CITY OF West Linn

PLANNING COMMISSION

PREHEARING WORK SESSION / REGULAR MEETING

Minutes of May 2, 2012

Members present:	Chair Michael Babbitt , Vice Chair Gail Holmes, Russell Axelrod, Thomas Frank, Robert Martin, Holly Miller and Christine Steel
Members absent:	None
Staff present:	John Sonnen, Planning Director; Chris Kerr, Senior Planner; Zach Pelz, Associate Planner; Jim Whynot, Water Operations Supervisor; Khoi Le, Engineer; and Pam Beery, Legal Counsel

PREHEARING WORK SESSION

The Commission met in the Rosemont Room of City Hall at 6:45 p.m. Ms. Beery recalled that the public hearing had been closed and the process would continue with questions of staff followed by the applicant's rebuttal. She noted that the applicant had submitted a packet of materials that included some site plan information. Mr. Kerr pointed out the applicant had submitted plans that showed residences that were not on the plan they presented at the previous hearing. Staff believed there were some elements of new evidence in the submittal, but it was the Commission's judgment call. Ms. Beery's advice was that if the Commission determined there was new evidence in the applicant's rebuttal it should leave the record open for seven days for written comments regarding the new evidence. 'Evidence' was 'facts, documents, data or other information offered to demonstrate compliance with standards that are relevant.' It was a fairly broad definition. Presenting new drawings and new information, even though it drew from things in the record, could be considered new evidence. Ms. Beery related her experience that LUBA had decided that when evidence was presented a different way on a different document it was a new document. If evidence was submitted that was not relevant or within the parameters the Commission set for the open record period, it could exclude that evidence from the record. The Commissioners generally agreed that if new evidence was submitted they would schedule deliberations in two weeks. Ms. Beery advised the Commission to ask the applicant whether they would waive their final seven days so it was clear to all. She responded to a question about 'bias' by advising the Commissioners to focus exclusively on approval criteria and not on any feelings about the project and to do critical self-evaluation about their own ability to be impartial at the beginning of a hearing.

Commissioner Axelrod understood that the federal National Environmental Protection Act (NEPA) mandated that projects similar in scope and similar impact as the plant and pipeline projects be reviewed together. He wanted to know if staff had asked the applicant to submit one application. The staff related they had researched the question of whether they could ask the applicant to submit a consolidated application for the plant and pipeline and found they could not. The Commission was required to make a land use decision on an application that had been presented, deemed complete, and was being processed. Ms. Beery suggested the Commissioners ask the applicant why they decided to beak the projects up. Mr. Sonnen asked how a federal law requiring the pairing of the plant and pipeline could affect a local land use decision. Ms. Beery related she would have to research that, but she believed it would make the projects subject to uniform review at the federal level and it would not affect the local review. The project would also have to meet DSL and Army Corps of Engineers requirements no matter what West Linn did. Planning Commission approval was to be based on West Linn's

code and criteria. Ms. Beery advised Commissioner Steel and Vice Chair Holmes to err on the side of caution and declare some conversations they had as *ex parte* contacts. Mr. Sonnen related the staff had prepared responses to questions that had been raised. Chair Babbitt advised the Commissioners to focus their questions on the applicant because the burden of proof was on them.

CALL TO ORDER - REGULAR MEETING

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

PUBLIC COMMENTS

None.

PUBLIC HEARING

CUP-12-02/DR-12-04, proposal to modify and expand the Lake Oswego Water Treatment Plant and site. [Continued from April 25, 2012 when public testimony was closed.]

Chair Babbitt opened the hearing and asked the Commissioners to declare any actual or potential conflict of interest, bias, or ex parte contacts (including site visits). Vice Chair Holmes reported she had revisited the neighborhood with the TSP in mind in order to verify how the streets lined up with Highway 43 and how the traffic flowed. Commissioner Frank reported he had a quick conversation with David Newell who had asked if the Commission had gotten through public testimony last week and would have a meeting this week. Commissioner Frank had simply affirmed that. Commissioner Steel reported she ran into David Rittenhouse in the grocery store. They had discussed testimony at Planning Commission meetings in a general sense, but had not talked about the current hearing. When she had coffee with Julia Simpson, who served on some of the same advisory committees, Ms. Simpson happened to mention that she had a water treatment plant opposition yard sign. The rest of the conversation was about other matters. When invited by the chair no one in the audience challenged the authority of any Commissioner to hear the matter.

Questions of Staff

Mr. Kerr responded to questions that had been raised. He confirmed that the acoustical study included electrical transformers. Recommended mitigation measures accounted for all noise generating facilities on site. Condition 4 (c) called for a post-occupancy noise study to verify compliance with standards. He responded to a question about truck washes. The plan in Figure 6.0 in Exhibit 23 showed three washes: two on Kenthorpe at both entrances and one on Mapleton. He responded to a question about whether Homeland Security Requirements would necessitate amendments to approved plans. He noted Condition 1 required the approval to conform to the plans that had been submitted. CDC Chapter 99 provided standards for amendments to approved plans. He cited specific criteria in order to clarify "benefit" to the community. CDC 60.070(3) provided, "The granting of the proposal will provide for a facility that is consistent with the overall needs of the community." He addressed a question about improper public notice related to the signage. He confirmed there was an affidavit in the file. He had posted the site himself and it was posted correctly with the standard sign the City used. It had Mr. Pelz's name and phone number on it. All public notice requirements of the code were met. He responded to a question about ground contamination on the site. Staff could find no record of contamination or underground storage tanks in the DEQ database. The applicant would be required to decommission any underground fuel tanks as part of the building permit process. Commissioner Axelrod asked about using Wilsonville for the noise study. Mr. Kerr related the applicant had used the Wilsonville facility as a comparable site for the noise study because it was similar to what was proposed and it had transformers.

Commissioner Steel asked Mr. Whynot to offer a history of how the intertie had been used. He reported the City had constructed the intertie in order to have a water source during six months in the winter of 2001-2002 when it could not use its line at the I-205 Bridge because ODOT was updating the bridge to seismic standards. Since then the City had used the intertie five times when the bridge moved and the line there failed and during two failures of the line in Oregon City. It typically took a day or two to fix the line. Last December the intake on the river was compromised and the City relied on the intertie once again. West Linn has also provided water to Lake Oswego through the intertie.

