

West Linn City Council Meeting Minutes
October 13, 2008

Council Present: Mayor Norman B. King, Council President Michele S. Eberle, Councilor Scott A. Burgess, Councilor Jody Carson and Councilor Mike Jones

Council Absent: None

Staff Present: Chris Jordan, City Manager; Peter Spir, Associate Planner; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

Call to Order/Pledge of Allegiance

Mayor King called the meeting to order at 6:31 p.m. and Council President Eberle led the flag salute.

Proclamations, Recognitions and Presentations

Dale Hoogestraat, Chair, West Linn/Wilsonville School Board stated he was here tonight to seek the Council's endorsement on some of the measures they have on the November 4th Ballot. He introduced Roger Woehl, Superintendent; David Good, Vice Chair; and Keith Steele, Bond Co-Chair.

Mr. Steele reviewed the measures with the Council. The outcome of the vote on these measures is very important and will impact the School District and the community for years to come.

- Measure 3-307 is a local option renewal which funds teachers. There is a certain amount the State of Oregon gives to the School District per child and then there is what the parents and community want the educational level to be in terms of teachers and curriculum. This gap is funded by the local option. The current local option expires in 2010. This measure is designed to back-fill that measure when it expires. If this measure fails class sizes will increase 15-20%.
- Measure 3-308 is a capital bond replacement of \$98 million which funds 140 projects on 12 campuses. It impacts every school and is targeted at removing 14 portable classrooms, alleviate overcrowding at the primary school level, improve safety, energy efficiency, catching up on deferred maintenance, upgrading technology in the classrooms and remodeling many of the libraries and kitchens.

Roger Woehl explained these are very important measures for the long-term health of the school district. These measures have been designed to be tax neutral. It was

concluded some time ago that Sunset School needs to be replaced. There are some parts of the building that go back over 50 years. It is not cost effective to remodel any more; it has gone through many remodels.

A citizen task force was formed of citizens in the Sunset neighborhood. They were tasked with coming up with a recommendation on the replacement of the School. The task force concluded the school should be rebuilt in the Oppenlander Park site. Subsequent to the task force a citizen group was formed to poll the citizens in the neighborhood and they asked that the process be slow so that all alternatives can be considered. The Sunset replacement will not be done with this bond; the intent is to have another bond in approximately 4 years to address this issue.

Mr. Hoogestraat noted reasoning for replacing the Sunset School and building an Elementary School at Erickson was to address overcrowding issues. Surveys were done and most of the people in the District are happy with the School District. These two measures will allow the District to continue that legacy.

Mr. Hoogestraat introduced Tim Woodly, Operations Manager, who is here tonight to answer questions Council may have on specific projects.

Councilor Burgess thanked the gentlemen for coming. He asked in view of the current economic situation, did the School Board feel they would get the full \$98 million dollars for the bond and when sold would the cost be such that there would be enough money to complete the projects. Mr. Woehl stated he is convinced that all of the things in play now in terms of correcting the economic situation will unfreeze the credit markets.

Councilor Carson stated she hopes the School District follows through with engaging as many of the neighbors as possible in the planning process of the Sunset School replacement.

Council President Eberle asked in the renewal of the levy is there any consideration and support of additional vocational programs in the schools. Mr. Hoogestraat stated it does not provide specifically for vocational education. There are no programs for development of this type of program in this measure. Mr. Woehl stated there is an alliance with Clackamas Community College and many of the vocational needs the students have are met through programs provided there.

Council President Eberle asked how often the bond is replaced. Mr. Hoogestraat stated that the wish list amount was \$160 million; however, they have the bonding capacity to go to \$120 million according to calculations worked up by Pacific Northwest Securities last spring. Administration worked to scale back as much as possible and prioritizes projects carefully with the anticipation of perhaps looking at an additional bond in 2012.

Councilor Burgess voiced his concerns about the relationship between the School District and the City; he would like to see more communication on common issues that concern the citizens of West Linn (aquatic center, police station, land availability).

Councilor Jones commended the School District on the excellent Schools and asked for comments on other endorsements received on these two ballot measures. Mr. Hoogestraat stated they have endorsements from the Wilsonville City Council, and Wilsonville Chamber of Commerce. Mr. Steele stated they have contacted several of the newspapers and are waiting to hear from them.

Council President Eberle asked when the last year there was a bond was. Mr. Hoogestraat stated the last bond was in 2002. With the new SDC's the Construction Excise Tax they anticipate \$350,000/year raised. This is much appreciated additional dollars; but it is a small amount in comparison to what is needed to sustain the facilities.

Council President Eberle asked if consideration was given to reducing the bond measure or delaying it. Mr. Hoogestraat stated when making this decision last March, they made a sound decision. Today, because of the economy, they may have made a different decision and asked for less.

