

West Linn City Council Meeting Minutes

Council Present: Mayor Norman B. King, Council President Michele S. Eberle, Councilor Scott A. Burgess, Councilor Jody Carson and Councilor Mike Jones

Council Absent: None

Staff Present: Chris Jordan, City Manager; Ken Worcester, Director of Parks and Recreation; Chris Kerr, Senior Planner; Peter Spir, Associate Planner; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

Call to Order/Pledge of Allegiance

Mayor King called the meeting to order at 6:45 p.m.

Proclamations, Recognitions and Presentations -- None

Community Comments

Steve Daiber, 1970 Sunburst Terrace stated that he wanted to address the controversy surrounding the question of whether consistent proper city procedures, practices, and codes were followed in the approval and erection of additional wireless communication facilities on top of the Rosemont water tower.

He asked Council why the 1996 City Council order regarding a 14-foot screen was never installed and requested that it be re-visited in light of new structures erected.

If it is determined that proper procedures were not followed, he asked Council to consider this request for immediate shut down of operation and removal of the new cellular antennas, dishes, and support structures in dispute until proper notification and procedures are followed.

For weeks he has been trying to get information on these towers and have not yet received adequate information. Previous councils have given commitment to keep the utility antennas on the water tower to a minimum for public safety. In 1996 assurances were given to work with the Hidden Springs neighborhood citizens regarding any future tower additions.

Mr. Daiber submitted 19 pages of documents on this issue to be put into the record for Council's consideration.

Mayor King asked if assurances were given at the installation of the first water tower. Mr. Daiber stated that the assurances were given in 1989/90; there was a local newspaper article with that quote as well.

Arnold Fried, stated he wanted to talk on the same issue, installation of antenna on the Rosemont Water Tower. In 1996 the tower was approved with a screen. He woke up one morning to cables banging as installers were attaching five ten-foot structures on the water tower. There should have been some notification to the neighborhood and adjacent neighbors. He questioned why the 4-foot screens were not installed as promised. He did not feel the screens would be obtrusive but he does feel these recently placed antennas are.

Mayor King asked if Mr. Fried received notification that the screen would not be installed. Mr. Fried said he did not receive notification. The neighbors agreed to a 4-foot screen which they felt would be less obtrusive than no screen at all.

Allison Henderson, 1909 Nixon Avenue, stated she is here tonight to ask Council to allow the West Linn Lacrosse Club reinstatement of the temporary permit for water they received five years ago when they built the soccer field. The field needs repair work and unless they can get water to it, the replanting work will be ruined. They have acquired Pacific Sports Turf to do the repairs and they are willing to pay for the water. Staff has informed them that they need approval from Council to get the water.

Mayor King suggested that this request go to Public Works. Chris Jordan, City Manager, explained there is a standing policy that the City was not to provide water to that field. It would require Council approval to overturn this policy. Council can address the issue at their next worksession or vote on a decision tonight to allow City staff to provide the water.

Ken Worcester, Director of Parks and Recreation, explained the field is on Parker Road next to Tanner Creek Park (7 acres). The reason the water has not been provided on a permanent basis is because it is outside the city limits. This soccer field is part of the neighborhood and the city uses it for parking, city sponsored events and general public use. Providing water is possible and the cost of providing the water is nominal (less than \$200).

Councilor Burgess stated that this issue has been around for a long time. There have been previous discussions on negotiations with the school district (as they own the property), SDC issues, and expense issues associated with providing the water.

Mr. Worcester stated the agreement for water requires an extra territorial extension. Staff has never been able to get the School District to the table for negotiations. A

letter went out to school district 7 months ago and there was no response. The cost to hook up the water would be about \$20-\$30 and staff time.

Linn Fox, President of Hidden Springs Neighborhood Association passed out copies of a resolution passed by her neighborhood to the Council. She is here tonight to address the Palomino Trail and a solution to the clean-up of that trail. They would like to establish a relationship with those who live along the trail to resolve the issue of portions of the trail being blocked off by debris and residential fences. These blockages prevent people from following the trail all the way to Santa Anita.

A cover letter with the resolution attached was sent to Mayor King asking Council to instruct the Parks and Recreation Department to notify the people who live adjacent to the trail to remove the fences or obstructions (fences, garden structures and debris) on the trail. Ms. Fox ask that the Council consider this resolution and instruct staff to work with the neighborhood on this trail issue. Friends of the Palomino Trail are willing to help out.

Mayor King stated this is a good opportunity for the neighborhood and the city to work together and have volunteers to help clean up this trail. He feels there are two issues here, the blockages between Appaloosa and the Park and the area that's been cleaned before on Appaloosa along Palomino Way to Pimlico (south side).

Ms. Fox explained there is an idea underway where students from middle school and high school can adopt a portion of greenbelt behind a resident's home along the trail and be responsible for keeping it maintained (restoration with native species). This project could possibly last until graduation of that student. The Friends of the Trail are willing to use their funds to buy native plants to be used to replace invasive plants. However, this project cannot be initiated until the trail has been opened up.

Councilor Burgess stated he feels this is a perfect example of a neighborhood association and neighbors helping neighbors. He suggested door hangers to invite people to become members of the trail group and start helping to take care of the trail.

