

Memorandum

Date: October 8, 2010

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager 

Subject: Miscellaneous Items

Appeal of Council Decision

Troy and Gina Bundy have appealed the Council's denial of the swimming pool that they constructed in their backyard in a conservation easement and without the necessary permits. The appeal is to the state Land Use Board of Appeals and the information is attached.

Municipal Court Collections

Under the leadership of Finance Director Richard Seals and Court Supervisor Fran Blake, the City has taken a more aggressive approach to collecting past due fines owed to our court. The City has been working with a private collections firm and, for the month of September, collected \$11,919 in past due fines.

Customer of the Year

The City's janitorial contractor – TVW – has named the City of West Linn its "Customer of the Year". As the Council knows, TVW hires individuals with disabilities which is a criterion for the City when we select a janitorial contractor and why we continue to contract with TVW. By being named TVW's Customer of the Year, we believe it is a strong indication of the City's continued support of those with disabilities.

October 25 Council Meeting

We have reviewed our list of future agenda items and concluded that there would only be a couple of agenda items that are not time-sensitive for an October 25 meeting. Therefore, after speaking with the Mayor, we have decided to cancel that meeting.

International City Managers Association Annual Conference

I plan to attend this year's annual ICMA conference in San Jose, California. I will be out of the office October 18-19. Assistant City Manager Kirsten Wyatt will act as City Manager in my absence.

Attachment



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October 5, 2010

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Land Use Board of Appeals
Attn: Kelly Burgess
Public Utility Commission Building
550 Capitol Street NE, Suite 235
Salem, OR 97301-2552

**Re: Bundy v. City of West Linn
"AP-10-01 Findings and Conclusions – In the Matter of an Appeal of the Planning Director's Decision to Deny the Water Resource Area Permit (WAP-09-03) Under the Provisions of West Linn Community Development Code Chapter 32 Submitted by Mr. and Mrs. Bundy of 1215 Ninth Street"**

Dear Kelly:

This office represents Troy and Gina Bundy. Enclosed for filing with the Land Use Board of Appeals please find the original and two (2) copies of Troy and Gina Bundy's Notice of Intent to Appeal the City's final decision in the above matter, together with a check in the amount of \$400.00 to cover the filing fee and deposit for costs. Please process this filing.

Feel free to contact me with any questions. Thank you for your assistance with this matter.

Very truly yours,

Michael C. Robinson

cc: Troy and Gina Bundy (w/enc.) (via email)
Persons Listed in Paragraphs III and IV (w/enc.) (via first class U.S. Mail)

73108-0001/LEGAL19204925.1

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

TROY and GINA BUNDY,

Petitioners,

vs.

CITY OF WEST LINN,

Respondent.

LUBA No. 2010 - _____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioners Troy and Gina Bundy intend to appeal the land use decision of respondent City of West Linn entitled "AP-10-01 Findings and Conclusions – In the Matter of an Appeal of the Planning Director's Decision to Deny the Water Resource Area Permit (WAP-09-03) Under the Provisions of West-Linn Community Development Code Chapter 32 Submitted by Mr. and Mrs. Bundy of 1215 Ninth Street," which became final on September 30, 2010. The decision involves the City of West Linn City Council's decision to deny the appeal filed by petitioners of the Planning Director's denial of petitioners' application for a Water Resource Area Protection Permit to authorize construction of a swimming pool, patio, landscaping, and improvement of the drainage ditch in a Water Resource Area and conservation easement located on private property owned by petitioners.

II.

Petitioners, Troy and Gina Bundy, are represented by Michael C. Robinson of Perkins Coie LLP, 1120 NW Couch Street, 10th Floor, Portland, OR 97209, (503) 727-2264. Petitioners are the applicants in this matter.

III.

Respondent City of West Linn has as its mailing address: 22500 Salamo Road, West Linn, OR 97068. Respondent has as its legal counsel in this matter: Timothy V. Ramis, Jordan Schrader Ramis PC, Two Centerpointe Drive, 6th Floor, Lake Oswego, OR 97035, (503) 598-7070.

IV.

The following persons were provided written notice of the City's final decision as shown on the governing body's records: **SEE ATTACHED EXHIBIT A**

NOTICE

Anyone designated in Paragraph IV of this Notice who desires to participate as a party in the case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-010-0050.

DATED: October 5, 2010.

PERKINS COIE LLP

By 
Michael C. Robinson, OSB No. 910909
Seth J. King, OSB No. 071384

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 5, 2010, I filed the original and two (2) copies of this Notice of Intent to Appeal via certified mail with the Land Use Board of Appeals, PUC Building, 550 Capitol Street NE, Suite 235, Salem OR 97301-2552.

I further certify that on October 5, 2010, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs III and IV of this Notice pursuant to OAR 661-010-0015(2) by first-class mail.

DATED: October 5, 2010.

PERKINS COIE LLP

By Michael C. Robinson
Michael C. Robinson, OSB No. 910909
Seth J. King, OSB No. 071384

Attorneys for Petitioners



CITY OF
West Linn

Memorandum

Date: October 8, 2010

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager *CJ*

Subject: Objection to LCDC

In the City's continuing efforts to preserve the rural character of the Stafford area, attached is a letter from Jeff Condit of Miller Nash objecting to the staff report/recommendation concerning the urban reserve designation of the Stafford area. Mr. Condit has filed this objection on behalf of both West Linn and Tualatin.

Attachment



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(503) 205-2305 direct line

October 7, 2010

**BY E-MAIL AND
FEDERAL EXPRESS**

Urban and Rural Reserves Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Subject: Exceptions to the Department's Report on the Objections to Portland
Metro Area Urban and Rural Reserve Designations

Dear Urban and Rural Reserves Specialist:

We represent the Cities of Tualatin and West Linn (the "Cities"). The Cities submitted valid objections to Metro's and Clackamas County's decisions¹ with regard to the urban and rural reserve designations to the Department of Land Conservation and Development ("DLCD" or "Department") on July 14, 2010. The Department issued its report on September 28, 2010 (the "Report"). The Report recommends that the Land Conservation and Development Commission ("LCDC" or "Commission") deny the Cities' objections, as well as all of the other objections submitted to the Department, and approve the submittal. Please accept this letter as the Cities' exceptions to the Report filed pursuant to OAR 660-025-0160(4).

1. The Department Misinterprets the Applicable Law.

A fundamental flaw that infects the entire Report is the Department's interpretation that the regulatory scheme grants Metro and the counties an unprecedented level of discretion over the location of urban and rural reserves:

"It is important to understand that the process and criteria for designating urban and rural reserves is unlike any other large-scale planning exercise previously carried out in Oregon. With two exceptions, the Department

¹ Because Metro's and Clackamas County's findings with regard to the four Stafford sub-area are substantively identical, the City's refer to the "Metro Findings" or "Metro Decision" for convenience.

Urban and Rural Reserves Specialist
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believes that the statute and the rules that guide this effort replaced the familiar standards-based planning process with one based fundamentally on political checks and balances, together with the factors that local governments are required to consider in making their decisions.

* * *

“The result is that, in the Department’s opinion, the region has substantial discretion in determining the *location* of urban and rural reserves – the framework that will guide where the region will grow over the next 50 years *if* the region shows that its needs for housing and employment require additional lands beyond the current urban growth boundary.” (Emphasis in the original.) Report, Page 3.

“With one exception [designation of Foundation Farmland], the Department does not believe that the question is whether an area would be better as a rural reserve than as an urban reserve, or even whether Metro was right in its decisions. The questions are narrow: *whether Metro considered what it was supposed to consider, whether Metro’s findings explain its reasoning, and whether there is some evidence in the record to support Metro’s decision.*” (Emphasis in the original.) Report, Page 18.

In other words, according to the Department, the decision as to the location of the urban and rural reserves is primarily a political decision and the Commission must defer to that decision as long as the findings contain *some* explanation of the decision and can point to *some* evidence in support of the decision. The statute and the rule do not support this interpretation.

In determining the meaning of a statute or rule, the first step is examination of the text and context of the statute and the legislative history of that statute. State v. Gaines, 346 Or 160, 206 P3d 1042 (2009); PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143 (1993).

ORS 195.145(5) set forth the standard for location of urban reserves:

“(5) A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

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- (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (b) Includes sufficient development capacity to support a healthy urban economy;
- (c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (e) Can be designed to preserve and enhance natural ecological systems; and
- (f) Includes sufficient land suitable for a range of housing types.”
(Emphasis added.)

As the underscored statutory language indicates, the six urban reserve locational factors are unambiguously mandatory considerations when determining the location of urban reserves. The Department correctly points out that these considerations are described as “factors” and not “criteria,” and so the Cities would agree that Metro and the counties do not have to find that an area complies with each and every one of these factors. But that does not justify a leap to the conclusion that the statute grants Metro and the counties a higher level of political discretion over the location of the reserves than they have over any other land use decision subject to compliance with state law.

In point of fact, Goal 14 uses almost exactly the same language as ORS 195.145 to describe the analysis required for the location of an urban growth boundary (“UGB”) amendment:

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of the public facilities and services;

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(3) Comparative environmental, energy, economic and social consequences; and

(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside of the UGB.”

The Goal 14 locational factors are clearly the context for the urban reserve locational factors. They were in effect at the time ORS 195.145 was adopted and address very similar considerations. If anything, the urban reserve factors are far more specific and detailed as to what must be analyzed than the Goal 14 factors.

