

ATTACHMENT 6
APPROVED MINUTES FROM OCTOBER 25,
2012 PLANNING COMMISSION HEARING

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



CITY OF
West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of October 25, 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; Khoi Le, Engineering Department; and Pam Beery, Acting City Attorney

PREMEETING WORK SESSION

The Commission convened the work session at 6:30 p.m. in the Rosemont Room of City Hall. They discussed procedure and a potential date to continue the hearing. Mr. Sonnen related that Greg McKenzie and a representative from TVF&R would be available to answer questions. Mr. Pelz had sent the Commissioners an internet link to the DSL joint permit application. He distributed copies of recently received testimony. Ms. Beery counseled the Commissioners regarding *ex parte* contact.

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 7:00 p.m.

PUBLIC HEARING

CUP-12-02/DR-12-04 (water treatment plant) and CUP-12-04/DR-12-14 (water transmission line). Continued from October 18, 2012.

Chair Babbitt opened the public hearing. Commissioners Frank and Axelrod each reported site visits. Commissioner Steel had visited the Wilsonville water treatment plant.

Public Testimony - continued

Brian Sherrard, 7401 SW Washo Ct. #101, Division Chief; and Karen Mohling, Deputy Fire Marshal, Tualatin Valley Fire & Rescue; testified that TVF&R had reviewed the emergency response plan. They found it included the necessary elements to ensure the fire district could still provide timely and effective emergency service. It required daily updates between the construction team, the fire district and local emergency dispatch agencies. Emergency vehicle access along Mapleton was to be provided via the 12-foot temporary access and there were times that would require moving metal plates over the trench. They advised that the district routinely adjusted its response matrix and routes to meet the needs of communities during times of construction.

During the questioning period, Commissioner Martin inquired regarding response time in the worst case scenario, when equipment and plates had to be moved. Mr. Sherrard explained the district had different guidelines for response time which depended on things like call type and location and variables such as traffic. The most stringent guideline was 9 minutes and 20 seconds from when the call came in. He advised that the apparatus had a mapping system; dispatch alerted them to blockages along the route on any particular day; and there was a fire station right down the road. The district had evaluated the response time; travel routes during construction; and factored in that construction activity areas were limited to 150 feet at any

particular time. Each engine carried a large enough quantity of hose that TVF&R could operate from along the road near a construction zone to deal with structure fires. It could access a residence without going into the driveway. Commissioner Axelrod asked who would be responsible for dropping the plates on the road. Mr. Sherrard said the construction team was responsible for that. There were only four pinch points along Mapleton where plates might be needed during between three and six days of the project. TVF&R would be communicating with the construction team, but they would also try to take the most expedient and efficient route, which might not require them to rely on plates. Mr. Sherrard confirmed that fire trucks could make the turn on Nixon to go up Mapleton. It might require backup maneuvers. He clarified that it was the responsibility of the construction team to notify the local fire station and the emergency dispatch centers. Commissioner Miller asked how reliable that system was in his experience. He said they had to have that daily dialogue so they could change their response matrix and who would respond. Commissioner Frank asked how and when construction crews would know they had to put the plates down. Mr. Sherrard said it could happen multiple ways. The emergency dispatcher could contact the construction crew; the apparatus could call them; and the district would know what section was being worked on any given day. They could still operate in a timely and effective manner with the 150-foot construction areas.

Mary Hill, 19050 Nixon Ave., recalled approval history. The Clackamas County Planning Commission had voted to recommend denial of Lake Oswego's 1967 plant application on the basis that the proposed use would be incompatible with the overwhelming single-family residential character of the area and that could be adverse to the general welfare of the community. When Lake Oswego appealed her husband had submitted a letter containing a petition from 321 people who supported the decision. She read the letter aloud. She noted the Board had then approved Lake Oswego's appeal, but the minutes of that meeting contained no reference to the matter or to a public vote. Today's opponents had no idea how and why that happened and what deals were made. Ms. Hill related that one of her neighbors had told her she felt pressured to sell her property to Lake Oswego and another had just given up and built elsewhere. She acknowledged the existing plant had been good neighbor and there had been no noise or big problems with them. However what they were currently asking for would be disruptive. She suggested the fire department take a truck down Nixon to time how long it took to make the turn onto Mapleton. It would be very difficult. She hoped the project would be denied. During the questioning period, Ms. Hill clarified that she could not tell from the plans if the completed plant would be disruptive, but she believed construction would be disruptive.

