

WEST LINN CITY COUNCIL MEETING MINUTES May 11, 2009

Council Present:

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

Council Absent:

None

Staff Present:

Chris Jordan, City Manager; Chris Kerr, Acting Planning Director; Tom Soppe, Planner
City Attorney Bill Monahan; and Tina Lynch, City Recorder - Minute Taker

Call to Order/Pledge of Allegiance

Mayor Galle called the meeting to order at 6:38 p.m. She asked Roger Shepard, Parks Volunteer to lead the flag salute.

Proclamations, Recognitions and Presentations

- Take Care of West Linn Day

Roger Shepard stated he is a member of the Parks and Recreation Advisory Board. He lives in the Bolton Neighborhood. Oregon is celebrating its 150-year centennial this year. As part of the birthday celebration the State has created a non-profit organization called "Oregon 150" to organize a number of events throughout the year. One of the most visible is the "Take Care of Oregon Days" where projects to beautify and assist will take place throughout the state. The goal is to make this the largest volunteer effort in the state's history. There are 600 events lined up throughout the state and a majority of these events are happening on May 16th. Here in West Linn the Parks and Recreation

Advisory Board and the Parks and Recreation Department have organized "Take Care of West Linn Day" to promote the value of volunteerism and community pride by making available opportunities for community members to participate in projects to give back to the communities and improve West Linn. Several events and projects happening throughout the City on May 16th:

- Mike Watters, Friends of the McLain House and Park is leading a park clean-up at McLain House
- Alma Costen, Friends of the Maddox Woods leading a garden clean-up work party at Maddox Woods
- Elizabeth Kieres, Willamette Neighborhood Association leading a project at Willamette Park working on the Centennial Pathway and cleaning up the river shore.
- Kevin Bryck, Robinwood Neighborhood Association leading an effort to improve a trail between Cedar Oak School and Nixon Avenue.
- Marla Garrenstrom, Bolton Neighborhood Association is leading a work party to clean up and plant flowers in the Bolton Volunteer Garden.
- Lori Griffith, Mary S. Young Park Volunteers is leading an Ivy pull event at the park.
- Alison Benski, leading an Ivy pull event at Burnside Park
- Tammy Gimerelli-Myis wants all 12 of her stylist to plant flowers around the sign on Highway 43 at Hammerle Park.
- The City Parks and Recreation Department is leading a group of volunteers planting the flower boxes in the Willamette business district. About 20 employees from Pacific West Bank have volunteered to help out with this effort.
- Ken and Lisa Clifton, along with their daughter and two friends volunteered to sweep the sidewalks on Highway 43 between West A and Hammerle Park.

Most of the events are happening between 9:00 a.m. and Noon on Saturday, May 16, 2009. To recognize the efforts of all the volunteers helping out on "Take Care of West Linn Day" the Parks and Recreation Department has organized an after-party between Noon and 3:00 p.m. at Mary S. Young Park. They will be getting help from the West Linn Lyons and sponsorship from Pacific West Bank.

Mayor Galle explained the State of Oregon is celebrating 150 years since statehood and the Oregon 150 Committee has designated the month of May as "Take Care of Oregon Day." Communities throughout the state have been invited to organize events for citizens to give back to their state as part of the "Take Care of Oregon Day."

Mayor Galle read the proclamation designating May 16, 2009 as "Take Care of West Linn Day" to allow the citizens to participate in "Take Care of Oregon Day." Eight community organizations have volunteered to coordinate projects as part of "Take Care of West Linn Day" and invited all citizens to participate to share the value of volunteering and giving back to their community.

- Cedaroak Park Primary School Celebration

Mayor Galle reported Cedaroak Park Primary School is celebrating their 50th year. They first welcomed students in 1958 and have been an important starting point for hundreds of West Linn children's education. The school fields and playgrounds have been enjoyed by many West Linn families. The school has consistently scored strong results in student's achievement report cards and displays a strong commitment to the whole student through art, music and physical fitness programs.

Mayor Galle read the proclamation by West Linn City Council that the teachers, staff, students and alumni of Cedaroak Park Primary School are congratulated on the school's 50th anniversary and the school's contributions to West Linn community and Oregon's future.

Community Comments

Bruce and Mary Swanson, 2071 Fields Drive asked the Mayor for five minutes to make his comments. Mayor Galle approved the time.

Mr. Swanson stated he is trying to keep his family safe at home and use his property. Due to activities on the adjacent property objects come flying onto their property and the nuisance noise impacts them on a regular basis. This activity is decreasing his property use, significantly diminishes his family's quality of life, and compromises their safety.

Flying objects hit their windows, house, patio and garden. His issue tonight is caused by the way and location basketball is played on the property next to his. The neighbors have placed a portable basketball hoop on their back yard patio in a location adjacent to his house, patio and outdoor living space. Besides the safety issue, this location creates a noise nuisance and loss of use of their property since most of this sound comes in their direction. They have regularly measured sound levels that surpass construction and other loud noises. The amount of noise is high enough to be heard inside their house with their windows closed and television or stereo playing. This has been an issue for them for three years now.

On November 24, 2008, Council passed changes to the City Noise Ordinance they thought would address these kinds of issues. Since that change they have worked with the Police Department and they have informed them they will not enforce the Ordinance because the activity that creates the nuisance is basketball play.

Mr. Swanson stated noise nuisance is a nuisance regardless of the source. What they are experiencing is far worse than construction noise, barking dogs and other named noise sources that are regulated in the Ordinance. They are not against their neighbors playing basketball on their property; it is the location that is the issue.

This nuisance impacts their lives daily, their home based business, and the value of their home. They are committed to resolve this issue in a civil manner; their attempts to talk with their neighbors have gone poorly. There are other hoop locations options on their property that would likely eliminate or reduce the noise nuisance and would remove the safety issue.

Mr. Swanson provided a packet of information that should give the Council what they need to understand the issue and possible solutions of enforcing the new noise ordinance as stated intent and provisions for one person noise generation, revise the noise ordinance so it does not bias as to the noise source, or create a new land use ordinance that allows activity and requires a measureable standard for the location of target for projectile objects.

As requested by the Police Department they have given back the basketballs to their neighbors and are asking the Council to use their regulatory authority to provide the quality of life most residents of West Linn expect and are indicated as the intent throughout the nuisance and land use ordinances of the City.

Councilor Burgess suggested that Council read the information packet given to them, schedule a worksession to talk with staff and review the current ordinance.

Council President Carson thanked the Swanson's for providing all the materials and assured them Council will work with staff to determine what the next steps would be to address this issue.

Roberta Schwarz, 2206 Tannler Drive stated a third-grader in her neighborhood has been growing her hair for several years. Recently she had her mom cut it off and donated to "Locks for Love." This is a group that gives hair to children who have lost hair because of chemo or other medical issues. She feels that this child is special and special recognition should not only go to business people, developers or businesses. She suggested to Council to give this special person recognition of some sort. She also asked Council to consider a Proclamation for this very special third-grader.

Ms. Schwarz commended the Council on their firm stand on the Stafford area. She feels real progress has been made; over 100 signatures have been received. They will be sent to Metro and the Core IV. Her group is working on their second hundred signatures. She thanked Council for the unanimous resolution approved; it comes a long way in doing what is right for the people of West Linn. She applauds their efforts.

