

# **WEST LINN CITY COUNCIL MEETING MINUTES May 19, 2009**

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**Council Present:**

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

**Council Absent:**

Councilor Teri Cummings

**Staff Present:**

Chris Jordan, City Manager; Chris Kerr, Acting Planning Director; 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 6:09 p.m. She asked Ms. McLarty to lead the flag salute.

**Holiday Inn Application**

Mayor Galle re-opened the hearing to continue to review the Planning Commission Decision on the application for the Holiday Inn Express proposed at 2400-2250 Willamette Falls Drive and to consider the proposal for a conditional use permit to allow a hotel in the general commercial zone.

The hearing on the review of Planning Commission approval was held on March 30, 2009. A hearing was held on May 11<sup>th</sup> on both applications and continued to this date. At the close of hearing on May 11<sup>th</sup>, the council responded to a request for a continuance by leaving the record open for the submission of written testimony until 5:00 p.m. on May 18<sup>th</sup> and continued the hearing for further testimony until this hearing.

Mayor Galle explained anyone may testify, you need not have testified previously in order to participate tonight. The City attorney has already read the statement that describes the applicable statement and she requested that he read it again tonight.

Mr. Monahan explained for deliberations tonight the applicable criteria are found in the Community Development Code (CDC) 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, The General Commercial Zoning District. The applicant has the burden of proving that the applications comply with all relevant criteria.

Mayor Galle explained the hearing conduct. She asked if any member of Council visited the site since the hearing of May 11, 2009. Councilor Burgess stated he drives by the site daily and observed it; however, he has not walked the site since the last meeting. Councilor Kovash stated he has not visited the site since the last meeting. Council President Carson stated she drives and walks by this site on a regular basis, but has not walked around it since the May 11<sup>th</sup> meeting. Mayor Galle stated she has not visited the site since May 11<sup>th</sup>.

Mayor Galle asked if there were any potential conflicts of interest or ex-parte contacts to declare. There were none.

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 resulting from a site visit made, an ex-parte contact or conflict of interest that has taken place since the hearing of May 11<sup>th</sup>. There was no response.

Mayor Galle asked staff to report on the correspondence received since the last meeting.

Chris Kerr, Acting Planning Director reviewed his memos regarding these applications. The first memo dated May 18<sup>th</sup> directed to Chris Jordan contains supplemental information from staff for the Holiday Inn Express. It addresses two issues; details of the conditions of approval with recommendations for modifications and staff's responses to specific Council questions that came up at the end of the last hearing.

The second memorandum deals with additional findings for CUP-09-01 and AP-09-02. Staff is recommending these six specific findings should be included in the final decision tonight, regardless of whether Council approves or denies these applications. The third memo includes all correspondence that was received since the May 11<sup>th</sup> meeting and 5:00 p.m. yesterday.

Several comments came in from the applicant with additional information and many of the comments are additional comments from people who had previously provided testimony.

### **Staff Introduction**

Chris Kerr reported this is a continuation of the May 11<sup>th</sup> hearing which involved the City Council call-up of an application that was approved by the Planning Commission for a 70-unit hotel which is located along Willamette Falls Drive. That application involved a design review, water resource area permit, and a class II variance for the amount of square footage being developed within the water resource transition area. Prior to that Council hearing, a Conditional Use Permit (CUP) was found to be required for the hotel use and subsequently the CUP application was submitted and City Council determined this could be a consolidated hearing along with the AP application. Council will be voting on CUP first and then the AP as a separate vote.

A general vicinity map was shown of the subject site and surrounding area. The hardship provisions relate to Chapter 32 and the variance relates to Chapter 75. There is a 100-ft. setback used for the transition areas due to the riparian corridor. The majority of the site is within the transition area of the Creek and the wetlands, except for a strip at the rear which is adjacent to I-205. The Water Resource Area, Chapter 32, permits up to 5,000 sf of development within the transition area. The variance is required if the 5,000 sf is exceeded. The applicant is proposing to develop 21,440 sf.

The site plan that was approved by the Planning Commission is the same one that has been submitted for the conditional use. The building is proposed to be located in the northeast corner of the site. Access is from an existing driveway off Willamette Falls Drive and there will be an area where cars can come in and drive under to drop people off and drive away.

The total proposed development area (building footprint, parking areas, driveways) is 31,547 sf. The water resource area to be disturbed: 21,440 sf. 10,800 sf is an area that is already disturbed; however the applicant is not getting additional credit for that area. The specific requested variance is 16,440 sf. The first part of the application for the hardship is to permit 5,000 sf of water resource area.

Mr. Kerr provided a memo dated May 18, 2009 regarding supplemental information from staff for Holiday Inn. The first section is the conditions of approval. Staff is proposing a revision to the proposed Condition of Approval #2, "The applicant shall install an 8-foot wide sidewalk along Willamette Falls Drive with a minimum 6-ft. wide rain guard swale strip between the sidewalk and the street" to read "Excepting the portion of the sidewalk adjacent to the southeast corner of the site which shall be sited as close to the roadway as possible to impact creek and wetland as little as possible." The intent is to allow flexibility so the sidewalk can be placed slightly closer to the

street, possibly curb tight for a portion of the length of the frontage in order to minimize the impacts along the Creek within the riparian area.

