



February 2, 2017

Land Use File(s): EXT-2017-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 3, 2017.

**Applicant(s):** John Marquardt  
**Location(s):** Property north of 5445 SE King Rd  
**Tax Lot(s):** 1S2E30DC 02601  
**Application Type(s):** Extension to Expiring Approval  
**Decision:** Approved  
**Review Criteria:** **Milwaukie Zoning Ordinance:**

- Section 19.908 Extensions to Expiring Approvals
- Section 19.1005 Type II Review

**Milwaukie Land Division Ordinance:**

- Section 17.04.050 Time Limit on Approval

**Neighborhood(s):** Lewelling and Linwood

**Appeal period closes: 5:00 p.m., February 17, 2017**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelper, Associate Planner, at 503-786-7657 or [kelperb@milwaukieoregon.gov](mailto:kelperb@milwaukieoregon.gov), if you wish to view this case file, or visit the project webpage at <http://www.milwaukieoregon.gov/planning/EXT-2017-001>.

**This decision may be appealed by 5:00 p.m. on February 17, 2017, which is 15 days from the date of this decision.**<sup>1</sup> Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 17.04.050.B, expiring land division approvals may be extended one time for no more than 6 months.

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

### **Findings in Support of Approval**

1. The applicant, John Marquardt (LandmarQ Consulting Group), on behalf of the property owner (Phillip Joseph), has applied to extend the expiring approval of land use master file #MLP-2015-002 for the adjacent property north of 5445 SE King Rd. The site is zoned Residential R-7. The land use application file number for the extension request is EXT-2017-001.
2. Master file MLP-2015-002 was a preliminary plat application for a 3-lot partition of the subject property and included a variance to the minimum lot width of two of the parcels (file # VR-2015-006). MLP-2015-002 was approved on January 19, 2016, with the appeal period ending on February 3, 2016. On August 3, 2016, the applicant submitted an application for final plat (file #FP-2016-006). To date, the applicant has not completed construction of the required public improvements and has not been granted final plat approval.

The approval of MLP-2015-002 expires on February 3, 2017. On January 17, 2017, the applicant requested a 6-month extension (to August 3, 2017) to allow additional time for construction of the required public improvements and approval of the final plat.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1005 Type II Review
  - MMC Section 17.04.050 Time Limit on Approval
  - MMC Section 19.908 Extensions to Expiring Approvals

Sections of the MMC not addressed in these findings are found to be inapplicable to the decision on this application.

4. The application has been processed in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director. As allowed by MMC Subsection 19.1002.2.B.1, the requirement of MMC Subsection 19.1005.1 for a preapplication conference was waived by the Planning Director. The application was deemed complete on January 18, 2017, and public notice was mailed to surrounding property owners within 300 ft of the site on January 18, 2017, as required by MMC Subsection 19.1005.3.B. Public notice of the application was posted on the subject property on January 24, 2017, as required by MMC Subsection 19.1005.3.C.
5. MMC Section 17.04.050 Time Limit on Approval

MMC 17.04.050 establishes standards for time limits on approvals for boundary changes and land divisions. Specifically, MMC Subsection 17.04.050.A establishes that land division decisions expire 1 year after approval. In addition, MMC Subsection 17.04.050.4.B establishes the following criteria for a one-time extension of approval for a period up to 6 months:

- a. No changes are made on the original plan as approved.

*No changes have been made on the original plan as approved by master file MLP-2015-002.*

- b. The applicant can show intent of recording the land division or boundary change within the 6-month extension period.

*The applicant submitted the final plat application to the City on August 3, 2016. Redline comments from City staff were returned to the applicant on October 24, 2016. Engineered plans for the required public improvements have been reviewed and*

*approved by the City, and a pre-construction meeting is scheduled with City staff for early February 2017.*

- c. There have been no changes in the ordinance provisions on which the approval was based.