Lynn Fox, stated she is here tonight as a citizen of West Linn. She read a letter into the record regarding her dismay as the development at 1165 Rosemont has evolved without following the conditions set forth by the Planning Commission when they granted approval for this subdivision. This subdivision stands at the entry to the Hidden Springs

Neighborhood Association and creates the first impression for the entire neighborhood. The black chain link fenced enclosed storm water recovery area that welcomes visitors at the entrance to her community has all the charm of Alcatraz. There is no sidewalk, where there was to be a sidewalk in addition to the meandering path which doesn't meander. The citizens were told they would have the sidewalk because of the children walking to school, location of the senior center and the goal to provide pedestrian access to a commercial center and several churches. The open space provided by the developer does not match the description given at the Hidden Springs Neighborhood Association meetings. The development appears to be more than 10% altered from the approved application.

As a citizen she respectfully requests Council provide a design review committee to evaluate this development. The Neighborhood Association would be happy to provide records from the inception of the pre-application meeting through approval of development.

Chris Jordan, City Manager, reported the fence is in keeping with the Public Works standards and conditions of approval. It is up to the developer if they want to make changes to meet standards; however, the black chain link fence meets City standards. There is no condition of approval for a meandering sidewalk.

Gary Hitesman, 2188 Clubhouse Drive stated the Rosemont intersection that was previously discussed is near his home as well. There are plenty of people who walk by there everyday. He voiced concern about how there was no development of the cross-section of Santa Anita. It was discussed during the process that the developer didn't impact Santa Anita so therefore he shouldn't pay any money towards it. Now he notices that the City is closing off the street to improve it and that's great. He doesn't feel the section of Santa Anita and Rosemont has been adequately addressed. The asphalt path keeps the children off the sidewalk which is below City standards.

He asked Council to provide some improvements along Santa Anita. It is an abomination to all of the other entrances throughout West Linn. He suggested changing the standards to address the consistency of entrances of neighborhoods in the City and consider improving the improvements along Santa Anita right-of-way out to the intersection and doing something with the wetland area to improve not only the future neighborhood but the existing neighbors and provide safety for the school.

Councilor Burgess noted the proposed budget approved by the Budget Committee includes improvement of Santa Anita at Rosemont.

Consent Agenda

1. Agenda Bill 09-05-11A Resolution No. 09-10 – Tanner Basin Neighborhood Association name change
2. Agenda Bill 09-05-11B Resolution No. 09-09 – Annexation Election date change
3. Agenda Bill 09-05-11C Procurement of New Pipe Line Television Inspection System

Council President Carson moved to approve the Consent Agenda consisting of Agenda Bill 09-05-11A, Resolution No. 09-10, Tanner Basin Neighborhood Association Name Change; Agenda Bill 09-05-11B, Resolution No. 09-09, Annexation Election Date Change; and Agenda Bill 09-05-11C, Procurement of New Pipe Line Television Inspection System. Councilor Kovash seconded the motion.

Ayes: Burgess, Kovash, Carson, Cummings, Galle

Nays: None

The motion carried 5-0.

Report from the City Manager

Chris Jordan, City Manager announced that there will be a joint City Council/Tualatin Valley Fire and Rescue (TVF&R) District Board meeting in Sherwood at TVF&R's offices.

In response to Ms. Fox, Mr. Jordan agrees the City should review the public work standards, particularly at specific locations where there are entryways. Personally, he too does not like the look of the black chain link fencing. Staff has talked with the developer on several occasions and they are hoping he will voluntarily make some changes and will continue to work with him on those changes. The developer has dedicated 11-feet of right-of-way along Santa Anita and it is in the City's budget to do the right-turn lane improvement at that location.

Business from the City Council

Councilor Cummings stated in reference to the subdivision going in on Rosemont Road, she is familiar with the developer's work; he has built beautiful homes. It would be in everyone's best interest (including the developer) to come up with a much more natural appearing and aesthetically pleasing design. Councilor Cummings also noted he does great work.

Business Meeting

1. Agenda Bill 09-05-11D Public Hearing - Holiday Inn Express, CUP-09-01 Conditional Use Permit

Mayor Galle opened the public hearing to review the Planning Commission decision to approve design review of a 70-unit hotel on a site containing Burnett Creek and wetland with a Class II Variance for the amount of square footage proposed to be developed within the water resource transition area at 2400-2450 Willamette Falls Drive and to consider the proposal for a Conditional User Permit to allow a hotel in the General Commercial Zone. 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.

The hearing on the review of the Planning Commission approval was opened on March 30, 2009 and continued to this date. This hearing on the review of Case File AP-09-02 is de novo, you need not have testified previously in order to participate tonight.

Bill Monahan, City Attorney explained the applicable criteria are found in the Community Development Code within Chapter 55, Design Review; Chapter 75, Class II Variance Criteria; and Chapter 32, Water Resource Areas. In addition following the Planning Commission 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, General Commercial Zoning District.

Mayor Galle explained the hearing conduct. Mr. Monahan asked for a change in the hearing conduct to have "Questions to Staff from Council" first then followed by "Applicant's Rebuttal." Mayor Galle agreed with the change and called for a formal vote from the Councilors.

Ayes: Kovash, Carson, Burgess, Galle

Nays: Cummings

The motion carried 4-1 to change the hearing conduct to have "Questions to Staff from Council" first then followed by "Applicant's Rebuttal."

She asked if any member of Council visited the site. Council President Carson said she walks by the site on a regular basis and has walked around the site. She observed the asphalt and noticed there were no sidewalks. She crosses the road at that point and walks up the old stairway.

Councilor Cummings stated she visited the site last fall prior to the winter storms and she has been to the site a month or two ago since that time.

Councilor Burgess stated he passed by the site in various modes of transportation; he has not actually walked the site. He saw the site, noticed the pipe going across the creek, and there is some old pavement. In relationship to Willamette Falls Drive and Highway

205 this is a constrained site. It clearly has water or a water resource area. There is no sidewalk along Willamette Falls Drive at this point, but there is sidewalk further to the west. He did not speak with anyone when he was on the site.

Councilor Kovash stated he visited the site, walked the whole length of the road in front of the site and walked the road on the side, walked up on adjacent property and onto the site briefly.

Mayor Galle stated she has driven by the site and observed it.

Mayor Galle asked if there were any conflicts of interest or ex-parte contacts to declare.

Council President Carson stated she walked the site as a part of her morning walks with the Willamette Neighborhood Association President and they did not discuss the merits of the application.

Councilor Kovash reported last week he provided each Council member with notes entitled, "Holiday Inn Analysis." This analysis was prepared in response to a request made earlier by the applicant's representative questioning the reasons for the call of the Planning Commission's decision. He was one of the two council members who called the decision. He spoke with Mayor Galle who joined him in calling up the decision for review. Together they spoke with Mr. Kerr about materials that have been submitted in the hearing process for tonight. The analysis is his efforts to identify the elements of the criteria where he feels the applicant should provide more complete explanation and justification of an order to demonstrate compliance with the code. His earlier review of the Planning Commission's final order left him with the impression that at that level the findings did not explain how all applicable approval criteria were met. His analysis was provided with the hope that it would be given to the applicant so more information can be presented to the City Council at the hearing tonight.

Councilor Kovash stated he has also talked briefly with a few members of the community including Jim Morton, Gary Hitesman, and Mike Jones. He discussed with Gary Hitesman some issues about areas of land he had found a conditional use was necessary for the placement of a hotel in general commercial.

He has not made up his mind whether the applications can be approved. He has an open mind tonight and he will listen for explanations from the applicant how the approval criteria have been addressed. Once the hearing has been closed, after all participants have had an opportunity to present evidence, he will weigh all the evidence and express his opinion.

