Appeal Testimony re PDT 13-1

September 4, 2015

Eugene Planning Commission
c/o Gabe Flock, Planner
City of Eugene
99 West 10th Avenue,
Eugene, OR 97401

Submitted by: Simon Trautman
Send notices to: 2303 C Street, Bellingham, WA 98225

Re: City File No. PDT 13-1; Oakleigh PUD
Opposition to Hearings Official Decision

Dear Commissioners:

On August 17, 2015, the Planning Commission voted to re-open the record for new evidence and arguments.

The motion adopted by the Planning Commission set the following time limits:

- New evidence allowed through close-of-business on August 31st.
- Rebuttal arguments through close-of-business September 4th.
- Final applicant rebuttal through close-of-business September 11th.

The motion adopted by the Planning Commission allowed only the applicant and myself and our legal representatives to contribute new, written testimony.

The motion adopted by the Planning Commission limited the scope to right-of-way, pavement widths and parking, in relation to the safety of Oakleigh Lane.

Notwithstanding the adopted motion, ORS 197.763(7) requires:

> "When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue."

On August 31, 2015 I submitted written testimony accompanied by a CD and a resubmittal of my July 27, 2015 written testimony.

This letter provides further argument in response to the testimony submitted by the applicant's representative during the re-opened period of the record through August 31, 2015.

ORS 197.763(6)(c) limits testimony during this response period through September 4, 2015 to "an opportunity to respond to new evidence submitted during the period the record was left open." Testimony submitted after August 31, 2015 cannot contain new evidence. Testimony submitted after August 31, 2015 also cannot contain any argument that is not in response to the new evidence that was submitted on August 31, 2015.

To preserve my substantial procedural rights, I am stating a precautionary objection if the applicant, city staff person or any other party submits new evidence or argument that is not compliant with ORS 197.763(6) and (7).

AN ESSENTIAL TEST

Before the Planning Commission can lawfully and in good conscience approve this application, you must – at the very least – be able to answer affirmatively the following question:

> *Does our decision ensure that a fire truck will be able to make it to the proposed development site without requiring that the fire truck or an oncoming vehicle has to back up to a point that allows the fire truck to advance to and onto the site?*

This question, of course, is not the only question the Planning Commission must answer. However, it offers a good litmus test for whether Oakleigh Lane is safe and adequate.

UNRELIABLE TRAFFIC "ANALYSIS"

As covered in full detail below, the August 27, 2015 letter from Michael Weishar of Access Engineering contains so many errors, omissions and false and misleading information that the letter's conclusions are wholly unreliable.

The conclusions in this letter are also inconsistent with Eugene Fire Code and the locally adopted street standards in the Eugene Land Use Code

The conclusions in this letter are also inconsistent with the analysis and recommendations of major organizations concerned with traffic safety, including Oregon Department of Transportation (ODOT), the National Fire Protection Association (NFPA) and the federal Occupational Safety & Health Administration (OSHA).

DIXON'S ANECDOTAL LETTER CHANGES NOTHING

The August 27, 2015 letter from Willard Dixon simply claims that he and his family have used some portions of Oakleigh Lane, which I believe is true, but which in and of itself has no immediate relevance to the findings in this case.

He anecdotally reports that he hasn't observed that the road surface was "blocked" by parked cars. That wouldn't be surprising if what he means is that he never saw cars blocking the street so completely that no other *car* could pass. However, my argument is in no way based on cars completely blocking the street.

Dixon's letter does not appear to dispute that cars do park on the Oakleigh Lane pavement and on the gravel on the north side of the right of way. Examples of both of these cases appear in

photos at LUBA Rec 682 and 683. A couple cases even appear to be captured in the photographs submitted by the applicant on August 31, 2015.

The three video files included in my August 31, 2015 testimony also show substantial presence of legally-parked cars.

Further, as the August 25, 2015 letter from Lauren Regan attests, residents do park (legally) on the pavement that's located on their own private property. (See Attachment I included with my August 31, 2015 testimony.)