The second proposal is to delete Condition of Approval #7 which addresses the pervious pavement that was at one time proposed on the site plan. There is no pervious pavement proposed on the plan; therefore, this condition should be deleted.

Staff is proposing a new Condition of Approval #12, "Prior to issuance of any engineering permits, applicant shall provide verification that no Department of State Lands (DSL) or Army Corps of Engineers permits are necessary. If such permits are required, applicant shall provide evidence that they have been obtained prior to the issuance of any site improvement permits. Based on the staff's review of the application, they don't feel the applicant needs these permits; however, if it is required this Condition of Approval is a safety measure to make sure it is acquired and the City knows about it.

Staff is recommending approval on both items, the Planning Commission's approval of the application be upheld and approval of the CUP application presented this evening. The Council will vote on the CUP application first because it is staff's opinion that the hotel use requires a CUP in this zoning district (Chapter 19). If Council approves the CUP, it is staff's position that the AP is also approvable and will continue to recommend for approval. If Council denies the CUP application staff recommends denial of the AP application as well because they believe the CUP is required for the hotel to be built on this site.

The same recommended conditions of approval are the same for both applications. Staff is suggesting six additional findings for the record and to include those regardless of the direction of the vote tonight. Staff has prepared additional findings of fact that can be included with tonight's decision.

### **Questions of Staff from Council**

Councilor Burgess asked the square footage of the ground of the first floor of the hotel. It would be interesting to him to compare this hotel footprint and an office or retail footprint to see how much parking would be required. Mr. Kerr stated the hotel footprint is about 10,800 sf.

Councilor Burgess asked why a sidewalk was not required to the property on the west (Attorney's Office). Mr. Kerr stated the sidewalk may not have been required because it did not trip a threshold. There are gaps in the sidewalk on the north side of Willamette Falls Drive.

Councilor Burgess asked the distance from pavement to the property line. Mr. Kerr stated the applicant would have that information.

### **Applicant's Presentation**

Brad Kaul, Steven P. Elkins Architects, 11000 NE 33<sup>rd</sup> Place, Suite 101, Belleview, Washington, responded to Councilor Burgess' question about the sidewalk. He does not know exactly what the width is; it looks like it is about 28-30 feet from the south property line to the edge of existing asphalt. He pointed out the rain garden (drainage swale) between the sidewalk and the drive which is the new storm controls that will be added to the site. This area will treat the water before it dumps into the water resource area and into the Creek.

Mr. Kaul stated that after talking with Mr. Kerr on lessening the impacts on the southeast portion of the site, their proposal is not to have any impacts on the wetlands and Creek. At their expense they will build a span from the street down to the Creek (about 10 feet). They would place a concrete plank across the Creek and there wouldn't be any impacts on the water resource area.

Addressing the eastern side sidewalk that connects the building to the public right-of-way sidewalk system (existing culvert) and responding to a comment that they did not identify the wetlands on this side of the property, Mr. Kaul stated there are no wetlands on this side of the Creek. All of the wetlands are on the other side of the Creek. The design is not yet completed; however, when it is designed it will be done in a manner that will not impact or fill existing wetlands or Creek channel. There will be no diversion of the Creek and no impacts to the wetlands.

Councilor Burgess has asked why the sidewalk to the street was placed in this location when a potential restaurant destination is about 1,000 feet from the site property. The reason for this placement in this location is (1) the impacts on the water resource area; (2) the stairway for egress will have a corridor inside the building linking all the rooms to go to a stairway out to the connection sidewalk and in cases of fire or emergency, the residents will have the option of coming to the parking lot or out to the right-of-way for egress; and (3) this area also allows for fire access (fire trucks and fire fighters).

The next door neighbor has agreed to allow the usage of a portion of their driveway for a fire truck access easement if this becomes a requirement necessary from TVF&R. If this application is approved they will formally get the easement on their title.

From this location the sidewalk on that side provides fire access, emergency egress and the pedestrian walkway required to the site from the sidewalk. There will be an accessible walk as well. They have done preliminary studies on the walk and it will meet the requirements for accessibility.

There was a question on the impact now the culvert is gone. No matter what happened the culvert was going to be removed. That was a condition of the Planning Commission's approval. The impact of what they are proposing will never be as bad as

what is occurring there now. The culvert was taken out because there was thought that water might overtop the street.

Mr. Kaul asked for more time; there are so many issues involved in these applications that he would like to address them as thoroughly as possible. Mayor Galle allowed more time.

Since the culvert has been taken out there may be the question of accessing the site from elsewhere. Accessing the stream at this location allows them to do so without any possibility of harming the existing water resource area. They can place the footings for the arch culvert without impacting the wetlands or stream channel. By putting the culvert/bridge in it enhances the water quality by allowing the channel to have vegetation and increases water quality. The main reason is to provide the capacity so water does not back up in this location again and possibly flood the neighbor.

