

# **WEST LINN CITY COUNCIL MEETING MINUTES January 11, 2010**

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## **Council Present**

Mayor Patti Galle, Council President Jody Carson, Councilor Scott Burgess, Councilor Teri Cummings, and Councilor John Kovash

## **Council Absent**

None

## **Staff Present**

Chris Jordan, City Manager; Tom Soppe, Associate Planner; Peter Spir, Associate Planner; City Attorney Tim Ramis; and Shirley Richardson, Minute Taker

## **Call to Order/Pledge of Allegiance**

Mayor Galle called the meeting to order at 6:40 p.m. and led the flag salute.

**Proclamations, Recognitions and Presentations** -- None.

## **Community Comments**

Randall Fastaben, 18787 Trillium, stated he is a representative from the Robinwood Fire Station Committee (Cedar Oak Fire Station). He stated he is here tonight to give an update of actions of the Robinwood Fire Station Committee. A smaller group met with Ken Worcester to look at the space in February. The community was invited and an open house was held on December 19, 2009 to view the space; the building was opened up by Ken Worcester and the Fire Chief moved the engines out so people could get a good look at the facility. There were 35 people who attended that event. The Committee solicited comments and usage from those people who attended and are now ready to move forward.

The Robinwood Fire Station Committee is requesting a work session with Council to figure out how to repurpose this space so that it can be for the public benefit. Committee members have called Sunset Fire Hall and found their citizen usage has resulted in a full schedule; they are always turning away people who need public space to meet; toddler groups, yoga groups, etc.

This Committee is looking at the Robinwood Fire Station as that type of public entity (public space) where it is available to the citizens of Robinwood neighborhood, as well as the citizens West Linn for public use. Going forward the group is putting together a plan for non-profit status and they are working closely with the Robinwood NA. The next step for them is to meet with John Sonnen and Ken Worcester to get a sense of what they are looking at. They would like to meet with staff first before proceeding into a meeting with Council. At the meeting with Council it is hoped to have their plan or vision of what the space can be and how it can be managed.

Kevin Bryck, 11840 Nixon Avenue stated he is here tonight as the incoming chair of the West Linn League of Neighborhoods. He thanked council members, staff and residents who have come to visit them over the last year and shared comments with them.

The primary goal of this group is they want to emphasize educational outreach in the year to come. They would like to be the group that sponsors lively and entertaining forums for the wider West Linn audience. He invited everyone to come to their meetings on the second Saturday of every month. They would like to have input from people with regards to what type of educational forums and topics they should have at their monthly forums.

Ken Pryor, 2119 Green Street stated that his issue is with the anti-recall float and the political message that was allowed to infiltrate the West Linn Christmas Parade. The supporters of the anti-recall campaign, the same people that would deny his democratic right to due process, decided to corrupt the annual West Linn Christmas Parade.

He stated it is sad that the City's reputation and good name was sullied by those lacking fundamental decency and will to exploit any opportunity, even the children's parade. Notice of the ethically bankrupt and bad judgment was not just annoying to him but also other West Linn citizens. Some of which had signed the anti-recall petition earlier have reconsidered and signed the recall petitions as well.

If the tone of his words seems strong it is because the perpetrators of this act knowingly, willfully did this and disregarded common decency. The idea of putting a political message into a children's parade passes for civility to some, personally he views it as an example of the same faulty logic that fosters the idea that a special recall election will cost taxpayers \$30,000.

Master card and Visa already do a great job in diminishing the concept of Christmas; there is no need for West Linn city officials to add to the distortion. He is asking that Council pass a resolution that political messages not be allowed to intrude on West Linn Christmas parades in the future. If city officials need to participate in the parade their presence is in keeping with the Christmas spirit.

Mayor Galle stated she felt that it was inappropriate also. She received several complaints from citizens. She asked that a work session be scheduled to discuss this issue.

Councilor Cummings asked if there is a policy for using a City-sponsored event for promoting election activity. Chris Jordan stated there is no City policy. It is his understanding that it has been traditional at some City parades for candidates for office to have floats. There are laws regarding limiting access to a parade. Ultimately any such policy would have to be reviewed extensively by the city attorney.

Tim Ramis stated he will review regulations for City-sponsored events if Council requests it. He is not prepared tonight to expand on the constitutionality of the issue at this point.

Roberta Schwarz, 2206 Tannler Drive stated she enjoyed the program the City uses for recycled Xmas trees that are live are picked up and put into the park. If you ask the tree to be placed in a specific park it can be placed there. She visits them every so often. It is hoped that this program is continued. She suggested that staff get the word out about this program before the holiday so people are encouraged to buy live trees and know that they could go into the park of their choice after the holiday to see the donated tree.

#### Consent Agenda

1. Agenda Bill 2010-01-11A Draft Minutes for Approval – October 26, 2009
2. Agenda Bill 2010-01-11B Draft Minutes for Approval – November 9, 2009
3. Agenda Bill 2010-01-11C Draft Minutes for Approval–November 23, 2009
4. Agenda Bill 2010-01-11E West Linn School District Excise Tax
5. Agenda Bill 2010-01-11F School District Easement
6. Agenda Bill 2010-01-11G Community Grants and Allocation of Community Grant Funds

Council President Kovash read the 6 items above and moved to approve the consent agenda. Councilor Burgess seconded the motion.

Councilor Cummings asked that any items that involved money be moved to the business meeting so they can be reviewed before a decision made. Some of these items have been discussed in Council work session. She is not prepared to approve the minutes as she has not been what corrections have been made; she will abstain on the minutes.

Councilor Burgess stated that during the work session it was decided to take Agenda Bill 2010-01-11D, Resolution No. 2010-01, Management Compensation off the consent agenda and it will become first item under Council Business. Corrections were given to the City Manager by himself, Councilors Kovash and Carson. None of the corrections were substantive; they were typographical errors. It was agreed in the work session to accept the minutes with amendments.

