



## Memorandum

Date: February 5, 2013  
To: West Linn City Council  
From: Zach Pelz, Associate Planner  
Subject: AP-12-02 and AP-12-03 – Additional testimony received before midnight on February 4, 2013

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Attached is public testimony received before the February 4, 2013, deadline for written testimony, regarding the Lake Oswego-Tigard Water Partnership appeal.

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**REVISED COPY (February 2, 2013)**

**To: West Linn Council and Mayor**

**From: Alice Richmond**

On January 28, 2013 the West Linn City Council continued it's L.O.T. appeal:

- Four councilors argued the statistics and ratio over this proposal.
- Two councilors opposed the appeal
- One councilor and the mayor were in favor of the appeal.

In my opinion it should have gone back to the Commissioners denial. Mayor Kovash, whose argument became an impertinent despotic decree in an effort to intimidate the crowd by arduously supporting this proposal, was nonetheless nothing short of misfortune askance adversity.

L.O.T. preponderates that their project is a regional benefit. Well, how contritely ambitious of them! Why refute L.O.T. appeal, I ask? Here are a few more reasons:

1. **The site has a low, flat and stagnant subsurface. In a 2004 study, West Linn consultants indicated three active creeks running in this entire area. The subsurface decayed matter can become hazardous radon gas. So adding massive concrete structures with tons of water capacity, these radon gasses will be kept from dissipating in a safe manner. However, if houses are built with adequate spacing (lots large enough), this hazardous gas can escape without worry, in a natural manner. Plus, these lots would provide tax revenues for the city when subdivided.**
2. **Site location - the current proposal is a covetous enterprise. The unethical character of L.O.T. attorney, Mr. Sullivan and his rebuttal to the citizens of West Linn was hostile and he treated their testimony as unimportant. He was out of order and discriminating. Mr. Sullivan also assured the council that this proposal would safely withstand a 9 point magnitude earthquake. As an attorney, Mr. Sullivan does not qualify as an expert on soil, geology and geomorphology.**

**Here are factual consequences in recent times:**

**6 point magnitude earthquake - damages structures and causes crevasses, slides, etc.**

**7 point magnitude earthquake - does all of the above, plus causes fires, floods, surging water and more.**

8.8 point magnitude (as in Japan) **demolished** 220,000 homes and destroyed the nuclear concrete power plants designed to withstand the forces of natural quakes of this magnitude.

9 point magnitude - annihilates everything in its path.

**We just recently experienced subsurface movements at lower magnitudes such as 3 to 5 occurring from 3 to 5 miles below the surface capable of causing damage such as the recent Amboy, Washington quake felt all the way to Beaverton, Oregon and the surrounding suburbs of the Portland metropolitan area.**

In January 2013, six different consecutive quakes were registered trailing all along the Pacific Coastline starting from Alaska and traveling down through Oregon including our local areas. **With L.O.T. officials reassuring citizens that their structures are designed to withstand such earthquakes, I have concluded they haven't done their homework.**

**The West Linn Utility Advisory Board's meticulous studies were stalled by West Linn City Council and became meaningless in it's efforts to solve our own water system. They even condemned the Planning Commission's hard work and effort toward their decision on the L.O.T water plant proposal.**

**The citizens of West Linn need to know that our Planning Commission is appointed from the ranks of our community to represent us in good faith with their knowledge and effort. It is an affront that our Mayor would ignore and demean their work in an attempt to forward his own agenda on L.O.T.'s behalf, regardless of what we, the people, are telling the council. The Planning Commission was unanimous in their decision to say "NO" to this proposal. We, on the other hand, must stay responsible, involved and repeal the L.O.T. plans.**

Sincerely,



Alice Richmond  
3939 Parker Road  
West Linn, Oregon 97068  
(503) 723-0101

**Attachments submitted by hand**

# City pulls plug on 18% water rate measure

## LO water treatment plant expansion may affect March vote

By LORI HALL  
The Tidings

In a surprise vote, the West Linn City Council unanimously voted during its Jan. 14 meeting to take the proposed March 12 water mea-

sure off the ballot. Council President Mike Jones moved for staff to take "whatever legal actions necessary" to remove the proposed one-time rate hike. This is a sudden switch from recent council discussion. Last month, the council voted to ask residents for a one-time water rate hike of 18 percent, over and above the city's annual capped 5 percent increase. The council is attempting to remove the ballot measure to avoid confusion with the contentious permit hearings

it is conducting this month regarding the Lake Oswego-Tigard Water Partnership proposed water treatment plant expansion and pipeline. "The reason that council feels this is necessary to remove this from the ballot is there is a great deal of confusion over our water issues and this," Jones said. Although the council was aware it would hear the water treatment plant conditional use permit proposals in January, Mayor John Kovash said the council didn't realize the issues could

be misconstrued. Kovash said councilors were hearing from residents expressing confusion, and after discussion among each other and city staff the council thought it would be best to take the measure off the ballot altogether. Kovash also said the LOT permits, if approved, could have an impact on the city's water system. This is because as part of its conditions of approval, the city council may tack on a one-time \$5 million payment from LOT for use of the pipeline right-of-way. That money

could be used toward city water structure or the replacement of Bolton Reservoir. The city wanted the March 12 measure to raise funds to start repairing and repairing the city's pipeline system. Under the city's plan, the city cannot raise more than 5 percent annually for voter approval. The one-time rate would be in addition to the 5 percent increase. West Linn currently has more

See BALLOT /!

From page A1

10 miles of pipe, about 10 percent, overdue for replacement due to size or condition. Water main breaks occur nearly monthly and have cost the city more than \$26,000 in repairs last year.

The city contends the current 5 percent limit does not cover the costs of routine maintenance and improvements. According to Chief Finance Officer Richard Seals, the city currently spends \$210,000 yearly operating the water system. However, the city needs another \$540,000 a year to start bringing the pipeline to current standards over the next 20 years.

According to the city, since the 1990s, the city's water master plan has required \$750,000 annually for line improvements and replacements.

Those fixes and expenditures have not happened as the city's water revenue has

**"The reason that council feels this is necessary to remove this from the ballot is there is a great deal of confusion over our water issues and this."**

—Mike Jones, city council president

of 18 percent would generate the extra \$500,000 annually the city needs to start making upgrades and repairs. Removing the ballot measure may prove difficult for West Linn. According to Assistant City Manager Kirsten Wyatt, the city will need to file a lawsuit, asking the court for an injunction to prevent the country from printing and circulating the ballots. The deadline to remove a measure filed with Clackamas County was Jan. 10.

continually decreased with better water conservation and expenses have steadily increased, including annual hikes from the South Fork Water Board for acquiring the water.

According to city staff, operating costs outstrip revenues from water sales by nearly \$500,000 a year. To offset those costs, the city has deferred line maintenance. The recommended water rate increase

you're correct about this! (an)

# Water measure pulled from March ballot

City successful in getting 1.8% rate increase off ballot

By LORI HALL  
The Tidings

Though the vote approving a special measure was easily achieved, removing a stated March ballot measure proved to be more difficult for the city of West Linn.

In a surprise vote, the city council unanimously voted during its Jan. 14 meeting to take the proposed March 12 water measure off the ballot.

The change of heart was a sudden reversal of the council's December decision to ask residents for a one-time water rate hike of 1.8 percent, over and above the city's annual capped 5 percent increase.

The council wished to remove the ballot measure to avoid confusion with the contentious permit hearings it is conducting this month regarding the Lake Oswego-Tigard (LOT) Water Partnership proposed water treatment plant expansion



SUBMITTED PHOTO: CITY OF WEST LINN

The West Linn City Council put a special election measure asking residents for an 1.8 percent water rate hike on hold for the time being. The council will discuss the future of the ballot measure during its goal setting retreat in February and pipeline.

"It's confusing to voters because we're talking about West Linn water, Lake Oswego water and Tigard water," Assistant City Manager Kirsten Wyatt said.

Also, if approved, the LOT permits could have an impact on the city's water system. This is because,

as part of its conditions of approval, the city council may tack on a one-time \$5 million payment from LOT for use of the pipeline right of way.

That money could be used toward city water infrastructure or the re- placement of the Bolton Reservoir.

The city wanted the March ballot measure to raise funds to start re-

placing and repairing the city's water pipeline system. Under the city charter, the city cannot raise rates by more than 5 percent annually without voter approval. The one-time rate hike would be in addition to the annual 5 percent increase.

Since the March vote is looming, the city rushed to try to get it off the ballot. Since removing ballot measures with the county is rare, the process was not readily available to the city.

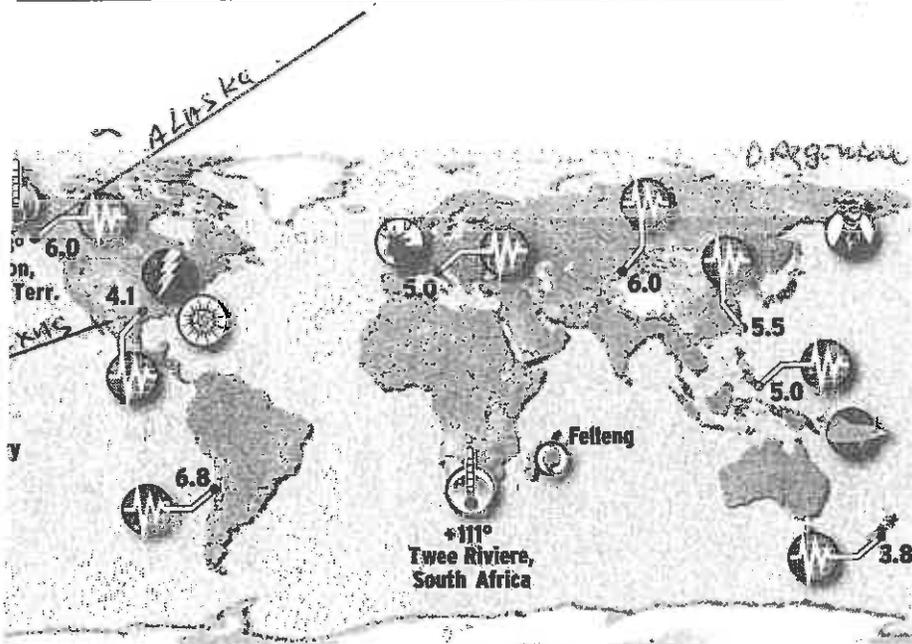
"There's not a whole lot of precedence," Wyatt said.

Following legal steps, the city council convened on the afternoon of Jan. 17 to vote on rescinding the resolution that placed the water rate measure on the March ballot. All councilors were present except Jody Carson and voted in favor of the repeal.

According to Peter Watts, a city attorney, though the county didn't oppose the city's wish to remove the measure, the deadline had already passed to do so.

"The Secretary of State's office

See BALLOT / Page 144



## Northwest quakes 2-2-13



Earthquakes occur frequently in the Northwest. To see a map of recent quakes, visit the Pacific Northwest Seismic Network at [pnsn.org/earthquakes/recent](http://pnsn.org/earthquakes/recent)

southeast Alaska and eastern Texas.

## Tropical cyclones



The Seychelles were swamped by more than a month's worth of rainfall within a single day as outer bands of developing Cyclone Felleng swept over the western Indian Ocean island republic. The storm later reached Category 4 force as it passed between Madagascar and the French overseas territory of Reunion.

• Cyclone Garry brought locally heavy rains to the Cook Islands, but the South Pacific storm spared the archipelago any significant damage.

## Russian lava



Far East Russia's Plosky Tolbachik volcano spewed jets of hot lava up to 650 feet above the Kamchatka Peninsula's frozen wintertime landscape. The volcano roared back to life in November after lying dormant for almost 40 years. Vulcanologists say the eruption may be creating the first lava lake ever recorded on the Kam-

chatka Peninsula. This near the flow from deep beneath surface is fast enough to keep all the lava fluid long enough to form a lake.

## Pastoral adoption



A red deer has been "adopted" by a flock of sheep on the Suffolk coast. The young buck apparently joined the woolly grazers after his herd passed by in early December. The deer has been living among the sheep ever since. "I've been involved with sheep all my life, but I've never seen deer interact with them," says shepherd Andrew Capell. "They seem to have accepted him as one of their own." The National Trust, a U.K. charity that specializes in protecting everything from historical to endangered species, is watching over the buck and hopes he will rejoin his herd ever roams by again. For the deer seems to be living among his new family, eating, playing and sleeping with the flock.

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## Clouds are alive



Bacteria and other tiny life forms are thriving high in Earth's atmosphere as they are carried around the world by prevailing winds, according to new research. "We did not expect to find so many microorganisms in the troposphere, which is considered a difficult environment for life," said microbiologist Kostas Konstantinidis of the Georgia Institute of Technology. "There seems to be quite a diversity of species." Some of the bacteria and other organic material, living up to six miles high, are believed to have an effect on the weather. Researchers think that common sea spray catapults them from the top of the

ocean up into the atmosphere. But it's unknown how long these organisms can survive or reproduce in the high-altitude and low-oxygen environments. "I wouldn't be surprised if there is active life and growth in clouds, but this is something we cannot say for sure now," said Konstantinidis.

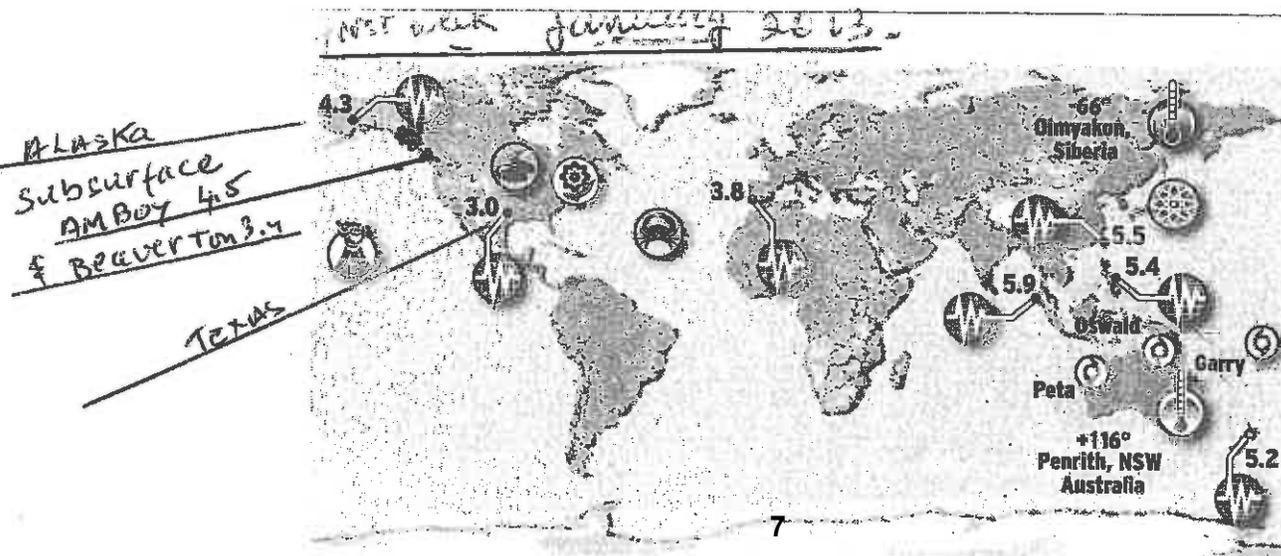
## Earthquakes



The northern half of Chile was jolted by a strong quake that knocked out windows and sent residents rushing into the streets.

• Earth movements were also felt in northern Italy, southeastern Kazakhstan, New Zealand's South Island, the southern Philippines, Taiwan,

ing them don't know the exact storms are around. Scientists at the University of Miami say the link between the painful conditions nearby thunderstorms is unclear. "Many studies showing findings on how weather, including elements like barometric pressure and humidity, affect the onset of headaches," said Geoffrey M. Rea, who conducted the study with his father, Vincent. His study very clearly shows a correlation between weather, associated meteorological factors and headaches. "The scientists aren't fully sure how lightning and headaches are related, but the electromagnetic waves or ionized ozone from the lightning could be the culprits.



# Chile hit by magnitude-6.8 earthquake

By LUIS ANDRES HENAO  
THE ASSOCIATED PRESS

SANTIAGO, Chile — A magnitude-6.8 earthquake shook offices, toppled supermarket shelves and broke windows on Wednesday in north-central Chile.

The U.S. Geological Survey originally reported the quake at 6.7, but later revised it upward. It struck at 4:15 p.m. local time and was centered 27 miles north of Vallenar, Chile.

The quake shook the capital of Santiago, causing office buildings to sway, but was felt most powerfully in the north where state television showed images of groceries scattered on supermarket floors and broken windows at several homes in Vallenar, Copiapo and other nearby cities.

Witnesses described people running from buildings into the streets in panic.

Vallenar Mayor Cristian Tapia said telephone lines were jammed and some electricity lines were temporarily down but services were slowly returning.

"The first half hour was really tough. We're still having problems with telecommunications," Tapia told state television. "Two walls collapsed. We're evaluating ruptures at homes to find out if they're still safe to live in."

But Chile's Emergency Office, ONEMI, said no injuries were immediately reported and damage to infrastructure appears minimal. The oceanographic service discounted the possibility of a tsunami.

"There's no doubt the population in some places fled, following a culture of evacuation," said Miguel Ortiz, national chief of the early alert center at ONEMI. Two lower intensity aftershocks were also reported.

A devastating 8.8 magnitude quake and the tsunami it unleashed in 2010, killed 551 people, destroyed 220,000 homes and washed away docks, riverfronts and seaside resorts. The disaster cost Chile \$30 billion, or 18 percent of its annual gross

## The Oregonian

Newsroom: 503-221-8100  
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MONDAY, JANUARY 28, 2013

# Seattle prepares for rising seawater

THE ASSOCIATED PRESS

SEATTLE — Seattle officials predict that parts of the city will be underwater as the shoreline creeps higher because of global climate change.

City agencies are calculating the local effects of climate change and how to respond and adapt to protect people and infrastructure, The Seattle Times reported this month.

Agencies have been preparing for more intense heat, protecting the new downtown seawall under construction and calculating the number of pump stations and outfalls that would be underwater, as they anticipate the sea level rising because of heat-trapping greenhouse gases such as carbon dioxide pumped into the atmosphere by humans.

Calculations by the Washington Climate Impacts Group and the Washington State Department of Ecology published in 2008 predict a sea-level rise in Seattle of 6 inches by 2050. Less-likely scenarios are rises of 3 inches on the low end and 22 inches on the high end, the Times reported.

A commission has come up with recommendations to respond to climate changes.

City Council members unveiled a map showing neighborhoods of Seattle, including parts of Interbay, Georgetown, South Park, West Seattle, Harbor Island and Golden Gardens, likely to be flooded by rising sea levels.

"We did this map to understand impacts on our infrastructure," Paul Fleming, manager of climate and sustainability for Seattle Public Utilities, told the Times. "In the big picture this isn't just about sea-level rise. It's about drinking water, urban flooding and how we design new projects."

Seattle's water supply is in the central Cascades, so it won't be contaminated by seawater. But as the sea creeps upward, water supply, drainage and wastewater infrastructure possibly could be affected by everything from flooding to corrosion.

Other effects of climate change, including drought and wildfires, also could diminish the water supply's quality and quantity in the future.

"The real question is one of timing," Phil Mote, lead author of the 2008 sea level rise report and scientist at the Oregon Climate Change Research Institute, told the newspaper. "When is the next huge storm going to coincide with a high tide in winter and an El Niño? We don't know when that bad timing of factors is going to lead to inundation; it could be next winter or 50 years from now."

Mote said some degree of sea level rise is certain. "It's basic physics. Ocean water heats, and it expands. You just can't get away from rising sea levels being an inevitable consequence. How much and how fast, that alone is what determines how the shorelines will look."

Councilmember Mike O'Brien said city officials are united in recognizing the importance of global climate change. He said there's a lot that the city can employ to respond, including tolling to discourage driving and energy efficiencies in heating and cooling buildings.

from Astoria to ↑  
West Linn Falls  
it is a very short  
distance -  
hot plant on this  
path.



DEBATING GLOBAL WARMING



SHEMAMAN/DAVE NEW 9/1/05

2-2-13 OREGONIAN  
Climate change data

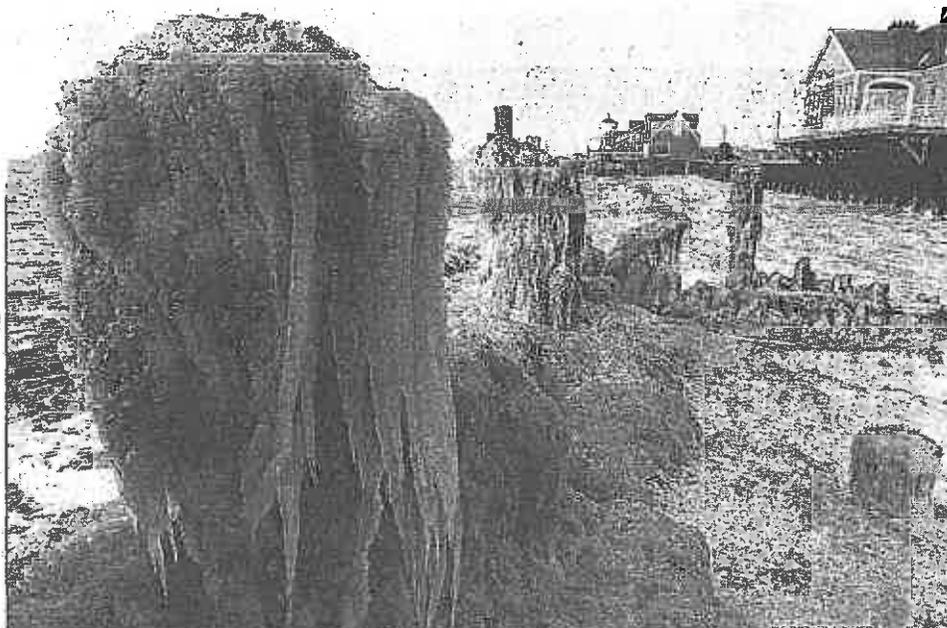
On Jan. 29, a letter from professor David Douglass claimed that, based on his analysis of data from the National Oceanic and Atmospheric Administration's National Oceanographic Data Center, there has been no global warming during the past 15 years. Last year, my colleagues and I published a correction to Douglass' research, showing that there is no sign that global warming has even slowed in the NODC data.

In fact, heat is accumulating in the earth's climate system because the greenhouse effect has increased to a faster rate than it was 15 years ago.

Oregon State University's Andreas Schmittner (Letters, Jan. 23) was entirely correct to note that global warming has continued at a rapid rate over this time span.

**DANA NUCCITELLI**  
West Sacramento, Calif.

*Nuccitelli is an environmental scientist at Tetra Tech Inc. and writes for the website Skeptical Science.*



DALE GERHARD/THE PRESS OF ATLANTIC CITY

Ice coats the shoreline along the Delaware Bay in the Rends Beach section of Middle Township, N.J., Wednesday.

Bitterly cold polar air mass

# Relocate water plant in Lake Oswego

2013

It came home from the hospital last week to a city torn with outraged cries — messages on my phone and phone calls because West Linn City Council is potentially selling out our city for a preposterous \$5 million offer from the city of Lake Oswego for their proposed water treatment plant expansion. This \$5 million offer is a cheap and insulting bribe! That's what it is — make no mistake about it! Definitely a Maffioso threelit!

## CITIZENS' VIEW

by Alice Richmond

For 44 years the city of Lake Oswego has had ample time to rebuild their water plant within their city. Although, back then the county denied this expansion project. Who knows how Lake Oswego might have previously bribed their way to encroach county property at Clackamas County residents' expense? I promise you, had any of West Linn's infrastructures been in Lake Oswego, they would have evicted us or taxed us at an

exorbitant cost. Never have I heard of a city attempting to encroach in another city to build their civic facilities when they have enough terrain in their own city ... and not pay annuities to boot. Here is another considerably critical assertion: This site's land foundation is questionable — as fragile as the swimming pool site the city denied to taxpayer and subsequently imposed a huge penalty to that taxpayer. This site, and all along Highway 43 and east to the river, is Missoula flood residues; it harbors stagnant waters, soggy wet patches and visible petrified matters. I've walked through this area from a friend of mine's adjoining property to this water plant.

## CITIZENS' VIEW

by Alice Richmond

West Linn's 2004 storm and surface waters studies plan demonstrates this whole area need be protected. I believe 100, it is included in city

**Now is the time to represent West Linn residents with your upstanding and worthy initiatives. One, 10 and upward of 20 years from today, our children and grandchildren will bless you for denying this gigantic project.**

### council goal five.

Again, Lake Oswego had ample time to act responsibly by relocating their water structure within their city. Now is their time to do so. What potential troubles do we invite to our city with global climate phenomena attesting extreme flooding and disasters, plus factual earthquakes awaiting us and predicted ocean water surges ebbing to the falls? Ah, but of course — Lake Oswego speculates and assumes they still

could bully West Linn citizens. It shows their pretentiousness and their ostentatious attitudes. Council, you have sworn to your loyal constituents your integrity to serve them well. Your oath pledged to hear their voices and stand for your people. Now is the time to represent West Linn residents with your upstanding and worthy initiatives. One, 10 and upward of 20 years from today, our children and grandchildren will bless you for denying this gigantic project. I ask you to secure the West Linn Planning Commission decision. Refute this project. We all still apply our planning commissioners for their integrity displayed to their people. You should do no less. West Linn City Council, refuse and deny this appeal. You love West Linn as much as we do. Rest my case.

Alice Richmond has been a West Linn resident for 5 years.

West Linn Things, West Linn, OR January 24

# Let Tigard sue the city of Lake Oswego

2013

The recent revelation that Lake Oswego was involved in offering \$5 million (some call it a bribe) to the West Linn City Council in an attempt to persuade council members to overturn an early December decision made by its planning commission is beyond shocking — it is shameful and, at the very least, unaffordable to LO residents and taxpayers.

## CITIZENS' VIEW

by John Surratt

Never officially approved by the outgoing Hoffman council of LO and certainly not by the incoming Studebaker council (they were not even sworn in yet) the offer was hatched in secret by LO staff, Lake Oswego-Tigard Water Project senior management, consultants and, of course, legal advisers during the remaining weeks of December following the West Linn Planning Commission's 7-0 unanimous decision. The decision involves the Lake Oswego-Ti-

gard Water Project where the planning commission decided not to grant conditional use permits for the project's proposed expansion and reconstruction of the Lake Oswego Water Treatment Plant in the West Linn Robinwood neighborhood near Mary S. Young State Park and for a new much larger water transmission pipe from the plant to LO along Highway 43.

## CITIZENS' VIEW

by John Surratt

As managing partner of the project bearing the burden of obtaining all the permits for the project, Lake Oswego appealed the planning commission's decision to the West Linn City Council. Hearings were held by the council Jan. 14-15 with a decision on the appeal slated for Jan. 28. The revelation of the \$5 million offer was made by the West Linn council after holding a surprise executive session prior to its regular meeting — one day before the swearing-in cer-

emony of the new LO council. To his credit, Mayor Studebaker alluded to the \$5 million controversy during his acceptance remarks, emphatically stating that there had been neither prior council approvals nor any council discussions on the subject and vowing that there would be council deliberations.

Many, many questions need answers. Who authorized the secret meetings? Why was LO staff involved — particularly to discuss a huge amount of money to be paid to West Linn? Would they write the check? Lake Oswego has no budget allocation for this expenditure, nor does the project budget. There are several references in the intergovernmental agreement where large expenditures of money must first have council approval before a check is written.

Lake Oswego's \$5 million offer to the West Linn council is an "extra mile" gesture of faith meant to convince Tigard that they'd done everything possible. If the commission decision is upheld, the project is in serious jeopardy and most likely would be abandoned. I'll reserve my opinion about that in this column. But, again, fear crept in and panic to over with secret meetings and millions of budgeted and unapproved dollars in play handicapping the outcome of the West Linn council vote.

It comes down to this. Fearing that Tigard will view the LO appeal to the planning commission as insufficient performance and sue,

Negotiating out of fear is never good. Remember what FDR said about fear? It was something like: "The only thing that we to fear is fear itself." So, let Tigard sue us! tuned. There is much more to this malodorous story.

John Surratt is a Lake Oswego resident and former candidate for Lake Oswego mayor.

# LETTERS TO THE EDITOR

II  
①

1-01-3

## OREGONIAN West Linn water

Regarding the editorial "Open the taps for Lake Oswego, Tigard" (Jan. 16): The editorial board asks for "regional cooperation" with the proposed Lake Oswego water treatment plant expansion, but this project benefits Lake Oswego and adversely affects West Linn.

Lake Oswego stands to make huge revenues from selling treated water to Tigard, but no benefit comes to West Linn. Placement of pipes along Highway 43 will be a major disruption, and the pipe installation near Mary S. Young Park could be devastating.

So consider the community gains and losses. Lake Oswego gains huge revenue without experiencing any disruptions. Tigard gets cheaper water. West Linn would risk damage to one of its favorite parks and the disruption of a main thoroughfare, but might get some emergency water.

Regional cooperation is a two-way street.

**BRENDA PERRY**  
West Linn

I must respond to the Jan. 16 editorial. Here's a little history. This plant, built in the Robinwood neighborhood in 1968, was denied in 1967 by the Clackamas County Planning Commission, then overturned by the Clackamas County board. Not one ounce of water has been delivered to Robinwood, other than emergencies, after it was annexed into West Linn.

Conditional-use approvals by West Linn have been for only minor changes. But this is not an expansion; this is essentially a new plant.

All West Linn gets is the continued emergency water intertie with Lake Oswego.

The Tri-City Service District is jointly owned by West Linn, Oregon City and Gladstone and serves only those cities. The South Fork Water Board is jointly owned by Oregon City and West Linn and supplies water to them. The Lake Oswego plant is the only one I know of that is located in a city that it does not supply on a daily basis.

Lake Oswego and Tigard get all of the benefits and we get little.

**ROBERT STOWELL**  
West Linn

West Linn Tidings, West Linn, OR January 24, 2013

## Water plant is no benefit to West Linn

Regarding the water treatment plant ... there are so many reasons why this proposal is a bad idea that it's hard to know where to begin.

There's the fact that this project is not so much an expansion as a complete replacement. Almost nothing of the existing plant would remain after the construction. As such, it defies logic that LOT has not even considered another site.

Then there's LOT's constant harping on the expanded intertie as a new benefit to West Linn. Why does it need to be expanded? West Linn's need in an emergency has not changed. Lake Oswego, on the other hand, has added 40,000 Tigard customers to its service area. So who does the expanded intertie really benefit?

There is, of course, the well-documented fact that the existing plant was built in a geotechnical red zone, which means that the soil is subject to liquefaction in the event of a large earthquake. When the soil around the 2 million gallon clear well liquefies, then all that water will go rushing down the hill into the Willamette along with everything else in its path.

There's the threat of development of the Stafford triangle that is made possible by the additional water this new plant could produce. LOT says they won't try to develop Stafford, but they've said a lot of things during this process that haven't turned out to be true. So I,

for one, don't believe that they will stick to that promise. And if we let them build this plant in our city, then we will be complicit should they decide they do want to develop Stafford after all.

And how about the latest attempt by LOT to tip the scales in their favor with the \$5 million right of way fee? LOT has obviously recognized the validity of the arguments made

by the planning commission when they unanimously voted to deny the permits. Instead of addressing the core issues, they simply opened up the purse a little bit wider and tried to grease the skids. Then the lawyers got creative and drew up a document to legitimize it.

But maybe the best reason is the most obvious of all. The community development code of West Linn contains a requirement that in order for a proposal to be granted a conditional use permit, it has to result in a facility that is consistent with the overall needs of the community. We have listened for two years to LOT argue that this new plant is a good idea and that we should accept it in our neighborhood.

We are the community and we are not convinced. We, the community, do not see this proposal as an overall benefit to us. Over a thousand of us signed a petition telling LOT to go back to the drawing board. It couldn't be more clear.

It's time to stop this madness!  
Sam Stephens is a West Linn resident.

**CITIZEN'S VIEW**  
by Sam Stephens

# Let's win one for West Linn



3/2

The West Linn City Council recently sprung the news of a potential \$5 million payment negotiated from Lake Oswego-Tigard water project officials. It is hoped the council and their negotiator took the following facts into account in their dealings:

1) With the LOT project approved, Lake Oswego will more than likely control the Stafford area development. Their available water supply and excess school capacity will seal West Linn's fate as loser in any Stafford land use decision. Incidentally, LO will pick up at least \$5 million in revenue from that area's tax base and subsequent system development fees.

2) Pages ES10 and 11 of the 2007 LOT consultant's report state LO residents will save \$63 million should the LOT project be implemented and their water bills "are forecasted to increase cumulatively 56 percent over the next 25 years." This is less than 3 percent annually, a lot lower than the WL rate projections of more than 5 percent.

3) The LOT project will create more than 50 percent forecasted capacity for Tigard and LO. There is nothing preventing Lake Oswego from selling a portion of this excess water to a number of jurisdictions; the project be-

## CITIZEN'S VIEW

by Mike Taylor

comes a cash cow for LO.

If I were negotiating this is the minimum I would ask for:

1) As a former LO resident, planning commissioner and city councilor, I have a reasonable historical perspective of where they (LO) are heading. A \$7 million "upfront" payment to West Linn is reasonable. For example, if the city of West Linn does not hold up the project in state Supreme Court, the LOT construction cost savings are at least 3 percent (this does not preclude neighborhood suits at LUBA level). Incidentally, 40 percent of the "upfront" West Linn payment could be given as credits to future tax revenues for home and business owners adversely affected by the project.

2) For the first 25 years of the project, 75 cents per month of every LOT-metered customer monthly bill would be due WL. Trying to determine how many meters currently exist in the LOT service boundary was near impossible (that is a story in itself)-but using 34,000 meters would net WL \$306,000 annually (\$7.65-million over the con-

**The West Linn City Council must take every conceivable issue into consideration when dealing with the LOT project. Negotiate well or do not negotiate at all!**

tract). This revenue and "upfront" payment would be enough to rehabilitate our ageing water system.

3) Lastly, on any new customers where LOT water leaves the current LOT service boundary once the project is completed as currently proposed, WL would receive a 7 percent surcharge on each water unit sold. This protects WL from being the unknowing partner in a LO maneuver to sell excess capacity at a profit.

I am not taking a position on the merits of the legal challenges wrapped up in the current LOT hearing. However, the West Linn City Council must take every conceivable issue into consideration when dealing with the LOT project.

Negotiate well or do not negotiate at all!

Mike Taylor is a resident of West Linn.

# Don't ignore the will of West Linn citizens

By now, it's well known that the city of Lake Oswego wants to rebuild its water treatment plant in our community. Much discussion has been heard regarding the pros and cons. Many questions asked, many answers given. But when it's all said and done, what will West Linn be left with?

It seems that the city council, and in many ways the city of West Linn, is at a crossroads for its future. The council has an incredibly hard decision to make, but it's one that is incredibly easy if they listen to the people who elected them.

I really hope the council will listen to its citizens, seven neighborhood associations and the small businesses along Highway 43, and support the unanimous rejection by the city planning commission of Lake Oswego-Tigard Water Partnership's conditional use request. The city council needs to come back to us with a long-term plan for the improvement of our water system that everyone can support.

I'm really having a hard time believing that common sense can't prevail.

## CITIZEN'S VIEW

by Jeff O'Brien

residential neighborhood? Destroying a neighborhood for the benefit of two other municipalities? Condemning CC&Rs for limited local benefit? And then having to pay to receive these so-called benefits? Where's the common sense?

West Linn Community Development Code chapter 60.070 Section A, paragraph 3 states that "The granting of the proposal will provide for a facility that is consistent with the overall needs of the community." If common sense is applied to this proposal, it becomes very clear that it does not meet the overall needs of West Linn, Robinwood or the residents of Mapleton, Kenthorpe and Nixon. Our needs and expectations are far greater.

The West Linn City Council must come back with an intelligent, comprehensive plan that encompasses a solution to all of the regional water and sewer problems for many years. It

**The city council has an opportunity to leave a legacy, please don't settle for the easy money and the short-sighted solution.**

would be looked upon as visionary, gaining respect and support of the entire city, as well as the region.

Ignoring the will of the citizens, the unanimous vote of the city planning commission, seven neighborhood associations and the small businesses along Highway 43 will bring the city council nothing but disappointment and disdain. As a result, bond issues will never be passed and the city council will never be able to regain the trust and respect of its citizens.

The city council has an opportunity to leave a legacy, please don't settle for the easy money and the short-sighted solution. Ten years from now all this emotion and discussion will mostly be forgotten, and what will we be left with? We can do better than this.

Jeff O'Brien is a resident of West Linn.

# The Oregonian

1 of 2

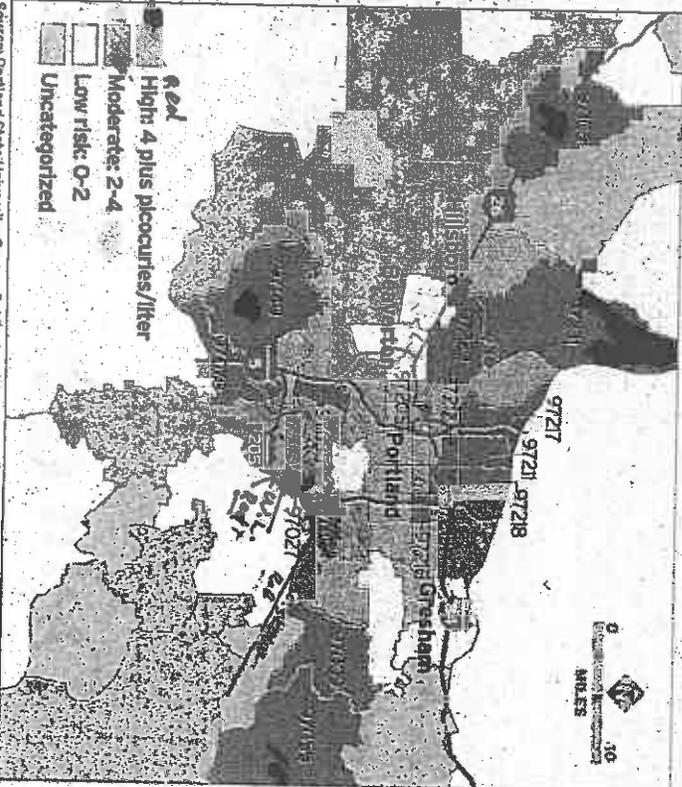
POWERING OregonLive.com

THURSDAY, JANUARY 24, 2013

## Radon risks high in Portland

### Radon levels in the metro area

Map shows average radon levels by ZIP code, gathered from test data submitted to the state. Public health officials recommend that all homeowners test for radon, because exposure can vary greatly from house to house. The Environmental Protection Agency recommends fixing homes to reduce radon exposure if levels are 4 picocuries per liter or higher.



The rate of Metro homes with elevated levels of the cancer-causing gas is double the national average, new estimates say

By SCOTT LEARN  
THE OREGONIAN

New estimates of radon risks across Oregon underscore the need for homeowners to test for the presence of the odorless, invisible radioactive gas, researchers say. The update, released this week, suggests that one in every four houses in the Portland area accumulates radon above the level the U.S. Environmental Protection Agency says should prompt fixes to keep the gas out of doors. That's double the national average, said Scott Burns, a Portland State University geology professor who worked with five students to compile radon tests from homes and businesses statewide. Radon is the second-leading cause of lung cancer in the United States after smoking, the EPA estimates, and the leading cause among nonsmokers. It seeps from the ground through construction joints and cracks and gaps in foundations, accumulating in

Please see RADON, Page A4

\* not plant sites on High 4+ plus picocuries/liter.

# Radon

Continued from Page One

buildings. Risk in the Portland area is higher because granite-infused sediment, relatively high in uranium, washed into the region from the torrential Missoula Floods during the last ice age. Radon is a byproduct of uranium's breakdown.

Widely available short-term measurement devices cost roughly \$35 with lab fees, and contractors say fixes generally range from \$1,000 to \$2,100.

"It's a geological hazard that can be dealt with cheaply," Burns said. "We need to reduce the amount of radiation in our lives, and this is one way of doing that."

## Results and risks

The new results, the first update since 2003, drew on testing in 33,000 homes in the Portland area — 10 times more than the last round. The data cover more ZIP codes and indicate higher risks.

Long-term tests show ZIP codes with high or moderate average levels of radon at 79 percent, up from 65 percent at last count.

Results confirm high levels in areas of Portland already known to be at most risk, including Alameda Ridge in Northeast Portland.

The expanded data also showed high levels in areas previously unreported, including sections of Banks, Boring, Clackamas, Gladstone, Lake Oswego, Newberg, Sandy, Sawie Island, Sherwood and Willsonville.

Statewide, high values include areas of West Salem, Astoria, Milton Freewater and Myrtle Creek.

Radon is responsible for about 21,000 lung cancer deaths every year, the EPA estimates, roughly 18,000 of them smokers whose risks are amplified by radon exposure. About 3,000 people who never smoked die annually from radon exposure.

The EPA estimates 62 smokers out of 1,000 could get lung cancer from radon if exposed over a lifetime to 4 picocuries per liter of radon, the EPA's recommended "action level."

Most would not die from radon exposure if they hadn't smoked, the agency says, and quitting smoking is by far the best way to reduce lung cancer risk. Seven of a thousand non-

## Radon forum

Radon and health experts will discuss radon, its health risks and what you can do about it at a free forum from 5:30 to 7:30 tonight at the Portland Water Bureau's Water House, 1616 N.E. 140th Ave. (just north of Halsey Street).

Details: [cascaderadon.com](http://cascaderadon.com)

## Radon information

- List of results by ZIP code for the Portland area: [tinyurl.com/pdxradon](http://tinyurl.com/pdxradon)
- Oregon Public Health Radon Program: 971-673-0440; [health.oregon.gov/radon](http://health.oregon.gov/radon)
- Environmental Protection Agency: [epa.gov/radon](http://epa.gov/radon)

smokers could get lung cancer at the same exposure level, the agency says, about the lifetime risk of dying in a car crash.

Mike Brennan, a radiation health physicist with the Washington Department of Health, said national and international health groups agree that radon is a legitimate health risk.

"We don't want people to panic, but we want them to be informed," he said. "It's a health risk that is easy to re-

duce, by testing and mitigating if necessary."

Radon levels tend to be highest in winter, the best time for testing. Exposure is typically greatest in basements and other rooms below grade.

But two houses right next to each other can have sharply different results, Brennan said, even in "low risk" ZIP codes. That's why health officials recommend radon tests for all homes.

"The tests are not difficult," Brennan said, "and if you find out you don't have a problem, you've bought some very reasonably priced peace of mind."

If there is a problem? "My father had lung cancer," Brennan said. "Let me assure you that whatever you have to do to your house that decreases that chance is cheap."

## "Really, really scary"

Kate Myrton, decided to test for radon after her house-hunting friends reported seeing radon venting pipes outside many of the homes they were exploring.

Myrton, who lives in a 100-year-old house in Southeast Portland's Lents neighborhood, mailed in a short-term testing device. The

results showed radon levels of 88 picocuries per liter in her basement, 22 times the EPA's action level.

"I just looked at it and thought, I must be reading it wrong," said Myrton, an executive assistant at Freightliner. "It was really, really scary."

Myrton's basement has a finished slab and an unfinished crawl space. EcoTech, her contractor, sealed the floor of the crawl space with a membrane and punched a small hole in the basement floor.

Then workers ran plastic pipe from the hole and another sealed suction point beneath the crawl space to an inline exhaust fan mounted outside the house. From the fan, the pipe continues through the roof, where radon can dissipate into the air.

The venting system is designed to capture radon before it gets into the house. After Myrton's \$1,500 of work, her radon reading dropped to 1 picocurie per liter.

The EPA recommends doing a second, short-term test if readings are 8 picocuries or higher. For readings below 8 picocuries, it recommends following up with a long-term test of 3 months or more.

If the tests average 4 picocuries or higher, you should fix your home, the EPA says. Between 2 and 4 picocuries, you should consider repairs. Don Francis, EcoTech's general manager, said his firm completes about 300 radon fixes a year, competing with nine other certified radon mitigation contractors serving the Portland area.

More homebuyers are conducting tests as part of home inspections, Francis said, the largest source of the work. Sealing gaps helps some, but sealing plus venting is the surest fix.

Francis warned that Oregon doesn't regulate installation of radon vents. Most cities and counties require a mechanical permit, but some contractors skip it. Fans should be mounted outdoors, not indoors, he said.

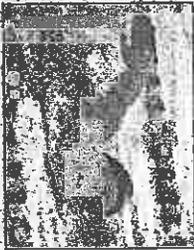
The fan's suction will also draw heat from the home if the contractor doesn't seal the ground in the crawl space or holes in the basement floor, Francis said, lowering the installation bid but boosting utility bills.

Scott Learn: 503-294-7657; [slearn@oregonian.com](mailto:slearn@oregonian.com); [twitter.com/slearn1](https://twitter.com/slearn1).

2 of 1

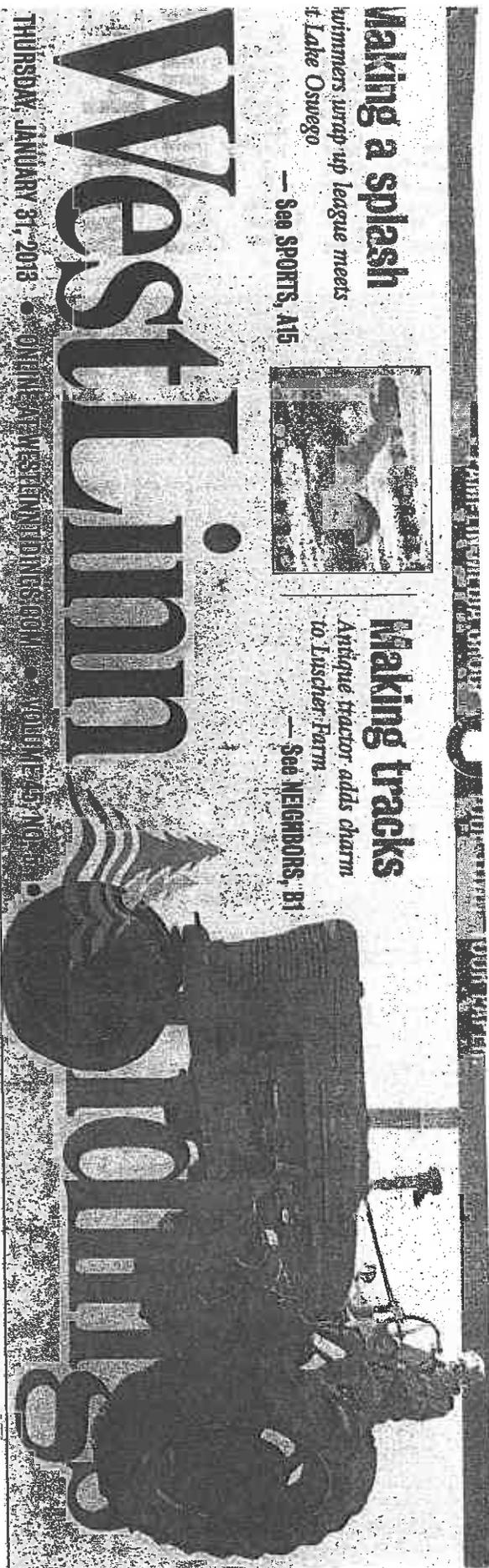
**Making a splash**  
 swimmers wrap-up league meets  
 at Lake Oswego.

— See SPORTS, A15



**Making tracks**  
 Antique tractor adds charm  
 to Luschter Farm

— See NEIGHBORS, B1



THURSDAY, JANUARY 31, 2013 • ONLINE: [WWW.METROJOURNAL.COM](http://WWW.METROJOURNAL.COM) • PHONE: 455-2000

# West Linn

## Missstep delays water plant decision

**Hearings reopened**  
 or more testimony

LORI HALL  
 of Tidings

Still dragging on, the hearings for a proposed water treatment plant and pipeline have been continued yet again because of a misstep by the mayor of West Linn. The West Linn City Council was due to close the hearings and deliberate on a controversial project during its

Monday meeting; however, a statement by the mayor introduced new evidence, causing the city to reopen public testimony and applicant rebuttal.

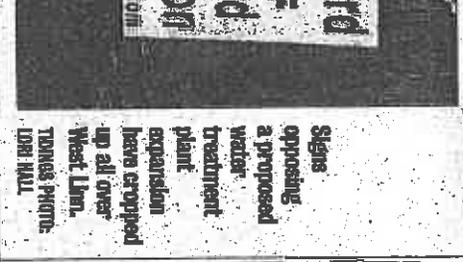
The city council conducted two nights of public hearings Jan. 14 and 15 to collect community comment on Lake Oswego-Tigard water treatment plant expansion and pipeline public hearings.

Back on Nov. 1, the West Linn Planning Commission unanimously voted to deny the two conditional use permits, mainly due to lack of community benefit to West Linn. The Lake Oswego-Tigard Water Partnership appealed the

decision last month to the city council. Lake Oswego has operated a water treatment plant at 4260 Kenworthy Way in West Linn's Robinwood neighborhood since 1968. In cooperation with the city of Tigard, Lake Oswego wants to expand the plant and run a new pipeline to address the future water needs of both cities.

The plant, which will hold up to 2 million stored gallons of water underground and handle up to 38 million gallons each day, also serves as an emergency backup water supply for West Linn.

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Signs opposing a proposed water treatment plant expansion have cropped up all over West Linn. TORRES PHOTO: LORI HALL

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Signs opposing a proposed water treatment plant expansion have cropped up all over West Linn. TORRES PHOTO: LORI HALL

Signs opposing a proposed water treatment plant expansion have cropped up all over West Linn. TORRES PHOTO: LORI HALL

1-29-13

METRO AREA

### Error delays W. Linn vote on water plant

The West Linn City Council has postponed a decision on permits for a controversial expansion of Lake Oswego's water treatment plant in West Linn.

The decision instead will be made Feb. 11 because Mayor John Kovash mistakenly spoke Monday about information that hadn't been presented in previous public hearings or written testimony. He remarked about contacting two West Linn neighborhood associations concerning their feelings about the project by Feb. 8.

Legally, the Lake Oswego-Tigard Water Partnership, which needs the permits to expand its water treatment plant in the Robinwood neighborhood and install a larger pipeline, needs a chance to respond to that information.

The City Council was set to decide Monday whether to overturn or uphold a unanimous decision in November by the city's planning commission that denied conditional use permits. The commission argued that the project lacked benefit to West Linn.

—Victoria Edwards

# Misstep delays water plant decision

## Hearings reopened for more testimony

By LORI HALL  
The Tidings

Still dragging on, the hearings for a proposed water treatment plant and pipeline have been continued yet again because of a misstep by the mayor of West Linn.

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decision last month to the city council.

Lake Oswego has operated a water treatment plant at 4260 Kenttorpe Way in West Linn's Robinwood neighborhood since 1968. In cooperation with the city of Tigard, Lake Oswego wants to expand the plant and run a new pipeline to address the future water needs of both cities.

The plant, which will hold up to 2 million-stored gallons of water underground and handle up to 38 million gallons each day, also serves as an emergency backup water supply for West Linn.

See WATER PLANT / Page A8



Signs opposing a proposed water treatment plant expansion have cropped up all over West Linn. THOMAS PHOTOS/LORI HALL

# Water plant: New testimony accepted until Feb. 4

■ From page A1

Along with a new plant, the project involves the installation of a 4-foot-diameter pipeline from the Clackamas River through West Linn and into Lake Oswego. The pipeline, which will be broken into four construction phases, will extend 1.9 miles in West Linn, crossing through both residential and commercial areas.

Before entering deliberation, councilors asked city and LOT staff about home access during construction, Highway 43 work, the intergovernmental intertie agreement, emergency access and the monetary and nonmonetary benefits to West Linn.

As part of the proposed projects, West Linn could receive \$350,000 worth of asbestos pipes replaced in the Robinwood neighborhood, \$250,000 worth of road resurfacing along Mapleton and Kenthorpe, \$90,000 in improvements in Mary S. Young State Park and \$5 million for a license fee for the pipeline right of way. Associate Planner Zach Pelz also pointed out the benefit of having a completely redundant water supply.

## 'Long and difficult' process

Prior to the mayor's misstep, the council was heading toward a 2-2 decision on the permits. The council's fifth member, Thomas Frank, had recused himself from the hearings as he previously voted on the permits as a planning commissioner last year. If the vote is a tie, the planning commission's denial would become final.

The mayor and councilors spoke passionately about their determinations, with Mayor John Kovash speaking at length in favor of the project along with Councilor Jody Carson. Council President Mike Jones spoke strongly against it along with Councilor Jenni Tan.

Both Kovash and Jones talked about the definition of "community" and "community benefit," each with varying opinions.

"This is one of the most im-



ties for people in the neighborhood," Carson said. "I believe that the applicant has a plan that addresses those concerns."

She also cited the need for water supply redundancies and the \$5 million license fee that could go toward infrastructure.

Jones and Tan contended otherwise. Jones said the applications put an unfair greater burden on the Robinwood neighborhood for the benefit of the rest of the community.

"What is unique about these applications is that their primary benefit will not be to the citizens of West Linn," Jones said. "This is unlike any CUP (conditional use permit) with which I have been involved."

Jones also criticized Lake Oswego for its ongoing lawsuit against water plant neighbors condemning the area's covenants, conditions and restrictions.

"I am confident that Lake Oswego would not have used this bludgeon on its own citizens so early in the process," he said.

Tan said she would also uphold the planning commission's decision, saying that more work should have been done and the burden the proposals implied could not be quantified.