Applicant's Rebuttal

Bill Kabeiseman, Garvey Schubert Barer, 121 SW Morrison, Ste. 1100, Portland, Oregon 97204, represented the applicant. He related that the applicant would address testimony that related to the code but they would not address testimony that did not relate to it. He observed that West Linn had made the decision a long time ago that its future lay with the kind of proposal that was before the Commission. The plant was built in 1967 and upgraded and expanded in 1980, 1988 and 1996. After the last upgrade the Commission had asked the applicant to come back with a plan for the future of the facility and they provided the plan in 1997. The proposed project is within the scope of that plan. Moreover, West Linn had considered it when it formulated its Water Master Plan, which was a supporting document to the Comprehensive Plan. Pages 28 and 29 of the staff report reported expansion of the plant was an alternative preferred by the City of West Linn in providing water for its citizens. The Commission had heard from West Linn's water supervisor that the intertie was important to the City and the City had relied on it in the past. He said the applicant's plan considered the West Linn Water Master Plan and did not take it lightly. He discussed the specifics of the application. The applicant had applied for a conditional use permit and design review for the water treatment facility. That use was allowed by the code provided certain criteria were met. CDC 60.070(a) established the seven criteria the application had to meet. Staff found the application met those criteria. The Commission had heard passionate, heart-felt testimony that never really rebutted staff's conclusion that the application met conditional approval criteria. That meant the applicant had met its burden of proof. CDC 50.070(c) authorized the Commission to impose conditions necessary to assure the use was compatible with other uses in the vicinity. It outlined thirteen areas in which the Commission may impose conditions. The applicant had addressed those topics throughout the application and believed they had met or exceeded the compatibility requirement through things such as setbacks, lot coverage, landscaping, frontage improvements and stormwater management.

Mr. Kabeiseman related that the applicant wanted to discuss Condition 1 in a little more depth. It required the plant to match the drawings submitted. As construction plans were refined there could be opportunities to reduce impacts on neighbors even more by doing things like reducing the footprint or bringing things in. That could mean fewer piles driven and fewer impacts on the neighbors. The applicant wanted the flexibility to do that. Mr. Kabeiseman said for West Linn and the applicant this plant was the preferred alternative in terms of cost, efficiency and consistency with the Comprehensive Plan. Adding Tigard to the partnership allowed Lake Oswego not only to meet the needs of those two cities, but to ensure it could meet West Linn's needs in emergency situations for the next quarter century. Pages 28-30 of the staff report explained why the proposal met the overall needs of the West Linn community. It provided for more than the current interruptible, limited, supply of water on an emergency basis. If the plant had greater capacity there would be more water available for emergency situations. It fulfilled a need stated by the Water Master Plan. The project benefitted the community at large by increasing supply reliability, treatment reliability and operational reliability. The improvements would specifically benefit the immediate neighbors through a modernized plant and the mitigation being proposed. The current plant was almost 45 years old. While it could continue to operate safely for many years to come, modernizing it would

provide a better outcome for the larger community and in fact, mitigate many of the safety concerns that the applicant heard expressed in the process. The applicant had heard a wide variety of other concerns throughout the process. Some were relevant to the criteria. He invited the Commissioners to dig deeper so the applicant could answer the concerns they had. The applicant would answer with experts it relied on. He introduced them: Gary Petersen, Senior Vice President, Shannon & Wilson, the firm that helped design the plant; Jude Grounds, Principal Engineer, MWH, who could address concerns about construction impacts; Jane Heisler, Communication Director, LO-Tigard Water Partnership, who could address the public outreach process; Eric Day and Eric Eisemann, project planners; and Joel Komarek, Project Director.

Questions of applicant

Commissioner Martin asked about insurance. The applicant's written response said Lake Oswego was responsible for those events for which they were legally responsible under the Oregon Constitution and laws. He asked the applicant to clarify what that really meant for a citizen living close to the plant and if the applicant could reduce his fears. Mr. Kabeiseman differentiated between fear that made sense and fear about things no one could do anything about. He said the applicant had an obligation to take care of damage they were responsible for to people and property. They wanted to be a good neighbor. If a high magnitude earthquake happened, it was an act of God. The liability in the legal system was based on fault. To the extent the Partnership caused any issues they had a responsibility and obligation to deal with that. They were not a private entity that might go bankrupt and go away. They were there for the long term. They had an obligation to make sure they were good neighbors. Part of the reason for the modernization was to deal with those events. The expanded plant would be better able to withstand events like that and better able to be operational throughout events like that. Mr. Kabeiseman explained his best answer to them was that the modernization of the plant would better protect them against the fears they had.

Commissioner Martin recalled testimony about the dangers of a 48" pipe. He wanted to know if it broke on the plant site and washed out downhill houses how would people be covered and what kind of insurance was available. Mr. Kabeiseman answered that unfortunately there were many variables involved in what happened in those situations. Case law about responsibility in situations like that included a famous case - Vokoun v. City of Lake Oswego - where the City was found liable to neighbors for a wash out related to a stormwater outfall. Mr. Kabeiseman indicated there were some significant protections in Oregon law to make sure that people were made whole in situations like that. Commissioner Martin asked if Lake Oswego had not offered to make the other party whole until it got to court. Mr. Kabeiseman did not know the details. He said it could have gotten to court because the parties disputed what being made whole was. Commissioner Martin remarked that his goal was to reassure people. Mr. Kabeiseman was not sure how much more certainty he could give. It was hard to predict what was going to happen. He could tell them the Partnership fully intended to live up to the obligations placed on it by Oregon statutes and the constitution.

Commissioner Steel asked who would own the plant and would be liable. Mr. Komarek related that the City of Tigard was part owner of the plant property by virtue of a buy-in that occurred shortly after the two cities signed the intergovernmental agreement. When the project was completed, Tigard would be on the title as a joint owner in fee. He confirmed that the Partnership would insure the plant. Commissioner Steel asked if the insurance limits could be "beefed up" to make neighbors feel protected. Mr. Komarek indicated his city's risk management group would have to respond to that at a later date. Commissioner Steel asked how the Wilsonville plant compared in layout, technology and footprint. She had noticed in an aerial view of that site that Wilsonville had a nice park around it that created a very generous buffer zone. It also looked like it had nice houses on three sides and some industrial activity on

the other side. Mr. Grounds advised the Willamette River Water Treatment Plant had three times the capacity of the applicant's plant. There were neighbors adjacent to the facility and there was a cement plant on the backside.

