

**WEST LINN PLANNING COMMISSION**

**FINAL DECISION NOTICE**

**CUP-12-02/DR-12-04**

**IN THE MATTER OF THE PROPOSAL FOR A CONDITIONAL USE PERMIT AND CLASS II DESIGN REVIEW FOR THE PROPOSED EXPANSION OF THE CITY OF LAKE OSWEGO WATER TREATMENT PLANT AT 4260 KENTHORPE WAY**

On April 18, 2012 the West Linn Planning Commission conducted a duly noticed public hearing to consider the request by the Lake Oswego-Tigard Water Partnership (Partnership) to expand an existing water treatment plant at 4260 Kenthorpe Way. The applicable review criteria for the Conditional Use and Class II Design Review standards are found in the West Linn Community Development Code (CDC). The approval criteria for Conditional Uses are located in Chapter 60 of the CDC. The approval criteria for Design Review are found in Chapter 55 of the CDC. The hearing was conducted pursuant to the provisions of CDC Chapter 99.

The hearing was continued to April 25 and again to May 2. On May 16, 2012 the applicant submitted a written request to suspend the applications for the expansion of the water treatment plant to allow additional work in several areas of concern identified during the public hearing, and to allow procedural consolidation of these applications with a planned additional related application for a pipeline to serve the expanded treatment plant. The Commission granted this request and suspended the hearing on May 16, 2012.

On October 17, 18 and 25, 2012, the Planning Commission reconvened and conducted a duly noticed public hearing. The Commission record consists of all materials from the previous hearings together with the record of the reconvened hearing.

The hearing commenced with a staff report presented by Zach Pelz, Associate Planner. Dennis Koellermeier, Ed Sullivan, Jon Holland, Carrie Richter and other representatives from the Partnership presented for the applicant. The Commission then opened the hearing to the public, heard a significant amount of testimony and received written argument and evidence. A member of the public requested that the record be left open pursuant to ORS 197.763(6)(b) based on new evidence submitted at the continued hearing. The Commission granted this request, leaving the record open for seven days for all parties to respond to the new evidence. The applicant waived the additional seven day open record period provided by ORS 197.763(6)(e).

When the Commission reconvened the hearing on November 1, 2012, the applicant responded with rebuttal, followed by questions from the Planning Commission for City staff. The hearing was then closed, and the Planning Commission deliberated to a decision.

Following deliberations, a motion was made, seconded, and unanimously passed to deny the application on the following grounds:

**Finding 1:** The Planning Commission finds that the applicant failed to satisfy CDC 60.070(A)(3) – *“The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”* In reaching this decision, the Planning Commission determines that the language of this criterion is ambiguous, and requires interpretation. As such, the Planning Commission makes the following interpretations and findings:

- A. The term “community” refers to the community to which the Comprehensive Plan and CDC apply, which is limited to the City of West Linn. It does not mean the larger region. A “facility that is consistent with the overall needs of the community” is one that is designed and sized to serve the needs of the residents and land uses in the city. Although the water treatment plant both as it currently functions and as proposed currently does and could continue to provide a supply of water to West Linn in the event of an emergency through an existing intertie with the West Linn water system, its primary purpose is to serve residents in Lake Oswego and Tigard, and therefore is inconsistent with the intent to meet the overall needs of West Linn residents. There is no guarantee that the expanded treatment plant would provide water to West Linn for any given period of time or by making water available on an emergency or backup basis. Specifically, in conclusion, the scale of the proposal is regional in nature and therefore violates the intent that facilities in West Linn have the primary purpose and be of a scale to serve the community of West Linn.
- B. The Commission interprets the term “overall needs” as used in this criterion to mean that the facility must provide a benefit to the community for the duration of that facility’s existence in the community and commensurate with the impacts of the proposed facility. As discussed above, there is no demonstration that a need for water will be met by the expanded facility and yet it was abundantly clear from overwhelming public testimony that the proposal will have significant short term and long term impacts on the immediate neighborhood. Although the term “benefit” does not appear in this criterion, the term “overall needs” can be interpreted to include an enhancement to the community that offsets any impacts the proposed development creates, resulting in a net benefit. In addition, the applicant presented a portion of its application using the term “benefits” to demonstrate compliance with this criterion. Public testimony also relied on the term. Similarly, the Robinwood Neighborhood Plan, referenced in the Staff Report as part of Finding No. 10 in discussing compliance of the application with CDC 60.070(A)(7) uses the term “benefit.” The Planning Commission finds that it is reasonable to include the concept of “benefit” as articulated here and in the Robinwood Neighborhood Plan as addressing the “overall needs of the community” criterion given the significant impacts of the project on the Robinwood Neighborhood.
- C. The applicant’s offer to potentially provide 4 million gallons per day (mgd) as an emergency water supply (as expressed in a proposed inter-governmental agreement (IGA) signed by the Cities of Lake Oswego and Tigard) to the City of West Linn until the year 2041, amounted to, at most, a temporary benefit to the City of West Linn and could therefore not be characterized as providing a facility that meets the overall needs of the community. Further, the offered IGA indicates that the Partnership can provide and will endeavor to provide 4 mgd of emergency

