



22500 Salamo Road
West Linn, Oregon 97068
<http://westlinnoregon.gov>

WEST LINN CITY COUNCIL MEETING MINUTES September 13, 2010

[Call to Order & Pledge of Allegiance](#)

Council Present:

Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Staff Present:

City Manager Chris Jordan, City Attorney Cindy Phillips, Assistant City Manager Kirsten Wyatt, Associate Planner Sara Javoronok, Senior Planner Chris Kerr, Planning Director John Sonnen, and Associate Planner Peter Spir.

[Approval of Agenda](#)

Council President Scott Burgess moved to approve the agenda for the September 13, 2010 West Linn City Council Meeting with the following clarifications: the report from the City Manager will include clarification on Resolution 2010-35; Business from the City Council will be limited to three minutes per person. Councilor Jody Carson seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Community Comments

Dale Fortuna - took issue with the Oregonian report regarding the estimated staff cost of \$15,000 for the Swanson noise ordinance issue; asked a question about use of Code Enforcement Officers time; wanted to know if noise calls are coming in on 911 line.

Mary & Bruce Swanson - offered a 'thank you' for continued efforts to address noise ordinance issues for our family; offered the opinion that there were inaccuracies in the Oregonian article on the Swanson noise issue; shared an audio file of the Fahey's hot tub party.

Ken Pryor - posed two questions: what is the financial plan for the future of the City regarding plans for the community (streets, utilities, etc.); what is happening with Teri Cummings and censorship?

Ron Reams - attempted to show a DVD that did not work with available City A/V equipment.

Curt Sommer - read from the West Linn Charter related to public input into to City Manager's performance; relayed his interpretation of a meeting between Councilor Cummings and Assistant City Manager Wyatt.

Document Supplied by Mr. Sommer

Bob Thomas - took issue with John Kovash and Jim Mattis' voters' pamphlet statements; offered his perspective regarding John Kovash's performance as mayor; shared his perspectives on various City issues.

Karie Oakes - shared her belief that the 2009 evaluation of the City Manager was not properly completed because a singular document was not compiled for Council consideration.

Documents Supplied by Ms. Oakes

Alice Richmond - did not want to listen to people 'deteriorate' the City she has lived in for many years.

[Consent Agenda](#)

Agenda Bill 2010-09-13-01: Minutes from the June 28, 2010 Council Meeting

[Draft June 28, 2010 Minutes](#)

Agenda Bill 2010-09-13-02: Minutes from the July 6, 2010 Special Meeting

[Draft July 6, 2010 Minutes](#)

Agenda Bill 2010-09-13-03: Minutes from the July 8, 2010 Council Retreat

[Draft July 8, 2010 Minutes](#)

Agenda Bill 2010-09-13-04: Minutes from the July 26, 2010 Council Meeting

[Draft July 26, 2010 Minutes](#)

Council President Scott Burgess moved to approve the following items included on the September 13, 2010 Consent Agenda: minutes from the June 28, 2010 City Council meeting; minutes from the July 6, 2010 Special City Council meeting; minutes from the July 8, 2010 City Council meeting; and minutes from the July 26, 2010 City Council meeting. Councilor Jim Mattis seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, and Councilor Jim Mattis.

Nays: Councilor Teri Cummings.

The motion carried 4 - 1

[Report from the City Manager](#)

Mr. Jordan shared information about Resolution 2010-35 which interprets a section of the Charter

related to commencement of elected office for newly elected officials during a special election. The key section indicates that the Charter is interpreted to mean that term of office begins at the first Council meeting after the election has been certified by the Elections Office. He reminded the Council that it is their duty to interpret the Charter.