Commissioner Axelrod asked what the the draft seismic analysis report addressed. Mr. Petersen advised it addressed the full foundation design (including a foundation loads analysis) for the treatment facility itself. The design was still in process so it was issued as a draft. The final design was almost finished. Commissioner Axelrod indicated it was likely that someday a mega-quake was going to occur in Oregon. Engineer's models could not address everything that might happen. Item 3 in the applicant's additional written testimony said the Partnership would design the facility to a seismic performance standard that ensures the water treatment plant will remain occupiable and operational. He noted that was a difficult measure. He asked how comfortable the applicant was with the overall design considerations and what was the percentage chance of failure during a mega-quake greater than 9 with ground motions that could last for five minutes. Mr. Petersen indicated that they worked with the building codes. He had spent his entire career being cognizant of seismic threats in Oregon. He concurred that the evidence was the area should expect a quake. Engineers in his firm were part of the technical committee for Lifeline Engineering. They had direct experience responding during three big quakes in Haiti, Chili (8.8) and Japan (9.0) and looking at lifeline structures to see how they failed or what worked well. They were following the code for Site Class F (liquefiable). The Partnership wanted to engineer it to exceed occupancy criteria. Typically that was 3 for water treatment plants, but the engineers were building it to 4 (residential facility) to have the highest level of protection. The design addressed liquefaction separately from ground motion. The designers did not want the design to tolerate any deformations or cracks in tanks, especially the clearwell. They were designing to that criteria and putting them on piles. They could be installed efficiently and quietly next to adjacent residential structures and be in operation at all times as elements of the plant were being built. The design team had adopted the philosophy since the report was finalized that all of the critical occupiable structures would also be pile founded. That was a step up above the basic code requirement. It would be the best they could do within their code practice. The code was a continuously evolving thing. Currently they were evaluating how it would fit a magnitude 9 subduction zone earthquake and a magnitude 7 local earthquake. This particular site and clearwell responded to short frequency the most. The biggest threat to it was a magnitude 7 local quake. That was the biggest risk factor. He said it was important to recognize the community they were in. The City of West Linn's hazard mapping showed that the entire area was at a high hazard for liquefaction. That included the residential community as well as the site. That meant as the ground shook some settlement would occur and perhaps some sand boils. He indicated the applicant believed its design was going to provide for a reliable, reliant structure in a neighborhood that in the post-earthquake recovery would be a huge asset for the community and residents. Commissioner Axelrod indicated he still thought things could go wrong. It seemed to him one deficiency could be the lack of a hazard management plan. He asked if Shannon & Wilson had recommended something like that. Mr. Petersen asked him to clarify his concept of a hazards analysis plan. Commissioner Axelrod explained those were procedures to follow in the event of failures or catastrophes that would ensure protection of those at the plant and the surrounding community. Mr. Petersen suggested Mr. Grounds was the structural designer and could better answer that question. But the theme and focus of the experts was 'operable and occupiable.' It went beyond just setting it on piles. It addressed the internal systems, including the wiring and functions to keep the operation of the plant intact even if the structures moved around a bit.

Mr. Komarek talked about what response the applicant would have in place in case of an event. The applicant had indicated in the application they would be working very closely with emergency response agencies like TVF&R regarding any chemicals handling and storage. The

containment areas were designed to endure events and sized appropriately so the entire contents of a tank could spill and be contained within another concrete structural basin. They would be anchored seismically and they would have monitors on them to determine whether or not there was leakage. The applicant would work with its emergency response partners including TVF&R, West Linn Police Department; and the Lake Oswego Police. LOCOM provided dispatch services to the City of West Linn. Commissioner Axelrod clarified that his main concern was that there would be a lot of water on the property and in a transmission line and a plan was necessary that addressed the community's safety. Mr. Komarek advised the clearwell would be buried and designed to tight tolerances in terms of settlements. They did not want it to crack, but if that did occur it would not result in an uncontrolled release of the contents of that tank. First, water would have to somehow find its way 30 feet into the air and out of the ground. The worst case was that there might be some cracking and slow seepage of water into the excavation itself. Part of the response to that type of potential event was to monitor the structures for damage.

Commissioner Axelrod noticed the draft report showed ground water level for three months. It was normal to look at ground water elevations for a full year. Mr. Petersen confirmed they were continuing to do monitoring and would report about it. Commissioner Axelrod asked if the data was showing anything of significance. He noted the groundwater flow direction would likely be toward the Willamette or Heron Creek. The water level data appeared to show there might be a little mounding under the current plant. Water facilities typically leaked somewhat. He asked if the liquefaction zone was identified. Mr. Petersen said his firm's settlement calculations were based on that thickness. The numbers they reported were from looking at the risk and calculating the liquefaction and settlements. Commissioner Axelrod commented about the water level data. It appeared weird that the highest levels were in the fall. But that may support the theory that the plant was leaking water and tended to raise the water level underneath the plant a little bit. He asked if they were seeing significant changes in ground water level now. Mr. Petersen said he did not have that information with him and did not know what the most recent results were.

Commissioner Axelrod observed that the draft report recognized the need to manage stockpile soils on the facility that were going to be reused at the site. He asked what the plan for managing them was and if they would be stored onsite or trucked off and then back to the site. Mr. Komarek advised there would be materials that would be stored onsite, for example, topsoil stripped off the top would be preserved so it could be restored later. The plan was to store as much of that as they could onsite and minimize the cost and impact of additional trips. They would work to find locations to place that material onsite. Commissioner Axelrod asked for a rough volume estimate. Mr. Petersen explained the fact the plant would be built by incremental construction helped keep the volume down. He did not have a volume estimate.

Commissioner Martin asked if approval of the application would invalidate the current intertie and require West Linn to negotiate another agreement. Mr. Komarek advised approval or non-approval of the application would not invalidate that agreement. Potentially another agreement would be negotiated. Lake Oswego was obligated to provide surplus water to respond to a need of its partner per the agreement. If no expansion occurred their ability to provide any kind of a reliable supply was very limited. It was not just a capacity issue, but the quality of the water, and the reliability of the operating equipment and the operation of the facility in a seismic event. All those things played into assuring a reliable supply of water. Commissioner Martin observed West Linn currently had an agreement with Lake Oswego and the South Fork Water Board. If Tigard was going to be involved that would likely require a new agreement. Mr. Komarek agreed. The applicant had discussed that with West Linn staff. Now that Tigard was part owner of these facilities at a minimum the agreement should recognize that relationship. South Fork was recognized in the agreement even though the intertie was owned by West Linn. Commissioner Martin asked about capacity. The applicant had a website

called, Water Savvy. It said that at build out only 70% of Tigard's water supply would be met. Mr. Komarek explained that was likely a reference to the fact that the project would not supply all of Tigard's needs. The agreement with Tigard was to provide that city with 14 million gallons of the plant's 38 million gallon capacity. Since Tigard's ultimate demands at build out were projected to be in the neighborhood of 20 million gallons per day it had a shortfall. Tigard was addressing that shortfall through the use of its aquifer storage and recovery facilities. They currently had several wells and planned on one more that would provide them up to 6 million gallons per day of additional capacity in the summer when Lake Oswego demands were at the highest. That would get them to the ultimate 20 million gallons per day they needed.

