

**WALDPORT PLANNING COMMISSION
DECEMBER 4, 2017
MEETING NOTICE AND AGENDA**

THE WALDPORT PLANNING COMMISSION WILL MEET ON MONDAY, DECEMBER 4, 2017 AT 2:00 P.M. IN THE CITY COUNCIL MEETING ROOM, 125 ALSEA HIGHWAY, TO TAKE UP THE FOLLOWING AGENDA:

1. CALL TO ORDER AND ROLL CALL
2. MINUTES: (October 23, 2017)
3. CITIZEN COMMENTS AND CONCERNS
4. CORRESPONDENCE – None
5. PUBLIC HEARINGS - Planned Development File #1-PD-PC-17 Vista View Planned Development (continued)
6. DISCUSSION/ACTION ITEMS:
 - A. Planning Report
 - B. Waldport Development Code Amendments*
 - C. Other Issues*
7. COMMISSION COMMENTS AND CONCERNS
8. ADJOURNMENT

*Denotes no material in packet

The Council Chambers are accessible to all individuals. If you will need special accommodations to attend this meeting, please call City Hall at (541)264-7417 during normal business hours.

Notice given this 27th day of November 2017

City of Waldport

**WALDPORT PLANNING COMMISSION
OCTOBER 23, 2017
MEETING MINUTES**

1. CALL TO ORDER: Chair Woodruff called the meeting to order at 2:00 p.m.
2. OATH OF OFFICE: City Recorder Eckerman administered the oath of office to Jerry Phillips.
3. ROLL CALL: Chair Woodruff and Commissioners Peterson, Stole, Phillips, Yorks and Barham answered the roll. A quorum was present.
4. MINUTES: The Commission considered the minutes from the June 26, 2017 meeting. Commissioner Barham **moved** to approve the minutes as presented. Commissioner Yorks **seconded**, and the motion **carried** unanimously on a voice vote.
5. CITIZEN COMMENTS AND CONCERNS: None.
6. CORRESPONDENCE: None, other than that related to the public hearing.
7. PUBLIC HEARINGS:

A. #1-PD-PC-17 - Vista View Planned Development: Chair Woodruff opened the public hearing, and called for abstentions, bias, conflicts of interest and *ex parte* contact: Commissioner Barham indicated that he owned property in the area, had participated in brief conversations with his neighbors, and also noted that his wife had submitted a letter of testimony which was included in the packet materials. He stated he felt he could make a fair and unbiased decision. There were no objections to his participation in the public hearing.

City Planner Lewis reviewed the written staff report, and noted that the packet also included six letters from the following persons: Paul Virtue, June Barham, Tim Muggleston, Louis Orndorff, Ray Bregenzer, and Bernice Barnett. The primary issues addressed by these letters were identified in the staff report. Subsequently, additional letters have been received from the following: Joyce Wilson, Dennis & Laurie Meredith, Hollis Lundeen (3), Laurance McLamb, and William & Leigh Ratteree. Copies of these letters were distributed at the meeting. The applicant was proposing to access the property via an extension to Norwood Drive and a circular drive to access the individual properties, with an extension to the south to eventually meet up with Kelsie Lane. Comments were also received from Public Works and Central Oregon Coast Fire and Rescue District. The Fire District indicated that the proposed 20' paved street width within the 30' right-of-way was adequate, as long as parking would not be permitted. The City recommended installation of sidewalks at the time of the street construction, and an installation of standard curbs rather than rolled curbs. Mr. Lewis noted that there would actually be five lots that would be less than 60' in width, rather than the one which had been identified in the table in section C-2 of the staff report. Norwood Drive has a 20' pavement width, and Mr. Lewis noted that the City would be improving the radius of the nearly 90° turn partway up the road. The applicant was also proposing a 20' pavement width and both the Public Works Department and the Fire District were amenable, as long as no parking would be allowed. Norwood Drive is identified as a local street which would have a capacity of 1000 trips per day. According to the ITE Trip Generation Report (8th Edition), a single family residence generates 10 trips per day. There are currently 72 lots within the Norwood Heights subdivision, and the proposed subdivision would add an additional 34 lots, so at total buildout between the two subdivisions, the anticipated traffic would exceed the recommended capacity. A possible

solution to alleviate this would be the street extension to the south property line in Phase 2 of the Vista View development, which would then eventually join up to the Kelsie Lane-Forestry Way north-south connection that was identified as the "Norwood Drive Extension (Project #S4) in the City's "Yaquina John Point Land Use & Transportation Plan". Therefore, one of the recommended conditions proposed in the staff report was to require a street extension to the south property line to be constructed when the Vista View development exceeded 19 lots. Mr. Lewis noted that the applicant was proposing to dedicate an open space totaling roughly 25% of the property, along with a public nature trail through that open space which would connect the east edge of the property to the west edge, along the south edge of Lots 11-13 and then south to Kelsie Lane. This would connect to a planned trail that would eventually connect the Norwood Drive extension to Highway 101. Additionally, the applicant would be paying a park assessment fee calculated to be \$16,879,50, which may be paid by phase. The infrastructure to provide utilities to the properties would need to be coordinated with and approved by the City, and Mr. Lewis noted that if the applicant proceeded with the proposal to connect to an existing pump station at the Forest Service, upgrades will need to be provided to accommodate the increased flows.

Attorney Dennis Bartoldus addressed the Commission on behalf of the applicant. He distributed photographs of various shots of the property proposed for development, along with GIS photos, and previous plats for Norwood Heights and its various additions. Mr. Bartoldus noted that other developments in that area have not put in additional roads, and the applicant was proposing an extension of Norwood Drive to the current standards in that area. The street at the south end would eventually join Kelsie and then down to Highway 101. He cautioned that requests to improve the existing Norwood Drive to accommodate projected impacts from the new subdivision may be considered an exactment, and cited *Dolan vs Tigard*, *Nolan vs the California Coastal Commission*, and *Lucas vs. South Carolina* as arguments to not charge one developer for all of the improvements to existing infrastructure. The City would be getting an extension of Norwood Drive, the continuation at the south end to the eventual link with Kelsie Way, and the open space and nature trail as requested. He noted that the City had that day requested to have the developer not only provide the easement, but also build the trail, to which his client had agreed. The proposal for 34 lots was far less than the 56 lots that would be allowed by City standards, and even less than the 40 lots that had been tentatively identified in the Yaquina John Point Land Use Transportation Plan. Mr. Bartoldus explained that a planned unit subdivision was intended to allow for modifications to the standard subdivision requirements, and his client was requesting a reduction in lot size for some lots, a reduction for lot frontage on some lots, and a street width of 20' with no parking allowed on the street. In exchange for these considerations, his client was offering a large open area, a public pedestrian trail, an extension of Norwood Drive and access to the southern extension to Kelsie Way, and five-foot sidewalks on one side of the street, which will meet all standards that Public Works and the Fire District require. One issue was the requirement that the extension to the south be put in after 19 lots, since based on the map and the projected traffic counts it shouldn't need to be done until 100 lots in the area have been developed. Following the presentation, Mr. Bartoldus indicated he was available for questions.

Commissioner Yorks asked if the open area proposed to be dedicated was, in fact, buildable land. Mr. Bartoldus responded affirmatively, noting that current building practices lend themselves to construction on topographically challenged property, and citing his own home as an example of such. Though potentially buildable, his client felt that the open area would provide a buffer to adjoining properties and allow the addition of the trail system.

Opponents Presentation: The following people addressed the Commission: Laurence Klein, Jim Shepherd, Paul Laakso, Bernice Barnett, Ray Bregenzer, Kevin Quill and Bill Ratteree. Concerns cited included potential drainage issues, the proposed trail access, impact of increased traffic on the existing Norwood Drive with regard to truck traffic during construction as well as property owner traffic upon completion, surrounding property notification requirements, street width and pedestrian access, fire/life safety, school bus and emergency vehicle access, geological hazards and erosion, affordable housing, and the timeline for the street extension to Kelsie Lane.

Proponents Presentation: Phil Splunik addressed the Commission, noting that the purpose for a planned development was to allow for some modifications to accommodate topographical challenges and provide some enhancements in exchange. He urged the Commission to approve the application.

