



PLANNING COMMISSION

SPECIAL MEETING

Minutes of November 1, 2012

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

Members absent: None

Council Liaison:

Staff present: John Sonnen, Planning Director; Zach Pelz; Associate Planner; Pam Beery, Acting City Attorney;

PREMEETING WORK SESSION

Chair Babbitt convened the work session in the Rosemont Room of City Hall at 6:30 p.m. Staff distributed the most recent submittals. Ms. Beery discussed procedure and advised how to deal with a newspaper article about an after-hours conversation that had been recorded. The article and the recording were *ex parte* contacts and would be in the record.

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:03 p.m.

PUBLIC HEARING – continued from October 25

CUP-12-02/DR-12-04 (water treatment plant) and CUP-12-04/DR-12-14 (water transmission line)

Chair Babbitt reopened the hearing. Commissioners Martin, Axelrod, Frank, Steel, Miller and Chair Babbitt reported different types of *ex parte* contacts in the forms of an email, hearing impolite comments about the Commissioners, and an article and a video related to a post-hearing conversation in the Council Chambers that had been recorded.

Chair Babbitt asked the Commissioners to determine if there was any new evidence the November 1 staff memorandum and compilation of testimony received in the past seven days. Commissioner Axelrod asked if the November 1 Brown and Caldwell memo contained new evidence. Mr. Pelz and Chair Babbitt believed it was clarifications from the applicant related to things that were already in the record. Ms. Beery advised the Commissioners to ask the applicant if there was any new evidence in it. Karie Oakes had submitted a letter regarding hearing procedure. Chair Babbitt clarified that anyone could request a continuance at the first evidentiary hearing but that type of extension could not be used at subsequent hearings; and a public hearing was not intended to allow the public to use testimony time to debate each other. Ultimately the burden of proof was on the applicant and Oregon state law allowed the applicant to have the final say.

10:42

Applicant Rebuttal

Carrie Richter, Attorney for Lake Oswego-Tigard Water Partnership and Dennis Koellermeier, Public Works Director, City of Tigard, represented the applicant. Ms. Richter highlighted the four key documents that established that applicable code criteria were satisfied.

- Staff reports;

- October 16, 2012 letter from Murray Smith Associates regarding the significance of the Partnership to the City of West Linn
- October 25, 2012 Partnership memo from the legal and planning team responding to code challenges raised by the opposition.
- Amended intertie IGA adopted by Lake Oswego and Tigard in September 2012.

She discussed legal issues raised during the hearing. The eminent domain issue was not relevant to the current proceedings. The CDC had no requirement to consider alternatives for siting a plant in a residential zone and the plant was not in a floodplain. The applicant had submitted an alternatives analysis related to the pipeline in a habitat conservation area. The applicant was not proposing any transportation facilities so it was not subject to conditional use criteria that related to transportation facilities. There had been testimony that the plant was an 'industrial use' in a residential zone. The project was a 'major utility', which was a conditional use in an R-10 zone. Impactful major utility installations were allowed so long as the conditional use criteria requiring compatibility and benefits were met. The code set no numeric limits on construction traffic associated with this use. The applicant was not asking for any exceptional treatment: no variances or adjustments. They were asking to be treated as any other public utility provider upgrading their utility in order to provide a safer plant and pipelines.

The applicant disagreed with testimony that the treatment plant was improperly sited in 1967. The Board of County Commissioners had approved it at an open public hearing. Since then the City of West Linn had incorporated the plant into its planning documents, finding it was compatible with the neighborhood. The City had approved it as a conditional use in 1980, 1988 and 1996. Planning Commissions had found the water treatment plant was compatible with the site and the neighborhood. In 1996 the City imposed conditions of approval requiring Lake Oswego to provide West Linn with a conceptual plan for the future expansion. That was done in the form of a master plan that included a very early description of the current proposal. The 2008 adopted Robinwood Neighborhood Plan stated that the treatment plant was compatible with the neighborhood. The West Linn Water Master Plan relied on the applicant providing a water supply as the preferred approach for addressing backup supply deficiencies.

When the applicant upgraded the plant and installed the new pipes they were not creating a new use but expanding an approved, existing use that had been in the neighborhood for decades. 'Compatibility' did not mean no impacts or inconvenience. It meant that notwithstanding impacts, reasonable mitigation efforts were taken and benefits accrued to the overall community, including Robinwood.

Mr. Koellermeier discussed compatibility and benefits. Construction would inconvenience the Robinwood Neighborhood. The applicant had listened to their concerns and that improved the proposal. The applicant had substantially exceeded the outreach requirement. When they heard there was a desire to consolidate the design they moved all process facilities to the center of the property to create some very generous setbacks that were way beyond what the code required. They had addressed noise and glare above and beyond code requirements. They would install some large trees where they thought glare might be an issue for the neighboring properties. They provided numerous amenities for the neighborhood, including a lighted trail connecting the two streets; green street type frontages; and the Mapleton open space which would be open to the public. The applicant went the extra mile in the design. They did not just design a project that was the minimum necessary to meet the code.

The applicant had agreed to reasonable work hours per City requirements. They would work at night on Highway 43. They had provided safe access around the through work zones. TVF&R was comfortable with their plans and construction communication systems. The applicant would ensure the agency could access the neighborhood to provide emergency services during construction. The applicant's phased and sequenced construction did a lot to minimize traffic

concerns. Both Kenthorpe and Mapleton would continue to operate well below recognized industry standards for what those streets should be able to carry. The code looked for the impacts of permanent traffic after construction. Post-construction traffic would be four additional daily trips in the neighborhood.

The applicant was replacing existing 45 year old facilities. They were not changing uses. As utility providers they wanted the facility to operate in worst case conditions. They were dealing with mitigating the impacts through the design process. They were designing to the highest seismic standards. The landscaping would far exceed what was there today. The architects and design team had taken their design cues from the neighborhood so their designs would be compatible. What the applicant proposed was not unprecedented, it was pretty common. The South Fork treatment plant was in a residential neighborhood and had large diameter pipelines. Its setbacks were not as generous. There was a lot of data about pipelines of this diameter or larger installed in streets of this caliber in the Portland metropolitan area.

The 1996 land use decision found the intertie fulfilled an overall community need. The new intertie proposal and IGA bettered that and made the intertie more valuable to West Linn. The October 16 memo from MSA evaluated the applicant's proposal for the City of West Linn. They found the proposal benefited the City of West Linn above and beyond the benefits available today. Robinwood Neighborhood Plan Policy 3.9 called for ensuring that the water treatment plant 'remains compatible' and provided benefits to Robinwood. It listed action items related to landscape screening, street improvements, pedestrian routes, minimizing impacts on streets and homes during construction, and mitigating negative impacts with positive contributions to connectivity between Kenthorpe and Mapleton. The applicant's proposal met all of them. Beyond that the project would provide the additional benefits that the two streets would be completely repaved; two streets' worth of asbestos cement pipelines would be removed and replaced with modern materials; the applicant would build a safe, reliable, state of the art, piece of infrastructure that not only would continue to provide water to the sponsors, but also to the City of West Linn into the future. The improvements to Mary S. Young Park would provide a benefit to the Robinwood Neighborhood and the other citizens of West Linn who used that park. It did not really matter whether a particular improvement was volunteered or required by the code. At the end of the day it was still a benefit to the community.