In response to one of Jones' statements, Kovash declared he had spoken with two repre-



TIDINGS PHOTO: LORI HALL

Top, there was standing room only in the city hall chambers during public testimony held Jan. 14 and 15 concerning the water treatment plant and associated pipeline. Above, documents associated with the water treatment plant and pipeline conditional use permit applications are several feet thick.

pansion of the plant is expected to begin this spring, and the entire project, including the pipeline, will be complete by early 2016. However, the extension of testimony may cause LOT to miss its first in-water work date at the river, which will cost LOT \$500,000, according to LOT Communications Director Jane Heisler.

"All of this delay equates to dollars for us," she said.

After resetting the meeting, Carson also moved to direct staff to draft a list of conditions

8. Defining severe penalties for violating the construction management plan.

9. Ensuring the 24/7 hotline is answered by a person of authority, not just an answering system.

According to Heisler, the plan already addresses some of these conditions and there may be concerns about others. She said the condemnation process is a confidential and separate issue and should not be tied to the CUPs, and there may be concern about reworking the intertie agreement.

# Opponents of water plant expansion are unwavering

At a public hearing, Robinwood residents again speak out on Lake Oswego's plan

By VICTORIA EDWARDS  
THE OREGONIAN

Residents in the West Linn neighborhood where Lake Oswego wants to expand its water treatment plant again voiced strong opposition to the project this week, when the West Linn City Council held a lengthy public hearing on the expansion.

More than 60 people spoke in front of the council Monday and Tuesday nights, many of them residents of the Robinwood neighborhood who are against the plant expansion.

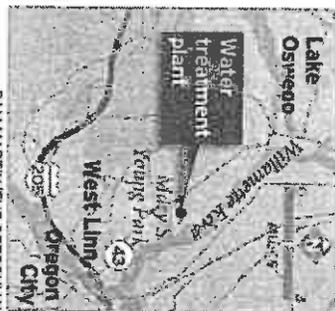
The scene was much like those that transpired in West Linn's City Council Chambers several times over the past year. Many Robinwood residents came out for a public hearing before West Linn's planning commission in October, where they voiced concerns about construction impacts, decreased property values and a lack of benefit to West Linn.

In November, the planning commission unanimously decided to deny permits the Lake Oswego-Tigard Water



THE OREGONIAN

Signs opposing the expansion of Lake Oswego's water treatment plant are scattered throughout West Linn's Robinwood neighborhood. More than 60 people, many of them Robinwood residents, testified at a public hearing this week.



PAM MARTIN/THE OREGONIAN

## Decision time

The West Linn council will discuss and then decide whether to issue permits for the expansion of Lake Oswego's water treatment plant at its 6 p.m. meeting Jan. 28 at 22500 Salamo Road.

Partnership needs to expand the plant — operated by Lake Oswego since 1968 — between Kenhorpe Way and Mapleton Drive and install a larger underground water pipeline.

It's a decision that ultimately led to this week's public hearing before the City Council and a familiar scenario, with the Lake Oswego-Tigard Partnership officials again presenting the merits and need for the project and residents again rebutting those claims. The partnership announced it was appealing the planning commission's decision in December.

A decision from the West Linn City Council on whether to overturn or keep the planning commission's denial of the conditional use

permits for the expansion is expected to come at its meeting Jan. 28.

If the council decides to approve the permits, it could require Lake Oswego and Tigard to pay a fee to use the right of way where the plant is located. West Linn released tentative terms for an agreement that would have the partnership give the city a \$5 million lump-sum payment to go toward improvements to West Linn's water system or to Oregon 43.

However, those terms only reflect West Linn's position in the draft agreement, since last week the Lake Oswego City Council told the water partnership not to present terms for that \$5 million payment to West Linn as the West Linn City Council had asked. While West Linn has the right to im-

peadly presented at previous public hearings, but little to no headway was made by the partnership in changing the minds of opponents.

Joel Komarek, director of the project, pointed to the four million gallons of water per day West Linn would get until at least 2041 in case of an emergency as one of the benefits to the city.

"Let's face a glaring fact," Komarek said. "The underpinnings of our water supply system and yours are weak and crumbling and will not survive the earthquake that experts say has a 37 percent chance of occurring in the next 50 years." That would leave both cities in danger, he said, if the project, which includes seismic upgrades to water pipes and the treatment plant, didn't happen.

But partnership officials and opponents disagree on whether that's a benefit and on the need for the seismic upgrades, along with nearly every other aspect of the project.

While Jon Holland, who leads the program management team for the partnership, highlighted that construction will result in only minimal traffic impacts, opponents said that's underplaying it. Opponents characterize the expansion as a

major industrial development in a residential neighborhood.

Officials say it would result in a 9 percent increase in the plant's footprint on the approximately 9-acre lot, with nearly 60 percent of that area being landscaped. Opponents say businesses will be negatively affected on Oregon 43 during construction. Officials promised businesses wouldn't be left without a driveway open during construction, which would happen at night as required by the Oregon Department of Transportation.

While the arguments remained much the same at the hearing, one change to the project was presented by the partnership. The plant will take four fewer months — down from 32 to 28 — to construct since the proposed administration and operations buildings on the site were consolidated into one.

Although the public hearing has ended, people can still submit written testimony to the city until Tuesday. On Friday, the partnership has to submit a response to those comments, and the City Council is to make its decision on Jan. 28.

Victoria Edwards: 503-294-5918; [vedwards@oregonian.com](mailto:vedwards@oregonian.com)

# Tigard adds west Bull Mountain

By FINDLEY MERRITT  
THE OREGONIAN

Tigard will annex 268 acres of West Bull Mountain at the request of most property owners.

The City Council voted unanimously Jan. 22 to annex the 29 parcels, which sit just southeast of the recently annexed River Terrace, following a public hearing.

The properties, known as Roy Rogers West and Area 63, will join the 224 acres of River Terrace to become part of the River Terrace Community Plan. The areas sit between Southwest Roy Rogers and Beef Bend roads.

In December, the council adopted the River Terrace plan, which includes land-use designations and densities for residential, park and commercial spaces. Developing the area's zoning, utilities and financial plan for roads and utilities will be the next steps in a lengthy process that may take a couple of years.

Councilors expressed gratitude for the way residents pulled together. In 2004, the city tried to annex Bull Mountain but abandoned the effort when the campaign pitted neighbor against neighbor.

"It's a breath of fresh air to have the citizens come and do what they've done," Councilor Marland Henderson said. "You've done a wonderful job, and welcome to the city."

All areas will retain their Washington County zoning, which include future development and farm use, until Tigard zoning is applied.

City planners say the next steps will include committee and community meetings in March, April and May. The plans will address extending the city's services into the area. Tualatin Valley Fire & Rescue has responded to the area since its inclusion into the urban growth boundary, and Tigard police will begin servicing the area upon annexation.

Taxation begins after community planning is finished, which could be by summer 2014.

Kerr, Chris

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**From:** Dave Froode [dfroode@comcast.net]  
**Sent:** Saturday, December 29, 2012 10:19 AM  
**To:** Kerr, Chris  
**Cc:** Jordan, Chris  
**Subject:** Re: West Linn Businesses

Well then, I guess we agree to disagree.

I was being sarcastic suggesting a Good Business Plan and offering of \$1,000.00. LOT has already tried those unsavory methods. But maybe the popular A. Gregory McKenzie mediation would work? Oops, more sarcasm.

Like you say, just the business facts.

1. The West Linn Planning Commission denied the applications by a unanimous vote of 7-0 with each commissioner having multiple issues.
2. There are seven West Linn Neighborhood Associations, plus the WLRA that voted with an overwhelming majority to oppose this project.
3. Hundreds of business people on Hwy 43 oppose this project regardless if destruction is by day or night.
4. By LOT's estimation, there will be over 50,000 trucks that will move in and out of the Robinwood neighborhood during day time destruction not being discussed.
5. Traffic on Hwy 43 during normal peak hours is currently congested and backed up for blocks. How will adding 50,000 vehicles not be a negative influence?
6. What about the noise factor for businesses and property owners on Hwy 43 or above and below the road?
7. It is simple common sense if a person has the choice to shop without the hassles of a construction zone, most will choose to avoid it.
8. Where is any financial aid plan to assist businesses who might incur losses?
9. Given the lingering recession, what about businesses who were weakened, may not be able to absorb this and fail?
10. If there are businesses impacted, what will be the affect of jobs lost and economic fall out not only to neighboring businesses but the community at large?

These are all very real concerns people have. Yet you *"believe the applicant ... addresses as many of these issues as possible"*. Chris, it doesn't matter how many issues they bring to the gold standard. The fact remains this facility should not have been built in Robinwood in 1967 and it should not be built new today! It is unprecedented to install a four foot water pipe in the middle of a residential area. It does not meet the city's code and it does not belong in a residential area. But most important, who better to define a benefit then the people? The people have said no.

Your continuing to "reach out" as if it is going to happen is a grave disservice to this community and yes, quite divisive. We have been dealing with this for three years. We have experienced LOT's methods of operation. They are always quick to tell all "we have that covered" or "that won't be a problem", or "don't worry about it, our engineers will deal with it" and so on. Point here, we have been very aware of their lack of consideration, disrespect and every effort to marginalize the people who will be most impacted by this project. There is absolutely no way in a month of Sundays, you or any one from LOT will be able to convince our people in this community all is well.

People representing LOT have made a mess of this and even those in West Linn City Hall know that. It is time to send this project back to Oswego and Tigard so their new councils can re evaluate their real needs. Obviously this project is not going to work for any one. Why keep dragging a dead horse?

Dear Mr Kerr:

It has come to my attention you are asking West Linn businesses for suggestions regarding the Oswego Tigard construction.

As I understand it, many businesses are opposed to the construction on Hwy 43 occurring day or night. LOT claims the construction will not have a negative impact on businesses. But they fail miserably to point out the substantial construction activity occurring on Hwy 43 during the day that will obviously impact businesses. Who chooses to drive through a construction zone or be delayed if they have a choice? How will LOT compensate businesses for this loss? Or worse, if a business fails in such fragile economic conditions how will that get reconciled? Possibly LOT could create a Good Business Plan similar to the Good Neighbor Plan?

Or maybe they could offer each business \$1,000.00 to sign off on the project?

Rather than assist the paid professionals of other cities, creating even more division, would it not be reasonably prudent to serve the citizens of West Linn who obviously are not in favor of the project?

Sincerely,  
David J. Froode

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On 12/28/2012 6:01 PM, Kerr, Chris wrote:

Thanks for your comments..

Respectfully, you are flat wrong when you state that I am causing divisions in the community by asking potentially impacted businesses if there are specific/additional issues they have with the project that the City should be aware of or that they would like to see addressed should the project be approved. Reaching out to affected groups, providing them with factual information, and soliciting their constructive feedback is exactly our job at the City. It's unfortunate that you would view these actions as being contrary to the interests of the community. The divisiveness you're referring to is likely coming from some other parties in the City.

RE: suggestion for a 'good business plan'. I believe the applicant has delivered an application that addresses as many of these issues as possible (traffic plan, access, signage, signalization issues, dust, advertising, timing, parking, utility interruptions, noise, etc); and certainly more than any other project in this city's history. I am happy to go over the details with you, or any other parties, to discuss, augment, or change them. However, based on your extensive testimony on this case, you have a litany of political/policy/process issues with the project that far exceed the specific business impacts - therefore, a meeting may not be very fruitful to you. I'll leave that decision to you. However, I would encourage you to continue to provide your opinion on the project to the Council.

Also, while I appreciate your candor in recommending that the applicant pay \$1,000 to each business which has stated that they oppose the project in order to get them to drop their opposition - I would not support it, as it is for me, a bit too close to extortion. You are welcome to suggest it to the partnership directly (Jane Heisler 503-697-6573) since she is actively looking for ways to get more support for their proposal. Good Luck.

Thanks  
CK

 Chris Kerr  
[ckerr@westlinnoregon.gov](mailto:ckerr@westlinnoregon.gov)  
Economic Development Director  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 723-2538  
F: (503) 656-4106  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

-----Original Message-----

From: Dave Froode [<mailto:dfroode@comcast.net>]  
Sent: Friday, December 28, 2012 12:45 PM  
To: Kerr, Chris  
Cc: Jordan, Chris  
Subject: West Linn Businesses

## Pelz, Zach

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**From:** Gary Hitesman [ghitesman@gmail.com]  
**Sent:** Monday, February 04, 2013 10:00 AM  
**To:** Pelz, Zach; Sonnen, John; CWL Council  
**Subject:** AP-12-02 et al

Council,

A brief synopsis, and added point, to my email of yesterday. Personally, it looks to me that we are too far down the road to trigger CDC 99.120(B). [If it isn't, than the Director should weigh in.] But Andrew Stamp, the STOP attorney, did mention something about remanding the decision back to the PC.

On Sun, Feb 3, 2013 at 6:57 PM, ~ wrote:

The tank has to have a footprint or base whether situated above ground or 30 feet below. And it appears indisputable that the footprint has changed significantly, certainly more than 20%.

The size and siting of the tank is a major factor affecting the use of the property.

The requirement for an amendment does not include exceptions for below ground facilities.

(Hey, building underground without codes and criteria might be the the wave of the future!

..Planning departments, Planning Commissions, who needs them?)

I don't see that the " amendment" triggers a new application, but 99.120 B. apparently requires the Planning Director to refer an amendment decision back to PC as the initial hearing body..

No harm raising this issue.

Of course, much of what appears in the staff report is now out of sync with the actual application. The exceptions are the only thing in the application that outnumber the omissions or misconstrued criteria. The exceptions, btw, are without precedent, Mayor.

What really grinds me is the statement by Jane Hiesler about the process being slowed down by the mayor's gaffe. She said something to the effect that it is costing them money? This is typical behavior of the LOT Partnership and something citizens have had to put up with consistently over the last two years. Instead of abiding the process and honest brokering, all residents have ever gotten was juvenile criticism along with "it's my way or the highway" mentality. It is neither the CC or the NA that caused delays of this project but the Partnerships own insistence on first separating the applications over a year ago and pulling the failing application back in March/April of last year.

What Ms. Heisler fails to mention is the incredible burn rate the partnership has been using and the failed management of the program. It is obvious when you look at the statements of the LOT Program Director when he has had to answer to the LO Council on his expenses to date. He had made the assumption that they could waltz right into West Linn and administrate a Fiat-Au-Complet. Now, Push has come to Shove and once cherished program elements are being jettisoned to meet the bottom line and curb otherwise increased expenditures attributable to the delays the Partnership has self induced.

These applicant-caused delays have now shredded any consistency that may have existed in the regular report. I tried to qualify some of those inconsistencies and realize that there is absolutely no one on the planet that can make hide nor hair of this proposal; let alone our intrepid council. There are over 4000 pages and much of it may be repetitive but that is hard to quantify and qualify. What this has lead to is a shabby record, a population that distrusts both LO and it's own City, and one of the worst land use applications that West Linn is ever going to face.

Also, everybody and every design firm right now is desperate for work and will do anything to get a commission including doing just what the client asks for. The scale, fit, and appropriateness of this project is out of whack because the application addresses the DESIRES and WANTS of a public utility and never once used the process to see what being a good neighbor demanded. This project has been more than a justifiable NEED. This project has always been a bullying and boisterous WANT! Regardless of how you may mince words, the benefits you may be discussing will never be supported by the facts, let alone meet a reasonable Burden of Proof.

Uphold the PC decision. They appear to be the only ones who did their jobs as they should have. It is my hope that the councilors do the same.

And if the applications cannot be remanded back due to costs and other timely burdens, than the project decision should be upheld. This is where all the misconstrued facts, tortured policies, errors, omissions, and egotistical hubris inexplicably point, without fail.

~

## Pelz, Zach

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**From:** Jenne Henderson [hendersonjj@comcast.net]  
**Sent:** Monday, February 04, 2013 11:16 PM  
**To:** Pelz, Zach  
**Subject:** AP-12-02 and AP-12-03

Please submit this to the record.

West Linn City Council  
RE: AP-12-02 and AP-12-03

I would like to provide additional written testimony for the above appeal.

As you all know, on 11/1/2012, the West Linn Planning Commission cited nine reasons that the above Conditional Use Permit application did not meet the CDC or Comprehensive Plan. I wanted to focus my comments on just a few of them.

1. The facility is consistent with the overall needs of the community (60.070(A)(3)):

- The Planning Commission defined "community" to refer to the community to which the Comprehensive Plan and Community Development Code apply (which is the city of West Linn).
- They noted that the primary purpose of the proposed facility is to serve residents in Lake Oswego and Tigard (LOT has not disagreed with this), and therefore is inconsistent with the intent to meet the overall needs of West Linn residents.
- Unless there is an emergency, West Linn will not see a drop of water from the proposed plant expansion.
- Some have interpreted the Planning Commission's definition of community to mean serving West Linn and only West Linn, yet the Planning Commission meant that the CDC and Comprehensive Plan are limited to West Linn.
- West Linn has many shared facilities in the city (e.g., TVF&R, WL- Wilsonville School District) but West Linn receives daily services from them. LOT's proposed expansion does not involve a shared facility with West Linn.
- Is this an unprecedented decision by the Planning Commission, as some say? Or is it unprecedented to have a facility in West Linn that doesn't serve the City on a daily basis?
- In the January 28, 2013 City Council meeting, Mayor Kovash wondered how West Linn can allow other cities to build joint facilities in their community if we don't allow them in ours. The key word in this statement is joint. The current application does not propose a joint facility with West Linn.

2. The facility is consistent with the overall needs of the community (60.070(A)(3)):

In his 1/11/13 report, Dr. Michael Wilkerson of Economic Market Analysis cited research to discuss the potential economic impact of construction on Highway 43 businesses:

- Even with mitigation efforts, businesses lose 5% - 50+% of customers and revenues during construction.
- Traffic mitigation efforts can only reduce the damage to businesses but aren't able to eliminate decreased revenues during and after the end of construction.
- The average increase in traffic due to construction vehicles will be 7% on Highway 43.
- Traffic congestion will impact all of the 50+ businesses located on Highway 43.
- The negative impacts of construction will be more profound on Highway 43 businesses (as compared to the

studies cited in Dr. Wilkerson's letter):

-66% are impulse businesses, which are more susceptible to construction effects than destination businesses.

-Of the 42% of the businesses open during pipeline construction hours on Highway 43, all are impulse businesses.

-Most businesses have experienced reduced revenues over the past several years and are further susceptible to income losses than in normal economic conditions.

-The size and scope of LOT's project is so much greater (e.g., longer time frame, encompasses a larger area) than previous projects in the research literature.

-Businesses exist outside the construction zone so people can choose to shop elsewhere.

-Construction workers could purchase local goods and services but this only mitigates the impact and does not eliminate the damage to local businesses.

3. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features (60.070(A)(2)):

-Potential for seismically induced liquefaction and lateral spreading of soils in the area.

-Potential for slope failure. Commissioner Axelrod, a qualified geologist, said that there was substantial geologic evidence of instability in the area east of the plant property, including the steep terrain above Nixon avenue, as well as the Mapleton corridor and lower section of Heron creek, directly adjacent to the proposed route of the raw water pipeline.

-LOT's geologic experts stated that the slope was stable yet they based their conclusions on samples taken outside the area of concern.

-One of experts' reports indicated that additional analysis was needed to address slope stability yet in follow up reports this was never done.

-Two recent geological opinions were provided by LOT, yet neither one addresses slope stability.

-Based on available information, geologic instability exists at the current site. This is the wrong site for this project.

The Planning Commission members are selected and approved by the City Council, based on their education, training, and experience. They are not narrow-minded individuals who randomly apply codes as they see fit.

Rather, they are an intelligent and thoughtful group who weighed all the evidence before deliberating the case.

They reached a *unanimous* decision that this project does not satisfy the code in many ways. This appeal hearing has always been about using the applicable codes to make a decision. Please apply the codes and deny the appeal.

Thank you,

Jenne Henderson  
4130 Mapleton Drive  
West Linn, Oregon

## Pelz, Zach

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**From:** C KREBS [cmkrebsnw@msn.com]  
**Sent:** Monday, February 04, 2013 11:43 PM  
**To:** Pelz, Zach  
**Cc:** CWL Council  
**Subject:** Public testimony for AP-12-02 and AP-12-3  
**Attachments:** West Linn public testimony on LOT project.doc

See attached file for our written testimony in regards to: AP-12-02 and AP-12-03

Carolyn Krebs and Jim Bolland

4 February 2013

To : West Linn City Councilors

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

As residents of Lake Oswego, we ask that you uphold the West Linn Planning Commission's Decision to deny Lake Oswego's CUP application for a new Water Treatment Plant.

We support West Linn neighborhoods and businesses who have overwhelmingly opposed this land use application. This has become a politically charged issue for both West Linn and Lake Oswego. Many of us in Lake Oswego question the basic assumptions stated in the Carollo Report: 1) Erroneous population growth projections (including Stafford urbanization), 2) Radically underestimated project cost (up from \$128M to greater than \$250M), and 3) Faulty needs analysis that dramatically underestimated conservation impacts on water usage.

We believe that Lake Oswego is using a threat of terminating the IGA for the Intertie to leverage West Linn's City Council to approve the land use application. The offer of a one-time, lump sum payment to West Linn in the amount of \$5M for a franchise fee has not received public vetting or Lake Oswego City Council approval. We oppose this apparent "bribe" and question the timing of the offer with respect to this land use application.

Our sincerest hope is that the West Linn City Council rejects Lake Oswego's CUP application for a new Water Treatment Plant and that our cities work together for both of our mutual benefit.

Carolyn Krebs  
16925 Denney Court  
Lake Oswego, OR 97035

Jim Bolland  
804 Fifth Street  
Lake Oswego, OR 97034

## Pelz, Zach

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**From:** Stephens, Samuel I. [SISephe@GAPAC.com]  
**Sent:** Monday, February 04, 2013 10:29 PM  
**To:** Pelz, Zach  
**Subject:** AP 12-02/AP 12-03

Mr. Pelz,

Please include the following comments in the written record.

West Linn City Council,

I am opposed to the granting of these conditional use permits and urge you to uphold the Planning Commission's unanimous decision to deny these permits.

Having sat through the public hearings, there are several points that stood out that I would like to address (in no particular order):

- 1) The applicant's attorney claimed in his rebuttal that the PC erred in construing the word "community" in the West Linn Community Development Code as referring only to West Linn. He stated that the PC has never taken this position before. This claim may be technically true, but the implication is false. I submit to you that, in fact, the PC has always considered the word community to be restricted to West Linn. In most cases that have come before the PC, the definition of "community" has not been an issue. The instant case is nearly, if not completely, unique in that the proposed project is to be built to serve citizens of Lake Oswego and Tigard. It simply cannot be argued that any benefit that might accrue to West Linn as a result of this proposal is anything other than a side effect. In nearly every other application to the PC, the primary benefactors have been West Linn as a whole, or certain citizens of West Linn. In such cases, the scope of the word "community" has not been disputed and so it has not had to be addressed. LOT would have you believe that this means the PC has reversed a long-standing position on the perceived definition of the word "community." But this is NOT TRUE.
- 2) The applicant's attorney also stated in his rebuttal that the opposition has produced no experts and no new information in the appeal hearings, while they have submitted additional expert testimony to support their previous documentation. In fact, the opposition did produce an economic expert to testify to the damage that will be suffered by local businesses during construction. I urge you to read this report.
- 3) LOT stated in opening arguments that no damage would be done to the neighborhood on Mapleton during the pipeline construction because all work would be done within the 50-foot right-of-way. In fact, the road bed is less than 20-feet wide and is abutted by drainage swales, utility poles, mailboxes landscaping and some very large trees. There project would cut a 50-foot swath through the neighborhood which will completely change its character. This is contrary to the stated purpose of the CDC.

Thanks,

**Sam Stephens**  
**3990 Mapleton Dr.**  
**West Linn, OR 97068**

**Peiz, Zach**

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**From:** Ken Hanawa [kenhanawa@yahoo.com]  
**Sent:** Monday, February 04, 2013 10:13 PM  
**To:** Peiz, Zach  
**Subject:** Re: Additional testimony for CUP 12-02/12-04  
**Attachments:** WLPC CUP1202 appeal KHanawa arguments against Feb1.docx

Hello Zach,

Please add the attached document to the public record for CUP 12-02/12-4 as response to the city council appeal introduced by LOT and for which the record was left open through 2/4/2013.

Thank you,  
Ken Hanawa

Submitted by: Ken & Rachel Hanawa; 4191 Mapleton Drive, West Linn, OR, 97068

The CDC “code criteria” which are to be used as a framework to enforce the intent of West Linn’s Comprehensive Plan and ensure appropriate and healthy West Linn community development have not been satisfied at all in the applications for the LOT Water Treatment Facility/Pipeline and the comments introduced by Mayor Kovach at the close of applicant testimony for this appeal interpreting ‘community’ in this case as extending beyond West Linn are absurd and inappropriate. The intent of the CDC is to “maintain and improve the existing character and quality of WEST LINN” (CDC 01.020) and to protect our community from inappropriate and/or inconsistent development requests. The burden of convincing decision making bodies (and particularly in this case our *elected city officials*) of compliance with this intent lies solely with the applicant.

LOT has approached this burden from a narrow legal-literal context submitting highly selective purpose-funded studies and carefully selected statements as “proof” or evidence of compliance with *its own interpretation* of specific CDC language, however the underlying issue remains that LOT’s overall objective for this project is still fundamentally non-compliant with CDC intent. The LOT projects primary goal is to build an economically and politically attractive solution for the cities of Lake Oswego and Tigard to address their long-term water needs and this solution just happens to be inconveniently located in the heart of an established and legally protected West Linn single-family-home neighborhood. LOT’s whole case rests on the strategy that they might convince West Linn decision makers to accept their selective interpretation of the projects compliance with specific CDC language and that this interpretation might form the criteria by which the case might be decided. LOT’s strategy fails to recognize, however, that this case is in fact about compliance with the overall intent of the CDC, and compliance in this regard has clearly not been satisfied here - a point that has been exhaustively detailed through more than 100 hours of oral and written testimony in opposition to the application.

60.070 “A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”

Related to CDC 60.070 – the weak argument again asserted in evidence of compliance by LOT (particularly around the ‘benefit’ of the intertie, and their claim to “dozens” of minor and/or irrelevant comprehensive plan policy benefits) are completely negated by the fact that the intertie is a mutual benefit that already exists today, and the negative effects of the introduction of a massive industrial facility in a residential single-family home neighborhood to property values, community safety, security, health and overall quality of life demonstrate total inconsistency with the needs of the West Linn community. That the proposed site might otherwise potentially have 28 single-family residential homes (as cited in original Staff report, p.12) is further evidence of inconsistency between this expansion and the overall needs of the community. West Linn ‘needs’ would be best served by families and people bolstering its neighborhoods, communities and local commerce and not by an industrial facility that’s primary purpose is to serve the needs of an external community. The revenue and impact to local business and to the city of not having those 28 single-family homes easily adds up to several millions of dollars that West Linn and its businesses lose each year. That LOT now adds a calculated 5-million dollar insertion of ‘benefit’ into the mix via a fixed ‘right-of-way’ payment does

not make up for the lack of benefit generated specifically by the project and in fact constitutes LOT's acknowledgement of the lack of benefit set forth in their original case. Allowing this payment to make up for the lack of benefit sets dangerous precedence for other projects that might also simply add specially constructed 'payment' sweeteners to their projects in order to influence decision makers at specific levels. The fact remains however that the intent of the CDC in serving the "needs of the community" is simply not met for LOT's proposed use even with the insertion of these arbitrary funds.

**60.070 A2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.**

The application and subsequent assertions also do nothing to address the fact that the characteristics of the site are NOT suitable for the proposed use considering the CDC factors and intent. The road (Mapleton drive) is too small and not appropriate for heavy industrial traffic; the huge finished water pipe at such close proximity to residential homes is disproportionate to the surrounding area and presents unprecedented danger to residents; the site for the water treatment facility has soils that are unsuitable for the massive industrial complex – and requires 1000 60-ft pilings just to hold the buildings up on the weak soil. LOT claims favorable seismic studies and references the use of standards that are used for 'hospitals' – which are again irrelevant because no hospital would ever be built on silt plains and although LOT has attempted to overcome the lack of suitability through the additions of pilings, they fail to address the risk that the unsupported 48" high-pressure pipes attached to those buildings represent all along their entire length. These are just a few examples of the fundamental disconnect that exists between LOT's argument supporting their claim to compliance with CDC 'language', and their fundamental lack of compliance with the overall intent of the CDC's code governing site characteristics. Carefully selected statements from partially relevant sources supporting their narrow interpretations do not establish grounds for approval.

The conditional use process as afforded under CDC Chapter 60.070 should not be allowed in regard to this application as the intended use does not meet the fundamental criteria and intent detailed in 60.070 APPROVAL STANDARDS AND CONDITIONS. The interpretation of these standards and conditions is subjective, therefore the rules of common law should apply, meaning this should be considered through the eyes of a "reasonable person". In common law a "reasonable person" is - a composite of a relevant community's judgment as to how a typical member of said community should behave in situations that might pose a threat of harm (through action or inaction) to the public." The 'relevant community' in this case is represented by the residents of WEST LINN, who have unanimously opposed this unprecedented intrusion within its residential neighborhoods

As the proposed expansion is appealed to the West Linn City Council now it is critical that all aspect of the proposal and its details are fully understood and impacts to the community are carefully considered to ensure that the vision and intent for the development of West Linn as set forth in the West Linn Community Development Code (CDC) is faithfully and dutifully served. There should be no expediting of procedure in the process nor should there be any argument left unresolved considering the complexity and magnitude of change that the proposed expansion represents. We are hopeful that the City Council will uphold the thoroughly considered decision of the Planning Commission in denying the application and will consider this matter fairly and with extraordinary diligence on behalf of the residents of West Linn.

Thank you for your time and careful consideration on this matter.

Ken and Rachel Hanawa

**Pelz, Zach**

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**From:** thorfinn@comcast.net  
**Sent:** Monday, February 04, 2013 10:09 PM  
**To:** Pelz, Zach  
**Subject:** public comment AP 12-02/AP 12-03

Mr. Pelz,

Please include my comments below in the written record to be considered by the City Council in this matter.

Thank you,

Janet Beckett  
3990 Mapleton Drive  
West Linn

Dear Mayor Kovash and West Linn City Councilors,

I am writing to submit my testimony regarding the appeals of LOTWP's conditional use permit applications, designated AP 12-02 and AP 12-03.

#### The Intertie

Much has been made of the emergency water intertie. But there is a very important and relevant point that everyone keeps dancing around. That is, the applicant has continuously maintained that the new plant will allow for the continued use of the intertie for West Linn's emergency needs. They have cleverly allowed the Council, and the Planning Commission before, to infer that the intertie will go away if the CUPs are not approved.

This is would they would like you to believe, but it is not the case. The applicant has never once stated that it will cancel the current IGA governing the intertie if the CUPs are denied. This is because they need this intertie as much as West Linn does.

If the Council denies these permits, LOT will find another place to build this new plant. They will still need to serve their customers in Marylhurst. Their water system will still reach the boundaries of West Linn. They will still want to maintain the intertie. It works both ways and protects both sides in the event of an emergency.

Do not make the mistake of assuming that the intertie will only be available if they build the new plant in West Linn. There are more suitable sites within Lake Oswego that should at least be explored.

The intertie is intact today, and it will be there in the future, whether you allow this plant to be built in West Linn, or not.

#### The Seismic Upgrade

The applicant has repeatedly stated the need to upgrade the existing plant to current seismic standards. Yet they choose a site that is a geotechnic red zone. It makes no sense to claim that the current plant won't

survive a 9.0 earthquake, and then build a new plant in this same site, where the soil is subject to liquefaction. It would be better and safer to find a site that is not so unstable and build it there.

In addition, the applicant implies that, in the case of a 9.0 earthquake, the new plant will survive and be able to provide water. Since the majority of West Linn's water pipes and other infrastructure are not built to survive a 9.0 earthquake, it makes little sense to think the water would be able to get to West Linn residents. Unless and until the rest of West Linn's water infrastructure is upgraded to the same seismic standards as the proposed plant, it cannot be considered anything more than a phantom benefit.

#### Other So-Called Benefits

The Applicant has also cited the replacement of West Linn's pipe in Mapleton Drive as a benefit to West Linn as well as the repaving of Mapleton Drive. The only reason they are willing to do these things is because they are planning to tear up Mapleton Drive. They will have to move our pipe in order to place their pipe in the ground. When they are done, they will have completely destroyed the surface of the street. Of course they will replace these things. But they do not need replacing now. Currently the pipe and the street are in good working order. No replacement or repaving necessary at this time.

They further claim improvements in Mary S. Young Park. Again, these are largely mitigation expenditures, rather than improvements. They are planning to remove trees, tear up the ground and disrupt the environment in order to drill the tunnel for the pipe under the Willamette River. The current state of Mary S. Young Park is fine. No "improvements" are necessary.

#### Condemnation Proceedings

Recently, the Applicant attended a settlement conference with a group of homeowners on Mapleton Drive. A settlement was reached but the Applicant insisted that no payment will be made until the earlier of 2 years or the project ground-breaking. Included in the settlement was an amount designated for legal fees, which was not adequate to cover all the fees incurred by these homeowners. These are legal fees that have already been incurred and paid, yet the Applicant will not be required to pay them now. All other owners on Mapleton Drive that previously agreed to a settlement have been paid in full. The Applicant has used these proceedings to hurt the residents who tried to stand up to them.

Despite the terms of the settlement agreement regarding timing, if the Council sees fit to approve the CUPs, it should indeed include as a condition of approval, the immediate payment in full of all legal fees incurred by these residents.

Respectfully submitted,

Janet Beckett

**Pelz, Zach**

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**From:** Mike Monical [mike.monical@comcast.net]  
**Sent:** Monday, February 04, 2013 9:03 PM  
**To:** 'Dave Froode'; Pelz, Zach; CWL Council; Kovash, John; Carson, Jody; Jones, Michael; Tan, Jennifer; Frank, Thomas  
**Cc:** Vicki Smith  
**Subject:** CUP 12-04 Testimony Submittal, Monical 2-4-2013  
**Attachments:** CUP 12-04 Testimony Monical 2-4-2013.pdf

Attached is my final submittal to the massive pile we hope our city council can review by next week. My apologies for adding to your workload.

The last few months have been a tremendous experience for me interacting with local government and our neighborhood.

We hope that the Council will make the right choice.

Michael Monical

Written Testimony  
Michael Monical, PE  
18735 Nixon Ave  
West Linn, Oregon 97068

**Water Transmission Pipeline CUP-12-04 fails to meet CDC Code requirements 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....” and 60.070(A)(2) “The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.”**

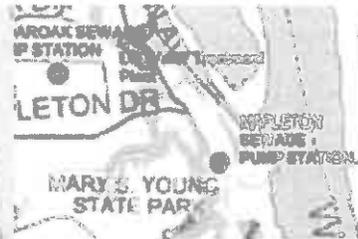
**These conditions are not met.**

The applicant has burden of proof when addressing CDC Code Requirements. He has failed to provide evidence that the 42” Raw Water Pipeline can be installed along the eastern portion of Mapleton in the very narrow and geologically, environmentally, geologically and geotechnically constrained uphill winding segment immediately west of the intersection with Nixon Avenue.

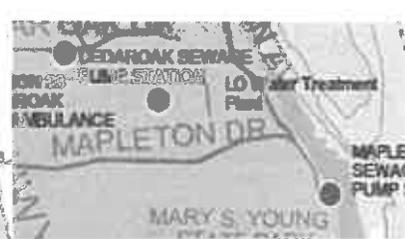
Riparian Corridors



Landslides and steep slopes



Earthquake Hazards



Requested as early as January 25, 2012 Vicky and Pat Smith submitted at the preapplication meeting. "

14) Please have the applicant provide a series of "Typical Cross Sections" for the transmission line along Mapleton Drive. Specifically showing; relative depth to top of pavement, relationship with existing utilities, proximity to the right-of-way and typical trench width.

Staff's response was that "

' for the transmission  
p of pavement,  
ypical trench width.  
it proposes installing



Comment (213): We anticipate the applicant's application will include this information

This information appears to never have been submitted for the record nor did staff require it.

At the October 17<sup>th</sup> hearing, allegedly (you can ask him) the verbal response to the same query was "Basically at the end of the day the City Engineer can waive this - and according to Zach - The City folks are fine with it ". While this is apparently true, and it **might** be technically feasible to accomplish this installation, the applicant has not demonstrated the means and methods by which this might be accomplished. The work cannot be done within the normal application of West Linn's Standard Design Details or the OAR 333-061 and will require variances with the review and approval by the City Engineer to whom all decision making will be delegated.

Like CUP 12-02 Water Plant CUP-12-02, the pipeline is a condition use permit required to meet all aspects of the code including review and comment by the citizens. Staff has failed to require the applicant meet the burden of proof criteria and has given a pass to the applicant in all aspects of the physical location of the oversized waterline in the ROW.

The Application includes the following criteria (pg 27):

**APPROVAL STANDARDS AND CONDITIONS (60.070)**

*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 CDC 36.030, or to enlarge or alter a conditional use based on findings of fact with respect to each of the following criteria:*

*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.*

*2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.*

.....

*7. The use will comply with the applicable policies of the Comprehensive Plan.*

The applicant then provides his response

**Applicant Response:**

The pre-application conference notes provided the following list of potentially applicable Comprehensive Plan and supporting plan goals, policies, and action measures.

The following 30 pages of the application are all in response to 60.070(A)(7) addressing the goals. The first 6 requirements are ignored completely in the entire application. 60.070(A)(1)&(2) are not address in any fashion, in spite of several requests from the citizens.

In other words, a complete blow off of identified concerns of the citizens on very critical engineering challenges.

Having been responsible for preliminary engineering in the Portland Metropolitan Region for over 20 years including several projects in West Linn, I have often been required to show plan, profile and sections for utilities in Preliminary Engineering for challenging aspects of design. If there is a question about saving a tree, show how it is done. If there is a question about gravity service or pipe cover, show a profile. If there is a question about a structure or geotechnical hazard, show a detail and discuss in depth how the safety of the public will be protected. Happily, by utilizing the engineering standards, challenging situations are usually avoided. **In this case, engineering standards have been ignored.**

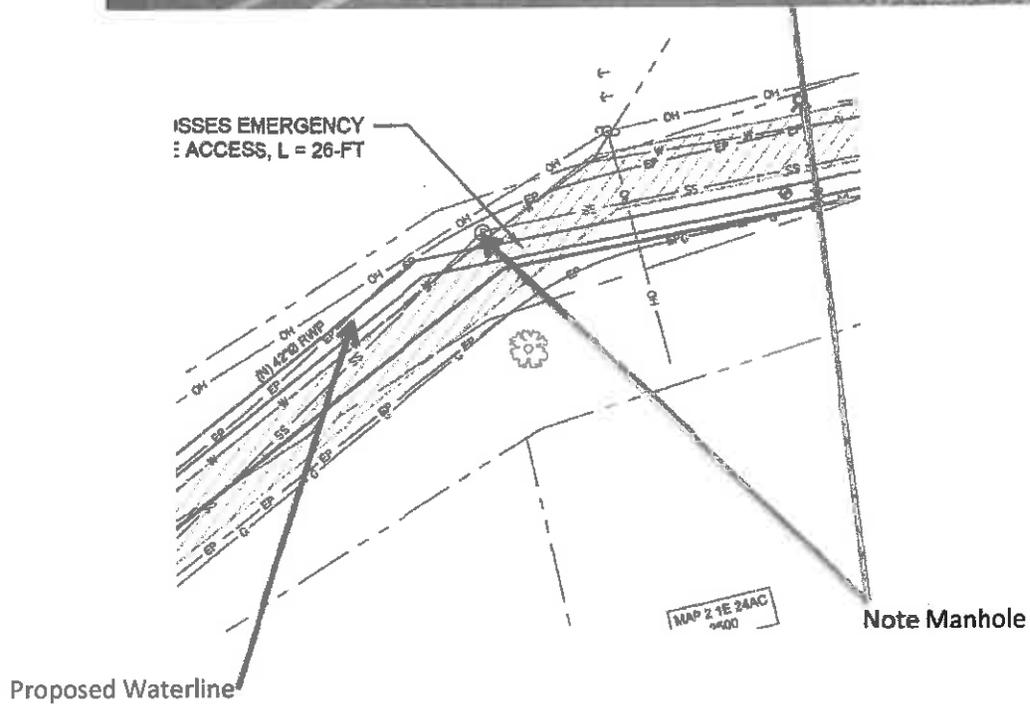
There will be important decisions being made which will affect Mapleton Avenue in perpetuity. How deep are the 42" & 48" water lines, how will it affect the other utilities, what is the impact on crossing laterals which will have to be relocated, what is the impact of future laterals which will limit what development can be done, what is the impact to West Linn standard of undergrounding all franchise utilities? The list goes on and on. Many of these issues impact costs to the city in plan review and all future work on Mapleton Avenue. The Highway 43 ROW has identical issues but is under ODOT jurisdiction and has more physical space for accommodation. **These issues could be considered in determining an appropriate Franchise Fee.**

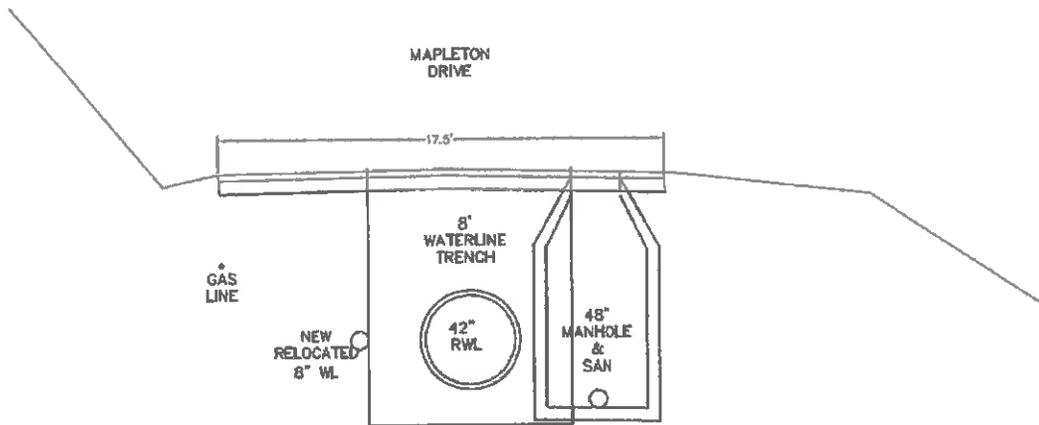
There is precedence to be set by this decision. If City Council passes on this authority, will the Planning Commission or City Council be able to ask for detailed explanation of critical engineering design choices in the future? Will they be able to demand that developers demonstrate that utilities can successfully service a site? Would a Neil Nedelisky, Herb Koss, or Vic Coombes have gotten away with such a nonchalant response to a requirement? My experience is no they would not have. I hope that City Council will agree that just because LOTWP represents two of our neighboring cities that they still have to abide by our codes when working in this city. I can also attest from personal experience that neither city would allow me to get away with not showing specific details of how to address the critical points of infrastructure installation during the planning process. I suppose in the future when asked by planning for details of how I plan to avoid impacts to the trees or conflicts with the existing utilities in West Linn I will just tell planning I will work it out with the City Engineer.

In all likelihood this work has been done by the applicant. However this information is not in the record and neither the Citizens, staff, Planning Commission, nor City Council are afforded the opportunity to review and comment. Among other problems this violates Goal 1 Citizen Involvement.

It would be imprudent and I am not saying that LOTWP would adopt a developer's approach to a difficult design situation, but it is said that some developers when faced with a challenging planning approval take the approach that it is better to ask forgiveness than permission. Is that the case here?

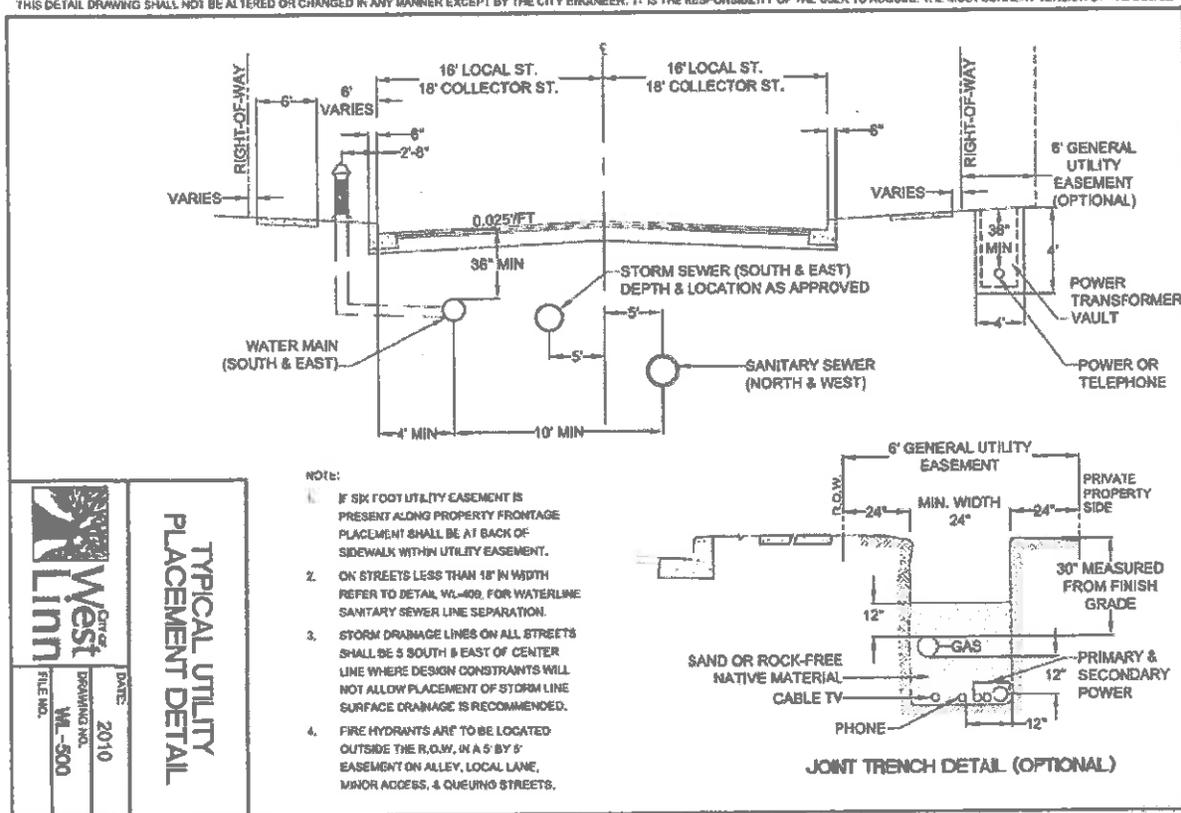
The following shows application layouts, photos and a rough cross section of a critical area.





Actual exact location and depth of any utility is unknown, there seems to be a number of challenges with this layout regardless of depth, how is the applicant going to solve this? Is sanitary above water, below, where do laterals go? Are you undercutting the new water line? Extra maintenance and design requirements.

THIS DETAIL DRAWING SHALL NOT BE ALTERED OR CHANGED IN ANY MANNER EXCEPT BY THE CITY ENGINEER. IT IS THE RESPONSIBILITY OF THE USER TO ACQUIRE THE MOST CURRENT VERSION OF THE DETAIL.

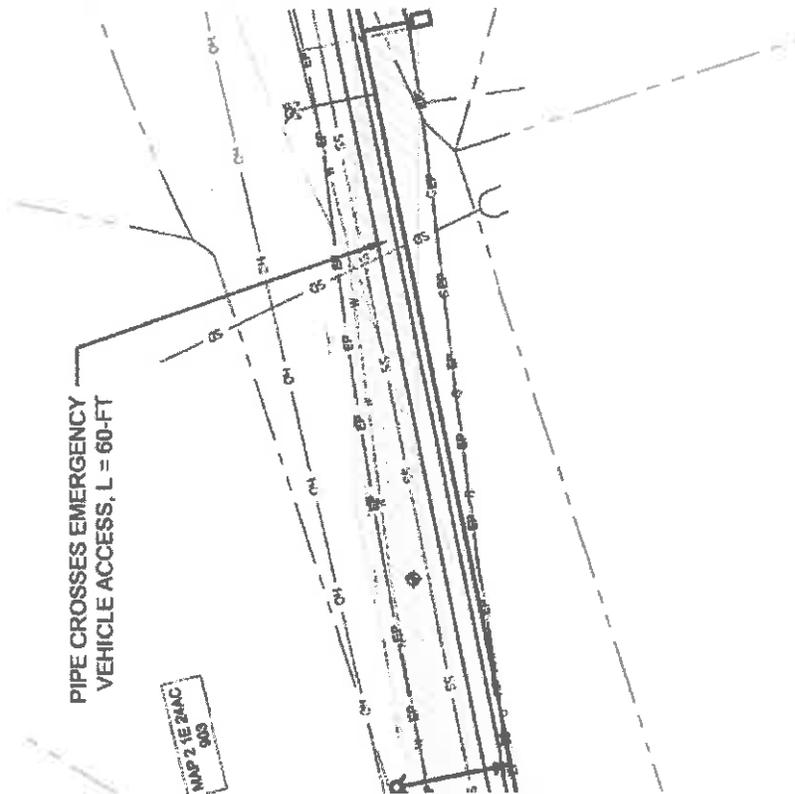


- NOTE:
- IF SIX FOOT UTILITY EASEMENT IS PRESENT ALONG PROPERTY FRONTAGE PLACEMENT SHALL BE AT BACK OF SIDEWALK WITHIN UTILITY EASEMENT.
  - ON STREETS LESS THAN 18' IN WIDTH REFER TO DETAIL VA-409, FOR WATERLINE SANITARY SEWER LINE SEPARATION.
  - STORM DRAINAGE LINES ON ALL STREETS SHALL BE 5' SOUTH & EAST OF CENTER LINE WHERE DESIGN CONSTRAINTS WILL NOT ALLOW PLACEMENT OF STORM LINE SURFACE DRAINAGE IS RECOMMENDED.
  - FIRE HYDRANTS ARE TO BE LOCATED OUTSIDE THE R.O.W. IN A 5' BY 5' EASEMENT ON ALLEY, LOCAL LANE, MINOR ACCESS, & QUEUING STREETS.

	DATE:	2010
	DRAWING NO.:	WL-500
<b>TYPICAL UTILITY PLACEMENT DETAIL</b>		



Herron Creek Crossing





## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Tuesday, February 05, 2013 9:48 AM  
**To:** Pelz, Zach  
**Subject:** FW: lot  
**Attachments:** image9bb7da.gif@7c9b80ce.dac54da5; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.  
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Tuesday, February 05, 2013 8:19 AM  
**To:** Sonnen, John  
**Subject:** Re: lot

one was concerned that LOT treat WL citizens right and the other knew nothing about LOT. JOHN

Sent from my iPad

On Feb 4, 2013, at 12:53 PM, "Sonnen, John" <[JSONNEN@westlinnoregon.gov](mailto:JSONNEN@westlinnoregon.gov)> wrote:

At did you learn?

John Sonnen, Planning Director  
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.  
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Monday, February 04, 2013 11:19 AM  
**To:** Sonnen, John  
**Subject:** lot

This weekend I talked with two citizens about Lot. John

<image001.gif>

Mayor John Kovash  
[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)  
West Linn Mayor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)

<image003.jpg><image005.jpg><image007.jpg>

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.  
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Mayor John Kovash  
[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)  
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*Public Records Law Disclosure* This e-mail is subject to the State Retention Schedule and may be made available to the public.

## Pelz, Zach

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**From:** Dave Froode [dfroode@comcast.net]  
**Sent:** Monday, February 04, 2013 9:01 PM  
**To:** Pelz, Zach; CWL Council  
**Subject:** Neighborhood Associations

Please submit this to the record for

West Linn City Council  
RE: AP-12-02 and AP-12-03

Had the Mayor or councilors simply requested information from us regarding the West Linn Neighborhood Associations, we would have been very willing to provide it. Much of what has followed would have been avoided.

Following the Mayor's remarks at the Feb 4 hearing, I investigated for myself. As it turned out, one NA was inadvertently included in a letter that should not have been. But because we had to print letters in advance, we were not able to include two other neighborhoods, one of which asked us to meet with them the on Jan 13th. Subsequently, there are actually eight NAs that have voiced opposition in one form or another. Because each NA had their own reason(s) we did not elaborate. But, not all had quorums or are active. Know LOT reps were at most of the meetings. Bottom line, eight of eleven took a position. That should be where the focus lies and not on trying to discredit a group of volunteers doing what they believe to be the right.

There are numerous reasons why people in West Linn oppose this project. But suffice it to say, those that voted to oppose, did so contingent on LOT mediating with the RNA on the Good Neighbor Plan to an amicable conclusion. That did not happen, did it? That should be of deepest concern to the council. But it isn't, is it?

In addition:

- The WLRA Board of Directors opposed.
- Members of two recreational fishing groups were in opposition.
- Waterwatch Oregon
- There were over 1,000 people who signed a petition that was designed purposely to be positive and simple to understand.
- I was informed this afternoon the West Linn Chamber of Commerce will try to provide a letter opposing the project.
- As mentioned in another statement, during our meeting with Lake Oswego's neighborhood organization called LONAC, we did not hear one of the 35 people present speak in favor of this project. Maybe some were but it was apparent the majority were not. Know Mayor Kent Studebaker and City Manager Tom Coffee were in the audience.

Most objective and prudent thinking people would consider this many groups to be a lot of opposition. But some how certain people in this city still don't get it. Why is that?

