



PLANNING COMMISSION

SPECIAL MEETING

Minutes of October 18, 2012

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

Members absent: None

Council Liaison:

Staff present: John Sonnen, Planning Director; Zach Pelz, Associate Planner; Chris Crean, Acting City Attorney

**PREMEETING WORK SESSION**

Chair Babbitt convened the work session at 6:30 p.m. in the Rosemont Room of City Hall. Staff suggested potential dates for continuances. They explained the options for keeping the hearing open for oral testimony or just written testimony and the 120-day rule period. They distributed copies of recently submitted information and a new testimony form.

**CALL TO ORDER – SPECIAL MEETING**

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:00 p.m.

**PUBLIC HEARING**

**CUP-12-02/DR-12-04 (water treatment plant) and CUP-12-04/DR-12-14 (water transmission line)** Continued from October 16, 2012.

Chair Babbitt opened the hearing and outlined the time limits. Commissioner Miller reported an *ex parte* contact related to an inquiry about allowing testimony.

**Public Testimony - continued**

Lamont King, 4257 Kenthorpe Way, responded to the argument that the plant had existed for many years and was not a problem. Most of the neighborhood had signed the petition opposing the original application, but after the county approved it they just got used to the plant activity and noise. None of the other water plants in the Clackamas River Watershed were in a neighborhood they did not serve. The applicant claimed to have contacted every business on Highway 43, but missed a significant number of them. Mr. King detailed his disappointment with the way City administration had initially handled the matter and with the way facilitator McKenzie had controlled and limited the resolution effort. Nothing had been resolved. He testified that consultant Heffernan had helped the neighborhood understand the process and put together a list of mitigations that made sense. He discussed costs and benefits. The traffic study was flawed because it did not factor in the school; narrow streets; more minutes for an ambulance to reach the care center; traffic disruption; and the impact on local businesses. He questioned that the intertie was a benefit. Managers of four Clackamas River water plants indicated that giving Lake Oswego more water would have an impact on the capacity of the watershed and that West Linn did not need the new enhanced intertie agreement with Lake Oswego because water districts sent water to whomever needed it. He contended the applicant proposed a disproportionate sized building in a residential neighborhood. He suggested they might have made changes in the conditions of approval that might require a new application. It was not consistent with the needs of the community to intimidate Mapleton neighbors by suing them. Neighbors were scared that their lives would be

put on hold through three years of construction when they could not sell their homes. The insurance fund the applicant had offered was meaningless because if the pipe broke there could be catastrophic damage. The applicant claimed things as benefits they would have to do anyway. That included repaving the two streets and replacing the AC water line. The park work might jeopardize the community's ability to use it in the future. Most of the neighbors did not even want the new path between Mapleton and Kenthorpe.

During the questioning period, Mr. King offered to submit the outline he used during his testimony. He clarified the Good Neighbor Plan the applicant had presented was not the one from the RNA Good Neighbor Committee. The applicant listed many things the City would require them to do and they only partially agreed to some items. They had suggested franchise fees could apply to some items. But there might never be franchise fees.

Alice Richmond, 3939 Parker Rd., submitted written testimony (October 19 Memo to the Planning Commission, p. 110/174 for CUP-12-04/DR-12-014). She advised that Foothills was the best location for the plant and intake. West Linn would be able to continue to use the existing intertie. The applicant proposed to rebuild the plant - not expand it. It was a mammoth, improper, imposition on West Linn that would impact the citizens of West Linn and not the residents of Lake Oswego, who would not put up with a similar kind of disturbance in their midst. She asked to see the applicant's Army Corp of Engineers permit. If Lake Oswego sold its land to a developer that would be consistent with the code and generate tax revenue. She reminded the Commission that its first obligation was to its own city's residents and to remember that West Linn had its own water pipe improvements to put in very soon.

Carl Edwards, 3680 Mapleton Dr., and Steve Hopkins, 3910 Mapleton Dr., submitted written testimony (October 19 Memo to the Planning Commission, p. 125/174 for CUP-12-04 ). Lake Oswego was trying to profit from selling water at the expense of West Linn residents. One of the risks of installing the 4-foot diameter pipe was it would squeeze residential and emergency traffic into a 12-foot lane in competition with construction machinery and dump trucks. They displayed a cutout of a hole that diameter while they testified. Another risk was that a break in a pipeline under 150 static pounds per square inch pressure would create catastrophic damage. They questioned that the applicant would pay for the damage. They read aloud from their written testimony, which contained articles about incidents of damage related to large diameter pipelines. They contended it was just a matter of time until the applicant's pipe would leak. They held the application did not meet the applicable criteria. They were counting on the Commission and Council to stop it. Lake Oswego had a better alternative to use Willamette River water and put a facility on the bank in Lake Oswego.