The applicant states contrary to some of the testimony the proposed new IGA provided a 30-year guarantee to West Linn. The current IGA did not do that. The current situation was that the existing water treatment plant was at capacity in the summer. Its ability to provide emergency water to West Linn struggled in the summer and the applicant could not guarantee it. The new IGA guaranteed water to West Linn 24/7 for 365 days a year for 30 years. Another important benefit was the fact that if the intertie agreement was not available to West Linn the City would have to deal with an alternative water supply on its own. The cost for that would be \$11.6 million. By using the intertie as its alternative water source, West Linn could avoid an additional 30% water rate increase.

It was time for a decision. The Partnership had been meeting with the neighbors for over two years. As the Greg McKenzie report mentioned, the Partnership had substantially enhanced its responses to the mitigation items on the RNA mitigation list. The opponents clearly did not want the project. More time would not change that. Their applications committed them to ongoing communications through construction to minimize impacts. They were more than willing to work with anyone and everyone as they built the facility to mitigate any impacts as they developed. The decision should be based on the code.

33:44

Questions of Applicant

Commissioner Martin referred to the slides showing the interconnections of water systems and asked how the overall system worked. He asked if it would be possible to reverse the flow in the pipeline from Portland to Tigard and then all the way to West Linn through interties.

Jon Holland, Brown and Caldwell, 6500 SW Macadam, Portland, Oregon, 97239, explained the current limitation on providing intertie water to West Linn was that it had a firm capacity of 12 MGD, but summertime demand routinely exceeded that amount. If there was ever a problem with the Clackamas River intake, the pipeline, or the treatment plant they would not be able to send water from those locations to any of the cities. Gravity moved water backwards from Tigard to Lake Oswego. The existing intertie to West Linn required a pump station near the plant to pump water up into the Bolton Reservoir. There was a 2 MGD capacity bottleneck in the pipeline segment between Lake Oswego and Tigard that would constrain their ability to send water from Tigard back through the pipeline. Upgrades to the system would increase its capacity to 10 MGD coming from Tigard backwards into Lake Oswego and West Linn if there was a problem with the Partnership supply and/or its facilities.

Commissioner Axelrod's perspective was that improving the bottleneck was not necessarily contingent on the plant upgrade. Mr. Holland observed that the applicant would have to be interested in making the investment to improve the bottleneck and all the pipelines through Lake Oswego that would allow the flow to go back to West Linn without getting the benefit of an upgraded plant. They would not propose that.

Commissioner Frank asked what limit the current intertie agreement set and what happened in 2042. Mr. Holland clarified the existing IGA had no commitment as to duration or minimum capacity. Currently, if the Partnership had capacity remaining they could share that with West Linn in an emergency. The new IGA committed the Partnership to provide West Linn's average daily demand of 4 MGD no matter what for the next 30 years. That essentially deferred for another 30 years the situation West Linn was in right now: there was not a full emergency water supply 365 days a year. There was an opportunity to have access to Portland; the Joint Water Commission; and the Tualatin Valley Water District sources and extend beyond 2041. That would have to be renegotiated in a new IGA at that time.

Commissioner Frank inquired why the applicant could not make the 4 MGD supply available indefinitely. Mr. Koellermeier anticipated if they did, sometime in the future after 2041, if West Linn had a water supply emergency and needed 4 MGD Tigard and Lake Oswego would have to forgo that amount of plant capacity in order to give it to West Linn. Tigard would have to find an additional source. That moved the solution up to a regional management system. That was similar to what they did now voluntarily. No community would want to leave another community without water. The point of putting the 30 year guarantee in during negotiations between city managers was to demonstrate what they could do into the future was better than the current situation. The 2041 date had been picked off a curve of when the Partnership expected to need to use that capacity. It all depended on growth. It might be 2050, or later. They felt comfortable guaranteeing it through 2041. Mr. Koellermeier confirmed for Commissioner Frank that the plant would not go away if West Linn was not able to renegotiate to keep the 4 MGD in place after 2041. They would probably have to negotiate a way to deal with the financial impacts to Tigard and Lake Oswego of bringing on an additional water source so they could shed more MGD to West Linn on a peak day. The Partnership would be looking for the financial security that it was not buying water for \$1 per gallon and giving it away for at a nickel a gallon for West Linn's emergency.

Commissioner Axelrod observed the IGA did not guarantee anything. It did not say 'guarantee', it just said 'can provide.' It indicated that anyone could terminate the agreement in three years. Mr. Koellermeier explained the intent of the IGA that the city managers had negotiated was that if there was a new plant and the new improvements the Partnership would have water available to West Linn through 2041. The only thing they were trying to protect against was if

something happened that was out of their control that meant they could not produce the full 38 MGD but would still need to give West Linn 4 MGD. He did not expect that to happen. Commissioner Axelrod observed there was redundant water in the system. According to other water supply sources outlined by Lake Oswego as benefits of the project to West Linn, there would be voluminous resources they could draw on from others and they had ability to reverse the water, so it was not contingent on the 38 MGD water treatment plant. Mr. Koellermeier explained that depended on how long the emergency was. They could deal with a lot of short term issues, but not months at a time. Commissioner Axelrod anticipated that in an emergency situation agreements would go by the wayside and other communities would step up and give whatever they could to anyone else. West Linn would certainly provide water to Lake Oswego. It would go both ways.

Commissioner Martin agreed there was no guarantee. He read aloud IGA Item 8 (page 4) related to the quantity of water to be supplied: 'Upon agreement between the parties to make use of the intertie pursuant to paragraph 3 this agreement to supply water shall endeavor to supply the maximum feasible quantity of water requested to the receiving party and to take reasonable actions necessary to accomplish the same so long as such actions are not detrimental to the operations of the supplying party's own water system.' That was pretty weak. It was probably a misrepresentation to call it a 'guarantee.' It also said, 'Provided that Lake Oswego's supply facilities are expanded to a treatment capacity of 38 MGD Lake Oswego and Tigard can provide West Linn in board with redundant water supply facilities and reliable source of emergency water supply.' He noted it said, 'can provide', which did not mean 'will provide.'

Mr. Holland indicated the Partnership would likely be willing to consider different verbiage. The Partnership's intent was to provide water if it was possible. The legal document stopped short of saying 'guarantee' and 'will' because they could not anticipate all conditions that would arise and someday the Partnership's ability to deliver on that promise might be limited through no fault of its own. Commissioner Martin agreed the language needed to be reworked and clarified so the Commissioners could consider the actual benefit of the intertie. Mr. Koellermeier clarified the IGA language had been negotiated by all three city managers including West Linn City management. A good share of the language - at West Linn's request - was not changed from the original intertie agreement in order to avoid the confusion of a wholesale change.

Chair Babbitt shared other Commissioners' concern about promises. The project was touted as a community benefit but it was actually a possible community benefit and a limited community benefit, not a guaranteed community benefit. In 2042 the IGA might go away and Lake Oswego and Tigard might decide to do something on their own. West Linn could be stuck with a water treatment plant that offered it no benefit from then on because it had relied on testimony from two men in 2012 that they did not want to leave West Linn without water. Mr. Holland observed West Linn's current situation was that it had some emergency water supply from the Partnership that was tenuous at best during summer. Without this project that situation only got worse over time. The proposed IGA would defer the situation West Linn was in today for 30 years and give West Linn 30 years to deal with the significant backlog of water system improvements it needed to make. It could defer the recently proposed water rate increase.

Chair Babbitt indicated he was weighing whether that short term benefit met the subjective standards of the code related to community benefit. It sounded like there was no guarantee that it would be a long term community benefit. Mr. Holland explained that to make a permanent commitment regarding the availability of emergency water the Partnership would have to propose a larger plant and larger pipelines. Mr. Koellermeier explained that the document period ended in 2041 because the applicant could not say for certain they would

have 4 MGD available 24/7 after 2041. They might only have 3.9 MGD to provide in 2041. They could not predict at this point.

