



PLANNING COMMISSION

SPECIAL MEETING

Minutes of April 25, 2012

Members present: Chair Michael Babbitt, Vice Chair Gail Holmes, Russell Axelrod, Thomas Frank, Holly Miller, Christine Steel and Robert Martin (arr. approx. 8:15 p.m.)

Members absent:

Council Liaison:

Staff present: John Sonnen, Planning Director; Chris Kerr, Senior Planner; Tom Soppe, Associate Planner; Zach Pelz, Associate Planner; Dennis Wright and Khoi Le, Engineering Department; Jim Whynot, Water Supervisor; and Pam Beery, Legal Council

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 6:00 p.m.

PUBLIC COMMENTS (None)

APPROVAL OF MINUTES

Commissioner Miller **moved** to approve the Minutes of March 7, 2012. Commissioner Steel **seconded** the motion and it **passed** 6:0. Commissioner Martin was not present.

PUBLIC HEARINGS

CUP-12-01/DR-12-03, Booster Pump Station at the Bland Reservoir site [Continued from April 4, 2012.]

Chair Babbitt opened the public hearing. Commissioner Martin was not present during this hearing. Chair Babbitt asked the Commissioners to declare any additional *ex parte* contacts. Commissioner Steel related she served on a committee that was considering the West Linn water system in general. She had toured the system with Jim Whynot, Water Supervisor. They had visited a number of reservoirs and pump stations, but not the Bland reservoir.

Public Testimony – continued

Proponent

Alice Richmond, 3939 Parker Rd., recalled the Commission had approved the school as a conditional use. One of the conditions was the pump station. The project was not legally connected to a requirement to do road repair.

Opponents

Kathi Halicki, 2307 Falcon Dr., questioned that Trillium School should be considered the trigger for a pumping station. It would be open before the pumping station was operational and the greatest need for water would be during the summer when school was not in session. She held the issue of lack of water should have been discussed and resolved before the bond issue was voted on. That would have been transparent government. She recalled there was an issue of what should or should not be in the Stafford triangle. She asked the City to table the application and revisit it when there was actually a need. She asked the City to table the application until the condition of the roadways could be addressed. Tannler and Bland were

not in good condition. They needed to be strengthened before the project began so they could accommodate heavy trucks and again after the project.

Gary Hitesman, 2188 Clubhouse Dr., displayed photographs of some houses in the area and compared them to the proposed design, which he called 'The Green Turd' because it was just a concrete box painted green. He held what was proposed did not belong in the neighborhood and did not meet Design Review or Landscaping code. He suggested more work was necessary to get the proposed landscaping to blend in with the rest of the landscape. He favored using native plants instead of arborvitae. He indicated he did not favor the proposed massing and he questioned the need for the project. He questioned where the City was going to find an emergency generator to take to the pump station while an emergency was going on. He advised the emergency generator would need to be brought to the site for testing every month or two. That would generate noise. He explained what was really needed was an *in situ* emergency generator. That would require a slightly larger building. He advised that the Commission could not approve the pump house without it having an attached emergency generator. He held the Commission should send the application back to the Engineering Department for redesign to ensure it met the landscaping and emergency generator requirements. He advised there were other alternatives that could be used to make the pump house fit in better with its surroundings.

Ken Pryor, 2119 Greene St., Vice President of the Savannah Oaks Neighborhood Association, related the neighborhood was going to prepare a formal objection. He discussed and submitted a compilation of issues that had been solicited from the neighborhood. Residents believed a Comprehensive Plan amendment/zoning change was the correct process. That was because what was proposed was not an expansion but a new use of the site. It was an industrial plant that should not be in a residential neighborhood. They were concerned about the lack of an auxiliary power supply for an emergency. They were concerned seismic hazards had not been adequately addressed. One of the neighbors had received information that homes in the area would not be covered by City insurance if there was an Act of God. There was no environmental impact study. People objected to the plan to remove several significant trees. Residents felt there might be alternate sites that might be more suitable for the station. No notification had been provided to neighbors who might be adversely affected by the plant when the Water Master Plan was adopted in 2008. That violated CDC 99.038. The code stated the purpose and intent of design review was to conserve and enhance the appearance of the City. Residents held the application did not meet that criterion. They believed the approval criterion that every reasonable effort was to be made to preserve existing trees was not met. They recalled conflicting testimony. The contractor stated the City had told them to move the station to where trees had to be cut down but the applicant said the contractor had recommended it. The code called for above ground utilities to be buffered and screened to obscure the view and reduce noise levels. The application did not meet that code. There was general consternation that when the school was put on the ballot the voter guide had not related there was inadequate water for a new school. Residents were aware of many instances when pumps failed and water spilled. Having so much water stored uphill from dozens of houses was just not acceptable. Residents asked the Commission to deny the application so the applicant would go back to the drawing board and use some other site that was not in such close proximity or in such a steep environment.

Vice Chair Holmes noted the Water Master Plan had been posted in the *West Linn Tidings* in October 2008 and delivered in water bills. Mr. Pryor responded that if it had been buried there the residents likely overlooked it. When asked, Mr. Pryor clarified that the Association was going to vote to submit a formal request to deny the application at the next neighborhood association meeting on May 3, 2012.

David Rittenhouse, 2101 Greene St., President of the Savannah Oaks Neighborhood Association, related the application had caught the Association off guard. He had been a member of the Association since 2005 and had a good memory, but he could neither recall nor find a record of an Association meeting about the Water Master Plan. It would significantly impact the Neighborhood. He did not know if any alternative sites had been considered. People were concerned about earthquakes and Acts of God. He related that when he inquired about the criteria for protecting water tanks during earthquakes staff had told him the neighborhood was lucky because theirs was strapped down. Others were not strapped down. That was the best the City did. He related that residents at the top of the Neighborhood Association could not get flood insurance because they were not in the floodplain. During the questioning period, Mr. Rittenhouse clarified that the Association had received notice of the current application, but he could not recall that the Association had received proper notice of the 2008 Water Master Plan. He believed he would remember something that significant. Legal council advised that the project was properly noticed.

Rebuttal

Mr. Wright testified that the facility was designed to current seismic standards. No additional sites had been considered in the Water Master Plan process because the subject site had an existing reservoir and was over an acre. The master planning process found that an additional 300,000 gallon reservoir and pump station was needed to serve growth in the Rosemont zone. The school triggered it because the Rosemont tower reservoir was much smaller than what was really required. That had happened before he joined the City and he was not certain why. To mitigate for the small size of that reservoir the Plan found there had to be three backup feeds into the reservoir to handle the additional demand from growth. One came up from View Drive. It had been constructed when the Rosemont Point development was built. There was another pump station at Horton. The third one was the subject site. It was an optimum location because its size would accommodate the facility as well as landscape buffering. Having a pump station close to a reservoir was an ideal situation because it reduced line loss and was more energy efficient. He stated the design would meet all the noise criteria in City codes. A deciduous tree out front that barely met significant status had been identified. The applicant was very willing to mitigate its loss with other plantings that would actually enhance the screening. A tree such as a fast growing Leland Cypress would provide screening year-round and it would be a stronger tree. The applicant was trying to be a good neighbor and would comply with the conditions of approval mitigate impacts to the neighbors.