Natalie Christensen, 4738 Mapleton Dr., testified she was worried about the safety of kids whose parents had already left for work having to walk by themselves along Mapleton and through workers and truck traffic. She questioned the claim that the pipe would never break. If broke her property would be in the river. She questioned that the noise wall at the river would buffer her property based on the staff report that there would be truck traffic and a relatively high noise level which could be intolerable for immediate neighbors. She questioned why the applicant could not build a plant in their own city. She was concerned that her employer and other businesses on Highway 43 would lose clients. A neighborhood was not a place for a large industrial facility. She was concerned about the plan to shut off valves manually. Fireman had advised her they would not be able to make the turn between Nixon and Mapleton and would likely use a driveway on Mapleton to turn around. She hoped West Linn would come up with its solution to its water problems.

Bob Stowell, 2606 Maria Ct., submitted written testimony (October 19 Memo to the Planning Commission, p. 122/174 for CUP-12-04). The intertie was not new. It would be available whether or not the application was approved because Lake Oswego would need to continue to supply water to Marylhurst. The placement of the path was on the wrong side and did not

meet code. The franchise fee was not a benefit because it had not been finalized. The applicant had clarified they had never seriously considered an alternative location for the plant. The mitigation list included items an approval should call for, including transportation-related improvements. Franchise fees could be set aside to pay for a bond for the improvements. The limit on highway construction hours would mean it would not cause a major problem for the business district. He was concerned that during the 37 nights it would take the project to move between Marylhurst and the city limits the applicant would not be able to adequately buffer the noise and it would impact residents. If the project was approved and would cause major disruption in West Linn for three years it should be conditioned to make it as bearable as possible for those most impacted.

Neal Rea, 4240 Mapleton Dr., did not come forward to testify when called.

Jana Rea, 4240 Mapleton Dr., did not come forward to testify when called.

Julie Blake, 4400 Mapleton Dr., held that if the projects were approved the Commission should impose the strictest conditions and guidelines on the applicant so the project would not disrupt the way of life of residents of her quiet, easily accessible, neighborhood. That included maintaining 24-hour access to homes by car or whatever means residents currently used for access. Construction should be restricted to 7:00 a.m. to 7:00 p.m. weekdays with no exceptions. Open road construction should not be allowed on holidays and from December 15 to year end. The code allowed major utilities in a neighborhood but she did not think that meant something as large as an industrial plant.

1:07

Steven Blake, 4400 Mapleton Dr., submitted written testimony (October 19 Memo to the Planning Commission, p. 120/174 of CUP-12-04). The plant application did not meet conditional use criteria. It was too massive for the location. The streets were not adequate to accommodate construction traffic. He questioned that this was the right location for the plant if so many pilings were necessary. He suggested the entire length of each street should be considered a construction zone. That would require a higher level of safety requirements. He asked that the application be denied because the applicant had removed safety standards after their application had been deemed complete. The Management Construction Plan called for pedestrian/bike path separated from the rest of the street activity by a safety zone but it turned out it might just be a chain link fence. Continuous emergency access was not practical in at least four places. TVF&R would have to route down Cedaroak to Nixon, which was an additional 1.25 miles and would impact response time. Emergency response times to all areas in the construction zone should be maintained throughout the entire period of 32 months or however long it took.

Lillian Landeen, 4020 Mapleton Dr., did not come forward when called to testify.

Scott Gerber, 3940 Kenthorpe, submitted written testimony (October 19 Memo to Planning Commission, p. 106/174 for CUP-12-04/DR-12-04). The City's land use policy goal was primarily compatibility. It could not allow a huge, life-altering, industrial project in the middle of a residential area. Staff interpretation of Comprehensive Plan policies twisted the obvious intent of the Plan. The staff analysis interpreted the applicant's willingness to do things the right way as benefits. He disagreed with the staff report that the project complied with RNA Plan policy 3.9 which called for ensuring that the plant facility remained compatible with the surrounding residential area and provided benefits to Robinwood as well as Lake Oswego. He held it was incompatible and there were no benefits to residents. The RNA was officially opposed to the project. He disagreed with the staff findings related to critical facilities because they were predicated on the proposed site being the applicant's only alternative. This was the only site the applicant had considered. Both cities owed it to the citizens of West Linn to at least submit a nonbiased alternatives site study. Tigard had a clear alternative with the Wilsonville plant.