There is no flood plain for this location; however there is water. Storm comes down through here; last January there was a major storm event. The Creek is at zero elevation, the street is 9 feet above the Creek, and the building is roughly 20 feet above the Creek which is 11 feet above road. The water in the creek will have to go 20 feet to get to the floor of the hotel building.

The applicant is providing a rain garden (storm filter), street lights, and street trees. The neighborhood association is trying to come up with a plan for the entrance to their neighborhood. The proposed hotel is the entrance into their neighborhood and the applicant is working with the neighbors to come up with a unified scheme for the entrance with street lights and street trees. They will be available to work with public works and the neighborhood to implement their scheme on the frontage if the City wants to do so.

The bike lane will be extended. Currently the neighbor's sidewalk sits right up to the storm controls, this allows them to bring the sidewalks curb tight at this location. By working with public works they may be able to provide more swale area for treatment of the storm water. That is something that will be done after analyzing the flow of the water and determining the proper size swale. They will be treating all the storm water off the street that is currently uninhibited to go straight into the water resource area taking with it all the pollutants and uncontrolled water events which would cause erosion and sedimentation.

The parking lot is designed for access by the fire, garbage and delivery trucks and is also handicapped accessible. The building itself has one set of stairs to the roof for fire access. This will be a 4- story, 70-unit hotel that is built into hill. Elevation pictures were shown of a hotel building similar to the building proposed and a material board was displayed. The materials include hardy shingles, trim material, two different types of siding (shake) and the rock will be everywhere where there is concrete retaining wall

on the building. The trim will be a mixture of cache and sand color; Chapter 55 calls for muted earth tones. They believe the colors meet that requirement. The burgundy color is for accent and the white trim is required by same chapter.

Questions from the Council

Councilor Kovash stated the authority of the Council is limited to the applicable criteria. The burden of proving the application complies with the applicable code is the applicant's alone. He read the applicable codes that he feels have not been addressed:

- Before requesting reduction of standard or variances there must be 19,154 sf of buildable property.
- Application for reduction in standards under Chapter 32.090; Chapter 32.050(C), the approval criteria is, "...development shall be conducted in a manner that will minimize the adverse effects on the water resource areas. Alternatives which avoid all adverse environmental impacts associated with the proposed action shall be considered first." This code is designed to protect the water resource areas. There is a provision for a maximum of 5,000 sf in addition to 19,000 sf, totaling 24,000 sf. It was stated in the applicant's power-point presentation, in response to 32.050, "...to provide an economically feasible project, we have some unavoidable adverse impacts. We have researched all alternatives to minimize the impact of development on the water resource areas." He asked what alternatives were those besides the hotel.

Mr. Kaul stated they went through Chapter 19 and reviewed all the uses allowed (animal sales, auto body shop, office, retail uses) and they came up with the fact the uses basically fit into two categories; office spaces and retail spaces.

Dave Smith, applicant representative, stated John Gordon with Kidder Mathews prepared the feasibility report in connection with the subject property was unable to make it tonight. He would have concise answers to Councilor Kovash's questions. If this is critical, he requested a couple of days to be able to submit a written answer to feasibility or property use questions.

Councilor Kovash continued his concerns:

- In applying for the reduction of standards (5,000 sf), the applicant must show that no other application could result in permission for an economically viable use of the subject property? In the applicant's power point presentation they mentioned office space and restaurants and concluded that the same footprint would be needed for these uses that are needed for the hotel (40,000 sf). He asked staff to look at the businesses in the area and compare how many square feet they required. The resulting table compares the applicant's proposed development area to the developed areas of other existing commercial properties in the greater 8<sup>th</sup> Court, Willamette Falls Drive east of 10<sup>th</sup> Street. The list shows square footage of 16,000, 10,000, 14,000, 34,000, 25,000, etc. These are all viable businesses. Mr. Hitesman developed a list which showed other areas of West Linn. All of these businesses have square footage from 5,000 - 12,000 sf, considerably less than 19,000 sf that this application starts