Business from the City Council

Council President Scott Burgess moved to approve Resolution number 2010-35 interpreting section 31(b) of the West Linn Charter regarding the commencement of office of a candidate elected at a special election pursuant to Charter section 31(b). Councilor Jim Mattis seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Councilor Carson wants the public to be aware that Metro's COO recommendation was issued in August and this recommendation kicks off a decision process related to the Urban Growth Boundary (UGB). One item in this recommendation was that no land in the Stafford area be brought into the UGB in the next five year period. It is important for the public to make comment on this recommendation. There are two opportunities close to West Linn: at Wilsonville City Hall on September 14 at 5:00; and at Clackamas County Community Services Division on September 20 at 5:00. There is also a Metro online survey at <http://www.oregonmetro.gov/>. The final decision will be made by the Metro Council. It is important that Borland and Stafford not be included, consistent with the COO's report.

Councilor Mattis attended a meeting on September 2 in Lake Oswego related to Clackamas high speed rail. This group was convened by Clackamas County Commission Chair Lynn Peterson. This meeting goal was to gather information and support from the Clackamas County communities to see what high speed rail would mean for Clackamas County communities. Communities are currently awaiting a consensus letter for review and consideration.

Councilor Mattis noted that the Citizen Support Center located at <http://westlinnoregon.gov> is providing a citizen service. He asked staff to let the Council know if there are repetitive issues that should be brought to the Council's attention.

Council Mattis read a report in the New York Times about a software service that may help Neighbors Helping Neighbors.

[New York Times Article Shared by Councilor Mattis](#)

Councilor Cummings would like to see a conflict of interest statement from Jeff Condit.

Councilor Cummings raised concerns related to the July 27, 2009 executive session and how executive sessions records are kept; she indicated that the attendance record was incorrect on the July 27, 2009 executive session minutes. Councilor Cummings reiterated her desire to record executive sessions.

Councilor Cummings raised concerns about the City Manager's 2009 evaluation and her belief that the 2010 evaluation is overdue. She noted that the 2010 evaluation is not on the tentative calendar. She requested information from fellow Councilors about their Charter interpretation related to evaluations. She also shared her interpretation of the October 10, 2009 conversations related to the City Manager's evaluation tool.

Council President Burgess clarified that Mr. Thomas' issue related to use of the term "interim" cannot be linked back to a document which requires use of the term "interim." He wants to remind to all citizens to vote in the September 2010 special election. He clarified that the Council appointed and approved Mayor Kovash and Councilor Mattis to fill the vacant positions when the former mayor resigned.

Council President Burgess clarified that Ms. Oakes' interpretation of the 2009 City Manager evaluation can be likened to the adage that "government processes are like making sausage." He clarified that the 2009 Council held retreat, used an evaluation tool, and at that time Councilor Cummings chose to not use that tool. He further stated that the Council voted to continue the employment of the City Manager. He also clarified that no change in the contract and salary for the City Manager was made. He also specified that in 2009, the Council took public comment on the City Manager's performance and those comments were considered during the 2009 evaluation.

Council President Burgess indicated that there is movement in the community to address drug use by teens; he encouraged citizens to contact Julie Edwards through City staff; and the City is planning to take a role to address this issue and share information.

Mayor Kovash clarified that when the City Council completed the 2009 evaluation of the City Manager, there were five separate evaluations for the City Manager (one from each member of the Council). The Council initially wanted the five evaluations to be "blended" into one document. However, despite working with a mediator, the evaluations were 'all over the board.' At that time, Mayor Kovash worked with the mediator to come up with an evaluation. The five evaluations were put onto sheets of paper and they reconciled them. This compilation document was brought to the Council. Because the documents were not reconcilable, the compilation was used as the evaluation because it was the best the Council could do at that that time. For 2010, the City Council is trying to

work on a better process. Councilor Mattis and Councilor Carson are experienced managers and they are working on the development of the 2010 tool.

Mayor Kovash clarified that the noise ordinance is important, and the City currently only has one Code Enforcement Officer and she is not on duty in the evening. After hours, the City does send Police Officers to address noise issues. The City seeks to keep enforcement of the noise ordinance as cost efficient as possible.

[Business Meeting](#)

[Agenda Bill 2010-09-13-06: Ordinance 1597 - Creation of a Historic Review Board \(CDC 10-01\)](#)

[Click here to link to the land use case file](#)

Staff report from Ms. Sara Javoronok.