Thus, Mr. Dixon's anecdotal testimony doesn't change the fact that parked cars do obstruct two-way traffic on Oakleigh Lane at different places and times, and there is nothing in the record that ensures this practice won't continue in the future.

ONE-TIME SNAPSHOTS AREN'T EVIDENCE OAKLEIGH LANE WOULD REMAIN UNOBSTRUCTED

My argument is not based on a claim that at every moment of every day parked cars obstruct Oakleigh Lane. The applicant's ten snapshots depict a common scenario during the middle of a weekday when the working families along Oakleigh Lane have driven their cars to their jobs.

This "evidence" might be germane to safety issues if residents could time house fires and heart attacks on the right days of the week and at the right time. The real world doesn't work that way, and the Eugene-Springfield Fire Department certainly doesn't base their safety standards and practices for emergency access on just responding during certain hours of the day or when conditions on the street are ideal.

The applicant's snapshots capture a few minutes of a single day – just one moment in time, and they're no more a basis for findings about Oakleigh Lane than Mr. Dixon's anecdotal observations.

The record already contains snapshots that show a different scenario with cars parked on the roadway. For example, see the four pictures at LUBA Rec 682 and 683. In addition, the two videos that I submitted on August 31, 2015, show Oakleigh Lane around noon on Sunday, August 30, 2015, when one of the residents on Oakleigh Lane was hosting a "fantasy football" party. See the following video files:

- 2015August30PedestriansBicyclistAndVehicleSharingTheOakleighLanePavement.mp4
- 2015August30TruckLeavingOakleighLaneResidence.mp4

My argument concerns events, such as a weekend party, that are not at all unlikely. What would happen, for example, if an Oakleigh Meadows Co-housing (OMC) resident had a heart attack at 7:30 a.m. on a weekday morning at a time when a number of cars remained parked along the 250-foot long choke point[1] and some of the other OMC residents were leaving the compound to drive down Oakleigh Lane and off to their jobs? When the emergency vehicle –

[1] The "choke point" is the 250-foot segment of Oakleigh Lane that has a 20-foot right of way and only approximately 14' to 16' feet of pavement in the public right-of-way. Note that only the third, fourth, fifth and sixth submitted photos submitted by the applicant appear to show the "choke point." The other photographs show stretches of Oakleigh Lane closer to River Road that have wider right-of-way.

which might be a large fire truck – came rushing up Oakleigh Lane towards the OMC and encountered the oncoming cars in the choke point – Who would back up, and how long would that emergency vehicle be delayed?

TWO DEAD HORSES AND A SKUNK IN THE ROOM

There were already three elephants, a gnat and a red-herring in the metaphorical room in which this process is unfolding.

In his letter of August 27, 2015, Michael Weishar throws two dead horses and a skunk into the mix.

The skunk in this case is Mr. Weishar's insinuation (in his Footnote 1) that I may have not been involved in an accident at the intersection of River Road and Oakleigh Lane. This suggestion is simply false; is another attack on my character; and echoes similar tactics used by the applicant in my first appeal.

As I'm sure commissioners understand, and as the Court of Appeals decision made clear, my character is not the issue before you. Continued attempts to undermine my credibility are not clever in the slightest, but instead are both irrelevant and insulting. Furthermore, I would gladly provide police call logs, accident photos, and insurance correspondence related to the accident if any commissioner would like proof of my statements.

Mr. Weishar's **first "dead horse"** is his attempt to portray Oakleigh Lane as a "queuing street."

Oakleigh Lane is not in any way configured as a "queuing street," according to city and ODOT descriptions. Oakleigh Lane lacks a reserved and designated parking/pull-in lane and sidewalks, as well as striping, curb markings and signage that are essential for a genuine "queuing street."

Therefore, Oakleigh Lane would not, in its current configuration, perform at all the way a properly configured "queuing street" would perform.

The only way that "queuing" will have an effect on Oakleigh Lane related to this decision is that emergency vehicles may be forced to <u>wait</u> in a "queue" when they encounter an oncoming vehicle. Yes, as the Hearings Official noted in his decision: "the queuing effect of having a single travel lane along Oakleigh Lane is likely to result in lower speeds." And that would include slowing down, and therefore delaying, emergency response. LUBA Rec 373.