Vice Chair Holmes asked about three-phase power. She wanted to know what the cost difference was between using a route over the Mathews' property and using an alternative route. Mr. Wright confirmed the pump station would require three-phase power and PGE would bring it into the site. He understood that would improve the reliability of the power in that area and the new pump would have a 'soft start' feature and would turn on gradually so people would not even be aware of it. He related the route option to go out to Bland and then along the Salamo right-of-way was a much longer route and would have more impact on citizens because the pavement would be torn up. The proposed route was the shortest, lowest cost and least impactful route. It would impact three lots that were in the county. The applicant would need to obtain an easement from some property owners. Mr. Wright confirmed for Commissioner Miller that the applicant would take out ash trees and replace them with evergreens. No other significant trees were at risk. Commissioner Steel recalled they were both ash and alder. She asked if it was feasible to have a generator on site and what it would cost. Mr. Wright related the applicant had considered having a generator on site. They had a couple of pump stations where generators were on site. They had not opted for that at the Bland site because it was more expensive (estimated to be around \$200,000) and they could use a portable generator for backup. If a generator was on site it would require regular maintenance and testing that might cause noise and interruption. Commissioner Steel

inquired about who would maintain the access driveway. She recalled the owner of the property the access was over had testified at the last hearing. She recalled he had not opposed the additions and fencing, but he had seemed to want to be sure his own needs and interests were considered. She asked if the applicant could assure him he would be part of decisions that were made, especially regarding screening. Mr. Whynot reported he had met with Mr. and Ms. Coppedge that day. They had discussed things like the driveway and screening. They maintained the driveway, but he had assured them the City would repair it if the City damaged it. It had just been paved and was in good shape. The Coppedge's had indicated they would prefer to see the trees go because they were 'hideous' and they seemed to like the idea of having evergreens there. Mr. Wright related they actually preferred the proposed station location because if it were moved further west it would be in the line of sight from their deck.

Commissioner Steel noted the screening was to screen the chain link fence. She indicated she would prefer to screen the utilities rather than the fence. She suggested the fence could be green so it would blend in. She explained that if it was positioned on the property line people would not get confused about where the boundary was. Mr. Wright indicated the applicant wanted to be a good neighbor and would do whatever the Commission wanted them to do with the fence. He noted the neighbors on the north side already had their fences in place and when the property to the east was developed there would be a fence there as well. Those residents would likely not be able to see the chain link fence. The applicant had talked to the Coppedge's about screening and they had indicated they were receptive to either alternative for a fence.

Commissioner Axelrod and the staff discussed an existing well on the site. It had been drilled on the City's property by mistake and then capped by a predecessor owner of the Coppedge property. He advised that the well should be properly decommissioned before the station was built. He asked why the applicant did not consider the Horton location. Mr. Wright explained it would not serve as the third backup source that water consultants recommended because Horton was already one of the feeds. Commissioner Axelrod was concerned that the site plan was so spread out over the parcel and the structure would be so close to where other homes would be built. He would prefer the northwest location, but he noted it might require removal of one of the significant trees and the neighbors did not favor it because the facility would be in their direct view. He asked if it was possible to put the station there and plant vegetation that would block that view. Mr. Whynot related the Coppedges preferred not to see it from their patio. He had been in their house and looked out of their windows and found they would not see the proposed facility from their house because of existing shrubbery on their own property that would block both the station and the group of trees to be removed. The additional screening would screen the view from the driveway. Commissioner Axelrod suggested if a sewer connection was not needed a swale could be used. Mr. Wright related the water volume was extremely low and the City did not want to spend the money to connect to the sewer. He and the Building Official had talked about it and wanted to pipe the water outside so it never touched the floor.

Commissioner Axelrod suggested the impact of the 15' high structure could be reduced by excavating and lowering it.

Everett Butts, Four B's Engineering, advised that would require an additional level of design and additional cost. The walls would have to be designed to handle the soil loading outside and the designers would have to verify there was no ground water encircling the site. He explained that the Building Code categorized booster pump stations as essential facilities. That meant an extra layer of design effort was necessary because the facilities had to stay in operation during emergencies such as a moderate earthquake. Commissioner Axelrod asked about the habitat value of the property; if it was to be entirely fenced; and if it needed to be habitat friendly fencing. Mr. Soppe advised the site was not in the WRA and the only resource-related code criteria to apply were with respect to trees.

Commissioner Frank asked about three-phase power. Mr. Butts related that PGE would bring in two additional phases in order to achieve three-phased power. Its biggest concern would be ensuring that the new power did not cause problems with existing residential service. He anticipated residents would benefit from it because of redistributed, more balanced, transformer loads. Commissioner Frank asked what the notification standards were. Mr. Soppe said the current process required a neighborhood meeting and 500-foot notice. That had been done. He said he had researched the notice requirements for the water master planning process and found they were not only met but exceeded. Commissioner Frank asked if the plan would have to change if the City could not negotiate the easements. Mr. Wright related the pump station site layout would not be impacted at all. The option to go up to Bland and Salamo was available. Commissioner Axelrod said he preferred to see a more rigorous vegetation plan with a variety of native vegetation instead of a wall of arborvitae that would look too much like commercial use. Mr. Wright said the applicant would be happy to do that.

Chair Babbitt asked if the applicant had researched the well. Mr. Butts confirmed they had found records of the well which indicated it was a fairly shallow-cased well about 50 feet deep in basalt rock. He confirmed the well needed to be permanently abandoned per state standards. He intended to ensure that got done.

Chair Babbitt discussed the concern about the generator. \$200,000 was a lot of money if a generator could be transported to the site fairly easily. Mr. Whynot related that one of the two other stations serving the Rosemont zone had an on-site generator. This facility and the other one that did not have a generator would have a place to plug in a generator. If the site with the generator was using it and the other sites needed one the City would have to get other generators out there. Chair Babbitt asked if it was realistic to have a portable generator on the subject site. Mr. Whynot advised the City did not have a portable generator powerful enough to run that station. It would have to rent one and transport it to the pump station. He explained one of the other two pump stations did have an on-site generator that would feed water into the zone in the event of a power outage. That was the backup. Commissioner Miller asked how far away the City would have to go to rent a generator in the event of an emergency. Mr. Whynot advised it could likely be four hours to a couple of days if the bridges were down, depending on the emergency. The worst case scenario would be if the I-205 Bridge fell down. Commissioner Miller asked if the City was guaranteed a rental if more than one City was looking for one. Mr. Whynot advised the City did not have a contract in place that guaranteed it a rental. When asked, he confirmed the staff would be willing to consider that. Mr. Butts advised it was not unusual to set up stations that allowed a portable generator to be plugged in. In this case the City would have more flexibility than many other areas because it had three units. It could run just one pump and do load sharing so it did not need such a large generator in an emergency. That offered flexibility to handle those situations. He advised that because of 9/11 and storms there had been a large influx of rental units in the metropolitan area. He did not anticipate it would be too difficult to find a generator that would run the station. Chair Babbitt noted the Commission was walking a fine line. It had to apply the code. It was not the body to set policies and procedures for how the City handled emergencies. Commissioner Axelrod commented that having to find rentals during an emergency did not sound like a very good approach. It would be nice to know what the implications would be to have a small emergency generator on site. Mr. Whynot recalled the master planning process had analyzed how to address emergencies and was comfortable that there would be three pump stations serving the zone. One of them would have a backup generator. There were two other sites in town that also had backup generators.

Additional Public Testimony

Chair Babbitt invited a person who had just submitted a testimony form to come forward to testify.

C. Mathews, 2305 Crestview Dr., testified there was a significant Douglas fir tree in the area of the easement that would go past his house that would be destroyed. He clarified he lived in the house at the end of Crestview and the easement would abut his property.

Additional Rebuttal

The applicant waived the opportunity to provide additional rebuttal.

Additional Staff Comments

The staff had distributed the April 20 Memorandum entitled, "Answers to Commissioners' concerns on Bland Water Pump Station, CUP-12-01/DR-12-03"; and the April 25 Memorandum entitled, "Correspondence since April 20 PC packet." Mr. Soppe reported that the City Arborist had advised that none of the trees proposed to be removed were significant trees. He advised off-site infrastructure, including the pipeline, was outside the purview of the CUP. He pointed out that the staff memorandums answered questions and contained emails submitted by the Commissioners, the City Arborist, and members of the public. Roberta Schwarz had submitted photographs of an Idaho reservoir she found to be more aesthetically pleasing. The City Arborist had corrected the affected trees' species; reported that none of them were significant trees; and advised it would be better to replace them with stronger, fast growing trees for long term screening. The April 25 memorandum answered Commissioner Axelrod's questions including questions related to hydrology and whether the structure should be reviewed as an accessory structure. Mr. Soppe advised the structure was too important to the site to be an accessory structure. Vice Chair Holmes asked what it would cost for the facility to have its own temporary generator. The staff did not have that estimate.