Mayor Galle stated last week she spoke to Councilor Kovash and joined him in calling up the decision for review. Together they spoke to Mr. Kerr about the materials that had been submitted and the hearing process for tonight. Since the Council hearing was

opened and continued until tonight she had ex-parte contact first with a representative from TVF&R where she had a brief discussion about the issue of 150-feet. At that time the TVF&R representative explained she would look into the issue and make a presentation this evening. Secondly she met with the applicant, Vic Patel, this afternoon they had coffee and a lengthy discussion at Bales Shopping Center. Primarily they discussed the shape of the building and she asked him if he could make the building long and narrow. That was the gist of their conversation. Nothing was said that lead her to make up her mind whether the application should be approved. She has an open mind and wants to hear everything that is said at this hearing tonight and she will be listening for an explanation from the applicant on how the approval criteria have been addressed. Once the hearing is closed after the participants have had an opportunity to present evidence, she will weigh all the evidence and express her opinion.

Mayor Galle asked if there was anyone in the audience who wished to make a challenge to any Council Members impartiality or ability to participate in this decision. There was no response.

Mr. Monahan noted at a previous hearing on the Holiday Inn Councilor Cummings stepped down from the hearing.

Councilor Cummings stated this is a new application for a conditional use permit and she has not participated in this. She has had conversations with Karie Oaks and Gary Hitesman hearing their concerns about whether this is appropriate or not and she is open to hear any other concerns that are brought out. At the prior meeting she determined she would not participate in this hearing; however, upon further consideration, this part of the hearing is a new application. She stepped down from the hearing on Application 09-02 on March 30, 2009, because she had previously testified in November solely on the interpretation of the hardship clause. Having been involved with the stream code rewrite and being quite familiar with the hardship clause, she testified on the interpretation and was concerned about whether it was being misunderstood or not. She did not have feelings either way. She was in support of a motel, but didn't know what it was going to look like and just wanted to make sure about how the stream code was being interpreted. She will recuse herself for the second hearing tonight on the Holiday Inn.

Mr. Monahan explained this is a combined hearing and there is was one hearing on the conditional use that she did not participate in. In the second hearing, there is a specific section of the Community Code that was used by Councilor Cummings at the last meeting which indicates, "...Council members that appear as a party in another hearing process on an application such as testifying before the Planning Commission in a case that is then appealed to City Council shall be disqualified from Council consideration of that application."

Councilor Cummings stated she disagrees with the use of the term “combined.” These are two separate hearings, they have two separate numbers, and they were applied at two separate days. The 120-day rule begins for this CUP much later after this last application. The only thing she would consider combined about these two applications is the fact that they now occur on the same day.

Mr. Monahan stated it was up to Council to decide whether or not Councilor Cummings can participate. In Council rules, page 7 of the draft from April 12, 2009, under bias and disqualifications there is a section that says, “...if the Council determines that the member is biased it may disqualify the member by a majority vote from participating.” A determination should be made whether Councilor Cummings explanation is one that leaves her in a position that she is biased or not biased on the combined hearing before Council tonight.

Councilor Cummings stated the first hearing is about whether there should be a conditional use permit.

Mayor Galle asked if there was anyone in the audience who wished to make a challenge to any Council Members impartiality or ability to participate in this decision.

Tim Turner, 2636 SE Market Street, Portland stated he attended the previous meetings and he believes that Councilor Cummings had asked to be excused. The information under the Conditional Use Permit (CUP) is the same information under the original application. He does not agree that this is new material.

Gary Hitesman, 2188 Clubhouse Drive stated he disagrees with the City Attorney and his interpretation. He feels the councilor has the right to review the application; it is the first time it is coming up for public review. It is a whole new issue that was overlooked by the applicant. Part of this discussion relates to Chapter 19 and Chapter 99 and instructing the Council how to rule, Mr. Monahan left out Chapter 99 and 19. They are very important given the time line and the process that this application has gone through. He asked for a clarification from the City Attorney on Chapters 19 and 99, and will be used as further criteria to make the judgment. He feels Councilor Cummings has the right to hear the conditional use permit.

Karie Oaks, 1125 Marylhurst Drive asked if this is the correct time to object to the jurisdiction of the Council to consider this matter. Mayor Galle stated this is a time to object to Councilor Cummings sitting on this hearing. It is ultimately up to the Council to make the decision; however the audience is being asked to voice their objections.

Mr. Monahan explained the total purpose of this question is whether there is someone in the audience or on the Council that wish to challenge their ability of a council member to hear this application

Councilor Burgess stated that all along it was understood that Councilor Cummings would step down. On December 3, 2008 she testified in opposition to the application. Since that time, the Conditional Use has arisen as an issue and the Council is hearing that as well tonight. Mayor Galle has explained there will be testimony from staff, the applicant, and the public on both. The issue has not been separated. Unless the Council holds two hearings and not treat them as one, he believes there is a conflict.

Mr. Monahan stated the question of whether or not a council member can participate is totally the discretion of Council without the opportunity for public input on this question.

Point of Order posed by Ms. Oaks on Councilor Burgess regarding a neighborhood plan decision did not recuse himself even though he was considering flag lots for his property. She feels this is the same thing.

Councilor Kovash noted the decision was made to hold the vote for both of these issues in one night. At that time he understood that Councilor Cummings would step down. If the decision was to hold two separate hearings on separate nights would Councilor Cummings be able to sit for the second hearing. Mr. Monahan stated if the question was split into two separate hearings, Councilor Cummings would be able to participate if she were not biased towards a decision on the conditional use application. The question for Council is to determine whether the information received to this point, are the two able to be split. The analysis by staff the conditional use criteria were in essence reviewed as part of the earlier application; they just weren't reviewed in the context of an application for a conditional use permit. Are the conditions the same and is the position taken by Councilor Cummings at the earlier hearing one that shows that she would be biased towards the same issues within the conditional use application.

Councilor Kovash asked if the rules specifically state that if you testify on this matter for the Planning Commission, you are disqualified. Mr. Monahan stated that would be an absolute disqualification.

Mayor Galle stated she is not in agreement that Councilor Cummings should step down. She has indicated she can be unbiased and this is a new conditional use application where the applicant was sent back to fill out information that was not on the other application.

Council President Carson asked if Councilor Cummings is allowed to participate in the Conditional Use hearing would the Council have to separate the hearings into two separate processes. Mr. Monahan stated that his recommendation would be to separate the two processes into two separate hearings. The code says that if a council member participated in a matter at a prior level, that council member cannot participate in that part of the hearing. He believes that Councilor Cummings intends to participate in the

hearing as a member of the public. She cannot sit on the Council at one stage of the hearing and then participate as a member of the public and then be reseated.

Mr. Monahan stated this can be done by breaking the hearing into two pieces to allow the same amount of public participation and application participation in a conditional use hearing first, take a vote on the conditional use application and then move on to the second hearing.

Councilor Cummings reiterated that these are two separate agenda bills. She cannot remember any other time when the Council has voted on agenda bills together as if they are the same one when they are separate. Each agenda bill is voted on separately.

Councilor Burgess noted Council is the hearing body for this Conditional Use Permit. If these issues are to be separated, maybe they should be taken back to the Planning Commission. It is being dealt with at this level to try to bring this issue together. This issue is about a hotel on a piece of property on Willamette Falls Drive and whether it meets the conditions of the Conditional Use Permit, variance requirements, design review or the code. He is not sure he can separate those issues.

Councilor Kovash asked if it is challengeable if the Council proceeds to separate these issues. The Council is the deciding body and he would like to decide.

Point of Order raised by Councilor Burgess. If Council is going to discuss Council's legal position, he suggested it be done in executive session.

