



November 20, 2024

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VIA E-MAIL

Ms. Sidonie Winfield, Chair
McMinnville Planning Commission
c/o Ms. Heather Richards
231 NE Fifth Street
McMinnville, OR 97128

RE: PDA 1-24/S 3-24 – Applicant’s Request to Revise PDA 1-24 Condition of Approval Number 21 and S 3-24 Condition of Approval Number 13
Our File No.: 014915-279866

Dear Chair Winfield and Planning Commissioners:

As you know, this office represents Holt Homes (“Holt”), Applicant in the in the above-referenced Applications. On Nov. 7th, 2024, the Planning Commission held an initial evidentiary hearing on the Applications. At the conclusion of that meeting, the Planning Commission voted to close the hearing and allow the written record to remain open for two periods, each lasting one week. The first open record period allowed any party to submit any evidence or testimony. Holt submitted evidence and testimony concerning proposed conditions PDA 22 and S 13, which addressed payments-in-lieu of tree mitigation. The second open record period, which concludes on November 21, allows any party to respond to evidence and argument submitted during the first period. During the first open record period, City staff submitted a memorandum and an updated staff report, which responded, in part to Holt’s testimony and proposed new conditions of approval. The purpose of this letter is to respond to staff’s Nov. 14 memoranda and updated staff report submitted during the first open record period. This letter does not contain new evidence, and is properly submitted prior to the close of the second open record period.

First, Holt is very appreciative of city staff working with us to come to an agreement on an appropriate tree mitigation fee-in-lieu amount for the Hillcrest Project. Holt supports in their entirety staff’s revisions to proposed conditions PDA 22, 26, and S 13, submitted on November 19 as part of a follow-up memorandum. Holt believes that this reflects an appropriate balance between tree preservation and housing affordability.

Second, Holt accepts Condition PDA 20 proposed by staff on Nov. 14, which requires Holt to provide a landscape plan that includes playground equipment and a shelter, among other amenities. Holt also accepts the new conditions concerning blasting and drilling (Condition PDA 24) and the new requirements for the street service to lots 103–107 (Condition S 3.I).

Heather Richards
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The only concern remaining for Holt is related to conditions PDA 15 and 23, which were first proposed on November 14th and require Holt to comply with the unadopted MMC Chapter 17.49 (“Natural Hazard Overlay Subdistricts”), whatever those standards may require, and whether they are adopted or not. Holt does not accept these conditions because this chapter has not been adopted by ordinance as part of the City’s land use regulations. Under MMC 17.03.025, only adopted regulations may apply to a land use application. Similarly, under ORS 197.175(d), the local government may only apply land use regulations that have been acknowledged by the Oregon Land Conservation and Development Commission. As MMC Chapter 17.49 has not been adopted yet, it has certainly not been acknowledged, and the regulations therein are not yet even *unacknowledged* land use regulations. Further, under ORS 227.178(3), approval or denial of the Applications must be based on the standards and criteria applicable when they were submitted. MMC Chapter 17.49 was not applicable when the Applications were submitted and is not applicable now. Finally, compliance with that unadopted chapter cannot be required as part of as conditions of approval because they may be imposed only to require compliance with approval criteria or “applicable city ordinances.” MMC 17.03.055. MMC Chapter 17.49 is neither of these. For these reasons, the Applicant respectfully requests that proposed conditions PDA 15 and 23 be struck from the proposed findings and not be included in the Planning Commission’s decision.

Again, we greatly appreciate the time afforded to us by the Planning Commission to come to a resolution with staff concerning the tree mitigation fee-in-lieu, and thank staff for their willingness to engage in a productive discussion regarding the proposed conditions. With the minor change concerning proposed conditions PDA 15 and 23 requested above, Holt otherwise supports the findings and proposed conditions in the updated staff report, dated November 19. For this reason, Holt requests that the Planning Commission adopt as its decision the proposed November 19 staff report and conditions of approval, excluding proposed Conditions PDA 15 and 23.

Best regards,



Garrett H. Stephenson
GST:jmhi

cc: Mr. Tom Schauer (*via email*)
Mr. Mike Loomis (*via email*)
Mr. Zach Pelz (*via email*)
Mr. Josh Lang (*via email*)
Mr. Bill Kabeiseman (*via email*)

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