By the way – Be sure to note that the Hearings Official himself seemed to acknowledge that there is "a single travel lane along Oakleigh Lane." Unfortunately, he drew the wrong conclusions from this fact.

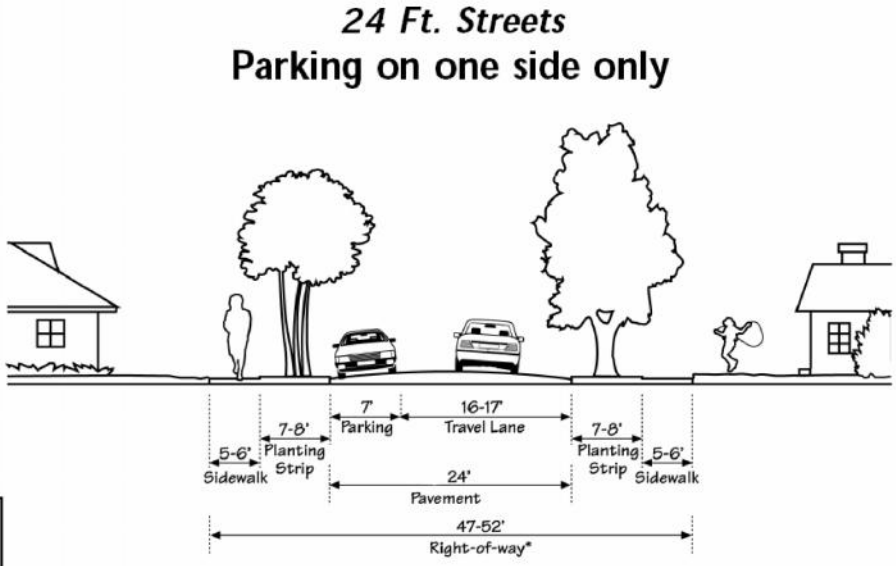
It seems a shame that a professional traffic engineer would use his credentials to try to slip the ruse that Oakleigh Lane is a "queuing street" by the Planning Commissioners again, especially since this meritless argument had already been debunked in testimony before the Hearings Official. (See LUBA Rec 268.)

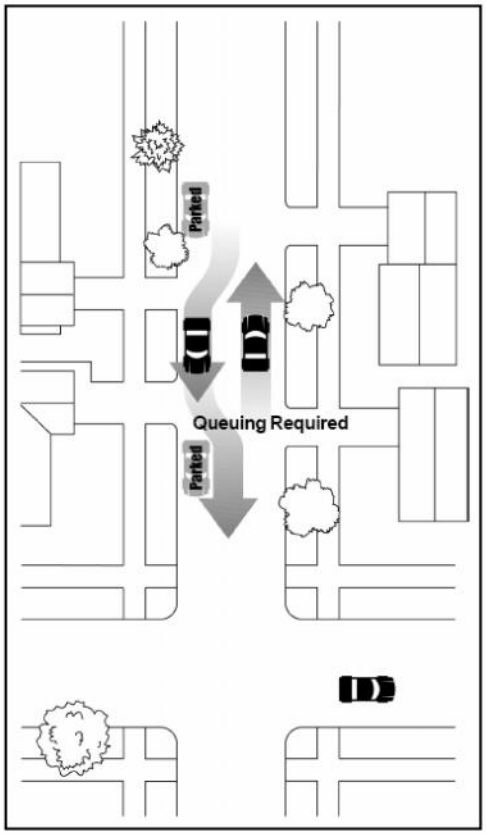
One more time, here is the accurate description of a "queuing street" from the *Eugene Arterial & Collector Street Plan* (LUBA Rec 886-894, excerpt from Rec 894):

2) On local residential streets with traffic volumes less than 750 vehicles per day, a single 14' traffic lane may be permitted for both directions of vehicular travel The single traffic lane is intended to create a "queuing street", such that when opposing vehicles meet, one of the vehicles must yield by pulling into a vacant portion of the adjacent parking lane. This queuing effect has been found to be an effective and safe method to reduce speeds and non-local traffic.