Deliberations

Chair Babbitt closed the public hearing. Staff pointed out they had crafted new Condition 6.b (related to screening) and Condition 7 (to decommission the well). Commissioner Frank indicated he would support the application with the additional conditions. He suggested adding Condition 8, which would call for 3-phase power to be brought in. Commissioner Miller indicated she was leaning toward approval, but she was uncomfortable because of the generator issue. She did not know if requiring 3-phase power was within the purview of the hearing; if it needed to be a condition of approval; or if it was required anyway. Commissioner Steel did not favor the requirement to set the fence back five feet from the property boundary. She indicated the screening should screen the facility itself and not the fence. Putting the fence on the property line would help avoid any adverse possession claims. She asked for clarification regarding which site plan Condition 1 should refer to. Mr. Soppe clarified that the site plan the Commissioners were given on the night of the application had another possible future water tank on it that was not part of the current application. Vice Chair Holmes expressed concern that there might not be a generator on hand. She noted the City was separated from help from other jurisdictions by a lot of bridges. She was concerned about the impact on the neighbors of the unsightly fenced area and removal of trees. Commissioner Axelrod agreed with the suggestion for a condition related to electrical service. He was concerned about the generator. He held the pump house should function in an emergency and the emergency response needed to be better defined. He suggested the City might purchase a generator. He was not sure the Commission could require it. He recalled the neighborhood association opposed the application. He saw a need for more dialogue with the neighbors and the neighborhood association to ensure all of their concerns were being addressed.

Chair Babbitt asked staff if the Commission had the authority to impose a condition of approval that would require the City to purchase a portable generator or construct a permanent generator station. Ms. Beery advised the Commission had the authority to condition approval on a generator if it was directly related to the approval criteria.

The Commissioners went through the list of issues to reach consensus. The majority of the Commission did not think a condition of approval requiring three-phased power was necessary because they understood it would be required anyway. Mr. Sonnen had indicated he understood that the pump station would only become operational with that power. Vice Chair Holmes and Commissioner Frank wanted it to be a condition of approval. Chair Babbitt polled the Commissioners and found they all agreed to impose Condition 7 which required the well to be decommissioned. The Commissioners then discussed the fencing. Commissioner Steel advocated changing the conditions of approval to require the fence to be located on the property line with the vegetation behind it. She indicated she believed screening was really needed to screen the pump station/reservoir. That could be done behind the fence. Vice Chair Holmes agreed. Commissioner Miller observed that chain link was not very attractive, even if it was green. It would not be in keeping with the other good neighbor fences in the neighborhood. She wanted to be cognizant of the neighbors concern that it would look too industrial. She preferred to have the fence set back five feet and well screened, but not necessarily with arborvitae. Mr. Soppe displayed the aerial view and pointed out which houses had wooden fences. He recalled that people did not want to see chain link fencing. That was why the staff had crafted Condition 6(a). Commissioner Steel noted the proposed condition said the applicant was to coordinate landscaping and fencing materials with the property owner to the south to screen the pump station and reservoir. She noted that was the neighbor who needed the most screening. She indicated she agreed with the newly proposed language that called for evergreen trees and native shrubs. If the fence was on the property line that screening would be behind it. Commissioner Frank would leave the condition as drafted, in deference to the neighborhood. The fenced area would be in view from Bland and from Tannler. It would look too industrial if it were not set back with a shrubbery buffer in front of it. Commissioner Axelrod also favored setting the fence back behind the vegetation. He preferred a green colored fence to soften it. He asked how high the entrance gate was. Mr. Soppe noted the proposed condition said it was to be no more than 8 feet high, but the applicant proposed a six-foot high fence. Commissioner Axelrod suggested changing the condition to specify six feet. Vice Chair Holmes wanted to know that the fence screening vegetation would cover the fence. Mr. Sonnen pointed out the proposed condition suggested Leland Cypress, which was a fast growing tree that could reach 15 to 20 feet in five years and be as tall as 30 feet at maturity. Mr. Soppe suggested inserting the words, 'fast growing.' Commissioner Axelrod advised there were other species that grew fast such as Hogan Cedar that the applicant could look at. Commissioner Steel related that she would not deny the application on the basis of Condition 6(a) which related to screening.

Applicant's response to changed conditions of approval

Chair Babbitt observed the applicant was indicating they would agree with the conditions of approval that had been crafted.

Commissioner Axelrod then suggested considering adding language to Condition 5 to call for a bioswale or some alternative to the sewer if that was feasible. He wanted to look at incorporating onsite water management into the design. He recalled the applicant had indicated it would be feasible to do that. He suggested considering a condition calling for lowering the pump house profile a couple of feet by requiring a shallow excavation. Commissioner Steel did not support that because she was concerned about whether a bioswale would be sufficient if there was a tank overflow and she did not support requiring the applicant to start reengineering the design at this time. Commissioner Axelrod clarified the bioswale he suggested was not intended to address overflow. Chair Babbitt was willing to consider modifying Condition 5, but he did not want to look into excavating and redesigning the site. Commissioner Miller explained that she was sensitive to how high the tower would be but not

to the point of imposing a condition of approval calling for excavation. Commissioner Frank did not favor looking into a condition of approval related to excavation. Vice Chair Holmes did not think looking into excavation was a good idea. Chair Babbitt observed the majority of the Commission did not want to explore imposing a condition related to excavation. Mr. Soppe crafted changes to Condition 5 by adding a last line related to an alternative solution if the applicant would not need to include sanitary sewer, such as a stormwater bioswale.

Mr. Wright discussed proposed Condition 5. He recommended conditions that called for the applicant to meet all the building and plumbing code requirements. If it turned out a sanitary sewer connection was required by the code the applicant had no other option. If the code did not require it the applicant would do whatever they were required to do in lieu of a sanitary sewer connection. Commissioner Axelrod suggested adding 'or similar design' after 'bioswale.' Vice Chair Holmes and Commissioners Miller and Frank agreed. Commissioner Steel related that she would have preferred a more careful study of the impacts. Chair Babbitt indicated he felt comfortable moving forward with the changed condition because the applicant would have to meet the code. Mr. Wright confirmed that the applicant would agree to the seven conditions of approval. Commissioner Axelrod asked if a condition was necessary in light of the neighborhood's request for more time to resolve any remaining issues. Ms. Beery observed that Chair Babbitt had already closed the hearing and would have to reopen it to allow testimony by the neighborhood association and anyone else who wanted to testify.

Commissioner Steel **moved to approve** CUP-12-01/DR-12-03 subject to the seven conditions of approval that had been edited during deliberations. Commissioner Miller **seconded** the motion.

Vice Chair Holmes observed the Commission had not discussed the backup generator. The applicant had not addressed an emergency need for adequate water and how they would supply it. She wanted to add a related condition. Ms. Beery observed that condition might not address the applicable criteria. She suggested after taking action on the application the Commission could discuss asking the City Manager to consider the need for emergency backup. Chair Babbitt polled the Commissioners to assess support for a condition regarding a generator. Commissioner Steel recalled she had learned during a recent tour of West Linn's water system that there were redundancies and ways of getting water to different reservoirs when one was offline. The Water Department staff seemed to feel comfortable with the way things were. She indicated that she would feel more comfortable knowing Public Works had an emergency generator they could pull out and take wherever they needed to. She would not make it a condition of approval. She would send a memorandum to the City Manager conveying the concerns of the Commissioners and public about it. Commissioner Axelrod recalled hearing that the City was able to provide water to that zone with the existing on-site generator. He suggested the Commission send a memorandum asking the administration to look into whether one or two backups could be worked into the system. Commissioner Frank was not convinced the Commission could impose a condition of approval calling for a backup generator. He did support sending a memorandum conveying the Commissioners' concerns. Commissioner Miller indicated she was very uncomfortable after having learned what the City had and did not have. She wanted to convey that to the City but would not tie it to a condition of approval. **The vote was conducted and the motion passed 5:1.** Vice Chair Holmes voted against. The Planning Commission recessed for fifteen minutes and reconvened at 8:15 p.m. when Commissioner Martin joined them.

