

**CITY OF WEST LINN  
PLANNING COMMISSION MINUTES**

**Wednesday, December 3, 2008**

**Draft**

Members present: Chair Michael Babbitt, \*Vice Chair John Kovash and Commissioners Shawn Andreas, \*Valerie Baker, Robert Martin, Ron Whitehead and Dean Wood

Staff present: Bryan Brown, Planning Director; Chris Kerr, Senior Planner; Peter Spir, Associate Planner; Tom Soppe, Associate Planner; Dennis Wright, Engineering Manager; and William Monahan, City Attorney

Members absent: \*Commissioners not present for part of the meeting.

**CALL TO ORDER**

Chair Michael Babbitt called the Planning Commission meeting to order at 6:35 p.m. in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, Oregon.

**APPROVAL OF MINUTES**

Commissioner Martin **moved** to approve the Minutes of November 5, 2008. Vice Chair Kovash **seconded** the motion and it **passed** 5:0. Commissioner Wood abstained and Commissioner Baker was not present during the vote.

**PUBLIC COMMENTS (None)**

**PUBLIC HEARINGS**

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

**CUP-08-02/DR-08-09/DR-08-10/VAR-08-06/VAR-08-07/VAR-08-08, Conditional Use, Design Review and (3) Variances for Fire Station #58 at 6050 Failing Street**

This hearing was continued from November 19, 2008. Chair Babbitt reopened it.

*Staff Report*

**Peter Spir, Associate Planner**, presented the staff report (see Planning & Building Department Staff Report dated November 19, 2008). He said the proposed new fire station was near the existing station and would feature a community meeting room as well as housing for firefighters and bays for emergency vehicles. He showed elevation drawings and observed that the proposed architecture was similar to that of other buildings in the area and would showcase the old fire station bell. Mr. Spir reported that the staff had addressed several issues raised at the previous hearing. The City Arborist had agreed the two maple trees in the parking lot could be saved, and Planning Department staff had found that three parking spaces could be eliminated to save them because the remaining 21 spaces were adequate to serve the 4 - 8 firefighters who would be on site on a daily basis and to serve as parking for attendees during occasional evening meetings in the community room. He recalled the Commissioners wanted to know whether removal of the electric pole on Eliot Street was necessary and practical. He reported that the applicant had just submitted a proposal that seemed to satisfy the City Engineer and that could be further refined by

the staff and the applicant in the preconstruction stage. He recalled the Commissioners wanted to know how the Historic Resources Advisory Board (HRAB) decided the applicant's request for a demolition permit for the house at 1850 Buck Street. He reported the Board decided that the applicant was to try to find another location to move it to, but if they could not do that within 120 days they were to return to the HRAB to obtain the demolition permit. He reported the only new testimony the city had received in the interim period was comments from the applicant's planning consultant, Angelo Planning Group. Mr. Spir made the following revisions to the recommended conditions of approval:

Condition 4. The applicant was to pay for, install and maintain a six foot high solid wood fence along the east side of 1912 Buck Street to protect the residents from the glare of headlights from emergency vehicles.

Condition 5. The interior sidewalk was to be six feet wide. Mr. Spir advised the code allowed it to be reduced to that width at a public facility where the normal standard could not be met. He anticipated that the handful of employees at the facility each day would generate a very low level of pedestrian activity.

Condition 14. The applicant was to address ORS 358.653 by formalizing the mitigation for the removal and loss of the building at 1850 Buck Street in writing to the State Historic Preservation Office (SHPO). He said that meant that the applicant was to use that agency's procedure.

Condition 15. The site plan was to be modified to save the two significant maple trees at the southwest corner of the parking lot. Three parking spaces could be eliminated to save those trees. The applicant was to submit a revised site plan to the Planning Director for his review.

Mr. Spir advised the Commissioners could decide to add Condition 16 to require the applicant to revise the landscape plan to show that three commemorative rose bushes would be planted on the site. The West Linn Garden Club had requested that in a letter in the record.

During the questioning period, Mr. Spir explained that the staff had not originally believed the two maple trees could be saved, but the City Arborist had looked at them and concluded they could be saved.

#### *Applicant*

**Frank Angelo, Angelo Planning Group, 921 SW Washington Ste 468, Portland, Oregon, 97205**, represented the applicant, Tualatin Valley Fire & Rescue. He was invited to comment on the staff-proposed conditions of approval. He confirmed that the applicant could agree to all 16 conditions of approval.

#### *Deliberations/Motions*

Char closed the public hearing. Commissioner Martin thanked the staff and the applicant for making the effort to save the significant trees.