- In reference to Mr. Gordon's document, in it he states, "The purpose of the study is to evaluate the highest and best use of the vacant land and the economic feasibility of the proposed hotel." In the third paragraph he states, "Finally we evaluated the highest and best use of the land based on a comparison of three generic property types (lodging, retail, office). These studies are done to give to potential mortgage lenders and buyers of property to show that the intended use is profitable but the highest and best. The highest and best use is not part of code; WL does not require the highest and best use on the land. The requirement is that it be a viable business. While this type of study does not apply to code, there is one page that is pertinent (Page 25, Table 8) indicates size range for minimum and maximum is between 33,000 and 114,000 for lodging. The hotel fits this equation. For retail the size is between 17,000 and 18,000 sf and for office 5,000 to 17,000. The last line of this table shows that retail and office less than 18,000 are also viable businesses. Chapter 32 requires the applicant must show that no other application can result in permission for an economically viable use of subject property. There are several kinds of businesses that are viable that use no more square footage than the 19,000 sf this application starts with.
- The applicant has request a class II for an additional 16,000 sf under Chapter 75 and breach the 15-foot setback in the wetlands. It is stated in findings that it would be impossible to develop the site viably while disturbing only 5,000 sf or less of the transition area as required by the hardship provisions in Chapter 32. Is the applicant saying it is impossible to develop the site with a viable business while disturbing only 24,000 sf? Councilor Kovash asked the approval criteria be reviewed for the class II variance (75.060) which is on Page 75-3 of the Community Development Code which states, "...the approval authority shall approve a variance if all of the following criteria are met. There are six criteria. The approval authority shall deny the variance if any of the criteria is not met."
  1. "Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zone or vicinity and result from lot size, shape or topography or the circumstances over which the applicant has no control." The applicant says the variance is needed due to the shape of site and the percentage of the site comprised of water resource area and the parking requirement. Parking requirements are not extraordinary circumstances. There are water resource areas throughout West Linn and a lot of development on properties that have water resource areas.
  2. "The variances necessary for the preservation of a property right of the applicant which is substantially the same as a rights possessed by owners of other property in the same zone or vicinity." Finding 48 on Page P37 of the application, the variance for the amount of square footage give the applicant the right to develop this property using more than a small amount of land of the property. In his opinion this is a stretch to think of this as a small area,

particularly when there are legends of businesses that are existing on a lot less.

3. "The authorization of the variance will not be materially detrimental to the purpose and standards of this code. It will not be inconsistent with all of the other regulatory requirements and not conflict with the goals and policies of the West Linn Comprehensive Plan." The objective of the code is to minimize adverse impact on the water resource areas. Having a variance of three/four times the maximum hardly seems to be in keeping with the minimum adverse effects.
  4. "The variance request is the minimum variance which would alleviate the exceptional and extraordinary circumstances." Finding #50, Page P-40, staff adopts the applicant's finding for the transition area square footage variance and finds this is the minimum variance. There is no variance necessary to have other businesses mentioned. If any other viable business can be sited there, that is what must be done.
- Chapter 32.090(b) states, "Evidence to meet these criteria shall include a list of uses allowed on the subject property." The applicant listed all the allowed uses on general commercial zoning. Councilor Kovash asked if the applicant noticed that hotel was not listed in the code. If hotel was not a listed use, wouldn't it follow that the applicant would take action to ask for a conditional use? Yet the applicant submitted the application knowing that hotel was not an allowed use.

Mr. Kaul stated when the application was submitted they hired a permit expeditor to come in and work with the City to determine what all the requirements were. They worked with the City to fill out the application. The City asked them to provide information on a list of uses until December, after the application had been submitted.

- How many reductions in standards and variances are being requested in this application (list them in detail).

Steve Elkins, Principal and owner of Steve Elkins Architects reported that Brad is one of the principles in the company and has done a good job in putting the project together. In response to the questions about the CUP the applicant was asked to answer; we provided information specified in the application, submitted it to the Planning Department, the Planning Department reviewed that application to determine if it is complete. The applicant provided the information, filled out the application; the Planning Department took it and vested the application as complete. Then, the applicant followed through on the process. The applicant feels they have provided the information in the process directed by staff on both applications. The Planning Commission found that their answers and information was acceptable and approved the application.

Councilor Kovash noted that these same questions were posed before and the applicant has had time to respond. There is no further response required if the applicant does not wish to.

Dave Smith, asked for a week to respond to Mr. Kovash's questions. Councilor Kovash stated he hesitates to do that; there was plenty of time since the questions were given to Mr. Kerr and passed on to the applicant. Mr. Gordon may not be of assistance; his report doesn't address the code and inadvertently supports the idea that there are other businesses that are viable and would fit on 19,000 sf of property.

Mr. Smith stated that for the purposes of the feasibility issues, he asked that Council allow the time for a response. The report was provided shortly before the hearing last week and these questions were not asked of Mr. Gordon at the last meeting.

Councilor Burgess asked if the culvert extends past their eastern property line and if the applicant has access to it. Mr. Kaul stated the culvert does extend past their property line.

Councilor Burgess asked for information on the size and scale of the culvert under the driveway. Mr. Kaul stated the existing culvert will be replaced.

Councilor Burgess asked if the parking lot will be broken up by landscaping. Mr. Kaul stated; the middle landscape islands are landscaped.

Councilor Burgess asked for the location of the service area. Mr. Kaul showed on the map where the trash/recycling area is proposed. There is an area for the service trucks to park and do their deliveries. The trash/recycling area will be totally enclosed 100 sf area with 6-foot high walls, 20 feet wide 10 feet deep.

Council President Carson asked if there is a place for employee parking. Mr. Vic Patel, VK Northwest Investments stated extra employees are in the morning (housekeeping) and that is when guests are checking out (8:00 a.m. to 3:00 p.m.) Guests check in after 3:00 so there are enough parking spaces for employees. There is usually one desk agent in the evening. The 63 parking spaces are based on number of rooms not employees.