Councilor Cummings stated she would be abstaining from the minutes for approval.

Councilor Cummings moved to amend the motion to have Agenda Bills 2010-01-11D, Management Compensation; 2010-01-11E, West Linn School district Excise Tax; 2010-01-11F, School District Easement; and 2010-01-11G, Community Grants and Allocation of Community Grant Funds moved to the first items considered under the Business Meeting for an explanation and individual vote.

The motion died for lack of a second.

Poll on the main motion:

**Ayes: Carson, Burgess, Kovash**

**Nays: Galle**

**Abstentions: Cummings**

**The motion carried 3-1 with 1 abstention.**

### **Report from the City Manager**

Chris Jordan submitted to the Council maps and a description of the reserve areas from the Metro Corp Four that was just received today.

### **Business from the City Council**

Mayor Galle opened the meeting to discussion of the appointments to the Planning Commission.

Council President Kovash moved to appoint Charles Lytle and Lewis McCoy to the Planning Commission. Councilor Cummings seconded the motion.

**Ayes: Cummings, Kovash, Carson, Burgess**

**Nays: Galle**

**Motion carried 4-1.**

Councilor Carson thanked Michael Babbitt for years for service and dedication on the Planning Commission for the past eight years. She hopes he will continue to be involved in other committees. Council President Kovash stated he hopes Mr. Babbitt continues his involvement in city government; his contributions are appreciated. Mayor Galle thanked Mr. Babbitt for his years of service.

Council President Kovash moved to appoint Councilor Terry Cummings as West Linn's primary representative to Clackamas County C-4 Group and Councilor Jody Carson as the alternate representative. Councilor Burgess seconded the motion.

**Ayes: Kovash, Carson, Burgess, Cummings, Galle**

**Nays: None**

**The motion carried 5-0.**

Councilor Carson encourage citizens to take an opportunity attend the upcoming Metro Council hearings. Some of the meetings will be open houses and some will be hearings; they are all listed on the Metro website. She invited citizens to attend the meetings and to take the opportunity to provide their input to Metro Council on feelings about the urban and rural reserves. There is an interactive map on the website where input can be provided directly on the map regarding your wishes and desires.

Councilor Cummings explained there is a link on the City's website that gives you access to post written comments regarding urban and rural reserves to Metro. There will be an open house at Clackamas County Services Development Building from 4:30 p.m. to 6:30 p.m. The purpose of the open house is to view the maps and write down comments. On January 21<sup>st</sup> there will be an open house from 4:30 p.m. to 6:30 p.m. At 6:00 p.m. there will be a hearing where the C-4 and Metro Commissioners will be there to listen to public comment. This is the public's opportunity to weigh in on this issue. There is only an 11-day period of public input this time. Metro has been leaning towards putting the entire Stafford area in an urban designation. The decision has not yet been made; they are accepting input on that issue.

Mayor Galle asked staff to schedule the Economic Task Force on a work session with Danny Crossman in attendance.

Mayor Galle asked if the school board made a decision about building a school at Sunset. Mr. Jordan stated the Superintendent and he have exchanged phone calls over the past week but have not had a chance to sit down to a discussion. The school district has had discussions on this issue but he has not heard if there is a decision.

Mayor Galle asked when the rest of the appointments to commissions and committees will be made. She stated that Lynn Peterson has requested that the Wastewater Treatment appointment by January 14, 2010. Mr. Jordan stated appointments will be put on the January 25<sup>th</sup> Council agenda and on the work session for next week. He will send a note to Ms. Peterson regarding the appointments.

Councilor Cummings moved to appoint the City Manager to represent the City of West Linn in the Wastewater Treatment Association meetings until a formal appointment has been made. Mayor Galle seconded the motion.

**Ayes: Carson, Burgess, Cummings, Kovash, Galle**

**Nays: None**

**The motion carried 5-0.**

Mayor Galle asked staff to comment on the software issue in the Finance Department. Mr. Jordan stated the project is moving forward and should be completed shortly.

Councilor Carson asked City staff to contact the Robinwood Neighborhood Association regarding the Cedar Oaks Fire House and schedule a meeting with them.

Councilor Cummings stated it was exciting to have to participate in a discussion with Kurt Schrader in the morning and that afternoon hear a presentation. Councilor Carson stated the presentation focused on the concept of developing a national heritage area for the area surrounding the falls. Currently they are talking about both sides of the River, Oregon City and West Linn. That area may expand in the future. A National Heritage Area is a designation which looks at properties that have the National Heritage Area aspects of natural features that are significant, long standing cultural features, etc. It is not regulatory, but it brings together the area to interpret the heritage in the area and define recreational opportunities and cultural heritage experiences. The group going forward will be looking at developing public information sessions where people are encouraged to attend and help give input of stories they can tell regarding the area around Willamette Falls. Kurt Schrader indicated the first step of a National Heritage Area is to have a bill passed through Congress to designate a feasibility study. Congressman Schrader has introduced that Bill with an appropriation of money for the feasibility study. Hopefully that bill will pass and there will be designated funding to help with a feasibility study.

Councilor Burgess recognized Police Officer John Satter, a great City employee we lost to Cancer last month. Councilors attended a service in his honor. Mr. Satter served this community for number of years and a great job. He was a great individual, fun to be around. He extended sympathies from the Council to his family.

Councilor Cummings mentioned Councilor Carson and she attended a League of West Linn Neighborhoods meeting and noted they adopted new bylaws and came up with good ideas about future forums and activities. Councilor Carson was able to present to them the National Historic District work as well.