Commissioner Martin **moved** to approve CUP-08-02/DR-08-09/DR-08-10/VAR-08-06/VAR-08-07/VAR-08-08 subject to the sixteen conditions recommended by staff. Commissioner Wood **seconded** the motion and it **passed** 5:0. Commissioner Baker was not present.

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**ZC-08-03, Zone change R-10 to R-7, 1095 Dollar Street**

Chair Babbitt opened the public hearing, explained the applicable criteria and procedure, and announced the time limits for testimony. He asked the Commissioners to declare any conflict of interest, bias, or ex parte contact (including site visits). Commissioners Andreas and Wood, Vice Chair Kovash and Chair Babbitt each reported they had made a site visit. When invited by the Chair, no one in the audience challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

*Staff Report*

**Peter Spir, Associate Planner**, presented the staff report (see Planning & Building Department Staff Report dated November 4, 2008). He said out the subject site was a large, R-10 zoned lot on the corner of Dollar and Ostman Streets. It had one house on it that was positioned close to the west edge of the parcel. That left room for a future second lot and house if the current application to rezone it R-7 were approved and the applicant subsequently used a separate process to partition the parcel into two lots. He advised the Comprehensive Plan classified both the R-10 and R-7 zones as low-density residential zones, so no Comprehensive Plan amendment was required. He pointed out that surrounding zoning included R-10, R-7 and R-4.5 areas and that many other lots in the area were less than 10,000 sq. ft., including nearby developed lots on Ostman Street. He recommended approval of the change to R-7 based on findings that the surrounding area was a collection of multiple zones, multiple lot sizes, nonconforming lots, and because an R-7 designation of the subject site would not be incompatible with the existing, established lotting pattern in the area.

During the questioning period Commissioner Wood asked if the existing, relatively new house on the lot had replaced an older home. The staff had no information about that. Vice Chair Kovash was concerned that if the property were partitioned into two lots the existing house would be on a new, smaller lot that would not meet the code's FAR limit. Mr. Spir explained a partition was not a consideration in the current rezoning application and that would be a separate process if and when the applicant chose to apply for a partition. He assured the Commissioners that approval of the rezone would not obligate the city to allow a lot to be created that put the existing house on a lot where it did not meet the FAR requirement. However, he observed the 16,895 sq. ft. parcel was large enough that it could be partitioned into two lots that were each over 7,000 sq. ft. .

*Applicant*

**Ben Altman, SFA Design Group, 9020 SW Washington Square Dr., Ste 350, Portland, Oregon, 97223**, pointed out the applicant had submitted findings demonstrating they met zone change approval criteria. He said they concurred with the staff analysis and conclusion. He said

he did not know the history of any previous home on the site. When asked, the staff clarified that the applicant could not partition the site under the current R-10 zoning and approval of the zone change did not guarantee the applicant could partition it.

*Proponents*

**Alice Richmond, 3939 Parker Rd.**, referred to the zoning map and observed the site was surrounded by many smaller than R-10 sized lots and if the site were partitioned into two lots they could each be still be larger than nearby lots, particularly the R-4.5 lots.

*Opponents*

**Midge Pierce, 1725 Britton St.**, referred to a letter she had submitted. She said her main concern was that rezoning the subject site would set a precedent that would devalue others' property and eventually mean the loss of the Willamette area's larger lots. She said the character and uniqueness of the Willamette area was due to its "patchwork" mix of older and newer homes, trees and "nonconforming" lots. She contested the staff findings that the area would experience additional rezones in the future and that increased density there would help the local merchants. She said neighbors were already concerned about the level of traffic and the city could help the local merchants by finding ways to let people know the shops were there and creating better transportation opportunities to serve the area.

**Buffalo Zobel, 2175 River Heights Cir**, said he opposed rezoning the site because the majority of lots in the area were R-10; to "arbitrarily" start dividing larger parcels there would impact the neighbors; and because another house on the subject site would add to area traffic problems. He said approval of the application would set a dangerous precedent. He argued that the property owner knew it was zoned R-10 when they bought it. He recalled neighbors had successfully petitioned Renaissance Homes not to rezone land that developer had purchased from the School District to use to build another 50 homes. He asked of the developer of a new house on the site would be subject to the same SDCs and street fees as the developer who built the Fields Bridge development.

**Fred Hall, 1007 Dollar St.**, questioned why the city would allow another driveway access at the Ostman/Dollar intersection, when it was already a problem intersection. He questioned why the city should allow the applicant to rezone the subject site when the development across the street had to be built subject to R-10 zoning. He cautioned that allowing another house on the site would impact side yard and back yard privacy of residents adjacent to it.