Note in particular, that a "queuing street" must have a clearly-defined, <u>separate</u> parking lane to function safely.

The ODOT/DLCD *Neighborhood Street Design Guidelines* (provided as Attachment K with my August 31, 2015 testimony, see page 18) shows how a <u>minimal</u> queuing street would be configured.





18

Note the 16'-17' Travel lane, with an additional 7' parking/pull-in area of pavement on one side. The required pavement for a queuing street is thus 23'-24' wide, much greater than Oakleigh Lane's pavement, particularly along the 250-foot "choke point."

A "queuing street" also does <u>not</u> force pedestrians to share the pavement with vehicular traffic; and, as the diagram above shows, the 47'-52' right-of-way provides room for separating pedestrian sidewalks from the roadway.

On the left is how a genuine queuing street would be configured and function (again, from page 18).

The reference cited by Mr. Weishar makes no explicit or implied claim whatsoever that a "queuing street" doesn't require sidewalks and can safely *force* pedestrians to walk in the street, as Oakleigh Lane does.

Oakleigh Lane clearly does not meet the standards for a safe "queuing street," and thus the "queuing effect" is wholly irrelevant to this case unless the Planning Commission would choose to impose adequate conditions of approval for the

entirety of Oakleigh Lane to have the necessary right-of-way, striped lanes and sidewalks to meet the standards for a safe and adequate "queuing street."

Furthermore, a "queuing street" would not meet the Eugene Fire Code (EFC) standards for a fire apparatus access road, as described in my prior testimony. Thus, the proposed development would have to be served by an alternative fire apparatus access road (which is not currently the case) before Oakleigh Lane would be acceptable when configured as a "queuing street."[2]

The second dead horse that Mr. Weishar has thrown in with the elephants and red herring is the patently false claim that the Public Works Department (PWD) report didn't recognize any hazards or risks that would arise on Oakleigh Lane in its current condition when 29 new dwelling units were added at the end of the road.

Mr. Weishar presented no rebuttal to my argument in my July 27, 2015 testimony that debunked this claim by citing the explicit statements in the following section of the PWD report:

> "The proposed development will result in a 29 new residential units. These residential units will be accessible only from Oakleigh Lane. Currently, 25 lots, consisting of a mix of residential, general office and commercial zoning have structures that take access onto Oakleigh Lane; thus, the additional 29 residential units will increase the number of structures that access this Oakleigh Lane by over 100 percent. The construction of the new structures will result in an increase of vehicular traffic onto Oakleigh Lane by approximately 168 new vehicular trips per day. See Trip Generation Manual from the Institute of Transportation Engineers (ITE) for Residential Condo / Townhouses (Category 230). Without the additional right-of-way, Oakleigh Lane cannot be improved to the City's minimum street design standards and the 168 new vehicle trips per day generated by the proposed development, along with the additional pedestrian and bicycle traffic generated by the proposed development; will not be assured of safe access via Oakleigh Lane. (LUBA Rec 1257. Emphasis added)

This analysis is undeniably all about the impacts that will arise from the new development. It starts by describing the development's dwelling count and emphasizes that "[t]hese residential units will be accessible only from Oakleigh Lane." The report is talking here about safe access for the OMC residents, not some future development.

The analysis then identifies the effect on daily trips by "the new structures," i.e., the PUD structures.

Finally, the PWD analysis conclude that not only the "168 new vehicle trips per day, generated by the proposed development" but also "pedestrian and bicycle traffic generated by the proposed development" on Oakleigh Lane "will not be assured of safe access."

---

[2] Discussions about queuing streets generally recommend that they be configured so they *could* allow use by emergency vehicles *in some cases*, for example as secondary access when multiple fire trucks are deployed. (See for example, page 8 of the *Neighborhood Street Design Guidelines*.) However, not one of these suggestions implies that a queuing street would be adequate as the only access for fire apparatus.