Vice Chair Holmes asked why the Partnership had not talked about having a future water intake in Foothills. Wilsonville used Willamette River water. Mr. Holland clarified that the Partnership had been committed to the Clackamas River source from day one. In the 1960s the citizens of Lake Oswego looked at alternatives and voted to pay more for that higher quality drinking water source. That was where Lake Oswego's water rights were. Likewise for West Linn and Oregon City. The Willamette was available, but they and others had decided the Clackamas River was a quality source that was worth the extra expense for the longer pipe. Lake Oswego's water rights on the Willamette River were less than 4 MGD. They could try to trade for or acquire new Willamette River rights, but state records indicated those were limited.

Vice Chair Holmes asked the applicant to elaborate on franchise fees. Mr. Holland said it was West Linn's decision whether to levy a fee. Vice Chair Holmes observed that one reason to levy them would be to provide some sort of backup protection for citizens in the plant area if there was a major catastrophe. Mr. Koellermeier recalled hearing it would be used to make various improvements for various uses in the City. How it was used was not up to the applicant. Vice Chair Holmes wanted to know in that case if the only recourse for people whose homes suffered major damage was to try to sue Lake Oswego. Mr. Koellermeier indicated that if the Partnership did something that caused a problem it had adequate liability insurance to remedy that problem. It had also added a self-insurance fund of \$1.5 million that people could make claims against for things above and beyond liability or other issues and above and beyond their own insurance issues. There was adequate insurance for things that were insurable, but neither the Partnership nor West Linn could have a no-fault insurance policy that insured against an Act of God event such as an earthquake. Mr. Holland pointed out the applicant had chosen to make a significant investment in a piles-supported plant and double-welded, steel joints for the pipeline to reduce risk. He passed samples of the joints around. Each of them would be pressure tested. The pipe could not pull apart in an earthquake.

Commissioner Steel asked if the Partnership was part of the Clackamas Water Providers and the Regional Water Providers Consortium and if those organizations provided emergency water around the region in case of a problem. Mr. Koellermeier confirmed Lake Oswego and Tigard were members of both organizations, which discussed policy issues and were not mechanisms for moving emergency water around. Mr. Holland showed a slide entitled: 'NCCWC does not address West Linn's need for reliable backup supply'. It was a map showing Lake Oswego's and West Linn's water sources, water treatment plants and pipelines. He used the map to show why North Clackamas County Water Commission had been unable to provide some water to West Linn during a period last winter when the South Fork intake was damaged. The Partnership had provided water to West Linn during that time. It was an example of how water organizations relied on partnerships, like Lake Oswego and Tigard proposed.

Chair Babbitt asked if tripling the amount of amount of water processed was going to affect the amount of water West Linn was able to get out of the Clackamas River. Mr. Koellermeier said the short answer was no. The South Fork intake was upstream of Lake Oswego's intake and South Fork rights were senior to Lake Oswego's rights.

Commissioner Axelrod observed West Linn's Comprehensive Plan policy was not to support development of the Stafford basin and Lake Oswego had a similar Comprehensive Plan policy. However, there had been testimony that Lake Oswego had indicated serving Stafford was a goal of its long term water use management proposal and plan - see as example record item 16 (OWRD Proposed Final Order for water rights extension, Application S 43365). Mr. Holland confirmed that Lake Oswego had calculated that 2 MGD of its 24 MGD potential demand could be from development in Stafford. However, the sizing of the plant and the capacity of the plant and pipelines had nothing to do with Stafford. It asked for 38 MGD because that was Lake

Oswego's water rights. If Stafford was never developed then Tigard would be happy to take that 2 MGD because its 14 MGD share of the 38 MGD was less than its ultimate demand. Commissioner Axelrod observed that having that capacity certainly allowed it to provide it to Stafford. Ms. Richter advised that Lake Oswego would have to amend its Comprehensive Plan to do that and it would require a significant legislative effort to change it.

Commissioner Frank inquired why the applicant would limit the duration of the \$1.5 million insurance fund to ten years. Mr. Koellermeier explained it was the period of time when claims could be brought between contractors, material suppliers, and others if there was a failure. This would be available to the neighborhood, so their claims would not necessarily be tied up in litigation. It was a way to address their concern. After ten years the money in the fund would be used for long range maintenance of the system. Commissioner Frank asked for clarification that the fund would pay out or take on an issue head on and then go after the contractor, so residents were not tied up in litigation. Mr. Koellermeier clarified it was a concept and the details were not all worked out. Commissioner Frank asked if the applicant would entertain making the fund available for an indefinite amount of time. Mr. Koellermeier was reluctant to negotiate that on the spot. Their position was they would rather maintain the facility so a problem did not happen rather than invent an insurance-type policy that would tie up a lot of money because of something they did not regard as an issue.

Commissioner Frank and Mr. Koellermeier established that the Lake Oswego plant and the North Clackamas County Water Commission both used the Clackamas River as their source of water. Commissioner Frank asked why the HDD pipe pullback was on the West Linn side of the river. Pete Oveson, pipeline lead explained that the entire 4,000 foot reach of pipe would be assembled and floated on the river on the Meldrum Bar Park side and pulled to the West Linn side. There was not enough room to lay it out on the West Linn side.

Commissioner Martin inquired how they would stabilize the pipeline in a 9.0 earthquake. Mr. Holland explained it would be a relatively ductile and flexible welded steel pipeline that could tolerate and move with settlement without cracking. They had hired the leading seismic pipeline design expert in the county to look at settlement during liquefaction; lateral spreading, and slope stability. The pipeline risk was identified as liquefaction. The lateral spreading and landslide issues were judged to not be of any risk at all. It was well within the ability of the flexible steel pipeline to tolerate the anticipated settlement. Commissioner Martin recalled the trans-Alaska pipeline project had taken more precautions than just allowing the pipe to bend. He was nervous that the applicant was just trusting that the strength of the pipes would be adequate. Mr. Holland advised the amount of movement the applicant anticipated was nothing like the 8 to 15 feet the Alaska pipeline was designed to handle. He referred the Commissioners to the consultant's seismic evaluation of the pipeline.

Commissioner Martin explained he had a hard time accepting the legal counsel's explanation that a pipeline was not a transportation facility and not subject to conditional use criteria for transportation facilities. If it was a transportation facility the applicant would have to reconstruct the highway in accordance with the Highway 43 Concept Plan. It included sidewalks and bike lanes. Would the applicant accept that condition of approval? Mr. Holland indicated the applicant had not planned on rebuilding Highway 43. The additional improvements would significantly add to the cost. Ms. Richter advised that the code provisions Commissioner Martin referred to were about things that the applicant was not proposing. If the City exacted improvements they had to be roughly proportional to the impacts from the applicant's development. Putting in a pipeline was not going to generate the impacts of pedestrian and bicycle trips. Commissioner Martin asked if the applicant agreed they were going to do reconstruction of a highway. Mr. Holland would not call it a highway reconstruction project. He would call it a pavement patching project on top of a pipeline. It was nothing like a highway project. The applicant would restore Highway 43 pavement (that was any lane that

was impacted by the applicant's construction) in accordance with ODOT requirements. Commissioner Martin held the code meant the applicant had to build it to the adopted TSP plan.

