



PLANNING COMMISSION
Draft Meeting Notes of August 3, 2022

Commissioners present: Gary Walvatne, Charles Mathews, Scott Erwin, John Carr, Joel Metlen, Carrie Pellett, and Bayley Boggess.
Public present: Betty Reynolds and John McCabe
City Consultant: Elaine Howard, Howard Consulting
Staff present: Planning Manager Darren Wyss, Deputy City Manager John Williams, Associate Planner Chris Myers, and Lynn Schroder, Administrative Assistant

The meeting video is available on the [City website](#).

1. Call To Order and Roll Call

Chair Walvatne called the meeting to order at 6:00 pm.

2. Public Comment Related To Land Use Items Not On The Agenda

Betty Reynolds commented about the new Athey Creek Middle School and infrastructure improvements on Willamette Falls Drive by the City of West Linn and West Linn Wilsonville School District. She submitted written comments.

John McCabe commented about speed zone orders for the proposed roundabout at Fields Bridge and traffic safety.

3. Approval of Meeting Notes: [04.06.2022](#), [04.20.2022](#), [05.04.2022](#), and [05.18.2022](#)

Commissioner Carr moved to approve the meeting notes for 04.06.2022, 04.20.2022, 05.04.2022, and 05.18.2022. Commissioner Erwin seconded. **Ayes: Mathews, Pellett, Erwin, Carr, Boggess, Metlen, and Walvatne. Nays: None. Abstentions: None. The motion passed 6-0-0.**

4. Briefing: [Tax Increment Financing Project](#)

The Planning Commission received a briefing on the Tax Increment Financing District by Elaine Howard, Howard Consulting. The West Linn City Council has directed staff to pursue a tax increment financing district that would include the Waterfront Planning Area, Historic Willamette Commercial District, and the Commercial District north of I-205.

5. Work Session: [CDC Chapter 96 Code Amendment Package](#) as recommended by City Council Appointed Working Group

Associate Planner Chris Myers responded to the Commissioners' concerns at the first work session on the proposed Chapter 96 code amendments. He addressed the definition of through-streets and street improvements, the difference between the cul-de-sac and non-through street and the possibility of combining the proposed criteria language, exemptions to street improvements for Accessory Dwelling Units, the possibility of allowing larger ADUs, the potential burden to homeowners in older homes, and the concerns of older neighborhoods that do not want street improvements in areas where they do not already exist.

In the past, the City of West Linn has allowed some development to forgo building half-street improvements and instead pay the estimated cost of the half-street improvements called a fee-in-lieu. This

process has been loosely defined in the CDC. Myers noted the proposed amendments allow the option of paying a fee-in-lieu instead of building orphan street improvements.

Commissioner Pellett commented that property owners do not want to pay for street improvements when they remodel their houses. She did not support fee-in-lieu because she thought the City needed to build street improvements.

Commissioner Mathews stated that fee-in-lieu is intended to accommodate neighborhoods that do not want sidewalks but provide fairness for infill projects to pay their share of street improvement costs. He supported clear and objective criteria for fee-in-lieu.

Chair Walvatne clarified that remodeling homes to convert existing space into an ADU would not need to pay a fee-in-lieu. He noted that some streets are planned as through streets would require a fee-in-lieu. He asked for clarification on how linear feet would be defined.

Commissioner Erwin suggested allowing fee-in-lieu for short, through-streets with only a few houses. He wanted to add "excluding cul du sacs" to the definition of through streets.

Commissioner Boggess left the meeting at 8:00 pm.

Commissioner Erwin left the meeting at 8:15 pm.

6. Discussion: Potential Future Projects to Recommend Adding to the Planning Docket

Chair Walvatne tabled the agenda item.

7. Planning Commission Announcements

None.

8. Staff Announcements

Wyss provided an update on the Planning Commission schedule and upcoming Planning projects. Commissioner Mathews asked for an update on the status of Brandon place for the Athey Creek Conditional Use Approval.

9. Adjourn

Chair Walvatne adjourned the meeting at 8:23 pm.