Commissioner Martin observed that with the existing plant West Linn had some exposure due to the possibility the plant might not be able to meet the City's need for water at certain times of the year. Considering what Mr. Komarek had just explained about Tigard's situation led him to think that West Linn would have the same exposure even with the new plant. Mr. Komarek clarified West Linn would have that level of exposure much further in the future. With the expanded capacity; the more reliable treatment process; more modern equipment; the reliability of the supply would be significantly greater than it was today. Currently peak day demand was around 30 million gallons and West Linn could have anywhere from 10 million gallons a day to 6 million gallons. But the capacity of the existing intertie was less than six: likely 3 or 4 million gallons. West Linn would have to add another pump to it to get it up to the 5 - 6 million gallons range. Supply also depended on the season. Currently peak day demands in West Linn were somewhere around 8 million gallons a day, but its wintertime demands might be around 3 - 4 million gallons. If West Linn's need came in the winter the plant would only need to provide the City with 3 or 4 million gallons because the City could not use 6 million gallons. The expanded plant would be able to provide that for a long time. Commissioner Martin observed West Linn would only benefit from the expanded plant for the five years (2016 to 2021) when there would be a surplus. After that the City would be in the same position again. Mr. Komarek advised if the applicant's population and demand projections held true and West Linn's wintertime demand was only 3-5 million gallons the supply might be there for 20 years. He advised that on peak days cities could do many things to manage their need. Lake Oswego had adopted a water conservation plan. He did not know if West Linn had one. Lake Oswego's plan implemented different levels of curtailment during a shortage or disaster. It did not assume that if there was a problem on a peak day it would continue to try to meet peak day demand. It would ask its residents to reduce use. Curtailment progressed from voluntary to mandatory. He asked if it was reasonable for West Linn citizens to expect to be provided with peak day demand on a hot summer day or if they would curtail their demand so they could get supply from somewhere else.

Commissioner Martin asked if the applicant was still relying on the 2007 Corollo Report and if the numbers in it were still valid. Mr. Komarek clarified that had been the basis for determining whether the partnership made sense, but the applicant was not relying on it as they moved forward. They had revisited all those growth and demand forecasts and started to consider Tigard's ASR (Aquifer Storage and Recovery) capacity and how long during the summer that system could work. Commissioner Martin asked if the Lake Oswego water service area defined in Figure ES-1 was still the same. Mr. Komarek confirmed that.

Commissioner Frank asked what was the maximum volume of water the City could pull from the plant using the current intertie and if the application meant the intertie would be expanded. Mr. Komarek advised the intertie was designed for an ultimate pumping capacity of about 5 ½ to 6 million gallons per day with three pumps, but it currently only had two pumps and a capacity of and 4 million gallons per day. It would be up to West Linn to install a third pump if it wanted to. Commissioner Frank asked about Vokoun v. City of Lake Oswego. Mr. Kabeiseman clarified that lawsuit had been about property damage due to stormwater runoff during the 1996 flood. In that case the court made it clear that a governmental entity that ran

a public utility was responsible for the damage that it caused. Commissioner Frank observed that would be above and beyond any insurance coverage. He inquired about vehicle trips. He asked if 7,000 to 8,000 dump trucks was accurate and if the trucks would be going on Mapleton or Kenthorpe. Mr. Komarek indicated that range of trucks was probably in the ball park and the trucks would probably be using both streets because it would be more efficient to route trucks in a loop and it would minimize truck traffic on either street. Commissioner Frank asked about hours of construction. Mr. Komarek indicated the applicant was beholden to the City's construction hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. on Saturdays. They did not plan or anticipate to work on Sundays or holidays. However, there would be points during the overall project when they would need to make connections or switchovers from the old facilities to the new facilities. When that happened they would ask the City Manager to approve work outside the allowed hours. They would make those connections as quickly and efficiently as they could in order to minimize the downtime of the plant.

Commissioner Frank referred to the treatment plant portion of the RNA Great Neighbor Committee's mitigation list dated April 25. It looked like the applicant had agreed to three of six proposals. He asked the applicant to explain why they had not agreed to the others. Ms. Heisler referred to the list on page 8 of the April 25, 2012 staff addendum. It had been submitted by Kevin Bryck. She clarified this was the most recent list and it was the adopted list from the neighborhood. Prior to this list there had been three other lists. The first one had 64 items on it and the applicant had agreed to 30 of them. The applicant had agreed to 32 items on the next list. Another list just before the April 25 list was substantially shorter. Then the April 25 list was adopted by the neighborhood. She noted the applicant had agreed to a lot of things the neighbors asked for that were on prior lists. She related she had counted 17 items on the April 25 list that the applicant had either fully or partially (as a compromise) agreed to. She offered the applicant's reasons for not accepting some of those items as follows:

Insurance. The applicant was under the same kind of insurance limits that the City of West Linn was under. She did not know of any municipality or agency that would take on unlimited liability. Liability was based on who was at fault.

Independent appraisal/evaluation of all homes. An appraisal would consider a lot of factors, including the current economy. The applicant had an appraisal done based on the Mapleton plat issues because they needed to lift those plat conditions. It said there were no financial impacts.

Fund established to attract matching funds for remodeling Robinwood Station. This was a proportionality issue. It did not really have anything to do with the applicant's plant, construction of the plant, or the impacts the plant would create.

Fund established to attract matching funds for Trillium Creek restoration. There was apparently a project on Trillium Creek in Mary S. Young Park that neighbors needed some matching funds for. A prior iteration of this request asked the applicant to replant all trees they were removing from the site or plant any additional mitigation along Trillium Creek. She related the applicant was able to do all of their mitigation onsite, so they did not accept this item.

Treatment plant - Construction. Independent mitigation compliance monitoring consultant selected by the GNC and paid for by the partnership with all contractors subject to accelerating fines schedule for noncompliance with conditions of approval. Require that the contractor or construction manager hold regular meetings in the neighborhood to explain the status of the project. Ms. Heisler noted that regular meetings was in the Good Neighbor Plan. The applicant had discussed independent compliance

monitoring with the West Linn City Manager and he had indicated that the City would not be willing to give up that responsibility to a third party.

Fund to offset hardship residential sales during the construction phase with defined circumstances. Ms. Heisler said this did not seem like it was an impact caused by the project that one could isolate separate from the economy or other factors.

Separate the pathway, landscaping and perimeter screening buffer contract from the plant construction contract to ensure these improvements are not dropped as a result of cost overruns. Ms. Heisler explained the applicant did not see a need to commit to that because those were conditions of approval and West Linn staff and the applicant were going to ensure they were done.

Construction workers may not park on local streets. Workers must park onsite or at designated off-street parking sites and bussed to the work site. Delivery trucks may not park or wait on residential streets. They must either enter the construction site or wait in designated off-site staging areas. Access to adjacent residential property shall be maintained. Ms. Heisler said the applicant had several items in the Good Neighbor Plan that addressed this issue. Most of them were prefaced with 'To the extent feasible.' A large construction project could not say it would do something all of the time. There may be cases when they had to park on the street or were going to block someone's access for a short period of time. She referred to the applicant's Good Neighbor Plan. For example, it provided that, 'Every effort will be made to load and unload equipment and materials on the plant property during plant construction. In the event that materials need to be unloaded on residential streets flaggers will be used to ensure the safety of the traveling public as the highest priority.'

Hazard impact and response scenario for pipeline break. Ms. Heisler observed this was a pipeline issue and not within the purview of this application.