**Danette Nielsen, 1990 Ostman Rd.**, was concerned that residents of the future new house on the site would be able to look directly into her house. She confirmed there had been accidents at the Ostman/Dollar intersection. She said another house on the site would impact an existing old walnut tree and wildlife.

*Neither for nor Against*

**Elizabeth Kieres, 1852 Fourth Ave.**, reported that when the neighborhood association met to consider the application many people in attendance were either strongly opposed to it or did not feel they had enough information to vote on it. She asked why the decision had to be made so fast. She indicated one issue of concern to neighbors was that a fence impaired the sight distance of drivers traveling through the intersection.

Chair Babbitt reminded Commissioners and audience members that this application was for a zone change, not a lot partition or design review of a new house.

#### *Rebuttal*

Mr. Altman recalled testimony of people who were concerned that approval would alter the neighborhood and impact traffic. He said the potential impact of approval would be limited to one additional home and that would not be a significant change. He recalled testimony that approval would set a precedent and advised it would not because other applications would have to stand on their own merits. He stressed the application met the applicable criteria for a zone change.

#### *Staff Response to Testimony*

Mr. Spir confirmed the application met the applicable criteria. He advised that impacts of a partition could be considered at the time of a future partition hearing. During the questioning period, Commissioner Whitehead explained that he was concerned approval of the application would exacerbate the current traffic problem. Mr. Spir advised that impacts to the intersection would be examined if and when a separate application for a minor partition were submitted. He anticipated at that time the developer would be required to dedicate land at the corner for public right-of-way and install a half-street improvement there to make it safer. He stressed the current rezone application was a completely separate application.

#### *Deliberations/Motions*

Chair Babbitt closed the public hearing. He disagreed with the argument that the zone change to R-7 was consistent with the area because the zoning map showed there were a lot more R-10 than R-7 or R-4.5 properties. He said he saw no profound reason to change the site's zone. He held that zoning was a city responsibility - not an individual lot owner's responsibility - and if the area needed to be rezoned the staff should propose amendments to accomplish that. Commissioner Andreas indicated that he agreed with the staff finding that R-7 zoning would be consistent with the area because it already had other R-7 and R-4.5 lots, and some apartments, and the existing house was positioned so there was room for a second lot. He recalled that the Commissioners had been advised that consideration of impacts of a partition would be considered if there was a future partition application. But he also noted the improvements that the developer would likely have to make to be allowed to partition would improve the safety of the intersection. He contrasted the current request, which had the potential to add one more house to the Renaissance plan neighbors had objected to that would have added many more houses. He held an individual property owner had a right to ask for a zone change.

Commissioner Wood agreed that the city should be responsible for rezoning. He also saw a lot of R-10 zoned lots in the area around the subject site. He agreed approval of the application would “open the door” to rezoning other lots on Dollar Street to R-7. He said if the builder of the existing house that was built so close to one property line had positioned it there in anticipation of a zone change, he did not agree with that action either. Vice Chair Kovash explained that he was also concerned that granting the applicant a zone change would allow neighbors to argue they deserved the same consideration. He indicated that approval might only make it possible for the applicant to add one more house to the area, but it would encourage other people to add more houses, and that would exacerbate traffic impacts on the 10<sup>th</sup> Street corridor. Chair Babbitt saw no compelling reason to change the zone and said if the site was inappropriately zoned it was the city that should correct that.

Vice Chair Kovash **moved** to deny ZC-08-03. Commissioner Wood **seconded** the motion and discussion followed. Commissioner Martin announced that he would abstain because he did not feel prepared to make a decision. He explained that at the beginning of the hearing the staff report had seemed to be very clear, but he had not visited the site, and public testimony had revealed there were more dimensions to the request. Commissioner Andreas questioned how the Planning Commission could deny an application that met all the applicable code criteria. **The vote was conducted and the motion passed 3:2**. Commissioner Andreas and Commissioner Whitehead voted against and Commissioner Martin abstained. Commissioner Baker was not present.

When City Attorney Monahan asked Commissioners who voted to deny to state their reasons for the record, Chair Babbitt explained that he saw no compelling reason for the zone change; that zoning was the foundation of planning; and that he disagreed with some staff findings that supported the change. He said he did not feel the change would make the site more compatible with the area because the zoning map showed it was surrounded by R-10 lots and there were only “patches” of R-7 and R-4.5 lots in the area. No other Commissioners offered their reasons for voting to deny the application. Chair Babbitt then outlined the appeal process. He announced a five-minute break in the meeting and Commissioner Baker had joined the other Commissioners when Chair Babbitt reconvened it.

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**CDC-08-01/PLN-08-07, Transportation System Plan**

The hearing had been continued from November 5, 2008. Chair Babbitt reopened it.