Mr. Woehl noted the intent is to provide a safe and secure environment for the kids. He thanked the Council for giving this opportunity. Hope that in the future there will be more communications between the City of West Linn and the School District.

Community Comments

Alice Richmond, 3939 Parker Road thanked City Manager Chris Jordan for putting the School District on the agenda. This is important issue for the citizens of West Linn.

Ms. Richmond brought with her a newspaper ad on Transportation issues. Metro has scheduled an open house on Tuesday, October 28th at 5-8 p.m. The event will be hold at the Oregon City Pioneer Community Center (615 5th Street). This meeting will focus on regional transportation issues and this would be the place and time for interested parties to make comments.

Lynn Fox, President, Hidden Springs Neighborhood Association, P.O. Box 236, Marylhurst, voiced concern there is not a Community Information Officer here in West Linn. There have been a number of citizens who volunteered to sit on committees for Hidden Springs who have come to the City for documentations and are not able to get that information because there is no one to contact to obtain that information. She asked if the City Manager could let her know what process the citizens need to follow to get public information.

Tom Stiglitch, 6591 Failing Street, stated here was here tonight to ask Council to get an update on his request to be compensated for the damages for denial of his boat dock application. Mayor King stated the City Manager has sent a letter to Mr. Stiglitch today in responding to the request.

Mr. Stiglitch asked that MIS 06-26 be amended to allow him to have the boat house, boat dock and fishing shelter because there is nothing in the code that prevents it. He asked that consideration be given to refund his money and allow him a permit to build.

Kevin Bryck, 18840 Nixon, stated he received notification from the City stating that neighborhood presidents and neighborhood elected officials are not allowed to endorse political candidates. He asked for clarification on how this ruling came about and its legal basis that elected members of the City Council can endorse political candidates but elected neighborhood officials can't.

Consent Agenda

1. Agenda Bill 08-10-01 Approval of September 8, 2008, City Council Minutes
2. Agenda Bill 08-10-02 Approval of September 22, 2008, City Council Minutes

Council President Eberle moved to adopt the consent agenda consisting of approval of the minutes of September 8, 2008 with revisions and September 22, 2008 with revisions. Councilor Jones seconded the motion.

Ayes: Burgess, Jones, Eberle, Carson, King

Nays: None

The motion to approve the consent agenda carried 5-0.

Report from the City Manager

Chris Jordan announced that City Hall Day will take place on October 16 from 5:30 p.m. to 7:00 p.m. at the Carnegie Center in Oregon City. This is an opportunity for citizens to learn more about how cities operate and to meet some of their elected officials. He invited those interested to attend.

Mr. Jordan asked Mr. Monahan to comment on who qualifies as an elected official and who qualifies as a public employee under Oregon's Election Law. Bill Monahan, City Attorney, explained the election laws are enforced by the Secretary of State's office and is available on their website. City Council as elected officials are exempt from limitations in regards to endorsing candidates and measures.

There are limitations on City employees as well as members of boards and committees. The neighborhood associations, because their activities are funded by the City, the interpretation has been that neighborhood associations come under the limitations of the State Law. The distinction is between the elected officials of the City Council are exempt from the limitations but others are not.

Business from the City Council

Councilor Jones moved to approve the Resolution of The City Council of the City of West Linn Endorsing Ballot Measure 3-308, A \$98 Million Bond Measure for School Facility Additions and Improvements in the West Linn/Wilsonville School District, and Urging A “Yes” Vote in the November 4, 2008, Mail-In Election. Councilor Carson seconded the motion.

Ayes: Jones, Eberle, Carson, Burgess, King

Nays: None

The motion carried 5-0.

Councilor Jones moved to approve the Resolution of The City of West Linn Supporting the West Linn-Wilsonville School districts Five-Year Local Option Operating Levy Renewal, Measure 3-307. Councilor Carson seconded the motion.

Ayes: Eberle, Carson, Burgess, Jones, King

Nays: None

The motion carried 5-0.

Councilor Jones moved to approve the Resolution of The City Council of the City of West Linn Endorsing Ballot Measure 3-310, and Urging the Voters of the City of West Linn to Approve Ballot Measure 3-310 Creating A Countywide Library Service district in Clackamas County. Councilor Burgess seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle, King

Nays: None

The motion carried 5-0.

Council President Eberle acknowledged Austin Meyers and his mother who are here tonight working on a Boy Scout badge. She also announced that tonight is her 18th wedding anniversary.

Councilor Jones asked staff to comment on the process citizens use to obtain City information. Mr. Jordan stated that citizens can call the main City Hall number and the receptionist will refer to the correct person. Generally these types of requests are handled by Kirsten Wyatt, Assistant to the City Manager, or Tina Lynch, City Recorder.

Mayor King announced that he attended the Oktoberfest and it was excellent; the food was delicious.

Mayor King announced that he and Councilor Carson attended a meeting at Metro which focused on planning for future growth in the metropolitan area to 2060.

