

Attachment D: Approved minutes from [April 18](#), [April 25](#), [May 2](#) and [May 16](#), 2012



CITY OF
West Linn

PLANNING COMMISSION

Minutes of April 18, 2012

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

Members absent: Christine Steel

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

CALL TO ORDER

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

PUBLIC COMMENTS (Regarding matters not on the agenda)

None.

PUBLIC HEARING

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

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

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

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

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

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

Staff Report

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

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

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

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

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

Mr. Kerr discussed a list of significant issues:

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

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

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

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

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

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

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

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

Public Testimony - Applicant

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

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

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

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

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

Questions of Applicant

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

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

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

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

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

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

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

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

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

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

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

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

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

Proponents

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

Opponents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

None.

ITEMS OF INTEREST FROM STAFF

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

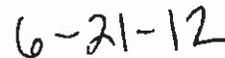
ADJOURNMENT

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

APPROVED:



Gail Holmes, Vice Chair



Date



CITY OF
West Linn

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. Tannier 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 Coppedges 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 Coppedges 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 noted 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 unneighborly 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 a 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 was 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



CITY OF
West Linn

PLANNING COMMISSION

PREHEARING WORK SESSION / REGULAR MEETING

Minutes of May 2, 2012

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

Members absent: None

Staff present: John Sonnen, Planning Director; Chris Kerr, Senior Planner; Zach Pelz, Associate Planner; Jim Whynot, Water Operations Supervisor; Khoi Le, Engineer; and Pam Beery, Legal Counsel

PREHEARING WORK SESSION

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

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

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

CALL TO ORDER - REGULAR MEETING

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

PUBLIC COMMENTS

None.

PUBLIC HEARING

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

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

Questions of Staff

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

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

Applicant's Rebuttal

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

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

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

Questions of applicant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

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

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

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

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

PUBLIC COMMENTS TO CCI

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

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

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

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

APPROVED:



Michael Babbitt, Chair



Date



PLANNING COMMISSION

Minutes of May 16, 2012

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

Members absent: None

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

PREHEARING WORK SESSION

Chair Babbitt convened the prehearing work session at 6:45 p.m. in the Rosemont Room of City Hall. The applicant's counsel, Ed Sullivan, was present. Ms. Beery announced the applicant had just submitted a request to suspend processing of the application until they could work out issues. They would couple the pipeline application with the treatment plant application and work with West Linn on the intergovernmental agreement that would be needed due to Tigard joining the Partnership. They had agreed to continue the 120-day rule for as long as it took. She and staff believed Oregon statutes would limit the process to 365 days even if the applicant was willing to extend the time period. That meant the combined package would have to be processed by sometime in February. She suggested the procedure be to reopen the public hearing; ask the applicant to come forward to clarify their request; then decide the request. She related the applicant's counsel was offering to withdraw a previous letter he had sent regarding leaving the record open if the Commission agreed to suspend the application. If the Commission decided not to table it the applicant would likely maintain that request to keep the record open. Staff would then advise the Commissioners how to complete that cycle in 21 days and then act.

During the discussion the Commissioners wanted to know if West Linn would lose jurisdiction if the application remained tabled beyond the 365-day period and if the current record would be part of a new application if the current one were withdrawn. Ms. Beery advised the application would be 'dead' if it were suspended that long and if the applicant wished to they would have to start all over. If the applicant withdrew and then submitted a new application they could place the existing record in the new record. But they had indicated they were not willing to withdraw the current application. If the Commission denied the current application the applicant could not submit a new one for one year. When asked, Ms. Beery confirmed the Commissioners could give themselves a week to think about what made the most sense. Chair Babbitt recalled the public wanted to combine the plant and pipeline projects. Mr. Sonnen observed the suspension would give the applicant more time to resolve neighbors' concerns and the intergovernmental agreement. It would be more efficient to process the projects together. Commissioner Martin observed a benefit of starting over with a new application was that the City would not have to worry as much about the clock. Ms. Beery reported the applicant's legal counsel had indicated that if the Commission allowed the suspension they would agree not to pursue mandamus against the City based on the 120-day clock. She advised the Commission to ask the applicant about that at the hearing to get it on the record. She advised the Commissioners to be cognizant of *ex parte* contacts and not state a position on the application during the suspension period. Staff clarified the pipeline application had not been submitted yet. It would likely be submitted in June. Staff would have 30 days to deem it complete. The 365 day deadline would be February 21, 2013. There should be sufficient time

to process the combined application to an appeal to the City Council if the Commission managed the open record period aggressively. Staff would watch the clock and alert the Commission to consider acting on the application if they saw the clock running out.