Councilor Cummings voiced her concerns about the City's public meeting process (public notice issues) which has caused inconvenience, cost, misunderstandings, and delays. She cited an incident at the July 27<sup>th</sup> meeting when an executive session took place; the public, Mayor Galle and she were not aware that it had been planned in advance. For the last 5-1/2 months have raised issue of proper notice. She would like this to be avoided in the future. Another concern of hers is whenever an executive session takes place and a vote takes place during that meeting, those decisions need to be disclosed to the public. She feels this issue is unresolved and she would like to see Council action to deal with this issue so it doesn't happen anymore.

Councilor Cummings stated on July 27<sup>th</sup> an executive session was held to discuss the performance evaluation of a public officer. This meeting, which was called in advance by Councilor Kovash, was not specifically noticed on the agenda. Mayor Galle, the public, and she were not told about this meeting at the work session prior, on that day, or any time during the meeting. At the end of the meeting, the executive session went forward even though it had been previously planned. Mayor Galle left in discuss because she had already asked whether there was going be an executive session without a response. She stated she was going to disclose what took place at that meeting.

**Point of Order:** Councilor Burgess raised the point of order.

Councilor Cumming stated this information should be disclosed per ORS.192.680 which requires that ORS.192.660 (6) be followed.

**Point of Order:** Councilor Burgess raised the point of order and asked the City Attorney to respond.

Tim Ramis stated if the contention is that the Council didn't take final action after the executive session, one appropriate approach would be to say to have a motion for final action. If there was final action taken at the meeting, and he doesn't believe there was. He was there present and he cautioned the Council against voting at that meeting, that's something different. As he understands the contention it is that the Council reached a

direction but then didn't take final action outside the meeting. If that is the case, the Councilor could make a motion calling for final action on it. The Council could then dispose of it in that way.

Councilor Burgess stated executive sessions are held without the public. Items discussed in executive session are not disclosed. If there is a decision made at that executive session, it can be disclosed.

Councilor Cummings stated the Public Meeting Law states that there should be specific notice when meetings are planned in advance. Reasonable effort should be made to give notice. This is for public trust and trust amongst the Councilors. In the Public Meetings Manual it states, "As discussed below under final decision prohibition, ORS.192.660 (6) guarantees that the results of any consensus will be made public by the requirement that any final decision be made in open session." There is no doubt in her mind that a vote took place that night. Councilor Kovash called the meeting to order and he asked that the contract of the City Manager not be on the table when the Council moves forward in the evaluation of his position.

Point of Order: Councilor Burgess stated the City Attorney has responded to this issue and he feels that Councilor Cummings is violating the chapters that she is reading in the Statute.

Mayor Galle asked Mr. Ramis for clarification of his response. Mr. Ramis stated that if the Councilor felt that the Council had reached consensus, a motion should be put forward for finality. This is different than disclosing executive session material. The Councilor can make a motion for the proposition and debate whether or not to vote for or against it. If you talk about what was done in executive session, you are then disclosing the executive session material. That is what councilors are not to do.

Councilor Kovash stated this issue has been going on for six months. There have been several discussions and the attorney has weighed in quite often. The executive session notice that is on the agenda is the notice that is required by law. The meeting that is in question was within the guidelines and rules of the law. It is unfortunate that Councilor Cummings has chosen to violate the executive session rules that have been put down to protect everyone by disclosing what was discussed. The attorney has stated that a councilor can make a motion and vote on whether to disclose a discussion that was held in executive session. He would like to put this issue to rest; it has been discussed continually for six months.

Councilor Cummings read from the Public Meetings Manual, "ORS.192.660 (6) guarantees that the results of any consensus will be made public by the requirements that any final decision be made in open session." She feels there was a consensus and she has asked that the Council come forward and finalize their decision. There has been no response. She has asked that the Council be more specific in notice. The last meeting the Council had did not



have a specific notice. She stated the councilors received a written memo indicating the possibility of an executive session prior to the Suncrest PUD. It was not specifically noticed. She is asking for a better job of noticing the public and councilors.

Councilor Burgess stated often an issue will come up during a discussion on any item when executive session is necessary and council goes into executive session; that is why it is there. The goal councilor is asking for is that if it is known that an item might require executive session, the best effort is done to put on the agenda notice that this item may require an executive session. However, he does not feel that it is always known that something could come up that would require executive session.

In regards to the word consensus, the attorneys in the past have advised council that they can give direction to staff. Direction can be given as long as any direction to staff that requires action by the council comes back and is done in open session. If that is consensus, so be it. He feels the goal of public notice for items that may require an executive session to avoid potential litigation is a goal and council should strive for that. It does not mean, however, that there will not be situations in a council meeting where you need to go into executive session because of what comes up at a meeting.

Councilor Carson stated in subsequent discussion agreed when possible, would make sure that executive sessions are properly noticed and council would communicate that clearly to staff if a councilor has a subject they want to bring up in executive session with the appropriate numbers so that information can be shared with the public. In terms of what happened that the specific meeting mentioned, she does not feel council has concluded the discussions that were started that evening. Another meeting is needed to finalize the manager's evaluation and accept goals. Until that process is completed, there has not been a final decision.

Councilor Cummings moved that in the future any executive sessions that are planned in advanced be specifically noticed with the letter and title. Councilor Burgess seconded the motion.

Councilor Burgess stated in order for the notice to be on the agenda and noticed staff must be informed before the agenda is prepared. Mr. Ramis stated the critical time is the preparation of the agenda. If it is known at that time, it should be included.

Mayor Galle stated the notification is a way of communicating what the executive session is being called for. She left the meeting that evening because she was told that she could not know what the executive session was about; she did not want to participate in a meeting that was not properly noticed. It is not fair to anyone.