Consent Agenda

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|----|----------------------|---------------------------------------------------------------------------------------------|
| 1. | Agenda Bill 08-08-20 | Approval of the City Council Meeting
Minutes of July 21, 2008 |
| 2. | Agenda Bill 08-08-21 | Memorandum of Understanding With
Stafford Hamlet re Communications |
| 3. | Agenda Bill 08-08-22 | Contract Award – Cedaroak Boat Ramp |
| 4. | Agenda Bill 08-08-23 | Resolution Approving Compensation Levels
for Management and Non-represented
Employees |

5. Agenda Bill 08-08-28 Resolution Disclaiming a Parcel of land at
 the North End of 13th Street (South of I-205)
 for Public Street Purposes

Council President Eberle moved to adopt the consent agenda consisting of the above five items read. Councilor Burgess seconded the motion.

Ayes: Burgess, Jones, Eberle, Carson, King

Nays: None

The motion to approve the consent agenda carried 5-0.

Report from the City Manager

Chris Jordan reported he and staff were in a meeting earlier this morning with business owners along 8th Court and 10th Street, the Willamette Neighborhood Association, and citizens to discuss the draft IGA for installation of a signal on 10th Street. ODOT has informed the City that this is ODOT property and will not be installing a signal in the 8th Street/10th Street area. Staff has been working on this draft IGA for several months and the business owners and the neighborhood are not happy with the document. ODOT was invited to the meeting but did not attend. Discussions will continue and staff will return with an update on this issue in September.

Councilor Burgess asked if approval of the light is holding up the opening of Willamette Marketplace. Mr. Jordan said no. There was a Condition of Approval regarding occupancy and he will verify that the signal was not tied to that condition. This is not the developer's fault. The negotiations were with ODOT to install the signal.

Councilor Carson asked if there was any other body that could negotiate with ODOT if no agreement can be reached on the draft IGA. Mr. Jordan stated he will look at leverage legally and politically and give an update in September. He has been in contact with Governor's office and there has been some movement but no solution.

Councilor Burgess asked staff to find out if the original Conditional Use Permit (CUP) had been changed for the towers. It may be that the CUP has been updated and there is no longer a need to have a public hearing for additional towers.

Councilor Eberle asked whether the antenna and water tower could be addressed tonight. Mr. Jordan stated staff will put together a discussion document for council's review and consideration at a worksession. Mayor King asked that the information include the relevant approvals referenced and 89/90 planning documents prepared in 1996. Mr. Jordan noted that the City's code encourages co-location of communication towers. The code specifies that new towers cannot be taller than

existing towers. The towers installed are not taller than the existing towers. That is why a land-use process was not initiated.

Councilor Eberle asked about code enforcement for the trail and whether the trail is marked as City property. Mr. Jordan stated that parts of the trail are marked. The trail has not been recently surveyed so the City cannot say where the encroachments are occurring. A letter was sent a year ago explaining the concerns raised by the neighborhood association and requested that encroachments be removed. Staff has not had a code enforcement officer go out and specifically point out the encroachments. Councilor Carson noted that it would be helpful to put up signage that this is city property and encroachments will be dealt with.

Mayor King asked staff to check the status on:

- When code changes for public safety will be coming to the council
- When the two potential CDC changes in Chapter 99 will be coming to Council
- When Council could expect a report on properties that are being developed as infill. Will this development include sidewalks? Will SDC's be required?

Business from the City Council

Mayor King opened discussion on the temporary water request from the Lacrosse Club. The School District has leased this property to another party at no cost. Previous negotiations between the school district and the City have not been successful.

Council President Eberle stated she is not opposed to providing the temporary water. She would like to have the term "temporary water" defined. Councilor Burgess noted the field is used by the community and City for parking and other various events.

Councilor Carson suggested that staff come back with recommendations for Council consideration. Mr. Gloucester recommended granting temporary use for 90-120 days and allow staff authority to provide the water to the field. The need for the water is now in order to be effective.

Councilor Burgess moved to allow staff to provide temporary water to the Parker Road site for up to 120 days. If needed, further recommendations for water can be addressed next year. Councilor Jones seconded the motion.

Mayor King suggested a friendly amendment to the motion that the Lacrosse group would be responsible for the cost of the water and the City would be responsible for the hookup and getting the water to the site. Councilor Burgess agreed with the amendment if the Lacrosse Club was charged a reasonable flat fee that could be added to the Water Fund or Parks and Recreation. Councilor Jones, the second, agreed.

Vote on motion to allow staff to provide temporary water to the Parker Road site for up to 120 days. The Lacrosse Club will be charged a flat fee for the extension of water and these funds will be added to the Water Fund or Parks and Recreation. Further requests for water will be by recommendation from the Parks and Recreation Department.

Ayes: Jones, Eberle, Carson, Burgess, King

Nays: None

The motion carried 5-0.

Mayor King asked staff for an update on the status of the survey of property lines along the trail. Mr. Jordan stated the next step in the process would be to complete a survey of property lines. The surveys will be expensive and time consuming.

Councilor Jones asked if the survey for the Palomino Trail was a part of this year's budget. Mr. Jordan said the Trail was not budgeted for this year; however, staff will review budget possibilities or come back to Council for a small appropriation. The entire Trail will not need to be surveyed. Staff will review and determine which portions of the Trail will get priority.