How many times will OMC and their paid "experts" repeat the lie that the PWD analysis was only about *future* needs beyond the proposed development?

Hopefully, this is the last time that dead horse has to be flogged.

THE NUMBERS GAME

Mr. Weishar has a certain way with numbers. However, his math doesn't withstand elementary examination.

Mr. Weishar uses the ITE manual to derive that "the total would be 378 daily trips" on Oakleigh Lane after the 29 new dwelling units were built. Then he concludes that this volume is "well within the range for a low-volume residential street."

What OMC's paid consultant failed to account for in his conclusion is that ITE "trips" are roundtrips (*two-way*) whereas the City uses *one-way* trips to determine the category of a street's projected traffic load. LUBA Rec 872, Footnote 8. So, using Mr. Weishar's own numbers, the projected daily one-way trips would be 756 (378 x 2), which would put Oakleigh Lane's projected traffic load in the *Medium* Volume Residential category. Streets with that amount of daily trips would require a 50 to 60 foot right-of-way, according to the city's adopted street standards at EC Table 9.6870.

However, as explained at LUBA Rec 872, the correct projection is actually somewhere around 700 daily trips[3], which means the projected trip volume on Oakleigh Lane places it at the top of the range for a Low Volume Residential street.

(Even the Hearings Official's findings stated: "with the addition of 29 dwelling units proposed by the subject development, the Average Daily Traffic (ADT) would be greater than 500 trips per day …." – stated at LUBA Rec 39, adopted at LUBA Rec 44.)

Mr. Weishar's figures were wildly incorrect.

In any case, there is no dispute that the trip volume after the PUD is implemented would fall within the range requiring the minimum right-of-way and pavement width that has been adopted for a Low Volume Residential street.

The takeaway from this section of Mr. Weishar's letter is that his calculations are unreliable.

A FINE TAUTOLOGY

The next error in Mr. Weishar's letter is not so harmless.

Read this passage slowly:

> "As a low-volume residential street, Oakleigh Lane can safely accommodate between 250 and 750 average daily trips."

[3] Mr. Weishar also apparently over-counted the number of existing residences on Oakleigh Lane.

What that statement *appears* to assert is this:

> "The City has determined that Oakleigh Lane is (in its current condition) a Low-Volume Residential street. That means the City has determined that Oakleigh Lane can safely handle up to 750 daily trips, which is the range of daily trips associated with a Low Volume Residential street."

But Mr. Weishar has engaged in another slight-of-hand. Here is the *true* story:

- "Oakleigh Lane is projected to have approximately 700 daily (one-way) trips.
- Accordingly, the projected number of daily trips falls in the city's range for a Low Volume Residential street.
- According to the city's adopted street standards at EC Table 9.6870, a street with the projected number of trips in the Low Volume Residential street category must have at least a 45-foot right-of-way and pavement that is 20 feet wide.
- Oakleigh Lane doesn't meet the adopted street standards to safely and adequately handle the projected number of daily trips."[4]

Mr. Weishar has turned the proper use of projected ADT, street categories, and adopted street standards on their heads, making it seem as if Oakleigh Lane has been deemed adequate for the projected traffic load. That is, however, not at all the case.

Again, even if Mr. Weishar's mistake is unintentional, this very obvious analytic error demonstrates that his analysis is unreliable.

AN "OIL-MAT" SURFACE IS SUBSTANDARD

It's helpful that Mr. Weishar confirms that Oakleigh Lane has an "oil mat" surface and not an "asphalt concrete" surface, which means Oakleigh Lane's pavement is unlikely to be adequate to support 80,000 pound fire apparatus, as the Eugene Fire Code requires.

It's unhelpful that the bearing capacity of Oakleigh Lane has never been assessed by OMC consultants or the city staff, and therefore no assumptions can be relied upon as to its bearing capacity. The Planning Commission cannot ignore this uncertainty or make assumptions that are not supported by reliable evidence.

Mr. Weishar letter didn't evaluate the capacity and adequacy of Oakleigh Lane's pavement, an omission that further undermines the reliability of his conclusions.