**Ayes: Burgess, Cummings, Kovash, Carson, Galle**

**Nays: None**

**The motion carried 5-0.**

Mayor Galle asked for clarification on a budget item on the Franchise Fees regarding Comcast and Willamette Falls TV. Mr. Jordan stated franchise fees are spread throughout the budget fees. There are five franchise fees and they are allocated to various different functions of the City. Examples of intergovernmental fees are State Shared Revenues, Gas Taxes, etc. Franchise fees and what is in the budget are estimates of what the City expects to receive based upon existing franchise agreements. Generally speaking there is very little movement because if someone has Comcast they continue to have that throughout the year. There is a number in the budget that is an estimate for potential Public Education Government (PEG) Funds which is a new franchise agreement with Comcast. It is an estimate; the City is still in negotiations with Comcast on that new franchise agreement. These negotiations can drag on for years. However, under budget law the City has to provide in the budget what the estimated amount is for what they will be receiving. The City is still funding Willamette Falls TV. There is a work session agenda item for next week on Comcast negotiations.

**Business Meeting - Agenda Items**

1. Agenda Bill 2010-01-11D Resolution No. 2010-01, Management Compensation

Mayor Galle opened the meeting to discussion of the Management Compensation at 7:54 p.m.

Chris Jordan reported this resolution is a recommendation from the City Manager regarding management compensation beginning calendar year 2010. It is being recommended a zero percent increase for all management staff with the exception of police sergeants, who are facing a compression issue with police officers. Most cities in the area have a 24% gap between the two positions and the West Linn gap is 17%. Therefore it is being proposed that the police sergeants receive a 3% increase in order to maintain an appropriate separation between officer salaries and sergeant salaries. All other management compensation would remain with no increase.

Councilor Cummings asked staff to comment on the statement in the report, "...finances budget of 4% for the management group..." Mr. Jordan stated when the budget was prepared last year there was an estimate of what salary increases were likely to occur. At that time the estimated budget was for a 4% increase effective January 1 and at this point the recommended budget amount is a zero percent increase.

Councilor Burgess moved to approve Resolution 2010-01, A Resolution of the City of West Linn Council Adopting a Zero Percent Increase in Pay for Management Positions and a Three Percent (3%) Increase for Police Sergeants Effective January 1, 2010. Councilor Carson seconded the motion.

Ayes: Cummings, Kovash, Carson, Burgess, Galle\

Nays: None

The motion carried 5-0.

2. Agenda Bill 2010-01-11L Public Hearing Closed – Approval of Final Order, Suncrest PUD–AP-09-05, PUD-09-01, SUB-09-01, WAP-09-02

Tom Soppe, Associate Planner submitted to the Council the revised change to the second additional finding that was discussed in work session. Mr. Ramis reported he had earlier recommended one additional change to this document. At the very end before the signature line, he added a paragraph that describes the effective date and standing. Since there has been confusion about appeal dates when the previous paragraph was included, it is his recommendation that this paragraph be stricken and in its place add, "This decision may be appealed to the Land Use Board of Appeals under its statutory provisions."

Councilor Burgess moved to approve the Final Decision AP-09-05, in the matter of Hidden Springs Neighborhood Association Appeal of Icon Construction Proposal for a 6-Unit Single Family Residential PUD Subdivision at 19650 Suncrest Drive as presented by staff in their January 8, 2010 memo with two amendments:

1. Page 1, Under Finding #2, Second Sentence to read, "The majority of the Council finds that..." and
2. Last page, above signature line, delete paragraph starting "This decision..." and replaced with the language, "This decision may be appealed to the Land Use Board of Appeals (LUBA) under its statutory provisions."

Councilor Carson seconded the motion.

Councilor Burgess commended staff on the excellent job on the final decision. The language added addressed a concern of Councilor Cummings who voted against the motion based on ambiguity and the city attorney's addition of language clarifying where this decision could go next if so desired. He feels the findings and conditions reflect the Council's actions.

Councilor Carson thanked the city attorney; he has included language that protects the City in terms of being able to insure the property is maintained and enforceable in future years. The language is strong and reflective of Council's discussions.

Ayes: Kovash, Carson, Burgess, Galle

Nays: Cummings



- One year by the Planning Commission plus second year by the Planning Director
- A two-year extension by the Planning Commission with the addendum that this extension is only for public projects

Councilor Burgess moved to approve Ordinance No. 15-89, An Ordinance Creating Procedures to Allow Two-Year Extensions Approved Land Use Decisions, Exhibit A, 1 through 7 and the options within the italic language after the Exhibit.

Councilor Burgess withdrew his motion. He apologized for making a motion before the questions of councilors and public testimony was complete.

Councilor Carson stated she has received a lot of comments from the public that if this were granted, it would provide a five-year window for people to complete a project. She asked staff to comment on the process. Mr. Spir stated they reviewed other jurisdictions in 2009 and discovered a number of them did not require final platting within the final phase. The final plat only had to be submitted for review. Conceivably from the date the final plat is submitted to the date of recording with the County, it could be a year to a year and a half. Other jurisdictions have built into their systems accommodation of periods up to 7 years. They also allow bonding which allows the developer to secure their improvements by payment of cash deposits or bonds that gives them extra time to get the improvements done. West Linn does not allow bonding and runs a tight ship as far as the platting process.

Prior to February 1998, the City allowed extensions of one year for the final plat process, but up to four one-year extensions for a total of five years. Five years has been part of the City's zoning history; it worked then. There are differences between the jurisdictions; West Linn makes it difficult with procedures particularly not allowing bonding for a developer to move along, even though they may be making reasonable attempts to final plat. They run out of time.

### **Public Comment**

Ed Schwarz, 2206 Tannler Drive stated he has sent emails previously on this subject with his opinions. He is asking to vote no on this agenda bill as he feels it is the appropriate action to take tonight.

This agenda bill is set up to aid the development community in West Linn. He has lived here for 7-1/2 years. In that period of time the development community continued to go to Salem and work at the Legislature to make sure that school costs, library costs, and other infrastructure costs are not included in the system development charges they need to pay when they build homes. This results in costing West Linn approximately \$30,000 in unrecovered SDC charges every time a home is built here in West Linn.

