

From: [Darren Gusdorf](#)
To: [Laura Terway](#)
Cc: [Wendy Marshall](#); [Aleta Froman-Goodrich](#); ["Bruce Goldson"](#); ["Rick Givens"](#); ["Mark Handris"](#); ["CARRIE A. RICHTER"](#); [Matthew Palmer](#); [MRobinson@perkinscoie.com](#)
Subject: RE: Pavilion Park III (TP-15-03) - Revised Staff Report
Date: Tuesday, September 08, 2015 10:41:30 AM
Attachments: [image001.png](#)
[RE Pavilion Park III\(TP-15-03\).msg](#)
[san water memo.docx](#)
[sanitary memo.docx](#)
[leland road estimate.docx](#)
[Water Line Exrension.pdf](#)
Importance: High

Good morning Laura,

Please understand that we are appreciative of you and all other OC staff, and in no way are we trying to be problematic without fair reason. Unfortunately in this case, we're not able to align with the city's position that condition of approval #10 is proportionate to the application. As written, it is requiring us to extend the city water main approximately 228' and fully burden the cost associated with this city improvement. As you know, we can service lot #16 through our subdivision. The cost to extend the city's waterline down to our frontage is over \$60k, and nearly offsets the value of lot 16 itself. If deemed not proportionate, it must be deemed a taking.

At this time, we are only hoping for further resolution to Condition #10. Like OC's engineering department, we have concluded that condition #21 can easily be met.

I'm providing you with the following documents:

- An e-mail response from Mike Robinson, Perkins Coie, regarding condition of approval #10.
- A construction cost estimate prepared by Bruce Goldson reflecting the costs affiliated with conditions of approval #10 and #21 broken out.
- Documentation from Bruce Goldson in response to Matt Palmer's comments below about Oregon State Law and sewer and waterline placement in a private easement.
 - o The City does not think the Applicant can meet Oregon State Law with regard to minimum spacing between sanitary sewer services and water services within a 10-foot private easement across Lot 17.
- Documentation from Bruce Goldson pertaining to condition #21 demonstrating that this condition can be met.
 - o Generally, we are stating that the Applicant is to extend this existing 8-inch sanitary sewer main in Leland Road, unless the Applicant can demonstrate to the City that all other adjacent properties can be served via gravity sewer service by some other means. John, Wendy, and I all believe this is achievable, but this would need to be demonstrated by your Engineer prior to waiving this condition. We feel this is a reasonable position. If this condition is waived, Lot 16 can run their sanitary sewer lateral across Lot 17 within a private easement and discharge into the sanitary sewer system in Pelican Lake Place as originally proposed.

We are hopeful that we can work together quickly and before the hearing, and come up with a reasonable and proportionate resolution to CofA #10. If an outright removal of this condition can't

be made, we're hopeful the city will explore other mechanisms that could fairly reimburse us for this (or portions of) this extension. For example, maybe Icon is responsible for the costs affiliated with its 50' frontage (\$13,158 +/-) and the city is responsible for the costs affiliated with the 178' non-frontage (\$46,842 +/-)? We're open to any ideas that would result in a more fairly distributed cost of this improvement.

Thank you,

Darren Gusdorf

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From: Laura Terway [mailto:lterway@ci.oregon-city.or.us]
Sent: Tuesday, September 08, 2015 8:28 AM
To: Darren Gusdorf <darren@iconconstruction.net>
Cc: Wendy Marshall <wmarshall@ci.oregon-city.or.us>; Aleta Froman-Goodrich <afroman-goodrich@ci.oregon-city.or.us>; 'Bruce Goldson' <thetaeng@comcast.net>; 'Rick Givens' <rickgivens@gmail.com>; 'Mark Handris' <handris@aol.com>; 'CARRIE A. RICHTER' <crichter@gsblaw.com>; Matthew Palmer <mpalmer@ci.oregon-city.or.us>
Subject: RE: Pavilion Park III (TP-15-03) - Revised Staff Report

Darren,

We are required to send out the Planning Commission agenda and associated staff report today. I have been out of the office and wanted to check in on this and see if you had any additional information or issues for the City to consider before issuing the report. In order to adequately respond to your comments and amend the staff report if necessary, can you reply to this email by 11am with your outstanding concerns or additional information? Thank you, I appreciate your willingness to work with us to understand and address your concerns.



