



CITY OF West Linn

PLANNING COMMISSION

Minutes of April 18, 2012

Members present: Chair Michael Babbitt , Vice Chair Gail Holmes, Russell Axelrod, Thomas Frank, Robert Martin and Holly Miller

Members absent: Christine Steel

Staff present: John Sonnen, Planning Director; Chris Kerr, Senior Planner; Zach Pelz, Associate Planner; and City Attorney Pam Beery

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:30 p.m.

PUBLIC COMMENTS (Regarding matters not on the agenda)

None.

PUBLIC HEARING

CUP-12-02/DR-12-04, proposal to modify and expand the Lake Oswego Water Treatment Plant and Site

Chair Babbitt opened the public hearing and outlined the applicable criteria and procedure. Each Commissioner present reported making a site visit. Commissioner Martin and Vice Chair Holmes each reported touring the facility. Commissioner Martin explained that his tour of the facility included a conversation with the plant manager that focused on much of the information already included in the project record but also included a discussion of the plant capacity, the possibility of two additional employees on site, and the fact that approximately 80 percent of the plant would be replaced – Commissioner Martin reported that except for two existing lagoons, the entire plant would be replaced. Those Commissioners who had spoken to anyone while on site clarified they had not discussed the application. Vice Chair Holmes reported that her friends Neal and Jana Ray, 4240 Mapleton Drive, were concerned about their property value. Commissioner Martin read aloud from notes he had made during his tour: He learned about plant capacity; that two more people might be employed there; and that 80% of the plant was to be replaced and two of the holding ponds would be retained.

Gary Hitesman challenged the authority of the Planning Commission to hear the matter. He advised that the Commission needed to first make an interpretation of what was nonconforming use of the land. City Attorney Beery observed Mr. Hitesman was concerned that an interpretation had been made by the Planning Director regarding nonconformity of the property. In fact, no interpretation had been made and the use was not nonconforming. It had been approved through a conditional use process and lawfully existed at the site. The Commission had authority to conduct a hearing on a conditional use permit under the CDC.

Mr. Hitesman referred to code standards regarding official actions. He claimed that staff failed in their report to adhere to the standards, so they had not been met. Ms. Beery advised the challenge was not a jurisdictional matter. Rather it was a question of whether the staff appropriately weighed the evidence in the application in determining staff's proposed findings. At the hearing the Commission would be hearing any additional evidence anyone wished to present and it would be the Commissioners' job to determine whether the staff appropriately weighed and evaluated the CDC criteria.

Mr. Hitesman challenged Chair Babbitt's and Commissioner Martin's ability to hear the matter. He contended that they had been biased in previous applications and had approved things that did not meet code. Ms. Beery advised that Mr. Hitesman might disagree with past decisions, but that did not mean the Commissioners were biased in judging the present application. Chair Babbitt reported that he had read all the materials and had no predisposition toward a decision. He would listen to the additional testimony that evening and then make a decision. Commissioner Martin reported he had read the entire record and he believed that he could decide the application fairly based on the merits and had not prejudged it. Chair Babbitt invited the other Commissioners to raise any concerns regarding his and Commissioner Martin's participation. None were raised.

Ken Hanawa, 4191 Mapleton Dr., contended the staff was biased in favor of the applicant. The staff report and recommendation document did not treat each item fairly – it was more like advocacy. He noted the City Manager was a resident of Lake Oswego and approval would benefit Lake Oswego residents. Ms. Beery advised the Commission had the authority to evaluate the staff recommendation and decide the application based on everything it heard at the hearing.

Staff Report

See the see the April 18, 2012 staff report and Staff Memorandum 4-18-2012.

Mr. Kerr presented the report. The applicant asked to be allowed to upgrade and expand the Water Treatment Plant (WTP) at 4260 Kenthorpe Way. It was a Major Utility in the R-10 zone that could be allowed by conditional use permit. Class 2 design review was also required. He pointed out the location of the site between Kenthorpe and Mapleton Streets. He advised the plant was not a nonconforming use. It had been constructed in the county. After West Linn annexed the area the plant had received conditional use and design review approval for plant changes made in 1980, 1988 and 1996. In 2011 a lot line adjustment that brought in 3.2 acres along Mapleton had been approved. The Mapleton lots were subject to private covenants that prohibited non-single-family uses on them. The city did not regulate or enforce private agreements. An application for a related new water transmission pipeline had not been submitted. It was not part of the current application and the City could not require that. The pipeline application would be subject to a separate conditional use approval.

Mr. Kerr used an aerial photograph and other photographs to show the existing Kenthorpe access, the Kenthorpe and Mapleton frontage and perimeter conditions and the major components of the site. There were no curbs or sidewalks on Kenthorpe or Mapleton except for a curb at the site's Kenthorpe driveway. Six of the 41 significant trees were proposed to be removed. They were generally in the area of an underground reservoir and north driveway. Staff proposed a new condition to require an easement over the significant tree clusters. Two existing single-family homes on Mapleton would be removed and those driveways would be closed off. The proposed site plan showed the above-ground facilities would generally be in the center of the site, with open space areas around the perimeter. The plant would use the existing Kenthorpe driveways. The only access on Mapleton would be a gated emergency access for use by TVF&R and a pedestrian access. Street cross sections illustrated improvements to be made on both streets. They would be green streets with stormwater swales and sidewalks. There would be a pedestrian pathway connection from Mapleton to Kenthorpe that could eventually be made part of a pedestrian loop. Mr. Kerr pointed out the internal circulation pattern and internal parking areas. He pointed out two existing lagoons and other structures that would remain at their current locations. He described the architectural materials. Some of the structures had green roofs and solar panels on them. There was to be a series of vegetated stormwater management areas similar to rain gardens. The pathway and parking areas would be pervious materials. One of the open space areas would be open to the public. He pointed out the route of the future water pipeline. He

pointed to the location of the clearwell, which would be a 3 million gallon underground facility with about two feet of soil and vegetation on top of it. He described the perimeter and internal fencing.

Mr. Kerr discussed aspects of the staff review and some of the recommended conditions of approval. He related that the staff would rather wait to receive the final stormwater operations and maintenance plan and construction details for the refuse/recycling pad closer to the time of construction (see recommended Conditions 8 and 11). The emergency gate was to be set back 30 feet from the right-of-way (Condition 6). He discussed some of the approval criteria. The staff found that the site's size and dimensions were adequate for the proposed use and to mitigate any possible adverse effects of the use on the surrounding properties (see the discussion of CDC 60.070(A)(1) on page 27). They reasoned that Lake Oswego had been operating under CUP approvals since 1968 on a smaller property so increasing the size of the site allowed them to locate the facilities in the center of the property and maintain and increase the surrounding green buffers. The larger site area allowed the buffers to be denser and feature open spaces. The staff found that the proposal would provide a facility that was consistent with the overall needs of the community, as called for in CDC 60.070(A)(3). The staff report discussed the needs that had been identified in a variety of City plans (see pages 32-43). The needs related to things like connectivity; sustainability; right-of-way improvements; compatibility; efficient use of property; and public safety. The Water Master Plan called for working with Lake Oswego/Tigard to improve the emergency supply capacity and reliability of the emergency supply connection (the existing intertie). The expansion was the recommended reduced cost approach to accomplishing that.