Rebuttal: Mr. Bartoldus noted that none of the issues raised would be a cause to legally deny the application. Currently there are 72 lots either built or available to be built on, but to the best of his knowledge there have been no concerns raised about traffic safety or emergency vehicle access. He noted that the development would be taking place over 20 years, it would not be happening overnight. The first phase will include an adequate cul de sac or hammerhead at the end of the street to accommodate emergency vehicles until the future phases are developed. As for drainage, the entire subdivision drainage will be engineered and will be capable of handling the flow of rain. If the developer was required to install sidewalks on both sides of the street, it could potentially impact the current use of the right of way by eliminating parking areas utilized at present. Mr. Bartoldus noted that the City has long anticipated that Norwood would become a through street, which would also address some access and increased traffic concerns, and asked that the Yaquina John Point Land Use and Transportation Plan be incorporated into the record by reference.

Chair Woodruff closed the public hearing and opened the Commission meeting for deliberations. He noted that there had been additional information submitted by the applicant, and suggested that the deliberations be continued to the next meeting. Discussion ensued. Commissioner Yorks noted that some of the issues are apparently outside of the planned development, and wished to hear from the City Attorney with regard to the case laws cited and the determination of responsibility for necessary street improvements, as well as to allow time for consideration of the additional written testimony and exhibits received that day, and review of the Yaquina John Point Land Use and Transportation Plan. He **moved** to continue the public hearing to the next meeting. Commissioner Stole **seconded**. The motion **carried**, and **consensus** of the Commission was to leave the record open until November 6 for submission of additional information or testimony, and to schedule the continuation of the public hearing to December 4 at 2:00 p.m.

The Commission took a short recess at 4:00 p.m., and resumed the meeting at 4:10

p.m.

B. Subdivision File #1-S-PC-05 - Land and Sea Addition Subdivision Time Extension Request: Chair Woodruff opened the public hearing, and called for abstentions, bias, conflicts of interest, or *ex parte* contact. None were announced.

City Planner Lewis reviewed the staff report, noting that the subdivision had been approved in 2005. 35 lots in Phase 1 have been built. The applicant was asking that the tentative approval for Phases 2 and 3 be extended. There were no changes proposed to the design, but the applicant was asking for consideration to develop Phase 3 prior to Phase 2, and to incorporate 8 undeveloped lots included in Phase 1 into Phase 3. Two letters of testimony had been included in the staff report.

Proponents Presentation: None.

Opponents Presentation: None.

Chair Woodruff closed the public hearing and opened the Commission meeting for deliberations. Commissioner Barham noted that the City's Code did not appear to provide for additional time extensions, and Mr. Lewis explained that this was the reason the public hearing was being held to consider the request, and future modifications of the Code may refine the process for such issues. Commissioner Peterson **moved** to grant the time extensions with the proposed conditions of approval. Commissioner Barham **seconded**, and the motion **carried** unanimously. **Consensus** of the Commission was to have Mr. Lewis prepare the findings and authorize the Chair to sign them.

6. DISCUSSION/ACTION ITEMS:

A. Planning Report: Mr. Lewis noted that this planning report included activities from the end of June through the beginning of October. No action was required.

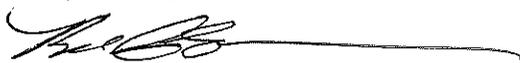
B. Waldport Development Code Amendments: Mr. Lewis explained that the City Council had authorized the Planning Commission to review proposed Code amendments and make a recommendation to the Council. This process will probably take several months.

C. Other Issues: None.

7. COMMISSION COMMENTS AND CONCERNS: None.

8. ADJOURNMENT: At 4:45 p.m., there being no further business to come before the Commission, the meeting was adjourned.

Respectfully submitted,



Reda Q. Eckerman, City Recorder

APPROVED by the Planning Commission this ____ day of _____, 2017.

SIGNED by the Chair this ____ day of _____, 2017.

Ray Woodruff, Chair

November 27, 2017

To: Waldport Planning Commission
From: Larry Lewis, City Planner
Re: Vista View Planned Development

At the December 4, 2017, 2:00 p.m. Planning Commission meeting, the Commission will continue the hearing on the proposed Vista View Planned Development. At the October 23, 2017 Planning Commission meeting, the Commission continued the public hearing. The Commission requested an opinion from the City Attorney addressing the Norwood Drive nexus or exactions issue, i.e. should the Vista View PD developer assume some or all responsibility for making improvements to existing Norwood Drive. The Commission also raised questions about affordable housing and requested additional information on the Yaquina John Point Land Use & Transportation Plan.

Subsequent to the October 23, 2017 Planning Commission meeting, the City received the following additional information:

City Attorney (memo attached)

Pete Gintner, City Attorney, states that the planned development and related conditions (as currently drafted) appear to be roughly proportionate based upon the information provided. He states, in part, that to go beyond the specific conditions imposed upon the builder and demand additional public improvements is inadvisable.

Dennis L. Bartoldus, Attorney on Behalf of the Applicant (Submittals attached – exhibits submitted in hard copy form only)

Additional submittals on behalf of the applicant include:

- Supplemental Submittal of Applicant Tidewater Development LLC. This includes:
 - The Issue of Commissioner Barham Hearing This Case
 - Issues Raised by Opponents
 - Addressing the Issue of Exactions
- Maps and Photos [*Please Note: 36 exhibits were submitted and are attached to the hard copy of this packet. Including the exhibits in electronic format exceeds the file limit for electronically transfer. A hard copy of the exhibits is available for review at city hall and in each Planning Commissioner city hall mail box.*]
- Proposed Findings and Conclusions Submitted by Applicant

Letters Submitted Following the October 23, 2017 Planning Commission Meeting (attached)

The City received letters from Bernice Barnett, Louis Orndorff, and Hollis Anne Lundeen. Letters received prior to the October 23, 2017 meeting were previously distributed to Planning Commissioners.

Additional information addressing affordable housing, the Yaquina John Point Land Use & Transportation Plan, and traffic counts is provided below.

Affordable Housing

During the October 23, 2017 Planning Commission meeting, Commissioners mentioned that affordable housing had not been addressed with this Planned Development application. Please note there is wide recognition of affordable housing needs at the local, state, and national levels. However, at this time there are no regulatory requirements for affordable housing. Therefore affordable housing is not relevant criteria to be considered in this land use decision.

Yaquina John Point Land Use & Transportation Plan

Commissioners requested additional information regarding the Yaquina John Point Land Use & Transportation Plan (YJP). YJP was adopted into the Waldport Comprehensive Plan in 2012. YJP calls for a Norwood Drive Extension (Project #S4) to “provide a new north-south connection from the south terminus of Norwood Drive to the new Forestry Way-Kelsie Way extension.” The Vista View PD plan provides this connection from the north-to-south ends of the subject property.

YJP also called for an east-west connection between Norwood Drive and Skyline Drive (Project #S3). Just prior to the adoption of YJP a house was constructed preventing this future Norwood-Skyline connection. A modified #S3 connection was evaluated in a 2015 Planned Development that would have realigned this connection to the south however it was determined that topographic constraints made this connection difficult to construct.



Traffic Counts

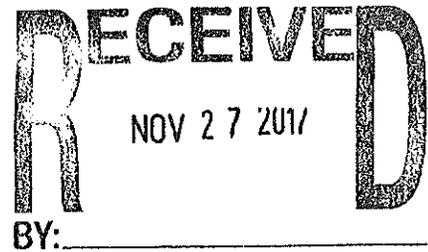
Waldport Public Works conducted traffic counts on Norwood Drive over a three-day period to get an indication of actual traffic volumes versus the national standard. The traffic counter was placed on Norwood Drive just south of the approximate 90-degree curve. There are 11 occupied homes from this location to the south end of Norwood Drive. The traffic counter recorded traffic in one direction. 149 counts were recorded. Assuming this traffic flowed in both directions there were 298 counts over a 3-day period or approximately 100 counts per day. 100 counts per day divided by 11 homes indicates a single family home generated 9 trips per day. The national standard, per the ITE Trip Generation Report, 8th Edition, states that a single family home generates 10 trips per day. This demonstrates the vehicle trip count at the south end of Norwood Drive is fairly consistent with the national average.

