

**West Linn City Council Meeting Minutes
November 24, 2008**

Council Present: Acting Mayor Michele S. Eberle, Councilor Scott A. Burgess, Councilor Jody Carson and Councilor Mike Jones

Council Absent: Norman B. King, Mayor

Staff Present: Chris Jordan, City Manager; Rhett Bernstein, Prosecuting Attorney; Gene Green, Public Works Director; Gordon Howard, Staff Attorney; Richard Seals, Finance Director; Terry Timius, Police Chief; Ken Worcester, Director Of Parks and Recreation; Jim Whynot, Water Utility Supervisor; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

Call to Order/Pledge of Allegiance

Council President Eberle called the meeting to order at 6:34 p.m.

Proclamations, Recognitions and Presentations - None

Community Comments

Robert Stowell, 2606 Maria Court, read into the record a letter he submitted to the Council. He is requesting the neighborhood plans be updated to include an agreed upon design and requirements for all future development and updating old areas of sidewalks and storm drains along Highway 43 and that the City follow through. He submitted his statement into the record which included pictures of sidewalk and storm service drain problems that continue to happen on Highway 43 in the Robinwood Area as well as other sections of Highway 43.

Tom Stiglitch, 6591 Failing Street, asked Council to review the actions in the land use decision regarding his application requesting a boat dock, boathouse and fishing shelter. He would like to have an answer as to why his application was not approved when history shows that every boathouse that has been applied for has been approved. His application for a boathouse is the first boathouse application that has been denied.

Alice Richmond, 3939 Parker Road announced there is a male, neutered Tabby cat that has found her. She asked that the owner contact her so he can be returned home.

Bob Thomas, 2563 Pimlico Drive, read from the Council rules, "...comments that are personal, offensive or slanderous are not permitted. Comments that constitute political advocacy will not be permitted." He voiced concerns that these restrictions obstruct the residents' rights for freedom of speech.

Valerie Baker, 2270 Crestview Drive, stated that she works with a non-profit organization, Cascadia Behavioral Healthcare who is involved with encouraging local merchants to help with the Giving Trees. She is asking Council or the City to support these types of activities. The City has a long-standing agreement with the Christie Schools and there is a Giving Tree in City Hall. She wanted to take this opportunity to inform the public that with this economic downturn the needs are up and giving is down. She asked that the public get involved.

Terri Cummings, 2190 Valley Court voiced concern about the comments that can be made during Community Comments. She feels that there needs to be more clarity in the language about which statements can be made. Citizens should have the right to comment about how their elected officials behave.

Consent Agenda

Agenda Bill 08-11-01

Approval of October 13, 2008 Council Minutes

Agenda Bill 08-11-02

IGA, CCDRC and City of West Linn

Councilor Carson moved to adopt the consent agenda consisting of approving the Council minutes of October 13, 2008 as amended and the Intergovernmental Agreement between Clackamas County Dispute Resolution Center (CCDRC) and the City of West Linn. Councilor Jones seconded the motion.

Ayes: Burgess, Jones, Carson, Eberle

Nays: None

The motion to approve the consent agenda carried 4-0.

Report from the City Manager -- None

Business from the City Council

Acting Mayor Eberle announced the annual Holiday Tree Lighting and Community Celebration on Saturday, December 6, at Central Village. Festivities begin at 5:30 p.m. with a performance by the West Linn Community Chorus. There will be beverages, holiday cookie decorating and special offerings from the Central Village merchants.

Councilor Carson responded to Mr. Stowell's concerns about the sidewalks along Highway 43. She too is concerned about having a consistent approach to sidewalks along that Highway. This issue is being addressed in the Highway 43 Plan, part of

the Transportation System Plan. With the adoption of this document she hopes it will address some of these concerns. Mr. Jordan stated that staff will review the concerns and will respond to Mr. Stowell's' comments.