Mr. Kerr discussed a list of significant issues:

Noise. The municipal code regulated noise as nuisances. There were no specific decibel requirements. The applicant had provided an acoustical study that recommended mitigation measures. Condition 4 called for those measures. With those measures the plant would meet DEQ requirements and even the noise standards the City used to have. A post construction noise analysis was required after six months.

Good Neighbor Plan. The applicant had provided this plan. Condition 2 required them to comply with it. Some of the provisions in it related to coffee with the construction manager; annual open houses/tours; a reverse 911 system; and notifying the neighborhood about changes related to chemicals and emergency procedures.

Construction Issues. Construction would take 24 to 26 months. The applicant had provided a construction management plan (see PC-3, Section 23). Condition 2 would require the applicant to comply with its provisions. They related to things like low sulfur fuel; communicating with the neighborhood regarding the location of temporary offices, trailers, and off-site parking areas; providing the City and the neighborhood with a contact list; recording right-of-way conditions for post construction analysis; and prohibiting on-street parking.

Public Safety. The plant was West Linn's emergency water provider. The applicant would be required to coordinate an emergency response plan with TVF&R and the Police; be subject to annual facility inspections; provide a hazardous materials management plan; and allow controlled vehicular north/south access to residents in time of emergencies on Kenthorpe.

The staff concluded the application would meet all applicable CDC criteria if approved subject to the recommended conditions of approval in the staff report and as amended in Memorandum 4-18-2012. The memorandum corrected typographical errors in Condition 4 and added Condition 17, which would put significant trees in an easement:

Condition 17: Prior to issuance of any site development permits the applicant must establish a conservation easement for all tree protection areas, as shown on the

applicant's site plan in Exhibit PC-3, Section 23, Figure 3.0, containing clusters of two or more significant trees. The easement shall be approved by the Planning Director and recorded with Clackamas County.

Mr. Kerr highlighted two more conditions. Condition 4 contained noise mitigation related provisions including a provision that required the applicant to notify neighbors of any after-hours construction request. Condition 15 required the applicant to implement all the recommended measures in the geotechnical report.

Public Testimony - Applicant

Jack Hoffman, Mayor of Lake Oswego; and Gretchen Buehner, President of the Tigard City Council, testified on behalf of the applicant. Tigard Mayor Dirksen was not present because he was at another event. Lake Oswego City Councilor Bill Tierney was present in the audience. Mayor Hoffman related the project was important to Lake Oswego, Tigard and West Linn. It would provide clean and dependable water to West Linn in an emergency. Because the plant had the potential to adversely impact the neighbors and the community the applicant had created the Good Neighbor Program. The two mayors had met with the neighbors and neighborhood leaders three times. They had directed staff to take all reasonable steps to be a good neighbor and treat West Linn residents as they would treat residents of Lake Oswego and Tigard. Ms. Buehner advised that Tigard had built a tremendous number of reservoirs and water storage wells and had the ability to provide emergency water to all neighboring cities when it was needed. Tigard was very committed to being a good neighbor.

Joel Komarek, Project Director, Lake Oswego-Tigard Water Partnership, and Jeff McGraw, Principal Architect, MWA, discussed the proposal. Mr. Komarek related that Lake Oswego and Tigard had been sharing water from the Clackamas River since 1973. The current partnership had been formed in 2008. The project would supply a clean, dependable source of water. It was subject to many other levels of review, including federal, state, tribal and by three other cities. It would protect fish and restore impacted habitat. It furthered statewide goals related to integrated water supply planning. The existing plant had been in the neighborhood since 1968. After it was annexed to the City of West Linn the neighborhood grew up around the plant. The plant had received land use approvals from the City in 1980, 1988 and 1996. That confirmed the facility was allowed in the zone and it was compatible with the residential character of the neighborhood. The applicant had complied with all conditions of approval. It had worked hard for over 44 years to be a good neighbor. He displayed a slide with quotes from neighbors indicating, "The plant is the quietest neighbor we have;" and the "treatment plant has been a great neighbor."

Mr. McGraw described the public outreach process. The applicant had held more than the one required neighborhood meeting; listened to the neighbors; and incorporated their suggestions into the design. They had met with the Robinwood Neighborhood Association 21 times; made 15 backyard visits; met 9 times with other neighborhood associations; met four times with West Linn boards and commissions; held three open houses; conducted two design preference surveys; held two Good Neighbor Plan workshops; and conducted two tours of Lake Oswego and Wilsonville facilities. The applicant had heard reoccurring themes in public comments. Robinwood neighbors had asked for generous setbacks; a pathway connection between Mapleton and Kenthorpe; green features; putting the tallest features in the center; noise control and public safety. Those features had been incorporated into the plan. During the backyard visits the applicant had heard that the plant had been a good neighbor so far; trees and buffers were very important; aesthetics and views were important; they wanted quality buildings and quality edges; existing trees should be preserved where possible; the neighborhood was very quiet; neighbors enjoyed safe streets; and the plant should blend in with neighborhood. The applicant had designed the site with those things in mind.

Mr. McGraw displayed and discussed the proposed site plan. He pointed out the open spaces created buffers along both streets. There would be multiple layers of screening. 35 of the 41 existing significant trees would be preserved and 300 trees would be planted. That was well in excess of the code's tree planting requirement. He addressed noise. He said this was likely going to be one of the quietest plants his firm had ever designed. All mechanical equipment on the roofs would be covered. Process work, including chemical storage, would be done inside buildings. He addressed safety. He noted there had been no safety violations or safety-related complaints for over 40 years. The applicant would work with TVF&R on the safety response plan. The plan would be even safer and more efficient than it was now. He listed the sustainability features: stormwater elements; low impact development; low impact paving elements; permeable parking spaces; innovative storm water treatment; a fountain at the main entry; and habitat restoration. Architectural sustainability features included photovoltaics; some green roofs; highly efficient building envelopes; orientation to daylight; healthy worker environments; and LEED design principals used on all buildings and the site.

Mr. Komarek concluded that the applicant had worked with the staff to understand and meet the code requirements and had incorporated neighborhood input into the design. The plant would continue to be a good neighbor. It would blend in visually and aesthetically with the surrounding neighborhood. It would be asset to the neighborhood and West Linn. The applicant concurred with the staff report and asked for approval. The Planning Commission took a short break and reconvened at 9:00 p.m.