Given the volume of information we have absorbed, digested and put out on to the street to educate the good people of West Linn, no doubt more then one mistake was made. Our intentions were always above reproach. We never tried to misrepresent the facts. It was not necessary because we were promoting the truth. If you look at our core message, it was always positive.

We have received praise and encouragement from people on the street and many groups that were gracious enough to allow us to present our agenda. On the other side of this matter is the total break down of communication between our own city council and the people of West Linn. That is on you, the City Manager and the attorney advising you poorly.

If you think there is bad information put out by us, I would challenge any one of you to present it. However we could write a book on the nonsense the city put out in collusion with LOT. Of course, it is very disturbing to realize the Mayor felt it necessary to investigate us when in fact it is the West Linn City Hall that needs to be examined but you just refused to listen. Sad, very, very sad.

Sincerely,  
David J. Froode  
19340 Nixon Ave  
West Linn, Or.

**Pelz, Zach**

---

**From:** Kevin Bryck [kevinbryck@comcast.net]  
**Sent:** Monday, February 04, 2013 8:00 PM  
**To:** Pelz, Zach  
**Subject:** AP-12-02 AP-12-03  
**Attachments:** Waluga Liability.JPG

LOT answer to a guy who wants to know what happens when a tank rupture washes his house away.

This is how LOT answers to their own citizens, thus the recent big city council turnover.

That \$1.5 million LOT fund to cover damage in 4 cities, Gladstone, West Linn, LO and Tigard goes away in 10 years?

Is this how West Linn protects its citizens?

## Wafuga Liability Q & A

### **1. Who is responsible should the tanks fail and adjacent property is directly or indirectly damaged due to the release of the stored water?**

In the event of tank failure, responsibility for losses would be determined in accordance with Oregon law. While as a general rule a municipality may have responsibility (within statutory limits) where losses result from the municipality's negligence in the operation, construction or design of the system, the actual allocation of liability depends on the particular facts surrounding each occurrence as well as the nature of the claims. The city maintains insurance covering such liabilities. In addition, the City generally requires its design and construction contractors to maintain insurance covering the city against claims resulting from the contractors' negligence.

### **2. What process would be used to address a claim for damages to property related to a tank failure?**

Property owner claims for damages to their properties due to a release of water from the tank(s), may be sent to the City. The City's insurance provider will evaluate the claim and make a determination of whether the City bears any liability for the event. If the City is determined to be liable, then the claim will be handled through the City's normal claims process. If the City is determined to not be liable, then the claim will be rejected and the property owner(s) would need to submit the claim to their own insurance carrier.

## Pelz, Zach

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**From:** Kevin Bryck [kevinbryck@comcast.net]  
**Sent:** Monday, February 04, 2013 7:57 PM  
**To:** Pelz, Zach  
**Subject:** AP-12-02 AP-12-03 LOT Good Neighbor Plan Markup  
**Attachments:** RNA Good Neighbor Plan.pages; LO GNP1 cover.pdf; LO GNP2.png; LO GNP3.png; LO GNP4.pdf; LO GNP5.pdf; LO GNP6.pdf

### GNP Markup Highlight Code:

Blue = Required, entirely or in part by WL CDC and/or Comp Plan

Green = Requested by the RNA and agreed to by LOTWP

Yellow = Not requested by RNA

Orange = Requested by RNA and denied by LOTWP

# Lake Oswego Water Treatment Plant: Good Neighbor Plan

## Purpose

 that will guide facility and site design, construction, and operation for the Partnership's drinking water treatment plant in West Linn. The Plan reflects a good faith effort and commitment by both parties to ensure the water treatment plant will remain compatible with its surroundings and continue to be a good neighbor as the plant is modified and expanded for the future.

 As circumstances change, the Partnership and the RNA fully expect to update the Plan and make any changes needed to achieve the parties' shared goals.

## Introduction

The City of Lake Oswego has operated a drinking water treatment plant in West Linn's Robinwood neighborhood since 1968. The site is zoned R-10 (residential). West Linn defines WTP use as "Utility, major", allowed in R-10 as a conditional use. In 1996, West Linn approved a conditional use and design review for WTP expansion, with 19 conditions of approval. Lake Oswego is in compliance with all 1996 approval conditions. Operating at its present location for over forty years, the plant has generally earned a reputation for being a good neighbor.

Now, the Partnership plans to upgrade and expand the treatment plant to meet Lake Oswego's and Tigard's current and future drinking water needs. 

 As the treatment plant expands, further steps must be taken to ensure the facility remains compatible with its neighbors and quiet setting.

The Partnership is committed to keeping water treatment plant neighbors informed and involved throughout the water treatment plant improvements. The project team has worked with plant neighbors, RNA, and the City of West Linn to develop the Plan.

The Plan ensures neighbors' interests are considered through the life of the project and beyond. The Plan includes guidelines for every phase: design, construction, ongoing operations, and communications.

## The Planning Process

The Plan was developed over a twenty-month period (April 2010 to December 2011). The process included:

- Presentations and discussion at regular monthly meetings of the RNA
  - ✓ *Monthly between April 2010 – January 2012*
  - ✓ *April 16, 2011 Lake Oswego and Tigard Mayors meeting with Robinwood neighbors*
- Open houses and tours at the treatment plant
  - ✓ *June 24, 2010 Water Treatment process recommendation Open House*
  - ✓ *July 24, 2010 Water Treatment Plant Open House*
- Three planning workshops
  - ✓ *August 4, 2010 Maple Grove Plat property owners*
  - ✓ *October 27, 2010 First Good Neighbor Plan meeting*
  - ✓ *December 1, 2010 Second Good Neighbor Plan meeting*

### ***Water Treatment Plant Design***

The Water Treatment Plant will be upgraded and the capacity increased from 16 to 38 mgd (million gallons per day) utilizing Lake Oswego's maximum water rights from the Clackamas River.

The recommended plan is to reconfigure the plant and convert the treatment process from direct filtration to conventional treatment plus ozone. Other modifications include a new, larger clearwell (underground reservoir) and treated water pump station, mechanical process to handle solids, upgrades to chemical feed systems, miscellaneous improvements to existing buildings, a pathway and site re-landscaping.

The following recommendations supported by neighbors and the Partnership will be used by the water treatment plant design team to help create a facility that blends in with the neighborhood.

#### **Landscaping/Site Design**

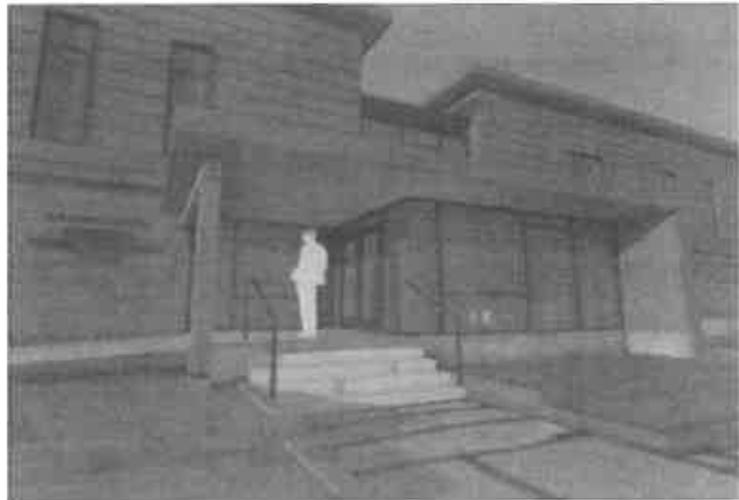
- Provide setbacks compatible with those for nearby neighborhood homes that meet West Linn zoning standards.
- Buffer the facilities from adjacent properties using appropriate manufactured or natural systems where suitable and possible.
- Mitigate lost tree canopy on site by removing invasive species and planting native trees and plants per the COWL Code requirements. For needed off-site mitigation, pay into the West Linn "Canopy Replacement Fund" so that that West Linn may determine the best location for replanting. Neighbors have expressed a desire for additional Trillium Creek mitigation within the neighborhood.
- Consider "green" features for the treatment plant:
  - ☐ Native vegetation to conserve water
  - ☐ Energy conserving pumps, lighting and electrical equipment
  - ☐ Solar collectors for renewable power generation
- Landscaping, fencing and walkways should be designed to fit the residential setting.



**Landscaping will enhance the residential look and feel of the facility.**

## Facilities

- Locate taller process facilities in the central area of the site, away from homes, rather than near property setbacks and adjacent to homes.
- Design buildings visible from the neighborhood to have residential scale and appearance.
- Locate new clearwell, pump house and electrical building so that minimum setbacks between the new facilities and homes are exceeded.
- Design facilities to minimize off-site treatment plant noise and odors. Measure baseline noise level around the existing plant.
- Use low level lighting for water treatment plant facilities, prevent off-site glare and light trespass.
- Install fence with non-industrial appearance, designed to fit the neighborhood setting yet provide adequate security.



**Residential scale and design features will make the treatment plant better fit the neighborhood setting.**

## Access

- Build a pedestrian path – buffered from adjacent property owners – that connects Mapleton Drive with Kenthorpe Way and meets West Linn development code standards.
- Install a half street improvement along the Water Treatment Plant frontage (Kenthorpe and Mapleton) frontage with "Green Street" treatment.
- Locate fence line to provide public access to a portion of the Mapleton Drive parcels.
- Every effort will be made to maintain vehicle access to driveways during construction and minimize any road closures. Periodically, it may be necessary to close a road or to provide a detour. When this occurs, advance warning will occur and signage or flaggers will guide drivers through detour routes. Access to homes for emergency vehicles will always be maintained.

## Construction

Construction of the upgraded and expanded treatment plant is expected to take approximately twenty eight months. Mitigating the impacts of construction on treatment plant neighbors is a top concern of neighbors and a top priority for the Partnership in protecting neighborhood livability.

The contractor will be required to meet noise, erosion, emissions, dust, traffic and parking, work hours, site security and safety standards. The following construction mitigation measures identified by neighbors and Partnership will also be required of the contractor:

- Shut off idling equipment when not in use. Schedule noisier construction operations to limit their duration. Give advance notice to neighbors when noisy work will occur outside these times.
- A regular "Coffee with the Construction Manager" will be provided throughout construction as long as there is interest on the part of neighbors and others.
- All off road construction equipment operating on site will use ultra low sulfur diesel, be in good working order and will comply with current emissions standards as applicable to new and used off-road diesel equipment and fuel.

- Allow controlled use of the Treatment Plant's future emergency access road by Kenthorpe Way neighbors in the event of an emergency that would block access for residents of this dead-end street.

### **Communications**

Communications among the RNA, treatment plant neighbors and the Partnership team will occur throughout the plant upgrade and expansion project as well as after upgrades are completed. After the new treatment plant is on-line, plant staff will periodically communicate with neighbors and the RNA.

Lake Oswego's water treatment plant has an emergency response plan in place, and procedures are closely coordinated with the local emergency responders: Tualatin Valley Fire & Rescue and West Linn Police Department. Tualatin Valley Fire & Rescue inspects the plant facilities at least annually. In event of an emergency, communications with plant neighbors would be initiated by the noted emergency responders.

Full information on drinking water treatment chemicals used on-site is maintained at the treatment plant. Plant staff are available to answer neighbors' questions about these chemicals. The plant's drinking water disinfection process was converted years ago to use a sodium hypochlorite (bleach) solution. There is no use or storage of chlorine gas on-site.

The following communication strategies will be implemented by the WTP staff.

- Treatment plant staff continue to provide information and answer neighbors' questions about chemicals used and stored on-site, and transported through the neighborhood.
- Hazard analysis and hazard response plan for all chemicals at the plant to be shared with West Linn residents.
- Continued use of Tualatin Valley Fire and Rescue reverse 911 alert system.
- Update neighbors and the Robinwood Neighborhood Association on any changes in process chemicals or emergency procedures affecting neighbors.
- Hold an open house/tour at the treatment plant once or twice per year.
- Keep neighbors informed about the pertinent plant activities through community meetings, website and email updates, mailings and presentations at RNA meetings.

### **Learn More**

For more information about the Lake Oswego Water Partnership or the Good Neighbor Plan for the Partnership's water treatment plant contact:

Jane Heisler, Communications  
Director  
City of Lake Oswego  
503-697-6573 /  
[jheisler@ci.oswego.or.us](mailto:jheisler@ci.oswego.or.us)

For information about the water treatment plant:  
Kari Duncan, Water Treatment Plant  
Manager  
City of Lake Oswego  
503-635-0393 /  
[kduncan@ci.oswego.or.us](mailto:kduncan@ci.oswego.or.us)



**A water treatment plant open house held in August 2010 was well attended by neighbors.**

# Good Neighbor Plan Lake Oswego Tigard Water Partnership Water Treatment Plant



December 19, 2011



- As much as practicable, locate noise producing activities/equipment in central part of site, away from neighbors.
- All noise generating activities will conform to COWL, Oregon Department of Environmental Quality, and Occupational Safety and Health (OSHA) requirements. Noisy portable equipment, such as generators or compressors will be located as far from residential receptors as practicable. Perimeter, noise dampening fencing will be used to limit noise impacts where needed.
- Maintain vehicular, bicycle, pedestrian and emergency vehicle access to area homes throughout construction.
- Every effort will be made to load and unload equipment and materials on the Water Treatment Plant property during plant construction. In the event that materials need to be unloaded on residential streets, flaggers will be used to ensure that the safety of the travelling public is the highest priority.
- Ensure safe pedestrian, bicycle and vehicular school commute during the construction period.
- Provide off-street / off-site parking for construction workers during construction. Some on-site parking for construction supervisor, inspector and project management staff will be provided.
- Use visible ID badges or other methods to identify construction workers.
- Maintain pavement condition on Mapleton Drive and Kenthorpe Way, during and after construction.
- Require reduced speed limit for construction vehicles when traveling through residential neighborhoods if allowed by COWL standards.

The City of Lake Oswego will also:

- After a construction contractor is hired, identify all construction material staging areas, temporary offices and trailers and equipment and commuter parking areas, on and off the plant site for the RNA.
- Provide 24/7 construction hotline telephone number that provides access to report problems.
- Coordinate with the City of West Linn on construction of West Linn infrastructure projects during water project work to see if there are opportunities for West Linn to save money.
- Lake Oswego will repair or rebuild, if required, all streets that are damaged by Water Partnership projects to as good or better condition as prior to construction and according to COWL standards.
- Use informational signage and lights at Mapleton and Hwy 43 and Nixon intersections to indicate closures and other road conditions.
- Any street reconstruction or paving will meet COWL engineering standards for grading to meet surface water flows. The City of West Linn Engineering Department will review all plans for consistency with its requirements. If, at the time of paving, COWL would like to install additional surface water improvements, Lake Oswego will coordinate with them.
- Maintain landscape where visible to neighbors to a level appropriate to the location and type of landscaping.
- Report to Robinwood Neighborhood Association on construction activities as needed.

### *Ongoing Operations*

Once construction is complete, the Partnership will continue to operate the treatment plant with a high level of sensitivity to its neighbors. The neighborhood and Partnership agree the following neighborhood requests will be incorporated into the plant's standards of operation.

- Minimize off-site treatment plant noise and odors.

**Peiz, Zach**

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**From:** Holder, Thom [thom.holder@intel.com]  
**Sent:** Monday, February 04, 2013 7:23 PM  
**To:** Tan, Jennifer; Jones, Michael; Carson, Jody; Kovash, John  
**Cc:** 'holder.thom@gmail.com' (holder.thom@gmail.com); Peiz, Zach  
**Subject:** updated RNA testimony.....  
**Attachments:** Feb 11 WL City Council Update RNA.pdf

Dear Honorable Mayor and City Councilors,

Today a hard copy of the attached testimony was dropped off at the city headquarters. This represents the sincere comments of the RNA as follow-up to the City Council discussion of potential conditions for approval of the pending LOT applications. The first few pages address the nine proposed conditions relative to the CDC and Comprehensive Plan and the backup is the previous discussed testimony as a point reference. We appreciate your time and continued commitment to this discussion.

Sincerely, Thomas Holder

# Presentation to the City Council

11 February 2013



**Help Save West Linn**

**Executive Summary – Conditions of approval as discussed at West Linn City Council meeting do nothing to overcome West Linn City Code violations**

- Robinwood Neighborhood Association remains opposed to approval of LOT Plant and Pipeline for all the code violations as referenced in 14 January discussion with City Council (see backup)
- Mitigations are not benefit to community
  - Paved streets (requirement of construction), paths, planted trees (fewer than removed)
- Suggested “Conditions of Approval” by City Council on 14 Jan do not meet benefit requirements of CDC 60.070, approved Transportation System Plan, or OAR 333-061-0064 Emergency Response Plan
- NOTE: none of the conditions eliminate any of the violations of the CDC as noted by the Planning Commission



**Help Save West Linn**

## Neighborhood Position Regarding Conditions, 1 of 9 (from WLCC)

2. “Good Neighbor Team” to be responsive to needs of citizens (e.g. handicap access, emergency services, etc.)
  - No mitigation possible for ~3-5 minute delay for road closures → CDC 60.090 A(2)
  - Delayed emergency response → no change from Good Neighbor Plan discussions over past 24 months
  - Service outages unknown with no known remedy → acknowledged ~8 hour outages for electrical, water, sewer during pipe construction

**Other service interruptions (mail, garbage, paper, other delivery or services, etc.) not comprehended here**

**Help Save West Linn**



# Neighborhood Position Regarding Conditions, 2 of 9

2. Modify IGA to eliminate 36 month termination term before 2041
  - This remains as no community benefit → city executives determine access to water, in times of emergency, LOT may say 'no' to water for West Linn to preserve water for others
  - NO GUARANTEE of backup water source provided
  - LOT discusses capacity accommodating 100 years of capacity, IGA should extend for balance of century for the treatment plant being located in West Linn → this would represent a perpetual benefit



# Neighborhood Position Regarding Conditions, 3 of 9

3. Intersection Safety for Intersection of Mapleton and Nixon – continued comments with regard to evaluation of whole of Nixon Avenue
  - Flagger will not increase safety at intersection → CDC 60.090 A(2)
  - Large vehicles, as demonstrated in backup, cannot make this turn (e.g. emergency vehicles or buses)
    - Note: buses no longer traverse these streets for this reason
  - Nixon evaluation TBD based upon traffic volume → no community benefit if evaluation of condition with no commitment to repaving preconditioned



**Help Save West Linn**

# Neighborhood Position Regarding Conditions, 4 of 9

4. **Modifications to determine breaks in fence line**
  - No community benefit with Good Neighbor Plan and neighborhood not wanting paths
  - Breaks in fence line only introduces more risk to terrorism or other trespass
  - Entire project does not meet standard for OAR 333-061-0064 which **REQUIRES** an Emergency Response Plan. Specifically, **“All public water systems shall complete a security vulnerability assessment and develop a prioritized plan for risk reduction.”**

- “The Public Health Security and Bioterrorism Preparedness and Response Act requires community water systems serving more than 3,300 persons to conduct vulnerability assessments and develop emergency response plans. EPA and its research partners have developed tools and methodologies to help: <http://www.epa.gov/nhsrca/aboutwater.html>



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# Neighborhood Position Regarding Conditions, 5 of 9

5. \$5M right of way license fee
  - Payment of license fee does not eliminate the violations of the CDC
  - Not good business, congruent with size of project, therefore not a viable benefit for West Linn Community or Neighborhood
  - Arbitrary use of benefit to community
    - Does not meet CDC 60.070 (A) (3) with unknown benefit to neighborhood or definition of community
    - Cannot apply 'community' for being a good regional partner while simultaneously assuming that the 'community' benefit of monies paid do not directly benefit the very same broad definition of 'community' → shall we share the \$5M with Oregon City parks?



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## Neighborhood Position Regarding Conditions, 5 of 9, continued

- 5. **\$5M right of way license fee**
  - This is just a bad business deal, need to apply perpetual royalty in the neighborhood of 10-20% gross revenue share per year, for life of agreement
  - City Council needs to use the precedent of existing agreements with annual revenue for West Linn
    - PGE deal agreed two weeks ago, \$750k for ten years, rights to renegotiate
    - WL Disposal and Recycling: 5% of **gross revenues**. Expires 6/17
    - Qwest: 7% of **gross revenues**. Expires 7/14
    - NW Natural: 5% **gross revenues**. Expires 7/12
    - Keller Drop Box: 3% **gross revenues**

**Fiduciary and ethical responsibility to negotiate BEST  
POSSIBLE DEAL for West Linn, not easiest possible deal**

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# Neighborhood Position Regarding Conditions, 6 of 9

6. **Provide compensation to citizens for condemnation**
  - Result: City of Lake Oswego unwilling to discuss a mutually beneficial outcome to the condemnation of rights lawsuit → in the end, forced settlement with no negotiation
  - Due to fixed income status of a handful of Maple Grove Plat neighbors there was an urge to settle for “anything” by a percentage of the neighbors → agreement to settle for the benefit of maintaining peace with neighbors and not divide community
  - After four hours at courthouse for all individuals in lawsuit; Settlement Offer did not include provisions to fully reimburse Robinwood legal expenses



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# Neighborhood Position Regarding Conditions, 7 of 9

7. LOT develop a mitigation plan for businesses on Highway 43, with approval by West Linn City Council
  - 1/11/13 letter, Dr. Michael Wilkerson of Economic Market Analysis cited that research indicates:
    - Even with mitigation efforts, businesses lose 5% - 50+% of revenue during construction
    - The impact would be greater in West Linn because there are options outside the construction zone
    - Construction workers could purchase local goods and services but this only mitigates the impact and does not eliminate the damage to local businesses
    - Traffic mitigation efforts can only reduce the damage to businesses but aren't able to eliminate decreased revenues during and after the end of construction

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## Neighborhood Position Regarding Conditions, 7 of 9, continued

7. LOT develop a mitigation plan for businesses on Highway 43, with approval by West Linn City Council
  - Coupons and advertising does not meet or apply to City Code, no community benefit
  - Only reasonable plan would allow for revenue compensation at 100%
    - Example: business provides trailing revenue for 12-24 months, compensation for 100% of average monthly revenue and/or seasonally adjusted
  - Should not be capped
  - Should have an oversight committee administered by independent 3<sup>rd</sup> party

**There are no mitigations to remedy the loss of business**

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# Neighborhood Position Regarding Conditions, 8 of 9

## 8. Significant monetary penalties for not following the construction management plan

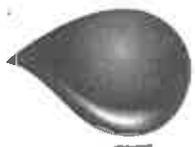
- No clear neighborhood direction to CC request
  - How to measure noise violations during construction?
  - How to collect data to verify violations?
  - Who do we report to or provide evidence?
- RNA Dec'11 Mitigation Plan asked for Independent Compliance Monitor – not comprehended in Staff report
  - 8 to 5 office hours versus 24 hour a day construction will be a challenge

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# Neighborhood Position Regarding Conditions, 9 of 9

9. 24/7 hotline needs to be staffed by someone in authority who can correct problems that arise
  - No clear neighborhood direction to CC request
    - Oversight committee on violations?
    - Public collection via LOT website on complaint and resolution status?
  - RNA Dec'11 Mitigation Plan asked for Independent Compliance Monitor – not comprehended in Staff report
    - 8 to 5 office hours versus 24 hour a day construction will be a challenge



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**Conclusion – Conditions of approval as discussed  
at West Linn City Council meeting do nothing to  
overcome West Linn City Code violations**

- Robinwood Neighborhood Association remains opposed to approval of LOT Plant and Pipeline and the discussion of proposed mitigations do not eliminate the findings of the Planning Commission or introduce meaningful community benefit per the West Linn CDC and Comprehensive Plan
- The Robinwood Neighborhood Association submitted comprehensive mitigation plan on December of 2011
  - NOTE: This was not reflected in the WL City Staff report and not considered by LOT
- West Linn citizens eager to cooperate on long term viable water solution for West Linn



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# Slides 16 – 47 → Backup Code Reference Data

## Executive Summary – Overturning the West Linn Planning Commission decision does nothing to solve West Linn’s long term water issues

- The Planning Commission voted unanimously 7 to 0 that the LOT Plant and pipeline do not comply with West Linn City Code CDC 60.070
- West Linn Citizens need a comprehensive long term water plan
  - City Wide pipe replacement, improvements to Bolton Reservoir, and the LOT proposed plant are mutually exclusive
- The proposed community benefits outlined by LOT are mitigation requirements and/or are already in place
- Not compatible with West Linn CDC or Comprehensive Plan



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# History

- February 27, 1967 documents highlight that the Planning Commission REJECTED the building of the plant – no benefit to the community
- April of 1967, without public deliberation or vote, the County Commissioners overturned the County Planning Commission
  - A required condition by the County Commissioners would be that water is provided to Marylhurst and Robinwood
  - Facility never connected their water to any residences in Robinwood, a failed promise to honor the original 1967 commitments

## BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CLATSOP COUNTY, STATE OF OREGON

FILED

1967

In the matter of the appeal of the City of Lake Oswego for a water treatment plant to be classified as a Conditional Use on property located on the south side of Southern Sky at its easterly terminus, Robinwood Lane

This matter being on regularly at this time to be heard, and it appearing to the Board of County Commissioners that Dave Seeger, representing the City of Lake Oswego, has made application to the County Planning Commission to construct a water treatment plant as a Conditional Use within an R-20 Single Family Residential District, on property located as stated above, and more particularly described as Tax Lots 11-11, 11-12, 11-16, 16, 17, and 18, George Walling D.L.C., Section 26, T2S, R1E, 4th N., and

It further appearing to the Board that said application was heard at the regular session of the County Planning Commission on February 27, 1967, at which time the Commission denied the Conditional Use request, and

It further appearing to the Board that, subsequent to the Planning Commission's decision, Mr. Seeger, again representing the City of Lake Oswego, did on the 9th day of March, 1967, file an appeal with the governing body of the County, and

It further appearing to the Board that said appeal application was heard by the Board of County Commissioners, after due notice, pursuant to the provisions of the Clatsop County Zoning Ordinance, at their regular session on Wednesday, April 5,

and after due consideration, the Board reached a decision on the appeal, now therefore,

IT IS HEREBY ORDERED that the appeal of the City of Lake Oswego for a water treatment plant as a Conditional Use on the above described property be and the same is hereby approved subject to the following conditions: (1) adequate landscaping and shading and recommendations of the County Health Department, and (2) and that said treatment plant will provide for the future needs of water users in Robinwood, Glenmorris, Marylhurst and Lake Oswego areas.

WITNESSED this 19th day of April, 1967.

BOARD OF COUNTY COMMISSIONERS

*[Signature]*  
Chairman

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## Many Organizations Opposed

- West Linn Planning Commission (Unanimous)
- 7 of 11 Neighborhood Associations
  - Note: 3 of remaining are not meeting or have no representation, remaining 1 opposed but had no quorum
- West Linn Riverfront Association Board
- WaterWatch Oregon
- Members of Trout Unlimited (local chapter)
- Members of Coastal Conservation (local chapter)

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# West Linn Business Speak Out

## Lake Oswego Tigard Water Projects Harm Residents and West Linn Businesses!

- Bad for our Residents and Commuters
- Brings approximately 60,000+ construction vehicles = traffic congestion
- Bad for our Local Businesses
  - Violates our City Code
- ZERO Tangible Benefits for the City of West Linn
  - Significant Environmental Concerns
- Oswego/Tigard facility would provide water to Stafford area development conflicting with WL/Tualatin goals

- Paid for by West Linn Business Owners
- West Linn Tidings, 10 January 2013



**Help Save West Linn**



# Planning Commission Summary

- 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.”
- 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.”
- Finding 3: The Planning Commission finds that the application is not consistent with CDC Section 60.070 (A) (7) – “The use will comply with the applicable policies of the comprehensive plan.”
- 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....”

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The Problems with the LOT CUP / Plant /  
Pipeline in West Linn

**Only one criterion needed to support a  
denial**

**→ many significant violations of the West  
Linn City Code and Comprehensive Plan**



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14

- CDC (Community Development Code) non-compliance
- CDC 60.070(A)(7): “The use will comply with the applicable policies of the comprehensive plan”
- The Comprehensive Plan
  - Goals, Policies, and Recommended Action Measures
  - “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”
  - “A policy may not be the only action the city can take to implement the goals”



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

## • Comprehensive Plan Specific Goals, Policies, and Recommended Action Measures

- 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”
- Goal 2, Section 3, goal #4: “Protect surrounding residential areas from adverse effects of commercial development in terms of loss of privacy, noise, lights, and glare.”
- Goal 2, Section 3, policy #4e: “Requires that any redevelopment of existing land or buildings be completed in a manner which conforms to the adopted neighborhood plan.”
- Goal 2, Section 4 → Industrial Development “West Linn does not contain any additional lands suitable for large-scale industrial development. There are no remaining undeveloped areas in the City....and suitable buffering from the residential development that characterizes most of the City.”

**Use of Contextual / Compatible: “Capable of orderly efficient integration and operation with other elements in a system with no modifications or conversion required.” ....Webster’s “capable of living in harmony”**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

## • Additional Comprehensive Plan References for Non-Compliance

- City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
- GOAL #11 (Public Facilities and services):
  - Policy 13 (C): “The need to equitably distribute the cost based on the benefit received from the facility”
- City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
- City 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 neighbors real control over their future”
- City Council Goal # 6: “Promote land use policies, both local and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality”
- *Carrying Capacity* is defined in the Comprehensive Plan: “The level of use that can be accommodated without unacceptable damage to the environment, including air, land, and water quality, the transportation network, storm water management, and overall quality of life”
- City 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”
- GOAL #2 (Land Use Planning):
- Section 1; policy #8: “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other incompatible land uses”
- Section 1; policy #9: “Foster land use planning that emphasizes livability and carrying capacity”
- GOAL # 6 (Air, water, and land resource quality):
- Section 1: “The primary source of air pollution within the city of West Linn is automobile and truck emissions. At this time there are no known major single (point) sources of air pollution in the city. However, it is important to be aware of existing or future industrial facilities which could be major point”
- Goal: “Maintain or improve West Linn’s air quality”
- Section 4; recommended action measures (2): “Monitor and enforce conditions of approval for new development related to noise impact”
- GOAL #7 (Areas subject to natural disasters and hazards):
- Goal: “Protect life and property from flood, earthquake, and other geological hazards, and terrorist threats or attacks”

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

- **Additional CDC References for Non-Compliance**
  - 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)(7): “The use will comply with the applicable policies of the comprehensive plan”
  - 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)(1): “The site size and dimensions provide a) adequate area for 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
  - 60.090 ADDITIONAL CRITERIA FOR TRANSPORTATION FACILITIES
  - 60.090(A)(2): “The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties
  - 60.090(A)(3): “The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities, and a site with fewer environmental impacts is not reasonably available”

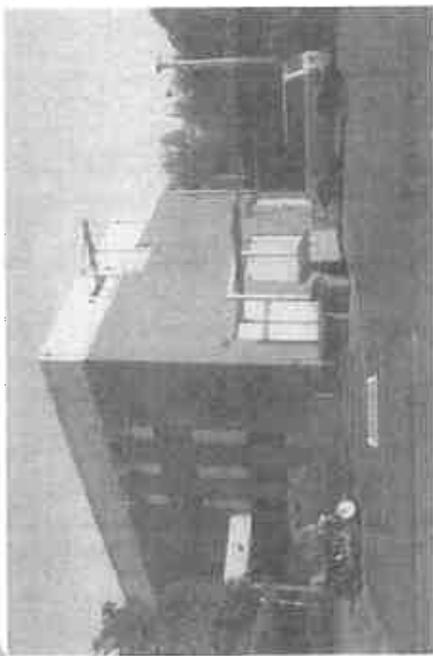
**Only one for either the CDC or the Comp Plan needed to support a denial**

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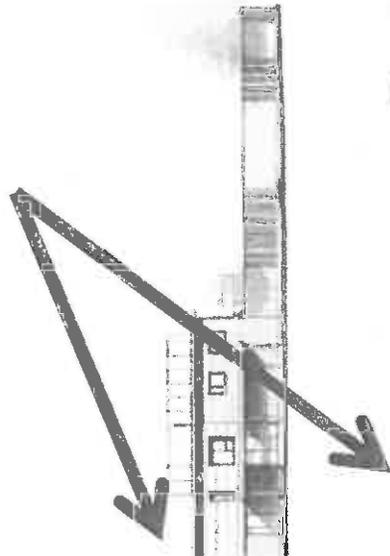


# Compatible / Contextual ?

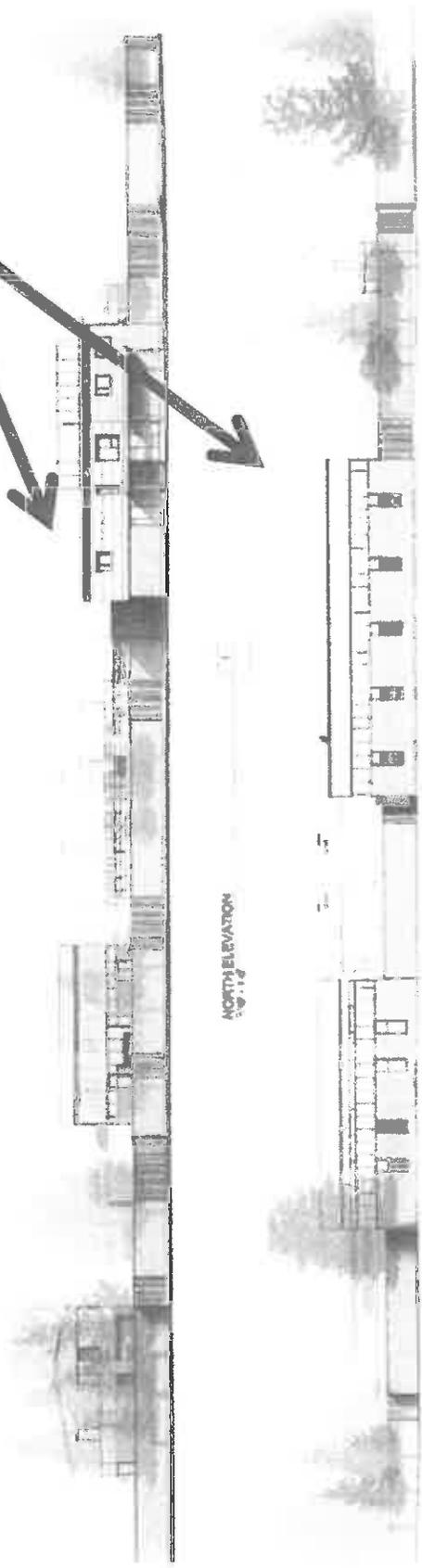
EXISTING



PROPOSED



NORTH ELEVATION



SOUTH ELEVATION

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 2 of 14

- **Goal 10 (Housing)**
- Goal (1): “Preserve the character and identity of established neighborhoods”



**Appellant requesting Zoned Residential Use to set aside 10 acres for Industrial Plant, right next to homes, school, & West Linn’s largest park**

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 3 of 14

- **Preservation of Stafford**
  - Adopted City Policy, Council Goal #9 of Comprehensive Plan: “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”
  - Justification of Carollo report, and the assumptions for required capacity by LOT, assumes complete development of Stafford
  - Stafford development also referenced in the Department of State Lands application



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14

- **The Inter-Tie** is already in place, used by both parties 7 times since 1998 → offering this as a new benefit is inappropriate
- Don't be misled there are other reasons that LOT wants to amend the IGA and it's not to benefit West Linn:

- “... Lake Oswego has entered into a partnership with Tigard **necessitating** a change to the IGA so as to include Tigard as a party.” – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council – This doesn't sound as if the goal is to benefit West Linn
- “In many respects the new IGA is similar to the 2003 version. Most importantly, the purpose remains the same: to describe how and when the intertie will be used to the benefit of any of the parties. **This is not contingent on approval of Lake Oswego's land use application.**” – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council

**Our City Manager states that the IGA and the CUP are separate so approving the CUP does not confer a benefit to West Linn via the IGA**

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14 cont.

- **There is no guarantee of 4MGD – based upon availability**
- “This extra water could be available year-round up through 2026 — up through 2041 outside of peak seasons, according to Joel Komarek, LOT project director.” – The Lake Oswego Review, Dec 22, 2011.
  - Note: If this is a real benefit then why not stipulate it in the new IGA agreement? Otherwise it is an empty promise not enforceable under the IGA.
  - Note: if no power from PGE, there is no back-up water for West Linn
  - In fact, the IGA relieves LOT of any obligations....
    1. Either party can terminate IGA Agreement with at least 36 months notice prior to effective date of termination
    2. Utilization of the water intertie is triggered by mutual consent of the executive officer

**The introduction of the inter-tie is not a benefit to West Linn**

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 5 of 14

- Inappropriate use of the Conditional Use Permit
- *Conditional Use* is defined in 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 city public facilities, and is of overall benefit to the community and meets all other relevant criteria.”



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 6 of 14

- **LOT Plan built on faulty assumptions purchased through the Carollo Report**

2007 Carollo Report Fiction	Fact - Actuals
Doubling of the population served	Actual population growth at <.5% per year
50% more water required for Lake Oswego service area	5% actual Lake Oswego build-out (Stafford Triangle development included in assumptions)
Estimates 0.5% conservation per year	2011 actual conservation was 36% (source: LO report to Water Resource Board)
Cost of Project = \$128M	Current estimates greater than \$250M
Plant Expansion required	w/ trending conservation and current capacity, plant not required for LO

**Assumptions paid for during pre-financial crisis time should not be a basis for maximizing capacity....purpose of Carollo report was a justification to 'VEST' all of their Clackamas water rights making LOT a regional water powerhouse**



# Faulty Carollo Report Estimates

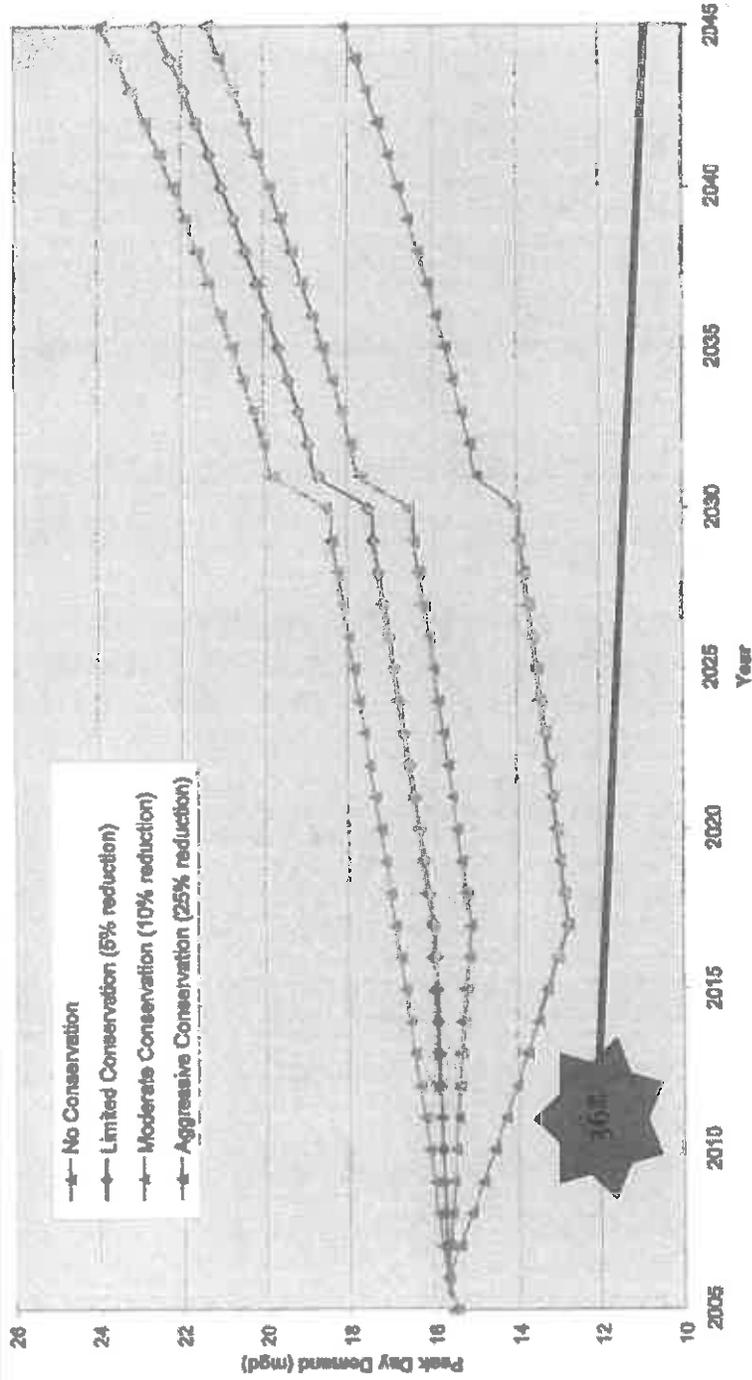


Figure 4.1  
 CONSERVATION IMPACTS ON LAKE OSWEGO FUTURE DEMANDS  
 JOINT WATER SUPPLY SYSTEM ANALYSIS  
 CITY OF LAKE OSWEGO AND TIGARD WATER SERVICE AREA

Los0714.1-7525.a.j

**Conservation of 36% between 2007 & 2011 – nullifies any assumptions that new plant & infrastructure might be required**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 7 of 14

- Multiple Financial Shortcomings for West Linn
  - 1 – Loss of tax revenue for West Linn due to tax exempt status
  - 2 – LO expands its tax base with expanded services for property, plant, and equipment in West Linn residential zone
  - 3 – Business Risk
  - 4 – Use of all WL municipal services – for free
    - No SDC (system development charges)

## FOOTHILLS URBAN RENEWAL

The City Council is scheduled to meet on December 4 to conduct a public hearing and vote on an ordinance to adopt the proposed Foothills Urban Renewal Plan. This meeting was previously scheduled for November 20. If adopted, the Urban Renewal Plan would authorize the use of tax increment financing up to a maximum indebtedness of \$43.2 million over a projected 22-year time period. Upon commitment of private investment in the area, the Plan would begin funding needed public infrastructure (roadways, pathways, water, wastewater, and storm water). The Plan also provides assistance in the development of affordable housing.

Urban renewal does not increase property taxes; it allows for tax revenues from incremental growth of property values within a defined urban renewal area to be reallocated to investment in urban renewal projects rather than going to overlapping taxing jurisdictions.

Visit [www.ci.oswego.or.us/euy/foothills](http://www.ci.oswego.or.us/euy/foothills) for more information.

### City Council Public Hearing Notice Foothills Urban Renewal Plan

The Lake Oswego City Council will hold a public hearing and consider an ordinance for the adoption of the proposed Foothills Urban Renewal Plan. Tuesday, December 4, 2012. Meeting scheduled to begin at 6 p.m. (subject to change) City Hall, City Council Chambers 380 A Avenue, Lake Oswego

A copy of the ordinance, the proposed Foothills Urban Renewal Plan and accompanying report may be obtained by contacting Sidaro Sin, 380 A Avenue, Lake Oswego, OR 97034; 503-697-7421; [ssin@ci.oswego.or.us](mailto:ssin@ci.oswego.or.us) or visiting the City's website.

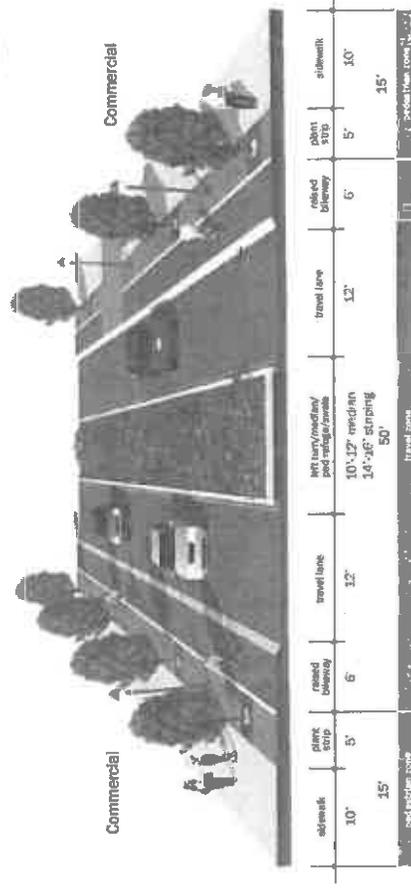
The proposed maximum indebtedness of the Plan is \$43,200,000. The ordinance, if approved, is subject to referendum. The adoption of the Plan may impact property tax rates for general obligation bonds approved by voters prior to October 6, 2001.



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 8 of 14

- Inappropriate Application of West Linn **Transportation System Plan (TSP)** – no recognition of Robinwood Neighborhood Plan (adopted by PC and CC of West Linn)
- TSP to Highway 43 are being ignored
  - Comprehensive Plan, Goal 12, Transportation, Action Measure 3 “to assure that new development pays needed improvement to transportation facilities of city wide importance”
- Transportation Project – “not a pipeline project” from PC meeting – triggers the code requirement – new standard which was confirmed by Atty Beery
  - The 48” pipe to run along Highway 43 must be upgraded to current standards
  - Note: This is not a benefit to West Linn, this is a requirement



What Highway 43 Is Approved to Look Like



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 9 of 14

- The Exploitation of Mary S. Young a Violation of voters rights
  - “Staging Area” with large machinery and drilling within 150 meters of this sign
  - Interferes with city owned greenway, cedar island and beach
  - **Construction activity above ground eliminates user parking and access, this requires approval of voters per the City Charter**

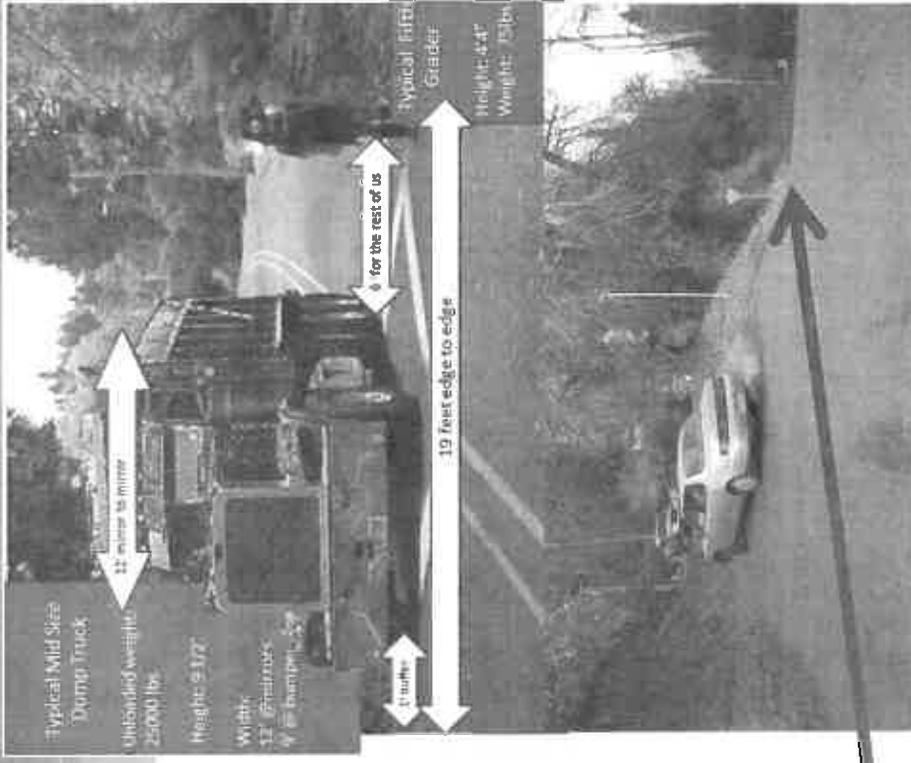


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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14

- Traffic and Safety
  - CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
  - Emergency Vehicles access 24 x 7
  - Large construction vehicles over 28 month period of construction → safety
  - Precarious ‘hair pin’ turn of Nixon and Mapleton



Paid consultant GreenLight Engineering  
“280 feet visibility”, page 51 → not accurate  
– yield & truck size not considered

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14, cont.

- Traffic and Safety, cont.



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 11 of 14



- Traffic and Congestion
- CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
- 24 hours a day of construction
- ~50,000 Diesel trucks trips in residential neighborhoods & West Linn city streets
- Workforce traffic unquantifiable
- Staging of equipment & materials unknown

How to lie with numbers:  
Does a loaded dump truck equal a car? Impact to congestion along all intersections vs. Highway 43 unquantifiable

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 12 of 14

## • Business Impact

- No safety net for businesses in the event of severe reduction in traffic or revenue
- Side effects from slowed traffic, alternative routes because of torn up road, etc.
- No benefit to businesses at the end of the work, in fact, trickle down effect un-measurable and irreversible
  - Job losses
  - Reduction in business values
  - Reduction in commercial real estate values
  - Stigma of bankruptcy and/or perception of business activity in West Linn
  - Implications to tax base for continued and needed infrastructure improvements



LOT first 30 months of discussion: “there will be no impact to business”  
LOT Published Last Thursday, 1/7/13: “we will promote businesses to keep them open”

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 13 of 14

## • **Environmental Responsibility**

- Two water resource areas along Mapleton (Trillium Creek and Heron Creek)
- CDC Chapter 32.020 D (8) → loose interpretation of disturbed area
- Applicant states they will stay within the 'paved areas' → pipe in violation
- Implications:
  1. Multiple sensitive areas and streams on top of proposed pipes and traffic impact
  2. Many residents have been denied the right to disturb streams and trees in this area
  3. LOT drilling and driving equipment outside of disturbed area

NOTE: geotech reference of work being done during winter/rainy season introduces the most risk to environmental



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 14 of 14

- **Geological Instability**
- “Red Zone” → level 5, most unstable land for development
  - Soil subject of Liquefaction
- LOT Claim → a “basalt ridge” might prevent landslide
- FACT Planning Commission determined that known Basalt ridge is too far south in Mary S Young
- IMPACT → LOT location at highest possible risk to landslide
- LOT response: nearly 1,000 pilings required to support the plant & clearwell
- 42” and 48” pipes subject to same risks

**LOT Geologists testimony paid for; attempts made to hire firm and none would risk losing future business from government agencies**





# The Problems with the LOT CUP / Plant / Pipeline in West Linn, one last CDC

The City's noise standards are based on Department of Environmental Quality (DEQ) regulations. The applicant proposes to design and landscape the site to be consistent with DEQ daytime and nighttime noise limits in a residential neighborhood. ~~The application contains a noise study prepared by ENVIRON, a licensed acoustical engineering firm. The acoustical engineer concluded that the proposed WTP can meet DEQ daytime standards. However, ENVIRON was not able to reach a definitive conclusion regarding nighttime compliance at the WRWTP based on the available measurement data, due to non-plant related noise generated by the architectural water feature along the west side of the WRWTP and a gravel producing operation to the east.~~

Source:  
West Linn Staff Report to Planning Commission  
17 Oct 2012

- **Noise**, Comprehensive Plan reference Section 4; recommended action measures (2): "Monitor and enforce conditions of approval for new development related to noise impact"
- Today
  - Trucks idling for 10 minutes or more
  - Removal of trees on Christmas Eve
- Next Century
  - Unknown → planting more trees does not solve the problem
  - But, the City Staff can approve ANY variants (e.g before 7 a.m. or after 7 p.m.)



**Help Save West Linn**

## Next Steps

As Citizens and Voters of West Linn -  
Humble Request to Vote Unanimously to  
Deny the Appeal and Support the  
Planning Commission

## Executive Summary – Overturning the West Linn Planning Commission decision does nothing to solve West Linn’s long term water issues

- There is no new benefit to West Linn with the building of the LOT Plant and associated pipeline – per the CDC 60.070 and Comprehensive Plan
- West Linn Citizens want a comprehensive long term water plan to determine an autonomous water solution
- This is NOT an expansion, it is essentially a new plant
- Any reference to a one-time \$5M **LICENSE** fee is not a community benefit; is not appropriate for 100+ years of water revenue
  - also a violation of ORS 221.470.....”shall not be granted for longer than 20 years”
- Opportunity Costs!! (many: economic, political, perception)
  - Lowest political effort for LOT to build in West Linn
  - Tigard now becomes the majority partner
  - Highest cost for expansion burdened by West Linn w/ no benefit

## **Water Treatment Plant Design**

The Water Treatment Plant will be upgraded and the capacity increased from 16 to 38 mgd (million gallons per day) utilizing Lake Oswego's maximum water rights from the Clackamas River.

The recommended plan is to reconfigure the plant and convert the treatment process from direct filtration to conventional treatment plus ozone. Other modifications include a new, larger clearwell (underground reservoir) and treated water pump station, mechanical process to handle solids, upgrades to chemical feed systems, miscellaneous improvements to existing buildings, a pathway and site re-landscaping.

The following recommendations supported by neighbors and the Partnership will be used by the water treatment plant design team to help create a facility that blends in with the neighborhood.

### **Landscape/Site Design**

- Provide setbacks compatible with those for nearby neighborhood homes that meet West Linn zoning standards.
- Buffer the facilities from adjacent properties using appropriate manufactured or natural systems where suitable and possible.
- Mitigate lost tree canopy on site by removing invasive species and planting native trees and plants per the COWL Code requirements. For needed off-site mitigation, pay into the West Linn "Canopy Replacement Fund" so that that West Linn may determine the best location for replanting. Neighbors have expressed a desire for additional Trillium Creek mitigation within the neighborhood.
- Consider "green" features for the treatment plant:
  - Native vegetation to conserve water
  - Energy conserving pumps, lighting and electrical equipment
  - Solar collectors for renewable power generation
- Landscaping, fencing and walkways should be designed to fit the residential setting.



