

WEST LINN CITY COUNCIL MEETING MINUTES June 8, 2009

Council Present:

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

Council Absent:

Councilor Teri Cummings

Staff Present:

Chris Jordan, City Manager; Tom Soppe, Associate Planner; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

Call to Order/Pledge of Allegiance

Mayor Galle called the meeting to order at 6:53 p.m. She asked Julia Simpson to lead the flag salute.

Proclamations, Recognitions and Presentations

Mayor Galle announced today at 5:30 p.m. the students from Sunset Elementary School passed a Crustacean Bill (HR -37) naming the crab the official Crustacean of the state.

Community Comments

Alice Richmond, 3939 Parker Road, passed out information to the Council and the city attorney. The West Linn Community Concert was fun for everyone. Through the efforts of a great volunteer team and the efforts of sponsors, their giving back to the community has resulted in successful events.

In 2005 she introduced the first concert in the park as well as the first October Fest event to the citizens. All events were well attended. These free-to-all events are solely funded by corporations, businesses, and others at no cost to taxpayers. She was able to raise the budget each year keeping the balance of \$10,000 to \$14,000 in the bank. This year it is within her budget again, including her contribution of \$200. This year will mark the city's first Fourth of July national celebration.

Lately more events have been included in the summer time and demanding the same site to hang a banner announcing certain activities being staged. She was told it would cost \$500 to hang the banners. She studied sites for safety and visibility and worked with ODOT (Oregon Department of Transportation) and PGE (Portland General Electric) directors in the selection of a site. PGE called and said they would hang the banners at two different sites and remove the banners as many times as needed.

Ms. Richmond stated she is grateful for the public service and sponsorship from PGE and ODOT; she is overwhelmed by PGE and ODOT's compassion in regards to reach the citizens. West Linn residents will now have their first Fourth of July at no taxpayer's cost. The banners will be placed on Highway 43 near Shady Lane and near Central Village.

Ms. Richmond stated the City Manager has disapproved of these locations and she is here tonight to ask Council to evaluate and approve the banner locations. If Council agrees, many citizens will enjoy and celebrate the Fourth of July and October Fest in September. Family style fireworks are provided; music, food, games, prizes, raffles and other events are planned.

Mayor Galle asked staff to prepare information on the code/authority for banners and the rationale for the chosen locations to be discussed at the next worksession. Ms. Richmond will then be informed of the decision.

Roberta Schwarz, 2206 Tannler Drive, stated she feels it is a great idea to have this Fourth of July event and hopes Council can find a way to make it all come together and have good spots for signage.

Ms. Schwarz stated she really appreciates the Mayor's open office hours. The citizen's response has been encouraging. She stayed for an hour and a half and found the

citizen's questions, concerns and comments to be very interesting. The accessibility of this council is extraordinary.

The White Oaks Savannah Tour was on Friday, June 5. There were 16 volunteers that made this a very warm engagingly wonderful tour for Metro. Five middle school kids prepared posters for the event and volunteers came out and slashed the pathways before the event. She thanked all the people who helped out and thanked Councilors Carson, Kovash and Mayor Galle for attending. She also thanked the person who provided three loaves of home-baked bread.

Ms. Schwarz announced on Thursday, June 11th, they will be going to Sun River to take a presentation about White Oaks Savannah. The Trust for Public Lands gave them tips on how to make the most of their 20 minute presentation. When she stopped and added up the time spent on this project it totaled about 4,000 hours (20/week-4 years); every hour worthwhile. They will know by the end of July how much money will be funded by Metro and State Parks. The next step is to secure Federal monies for the middle 5.65 acres.

Sally McLarty, 19575 Rover Road, #64, Gladstone 97027, stated she is the Bolton Neighborhood Association president and here tonight to talk about the new West Linn logo. They were not aware a change was eminent for the logo. They feel it is inappropriate for the city of hills, trees and rivers. The dictionary defines a logo as an identifying statement and somehow a dead tree does not send the hills, trees and rivers message. She suggested the City use Elizabeth Rocchia's West Linn flag design which does a great job describing West Linn's treasures.