Lake Oswego could either maintain the current plant or build in a more suitable location and explore alternative solutions to the intertie agreement. The applicant was betting on political power overcoming rationality.

Shannon Vroman, 4101 Mapleton Dr., held that the plant did not belong in a residential neighborhood. The negative impact was so unspeakable there could be no benefit. She questioned how an existing intertie could count as a new community benefit. It was not West Linn's only source of emergency water. The entire water system needed an overhaul. The applicant was only going to replace a 6 inch pipe with an 8 inch pipe because it had to be removed from the pipeline route. West Linn was paying for half the cost. That could not be considered a benefit. Franchise fees were a possible benefit but no one knew how much that benefit would be. Lake Oswego should not get to dictate that West Linn had to use the franchise fees for the mitigation items. The number of items on the mitigation list they agreed to was very small. Repaving the road they tore up was not a benefit, but a requirement. Surveys showed that people who wanted a path between Mapleton and Kenthorpe did not want it badly enough to accept an industrial plant in order to have it. She questioned why the applicant should be allowed to disturb creek areas when residents were restricted on what they could do there. She asked the Commission to deny the project because it did not meet the criteria that called for it to be compatible with the surrounding, residential-zoned, neighborhood that had CC&Rs to keep it a residential neighborhood.

Ken Hanawa, 4191 Mapleton Dr., referred to the common law term, 'reasonable person'. He contended that a reasonable person would not think the proposal was even relevant to a conditional use, and would not think it was consistent with overall needs of the community. The intertie could not have been a consideration without a combined plant/pipeline application. There was a lot of good evidence. The business community had talked about loss of business. The applicant's traffic study reported the site could otherwise be developed with 28 single-family residential homes. That would be a benefit to the community. He questioned why the applicant had not proposed a partnership with West Linn. He talked about the criterion that the characteristics of the site were to be suitable for the proposed use. It was unprecedented to put a 42 inch pipe and trench so close to residential homes and expose them to the risk it would burst. He was concerned about his kids walking along the street through construction in a 4-foot protected zone. The silt ground was not suitable because when fire trucks drove to the retirement home across the street the ground shook. The applicant proposed to put buildings on pilings because of that. He asked the Commission to continue the hearing to offer people more time to present more evidence.

1:36

Michael LaGiudice, 18750 Willamette Dr., Ste. P, did not come forward to testify when called.

Ray Cozby, 4284 Mapleton Dr., testified that when he bought his home in 2009 he had been assured that the plant would never expand to the Mapleton properties due to the CC&Rs. The applicant saying the project was a 'fitting design for the neighborhood' was putting lipstick on a pig. There would be massive buildings directly across from this house. Alternatives had not been presented. The plant could be upgraded to meet Lake Oswego's needs where it was currently located. The applicant was trying to claim a \$12 million benefit to West Linn. Even if it were true, it would be on the backs of the local neighborhood. He asked the Commissioners to consider what they would do if they were in affected residents' shoes. Despite residential zoning and protective CC&Rs an outside entity would build a huge industrial plant next door or across the street. There would be three years of heavy construction literally at their doorsteps. They could not consider selling their homes during that time. After the project was finished, their peaceful residential neighborhood would be damaged forever and their greatest investment - their homes - would not be worth what they once were. They would feel backed

into a corner and they would react the same way. He asked them to defend residents' property rights.

Vicki Smith, 4448 Mapleton Dr., submitted written testimony (October 19 Memo to the Planning Commission, p. 66/174 for CUP-12-04). She discussed safety. The Comprehensive Plan called for protecting residentially zoned areas from negative impacts. The project failed to meet it. There needed to be a valid vulnerability assessment study of the plant. The applicant should be required to provide it. It would tell West Linn what the threats were and what the applicant had done to protect them. West Linn would be the first responders and pay the cost. Neither conditional use application complied with the Comprehensive Plan public facility-related policy that the user was to bear the cost of new infrastructure and maintaining existing infrastructures. The applicant was trying to cram a large pipe in with other utilities in a narrow roadway and it did not fit. Having such tight spots increased risk and could cause potentially higher future city maintenance costs. The applicant's lawyer had stated that alternative site analysis was not germane. The public had suggested some alternatives. Before any public entity imposed hardships of any kind they had an implied obligation to evaluate alternatives. The fact that the buildings were on piles and the pipe was not created a weak link close to homes in the event of ground movement.

