advertised for October 7, 2009.

Chair Babbitt opened the hearing. Lytle had previously recused himself from hearing the matter. Horsey declared she had made a second site visit that day. Steel reported that she had driven by the site that evening.

Applicant Rebuttal

Kirsten Van Loo, Emerio Design LLC, 6107 SW Murray Blvd., Ste 147, Beaverton, Oregon 97008, clarified the site plan she had submitted at the previous hearing was the version the conditions of approval should refer to. She conveyed the applicant's requests to correct and clarify them. Condition 15, line 3 should say "conservation," rather than "conversation." Condition 4 should be clarified to indicate the applicant was to underground all new and existing utilities along the project frontage and within the project, but was not obligated to extend undergrounding beyond that. She testified the application in its final form met every standard established by the code. It set aside the majority of the land in private tracts with conservation easements, which was what the City asked for. Her client was willing to do everything they could to protect the laurel hedge and buffer and maintain the value of the property to the south, including planting native species trees on the south property line as part of tree mitigation.

During the questioning period Steel wanted to know how the newly divided Tracts B and C would be treated. Van Loo referred to proposed Conditions 14 and 15. Tract B was east of the creek and Tract C was west of the creek. Both Tracts would be owned by the homeowners association. Both tracts would have conservation easements over them. But the conditions gave the City a trail easement over Tract B and made the City responsible for maintaining Tract B. The homeowners association was to maintain Tract C. The conservation easements prohibited any activity other than that necessary to maintain the land in its natural state. The trail easement allowed the City to install a soft surface trail at some point in the future. The easements traveled with the title to the land. Potential home purchasers would see on the title documents that they were purchasing their lot, plus an undivided one-sixth interest in Tracts B, and C (Open Space); Tract A (water quality facility); and Tract D (private street) and as members of the homeowners association they had a responsibility to maintain those tracts. The homeowners association Covenants, Conditions and Restrictions (CC&Rs) would spell out what those agreements and responsibilities were, including how common areas were to be maintained. Even if one or more of the association members did not step up to financially or physically fulfill their responsibilities to help maintain the tracts, the remaining members were fully responsible for doing so.

Steel observed Condition 15 offered the applicant the option of putting a split rail fence or a wood fence between the homes and the open space area. Van Loo clarified that the applicant

would build a split rail fence and place signage there so residents could enjoy the view. When asked, she confirmed that applicant would concur with removal of the wood fence option.

Horseley referred to Condition 3 regarding tree mitigation and wanted to know specifically what five significant trees were proposed for removal. Van Loo explained there was no way to save the big pine tree in the right-of-way in front of the project because the applicant had to use that area to make required street improvements. One big Douglas fir in front of a garage and three more that were behind the garage and directly in the center of the developable area would be removed (See the list on page 92 of the original staff report).

Babbitt wanted to know why the applicant wanted Condition 4 modified. Van Loo observed it called for undergrounding all new and existing utilities. She explained the applicant wanted it to be very clear they were not required to underground dry or franchise overhead utilities down the street beyond the site frontage. They planned to underground overhead utilities in front of the project and the internal utilities. They were going to work with the City to upsize the water line in the street and extend it several hundred feet beyond the site in each direction, but they did not want to be required to underground offsite dry utilities. Khoi Le, Engineering Department, advised that sometimes the utility company required a developer to extend the undergrounding a few feet further to anything would affect it. He suggested the condition say the developer was responsible for undergrounding dry utilities along the project frontage and anything that affected it.

Staff Comments

Soppe pointed out that the current list of proposed conditions of approval was in the October 21, 2009 staff memorandum. The conditions referred to the new site plan that delineated Tracts B and C. Two conditions had been eliminated. They were no longer necessary because the current version of the site plan showed the stormwater facility outfall out of the drainageway transition area and street trees in a planter strip instead of east of the sidewalk. The staff had not seen any new arguments or changed circumstances in the testimony received since the previous hearing that would cause them to change their recommendation. Soppe recommended revising **Condition 4** to say, **“All new and existing dry utilities along the project frontage and that are affected by the development shall be placed underground.”**

During the questioning period, Soppe explained neighbors wanted to require the applicant to remove nails and treated wood from the drainageway area and to require establishment of a homeowners association with sufficient fees to cover the maintenance responsibilities. Those were not in the recommended conditions of approval. The staff had related the requests to the Commissioners at a work session in case they wanted to put them on the drafted list of conditions.