The Commission and the courts have never interpreted “consideration” and “factors” as used in Goal 14 to mean that the determination of the location of a UGB is a political decision to which the Commission must defer. Rather, the Commission and the courts have concluded that under Goal 14, a local government must consider *all* of the factors, must balance those factors when determining the location of the UGB, and that no one factor controls (because they are “factors”). See e.g., City of West Linn v. Land Conservation and Development Commission, 201 Or App 419, 440, 119 P3d 285 (2005); Citizens Against Irresponsible Growth v. Metro, 179 Or App 12, 17, 38 P3d 956 (2002). The local government’s decision has to be sufficiently explained and has to be supported by substantial evidence in the *whole* record, not just one piece selected by the local government. 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377, aff’d 130 Or App 406 (1994). For these reasons, the Cities argued in their objection No. 6 that the urban reserve factors should be applied the same way as the Goal 14 factors, and the Commission’s scope of review should also be the same.

Far from indicating that the statute and the rules intended to replace “the familiar standards-based planning process with one based fundamentally on political checks and balances,” the text and context indicates that the intent was to adopt the very familiar analysis long established in Goal 14.

2. The Department Misapplies the Applicable Law.

Given that the Report misinterprets the applicable law, it is unsurprising that it also misapplies it. The common theme of the Cities’ objections 2-6 is that Metro’s findings with regard to the factors are conclusory and fail to demonstrate support by substantial evidence. Metro’s decision recites the factors and reaches a conclusion, many times without citing any evidence in the record at all. At no time does Metro address the substantial evidence to the contrary submitted by the Cities or explain why Metro found other evidence more persuasive.

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According to the Department, Metro only has to show that it took the factors into consideration and that there is some evidence in the record to support its conclusion. As noted in the Cities' first exception, Metro should have analyzed the urban reserve factors in the same manner as required for the UGB factors in Goal 14. Because Metro failed to do so, the decision should be remanded.

Similarly, nothing in the urban reserve rule or statute implicitly or explicitly changes LCDC's scope of review. Goal 2 requires Metro's decision to be supported by substantial evidence. ORS 197.651 requires the Commission's findings to be supported by substantial evidence in the whole record. As noted above, "substantial evidence" is evidence in the whole record, and requires consideration of competing or conflicting evidence. Where conflicting evidence has been submitted, a local finding cannot just point to evidence that supports its decision, it must explain why it found such evidence more persuasive than the conflicting evidence. See e.g., Younger v. City of Portland, 305 Or 346, 752 P2d 262 (1988). Metro's findings fail to do so and therefore its decision must be remanded.

The Report parrots Metro's conclusory findings with regard to the Stafford subareas and does not analyze the substantiality of the evidence. The Cities therefore adopt and incorporate by reference the objections contained in their July 14 submittal as exceptions to the Report.

If LCDC approves Metro's decision based on the Report, it will have misapplied the substantial evidence test and adopted findings insufficient for judicial review. See e.g., 1000 Friends of Oregon v. LCDC and the City of Woodburn, ___ Op App ___, ___ P3d ___ (CA A135375, September 8, 2010).

3. The Report Does Not Fully Respond to the Cities' Objections With Regard to Factors 1 and 3.

In their second objection, the Cities argued that Metro had failed to demonstrate that the four Stafford subareas can be developed at urban densities in a way that makes efficient use of existing and future transportation infrastructure or can be efficiently and cost-effectively served with transportation facilities. Exhibit A for the Cities' argument is Metro's own 2035 Regional Transportation Plan, which concludes that even under the rosiest of financial assumptions, the road providing service to the Stafford area will be failing by 2035.

The Report treats this as a Goal 12/TPR argument and rejects that argument. The Cities did make such arguments (and continue to believe that they are

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correct). This Cities also argued, however, that as a matter of substantial evidence, a reasonable person could not conclude that the Stafford area would or could be adequately served by transportation facilities, when Metro's own RTP analysis concludes that it will not be so served. The evidence relied on by Clackamas County (and cited in the Report) is a July 8, 2009, outline analysis of the subareas. It ranks the Stafford area as "medium to low" suitability for transportation. Neither Metro nor the County explain why they found this evidence more persuasive than the subsequently developed—and now adopted—RTP, which concludes that adequate facilities will not be in place by 2035 and that there is no current or projected funding source available to change this outcome.

As noted in the Cities' Objection No. 2, the City of West Linn submitted the relevant portions of the final draft RTP to the Clackamas County Board of Commissioners on April 21, 2010. The final draft RTP was adopted by the Metro Council on June 10, 2010. Metro's findings are inadequate because they fail to explain why it found the July 8, 2009, outline more persuasive than the RTP. In addition, a reasonable person would not find a year-old outline more persuasive than the RTP, particularly when that same "person" has now adopted the RTP as the transportation planning document for the region for the next 25 years.

The Cities made a final argument, also not addressed in the Report, that Metro's urban reserves decision is inconsistent with the RTP in violation of Goal 2. A number of other objectors have also cited to inconsistencies between the RTP and Metro's urban/rural reserves decision. The Department's response is, variously, that the planning period for urban and rural reserves is different than the planning period for the RTP, and that the TPR and Goal 12 do not apply to designation of reserves, and that the RTP wasn't adopted until a week after adoption of the urban/rural reserves decision and isn't yet acknowledged.

First, the RTP is a 25-year document because that planning horizon is required of a regional plan by the federal government. So at least from an analytical standpoint, it applies to the first five years of the 30 to 50-year reserves period.

Second, the effect of the designation of an area as an urban reserve is to move it to the front of the priority line the next time the UGB is expanded. See ORS 197.298. Metro must update its inventories and determine whether to amend the UGB every five years (and is doing so right now). ORS 197.299. Every designated urban reserve will therefore be under consideration for addition to the UGB within the time frame governed by the RTP. It makes no sense from a consistency or a planning

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standpoint to designate a territory as urban reserve that the RTP demonstrates cannot and will not be served for the next 25 years.

Finally, the date of adoption of the RTP is irrelevant to the consistency and evidentiary considerations. The period review process has long been held to be an “iterative” process that has to take into consideration new regulations adopted prior to acknowledgment. The urban/rural reserve decision is not yet acknowledged and the RTP has been adopted. They are required to be consistent under Goal 2 and they are not.

4. The Report Misconstrues the Cities’ First Objection.

In their first objection, the Cities argued that Metro had no authority to designate urban reserves under the optional OAR 660 Division 27 process, because its code requires it to designate urban reserves under OAR 660, Division 21. For this reason, the Cities argued that Metro had not made the choice to select that optional process. The Department claims that this argument is “nonsensical” because the Metro Code provision was adopted prior to OAR Division 27 and so could not reflect a “choice.”

The “choice” (or inadvertent mistake) was *not* to amend the Metro Code *after* the statute and Division 27 were adopted to authorize Metro to designate urban reserves under that process. A state statute does not preempt a local regulation unless the intent to preempt local legislation is express. See e.g., Thunderbird Mobile Club v. City of Wilsonville, 234 Or App 457, 228 P3d 650 (2010), rev den 348 Or 524 (2010). Not only is there no intent to preempt local legislation, the Division 27 process is expressly optional. A county that has adopted a 100-acre minimum lot size in its EFU zone, for example, cannot ignore this requirement merely because the state or the Commission subsequently enacts a statute or rule allowing an 80-acre minimum lot size; it must first amend its code. And so must Metro.

5. Don’t Make the Same Mistake Twice.

The Cities find ironic the Department’s favorable citation to Metro’s finding with regard to the City of Damascus. Report page 53. Metro’s finding supports its decision to designate some foundation farm land as urban reserves over some exception lands. It notes the difficulty of converting existing low-density rural residential development to urban development due to expense and politics:

“There is no better support for these findings than the experience of the City of Damascus, trying since its addition to the UGB in 2002 to gain

Urban and Rural Reserves Specialist

October 7, 2010

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acceptance from its citizens for a plan to urbanize a landscape characterized by a few flat areas interspersed among steeply sloping buttes and incised stream courses and natural resources.”

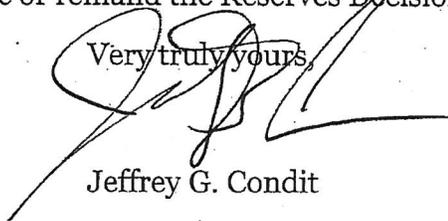
This could be a word-for-word description of both the physical and political landscapes with regard to Stafford: A heavily parcelized area consisting of steep slopes, rivers and streams, very expensive and difficult to adequately serve, and inhabited by residents and surrounded by cities that, for these reasons, have always strongly opposed urbanization.

The Cities hope that LCDC will have its own revelation on the road to Damascus and remand the urban/rural reserves decision back to Metro and the counties.

CONCLUSION

Based on its July 14 objections and its above exceptions, the Cities respectfully request that LCDC reverse or remand the Reserves Decision.

Very truly yours,



Jeffrey G. Condit

cc: Sherilyn Lombos, City of Tualatin
Chris Jordan, City of West Linn
Laura Dawson Bodner, Metro
Maggie Dickerson, Clackamas County
Chuck Beasley, Multnomah County
Steve Kelly, Washington County



Memorandum

Date: October 8, 2010

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager *uj*

Subject: Agenda Materials

In preparation for the October 11 meeting, attached are the following:

- Revised Minutes for the July 19 and the September 27 Council meetings including edits received from Councilors at the work session.
- Materials for the work session that is immediately following the Council meeting. This information was sent to the Council via e-mail earlier this week.
- The matrix showing upcoming agenda items. This includes the cancellation of the October 28 Council meeting.