The traffic counts provide additional information for evaluating the capacity of Norwood Drive as a local street. The national standard identifies the maximum daily capacity of a local street at 1,000 vehicles per day. Therefore:

27 existing lots on Norwood Drive would generate 243-270 trips per day if all lots were developed and occupied. Add 34 proposed Vista View lots and 61 lots would generate 549-610 trips per day.

72 existing lots on Norwood Drive, Skyline Terrace, and Dolores Drive/Norwood Park Place would generate 648-720 trips per day if all lots were developed and occupied. Add 34 proposed Vista View lots and 106 lots would generate 954-1,060 trips per day.

To: Larry Lewis
From: Pete Gintner
Re: Land Use Standards



This memo regards the City's pending decision regarding the building conditions to be imposed upon the Vista View Planned Development. The planned development and related conditions appear to be roughly proportionate based upon the information provided. However, because this is an evolving area of land-use law, care should be taken in drafting the findings and final order.

Neighboring landowners frequently have concerns when new subdivisions are built. As grants for public improvements have waned in recent decades, authorities now increasingly turn to the developer for those costs. Courts have said these costs must share a nexus with the development and be "roughly proportionate" to the impacts of the same. Unfortunately this can leave existing landowners whose homes were built before such exactions were common feeling left out. However, courts have been clear in saying that public need alone is not grounds for additional exactions. Thus, the specific conditions imposed upon the builder must all be tied to the specific impacts of that development. To go beyond that and demand additional public improvements, even when there is a great public need, is inadvisable. As I understand the current proposed conditions, the City appears to be in range of what I would think is defensible.

Care should be taken to include within the findings a rough proportionality analysis that matches impact with condition before concluding their proportionality and sufficiency. One take-away from relevant case law is that a poorly drafted record can threaten an otherwise viable plan of development. Therefore, all relevant data acquired from traffic studies, architects, engineers, and the like should be included. The final conclusions need not be built upon mathematical precision, they must only be roughly proportionate. What is required is an individual analysis for each condition or impact. Should you need guidance when drafting these documents, we stand ready to assist. As always, if you or the Commission have any questions, feel free to contact me for any follow up.

BEFORE THE PLANNING COMMISSION OF THE CITY OF WALDPOR
STATE OF OREGON

In the matter of a request for Approval of a)	Case File #1-PD-PC-17
34 lot Planned Development by)	
Tidewater Development LLC known)	SUPPLEMENTAL SUBMITTAL
as Vista View)	OF APPLICANT TIDEWATER
)	DEVELOPMENT LLC
)	

THE ISSUE OF COMMISIONER BARHAM HEARING THIS CASE

At the beginning of the hearing, Commissioner Barham said that while he owned property adjacent to the proposed PUD, he could be fair, impartial and unbiased. He indicated that his wife had submitted a letter regarding the proposed development.

Since the hearing on October 23, we have reviewed the property ownership of the Barham property and carefully reviewed the letter submitted by June Barham.

The deed records show that Mr. and Mrs. Barham own the property as husband and wife, which means they both have an interest in the property. (A copy of the deed is enclosed.) The letter submitted by June Barham uses such phrases as “our property” and “we have suffered over \$8,000 worth of property damage for tree removal from storm damage likely due to clear cutting of the land being developed”. The use of these pronouns suggest that the letter is written on behalf of both of the Barhams because of the use of the plural pronouns. It also indicates that perhaps Commissioner Barham feels he has been damaged by applicant. While the applicant absolutely denies any suggested liability, the use of these plural pronouns in the letter is troubling. At a minimum, Mr. Barham needs to state on the record whether those feelings express his thoughts and, if not, why the use of the plural pronouns were used. The applicant is entitled to know the extent of any discussions between Mr. and Mrs. Barham both before the hearing and since the hearing. There needs to be a full disclosure of ex parte contacts and, in this situation, any communications between Mr. and Mrs. Barham regarding the applicant’s property or the application would need to be disclosed.

ISSUES RAISED BY OPPONENTS

As is often the case when a development is proposed, surrounding land owners become concerned. Rather than simply stating they outright oppose the project because they like their neighborhood the way it is, they seek to raise concerns and paint a tale of perceived horrors. However, the perceived tale of horrors is based on speculation and a desire not to have any changes in the neighborhood.

The applicant’s property has been zoned R-1, for residential development for literally decades. People who purchased in the Norwood neighborhood either knew or had the opportunity to know how the property was zoned. In fact, the zoning on the applicant’s property is no different than the zoning on the property in Norwood Heights. It is clear from reviewing the plat of Norwood Heights that Norwood Drive was to be continued through the property onto

the adjoining land. This has been a secret to no one since the plat of Norwood was filed in the 1960s.

As was discussed at the hearing, the continuation of Norwood is a very important component in providing access in Waldport across the top of the hill. Access across the top of the hill is currently lacking and the road to be built by the applicant would be a very important component in seeing that the system across the top of the hill is completed so access can be gained around Waldport without having to go down into the tsunami zone along Highway 101 and Highway 34. The applicant has indicated that it will construct a road from the current end of Norwood through its development to the south line of its property. The applicant has no control over the land to the south and therefore it cannot extend the road over that property. However, there is only one parcel of property then between the applicant's property and connecting the road with Kelsie Lane.

The opponents tried to paint Norwood Drive as a narrow road that is inadequate. However, as Mr. Lewis pointed out during his presentation, there are currently 72 lots by his count in the Norwood Heights area. The proposed development will add a maximum of 34 lots and those lots will be added over an extended period of time. By the applicant's count, it could take 10-20 years to build out the development. As was also noted, the applicant's property, based on its size, could accommodate 56 lots under the zoning ordinance. The applicant is only proposing 34.

The applicant is proposing significantly less lots than could be developed on the property. Additionally, there are already subdivided lots in Norwood Heights and its additions that have not yet been built upon and there is other vacant property that could be further divided. Therefore, there is no reason to limit Vista View to fewer than the 34 lots that are proposed. To do so is to punish Vista View in favor of other properties.

Also, it is also the applicant's position that restricting lots below what is proposed is a taking property violation of their 5th amendment rights (and Article I, Section 18 of the Oregon Constitution) and also in essence constitutes a moratorium under ORS 197.505 et seq. which prohibits governmental entities from restricting services without declaring a moratorium and following the procedures set forth in the statutes.

The information provided the City of Waldport staff showed that the width of the pavement on Norwood is 20 feet, not under 20 feet, as several of the opponents contended. The City also advised that the pavement on Norwood was average for the city. It is disingenuous for residents in the area to complain about the road based on a future development when in fact they have not made any moves to improve what they describe as bad road conditions and inadequate turnarounds and pedestrian access.

One concern that was raised by the opponents was fire access. The opponents are concerned about how and where a fire truck would turn around. This argument is also disingenuous. Presently, Norwood dead ends and there is inadequate room for a fire truck to easily turn around. This has been a condition that has existed for many, many years and apparently was not a large concern to the neighbors because they did nothing to address it despite the fact there is a 60 foot right of way. In fact, when the road is extended into the applicant's property, the applicant's will continue to provide a 20 foot paved surface that meets the City

standards and will provide a hammerhead turnaround at the end of each phase of the road as it is completed to assure there is adequate turnaround for fire trucks and other emergency vehicles. In other words, by approving the development, the opponents will receive something that they want, an adequate turnaround for fire trucks and other emergency vehicles.

The opponents also had indicated a concern about street width. However, as was demonstrated through photos and explanation, the pavement on Norwood is 20 feet. If there was any attempt to curb and gutter the property, it would actually change the tenor of the neighborhood and reduce parking. If the street was improved to 26 feet, parking would be allowed and a car parked in the street would have more effect of blocking the street than the current system used in Norwood Heights which is what was described at the hearing as cutout areas in front of each property. If there was a curb, those cutout areas could not exist and people would not be able to park in the area in the right of way in front of their houses as they currently do without adding to the congestion on the paved street. Photos are submitted of cars parked on Kelsie Lane and Chad Street showing how traffic flow is altered on a 26 foot wide street with curbs.

