



City of
West Linn

**WEST LINN CITY COUNCIL
NOTICE OF FINAL DECISION
FILE NO. AP-16-01**

At their meetings on May 23, 2016, May 24, 2016, May 26, 2016, and June 2, 2016; the West Linn City Council ("Council") held a public hearing to consider the appeal by Carrie Hansen and Save Our Sunset Park of the West Linn Planning Commission's approval of CUP-15-03, DR-15-17, VAR-15-01, and VAR-15-02 for the replacement of the Sunset Primary School by West Linn-Wilsonville School District at 2351 Oxford Street. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The Council denied the appeal (AP-16-01) and upheld the Planning Commission's approval with a modified condition of approval.

The Final Decision and Order and the complete application and record for AP-16-01, CUP-15-03/DR-15-17/VAR-15-01/VAR-15-02 is available for inspection at no cost at City Hall or via the City of West Linn's website at <http://westlinnoregon.gov/planning/2351-oxford-street-appeal-planning-commission-approval> Printed copies of these documents may be obtained at City Hall for a minimal charge per page.

City Council decisions are final upon the date of the signature on the decision.

This decision may be appealed to the Land Use Board of Appeals pursuant to applicable state rules and statutes. This decision will become effective 21 days from the date of mailing of this final decision as identified below.

Mailed this 3rd day of June, 2016.

Therefore, this decision becomes effective at 5 p.m., June 24, 2016.

**WEST LINN CITY COUNCIL
FINAL DECISION AND ORDER**

AP-16-01

**IN THE MATTER OF AN APPEAL OF THE PLANNING COMMISSION'S
APPROVAL OF A CONDITIONAL USE PERMIT, CLASS II DESIGN REVIEW,
AND TWO CLASS II VARIANCES FOR THE REPLACEMENT OF SUNSET
PRIMARY SCHOOL**

I. Overview

West Linn-Wilsonville School District (Applicant), filed its application December 2, 2015. It was deemed incomplete on December 18, 2015, and deemed complete on February 1, 2016 following additional submittals. The approval criteria for the application are found in Community Development Code (CDC) Chapters 11, 38, 41, 42, 44, 46, 48, 52, 54, 55, 60, 75, 92, 96, and 99. The hearings were conducted pursuant to the provisions of CDC Chapter 99.

The Planning Commission (Commission) held the initial evidentiary hearing on March 16, 2016. The hearing commenced with a staff report presented by Darren Wyss, Associate Planner. Tim Woodley, Applicant, and B. Karina Ruiz, Dull Olson Weekes – IBI Group Architects, Inc., presented for the applicant. The initial hearing was continued to April 6, 2016, for additional written evidence and public testimony. At its April 6 hearing the Applicant offered to withdraw VAR-15-03, and the Commission approved the withdrawal of the variance. The Commission then closed the hearing, granted seven days, until noon on April 13, 2016, for written responses to new evidence, and it continued the hearing to April 13, 2016, for deliberations. The Commission heard public testimony from 15 individuals over the course of the first two meetings and accepted many written submissions.

After deliberations on April 13, 2016, a motion was made and seconded to deny the application. The motion failed. Then a motion was made by Commissioner Knight and seconded by Commissioner Myers to approve the applications with 12 conditions of approval and direct staff to prepare a Final Decision and Order. The motion passed with four votes in favor and two votes opposed. A Final Decision and Order was signed by the Planning Commission on April 14, 2016.

Carrie Hansen and Save Our Sunset Park (Appellant) filed an appeal of the Planning Commission's decision on April 28, 2016. The Appellant contended the Planning Commission misapplied the following provisions of the West Linn Community Development Code: CDC 60.070.A(2); CDC 60.070.A(3); CDC 60.070.A(6) / CDC 55.130.B; CDC 75.020.B; and, CDC 92.010.E.

