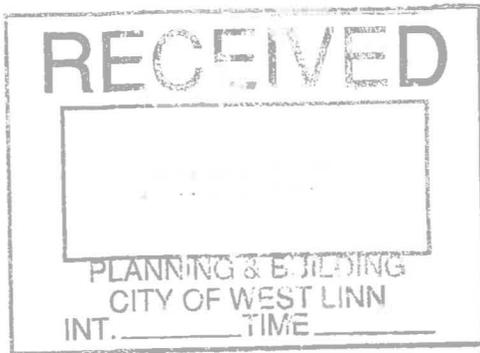




Memorandum

Date: January 22, 2013
To: West Linn City Council
From: Zach Pelz, Associate Planner
Subject: AP-12-02 and AP-12-03 – Additional testimony received by January 22, 2013

Attached is the most recent testimony received prior to the January 22, 2013, 10 am deadline for written testimony, regarding the Lake Oswego-Tigard Water Partnership appeal.



Office 503 636 9000
Fax 503 387 3082

January 21, 2013

Dear Councilor Carson:

The City Council and the City of West Linn are at a key cross road for its future.

You can listen to the majority of your citizens, the seven neighborhood associations and almost all of the businesses along Highway 43 and support the City Planning Commission's unanimous rejections of the LOT conditional use requests because they failed to satisfy the CDC requirements as stated in their decisions attached hereto, and then present to your constituents a long term plan for the improvement of our water system that the citizens can support.

Or you can go against the will of the entire City Planning Commission, the CDC requirements, a majority of your constituents, seven neighborhood associations and almost all of the businesses along Highway 43 and attempt to relinquish valuable West Linn rights and, in the process, harm many of your constituents.

Creating an intelligent and comprehensive plan that permanently solves our water problems would be visionary and gain you the respect and support of all of your constituents.

Ignoring the will of a majority of the citizens, the unanimous vote of the City Planning Commission, the CDC requirements, the seven neighborhood associations and almost all of the businesses along Highway 43, while harming many of your constituents, would bring the City Council disdain, and guarantee substantial future opposition from your citizens and neighbors; and, as a result, future bond issues will never be supported by a majority of the citizens because

the City Council will never be able to regain the trust and support of its constituents.

We urge you to please not follow the advice of some of the members of the City's staff, some who do not even live in West Linn, and some who have different vested interests than your constituents, as you were elected by the citizens of West Linn, and not elected by the city's paid staff, or by the citizens of Lake Oswego or Tigard.

We urge you to please not allow protracted litigation and public dispute to ensue causing this fight to continue for years to come as it will create great indefinite, long term and irreconcilable divisions for the entire city.

We want visionary City Councilors and a visionary City Council that will develop long term meaningful solutions for West Linn.

I urge you to please not disappoint your constituents and sustain the unanimous decisions of the City Planning Commission.

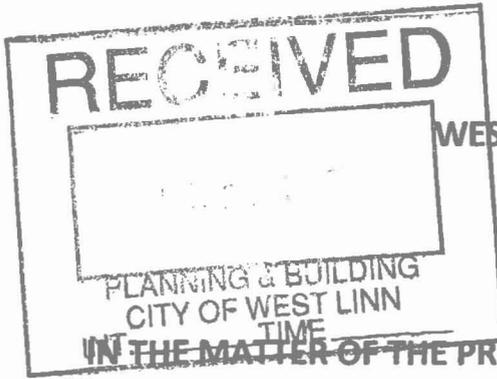


William J. More
Robinwood Shopping Center

P. S. If the City Council created an intelligent, comprehensive, long term plan that solved our water problems, I and others would personally commit to rally businesses and most of our residents around that proposal, and any other future meaningful City Council proposals.

cc: City Council file regarding the appeal re: CUP-12-02/DR-12-04 and CUP-12-04/DR-12-14/Misc-12-10/WA-12-03/WR-12-01

Enc: West Linn Planning Commission/Final Decision Notice
CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01
West Linn Planning Commission/Final Decision Notice
CUP-12-02/DR-12-04



WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-02/DR-12-04

**IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE PERMIT AND CLASS
II DESIGN REVIEW FOR THE PROPOSED EXPANSION OF THE CITY OF LAKE
OSWEGO WATER TREATMENT PLANT AT 4260 KENTHORPE WAY**

On April 18, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to expand an existing water treatment plant at 4260 Kenthorpe Way. The applicable review criteria for the Conditional Use and Class II Design Review standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was continued to April 25 and again to May 2. On May 16, 2012 the applicant submitted a written request to suspend the applications for the expansion of the water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow procedural consolidation of these applications with a planned additional related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened and conducted a duly noticed public hearing. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the application on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.
- C. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency

water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.

- D. To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the “community” identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners’ ability sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility

Moreover, the Partnership’s offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership’s municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

- E. Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *“The characteristics of the site are suitable for the proposed use*

considering size, shape, location, topography, and natural features.” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the Water Treatment Plant site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the aesthetic impacts discussed below under Finding 4, although the existing plant has been a good neighbor, the site is not suitable to accommodate the proposed expansion.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality;and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses* - in that the Partnership's proposal creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

The proposal constitutes a replacement of an existing plant with what is essentially a new, much larger plant. The subject site in a residential area is not adequate for the large

replacement plant because of the disruption to the neighborhood during the proposed 32 month construction period.

As noted above under Finding 3, the failure of the proposed project to meet the Comprehensive Plan Policy requiring the protection of residential areas from incompatible uses is not met, further demonstrating that the proposal does not contain adequate area for an industrial building of the size and scale proposed here.

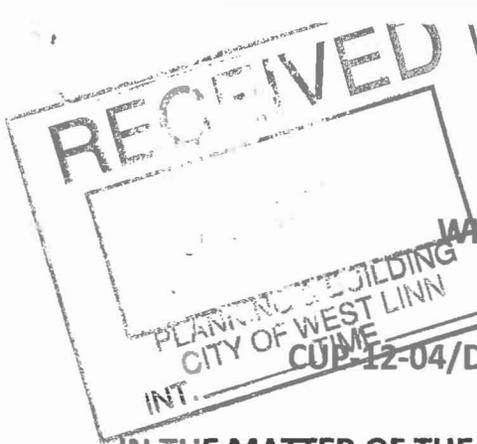
This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.


MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.



WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUM 12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE, CLASS II DESIGN REVIEW, CLASS II PARKS DESIGN REVIEW, FLOOD MANAGEMENT AREA, WATER RESOURCES AREA AND WILLAMETTE RIVER GREENWAY PERMIT FOR THE PROPOSED INSTALLATION OF A WATER TRANSMISSION LINE FROM THE CITY LIMITS UNDER THE WILLAMETTE RIVER, THROUGH MARY S. YOUNG STATE PARK TO THE CITY'S NORTHERN BOUNDARY BORDERING THE CITY OF LAKE OSWEGO VIA MAPLETON DRIVE AND HIGHWAY 43

On October 17, 18 and 25, and November 1, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to install a water transmission line through the City of West Linn. The applicable review criteria for the Conditional Use, Class II Design Review, Class II Parks Design Review, Flood Management Area, Water Resources Area and Willamette River Greenway standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The approval criteria for Parks Design Review are found in Chapter 56 of the CDC. The approval criteria for Flood Management Areas are found in Chapter 27 of the CDC. The approval criteria for Water Resource Areas are found in CDC Chapter 32. The approval criteria for the Willamette River Greenway are found in CDC Chapter 28. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

On May 16, 2012 the applicant submitted a written request to suspend a related application for the expansion of a water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow the water treatment plant application to be considered concurrently with the application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, and November 1, 2012 the Planning Commission reconvened and conducted a duly noticed public hearing to consider both this application and the related application for the expanded water treatment plant. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open

pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the applications on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC Subsection 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although Lake Oswego’s existing water transmission line, both as it currently functions and as proposed, could continue to provide a supply of water to West Linn in the event of an emergency through an existing or replacement intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. As noted in Finding 1(B), there is no guarantee that the proposed water transmission line would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. The scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounts to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per Subsection 60.070(A)(3) is not satisfied.
- C. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of

that facility's existence in the community. Further, to determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. The Commission interprets the term "overall needs" to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. Potential benefits provided by the facility, in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period, which as noted above, constitute a portion of the "community" identified in this criterion. The applicant's proposal uses the term "benefits" and provides a list of proposed amenities and improvements to the West Linn water system to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term "benefit." The Planning Commission finds that it is reasonable to include the concept of "benefit" as articulated here and in the Robinwood Neighborhood Plan as addressing the "overall needs of the community" criterion given the significant impacts of the project on the Robinwood Neighborhood.

West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets, if necessary, as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility. While the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project is appreciated, the amount is inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

As discussed above, there is no demonstration that a need for water will be met by the proposed facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term impacts and long term impacts (e.g., noise, heavy truck traffic, loss of property tax revenue) on the immediate neighborhood and those using Highway 43.

Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process indicating that the impacts exceed the potential benefits.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *“The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.”* The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the proposed water transmission line alignment to accommodate the 42- to 48-inch diameter pipe conveying up to 38 mgd given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the proposed pipeline alignment. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership indicating that a buttress is present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the impacts discussed below under Finding 4, the site is not suitable to accommodate the proposed water transmission line.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan”*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the

surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing Lake Oswego water treatment facility, including the existing water transmission line was uniformly described as a “good neighbor” the proposed water transmission line would be significantly larger than the current line. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed transmission line presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership’s proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *“Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities.”* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled “goals” and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership’s initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership’s proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn’s quality of life and livability.* See Finding 1(C). The Partnership’s proposal fails to protect residents’ quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn’s neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality; and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn’s land use process.*

Finding 4: The Planning Commission finds that the Partnership’s proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the*

needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses - in that the Partnership's proposal calls for construction and heavy equipment in the streets without sidewalks that creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

Moreover, while the applicant failed to provide an analysis of these impacts, the Commission finds that proposed night-time work on Highway 43 would have adverse effects to residences upslope from Highway 43. Similarly, the Commission finds that noise impacts associated with the 24- to 48-hour continuous "pullback" phase of the horizontal directional drilling (HDD) operation is expected to generate noise levels of 55 to 61 dBA and would have adverse impacts on surrounding properties.

The proposed pipeline alignment is not adequate for the large replacement water transmission line because of the disruption to the neighborhood during the proposed 32 month construction period.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.



MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

January 21, 2013

Dear Councilor Jones:

The City Council and the City of West Linn are at a key cross road for its future.

You can listen to the majority of your citizens, the seven neighborhood associations and almost all of the businesses along Highway 43 and support the City Planning Commission's unanimous rejections of the LOT conditional use requests because they failed to satisfy the CDC requirements as stated in their decisions attached hereto, and then present to your constituents a long term plan for the improvement of our water system that the citizens can support.

Or you can go against the will of the entire City Planning Commission, the CDC requirements, a majority of your constituents, seven neighborhood associations and almost all of the businesses along Highway 43 and attempt to relinquish valuable West Linn rights and, in the process, harm many of your constituents.

Creating an intelligent and comprehensive plan that permanently solves our water problems would be visionary and gain you the respect and support of all of your constituents.

Ignoring the will of a majority of the citizens, the unanimous vote of the City Planning Commission, the CDC requirements, the seven neighborhood associations and almost all of the businesses along Highway 43, while harming many of your constituents, would bring the City Council disdain, and guarantee substantial future opposition from your citizens and neighbors; and, as a result, future bond issues will never be supported by a majority of the citizens because

the City Council will never be able to regain the trust and support of its constituents.

We urge you to please not follow the advice of some of the members of the City's staff, some who do not even live in West Linn, and some who have different vested interests than your constituents, as you were elected by the citizens of West Linn, and not elected by the city's paid staff, or by the citizens of Lake Oswego or Tigard.

We urge you to please not allow protracted litigation and public dispute to ensue causing this fight to continue for years to come as it will create great indefinite, long term and irreconcilable divisions for the entire city.

We want visionary City Councilors and a visionary City Council that will develop long term meaningful solutions for West Linn.

I urge you to please not disappoint your constituents and sustain the unanimous decisions of the City Planning Commission.



William J. More
Robinwood Shopping Center

P. S. If the City Council created an intelligent, comprehensive, long term plan that solved our water problems, I and others would personally commit to rally businesses and most of our residents around that proposal, and any other future meaningful City Council proposals.

cc: City Council file regarding the appeal re: CUP-12-02/DR-12-04 and CUP-12-04/DR-12-14/Misc-12-10/WA-12-03/WR-12-01

Enc: West Linn Planning Commission/Final Decision Notice
CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01
West Linn Planning Commission/Final Decision Notice
CUP-12-02/DR-12-04

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-02/DR-12-04

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE PERMIT AND CLASS II DESIGN REVIEW FOR THE PROPOSED EXPANSION OF THE CITY OF LAKE OSWEGO WATER TREATMENT PLANT AT 4260 KENTHORPE WAY

On April 18, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to expand an existing water treatment plant at 4260 Kenthorpe Way. The applicable review criteria for the Conditional Use and Class II Design Review standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was continued to April 25 and again to May 2. On May 16, 2012 the applicant submitted a written request to suspend the applications for the expansion of the water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow procedural consolidation of these applications with a planned additional related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened and conducted a duly noticed public hearing. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the application on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.
- C. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency

water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.

- D. To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the "community" identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners' ability sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility

Moreover, the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

- E. Finally, the Commission finds that the term "community need" should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, "community need" as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership's proposal expressed by residents and local business owners throughout the hearing process.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *"The characteristics of the site are suitable for the proposed use*

considering size, shape, location, topography, and natural features.” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the Water Treatment Plant site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the aesthetic impacts discussed below under Finding 4, although the existing plant has been a good neighbor, the site is not suitable to accommodate the proposed expansion.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality;and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses* - in that the Partnership's proposal creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

The proposal constitutes a replacement of an existing plant with what is essentially a new, much larger plant. The subject site in a residential area is not adequate for the large

replacement plant because of the disruption to the neighborhood during the proposed 32 month construction period.

As noted above under Finding 3, the failure of the proposed project to meet the Comprehensive Plan Policy requiring the protection of residential areas from incompatible uses is not met, further demonstrating that the proposal does not contain adequate area for an industrial building of the size and scale proposed here.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.


MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE, CLASS II DESIGN REVIEW, CLASS II PARKS DESIGN REVIEW, FLOOD MANAGEMENT AREA, WATER RESOURCES AREA AND WILLAMETTE RIVER GREENWAY PERMIT FOR THE PROPOSED INSTALLATION OF A WATER TRANSMISSION LINE FROM THE CITY LIMITS UNDER THE WILLAMETTE RIVER, THROUGH MARY S. YOUNG STATE PARK TO THE CITY'S NORTHERN BOUNDARY BORDERING THE CITY OF LAKE OSWEGO VIA MAPLETON DRIVE AND HIGHWAY 43

On October 17, 18 and 25, and November 1, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to install a water transmission line through the City of West Linn. The applicable review criteria for the Conditional Use, Class II Design Review, Class II Parks Design Review, Flood Management Area, Water Resources Area and Willamette River Greenway standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The approval criteria for Parks Design Review are found in Chapter 56 of the CDC. The approval criteria for Flood Management Areas are found in Chapter 27 of the CDC. The approval criteria for Water Resource Areas are found in CDC Chapter 32. The approval criteria for the Willamette River Greenway are found in CDC Chapter 28. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

On May 16, 2012 the applicant submitted a written request to suspend a related application for the expansion of a water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow the water treatment plant application to be considered concurrently with the application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, and November 1, 2012 the Planning Commission reconvened and conducted a duly noticed public hearing to consider both this application and the related application for the expanded water treatment plant. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open

pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the applications on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC Subsection 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although Lake Oswego’s existing water transmission line, both as it currently functions and as proposed, could continue to provide a supply of water to West Linn in the event of an emergency through an existing or replacement intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. As noted in Finding 1(B), there is no guarantee that the proposed water transmission line would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. The scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounts to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per Subsection 60.070(A)(3) is not satisfied.
- C. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of

that facility's existence in the community. Further, to determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. The Commission interprets the term "overall needs" to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. Potential benefits provided by the facility, in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period, which as noted above, constitute a portion of the "community" identified in this criterion. The applicant's proposal uses the term "benefits" and provides a list of proposed amenities and improvements to the West Linn water system to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term "benefit." The Planning Commission finds that it is reasonable to include the concept of "benefit" as articulated here and in the Robinwood Neighborhood Plan as addressing the "overall needs of the community" criterion given the significant impacts of the project on the Robinwood Neighborhood.

West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets, if necessary, as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility. While the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project is appreciated, the amount is inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

As discussed above, there is no demonstration that a need for water will be met by the proposed facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term impacts and long term impacts (e.g., noise, heavy truck traffic, loss of property tax revenue) on the immediate neighborhood and those using Highway 43.

Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process indicating that the impacts exceed the potential benefits.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – “*The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the proposed water transmission line alignment to accommodate the 42- to 48-inch diameter pipe conveying up to 38 mgd given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the proposed pipeline alignment. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership indicating that a buttress is present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the impacts discussed below under Finding 4, the site is not suitable to accommodate the proposed water transmission line.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (“*The use will comply with the applicable policies of the comprehensive plan*”) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states “*Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.*” The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the

surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing Lake Oswego water treatment facility, including the existing water transmission line was uniformly described as a “good neighbor” the proposed water transmission line would be significantly larger than the current line. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed transmission line presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership’s proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *“Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities.”* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled “goals” and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership’s initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership’s proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn’s quality of life and livability.* See Finding 1(C). The Partnership’s proposal fails to protect residents’ quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn’s neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality; and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn’s land use process.*

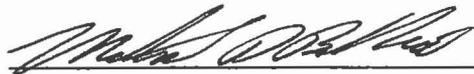
Finding 4: The Planning Commission finds that the Partnership’s proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the*

needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses - in that the Partnership's proposal calls for construction and heavy equipment in the streets without sidewalks that creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

Moreover, while the applicant failed to provide an analysis of these impacts, the Commission finds that proposed night-time work on Highway 43 would have adverse effects to residences upslope from Highway 43. Similarly, the Commission finds that noise impacts associated with the 24- to 48-hour continuous "pullback" phase of the horizontal directional drilling (HDD) operation is expected to generate noise levels of 55 to 61 dBA and would have adverse impacts on surrounding properties.

The proposed pipeline alignment is not adequate for the large replacement water transmission line because of the disruption to the neighborhood during the proposed 32 month construction period.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.



MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12

DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

January 21, 2013

Dear Councilor Tan:

The City Council and the City of West Linn are at a key cross road for its future.

You can listen to the majority of your citizens, the seven neighborhood associations and almost all of the businesses along Highway 43 and support the City Planning Commission's unanimous rejections of the LOT conditional use requests because they failed to satisfy the CDC requirements as stated in their decisions attached hereto, and then present to your constituents a long term plan for the improvement of our water system that the citizens can support.

Or you can go against the will of the entire City Planning Commission, the CDC requirements, a majority of your constituents, seven neighborhood associations and almost all of the businesses along Highway 43 and attempt to relinquish valuable West Linn rights and, in the process, harm many of your constituents.

Creating an intelligent and comprehensive plan that permanently solves our water problems would be visionary and gain you the respect and support of all of your constituents.

Ignoring the will of a majority of the citizens, the unanimous vote of the City Planning Commission, the CDC requirements, the seven neighborhood associations and almost all of the businesses along Highway 43, while harming many of your constituents, would bring the City Council disdain, and guarantee substantial future opposition from your citizens and neighbors; and, as a result, future bond issues will never be supported by a majority of the citizens because

the City Council will never be able to regain the trust and support of its constituents.

We urge you to please not follow the advice of some of the members of the City's staff, some who do not even live in West Linn, and some who have different vested interests than your constituents, as you were elected by the citizens of West Linn, and not elected by the city's paid staff, or by the citizens of Lake Oswego or Tigard.

We urge you to please not allow protracted litigation and public dispute to ensue causing this fight to continue for years to come as it will create great indefinite, long term and irreconcilable divisions for the entire city.

We want visionary City Councilors and a visionary City Council that will develop long term meaningful solutions for West Linn.

I urge you to please not disappoint your constituents and sustain the unanimous decisions of the City Planning Commission.



William J. More
Robinwood Shopping Center

P. S. If the City Council created an intelligent, comprehensive, long term plan that solved our water problems, I and others would personally commit to rally businesses and most of our residents around that proposal, and any other future meaningful City Council proposals.

cc: City Council file regarding the appeal re: CUP-12-02/DR-12-04 and CUP-12-04/DR-12-14/Misc-12-10/WA-12-03/WR-12-01

Enc: West Linn Planning Commission/Final Decision Notice
CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01
West Linn Planning Commission/Final Decision Notice
CUP-12-02/DR-12-04

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-02/DR-12-04

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE PERMIT AND CLASS II DESIGN REVIEW FOR THE PROPOSED EXPANSION OF THE CITY OF LAKE OSWEGO WATER TREATMENT PLANT AT 4260 KENTHORPE WAY

On April 18, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to expand an existing water treatment plant at 4260 Kenthorpe Way. The applicable review criteria for the Conditional Use and Class II Design Review standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was continued to April 25 and again to May 2. On May 16, 2012 the applicant submitted a written request to suspend the applications for the expansion of the water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow procedural consolidation of these applications with a planned additional related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened and conducted a duly noticed public hearing. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the application on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.
- C. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency

water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.