Sam Stevens, 3990 Mapleton Dr., submitted written testimony (October 19 Memo to the Planning Commission, p. 71/174 for CUP-12-04). An industrial plant was contrary to the purpose of the CDC. The 'community' the code referred to was West Linn. 'Existing character' was the residential street and the CC&Rs. The facility had to be consistent with the overall needs of the community. 'Overall' meant taking everything into account. The applicant's claim that the project would potentially save West Linn \$11.6 million was a 'red herring' because the Water Master Plan process had discussed and rejected building a redundant supply line from the South Fork facility. The intertie already existed and the existing IGA did not terminate if the project was built. The cost to West Linn to configure the intertie also had to be considered. Other needs of the community were citizens' peace and quiet; access to their homes; access to local businesses; access to schools; knowing their homes and families were as safe as they could be. Construction would impact their lives and businesses for several years; increase response time for emergency services; and cause injuries and property damage. Activity and strangers in the area would increase safety risks for children going to school. The proposal would put a large industrial facility on site intended for single-family homes since the 1940s. Citizens had wasted countless hours trying to tell the applicant what would make the project more palatable. If the project was denied the properties could be turned aback to private ownership and generate property tax revenue. The applicant did not really know if their designs could withstand a 9.0 earthquake. A water treatment plant was a potential target for terrorist attack. Residents would be collateral damage. If the risks were weighed against any claimed benefits to the community he believed it would show the project did not meet the criteria. He explained he was angry that another city would impose this on his neighborhood for its own benefit; that they wanted to do that for three more years; that they had sued him to force condemnation of CC&Rs; that they had forced him and his neighbors to spent so much time addressing the project; that they did not have the guts to suggest building a plant in their own city; and that they had not done any work to prove this site was the only option. He asked the Commission to deny the application. The Commission recessed for ten minutes until 9:10 p.m.

2:11

Mike Cooper, 3970 Mapleton Dr., opposed the expansion. Things the applicant listed as benefits to the neighborhood were things they either already had or were not needed. The Good Neighbor plan the applicant said the neighbors were satisfied with did not reflect what they wanted. The question of alternate sites and whether the current site was the optimal site was germane. If the applicant had such studies they should make them available to the public.

If it was true that the applicant had saved West Linn \$12 million it was earned on the backs of Robinwood. An outside entity should not dictate how to upgrade West Linn's water system. A good neighbor did not ask their neighbor to shoulder burdens of this magnitude. He questioned why the applicant would try to buy out residents by paying them \$1,000 and then another \$3,000 if the applicant believed in the benefits. The applicant had stated there was no commercially available insurance for natural disasters. There was a financial instrument known as a CAT (Catastrophe) bond and something like that should be considered. He had just received a notice that the Sheriff's office would be conducting training in the neighborhood over the next two weeks. He surmised there was a security risk and they were training for it.

Cindy Kauffman, 3993 Mapleton Dr., opposed the project. She lived along Trillium Creek and had to adhere to certain restrictions on how she used her property. Yet the 48 inch pipe would run through the creek. The pipeline would affect a lot of streams Goal 5 was trying to protect. It appeared that it would be routed into a possibly unstable area. There was potential for disaster. She was concerned about safety and noise. She listed many types of short-lived noises the neighborhood typically heard. They could not live with the type of noise the project would generate. She held the application did not meet conditional use criteria.

Steve Esnard, 3786 Kenthorpe Way, did not come forward when called to testify.

Charlotte Bierman, 21745 Willamette Dr., had attended a meeting when Lake Oswego had talked about eminent domain law and indicated the project was almost a done deal. She was concerned that trucks every ten minutes and the noise and lights they would generate would impact people's emotions, health and sleep. The applicant might have changed the good neighbor policy to give people emergency water they had talked about at the meeting and now it was only during a winter emergency. She remarked that she found it inconceivable that the project was even being considered.

