

# **WEST LINN CITY COUNCIL MEETING MINUTES August 10, 2009**

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## **Council Present**

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

## **Council Absent**

Councilor John Kovash

## **Staff Present**

Chris Jordan, City Manager; Gene Green, Public Works Director, Dennis Wright, West Linn City Engineer; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

## **Call to Order/Pledge of Allegiance**

Mayor Galle called the meeting to order at 6:39 p.m. and led the flag salute.

## **Proclamations, Recognitions and Presentations**

Mayor Galle stated the City of West Linn proudly acknowledges and honors Christina Lee with the Golden Scissor Award for her spirit of good will and service to mankind by donating 6 years of hair growth to Locks for Love.

## **Community Comments**

Roberta Schwarz, 2206 Tannler Drive, thanked the Council for the lovely presentation to Christina Lee. She stated that Christina Lee is her neighbor and has indicated to her that she will continue to grow hair for the Locks for Love cause. It is amazing that this fourth grader was thinking about this enough years ago to give 14 inches of hair away.

Ms. Schwarz thanked everyone who came to the auction; they made \$1,942 this year. The goal was to purchase computers for school children who don't have one and this year they will be able to buy three possibly four computers. They are happy to accept cash donations ([Roberta.schwarz@comcast.net](mailto:Roberta.schwarz@comcast.net)) as well. For the first time they will be purchasing new Dell computers instead of piecing together parts that have been donated.

There will be a Savannah Oaks party to celebrate these 14 acres. The City of West Linn now owns. The event will be held on September 25<sup>th</sup> from 6-10 p.m. at the Adult Community Center. They are asking the City for \$600 to offset the expenses. All elected officials, all conservation groups and The City of West Linn, and anyone who has helped and would like to join in and celebrate this monumental, extraordinary event is invited. Desserts will be provided.

Ms. Schwarz stated she has what the City put out on Chapter 28, Revision to the code. She would like to have an external investigation on these revisions; it was actually rewritten. She asked that the investigation take place outside the house.

She reminded citizens this Friday is the last day to put in comments regarding the City Manager. She encouraged all to respond.

Alice Richmond, 3939 Parker Road, stated she wanted to speak on employee conflict of interest. Ms. Horsey has been appointed as a Planning Commissioner and the public should know the process of how a person is appointed. This person has been involved in bringing the City Planning issues to Land Use Board of Appeal (LUBA) and (FEMA) and questions whether this could be a conflict of interest having her on the Planning Commission. She would like the City to look into this matter.

Laura Horsey, 5725 Hood Street, stated she has prepared a written statement for Council to review regarding a procedural issue on a Council action that may be coming up in the future. Her question arises out of the 5750 Hood Street office building application which for the second time has been remanded back to the City by the State Land Use Board of Appeals.

Councilor Burgess asked the City Attorney since this is a land use case that is in process, should it be discussed at this time. Mr. Monahan stated the issue is the land use action that has been remanded to City Council for a second time and will be before the Council for action soon. He has scanned the written material submitted and it primarily talks about procedural issues. The procedure is one that the Council will have to make independently at a future date. He suggested that Council not talk about this issue. The written information is good to have, information similar to what may be received from the applicant who's going to ask the Council also to make a determination on process. He recommended Council take the information under advisement and not have any

conversation about it tonight. It will insure that Council will be able to act on the matter when it does get before the Council.

Ms. Horsey stated she is asking that the procedural issue be taken up by Council. Her information from staff is that this is a staff decision. If you wait until a hearing on the matter itself, the procedural issue will have passed. Mr. Monahan stated the decision is the Council's. It will come back to Council because LUBA directs it back to the body from which it came. Council will then make a decision, not necessarily at a public hearing, and decide whether the application should be scheduled for a public hearing or whether they want to send it back to the Planning Commission. To send it back to the Planning Commission; however, will take a formal Council action. Council has not made a determination of where the action will go; he understands the Court of Appeals filing was withdrawn about two weeks ago. When an application does come forward, the Council will then make a decision on the process.

Ms. Horsey stated whether this goes to Planning Commission or City Council, the procedural issue is on amendment versus new application. Mr. Monahan stated once the Council receives the application the application needs to be modified because of defects that LUBA found. That will come back to staff initially and they will make its recommendation to Council on whether it is an amendment that falls within the allowable revisions to an application or whether it is of such a change that it constitutes a new application.