Mayor Galle asked Council to go into recess for an executive session pursuant to ORS-192.660, Section H to talk about pending or threatened litigation at 7:32 p.m.

Mayor Galle reconvened the hearing at 7:46 p.m. and asked Councilor Cummings to make comments.

Councilor Cummings stated she has been involved in land use since 1994 and this situation is the worst she has seen. This is a learning experience for everyone. She would like to see better planning in the future. Codes are in place for a reason and they need to be followed; it is only fair to everyone (Council, the public and the applicants). She will be stepping down to help the process move on; the public will hear her on the other side of the podium.

Mayor Galle asked if there were any objections to the Council's jurisdiction to consider this matter.

Karie Oaks, 1125 Marylhurst Drive stated she objects to the Council's jurisdiction for CUP-09-02 for the process the Community Codes have set forth when acting to consolidate AP-09-01 and CUP-09-02. The Planning Commission has original

jurisdiction for the CUP pursuant to CDC-99.060(b)(c), which states, "...The Planning Commission shall have the authority to approve, deny or approve with conditions a Conditional Use, Chapter 60." And, pursuant to Chapter 60.030, Administration Approval Process, "...Conditional Use applications shall be decided by the Planning Commission..." the manner set forth in Section 99.060(b), "...a petition for review by the City Council may be filed as provided by 99.0240(b)..." She noted the language is mandatory; furthermore, the City Council pursuant to Section 99.060(c) has no authority to hear this CUP. This is an initial hearing for the CUP and the City Council is to decide comprehensive plan amendments, boundary changes and appeals, pursuant to 99.060(c). It is never to be the initial hearing authority in a land use decision. This is necessary that the Planning Commission hear the CUP initially and not the City Council because the Council functions as the authority for the appeal of the Planning Commission for the Conditional Use Permit.

The City Council has the authority to consider an appeal of a decision made by the Planning Commission or Historic Review Board whether on its own motion or otherwise is provided by Section 99.240 "...the authority to appeal or seek the review of a decision exhaustion of administrative remedies..." The Oregon Revised Statutes require that prior to filing an appeal, the State Land Use Board of Appeals (LUBA) an appellant must first utilize the appeal opportunities provided by the City. A case cannot be brought before LUBA unless an appeal or petition for review is first filed with an appropriate city review body. It is the purpose of this section to provide parties information about possible remedies prior to litigation.

To that end, the filing of an appeal or petition for review is a condition precedent for further administrative or judicial review. This process will prejudice those with standing who will have no recourse to appeal the City Council decision for CUP-09-01 at the City level thereby precluding an appeal to LUBA. Furthermore it will prejudice the Willamette Neighborhood Association and citizens who have lost the opportunity to be noticed and participate in a Neighborhood Association meeting to discuss the CUP application as provided in CDC-99.030, Neighborhood Contract Required for Certain Applications.

At the CC meeting held March 30, 2009, City Attorney Monahan contends the Neighborhood Association meeting was held prior to AP-09-01 and there was no provision in the code that the applicant can add another application after the meeting and no provisions in the code that requires the applicant to go back and have another Neighborhood Association meeting. She argues the code cannot be expected to provide for everything that the applicant cannot do; however, the code can provide for what the applicant is expected to do. It has in CDC-99-038, The Neighborhood Association Meeting Requirements.

At the March 30th Council meeting, Council decided to consolidate the proceedings pursuant to CDC-99.070, Consolidation of Proceedings. This states whenever an

applicant requests more than one approval or more than one approval authority is required to decide the application, the proceedings shall be consolidated so that one approval authority shall decide the application in one proceeding. In such cases, the hearings shall be held by the approval authority having the original jurisdiction over the application under Section 99.060.

In the following order of preference, Mr. Monahan did not cite all of the consolidation code. City Council, Planning Commission or the Planning Director except for expedited land division applications which shall be processed as described in ORS, Chapter 197, is not applicable. If a conditional use permit and a class one design review application were submitted, ordinarily the CUP would be heard by the Planning Commission and the Class One Design by the Planning Director. This hierarchy dictates that the higher body (Planning Commission) would hear the consolidated hearing.

In this application there is the CUP (Planning Commission); Design Review (Planning Commission) and Variance (Planning Commission). Mr. Monahan did not cite CDC-99.070 in its entirety and in so doing misinterprets the code to the City Council by not pointing out the hierarchy. The Planning Commission has original jurisdiction over the CUP.

CDC-99.060 states, "...The Planning Commission shall have the authority to approve, deny or approve with conditions a conditional use." Mr. Monahan at the last City Council meeting stated the Council has the authority to do a consolidation because of CDC-99.060, "...authority to consider an appeal or review a decision made by the Planning Commission or historic review..." whether it is on Council's own motion or otherwise provided in 99.240. That does not sustain a consolidation. A CUP is a new application; it is not part of the Planning Commission decision that is appeal as AP-09-002. Furthermore, these proceedings are in violation of Section 99.240 that requires exhaustion of administrative remedies.

This Council may only act according to CDC-99.290 action in appeal or review, time limit and authority to change the decision. The approval authority may affirm, reverse or modify the decision which is subject of the appeal. However the decision shall be made in accordance with the provisions of 99.110 of this Chapter. Mr. Monahan only argued that the 99.290 only applies to final decisions and since the Planning Commission was not final, this does not apply to AP-09-02. This is a gross misinterpretation of the code because a decision becomes final once the time period to appeal the decision has expired as provided by 99.150 and once the Planning Commission decision is final; there is no chance of an appeal at the local level. Section 99.290 would be useless.

She challenges the jurisdiction and the proceedings if they are consolidated.

Mr. Monahan stated the section of the code that Ms. Oaks was referring to was 99.070, Consolidation of proceedings. It says, "...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 authority shall decide all the applications in one proceeding. Ms. Oaks is correct there are other provisions of the code that speak to who the initial approval authority is. In some applications the initial approval authority is the Planning Director, some the initial approval authority is the Planning Commission and in the case of the review proceedings, the City Council is the first action there. The consolidation of proceeding language he read says that in such cases the hearing shall be held by the approval authority having the original jurisdiction over one of the applications. The application being talked about is the review of the Planning Commission's decision. The Council is the initial hearing body on a Council review. When you look at a conditional use application where the Planning Commission is the initial authority and you look at that combining with a review of a land use application where the Council is the review body, the hierarchy that is stated in 99.070 would say that you follow the order of preference of City Council. The only way to combine these two is to have the higher body namely the Council be the review authority.

It is his interpretation that you do have the authority under the consolidation section of the code. It was discussed by Council and determined this is the proceeding that Council would do. He still feels it is appropriate for Council to follow that direction.

In terms of the LUBA level appeal, in a case where the Council is the review authority there is no appeal of that decision. Under State law there is no requirement that there be the opportunity for an appeal of a local decision. The initial decision can be appealable directly to LUBA. That is not what West Linn's code speaks to; their code speaks to decisions such as conditional use as having an opportunity for appeal, however under the present circumstances when you do a consolidation, that is what results; that there be only an appeal to LUBA.

Mayor Galle confirmed the Council is the authority on the review from the Planning Commission decision. By adding in the conditional use, the code strongly supports the higher authority based on the second part of what Council is hearing because they would be the authority on the Planning Commission decision. That puts the conditional use under Council's umbrella also. Mr. Monahan stated this type of proceeding and the circumstance that led to this interpretation is not an every day occurrence, but it is his interpretation that the code language of 97.370 can be interpreted to allow the consolidated hearing and be the initial review body of the conditional use application.

Councilor Burgess stated when there is ambiguity in the ordinance Council wrote, it is Council's authority to interpret them.