Questions of Applicant

Commissioner Martin referred to Section 10, Vehicle Trip Generation. He noted the expanded plant was going to process twice as much water. He asked why average daily trips (ADTs) for sludge removal went from .14 to .16 ADT and did not double.

Jude Grounds, Montgomery Watson (MWH), explained the plant would use a new method of mechanical dewatering that would result in decreased volume of solids, even though the total dry tonnage would increase.

Commissioner Axelrod asked what options and alternatives and other sites the applicant had considered. Mr. Komarek confirmed that a costs and benefits analysis of different supply options for Tigard and Lake Oswego had been done. It considered several supply options for Tigard. It had considered one for Lake Oswego. That was the only vacant property Lake Oswego owned at Stafford/Rosemont that could be suitable for a treatment plant facility. There were issues associated with having a plant there: it was outside the UGB; the city already had a significant investment in the current plant site; it would be hard to find nine acres anywhere else in Lake Oswego; the city would have to condemn private properties to build it in Foothills; the neighborhood around the existing plant would still be impacted by a pipeline from the Clackamas River to the new facility and demolition of the plant. If the existing site were redeveloped into a residential development it would increase traffic and increase the burden on water, sewer and stormwater facilities that were already overburdened. Commissioner Axelrod asked if the applicant could use the old waterfront mill site in Lake Oswego. Mr. Komarek explained that was now park land.

Commissioner Frank noted the applicant addressed the overall needs of the community by saying the increase in water to the intertie would be beneficial to West Linn. He asked if the 2003 Intergovernmental Agreement had been changed to reflect that and if it would have to be approved by the South Fork Water Board. Mr. Komarek indicated the agreement had not been changed to reflect the increased intertie. Current capacity constrained the plant's ability to supply emergency water to West Linn, depending on the time and season. The expanded plant would have some surplus capacity near term that could be made available to West Linn on

closer to a year-round basis. The parties would be required to notify South Fork and all the parties to the existing IGA would likely review and update the agreement.

Vice Chair Holmes asked if there was a contingency plan if water leaked from the plant and damaged homes. Mr. Komarek explained he could not speak to what insurance private properties would have. He would prefer to have the Lake Oswego City Attorney or an insurance professional who represented the city answer that. He related that in Lake Oswego if there was damage to private property and the owner believed it was caused by another party there was a process for the damaged person to file a claim. It was reviewed by the insurance providers and they figured out if there was liability.

Commissioner Axelrod asked why the pipeline through the neighborhood had not been incorporated into the application. Mr. Komarek explained that each of the project's six different facilities, including pipelines, had been segmented out because they were each on their own schedules in terms of design, permitting and land use approval. Some had to go through the land use process before others. Commissioner Axelrod asked if the applicant had initiated the ESA permitting process on the river component. Mr. Komarek confirmed that and related the application was to be submitted to the Army Corps of Engineers that week. The Corps had already seen a draft of it. Commissioner Axelrod indicated he was concerned about having a 3 million gallon holding tank over liquefiable soils in a major earthquake. If it failed it could impact homes along the slope to the river. He asked if there was a precedent for having such a tank in a community. Mr. Komarek advised this was not precedent-setting. He related that reservoirs were perched across from homes in developed subdivisions all around Lake Oswego. A total of about 27 million gallons was stored in around 15 reservoirs. Tigard had about 25 million gallons stored throughout their community in concrete tanks. Some were buried and some were above ground. He advised that the applicant's geotechnical engineers were present to talk about seismic risks. The tank would be in a 30-foot deep hole in the ground and covered with two feet of soil. It would be designed for the maximum earthquake that was expected to happen. If it were to crack the experts did not expect to see a catastrophic, uncontrolled, release of water out of the hole that would then flow uncontrolled over land and cause off site damage. Commissioner Axelrod related that he had read the Shannon & Wilson report.

Commissioner Martin explained he wanted help clearly establishing the community benefit to West Linn. So far he knew the plant's current capacity was 16 million gallons per day. Occasionally (in the worst cases) Lake Oswego could use all of it. Current capacity meant there might be days when West Linn had a water emergency and Lake Oswego was using all of the water. After the plant was expanded its full capacity would be 38 million gallons per day. The 'Water savvy' section of the applicant's website said 'Option 4' would provide 24 million gallons per day for Lake Oswego and 14 million gallons per day for Tigard. It would meet Lake Oswego's build out demand and provide about 70% of Tigard's future demand. Commissioner Martin noted that accounted for all 38 million gallons. He questioned how that would benefit West Linn. If Tigard had first claim to the water, West Linn would go from just barely breaking even to being 30% down. Mr. Komarek advised the cities would not be using 38 million gallons at the start. The applicant anticipated the plant would have an additional six million gallons a day of surplus water year round through about 2021. After that, depending on the time and season, it could provide that volume of water through 2040, until the demands of Lake Oswego and Tigard increased to the point where they needed to start reducing some portion of that six millions gallons a day. When the applicant considered what types of disasters might happen that would take West Linn's system down, it was winter storm events that would happen when demands were seasonably low, so they anticipated they would be able to provide the full six million gallons a day. Tigard had a robust aquifer storage and recovery system. They could utilize that source of water in the summer, or to respond to reduced flow impact on fish, or in some other emergency and take demand off the Clackamas River. The current plant was

constrained in the summertime and it was also 45 years old. It was more susceptible to mechanical and electrical failure and parts were hard to find. The new system would be a much more reliable, robust, system. It would use the best technology for treating water as the quality of river water declined due to things like pesticides, herbicides and pharmaceuticals. It would produce a quality of water superior to that from any other plant on the river. That was a benefit.

Chair Babbitt interpreted a paragraph in the IGA. He thought it meant they would not supply more water than West Linn needed if it would cause any deficiency or detriment to the City of West Linn. Commissioner Axelrod said he understood that did not change the volume of six million gallons of water available to West Linn per the intertie agreement. He understood if there was a benefit to West Linn it would be that expanding the plant created a higher likelihood that the water would be available to West Linn in an emergency. Mr. Komarek confirmed that. Commissioner Martin observed that would not always be the case. Mr. Komarek said depending on time and season that would be the case until between 2021 and 2041. Tigard would be able to put a significant amount of water into storage during times river water was plentiful to be used during periods in the summer when stream flows were low and demands were higher. There were many things municipal water suppliers could do to manage water so they could help others. Intertie agreements contemplated that. There was a wide range of things that could be done to manage water to get it to where it was needed in an emergency situation. For example, Tigard had access to other sources, such as Bull Run. Lake Oswego had connections to other municipal suppliers. West Linn and Lake Oswego were members of the Regional Water Providers Consortium of all the water providers in the region. That organization talked about how to respond to water emergencies. Commissioner Martin asked if water from Bull Run would be available to West Linn if there was a problem. Mr. Komarek clarified that water would be available to Lake Oswego and Tigard that would then allow Lake Oswego to send water to West Linn. Lake Oswego would then backfill that with water from another source. The plant was necessary because Lake Oswego had to produce the water to be sent somewhere else.