It is also to be noted that the City indicated at the hearing that they will be improving the intersection at the bend at the top of the hill in Norwood. The City saw this as something it needed to do in any event and that work will be done which will help facilitate traffic.

Opponents also expressed concern about engineering of the road and drainage. One of the conditions suggested by the City staff is that the engineering work will be completed to the City's satisfaction. This is typical in any development of this type. The improvements for Vista View will be engineered and meet City engineering standards for the development. Furthermore, it should also be noted that in terms of drainage, the drainage way for the area exists over the applicant's property. The water from Norwood Heights flows into this drainage. Therefore, they are contributing to any a drainage system which they suggest exists. The applicant has provided for a retention pond and will have a drainage system that meets all applicable standards and laws.

It is also to be noted that the applicant is having to pay approximately \$17,000 as a park fee. As Mr. Lewis stated at the meeting, that money can be used to improve pedestrian ways so that in the event the City seeks to improve pedestrian access along Norwood, the applicant will have contributed significantly to a fund that would allow those improvements.

In summary, the opponents, while indicating they are concerned about the development because they don't want more houses on residentially zoned property, provided no reason to deny the development as proposed.

ADDRESSING THE ISSUE OF EXACTMENTS

At the hearing on October 23rd, the opponents were seemingly taking the position that the applicant for a 34 unit planned unit development should address and resolve all the issues that have developed in the entire Norwood Heights area over a period of 50 years. To be clear, much of what they are addressing as issues and concerns are really not issues as we have noted above. However, it is not reasonable or legally permissible for the City to require the applicant to make offsite improvements that are not substantially related to the development alone. Generally speaking, when a municipality attempts to require certain improvements of a developer, these are

called "exactments". The exactments must be reasonably related to the project and certainly cannot be arbitrary. The City has already requested a number of things from the applicant which the applicant has agreed to do and some of which are found in the City's ordinance. For example, the sewer pump station down below the property will need to be expanded to serve the development. This is an offsite improvement that will benefit the City but will also allow the developer to construct the project. The developer has not objected to this and it is requirement. The cost of this offsite improvement for sewer are roughly \$50,000 to \$100,000, possibly more, depending on exactly what upgrades are needed.

The City is also requiring the developer to extend Norwood Drive from its present terminus to the north line of the subject property. This will require engineering, pavement, curbs and a sidewalk. The distance of this extension is approximately 330 feet according to the staff report. According to the applicant's engineer, this will be a cost of approximately \$100,000, possibly more. The applicant has agreed to do this. The City should not and cannot require more than the applicant has agreed to do lest the City overstep its bounds on exactments and violate applicant's 5th amendment rights by taking applicant's property. See *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Schultz v. City of Grants Pass*, 131, Or App 220 (1994); *Clark v. City of Albany*, 137 Or App 293; review denied 322 Or 644 (1995); 142 Or App 207 (1996); *Property Group, Inc. v. Planning Zoning Comm'n*, 29 Conn App 18; 613 A2d 1364 (1992). Article I, Section 18 of the Oregon Constitution also prohibits the taking of private property for public use without just compensation.

The City has also requested that the applicant provide an easement through an open area of the property to provide public access as part of a trail system being developed in Waldport. The applicant agreed to do this. At the hearing, there was a request made for the applicant to not only create an easement for the trail, but to build the trail and place bark chips on it as a covering. The applicant also agreed to do this. Both the requirement to dedicate the trail and to build the trail are exactments that benefit the City much more than the developer. They could be challenged by the property owner because they are exactments that encumber the owner's property and cost money. However, the owner agreed to do these things.

After seeing the initial project layout submitted by the developer, the City requested that it be modified to provide an access to the south so there could be a connecting road system as set forth in the South Waldport/Yaquina John Transportation Plan. The developer agreed to do this. After agreeing to provide the location for the road which reduced the number of lots in planned unit development, the developer also agreed to build the road to the south side of the property, rather than just giving the City an easement for the road for use when the City wanted to build it. These features benefit the City as a whole and are also exactions.

The City, as part of the proposed approval criteria, requires that the applicant's pay a park assessment fee of \$16,879.50. This is also an exaction from the applicant as the amount will be used to fund offsite improvements.

As each house is built, the developer will pay systems development charges to the City of Waldport pursuant to the City's charges at the time the homes are built. The property will also be in the Waldport Road District which will levy assessments against the property for road purposes.

Requesting that the developer do more than the developer has already agreed to do at the request of the City, will result in an unreasonable exaction from the developer. Norwood Drive which serves the development is a local street not unlike many other city streets in Waldport in terms of width and slope. As was pointed out at the hearing, even though Range Drive and Crestline Drive are collector streets, they do not have sidewalks. Photos of those main roads are included in this submittal. The \$17,000 already being paid by the developer for the park assessment fee could be used for such purposes as improving pedestrian ways, if the City so desires.

As was stated at the hearing, the whole purpose behind looking at essential nexus and rough proportionality and exactments is to make sure the developer is not required to pay expenses that the public at large should be expected to bear. To the extent any improvements beyond what the developer has already agreed to do would be cost which the public should be expected to bear because there are at least 72 other lots on the hill and there is property for others to be developed, not including the applicant's property.

Dated this 6th day of November, 2017.

Respectfully submitted,



Dennis L. Bartoldus
Attorney for Applicant
Tidewater Development LLC

BEFORE THE PLANNING COMMISSION OF THE CITY OF WALDPOR
STATE OF OREGON

In the matter of a request for Approval of a)
34 lot Planned Development by)
Tidewater Development LLC known)
as Vista View)

Case File #1-PD-PC-17
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS

1. Tidewater Development LLC filed an application for 34 lot Planned Development with the City of Waldport on property it owns within the City of Waldport. The property is described as Tax Lot 120 on Lincoln County Assessor's Map 13-11-19-CC. Presently the property is vacant and there are no structures on the property.

2. The property is 7.75 acres in size and is located at the end of Norwood Drive. Norwood is presently the only access to the property.

3. The proposed plat of the PD is attached as Attachment A and by this reference incorporated herein.

4. The majority of the property is gently sloped to the west. The highest point on the property is in the southeasterly portion of the property. The steepest slopes are on the north end and the northeasterly portion of the property. Most of the property that has steeper slopes is proposed for open space.

5. The subject property is zoned R-1, single family residential. The comprehensive plan designation for the property is residential. The property abutting the subject property on the north, east, and south and a portion of the property adjoining on the west is zoned and planned R-1. Property on the north, east and south is already developed and utilized for single family residences. A 5.66 acre parcel adjoining the property on the south is zoned R-1 but is still vacant. The U.S. Forest Service Station is west of the site.

6. The following utilities are available to the property:
- a. Water: City of Waldport
 - b. Sewer: City of Waldport
 - c. Electricity: Central Lincoln P.U.D.

7. Relevant Waldport Development Code and Waldport Comprehensive Plan criteria are as follows:

- Chapter 16.12 Residential Zone R-1
- Chapter 16.60 Planned Development Zone P-D (relevant sections)
- Chapter 16.72.020 Off-Street Parking and Off-Street Loading Requirements
- Chapter 16.96 Development Guidelines
- Chapter 16.100 Land Division

Waldport Comprehensive Plan—Yaquina John Point Land Use & Transportation Plan
Full descriptions of relevant criteria are included as attachment B to these findings.

8. The proposed name of the project is Vista View Planned Development. It will contain 34 units when fully developed. The lots are proposed to range in size from approximately 4,810 square feet to approximately 9,041 square feet. The access to the development is proposed at the south end of Norwood Drive. This is the only legal access to the site. The Plat of Norwood Heights extended Norwood Drive through that Development to the edge of the subject property. Norwood Drive is a City Street that is paved to a width of 20 feet. It presently serves other residential uses.

9. Based on code criteria, the allowed density based on the size of the property is 56 lots. The applicant is requesting 34 lots and requesting that the property be designated as a Planned Development. A PD allows certain standards to be varied if other considerations are given. In this case, the developer is proposing to maintain an open space along the northerly and easterly signs of the property to accommodate drainage for area properties and to provide a 10 foot wide easement to the City of Waldport through the area for a walking trail.