Ms. Oaks stated all of 99.060 have Section A which is the Planning Directors authority; Section B which is the Planning Commission's authority and then C, which is the Council's authority. When you read the entire Council authority it shows this is not the

best use of what this is. This is for an appeal that is coming to Council and doesn't have anything to do with consolidating. Consolidating can only occur because of the hierarchy because of the authority that is given to each entity in 99.060. Authority is given to hearing plan amendments, zone changes, and appeals.

Ms. Oaks stated she did not realize the State does not require appeal at the local level if that process is not available. That process is available and this circumvents that process and it might be to Council's best interest to look at the Oregon Revised Statutes or ask Mr. Monahan to recite ORS-227 that speaks to the consolidation.

David Smith, Applicant Counsel stated he wanted to make sure for purposes of the record the position of the applicant is preserved in connection with his March 27, 2009 letter in so much as it relates to the jurisdiction for the Council in connection with the call-up review.

Mr. Monahan stated he did not have ORS-227 at his fingertips. Again, it comes to the Council making a determination on the challenge and Council has the discretion to interpret its code and it provided with certain levels of deference in that case. He suggests that Council continue the hearing of the challenges.

Teri Cummings, 2190 Valley Court stated she feels there was an error made in deciding to combine these two issues. It came at the risk of both the applicant and the public (opposition). Chapter 60 is the chapter that should have originally been applied under and some errors occurred in that respect. Under Chapter 60.030, the administration and approval process says (A) conditional use applications shall be decided by the Planning Commission. Shall is a big word. Moving on to 60.070, Approval Standards and Conditions under A, the Planning Commission shall approve with conditions or deny an application for Conditional use. There is nothing in Chapter 60 that provide for an initial hearing to be heard by the City Council. If you go by State law, it is at the peril of violating West Linn's City codes. The City Codes are there to give the public and the applicant an opportunity to weigh in and this is being circumvented. Chapter 60 is different from the rest of this. It has its own requirements and to go ahead and allow these to be combined together when they occurred at different dates and with different numbers and a different specification she feels is an error. If this could have been looked at differently it should have been given to the Planning Commission to decide.

Gary Hitesman, 2188 Clubhouse Drive stated that he voiced first on March 30, 2009 against consolidation. Consolidation is a little dicey however by executing the consolidation requirement in 99.070 the Council is jumping over chapter 60 which was completely left out to begin with. There are sections A-H that talk about public participation. What is being missed here is the entire public participation component that goes along with the conditional use. He does not feel the consolidation rule supersedes that. He is asking for a clarification and an addition from the City Attorney to include both Section 99 and Chapters 19 and 99. Based on the City Attorney's letter

dated March 27, the applicant has stated that the City messed up. This is why everyone is here to debate these issues. He agrees that the process has not been followed through by the applicant and everyone is being strong-armed into going through these deliberations and squeezing the entire public participation process. The Attorney with his interpretation is allowing it to happen.

Mr. Hitesman stated he would like to see the City Attorney as part of deliberations Chapter 19 and 99. This will allow discussion of applicant's issues that were stated in the March 27th letter which also should be open to the public for review.

Roberta Schwarz, 2206 Tannler Drive stated she concurs with what Ms. Oaks, Ms. Cummings and Mr. Hitesman said. She agrees that this is bad planning. The applicant had the obligation to meet the code and he did not do so. The applicant should have asked for a CUP from the beginning and did not do so. This should be two separate hearings. There has not been the ability for the public to voice their concerns at the lower Planning Commission level. That is forever and always gone. There are many appealable issues here with LUBA. Ms. Cummings should have been allowed to stay up.

She talked to the former mayor about this development and he suggested that Ms. Cummings should not step down; that she had every right to be here for a separate application. She asked the Council to not make bad decisions worse by allowing this to happen.

Mayor Galle stated she feels this administration has been open and willing to hearing the public. She appreciates the Neighborhood Association may have not had a second chance to hear it. She challenged the public to come up with how that is a hardship for them based on the fact that this conditional use application is mirroring the other application and they are not going to be in a negative situation.

As mayor she has made every promise to the public and she intends to do that by enhancing, allowing, and encouraging the kind of exchange that just occurred. She wants to hear the public and wants the public to be heard.

Council President Carson moved to continue with the consolidated hearing based on the interpretation of the Code provided by legal counsel affirming the motion made at the last hearing of the matter. This is a consolidated hearing based on the provisions of the code allowing Council to do so. Councilor Burgess seconded the motion.

Ayes: Burgess, Kovash, Carson, Galle

Nays: None

The motion carried 4-0.

Council President Carson moved to extend this hearing until 10:00 p.m. Councilor Burgess seconded the motion.

Ayes: Kovash, Carson, Burgess, Galle

Nays: None

The motion carried 4-0.

Staff Introduction

Chris Kerr, Interim Planning Director reported AP-09-02 is a City Council call-up of the Planning Commission approval of a class II design review, water resources area permit, and a class II variance application for the Holiday Inn Express. The item was continued at the March 30th Council hearing to this date. After the call-up was initiated, staff determined the transient lodging use requires a conditional use permit within the GC zoning district. That is the purpose of this hearing tonight for the consolidated conditional use permit application.

A 70-unit hotel is proposed. The Council will be voting on the conditional use permit first and then the AP in a separate vote. Aerial photographs were shown identifying the location of the site. The property is 1.58 acres in area. The comprehensive plan designation is commercial and the zoning district is General Commercial. There is General Commercial on the north side of Willamette Falls Drive and R-10 on the south side.

The Class II design review is found in Chapter 55; the Water Resource Area Permit is found in Chapter 32 and the variance request is applicable to Chapter 75. Chapter 19 is a specific GC zoning district and it contains some provisions for the general commercial zone. There are no specific criteria found in it.

The Planning Commission approved the specific design review, water area resources permit and variance application with 11 specific conditions. The conditional use permit has separate criteria found in Chapter 60. The site plan was approved by the Planning Commission and is the same site plan that was submitted for the conditional use application.

The applicant has submitted pictures of their Astoria Holiday Inn Express which shows the design, architecture and colors for the hotel. Architectural plans have also been submitted. The hotel proposed will be four stories in height and will take access for Willamette Falls Drive. Pictures were shown of the proposed materials to be used on the project.

The class II variance request has been filed. Due to the fact there are two identifiable wetlands on the property, as well as the Bernert Creek which runs along the north side of Willamette Falls and behind most of the existing properties, cuts across the subject site and comes along Willamette Falls Drive. It bisects the 150 foot buffer that follows

the stream. Because of this the site is subject to the water resources area provisions under Chapter 32. Site videos of the property were shown.

Because of the 150-foot setback requirement and transition area requirement the applicant is proposing to encroach into that water resource area. The majority of the site is located in the transition area for the creek and wetlands.

Chapter 32 has hardship provisions which allow for up to 5,000 sq.ft. of development within the transition area, provided they meet the requirements in Chapter 32. If it is more than 5,000 sq.ft. a hardship provision can be applied for. The applicant is proposing to develop 21,569 sq.ft. of the transition area. Photos were shown of the subject site and surrounding area. The total site area is 68,699 sq.ft. The area outside to the north of the water resource area is 19,176 sq.ft. The total proposed development area on the site being developed is 31,547 sq.ft. The portion of the water resource area to be disturbed is 21,569 sq.ft.

Staff finds the CUP application meets the conditional use permit criteria and recommends upholding the Planning Commission decision to approve the hotel application. The same conditions of approval are recommended for actions, the call-up and the CUP. A new condition 12 has been added since the last Council meeting requiring the applicant to have a mitigation plan to reconcile the area that is being disturbed within the water resource area.