Commissioner Axelrod observed that neighborhood streets were narrow. He estimated if there was a dump truck every half hour it would take eight months to remove excavated soil under the large tank. He asked how the applicant would schedule that and address the impact on the neighborhood. He noted the plant upgrades would be done over two or three years. He wanted to know the timing of the pipeline project. Mr. Grounds explained construction sequencing had to be staged because the plant had to continue to operate during construction. There would be a period of excavation, then construction and mechanical and electrical installation for each stage. There were other excavations besides the clearwell excavation. They would not happen concurrently. Traffic would be kind of smoothed out over the course of the 'heavy' construction period. Commissioner Axelrod wanted to know which street the trucks would use. Mr. Grounds anticipated they would use both streets. It would depend on what structure was being constructed. Commissioner Axelrod wanted to know if the roads would be resurfaced after all the truck traffic. Mr. Komarek confirmed that the applicant had committed to restoring them to West Linn public works' standards.

Commissioner Axelrod recalled there were not many lights at the plant now, but the lighting plan indicated there would be a fair amount of lights. Would the neighborhood suddenly be impacted by a lot of lights? Mr. McGraw related the project would meet code requirements for lighting. The lights on the tallest elements (the filters) were 14 feet high and would only be on during an emergency. The applicant was aware that residents of a nearby house could look straight across to the filters from a second story window. The vegetative screening would serve as a visual screen as well as an acoustic screen. During the nighttime hours only low-level safety lights would be on. There would be low-level, cut-off, fixtures to light the parking area. The neighbor wanted to be able to see it because there had been police activity there in the

past. There would be low-level pathway lighting (required by the code). The applicant had taken a prescriptive, edge-by-edge, approach to lighting. They did not anticipate any light pollution. Mr. McGraw clarified that "low level" referred to height, wattage and color.

Proponents

Alice Richmond, 3939 Parker Rd., recalled the history of the plant. In the early 1960s it had been anticipated that the area would become part of the City of Lake Oswego. When Marylhurst was developed Robinwood had been cut off from Lake Oswego and joined West Linn. That had helped the city grow. West Linn's water system was in worse condition than Lake Oswego's and the City might need the water supply. She asked the Commissioners to approve the project. West Linn needed a larger, more efficient water source. It used the intertie when it had an emergency.

Opponents

David Newell, 19635 Old River Dr., Vice President of the Robinwood Neighborhood Association (RNA), testified that the Association had tried to negotiate reasonable mitigations with the applicant and was still willing to try to work things out. They had met with the mayors of Tigard and Lake Oswego. Julie Parrish had acted as an intermediary. The proposed change would mean the plant would no longer be a small water treatment plant – it would be a regional public utility facility - a massive industrial site in the midst of a residential area. That was not a planned or desired use in the underlying R-10 zone. It was beyond exceptional. It was not a conforming property. He observed that the Commission had the discretion to deny the application or only approve it with conditions. He discussed the Association's and neighbors' concerns.

The RNA had grave concerns about the lack of scope of the proposed mitigations. Some residents questioned whether the size of local mitigation corresponded with the \$180 million cost of the project. The application lacked important details regarding hazard insurance. Neighbors wanted written proof that a reasonable amount of insurance coverage would be offered to each affected house in the community in the event that an incident caused property damage. They were concerned that the multiyear construction cycle could impede their ability to sell their homes; impact access and traffic flow in the neighborhood; and degrade what was already a failing intersection at Cedar Oak/Highway 43. Residents felt the proposed expansion had no community benefit to the surrounding neighborhood. It offered nothing essential to the governance or public function of West Linn. Maintenance of the existing emergency water intertie did not offer any additional benefit to West Linn or RNA residents. Some of the impacted neighbors doubted that any community benefit – proposed or merely envisioned – could compensate the City of West Linn for the threat of losing the value of its senior water rights on the Clackamas River. Some neighbors were concerned about the scale of the site. Its massive height and size would dwarf the community. Some questioned whether the renderings were an accurate representation of what would actually be built considering new homeland security standards. Some were concerned about liquefaction of the soil. Some were concerned about future plans to direct the pipeline through state forest. Some were concerned about project management and oversight of such a large project; having access to staff to report incidents during construction and transport and storage of hazardous chemicals; and about emergency power backup. Some were concerned about the process. They questioned whether the application met code. They questioned that the application should be processed as conditional use. They believed the application was premature and pending legal issues regarding the condemnation of the CC&Rs should play out first. They reported that public meetings had been moved without proper notice. Some were concerned that the new water may be used to develop Stafford. That did not support the goals of West Linn. Residents

questioned that the applicant was being a good neighbor. Legal actions related to the matter had frozen the ability of many homeowners – some on fixed incomes - to access the liquidity in their homes. Some had been insulted by attempts to buy off their rights with small sums of money and then forced to enter into the legal arena against a well-funded city with staff to spare behind it. They felt bullied. Some related how mitigation proposals were not responded to by Lake Oswego or Tigard staff for months at a time until their state representative connected the mayors of Lake Oswego and Tigard with neighborhood representatives.

Mr. Newell wanted to make it clear to the citizens of Lake Oswego and Tigard that the RNA was willing to continue to talk. It wanted to put to paper the fruitful discussions that they had been having during the past month on the ancillary issues. It wanted an adequate response to the insurance issue. It wanted to address the issue of what size community benefit would offset the burden that neighborhood residents would bear during construction. He quoted Benjamin Franklin: "Love thy neighbor, yet don't pull down your hedge." He said for many of his neighbors there would be no hedge tall enough to obscure the height of the plant. The residents would endure this burden for the City of West Linn for a reasonable amount of mitigation and answers to their concerns. What was currently being proposed was not close to a reasonable amount of mitigation or an answer to their grave concern about insurance. They asked the Commission to deny it.

Commissioner Martin referred to the Good Neighbor Plan that had been presented and asked what else the applicant should have done that would have solved the problem. Mr. Newell related that the Association had been talking with the mayors and the oversight committee during the past month. It believed they now knew the types of documentation the Association wanted related to some of the ancillary issues. They wanted written assurance that access would be as the applicant had described to them. They wanted written assurance related to 24/7 access via pagers; construction times; and traffic mitigation (if possible). He indicated he thought they would be able to work those things out if they had an opportunity to continue to talk with the applicant.

Kevin Bryck, 18840 Nixon Ave., Chair of the Robinwood Neighborhood Association's Great Neighbor Committee (GNC) explained that the GNC had been formed to take the mitigation planning discussions off-line after the Association failed to see progress and the atmosphere at RNA meetings had become acrimonious. By that time there had been six months of RNA/Applicant meetings. The March 2011 draft of the Lake Oswego-Tigard Good Neighbor Plan had ignored or glossed over concerns. There were still concerns about issues such as insurance and the intensity of construction. The general perception was their time was being wasted. There had been 21 meetings with no progress as if someone was keeping score. Many felt the applicant's intent was to divide and discourage the Association.

