

**WEST LINN CITY COUNCIL
FINAL DECISION NOTICE**

AP-09-05

**IN THE MATTER OF HIDDEN SPRINGS NEIGHBORHOOD ASSOCIATION'S
APPEAL OF ICON CONSTRUCTION'S PROPOSAL FOR A 6-UNIT SINGLE-
FAMILY RESIDENTIAL PUD SUBDIVISION AT 19650 SUNCREST DRIVE**

At a special meeting on January 4, 2010, the West Linn City Council held a public hearing to review Hidden Springs Neighborhood Association's (HSNA) appeal of Icon Construction's application for a 6-lot PUD subdivision at 19650 Suncrest Drive (PUD-09-01/SUB-09-01/WAP-09-02) which included permits for subdivision, planned unit development (PUD), and a Water Resources Area.

Mayor Galle opened the hearing. Tom Soppe, Associate Planner, gave the staff presentation. Lynn Fox of HSNA gave the appellant's presentation. Kirsten Van Loo of Emerio Design gave the applicant's presentation. Brandy Sargent, Andy Davidson, Sandra Hughes, Karie Oakes of Marylhurst Neighborhood Association, Lynn Pettit, Mike Gokey, Wayne Horner, Matthew Knowles, David Jones, Dale Blanchard, and Bob Thomas spoke in support of the appeal. Alice Richmond spoke in opposition to the appeal. Ms. Fox gave the appellant's rebuttal. Ms. Van Loo gave the applicant's rebuttal. Mayor Galle closed the hearing.

The City Council denied the appeal and upheld the Planning Commission's decision with 9 additional findings, changes to Conditions 14 and 15, and two new conditions.

The additional findings are as follows:

1. Any promises made by an applicant during an annexation Step 1 Annexation Hearing regarding dedication of open space would constitute an offer that the City could choose to accept or reject. If accepted, the applicant would be bound under the case of Frankland versus the City of Lake Oswego.
2. The City Council witnessed the videos provided in the packet and shown at the January 4, 2009 hearing and heard conflicting testimony regarding annexation application representative Ben Altman's statements during the annexation process. The majority of the Council finds that Mr. Altman was not necessarily indicating that the applicant chose to dedicate the land title when he represented the annexation applicant at the Step 1 Annexation Hearing and neighborhood meetings, as demonstrated by quotes in the written and video records. It is ambiguous as to whether he was indicating the applicant chose to dedicate the land title or whether he was merely explaining what he thought would be required of the applicant under Chapter 32. Also, even if he was stating that the applicant chose to "dedicate" the property, it was not clear that his references to "dedication" indicated dedication of fee simple title, since the record shows that

he discussed the possibility of dedication of a conservation easement on more than one occasion.

3. The record indicates that the applicant did not choose to dedicate tracts B and C through the PUD-09-01/SUB 09-01/WAP 09-02 application process, and there was no demonstration that a City-imposed dedication would be roughly proportional to the impacts of the development. It was demonstrated in the record via applicant's attorney Michael C. Robinson's June 17, 2009 letter and Finding No. 37 in the PUD-09-01 et al. staff report that a City-imposed dedication would not be roughly proportional to the impacts of the development. Therefore dedication of tracts B and C to the City is not required under CDC Section 32.050 D.
4. To ensure proper maintenance and protection of the water resource area contained in tracts B and C, the conditions of approval need to include more definite and detailed requirements for the homeowners' association's establishment and operation, for maintenance of the tracts, and for City enforcement of maintenance.
5. The homeowners' association is the appropriate entity to maintain tracts B and C, with the exception of the trail easement in the event a public trail is established, since they will own the tracts, and will be the primary beneficiary of the preservation of the tracts which are not viewable from a public right-of-way.
6. In order to best ensure the protection and maintenance of tracts B and C upon the possible forfeiture of the tracts by the applicant or homeowners' association or the possible lack of maintenance ability by these entities, the applicant or homeowners' association, at their discretion, may dedicate the tracts fee simple to the City.
7. The orientation lots of 1 and 6 results in side setbacks of 7.5 feet along their north side, which will result in new houses close to the existing rear yards of three houses fronting on Ridgebrook Drive. Therefore, to mitigate for possible negative effects on privacy and compatibility, appropriately tall vegetative screening is warranted within the north side yards of lots 1 and 6.
8. The site is not is a documented land slide hazard area based on the Natural Hazards map of the West Linn Comprehensive Plan Inventories, and based on the Potential Landslides map of the West Linn Natural Hazards Mitigation Plan.
9. The Council heard and read testimony claiming that there was no public benefit to the PUD as approved by Planning Commission. CDC 24.010 states that the purposes of a PUD include the following:
 - A. To produce a development which would be as good or better than that resulting from traditional lot by lot development.

