

**ATTACHMENT 4
NEW TESTIMONY RECEIVED ON
NOVEMBER 1, 2012**

FILE NO.: AP-12-02 and AP-12-03

REQUEST: Appeal of Planning Commission decision in CUP-12-02 and CUP-12-04 denying application to expand Water Treatment Plant and install new Raw- and Finished-water transmission line

Pelz, Zach

From: Eric Eisemann [e.eisemann@e2landuse.com]
Sent: Thursday, November 01, 2012 12:13 PM
To: Pelz, Zach
Cc: Oveson, Pete; 'Holland, Jon R.'; 'Carrie Richter'; 'Day, Eric'; bkc@dksassociates.com; 'Komarek, Joel'
Subject: FW: West Linn Land Use Hearing Traffic Response - ATTORNEY CLIENT COMMUNICATION - PRIVILEGED AND CONFIDENTIAL
Attachments: West Linn Land Use Hearing Traffic Response 11012012.pdf

Zach,

Attached is a brief memorandum for the record prepared by Brian Copeland, DKS, and Pete Oveson, Brown and Caldwell. It responds to questions raised during public testimony regarding construction traffic.

Thank you for your assistance.
Eric

Eric Eisemann
E2 Land Use Planning, LLC
215 W. 4th Street, Suite # 201
Vancouver, WA 98660
360.750.0038
e.eisemann@e2landuse.com



Memorandum

Date: November 1, 2012

Prepared for: West Linn Planning Commission

Subject: Response to West Linn CUP 12-02 and CUP 12-04 public comments on construction traffic calculations

From: Brian Copeland, PE, PTOE – Lake Oswego-Tigard Water Partnership Traffic Engineer
DKS Associates

Pete Oveson, PE – Lake Oswego-Tigard Water Partnership Pipelines Engineer
Brown and Caldwell

Introduction

The Partnership is committed to adhering to the well-thought out construction traffic management plan for Mapleton Drive, Kenthorpe Way, and Highway 43 presented in CUP 12-02 and CUP 12-04. Studies have been performed by a professional traffic engineer demonstrating that our plan will substantially mitigate construction traffic impacts and will not significantly add to overall traffic volumes on nearby roadways.

The West Linn Planning Department Staff Report for CUP 12-04 states: “The traffic management plan identifies existing conditions as well as proposed access and traffic control strategies for all travel modes and satisfactorily demonstrates an acceptable level of automobile and non-automobile circulation for the duration of the proposed construction” (page 11).

This memorandum is provided in response to two separate traffic impacts analyses presented to the Planning Commission during its public hearings. The first was provided by Yvonne Davis on October 25, 2012, and the second was titled “Calculations only for Truck Traffic,” and has been submitted multiple times by various residents. All information discussed in this memorandum is already contained in the records of CUP 12-02 and CUP 12-04.

Summary

The public testimony offered to the Planning Commission about construction traffic impacts is flawed. The analyses claim to be based on information provided in CUP 12-02 and CUP 12-04, however, both rest on several incorrect assumptions. As a result they significantly overstate the total traffic volume expected as a result of construction. These two analyses include the following errors:

- **One-Way Trips vs. Round-Trips** – Calculations provided through public testimony doubled the Partnership’s estimates of one-way trips to arrive at round-trips. One-way trip values should be halved to arrive at round-trips. This error resulted in public comment significantly overestimating the number of expected construction traffic.
- **Truck and Non-Truck Vehicular Traffic** – Statements made in public testimony assumed that the Partnership’s estimates of construction trips only included large trucks. However, the Partnership’s application materials clearly state that non-truck vehicular traffic is included in the overall construction trip estimates. Therefore, comments made in public testimony speculating that the actual traffic impacts from non-truck vehicular traffic could be worse than reported are not correct.
- **Construction Duration vs. Construction Window** – Traffic analyses provided through public testimony assumed that the duration for each pipeline project phase was the entire construction window for each phase. The construction window was provided only to bracket the possible range of starting and ending dates, not as an estimate of duration for each phase. The actual construction duration for each pipeline phase is provided in the Partnership’s application materials and is much less than the window in which it could occur. Public testimony also assumed that WTP truck traffic was based on allowed work hours (11.5-hour work day Monday through Friday and a 9-hour work day on Saturday). The Partnership’s WTP traffic values are based on the expected 8-hour day, five days a week. These errors resulted in public comment significantly overestimating the number of expected construction traffic.
- **Effect of Project Delays on Total Traffic** – Statements in public testimony assumed that if the duration of the project was increased then the total truck trips would also increase. Total truck trips do not change based on project duration; they are based on the scope of the project and are therefore constant regardless of project duration. Therefore, comments made in public testimony that speculate that the actual traffic impacts could be worse than reported do to project delays are not correct.