Mr. Bryck testified that the GNC had drafted rules, a mission statement and a work plan. It had been collecting and publishing mitigation ideas on a public blog. It presented a progress report to the RNA each month. He explained the GNC perceived the lack of a level playing field. The 10 community volunteers faced the partnership's considerable resources. After they learned that it was not legal for City Planning staff to assist them because the applicant might take exception the GNC asked the City Council for assistance from an independent planning advisor. The Council directed the City Manager to do that in July and the contract was in place in October. With that assistance the GNC drafted mitigation goals and mitigation selection criteria that were adopted by the RNA. Those documents informed an RNA mitigation charrette. In December 2011 the RNA adopted a 28-point mitigation plan for both the treatment plant and pipeline project and forwarded it to the applicant. The GNC subsequently met with two members of the applicant's staff and got 'yes' and 'no' responses to the adopted mitigation plan. It anticipated the West Linn government would then step forward and mediate serious discussions between the neighborhood and the applicant. Mr. Bryck related that he met with

the applicant's oversight committee in January 2012 to express residents' concerns and their desire to meet. On February 11, 2012 the GNC wrote to the oversight committee to request a meeting. The applicant responded in a February 17 letter to the RNA president. No meeting or discussion was proposed. More than a month passed. Finally Representative Parrish was gracious enough to arrange for the GNC and the mayors of Lake Oswego and Tigard to meet at her home on March 22. The neighborhood representatives came away from that meeting with the impression that both mayors were poorly informed regarding the intent and contents of the RNA mitigation plan, but they were willing to listen to the RNA and work with it. The first and only GNC meeting with the LO-Tigard oversight committee occurred on Thursday, April 12 in Lake Oswego. The only concrete proposal they offered that evening was to allow the process to play out.

Mr. Bryck questioned how serious the applicant was about working with the Robinwood Neighborhood to craft a respectful, serious plan for mitigation and community benefit. He indicated he felt the West Linn Planning staff recommendation was part of a pretense of public process. The applicant's staff had cherry-picked cheap and easy items to include in their mitigation plan. They were trying to sell code requirements and prevalent construction industry practices as benefits. They had drafted their own Good Neighbor Plan and claimed it was collaborative. Mr. Bryck held code requirements were not the community benefit the Comprehensive Plan called for. He stressed that mitigations were not benefits. They did not make three years of heavy industrial construction and a processing plant in the middle of the neighborhood disappear. They only made it less intrusive and more tolerable. The only proffered benefits were not proportional – they were laughable because the intertie already existed. It was previously used as a benefit for a CUP in 1996. He questioned how many times the applicant should get to use the same existing intertie and IGA as a benefit for a new CUP. He noted the water flowed both ways. He questioned how that could be considered a benefit to West Linn. He questioned whether the intertie would be effective in a real regional emergency. He observed there was no way to get the water from the plant into the West Linn system unless portable generators were brought to the site. He conveyed the GNC recommendation that the Commission reject the application. The applicant should have to make the case to Lake Oswego and Tigard citizens and ratepayers that it had done its best to give West Linn and Robinwood something more than just code requirements. Then a serious discussion could begin related to mitigation and community benefits.

Commissioner Frank asked if the GNC had reviewed the Good Neighbor Plan in the application. Mr. Bryck confirmed that. He noted it was only six pages long. He related that other mitigation plans for projects of this size were 20-30 pages long. He had highlighted the things in their plan that were required by the code in blue and the things the neighborhood had asked for and received in green. He planned to submit a copy of the highlighted document. Of the 28 items on the neighborhood's list they now knew that five were required by ODOT or other agencies. The applicant had agreed to six of them and partially agreed to several more. The applicant had completely refused to accept 12 of them. Commissioner Frank indicated he would like to know what the six and twelve requests were. Mr. Bryck agreed to send the Commission a copy of the neighborhood's Great Neighbor Plan with notations on it.

Bob Stowell, 2606 Maria Ct., related that he lived close to Highway 43 and not in the immediate neighborhood, but what was being planned would definitely affect him and many others in the future. He was concerned that the proposed pathway spacing did not meet Goal 12 preferred spacing of 300 feet. He suggested one should be provided on each side. He calculated that if the applicant spent an additional \$1 million on mitigation and community benefits it would cost each Lake Oswego/Tigard citizen less than \$1 a year. He related that he served on the GNC. He clarified that a quorum was four and three could make a decision. All committee recommendations had been presented to the RNA and it had accepted them. The Committee could not find another water plant anywhere in the nation that was in a city that did not get

water from it. He reported that the GNC had developed a list of mitigations to gain some value for what residents were giving up. He said he understood there was going to be a truck-washing station on Kenthorpe Way. Since there was no information about a truck-washing station on Mapleton it was likely there would be dirty trucks on Mapleton and clean trucks on Kenthorpe. He observed there was an unanswered question about noise impacts at specific locations where new infrastructure was proposed. For example, it was not clear that a series of electrical transformers proposed on the west side of the clearwell would be below ground or in a building. Transformers were notoriously noisy. He observed the application did not discuss why the plant was needed at the proposed location and whether alternate sites had been considered. He acknowledged that the use was allowed conditionally in the underlying zone. However, the fact that it was utility infrastructure that provided limited benefit to West Linn and RNA residents raised the question why it should be allowed there. The argument that all pipes led there was not relevant because all the pipes would need to be replaced to accommodate the larger volume of water. He suggested that now that the streetcar was dead Foothills should be considered as a location for the plant. He reported that at a Clackamas Water Providers meeting the previous week a WTP representative had related that the project had broad support in West Linn and it was only opposed by a handful of extremists. She had also indicated the WTP had never compared what it would cost to appease the opposition with the cost of a drawn out approval and appeal process.