- D. To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the “community” identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners’ ability sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility

Moreover, the Partnership’s offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership’s municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

- E. Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *“The characteristics of the site are suitable for the proposed use*

considering size, shape, location, topography, and natural features.” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the Water Treatment Plant site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the aesthetic impacts discussed below under Finding 4, although the existing plant has been a good neighbor, the site is not suitable to accommodate the proposed expansion.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality;and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses* - in that the Partnership's proposal creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

The proposal constitutes a replacement of an existing plant with what is essentially a new, much larger plant. The subject site in a residential area is not adequate for the large

replacement plant because of the disruption to the neighborhood during the proposed 32 month construction period.

As noted above under Finding 3, the failure of the proposed project to meet the Comprehensive Plan Policy requiring the protection of residential areas from incompatible uses is not met, further demonstrating that the proposal does not contain adequate area for an industrial building of the size and scale proposed here.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.


MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE, CLASS II DESIGN REVIEW, CLASS II PARKS DESIGN REVIEW, FLOOD MANAGEMENT AREA, WATER RESOURCES AREA AND WILLAMETTE RIVER GREENWAY PERMIT FOR THE PROPOSED INSTALLATION OF A WATER TRANSMISSION LINE FROM THE CITY LIMITS UNDER THE WILLAMETTE RIVER, THROUGH MARY S. YOUNG STATE PARK TO THE CITY'S NORTHERN BOUNDARY BORDERING THE CITY OF LAKE OSWEGO VIA MAPLETON DRIVE AND HIGHWAY 43

On October 17, 18 and 25, and November 1, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to install a water transmission line through the City of West Linn. The applicable review criteria for the Conditional Use, Class II Design Review, Class II Parks Design Review, Flood Management Area, Water Resources Area and Willamette River Greenway standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The approval criteria for Parks Design Review are found in Chapter 56 of the CDC. The approval criteria for Flood Management Areas are found in Chapter 27 of the CDC. The approval criteria for Water Resource Areas are found in CDC Chapter 32. The approval criteria for the Willamette River Greenway are found in CDC Chapter 28. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

On May 16, 2012 the applicant submitted a written request to suspend a related application for the expansion of a water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow the water treatment plant application to be considered concurrently with the application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, and November 1, 2012 the Planning Commission reconvened and conducted a duly noticed public hearing to consider both this application and the related application for the expanded water treatment plant. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open

pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the applications on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC Subsection 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although Lake Oswego’s existing water transmission line, both as it currently functions and as proposed, could continue to provide a supply of water to West Linn in the event of an emergency through an existing or replacement intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. As noted in Finding 1(B), there is no guarantee that the proposed water transmission line would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. The scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounts to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per Subsection 60.070(A)(3) is not satisfied.
- C. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of

that facility's existence in the community. Further, to determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. The Commission interprets the term "overall needs" to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. Potential benefits provided by the facility, in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period, which as noted above, constitute a portion of the "community" identified in this criterion. The applicant's proposal uses the term "benefits" and provides a list of proposed amenities and improvements to the West Linn water system to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term "benefit." The Planning Commission finds that it is reasonable to include the concept of "benefit" as articulated here and in the Robinwood Neighborhood Plan as addressing the "overall needs of the community" criterion given the significant impacts of the project on the Robinwood Neighborhood.

West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets, if necessary, as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility. While the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project is appreciated, the amount is inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

As discussed above, there is no demonstration that a need for water will be met by the proposed facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term impacts and long term impacts (e.g., noise, heavy truck traffic, loss of property tax revenue) on the immediate neighborhood and those using Highway 43.

Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process indicating that the impacts exceed the potential benefits.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *“The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.”* The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the proposed water transmission line alignment to accommodate the 42- to 48-inch diameter pipe conveying up to 38 mgd given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the proposed pipeline alignment. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership indicating that a buttress is present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the impacts discussed below under Finding 4, the site is not suitable to accommodate the proposed water transmission line.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan”*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the

surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing Lake Oswego water treatment facility, including the existing water transmission line was uniformly described as a "good neighbor" the proposed water transmission line would be significantly larger than the current line. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed transmission line presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy's clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality; and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the*

needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses - in that the Partnership's proposal calls for construction and heavy equipment in the streets without sidewalks that creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

Moreover, while the applicant failed to provide an analysis of these impacts, the Commission finds that proposed night-time work on Highway 43 would have adverse effects to residences upslope from Highway 43. Similarly, the Commission finds that noise impacts associated with the 24- to 48-hour continuous "pullback" phase of the horizontal directional drilling (HDD) operation is expected to generate noise levels of 55 to 61 dBA and would have adverse impacts on surrounding properties.

The proposed pipeline alignment is not adequate for the large replacement water transmission line because of the disruption to the neighborhood during the proposed 32 month construction period.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.



MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.



January 21, 2013

Dear Mayor Kovash:

The City Council and the City of West Linn are at a key cross road for its future.

You can listen to the majority of your citizens, the seven neighborhood associations and almost all of the businesses along Highway 43 and support the City Planning Commission's unanimous rejections of the LOT conditional use requests because they failed to satisfy the CDC requirements as stated in their decisions attached hereto, and then present to your constituents a long term plan for the improvement of our water system that the citizens can support.

Or you can go against the will of the entire City Planning Commission, the CDC requirements, a majority of your constituents, seven neighborhood associations and almost all of the businesses along Highway 43 and attempt to relinquish valuable West Linn rights and, in the process, harm many of your constituents.

Creating an intelligent and comprehensive plan that permanently solves our water problems would be visionary and gain you the respect and support of all of your constituents.

Ignoring the will of a majority of the citizens, the unanimous vote of the City Planning Commission, the CDC requirements, the seven neighborhood associations and almost all of the businesses along Highway 43, while harming many of your constituents, would bring the City Council disdain, and guarantee substantial future opposition from your citizens and neighbors; and, as a result, future bond issues will never be supported by a majority of the citizens because

the City Council will never be able to regain the trust and support of its constituents.

We urge you to please not follow the advice of some of the members of the City's staff, some who do not even live in West Linn, and some who have different vested interests than your constituents, as you were elected by the citizens of West Linn, and not elected by the city's paid staff, or by the citizens of Lake Oswego or Tigard.

We urge you to please not allow protracted litigation and public dispute to ensue causing this fight to continue for years to come as it will create great indefinite, long term and irreconcilable divisions for the entire city.

We want visionary City Councilors and a visionary City Council that will develop long term meaningful solutions for West Linn.

I urge you to please not disappoint your constituents and sustain the unanimous decisions of the City Planning Commission.



William J. More
Robinwood Shopping Center

P. S. If the City Council created an intelligent, comprehensive, long term plan that solved our water problems, I and others would personally commit to rally businesses and most of our residents around that proposal, and any other future meaningful City Council proposals.

cc: City Council file regarding the appeal re: CUP-12-02/DR-12-04 and CUP-12-04/DR-12-14/Misc-12-10/WA-12-03/WR-12-01

Enc: West Linn Planning Commission/Final Decision Notice
CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01
West Linn Planning Commission/Final Decision Notice
CUP-12-02/DR-12-04

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-02/DR-12-04

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE PERMIT AND CLASS II DESIGN REVIEW FOR THE PROPOSED EXPANSION OF THE CITY OF LAKE OSWEGO WATER TREATMENT PLANT AT 4260 KENTHORPE WAY

On April 18, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to expand an existing water treatment plant at 4260 Kenthorpe Way. The applicable review criteria for the Conditional Use and Class II Design Review standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was continued to April 25 and again to May 2. On May 16, 2012 the applicant submitted a written request to suspend the applications for the expansion of the water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow procedural consolidation of these applications with a planned additional related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened and conducted a duly noticed public hearing. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the application on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.
- C. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency

water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.

- D. To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the "community" identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners' ability sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility

Moreover, the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

- E. Finally, the Commission finds that the term "community need" should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, "community need" as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership's proposal expressed by residents and local business owners throughout the hearing process.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *"The characteristics of the site are suitable for the proposed use*

considering size, shape, location, topography, and natural features.” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the Water Treatment Plant site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the aesthetic impacts discussed below under Finding 4, although the existing plant has been a good neighbor, the site is not suitable to accommodate the proposed expansion.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality;and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses* - in that the Partnership's proposal creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

The proposal constitutes a replacement of an existing plant with what is essentially a new, much larger plant. The subject site in a residential area is not adequate for the large

replacement plant because of the disruption to the neighborhood during the proposed 32 month construction period.

As noted above under Finding 3, the failure of the proposed project to meet the Comprehensive Plan Policy requiring the protection of residential areas from incompatible uses is not met, further demonstrating that the proposal does not contain adequate area for an industrial building of the size and scale proposed here.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.


MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

WEST LINN PLANNING COMMISSION

FINAL DECISION NOTICE

CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01

IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE, CLASS II DESIGN REVIEW, CLASS II PARKS DESIGN REVIEW, FLOOD MANAGEMENT AREA, WATER RESOURCES AREA AND WILLAMETTE RIVER GREENWAY PERMIT FOR THE PROPOSED INSTALLATION OF A WATER TRANSMISSION LINE FROM THE CITY LIMITS UNDER THE WILLAMETTE RIVER, THROUGH MARY S. YOUNG STATE PARK TO THE CITY'S NORTHERN BOUNDARY BORDERING THE CITY OF LAKE OSWEGO VIA MAPLETON DRIVE AND HIGHWAY 43

On October 17, 18 and 25, and November 1, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to install a water transmission line through the City of West Linn. The applicable review criteria for the Conditional Use, Class II Design Review, Class II Parks Design Review, Flood Management Area, Water Resources Area and Willamette River Greenway standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The approval criteria for Parks Design Review are found in Chapter 56 of the CDC. The approval criteria for Flood Management Areas are found in Chapter 27 of the CDC. The approval criteria for Water Resource Areas are found in CDC Chapter 32. The approval criteria for the Willamette River Greenway are found in CDC Chapter 28. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

On May 16, 2012 the applicant submitted a written request to suspend a related application for the expansion of a water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow the water treatment plant application to be considered concurrently with the application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, and November 1, 2012 the Planning Commission reconvened and conducted a duly noticed public hearing to consider both this application and the related application for the expanded water treatment plant. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open

pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the applications on the following grounds:

Finding 1: The Planning Commission finds that the applicant failed to satisfy CDC Subsection 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although Lake Oswego’s existing water transmission line, both as it currently functions and as proposed, could continue to provide a supply of water to West Linn in the event of an emergency through an existing or replacement intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. As noted in Finding 1(B), there is no guarantee that the proposed water transmission line would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. The scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounts to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per Subsection 60.070(A)(3) is not satisfied.
- C. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of

that facility's existence in the community. Further, to determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. The Commission interprets the term "overall needs" to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. Potential benefits provided by the facility, in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period, which as noted above, constitute a portion of the "community" identified in this criterion. The applicant's proposal uses the term "benefits" and provides a list of proposed amenities and improvements to the West Linn water system to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term "benefit." The Planning Commission finds that it is reasonable to include the concept of "benefit" as articulated here and in the Robinwood Neighborhood Plan as addressing the "overall needs of the community" criterion given the significant impacts of the project on the Robinwood Neighborhood.

West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets, if necessary, as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility. While the Partnership's offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership's municipal insurance coverage, in the event of damage to property due to a failure in the proposed project is appreciated, the amount is inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

As discussed above, there is no demonstration that a need for water will be met by the proposed facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term impacts and long term impacts (e.g., noise, heavy truck traffic, loss of property tax revenue) on the immediate neighborhood and those using Highway 43.

Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process indicating that the impacts exceed the potential benefits.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – “*The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*” The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the proposed water transmission line alignment to accommodate the 42- to 48-inch diameter pipe conveying up to 38 mgd given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the proposed pipeline alignment. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership indicating that a buttress is present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the impacts discussed below under Finding 4, the site is not suitable to accommodate the proposed water transmission line.

Finding 3: The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (“*The use will comply with the applicable policies of the comprehensive plan*”) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states “*Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.*” The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the

surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing Lake Oswego water treatment facility, including the existing water transmission line was uniformly described as a “good neighbor” the proposed water transmission line would be significantly larger than the current line. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed transmission line presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership’s proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *“Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities.”* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled “goals” and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership’s initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership’s proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn’s quality of life and livability.* See Finding 1(C). The Partnership’s proposal fails to protect residents’ quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their quality of life and livability;
- Goal 2: Actively support and encourage West Linn’s neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future;*
- Goal 6: Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality; and*
- Goal 11: Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn’s land use process.*

Finding 4: The Planning Commission finds that the Partnership’s proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the*

needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses - in that the Partnership's proposal calls for construction and heavy equipment in the streets without sidewalks that creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

Moreover, while the applicant failed to provide an analysis of these impacts, the Commission finds that proposed night-time work on Highway 43 would have adverse effects to residences upslope from Highway 43. Similarly, the Commission finds that noise impacts associated with the 24- to 48-hour continuous "pullback" phase of the horizontal directional drilling (HDD) operation is expected to generate noise levels of 55 to 61 dBA and would have adverse impacts on surrounding properties.

The proposed pipeline alignment is not adequate for the large replacement water transmission line because of the disruption to the neighborhood during the proposed 32 month construction period.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.



MICHAEL BABBITT CHAIR
WEST LINN PLANNING COMMISSION

11-26-12

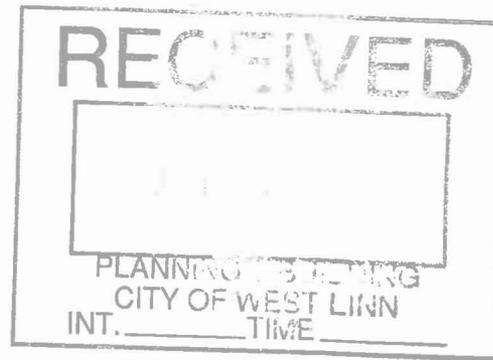
DATE

Mailed this 27th day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.

January 21, 2013

RE: AP-12-02 and AP-12-03



A great deal was left on the table after last week's city council appeal hearing. I feel that it is important to address the final statement by LOT attorney Ed Sullivan, as his perspective on some of the critical issues is fundamentally flawed.

To begin with, he talks about all of the expert testimony and review LOT has presented and that the opponents have offered no credible testimony to contradict their experts. Yet when it comes to the Carollo report, which was another of LOT's expert analyses which proved to be wrong on many points, he is quick to dismiss it as a preliminary analysis used merely to launch the public hearing process. This document was a supporting "expert" analysis for this project, and it was wrong. Unfortunately if other experts that LOT has brought forth prove to be wrong after this project begins, it is the citizens of West Linn who will bear the brunt.

Then there is the all important issue of the planning commission decision. Mr. Sullivan claims they "got it wrong". Really? He cites that they erred on the three criteria that they presented in their denial. In reality the commission found the proposal failed to meet 4 different CDC criteria and within those, also 6 criteria of the city's comprehensive plan. This is one the most important elements for the city council to review in making its decision. The planning commission found **9 criteria that failed to comply**. It only requires one to deny. Could all seven of them have gotten it that wrong?! I feel it is important to enter all of those criteria here for the record:

- 60.070(A)(3): "The granting of the proposal will provide for a facility that is consistent with the overall needs of the community"
- 60.070(A)(1): "The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses"
- 60.070(A)(2): "The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features"
- 60.070(A) (7) "The use will comply with the applicable policies of the comprehensive plan". Here there were six criteria that failed to comply:
- Council Goal 1: "Maintain and protect West Linn's quality of life"
- Council Goal 2: "Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future"

- Council Goal 6: “Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality”
- Council Goal 11: “Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn’s land use process”
- Council Goal 9: “Oppose urbanization of the Stafford triangle and pursue policies that would **permanently** retain that areas a rural buffer between West Linn and neighboring communities”
- Goal 2, Section 1, Policy 8: “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other incompatible land uses”

So, rather than the 3 criteria that Mr. Sullivan claims the PC missed on, there are 9 that must be overruled for the decision to be overturned. Collectively these criteria present the commission’s strong case for denial. Unless the council can find every one of them to be in error, there can be no case for overturning the decision.

While the city staff has dismissed some of these criteria as “aspirational”, I would refer the council to this statement from the comprehensive plan, “The goals and policies contained within this plan have the force of law and the city is obligated to adhere to them in implementing the plan.”

I would also argue with Mr. Sullivan’s reference to “conditional use” as to its meaning and application. Mr. Sullivan argues that conditional use means that the use is allowed with conditions. Again I quote directly from the comprehensive plan, “A proposed use of land which **might be allowed** after the city planning commission has determined that the proposed use is appropriate for the site, compatible with surrounding uses, is supported by public facilities, and is of overall benefit to the community and meets all other relevant criteria” “Might be allowed” does not equate with “will be allowed with conditions”.

Of course also within this statement is the phrase which has been in the forefront of this proposal which is “of overall benefit to the community”. Mr. Sullivan refers to this several times in his closing remarks. First he argues that the planning commission’s interpretation of this phrase is faulty because the term “community” is too narrowly defined as being only West Linn. He goes on to say that with this interpretation, other important infrastructure projects would be denied if they serve other communities. The problem with Mr. Sullivan’s logic here is that all of the other referenced projects primarily serve West Linn whereas this project primarily serves Lake Oswego and Tigard with West Linn having to suffer the hardships imposed by the project.

Also of note here is the list of “benefits” that he and LOT claim West Linn will receive. I feel it is important to list and address those:

- **Mary S. Young Park:** This is another “pay to play” on LOT’s part. While \$90,000 might be a benefit to the park’s coffer, there are many regular users of the park who would argue that it is not worth the noise and disruption to the park that it comes with. It also seriously falls into the shady territory of a developer being able to buy his way through a land use project. There is also the related issue of parts of this use being a charter issue which should require a public vote. The charter applies here because the staging area is above ground and will interfere with the use of city owned parks; i.e. the beach and Cedar Island.
- **Back up water:** The intertie exists. If this project goes away the intertie will not, particularly with the current Lake Oswego council in place.
- **Seismic armoring:** The faulty reasoning here is that in order to receive this benefit, we must allow an entirely new facility in an area where the facility does not belong precisely because of the seismic hazard. Their own experts tell us how dangerous this location is in seismic terms. Regardless of the technology used in building the plant and pipeline, **how does it make sense to put it in an area where it can do more harm if damaged by a seismic event?**
- **Streets and roads:** They will be doing no more than repairing what they are destroying in the process
- **Asbestos pipes:** Same thing and West Linn has to kick in as well. The asbestos pipes are a long term issue for West Linn, but to call a replacement of a short stretch of pipe because it is in the way of their mission a “benefit” is somewhat skewed reasoning. I would also add here that LOT has never explained how they plan to cut and splice into the asbestos pipes without contaminating our existing water system.
- **The right of way fee:** This is another one that falls in the shady area of “pay to play”. The offer of money before a land use application is decided upon sets a dangerous precedent. I would argue that it is not a benefit as the same purpose could be achieved through an actual franchise fee. Such a fee would be dictated by West Linn and could be much broader in its scope as well as increasing the amount West Linn could receive over the years to come. Also, since it is actually a rental fee, it should not be interpreted as a benefit.

The discussion of benefits brings up the issue of the petition. I understand that LOT doesn’t like the wording of it or the fact that a thousand people signed it. As the council fully knows there are sides being taken in this issue and “facts” being debated. LOT claims that its version is gospel, and anything stating otherwise is incorrect. Obviously there are those that disagree. The petition language was carefully crafted to be an accurate representation of our point of

view; there is nothing in it that “stretches the truth”. Additionally, LOT’s implication that people didn’t understand what they were signing is insulting to those who did sign.

Then there is the “canard” of highway disruption leading to problems for local businesses. While this is a case where there was opposing expert testimony, it fell on deaf ears with LOT. The bottom line is that this is a case of LOT making it look great with graphs, reports, and promises, but the hard reality is that this type of construction impact is very difficult to mitigate, and if their expert reports are wrong in this case, who will be accountable for the losses local businesses will be subject to? As for Mr. Sullivan’s claim that by not taking a position, certain businesses have “signed off” and are “effectively endorsing the project”. Talk about “aspirational”. A “no position” stance is exactly what it says; it is not an endorsement of the project.

Mr. Sullivan refers several times to the much used term, “good neighbor”. While the existing LO plant might be termed a tolerable neighbor, the LOT partnership long ago burned the bridges for any use of this term with the Robinwood neighborhood. LOT has never been and will never be considered a “good neighbor”. If this project were to go forward, it would be nothing short of a forced occupation leading to both short and long term resentment for the majority of the people in the neighborhood.

I realize that I am presenting a rather long document here, but Mr. Sullivan’s final statement required that it be addressed in complete manner for the record.

In closing I would add that the appeal hearings gave strong credence to the planning commission decision. West Linn and Lake Oswego can work together going forward to solve our water issues. This project is not the answer. The current Lake Oswego city council has indicated that it does not favor this project. It does not want to terminate our intertie agreement. I urge the West Linn council to deny this project, and coordinate with the city of Lake Oswego to achieve a well conceived and balanced future for our water needs.