Council President Scott Burgess moved to adopt Ordinance Number 1597 establishing a Historic Review Board and extending the terms of office for positions on boards, commissions and committees until the Council reappoints or replaces the position. Councilor Jody Carson seconded the motion.

Mayor Kovash noted that because there is no public testimony, the public hearing is closed.

Council President Burgess thanked the Planning Commission, Historic Resources Advisory Board and the public for their direction and assistance on this new venture. While he has some concerns about the City approach to a Historic Review Board due to the two processes and the 120 day limitation, he appreciates the work that has been done and the discussions. He is hopeful this process is as clean as possible and will result in a great Historic Review Board.

Councilor Carson thanked the Planning Commission, Historic Resources Advisory Board and the staff for collaborating on the creation of a Historic Review Board. Now, the City needs qualified people to apply to serve on the Historic Review Board.

Councilor Mattis thanked the Planning Commissions and Historic Resources Advisory Board members.

Council President Burgess provided clarification that he also thanks staff for their work.

Councilor Cummings thanked staff for working so carefully on the Historic Review Board, as well as the Planning Commission, and everyone else who has worked to preserve and protect West Linn historic resources.

Mayor Kovash indicated that the Historic Review Board is important. He reminisced that 20 to 30 years ago, the Willamette district was a very different place. But the Willamette neighbors have made Willamette a huge asset to the City and they have created something very good.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Council President Scott Burgess moved to adopt the second reading of Ordinance Number 1597 establishing a Historic Review Board and extending the terms of office for positions on boards, commissions and committees until the Council reappoints or replaces the position. Councilor Jody Carson seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

[Agenda Bill 2010-09-13-07: Bundy Appeal of a Planning Director's Denial of a Water Resource Area Protection Permit \(AP 10-01\)](#)

[Click here to link to the land use case file](#)

The appellant's attorney Mr. Steve Pfeiffer reminded the Council of the appellant's letter which raises procedural objections. Specifically, there are issues with a series of photos that were made available to the Council; a request to delete a portion of the report involving wetlands in Washington State; also, a concern that the appellant's packet was disorganized so it was difficult to tell which pages were from different sources. The appellant reviewed the Council's packets and determined that the Council's packets were correct. Finally, page 252 of the packet includes a document that purports to be from the appellant's attorney, but the appellant's attorney has no record of this document, and there is no record

of the referenced pages, and so the appellant would like this document stricken from the record.

Mayor Kovash read from a prepared script on the land use hearing process.

Mayor Kovash raised the appellant's first issue regarding the photos, and stated that new pages with captions on the photo were added to the packet. Mr. Pfeiffer ascertained that replacement pages with the corrections were offered. Mayor Kovash asked for clarification that the options were for the Council to accept the corrected pages or to keep the pages as-is. City Attorney Cindy Phillips confirmed this.

Councilor Cummings inquired if it is allowable for the photos with captions to be added to the record. Ms. Phillips indicated that the appellant's point is that the item included in the packet is not what is submitted, so the Council should rule on the appellant's interest in replacing the pages. Councilor Carson asked for clarification if each item raised by the appellant needed to be voted upon by the Council. Ms. Phillips confirmed this.

Councilor Jody Carson moved to include the legible caption photos in the record, replacing the photo pages without captions. Councilor Jim Mattis seconded the motion.

Council President Burgess indicated that related to the packet, that the packet was noticed and did not include the caption photos. No one (public or Council) had the captions until tonight. Ms. Phillips clarified that the appellants can be asked: 'if the Council incorporates the captions, will the appellant withdraw their objection?' Mr. Pfeiffer indicated this was amenable to the appellant.

Councilor Jody Carson moved to withdraw - (original motion: to include the legible caption photos in the record, replacing the photo pages without captions.)