Ms. McLarty Invited everyone to Hammerle Park on Wednesday, July 1, and July 22 at 7:00 p.m. to hear the Clackamas Community Band. These concerts have been sponsored in Hammerle Park since 1960. She encouraged the citizens to bring picnic supper, stay for the concert under the trees and enjoy the old-time band music.

Maddox Woods will be having their annual "Lighting of the Woods" in November. They have had regular monthly clean-up days in Maddox Woods which connects to Burnside Park. They are now working on Westridge Park which will eventually connect to Mary S. Young Park.

Karie Oakes, 1125 Marylhurst Drive, asked Council to make information regarding the city meetings available to the public at the meetings. She was unable to obtain information about tonight's meeting so she could prepare for tonight. The applicant has submitted evidence and arguments and the public has submitted several pieces of information. She feels that all this information should be available; she is always advocating for public participation that is easy, accessible and understandable.

Consent Agenda

1. Agenda Bill 09-06-08A Approval of Council Meeting Minutes
April 13, 2009
2. Agenda Bill 09-06-08B Approval of Council Meeting Minutes
April 27, 2009
3. Agenda Bill 09-06-08C Approval of Council Meeting Minutes
May 11, 2009

Council President Carson moved to approve the Consent Agenda consisting of approval of the Council minutes of April 13, 2009 as revised and Council meeting minutes of April 27, 2009 as revised. Councilor Burgess seconded the motion.

Ayes: Carson, Burgess, Kovash, Galle

Nays: None

Abstentions: None

The motion carried 4-0.

Report from the City Manager

Chris Jordan, City Manager announced there will be a town hall meeting on June 11, 2009 in Council Chambers to discuss the Solar Highway Project and again on June 16th at noon at the library. Information is online regarding this project and we offer the ability to submit questions or comments to the city.

Business from the City Council

None

Business Meeting

1. Agenda Bill 09-06-08D City Council deliberations/decision on
Holiday Inn Express, CUP-09-01

At 7:20 p.m. Mayor Galle called to order the public hearing for the Council to continue to review the Planning Commission's decision on the application for the Holiday Inn Express proposed at 2400 to 2450 Willamette Falls Drive and to consider the proposal for a conditional use permit to allow a hotel in the general commercial zones. The hearing on the review of the planning commission approval was opened on March 30, 2009, with hearings held on both applications on May 11 and 19, 2009 and continued to this date for Council deliberation.

At the close of the hearing on May 19, and closure of the record to all other parties, the Council responded to a request by the applicant to submit final written arguments in support of the application by Monday, June 1st and continued the hearing deliberation until this hearing on June 8th. The applicant also agreed to extend the 120 day clock to June 12.

There will be no public testimony accepted tonight, the record of the hearings and the applicant's final written arguments are in the hands of the council for deliberation.

Mayor Galle asked if any member of council visited the site, had any ex-parte contacts or conflicts of interest to declare. Councilor Burgess stated he had no ex-parte contact, no conflicts of interest and drives by the site every day. He has seen no difference in the site since the last hearing.

Council President Carson stated she had no ex-parte contact, no conflicts of interest and walks by the site regularly every morning and she has seen no difference in the site since the last hearing.

Councilor Kovash stated he had no ex-parte contacts, no conflicts of interest and had not been to the site since the last hearing.

Mayor Galle stated she had no ex-parte contacts, no conflicts of interest and had not been to the site since the last hearing.

Mayor Galle asked if there were any points of order to declare.

Ms. Schwarz stated she wanted to make sure there was no new information given by applicant.

Ms. Oakes stated she had two concerns; (1) Will the public have an opportunity to respond to any information given by the applicant and (2) Will any changes to the Sensitivity Analysis submitted by applicant's real estate advisor be considered new evidence and if so, will the public have an opportunity to respond.

Ms. Oaks stated she has not been able to locate a copy of the map presented at the last meeting that showed the site plan with the new proposed sidewalk at the far end to meet fire requirements.

Councilor Kovash stated there were very minor changes to the report Sensitivity Analysis previously submitted. The table designation/label was changed and the new table has three additional sentences at the bottom of the document. The original submittal (Table 8) has the same figures in it as the new Table A of the Sensitivity Analysis.