CUP-12-02/DR-12-04, proposal to modify and expand the Lake Oswego Water Treatment Plant and site [Continued from April 18, 2012.]

Chair Babbitt opened the hearing. He asked the Commissioners to declare any site visits or *ex parte* contacts they had not previously declared. Commissioner Martin reported he had visited Lake Oswego websites to try to track down the documents the applicant referred to in the

material in the record so he could understand as much of the project as he could. He had provided a set of those links to the staff and they had included them in the record. Commissioner Steel had not participated in the previous hearing. She reported she had watched the video and indicated she was prepared to participate. She related she had gone to the water plant's open house in 2010. She reported she had walked by the site on several occasions. On one occasion she was with a friend from Tigard who offered an opinion, but her friend's opinion would not unduly sway her. As part of a City task force involved in the City's general water situation she had recently toured the water system with Jim Whynot, the operations supervisor for the water system. They had stopped at the concrete pad over the emergency intertie. Mr. Whynot had talked about how frequently that intertie had been used. She hoped he would offer more details about that during the hearing. Commissioner Axelrod related that he had received the email with the links to information about the history of the water treatment plant and he planned to look at them all during the process. Chair Babbitt invited the Commissioners to declare any potential or actual conflict of interest or bias. None were declared. When invited by the chair no one present challenged the authority of the Planning Commission to hear the matter or the ability of any individual Commissioner to participate.

Public Testimony – continued

Opponents

Natalie Christensen, 4738 Mapleton Dr., testified the applicant had not been a good neighbor. Residents had been bullied and lied to. An industrial facility should not be in a residential neighborhood. The applicant should not have been knocking on doors, offering money, and threatening to get what they wanted because they were Lake Oswego. It was upsetting that whenever she asked them about insurance they always answered that nothing would ever happen. She was concerned that if something happened it would take her house down the hill. She indicated the applicant had been rude to her. She was concerned that over 7,000 trucks would drive along Mapleton as children walked along the street. She questioned how the expansion would benefit West Linn when it already had an emergency water agreement. She asked for a guarantee that West Linn would have the water when it needed it.

Linda Edwards, 3680 Mapleton Dr., stated she strongly objected to the expansion. Others had already stated her concerns.

Carl Edwards, 3680 Mapleton Dr., submitted written testimony and read it aloud (see Exhibit Supplemental Public Comments Received at April 25, 2012, Planning Commission Public Hearing, pp. 12-15). He was concerned about the risks of loss of life and degrading of property values. He contended the plant was not suitable for a residential neighborhood. He related there were risks connected with 48-inch and 42-inch pressured transmission lines. Those sizes had the worst problems. They would be as close as 30' - 60' from some front doorways. He questioned why Lake Oswego did not build the plant in its own industrial area; pull water from the Willamette; and leave the existing plant alone. He related his efforts to negotiate with the applicant had been unsuccessful. They had sent condemnation papers. He had asked one of the applicant's representatives what they would do if there was a major flood from the transmission line. She had told him that he needed to check with West Linn because it had a policy. He indicated he believed the applicant wanted to forget about it after the application was approved. He advised there were numerous underground springs in the neighborhood which would be diverted to the new ditch, which he imagined would be 12' wide and 10' - 12' deep. He was concerned about the safety of kids walking along the street. He recalled the applicant had explained they would not use a site in Foothills because that was their park. He contended Lake Oswego wanted the plant not only to serve its own needs, but for the money it would make selling it to Tigard. He indicated he expected the Planning Commission to deny their application.

Mary Robinson, 3960 Mapleton Dr., questioned whether the code allowed what the applicant proposed to be in a family neighborhood. She recalled that Mr. Komarek had testified that Lake Oswego did not have industrial land. She contended it could use the Foothills district. She related that the applicant had told the neighbors in public meetings that they had looked at many options in Lake Oswego and Tigard and found the costs were prohibitive. She referred to a section that quoted Jane Heisler (#4) when Ms. Heisler explained the cost of relocating the plant would negate the savings Lake Oswego got from partnering with Tigard; that Lake Oswego would lose tax revenue from the properties that would have to be condemned; and that Lake Oswego had not attempted to find a new location for the water plant. Ms. Robinson recalled the meetings the applicant held were geared so the neighbors could not talk and in many of them the applicant's representatives had indicated they did not know there were covenants. She pointed out that the applicant had unsuccessfully tried to ignore the covenants in a 1986 application. She anticipated an amazing number of 40-foot trucks would be using the very narrow street for two years. She indicated the bottom line was this was industrial use and the residential neighborhood could not handle it. She contended the plant needed to be in Lake Oswego's neighborhood. She noted that once the houses were torn down the applicant would not have to pay taxes to West Linn. She asked the Planning Commission to deny the application.

Cindy Kauffman, 3993 Mapleton, observed that stream protections applied on the private property in her neighborhood that she and the other residents paid taxes on. The applicant did not pay taxes on the lots they owned and were going to install a four-foot diameter pipe under the stream. She questioned who would buy a residential property that had so many industrial impacts. She contended the plant and the pipeline were the same project and should be treated as such. She held the project held no value for City of West Linn. She and the City had a lot to lose if the project moved forward. She recalled the applicant had explained that pipe breakage resulting in property damage was 'highly unlikely.' She cited news reports that an 8-inch water pipe break in Portland in 2010 and a 12-inch water main break in Tigard in 2011 had resulted in flooding, damage to homes, and halted service to other homes. She wanted to know where and how many shut-off valves there would be; who would shut them off and where would they have to come from. She held there were too many questions and not enough answers. She contended the project had no benefit for the citizens of West Linn. She held that three years of destruction and daily interruptions of residents' lives was unacceptable. She urged the Commission to deny the application. She indicated the applicant should put the plant in their own backyard.

Randall Fastabend, 18787 Trillium Dr., President of Friends of Robinwood Station, advised that the 250 Friends had grave concerns about the project. He questioned whether the applicant had really listened during the 25 public meetings. They had dismissed the list of specific mitigations the Great Neighbor Committee had put together, explaining they were not in the budget and they would look at them after the permit was approved. He questioned what would compel them to even look at the list after approval. He said the Great Neighbor Committee list of mitigations was an excellent list that addressed a lot of concerns. He asked the Commissioners to look at it and decide for themselves. He confirmed the list had been submitted to the record.

Jack Norby, 4040 Kenthorpe, explained the reasons for residents' lack of trust. West Linn Planning staff had used some of the exact language the application used. The City staff and the applicant's staff were all friends and went to the same conferences together. Five years ago Mr. Komarek had sat in Mr. Norby's home and stated that rumors of a huge expansion of the plant had no validity and any expansion would be minimal. Mr. Norby had subsequently found out the applicant's plans were well underway. Two months later Mr. Komarek had been quoted as saying his view was that with the projected growth in Clackamas County the demand for water from the Clackamas River would exceed the river's ability to support fish in the next

two decades. Mr. Norby questioned whether the applicant's statement that nothing would change was true if they needed noise abatement walls. He was concerned it was major construction that would even get larger in the future. He cited LO-Tigard Water Partnership Oversight Committee meeting minutes that reported that Mayor Hoffman had asked if all the water was for Tigard or if it would be possible to sell water to Washington County looking ahead 20-30 years. Mr. Norby expressed his concern that Lake Oswego would just keep expanding the plant every few years when the political timing was right. He related he lived 100 feet from the site. He anticipated that he would be kept awake at night for two years due to all night construction because the applicant had said they would not use backup beepers at night and the West Linn City Manager, who happened to live in Lake Oswego and had been Lake Oswego's assistant city manager, could approve longer hours. He reported that although the applicant's plans showed many trees on the west side of the property, they had cut most of them down two months ago. When they entered into the CC&Rs with the Mapleton neighborhood it was to allow them to continue operation of the plant. Now they wanted the CC&Rs canceled because they wanted the giant expansion. Mr. Norby explained that Mapleton property owners had initially agreed to allow construction and upgrades because they trusted the applicant to be good citizens and keep the plant to a minimum. The applicant claimed to have studied other sites, but they had no paperwork to prove that. They claimed to have property assessments that showed no changes in value on Kenthorpe and Mapleton but could not produce them. Mr. Norby related that Gary Hitesman would present the plant to scale, which was different than what the elevations Lake Oswego presented looked like. He noted the applicant's drawings showed buildings only a foot taller than the people. He contended that the huge new plant violated Chapter 60.070 because it was a new use, a huge industrial expansion into a residential neighborhood, and would only continue to grow. He explained it was a 'new use' because the plant currently provided water to Lake Oswego and a small part of Tigard. The new use was all the additional customers they were planning to add – some 40,000 plus - and perhaps also the rest of Washington County in 20-30 years.