The appeal hearing was held on May 23, 2016. The Appellant presented oral argument, followed by oral argument from the Applicant, and the public. The appeal hearing was continued to May 24, 2016 for Council questions and deliberation. Council closed the public hearing on May 24,

2016. Councilor Tan made a motion to deny the appeal AP-16-01 and uphold the Planning Commission's decision to approve CUP-15-03, DR-15-17, VAR-15-01 and VAR-15-02, and adopt the Planning Commission's findings and 12 conditions of approval. Councilor Frank seconded the motion. The motion failed. Councilor Martin then made a motion to deny the appeal AP-16-01 and tentatively affirm and modify the Planning Commission's decision on application to approve the conditional use permit, Class II Design Review, and two Class II Variances for the Sunset Primary School Replacement, and adopt the Planning Commission's findings and conditions of approval, except to the extent modified by a new condition, defined during the May 24, 2016 hearing as:

"Reconfigure and reduce size of proposed stormwater detention facility to provide for an impervious lined stormwater detention facility and to preserve a minimum of 7 trees that were originally proposed for removal to accommodate the stormwater detention facility."

Councilor Perry seconded the motion, and the motion passed three votes in favor and two votes opposed. The proceeding was continued to May 26, 2016 for the purpose of reviewing final language, and staff were directed to prepare final language of the condition for consideration by the Council on May 26, 2016.

On May 26, 2016, the Council deliberated briefly and determined to retain the original draft condition as stated above. The Council also determined there was insufficient time to prepare final findings that day and asked the Applicant if it would grant a short extension so the Council could adequately prepare its findings. The Applicant agreed to extend the record to June 3, 2016, and the appeal hearing was extended to June 2, 2016, after considering and approving revisions.

The final text of the conditions and findings was adopted by Council vote on June 2, 2016.

II. The Record

The record was finalized at the May 24, 2016 appeal hearing. The record includes the entire file for AP-16-01, CUP-15-03, DR-15-17, VAR-15-01 and VAR-15-02, evidence admitted in the course of Planning Commission and City Council review proceedings, as well as testimony taken on the May 23, 2016 and May 24, 2016 public hearings.

III. Procedural Issues and Scope of Review

The Appellant and Applicant agreed that the scope of the hearing was limited to the issues on appeal.

The Council reviewed the Planning Commission's decision to determine if: 1) there is substantial evidence in the record to support the Planning Commission's decision, or 2) errors of law were committed. CDC 99.280(D).

IV. Findings of Fact

- 1) The Overview set forth above is true and correct.
- 2) The applicant is the West Linn-Wilsonville School District.

- 3) The appellant is Carrie Hansen and Save Our Sunset Park.
- 4) The Council finds that it has received all information necessary to make a decision based on the Agenda Report; appeal application; the Appellant's oral argument; the Applicant's oral argument; oral argument by the public; and the evidence in the whole record.

V. Findings

Summary

A majority of the Council found that certain aspects of the stormwater management system did not satisfy the following code criteria identified by the Appellant: CDC 60.070.A(2); CDC 60.070.A(3); CDC 60.070.A(6) / CDC 55.130.B; and, CDC 92.010.E. Specifically, the proposed design to retain and infiltrate stormwater into the ground in a single pond located in a vulnerable area of the property would lead to oversaturation of soils and offsite runoff with potential adverse impacts to significant trees, offsite city property, and private property in the vicinity downgradient. However, with the additional conditions stated below, the Council finds that these code criteria can be reasonably satisfied and the solutions to the identified problems are possible, likely and reasonably likely to succeed:

Condition A. Reconfigure and reduce the size of the proposed stormwater detention facility to provide for an impervious lined stormwater detention facility and to preserve a minimum of 7 trees that were originally proposed for removal to accommodate the stormwater detention facility.

Condition B. The stormwater discharge offsite from the modified detention facility must achieve or be less than the reduced discharge rates specified in the approved CUP application.

Condition C. The Applicant shall submit to the City Engineer for review and approval, under adopted engineering standards, an amended stormwater management plan incorporating the modified detention facility, supported by the calculations required by the City's engineering standards and signed by a registered engineer.