Councilor Burgess suggested staff consider a lower cost solution to the encroachments than a survey. He suggested staff walk down the path and do an assessment of blockages of the trail.

Mr. Worcester noted a letter was sent last summer asking residents to remove the encroachments. Most of the comments received indicated the residents feel that their obstructions are within their property lines.

There needs to be a definition of encroachment. The City should decide if the Trail should be allowed the full 30-foot access path so that the encroachment can be dealt with on a fair basis to all along the Trail. Temporary permits are granted for gardens in vacant right-of-ways, etc. There has never been access to Santa Anita along this Trail. There are some encroachment issues from Appaloosa Street to the back side of Palomino Park that will require a survey.

Councilor Burgess suggested that staff draft a recommendation to Council on the best way to approach the encroachment issue. He would like to see the neighborhood encouraged to work with the City on a solution to help maintain the Trail.

Councilor Burgess moved to have staff address this issue and bring a recommendation back to Council for consideration and a decision. Councilor Carson seconded the motion.

Ayes: Eberle, Carson, Burgess, Jones, King

Nays: None

The motion carried 5-0.

Councilor Carson announced there will be a concert, "100 Years of Music," on August 20, 2008 at Willamette Park. This is the next of the continuing events planned for the Willamette Centennial Celebration. She invited all to come out and attend.

Mayor King announced there will be another Centennial Event (Meteorite Day) on August 23rd at Fields Bridge Park.

Business Meeting

1. Agenda Bill 08-08-24 Ordinance Amending Chapter 2 of the West Linn Municipal Code Establishing a Commission for Citizen Involvement

Mayor King opened the meeting to discussion of a Commission for Citizen Involvement. He asked for a staff report.

Chris Kerr, Senior Planner reported the purpose of this Ordinance is to enhance the city's citizen involvement efforts as they relate to the land use planning process. The Commission for citizen Involvement (CCI) shall review and evaluate the City's existing processes to ensure that citizens are informed and are given appropriate opportunities to participate in the land use planning process. The City's Planning Commissioners will make up the membership of the CCI.

The CCI will make formal recommendations to the City Council as to the issues discussed and findings and recommendations to improve the City's citizen involvement practices. It will ensure compliance with Statewide Planning Goal 1 as it relates to citizen involvement in the planning process.

The Planning Commission reviewed this proposal at the request of Council and voted 4-3 to recommend adoption of the Ordinance as proposed.

Mr. Kerr noted that his memorandum dated August 6, 2008 includes two changes staff would like to include:

- Circle Page 3R-1: Delete the phrase "all voting members of"
- Circle Page 3R-1, Section R-3, changed to read "Pursuant to Goal 1"

Jones asked for clarification of how the CCI will be different from the Planning Commission, how you separate the identity of the two bodies and how the CCI pragmatically will be more effective than the Planning Commission as it sits now. Mr. Kerr stated the Planning Commission hears quasi-judicial and legislative matters. The CCI will allow more flexibility in that go outside the Planning Commission and get details of a specific issue from the citizens.

Discussion followed on the proposed Ordinance. Mr. Jordan noted that currently people who are attracted to a specific topic come and testify on that subject. With the CCI program, people who are interested in that topic will be allowed to come to this meeting and talk about the issue that evening in addition to coming out and testifying at a Planning Commission hearing on the issue.

Councilor Jones questioned whether the CCI members should include representative of the neighborhood associations. Council President Eberle asked if there is a recommendation for the size of this Commission. Mr. Kerr stated that similar sized cities with similar programs have streamlined their membership. Larger memberships tend to slow down the process. The Planning Commission can evaluate whether the membership should be increased and come to Council with recommendations for changes.

Councilor Carson asked for clarification of the intent of this committee; is it required to report to the Council once a year yet there is no limit to how often the committee can meet. Mr. Kerr explained the Committee can meet as many times they want and bring issues to the Council for consideration as needed.

Councilor Burgess suggested adding to the changes in his memo of August 6th, "as well as the general public."

Public Testimony

Dawn Adams, 22310 Century Lane read a letter into the record to council from Ed Schwarz who is out of town. The letter expressed his concerns about the proposed CCI being a weakening of citizen involvement in the planning process.

Questions were asked by Councilors Eberle and Carson; however, Ms. Adams stated that she was reading the letter as a favor to Mr. Schwarz and could not comment on his intent or answer questions about the context of the letter.

Alice Richmond, 3939 Parker Road, stated that she likes the idea of a CCI but doesn't feel the text is clear. She suggested Council appoint four citizens on this commission as stewards for the City. These citizens would be representative of the west, east, north and south portions of the City and these four could rotate the

section of the city they represent giving them a broader perspective of the issues discussed.

Linn Fox, President of the Hidden Springs Neighborhood Association, submitted a resolution from the Association. She received many responses from citizens after Council's worksession discussion about the CCIs. People are concerned that they will lose their current access to Council because it was stated that the citizens would bring their issues to the CCI and the CCI would then make recommendations to Council. The Hidden Springs Neighborhood Association passed the resolution requesting that all of the members of the CCI be members of neighborhood associations. If there is going to be a CCI they would like to see something that serves both the Council and the citizens.