*Staff Report*

**Chris Kerr, Senior Planner**, presented the staff report (see Planning & Building Department Staff Report dated October 23, 2008 and Staff Memorandums dated October 29, November 14, November 24, and December 3, 2008). He explained the proposal would revise the 2000 version of the Transportation System Plan (TSP); amend Comprehensive Plan Goal 12 (Transportation); and amend the CDC to implement the new TSP. He said DKS Associates had prepared the plan and Karl Springer, Angelo Planning Group, had drafted the CDC text amendments. He said the staff recommended approval with changes The Transportation Advisory Board (TAB) had

recommended and the changes the Commissioners had asked for during their November 24th work session. (See the staff memorandum dated November 24, 2008 summarizing those changes.) He then described changes the staff had incorporated that had been suggested at the Planning Commission work session on November 24<sup>th</sup>. Those changes would allow some elements of an arterial street cross section to be moved to a parallel facility at the discretion of the City Engineer if the street were severely constrained, as Sunset was. Mapped trails were notated as “conceptual only.” A study to pursue the feasibility of local jitney service had been added. The Commissioners had agreed to accept three new staff recommended changes at the work session. Those policies incorporated the concepts in Imagine West Linn and the city’s Sustainability Plan; a new Street Action Measure 8; a new Transit action Measure 4; and a new Transportation Management Policy 4.

Mr. Kerr recalled the Commissioners had asked that Transit Policy 11(b) be removed. It was the part of Transit Policy 11 that called for supporting a public transit system that was accessible to the largest number of people by (b) seeking higher concentrations of employment opportunities, residential development and commercial uses in these areas. The Commissioners had observed that method was not called for in any other city document. He noted the staff had replaced (b) with a statement to the effect that future proposed land use changes or rezoning that would result in increased residential densities, additional employment activities or commercial activity should be located in transit areas. During the questioning period the staff agreed to completely eliminate 11(b) when Vice Chair Kovash recalled the Commissioners had agreed to remove, but not replace, that provision. Chair Babbitt asked if the Planning Commission could recommend the City Council remove certain controversial provisions, such as the Kapteyns Street connection. Mr. Brown confirmed that after the City Council adopted the updated TSP they could make subsequent amendments to it related to local matters without involving the state.

*Proponents*

**Gary Hitesman, 2188 Clubhouse Dr.**, suggested instead of spending money on a jitney feasibility study those funds be used to look at pedestrian and bike facilities. He indicated that the local connectivity plan should be eliminated because it had no connection to reality. He advised that Transit Policy 11(b) should be reworded so it called for putting higher density along major transit routes behind designated town centers. He said that language would focus higher density only in the areas where it fit existing infrastructure. He cautioned that to strike 11(b) would result in higher density in places the city did not want to see it. He said the City needed to improve Santa Anita so it met the standards for its current functional classification as an arterial street. He wanted some of the funds that were proposed to be spent for pedestrian facilities along Highway 43 and for other roadway work used instead for pedestrian facilities elsewhere in the city.

**Troy Bowers, 2790 Lancaster St.**, had submitted written comments. He was concerned that older streets like Sunset did not have enough room to accommodate a full street cross section and he supported allocating the connectivity burden among multiple streets.

*Opponents*

**Patti Galle, 2530 Hillcrest Dr.**, questioned why the city should plan to connect Kapteyns Street when traffic volume and speed were already a problem for the neighborhood and residents of Kapteyns Street had not anticipated such connection when they purchased their property and had been living there without it for many years. She cautioned against making it more tempting to speed along a big and wide street. She stressed that community livability was important. She indicated she agreed with Mr. Hitesman's recommendation regarding Transit Policy 11(b).

*Opponents*

**Jennifer Huntsman, 19390 Kapteyns St.**, submitted a joint statement with her neighbors urging the city to remove the proposed Kapteyns Street / Carriage Way connection from the TSP. She held such a connection would turn the local street into one that functioned like a higher classification street when non-local traffic used it as a short cut between Highway 43 and Rosemont. She said that did not support the Marylhurst Neighborhood Plan goal to maintain the neighborhood's quiet character; and she said no data had been presented to show that the city needed another collector street. She held the Kapteyns connection was not a priority for the city, so those tax dollars should be used for other projects. She said it was not like the other proposed connections because it was in an area that had been fully developed for many years. She stressed the people who walked or biked in the area could use the existing pedestrian path.

When called to testify, **Jim Keltz, 19597 Kapteyns St.**, waived his right to testify orally because he had already submitted written testimony. **Dale and Jennifer Fossati, 19541 Kapteyns St.**, had submitted a testimony form indicating they were opposed, but did not wish to testify orally.