Council President Eberle moved to adopt the revision to the Community Comment section of the Council Rules adding to the first paragraph per the memorandum of October 9, 2008 regarding Council Rules:

Addition under Community Comments:

- **“Comments that are personal, offensive or remarks that promote or market private, either for profit or non-profit, events or organizations will not be allowed. Only remarks concerning events sponsored or cosponsored by the City of West Linn and government sponsored events for the benefit of West Linn residents will be allowed. Personal comments regarding a vote, behavior or statements of any member of the Council while acting as a Councilor or Mayor will be permitted. Speakers making Community Comments should clearly distinguish in the text of their remarks if their comments are opinion or fact. If the remarks are facts the speaker should reference the source of the fact.”**

Addition under Order and Decorum (A-1), first sentence:

- **“..., including personal, offensive or slanderous remarks, or actions that are boisterous, threatening or personally abusive.”**

Councilor Burgess seconded the motion.

Councilor Carson explained the changes made to the Council Rules resulted from several discussions amongst City Councilors at several meeting wanting to provide clarity to what kinds of matters are allowed during community comments. Mayor King stated it would be helpful to people as they come into the Council meeting to have an information sheet that detailed the procedures of testifying and the type of information that is not allowed.

Ayes: Burgess, Jones, Eberle, Carson, King

Nays: None

The motion carried 5-0.

Councilor Burgess asked the City Manager to provide an update on the IGA Draft Agreement with Oregon Department of Transportation (ODOT). Tri-Cities is the County Service District for sewer; West Linn, Oregon City and Gladstone are the participating cities. There are two issues; one is providing the continued diversion agreement and Oregon City, West Linn and Gladstone being paid because they provided the capacity. Mr. Jordan stated discussions are ongoing. The IGA is still

in draft at this point. County staff is scheduled to come to Council's worksession on November 3rd to give an update of the final proposed IGA.

Mayor King announced that there will be a series of meetings put on by Metro that will be taking comments on policies and procedures for future expansion in this area. He asked those that are interested to attend.

Business Meeting -- Agenda Items

1. Agenda Bill 08-10-04 Ordinance No. 1579, Creating a Public Safety Advisory Board

Mayor King opened the discussion on Ordinance No. 1579, creating a Public Safety Advisory Board at 7:33 p.m. He asked for a staff report.

Chris Jordan reported Ordinance 1579 amends the West Linn Municipal Code Section 2.085(J) by creating a Public Safety Advisory Board that would replace the existing Police Advisory Committee. This Board would consist of seven members who are residents of West Linn. They are appointed for three-year terms. Their responsibilities are:

- Advise and make recommendations to the City Council, City Manager and Public Safety Department Heads regarding public safety needs
- Review and make recommendations on community concerns related to crime prevention, traffic safety, fire prevention, emergency services and disaster response issues in West Linn
- Review and make recommendations for community partnerships
- Promote public education in all areas of public safety in West Linn
- Collaborate with local, county and state government agencies to develop strategies and partnerships to improve public safety in West Linn
- Review and provide advice and recommendations concerning development implementation of the City's Public Safety Strategic Plans
- Review and provide recommendations on certain performance standards appropriate to each area of public safety
- Review and provide recommendations on facility and capital improvements
- Review and provide recommendations on proposed contracts for contracting public services

The Public Safety Advisory Board would not undertake the review of any individual public safety employee. The Police Advisory Committee (PAC) was created in December 2002 by Ordinance No. 1490. The original committee consisted of 15 members.

Council President Eberle asked if there would be a difference in staff time to support the Public Safety Advisory Board compared to the Police Advisory Committee. Mr. Jordan stated that he doesn't foresee a difference in staff time. He is concerned that

some of the areas of responsibility fall outside the jurisdiction of the City of West Linn. There is no staff expertise in some areas.

Councilor Carson stated she would like to hear comments from a representative of the Tualatin Valley Fire and Rescue. Cassandra Ulven, Tualatin Valley Fire and Rescue (TVF&R), stated she is speaking on behalf of the Fire Chief Hale who is out of town tonight. There is a concern that some of the current parameters defined in the Public Safety Advisory Board mirror what their Board of Directors currently under-take. The proposed language covers responsibilities of their governing body. TVF&R made a presentation to the Police Advisory Board on this issue. They regularly attend those meetings to share updates relative to operations in the City of West Linn, and focus on inter-operability with the Police Department relative to communications, response times, etc.

Ms. Ulven asked if the Council would like to expand to the Public Safety Advisory Board they would like time to look at some of the language to see if it is not already covered by their Board of Directors. She has submitted to Kirsten Wyatt four items that address the advising on capital infrastructure and some of the response that mirrors that language.

Mr. Jordan noted that the information from TVF&R can be reviewed by staff for a recommendation and bring this issue back at the next Council meeting.