Kevin Briet was called but was not present.

Bob Adams, 22310 Century Lane, submitted into the record a letter regarding his concerns about the serious deficiencies of the proposed CCI. He read the letter to the audience. Some of the concerns mentioned were:

- Leaves the actual implementation of the CCI unclear
- Independent citizens are not included
- The Planning Commission's weak 3-4 vote reflected concerns. Dissenting commissioners commented that "...it seemed like writing the Council a blank check" and "...it did not make sense for the Planning Commission to monitor itself on how to handle public participation."
- The aim of Goal 1 is to provoke the involvement of independent citizens in all phases of the city's planning process. Why not acknowledge the importance of neighborhood associations and utilize their expertise in providing independent public input into to the Planning Commission.
- This proposed CCI plan impedes the usual process for addressing public and neighborhood association issues
- This is an unnecessary delay and waste of citizen and city resources
- If the CCI body is formed to evaluate neighborhood associations and public participation, it should be comprised of independently elected officers or representatives of neighborhood associations, not Planning Commissioners.
- Any task given the CCI should include a specific purpose, a specific time frame, and preparation of a report and delivery of that report in a venue which allows meaningful public input.

Mr. Adams stated that he opposes this ordinance as written. He would like to see the City cash in on the ability of the neighborhood associations to facilitate citizen participation in the planning process. He asked that Council set this ordinance aside and consider the best way to accomplish the important objectives of Goal 1. He does not feel the current method of handling things through the Planning Commission is broke.

Councilor Carson noted that the intent of the CCI is not to evaluate the neighborhood associations. The CCI purpose is to look at the land use process and make sure everyone has the opportunity to provide input into land use decisions. The neighborhood associations will be a good source of input in terms of how the process is working that the CCI could utilize.

Council President Eberle asked Mr. Adams if his recommendation be that the CCI be the Planning Commission. Mr. Adams stated that it would be an acceptable solution and it might be the best solution.

Valerie Baker, 2270 Crest View Drive, read into the record her personal opinion about the proposed CCI as a planning commissioner and as a citizen of West Linn. She voted in support of the ordinance as presented. Although there was testimony and discussion regarding additional potential duties and responsibilities, new text has been added that was not a part of the documentation before them. Should the scope of the CCI be expanded, she would request a public hearing on the subject.

The CCI would not form another level of government. There is no role defined that requires citizens to go through this body. The CCI as defined would not form opinions on specific land use cases and the commission would not act in the place of residents, businesses, neighborhood associations or other concern citizens on actual land use decisions. The CCI will develop a program to promote and enhance citizen involvement and land use planning. Her vision is that the CCI would reach out to evaluate the current process by soliciting input from citizens and staff, reviewing current policies, accessing process flow and looking at internal efficiencies or inefficiencies. The CCI will conduct a review and make recommendations to staff for process improvements, including suggestions on what the membership should be.

Ms. Baker stated she feels the Planning Commission is suited for the membership panel. The Commission will be made up of seven unrelated individuals with diverse backgrounds who live in different parts of the city, belong to various neighborhood associations, have a variety of educational industry experience and display a wide range of political leaning. Goal 1 speaks to the need for a cross-section.

Ms. Baker noted that testimony tonight indicated that the Planning Commission was sending Council a blank check. She was the one that brought the issue up; however, what she said was that she knew that people were concerned that the Planning Commission was giving Council a blank check. Her vote in favor was to ensure that the Planning Commission was not doing that.

Kerry Oaks, 1125 Marylhurst Drive, pointed out differences in the CCI being proposed tonight and what was proposed at the Planning Commission:

- Document before the Council: #3 under Duties, "...they will be making recommendations to the City Council and City staff regarding citizen involvement in land use planning."
- Document before the Planning Commission: #3 under Duties, "...they will be making recommendations to the City Council and City staff regarding citizen involvement issues in general."
- Document before Council: #4, "...the procedure will be to enhance citizen involvement in land use planning."
- Document before Planning Commission: #4, "...to enhance citizen involvement in the City of West Linn."

Ms. Oaks read her letter into the record. Her concerns were that citizen involvement should not be limited to only the members of the Planning Commission. The CCI should include an elected representative of each of West Linn's neighborhood associations. She feels the direct involvement with neighborhood association members on land use issues is an established connection to promote and evaluate the participation of citizens in land use issues.

Mayor King approved two additional minutes for the completion of Ms. Oaks' testimony.

Ms. Oaks noted that Goal 1 states that if the Planning Commission is to be used in lieu of an independent CCI its members shall be selected by an open well-publicized process. She asked that the Council share their rationale for proposing the CCI be comprised only of members of the Planning Commission and indicate the mechanism it intends to use for an evaluation of the citizens involvement program. She strongly opposes the broad assignment of duties to the CCI that are beyond those related to citizen involvement in the land use planning process. The CCI should not have the responsibility of advising on citizen involvement issues in general. This is the responsibility of the neighborhood associations and the League of the West Linn Neighborhoods.

Councilor Carson asked staff to comment on the discrepancies stated in testimony. Mr. Kerr stated that the ordinance after being presented to the Planning Commission was reviewed by Council at a worksession. At that time the Council requested two changes. These two changes are the ones testified to by Ms. Oaks, in order to have consistency in the entire document, adding the phrase, "...citizen involvement in land use planning."