Ms. Horsey stated based on having been through two LUBA remands, her discussion with Brown (prior planning director) when she brought this up at the first LUBA remand was it too late. He had given guidance to the applicant indicating they could go forward with an amended application. The 10% guideline became their target as opposed to the question more openly should this be new or should this be an amendment. Mr. Monahan stated when this issue comes before the Council they will be making that decision

Bob Thomas, 2563 Pimlico Drive, submitted a memo regarding the solar highway project. In summary of this information, his point to Council is to not unquestionably accept what Lynn Frank has been saying about the proposed solar highway. He went through what Mr. Frank said at both the June 22<sup>nd</sup> meeting and at the July 27<sup>th</sup> meeting and at both meetings what he claimed were outlandishly incorrect claims about solar highway sending power up the hill to light the city of West Linn. As an electrical engineer himself, he knows that such claims are not in accord with reality and the facts. Also the PGE Engineer, Bruce Barney that Mr. Frank referred him to told Mr. Thomas that Mr. Frank was mistaken about that and he was correct.

Mr. Thomas stated he pointed this out in his testimony at the July 27<sup>th</sup> meeting and it was ignored by Mr. Frank. The proposed solar project can only generate electricity during the day. To supply any power at night to West Linn or any part of it, its output

during the day would have to be stored and fed at night into a distribution grid that exclusively powers just West Linn or a part of it. What Mr. Frank told the Council is simply not correct.

Mr. Frank stated at the July 27<sup>th</sup> meeting that Oregon Department of Transportation (ODOT) is paying for every kilowatt hour that would come off of this project. This conflicts with what he said previously about net metering; he said the output of the solar project that feeds into a local PGE grid during the day is metered and subtracted from the metered PGE power used to light that nearby section of the freeway at night. In order to credit ODOT for the output of its solar project, which Mr. Frank said would result in an 8-10% savings per year for ODOT.

In his opinion, another ridiculous claim by Mr. Frank is when he said he tells Allyson that when she plugs in her toaster in the morning that she is connecting to a system that runs from British Columbia to Mexico and that when those electrons come out they flow through that system. That too is nonsense. He asked that Council read the information he has submitted and take it into consideration.

Tina Decker, 18602 Upper Hill Road stated she noticed that the residents have a council that really enjoys giving presentations and recognizing people and suggested the Council get an additional microphone in front of the comment stand so those testifying can be heard.

### **Consent Agenda**

Agenda Bill 09-08-10A

Approval of Council Meeting Minutes of July 13, 2009

**Council President Carson moved to approve Council Meeting Minutes of July 13, 2009 per Agenda Bill 09-08-10A. Councilor Burgess seconded the motion.**

**Ayes: Carson, Burgess, Cummings, Galle**

**Nays: None**

**The motion carried 4-0.**

**Report from the City Manager** -- None

### **Business from the City Council**

#### **Update to City Council Rules**

Chris Jordan, City Manager, stated that Council has alternatives for amending the Council rules regarding community comment. It is Council's decision to pick one of the suggested alternatives, amend the language, or draft the language in any way they want.

**Councilor Cummings moved to approve the set of rules suggested by her that are highlighted in pink with the spelling correction to the word “matter,” including language about sign-in sheets being provided to record city attendance. Council President Carson seconded the motion.**

**Ayes: Burgess, Cummings, Carson, Galle**

**Nays: None**

**The motion carried 4-0.**

Councilor Burgess stated he received a couple of emails regarding the West Linn/Oregon City Bridge pedestrian and bicycle path and asked for an update on the West Linn/Oregon City Bridge and the City's involvement on pedestrian and bicycle traffic. Mayor Galle stated she has forwarded all of her emails on this subject to the Assistant to the City Manager and she will let Council know the history and where the City plan on going from here.

Council President Carson reported she went to the Clackamas County Coordinating Committee (C-4) meeting last week and they voted to forward on the list of projects for the Regional Transportation Plan submitted by West Linn and other jurisdictions. This will be passed onto the next draft of the Regional Transportation Plan. All of West Linn's projects will be considered for future funding.