Mayor King stated that the role of advisory boards have no approval or supervisory authority over departments or staff; no authority having to do with the budget, or performance standards. Boards in West Linn are purely advisory and make recommendations to Council. A board or directors or council have completely different responsibilities.

Mayor King stated he suggested this Advisory Board to involve the public in the area of emergency service and disaster services and response. There have been many requests and comments about information on processes for disaster response and how public information will be put before the citizens. He does not see any similarity to what the advisory board will do and what the TVF&R Board of Directors do.

Councilor Carson moved to continue this item to the October 20, 2008 or November 10, 2008 Council meeting (whichever is feasible) to allow the staff time to address concerns raised tonight. Councilor Jones seconded the motion.

Ayes: Eberle, Carson, Burgess, Jones, King

Nays:

The motion carried 5-0.

2. Agenda Bill 08-10-05 Resolution No. 40 & 41, Neighborhood Name and

Boundary Change

Mayor King opened the discussion of Resolution No. 40 & 41 regarding neighborhood name and boundary changes at 7:57 p.m. He asked for a staff report.

Chris Jordan reported the objective on both of these resolutions is to develop policies for Neighborhood Associations that wish to change names and boundaries. They provide the opportunity for residents, neighbors, and neighborhood association input on any boundary change or name change.

Both resolutions were mailed to Neighborhood Association presidents on September 16, 2008 and to-date there have been no comments or responses received on this issue. Council President Eberle noted this issue came before the Council on September 15th and was continued to allow time for neighborhood review and response.

Public Testimony

Kevin Bryck, 18840 Nixon Avenue, Robinwood Neighborhood President stated that he supports the incremental step on clearing up misunderstandings about neighborhood associations. He questioned whether a neighborhood association task force is needed. People in the community have collected wisdom on what neighborhood associations should be and do. Council should get people together and work on some of these issues and address other challenges associated with neighborhood associations.

Lynn Fox, President, Hidden Springs Neighborhood Association, P.O. Box 236, Marylhurst, stated that she opposes these resolutions. The information was sent to her after the neighborhood meeting so it was not presented to the members. This issue is very important; they could have far reaching consequences. She suggested that city staff come to all the neighborhood meetings and explain all the ramifications of these changes to the citizens. To pass this now may be unfortunate and unnecessary. This could be a good process if it involved a lot of people. She asked that this issue be continued to allow time for City staff to work with neighborhood associations regarding citizen involvement.

Hearing no further questions from Council and no further response from staff, Mayor King closed the public hearing portion of the meeting.

Council Discussion

Councilor Carson stated she feels these two resolutions on name and boundary changes are long overdue. There have been many discussions on this issue and there has been ample time for neighborhood associations to comment. She agrees there should be a future meeting of bring people together in terms of a discussion

about neighborhood associations; however, she doesn't feel these resolutions should be held up for that process.

Council President Eberle stated that this same information was held up for a month so that neighborhood associations could review the information and there have been no comments received on this issue.

Councilor Burgess moved to approve Resolution No. 08-40 and Resolution No. 08-41 Describing Policies for Neighborhood Association Name and Boundary Changes per Agenda Bill 08-10-05. Councilor Carson seconded the motion.

Councilor Burgess noted these resolutions do not change existing policy as there is no policy. There has been a lot of testimony asking for a process for name changes. He will be voting in favor of these resolutions.

Mayor King feels there is no reason to delay passing this procedure. This is a resolution that sets up a process for name and boundary changes. There can be changes to these procedures, if needed in the future.

Ayes: Jones, Eberle, Carson, Burgess, King

Nays: None

The motion carried 5-0.

3. Agenda Bill 08-10-06 Ordinance No. 1573, Corrected Lorinda Lane/Court Vacation

Mayor King opened the public hearing at 8:08 p.m. and asked for a staff report.

Chris Jordan reported Ordinance 1573 corrects a previously approved ordinance (approved September 8, 2008) which vacated Lorinda Court and the adjacent upper portion of Lorinda Lane. The street vacation was city-initiated.

The adopted ordinance declared the street to be "vacated, while retaining a public utility easement for public sanitary sewer and water infrastructure, for the length of the vacated right of way." The corrected language will read, "The property owner will transfer the property and "reserve" an easement as an integral part of the transfer."

This is a correction to the language in the Ordinance; the policy decision was previously made by Council to vacate the right-of-way.

There was no public comment on this issue.

Upon the first reading by title only, Council President Eberle moved to adopt Ordinance No. 1573, An Ordinance Vacating Lorinda Lane and Lorinda Court

Right of Way Within the City of West Linn, Oregon per Agenda Bill 08-10-06. Councilor Carson seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle, King

Nays: None

The motion to adopt Ordinance No. 1573 upon first reading carried 5-0.