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CALL TO ORDER – REGULAR MEETING

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

PUBLIC COMMENTS (Regarding items not on the agenda)

None.

PUBLIC HEARING

CUP-12-02/DR-12-04, Deliberation and action – Proposal to modify and expand the Lake Oswego Water Treatment Plan and site (Public comment period was closed)

Chair Babbitt announced the applicant had submitted a request to table the application to a date uncertain. He reopened the record and invited the applicant to come forward.

Ed Sullivan, Garvey, Schubert Barer, 121 SW Morrison, 11th Floor, Portland, Oregon 97204 and Joel Komarek, Director, Lake Oswego-Tigard Water Partnership, represented the applicant. Mr. Sullivan pointed out that he had submitted the May 16, 2012 letter indicating that the project's Oversight Committee had instructed him to ask the Commission to suspend the current proceedings in order to allow the applicant time to do several things. They had heard the public ask that the pipeline and plant applications be heard together. They expected to file the pipeline application in mid-June so the Commission could consider it along with the water treatment plant application. The Partnership was reviewing its intergovernmental agreement with the City of West Linn. It was time to do that in the sense of looking at the supply of emergency water or normal water provision to the City. They wanted the opportunity to talk with City staff about coming up with an arrangement for water that was more complete and more certain so it would be part of the consideration. They wanted to have the opportunity to talk more with the immediate neighbors and the neighborhood association about further mitigation. They were aware there were folks who would not abide by the applicant's application under any circumstances. But they wanted to be able to talk with those who were willing to talk with them to see if there were further opportunities for mitigation.

Mr. Sullivan spoke to a couple of the legal issues he had heard the Commissioners talk about. He advised the 120-day rule, which had been extended, could be waived by the applicant upon the applicant's request. He stated they were requesting (and would put it in writing if the Commission wanted them to) to extend the 120-day period consideration for the life of the applications. That meant they would not be seeking any mandamus or other relief on the basis of timing. They would not do that anyway, but he was prepared to give them that assurance on the record that night. He said another thing he had heard them talk about was how to deal with the timing on the applications. The applicant currently had about a one year period under Oregon law for completion of the proceedings. He and the City's legal counsel might disagree about that. He recalled a case in which it had been alleged that the 365-day period was violated and the application was dead. But LUBA did not find it to be that way. Nonetheless he was willing to work with the Commission and counsel to whatever period that was allowable by law for a maximum time of deciding the case. Submitting a second application would start a different period. The applicant would waive that 120-day period as well so the City would basically have the one year period for the first application to decide both unless the City's counsel was satisfied that there could be an extension. Mr. Sullivan stated that he and Mr. Komarek were there to hear the Commissioners' concerns. He said he would put the request in

writing. He distributed the May 16, 2012 Memorandum from Mayors Craig Dirksen (Tigard) and Jack Hoffman (Lake Oswego) that he said conveyed the same request.

Commissioner Martin asked why the applicant had decided on this approach rather than withdrawing. Mr. Sullivan explained that withdrawing would require the applicant to go through another neighborhood meeting; pay another fee; start another whole process; and extend this out three or four more months. They would rather keep the testimony in the record and proceed by conjoining that with the second application. He clarified that the applicant had already held the neighborhood meeting related to the pipeline application. Commissioner Miller asked if it would be reasonable to have another neighborhood meeting on the combined application. Mr. Sullivan said they had held the two individual meetings and everybody knew this was the same project. He was not sure what the applicant would gain by doing that. Commissioner Miller asked them to consider having another meeting. Mr. Sullivan said if he got that consensus the applicant would sit down with the neighbors and talk with them about it. Chair Babbitt noted that Mr. Sullivan's letter indicated that the additional time would allow the applicant to conduct further discussions with the affected neighborhood associations and individual neighbors. Mr. Sullivan said the applicant was certainly willing to sit down and talk with the neighbors about the consolidated applications. Commissioner Axelrod indicated he would view that as an open book opportunity to work with them on the whole project. He would expect them to do whatever it required, even holding another public meeting. Mr. Sullivan looked for Commissioners nodding heads and then agreed the applicant would do that.