Commissioner Martin discussed the Stafford triangle issue. He anticipated it would not be as hard or take as long to change the Comprehensive Plan as the applicant suggested given the right motivation. He wanted to know how West Linn could guarantee that if the project was approved the water would not end up in Stafford, or how it would even know water provided to Stafford was from this plant. Ms. Richter advised that nothing in their proposal provided that guarantee. She understood the City of Lake Oswego would have to serve the Stafford triangle if that land came into its UGB. To legally ensure that would not happen might be even more difficult than changing the Comprehensive Plan. Chair Babbitt related his experience was Comprehensive Plan amendments were not that difficult.

Commissioner Miller asked the applicant why she should believe their recalculation that led them to extend the intertie agreement to 2041 was more accurate. She asked if the Stafford triangle was factored into the growth calculations. Mr. Holland explained they had been able to extend to 2041 after they had updated growth projections; considered access to storage to shave off peaks; and learned that West Linn's average daily demand was 4 MGD, not 6 MGD. She could believe the Partnership was projecting accurately because of its willingness to commit to the 4 MGD. He acknowledged the guarantee may need some work. The original planning for 38 MGD included a 2 MGD allowance for some portion of Stafford. If Stafford was never served by the Partnership, Tigard would snap up that 2 MGD because their share of the Partnership would not satisfy their full demand.

Commissioner Miller inquired whether there was maintenance risk (when going in and checking pipes); why the applicant would wait ten years to start doing it; and if it was covered by some other type of insurance. Mr. Holland advised that maintenance was not a risky operation. It was electronically checking for corrosion; using ultrasonic technology to listen for leaks; and inserting inspection equipment inside the pipe during shutdowns at night. At the end of ten years they would have exceeded the period during which construction defects were likely to have shown up. The statute of limitations for construction liability was something like six or seven years. The older a pipe got the more frequently it would need to be inspected. They might start off on an every ten year inspection interval, but over time it would be reduced. They would be checking the corrosion protection system annually right from the start.

Commissioner Miller asked why the insurance fund could not be extended past ten years in order to provide some assurance to residents. Mr. Holland explained the Partnership believed the highest risk was from construction-related defects. Because of the design and level of inspection and testing that risk was quite small. Beyond ten years was getting into operations and maintenance issues and condition assessment issues. He acknowledged that some other time period could have been selected. This was the duration the Partnership chose in its attempt to address residents' concern related to insurance.

Commissioner Miller asked him to address residents' concern that there were no automatic shutoff valves in event of emergency. Mr. Holland explained that shut off valves were not in pipelines so the owners could rush out to shut them off when the pipes exploded and prevent massive flooding. Their primary function was for maintenance and for inspection access. There had been concern about the pipeline suddenly being sheared off and pumping 38 MGD into neighborhood streets and homes and causing property damage. The applicant had attempted to explain how robust and conservative the design was. They explained construction testing. They explained their commitment to asset management to prevent those problems. He could not say they would never, ever, leak a drop. What they could say was they were not aware of a failure of a steel pipeline with double lap welds and a corrosion protection system of linings and coatings. All of the failures that were cited in testimony were old, brittle, materials with no

corrosion protection; with push on joints; that had not been inspected and assessed for many years if at all. Mr. Oveson had found that Waco, Texas' solution to the risk was to use double welded, lap-style pipeline, exactly like the applicant was proposing.

Mr. Holland addressed the issue of automatic versus manual valves. This was going to be a showcase pipeline in terms of conservatism in the U.S. Beyond that, as a belt and suspenders approach, they would also use the shutoff valves that were for maintenance and inspection purposes primarily, as a further way to limit the risk that there might be some sort of leak. The leaks that they were talking about were not from a catastrophic shearing off of the pipe. They were potentially a crack with some water seeping out. The water was under pressure. People would see damp pavement. If it was a lot of water the plant would notice pressure drops and likely be getting calls and they could go out and shut a valve down. They were concerned that an automatic valve would immediately shut down a pipeline that was supplying water to over 80,000 people. They wanted to ensure a conscious decision was made and that it was done in response to a real problem, not a malfunction, or misinterpretation of an instrument's data signal.

Commissioner Miller indicated she understood they needed to be careful, but she still did not understand why shutoff could not be automatic and accomplish the task more quickly. Mr. Holland explained water would not be pumped unless the plant was manned. The amount of water going through the system and the amount of water that could get out was much less than had been characterized. The peak of 38 MGD would be on the hottest day of the year 30 years in the future. The applicant was going to purchase truck-mounted mechanical equipment that could close a valve in 2.5 minutes. West Linn public works emergency response staff could have the same equipment. They could arrive at a West Linn location in about five minutes. Some small amount of leakage could happen before the value was shut. If it happened during pumping they could shut down the pump. If it happened at night or on weekends or holidays there would be no pumping going on and the pressure and volume of water would be small. Mr. Koellermeier said it was the professional judgment of the design team that adequate safeguards were used and they were state of the art, industry standard. Automatic shutoff valves on water systems were not industry standard. There might be some that existed somewhere for a unique situation, but the design community did not generally install automatic shutoff valves on transmission lines.

The Commission took a break until 9:10 p.m. and then reconvened the hearing. Commissioner Axelrod noted that the local community was likely to avoid the entire plant area for the multi-year duration of construction by driving around the area which would put extra traffic onto Cedaroak Elementary School and asked if that impact had been evaluated. Brian Copeland, DKS Associates, a transportation engineer, confirmed the plan was to detour traffic to Nixon and then to Cedaroak and Highway 43 during the Mapleton closure. How many trips that was depended on where the work zone was. If half the residents used the detour it could mean a combined total of 35 cars going both directions during the worst case hour of the day. The applicant did not propose any mitigation for that. Mr. Holland clarified that the possibility of using a shuttle system to move kids was in the Construction Management Plan in a list of additional items the applicant would be happy to discuss. Those items were proposed as potential mitigation items but not included as conditions of approval by staff because the applicant wanted additional time to discuss these items with the neighborhood first. In their past meetings with the neighborhood they never got to that level of detail. They did not know what the demand for such a shuttle service would be.

Commissioner Axelrod asked if the construction noise studies had looked at impacts to the residential area up the hill behind the shopping area. He lived there and had noticed sound traveled from the highway and the river. Eric Eisemann, E2 Land Use, clarified they had considered how to address noise in the immediate area, but not above on the hillside.

Commissioner Axelrod asked the applicant what they had learned from groundwater monitoring data. Brett Shipton, geotechnical engineer, reported that piezometers had been installed that showed the water level was 20 feet below the plant and did not change, but later upon further questioning indicated the groundwater level did change seasonally a few feet. Mr. Shipton noted there was not significant ground water along the pipeline alignment down Mapleton; and it was shallower on the hillside about 6 or 7 feet below the hillside bluff. Commissioner Axelrod asked about stormwater management plans noting that presently stormwater appeared to be captured in pipelines that discharged to the bluff east of the plant site, but it appeared that the proposed plan was to manage stormwater onsite using infiltration approaches such as bioswales. If so, Commissioner Axelrod asked if this stormwater management approach was expected to change (i.e., increase or raise) the shallow groundwater levels beneath the plant and if they had evaluated such effects. The applicant confirmed Commissioner Axelrod's assumptions for stormwater management and indicated that they did evaluate the potential stormwater effects and found no impacts to the shallow groundwater levels from the proposed plant design. He and Mr. Holland clarified that the ground water level fluctuated seasonally on the order of about 2 to 3 feet. Shannon Wilson was the geotechnical engineer for the water treatment plant. Their design took seasonal fluxuations into account.

