



TO: Development Review Commission

FROM: Leslie Hamilton, AICP, Senior Planner
Planning and Building Services Department

SUBJECT: Additional written testimony and rebuttal for LU 17-0065
1923 Mapleleaf Court

DATE: May 3, 2018

Written Testimony and Rebuttal

At the hearing on April 2, 2018, the Commission continued the public hearing to May 7 to allow the submission of written testimony on the subject of slope stability as it relates to the proposed drainage systems only. Written testimony could be submitted by April 20, 2018, with rebuttal of that new written testimony due on Monday, April 27, 2018.

Written Testimony

The following exhibits were submitted as new evidence: F12, G203, G204 and G205. Staff has reviewed all of the materials against the limited scope of the continuance, and staff finds that Exhibits G204 and G205 contain material that are outside of its scope, as follows:

- Exhibit G204 introduces evidence on the conveyance of the parcel in question, tree removal and tree mitigation.
- Exhibit G205 introduces evidence on earthquake hazards, 1994 Comprehensive Plan policies relating to earthquakes and other natural disasters, and disaster preparedness.

In the attached exhibits, staff has marked portions of the material by striking out paragraphs, sentences and images that staff recommends the Commission not consider because it is outside the scope of the continuance. At the start of the May 7 continued public hearing, for deliberation purpose only, the Commission will need to decide on the admissibility of the marked material.

Rebuttal

The following exhibits were submitted as rebuttal testimony: F13, F14, F15, G206, G207, G208 and G209. Staff's review and recommendation on admissibility of this material is based on two tests: (1) limited to rebuttal of evidence contained with the new written materials submitted by April 20, 2017; and (2) limited to slope stability, pursuant to the limited scope of the continuance. Staff has marked Exhibits G207, F13, F14 and F15 as containing material that the Commission should find not admissible, as follows:

- Exhibit G207: Evidence outside the scope of rebuttal: New slope measurements taken on April 24, makes reference to new data obtained by RSS on April 25, and includes rain data that was previously not in the record.
- Exhibit F13: Evidence outside the scope of rebuttal: New testing data that was performed after April 20, 2018.
- Exhibit F14: Evidence outside the scope of rebuttal: Technical analysis of the testing performed after April 20, 2018.
- Exhibit F15: Rebuttal to Evidence outside the scope of the continuance: Sales agreement that responds to a point made by Eric TenBrook in Exhibit G204, which was previously described as outside the scope of the continuance.

In the attached exhibits, staff has indicated by striking out paragraphs, sentences, graphs and images in the material in the above Exhibits that staff recommends should be considered by the Commission and found to be inadmissible.

Analysis of New Material

The Lake Oswego City Code and the Lake Oswego Stormwater Management Manual (LOSWMM) do not have criteria or requirements for slope stability analysis associated with stormwater facilities. Staff and the City's stormwater consultant, Brown and Caldwell, have reviewed the admissible new material and the City consultant's complete findings are detailed in Exhibit F16.

Staff and the City's consultant find that the applicant's stormwater management plan meets the requirements of the LOC Ch. 38.25 Stormwater Management Code and LOSWMM. The following findings are identified specifically as a result of the Commission's discussion on April 2, 2018:

Drywell: The rain garden has been designed to fully manage the 10-year, 24-hour design storm, which would meet the requirements of the Stormwater Management Code and LOSWMM. The rain garden proposed for this site demonstrates that it is feasible for a rain garden to be designed with a surface spillway that allows overflows to follow the natural drainage pattern. The overflow drywell proposed at the north end of the lot is a redundant system and not necessary to meet the onsite stormwater management requirements of the Stormwater Management Code and LOSWMM.

Note: If the Commission does find that the drywell is required, the Commission cannot consider the evidence submitted in Exhibits 207, G F13 and F14 that relate to testing and analysis that took place after April 20, 2018, because, as stated above, that is evidence outside the scope of rebuttal evidence.

Conclusion

Based upon the materials submitted by the applicant and findings presented in this report, staff concludes that **LU 17-0065** complies with all applicable criteria and standards or can be made to comply through the imposition of conditions.

Recommendation

Approval of LU 17-0065, subject to the conditions identified in the staff report dated April 2, 2018.

Written Materials:

- F12 Addendum Report from Rapid Soil Solutions, dated April 20, 2018
- F13 Rebuttal letter from Ottbone Investments, LLC, dated April 27, 2018
- F14 Rebuttal report from Rapid Soil Solutions, dated April 27, 2018
- F15 Rebuttal sales agreement from Ottbone Investments, LLC, dated April 27, 2018

- F16 Revised analysis from Brown and Caldwell, dated May 3, 2018

Letters in Opposition:

- G203 Supplemental Geotechnical Review by Earth Engineers, Inc., dated April 20, 2018
- G204 Supplemental testimony from Black Helterline, LLP, dated April 20, 2018
- G205 Email from Patricia Thiery-Bourque, dated April 20, 2018

- G206 Rebuttal testimony from Patricia Thiery-Bourque, dated April 26, 2018
- G207 Rebuttal testimony from Earth Engineers Inc., dated April 27, 2018
- G208 Rebuttal testimony from Mary Palm, dated April 27, 2019
- G209 Rebuttal testimony from Roy Ettinger, dated April 27, 2018

Copies of these exhibits were distributed to the Commission and are available online at the following link:

<https://bit.ly/2jpldU2>