Councilor Burgess asked staff to comment on Mr. Stiglitch's concerns. Mr. Jordan stated that he sent a letter to Mr. Stiglitch last week discussing what his options were. City Council approved Mr. Stiglitch's request for a dock and denied the boathouse request. The boathouse application was appealed to the State Land Use Board of Appeals and Mr. Stiglitch withdrew his appeal prior to that hearing. At that point the City Council's decision in the matter stood as final.

Mr. Stiglitch's recourse at this point is to prepare a new application and proceed again with the land use process (public hearings and decision). Under State law you cannot change a decision by Council.

Councilor Burgess noted that Highway 43 is under construction. This is the time to address Mr. Stowell's concerns. He commented on the concerns raised about the community comment changes to Council rules. The intent is not to keep people from speaking; however it is important to have decorum and respect for each other. He suggested that Council talk about the meaning of the new language and to make sure it is clear for citizens.

Business Meeting -_Agenda Items

1. Agenda Bill 08-11-03 Ordinance No. 1582, Fair Commission Act

Acting Mayor Eberle opened the meeting to discussion of the Fair Commission Act. She asked for a staff report.

Ken Worcester, Director of Parks and Recreation, reviewed the staff report. This action repeals section 2.085(m) of the West Linn Municipal Code which established the Fair Commission. Staff is suggesting that the existing Fair Commission be replaced by a group of local citizens who will work in an advisory capacity to staff.

It is becoming increasingly difficult for Parks and Recreation staff to identify and retain active citizens on the Fair Commission and feel that assistance in the form of an advisory board would be a better vehicle for continuing the operation and financing of the Fair.

There was a meeting with the Fair Commission and the overall response to this ordinance was favorable. There were several members who had expressed concern about the way the Commission was run and during this meeting new and previous members expressed excitement about the change. They want to move forward and produce a great event.

Acting Mayor Eberle noted the Fair Commission, if granted a 5013C, would be eligible as that type of organization to solicit funds from the County and other revenue sources.

On the first reading, by title only, Councilor Carson moved to approve Ordinance No. 1582, Amending West Linn Municipal Code Section 2.805(m) Repealing the Creation of the Fair Commission per Agenda Bill 08-11-03. Councilor Jones seconded the motion.

Ayes: Jones, Carson, Burgess, Eberle

Nays: None

The motion carried 4 to 0.

Councilor Carson read the Ordinance for the second time and moved to approve Ordinance No. 1582, Amending West Linn Municipal Code Section 2.805(m) Repealing the Creation of the Fair Commission per Agenda Bill 08-11-03. Councilor Jones seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4 to 0.

2. Agenda Bill 08-11-04

Ordinance No. 1583 – Creating a Municipal Court of Record

Chris Jordan reported Ordinance 1583 establishes the West Linn Municipal Court as a Court of Record. He introduced Heather Karabeika, Elected Municipal Court Judge, who is here tonight to discuss the Municipal Court of Record.

Judge Baker reported currently the City of West Linn is not a Court of Record. Currently a decision by the municipal court can be appealed de novo to the Circuit Court because there is no recording of the hearing.

In 2003 Oregon Revised Statute 221 allowed municipal courts to qualify as a Court of Record to prohibit people from getting a fresh trial because they didn't like the decision. A municipal court must provide audio recordings, the judge must be a member of the Oregon State Bar, an ordinance must be enacted, and a declaration must be filed with the Supreme Court of Oregon.

Other city municipal courts that are a Court of Record include Beaverton and Lake Oswego. The recording process will allow people to have a recording of their hearing and if there is an issue can go to the Court of Appeals.

A draft ordinance has been submitted which will establish the West Linn Municipal Court as a Court of Record. Staff is recommending approval of the ordinance.

Councilor Jones noted the City is losing revenue by not having a Court of Record because if a fine is levied and the person does not deal with it, they go to Circuit

Court and they then collect the fine. Not being a Court of Record also means the Police Officers may have to testify twice, it takes up time at Municipal Court and time at the Circuit Court.