Jack Norby, 4040 Kenthorpe, submitted written testimony (October 19 Memo to the Planning Commission, p. 74/174 for CUP-12-04). The intertie agreement was nothing new. The existing plant was quiet, but if the new one was like the Wilsonville plant it would generate a high pitched whine. Construction noise would also affect the neighborhood's quiet nights. What would be done if the noise was too much still needed to be addressed? The copy of Lake Oswego water permit he had submitted showed that Lake Oswego would supply water for Stafford. Water Watch representatives had advised Trout Unlimited that the region had plenty of water and there was overcapacity in the system, but every town wanted to have its own utility. The goals for fish passage on the Clackamas could not be met. Climate change meant snow packs would melt more quickly and then there would be a steeper drop in water. Relicensing of the PGE plant at Timothy Lake, together with the applicant's plant expansion, could create a serious water problem between August and mid-October. He urged the Commission to deny the application because a plant did not belong in the neighborhood.

2:31

Tom Sieben, 4550 Mapleton Dr., submitted written testimony (October 19 Memo the Planning Commission, p. 91/174 for CUP-12-04). He asked the Commission to deny the two conditional use permit requests based on CDC 60.070.A.3: the facility was to be consistent with the overall needs of the community. The stated purpose was to provide water to Lake Oswego and Tigard, not to citizens of West Linn. The proof was in their DSL joint permit application. The only real benefit to West Linn was an intertie that essentially ended in 2041. He cited portions of the DSL application. He questioned why they could not use their own land for a plant. He questioned why Tigard, which had other sources, should have an ownership position in the plant. He questioned how many expansions would be necessary to provide the other cities with an adequate supply of drinking water over the next 30 years. If they justified the proposal because it was the lowest cost option for the other cities he questioned how that benefitted

West Linn. Lake Oswego had 44 years to find another location for a plant. But they had quietly purchased more land around the plant with the intent of expanding it because West Linn had always been the lowest cost option. They paid no taxes, they did not lose tax revenue; and they received free police and fire protection and free road maintenance. It was a great deal for Lake Oswego but a rotten deal for West Linn. The Comprehensive Plan directed West Linn to respond to the desires, needs and aspirations of its own citizens. Conditional uses were supposed to benefit - not harm - West Linn. He asked the Commission to deny the applications.

During the questioning period, Gwen Sieben clarified that residents within a certain distance of the transmission line had been sent copies of the DSL Joint Permit Application and it and a summary of it was available online. Commissioner Martin asked that the document be submitted to the record.

Gwen Sieben, 4950 Mapleton Dr., submitted written testimony (October 19 Memo to the Planning Commission, p. 97/174 for CUP-12-04). She had visited the Wilsonville Plant. It used a big city park to buffer nearby residences. If Lake Oswego wanted to duplicate that they would have to buy all the properties on Mapleton and Kenthorpe. She discussed CDC 60.070 conditional use approval criteria. The proposal had to be consistent with the overall desires, needs and aspirations of the community, which was West Linn. The new intertie agreement was only a temporary benefit. Legally, the applicant did not need to provide the 4 MGD after 2041. Bolton could not be rebuilt until the plant was finished. West Linn should not be Cinderella against the step sisters. It should stick up for its own interests. She questioned why Lake Oswego had not negotiated a new plant site on Marylhurst property that would also benefit the collage at the time the Street of Dreams was built. There were alternatives, but the applicant had no reluctance to use condemnation. They were doing it to her now. They should do it to their own citizens. Not in West Linn.

2:50

Norm King, 19420 Wilderness Dr., would send a copy of his written testimony after the hearing. He listed the ways the application did not comply with the CDC criteria.

CDC 60.070.A.2. The proposal did not comply with this criterion. Regarding the shape of the site: It exposed neighbors located on the interior corners of the site to noise, dust, traffic and light impacts of construction and plant operation. Regarding location: the sheer scale or mass of the facility was not appropriate. The size and height lowered property values; reduced privacy; attracted industrial traffic; and reduced the visual experience; and imposed impacts that reduced residents' quality of life. The size and mass would be comparable to that of a big box store. The three to four story height was supposed to be a regional water treatment plant. It did not belong in the residential neighborhood where the predominant housing type was ranch style homes. The location of the intertie should not determine the location of the water treatment plant. The intertie could be located any place near the finished water pipeline.