Attachment

**WEST LINN
CITY COUNCIL MEETING
MINUTES
JULY 19, 2010**

Council Present:

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

Staff Present:

City Manager Chris Jordan, Assistant City Manager Kirsten Wyatt, Parks & Recreation Director Ken Worcester, City Engineer Dennis Wright, and City Attorney Tim Ramis.

Business Meeting

Public Hearing (AP-10-01) to Consider the Appeal Filed by Troy and Gina Bundy of the Planning Director's denial of a Water Resource Area (WRA) Permit (Continued from June 14, 2010)

Mayor Kovash opened the public hearing to consider an appeal of the Planning Director's decision in WAP-09-03 to deny any application for Water Resource Area Protection Permit to allow installation of a swimming pool, patio, grading of property, filling of wetlands, removal of native vegetation, planting of non-native vegetation, and creation of a new drainage way in a conservation easement and in two environmental overlay areas associated with wetland and riparian areas proposed at 1215 9th Street described at the assessor's map 31 East 2ab, Tax Lot 8210.

The appeal has been filed by the property owner applicants, Troy and Gina Bundy. The hearing is de novo; the record in this case will include all testimony and written submissions received before the close of the hearing or record by City Council. Anyone may testify. Those wishing to speak must focus their comments on the applicable criteria or approval of the land use application. The hearing was originally noticed and scheduled for June 14, 2010; however, the applicant requested a continuation to this evening.

The hearing will be conducted according to the applicable criteria found in the Community Development Code, Section 99.170. Because this hearing is the initial evidentiary hearing, anyone may ask the City Council to continue a public hearing or leave the written record open and the City Council is required to grant the request and either continue the public hearing or leave the written record open for at least 7 days.

City Attorney Tim Ramis stated all persons wishing to speak must be recognized by the Mayor before speaking. For the deliberations tonight the applicable criteria are found in the Community Development Code. The applicable approval criteria are found in Chapter 32, Water Resource Area Protection. The authority of the Council is limited only to those issues that address compliance with the applicable criteria. The applicant has the burden of proving that the application complies with all relevant criteria.

Mayor Kovash reviewed how the public hearing will be conducted. He asked if any members of the Council had visited the site. Council President Burgess stated he has driven by the site, did not walk onto the property but was able to see what was noted in the record as the gate to the property. He

feels he can vote impartially on this issue. Councilor Cummings stated she went down the private drive and knocked on the door. Mr. Bundy showed her the back yard, pool and helped her get oriented to the area. They did not engage in any discussion about the specifics of the case. Councilor Carson stated she has driven and walked often by this property; she has not gone down the private driveway. She did not talk to anyone about this property. Mayor Kovash stated he has driven on the street around the property to get a view of the terrain. He has driven down the driveway to the home and looked through the buildings to the area behind the home. He did not talk to anyone during his visit.

Mayor Kovash asked if there were any conflicts of interest or ex-parte contacts to declare. Councilor Cummings stated at an executive session she made statements that she later realized were incorrect in thinking she had been with Mayor Galle on a certain weekend. She called Ms. Galle to let her know that she was not with her the weekend of the Old Time Fair; it was the Fourth of July Celebration. They did not engage in any further conversation about details of this case. Mayor Kovash noted he met the Bundy's at the Fair yesterday and had a short conversation. There was no discussion about the details of the case.

Mayor Kovash asked the audience if they wished to make a challenge of any council member's impartiality or ability to participate. There were none. He asked if there were any objections to the Council's jurisdiction to consider this matter. There were none.

Staff Presentation

Planner Peter Spir gave a power-point presentation of the staff report of the subject site and surrounding area. He reported this is a public hearing to consider the appeal of the Planning Director's decision that would have allowed the construction of a swimming pool and associated patio, etc. The appellant constructed the swimming pool and patio and undertook activities in protected wetlands, riparian area, transition zones, and in the open space conservation easement. Although the application was for the pool, discussions of the water resource areas (wetlands, drainage ways) are important in determining the setbacks that the pool should meet.

Community Development Code, Chapter 32 is the applicable chapter and states, "...no person may clear, fill, build in, or alter existing water resource areas without having obtained a permit."

The location of the appellant's property was pointed out on the site map showing access along a private driveway. The property constraints and limitations include a Wetland (Water Resource Area) delineation, Water Resource Area Wetland Transition and Setbacks, Water Resource Area Riparian Corridor, and Open Space Conservation Easement. The swimming pool extends between 33 and 38 feet from the rear property line. An aerial photograph was shown with a rough approximation of the natural drainage-way (AKS, Wetland Delineation) and identified on the Surface Water Management Plan as located along the access. The City of West Linn Wetland Inventory adopted in 2005 shows wetlands on the property. Chapter 32 depends on the Wetland Inventory as the basis for wetland delineation.

A photograph was showed depicting the location of the trench that represented the northern edge of the property. This trench existed before the Bundy's arrived at the property in 2003. There are

submittals from neighbors that the trench existed long before the Bundy's and it was not created by them.

The wetland boundary has a 50-foot transition zone and a 15-foot setback which takes up almost all of the Bundy property in the rear yard almost to the back and the front of the house. The riparian corridor covers most of the subject property. There is an overlay over the appellant's house.

The wetland conservation easement boundary was recorded in 2001 which extends 32-38 feet into the rear yard of the Bundy property. This easement forbids the construction of fences, buildings, filling, excavation, removal of top soil, any changes in topography, removal of trees and plants (particularly native plants), prohibiting the planting of non-native trees and plants including disturbances or changes in natural habitat in any way, modifications to the topography (placing of fill), manipulation land alteration or water courses, marshes, things that would be detrimental to purity, drainage, flood control, conservation, etc.

Pictures were shown of the rear of their property where the applicants went onto PGE property and modified it significantly. The transitions and setbacks embrace most of the rear yard, pool and patio areas. The trench was not excavated by Mr. Bundy; however, it was subsequently improved by him and his neighbors with new rock and plant materials which slowed down the flow of water through that area. Staff contacted PGE and they reported no authorization of the use of their property. Removal of vegetation accelerates the flow of water during periods of high rain. In wetlands grasses slow and contain the rainwater for a more measured release of the water downstream. In this case the water flow has been changed.

Pictures were shown of 2007 showing the rear of the subject property. Earlier photographs show thick trees and vegetation. 2008 pictures show grading at the rear of the property and removal of most of the vegetation.

The Planning Director found the appellants constructed the swimming pool without a building permit, constructed a patio area around the pool, a water feature in the transition area, graded the rear yard and PGE property to the north, moved native vegetation in the rear yard and PGE property, modified the natural drainage way (replaced by a trench in 2001/2003), and the appellant subsequently lined the trench with rock/gravel to create a 9-15 inch deep channel. There is evidence in the record that the applicant installed piping to direct water from the trench to wetlands to the south of the property to cure flooding in their home which should have been permitted. Non-native grass materials and two footbridges were installed across the trench along with a brick wall in the open space conservation easement area in front of the house. All of these activities were done within the transition zone, riparian corridor or wetland conservation easements.

Chapter 32-032 prohibits any new lawn or garden consisting primarily of non-native vegetation, removal of existing native vegetation from the transition area or setback area. Staff recently received from the Department of State Lands, signed by Mr. Bundy, a consent agreement with findings that the property contained a wetland and that the Bundy's removed and/or filled more than 50 cubic yards of material within the waters of the State without permit or authorization from the Department. In the record is a letter dated May 18, 2010 from the U.S. Army Corps of Engineers stating their site visit revealed a pool,

patio and landscaping may have been placed within wetlands in the back yard of the residence. Fill material was placed in the backyard of the property to create the area prepared for planting.

The proposed development shall be designed to maintain the existing natural drainage ways and utilize them as the primary method of stormwater conveyance. The AKS Wetland Study identified a dry creek channel. The Surface Water Management Plan identified two channels and one of the channels being the one between the applicant's property and PGE.

An email was received from a neighbor Jay Walker dated June 8, 2010 stating they re-graded the ditch and put in three inches of fill to stop erosion. The Bundy's also cleared their ditch at the same time and put in the same fill rock. By modifying the ditch along the rear property and removing the native vegetation the appellants destroyed many of the functions of the natural drainage way, storm water treatment, storm water detention and habitat area. Further pipes directing storm water to the south of the property diminish downstream water flows which impact wetlands northeast of the Bundy property. For that reason staff found the Bundy's have not met the approval criteria.

The next criteria states that development shall be conducted in a manner that will minimize adverse impact on the water resource area, alternatives which avoid all adverse environmental impacts shall be considered first. It was staff's finding that the house is correctly built outside of the conservation easement, outside of the transition zones that were in place at the time of construction. In contrast the modifications of the pool, patio grading, re-directing stormwater, filling of wetlands, removing trees, elimination of habitat areas resulted in significant adverse environmental impacts. Staff finds a significant portion of wetlands on the PGE property was eliminated. For these reasons staff found the criteria was not met.

Chapter 32.050(i) requires sound engineering principles regarding downstream impacts, soil stabilization, erosion control, inadequacy of improvements to accommodate the intended drainage through the drainage basin shall be used. Storm drainage shall not be diverted from the natural water course. Staff finds the drainage was diverted from the water course as depicted on the 2000 AKS delineation. The drainage way was straightened by a prior owner per a letter from Mr. and Mrs. Paulson (included in the record). The appellant subsequently fortified it was gravel. The installation of the pipes by the appellant has diverted the stormwater flow from its natural water course. Staff finds this does not meet the criteria.

Chapter 32.050(e) identifies the appropriate transition areas associated with water features, wetlands, and drainage way. The transition area is a total of 65 feet from the edge of the drainage way. All of the improvements are within that area. Staff finds the approval is not met.