**Clark Park, 19546 Kapteyns St.**, read aloud his written testimony (see his December 3, 2008 letter to the Planning Commission). He stressed the proposed Kapteyns connection would not be a "local" connection because it would connect two collector streets. He said it would become an unsafe shortcut between Rosemont and Highway 43. He said the original plat showed it had always been intended to be a cul-de-sac. He said to make a connection there would remove the only flat, local street in the neighborhood

**Mike Zoordasian, 19430 Kapteyns St.**, asked the city to remove the Kapteyns connection from the TSP because otherwise it would function like a collector street. He said it was never designed to go through; the neighborhood plan did not show such a connection; he wanted to keep the area safe for pedestrians and bicyclists; and he wanted to preserve the property values of those residents who had paid more to buy homes on a cul-de-sac. He questioned whether making a connection through the park was legal.

**Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, President of the Hidden Springs Neighborhood Association**, asked the Planning Commission to postpone making their TSP recommendation in order to allow more time for public input. She agreed with Mr. Hitesman's comments about Santa Anita Drive. She said the proposed TSP changed the definitions of "arterial" and "collector" streets with no explanation, and the result would be increased traffic on them. She said the staff had confirmed that the proposed bike boulevard on Pimlico would be removed from the TSP, but it was still in the documents she saw. She held that residents on Kapteyns Way should agree to open up that connection and share the traffic burden that residents

on other city streets were bearing. She noted residents of Miles Drive had already been required to connect their street. She explained the public had no basis to challenge the authority of the Planning Commission or individual Commissioners at the start of a hearing because they had no way to know if any Commissioner had conflicts to challenge.

During the questioning period Ms. Fox confirmed that she was speaking on behalf of her neighborhood association. The Commissioners clarified that they had approved the closing of Miles Drive and that street was to be closed in the first phase of a nearby church development. Commissioner Martin advised Ms. Fox that each Commissioner completed a questionnaire and submitted it to the state ethics board and that information was available to the public.

**Kevin Bryck, 18840 Nixon Ave., representing the Robinwood Neighborhood Association,** reported his Association had adopted and submitted three resolutions related to the TSP. He said they did not want the City Council to put Transit Policy 11(b) back into the Plan. If the City Council decided to put it back they wanted language to clarify that no provision in the TSP could contradict their neighborhood plan. He explained the Association had asked the City Council to slow the process of adopting the updated TSP because new Comprehensive Plan and code language had been inserted so late in the process there had not been enough time to respond to it. He clarified that the neighborhood plan stated the neighborhood did not want property north of Willamette Drive (north of their existing commercial area) rezoned, and they would allow mixed use in their commercial area along Highway 43 to the extent it offset any further density in the neighborhood, but they did not want those developments to tower over the neighborhood. During the questioning period, the staff asked Mr. Bryck for another copy of the document he was talking about, because they had not seen it. They said they would forward it to the City Council.

**John Sramek, 2738 Sunset Ave.,** asked for more time to review the material he had received. He wanted Sunset's designation changed from an arterial street to a neighborhood route in order to lessen the impact on Sunset residents. He observed that if developers of two undeveloped parcels in the area improved part of Sunset, the improved area would funnel down to the existing narrow roadway. He noted the TSP advised there should be arterials within a mile of each other. He said Rosemont was within a mile, so the Sunset arterial was not necessary and the city should protect Sunset residents. During the questioning period he clarified that he recommended declassifying Sunset between Parker and Cornwall, not the entire length of Sunset.

Chair Babbitt explained the City Council had made it clear they planned to address the updated TSP on December 8<sup>th</sup>.

*Neither for nor Against*

**Alice Richmond, 3939 Parker Rd.,** recalled that ten years ago the city decided that Parker Road was to be a collector street to serve future subdivisions and connect to the Willamette area.

**Mike Salchenberg, 2733 Sunset Avenue,** testified that the Cornwall / Lancaster / Parker route helped slow traffic better than a direct route from Parker to Sunset would. He advised there was no shoulder on one corner of Sunset and lots of fill would be required there. He anticipated that

his and several other homes would be within four to five feet of the improved roadway and that would affect their property value.

*Deliberations/Motions*

Chair Babbitt closed the public hearing. The Commissioners wanted to know if the city could approve a TSP that called for the Kapteyns / Carriage Way connection through the park. The staff clarified that a vote might be required to accomplish that because the parkland had been acquired by voter-approved park bond funding. They noted, however, that the final phase of the park plan showed the connection and the current TSP, which had been adopted before the park was created, also called for that connection.