**Landscaping will enhance the residential look and feel of the facility.**

## Pelz, Zach

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**From:** Karie Oakes [karieokee@aol.com]  
**Sent:** Monday, February 04, 2013 11:55 PM  
**To:** CWL Council  
**Cc:** Pelz, Zach  
**Subject:** Mayor Kovash's declaration of ex parte contacts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Mayor Kovash and Councilors,

I am concerned by the action undertaken by the Council to remediate Mayor Kovash's ex parte contact that he referred to on January 28, 2013 during Council deliberations for the appeals of the Lake Oswego-Tigard Water Partnership (LOT) applications to build a water treatment plant and pipes in West Linn. I question if the remediation proceedings meet the requirements and practices of the quasi-judicial process.

I was at the hearing and witnessed the following:

- Mayor Kovash used information he obtained from two ex parte contacts as evidence in his closing argument during Council deliberations in support of the LOT appeals to reverse the Planning Commission decisions to deny the applications.
- Mayor Kovash did this after giving strict instructions to the Council, City staff and LOT to not introduce any new evidence when answering the Council's questions.
- Mayor Kovash did not previously disclose these ex parte contacts.
- Mayor Kovash referred to these ex parte contacts after the public hearing and record was closed.
- Mayor Kovash said he called and talked with two presidents of neighborhood associations about their respective resolutions objecting to the LOT application.
- Mayor Kovash said he read the meeting minutes of one of the neighborhood association that were emailed to him by the president.
- Mayor Kovash claimed that he previously submitted the meeting minutes and the email to the record.
- The attorney for the City recommended the Council should reopen the public record, place the substance of the communication in the record, and allow the public and the appellant to respond.
- The Council reopened the public hearing and record for written testimony until February 4, with appellant response until February 8 and continued the hearing until February 11, 2013

My questions are:

- Why didn't Mayor Kovash declare his ex parte contacts and place the substance of the communications in the record after the record was reopened?
- Why didn't Mayor Kovash give the names of the neighborhood association presidents he contacted and the names of the neighborhood associations they represent?
- Why didn't Mayor Kovash state for the record where the minutes and the email that he received are located in the record?
- Why didn't Mayor Kovash give the date of the email from the neighborhood association president?
- How is the public expected to give written testimony about the Mayor's ex parte contacts when the public does not know when Mayor Kovash made the contacts, who the mayor contacted and what neighborhood association minutes the mayor read?
- Did Mayor Kovash properly declare his ex parte contacts?
- Will these proceedings "cure the error" as the attorney for the City put it?
- Are the substantial rights of persons prejudiced when they are not given the substance of the communications to respond to Mayor Kovash's ex parte contacts that clearly are a factor in his decision?

I think Mayor Kovash is bias and should recuse himself from participating in the decisions of the appeals. He clearly sought information from outside the record in order to dispute the opposition of seven neighborhood associations to the LOT projects. He said that it was assumptions that the neighborhood associations oppose the LOT projects because they

were bad for the community, so he called two neighborhood associations. He said that the minutes of one neighborhood association said it opposed the LOT projects until there was better dialog between LOT and the (Robinwood) neighborhood association. He said that he called the president of a second neighborhood association who said that there were no minutes and that he didn't know who LOT was; so Mayor Kovash said that that neighborhood association didn't have an opinion on LOT.

Mayor Kovash reveals his ex parte contacts in the City Council January 28, 2013 meeting minutes video at time stamp 1:27:54 to 1:29:34. It is further discussed and the attorney for the City gives his opinion at 1:37:37 to 1:40:00. The Council reopened the hearing and record at 1:40:50 to 1:43:02. Mayor Kovash did not subsequently disclose his ex parte contacts.

To be clear, what Mayor Kovash said is nothing more than his claims, but the public was not given the opportunity to verify or dispute his claims. The damage that Mayor Kovash has imposed on these proceedings is irreparable. He introduced biased hearsay at the most opportune time- after hearing the other Councilors' positions. The vote was apparently going to be a tie and the Planning Commission decision would be affirmed. Mayor Kovash tried to persuade the Councilors in opposition using his ex parte contacts.

If Mayor Kovash does not recuse himself, then I challenge his ability to make impartial decisions in these appeals due to his bias. The Council must vote to accept or deny the challenge and the Mayor may not vote; and it shall be incorporated into the record of the hearing pursuant to the Council Rules.

Thank you for your considerations.

Karie Oakes  
1125 Marylhurst DR  
West Linn, OR

**Pelz, Zach**

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**From:** Karie Oakes [kariooke@aol.com]  
**Sent:** Monday, February 04, 2013 11:56 PM  
**To:** CWL Council  
**Cc:** Pelz, Zach  
**Subject:** Ap-12-02 & AP-12-03  
**Attachments:** Oakes\_CC\_LOTWP\_ex\_parte\_CM\_evaluation.docx; Oakes\_CC\_LOTWP\_PRD\_PRAB.docx; PRAB\_03\_22\_12\_agenda.pdf; PARB\_03\_22\_12\_minutes.pdf

Please submit my attached letters for the record of AP12-02 and AP 12-03

Karie Oakes  
1125 Marylhurst DR  
West Linn, OR 97068

February 4, 2013

For the record of Land-use Cases AP-12-02 and AP-12-03 Lake Oswego Tigard Water Partnership (LOTWP) Appeals of the Planning Commission decisions to deny construction of a water treatment plant and pipes in West Linn.

Re: Disclosed ex parte contact during the Performance Evaluation of the City Manager.

Dear Mayor and Councilors:

The Council disclosed ex parted contacts made during the process of evaluating the City Manager, by placing in the records of the above named appeals, the evaluations of nineteen individual citizens. The evaluations were made by residents of Robinwood neighborhood who are opponents to the LOTWP projects and who evaluated Mr. Jordan's job performance at it related to the projects. The evaluations were candid and not favorable.

I think that in order for this ex parte disclosure to meet the requirements and intent of the law, the Council must disclose the entire substance of the communications, which would include the evaluations made by each individual Council member and the overall evaluation of the City Manager. The parties to the cases, and especially the citizens who made the evaluations, have a right to know both sides of these ex parte communications, in order to determine if the ex parte communications indicate a bias or inability of the decision maker to act impartially.

Mr. Jordan placed the evaluations by citizens in the record with a memo dated December 14, 2012 to the Planning Director, John Sonnen. They are found in the records of the appeals in sections titled '7a- Public Testimony as of 1-3-13 (1 of 2) on page 48 of 130.

I request Council members place in the record their individual evaluations and overall evaluation of the City Manager and leave the record open for the public and appellant to respond.

Thank you.

Karie Oakes  
1125 Marylhurst DR  
West Linn, OR 97068

February 4, 2013

For the record of Land-use Cases AP-12-02 and AP-12-03 Lake Oswego Tigard Water Partnership (LOTWP) Appeals of the Planning Commission decisions to deny construction of a water treatment plant and pipes in West Linn.

Re: The West Linn Parks and Recreation Advisory Board did not vote to approve the improvements to Mary S. Young.

Dear Mayor Kovash and Councilors:

It is bothersome that the Parks Director, Ken Worcester, writes in his letter in the record that the Parks and Recreation Advisory Board (PRAB) voted to approve the improvements to Mary S. Young Park, when the agenda and the minutes of the PRAB record that it was an item for discussion only and no vote was taken.

It is important that as decision makers in these appeals that you consider why Mr. Worcester would do this. It is evident that he wanted to have the PRAB approval before the meeting of the Oregon State Parks and Recreation Department meeting to approve the MSY improvements.

I would say that Mr. Worcester did not provide the opportunity for the public to participate in the decision of improvements to MSY Park and instead stamped his approval on the deal.

Please find attached agenda and minutes of the PRAB.

**City of West Linn  
Parks and Recreation Advisory Board Minutes  
March 22, 2012**

Members Present: Roger Shepard, Lorie Griffith, Vicki Handy and John Linman

Staff Present: Ken and Ken

Guests: Councilor Mike Jones

Meeting called to order by Chair, John Linman at 7:00.

**1. POOL AND RECREATION CENTER UPDATE**

We have interviewed all responders, and reviewed their materials and their responses to additional questions. We are encouraged by the public private model and the possibility to reduce the City bond needs. We are going to present an update to the City Council.

**2. BLUE HERON PROPERTY**

The property is going up for auction. WES is still hoping to pursue this property.

**3. EARTH DAY CELEBRATIONS**

April 21<sup>st</sup> 9:00 – 12:00

Activities include invasive plant removal competition, scavenger hunt, nature walks, Native American artifacts, native plant sales. City of West Linn, Starbucks and SOLV. Lake Oswego will be present to talk about their perspective regarding the water pipe in MSY. This is also a workday on Burnside Park, Maddox Woods, and Willamette Falls Drive.

**4. LOT WATERLINE PROJECT**

April 4th the Oregon Parks and Recreation Commission Meeting will have an agenda item (9.a.) the Willamette River pipe crossing.

We have been asked by, Oregon Parks & Recreation, to send a mitigation plan for the potential impact to the 3700 sq. ft. area that will result in an overwhelming public benefit. By contract they must repair any damage resulting from this project. The amount of \$50,000 has been mentioned as a starting point.

At this time the plan is to go underground under the river.

Some of the ideas shared include: (not in priority order)

Pulling the ivy in MSY Park 5-10 acres in visually prominent areas of the park

Asphalt paths from parking lot to pump station - \$17,500

River access trail

Cedar island access

River habitat enhancement

River frontage trail

Restoration improvement to trails

Drainage improvements to fields

Canopy tour on zip lines

**5. OTHER PROJECTS**

PRAB should go see Sahalee Illahie park! See the hillside slide!

Ken Warner will send the list of upcoming events

Volunteer & Partnership Workshop on Tuesday April 17<sup>th</sup> by Oregon Recreation & Park Association

Meeting adjourned at 8:15

Next meeting April 26, 2012

# Memorandum

Date: March 14, 2012  
To: West Linn Parks and Recreation Advisory Board  
From: Ken Warner, Interim Parks and Recreation Director  
Subject: March 22nd, Meeting Agenda

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Our regularly scheduled meeting for March is next Thursday, March 22, 2012, **7:00 p.m. at City Hall**. The Agenda is as follows:

1. Approval of tonight's agenda (action item 5 min.)
2. Community Comments (10 min.)
3. Adoption of minutes (action item 5 min.)
4. Pool & Rec Center RFI Interview Committee Review and next Steps (discussion item 20 min.)
5. LOT Waterline Project (discussion item 20 min.)
6. Blue Herron Pond & Property (discussion item 5 min.)
7. Other Projects

I look forward to seeing you next Thursday. Please let us know at 503-557-4700 or via email if you are unable to attend.

**Pelz, Zach**

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:48 AM  
**To:** Pelz, Zach  
**Subject:** FW: Costs Unknown In Lake Oswego Tigard Water Plant Proposal  
**Attachments:** Letter to City Council Rebuttal for February 4th (1).docx

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**From:** alison-henderson@comcast.net [mailto:alison-henderson@comcast.net]  
**Sent:** Monday, February 04, 2013 4:25 PM  
**To:** alison-henderson@comcast.net  
**Cc:** Kovash, John; Tan, Jennifer; Carson, Jody; Jones, Michael; Frank, Thomas; CWL Council  
**Subject:** Re: Costs Unknown In Lake Oswego Tigard Water Plant Proposal

Dear West Linn City Council,

Please see our response to the January 28th meeting for February 4th time line. Thank you and I look forward to hearing from you.

Sincerely yours,  
Alison Henderson  
(503) 887-3528 cell

----- Original Message -----

**From:** alison-henderson@comcast.net  
**To:** jkovash@westlinnoregon.gov, jtan@westlinnoregon.gov, jcarson@westlinnoregon.gov, mjones@westlinnoregon.gov, tfrank@westlinnoregon.gov  
**Cc:** cwl council <cwl\_council@westlinnoregon.gov>  
**Sent:** Tue, 22 Jan 2013 17:44:16 -0000 (UTC)  
**Subject:** Costs Unknown In Lake Oswego Tigard Water Plant Proposal

Dear West Linn City Councilors,

Please find attached our response regarding the LOT Water Plant Proposal. Please respond back to me so I know that you received this email and were able to open the attachment. Thank you for your time and consideration. Please let me know if you have any questions.

Sincerely yours,  
Alison Henderson  
and Jan Palmer

Dear West Linn City Council:

This is a Regional project – but does not include West Linn. The Oregonian has it wrong. This is a NEW FACILITY. The West Linn water plant located in Oregon City is shared by Oregon City. IF this project took place in Lake Oswego it would be a similar situation between Lake Oswego and Tigard. Putting it in West Linn with no benefit to West Linn is nothing short of “sticking it” to your neighbors. LOT needs to learn how to play nice in the sandbox first. Then an open, honest discussion and solution process can start within our region for everyone’s needs for water to be addressed in non-emergency and emergency situations.

This project overall is a CON for West Linn. Just look at Oregon City business during Arch Bridge rebuilding. Oregon City had the advantage of business from the courthouse and a functional street once you got off the alternative exit to the city. However, many of the previous businesses before the Arch Bridge rebuild are gone and luckily new businesses have assumed their locations once the bridge was reopened. West Linn situation will not be this easy. Our roads will be impaired for long periods of time and business will go out of business!

Highway 43 will be a mess. Often traffic is increased from Hwy 205 with a high incidence of issues on this part of the highway. The truck traffic will slow movement even more. When HWY 43 was repaved near the library it led to a least ½ hour TO 45 minutes delays and traffic increased incredibly on the hill by Rosemont and the surrounding neighborhoods. This whole project affects our entire town not just Robinwood. Robinwood will take the brunt of it but all of West Linn will feel and suffer the pain for a project that offers no benefits to West Linn.

Our emergency pipe line could go across the new arch bridge that is earthquake proof at a 9. That would help alleviate the fears of the current pipeline crossing the 205 bridge which is earthquake proof at a 7 rating.

This whole project has delayed our own attention to our own water needs by tying up our staff on non-West Linn business. This is also an expensive alternative for Lake Oswego however it does allow them to free up their tax lots in their industrial area of Foothills and to increase their water intake by extraordinary amounts that they can turn and sell to other communities with no water rights on the Clackamas River for huge profits. And it only allows us to have emergency water for 26 years IF Lake Oswego is feeling compassionate to actually give us water in an emergency situation. None of their profits will be shared by the other stakeholders on the Clackamas river (Oregon City, Clackamas, Galdstone and West Linn). The \$5million dollar bribe does nothing to address the theft of Lake Oswego on the Clackamas River. The population numbers for growth are bogus at best. There is no way that any of the communities can sustain such growth without increasing their waste water treatment plants as well and that issue hasn’t been addressed.

Lake Oswego only uses 4 – 6 mgd now and they want to increase to 38 mgd? I wonder why? No not really, does profiteering sound like a reasonable reason? At the cost to West Linn and it’s peoples. Your job as City Councilors is to protect the people of West Linn. It certainly is not to protect the politicians of Lake Oswego. Lake Oswego residents are not for this project either. That should speak volumes to you

to do your job and to protect the interests of West Linn. Also, emergency water can be had for West Linn with the purchase of a Tempest Environmental Unit that can be funded with a grant from the Federal Government. You should check into this alternative and then we will not even need an intertie with Lake Oswego.

Please feel free to contact us with any questions that you may have and please refer to our Pro and Con charts below for further details. Thank you for your consideration in this important matter and please protect the interests of West Linn First!

**Sincerely yours,**  
**Alison Henderson**  
**Jan Palmer**

**Pros and Cons of LOT Water Treatment Plant on Kenthorpe Road in West Linn**

**The LOT Water Plant: PROs:**

<b>West Linn</b>	<b>Lake Oswego</b>	<b>Tigard</b>	<b>Robinwood</b>	<b>Mapleton/Kenthorpe</b>
Emergency water MAY be available for 26 years.	Plant located in another town	Located in another town		
	Does not affect tax rolls	No less tax lots		
	No less of industrial area	No industrial area loss		
	No inconvenience to residents	No inconvenience to residents		
	2,000,000 gallon reservoir	2 mg reservoir		

**The LOT Water Plant: CONs:**

<b>West Linn</b>	<b>Lake Oswego</b>	<b>Tigard</b>	<b>Robinwood</b>	<b>Mapleton/Kenthorpe</b>
Takes land off the tax rolls forever			Clog up streets	Clog streets with traffic
Construction will clog up hwy 43 with traffic			Increase time to get onto hwy 43 from neighborhood	7-7 per day working plus weekends. Noise and congestion
Must negotiate a new intertie agreement			If water plants leaks could create a landslide	Much longer routes to hwy 43
Need to have new piping to be able to connect to new 42 " intertie			Constant machine sounds	6+ trucks/hour and increased traffic down Nixon up around to Cedar Oak Drive.
No emergency water available after 26 years.			Business affected by increase truck traffic	More dangerous to walk up street for children to go to school
				Longer response time for emergency vehicles and personnel
				Noise of drilling 1000 pilings
Leak in reservoir could lose street, houses and utilities.				Leak in reservoir could lose street, houses and utilities. Potential landslide.

**If Low Clakamas River Water: Pros:**

<b>West Linn</b>	<b>Lake Oswego</b>	<b>Tigard</b>	<b>Robinwood</b>	<b>Mapleton/Kenthorpe</b>
Potentially get emergency water from Portland and their reservoirs if new pipes are laid from Tigard and they agree to supply the water	Get access to Tigard's water from Portland.	Numerous back up systems for water		
Same Pros with a Portable emergency water system called the Tempest Environmental Unit				

**If Low Clakamas River Water: CONS:**

<b>West Linn</b>	<b>Lake Oswego</b>	<b>Tigard</b>	<b>Robinwood</b>	<b>Mapleton/Kenthorpe</b>
Extensive new pipes laid to connect to LOT's new system	Will need to lay down new pipes from Tigard			
Higher cost of emergency water				
Only for 26 years potential emergency water from this plant.				
The plant does go away after 26 years.				
LOT Insurance disappears after 10 years.				

**Pipeline Pull up through Willametter River: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	Not in our city – little inconvenience to their citizens	Not in our city		
	Increase water from 8mgd to 38mgd so they can sell at a huge profit.			

**Pipeline Pull Up through the Willamette River: CONS:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Increase dump trucks. 6/hr for 48 hours	Will have to repair Mary S. Young Park for \$90,000 to the State of Oregon not to the City of West Linn for damages caused during drilling and construction.	Glad LO is paying for this too.	Dump trucks day and night.	Dump trucks day and night.
Difficult for emergency workers on Nixon and Mapleton			Problems for Cedaroak school because of increase traffic on cedar oak road	Traffic noise lights
Police needed for traffic			Difficult to reach MSY	Difficult to reach MSY
			Emergency workers difficult may need police to direct traffic	Emergency workers difficult may need police to direct traffic
			Terrible traffic	Danger to children
			Will need to replace Nixon and Elmran	Will need to replace Nixon and Elmran
Extra police coverage in neighborhood due to potential for looting vacated homes	May have to relocate WL residence for intolerable noise	May have to relocate WL residence for intolerable noise		May have to relocate WL residence for intolerable noise

**Pipeline: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	Not in our city	Not in our city		

**Pipeline: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
More difficult to reach sewer plant			More difficult to reach sewer plant	More difficult to reach sewer plant
Need to watch out for hydrofracting near sewer plant			Need to watch out for hydrofracting near sewer plant	Need to watch out for hydrofracting near sewer plant
Mapleton narrow over two streams. Difficult to fit pipes because of 48" diameter. Have to put other utilities closer than recommended near a 48" diameter pipe.			Mapleton narrow over two streams. Difficult to fit pipes because of 48" diameter. Have to put other utilities closer than recommended near a 48" diameter pipe.	Mapleton narrow over two streams. Difficult to fit pipes because of 48" diameter. Have to put other utilities closer than recommended near a 48" diameter pipe.
Difficult to maintain utilities			Difficult to maintain utilities	Difficult to maintain utilities
Have to replace Mapleton water pipe and maybe along side new 4 foot pipe more difficult if either leaks.			Have to replace Mapleton water pipe and maybe along side new 4 foot pipe more difficult if either leaks.	Have to replace Mapleton water pipe and maybe along side new 4 foot pipe more difficult if either leaks.
Replace Nixon because of increased traffic			Replace Nixon because of increased traffic	Replace Nixon because of increased traffic
			Hope no one has a heart attack or need emergency services because TVFR will not be able to get to you in time!	Hope no one has a heart attack or need emergency services because TVFR will not be able to get to you in time!
			TVFR times to Robinwood are already below	

			standards. It takes at least 12 minutes for them to arrive without construction going on. What will happen in the middle of construction? DEAD On Arrival!	
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**Planning Commission: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Spent a lot of time studying and listening to public			Finally allowed to speak	

**Planning Commission: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Took up city planning time could have worked on WL projects	Spent a lot of money for a negotiator – Greg McKenzie – wasted money since not more than 9 people could attend and were forbidden to take notes.			3 years of preparing and meetings Research Worry
				Mediator not allowed groups - only 9 people at a time – no notes
				Loss in house values
				Pain and suffering
				More hell ahead!

**Do Over City Council: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	\$400 complete review for applicants case in front of City Council - What a bargain!	Thank heavens LO has paid for the permit process!	Finally allowed to speak	
	Can refine testimony			
	Allows less time for public testimony			

**Do over City Council: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
More waste of city workers time	Money for lawyers			
Could have worked on WL projects				
Money for lawyers				
Delay master plan on ballot				
Water unavailable-intertie				
More Hell for WL			More Hell for WL	More Hell for WL

**Earthquake: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Bucket brigade at LOT's reservoir for West Linn residents since our pipes will be broken spaghetti.	LOT's regional facility has priority to have access to water.	LOT's regional facility has priority to have access to water.		
	Pipes will be intact but hillside will be gone			
	Priority for a regional facility over one towns (WL) needs.			

**Earthquake: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Pipes won't connect if 9			No priority in service or access to water for LOT's regional facility is repaired.	No priority in service or access to water for LOT's regional facility is repaired.
No priority of water.				
Our reservoir that is not earthquake proof and has not been focused on since our city employees are too busy dealing with this issue.			Will need to organize a bucket brigade to LOT's water reservoir if it did not slide into the Willamette River.	
Hillside with residents will wash into the Willamette and no insurance from LOT for death and damages.			Will probably need to fight LO for access to the reservoir could result in civil disobedience. 😊	

**Lawsuits against Neighborhood: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	Bullied the neighbors into signing their agreement.	Glad LO IS PAYING FOR THIS!!		
	Hoping to get neighborhood covenants erased.			

**Lawsuits against Neighborhood: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	Have to buyout neighbors			Spend personal funds to cover legal costs of being sued by LO.
				Lots of money wasted and time

**Pipeline Down Hwy 43: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
One new lane repaved. Rest of the road looks silly.			Watch out for that hump!! 😊	

**Pipeline Down Hwy 43: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Trucks delay traffic			Business impacted open at night	
1 lane night			No sleep at night noise and light	
Many business open at night – restuarants			Go by sellwood bridge and see the lights used at night – looks like a football stadium	
Lights and noise all night for homes near HWY 43				
More traffic Rosemont and Stafford				
Have to repave rest of roads after increase in heavy traffic				

**Insurance: Pros:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
	<b>\$1million for 10 years. All other insurance must be exhausted before you can file for it.</b>	<b>No worries about insurance. LO is covering this.</b>		

**Insurance: CONs:**

West Linn	Lake Oswego	Tigard	Robinwood	Mapleton/Kenthorpe
Only \$1million in excess insurance			All homes below the reservoir are inadequately covered by this excess coverage	All homes below the reservoir are inadequately covered by this excess coverage
WL will have to upfront the repairs and hope insurance will cover it later for the first ten years than no insurance.			Will not be able to purchase insurance against pipe line breakage	Will not be able to purchase insurance against pipe line breakage.
Plant is forever! Insurance only for 10 years.				

## Pelz, Zach

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:48 AM  
**To:** Pelz, Zach  
**Subject:** FW: Letter to Mayor John Kovash: LOT Application

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**From:** randall fastabend [mailto:randallfastabend88@gmail.com]  
**Sent:** Monday, February 04, 2013 4:55 PM  
**To:** Kovash, John  
**Cc:** Frank, Thomas; Carson, Jody; Tan, Jennifer; Jones, Michael; Jordan, Chris  
**Subject:** Letter to Mayor John Kovash: LOT Application

Mayor John Kovash

City of West Linn, Oregon

Dear Mayor Kovash,

In your statement during the January 28, 2013 West Linn City Council meeting you spoke of the economic benefits as the basis for your decision to vote in favor of the expansion of the LOT water treatment facility and pipeline.

You cited that we would get valuable emergency water through the inter-tie. Currently, the inter-tie already exists with no expiration date. If the application is approved then starting in 2026 this emergency water agreement will begin to go away and will completely end in 2041. Why would you vote to end our current emergency water source and put the City at risk? In your statement you mentioned an alternative expenditure put in our own pipeline under the river, which I find is not needed because the Abernathy Bridge and pipeline have been earthquake retrofitted and are doing fabulously.

You cited a one-time payment of a \$5 million franchise fee that has been put forth as a benefit. This benefit is calculated on a 1 to 3 percent charge on revenue generated by the pipeline. Franchise fees are not a benefit. They are net neutral and intended to pay for the property rights and risk incurred by the community. The risk of business loss and community disruption is far greater than the \$5 million proposed. Last week it was announced that the franchise fee negotiated with PGE was set at 5 to 7 percent of revenue on a yearly basis with the opportunity to re-negotiate after 10 years. This will bring in over \$700,000 per year to the City and this is without destroying our roads and interrupting businesses. If we use this as the basis then LOT should pay over \$10 million and after 10 years we should be able to re-negotiate a higher fee. Why would you vote to give away West Linn property rights, subject our citizens to construction abuse, and incur higher risk to West Linn citizens to favor LOT?

You cited that the business on Highway 43 will not suffer unduly and will be able to continue as normal. You ignore your own business community that has brought credible reports that claim the opposite. The businesses affected require customer flow and that customer flow will go elsewhere during construction. Why would you vote to harm our community businesses?

You cited the need to be interlinked and be a part of the greater community. We believe in being good neighbors but not if we must shoulder the burden and get little in return.

Mayor Kovash you are ignoring your own Planning Commission, the businesses and citizens who all have come out against this project. Do you serve in the best interests of the citizens of West Linn or in the best interests of the Lake Oswego Tigard Water partnership? I urge you to reconsider and vote no on the LOT application.

Randall Fastabend

Citizen of West Linn

## Pelz, Zach

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:48 AM  
**To:** Pelz, Zach  
**Subject:** FW: AP-12-02; AP-12-03

-----Original Message-----

**From:** Scott Gerber [mailto:jumpin@cmn.net]  
**Sent:** Monday, February 04, 2013 5:25 PM  
**To:** Tan, Jennifer  
**Subject:** AP-12-02; AP-12-03

Councilor Tan

The following statement was entered into the record today Feb 4, 2013. I appreciate your time and attention Respectfully Scott Gerber

Jan 31, 2013

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

I would like to address the recent council request to staff to provide language on certain conditions of approval for the Lake Oswego - Tigard Water Plant project. Throughout these proceedings it has been emphasized that approval or denial of this application needs to be based on the criteria found in the CDC and the Comprehensive Plan. The citizens that have opposed this project have made it their business to study and understand these criteria. It has become increasingly apparent that application of a number of these criteria is interpretive, and various interpretations of several criteria have been debated by both sides. One thing is clear however, and that is that nine out of eleven of the city's decision makers that have been involved in this process have agreed that this proposal does not meet the necessary criteria. This fact will not be changed by the suggested conditions brought forth by the council. Even if every one of these conditions were to be put on the table and accepted, the proposal would still not comply with multiple criteria.

The planning commission, in their denial of the project, found 9 criteria that were not met by the applicant. Councilors Jones and Tan touched on many of these and with review should see that the proposed conditions of approval will not serve to bring all 9 of these into compliance. The application has to be denied if it is in violation of even one of the applicable codes.

I would also like to once again offer comment on something that has been repeatedly overlooked and ignored by the proponents of this project. They continually cite our need for the intertie with LO and what it would cost us to go it alone. The truth is that if this project is denied, our intertie agreement with LO still stands. Although LOT has intimated that it will be taken away, the current LO city council has indicated that it will continue to work with West Linn in good faith regarding water issues. The intertie and the IGA that backs it up will continue to serve the needs of both cities when this project is denied. The last council meeting made it very clear where the individual councilors stand in terms of this proposal. Councilors Jones and Tan have recognized the shortcomings of this proposal. The proposed conditions of approval do not negate these shortcomings, but merely serve as additional mitigation factors for a burdensome and unnecessary project that fails to comply with applicable codes. I do not necessarily agree with Councilor Jones' assessment of this as a "lose...lose" situation. If LOT loses, West Linn and Lake Oswego can move forward to a better and more mutually beneficial water future.

Scott Gerber

3940 Kenthorpe Way, West Linn OR

## Pelz, Zach

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:49 AM  
**To:** Pelz, Zach  
**Subject:** FW: AP-12-02: AP-12-03

-----Original Message-----

**From:** Scott Gerber [mailto:jumpin@cmn.net]  
**Sent:** Monday, February 04, 2013 5:28 PM  
**To:** Jones, Michael  
**Subject:** AP-12-02: AP-12-03

Councilor Jones'

The following statement was entered into the record today, Feb4, 2013. Thank you for your time and attention Respectfully Scott Gerber

Jan 31, 2013

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

I would like to address the recent council request to staff to provide language on certain conditions of approval for the Lake Oswego - Tigard Water Plant project. Throughout these proceedings it has been emphasized that approval or denial of this application needs to be based on the criteria found in the CDC and the Comprehensive Plan. The citizens that have opposed this project have made it their business to study and understand these criteria. It has become increasingly apparent that application of a number of these criteria is interpretive, and various interpretations of several criteria have been debated by both sides. One thing is clear however, and that is that nine out of eleven of the city's decision makers that have been involved in this process have agreed that this proposal does not meet the necessary criteria. This fact will not be changed by the suggested conditions brought forth by the council. Even if every one of these conditions were to be put on the table and accepted, the proposal would still not comply with multiple criteria.

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I would also like to once again offer comment on something that has been repeatedly overlooked and ignored by the proponents of this project. They continually cite our need for the intertie with LO and what it would cost us to go it alone. The truth is that if this project is denied, our intertie agreement with LO still stands. Although LOT has intimated that it will be taken away, the current LO city council has indicated that it will continue to work with West Linn in good faith regarding water issues. The intertie and the IGA that backs it up will continue to serve the needs of both cities when this project is denied. The last council meeting made it very clear where the individual councilors stand in terms of this proposal. Councilors Jones and Tan have recognized the shortcomings of this proposal. The proposed conditions of approval do not negate these shortcomings, but merely serve as additional mitigation factors for a burdensome and unnecessary project that fails to comply with applicable codes. I do not necessarily agree with Councilor Jones' assessment of this as a "lose...lose" situation. If LOT loses, West Linn and Lake Oswego can move forward to a better and more mutually beneficial water future.

Scott Gerber

3940 Kenthorpe Way, West Linn OR

## Pelz, Zach

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:49 AM  
**To:** Pelz, Zach  
**Subject:** FW: AP-12-02; AP-12-03

-----Original Message-----

**From:** Scott Gerber [mailto:jumpin@cmn.net]  
**Sent:** Monday, February 04, 2013 5:30 PM  
**To:** Carson, Jody  
**Subject:** AP-12-02; AP-12-03

Councilor Carson,

The following statement was entered into the record today, Feb 4, 2013. Thank you for your time and attention Respectfully Scott Gerber

Jan 31, 2013

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

I would like to address the recent council request to staff to provide language on certain conditions of approval for the Lake Oswego - Tigard Water Plant project. Throughout these proceedings it has been emphasized that approval or denial of this application needs to be based on the criteria found in the CDC and the Comprehensive Plan. The citizens that have opposed this project have made it their business to study and understand these criteria. It has become increasingly apparent that application of a number of these criteria is interpretive, and various interpretations of several criteria have been debated by both sides. One thing is clear however, and that is that nine out of eleven of the city's decision makers that have been involved in this process have agreed that this proposal does not meet the necessary criteria. This fact will not be changed by the suggested conditions brought forth by the council. Even if every one of these conditions were to be put on the table and accepted, the proposal would still not comply with multiple criteria.

The planning commission, in their denial of the project, found 9 criteria that were not met by the applicant. Councilors Jones and Tan touched on many of these and with review should see that the proposed conditions of approval will not serve to bring all 9 of these into compliance. The application has to be denied if it is in violation of even one of the applicable codes.

I would also like to once again offer comment on something that has been repeatedly overlooked and ignored by the proponents of this project. They continually cite our need for the intertie with LO and what it would cost us to go it alone. The truth is that if this project is denied, our intertie agreement with LO still stands. Although LOT has intimated that it will be taken away, the current LO city council has indicated that it will continue to work with West Linn in good faith regarding water issues. The intertie and the IGA that backs it up will continue to serve the needs of both cities when this project is denied. The last council meeting made it very clear where the individual councilors stand in terms of this proposal. Councilors Jones and Tan have recognized the shortcomings of this proposal. The proposed conditions of approval do not negate these shortcomings, but merely serve as additional mitigation factors for a burdensome and unnecessary project that fails to comply with applicable codes. I do not necessarily agree with Councilor Jones' assessment of this as a "lose...lose" situation. If LOT loses, West Linn and Lake Oswego can move forward to a better and more mutually beneficial water future.

Scott Gerber

3940 Kenthorpe Way, West Linn OR

## Pelz, Zach

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**From:** LOTWP  
**Sent:** Tuesday, February 05, 2013 9:50 AM  
**To:** Pelz, Zach  
**Subject:** FW: Mayor Kovash's declaration of ex parte contacts

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**From:** Karie Oakes [mailto:karieokee@aol.com]  
**Sent:** Monday, February 04, 2013 11:55 PM  
**To:** CWL Council  
**Cc:** Pelz, Zach  
**Subject:** Mayor Kovash's declaration of ex parte contacts

Dear Mayor Kovash and Councilors,

I am concerned by the action undertaken by the Council to remediate Mayor Kovash's ex parte contact that he referred to on January 28, 2013 during Council deliberations for the appeals of the Lake Oswego-Tigard Water Partnership (LOT) applications to build a water treatment plant and pipes in West Linn. I question if the remediation proceedings meet the requirements and practices of the quasi-judicial process.

I was at the hearing and witnessed the following:

- Mayor Kovash used information he obtained from two ex parte contacts as evidence in his closing argument during Council deliberations in support of the LOT appeals to reverse the Planning Commission decisions to deny the applications.
- Mayor Kovash did this after giving strict instructions to the Council, City staff and LOT to not introduce any new evidence when answering the Council's questions.
- Mayor Kovash did not previously disclose these ex parte contacts.
- Mayor Kovash referred to these ex parte contacts after the public hearing and record was closed.
- Mayor Kovash said he called and talked with two presidents of neighborhood associations about their respective resolutions objecting to the LOT application.
- Mayor Kovash said he read the meeting minutes of one of the neighborhood association that were emailed to him by the president.
- Mayor Kovash claimed that he previously submitted the meeting minutes and the email to the record.
- The attorney for the City recommended the Council should reopen the public record, place the substance of the communication in the record, and allow the public and the appellant to respond.
- The Council reopened the public hearing and record for written testimony until February 4, with appellant response until February 8 and continued the hearing until February 11, 2013

My questions are:

- Why didn't Mayor Kovash declare his ex parte contacts and place the substance of the communications in the record after the record was reopened?
- Why didn't Mayor Kovash give the names of the neighborhood association presidents he contacted and the names of the neighborhood associations they represent?
- Why didn't Mayor Kovash state for the record where the minutes and the email that he received are located in the record?
- Why didn't Mayor Kovash give the date of the email from the neighborhood association president?
- How is the public expected to give written testimony about the Mayor's ex parte contacts when the public does not know when Mayor Kovash made the contacts, who the mayor contacted and what neighborhood association minutes the mayor read?
- Did Mayor Kovash properly declare his ex parte contacts?
- Will these proceedings "cure the error" as the attorney for the City put it?

- Are the substantial rights of persons prejudiced when they are not given the substance of the communications to respond to Mayor Kovash's ex parte contacts that clearly are a factor in his decision?

I think Mayor Kovash is bias and should recuse himself from participating in the decisions of the appeals. He clearly sought information from outside the record in order to dispute the opposition of seven neighborhood associations to the LOT projects. He said that it was assumptions that the neighborhood associations oppose the LOT projects because they were bad for the community, so he called two neighborhood associations. He said that the minutes of one neighborhood association said it opposed the LOT projects until there was better dialog between LOT and the (Robinwood) neighborhood association. He said that he called the president of a second neighborhood association who said that there were no minutes and that he didn't know who LOT was; so Mayor Kovash said that that neighborhood association didn't have an opinion on LOT.

Mayor Kovash reveals his ex parte contacts in the City Council January 28, 2013 meeting minutes video at time stamp 1:27:54 to 1:29:34. It is further discussed and the attorney for the City gives his opinion at 1:37:37 to 1:40:00. The Council reopened the hearing and record at 1:40:50 to 1:43:02. Mayor Kovash did not subsequently disclose his ex parte contacts.

To be clear, what Mayor Kovash said is nothing more than his claims, but the public was not given the opportunity to verify or dispute his claims. The damage that Mayor Kovash has imposed on these proceedings is irreparable. He introduced biased hearsay at the most opportune time- after hearing the other Councilors' positions. The vote was apparently going to be a tie and the Planning Commission decision would be affirmed. Mayor Kovash tried to persuade the Councilors in opposition using his ex parte contacts.

If Mayor Kovash does not recuse himself, then I challenge his ability to make impartial decisions in these appeals due to his bias. The Council must vote to accept or deny the challenge and the Mayor may not vote; and it shall be incorporated into the record of the hearing pursuant to the Council Rules.

Thank you for your considerations.

Karie Oakes  
1125 Marylhurst DR  
West Linn, OR

The Robinwood Neighborhood Association of the City of West Linn

Re: AP-12-02 and AP-12-03 The "Good Neighbor Plan" 2/04/13

The Lake Oswego-Tigard Water Partnership (LOT) proffers a propaganda document that their representatives continuously misrepresent as being drafted "in cooperation with the neighborhood" when in reality this "Good Neighbor Plan" is entirely a creation of the LOT public relations staff.

The "Good Neighbor Plan" has been repeatedly repudiated by the Robinwood Neighborhood Association (RNA), which created its own Mitigation Plan, included in the record.

At the council hearings on 1/14, 1/15 and 1/28 the LOT representatives repeatedly refer to this propaganda document to sell their project when the majority of claimed benefits and mitigations are actually code requirements.

Worse, the City of West Linn Planning staff refers to this document as the final word on mitigation, while completely ignoring the Mitigation Plan created by the RNA.

Shilling the applicants propaganda while ignoring the input of the West Linn citizens most directly impacted fails the test of citizen participation, fair dealing and good governance.

The misrepresentation by West Linn staff, of document, exhibits and slide shows created by LOT staff, as objective analysis, again calls into question the integrity of the process and participants

Please reject this broken and corrupted process so that a more compatible and respectful project and process may come forth to solve our mutual water challenges.

RNA Planning Committee

# The Robinwood Neighborhood Association of the City of West Linn

Re: AP-12-02 and AP-12-03 Conditions of Approval 2/04/13

## Summary:

Attempts to hurriedly assemble acceptable and legally enforceable conditions of approval from the council dais at the final tick of the eleventh hour fails the test of citizen participation, fair dealing and good governance.

Negotiation and presentation of potential conditions of approval conducted outside of open public meetings, with community members at the table, fails the test of citizen participation, fair dealing and good governance, and calls into question the integrity of the process and participants.

## History:

- The Robinwood Neighborhood Association (RNA) empaneled the Great Neighbor Committee in May 2011 to deal with Lake Oswego-Tigard Water Partnership (LOT) issues.
- Community volunteers invested thousands of hours to produce a Mitigation Plan document.
- The City of West Linn invested thousands of dollars to hire a planner to advise the RNA, to assure that the Mitigation Plan would embody legal and practical ideas.
- The RNA Mitigation Plan is a collection of goals and ideas, as a basis for negotiating comprehensive and legal mitigation language with West Linn and LOT.
- The RNA Mitigation Plan was formally endorsed by the RNA and delivered to LOT and the West Linn Planning staff in December 2011.
- The West Linn Planning Staff Reports for both permits, for all hearings to date, completely fail to cite or even to mention the RNA Mitigation Plan. Why?

Please reject this broken process so that a more compatible and respectful project and process may come forth to solve our mutual water challenges.

RNA Planning Committee

The Robinwood Neighborhood Association of the City of West Linn

Re: AP-12-02 and AP-12-03 Water Inter-tie and IGA 2/04/13

Summary:

We currently have a mutually beneficial water inter-tie and a governing IGA, between the West Linn and the Lake Oswego water systems.

This inter-tie has been used to the benefit of each city about 7 times since construction, per somewhat vague West Linn records.

The current Lake Oswego Water Treatment Plant has a capacity of 16mgd.

Current peak Lake Oswego Water water usage, measured over the last three years, with conservation methods in place, is barely above 12mgd.

Therefore, Lake Oswego could currently provide 4mgd to West Linn under their highest usage scenario without invoking curtailment for their customers.

The new Lake Oswego City Council has no intention of revoking the current IGA or demolishing the physical inter-tie.

The physical and mechanical manifestation of our water systems are unchanged from the recent past will continue forward regardless of this planning decision.

The pretense of the gloom and doom scenarios attested to by the proponents of the Lake Oswego-Tigard Water Project partnership have no place in a reasoned examination of their current proposal.

Please reject this blatant and inaccurate bullying and fear-mongering, so that a more compatible and respectful project and process may come forth to solve our mutual water challenges.

RNA Planning Committee

## Pelz, Zach

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**From:** Gary Hitesman [ghitesman@gmail.com]  
**Sent:** Friday, February 01, 2013 11:41 AM  
**To:** CWL Council; Pelz, Zach; Sonnen, John  
**Subject:** Mayor's Ex Parte \_ AP-12-02

West Linn City Councilors and Mayor,

When evaluating the proposal put forward by your city manager and the LOT Partnership, ORS clearly states that the whole of the record shall be taken into consideration.

Unlike the Holiday Inn Appeal where one fact was used to overturn the Planning Commission decision to approve, these Conditional Use applications fail on many fronts. Unlike the Holiday Inn application where lot sizes were used as evidential fact to overturn the PC decision in 2011; AP-12-02 et al has suffered it's death by a thousand cuts in errors, omissions, and other stuff that does not meet criteria.

Including lack of real citizen participation and an overwhelming disapproval from the numerous neighborhood association meetings conducted by the RNA. With 11 NA's on record and 7 that meet regularly or now, annually, the mayor's parsing of meeting notes is not substantial to overturn the other overwhelming evidence to the contrary of his bias and prejudicial views.

Also, the Sunset NA leadership and friendships with 2 of the councilors could appear to place their participation on a very, very slippery slope.(And again, I don't know what NA's the mayor referred to as the question has not been answered and the Mayor was unclear.

Please, look at the whole of the record and consider the fact that you have heard testimony from many, many affected residents who have spoken using the code and have stuck to the criteria. Despite the protests and character assassinations raised by the applicant; it is very easy to establish that the burden of proof has not been met. The CUP has used the City of West Linn to aid and abet in getting this thing through.

This is born out of the record in spades. The only hope the mayor has in passing this application is to change the message to suit his wants. Apparently, deciphering a decision requires precedent and interpretation; something the mayor assured us he was quite capable of providing, given his 8 years on the PC and CC, prior to making his Ex Parte Gaffe.

Well, the issues of Ex Parte, LACK of CLARITY, and Precedent have been misconstrued as well. The precedents requested by the applicant and allowed by the City are unprecedented in their wonton destruction of the intent and meaning of the code and criteria. Allowing the myriad of exceptions sought b\y the applicant, solely because they make it harder for an industrial facility to properly coexist within an existing neighborhood, invalidates much of the criteria and goes against the intent and purpose of the Comprehensive Plan, the Imagine West Linn Document, and still, the Water Master Plan. And when you add in the Mayor's inconsistent messaging, perceived bias, change in direction, and lack of clarity in the proceedings (and within the application,) this application will take months upon months to shift through and prepare an appeal to LUBA if the council unwisely decides to overturn the PC deliberations.

Please UPHOLD the PC decision and let LO come back with a more reasonable solution that meets the criteria already on the books.



**Pelz, Zach**

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**From:** Gary Hitesman [ghitesman@gmail.com]  
**Sent:** Monday, February 04, 2013 4:39 PM  
**To:** Pelz, Zach; CWL Council  
**Subject:** AP-12-02  
**Attachments:** appeal.pdf

Zach, attached are sketches showing how the entire application hasw ben rendered void due to the substantial change of demolishing the existing Operations building.

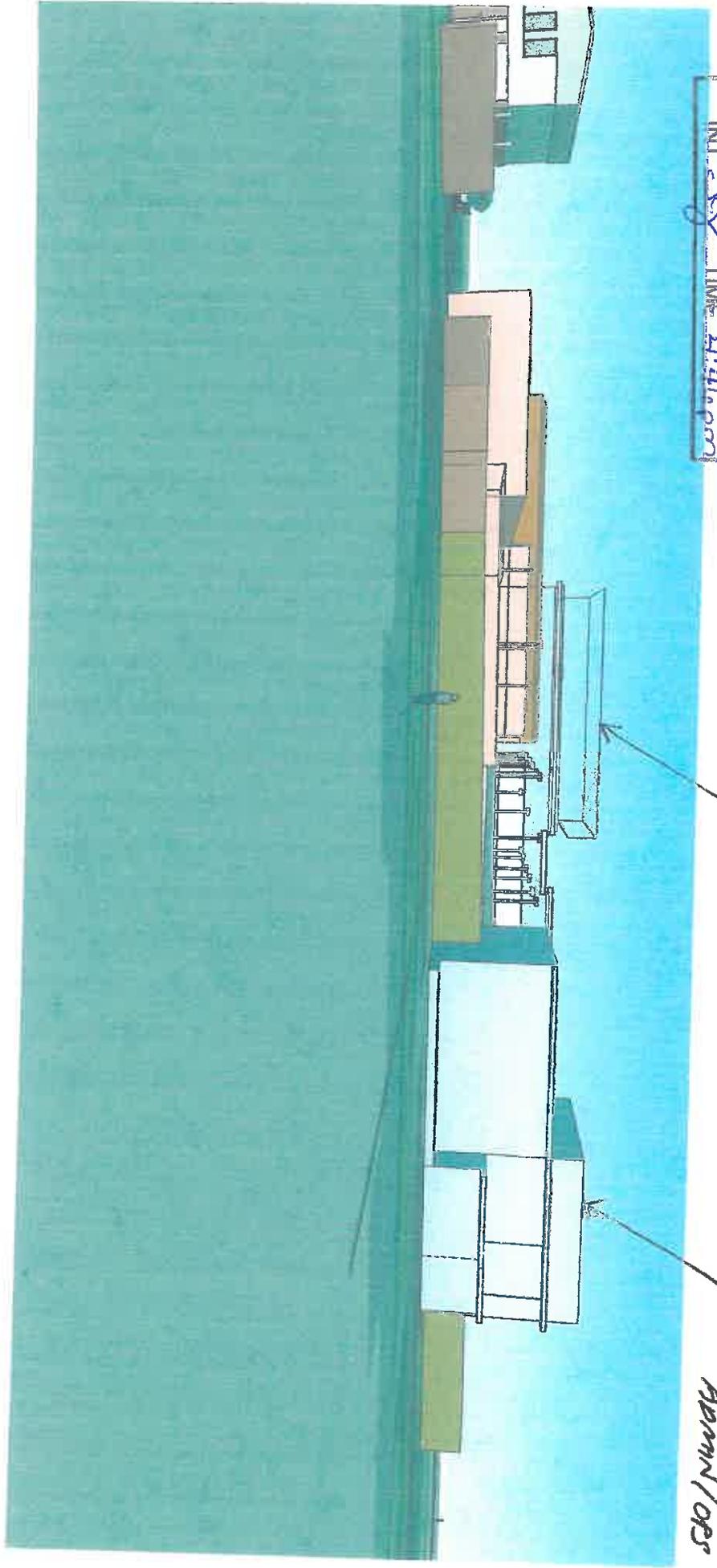
I will be dropping off hard copies at City hall for inclusion into the record

AP-19-02 *Admin*

RECEIVED

FEB 04 2013

PLANNING BUILDING  
CITY OF WEST LINN  
INT. STAIR TIME 2:44pm



OUTLINE OF  
EXISTING BUILDINGS

NEW  
ADMIN / OPS

The revised site plan omits important & corollary criteria that is now obsolete, contradictory, & presents many errors. The documents & exhibit's do not address how the revised site plan conforms to the criteria.

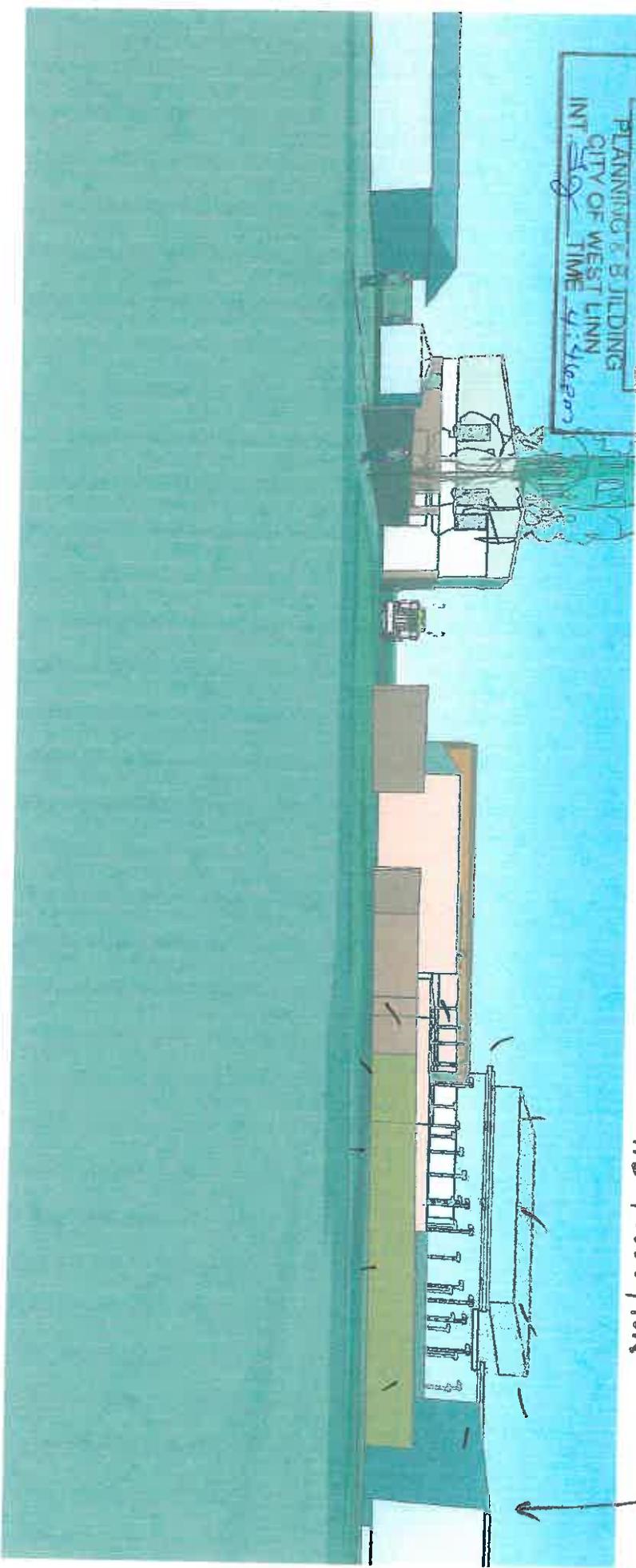
2/14/13

Ap-12-02 Appeal

RECEIVED

FEB 04 2013

PLANNING & BUILDING  
CITY OF WEST LINN  
INT. TIME 4:45pm



NO FIT  
OUT OF SCALE  
LIGHT POLLUTION  
NOISE POLLUTION

OR SWL

Does not meet criteria of CDC 55.100

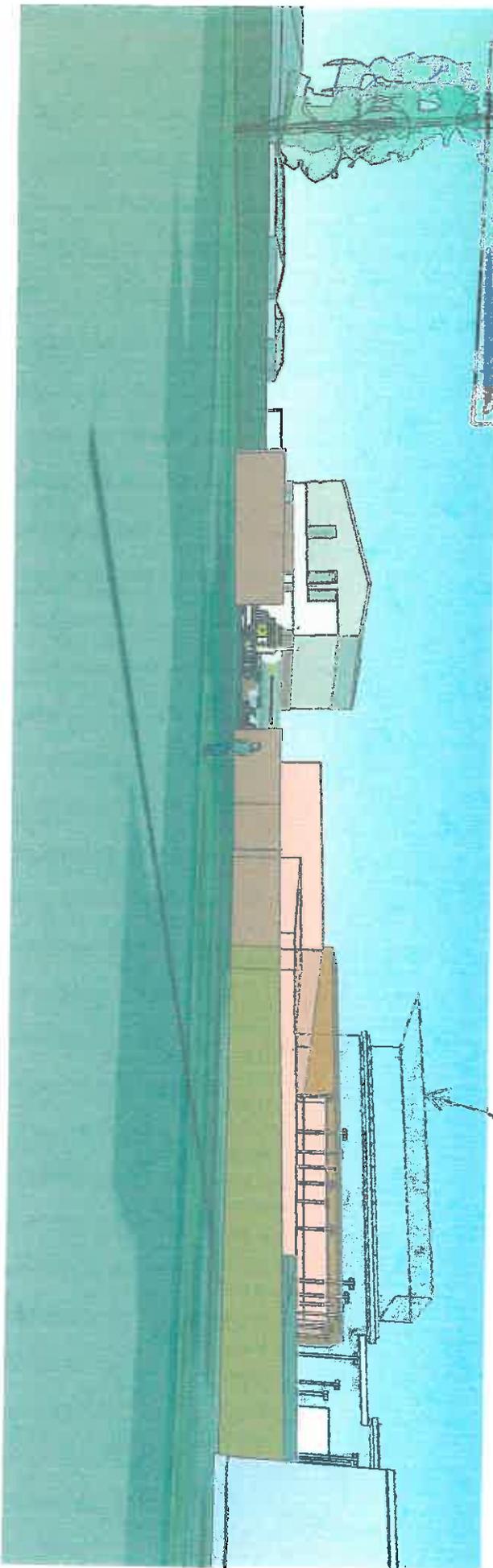
2/4/13

AP-12-02 APPEAL

RECEIVED

FEB 04 2013

PLANNING & BUILDING  
CITY OF WEST LINN  
INTERIOR



OUTLINE OF EXISTING BUILDING.