CDC 60.070.A.3. The facility had to be consistent with the overall needs of the community. West Linn provided its own water; the intertie already existed; and any additional benefits were non-existent until West Linn expanded the size of the intertie. Water required during replacement of the Bolton Reservoir, was only a benefit if West Linn continued to locate its reservoir in the same seismically and geotechnically impaired site. It would not be a benefit if the Bolton Reservoir was moved somewhere else.

CDC 60.070.A. The site had to be safe, but engineers had found the site was not stable due to the high liquefaction factor. Lake Oswego-Tigard Water Partnership wanted things both ways when it came to benefits. It exempted itself from an election to approve the easement under Mary S. Young Park because it was a state-owned park. Then it turned around and said the improvements to the park were benefits to the City of West Linn. Those benefits were really to

the State of Oregon, not to West Linn. If they believed they were a benefit to the citizens of West Linn then they should have an election.

The cost to the citizens should be included in the calculations of benefits and the net should be positive taking them into account.

CDC 60.070.C. This required the street to be improved, 'including all steps necessary to address future street improvements identified in the adopted master plan.' The applicant's plan did not do that. Lake Oswego-Tigard Water Partnership needed to improve the streets and the sidewalks it messed up to the standards of the master plan. It was out of compliance.

CDC 60.070.C.7 required the intersections to be improved to levels indicated in the master plan or fees paid in lieu. The proposal in no way included any intersection improvements.

CDC 60.070.C.4 The Planning Commission had the authority to require the building height to be lowered to two stories so it would be in compliance with the Robinwood Neighborhood Plan and be more compatible with the surrounding properties.

CDC 60.090.A.1. required that reconstruction of highways, roads and bridges and so on be consistent with the West Linn Transportation Plan. The application did not do that.

Chapter 55.100.B.6.b required the proposed structure to be compatible with the existing structures on the site and adjoining sites. Contextual design was required. The proposed water treatment plant was in no way in compliance with this. He was not sure it was even possible.

Chapter 55.100.B.6.c. required transition of big buildings in commercial or multifamily zones to residential zones. The application was not in compliance with this. They had not attempted to have a step down transition except for the small buildings on two sides of the main building. Those lower structures added to the mass as they did not adopt the design features of the large building.

CDC 60.070.A.2. The pipeline did not comply with regards to location. The 42- and 48-inch pipelines were too large to fit into the available right-of-ways without damaging existing infrastructure. The construction was too invasive and created too many unsafe conditions for the residents. The size of the pipes was regarded by the community as unsafe in a residential area. The pipeline should be located elsewhere.

Chapter 55.100.D. Unless the applicant could meet the specified levels of allowed impulse sounds on Highway 43 during night time work the night time working hours should be limited to 6 p.m. to 9 p.m. so people nearby could sleep. Regardless of the work hour, impulse sound standards should be met. Chapter 60 allowed the City to limit or adjust the hours of work.

CDC 60.070.C. required undergrounding of utilities in the right-of-way that was being improved. The proposal was not in compliance in this respect on Mapleton, Kenthorpe or Highway 43.

Mr. King observed the proposal assumed it would eventually provide an allocation of water to the Stafford triangle. His last objection was regarding the absence of the West Linn government in this situation. They did not seem to be watching out for citizens' best interest or safety. He questioned why West Linn residents should subsidize the construction and operation of the plant. There were no proposed or required contracts for services that would be provided by city or county agencies. That must be required. Lake Oswego did not pay property taxes and in 50 years it had not paid a franchise fee or a transportation system fee. West Linn had afforded Lake Oswego extraordinary favoritism. That was totally unacceptable. West Linn should bill for cost of overhead and FTE time and services.

David Newell, 19635 Old River Dr., did not come forward to testify when called.

Val Sabo, 4110 Mapleton Dr., did not come forward to testify when called.

Jenne Henderson, 4130 Mapleton Dr., questioned that the site met the criterion that it was suitable for the proposed use (CDC 60.070.A.2) when it was located in a residential neighborhood. The Maple Grove plat CC&Rs only allowed single-family dwellings. They were in place before the original plant was built. The applicant proposed to install a 48-inch finished water line on Mapleton Drive, which would be 700% larger than the existing 6-inch pipe and did not fit in that location. In some places Mapleton was 16 feet wide. A 12-foot emergency access plus an 8-foot wide trench was 20 feet. The applicant had originally said residents would have water, but now their water was to be shut off for periods of time while contractors relocated pipes in order to make the 48 inch pipe fit. This was not the right location for the project. She was concerned about the level of noise from ongoing construction over three years. She had lost her cat for 14 hours after it was scared by noise from a small project.