Councilor Burgess asked if there is a downside to making the municipal court a Court of Record. Judge Baker stated the only downside would be expense and there wouldn't be much expense because the City already has all the recording equipment needed to record the hearings. Chris Jordan noted that there is different court reporting software which the City has already purchased.

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

Council Discussion

On the first reading, by title only, Councilor Jones moved to approve Ordinance No. 1583, An Ordinance Establishing The West Linn Municipal Court As A Court Of Record Pursuant To Oregon Revised Statute 221.342 per Agenda Bill 08-11-04. Councilor Burgess seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4 – 0.

Councilor Burgess read the Ordinance for the second time and moved to approve Ordinance No. 1583, An Ordinance Establishing The West Linn Municipal Court As A Court Of Record Pursuant To Oregon Revised Statute 221.342 per Agenda Bill 08-11-04. Councilor Jones seconded the motion.

Ayes: Burgess, Jones, Carson, Eberle

Nays: None

The motion carried 4-0.

3. Agenda Bill 08-11-05 Ordinance No. 1581, Amending Noise Ordinance

Acting Mayor Eberle opened the hearing to discussion of the Noise Ordinance at 7:16 p.m. She asked for the staff report.

Chris Jones introduced Gordon Howard, Staff Attorney, and Rhett Burnstein, City Prosecuting Attorney, and Police Chief Timius are here tonight to discuss the Municipal Court of Record.

Gordon Howard reported this item consists of proposed changes to Section 5.487 of the Municipal Code relating to noise standards and rules for the City of West Linn. The current language in the chapter lacks sufficient penalties to discourage violators from reoffending and creating instances where law enforcement lacks reasonable

means by which to address legitimate complaints from chronic sources of excess levels of noise.

The major changes proposed are:

- The elimination of the decibel generation standards that require the police to use noise meters and technical equipment
- Elimination of the current language which requires any variance to the noise standards to be processed as if it were a land use variance before the Planning Commission
- Change of hours of noise sensitive uses
- No construction activities allowed outside certain hours with the exception of a permit from the City Manger
- Measuring of noise at property edge versus inside the dwelling unit
- Changes in party language regarding shouting, yelling and screaming
- General dog uses
- Hours concerning mechanical device equipment

Staff has submitted additional handouts of additional revisions and information. There were two letters of comment received this evening. One letter from Aaik van der Poel requesting the decibel requirements not be removed. The second letter from Bruce and Mary Swanson relates to noise from an adjacent home due to basketball play. These letters were submitted into the record.

Councilor Jones asked Chief Terry Timius to respond to the proposed changes. Chief Timius explained the original ordinance was found to be very cumbersome and difficult to enforce. Specific instruments for the measurement of noise were not always available. In his opinion the decibel reading is less important than helping an adjacent neighbor get to sleep uninterrupted.

Councilor Burgess asked how a situation would play out in the court. After the violator receives a violation and the offender appears in court, is the officer believed if there is no verification of noise levels. Mr. Bernstein stated the prosecutorial decision is made by meeting the standard of proof that is required by law to proceed with such a case. A noise complaint is no different than a dog complaint, theft, etc. It comes down to testimony of one person over another and certain mitigating circumstances.

The current ordinance does not allow citizens or police officers to communicate efficiently. It does not allow people who feel they have been violated by noise to understand whether or not they are reasonable or not reasonable in making their complaints. A decision to prosecute or a decision by the Judge on whether a witness is credible or not, will exist whether there are decibel readings or not in his opinion. He has not experienced an incident come across his desk where he thought he needed a decibel reading to figure out whether it was enforceable or not under the Municipal Code.

Councilor Burgess asked if a decibel reading is needed for a business that has a machine that runs at all the time (car wash). Gordon Howard noted the Community Development Code sets forth noise standards for all new development that has to be shown to be met by an applicant before the application is approved. The standards are numeric and if the business in the future exceeds the noise standards, they would be in violation of the Community Development Code. If the business is reported to be in violation, a noise meter to assess that the Community Development Code has been violated.

