CITY OF
West Linn

Memorandum

Date: **April 22, 2011**

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

From: **Chris Jordan, City Manager** CJ

Subject: **April 25 Council Meeting Agenda Update**

Based on discussions at the April 18 work session, we have added a few items to the Council agenda:

Business from the Council:

1) Support of the Mayor's letter (attached) regarding the proposed streetcar. Proposed Motion: *The City Council supports the March 16, 2011 letter sent by Mayor Kovash to regional partners regarding the proposed Portland to Lake Oswego streetcar.*

2) Initiation of proposed legislative amendment. Proposed Motion: *The City Council requests the initiation of a legislative amendment to Chapter 99.280 of the Community Development Code making appeal or review hearings on the record, or, at the appellant's discretion, de novo. Under a de novo hearing the appellant would be expected to cover the full cost of the review and the hearing. The City Council would also like to consider the option of holding a de novo hearing should they believe there are compelling circumstances to do so.*

   The Council requests the Planning Commission hear this proposal and provide a recommendation to the City Council within 120 days

Report from the City Manager:

- Amendment to Maple Grove Plat CC&R's (attached). Proposed Motion: *As a property owner in the Maple Grove plat, the City Council authorizes the City Manager to approve the proposed amendment to the CC&R's that would eliminate the discriminatory and offensive language listed as point number 6 in the CC&R's.*

In addition, we have added a proclamation naming May as National Preservation Month. We also expect a Cub Scout den at the meeting to lead the Pledge of Allegiance.

Please let me know if you have any questions.

CITY OF
West Linn

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

Revised

CITY COUNCIL MEETING

Monday, April 25, 2011

6:00 p.m. – Work Session – Rosemont Room

6:30 p.m. – Meeting - Council Chambers

1. Call to Order & Pledge of Allegiance
2. Approval of Agenda
3. Proclamations, Recognitions and Scheduled Presentations
    1. Preservation Month Proclamation
4. Consent Agenda
    2. Agenda Bill 2011-04-25-01 Aquatic Task Force Report
    3. Agenda Bill 2011-04-25-02 Oregon Department Of Transportation Intergovernmental Agreement
    4. Agenda Bill 2011-04-25-03 Street Paving Contract
5. Community Comments
6. Report from the City Manager
    5. Authorize City Manager to sign First Amendment to Maple Grove Plat Covenants, Conditions, and Restrictions (CC&Rs).
7. Business from the City Council
    6. March 16, 2011 Letter from Mayor Kovash regarding Portland to Lake Oswego streetcar.
    7. Information regarding Community Development Code (CDC) amendment regarding on the record and de novo hearings.

8. Business Meeting

8. Agenda Bill 2011-04-25-04 Tree Removal Appeal/Cheryl Drive
   PUBLIC HEARING

9. Executive Session, pursuant to ORS 192.660(2)(e) Real Property Transactions

10. Adjourn

Meeting Notes:

The Council Chambers is equipped with an induction loop and a limited number of neck loops for the hearing impaired. Please let the City know if you require any special assistance under the Americans with Disabilities Act, please call City Hall 48 hours prior to the meeting date, 503-657-0331.

Community Comments provide an opportunity for statements from citizens regarding issues related to City government, properly the subject of Council/Commission consideration and not issues on the agenda. Persons wishing to speak shall be allowed to do so only after completing forms provided in the foyer in advance of Community Comments. All remarks should be addressed to the governing body. The City Council/Planning Commission will not engage in discussion with those making comments. The time limit for each participant is three (3) minutes or will be set by the Mayor or Chair.

Consent Agenda items are routine and will not be allotted individual hearing time. The items may be passed in one blanket motion. Any member may remove an item for discussion or questions by requesting such action prior to consideration.

Persons wishing to speak on agenda items shall be allowed to do so only after completing the forms provided in the foyer and returning them to the Clerk prior to the item being called for discussion. A separate slip must be turned in for each item. The time limit for each participant is three (3) minutes, unless the Mayor decides prior to the item to allocate more or less time.

When needed, the Council will meet in Executive Session pursuant to ORS 192.660.

PROCLAMATION
West Linn, Oregon

WHEREAS, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, "Celebrating America's Treasures" is the theme for National Preservation Month 2011, co-sponsored by the City of West Linn and the National Trust for Historic Preservation.

NOW, THEREFORE, BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF WEST LINN I, John Kovash, Mayor of the City of West Linn, hereby proclaim May 2011 to be

NATIONAL PRESERVATION MONTH

In West Linn and encourage all West Linn citizens to join in this observation.

Dated this 25th day of April, 2011

_____

JOHN KOVASH, MAYOR

ATTEST:

_____

KATHY MOLLUSKY, CITY RECORDER

RECORDING REQUESTED BY, AND
AFTER RECORDING RETURN TO:

David J. Petersen
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

FIRST AMENDMENT TO RESERVATIONS AND RESTRICTIONS UPON USE AND OCCUPANCY OF PROPERTY IN MAPLE GROVE, IN CLACKAMAS COUNTY, OREGON

WHEREAS, the undersigned constitute at least 75% of the owners of that certain real property subject to those certain Reservations and Restrictions Upon Use and Occupancy of Property in Maple Grove, in Clackamas County, Oregon, recorded on February 1, 1945, in Book 338, page 365, Official Records of Clackamas County (the "Original Declaration");

WHEREAS, the undersigned desire to amend the Original Declaration;

NOW THEREFORE the undersigned amend the Original Declaration to delete paragraph 6 thereof in its entirety, which reads:

> 6. No negroes or orientals shall use or occupy any building or any tract therein, except that negroes or orientals may live upon said premises, when employed by owner or tenant as servants.