Commissioner Martin recalled the applicant's rationale for not combining the applications to begin with was that the permits were not ready for the pipeline. He asked why they did not wait for that and then apply for a combined plant and pipeline permit. Mr. Komarek explained it had to do with the fact that there were six separate program components. Each of them had unique permitting requirements (both environmental and land use) and construction durations. The construction duration for the plant project was much longer than it was for the pipelines. In order to manage their design and permitting and planning resources they chose to move designing of the plant forward at a faster pace so they could get the land use application in earlier in order to accommodate that longer construction period. It all had to be done at the same time at the end. But they all had different construction periods and durations. They had no choice but to start this sooner. He agreed with Commissioner Martin's summary that it allowed the applicant to optimize use of their resources by spreading them out.

Chair Babbitt closed the public record.

Commissioner Steel moved to grant the applicant's request as stated in their letter and as explained verbally to suspend or table CU-12-02/DR-12-04 to a date uncertain. Commissioner Frank **seconded the motion.** Ms. Beery clarified for the public that the Commissioners had an opportunity to discuss the request at the prehearing work session. The proposal would place the application in inactive status for an undetermined time. The Commissioners anticipated the current application would be combined with the waterline application and they would hold new hearings on the combined project. A new public notice would be distributed for those hearings. All of the testimony that had been offered so far would be carried forward and would remain in the record, which was closed. A new hearing would be scheduled when the time was right. She clarified that the application had not been withdrawn and was still pending. The Commissioners should continue to be vigilant and do their best to avoid *ex parte* communications; keep track of them; and disclose them when they reconvened. That would most likely be in the fall. They should do their best to avoid making statements that might lead people to believe they were biased about the projects. She reminded the Commissioners they should not be engaging in deliberations during the period. They should treat the suspended application like a pending application.

Commissioner Martin complimented the applicant for listening to the testimony and taking positive action to deal with it. He acknowledged all the people who had taken the time to testify and offer their ideas. He hoped they saw that the process was working. The applicant had heard and responded to it. He hoped parties on both sides would continue doing that. Vice Chair Holmes recalled the applicant had offered to submit a signed document. Ms. Beery noted Mr. Sullivan's oral assurance was recorded on DVD and on the record. She would prefer to keep the record closed. Commissioner Axelrod asked when the public could get involved again; how they would know when the time came; and how parties interested in the pipeline project could get up to speed regarding the plant project. Ms. Beery advised that when the staff received the pipeline application they would review it and then send out the normal public notice plus additional notice to interested parties who had signed up to receive information about the applications. The documents in the record would be available on the website.

Vice Chair Holmes asked about the required meeting with the neighborhood. She indicated she wanted them to have an opportunity to look at the combined project. Mr. Sonnen related the applicant had assured the staff they would hold a meeting to talk about the whole project, but it would not be the formal, code-based, meeting with the neighborhood association that could delay the project. The result could be the same if they held a meeting with residents all along the project and the neighborhood association. Chair Babbitt pointed out the Commission had their written statement that they would conduct further discussions with the affected neighborhood associations and individual neighbors. **The vote was conducted and the motion passed by unanimous vote.**

Chair Babbitt clarified that everyone who had testified before would have another opportunity to testify about the joint application. Notice would be distributed.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

None.

ITEMS OF INTEREST FROM STAFF

None.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

Mr. Sonnen clarified that the Commission was scheduled to follow up on the Bland Pump Station at their June 20 work session. Commissioner Martin suggested the Commissioners think about how to use the Trails Master Plan and water treatment plant hearings as learning opportunities related to how to create more harmonious hearings.

Commissioner Axelrod asked if the neighbor to neighbor lighting issue had been resolved. Mr. Sonnen advised that it was a pre-existing, lawful use the City could not do much about from a regulatory standpoint. The administration was not prepared to address it as a nuisance at this point. The homeowners association's authority to regulate it was limited. The issue would be addressed in a package of code amendments to be presented to the Commission in the summer. The staff had researched how other jurisdictions regulated lighting between residences. The only thing they could do was restrict the hours of operation and the kind of bulb, so when the bulb needed to be changed it had to be replaced with a less bright, less onerous bulb. That might not fully address the complaining residents' concerns. They had sent Mr. Sonnen an email within the last few days. Commissioner Miller related that each neighbor lived in a different neighborhood and neither neighborhood had an active homeowners association.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 8:01 p.m.

APPROVED:



Michael Babbitt, Chair

8-26-12

Date