Martin said if the City did not want the responsibility of maintaining the open space tracts how would the City ensure the homeowners association met its obligation to do that? The staff explained they would examine the title documents to be recorded to ensure they showed the obligations called for in the conditions of approval and those obligations would run with the title to the land. The conditions could go farther than that and specify that the provisions in the documents related to how the homeowners association was to satisfy their obligation to the City were subject to the approval of the City Attorney. Condition 15 provided that if the homeowners association failed to meet its obligation to maintain the conservation easement to City standards the City had a right to enter the area to maintain it and could place a lien on the property. Steel wanted to know if the neighborhood association could volunteer to help maintain the conservation easement? She recalled Karie Oaks had testified that water resource areas benefited a larger number of people than just the adjacent property owners. Babbitt observed the City could legally bind the homeowners association and tie the obligation to ownership of the property, but they could not legally bind the neighborhood association, which would be subject to leadership and membership changes. It was safer to put the obligation on the title and make the homeowners association responsible for it.

Deliberations / Motions

Horseley welcomed the opportunity for the Commissioners to finally raise and discuss issues. The amount of plan flexibility and additional density the PUD had did not balance with the level of public benefit the PUD offered in return. That was because the large tracts the applicant put into conservation easements was not a public benefit they could trade because most of that land would have already been protected from the time of annexation by Chapter 32 riparian resource protection provisions. She indicated she accepted the fact the project was allowed to be a PUD, transfer density, and have R-7 sized lots instead of R-10 sized lots - even without a public benefit to trade - because the site featured Type 1 and 2 lands and the R-7 sized lots carried out the Comprehensive Plan. She suggested the Planning Commission take a look that code later. Horseley was concerned the proposed reduced setbacks and narrow lane created an alley-like arrangement with less room between houses so the development felt too compacted. She was concerned the back row of houses could potentially be facing fences rather than front yards of the front row houses and side yards would face neighbors' rear yards. She said the Planning Commission needed to ensure that the entire perimeter was set back per base zone standards. She pointed out that although the code allowed a PUD to have narrower setbacks, the approval criteria said a proposed PUD was to be a desirable, attractive and stable environment in harmony with the surrounding area through well developed, detailed, planning and by comprehensively correlating the provisions of the code and all applicable adopted plans.

Horseley related that she had visited the site that day to see if there were interesting larger trees and other existing trees than could be easily accommodated by the development. She noticed a fabulous Madrone that likely could be in the front yard of Lot 4 and a cedar tree on the north boundary. She thought they should be categorized as significant trees. She noted the approval criteria also called for preserving existing amenities of the site to the greatest extent possible, and relating the type and design of the development to the topography, landscape features and

natural amenities existing on the site and in the vicinity. She reasoned that if the applicant was getting more than they were giving (because the public benefit they offered was greatly diminished by the fact the land would have been conserved anyway via other codes), the Planning Commission should ask the applicant to step up to meet the higher standards in the approval criteria and detail the plan to preserve amenities at the site. She pointed out on the map on page 81 areas where many trees that were not covered by the conservation easements were to be removed. She said that did not seem to her to meet the criteria to protect existing amenities and do detailed planning to make the development attractive. She acknowledged there was an additional level of effort and cost to meet them, but she thought that was appropriate and it might be offset by a reduced need for mitigation for removed trees. She suggested the Madrone, the cedar tree, and the pine tree in the right-of-way (if there were a way to do it) be preserved for their inherent value, as well as some trees on the north and south boundaries to buffer neighbors. She suggested giving the arborist and Planning Director discretion to decide if some of the six or seven maples along the north boundary should be preserved as a buffer. She said that was the kind of fine-tuning the City should want to see to meet PUD standards. The code allowed density transfer from Type 1 and 2 lands and that resulted in smaller lots. The application met a "literal" section of code concerning setbacks. But the approval criteria in 21.100(B) trumped that. They called for comprehensively correlating the code with all adopted plans. The Comprehensive Plan had a density designation for the area that was equivalent to R-7 and R-10 and both of those zones required larger setbacks than what was proposed. Horsey said the Planning Commission should consider and judge the unusual way the development was planned with a narrow, stubbed lane, smaller setbacks, and homes facing other homes' rear yard fences. The approval criteria was subjective, but it was code and it had to be applied too. That meant the Planning Commission had to interpret what "detailed planning" and "preserving the existing amenities" meant and apply them.