10. Pursuant to the flexibility allowed under the PD standards the applicant is requesting that some lots be under 6000 square feet, that some be less than 60 feet wide and that the road right of way be 30 feet with 20 foot wide paved streets.

11. The road proposed through Vista View is a circular road with a stub out to the south line of the property that will allow the road to be connected to the property to the south. This road is a component of the Yaquina John Point Land Use and Transportation Plan which shows Norwood being connected to Kelsie Lane. Kelsie Lane is projected to attach to existing Kelsie Way on the east and then run to Highway 101 on the west.

12. The applicant's proposed road will be paved to a width of 20 feet with curbs and will have a 5 foot wide sidewalk on one side. No parking will be allowed within the streets within the subdivision. The applicant is proposing that each lot will have at least 3 off street parking spaces with at least one of those being a covered space.

13. The applicant is proposing that some lots be less than 6000 square feet to allow for the retention of open space along the northerly and easterly sides of the property, to provide for continued draining of the subject property and the surrounding properties through the drainage way and to grant an easement to the City of Waldport for a 10 foot pedestrian path along the northerly and easterly sides of the property. (The easement will also be extended across the south sides of lots 11, 12 and 13.

14. The drainage way and ravine along the northern and eastern portion of the property is proposed to be open space. This open space totals approximately 1.93 acres which is approximately 25% of the property. The drainage way is identified in the Waldport Local Wetlands Inventory as a drainage way with no significant wetlands or riparian area.

15. In addition to retaining open space and providing an easement through the property for a pedestrian trail, pursuant to Resolution No. 875 the applicant will be assessed a park assessment fee in the amount of \$16,879.50.

16. The Waldport Public Works Department and the Central Oregon Coast Rural Fire District have reviewed the plans for the proposed development. They provided the following comments related to water service and the proposed streets.

a. The 20 street width within a 30' foot right-of-way is good as long as "No Parking" signs are posted.

b. The City recommends construction of sidewalks at the time the street is constructed.

c. The Public Works Department and Central Oregon Coast Fire request review and approval of engineering plans prior to construction. The developer shall be responsible for all costs the City incurs for review and approval of the plans.

17. Water and sewer are to be placed within the street right of way. Sewer is proposed to extend west to an existing sewer pump station near Highway 101. Water is proposed to connect to the existing city water system to the south in Kelsie Lane. All utilities shall be placed underground.

18. The Waldport Development Code requires one parking space per single family dwelling. New single family homes are required to have one covered parking space, either a garage or carport. The developer has proposed having at least 3 off street parking spaces per lot with at least one being covered.

19. The applicant has provided a copy of a proposed Declaration of Condition, Covenants and Restrictions of Vista View as they relate to Architectural Control and Use Restrictions. The CC&Rs recognize and are in conformance with the City of Waldport provisions and provide additional restrictions as to the size of home, color and materials of homes, view protection landscaping and other features.

20. The applicant is proposing to develop the PUD in 4 phases. Currently, WDC allows a preliminary plan approval per phase for 2 years with the possibility of three one year extensions.

21. A public hearing on the requested PD was held in front of the Waldport Planning Commission at 2:00 p.m. on October 23, 2017 at the Waldport City Hall. Notice of the hearing was given to all property owners within 250 feet of the property as required by law. At the hearing, all interested parties were given the opportunity to present testimony. The applicant's representative provided testimony on behalf of the applicant. Property owners in the vicinity also submitted letters and some testified. The letters that were submitted are included in the record of the hearing. At the conclusion of the hearing, the Planning Commission kept the record open for a period of 14 days, to November 6, 2017 for the submission of additional information. The planning commission continued deliberations on the matter until December 4, 2017.

22. The applicant's representative described and spoke in favor of the project.

23. Several persons spoke with concerns or in opposition to the proposed PUD. The primary concerns revolved around the width and adequacy of Norwood Drive to handle

increased traffic, the adequacy of pedestrian ways, adequate turn around for fire trucks, the stability of the property, payment of infrastructure, drainage and engineering. The applicant's representative testified in rebuttal to address the concerns and opposition.

24. After considering the concerns raised by opponents and the rebuttal provided by the applicant's representative the Commission determines that some concerns are not related to development criteria but involve the residents of the area not wanting a change in their neighborhood but have nothing to do with the criteria to be considered by granting land use approval. The developer is not required to pay for off-site improvements requested by the opponents. Other concerns expressed can be addressed through conditions imposed on the approval.

25. In addressing the concerns raised by opponents the Commission makes the following findings:

a. Norwood heights was developed in the 1960s. The Plat of Norwood Heights continues the right of way Norwood Drive as a public right of way through the property and the applicant's property connects to the present terminus of Norwood Drive. Norwood Drive provides the only public access to the applicant's property.

b. The applicant's property has been zoned R-1 for decades. It has long been planned for single family residential development.

c. Norwood Drive has a 60 foot right of way and a 20 foot paved asphaltic roadway according to information provided by staff. The staff also indicated that the pavement was in average condition.

d. While there are no curbs on Norwood, owners have created parking areas off the pavement in front of their property. This means the entire 20 foot pavement width is available for vehicle traffic. If the street was widened and curbed parking would be restricted because much of the current area used for parking would be lost and the vehicle parked in front of properties would be parked in the street make the path for vehicle access 20 feet or less. The applicant presented photos of this situation in other areas of the City.

e. The applicant should not be required to fund street improvements on Norwood Drive from its beginning on Highway 101 to its terminus at the end of the developed Norwood Heights. The applicant is extending Norwood Drive by approximately 330 feet to reach its property. The improvements will include the road, curbs and a sidewalk on one side. The applicant is also constructing the road through its development as requested by the City. The applicant is providing a right of way and constructing a road to the south edge of its property so the road can be extended as provided in the Waldport Yaquina John Transportation Plan. The applicant is also being required to dedicate an easement for a public walking trail through its property and build the trail. In addition, the applicant is required to pay \$16,879.50 as a park assessment fee. The City staff has advised that money in that fund can be used to pay for pedestrian ways should the City desire to use the park money in that manner. Furthermore, there are already 72 lots that use Norwood Drive according to the City Staff Count and it is not reasonable for the applicant to shoulder the burden of improvements on Norwood as suggested by the opponents. The applicant could have developed the property into 56 lots but is only developing the property into 34 lots.

f. The drainage way on the property is being preserved and that drainage way will still provide drainage for not only the applicant's property but for surrounding property as well.

g. All improvements in the development will be engineered to the appropriate engineering standards and in compliance with applicable laws. The City will review the plans for drainage, roads, sewer, water and other aspects of the development that need to be engineered.

CONCLUSIONS:

Based upon the foregoing findings, the planning commission concludes that the 34 Lot Planned Unit Development know as Vista View meets the criteria of the applicable ordinances and should be approved subject to the following conditions:

1. **Planned Development.** The development shall be in substantial compliance with the approved plan which is attached as Attachment A including a maximum of 34 single family lots on 7.75 acres. Access to the development shall be from the south end of Norwood Drive. A second access shall be provided for a future extension at the south end of the site. Within the property, a circular street system shall provide access to the lots. Streets shall have a minimum 20 foot pavement width within a 30 foot right-of-way with curbs and gutters and a sidewalk on one side. The area along the north and east sides of the property shown as open space shall be maintained as open space. The applicant shall grant an easement 10 feet in width to the City of Waldport for a public nature trail through the open space that will run from the south side of the property, along the easterly and northerly portion of the property and exit the property at the northwest corner of the property. The exact location of the easement shall be agreed upon by the City staff and the applicant. The applicant shall construct the path to a reasonable width within the easement and shall cover the path with park chips.

2. **R-A Residential Standards and Modifications.** The development shall occur in accordance with R-1 standards and the following modifications:

a. Twenty three (23) lots may be less than 6000 square feet including four lots under 5,000 square feet. The smallest lot shall be not less than 4,810 square feet.

b. Lots shown on the proposed plat with an average lot width of less than 60 feet may be developed with lot widths less than 60 feet.

3. **Proposed Street and Extension of Norwood Drive.** The Vista View Planned Development shall be accessed from Norwood Drive near the northwest corner of the property as shown on the submitted plan (Attachment A.) Streets within the property shall be within public right-of-way. The street shall extend south into the property, then a circular street will provide access to the lots. The street shall have a minimum 30' right-of-way width and minimum 20' pavement width. "No Parking" signs shall be posted.