Lamont King, 4257 Kenthorpe Way, stated he had lived across the street from the plant site since before it was built. The neighborhood had been there when the plant was constructed. Neighbors had not wanted an industrial plant in their neighborhood then and they did not want it now. He questioned how it could be a good neighbor when it generated noise and heavy truck traffic. He reported the people who had been managing it were good people. But it was still an industrial application in a residential neighborhood and that was inappropriate. He related that residents who had been sued by the applicant to nullify covenants on their property were terrified by the prospect of being sued by a city and they questioned how another city could use eminent domain to take away their property rights. They questioned how it could put them through a construction nightmare and an increased industrial presence when the plant was not for their benefit. Mr. King contended the applicant's interaction with the neighbors had been superficial and insincere and it failed to maintain a high level of communication during the construction phase. It called things the applicant was required to do by the City code and by other bodies benefits or mitigation. He observed the application did not mention that four of the largest and most active neighborhood associations (Bolton, Willamette, Hidden Springs, and Robinwood) had voted in support of the Good Neighbor Committee and against LO-Tigard's unchecked expansion into the neighborhood. He testified that the applicant's representatives had attended many neighborhood meetings and conducted a number of open houses, but had refused to sit down with concerned members of the community to address specific issues that many residents were concerned about. Specific items requested by the community had been ignored. He reported that recent meetings with senior level LO-Tigard decision-makers, including both mayors and the oversight committee showed there might be some common ground and sincere give and take. He anticipated that additional meetings could lead to resolution of some of the concerns. At those meetings residents had finally been able to talk about insurance. The response had been that issue was something they should explore. Mr. King held that the expansion had no benefit for the citizens of West Linn because they already had the intertie. He related in 2007 the project manager was quoted as saying that the Clackamas watershed could not provide long term water for existing customers in Clackamas County at that time. Now he planned on selling 20 million gallons a day to Tigard in order to subsidize Lake Oswego's water. Mr. King asked the Commission to deem the application incomplete until the concerns of West Linn had been properly addressed.

Steven Blake, 4400 Mapleton Dr., testified the volume of water in the 3 million gallon reservoir constituted a substantial hazard to area homes. There was always potential for a failure due to an earthquake, manufacturing defects, or installation and construction errors. An insurance agent had advised him that homeowners insurance may not cover damage if there was a spillage. It certainly would not cover the loss of soil or landscaping. He said it was unclear whether Lake Oswego would have insurance to cover damage or enough insurance to cover a catastrophic failure. He was also concerned that the Oregon Tort Claim Act severely limited a government agency's financial exposure in a lawsuit to just over \$100,000 per claim or \$500,000 per incident. (He indicated he believed those limits were increasing.) He said damage to a single home could easily exceed the \$100,000 limit. An incident with multiple homes involved would quickly exceed the \$500,000 limit. The result could be financial devastation for the private property owner. He testified the subject of financial responsibility for damage had been raised during several public meetings with the applicant. Its representatives denied that Lake Oswego would have any liability and indicated it would be impossible for Lake Oswego to obtain insurance to protect against any damage. Mr. Blake held it was absolutely essential that Lake Oswego take responsibility for any and all damage that resulted from operation of its water treatment plant. Neighbors around the plant should not be expected to bear the financial risks associated with operating the plant. He said there were also chemical processes at the plant that may pose hazards. Neighbors needed assurance that in the event of damage as a result of any process at the WTP Lake Oswego would accept the responsibility and make full restitution. He asked that West Linn require proof that Lake Oswego maintained insurance at levels sufficient to cover a worst case situation where multiple homes or businesses were damaged or destroyed.

Tom Sieben, 4950 Mapleton Dr., opposed the application because it was impossible to ensure against an attack by terrorists without doing things like installing intense night lighting; barbed or razor wire; higher and/or electric fencing; guard towers; guard dogs; restricted access area and removal of landscaping in order to create a defensible perimeter. That would destroy the neighborhood. It would not be the low-impact project the applicants claimed it was. He said it would be very visible and very disruptive. If the Commission wanted to approve it it should condition approval on compensation to the property owners for devaluation of property and disruption of peaceful enjoyment of their homes. He expressed concern that in the event the high-pressure, 48-inch transmission line failed and caused damage to many properties the applicant would only have to provide a small amount of compensation due to tort limits. He suggested that if the Commission had to approve the plant and later the pipe it should condition approval on a method of compensating property owners for actual damage or loss. He was concerned that the pipe project would be 'muscled through' once the plant was approved. If the Commission decided to approve the plant the conditions should specify that did not guarantee approval of the pipeline. The Commission should include a condition that the applicant and not West Linn was to be responsible for any financial impact and the applicant could not claim the plant was a 'stranded asset.' He held that all of the impacts were borne by West Linn and avoided by Lake Oswego. The plant would not bring any benefit to West Linn. It would cost the City money when the Mapleton lots were removed from the tax base; properties on Mapleton and Kenthorpe were devalued; and West Linn had to spend millions upgrading the intertie to tie into the new construction. He asked the Planning Commission to deny the application.

Karen Lucas, 1733 Jamie Cir., testified that what affected Robinwood also affected the entire city. All had to stand together. She had called West Linn staff to ask about the application and they had a Lake Oswego representative call her. She questioned why West Linn leaders should let Lake Oswego do whatever it wanted to West Linn. She questioned why the City was abandoning tax paying citizens in their time of need. She questioned how West Linn could benefit from the application. She noted that even when the site was in the county it had been

zoned residential. Since then Lake Oswego had been quietly and covertly buying up property in the area to bring about its scheme while West Linn was distracted. Now they proposed a huge, three-story plant in an area of modest one and two story homes. She held that could not be viewed as consistent with zoning and compatible with the neighborhood. She noted the large supply pipe was not included in the application. By cutting the project into pieces the applicant hoped the Commission would not notice that West Linn would swallow a whale. Approval meant Lake Oswego would aggressively pursue the huge pipeline cutting into the neighborhood. The consequences of a rupture of the large pipeline were of concern due to its size and PSI. The project had to be stopped. She was concerned that the leaders of West Linn were doing nothing to stand up against Lake Oswego. She held that Tigard did not have any rights to Clackamas River water and it should stay that way. She suggested that it would be West Linn that was shortchanged in a draught year. The project would benefit the other two cities, but not West Linn. She estimated that none of the water storage facilities in Lake Oswego held as much of 3 million gallons. She noted that if there was any benefit to having the emergency water supply it ended in 2021. It was temporary at best.

Vicky Smith, 4448 Mapleton Dr., submitted written testimony. She observed the applicant had not responded to Commissioner Axelrod's question about alternative sites which citizens had been asking for a year and a half. She noted the Maple Grove plat and its CC&Rs predated the plant. CC&Rs were intended to add insurance above and beyond what city zoning covered and enhance property values by controlling development. When Lake Oswego purchased property in the subdivision in the past it had ignored the CC&Rs. She noted the City of West Linn owned a lot in the plat and was not named in the condemnation suit Lake Oswego had brought. She asked if the City of West Linn had signed the waiver and if it had, under what authority. She asked the Commission to revisit the staff decision to use the conditional use permitting process and the decision to separate the project into two separate applications. She noted it was an \$80 million project. She questioned whether the City had recovered the cost of its staff time on this project when the CDC capped an applicant's fees at \$25,000. She questioned whether the City had adequate time and experience to review the application. She contended that the applicant's site analysis (page 3 of 83) only identified 9 of the 27 homes it should have identified. Four were missing and the closest home was not shown at all. She referred to the Comprehensive Plan. She held the project was completely out of scale with the intended and planned use of an R-10 area. Her construction experience indicated to her that the cost and construction time estimates were very optimistic. She observed the applicant had not considered alternate sites and it had not identified a benefit to the community when the Comprehensive Plan required that. She contended Lake Oswego refused to consider a very environmentally positive solution because they wanted to continue using the intake on the Clackamas River. She advised they could transfer their water rights to the Willamette River and use Tigard's Willamette River water rights. She disputed that Lake Oswego was taking advantage of its existing investment in the plant when it was spending \$80 million on the expanded plant but could build elsewhere for less time and money. Wilsonville had spent less than two years building their new water plant on a vacant site.