Councilor Carson stated the sidewalk appears to end short of the driveway for the neighboring building. Mr. Kaul stated they are required to end the sidewalk at their property line. If Council wanted to add a condition to extend the sidewalk across the path (15 feet) they would be in agreement to that.

Mayor Galle asked if there was a response from the Fire Department, stating that they are comfortable working with the applicant in regard to building requirements. Mr. Kerr stated he has received no additional correspondence from the Fire Department since the last meeting. Mr. Kaul stated the idea of the upgrades to the building type had to do with the remoteness factor. The Fire Official had not approved the second access of Willamette Falls Drive and sidewalk. If that access is approved the requirement would be met. They would have to go with alternate methods of construction if there

are not two access points. The additional access point on the neighbor's property would eliminate the requirement for additional life safety requirements.

This size of building is allowed by the building code to be built out of wood (type 5 fire rated building). They could go to a totally non-combustible building (type 2 building) which would significantly upgrade the structure. They are working with TVF&R to get all their requirements together.

There is a fire requirement; from the fire truck, the firefighter has to be able to take a hose and walk around the perimeter of the building. There is 150 feet for a building that doesn't have a sprinkler system. If there is a sprinkler system the Fire Code Official gives an increase of additional feet. If the fire truck parks on the southeast corner (where a fire hydrant is placed), there is 200 feet to the extreme portion of the building (northeast corner). Typically if you have a fire sprinkler you get an increase to 300 feet. Now with fire truck parking on both sides, there is 150 feet easy.

Mayor Galle asked staff if they removed the culvert after the storm event in January. Mr. Kerr stated that ODOT did that work with Kerr Construction as an emergency operation after the storm.

Mayor Galle asked if the neighborhood association wanted the Astoria hotel site plan. Mr. Patel stated the neighborhood association requested the building be patterned after the Astoria Holiday Inn Express.

Mayor Galle stated she met with Mr. Patel they had a conversation about design review of the building to better fit the impact on the water resource area. She asked him to comment on his possible redesign of the building so it is more appropriately placed.

Vic Patel, 127 SE Happy Valley stated that he discussed making the building longer and moving it to a different portion of the site and so far it is not doable on their end because of the expense. They have several designs before this final design was chosen. Mr. Kaul stated when the building is placed on the other side of the site there is less parking. You get closer to creek and wetlands and it's harder to provide access for emergency vehicles. Where the building is currently sited there is the greatest slope. They designed the building so it fit into the slope.

Mayor Galle asked Mr. Kaul if he read the plan. He said yes he read the comprehensive plan.

Mr. Kaul stated last week they looked at the idea of putting parking under the building to reduce the impacts on the water resource area. 26 parking stalls can be installed under the building. They would have to add a ramp to get down under the building and the ramp would have to go through where the rain garden and trash enclosure is currently located. With this 80-100 foot ramp, finding another area for the trash enclosure, and removal of the parking stalls there will be a savings of 25,000 sf saved.

Then there is the cost of \$600,000-900,000 for underground parking for that size building.

Councilor Burgess asked about the possibility of cantilever over the water resource area. Mr. Kaul stated that the building cannot go any higher. They could put parking under the structure on stilts however there are certain functions that need to be at grade.

Mr. Kaul noted they offered the idea of mitigating for the White Oak by replacing it with three additional significant trees. If the Council feels stronger about the water resource area than about trees, a tree can be replaced in another location. They talked to a company who could replace that one tree with three 12-inch caliber trees.

The site plan shows a 10,000 sf retail results in 100 parking stalls/1,000 sf and for office space the impact similar to hotel. Kidder Matthews report shows there is a minimal economic return on the separate properties with similar impacts. This is not a good retail site as an office site; it would be as viable as the hotel and the percentage of returns are similar. However, as you scale them back the square footages due the increase cost of the project and the fact that there are buildings on other development. If the hotel does not go through they would have to develop each parcel separately and still have the same impact as the hotel with a total of 15,000 sf into the water resources area.

Mr. Elkins stated he wanted to respond to Councilor Kovash's questions regarding feasibility. Mr. Gordon's report suggests the footprint of the hotel is 10,000 sf and to go up four stories. By doing that there is enough parking and the impact is 63 stalls and its offset by the sum of \$900,000 worth of mitigation and improvements. They are suggesting the retail building or an office building would need the same 10,000 sf footprint, the same amount of asphalt and area as far as parking, and it will have the same disturbance. There will be \$900,000 of improvements required no matter what use is put on the property. As far as return goes, the ability to go up, the idea of having less amount of parking is the least impact on that property and it is the most feasible as far as the disturbance and being able to afford the additional \$900,000 improvements. They feel the hotel has the best return as far as return to the City (taxes, revenue, etc.).

Mayor Galle called a recess at 8:11 p.m. and the meeting reconvened at 8:32 p.m. She asked for public comment in support of the applications.