Norwood Drive shall be improved from the property to the existing Norwood Drive pavement (approximately 330 feet) and include a minimum 20' wide pavement with curb and gutter and a 5 foot sidewalk on one side. The applicant shall work with the City to determine be most appropriate side for a sidewalk taking into account topographical and other features.

As each phase of the development is completed, the developer shall provide a hammerhead turnaround for emergency vehicles that is an all-weather surface, such as gravel.

4. **Proposed Street Extension to South Property Line.** The street shall extend to the south property line to allow for future street extension to the south. The street extension to the south property line shall be constructed when the Vista View development exceeds 19 completed lots.

5. **Open Space and Drainage Way.** The drainage way and ravine along the northern and eastern portions of the property shall be dedicated as open space on the plat of Vista View in accordance with the approved plan. The developer or homeowners association shall be responsible for maintenance of the open space.

6. **Park Assessment Fee.** A park assessment fee totaling \$16,879.50 shall be paid to the City. The park assessment fee may be paid by phase. The fee per phase shall be calculated as follows. Gross area of the phase x 5% x \$1 per square foot. The park assessment fee shall be paid prior to the final approval of each phase.

7. **Public Nature Trail.** The applicant shall authorize an easement for a public nature trail through the open space that will connect the east edge of the property to the west edge, and continue along the south edge of Lots 11-13, and south to Kelsie Lane. The applicant shall coordinate with the City to determine the best trail route given topographic constraints and future trail extensions.

8. **Water, Sewer, Storm Drainage, and Other Utilities.** The applicant shall coordinate with the City Public Works Department on the design and construction of water, sewer, and storm drain facilities. If the sewer connects to the existing pump station near Hwy 101, the applicant shall provide required upgrades to the pump station to accommodate increased flows. Utility easements shall be provided to the City as requested by the Public Works Directors. All utilities shall be placed underground.

Final engineering plans for water, sewer, storm drainage, and streets shall be reviewed and approved by the City Public Works Director. The developer shall be responsible for any costs incurred by the City to have a professional registered engineer review and approve development plans. Final engineering plans for water and the street shall also be reviewed and approved by COCRFD.

9. **Off-Street Parking.** New single family homes are required to have one on-site parking space, i.e. garage or carport. No parking is allowed on the street therefore each lot shall have a minimum three on-site parking spaces including the garage.

10. **Phasing and Time Limits of a Preliminary PD Approval.** Phase 1 shall consist of 19 lots including lots 11-24 and 25, 34, 33, 32 and 31 as shown on the submitted plan. The number of lots in additional phases shall be determined by market conditions and the rate of sale of developed lots. The street extension to the south property line shall occur in Phase 2. The phasing plan shall be as follows:

- Phase 1: November 30, 2017 - November 30, 2019
- Phase 2: November 30, 2019 - November 30, 2021
- Phase 3: November 30, 2021 – November 30, 2023
- Phase 4: November 30, 2023 – November 30, 2025

11. **Final Plan Review Procedure.** When the city planner determines that all the certifications set forth below have been met and that the plat conforms in all respects to the tentative plan as approved, consideration of the plat will be placed on the next practical scheduled meeting of the Planning Commission for determination that all requirements have been met. The Commission shall then approve, disapprove or, when further information is required, postpone a decision on the plat. Requests for final plan approval of a planned development shall be accompanied by the following certifications:

- a. A certified copy of all covenants and restrictions;
- b. Certified copies of legal documents required for dedication of public facilities or for the creation of a homeowner’s association;
- c. The certification, performance agreement or statement regarding the availability of water and sewerage services;
- d. As-built certifications for all required roads and utilities unless otherwise guaranteed by a performance agreement;
- e. A plat and one exact copy meeting the requirements of Section 16.100.060 of this chapter and ORS 92.050-92.100.
- f. A preliminary title report, lot book report, subdivision guaranty report or equivalent documentation of the ownership of the subject property, issued not more than thirty (30) days prior to the date the final plat is submitted for final approval. Such a report shall also identify all easements of record.

Dated this _____ day of December, 2017.

Chair, Waldport Planning Commission

RE: Vista Development Proposal

DT: October 27, 2017

Dear Commissioners,

Thank you for the time you took to hear from Vista Development proponents and those who had concerns about aspects of the proposed Development at the October 23, 2017 Planning Commission meeting. I don't believe any of the citizens who will be directly affected by the Vista Development were opposed to the creation of the Vista Development.

We appreciate that you held open the hearing and are allowing additional input from citizens and from Vista Developers. The Commission identified a short list of items they will review. At this point they include review of letters that the Commission received close in time to the meeting and review of a traffic study.

Commissioner Stole asked if there would be a geological study of the property. The Vista Developers stated if the Commission requested a study they would complete one. Some neighbors and I discussed this proposition and are asking the Commission to request such a study be done. There have been blow down trees since the clear cut and the steep bare terrain and stream bed on the property present issues that should be addressed in the development plan. Each parcel which is undersized should be reviewed for geological issues. Thank you for considering this request.

In addition there was an assertion at the meeting that Vista Development would provide low cost/affordable housing. When asked this was not confirmed by the Developer's representative. I would suggest it wasn't confirmed because this project will not contain low cost or affordable housing. The name of the development, Vista View, is helpful in determining the type of houses that are intended to be built. These plots are ocean view. They will likely be premium houses sold to people who can afford to buy a house with an ocean view. The developer shouldn't be allowed to modify the planning code because the commission believes this project will provide low cost housing unless the Developer agrees to build low cost/affordable housing and provides appropriate details to support any claim.

As stated in the hearing Norwood Drive is a short dead-end street. There are only 17 houses currently located on Norwood Drive which ends on Hwy 101. Mr. Lewis spoke of the current traffic density. If his statement was intended to inform the Commission of the current traffic density on Norwood Drive his information is incorrect. The increase in traffic from the Vista Development will be huge and will create a safety hazard if Norwood Drive is not brought up to city code.

The current number of trips on this street is nowhere near 150 trips per day. There may be as many as 50 trips on this street each day. This is important because as mentioned we and many others walk the street including up and down the hill. Even if you add traffic from Delores Street and Skyline Terrace there are still nowhere near 150 cars driving on Norwood Drive each day. We frequently walk the entire road without meeting a car. During any walk it would be extremely unlikely to meet as many as 4 cars. There is no shoulder or any ability to step off of the road at all in many places on the Norwood Drive hill. Pictures that show grass on the side frequently don't show the holes and slope that require walkers to stay on the pavement. Considering the projected traffic, from the proposed Vista Development, sidewalks are a necessary safety requirement for Norwood Drive.

Fire safety for a neighborhood that will house 34 families is a vital issue. There was testimony regarding turnaround space for our large fire trucks after they respond. That is not the real problem. The real problem is access to extinguish fires in the Vista Development. The Fire chief states his trucks can get to the houses IF there is no on street parking. If people in this closed off development park on their narrow streets the fire trucks will be blocked the fire. It is virtually guaranteed people will park on their quiet street. The houses proposed to be built would be close together on undersized lots. Fire trucks will be delayed or prevented from responding quickly to fire emergencies.

This is a bigger problem because the City hires one code enforcement officer to work one day each week. Currently it will be difficult if not impossible to enforce the no on street parking rule. Why would the Commission approve a street so narrow that it places a burden on the city to spend resources on daily enforcement? The Commission could allow a modification of the code to provide parking on one side of the street only, requiring only 24 ft paved road surface instead of the 28 ft required by city code.

Thank you for listening to my thoughts regarding the proposal and the issues brought up at the Commission Meeting.

Sincerely,
Bernice Barnett
1065 SW Norwood Drive
Waldport, Oregon 97394

6 November 2017

**City of Waldport
Waldport Planning Commission
P.O. Box 1120
Waldport, OR 97394
(541) 264-7417**

REFERENCE: Tidewater Development LLC; Lincoln Tax Assessor Map 13-11-19CC; tax lot 120

Dear City of Waldport Planning Commission (Mr. Larry Lewis),

I am submitting an additional response to the request from Tidewater Development LLC for approval of a planned development (Vista View) for 34 single family homes/lots at the end of SW Norwood Drive. As a homeowner and a concerned citizen of Waldport, I am against this request and ask that it be denied by the Waldport Planning Commission.