Commissioner Axelrod asked for confirmation that borings showed the geology beneath the plant on the terraced area was fairly laterally continuous; it appeared to be laterally continuous out to the slope break just east of the plant along drainage and frontage there; and the liquefaction potential for that area was quite high. Mr. Shipton confirmed that. Commissioner Axelrod commented that it was hard to follow aspects of the seismic work because it had been done by multiple consulting firms sometimes relying on interpretation of others. Mr. Shipton clarified that Shannon Wilson was the geotechnical engineer of record for the water treatment plant and had done that study. Kleinfelder was brought in to do a seismic evaluation of the pipeline in West Linn. Mr. Shipton was the geotechnical engineer on the Partnership team overseeing the pipeline project. All three firms had similar opinions as far as liquefaction and seismic hazards. Commissioner Axelrod questioned certain findings and interpretation in these reports related to slope stability and referred to elements of the Kleinfelder documentation specifically. Commissioner Axelrod reviewed the geologic information and found no evidence for a basalt high or buttress east of the plant site and claimed by the applicant to preclude any potential landsliding in that area, including the pipeline route up through the sloped terrain along Mapleton and Heron Creek. Commissioner Axelrod pointed out that the basalt buttress they referred to appeared to be basalt outcrop along the river well south of the area of concern along the pipeline route where underground in front of Mary Young State Park. Mr. Shipton pointed out for Commissioner Axelrod where the basalt buttress and the butresses that were other soils that were not liquefiable and would not move were. Mr. Oveson pointed out where additional borings had been taken to evaluate their stability analysis. Commissioner Axelrod asked if these were the B borings and the applicant confirmed that was correct. Commissioner Axelrod noted that no borings had been drilled in the area east of the plant where the pipeline was going to come up that would show the geology of that area and the B borings were located far to the north with the closest approximately 1,000 ft north of the Cedar Oak Park Elementary School. He expressed his concern about landslides for the area immediately east of the plant site where the steep slopes occur, including the Mapleton corridor and lower section of Heron Creek where the pipeline is proposed. In addition, the applicants reports indicate their interpretation on slope stability was based on evaluations of four other locations (3 along Hwy 43 and the 4th some distance to the south along the river) not in this specific area of concern. In addition, the June report indicated that additional analysis was needed to address slope stability, but the same findings and interpretation did not change in the following August report from Kleinfelder which also referred to interpretation by GeoDesign (data/analysis not in the application).. He was a geologist. He had walked the area, which was steep and seemed pretty

unstable and pointed out the high percent slopes of the terrain shown on the maps provided by the applicant. There were also two 'deep seated' recent landslides in this area of concern on the geologic map. One was quite large – approximately 500 ft head scarp and slide area encompassing about 5 acres. Mr. Shipton confirmed they had looked at it. It might not be documented in the report. The large landslide Commissioner Axelrod was pointing to was a well-defined prehistoric landslide where there was no evidence of recent movement. The pipeline did not go through that landslide. Two reputable firms had determined that the landslide hazard was negligible along the pipeline alignment and the area is stable. Commissioner Axelrod explained that it appeared to him that there was pretty substantial geologic evidence that there was instability in the area east of the plant property and including the steep terrain above Nixon Avenue.

Commissioner Axelrod pointed out where a fault ran beneath the water treatment plant. It was buried for the most part beneath alluvium. He asked if anyone had trenched it and if they knew how old it was and if there was any documentation of offset on the fault. Mr. Shipton explained no one had done any work on that fault that he knew of because it was not active. A fault was considered active if it showed evidence of movement in the last 10,000 years. The alluvium was from the Missoula Flood which was about that old. There was no evidence that offset that. Commissioner Axelrod noted that the fault line was covered by development and there was no evidence in their documentation of any trenching across the fault to confirm the interpretation of no potential movement on the fault shown beneath the plant site. Mr. Pelz noted the fault was the River Forest Fault. It was listed in the Kleinfelder report in Table 1: Local Faults in the Proximity of the pipeline (GeoDesign).

Commissioner Frank asked if the applicant had looked at other mechanisms for insurance, such as CAT bonds. Mr. Koellermeier confirmed they had. CIS was the insurance provider for most cities in Oregon. They had explained that CAT bonds were not applicable to this issue and could not be used. They were not issuable by local insurance companies or providers of insurance here. Commissioner Frank asked if the insurance fund would pay up to \$1.5 million per occurrence or if that was the aggregate total it would pay out. Mr. Koellermeier indicated that was the aggregate total. If one claimant used up the \$1.5 million there would be no monies for anybody else.

Commissioner Frank asked where the shutoff valves were located and if they were mapped. Mr. Holland said they were spaced 1,600 to 2,000 feet apart along the pipeline alignment. Mr. Oveson confirmed they had been mapped. That had not been included in the record because the design was currently at 60%. What was in the record was that the applicant had stated that they were going to be less than 2,000 feet apart. They were all along the Highway 43 and Mapleton Drive alignments.

Vice Chair Holmes asked for confirmation that ODOT's requirement that construction only be done at night, after 8:00 p.m., only applied to activity on Highway 43, and there would be no trucks going into the neighborhood at night time. The applicant confirmed that.

Commissioner Steel asked what the impact on the construction schedule would be if no work was done on weekends. Mr. Holland related that it would introduce additional constraints and the risk that the project would not be completed on schedule. They were not planning to work on weekends or to work 12-hour days, five days per week. They just wanted to provide flexibility to the contractor if for some reason he was behind schedule or there was something that had to be done in a continuous operation over a long work day. Mr. Koellermeier added that those hours were simply the current West Linn rules about work hours that applied to every contractor working in the city. Commissioner Steel asked for confirmation that residents did not necessarily have to expect construction seven days a week for the next two-plus years. The applicant confirmed that.

Chair Babbitt observed there were no details in regard to the \$1.5 million insurance fund. He asked if it was controlled by the Partnership and what motivation it would have to pay out if its own insurance company would not pay based on finding no fault and no liability. Mr. Koellermeier related the applicant's motivation was to get a successful project built; live up to the conditions of being a good neighbor; and try to resolve issues. If a claim was outlandish and not warranted they would obviously resist paying it. They had created the fund just to resolve those kinds of issues. They could not find another way to do it. They had to self-insure to extend this benefit at all. It was the best they could put together.

Commissioner Axelrod referred to the Joint Permit application. The alternatives analysis the applicant had submitted with that application was the memorandum from Integrated Water Solutions LLC in Appendix F. It showed alternative pipeline routes, but assumed all of them would lead to the plant in West Linn. It explained that the community would reject building a facility on the river bank in Lake Oswego. He suggested they should have explored building a plant that would not be right on the river bank. He noted it contained a cost table that indicated the cost of the 'full expansion alternative', which would involve some development in Lake Oswego, was only 12% higher than the proposed project. Mr. Holland clarified the 'Full expansion' alternative was short for 'Full system expansion, Clackamas and Willamette intakes.' It contemplated using the existing intake and a new intake on the bank of the Willamette River in West Linn. No alternative plant sites were considered. Other factors besides cost were evaluated, including acceptability, affordability and permit-ability (related to having two intakes that affected two rivers). The report said that alternative would be rejected by the citizens of both Lake Oswego and Tigard based on the commitment to the higher quality source of the Clackamas River.