Bob Thomas, 2563 Pimlico Drive, stated that he supports everything said by Ms. Oaks. He opposes the nature of the CCI if it going to be used in the manner described at a prior worksession of the City Council. It should not be limited to members of the Planning Commission. The CCI should not be made to be beholdng to any part of city government or any appoint part of city government.

Mr. Thomas asked Council to drop anti-citizen oriented ideas about neighborhood associations, reconsider a CCI which does not comply with Goal 1 and drop the unfavorable ideas regarding Chapter 99.

Council President Eberle noted that Council meets yearly with the neighborhood association presidents and individually councilors have attended neighborhood association meetings independently.

Gregg Morris, 18335 Nixon Avenue, urged the Council to oppose the proposed CCI for now. He doesn't understand the ordinance and feels there are other people who don't understand it. There is no rush to get this ordinance through. This seems like a rush job on a blank check to him. Nothing would be lost by slowing down the process.

Councilor Jones asked staff to comment on useful results that have come from other communities having a CCI. Mr. Kerr stated that other communities have come forth with user-friendly brochures that go out to citizens indicating how to get involved in the City's processes for citizen involvement.

Mayor King closed the public testimony portion of the hearing and moved it into deliberations among the Council.

Councilor Burgess moved for the first reading of Ordinance No. ____ Amending Chapter 2 of the West Linn Municipal Code Establishing a Commission for Citizen Involvement per Agenda Bill 08-08-24 with the suggested amendments:

- **Circled Page 2, 4th whereas, change to read, "...will provide a process for evaluating the effectiveness of citizen involvement".**
- **Circled Page 3-R1, Circled Page 3-R3 on August 6th memo from staff: change the last sentence to read, "...and business organizations, as well as the general public."**

Councilor Eberle seconded the motion.

Councilor Burgess stated that he believes there were mistaken concerns expressed tonight partially because the City did not clearly state their purpose and intent for the CCI and partially because the testimony spoke to a previous version of the ordinance. He does not feel the current system is broken; however he does feel there should be continuous improvement.

The intent of the CCI is to evaluate the citizen involvement process in the land use planning process and make recommendations, not take the place of the neighborhood association's involvement. This ordinance recognizes the existing role of the Planning Commission. It recognizes the Goal 1 suggestion to use the Planning Commission.

Councilor Jones stated that he feels the CCI should hold separate meetings. He will be voting in favor of the motion as stated. He feels there should be a provisional period in which the CCI reports back to Council on how to make the process better. The makeup of the CCI might be more effective if the body was chaired by the Chair of the Planning Commission, 4 members of the Planning Commission and 3 members selected by a public process.

Councilor Carson agreed with both Councilors Burgess and Jones. This is an important group to have appointed and she will be voting in favor of the motion. It does not diminish the influence of the neighborhood associations. She feels there should be an initial period for the group as the Planning Commission to develop a plan to assess whether or not the make up should be expanded beyond the Planning Commission, possibly using the people from the neighborhood associations that attend the pre-application meeting.

Council President Eberle noted that the development and implementation of the CCI has been done through the Comprehensive Plan. The important piece is to evaluate and make recommendations on what needs to occur in the future. She feels the language should specifically state that the duties are to annually evaluate citizen involvement in land use planning. The procedure should indicate that there will be 4-week period of time where there is preparation of a report and that report will be delivered in a presentation to City Council for review.

Council President Eberle suggested an amendment on circled page 3, R-1, Membership: "...consisting of 5 members of the Planning Commission and 5 citizen-members." Councilor Jones suggested 4 members of the Commission and 4 citizen-members. Council President Eberle agreed.

Council President Eberle moved to amend the main motion to change

- **Circled Page 3, R-1, Membership, to read, "...establish a Commission for Citizen Involvement of the City of West Linn consisting of 4 members of the West Linn Planning Commission and 4 citizen members appointed by Council to serve staggered 3-year terms.**
- **Strike Section 2 entirely.**

Councilor Jones seconded the motion.

Councilor Carson voiced concern about the number of changes being made to this document. She suggested continuing this hearing to allow staff to incorporate the changes suggested tonight and bring the document back for review and decision. Councilor Burgess agreed.

Vote on motion to amend:

Ayes: Jones, Eberle, Carson

Nays: Burgess, King
The motion carried 3-2.

Mayor King stated that he feels the CCI is a means to deal with the complaints and problems about the planning process so there is the greatest possible citizen involvement. This board could look into the problems and focus on those particular problems.

Councilor Burgess moved to table this issue. Council President Eberle seconded the motion.

Ayes: Jones, Eberle, Carson, Burgess

Nays: King

The motion carried 4-1.

Recess was taken at 9:27 p.m. and the meeting reconvened at 9:40 p.m.

2. Agenda Bill 08-08-27 Selection of Artist for Grindstone Project

Mayor King opened the meeting to discussion of the Artist for Grindstone Project at 9:40 p.m. He asked for a staff report.

Ken Worcester, Director of Parks and Recreation, reported the Percent for Art West Linn Historic Grindstone Project has completed their selection process and is bringing forth a recommendation for the artist finalist, John Davis from Tucson, Arizona.