Ms. Oakes asked if the difference between what was submitted and what was previously submitted would be considered new evidence. Mr. Monahan asked Mr. Kovash to read the three lines. Councilor Kovash stated the Table 8 in the previous document ended with a line whose title is, Indicated Residual Value and that line is the fourth line up on the new Table A. What is being showed are the cost and expenses (residual value excluding the land). The report then shows (the next line down) the Land Assessed Value of \$160,000 across all the entries. There is a new residual profit which is the expected money to be earned by the developer and also the ratio to development cost which is \$560,000 out of a \$6 million investment for 8.9% return.

Councilor Kovash stated he feels this is not new information; just a different way of restating of the same arguments of the financial results of the development of the property.

Mayor Galle asked if the prior document reflected the same numbers as the document submitted. Councilor Kovash stated the numbers have changed a bit; the consultant did not include in Table 8 the land value. He did subtract the land value from the residual value and added the ratio to development cost.

Mayor Galle ruled this as new information and stated she would allow the public to comment on this issue specifically later in the hearing.

Recess was called at 7:32 p.m. and the meeting reconvened at 7:53 p.m.

Ms. Oakes voiced concern about testifying on new evidence she had not yet seen. She didn't expect to receive information from the city; she knows to look on line. However, at the last hearing it was her understanding the applicant was to provide argument and no additional evidence.

Mayor Galle reopened the testimony portion of the public hearing to speak only to the change in Table A, Sensitivity Analysis which was deemed new evidence. After public testimony the applicant will have an opportunity to respond.

Ms. Oakes, 1125 Marylhurst Drive stated as a matter of process, once new evidence is presented, the public is allowed 7 days to respond. Mr. Monahan noted in regards to the period of time an applicant had to submit final arguments, there is no provision under ORS-197.763.6(e) that talks about what happens if an applicant submits new evidence. There is nothing in the statutes about a requirement of a seven day extension for new evidence.

Mr. Monahan stated Council has the authority to accept testimony on the information deemed new evidence which has been available since June 3rd. This hearing alone can be the comment period. After the comment period, the applicant should be given the

opportunity whether they agree to these comments and the opportunity tonight to preserve the record by allowing the additional seven days.

Mayor Galle called a recess at 8:01 p.m. to allow the public time to review the code and prepare for their public testimony. The meeting reconvened at 8:07 p.m.

Mr. Monahan stated Section 99.200 of the Community Development Code refers to evidence and it doesn't provide guidance. The applicant was given the opportunity to submit final written arguments in support of the application. At the conclusion of the meeting on May 19, 2009, in reference to ORS-197-763.6(e) states the applicant has the opportunity to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record but shall not include any new evidence.

Since the Council has deemed that a portion of the submittal is new evidence a possible resolution would be to delete what the Mayor has determined to be the new evidence (the final three lines of Table A) and take them out of the record. This will eliminate the issue of new evidence.

Councilor Burgess asked about the site plan map that Ms. Oakes referred to regarding the sidewalk. Mr. Monahan stated the site plan map was on a power point presentation on May 19. Staff asked the applicant to more clearly show the sidewalk. It had already been referred to as a component of the application elsewhere in the application. This map was on a power point presentation and there was an opportunity for public to speak on that map on the 19th. The opportunity to respond to this revision to the plan (not new evidence) was evidence already in the record.

Councilor Burgess asked if the three lines mentioned were the only portion of the Sensitivity Analysis that is being deleted. Mr. Monahan stated the three lines are the only point the Council is focusing on. The determination made by Council during the points of order portion of the hearing was it is new information. There was no other new information.

Councilor Burgess stated he has no problem removing the last three lines. To him it is just a reiteration of the comparison provided earlier of lodging versus retail/office use. It was ruled as new information.

Councilor Kovash stated the last three lines of Table A are a different way of expressing the line above it which is also the last line on Table 8. It is just a different way of saying what was said previously, it doesn't change the meaning, content or the conclusions. He has no problem eliminating the last three lines of Table A.

Ms. Oakes stated while you might want to delete these lines, they have already been accepted into the record by Planning staff and council. Public comments received by the

planning staff by citizens that did not understand they could not comment were not accepted into the record as received. She feels this is a prejudice. She is not prepared to speak on this issue tonight. She stated for record she believes that when new evidence is introduced the public should be given seven days to provide written comment on it at the very least and in some cases, the hearing continued for new evidence.