- B. To preserve, to the greatest extent possible, the existing landscape features and amenities through the use of a plan that relates the type and design of the development to a particular site.

The application clearly proposes a development that is better than would result from traditional lot by lot development, due to the density transfer out of the proposed open space tracts and into the area of the 6 proposed residential lots. The result of this PUD layout, including density transfer is the preservation of the entire forest canopy area of the site, not merely the Fern Creek transition area within the open space tracts that is required to be preserved per CDC Chapter 32. The approved PUD includes the open space tracts that encompass approximately 103,800 square feet that will be preserved from development permanently. This includes the area east of the creek that is outside the transition zone (approximately 20,000 square feet of forest canopy habitat area) that would have likely been proposed for development under a non-PUD subdivision application and that, under such a non-PUD subdivision scenario, may have resulted in a street crossing the otherwise protected Fern Creek riparian corridor on site. The density transfer allowed under the approved PUD also provided for the application to significantly exceed the tree protection requirements of 55.100(B)(2)(b). 55.100(B)(2)(b) requires up to 20% of the Type III and IV lands on site to be preserved for significant tree preservation. As discussed in Finding No. 33 of the PUD-09-01 staff report, 20% of the Type III and IV lands on site would equal 23,435 square feet whereas the approved PUD layout preserves 33,000 square feet of significant tree canopy on Type III and IV lands, preserving the habitat, aesthetic, and other benefits of significant tree canopy for the benefit of the city. In addition the approved PUD provides a trail easement.

The new conditions of approval are as follows:

21. The applicant shall plant trees or shrubs approved by the City Arborist in the north side yard setback of lots 1 and 6 of a type and size to provide effective screening between the properties, within three years, as determined by the City Arborist.
22. The requirements of the Conditions of Approval that are applicable to the individual homeowners and/or to the homeowners' association shall be placed on the deed for each lot.

Conditions 14 and 15 are revised to read as follows:

14. A suitable covenant, or a conservation easement subject to the requirements of ORS Chapter 271, shall be established for Tract B, for the benefit of the homeowners' association and the City of West Linn. (In the event the City does not accept the conservation easement or the covenant, this condition shall be satisfied by dedication of a conservation easement or suitable covenant in a form approved by the Planning Director, in favor of the homeowners' association only,

which shall be subject to the use restriction in this condition.) This easement shall forbid all development of any kind, except for the installation and maintenance of required signs and a trail within the trail easement described in Condition of Approval 2.

The homeowners' association shall be responsible for maintenance of the entire tract, except for the area contained in the trail easement, if and when a trail is developed within the easement, consistent with city standards. The City will be responsible for the maintenance of the area contained in the trail easement only upon construction of a trail within the easement. The homeowners' association shall enter into a maintenance agreement with the City to provide for the maintenance of this tract. This agreement is subject to approval by the City's Parks and Recreation Director and the City's Environmental Services Engineer. The signed agreement shall be recorded on the title deed of records of Clackamas County, and referenced in the subdivision's covenants, codes and restrictions. The homeowners' association shall periodically (at no more than two –year intervals) remove all invasive plants (i.e., Himalayan Blackberry, Garlic Mustard and English Ivy) from the tract. Homeowners shall be prohibited from storing materials, cutting or removal of trees (except for hazard trees as approved by the City) or native vegetation and dumping yard waste or other debris in Tract B. These and other requirements will be included in the easement or covenant and the maintenance agreement, including but not limited to:

Provisions for enforcement and collection of costs; performance requirements; prohibited activities and uses; City authority to inspect; and City control over extinguishment.

The applicant shall install readily visible conservation zone signage per City standards along the edge of the tract (except where it borders Tract C) identifying the use restrictions specified above. The signage shall be placed at approximately 30-foot intervals. The homeowners' association shall be responsible for the maintenance of the signs.

The conservation easement and the use limitations in this condition shall be placed on the final plat and on the deed for each lot. Tract B shall be dedicated to the homeowners' association. The applicant and subsequently the homeowners' association shall retain the option to dedicate the tract to the City.

15. A suitable covenant, or a conservation easement subject to the requirements of ORS Chapter 271, shall be established for Tract C for the benefit of the homeowners' association and the City of West Linn. (In the event the City does not accept the conservation easement or covenant, this condition shall be satisfied by dedication of a conservation easement or suitable covenant in a form approved by the Planning Director in favor of the homeowners' association only, which shall be subject to the use restriction in this condition.) This conservation

easement shall forbid development of any kind, with the exception of the construction and maintenance of the fence and signs required below.

