

Memorandum

Date: April 15, 2011

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

From: Chris Jordan, City Manager *CJ*

Subject: April 18 Work Session and Upcoming Schedule

The City Council is scheduled to meet in a work session on April 18 at 6:00. The agenda for this meeting includes the following:

- **Highway 43 Update:** Staff will provide a brief update on continuing discussions with regional agencies regarding the possible jurisdictional transfer of Highway 43 from ODOT to local agencies. A memorandum from City Engineer Dennis Wright is attached.
- **Aquatic Center Task Force Report:** The Task Force that started meeting in summer 2010 will provide its report to the Council regarding the possible design, location and cost of an aquatic/community center for West Linn. Task force co-chairs Nancy King and Vicky Handy will present. This item is also on the consent agenda for the Council's April 25 meeting with a recommendation to "accept" the report. It is not anticipated that the Council will take any additional action on the report or project at this time as the Council has adopted as one of its priorities to consider placing a bond measure before the voters to fund an aquatic center pending the successful outcome of a police station bond measure.
- **Land Use Appeal Process:** Attached to this memorandum is the memorandum I provided to the Council in January that the Council has not had the opportunity to discuss.
- **Review of the April 25 Agenda.** Attached is a memorandum from the Police Department responding to questions raised by the Council during the last Council meeting regarding the Motor Carrier Safety Assistance Program.

Upcoming Agenda Item – Police Station

Staff is completing our due diligence regarding possible locations for a police station based on the report from the police station task force and direction provided to the staff by the Council. I have scheduled an executive session for the Council at the end of the April 25 Council meeting for the Council to receive the staff report and provide additional direction to staff regarding possible sites and land acquisition, if necessary.

At this time, I would expect a community discussion regarding the staff report to occur at a Council meeting in May. The Council could then take that input and make a final determination regarding placing the bond measure on the ballot by July.



Memorandum

Date: April 13, 2011
To: Chris Jordan, City Manager
From: Dennis Wright, City Engineer
Subject: Highway 43 Jurisdictional Transfer

Purpose:

To provide an update on the proposed jurisdictional transfer of Hwy 43 and report on a meeting held by Metro's Highway 43 Working Group on April 11th at Metro headquarters in Portland.

Update from the Metro Meeting:

A meeting was held at Metro from 2:30 – 3:30 PM on April 11th, 2011. In attendance were elected officials from Metro, counties of Clackamas and Multnomah, cities of West Linn and Lake Oswego, as well as representatives from ODOT and City of Portland. Some support staff personnel had been brought by the various agencies as well.

Jason Tell from ODOT indicated that he had initially issued a letter and prepared a draft jurisdiction transfer proposal in response to what he believed was a desire of the counties and cities to have local jurisdiction of the Hwy 43. ODOT's view of Hwy 43 is a transportation corridor while the local jurisdictions plans reveal a desire for Hwy 43 to have more of a boulevard concept, providing for not only vehicular traffic but also encouraging pedestrians and bike riders as well.

In discussing the benefits of the transfer to local jurisdictions, ODOT noted in particular that with the Sellwood Bridge under design and the Lake Oswego – Portland trolley project under consideration, the roadway requirements associated with both these projects could be significantly reduced at the interfaces with Hwy 43 if it was no longer a state-owned facility. ODOT recommended some urgency to the jurisdictional transfer consideration as the further these projects proceed through design and construction process, the less will be any savings realized from local ownership as it affects design criteria.

The city councils of both West Linn and Lake Oswego have conducted worksessions regarding the proposed transfer and have both submitted letters to ODOT opposing the transfer because the proposed compensation is insufficient. Clackamas County has done an independent review of the pavement and bridge conditions and prepared a cost estimate that far exceeds the offer from ODOT. Of particular concern is the ongoing maintenance that will be required once any initial maintenance/repair effort is partially funded in conjunction with the proposed transition.

All in attendance acknowledged that transfer of jurisdiction from ODOT to local control would be of benefit to all. While most seemed to say that it wasn't about the money, funding appeared to be the most difficult issue to overcome in everyone's view.