Mr. Hitesman, 2180 Clubhouse Drive stated in relation to the three lines there is the legal argument and there is the argument Council Kovash made regarding what the three lines means. He does not know what the three lines mean; they have been stricken from the record. If the three lines do stay, it is information that the public cannot understand. He did not feel he had enough time to read the information carefully to see if this is new information or not.

Staff has been good in consistently getting information to him. The information was delivered on time, it referred to a link on the website, and he clicked on that site and the information online was clear and legible. He had all the information in front of him. In terms of process he has been following this issue since October and he is very happy with the way staff has presented this information. He feels the applicant has been doing as little as they could to get the project approved.

Councilor Kovash noted the applicant has stated they have submitted no new evidence. He doubts if they would object to eliminating these three lines which they feel is not new evidence.

Matt Smith, representative on behalf of the applicant stated he agrees to withdraw the last three lines of Schedule A.

Councilor Carson moved to delete the last three lines of Table A in the Sensitivity Analysis. Councilor Burgess seconded the motion.

Ayes: Burgess, Kovash, Carson, Galle

Nays: None

The motion carried 4-0.

Mayor Galle closed the public testimony portion of the hearing and opened the meeting to discussion among the councilors.

Councilor Carson referred to the newly proposed conditions of approval, Finding 4, Page 6, relating to the crosswalk across Willamette Falls Drive. The first sentence states, "...there is a compelling need for crosswalk across Willamette Falls Drive connecting the site to the south side of the street." She suggested adding to that sentence, "...across from the farthest east stairway."

Councilor Burgess stated he is swayed by fact the Planning Commission approved this project, staff has recommended approval, and swayed by Councilor Kovash's issues

raised in terms of hardship and need. There is confusion in Chapter 32, due to a typo. Chapter 32 provides for variance over and above the 5000 sf hardship. Some applicants in the area of this application would have a hard time meeting Chapter 32 without the 5,000 sf allowance.

There is a specific variance procedure over and above the 5,000 sf. The applicant is asking for more than the 5,000 sf citing extraordinary circumstances. He feels there are unusual circumstances in terms of the lots that create a difficult situation by I-205 years ago and the fact that Chapter 32 is more recent than the development around it.

In terms of preservation of property rights the same as others, all others have the same rights to develop within the code and meet Chapter 32 or request an exemption/variance.

As to the minimum variance the applicant has testified they are developing three lots, which taken individually could have a certain impact at a minimum and was approved by the Planning Commission and/or Council of 5,000 sf and perhaps variances beyond that. Because of the variance it should be considered as one lot and he agrees it should be one lot. He feels the applicant has significantly met the requirements to develop within Chapter 32 in terms of the ability to get return on investment and the fact that there are three lots that could have a greater impact if developed separately. Combining the lots and dealing with the impacts could be viewed as the minimum variance requested.

While he may not think the mitigation is adequate, it was proposed and accepted by the Planning Commission for the mitigation off site of a comparable value. These issues are compelling as well as the need for a hotel. No one has said they didn't want a hotel, there is a need for a hotel, and in fact there is no hotel in West Linn.

Councilor Kovash stated in reference to the final argument from the applicant, the first couple of pages are from Mr. Gordon, DVA Kidder and in that analysis he states the development is considered economically viable when the value of the project, upon completion exceeds development cost by a margin sufficient to cover the value of the land and provide an adequate return to the developer. The residual profit expected to be earned by the developer was discussed. Profit ratios for the developer and in the three options the applicant presented stated only the proposed hotel is expected to generate sufficient profits to warrant development. What was presented in the previous submittal on Table 8 and again in Table A is indeed the residual value of retail/office is significant. The hotel has a larger return, but the retail/office footprints are below the square footage without any disturbance.

The City's criteria are that no other application could result in permission for economically viable use of property. Not only would the developer make a profit without disturbing the water resource area but there are plenty of examples of

properties and businesses in West Linn that are profitable and have a footprint that is less than the land that is available without disturbing the water resource area. The economically viable use of the property is a use; it is not for developer profit. The uses for this zoning are found in Chapter 19 and they do not contain a hotel and they also do not contain developer profit. The letter from DVA Kidder is not applicable because it only deals with developer profit.