On the first reading, by title only, Councilor Burgess moved to approve Ordinance No. _____, An Ordinance Amending Section 5.487 of the West Linn Municipal Code Relating to Sound Levels and Noise per Agenda Bill 08-11-05 with the following changes to remove the technical aspects of decibels but not making changes in the policy:

- **Section B, Prohibited Noise Making Acts, Subsection 3: Remove the term “leaf removal.”**
- **Subsection (a) changed to read, “Between the hours of 7:00 AM and 7:00 PM Monday through Friday.” Delete the rest of that section.**
- **Subsection (b) changed to read, “Between the hours of 8:00 AM and 5:00 PM...”**
- **Add Subsection (c) to read, “Domestic power tools for outside use such as lawnmowers may be used from 7:00 AM until Sunset on weekdays only when performed by paid professionals and from 7:00 AM until Sunset on weekdays and 8:00 AM until Sunset on weekdays and holidays when performed by homeowners. This restores the language of the existing Code.**
- **Subsection 5(a); change the language to read, “Between the hours of 7:00 AM and 7:00 PM all days.” Delete the rest of that section.**
- **Delete Subsection 5(b).**
- **Subsection 8, restored to current language with the exception of changing the text, “...if such idling produces sound in excess of 45 dPA at the property line of any noise sensitive use in any one hour period.”**
- **The section on “Leaf Removal” put back in and that section renumbered.**
- **Suggested change in staff’s memo of November 21, 2008 about property edge versus inside dwelling unit**
- **Suggested change in staff’s memo of November 21, 2008 about the shouting, yelling and screaming language as being redundant with the parties and gatherings language.**
- **Suggested change in staff’s memo of November 24, 2008 putting in the reference to Section 5.60 having to do with other dog nuisance issues.**
- **Suggested change in staff’s memo of November 24, 2008 (language in #3 was inadvertently left out) about the hours.**
- **Suggestion from the Swanson’s letter to change the party language (#5) to read, “The gathering of any number of persons on premises, whether**

public or private, and the creation of noise from such person or persons so as to be audible within a dwelling.”

Councilor Jones seconded the motion.

Councilor Burgess asked if this ordinance addressed the issue of daylight savings time and homeowners using their lawnmowers after 7:00 p.m. Mr. Howard stated that the “sunset” language for domestic power tools for outside use address that issue.

Councilor Jones asked for a copy of the final ordinance in their packet for the next Council worksession so they as a group can review and comment on the changes. Mr. Monahan stated if there are any content changes, the Council will have to modify the Code at another Council meeting.

Ayes: Jones, Carson, Burgess, Eberle

Nays: None

The motion carried 4-0.

Councilor Burgess read the Ordinance for the second time and moved to approve Ordinance No. _____, An Ordinance Amending Section 5.487 of the West Linn Municipal Code Relating to Sound Levels and Noise per Agenda Bill 08-11-05 with the following changes to remove the technical aspects of decibels but not making changes in the policy:

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- **Suggested change in staff’s memo of November 21, 2008 about the shouting, yelling and screaming language as being redundant with the parties and gatherings language.**
- **Suggested change in staff’s memo of November 24, 2008 putting in the reference to Section 5.60 having to do with other dog nuisance issues.**
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Councilor Eberle seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4-0.

Councilor Burgess recognized Mr. Gordon Howard for his excellent service to the City of West Linn as a Senior Planner and West Linn’s first in-house Staff Attorney. Mr. Howard stated that he will be working for the State Legislature in the Office of Legislative Council starting December 8, 2008. He has enjoyed working at West Linn for the past 11-1/2 years.

4. Agenda Bill 08-11-06

Resolution 08-45, Bond Authorization

Acting Mayor Eberle opened the meeting to discussion of staff’s request to authorize a bond sale.

Chris Jordan stated that explained why municipalities do bonds and why they go into debt for certain projects. The citizens who are going to benefit from the project will be the ones that actually pay for the project. If the City saved money up over a period of time and then built the project, the individuals who are paying over the last several years would not be receiving dollar for dollar service from the City. If those citizens move out of town before the project is completed, they are not getting the full benefit of the project being done. The people who will benefit are those who live in West Linn over the next 10 to 20 years. The intent is to have the citizens who will benefit from the project are the ones that are actually paying for it over a period of time. He then introduced Richards Seals, Finance Director to will give the staff report.