LAYERING & COMPATIBILITY & MASS & HUMAN SCALE ARE NO CONCERN VISIBLE.

2/4/13

February 4, 2013

West Linn City Council  
City of West Linn City Hall  
22500 Salamo Road  
West Linn, OR 97068



Re: Lake Oswego-Tigard Water Partnership  
AP 12-02; AP 12-03  
City Files: CUP-12-02/DR-12-04, Water Treatment Plant  
Water Partnership: CUP 12-04/DR-12-14: Water Transmission Line

Dear Mayor Kovash:

As we referenced in our correspondence of January 30<sup>th</sup>, at the Council meeting of January 28, 2013 it was expected that a decision on the appeal of the above applications would occur. Instead, the process was halted when you announced that you had participated in two separate and distinct conversations with two unnamed neighborhood groups about their positions on the pending appeals.

Your rendition of these two previously undisclosed *ex parte* conversations was deemed to be new evidence and the record was then left open for participants to assess and respond to the information described by you.

Since the record was left open for participants to assess and respond to the information described by you, and since you attached significance to them and brought them to the Council's attention for purposes of influencing the Council's deliberations and since the record had as a consequence been supplemented with the your description of these two *ex parte* discussions, we requested that you provide for the record the information below:

1. With whom (by name) did these conversations occur?
2. When did the conversations occur, how and where?

3. Who initiated the conversations?
4. What confirmation existed indicating that those speaking with you represented a neighborhood group; what persons were included in any such group?
5. What were the specifics of the conversations – who said what? What was the sequence of questions, answers and comments?
6. At any point, did you inform the other participants that such conversations were *ex parte* contacts, improperly occurring while the Council was actively considering land use appeals on the very topic to which the conversations related?
7. Were the group representatives asked to submit their comments to the record in some documented form?
8. Were any written communications or emails provided to, or from, these groups or their representatives? If so, where are the copies available for public review?

Because time was of the essence, we asked if you could please respond to the answers to our questions one through eight no later than Friday, February 1<sup>st</sup> by NOON by filing a copy in the record and emailing a copy to us at our specific email addresses so that we would be able to timely file any response that we may have into the record.

We have not received any email from you regarding any answers to our questions, but we did notice that there is newly submitted testimony to the City by you via an email from you to Megan Thornton dated 1/31/13 at 2:27pm which states:

"Earlier this month I called two NA Presidents regarding any meetings that NA's may have had concerning LOT. The substance of these contacts was disclosed at the January 28, 2013 Council meeting. John "

We greatly appreciate your recent written acknowledgement of these previous two *ex parte* communications, but unfortunately you have failed to provide any crucial details at all about these *ex parte* contacts. We would greatly appreciate if you would immediately provide on the record all of the specific details of these two contacts by answering the eight questions posed in our original letter.

Also, as we indicated in our earlier letter, this whole series of events is inconsistent with a fair process. As a result, we ask you to please recuse yourself from any participation in these appeals. The facts show that you consciously engaged in two improper *ex parte* discussions which you have stated were initiated by you. In addition, you did not disclose them until you accidentally stated your actions when you tried to use them, as evidenced at the last City Council meeting, as a means to influence your fellow Councilors.

By handling these conversations as you did at the January 28, 2013 Council session, you have now improperly assumed the multiple roles of witness, investigator, proponent and decision-maker. You cannot do these and maintain objectivity or fairly preside over this process. You have made choices about what you have done outside the hearing process as well as what you have disclosed about it. You had no basis for doing these, and now have attempted to influence the balance of the Council based on your narrative of these improper *ex parte* contacts. Your actions are contrary to the supposed transparency of the land use appeal process.

Mr. Mayor, we have absolutely no doubt that you are an honorable man, and that you mean well for the citizens and our city. But under these sets of circumstances, and for the record, we hereby ask you to do the honorable thing and totally remove yourself from any further participation in these appeals as your actions have totally compromised your objectivity on this particular appeal.

Very truly yours,

  
Norman B. King

  
Kevin Bryck

  
Dave Froode

RECEIVED

FEB 04 2013

PLANNING & BUILDING  
CITY OF WEST LINN  
INT. \_\_\_\_\_ TIME \_\_\_\_\_

ANDREW H. STAMP, P.C.  
ATTORNEY AT LAW  
Kruse-Mercantile Professional Offices, Suite 16  
4248 Galewood St.  
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318  
Fax: 503.675.4319  
andrewstamp@comcast.net

FEBRUARY 4, 2013

VIA HAND DELIVERY

Mayor John Kovash  
City of West Linn  
22500 Salamo Road  
West Linn OR 97068

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

Dear Mayor Kovash:

Upon returning from a short vacation last Thursday, I was contacted by various members of STOP who witnessed you presenting evidence outside the record - in the form of undisclosed *ex parte* contacts - during the deliberations portion of the January 28, 2013 public hearing process. I watched the video of the aforementioned hearing, and I was disappointed to see you taking on the role as an advocate for LOT by presenting to the other councilors the results of an evidence-gathering mission that you undertook on behalf of the applicant. In so doing, you have violated your statutory obligations as a quasi-judicial decision-maker, and have demonstrated that you are biased and cannot be counted on to render a fair and impartial decision regarding the LOT land use applications. As a result of your actions, I trust you will take the only honorable course of action, which is to recuse yourself from this case.

**I. Facts.**

First, I would like to recount the facts, as I understand them, for the record. At the January 14, 2013 public hearing, you stated that you had had some *ex parte* contacts prior to that date, but you stated that you had memorialized the substance of all of those conversations in emails that had been placed in the record. At no point did you ever specifically identify "two Presidents of neighborhood associations" as having been parties to any of these *ex parte* communications. We have made a diligent attempt to review your email disclosures which are preserved in the record, and none that we read reveal contact with any neighborhood association presidents.

Similarly, at the January 28, 2013 public hearing, you opened the hearing by announcing that you had not had any additional *ex parte* contacts between January 14 -28, 2013.

However, towards the end of the deliberations that occurred on the January 28, 2013, you finally came forth with the revelation that you had deliberately sought out evidence outside of the

record. You stated that you had initiated discussion with neighborhood association presidents because you were concerned about certain un-rebutted testimony that had been provided to the Council by opponents of the project. Your disclosure occurred at a time in the proceedings when all four sitting decision-makers had already revealed their tentative vote, and at a point in time when it was clear that the appeal was not going to be overturned if the tentative 2-2 vote stood. In seeking to throw a monkey wrench into the process, you stated the following:

“I heard several times, and it is in throughout the literature, that LOT is opposed by seven neighborhood associations, and the assumption I heard tonight is that they were against this because it was bad for the community. I didn’t make that assumption. I called them, I called two of them. The first one I called he said, “Well we have some minutes on that. I’ll send them to you”. What the minutes said was that they opposed LOT until there was better dialogue between Lake Oswego, Tigard, and the neighborhood association. They were keying on something else that was said that there were some problems with the way this issue has been handled and that’s a problem. The other neighborhood association I called, I asked the neighborhood president what the impact was or what they heard. And he said “Well I can’t send you minutes because we have not had a meeting since last June or July.” And I said “What about LOT?” He said “never heard of it”. That neighborhood association didn’t have an opinion on LOT and that should be bothersome to us.”

See [http://westlinn.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=337](http://westlinn.granicus.com/MediaPlayer.php?view_id=2&clip_id=337). As a result of your disclosure, the City Council decided not to hold a formal vote that evening. Rather, it decided to instead re-open the record in an attempt to cure the late disclosure.

STOP wrote to you on Wednesday, 30 January 2013, and posed a series of eight detailed questions pertaining to your inadequately disclosed *ex parte* contacts. These questions are set forth below:

- [W]e request the following information be provided as matters of minimal fairness:
1. With whom (by name) did these conversations occur?
  2. When did the conversations occur, how and where?
  3. Who initiated the conversations?
  4. What confirmation existed indicating that those speaking with the Mayor represented a neighborhood group; what persons were included in any such group?
  5. What were the specifics of the conversations – who said what? What was the sequence of questions, answers and comments?
  6. At any point, did the Mayor inform the other participants that such conversations were *ex parte* contacts, improperly occurring

- while the Council was actively considering land use appeals on the very topic to which the conversations related?
7. Were the group representatives asked to submit their comments to the record in some documented form?
  8. Were any written communications or emails provided to, or from, these groups or their representatives? If so, where are the copies available for public review?

Rather than comply with STOP's reasonable request for additional substantive disclosure, you provided the following non-substantive disclosure on January 31, 2013, at 2:27 pm, via an email placed in the record that we received on Friday, February 1, 2013:

"Earlier this month I called two NA Presidents regarding any meetings that they may have had concerning LOT. The substance of these contacts was disclosed at the January 28, 2013 council meeting."

As I understand the facts, there has been no other effort to respond to the specific questions posed by STOP.

## II. Legal Analysis.

### 1. Your Actions Are Unlawful and Have Irreparably Tainted the Proceedings.

Your actions are unlawful for five reasons:

1. You sought to develop your own evidence outside of the public hearing process.
2. You failed to disclose multiple *ex parte* contacts that you had engaged in concerning the LOT application. It appears you may have even affirmatively made a misstatement of fact regarding not having had *ex parte* contacts between January 14, 2013 and January 28, 2013.
3. You initiated the *ex parte* contacts for the purpose of influencing other members of the City Council.
4. When you did finally disclose the *ex parte* contacts, your disclosure was inadequate to convey the substance of the conversations
5. Your disclosure was untimely.

Last month I wrote a memo which was forwarded to City Councilor Frank summarizing the applicable law pertaining to the issue of prejudgment bias. Councilor Frank believed that based on his review of the case as a member of the Planning Commission, that he could not put his personal feelings aside and rule on the matter based on the facts and criteria. While we do not believe that the law compelled him to recuse himself merely because he sat on the Planning Commission when it heard the LOT applications, we respect his decision, his candor, and his dedication to keep the process fair and objective.

You actions, on the other hand, do demand recusal. In my memo, I noted that although the standard for finding bias is high, there were certain actions that have been found to violate the standard. I stated:

*Based on the case law decided to date, the type of conduct that has sufficed to demonstrate "actual bias" is really quite narrow, and includes the following:*

- *Personal verbal or written attacks on a party that indicate personal animus;*
- *Developing evidence outside the record, particularly when the goal in developing that evidence is to favor one side's position,*
- *Inflammatory statements, particularly those that indicate an inability of the decision maker to be fair and objective - or that suggest that the result is a foregone conclusion. (Emphasis added).*

You violated the second of these points. As LUBA has recently stated:

[I]t is highly unusual and at least potentially improper for a decision maker to independently seek out or attempt to obtain additional evidence outside the scope of a public hearing with respect to a quasi-judicial application pending before that decision maker. The role of the local government decision maker is not to *develop* evidence to be considered in deciding a quasi-judicial application, but to impartially consider the evidence that the participants and city planning staff submit to the decision maker in the course of the public proceedings. The fact that councilor Haskell felt called upon to develop additional evidence not submitted during the public proceedings, and to cause that evidence to be presented to his fellow decision-makers, is an indication that Haskell had departed somewhat from his obligatory role as an impartial quasi-judicial decision maker. (Emphasis in original).

*Woodard v. City of Cottage Grove*, 54 Or LUBA 176, 186 (2007).

You initiated *ex parte* contacts for the purpose of developing evidence to rebut the substance of testimony proposed by STOP and its membership. The fact that you concealed the *ex parte* contacts until such time as you had determined that the tentative vote was unfavorable to LOT makes your actions particularly egregious. It is clear from your testimony that you were trying to influence the other three city councilors by telling them that they should be "bothered" by what you incorrectly perceived to be discrepancies between evidence presented by STOP and evidence that you researched on your own. In a recent case that I was tangentially involved with, *Oregon Natural Desert Ass'n, v. Harney County*, \_\_ Or LUBA \_\_ 2012 WL 1964616, LUBA No. 2011-097 (May 3, 2012), LUBA remanded a case where a County Commissioner recused himself but still gave his opinion on the merits of the application. In that case, LUBA found that the potential influence that the Commissioner's statements might have had on how the other Commissioners voted was unclear, a problem which LUBA felt warranted a remand.

The court of appeals has noted that the failure to adequately disclose an *ex parte* contact is substantive error, as opposed to being a mere procedural error. *Horizon Construction, Inc. v. City of Newberg*, 114 Or. App. 249, 834 P.2d 523 (1992). Thus, STOP's substantive right to a full and fair hearing was violated when you talked to undisclosed persons outside of the public hearing process on undisclosed dates. This is particularly true since you used the information that you obtained from those *ex parte* contacts in an attempt to derail and delay what appeared to be a 2-2 vote, which would have otherwise resulted in the denial of the appeal.

## 2. Your Disclosure is Inadequate to Cure the Problem.

ORS 227.180(3) provides:

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. (Emphasis added).

As an initial matter, this law only provides a method for curing *ex parte* contacts if the contact is initiated by someone other than the decision maker. Note that ORS 227.180(3) is written in a fashion that presumes that the *ex parte* contact with a decision maker is initiated by someone other than the decision maker: the statute assumes that the member of the decision-making body is the person "*receiving the contact*," not the person initiating it.

Second, your disclosure to date has been inadequate. A general disclosure that merely recites the issue or topic of conversation is not sufficient to meet the standard set by the courts.

Third, in this case, the timing of both the *ex parte* contact and the disclosure is also critical. If, as we understand to be the case, one or more of the *ex parte* contacts with the two neighborhood association presidents occurred prior to January 14, 2013, then the disclosure was not "made at the first hearing following the communication where action will be considered \* \* \*."<sup>1</sup>

<sup>1</sup> We are aware that some older LUBA cases place little relevance to the actual timing of the disclosure, regardless of the statutory language stating that the public announcement must be "made at the first hearing following the communication where action will be considered." However, in light of *PGE v. BOLI*, the "first hearing" language must be given effect if the curative actions are to be deemed effective. The statute is clearly written with no ambiguity, and the exact words must be enforced.

Fourth, it is important to recognize that even in cases where ORS 227.180(3) does apply, it requires the decision maker who has received *ex parte* communications to take two separate and distinct actions. First, the decision maker must place the substance of the conversation on the record. Second, the decision maker must make a "public announcement of the content of the communication." Given that the statute sets this second act out as a separate and distinct act apparent from "plac[ing] on the record the substance of any written or oral *ex parte* communications," it is clear that merely sending an email to the "file" as you have done is not sufficient.

### III. Conclusion.

In conclusion, you have demonstrated that you are incapable of serving as a neutral decision-maker in this case. You had a solemn obligation as a quasi-judicial decision-maker and your actions did not live up to that standard. You were not hired to be the fact-finder and spokesperson for LOT, but that is what you have become. While stepping down from this case may not completely cure the taint you created on these proceedings, it is the only right thing to do. To continue to stay on the case will only be further evidence that you are so vested as an advocate for LOT that you are willing to set aside proper decorum to achieve your goal as a supporter of the project. We respectfully request that you recuse yourself from these proceedings.

Sincerely,

ANDREW H. STAMP, P.C.

*Andrew H. Stamp*

Andrew H. Stamp

AHS:ahs  
cc: STOP

The Robinwood Neighborhood Association of the City of West Linn

Re: AP-12-02 and AP-12-03 Conditions of Approval 2/04/13

Summary:

Attempts to hurriedly assemble acceptable and legally enforceable conditions of approval from the council dais at the final tick of the eleventh hour fails the test of citizen participation, fair dealing and good governance.

Negotiation and presentation of potential conditions of approval conducted outside of open public meetings, with community members at the table, fails the test of citizen participation, fair dealing and good governance, and calls into question the integrity of the process and participants.

History:

- The Robinwood Neighborhood Association (RNA) empaneled the Great Neighborhood Committee in May 2011 to deal with Lake Oswego-Tigard Water Partnership (LOT) issues.
- Community volunteers invested thousands of hours to produce a Mitigation Plan document.
- The City of West Linn invested thousands of dollars to hire a planner to advise the RNA, to assure that the Mitigation Plan would embody legal and practical ideas.
- The RNA Mitigation Plan is a collection of goals and ideas, as a basis for negotiating comprehensive and legal mitigation language with West Linn and LOT.
- The RNA Mitigation Plan was formally endorsed by the RNA and delivered to LOT and the West Linn Planning staff in December 2011.
- The West Linn Planning Staff Reports for both permits, for all hearings to date, completely fail to cite or even to mention the RNA Mitigation Plan. Why?

Please reject this broken process so that a more compatible and respectful project and process may come forth to solve our mutual water challenges.

RNA Planning Committee

FEB 04 2013

CIVIL SERVICE BUILDING  
CITY OF WEST LINN

The Robinwood Neighborhood Association of the City of West Linn

Re: AP-12-02 and AP-12-03 Water Inter-tie and IGA 2/04/13

Summary:

We currently have a mutually beneficial water inter-tie and a governing IGA, between the West Linn and the Lake Oswego water systems.

This inter-tie has been used to the benefit of each city about 7 times since construction, per somewhat vague West Linn records.

The current Lake Oswego Water Treatment Plant has a capacity of 16mgd.

Current peak Lake Oswego Water water usage, measured over the last three years, with conservation methods in place, is barely above 12mgd.

Therefore, Lake Oswego could currently provide 4mgd to West Linn under their highest usage scenario without invoking curtailment for their customers.

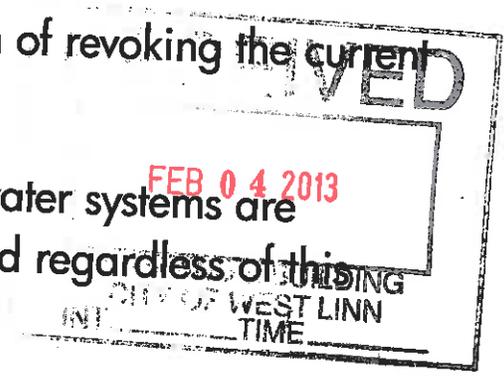
The new Lake Oswego City Council has no intention of revoking the current IGA or demolishing the physical inter-tie.

The physical and mechanical manifestation of our water systems are unchanged from the recent past will continue forward regardless of this planning decision.

The pretense of the gloom and doom scenarios attested to by the proponents of the Lake Oswego-Tigard Water Project partnership have no place in a reasoned examination of their current proposal.

Please reject this blatant and inaccurate bullying and fear-mongering, so that a more compatible and respectful project and process may come forth to solve our mutual water challenges.

RNA Planning Committee



Greetings Council Members;

2-4-2013

Our Codes should not be for Sale.

Our Comprehensive plan should not be compromised.

Our Safety should be #1.

Our Planning Commissioners Should Not Be Discredited.

We, The Citizens of West Linn have brought the truth to you.

We have been accused of non creditability because we didn't  
Pay for expert reports, not true.

Our I G A intertie, Once you have intertie , it is very hard to  
remove as you have to show how it is not serving a purpose.

This IGA Intertie shouldn't even be considered .

As our mayor said, codes , so please refer to codes as our  
planning commissioners worked so hard to do.

I still can't find a 48 inch transmission line going strictly thru a  
residential neighborhood.

We are against LOT's WTP expansion.

Carl and Linda Edwards.



February 4, 2013

Dear Councilor Tan:

At the last City Council meeting it is my understanding that Councilor Carson moved to direct the West Linn staff to draft a list of approximately nine conditions of approval that LOT would need to agree with for the permits to be approved. One of these conditions was a mitigation plan to be implemented that would alleviate the effects of construction on businesses along Highway 43.

On behalf of the ownership and management team of Robinwood Shopping Center, and many of the businesses and tenants in the area, I would like to share with you our thoughts and concerns about mitigation.

There truly is no way that most of the damage to the businesses along Highway 43 that will be done by the LOT project over a three year period can be meaningfully mitigated except by the actual reimbursement of the monies lost as a result of the work being done.

The problem is that extra signage and extra advertisement, along with a lot of other nice concepts, cannot mitigate the scenarios below. I can think of no meaningful way to mitigate other than a 100% financial reimbursement for the monies lost.

Traffic congestion problems are traffic congestion problems. No matter how much you try to reduce that problem, people being people will go out of their way to avoid any traffic congestion. People do not want to be frustrated by traffic jams and face the uncertainty of slower or possibly interrupted traffic flow. Large slow moving construction trucks are large slow moving construction trucks.

Additionally, there is no way that road construction problems can be sufficiently controlled to prevent the loss of business for the same exact reasons. Nothing can change that. People will simply reroute from the places they would normally go for business to avoid being hassled by the traffic issues that these projects will create.

There is a double problem which compounds the issue, the tens of thousands of additional slow moving trucks and other vehicles that are going to descend on the area in addition to the several miles of four foot pipe placed in the center of Highway 43 that is going to disrupt the flow of Highway 43.

Another truth is that businesses no matter what master mitigation plan is implemented are going to have serious financial losses. Studies that have been done that examined real after the fact situations where this type of construction has occurred in similar environments show that there will be substantial financial losses for most all of the businesses. **These studies have been submitted into the record for your review via a report rendered by Dr. Michael Wilkerson dated January 11, 2013.**

The studies are incontrovertible as they are studies that were done based upon the hard facts and evidence after the actual construction work was performed, and also after factoring in all of the mitigation efforts that had been made. These studies show that mitigation does not prevent substantial losses.

LOT says to the contrary, yet they do not offer any proof for their position, and also most notably refrain from offering to reimburse businesses for the loss of income that the businesses will experience. If they really felt that there were to be no losses, then they should be willing to "step up to the plate" and agree to compensate the businesses for any financial losses they suffer during the time frame of this work. The fact that they won't agree to compensate shows how they really think and feel about this issue.

We are talking about hundreds of thousands of dollars of actual losses to many businesses that cannot afford it with an aggregate in the millions of dollars, yet LOT does not want to acknowledge and refuses to accept the direct responsibility.

We all know how bad things have been for all businesses over the past several years. And now just when the mom and pop businesses, and others, which employ many of our residents, are just starting to get some traction and momentum, they are getting ready to possibly be hit very hard by these two major construction projects. Many flat will not make it, and businesses and jobs for our residents will be lost.

If LOT truly thought there was no problem, they would be willing to be responsible for people's losses which can clearly be defined based upon prior years of business. But they will not do that because they realize what the costs would be.

I urge you to please not accept any business mitigation plan whatsoever that does not make businesses financially whole. A mitigation plan that compensates businesses for the loss of income directly due to this project is the only fair and intelligent way for there to be true and satisfactory alleviation of the effects of the construction for businesses.

Additionally, besides the businesses financial plight, there is unfortunately a plethora of other problems that businesses, residents and all of the citizens will also have to endure if this project is approved. These problems have been addressed by many others in multiple letters and emails, and put into the record, so I will not burden you with a repeat.

Unfortunately, the LOT project has taken away a lot of precious time from our city staff and all of our citizens, time that we could have been using to work together in a constructive way to come up with a Master Plan to solve our water problems. Let's do that now.

I urge you to please reject this ill-conceived plan that does much harm to our businesses and residents. Let's put this behind us, and then let's immediately commence to work with all of the citizens of West Linn to bring about a Master Plan that works for all.

To that end, I promise that I would personally do everything that I could to make that happen, and I know that there are many others who are against this project who would do the same.

Sincerely,



William J. More  
Robinwood Shopping Center, LLC

c.c. 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

February 4, 2013

Dear Councilor Carson:

At the last City Council meeting it is my understanding that Councilor Carson moved to direct the West Linn staff to draft a list of approximately nine conditions of approval that LOT would need to agree with for the permits to be approved. One of these conditions was a mitigation plan to be implemented that would alleviate the effects of construction on businesses along Highway 43.

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If LOT truly thought there was no problem, they would be willing to be responsible for people's losses which can clearly be defined based upon prior years of business. But they will not do that because they realize what the costs would be.

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February 4, 2013

Dear Councilor Jones:

At the last City Council meeting it is my understanding that Councilor Carson moved to direct the West Linn staff to draft a list of approximately nine conditions of approval that LOT would need to agree with for the permits to be approved. One of these conditions was a mitigation plan to be implemented that would alleviate the effects of construction on businesses along Highway 43.

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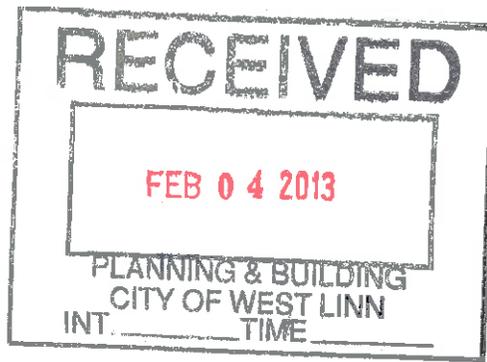
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William J. More  
Robinwood Shopping Center, LLC

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February 4, 2013

Dear Councilor Carson:

At the last City Council meeting it is my understanding that Councilor Carson moved to direct the West Linn staff to draft a list of approximately nine conditions of approval that LOT would need to agree with for the permits to be approved. One of these conditions was a mitigation plan to be implemented that would alleviate the effects of construction on businesses along Highway 43.

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Another truth is that businesses no matter what master mitigation plan is implemented are going to have serious financial losses. Studies that have been done that examined real after the fact situations where this type of construction has occurred in similar environments show that there will be substantial financial losses for most all of the businesses. **These studies have been submitted into the record for your review via a report rendered by Dr. Michael Wilkerson dated January 11, 2013.**

The studies are incontrovertible as they are studies that were done based upon the hard facts and evidence after the actual construction work was performed, and also after factoring in all of the mitigation efforts that had been made. These studies show that mitigation does not prevent substantial losses.

LOT says to the contrary, yet they do not offer any proof for their position, and also most notably refrain from offering to reimburse businesses for the loss of income that the businesses will experience. If they really felt that there were to be no losses, then they should be willing to "step up to the plate" and agree to compensate the businesses for any financial losses they suffer during the time frame of this work. The fact that they won't agree to compensate shows how they really think and feel about this issue.

We are talking about hundreds of thousands of dollars of actual losses to many businesses that cannot afford it with an aggregate in the millions of dollars, yet LOT does not want to acknowledge and refuses to accept the direct responsibility.

We all know how bad things have been for all businesses over the past several years. And now just when the mom and pop businesses, and others, which employ many of our residents, are just starting to get some traction and momentum, they are getting ready to possibly be hit very hard by these two major construction projects. Many flat will not make it, and businesses and jobs for our residents will be lost.

If LOT truly thought there was no problem, they would be willing to be responsible for people's losses which can clearly be defined based upon prior years of business. But they will not do that because they realize what the costs would be.

I urge you to please not accept any business mitigation plan whatsoever that does not make businesses financially whole. A mitigation plan that compensates businesses for the loss of income directly due to this project is the only fair and intelligent way for there to be true and satisfactory alleviation of the effects of the construction for businesses.

Additionally, besides the businesses financial plight, there is unfortunately a plethora of other problems that businesses, residents and all of the citizens will also have to endure if this project is approved. These problems have been addressed by many others in multiple letters and emails, and put into the record, so I will not burden you with a repeat.

Unfortunately, the LOT project has taken away a lot of precious time from our city staff and all of our citizens, time that we could have been using to work together in a constructive way to come up with a Master Plan to solve our water problems. Let's do that now.

I urge you to please reject this ill-conceived plan that does much harm to our businesses and residents. Let's put this behind us, and then let's immediately commence to work with all of the citizens of West Linn to bring about a Master Plan that works for all.

To that end, I promise that I would personally do everything that I could to make that happen, and I know that there are many others who are against this project who would do the same.

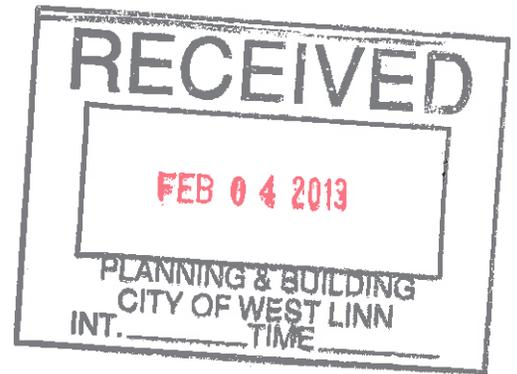
Sincerely,



William J. More  
Robinwood Shopping Center, LLC

c.c. 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

2/01/13



Dear West Linn City Council,

I was very disappointed when leaving the meeting on Monday, Jan. 28, 2013. And then the Mayor introducing new evidence at the last minute right before the council vote? Was this planned and calculated? Is the City Council trying to give LOT more time to get other items needed to get West Linn Council to pass the project? How many more chances are you going to give them? We've been battling this for over two years. This has gone on far too long, and you have given them plenty of time to do their homework. This project shouldn't even be considered. Have we forgotten it's in a residential area? The West Linn Planning Commission has gotten it right, as well as Councilors Jones and Tan. No, the project does not belong in West Linn and especially not in a quiet residential neighborhood!

This project is because LO wants to make money from selling water to Tigard and let's not forget about the water to develop the Stafford triangle. Not really seeing the benefits for West Linn. Everything about this project is WRONG!

At the start of the meeting, the Mayor didn't seem to know that written testimony had been submitted since the last meeting regarding the project. He apparently didn't do his job. As a community member, I thought Mayor Kovash was LOT's biggest cheerleader during the entire meeting. He didn't even try to hide the fact. I believe he forgot who he was to be representing.

In the Mayors statement to move the controversial project forward, he had forgotten to mention the neighbors, neighborhood where the project will be taking place. In this case it's our front yard. How would anyone on the Council like to have a 2-3 year major construction of an industrial plant with 1000 or more pilings in your front yard? Is all he talked about was the 5 million dollars and how great that will be for West Linn. That 5M is really considered a bribe. Not even

considering our quiet neighborhood and all the disruption, constant noise, trucks, equipment, traffic, and safety. We already see the exterior lights on the WTP, we can't even imagine how many more exterior lights with the ginormous projected Water Treatment Plant will have. That's 3 years of our quiet life gone along with the ability to sell our house. What part of this fits into a residential neighborhood?

Again, I'm very surprised about the Mayors, lack of interest, being LOT best cheerleader, making light of the meeting by making jokes and throwing out crazy remarks. When told that you could open it up for another two weeks of testimony, he said, fine with me with no concern for the hundreds of hours we all have committed to this. He just forced two more weeks of hell, and more meetings to go to. He was very disrespectful of all the citizens who have put in many years and hours to STOP this project.

On top of that, the Newspaper article/letter that was submitted by LOT's Jane Heisler regarding condemnation of our CCR's couldn't be any more untrue. All lies, we were bullied into and forced into signing as we didn't have an alternative. It was all of us or none of us, and not everyone in our group can afford all the lawyer costs. What makes LOT think that it's okay to sue people to condemn their neighborhood CCR's and what gives them the right? They are doing whatever it takes to continue this process, and bulldoze down whatever comes in front of them. West Linn City Council that needs to STOP this as the Planning Commission did!

Thank you for your time and support.

Kim Cozby



4284 Mapleton Drive

West Linn, OR

RECEIVED

FEB 04 2013

February 3, 2013

PLANNING & BUILDING  
CITY OF WEST LINN  
INT. TIME

Dear City Council Members:

The City of Lake Oswego, (City), brought suit against ~~56~~ property owners, individually. The City chose condemnation of their neighbors in the Maple Grove Plat to take legally binding Covenants and Restriction that the City itself agreed to when it purchased these properties from long time Robinwood neighbors.

Thirty-one of these residents united together against this surprise attack to protect what we held most precious and to share the financial burden we knew to be in front of us. None of us had experience against such an action and the support and security created by this group of neighbors was priceless in the face of a well funded and legally astute City. In fact, Lake Oswego's former Mayor, a prominent local Land Use attorney himself, approved all the necessary council actions creating the "legal basis" to bring suit against us.

As negotiations for "a settlement" started, just a few weeks ago, the City refused to consider any counter offer that allowed us to act as the individuals it sued. The City demanded it was an "Everybody or Nobody" deal.

After two years, the stress and financial hardship became too much for many of our neighbors. It was unbearable to see this strain on our friends and neighbors and so this caused the rest of us to give up the fight to protect our valuable property rights so as to maintain our healthy relationships with our fellow neighbors.

We naively thought this "Everybody or Nobody" stipulation, could not be upheld by the judge, in the Settlement Hearing since the City had dealt individually with many of our neighbors it had originally sued. Therefore we were surprised again when the Judge made this same demand. In fact, every counter proposal suggested by our attorney was denied by the Judge. Our surprise was compounded when we left the court on Wednesday to find the press release announcing the Judge would retire at the end of the week to return to a legal practice in Lake Oswego, the City in which he also resides in.

By agreeing to the ONLY terms offered by the City of Lake Oswego, we as a community of individuals agreed, under the advice of counsel, that pursuing the costlier path of an arduous court case would not yield results that would serve to provide individual or community benefits that were satisfactory to all. We agreed as neighbors, to 'disagree and commit' to the only offer from Lake Oswego in order to avoid the emotional and financial stress of continuing the process since not all members of the group were able to commit to this hardship. This should not be construed as recognition that compensation is fair or just. Furthermore, the City introduced conditions, post agreement, stipulating that payment would be contingent upon the start of construction and final approval by the Lake Oswego City Council, but no later than two years from the settlement date. If we exercise our civic rights and continue to oppose this incompatible project in our residential neighborhood, we delay recovering any money we have expended to defend against the lawsuit brought upon us by the City. This "delayed" settlement payment was NOT imposed on any other individual named in the Lake Oswego suit.

The inflexible terms of the City's settlement offer fell well short of covering each neighbor's costs to defend themselves, further penalizing those of us who chose to challenge, on principal, the taking of our property rights by another neighbor. The offering of \$2,000 per owner, for legal fee reimbursement, does NOT fully refund *all* out of pocket legal costs these individuals have incurred, over the last two years, in an effort to defend themselves. Our choice to move forward is simply a reflection of our values and the priority to maintain our long term relationships with our residential neighbors. This should not be construed as acceptance of the proposed Lake Oswego Tigard Water Treatment Plant or the unneighborly behavior shown by our industrial neighbor.

We continue to stand with the greater Robinwood neighborhood and countless other West Linn friends in opposing the Lake Oswego Tigard Water Treatment Plant Conditional Use appeals.

Thank you,

Mike and Natalie Cooper  
Mark and Carol Ellsworth  
Rebecca and Darryl Walters  
Yvonne Davis and Ben Cota  
Val Sabo  
Eric and Jeane Jones  
Charles and Nathalie Christensen  
Kim and Ray Cozby  
Thomas Holder  
Steve and Julie Blake  
Brian and Anna Wheeler  
Jana and Neal Rea  
Liselotte Scheu  
Pat and Vicky Smith  
Ken and Rachel Hanawa  
Derek and Mia Tippner  
Georgia and Shaun Gavin  
Bob and Muriel Rowning  
Sam Stephens and Janet Beckett  
Cindy and Don Kauffman  
Shanon and Brandt Vroman  
Tom and Gwen Sieben  
Sharon and Robert Knutson  
Mukesh Patel  
Jerry and Jenne Henderson  
Chuck Landskoner  
Stacey and Andy Gianopoulos  
Mike and Donna Ragan

Written Testimony  
Michael Monical  
18735 Nixon Ave  
West Linn, Oregon 97068



### INTERTIE FEAR MONGERING

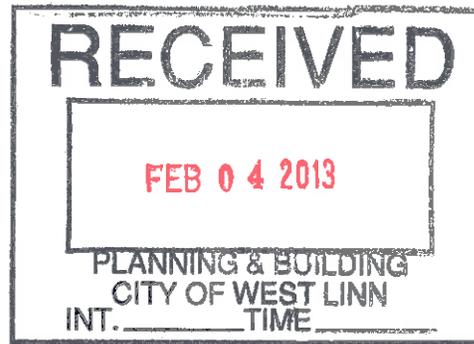
The applicant will have you believe the Intertie is optional component of the water system which LOT will provide to West Linn as a benefit. This is a fabrication. The intertie is an existing facility partially paid for by West Linn that is a mutually beneficial facility and CANNOT be removed without abrogating our existing Inter Governmental Agreement (IGA); an event which would justify a lawsuit by West Linn if LOT tried to remove it. It also is a component of the regional connectivity dictated by ORS 690-086-0170 "The water supply element shall include ....(b) Interconnection with other municipal supply systems and cooperative regional water management". Regardless of all the rhetoric and fear mongering on the part of the applicant, the intertie will continue in any scenario and will supply water to West Linn (and vice versa) in an emergency, IF excess supply exists. Also true in all scenarios is there is no guarantee supply will exist.

The Lake Oswego Intertie is not a bargaining chip. It is an existing benefit for both Lake Oswego and West Linn, paid for by the citizens of West Linn not a bludgeon to coerce West Linn to LOT's will. If that is Lake Oswego's choice, why would we ever enter an agreement with them or provide them support in any way. Negotiation with a gun is not negotiation, it is extortion.

Another falsification is that the Bolton Water Reservoir work is dependent upon the intertie. The intertie might possibly make work on Bolton easier but there are five other reservoirs in the City. The city is able to take Bolton off line at any time and continue to provide water to the residents of West Linn. Temporary booster pumps will easily provide supply during construction for the rest of the West Linn water system and will almost certainly be installed as part of the Bolton Reservoir project. It would be foolish to use the intertie to replace water we are already getting from our primary supply line, we will still need to pump it to the other reservoirs **which the intertie cannot do**. We are very unlikely to rely on Lake Oswego or the intertie for the Reservoir construction. This is "pants on fire" fear mongering.

**Written Testimony  
Michael Monical, PE  
18735 Nixon Ave  
West Linn, Oregon 97068**

## **Master Plan Argument**



**CUP 12-02 Water Treatment Plant and CUP 12-04 Raw Water/Finished Water Pipeline both claim to support the West Linn 2008 Water Master Plan. The claims submitted are in general incorrect and in some case false or deliberate misrepresentations.**

**The Water Master Plan directs connection to Portland's Water System, not support for another connection to the Clackamas River.**

**Contrary to Staff's attempts to create a beneficial justification to support the projects, the LOT Water Plant Expansion provides no community benefit supported by the Water Master Plan.**

**An \$11 million savings to West Linn does not and never has existed; it is a fabrication on the part of LOT to claim benefits which do not exist.**

**Reliance on Lake Oswego for emergency supply is detrimental to West Linn, not a benefit. It delays the construction of our needed storage, storage that EVERY other jurisdiction in the area has.**

## **Master Plan Argument**

Much of the Applicant's and Staff's argument hinges on the master plan wording to pursue connection to the Lake Oswego Tigard system. Staff quotes from Approach C (pg 6-9) of the West Linn Water Master Plan. What staff omitted from their quote is that: "An element of these discussion (LOT) includes the construction of a transmission system intertie that connect the City of Portland supply to Tigard through the Washington County Supply Line in such a way that water, which originates at the City of Portland's Powell Butte Reservoir could flow by gravity Lake Oswego's Waluga Service Zone". The intent here is to tap into a *different water source*, not an alternative routing to the Clackamas River! Staff's interpretation of this wording that it directs West Linn to support expansion of the Clackamas River source is contrary to the stated goal of connecting to the Portland Water system.

### **The Water Master Plan directs connection to Portland's Water System, not support for another connection to the Clackamas River.**

Staff then goes on to claim that the expansion of the Water Plant "is consistent with the overall needs of the community, as established in the Water Master Plan." This is incorrect. The expansion does nothing to facilitate the connection to the Portland Water System which is the goal of the Master Plan. Staff then enters a discussion of how regional and cooperative services with conditional uses are found throughout the area (TVFD, School District) in an apparent attempt to draw a connection between them and LOT. However all of the examples are of PRIMARY PROVIDERS located in a service area as opposed to an incompatible use (Industrial Plant in a residential neighborhood) providing primary service to an adjacent district. A proper analogy would be Tigard funding a water plant in LAKE OSWEGO to service Tigard and Lake Oswego, not to build it in West Linn. Staff then appears to compare the LOT proposal to our agreements with Oregon City for Southfork and Tri-City. The City Managers extends this discussion and states that West Linn would be unable to access water from South Fork, a facility we paid for and located in its service area and providing the primary water source to the neighborhood.

### **Contrary to Staff's attempts to create a beneficial justification to support the projects, the LOT Water Plant Expansion provides no community benefit supported by the Water Master Plan.**

It is further noted that Murray Smith's first recommendation was that West Linn build its own Water Storage capacity, not rely on another jurisdiction. That was not acceptable to staff at the time and they were directed to identify other options.

The applicant's claim of an \$11 million cost savings which does not exist. The applicant cites Murray Smith and Associate's (MSA) evaluation of the cost to build a parallel pipeline but sidesteps the issue that this was discussed in but was **never** a recommendation of the Water System Master Plan (WSMP) prepared by MSA. From a risk and engineering analysis it is very unlikely that there would ever be a justification to spend \$11 million (about the cost to replace ALL of West Linn's deficient water lines) to install redundant pipe for one small section on a

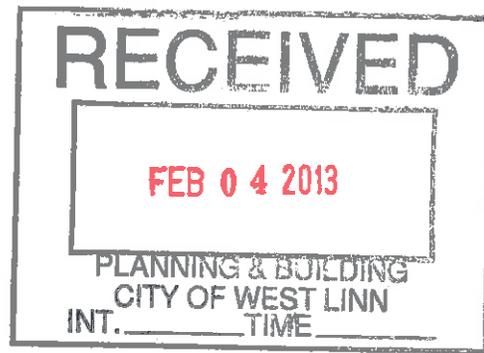
fairly long and vulnerable pipeline, a link that could be repaired for much less or in the event of catastrophic collapse of the Abernathy bridge, replaced by temporary piping or mobile water production units for a fraction of the cost. The claim that West Linn will need full water production after a Subduction Zone Earthquake likely to devastate the entire region is fallacious.

**An \$11 million savings to West Linn does not and never has existed; it is a fabrication on the part of LOT to claim benefits which do not exist.**

There is also constant blurring of the distinction between emergency water supply and emergency water storage. The confusion has been manipulated by the applicant to justify support for the LOT water treatment plant. The justification is based on the WSMP's substitution of emergency supply for emergency storage. As a member of the Utility Advisory Board I have spoken with one of the Authors of the plan and can state that emergency supply from Lake Oswego was not the first recommendation of the Engineering Consultant. It was directed by West Linn staff (under the direction of the city manager, Chris Jordan) as a SUBSTITUTE for adequate Water Storage. My conversation with MSA was that **Adequate Storage (8 MG)** is the primary recommendation of consultant to provide West Linn the emergency resources dictated by the engineering analysis presented in the WSMP. Common sense parallels the engineering recommendation and dictates that in the event of an emergency you want water on hand in storage containers and not located miles away connected by pipelines which may or may not survive a seismic event. That is why every resident of West Linn is recommended to keep a supply of drinking water on hand. They do not recommend relying on your neighbor to store your water for you or direct your neighbor to provide you water in the event of an emergency. Yet that appears to be what the Mayor states is the City of West Linn's long range plan. Instead of building our own adequate storage facility, the Mayor wants West Linn to continue to rely on Lake Oswego for emergency water supply. Another fallacy of this statement is that Lake Oswego does not have excess emergency water storage! Lake Oswego would be hard pressed to justify giving away their emergency storage to West Linn in the event of any disruption of the source of our common supply, the Clackamas River. The harm of the statement is that it delays action (building needed storage) to a point where it will be more expensive, more immediate, and possibly too late.

**Reliance on Lake Oswego for emergency supply is detrimental to West Linn not a benefit. It delays the construction of our needed storage, storage that EVERY other jurisdiction in the area has.**

Written Testimony  
Michael Monical  
18735 Nixon Ave  
West Linn, Oregon 97068



### **IGA analysis and recommendations**

The proposed IGA is largely an update to the existing IGA and keeps most of the provisions the same. In addition it inserts a number of additional recitals and agreements to integrate a proposed LOTWP Water Plant and Pipeline expansion.

The existing IGA is sufficient to govern the operation of the intertie currently and through construction of any water plant upgrades for Lake Oswego. A new IGA should not be completed until the successful completion of any contemplated upgrades as was done in 2001-2003 with the upgrade of the West Linn Transmission Line.

In addition, recitals and agreements proposed by the Lake Oswego Tigard Water Partnership must be fully examined. The current proposal appears to be flawed and the following recommendation are provided for consideration

### **RECITALS**

10. WHEREAS, through expansion of Lake Oswego's existing water supply system to its ultimate treatment capacity of 38 million gallons per day (mgd), Lake Oswego and Tigard can provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply sufficient to meet West Linn's average day demand of 4 mgd through at least 2041; and

The expansion of the plant does **not** "provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply", the West Linn intertie and existing LO plant are existing which provide this capability. The expansion, if constructed, provides more reliability to the existing **redundant** system, and survivability in the event of a seismic event.

The statement "sufficient to meet West Linn's average day demand of 4 mgd through at least 2041" is not a statement guaranteeing the delivery of 4 mgd, it is merely a statement of anticipated availability. In fact the plant will likely be able to provide much more than 4 mgd for much of the year, exceeding our pumping capacity; or the plant may not be able to provide any depending on a number of factors the most significant being the existing flows in the Clackamas river and the quality of the Clackamas river flows. This statement is irrelevant as by Agreement 8, the quantity of water provided with will be the "**maximum feasible quantity**".

The statement should be revised to eliminate extraneous recitals and focus on the facts.

**10. WHEREAS, through expansion of Lake Oswego's existing water supply system greater reliability and survivability in a seismic event were installed; and**

11. WHEREAS, the Parties agree that other options for West Linn to provide its citizens with a

redundant and reliable water supply system for emergency water supply needs are significantly more expensive and therefore agree it is in the best interests of their respective communities to work together in good faith to address critical, local water infrastructure needs in a coordinated and collaborative manner for mutual benefit; and

This is an **incorrect** statement, has nothing to do with the water plant expansions, and has no value in the IGA. It appears to be a mechanism by LOT to create justification for the water plant.

The 2008 WSMP is West Linn's guide Infrastructure improvements. It discusses the option of a redundant river crossing and concludes "it is not recommended that the City pursue development of a new river crossing at this time." (pg 5-8 2008 WSMP)

Per the 2008 WSMP, the emergency supply required by West Linn is a connection to a **DIFFERENT SOURCE**, not a redundant supply to the same source. Approach C (pg 6-9) of the West Linn Water Master Plan. "An element of these discussion (LOT) includes the construction of a transmission system intertie that connect the City of Portland supply to Tigard though the Washington County Supply Lin in such a way that water, which originates at the City of Portland's Powell Butte Reservoir could flow by gravity Lake Oswego's Waluga Service Zone". The intent here is to tap into a **different water source**, not an alternative routing to the Clackamas River!

Neither LOT or City Council can rewrite the identified needs of the City of West Linn as identified in the 2008 WSMP. **This recital has no business in the IGA and should be removed.**

12. WHEREAS, provided that expansion of Lake Oswego's existing water supply system occurs, West Linn ratepayers will avoid between \$12 million to \$19 million in water system capital construction needs during the next 20 years, and each Party will realize other benefits including mitigating environmental impacts from duplicative infrastructure projects, flexibility in system operations for emergency and non-emergency events, and economies not otherwise achieved through individual actions; and

This recital like the last one has no business in the IGA, it is false, there are no savings. You are not avoiding cost you would never spend in the first place. It is manipulative as LOT is trying to demonstrate savings which do not exist and to justify a project which is neither approved nor built. **This recital should be removed.**

#### AGREEMENTS;

3. Utilization of Water Intertie. The water system intertie may be utilized by the mutual consent of the executive officers of each of the Parties, or their designees. Decisions regarding the use of the intertie may be reviewed by the city councils of each of the Parties at the discretion of each city council.

This is a substantial rewrite of the previous Agreement which separated out Emergency Conditions from Non-Emergency less than and greater than two weeks. While unlikely to ever be an issue, both this and prior Agreements seem predicated on cooperative relations between all parties. With the proposed addition of Tigard as a party to this agreement, the increasing likelihood of insufficient supply at the source, and the unknown forecast of global weather change; the possibility of disagreements between the parties will increase.

It is recommended that this section be expanded to provide clarification as to the duties and responsibilities of each of the parties and to include the responsibility that the consent will not be unreasonably withheld.

It is further recommended that in addition to duties and responsibilities, Water Right priority should also be acknowledged and that South Fork will have the right to exercise its water rights with enforcement of the IGA provisions.

8. Quantity of Water to be Supplied. Upon agreement between the Parties to make use of the intertie pursuant to Paragraph 3 of this Agreement, the supplying Party shall endeavor to supply the maximum feasible quantity of water requested by the receiving Party, and take all reasonable actions necessary to accomplish the same, so long as such actions are not detrimental to the operation of the supplying Party's own water system. ~~Provided that Lake Oswego's supply facilities are expanded to a treatment capacity of 38 million gallons per day, Lake Oswego and Tigard can provide West Linn and Board with redundant water supply facilities and a reliable source of emergency water supply sufficient to meet West Linn's average day demand of 4 mgd through at least 2041.~~

The struck out provision is completely irrelevant and inappropriate in the IGA. It is also contrary to the declaration of the preceding statement and Agreement 3. The fact is that West Linn, Lake Oswego, Tigard and Oregon City will all get the "maximum feasible quantity of water requested" under the provision of this agreement. The perceived "guarantee" of the 4 MGD for West Linn is misleading and another blatant attempt to justify the LOT expansions which needs to precede the adoption of this IGA.

9. Cost of Water to be Supplied. The Parties agree to pay for all water provided through the intertie at the rate then being paid by West Linn to South Fork for wholesale water. The volume of water delivered shall be measured by the meter installed at the intertie pump station. The Parties shall have the right at any time to review rates for water supplied and make such adjustments to the cost of water provided, as they deem necessary and by mutual agreement of all Parties. In the event it is necessary for a Party supplying water through the intertie to obtain additional water from a water provider not party to this agreement, the water rate charged to the Party receiving water under this agreement shall be the water rate charged to the supplying Party by the non-party water provider. The Parties further agree that water utilized for periodic testing and exercising of the facilities will be furnished between the Parties without cost. In addition to the rate charged for water, the Parties by mutual agreement reserve the right to impose wheeling charges.

It should be acknowledged by LOT that the cost of water delivered by the LOTWP will likely be substantially higher than Southfork's wholesale rate but that will never be a cause for a rate review. West Linn has assumed perpetual O&M responsibility for the intertie as is appropriate based on their higher use. Regardless the rate charged for water will be the same for all parties.



Jan 31, 2013

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

I would like to address the recent council request to staff to provide language on certain conditions of approval for the Lake Oswego - ~~Heard~~ West Linn project.

Throughout these proceedings it has been emphasized that approval or denial of this application needs to be based on the criteria found in the CDC and the Comprehensive Plan. The citizens that have opposed this project have made it their business to study and understand these criteria. It has become increasingly apparent that application of a number of these criteria is interpretive, and various interpretations of several criteria have been debated by both sides. One thing is clear however, and that is that **nine out of eleven** of the city's decision makers that have been involved in this process have agreed that this proposal **does not** meet the necessary criteria. This fact will not be changed by the suggested conditions brought forth by the council. Even if every one of these conditions were to be put on the table and accepted, the proposal would still not comply with multiple criteria.

The planning commission, in their denial of the project, found 9 criteria that were not met by the applicant. Councilors Jones and Tan touched on many of these and with review should see that the proposed conditions of approval will not serve to bring all 9 of these into compliance. The application has to be denied if it is in violation of even one of the applicable codes.

I would also like to once again offer comment on something that has been repeatedly overlooked and ignored by the proponents of this project. They continually cite our need for the intertie with LO and what it would cost us to go it alone. The truth is that if this project is denied, **our intertie agreement with LO still stands**. Although LOT has intimated that it will be taken away, the current LO city council has indicated that it will continue to work with West Linn in good faith regarding water issues. The intertie and the IGA that backs it up will continue to serve the needs of both cities when this project is denied.

The last council meeting made it very clear where the individual councilors stand in terms of this proposal. Councilors Jones and Tan have recognized the shortcomings of this proposal. The proposed conditions of approval do not negate these shortcomings, but merely serve as additional mitigation factors for a burdensome and unnecessary project that fails to comply with applicable codes. I do not necessarily agree with Councilor Jones' assessment of this as a "lose...lose" situation. If LOT loses, West Linn and Lake Oswego can move forward to a better and more mutually beneficial water future.