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Pavilion Park III

Pavilion III Preliminary cost estimate Sept 1, 2015

Item	units	Quantity	unit Cost	total Cost
SANITARY IMPROVEMENTS				
1. 8-inch PVC	LF	228	\$57.00	\$12,996.00
2. 48" manhole	EA	1	\$3,600.00	\$3,600.00
3. Testing	LS	1	\$800.00	\$800.00
4. grind and overlay	SY	329	\$97.00	\$31,913.00
5. Traffic Control	LS	1	\$2,500.00	\$2,500.00
		Total		\$51,809.00
WATER IMPROVEMENTS (assume 228LF with 8" Ductile Iron)				
1. 8-inch Ductile Iron	LF	228	\$55.00	\$12,540.00
2. blowoff assembly w/ 8" gate valve	EA	1	\$1,500.00	\$1,500.00
3. 1" copper service	EA	1	\$1,000.00	\$1,000.00
4. testing and Tie in	LS	1	\$2,000.00	\$2,000.00
5. grind and overlay	SY	329	\$97.00	\$31,913.00
6. Traffic control	LS	1	\$2,500.00	\$2,500.00
		total		\$51,453.00
Water Improvements (assume 228 LF with 12" ductile Iron)				
1. 12-inch Ductile Iron	LF	228	\$75.00	\$17,100.00
2. blowoff assembly w/ 12 GV	EA	1	\$2,000.00	\$2,000.00
3. 1" copper Service	EA	1	\$1,000.00	\$1,000.00
4. testing and tie in	LS	1	\$2,000.00	\$2,000.00
5. grind and overlay	SY	329	\$97.00	\$31,913.00
6. Traffic Control	LS	1	\$2,500.00	\$2,500.00
		total		\$56,513.00
design engineering each option	LS	1	\$2,000.00	\$2,000.00
Survey layout each option	LS	1	\$400.00	\$400.00
Inspection each option	LS	1	\$1,500.00	\$1,500.00
Geotech compaction testing each	LS	1	\$1,000.00	\$1,000.00
Review fees each option (approx)	LS	1	\$2,800.00	\$2,800.00
		total		\$7,700.00

This estimate is based on concept plan, without any site visits. Assumes 12-foot grind and overlay per Std Detail 532, and assumed no rock excavation.

Prepared by Bruce D. Goldson, PE ; September 2, 2015; sanitary & water on Leland Road for lot 16

From: [Robinson, Michael C. \(Perkins Coie\)](#)
To: darren@iconconstruction.net
Cc: "Mark Handris"
Subject: RE: Pavilion Park III(TP-15-03)
Date: Tuesday, September 08, 2015 9:58:22 AM
Attachments: [image001.png](#)
[image002.png](#)

Michael C. Robinson | Perkins Coie LLP

PARTNER

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From: Robinson, Michael C. (Perkins Coie)
Sent: Tuesday, September 08, 2015 9:51 AM
To: darren@iconconstruction.net
Cc: Mark Handris
Subject: Pavilion Park III(TP-15-03)

Darren, I've reviewed the materials that you've provided me, including the staff report for the September 14 public hearing. You've asked me to comment on the constitutionality of proposed condition of approval 10 which requires the extension of a city water line to serve a single lot at the approximate cost of \$50-60,000 to the applicant.

This proposed condition of approval is an unconstitutional exaction under relevant US Supreme Court decisions. The costly extension of an off-site public improvement to serve a single line is not proportional to the impacts of the application where the evidence shows that the lot can be served in a different way without the extraordinary costs. Further, the City has the burden of proof to show that the conditional meets the tests established by the US Supreme Court. Oregon City Development Code("OCDC")section 16.12.095 provides that public facilities, including water lines, shall be required for a land division unless the decision-maker determines that the improvement is not proportional to the impact by the application on the City's public system and facilities. In fact, the City has the legal burden to first show that the impact is proportional to the impacts of the application and the City has not met its burden.

I'd suggest that we schedule a call with the City and see if we can work through this issue so that a modified condition of approval can be issued before the public hearing.

Michael C. Robinson | Perkins Coie LLP

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The as built elevation of the manhole at Leland and Kala Court has a rim of 449.75 with IE in of 437.47. The ground elevation in Leland Road slopes westerly with an elevation opposite future lot 16 of 446.36. The existing ground continues to slope westerly. Future mains from McCord or from Pavilion III would serve this area.



Site