Concrete asbestos water lines replaced on Mapleton and Kenthorpe in cooperation with the City of West Linn. Ms. Heisler clarified that where the applicant was replacing pipeline it was working with the City of West Linn and planning to replace about 1,200 feet of pipeline that it needed to move in order to put its pipeline in. The existing pipe would be replaced and upsized with current materials. That was on Mapleton. They were not impacting Kenthorpe so they were not replacing pipelines there.

Residential Street - construction (notated as 'Partial/refused'). Maintain daily access to all driveways and residences. Require the contractor to inform residents about all planned closures by telephone, email and in writing at least 10 work days prior to a closure. Ms. Heisler explained the applicant would not know ten work days prior exactly who may or may not be able to get into their driveway. They had addressed that, by saying 'Maintain vehicular bicycle, pedestrian and emergency vehicle access to area homes throughout construction.' She said there may be times when someone might have to park outside of their driveway so the applicant could finish something or put a plate in or something like that.

Highway 43 – Design and Improvement. Ms. Heisler indicated the request to construct the City's design plan for Highway 43 during the pipeline project was not related to the applicant's project. The applicant was not willing to do that. There was no rough proportionality.

Highway 43 – Construction, good neighbor representative. Ms. Heisler related the project oversight committee had discussed this and they were willing to go along with it. If the applicant met with ODOT they would give the Great Neighbor Committee and the City of

West Linn the opportunity to participate in any pipeline planning and permitting. That was not connected to the plant application, but to the pipeline.

Commissioner Frank asked why a hardship fund for residential sales during the expansion could not be established. Mr. Komarek questioned what basis would be used to establish the hardship. Commissioner Frank noted owners close to the plant might not be able to sell their homes or might have to significantly reduce the price to sell them. He would consider that a hardship. Mr. Komarek agreed it would be a hardship if someone was unable to sell their home, but the question would be were they unable to sell because of the project or because of some other factors. How would one assess that? Commissioner Frank suggested it could be assessed by comparing it with sales in surrounding communities. A benchmark could be set for that. Mr. Komarek noted that construction projects went on in many places. It would be precedent-setting for a local government to get into the arena of establishing hardship funds based on allegations that a public works project was causing some damage to a private property owner.

Commissioner Steel had a printout of the Good Neighbor Plan on the applicant's website. She noted it included specific action items that the Good Neighbor Plan in Section 8 of the application did not have. It had bullets listing things such as 'Ensure safe pedestrian bicycle and vehicular school commute during the construction period' and 'Use visible ID badges or other methods to identify construction workers.' Mr. Kerr clarified the conditions of approval referred to the Good Neighbor Plan in the application in PC-Section 8. That was the Plan that would be enforceable by the City. Commissioner Steel asked for confirmation that the version dated December 19, 2011 was the most current. Ms. Heisler confirmed that. Commissioner Steel recalled that a question on the Frequently Asked Questions list was, 'Can public amenities, such as a pedestrian path, be built on the Mapleton Drive parcels without property owners' consent?' The answer was that it and other amenities could not be built without the consent of Maple Grove plat property owners. She asked the applicant to explain that. Ms. Heisler advised the Maple Grove plat had been platted in 1944 and it contained a dozen or so CC&Rs. Some of them restricted fence height to four feet; talked about certain properties that could have industry on them; and indicated that only single-family homes could be built in the plat. The applicant needed to lift those restrictions from their four Mapleton properties. Until they did that the pathway, a taller fence, and anything other than a single-family home could not be built there. They were involved in a separate legal process to lift those restrictions. Commissioner Steel observed one of the benefits of the expansion application was a way to get from Mapleton to Kenthorpe. There might be a possibility it could not be fulfilled. Mr. Kabeiseman noted the pathway was required as a condition of approval and the applicant would have to be able to provide it in order to construct the plant. Commissioner Steel asked if that was what public comment was referring to when it referred to 'condemning the CC&Rs.' Ms. Heisler said she believed it was.

Commissioner Steel asked if the applicant had reconsidered or changed anything, or decided to do anything more after hearing the public testimony and feedback in the previous hearings - especially the charge that there had been a lack of responsiveness. Ms. Heisler recalled many conversations about what collaboration meant at Robinwood Neighborhood meetings. It was not a one-sided thing. She indicated the applicant had been very responsible. They had made a commitment to the immediate neighbors and to the Association from the very beginning that they would listen to their concerns and aspirations and take them into consideration and give them feedback on how they impacted the design of the plant. They had done that and planned to continue to work with the neighborhood throughout the process. She believed the Commissioners would find that some of the Maple Grove property owners were primarily the ones who were unhappy. Ms. Heisler related the applicant had had the neighbor's mitigation list and its predecessors for 8 to 10 months. They had looked again and again and at all of the lists. Their oversight committee (two city councilors from Lake Oswego and two from Tigard)

had also reviewed the lists. They had said they were willing to do a couple more items on the list. One was related to participation in ODOT meetings; and other was about a grate in Highway 43 that had been on a previous list. The applicant was going to be in that area and would have the opportunity to do that. They had based their plan on what they heard in neighborhood meetings and suggestions from the backyard visits. It all came from neighbors and the neighborhood association. Mr. Komarek said the answer was that the applicant was continuing to work very hard to minimize the impact to the neighborhood and the neighbors, particularly during construction, because that was a recurring theme they had heard. They had ideas about ways to minimize those impacts in terms of the duration of construction and perhaps ways to minimize or reduce the amount of trucks through optimized design. That was part of what Mr. Kabeiseman had been referring to when he asked for more flexibility in Condition 1. The applicant would need more flexibility in order to continue to refine and optimize the design to minimize those impacts. They had heard that message loud and clear and were working hard to pull out some more things that made sense for the neighborhood. They would continue to do that.

Commissioner Axelrod referred to the new information the applicant had provided. Item 8 addressed the concern raised by members of the community regarding the level of homeland security and federal requirements that the plant may need to meet. The last paragraph reported that Lake Oswego had completed a vulnerability assessment of its water supply system, including the water treatment plant, and satisfied all requirements of the act subsequent to the completion of that assessment. The design of the plant would incorporate federal recommendations related to the physical and cyber security features. Commissioner Axelrod was concerned that meant there might still be refinements and changes to the design as a result of subsequent review related to meeting federal requirements. He clarified that his concerns related to things like fencing and lighting. He recalled testimony that the existing lighting was an issue. He was concerned the proposal would not change that. Lighting and fencing could change in the future. Mr. Komarek acknowledged he could have worded that paragraph differently. He would say the applicant had satisfied all requirements of the act. First and foremost it was the five items above it. The applicant was required by federal law enacted after 9/11/2001 to do an assessment of all critical infrastructure facilities in accordance with a very prescriptive set of standards that Homeland Security developed. They had to go through all their facilities and report to Homeland Security. They had to certify to the U.S. EPA that they had developed an emergency response plan that was based on the findings of the vulnerability assessment that would guide their ability to detect and respond to intentional acts that might be perpetrated against their water facilities. The information in the document was exempt from public disclosure. The applicant was incorporating those things into the design of the plant. What was in the application today in terms of what could be disclosed (such as lighting and fences) was what the applicant was doing to respond to the security requirements. There was no federal overview or permit or review of this. It was left to the individual infrastructure owner to decide, based on a number of factors, what types of risks were out there and how to best mitigate or address them. Commissioner Axelrod noted the vulnerability assessment had been done for the existing, smaller-sized, water treatment plan. Mr. Komarek clarified it was not a function of capacity or size. A water treatment facility of any size was an essential facility and its water had to be protected from those who may want to harm the supply.