Mayor Kovash raised the appellant's second issue regarding the Washington State wetlands report. Mr. Pfeiffer noted that it is the appellant's belief that this report should be stricken from the record. Ms. Phillips clarified that the appellant's request to keep the record open was very specific, and the transcript from the hearing showed that the appellant wanted to allow items (including new evidence) to be added to the record. The appellants' waived the opportunity to not have new evidence submitted. Mayor Kovash clarified that the recommendation from the City Attorney's Office is to leave the document in the record.

Council President Scott Burgess moved to approve the inclusion of the "Science of Wetland Management" in the record. Councilor Teri Cummings seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Council President Burgess noted that the City Attorney's recommendation is consistent with his recollection. The August 2, 2010 memo from staff refers to this document and the appellant was given the opportunity to rebut. The document is part of the record; this is part of the process.

Mr. Pfeiffer indicated that the appellant was not given a chance to rebut and stands by their objections.

Council President Burgess asked for clarification that the August 2, 2010 memo was given to the applicant. Associate Planner Peter Spir indicated that it was.

Mayor Kovash noted that the appellant's issue related to the perceived disorganization of the Council's packet had been resolved.

Mayor Kovash raised the appellant's fourth issue regarding page 252 of the record and the appellant's inability to identify the document. Ms. Phillips opined that the document in question does not contain any information and so there would be no harm in including it in the record. She further clarified that the appellant's request to exclude the page and the enclosures are new requests not originally included in the September 13, 2010 letter from the appellant, and that excluding something may result in exclusion of the enclosures which may not be the Council's intent.

Councilor Jim Mattis moved to exclude page 252 from the record. Councilor Jody Carson seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, and Councilor Jim Mattis.

Nays: Councilor Teri Cummings.

The motion carried 4 - 1

Ms. Phillips noted that since an exclusion from the record was made, that the Council needs to be cautioned that the excluded item may not be used in deliberations.

Mayor Kovash noted that the public hearing has been closed, and it is time to deliberate.

Council President Scott Burgess moved to deny the appeal of a Planning Director's denial of a water resource area protection permit (land use case file AP 10-01). Councilor Jim Mattis seconded the motion.

Council President Burgess noted his concurrence with the Planning Director's decision after reviewing the staff report and in going through the evidence at hand related to wetlands and fills, structure and use, issues of hardship, transition, open space, conservation easements, and multiple jurisdictions. He reminded viewers that the Council's job is to consider the Community Development Code; and in doing this he finds the Planning Director's interpretation of code to be correct.

Councilor Cummings indicated her appreciation of staff's diligence on this land use appeal. She noted that there have been misunderstandings about this property, even though the conditions of approval placed on this property were spelled out very clearly. She reminded viewers that the appellant gave the impression that "City bullying" should end. She clarified that the conservation easement was signed to protect this land for the people of West Linn. She indicated that it was not a hardship to not be able to put in a backyard pool. She opined that she would like to know what the City does with contractors who operate in West Linn in violation with our codes and conditions of approval.

Councilor Mattis noted that while the Council has materials in support of the appellant, they do not link together the role of the Council to this issue and the Community Development Code. While there may be some agreement that the City's controlling documents as they relate to passive uses are perhaps too restrictive and perhaps should be looked at, these opinions are irrelevant at this time. He agreed with staff that a pool is not passive use. He agreed with Councilor Cummings that there is relevance related to the easement and how any changes related to the easement should have occurred.

Councilor Carson noted that it is difficult to review this appeal in light of the pool already being built, but the staff's findings show that the application does not meet Code criteria, and multiple findings in the original Planning Director's report show that the application did not meet requirements. For these reasons, she will also be voting up to uphold the Planning Director's decision.

Mayor Kovash summarized that the issue tonight is to approve or deny the requested WRA permit. That is all. This is not related to a pool, it is just the WRA permit. The Planning Director's review of the permit application found that criteria were not met, and the motion before us would state that we agree with the Planning Director for the requested WRA permit.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Council President Burgess noted off-topic that he has concerns about Chapter 32 of the Community Development Code and the Council has asked the Planning Commission to look at this Chapter and do more work on it. This is part of their work plan.