Yvonne Davis, 4226 Mapleton Dr., submitted written testimony which included a spreadsheet analysis of the applicant's trip numbers and a photograph of a dump truck on a 19-foot wide section of Mapleton (October 26 Memo to the Planning Commission, pp. 39-45/583). She calculated how frequently trucks would run on Mapleton during different aspects of construction of the plant and pipeline. A truck trip could happen as often as every five or six minutes during pipe pulling and open cut periods and during peak plant construction. Trucks would run on Highway 43 every five minutes, all night long, for five months. It appeared Highway work could run concurrent with the Mapleton work, so some people would be getting barraged around the clock. The photograph of the dump truck demonstrated there was only six feet left for pedestrian/bike traffic. The grand total of plant and pipe trips combined exceeded 75,000. She held that endangering school children was a gross violation of CDC 60.090.A.2. Ms. Davis also contended the project violated Goal 6, which called for careful preservation and management of resources for a healthy environment. Staff had ignored the fact that the 75,000 truck trips would emit particulates which would have a huge negative impact on the quality of the air. She said the project also violated CDC 60.090.A.3 which called for a project to minimize impacts to resources. She charged that the applicant had violated development

standards because they had not looked at alternative sites and had wanted to be in Robinwood from day one. The lawsuit and residents' efforts to convince their own city were disrupting their daily lives and making them angry and fearful. She asked the Commission to deny the application. During the questioning period, Commissioner Axelrod advised her to be aware that the construction plan had been updated to show a higher number of truck trips.

Greg McKenzie, 1470 Rosemont Rd., testified that the City of West Linn had hired him to organize and facilitate meetings between the Partnership and the neighborhood and he had submitted his report.

During the questioning period, Commissioner Martin asked Mr. McKenzie how successful he thought the facilitated process was and what he would do differently if he were able to do it over again. Mr. McKenzie indicated that he felt he had succeeded in creating a meeting format that made people feel safe to talk, but they had not reached agreement on solutions. The circumstances did not lead them there. It was not for lack of effort. The neighborhood came to meetings and inquired. The Partnership tried hard, provided a lot of information, and kept enhancing its position. However, they could not get a 'yes' out of anyone on the neighborhood side because there was no clear understanding about who could do what. It was not a group with unified leadership to address the issues. He knew the RNA and the GNC were spokespersons, but he thought that there was a larger group that had some difficulty in coalescing around a solution. He explained that he would have preferred to give it a couple more months to work. It was unrealistic to think they could build relationships and resolve the issues in the time they had.

Commissioner Miller asked him to respond to testimony that he had not made it clear why he chose to have separate meetings that the neighbors were not allowed to attend. Mr. McKenzie explained that the neighborhood had suggested holding smaller group meetings and he had arranged for smaller group meetings. However, everyone wanted to be involved in the small group meetings. When there were multiple ideas about how the process should occur, and some tried to take the process away from the facilitator, he had to take charge of the process so there could be conversations. That had disappointed some of them. He had explained to the neighborhood group many times that the substance of what they did was between them and the Partnership. But the process they followed was going to be his. 30 to 50 people participated in the larger group meetings, which were difficult to manage in the sense that they kept getting off track. People kept moving to issues they were particularly interested in. The larger group meetings were never going to get them to any sort of discussions related to the actual mitigation requests and the Partnership proposals. For that reason, the small group meetings were the way to go.

Commissioner Miller inquired who was invited to the small group meetings. Mr. McKenzie referred to them as 'joint meetings.' There were six people from the neighborhood; three people from Tigard; three people from Lake Oswego; and three people from the City of West Linn at each meeting. He was the facilitator. He set the criteria for who could be there. He chose neighborhood representatives who lived on Kenthorpe or Mapleton and would be directly impacted, as well as officers of the RNA and GNC. He recalled there were many people who did not live on the two affected streets who were very vocal about issues. During the course of the discussions the neighborhood group made it very clear that certain people from the Partnership were not welcome. He told the Partnership not to send them, but to send someone else. He never intended the small group to be a decision making body. After a meeting they were to report back to the larger group. That usually happened near the end of an RNA meeting when representatives from the Partnership were present to answer questions. It seemed to him that they were starting to narrow the issues at the smaller group meetings. If they had a couple more months they might have been able to follow through on some pathways that looked like they were heading toward agreements.

Mr. McKenzie clarified for Commissioner Axelrod that he had not initiated the idea of franchise fees. In addition to the meetings process he worked on, the neighbors, Partnership and City staff held separate, private, discussions to try to find creative ways to address the issues and the mitigation. He was not the leader of any of that – he just kept track of what was going on.

