

November 12, 2019

Michael C. Robinson

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

VIA E-MAIL

Ms. Debra Brush, Chair
Tangent Planning Commission
Tangent City Hall
23166 Old Oak Drive
Tangent, OR 97389

RE: Application by Central Valley Christian School for Conditional Use Permit,
Property Line Adjustment, and Variances (the “Applications”) on Property Zoned
Exclusive Farm Use (“EFU”); Applicant’s Final Written Argument

Dear Chair Brush and Members of the Tangent Planning Commission:

This office represents Central Valley Christian School, the Applicant. This letter is the Applicant’s final written argument due no later than November 13, 2019 at 5:00 p.m. This letter does not contain new evidence.

1. Status of Application Review by the Tangent Planning Commission (the “Planning Commission”).

The Planning Commission held the initial evidentiary hearing on this Application on October 30, 2019. After hearing the Staff Report, testimony from the Applicant and testimony from the public, the Applicant did not waive final written argument. No party asked that the public hearing be continued or the written record held open. The Planning Commission adopted a motion allowing the Applicant to submit final written argument no later than November 13, 2019 at 5:00 p.m. The Applicant thereafter extended the 120-day period in ORS 227.189(1) by twenty-six (26) days, the period of time between October 30, 2019 and November 25, 2019. The Planning Commission will return to deliberate to a tentative decision on the Application at a public meeting on November 25, 2019 at 7:00 p.m.

2. Conditions of approval.

The Applicant submitted a letter dated October 30, 2019 raising several issues and addressing the prior recommended conditions of approval. The Planning Department submitted an updated list of twenty-one (21) recommended conditions of approval on October 30, 2019 (**Exhibit 1**).

Thereafter, the City Attorney and City Planner submitted a revised set of twenty (20) staff-recommended conditions of approval on November 8, 2019 (**Exhibit 2**). Conditions of approval are not new evidence. ORS 197.763(9)(a) and (b). Therefore, the revised conditions of approval are permitted as part of final written argument and may be included in an updated Staff Report to the Planning Commission because they do not constitute new evidence.

The Applicant has reviewed the November 8, 2019 revised conditions of approval and agrees with them. Provided the Planning Commission approves the Application and adopts the revised conditions of approval, the Applicant will accept the revised conditions of approval. The revised conditions of approval are feasible to be performed by the Applicant.

3. Response to certain issues discussed at October 30, 2019 initial evidentiary Planning Commission hearing.

A. This Application is a “permit” as that term is defined in ORS 227.160. Neither the Statewide Planning Goals (the “Goals”) nor administrative rules implementing the Goals are directly applicable to the Application. Further, this Application does not seek an amendment to the City’s acknowledged Comprehensive Plan or its land use regulations. Therefore, the Oregon Transportation Planning Rule (the “TPR”) is not an applicable approval criteria.

B. The Oregon Court of Appeals’ decision in *Hill v. City of Portland*, 293 Or App 283 (2018) controls the legal issues in this matter.

Revised condition of approval 2 is satisfactory to the Applicant and if the Planning Commission approves the Application with revised condition of approval 2, the Applicant will accept the condition. The Planning Commission should consider two aspects of the decision in *Hill v. City of Portland*.

First, a City’s request for a property owner to give up property rights, such as allowing third parties on its property through an easement, is subject to the Fifth and Fourteenth Amendments to the United States Constitution. *Hill*, 293 Or App 283, 284. Because of that, the City has the burden of proof to demonstrate the nature and extent of the exaction are roughly proportionately to the impacts of the proposed development.

Second, a future dedication as proposed in prior condition of approval 2 would not have met this test because the evidence allowing the City to impose the condition is not in the record. Testimony to the Planning Commission was clear that such evidence might be present in the future but it is not present now. Therefore, under *Hill*, there would be no basis for prior condition of approval 2. However, the Applicant agrees with revised condition of approval 2 because it links the grant of an easement by the property owner to a specified event in the future.

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4. Conclusion.

The Applicant appreciates the revised conditions of approval. While the Applicant does not waive any of its arguments made prior to this letter and contained in this letter, the Applicant will not appeal the Planning Commission's approval of this Application if it includes the revised twenty (20) conditions of approval. The Applicant will work collaboratively with the City Staff to see that all of the conditions of approval are promptly and properly implemented.

I have asked Mr. Eckert to place this letter before you prior to the commencement of your deliberation on November 25, 2019 and in the official Planning Department file.