The homeowners' association shall be responsible for maintenance of the entire tract consistent with City standards. The homeowners' association shall enter into a maintenance agreement with the City to provide for the maintenance of this tract. This agreement is subject to approval by the City's Parks and Recreation Director and the City's Environmental Services Engineer. The signed agreement shall be recorded on the title deed of records of Clackamas County, and referenced in the subdivision's covenants, codes and restrictions. The homeowners association shall periodically (at no more than two –year intervals) remove all invasive plants (i.e., Himalayan Blackberry, Garlic Mustard and English Ivy) from the tract. Homeowners shall be prohibited from storing materials, cutting or removal of trees (except for hazard trees as approved by the City) or native vegetation and dumping yard waste or other debris in Tract C. These and other requirements will be included in the easement or covenant and the maintenance agreement, including but not limited to:

Provisions for enforcement and collection of costs; performance requirements; prohibited activities and uses; City authority to inspect; and City control over extinguishment.

A split-rail fence shall be constructed along the western boundary of Tract C. The applicant shall install readily visible conservation zone signage per City standards along the edge of the tract (except where it borders Tract B) at approximately 30-foot intervals, identifying the use restriction specified above. The signage along the west side of Tract C shall be attached to the required fence. The homeowners' association shall be responsible for the maintenance of the fence and signs. The conservation easement and the use limitations in this condition shall be placed on the final plat and on the deed for each lot. Tract C shall be dedicated to the homeowners' association. The applicant and subsequently the homeowners' association shall retain the option to dedicate the tract to the City.

Therefore the final approved conditions of approval are as follows:

1. Tract A and the storm water facility in Tract A shall be private, and the applicant shall enter into a maintenance agreement with the City for the facility. The storm water line under the private street shall be private.
2. A 20-foot wide public trail easement extending north-to-south through the site shall be provided on the final plat within Tract B, east of Fern Creek. The exact location of the easement shall be determined cooperatively between the applicant and the City. The city shall be responsible for maintenance of the trail easement.

3. The applicant shall mitigate for the loss of the 5 trees determined to be significant by the City Arborist that are proposed for removal. These trees shall be mitigated for on an inch per inch basis per CDC Section 55.100(B) (2) (f), preferably on site. The City Arborist shall determine preferred on-site locations. If on site mitigation is not possible for all mitigation planting, the applicant shall work with the Parks and Recreation Department to mitigate at an appropriate city-owned site. Street trees shall not count towards the mitigation required in this condition.
4. All new and existing dry utilities along the project frontage, and that are affected by the development, shall be placed underground.
5. Houses on lots 1-3 shall have front facades oriented to Suncrest Drive. This requirement shall be recorded on the deed for lots 1-3
6. Turning radii on the private street/shared driveway turnaround shall be at least 25 feet.
7. The applicant shall be responsible for funding waterline upsizing along the subject site's frontage. The upsizing requirement is a Capital Improvement Project in the 2008 Water System Master Plan and SDC eligible at 56%. It shall be the City's option whether to contract directly for the improvement or have the developer contract for the work. If the City decides to upsize a greater length of water line replacement than the site frontage, the applicant will still only be responsible for funding the portion along the site frontage.
8. The private street/shared driveway depict on the applicant's site plan dated October 8, 2009 shall be built to City street structural standards.
9. The applicant shall commission a lighting study of the project's frontage, and provide this to the Engineering Department who will use it to determine the street lighting needed to meet the City's lighting standards. If needed, the applicant will install street lights that meet City lighting standards.
10. The applicant shall perform fire flow tests, install hydrants, and install "No Parking" signs to the satisfaction of TVFR.
11. Prior to recording of the subdivision plat, the applicant shall remove all Himalayan Blackberry, Garlic Mustard and English Ivy on the ground within proposed Tracts B and C.
12. The front yard setbacks of lots 1-3 shall be those of the underlying base zone R-10, which is 20 feet (15 feet to a porch) as measured from the front property line after the 10-foot ROW dedication.

13. The applicant shall provide 5-foot utility easement along the front and rear of each lot in areas not already covered by the proposed utility easements overlaid on the proposed private street.
14. A suitable covenant, or a conservation easement subject to the requirements of ORS Chapter 271, shall be established for Tract B, for the benefit of the homeowners' association and the City of West Linn. (In the event the City does not accept the conservation easement or the covenant, this condition shall be satisfied by dedication of a conservation easement or suitable covenant in a form approved by the Planning Director, in favor of the homeowners' association only, which shall be subject to the use restriction in this condition.) This easement shall forbid all development of any kind, except for the installation and maintenance of required signs and a trail within the trail easement described in Condition of Approval 2.