Scott Gerber

3940 Kenthorpe Way

West Linn, OR

I agree that:

1. The Lake Oswego Tigard proposal is not consistent with the overall needs of the West Linn community.
2. The West Linn City Council should vote to uphold the unanimous decision of our West Linn Planning Commission.

	Signature	Print Name	Street Address	Email (optional)
1.		Sergey Nikishin	2557 Marylhurst Dr.	snikishia@gmail.com
2.		Irina Nikishin	2557 Marylhurst Dr.	sinikisha@gmail.com
3.		Olga Nikishin	2557 Marylhurst Dr.	Oggi808@gmail.com
4.		Alisa Nikishin	2557 Marylhurst Dr.	123peck@yahoo.com
5.		Elena Dyedkina	2557 Marylhurst Dr.	N/A

Help Save West Linn

from Nikishin Family, 2557 Marylhurst Dr. West Linn, OR 97068

Posted by Linn West at 2:50 PM

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01/18/2013

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Details for public viewing

As a twenty-one year citizen of West Linn, my husband and I would like to lodge of great displeasure at the thought of this action going through.

There are many reasons this would MORE than greatly inconvenience our family and the future sale of our home during the construction, but as we have read and understand the laws that would enable the LOT project to go through the application does NOT meet the cities requirements.

Another concern is that of safety. We literally live below the site and the potential for catastrophic water damage as outlined by the expert testimony in the first round of presentations is unacceptable.

Would love to have the rationale for the re-submission for this project after the city planning committee unanimously rejected it the first time. This has become a colossal, but sadly necessary waste of time and resources!

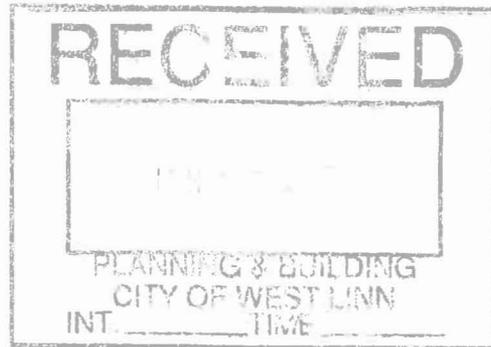
John and Cathie Alder
19120 Nixon Ave.
West Linn, OR. 97068

Written testimony

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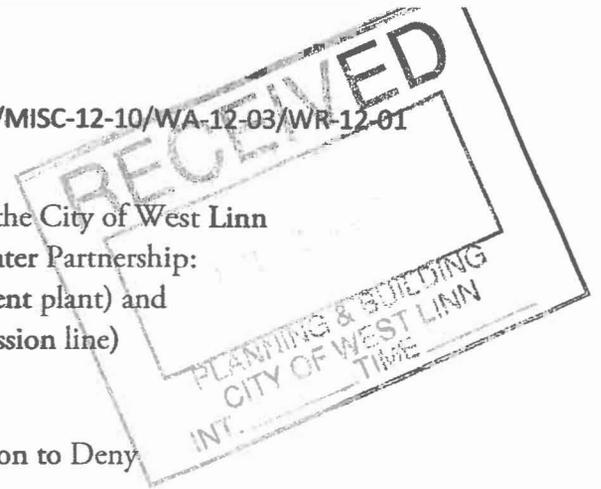
22 January 2013

NO.	ITEM	PAGES
1	CDC 55.100/Stafford Expansion/Geology/WMP /Criteria	24
2	CDC 55 NOTES/BURDEN OF PERSUASION R'QMT.	3
3	Public Participation Unconstitutionality	2
4	Copy of LOT CUP Application Overview	11
5	Gary Hitesman Project experience - by request only	2



Uphold to Deny CUP-12-02/DR-12-04 and CUP-12-04/DR-12-14/MISC-12-10/WA-12-03/WR-12-01

TO: Honorable Mayor and Councilors of the City of West Linn
SUBJECT: Appeals for Lake Oswego - Tigard Water Partnership:
CUP-12-02/DR-12-04 (water treatment plant) and
CUP-12-04/DR12-14 (water transmission line)
FROM/DATE: Gary Hitesman/21 January 2013
RE: Uphold Planning Commission Decision to Deny



The amended application has substantial changes that further propogate negative impacts to the existing neighborhood and still does not meet the requirements/criteria for a conditional use.

The amended application dated 12/10/12 states;

The plant design is suitable for this site and compatible with the surrounding residential neighborhood. (Page 2 of the amended applicant submittal to the City Council dated 12/10/12.)

Where new lighting or noise generation is proposed, the Partnership has responded by increasing the landscape buffering or sound baffling necessary to mitigate these impacts. (Page 3 of the amended applicant submittal to the City Council dated 12/10/12.)

Staff findings were allowed to remain standing in the record without taking into account the additional impacts and contradictory information now existing in the whole of the Record. The application is not consistent, contains many omissions, and has changed significantly with respect to staff findings. As is shown here, the plant design is not suitable , nor compatible as defined by the criteria with the surrounding residential neighborhood.

With new lighting and noise generation, the impacts of removing the existing building and adding a storm water retention pond creates an adverse impact of noise and glare from the elevated industrial operations proposed high off the ground plane. The landscaping, as proposed, will not only offer insufficient screening and buffering for decades, the large parking lot and new storm water pond will exacerbate the added noise and lighting onto Kenthorpe.

Additional criteria failing to meet the Comprehensive Plan follows.

The process offered citizens, in contrast to the over-abundance of time allowed the applicant, makes "the burden of persuasion" very difficult, if not impossible, to meet. However, the removal of the existing Operations Building is not referenced in the staff findings nor its impacts coordinated with other criterion within the code. When reviewed against the available documents the application no longer aligns with staff findings and/or the criteria.

Some of the appellants Conditions of Approval, page 7 of their December 10, 2012 submittal are not shown to comply with CDC 55.100;

1. Expanding the site size from 6 acres to 9.2 acres (see illustration in Figure 2 below);
2. A new administration building and modifications to the existing operations building (see Figure 2 below);
15. The existing high service pump station and roof mounted fans and the CO2 storage tank and associated compressor will be replaced and relocated, respectively, with appropriate noise attenuation features;

With the reduction in footprint, in itself not criterion, calls into question the initial discussions with the community and need for condemning on covenant restrictions. Is the expansion of the site size still valid? And with the demolition of the existing Operations Building, staff findings are no longer completely valid. Some criteria previously reviewed may not be met as appears to be the case. Roof mounted fans and other relocated equipment could potentially have an impact that staff has not reviewed or applied to the criteria. As an example, the report says appropriate noise attenuation features will be added but what does that do to respect to criteria in CDC Section 55.100(B)(6) and staff findings of the old? Overall, The burden of proof has been thrown aside to meet with the schedule demands of the applicant. Overturning the Planning Commission decision after the length and effort of their deliberations would appear, given the new inconsistencies and substantial changes to the project, to be acting with bias and with predetermination.

The purpose of the criteria is stated as:

55.010 PURPOSE AND INTENT - GENERAL

The purpose of the design review provisions is to *establish a process and standards* for the review of development proposals *in order to conserve and enhance the appearance of the City and to promote functional, safe, and innovative site development*. Attention will be paid to the proposal's scale, layout and design, its compatibility with the surrounding natural environment, and the character of the surrounding neighborhood or area. The intent is to ensure that there is general compatibility between adjoining uses . . . *and* that areas of public use are made aesthetically attractive and safe.

In Attachment 3 staff report, on page 15 states:

the applicant centered as many buildings as possible in the interior of the site and proposed "landscape layering" and other screening to minimize the appearance of the plant. The idea of landscape layering is to establish a variety of attractive screens and filters that soften the presence of the WTP for the community, and maintaining an overall transparency and cohesiveness while avoiding disconnectedness or an alien appearance. One specific example of this concept is the proposed approach to fencing. Taller security fencing is proposed to be subdued behind layers of vegetation within the core WTP area, distant from street view. The street edges along Kenthorpe Way and Mapleton Drive are proposed to be delineated by split-rail fencing and good neighbor fencing which contribute to a residential neighborhood character. In addition to fencing, other layers that subtly screen and secure the site are the preserved woodland edges, vegetated stormwater facilities, and the buildings themselves, which create a continuous façade shielding the most intensive plant operations from view.

As with the Planning Commission findings that the application is not consistent with CDC Section 60.070(A)(2) - "*The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features*", the staff report misconstrues and the applicant does not meet the criteria. (As much as they configured the layout based on equipment sizes location of existing processes that have grown to be out-of-scale with the surrounding residential use.) CDC Section 55.100(B)(6)(b) states "*proposed structures SHALL be compatible with existing structures on site and on adjoining sites. Contextual design is required. Contextual design means respecting . . . building lines, building scale and massing and colors of surrounding buildings.*" The applicant claims to minimize the appearance through landscape layering and other screening. Yet the landscaping demonstrated is at most 6 foot tall with maybe a 30" diameter on average. Most of the landscaping will be inches off the ground. And the predominant fencing, at 14 feet tall, far exceeds in scale anything else previously allowed in the city. Also, the "layering" mentioned by staff is a violation of the criteria under CDC Section 42 Fences and remains unaddressed by staff, applicant, and any Conditions of Approval allowing the exception. Looking at the figures and drawings, taller fencing is not subdued behind layers of vegetation. These fences are angled back and look more like abandoned homes than attractive screens. The fences, the size of fence normally seen at the need of airport runways are the height of the surrounding single story homes. And grading that is primarily level with the street and new plantings will do nothing to adequately buffer even with the setbacks proposed. This proposal is without precedent and staff has no authority or experience to justify the claims they are asserting. The closest example of what they are allowing is at Portland International Airport or, if you take away the grade, the walls around the Albertson's off I-205. As far as within the city's jurisdiction, fencing of this type only exists around ball fields that are outside residential areas, or as like the high school, used with larger setbacks and other buildings. The staff erred in implying the solution is subtle. Online, the word is defined as;

sub·tle - Adjective

1. (esp. of a change or distinction) So delicate or precise as to be difficult to analyze or describe.
2. (of a mixture or effect) Delicately complex and understated.

The application is not difficult to analyze and compared to many Conditional Uses that have come before it; ham-fisted. Due to the centralization of equipment that is relatively 200% taller than surrounding structures and surrounded by prison-tall fencing, the complexity required to avoid an alien appearance has only been enhanced by the lack thereof.

In Attachment 3 staff report, on page 16 and 17 states:

Architecture. The applicant states that the proposed architectural design is intended to reflect the building materials articulation, scale, and forms that occur in the neighborhood. The neighborhood is primarily made up of single-story ranch-style homes, most of which were constructed in the 1960s. Predominant roof forms found throughout the neighborhood tend to be low slope shed roofs and gable roofs, as well as a few flat roofs,

and the predominant cladding is lapped siding or vertical board and batten wood siding. Many of these ranch-style homes sit with their broad side facing the street, with their long, low pitched roof forms overhanging facades with lap siding, ultimately displaying a common pattern of horizontality.

This horizontality is proposed to be carried throughout the design of the plant.

According to Page 9 of ARCHITECTURE Form, Space, & Order by Francis D.K. Ching, the orientation of a line affects its role in a visual construction.

"While a vertical line can express a state of equilibrium with the force of gravity, symbolize the human condition, or mark a position in space, a horizontal line can represent stability, the ground plane, the horizon, or a body at rest."

Horizontal and Linear examples are cited as the Salginatobel Bridge in Switzerland; The Katsura Imperial Villa in Kyoto, Japan; and the Villa Aldobradini in Italy. As more applicable examples of appropriate horizontality as it applies to Robinwood, both Northwest tradition and other works by the project architect provide an authoritative visual demonstration on horizontality and suitability;



Figure 1- Peter Kerr House by Pietro Belluschi



Figure 2 - Lacy-Olympia-Thurston-Tumwater Wastewater Treatment Facility by Michael Willis Architects

The proposed structures do not conform to existing building articulation, scale, and form that occur in the neighborhood. And proportionally, the proposed plant does not conform to scale and articulation. (See Figure #3 through #4.)



Figure 3 -Existing Home on Mapleton with human scale added

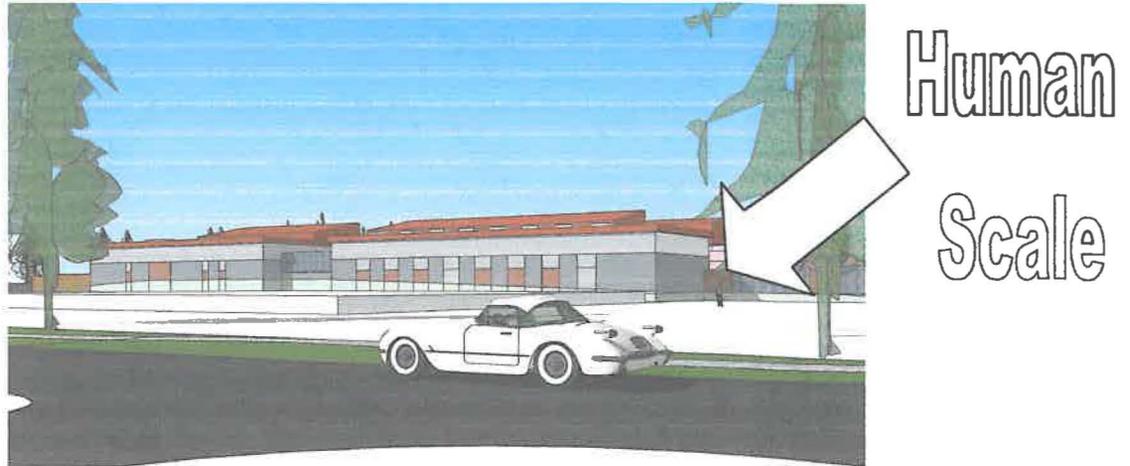


Figure 4- Original Plant facing Mapleton lacking compatibility, articulation, and scale.

The primary materials for building facades are proposed to be brick and horizontally articulated metal siding. Light colored composite panels and wood are secondary materials for elements like soffits, accents, and screens. New process buildings on the edge of the plant include the Electrical Building, the Finished Water Pump Station (FWPS), and the Mechanical Dewatering Building. Process buildings on the interior of the plant such as the Chemical Building will also employ these design elements, though in modified form.

Attached is a rendering drawn from the documentation provided in the application of the Chemical Building facing Kenthorpe. This building has significant changes that create a square proportion and stress verticality. The vehicle doors are about 14 feet tall versus the average garage door around 7 feet. The windows are larger than any of the homes in the area and the vertical configuration conforms better with the square proportions and is not horizontally proportioned. The shed roof that used to be there has been replaced by a higher pitched roof lacking the articulation of nearby residential roof forms. Also, notice how the interior of the plant impacts the pedestrian and residential feel of Kenthorpe. Like all the buildings at the interior of the plant, the mass(height, width, length) is not layered or cohesive with the existing fabric of the residential neighborhood. The elimination of existing vegetation on site, as suggested here, and the addition of a 14 foot high wall separated by a access drive and parking lot was not considered by staff and fails to meet the criteria.



Figure 5 - Chemical Building Concept Drawing from Kenthorpe

The proposed natural earth-toned brick atop a cast in place concrete stem wall rising from the landscape to a height of 12 to 16 feet is proportional to the residential scale.

"Proportional" is a misapplied construct in the context of the existing neighborhood. Even with smaller footprints and newer homes, brick and concrete walls "rising from the landscape" are neither compatible or manifestly superior or cohesive onto themselves. Newer two story homes are about 17 feet(or less) to the eave and show a finer scale of delineation and breakup of massing. The length and height of the Plant buildings not only are proportionally twice as big, there is little done to transition as stipulated by criteria in Chapter 24. And where you have less horizontality, existing homes show greater variations in roof forms, transitioning, steeper pitches, and greater transparency.



Figure 6- Two-story home on Mapleton



Figure 7- New residence, by a developer, in Robinwood demonstrating authoritative compatibility

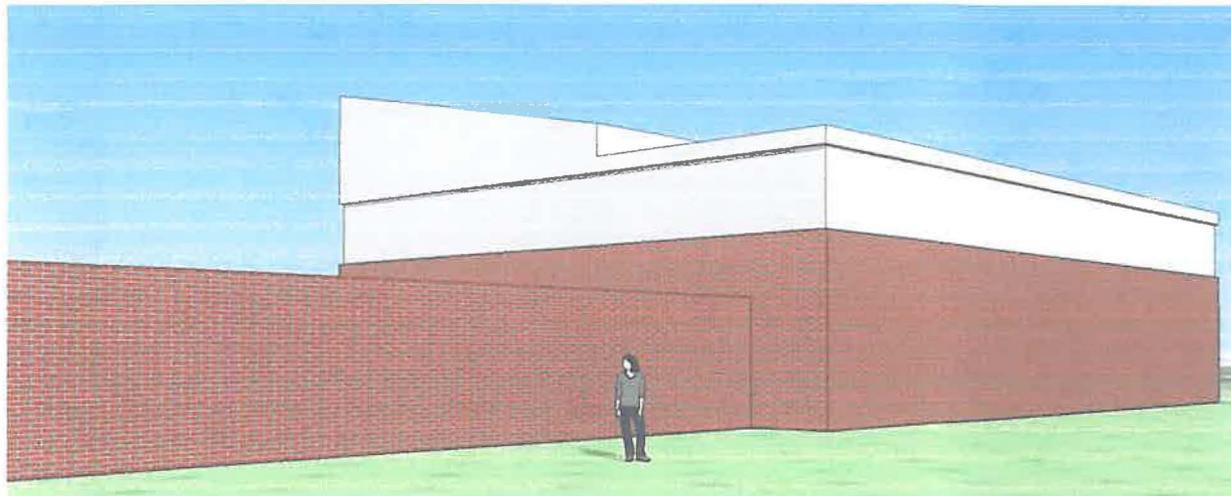


Figure 8 - Massing of revised Plant Building off Mapleton showing lack of proportionality and compatibility

These buildings will be articulated by shed roof forms; these volumes are essentially mechanical penthouses to keep all of the equipment indoors, out of view, acoustically isolated, and weather protected. These penthouses will be pushed to the far interior side of the process building and be constructed with shed roofs sloping to a high side towards the plant interior. They will be dark, allowing the form to recede from view.

Staff misconstrues function for aesthetic reflection. these forms are "mechanical penthouses" and are not proven as to 'how' they are intended to conform to the criteria. As demonstrated by the example of the Chemical Building, being "pushed to the far interior side" provides insufficient transitions and setbacks to the neighborhood. The notion of "Dark" is also a contradiction from the previously approved Trillium Creek Primary School, where rooftop elements exceeding the height requirements were painted "light" to recede from view and approved as such. The lack of consistency is troubling and given how the Planning Commission approved the school and not the Plant, it would appear staff is inconsistent or just making things up that sound good. In fact, when you consider sunlight, reflections, and shadow, darkening the roof forms at their relative heights of 24 feet will cast a larger, perceptible form that looms over the streetscape.



Figure 9 - Dark versus Light colored penthouses

The renovation of the existing Operations Building and construction of the new adjoining Administration Building creates the visual effect of one building.

This comment is out of date and no longer applies. The building is just about as high but now almost 50% less in length which makes it more like a rectangular shoebox than some object espousing "horizontality". Almost three times larger than two story homes and 34% taller, the administration building has no transition facade elements or roof lines that is compatible with the surrounding homes. It is also different from the Industrial components that are now exposed and the entire integrity of the design falls apart. You have the industrial components that are shaped from a functional aspect; an administration building that has been cut in half and has finer materials than the industrial part; and existing homes with a different look matching ranch-style and/or neo-contemporary.

Staff recommends approval of the proposed project subject to the following conditions:
1. Approved plans. The project shall conform to the Site Plan, Exhibit PC-3, Section 23, Figure 3.0;

The approved Plans do not show the reconfigured Operations Building or the stated new storm water retention pond.

Reasonable Response for Upholding PC.

Note that staff findings are incomplete, inconsistent, and does not refer back to the criteria within the CDC. Figure 2 , Exhibit PC-3, Section 23, Figure 3.0 shows a "REMODELED EXISTING OPS BLDG" that is to be demolished and replaced with a storm water basin. The plan is not coordinated with the elevations. Enlarged Elevations in the Record are not accurate. The LOTWSP Memorandum on Page 5 dated December 10, 2013 removes the existing Operations building and creates several inconsistencies and errors that staff findings no longer apply. Table 2.1 WTP Figures do not describe the added negative impacts and violations of this codes' criteria, only the changes enacted, primarily to save construction costs and reduce time, neither of which fit the criteria in the code. Further on down the table, the existing Ops building is replaced with a storm water retention pond . This is also not reviewed by staff and presents in omission in the staff report.

Going back further to the original staff findings, the Planning Commission appears validated by enforcing CDC 60.070(B) in reference to CDC 55.100(6) ARCHITECTURE not being met.

This analysis, unlike staff findings, includes the demolition of the existing Operations Building which contradicts the earlier findings of facts, creates substantial inconsistencies, and has not been proven to provide any greater benefit to the community. For example, Demolition violates Conditional Use No. 11 no offsite glare shall be created from exterior lights.

Where new lighting or noise generation is proposed, the Partnership has responded by increasing

the landscape buffering or sound baffling necessary to mitigate these impacts. The removal of the existing building, in effect, worsens conditions and was never evaluated by Partnership experts or peers.

