

WEST LINN CITY COUNCIL MEETING MINUTES MARCH 30, 2009

Council Present:

Mayor Patti Galle, Council President Jody Carson, Councilor Scott Burgess; Councilor Teri Cummings and Councilor John Kovash

Councilor Absent:

None

Staff Present:

Chris Jordan, City Manager; Kirsten Wyatt, Assistant to the City Manager; Chris Kerr, Interim Planning Director; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

Call to Order/Pledge of Allegiance

Mayor Galle called the meeting to order at approximately 6:45 p.m. and Council President Carson led the flag salute.

Mayor Galle announced that there would be no public comment on the Holiday Inn hearing that is scheduled for later this evening.

Proclamations, Recognitions and Presentations

Community Comments

Gary Hitesman, 2188 Clubhouse Drive, stated the Council is missing the point when it comes to historic buildings and historic neighborhoods. The latest push by the City to bull-doze down 8th and Dollar Street in the Willamette Neighborhood is a crime against livability that benefits no one. The City needs to stop throwing away limited and precious capital resources on look-and-see projects that are oriented towards

benefiting only a few select. He would like to see the volunteers of the Historical Advisory Board and Sustainability Board engaged in saving resources and upgrading engineering standards and level of enforcement.

Mr. Hitesman stated the design solution proposed for Willamette is inappropriate for the context. Some of the projects have been an assault upon the riparian areas; this proposed project assaults the eyes, rejects decency towards its neighbors and wastes money.

The proposed street system changes contemplated on 8th and Dollar Street go far worse than the mystery of the meandering path on Rosemont. As proposed this fire station and these changes take away another threat of the interwoven communities within neighborhoods.

Foreseen problems will include:

- Below standard engineering investigation and design
- City policies and codes only support a cheap and destructive solution that help cars and fire trucks while destroying everything else
- Current speed limits and road configurations are not helping; there are many safety and community welfare issues that the current street section proposals do not address
- There are insufficient site lines for anything faster than going 10 miles per hour

He would like to see the City institute comprehensive engineering standards that protect the environment and accommodate pedestrians more safely. He asked Council to save the Willamette Fire House and save the neighborhood streets from poor engineering practices and solutions.

Laura Horsey, 5725 Hood Street, stated she appreciates the action to restore the appeal fee to \$400. It is not always useful or feasible for some citizens to go through the neighborhood associations. She presented Council with a few suggestions to improve public participation and the planning process:

- Applicants be required to provide dimension drawings sufficient for meaningful public review
- Council specifies what level of input from applicants is appropriate for staff reports and findings from the Planning Commission and City Council decisions.

Roberta Schwarz, 2206 Tannler Drive, thanked Council for the mayor's comment at the last meeting that she appreciates the citizens coming up and voicing their concerns. It is such a change to feel welcome.

Ms. Schwarz stated she copied the report from Decker Business Consulting. She asked Council if they could answer some questions she has been trying to answers to for some time:

- How much, if anything, has been paid for this report?
- What were the qualifying credentials of the person who wrote the document?
- Was the job put out to bid?
- Is it possible to get a copy of the contract for this project?
- Was the work produced within the stated time line?
- Are there new laws written for Neighborhood Association Bi-laws?

Alice Richmond, 3939 Parker Road, noted the earphones she wears are to hear what is being said at the meetings in Council Chambers. She purchased her earphones because of health and sanitary issues,

Mayor Galle stated the City would reimburse Ms. Richmond for the earphones. The City can make available earphones for those who need them for the meetings.

Lynn Fox, P.O. Box 236, Marylhurst Drive thanked Mayor Galle and Councilor Cummings for attending Metro Steering Reserve Committee meeting on March 16th. She was concerned that the city consultant in the reserves process spent most of his time eating cookies in the hallway. He was not present when West Linn's was trying to make a place at the Metro table in this process.

This process has been very confusing. There has been no participation from the County. No one has come to their neighborhood meetings. She has been asking for months to have a representative come. She received her copy of the Community Development Code and it has too many pages to fit in one binder; this is how much the laws have increased.

Ms. Fox voiced concern about Section CDC-81.010, "For the purpose of this chapter the term boundary change includes the formation, merger, consolidation or dissolution of the city or district, annexation or withdrawal of a territory to or from a city or district or from a city-county to a city or an extra-territorial extension of water or sewer service by a city or a district." She asked if the laws have been changed on whether extra-territorial extension of water or sewer service since it was her understanding that it was a Felony.