Mayor Galle asked if there was additional correspondence received since the submittal of the packet. Mr. Kerr stated he received two articles from the *West Linn Tidings* came from Karie Oakes as well as an email from her dated May 11, 2009 and an email from Gary Hitesman.

Mayor Galle called for a recess at 9:30 p.m. and the meeting reconvened at 9:40 p.m.

Applicant's Presentation - (20 minutes)

Brad Kaul, Steve Elkins Architects, 11000 NE 33 Place, Belleview, Washington, stated he will be reviewing the Conditional Use Permit. Hotels are not permitted in the CG zone without a Conditional Use Permit (Chapter 60). The site is more than adequate in size. There is 500-feet of frontage and about 150 feet deep. There is adequate area for aesthetic design and treatment to mitigate possible adverse affects. All of the required parking and street access is provided. The size, shape, location, topography and natural features are suitable for the proposal. Due to the existing road bed grade it will be used for the parking lot and building. They will dig into the grade to site the building. The grade allows them ample area to get the building out of any possible flooding; it will be roughly 20 feet above the first floor.

This is consistent with the overall needs of the community because the city does not currently have a hotel. The applicant will be adding to the public utilities by adding sidewalks, bike paths, and storm facilities to treat the water. All of the applicable zone requirements have been met as well as the supplemental requirements of Chapter 52 and Chapter 55. They meet the policies of the comprehensive plan and goals. Supplemental requirements of Chapter 52 and 55 have been addressed.

This proposal will be protecting the surrounding residential areas from adverse affects of privacy, noise and glare. There is residential across the street (200 feet from the proposed building) taking into account 100 feet of buffer. Lighting will have cut-off mechanisms to prevent light from glaring past the hotel site. Building signage will be addressed at another time. They will be protecting environmental features by controlling runoff of with controls with the rain garden that is being added with the sidewalk.

They will be reducing pollution from vehicle emissions by providing uses that are local instead of having to drive elsewhere. The hotel will increase the economic vitality of the city by providing another tax-based option, encourages business that enhances the community by providing another place for family. This is a locally owned business with local family ownership; they have other hotels in the area.

Mr. Kaul stated they have invested quite a bit of money into the sidewalks, bike paths, creek restoration and storm water controls. They believe the hotel will meet the requirements for a conditional use. The design review requires they give the site more of a store-front look. The sidewalk is separated by the creek and the water resource area. They are providing a greater expanse of windows on the first floor, providing pedestrian access to the building.

Dale Regold, Jr., 66 Savonte Circle, lake Oswego stated he is a wetland biologist for Schott and Associates for the past 13 years. Mr. Kerr provided most of existing conditions on site. Approximately 18% of the water resource area is comprised of canopy cover of trees six inches or more in diameter at breast height. Woody vine and juvenile tree species occupy approximately 15.2% of the water resource area while the remainder (76.6%) is covered by grasses and forbs. Most of the native vegetation falls under the mature trees and shrub layer. The remaining 75% is comprised of mixed non-native and native grass and forbs species. Considerable amount of fill will be needed on the site; part of that is the vacated Willamette Falls Drive and surrounding berms and existing Willamette Falls Drive to the south.

The flood plain on the site tends to be wider than what is found upstream and downstream. The removal of the culvert in January has dewatered the wetlands to the west.

Mr. Regold stated he feels the condition of the buffer is degraded outside of the mature trees and native shrubs. The existing water resource area provides little in the way of shading or habitat. The applicant proposes to replant the remaining non-developed areas into a mature shrub, low growing tree habitat. The same can be said for the off-site proposed mitigation areas in the park. In its current state there is a lot of invasive grass in the wetland; some of that can be eradicated and hopefully replanted.

Mr. Kaul stated the net result of the water resource area and the project is a water resource area that has more benefit to it after the development than it does without the development from controlling runoff from the street which now goes straight into the water resource area on large storm events.

Mr. Regold stated the existing condition affords very few habitat and stream functions. Currently this area is pretty stagnant; after mitigation there will be greater than 80% native cover of tree and shrub canopy.

Mr. Call stated the developable area is on the opposite side of the access side of the site and a driveway will be needed across the water resource area to the site. This will be provided without going to the hardship provision because driveways are permitted to get to the developable site. If a coffee hut is built, there will still be the requirement for the frontage improvements, sidewalk, retaining wall near the stream, replace the culvert, add half street improvements, and the rain garden. The price for that is nearing \$1 million.

John Gordon, Real Estate Analysis and Appraiser, GVA Kidder Matthews, stated he has been appraising hotels for the past 25 years and doing feasibility studies for the same property types. Most of his work has been done in the Pacific Northwest. He was engaged by Mr. Patel, the developer to study the financial feasibility of the Holiday Inn Express here and to complete an evaluation of highest and best use for the site. He submitted his evaluation report to the Council.

Mr. Gordon reviewed the report with Council. The report begins with a brief overview of the region and local economy focusing particularly on West Linn and the neighborhood of the site. It discusses the lodging market in the area; there are no hotels in West Linn but they looked at hotels in the surrounding communities. There is a description of the subject site and the proposed improvements. Then the report gives an estimate of how the hotel will perform once it is stabilized. Hotels usually take two/three years to get settled into a market.

Hotel feasibility refers to a comparison of a cost to develop the hotel with the value of the hotel once it is finished. A project is considered financially feasible when the value of the property exceeds the cost by a sufficient margin to attract a developer. The last section of the report compares the potential development of a hotel with potential retail and office developments on the same site.

The purpose and use section is included which shows whether the hotel will be economically feasible and determine whether other uses would be equally viable on the site. They believe that the value of the hotel, based on its projected performance will exceed the development cost by a sufficient market to attract a developer and provide an adequate return to the land. After evaluation of both the hotel development and two alternate developments, generic retail space and generic office space. In the case of retail space, it is typical for a project to be developed in a shell condition and then finished out with tenant improvements. For office space it is more common that the building would be fully built-out on its own. A table is included in the report that analyses the three different property types (lodging, retail, office). There is a comparison of the recent sales of these property types in terms of prices paid per square foot of building area. It was concluded, based on the sale activity they indicated value as a hotel would be something in excess of \$7 million; the indicated values of the retail and office space is considerably less. This is not because of the value per square foot but instead it is because of the maximum building area that is permitted. Based on information provided by the architect and the parking requirements for each use, the architect has estimated that a retail structure on the site could be no more than 10,000 sq.ft. to provide adequate parking on site for that use. An office structure could be as much as 20,000 sq.ft. and the hotel is estimated at about 44,000 sq.ft. In each case those are the maximum building areas that could be developed on this site and still provide adequate surface parking to meet the zoning requirements.

The lower half of the table shows the estimates of the cost to develop each project. These estimates do not include land; they are development costs of the building. In the case of the hotel it includes furnishings and equipment. In the case of the retail space it includes the tenant improvements. In all three cases the cost estimate also includes a fixed amount of \$900,000 for site improvements. Essentially that is the cost to meet the mitigation and other requirements provided by the Planning Department's list of requirements for the development. This fixed cost is relevant to how much square footage should be built on the site. The extent you reduce the size of the building, it does not reduce the fixed component.

The indicated residual value is how much would be left over after the development costs for a return on the value of the land and a profit to the developer. The land is currently assessed at about \$160,000. In the hotel scenario, there would be \$560,000 in profit from this project. If you deduct land value from the retail and office components, the residual profit is considerably less. If you reduce the size of the retail and office buildings to try to maintain additional wetlands, the profit disappears entirely.