The applicant asserts:

West Linn planning staff found that in all cases the proposed projects satisfied an overall community need, provided measurable benefits to the City of West Linn and its residents, and met all applicable underlying zoning, design review; environmental and supplemental land use regulations. The Partnership crafted all of the design modifications identified below so that the WTP/RWP/FWP proposals continue to comply with all applicable West Linn land use regulations. The modified proposal removes one large building, reduces impervious surface area shortens the construction period from 32 months to 28 months, and provides additional landscaping and buffering areas.

The modified proposal was not reviewed by the City staff for compliance with the above stated criteria (applicable design review, et al) and the applicant has significantly changed the nature of the project making hazards and larger negative impacts than originally proposed. Left unaddressed are the changes to the chemical processing equipment and locations and assertions that appear to have no basis of fact.

While staff are not aware of any reports that the existing WTP has had significantly negative impacts on the neighbors, water treatment plants have the potential to adversely impact the surrounding community. Many of the potential negative impacts are mitigated by the proposed increase in site size, burying the water reservoir, and by compressing the facilities in the center of the property. This enables larger setbacks of the plant facilities

Given the industrial scale massing, new landscaping, lack of measurable relief, and application of appropriate transitional elements, the existing, modestly scaled WTP will be transformed from a Dr. Jekyll to a Mr. Hyde. To further supply the burden of proof, staff did not comment on, nor did the applicant prove that demolishing the existing benefit meets the criteria. Worse still, the building has been replaced with a storm water basin that does nothing to aid in layering, allow needed screening, or provide any tangible community benefit.

The Staff Report for the Planning Commission dated April 18, 2012 states:

The most significant features of the new plant include: a proposed new administration building, a new underground water reservoir, new settling facilities, and new treatment facilities (see the project description on page 7 for other proposed project components).

And yet the staff findings did not change accordingly. Along with the most significant features came significant changes that were not fully addressed, do not meet with the criteria, and did not meet with the burden of proof.

The original staff findings, with Reasonable Response for Upholding the PC, follows starting on the next page;

6. Architecture.

a. The predominant architecture of West Linn identified in the West Linn vision process was contemporary vernacular residential designs emphasizing natural materials: wood with brick and stone detail. Colors are subdued earth tones: greys, brown, off-whites, slate, and greens. Pitched roofs with overhanging eaves, decks, and details like generous multi-light windows with oversized trim are common. Also in evidence are the 1890s Queen Anne style homes of the Willamette neighborhood. Neo-traditional homes of the newer subdivisions feature large front porches with detailed porch supports, dormers, bracketed overhanging eaves, and rear parking for cars. Many of these design elements have already been incorporated in commercial and office architecture.

FINDING NO. 24

Staff concurs with the applicant's response on page 54 of Section 4, Exhibit PC-3: The emphasis in subsection (6)(a) is on taking architectural cues from vernacular residential design and incorporating them into neo-traditional residential design. There is also an acknowledgement that some of these residential design elements can be incorporated into commercial and office architecture. The WTP is not a commercial building nor is it an office complex; it is a major utility with a variety of non-office uses necessary to process raw water into finished water. The second floor of the Administration Building will contain about 1,300 square feet of office uses but the balance of the WTP complex will be devoted to processing water. ~~However, as discussed below, the applicant conducted a visual analysis of the surrounding neighborhood and has incorporated several of the significant architectural design elements into the WTP design, such as, wood, brick, earth tones, modulated roofs and horizontal planes.~~

~~The criterion is met.~~

Reasonable Response for Upholding PC.

Citizens were offered an example, presented above, at what the applicant would strive towards and delivered nothing that identifies with the predominant architecture of West Linn. The second floor square footage has changed and the client failed to address how the demolition of an existing building and the ensuing "hole" in the elevation would comply with the criteria. The enlarged elevation that was put into the record was out of date and should have addressed what the new configuration would look like, but did not. Some of what staff writes does not apply. The applicant failed to present proof that this criteria was being met.

b. The proposed structure(s) scale shall be compatible with the existing structure(s) on site and on adjoining sites. Contextual design is required. Contextual design means respecting and incorporating prominent architectural styles, building lines, roof forms, rhythm of windows, building scale and massing, materials and colors of surrounding buildings in the proposed structure.

FINDING NO. 25

Staff concurs with the applicant's response on page 54 of Exhibit PC-3, Section 4: From the existing neighborhood, the WTP design draws cues regarding material articulation, scale, and form. The neighborhood is primarily made up of single-story ranch-style homes, most of which were constructed in the 1960's. Predominant roof forms found throughout the neighborhood tend to be low slope shed roofs, gable roofs, as well as a few flat roofs, and the predominant cladding tends to be lapped siding or vertical batten wood siding. Many of these

ranch-style homes sit with their broad side facing the street, with their long, low pitched roof forms overhanging an abundant use lap siding, ultimately displaying a common pattern of horizontality. This language of horizontality is proposed to be carried throughout the design aesthetic of the plant.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

As previously demonstrated above, the scale of the WTP is not compatible with adjoining sites. The design lacks local respect of the existing residences and incorporates nothing. Existing structures are being torn down to expedite schedule and consolidate construction expenses. So the proposed structures, in effect, were not compatible with the existing structures either.

c. While there has been discussion in Chapter 24 CDC about transition, it is appropriate that new buildings should architecturally transition in terms of bulk and mass to work with, or fit, adjacent existing buildings. This transition can be accomplished by selecting designs that “step down” or “step up” from small to big structures and vice versa (see figure below). Transitions may also take the form of carrying building patterns and lines (e.g., parapets, windows, etc.) from the existing building to the new one.

FINDING NO. 26

As shown on figures 10.0 and 10.1 of the applicant’s submittal (Exhibit PC-3, Section 21 and figure 10.2 in Exhibit PC-3, Section 23), the new buildings carry patterns, materials and lines from other buildings in the neighborhood throughout their design. Additionally, building elevations slope gradually from approximately 30-feet at the north end of the site to approximately 20-feet near the south end of the site. While there is no step down transition between the northern-most site buildings and the adjacent residences to the north, there is more than 200-feet of separation and mature site vegetation along Kenthorpe Way to act as a natural transition between these uses.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

The finding remains unsubstantiated. Photographs of existing residences and third dimensional take-offs of public documents show there is no transition in terms of bulk and mass. The buildings are best described as shoe boxes with broken lids. Nowhere is this more evident than where the existing Ops Building is currently located. The applicant proposes to place a retention pond there that contains no mass, bulk, or steps. Just a massive unadorned hole. The criteria is not met.

d. Contrasting architecture shall only be permitted when the design is manifestly superior to adjacent architecture in terms of creativity, design, and workmanship, and/or it is adequately separated from other buildings by distance, screening, grade variations, or is part of a development site that is large enough to set its own style of architecture.

FINDING NO. 27

Staff concurs with the applicant's response: The functional character of the dominant architectural form in the neighborhood is residential; the dominant form of the WTP is a public utility. The functionalities are in contrast but that does not mean that the architectural design also is in contrast. The applicant's design goal was to create an architectural design that does not contrast with the surroundings and which is manifestly superior to the adjacent architecture. The applicant proposes to create an architectural form that is both functional and sympathetic to the surrounding properties. To accomplish this blending, the design team compressed the process activity into the center of the site, thereby exaggerating the setbacks; it created building that are more horizontal than vertical; it selected cladding materials, such as wood and brick, that reflect the materiality and tone of the neighborhood; and it employed extensive landscaping and buffering to screen the WTP functions from the surrounding properties.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

Instead of meeting any of the criteria, staff has wordsmithed a finding that misconstrues intent and delivers a bland, lifeless building that fulfills none of the criteria. And the criteria is rather vague at that. Look back at the criteria. The applicant has three options to choose from. Manifest Superiority is achieved through creativity, design, and workmanship. Instead of providing proof how this was accomplished, both the staff and applicant say the design is sympathetic. Sympathetic is not how Manifestly Superior is defined. Or, by adequate separation. The grade is fairly level throughout; the distances are similar all throughout Kenthorpe and to close to residential structures off Mapleton to provide contrast. Or, is part of a development that is large enough to set its own style. The project is so small that it was a forced to sue neighbors because the covenant restrictions were too restrictive. And the developments on Kenthorpe and Mapleton constrain the site from being called a development site like the shopping centers in West Linn. The criteria states neither function or "sympathetic" as providing the requisite contrasting architecture. The project fails to meet with the stated criteria.

e. Human scale is a term that seeks to accommodate the users of the building and the notion that buildings should be designed around the human scale (i.e., their size and the average range of their perception). Human scale shall be accommodated in all designs by, for example, multi-light windows that are broken up into numerous panes, intimately scaled entryways, and visual breaks (exaggerated eaves, indentations, ledges, parapets, awnings, engaged columns, etc.) in the facades of buildings, both vertically and horizontally. The human scale is enhanced by bringing the building and its main entrance up to the edge of the sidewalk. It creates a more dramatic and interesting streetscape and improves the "height and width" ratio referenced in this section.

FINDING NO. 28

The applicant proposes a site configuration that is inconsistent with the suggestion to bring buildings and main entrances to the edge of the sidewalk for two reasons; 1) few buildings in the neighborhood have their main entrance along the edge of the front setback (compatibility); and, 2) according to the applicant, during discussions with the neighborhood there was not support for the notion of bringing the buildings closer to the property line. The applicant proposes to achieve a sense of human scale by creating an interrupted front plane of the Operations and Administration Buildings, using multiple windows, varied surface textures and tones, a soffit, and a prominent public entryway in the center of the building. The applicant also proposes a water feature to direct visitors to the central entryway leading into an open lobby. Access from the site into the central entryway will be along a clearly marked pedestrian walkway from Kenthorpe Way and across the visitor parking lot.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

See the figures provided above. This is not a criteria of compatibility but of scale related to use. The use of this project is different from a residence and compatibility is not a criteria under this requirement. Both applicant and staff have misconstrued the intent and misapplied the desired outcome. As such, the project does not seek to accommodate users as much as it does the equipment, budgetary constraints, and engineering processes. The pathway across the parking lot is also scaled towards the safe operation of vehicles and contains little else beyond the ground plane that would accommodate walking patrons or users.

f. The main front elevation of commercial and office buildings shall provide at least 60 percent windows or transparency at the pedestrian level to create more interesting streetscape and window shopping opportunities. One side elevation shall provide at least 30 percent transparency. Any additional side or rear elevation, which is visible from a collector road or greater classification, shall also have at least 30 percent transparency. Transparency on other elevations is optional. The transparency is measured in lineal fashion. For example, a 100-foot-long building elevation shall have at least 60 feet (60 percent of 100 feet) in length of windows. The window height shall be, at minimum, three feet tall. The exception to transparency would be cases where demonstrated functional constraints or topography restrict that elevation from being used. When this exemption is applied to the main front elevation, the square footage of transparency that would ordinarily be required by the above formula shall be installed on the remaining elevations at pedestrian level in addition to any transparency required by a side elevation, and vice versa. The rear of the building is not required to include transparency. The transparency must be flush with the building elevation.

FINDING NO. 29

~~The applicant's proposed use is a major utility and not an office or commercial building. The criterion does not apply.~~

Reasonable Response for Upholding PC.

The main front elevation on Kenthorpe IS a Administrative-type building and there is no hardship in attempting to meet the criteria. The main criteria is the notion that buildings be designed around

human scale. None of the opportunities suggested have been provided by the applicant. Potential enhancement of the streetscape is possible with the removal of the existing Ops Building. As such, the criteria is applicable and it has not been met, let alone attempted.

g. Variations in depth and roof line are encouraged for all elevations.

To vary the otherwise blank wall of most rear elevations, continuous flat elevations of over 100 feet in length should be avoided by indents or variations in the wall. The use of decorative brick, masonry, or stone insets and/or designs is encouraged. Another way to vary or soften this elevation is through terrain variations such as an undulating grass area with trees to provide vertical relief.

FINDING NO. 30

The applicant's proposal includes a variety of roof forms (flat roofs, with and without parapets, shed roofs, gable roofs, skylights, and green roofs) as well as vertical interruptions to horizontal building facades that serve to vary the roof line and depth along all proposed elevations. Figure 7 below and Figure 10.0-10.8 of the applicant's submittal (Exhibit PC-3, Section 21) illustrate the varied depth and roof line along proposed site elevations.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

There are two roof forms. A simple shed configuration that sometimes includes a continuation of the roof onto a vertical surface. The other is around a constant 24 foot height with inwardly facing shed roof that is noticeable from all angles. many of the elevations appear contiguous due to the security fence and indents or variations are less than what West Linn Supermarkets, in commercially zoned areas, possess. Brick is not used as an inset but as a primary material, which at the setbacks provided will appear as one massive masonry wall. Because the buildings facing Kenthorpe are to the south, the little variation that occurs will not be noticed. Compared to the overall heights of the buildings being 20 feet or higher, the variety of roof forms will not be perceived as stated.

h. Consideration of the micro-climate (e.g., sensitivity to wind, sun angles, shade, etc.) shall be made for building users, pedestrians, and transit users, including features like awnings.

FINDING NO. 31

The applicant's proposal includes pedestrian accessways to the site which are flanked by trees and other landscaping. The Planting Plan Overview (Exhibit PC-3, Section 21, Figure 12) illustrates how landscaping is proposed which will improve comfort for users of the building and other pedestrians.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

The 35 foot tall buildings and continuous security walls create a significant solid barrier that does not encourage pedestrian usage. Kenthorpe is primarily north of the proposed structure and the view of the building will always be in the shade. The landscape will take decades to mature and the overall

mass of the structures, parking lots, roads, and security barriers create an alien environment that provides neither comfort nor a location to stroll after a busy day at the office or work.

7. Transportation Planning Rule (TPR) compliance. The automobile shall be shifted from a dominant role, relative to other modes of transportation, by the following means:

a. Commercial and office development shall be oriented to the street. At least one public entrance shall be located facing an arterial street; or, if the project does not front on an arterial, facing a collector street; or, if the project does not front on a collector, facing the local street with highest traffic levels. Parking lots shall be placed behind or to the side of commercial and office development. When a large and/or multi-building development is occurring on a large undeveloped tract (three plus acres), it is acceptable to focus internally; however, at least 20 percent of the main adjacent right-of-way shall have buildings contiguous to it unless waived per subsection (B)(7)(c) of this section. These buildings shall be oriented to the adjacent street and include pedestrian-oriented transparencies on those elevations.

For individual buildings on smaller individual lots, at least 30 lineal feet or 50 percent of the building must be adjacent to the right-of-way unless waived per subsection (B)(7)(c) of this section. The elevations oriented to the right-of-way must incorporate pedestrian oriented transparency.

FINDING NO. 34

~~The applicant proposes to expand a major utility, not a commercial or office development. The criterion does not apply.~~

Reasonable Response for Upholding PC.

The criteria applies and it has not been met. The criteria states . . . " *if the project does not front on a collector, facing the local street with highest traffic levels.*" The criteria as shown refers to "the project". As a standalone structure that is new and no longer attached to an existing building, the administrative building is minimally classified as an auxiliary Use OR is an Office Development outright. The applicant has already described the entry as inviting to suit other criteria. The applicant nor staff have provided a consistent review and mask over the intent of the TPR which is to incorporate pedestrian oriented transparency. In addition, the criteria states " *The automobile shall be shifted from a dominant role, relative to other modes of transportation,*". Other modes include pedestrian and bike circulation as a major mode of transportation and having a parking lot off Kenthorpe encourages the automobile as a dominant use.

e. Paths shall provide direct routes that pedestrians will use between buildings, adjacent rights-of-way, and adjacent commercial developments. They shall be clearly identified. They shall be laid out to attract use and to discourage people from cutting through parking lots and impacting environmentally sensitive areas.

FINDING NO. 36

Staff concurs with the applicant's response: There are three proposed paths on site: a short pathway through the landscaped area between Kenthorpe Way and the visitor parking area, a

small path from the visitors parking area through the stormwater facility to Kenthorpe Way, and the pedestrian path from Kenthorpe Way south to Mapleton Drive via, in part, the emergency access road. The first two paths connect the public right-of-way to the WTP Administration and Operations Buildings. The path leading from Kenthorpe Way to the WTP entrance through the visitor parking area varies from 8- to 18-feet and will be of a color or texture different than the visitor parking lot surface. The stormwater facility at the northwest corner of the site is within a small swale, which is not an identified stream corridor or regulated natural area. The applicant welcomes visitors to this area that is designed to be a quiet reflective area within the neighborhood. The Kenthorpe Way to Mapleton Drive path winds around the secured WTP core area and then travels southward through a grove of five significant trees that the applicant has protected (see applicant submittal Exhibit PC-3, Section 23, Figure 3.4). Therefore, the applicant proposes to provide pedestrian paths between rights-of-way and the WTP facility that are attractive to use, provide direct access through a parking area and do not impact any regulated environmentally sensitive area.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

The suggested path is not a direct route. Even the applicant qualifies it as winding around. A pathway was requested by citizens and never considered by the applicant. By review of the site analysis and location of plant facilities, a more direct path is possible between Mapleton and Kenthorpe. The other two paths connect parking and use areas immediately adjacent to over-scaled building components, lack encouragement to use, and are not attractive to use. The quiet reflective area is in plain view of an non-buffered and unscreened industrial complex. The site area to the west is secluded behind a security fence and has no function. Criterion has not been satisfied.

f. At least one entrance to the building shall be on the main street, or as close as possible to the main street. The entrance shall be designed to identify itself as a main point of ingress/egress.

FINDING NO. 37

The public entrance to the WTP is via Kenthorpe Way. This primary visitor entry is proposed to be gently elevated above the parking lot level. Pedestrian pathways lead visitors to the WTP main entrance. ~~The criterion is met.~~

Reasonable Response for Upholding PC.

Figure 8 Applicant's rendering of proposed primary visitor entrance (Page 56 of the staff report dated 4/18/2012) is no longer accurate or consistent with the finding. Besides the landscaping providing a false sense of canopy and buffering, the entry is no longer as close as possible to the main street. With the removal of the existing building, the new Operations Building with a setback of 114 feet no longer meets the criteria. With the 14 foot high wall and industrial infrastructure as background, the entrance can no longer be identified as the main point of ingress/egress.

h. Projects shall bring at least part of the project adjacent to or near the main street right-of-way in order to enhance the height-to-width ratio along that particular street. (The "height-to-width ratio" is an architectural term that emphasizes height or vertical dimension of buildings adjacent to streets. The higher and closer the building is, and the narrower the width of the street, the more attractive and intimate the streetscape becomes.) For every one foot in street width, the adjacent building ideally should be one to two feet higher. This ratio is considered ideal in framing and defining the streetscape.

FINDING NO. 39

CDC Section 55.100(B)(7)(i) recognizes that while the architectural standards in 55.100(B)(7) apply to public facilities, these uses, due to their functional requirements, cannot readily be configured to meet them (architectural standards). 55.100(B)(7)(i) further states that in these situations, attempts shall be made to make the design sympathetic to surrounding properties by landscaping, setbacks, buffers, and all reasonable architectural means.

The existing Operations Building is set back 114-feet from the Kenthorpe Way right-of-way. The applicant proposes a remodeled Operations Building that is set back the same distance as the existing one and a new Administrative Building that will be set back an equal distance to continue the horizontal plane of the Operations Building.

Kenthorpe Way includes a 50-foot wide right-of-way with a pavement width that varies between 22 and 25-feet (see Exhibit PC-3, Section 23, figure 3.0). The Administration Building is proposed to be 29-feet tall and the Operations Building is proposed to be 35-feet tall. Applying the height and width ratio, as suggested in this section, would result in Administration and Operations Buildings between 44- and 50-feet tall. Because the intent of CDC Chapters 55 and 60 strive to maintaining compatibility with surrounding uses and because of the additional flexibility provided in 55.100(B)(7)(i) for public facilities, staff finds that this portion of this criterion is not applicable.

Reasonable Response for Upholding PC.

CDC Section 55.100(B)(7)(i) states "THESE standards SHALL apply" but "attempts SHALL be made". With the removal of the existing Operations Building it can be asserted that "attempts" at making the "design sympathetic" was not done. The criteria has not been met.

Applying a height to width ration that already exists on Kenthorpe would achieve greater compatibility and would also work to better buffer the larger plant behind and control noise and glare with a massing similar to newer developments built in the area. Instead of stating the criterion is not applicable, the applicant shall be required to provide a ratio that extends the "enhancing" qualities sought by the criteria.

i. These architectural standards shall apply to public facilities such as reservoirs, water towers, treatment plants, fire stations, pump stations, power transmission facilities, etc. It is recognized that many of these facilities, due to their functional requirements, cannot readily be configured to meet these architectural standards. However, attempts shall be made to make the design sympathetic to surrounding properties by landscaping, setbacks, buffers, and all reasonable architectural means.

FINDING NO. 40

Staff concurs with the applicant's response: The WTP complex is a major public utility. The primary purpose of this facility is to process raw water into finished potable water and to pump the finished water into the delivery system. The majority of the actual work accomplished on-site will occur in or around structures that do not necessarily lend themselves to the architectural standards articulated in CDC subsection 55.100(B)(7). The applicant and their design team, in consultation with the neighbors, made significant efforts to: assess the visual character of the neighborhood, design a complex that reflects the design qualities of the neighborhood, compress WTP operation into the center of the site, and provide a high degree of landscape plant and structural materials to buffer the neighborhood from the WTP day-to-day operations.