Councilor Kovash referred to the last two pages of the applicant submittal, Hardship Provision Economic Viable. Under this hearing the applicant argues that the alternative to the hotel is a separate development for three lots. In paragraph 6, the next to the last sentence there are three legal lots within the water resource area and could disturb 5,000 sf on each lot without need of a variance. This is not true; Chapter 32 says an owner would be deprived of all economically viable use of the land. Relief may be granted up to 5,000 sf.

The applicant makes the issue the imprint on the water resource area would be worse with development of three lots than with current development. Potential use for an office makes the issue of an imprint on the water resource area worse with the development of three lots than with current three lots. The last three short paragraphs on that page state, "...the western most lot has 4,500 sf of buildable land outside of the water resource area. The middle lot is entirely within the water resource area; and the eastern lot has 9,000 sf of buildable area outside the water resource area." The result of these lots is 13,500 sf. At the May 19th meeting, I (Councilor Kovash) made a point of making sure that the applicant and staff agreed on the amount of land available for development without any variance. It was agreed that there was 19,154 sf of developable land. This proposed development covers only 13,500 sf. This analysis of the applicant's office is flawed; they have fundamental errors in their analysis. The entire argument is not applicable.

Council must make a decision on the application before them; not on a hypothetical application that may or may not be submitted sometime in the future. The current submittal leaves the council with the same decision (code-wise) to make as they were on May 19th. Under Chapter 32 the applicant must show that no other application can result in the economically viable use of subject property. The applicant has not demonstrated that. There are many businesses in West Linn that use far less land than is available without any variance. He feels the applicant's attempt to comply with Chapter 32 fails.

The applicant is asking for an additional 16,000 sq ft. The variance is larger than the original developable area of property. The magnitude of this variance is unprecedented and if granted may be a precedent the City may not want to live with. This is not exceptional or extraordinary circumstances. Page 4, under Chapter 75 states, "...exceptional or extraordinary circumstances apply to the property. Councilor Kovash read into the record suggested language for denial finding #2, "...Exceptional or

extraordinary circumstances apply to the property which does not generally apply to other properties in the same zone or vicinity and results in lot size or shape legally existing prior to the date of this ordinance, topography or circumstances over which the applicant has no control..."

The applicant does not explain why the shape of the site might be exceptional or extraordinary and the shape of the site does not manifest itself to be exceptional or extraordinary. The percent of the site that is in a water resource area is large. The site is along a drainage way which is a common rather than exceptional or extraordinary situation in West Linn. Parking requirements are a function of the applicant's intended use of the site; not of circumstance that applies to the property. Parking was in the staff report as to their findings which were in keeping with what the applicant had said were extraordinary circumstances.

In conclusion, Councilor Kovash stated he does not agree it would be impossible to develop the site viably without a 16,440 sf variance per Section 75.0601. It has been shown it is common for viable businesses in West Linn to occupy 10,000-20,000 sf of land.

Staff then goes on to say the water resource area on the property is not extraordinary circumstances due to the fact that the Community Development Code (CDC) allows for development opportunities for commercially zoned properties that include a water resource area. Therefore there is no exceptional or extraordinary circumstance and this criterion is not met.

Staff states in their staff report that a variance must be necessary for the preservation of a property right of the applicant which is substantially the same as the rights possessed by other owners of other properties in the same zone or vicinity. There is no violation of the applicant's right to develop this property because as demonstrated in the record the applicant maintains the right to develop more than 19,000 sf of the site without a variance. Therefore, this criterion is not met.

The Conditional Use Permit suggests the applicant needs a conditional use permit for this application or this use which is not part of Chapter 19. He asked for the number of variances being requested by the applicant at the last meeting. He feels the number of variances and the magnitude of the variances show the size of this site is not suitable for the intended use. If the site were suitable for the intended use, there would be no need for an unprecedented granting of a variance for more than double the size of the property, the allowance of an intrusion into the legal setbacks from the wetlands, and the storm drainage area would not have to be sited in the water resource area. The site doesn't accommodate the size of development that is being contemplated.