IS THE ELEPHANT THAT HARD TO SEE?

Mr. Weishar's conclusions regarding the safety of pedestrians, bicyclists and motorists sharing the constricted pavement of Oakleigh Lane ignores the fact that the only reasonable interpretation of EC 9.8320(5) explicitly requires that, when there's only a single, dead-end

---

[4] Alice in Wonderland might have preferred Mr. Weishar's version based on Alice's comment that: "If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't. And contrary wise, what is, it wouldn't be. And what it wouldn't be, it would. You see?"

street that provides access to a proposed PUD, that street must provide a safe and adequate transportation system by conforming to adopted city street standards. This is fully explained on pages 21-25 of my July 27, 2015 testimony.

But even if that were not the case, there is no question that from both a legal and a practical perspective, the one and only access road to the proposed new development must meet the Eugene Fire Code (EFC) criteria for a fire apparatus access road.

If for some reason, the EFC standards were trumped by the city street standards adopted by the local government, then we're right back to Oakleigh Lane having to meet the adopted city standards at EC Table 9.6870.

From a practical perspective, Oakleigh Lane must allow the unobstructed passage of a fire truck from River Road to the development site. As the evidence submitted in the August 31, 2015 testimony by Paul Conte shows, this requires at a minimum, clear passage for a 10-foot wide fire truck. That reference point of 10 feet is confirmed in the ODOT/DLCD *Neighborhood Street Design Guidelines*, included in my August 31, 2015 testimony:

> "***Emergency Response.*** The movement to reduce street standard widths raised concerns with emergency service providers. Thus, the most controversial issue facing Oregon's fire departments in the past decade has been street width. Fire departments must move large trucks, on average, 10 feet wide mirror-to-mirror." (page 5, emphasis added)
>
> "The size of fire apparatus is driven, in part, by federal Occupational Health and Safety Administration (OSHA) requirements and local service needs. The regulations require that fire trucks carry considerable equipment and that firefighters ride completely enclosed in the vehicle. In addition, to save money, fire departments buy multi-purpose vehicles that can respond to an emergency like a heart attack or a traffic accident, as well as a fire. These vehicles typically provide the first response to an emergency. An ambulance will then provide transport to a hospital, if needed. To accommodate the need to move the vehicles and access equipment on them quickly, the Uniform Fire Code calls for a 20-foot wide clear passage." (pages 2-3, emphasis added)

When a 10-foot wide fire truck meets an oncoming car, at least six feet wide, there has to be a clear passage way of at least 16 feet plus allowance for space between the two vehicles and obstacles (such as parked cars) one either side. The very bare minimum would be about 18 feet of clear width. If the oncoming vehicle were a truck or larger car, even greater clear width would be required.

The 2015August30TruckLeavingOakleighLaneResidence.mp4 video file, included in my August 31, 2015 testimony, provides additional, visual evidence that a fire truck would be impeded by parked cars and moving vehicles encountered in the roadway.

Nothing in Mr. Weishar's letter, or any other evidence in the record, supports a conclusion that Oakleigh Lane in its current condition can be ensured to have an 18-foot clear width along the entirety of the 250-foot segment where the right-of-way is only 20 feet; the pavement in the right-of-way is no more than 16 feet wide and legally-parked cars on both sides of the road may obstruct both the right-of-way and the pavement.

After making another thinly-veiled attempt to smear Oakleigh Lane residents by claiming "there is some speculation that neighbors could intentionally obstruct as much as six feet of the improved street surface,"[5] Mr. Weishar makes the untenable claim that "even assuming that only 13 feet of the street were available for travel by the public for 250 feet, this would be adequate to accommodate emergency vehicles, and two-way vehicle travel in the same fashion as a queuing street.

Mr. Weishar seems to have overlooked that a "queue" is defined as "a waiting line, especially of persons or vehicles."[6]

Based on this comment, it appears Mr. Weishar's solution to a major fire engulfing PUD townhouses would be for the fire fighters to await their turn to move forward on this supposed 13-foot wide "queuing street."