Babbitt and Wood recalled that the City Arborist had looked over the site and designated the significant trees to be saved or considered. Horsey pointed out that not all of the five significant trees the Arborist had identified would be saved because they were not all in convenient places in the plan. So they would be removed and mitigated for. The Tree Inventory showed other trees as large as 12" to 18" caliper and there were a couple of large, distinctive species. It seemed to her they could be accommodated. There were three trees in particular she was suggesting the Arborist look at and designate with the agreement of the Planning Director. There were other trees that could serve a useful screening function. Some were in the 7.5-foot setback area. That fit code intent for a PUD that was in harmony with its surroundings. She opined that to keep them would not require a significant change in the plan. It was better than chopping them all down. To save them would reduce the number of trees the applicant had to mitigate for.

Steel favored keeping trees of any caliper that served a useful function, such as screening neighbors, but she anticipated that even if the developer went to great lengths to save them during grading and construction, trees might still be adversely impacted anyway, or the new homeowners might remove them if they did not fit their landscaping plans. Jones agreed. He

observed the process had been extended many months in this case. He believed the current conditions of approval were adequate. He acknowledged that he and other Commissioners still questioned what a homeowners association could or could not do, but the Planning Commission would have the assurance that their documents would be reviewed by the staff to ensure they addressed the conditions of approval.

Jones **moved** to approve PUD-09-01/SUB-09-01/WAP-09-02 subject to the conditions of approval listed in the October 21, 2009 staff memorandum with the following changes: Condition 4: As revised by staff during the hearing. Condition 15: Correct "conversation" to "conservation." Starting on line 10 strike "or a six-foot wooden fence" and "If the applicant shall choose to construct a split rail fence," and start the next sentence with "One." Wood **seconded** the motion and discussion followed.

Babbitt said his overall concern about the case was that even though the code preferred that protected land be dedicated to the City, the City had decided not to accept it in this particular case and to require the homeowners association to maintain it. He held that was poor policy. He said the representations made by the applicant during the annexation process were likely made because the applicant was aware that the code said dedication was the preferred method and it was historically what the City had done. He asked the Planning Commission to add new Condition 20 to require the language of the CC&Rs to be reviewed by the City Attorney to ensure it met the all the conditions of approval. He indicated he was not suggesting adding any other new conditions to remove nails and treated wood or to establish sufficient homeowners association fees. He did not think it was within the purview of the Planning Commission to address the fees and they should not start setting restrictions on how they designed their homeowners association.

Jones **amended his motion** to include new Condition 20, to require the language of the CC&Rs to be reviewed by the City Attorney to ensure it met the all the conditions of approval. Wood **seconded** and discussion continued.

Martin agreed a legal review was better than the staff review referred to in Condition 15. He said his general feeling was this was a difficult case because the staff and applicant had done a skillful job of making the application comply with the code and it was what the Comprehensive Plan said the City wanted. But the process took a beautiful piece of property and forced the applicant to push six houses very close together and very close to the road. He believed the development could have been moved a little more into Tract C so it was more compatible with the houses around it, which was what people wanted. The problem was the PUD code had a different set of goals than Chapter 32. He saw a need to work on the code so infill development was what the community wanted and fit everything around it. He worried that the City would end up destroying the water resource area by allowing people to walk right next to the stream.

Horseley indicated there was a need to work on the code related to PUDs including looking at the circumstances under which they were allowed. But the existing code had subjective criteria that allowed the Planning Commission to look a little harder at them in exchange for the

additional advantages and flexibility a PUD applicant enjoyed. She believed the applicant, the City Arborist and the Planning Director could work together to fine-tune the plan so the result was a development that reflected the preservation of amenities the approval criteria called for. She stressed the development was a PUD because it had Type 1 and 2 lands on it and not by virtue of additional dedication of land to conservation because that land would have been preserved by the code anyway. Horsey pointed out the code said the purpose of the PUD code was to produce a development that would be as good or better than the results of lot-by-lot development. An example would be trading space for a developed park in exchange for the flexibility of denser clusters. She worried that allowing PUD development made it more attractive to buy land with steep slopes so a developer could have a denser development on the flat portion.

Jones agreed the Planning Commission needed to look at the CDC and how it caused infill to impact the community. He observed the application met every applicable code requirement and the Commissioners had been discussed it at length.