Vice Chair Kovash recalled the Commissioners had heard some new ideas about how to address the Sunset / Lancaster situation at their work session and he suggested it might be appropriate to recommend that the City Council postpone that decision pending further analysis. He said he thought it was appropriate to drop the Kapteyns Street connection. The staff explained they had asked the consultant to remove the Pimlico bike boulevard when Ms. Fox first asked for that, and they would follow up with the consultant to ensure it was removed.

Chair Babbitt asked the Commissioners if they still wanted to strike Transit Policy 11(b). Commissioner Andreas said he could agree to strike it. Commissioner Baker said she favored retaining it and using the language proposed by the staff. Commissioner Wood recalled the Commissioners felt to call for higher intensity zoning along transit corridors now was putting the cart before the horse. Commissioner Whitehead said he favored retaining the provision and letting the City Council make the decision.

Commissioner Martin invited Mr. Hitesman to read the wording for Transit Policy 11(b) that he advocated. Mr. Hitesman said he thought the following language would satisfy a lot of arguments, both pro and con:

**Transit Policy 11(b) supporting more intense and mixed use zoning designations in areas around transit stations in the designated town centers along major transit routes, and along designated Main Street areas.**

Commissioner Martin said he preferred the language proposed by the staff. Vice Chair Kovash recalled that the Commissioners had identified the language in 11(b) as standard language used by consultants. He said to increase density along corridors to attract transit service was not necessarily a good idea in West Linn. He said it might slightly increase the city's current 2% level of transit use but the increase in Highway 43 traffic would be large and exacerbate the already poor levels of service of intersections along that route. He said the city was getting ready to present its aspirations regarding density and growth to Metro in January and he indicated it would be premature to insert any version of 11(b) in the TSP until the city fashioned its response to Metro. Chair Babbitt said he favored modifying the provision. He then observed the Commissioners were split on the issue of whether to strike or modify the provision.

Chair Babbitt **moved** to approve CDC-08-01/PLN-08-07 with the changes Mr. Kerr had described during the staff report; but postpone addressing the issues of the Sunset / Lancaster and Kapteyns / Carriage Way connections and let the City Council know the Commission was split about whether to completely strike or modify the language of Transit Policy 11(b). Commissioner Whitehead **seconded** the motion and it **passed** 6:0. Vice Chair Kovash abstained. Chair Babbitt announced a five-minute break in the proceedings and thereafter reconvened the meeting. \*Commissioner Baker and Vice Chair Kovash left the meeting.

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**DR-08-01/VAR-08-01/VAR-08-09/WAP-08-01, Design Review Variances and Water Resource Area Protection for Holiday Inn Express, 2400 Willamette Falls Drive**

Chair Babbitt opened the public hearing, explained the applicable criteria and procedure, and announced the time limits for testimony. He asked the Commissioners to declare any conflict of interest, bias, or ex parte contact (including site visits). The only declarations were that Commissioners Martin, Wood, Andreas, Whitehead and Chair Babbitt each reported they had made a site visit. When invited by the Chair, no one in the audience challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

*Staff Report*

**Tom Soppe, Associate Planner**, presented the staff report (see Planning & Building Department Staff Report dated November 5, 2008). He said the applicant proposed to build a 71-unit hotel on a GC-zoned site where development was severely constrained by Bernert Creek, wetlands and related transition area. He said a code hardship provision allowed development of up to 5,000 sq. ft. of such a constrained site. He clarified that the applicant proposed to continue to use the existing driveway over the wetland. He said they had revised the site plan to save a significant oak tree but still had enough parking, so they no longer needed a second variance. He corrected staff-recommended Condition 8 so it called for a 100' transition area. He added a new Condition requiring the applicant to conduct a lighting study to determine the number and locations of fixtures and offer the Historic Resources Advisory Board a selection of designs to choose from that would be consistent and compatible with those to be installed in the historic Willamette District in the future. The staff recommended approval of the application subject to the staff-recommended conditions of approval.

During the questioning period, Mr. Soppe clarified the staff had revised their initial staff report and recommendation to deny the application after they examined the revised site plan because it saved the oak tree, and had enough parking. They now recommended approval because the proposal met the code, but they acknowledged there were other issues to be worked out during the Building Permit process with Tualatin Valley Fire and Rescue (TVFR), which would require certain methods of construction and building materials if there were to be only one driveway. When asked, City Attorney Monahan confirmed the Planning Commission could approve part of an application while denying other elements of it. Mr. Soppe confirmed that the revised site plan proposed 64 parking spaces that were close enough to the building and met all Chapter 46 parking requirements, so there was no longer a need to use the adjacent building's lot. Commissioner Martin observed the setback was very close to the stream. Mr. Soppe clarified

that Chapter 32.090 hardship provisions allowed the setback to be reduced to 15 feet from the actual creek or wetland on a very constrained site. He clarified that mitigation would be on 32,074.45 sq. ft. of the 41,000 sq. ft. available for mitigation purposes in Fields Bridge Park. The staff advised that although the hardship provision might have been originally intended to allow a constrained residential site to have 5,000 sq. ft. developable area, it was written in a manner that also allowed a commercial development to have that much developable area. However, the applicant was requesting a variance that would allow them to have a larger developable area. .