Scott Gerber  
3940 Kenthorpe Way, West Linn OR

## Pelz, Zach

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**From:** Scott Gerber [jumpin@cmn.net]  
**Sent:** Monday, February 04, 2013 4:02 PM  
**To:** Pelz, Zach  
**Subject:** AP-12-02; AP-12-03 RNA Powerpoint

West Linn City Council:

RE: The powerpoint from the RNA delivered on Feb 4,2013

This powerpoint presents new comments and information since the Jan 28, 2013 Council meeting and is an update, not a repeat of the RNA's earlier presentation. It specifically addresses the conditions of approval that were discussed on the Jan 28 meeting.

Scott Gerber



# Presentation to the City Council

11 February 2013



**Help Save West Linn**

**Executive Summary – Conditions of approval as discussed at West Linn City Council meeting do nothing to overcome West Linn City Code violations**

- Robinwood Neighborhood Association remains opposed to approval of LOT Plant and Pipeline for all the code violations as referenced in 14 January discussion with City Council (see backup)
- Mitigations are not benefit to community
  - Paved streets (requirement of construction), paths, planted trees (fewer than removed)
- Suggested “Conditions of Approval” by City Council on 14 Jan do not meet benefit requirements of CDC 60.070, approved Transportation System Plan, or OAR 333-061-0064 Emergency Response Plan
- NOTE: none of the conditions eliminate any of the violations of the CDC as noted by the Planning Commission



## Neighborhood Position Regarding Conditions, 1 of 9 (from WLCC)

2. “Good Neighbor Team” to be responsive to needs of citizens (e.g. handicap access, emergency services, etc.)
  - No mitigation possible for ~3-5 minute delay for road closures → CDC 60.090 A(2)
  - Delayed emergency response → no change from Good Neighbor Plan discussions over past 24 months
  - Service outages unknown with no known remedy → acknowledged ~8 hour outages for electrical, water, sewer during pipe construction

**Other service interruptions (mail, garbage, paper, other delivery or services, etc.) not comprehended here**

**Help Save West Linn**



# Neighborhood Position Regarding Conditions, 2 of 9

2. Modify IGA to eliminate 36 month termination term before 2041
  - This remains as no community benefit → city executives determine access to water, in times of emergency, LOT may say 'no' to water for West Linn to preserve water for others
  - NO GUARANTEE of backup water source provided
  - LOT discusses capacity accommodating 100 years of capacity, IGA should extend for balance of century for the treatment plant being located in West Linn → this would represent a perpetual benefit

177

Help Save West Linn



# Neighborhood Position Regarding Conditions, 3 of 9

3. Intersection Safety for Intersection of Mapleton and Nixon – continued comments with regard to evaluation of whole of Nixon Avenue
  - Flagger will not increase safety at intersection → CDC 60.090 A(2)
  - Large vehicles, as demonstrated in backup, cannot make this turn (e.g. emergency vehicles or buses)
    - Note: buses no longer traverse these streets for this reason
  - Nixon evaluation TBD based upon traffic volume → no community benefit if evaluation of condition with no commitment to repaving preconditioned



# Neighborhood Position Regarding Conditions, 4 of 9

4. Modifications to determine breaks in fence line
  - No community benefit with Good Neighbor Plan and neighborhood not wanting paths
  - Breaks in fence line only introduces more risk to terrorism or other trespass
  - Entire project does not meet standard for OAR [333-061-0064](#) which REQUIRES an Emergency Response Plan. Specifically, **“All public water systems shall complete a security vulnerability assessment and develop a prioritized plan for risk reduction.”**
    - **“The [Public Health Security and Bioterrorism Preparedness and Response Act](#) requires community water systems serving more than 3,300 persons to conduct vulnerability [assessments](#) and develop emergency response plans. EPA and its research partners have developed tools and methodologies to help: <http://www.epa.gov/nhsr/aboutwater.html>**



# Neighborhood Position Regarding Conditions, 5 of 9

5. \$5M right of way license fee
  - Payment of license fee does not eliminate the violations of the CDC
  - Not good business, congruent with size of project, therefore not a viable benefit for West Linn Community or Neighborhood
  - Arbitrary use of benefit to community
    - Does not meet CDC 60.070 (A) (3) with unknown benefit to neighborhood or definition of community
    - Cannot apply 'community' for being a good regional partner while simultaneously assuming that the 'community' benefit of monies paid do not directly benefit the very same broad definition of 'community' → shall we share the \$5M with Oregon City parks?



# Neighborhood Position Regarding Conditions, 5 of 9, continued

5. \$5M right of way license fee
  - This is just a bad business deal, need to apply perpetual royalty in the neighborhood of 10-20% gross revenue share per year, for life of agreement
  - City Council needs to use the precedent of existing agreements with annual revenue for West Linn
    - PGE deal agreed two weeks ago, \$750k for ten years, rights to renegotiate
    - WL Disposal and Recycling: 5% of gross revenues. Expires 6/17
    - Qwest: 7% of gross revenues. Expires 7/14
    - NW Natural: 5% gross revenues. Expires 7/12
    - Keller Drop Box: 3% gross revenues

**Fiduciary and ethical responsibility to negotiate BEST  
POSSIBLE DEAL for West Linn, not easiest possible deal**

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# Neighborhood Position Regarding Conditions, 6 of 9

## 6. Provide compensation to citizens for condemnation

- Result: City of Lake Oswego unwilling to discuss a mutually beneficial outcome to the condemnation of rights lawsuit → in the end, forced settlement with no negotiation
- Due to fixed income status of a handful of MapleGrove Plat neighbors there was an urge to settle for “anything” by a percentage of the neighbors → agreement to settle for the benefit of maintaining peace with neighbors and not divide community
- After four hours at courthouse for all individuals in lawsuit; Settlement Offer did not include provisions to fully reimburse Robinwood legal expenses



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# Neighborhood Position Regarding Conditions, 7 of 9

7. LOT develop a mitigation plan for businesses on Highway 43, with approval by West Linn City Council
  - 1/11/13 letter, Dr. Michael Wilkerson of Economic Market Analysis cited that research indicates:
    - Even with mitigation efforts, businesses lose 5% - 50+% of revenue during construction
    - The impact would be greater in West Linn because there are options outside the construction zone
    - Construction workers could purchase local goods and services but this only mitigates the impact and does not eliminate the damage to local businesses
    - Traffic mitigation efforts can only reduce the damage to businesses but aren't able to eliminate decreased revenues during and after the end of construction



# Neighborhood Position Regarding Conditions, 7 of 9, continued

7. LOT develop a mitigation plan for businesses on Highway 43, with approval by West Linn City Council
  - Coupons and advertising does not meet or apply to City Code, no community benefit
  - Only reasonable plan would allow for revenue compensation at 100%
    - Example: business provides trailing revenue for 12-24 months, compensation for 100% of average monthly revenue and/or seasonally adjusted
  - Should not be capped
  - Should have an oversight committee administered by independent 3<sup>rd</sup> party

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**There are no mitigations to remedy the loss of business**

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# Neighborhood Position Regarding Conditions, 8 of 9

## 8. Significant monetary penalties for not following the construction management plan

- No clear neighborhood direction to CC request
  - How to measure noise violations during construction?
  - How to collect data to verify violations?
  - Who do we report to or provide evidence?
- RNA Dec'11 Mitigation Plan asked for Independent Compliance Monitor – not comprehended in Staff report
  - 8 to 5 office hours versus 24 hour a day construction will be a challenge



# Neighborhood Position Regarding Conditions, 9 of 9

9. 24/7 hotline needs to be staffed by someone in authority who can correct problems that arise
  - No clear neighborhood direction to CC request
    - Oversight committee on violations?
    - Public collection via LOT website on complaint and resolution status?
  - RNA Dec'11 Mitigation Plan asked for Independent Compliance Monitor – not comprehended in Staff report
    - 8 to 5 office hours versus 24 hour a day construction will be a challenge



**Conclusion – Conditions of approval as discussed at West Linn City Council meeting do nothing to overcome West Linn City Code violations**

- Robinwood Neighborhood Association remains opposed to approval of LOT Plant and Pipeline and the discussion of proposed mitigations do not eliminate the findings of the Planning Commission or introduce meaningful community benefit per the West Linn CDC and Comprehensive Plan
- The Robinwood Neighborhood Association submitted comprehensive mitigation plan on December of 2011

• NOTE: This was not reflected in the WL City Staff report and not considered by LOT

- West Linn citizens eager to cooperate on long term viable water solution for West Linn





**Slides 16 – 47 → Backup Code  
Reference Data**

## Executive Summary – *Overturning the West Linn Planning Commission decision does nothing to solve West Linn's long term water issues*

- The Planning Commission voted unanimously 7 to 0 that the LOT Plant and pipeline do not comply with West Linn City Code CDC 60.070
- West Linn Citizens need a comprehensive long term water plan
  - City Wide pipe replacement, improvements to Bolton Reservoir, and the LOT proposed plant are **mutually exclusive**
  - The proposed community benefits outlined by LOT are mitigation requirements and/or are already in place
  - Not compatible with West Linn CDC or Comprehensive Plan



# History

- February 27, 1967 documents highlight that the Planning Commission REJECTED the building of the plant – no benefit to the community
- April of 1967, without public deliberation or vote, the County Commissioners overturned the County Planning Commission
  - A required condition by the County Commissioners would be that water is provided to Marylhurst and Robinwood
  - Facility never connected their water to any residences in Robinwood, a failed promise to honor the original 1967 commitments

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLATSOP COUNTY, STATE OF OREGON

IN THE MATTER OF THE APPEAL OF THE CITY OF LAPEER  
FOR A WATER TREATMENT PLANT TO BE  
CLASSIFIED AS A CONDITIONAL USE ON PROPERTY  
LOCATED ON THE SOUTH SIDE OF HANCOCK AVENUE  
AT THE EASTERN CORNER, ROBINWOOD AREA

APPEARED AND WERE HEARD:

Mr. LAPEER

300 ... 1967

This matter came on regularly at this time to be heard, and appearing to the Board of County Commissioners that Dennis Seeger, representing the City of Lapeer, had made application to the County Planning Commission to construct a water treatment plant at a Conditional Use within an R-10 Single Family Residential District, on property located as stated above, and was particularly described as Tax Lots 11.11, 11.12, 11.13, 11.14, 11.15, and 11.16, 11.17, and 11.18, George William J. ... Section 26, 125, 126, 127, and 128.

It further appearing to the Board that said application was heard at the regular meeting of the County Commissioners on February 27, 1967, at which time the Commission denied the Conditional Use request, and that the Commission's decision, Mr. Seeger, again representing the City of Lapeer, did not appeal with the governing body of the County, and that further appearing to the Board that said appeal application was heard by the Board of County Commissioners, at their regular session on Wednesday, April 5, 1967, at which time this matter was confirmed, and that further appearing to the Board that subsequent to their decision, the Board reached a decision on the appeal, now therefore,

IT IS HEREBY ORDERED that the appeal of the City of Lapeer for a water treatment plant at a Conditional Use on the above-described property be and the same is hereby approved and the County Health Department, and (1) adequate landscaping and (2) adequate treatment of the water from the residential character of the area; (3) and that said treatment shall be subject to the future needs of water users in Robinwood, Marylhurst, and Lapeer areas.

March 15th day of April 1967

BOARD OF COUNTY COMMISSIONERS  
CLATSOP COUNTY

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## Many Organizations Opposed

- West Linn Planning Commission (Unanimous)
- 7 of 11 Neighborhood Associations
  - Note: 3 of remaining are not meeting or have no representation, remaining 1 opposed but had no quorum
- West Linn Riverfront Association Board
- WaterWatch Oregon
- Members of Trout Unlimited (local chapter)
- Members of Coastal Conservation (local chapter)



# West Linn Business Speak Out

## Lake Oswego Tigard Water Projects Harm Residents and West Linn Businesses!

- Bad for our Residents and Commuters
- Brings approximately 60,000+ construction vehicles = traffic congestion
  - Bad for our Local Businesses
  - Violates our City Code
- ZERO Tangible Benefits for the City of West Linn
  - Significant Environmental Concerns
- Oswego/Tigard facility would provide water to Stafford area development conflicting with WL/Tualatin goals

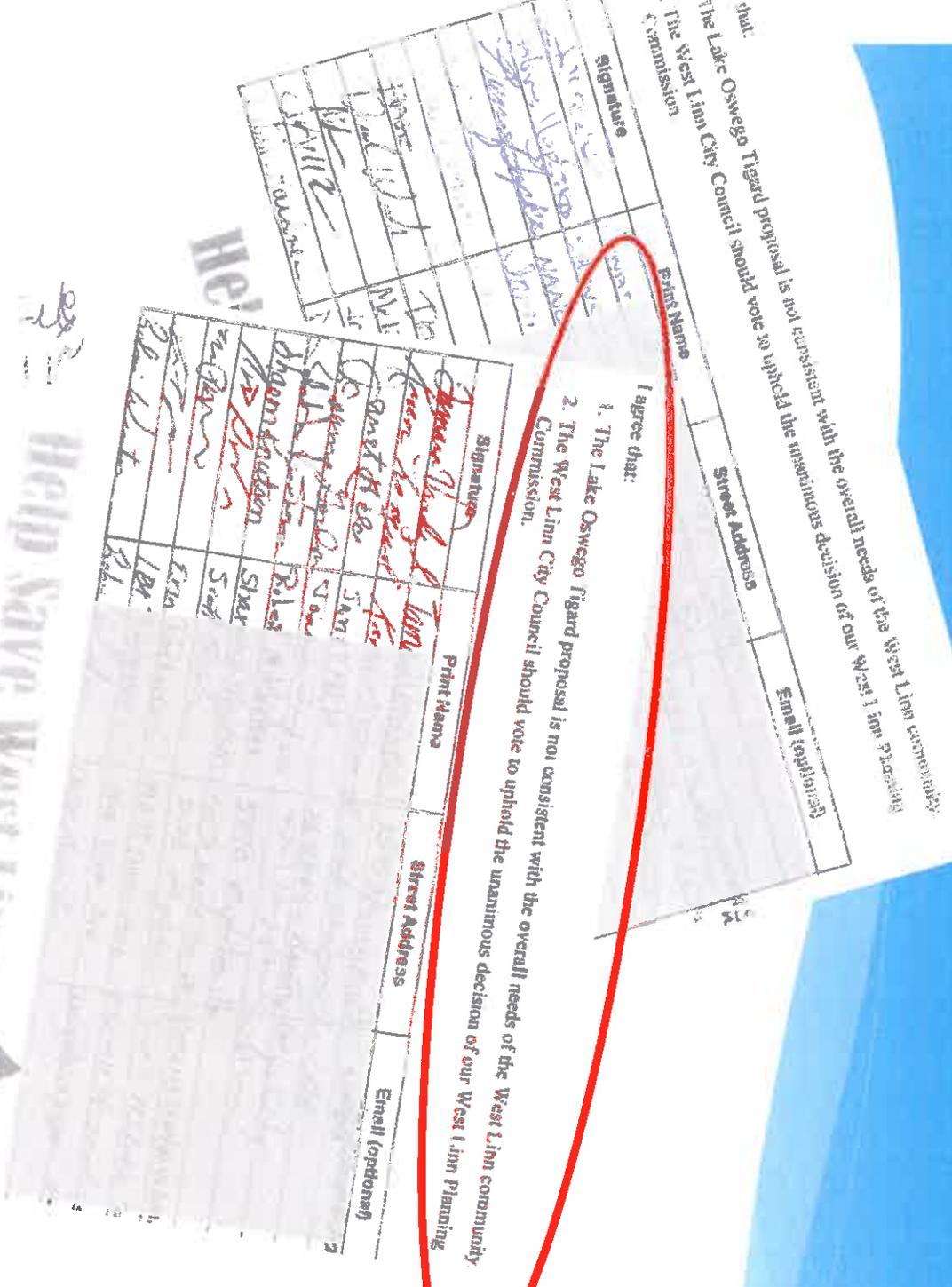
- Paid for by West Linn Business Owners
- West Linn Tidings, 10 January 2013

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# West Linn Citizen's Respond



- >1,000 signatures of Clackamas County Residents, examples

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# Planning Commission Summary

- 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.”
- 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.”
- Finding 3: The Planning Commission finds that the application is not consistent with CDC Section 60.070 (A) (7) – “The use will comply with the applicable policies of the comprehensive plan.”
- 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...”

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn

**Only one criterion needed to support a denial**

**→ many significant violations of the West Linn City Code and Comprehensive Plan**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14

- CDC (Community Development Code) non-compliance
  - CDC 60.070(A)(7): “The use will comply with the applicable policies of the comprehensive plan”
- The Comprehensive Plan
  - Goals, Policies, and Recommended Action Measures
  - “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”
  - “A policy may not be the only action the city can take to implement the goals”



# The Problems with the LOT CUP / Plant / Pipeline in West Linn , 1 of 14, cont.

- **Comprehensive Plan Specific Goals, Policies, and Recommended Action Measures**

- 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”
- Goal 2, Section 3, goal #4: “Protect surrounding residential areas from adverse effects of commercial development in terms of loss of privacy, noise, lights, and glare.”
- Goal 2, Section 3, policy #4e: “Requires that any redevelopment of existing land or buildings be completed in a manner which conforms to the adopted neighborhood plan.”
- Goal 2, Section 4 → Industrial Development “West Linn does not contain any additional lands suitable for large-scale industrial development. There are no remaining undeveloped areas in the City...and suitable buffering from the residential development that characterizes most of the City.”

**Use of Contextual / Compatible: “Capable of orderly efficient integration and operation with other elements in a system with no modifications or conversion required.” ...Webster’s “capable of living in harmony”**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

## • Additional Comprehensive Plan References for Non-Compliance

- City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
- GOAL #11 (Public Facilities and services):
  - Policy 13 (C): “The need to equitably distribute the cost based on the benefit received from the facility”
- City Council Goal #1: “Maintain and protect West Linn’s quality of life and livability”
- City 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 neighbors real control over their future”
- City Council Goal # 6: “Promote land use policies, both local and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality”
- *Carrying Capacity* is defined in the Comprehensive Plan: “The level of use that can be accommodated without unacceptable damage to the environment, including air, land, and water quality, the transportation network, storm water management, and overall quality of life”
- City 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”
- GOAL #2 (Land Use Planning):
  - Section 1; policy #8: “Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other incompatible land uses”
  - Section 1; policy #9: “Foster land use planning that emphasizes livability and carrying capacity”
- GOAL # 6 (Air, water, and land resource quality):
  - Section 1: “The primary source of air pollution within the city of West Linn is automobile and truck emissions. At this time there are no known major single (point) sources of air pollution in the city. However, it is important to be aware of existing or future industrial facilities which could be major point”
- Goal: “Maintain or improve West Linn’s air quality”
- Section 4; recommended action measures (2): “Monitor and enforce conditions of approval for new development related to noise impact”
- GOAL #7 (Areas subject to natural disasters and hazards):
  - Goal: “Protect life and property from flood, earthquake, and other geological hazards, and terrorist threats or attacks”

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 1 of 14, cont.

## • Additional CDC References for Non-Compliance

- 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)(7): “The use will comply with the applicable policies of the comprehensive plan”
- 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)(1): “The site size and dimensions provide a) adequate area for 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
- 60.090 ADDITIONAL CRITERIA FOR TRANSPORTATION FACILITIES
- 60.090(A)(2): “The project design is compatible with abutting land uses in regard to noise generation and public safety and is consistent with the applicable zoning and development standards and criteria for the abutting properties
- 60.090(A)(3): “The project design minimizes environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities, and a site with fewer environmental impacts is not reasonably available”

**Only one for either the CDC or the Comp Plan needed to support a denial**

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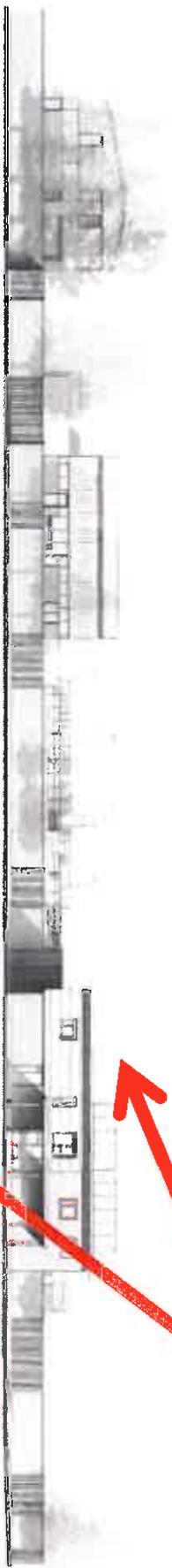
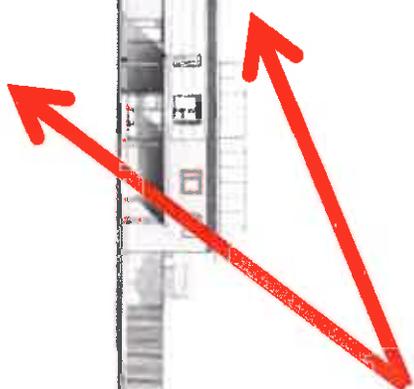


# Compatible / Contextual?

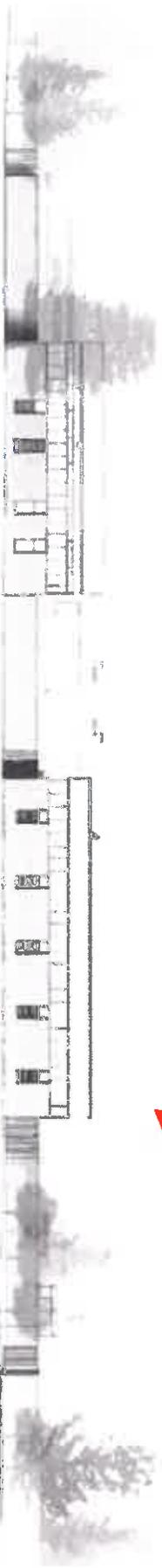
EXISTING



PROPOSED



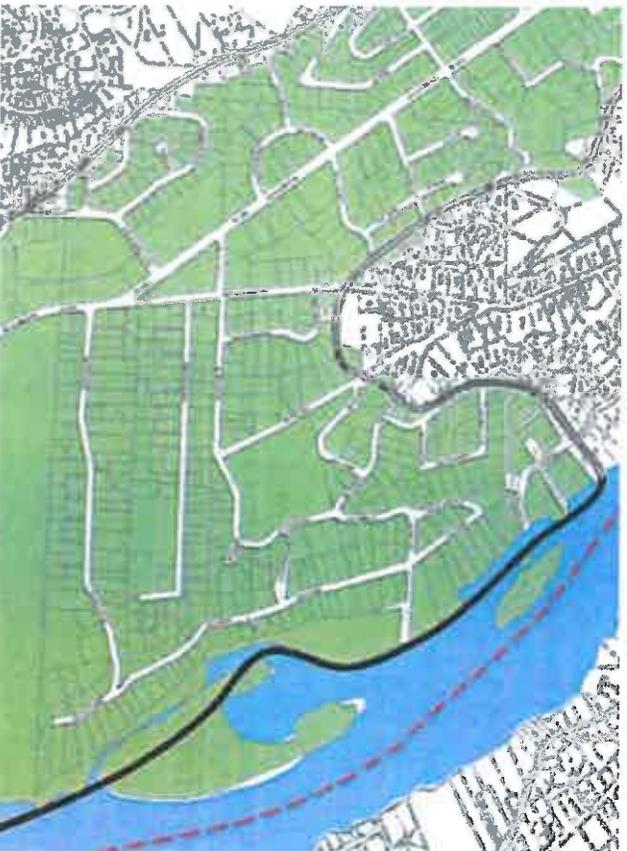
NORTH ELEVATION



SOUTH ELEVATION

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 2 of 14

- **Goal 10 (Housing)**
- Goal (1): “Preserve the character and identity of established neighborhoods”



**Appellant requesting Zoned Residential Use to set aside 10 acres for Industrial Plant, right next to homes, school, & West Linn’s largest park**

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 3 of 14

- **Preservation of Stafford**
- Adopted City Policy, Council Goal #9 of Comprehensive Plan:  
“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”
- Justification of Carollo report, and the assumptions for required capacity by LOT, assumes complete development of Stafford
  - Stafford development also referenced in the Department of State Lands application



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14

- **The Inter-Tie** is already in place, used by both parties 7 times since 1998 → offering this as a new benefit is inappropriate
- Don't be misled there are other reasons that LOT wants to amend the IGA and it's not to benefit West Linn:
  - "... Lake Oswego has entered into a partnership with Tigard necessitating a change to the IGA so as to include Tigard as a party." – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council – This doesn't sound as if the goal is to benefit West Linn
  - "In many respects the new IGA is similar to the 2003 version. Most importantly, the purpose remains the same: to describe how and when the intertie will be used to the benefit of any of the parties. This is not contingent on approval of Lake Oswego's land use application." – 8/3/2012 Memo from Chris Jordan, City Manager to John Kovash, Mayor, Members, West Linn City Council

**Our City Manager states that the IGA and the CUP are separate so approving the CUP does not confer a benefit to West Linn via the IGA**

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 4 of 14 cont.

- **There is no guarantee of 4MGD – based upon availability**
  - “This extra water could be available year-round up through 2026 — up through 2041 outside of peak seasons, according to Joel Komarek, LOT project director.” – The Lake Oswego Review, Dec 22, 2011.
    - Note: If this is a real benefit then why not stipulate it in the new IGA agreement? Otherwise it is an empty promise not enforceable under the IGA.
    - Note: if no power from PGE, there is no back-up water for West Linn
  - In fact, the IGA relieves LOT of any obligations.....
    1. Either party can terminate IGA Agreement with at least 36 months notice prior to effective date of termination
    2. Utilization of the water intertie is triggered by mutual consent of the executive officer

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**The introduction of the inter-tie is not a benefit to West Linn**

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 5 of 14

- Inappropriate use of the Conditional Use Permit
- *Conditional Use* is defined in 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 city public facilities, and is of overall benefit to the community and meets all other relevant criteria.”



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 6 of 14

- **LOT Plan built on faulty assumptions purchased through the Carollo Report**

2007 Carollo Report Fiction	Fact - Actuals
Doubling of the population served	Actual population growth at <.5% per year
50% more water required for Lake Oswego service area	5% actual Lake Oswego build-out (Stafford Triangle development included in assumptions)
Estimates 0.5% conservation per year	2011 actual conservation was 36% (source: LO report to Water Resource Board
Cost of Project = \$128M	Current estimates greater than \$250M
Plant Expansion required	w/ trending conservation and current capacity, plant not required for LO

**Assumptions paid for during pre-financial crisis time should not be a basis for maximizing capacity...purpose of Carollo report was a justification to 'VEST' all of their Clackamas water rights making LOT a regional water powerhouse**



# Faulty Carollo Report Estimates

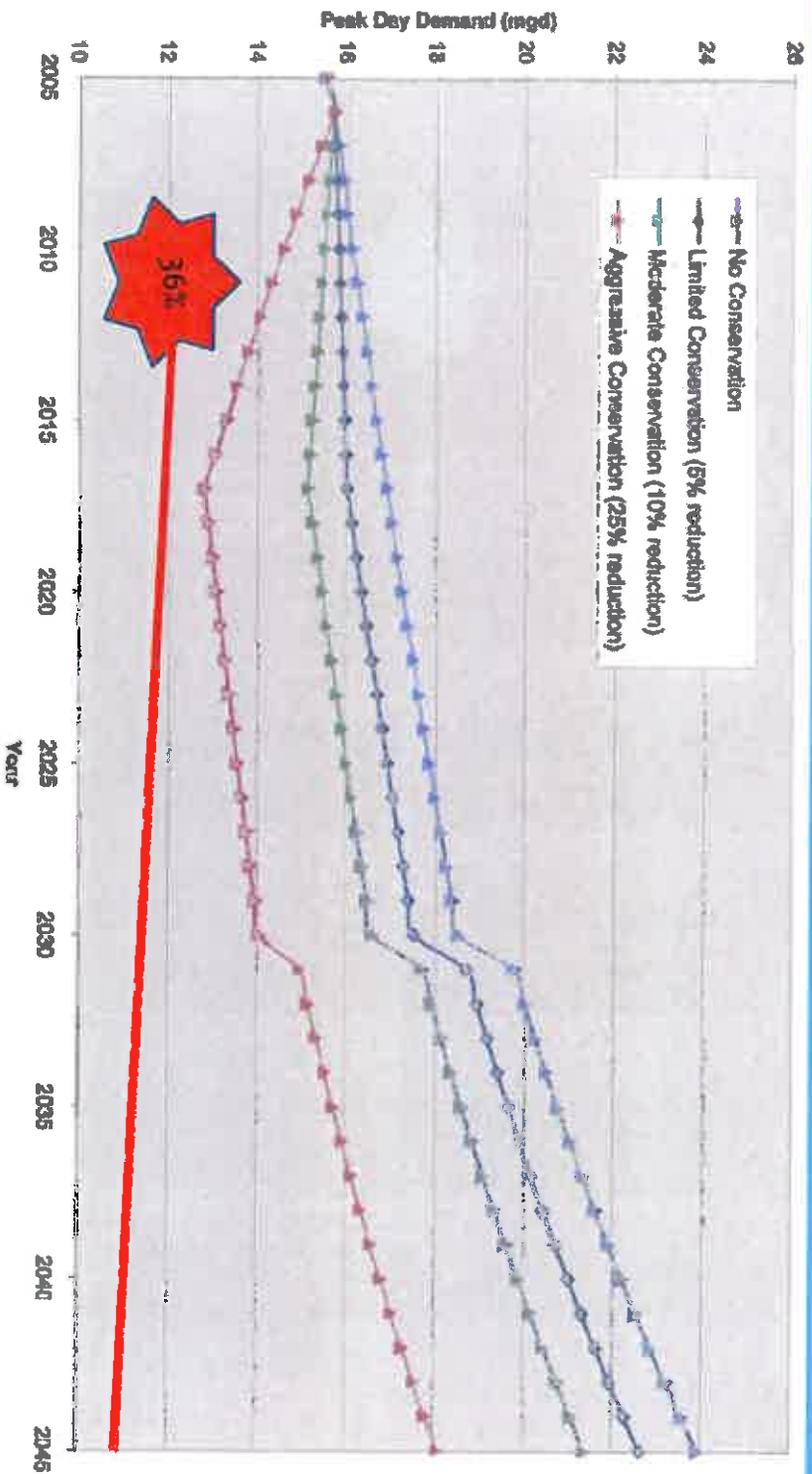


Figure 4.1  
**CONSERVATION IMPACTS ON LAKE OSWEGO FUTURE DEMANDS**  
 JOINT WATER SUPPLY SYSTEM ANALYSIS  
 CITY OF LAKE OSWEGO AND TIGARD WATER SERVICE AREA

**Conservation of 36% between 2007 & 2011 – nullifies any assumptions that new plant & infrastructure might be required**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 7 of 14

- Multiple Financial Shortcomings for West Linn
  - 1 – Loss of tax revenue for West Linn due to tax exempt status
  - 2 – LO expands its tax base with expanded services for property, plant, and equipment in West Linn residential zone
  - 3 – Business Risk
  - 4 – Use of all WL municipal services – for free
    - No SDC (system development charges)

## FOOTHILLS URBAN RENEWAL

The City Council is scheduled to meet on December 4 to conduct a public hearing and vote on an ordinance to adopt the proposed Foothills Urban Renewal Plan. This meeting was previously scheduled for November 20. If adopted, the Urban Renewal Plan would authorize the use of tax increment financing up to a maximum indebtedness of \$43.2 million over a projected 22-year time period. Upon commitment of private investment in the area, the Plan would begin funding needed public infrastructure (roadways, pathways, water, wastewater, and storm water). The Plan also provides assistance in the development of affordable housing.

Urban renewal does not increase property taxes; it allows for tax revenues from incremental growth of property values within a defined urban renewal area to be reallocated to investment in urban renewal projects rather than going to overlapping taxing jurisdictions.

Visit [www.ci.oswego.or.us/eu/foothills](http://www.ci.oswego.or.us/eu/foothills), for more information.

### City Council Public Hearing Notice Foothills Urban Renewal Plan

The Lake Oswego City Council will hold a public hearing and consider an ordinance for the adoption of the proposed Foothills Urban Renewal Plan. Tuesday, December 4, 2012. Meeting scheduled to begin at 6 p.m. (subject to change) City Hall, City Council Chambers 380 A Avenue, Lake Oswego

A copy of the ordinance, the proposed Foothills Urban Renewal Plan and accompanying report may be obtained by contacting Sidaro Sin, 380 A Avenue, Lake Oswego, OR 97034; 503-697-7421; [ssin@ci.oswego.or.us](mailto:ssin@ci.oswego.or.us) or visiting the City's website. The proposed maximum indebtedness of the Plan is \$43,200,000. The ordinance, if approved, is subject to referendum. The adoption of the Plan may impact property tax rates for general obligation bonds approved by voters prior to October 6, 2001.

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 8 of 14

- Inappropriate Application of West Linn **Transportation System Plan (TSP)** – no recognition of Robinwood Neighborhood Plan (adopted by PC and CC of West Linn)
- TSP to Highway 43 are being ignored
  - Comprehensive Plan, Goal 12, Transportation, Action Measure 3 “to assure that new development pays needed improvement to transportation facilities of city wide importance”
- Transportation Project – “not a pipeline project” from PC meeting – triggers the code requirement – new standard which was confirmed by Atty Beery
  - The 48” pipe to run along Highway 43 must be upgraded to current standards
  - **Note:** This is not a benefit to West Linn, this is a requirement



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What Highway 43  
Is Approved to  
Look Like

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 9 of 14

- The Exploitation of Mary S. Young a Violation of voters rights
- “Staging Area” with large machinery and drilling within 150 meters of this sign
- Interferes with city owned greenway, cedar island and beach
- **Construction activity above ground eliminates user parking and access, this requires approval of voters per the City Charter**



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14

- Traffic and Safety
  - CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
  - Emergency Vehicles access 24 x 7
  - Large construction vehicles over 28 month period of construction → safety
  - Precarious ‘hair pin’ turn of Nixon and Mapleton



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Paid consultant GreenLight Engineering  
“280 feet visibility”, page 51 → not accurate  
– yield & truck size not considered

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 10 of 14, cont.

- Traffic and Safety, cont.



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 11 of 14

- Traffic and Congestion
  - CDC 60.090 A(2) “compatible with abutting land uses in regard to noise generation and public safety”
  - 24 hours a day of construction
  - ~50,000 Diesel trucks trips in residential neighborhoods & West Linn city streets
    - Workforce traffic unquantifiable
    - Staging of equipment & materials unknown



How to lie with numbers:  
Does a loaded dump truck  
equal a car? Impact to  
congestion along all  
intersections vs. Highway 43  
unquantifiable

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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 12 of 14

## Business Impact

- No safety net for businesses in the event of severe reduction in traffic or revenue
- Side effects from slowed traffic, alternative routes because of torn up road, etc.
- No benefit to businesses at the end of the work, in fact, trickle down effect un-measurable and irreversible
  - Job losses
  - Reduction in business values
  - Reduction in commercial real estate values
  - Stigma of bankruptcy and/or perception of business activity in West Linn
  - Implications to tax base for continued and needed infrastructure improvements



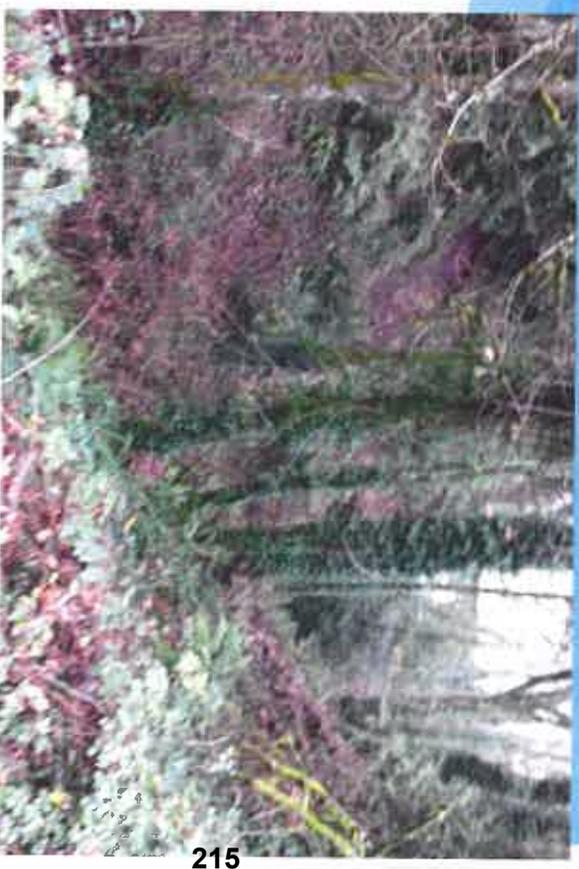
LOT first 30 months of discussion: "there will be no impact to business"  
 1/7/13: "we will promote LOT Published Last Thursday, businesses to keep them open"

# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 13 of 14

- **Environmental Responsibility**

- Two water resource areas along Mapleton (Trillium Creek and Heron Creek)
- CDC Chapter 32.020 D (8) → loose interpretation of disturbed area
- Applicant states they will stay within the ‘paved areas’ → pipe in violation
- Implications:
  1. Multiple sensitive areas and streams on top of proposed pipes and traffic impact
  2. Many residents have been denied the right to disturb streams and trees in this area
  3. LOT drilling and driving equipment outside of disturbed area

NOTE: geotech reference of work being done during winter/rainy season introduces the most risk to environmental



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# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 14 of 14

- **Geological Instability**
  - “Red Zone” → level 5, most unstable land for development
    - Soil subject of Liquefaction
  - LOT Claim → a “basalt ridge” might prevent landslide
  - **FACT** Planning Commission determined that known Basalt ridge is too far south in Mary S Young
  - **IMPACT** → LOT location at highest possible risk to landslide
  - LOT response: nearly 1,000 pilings required to support the plant & clearwell
  - 42” and 48” pipes subject to same risks

LOT Geologists testimony paid for; attempts made to hire firm and none would risk losing future business from government agencies



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, 14 of 14 cont.

- **West Linn City Code NOT being adhered to with regard to distance from other services**

[CE Database Search](#) | [Descriptions](#) | [Search Tips](#) | [Subject Heading](#)

- Implications of a 42" Pipe under the Willamette, through Mary S. Young & 48" Pipe through Residential Neighborhoods

**An Unexpected Christmas Present — Failure of a 48-Inch Waterline**

by James M. Crook, E.I.T., (Lockwood, Andrews & Newnam, Inc., 2925 Briarpark Dr., 3<sup>rd</sup> Floor, Houston, TX 77042-3720, E-mail: [jmccrook@lan.com](mailto:jmccrook@lan.com))  
P.E., (Lockwood, Andrews & Newnam, Inc., 2925 Briarpark Dr., 3<sup>rd</sup> Floor, Houston, TX 77042-3720, E-mail: [glhenry@lan.com](mailto:glhenry@lan.com))  
Section: Infrastructure Assessment/Monitoring 1, pp. 558-565. (doi: [http://dx.doi.org/10.1061/41138\(386\)54](http://dx.doi.org/10.1061/41138(386)54))

- 42" pipe risk

[Access full text](#)

- 3,800 feet under the river

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- 950 feet within the city of West Linn

Document type:

- 1,500 feet of 'open cut'

Part of:

- 48" pipe risk

Abstract:

Conference Proceeding Paper  
Conference Proceedings Paper  
Pipelines 2010: Climbing New Peaks to Infrastructure Reliability. Renew, Rehab, and Re  
In the early morning hours of December 25, 2008, a 48-inch prestressed concrete cylinder  
major state highway in the southern part of Houston, Texas. The failure flooded the near  
Alameda Road. Service was maintained in the area due to multiple groundwater wells of  
San Jacinto Pump Station refill line. Lockwood, Andrews, & Newnam, Inc. (LAN) and a  
Houston (City) Utility Maintenance crews to assess the extent of damage and restore  
Assessment of the PCCP portions of the W. Belfort 48-inch included visual observati  
electromagnetic survey and materials testing. The failed PCCP pipe section was rem  
with approximately 64 LF of a 48-inch steel pipe. This paper will present the findings  
measures taken to restore the roadway and water line to service quickly.

- 1,850 on Mapleton
- 5,200 on Highway 43

**2008 Pipe failure w/ flooding**

**Help Save West Linn**



# The Problems with the LOT CUP / Plant / Pipeline in West Linn, one last CDC

The City's noise standards are based on Department of Environmental Quality (DEQ) regulations. The applicant proposes to design and landscape the site to be consistent with DEQ daytime and nighttime noise limits in a residential neighborhood. The application contains a noise study prepared by ENVIRON, a licensed acoustical engineering firm. The acoustical engineer concluded that the proposed WTP can meet DEQ daytime standards. However, ENVIRON was not able to reach a definitive conclusion regarding nighttime compliance at the WRRWTP based on the available measurement data, due to non-plant related noise generated by the architectural water feature along the west side of the WRRWTP and a gravel producing operation to the east.

218

Source:

West Linn Staff Report to Planning Commission  
17 Oct 2012

- **Noise, Comprehensive Plan reference Section 4; recommended action measures (2):** “Monitor and enforce conditions of approval for new development related to noise impact”
- **Today**
  - Trucks idling for 10 minutes or more
  - Removal of trees on Christmas Eve
- **Next Century**
  - Unknown → planting more trees does not solve the problem
  - But, the City Staff can approve ANY variants (e.g before 7 a.m. or after 7 p.m.)



# Next Steps

**As Citizens and Voters of West Linn -  
Humble Request to Vote Unanimously to  
Deny the Appeal and Support the  
Planning Commission**

## Executive Summary – *Overturing the West* *Linn Planning Commission decision does nothing to solve West Linn's long term water issues*

- There is no new benefit to West Linn with the building of the LOT Plant and associated pipeline – per the CDC 60.070 and Comprehensive Plan
- West Linn Citizens want a comprehensive long term water plan to determine an autonomous water solution
- This is NOT an expansion, it is essentially a new plant
- Any reference to a one-time \$5M **LICENSE** fee is not a community benefit; is not appropriate for 100+ years of water revenue
  - *also a violation of ORS 221.470...."shall not be granted for longer than 20 years"*
- Opportunity Costs!! (many: economic, political, perception)
  - Lowest political effort for LOT to build in West Linn
  - Tigard now becomes the majority partner
  - Highest cost for expansion burdened by West Linn w/ no benefit

February 4, 2012

To Mayor Kovash and for the record:

Re: Violation of Council Rules

2012 FEB 4 PM 1 50

I have served as a deputy sheriff for 22 years. During that time I was required to read and interpret laws and rules so I could enforce them as intended, and served as a court bailiff for 7 years, during which time I researched case decisions for judges. I have also served on the board of directors of two different nonprofit organizations as the Director of Bylaws and Ethics, and served as the parliamentarian for both organizations.

It is with this experience and expertise that I make the following statement regarding violations of our City Council Rules as revised February 28, 2011.

Page 11, the section titled "Ex Parte Contacts and Disqualification", the first sentence states, "for quasi-judicial hearings, Councilors will endeavor to refrain from having ex parte contacts relating to any issue of the hearing". At the City Council Meeting of January 28, 2013, during the deliberations of this hearing, Mayor Kovash, on the record, not only admitted to two ex parte contacts relating to issues on this matter, but he initiated both ex parte contacts by making phone calls to two Neighborhood Association Presidents. These contacts are in clear violation of this section.

Subsection "A" states, "the Councilor will reveal this contact at the meeting and prior to the meeting". Mayor Kovash did not disclose these ex parte contacts prior to the meeting as required, but waited until deliberations. Again, this is in violations of Council Rules.

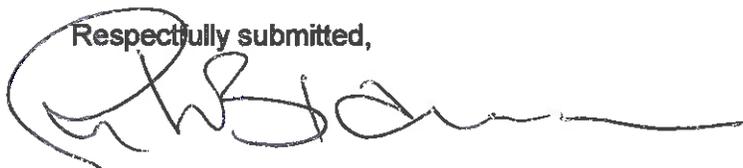
Subsection "A" goes on to state, "the Councilor also will state whether such contact affects the Councilor's impartiality or ability to vote on the matter". Mayor Kovash stated his decision on the issue before the Council was partially based upon both ex parte contacts. Mayor Kovash failed to disclose the fact that these ex parte contacts affected his impartiality on this matter, another violation of this section.

Mayor Kovash, as a result of your actions, I respectfully request you, and for the record, recuse yourself or be recused from any involvement whatsoever in the remaining proceedings of this matter due to these violations of the Council Rules.

Specifically:

1. The initiation of two ex parte contacts concerning issues on this hearing.
2. The failure to disclose the two ex parte contacts at the beginning of the hearing.
3. The failure to state the two ex parte contacts affecting the impartiality in the decision making.

Respectfully submitted,



Ron Le Blanc  
19970 Bluegrass Circle  
West Linn, OR 97068

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 11:18 AM  
**To:** Pelz, Zach  
**Subject:** FW: AP-12-02 et al Uphold PC decision to Deny  
**Attachments:** image8ed023.gif@4029b22b.37724d36; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.  
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Monday, February 04, 2013 11:15 AM  
**To:** Sonnen, John  
**Subject:** FW: AP-12-02 et al Uphold PC decision to Deny

LOT contact



West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.  
Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Gary Hitesman [<mailto:ghitesman@gmail.com>]  
**Sent:** Sunday, February 03, 2013 4:45 PM  
**To:** CWL Council; Pelz, Zach; Sonnen, John  
**Subject:** AP-12-02 et al Uphold PC decision to Deny

**TO:** 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/3 February 2013

**RE:** Uphold Planning Commission Decision to Deny

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["hard-core pornography"]; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it**, and the motion picture involved in this case is not that. [*Emphasis added.*]

—Justice Potter Stewart, *concurring opinion in Jacobellis v. Ohio* 378 U.S. 184 (1964), regarding possible obscenity in *The Lovers*.

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["West Linn Water Treatment Plant"]; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it**, and the building involved in this case is not that. [*Emphasis added.*]

—GARY HITESMAN.

I have two people who shall take the honors of helping to provide the proof that the application for the Treatment Plant should be denied or, in the least, sent back for a Design Review Amendment. One, a well-intentioned neighborhood advocate that shall remain anonymous, and Two, Mayor Kovash, for his unfortunate blunder, for which the timeline had to be extended. There may still be wiggle room to take the luster off my silver bullet, but in the end, I find nothing in the Record that meets with the Burden of Proof or provides sufficient and reasonable arguments supporting an overturn of the PC decision.

## **55.050 DESIGN REVIEW AMENDMENT TRIGGER**

Amendments to design review shall be required when 10 percent or more of the housing type changes (e.g., from single-family units to multi-family units) from the tentatively approved design review plan, or when there is more than a 10 percent change in the number of units, or when the layout of streets and lots significantly changes, ***or adjusting more than 20 percent of*** the building footprint or ***site plan***, or ***significant changes to the architecture that modify the style, mass, or result in elimination of significant design features.*** Changes in color or materials would not require an amendment unless the colors were non-earth tones and the materials were of poorer quality (for example, going from tile roof to composition roofing) than originally approved. Changes to the project/site plan to meet conditions of approval or legislative changes shall not trigger an amendment. (Ord. 1408, 1998)

My previous 24 page tome refers to significant changes with the existing Operations Building which is now being demolished and was not part of the staff report or PC decision and further exacerbates the non-compatibility of the proposal put before the PC. In addition to that, the proposed reservoir has changed twice; once in a 75% reduction of the reservoir and then a 50% increase in size of the reservoir. The reservoir fails to satisfy the recommendations for an ASR and other components of the Water Master Plan.

### **CDC 554.050 not met**

The site plan has been adjusted greater than 20 percent with the proposed water reservoir for the plant. The changes to the site plan were affected by the change in the reservoir configuration, location, mass were not done to meet conditions of approval or legislative change. This has been an error or omission of the staff, applicant, and city and as of yet has not been acknowledged. Looking at the record, the changes were made to accommodate the increase in unexpected costs for necessary structural support via piles. The Record shows that the Reservoir has gone from 8 million gallons of capacity to 2 million back up to 3 million. That is roughly a 75% reduction and then 50% increase in footprint and a significant change in the site plan, EVEN though it may be partially buried or completely buried into the ground. Using the words as defined by Webster's or any other dictionary indicates that amendements to design review shall be required based on these changes by the applicant.

The trigger to the amendment was never raised by staff or been discussed during these deliberations. And before the council tries to pooh-pooh the idea or just ignore it like they have with so many other issues, the flip flopping of the reservoir should have in the least triggered a revised staff review and commentary to CDC 55.050.

The reservoir has played a large part in how the Plant came to be. For the record, the original site plan that was presented to the neighborhood should be reviewed again and discussed at the hearing. Please add to the Record the neighborhood comments that were written onto the plan and the applicant's response, including the architects and engineers. Add to the Record the lawsuit regarding the covenants which should also be examined to see how the lawsuit was triggered by the need to fit the reservoir onto the site and how 'that' influenced the direction. And also, for the Record, all correspondence and meeting notes that will daylight conversation with the adjacent propoerty owners around the 300 foot setback that was maintained and why the reservoir was never proposed to go in what appears to be ample room to bury 'it' there?

Simply looking at the site plan indicates that a 2 or 3 million gallon capacity reservoir might reasonably be located in the area with minimal to no lasting negative impacts. As it appears now, that the applicant may have avoided having to condemn the covenants or settle out of court had the criteria been enforced when the changes to the reservoir were made, not once, but twice.

I mention property owners because; 1.) this is an issue of property rights and community more than it is about water(at least for me), and 2.) member(s) of the property in question served(s) on the Budget committee for the City and others on the Planning Commission after a stint(s) with Parks. It is merely the appearance of favoritism that should be addressed when you look at the layout the applicant and city have foisted upon the citizens and city council. There is nothing in the record that indicates, after changes to the reservoir, that the proper mitigation, or planning process, or transparent procedures and processes, have been followed per the criteria.

Regardless of speculation on communications that will have to be validated, or unvalidated, after an exhaustive public records search, is not the main rationale. (As a tangent to this argument, the whole of the Record should include all the NA meetings that were held over the last two years since the mayor reopened the record and introduced his Ex Parte communications with two unnamed Neighborhood Associations.)

### **Lack of Coordination with the Comprehensive Plan**

Primarily, the lack of a design review amendment ignores the assumptions stated regarding emergency conditions on page 75/201 of the West Linn Water System Master Plan (2008) (replaced p15).pdf [WLWSMP];

Under normal and emergency conditions, the analyses presented throughout this section consider the MDD condition for one (1) day and assume that the City's supply capacity is adequate to refill storage volume used for fire suppression. The emergency condition presented in the table below assumes a loss of the City's SFWB supply for one (1) day. Under emergency conditions it is assumed that emergency supply from the City of **Lake Oswego Intertie is unavailable** under MDD conditions.

In the type of seismic event anticipated, a safe assumption on building reliable emergency supply is that both lines crossing the Willamette River are compromised and/or incapacitated. And reservoirs within city limits will cost millions and are not likely to occur in time to meet emergency demand. The current deficit in storage capacity requires more than relying on the existing intertie. Water sources from Bull Run or a Robinwood ASR are reasonable solutions that were left out of negotiations and deliberations.

The current agreement between the cities does nothing to address the current and future supply deficit under

emergency conditions and the current benefit of the intertie is not coordinated with the Comprehensive Plan! In reading the analysis of the MSA report, the IGA proposed will not meet(OR DOES NOTHING TO DAMPEN) the real threat of a comprehensive conflagration hitting Cascade Summit, Hidden Springs, and Barrington Heights(pg.92/201)( . . ."revealed distribution system deficiencies during fire flow events" . . .

Omissions and mistakes exist within the lack of coordination of the reservoir and intertie with the West Linn Water System Master Plan (2008) (replaced p15).pdf [WLWSMP] and how it has been misconstrued and improperly followed by the City Manager and council. For the Record, a conflict exists with coordinating policy, staff actions, and coordination with land use. As with the Imagine West Linn Document added by the mayor, the Council Rules and City Charter shall be added to the Record as well to help meet the Burden of Persuasion. For the Record, include; page 3/201 of the WLWSMP, page 13/201 of the WLWSMP, page 17-18/201 of the WLWSMP, page 28/201 of the WLWSMP, page 30/201 of the WLWSMP, page 40/201 of the WLWSMP, page 48/201 of the WLWSMP, page 71/201 of the WLWSMP, and 65/201 of the WLWSMP.

The discussions to date, and the Record, have not acknowledged the "City's supply source with the greatest vulnerability to great loss of service" and the conceptual approaches compared to a storage only solution approach. Page 66/201 says:

As presented in Section 6, the most cost effective approach to addressing the vulnerability of the City's transmission system may be to develop reliable emergency supply sources in cooperation with neighboring and regional water providers. *Should the City be unable to achieve the goal of securing reliable emergency supplies*, consideration of a parallel river crossing or other options should be re-evaluated.

Emergency discussions and allowable reduced system performance noted on pg. 75/201 shall also be considered. At this point, why would the City be unable to secure reliable emergency supplies from the Bull Run system? Also, what of the Aquifer Storage and Recovery submitted here;

#### Aquifer Storage and Recovery

As part of this supply analysis, an evaluation of the potential for development of aquifer storage and recovery (ASR) as a backup or peaking supply was completed. ASR is the underground storage of treated drinking water that is injected into a suitable aquifer and subsequently recovered from the same well or wells, generally requiring no retreatment other than disinfection. ASR is a water supply management tool for water providers whose peak water demands either approach or exceed supply capacities, while non-peak supply capacities are typically in excess of non-peak demands. A technical memorandum documenting this analysis is included in the Appendix D.