~~The criterion is met.~~

Reasonable Response for Upholding PC.

Citizens were shown 'A' design and were offered no studies that proved significant efforts had taken place. Instead of attempting to meet the criteria, a preference to extol the limitations of engineering are used as a "get-out-of-jail free card, so to speak. The scale and size of the equipment required to generate the MGD desired

C. Compatibility between adjoining uses, buffering, and screening.

1. In addition to the compatibility requirements contained in Chapter 24 CDC, buffering shall be provided between different types of land uses; for example, buffering between single-family homes and apartment blocks. However, no buffering is required between single-family homes and duplexes or single-family attached units. The following factors shall be considered in determining the adequacy of the type and extent of the buffer:

- a. The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier.*
- b. The size of the buffer required to achieve the purpose in terms of width and height.*
- c. The direction(s) from which buffering is needed.*
- d. The required density of the buffering.*
- e. Whether the viewer is stationary or mobile.*

FINDING NO. 42

The applicant's plans indicate the presence of buffers which serve primarily to decrease noise and to provide a visual buffer from adjacent properties; according to the applicant's submittal, and verified by staff in the field, the WTP does not generate significant amounts of dust or air pollution. The applicant proposes to decrease off-site noise and visual impacts by: Placing WTP operations facilities near the center of the site; to maximize distance between noise generating and more visually prominent buildings, and adjacent residences; and, Placing site landscaping, such as fences, walls, plantings and stormwater facilities in various layers, between adjacent properties and the center of the site, throughout the site.

While noise buffering such as sound reducing walls, fences, vegetation and the placement of noise generating equipment indoors serves to minimize the noise impacts on adjacent residences, visual buffering serves to soften the presence of the WTP for the community. As proposed, visual buffers maintain transparency and cohesiveness while avoiding disconnectedness and alienation. The applicant has proposed a system of buffers that are sensitive to the requirements for neighborhood compatibility, as expressed in this Chapter as well as Chapter 60, while minimizing off-site noise impacts.

Due to the industrial nature of the uses and buildings, the applicant centered as many buildings as possible in the interior of the site and proposed "landscape layering" and other screening to minimize the appearance of the plant.

Reasonable Response for Upholding PC.

The buffers have not been proven to decrease noise. With the removal of existing vegetation and the addition of more hardscape, noise is likely to increase. And where the 14 foot walls might contain some noise, the fencing material is not sound proof and noise appears to be ill considered. With reverberation coming off the hard concrete, brick, and metal siding, it is more probable that an increased level of noise will be experienced in the area outside the project. Regarding placement, the maximizing of dimensions between sources of noise has not been demonstrated. The use of "various layers" is also ambiguous.

The visual buffers offered, like the structures they surround, are not compatible with the existing neighbor and only strengthen the perception of difference and alienation. As stated, there is a split rail fence in front of low level landscaping and fresh starts in what will be a relatively open meadow. The buried reservoir suggests some kind of elevational rise but that has not been consistently applied to the documents and it is unclear what will happen off Mapleton. There are some airport-like fence barriers scattered across the meadow that have not been shown what type or efficacy of buffering they might provide. Then you have the massive buildings that are about 24 top 26 feet tall connected by a 14 foot tall wall continuous across the site. The current plant uses a 6 foot chain link fence and is overtaken with plant life. In terms of the criteria, the proposed buffers fail to prove compatibility, extent, and adequacy.

OVERVIEW

The legal obligation imposed upon the Partnership is at best muddled because "sufficient capacity to serve existing communities as well as customers within a 30 year planning horizon includes projections into the Stafford Area. (Page 2 of the amended applicant submittal to the City Council dated 12/10/12.)

The Comprehensive Plan clearly states growth in Stafford is not allowed.

ANALYSIS

See the previously submitted email, with attachments, sent to the Council and Zach Pelz on January 16, 2013.

OVERVIEW

The geology is left unreconciled.

ANALYSIS

#1.) "All of the qualified expert testimony", is not a valid assertion. In another discussion, the expert geologists did not adequately explain the lack of boring holes or unstable geology in the area, instead just outright disagreeing, without providing the burden of proof, that the commission was wrong. The pipeline continues to be an undue hazard to the community.

#2.) Lake Oswego appears to have misrepresented the geological conditions and instability for the area immediately east of the WTP property and including the steep frontage properties and drainages adjacent to Mapleton Drive and above(west of) Nixon Avenue.

During questioning of the applicant on 11/1/12(See West Linn Planning Commission Minutes of November 1, 2012 pages 9 and 10) and the video recording of the hearing and questioning. Commissioners indicated how the applicants characterization of the geology and slope instability immediately east of the WTP property were erroneous and misrepresented.* This included the applicants description of conditions for other areas southeast and north of the critical unstable area in question. The applicants reports provided insufficient findings that did not satisfy the criterion. Furthermore, the client representative characterized/represented the critical unstable area noted by commissioners unsatisfactorily. Commissioners cited specific references to these misrepresentations in the applicants expert reports and indicated that they also walked the area to assess the applicants documentation and to observe the field conditions. A further comparison of the applicants characterization with the geologic mapping performed by the State, which showed significant recent landslides mapped in critical areas of question, was identified as being relevant to the proposed development. The applicants representative testified that the 'entire' area located east of the WTP property, and identified by the commission as an area of concern, was completely stable and "not a problem".

It also appeared to this observer that the commission was represented by a professional registered geologist in Oregon and licensed geologist/hydrologist in Washington. Rather than meeting the burden of proof, the applicant left unanswered serious doubts raised by commissioners.

* (City did not have any engineering representative there. (Mr. Greene was let go early 2012 and the position remained unfilled throughout the review process.)

OVERVIEW

The intent of the West Linn Water Master Plan, a component of the West Linn Comprehensive Plan, has been misconstrued. The benefits and components proposed by the applicant and the West Linn City Manager trigger the amendment process to the Comprehensive Plan. This was also an oversight of the West Linn Planning Director who, after overseeing the review of the application, should have determined accordingly.

ANALYSIS

The assumptions and recommendations of the Water Master Plan have been largely ignored. Primarily, a shortage of water has been identified in the case of a catastrophic seismic event with a average probability of hitting the region within the foreseeable future of infrastructure planning. The base assumptions are so many MGD are required to keep West Linn citizens safe and that both pipelines crossing the Willamette will be put out of commission for awhile.

The recommendations primarily support the addition of reservoirs and pump stations to get the water from the existing intake. The intake provides an option of potential providers. One is Bull Run. The other is the Robinwood Aquifer.

The solution provided by the applicant and the solution negotiated by the West Linn City Manager do not meet with the West Linn Master Water Plan and the discussions therefore do not meet the criteria in the West Linn Comprehensive Plan. Both the process enacted by the city and the applicant's opaque project design process have prevented an execution of the West Linn Comprehensive Plan as providing the appropriate response.

To meet with the Burden of Persuasion, the following items shall be placed into the Record for further consideration in upholding the decision to deny the application;

- The West Linn City Charter
- The West Linn City Council Rules
- All records of discussions between the cities of West Linn and Lake Oswego
- The Neighborhood Association bylaws

OVERVIEW

The applicant claims in their memorandum to the City on December 10, 2012;

3. As a quasi-judicial proceeding, review must focus solely on the applicable approval criteria.
 - The strongly held emotional views of those who testify about the presence of the existing plant and the proposed project should play no role in how the applicable criteria are applied by the hearing body.

I believe residents recognize the quasi-judicial proceeding and the mayors' request to get "rational" and to "cite criteria"; as was done by many and was in the Planning Commission's decision to deny.

In answer to the non-issue of emotion, the following quote is submitted for the record;

"It is easier to manufacture seven facts than one emotion."

Life on the Mississippi
Mark Twain

Citizens are well versed in the code and have done the best job allowed by the City Manager's process to cite code and provide the "burden of persuasion". The staff findings, unfortunately, as well as the applications efforts, have not met with providing "the burden of proof" and have misconstrued much of what should have been applied.

The application fails to meet CDC 55.100. All you need is one. I have provided you with 15 plus more to come.

Please refer to CDC 55.100(6) Architecture, attached here for your reference.

b. The proposed structure(s) scale shall be compatible with the existing structure(s) on site and on adjoining sites. Contextual design is required. Contextual design means respecting and incorporating prominent architectural styles, building lines, roof forms, rhythm of windows, building scale and massing, materials and colors of surrounding buildings in the proposed structure.

Please acknowledge, when you support the denial by the Planning Commission, that the applicant **failed to provide**, and even failed to attempt, meeting **the burden of proof**. They have provided inconsistent and ever changing plans, elevations, and site plans that have never been coordinated even to this day. Exhibit one is the detail elevation of the administration building which still shows the existing structure in place. The applicant has incorrectly stated that no one has used the code to deny the application. Although that is exactly what the Planning Commission did do.

Assuming that the Partnership gave it's level best to present you with the burden of proof, **allow me to provide you with the Burden of Persuasion**. The client's biggest argument was that the project has a smaller footprint. And the renderings shown are graphic misrepresentations that they have tried to pass off as reasonable accommodation towards the requirements.

Sadly, these drawings would hardly warrant consideration in a city of 26,000 anywhere else and places a question mark over the integrity of your planning process. Reviewers appear to have acted with bias, not objectivity. To satisfy LUBA, the burden of persuasion must be allowed to coexist with staff's approval on a level playing field. It appears Staff has been led astray and that the city manager has provided a strong influence on getting the necessary approvals while keeping you guys at bay and effectively tying your hands with actual bias. So not only did staff NOT conduct a fair review; the process in place was corrupted by lack of proper procedures and processes.

The only one, so far, . . . to do it correctly, was the Planning Commission.

Because, from the profane to profanity;

1.)Footprint is not a criteria in CDC 55. (There is criteria on "layout", but the client has failed to make the connection to the criteria. And it appears that if they did they would fail here too.)

2.)There is no transition per Chapter 24, just a fence 14 feet in height separating the fabric of the existing suburban neighborhood from the industrial complex within.

3.) Compatibility is. As defined, Structures SHALL be compatible with existing structures on site, which they are not. They are getting rid of existing structures because existing structures are not compatible with the new ones. It is not the decision makers choice to warrant compliance because it suits the applicants construction schedule. That is not a criteria. And they have not

addressed, ever, how the architecture is compatible with existing structures on adjacent lots other than to cite setbacks that are not appropriately presented or proven to serve compatibility. They just say it is. My submitted drawings say otherwise. Contextual design is required yet the structures DO NOT compare favorably, nor reasonably, with the existing scale, massing, architectural styles, building lines, roof forms, rhythm of windows, color, and materials and color. Zilch. Nada. Nowhere. Extinct. Irresponsible. Miscreants. Liars.

All of them who pretend to support this project appear to be acting like fools or liars. The city manager should be let go for allowing this mockery to see the light of day and waste your time. Enablers have provided a disservice to this community and offer only a Trojan Horse as community benefit. Shame on ALL of them.

4.) And as for you-former-planning-commissioners, CDC 55.100 6.(a) is an abomination and waste of ink on paper. What is described is not West Linn. It is just crap on paper suggesting that crap like this proposal musters consideration. But even with these lackluster requirements and poorly crafted attempt at regulating aesthetics, the applicant fails miserably. What is worse than Crap? Until now, I hadn't the answer. Now I do. It is this application.

5.) Contrasting Architecture would be allowed if it is "manifestly superior". Ms. Jane Hiesler even asked what that meant and no public response was given. The client failed to provide proof in terms of their creativity, design, and workmanship. My flowery and disrespectful emails show more creativity and is manifestly superior to their design responses; which are crap.

6.) Human scale? Definitely not.

7.) 60 percent transparency? Not proven.

8.) Variations in depths and roof lines? No. Facing Mapleton are blank walls. Fences act as blank walls and are foreign to West Linn.

9.) Awnings? No.

10.) Attractive Pedestrian Environment? Sadly, the buildings overshadow the surrounding area like a Death Star. People are running away from this monster.

11.) The huge rolling gates to allow employee cars and delivery trucks does not diminish the predominant role of supporting this facility with materials and quantities exceeding what the neighborhood could ever use or require. Since the applicant failed to talk about the TSP, the application should be denied.

12.) The roll-up door for the building facing Kenthorpe is a nightmare.

13.) Paths should provide direct routes. The path suggested diverts travelers around the behemoth and circumvents a possible positive pedestrian experience.

14.) Height to width ratio was never considered. Classic fail.

15.) Buffering is woefully inadequate and inappropriate. The landscaping will take decades to provide the required buffering.

I recall who was the West Linn Buffoon who said property values would rise over the next 40 to 50 years and be forgotten? A UAB volunteer? Incredible! Are you guys that out-of-touch with the shit storm you yourselves have created? I don't think I am being disrespectful when I measure the lack of respect afforded residents in West Linn. I would be a coward if I could not state such an obvious fact occurring inside West Linn.

As the L.O. sign says at Lusher Farm, "WECLOME". PLEASE! Don't weclome this project to West Linn. Give it a swift kick in the 'tucus' and let's move on to really solving our emergency water needs as recommended in the Water Master Plan. Start by getting a respectable UAB assembled.

I emphatically state the project fails to meet CDC 55.100.
Ex Parte

Uphold the PC decision to deny CUP 12-02 and CUP 12-04

WTP Public Participation Unconstitutionality

Statement of Violation

The Beery Memo is being used to violate citizens constitutional rights by restricting public participation using increased restrictions than required under the Oregon Land Use Process.

In the case of Land Use quasi-judicial matters, Ex Parte contact is invalid when the "councilor" places the substance onto the record and makes a public announcement. The right to hear residents speak out at "Community Comments", or attend Neighborhood Associations and listen to grievances, is a duty of the decision maker. Invoking "The Beery memo" violates the intent of Goal One Land Use objectives, breaks the rules under ORS 197.835, and is not supported in the council rules.

Action Request:

When the Planning Commission(PC) reconvenes to hear the suspended application, the PC shall deny CUP-12-02/DR-12-04 for failure to comply with the West Linn comprehensive plan and ORS 197.835(2)(b).

Background:

197.835 Scope of review; rules. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) . . .

(b) In the case of . . . unconstitutionality of the decision, ex parte contacts, . . . or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, ***only if*** the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

227.180 Review of action on permit application; fees. (1)(a) . . .

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

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JANUARY 22, 2013

VIA HAND DELIVERY

West Linn City Council
22500 Salamo Road
West Linn OR 97068

Re: LOT CUP Applications AP 12-02; AP 12-03

Dear Honorable Members of the City Council:

I represent STOP in opposition to the application by Lake Oswego -Tigard Partnership to replace the existing water treatment facility located on Kenthorpe Way, as well as the application to route a 4-foot diameter water pipeline through the City of West Linn.

While other members of STOP will present a more broad overview of the specific objections that the citizens of West Linn have to this proposal, my presentation focuses instead on some of the more nuanced legal issues present in this case.

A. The Applicant Submitted What Amounts to a New CUP Application for the Water Treatment Facility; the City Council Should Remand the Matter Back to the Planning Commission.

After the Planning Commission denied the CUP permit, LOT submitted a new site plan for the water treatment facility. These plans call for a complete replacement of the old facility, with a new building being constructed in its place. However, LOT never went back and re-addressed the Design Review criteria set forth in CDC Ch. 55.

We recognize that the city has substantial latitude in determining whether an alteration in a permit proposal requires a complete re-hearing or rather can be taken up in the course of the ongoing proceeding. In this case, the changes are substantial enough that the new plans constitute a new application, particularly as it relates to the design review criteria.

B. Overview on Conditional Use Permits.

One frequently encountered argument advanced by applicants for a CUP is that the legislative determination that a particular use is a “conditional use” in a zone represents a prima facie determination that the characteristics of the proposed use are compatible with the permitted uses in the surrounding areas. *See e.g., Hannan v. Yamhill County*, 6 Or LUBA 83 (1982). LUBA and the Courts have consistently rejected that argument, and we will explain the reasoning for rejecting it, below:

When cities draft their zoning codes, they typically differentiate between three general categories of land uses: (1) uses allowed by right (aka “permitted” uses), (2) prohibited uses, and (3) conditional uses. Permitted uses are those uses that the city has determined, as a legislative matter, are *per se* consistent with the objectives of the zone and should be allowed by right in all cases. These uses cannot be outright denied in the particular zone in question under any circumstance.

Conversely, prohibited uses are those that the city has determined are always going to be inconsistent with the objectives of the zone, and cannot be allowed in that zone under any circumstance.

Conditional uses are the proverbial gray area. Whereas permitted uses are a “yes” and prohibited uses are a “no,” conditional uses are a “maybe.” This is because they are sometimes consistent with the zone and sometimes inconsistent with the zone, depending on the specifics of what is being proposed and what other uses exist in the surrounding area. In creating a list of conditional uses, the city is essentially saying that it cannot say definitively, via a legislative process, whether any particular proposal from that list should be approved or denied, and that this determination should be deferred until an applicant comes along and puts a specific proposal before the city via a quasi-judicial process.

Thus, in this manner, a conditional use permit (CUP) allows a city to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district, through a public hearing process. A conditional use permit can provide flexibility within a zoning ordinance. Another traditional purpose of the conditional use permit is to enable a municipality to control certain uses which could have detrimental effects on the community. Examples of common uses allowed with a conditional use permit include churches, public or private schools, public building or utility structures, parking lots, temporary subdivision sales offices, and community care and health care facilities.

Consideration of a CUP is always a discretionary act. *See, e.g., CDC 10.020* (“The approval of a conditional use (CDC 10.060) is discretionary with the Planning Commission.”). Most importantly, a conditional use may be approved or denied. There is no presumption that a proposed conditional use application should be allowed with conditions. DLCD has described the CUP process in a manual entitled “An Introductory Guide to Land Use Planning For Small Cities and Counties in Oregon, January 2007. In this manual, DLCD states “The decision maker can approve the request, deny it, or approve it with conditions, based on criteria in the zoning ordinance.”

The City of West Linn's code reflects this paradigm by using the word "may" as opposed to shall in the definition of conditional use: "a use which may be permitted by the approval authority * * *." CDC 02.030 (Emphasis added). CDC 60.070 states that "The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, * * *, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria: * * *." Similarly, the Comprehensive Plan states that a conditional use is "[a] proposed use of land which *might be allowed* after the city planning commission has determined that the proposed use is appropriate for the site, compatible with surrounding uses, is supported by public facilities, and is of overall benefit to the community and meets all other relevant criteria."

In this case, the applicant states that "[b]y allowing a major utility as a use conditionally permitted within the R-10 zone, temporary construction impacts are contemplated so long as the compatibility and benefits criteria are satisfied." See Memorandum from Joel Komarek *et al* to City of West Linn, Dec. 10, 2012, at p. 2. We disagree. With the sole exception being the Campus Industrial (CI) zone, the City of West Linn allows Major Utilities in *all* of its zoning districts. That is a very common practice, since typically it will be the city itself that is the applicant for a major utility, and the drafters of the code want to give *themselves* as much flexibility as possible. Nonetheless, the decision to make a major utility a conditional use in any given zone is, at best, merely a recognition that the discussion of compatibility and impacts should take place in a quasi-judicial setting, as opposed to legislatively declaring *every* major utility to be *per se* compatible or *per se* inappropriate. It is, in this regard, a decision to make a utility a conditional use merely grants the Planning Commission and City Council the flexibility to address the merits of any given application on a case-by-case process.

But that flexibility does not require the city of grant an approval in every case. In fact, the Code's definition of "major utility"¹ recognizes that the primary impact on the community may likely occur during construction, and the CUP may be denied for that reason. The code distinguishes between major and minor utilities, with minor utility being use permitted by right in most every zone, while major utilities are conditional uses in virtually every zone (except the GI zone, where they are permitted by right, and the CI zone, where they are prohibited). A "Major Utility" is defined as "[a] utility facility or service that will have, or the installation of

¹ The Project Consists of two Separate "Major Utilities," the pipeline and the treatment plan. The Code contrast between "major" and "minor utilities, as follows

Utility, major. A utility facility or service that will have, or the installation of which will have, a significant impact on the surrounding uses or the community in terms of generating or disrupting traffic, interfering with access to adjacent properties, creating noise or causing adverse visual effects. "Major utility" includes, but is not limited to, a substation, pump station, water storage tank, sewer plant, transmission lines for water, drainage or sewerage collection systems, gas or electric, or other similar use.

Utility, minor. A utility facility or service that will have, or the installation of which will have, a minor impact on the surrounding uses or on the community in terms of generating or disrupting traffic or access to adjacent properties, creating noise or causing adverse visual effects. "Minor utility" includes, but is not limited to, overhead or underground electric, telephone or cable television poles and wires, distribution lines for electric, gas, water, drainage or sewerage collection systems, or other similar use.

which will have, a significant impact on the surrounding uses or the community in terms of generating or disrupting traffic, interfering with access to adjacent properties, creating noise or causing adverse visual effects. Thus, as an example, a water transmission line can be considered a “major utility” (as opposed to a minor utility) merely on the basis that the construction impacts are deemed to be significant enough. And because it is a conditional use (as opposed to a permitted use), any specific proposal can be denied if the broad, subjective criteria are not met.

For this reason, temporary construction impacts may be sufficient reason to deny a conditional use application. Combine that with the uncertainty of the geologic stability of the area and of the other concerns raised by the neighbors, and it is clear that the application should be denied.