Staff recommends denial of the appeal based on approval criteria in Chapters 32.050(b), (c), (d), (e), (f), (h), (i) and (l) are not met. The applicant must demonstrate compliance with all of these criteria.

Mr. Spir reported that **Christine Haver**, Corps of Engineers, sent an email correcting staff on a number of points:

- Staff stated the permit needed by appellant was the Joint Permit when the required permit name is After the Fact Permit under Nationwide Permit Number 29

- Staff stated the Corps of Engineers and Department of State Lands (DSL) would both pursue enforcement. Ms. Haver corrected staff in a follow-up email stating the Corps of Engineers would, "...not open enforcement action on the alleged activities
- Staff stated, "The preponderance of evidence shows that the provisions of Chapter 32 have been violated. It is the view shared by DSL and U.S. Army Corps of Engineers as well the City engineering staff responsible for management of the storm drainage facilities." Ms. Haver wanted to make it clear that the Corps does not become involved in city regulations or codes therefore would be inappropriate or inaccurate to state that the Corps shares the views of the Planning Director, City Engineering staff on the provisions of the Community Development Code.

These corrections having been made, staff feels the essential points on the approval criteria still stand.

The appellant's attorney asked if the swimming pool is in fact a structure and therefore exempt from water resource area structural setbacks per Chapter 32.050(f). The Community Development Code defines structure as something constructed or built and having a fixed base on or fixed connection to the ground or another structure and platforms, walks, and driveways more than 30 inches above grade and not over any basement or story below. It was the feeling that since the 15 x 30 foot pool is not over 30-inches above grade, it is not a structure. Staff feels the CDC definition can be interpreted to define two separate types of structures given the use of the conjunction and (structures with fixed base and structures such as platforms, walks, etc.). The pool is indeed a structure and would not be given accommodation in the transition areas.

The Oregon Residential Specialty Code indicates any structure intended for swimming or recreational bathing that contains water over 24-inches deep will require a permit. A structure is defined as anything which is built or constructed. No building or other structure shall be constructed, improved, altered, and enlarged except in conformity with conditions of the zone.

There is the contention that the swimming pool and patio could be defined as passive recreation facility and therefore permitted in the water resource area transition area. However, there is no clear definition of passive recreation in the Community Development Code. There is language in Chapter 56 relating to passive recreation oriented parks where support facilities, more intent uses (structures) are discouraged.

The Metro Greenspaces Master Plan calls passive recreation as recreation not requiring developed facilities. The Department of State Lands defines passive recreation activities as those that require no structures. With those definitions in mind that define a pool as an active recreation, staff feels the swimming pool is not passive recreation facility; it is more of an active recreation facility.

There is a provision in Chapter 32 addressing the hardship allowance. The idea is not to deprive property owners of all economic use of their land. The County Assessor's Office made a determination the value of the house is \$640,000. The site has achieved some measure of economic viability. If the applicant had been able to prove that they have been denied economic use of the property, they would have been allowed up to 5,000 sqft of site (including area for grading and excavation). Staff found the existing driveway in the front of the property, the sidewalk from the driveway to the house, and the

house footprint combine for 7,175 sqft (not counting pool and recent improvements). The applicants have already exceeded the 5,000 sqft allowed.

Applicability of other land uses, the lot line adjustments and wetland permit involving the property would include the following conditions of approval:

- Willamette River Greenway Permit shall be required for any new structure on the site
- No development shall occur in the flood management, area boundaries, or within the wetland conservation easement without required permits
- The property is within a 100-year flood plain and therefore a Flood Management Permit and Willamette River Greenway Permit will be required for the pool and other improvements
- If this application were approved, it would allow the retention of the pool, patio and associated hard surface improvements but only if Council specifically modifies the open space conservation easement as well. It will not address the fill, grading, loss of native vegetation, drainage way modifications on PGE and Bundy property. The application was for the swimming pool; not for the right to make these site modifications. It will not change the conditions of approval or the original lot line adjustment and wetland permit for the property. It will not solve the continuing environmental problems regarding reduced or modified downstream water flow.

Mr. Ramis reiterated to the Council the question being asked tonight is whether the improvement described in the application satisfies the criteria in the Code. In after-the-fact situations, it is tempting to get into the details of how the improvement came to be. That is a question for another day; however, it is not before the Council in this proceeding tonight. Some of the history may be important in terms of the impacts of the improvement, but the precise of how it came to be is not directly relevant to the criteria.

Mayor Kovash reported the hearing is to consider the appeal of the Planning Director's decision to deny the application for a water resource area protection permit to allow the installation of a swimming pool and patio, grading of property, etc.

Council President Burgess noted Council's decision tonight is focused on the City's enforcement of the standards of Chapter 32 no matter who alters the natural area. The house is in the transition zone; however, it was built before changes in Chapter 32.

Applicant Presentation

Michael Robinson, Applicant's Representative, stated their presentation would include testimony by Mr. and Mrs. Bundy and himself.

Troy Bundy, 1215 9th Street stated the staff report left out some details. They have met and agreed with Department of State Lands and U.S. Army Corps of Engineers to restore the PGE property consistent with their needs and desires. They have retained an independent wetland consultant who is preparing a plan for those improvements, paying a \$3,000 fine, and purchasing wetland remediation credits involving the encroachments.

The delineation relied upon allowing his home to be built initially was not accepted by DSL and it wasn't verified before all the homes were built in the area. His entire half-acre portion of property is overtaken by government regulations. There is nothing he can do. Mr. Spir earlier indicated that the action against him will involve his pool, sod, sprinkler system, landscaping, etc. The wetlands are supposed to be up to his slider. Mr. Bundy stated he tried to settle this matter respectfully and have been dealt with hardship.

In regards to the PGE situation, a Cottonwood tree fell over onto his property from the PGE land. He contacted PGE and at first they denied it was their land and after further investigation they discovered it was their land and came out. Mr. Bundy stated he asked PGE while they were removing the tree if they would remove the construction debris in the back of the property. The response was it was a low priority for them. Mr. Bundy then asked if he could do it and PGE gave him the okay saying it is better to ask for forgiveness than to ask for a permit. The only restrictions were not to drive any tractors underneath the lines, take down any trees or plant any trees under the lines.

Mr. Bundy stated his children were playing in that area and he was concerned for their safety because of the construction debris (rusty nails, boards, rusty metal, broken glass, etc.). He cleaned up the debris from that area. He has come to reasonable agreements with PGE, DSL and U.S. Army Corps of Engineers.

Mr. Bundy noted they put in the pool with good faith; they were relying on representations made to them. It was their understanding they had the authority of someone in power to do these improvements. They have invested \$100,000 into these improvements to improve their home, the quality of their lives and their children lives. The money that was invested has been invested in this community by local businesses at a time when people really needed the work. He does not feel the limitations placed on his property are fair as he can't do the same things as any other West Linn citizens has the right and ability to do. He is asking the City to be reasonable; not to take away his back yard, not to take away their life savings. They have agreed to enter into agreements with the Department of State Lands. The area is still a functioning wetland. He invited the Councilors to come out and see what is going on with his property.

Gina Bundy, 1215 9th Street stated she started talking with the City two years ago regarding these improvements. Everything that was done was based on suggestions by city staff. She has submitted emails and site visits from city staff that approved the process. They did what they thought was right; they did seek permits.

All of her neighbors have yards; that's all they wanted was a yard. There have been two documented wildfires behind their property. There have been sparks from two PGE lines on PGE property. Being concerned about the safety of their children, they cleared the area. This is what their neighbors have done in the same area in their yards. This has been a year battle for them.

Michael Robinson submitted additional materials to the Councilors. He stated there is not a wetland on the vast majority of the Bundy property; it is transition area. The slide shown denoting the wetland is not accurate. Most of the wetland is a little bit on the ditch, which is the far northern portion of the

property. The portion that was delineated in 2000 by AKS is primarily PGE property. It is not in the area of the pool and patio.

The July 16th Consent Order from the Department of State Lands shows a hatched area inside the conservation easement that is not required to be restored. The area required to be restored is the PGE right-of-way. The wetland area the DSL is concerned about is the PGE property and the drain; not the area that the pool and patio are on. There is no delineated wetland or protected wetland on the property.

If it is the City's interpretation that a pool and patio is a structure, there are thousands of people the City must enforce against. That is not how pools have been handled in the past. It is the Community Development Code that controls here, not Metro, not Oregon Administrative Rules nor the Uniform Building Code. He disagrees with staff on how the definition of structure should properly be read.

He appreciates as did the Bundy's staff's recognition that the Corps of Engineers is not going to enforce. They have invited the Bundy's to make an After the Fact Nationwide Permit application. Nor is the Department of State Lands going to do anything further; they are satisfied with the consent order which they entered into on the Bundy's. The important wetland, the only wetland is on the PGE right-of-way and drainage ditch. It has to be restored; not the area of the pool and patio are located on.

There are three physical areas that are important; the PGE right-of-way (delineated wetland in 2000 and protected Goal 5 resource), the ditch (indicated in the AKS delineation as the "dry ditch," and the Bundy property.

The only wetland area, delineated or protected is the ditch area and the drain on the side of the home. Under the relevant approval criteria the pool and the patio are not on resource areas. This is not a case where someone has put improvements on a protected wetland, but where someone has reportedly violated a conservation easement and transition areas. Only a small sliver of the Bundy's property (drainage ditch) is designated as a wetland.

The Bundy's made a good point; their entire property is within the riparian corridor. It is not an idle point when they say they have a house they can't effectively live outside of. They can't have a flower garden, can't have sod, or a wall in the front yard by their car. None of the restrictions on the property protect the resource. All the resource the City and DSL is concerned about go on to the far north side.