Commissioner Martin **moved to extend the meeting to 11:30 p.m.** Commissioner Miller **seconded** the motion and it **passed 6:0.**

Jay Eric Jones, 4310 Mapleton Dr., submitted written testimony. Mr. Jones related that he lived with his 85-year-old mother who resided across the street from the plant. She was being sued by the City of Lake Oswego so she could not sell her home to get the equity she had tied up in it. He testified he had a geologic background and had become concerned when he read the geotechnical report. The soils were the worst in the state. He had talked with a state building code enforcement officer about it who had been surprised to hear about it. Mr. Jones advised that any event larger than a 6.0 earthquake (which was possible in the area) would result in liquefaction. The report anticipated in that event the structures would settle up to nine inches.

Mr. Jones was concerned the containment structures would fail during such an event. He was also concerned about the ozone process. He understood that if organic material, such as soil, came into contact with ozone there could be an explosion and fire. He noted a school was within 1,000 feet of the facility. He questioned the applicant's emergency plan, which was to call the fire department if there was a problem. He anticipated that if there was a major earthquake the region would not have the resources to deal with a disaster like that. There was not a good way to get emergency vehicles to the plant in case of a disaster. He was concerned there was just one backup generator that was supposed to run all the pumps, including the one that would pump water to West Linn and provide fire-fighting water. He noted there was no pump at the intertie. He noted the applicants were supposed to maintain the containment and address any leaks that developed in the 3 million gallon clearwell across the street from where he lived. The applicant proposed reverse 911. They had no backup system to use to notify the neighborhood of a fire, explosion or other disaster if LOCOM failed. He noted the plant was proximate to the school and many residences. He asked the Commission to deny the application. He explained it was not a reasonable risk within a neighborhood and a school zone.

Commissioner Axelrod asked Mr. Jones for the name of the state expert he had spoken with. Mr. Jones offered to provide the name later. Vice Chair Holmes asked if digging 30-feet deep where there was an aquifer would impact a water source. Mr. Jones indicated he did not have enough knowledge of the site and would defer to someone who knew more about that.

Gary Hitesman, 2188 Clubhouse Dr., compared the Good Neighbor Plan to a Soviet Union propaganda machine covering up a massacre. He held up a notebook he had obtained from the RNA. He had marked violations of the CDC he had found in it. He encouraged the Commission to thoroughly examine it. He had emailed the Commission information related to Chapter 44 fence code. The staff had stated that all codes had been met but his email spelled out what was wrong with the staff report. Other codes had not been met. He went through the notebook and called out page numbers where the Commission should look to find things that were wrong with the report. He said it essentially came down to the definition of 'rough proportionality.' He asked the Commissioners to look at the plan and at the conditions recommended by the staff and ask themselves if that was rough proportionality being met. The proposal was more about pumping water to outside the City than any benefit being derived by the City. He remarked that the biggest benefit West Linn was getting was more sludge. He encouraged Commissioner Martin to continue with the average daily trip investigation. The related page of the staff report was page 12. He said if they read the material the Commissioners would realize that ADTs were trucks and that chemicals increased substantially. He advised that all the activity was being thrown on Kenthorpe, which was a cul-de-sac. He pointed out on the site plan where chemicals and trucks would pass; where the setback was only 17.5 feet; where a fence was too tall. He pointed to a building that was 32' tall at the peak of the roof. He pointed to the chemical area where trucks drove in and out of a 24' high rolling door that opened up. He pointed to a house that had some vegetation around it but would be exposed to that activity. He said the Commissioners needed to look at the amount of chemicals the applicant was bringing in. The Commissioners should look at the buildings and realize there were chemicals being put in them. The applicant was bringing in 200% more chemicals than they had now. To go from 16 million gallons per day to 38 million gallons a day had tremendous impacts that no one was talking about. The Commissioners needed to drill down into the buildings. He advised the trees would not be as tall as illustrated for 20 to 25 years. He told the Commissioners to consider what the applicant had chopped down already. That was what they were going to see along the buildings that were 30 to 35' tall. He asked them to drive by the school on Clubhouse Drive and look at the play structure which was 24' high to see how it looked in that neighborhood. Then consider how tall the proposed buildings were. He predicted they would realize that Chapter 55 was not met at all. He advised that he would

appeal to LUBA and he knew he would win the case. He suggested the Commissioners take a look at another facility that the applicant's design firm had done across the Clackamas River. The buildings were similar size to what they were proposing in West Linn. He advised they could reconfigure the buildings and the clearwell but what was driving the proposed configuration was not neighborhood fit or the Good Neighbor Plan – it was the most efficient way to pump 38 million gallons per day. He recalled Mr. Komarek had related at one meeting that the applicant had originally considered 24 million gallons per day. Mr. Hitesman remarked that was likely really only what the site could reasonably hold. The applicant had decided on 38 million gallons because there was an economic advantage to selling the water rights to other cities and they were banking on that. He advised that to allow them to construct a 38 million gallons per day plant without providing rough proportionality to the neighborhood would be selling the place out.

Steve Hopkins, 3910 Mapleton Dr., said he and his wife had raised their children on this quiet street and barely knew that Lake Oswego was operating a WTP nearby. The plant may have been a good neighbor then, but that changed when they announced the plan to expand onto Mapleton Drive and install a huge pipeline the length of the street. Since then the street had become an 'urban terrorist zone'. The applicant had tried to bribe residents into waiving the CC&R clause. They held an endless series of meetings to try to mollify property owners who objected to the findings of a firm they hired that reported that years of construction would not affect property values at all. Neighbors were concerned about what the project would do to mature trees and landscaping along the street. When the applicant could not get enough people to agree to waive the covenants it declared the project was for the public good and sent a series of threatening legal mailings to the neighborhood. That confused some elderly residents who believed that liens were going to be slapped on their property. He noted residents were to be faced with two to three years of expansion of an industrial plant and excavation of Mapleton drive and Highway 43 for a four-foot- diameter pipeline. They were concerned about safety, access to their homes; aerial illumination from the plant; flooding and erosion if the pipeline failed; increased truck traffic; visual blight; the effect on natural resources of increased takings from the Clackamas River; trenching through Mary S. Young Park; and reduced property values. There might be benefits for the City of West Linn, but there was little evidence of compensation or mitigation for the residents of Mapleton drive. They would be impacted by two to three years of industrial construction; have their street torn up by a pipeline project for who knew how long. That would adversely affect their property values. He said the residents knew Lake Oswego had access to industrial property in Foothills and that it could take and treat water from the Willamette. He asked the Planning Commission to reject the application.