### **Testimony in Support**

Alice Richmond, 3939 Parker Road, noted there is nothing in the West Linn codes or provisions for a hotel. She feels staff has been diligent in reviewing the codes and standards trying to create a process so the hotel can make their application. Codes are different for cities, state and county. She would like very much to have this hotel in the

city. Maybe the City doesn't have all the facts worked out but this will prepare the city for other hotels that come along down the road in the future.

This hotel will be a convenience for in-town people as well; those who need a place to stay during ice storms, during emergency times, when repairs are being made on their homes, etc. Working together and coming up a process that will benefit both the City and the applicant is important; the City needs the facility. It is a plus and she urges the City to work it out.

Dave Smith, 1672 Willamette Falls Drive, stated that he has a law practice on Willamette Falls Drive and lives in this city. He is involved in multiple community organizations and he feels a decision averse to building this hotel would be a detriment and would send a picture that West Linn is anti-development.

When he needs to schedule a deposition or has a business lunch or large gathering he has to go outside of West Linn because there isn't a conference room big enough to accommodate him. He understands this hotel will have a conference room big enough to facilitate these types of things. When a banquet or any kind of large gathering is planned, there is no place in West Linn to hold that event. When his family visits from out of town, they can't stay in West Linn if he can't fit them in his house (he has five siblings).

He feels the décor of the hotel will fit into the neighborhood nicely. He asked the Council to compare the way this hotel will look to Albertsons when you drive by on I-205. This will be a beautiful building. He feels it will fit into the community nicely for both personal and professional reasons.

Chris Williams, 2622 5<sup>th</sup> Avenue stated he moved here from Tualatin in 2000. He reviewed the plans and attended a Willamette Neighborhood Association meeting at the library when the applicant presented their elevations. He was impressed the developers and the architects changed their plans to accommodate the Oak tree, moved the building and even reduced the number of parking spaces. From a developer's standpoint and a company trying to put a business together and make it viable, they really tried to address concerns. With no disrespect intended, the wetland area is an eyesore. When he thinks about what other developers have done for existing wetlands, it seems to him there is a definite improvement potential in this property to try to build the building with minimal impact, put in an attractive sidewalk, handle storm drainage, and make a better culvert system.

ODOT took out the culvert because it was in danger of restricting runoff from snow melt. Visually if the applicant plans to take care of the property as they are developing, it's a good thing. This will result in a better property, tax revenue for improvements on the property, and business taxes to the City of West Linn, because there is a company that is profitable at this location rather than it remaining vacant. It is the best use of the

property for numerous other reasons. This will be a place where out-of-town visitors can stay, it will be a place where people who are there will shop locally, buy dinner, and patronize the new businesses in the Willamette area. He is in support of it; the applicant has taken a lot of care. He has no opposition to the hotel being approved.

### **Testimony in Opposition**

Roberta Schwarz, 2206 Tannler Drive, stated she appreciated the analysis that was done tonight and Council asked good questions of the applicant. The citizens would like to have a hotel here; however, she does not want a hotel if they have to get rid of the code. The residents have worked long and hard for eight years to have Goal 5 implemented. If you chip away at this area, all the people who worked hard, did it for nothing. She asked Council not to give up the code.

Ms. Schwarz stated West Linn residents like trees and wetlands, and they want both. She and her husband have wetlands and they have a lot adjacent to those wetlands and beach property. They will give their beach-front city their wetlands. Wetlands are very valuable. If this applicant decided to give the wetlands to the city, they will get an amazing tax rebate. It has flora and fauna and it is the place where a lot of animals end up thriving; there are deer that go through. An argument was made why this is not the only use for this property but giving it to the City is a good option.

Karie Oaks, 1125 Marylhurst Drive thanked Mr. Kovash for his thorough analysis. She agrees with his interpretation of Chapter 32. The applicant does not meet the criteria, it is not minimal impact, and there is space for viable business to locate here without impacting the natural resource area. This land the applicant proposes to develop in the water resource area will be permanently taken out of function (destroyed). The reason for the 100-foot setbacks is because the water resource needs that space to function completely. What is left when development is closer than the 100-feet is a water resource area that will never function to its full capacity.

In reference to Mr. Smith's comments about West Linn being perceived as anti-development, she too would like to see a hotel developed but this is not the appropriate site for this size and design hotel proposed. If Council decides not to approve the CUP, as it is not appropriate for the size of land, the restrictions do not allow this design to be built there. If not built the Council will be perceived as respecting West Linn's code and water resources as something that this community values not only for the beauty, the functions they provide, the safety insured if development is out of the water resource area.

Protection of natural resources runs throughout the comprehensive plan. In reviewing the pre-application conference summary notes, one representative made a remark that she thought the Astoria hotel was nice. She believes it was a remark that she liked the

hotel, not an indication of what the neighborhood wanted. She urged the Council to deny the CUP and AP be denied.

### **Neutral testimony and Questions - None**

### **Final Staff Comments**

In response to Councilor Burgess' question Mr. Kerr stated the square footage on the ground floor of the hotel is 10,800 sf. The parking requirement for a retail facility of that size would be 43 parking spaces and for office it would be 45 parking spaces.