C. Quasi-Judicial Land Use Cases Do Not Form “Precedent” for Other Unrelated Cases.

The most recent Staff Report suggests that the Council’s interpretation of CDC 60.070 “may set precedent” for future quasi-judicial decision-making.” See Staff Report at p. 3. However, as early as 1969, Oregon courts recognized that a governing body is not necessarily bound to decide a matter in the same manner as a previous governing body. In *Archdiocese of Portland v. Washington County*, 254 Or 77, 87-8, 458 P2d 682 (1969), the court stated:

“Implicit in the plaintiff’s contention is the assumption that the Board of County Commissioners of Washington County is bound by the action of previous Boards of County Commissioners in that county. This assumption is not sound. Each Board is entitled to make its own evaluation of the suitability of the use sought by an applicant. The existing Board is not required to perpetuate errors of its predecessors. Even if it were shown that the previous applications were granted by the present Board, there is nothing in the record to show that the conditions now existing also existed at the time the previous applications were granted.”

Alexanderson v. Clackamas County, 126 Or App 549, 869 P2d 873, *rev den*, 319 Or 150, 877 P2d 87 (1994). See also *Okeson v. Union County*, 10 Or LUBA 1, 2 (1983) (“Indeed, to require consistency for that sake alone would run the risk of perpetuating error.”); *Reeder v. Clackamas County*, 20 Or LUBA 238 (1990); *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 46-47 (1988); *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-712 (1986) (Past pattern of applying approval standards in one manner to five similarly-situated applicants does not mean that the City cannot change course and apply different approval standards to the sixth applicant).

LUBA has stated, in dicta, that “[A]rbitrary and inconsistent interpretation of approval criteria in deciding applications for land use permits may provide a basis for remand. See *Friends of Bryant Woods Park v. City of Lake Oswego*, 26 Or LUBA 185, 191 (1993), *aff’d* 126 Or App 205, 868 P2d 24 (1994) (although local legislation may be susceptible of more than one interpretation, local government may not “arbitrarily * * * vary its interpretation”). See also *Smith v. Clackamas County*, 25 Or LUBA 568, 570 n1 (1993). However, that rule of how only

applies to the interpretation itself, not to how rigorous a standard is applied to any given set of facts. Furthermore, there is no violation of this rule unless “there is an indication that different interpretations are the product of a design to act arbitrarily or inconsistently from case to case.” *Greer v. Josephine County*, 37 Or LUBA 261 (1999). Thus, the rule of law does not prevent a city from changing previously-stated interpretations; it merely prohibits the arbitrary flip-flopping of interpretations on a case-by-case basis. Certainly, if there is a rational basis in law or fact to treat certain types of land uses differently than others, due to the scale of impacts or other public policy reasons, the rule is not triggered.

Finally, in terms of precedent, even if we were concerned about setting precedent, the precedent we would want to avoid is the notion that another community could site its major utilities (such as a sewer treatment plant) in West Linn despite the fact that these utilities would primarily serve other communities, such as Stafford. Other jurisdictions should cite their major facilities within their own boundaries.

D. The “Community Need” and “Public Benefit” Standards are Highly Subjective and Can Be Applied More or Less Rigorously In Any Given Case.

In a similar vein, LOT complains that the City of West Linn has never applied its CUP approval criteria as rigorously as the Planning Commission did in its decision under appeal. However, the City has never considered a proposal of this magnitude. There is no rule of law that says that the CUP criteria have to be applied as rigorously when considering small, inconsequential projects as compared to large-scale projects with high levels of impacts and ramifications. In fact, the very nature of the conditional use process recognizes, as an example, that a small, 100-person church may be compatible with a neighborhood, but a large-scale, 2000-person church is *not* compatible with the neighborhood.

In this regard, the City of West Linn has never had to consider the effect of the installation of a large 4-foot diameter water pipeline across a large section of the City.

Truth be told, both the “community need” standard and the “public benefit” standard are extremely subjective in nature, and call for an exercise of judgment by the City Council. LUBA will not lightly substitute its judgment for that of the Council regardless how it rules.

E. The “Public Benefit” Standard Should Be Defined On A Sliding Scale; Commensurate with the Degree of Public Impact and Lost Opportunity.

The applicants assert that the large, industrial-scale water treatment facility and associated water transmission pipeline should be evaluated under the same interpretive standard for “public benefit” as a 7-11 or a small elementary school. We believe that the interpretation / application of public benefit standard *should, as a policy matter*, involve a balancing between the degree of impact vs. the amount of benefit. In other words, the greater the impact, the greater degree of public benefit that should be demanded by the City before a CUP is approved.

In addition, the applicant is wrong when it asserts that the mitigation it will provide is a public benefit. To the contrary, Code’s “public benefit” standard contemplates that *the*

use itself be the benefit to the public, not the mitigation required of the developer of that use. The mitigation required by the Code should not be considered to be a “public benefit” because improvements required by the zoning code are merely intended to mitigate the impacts of development. As an analogy, if a motorist smashes into your car, the fact that his insurance will repair the damage on your car is not a benefit to you, especially considering all of the inconvenience and hassle associated with filling out reports, acquiring a rental car, etc. Likewise, in this case, the Robinwood neighborhood is being asked to shoulder the burden of three years of construction, and the fact that the streets will be repaired at the end of that ordeal offers little solace to the community.

F. The Project Provides Insufficient Public Benefit to Warrant Approval of the Project.

The applicant has stated that it will provide a number of public benefits to the citizens of West Linn. We briefly address each one of these individually below:

1. Applicant’s proffered benefit No.1: New Intergovernmental Agreement

Counter: The issue of a new IGA is separate from the alleged benefits provided by the proposed land use. Moreover, the proposed "new IGA" is short term, with emergency water being available to West Linn if it is available to Tigard and Lake Oswego. The existing IGA has served both communities well. Given the conclusions of the Carollo report, it will serve both communities in to the future. In the event Lake Oswego wishes to discuss a new design in the future, the new IGA will be available to West Linn. In addition, West Linn will need to upgrade their system at significant costs to West Linn in order to connect to the new intertie.

2. Applicant’s proffered benefit No. 2: Upgraded Water Treatment plant allows West Linn to Replace Bolton Reservoir without service interruptions.

Counter: The replacement for Bolton Reservoir can be built at a different location, accomplishing the same goal.

3. Applicant’s proffered benefit No.3: Upgrading seismically vulnerable pipes serving the intertie will provide the City of West Linn long Term access to Bull Run Water.

Counter: This so-called “benefit” is not needed by the city. Alternative solutions exist that would have less impact than LOT’s plan. Moreover, the argument that LOT makes – namely that in order to receive the benefit of better pipes, we must allow an entirely new facility in an area where the facility does not belong – is flawed because West Linn can fix seismically vulnerable pipes on its own without adding another seismically vulnerable 4-foot diameter pipe to the equation.

4. Applicant’s proffered benefit No. 4: Payment of one-time \$5 Million dollar gratuity

Counter: *Is West Linn for sale?*

5. **Applicant's proffered benefit No. 5:** LOT will repave streets and provide sidewalks along Mapleton Dr.

Counter: *Resurfacing streets after LOT destroys them is mitigation, not a benefit. Citizens on Mapleton do not desire sidewalks in any event. In addition, several other streets, including Nixon, Elmran, and Cedar Oak, will also be heavily used and likely damaged but are not in the list to be resurfaced. This offsets any benefit achieved by repaving Mapleton.*

6. **Applicant's proffered benefit No. 6:** Cooperative public works agreement will be negotiated that will result in the removal of a small portion of asbestos cement pipe.

Counter: *Not a benefit to West Linn because the city will need to replace the asbestos cement pipe in any event. This is a six inch pipe that is in the way of LOT's new four foot pipe. In addition, West Linn is being asked to pay for half the cost of this one pipe's replacement.*

7. **Applicant's proffered benefit No. 7:** Improvements to Mary S. Young State Park.

Counter: *\$90,000 payment for plant restoration is mitigation; new parking lot is not desired by residents and will create more problems than it solves. Moreover, MSY Park is state owned and only leased by the city. Many citizens from all over the metro area use this park. It is not a benefit to only West Linn.*

8. **Applicant's proffered benefit No. 8:** Construction Management Plan ("CMP").

Counter: *Making the neighbors' life less miserable during construction than it otherwise might without a CMP is not a benefit; it is mitigation.*

9. **Applicant's proffered benefit No. 9:** LOT 1.5 million dollar loss mitigation fund

Counter: *Too paltry of a number and too discretionary to be considered a serious benefit to the community. The risks that exist to property owners are three perils that are commonly not coverage by the normal Home Owners Insurance Policy. They are: a) underground water, b) repeated seepage, and c) flood surface water. Moreover, it is at best only secondary coverage which is only allowed for ten years, and is controlled by LOT.*

G. The "Overall Needs of the Community" Should Focus Generally on West Linn, and Specifically on the Robinwood Neighborhood.

CDC 60.070(A)(3) seeks to ensure that the “granting of [a CUP] proposal will be consistent with the overall needs of the community.” Thus, in this case, the applicant must demonstrate that there is an unmet “overall need” in the community for a new water treatment plant and associated pipeline.

In a related context, LUBA has stated that the phrase “public need for a use” is a difficult matter to define. *Ruef v. City of Stayton*, 7 Or LUBA 219 (1983). Nonetheless, LUBA stated in *Ruef* that the focus needs to be on the need for that use, not a need for the incidental benefits or mitigation (such as landscaping and buffering) that a proposed use may provide.

Viewed in this light, a “community need” is something that reflects the community’s desires, attitudes, and welfare. In a typical case, the proposed land use will serve the citizens in the community, and therefore identifying an overall community need for a facility is a straightforward exercise. In this case, however, the proposal is unusual because a different city is asking to build a utility that will primarily serve citizens of Tigard and Lake Oswego. It becomes much less clear that the citizens of West Linn have an “overall need” the facility that LOT seeks approval for.

The term “community” should be defined, at the very minimum, as the City of West Linn. The Planning Commission adopted this interpretation. While we agree with the Planning Commission’s interpretation, we believe the City Council could define the term “community” even more narrowly as the area surrounding general vicinity of the project which will be impacted thereby. In this matter, the City Council would recognize that the people that will bear the burdens of the project should be served by the use.

The use of the term “community” in various other contexts in the Code supports the conclusion that its focus is on a relatively small geographic area. For example, the code defines the term “major utility” in terms of impacts on either surrounding uses or the community: “A utility facility or service that will have, or the installation of which will have, a significant impact on the surrounding uses or the community in terms of generating or disrupting traffic, interfering with access to adjacent properties, creating noise or causing adverse visual effects.” Thus, while a community is something more broad than the immediately surrounding land uses, it is still measured on a scale that reflects the citizens that could potentially be impacted by traffic, noise, and visual effects.

In this case, the Community needs are reflected in the Comprehensive Plan, and reflect the following:

- A need to prevent incompatible development;
- A need to protect the environment and natural resources;
- A need to ensure that the Lake Oswego Water Treatment Facility remains compatible with the surrounding residential areas and provides benefits to Robinwood’s residents as well as those of Lake Oswego.

Thus, the term “community” should not be interpreted as the region in general, as the applicant desires. If that were the intent of the code, the code would have used the more

broad term “public need.” By focusing instead on a “community” need, the wording suggests geographic limitations on what groups of folks should be considered. Whether it is West Linn or Robinwood is debatable, but it is certainly not Lake Oswego or Tigard.

In a recent staff report, staff gave examples of conditional uses (including schools, religious institutions, post offices and fire and police stations), and noted that the city's code doesn't explicitly stop conditional uses from being used by non-West Linn residents. However, staff misses the point: those uses can all be denied under CDC 60.070(A)(3) if the proposal is not “consistent with the overall needs of the community.” Thus, in the unlikely event that an applicant proposed a school in West Linn but informed the City that all of the students would be from Lake Oswego and Tigard, it seems rather obvious that the West Linn could deny the school on the grounds that it not meet the “overall needs of the [West Linn] community.”

At the end of the day, the Planning Commission is correct that LOT failed to prove a nexus between the proposed facility and the overall needs of the citizens of West Linn. While they identified some minor tangential potential benefits to the City of West Linn, nothing they offered in any way mitigates the high degree of impact on the community. The bottom line is this: if they want a new water treatment plant, they should put it somewhere in Lake Oswego.

H. The Design Review Criteria Are Not Met.

After the Planning Commission denied the application, the applicant submitted a revised site plan for the water treatment facility. However, to our knowledge, staff has not gone back and drafted a new staff report to re-address whether or not the *new revised* application complies with the applicable Design review criteria. This issue is briefed in more detail by Mr. Gary Hitesman, in his letter dated 21 January, 2013.

I. If the Application is Approved, the City Should Demand that LOT Improve Highway 43 to TSP Standards.

The Standards for Conditional Use Permits authorize the City to impose conditions of approval to ensure compatibility and to offset the impacts of the development. CDC 60.070(C).² In this case, the Robinwood Neighborhood Plan includes Goals and policies directed at ensuring that Willamette Drive is improved to meet TSP Standards.

GOAL 1: Willamette Drive shall provide superior transportation facilities for all modes of transportation.

Policies:

1.1 Provide continuous and wide pedestrian facilities on both sides of Willamette Drive.

* * * * *

1.3 Beautify the length of Willamette Drive with a comprehensive and consistent streetscape.

1.4 Provide a continuous bike lane along Willamette Drive.

These policies support the conclusion that Willamette Drive should be upgraded as part of the project to include bike lanes, pedestrian facilities, and landscaping.

At the planning Commission hearing, there was a discussion of whether the City can demand the applicant improve Highway 43 to TSP standards. Staff indicated that the case of *Dolan v. City of Tigard* prohibited the City from demanding transportation improvements in this case. However, the city attorney countered staff, acknowledging that *Dolan* no longer applies to exactions that do not involve the dedication of land. *West Linn Corporate Park v. City of West Linn*, 349 Or 58, 86-7 (2010). In this case, the demand to make on or off site road improvements is the equivalent of a demand for money, which is not subject to the takings clause of the state or Federal constitutions.

² C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:

1. Limiting the hours, days, place, and manner of operation.
2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.
3. Requiring additional setback areas, lot area, or lot depth, or width.
4. Limiting the building height, size or lot coverage, or location on the site.
5. Designating the size, number, location and design of vehicle access points.
6. Requiring street right-of-way to be dedicated and the street to be improved including all steps necessary to address future street improvements identified in the adopted Transportation System Plan.
7. Requiring participation in making the intersection improvement or improvements identified in the Transportation System Plan when a traffic analysis (compiled as an element of a conditional use application for the property) indicates the application should contribute toward.
8. Requiring landscaping, screening, drainage, and surfacing of parking and loading areas.
9. Limiting the number, size, location, height, and lighting of signs.
10. Limiting or setting standards for the location and intensity of outdoor lighting.
11. Requiring berming, screening, or landscaping and the establishment of standards for their installation and maintenance.
12. Requiring and designating the size, height, location, and materials for fences.
13. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

Conclusion.

I will close with three thoughts unrelated to the analysis above. First, LOT's attorney, Mr. Edward J. Sullivan, made it a point to emphasize in his verbal presentation to the Council that LOT had many "experts" on their side. Granted, it is true that the citizens of West Linn, who overwhelmingly oppose this project, cannot compete with the purchasing power of LOT when it comes to buying expert testimony. In fact, when STOP attempted to find a geologist to review the work of LOT's hired guns, we were told by every firm we called that they were either working for LOT or wanted to be working for LOT! We learned that most firms would not take on a project opposed to LOT, Lake Oswego, or Tigard for fear of being blackballed by the government contractor community. As we learned, local governments seem to be the only folks with any money these days, so many engineering firms are keeping their doors open via public works projects. These firms told us that they would not risk the ire which would surely be generated by the local government for opposing any large-scale gravy-train project. [REDACTED] found significant problems with the expert testimony prepared by LOT's experts. In fact, LOT's experts looked like deer in the headlights as they withered through his strenuous cross examination. There can be no doubt that LOT's other experts would have suffered similar embarrassment if put to the test in the same manner. For these reasons, LOT's expert testimony should be given little to no weight.

Second, the Council should not kid itself: despite what LOT states, a vote in favor of this application is a clear vote in favor of developing Stafford. LOT states that its comprehensive plan prohibits this from happening, but we all know how easy it would be for Lake Oswego to amend its plan if it wanted to.

Second, if I'm reading the tea leaves correctly, it may be the case that the newly-elected City of Lake Oswego City Council are getting cold feet from this expensive project. This Council will undoubtedly have noticed a lack of testimony in support of the project from the new Lake Oswego City Council, even though some of the Lake Oswego Councilors attended West Linn's public hearing. Therefore, it would seem to be politically imprudent to waste political capital wedding yourself to an unpopular idea that may die a natural death anyway. A much safer approach is simply to deny the appeals, uphold the Planning Commission's decision, and draft additional findings in support of that decision.

Thank you for your time and attention to this matter.

Sincerely,

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp

AHS:ahs

Gary Hitesman, Project List

Registration

California (C25267) non-active

Oregon (4742) non active

Education

California Polytechnic State University, 1988

San Luis Obispo of Architecture, B. A.

Ecole De Beaux Arts, Fontainebleau, France, 1988

Water/ Waste Water/ Infrastructure

BES Airport Way satellite Pump Stations

Happy Valley Pump Station

Shady Cove Administration Building

LOTT/ Olympia Water Reclamation Plant

LOTT/ Olympia Screenings Building @ Martin way Pump Station

LOTT/ Olympia Visitor Kiosks + Interpretive Signage @ 40 Acre Recharge Park

City of Portland - Swan Island Pump Station (250 mgd)

City of Portland – Swan Island 17 MW Emergency Generator Building

King County – Sammamish Valley Water Reclamation Plant

King County – Carnation Water Reclamation Plant

Transportation

Architectural Project Manager, South Alignment LINK Light Rail, Seattle, Washington

Project Manager, Bay Area Rapid Transit, Oakland, California

San Francisco International Terminal, San Francisco Airport, California

Red Line Extension to Portland International Airport, Portland, Oregon

Terminal Expansion South II, Portland International Airport, Oregon

Master Plan for the Ground Transportation Center, San Francisco Airport, California

Master Plan for the new Sahkalin International Airport, Sahkalin, Russia.

Powell Lift Station Design/Build Competition

Corvallis Bus Mall, Corvallis, Oregon

Housing

Tenth and Jefferson Housing Proposal with Simpson Housing, Portland, Oregon

Vancouvercenter Condominiums, Vancouver, Washington

Affordable Housing Competition, Aspen, Colorado

50 Story Residential Tower, Bangkok, Thailand (unbuilt)

Lough Residence, Agoura, California

Hill Residence, Thousand Oaks, California
Baker Residence, San Luis Obispo, California
Custom Home, Woodland Hills, California
Custom Home, Northridge, California

Office / Commercial

Vancouvercenter, Office Building A and B, Vancouver, Washington
Vancouvercenter Parking Garage, 800 cars, Vancouver, Washington
101 Second Street, San Francisco, California
505 Sansome Street Renovation, San Francisco, California
Industry and Commerce Bank of China, Beijing, China
Court of Appeals, Ninth District, San Francisco, California
Toontown, Disneyland, Anaheim, California
World Bank Headquarters, Washington, D.C.
100 Pratt Street Tower, Baltimore, Maryland
MCI Headquarters Building, 1101 K Street NW, Washington, D.C.
Tomlinson Roads Mixed Use Development, Singapore (unbuilt)
Surabaya Hyatt, Surabaya, Indonesia
Legacy Medical Office Building, Gresham, Oregon
Portland Fire Station remodels 5, 13, & 42
Portland Fire Station remodels 2 & 11
Emergency Medical Services Building, Portland, Oregon
Parking Garage modifications and improvements for City of Portland BGS

RECEIVED

To the West Linn City Council

January 22, 2013

I am addressing WL CDC 60.070(A)(3). From the February 13 LOTWP oversight committee meetings. "Mr. Koellermeier requested the Oversight Committee recall staff made the decision late in the process to split the GNP between the treatment plant application and the pipeline application. He stated the precedence staff sets is important because the application for the pipeline is even more nebulous as West Linn has chosen to try to make it a conditional use for an underground facility. If the neighbors are of the opinion that the planning commission in West Linn has a broader authority it will only get exacerbated on the pipeline application. The point is to try to set the boundaries so that it's not get perceived as a sign of weakness as staff goes into the next application. Mayor Hoffman asked what Mr. Koellermeier meant by weakness and he explained it as willingness to acquiesce."

In the spring of 2006 Joe Komarek, the LO chief engineer, came into my living room and told assembled neighbors that our fears of a mega plant going in were unfounded. He said maybe some modest upgrades like we have had but no big deal. Why would an engineer who has sworn an oath of truth and no deception do this? The answer lies in the compatibility of this plant with the neighborhood. He knew at the time that they would have to shoehorn this huge plant and didn't want to have any opposition. If he could keep us out of it they might just be able to pull it off. They have used many tactics including suing neighbors they signed an agreement with and threatening a public employee by calling their boss and giving the word to back off any criticism. They want you to think that this is no big deal. Their argument that the footprint is only 9% larger ignores the fact that instead of flat low settling beds, you will have over three story buildings. Should we allow the Empire State Building there because it's footprint is only slightly larger? Commissioner Axelrod made the finding that it is the clearest example of trying to put a square peg in a round hole that he has had the chance to consider. This is not even a close call. They have snuck around and deceived because this plant doesn't belong here.