Roberta Schwarz, 2206 Tannler Dr., noted the words, "eminent domain" and "condemnation" were being used. Those were terms that good neighbor did not use. She recalled the mayor of Lake Oswego had explained he wanted West Linn citizens treated as though they were his own. That was not what was being done. If it were, the plant would be built in Lake Oswego. The real elephant in the room was the proposed use was a new use - a new development - which would ultimately provide water to the Stafford area. That was an area that 74% of West Linn citizens did not want developed. She referred to Shanon Vroman's written comments on pages 9-12 of the April 9 memorandum packet. She asked the Commissioners to read her well researched and articulate comments and good reasons to deny the application. She asked the Commissioners to act in good faith and in the interest of the citizens they represented in West Linn. They should deny the application and let Lake Oswego build where they lived.

Darryl Walters, 4426 Mapleton Dr., indicated the proposal should require a Comprehensive Plan amendment rather than be treated as a conditional use due to the scale of the expansion and the fundamental change it made to the neighborhood. He referred to the staff report. He disagreed with the findings. He did not think the characteristics of the site were suitable due to

the amount of water to be carried in the raw water pipe and finished water pipe; the 3 million gallon clearwell; and the risk of liquefaction in a seismic event. If the pipes broke or the clearwell was breached there could be catastrophic slides that could wipe out a number of homes to the east. The plant may have existed at its present location since 1967, but it had never existed on any part of the Maple Grove plat. He referred to criteria related to the overall needs of the community. The application did not mention any mitigation was in place for loss of property value. The elevation drawings showed the buildings would be very visible from Mapleton. Potential homebuyers would look at the satellite image and see a big industrial plant site and steer clear of the neighborhood. Real estate agents had advised that clients did not want to look at properties for sale on Mapleton now. His insurance agent had advised he would not be covered if a pipe broke and caused flooding damage because it was not a natural disaster. He asked that there be something in place to cover homeowners in the event of pipe breakage. He asked if there was a process in place for the Commissioners to determine if the staff that produced the staff report had been unduly influenced by staff who were connected with Lake Oswego. He asked the Planning Commission to deny the application.

Chair Babbitt addressed the concern about the staff. He advised the Planning Commission was the deciding body. It made decisions by applying the code in public hearings where it listened to public testimony. The public was reading the same material and all of the material the Commissioners had access to. Staff's opinion was only part of the information the Commissioners considered. Mr. Walters asked that the Commissioners keep in mind the issue the citizens had with the staff report.

Ken Hanawa, 4191 Mapleton Dr., testified he lived next to the site and his kids' playhouse was close to the electrical transformer and fuel depot. His kids walked down the street to take the bus to school every morning and afternoon. His neighbors had done a good job putting comments into the record. He said Chapter 60.070(A)(3) essentially called for doing the right thing. The proposal had to be consistent with the needs of the overall community of West Linn. While the applicant was presenting a business case for what they needed, residents were dealing with something completely different. The benefit the applicant offered was the intertie. Residents had already explained it was not that big a benefit to them. Even if they used it for 20 days usage would be less than 100th of a percent of 38 million gallons. The staff report talked about numerous improvements and dozens of Comprehensive Plan policies. The report was a gross exaggeration of what was what really going on. The proposal impacted 28 homes in the R-10 zone. Those were families who were members of the community; supported local business; and paid taxes. One of his neighbors who had been renting was being evicted and moving out this week. Lake Oswego had not maintained the property. It had no intention to be part of the community. Mr. Hanawa held this was a totally inappropriate use of what was meant to be conditional use code. The opponents had demonstrated pretty clearly that the expanded plant was not meant to be for the benefit of the community. He held the Planning Commission had to consider the impact of the expanded plant and pipeline together as one impact. He related that he was doing more research on the transportation, noise, visual impact, and safety aspects. He needed more time to do the research. He lived within 300 feet of the site and had a vested interest. The matter was directly related to his quality of life. Chair Babbitt advised the Commission was obligated by state law to grant a request for a continuance at the first evidentiary hearing.

Neal Rea, 4240 Mapleton Dr., submitted written testimony. He lived across the street from the site. He explained some things that concerned him. It was more about money and property rights than about being a good neighbor. The applicant's inappropriate 'divide and conquer' strategy had resulted in neighbors fighting against neighbors. He related that the applicant's water rights to the lower Clackamas River were in litigation. The river might not be able to sustain that much water removal and still have adequate flows to protect the aquatic life and

endangered species that lived in the river. He hoped the Commissioners would take the time to evaluate all the information that had been provided to them before they made a decision.

Jana Rea, 4240 Mapleton Dr., said she had nothing more to add to what her other neighbors had said. She wanted to be on record for being against the plan.

Scott Gerber, 3940 Kenthorpe Way, related he lived within 500' of the site and would be impacted by it. He talked about the conditional use criteria. He recalled the applicant had been repeatedly asked to examine another site. At one meeting he had attended Mr. Komarek was asked that question and responded that that was not going to happen. Mr. Gerber questioned whether any West Linn need was fulfilled by the proposal. The intertie was already in place. It was not consistent with the overall needs of the community to subject it to years of major construction and disruption in return for a vague promise of emergency aid. He questioned why the Planning Commission would even consider a conditional use permit for a project that would impact the community for years to come only to provide service to the other cities. He encouraged the Commission to fully examine the applicant's needs argument.

The following persons had submitted Testimony Forms but did not come forward when called:

Chuck Landskroner, 9059 Mapleton Dr.
Bruce Griswold, 2928 Carriage Way
Ana Rivera, 4245 Mapleton Dr.
Julie Blake, 4400 Mapleton Dr.
Jeanne Jones, 4310 Mapleton Dr.

Commissioner Martin **moved to continue CUP-12-02/DR-12-04 to April 25, 2012** and leave the record open for oral and written testimony with no restrictions on who was allowed to testify or testify again. Commissioner Axelrod **seconded** the motion and it **passed 6:0**.

Commissioner Martin **moved to change the start time for the previously scheduled hearing on April 25 to 6:00 p.m.** Vice Chair Holmes **seconded** the motion and it **passed 6:0**.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

None.

ITEMS OF INTEREST FROM STAFF

Mr. Sonnen related that SHPO had reviewed the Willamette school application and found the school was not historic. It had not imposed any additional conditions.

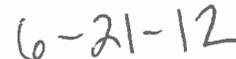
ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 11:40 p.m.

APPROVED:



Gail Holmes, Vice Chair



Date