Staff is asking for approval of the recommended art for the West Linn Historic Grindstones Art Project in concept. Approval of the finalist is necessary in order to proceed with fundraising for the remainder of the dollars necessary to carry out the art project.

This art project is teamed with the Parks and Recreation Departments Willamette River Trail project and the sculpture integrates the historic grindstones into an artistic monument and visual chronicle of the mill. It reflects the significance of the earlier 20th century industry and honors the legacy of the men and women who have worked in the mill.

Councilor Jones asked what the cost of this artwork is. Mr. Worcester stated it would be about \$40,000. \$37,000 needs to be raised.

Councilor Jones asked what volunteer group would be responsible for raising the funds. Mr. Worcester stated that some of the selection committee members will continue to form a fundraising committee.

Councilor Carson moved to approve the selection of John Davis' sculpture for the Grindstone Project per Agenda Bill 08-08-27. Councilor Burgess seconded the motion.

Councilor Carson stated that she feels this is a great project. The concept of using the grindstones for an art structure that would be representative of the heritage of the West Linn area is great. This town was built around the mill and having an artistic representation of that is significant. She is pleased with the selection with the committee made.

Councilor Burgess agreed with Councilor Carson's comments. He thanked staff for bringing this Percent for Artwork group together.

Ayes: Eberle, Carson, Burgess, Jones, King

Nays: None

The motion carried 5-0.

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| 3. | Agenda Bill 08-08-25 | CDC Amendments to Chapter 27 and 28
Tualatin and Willamette River protection;
CDC-07-04/CDC-07-06 |
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Mayor King called to order the Council's public hearing to review amendment to Chapters 27 and 28 of the Community Development Code at 9:40 p.m. City Attorney, William Monahan explained the process for taking public comment. The applicable criteria to be considered are found in Chapter 98 of the Community Development Code for Legislative plan amendments. The Council's decision must be based on consideration of the Statewide Planning Goals 5 and 15 and Administrative Rules adopted under ORS Chapter 197; under any other Federal or State Statutes or Rules that are applicable; on any applicable plans and rules adopted by Metro, specifically Title 13 of Metro's Urban Growth Management Functional Plan; on the City's Comprehensive Plan, Goal 5, Policy 5 and 10; and the Development Code.

Mayor King explained the hearing conduct. He asked if any member of the City Council wished to announce or declare any ex-parte contacts or potential conflicts of interest. There were none.

Mayor King asked if there were any members of the audience who wished to make any challenge to any council member's ability to participate in this decision or the Council's ability to make a decision on these issues. There were none.

Mayor King explained that this hearing would be continued after public testimony and asked for the staff report. Peter Spir, Associate Planner, reviewed the staff report with the Council. At the behest of City Council, the Planning Commission, along with

a citizen task force, undertook to amend the Community Development Code (CDC) to create one chapter that integrates Willamette River Greenway (WRG) and Tualatin River Protection Chapters with the requirements of Title 13 of metro's Urban Growth Management Functional Plan (CDC-07-04).

There was the establishment of a committee of riverfront property owners and after three meetings; the committee presented their proposal language to the Planning Commission. The solution was to consolidate the protection for the two rivers into one chapter.

Metro's Title 3 (protection health and public safety by reducing flood and landslide hazards, controlling soil erosion and reducing pollution of the region's waterways) and 13 (conserve, protect and restore stream corridors and associated habitat areas) requirements were satisfied as part of the Urban Growth Management Functional Plan. The solution was to seek compliance with these Titles to the avoidance of habitat areas, setback from streams and rivers, erosion control, re-vegetation and introduction of measures to reduce run-off and pollutants.

Development will be directed to areas identified as allowed development or not affected by the recommendation. Development in the low, medium and high Habitat Conservation Areas (HCAs) lands will be discouraged. The code provides 5,000 sq.ft. of building envelope for impervious surfaces for a house. Additions to existing homes in the HCA areas are exempt as long as the addition extends laterally or parallel to the river, is a second-floor addition, or an addition on the side of the house away from the river. Accessory structures under 15-feet tall and 500 sq.ft. in size are exempt from permit if they are on the side of the principle structure away from the river. If a lot has the conservation area all the way to the top of the bank, development can be allowed up to 15-feet from the top of the bank. Water permeable decks/patios may be encroaching into the 15-foot setback but must be back 5-feet from the edge of the bank and be no more than 30 inches above grade.

There are provisions that allow for the outright reconstruction of a home on the old footprint that has been destroyed by fire or flood without a land use application other than a building permit and flood management permit.

The Planning Commission held public hearings on July 2 and July 23, 2008. Public testimony was mixed. Concerns were expressed that there would be errors in Metro's mapping system in regards to HCA classifications; it was made clear that there is a provision that would allow the Planning Director to amend the classification after a site visit. Public notice would be given that there was a classification change contemplated. A change would occur once it was determined there was no loss of habitat. The trees are already protected by Chapter 55, Design Review; Chapter 85, Subdivisions; and the Municipal Code. Of the 255 waterfront properties, only 21 will have to go through a change of classification.

Non-residential commercial industrial site have the same HCA setback standards, however, they are offered incentives to provide public access to and along the waterfront. There is an allowance of 60-foot height for structures (industrial lands along the Willamette River upstream from the Old Oregon City Bridge).