To put the construction traffic impacts in perspective, the total construction traffic resulting from all pipeline phases over the duration of pipeline construction work will only increase existing total traffic volumes by 14 percent on Mapleton Drive and by less than 1 percent on Highway 43. Total WTP construction truck traffic over the entire duration of WTP construction will only increase total existing traffic by 7 percent on Kenthorpe Way and by 4 percent on Mapleton Drive. Almost all pipeline and WTP traffic will be sequenced so as to not overlap or occur simultaneously on the same street (e.g. Mapleton Drive and Kenthorpe Way) as can be shown in Figures 1 and 2 of the update memorandum, submitted on September 27, 2012, that outlined revisions to CUP 12-02 and CUP 12-04.

One-Way Trips vs. Round-Trips

CUP 12-04 Section 10-4.2.1 outlines daily construction traffic volume for the various pipeline phases in ADTs, which are defined as average daily traffic, with units of one-way vehicles per day. ADTs are used to measure one-way vehicle trips traveling in both directions on a given street. For example, if an observer is standing on a street and sees two vehicles traveling east and two vehicles traveling west, the observer would have seen four one-way trips. To convert traffic values from ADT or one-way vehicle trips per day to round-trip vehicles per day, one-way trip values should be halved, not doubled as per public testimony analysis. Per the previous example, this means that two vehicles traveling west and two vehicles traveling east could be reported as two round-trips or four one-way trips. In fact, the note in CUP 12-04 Section 10-4.2.1 Table 3 that was cited in public testimony states that, “all truck trip volume reported is one-way (each round trip results in two (2) one-way trips).” CUP 12-02 Section 14A-5.1.1 also presents all WTP construction traffic volume in one-way vehicle trips per day.

Hourly truck trip volume is included in CUP 12-04 Section 10-4.2.1 Table 3 and CUP 12-02 Section 14A-5.1.1. Hourly values were calculated by dividing total truck trip volume, based on project scope, by the total estimated work days and available work hours per day for each project phase. These values were provided so as to determine the actual impact of construction traffic on an hourly basis, which is the standard for evaluating traffic capacity impacts.

Truck and Non-Truck Vehicular Traffic

As outlined in CUP 12-04 Section 10-4.2.1 and CUP 12-02-5.1.1, all construction traffic volume for each project includes an allowance for non-truck vehicular traffic, such as lunch breaks and various other activities for pickup trucks and other small vehicles. Also noted in this section is that an additional non-truck vehicular traffic allowance is included for construction management and engineering inspection for each phase. Furthermore, construction workers will be bussed to the job site from an off-site location to minimize worker traffic and parking on Mapleton Drive (CUP 12-04 Section 4, Page 12; CUP 12-02 Section 14A-5.1.1). Therefore, the assertion made in public testimony that the Partnership’s traffic volume does not include “any additional vehicular traffic whatsoever” is incorrect. The construction traffic volume numbers provided are the Partnership’s best estimate of all construction related traffic resulting from project construction (including both truck and non-truck vehicular traffic). In fact, non-truck vehicular traffic comprises approximately half of the total construction traffic volume reported in CUP 12-02 and CUP 12-04.

Construction Duration vs. Construction Window

CUP 12-04 Section 10-2.3-Table 1 provides the estimated construction duration for each pipeline project phase. The “Anticipated start of construction window” and “Anticipated end of construction window” in CUP 12-04 Section 10-4.2.1-Table 3 is provided only to acknowledge that the actual duration of each project phase may occur within a certain construction window. For example, CUP 12-04 Section 10-2.3-

Table 1 states that the *HDD construction* duration is six months and could occur anytime between March 2014 and October 2014 (an eight month window) this means that construction could start as early as March or end as late as October, but that the duration will be six months regardless. All phases of pipeline related construction work will only occur Monday through Saturday (i.e. six days per week) unless a variance is granted by the City of West Linn. The only pipeline related construction activity that could possibly require work on a Sunday is the HDD pullback work described in CUP 12-04 Section 10-4.4.1 and this is only a one or two day maximum work activity. Pipeline construction durations are actually much less than what was reported in public testimony (refer to Table 1 in this document).