There are several blank pages throughout the document and concerns her. A document this important should not have blank pages that could lead to mischief later on.

At the urban reserves meeting she attended there were representatives there who were putting miss-statements of fact into the record. It is important to have representatives at every meeting so errors can be corrected that are made against the City.

Mayor Galle stated she will have the Planning staff give her an explanation on Chapter 81.010. She agrees that City representative need to be at these types of meetings. She thanked Ms. Fox for her diligent work on the Stafford Basin.

Councilor Cummings asked Ms. Fox to share what she felt was erroneous information. Ms. Fox stated there was a developer who testified the City of West Linn had extended sewer services to the other side of the River (Pete's Mountain area). It is not her understanding that the City has done so. Councilor Burgess noted that there was sewer service extended to the other side of the river for one resident not for the area. Mayor Galle stated she would have staff prepare an answer for Ms. Fox on her concerns.

Business Meeting

1. Resolution No. 09-08 Proposed Local Agency Agreement
Between the Oregon Department of
Transportation and the City of West Linn for
American Recovery and Reinvestment Act
of 2009 Funding

Mayor Galle opened discussions on the American Recovery and Reinvestment Act of 2009. She asked for a staff report.

Chris Jordan, City Manager reported this resolution provides \$900,000 of Federal stimulus dollars through ODOT to the City of West Linn to complete a 2-inch overlay on Salamo Road from Barrington to Rosemont. This project is estimated to be about \$1 million, so the City would have to fund what is over the \$900,000. The Federal has a cap of \$900,000 and if the project comes in less than only the amount quoted will be paid for. It is clearly stated in the agreement the project is for a 2-inch overlay of the street.

The funds need to be obligated by March 1, 2010. Staff recommends approval of the resolution and authorizing the City Manager to enter into the Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT).

Council President Carson moved to approve resolution 09-08, Proposed Local Agency Agreement between Oregon Department of Transportation and the City of West Linn for American Recovery an Reinvestment Act of 2009 Funding. Councilor Kovash seconded the motion.

Ayes: Carson, Kovash, Cummings, Burgess, Galle

Nays: None

The motion carried 5-0.

Business from Council

Councilor Cummings asked staff to respond to the community comments made tonight.

In response to Mr. Hitesman's concerns, Mr. Jordan stated the fire station has been completely approved; it has gone through the entire land use process. Regarding the Hidden Springs Neighborhood Association not receiving notice, he is absolutely sure the consultant contacted the Hidden Springs Neighborhood Association President and that person did not respond. Mr. Jordan stated he will review the other issues brought up by Ms. Fox and get back to her and the Council.

Mr. Jordan stated the earpiece devices should be here and available if someone needs one; however the hearing devices do not work for everyone. The City will reimburse Ms. Richmond for her expense and staff will provide earpieces to those who make a request.

Councilor Cummings asked staff for a report on the meeting attended by Tom Coffee. Mr. Jordan stated he will be talking with Mr. Coffee tomorrow and will get a report from him and pass it on to the Council members.

Councilor Cummings announced upcoming meetings:

- Thursday at 6:30 p.m. there will be a C-4 meeting at the Clackamas County Development Service Building on 150 Beavercreek Road
- Metro meeting at the Clackamas County Development Service Building on April 15, 2009, from 5:30 to 7:30 p.m.

Mayor Galle stated that Metro will be giving a report on decisions they have made on their process tomorrow. Mr. Jordan stated that Metro will post their decisions on the internet.

Mayor Galle announced West Linn will host a meeting where Metro will speak to the neighborhood association representatives on April 21, 2009.

2. Resolution No. 09-02 Holiday Inn Express Appeal Application

Mayor Galle opened the public hearing on the Holiday Inn Express Appeal Application at 7:10 p.m. This is a de novo review hearing on the Planning Commission's approval of the design review of a 70 unit hotel on a site containing Bernert Creek and wetlands with a class II variance for the amount of square footage proposed to be developed within the water resource transition area at 2400 to 2450 Willamette Falls Drive (Case file AP-09-02). Two members of the City Council called the decision up for review pursuant to Community Development Code Section 99.170 and Section 99.240(C)(2).