For the first time in the proceedings staff agrees the Bundy's did not install the ditch. The ditch was modified in rock before they arrived. They did improve the ditch after; however, they disagree that it has changed the function of the wetland. If the ditch had modified the riparian characteristics (water intake), there wouldn't be a wetland. The fact there is a wetland shows the ditch hasn't modified the characteristics or function of the wetland.

The PGE property is the area designated as the resource. It is the area that DSL was concerned about and the area that was protected in the 2000 delineation that led to the 2001 partition plat that created this parcel. It is the area the City was concerned about in 2005 when it adopted its Goal 5 regulations. The majority of what this being addressed tonight are transition areas, conservation easements and a

number of redundant, overlapping regulations that have tripped the Bundy's up. The Bundy's are sorry they got into this situation; they thought they were doing the right thing. They have reached out to City staff and will continue to meet with them to resolve the problems.

Not all the approval criteria in Chapter 32 are approval criteria for this kind of application. Many of them are simply directions to establish transition areas and conservation easements. He noted that the 2001 conservation easement was not established according to ORS Chapter 271, which controls. Also, the 2000 delineation was rejected by DSL which means the conservation easement may not be accurate. A conservation easement is supposed to relate to an accepted delineation.

In response to the criteria in the Community Development Code, Mr. Robinson noted:

- Chapter 32.050(d) and (e) are not relevant to this application; they are directions to other things. There is no way they are relevant to this kind of permit.
- Chapter 32.050(b) can be met because the dry ditch can be restored and maintained; that is what the DSL Consent Order requires.
- Chapter 32.050(c) does not require avoidance; it requires minimization. If someone reasonably wants to use their back yard, that is minimization. The Bundy's have built a pool and patio; the patio is something that is common in virtually every home in West Linn.
- Chapter 32.050(f) allows passive recreation uses. Definitions from outside the Community Development Code are not relevant; they are not bound by them and need not rely on them. If the city is going to take the position that patios have to meet the definition of structure and the setbacks have to get building permits, there are a lot of people in the city that are out of compliance.
- Chapter 32.090(a) and (b) are the hardship criteria. The applicant originally applied under (b) and the staff decision by Mr. Sonnan it is clear that (a) applies to this situation. The entire property is within a water resource area which means (a) is relevant, (b) is not. Section (a) does not have an economically viable standard on it. The purpose of (a) is to avoid unreasonable hardship. He asked if it is unreasonable for a family to have sod, flower garden, or patio in their front or back yard. It is an unreasonable hardship.

Mr. Robinson stated he feels this can be fixed. They have agreed to apply for post construction building permits and mitigation and will comply with the relevant requirements of Chapter 32. They will cooperatively with City staff to see that the necessary permits are applied for and received.

If Council finds that the pool and patio are passive, the applicant doesn't need a hardship exception under Chapter 32. If Council concludes additional hardship relief beyond 5,000 sqft, they ask that this matter be put on hold and let them apply for a variance under Chapter 75.

If all of this is done the Bundy's will be in City compliance with requirements and they will enter into a written consent agreement under Community Development Code Chapter 106. The City will commit in writing to the things to be done, mirror the DSL Consent Order and require the Bundy's to obtain the necessary building permits and mitigation plans.

Mr. Robinson asked Council to read all the materials submitted. He feels the Bundy's have met the approval criteria. They are willing to accept reasonable conditions of approval. He reiterated that the

important point is that the pool and patio are not on wetlands; they are on a transition area or conservation easement.

Questions from Council to Applicant -- None.

Public Testimony

Frank Lassar, 1301 9th Street stated he is in support of the applicant. It seems unreasonable to have the Bundy's remove the pool.

Alice Richmond, 3939 Parker Road stated she has lived in West Linn since 1959. She has witnessed the changes of the Parker Road which changed private property on both sides. The proposed aquatic center is going to be on Parker Road. When it rains a little, she cannot walk across the aquatic center property unless she is wearing her boots. She does not feel the brick wall installed on the Bundy's property stops the migration of water.

Ms. Richmond noted the important issue here is a person's constitutional rights; the Bundy's should be able to improve their property in a way that they see fit. The entire city of West Linn is built on wetlands. She urged the Council to take time and carefully review this application.

Darleen Sargent, 1325 9th Street stated she too is in support of the applicant. Why did the City allow houses to be built in that area if the wetlands were going to be an issue? She is in favor of the Bundy's keeping their pool and patio. Her house looks down on the Bundy's property and she does not feel they have interfered with any of the wetlands that border their properties. They still have lots of birds, ducks, and all kinds of wildlife.

J.Wallace Walker, 1213 9th Street stated he lives next door to the Bundy's. He is in favor of allowing them to keep the pool and improvements to the back yard. The rules as outlined by staff seem to indicate it is against the law for the Bundy's and himself to even mow their lawn or even to have a lawn. He understands there needs to be conservation of wetlands for various reasons, it is best not to impede the natural water flow, and agree it was an ill-conceived idea to build those homes in this area but the homes are there. At this point he would like to recommend the City consider these slivers of land that compose the Bundy's and his neighbor's backyards not as wetlands, but their private property. They should be allowed some variance to be able to use their property up to the borders of their property lines as they see fit.

The idea of maintaining a wetland up to the back door may not have been thought out with regard to the protection of the home. If there is no allowance for a catch basin, it might propose an adverse affect on their homes in that it would allow the water to accumulate under their homes. Maybe these rules should be reconsidered that do not allow these properties to modify the water and allow it to flow around their properties and back onto the wetlands.

Sharon Paulson, 1250 9th Street stated she lives across the street from the Bundy's. They built their home with permits; they have lots of wetlands. They had to abide by the rules that were in place at that time. They have greatly changed since they built 16 years ago. It is her understanding that the Bundy's

house was built with permits; they should not have to go through this hardship. She has not noticed any change in the amount of water in their field. They have a lot of water, they call it a lake. It is her opinion that the Bundy's have not destroyed a thing. She has seen their backyard and feel it is gorgeous and a real asset to the neighborhood. She would like to see it stay the way it is.

Tim Phillips, 2260 Volt Street stated he has lived here 12 years. He does not feel the houses should have been built there in the first place. However, since they are, the Bundy's should be able to use their property. They pay taxes on it and they should be able to do what they want.

Questions from the Councilors

Council President Burgess asked when the house was built. Ms. Bundy stated the house was built in 2001-2003 and it met the flood plain requirements in place at the time.

Councilor Carson asked for clarification of the request by Mr. Robinson to apply for a variance rather than the hardship clause. Mr. Spir stated you can seek relief from the standards in many of the provisions of the Community Development Code by pursuing a variance. This situation may meet some of those provisions. It would be difficult to meet the requirements of extraordinary or exceptional circumstances if the property did not arise from a violation of the ordinance. If the wetland standards are not met, it would constitute a violation of the ordinance and it would not meet the approval criteria for a variance.

Councilor Carson noted the way the wetlands were explained, no one on this street is allowed to have grass. Mr. Spir stated there is a variety of plant material and landscaping that is allowable for these residents. These alternatives would be much more appropriate to the natural surroundings, wetlands, etc.

Council President Burgess noted in Chapter 32 there is a provision for hardship. No variance has been applied for in this case, the applicant has applied for a Water Resource Area permit.

Councilor Mattis stated the hardship criteria to be acceptable in extraordinary circumstances which would be the criteria to be measured against, not necessarily a violation of the ordinance.

Councilor Cummings stated the issue tonight is reviewing the appropriateness of whether this would be something that is allowed. Some people purchase a piece of land and highly value the fact it is so close to nature. Section 5 of the Park and Recreation Plan indicate the differences between passive and active. A swimming pool is listed as active. The limitations for the conservation easement are for passive. These limitations are clearly spelled out in writing for whoever would have purchased this site. When a person purchases a piece of property, the limitations of the property should be considered beforehand.

Recess was taken and the meeting reconvened at 7:50 p.m.

Applicant's Closing Comments

Michael Robinson noted a portion of his testimony where he referred to the area of the designated wetlands in Goal 5. He read from Page 70 of the bound packet, the first page of the Director's decision that was appealed, second paragraph, "Wetlands designated on the City's adopted West Linn Wetland Riparian Wildlife Inventory lie to the north of the applicant's rear property line. The wetlands are located on property owned by PGE." The protected resource is not on the Bundy property, its PGE. They can deal with that both with the City and have already agreed to deal with it with DSL.

In response to Councilor Carson's question on Chapter 75, Variances, CDC 32.090 is Reduction in Standards for Hardship. There are two subsections (a) and (d). Both of them have in common the idea that you can ask for a hardship, but up to 5,000 sqft of coverage. If Council agrees with the passive use, there is no need for the hardship portion. If Council does not agree, Chapter 32.090(d) states, "Any further reduction of the standards of this Chapter shall require approval of a variance pursuant to CDC Chapter 75. He understands the burden of proof and feels it is possible to get to compliance with all the City codes through both a hardship and potentially a CDC Chapter 75 variance.

Mr. Robinson stated he agrees with staff that native plants are allowed. As heard by testimony tonight by the Bundy's and many of their neighbors in that area, it is important to have a green area that can be enjoyed, especially if you have children. Native vegetation possibly doesn't include sod. Reed Canary Grass is a native species; however, it is considered an invasive species and that is what the Bundy's took out of PGE and the wetlands. The point of the hardship provisions in CDC Chapter 5 is to let people do what others in the community can do.