Upon the second reading by title only, Councilor Burgess moved to adopt Ordinance No. 1573, An Ordinance Vacating Lorinda Lane and Lorinda Court Right of Way Within the City of West Linn, Oregon per Agenda Bill 08-10-06. Councilor Carson seconded the motion.

Ayes: Burgess, Jones, Eberle, Carson, King

Nays: None

The motion to adopt Ordinance 1573 upon second reading carried 5-0.

4. Agenda Bill 08-10-07 IGA – with ODOT and 10th Street

Mayor King opened at 8:10 p.m. and asked for a staff report.

Chris Jordan reported as a condition of approval for the new Willamette Marketplace, the City required the developer to install a traffic signal at the intersection of 10th Street/8th Ct. /8th Avenue. At the public hearing, ODOT recommended that the traffic signal be installed at Willamette Falls Drive and 12th St. The Council disagreed and made its determination which was in accordance with the views of the developer and the businesses in the area. The City's approval was not appealed to the State Land Use Board of Appeals.

After approval of the project, the 10th Street Task Force was preparing its final recommendation when ODOT announced to that group it owned the property where the traffic signal was to be installed and ODOT would not provide an access permit for that to happen. This was the first time that ODOT had indicated that it had an ownership interest in this project. This was after the period of time for an appeal to Land Use Board of Appeals (LUBA).

Since that time City staff and ODOT have attempted to craft an IGA that would allow the developer to install the traffic signal at that location in accordance with the conditions of approval. The result of over a year of discussion is the draft IGA being submitted tonight.

The main points of the IGA:

- The IGA covers the length of 10th Street from Blankenship to Willamette Falls Drive.
- The City would be required to convey all its interest in 10th Street to ODOT and ODOT will have full jurisdictional authority over 10th Street.
- The developer will be allowed to install the traffic signal at 10th and 8th.
- The traffic signal will be considered temporary with a life span of 2-5 years.

- At the time of 8th Court being connected to Willamette Falls Drive, or 5 years, whichever is sooner, the City will remove the traffic signal at 10th/8th and 8th Court and 8th Avenue will become right-in and right-out only.
- At the time earlier than two years, ODOT can require the City to remove the traffic signal "if the signal is shown to cause unsafe conditions".

Staff convened a meeting on August 11th with many of the business owners in this area and a representative of the neighborhood association to discuss the draft IGA. It was clear from that meeting the vast majority of those in attendance were not supportive of the IGA and were hopeful that the City would find another means to allow the traffic signal to be installed that would not include approval of this document. They believe the City should not turn over jurisdiction of 10th Street to ODOT. 10th Street at I-205 is a gateway to the community of West Linn and turning this intersection over to ODOT the City would lose opportunities for gateway improvements that could be possible.

Staff is asking Council to review and reject the proposed Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) that would allow for the temporary installation of a traffic signal at the intersection of 10th Street and 8th Avenue.

Council President Eberle asked if ODOT has existing jurisdiction over any portion of 10th Street. Mr. Jordan stated they have jurisdiction over the right-of-way out on the east side of 10th Street and the south end of I-205 South to approximately the middle of 8th Court (corner where the traffic signal needs to be installed). An access permit is required from ODOT in order to install the traffic signal.

Councilor Carson asked if ODOT has jurisdiction on the other side of 10th Street. Mr. Jordan stated it is not in their jurisdiction. As part of this agreement ODOT wanted full jurisdictional authority over 10th Street from Blankenship to Willamette Falls Drive.

There was no testimony on this issue.

Hearing no further questions from Council and no further response from staff, Mayor King closed the public hearing portion of the meeting.

Council Discussion

Councilor Jones moved to reject the Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) regarding the installation of a traffic signal at 10th Street and 8th Avenue per Agenda Bill 08-10-17. Councilor Carson seconded the motion.

Councilor Jones stated that he will be voting in favor of rejecting the IGA; it is neither appropriate nor proper. ODOT is concerned about I-205 and West Linn is concerned

about the community. He feels responsibility for the City should be kept with the City.

Councilor Burgess disclosed that he is a State employee; however, he does not work for ODOT. He works for Legislature, not ODOT and does not feel that this relationship has anything to do with his ability to be impartial in this decision. I-205 was built several years ago and had significant impact on the community then and other issues have risen as the community has developed over time.

There was a 10th Street Task Force and ODOT participated in that process. This is a difficult corridor and ODOT has interest in making sure that it works as does West Linn. Action was taken off 10th Street; planning staff recommended that 8th Court be put through. ODOT made no suggestions at that time; a lot of concern would have been eliminated if ODOT had voiced these concerns before 8th Court was dead-ended.