CUP 12-02 Section 14A-Appendix A outlines the parameters used to develop WTP construction traffic. Anticipated construction hours for truck trip generation are presented as Monday through Friday (i.e. five days per week) from 7 a.m. to 4 p.m. with a one hour lunch. This equates to 672 work days over the 32-month construction duration and is much shorter than what was reported in the analysis provided via public testimony (refer to Table 2 in this document).

Effect of Project Delays on Total Traffic

WTP and pipeline construction traffic values are dependent on the total haul-off, fill, and required materials to complete the project (i.e. project scope). Therefore, total construction traffic volume is a static value and is not dependent on the overall project construction duration. For example, hauling 50 CY of material would be completed through five 10 CY truck trips regardless of whether the task takes one day or one week. If the project duration is slightly longer than anticipated, then the daily construction traffic will be slightly less than what is presented in CUP 12-04 and CUP 12-02. This example is only used for illustrative purposes, since the durations and traffic trips stated in the two applications are our best estimates based on the team's extensive engineering and construction experience. Therefore, no adjustment in total construction trip volume would be required if the project goes longer than anticipated.

Total Construction Traffic for all Pipeline Phases

As stated before, total pipeline construction traffic is constant based on project scope. Average daily and hourly traffic volume was calculated based on the number of work days (and associated work hours) estimated to complete each project phase. Table 1, One-way Traffic Volume for Pipeline Construction Phases, shows the total traffic volume by project phase (note that using round-trip traffic volumes would result in half the number of one-way trips). As can be seen in Table 1, the total construction-related trips from pipeline work on Mapleton Drive and Highway 43 is actually 24,274 one-way trips (or 12,137 round-trips). This number is significantly lower than the 89,472 or 77,760 round-trips reported in the "Calculations only from Truck Traffic" document submitted in public testimony.

Pipeline Phase	Construction Traffic (ADT, one-way trips per day)¹	Work Hours (hours per day)²	Construction Traffic (one-way trips per hour)³	Construction Duration (days)⁴	Total Construction Traffic (one-way trips)⁵
HDD Construction (via Mapleton) normal	32	12	3	155	4,960
HDD Construction (via Mapleton) pullback	144	24	6	1 or 2	144
West Linn AC Waterline Replacement on Mapleton Drive	38	12	3	36	1,368
Open-Cut Construction on Mapleton Drive	86	12	7	78	6,708
Open-Cut Construction on Highway 43	86	9	10	129	11,094
Total One-Way Construction Traffic					24,274

¹ Construction traffic volume from CUP 12-04 Section 10-4.2.1 and reported in ADT or one-way trips

² Work hours per day from CUP 12-04 Section 10-4.4

³ Construction traffic per hour calculated by dividing one-way construction traffic per day by the work hours

⁴ Construction duration based on estimated construction duration in CUP 12-04 Section 10-2.3, with 30 day months and 6 work days per week

⁵ Total construction traffic is based on the physical properties of each project, not duration, and can be back-calculated by multiplying one-way construction traffic per day by the number of days in the construction duration. Note that hourly traffic from HDD pullback is based on a duration of one workday, if it were based on two workdays the hourly volume would decrease to 3 trips per hour and the daily volume would decrease to 72 trips per day.

Total Truck Traffic for WTP

Total WTP construction truck traffic is based on the project scope. Average daily and hourly traffic volume was calculated based on the number of work days (and associated work hours) estimated to complete the project. As can be seen in Table 2, One-way Truck Traffic Volume for WTP Construction, the total truck trips resulting from WTP construction is 18,816 and is significantly lower than the 33,569 reported in Yvonne Davis' analysis.

Average Truck Traffic (one-way trips per day)¹	Work Hours (hours per day)²	WTP Truck Traffic (one-way trips per hour)³	Construction Duration (days)⁴	Total WTP Truck Traffic (one-way trips)⁵
28	8	3.5	672	18,816

¹ Average truck trip volume calculated by dividing the total WTP truck trips by construction duration, note that for a more detailed analysis of WTP construction traffic refer to the update memorandum provided September 27, 2012, Figures 1 and 2, which provides anticipated construction traffic values by month.

² Work hours per day from CUP 12-02 Section 14A-Appendix A and reported as 7 a.m. to 4 p.m. with a one hour lunch break.

³ Average hourly truck trips reported in CUP 12-02 Section 14A-5.1.1 Table 14A. These values were calculated by dividing total truck trips by the construction duration and planned work hours.