Very truly yours,



Michael C. Robinson

MCR:jmhi

Enclosures

Cc Ms. Georgia Edwards *(via email) (w/enclosures)*
Mr. Creed Eckert *(via email) (w/enclosures)*
Mr. Dan Kearns *(via email) (w/enclosures)*
Mr. Ralph Stathem *(via email) (w/enclosures)*
Mr. Herald Follett *(via email) (w/enclosures)*

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RECOMMENDED CONDITIONS OF APPROVAL: With implementation of the following conditions of approval, the application is capable of fully conforming to the applicable decision criteria. In the event the Planning Commission elects to approve this request, staff recommends adoption of the following minimum conditions of approval:

1. The applicant shall comply with all local, state and federal regulations and requirements applicable to this property and the activities occurring thereon.
2. The applicant shall construct a 20' wide paved vehicular access way to private driveway standards to serve the school, and a 6' wide compacted crushed gravel multi-use (bike and pedestrian) access on the north side of the paved vehicular access, consistent with the Applicant's "Proposed Shared Path Design Profile", Attachment E to the Addendum to the Staff Report, and subject to final inspection and approval by the City Engineer. The city will not require a public access easement or dedication of either access way, but does require that the applicant execute and record an irrevocable commitment to dedicate the 6' multi-use access to the city in the future upon written demand by the city. The irrevocable commitment to dedicate the 6' access way shall be on a form provided by the City and shall be executed and recorded by the Applicant within 30 days of permit approval.
3. Within thirty (30) days of this decision, the applicant shall submit for City approval a detailed parking and landscape plan, including a minimum of thirteen (13) parking spaces and ____ street trees, consistent with the planning commission's findings and decision concerning the applicant's request for Variance to the street tree standards of the LDC. The plan shall depict the approved bicycle and pedestrian access. Street trees shall be placed north of the private street and pedestrian/bicycle access unless an alternative location is approved by the planning commission, except that the one tree proposed on the south side of the driveway is also approved and hereby incorporated as part of the applicant's approved development plan.
4. The proposed off-street parking lot shall be designed and constructed as required by the Tangent Rural Fire Department (TRFPD), and shall include a minimum of thirteen (13) delineated spaces. Hard surfacing and parking lot shade trees are not required. The final parking plan shall demonstrate conformance with requirements of the Americans with Disabilities Act (ADA).
5. The applicant shall provide the City with general design plans for the proposed parking and storm drainage and obtain approval by the city engineer prior to the start of construction. These plans need not be prepared by a professional engineer.
6. Prior to commencing construction, the applicant shall provide the City with a copy of an approved road approach permit from the Oregon Department of Transportation (ODOT). The applicant shall comply with all requirements and conditions of ODOT's permit.
7. The property line adjustment shall be record within thirty (30) days from the date of this decision.

8. Prior to utilization of the new access for the school, the applicant shall obtain inspection and written City approval of the driveway and shared pedestrian/bicycle facility's construction; installation of street trees consistent with these conditions of approval; and any other required improvements, as consistent with this decision.
9. The parking lot is subject to final inspection and acceptance by the city engineer, prior to utilization.
10. The applicant shall be responsible for all maintenance of the private street and shared pedestrian / bicycle facility until and unless the city accepts dedication of the shared path in the future.
11. These land use approvals and their associated conditions run with the land are applicable to all future owners, heirs, assignees, etc.
12. The applicant shall apply with the Linn County Building Department for a new site address to reflect the school's relocated access from Highway 34 to McFarland Road. Signage shall be provided at the intersection of the new street with McFarland Road, including address markings to specifications of the Tangent Rural Fire Protection District (TRFPD).
13. The City reserves the right to require street lighting on the private street in the event future conditions warrant it. Any new lighting associated with the parking lot and / or street shall be shielded and directed so as to avoid shining directly or creating glare upon any neighboring property, land use or right of way.
14. All refuse containers and waste disposal areas shall be screened from view consistent with the LDC.
15. All improvements indicated in the application materials, as well any improvements, requirements or modifications required by these conditions of approval, shall be completed consistent with the timelines dictated by these conditions of approval, or where not specified, prior to utilization of the new access drive, unless each uncompleted improvement is financially secured, subject to an improvements agreement, in a manner approved by the City Manager and consistent with the LDC.
16. This conditional use approval shall be void one (1) year from the expiration of the appeal period for this decision, unless construction has commenced and is progressing in good faith.
17. Any future modification or expansion of the activities and development approved herein requires City approval as an Alteration or Expansion of Conditional Use, Site Plan Review, and/or any applicable procedure(s) in effect at that time.

18. Upon satisfaction of adopted conditions of approval, the applicant shall submit a letter informing the City of Tangent of their completion.

19. The City reserves the right to monitor the status of compliance with adopted conditions of approval. The applicant's failure to comply fully with all adopted conditions of approval may result in withholding final design approval, levying of civil fines and other legal action, revocation of these land use approvals, and / or withholding future land use approvals until compliance is demonstrated.