The development community has built a gigantic barn in West Linn on property that was in the County at the time they built it which was totally out of character for the neighborhood. Once it was built, they then asked for annexation into the City and it was brought in. It was discovered after that the house was improperly connected to City sewer and water for several years.

Developers also have the tendency to clear cut property that is in the County (ridding it of all the trees) before they ask for annexation into the City. That is how they do favors to West Linn. He feels they are skirting West Linn code when they do these kinds of actions.

Currently, developers promised West Linn dedication of a park in exchange for development approval and then went back on that promise. In Mr. Spir's October 13, 2009 memo to Chris Jordan, first page, last paragraph, it states, "...and even if they could get a loan to build the required infrastructure necessary for final platting, there is scant incentive given the oversupply of recently completed homes and empty platted lots on the market." Mr. Schwarz asked whose problem is that; they overbuilt and over-anticipated the market and now the developers are asking the City to come back and help them out with that.

Roberta Schwarz, 2206 Tannler Drive stated she called the same cities reviewed by staff and Mr. Robinson and found that two of the cities give bonds. The average is 2.6 years with extensions, West Linn gives 3. The City is already more than generous.

The Planning Director by email stated it will cut 50% off of what the developer is being charged. These are the multi-millionaires; these are the ones that a lot of citizens think own this town. She asked that Council do what they were elected to do, which is to represent the citizens. The developers have an attorney; the citizens don't.

Ms. Schwarz stated she took a drive around West Linn today and there are a lot of new housing starts. This economic hardship is not happening. Developers are building houses again and getting loans. She does not feel they need an extension.

As she wrote in a letter to the editor recently, printed in the *Tidings*, she and her husband did an analysis of all the 17 effected land use applications that were samples in the December staff report. In that analysis they found 6 housing developments that will equal 182 homes. Those 182 homes will cost the citizens of West Linn \$5.46 million dollars. She has friends who are not making it from paycheck to paycheck and cannot supplement developers anymore; they will have to move.

There is good reason that the applicant opposes coming back and facing the scrutiny of a new application. More than the money it will cost, it is the thought that many of them would not be approved a second time around if the appropriate codes were used correctly.

These are some of the worst application approvals that have been done recently in this City and the City is giving them a second time around; why.

She asked that Council to please consider this in their future discussions of cutting this unprecedented break or deal for the major homebuilders. Just because one or more of the developers had the money to hire an attorney to spoon feed this to Council for over a year, it is not fair to the public. It is the citizens that should be protected and they are coming out of this recession.

Ms. Schwarz stated she feel this proposal is really to help the 6 individual home owners who want a boat dock, a remodel, three partitions; people who if they were going to do it would have already done it. This is not to help them; this is to help the developers in this community. Why not waive individual fees for the six individuals and not those of the multi-million dollar airs represented tonight.

Ms. Schwarz asked for an additional minutes; Mayor Galle allowed the time. Ms. Schwarz continued that many private homeowners may have already scraped their plans by now; the City did something similar when they promoted mass annexations by waiving fees for approximately 100 homeowners in the annexations that were allowed a few years ago. The citizens will take a huge economic burden with the passage of the proposed code amendment. They will also have their homes further devalued when 182 additional homes flood a market that is already plagued by surplus housing. How ironic, the citizens will be paying \$30,000 for each house that is built by development that is subsidized which will further devalue their homes in a time when they are coming out of the worst recession since the depression. Shame on the Council if this is approved.

Mayor Galle asked if the \$30,000 is for the City or per person (taxpayer). Ms. Schwarz stated each citizen is paying a portion (per home, per acre) for the \$30,000 cost per house.

Ernie Platt, 15555 SW Bangy Road, Lake Oswego stated he represents the Homebuilders Association of Metro Portland. He is here to speak in favor of this proposal. It has been a long time in the process. It is time to take action; it is a reasonable and fair thing to do to help people to bridge across these economic times. These people have gone through the application approval process; let them keep the projects alive so they can get financing and possibly pull out of this thing.

He is speaking in favor of the basic proposal without the options; a straight forward two year extension. To his knowledge the only two jurisdictions that have not addressed this issue are West Linn and Tigard. Tigard now has a draft agenda bill and will have its public hearing on March 1<sup>st</sup>. Their proposal is very straight forward; all projects that receive their land use approval between July 2007 and July 2010 shall have an expiration date of July 2012.

He urges Council approval of the proposed extension.

Michael Robinson, 1120 NW Court 57, Tenth Floor, PO 97209-4128 asked that he receive five minutes for his testimony. Mayor Galle allowed the extension of time.

Mr. Robinson stated that he is the attorney here on behalf of Jeff Smith. Mr. Smith could not be here tonight, he is out of town on business. He thanked Council and staff for all the time put into this proposal. It is not true that he has spoon fed information; if he were that effective it would have been passed a long time ago. This has been an open, collaborative process. They have tried to be at the work sessions and offer helpful suggestions; they have been at the Council and Planning Commission hearings and tried to offer suggestions and testimony about why this is needed.

Mr. Robinson stated that they support Attachment A. If that is the ordinance that Council chooses to adopt, they are comfortable with the language. It is a fair ordinance; it requires something of the applicant requires a little more process and requires a second look.

He has not heard any complaints about the ordinance in general; it is a well written ordinance. It doesn't give the applicants and homeowners everything they ask for. This is not about Mr. Smith's property; it is not about what the City should be charging with SDC fees; if the City believes its SDC charges are appropriate, he suggest they have the ability to increase them. The Homebuilders Association in the past Legislative session supported the school excise tax. It is not simply a matter of applicants and homeowners not being willing to pay their fair share; they pay what they are required by law to pay.