Gary Hitesman, 2188 Clubhouse Dr., submitted written testimony, including photographs (October 26 Memo to the Planning Commission, pp. 46-52/583). He contended West Linn had failed to follow the Comprehensive Plan call to support the neighborhood association, promote citizen involvement, and establish and maintain policies that gave neighborhoods real control over their future. The neighborhoods and residents have been thwarted from the necessary and required burden of persuasion. The process had disregarded the Comprehensive Plan call to manage in the best interest of the people and ORS 197 policies regarding overarching principles. The application was without merit; ill conceived; poorly executed; without precedent; and out of scale in the location Lake Oswego preferred. He asked the Commission to review the application as LUBA would. There were disputed allegations; unconstitutionality; *ex parte* contact, procedural irregularities; not applying applicable criteria without fail, not properly construing the applicable law, etc. He submitted photographs of other facilities to demonstrate that Lake Oswego and its design team knew what a design of 'manifest superiority' was even though it pretended it did not. Mr. Hitesman testified that his request for clarification of what the intent of that code provision meant had remained unanswered for over a year. The applicant had not satisfied most of Chapter 55. There was no aesthetic design treatment. He had posted diagrams on his website to show the applicant did not mitigate adverse effects on surrounding uses and properties. The applicant's project manager had lied to the neighborhood association when he stated unequivocally that he did not think this facility was an industrial use. Chapter 44 Fences had been ignored except to say that excessive height was required because of security concerns. That was one example why the outmoded use was no longer appropriate for a conditional use. The applicant had ignored many aspects of the code so the application was incomplete. The requested exceptions should not be permitted. The land was not 'irrevocably committed' as described.

Mr. Hitesman contended that many of the exceptions requested did not meet ORS 197 goal exception requirements: 'A local government may deny an application that is inconsistent with the Comprehensive Plan and applicable land use regulations and that cannot be made consistent through reasonable conditions of approval.' The original community sketch was different than the one currently before the Commission. Lake Oswego had made it a moving target on purpose. The Commission should affirm or invalidate the staff's interpretations of regulations and Comprehensive Plan; read the Water Master Plan; and look at the abundant inconsistencies in the application before making a decision. The applicant knew where the existing water table was because they reconfigured the underground water reservoir. The City Manager had failed to illicit discussion of his own extravagant emergency supply goals. Residents had a right to know why the possibility of multiple river pipe failures and the overall cost to meeting West Linn's emergency water supply needs and related assumptions were never addressed. During the questioning period, Chair Babbitt asked what the photograph, "Community Benefit for the Region" demonstrated. Mr. Hitesman explained that was a completely different plant project that offered another example that the team Lake Oswego had assembled was capable of really great things. What they proposed in West Linn was "the short end of the stick." Commissioner Axelrod asked if Mr. Hitesman's 6/12/12 request for an enforcement order had been responded to by government. Mr. Hitesman indicated it had not been submitted on the record.

Cheryl Keicher, 19145 Willamette Dr., a business owner in the Robinwood Shopping Center submitted written testimony (October 26 Memo to the Planning Commission, pp. 64-66/583). She testified that a Partnership representative had informed the Center that she had made a mistake when she estimated there would be 15,400 truck trips and 50,000 additional

construction related vehicles and it was a gross exaggeration; that the applicant had sent her and the other business owners a letter about the project in December 2011 and had an affidavit to prove it; and he wanted her to be aware that the highway construction work would be done at night. She explained to the Commission that she had then looked at Footnote 1 of Table 3 on page 11 of the applicant's Construction Management Plan and found that the actual number of truck trips alone could be anywhere from 77,760 to 89,472. That amount of traffic would unquestionably create a huge congestion nightmare that would kill many businesses and jobs. She had looked for the letter about the project and an associate had found a December 20, 2011 letter addressed to 'Highway 43 Neighbor' from the Partnership. It stated that members of the applicant's team would visit businesses and homes along Highway 43 over the next month to talk with them about the project. She indicated it would not be unusual not to have seen a generic letter sent via regular mail in the middle of the Christmas holidays. If it had been sent via certified mail it might not have looked so much like junk mail. No one had visited her or any of the other businesses in the shopping center to discuss the contents of the letter. If the applicant's representative had dropped off packets at businesses during the middle of the holiday season he likely gave them to employees and not to the owners themselves. Many businesses did not welcome solicitation during the holidays. She confirmed that all of the tenants and businesses she knew of on Highway 43 were strongly against the proposal. Doing roadwork at night would be helpful, but the sheer volume of water treatment plant work that would be done during the day would bring a large amount of additional traffic to Highway 43 and be a business and jobs killer. She urged the Commission to reject the harmful plan.