*There have been no changes in the ordinance provisions on which the approval of MLP-2015-002 was based.*

*The Planning Director finds that the approval criteria of MMC 17.04.050.B are met and that the requested extension is allowable.*

## 6. MMC Section 19.908 Extensions to Expiring Approvals

MMC 19.908 establishes a review process for extending the time period during which land use approvals are valid and may be utilized.

### a. MMC Subsection 19.908.2 Applicability

MMC 19.908.2 establishes that unexpired land use applications that were required by MMC Titles 14 (Signs), 17 (Land Division), or 19 (Zoning) and that required Type I, II, or III review are eligible for an extension. Applications that have already expired are not eligible for extension.

*Master file MLP-2015-002 (including VR-2015-006) is an unexpired land use application that was required by MMC Titles 17 and 19 and was approved through a Type III review.*

*The Planning Director finds that master file MLP-2015-002 is eligible for an extension.*

### b. MMC Subsection 19.908.3 Review Process

MMC 19.908.3 establishes the procedures and review types that are applicable to extension requests. For applications originally approved through Type III review, MMC Subsection 19.908.3.A.3 requires that the Planning Director notify the Planning Commission of the receipt of an extension application at the same time that public notice is mailed. In addition, MMC Subsection 19.908.3.B.2 requires Type II review for the extension application for an expiring application approved through a Type III review.

*The expiring application (master file MLP-2015-002) was originally approved by the Planning Commission through Type III review. Notice of the extension application (EXT-2017-001) was provided to the Planning Commission when the application was referred to relevant departments and agencies on January 18, 2017.*

*The Planning Director finds that the extension application is subject to Type II review and that the applicable standards of MMC 19.908.3 are met.*

### c. MMC Subsection 19.908.4 Approval Criteria

MMC 19.908.4 establishes the following criteria for approving an extension to an expiring land use application:

- (1) There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.

*There have not been any significant changes to the property or in the vicinity of the site since the original approval on January 19, 2016, nor have there been any changes to the relevant regulations.*

- (2) No modifications are proposed to the approved application or to the conditions of approval.

*No modifications are proposed to the approved application or to the conditions of approval.*

- (3) If the previously approved application included a transportation impact study or a natural resource report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property.

*The application for master file MLP-2015-002 did not include a transportation impact study or a natural resource report.*

*The Planning Director finds that the approval criteria of MMC 19.908.4 are met.*

*The Planning Director finds that the requested extension is allowable as per the applicable standards and requirements of MMC 19.908.*

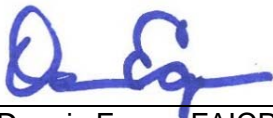
7. As described in Finding 4, public notice of these applications was posted on site and mailed to parties as required. The application was referred for comment to the following entities: Milwaukie Planning Commission, Milwaukie Engineering Department, Milwaukie Building Department, Clackamas Fire District #1, Clackamas County, Metro, TriMet, and the Lewelling and Linwood Neighborhood District Associations. No comments were received.

### **Conditions of Approval**

None

### **Other requirements**

1. To avoid the necessity of reapplying for the partition originally approved by MLP-2015-002, the accompanying final plat (FP-2016-006) must be approved by the City no later than August 3, 2017. As per MMC Section 17.24.040, approval of the final plat shall be null and void if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.



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Dennis Egnor, FAICP  
Planning Director

- cc: John Marquardt, applicant (P.O. Box 1928, Vancouver, WA 98668)  
Phillip Joseph, property owner (via e-mail)  
Planning Commission (via e-mail)  
Ann Ober, Interim Community Development Director (via e-mail)  
Chuck Eaton, Engineering Director (via e-mail)  
Alex Roller, Engineering Technician II (via e-mail)  
Samantha Vandagriff, Building Official (via e-mail)  
Bonnie Lanz, Permit Specialist (via e-mail)  
Mike Boumann and Matt Amos, CFD#1  
NDA(s): Lewelling and Linwood (via e-mail)  
Land Use File(s): EXT-2017-001, FP-2016-006, and MLP-2015-002 (with VR-2015-006)