Although not verified by deep well data, the Bolton and Robinwood areas between Highway 43 and the river potentially are underlain by more than 1,000 feet of CRBG section and therefore may have the highest potential for productive aquifer conditions. (The applicant has inadvertently provided data supporting aquifer storage and recovery as a potential source for emergency needs in their study of the reservoir support system.) While it is not recommended that the City immediately pursue development of ASR as a water management tool because of the associated risks and unknowns, it is recommended that ASR be included as a water management supply option as the City considers its supply and storage options.

Given the considerations raised by City Staff, what were the findings of a supply option using ASR? Or was that option completely ignored/omitted? (pg. 79/201)

Notes on the Water System Master Plan;

#1.) Issue of River Intakes? Does this application allow a 'run-around' of the original condition of approval of

the construction of the new intake for WL?

#2.) Need, Benefit, and Priorities are based on 2008 "Saturation Development" criteria. The currently offered benefits of replacement pipes, intertie, and reservoir do not address the planning period and sizing efforts at saturation development.

#3.) The WLWSMP refers to saturation development within the current city and UGB limits and addresses only the needs within the City's jurisdiction. The claim by the Mayor of regarding a change in the definition of "regionalism" and jurisdiction sets dangerous, and untested, precedent.

#4.) Add to the Record the current status of "Water Systems Operations and Maintenance Guide", page 48/201. Provide proof the Guide was referenced in the decision making process.

#5.) Where is the analysis and additional seismic restraint evaluation? (pg.53/201) And does the current SFWB WMPU already provide the required redundancy the WLWSMP requires?

#6.) The current transmission line has a total capacity of 9.5 MGD when total saturation development and needs will require 10 MGD. So the pipe is going to have to be replaced EVENTUALLY as the estimated 5.6 fps will only work for short durations. The false savings offered by the Mayor of West Linn missed this piece of existing information. There will be no savings in pipe construction after all. (pg64/201)

#7.) In particular, note the discussion on Planning Period and Study Area as to what is "economically and physically developable". For the Record, discuss Approach D and the new updated information uncovered by the applicant and why staff has failed to review or coordinate the applicants preferred solution to Approach D. Also, Option C. (Option B was the recommended approach to be adopted by the city Council, yet pg. 23/201 #3 mentions Approach C on capacity and reliability.)

Currently, the City's primary water supply is from the South Fork Water Board (SFWB) water treatment plant (WTP) located in Oregon City. The City also has an emergency supply connection to the City of Lake Oswego's WTP located at the north end of the City. The City's water distribution system consists of six (6) service zones supplied by six (6) storage facilities and five (5) pumping stations. Each of the service zones is supplied by gravity from a storage facility.

#8.) What happened to 'this' emergency water solution? Apparently, the increase in size of the existing water plant in Robinwood is not a necessary condition of accessing required emergency water? West Linn can access water without any changes to the existing water plant. (pg. 78/201)

An element of these discussions includes the construction of a transmission system intertie that connects the City of Portland supply to Tigard through the Washington County Supply Line in such a way that water, which originates at the City of Portland's 50 mg Powell Butte Reservoir, could flow by gravity into Lake Oswego's Waluga Service Zone. With this supply Lake Oswego would have the ability to supply the City and meet its own demand needs at the same time by off-setting demands from the Lake Oswego treatment plant with supplies from the Tigard/Portland intertie. With the Tigard/Lake Oswego emergency supply connection operational Lake Oswego could supply an equal amount of water to the City through the West Linn/Lake Oswego supply connection. A preliminary review indicates that this connection may have a hydraulic capacity in excess of 6 mgd, potentially making an equal amount available to the City in an emergency event.

Pursuing this option involves negotiating intergovernmental agreements (IGA) and probable participation in funding a portion of the transmission system intertie improvement. A preliminary

review of potential project costs associated with this approach indicates that it has a lower cost than Approaches A and B.

Was this done? Where is the documentation?

#### #9.) Kenthorpe Well Evaluation

The City owns a former Robinwood Water District supply well, now called the Kenthorpe Well. The Kenthorpe Well is located on Kenthorpe Avenue in northeast West Linn (Figure 1). Based on the OWRD well report, the well is 8 inches in diameter, approximately 278 feet deep, had a static water level of 137 ft bgs at the time of drilling, and was pumped at a rate of 200 gpm with 62 feet of drawdown for a specific capacity of 3.2 gpm/ft. Although a geologic log is not available as part of the OWRD well report, the location of the well relative to the understanding of the geology in the area indicates that the well likely is completed in the upper portion of the CRBG aquifer. No other information regarding the well construction, capacity, pumping history, or water quality was available for review when this TM was being prepared. The City conducted a site visit to assess the accessibility of the Kenthorpe Well for this evaluation. The well was not accessible because a concrete slab covers the location of the well. Consequently, the condition of the well could not be determined for this TM. Based on available information, the Kenthorpe Well is not suitable for ASR pilot testing because of capacity limitations, the size of the well, and the lack of accessibility. However, the well penetrates only the upper portion of the CRBG section, and the CRBG near the Kenthorpe Well is potentially 1,000 feet or more thick. Thus, the CRBG in the area of the Kenthorpe Well has a potential to have suitable production and storage characteristics for groundwater supply or ASR development.

It appears that the plant and water line do not need to increase in size to trigger this solution? What about the possibility of accessing this resource as a condition of approval, given the work to be conducted on the reservoir? ( See pg. 131/201) Why did city staff not review this aspect of the Water Master Plan? Why did the city manager fail to enforce recommendations and Next steps as specified in the Water Master Plan?

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 11:18 AM  
**To:** Pelz, Zach  
**Subject:** FW: LOT Proposal  
**Attachments:** imagea370b8.gif@2c0c0a18.9da64b18; image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

*West Linn Sustainability* Please consider the impact on the environment before printing a paper copy of this email.

*Public Records Law Disclosure* This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Monday, February 04, 2013 11:17 AM  
**To:** Sonnen, John  
**Subject:** FW: LOT Proposal

Lot contact



*West Linn Sustainability* Please consider the impact on the environment before printing a paper copy of this email.

*Public Records Law Disclosure* This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Carson, Jody  
**Sent:** Sunday, February 03, 2013 1:00 PM  
**To:** City Council  
**Cc:** Pelz, Zach  
**Subject:** Fwd: LOT Proposal

For the record

Begin forwarded message:

**From:** Curt Sommer <[curt.sommer@comcast.net](mailto:curt.sommer@comcast.net)>  
**Date:** February 1, 2013 8:18:50 PM PST  
**To:** "Kovash, John" <[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)>  
**Cc:** "Tan, Jennifer" <[jtan@westlinnoregon.gov](mailto:jtan@westlinnoregon.gov)>, "Jones, Michael" <[mjones@westlinnoregon.gov](mailto:mjones@westlinnoregon.gov)>, "Carson, Jody" <[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)>  
**Subject:** LOT Proposal

Dear Mayor Kovash;

There are no words to express my disappointment with your performance on Monday night. It is impossible to believe that someone with your years of experience in the public sector would make such a rookie mistake like the one you did Monday night. You have failed the people miserably. The best thing you can do at this point is to recuse yourself from all future votes on the LOT Proposal. You are obviously not impartial and objective.

Kudos to councilors Tann and Jones for taking the high road. Shame on you Mr. Mayor. Shame, shame, shame.

Regards,

Curt Sommer  
Energy Advisor/Writer  
503-407-1826  
<http://ezsolarhouse.com>

**City of**  
**West Linn**

Councilor Jody Carson  
[icarson@westlinnoregon.gov](mailto:icarson@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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**Pelz, Zach**

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 11:19 AM  
**To:** Pelz, Zach  
**Subject:** FW: Mayor's Ex Parte \_ AP-12-02  
**Attachments:** imagea7d64a.gif@594df826.dc494c57; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Kovash, John  
**Sent:** Monday, February 04, 2013 11:18 AM  
**To:** Sonnen, John  
**Subject:** FW: Mayor's Ex Parte \_ AP-12-02

Lot contact

 Mayor John Kovash  
[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)  
West Linn Mayor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)

*West Linn Sustainability* Please consider the impact on the environment before printing a paper copy of this email.

*Public Records Law Disclosure* This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Gary Hitesman [<mailto:ghitesman@gmail.com>]  
**Sent:** Friday, February 01, 2013 11:41 AM  
**To:** CWL Council; Pelz, Zach; Sonnen, John  
**Subject:** Mayor's Ex Parte \_ AP-12-02

West Linn City Councilors and Mayor,

When evaluating the proposal put forward by your city manager and the LOT Partnership, ORS clearly states that the whole of the record shall be taken into consideration.

Unlike the Holiday Inn Appeal where one fact was used to overturn the Planning Commission decision to approve, these Conditional Use applications fail on many fronts. Unlike the Holiday Inn application where lot sizes were used as evidential fact to overturn the PC decision in 2011; AP-12-02 et al has suffered it's death by a thousand cuts in errors, omissions, and other stuff that does not meet criteria.

Including lack of real citizen participation and an overwhelming disapproval from the numerous neighborhood association meetings conducted by the RNA. With 11 NA's on record and 7 that meet regularly or now, annually, the mayor's parsing of meeting notes is not substantial to overturn the other overwhelming evidence to

the contrary of his bias and prejudicial views.

Also, the Sunset NA leadership and friendships with 2 of the councilors could appear to place their participation on a very, very slippery slope. (And again, I don't know what NA's the mayor referred to as the question has not been answered and the Mayor was unclear.

Please, look at the whole of the record and consider the fact that you have heard testimony from many, many affected residents who have spoken using the code and have stuck to the criteria. Despite the protests and character assassinations raised by the applicant; it is very easy to establish that the burden of proof has not been met. The CUP has used the City of West Linn to aid and abet in getting this thing through.

This is born out of the record in spades. The only hope the mayor has in passing this application is to change the message to suit his wants. Apparently, deciphering a decision requires precedent and interpretation; something the mayor assured us he was quite capable of providing, given his 8 years on the PC and CC, prior to making his Ex Parte Gaffe.

Well, the issues of Ex Parte, LACK of CLARITY, and Precedent have been misconstrued as well. The precedents requested by the applicant and allowed by the City are unprecedented in their wonton destruction of the intent and meaning of the code and criteria. Allowing the myriad of exceptions sought by the applicant, solely because they make it harder for an industrial facility to properly coexist within an existing neighborhood, invalidates much of the criteria and goes against the intent and purpose of the Comprehensive Plan, the Imagine West Linn Document, and still, the Water Master Plan. And when you add in the Mayor's inconsistent messaging, perceived bias, change in direction, and lack of clarity in the proceedings (and within the application,) this application will take months upon months to shift through and prepare an appeal to LUBA if the council unwisely decides to overturn the PC deliberations.

Please UPHOLD the PC decision and let LO come back with a more reasonable solution that meets the criteria already on the books.

To: City Council  
From: Gail Holmes  
801 Wendy Ct.  
West Linn, OR 97068  
"Willamette Neighborhood"

Date: February 4, 2013

Re: Lake Oswego Tigard Water Treatment Plant and Pipeline



Dear Council:

I am against this application due to the fact it violates our West Linn Comprehensive Plan, as stated in the Engineering Report which LOT used to create this plan, states the water needed to this region including Stafford Triangle property for the future is 32 million gallons per day. Since this is a complete violation of our Comprehensive Plan you must deny this application.

This application also violates Chapter 60 of the West Linn CDC and I am shocked you are turning a blind eye to this, which has been stated in numerous testimonies and also stated in the Planning Commission's findings.

As you know my term ended on the West Linn Planning Commission and you wanted me to concentrate my energy on the West Linn Economic Development Advisory Board, in doing so you as a City Council have given me a vote of confidence in having the ability to be part of an advisory board with their sole purpose is to maintain and grow the Economic situation here in West Linn, so with that, I also am against LOT.

The construction plan, day work will have heavy trucks loaded with dirt removed from the excavation for the in-ground water tank, which the truck route is left onto Highway 43 from Cedar Oak Road, through Bolton to I-205 and night work 8 pm to 5 am on Highway 43, all of this activity is contrary to Council Goals and I am shocked you care so little for the Economics of West Linn, for Emergency Water!

The true concern we have here in West Linn is our own 99 year old water system, which in the past 30 years our City Managers and Councilors should have been putting their energy's to make sure our infrastructure was being looked after. Don't make the mistake of selling us down the river in hopes this system will aide us in our future water system. The current IGA does not have a sunset clause and you would be bartering away an IGA that will end in 2041 and the future leaders will be at the mercy of Lake Oswego and Tigard, after seeing them suing our citizens to break a 45+ year land agreement, I don't have any faith they will be fair to West Linn in the future.

This project is not for the good of OUR COMMUNITY; in fact it will destroy Robinwood and Bolton, which are 2 of our largest Business Districts, I personally cannot understand why you would put West Linn in such jeopardy.

In closing, PLEASE DENY LOT WATER TREATMENT PLANT REMODEL AND PIPELINE!

## Pelz, Zach

---

**From:** Pelz, Zach  
**Sent:** Monday, February 04, 2013 10:38 AM  
**To:** City Council  
**Cc:** Jordan, Chris; Sonnen, John  
**Subject:** RE: Revision - Alice  
**Attachments:** Testimony-Alice Richmond (2).docx; image001.gif; image002.jpg; image003.jpg; image004.jpg

Good morning,

Alice Richmond submitted testimony that I believe some of you were having difficulty opening. A Word version of this document is attached.

Zach

---

**From:** Sonnen, John  
**Sent:** Sunday, February 03, 2013 11:56 AM  
**To:** Kovash, John  
**Cc:** Pelz, Zach  
**Subject:** RE: Revision - Alice

We will try to get a file you can open

John Sonnen, Planning Director  
Planning and Building, #1524

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*Public Records Law Disclosure* This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Sunday, February 03, 2013 11:36 AM  
**To:** Sonnen, John  
**Subject:** FW: Revision - Alice

Neither could I. John

**CITY OF**  
**West Linn**  
Mayor John Kovash  
[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)  
West Linn Mayor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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**From:** Jones, Michael  
**Sent:** Sunday, February 03, 2013 10:40 AM



Hi Brian and council - I have revised my earlier testimony/letter to the editor. Please see that the changes that have been added in **BOLD** print. Give me a call if you have any questions regarding my written testimony.

Thank you,

Alice Richmond

**From:** [Susan Hill](#)

**Sent:** Saturday, February 02, 2013 12:21 PM

**To:** [Bill Hill](#)

**Subject:** Revision - Alice

February 1, 2013

To: West Linn Council and Mayor

From: Alice Richmond

On January 28, 2013 the West Linn City Council continued it's L.O.T. appeal:

- Four councilors argued the statistics and ratio over this proposal.
- Two councilors opposed the appeal
- One councilor and the mayor were in favor of the appeal.

In my opinion it should have gone back to the Commissioners denial. Mayor Kovash, whose argument became an impertinent despotic decree in an effort to intimidate the crowd by arduously supporting this proposal, was nonetheless nothing short of misfortune askance adversity.

L.O.T. preponderates that their project is a regional benefit. Well, how contritely ambitious of them! Why refute L.O.T. appeal, I ask? Here are a few more reasons:

1. Site is a low, flat and stagnant subsurface. In a 2004 study, West Linn consultants indicated three active creeks run in this entire area. The subsurface decayed matter can become hazardous. So, additional massive concrete structures with tons of water capacity will prevent these radon gasses from dissipating in a safe manner. However, if houses are built with adequate spacing (lots large enough), this hazardous gas can escape without worry, in a natural manner. Plus, these lots would provide tax revenues for the city.
2. Site location - the current proposal is a covetous enterprise. The unethical character his rebuttal to the citizen of West Linn as though they were unimportant. He was out of order and discriminating. Mr. Sullivan also assured the council that this proposal would safely withstand a 9 point magnitude earthquake. Mr. Sullivan, as an attorney, does not qualify as an expert on soil, geology and geomorphology.

Here are factual consequences in recent times:

6 point magnitude earthquake - destroys and causes land splits, slides, etc.

7 point magnitude earthquake - does all of the above, plus causes fires, floods, surging water and more.

8.8 point magnitude (in Japan) that unleashed 220,000 homes and destroyed the nuclear concrete power plants designed to withstand the forces of natural quakes of this magnitude.

9 point magnitude - annihilates everything in its path.

Now we have subsurface movements at lower magnitudes such as 3 to 5 that occur from 3 to 5 miles below the surface that causes disastrous results such as the recent Amboy, Washington quake.

In January 2013 six different consecutive quakes were registered trailing all along the Pacific Coastline starting from Alaska through Oregon including our local areas. The L.O.T. officials reassure citizens that their structures are designed to withstand such earthquakes brings me to believe they haven't done their homework.

West Linn Utility Advisory Board, whose meticulous studies were stalled by West Linn City Council, became meaningless in it's efforts to solve our own water system. They even condemn the Planning Commission's hard work and effort toward their decision on the waterlines.

West Linn Citizens need to know that our Planning Commission are appointed from our community to represent us with their knowledge and effort. It is an affront that our Mayor would ignore and demean their work in an attempt to forward his agenda, regardless of what we, the people, are telling them. The Planning Commission was unanimous in their decision to say "NO" to this proposal. So we must stay alert to what is happening and repeal the L.O.T. plans.

Sincerely,

Alice Richmond  
3939 Parker Road  
West Linn, Oregon 97068  
(503) 723-0101

**Pelz, Zach**

---

**From:** Dave Froode [dfroode@comcast.net]  
**Sent:** Monday, February 04, 2013 10:42 AM  
**To:** Pelz, Zach; CWL Council  
**Subject:** License Fee

Zach, could you please acknowledge receipt?

Please submit this to the record for

West Linn City Council

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

The Lake Oswego/Tigard water treatment facility proposal is not compatible or should it be allowed in a residential area. It does not meet the City's code.

Interestingly the city just completed negotiations with PGE for a franchise fee and can be used as a very good comparable for what a reasonable fee is valued at. But the reader can decide what is reasonable.

PGE fee \$734,000.00/year for 10 years or \$7.34 total  
LOT fee \$500,000.00/yr for 10 years or \$5 million one time fee

PGE Fee w/40 yrs, current terms=\$29.36 mil.  
LOT fee w/40 yrs, \$125k per yr., \$5 mil. total

PGE agreement after ten years, re negotiated  
LOT agreement, one time fee

PGE agreement no city resources provided  
LOT agreement, all city resources available yet tax exempt

PGE to complete work needed involves several work trucks  
LOT, 50,000 trucks three yr construction period

PGE minimal impact to Hwy 43  
LOT impact nine months construction Hwy 43

PGE, zero impact to property values  
LOT, 10-25% reduction to property values

PGE, zero impact to businesses  
LOT, 5-50% neg. impact to business income on 43.

PGE, no noise  
LOT, major noise during three year period & after

PGE, no litigation  
LOT, 86 property owners sued.

PGE, no hassles

LOT, 3 yrs of hell on earth since 2010, and three years of destruction if project done.

PGE, no pilings

LOT, 1000 pilings in liquidified soil equivalent to a bowl of jelly.

PGE, no impact to parks

LOT, above ground activity interferes with city Cedar Island park and beach

PGE, no street damage

LOT, Mapleton, Nixon, Kenthorp and 43 impacted

PGE, no codes violated

LOT, nine codes violated

PGE, no conflict w/ comprehensive plan

LOT, Stafford development conflicts w/ comp. plan

PGE, no threat of elec. service stopped

LOT, threat of IGA intertie canceled

PGE, not contingent on permits

LOT, contingent on permits issued

PGE, electrical service is a benefit to West Linn

LOT facility benefits Oswego and Tigard, not West Linn.

I could double this list to compare more but it is not necessary, is it?

The next questions needing answers are: a) who receives this license fee and b) how is this money going to be spent? Will it be to used for city employee's payroll? Or might it be used to remodel City Hall? Could it be used to restore the City's water infrastructure? Will property owners and businesses impacted be compensated for their losses?

Our codes, permits are not for sale.

The code requires the project to be a benefit. The license fee is not an adequate benefit.

This project does not meet nine codes.

Please do not approve the LOT permits but turn your commitment to the citizens of West Linn in order to focus on West Linn's water issues creating long term solutions with West Linn resources.

Respectively,

David J. Froode

19340 Nixon Ave West Linn

?

**Pelz, Zach**

---

**From:** Dave Froode [dfroode@comcast.net]  
**Sent:** Monday, February 04, 2013 10:44 AM  
**To:** Pelz, Zach; CWL Council; Kovash, John; Carson, Jody; Jones, Michael; Tan, Jennifer; Frank, Thomas  
**Subject:** Olive Branch

Zach:

Please acknowledge receipt.

Please submit this to the record for  
West Linn City Council  
RE: AP-12-02 and AP-12-03

STOP, LLC has always thrived to maintain integrity and only present objective truths as we know them as we realize that a facility of this magnitude coupled with an unprecedented four foot water pipe is not compatible to this residential area, and should not be allowed.

Please understand our only goal is to not allow this huge project proposed by LOT to occur since it will permanently destroy the character of our family homes and neighborhood and is a very bad deal for all of West Linn. Our reason is simple. This is an industrial facility and should not be allowed to be in a residential area as there are no compromises for this proposal that can ever change that. We are committed to the long haul and are prepared legally, politically, financially and mentally to fight this to the end. This is our neighborhood, our homes, our lifestyles and our city that we are defending.

Currently, we are a neighborhood with a small facility. The LOT proposal will fundamentally change the nature of the neighborhood which is prohibited by code because it is not compatible. This neighborhood would become a de facto an industrial zone whose use supersedes the need of the residences. It will be a Regional Water Facility with a surrounding encroaching neighborhood. What happens in 25-50 years when even more water is needed and purification standards are higher calling for more land required for the ever growing facility and another City Council expands the plant again and adds even more burdens to a West Linn residential community?

More compatibility issues are presented by over sized service vehicles on a regular basis and generating 20 truckloads of waste hauled off intermittently. This is certainly not a normal neighborhood process. Is the storage and use of toxic material in a residential area compatible? Maybe a small nuclear power plant, correctly designed and mitigated meets the criteria of compatibility? Is the storage and use of toxic and potentially explosive material in a residential neighborhood compatible? All of this acknowledged in the Carollo report and listed last among the risks of generating chlorine on site. What does it take to be incompatible?

Additionally, the unprecedented but proposed 48" pipe is probably the largest utility pipe in the city. Portions of the 16 foot right of way are inadequate for proper installation and maintenance as evidenced by having to shut down the road. No other developer would ever be allowed to do that.

Every utility which is installed in the Mapleton and Hwy 43 ROW in the future will have to consider, design around, and construct around the 48" pipe. This will be a permanent ongoing cost in the future to all of our citizens, and it has totally been ignored along with a plethora of other issues and costs.

The council has mentioned several alleged benefits to this community. Rather than delving into all, I will discuss the merits of the IGA.

The IGA has been a benefit in the past and will continue to be in the future as the Mayor of Lake Oswego, and members of their city council and residents of Lake Oswego have all said that they will not cancel the IGA as the IGA is as important to both communities. For LOT Partnership threat to cancel, is a breach. For LOT to use it as leverage for permits, is extortion. The new Oswego council will not permit this.

Additionally, alleged benefits of the proposed IGA are temporary and could be suspended after three years, and certainly after 2041. The revised LOT IGA is not a long term fix for our city's emergency water needs. It provides nothing permanent that the current IGA does not have! We should not put our city's future at risk, we should be focusing on replacing the Bolton reservoir and building our own adequate water storage resources.

How is it a benefit today yet pulled after 28 years even though the facility is still very much inside West Linn? Do other developers donating land for parks, easements or ROWs have that option after a certain number of years? Is this a precedence the city wants to establish for future CUP applications? Hardly. A benefit is not to be re-negotiated. It is to be perpetual.

Discussion of millions of dollars of savings related to the Intertie is a complete fabrication and needs to be removed from the proposed IGA and the IGA not signed under any circumstances until and unless the facility is actually built. Agreeing to these new terms forced upon our city would be extremely pre mature and frankly according to the current decision makers in LO, unnecessary.

Next, we all heard the Mayor's speech about an objective analysis based on the codes, so let's stick with an objective analysis. Our codes should never be for sale. They are the fiber that holds this community together. This project does not comply with nine codes and flies in the face of the Comprehensive Plan. No benefits will correct that. This is a terrible deal.

People in Oswego are not pleased with this project or partnership. An article written by LO councilor, Karen Bowerman, Sept 27, 2012 addresses these issues in her article in the LO Review "Skyrocketing water bills lead to concerns". In addition, some of the LO Councilors have in meetings told us the same thing. It appears that no matter what happens in West Linn, this facility will not be built because it is too big and too expensive. The LO Mayor has also publicly announced if WL denies permits, LO will not appeal this to LUBA.

On February 2, seven people from West Linn were invited to the LONAC meeting in Oswego. We understood most of their neighborhood associations were represented at this meeting. We were allowed 45 minutes to present our Power Points and field questions. It was obvious most in the room expressing their opinions were not in favor of this project.

Both Oswego and Tigard have opted to try to put this heavy burden on West Linn without even looking for any alternative sites at all during this entire process. According to the Oregonian and many smart people, this region's future water needs are best met by tapping the Willamette River. We are not saying it is the only option, but one of several that have not been evaluated. If people from Oswego or Tigard could have DASANI purified bottled water coming out of their taps, they would be pretty thrilled. Who wouldn't be? DASANI is produced by Coca Cola, Coca Cola is in Wilsonville, Wilsonville has their straw in the Willamette. Sound absurd? Of course it is. But not any more absurd then installing a major utility in a residential area costing rate payers upwards of \$250 million dollars. Point here, alternatives have not been evaluated and need to be.

What LOT has failed to understand is that there is no way that they can offer any benefits that will meaningfully solve the problem since West Linn residents have too high of a value system to allow our code be for sale. In addition, the incredible grief and inconvenience that the residents will experience for approximately three years and the total loss of revenue and customers that the businesses will incur for approximately three years are, for all practical purposes, far too great to be mitigated by any conditions.

We understand Tigard would like their own water source. I would like a '65 Corvette. Life doesn't always work that way, does it? Tigard's wants should not become our problems. Oswego and Tigard have issues they need to work out. When they do, one or both can approach our community and we will act in good faith. But the very best decision is for the West Linn City Council to unanimously honor our codes and uphold the Planning Commission's decision. West Linn can then heal and re-unite to focus on our water problems, utilizing our resources, to insure our community with long term solutions.

Respectively,

David J. Froode

19340 Nixon Ave, West Linn

## Pelz, Zach

---

**From:** Dave Froode [dfroode@comcast.net]  
**Sent:** Sunday, February 03, 2013 6:13 AM  
**To:** Pelz, Zach; CWL Council  
**Subject:** West Linn City Council RE: AP-12-02 and AP-12-03  
**Attachments:** Winston Churchill.mov; Winston Churchill.m4a

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please submit to the record for West Linn City Council RE: AP-12-02 and AP-12-03

Thanks  
David J. Froode  
19340 Nixon Ave  
West Linn Or.

**Pelz, Zach**

---

**From:** tomlorie@comcast.net  
**Sent:** Sunday, February 03, 2013 9:44 AM  
**To:** Pelz, Zach  
**Subject:** Re: New testimony re: LOTWP

Zach,

I have a major typo in the last paragraph of my testimony.

Should have read "through out" not "thought"

Also, is there anyone else I should send this to to be part of the record?

Thanks,

Lorie,

----- Original Message -----

**From:** Zach Pelz <ZPELZ@westlinnoregon.gov>  
**To:** Zach Pelz <ZPELZ@westlinnoregon.gov>  
**Cc:** John Sonnen <JSONNEN@westlinnoregon.gov>, Shauna Shroyer <SShroyer@westlinnoregon.gov>  
**Sent:** Sat, 02 Feb 2013 00:18:34 -0000 (UTC)  
**Subject:** New testimony re: LOTWP

Good afternoon,

The City's website has been updated with the

latest testimony received regarding the Lake Oswego-Tigard Water Partnership's pending treatment plant and pipeline applications.

Have a great weekend,

Zach

Zach Pelz, AICP  
[ZPELZ@westlinnoregon.gov](mailto:ZPELZ@westlinnoregon.gov)  
Associate Planner  
22500 Salamo Rd.  
West Linn, OR 97068  
P: (503) 723-2542  
F: (503) 656-4106  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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**Pelz, Zach**

---

**From:** Jordan, Chris  
**Sent:** Sunday, February 03, 2013 12:54 PM  
**To:** Pelz, Zach  
**Subject:** Fwd: Lake Oswego/Tigard water partnership (LOT)

Sent from my iPhone

Begin forwarded message:

**From:** Dave Sengenberger <[dave.sengenberger@frontier.com](mailto:dave.sengenberger@frontier.com)>  
**Date:** February 3, 2013, 11:27:05 AM PST  
**To:** CWL Council <[cwl\\_council@westlinnoregon.gov](mailto:cwl_council@westlinnoregon.gov)>  
**Subject:** Lake Oswego/Tigard water partnership (LOT)

attn: West Linn City Council

As a resident of Lake Oswego, I am opposed to the Lake Oswego/Tigard water project for the following reasons:

The current Lake Oswego water treatment facility's capacity is adequate for probably 30 to 40 years - or even longer. The Carolla Report overstates the population growth for Lake Oswego, even when you factor in the UGB to include Stafford, blowing the projected water requirements beyond reason. As a footnote, it is the desire of the people of Lake Oswego not to expand our city into Stafford. So including this area in the projections is a mute point. Spending \$300 million or our more to build a super water system is simply insane based on the future needs of our community. Your vote to block LOT will save the LO taxpayers a tremendous amount of money.

Lake Oswego would probably incur the expense soon to rebuild the intake structure. Maybe upgrade one of the pumps and perform some rebuilding of the plumbing. The total cost might be about \$10,000,000, which is affordable, even though the city management in 1968 failed to make a reserve fund provision for maintenance. Given that the Lake Oswego citizens' exposure on the LOT project will be upwards of \$150,000,000, and that we will forfeit half of the ownership to Tigard, I find this unacceptable.

Our city's \$5,000,000 token to West Linn, (from LO Mayor Jack Hoffman's council) for cooperating with LOT while we rip up your town to lay in a mammoth 48" pipe is an expense that I do not want to have pay for. We have other priorities which could make better use of the money. And LOT's overreaching game plan could invite litigation - and delays - which will ramp up the costs. Not to mention the ill will created with our neighbor. I can not image how much the construction will interfere with the people of West Linn, not to mention the interruption of traffic flow on Highway 43.

The bureaucrats and politicians need to hear the message from the people of West Linn that making assumptions and shoving grand plans down our throats without discussion or consideration no longer works for the folks. I am frankly tired of their need to tax and spend.

Tigard can still pull water from Portland (contrary to the risks advocated by EPA) and neighboring water districts in the Clackamas system for many years.

I urge you to support your Planning Commission by stopping this project in its tracks by not granting LOT the approval to expand the Lake Oswego water plant. Councilors Jones and Tan apparently have the best interests of their people at heart. It is my hope that all of you agree on killing this project which will also benefit the people of Lake Oswego. I might add, as Chair of my NA, these opinions are my own and do not necessarily reflect the feelings of my neighbors.

Sincerely,

Dave Sengenberger  
Chair, Westridge Neighborhood Association  
25 Hillshire Drive Lake Oswego 97034 503-638-0743  
[dave.sengenberger@frontier.com](mailto:dave.sengenberger@frontier.com)

Chris Jordan, City Manager  
Administration, #1422

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**Pelz, Zach**

---

**From:** nathalie christensen [tessamess@gmail.com]  
**Sent:** Friday, February 01, 2013 6:25 PM  
**To:** Pelz, Zach  
**Subject:** LOT

Dear Zach,

Could you please put this email in your pile for the project mentioned above. I'm a citizen who got sued by LO and I want to make sure that the City council knows that LO only got the settlement resolved because:

**We got bullied again!!! They knew that by threatening us with their deep pockets and endless resources that they would prevail!!! Even the judge is retiring to a lucrative private practice in LO...the whole thing stink and I personally felt very humiliated. I truly believe that this scenario would have had a very different conclusion if we have had a greater war chest or any support from our City council!!**

**It makes me ill to have to pay property taxes, be a good citizen, be proud of my City when I have been treated like a serf!!!**

I know that LO is making grand promises to our City, but are you that blind or stubborn to see that this whole project is not in the best interest of our City or its citizen. Why are we bending down over and over again for Lake Oswego? Are we that infatuated with them that we allow them to run us over? What is the deal? I would love to have someone from the City explain to me how this project is in any way a benefit to our city? Are you going to be supportive of your citizen when something terrible happens with this project....Please let's be grown up here and start thinking of our own ways to fix our problems without creating this enormous shadow that is going to be really real for many years to come.

I hope you have faith in your citizens and business owners and will deny this atrocity and get together as a community!!!!!!

Thank you,

Nathalie Christensen

## Pelz, Zach

---

**From:** tomlorie@comcast.net  
**Sent:** Saturday, February 02, 2013 6:23 PM  
**To:** Pelz, Zach  
**Subject:** Re: New testimony re: LOTWP

Zach,

I would like to submit a suggestion on an existing "benefit" from LOT on the good neighbor fencing part of the application..

I would like to submit that this fence be installed at the very "front end" of the project.

This will create for me and my neighbors a reduction in stress for several reasons.

First, safety. With the intrusion of vehicles, temporary "trailers" for project management and general activity, neighbors would like to create and maintain a feeling of privacy and safety by not having eyes gaze into or onto their residences and properties..

Second, over stimulation. View shed abatement will reduce the over all "stimulation" of the visual transition from the activities that will be intrusive. The physical. transition needs to be blocked in a neighbor friendly fashion. Not razor wire but a standard cedar fence with an attractive top. Neighbors will have some peace even with tremendous noise going forward day after day.

Thirdly, several of us have dogs that will "go nuts" with activity that goes on daily for many months. This is a gracious neighborly kindness tha I hope LO will value.

Lastly, a good neighbor privacy fence will truly define LOT's property development.

Because this fence is on the list I firmly believe that the benefit of erecting it early on will ease much of the tension the immediate neighbors have and will continue to have thought the project of this very intrusive industrial sized project.

Thank you!

Lorie and Tom Griffith  
4068 Kenthorpe Way  
503-803-0678

----- Original Message -----

**From:** Zach Pelz <ZPELZ@westlinnoregon.gov>  
**To:** Zach Pelz <ZPELZ@westlinnoregon.gov>  
**Cc:** John Sonnen <JSONNEN@westlinnoregon.gov>, Shauna Shroyer <SShroyer@westlinnoregon.gov>  
**Sent:** Sat, 02 Feb 2013 00:18:34 -0000 (UTC)  
**Subject:** New testimony re: LOTWP

Good afternoon,

The City's website has been updated with the

latest testimony received regarding the Lake Oswego-Tigard Water Partnership's pending treatment plant and pipeline applications.

Have a great weekend,

Zach

Zach Pelz, AICP  
[ZPELZ@westlinnoregon.gov](mailto:ZPELZ@westlinnoregon.gov)  
*Associate Planner*  
22500 Salamo Rd.  
West Linn, OR 97068  
P: (503) 723-2542  
F: (503) 656-4106  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:43 AM  
**To:** Pelz, Zach  
**Subject:** FW: LOT

John Sonnen, Planning Director  
Planning and Building, #1524

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-----Original Message-----

**From:** Tan, Jennifer  
**Sent:** Sunday, February 03, 2013 6:30 PM  
**To:** Sonnen, John  
**Cc:** City Council  
**Subject:** FW: LOT

Please add to the record. Thank you.

Councilor Jennifer Tan  
<mailto:jt看@westlinnoregon.gov>  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: <http://westlinnoregon.gov>

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---

**From:** Mark Hanson [[mark@accentonmusic.com](mailto:mark@accentonmusic.com)]  
**Sent:** Wednesday, January 30, 2013 9:49 PM  
**To:** Tan, Jennifer  
**Subject:** LOT

From: Mark Hanson, 19447 Wilderness Dr., West Linn, OR

Dear Ms. Tan:

To reiterate my email from yesterday:

Please vote to uphold the Planning Commision's rejection of the LOT proposal. There are many of us who feel this is a bad proposal. Thank you for your time and efforts.

Mark

-----  
Mark Hanson

Guitarist, Author, Educator

Email: [Mark@AccentOnMusic.com](mailto:Mark@AccentOnMusic.com)

Website: [www.AccentOnMusic.com](http://www.AccentOnMusic.com)

Accent On Music LLC

PMB 252 . 19363 Willamette Dr.

West Linn, OR 97068

Grammy-Award Winner 2005

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:43 AM  
**To:** Pelz, Zach  
**Subject:** FW: LOT Proposal

John Sonnen, Planning Director  
Planning and Building, #1524

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-----Original Message-----

**From:** Tan, Jennifer  
**Sent:** Sunday, February 03, 2013 6:28 PM  
**To:** Sonnen, John  
**Cc:** City Council  
**Subject:** FW: LOT Proposal

Please add to the record. Thank you.

Councilor Jennifer Tan  
<mailto:jtan@westlinnoregon.gov>  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: <http://westlinnoregon.gov>

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---

**From:** Curt Sommer [curt.sommer@comcast.net]  
**Sent:** Friday, February 01, 2013 8:18 PM  
**To:** Kovash, John  
**Cc:** Tan, Jennifer; Jones, Michael; Carson, Jody  
**Subject:** LOT Proposal

Dear Mayor Kovash;

There are no words to express my disappointment with your performance on Monday night. It is impossible to believe that someone with your years of experience in the public sector would make such a rookie mistake like the one you did Monday night. You have failed the people miserably.

The best thing you can do at this point is to recuse yourself from all future votes on the LOT Proposal. You are obviously not impartial and objective.

Kudos to councilors Tann and Jones for taking the high road. Shame on you Mr. Mayor. Shame, shame, shame.

--

Regards,

Curt Sommer  
Energy Advisor/Writer  
503-407-1826  
<http://ezsolarhouse.com>

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:43 AM  
**To:** Pelz, Zach  
**Subject:** FW: Alice  
**Attachments:** Testimony-Alice Richmond.wps; ATT00001.htm; image835e1f.gif@ceff3c89.d5ea44b6; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Tan, Jennifer  
**Sent:** Sunday, February 03, 2013 6:27 PM  
**To:** Sonnen, John  
**Cc:** City Council  
**Subject:** FW: Alice

Please add to the record. Thank you.

  
Councilor Jennifer Tan  
[jtan@westlinnoregon.gov](mailto:jtan@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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---

**From:** Jennifer Tan [[jennifer\\_dennis1996@yahoo.com](mailto:jennifer_dennis1996@yahoo.com)]  
**Sent:** Saturday, February 02, 2013 10:33 AM  
**To:** Tan, Jennifer  
**Subject:** Fwd: Alice

Begin forwarded message:

**From:** "Bill Hill" <[beh\\_44@live.com](mailto:beh_44@live.com)>  
**Date:** February 1, 2013 3:13:40 PM PST  
**To:** "Michael Jones" <[michaelkjones@comcast.net](mailto:michaelkjones@comcast.net)>, "Jody Carson" <[JCarson@acumentra.org](mailto:JCarson@acumentra.org)>, "Jennifer Tan" <[jennifer\\_dennis1996@yahoo.com](mailto:jennifer_dennis1996@yahoo.com)>, "Thomas A. Frank" <[mail@thomasafrank.com](mailto:mail@thomasafrank.com)>, "John Kovash" <[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)>

**Cc:** <[BMonihan@LakeOswegoReview.com](mailto:BMonihan@LakeOswegoReview.com)>

**Subject: Fw: Alice**

Hi Brian, and council

This is my latest testimony for February 4, 2013 L.O.T. appeal.  
Alice

**From:** [Susan Hill](#)

**Sent:** Friday, February 01, 2013 3:07 PM

**To:** [Bill Hill](#)

**Subject: Alice**

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:43 AM  
**To:** Pelz, Zach  
**Subject:** FW: Thank you  
**Attachments:** imagea02411.gif@ffa83120.7f164b2c; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Tan, Jennifer  
**Sent:** Sunday, February 03, 2013 6:27 PM  
**To:** City Council; Sonnen, John  
**Subject:** FW: Thank you

Please add to the record. Thank you.

 Councilor Jennifer Tan  
[jt看@westlinnoregon.gov](mailto:jt看@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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---

**From:** Jenni Tan [[tan@jennitan.com](mailto:tan@jennitan.com)]  
**Sent:** Sunday, February 03, 2013 10:09 AM  
**To:** Tan, Jennifer  
**Subject:** Fwd: Thank you

Begin forwarded message:

**From:** "Peter Toll" <[ptoll@hevanet.com](mailto:ptoll@hevanet.com)>  
**Date:** January 30, 2013 11:43:50 PM PST  
**To:** "Jenni Tan" <[tan@jennitan.com](mailto:tan@jennitan.com)>  
**Subject:** Thank you

Jenni, I am immensely pleased you were able to remember who you serve and vote against Lake Oswego's self-serving water project which would probably end up helping develop Stafford. You have done the right thing and I am very grateful. Stick to your guns!

Grateful regards, Peter

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:42 AM  
**To:** Pelz, Zach  
**Subject:** FW: opinion  
**Attachments:** imagea6d5a9.gif@3332bf46.439544e8; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Tan, Jennifer  
**Sent:** Sunday, February 03, 2013 6:26 PM  
**To:** Sonnen, John; City Council  
**Subject:** FW: opinion

Please add to the record.

 Councilor Jennifer Tan  
[jtan@westlinnoregon.gov](mailto:jtan@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

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---

**From:** Jenni Tan [[tan@jennitan.com](mailto:tan@jennitan.com)]  
**Sent:** Sunday, February 03, 2013 10:08 AM  
**To:** Tan, Jennifer  
**Subject:** Fwd: opinion

Begin forwarded message:

**From:** Char <[char@berkham.com](mailto:char@berkham.com)>  
**Date:** February 1, 2013 9:18:22 AM PST  
**To:** Jenni Tan <[tan@jennitan.com](mailto:tan@jennitan.com)>  
**Cc:** Mike Jones <[mjones@westlinnoregon.gov](mailto:mjones@westlinnoregon.gov)>  
**Subject:** opinion

Hello

I do not support the LOT Water Plant because of the damage it will do to an existing neighborhood, home values, disruption to business and travel along Hwy 43, and the less than "good citizen relationship" Lake Oswego has imposed on the Mapleton residents. Homeowners should not have to hire lawyers to fight powerful business and local government to keep their neighborhood livable.

I think when the initial plant was built there in the 60s, West Linn was a different community, and probably those streets did not have the number of homes there are today. It looks like many of the houses are on large lots. I drove down that street to look around, and honestly, I'm still not sure where the new plant could be built that wouldn't look like an monstrosity along the bank of a beautiful waterway. Why impose on our best natural resource, the Willamette River?

I also don't like the thought of disrupting the habitat and riverbank in Mary S Young Park.

Bottom line is that Lake Oswego should find some land bordering the railroad tracks in their community - where it is undeveloped! Offering a potential five million dollars to the City of West Linn is chump change in the long term.

I am hopeful that you will stay with your NO votes, in agreement with the Planning Commission. "Just say NO".

Sincerely,  
Char Berkham

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Monday, February 04, 2013 8:42 AM  
**To:** Pelz, Zach  
**Subject:** FW: Lake Oswego/Tigard water partnership (LOT)

John Sonnen, Planning Director  
Planning and Building, #1524

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-----Original Message-----

From: Tan, Jennifer  
Sent: Sunday, February 03, 2013 6:25 PM  
To: Sonnen, John  
Cc: City Council  
Subject: FW: Lake Oswego/Tigard water partnership (LOT)

Please add to the record.

Councilor Jennifer Tan  
<mailto:jt看@westlinnoregon.gov>  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, OR 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: <http://westlinnoregon.gov>

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---

From: Dave Sengenberger [dave.sengenberger@frontier.com]  
Sent: Sunday, February 03, 2013 11:27 AM  
To: CWL Council  
Subject: Lake Oswego/Tigard water partnership (LOT)

attn: West Linn City Council

As a resident of Lake Oswego, I am opposed to the Lake Oswego/Tigard water project for the following reasons:

The current Lake Oswego water treatment facility's capacity is adequate for probably 30 to 40 years - or even longer. The Carolla Report overstates the population growth for Lake Oswego, even when you factor in the UGB to include Stafford, blowing the projected water requirements beyond reason. As a footnote, it is the desire of the people of Lake Oswego not

to expand our city into Stafford. So including this area in the projections is a mute point. Spending \$300 million or our more to build a super water system is simply insane based on the future needs of our community. Your vote to block LOT will save the LO taxpayers a tremendous amount of money.

Lake Oswego would probably incur the expense soon to rebuild the intake structure. Maybe upgrade one of the pumps and perform some rebuilding of the plumbing. The total cost might be about \$10,000,000, which is affordable, even though the city management in 1968 failed to make a reserve fund provision for maintenance. Given that the Lake Oswego citizens' exposure on the LOT project will be upwards of \$150,000,000, and that we will forfeit half of the ownership to Tigard, I find this unacceptable.

Our city's \$5,000,000 token to West Linn, (from LO Mayor Jack Hoffman's council) for cooperating with LOT while we rip up your town to lay in a mammoth 48" pipe is an expense that I do not want to have pay for. We have other priorities which could make better use of the money. And LOT's overreaching game plan could invite litigation - and delays - which will ramp up the costs. Not to mention the ill will created with our neighbor. I can not image how much the construction will interfere with the people of West Linn, not to mention the interruption of traffic flow on Highway 43.

The bureaucrats and politicians need to hear the message from the people of West Linn that making assumptions and shoving grand plans down our throats without discussion or consideration no longer works for the folks. I am frankly tired of their need to tax and spend. Tigard can still pull water from Portland (contrary to the risks advocated by EPA) and neighboring water districts in the Clackamas system for many years.

I urge you to support your Planning Commission by stopping this project in its tracks by not granting LOT the approval to expand the Lake Oswego water plant. Councilors Jones and Tan apparently have the best interests of their people at heart. It is my hope that all of you agree on killing this project which will also benefit the people of Lake Oswego. I might add, as Chair of my NA, these opinions are my own and do not necessarily reflect the feelings of my neighbors.

Sincerely,

Dave Sengenberger  
Chair, Westridge Neighborhood Association  
25 Hillshire Drive Lake Oswego 97034 503-638-0743  
[dave.sengenberger@frontier.com](mailto:dave.sengenberger@frontier.com)

**Pelz, Zach**

---

**From:** Vicky and Pat [patvicsmith@q.com]  
**Sent:** Monday, February 04, 2013 7:31 AM  
**To:** Pelz, Zach; Sonnen, John  
**Cc:** rebecca walters; Scott Gerber; Norman King  
**Subject:** Water Resource areas are impacted in AP12-02 and 12-03 - DRAFT  
**Attachments:** outside of paved area10.23.12.pdf

Zach and John -

Please submit to the record for West Linn City Council RE: AP-12-02 and AP-12-03

Below is the City of West Linn's staff answer to a City Council question. The answer was provided after the public record for this appeal was originally closed.

We do not think this answer reflects the current CUP and appeal information, with regards to impacts to City designated Water Resource Areas (WRA) on Mapleton Drive, most notably Trillium Creek.

Please remember, as early as October 2012, residents notified City Staff that the 48-inch transmission pipe alignment, as surveyed in the field by the applicant, appeared to be outside the paved areas through at least two WRA's on Mapleton Drive. We urged West Linn staff to review this available field record and also requested that you update your staff report to reflect that the proposed alignment does in fact go through at least two city designated WRA's - specifically outside of the "existing streets". This information was sent to you in an email during the CUP 12-02 and CUP -12-04 process. We received no response.

Rebecca Walters re-sent that same email to you in early January 2013, to ensure you would update the record for AP12-02 and AP 12-03.

Based on your answer to City Council, we are requesting an explanation of what information was used by staff to prepare the answer provided to City Council, since the 48-inch pipeline alignment is clearly indicated by the applicant's (still visible) field survey. The City staff has already relaxed the City's baseline "utility separation" code requirements, and even this is not enough to keep this large pipe within the narrow pavement width along Mapleton Drive.

While the applicant has proposed to utilize HDD installation methods to go under Trillium Creek, NO plan of ANY kind (as required by CDC Chapter 32) appears to have been submitted for your review. The City must realize that the two HDD "bore pits" will be very deep and substantial in size and considering the similar HDD set-up shown by the applicant for the 42-inch pipeline HDD receiving pit at the lower end of Mapleton Drive, one can only speculate that all this activity will be well within the WRA limits on both sides of Trillium Creek.

I am attaching the detailed information from Rebecca, with the hope that you will review it and if appropriate update your response to the City Council. As you are fully aware, alternative site analysis has been discussed at length during this application process. Whether these impacts would trigger this requirement or not should be answered for the record. The neighborhood looks forward to your response

CITY COUNCIL QUESTION AND WEST LINN STAFF ANSWER

**Lake Oswego did not look at alternative Water Treatment Plant sites. Is there an obligation to require an alternative site analysis?**

*Answer:* No. Major utilities are allowed as conditional uses in all zoning districts subject to this application. Except in water resource areas, the CDC does not require that conditional use proposals evaluate alternative sites. Conditional Use applications must include a site analysis (if the land is undeveloped), a site plan, architectural drawings, a grading plan, a landscape plan, a sign plan, a circulation plan, a utility plan and a narrative responding to the applicable criteria.

CDC Chapter 32 requires that where roads, paths, trails, utilities or other similar facilities are proposed to be constructed through a water resource area, the applicant shall submit an alternatives analysis demonstrating that the proposal has the least impact to the resource area. In this case, the Partnership's pipe alignment avoids water resource areas and keeps impacts to areas already disturbed (existing streets)

Zach –

We have reviewed the documents referenced below and we respectfully request that the staff report be revised to reflect the most recent information provided by the applicant.

***City of West Linn Staff Report. Dated October 17, 2012. Finding 14, page 29.***

The construction practices are designed to minimize impacts to water resources. By tunneling the RWP below the riverbed from Meldrum Bar under the Willamette River and then continuing at a depth between 60 and 34 feet under the wetlands and stream corridors in Mary S Young Park before daylighting the RWP on tax lot 200, there is no impact on overlying resources. On tax lot 200 the RWP transitions to a trench. Whereas concern about trenching is rooted in the expectation that the trench would cross and disturb a creek or wetland, the trenching process on Mapleton and Highway 43 will be exclusively in the paved ROW through these WRAs which will be bracketed by erosion control measures. No impacts on adjacent storm drainage channels, streamside vegetation, and water quality or water quantity are expected.

***Water Resources Area and Habitat Conservation Area Technical Memorandum. Dated June 15, 2012, page 7.***

#### **Areas Outside of MSY Park and OPRD Parcels**

No impacts will occur to WRAs located outside of MSY Park. All work will occur within existing roadways. Pipeline crossings of existing stream culverts will occur either above or below the existing culverts so that no modifications to the culverts are needed.

It appears the staff report is no longer accurate based on the most recent plans from the applicant. These plans were made available by applicant to the neighborhood ahead of **Open House October 10, 2012. PDF 119101620-EVA-1-FW.9.17.12. These plans show the following:**

- The HDD work areas crossing Trillium Creek in front of Tax Lot 21E24BC400 and 21E24BC 500 are **outside the paved road area** and within the **WRA**.
- The open cut work area crossing Heron Creek in front of tax lot 21E24AC2500 is also **outside the paved road area** and within the **WRA**. In addition this alignment of the transmission pipeline is at the toe of a hillsides that was the site of a recent slide.

These two areas are both outside the paved roadway and in WRA's. They are NOT the only locations on Mapleton where the most recent transmission line alignment indicates it will fall outside the paved area. **We request City staff review the waterline alignment as surveyed by the applicant to assess the new impacts.**

Thank you for your time.

## Pelz, Zach

---

**From:** Carson, Jody  
**Sent:** Sunday, February 03, 2013 8:53 PM  
**To:** Pelz, Zach; Jordan, Chris  
**Subject:** Fwd: LOT Proposal  
**Attachments:** image9994b8.gif@99607487.20b74add; image99f200.jpg@650ef25c.2b0846af; image8406a7.jpg@1c84e1fc.4a8f4143; image9d33b6.jpg@cef76142.7d0f4849

For the record

Begin forwarded message:

**From:** Curt Sommer <[curt.sommer@comcast.net](mailto:curt.sommer@comcast.net)>  
**Date:** February 1, 2013 8:18:50 PM PST  
**To:** "Kovash, John" <[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)>  
**Cc:** "Tan, Jennifer" <[jt看@westlinnoregon.gov](mailto:jt看@westlinnoregon.gov)>, "Jones, Michael" <[mjones@westlinnoregon.gov](mailto:mjones@westlinnoregon.gov)>, "Carson, Jody" <[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)>  
**Subject:** LOT Proposal

Dear Mayor Kovash;

There are no words to express my disappointment with your performance on Monday night. It is impossible to believe that someone with your years of experience in the public sector would make such a rookie mistake like the one you did Monday night. You have failed the people miserably. The best thing you can do at this point is to recuse yourself from all future votes on the LOT Proposal. You are obviously not impartial and objective.

Kudos to councilors Tann and Jones for taking the high road. Shame on you Mr. Mayor. Shame, shame, shame.

--

Regards,

Curt Sommer  
Energy Advisor/Writer  
503-407-1826  
<http://ezsolarhouse.com>



Councilor Jody Carson  
[icarson@westlinnoregon.gov](mailto:icarson@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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Pelz, Zach

---

**From:** Gary Hitesman [ghitesman@gmail.com]  
**Sent:** Sunday, February 03, 2013 4:45 PM  
**To:** CWL Council; Pelz, Zach; Sonnen, John  
**Subject:** AP-12-02 et al\_Uphold PC decision to Deny

**TO:** 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/3 February 2013

**RE:** Uphold Planning Commission Decision to Deny

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["hard-core pornography"]; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it**, and the motion picture involved in this case is not that. [*Emphasis added.*]

—Justice Potter Stewart, *concurring opinion in Jacobellis v. Ohio* 378 U.S. 184 (1964), regarding possible obscenity in *The Lovers*.