20. The City reserves the right to initiate the future formation of a local Improvement district for McFarland Road if future conditions warrant such improvements, according to state law in effect at that time and the City Charter.

21. This permit is limited to the applicant's requested proposal as described in the applicant's materials submitted to the Planning Commission prior to approval.

RECOMMENDED CONDITIONS OF APPROVAL: With implementation of the following conditions of approval, the application is capable of fully conforming to the applicable decision criteria. In the event the Planning Commission elects to approve this request, staff recommends adoption of the following minimum conditions of approval:

1. The applicant shall comply with all local, state and federal regulations and requirements applicable to this property and the activities occurring thereon.
2. The applicant shall construct a 20' wide paved vehicular access way to private driveway standards to serve the school, and a 6' wide compacted crushed gravel multi-use (bike and pedestrian) access on the north side of the paved vehicular access, consistent with the Applicant's "Proposed Shared Path Design Profile," Attachment E to the Addendum to the Staff Report, and subject to final inspection and approval by the City Engineer. The city will not require a public access easement or dedication of either access way at this time, but does require the applicant to execute and record an irrevocable commitment to convey to the city a public easement on, over and through the 6' multi-use access in the future upon written demand by the city. The city shall not require conveyance of the easement corresponding to the 6' pathway until such time as the city has an adopted and funded project showing a bikeway and/or pedestrian path that connects to the west end of the path and does not cross the existing school lot. The easement required by this condition does not include any rights over the existing school lot. Upon conveyance of the easement, the city shall be responsible for maintenance of the path. Until such time as the city requires conveyance of the easement, the school may maintain a fence and gate where it's property abuts McFarland Road to limit access to its invitees and guests to its existing school lot. After conveyance of the easement provided for in this condition, the applicant may install a fence and gate at the west end of the 6' path to limit access to its invitees and guests to its existing school lot. The irrevocable commitment to convey an easement to the City corresponding to the 6' access way shall be on a form provided by the City and shall be executed and recorded by the Applicant within 30 days of permit approval.
3. Within 120 days of this decision, the applicant shall submit for City approval a detailed parking and landscape plan, including a minimum of thirteen (13) parking spaces and ____ street trees, consistent with the planning commission's findings and decision concerning the applicant's request for Variance to the street tree standards of the LDC. The plan shall depict the approved bicycle and pedestrian access. Street trees shall be placed north of the private street and pedestrian/bicycle access unless an alternative location is approved by the planning commission, except that the one tree proposed on the south side of the driveway is also approved and hereby incorporated as part of the applicant's approved development plan.
4. The proposed off-street parking lot shall be designed and constructed as required by the Tangent Rural Fire Department (TRFPD), and shall include a minimum of thirteen (13) delineated spaces. Hard surfacing and parking lot shade trees are not required. The final parking plan shall demonstrate conformance with requirements of the Americans with Disabilities Act (ADA).

5. The applicant shall provide the City with general design plans for the proposed parking and storm drainage and obtain approval by the city engineer prior to the start of construction. These plans need not be prepared by a professional engineer.
6. Prior to commencing construction, the applicant shall provide the City with a copy of an approved road approach permit from the Oregon Department of Transportation (ODOT). The applicant shall comply with all requirements and conditions of ODOT's permit.
7. The property line adjustment shall be record within 120 days from the date of this decision.
8. Prior to utilization of the new access for the school, the applicant shall obtain inspection and written City approval of the driveway and shared pedestrian/bicycle facility's construction; installation of street trees consistent with these conditions of approval; and any other required improvements, as consistent with this decision.
9. The parking lot is subject to final inspection and acceptance by the city engineer, prior to utilization.
10. So long as the school is in operation, the applicant shall be responsible for all maintenance of the private street and shared pedestrian/bicycle facility until and unless the city accepts conveyance of a public easement over the shared path in the future.
11. These land use approvals and their associated conditions run with the land are applicable to all future owners, heirs, assignees, etc.
12. The applicant shall apply with the Linn County Building Department for a new site address to reflect the school's relocated access from Highway 34 to McFarland Road. Signage shall be provided at the intersection of the new street with McFarland Road, including address markings to specifications of the Tangent Rural Fire Protection District (TRFPD).
13. All refuse containers and waste disposal areas shall be screened from view consistent with the LDC.
14. All improvements indicated in the application materials, as well any improvements, requirements or modifications required by these conditions of approval, shall be completed consistent with the timelines dictated by these conditions of approval, or where not specified, prior to utilization of the new access drive, unless each uncompleted improvement is financially secured, subject to an improvements agreement, in a manner approved by the City Manager and consistent with the LDC.
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Central Valley Christian School CU, PLA, VAR

Recommended Conditions of Approval

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