Nothing in the new code will deny or take away the rights of riverfront property owners. No public access will be required where it did not exist before. Language regarding docks and water-dependent facilities will remain unchanged.

In comparisons of Chapter 28 and Chapter 32, both are protective of the water resource areas, streams and riparian areas. Both regulate grading and encourage minimal activity or disturbance of water resource areas. Chapter 28 allows for a reduced setback of 15 feet where Chapter 32 claims to a 57-1/2 to a 65-foot setback. Chapter 28 has language regarding re-vegetation and mitigation.

The Planning Commission voted to recommend approval of the amendments at the July 23, 2008 hearing with minor changes.

It was asked if the recommendations referred to in the letter on circle page 89 regarding Goal 15 have been incorporated into the document. Mr. Spir stated that he and Gordon Howard met with Amanda Clinton of DLCD to review the code and made the changes necessary based on her directives.

Mayor King asked for a copy of the presentation.

Discussion followed on minor changes. It was decided that these items can be discussed at the next hearing on this issue.

Public Testimony in Favor

Bob Martin, 2017 Maple Terrace, thanked the Council, staff and those who were involved and worked on this document. This ordinance is a very good solution. It is the best shot at really protecting the City's resources in an intelligent way. There is an inconsistency between Chapter 32 and Chapter 28 because of the setbacks. Chapters 30 and 32 are based on fixed setbacks; these changes are based on a variable setback based on an actual analysis of the land.

Mr. Martin asked that Council reconvene the task force to allow them to make Chapters 30 and 32 consistent with Chapter 28 and apply the HCA approach to the riparian areas and drainageways as well as to the riverfront.

Mayor King thanked the taskforce for a job well done. Councilor Burgess thanked the taskforce and agreed that more work could be done to address concerns of

access, private property respect, vegetation in setbacks and two major riparian areas that were left out of Chapter 32. He suggested having some people that were directly affected by Chapter 32 in addition to the existing membership.

Testimony in Opposition

Ed Bennett, 5707 River Street, stated he has lived here for 35 years. He has provided comments on earlier versions of this proposal. The current proposal is much improved. The requirement that all homes be 15-feet back from the top of the upper bank is reasonable and appropriate. His lot is currently totally within the high value HCA boundary resulting in severe limitations being imposed upon what development could be done. He talked with Tim O'Brien at Metro and he agreed there was no reason his lot should be included in this boundary. Because these maps are based on aerial photographs, they are known to have errors. Metro expects that many such errors will be identified and corrections submitted by area governments. Mr. Spir stated that he was already familiar with some of these errors and inconsistencies that require map revisions.

Mr. Bennett stated he did not know if the map corrections have been made. He is unsure of what process is required to initiate action by the Planning Department to revise the HCA boundaries. This is a very serious issue for property owners involved. There is no crisis that requires that this ordinance be enacted before the known HCA boundary errors have been corrected. He urged Council to take the time to do the job right and save everyone misery and expense.

Mayor King asked for a motion to continue the hearing.

Council President Eberle moved to continue the hearing on Agenda Bill 08-08-25, the public hearing to consider Community Development Code amendments to chapters 27 and 28 regulating the Willamette and Tualatin Rivers to the September 8, 2008 Council meeting with public testimony to be allowed in writing between now and August 18, 2008. Councilor Carson seconded the motion.

Ayes: Jones, Eberle, Carson, Burgess, King

Nays: None

The motion carried 5-0.

4. Agenda Bill 08-08-26

Wildlife Habitat Inventory

Mayor King opened the public hearing of the proposed amendment to the City of West Linn Comprehensive Plan to provide a Wildlife habitat Area map and Inventory with associated text changes related to habitat friendly development practices to be adopted into Goal 5 of the Plan at 10:40 p.m. He explained the hearing format.

City Attorney, William Monahan explained the process for taking public comment. The applicable criteria to be considered are found in Chapter 98 of the Community Development Code for Legislative plan amendments. The Council's decision must be based on consideration of the Statewide Planning Goals and Administrative Rules adopted under ORS Chapter 197; on any other Federal or State Statutes or Rules that are applicable; on any applicable plans and rules adopted by Metro, and on the City's Comprehensive Plan and the Development Code.

Mayor King asked if any member of the City Council wished to announce or declare any ex-parte contacts or potential conflicts of interest. There were none.

Mayor King asked if there were any members of the audience who wished to make any challenge to any council member's ability to participate in this decision or the Council's ability to make a decision on these issues. There were none.

Mayor King asked for the staff report.

Chris Kerr, Senior Planner reported this is a proposed amendment to the City's Comprehensive Plan that will provide for a specific wildlife habitat areas map and inventory to be adopted into Goal 5 of the City's plan.

There are text amendments proposed for the Comprehensive Plan including a new terms "Habitat-friendly practices as well as three new related action measures. This proposed map and inventory is an update of the 2002 inventory completed by Winterbrook Consulting. It was accepted by the City but was never approved by the City. 12 habitat areas were identified (most include streams and rivers and include riparian corridors or wetlands). The updated inventory removed any development approvals that have taken place since that time.