Regarding CDC 75.020.B challenged by the Appellant, the Council finds that the Class II variance approval criteria is satisfied.

Application of CDC 99.280(D) Regarding Substantial Evidence Review

The Appellants have questioned whether there is substantial evidence to support the Planning Commission's determination that the stormwater facility, as submitted by the Applicant, meets all applicable criteria. Specifically, they point to conflicting evidence in the record regarding impact on trees and the effect of water saturation of the soil through infiltration from the proposed unlined pond. Several criteria are implicated in this factual dispute.

We have carefully considered the conflicting evidence, principally the written and oral submissions by the Applicant's experts and Malia Kupillas. We have also had the opportunity to hear the key witnesses' present testimony and respond to questions. We have observed their demeanor and

responsiveness to issues raised. Based on evidence in the whole record, we conclude that the decision of the Planning Commission is not supported by substantial evidence in the record.

After considering the evidence and observing the witnesses we conclude that a reasonable person would not rely solely on the evidence submitted by the Applicant. Based on our evaluation of the witnesses and evidence, we conclude that a reasonable person would not discount entirely the evidence that the configuration of the pond, and seepage from it, would be detrimental to trees and soil stability. Because the Planning Commission did not adequately take this conflicting evidence into account, we find the decision on this factual issue not supported by substantial evidence.

In our evaluation of the evidence, we considered the evidence of issues related to tree preservation and soil stability and the need to mitigate these impacts in order to assume that the project satisfied applicable criteria.

- 1. APPEAL ISSUE CDC 60.070.A(3):** CDC 60.070.A(3) requires that “[t]he granting of the proposal will provide for a facility that is consistent with the overall needs of the community.” With the additional conditions imposed by Council, the Council finds that the granting of the proposal will provide for a facility that is consistent with the overall needs of the community.
 - a. The overall needs of the community include consideration of the community value placed on mature trees located in the vicinity of the proposed stormwater detention facility.
 - b. The Council finds that while Ballot Measure 3-358 was properly disregarded by the Planning Commission as a required approval criterion. The factual content of Ballot Measure 3-358 is nevertheless instructive and persuasive with respect to the community perceptions and expectations regarding the issue of community interests in the subject trees and whether inclusion of tree protection in the plan for the facility is a part of providing a facility that is consistent with the overall need of the community.
 - c. The Council considered representations from Public Works Director Lance Calvert that the stormwater plan as submitted meets City engineering standards; but that it would be possible to modify the stormwater detention facility design and location to avoid removal of certain trees in the vicinity of the stormwater detention facility.
 - d. The Council finds that removal of certain trees proposed to accommodate the stormwater detention facility as proposed is not consistent with the overall needs of the community. The Council considered evidence of the nature and extent of active recreational use and enjoyment associated with the trees, and finds that CDC 60.070.A(3) cannot be satisfied without a minor modification of the stormwater detention facility to address soil saturation and tree retention concerns.
 - e. The Council finds that there are feasible solutions to avoid removal of at least seven (7) trees in the vicinity of the proposed stormwater detention facility, depicted on diagram LU2.01 (Tree Removal Plan).
 - f. The Council finds that the footprint and design of the detention facility could be modified to avoid removal of certain trees and address concerns with soil saturation in the vicinity.
 - g. The Council finds that such modification can be feasibly accomplished under existing engineering standards in a manner that enables the preservation of a

minimum of seven (7) mature trees that were originally proposed for removal to accommodate the stormwater detention facility under the adopted engineering standards. The solution required by the additional conditions will protect trees in two ways. First, the size of the facility will be reduced, thus allowing retention of trees that would have been removed under the original plan. Second, an impervious surface beneath the facility will prevent saturation of the ground and associated negative impacts on the root systems of the trees. This approach is possible, likely and reasonably certain to succeed because it eliminates the identified threats to the preservation of the trees.