Obviously, this "solution" bears further dissection. No matter how long the fire fighters wait on a *13-foot wide* section of Oakleigh Lane, they aren't going to get past a 6-foot wide car in front of them. As explained above, a queuing street needs to have – at a minimum – a pavement width that can accommodate at least two lanes – one reserved for travel and the other with parking and sections reserved for pullovers. Thirteen feet won't accommodate that configuration, not to mention that all this talk about a "queuing street" should have no bearing on the Planning Commission's decision because Oakleigh Lane is simply not configured as a queuing street of any sort.

HEADED IN THE WRONG DIRECTION

Mr. Weishar caps off his analysis by pointing out that "excessive parking" – without explaining what "excessive" would mean, when the parking is legally permitted – could require a fire truck to have to back down the street upon leaving the site. Mr. Weishar left out of his analysis any consideration of a much more serious condition – a fire truck might have to back down the street as it was attempting to reach the site in order to let oncoming cars get by.

In addition, Mr. Weishar omitted any analysis of the possible scenario in which an emergency vehicle has arrived at the site and is leaving with a person suffering burns or a heart attack. If this outbound emergency vehicle were to meet a fire truck coming to the fire scene to assist in putting the fire out – how far back towards River Road is the fire truck going to have to back up so that the emergency vehicle can pass?

In summary, Mr. Weishar has presented the Planning Commission with a "professional opinion" that cannot withstand the most cursory scrutiny and which is contrary to what fire safety organizations, ODOT and OSHA recommend, as well as not hewing to Eugene Code.

There is no accurate, reliable or probative testimony in Mr. Weishar's letter. Mr. Weishar's letter is so inaccurate, incomplete and slanted only to the applicant's interests, that no independent,

---

[5] If there is any speculation at all, it is coming from individuals whose intent is to tar opponents of the PUD as maliciously-minded individuals.

[6] Merriam-Webster on-line.

reasonable person could consider it reliable. Accordingly, the Planning Commission cannot rely on Mr. Weishar opinion for a finding that Oakleigh Lane in its current condition would be safe.

TITLE REPORTS CONFIRM SURVEY

The eight pages of title reports included in the applicant's testimony are just copies of documents already in the record at LUBA Rec 467-470, 479-480 and 568-569; and which I had previously referenced in at the top of Attachment B in my July 27, 2015 testimony and Attachment B of my August 31, 2015. The metes-and-bounds property descriptions contained in these reports confirm the areas shown on the surveys that I submitted on August 31, 2015.

CONCLUSION

By any reasonable assessment the proposed site at the end of Oakleigh Lane is not suitable for 29 new dwelling units because Oakleigh Lane isn't adequate for emergency access and the narrow pavement, constrained by legally-parked cars, forces an unsafe sharing of the roadway by vehicles, bicyclists and pedestrians (some of whom may be in wheelchairs).

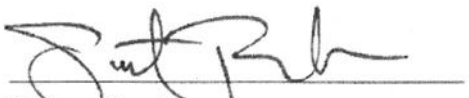
There are several alternative ways the Planning Commission can address the facts in the record.

The most sensible, and defensible, approach is to deny the application for failing to comply with EC 9.8320(5), (6) and (11)(b), as well as EC 9.8320(7) and (11)(k). Denying this application would allow the applicant to potentially address the street safety issues and/or reduce the number of dwelling units. This decision would allow full public review and comment on the application and the <u>true</u> facts regarding Oakleigh Lane and applicable Eugene Fire Code requirements.

A second alternative would be to approve the application with sufficient conditions that would ensure adequate Oakleigh Lane right-of-way, pavement and improvements to meet code requirements and to provide a safe and adequate street for drivers, bicyclists, pedestrians, fire fighters and other emergency personnel.

Finally, the Planning Commission could approve this development without any additional conditions on the right-of-way, pavement and improvements of Oakleigh Lane and without even requiring that the city and/or county maintain the roadway and post and enforce "no parking" signs. That approach would be an unconscionable failure on your part to protect and promote the public's safety. It would also likely lead to another remand.

Respectfully,



Simon Trautman