Mr. Monahan explained the process and procedures the City will use in considering this matter. The applicable criteria to be considered are found in Chapter 55, Design Review, chapter 75, Class II Variance criteria, and Chapter 32, Water Resource Areas of the Community Development Code for Legislative Plan Amendments. In addition, following the Planning Commission's action, it was determined that compliance with CDC chapter 60, Conditional Uses, is required since transient housing is listed as a conditional use in Chapter 19, the General Commercial zoning district.

Mayor Galle explained the hearing conduct. She asked if any member of Council visited the site. Councilor Kovash stated he visited the site; Councilor Carson stated she visited the site many times and walks along that area on a regular basis; Councilor Burgess stated he visited the site and is aware there is water there however, he did not see anything that would prevent him from voting on this issue; Councilor Cummings stated she visited the site and Mayor Galle declared she too visited the site.

Mayor Galle asked if any members of Council wished to declare any conflicts of interest or ex-parte contact. Councilor Cummings announced she would be stepping down from this hearing because she testified in opposition with concerns about the interpretation of the hardship clause when this was before the Planning Commission. Mr. Monahan explained when Councilor Cummings spoke before the Planning Commission she was not a Council member at that time. There is a provision in the Community Development Code, Section 99.180(F)(3) which indicates that Council members who appear as a party in another hearing process on an application such as at the Planning Commission, are required to step down.

Mayor Galle asked if any member of the audience wish to make any challenge to any Council member's impartiality or ability to participate in this decision. Ms. Richmond noted Councilor Cummings testified in front of the Planning Commission and asked if Councilor Kovash was on the Planning Commission at the time this issue was heard. Councilor Kovash explained he was on the Planning Commission last year. There was one meeting he attended where this issue was brought up and the hearing was continued. There was no testimony given. He was not in attendance at subsequent hearings and not in attendance when Councilor Cummings testified. Because he did not participate in those deliberations and the materials available to him were given to everyone, he does not feel he has a bias on this application.

Mr. Monahan stated that he had the opportunity to be at the initial hearing where there was a staff report and no testimony before it was continued. He did not take part in the decision on this issue.

Mayor Galle asked if any member of the audience wished to make any challenge to the Council's jurisdiction to consider this matter. Mr. Hitesman asked if the

application was incomplete because the Chapter 19 and Chapter 16 have not been addressed. Information pertaining to Chapter 19 and 16 has not been provided to the public. He asked how there can be a hearing without that information. Mr. Monahan stated these chapters will be discussed during the staff report.

Dave Smith, who represents the applicant in this matter, stated he wanted to make an objection on the record. It is the applicant's position that there is no jurisdiction for the City County to consider this at this time based on lack of notice provided to the applicant in connection with the call to review or the appeal process. He would like to make sure that position is not waived in connection with any decision that is made after the staff report. Mr. Monahan stated the applicant is preserving the challenge for future consideration if this matter goes forward to a higher body.

Staff Report

Chris Kerr, Interim Planning Director, reported on March 6th staff determined the proposed hotel use for the site in the general commercial zoning district requires a conditional use permit for Community Development Code 19.060. A conditional use application has not been submitted. Staff at this time recommends denial of the application as currently submitted. After discussions with the applicant and city attorney, an understanding has been reached which will allow for the consolidation of these applications. This will enable the Council to hear the conditional use as well as the appeal application in accordance with all provisions of the CDC.

Mr. Monahan stated in order for the conditional use application to be reviewed. The conditional use application must be submitted for reviewed by staff, notice must be given of the hearing, a staff report is prepared and it needs to be part of a decision. He has reviewed various parts of the Community Development Code and believes the Council has the opportunity under CDC Section 99.070, Consolidation of Proceedings to review both the review of the Planning Commission's prior decision and a new conditional use application. It can be done at one hearing.

CDC 99.070 states, "Whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval of authority shall decide all applications in one proceeding. In such cases, the hearing shall be held by the approval authority having original jurisdictions over one of the applications under Section 99.060 in the following order of preference."