Councilor Burgess stated he takes exception to the fact that the ordinance does not talk about profit. He has never heard the term economic viability ever used outside profit. If

the city is asking the applicant to show economic viability, one would have to say profit. They are not separate issues. In terms of many other developments that don't require economic viability, he doesn't think there are many other developments that have the same situation, certainly in terms of water resource area. Many developments are in shopping centers, in downtowns, etc. This is the city of hills, rivers, trees and drainage ditches that have to comply with Chapter 32. He is not insensitive to the water resources area and feels this is a good Chapter; however, there is a need for revisions as the city deals with development.

The property next door, which is on the list of "viable businesses" in terms of square footage, never went through the Planning Commission, was a re-development, did not require any of the site requirements that are required here in terms of frontage on an arterial and the type of development being considered. The parking requirements for the hotel are less than office and retail. He has always been told in terms of variances that each one is on a case by case basis. There is no precedence in terms of granting a variance that if you do it for one you must do it for others. Much of the criteria talks about unique and it would be hard to say this property is not unique in any way.

Councilor Carson stated she concurred with Councilor Burgess' comments. She feels there is an exceptional circumstance on this property. She thinks viability is realistic to consider as a part of this; there needs to be a business that is going to be successful. There is no need for more buildings that are not economically viable. In regards to how the discussion related to whether or not there is 5,000 variance potential for each of the three lots impacts her opinion of the overall application; in general the arguments related to what the impact would be if you have the three lots developed separately is compelling.

Councilor Carson voiced concern about a significant part of this property that the applicant will be building on is a paved street and already has degraded wetlands and is part of the overall area that will be included in the disturbed land. This makes the site exceptional and she feels there is merit in the fact that the water resources area may actually be enhanced through this development. She feels this application does meet the variance code. Even though it is a very large variance and she agrees that it is a very difficult bar in terms of looking at the variance code; however, she thinks the applicant has addressed those issues.

Councilor Kovash stated he is for profit. The problem he has with profits here is that the applicant only addressed the profits to the developer. The code requires there is a viable use and the use is not the developer. The use is all the other businesses that are viable on less land. The code indicates if there are any other viable uses, the variance can't be granted. To approve the variance would mean there is no other application that could be submitted that would be a viable business. This hurdle is much too high and it is clearly demonstrated in the surrounding area that whether the property is surrounded by other development or a water resource area, it doesn't matter. The code

in Chapter 32 is designed to protect the water resource area. This property is large enough for all types of business and it takes only one business to deny the variance.

Councilor Burgess noted in regards to the issue of conditional use permit under the code says hotels are a conditional use permit. Hotels are allowed in the general commercial zone if certain conditions are met in terms of need and traffic. He feels the applicant has addressed these issues in terms of the improvements. They have gone as far as a school in terms of meeting its requirements for being in a residential zone. A drive-in restaurant is always a conditional use permit because it traffic; obviously a hotel has a specific kind of traffic. No one has objected to those aspects of this development in terms of why this is a conditional use permit. Not a lot of business types can be put on this property that are economically viable. The applicant has indicated, based on their view of the economy and the market, they can build a hotel and can get a return on buying the hotel and running it. He has a hard time believing anyone can say there is no reason this property cannot be developed to be an economically viable use given it abuts a freeway slope and has a 100-foot riparian setback from a water body that is in bad condition in terms of preservation. If this site is not developed, the site will continue to be in poor condition. This is an ability to improve the water resource area at this location. There are unique aspects of this property.

Councilor Kovash stated the applicant has gone through the effort to design a hotel for the property. However, he feels it is the city's responsibility to look at other uses of the property that would be viable. The code mandates other uses be reviewed and if the Council did not look to see there were other uses that were viable, they would not be fulfilling their duties to the code. The applicant has demonstrated that retail and office are viable and profitable without disturbing any of the water resource area. The code requires if the applicant can do that, the variance cannot be granted.

Councilor Burgess noted if the current development to the east were to build new today it would probably not be considered economically viable. If the current business next door had to meet the same requirements that are on this application (same square footage), he doubts it would ever be developed.