Councilor Cummings stated she attended the Policy Advisory Committee meeting of Clackamas Urban and Rural Reserves process. Last Tuesday they finalized the urban designation for the Stafford Area. The majority of the group supports the Stafford area not being designated as rural. As far as the urban designation progress, the group was in consensus of only designating the Borland area as potentially urban. There were concerns raised that it not be as intense as some of other inter-city density. There is difficulty cited by ODOT for the ability to serve the area; any additional lanes on I-205 would be to address the current gridlock and the ability to provide additional lanes and server for additional growth above is extremely limited. The cost would be huge. This might be an area where the concept of the semi-rural urban uses (equestrian areas, u-picks, bed and breakfasts, wineries, etc.) are now being seen as an amenity to the edge or urban areas.

Councilor Cummings announced there is a meeting at the Clackamas County Commission taking place tonight; she will get an update from Tom Coffee and let the public know. The packet for this meeting had an organizational chart. She feels it would be a good idea for Council to make a motion to have this chart included as an amendment the current budget statement. Mr. Jordan stated he would not recommend amending the budget. The budget is a signed, dated document; it should not be amended at this point. The organization chart can be approved as an updated Organization Chart for the City of West Linn. I would like to have some sort of language

in the budget that makes it clear that the City will not be hiring an in-house city attorney and should reduce the number of FTE's proposed in the budget by one.

Council President Carson asked for guidance on a motion to address this issue. Mr. Monahan disclosed that because they are the contract city attorneys they have a direct conflict in giving advice on this. His advice is to seek other council. However he did suggest the idea of a motion that could be used.

**Council President Carson moved to continue with the current city-attorney agreement for outside counsel and direct staff to that the modified organizational chart (referred by the City Manager) takes precedent over and is the official adopted organizational chart (not the one in the budget). Funding for the full-time equivalent (FTE) position will be used for continuation of the contractual services of the current city attorney process. Councilor Burgess seconded.**

Councilor Burgess stated they are not removing dollars, they are removing an FTE. The funds will remain in the approved budget. This issue here is there are 5 FTE's shown and one is being removed. The funding stays there for a city attorney; there will be a reduction of one FTE in the City Manager's office for a city attorney.

**Ayes: Cummings, Carson, Burgess, Galle**

**Nays: None**

**The motion carried 4-0.**

Councilor Cummings asked for staff to comment on the guidance given on the testimony regarding Chapter 28. Mr. Jordan stated this issue is being discussed by the Planning Commission at this time. If they recommend something coming forward to Council, it will be in a package to Council submitted at that time.

Mayor Galle stated there would be no discussion on the process for the Planning Commission and LUBA testimony as recommended by the City Attorney.

### **Business Meeting**

1. Agenda Bill 09-08-10B Ordinance No. 1588 – Noise Ordinance Amendments “Second Reading”

Mayor Galle opened the meeting to a second reading of title only of Ordinance No. 1588, Noise Ordinance Amendments.

**Council President Carson read Ordinance No. 1588, An Ordinance Amending Section 5.487 of the West Linn Municipal Code Relating to Sound Levels and Noise by title only for a second time per Agenda Bill 09-08-10B. Councilor Burgess seconded the motion.**



Councilor Cummings pointed out an amendment in stated ordinance 1587; moving the words "is fully funded," to the end of the word "incurred by the City." This clarifies that the Council is asking that this street will be fully paved, that the SDCs will be used for this and the City would like to charge an additional 25% for any labor and administrative expenses that have been associated with this project. The rest of the certificate that is not used for those things will be reissued to Mr. Parker with an expiration date of April 28, 2018.

### **Public Comment**

Alice Richmond, 3939 Parker Road stated she is in favor of this ordinance. She does not want the same thing that happened a long time ago repeated. She would like to get this done.