water to West Linn; this provides no certainty that water will be available in the event of an emergency, consequently it does not satisfy a need, and as such a community need per 60.070(A)(3) was not satisfied.

- D. To determine if a need is met, one cannot evaluate the end result independent of the means to achieve that result. Potential benefits provided by the facility in terms of emergency water supply, must exceed the impacts/costs borne by residents, business operators and those relying on Highway 43 during the construction period which as noted above constitute a portion of the “community” identified in this criterion. West Linn residents and business owners testifying at the hearing indicated that the construction of the proposed project over the course of 32 months, entailing 86 truck trips per day on what is now a low volume (Mapleton Drive currently experiences 350 average trips per day) residential street without sidewalks, would generate noise, cause disruption, diminish the livability of the area, pose a safety risk for children walking through a construction zone to reach the school bus, and potentially slow emergency response times, thus jeopardizing public safety and potentially diminishing the ability to sell a dwelling along the affected streets and likely impeding property owners’ ability sell their property if necessary as well as depressing property values. Further, business owners testified that impacts during the construction would be detrimental to their businesses. In the event the proposed project caused businesses along Highway 43 to close or relocate the impact could last until vacant storefronts are filled.

The temporary construction impacts, as well as the ongoing risks associated with the storage and transmission of 38 mgd of water in a seismically hazardous area of the City outweighed the temporary benefits that would accrue to West Linn residents with the approval of the facility

Moreover, the Partnership’s offer to self insure by providing a \$1.5 million risk management fund, in addition to the Partnership’s municipal insurance coverage, in the event of damage to property due to a failure in the proposed project the amount was inadequate to cover the potential significant property loss to surrounding homes in the event of a large failure, the 10 year duration is too limited and, absent a third party administering the fund, there is no certainty that the applicant would pay legitimate claims.

- E. Finally, the Commission finds that the term “community need” should be interpreted by taking into consideration the sentiment of citizen participants engaged in the pending quasi-judicial land use hearing. Despite the recommendation in the adopted 2008 West Linn Water System Master Plan, to improve the supply reliability of the West Linn-Lake Oswego emergency water intertie, “community need” as set forth in CDC 60.070(A)(3) the Commission concludes this criterion is not satisfied both based on the analysis above, and because of the significant opposition to the Partnership’s proposal expressed by residents and local business owners throughout the hearing process.

Finding 2: The Planning Commission finds that the application is not consistent with CDC Section 60.070(A)(2) – *“The characteristics of the site are suitable for the proposed use*

*considering size, shape, location, topography, and natural features.”* The Planning Commission disagrees with the Partnership’s testimony regarding the suitability of the Water Treatment Plant site given the potential for seismically induced liquefaction and lateral spreading of soils in this area as well as the potential for slope failure north and east of the plant. The Planning Commission referred to a deep-seated pre-historic landslide, illustrated on plate 2A (p. 30/50) of the June 20, 2012, Kleinfelder report in Section 8, of the Partnership’s submittal materials for the Raw- and Finished-water pipeline, north and east of the Water Treatment Plant site, as evidence that the area is subject to liquefaction and lateral movement. In addition, the Planning Commission concluded that the presence of this pre-historic deep-seated landslide demonstrates that a buttress of more consolidated and stable soils is not present to the east of the Water Treatment Plant site and Raw- and Finished-water pipeline alignment, contrary to information presented by the Partnership attesting this buttress was present. Additionally, the Planning Commission is not convinced by evidence supplied by the Partnership to the contrary, that the proposed design of these facilities would enable them to withstand a magnitude 9.0 Cascadia Subduction Zone seismic event in this area.

In addition, given the significant impacts of the project as discussed above under Finding 1, and the aesthetic impacts discussed below under Finding 4, although the existing plant has been a good neighbor, the site is not suitable to accommodate the proposed expansion.