Jan Gerber, 3940 Kenthorpe Way., opposed the plant expansion. She and neighbors wanted to know specifically how the applicant would deal with the danger of releasing asbestos into the water during the AC pipe removal project.

Martin Gilton, 19133 Willamette Dr., did not come forward to testify when called.

Pam Peet, 2540 Oregon City Blvd., did not come forward to testify when called.

Thomas Holder, 4000 Mapleton Dr., urged the Commission to continue to fight for what was best for West Linn. He had been sued and he had been angry. When he purchased his home in 2009 he had not known about the water treatment plant. His 86 year old neighbor had told him she felt she had been bamboozled into accepting money from the applicant.

Mary Robinson, 3960 Mapleton Dr., opposed the application because it did not meet CDC 60.070.A. Neighbors feared they would lose what made their neighborhood so special. Most had lived there more than 25 years. They visited and communicated via walking in the street. There were no paths. They would not have a street to hang in for three years. Older, homebound neighbors would lose their connection with neighbors. Some would spend the last years of their lives listening to construction noise. She held Lake Oswego did not need more water than what it could get from the existing plant. Lake Oswego had a high water consumption rate and it could conserve a little. Tigard was not West Linn's neighbor. She felt no commitment to offer it anything. Lake Oswego had land in Foothills that it had decided to turn from industrial to residential at the same time they wanted to turn her neighborhood from residential to industrial. Lake Oswego did not pay taxes to West Linn and had been a horrible neighbor for 20 years because it never improved the properties it bought. It would destroy connecting roads, including Cedaroak, River Road, and Nixon, and there was no plan to repair them. The residents felt exhausted by the applicant. Their quality of life had been significantly impacted for two years as they had been manipulated, lied to, laughed at, and felt very alone in the fight to keep their quality of life. She asked the Commissioners to put themselves in their position; keep their neighborhood a neighborhood; and not be bullied by the politics.

Curt Sommer, 18490 Lower Midhill Dr., would email copies of his testimony after the hearing (October 19 Memo to the Planning Commission p. 22/23) He held it was not possible for a reasonable person to conclude that an industrial facility was compatible with residential use. The applicant could dress up the facility with trees, fencing and other things, and put lipstick on a pig, but it was still a pig. The project would obviously not be allowed if it was starting from scratch, so why should an expansion be allowed? Lake Oswego had the opportunity to annex Robinwood in the past and chose not to. This project had been forced on the residents in the 1960s and now Lake Oswego was back to supersize it and force it down their throats again. The project did not satisfy the Comprehensive Plan community benefits requirement. The existing intertie was not *quid pro quo* for three years of heavy construction traffic, day or night. He was insulted by their assertion that the intertie was a new community benefit, because it already existed. He recalled the vote at the October RNA meeting had been unanimous to approve a

resolution asking the Commission to deny the proposal. CDC 60.070.A.7. called for the use of the property to comply with applicable policies of the Comprehensive Plan. Approval of the project would set a dangerous precedent of allowing outside entities to use West Linn as a launching pad for their resource extraction endeavors. The arrogance of Lake Oswego representatives was beyond galling. They had been deceitful, manipulative, and refused to negotiate in good faith while calling themselves good neighbors. He asked the Commission to deny the applications.

At 10:30 p.m. Commissioner Martin **moved** to continue to hear testimony until 11:00 p.m. that evening. Commissioner Miller **seconded** the motion and it passed 7:0.

Randall Fastabend, 18787 Trillium Dr., President of Friends of Robinwood Station, 3706 Cedaroak, related the group was renovating the old fire station into a community center. He cited an example of the applicant's ineptitude. It had sent a letter to Maple Grove owners offering them \$1,000 for their vote to lift the CC&Rs, but saying they would condemn the properties and take them anyway. They used photos of the station taken by Thomas Bose, who had no idea they were using them. They had mentioned they might give money to renovate the station, but Mr. Fastabend did not know about it. The applicant had not been working well with the neighbors and there was no agreement. It had to stop and the line had to be drawn.

CDC 60.070.A. called for the project to be appropriate in the neighborhood. The plans showed it was an industrial facility that did not fit. He suggested imposing a requirement to allocate 2% for community projects. A \$300 million project would result in \$6 million for community projects. It was not enough, but, it was time to stand up to them. Conditions should be imposed that would make it a more livable situation or make it go somewhere else.