Councilor Kovash stated there is plenty of land for other viable businesses and the developer himself states there is adequate return to the developer and certainly they are viable entities and they do not require any variance for taking over the water resource area. This current application may improve the water resource area, however, they are paving over portions of that area. He feels the city can do better.

Councilor Burgess stated whether it is this development, another development on all three lots, or other developments on each of the three lots the applicant will have to get access and build a driveway or three driveways.

Councilor Kovash stated there is already a driveway and the wetland there is disturbed; no one is arguing the access. The access is secure and it is not an issue.

Councilor Burgess stated there was an issue of the water resources area was being degraded because of the access. Yes there was access before and this will be an improved access; before there was a small pipe which blew out during last winter's storm. This applicant is willing to put in a three-sided culvert and yes it will be paved in that area as other parts of the resource area will be paved. This will be an improvement over what was there before. There will be pavement for any development whether it is one or three developments on these parcels. Any business in this location will require access and therefore pavement through the water resource area is in order to get to the developable property outside the riparian area.

Mayor Galle stated there is no doubt in her mind that West Linn will have a hotel; it is part of the evolution of a city. As a political body the Council is a steward of the codes that are developed. The applicant is proposing to encroach into 16,000 sf of the riparian area. Regardless of what is developed there, precedence states a fact. At some point there needs to be a stopping point and she feels this application does not meet the standards of the spirit of how the code was written. She is concerned about the fact that a variance can be put on another variance and reasons presented to go beyond what the code states. The code states if there is proof there are other business that are economically viable, the application cannot be approved.

Mayor Galle stated she does not feel there is anything exceptional about this application and she doesn't feel there is particular hardship. There has been much said about the significance of the riparian area and the condition of the riparian area. This is a water resource area, it meets the standards for a water resource area, and she feels the city needs to respect that. The 16,000 sf exception is a major variance to her.

Having a hotel in West Linn is not out of the realm of reality if this application is not approved tonight. There is very little property left in West Linn and she would like to see what is left to be used to the best of its design-ability, suitability, and with respect for the environment and Goal 5. She feels the hotel will find another home that will meet all of the code requirements and be an asset to the community.

Councilor Burgess noted there are two issues before Council tonight; (1) conditional use permit and (2) design review variance.

Councilor Burgess moved to approve CUP 09-01 including the additional findings and conditions of approval as presented by staff as in their memos with the suggested amendment by Councilor Carson to the newly proposed conditions of approval, finding 4, Page 6, "There is a compelling need for a crosswalk across Willamette Falls Drive connecting the site to the south side of the street across from the farthest east stairway." Council President Carson seconded the motion.

Ayes: Burgess

Nays: Kovash, Carson, Galle

The motion failed 3-1.

Councilor Burgess moved to approve the consolidation findings one through six and denial findings one through four as proposed in staff's memo dated May 28th.

Councilor Carson seconded the motion.

Ayes: Kovash, Carson, Burgess, Galle

Nays: None

The motion carried 4-0.

Councilor Kovash moved to amend denial finding #2 with his suggested language (copy of language submitted into the record). Councilor Burgess seconded the motion.

Ayes: Carson, burgess, Kovash, Galle

Nays: None

The motion carried 4-0.

Councilor Burgess moved for denial of CUP-09-01 with the consolidation findings one through six and denial findings one through four as proposed in staff's memo dated May 28th with the amendment to denial finding #2 as submitted into the record. Council President Carson seconded the motion.

Ayes: Burgess, Kovash, Carson, Galle

Nays: None

The motion carried 4-0.

Councilor Burgess moved for denial of VR-08-01, VAR-08-01 and WAP-08-01 with the consolidated findings one through six and denial findings one through four as proposed in staff's memo dated May 28th with the amendment to denial finding #2 as submitted into the record. Council President Carson seconded the motion.

Ayes: Kovash, Carson, Burgess, Galle

Nays: None

The motion carried 4-0.

Adjournment

Hearing no further business from Council, Mayor Galle adjourned the meeting at 9:33 p.m.

RESPECTFULLY SUBMITTED,

Tina Lynch /s/

Tina Lynch
City Recorder

APPROVED BY THE CITY COUNCIL
ON JULY 27, 2009

Patti Galle /s/

Patti Galle, Mayor