Commissioner Martin asked why Mr. Norby believed there would be all night construction. Mr. Norby reasoned that the applicant was already planning on 24 hour construction because they had observed that the City Manager could authorize construction outside of 7:00 a.m. to 7:00 p.m. and then stated they would not use backup beepers at night in the very next sentence.

Stacey Gianopoulos, 5035 Mapleton Dr., offered the perspective of a riverfront property owner. She related her experience bringing in fill and installing drain pipe and a catch basin in order to build a home above the floodplain; her experience with flooding; the adverse impact of trucks and buses using her driveway to turn around; and that the logs and debris that collected at the bridge the City had built in Mary S. Woods Park created a safety risk. She indicated that residents along that section of Mapleton felt they were being 'choked' from all sides: the front; the river; the park; and by the proposed expansion of the plant. She disagreed with the contention that there would not be any consequences from the plant expansion. She held the proposal was not a win/win proposal. She agreed to submit her full written testimony (see Exhibit Supplemental Public Comments Received at April 25, 2012, Planning Commission Public Hearing, pp. 30-32). She asked the Planning Commission to deny the plant expansion. When the Commissioners asked her where the bridge was located she clarified that it was the bridge to the island at the base of Mary S. Young Park. It was in the vicinity of where the pipe was going to come up and around.

Additional Public testimony by those who had also testified at the previous hearing

Proponent

Alice Richmond, 3939 Parker Dr., observed the plant would have to meet federal, state and local codes and regulations. She observed that subdivision construction activity also had impacts. She related that newer technology allowed buildings to be built on ground that

moved. She advised that West Linn had more problems with its water system and old pipes than Lake Oswego did and was using the intertie more than Lake Oswego was getting water from West Linn. Until West Linn made water system improvements it needed it. She related the West Linn staff worked night and day to repair the water system and broken pipes. She asked the Commission to approve the application.

Opponents

Dave Froode, 19340 Nixon Ave., recalled that Mayor Hoffman had suggested the Great Neighbor Plan, but it had been set aside. He related that he was an insurance adjuster. He advised that homeowners insurance excluded repeated seepage, surface flood water, ground water, and landslides, which were the types of risks being created by the project. If anything happened the property owner was basically on his own unless the municipality was found to be grossly negligent. He advised that ORS 30.273 limited the liability of a public body to property damage of \$500,000 per single occurrence and \$1.2 million for an injury. He advised that during construction the applicant could require all of its contractors to carry liability coverage. It might be unusual for a municipality to carry liability coverage in excess of statutory limits for post construction operations. The fact that state statutes limited exposure should not prevent the applicant from providing the necessary protection for an abnormal situation. They would have created the risk and should be the ones to remedy it. He anticipated that someone who had the choice to buy a house in a construction zone or in a non-construction zone would not chose the one in a construction zone unless they could get it at a reduced price. Real estate agents had suggested it might be 10% to 25% less. A house next to a sewage facility had sold for half its original price.

Karie Oaks, 1125 Marylhurst Dr., read aloud a prepared statement (see Exhibit Supplemental Public Comments Received at April 25, 2012, Planning Commission Public Hearing, p. 29). She related that she had not immediately recognized the signs placed along Highway 43 as land use notices due to their placement, color and format. She held that citizens should be able to easily recognize land use notices. She questioned why the signs offered a Lake Oswego planning department person as the contact. That kind of contact might not be made part of the application record and that person might not give the citizens information they wanted to know. She indicated she opposed the application and was asking the Commission to deny it. If the creek people referred to in testimony was in a WRA the applicant should be mitigating that.

Gary Hitesman, 2188 Clubhouse Dr., asked the Commission to punt to the City Council, deny the application, or rule it incomplete. He showed a photograph and an elevation of what the applicant had first told the neighborhood the plant could look like about 14 months ago. He showed a model of the site that he had created based on the information from the applicant. He advised their drawings were lacking in detail; their plans did not match elevations; critical decision markers related to code were left open to interpretation; landscaping, grading, architecture and engineering processes were barely at 30%, and the application contained too many conflicting errors and omissions for the Commission to rule on it. He advised the staff's findings were not supported or believable. Their work suggested they had a predetermined conclusion even though the application did not meet the code, City Charter or Oregon Revised Statutes related to land use planning (ORS 197 and others). He said state Goal 1 objectives had not been fulfilled. It was quality that mattered – not quantity. He noted the applicant talked in generalities and rarely talked about specifics. Mr. Hitesman contended the project was not permitted outright (per CDC Chapter 67). Page 12 information obscured the added harmful traffic imposed along Kenthorpe. The true ADT numbers would turn Kenthorpe into an industrial park collector roadway. Given the illegal fence heights and canyons created within the plant, noise levels would be exacerbated and sent due west towards Highway 43. The frontage improvements were out of scale with the neighborhood and did not meet Chapter 55 requirements. Visual impacts shown were not physically integrated into the neighborhood.

Page 15 (regarding visual impacts) of the staff report was misleading. The recommendations and conditions of approval did not address the shortcomings and harmful impacts that Mr. Hitesman's model showed. He indicated the findings related to CDC Chapter 44 (Fences); Chapter 54 (Landscaping); Chapter 55 (Design review) and most of Chapter 60 (Conditional use) did not hold water or meet the code. He advised that the Commission had to deny the application so the applicant would be forced to do it over or site it in their own city. He hoped in that case it would be sized properly, unlike what they proposed in West Linn.

Karlene Norby, 4040 Kenthorpe Way, did not come forward when invited to testify.

Kevin Bryck, 18840 Nixon Ave., clarified the purpose of the Robinwood Neighborhood Association's Great Neighbor Committee was to ask for mitigations to be done in cooperation with the neighborhood - not necessarily to ask that the application be denied outright. He presented slides showing the Committee's Mission Statement; Mitigation Goals; and Mitigation Selection Criteria. He noted the Mission Statement said, 'Negotiate mitigation and enhancement priorities with LOTP.' Mr. Bryck explained this was where the neighbors believed the process had broken down. He explained the neighborhood had added the last statement, 'To be an advocate for a Great Neighbor relationship with the LOTWP water treatment plant' because they wanted the process to end that way. He related that the Committee had found that some of the goals were actually required by other agencies. He showed the slide, 'Comprehensive Plan – Conditional Use Defined.' He explained that at first the neighbors only thought the plant had to meet minimum code requirements. Then they learned that a conditional use actually required a community benefit. The intertie was then put forth as the community benefit. He recalled that at the last hearing Gary Hitesman had discussed the concept of 'rough proportionality.'

Mr. Bryck presented slides showing the Great Neighbor Plan that had been written by the applicant. It stated that it had been written in partnership with the neighborhood; that it reflected the current understanding of future conditions; and that the plant was the only source of emergency and backup drinking water. Mr. Bryck had highlighted all the promises made in the plan in colors which indicated those that were required entirely or in part by the CDC or the Comprehensive Plan (blue); those the RNA had asked for that the applicant complied with (green); things the RNA had never asked for (yellow) and additional Trillium Creek mitigation the neighborhood had asked for as a community benefit but that was denied (orange). He asked the Commissioners to go through the highlighted copy of the plan and look at those things. He confirmed the staff had a copy of the electronic version of the highlighted document (see Exhibit Supplemental Public Comments for April 25, 2012, Planning Commission Hearing pp. 7-36). He explained the Committee had purposely made the items on its list short, sharp and similar to sound bites in order to facilitate discussion. They had presumed that they would work with the staff and the applicant to turn them into full-fledged conditions of approval. They were not yet ready to be turned into conditions of approval. They were ideas for conditions of approval.