Now they have a new argument, that the plant is on unstable ground and they need a new one, ON THE SAME UNSTABLE SITE. They argued like crazy in April and then again in October that the ground was stable, even going so far as to take drilling samples to the north, south and west of the plant to argue that the site is ideal. Another bunch of experts were lined up to achieve results they wanted and then when that didn't pan out, they used deception and attempted slight of hand. The old plant might have to be replaced, but to build a new one on unstable soil and an ancient landslide has to be considered insane. This plant is not suitable for this site no matter what they do. It won't help if all the plant goes together or separately into the Willamette. It is too big for the neighborhood and is to be built on unstable soil. You must deny the LOTWP appeal.

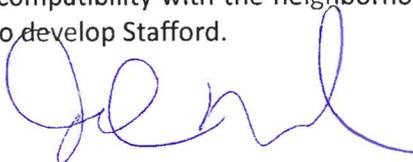
Preservation of the Stafford Triangle is adopted City Policy , Council Goal # 9 of the comprehensive plan: "Oppose urbanization of Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer, between West Linn and neighboring communities." Where is the increase in water going to go? LOTWP claims Stafford is not in their plans. If it isn't, what is? Where are all of these customers going to come from? The LO build out is a maximum of 5%. Their own LO water take will be 5 times more than their average daily use. Servicing the Stafford Triangle is central to their plans. It is all through their starting document and the assumptions of the report are included in all the relevant documents that have been submitted for permits with the State. Even Joel Komarek's testimony on January 25, 2010 to the State Of Oregon Water Resources Board is full of Carollo references. Now LOTWP has disowned Carollo, saying it was never intended to be a final document. Well if it isn't, let them share with us the final, including, factored in, the new realities of the economy, real growth without Stafford and the effect of conservation on future supplies and the huge cost overruns of the

project which will be borne on the backs of our young people who are struggling now to get jobs. This is the reality. The experts have put out no new report or budged from their estimates except for plant costs which just keep going up...double already. If they keep the plant at its current level of production, with the recent water conservation measures succeeding and with limited growth in the real world, they don't need the new plant. We the opponents have done the real world math and the real world impacts. These are facts, not subterfuge. The Stafford Triangle is still central to their plans and you would be breaking Council Goal #9 if you approve this plant. I also found it disconcerting that the Planning Staff didn't identify the Stafford concern as germane. They never read the Carollo report, LOTWP's most important document, or they might have done more due diligence on behalf of your citizens in West Linn, and not tried to help fellow bureaucrats in LO and Tigard. If they are so thorough why did they not even read the most important document and just believed the applicant with no research? Stafford is all over this project. You must deny.

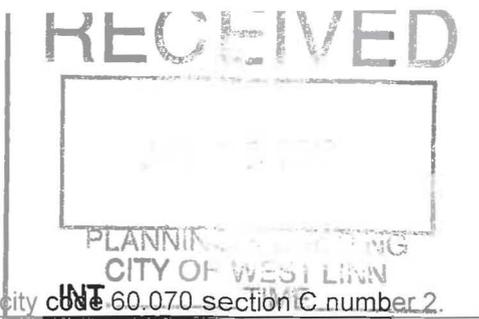
Lastly I want you to consider the term "overall needs" in 60.070(A)(3). Because your planning department did not do its work they ignored the most important dynamic that is at work here. When and if LOTWP gets to draw more water from the Clackamas, they will push the Clackamas to minimum flows for months in the summer. Now, even before the new pipeline, the Clackamas is at minimum on many summer days. South Fork with its "senior water rights" will not be using all of their 50MGD and will not be allowed to exercise those rights because LOTWP will have been there first and will be vested. The state law is, use it or lose it. If you grant this plant you will have approved a serious non-benefit for our city. Global warming is melting the snowpack between 6000 and 8000 feet that feeds Timothy Lake, the source of the Clackamas summer water. This snowpack will not be able to buffer the drawdown of the lake in the future. Timothy Lake will be hard pressed to meet minimum flows even without the huge LOTWP plant. We will bring up the rear and our chances of vesting our water rights will be gone. The Clackamas is not an unlimited source in the summer. If you don't believe me, look into it yourselves. Don't be swayed by reassurances, look into it. The reassurances from LOTWP are deceptions; look at the lawsuit by Water Watch in State Court right now. You will be promoting a huge non-benefit to the community by giving away our senior water rights. You must deny their application.

Your Planning Commission, of which you yourselves once were a proud part, has denied this application 7-0. They were right. Listen to your team. You must deny AP-12-02 and AP-12-03 because of the plant's in-compatibility with the neighborhood, its effectively taking of your senior water rights, and its purpose, to develop Stafford.

Sincerely



Jack Norby, 4040 Kenthorpe Way, West Linn, Oregon



January 21, 2013

Dear West Linn City Councilors,

Please deny the application for LOT due to the failure to meet city code 60.070 section C number 2.

60.070 APPROVAL STANDARDS AND CONDITIONS

A. The Planning Commission shall approve, approve with conditions, or deny an application for a conditional use, except for a manufactured home subdivision in which case the approval standards and conditions shall be those specified in CDC36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:

C. The Planning Commission may impose conditions on its approval of a conditional use which it finds are necessary to assure the use is compatible with other uses in the vicinity. These conditions may include, but are not limited to, the following:

- 1. Limiting the hours, days, place, and manner of operation.
- 2. Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor, and dust.

I visited the Wilsonville water treatment plant this past summer. The daily operating noise has an extreme high pitch noise running 24/7. The Wilsonville water treatment plan is not located in a residential neighborhood. The closest street with houses on it is over 100 yards away, and many of these house's were built after the water treatment plant was up and running. The Wilsonville water treatment plant does not have neighbors directly across the street, or three doors down.

I live three doors down from the current treatment plant on Kenthorpe Way. I have lived here for over seventeen years. I live on a dead end street that is very quiet, and silent evenings. I love where I live, and often refer to my neighbor as to living in Mayberry. I do not have a high pitch noise running continuously twenty four hours a day in my neighborhood, and want to keep it that way.

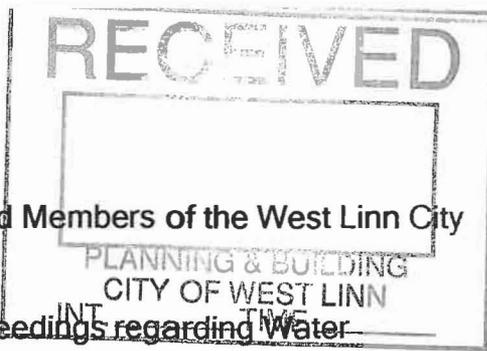
LOT has proposed to increase the foot print of the current plant by 9%. Foot print is the size of ground they are proposing, not the height. Don't be fooled by LOT's proposal in this misleading statement. The solution they have for noise is to plant a few trees. There are no trees or vegetation that will minimize or silence the operating noise of this plant. Are you aware that LOT recently clear cut our end of their property to rid of so called "damaged trees" (we have pictures of the perfect stumps). LOT claims it will handle this issue as they see fit, well this clear cut only will make matters worse with noise pollution.

This noise will cause a hardship for myself and my neighbors. What right does another city have to build a commercial size plant on my residential street? This high pitch noise is NOT compatible with my home 3 doors down. I don't think my quality of life should have to endure this hardship. Would you let this happen to your home? Would you allow a huge commercial building to be built three doors down from your house?

There have been several testimonies besides mine with not only this one concern of disruption of residential life style. There are hundreds other you have heard.

The shameful thing is that Lake Oswego does not need more water, they only want to go into business to sell water. LOT wants to raise revenue for their city by selling water. They don't care about the residents on my street. This is pure greed. Beside, both Wilsonville and Portland have the resources and have made statements they can provide more than adequate water to Tigard today. The West Linn Planning commission voted against LOT's application, as they recognized it is far too disruptive to the residents of West Linn. Please do the same, listen to your citizens, and deny Lot's application.

Sincerely,
Karlene Norby
4040 Kenthorpe Way
West Linn OR. 97068



The Honorable Mayor Kovash, Mayor of West Linn and Members of the West Linn City Council:

Thank you for the opportunity to comment on the proceedings regarding Water Treatment Plant (CUP-12-02) and Water Transmission Line (CUP-12-04). The LOT project is required to comply with the West Linn Comprehensive Plan WL CDC 60.070 (A)(3) which requires a community benefit to be demonstrated. The applicant has not demonstrated compliance with this code. In particular I would ask you to reexamine some of the conclusions as summarized by the applicant in their rebuttal commentary.

1. **Interpretation of Community Benefits:** Applicant suggests that the Planning Commission's interpretation of community benefit was too narrow and implied that the issue at hand is of significant regional benefit. In LOT's refutation, they site that this narrow interpretation would preclude the existence of churches, libraries and hospitals. Churches, libraries and hospitals have a direct benefit to the community unlike LOT's selfish project. If LOT's interpretation of community benefit is broader than the Planning Commission then why are the direct beneficiaries of this project only two communities, Tigard and Lake Oswego? If this project is of such regional significance, why are there not more communities involved? Why are there only 2 communities in the Partnership? It's not coincidental that the "purported" benefits to West Linn are of a derivative nature and only arise as result of LOT's ultimate goal of selling water to Tigard and securing their maximum water rights on the Clackamas.
2. **Benefits:** Applicant's rebuttal alluded to the fact that all the neighbor's "needs" were fulfilled via the Good Neighbor Plan. Yet in meeting after meeting between the neighborhood and LOT, the neighborhood discussed benefits which were all denied by the applicant. The applicant continually talks about sidewalks, pathways, surfaced streets - all activities that would be required after uprooting our neighborhood-Nothing above and beyond. The non-existence of those "benefits" did not prevent people from moving into the neighborhood, so they are not a benefit that drew us to our surroundings, nor would their existence make the neighborhood more valuable.
3. **Carollo Report:** The applicant tries to marginalize the Carollo report. The Carollo report was the impetus to move this project forward. If as the applicants suggests that this was merely a preliminary engineering report and that the implication is that it is no longer valid, then should a new report be commissioned to justify this project? If the assumptions need to be updated or revalidated then should it be completed before the project moves forward? Yet the applicant prominently states the following quote in their newsletter Water Savvy, Issue #4, June 2010: "The cities of Lake Oswego and Tigard completed a comprehensive study in 2007 to evaluate possible formation of a joint water supply system to serve the two communities. The study identified the partnership approach as the preferred supply option for both cities based on a variety of factors: cost, permitting,

governance, design, financing, and construction related issues.” As far as I know there is only one comprehensive study from 2007, the Carollo Report.

4. **Petition Drive:** The applicant suggested that the information disseminated to gather signatures for the Petition Drive against the LOT was misleading and therefore “duped” the signers, predominately the citizens of West Linn. This is insulting to our citizens. Our citizens are very astute and are a very well informed citizenry and are capable of making their own conclusions. Nobody signs their name unless they are comfortable and have done their homework.

Contrary to what the applicant suggests, this project is a commercial and industrial endeavor. Tigard has access to other water sources but has chosen not to exercise those options. Nobody would argue that water is a necessity and that West Linn does have some tough decisions to make. But those should be our decisions and our solutions and not a byproduct of LOT’s desire to further their needs.

Thank you very much.

Sincerely,

Mike Cooper

3970 Mapleton Dr.

West Linn, Or 97068



City Council Members:

Jan. 19th, 2013

Would like to voice my opposition to the Lake Oswego water plant expansion and transmission pipeline. TVFR testified that they could respond to an emergency with no time constraints on services. We have difficulty with this, because we have all at one time or another had to negotiate the turn at Nixon and Mapleton Dr. School buses and semis cannot make this turn, how could a fire truck do it. Mapleton is a posted street for no turn around for trucks over 40 feet. We would like to request that a dry run be timed and would like to see this for ourselves. These streets could not possibly hold up under the heavy truck traffic. Our house literally shakes when semis go by on 43. Below are the codes this project clearly does not meet. Comprehensive plan # 1.2, 9 and 10. Goal 2 section 1 policy 8 and 9 urbanization of Stafford. Goal 1 see findings 1c. CDC 60.070A 1B, A2,A3,A5, and A7 clearly ties to comprehensive plan. CDC 55.070 B2E access and potential traffic. CDC- 55.110 site analysis, section 6 C and D land is not stable. Gretchen Beaner testified that signers were victims. Myself, my husband and daughter were some that gathered signatures. We walked door to door, comments ranged from: Figured the city would do what they want, regardless of what the citizens wanted. There were a few that said they would not sign. Some said they needed more facts. Quite a few had already done their own research and was opposed and willing to sign. Ms. Beaner was wrong about the signatures, you must remember a while back some of these very streets we walked were being considered for the route of the pipeline. The planning commission thought long and hard on their decision and they were

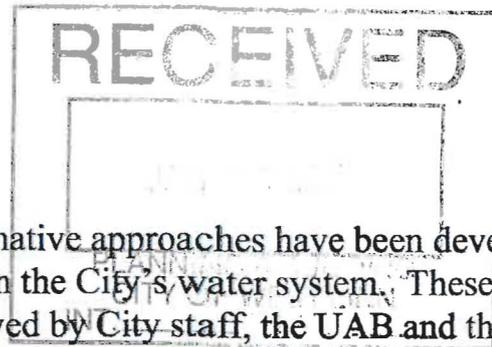
correct in their conclusion. You should support their decision and deny the application.

Respectfully Linda Edwards

Greetings Council Members And Mayor:

If you check into Mueller valve web site, you will clearly see that with this size of sectional valve that there is the option of electric operated assemblies , as Joel K. clearly stated, doesn't exist. I found one at Longview Fibre in Longview. Talking with millrights, that it is a 60 inch pipe and it is electricly controlled. It took 15 minutes to shut off. Also said that they didn't have ~~time~~ enough time to maintain so now it is a manual procedure and it takes 45 to 60 minutes to shut down.

It's really amazing how misstated words come from LOT, as we have delt from day one, meeting to meeting and as the planning commissioners discovered. Respectfully, Carl Edwards



Water Storage Requirement Summary

Based on the analysis presented above, two (2) alternative approaches have been developed to address current and future storage volume needs in the City's water system. These two (2) alternative approaches were presented to, and reviewed by City staff, the UAB and the City Council. **The City Council directed that the development of recommended system improvements be based on Approach B. It was further directed to pursue development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard and others in accordance with Solution Approach C. The recommended improvements and associated project costs are documented in Section 8 which presents the recommended Capital Improvements Plan (CIP) and Capital Maintenance Plan (CMP).**

This language is from the 2008 West Linn Water System Master Plan, page 6-15. This is the language that the LOT and the staff rely on to sell CUP 12-02 and CUP 12-04.

Study of the 2008 West Linn Water System Master Plan reveals a number assumptions regarding this potential solution. These CUP applications fail to include mechanisms to comply with the intent of this emergency storage solution and replace the need for 4 million gallons of storage at Bolton Reservoir.

That these mechanisms are not part of this application and that the City of West Linn must engineer and construct system improvements in order to realize the 4 million gallons of emergency storage impacts any potential benefit as proposed in these Applications.

In order for these applications to satisfy the intent of the 2008 West Linn Water System Master Plan, LOT must provide the 4 million gallons of emergency storage to Bolton Reservoir under any and all conditions, including failure of the electrical grid.

The current clear well design only has a maximum capacity of 2 million gallons of storage within West Linn and there is no emergency generators to pump that water from the clear well to the inter-tie and no emergency generators to pump that water from the inter-tie into the West Linn system and on to Bolton Reservoir.

There remains a 2 million gallon shortfall that would need to be pumped to the inter-tie from Lake Oswego storage. There is a line item on table 8-6 that indicates that West Linn is responsible to pay for this pumping capacity:

Capital Improvement and Capital Maintenance Program Summary

Category	Project Description	Project Location	CIP and CMP Schedule and Project Cost Summary (Fiscal Year)										Estimated Project Cost
			2010	2011	2012	2013	2014	2015	2016	2017	Medium-Term (2018-2030)	Long-Term (2030+)	
Capital Maintenance Projects													
Distribution System	AC Pipe Replacement	AC Pipe Replacement	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 345,000	\$ 4,140,000	\$ 6,900,000	
		Galvanized Pipe Replacement	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 150,000	\$ 750,000	
		Pressure Reducing Valve Vault Improvements	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000					\$ 100,000	
	Reservoir Improvements	Seismic Assessment and Improvements	Seismic Assessment and Improvements			Assessment \$ 90,000	\$ 100,000	\$ 100,000	\$ 100,000				\$ 390,000
			Reservoir Re-coating	Bland \$ 150,000							View Drive and Rosemont \$ 210,000		\$ 360,000
	General System Improvements	Willetts Pump Station MCC Assessment and Upgrades	Willetts Pump Station MCC Assessment and Upgrades	Assessment \$ 20,000	Upgrades \$ 100,000								\$ 120,000
			Demolish Abandoned View Drive Site Facilities			\$ 75,000							\$ 75,000
SCADA System Upgrades				\$ 150,000								\$ 150,000	
Capital Maintenance Plan (CMP) Total			\$ 618,000	\$ 690,000	\$ 605,000	\$ 440,000	\$ 540,000	\$ 520,000	\$ 520,000	\$ 420,000	\$ 4,500,000	\$ 8,840,000	
Capital Improvement Projects													
Storage and Pumping Facilities	Bolton Pressure Zone	Bolton Reservoir Replacement (4.0 MG)	\$ 500,000	\$ 4,000,000	\$ 3,500,000							\$ 8,000,000	
		Bland Reservoir No. 2 (0.3 mg)				\$ 125,000	\$ 400,000					\$ 525,000	
	Rosemont Pressure Zone	Bland Interie Supply to Rosemont						\$ 1,250,000				\$ 1,250,000	
	Emergency Interie	Emergency Interie PS Expansion		\$ 75,000								\$ 75,000	
Sub-Total			\$ 500,000	\$ 4,075,000	\$ 3,500,000	\$ 125,000	\$ 400,000	\$ 1,250,000	\$ -	\$ -	\$ -	\$ 9,850,000	
Distribution System Piping	Willetts Pressure Zone	CIP - 1	\$ 1,187,200									\$ 1,187,200	
		CIP - 2				\$ 311,910						\$ 311,910	
		CIP - 3					\$ 505,605					\$ 505,605	
		CIP - 4							\$ 351,125			\$ 351,125	
		CIP - 5								\$ 355,625		\$ 355,625	
		CIP - 6								\$ 84,750		\$ 84,750	
		CIP - 7								\$ 244,750		\$ 244,750	
		CIP - 8								\$ 170,625		\$ 170,625	
		CIP - 9								\$ 92,875		\$ 92,875	
		CIP - 10								\$ 122,500		\$ 122,500	
		CIP - 11								\$ 176,500		\$ 176,500	
		CIP - 12								\$ 146,915		\$ 146,915	
		CIP - 13								\$ 518,375		\$ 518,375	
		CIP - 14								\$ 320,625		\$ 320,625	
		CIP - 15								\$ 90,000		\$ 90,000	
		CIP - 16								\$ 172,150		\$ 172,150	
		CIP - 17								\$ 63,375		\$ 63,375	
		CIP - 18								\$ 224,750		\$ 224,750	
		CIP - 20								\$ 196,540		\$ 196,540	
		CIP - 21								\$ 66,500		\$ 66,500	
		CIP - 23								\$ 250,170		\$ 250,170	
		CIP - 24								\$ 138,330		\$ 138,330	
		CIP - 25								\$ 89,500		\$ 89,500	
		CIP - 26								\$ 68,875		\$ 68,875	
		CIP - 27								\$ 40,000		\$ 40,000	
		CIP - 34								\$ 151,000		\$ 151,000	
		CIP - 19								\$ 68,250		\$ 68,250	
	CIP - 22					\$ 194,250			\$ 68,375		\$ 68,375		
	CIP - 28								\$ 289,000		\$ 289,000		
	CIP - 29								\$ 31,000		\$ 31,000		
	CIP - 31								\$ 26,625		\$ 26,625		
	CIP - 32								\$ 53,125		\$ 53,125		
	CIP - 39								\$ 46,125		\$ 46,125		
	CIP - 42								\$ 95,625		\$ 95,625		
	CIP - 43								\$ 48,125		\$ 48,125		
	CIP - 47								\$ 30,750		\$ 30,750		
	CIP - 48								\$ 294,750		\$ 294,750		
	CIP - 36								\$ 153,500		\$ 153,500		
	CIP - 38								\$ 88,875		\$ 88,875		
	CIP - 40								\$ 94,875		\$ 94,875		
	CIP - 49								\$ 36,625		\$ 36,625		
	CIP - 50								\$ 306,405		\$ 306,405		
	CIP - 51								\$ 39,875		\$ 39,875		
	CIP - 52								\$ 107,625		\$ 107,625		
	CIP - 30								\$ 306,360		\$ 306,360		
	CIP - 37								\$ 162,500		\$ 162,500		
	CIP - 41								\$ 75,250		\$ 75,250		
	CIP - 44								\$ 340,955		\$ 340,955		
	CIP - 45								\$ 939,600		\$ 939,600		
	CIP - 46								\$ 99,375		\$ 99,375		
	CIP - 61								\$ 26,350		\$ 26,350		
	CIP - 62								\$ 50,750		\$ 50,750		
	CIP - 63								\$ 85,000		\$ 85,000		
	CIP - 64								\$ 779,035		\$ 779,035		
	CIP - 35								\$ 123,500		\$ 123,500		
	CIP - 53								\$ 378,500		\$ 378,500		
	CIP - 54								\$ 107,500		\$ 107,500		
	CIP - 55								\$ 28,125		\$ 28,125		
	CIP - 56								\$ 51,375		\$ 51,375		
	CIP - 57								\$ 73,000		\$ 73,000		
CIP - 59								\$ 250,250		\$ 250,250			
CIP - 60											\$ 250,250		
Pressure Reducing Facilities	Scenic Drive PRV Station				\$ 120,000						\$ 120,000		
Sub-Total			\$ 1,187,200	\$ -	\$ -	\$ 526,160	\$ 505,605	\$ 779,035	\$ 939,600	\$ 6,362,370	\$ 1,911,605	\$ 12,211,775	
Supply	Emergency Supply	Tigard/Lake Oswego Interie	\$ 700,000			\$ 1,500,000						\$ 2,200,000	
Sub-Total			\$ 700,000	\$ -	\$ -	\$ 1,500,000	\$ -	\$ 2,200,000					
Other	Planning Studies	Water System Master Plan Update								\$ 150,000		\$ 150,000	
Sub-Total			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150,000	\$ -	\$ 150,000	
Capital Improvement Plan (CIP) Total			\$ 2,187,200	\$ 4,075,000	\$ 3,500,000	\$ 1,506,160	\$ 711,160	\$ 905,605	\$ 2,829,835	\$ 939,600	\$ 6,412,370	\$ 1,911,605	\$ 24,411,775
CMP & CIP TOTAL			\$ 2,997,200	\$ 4,765,000	\$ 4,105,000	\$ 1,940,000	\$ 1,291,160	\$ 1,425,605	\$ 2,549,835	\$ 1,389,600	\$ 10,912,370	\$ 1,911,605	\$ 33,256,775

\$ 15,098,360
5 Year Total
\$ 3,019,672
Annual Ave.