- h. The Council finds that the Applicant can demonstrate compliance with this modification requirement by submitting the modification for review by the City Engineer for approval.
- i. The Council finds that in the event the applicant seeks substantive alterations to the proposed stormwater plan which require major modification of the detention facility design and footprint, an amended application shall be filed and processed pursuant to CDC 99.120, with associated notice and public hearing. Any increase to off site impacts or modification of stormwater performance standards as approved by the Planning Commission would constitute a major alteration.
- j. Minor relocation of the stormwater detention facility or minor adjustments to other aspects of the stormwater facility, in the manner necessary to satisfy conditions imposed by Council shall not constitute a major alteration. The Council finds that the additional condition requiring preservation of a minimum of seven (7) mature trees previously proposed for removal will accomplish, to the extent possible, preservation of significant trees and recreational opportunities on the site, particularly in light of additional recreational and community provisions to be developed by the Applicant in the form of an expanded playground and new playground equipment, new community room, acreage preserved in natural park-like condition, large sports field for community use, community use of parking spaces, pedestrian connections with adjacent neighborhoods, permanent tree protection easement, and similar improvements (See May 16, 2016 Correspondence submitted by Applicant, page 5 bullet items; See Correspondence by West Linn Parks and Recreation Director Ken Worcester addressing these additional recreational and community provisions and outlining the partnership between City and Applicant to cooperatively program associated recreational opportunities; See Exhibit 3 to Applicant's May 16, 2016 submittal: Sunset Primary School Site Design Summary).
- k. The Council finds that preservation of a minimum of seven (7) mature trees, coupled with additional tree retention percentages of at least 77% of the existing significant tree canopy (See May 16, 2016 Correspondence submitted by Applicant, paragraph 2) will adequately address aesthetic concerns and concerns regarding public recreational interests, including those concerns related to use of the adjacent City park, as expressed by Appellants.
- l. The Council finds that imposition of stormwater detention facility design features to address concerns regarding increased infiltration of water in the vicinity of the proposed stormwater detention facility, in terms of potential impact on trees in the immediate vicinity of the proposed stormwater detention facility, is feasible and

warranted. The Council considered representations by Appellant's geologist Malia Kupillas, including but not limited to the Pacific Hydro-Geology, Inc. March 15, 2016 Analysis and related testimony persuasive in this respect.

- m. The Council finds that it is appropriate to attempt to address those concerns to the extent possible, by requiring the stormwater detention facility to be lined or fully contained to eliminate infiltration.
- n. The Council finds that concerns about the impact to trees in the vicinity related to increased infiltration of water can be addressed through incorporation of a lined or fully contained stormwater detention facility.
- o. With the exception of a modification to the stormwater detention facility's design and footprint, and with the exception of a requirement for a detention facility providing full containment (no infiltration at the detention facility), the stormwater plan is otherwise approved as conditioned.
- p. The Council finds that the great majority of community input, as well as testimony by Appellant, indicates that the replacement of Sunset Primary School is consistent with the overall needs of community.
- q. The Council finds that the substantial evidence supports the Applicant's position that the school should not be replaced in its existing footprint.
- r. The Council finds that replacement of the primary school without disruption to the children through bussing to new locations and without the need for portable classrooms best meets the overall needs of the community, and found testimony to that effect most persuasive, in light of substantial testimony and evidence submitted by the Applicant, and despite some Appellant testimony to the contrary.
- s. The Council finds that based on the Applicant's testimony and evidence, adequate safety precautions will be implemented to address student safety while proposed construction progresses. (See Exhibit 4 to Applicant's May 16, 2016 submittal: Sunset Primary School Permitting Process – Question & Answer – Item 7).
- t. The Council finds that approval of the Application will not improperly reduce the total acreage available for public park purposes.

2. APPEAL ISSUE CDC 60.070.A(2): CDC 60.070.A(2) requires that "[t]he characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features." With the additional conditions imposed by Council, the Council finds that the characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features, if conditions 2a-c are satisfied.