Metro ended the meeting by encouraging the engineers and accountants from the various agencies to meet, discuss their respective concerns, and see if an acceptable funding picture and transfer agreement could be worked out. City staff has contacted Clackamas County Transportation and Development Director, Cam Gilmore, about scheduling a meeting with ODOT engineering and financial staff.

Memorandum

Date: January 26, 2011

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

From: Chris Jordan, City Manager

Subject: Land Use Appeals Process

Purpose

This memorandum has been prepared to initiate a Council discussion on the City process for City Council land use decision appeals.

Background

In accordance with Community Development Code (CDC) 99.280, all appeal hearings before the Council are de novo. Therefore, the record from the Planning Director or Planning Commission review/decision is considered by the Council along with any new documents and testimony the parties to the appeal care to submit.

The City charges \$400 to appeal a land use decision to the Council; appeals are free for recognized neighborhood associations. The fee is set by resolution and is part of the Master Fees & Charges schedule. The free appeal for neighborhood associations is established by CDC 99.240.

Attached is a chart providing some details of each of the appeals from the last two years.. Although there have been only three appeals, they have been expensive to process and hear, and time consuming for staff.

Discussion

The issue for Council discussion is whether or not land use appeals should continue to be de novo. There are some advantages to de novo appeals:

- 1) Hearings allow citizens and the applicant to provide additional relevant information for consideration by the Council.
- 2) Hearings allow individuals who failed to testify or provide information during the initial review process to participate at the appeal hearing.
- 3) Hearings remedy any procedural errors that may have occurred in the earlier decision process. (No procedural errors were raised on appeal during the last two years.)

There are also some disadvantages to de novo appeals:

- 1) Applicants can use the land use process as a negotiation by proposing one development during the initial process and a modified version during the appeal, thus testing the limit of the City's willingness to approve the project.
- 2) Applicants can use the de novo process to "stuff" the record for the appeal hearing in an effort to overwhelm and confuse the decision makers so that the decision is vulnerable to being overturned or remanded by the Land Use Board of Appeals (LUBA). In addition, the influx of new materials and arguments in the short time frame dictated by the 120-review period increases the potential for staff errors and incomplete findings that can be raised at a subsequent appeal to LUBA. This creates legal and financial risks to the City.
- 3) The de novo process effectively leaves the Planning Commission as only a recommending body on those items that are appealed, as opposed to a decision making body. Applicants and citizens can effectively skirt the Planning Commission if they think that the Council would be more willing to see things their way. Having an appeal "on the record", rather than de novo, would require the applicant and other participants in the process to submit all relevant information to the Planning Commission so they have the benefit of such information in reaching their decision.
- 4) The de novo appeal is essentially a rehearing of the case. "On the record" appeals are generally simpler and more straightforward because the Council must determine whether the original decision properly applied the code to the facts.
- 5) The de novo appeal process is excessively time consuming for staff and the Council as well as the applicants and members of the public trying to monitor the project. Due to the typical influx of new material and arguments, staff is forced into spending significant time analyzing the new information, compiling the expanding record, and drafting a new staff report and findings pertaining to an application that may be of relatively low priority to the Council, thus undermining their capacity to work on the Council's priority projects. And, the Council can spend several hours and, on occasion, several nights on an application that can distract the Council from its other priorities.
- 6) Because of the low or nonexistent fee, the cost of the appeal process is borne by the City's taxpayers. In recent cases, the added processing costs for the City and the project proponent have not yielded significant benefits because the appeal did not result in a changed decision.

The attached chart details the cost of de novo appeals. The chart includes the cost of staff time, other city expenses, and legal costs. In total, the three appeals referenced above cost the City approximately \$100,000 to process. The cost would be approximately ten percent of the cost of a de novo hearing if the appeal hearing was based entirely "on the record" established through the initial decision process.

Although some cities occasionally offer de novo hearings under certain circumstances, research of other cities throughout the state indicates that other cities typically offer “on the record” hearings.