Comments: West Linn Planning Commission, August 3, 2022
Re: Athey Creek Middle School Infrastructure Improvements, Willamette Falls Drive,
City of West Linn, West Linn-Wilsonville School District

Betty Reynolds, Ph.D. West Linn

Thank you for the opportunity of commenting about the new Athey Creek Middle School and infrastructure improvements on Willamette Falls Drive by the City of West Linn and West Linn-Wilsonville School District.

Intergovernmental Agreement

At its July 11 meeting, the City Council approved the “Athey Creek Infrastructure Improvements Intergovernmental Agreement with the West Linn-Wilsonville School District.” The IGA raises several concerns.

Brandon Place. As you know, condition #10 of Conditional Use Permit 21-02 for a new Athey Creek Middle School was “The Brandon Place extension will not be built as a through street. The extension will only be built for emergency vehicle access.”

However, the IGA states, “1.2 Streets Accessing the Site. *The school site will be accessed by proposed public streets connecting to the proposed Brandon Place and existing Dollar Street.* A map generally depicting the site location and the access streets and intersections is marked as Exhibit A, attached hereto and incorporated by reference herein.” (Emphasis added.) Exhibit A depicts Brandon Place fully connecting to Dollar street, with no impediments or restrictions, e.g., for emergency vehicles only.
https://westlinn.granicus.com/MetaViewer.php?view_id=&event_id=1849&meta_id=68640

Roundabout. Exhibit A of the IGA depicts a full roundabout. However, the plan that was in effect at the time of the Planning Commission’s “Final Decision and Order on the Conditional Use Permit for the new Athey Creek Middle School” was the *West Linn Willamette Falls Drive 2021 Conceptual Design Plan* recommended for approval by the Planning Commission on June 16, 2021 and adopted by the City Council on July 12, 2021. As indicated by its title, the *Plan* was conceptual; only three WFD roundabouts are discussed in the narrative: at Sunset Drive, West A, and OR 43. A Fields Bridge roundabout is not mentioned in the narrative, and only one detailed layout depicts a small “potential roundabout,” with one spoke as the “Future Dollar St. Connection,” a pedestrian crossing. A notation states, “Dollar Street connection *will be refined at a future design stage,*” and on p. 53, the need for more detail in the plan is identified as the plan is implemented.

Regardless, a July 11, 2022 staff presentation to the City Council prior to their approval of the IGA states, “The [Fields Bridge] roundabout construction was also approved in the land use decision and will proceed regardless of the approval of this IGA.” The IGA agenda item attachments include a link to project details including detailed engineering plans [Link to project details including detailed engineering plans https://westlinnoregon.gov/publicworks/athey-creek-middle-school-public-improvements](https://westlinnoregon.gov/publicworks/athey-creek-middle-school-public-improvements) Volume 4 of the plans depict a detailed roundabout
https://westlinnoregon.gov/sites/default/files/fileattachments/public_works/project/54648/pi-21-01_athey_creek_middle_school_plans_approved_5-31-22_set_1_of_3_for_project_page.pdf

Other questions included whether it would be safe and permissible to locate parking spaces near the roundabout on Willamette Falls Drive. In fact, the CDC prohibits such parking: “Chapter 85.200 Streets A. (5) d. -...On-street parking is not allowed unless part of a Street Master Plan.”

Lack of Public Input. For the first time, the detailed KPFF WFD improvement and Fields Bridge roundabout drawings submitted as part of the IGA became available to the public. Although status updates for the Athey Creek Middle School Improvements on the City’s website indicate “approval” of the design and plans occurred in May 2022, the approval stamp on the drawing was by planning staff, without public input or City Council approval.

Regarding a public hearing, the staff analysis for the IGA stated, “None required.” Likewise, the Pre-Application Conference summary notes for the project state, “All three permits are Planning Manager decisions and do not require a public hearing.” An attempt to submit written comments at the pre-application conference was rejected by staff with the statement that comments won’t be accepted until the application is submitted. This is inconsistent with prior conferences, e.g., public comments from two people were accepted for the Pre-app 4096 Cornwall St.

https://westlinnoregon.gov/sites/default/files/fileattachments/planning/meeting/38261/pa-19-11_staff_summary_cornwall.pdf. The pre-app link is provided on the project page for the application <https://westlinnoregon.gov/planning/4096-cornwall-street-6-lot-subdivision-0>, so public comments can be accessed.