- a. As conditioned, the Council finds that the Applicant has met its burden of proof and the findings of the Planning Commission are supported by substantial evidence.
- b. The Council finds that the site subject to the application is currently utilized for primary school purposes; and the site is of adequate size, shape, location, topography and natural features to accommodate a new primary school as proposed and approved by the Planning Commission.
- c. The Council is not persuaded by arguments that the School District should be required to reconstruct in the approximate footprint of the existing school, as detailed in findings above under CDC 60.070.A(3) analysis.

- d. The Council finds that the additional conditions to contain stormwater within the detention facility will address any concern for potential soil saturation impacts and shallow landslide hazards mapped by DOGAMI in the vicinity of the project site.
 - e. The Council carefully considered the testimony of Pacific Hydro-Geology (PHG) geologist Malia Kupillas, a Registered Geologist in the State of Oregon, on behalf of the Appellant, including but not limited to her reference to Department of Geology and Mineral Industries (DOGAMI) mapping for landslide risk, and analysis presented in the Pacific Hydro-Geology, Inc. Report dated March 15, 2016. The Council finds that Ms. Kupillas' testimony is persuasive in the context of soil saturation impacts and tree retention considerations, and that this and the other concerns are adequately addressed by Conditions 2a-c. The conditions are possible, likely and reasonably certain to succeed because they reduce the infiltration of stormwater in the area of most concern.
- 3. APPEAL ISSUE CDC 60.070.A(6):** CDC 60.070.A(6) requires that "[t]he supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are met."– With the additional conditions imposed by Council, the Council finds that supplementary requirements set forth in Chapters 52 to 55 CDC, if applicable, are (See findings for Appeal Item CDC 55.130.B).
- a. As conditioned, the Applicant has met its burden of proof and the findings of the Planning Commission are supported by substantial evidence
- 4. APPEAL ITEM CDC 55.130.B –** CDC 55.130.B requires a civil engineer to prepare a plan and statement that is "supported by factual data that clearly shows there will be no adverse impacts from increased intensity of runoff off site, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts. . . ." With the additional conditions imposed by Council, the Council finds that there will be no adverse impacts from runoff off-site.
- a. As conditioned, the Applicant has met its burden of proof and the findings of the Planning Commission are supported by substantial evidence.
 - b. The Council finds the Applicant provided factual data to establish that the rates of off site runoff to the city storm water system will be reduced from current conditions through implementation of the proposed stormwater plan.
 - c. The Council carefully considered the testimony of Pacific Hydro-Geology (PHG) geologist Malia Kupillas, a geologist licensed in the State of Oregon, on behalf of the Appellant. The Council finds that Ms. Kupillas' testimony is persuasive in the context of soil saturation impacts and tree retention considerations, and that this and other concerns are adequately addressed by conditions 2(a-c).
 - d. The Council considered concerns regarding alleged impacts to Sunset Creek, soil, trees, buildings and soil stability down slope from the detention pond site, and finds that the Applicant's testimony and evidence, including but not limited to evidence submitted by KPFF Engineering, constitutes substantial evidence that there will not be any adverse offsite impacts caused by the application as conditioned.

- 5. APPEAL ISSUE CDC 75.020.B:** CDC 75.020.B provides that Class II variances may be utilized “when strict application of code requirements would be inconsistent with the general purpose of the CDC and would create a burden upon a property owner with no corresponding public benefit. A Class II variance will involve a significant change from the code requirements and may create adverse impacts on adjacent property or occupants...”. Class II variances shall be approved by the approval authority if the following criteria are met, and the approval authority may impose appropriate conditions to ensure compliance with the criteria: a) the variance is the minimum variance necessary to make reasonable use of the property. In reaching this determination, the following factors may be considered, together with any other relevant facts or circumstances: 1) whether the development is similar in size, intensity and type to developments on other properties in the City that have the same zoning designation; 2) physical characteristics of the property such as lot size or shape, topography, or existence of natural resources; 3) the potential for economic development of the subject property; b) the variance will not result in violation(s) of any other code standard, and the variance will meet the purposes of the regulation being modified; c) the need for the variance was not created by the applicant and/or owner requesting the variance; and d) if more than one variance is requested, the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.