Staff believes it is appropriate to reconsider the City’s approach regarding appeals to determine if de novo appeals are in the best interest of the community and the City.

Options for Changing the Current Process

There are numerous tools available to revise the de novo appeals process, if the Council so chooses. The following options may assist in a Council discussion on this matter:

- 1) Increase the fee for a de novo appeal to more accurately reflect the processing cost to the City and to discourage frivolous appeals. A few years ago the appeal fee was \$2,500. However, during the time the fee was at that level, no appellant ever paid the fee; all appeals were either by neighborhood associations (free) or the Council “called up” the application for review.
- 2) Change the CDC to make all appeal hearings “on the record.” The record that is created during the original decision process will remain the record for the appeal and no new issues could be raised on appeal.
- 3) Modify the CDC and create a hybrid system for appeals. The City could continue to charge a relatively low fee for “on the record” appeals. However, if an appellant desired a de novo hearing, the CDC could require that 1) if it is the applicant who is appealing, the applicant must be willing to extend the review deadline by at least 30 days; and 2) the fee would be much greater, up to, perhaps, the full cost to process the appeal.
- 4) If the Council decides to continue to allow free appeals for the neighborhood associations, consider only allowing free “on the record” appeals.

Conclusion

As staff, we believe it is incumbent upon us to identify areas that can be made more efficient and/or effective. De novo hearings are costly to tax payers, with a benefit that seems to be marginal, at best. We believe this topic is worthy of a Council discussion as soon as practical.

Attachment

2009-2010 Land Use Appeals

Subject	Appealed by	Hearing Date	Fee received	Planning staff cost to process*	Legal Cost*	Total Cost	Net Cost to City	Decision
Suncrest 6-lot PUD	Hidden Springs NA	1/4/2010	\$0.00	\$22,097.00	\$2,612.00	\$24,709.00	\$24,709.00	Upheld PC decision w/ amended conditions
Bundy swimming pool	Bundy	7/19/2010 9/13/2010	\$400.00	\$37,815.00	\$18,910.00	\$56,725.00	\$56,325.00	Upheld Planning Director decision
Tannler West extension	Savannah Oaks NA	11/29/2010	\$0.00	\$11,325.00	\$1,674.00	\$12,999.00	\$12,999.00	Upheld PC decision
Total:			<u>\$400.00</u>	<u>\$71,237.00</u>	<u>\$23,196.00</u>	<u>\$94,433.00</u>	<u>\$94,033.00</u>	
<p>* The cost shown here for staff and legal is the cost for the period of time between the original decision and the Council decision. It does not take into account any costs that might be incurred by an appeal to the Land Use Board of Appeals.</p>								

Memorandum

Date: 04-14-11

To: Chris Jordan, City Manager

From: Ron Schwartz, Police Captain

Subject: City Council Questions for the proposed IGA Agreement with ODOT for Motor Carrier Safety Assistance Program FFY 2011

1. Please clarify the dollar amounts included in this item (specifically, indicate how the grant program works and the difference between the West Linn share and the received revenue).

ODOT contracts with local law enforcement agencies across the State of Oregon to conduct truck safety inspections. Officers from these agencies make traffic stops (based on the vehicle committing a traffic violation) on commercial motor vehicles and trucks for the purposes of conducting safety inspections on the vehicles. These inspections take an average of 28 minutes. The officer inspects the mechanical (brakes, lights, couplers, king-pins, etc.), and administrative (driver's log book, bill of lading, etc.) components of the vehicle for safety compliance.

The proposed ODOT Grant will reimburse the West Linn Police Department for 80% of the costs (up to \$10,000 during the grant period) for conducting truck safety inspections. The West Linn PD will submit reimbursement forms to ODOT every month to recover that 80%. This grant requires the West Linn Police Department to contribute 20% of the costs of doing the vehicle inspections. Here is an example of how this grant will work, based on the 80%-20% split in costs:

Officer Brad Moyle is our motor officer, and will be conducting the truck inspections. Once a month, Officer Moyle will come in and work 8 hours of overtime conducting truck inspections on I 205 or Highway 43 within/near West Linn. The costs for this overtime will be billed to ODOT once a month on a reimbursement form. The West Linn Police Department currently has three other active grants that are reimbursed this same way.