Commissioner Axelrod observed the document did not directly discuss West Linn, only Lake Oswego and Tigard's objectives. One of the listed benefits of the proposed route was that the proposal 'Minimizes impact to residences and businesses, particularly with respect to the east side of the Willamette River'. It indicated 'the construction development will minimize environmental impacts by avoiding geologically unstable areas.' He asked the applicant to comment on that. He noted the plant site, in addition to the pipeline route up to the plant, was in a geologically unstable area and considerable engineering methods were required to stabilize things. Mr. Holland noted that using pile supports was not unheard of in the water and wastewater treatment plant construction business. He explained that the applicant was not dismissing West Linn in their permit application to the Army Corp of Engineers and the DSL. As the applicant they had the burden of demonstrating that Lake Oswego and Tigard were meeting those agencies' permitting requirements. They were not submitting this permit on behalf of West Linn. Mr. Holland pointed out a map on page 27 showed the alternative pipeline routes that were evaluated for going through West Linn. Every other alternative would have greater impacts on residents and businesses in West Linn. Alternatives on the east side of the river went through denser development and business areas; they would be longer routes that would mostly go through residential and businesses areas and create more impacts; they would cross the river at less advantageous angles than the proposed crossing.

3:09

Questions of Staff

Vice Chair Holmes asked staff when the city managers of different cities had talked about a regional water system. Mr. Pelz explained those discussions were outside the purview of the current land use review. They had been about the intergovernmental agreement and franchise fees.

Commissioner Martin asked why staff did not require reconstruction of Highway 43 according to the Highway 43 Concept Plan. He interpreted the code to mean they would have to do that.

Mr. Pelz confirmed the TSP identified pipelines as transportation facilities. Staff had not treated this as a typical transportation facility. They explained why on page 30 of the pipeline staff report:

'Staff finds that the completed, trenched, finished water pipe and the trenched and tunneled raw water pipe will have no long term impact on transportation and will not produce increased trip generation. Thus there is neither nexus nor proportionality to justify improvements beyond restoration of Mapleton Drive and Highway 43, which the applicant has agreed to do.'

He recalled for Commissioner Martin that the trench width was proposed to be approximately 7 feet wide. Commissioner Martin commented that they would trench the length of Highway 43, yet staff did not see a nexus.

Chair Babbitt observed that the City would require someone who wanted to rebuild a single-family residence that did not have a sidewalk to bring the street frontage up to current code requirements even though it would not increase trips. He recalled the City anticipated its master plans would be implemented as redevelopment occurred and people had to bring things up to current code standards even if the development was not generating additional trips.

Mr. Pelz explained the City had to justify a requirement for improvements based on increased impact on the infrastructure. The home rebuild would generate additional vehicle trips or use of sidewalks or use of parks. The applicant's project would have impacts during construction but no long term impacts on the City's infrastructure, so there was no basis for requiring those types of improvements. Ms. Beery advised regarding legal limitations. The code had to be implemented on a case by case basis. The City could only impose conditions on each development approval that related to the nature of the project being proposed itself (the Nolan test). The Highway 43 plan alone did not give it that authority. There were legal overlay limitations that superseded the City's ability to implement the vision in a given time frame. There was a second test related to the rough proportionality of property exactions (*Dolan v. City of Tigard*) that did not apply to the pipeline because the City was not taking any property.

Commissioner Axelrod recalled testimony related to the location of the pathway seemed to indicate more benefit would come from having it on the west side of the site because that would offer better connections. Could West Linn ask for that? Would staff like to see a pathway on both sides? Mr. Pelz clarified the applicant had volunteered that connection and the City was not requiring it. The applicant had originally proposed it on the west side of the site, but shifted it to the east side after discussions with the neighborhood revealed concerns about having it on the west side. Staff would like to see as many pathways between Mapleton and Kenthorpe as possible, but they could not require them based on the impacts. Chair Babbitt recalled past conditional use permits that had been issued with conditions that required the applicant to do things like upgrade pipe sizes. In this case the applicant was tearing up the highway, so he did not understand why the City could not require them to bring it up to current code standards. Ms. Beery advised the Commissioners could express their interest in having an additional pathway. She was not as concerned about the legal limitations on requiring a second pathway through the project as she would be about requiring improvements on Highway 43.

Commissioner Axelrod read aloud from the City Charter, Chapter 9, Public Improvements, Section 35 regarding condemnation: 'Any necessity of taking property for the city by condemnation shall be determined by the City Council and a declaration by resolution of the City Council describing the property and stating the uses to which it shall be devoted.' Was that not what Lake Oswego was doing? Ms. Beery advised that Charter provision was about the City of West Linn obtaining private property for the public good and devoting it to public use. Lake Oswego had tried to lift a limitation imposed by a restrictive covenant of the Maple Grove subdivision that prevented anything other than residential use in that subdivision and on their

plant expansion lots. They needed a certain percentage of owners' signatures to lift it from their lots but they had not been able to get that many people to agree to it. They were now in court to determine how much money they had to pay individual property owners for the privilege of lifting the limitation from the Partnership lots so they could put those lots to nonresidential use. It was an unusual condemnation action in that they were asking to condemn a restrictive covenant on their own lots. This was the only legal way they could achieve what they needed to achieve. West Linn only had a say in it in the sense that it owned one lot in the subdivision and could be part of the group who consented to lifting the CC&Rs, but the Council had not taken that step.

Commissioner Axelrod recalled testimony raised the issue of the lease agreement for the park. If the City now had a property interest in the park did the Chapter 11 Charter provision apply there? Ms. Beery related that her office had issued a legal opinion on October 28 with respect to whether the pipeline under the park would violate the charter limitation on placing facilities in city parks that were non-recreational use. They concluded that the pipeline did not violate that charter provision. It did not apply because the property owner was Oregon Parks and Recreation Department.

Ms. Beery then discussed the question of community benefit. The criterion in CDC 60.070.A.3 called for a facility that was consistent with the overall needs of the community. The term 'community benefit' people had been talking about was really not a direct approval criterion. The Comprehensive Plan used the term 'benefit' in the definition of 'conditional use'. It said a conditional use could be allowed if it was an overall benefit to the community. The CDC implemented the Comprehensive Plan. The CDC was the right criteria to apply. The criteria related to things like the suitability of the location and the overall needs of the community. It was not that they could not require any benefit to the community. They should just keep in mind that it was the overall needs of the community they needed to be focused on. The benefit list that the project had provided responded a lot to the neighborhood's concerns. It was probably relevant when they considered the overall needs of the community.

Commissioner Steel asked if she was saying that the criterion in CDC 60.070.A.3 that the facility was to be consistent with the overall needs of the community was a bigger picture perspective than the benefits that were to be a response to neighborhood association requests. Ms. Berry acknowledged that the overall needs provision was ambiguous. The Commissioners should decide what it was, not the staff or the applicant. She agreed it was a reasonable interpretation that the words 'overall needs' might imply a broader focus than just the immediate benefits. That was not to say the immediate benefits around the project were not part of that equation. The staff report did a good job of going through all the criteria in CDC 60.070, which was probably the fulcrum of the analysis. The Commissioners should think about the criteria in making a decision.

Commissioner Axelrod indicated he did not understand how the staff could come up with a finding that the WRA protections did not apply. He realized that a significant portion was in the right-of-way of Mapleton. But there would necessarily be impacts along it. Heron Creek could be impacted. Mr. Pelz explained staff had interpreted the code to say there were no impacts to water resource areas where there were already existing impacts to water resource areas. The applicant proposed to contain construction activity in the paved portion of Mapleton and Highway 43 through all the WRAs there. For that reason staff found there would be no new encroachment in the WRAs in those locations. The applicant proposed to go beneath the WRAs at Mary S. Young Park. Staff looked at all three dimensions and found the applicant was literally going around the areas where WRA regulations applied.

3:40

Deliberations

Chair Babbitt closed the public hearing and opened deliberations.