Commissioner Steel asked who their advisor was and who had paid for his work. Mr. Bryck related the advisor was D.J. Heffernan, a free-lance planner. The City Council had provided about \$5,000 to fund the work, which had taken about 50 hours. The advisor had met with the Committee three times and spent the rest of his time reading the documents and writing reports to the Committee. The Commissioner asked that the color legend be included in the material and for the staff to provide pages 2, 3 and 4 that were missing from some of the copies.

Grace Crary, 19825 White Cloud Cir., did not come forward when invited to testify.

David Rittenhouse, 2101 Greene St., President of the Savannah Oaks Neighborhood Association and Chair of the Transportation Advisory Board, advised that mitigations were required by the

code but a benefit was something over and above what it required. He suggested that a project in excess of \$250 million needed to provide more serious proportional benefits to the city hosting it. The intertie was not a benefit since it already existed and because the applicant had acknowledged they had not even begun negotiating a formal agreement. Mr. Rittenhouse suggested that appropriate benefits could be partial ownership with representation and a voting interest (similar to the South Park Water Board); a backup generator so the intertie would work during a power outage; or replacement of the \$10 million Bolton reservoir. He observed that spending that much for the reservoir was a drop in the \$250 million bucket for the impacts of not addressing the neighborhood safety issues. He suggested looking at how the mitigation provided by the applicant fit into a matrix of magnitude (it was high magnitude); duration (it was long term); scope (it was long term); and significance (it was high significance). He contended that Finding 6 was not supported by the evidence provided by staff. There was no benefit to West Linn whatsoever, especially without an agreement. He advised that the Commission had no choice but to deny the application based on that alone. He contended the City Manager had waited too long to ask for residents' opinions, which was contrary to state Citizen Involvement provisions that called for citizens to be involved in all aspects of the land use planning process. He questioned the City Manager's loyalty and bias. He was a former Lake Oswego employee and still lived there. Since he supervised the planning department it was tainted.

Shawn Gavin, 4412 Mapleton Dr., held that just having the plant on a larger property did not necessarily mean the plant would fit the area. The plant would never be a house. It would be of enormous scale. He was concerned about what he would see from his front porch: a three-way intersection with a gate. He was concerned he might be looking straight down the road and directly into the facility. The roadway would be lighted at night. He wanted to know if the driveway approach would have to be as wide as the approach on Kenthorpe. That would be unsightly. He wanted to know how it would be aesthetically mitigated. He noted one of the requirements for conditional use was that the use was to be consistent with the overall needs of the community. He noted the only identified need was the water intertie, which already existed. He suggested a bigger plant should provide a bigger benefit. He held the benefit should not be paid for on the backs of property owners on Mapleton and Kenthorpe. They would experience lost marketability and diminished property values. He observed that the applicant's property appraisal claimed there would be little to no effect on neighbors' property values, but common sense indicated otherwise. The mere fact that there was a possibility the plant would be expanded had cost the neighborhood its value. Houses were not selling. A buyer did not want to move into a neighborhood that was about to spend three years under construction. The applicant had sued a coalition of Mapleton Drive neighbors. He was one of them. The applicant wanted to condemn the CC&Rs that did not allow anything but single-family homes to be built in that plat. He noted the lawsuit would be notated on the title report and it would make it hard for him to refinance. He remarked that not one shovel had been turned and the treatment plant had already cost him thousands of dollars in interest. He noted the CDC and Comprehensive Plan required communications by the applicant with the City, neighborhood association and local residents. The applicant had held all of the required meetings, but they were more like propaganda sessions. They were not acting in good faith with the neighborhood. They were like snake oil salesman. They claimed what a good neighbor they had been and what a good neighbor they would be with the new bigger plant. They tried to sell residents on the idea that it made good sense to expand the existing plant rather than build a new plant. Mr. Gavin observed it was basically a new plant with a few left-behind remnants of the old plant. He said the applicant had held meetings and asked questions with pre-constructed answers so they could publish the answers and show how cooperative they had been and how they had been incorporating residents' ideas into the expansion plans. He suggested most of those things probably would have been required anyway. He observed that

the applicant had tried to steal away the CC&Rs. He asked the Commission to deny the application.

Shanon Vroman, 4101 Mapleton Dr., and Bob Rowning, 4025 Mapleton Dr. testified at the same time. Ms. Vroman read aloud a statement from Mr. Rowning. He wrote that he and his wife had stood firm against an expansion. He believed they were at an age where they would need to sell their home and use the equity to change their living situation in the next two years. They felt trapped. Homes had not sold this past year because of the slow market, but also because of the pending industrial plant. One house that did sell sold at a dramatically lowered price after potential buyers asked about the plant expansion. He believed the plant would reduce the value of their home. If they needed to sell their home due to health issues the three years of construction alone would make that impossible. It was a stressful situation for them and for others in the neighborhood in similar situations. They had to call an ambulance to their home twice in recent years. They were concerned about how an ambulance would get to their home with all the trucks on the street and an open trench taking up part of the street. The applicant had said they could not guarantee them access to their home 24 hours a day. They would have a large metal plate that they could move over the trench in the road if needed. He questioned how much time it would take to use a crane to position the plate so an ambulance could get through. That time could be life or death for them. It was unfair and unreasonable to have to bear this kind of burden and stress at this stage of their lives. Their city should be looking out for them and their best interests and help protect them from this kind of industrial invasion in a residential neighborhood. The expansion was wrong. It should not happen and the City should tell Lake Oswego to go build a plant in its Foothills area.

Ms. Vroman then testified for herself. She related that people felt intimidated by the force of Lake Oswego and Tigard and the steamroll effect they had had in play over the past year and a half. Residents felt ill-equipped to protect themselves and their homes. They felt powerless and voiceless. They might not be comfortable public speaking and they may not understand City code, but that did not mean they were not out there and they should not be heard. Sunset, Bolton, Hidden Springs, and Willamette Neighborhoods had all voted to oppose the project. The Riverfront Property owners had voted to oppose it. They spoke for people who were not testifying in front of the Commission. She remarked that she supported all of the opponents who had testified and all the points they had made.

Bob Stowell, 2606 Maria Ct., commented on the staff report recommendations on page 20. He asked staff how they had decided the plant would have minimal impact. He questioned how they could find that the project could be considered under conditional use criteria when the facility was not owned by West Linn. It was there due to sloppy planning by the county in the mid-1960s. The previous permits West Linn had granted were for minor changes to an existing use. The proposed expansion would double the plant capacity so it could serve a whole new city. That was a new use and should require a Comprehensive Plan map and zone change. He referred to the finding that the intertie was located and had to continue to be located on the finished water side of the plant. He noted that claim was not supported by any engineering. Water could be piped from the intertie to another site using the existing pipeline. He noted the use was for limited durations. He questioned findings that in the event of an emergency Lake Oswego would continue to provide West Linn with water just as West Linn would do for Lake Oswego. He said until the amount of water was contractually available to West Linn this was just a vapor. He noted the 6 million gallons was not guaranteed and might only be available for 13 years. Continuing to have the plant at its current location might meet the Water Master Plan, but at what cost to the neighbors? He was concerned about pedestrian safety. The proposed structures would be taller than others in the neighborhood and that was completely out of character. The plant was a major public utility and the completed project would be 85% new. He indicated now was the time to remove it from the neighborhood and for Lake Oswego to locate it in Lake Oswego. They had room in Foothills but wanted to build a whole new

neighborhood down there with a streetcar. He asked the Commission to deny the application and continue the hearing due to the lateness of the hour.