Jeff McGraw, Principal Architect, MWA, advised the lighting and fencing would not change as a result of the vulnerability analysis or national requirements. Each treatment plant had levels of security and mitigated their own risks based on how they defined their own risks. The proposed lighting strategy was two levels of lighting. That would not change. What the application did not describe were the bells and whistles related to detecting and delaying threats, such as cameras at entrances. Commissioner Axelrod asked for assurance that the

design of the fencing, lighting and pedestrian pathway would not change. Mr. McGraw confirmed that.

Commissioner Axelrod referred to the independent review in February by Mr. Heffernan. Mr. Heffernan reported finding several deficiencies. One of his concerns was the type of lighting. Mr. Komarek confirmed that Item 7 of the applicant's response addressed that. They were not changing the lighting. They disagreed with the reviewer. They believed the types and levels of illumination in the application were appropriate for the use and were some of the most high-efficiency fixtures available on the market today. The Commission recessed for ten minutes and then reconvened at 9:30 p.m.

Commissioner Martin noted the Supply Reliability section of the information the application had provided was helpful. He referred to the Corollo Report, page 19, Note 3, Table 1-2. It said the Lake Oswego water service area would include both the Stafford triangle and the water districts currently located within the Urban Service Boundary. Figure ES-1 said the Stafford triangle was part of the Lake Oswego water service area. It was clearly outlined as part of the plan and part of the area to be serviced by the expanded plant. He noted that was clearly inconsistent with West Linn Comprehensive Plan, Goal 9, which called for opposing urbanization of the Stafford triangle and pursuing policies that would permanently retain the area as a rural buffer between West Linn and neighboring communities. Commissioner Martin observed the Planning Commission was bound by the code and the Comprehensive Plan. He asked how the Commission could consider something that was in opposition to the Comprehensive Plan. Mr. Komarek noted the Corollo Report identified Stafford as a potential future service area. In the FAQs document the applicant had provided they explained they were considering areas contiguous to their USB that sometime over the next 50 years could potentially come into the Urban Growth Boundary. They were designing facilities to last 50 to 100 years. They did not want to have to have to build them bigger in the future because they had not considered that possibility. That was the approach they took in that study. After construction of the expanded facility they would not be able to send one drop of water there. They had no plans to. In fact, the Lake Oswego Comprehensive Plan would not allow that without a vote. Lake Oswego was currently opposed to including Stafford. But they were trying to anticipate what would happen 50 years down the road when another generation of people might decide it was in the best interest to provide urban services to that area. The plant would have capacity that could potentially be used to serve the Stafford area or some other community that suddenly needed water supply for some reason. The facilities were expensive to build and permit and they did not want to do it again. Commissioner Martin noted the report specified 925 acres of the Stafford triangle. It projected the growth rate. It was a specific plan for a specific area. The applicant had based the size of the proposed expansion on it. He had to look at what was proposed as a specific plan for urbanization of the Stafford triangle based on what he read. How could he not see it that way? Mr. Kabeiseman contrasted an engineer's view of the world with a planner's view. An engineer saw the geography and other factors and had to consider what made engineering sense to serve from the plant's location. The planner considered where something should be done. West Linn and Lake Oswego were the two cities that had the most potential to do anything about the Stafford triangle. They both had the same planning position: Stafford was not on the table. The Corollo Report was an attempt to look at what made sense. He was not an expert on the report, but the plant expansion would likely make sense even if Stafford was taken out of consideration. The engineering report was not a planning report. It was about what made sense from an engineering perspective. It did not change Lake Oswego's or West Linn's stance on Stafford to avoid urbanization of that area.

Chair Babbitt noted the applicant reported the appraisal showed no effect on property values. He asked if it looked at just lifting the CC&Rs or the fact that the houses would be next to a larger industrial area. Mr. Komarek clarified it looked at the effect of lifting the specific

restriction that only allowed family dwellings and allowing the proposed structures to be constructed on surrounding property values.

Chair Babbitt related he could see how an appraiser could come up with that value if all he was looking at was lifting the CC&Rs. But he did not necessarily agree with the applicant's position that they could not come up with a hardship value. One of the things an appraiser should be able to do was evaluate a property based on the environment around it. He agreed it would be difficult and not a good precedent to set to address hardship during construction. However, the value of the property after construction would be a constant. The homes would then be sitting next to a much larger industrial area. An appraiser should be able to assess that value. He wanted to know if the applicant asked the appraiser to do that. Mr. Komarek explained that the applicant provided the appraiser with the concept plan in the application and asked if that facility was built as proposed and its construction were allowed by the lifting of the CC&Rs, what would be the impact to the surrounding properties. The appraisal had considered the impact of the larger facility on those properties.

Chair Babbitt observed Section 4 of the applicant's May 2 submittal indicated the cities liability policies would cover damage to third parties when the cities were at fault. He asked the applicant to discuss the definition of 'fault.' He asked if a part of the plant broke in a general failure would the applicant consider that to be a 'fault' and their liability. Mr. Kabeiseman said 'it depends.' Who determined 'fault' would be a jury of Clackamas County citizens. If the applicant's plant caused injury to a neighbor a Clackamas County jury would likely be sympathetic to the residents and decide the applicant was at fault. The judicial system would determine that. Chair Babbitt observed the Good Neighbor Plan document dated December 19, 2011 that was posted on the applicant's website was not the one in the application. But the applicant's representative had stated they would uphold all of the items in the report on their website. He asked if the applicant would agree with conditions of approval that referenced that specific report. Mr. Kabeiseman affirmed that. Chair Babbitt asked staff if the applicant was not able to have the CC&Rs lifted in the separate legal action and was not able to comply with the conditions of approval would they have to come back to the Planning Commission or would that be a Planning Director decision. Mr. Sonnen advised they would have to come back to the Planning Commission for modification of the approval.