Commissioner Martin **moved** to continue the hearing to midnight. Commissioner Steel **seconded** the motion and it **passed** 4:3. Commissioners Frank, Axelrod and Vice Chair Holmes voted against.

Commissioner Steel discussed the conditional use criterion CDC 60.070.A.3 that the facility was to be consistent with the overall needs of the community. She indicated she felt, after reading the intent of this requirement, that there was an assumption that the facility was actually for the community the facility was in. Whether it was a pump station or a treatment plant of some kind it was pumping or treating a product that was primarily for that community. It was more than an emergency supply – it was that community's supply. 'Consistent with the overall needs of the community' said to her it was of the scale for the community, which would not be regional, but of a size for that community. The way Webster's Dictionary defined 'community' indicated it was a hamlet, village, town, city, or neighborhood. That was not regional, but more local. That was the heart of the matter. She did not think any conditions of approval could remedy that one first hurdle for her. She explained her feeling on this was that both applications should be denied because both failed to meet that criterion.

Commissioner Martin suggested there were three areas the applicant might want to look at that were along the lines of good neighbor and good faith. They had to do with property values; Highway 43; and the CC&Rs. He discussed property values. A perfect application would leave all the citizens of West Linn no worse off and probably better off than they were before. He suggested the applicant appraise a control group of 10 or 15 houses away from the project area and appraise ten houses in the project area. Over the time the fund was in place, whenever a project area house changed hands, they could use the fund to make the owner whole based on the appraisals. If the applicant was right and the property values remained unchanged it would only cost them the cost of the appraisals. That would be a very neighborly thing to do. He discussed Highway 43. It would be a good gesture to bring Highway 43 up to the level of the Highway 43 Concept Plan. He would be tempted to let that one be sorted out in court over the nexus. He thought there was a strong nexus. But regardless, the people of West Linn were going to be subjected to three years of disruption and that was their heart line right through the middle of the City. Doing something like that would enhance both cities because of the transition of Highway 43 into Lake Oswego. He would like the applicant to consider that. He discussed the CC&Rs. He wanted Lake Oswego to make people whole by reimbursing legal expenses that had been created as the applicant sought to have the CC&Rs lifted. Those people would still be under stress, but at least it would reduce their financial hardship. There were a lot of senior citizens to whom any legal action was a burden.

Commissioner Martin observed the code required the application to satisfy community need. He looked at need in two ways. Need and the cost of the process of getting there and what was the benefit had to be looked at together. The second was it was the citizens of West Linn who got to assign the value to the need, not the applicant, the staff or even the Commissioners. The people had offered overwhelming testimony about what their values were. Many neighborhood associations had evaluated the need, voted on it, and they all told the Commission that they were in opposition. In this case the end was a potentially more reliable water supply. The means was a very disruptive impact on the City. The impacts were potentially safety, noise and other impacts people had talked about.

Commissioner Martin considered the issue of the Stafford triangle. The community's needs, desires and values were expressed in Comprehensive Plan Goal 9 which specifically called for opposing the Stafford triangle. The permit document indicated the proposed plan enabled the Stafford triangle. This problem could not be corrected by conditions. He would vote to deny.

Commissioner Axelrod recalled he had disagreed with the applicant about the geologic stability of the area. He discussed the criterion related to the overall need of the community. The Commission had been offered a lot of information about benefits that tied into the Water Master Plan. One of the things that was missing from the analysis was the City of West Linn's position in terms of the Water Master Plan. They had not heard much about that from the City. They had heard testimony from two of the four members of the Utility Advisory Board who opposed the application. The intertie discussion had been more complicated than it needed to be. He reminded the Commissioners that they were talking about an emergency water supply. It was not the only backup West Linn had. The community of West Linn collectively, and the various neighborhoods and the interests, all recognized that its water system was in need of some fixes. He would prefer they did not have to take that on as independent communities. He would like to see the communities work together on the challenges of finding ways to make it work that fit everybody's needs. It was a little bit misdirected to have Lake Oswego come in and tell West Linn what it should be doing about its water system. How West Linn decided to take care of its own water system was a question West Linn had to answer. He did not like it that the applicant had broadened the equation to evaluate the need for the plant by factoring in an assumption of how West Linn would do that. The application put a dollar amount on the water. Lake Oswego had proposed in the new IGA that the water would be at the higher cost of either what West Linn paid for raw water to the South Fork Water Board or .95 cents per 100 cubic feet. This is higher than West Linn pays for its water and is also only an estimate. At 4 MGD, the cost would likely be at least \$2M per year if provided annually or roughly \$10M over a 5 yr period. West Linn might want to buck up and invest that \$10 million into its own water system infrastructure. He would be willing to pay a little more every month to see West Linn's water system get to where it needed to be. It was a West Linn issue. It should not get drawn into this decision about the water treatment plant and pipeline.

Commissioner Axelrod indicated he found it very compelling that in 1967 a planning body had decided the middle of a residential neighborhood was not the right place for a water treatment plant. He was not sure where the record of that was and how it actually got approved. The permit indicated some plumbing need was met. It ended up getting built as a conditional use and had operated in that mode since. He realized that the conditional use permit had been extended through several modifications. He held the facility and the operations that were being proposed were more than an expansion. It was a complete construction project to build a fairly massive facility in the middle of a residential neighborhood. It was a great example of trying to put a square plug in a round hole. It was not a criterion, but if the applicant was going to spend so much of their taxpayers' money it seemed they owed it to their own citizens to explain why and how they were going to spend the money and what sort of alternatives they had looked at. As good neighbors they owed that analysis to West Linn. He felt they had dismissed that as a concern and been disrespectful. He had read the documentation that said Lake Oswego needed more water because it had land it wanted to develop. He noted the proximity of the Foothills property to Lake Oswego. As an example, one of the alternative routes could run a pipeline up the middle of Highway 99E towards Milwaukie where there were some boulevards and where the pipeline could zip under the river and pop right out at the Foothills property. It was a direct line that would minimize any impact to neighbors and minimize potential environmental impacts. He was familiar with HDD and he applauded Lake Oswego for taking the HDD drilling approach and the good solution of putting it under the river. He was just not sure it went to the right place.

Commissioner Frank related he would vote no. The applicant did not meet the criterion in CDC 60.070.A.3 regarding the needs of the community. He looked at needs as: 1.) overall city needs; and, 2.) the surrounding neighborhood's needs. The applicant tried to address both. In regard to the neighborhood's needs they mentioned establishment of an insurance fund. The intent of that was valid and good, but more thought needed to be put into it. He was not comfortable

with the duration of the fund; the claims process was unclear; and the applicant would be managing the fund - not an independent third party. When he looked at the community's needs as defined as the city's needs, the application hinged on the intertie. It had been used from time to time over the years. There was an existing IGA in place. The new IGA as far as he could see, gave West Linn the guaranteed minimum of 4MGD, but it had a timeline associated with it that ended at 2041. At that point West Linn was simply kicking the can down the road as far as trying to either renegotiate the IGA back to an acceptable level for West Linn, or putting its own increased infrastructure in place. But the plant would stay. It would not get smaller or go away. The IGA might get changed or go away. Based on that he found the applicant did not meet CDC 60.070.A.3.

Commissioner Axelrod disagreed with the finding that there was no concern about slope instability in the area where the pipeline is going to come up on the slope immediately north and east of the plant. He noted the plant was within a couple hundred feet of the head part of that drainage. The existing waterline was right up the middle of that area. He viewed it as a hazard because it was an older pipe. Continued operation of the water treatment plant concerned him if it stayed in its current configuration. As he evaluated the intent of the code and tried to understand its meaning, particularly in regard to the overall benefits to the community, it kicked back to the Comprehensive Plan. After listening to the community there were four Comprehensive Plan goals that stood out that related to both projects.