Steve Hopkins, 3910 Mapleton Dr., observed Lake Oswego was burdening West Linn in order to sell water to another city. He questioned who would want to subject their families to two or more years of construction and street destruction just to help Lake Oswego save money selling water. Who would not be concerned about children's safety, flooding and erosion from failure of a huge pipe; a major increase in truck traffic; visual blight; depletion of Clackamas River flow; trenching the neighborhood park and reduced property values. He said there were many unanswered questions the applicant had to answer. He related some of them. He asked why residents should believe that Lake Oswego did not know that the lots it bought on Mapleton Drive were protected by a covenant banning industrial development. He asked how destruction of the neighborhood for years could be considered for the public good. He asked how Lake Oswego could condemn a whole neighborhood in another city just because it did not want to condemn some properties in its own city and this was cheaper and easier to do. He asked why Lake Oswego did not take water from the Willamette if they wanted more water for a new profit center. It might even cost less. He related that Lake Oswego had attempted to bribe and threaten neighbors in their 90s with legal action, which confused them, and then urged them to hire a lawyer if they had questions. He remarked those people may not live to see another peaceful moment in the neighborhood. It was not right for Lake Oswego to condemn them to that torture. He asked the Commission to look at the unwarranted and un-neighborly attempt to take advantage of a West Linn neighborhood.

Hannah Berkowitz, 1519 Holly St., declined to testify when invited.

Kim Cozby, 4284 Mapleton Dr. did not come forward when invited to testify.

Ray Cozby, 4284 Mapleton Dr., pointed to his driveway on the site plan. It was directly across from the proposed expansion. He testified that light from the existing plant shined into their bedroom all night long. Before they purchased their house in 2009 he had asked about the vacant lots across the street. Lake Oswego had told him that they had once planned to expand the water plant there, but with the CC&Rs in place they recognized that 75% of the neighborhood would not likely approve that. So they were considering selling the lots for residential use. Mr. Cozby indicated he purchased the house based on that information. He reported that Lake Oswego had sent an erroneous property evaluation to residents that talked about the effects of a plant on property values. He noted they had not been able to find similar plants in residential neighborhoods. When the evaluation talked about his purchase in 2009 it said the property was directly across from the proposed expansion area and stated that after reviewing the research the buyers did not think it was an issue that would affect their purchase decision or the desirability of the property. Mr. Cozby explained it mischaracterized his experience. He had bought the property because he had been told there were protective CC&Rs in place. He stressed people relied on CC&Rs and the Planning Commission to protect residents from outsiders who came in to do damage to neighborhoods. He explained he felt the last two years had been nothing but a sales pitch and a threat to his neighborhood. He related he was a project manager for major construction projects and was very well aware of what happened after approval. There might be geotechnical issue that would mean the clearwell could not be buried. The applicant would then need a variance. He said the sound and light scape might be fine when it was perfectly new. However, the equipment had to be well maintained or it could degrade over time. Neighbors were concerned that after the applicant got a foot in the door they would have no control over what took place.

Lamont King, 4257 Kenthorpe Way, related that he had asked Mayor Hoffman and Mr. Komarek for the study of other sites. Mr. Komarek had related that they did it, but forgot to write anything down so they could not provide it to him. Mr. King noted the benefit the applicant cited was almost entirely the intertie. He suggested it was part of the pipeline, not the plant, so

there was no benefit related to the plant. He referred to the staff findings and observed the principle benefit to West Linn residents was implementation of the City's Water Master Plan. That meant the applicant was offering them up to 6 million gallons of water if they had it available. It might only be available for six years if the other cities did not need it. He questioned whether that met the benefit called for in approval criteria. He observed that communities used interties to share water when a problem arose in either community. It was not a sole benefit to West Linn. He noted the applicant had used this benefit for years. In the past residents did not object because they did not believe they had any choice. He lived across the street from the Kenthorpe entrance. Heavy truck traffic was common. Trucks swung out and damaged parts of his landscaping. He held that the past times that West Linn had approved the use it had been to approve it for the use of Lake Oswego. This was the first time Lake Oswego brought in another party that would take 20 million of the 38 million gallons. That changed the whole character of the plant and made it a commercial enterprise. A lot of people were there that night to say it was not meeting the overall needs of the community. He was concerned about the impact of so many trucks on narrow Kenthorpe on school bus traffic and kids in the street. He held the plant should be in an industrial area such as Foothills. He recalled Mr. Komarek had been asked about that and had explained that Lake Oswego had other plans for that area.

Jenne Henderson, 4130 Mapleton Dr., held that the drawbacks connected with the expansion were greater than the benefits. She questioned whether the benefits of storm water features would be necessary if the expansion did not happen. She questioned how open spaces could be considered more of a benefit than the trees and natural surroundings that were already present. She did not see why the trail was a necessary item. She noted the neighborhoods were already connected via Old River Road and Willamette Drive.

Commissioner Martin **moved** to extend the meeting to until the Commissioners got through all the testimony. Commissioner Axelrod **seconded** the motion and it **passed 7:0.**

Sam Stephens, 3990 Mapleton Dr., pointed out the Commissioners had already heard testimony about the reprehensible tactics the applicant had employed. He agreed with all of the opponents' testimony so far. He noted a portion of the pipe was on the property. He had calculated pipe capacities. His calculations showed the applicant would not need a pipe as large as 4 foot diameter to process 38 million gallons of water. It would allow them to process 60 million gallons of water. That led him to question the statement that the applicant would never expand the plant again. They might decide to sell water to the rest of Washington County and other entities. He concluded that there were too many questions and not enough answers.

Ken Hanawa, 4191 Mapleton Dr., held that the intertie did not hold up as a community need. He pointed out the Commission had a lot of latitude about what it could require to grant a conditional use permit. He stressed the need for due diligence and a complete record in case the decision was appealed. He referred to CDC 60.070(2) that called for the characteristics of the site to be suitable for the proposed use. He recalled testimony had demonstrated the soils were not suitable. He related that even a small passing truck like a UPS truck made his house rumble. He was concerned what the impact of 7,700 trucks would be. He expressed concern about the impact of piling for major buildings. He held that was not even close to fitting the neighborhood. He asked the Commissioners to consider the size and use of the streets. People used them as walkways. Children used them to go to and come back from school. The Commission should consider the impact on them. He held the characteristics of the site were not suitable for a major facility. The applicant was making some level of design effort to address that but the fact remained the decision was about the suitability to the neighborhood. He pointed out the proximity of the plant to residents was contrary to a quiet neighborhood. He lived next to the site. He imagined his family would not be able to enjoy their backyard any

more. He asked staff to display the site plan and they did. He advised the code called for the applicant to submit a site plan drawn to appropriate scale and show property and surrounding property to a distance sufficient to determine the relationship of the proposed development to adjacent properties. He pointed to the CD line on the plan. He advised the line went right through his house, which was not shown on the map. He indicated there were other houses around the site that were not indicated on the drawing. He observed that meant the application was incomplete and there had not been due diligence. Due diligence still needed to be done. He noted that other aspects, such as sound, still needed to be examined.

Mike Cooper, 3970 Mapleton Dr., stated that he opposed the project for one simple reason: that he had not heard or seen any evidence or been convinced that the proposal provided any value to his neighborhood or to West Linn. He observed that the applicant contended they were bringing value to the neighborhood by bringing it walking paths, native species, nice fences, etc. That might be their definition of value, but the reason many residents lived in that neighborhood was they liked it the way it was. They valued their neighborhood in its current state. If they believed the applicant was bringing value to the neighborhood they would not be there to oppose the application and the applicant would have let the project stand on its own merits. He observed the neighborhood was a quiet, residential area. He questioned how upsetting that equation could bring any value to its current state. Common sense said the project was taking value from the neighborhood. Having large trucks barreling down their quiet, bucolic streets seemed to imply negative value. If the value of the CC&Rs was taken away that was negative value. He reminded everyone that government was by and for the people. The LO-Tigard Water Partnership did not represent the citizens of West Linn and it was not their government. He called for the Commission to hear the voices of opposition loud and clear.