10th Street Corridor is critical to the City's traffic patterns. There were discussions of the development that generated the subject of this light. ODOT participated and objected at the time but did not appeal the decision. The draft IGA indicates ODOT would have the right to remove the existing signal if it creates unsafe conditions; there are already signals that create unsafe conditions. At this intersection people are taking significant chances to get through the intersection without a signal. A signal may not be a long-term solution; but West Linn wants to be involved in the long-term solution. He will be voting in favor of rejecting this draft IGA.

Council President Eberle stated the thought of giving up jurisdiction of 10th Street to ODOT is not appealing and not a good intention for the City. The more local control the City gives up the more difficulty there is in maintenance and making sure what is good for the community occurs. She is opposing this draft IGA.

Councilor Carson stated as a member of the 10th Street Task Force they struggled with how this could be resolved and she feels the plan they came up with is a good solution. The City needs to have jurisdiction in order to go through with that plan recognizing that there are still challenges ahead. She will be supporting the motion to reject the draft IGA as proposed.

Mayor King stated this is nearing the end of a very frustrating process for the City. The City wanted ODOT to participate in the 10th Street Task Force proceedings because they owned property and is a major player at that intersection. During the proceedings ODOT found they owned a part of that intersection. They promptly sent a letter to the City indicating if a light is put in at that intersection, they would tear it out. Later the application for the shopping center came forward. ODOT did not testify when it came before Council on appeal. Objection was not filed until after the testimony portion of the hearing was closed. When the shopping center was

approved, ODOT did not appeal it; however, they did indicate the signal cannot be installed without an access agreement and if it is installed it will be taken out.

The City recently held a meeting to get input from the businesses, citizens, and neighborhood associations and they are completely opposed to this agreement. It has taken months to get comments on the agreement as it was being drafted. The development is complete, the developer will construct the signal, the community wants the light, and ODOT is not going to let it happen.

As a member of this Council and as Mayor of this City he could never sign an agreement that gives ODOT jurisdiction and control over the full length of 10th Street. He will not be voting in favor of signing this proposed IGA.

Councilor Jones noted that with every other IGA that the Council has dealt with in the past six months there has been a representative of the agency in the audience or testifying. He asked if there was anyone in the audience from ODOT that could give a good reason why this agreement should be signed. There was no response.

Ayes: Jones, Eberle, Carson, Burgess, King

Nays: None

The motion carried 5-0.

Recess was taken at 8:29 p.m. and the meeting reconvened at 8:45 p.m.

Mayor King recused himself from this issue because of a conflict of interest. Council President Eberle presided over the hearing for the zone change for Willamette Drive/Shady Hollow.

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| 5. | Agenda Bill 08-10-03 | Ordinance No. 1574, Zone Change and Comprehensive Plan Map change from R-10 to R-4.5 on Willamette Drive/Shady Hollow |
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Council President Eberle opened the public hearing for the adoption of Ordinance 1574 a zone change for Willamette Drive and Shady Hollow Way from R-10 single residential to R-4.5 duplex residential at 8:45 p.m. This also requires a Comprehensive Plan Map Amendment to re-designate the same parcels on the Comprehensive Plan Map from low to medium density residential.

The Planning Commission recommended approval of the application with conditions. The subject property is located at the northeast corner of Willamette Drive (also known as State Highway 43 and Shady Hollow Lane).

Bill Monahan, City Attorney, explained this hearing is on the record and will include all testimony and written materials presented to the Planning Commission as well as

all testimony and written submissions received before the close of the hearing that is directed to the record tonight. Only those who participated at the Planning Commission level may participate tonight.

The applicable provision on participation is the Community Development Code 105.040(C) that states the Planning Commission makes a recommendation to the City Council on a zone change application which also involves a concurrent application for a Comprehensive Plan Map Amendment. The Council then decides the application on the record as provided by Section 99.280(C). All persons wishing to speak must be recognized by the Mayor before speaking. For the deliberations tonight the applicable criteria are found in the Community Development Code Chapter 105, amendments to the code, and map and applicable criteria just mentioned. These are the criteria the City Council must use in making its decision.

All testimony and evidence must be directed towards these criteria or other criteria in the Comprehensive Plan or other land use application which a person testifies and believes apply to the decision. The application before the Council this evening must be decided based on these criteria in the record. Despite the importance of other issues that may be raised during the public hearing, the authority of the Council is limited only to those issues that address compliance with the applicable criteria. The applicant has the burden of proving that the application complies with all relevant criteria. The testimony and arguments heard will be used by the City Council in coming to a decision on the application. Audience demonstrations or other disruptive behavior the will not be tolerated.

City Council is here to listen to testimony and come to the best possible decision. Failure to address a criterion or issue of sufficient specificity to allow the parties in the City Council to respond precludes an appeal to the Land Use Board of Appeals based on that criterion or issue. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City Council to respond to the issue precludes an action for damages in Circuit Court.

Council President Eberle described how the hearing will be conducted. She asked if any member of the Council visited the site.