⁴ Construction duration based on 32 month construction duration from CUP 12-02 Section 14A, with 30 day months and five work days per week

⁵ Total construction traffic is based on the physical properties of each project, not duration, and can be back-calculated by multiplying one-way construction traffic per day by the number of days in the construction duration. This value will be evenly split between Mapleton Drive and Kenthorpe Way.

Comparison between Construction and Normal Traffic

The total pipeline construction traffic reported in Table 1 is a small percentage of the current base traffic as reported in CUP 12-04 Section 12 Existing Transportation Conditions. The current average daily traffic (one-way) resulting from normal conditions for Highway 43 (at Robinwood Way) and Mapleton Drive is estimated at 17,000 ADT and 350 ADT, respectively. Table 3, Normal and Pipeline Construction Traffic Comparison, compares the total pipeline construction trips to the base traffic trips over the project duration. The total one-way construction traffic resulting from pipeline construction on Mapleton Drive represents a 13.9 percent increase over existing conditions on Mapleton Drive, while the total one-way construction traffic resulting from all pipeline construction phases on Highway 43 only represents a 0.5 percent increase over existing conditions on Highway 43.

Total WTP truck trip traffic from Table 2 is also a small percentage of the base traffic as reported in CUP 12-04 Section 12 Existing Transportation Conditions. The current average daily traffic (one-way) resulting from normal conditions on Kenthorpe Way is estimated at 200 ADT, while base traffic for Mapleton Drive and Highway 43 was previously reported in this document. Table 4, Normal Traffic and WTP Truck Traffic Comparison, shows the existing traffic conditions over the WTP construction duration.

Table 3. Normal and Pipeline Construction Traffic Comparison

Location	Base Traffic Count (ADT, one-way trips per day) ¹	Construction Duration (days) ²	Total Base Traffic Volume (one-way trips) ³	Total Pipeline Construction Traffic (one-way trips) ⁴	Percentage Increase due to Construction Traffic ⁵
Mapleton Drive	350	270	94,500	13,180	13.9%
Highway 43	17,000	270	4,590,000	24,274	0.5%

- ¹ Base traffic from CUP 12-04 Section 12 Existing Transportation Conditions Table 1, reported in one-way trips per day.
- ² Construction duration based on estimated construction duration in CUP 12-04 Section 10-2.3, 30 day months, and six work days per week, it is further assumed that work on Highway 43 is completed prior to February 2015, therefore, the duration is the sum of the construction phase durations on Table 1 Construction Duration on Mapleton Drive.
- ³ Total base traffic calculated by multiplying daily one-way trips by the number of days in the construction duration.
- ⁴ Mapleton Drive total one-way construction trips is determined by summing the total construction traffic on Mapleton Drive only. Highway 43 total one-way construction trips value includes all pipeline construction on Mapleton Drive and Highway 43.
- ⁵ Percentage increase due to construction traffic is calculated by dividing total construction traffic by total base traffic volume.

Table 4. Normal Traffic and WTP Truck Traffic Comparison

Location	Base Traffic Count (ADT, one-way trips per day) ¹	Construction Duration (days) ²	Total Base Traffic Volume (one-way trips) ³	Total WTP Truck Traffic (one-way trips) ⁴	Percentage Increase due to Construction Traffic ⁵
Mapleton Drive	350	672	235,200	9,408	4.0%
Kenthorpe Way	200	672	134,400	9,408	7.0%
Highway 43	17,000	672	11,424,000	18,816	0.2%

- ¹ Base traffic from CUP 12-04 Section 12 Existing Transportation Conditions Table 1, reported in ADT or one-way trips per day.
- ² Construction duration based on 32 month construction duration from CUP 12-02 Section 14A, with 30 day months and five work days per week.
- ³ Total base traffic calculated by multiplying daily one-way trips by the number of days in the construction duration.
- ⁴ Mapleton Drive and Kenthorpe Way total one-way WTP truck trips is determined by dividing the total WTP truck trips in Table 2 in half. Highway 43 total one-way construction trips value includes all WTP truck trips from Table 2.
- ⁵ Percentage increase due to construction traffic is calculated by dividing total construction traffic by total base traffic volume.