Chair Babbitt recalled the applicant was requesting modification of Condition 1, which called for the project to look like the drawings that had been submitted. They wanted a little more flexibility. He asked for more information about exactly what they wanted. He recalled that after some projects were approved and built they did not look like what had been submitted. He was a little reluctant to provide more flexibility because it did not seem to serve the citizens very well. Mr. Kabeiseman clarified the applicant was asking for more flexibility in order to ensure they had lesser impacts on the neighbors. They had discussed ways to pull in further; shorten the construction period; ensure the impacts on the neighbors were lessened. They were not considering changing the overall look, just for the ability to pull in the building envelope. Mr. Komarek clarified he would not describe it as 'pulling things in' any more. That was part of why they had the long construction duration they did. They had discussed maximizing buffers and setbacks. They had really consolidated the facilities and were consolidating them around an existing plant that had to remain in operation during construction. They were looking at ways to mitigate the consequence of consolidation of the facilities. They were looking at doing that by shrinking some of the structures so they would have a smaller footprint and would need fewer piles and less excavation. They could move some of those just far enough away from existing structures so they could build them simultaneously rather than sequentially. Those things would be a benefit not only in construction risk and costs, but also to reducing truck trips, reducing excavation volumes, the number of piles, and the overall duration of the project. The applicant was hoping to find a way to work with the Commission and the staff to craft a condition that allowed them the

opportunity to explore those things. Not to change the overall architectural look, but to figure out ways to minimize construction impacts. They had heard that was a significant impact to the neighborhood and they wanted to try and minimize that if they could. Chair Babbitt asked if the applicant had a suggestion for a revised condition to submit to staff that would assure the Commission that the applicant would do that and not go the opposite direction. Mr. Komarek said he did not, but perhaps one of the applicant's planners did. Mr. Sonnen advised the staff had some flexibility in administering the code. Mr. Pelz advised that CDC Section 99 provided standards for amending approved plans. Basically amendments to approved plans were heard by the initial review body (in this case the Planning Commission). The submittal requirements were determined by the Planning Director as necessary or as appropriate to the requested amendment. The code also provided that "An amendment application shall be required if the Planning Director determines that the proposed revisions will change the project by a factor greater than 10% in a quantifiable manner. Non-quantifiable changes shall also require an amendment if they result in significant differences between an approved project and the revised project or if the changes call into question compliance with a relevant approval criterion.'

Chair Babbitt asked what noticing requirements were necessary if the change was above or below the 10%. Mr. Sonnen advised it was typical for an applicant to run into some previously unknown situation that dictated a shift in something during construction. If it was within the 10% parameter; did not change a condition of approval; and was just a slight deviation that got the same job done it could be approved administratively with no notice. If it was a matter like not having a trail when a trail was required that was directly related to a conditions of approval it would require formal reconsideration by the Planning Commission and appropriate notice. There was some judgment involved if it was not quantifiable. The staff interpreted the code conservatively. Mr. Pelz added there was another provision in that same subsection of Chapter 99 that provided that if the proposed revisions would result in a project that changed by a factor greater than 25% in a quantifiable manner a new application was required.

Commissioner Steel asked about the type of construction contract and how locked in the design was. Mr. Komarek clarified the applicant would complete the design to 100% level and then award the contract to the lowest bidder from a pool of pre-qualified contractors. He advised the design was about 30% complete and would be complete later this year. That was why the applicant was seeking some flexibility in Condition 1 that would allow them to find better ways to design it and in the course of doing that find ways to alleviate construction impacts.

Commissioner Miller noted the applicant had stated they would not expand the plant later. If both cities agreed to development of Stafford in the future would there be room on site for further expansion. Mr. Komarek advised that would not require an expansion of the proposed facility. Mr. Kabeiseman advised the proposal represented the extent of the applicant's Clackamas River water rights. Commissioner Steel asked if the applicant had water rights to the Willamette River and if there were water rights pending that could be granted that would allow them to take even more capacity. Mr. Komarek related in the 1970s the City of Lake Oswego had acquired a permit to take about 3.8 million gallons a day from the Willamette River as an emergency source of supply to the plant if its pipeline across the river or that intake should fail. The permit specified it was for emergency purposes. At the time it was applied for it was contemplated that the City could pull a trailer-mounted pump down to the river and pump the water to the treatment plant. They did not contemplate using that permitted water for service to the general area. He did not know for sure, but perhaps it could be used as mitigation for the impacts on the Clackamas. Commissioner Axelrod asked if the applicant's Clackamas River water rights were transferrable to the Willamette River; if the applicant could take the extra water for the expanded plant from the Willamette; and if that could be used to support West Linn. Mr. Komarek confirmed the water rights could be transferred. In terms of water law the ability to use that water was there. Commissioner Axelrod asked if Tigard had an even larger

water right to the Willamette River. Mr. Komarek confirmed Tigard had access to 20 million gallons per day through the Willamette River Water Coalition. When asked, he clarified that Lake Oswego was not part of that consortium. Commissioner Axelrod asked if the partnership agreement dealt with sharing of Willamette water rights. Mr. Komarek did not believe the agreement addressed that.

Commissioner Axelrod talked about bigger picture issues. One was his concern that he had not seen any feasibility analysis with a comprehensive evaluation of needs and alternatives and costs to substantiate why a major industrial water treatment plant should be built on residential property in West Linn without a benefit from the proposed action. He noted the applicant's response discussed an alternative location, but he still did not see an analysis. He understood the applicant had to provide the most cost effective alternative to its citizens, but it seemed to him in certain circumstances they had to consider other things besides costs. When he had asked the applicant about their options for constructing a plant somewhere in Lake Oswego they had indicated that the Safford triangle was the only option that Lake Oswego had and it was precluded from development because it was outside the UGB. He asked if the applicant could have used the Foothills property or the west end area or some closed school site. He would have preferred to see the applicant provide that kind of analysis. Were the other properties potential options for a plant, even if it was not the least cost option? Mr. Komarek responded that he supposed that if money were no object and the applicant wanted to start over from scratch that was what they would be looking at. It would basically require redesigning and reconfiguring their entire water supply system. They had pointed out in the information they provided that the plant had been there since 1967; the use had been found to be in accordance with West Linn codes in a series of prior land use approvals; and the applicant had complied with all conditions that had been imposed on those prior land use approvals. He advised it was the best alternative, not only for the partnership, but for their continuing agreement with West Linn that had been in place since 1983. They had not spent a lot of time looking at alternate sites. When the Corollo Report was compiled those schools were not closed. There was significant value in the Foothills property. There was no vacant land there. It was residential, some light commercial and the Portland plant. To build somewhere else was starting over. That did not fit the timeline for needing to replace the outmoded, obsolete, vulnerable facilities. Commissioner Axelrod clarified he was not questioning past operation of the plant or whether the applicant had met the conditions. He was just trying to evaluate potential alternatives. He understood the proposed project would essentially be a completely rebuilt plant improved to be a state of the art plant. Could the applicant not do that in Lake Oswego? Perhaps they could find a site there that was not in a liquefaction zone that did not need to be designed for that. He stressed it was important to assess those things. If the applicant had transferrable water rights they could potentially put a plant in Foothills and pull water right there without the need for an expensive pipeline and then pipe water to the existing holding area in western Lake Oswego. He would have preferred to see a quantifiable analysis of options and alternatives.