Mr. Seals reported the budget for fiscal year 2009 included \$4 million of new bonds. This was approved by the Citizens Budget Committee and later adopted by Council. The \$2 million will be used for street improvement projects, \$00 thousand to retrofit the pools and bathrooms located at Hammerle and Sunset Parks, and \$1.5 million to finance acquisition of land for a new police station.

These bonds will be considered full-faith and credit obligation bonds which is the same as some outstanding bonds that currently exist. These types of bonds do not increase property taxes and there are no plans to increase fees because of these bonds.

This request includes refunding the 1998 and 1999 General Obligation bond issues. In February 2008, Council approved a resolution to refund four existing bond issues. This refunding was not completed due to adverse bond market conditions. Now, recent projections provided by the City's financial advising firm indicate that it would be advantageous to refund two of these four bond issues. If the \$4 million bond sale is approved, the 1998 and 1999 bond issues should also be included in the bond sale saving in approximately \$157,000 in interest.

Staff is recommending adoption of this resolution authorizing \$4 million in bonds.

Acting Mayor Eberle noted that Council reviewed the budget document at a worksession and confirmed the funding for this bond sale and discussed the projects that were the focus of \$2 million.

Public Testimony

Alice Richmond was called and she passed on testimony at this time.

Charles Roberts, 19636 Wildwood Drive read into the record a letter he submitted to Council. He feels that this debt is not a bond, it is a revenue obligation. Revenue obligations are not subject to referral; whereas a bond is subject to referral and voters would have the opportunity to testify and join in the decision.

The borrowing instrument must be linked to a specific asset to be constructed and the asset must meet a duration test that the life of the real and personal property asset obtained by the revenue obligation must exceed the life of the borrowing instrument. In the resolution there must be a finding concerning the duration test (ORS Section 271.390(5)) and this resolution does not contain such a finding.

Mr. Roberts stated he received an email from Mr. Seals who has been very informative and found out that portions of the bond will be retired each year. He reiterated that there needs to be a finding as to the residual value over the term of the borrowing instruments and how that compares to the actual funds borrowed.

Acting Mayor Eberle extended Mr. Roberts testimony time by one minute. Mr. Roberts voiced concern about using these funds to pay for architect fees and that is not a real or personal property asset. This type of instrument is supposed to be used for something that you can actually see, touch or feel.

Councilor Carson asked staff to address the issue of fees raised by Mr. Roberts. Mr. Seals stated that design fees or architectural fees (soft costs) would be capitalized

and is appropriate. The term of the bonds is long-term. The bonds are structured to have maturities every year up to 20 years. The average term on a bond issue would be roughly 10-11 years. That figure is compared to the useful life of the assets that are being used. You don't want to be financing short-term assets with long-term debts.

Acting Chair Eberle asked for clarification of a bond and a revenue obligation. Mr. Seals stated that he interchanges these terms when he presents. Technically the bonds are called full-faith and credit obligations. These are long-term notes; it is debt either way. The police station would have a useful life of 40 years; the rehab or a street is about 20 years; and the wading pools and park improvements proposed would have a life of 10-15 years. The average life of the requested obligation is 11 years so the proposed improvements would be a match.

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

Councilor Burgess moved to approve Resolution No. 08-45, authorizing issuance of full-faith and credit obligations to finance street, parks and costs of a new police station per Agenda Bill 08-11-06. Councilor Jones seconded the motion.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4-0.

5. Agenda Bill 08-11-07

Resolution 08-47, Utilities Rate Increase

Acting Mayor Eberle opened discussion of the utility rate increase for fiscal year 2009. She asked for a staff report.