A project has to produce profit in order to be viable. It appears from this analysis that of these three categories of use, only lodging produces a profit that would be significant enough to support this development.

Mayor Galle announced that TVF&R is here and available for questions.

Questions from Council to Staff

Councilor Burgess asked if this return of investment over a period of time. He also asked if the office/retail space return of investment is zero. Mr. Gordon stated if the office space were to be cut in half (reduced from 20,000 to 10,000 sq.ft.) the return of the investment is \$200,000 which is not a sufficient profit incentive. The typical ratio is 10-20% of the development cost. The return of investment for the hotel scenario it would take a couple of years to bring the project from raw land to a finished product and the project is sold. Once the property stabilizes and sold, there would be \$560,000 left over.

Councilor Burgess moved to extend the meeting to 11:30 p.m. Councilor Carson seconded the motion.

Ayes: Burgess, Carson, Galle

Nays: Kovash

The motion carried 3-1.

Mr. Gordon offered to answer any questions the Councilors may have after they have read the report. His phone number is included with the report.

Karen Moehling Tualatin Valley Fire and Rescue (TVF&R) the fire service provider for the City of West Linn. She came tonight to answer questions that may be a result of the fire plan review letter that the Fire District did on the project as it is proposed. She received a response letter to her fire plan review letter on Friday and she has not responded to that letter.

At this time the project is not approved by the Fire Department because it does not meet some of the minimum fire code requirements. Alternate methods can be proposed and accepted in the future. The fire plan review letter is something that is reviewed with the applicant to negotiate alternatives to meet the equivalent of the fire code.

Mayor Galle asked why this fire review was not done earlier in the process. Ms. Moehling stated that sometimes the review does not happen until further on in the project. Many times a project is proposed, they don't endorse the project and it later gets approved based on the negotiations for future approval.

Councilor Carson asked since the letter was received on Friday has TVF&R had a chance to review it. Ms. Moehling stated that she reviewed the letter and based on the responses the proposal does not meet the standards. That is not to say that it won't be approved in the future if appropriate alternatives are proposed.

Mayor Galle voiced concern how some of the responses that did not meet approval with the Fire Department were going to be met in the future. Ms. Moehling stated the fire plan review spells out the minimum requirements that are not being met. The fire code provides for alternatives to be proposed if the minimum requirements cannot be met.

Mr. Monahan noted this is an approval criterion that requires some response by the applicant and suggested the applicant's presentation be re-opened to address these issues. Both this April letter and a letter sent out in December identified the same issues. He suggested the applicant and TVF&R be given time to address the issues and give an explanation why they have not been able to address TVF&R's concerns.

The issue before the Council is whether it would be feasible for the applicant to address each of the criteria. If it is found to be feasible, the application can be approved with the condition that all of the criteria of the Fire Department are addressed. He suggested the applicant meet with TVF&R and come back with proof that it is feasible to address the safety issues.

Councilor Burgess stated he would like to hear the public testimony from the people who have come out tonight. One issue has been identified and ultimately it will have to be dealt with.

Applicant's Rebuttal

Brad Kaul, Steve Elkins Architects, pointed out Condition 9 which was approved that relates to the fire marshal's alternative methods of construction. Access shall be approved by the building official and TVF&R at the time of building permit issuance. After approval has been received by the Planning Commission, he contacted the Building Official and TVF&R and a meeting has been set up to go over these issues. This is an issue that needs to be coordinated between the Building Department, TVF&R and himself. Currently the building can be made out of wood; however, they can upgrade the construction of the building to a non-combustible type building that will be significantly safer and upgrade the fire sprinklers systems, etc. That is what is going to be discussed at the meeting. TVF&R wanted to bring the Building Official to the table to make sure that what is being done is a significant increase in life safety. They will go over all the options of mitigation.

Testimony in Support

Buffalo Zobel, 2175 River Heights Circle stated he feels West Linn needs a hotel; they do not have one. If you want a guest or business associates to stay nearby they have to go to Oregon City, Lake Oswego or Tualatin and this forces people to patronize businesses outside of West Linn. This hotel will bring economic benefits to West Linn; not only will it be a benefit to the local businesses, restaurant and shops; it will increase the tax base

to West Linn. It will boost the taxes from the businesses to West Linn. Everyone wins economically.

The Holiday Inn has a very good reputation. The Holiday Inn Express will insure the quality of this hotel for many years to come. It is a beautiful building and they have amended this building to fit into the spirit of Willamette as best they can. He has travelled extensively in his career, both domestically and internationally and stayed at many Holiday Inn Express hotels. They are always well kept up and he always patronizes the local businesses.

The hotel building will be in a commercial zone. It may prompt the other property owners in this commercial stretch to improve the appearance of their property. Willamette Falls Drive is not the best looking commercial zone. This hotel was unanimously approved by the Willamette Neighborhood Association and the Planning Commission. He urged the Council to approve this hotel.

Elizabeth Kieres, 1862 Forth Avenue stated she is here on behalf of the neighborhood association just to report the neighborhood did approve the hotel in their September meeting. They had originally had issues that but they were resolved at the Planning Commission level.

Their neighborhood has a lot of different opinions and it is fair to say that there are people who did not agree with the idea of the hotel at this location. This is an overwhelmingly sophisticated project and as far as the community is concerned they want the benefit of the project. They know it will be awesome in Willamette and be what Willamette needs. She stated she would be happy to help represent any community service to be involved with this project as it goes forward.

Testimony in Opposition

Gary Hitesman, 2188 Clubhouse Drive stated he would like to keep the record open based on the information provided by the real estate appraiser. According to Chapter 19 this is not an allowed use. It is a great hotel, but it is not an allowed use for the commercial zone. It requires a conditional use. The applicant never submitted that in the very beginning. The Patel family has hotels all over the place so they know what they are doing. They hired the best consultants to get things done. Yet, this is one of the least vetted projects in Oregon and it doesn't follow code whatsoever.

It would be nice to have a hotel in Willamette, but you look at Chapter 55, West Linn is not the Land of Oz. You can't take a building designed for Astoria and put it in Willamette and call it good. Where does this building meet the requirements as stated in Chapter 55? The applicant doesn't address it; the building is too high, too large and too massive for the site.

In terms of economic viability this is not in use on this property. There are a lot of other uses here that would be economically viable without having to infringe upon the riparian area. Chapter 32.090 talks about square footage. There was a debate about the Costen property where 4,998 sq.ft. and 5,000 sq.ft. This project blows through the 5,000 sq.ft. by looking at each lot separately. In this project there is a lot adjustment and there is only one lot. He feels the applicant should only get 5,000 sq.ft.

Mr. Hitesman stated he does not think this project meets the criteria in Chapter 32 in terms of economic viability. He doesn't feel the project meetings Chapter 75 either. There is no need for a variance; there are other uses that can be applied here.

Teri Cummings, 2190 Valley Court stated her main concern is with the hardship clause and how it will be interpreted because it can set a precedent for other decision that Council could be making. She hears from the applicant and staff that the applicant should have 5,000 sq.ft. She begs to differ. The applicant has to show the burden of proof that they have disturbed only the very minimum amount necessary. She does not feel the applicant has done that.

The applicant can't compare themselves to real estate plans; they have buildings right next to them they can compare themselves to. This is to figure out whether the applicant is being deprived of a right that other businesses under the same conditions have. This particular property has a significant stream going through it. It is not valued very much. The applicant has only paid \$100,000 for three lots; that is because it is not easy to build on. The fact that it is more expensive to build on does not give the applicant the right to disturb more and more area just to make a building that is larger than any other buildings nearby.