On July 16, 2008 the Planning Commission voted unanimously (6-0) to recommend approval of the amendment with two changes:

- Include a new Action Measure (#11) for inclusion into Goal 5, natural Environment Section of the Plan, "The City shall encourage and support private property owners to take advantage of any federal, state or regional programs (e.g. tax abatements, conservation easements, grant programs) that preserve and protect Wildlife Habitat Areas on private property."
- Modify the Map and Inventory to include the river areas (open water designation)

Wildlife habitat is an area upon which wildlife is dependent in order to meet their requirements for food, shelter, water and reproduction. Upland wildlife habitat refers to habitat that is generally located outside wetland riparian areas.

In 2002 the consultants, Winterbrook Consulting proposed that after their final map and inventory was formally adopted by Council, they would provide direction and options to the City (phase two) related to applying additional protections for these potentially threatened upland wildlife areas. Staff concurs with this and request in conjunction with the consideration for adoption of this map and inventory, that staff be given guidance and direction to pursue the next step to hire a professional consultant to develop a policy options report (additional specific development protections for the upland wildlife areas) to be presented to City for consideration.

The ordinance includes a new definition to go into the glossary of the Comprehensive Plan, "Habitat-friendly development practices." A broad range of development techniques and activities that reduce the detrimental impact on fish and wildlife habitat relative to traditional development practices. The objectives of these practices are to insure the natural pre-development functions of the sight of ecological and hydrological. These techniques may include a variety of site plan and storm water management practices as well as habitat sensitive design.

The proposed amendments satisfy all the requirements of the Plan, the staff and Metro. Staff recommends adoption of the map and inventory as well as the text changes discussed.

Mr. Spir read into the record an email received today from Linda Hammel, 5661 Cascade Street regarding her concerns about the limited scope and actual protections in the proposed ordinance and whether the inventory is so generic that it might allow more abuses than protections. She asked that Council approve the inventory and have staff return within 2-3 months with a specific proposal and incentive to encourage property owners to comply as part of Phase II.

Councilor Burgess moved to extend the meeting to 11:15 p.m. Councilor Jones seconded the motion.

Ayes: Burgess, ones, Eberle, Carson, King

Nays: None

The motion carried 5-0.

Councilor Jones asked if a mechanism is in place for a challenge or review of their property status in habitat areas. Mr. Spir stated that this ordinance adopts this inventory as well as the methodology the City will use for future adoptions. He suggested a biologist be consulted to make a determination as to whether or not a property meets all the criteria and fits into the 12 accepted habitat wildlife areas.

Mayor King voiced concern about the intent to protect and encourage wildlife when the connecting roadways present a danger to their existence. He asked if underpasses should be installed. Mr. Kerr stated a biologist could determine

whether a specific roadway is an active corridor for deer and what modifications would be needed for protection.

Councilor Burgess asked for clarification of what is proposed to be adopted tonight. Mr. Kerr stated the Council would be adopting the overall inventory (60-page document) which includes the 2002 Winterbrook Inventory map (dated July 2008).

Councilor Carson noted there were unique species (birds, flowers, etc.) only in this area that are missing from the lists and asked how these items would be added. She suggested that in phase two these items be considered modifying an area's classification. Mr. Kerr stated this inventory was completed in compliance with Metro and state requirements. Making changes to the inventory would chip away at the validity of the inventory. A second phase to modify the inventory is possible.

Councilor Burgess moved to extend the meeting to 11:45 p.m. Councilor Carson seconded the motion.

Ayes: Carson, Jones

Nays: Burgess, Eberle, King

The motion failed 3-2.

Mayor King moved to extend the meeting to 11:30 p.m. to allow public testimony. Councilor Eberle seconded the motion.

Ayes: Burgess, Jones, Eberle, Carson, King

Nays: None

The motion carried 5-0.

Public Testimony

Greg Morris, 18335 Nixon Avenue, submitted testimony into the record and asked that Council revisit circled page 14 regarding enforcement. He is glad the City is finally at this point; it has been nine years. He hopes that this current habitat inventory and verbiage is adopted. He feels the inventory is unenforceable and he recommends an additional action (Measure #12) to ensure that Phase 2 policy option occurs soon: "Within three months of the adoption of this ordinance, planning staff will submit specific recommendations regarding phase two policy options to city Council. These options will include identification of existing and new incentive programs, additional limited protection options, and full protection options for wildlife habitat."

In looking at these policy options there are significant resources that have worked on this project and suggested that these people be encouraged to continue. He urged Council to include the recommended action measure to make sure that phase two isn't neglected for another nine years.

Alice Richmond, 3939 Parker Road, stated she is uncomfortable with this issue. According to the inventory map her property is mixed Conifers and Hardwood forest. She has two acres of pasture and she has not seen any wildlife. On the other side of her residence is three acres which is designated as Conifers. All that is on this side is Blackberries, Cherry Trees, Crab Apple Trees, Vine Grapes and brush trees. She does not feel the inventory map is accurate.

Councilor Burgess moved to continue the hearing on Agenda Bill 08-08-26 to September 8, 2008. Councilor Jones seconded the motion.

Ayes: Jones, Eberle, Carson, burgess, King

Nays: None

The motion carried 5-0.

Adjournment

The August 11, 2008, meeting of the West Linn City Council adjourned at 11:37 p.m.