Pelz, Zach

From: Ken Hanawa [kenhanawa@yahoo.com]
Sent: Wednesday, October 31, 2012 11:55 PM
To: Pelz, Zach
Subject: Additional testimony for CUP 12-02/12-04
Attachments: WLPC CUP1202 KHanawa arguments against oct31.docx

Hello Zach,

Please add the attached document to the public record for CUP 12-02/12-4 as response to the new evidence introduced by LOT last week and for which the record remained open for responses by the public until 11/1 at 5pm.

Thank you,
Ken Hanawa

FILE NO. CUP-12-02/DR-12-04 and CUP 12/04 -

PROPOSED EXPANSION OF THE LAKE OSWEGO WATER TREATMENT FACILITY/TRANSMISSION PIPELINE

→ Response to new evidence submitted by LOT dated Oct.25, 2012 and entitled “Code Compliance Response”

Submitted by:

Ken & Rachel Hanawa

4191 Mapleton Drive, West Linn, OR, 97068

The CDC “code criteria” which are to be used as a framework to enforce the intent of West Linn’s Comprehensive Plan and ensure appropriate and healthy West Linn community development have not been satisfied at all in either the applications for the LOT Water Treatment Facility/Pipeline nor in the updated ‘assertions’ contained in the Oct.25, 2012 Memorandum from LOT. The intent of the CDC is to “maintain and improve the existing character and quality of West Linn” (CDC 01.020) and to protect the community from inappropriate and/or inconsistent development requests. The burden of convincing decision making bodies of compliance with this intent lies solely with the applicant.

LOT has approached this burden from a narrow legal-literal context submitting highly selective purpose-funded studies and carefully selected statements as “proof” or evidence of compliance with *its own interpretation* of specific CDC language, however the underlying issue remains that LOT’s overall objective for this project is still fundamentally non-compliant with CDC intent. The LOT projects primary goal is to build an economically and politically attractive solution for the cities of Lake Oswego and Tigard to address their long-term water needs and this solution just happens to be inconveniently located in the heart of an established and legally protected West Linn single-family-home neighborhood. LOT’s whole case rests on the strategy that they might convince West Linn decision makers to accept their selective interpretation of the projects compliance with specific CDC language and that this interpretation might form the criteria by which the case might be decided. LOT’s strategy fails to recognize, however, that this case is in fact about compliance with the overall intent of the CDC, and compliance in this regard has clearly not been satisfied here - a point that has been exhaustively detailed through more than 100 hours of oral and written testimony in opposition to the application.

60.070 “A.3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community.”

Related to CDC 60.070 – the weak argument again asserted in evidence of compliance by LOT (particularly around the ‘benefit’ of the intertie, and their claim to “dozens” of minor and/or irrelevant comprehensive plan policy benefits) are completely negated by the fact that the intertie is a mutual benefit that already exists today, and the negative effects of the introduction of a massive industrial facility in a residential single-family home neighborhood to property values, community safety, security, health and overall quality of life demonstrate total inconsistency with the needs of the West Linn community. That the proposed site might otherwise potentially have 28 single-family residential homes (as cited in original Staff report, p.12) is further evidence of inconsistency between this expansion and the overall needs of the community. West Linn ‘needs’ would be best served by families and people bolstering its neighborhoods, communities and local commerce and not by an

industrial facility that's primary purpose is to serve the needs of an external community. The revenue and impact to local business and to the city of not having those 28 single-family homes easily adds up to several millions of dollars that West Linn and its businesses lose each year. The intent of the CDC in serving the "needs of the community" is simply not met for LOT's proposed use.

60.070 A2. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

The application and subsequent assertions also do nothing to address the fact that the characteristics of the site are NOT suitable for the proposed use considering the CDC factors and intent. The road (Mapleton drive) is too small and not appropriate for heavy industrial traffic; the huge finished water pipe at such close proximity to residential homes is disproportionate to the surrounding area and presents unprecedented danger to residents; the site for the water treatment facility has soils that are unsuitable for the massive industrial complex – and requires 1000 60-ft pilings just to hold the buildings up on the weak soil. LOT claims favorable seismic studies and references the use of standards that are used for 'hospitals' – which are again irrelevant because no hospital would ever be built on silt plains and although LOT has attempted to overcome the lack of suitability through the additions of pilings, they fail to address the risk that the unsupported 48" high-pressure pipes attached to those buildings represent all along their entire length. These are just a few examples of the fundamental disconnect that exists between LOT's argument supporting their claim to compliance with CDC 'language', and their fundamental lack of compliance with the overall intent of the CDC's code governing site characteristics. Carefully selected statements from partially relevant sources supporting their narrow interpretations do not establish grounds for approval.