As far as the safety issue of TVF&R the City is going to have to develop a better process of making decisions in public. This is a safety issue and could involve human life. It is going to be on everyone's shoulders if a good decision is not made.

With a decision like this that leaves significant room for doubt, she suggested the Council deny the application if they don't have strong reason to believe it is approvable, that there is enough area to provide access all around the building for fire protection, and if it is not feasible, she pleaded that a second evidentiary hearing be held. It is supported by LUBA law and what should be done.

Karie Oaks, 1125 Marylhurst Drive stated the applicant knew the hotel was not a permitted use when he provided a list of permitted uses to satisfy the approval criterion in Chapter 32 at the Planning Commission level. It surprises her that the applicant did not apply for a CUP at that time. The CUP application has different criteria than just chapter 32, Chapter 55 and Chapter 75. CDC-60.070(A)1(a) states the site size and dimensions provide adequate area for the needs of the proposed use. This site with the wetland and streams and the protections provided those areas allows the appropriate

size for a hotel. The building is too big for the lot size. CDC-6.070(A)2 says one of the approval criteria is the characteristics for the site is suitable for the proposed use considering size, shape, location, topography and natural features. The water resource area constraints this land and the protections afforded to it regardless of their existing condition which the applicant has tried to repeatedly, as well as his wetland specialist, say are degraded; therefore they do not deserve protection.

The intent of Chapter 32 is to enhance and protect the water resource area. This proposed development if approved will take out 21,569 sq.ft. of transition area. Staff implied that 10,800 sq.ft. is already disturbed. The provisions in Chapter 32 apply regardless of the condition of the land.

Staff has made an error in not including the variance to the 15-foot setback as required in Chapter 32.090. This is going to be occurring in the water resource area for the sidewalk. That is why she sent the email and spoke over the phone with the Department of State Lands (DSL) because this is a criterion, it is part of the mitigation that they provide evidence that they have submitted and DSL has accepted their permit. The applicant has not done this and it concerns her because the study area provided by the applicant's wetland specialist is contained only to the property boundaries; however, this project site extends into the public right-of-way where the wetlands also extend.

The existing conditions which the staff erroneously reported on also no longer have an access road exiting when they were going to utilize the vacated Willamette Falls Drive. That was destroyed when the flooding occurred on that property. Therefore the applicant will need to build a road and there are no plans for that. In order to know if the removal fill requirement of 50 cubic yards has been exceeded the applicant needed to provide volume measurements. Tom Soppe responded to her email and indicated the applicant has 725 sq.ft. It is required in the code to show evidence that the applicant has filed a joint application permit to both the State Land Use Board and Corps of Engineers. That has not been done.

When she was at the City offices earlier this week she spoke with Peter Spir, Planner for this Application she questioned him about the pre-application conference meeting summary notes because it does refer to another creek on the property to the west that this applicant would have to address the transition setback that would extend into his property for protections of that creek. She has not seen anywhere in this application where that was addressed. It should be in the storm water drainage (rain garden) is proposed.

The sidewalk and rain garden are two permanent disturbances in the water resource area. This has not been delineated and the boundaries have not been marked by a wetland specialist. The impacts to the water resource area cannot be determined without that. The riparian and wetland maps are a tool and delineation on the site has

to be accurate. Things can change and DSL was surprised the applicant had not asked for a modification to the letter of concurrence from the DSL.

Mayor Galle stated she spoke to the applicant and they reported at the time of the pre-application they were given a chart that specifically indicated that the riparian corridor is a 100-setback from the riparian area and nothing changed from there.

Neutral Testimony

Aileen Ludwick, P.O. Box 322, Marylhurst stated she was watching the meeting on TV at home and come to the meeting after she saw the Council go into executive session. She has lived for 10 years in West Linn and she has watched this Council and there has been increasing openness, transparency, following rules and not asking for after the fact things. She asked the Council to extend this meeting to allow due diligence. There obviously was not due diligence from the applicant. The process is not being followed, something is slipping up somewhere.

Mr. Monahan recommended the Council consider at some point in the proceedings tonight to extend this and make a decision at a later date. Mr. Jordan suggested extending the meeting to Tuesday, May 19th at 6:00 p.m., beginning with the applicant's rebuttal. The City will not accept additional information after 5:00 p.m. on Monday, May 18, 2009.

Council President Carson moved to continue this hearing to Tuesday, May 19, 2009 at 6:00 p.m. to allow the applicant time to address issues raised by the public and Council. The record will be left open for additional written evidence to be received no later than Monday, May 18, 2009 at 5:00 p.m. On May 19, 2009 the meeting will be reopened and public testimony will only be taken on new evidence provided. Councilor Burgess seconded the motion.

Mr. Monahan explained Council could close the public testimony portion of the hearing and leave the record open for additional written evidence or they can reopen the hearing at the applicant's rebuttal and if the applicant submits evidence in support of its application someone could make a request to hold the record open to review the new material. A decision can be made at that time whether the magnitude of the evidence requires more opportunity to review.

Councilor Cummings noted there have been proceedings before where once there was a window of closure for new evidence; at the hearing no new evidence is allowed.

Council President Carson called for the question:

Ayes: Burgess, Kovash, Carson, Galle

Nays: None

The motion carried 4-0.

Mayor Galle opened the discussion to requests from Council for information from the applicant to be presented at the next meeting.

Councilor Burgess asked staff to confirm:

- Chapter 19 criteria on lot coverage cannot be more than 50%. There is no condition of approval that requires the lots to be consolidated. Is the application dealing with one lot or four lots?
- Language about maximum setbacks if there is an arterial within 20 feet
- Reference to a non-functioning state in terms of the existing paved area
- How far the building is proposed out of the flood plain
- Material board showing materials to be used
- Roadway and parking is on pervious hard surface or impervious
- How the sidewalk will cross the water
- What access is available to allow a patron of the hotel walk to a local restaurant
- How does a patron get back to the hotel if they have parked in the northwestern portion of the parking lot
- An explanation of the 5,000 feet variance (are there four 5,000 exemptions given)
- Has the criteria in Chapter 55 been met

Councilor Carson requested information on:

- How the sidewalk will connect across the lawyer's property
- There needs to be a crosswalk across Willamette Falls Drives connecting to stairways
- Now that the culvert is gone will it be replaced with a bridge or different culvert
- Address the need for DSL and Corps of Engineer permits on volume
- Address stream at the end of the property

Councilor Kovash stated he previously submitted his questions. He will review the report received tonight from the appraiser. He requested additional information on:

- How the applicant will handle the closeness of the walkway to the waterway (8-foot intrusion into the waterway)

Councilor Burgess asked for information on:

- A response on the encroachment into the riparian (economic analysis of putting parking on the first floor)

Councilor Burgess noted this is a very significant application. The applicant is asking for a whole lot and they need to do a better job in answering the questions and concerns.

Councilor Carson asked that the issues related to fire safety be addressed by the applicant and the Fire Department and not left to the possibility that the application will be approved.

Mayor Galle asked that the applicant step up their presentation. She would like to see the applicant address the issues that have come up tonight clearly, professionally and factually using the code references and specific examples.

Adjournment

Hearing no further business from Council, Mayor Galle adjourned the meeting at 11:30 p.m.

RESPECTFULLY SUBMITTED,

Tina Lynch /s/

Tina Lynch
City Recorder

APPROVED BY THE CITY COUNCIL
ON JUNE 22, 2009

Patti Galle /s/
Patti Galle, Mayor