Except as amended by this Amendment, the Original Declaration remains in full force and effect.

[signatures on following pages]

By: _____

Print Name: _____

STATE OF OREGON

ss.

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____.

_____
Notary Public for Oregon
My commission expires: _____

097204/00001/2801532v1

CITY HALL 22500 Salamo Rd. West Linn Oregon 97068 telephone: (503) 657 0331 fax: (503) 650 9041

City of West Linn

March 16, 2011

Tom Hughes
President, Metro Council
600 NE Grand Ave.
Portland, OR 97232

Sam Adams
Mayor, City of Portland
1221 SW 4th Ave. Rm. 340
Portland, OR 97204

Jack Hoffman
Mayor, City of Lake Oswego
567 9th St.
Lake Oswego, OR 97034

Lynn Peterson
Chair, Clackamas County Board of Commissioners
2051 Kaen Road
Oregon City, OR 97045

Jeff Cogan
Chair, Multnomah County Board of Commissioners
501 SE Hawthorne Blvd.
Portland, OR 97214

Hakeem Olaurewajn
Clackamas County Chair, TriMet Board of Directors
4012 SE 17th Ave.
Portland, OR 97202

Matt Garrett
Director
Oregon Dept. of Transportation
1158 Chemeketa St. NE
Salem, OR 97301

Ms. Peterson and Messrs. Hughes, Adams, Hoffman, Cogan, Olaurewajn and Garrett:

I am writing to you on behalf of the West Linn City Council.

The City of West Linn would like to express its interest in the long-term performance of vehicular, bike, pedestrian, and transit operations in the Highway 43 corridor. Of specific importance is the impact to the corridor resulting from a potential streetcar alignment between Portland's South Waterfront and the City of Lake Oswego, as recommended as the Locally Preferred Alternative by the Lake Oswego to Portland Transit Project (LOPT) Steering Committee in February 2011.

We are concerned that the evaluation of potential project impacts does not fully anticipate the added inconvenience for public transit users south of Lake Oswego; the added vehicular congestion on Highway 43 resulting from higher density mixed-use development in the Foothills District of Lake Oswego and in Portland's John's Landing Neighborhood; and the desire of West Linn's residents to participate in this process.

TriMet's Route 35 provides frequent peak hour service between Oregon City and Portland via Highway 43 during the weekday. Currently, Route 35 provides uninterrupted service to employment, college, business, and recreation for West Linn residents. Under the streetcar alternative of the LOPT Project, transit riders boarding Route 35 south of Lake Oswego will be required to transfer to the streetcar in Lake Oswego before continuing their trip north. This additional transfer(s) will increase inconvenience, add time, and add navigational complexity for Portland-bound residents boarding south of Lake Oswego.

Furthermore, a new streetcar terminal in Lake Oswego is likely to increase the density of commercial and mixed-use development along Highway 43. Increased density in the Foothills and John's Landing areas of Lake Oswego and Portland and new transit park and ride parking lots in Lake Oswego will

CITY HALL 22500 Salamo Rd. West Linn Oregon 97068 telephone: (503) 657 0331 fax: (503) 650 9041

City of West Linn

contribute to additional congestion; queue spillback and overflow at many intersections; and increased vehicular delay for West Linn residents accessing jobs in Portland.

Finally, we regret the limited participation afforded to our community throughout this decision-making process. While one of the build options (streetcar) does not enter West Linn, the no-build and enhanced bus options do. We remain convinced that impacts from a potential streetcar extend beyond the proposed termini and will affect West Linn's residents. Therefore, we believe this process should have accounted for the unique needs and specific interests of our community.

For these reasons, we respectfully request that you consider the following:

- Provide traffic forecasts through West Linn based upon expected changes to zoning in Lake Oswego. This will provide more accurate information concerning the actual impact of the project upon transit in West Linn;
- Consider the increased cost of maintaining and enhancing Highway 43 through West Linn;
- Maintain the performance of vehicular and transit operations in the Highway 43 corridor through West Linn and ensure that West Linn's current bus service is maintained or enhanced either as bus or by alternative transit;
- Assure that development in the Foothills District or other areas of Lake Oswego south of the proposed streetcar terminus does not preclude the future extension of streetcar or other high-capacity transit to Oregon City via West Linn along Highway 43.

Sincerely,

John Kovash
Mayor, City of West Linn
West Linn City Council

C: Neil McFarlane, General Manager TriMet
Alex McIntyre, City Manager, City of Lake Oswego
Michael Jordan, Chief Operating Officer, Metro
Susan Keil, Director, Portland Bureau of Transportation
Robin McArthur, Director, Metro Transportation Planning
Steve Wheeler, County Administrator, Clackamas County
Cam Gilmour, Director, Clackamas County Dept. of Transportation and Development
Karen Schilling, Planning Director, Multnomah County
Carlotta Colette, Councilor, Metro Council
Jason Tell, ODOT Region 1 Manager
Jody Carson, President, West Linn City Council
Teri Cummings, Councilor, West Linn City Council
Jenni Tan, Councilor, West Linn City Council
Mike Jones, Councilor, West Linn City Council
Chris Jordan, City Manager, City of West Linn
John Sonnen, Planning Director, City of West Linn

City of West Linn

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 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:	$400.00	$71,237.00	$23,196.00	$94,433.00	$94,033.00	

* 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.