- Goal 1. Maintain and protect West Linn's quality of life and livability.
- Goal 2. Actively support and encourage West Linn's neighborhood associations and promote citizen involvement in civic life. Establish and maintain policies that give neighborhoods real control over their future.
- Goal 6. Promote land use policies, both locally and regionally, that are based on the concepts of sustainability, carrying capacity, and environmental quality. He noted there had been arguments from both sides regarding this goal.
- Goal 11. Assert through both planning and policy that compatibility with existing development should be a primary goal in West Linn's land use process. The compatibility issue had come up today. That was another issue where he felt like the approach that West Linn had taken in managing the application was to "conditional use this thing to death." There was a three-ring binder just for conditions for the conditional use.

He held it was a failure in the planning effort to not have aspects flushed out further before something of this magnitude came before the Commission. He had been disappointed with both sides about that aspect. He could not support either application when he put all those considerations into a pot and looked at them in totality. He would deny both applications.

Commissioner Miller indicated that a lot of her thoughts had already been voiced. The applicant/neighborhood meetings had clearly not gone all that well, but she appreciated that the applicant had made an effort above and beyond what was required. She also appreciated the public testimony. It had provided new information. She felt West Linn needed to step up and invest in infrastructure. If it was concerned about seismic impacts during construction it should also be concerned about seismic impacts on a plant that did not meet current code. Addressing those issues now with the water treatment plant and the pipeline was a start, but it was only addressing the short term. There were no guarantees in 2042 or in the existing or new IGAs that West Linn would have access to the water supply. She was concerned about the insurance. She appreciated that the applicant had considered it and tried. She did not feel comfortable with the duration, the amount, or that the applicant got to decide whether to pay out. \$1.5 million per household was too much, but that amount overall was not enough. She did not see the applicant being persuaded to pay out to people if their insurance company had already denied it.

Commissioner Miller discussed the question of overall community benefit. She agreed there was benefit from seismic upgrades and access to more water in the event of emergency. However, the bottom line was the community had spoken loudly and clearly and asked the Commission to consider how emphatic they were that this was not the benefit to them, and to not abandon them in their hour of need. There were many other things that came into play, including the issue of the Stafford triangle. She would deny the application because she did not think there was any way to write conditions of approval that would make her feel comfortable. She agreed the City needed to step up and seriously start taking into consideration how it was going to address its water crisis. She related her experience that having a residential development construction in your neighborhood was not necessarily any more peaceful than construction of a water treatment plant.

Vice Chair Holmes thanked the applicant for putting a lot of thought into the applications. She thanked the citizens for participating and presenting their ideas and for showing the 4-foot hole display that represented the size of the pipe going into the ground. She advised the water issue was not new. Willamette had been its own town, but had to merge with West Linn when it had trouble with its water system. West Linn absolutely had to put its own dollars into infrastructure. She felt that through all of the discussions everyone had done a good job of explaining why they came to their conclusions. Not enough could be said about CDC 60.070.A.3. The benefit part was extremely important. It did not seem appropriate to put citizens in such jeopardy for a possible benefit or a temporary benefit. She had also been concerned about the environmental issues. The applicant would tunnel under creeks while citizens' properties were impacted by WRA regulations. There were numerous creeks the applicant would have to have go under. There were public safety concerns. Neighborhood children walked to school in the narrow street. She worried about how to keep the children safe in this process and did not think it could be done. She anticipated the economic impact would be beyond the Robinwood area. The project was going to affect traffic along all of Highway 43. It would impact Central Village. No one had talked about that. That was something to take into consideration. She was involved with the Chamber and knew that many West Linn businesses were just hanging on by a thread. This could have sent the majority of them over the edge. For several years there had not been a grocery store in Robinwood. That had impacted the neighbors a great deal. She asked the Commissioners to think about the impact of losing all of the businesses. She agreed that a \$1.5 million insurance fund would not cut it if five houses got washed away. It was not the answer. She indicated she pretty much agreed with what the other Commissioners had said. She was concerned about the Comprehensive Plan, Stafford and the other issues as well. She could not accept the applications and would deny both of them.

Chair Babbitt indicated he did not believe that the applications met the needs of the community. He had looked at the community benefit. He interpreted 'community' as West Linn because it was in the context of the West Linn code and they were West Linn Planning Commission. That narrowed the scope to the City of West Linn. He related that he had thought long and hard about whether the reaction of the citizens would be different if this was a West Linn project instead of a Lake Oswego project. He wished the Commission had heard from more people who were not so closely impacted by it. Hundreds of people had testified who all lived on Nixon, Mapleton or Kenthorpe or who were in business in Robinwood and would be impacted by the applications. He related he had thought about what would happen if the project did not go through and West Linn had to deal with its own water rates going up by 30%. Would there be 500 people at the Planning Commission yelling and screaming that the Commissioners had done the wrong thing? If those people were out there he could pretty much guarantee this was going to be appealed. He urged them to go to the Council hearing and voice their side of it if there was another side. He indicated he thought the application gave a lot of short-term benefits. He questioned whether they outweighed the problems, the

economic impact on the businesses that were struggling to survive. Those effects would last long past construction. When those businesses went away it could take years for businesses to come back. A Robinwood location had sat vacant for years before another business came in there. He indicated he thought the insurance fund was "smoke and mirrors." It would be controlled by the Partnership. He did not believe it would agree to pay out money from the \$1.5 million fund on a claim that other insurance carriers would not pay. He believed the applicant knew that. But the fact they had tried to come up with something showed they were at least listening to the citizens. If the applicant wanted to move forward with the insurance fund his suggestion was to come up with some specifics and some criteria and let it be managed by a third party. He indicated he did not see how the new IGA was a benefit over the existing IGA. There was no minimum guarantee because of the way it was worded. He did not believe the Planning Commission could condition a new IGA. He did not think it provided a long term benefit. He concluded that neither application supported CDC 60.070.A.3 regarding the needs of the community. He would deny them.

4:36

Commissioner Martin **moved** to deny CUP-12-04/DR-12-14 (water transmission line). Vice Chair Holmes **seconded** the motion. Chair Babbitt recalled that most of the Commissioners had discussed how it did not meet CDC 60.070.A.3. If the Commissioners had other code provisions to cite that application did not meet he would suggest they cite them now for the benefit of staff when they drafted the final decision. Those additions would not necessarily be part of the motion. Commissioner Axelrod cited CDC 60.070 criteria A.1, A.2, A.3, A.5, and A.7; and also CDC 67.040.A.1. Vice Chair Holmes noted the application was not in agreement with the Comprehensive Plan. The vote was conducted and the motion **passed** 7:0.

Commissioner Martin **moved** to deny CUP-12-02/DR-12-04 (water treatment plant). Vice Chair Holmes **seconded** the motion. Chair Babbitt invited the Commissioners to cite other code and goals it did not meet besides CDC 60.070.A.3 and the Comprehensive Plan. Commissioner Axelrod listed CDC 60.070 provision A.1, A.2, A.3, A.5, and A.7; and CDC 67.040.A.1. The vote was conducted and the motion **passed** 7:0.

Chair Babbitt outlined the process for appeal to the City Council.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

ITEMS OF INTEREST FROM STAFF

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 12:05 a.m.

APPROVED:



Michael Babbitt, Chair

12-7-12

Date