\$ 20,432,600
8 Year Total
\$ 2,554,075
Annual Ave.

\$ 31,345,170
20 Year Total
\$ 1,567,259
Annual Ave.

Lets blow that up so we can all see it, instead of hiding it in tiny print buried in a chart at the far end of the Water Master Plan:

			2011		2013	
		<i>Sub-Total</i>	\$ 1,187,200	\$ -	\$ -	\$ -
Supply	Emergency Supply	Tigard/Lake Oswego Intertie	\$ 700,000			\$ 1,500,000
		<i>Sub-Total</i>	\$ 700,000	\$ -	\$ -	\$ 1,500,000

What does this hidden treasure in this CIP summary chart mean?

It means that all of that LOT storage, all of that Tigard storage, all of that Bull Run Storage that the applicant's presentation and the staff reports lauds as a great benefit to West Linn, can't actually get to West Linn in an emergency, until West Linn spends at least another \$1.5 million for upgrades to the LOT system o reverse the flow and pump that water in our direction. This is the applicant and the staff report obfuscating the contents of the 2008 West Linn Water System Master Plan to benefit LOT and hurt the citizens of West Linn. Kinda chews into the \$5 million dollar 'license benefit.'

Here's an update from the West Linn Utility Advisory Board (UAB) meeting on December 7th, 2011. A nice little colorful spreadsheet, presented by the WL Public Works Director, laying out the case for an update to Approach B - Storage and Emergency Water Supply Improvement, where options are scored, ranked and recommended.

Look down there in the lower left corner at who prepared this analysis:

Option	Cost/Annual	Year 1-5	Other Issues	Relative Risk of Implementation (High, Medium, Low)	Relative Rank
1	Expand LO/WL intertie and contract with FYWD, Tualatin, and Tigard for connection to and supply from the WCS, and build 4 MG Bolton Reservoir.	\$11-\$12	Not a viable option. Tigard assumes Wl supply risk. Additional piping beyond that assumed by WWP. Blending unfiltered, chloraminated Portland water with filtered, ozonated water. Requires ICA with several exhibits. Vulnerability of exist. 24-inch diameter pipeline remains.	Medium	2
2	Contract for 6 million gallons per day (mgd) of surplus capacity from expanded LO/Tigard WTP to WL. Replace exist. Bolton Reservoir with new 4 MG reservoir and add third pump at Intertie PS.	\$9.0	Least expensive option. Vulnerability of exist. WL 24-inch diameter pipeline is mitigated with alternate LO/Tigard supply. Immediate supply deficiency of 4 MG is replaced by up to 6 mgd of supply available through LO/Tigard. 6 mgd during peak season will diminish over time, but is likely available 7-8 months/year during non-peak season. Options exist to mitigate this risk. Does not completely avoid need for future capital expenditures by WL.	Medium	1

¹ Ranking based on a combination of cost, ease of implementation and ability of option to reduce supply reliability risks. A rank of 1 indicates the most attractive option.

² Assumes contract terms do not require buy-in to surplus capacity at expanded LO/Tigard WTP valued @ - \$1M to \$2M. Other contract terms may apply.

Options assume replacement of exist. 2 MG Bolton Reservoir with new 4 MG reservoir. Estimated cost @ \$8.7M (per City of West Linn in 2011 dollars)

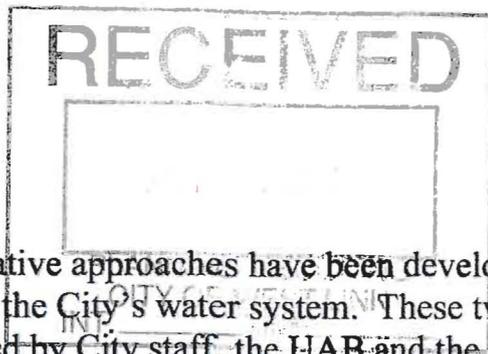
Analysis prepared by Joel B. Komarek, Project Director take Oswego-Tigard Water Partnership (11/29/2011).

Joel B Komerack, Project Director, LOT. The West Linn UAB is making policy recommendations to the City Council based upon options and CONCLUSIONS Created by Joel B Komerack, Project Director, LOT. Seem incestuous to you?

The current LOT application for CUP 12-02 and CUP 12-04 do not provide the 4 million gallons of emergency storage delivered to Bolton Reservoir as proposed in the 2008 West Linn Water System Master Plan.

Therefore these applications cannot be approved based upon the 2008 West Linn Water System Master Plan.

Kevin Bryck
18840 Nixon Av.



Water Storage Requirement Summary

Based on the analysis presented above, two (2) alternative approaches have been developed to address current and future storage volume needs in the City's water system. These two (2) alternative approaches were presented to, and reviewed by City staff, the UAB and the City Council. The City Council directed that the development of recommended system improvements be based on Approach B. It was further directed to pursue development of reliable emergency supply capacity with the cities of Lake Oswego, Tigard and others in accordance with Solution Approach C. The recommended improvements and associated project costs are documented in Section 8 which presents the recommended Capital Improvements Plan (CIP) and Capital Maintenance Plan (CMP).

This language is from the 2008 West Linn Water System Master Plan, page 6-15.

This is the language that the LOT and the staff rely on to sell the CUP 12-02 and CUP 12-04 proposal and all of the scare tactics about emergency water storage.

Solution Approach A: Construction of a New 8.4 mg Bolton Reservoir.

The only site considered in all 5000 acres of West Linn was the current Bolton Reservoir site which the 2008 plan then characterizes as too small and possibly unstable.

Solution Approach B: Build back-up supply from SFWB

A new redundant pipe across from South Fork across Willamette River that the 2008 plan says will cost too much. This is the option that LOT uses to claim their vast savings 'benefit' to West Linn.

Solution Approach C: Improve the Emergency Supply Capacity and Reliability of the Lake Oswego Emergency Supply Connection

Rely on storage miles away in LO, with no gravity feed and no emergency power generation to get that water to West Linn. This is the cheapest option considered.

Why is relying on remote water storage miles away, with no existing pumping capacity, directed by this plan, over new, safe, reliable emergency storage right here in West Linn?

Why was the current Bolton Reservoir site, perched on a bluff over homes, on top of an old landslide, the ONLY site considered for a replacement reservoir? To make us dependent on LOT?

Why not build a new reservoir at the close, convenient and already cleared parking lot site right across the street in Wilderness Park? Wouldn't moving the new storage across the street save us lots of construction money and gain easy voter approval, especially if the existing reservoir site was added to the park? Didn't the voters readily approve this type of land swap transaction at Sunset School.

LOT contends that West Linn must approve this application because the project is referenced in the the 2008 West Linn Water System Master Plan. This contention has no basis in law.

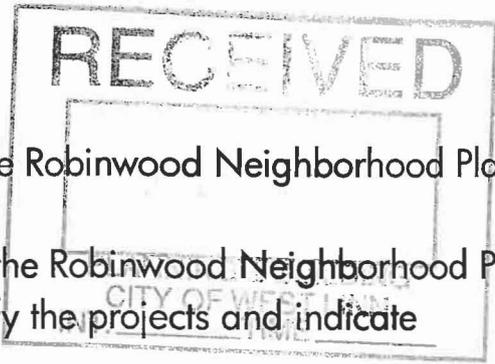
In theory there could be many other potential applications that would comply with the description in the 2008 West Linn Water System Master Plan, but that would be manifestly superior to this application in complying with other provisions of West Linn codes and plans, that would be in compliance with all of the provisions of 60.070 and chapter 55

The West Linn Comprehensive Plan defines a Conditional Use as:

"A proposed use of land which might be allowed after the city planning commission has determined that the proposed use is appropriate for the site, compatible with surrounding uses, is supported by public facilities, and is of overall benefit to the community and meets all other relevant criteria."

The applicant should return with a superior proposal that would satisfy this requirement.

Kevin Bryck
18840 Nixon Av.



Let's look at the how the LOT project got inserted into the Robinwood Neighborhood Plan.

The applicant and the West Linn Planning staff both cite the Robinwood Neighborhood Plan, adopted by the West Linn City Council in 2008, to justify the projects and indicate community approval.

Applicant and staff cite goal, policy and action item 3.9 as somehow expressing approval for this planning application. That's funny. Let's look at it.

3.9	Ensure that the Lake Oswego Water Treatment Facility on Kenthorpe Drive remains compatible with the surrounding residential areas and provides benefits to Robinwood's residents as well as those of Lake Oswego.	Require the Lake Oswego Treatment Facility to provide appropriate landscape screening and context-sensitive architecture as part of any facility expansion plan.	City Planners, City Engineers	<ul style="list-style-type: none"> • Development Review Process
		Take advantage of the need to replace Lake Oswego water pipelines along Robinwood streets to provide street improvements and needed pedestrian routes.	City Planners, City Engineers	<ul style="list-style-type: none"> • Development Review Process
		Ensure that construction activities associated with any facility expansion and ongoing service and maintenance activities minimize impacts upon neighboring residential streets and homes.	City Building Official, City Engineers	<ul style="list-style-type: none"> • Development Review Process
		Mitigate negative impacts of treatment facility expansion on the surrounding neighborhood with positive contributions to transportation connectivity between Kenthorpe and Mapleton Drives.	City Planners, City Engineers	<ul style="list-style-type: none"> • Development Review Process

I don't see Tigard in there anywhere.

I don't see 50,000 trucks or 1000 pilings.

I don't see suing our West Linn citizens on Mapleton

I don't see tearing down the entire existing plant and building a new one.

The Robinwood Neighborhood Vision process commenced in the summer of 2003 with 3 large community meetings to gather input. The first public draft was published in August 2003 and did not contain any reference to the Lake Oswego Water Treatment Plant (LOWTP).

LOTWP was also not in the May 2006 draft or the December 2006 draft, but then suddenly appears, exactly as adopted, in the May 2007 draft.

What happened between the December 2006 and the May 2007 drafts?

A letter stamped dated March 21, 2007 and stamped by City of West Linn Planning and Building on March 23rd, from Joel B. Komarek, current LOTWP Project Manager, to Bryan Brown, City of West Linn Planning Director, states:

"Dear Bryan,

Thank you for the opportunity to review and comment on the Draft Robinwood Neighborhood Plan (RNP) dated May 19th 2006..."

Followed by 2 pages of comments and suggestions.

That's how the LOT project got inserted into the Robinwood Neighborhood Plan.

The review of goal, policy and action item 3.9 reveal a number of items for which the applicant has failed to meet the burden of proof.

Other pertinent items that are not addressed in these applications include:

- 1.1 Sidewalks on Hwy 43 / Willamette Drive (The Goal stated on p21 is a scrivener's error)
 - 1.3 Beautification of Hwy 43 / Willamette Drive
 - 1.4 Bike Lanes on Hwy 43 / Willamette Drive
 - 3.3 Pedestrian access on residential streets
 - 3.4 as to undergrounding utilities
- and especially 3.5, which addresses commercial compatibility in residential neighborhoods.

You can't have it both ways - claiming that Neighborhood plan items have the power of policy when they favor an application and then dismissing Neighborhood plan items as merely aspirational condition or contradict an application.

That's simply the spin by LO's army of highly paid consultants.

Kevin Bryck
18840 Nixon Av.

IMPLEMENTATION SCHEDULE

The Robinwood Neighborhood Plan contains an ambitious set of goals, policies, and potential action measures. The following table is intended as a general guide to indicate city priority in accomplishing these policies. This table is intended only for general guidance, and can be changed by the City of West Linn due to changing circumstances, new priorities, or new opportunities without the need to amend this table.

The priorities are divided into three categories: short-range (within the next two years), medium-range (between two and five years), and long-range (more than five years). Some measures, even if given a short-range priority, may in fact be on-going and thus continue into the indefinite future.

Neighborhood Plan Policies		Action Measures	Priority
1.1	Provide a continuous bike lane along Willamette Drive.	Provide 6 to 12 foot wide concrete sidewalks on both sides of Willamette Drive, with landscaped areas between the sidewalk and street where right of way width permits it.	Medium-range
1.2	Reconcile the competing interests of cross-traffic onto and over Willamette Drive with the needs of through traffic.	Restrict access to Highway 43 from Robinwood Way, by limiting it to right turns in and out. Determine whether a signal light at the intersection of Highway 43 and Walling Way/Walling Circle is still necessary and appropriate. Realign the intersection of Cedaroak Drive and the entrance to the Robinwood Shopping Center to create a four-way intersection. Provide safe pedestrian crossings at all streets intersecting with Willamette Drive and at high traffic areas. Coordinate road projects between utility and construction companies so that the full area is completed at one time. Synchronize traffic signals along Willamette Drive to ensure smooth traffic flow.	Medium-range
1.3	Beautify the length of Willamette Drive with a comprehensive and consistent streetscape.	Place a West Linn gateway sign along Willamette Drive at the northern entrance to the City. Plant consistent types of street trees and associated landscaping along the sides of Willamette Drive and in the median where turn lanes are not needed. Place consistent and attractive lighting fixtures along the length of Willamette Drive Place all existing and proposed utilities underground along Willamette Drive. Where possible provide drainage swales in landscaped medians in lieu of covered storm drainage along Willamette Drive.	Medium-range
1.4	Provide a continuous bike lane along Willamette Drive.	Provide a paved bike lane at least five feet wide along both sides of Willamette Drive. Provide striping for bicycle lanes when designing intersections and turning lanes along Willamette Drive. Consider use of a multi-use path for both pedestrians and bicyclists where right of way is limited along Willamette Drive.	Medium-range
1.5	Keep Willamette Drive narrow enough to keep the neighborhood united while accommodating state highway traffic.	Provide two travel lanes and a center median for turns, crossings, and landscaped areas along the entire length of Willamette Drive.	Medium-range

2.6	Require commercial properties along Willamette Drive to meet ongoing standards for maintenance, cleanliness, and aesthetic attractiveness	Review existing municipal code standards for commercial property maintenance, and make revisions to ensure the upkeep of commercial properties as appropriate. Provide adequate city staff resources to ensure compliance with municipal codes for the upkeep of commercial property.	Short range
3.1	Rezone areas inappropriately zoned for multi-family residential uses to more appropriate residential zoning districts.	Work with neighbors and property owners in the College Hills Estates Neighborhood and adjacent areas on an appropriate zoning district that reflects the existing neighborhood's development..	Short-range
3.2	Ameliorate the negative impacts of the use of flag lot designs in the subdividing of existing lots.	Adopt Community Development Code provisions to reduce and discourage the use of flag lots to include only those that are compatible with the existing neighborhood. Adopt Community Development Code provisions requiring land divisions that create "flag lots" to submit concurrent design review applications showing proposed building orientation and building design that provide maximum separation from and privacy for existing adjacent single-family homes. Adopt Community Development Code provisions ensuring that existing homes on lots that are further divided continue to meet or exceed all design standards and regulations for single-family homes.	Short-range
3.3	Provide appropriate pedestrian facilities along residential streets.	Provide sidewalks on streets near Cedaroak Elementary School for student safety Provide sidewalks on streets leading to and from the Robinwood Main Street area On streets with topographic or environmental constraints, accommodate pedestrians with grade separated asphalt paths in lieu of sidewalks on at least one side of the street.	Short-range
3.4	Implement "green street" concepts for residential streets.	Amend the City Community Development Code and Engineering Standards to explicitly allow "green street" designs. Adopt a map of streets within the Robinwood Neighborhood where "green street" designs will be required for all new development and required when streets are improved by the City Require undergrounding of utilities along residential streets as development or street reconstruction occurs.	Short-range
3.5	Protect existing single-family neighborhoods from over-sized infill residences and neighboring commercial development.	Adopt Community Development Code provisions to measure building height based upon the actual height of a building from base to top of roof. Adopt Community Development Code provisions to create a sliding scale for allowed floor area ratio (FAR) for single-family homes that reduces the FAR for larger lots. Adopt Community Development Code provisions to reduce the bulk and mass of single-family homes along their front and side yards. Adopt Community Development Code provisions that encourage single-family homes with lower height by reducing allowed low coverage for taller homes. Study an infill design review process. Do not let new commercial development place unacceptable impacts such as traffic, noise, lighting, and building bulk upon existing residential neighborhoods	Short-range

3.6	Maintain and enhance affordable housing opportunities as part of a diverse Robinwood neighborhood.	Investigate options for providing incentives to construct new affordable housing in mixed use areas of the Robinwood Main Street Area.	Long-range
		Adopt Community Development Code standards that allow larger accessory dwelling units in accessory structures than is currently allowed citywide for the Robinwood neighborhood provided that the accessory structures provide separation from and privacy for neighboring single-family homes	Short-range
3.7	Use pedestrian shortcuts to connect existing streets.	Place pedestrian pathways along existing but unimproved public street right of ways Acquire right of way and construct pedestrian pathways from willing property owners between streets where such a path would provide a significant pedestrian shortcut	Medium-range
3.8	Ensure that commercial development along Willamette Drive does not negatively impact nearby single-family residential neighborhoods.	Enforce noise standards designed to shield residential neighborhoods from Willamette Drive area noise impacts. Provide physical buffering between single family neighborhoods and mixed use and commercial areas along the Robinwood Main Street.	Short-range
3.9	Ensure that the Lake Oswego Water Treatment Facility on Kenthorpe Drive remains compatible with the surrounding residential areas and provides benefits to Robinwood's residents as well as those of Lake Oswego.	Require the Lake Oswego Treatment Facility to provide appropriate landscape screening and context-sensitive architecture as part of any facility expansion plan. Take advantage of the need to replace Lake Oswego water pipelines along Robinwood streets to provide street improvements and needed pedestrian routes. Ensure that construction activities associated with any facility expansion and ongoing service and maintenance activities minimize impacts upon neighboring residential streets and homes. Mitigate negative impacts of treatment facility expansion on the surrounding neighborhood with positive contributions to transportation connectivity between Kenthorpe and Mapleton Drives.	Long-range
3.10	Make better use of the existing Robinwood Fire Station Site for neighborhood purposes.	Consider use of the Robinwood Fire Station site for a new city police station. Consider use of the Robinwood Fire Station site as a neighborhood community center.	Long-range
		Provide proper building and landscape maintenance of the fire station property.	Short-range
4.1	Preserve natural riparian corridors through Robinwood and enhance their value as wildlife habitat.	Implement Metro's standards for protection of stream corridors and adjacent upland habitat. Require natural area setbacks along the Willamette River frontage.	Short-range
4.2	Preserve hillside areas above Willamette Drive as a forested scenic backdrop.	Require preservation of steep slope areas above Willamette Drive	Long-range
4.3	Properly maintain publicly owned natural areas	Provide adequate city funding for maintenance of publicly owned natural areas.	Short range
5.1	Increase access to Robinwood Park and place appropriate recreational facilities within it for City residents.	Extend Lazy River Drive to provide access to Robinwood Park	Medium-range
		Provide appropriate active recreational and community facilities within Robinwood Park	Short range
5.2	Provide better access from Robinwood to Mary S. Young Park and its amenities.	Provide pedestrian walkways to Mary S. Young Park from Willamette Drive and Mapleton Drive.	Medium-range
6.1	Encourage cooperation between Robinwood and other city neighborhood associations.	Coordinate between the Robinwood neighborhood and other city neighborhoods, on areas of common interest that affect the Robinwood neighborhood.	Short-range