The conditional use process as afforded under CDC Chapter 60.070 should not be allowed in regard to this application as the intended use does not meet the fundamental criteria and intent detailed in 60.070 APPROVAL STANDARDS AND CONDITIONS. The interpretation of these standards and conditions is subjective, therefore the rules of common law should apply, meaning this should be considered through the eyes of a "reasonable person". In common law a "reasonable person" is - a composite of a relevant community's judgment as to how a typical member of said community should behave in situations that might pose a threat of harm (through action or inaction) to the public.¹

As the proposed expansion is considered by the Planning Commission now it is critical that all aspect of the proposal and its details are fully understood and impacts to the community are carefully considered to ensure that the vision and intent for the development of West Linn as set forth both in the West Linn Community Development Code (CDC) is faithfully and dutifully served. There should be no expediting of procedure in the process nor should there be any argument left unresolved considering the complexity and magnitude of change that the proposed expansion represents. We are hopeful that the Planning Commission will consider this matter fairly and with extraordinary diligence on behalf of the residents of West Linn.

Thank you for your time and careful consideration on this matter.

Ken and Rachel Hanawa

Pelz, Zach

From: Gary Hitesman [ghitesman@gmail.com]
Sent: Wednesday, October 31, 2012 10:19 PM
To: Pelz, Zach; RNA Great Neighbor Committee; CWL Planning Commission
Subject: CUP-12-02/CUP-12-04 New Evidence comment extension period ending 11/1/12 5:00 PM

Many of the letters submitted doubt the voracity of L.O. that Economic Development is served in this jurisdiction. I have poured over the application and found any support for Goal 9: Economic Development to be lacking. I also do not recall the applicant ever talking about this for the record.

The letters perform a better job of pointing out the lack of consideration by the applicant. Please look at Goal 9: Economic Development and see for yourself. Given what the City recognizes as important, this application misfires on all cylinders.

"West Linn's Economy is based primarily on service and retail-oriented commercial businesses, . . ."

Pelz, Zach

From: Gary Hitesman [ghitesman@gmail.com]
Sent: Wednesday, October 31, 2012 7:33 PM
To: Pelz, Zach; RNA Great Neighbor Committee; CWL Planning Commission
Cc: King Lamont
Subject: CUP-12-02/CUP-12-04 New Evidence comment extension period ending 11/1/12 5:00 PM
The Applicant needs to respond 'for the Record'.
Attachments: Missed Comp Plan & Council Goals Adopted Feb.pdf

Page 7 and 8 of the new evidence contains Lamont King's written testimony regarding LOT's communication as superficial, etc.

Since I too was involved in some of these meetings and some others, I do not concur with Mr. King. Mr. Lamont King's testimony does not reach into the code far enough as the situation warrants and does not sufficiently describe how;

- the applicant misconstrued neighborhood concerns and feedback,
- practiced character assassinations upon community advocates who were passionate about their concerns,
- deliberately misinformed,
- created government distrust,
- and misrepresented themselves not only at NA meetings but at state agencies with various presentations.

No, Mr. Lamont King is too far a gentlemen and weakens his concern by being far too modest, a fair sportsman, and all too willing to see the good in the people who are, in my opinion, everything but.

The information that I have personally collected has yet to find a proper opportunity to enter into the record because the City has been very exclusive and secretive about it's level of outreach. But to outline this recent new information and add to it;

Here are findings-of-fact that support Mr. Lamont's concerns;

- 1.) The PC shall review the Oregon State agency coordination meeting minutes going back 18 months to 'record' the apparent false claims Ms. Heisler makes to State Agencies as to progress and citywide consent. At the same time that the Beery memo went out on ex parte, Ms. Heisler is recorded in meeting minutes as stating that citizens were in favor of the proposal and that they were anticipating a timely decision and approval from West Linn. In the least, the Commission could ask the applicant to present those meeting minutes as they have been presented or place them into the record. Commissioners should have the opportunity, as have I, to read what other State Agencies were told, in order to see that my claims are not some emotional outburst or stunt. I will be producing the documentation later as the opportunity to submit earlier was denied;
- 2.) As that photo of the example Ms. Heisler submitted to the NA demonstrates, The RNA was shown one thing and after over a year of backing away from community communications, delivered the antithesis in regards to massing, height, materials, fit, appropriateness, and "manifest superiority";
- 3.) The PC should look at the recordings of the other NA meetings where the project was discussed and where Jane, Joel, and Dennis presented. Here Joel misconstrued, or possibly misrepresented, the Use at the Hidden Springs Neighborhood Association. At several meetings, they maligned Kevin Bryck. At the Willamette NA meeting, they scoffed at community advocates and complained. (And Mr. Bryck was censored at City Council!);
- 4.) Lake Oswego staff requesting West Linn police show up at Planning meetings for unjustifiable reasons with the sole purpose to intimidate;
- 5.) Not all of the West Linn city and Lake Oswego city staff personal friendships, potential bias, and potential conflicts-of-interest have been disclosed leading to less transparency and boxing-in the NA's;