Chris Jordan reviewed the staff report with Council. The fiscal year 2008/09 budget included rate increases of 5% for storm water, sewer and water rates effective January 1, 2009. The Utility Advisory Board (UAB), at their meeting of October 15, 2008, recommended approval to the Council.

Staff is asking Council for approval of the amended Fee Schedule which now includes these 5% rate increases effective January 1, 2009.

Public Testimony

Alice Richmond, 3939 Parker Road, stated that she is a member of the Utility Advisory Board and is in favor of this rate increase. There is a lot of work to be done in the maintenance of the water system and this rate increase will go a long ways in making improvements.

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

Councilor noted the vote on the sewer motion at the Utility Advisory Board was 5 in favor, Ray Kindley in opposition and Ed Keonjian abstained. The storm water and water motion passed unanimously. He asked if there was any comment from a member of the Utility Advisory Board. There was no comment.

Councilor Burgess moved to approve Resolution No. ____ modifying the City of West Linn Master Fee Schedule. Councilor Carson seconded the motion.

Ayes: Burgess, Jones, Carson, Eberle

Nays: None

The motion carried 4-0.

6. Agenda Bill 08-11-08

Resolution 08-46, Water Telemetry Repair

Acting Mayor Eberle opened discussion on water telemetry repair. She asked for a staff report.

Jim Whynot, Water Section Supervisor, reported on October 2, 2008 the Supervisory Control and Data Acquisition (SCADA) PLC Processor failed and had to be reinitialized. The processor, located at the Public Works Operations Building, is the centralized control of six reservoirs, 5 pump stations, and two altitude valves. This is the first time since the original installation that the system has gone down, expediting the need for re placement. The processor and the I/O modules were originally purchased in 1990 from S&B, Inc. for \$78,290 with a planned life cycle of 20 years. Seven of the 10 sites have been updated and there are three remaining that have the original system.

This resolution will serve two purposes. One it designates S&B, Inc. as the City's water system telemetry system integrator and granted a brand name or mark exemption for the water system telemetry equipment, supplies, and software in accordance with the City of West Linn local contracting rules. Secondly, it will award a contract to S&B, Inc. for the replacement of deficient components and integrate new, replacement components into the system for \$77,927.

S&B, Inc. has reviewed the condition of the telemetry system components that were subject to failure in early October and have stated that they have reached the end of their useful life and should be replaced immediately. It was in the Master Plan to upgrade next year, but because of the failure it was moved up and switched projects with the reservoir repainting. The life of the equipment being put in is 20 years.

Councilor Burgess asked if by purchasing the same equipment as purchased in the past three improvements the City would get locked into one company possibly losing out in terms of a better technology or new software. Mr. Whynot stated he personally feels the City is getting the best quality equipment and software. Working with and

talking to other water purveyors, they too feel S&B, Inc. is the most up-to-date software.

Gene Green, Public Works Director, reported funds were in the budget for water projects. It was designated in the budget for the reservoir repainting and it was moved to next year to allow funds for the telemetry system components.

Public Testimony - None.

Councilor Carson moved to approve Resolution No. 08- 46 exempting telemetry services and equipment from the prohibition on brand name specification for public improvements and other contracts per Agenda Bill 08-11-09. Councilor Burgess seconded the motion.

Councilor Jones voiced concerned with the fact that the City may be depending on one source for a very long period of time. This is inconsistent with efficient practices and he doesn't see how the City will deal with this on a competitive level for at least another 20 years.

Ayes: Jones, Carson, Burgess, Eberle

Nays: None

The motion carried 4-0.

8. Agenda Bill 08-11-09

CDC Amendment – Final Platting

Acting Mayor Eberle opened the meeting to Council consideration of a request to initiate an amendment to the West Linn Community Development Code that would allow extensions of approval for land divisions, allowing them more time to proceed to a final plat than is currently allowed by the City. She asked for a staff report.

Gordon Howard reported this matter is before the Council based upon a request that was received (letter from Michael Robinson representing Jeff Smith the property owner) to initiate a legislative amendment to the Community Development Code. Pursuant to Chapter 98 a private individual cannot initiate such a change to the City's code. Therefore Mr. Smith is making the request for the City to make this change.