*Applicant*

**Brad Kaul, representing Steven P Elkins, Architects, Inc., P.S., 11000 NE 33<sup>rd</sup> Place, Ste. 101, Bellevue, Washington, 98004,** came forward to answer questions. Chair Babbitt stressed it was the applicant's burden to prove the application met the code. He advised that a variance was typically granted to allow a reasonable and moderate exception to the code, but the applicant proposed to more than double the allowable footprint. Mr. Kaul asked that the applicant be allowed to develop the same area as the two developments on either side of the site. He said the code allowed the applicant to mitigate disturbance of the water resource area off site, and they would do that on the park property. Commissioner Martin observed the code called for development within the resource area to be the smallest economically viable amount and the fact that the adjacent development had 1,600 sq. ft. demonstrated that was the smallest amount.

*Proponents*

**Alice Richmond, 3939 Parker Rd.,** stressed the city needed a hotel facility and the proposed site was likely the only convenient and available place to locate one. She added it would also generate revenue to the city.

*Neither for nor Against*

**Elizabeth Kieres, 1852 4<sup>th</sup> Ave.,** related that no vote had been conducted at the August neighborhood meeting when the applicant presented the proposal, but an equal number of residents had seemed to her to be happy or anxious about the proposed development. She said they had discussed their concerns again at a September neighborhood meeting when they had a hard time envisioning the project. She asked the Planning Commission to ensure it would be appropriate, safe and respectful of the neighborhood.

*Opponents*

**Gary Hitesman, 2188 Clubhouse Dr.,** said the city needed a hotel, but the neighborhood and the city could do better than what was proposed and the plan should be reconfigured or the project should be located on some other site further down Willamette Falls Drive. He indicated that he abhorred the current proposal because he felt the applicant proposed a "stock" plan that was not appropriately oriented to the neighborhood and they had made no effort to limit the footprint to maximize preservation of the wetland. He said they proposed insufficient parking because they had not factored in employee parking and because bus transit service was irregular

and did not really serve the site. He anticipated site users would be parking on 7<sup>th</sup> Street and Willamette Falls Drive. He said recommended Condition 7 should call for pervious paving materials. He advised the project could be reoriented to protect more of the resource if the applicant worked out parking arrangements with adjacent property owners. He advised that the area should be designated a "Main Street," and that TSP Transit Provision 11(b), as it was currently proposed to be rewritten, would not prevent the proposed development. He said city citizens did not want this type of high density in this location, even if it was in a commercial cone. He said the conditions of approval to address sidewalks, driveways and drainage did not do a good job of addressing connectivity or the environment. The conditions of approval that required sidewalks did not add pedestrian connectivity, just cost, so city should use that money to install a river walk. He asked for a "sustainable" building that controlled water and maintained wetland. He referred to recommended Conditions 9 and advised that the proposed configuration and size of the project would make it a "firetrap." He worried that a facility on the fringe of town would attract the kind of people that West Linn did not want to attract.

**Karen Stuart, 1542 Sixth St.**, declined to testify orally, but pointed out she had explained why she opposed the application on the Testimony Form she had submitted.

**Paul Kays, 2235 Willamette Falls Dr.**, agreed the city needed a hotel, but not in the proposed location. He reported he had never received a copy of the staff report that reversed the recommendation to deny. He contended the applicant had not met variance criteria because there were no exceptional or extraordinary circumstances that justified a variance. He said they were just trying to put too large a building with a poor design on a site where it did not fit. He said they did not meet the criterion that the variance was to be the minimum necessary to alleviate the hardship. He said the proposed project did not help the community balance residents, businesses and traffic needs.