I have carefully reviewed and studied the Tidewater Development LLC proposal. I find it irresponsible and lacking consideration for the community of Waldport. Waldport has a steady population of approximately 2,000 people with roughly 1,080 houses according to city-data.com. The city is responsible for growth and development and should be able to share a long term vision of the Waldport community, which I respectfully request the City Planning Commission do at the next hearing. Please let us know if this development fits with the current long range plan of Waldport. Who will set the prices for the homes, the Median income in Waldport is \$45K and the median house value is \$213K, who is the target audience for sales? Does that fit the long range plan for the City of Waldport?

The Waldport Land Usage and Zone Map for Residential planning includes the area in question and more land for lots and development, in reviewing the Lincoln County Assessor data, there are currently over 60 homes and at least additional 8 parcels that may be further subdivided on Norwood and the side streets, I would ask the planning commission to carefully review the plans of other land owners using the Norwood access road. Will the planned Tidewater housing development prevent any current land owners from developing their properties? For example, there are two new lots under development on Delores Dr. There are several significant unanswered questions about road capacity, what is the cost to the city and what will 34 new properties generate in income to offset that long term cost?

Tidewater Development LLC has already shown amazing disregard and irresponsible development activity and tactics. I would ask the Planning Commission to survey the surrounding property owners and assess the damages from runoff, cutting down trees that are not on their property, the vast number of trees that died from the clearcutting of the property, and even request the Forest Service provide assessments on Eagle habitat and other ecological impacts. I expect you will find a number of facts to substantiate that the developer has been

reckless and irresponsible. What else will the developer disregard if given the approval to proceed?

The Waldport Development Code section 16.12.030.A defines required Lot Size and Dimensions at 6,000 Sq Ft and specifically states “No lot area, yard, off-street parking or loading area, or other required open space for one use shall be used as the required lot area, yard, off street parking or loading area, or other required open space for another use.” I would ask the Planning Commission at a very minimum to require Tidewater Development LLC to resubmit a plan which adheres to the minimum requirements, the code does not relieve the standard for density. In addition, I believe any such deviation from the code would require an amendment to the code as described in 16.104.020 and I do not believe this request will meet any of the required findings in order to be approved. In the event this development is approved, what legal liability will the City of Waldport risk?

There are still several factors that contribute to my concerns that I ask the Planning Commission to insist on complete analysis and insist on adequate resolution:

- HAS NOT BEEN ANSWERED: Who will pay for the infrastructure for this request, if a full utility and infrastructure plan is required, will the citizens of Waldport benefit at least equal to the cost of providing adequate access and support or will the developer pay for the infrastructure? What is the cost?
- HAS NOT BEEN ANSWERED: Who benefits from this request, especially to complete access from SW Norwood Drive, reviewing a plan of the city shows that if this is an appropriate subdivision, the appropriate approach to the area is from SW Kelsie Ln vice SW Norwood Dr. I submit that the cost to connect SW Norwood is an unreasonable burden on the taxpayers of Waldport, especially when SW Kelsie Ln provides adequate approach, road clearance and other logistical benefits, or even SW Forestry Ln. How will the cost to the city to prepare access, develop access and secure access as well as maintain access for considerable construction activity to include large commercial vehicles be resolved? This question has not been addressed! How long will I be blocked from accessing my property, how will my power and utilities be impacted and how will the residents of SW Norwood have their lives disrupted by commercial vehicles and construction activities?
- The Waldport Development Codes REQUIRES a geotechnical analysis to ensure the land is stable for development and the risk of a geologic hazard has been adequately researched and studied. Has an analysis been conducted on the entire building site as well as the passage requested from the existing end of SW Norwood Dr. to ensure the land will support a road safely in that location? (reference landslide on Cedar Rd)

- The Waldport Development Code section 16.12.030 section J. states “Any property identified as a geological natural hazard area as listed in Section 16.96.020 of this title or any property that has a twenty (20) percent slope or greater, as defined by Section 16.96.020 **shall require a geotechnical analysis** of the property in accordance with Section 16.96.030(D)(4) of this title.
- 16.96.030 Natural hazard areas. B. Areas of Concern. The primary areas of concern are those with active and potential landslides, high groundwater, weak foundation soils, coastal recession, and steep slopes.
- 16.96.020 Scope.

Development guidelines shall apply to those areas of concern delineated on the City of Waldport zoning map and in its comprehensive plan and plan inventories or any area determined potentially hazardous by the Planning Commission and shall also apply to any property that has a 20% slope or greater.

A. A property has a 20% slope or greater if:

1. The average slope from the highest to lowest point of the property has a slope of 20% or greater or;
2. The average slope of the building footprint or area to be disturbed is 20% or greater.

B. Development guidelines shall also apply to those properties where a 30% or greater slope is within 100 feet of the property.

- HAS NOT BEEN ADDRESSED: No information has been provided to assess the impact to the water shed from the subject site. What is the impact to impact the fishing and commerce activities directly below in the bay, what is the impact to the maritime assets of Waldport? How do we know the facts of this issue when we are considering such a vital part of the overall community?
- HAS NOT BEEN ADDRESSED: No ecological surveys on the water ways that run through the area, what is the actual impact if the runoff and rainfall egress is disrupted, what is the risk of a road washout if the area is blocked by a road?
- HAS NOT BEEN ANSWERED: The conversation offered by Tidewater Development LLC has a “public” trail that ends at a private lot, how does that work? What is the impact on the existing trail from SW Norwood to Hwy 101 which is one of the treasured features of the Norwood Heights neighborhood?
- HAS NOT BEEN ADDRESSED: The developer has stated they will continue access through to Kelsey Ln, however, there is no evidence that the land has been purchased to do this. If a tsunami or other disaster impacts Waldport, the evacuation area at the intersection of SW Norwood Dr and SW Skyline Terrance will already be congested with

people that cannot connect with the East side of Waldport, increasing the population constrained by the lack of an exit route is fundamentally unwise, how will this be mitigated? Does the developer own the required property to provide a through access; the city **should require proof of ownership prior** to approving any plans.

I am a homeowner on SW Norwood Dr, I have concerns about the propriety of the applicants request. I have additional strong concerns about the responsibility and the ability of the applicant to act in the best interest of the public based on actions to date. Most importantly I want to ensure my tax dollars are not used for personal gain for the applicant! This application has already generated a considerable burden on the community even discussing a disruptive and unnecessary housing development. Many homeowners along SW Norwood have worked very hard to establish a wonderful living environment and amazing quality of life. Any reasonable person can determine that appropriate considerations and due diligence is lacking in this request, there are so many substantial unanswered questions, and for what motivation? I ask the Planning Commission again to deny this request and preserve what so many have worked so hard to create along SW Norwood Dr. and in the city of Waldport.

Please let me know if there are any questions or if you need any additional information at this time. I can be reached at 971-275-5007; by email at louiso100@earthlink.net; or by correspondence at 1160 SW Norwood Dr, Waldport OR 97394.

Sincerely

//Signed//

Louis Orndorff

Hollis Anne Lundeen
P.O. Box 1392
Waldport, Oregon 97394
November 6, 2017

Waldport Planning Commissioners
City of Waldport
P.O. Box 1120
Waldport, Oregon 97394

Greetings Waldport Planning Commissioners:

ALSO INCLUDING CITY PLANNER
LARRY LEWIS

Thank you for granting the extension for you to receive additional information, inquiry, and concerns in regards to APP PD/#1-PD-PC-17 TIDEWATER DEVELOPMENT LLC/NOTICE, Planned Vista View Development Proposal.

Please consider this as additional appeal testimony, with my previous submittals dated October 16, 22, & 23 2017, along with the request for your denial of any approval or waivers until the developer submits the required and requested drawing, materials, and requirements made in this appeal.

Due to learning of this proposal not until October 16, and being away from the area at the time, I was not able to attend the public hearing on October 23, 2017, and had hoped to have the documented minutes from that hearing to respond to prior discussion and decision, however they have not been publicly posted, therefore I will ask for your understanding if I repeat any prior questions.