5.) I was present at Neighborhood Meetings when it became clear how community interactions would be handled after the project was suspended;

- At first; silence. After the commission accepted the suspension, the NA was not contacted by the Applicant. This remained the norm. The applicant's letter to you requesting a suspension was never fully honored. The applicant should explain to the PC how they feel they met the intent of the letter and then Mr. King should have a chance to respond. {I claim the suspension was not honored by the applicant and the project needs to be denied.}
- Then the City manager told the NA he would only talk to one or two people. Then, he relinquished and let in another 2 or 3. The City Manager eschewed a public participatory process because of his need to maintain control over the situation. The list of invitees is questionable and the City Manager excluded specific people from attending his meetings.[ie: the facilitation plan misses Goal 4 of Goal 1]
- The CM attendees were unable to report any progress in a growing list of concerns about avoidance and non action from the applicant. (Again, See the letter requesting suspension.)
- The benefit portion of CDC Chp. 60 was misconstrued, misunderstood, never clearly defined, and negotiated without public participation; just as the West Linn City Manager had instructed.
- As Mr. Mckenzie testified and as Mr. Kings' letter states, participation was limited to just a few "because that was how Mr. Mckenzie wanted it." His actions were supported by Mr. Chris Jordan without justification, public discussion, or relevance to Oregon Revised Statute. Beyond breaking compliance with this code; I think it would be proper to ask just how much money the city is burning in mismanagement and multiple planning blunders.
- The Robinwood Neighborhood Association has been controlled and limited in it's ability to perform it's function by the West Linn Community Director's Office.

Mr.King's letter, as well as countless others, attest to these missed codes, comprehensive plan, revised statutes, and more;

CDC 01.020 PURPOSE -As a means of promoting the general health, safety and welfare of the public, this code is designed to set forth the standards and procedures governing the development and use of land in West Linn and to implement the West Linn Comprehensive Plan. To these ends, it is the purpose of this code to maintain and improve the existing character and quality of West Linn through:

H. Providing for citizen participation in all phases of the planning process. (Ord. 1408, 1998)

CDC 60.060 Application - C. A prerequisite to the filing of an application is a meeting with the respective City-recognized neighborhood association, per CDC 99.038, at which time the applicant will present his/her proposal and receive comments. [the project changed and the "new" application was not presented in a consistent manner meeting this code or, precedent. A Q& A was held where questions were vetted and grouped together by the applicant in the presence of a city planner. But only certain questions were mentioned while others were misconstrued. Mr. McKenzie appeared, in my estimation, to provide a false facilitation that broke the intent of the suspension request made to the Commission.

CDC 60.070 Approval Standards and Conditions - (3.) The granting of the proposal will provide for a facility that is consistent with the overall needs of the community; and (7.) The use will comply with the applicable policies of the Comprehensive Plan. (A. This part of the code was never explained to the public or discussed at the NA. What matters here is that the applicant has been inconsistent in establishing "overall need". The Comprehensive Plan has been misconstrued in private meetings between the West Linn City Manager and the applicant during the time of Mr. King's claim of "superficiality".)

See the attached word file for non-compliance to the Comprehensive Plan as it relates to Mr. King and other testimony. Primarily this Goal;

3. Maintain and strengthen trust and credibility in City government.

This Goal has been utterly shattered. No one I have talked to and none of the evidence submitted supports the existence of trust and credibility with West Linn! Even L.O. paid consultants I have met with admit how the City has weakened the process. And no one remains at neighborhood meetings that trusts the City Manager and planners. Credibility was lost when L.O. fulfilled the threat they left hanging over everyone's head regarding suing over the covenants. The Beery memo limiting citizens access to the council destroyed whatever trust the city had at that time. Believe me, the credibility of the entire city rests at the hands of the commission! In the words of Princess Leia, "You are our last HOPE!"