**Finding 3:** The Planning Commission finds that the Partnership’s proposal is not consistent with CDC Section 60.070(A)(7) (*“The use will comply with the applicable policies of the comprehensive plan*) and the West Linn Comprehensive Plan based upon the following findings:

- A. The Partnership’s proposal is inconsistent with Goal 2, Section 1, Policy 8 of the Comprehensive Plan, which states *“Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed-use development, and other potentially incompatible land uses.”* The overwhelming testimony from affected nearby and neighboring property owners was consistent in describing that both the temporary 32-month construction period and the permanent scale and operational requirements of the proposed expansion would not be compatible with the surrounding residentially zoned neighborhood, which is comprised of established single family residences. Although the existing plant was uniformly described as a “good neighbor” the new building would be significantly larger, more industrial in appearance and would have exterior lighting that would be more invasive than the current plant. Based on the Applicant’s revised site plan, the buffering and setbacks are not sufficient to adequately protect the neighborhood from the dominant appearance of the project. Significantly more chemicals must be brought to the site to treat the greatly increased water being processed, and such chemicals are potentially hazardous putting nearby residents at increased risk. As discussed above, the Planning Commission also finds that the greatly increased size of the proposed plant presents a greater risk of significant property damage to the homes that could be impacted by a major earthquake and/or landslide event. In all of these respects, the Commission finds that the proposal is not consistent with the Policy’s clear requirement that residentially zoned areas be protected from such intrusions.

- B. The Partnership's proposal is inconsistent with the February 5, 2003, West Linn City Council Goal number 9 (contained on p. 2/117 of the Comprehensive Plan) to, *"Oppose urbanization of the Stafford Triangle and pursue policies that would permanently retain that area as a rural buffer between West Linn and neighboring communities."* The Planning Commission finds that the Council goals are incorporated into and were adopted and acknowledged as part of the West Linn Comprehensive Plan. Although titled "goals" and not policies, the Commission finds that these Council goals are the adopted policy objectives of the elected governing body of the City, and must be applied in the context of this review. The Planning Commission finds that, despite assertions that policies contained in the Lake Oswego Comprehensive Plan oppose development of the Stafford Triangle, the inclusion of portions of the Stafford Triangle in the Partnership's initial feasibility analysis (which allocated approximately 2 mgd of future water to the area) demonstrates that the project could facilitate development of the Stafford Triangle contrary to the West Linn Comprehensive Plan.
- C. The Partnership's proposal also fails to satisfy the following additional West Linn City Council Goals dated February 5, 2003 (contained on page 2/117 of the West Linn Comprehensive Plan) *Goal 1: Maintain and protect West Linn's quality of life and livability.* See Finding 1(C). The Partnership's proposal fails to protect residents' quality of life and livability by closing Mapleton Drive to through traffic between 7am and 7pm and by creating a potentially hazardous situation for pedestrians travelling through the construction work zone on Mapleton Drive. In addition, 86 new construction-related trips on Mapleton Drive would add delay and potential safety risks for residents in this area and therefore jeopardize their 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;and*
- 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.*

Finding 4: The Planning Commission finds that the Partnership's proposal fails to satisfy CDC Section 60.070(A)(1) – *The site size and dimensions provide, a) adequate area for the needs of the proposed use; and, b) adequate area for aesthetic design treatment to mitigate any possible adverse effect from the use on surrounding properties and uses* - in that the Partnership's proposal creates safety concerns for children walking along Mapleton Drive to and from school during the estimated 32 month construction period for the proposed project.

The proposal constitutes a replacement of an existing plant with what is essentially a new, much larger plant. The subject site in a residential area is not adequate for the large

replacement plant because of the disruption to the neighborhood during the proposed 32 month construction period.

As noted above under Finding 3, the failure of the proposed project to meet the Comprehensive Plan Policy requiring the protection of residential areas from incompatible uses is not met, further demonstrating that the proposal does not contain adequate area for an industrial building of the size and scale proposed here.

This decision will become effective 14 days from the date of mailing of this final decision as identified below. Those parties with standing (i.e., those individuals who submitted letters into the record, or provided oral or written testimony during the course of the hearings, or signed in on an attendance sheet or testimony form at either of the hearings, or who have contacted City Planning staff and made their identities known to staff) may appeal this decision to the West Linn City Council within 14 days of the mailing of this decision pursuant to the provisions of Chapter 99 of the Community Development Code. Such appeals would require a fee of \$400 and a completed appeal application form together with the specific grounds for appeal to the Planning Director prior to the appeal-filing deadline.

  
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MICHAEL BABBITT CHAIR  
WEST LINN PLANNING COMMISSION

11-26-12  
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DATE

Mailed this 27<sup>th</sup> day of November, 2012.

Therefore, this decision becomes effective at 5 p.m., December 11, 2012.