Alison Henderson, 19095 Nixon Ave., testified that the neighborhood had been kicked in the teeth by a bully. The applicant sued her neighbors over CC&Rs. People at the plant were very nice. It was the politicians who had made this a mess. She indicated she did not understand how Lake Oswego could sell water rights that belonged to Clackamas, Oregon City and West Linn to Tigard, which had no Clackamas River water rights. She testified that the land under her and her neighbors' houses was not solid, but all backfill. During the 1996 flood there had been a massive landslide on her property. A West Linn culvert project had caused vibrations that damaged a foundation. Who would pay for damage caused by the applicant's vibrations had not been addressed. The project affected the entire city. Commuters trying to avoid delays on Highway 43 would use Nixon Avenue to get through. Lake Oswego had created a pothole on Mapleton that got bigger and bigger until the City filled it. The applicant should have filled it. The project did not belong in a residential neighborhood. The existing plant size was fine and they should just leave it alone. There were alternative sites in Lake Oswego.

3:41

Kevin Bryck, 18840 Nixon Ave., requested that the record be held open so people who had already left could testify. Eric Jones had provided testimony regarding the original 1967 application approval. It had been a political decision. The objections the neighbors had at that time were exactly the same as their objections now. That decision had been based on a completely different set of approval criteria with outmoded codes and community standards. Lake Oswego had been able to bully its way into having the plant in the middle of a platted and built residential neighborhood in 1967.

The benefit equation was bogus. The 2008 Water Master Plan had been created with City of Tigard officials serving on the advisory board and people were pressing to include a provision that West Linn needed to build a second, redundant, pipeline across the Willamette River. He questioned that any other municipality would agree to that. However, the 2008 Water Master Plan called for it. The applicant's exhibits, especially the 10/12 update, demonstrated they could not agree internally on how much money their supposed new intertie was going to save

West Linn based on the 2008 Water Master Plan from replacing a pipe under the I-205 Bridge or building a redundant pipeline. That was basically 95% of their community benefit. The rest were things the code required or replacing things they were going to destroy anyway, such as the old AC pipeline. Mr. Bryck concluded there was no community benefit.

Regarding the process, Mr. Bryck had chaired the Great Neighbor Committee for a while and resigned because the City Manager and his appointed mediator did not want to talk to him or even have him in the room when discussions were being held. Lamont King had testified that the process had been a waste of time and netted almost nothing for the neighborhood. That there had been a mediation process should not be used to justify allowing the proposal. What it came down to was the Commissioners had to decide as fellow citizens. Staff wrote off things like noise, saying it was not going to exceed the city standard so the Commissioners should not look at it. Lake Oswego staff had decided in 2007 to use his residential neighborhood as their least political cost option. That did not obligate the West Linn Planning Commission to cave in to their political and legal pressure and threats.

Jerry Henderson, 4130 Mapleton Dr., submitted a newspaper article (October 19 Memo to the Planning Commission p. 100/105) He observed CDC 60.070 had been well addressed by others. He objected to the proposal. He bought his house in 1993 because he loved the neighborhood. He was afraid they were going to lose it. It was a neighborhood where people lived many years. They did not want it to change. They purchased property with CC&Rs in place that they thought protected them. They hoped the City would stand up and support them. They felt left. He asked the Commission to try to help them protect their neighborhood. He asked the Commissioners to read his written testimony, which contained a 2007 newspaper article about the future needs for drinking water in Clackamas County that quoted the applicant's project manager. He hoped the Commission would not rubber stamp the application and abandon affected residents. Commissioner Miller assured him that the Commissioners would take what citizens said in their heartfelt testimony into account.

Commissioner Martin **moved** to continue the hearing to October 25, 2012 and keep the record open for oral and written testimony. Commissioner Axelrod **seconded** the motion. Chair Babbitt clarified that the Commission would hear oral testimony from people who had not yet testified at the hearing. They would receive written testimony from anyone prior to the continued hearing. The motion **passed** 7:0.

#### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

#### **ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT**

#### **ITEMS OF INTEREST FROM STAFF**

**None.**

#### **ADJOURNMENT**

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 11:02 p.m.

APPROVED:

  
\_\_\_\_\_  
Michael Babbitt, Chair

12-7-12  
\_\_\_\_\_  
Date