By the way, the Comprehensive Plan is improperly enforced in the City Code as it has edited out the word "coordinated". This misuse of Oregon Revised Statute will be an Assignment Of Error in the upcoming appeal to LUBA.

ORS 197.005(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with goals.

ORS 197.010 Policy. The Legislative Assembly declares that: (1) In order to ensure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans: (c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans; [and] d) Shall be prepared to assure that **all public actions are consistent and coordinated** with the policies expressed through the comprehensive plans; . . .

The Planning Commission would be supported in denying CUP 12-02/CUP12-04 as the process has not lived up to the standard of public participation and promoting livability within the jurisdiction of West Linn.

Council Goals Adopted Feb. 5, 2003

1. Maintain and protect West Linn's quality of life and livability.
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.
3. Maintain and strengthen trust and credibility in City government.

. . . preventing degradation of quality of life in and for West Linn. (Degradation is a word that needs to be discussed! The partnership has failed to address this.)

The pipeline application is generally not supported by the Comprehensive Plan as well as the Applicant has failed to account for all the negative impacts and provide overall need of the community within it's jurisdiction. These aspects were not discussed and are part of the applicant's superficiality. This also includes the maintenance and sustainable growth needs of a major transportation corridor that will eventually be handed over to the City.

The City of West Linn is dedicated to a policy of 100% cost recovery for growth attributable impacts in all categories of Systems Development Charges (SDCs) allowable by Oregon law.

There is a charter requirement that all annexations require voter approval.

GOALS

1. Provide the opportunity for broadly based, ongoing citizen participation, including opportunities for two-way dialogue between citizens and City elected and appointed officials.
2. Provide opportunities for citizens to shape City government and other West Linn institutions into exemplary organizations that foster trust, respect, courage, and honor.
3. Support involvement of West Linn citizens in identifying and addressing regional issues.
4. Provide clear, simple, user-friendly information about how the planning process works and how citizens can be involved in land use and other City policy decisions.

The Planning Commission needs to substantiate that the Goals have been satisfied or accept Mr. King's testimony that the process has been "superficial". OR as I have clarified, not met with CDC 60.070

Pelz, Zach

From: Gary Hitesman [ghitesman@gmail.com]
Sent: Thursday, November 01, 2012 9:33 AM
To: Pelz, Zach; RNA Great Neighbor Committee; CWL Planning Commission
Subject: Deny CUP-12-02/CUP-12-04 New Evidence comment extension period ending 11/1/12 5:00 PM

Follow Up Flag: Follow up
Flag Status: Flagged

It should be noted that many of the October 25 letters submitted into the Record underscore an abundant amount of findings demonstrating the application misses many of the planning fundamentals related to this conditional use application. Despite the inordinate amount of attention given the recording snafu, the fact remains this project is woefully inconsistent, without precedent, and fails to meet many of the policies and goals of the Comprehensive Plan.

The inadvertent recording was just another example of what residents have had to put up with over the last two years.

I really believe each commissioner needs to ask themself these questions:

- *How would you feel if this is how **you** were treated?*
- *How has the process enabled, or hindered, citizen participation?*
- *Why has the process overseen by the City Manager appear to have failed?*

By my reckoning, I have placed into the record a potential 34 Assignment of Errors over the last 8 months; of only 1 which was brought to your attention this week. In my opinion, an objective review of the evidence forces you to deny this application. Certainly, LOT has not even attempted to provide "the burden of proof"; instead relying on the public to actively pursue "the burden of persuasion". Please listen to Ms. Oakes concerns regarding procedural errors and arguments regarding "basis".

The facts have appeared to take a second seat to the hostilities exhibited by the WL City Manager towards community advocates and at citizens negatively impacted by this awkward proposal. (I mean, come on! People are being sued!) Until a paradigm shift occurs at the City Manager's level in how he treats his constituents, planning will always take a second seat. The Planning Commission should deliberate on a "vote of no confidence" and reprimand the City Manager, the Community Director, and the former planner, now Economic Director, for misconstruing the facts and misleading the commission down this fatefully disastrous path.

After that, deny CUP-12-02/CUP-12-04 for any number of solid, justifiable reasons.

(c) 2012 Gary Hitesman

Like the play structure in the Trillium Creek Elementary School application, like the flawed procedures of the Holiday Inn application, and like the flawed engineering review by the now terminated Engineering Director, this application has been terribly mishandled and misapplied. Mistakes and errors abound!