This ordinance allows a catch up. He is glad to hear there are a few homes being built now. For the past two years there has been a real draught. There are a number of communities in this area that have not had a single building permit submitted in a particular month. There has been a period when people have not been able to get construction loans; where individuals who wanted to build projects for their own homes have not been able to do so because of the economy. This catches up. As he alluded to earlier, this is a fair balance. It is not everything that Mr. Smith would have liked the ordinance to have been, but it is a fair balance. It requires applicants to come back, requires applicants to show that they could be approved under new code provisions, and gives the City a chance to look at and determine whether mistakes have been made. If mistakes were made in the first approval, there is no obligation to grant the extension. This extension gives the City the ability to take a second look at applications. If people believe mistakes were made for some on the earlier ordinance, they come back and ask for an extension, they have the obligation to show that not only was the original approval valid, but that they can still meet today's code changes.

There is a trend in the region and the state for providing for extensions. Most jurisdictions have recognized that this is the worst recession in the last quarter century. The multi-



millionaires are no longer multi-millionaires. Randy Sebastian, Jeff Smith and a number of property owners are bankrupt. They don't have the businesses that they had. West Linn has among the strictest ordinances in terms of deadlines. He disagrees that only two communities allow bonding and the statement made as to the actual time. He is very familiar with extension ordinance and virtually every community allows bonds and far greater extensions.

This is an ordinance that Council can fairly adopt. It doesn't apply to continued applications after this. He requested that Council adopt the extension ordinance.

Council President Kovash asked if De Novo is satisfactory with him and his client. Mr. Robinson stated the code requires a second look; the language that staff proposes is acceptable to Mr. Smith. It is good language.

Councilor Cummings asked Mr. Robinson to clarify his statement about the SDCs. Mr. Robinson stated he does not belong to the Homebuilders Association; he stated the 2005/07 session did not oppose the school excise fee. Mr. Schwarz stated the building community didn't support the community; but it is his recollection that they supported school excise tax in place of an SDC.

Councilor Cummings stated the SDCs for schools, police, fire and public facility is borne by the citizens. She feels that is the issue that keeps coming up regarding the citizen's share of costs.

Point of Order was raised by Ms. Schwartz. There was a recent Homebuilders Association newspaper that said they dodged a bullet by not having to pay the school SDCs. She would be happy to provide a copy to the Council.

David Rittenhouse, 2101 Green Street stated he is a member of the Traffic Advisory Board and also President of the Savanna Oaks Neighborhood Association. He is here tonight speaking for the Traffic Advisory Board. They have discussed this issue at length at their last meeting. Many in attendance did not know about this issue being considered and he asked that the Traffic Advisory Board be noticed of these types of considerations.

He is here tonight to talk about traffic and transportation. Traffic is like water, it is always flowing, moving, and changing directions. Although Council has looked at the plats and designs of the uses, the problem is that the traffic is not static. The traffic continues to flow around these properties and it changes. The current Transportation System Plan has a shelf life of three years. The City is asking for a two-year extension. His concern is that even though the land hasn't changed, the Traffic Advisory Commission feels that the traffic has.

Mr. Rittenhouse stated he lives across the street from Tannler West which doesn't follow the new Transportation System Plan (TSP). He doesn't know if De Novo covers the new TSP. Will the TSP is included in the new look under De Novo.

As a neighborhood association officer, he fees the City is not concerned about traffic. De Novo does not take the issue back to the neighborhood association. When the traffic changes; the situation changes. They do not have input at the neighborhood level except to come to a hearing to discuss it. They do not get a notice before that. He would like to see a process where they are alerted of anything new coming in so they can address traffic issues that are coming on.

Councilor Cummings asked staff to prepare a response to be given after public comment as to whether these options proposed would address the new TSP which may require re-noticing the neighborhood association prior to the next public hearing.

Scott Huskey, stated he is one of the wealthy developers. He has properties at 2011 13<sup>th</sup> Street, 2008 13<sup>th</sup> Street, and 30950 River Lane Drive. He explained that some of the development process can be difficult and time consuming. The city is not the only entity that has to be dealt with.

Mr. Huskey told of a project where he has run into difficulties. You can get approval on a subdivision and there are other entities and processes that you need to deal with (like ODOT, State law, boundary difficulties, etc.) which can complicate things and lengthen the time it takes to put a development together. Currently he has approval for a subdivision but the City cannot go forward because of a lot line adjustment issue. There are pieces of property around the cul de sac in that subdivision that was given to the City by ODOT. The City doesn't need the property so now he has to negotiate with ODOT to get ownership of that property and they can't do anything unless they sell those little pieces. The engineering on this project cannot move forward until the ownership of the property is settled.

That is why there needs to be an extension process available for applicants who are in need of more time for extenuating circumstances. In his case, the subdivision has been approved, but the City cannot move forward on the subdivision because negotiations have not been completed with ODOT. If there were no extensions his project would be dead in a year.

Mr. Huskey stated he has lost his developing and building business. He has paid enormous SDCs in this City. He has built over 50 homes in this City. SDCs are fees that are paid up front by the builders that are taken out of their pockets when they go to get to loan. To build the house he has to have a certain amount of funds into the project. If houses stop selling and the developer get stuck with a house, they are making payments on that house. The developer has already paid the SDCs and paid for the lot and now has to continue to pay the bank loan until that house sells.

Mr. Huskey stated he is not a big builder; they did about 12-15 houses per year. If six of those houses go back to the bank and you have already paid these upfront costs, those funds are lost and bankruptcy is the only option. An extension process is very much needed and he hopes the Council approves this ordinance.

Councilor Cummings asked for clarification of the property ownership. Chris Jordan stated the right-of-way vacation process for ODOT is extremely burdensome in terms of how property reverts to one owner or another owner.

Alice Richmond, 3939 Parker Road, stated she may need more than three minutes to complete her testimony. She is in favor of a 2 year extension no matter how long it takes to complete a project. In these economic times not giving an extension is in opposition of promoting jobs. Developing housing is a job; we all have different business and different revenues. Jobs support families.