Further, despite requests from Willamette Neighborhood association, information about the IGA was not provided until *after* the IGA was approved.

The fast-track approval approach lacked transparency and bypassed the public involvement process required by Oregon law and Land Use Goals. For example, Oregon Revised Statutes require notice to interested persons: “ORS 192.640 Public notice required; special notice for executive sessions or special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons the public should have an opportunity to be heard...” In keeping with the spirit and letter of the law, notice should have been provided to interested person who could reasonably be assumed to have an interest, including potentially affected property owners, the writers of 53 letters and e-mails by the city and the 500 petitioners regarding the Dollar Street site. In addition, Neighborhood Associations, Advisory Groups and the Planning Commission didn’t have opportunity to provide input on the scope of improvements and design/drawings.

Further, acting upon the IGA without first having engaged members of the public on the scope of improvements and KPFF's drawings/ design, is contrary to the purpose and intent of Oregon's Statewide Planning Goal 1- Citizen Involvement, to develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

Scope, Need. The roundabout and improvements appear to be beyond the scope of Ballot Measures. The City’s Ballot Measure 3-572 re Fields Bridge Park only included sidewalks and bike lanes and failed to mention that City also intended to construct a roundabout next to Fields Bridge and make room for parking spaces not far from it. The Voters Pamphlet statement did not mention using park property for transportation, and it was not clear to voters that it encompassed a conservation area.

The District's Ballot Measure 3-554 did not mention the Dollar Woods site, the roundabout, Willamette Falls Drive changes, any impacts on a conservation area, etc. Rather, the District's ballot measure language cited the need based on enrollment increases.

The IGA identifies the need for the school based on enrollment growth. However, data shows that enrollment in the District has been declining, even before the Pandemic, and several schools are under capacity. Unfortunately, the District did not release enrollment data until immediately prior to the 2019 election. A Pamplin news article *after* the election showed that, in fact, none of the primary schools in West Linn and Wilsonville were over capacity, some were under-capacity, and overall, the District had 132 fewer students starting in 2019 than it did in fall of 2018. <https://pamplinmedia.com/wlt/109-education/444126-358713-new-data-shows-declining-enrollment>

That trend has borne out by PSU's Population Research Center 2020 census data. In fact, current enrollment includes a large number of students who do not reside in the District. The District admitted 625 students under HB 3681 (open enrollment), which sunsetted on 7/1/2019. As of 9/30/21 the number of remaining open enrollment students was 425 students. The District has opened enrollment again to more out of District students and is advertising on billboards and in theaters outside the District to "come join us."

Compliance with Laws, Requirements of Agencies, Entities

Multiple Agencies, Entities with Jurisdiction. On June 16, the City of West Linn Planning staff held a pre-application conference for the project, including construction of the roundabout and improvements to Willamette Falls Drive. The applicant was also the City, and only three permits were identified as being needed, in compliance with City Development Code:

"For a Flood Management Area Permit, address submittal requirements found in CDC 27.060 and respond to criteria found in CDC 27.070, 27.080, 27.090, and 27.100 (if applicable).

For a Tualatin River Greenway Permit, address submittal requirements found in CDC 28.090 and respond to criteria in CDC 27.110 (specifically L, T, and U).

For a Water Resource Area Permit, address the submittal requirements found in CDC 32.050 and respond to criteria in CDC 32.080 and 32.090."

However, the process appears to be insular; there are multiple, additional governmental entities with jurisdiction that should be consulted, and their laws, rules, and requirements complied with.