Councilor Burgess stated he visited the site by car, by foot and bike. He has seen the property as it has developed today and the vegetation around it. He has seen nothing different at the site than discussed in the staff report.

Councilor Jones stated that he has driven by the site and walked some of the perimeter of the site. He has not physically been into the property. He did not see anything that was different from what was discussed in the staff report.

Councilor Carson stated she has driven by the site; she has walked the perimeter of the site but has not walked inside the site. She did not observe anything at the site that is different that stated in the staff report.

Council President Eberle stated she has driven by and walked by the site but has not gone into the inside of the property. She did not see anything that would bias her decision tonight.

None of the councilors have observed anything about this site that is different from or adds to what was in the staff report.

Council President Eberle asked if there were any ex-parte contacts or potential conflicts of interest. Councilor Burgess stated that he has been aware of the applicant's desire to develop this property for a number of years and his frustration and patience in trying to address something on the property that is appropriate and an enhancement to the community. He also knows the applicant's planning representative and the attorney for this case. In none of these instances does he feel there is a conflict of interest or ex-parte contact that would affect his decision in this issue.

Council President Eberle asked if there were any members of the audience who wished to make any challenge to any Council member's ability to participate in this decision or the Council's ability to make a decision on these issues. There were none. Council President Eberle asked for the staff report.

Councilor Burgess introduced and welcomed Kara Hansen, new City Editor for the *Tidings*.

Peter Spir reported the proposed action was a zone change from R-10 (10,000 sq.ft. minimum lot size) to R-4.5 (4500 sq.ft. per lot). This would allow single family residential, single family attached, and duplexes. It also allows office and commercial activity. The Comprehensive Plan Map amendment is required because it will go from a low density to a medium density residential designation. The site consists of three lots on two acres. Maps were shown of the subject site and surrounding areas. The north edge of the site is a riparian corridor which has a 100-foot transition and setback.

The Planning Commission unanimously recommended approval with conditions that only residential uses shall be permitted. Commercial or office use would be prohibited by this condition.

A second condition required a 25-foot wide setback be required between housing units on this site and the abutting properties to the north. Only single family detached and/or single family attached housing shall be permitted. No triplexes or higher density allowed.

The final condition is a new zone shall be identified on zoning maps with R-4.5-COND" designations to communicate those conditions are imposed. Also conditions 1-3 shall be recorded with the deed.

Council President Eberle asked if there was any additional correspondence received since the staff report. Mr. Spir said no.

Questions of Staff

Councilor Burgess asked if there was any consideration given to access on Highway 43 as opposed to Shady Hollow. Mr. Spir stated that ODOT, Planning Staff and Engineering staff emphasized to the applicant that access would have to come off Shady Hollow. There will be no access onto Willamette Drive permitted.

Councilor Burgess voiced concern over issues that are not addressed:

- No discussion regarding Highway 43 being adopted in accordance with the Concept Plan
- Language in A-7(3) regarding no left-turn into the neighborhood
- Language about off-site PUD open space requirement

Mr. Spir stated these issues will not be addressed now as they will be addressed at the time of the development application.

Councilor Jones asked where the definition of R-4.5 is located. Mr. Spir stated it would be in the Community Development Code. Mr. Monahan stated this is not a creation of a new zone; it is a change to the zoning map.

Applicant Presentation

Michael Robinson, Attorney for the applicant, introduced Marty Stiven. They are both here on behalf of the applicant David Emami. He also introduced Frank Charbonneau, Charbonneau Engineering who completed the Traffic Engineering Analysis.

The Planning Commission recommended approval of this application with four conditions of approval. They agree with all of the conditions of approval. They agree with the residential use limitation of either single-family or duplexes. They agree with the prohibition and are not asking for a conditional use office/commercial in that zone. They are fine with the 25- foot buffer adjacent to the neighbors to the northeast. They were the one who suggested recording on the deed.

The Staff report at 20 and 21 does a good job on explaining why the application meets the criteria. They are asking tonight that Council follow the Planning

Commission's recommendation and approve this Comprehensive Plan Map and Zone Change Amendment.

Marty Stiven stated the Emami's have worked with the neighborhood over past couple of years. Mr. and Mrs. Emami presented the original project concept for development of the site to the neighbors that included mixed-use development, commercial and residential. The neighborhood responded they did not want to see any commercial development north of Shady Hollow. The applicants asked Stiven Planning and Development Services to look at the property. She and Mike went back to the neighborhood association and presented a plan for highest density (R2.1).

The neighborhood was glad to see commercial development limited and agreed with the residential development but were concerned with the higher density. They came back to the neighborhood association with a proposal of lower density and the neighborhood agreed. The Emami's commitment to continue working with the neighborhood and based on their willingness to reduce the density, she feel this can be a very nice project for the City.