She is appalled to hear that is costing the citizen \$30,000; this results in \$1-2 per citizen. This extension is to promote jobs. A two-year extension will insure businesses they do not lose their invested funds or go bankrupt. This is when the citizens have to bail people out.

Council was elected to represent the City; this is true. She is appalled that citizens can come in here and complain when if it had not been for previous residents going forward and opening up the land, cutting trees, etc. making homes available for them. An extension is needed to build economy. This is not Vegas gambling; a job is a human right. She asked Council to consider approving the extension.

Bob Thomas, 2563 Pimlico Drive stated he was here previously opposing this extension. The Dodd's administration hired a person to assess what the sale of each house cost the taxpayers. At that time (2003) it was around \$14,000 per house. Now Carl Hostica , Metro Council, says it is up to \$30,000.

The homebuilders feel their business should be subsidized by taxpayers. They have a very strong lobby in Salem. The school excise fee is a tremendous joke; it doesn't pay anything of consequence for schools. They have always opposed a decent and proper amount for a school SDC. John Chantler, employed by them said, "...school SDC's over his dead body." When it is said that developers have went bankrupt; he recently reorganized and is ready to develop again. Developers don't put their own personal assets at stake, when they go bankrupt it isn't their personal assets/personal wealth that was not involved.

Mr. Thomas stated the citizens have no obligation to reach out to developers or their representatives to meet their ridiculous request for a two-year extension of land use approval. West Linn already allows more than many places allow; they have had three

years. Developers are asking that permissible SDCs be increased to make a significant difference. The five categories of SDCs (water, sewer, storm water, streets and parks) cannot be increased enough to make a significant difference in the cost of schools, police, fire, library, etc.

Mr. Thomas stated he has lived in this town since 1989 and he has continually fought to have development pay for itself/impacts. Developers don't do that by a long shot; yet they have the crust to come in and keep developing at the citizen's expense. He is opposed to this two-year extension.

Testimony forms were submitted by the following people who did not wish to speak but wanted to be on record as be in opposition to the extension: Ken Pryor, Cindy Garner, Julia Simpson, Jo Ellen M. Hagerty, and Hannah Berkowitz.

Hearing no further comments from the public Mayor Galle closed the public testimony portion of the hearing and opened the meeting to discussion among the Council.

### **Council Questions for Staff**

Councilor Carson asked Mr. Spir for clarification of the Planning Director's role in the extension process. Mr. Spir stated the review body is dependent on the type of application. If it is minor partition, the Planning Director would be the review party using the approval criteria A1-3 and decide whether the extension will be approved or denied. If it is an application that goes to the Planning Commission (subdivision) it would be the Planning Commission who makes the decision to approve or deny.

Councilor Carson asked if the new TSP is taken into consideration. Mr. Spir stated the approval criteria 99.325(A) (2), "There are no demonstrated material misrepresentations, errors, omissions, or change in facts that directly impact the project." There are also requirements regarding neighborhood associations; Section 99.038 requires the applicant to contact the NA and go through all the regulations for extension.

Council President Kovash on page 3, Extensions of Approval, #1 suggested replacing "...not enacted since" with "...and relevant approval criteria." This change eliminates the need for #2 and the portion of #3, by striking "...all original and current," leaving "Conform with approval criteria."

Councilor Cummings asked staff which section addresses notice to neighborhood associations. Mr. Spir cited Section 99.03 which is notice of the proposed extension. An addendum to the neighborhood meeting section 99.038 could include notice to neighborhood associations for extensions or land use actions that typically require a neighborhood meeting.

Councilor Burgess read Ordinance No. 1589 for the first time by title only and moved to approve said Ordinance Creating a Procedure to Allow Two-Year Extensions to Approved Land Use Decisions per Agenda Bill 2010-01-11G. Councilor Carson second the motion.

Councilor Cummings stated as she looked at other entities and their extensions she found that West Linn is most generous with the two and a half years. She feels the longer you let things sit, the harder it is to track; she is not motivated to grant these extensions.

Councilor Burgess noted these are extraordinary times; before Council is to allow a 2-year extension for a limited number of applications that were approved between 07/2006-12/09 and allow them to go forward only if they meet current codes. He doesn't want to start the process over again unless there is a new application. These one-time extensions are only for those mentioned before; it includes extensions for private developers, private owners and city owned projects. There is a deposit similar to other applications. These applicants pay for the cost of this process. These are unusual circumstances and a very limited window of those who can use this process.

Councilor Burgess stated he feels the language in 1-3 is important; there are issues in the Community Development Code that doesn't not fully cover all the issues that may come up in a land use extension. He will be voting in favor of this motion.

Council President Kovash agreed these are difficult times; the request for an extension is in keeping with those times. There is only a limited set time that these extensions to be applicable. He feels this is an opportunity to look at all the applications and make sure that they conform to all applicable code. There have been problems for the City and developers with interpretation of the code in the past. He would like to insure that no applications going forward have criteria for appeal, which is difficult for everyone, the developer, the City, and for the neighborhood associations.

Council President Kovash moved to amend the main motion to Change Section 99.352(a)(1-3) replacing "...not enacted since" with "...and relevant approval criteria" in #1; thus eliminating the need for #2; and eliminating a portion of #3, by striking "...all original and current;" leaving "Conform with approval criteria."

The motion died for lack of a second.

Councilor Carson stated feels the current language should remain. It clarifies that the person coming in for the extension will need to address any criteria that have been changed. The language covers misrepresentations, errors, or any changes in existing conditions. She believes the proposed changes in language by Council President's motion are addressed under De Novo.

Councilor Carson noted there was discussion about including the neighborhood association in the process and she will make a motion to address that. Sometimes the neighborhood associations have a better idea if there are significant changes in traffic or other changes that might not be something the Planning Director would be aware of. That additional process would provide opportunities for those issues to be raised.