Commissioner Axelrod talked about the issue of breaking up the project and the National Environmental Policy Act (NEPA). If there was federal permitting involved NEPA would require the projects to be reviewed together if they were connected or cumulative actions. It would require things like economic and neighborhood issues to be considered. In his mind the plant and pipeline were connected actions and were very likely cumulative actions. Mr. Komarek related the applicant had been working closely with a host of regulators, including the Army Corps of Engineers, Division of State Lands, U.S. Fish and Wildlife, and the tribes. The applicant's permitting experts were not present at the hearing. As he understood it the applicant was not obligated under NEPA to consider the plant. The permit application that had been submitted to the Corps the previous week dealt with the impacts of the pipelines and the river intake pump station on the Clackamas River. That was the scope and the extent of the

environmental element of the project that was before the agencies. He confirmed there was no NEPA analysis for the plant. The applicant was seeking a nationwide permit for the pipeline through the agencies and that was not a NEPA process. Commissioner Axelrod said he understood Lake Oswego chose to break up the projects and stage the projects for its own convenience. Mr. Komarek clarified it decided to do that due to the types of permits it would need for the various elements of the overall program; the various land use processes that were required for those various elements; and how those related to the overall construction schedule. Each had to be considered in terms of the duration of construction, the types of environmental reviews and permits, the types of local land use reviews and permits. All of those drove the applicant to break them up into pieces to go through permitting processes in some cases concurrently and in some cases sequentially. Commissioner Axelrod explained the objective of NEPA was to make sure that projects that had environmental, human health and economic impacts did not get parceled out and that the full effects or potential impacts from a project were properly evaluated. He suggested the applicant consult with their environmental lawyer about a NEPA application. He said by definition by having to go through the federal permitting process meant the pipeline action fell into the category that required a NEPA evaluation. That would require a comprehensive evaluation of the projects. Both the plant and the pipeline were intimately related. The applicant would not do one without the other. Another aspect was if any federal funding was involved in the project. He encouraged the applicant to consult their attorney. Mr. Komarek clarified there was no federal funding of the projects. Commissioner Axelrod observed it was a federal action. NEPA defined federal actions as projects, activities or programs funded in whole or in part by federal funds and those requiring federal approval. He asked the applicant to ensure they had checked on that. Mr. Kabeiseman explained he was a land use attorney and did not know where in the process the NEPA review was, but the Partnership either had done that or intended to do it. Commissioner Axelrod advised that connected or cumulative actions could not be reviewed separately if subject to NEPA. They had to be reviewed together.

Vice Chair Holmes asked if construction trucks would have to turn left onto Highway 43. Mr. Komarek said that was not yet known, but they could be turning left if they needed to turn left to go to a dumpsite somewhere. The applicant might orchestrate construction traffic so it came in via a right turn from Highway 43 onto Mapleton and so that left turns could only be made at the signal at Cedar Oak. They would develop that plan as part of planning a safe and efficient environment. They did not want to make drivers have to wait for trucks. He confirmed trucks would have to turn onto River Road to get to Cedar Oak. The applicant would most likely use flaggers there. Vice Chair Holmes noted school buses would still be coming through there. Mr. Komarek confirmed the applicant was working closely with ODOT to figure out the most efficient and safe way to get construction vehicles out of the site and onto the highway. Vice Chair Holmes related she had not seen anything about ODOT in the paperwork that would help the Commissioners understand that. Mr. Komarek advised that the applicant would certainly have to get permits from ODOT for the pipeline project and they would have to provide traffic control and management plans to the agency for the plant as well. They had not developed them yet.

Chair Babbitt raised the question whether the applicant's May 2 submittal contained new evidence. He asked if the applicant considered anything in there new evidence. Mr. Kabeiseman related the applicant had discussed that with Ms. Beery and would not object to saying there was new evidence so the Commission could allow written rebuttal to the May 2 submittal.

When Commissioner Steel asked, Mr. Day, the applicant's senior planner, clarified the Good Neighbor Plan was not new evidence. The applicant had included it in the original submittal. Later, they had responded to the staff's request to submit an abbreviated submittal that could be conditioned more easily and that was Section 8 in the smaller packet. Chair Babbitt

observed the remaining question was regarding the applicant's May 2 submittal. Ms. Beery advised the Commissioners to treat it as new evidence rather than reject it because at this point everyone was aware of the packet. Chair Babbitt polled the Commissioners and every one of the Commissioners in turn concurred the May 2 submittal was new evidence.

Ms. Beery advised that the Commission could chose to leave the hearing open at this point, but it appeared they had concluded testimony and the legal requirement would be to allow written communications from the participants regarding the May 2 submittal for seven days. The record would remain open for those seven days and then be closed. After it was closed the applicant had a statutory period of another seven days in which to submit a final written argument unless they waived it. She advised the Commission to ascertain whether the applicant wanted to maintain that seven days. When asked, she clarified that the Commission could still ask clarifying questions of staff after the record was closed, but it could not accept any new information from the applicant. Chair Babbitt noted the Commission could decide to reopen the hearing if it deemed that necessary. Ms. Beery advised the Commission to ask the applicant to extend the 120-day clock. In the event of an appeal to the City Council the City would need more time. Mr. Kabeiseman stated the applicant could grant an additional fourteen days.

Commissioner Martin **moved** to close the hearing and keep the record open for seven days until May 9, 2012 at 7:30 p.m. in order to allow people to submit written responses to the applicant's May 2, 2012 memorandum. Then it would allow the applicant seven days to respond and reconvene for deliberations on May 16. Commissioner Steel **seconded** the motion and it **passed** 7:0. The Commission took a five minute recess and then reconvened.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Discuss recommendation to City Council regarding emergency generator for pump station.

This discussion was rescheduled to the June 20 work session. The Commissioners also planned to discuss findings, minutes, and the scope of Commissioners' responsibilities.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

Mr. Sonnen clarified that the Street of Dreams was being processed as a special event because if an event entailed closure of a street that was the method called for by the Municipal Code to deal with such events. The streets in the subdivision had all been dedicated as public streets earlier in the year. The City Manager was the authorized body to process the application.

PUBLIC COMMENTS TO CCI

David Rittenhouse, Savannah Oaks Neighborhood Association, held the Street of Dreams event should go through the land use approval process because it was a month-long commercial event being held in a residential zone. Doing so would involve neighborhood meetings and the Commissioners could fine tune it and make it a better event. Then the Parks and Recreation Department could run it. He had heard horror stories from neighbors of the previous year's Street of Dreams. They complained about a lot of noise from the grand opening ceremony, weekend concerts and in the evenings.

Gary Hitesman encouraged the Commissioners to read ORS 197.319 (regarding citizen submissions of suggestions related to the Comprehensive Plan, the CDC and process); ORS 197.319(6) (regarding public comments suggesting evidence) and 197.320 (regarding enforcement orders). He believed they showed how to improve the hearing process and public participation.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 10:55 p.m.

APPROVED:

Michael Babbitt , Chair

6-27-12
Date