The developers request to access the proposed 34 homes on 7.75 acres from Norwood Drive is not an appropriate, reasonable, or practical approach for the primary transportation route to Vista View. I, along with many other concerned neighborhood residents want to make sure you are aware of our concerns prior to considering granting any access on Norwood Drive to the Proposed Vista View Development.

I have thoroughly investigated the existing Norwood Drive, starting from the beginning junction off State Highway 101. The junction of Norwood and the State Highway 101 includes traffic from Starr Street, which is a local short cut connection from State Hwy 34 to the south end of Waldport junction with State Hwy 101. Many locals drive this back way to avoid our one traffic light in Waldport. Currently, this intersection is very confusing and busy with the existing traffic. It is a safety concern for the current traffic of both local and commercial vehicles to head north or south onto 101, from Norwood and Starr, including entering into the junction from 101 North and South. My recent transportation count and study revealed that there are vehicles heading both north and south at higher speeds than posted, along with confusing signage and lane designation. There is backup access to and fro and an undesignated left hand south turning lane from 101 onto Starr just at the point of 2 lane going into one lane on State Hwy 101. Please note: This intersection is an existing traffic challenge and hazard as is, without any additional proposed traffic.

-Has the State Highway Department been contacted to consult in redesign of this intersection with the proposed increased traffic flow?

-If so, will the developer be required to cover the costs of the redesign or new construction additional traffic signs necessary for the increased flow? There will be a definite increase of commercial vehicle use at this intersection, due to the proposed 34 new home construction, such as concrete trucks, semi's carrying trusses and lumber, along with many other delivery trucks. Recommend design to include allowance for curve widening due to construction widths necessary to maneuver the intersection safely along with the current traffic flow.

The existing adverse grade, less than minimum recommended City Ordinance Width, and "S" reverse curve alignment from the bottom of the hill on Norwood to where new construction would start varies from 15-22 %. (FYI: That is an elevation gain of 22 feet for every 100 feet. Very STEEP!) Such a continued sustained grade, along with measured widths of 17-20 feet traveled way, along with documented sub-grade failure and existing road asphalt patching from previous road failures, with minimum depth of asphalt surface, shows that the existing road would require substantial maintenance in curve widening, and realignment to facilitate any additional traffic. This can be confirmed by current residential users who have shared their concerns of safety, impact, and existing narrow road width which in many places cannot be widened due to slope and existing

thru cut road templates. Pedestrian traffic is high and verified by Transpiration Survey Analysis. There is little pedestrian "escape" route available should 2 cars pass uphill and downhill, let alone non existent, when 2 commercial vehicles pass each other.

The traveled way existing half width on the curves measures at 8.5-10 feet, with the average car measuring 8 foot width. Commercial Trucks and Large 4x4 trucks continue to cross over the non existent center lane designation on many curves, since there is not enough existing half width.

-If the Developer chooses to access their Vista View private property from Norwood Drive, have they committed the construction funds for these necessary improvements prior to the City of Waldport granting access to Vista View's proposed 34 lot development?

Request the Commissioners require the developer to submit design for this realignment and curve widening along with allowance for a safe and pedestrian protected sidewalk. Design criteria should include time line and costs of development including timeliness of completion and impact to residents currently using the road, including impacts to existing driveway and property access. This submittal should be required prior to granting developer any access, since, if properly designed, will reveal that this is not a feasible safe traveled route to facilitate additional traffic for the construction development to include 34 new homes, new residents vehicles, including, daily delivery and service vehicles along with visitors to the Vista View Development with this traffic flow increase.

In addition, on the new construction proposal on Norwood, the existing road field investigation, conducted on the proposed public easement, road width measurement in part, is at maximum of 17 feet, with a fill slope of -67% does not qualify for the city ordinance width requirements of 56 feet.

Please note: Request Commissioners to deny the proposed request to modify city ordinance road right of way width, in and outside the proposed road system development from 56 feet to 30 feet and in service paved width from 28 feet to 20 feet due to the inability to monitor and regulate on street parking.

There is an existing Power Pole within the proposed new construction access serving the neighborhood which would have to be moved.

-There is substantial cut and fill failure, including undercutting, and sedimentation along the proposed new construction access, which is just above State Hwy 101 and directly above Alsea Bay. I have received confirmation from the USDA Forest Service, that silt and sedimentation from the above timber harvest penetrated their newly constructed bunkhouse which backs up to the proposed development. With securing this information by investigation, I request the Commissioners to require the Developer to submit a Plan of Action with defined time-lines of removal and replacement of this existing power pole, impact to local power consumers, and written confirmation of absorbing the costs for moving and replacing this Power Pole. This work should be completed by the Developer well before any construction to the extension of Norwood Drive would commence. Highly recommend a Field Verification Transportation System Plan-In- Hand Invitation from the Developer to the many interested local residents to understand how this new construction extending Norwood Drive will occur. This Plan of Action submitted by the developer to the City of Waldport, should include the improvements that the developer will make to the existing Norwood Drive access by providing information and assurance of no environmental impact to and for the safety of current users, and pedestrians. Past performance of slope failure warrants including proactive planned protection of the entire development from future sedimentation and slope failure into the existing water sources and riparian areas within and surrounding Vista View. This Plan of Action will be submitted in writing to the City of Waldport prior to approval of access.

My investigation with the County Assessors Office and Surveyor Office does not show any deemed dedication of the road to the City of Waldport.

-REQUEST Proof of this Ownership be presented at the Public Meeting, with a confirmation that this entire development is within the City of Waldport limits..

The Developer has requested a waiver/modification to the City Ordinance which requires all lots be a minimum of 6,000 ft². The City Ordinance states that every lot should be at a minimum 6,000 ft². The developers proposal itself states that 23 lots are less than 6,000 ft², including 4 lots under 5,000 ft². The smallest lot is listed at 4,810 ft². That alone is justification that the Developer agrees that their proposed lot size is not compliant to city ordinance minimum requirements.

The developers justification of including dedicated open space, which exists on sloped ground, to steep for building, to be included in the calculation for justification of the waiver, which still is below the City Ordinance requirements, is completely unvalidated and unreasonable and should not be considered as justification, and should be revoked and repealed for the waiver.

-Request to Appeal Developers request for waiver modification due to non compliance with city code and unvalidated justification. This appeal includes appeal of Lot 13 width waiver which does not meet the City Ordinance requirements.

-Request an Appeal to granting this waiver/modification request for lot size variance in ft2 and width..

The Developer's justification that the included open space justifies the waiver/modification is not valid. The designated open space is located on steep ground exceeding 20%. As stated in the city ordinances, a Geo technical assessment per requirement that any property that has a 20 % slope or greater, request developer submit a Geo-Technical report on the entire 7.75 acres by a qualified non biased Geo-technical Engineer as stated according to the ordinance requirements. Request the entire development be assessed due to past sedimentation occurring from harvested acreage.

-23 of the proposed 34 lots exceeds the allocation of lots designated within the existing Norwood Heights Transportation System. This alone justifies investigation into alternative routes which include the Kelsie Lane route which was the designated choice transportation route of the developer, and utilized, with no impact to the existing transportation infrastructure, to harvest the timber off of the 7.75 acres. The proposal addresses utilization of Kelsie Way in phase two of the development. If this route was considered initially, as the primary access route, all the preliminary Norwood Drive Intersection and reconstruction costs, upfront investment with commitment to moving the power pole, field review, crossing the live flow drainage, with impact and construction to Norwood Drive would not have to be investigated or invested in preliminary requirements. It would be to the Developer advantage to truly investigate both Forestry Lane and Kelsie Lane as primary access alternatives prior to investigation and commitment use of Norwood Drive, which would require extensive cost and time to the developer let alone the request by many in the neighborhood that there is a pedestrian fact and human impact factor to consider.

Please consider these specific concerns prior to allowing a developer access to a community that is requesting for you to sincerely represent and preserve their neighborhood to remain in the present and existing atmosphere of now.

Sincerely, a Concerned Waldport Citizen, supporting the existing Norwood Drive & Heights Neighborhood & Community,



Hollis Anne Lundeen