The Applicant has met its burden of proof and the findings of the Planning Commission are supported by substantial evidence.

With respect to Variance 1 (Parking Space Location), the Council finds as follows:

- a. The applicant proposes to construct a new primary school on a parcel currently utilized for primary school purposes. The parking spaces are proposed to be located more than 200 feet from the school entrance and therefore do not comply with code requirements unless a variance is approved. The City of West Linn has four primary schools, all in residential zones, and similar to the proposed new primary school in size and intensity.
- b. A primary school must be designed to address unique issues associated with the provision of educational services to primary school-aged children.
- c. The applicant demonstrated that the application as proposed responds to unique needs of a primary school with respect to providing ongoing educational services to current and incoming students; ensuring the safety of primary age students; and accommodating transportation and design features that are unique to primary schools and the age range of students served (See May 16, 2016 Applicant correspondence, paragraph 3; See May 16, 2016 Applicant Memorandum, page 10 bullet point list of unique parking needs associated with a primary school and page 11 “parking beyond 200 feet”). The Council finds that based on the testimony of the Applicant’s representatives and City Planning staff analysis, including but not limited to March 16, 2016 Staff Report – Staff Findings 129, 132; March 30, 2016 Supplemental Staff Report; Section E-1 in the Applicant’s Supplemental Submittal dated March 28, 2016; Section C-1 in the Applicant’s Supplemental Submittal dated March 28, 2016, it is not reasonable to require all parking spaces be located within 200 feet of the main entrance and the related variance criteria are satisfied.

- d. The Council finds that in light of student safety and campus control concerns, the primary school facility is not reasonably comparable to general commercial development that can make use of multiple building entrances in order to comply with the requirement that all parking spaces be located within 200 feet of the main entrance. This standard would require the school's main entrance to be located a significant distance from the main street, and would require the main entrance to be surrounded with parking. To maintain appropriate campus security, the play fields and playgrounds need to be directly adjacent to the school building. Separating the playfields from the school building with a surface parking lot in order to comply with the requirement that all parking spaces be located within 200 feet of the main entrance would reduce the level of security for the students, as well as introduce unnecessary conflicts between vehicles and students crossing the parking areas.
- e. The Council, having separately determined that it is not reasonable to require the school be reconstructed in the existing footprint, finds that this variance is the minimum necessary parking standard variance, which enables student safety and security to be maintained, while providing for disabled parking spaces closest to the building entrance and a covered walkway to the main entrance.
- f. The Council finds that the placement of the play field and parking on the west side of the site, in the proposed configuration, is necessitated by physical characteristics of the property including lot size and shape, topography, and existence of natural resources.
- g. The Council finds that the variance will not result in violation(s) of any other code standard, and the variance will meet the purposes of the regulation being modified. Parking lot design requirements have been met.
- h. The Council finds that the need for the variance was not created by the applicant and/or owner requesting the variance, as analyzed in detail under Council findings related to the question of reconstruction in the existing school footprint versus the footprint proposed by the Applicant and approved by the Council.
- i. The Council finds that the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.

With respect to Variance 2 (Bicycle Parking Location), the Council finds as follows:

- a. The Council finds that based on the testimony of the Applicant's representatives and City Planning staff analysis, including but not limited to March 16, 2016 Staff Report – Staff Findings 129, 132; March 30, 2016 Supplemental Staff Report; Section E-1 in the Applicant's Supplemental Submittal dated March 28, 2016; Section C-1 in the Applicant's Supplemental Submittal dated March 28, 2016, it is not reasonable to require all bicycle spaces be located within 50 feet of the main entrance. The related variance criteria are satisfied.
- b. The Council finds that the total number of bicycle parking spaces will not be reduced below the code requirement through the variance. Twenty (20) of the required bicycle parking spaces will be located within 50 feet of the main school entrance as required by code. The variance simply authorizes the remaining number of spaces, which will be covered, to be located approximately 130 feet from the main entrance as opposed to the standard 50 feet.