Mark Ellsworth, 2060 Canemah St., related he grew up on Mapleton Dr. and his mother still owned a residence there. He recalled one of the properties had been owned by the Cantrells, who ran a construction business there and might have improperly disposed of things like petroleum based construction fluids in the creek, in a ditch and in the garage drain. He suggested having a third party testing firm test for potential contamination. He noted the open ditch had subsequently been culverted. The garage pad and drain were still there. He related he had read Jane Heisler's testimony to the Oregon State Parks Commission last year when the Commission decided to give up the CC&Rs on property it owned that abutted the end of Mapleton Dr. He found the testimony disturbing and misleading. He offered to get a copy of it for the Commission. He said he completely opposed the expansion. He held that a good neighbor would decommission the plant and move it to Lake Oswego.

Commissioner Frank asked him to point out the property he was referring to. He said it was where the path was. He did not have the address. He clarified it was once owned by Gene Cantrell. Lake Oswego owned the property now. It contained a boarded-up house. The house next door to it had been the Cantrell's before they built the boarded up house.

Tom Sieben, 4950 Mapleton Dr., did not come forward when invited to testify.

Sarah Rose, 3715 Parkwood Way, submitted written testimony (Exhibit Supplemental Public Comments Received at April 25, 2012, Planning Commission Public Hearing, pp. 2-3). She related she was a Realtor. She advised a project such as the one the applicant was proposing would affect property values and sales of homes in the neighborhood, neighboring businesses, and commuters who used Highway 43. It would impact families hoping to move into West Linn and those who needed to sell their property and move away. She would have to take potential buyers past the trucks, around construction detours and through construction zones. If she tried to show them how easy it as to ride to and from the parks they would see the lines of cars on Highway 43 waiting for trucks to exit. She advised it was unwise to move forward with the water treatment project without considering how it would impact home values. She provided copies of current data from the Multiple listing Service (RMLS) that showed all real estate

activity on Mapleton Drive and Kenthorpe Way for the past 12 months; 24 months; and as far back as 1996. She pointed out that there had been a total of 34 sales on Mapleton: six in the past 24 months and only one in the past 12 months. She pointed out there had been a total of 43 sales on Kenthorpe Way: one in the past 24 months and none in the past 12 months. She concluded the data appeared to show the proposed project had already had a direct impact on home sales in the neighborhood.

Charles Landskroner, 4059 Mapleton Dr., recommended the Commission deny the application. He had attended neighborhood association meetings to speak in opposition to the application. He reported that the Robinwood, Bolton, Hidden Springs, Willamette, and Sunset Neighborhood Associations and the West Linn Riverfront Association Board of Directors had voted to oppose the application. He had not yet met with the Marylhurst and Barrington Heights Neighborhood Associations.

Commissioner Martin **moved** to continue the hearing to May 2, 2012 and close both oral and written public testimony. Commissioner Frank **seconded** the motion. Chair Babbitt invited the public to ask questions related to procedure before the vote.

Mr. Hanawa contended the application was incomplete in aspects related to the site itself; impacts; distances to the houses; and key elements, like the transformer. Chair Babbitt explained the Commissioners would make a determination regarding whether the application was complete during deliberations. He explained there was a difference between determining a file was complete and determining whether an application had met all the criteria. Mr. Hanawa clarified he was talking about criteria that called for the distance to all the surrounding structures. Chair Babbitt confirmed for Mr. Hopkins that the Commission would accept all the supporting written evidence submitted by those who had testified that night on that night. The Commission would not accept it after that night. A member of the audience voiced her concern that Mr. Sonnen had not brought up an issue related to Homeland Security he said would be brought up. Ms. Beery recalled the email that raised a concern about Homeland Security was in the record. Mr. Sonnen explained the staff was prepared to respond to it during questioning of staff, which had not come up yet. Chair Babbitt explained the Commissioners had initially decided that since there were a lot of people who wanted to testify they would get through all the testimony first and then ask questions of staff. The Commissioners then considered the order of rebuttal and questions of staff at the next hearing.

Commissioner Martin **amended his motion to move** to continue the hearing to May 2, 2012 with written and oral testimony closed and to begin the meeting with questions of staff followed by the applicant's rebuttal. Commissioner Frank **seconded** the amended motion.

Ms. Oaks questioned the proposed procedure and whether the code allowed the Commission to change quasi-judicial land use procedure. The public had not been afforded the opportunity to hear the questions to staff before they testified. She questioned whether the public had known what they were giving up when the Commission decided not to have questions of staff earlier in the hearing. They were giving up an opportunity to testify about staff's answers. That was a poor decision and it did not benefit the public. Ms. Beery advised the Commission had the discretion to decide when to have staff answer questions.

Ed Sullivan, 121 SW Morrison, Portland, stated he represented the applicant. He suggested allowing any party to submit written materials for a week (that would include the applicant's rebuttal) and then asking the staff questions. In two weeks the hearing would be closed; all the evidence would be in; and the Planning Commission could make a decision. Ms. Beery advised that was within Commission discretion. The Commission could allow only the written record to remain open until May 2 when the continued hearing commenced. She advised the Commission to ask the applicant if they would be willing to grant whatever time was necessary to meet the 120-day rule. Mr. Sullivan observed they were not up to the end of the time period

and he assured the Commission it would not have a problem with the applicant that was related to the time period. Chair Babbitt indicated that he would be more comfortable if the applicant would extend the time period.

Mr. Sonnen and Ms. Beery advised the Commission had met the legal requirement to grant a request for continuance at the first evidentiary hearing by granting it. It was not required to keep the record open after a continued hearing unless new evidence had been presented. Mr. Sonnen observed that no one alleged that new evidence had been presented. Ms. Beery clarified it was not mandatory. However the Commission could decide to keep the record open in order to make people feel more comfortable that they still had a chance to submit additional written comments. Her notes reflected that no one had officially requested that the record be left open, but some had made statements that inferred in her mind that they would have liked that opportunity. They were not necessarily trained lawyers or land use advocates so she would err on the side of caution in that situation. She believed that was why Mr. Sullivan was making that suggestion. She announced that the witness who had just come to the staff table had indicated to her that he believed he had asked for a continuance. She advised the Commission had met its legal obligation to grant the one, mandatory, continuance when it granted a request for continuance at the first evidentiary hearing. She related that she would be inclined to grant the current request because of the level of public interest.

Mr. Sonnen related that the staff wanted to have seven days added to the 120-day clock period because no one had argued that new evidence had been submitted that warranted an extension under the code. Chair Babbitt observed it would actually be two weeks. He asked if the applicant would grant a 14-day extension of the 120-day rule. Mr. Sullivan responded that the applicant requested that the 120-day period be extended by 14 days.

Chair Babbitt recalled Ms. Oak's concern that citizens would not have an opportunity to respond to staff's answers. Ms. Beery advised that staff dialogue with the Commission was not something that the public necessarily had legal right to weigh in on. The caveat was that if staff or the applicant's rebuttal introduced new evidence the Commission would have to allow testimony in response to it. Mr. Sonnen reviewed Planning Commission quasi-judicial rules and procedures. He pointed out #4 specified there would be a staff report followed by initial Planning Commission questions of staff. #10 said there would be questions of staff and staff response to testimony following the applicant's rebuttal. He observed the Commission had forgone the initial staff questioning period and that it was proper to ask staff questions without an opportunity for public comment at the end.

The vote on the motion was conducted and it passed 7:0. Mr. Sullivan withdrew the applicant's request for an extension. Chair Babbitt, Vice Chair Holmes and Ms. Beery clarified that if the applicant or the staff presented new evidence orally or in writing the Planning Commission would have to allow additional testimony.

ITEMS OF INTEREST FROM STAFF

None.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Chair Babbitt noted that the Commissioners would need to talk about communicating their concern about the pump station generator to the City Council.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the meeting at 11:25 p.m.

APPROVED:

Gail Holmes

Gail Holmes, Vice Chair

6-21-12

Date