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description ["West Linn Water Treatment Plant"]; and perhaps I could never succeed in intelligibly doing so. But **I know it when I see it**, and the building involved in this case is not that. [*Emphasis added.*]

—GARY HITESMAN.

I have two people who shall take the honors of helping to provide the proof that the application for the Treatment Plant should be denied or, in the least, sent back for a Design Review Amendment. One, a well-intentioned neighborhood advocate that shall remain anonymous, and Two, Mayor Kovash, for his unfortunate blunder, for which the timeline had to be extended. There may still be wiggle room to take the luster off my silver bullet, but in the end, I find nothing in the Record that meets with the Burden of Proof or provides sufficient and reasonable arguments supporting an overturn of the PC decision.

## 55.050 DESIGN REVIEW AMENDMENT TRIGGER

Amendments to design review shall be required when 10 percent or more of the housing type changes (e.g., from single-family units to multi-family units) from the tentatively approved design review plan, or when there is more than a 10 percent change in the number of units, or when the layout of streets and lots significantly changes, or adjusting more than 20 percent of the building footprint or site plan, or significant changes to the architecture that modify the style, mass, or result in elimination of significant design features. Changes in color or materials would not require an amendment unless the colors were non-earth tones and the materials were of poorer quality (for example, going from tile roof to composition roofing) than originally approved. Changes to the project/site plan to meet conditions of approval or legislative changes shall not trigger an amendment. (Ord. 1408, 1998)

My previous 24 page tome refers to significant changes with the existing Operations Building which is now being demolished and was not part of the staff report or PC decision and further exacerbates the non-compatibility of the proposal put before the PC. In addition to that, the proposed reservoir has changed twice; once in a 75% reduction of the reservoir and then a 50% increase in size of the reservoir. The reservoir fails to satisfy the recommendations for an ASR and other components of the Water Master Plan.

### **CDC 554.050 not met**

The site plan has been adjusted greater than 20 percent with the proposed water reservoir for the plant. The changes to the site plan were affected by the change in the reservoir configuration, location, mass were not done to meet conditions of approval or legislative change. This has been an error or omission of the staff, applicant, and city and as of yet has not been acknowledged. Looking at the record, the changes were made to accommodate the increase in unexpected costs for necessary structural support via piles. The Record shows that the Reservoir has gone from 8 million gallons of capacity to 2 million back up to 3 million. That is roughly a 75% reduction and then 50% increase in footprint and a significant change in the site plan, EVEN though it may be partially buried or completely buried into the ground. Using the words as defined by Webster's or any other dictionary indicates that amendments to design review shall be required based on these changes by the applicant.

The trigger to the amendment was never raised by staff or been discussed during these deliberations. And before the council tries to pooh-pooh the idea or just ignore it like they have with so many other issues, the flip flopping of the reservoir should have in the least triggered a revised staff review and commentary to CDC 55.050.

The reservoir has played a large part in how the Plant came to be. For the record, the original site plan that was presented to the neighborhood should be reviewed again and discussed at the hearing. Please add to the Record the neighborhood comments that were written onto the plan and the applicant's response, including the architects and engineers. Add to the Record the lawsuit regarding the covenants which should also be examined to see how the lawsuit was triggered by the need to fit the reservoir onto the site and how 'that' influenced the direction. And also, for the Record, all correspondence and meeting notes that will daylight conversation with the adjacent property owners around the 300 foot setback that was maintained and why the reservoir was never proposed to go in what appears to be ample room to bury 'it' there?

Simply looking at the site plan indicates that a 2 or 3 million gallon capacity reservoir might reasonably be located in the area with minimal to no lasting negative impacts. As it appears now, that the applicant may have avoided having to condemn the covenants or settle out of court had the criteria been enforced when the changes to the reservoir were made, not once, but twice.

I mention property owners because; 1.) this is an issue of property rights and community more than it is about water(at least for me), and 2.) member(s) of the property in question served(s) on the Budget committee for the City and others on the Planning Commission after a stint(s) with Parks. It is merely the appearance of favoritism that should be addressed when you look at the layout the applicant and city have foisted upon the citizens and city council. There is nothing in the record that indicates, after changes to the reservoir, that the proper mitigation, or planning process, or transparent procedures and processes, have been followed per the criteria.

Regardless of speculation on communications that will have to be validated, or unvalidated, after an exhaustive public records search, is not the main rationale. (As a tangent to this argument, the whole of the Record should include all the NA meetings that were held over the last two years since the mayor reopened the record and introduced his Ex Parte communications with two unnamed Neighborhood Associations.)

### **Lack of Coordination with the Comprehensive Plan**

Primarily, the lack of a design review amendment ignores the assumptions stated regarding emergency conditions on page 75/201 of the West Linn Water System Master Plan (2008) (replaced p15).pdf [WLWSMP];

Under normal and emergency conditions, the analyses presented throughout this section consider the MDD condition for one (1) day and assume that the City's supply capacity is adequate to refill storage volume used for fire suppression. The emergency condition presented in the table below assumes a loss of the City's SFWB supply for one (1) day. Under emergency conditions it is assumed that emergency supply from the City of [REDACTED] under MDD conditions.

In the type of seismic event anticipated, a safe assumption on building reliable emergency supply is that both lines crossing the Willamette River are compromised and/or incapacitated. And reservoirs within city limits will cost millions and are not likely to occur in time to meet emergency demand. The current deficit in storage capacity requires more than relying on the existing intertie. Water sources from Bull Run or a Robinwood ASR are reasonable solutions that were left out of negotiations and deliberations.

The current agreement between the cities does nothing to address the current and future supply deficit under emergency conditions and the current benefit of the intertie is not coordinated with the Comprehensive Plan! In reading the analysis of the MSA report, the IGA proposed will not meet (OR DOES NOTHING TO DAMPEN) the real threat of a comprehensive conflagration hitting Cascade Summit, Hidden Springs, and Barrington Heights (pg.92/201) ( . . ."revealed distribution system deficiencies during fire flow events" . . .

Omissions and mistakes exist within the lack of coordination of the reservoir and intertie with the West Linn Water System Master Plan (2008) (replaced p15).pdf [WLWSMP] and how it has been misconstrued and improperly followed by the City Manager and council. For the Record, a conflict exists with coordinating policy, staff actions, and coordination with land use. As with the Imagine West Linn Document added by the mayor, the Council Rules and City Charter shall be added to the Record as well to help meet the Burden of Persuasion. For the Record, include; page 3/201 of the WLWSMP, page 13/201 of the WLWSMP, page 17-18/201 of the WLWSMP, page 28/201 of the WLWSMP, page 30/201 of the WLWSMP, page 40/201 of the WLWSMP, page 48/201 of the WLWSMP, page 71/201 of the WLWSMP, and 65/201 of the WLWSMP.

The discussions to date, and the Record, have not acknowledged the "City's supply source with the greatest vulnerability to great loss of service" and the conceptual approaches compared to a storage only solution approach. Page 66/201 says:

As presented in Section 6, the most cost effective approach to addressing the vulnerability of the City's transmission system may be to develop reliable emergency supply sources in cooperation with neighboring and regional water providers. **Should the City be unable to achieve the goal of securing reliable emergency supplies**, consideration of a parallel river crossing or other options should be re-evaluated.

Emergency discussions and allowable reduced system performance noted on pg. 75/201 shall also be considered. At this point, why would the City be unable to secure reliable emergency supplies from the Bull Run system? Also, what of the Aquifer Storage and Recovery submitted here;

#### Aquifer Storage and Recovery

As part of this supply analysis, an evaluation of the potential for development of aquifer storage and recovery (ASR) as a backup or peaking supply was completed. ASR is the underground storage of treated drinking water that is injected into a suitable aquifer and subsequently recovered from the same well or wells, generally requiring no retreatment other than disinfection. ASR is a water

supply management tool for water providers whose peak water demands either approach or exceed supply capacities, while non-peak supply capacities are typically in excess of non-peak demands. A technical memorandum documenting this analysis is included in the Appendix D.

Although not verified by deep well data, the Bolton and Robinwood areas between Highway 43 and the river potentially are underlain by more than 1,000 feet of CRBG section and therefore may have the highest potential for productive aquifer conditions. (The applicant has inadvertently provided data supporting aquifer storage and recovery as a potential source for emergency needs in their study of the reservoir support system.) While it is not recommended that the City immediately pursue development of ASR as a water management tool because of the associated risks and unknowns, it is recommended that ASR be included as a water management supply option as the City considers its supply and storage options.

Given the considerations raised by City Staff, what were the findings of a supply option using ASR? Or was that option completely ignored/omitted? (pg. 79/201)

Notes on the Water System Master Plan;

- #1.) Issue of River Intakes? Does this application allow a 'run-around' of the original condition of approval of the construction of the new intake for WL?
- #2.) Need, Benefit, and Priorities are based on 2008 "Saturation Development" criteria. The currently offered benefits of replacement pipes, intertie, and reservoir do not address the planning period and sizing efforts at saturation development.
- #3.) The WLWSMP refers to saturation development within the current city and UGB limits and addresses only the needs within the City's jurisdiction. The claim by the Mayor of regarding a change in the definition of "regionalism" and jurisdiction sets dangerous, and untested, precedent.
- #4.) Add to the Record the current status of "Water Systems Operations and Maintenance Guide", page 48/201. Provide proof the Guide was referenced in the decision making process.
- #5.) Where is the analysis and additional seismic restraint evaluation? (pg.53/201) And does the current SFWB WMPU already provide the required redundancy the WLWSMP requires?
- #6.) The current transmission line has a total capacity of 9.5 MGD when total saturation development and needs will require 10 MGD. So the pipe is going to have to be replaced EVENTUALLY as the estimated 5.6 fps will only work for short durations. The false savings offered by the Mayor of West Linn missed this piece of existing information. There will be no savings in pipe construction after all. (pg64/201)
- #7.) In particular, note the discussion on Planning Period and Study Area as to what is "economically and physically developable". For the Record, discuss Approach D and the new updated information uncovered by the applicant and why staff has failed to review or coordinate the applicants preferred solution to Approach D. Also, Option C. (Option B was the recommended approach to be adopted by the city Council, yet pg. 23/201 #3 mentions Approach C on capacity and reliability.)

Currently, the City's primary water supply is from the South Fork Water Board (SFWB) water treatment plant (WTP) located in Oregon City. The City also has an emergency supply connection to the City of Lake Oswego's WTP located at the north end of the City. The City's water distribution system consists of six (6) service zones supplied by six (6) storage facilities and five (5) pumping stations. Each of the service zones is supplied by gravity from a storage facility.

#8.) What happened to 'this' emergency water solution? Apparently, the increase in size of the existing water plant in Robinwood is not a necessary condition of accessing required emergency water? West Linn can access water without any changes to the existing water plant. (pg. 78/201)

An element of these discussions includes the construction of a transmission system intertie that connects the City of Portland supply to Tigard through the Washington County Supply Line in such a way that water, which originates at the City of Portland's 50 mg Powell Butte Reservoir, could flow by gravity into Lake Oswego's Waluga Service Zone. With this supply Lake Oswego would have the ability to supply the City and meet its own demand needs at the same time by off-setting demands from the Lake Oswego treatment plant with supplies from the Tigard/Portland intertie. With the Tigard/Lake Oswego emergency supply connection operational Lake Oswego could supply an equal amount of water to the City through the West Linn/Lake Oswego supply connection. A preliminary review indicates that this connection may have a hydraulic capacity in excess of 6 mgd, potentially making an equal amount available to the City in an emergency event.

Pursuing this option involves negotiating intergovernmental agreements (IGA) and probable participation in funding a portion of the transmission system intertie improvement. A preliminary review of potential project costs associated with this approach indicates that it has a lower cost than Approaches A and B.

Was this done? Where is the documentation?

#### #9.) Kenthorpe Well Evaluation

The City owns a former Robinwood Water District supply well, now called the Kenthorpe Well. The Kenthorpe Well is located on Kenthorpe Avenue in northeast West Linn (Figure 1). Based on the OWRD well report, the well is 8 inches in diameter, approximately 278 feet deep, had a static water level of 137 ft bgs at the time of drilling, and was pumped at a rate of 200 gpm with 62 feet of drawdown for a specific capacity of 3.2 gpm/ft. Although a geologic log is not available as part of the OWRD well report, the location of the well relative to the understanding of the geology in the area indicates that the well likely is completed in the upper portion of the CRBG aquifer. No other information regarding the well construction, capacity, pumping history, or water quality was available for review when this TM was being prepared. The City conducted a site visit to assess the accessibility of the Kenthorpe Well for this evaluation. The well was not accessible because a concrete slab covers the location of the well. Consequently, the condition of the well could not be determined for this TM. Based on available information, the Kenthorpe Well is not suitable for ASR pilot testing because of capacity limitations, the size of the well, and the lack of accessibility. However, the well penetrates only the upper portion of the CRBG section, and the CRBG near the Kenthorpe Well is potentially 1,000 feet or more thick. Thus, the CRBG in the area of the Kenthorpe Well has a potential to have suitable production and storage characteristics for groundwater supply or ASR development.

It appears that the plant and water line do not need to increase in size to trigger this solution? What about the possibility of accessing this resource as a condition of approval, given the work to be conducted on the reservoir? ( See pg. 131/201) Why did city staff not review this aspect of the Water Master Plan? Why did the city manager fail to enforce recommendations and Next steps as specified in the Water Master Plan?

**Pelz, Zach**

---

**From:** Carson, Jody  
**Sent:** Sunday, February 03, 2013 1:04 PM  
**To:** City Council  
**Cc:** Pelz, Zach  
**Subject:** Fwd: opinion  
**Attachments:** image926529.gif@25e5ade7.618c43d4; imagea95612.jpg@8d3e18a4.95ad42c1; image82f9be.jpg@52efede9.f2cc473a; imagea8dd60.jpg@7235b5ce.ee4a4f5f

For the record

Begin forwarded message:

**From:** "Berkham, Charlotte" <[char@berkham.com](mailto:char@berkham.com)>  
**Date:** February 1, 2013 9:20:35 AM PST  
**To:** "Kovash, John" <[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)>  
**Cc:** "Carson, Jody" <[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)>  
**Subject:** opinion

Hello

I do not support the LOT Water Plant because of the damage it will do to an existing neighborhood, home values, disruption to business and travel along Hwy 43, and the less than "good citizen relationship" Lake Oswego has imposed on the Mapleton residents. Homeowners should not have to hire lawyers to fight powerful business and local government to keep their neighborhood livable.

I think when the initial plant was built there in the 60s, West Linn was a different community, and probably those streets did not have the number of homes there are today. It looks like many of the houses are on large lots. I drove down that street to look around, and honestly, I'm still not sure where the new plant could be built that wouldn't look like a monstrosity along the bank of a beautiful waterway. Why impose on our best natural resource, the Willamette River?

I also don't like the thought of disrupting the habitat and riverbank in Mary S Young Park.

Bottom line is that Lake Oswego should find some land bordering the railroad tracks in their community - where it is undeveloped! Offering a potential five million dollars to the City of West Linn is chump change in the long term.

I am hopeful that you will reconsider your vote, and in agreement with the Planning Commission, "Just say NO".

Sincerely,  
Char Berkham  
Skyline Ridge

 City of  
**West  
Linn**  
Councilor Jody Carson  
[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F: (503) 650-9041

Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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**Pelz, Zach**

---

**From:** Carson, Jody  
**Sent:** Sunday, February 03, 2013 1:00 PM  
**To:** City Council  
**Cc:** Pelz, Zach  
**Subject:** Fwd: LOT Proposal  
**Attachments:** imagea370b8.gif@2c0c0a18.9da64b18; image91673e.jpg@3e52ef5b.23f64dc8; imagea16d83.jpg@33b5e8fb.46e9421c; imageac88d6.jpg@57103470.8f114550

For the record

Begin forwarded message:

**From:** Curt Sommer <[curt.sommer@comcast.net](mailto:curt.sommer@comcast.net)>  
**Date:** February 1, 2013 8:18:50 PM PST  
**To:** "Kovash, John" <[jkovash@westlinnoregon.gov](mailto:jkovash@westlinnoregon.gov)>  
**Cc:** "Tan, Jennifer" <[jtann@westlinnoregon.gov](mailto:jtann@westlinnoregon.gov)>, "Jones, Michael" <[mjones@westlinnoregon.gov](mailto:mjones@westlinnoregon.gov)>, "Carson, Jody" <[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)>  
**Subject:** LOT Proposal

Dear Mayor Kovash;

There are no words to express my disappointment with your performance on Monday night. It is impossible to believe that someone with your years of experience in the public sector would make such a rookie mistake like the one you did Monday night. You have failed the people miserably. The best thing you can do at this point is to recuse yourself from all future votes on the LOT Proposal. You are obviously not impartial and objective.

Kudos to councilors Tann and Jones for taking the high road. Shame on you Mr. Mayor. Shame, shame, shame.

---

Regards,

Curt Sommer  
Energy Advisor/Writer  
503-407-1826  
<http://ezsolarhouse.com>



Councilor Jody Carson  
[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)



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## Pelz, Zach

---

**From:** Carson, Jody  
**Sent:** Sunday, February 03, 2013 12:54 PM  
**To:** City Council  
**Cc:** Pelz, Zach  
**Subject:** Fwd: Lake Oswego/Tigard water partnership (LOT)  
**Attachments:** imagea8c7d1.gif@f66baf1c.8e5c4f17; imageb013c3.jpg@781acecf.e65e4473; image8eadad.jpg@8a51d830.ad594920; image9f88e7.jpg@158d43df.247842c4

For the record

Begin forwarded message:

**From:** Dave Sengenberger <[dave.sengenberger@frontier.com](mailto:dave.sengenberger@frontier.com)>  
**Date:** February 3, 2013, 11:27:05 AM PST  
**To:** CWL Council <[cwl\\_council@westlinnoregon.gov](mailto:cwl_council@westlinnoregon.gov)>  
**Subject:** Lake Oswego/Tigard water partnership (LOT)

attn: West Linn City Council

As a resident of Lake Oswego, I am opposed to the Lake Oswego/Tigard water project for the following reasons:

The current Lake Oswego water treatment facility's capacity is adequate for probably 30 to 40 years - or even longer. The Carolla Report overstates the population growth for Lake Oswego, even when you factor in the UGB to include Stafford, blowing the projected water requirements beyond reason. As a footnote, it is the desire of the people of Lake Oswego not to expand our city into Stafford. So including this area in the projections is a mute point. Spending \$300 million or our more to build a super water system is simply insane based on the future needs of our community. Your vote to block LOT will save the LO taxpayers a tremendous amount of money.

Lake Oswego would probably incur the expense soon to rebuild the intake structure. Maybe upgrade one of the pumps and perform some rebuilding of the plumbing. The total cost might be about \$10,000,000, which is affordable, even though the city management in 1968 failed to make a reserve fund provision for maintenance. Given that the Lake Oswego citizens' exposure on the LOT project will be upwards of \$150,000,000, and that we will forfeit half of the ownership to Tigard, I find this unacceptable.

Our city's \$5,000,000 token to West Linn, (from LO Mayor Jack Hoffman's council) for cooperating with LOT while we rip up your town to lay in a mammoth 48" pipe is an expense that I do not want to have pay for. We have other priorities which could make better use of the money. And LOT's overreaching game plan could invite litigation - and delays - which will ramp up the costs. Not to mention the ill will created with our neighbor. I can not image how much the construction will interfere with the people of West Linn, not to mention the interruption of traffic flow on Highway 43.

The bureaucrats and politicians need to hear the message from the people of West Linn that

making assumptions and shoving grand plans down our throats without discussion or consideration no longer works for the folks. I am frankly tired of their need to tax and spend. Tigard can still pull water from Portland (contrary to the risks advocated by EPA) and neighboring water districts in the Clackamas system for many years.

I urge you to support your Planning Commission by stopping this project in its tracks by not granting LOT the approval to expand the Lake Oswego water plant. Councilors Jones and Tan apparently have the best interests of their people at heart. It is my hope that all of you agree on killing this project which will also benefit the people of Lake Oswego. I might add, as Chair of my NA, these opinions are my own and do not necessarily reflect the feelings of my neighbors.

Sincerely,

Dave Sengenberger  
Chair, Westridge Neighborhood Association  
25 Hillshire Drive Lake Oswego 97034 503-638-0743  
[dave.sengenberger@frontier.com](mailto:dave.sengenberger@frontier.com)



Councilor Jody Carson  
[jcarson@westlinnoregon.gov](mailto:jcarson@westlinnoregon.gov)  
**West Linn City Councilor**  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F: (503) 650-9041  
Web: [westlinnoregon.gov](http://westlinnoregon.gov)

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## Pelz, Zach

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**From:** Sonnen, John  
**Sent:** Sunday, February 03, 2013 10:43 AM  
**To:** Pelz, Zach  
**Subject:** FW: water treatment plant  
**Attachments:** image859035.gif@5e1359c6.7cfd4109; image001.jpg; image002.jpg; image003.jpg; image004.jpg; image005.jpg; image006.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

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**From:** Kovash, John  
**Sent:** Sunday, February 03, 2013 8:58 AM  
**To:** Sonnen, John  
**Subject:** FW: water treatment plant

LOT CONTACT



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Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Carson, Jody  
**Sent:** Thursday, January 31, 2013 4:03 PM  
**To:** City Council  
**Subject:** FW: water treatment plant

for the record



West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

**From:** Robert Gowdy [pasupply@msn.com]  
**Sent:** Tuesday, January 29, 2013 2:28 PM  
**To:** Carson, Jody  
**Subject:** water treatment plant

Councilor Carson,

My understanding is that you are in favor of the expansion of the Lot treatment plant in the Robinhood area of West Linn. I urge you to reconsider this position and follow the wishes of your constituents and vote against this project. This position places an undue burden on the people of the Robinhood area and West Linn. I understand we have infrastructure issues that need to be addressed but the LOT expansion is not the answer.

Thank you for your service.

Robert Gowdy  
503.722-4686





Councilor Michael Jones  
[mjones@westlinnoregon.gov](mailto:mjones@westlinnoregon.gov)  
West Linn City Councilor  
22500 Salamo Rd  
West Linn, Oregon 97068  
P: (503) 657-0331  
F:  
Web:



*West Linn Sustainability* Please consider the impact on the environment before printing a paper copy of this email.  
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**From:** Char [char@berkham.com]  
**Sent:** Friday, February 01, 2013 9:18 AM  
**To:** Jenni Tan  
**Cc:** Jones, Michael  
**Subject:** opinion

Hello

I do not support the LOT Water Plant because of the damage it will do to an existing neighborhood, home values, disruption to business and travel along Hwy 43, and the less than "good citizen relationship" Lake Oswego has imposed on the Mapleton residents. Homeowners should not have to hire lawyers to fight powerful business and local government to keep their neighborhood livable.

I think when the initial plant was built there in the 60s, West Linn was a different community, and probably those streets did not have the number of homes there are today. It looks like many of the houses are on large lots. I drove down that street to look around, and honestly, I'm still not sure where the new plant could be built that wouldn't look like an monstrosity along the bank of a beautiful waterway. Why impose on our best natural resource, the Willamette River?

I also don't like the thought of disrupting the habitat and riverbank in Mary S Young Park.

Bottom line is that Lake Oswego should find some land bordering the railroad tracks in their community - where it is undeveloped! Offering a potential five million dollars to the City of West Linn is chump change in the long term.

I am hopeful that you will stay with your NO votes, in agreement with the Planning Commission. "Just say NO".

Sincerely,  
Char Berkham

## Pelz, Zach

---

**From:** Sonnen, John  
**Sent:** Sunday, February 03, 2013 10:42 AM  
**To:** Pelz, Zach  
**Subject:** FW: Mayor's Ex Parte \_ AP-12-02  
**Attachments:** image9bb1f6.gif@f8179ae2.b9094c01; image001.jpg; image002.jpg; image003.jpg

John Sonnen, Planning Director  
Planning and Building, #1524

West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Kovash, John  
**Sent:** Sunday, February 03, 2013 8:53 AM  
**To:** Sonnen, John  
**Subject:** FW: Mayor's Ex Parte \_ AP-12-02

LOT CONTACT



West Linn Sustainability Please consider the impact on the environment before printing a paper copy of this email.

Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

**From:** Gary Hitesman [<mailto:ghitesman@gmail.com>]  
**Sent:** Friday, February 01, 2013 11:41 AM  
**To:** CWL Council; Pelz, Zach; Sonnen, John  
**Subject:** Mayor's Ex Parte \_ AP-12-02

West Linn City Councilors and Mayor,

When evaluating the proposal put forward by your city manager and the LOT Partnership, ORS clearly states that the whole of the record shall be taken into consideration.

Unlike the Holiday Inn Appeal where one fact was used to overturn the Planning Commission decision to approve, these Conditional Use applications fail on many fronts. Unlike the Holiday Inn application where lot sizes were used as evidential fact to overturn the PC decision in 2011; AP-12-02 et al has suffered it's death by a thousand cuts in errors, omissions, and other stuff that does not meet criteria.

Including lack of real citizen participation and an overwhelming disapproval from the numerous neighborhood association meetings conducted by the RNA. With 11 NA's on record and 7 that meet regularly or now, annually, the mayor's parsing of meeting notes is not substantial to overturn the other overwhelming evidence to

the contrary of his bias and prejudicial views.

Also, the Sunset NA leadership and friendships with 2 of the councilors could appear to place their participation on a very, very slippery slope. (And again, I don't know what NA's the mayor referred to as the question has not been answered and the Mayor was unclear.

Please, look at the whole of the record and consider the fact that you have heard testimony from many, many affected residents who have spoken using the code and have stuck to the criteria. Despite the protests and character assassinations raised by the applicant; it is very easy to establish that the burden of proof has not been met. The CUP has used the City of West Linn to aid and abet in getting this thing through.

This is born out of the record in spades. The only hope the mayor has in passing this application is to change the message to suit his wants. Apparently, deciphering a decision requires precedent and interpretation; something the mayor assured us he was quite capable of providing, given his 8 years on the PC and CC, prior to making his Ex Parte Gaffe.

Well, the issues of Ex Parte, LACK of CLARITY, and Precedent have been misconstrued as well. The precedents requested by the applicant and allowed by the City are unprecedented in their wonton destruction of the intent and meaning of the code and criteria. Allowing the myriad of exceptions sought by the applicant, solely because they make it harder for an industrial facility to properly coexist within an existing neighborhood, invalidates much of the criteria and goes against the intent and purpose of the Comprehensive Plan, the Imagine West Linn Document, and still, the Water Master Plan. And when you add in the Mayor's inconsistent messaging, perceived bias, change in direction, and lack of clarity in the proceedings (and within the application,) this application will take months upon months to shift through and prepare an appeal to LUBA if the council unwisely decides to overturn the PC deliberations.

Please UPHOLD the PC decision and let LO come back with a more reasonable solution that meets the criteria already on the books.

## Mollusky, Kathy

---

**From:** Birdshill CPO/NA [birdshill.cpo.na@gmail.com]  
**Sent:** Monday, February 04, 2013 4:21 PM  
**To:** zpelz@westlinnoregon.com  
**Cc:** CWL Council; birdshillcpona@gmail.com; sentinelskip@gmail.com; lamontking@comcast.net; dfroode@comcast.net; jnorb@comcast.net; alison-henderson@comcast.net; normbking@gmail.com; khansen@westlinnidings.com; vedwards@oregonian.com; kstudebaker@ci.oswego.or.us; kbowerman@ci.oswego.or.us; jgustafson@ci.oswego.or.us; soneill@ci.oswego.or.us; djordan@ci.oswego.or.us; mkehoe@ci.oswego.or.us; jgudman@ci.oswego.or.us; tcoffee@ci.oswego.or.us; bcc@co.clackamas.or.us; stevewhe@co.clackamas.or.us; barbarasmo@co.clackamas.or.us; ccichair@yahoo.com; tom.hughes@oregonmetro.gov; carlotta.collette@oregonmetro.gov; ina.zucker@oregonmetro.gov; runnionk@trimet.org; warnerb@trimet.org; prosscerc@trimet.org; shelli.romero@odot.state.or.us; jackbogsblog@comcast.net; mayorcharliehales@portlandoregon.gov  
**Subject:** Birdshill CPO / NA RSLT 2013.08.12.34 request to WL City Council Vote NO on AP-12-02 and AP-12-04  
**Attachments:** RSPK\_BHCN\_Uphold\_WL\_CUPs\_L3R\_2013\_02Feb\_04Mo\_1400U.pdf; REPT\_Norb\_Carollo\_Synopsis\_2013\_01Jan\_07Mo\_1225U.pdf  
**Categories:** Forwarded, LOT Forward After Decision

Birdshill CPO / NA Resolution 2013.08.12.34 was passed unanimously by membership at meeting 2013.08 on 2013 Jan 23 Wednesday. We request the 2013 – 2014 West Linn City Council (WLCC) to

**VOTE NO wrt Appeal case file identifiers AP-12-02 and AP-12-04.**

As requested by City of Lake Oswego on behalf of the Lake Oswego Tigard Water Partnership.

WLCC vote scheduled for 2013 Feb 11 Monday 18:30 U 6:30 PM PT)

for appeal of Final Decisions of West Linn Planning Commission

on Conditional Use Permits CUP-12-02 and CUP-12-04

Documents attached; please see details below.

2013 Feb 04 Monday 16:20 U (4:20 PM PT)

Charles B. Ormsby (Skip)  
Chair 2012 – 2013  
Birdshill CPO / NA  
A Joint Clackamas County Community Planning Organization (CPO) and  
City of Lake Oswego Oregon Neighborhood Association (NA)  
Phn: 503.636.4483 Residence  
E-mail: [birdshillcpona@gmail.com](mailto:birdshillcpona@gmail.com)

Zach Pelz,  
City Planner

City of West Linn Oregon  
22500 Salamo Rd  
West Linn OR 97068-8270  
Phn: 503.657.0331  
Web: <http://westlinnoregon.gov/>  
Email: [Zpelz@westlinnoregon.gov](mailto:Zpelz@westlinnoregon.gov)

Copy  
Birdshill CPO / NA Board 2012-2013  
Parties in Robinwood NA of West Linn OR  
Lake Oswego Tigard Water Partnership  
City of Lake Oswego Recorder  
City of Lake Oswego City Manager  
Clackamas County Board of County Commissioners  
Clackamas County Office of Public and Government Affairs  
Metro

Subject: Birdshill CPO / NA RSLT 2013.08.12.34 request to WL City Council Vote NO

Abbreviations:

AP – Appeal, City of West Line case file identifier.  
CUP – Conditional Use Permit, City of West Line case file identifier.  
BHCN – Birdshill CPO / NA (That is us residents)  
LTWP – Lake Oswego Tigard Water Partnership (also abbreviated “LOT”)  
WLCC – West Linn City Council (2013 – 2014)  
WLPC – West Linn Planning Commission  
LOPW – City of Lake Oswego Public Works  
RSLT – Resolution

Membership of the Birdshill CPO / NA at publicly announced meeting  
2013.08 held on 2013 Jan 23 Wednesday 18:00 U (6:00 PM PT) voted  
unanimously on motion 2013.08.12.01 to pass following resolution (RSLT):

RSLT ID: 2013.08.12.34

Date ...: 2012-Jan 23 Wed 18:00 U  
Title ...: Request Uphold WLPC wrt CUP(s) Against LTWP  
Gist ...: Request to uphold West Linn Planning Commission (WLPC) decisions  
wrt Conditional Use Permit(s) CUP-12-02 and CUP-12-04 denying Lake  
Oswego Tigard Water Partnership (LTWP) appeal to West Linn City  
Council (WLCC) on 2013 Feb 11 Monday 18:30 U (6:30 PM PT).

Our community on the NE corner of the Lake Oswego Urban Growth Management  
Area (UGMA) requests that the 2013 – 2014 West Linn City Council members  
**VOTE NO** on the following Appeal case identifiers

1. AP-12-02, Appeal of West Linn Planning Commission (WLCC) Final Decision on  
CUP-12-02 requested for water filtration (treatment) plant expansion.
2. AP-12-04, Appeal of West Linn Planning Commission (WLCC) Final Decision on  
CUP-12-04 requested for infrastructure connections within West Linn  
City Limits.

This vote is to take place at regularly scheduled meeting of West Linn City Council on  
2013 February 11 Monday 18:30 U (6:30 PM PT), Agenda Item 3.1,  
Business Meeting, Agenda Bill 2013-02-11-01.

Resolution and summary document attached as specified below. Please make sure  
the 2013 – 2014 West Linn City Council considers this request especially the rationale  
stated in the “Whereas” preamble clauses.

A final note and forecast to many other government entities along OR Hwy 43.

Citizens are concerned about public involvement that affects their finances.

They desire to understand population forecasts that affect evolution of multiple government policies across multiple levels of governance. Further citizens are beginning to coalesce along the Oregon Highway 43 corridor at the neighborhood level and assist one another. And further still beginning to formulate questions in light of many policies and projects that have evolved in the past twelve years.

I forecast interesting times for the status quo that has existed.

Thanks

Skip

Charles B. Ormsby (Skip)  
Birdshill CPO / NA, Chair 2012 - 2013  
A Joint Clackamas County Community Planning Organization (CPO) and  
City of Lake Oswego Oregon Neighborhood Association (NA)  
Google Earth GPS Coordinates: 45°25'46.48"N, 122°39'40.02"W  
Clackamas County  
170 SW Birdshill Road  
Portland Oregon 97219-8502  
Phn: 503.636.4483 Residence  
E-mail: [birdshillcpona@gmail.com](mailto:birdshillcpona@gmail.com)  
Web: <http://birdshillcpona.shutterfly.com/> (Not Open Yet)

**Attachments (ATnn) Two (2) total:**

**AT01**

Title: RESOLUTION 2013.08.12.34 From the Membership of the Birdshill CPO / NA  
File: RSPK\_BHCN\_Uphold\_WL\_CUPs\_L3R\_2013\_02Feb\_04Mo\_1400U.pdf

**AT02**

Title: A Carollo Report Synopsis and Follow-up  
File: REPT\_Norb\_Carollo\_Synopsis\_2013\_01Jan\_07Mo\_1225U.pdf

**Cross Referenced Documents (CRnn) Zero (0) total**

# RESOLUTION 2013.08.12.34 From the Membership of the Birdshill CPO / NA

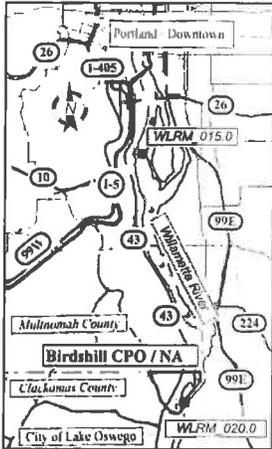
2013 Feb 04 Monday 14:00 U [2:00 PM PT]



**Approved By:**  
Membership of the  
Birdshill CPO / NA

Birdshill CPO / NA  
of Clackamas County and  
City of Lake Oswego Oregon

2012 – 2013 Officers  
Chair: Charles Ormsby (Skip)  
Vice-Chair: Amir Mehrabi  
Sec / Treas: John Hedlund



**Location:**  
The Birdshill CPO / NA (area) is  
a joint county and city  
community located on the west  
bank of the Willamette River  
between river miles 019.4 south  
to 020.2. This is about seven  
miles south of central Portland  
Oregon and immediately north  
of the City of Lake Oswego  
Oregon in Clackamas County.

Google Earth Coordinates  
Intersect: Midvale / Underhill Rds  
045° 25' 46.65" N, 122° 39' 39.90"  
W

## Contact Birdshill CPO / NA:

Phone: 503.636.4483 Charles Ormsby (Skip)  
Mail: Clackamas County – Birdshill Area  
170 SW Birdshill Road  
Portland OR 97219-8052

## Internet Presence – Birdshill CPO / NA

E-mail: [birdshillepona@gmail.com](mailto:birdshillepona@gmail.com)  
Website: <http://birdshillepona.shutterfly.com/>  
Facebook: <http://www.facebook.com/birdshillepona>  
Twitter: <http://twitter.com/#!/birdshillepona>  
YouTube: <http://www.youtube.com/birdshillepona>

## Attached Files / Cross Referenced Files:

08 – Endnotes and Access Hyperlinks, Page <10>.

Detail levels, pages, document files and disk space:

Detail Level	No Pages	No Files	Cum Disk Spc [kb-kilobytes]
L1 – Abstract <sup>1</sup> :	0	0	0 kb
L2– Summary <sup>2</sup> :	0	0	0 kb
L4 – Key Docs <sup>3</sup> :	0	0	0 kb
L5 – Total Outline <sup>4</sup> :	0	0	0 kb
L6 – World of Docs <sup>5</sup> :	0	0	0 kb

Notes on referenced documents:

- Files referenced have been posted to website below for download.
- Downloaded files require name change to enable hyperlinks.**
- Files available for at least 30 days from date at top of column.
- Files also available upon request by email to above address(es).

**GLOSSARY & Terms** – See spreadsheet (SPSH) at website below.  
<https://sites.google.com/site/rsltbirdshill/home/00index>

## Edition: L3 – Resolution

**Edition Access:** L1 – Abstract, L2 – Summary, L3 – Resolution  
L4 – Key Documents, and L5 – Total Outline

Website for editions: <https://sites.google.com/site/mt08jan/home/381twp>

**Note:** Navigate between most headers by Ctr+ mouse click, to follow most links.  
**Note:** CR = Cross Reference – Linked jump to Outline Section & then to endnotes.

## Resolution No.: 2013.08.12.34

[Birdshill Year (End) • Meeting Month Number • Agenda Item • Agenda Segment]

## Date Resolved:

**2013 Jan 23 Wednesday 6:00 PM PT (18:00 U)**

Vote Result on Motion 2013.08.12.01: Yes – 10, Nos – 0, Abs – 0

## Status: RELEASE

## Title:

**Request Uphold WLPC wrt CUP(s) Against LTWP**

## Gist:

Uphold West Linn Planning Commission (WLPC) decisions wrt Conditional Use Permit(s) CUP-12-02 and CUP-12-04 denying Lake Oswego Tigard Water Partnership (LTWP) appeal to West Linn City Council (WLCC) on 2013 Feb 11 Monday 18:30 U (6:30 PM PT).

## Sponsor(s):

**Charles B. Ormsby (Skip), Birdshill CPO / NA Chair 2012 – 2013.**

## Respondent(s): [Affected Parties(s)]:

**West Linn City Council 2013 - 2014**

## 01 – Abstract of Resolution

Resolution to 2013-2014 West Linn City Council (WLCC) for meeting on 2013 Feb 11 Monday 18:30 U (6:30 PM PT) to vote **NO** on AP-12-02 and AP-12-04 thus uphold West Linn Planning Commission (WLPC) decisions on Conditional Use Permit(s) [CUP(s)] CUP-12-02 and CUP-12-04 made on 2012 Nov 01 Thursday. These decisions denied Lake Oswego Tigard Water Partnership (LTWP) and primary managing entity – City of Lake Oswego, the required CUP(s) above necessary to construct infrastructure within the city limits of West Linn that primarily affects Robinwood Neighborhood Association (NA); by significant expansion of an existing City of Lake Oswego water treatment (filtration) facility. This planned upgrade from 16 Mg/d to 38 Mg/d would substantially affect neighborhood character and result in significant fee increases for water service to Lake Oswego residents and contracted customers including residents of the Birdshill CPO / NA east of OR Hwy 43 centerline on Elk Rock Rd, Riverside Dr (aka OR Hwy 43), Briarwood Rd, Fielding Rd, and Stampher Road.

## 02 – Summary.

Title, Gist, Question, Substance, Explanatory Statement

## 03 – Resolution

Resolution No., Title., Gist: Organization., Sponsor(s).  
Respondent(s)., Preamble., Body: Resolution:

## 04 – Key Documents

04.01.01 – A Carollo Report Synopsis and Follow-up  
04.01.02 – Carollo Report DRAFT (20 Mb – request by e-mail)  
04.01.03 – Lake Oswego Tigard Water Partnership (LTWP) Agreement  
04.01.04 – Water Watch presentation to LONAC  
04.01.05 – Hydrologic impacts of climate change Clackamas River

## 05 – Total Outline of Documents

None at L1A – Abstract to L4K – Key Document levels of document detail.

## 06 – Resolution Contacts

None at L1A – Abstract to L4K – Key Document levels of document detail.

## 07 – Locales Referenced

None at L1A – Abstract to L4K – Key Document levels of document detail.

## 08 – Endnotes and Access Hyperlinks

None at L1A – Abstract to L4K – Key Document levels of document detail.

**RESOLUTION 2013.08.12.34** From the Membership of the Birdshill CPO / NA

Approved At: Regular Meeting 2013.08 on 2013 Jan 23 Wednesday 6:00 PM PT (18:00 U)

**03 – Resolution**

Resolution No.: **2013.08.12.34** Status: **RELEASE**

Title: **Request Uphold WLPC wrt CUP(s) Against LTWP**

Gist: **Uphold West Linn Planning Commission (WLPC) decisions wrt Conditional Use Permit(s) CUP-12-02 and CUP-12-04 denying Lake Oswego Tigard Water Partnership (LTWP) appeal to West Linn City Council (WLCC) on 2013 Feb 11 Monday 18:30 U (6:30 PM PT).**

Organization: **Birdshill Community Planning Organization / Neighborhood Association hereafter Birdshill CPO / NA. A Joint Clackamas County Community Planning Organization / City of Lake Oswego Neighborhood Association in the State of Oregon.**

Sponsor(s): **Charles B. Ormsby (Skip), Birdshill CPO / NA Chair 2012 – 2013.**

Respondent(s): **West Linn City Council 2013 - 2014**

**Preamble:**

- Whereas: **1. A portion of Birdshill CPO / NA residents served by Lake Oswego Water,** Birdshill CPO / NA residents are served by public water with sources on Mt Hood in the Bull Run Watershed and Cascade Range in Clackamas River Watershed. Bull Run water is prepared for residents by City Portland Bureau of Water (PTWB) facilities and delivered by Palatine Hill Water District (PHWD). Clackamas River water is prepared and delivered by City of Lake Oswego Public Works. (LOPW); and
- Whereas: **2. Questionable assumptions wrt water source amount and filtration plant locale,** Questionable assumptions were made in 2007 Jul 11 Monday Carollo Report (DRAFT) Title: *City of Lake Oswego and Tigard Water Service Area. Joint Water Supply System Analysis DRAFT REPPORT* that lead to subsequent adoption of resolutions by City of Lake Oswego (08-61) and Tigard (08-39) to form the LTWP. Which include water amount that can be drawn from Clackamas River Watershed at Clackamas River mile, CLRM\_00.85 (est), by intake pump station at approx 13305 Clackamas River Dr, Oregon City OR 97045, Google Earth coordinates (GE: 45°22'45.66"N, 122°34'40.55"W) (est) under current water rights and geologic stability for significantly expanded existing Lake Oswego water filtration facility located at 4260 Kenthorpe Way, West Linn OR 97068-2126, (GE: 45°23'9.24"N, 122°37'55.75"W); and
- Whereas: **3. Formation of Lake Oswego Tigard Water Partnership (LTWP),** City of Lake Oswego, by resolution 08-61, (2008 Aug 05 Tue Agenda Item 7.1) and City of Tigard by resolution 08-39, (2008 Aug 05 Tue, Agenda Item 2) entered into a partnership in 2008 Aug 06 Wednesday labeled the Lake Oswego Tigard Water Partnership (LTWP). With purpose(s) including: (1) fully utilize City of Lake Oswego Clackamas River Watershed water rights and (2) cost effectively deliver water sourced from the Clackamas River Watershed; and
- Whereas: **4. Cost escalation of LTWP and resultant encumbrances,** LTWP project scope and resultant costs have increased in following series of estimates: 2007 – \$75 M, 2009 – \$200 M, 2011 – \$230 M, 2012 – \$250 M. This latest amount at about 50% project engineering level will result in significant Lake Oswego water fee increases of a similar magnitude to those imposed, without voter referral upon customers, for finance and construction sums of \$120 M; encumbered for the Lake Oswego Interceptor Sewer (LOIS). Which have further been guaranteed for payment by “full faith and credit clauses” (FFCC) placed upon both Lake Oswego residents and contracted service recipients including those within area of the Birdshill CPO/NA, in long term credit bonding finance instruments and;
- Whereas: **5. Detrimental effects upon Robinwood NA of City of West Linn Oregon,** Birdshill CPO / NA Chair – Charles B. Ormsby (Skip) has read, observed and agrees with assertions put forth by STOP LLC in: *A Carollo Report Synopsis and Follow-up*, and substantiated by WLPC decisions on Conditional Use Permit(s) [CUP(s)] CUP-12-02 and CUP-12-04, that there will be severe detrimental neighborhood impacts imposed upon the Robinwood Neighborhood Association (NA) and others within the city limits of West Linn by significant expansion of existing City of Lake Oswego infrastructure facilities including but not limited to those of (1) water filtration facility, (2) transmission pipes for raw water supply from Clackamas River and (3) finished water product to City of Lake Oswego and environs.

Body: **Therefore, be it in the name of,**

Unit: **Membership of the Birdshill CPO / NA, Voting at the,**

Meeting: **Meeting, 2013.08, Agenda Item and Segment 12.01, held on,**

Date Resolved: **2013 Jan 23 Wednesday 6:00 PM PT (18:00 U)**

Resolution: **We Resolve** the following Action(s), That

- Action: **1. Vote NO on AP-12-02** thus uphold West Linn Planning Commission (WLPC) Final Decision made 2012 Nov 01 Thu 19:00 U (7:00 PM PT) effective 2012 Dec 11 Thursday 17:00 U (5:00 PM PT) in Conditional Use Permit (CUP) CUP-12-02, for expansion of water filtration plant at 4260 Kenthorpe Way [see Whereas 2 above], thereby denying LTWP appeal; and
- Action: **2. Vote NO on AP-12-04** thus uphold West Linn Planning Commission (WLPC) Final Decision made 2012 Nov 01 Thu 19:00 U (7:00 PM PT) effective 2012 Dec 11 Thursday 17:00 U (5:00 PM PT) in Conditional Use Permit (CUP) CUP-12-04, for water transmission pipes within the City limits of West Linn Oregon, thereby denying LTWP appeal; and
- Action: **3. Send current proposals for LTWP project(s) within City of West Linn back to both Cities of Lake Oswego and Tigard and affected citizens and contracted entities and persons therein for reevaluation as to project scope, costs and any future potential effects and impacts upon the City of West Linn and neighborhoods, including but not limited to Robinwood NA and others within West Linn city limits.**

## A Carollo Report Synopsis and Follow up

The Carollo Report, completed in 2007, is the blueprint for the Lake Oswego-Tigard Water Partnership (LOT) proposal for a new 38 million gallons per day (MGD) water treatment plant and transmission pipeline

The City of Lake Oswego proposes to increase daily treatment capacity from 16 to 24 million gallons per day (MGD) when their average daily use for 2011 was only 4.7 MGD and peak daily demand was 12MGD.

LO's initial water conservation program has been very successful, achieving 36% water consumption reduction, with estimated ultimate conservation of 50%. This threshold requires metering the remainder of customers and stopping more of their 10% water loss through leakage.

The Carollo Report only estimates a .5% water savings, not 36% or 50%. Using the Carollo charts, at 36% conservation LO will never need the additional capacity for their current water users and at 50% conservation, will be able to develop newly annexed land in the Stafford basin without the additional water capacity.

The Carollo Report states that the proposed project is Tigard's **third** best option. The best option for Tigard is continuing to buy wholesale water from Portland which hasn't raised rates as the Carollo Report predicts.

According to current LOT discussions, up to 20MGD of Clackamas River water would be pumped to Tigard in Washington County.

The Carollo Report includes the Stafford Triangle in the proposed service area. It is mentioned numerous times in the report and is shown on the service area map. LO expansion into Stafford is one of the justifications for the new plant and capacity increase. The Carollo Report estimates 50% growth in the service area when the entire LO build out is calculated at 5%.

The original cost estimate of the plant has grown from \$128 million to \$250 million and will probably rise as new challenges, such as the liquifiable soils under the proposed treatment plant site, are discovered. These additional costs will drive the water prices in L.O. and Tigard dramatically upwards, at least 4 times more in Tigard.

Summer flows on the Clackamas River are currently at the mandated minimum limit BEFORE the new LOT intake structure begins pumping.

Timothy Lake feeds the Clackamas River and relies on the snowpack between 6000 and 8000 feet. With climate change, in the future, this snowpack will melt more quickly and won't be able to be available in July thru October to augment river flows as it is now. The Clackamas River watershed will be hard pressed to maintain summer demand and levels, before the new LOT withdrawals.

Despite the strident arguments from LOT attorneys and others that this has nothing to do with Stafford development, the report shows this project has everything to do with Stafford urban expansion.

Regarding water rights, the Carollo Report says 'use them or lose them.' If the LOT project is approved, West Linn and all of Clackamas County won't be able to increase water usage for economic development and growth. LOT and Washington County will have the permits and the massive pipeline to withdraw the available water, regardless of who holds senior water rights.

The real reason for the Carollo Report is that in 2007 L.O. decided to maximize their water rights on the Clackamas River and squeeze everyone else out and reversed engineered the report to build the plant. Their citizens get caught footing the huge bill.

It is apparent that the Carollo Report was written to Justify 3 predetermined conclusions:

1. To immediately fully vest all of LO's 38MGD in water permits as permanent water rights, ahead of other potential Clackamas River water users.
2. To get Tigard and Washington county access to the Clackamas River water resource.
3. To provide a supply of water for Stafford Basin annexation and development.

## Mollusky, Kathy

---

**From:** Dianne Cassidy [cassidy@pacifier.com]  
**Sent:** Monday, February 04, 2013 3:57 PM  
**To:** zpelz@westlinnoregon.com  
**Cc:** CWL Council; tcoffee@ci.oswego.or.us; CouncilDistribution@ci.oswego.or.us  
**Subject:** Testimony regarding the LOTWP Appeal before the West Linn City Council  
**Attachments:** Testimony for the West Linn City Council 2-4-13.docx

**Categories:** Forwarded, LOT Forward After Decision

To: The Mayor and City Council of West Linn  
From: Dianne Cassidy  
Date: February 4, 2013  
Re: **Lake Oswego-Tigard Water Partnership Appeal**  
**West Linn City Council RE: AP-12-02 and AP-12-03**

Dear Mayor and Council Members,

I have been following the Lake Oswego-Tigard Water Partnership saga for a while and do not believe this is a good project for any of the cities involved and that it will result in more negative consequences than positive. The justification for the project has not been proven, the advantage to West Linn is not apparent, and research has shown that Tigard has access to more easily accessible water sources at a much less expensive rate. The result for Lake Oswego will be an astounding debt and little improved service over what an upgraded water plant can provide at a fraction of the cost.

1. Since the Carillo Report was written, facts have shown that the report's anticipated growth rate for Lake Oswego of 3.5% per year is pure fiction. Competent planners have suggested that in the future the complete build-out of the city will be about 45,000 to 55,000 (including land in the Stafford area if it were developed and if it were part of the LO Service District). The report also assumes that water usage patterns will remain the same. Lake Oswego has reduced its water consumption by about 26% and has plans to push this figure up even further. Lake Oswego is growing very slowly, and its water needs are being reduced at the same time. The Carillo Report includes in its population forecast the development of Stafford to justify increased water demand. Everything I've read about urbanization of Stafford says that West Linn is opposed to development there. It is curious then, that you would support a water project that would make this possible. The need for new water resources for Lake Oswego for the foreseeable future has not been proven.
2. Lake Oswego and West Linn have an IGA (grandfathered) regarding an existing Inter-Tie located in West Linn. The inter-tie has been used by both cities and acts as a necessary resource in emergencies. There is no need for a new intertie. The duration of the agreement West Linn now has with Lake Oswego is "perpetual." A new agreement with Lake Oswego AND Tigard might not be so favorable to West Linn as the water needs and financial interests of Tigard will have to be considered. I would ask my own City Council to make sure future rates for use of the water be fair to both cities when they review the agreement, but that the agreement and the infrastructure are working fine now and the argument for a new Inter-Tie is bogus.
3. Cost to the citizens of both Lake Oswego and Tigard have been going up, and are expected to go even higher. The projected cost of the LOTWP started at \$135 million in 2006 but has climbed to \$249 million – so far, and no actual construction has begun. The end cost is sure to be much higher. Lake Oswego has a new sewer line (LOIS) that was very expensive. Our old pipes in the city are breaking down and need replacing, estimated to cost \$70 million (LO Master Water Plan), and the prospect of paying half of the quarter of a billion cost for water we don't really need

is painful. Our bi-monthly combined water-sewer bills have gone from an average of \$102 in 2006 to \$242 in 2012 – a 137% increase, or 15% annually. We expect them to go up even more with this extravagant water project and necessary pipe replacements. Even now there are citizens in both Tigard and Lake Oswego who cannot afford to pay their utility bills. That number will only go higher. This might not be West Linn's concern, but as a good neighbor, remember that there is another side to every story; the citizens of Lake Oswego elected a new Mayor and Council members to put us on a solid fiscal path. We don't need the added consequence of unneeded water projects to add to our burden.

This letter will be sent to my own Mayor and City Council as a protest against past administrations' extravagant spending in general, and especially on projects that show little benefit to the citizens of Lake Oswego.

I urge you to support your Planning Commission with a unanimous denial of the Lake Oswego-Tigard Water Partnership appeal on February 11,

Sincerely,

Dianne Cassidy  
3601 Wren St.  
Lake Oswego, OR 97034  
503-303-5975