### **Questions of Staff**

Councilor Kovash noted that the parking spaces quoted by Mr. Kerr are for those two allowed uses for general commercial. There are other uses that may have less or more parking requirements.

Councilor Burgess noted there were several written comments on the parking definition. He asked staff to address:

- Is there a bikeway on Willamette Falls Drive and if not is there enough room to have one.
- Will the rain garden swale detract from the bikeway or prevent it from occurring.
- Why the change from pervious to impervious.
- If this were approved, will staff want to keep these as separate lots or require the applicant to have it re-platted/combined?
- Is the storm facility required to be exempt or is it calculated as being in the resource area. Is that not disturbance and allowed in the resource area or is it included in numbers. Mr. Kerr stated the disturbance is included in number quoted.
- There are two definitions in the code that refer to transient lodging. There is concern that the parking provided is adequate for Willamette Falls Drive. Mr. Kerr stated the code has a definition for hotel use which has its own parking requirements. The alternative is transient lodging (residential hotel) which has different requirements.

Mr. Kerr stated Engineering did not ask for additional right-of-way on Willamette Falls Drive. His understanding is this is an arterial and believes there is adequate room for a bike path along Willamette Falls Drive. All the approved cross sections found in the TSP are adequate in the City right-of-way.

In response to the additional lots, there are other commercial properties in the city that have multiple lots. They have separate underlining lot lines with shared driveways, access and parking agreements. The City has not in the past required an applicant to consolidate their lots into one. Often times the applicant chooses to do so if it is to their

advantage. In this case since this is one individual user, there might be incentive to do so as well. There is no requirement in the codes to do so. Council could consider a condition to require them to consolidate the lots.

Council President Carson stated currently there is no bike path on Willamette Falls Drive. She asked if the applicant is required to install half-street improvements on that side of the street when they install the sidewalk. Mr. Kerr stated they are.

Council President Carson asked if the applicant can be required to have a sidewalk connect to adjacent parking lot so there is a continuous pedestrian walkway. Mr. Kerr stated it seems to be more than a reasonable suggestion. It is difficult to get off-site improvements. He heard the applicant clearly state that it was acceptable to them and they would agree to the construction of the sidewalk.

Mayor Galle noted the City instituted Goal 5 and assigned status to riparian areas and water resource areas. She asked what significance this plays when Council makes consideration of losing these areas to properties for development. Mr. Kerr stated this question addresses two resources, the stream and the wetland under Goal 5 protections. It affects it by laying specific regulations, criteria and standards for protecting those areas and part of that are the specific hardship provisions.

Mayor Galle asked if there are other Goal 5 properties that have been allowed a variance three times beyond the minimum. Mr. Kerr stated anytime you talk about something more than 5,000 sf under the new Chapter 32 would require some kind of variance. Mr. Soppe stated it has not happened since he has been here.

Mayor Galle stated she feels consideration of the environment is very important and asked what percentage of the comprehensive plan is taken into consideration in the pre-application process. Mr. Kerr stated the comprehensive plan is not related to development approval; there are no criteria in the comprehensive plan that outlines policies. The variance and CUP specifically requires the applicant to identify the goals and policies and how they relate to their proposal.

Mr. Kerr stated the Conditional Use report calls out specific policies generally related to appropriate location of commercial uses near an intersection, near other commercial uses and it being the appropriate location for a hotel. Circled pages 6 and 7 address natural resource policies, design policies, broad policies outlined in the comprehensive plan; a broad sweep of protecting the environment. It is not only found in Goal 5, but all the other chapters that address it as well.

Councilor Kovash asked staff if there were any previous variances close to this magnitude for wetlands and water resource areas. In his experiences on the Planning Commission he doesn't remember any variance of this magnitude. Mr. Kerr stated he could not give an example, however Chapter 32 provisions double the setback

requirements that were previously around the riparian areas. There may have been development encroaching just as close to riparian areas, but it didn't require a variance at that time. Since Chapter 32 has been applied the numbers cause the variance.

Councilor Burgess noted if Council approves this application staff will review vegetation, mitigation plans, etc. He has stayed at hotels and he asked if what's left of the wetlands would be preserved and not used as a dog recreation area for people staying in the hotel. Mr. Kerr stated there is a condition of approval that requires a conservation easement put on it. In reference to dog use, the City now has signs posted in areas to discourage dog use. Mr. Patel stated that the hotel is not pet-friendly; there will be no dogs allowed from the patrons of the hotel.

### **Applicant's Rebuttal**

Dave Smith, applicant representative, stated that he would like to work with Mr. Kerr in connection with the proposed findings submitted by Mr. Kerr.

For the purposes of the record, on behalf of the applicant, he objects to findings #2 and #3 and #4. The applicant has submitted sufficient evidence to indicate the appeal/review process was defective in this case in that they did not receive notice of an actual appeal or review and the notice itself did not include the basis for the call to review. The details of his objections are included in previous correspondence written to City Council and City staff. It is his understanding that two emails were written to the City Planning Department to indicate that the Council wished to call this application up for review. At no time after that was the applicant ever notified of the call to review or what the basis for the call to review was. Pursuant to Section 99.260 and 270, the applicant as an interested person is entitled of advance notice (before the hearing) of notice of the call to review and the basis of the call to review and the findings proposed by Mr. Kerr tonight.