Mr. Jordan reminded the Council that tonight's decision is tentative, and the final order will be ready in two weeks and to be reminded of ex parte contact issues until then.

Councilor Cummings shared her concerns that the City needs to do a better job with conservation easement management.

[Agenda Bill 2010-09-13-08: Oxford Street Right of Way Vacation \(MISC 10-19\)](#)

[Click here to link to the land use case file](#)

Staff report from Mr. Chris Kerr.

Councilor Jody Carson moved to direct the City Manager to initiate vacation proceedings for the portion of the Oxford Street right-of-way east of Bittner Street as well as the intersecting alley between Oxford Street and Long Street. Councilor Jim Mattis seconded the motion.

Council President Burgess reminded that there is a pedestrian easement from Oregon City Loop into this area. Given that the property is changing hands, he wanted to make sure the City addresses this with the school district.

Mr. Jordan asked that the motion be amended to include setting the hearing date for October 11.

Councilor Jody Carson moved to direct the City Manager to initiate vacation proceedings for the portion of the Oxford Street right-of-way east of Bittner Street as well as the intersecting alley between Oxford Street and Long Street and set the hearing date for October 11, 2010. Councilor Jim Mattis seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri

Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

[Agenda Bill 2010-09-13-09: Ordinance 1598 - Insurance Requirements for Entities Working Within the Public Right-of-Way and Public Utility Easements](#)

[Agenda Bill Cover Sheet - 2010-09-13-09](#)

[Memo to the City Manager](#)

[Ordinance No. 1598 - ROW & PUE Insurance Requirements](#)

Staff report by Mr. Chris Jordan

Council President Scott Burgess moved to adopt Ordinance Number 1598, changing the insurance requirements for entities working in the public right of way or public utility easements. Councilor Jim Mattis seconded the motion.

City Council discussion on the importance of Council retaining control over public works standards.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Council President Scott Burgess moved to adopt the second reading by title only. Councilor Jody Carson seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

[Agenda Bill 2010-09-13-10: Robinwood Station Use Agreement](#)

[Agenda Bill Cover Sheet - 2010-09-13-10](#)

[Draft Robinwood Station Use Agreement](#)

Staff report by Mr. Chris Jordan.

Councilor Jim Mattis moved to authorize the City Manager to enter into this agreement with the Friends of the Robinwood Station. Councilor Teri Cummings seconded the motion.

City Council discussion on the hours of operation of the facility; use of the facility; neighborhood consideration; role of the Friends group.

Mr. Randall Fastabend from the Friends group indicated that the Friends are comfortable working out the agreement with the City Manager and the Parks Director.

Mr. Jordan provided clarification on the temporary use permit language and indicated staff's willingness to work with the neighborhood on developing facility use guidelines within the temporary use guidelines.

Councilor Mattis suggested omitting the hours of operation from the use agreement and clarifying that the Friends can set the hours in their rules of operation, as well as other issues like liquor licenses, etc.

Mayor Kovash reiterated the Council concerns and the Council's interests in making the neighborhood comfortable. He indicated that Councilor Mattis' suggested language is agreeable.

Councilor Jim Mattis moved to authorize the City Manager to enter into this agreement with the following revisions: delete hours of operations, and include after operations, 'hours of use.' Councilor Teri Cummings seconded the motion.

Ayes: Mayor John Kovash, Council President Scott Burgess, Councilor Jody Carson, Councilor Teri Cummings, and Councilor Jim Mattis.

Nays: None.

The motion carried 5 - 0

Councilor Mattis noted off-topic that the work of the Friends of the Robinwood Station is similar to the work of the Library Foundation, which greatly benefited from the professional support from the City of West Linn. Non-profits have to deal with new regulations from the federal government related to non-profits; it is hard for non-profits to keep up with these new regulations. When West Linn has citizen groups who need help with paperwork etc. with nonprofits, the City should provide that level of support to them.

[Adjournment of Business Meeting](#)