Mr. Bundy's acknowledges that they violated the transition area and the wetland conservation easement is at issue. Mr. Robinson stated he feels this is an issue that can be resolved and is not relevant to Chapter 32. It is the Bundy's desire to find a minimal solution; they are not interested in litigating with the City. They would like to find a way to protect the City's integrity of its requirements, to make sure the public safety and welfare is preserved through appropriate permits, and give the Bundy's a reasonable use of their back yard.

There was no one testifying in opposition tonight. There is an opposition letter in the record; however an email was sent to staff from Mr. Hitesman indicating he doesn't oppose the application. This is indicative of the spirit of how the community wants to see this matter resolved; there are far more supporters than opponents.

Mr. Robinson suggested an open records schedule that would keep the record open for 21 days. The Bundy's would extend the 120 day clock from its current terminus of August 31st through September 21st.

- For the first open record period the applicants would like the record to remain open for all parties to submit argument and evidence until July 26th at 5:00 p.m. The argument and evidence submittals should be directed to Mr. Spir by personal delivery, fax, or email.
- The second open records period would extend until August 2nd at 5:00 p.m. to Mr. Spir for parties to rebut with argument and evidence what came in during the first open record period and provide an opportunity for staff to submit a new staff report.
- The third open record period would extend until August 9th at 5:00 p.m. to Mr. Spir for the applicant's final written argument only, no new evidence.

Council could then come back and render a final decision by September 21st, 2010. It is hoped that additional conditions of approval and a structured resolution can be met through the open record submittals and hopefully the Council will conclude that the pool and patio shouldn't be removed, they can meet the approval criteria and a reasonable solution can be reached.

Questions from the Council

Councilor Cummings clarified and confirmed the proposed open records schedule with Mr. Robinson.

Staff's Closing Comments -- None.

Council Questions of Staff

Council President Burgess noted the applicant is asking that the conservation easement not be a consideration in this decision. He asked staff if the conservation easement relevant to this issue. Mr. Ramis stated it is relevant to some of the deliberations. This particular proceeding doesn't include within it the authority to do away with the conservation easement or revise it. That would be a subsequent procedure. It can be used as evidence in terms of how it relates to the conditions of the land and what is allowed in these areas.

Mayor Kovash asked staff what the DSL, PGE and the U.S. Army Corps of Engineers to do in their jurisdictions. Mr. Spir stated there is a submittal from PGE where they acknowledge the fact they were made aware of trees on their property that were believed to be hazardous. There is no evidence PGE gave authority to the Bundy's to conduct clearing activities, grading, etc. DSL's position is clear in the Consent Agreement what they require (Page 4). Mr. Bundy testified a civil penalty of \$3,000 would be assessed and they are required to submit a restoration plan for review and approval by the Department of State Lands by August 1st. The U.S. Corps of Engineers have indicated they would consider an After the Fact Permit with conditions.

City Manager Chris Jordon suggested changes in Mr. Robinson's proposed open record schedule:

- Extend the 120 day rule to September 30, 2010.
- The record remains open for all parties to submit argument and evidence until July 26th at 5:00 p.m. The argument and evidence submittals should be directed to Mr. Spir by personal delivery, fax, or email.
- The second open records period would extend until August 2nd at 5:00 p.m. to Mr. Spir for parties to rebut with argument and evidence what came in during the first open record period and provide an opportunity for staff to submit a new staff report.
- The third open record period would extend until August 9th at 5:00 p.m. to Mr. Spir for the applicant's final written argument only, no new evidence.
- Council's final decision made at its regular meeting on September 13, 2010 and possible final written order adopted September 13th or 27th.

Mr. Robinson concurred with the revised schedule suggested by Mr. Jordan. They agree to extend the clock based on the revised schedule until September 30, 2010.

Council President Burgess moved to adopt the open records schedule as follows:

- **Extend the 120 day rule to September 30, 2010.**
- **The record remains open for all parties to submit argument and evidence until July 26th at 5:00 p.m. The argument and evidence submittals should be directed to Mr. Spir by personal delivery, fax, or email.**
- **The second open records period would extend until August 2nd at 5:00 p.m. to Mr. Spir for parties to rebut with argument and evidence what came in during the first open record period and provide an opportunity for staff to submit a new staff report.**
- **The third open record period would extend until August 9th at 5:00 p.m. to Mr. Spir for the applicant's final written argument only, no new evidence.**
- **Council's final decision made at its regular meeting on September 13, 2010 and possible final written order adopted September 13th or 27th.**

Councilor Carson seconded the motion.

Council President Burgess voiced concern about the timing and the fact that it is at the close of the construction season. He would like to see a resolution to this issue before the construction season is over.

Ayes: Carson, Cummings, Burgess, Mattis, Kovash

Nays: None

The motion carried 5-0.

Adjournment of Business Meeting

Mayor Kovash adjourned the July 19, 2010 West Linn City Council meeting.



CITY OF
West Linn

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

WEST LINN CITY COUNCIL MEETING MINUTES September 27, 2010

Council Present:

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

Special Guests Present:

Councilor-Elect Jenni Tan

Staff Present:

City Manager Chris Jordan, City Attorney Tim Ramis, Assistant City Manager Kirsten Wyatt, Police Chief Terry Timeus, and Planning Director John Sonnen.

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

[Proclamation - West Linn/Oregon City Football Game](#)

Councilor Mattis read from proclamation declaring "West Linn/Oregon City Rivalry Day" in celebration of the West Linn High School and Oregon City High School football game.

Approval of Agenda

Council President Scott Burgess moved to approve the agenda for the September 27, 2010 West Linn City Council Meeting with two additions: high school football rivalry proclamation and high speed rail letter approval. 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

Roberta Schwarz - offered her congratulations to John Kovash and Jenni Tan; asked for City Council apology for the treatment of Councilor Cummings; asked for Mayor Kovash to apologize to Councilor Cummings on water rate discussions; offered her opinions on public meetings law related to Council meals and emails.

Peggy Kirkendall - shared her opinions about: perceived disenfranchisement of citizens concerned by Marylhurst Park planning; extension of City Manager's contract; the 2008 City Manager's performance evaluation; August 9, 2010 video concerns and June 14, 2010 video concerns.

Alice Richmond - shared her concerns about Councilor Cummings "filibustering."

Karie Oakes - responded to Mayor Kovash's statement regarding the 2009 City Manager's performance evaluation; noted that she requested the 2008 evaluation criteria; noted that City of Tigard provided its City Manager's evaluation in a timely manner; shared the performance evaluation tool she received from the City of West Linn.

Consent Agenda

Mayor John Kovash moved to approve the following items included on the September 27, 2010 Consent Agenda: minutes from the August 9, 2010 City Council meeting; and minutes from the September 13, 2010 City Council meeting.

Councilor Cummings indicated that she will be voting "no" on the consent agenda because she did not receive a second paper copy of the minutes documents until Monday evening and she has concerns based on Ms. Oakes' community comments.

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

Nays: Councilor Teri Cummings.

The motion carried 4 - 1

Agenda Bill 2010-09-27-01: Minutes from the August 9, 2010 Meeting

[Draft August 9, 2010 Minutes](#)

Agenda Bill 2010-09-27-02: Minutes from the September 13, 2010 Meeting

[Draft September 13, 2010 Minutes](#)

Report from the City Manager

City Manager Chris Jordan shared three items. First, the PERS system released new two-year rates; City had optimistically hoped its rates would only increase by three percent; rates are actually only increasing by 1.9 percent. This is a big win for the City (other cities have eight- to nine-percent increases). Second, the election results from last Tuesday will be certified by October 4 and swearing-in will take place on October 11. Third, on behalf of staff, he thanked Councilor Mattis and noted that his expertise has been valuable.

Business from the City Council

Agenda Bill 2010-09-27-04: Appointments to the Historic Review Board

Councilor Carson thanked the applicants; and noted she is excited for the work ahead for the Historic Review Board.

Councilor Cummings inquired if there a way to reconfigure the appointment terms to give a longer term to Charles Awalt and to give the short term to Councilor Mattis.

Mayor Kovash replied to Councilor Cummings that an amendment to the motion is needed.

Councilor Mattis clarified that the switch in term lengths is okay with him as he wants to take on a bigger role with the City; this would include a Willamette Falls area long range plan, if that is ever pursued by the City.

Mayor Kovash noted that the Council still seeks one more person for HRB appointment.

Councilor Teri Cummings moved to amend the appointments to reflect the following change: Charles Awalt's term ends 12/31/11 and Jim Mattis' term ends 12/31/10. 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

Mayor John Kovash moved to appoint the following people to the Historic Review Board: Charles Awalt to a two-year term ending 12/31/11, Sandy Carter to a two-year term ending 12/31/11, Jim Mattis to a one-year term ending 12/31/10, John McLoughlin to a three-year term ending 12/31/12, Brian Pearce to a three-year term ending 12/31/12, Chris Sherland to a three-year term ending 12/31/12.

Council President Scott Burgess 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

[Historic Review Board Applications](#)

[High speed rail letter](#)

Councilor Mattis provided background information for the City Council. He attended a meeting in Lake Oswego called by the Clackamas County Commission Chair. The discussion was focused on high speed rail in the State of Oregon. The need to include many people in the discussions on high speed rail was a topic of the meeting. All cities are signing onto a letter calling for more openness and transparency in the high speed rail discussion; and asking that a third-party manage the discussion so it can be open and honest.

Councilor Carson indicated that a draft of the letter will be available online for public review and understanding once it is drafted and available.