**Council President Carson read the ordinance by title only for the first time and moved to approve Ordinance 1587, An Ordinance of The City Council of the City of West Linn Authorizing A Cash Fund For A Portion of System Development Fees Issued to Black Hawk LLC and West Linn Corporate Park LLC To Fund The Parker Development Northwest Liability For Le Chevalier Lane Paving per Agenda Bill 09-08-10C with the following changes:**

- **Moving the words "...is fully funded" after the words, "incurred by the City" in Section II**
- **Direct staff to obtain a letter of agreement from Mr. Parker that outlines the terms of this agreement including a waiver of any claims related to the 25% additional costs for anticipated labor and administrative expenses encumbered by the City to process this request for the use of SDC credits.**

**Mayor Galle seconded the motion.**

Councilor Burgess asked for an executive session to talk with the city attorney.

Mayor Galle recessed the meeting into Executive Session ORS-192.660(2h) at 7:34 p.m. for the purpose of discussion of potential litigation. Council will come back into session after their discussion.

The meeting reconvened at 7:48 p.m.

Councilor Burgess stated that he will reluctantly vote in favor of this motion. This was brought to Council's attention; this development goes back to 1994 through to 2000. The people in this development have not had an adequate street. These folks have been waiting that long to get this final lift. This is an opportunity to get this street paved for these residents even though it clearly is the responsibility of the developer in this



case...fees are connected with development in exchange for that obligation. In the interest of getting an adequate street in this subdivision for the citizens that live there and no significant cost to the city, hopefully, with the language added covering the administrative and labor costs of getting the street paved, he will be supporting this motion.

Mayor Galle stated when this case came before Council she was looking for efficiency in government and use of tax dollars. The situation has arisen that this is a \$39,000 project. If the City were to go out for a bond to try to legally negotiate this amount it will cost taxpayers thousands and thousands of dollars. This is a small project and negotiating with SDC credits gets the job done. The developer wouldn't be asking for this exception if they didn't really believe it was something that needed to happen. It will cost taxpayers to have the city do this project.

The win/win is that the citizens get their street; the City doesn't lose any money in the end. The City of West Linn, its residents, staff and Council must begin to work cooperatively and in the spirit of good will with developers. There is a dynamic of two magnets working against each other and each side is looking for air. If you give a little, you get a little and the job gets done efficiently. She will be supporting the motion.

Councilor Cummings will be supporting the motion. There was an application last year about the vacation of Lorinda Court because it was not properly recorded when deeded. In those discussions there were strong understandings developed that the City would take care of the street situation. She feels obligated to the citizens that have been waiting; it is good to move forward on this project and get it done.

**Ayes: Cummings, Burgess, Carson, Galle**

**Nays: None**

**The motion carried 4-0.**

**Council President Carson read the ordinance by title only for the second time and moved to approve Ordinance 1587, An Ordinance of The City Council of the City of West Linn Authorizing A Cash Fund For A Portion of System Development Fees Issued to Black Hawk LLC and West Linn Corporate Park LLC To Fund The Parker Development Northwest Liability For Le Chevalier Lane Paving per Agenda Bill 09-08-10C with the following changes:**

- **Moving the words "...is fully funded" after the words, "incurred by the City" in Section II**
- **Direct staff to obtain a letter of agreement from Mr. Parker that outlines the terms of this agreement including a waiver of any claims related to the 25% additional costs for anticipated labor and administrative expenses encumbered by the City to process this request for the use of SDC credits.**



Councilor Burgess thanked the city engineer. Since there are leftover funds, he hopes that another project will be completed on the streets before the end of the year. The City is behind in terms of replacing water lines. Mr. Green stated they have a list of capital improvements and will get started on finding another project as soon as possible.

**Acting as the Contract Review Board, Council President Carson moved to approve Agenda Bill 09-08-10E, Contract Approval of 2009 Waterline Replacement Project (PW-09-13). Councilor Cummings seconded the motion.**

**Ayes: Cummings, Carson, Burgess, Galle**

**Nays: None**

**The motion carried 4-0.**

5. Adjournment

Mayor Galle adjourned the meeting at 8:03 p.m. into Executive Session pursuant to ORS-192.660(h) pending litigation likely to be filed and ORS-192.660(e) real property transactions. She announced the Council would not be coming back into public session.

RESPECTFULLY SUBMITTED,

**Tina Lynch /s/**

Tina Lynch  
City Recorder

APPROVED BY THE CITY COUNCIL  
ON SEPTEMBER 28, 2009

**Patti Galle /s/**

Patti Galle, Mayor