He will be happy to work with Mr. Kerr; however, he rejects findings #2 (call-up), #3 (notice), and #4 (necessity of CUP) of staff's May 18<sup>th</sup> letter.

Mr. Smith stated that he understands from a discussion with Mr. Monahan the council would consider an extension previously requested in connection with specific questions raised by Councilor Kovash regarding the economic feasibility of the project and that Council would consider a date of June 1<sup>st</sup> for submittal of information specific on the economic feasibility; and meet on June 8<sup>th</sup> to deliberate a decision and issue a final decision by June 12<sup>th</sup>. Subject to those dates and subject to previous objections, the applicant will be willing to extend the 120 day period to facilitate the additional submittals.

Dale Guilford, 66 Avanti Circle, Lake Oswego stated that he wanted to address Councilor Burgess' concern about the pet area. The applicant is willing to erect a fence around the wetland and stream areas or the water resource areas.

Mr. Guilford stated this area is not a rare major feature. Even for the City of West Linn this is not a rare habitat; it is degraded. The transition area is currently an unhealthy and disturbed state based on Chapter 32.050. The on-site transition area has combination of native tree shrub and ground cover that is less than 80% (24%) and the canopy coverage is less than 50% (8.2%). This qualified for unhealthy and disturbed. Comments previously made regarding this area are opinions, not fact. Ms. Oaks stated that with this development the water resource area will be permanently impacted. He disagrees with her statement that if impacted it will never function to full capacity. In its current state it will never function to full capacity. There are a lot of invasive species and native species that will not naturally come back in and dominate. His interpretation of adverse is that the water resource area being in a worse condition after the development opposed to prior development.

In his original November 2008 report, the onsite mitigation in combination with the off-site mitigation will more than offset these impacts. Improvements will result in habitat, shading, nutria loading, bio-diversity, nine new species to the site that is native, continuous wildlife corridor with canopy coverage that extends across the site from east to west.

Mayor Galle suggested that in his presentation, Mr. Guilford enhance the purpose of West Linn's goals, desires, and purpose to respect the environment instead of diminish or disgrace the site. Mr. Guilford apologized if he sounded disrespectful, however, the point he was making is that the water resource area is unhealthy and disturbed.

Mr. Elkins stated the specialist was trying to suggest the property right now is in bad disrepair and not in a condition that the City would be proud. The development will enhance the site to make it more like what the City would like to see. There will be a tree canopy, additional shading, improvements to the street, sidewalks, continuous pathways, bike trails, etc. So the applicant feels they are indeed enhancing the site and making the improvements, following staff recommendations, following the guidelines of comprehensive plan and the regulations of Chapter 32 in the best constraints they can for the project they are trying to put together for the City.

There are basically 4 tax lots; three and a very small park for a fourth. The 5,000 sf limitation was per lot and not per project. He doesn't understand the concern about the 15,000 sf for this project when they could build three separate projects on these lots, each one having the 5,000 sf limitation (15,000 sf impact). He does not see three/four separate projects, but one project that can best consolidate everything into one development area and improve the water resource area instead of having three separate projects that would have three separate driveways, more impact and whatever than

exists right now. They feel they are meeting with neighborhoods, bring in their requirements as far as their likes and looks of the building along with the City. The project is well designed, has a good base behind it and meets with regulations as the Planning Commission has agreed upon and they encourage Council to do likewise.

**Questions from the Council**

Councilor Burgess asked if the applicant will be responsible for maintenance of the water resource area and if they are willing to accept a condition to do so. Mr. Elkins stated it is his understanding that is their responsibility is to maintain and provide a sprinkler system to make sure it does get established. They will accept a condition to maintain the natural resource areas.

Hearing no further questions from council and no further response from staff, Mayor Galle closed the public testimony portion of the hearing.

Mr. Monahan read statute 197763 Section 6b, “...unless waived by the applicant, the local government shall allow the applicant at least 7 days after the record is closed to all parties to submit final written argument in support of the application.”

**Council President Carson moved continue the hearing and grant the applicant’s request to allow 13 days (June 1, 2009) to submit final written arguments in support of the application without any new evidence. Further, Council will review the materials, reconvene on June 8, 2009 at 6:30 p.m. and make a final decision. The applicant has requested an extension of the 120 day clock to June 12, 2009 to allow Council to make their final decision. Burgess seconded the motion.**

Chris Jordan stated on June 8<sup>th</sup> staff will have findings ready for a Council decision that either approves or denies this application.

**Ayes: Carson, Burgess, Kovash, Galle**

**Nays: None**

**The motion carried 4-0.**

**Adjournment**

Hearing no further business from Council, Mayor Galle adjourned the meeting at 9:34 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