During the questioning period, Chair Babbitt asked how the applicant's representative had contacted her to talk about the number of truck trips. She clarified that the owner of the shopping center had contacted her and the letter she had submitted was actually his response to what the applicant said about their previous testimony.

The following persons did not come forward to testify when called:

David Newell, 19635 Old River Dr.

Val Sabo, 4110 Mapleton Dr.

Martin Gilton, 19133 Willamette Dr.

Pam Peet, 2540 Oregon City Blvd.

Neal Rea, 4240 Mapleton Dr.

Jana Rea, 4240 Mapleton Dr.

Lillian Landeen, 4020 Mapleton Dr.

Michael LaGuidice, 18750 Willamette Dr., Ste. P.

Mike Cooper, 3970 Mapleton Dr.

Steve Esnard, 3786 Kenthorpe Way

Charlotte Bierman, 21745 Willamette Dr.

Kim Cozby, 4289 Mapleton Dr.

Harold Otterloi, 1340 10th St.

Karie Oakes, 1125 Marylhurst Dr., submitted written testimony (October 26 Memo to the Planning Commission, pp. 53-57/583). She advised that Section B.2 of the lease agreement between the City of West Linn and the Oregon Parks and Recreation Department meant that the City could not engage in public improvements in Mary S. Young State Park without approval from Oregon Parks and Recreation Department (the property owner) and no third party could do that without prior approval of the City (as the lessee). Without City Council approval the application was invalid. During the questioning period, Ms. Oakes clarified the improvement she was referring to was the pipe going under the park. She further advised that the City Charter required a vote. Even if the application was considered valid the Commission had to condition approval on a vote of the people to allow the pipe to be put through the park.

Natalie Cooper, 3970 Mapleton Dr., had just received notice via email from the Oregon Parks and Recreation Department that Lake Oswego was asking for an easement across the two Maple Grove parcels. The Department would not consider doing that until Lake Oswego had been successful in getting the CC&Rs waived. She and others were being sued and had to pay for the cost of defending against it. There might be a second lawsuit to get the easement over the state's Maple Grove lots. She asked if the Commission wanted to be part of lawsuits. She clarified she planned to submit a copy of the state agency's email later (October 26 Memo to the Planning Commission, p. 58/583).

Rebecca Walters, 4426 Mapleton Dr., submitted written testimony. She contended the plant did not belong in the neighborhood. The written testimony supported that. Documents from the 1967 proceedings related to the original conditional use request showed that the Clackamas County Planning Commission denied Lake Oswego's application because the proposed use would be incompatible with the overwhelming single-family residential character of the area. Then the County Board of Commissioners overturned the denial. The minutes of that meeting made no reference to any related public discussion or vote. The fact that the Partnership could not get enough signatures to lift the Maple Grove CC&Rs and had initiated a lawsuit against subdivision owners who had not signed a waiver was further evidence that the plant did not fit the neighborhood. Those owners had to pay an attorney to defend them. Lake Oswego owned nine acres of property there and did not pay any taxes. It had saved close to \$100,000 in taxes. If that land was developed into 20 homes West Linn could receive \$35,000 per year in tax revenue. She questioned why West Linn was paying for half the cost of replacing the AC water line on Mapleton drive when it was being moved to make room for the applicant's line. She hoped the Commission would place restrictions on moving it because moving it could contaminate the air. She reported hearing that the administrator at Cedaroak Elementary School was relying on the City to make an appropriate decision.

Lamont King, 4257 Kenthorpe Way, requested a continuance so the neighbors could review the new information that had been submitted that day.

Carry Richter, the applicant's attorney, confirmed the applicant wished to present rebuttal and submit final written arguments on November 1. They asked to hear the Commissioners' questions at this hearing so they could be prepared to answer them on November 1. Chair Babbitt observed the majority of Commissioners wanted to wait until November 1 to ask questions.

Commissioner Steel **moved** to continue CUP-12-02/DR-12-04 (water treatment plant) and CUP-12-04/DR-12-14 (water transmission line) to 7:00 p.m. on November 1, 2012. The record was to remain open to November 1, 5:00 p.m. for parties only to respond in writing to the new written evidence that had been presented that evening. Commissioner Miller **seconded** the motion and it **passed** 7:0. Chair Babbitt then invited and answered questions about procedure from the public.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 9:00 p.m.

APPROVED:



Michael Babbitt, Chair

12-7-12

Date