Councilor Jim Mattis moved to authorize the mayor to sign a letter of support related to public involvement on high speed rail planning. 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

Councilor Cummings offered her thanks to Councilor Mattis for his time on the Council and offered congratulations to Councilor-Elect Tan and Mayor Kovash for their victories. She also thanked Ms. Lairson and Mr. Hitesman for their willingness to serve. She mentioned that campaign season brings up discussions about who we want to be as a City. She clarified that

dinner meetings make her uncomfortable and that she would like an "open-door" policy.

Councilor Carson thanked Councilor Mattis for his service, and offered congratulations to Mayor Kovash and Councilor-Elect Tan.

Mayor Kovash expressed his appreciation to Councilor Mattis for stepping into the Councilor position; he noted that Councilor Mattis will be missed but he will continue to contribute to the City. He welcomed Councilor-Elect Tan to the Council and indicated that the Council has confidence in her. He also noted that he attended the League of Oregon Cities conference and learned about other cities and how they conduct business. He mentioned that it was refreshing to look outside our City to get new ideas and become better at our jobs. Then, he addressed the fact that the City Manager's evaluation keeps coming up, and offered his perspective that the City has spent enough time on the evaluations of the past. He clarified that it is incorrect to cite the Charter on evaluations, and he read from the Charter language regarding City Manager's evaluation to prove that the Council has complied with the Charter. He closed by stating that the Council is now focused on the 2010 evaluation so it is meaningful and useful.

Councilor Cummings appreciated the opportunity to participate in the League of Oregon Cities conference and she learned from the valuable speakers and the chance to be with Councilor-Elect Tan, Mayor Kovash and Councilor Carson. She attended a valuable session was on dealing with angry people and civility. She noted that no apologies were offered to her regarding the June 14 meeting. She would like everyone to not talk about people who cannot defend themselves. She believes that the February resolution should be withdrawn. But, she understands there is more important business to attend to in the City and wants to get these issues off the table.

Councilor Mattis shared he must respond to the Community Comments statements made about meals. He clarified that it is not against the law to be at social gatherings with a quorum of the City Council. He noted that he has attended the pre-meeting dinners and that they are offered to Councilors because many Councilor come directly from work, and these meals allow them to have dinner before the Council meetings. To his knowledge, the Council has never conducted business at these meetings. He then offered congratulations to Mayor Kovash and Councilor-Elect Tan on their elections.

Council President Burgess stated that modifications should be made to Chambers to allow the A/V operator to offer or receive feedback if there is tape or sound disruption. He offered congratulation to Mayor Kovash on his election and noted that turnout was good for a special election. He offered congratulation to Councilor-Elect Tan and shared his belief that she ran a

good, clean campaign. He offered thanks to Councilor Mattis for his service and his continued service to the City.

Councilor Carson offered direction that meeting minutes are available online ahead of time. She clarified that the City Council eats dinner before meetings but they are not business meetings and the meals are offered as a chance to have dinner after work, before Council meetings. She clarified that email is not used for any Council business and is used to ask questions to staff. And, she reminded that that email is a public record. She also noted that four members of Council attended the League of Oregon Cities conference and gained information on sustainability, planning and other valuable topics.

Business Meeting

Agenda Bill 2010-09-27-03: Letter of Concurrence to Tri-Met

Staff report from Planning Director John Sonnen.

Councilor Carson expressed her support but requested additional language added to the letter to express that the City wants its expectations to Tri-Met clearly included in the letter of concurrence.

Council President Burgess noted that the Council would like additional language added to the letter that express West Linn's concerns and issues and the understanding it has in giving concurrence.

Council President Scott Burgess moved to authorize Mayor Kovash to sign a letter of concurrence regarding the proposed Tri-Met bridge across the Willamette River in Portland. Councilor Jody Carson seconded the motion.

Councilor Cummings reiterated that this item is about a TriMet light rail line.

Council President Burgess noted that the motion is to give the mayor signing authority for a letter to Tri-Met.

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

[Letter of Concurrence to Tri-Met](#)

[Agenda Bill 2010-09-27-05: Final Order - Denial of Bundy Appeal of a Planning Director's Denial of a Water Resource Area Protection Permit \(AP 10-01\)](#)

Staff report from City Attorney Tim Ramis.

Council President Scott Burgess moved to adopt the Final Order pertaining to AP 10-01 denying the appeal of Troy and Gina Bundy, and upholding the Planning Director's decision to deny a water resource area permit. 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

[Denial of Bundy Appeal Final Order Information](#)

[Agenda Bill 2010-09-27-07: IGA - Multi-Jurisdictional SWAT Team Participation](#)

Staff report by Police Chief Terry Timeus.

Councilor Carson inquired if there are any equipment needs for SWAT participation. Chief Timeus clarified that there are some specialized equipment needs and that the City has funds available to cover these costs.

Council President Burgess inquired about the status of the officers when they are SWAT. Chief Timeus clarified that they are always "our" employees, and their participation will not take away from City business.

Council President Scott Burgess moved to approve the Intergovernmental Agreement between the Clackamas County Sherriff's Office SWAT Team and the City of West Linn; and authorize the Police Chief to sign the IGA. 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

[Multi-Jurisdictional SWAT Team IGA Information](#)

[Adjournment of Business Meeting](#)

Memorandum

Date: October 5, 2010

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager 

Subject: Report on City Manager Evaluation Process, Criteria and Tool

In July the City Council requested that Councilors Mattis and Carson work with Donna Zajonc and the City Manager to develop a new evaluation tool and report back to the Council on a process that could be used to evaluate the performance of the City Manager. After several conference calls and various discussions, this group has developed the attached outline and evaluation tool for the City Manager evaluation for 2010 and continuing into the future.

The attached outline includes a discussion of the purpose behind the evaluation as well as the process that should be used each evaluation cycle.

The evaluation tool – “Leadership Feedback: Performance Appraisal and Development” – is based on an evaluation tool used by the Oregon Health Sciences University.

Councilors Mattis and Carson recommend the Council discuss this at a work session scheduled for October 11 (following the regular Council meeting that evening). If acceptable, the Council should approve the evaluation criteria and tool at an upcoming Council meeting and initiate the evaluation process.

Attachment

Outline of Plan for Ongoing Evaluation of West Linn City Government

September 30, 2010

As West Linn City Councilors, it is our desire to continue to improve all areas of city government. To that end we want to create a culture of ongoing evaluation throughout city government of which the City Manager evaluation is one part. We recommend the following purpose statement:

- 1) It is a high priority for the City of West Linn to measure and evaluate the performance of city government through information collected by multiple methods and tools from the community; the staff; the City Manager and the Council.
- 2) The purpose of this evaluation is to promote the practice of *continuous improvement* by the City Council, the City Manager, the staff and city in general.
- 3) The City Manager evaluation process provides a forum for constructive dialog between the City Manager, the Council and the public on issues related to the successful performance of the City Manager.

There are two general areas for evaluation:

- 1) Ongoing evaluation of the overall functioning of the City of West Linn is highly valued. We do this through a variety of sources:
 - a. Prior to the City Manager evaluation, the Council will request citizen feedback through the local newspaper and on the web site. West Linn citizens who have signed up for weekly newsletter updates will also receive requests for feedback.
 - b. The Citizen Support Center on the City's web site in an ongoing process for citizen concerns, requests and feedback.
 - c. The Community Survey was last completed in 1/2010 and current plans are to continue this as a biennial survey. This survey measures general satisfaction with City services; asks questions regarding customer of service and knowledge of staff; and measures the level of trust the citizens have with the City
 - d. This winter there will be an opportunity for a few "add-on" questions to be included on an upcoming opinion survey regarding the community/aquatic center.
 - e. We recommend in 2011 a new public folder on Outlook managed by the Director of Communications. This folder will include emails received by citizens from the Council, City Manager and various staff. The purpose of this new folder is to chronicle on a quarterly basis trends and issues that were addressed in the emails and note areas for action as well as recognition for jobs well done.

- 2) City Manager Evaluation:
- a. Prior to the City Manager evaluation, the Council will request citizen feedback through the local newspaper and on the web site. West Linn citizens who have signed up for weekly newsletter updates will also receive requests for feedback.
 - b. The City Manager's 360 evaluation from senior staff was completed in summer 2009 and in February, 2010 Donna Zajonc completed personal interviews of Council and Staff to complete Chris's 360 feedback. Completing this 360 again in 3 years is recommended.
 - c. Every third year, an outside consultant will conduct personal interviews of Council and staff to get feedback about overall progress of City goals and the City Manager's leadership.
 - c. Every three years a " culture/climate survey " of all city employees will take place. The survey is currently targeted for Spring-Summer 2011 . The survey goes deeper into the organization and obtains feedback from all City employees about the overall organizational culture of the City as well as Chris's leadership.
 - d. The feedback form for the City Councilor will be completed. The goal for this tool is to balance the technical aspects with the visionary qualities of leadership.
 - e. City Manager self - evaluation. October, 2010 is the 5th anniversary of Chris's role as West Linn City Manager. He will write a self-reflective narrative that will include his view of accomplishments the previous 12 months: issues, concerns and projects that could have been handled better during that time; and a discussion of possible improvements and goals for the next 12 months.
 - a. City Performance Objectives were reviewed by the Council in July, 2010 retreat. A chart updating the progress toward accomplishing these objectives is updated monthly so that tracking results toward accomplishing the Goals is measurable.
 - b. The City Manager's Leadership Plan was developed in Spring 2010 and is ongoing.

Timeline for Council involvement:

October – subcommittee provides a written document that provides the purpose statement, citizen involvement process (including schedule) and a suggested tool that the Council will use to evaluate the City Manager.