There are 17 projects that are affected by this ordinance. The majority of these projects are small (home improvements, historic remodels), five or six larger ones. There have been significant changes in the code that impact these projects. Several of these applications are small and some historic remodel. She is favoring the 1 plus 1 year approach versus a two-year extension because she believes there will be some changes in the historic district code soon. There are small homeowners and those trying to improve their lots who are in need of this extension. If applicants have given up and can't fund their project will not come in for this extension and their applications will expire.

Councilor Carson amended the main motion adding a new Section 2 Under E, The Extension Procedures on page 4 of the draft to read, "The application for extension of approval may be submitted only after a neighborhood association meeting if required under Section 99.038." Councilor Cummings seconded the motion.

**Ayes: Cummings, Kovash, Carson, Burgess, Mayor Galle**

**Nays: None**

**The motion carried 5-0.**

Council President Kovash moved to amend the main motion by striking, "all original and" leaving the sentence to read "The applicant has modified the approved plans conform with current approval criteria," on page 3, A (3). Councilor Cummings seconded the motion.

**Ayes: Kovash, Carson, Burgess, Cummings, Galle**

**Nays: None**

**The motion carried 5-0.**

Councilor Burgess asked if any hearing body can be appealed. Mr. Ramis stated there cannot be a discretionary land use decision without providing for an appeal.

Councilor Carson asked for clarification if there are new codes adopted in the next year, and if someone does not complete their project at the end of the first year and would like to extend for an additional year, would the new codes apply to that applicant. Mr. Ramis stated that the new codes would apply; the exception would be someone who applied for the first extension, got it and then got their project finished before applying for a second

year. If the applicant applied for the second year, they would fall under the requirements of the revised provision.

Councilor Carson moved to amend the main motion with additional language in Section 99.325(A) to use Option B, one year plus one year; and with Subsection B and C to use Option C, two one-year extensions. Councilor Cummings seconded the motion.

Councilor Burgess stated he can't support the motion as it relates to A specifically. Option B says up to two one-year extensions. His motion was to approve for two years as it relates to A.

Councilor Carson moved to change the motion to use Option A for two-year extensions and leave B and C using Option C, two one-year extensions. The second did not agree with the change.

The motion remained as stated.

**Ayes: Carson, Cummings, Galle**

**Nays: Burgess, Kovash**

**The motion carried 3-2.**

Mayor Galle moved to reconsider her vote. Councilor Burgess seconded the motion.

**Ayes: Burgess, Kovash, Galle**

**Nays: Cummings, Carson**

**The motion carried 3-2.**

Revote on amendment to the main motion for additional language in Section 99.325(A) to use Option B, one year plus one year; and with Subsection B and C to use Option C, two one-year extensions. Councilor Cummings seconded the motion.

**Ayes: Cummings, Carson**

**Nays: Kovash, Galle, Burgess**

**Motion failed 3-2.**

Councilor Carson moved to extend the meeting to 10:15 p.m. Councilor Burgess seconded the motion.

**Ayes: Kovash, Carson, Burgess, Cummings, Galle**

**Nays: None**

**The motion carried 5-0.**

Mayor Galle voiced concern about favoring one person/situation over the other. It is a fact that there is an economic downturn right now that has affected every industry. She has neighbors that are wealthy and she cited an incident where she put a basket together because these people have been out of work; it does happen to well-off people. She feels in favor of this motion because people would not come to you and ask for an extension if they didn't have a good reason to need one.

It has gotten to the point where the citizens are beating up an industry and she doesn't know why. There has been bad planning by the City and there have been developers who have done bad things. She would rather look towards the future to good direction and planning. If the City make developers accountable to doing things the right way; the ones that want to do that will stay and the ones that don't will go away. She doesn't believe that if this is denied that all the houses will go away, the land will be open and the City will come up to a bond and buy the land. It will not happen. There will be another 182 houses in this town whether it be now or two years from now. People develop land.

The issue of degrading West Linn has nothing to do with this. She would like the citizens to divert their attention off developers and pay attention to issues like being forced into regionalized sewer, being forced into the solar highway, being driven into the Stafford Basin, and no long-term planning for the City. She would like to work with developers and look at appropriate development. How can everyone together make this town livable and beautiful?

She feels this is the right thing to do. This is a good thing to do; it will make better development for everyone. She asked the citizens to put aside the feelings and get about the business of making West Linn good.

Councilor Cummings stated this will be a total of five years and she hoped it was not extended so far. The City has been generous; it is above and beyond other cities of the same size. She doesn't agree with this extension proposal. What is built is a permanent thing and citizens need to think long-term for the best outcome for the City.

Poll on the main motion

Councilor Burgess read Ordinance No. 1589 for the first time by title only and moved to approve said Ordinance Creating a Procedure to Allow Two-Year Extensions to Approved Land Use Decisions per Agenda Bill 2010-01-11G. Councilor Carson seconded the motion.

Amendment #1: Adding a new Section 2 Under E, The Extension Procedures on page 4 of the draft to read, "The application for extension of approval may be submitted only after a neighborhood association meeting if required under Section 99.038." Councilor Cummings seconded the motion.



Amendment #2: Section 99.325(A) (3), "The applicant has modified the approved plans to conform with current approval criteria."

**Ayes: Carson, Burgess, Kovash, Galle**

**Nays: Cummings**

**The motion to approve Ordinance No.1589 upon first reading carried 4-1.**

**Adjournment**

Mayor Galle adjourned the January 11, 2010 meeting of the West Linn City Council at 10:12 p.m.

RESPECTFULLY SUBMITTED,

**Tina Lynch /s/**

Tina Lynch  
City Recorder

APPROVED BY THE CITY COUNCIL  
ON FEBRUARY 22, 2010

**Patti Galle /s/**

Patti Galle, Mayor