For example, the US Environmental Protection Agency identifies 20 governmental agencies and entities involved in the Tualatin River riparian restoration project and implementation of agricultural and urban best management practices. They included,

Oregon Department of Environmental Quality
Oregon Dept of Agriculture
EPA
Clean Water Services
National Pollutants Discharge Elimination Program
Natural Resources Conservation Services

Oregon Watershed Enhancement Board
Tualatin Soil and Water Conservation District
US Department of Agriculture
Conservation Reserve Enhancement Program
Tualatin River Watershed Council
Tualatin Riverkeepers
Oregon Department of Agriculture
Oregon Department of Forestry
Multnomah, Clackamas, and Washington counties
The cities of Portland, West Linn, Tualatin, and Lake Oswego.

Recent advice from an environmental law attorney confirms that the Oregon Department of State Lands and US Army Corps of Engineers should be consulted regarding disturbance of wetlands and floodplain areas. Clean Water Act permits, an Oregon Department of Environmental Quality construction discharge permit should have been in place before construction began. DEQ and Clean Water Act Water Quality Certification must be assured, a Federal Emergency Management Agency Floodplain permit may be needed, and the Department of Geology and Mineral Industries, and Oregon Department of Fish and Wildlife may all have requirements.

Also, when FEMA regulations were modified to reflect settlement of Endangered Species Act litigation, a Schwabe Williamson Wyatt attorney stated that areas subject to the regulations are part of riparian habitat zones extending 150 to 250 feet from high water, which is beyond the 100-year floodplain. New uses, such as athletic fields and parking lots, are restricted in favor of keeping the spaces open

During consideration of a proposed trail along this section of the Tualatin River in 2011, Oregon Department of Fish and Wildlife District Habitat Biologist for the North Willamette Watershed District, Elizabeth J. Ruther, submitted a report to the City. The report identified the importance of riparian buffers, native vegetation, and protection of sensitive resources related to habitat, fish, and wildlife and identified multiple species potentially impacted: herons and waterfowl, red legged frog habitat, pileated woodpeckers. and she stressed the importance of protection of habitat for nesting mammals as a dwindling and critical resource.

She said the river plays a critical role as a safe movement corridor, and the small buffer area is critical to the passage of a number of species. Further, a natural riparian buffer increases water quality to protect ESA listed fish species. She commented that, "*Not anywhere* in West Linn, on the Tualatin River, is a trail appropriate...*too small of a buffer area.*"

Standards for roundabouts; Tualatin Valley Fire and Rescue. There's a lack of overall City of West Linn standards for roundabouts. Although the 2016 Transportation System Plan Table 12 indicates that traffic circles do not belong on minor arterials (based on Tualatin Valley Fire and Rescue emergency vehicles and safety guidelines). However, TVFR approval of the proposed improvements has not been made part of the record. It is imperative to know whether TVFR can adequately respond to the safety of 850 school children, as well as educators, staff volunteers, and families.

ODOT. Compliance with ODOT, transportation, and safety requirements is needed. Instead, the applicant's traffic study states, "The Willamette Falls Drive/Ostman Road intersection fails to meet the operating standard under all of the future scenarios," but that, "there is currently *no desire* to change

the traffic control at Willamette Falls Drive/Ostman Road.” Traffic problems will be likely exacerbated by I-205 tolling, but a traffic study to assess the impact of tolling has not been done. Further, public comment to the City Council on August 1, 2022, was that ODOT staff indicate ODOT has not yet been contacted about the project.

Environmental Harm

The roundabout, WFD improvements and school site are in an environmentally fragile area which needs protection, containing habitat conservation areas, wetland and riparian areas, a greenway, Tualatin River, and floodplains. Studies, plans, and reports all list threats to this environmentally fragile area.

For example, strategies in the “Oregon Conservation Strategy Flowing Water and Riparian Habitats” apply to all naturally occurring flowing freshwater streams and rivers throughout Oregon as well as the adjacent riparian habitat. They are based upon such laws and government entities as Oregon Forest Practices Act, Northwest Forest Plan, and identifies the DEQ, Statewide Planning Goals #5, Senate Bill 1010, Agricultural Water Quality Management Area Plans and Rules, and US EPA, Oregon Department of Agriculture, Oregon Watershed Enhancement Board, watershed councils. Multiple threats are identified, such as loss of riparian habitat, floodplain function, and habitat complexity, pollution, habitat degradation, passage barriers and channel complexity, water quality and quantity, temperature, sedimentation, etc.