November – actual written evaluation is completed by all concerned.

December – facilitated executive session that completes the process.

City of West Linn, Oregon
Chris Jordan, City Manager

Levers	Assessment
Vision <ul style="list-style-type: none"> • Clarity • Communication 	Is there a strong sense of long term vision articulated from the Council and City Manager throughout the City? Is this vision referred to frequently? Does it guide decision making?
City's Purpose <ul style="list-style-type: none"> • Meaningful work • Pride 	Is the vision for the City clear...have employees "bought in" and "own" the vision. Do they feel pride working for the City?
Value Alignment <ul style="list-style-type: none"> • City's values and employee's personal values 	Are the City's values are published on your web site – do people appreciate them. Are the values something that are "lived" everyday by the Council and Staff? This includes services to the citizens as well as the way employees are treated and valued.
Procedural Fairness <ul style="list-style-type: none"> • Hiring • Promotions • Recognition 	Are people treated fairly? Are laws enforced fairly and consistently? Are employees equally given a fair chance at promotions? Is credit for good deeds given to all involved?
Sociological Fairness <ul style="list-style-type: none"> • Compensation • Recognition 	Continues the same theme as previous topic. Are all people treated equally and inclusive regardless of race, religion, etc. etc.
Trust in Senior Management <ul style="list-style-type: none"> • Tell Truth • Keep promises • Walk the talk • Own up to mistakes • Forgiving 	These are the primary qualities of integrity. The mood of employees and their ability to fully engage hinges on integrity.
Communication <ul style="list-style-type: none"> • Formal • Informal 	Open, honest and timely communication is a foundational part of any high performance work environment. The survey will assess both the everyday informal communication as well as the formal, more process-oriented communication patterns.
Respect for Work Force by Senior Management <ul style="list-style-type: none"> • Reasonable workload • Included in relevant decisions • Dismissals done respectfully 	Respect toward senior management, including the City Manager and Council, is essential to build trusting and productive work environments. Respect has several dimensions including reasonable workloads, expectations of staff and fair dismissals when they do occur.
Professional Development <ul style="list-style-type: none"> • More than just challenging assignments • Senior involvement • Structured processes • Time allowed for it 	The senior staff reported high marks on this topic when I interviewed them in February. Does all staff feel the same commitment to professional development?



Feedback for: _____
(Manager's name)

Feedback from: _____
(Councilor's name)

The City Council has created and approved this evaluation criteria and format for gathering feedback in the core competencies and role responsibilities that are important for the on-going success of the City Manager and the organization. In responding to the assessment form, please think about your experiences working with the City Manager during the last twelve months. Your responses are preliminary to Council consensus on a final evaluation form which may, at the Council's discretion, be the basis for review of the City Manager's performance.

PERFORMANCE RATING GUIDE:

E = Excels/Role model.

Results consistently exceed expectations. Makes significant contributions well beyond requirements.

P = Fully Proficient.

Results are fully and consistently on target. Makes a valuable contribution. Is fully competent.

D = Developing/Usually meets standards.

Results are usually on target. May need occasional support, and/or improvement.

N = Needs improvement.

Improvement clearly needed. Is inconsistent in performance and requires excessive improvement and support. An action plan for improvement in this area needed.

N/A = Not applicable.

No opportunity to observe

CORE COMPETENCY & DEFINITION:	Rating E/P/D/N/NA
<p>1. Accountability: Ability to establish mutual agreements that result in clear responsibility, taking personal action to accomplish an agreed-upon result and assuming personal responsibility for the results of behavior and actions. Makes sound decisions. Self-starter who accomplishes performance objectives. When mistakes occur, focuses on finding solution rather than placing blame. Adheres to established schedules and performance objectives as established by the Council. Understands and assists in enforcing the adopted Council Rules.</p>	
<p>Comments:</p>	

<p>2. Integrity: Actions are consistent with ethical values. Honest in communication and actions. Ensures personal actions comply with the City of West Linn’s Personnel Policies, the Municipal Code and Community Development Code, the City Charter, the Council Rules and the ICMA Code of Ethics. Makes decisions in an ethical manner.</p>	
<p>Comments:</p>	

<p>3. Diversity: Honors the uniqueness of each individual, challenges stereotypes and promotes sensitivity and inclusion. Understands and utilizes cross-cultural perspectives to strengthen quality of interaction with others. Treats others with fairness, dignity and respect regardless of cultural diversity. Able to recognize and correct own attitude and actions when forming stereotypes about other individuals. Intervenes in an appropriate manner when others are engaged in behaviors that show cultural insensitivity.</p>	
<p>Comments:</p>	

<p>4. Respect: Demonstrates consideration and appreciation for Councilors, colleagues, regional partners and West Linn citizens. Honors the uniqueness of each individual and values the contribution of others. Makes every effort to demonstrate courtesy to colleagues and citizens. Is direct in sharing concerns with only individuals who are involved. Does not speak disrespectfully of others. Recognizes the importance of getting along well with colleagues, clients and citizens.</p>	
<p>Comments:</p>	

<p>5. Service Orientation: Seeks opportunities to improve work and work environment to better meet the needs of internal and external customers. Participates in establishing and monitoring service standards. Utilizes standards to evaluate self performance. Adaptable and initiates changes to create ongoing improvement. Demonstrates flexibility and a willingness to change for continual improvement</p>	
<p>Comments:</p>	

<p>6. Team Leadership & Collaboration: Leads his senior managers with clear direction and empowers them toward high performance. Works cooperatively and productively with others to achieve shared goals. Finds common ground, gets and gives cooperation. Approaches work with a “can do” attitude. Shares success with others. Resolves conflict directly and quickly.</p>	
<p>Comments:</p>	

<p>7. Communication: Demonstrates the ability to convey thoughts and ideas as well as understand others' perspectives. Listens to understand and respects the views of others. Actively seeks out information related to individual responsibilities and the City. Remains focused on the issue in conflict situations and works directly with others involved to resolve disagreements constructively. Is able to give and receive feedback constructively.</p>	
<p>Comments:</p>	

<p>8. Strategic Thinking: Ability to see and understand whole systems and how elements within systems relate. Works cooperatively with others to use appropriate systems strengths, knowledge and cooperation to improve performance. Challenges others to consider the impact of their actions on areas outside immediate work group. Is inclusive and considers the impact of decisions and actions on others. Works to maintain alignment of personal area of responsibility to the larger organization. Adapts and modifies actions and redirects work of team to meet evolving system needs.</p>	
<p>Comments:</p>	

<p>9. Prioritization: Establishes and Focuses Appropriate Attention on Priorities. Understands the Council and overall City priorities and makes decisions according to those priorities. Keeps himself and his team focused and inspired to follow through and complete the priorities.</p>	
<p>Comments:</p>	

<p>10. Managing Resources: Consistently operates area of responsibility to meet or exceed financial expectations and operating plans, effectively prioritizes use of available resources to accomplish goals. Meets performance goals and budget targets. Demonstrates the financial acumen for managing budgets aggressively. Meets goals within financial parameters, effectively manages resources.</p>	
<p>Comments:</p>	

<p>11. Change Leader: Ability to act and provide leadership throughout the change process. Engages interested parties in the entire process and develops commitment for sustaining change. Is realistic, honest and direct about the challenges, threats inherent in any change. Gives people realistic, balanced information throughout a change. Encourages innovation in others. Coaches others to support their increased resiliency and capacity for change. Provides employees with necessary support resources. Able to turn vision into a workable plan and enlist others involvement toward a common goal. Charts a clear direction for the agency.</p>	
<p>Comments:</p>	

<p>12. Developing Organizational Talent: Ability to recruit, retain and develop high performing individuals aligned with the City's goals and values. Selects employees who demonstrate understanding of organizational culture and job-specific capabilities and provides continuous feedback, encouragement and coaching to employees. Effectively addresses and redirects those who are not meeting performance expectations. Ensures management staff has development plans that increase their effectiveness and/or prepare them for future opportunities and expanded roles. Facilitates meaningful recognition for team and individual accomplishments.</p>	
<p>Comments:</p>	

<p>Comments related to the ratings given for effectiveness related to core competencies:</p>

<p>Feedback related to Individual Goals, Strengths and Opportunities for Continued Development:</p>

<p>Please comment on the status of any specific annual goals that were established at the beginning of the year by the person being evaluated that you were involved with:</p>

<p>Please provide any additional comments on what you value or appreciate most about this individual's leadership effectiveness, style or behaviors:</p>

(Signature and date)

City Council Meetings – Upcoming Agenda Items – Tentative Schedule of Meetings

<u>October 11, 2010</u>	<u>October 25, 2010</u>	<u>November 8, 2010</u>	<u>Work Sessions</u>
Swearing in of Mayor Kovash and Councilor Tan Reception Oxford St. ROW vacation Hearing Speed zone study for Willamette Falls Drive IGA – Juvenile Diversion Program Work Session: CM Performance Evaluation	Cancelled	PreserveAmerica IGA Juvenile Diversion IGA Building permit software IGA	<p><u>October 18, 2010</u></p> <ul style="list-style-type: none"> • Aquatic Center <p><u>November 1, 2010</u></p> <ul style="list-style-type: none"> • Tri City Service District Report – Mike Kuenzi, Clackamas County • Update from PUD/Infill Task Force

Pending:

- Meeting with the WL/WV School Board
- ODOT – WL OC Historic Bridge (September 20) – Potentially meeting onsite
- Proposed changes to the Municipal Tree Ordinance
- Open Space encroachment policy
- Stafford Hamlet Value and Vision Presentation
- Advisory Board/Committees Annual Reports