The homeowners' association shall be responsible for maintenance of the entire tract, except for the area contained in the trail easement, if and when a trail is developed within the easement, consistent with city standards. The City will be responsible for the maintenance of the area contained in the trail easement only upon construction of a trail within the easement. The homeowners' association shall enter into a maintenance agreement with the City to provide for the maintenance of this tract. This agreement is subject to approval by the City's Parks and Recreation Director and the City's Environmental Services Engineer. The signed agreement shall be recorded on the title deed of records of Clackamas County, and referenced in the subdivision's covenants, codes and restrictions. The homeowners' association shall periodically (at no more than two -year intervals) remove all invasive plants (i.e., Himalayan Blackberry, Garlic Mustard and English Ivy) from the tract. Homeowners shall be prohibited from storing materials, cutting or removal of trees (except for hazard trees as approved by the City) or native vegetation and dumping yard waste or other debris in Tract B. These and other requirements will be included in the easement or covenant and the maintenance agreement, including but not limited to:

Provisions for enforcement and collection of costs; performance requirements; prohibited activities and uses; City authority to inspect; and City control over extinguishment.

The applicant shall install readily visible conservation zone signage per City standards along the edge of the tract (except where it borders Tract C) identifying the use restrictions specified above. The signage shall be placed at approximately 30-foot intervals. The homeowners' association shall be responsible for the maintenance of the signs.

The conservation easement and the use limitations in this condition shall be placed on the final plat and on the deed for each lot. Tract B shall be dedicated to the homeowners' association. The applicant and subsequently the homeowners' association shall retain the option to dedicate the tract to the City.

15. A suitable covenant, or a conservation easement subject to the requirements of ORS Chapter 271, shall be established for Tract C for the benefit of the homeowners' association and the City of West Linn. (In the event the City does not accept the conservation easement or covenant, this condition shall be satisfied by dedication of a conservation easement or suitable covenant in a form approved by the Planning Director in favor of the homeowners' association only, which shall be subject to the use restriction in this condition.) This conservation easement shall forbid development of any kind, with the exception of the construction and maintenance of the fence and signs required below.

The homeowners' association shall be responsible for maintenance of the entire tract consistent with City standards. The homeowners' association shall enter into a maintenance agreement with the City to provide for the maintenance of this tract. This agreement is subject to approval by the City's Parks and Recreation Director and the City's Environmental Services Engineer. The signed agreement shall be recorded on the title deed of records of Clackamas County, and referenced in the subdivision's covenants, codes and restrictions. The homeowners association shall periodically (at no more than two –year intervals) remove all invasive plants (i.e., Himalayan Blackberry, Garlic Mustard and English Ivy) from the tract. Homeowners shall be prohibited from storing materials, cutting or removal of trees (except for hazard trees as approved by the City) or native vegetation and dumping yard waste or other debris in Tract C. These and other requirements will be included in the easement or covenant and the maintenance agreement, including but not limited to:

Provisions for enforcement and collection of costs; performance requirements; prohibited activities and uses; City authority to inspect; and City control over extinguishment.

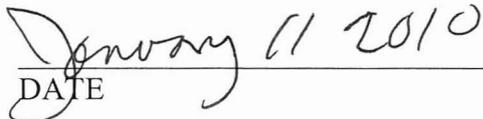
A split-rail fence shall be constructed along the western boundary of Tract C. The applicant shall install readily visible conservation zone signage per City standards along the edge of the tract (except where it borders Tract B) at approximately 30-foot intervals, identifying the use restriction specified above. The signage along the west side of Tract C shall be attached to the required fence. The homeowners' association shall be responsible for the maintenance of the fence and signs. The conservation easement and the use limitations in this condition shall be placed on the final plat and on the deed for each lot. Tract C shall be dedicated to the homeowners' association. The applicant and subsequently the homeowners' association shall retain the option to dedicate the tract to the City.

16. The applicant shall preserve the laurel hedge along the border of the subject property and 1810 Carriage Way, and shall protect the health and root systems as best as possible throughout the construction process.
17. This approval shall expire 3 years from the effective date of this decision.

18. Half-street improvements shall include on-street parking on the east side of Suncrest Drive in lieu of a bike lane, without changing the proposed width of the street pavement.
19. The final plat shall be consistent with the approved preliminary plat dated October 8, 2009, except as modified to comply with these conditions.
20. CC&R language shall be reviewed by the City Attorney to ensure it meets all requirements of the conditions of approval.
21. The applicant shall plant vegetative screening in the north side yard setback of Lots 1 and 6 to provide privacy, subject to the approval of the City Arborist to ensure the vegetation is high enough to provide adequate screening between properties.
22. The requirements of the Conditions of Approval that are applicable to the individual homeowners and/or to the homeowners' association shall be placed on the deed for each lot.

This decision may be appealed to the Land Use Board of Appeals (LUBA) under its statutory provisions.


PATTI GALLE, MAYOR


DATE