Mr. Robinson stated the applicant will accept a condition of approval regarding access. Oregon Law requires reasonable access to property. This can be interpreted in this situation that there is access to a local street. ODOT does not have an obligation and have said so in this case not to give access to the State highway. After talking with the Public Works Department, if Council approves change and if it becomes effective when they come back for the design review application, they will line the driveway up with the Burgerville driveway and direct all the direct out to Highway 43.

Public Testimony

There was no testimony in opposition or in support of this application.

Neutral Comments

Alice Richmond, 3939 Parker Road stated that this will be a unique development. She feels the change of zoning is appropriate. West Linn needs more facilities like duplexes to address the housing needs.

Kevin Bryck, Robinwood neighborhood Association, thanked staff, the applicant and his representatives for their communication with the neighborhood association. He objects to the inconvenient timing of this hearing; their neighborhood association meeting is tomorrow night.

Mr. Bryck stated he felt the Association was led into a dead-end in adopting a resolution that said they were in favor of this application so long as the zoning

changes were brought forward concurrently with the development plan. The Association adopted a resolution by a vote of 15-9 in favor of this application going forward with the conditions as proposed by staff. Eight members voted in opposition because they didn't want it approved at all; one was in favor of adopting unconditionally. There is major concern among the Association that this will set a precedent.

Concerns raised was the scale and scope (staff drafted a condition), traffic, and a major concern that this will set a precedent for further rezoning north on Highway 43.

The Association adopted a resolution asking for a tree corridor. If it is not a condition here, they feel that it will not be a condition at the permit stage.

Council President Eberle allowed Mr. Bryck an additional three minutes to complete his testimony. Mr. Bryck stated the motion was adopted asking for a stringent protection of the tree canopy on Highway 43. He suggested a Highway 43 Taskforce to deal with issue that will come up in the future.

Applicant Rebuttal

Mr. Robinson indicated that the neighbors immediately adjacent to the site have not opposed this application. This is not a development application; it is an application to modify to amend the Comprehensive Plan and Zoning Map. They feel it was appropriate to impose some conditions of approval that had to do with compatibility of this use as opposed to their neighbors.

There was a lot of discussion about the tree corridor at the Planning Commission hearings. The Planning Commission felt that the tree issues can be handled through Tree Ordinance in Chapter 85 and they understand they are obligated to do so for duplexes. They are interested in preserving trees. Trees bring value to the property.

The site adds very little traffic. The Traffic Study indicates it adds 12 p.m. peak trips which in year 2023 represents less than one-half of one percent of all trips at that intersection. There is the 25-foot buffer to two neighbors and the 100-foot riparian transition buffer on the north and a fairly wide street on Willamette Drive and Shady Hollow on the west and the south. They are comfortable with the use limitations.

Marty Stiven reported that Walk Knapp, Certified Arborist, worked with the City Arborist to understand the criteria for significant trees. It is premature to set a canopy along Highway 43 prior to any development proposal.

Hearing no further questions from Council and no further response from staff, Council President Eberle closed the public hearing portion of the meeting.

Council Discussion

On the first reading by title only, Councilor Burgess moved to approve Ordinance No. 1578, Approving the Zone Change From R-10 to R-4.5 And A Comprehensive Plan Map Change From Low to Medium Density Residential For Tax Lots 1100, 1200 and 1500 County Assessor's Map 21E-14DB per Agenda Bill 08-10-03. Councilor Jones seconded the motion.

Councilor Burgess stated he will be voting in favor of this application. He has concerns in terms of conditions because in some of the conditions it anticipates development and in others it doesn't. The zone change and Comprehensive Plan is what is before the Council tonight. He suggested an R-7-T (trail) or R-4.5-S (sidewalks) that would allow the City a tracking process for reviewing records. He thanked the applicant for working with staff and the neighbors.

Councilor Carson stated that the issues raised by the neighborhood association were valid. However, they are not part of the zone change application but she does feel they are a part of the application process. She is hopeful that the applicant and the neighborhood association will continue to work together to address this issue.

Councilor Jones stated in this case he feels what is being presented is consistent and compatible with the neighborhood. He is pleased staff has developed a data base and procedure to track conditions on zoning for the next 20-50 years. He congratulated them on their good work.

Council President Eberle commended the applicant and neighborhood association for working together. There are outstanding issues that can be addressed during the development application.

Ayes: Eberle, Carson, Burgess, Jones

Nays: None

The motion carried 4-0.

Councilor Burgess read the ordinance for the second time and moved to approve Ordinance No. 1578, Approving the Zone Change From R-10 to R-4.5 And A Comprehensive Plan Map Change From Low to Medium Density Residential For Tax Lots 1100, 1200 and 1500 County Assessor's Map 21E-14DB per Agenda Bill 08-10-03. Councilor Carson seconded the motion.

Ayes: Carson, Burges, Jones, Eberle

Nays: None

The motion carried 4-0.

Adjournment

The meeting adjourned at 9:45 p.m.