<https://oregonconservationstrategy.org/strategy-habitat/riparian-habitats-and-flowing-water/>

Consultant reports and hazard mitigation lists show susceptibility of the area to earthquakes, landslides wildfires, and flooding, there are steep slopes, and there were pesticide findings, including lead.

The risk of environmental harm by rushing ahead with construction, before all required permits are in place and laws and rules are complied with, is real. Despite promises by the District to preserve trees, create buffers, etc., and advice to avoid rainy season excavation, the District clearcut Dollar Woods in the fall of 2021, removed all stumps, and excavated. The result was a sedimentary flow, potentially containing lead, into the Tualatin River in late February and March. DEQ’s found multiple class I violations – the worst category – in both March and again May. The DEQ also found the city to be violating its stormwater permit, and cited 11 violations regarding waste discharge, failure to properly implement a stormwater plan and failure to enforce permit requirements for the school construction.

HCA’s, Land Use Goals. Compliance by the District with the City’s Habitat Conservation Area (HCA) requirements is questionable. The District’s application identifies four different areas in the HCA which are in the area needed for the roundabout, and each will be impacted. The District acknowledges the HCA protection requirements in the CDC but flatly states that the "impacts cannot be avoided."

These impacts appear to conflict with Planning Manager’s findings in his June 16, 2021, staff report for the WFD Concept Plan (page 11) regarding Statewide Planning Goal 6 – Air, Water, and Land Resource Quality: To maintain and improve the quality of air, water, and land resources of the state. The report states, “The City is currently in compliance with Metro’s Title 3: Water Quality and Flood Management program, which implements Goal 6.”

Another statement provides assurances, "The amendment does not alter the City’s acknowledged land use programs regarding water quality and flood management protections. The City is included in the

Metro Area Airshed, which is in compliance with Federal Clean Air Act regulations. The West Linn TSP and Willamette Fall Drive Concept Plan were developed following the rules and guidance found in Oregon Revised Statute 660-012 and the Metro Regional Transportation Plan. Both outline strategies for decreasing vehicle miles traveled and single-occupancy vehicle trips, which are intended to help improve air quality in the Metro Area Airshed. As a result, the amendments are in compliance with Goal." However, the claim that water quality and flood management protections will not change inconsistent with the impacts identified in the District's application, the updated drawings, etc.

Further, the potential impacts appear to conflict with Statewide Planning Goal 7 – Areas Subject to Natural Hazards: To protect people and property from natural hazards. Staff findings are: "The City is currently in compliance with Goal 7 and Metro's Title 3: Water Quality and Flood Management program. The amendment does not alter the City's acknowledged Goal 7 land use programs. No changes will occur to current natural hazard protections. As a result, the amendments are in compliance with Goal 7."

Unfortunately, the proposed improvements, some of which were not included in the WFD Concept plan, will result in a negative impact to protected areas. For that matter, the KPFF design/drawings demonstrate multiple impacts on the environment: six retaining walls, a large roundabout, widening of WFD, etc., cannot be constructed *without* impacting the HCA.

Safety of retaining walls in FEMA flood zone. The retaining walls in the new KPFF design were not envisioned in earlier conceptual planning. Construction of the walls will require extensive excavation, and a Division of State Lands permit would require mitigation of where to place the excavated fill.

It is concerning that the retaining walls are well within the 100 Year Flood Zone area that was inundated by floodwaters two years in a row: in 1996 and again in 1997. With climate change, catastrophic natural events such as these floods and landslides can be expected to occur more frequently. Construction of the new Fields Bridge reportedly involved drilling 45 to 60 ft down to reach bedrock to have solid support. How deep will the supporting structures for roundabout and retaining walls be?

Another concern is that adding or removing significant amounts of fill will cause downstream erosion that might adversely affect downstream property owners. With limited buffers and multiple riverfront homes, residents along the Tualatin River should have received notice and information and have had the opportunity for input.

Thank you for your consideration of these comments.