- c. The Council, having separately determined that it is not reasonable to require the school be reconstructed in the existing footprint, finds that this variance is the minimum necessary bicycle space location variance.
- d. The Council finds that requiring all covered bike spaces to be within 50 feet of the main school entrance would unreasonably interfere with pedestrian access in and out of the main school entrance, given the proposed building and improvement configuration needed to meet the unique needs of a primary school on this particular parcel.
- e. The Council finds that the placement of the bicycle parking spaces, in the proposed configuration, is necessitated by physical characteristics of the property including lot size and shape, topography, and existence of natural resources.
- f. The Council finds that the variance will not result in violation(s) of any other code standard, and the variance will meet the purposes of the regulation being modified. Safe and adequate bicycle parking facilities are being provided. All requirements, with the limited exception of the 50 foot standard for certain bicycle parking spaces, are met.
- g. The Council finds that the need for the variance was not created by the applicant and/or owner requesting the variance, as analyzed in detail under Council findings related to the question of reconstruction in the existing school footprint versus the footprint proposed by the Applicant and approved by the Council.
- h. The Council finds that the cumulative effect of the variances results in a project that is consistent with the overall purpose of the zone.
- i. The Council finds that the application as approved by the Planning Commission is the minimum variance necessary to make reasonable use of the property, as the Council finds that the project design is responsive to the unique needs associated with use of the property for primary school purposes.
- j. The Council finds that parking and traffic improvements and bicycle parking space configuration, as approved by the Planning Commission comply with the standards under CDC 75.020.B.

6. APPEAL ITEM CDC 92.010(E): CDC 92.010(E) requires that “[a] registered civil engineer shall prepare a plan and statement which shall be supported by factual data that clearly shows that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm, or the plan and statement shall identify all off-site impacts and measures to mitigate those impacts commensurate to the particular land use application. Mitigation measures shall maintain pre-existing levels and meet buildout volumes, and meet planning and engineering requirements.” With the additional conditions imposed by Council, the Council finds that a registered civil engineer prepared plans supported by factual data clearly establishing that there will be no adverse impacts from increased intensity of runoff off site of a 100-year storm.

- a. As conditioned, the Applicant has met its burden of proof and the findings of the Planning Commission are supported by substantial evidence.
- b. The Council did not find any factual data produced by a registered civil engineer that would persuade the Council to reject the plans as conditioned.

- c. The Council finds that substantial evidence as detailed in prior findings constitutes substantial evidence that there will not be any adverse offsite impacts caused by the application as conditioned.
- d. The Council carefully considered the testimony of geologist Malia Kupillas on behalf of the Appellant, and finds that testimony persuasive in the context of soil saturation impacts and tree retention considerations on property downgradient from the stormwater pond, and that the concerns identified are adequately addressed by conditions 2(a-c).
- e. The Council finds that the application as approved by the Planning Commission, and further conditioned by Council, will not result in increased intensity of runoff off site.

VI. Order

The Council denies appeal AP-16-01, and affirms, with modification through conditions 2(a-c), the Planning Commission's approval of CUP-15-03, DR-15-17, VAR-15-01 and VAR-15-02 based on the entire Record, Findings of Fact, Findings above, and the following conditions of approval from the April 14, 2016 Planning Commission Final Decision and Order, as modified by conditions 2(a-c), and 9:

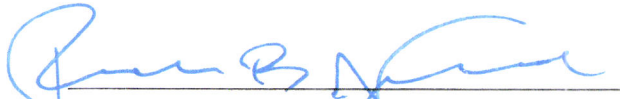
1. Site Plans. With the exception of modifications required by these conditions 2(a) and 2(b), the project shall substantially conform to all Tentative Plan Sheets.
2. Engineering Standards. All public improvements and facilities associated with the approved site design, including but not limited to street improvements, driveway approaches, curb cuts, utilities, grading, onsite and offsite stormwater, street lighting, easements, easement locations, and connections for future extension of utilities are subject to the City Engineer's review, modification, and approval. These must be designed, constructed, and completed prior to the issuance of the final building certificate of occupancy.
 - 2a. The Applicant shall reconfigure and reduce the size of proposed stormwater detention facility to provide for an impervious lined stormwater detention facility and to preserve a minimum of 7 trees that were originally proposed for removal to accommodate the stormwater detention facility.
 - 2b. The stormwater discharge offsite from the modified detention facility must achieve or be less than the reduced discharge rates specified in the approved CUP application.
 - 2c. Applicant shall submit to the City Engineer for review and approval, under adopted engineering standards, an amended stormwater management plan incorporating the modified detention facility, supported by the calculations required by the City's engineering standard, and signed by a registered engineer.
3. Street Improvements. The applicant shall complete full street improvements, including pavement improvements, curbs, planter strips, street trees, street lights, sidewalks, pedestrian crossings, and street storm drainage for those portions of Oxford Street and Bitter Street abutting the subject properties, per Staff Findings 143 and 144. Construction

of the half street improvements and storm drainage improvements on the west side of Bittner Street and the south side of Oxford Street shall be reimbursed by the City of West Linn.

4. **Overhead Utilities.** All existing overhead utilities and associated services must be removed and placed underground per Staff Finding 99. This must be completed prior to the issuance of the final building certificate of occupancy.
5. **Carpool Spaces.** The applicant shall identify four parking spaces closest to the building entrance for carpools, per Staff Finding 15, and provide signage reading *“Reserved – Carpool/Vanpool Before 9:00 a.m.”*
6. **Parking Lot Design.** The applicant shall reconfigure the parking areas to meet group of 12 parking design requirements per Staff Finding 25, while maintaining a total of 88 total parking spaces. The new configuration must also meet the 50 percent maximum compact space requirements.
7. **Curb Cuts.** The applicant shall redesign the three vehicle accessways to comply with the maximum curb cut requirements of 36 feet, per Staff Finding 43, and to also meet West Linn Public Works Standards.
8. **No Parking Signs.** The applicant shall install signs, per Staff Finding 40, reading *“No Parking – Fire Lane”* on both sides of the fire access drives. The signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background. The signs shall be installed with a clear space above grade level of 7 feet.
9. **Tree Protection.** The applicant shall provide appropriate root zone protections, per Staff Finding 70, for the 14 significant trees that are proposed to be retained and identified in the Arborist Report as needing monitoring, and for the seven (7) or more additional trees preserved pursuant to Order sections 2a and 2b. The applicant shall consult with both the project arborist and the City arborist to utilize the most effective measures. This includes the required protection fencing.
10. **Tree Conservation Easement.** The applicant shall provide a tree conservation easement, per Staff Finding 70, for all significant trees that are retained on site and not already protected by required setbacks. The easement shall extend outwards to the tree dripline plus 10 feet. The easement shall include a legal description and a map of the area. The easement shall be recorded with the County and a copy of the recorded easement shall be provided to the City of West Linn prior to the issuance of the final building certificate of occupancy.
11. **Fire Flow.** The applicant shall perform a fire flow test, per Staff Finding 91, and submit a letter from Tualatin Valley Fire and Rescue showing adequate fire flow is present prior to the issuance of the final building certificate of occupancy.

12. Sanitary Sewer Improvement. The applicant shall install sanitary sewer improvements to serve Sunset Primary School by either:

- a. Installing approximately 450 feet of sewer main with the associated manholes and sewer laterals along Bittner Street to the connection point on Long Street in accordance with Exhibit PC-6 and Staff Finding 92, and the City will reimburse the applicant for approximately 175 feet of sewer main, associated manholes, and 12 sewer laterals pursuant to Exhibit PC-6; or
- b. Connecting the existing sanitary sewer main at Sunset Primary School to the Oregon City Loop sanitary sewer main.



RUSSELL AXELROD, MAYOR
WEST LINN CITY COUNCIL

June 2, 2016
DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this 3rd day of June, 2016.

Therefore, this decision becomes effective at 5 p.m., June 24, 2016.