The request is to allow more time between the tentative approval of the subdivision and the time required to get approval of a final plat of recording that subdivision. It must be approved by the City and then recorded by the County Surveyor.

Oregon law authorizes a two-stage process for approval of proposed land divisions. First the local jurisdiction reviews a tentative application for a land division and approves or denies it based upon the jurisdiction's adopted development codes. Second, if the land division is tentatively approved, the subdivider records a final plat, which legally creates the discrete lots for subsequent sale. A tentative approval will

set forth a series of conditions that the subdivider must meet before recording the final plat.

The jurisdiction's development code sets a three-year deadline by which a tentatively approved land division must be recorded as a final plat or expire. An expired application must be resubmitted as a new tentative land division and begin the entire process over again. The City requires not only that the map be approved by the City within three years, but also that all public improvements required by the land division ordinance (roads, utilities) be in place and accepted by the City prior to the City approving the final plat.

A majority of other cities allow bonding or guaranteeing of those improvements instead of installation prior to the final plat. The staff memorandum included in the packet reviews the options raised by this request for initiation in dealing with this issue. The decision is not whether this idea should be approved, but whether it has enough merit to be initiated and studied by the Planning Commission and then reviewed and approved by Council.

The options reviewed were:

- Not to change the current code (leave three year requirement in place)
- Review whether the three-year period should be extended to a longer period
- Allow time extension applications which require discretionary review on an individualized basis with a specific request for an extension of time to get the tentative approved subdivision plat to the point where it can be recorded as a final plat
- Review allowing bonding for the improvements instead of the actual construction
- Bond and allow time extensions

This is a policy decision whether there are changes in circumstance where the City should allow more time to record a final once a tentative plat is approved. In the past the City has had no issues with applicant's promptly recording their final plats in the three-year period. However, there are changed economic circumstances and these two applicants have stated it is likely they will be in a position to put the major investment of public improvements into the subdivisions and get them recorded prior to the three-year limit.

Council will decide if this is enough change in the national situation to have the City look at necessity of the three-year requirement as to whether it should be longer. Staff recommends the Council initiate a code amendment regarding the final plat issues raised and any potential code amendments be limited to addressing the following matters:

- Allowance of limited bonding of public improvements prior to final plat approval to address minor issues such as weather-related concerns. The bonding should only be allowed if a majority of the public improvements have been successfully installed, and only a few outstanding items remain.

- Consideration of a blanket amount of additional time for approved projects beyond three years; considering the increased flexibility and fairness for applicants in balance with the desire of the City to not have approved projects built that don't reflect subsequent policy changes.

Councilor Jones asked if Planning staff ever raised this issue. Mr. Jordan said no. Staff met with Council a month ago and discussed what the priorities should be and where staff believed was the best places to spend their time. This item was not on that list at the time. The City would absorb the cost of this review because the property owner is petitioning the Council. Council will give staff direction. This will be a Council initiated legislative action.

Public Testimony

Michael Robinson stated he was here representing Jeff Smith a West Linn resident who has approval for division of his property. They are in complete support of the staff report to initiate a change to review two narrow amendments to the Code. The economy is not good right now and he has never seen the inability of his residential clients to borrow money to make public improvements. These are the largest home builders in the State of Oregon and Portland.

He is asking that Council needs to balance the need for having subdivisions timely against the needs to allow extensions where appropriate. Given the circumstances the economy is in and the investment of time and money that have been put into approvals, they feel taking a look at a longer period outweighs the other issues. They are asking that Council initiate the amendment that staff and the Planning Commission take a narrow look at it.

There is a time obligation in Section 98.030(B), which requires the Planning Commission to hold a hearing within 60 days of the Council initiation and then Council has to act within 60 days. Subsection (C) gives Council the ability to direct a different timeline.