**Karie Oakes, 1125 Marylhurst Dr.**, advised the application was easy to deny based on the applicable criteria in Chapter 32 hardship provisions. She clarified those provisions allowed up to 5,000 sq. ft. of permanent disturbance area, which included the building footprint, the driveway, parking lot, and internal sidewalks. She noted the proposed disturbed area was almost 37,000 sq. ft., - more than five times the 5,000 sq. ft. disturbance area the hardship provisions allowed. She said she had helped revise Chapter 32 and knew it was intended to strengthen protection of streams and wetlands while allowing owners of resource constrained land to build a reasonable development. She argued that the size of the disturbance area the applicant requested was not reasonable and was not what the code was intended to allow. She suggested the Commissioners read the purpose statement in Chapter 32 and deny the application. She pointed out that CDC 32.090 distinguished between partially and totally constrained lots. She explained that a duplicate provision (C) was likely older language that had inadvertently not been removed when the code was revised. She said the proposed plan did not fit the site and did not appropriately address pedestrian connectivity and traffic and a hotel guest would have to walk a long way to get to a transit stop. She asked that the record be left open for seven days to allow people who were unable to be at the hearing to testify. During the questioning period, Ms. Oakes clarified the hardship provision allowed an owner to develop up to 5,000 sq. ft. no matter how large the lot was. She wondered how much of the site was constrained by resources and how much was outside the resource transition area. .

**Teri Cummings, 2190 Valley Ct.**, said she agreed the city needed lodging facilities, but not this one. She stressed the city should not set a precedent by granting such a large variance to the 5,000 sq. ft. limit allowed by the hardship clause. She anticipated that LUBA would deny an appeal for that reason. She acknowledged that the code might need to be revised to relate the size of the developable area to the size of the lot or to distinguish between residential and commercial use.

*Rebuttal*

Mr. Kaul explained that most of the site was already disturbed. He said the applicant's geotechnical consultant had found that the impervious roadbed of Old Willamette Falls Drive could not easily be seen, but it still existed and angled across the site. He clarified that part of the proposed building would be outside the water resource area, and he asked to be allowed to reconfigure it so that only 5,000 sq. ft. was within the water resource area. The staff advised that the applicant's lot was a partially constrained lot and CDC 32.090 addressed partially constrained lots. It said development on such lots was not to disturb more than 5,000 square feet of the water resource area, including access roads and driveways. Mr. Kaul asked if the same 5,000 sq. ft. restriction applied to adjacent properties, which he believed were identical to the subject site. Mr. Soppe explained that the staff supported the variance on the applicant's site because there were exceptional and extraordinary circumstances on that lot that they did not see on the other lots. The subject lot seemed to be more severely limited by the creek and transition area, but if the other lots were redeveloped, they would be subject to a similar evaluation. Mr. Kaul asked why the staff had not alerted the applicant to the problem earlier in the process.

Commissioner Whitehead encouraged the staff to advise the Police Department that the Planning Commission needed their input regarding call to service and traffic aspects. The staff advised that if the applicant significantly revised the application they might have to start the process over as a new application. They observed the applicant was considering reducing an area that was currently proposed to be over 36,000 sq. ft. down to 5,000 sq. ft. Commissioner Wood observed the site was zoned commercial, which would typically require more than 5,000 sq. ft. Commissioner Andreas observed the staff already recommended approval of the application so the applicant might decide to come back and help the Commissioners understand how they had arrived at the current plan for positioning the building and addressing drainage; the special circumstances that justified the variance; and why the plan was suitable for the site. Mr. Kaul agreed to extend the 120-day rule period by 35 days. He anticipated the applicant's wetland biologist, who had evaluated the site and developed the mitigation plan, and the civil engineer who had designed the storm water management system, could help explain it at a hearing on January 7, 2009. Chair Babbitt and Commissioner Martin stressed that the burden was on the applicant to prove the application met the code and to justify the variance. They pointed out to meet one criterion the applicant needed to explain the "hardship" and show the requested variance was the least intrusive economically viable of all alternatives. Chair Babbitt encouraged the staff to not use language such as, "loopholes" and "avoidance of the code" in their reports.

City Attorney Monahan recalled request to submit additional info. That can be done. If new info at that meeting public gets to comment on new info  
Chair Babbitt you may submit written testimony before the meeting and at the January 7 meeting there will be public testimony only on the new info the applicant may be submitting.

Commissioner Martin **moved** to continue DR-08-01/VAR-08-01/VAR-08-09/WAP-08-01 to January 7, 2009 an accept written testimony up to the day of the hearing, but limit public testimony at the hearing to new material submitted by the applicant. Commissioner Andreas **seconded** the motion and it **passed** 5:0.

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**ITEMS OF INTEREST FROM STAFF**

*Review draft Annual Report; accomplishments; future goals; needed resources*

This discussion was postponed to give the Commissioners more time to draft the report.

**ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

The staff was to forward a December 17<sup>th</sup> meeting materials packet to Commissioner Whitehead who reported he did not yet have one.

**ADJOURNMENT**

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 10:20 p.m.

**APPROVED:**

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**Michael Babbitt, Chair**

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**Date**