Mr. Monahan stated City Council under Section 99.060(C)(3) has authority to review Planning Commission decisions on its own motion. It is his opinion that Council has the opportunity to review in a consolidated setting a conditional use application along with the review of the prior action of the Planning Commission. Council needs to discuss whether they want to hold a consolidated hearing and if so give the applicant an opportunity to comment on that. If there is to be a consolidated hearing, or any

continuance of this hearing, the applicant can be asked to voluntarily extend the 120 day clock so a proper hearing can be noticed and the review of the application be conducted, a hearing conducted and a decision made prior to the expiration of the 120 day clock. The 120-day clock currently expires on April 12, 2009.

Point of Order – Mr. Hitesman reiterated that Council doesn't have the jurisdiction to hear this matter according to 60.060(C). "A prerequisite to filing for an application is a meeting with the respective city recognized association per CDC Section 99.038." Had the applicant gone to the neighborhood associations, they would have met the terms of Chapter 60. He feels the attorney is suggesting the process be bypassed and go into a double hearing. This would violate the intent of Chapter 60.

Karie Oakes, 1125 Marylhurst Drive stated pursuant to 99.290, Action on Appeal or Review, Time Limit and Authority to Change the Decision, there are two actions that could be taken by Council. This is a review of a decision; not a new application. Section 99.290(B) states, "The approval authority may affirm, reverse or modify the decision which is the subject of the appeal; however the decision shall be made in accordance with the provisions of Section 99.110 of this Chapter." Or, the approval authority may remand the matter if it is not satisfied that testimony or other evidence could not have been presented or was not available at the hearing and deciding to remand the matter, the approval authority shall consider and make findings and conclusions regarding (1) prejudice of parties, (2) the convenience or availability of evidence at the time of the initial hearing, (3) the surprise to opposing parties, (4) the date notice was given to other parties as an attempt to admit, or (5) the competency, relevancy and materiality of the proposed testimony or other evidence.

Section 99.110 states, "The decision making process of the approval authority" This is the process granted as the approval authority on this review of this decision. (A) states, "The decision shall be based on proof by the applicant that the application fully complies with the applicable standards of any provision of this code or other applicable implementing ordinance."

Ms. Oakes stated she feels consolidation is meant to be applied when the application is made. To consolidate the various criteria that may require Planning Director or Planning Commission, never going higher to City Council but consolidate it to the highest authority based on what the provisions require.

Mr. Monahan stated in terms of Section 60.060(C), A Prerequisite for Filing of an Application is meeting with the City ... there is nothing in the code that says that after the preapplication the applicant can't add another application. The second issue was raised about changing a decision. That language is addressing changing of a final decision. This is not a final decision that has gone through the entire local review process. It is a Planning Commission decision that has been called up for review by Council.

Mr. Monahan stated the public who have raised their issues have reserved their rights and their testimony is part of the hearing record. Anyone who raises an issue as part of the hearing can raise their issues at the Land Use Board of Appeals.

Applicant Presentation

Mr. Smith stated the applicant's position in this matter is they would not object to a continuance on the stipulation that any claims are preserved on behalf of the applicant in connection with the application process against the City. The applicant will consent to an extension beyond the 120 day period so long as all of his rights are preserved in connection with continuing the application process.

Councilor Burgess asked for confirmation that the continuance would be to May 22, 2009. Mr. Smith said yes, the dates discussed between the applicant and the City were May 11, 2009 for a hearing and May 22nd for a final ruling by Council on this matter.

Final Staff Comments - None

Council President Carson moved to continue the review of AP-09-02 to May 11, 2009 at 6:30 p.m. to conduct a consolidated proceeding as allowed under Community Development Code 99.070 about AP-09-02 and a Conditional Use application for Transient Housing in the General Commercial Zoning District. Councilor Kovash seconded the motion.

Ayes: Burgess, Kovash, Carson, Galle

Nays: None

The motion carried 4-0.

Council President Carson asked the City Attorney if a motion is needed for the extension of the 120 day clock. Mr. Monahan stated the 120 day clock is really within the jurisdiction of the applicant and he has voluntarily agreed to an extension to May 22, 2009. Through this action tonight, Council has expressed the desire to have a consolidated hearing and authorized the filing of a Conditional Use application.

Adjournment

Mayor Galle adjourned the meeting at approximately 7:37p.m.

RESPECTFULLY SUBMITTED,

Tina Lynch /s/

Tina Lynch
City Recorder

APPROVED BY THE CITY COUNCIL
ON APRIL 27, 2009

Patti Galle /s/

Patti Galle, Mayor