Most jurisdictions have a much shorter time period; there is no other jurisdiction that requires the final plat to be recorded on the anniversary of the end of the approval period. In order for his client to start the development and get it done in that period, he would have to start now, get the construction drawings done, get the drawings approved and then go out and construct. This will not happen in this economic environment. For these reasons they are asking Council to consider initiating this.

Jeff Smith stated that he has been before the City several times for subdivisions. It is not just hard to get a development loan, it is impossible. The issue is not past experience or financial situation today, the issue is there is no funding to do development. Today there is no need for more homes or more lots in West Linn. There are a lot of developers who need to request extensions. He is asking that

Council give this issue to Planning and let him work with the Planning Commission to come up with something that is reasonable and bring it back to Council at that time.

Alice Richmond, 3939 Parker Road stated that she is in favor of this initiative because of the economic situation. In these economic times three years do not give enough time for development. She would like to see a developer build houses at a slower pace and sell them as they are built without going into bankruptcies.

Kerry Oaks, 1125 Marylhurst Drive stated she is not prepared to testify tonight because the agenda item didn't seem clear. She doesn't feel that the description for this item clearly lets the public know what was to be discussed tonight. She feels that if people were more informed, there would be other private citizens here tonight to testify. The City will bear the cost for this initiative; the citizens will have to pay the taxes.

Councilor Burgess asked for clarification of the timeline. Mr. Howard stated the Code states the initiative will be heard by the Planning Commission in 60 days and the Council 60 days. The Council may by the same or separate motion adopt a longer time period for Planning Commission hearings of proposed legislative changes. Council can specify a longer period for the staff and Planning Commission to review it before returning it to Council.

Chris Jordan stated because of the new Council changes, staff changes, and the holidays coming, 60 days will be an incredibly fast turn-around to get this to the Planning Commission. Perhaps 150-180 days would be helpful to staff.

Acting Mayor Eberle asked what happens to the developers who are in the process of development if this initiative is not passed. Mr. Howard stated if the three years expire and they haven't recorded nor has a final plat approved and the improvements put in, they would have to start over with a new application process. The new application would have to conform to any new standards that may be in effect at the time of application.

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

Councilor Burgess moved to initiate a code amendment application to look at the issue of overall subdivision time limits and limited bonding of subdivision improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for timeline to reflect 120/120 days. Acting Mayor Eberle seconded the motion.

Councilor Burgess feels there is no need to get into individual situations regarding reasons why developers need additional time. There is a reason to have a time limit in terms of approval. Staff has reviewed the request and feels there is merit in taking a look at this issue to see if there is a need in West Linn.

Councilor Jones stated he can go either way on this request. He feels this is no different from any other urgent or pressing need to change the CDC that rises to the top of the priority list, it should be reviewed.

Councilor Carson stated she could go either way. She understands the developers concerns on this issue. If this had not been raised as an issue by staff eventually it would have come from the citizens. She would like to see this brought forth with other code changes that are a part of the prioritizing process. She stated that when and if this issue comes before the Council, it is noticed in such a way that the citizens clearly know what the issue is.

Discussion followed on what time line would be appropriate for the Planning staff consideration and Council decision.

Councilor Carson moved to amend the motion to change the time limit for the application to return from the Planning Commission to Council up to one year. Councilor Jones seconded the motion.

Chris Jordan suggested that Council table the issue and let the new Council decide if this is a priority issue for them.

Councilors Burgess and Carson agreed it would be prudent to move this issue into the Planning staff domain and they can come back to the Council with a decision within a year whether there is merit to move forward on this issue.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4-0.

Vote on the main motion to initiate a code amendment application to look at the issue of overall subdivision time limits , limited bonding of subdivision improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for the timeline to reflect up to a year.

Ayes: Carson, Burgess, Eberle

Nays: Jones

The motion carried 3-1.

Adjournment

Chris Jordan thanked Gordon Howard, Staff Attorney for the eleven and a half years of work with the City of West Linn. His work as a Planner and Attorney has certainly been beneficial to the community, the City, and the City Manager.

The meeting adjourned at 9:31 p.m.