If Officer Moyle works 8 hours of overtime on the truck inspection grant, he will need to work 3 hours of straight time/duty time to meet the 20% contribution of the grant. I supervise Officer Moyle, and on one work day during the month, when staffing allows, I will assign Officer Moyle to work truck inspections in/near West Linn for 3 hours during his work day. Since Officer Moyle will be in/near the city, he will still be available to handle any calls for service if the citizens of West Linn need any assistance from a motor officer (i.e., motor vehicle accident).

Here is a look at how this grant works by using numbers. Under the above listed scenario, the math/dollars look like this:

Officer Moyle earns \$54.81 per hour on overtime. If he works 8 hours of OT for the grant it will cost \$438.48. This would be ODOT's part.

Officer Moyle earns \$36.54 per hour on straight time. If he works 3 hours of straight time on the grant it will cost \$109.62. This would be West Linn PD's part.

The total dollars for the 8 hours of OT (\$438.48) and 3 hours of straight time (\$109.62) is \$548.10.

ODOT's part: \$438.48 is 80% of the total, \$548.10. West Linn PD's part: \$109.62 is 20% of the total, \$548.10.

2. Item #6 under "Recitals" includes the date range of 2010-10-01 through 2011-09-30; will this IGA need to be renewed as soon as this September? Is this date incorrect?

This IGA will indeed need to be renewed this September. We got a late start on the process for the grant this year. But, we still have over 5 months left to establish this program and put systems and procedures into place to make it successful. Paul Kroll, ODOT's Grant Coordinator, strongly encourages us to pass this IGA so West Linn can start this program, learn what resources are needed, and develop a grant budget for fiscal year 2012 that is in line for what the department wants to do.

3. Who receives the fines when a violation occurs?

Officer Moyle will conduct traffic stops on commercial trucks based on whatever traffic violations (i.e., speed or equipment violations) the trucks commit in his presence. The purpose of this grant is to conduct truck safety inspections, not give out traffic citations. ODOT wants the truck safety inspection reports for their data bases, and citations will only be given for the most serious violations. If a citation is given, the citation will go to the appropriate court (most likely West Linn Municipal) and will be handled like any other traffic citation (all revenues from the fines will be handled the same as any other citation).

4. What is the projected number of trucks that will be cited daily? Monthly? Annually?

There are no citation quotas or goals for this grant. Citations will seldom be written. This grant is for Truck Safety Inspections. An officer working for this grant must meet a minimum standard of 32 truck safety inspections per year. Since we are in the last 5 plus months of the grant, 15 or 16 would be the minimum. Officer Moyle will easily meet this standard. I expect him to conduct between 40 and 50 inspections.

5. What are “accident corridors” and where are these corridors in West Linn?

ODOT defines Accident corridors as: “Safety Corridors are sections of State or local highway with an incidence of traffic crashes higher than expected for that type of roadway. These may be signed as “Safety Corridors” or “Traffic Safety Corridors”, in the case of “Truck Safety Corridors” the incidence of commercial vehicle involvement is high, due to high commercial vehicle traffic volumes or commercial or other vehicle error.”

The State of Oregon does not consider any part of I 205 as a Safety Corridor. However, Paul Kroll, ODOT’s Grant Coordinator, told me the Portland Metropolitan area (which includes I 205 in West Linn) has the highest concentration of commercial motor vehicles, and therefore has the highest need for truck safety inspections.

6. There were some concerns over a “minimum citation rate” (pg. 47, item 2a). Please describe this concept and allay any concerns related to overzealous policing.

The “minimum citation rate” referred to in the above question does not apply to what West Linn PD will be doing (Truck Safety Inspections). It only applies to officers working the TACT (Ticket Aggressive Cars and Trucks) details. TACT details are selective enforcement exercises that ODOT puts together once or twice a year to target specific trouble spots. ODOT has not contacted West Linn PD about participating in any of these exercises.