Horsey observed that Condition 12 reiterated the code in order to ensure that the perimeter of the project respected the base zone setbacks. But the drafted condition only covered the west perimeter. So the perimeter to the north had to be addressed. Horsey **moved to amend the motion** to add the following sentence to Condition 12, "The side yard setback of Lots 1 and 6 shall be those of the underlying base zone (R-10) which is 7.5 feet." Soppe explained the staff had inserted Condition 12 to ensure the lots at the front of the project had a 20-foot setback because that was the only place where the applicant proposed a setback that was not to code. Horsey **withdrew her motion to amend**. But she said her attention had been drawn to the perimeter because the neighbors had not likely anticipated at annexation that a narrow side yard would abut their rear yard and no one had anticipated how the project would connect. It showed lack of planning for transportation around annexation that the Planning Commission should discuss at a future work session. Horsey said the applicant had met the explicit elements of the code but not the subjective approval criteria. She held the Planning Commission needed to value the code in its entirety. They should consider the meaning of code language calling for the higher standard of "preserving the amenities of the site." A PUD should have to meet that higher standard in return for flexibility. She suggested that meant the Planning Commission should try to protect a good-sized Port Orford cedar to the north in the setback and a large Madrone that could be in the front yard of Lot 4.

Babbitt invited the applicant to comment on proposed new Condition 20. Van Loo said the applicant concurred.

The **vote on the amendment** to add Condition 20 to require the homeowners association CC&Rs to be reviewed by the City Attorney to determine they met all the conditions of approval was conducted and it **passed** 6:0.

Before voting on the amended motion the Commissioners agreed to the staff suggestion to also remove Condition 15 language, "If the applicant chooses to construct a split rail fence," because it reflected their intent.

The amended motion was to approve PUD-09-01/SUB-09-01/WAP-09-02 subject to the conditions of approval listed in the October 21, 2009 staff memorandum with the following changes:

Condition 4: All new and existing dry utilities along the project frontage and that were affected by the development were to be placed underground.

Condition 15: Correct "conversation" to "conservation" on line 3. Sentence starting on line 10 was to read, " A split-rail fence shall be constructed along the western boundary of Tract C." The following sentence was to begin "One or more signs, as necessary..."

Condition 20: A new condition to require the language of the CC&Rs to be reviewed by the City Attorney to ensure it met the all the conditions of approval.

The vote was conducted and the motion **passed** 5:1. Babbitt voted against because of his previously stated concern about the City's policy regarding dedication of land. He announced that all who had completed a sign-in form would have standing in the process.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Martin recalled cases where citizens had asked that a hearing be continued so they could look at new information and then they had not shown up at the next hearing. He asked why? He noted it put an added burden on the Planning Commission, the staff and the applicant. Horsey said people asked for more time when they saw new material the evening of the hearing and wanted time to review it. If they did not come to the next hearing she assumed they found no issue with the information. But it was vital to allow time for that review to happen. Martin agreed that was a good point. He just wanted people to respect the process and the consequences of it. Horsey contended that the Planning Commission had a history of being lax about allowing new information to be presented in a public hearing without identifying it. Jones disagreed with Horsey's characterization of the Planning Commission and held at no point in the last five years had the Commission been lax in recognizing new material. But there had been times when people asked for a continuance and thereafter did not have the courtesy to follow up. Horsey observed the Planning Commission had inflamed some citizens and suggested the Commission should look into how that happened and how the process might be improved so it was more civil. Babbitt anticipated the Commissioners would discuss that at the upcoming CCI meeting.

An audience member interrupted the meeting to say there was no sign in sheet out in hallway. He asked her to be quiet and respect the Planning Commission, but he also pointed out the "Planning Commission Sign In/Testimony Form" was available on a clipboard. Babbitt reminded those who would speak to the Commission that the rules were that anyone who spoke to the

Planning Commission had to speak to the Commission as a whole and respect individual members.

Lytle referred to the Suncrest application and said he objected to the City's decision to use a homeowners association to avoid the responsibility of taking care of land. He knew what a burden and expense that was because he served on his own homeowners' association board. He said the same thing happened with stormwater management and it was a nationwide problem. He hoped that West Linn might be one of the first cities to address it. He suggested the Commissioners discuss the matter at a work session. Wood agreed. He said people moved in without knowing what they were getting into. But if the City preferred not to take ownership of the open space it had been a good compromise to have the City take care of the area by the stream and have the homeowners association care for the sloped area, which might not require as much maintenance.

Babbitt recalled the Suncrest development applicant had explained she had tried to give the staff the updated map earlier, but they had asked her to wait until the hearing so multiple site maps would not confuse people. That had raised the issue of new evidence. He asked if the staff could fashion a better process to track such submittals. He also asked the staff to schedule a work session to advise the Commissioners regarding the issue of reconciling the PUD code with other code chapters.

ADJOURNMENT OF PLANNING COMMISSION

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 9:00 p.m.

APPROVED:

Michael Babbitt, Chair

Date