



**City of Lake Oswego/City of Tigard Water Supply Partnership
Summary of Oversight Committee Meeting #22
Meeting held
February 13, 2012**

Lake Oswego Technical Committee Member Joel Komarek called the meeting of the Lake Oswego/Tigard Water Partnership Oversight Committee to order at 6:00 p.m. on February 13, 2012, in the Oswego Conference Room of the West End Building; 4101 Kruse Way, Lake Oswego.

Present:

City of Lake Oswego Oversight Committee: Mayor Jack Hoffman, Councilor Bill Tierney
Staff: Joel Komarek, Dave Prock, Jane Heisler, Kari Duncan, Vanessa Thomas
Other: David Donaldson

City of Tigard Oversight Committee: Mayor Craig Dirksen, Councilor Gretchen Buehner
Staff: Dennis Koellermeier, Rob Murchison
Other: Marty Wine

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1. CALL TO ORDER/ROLL CALL
 2. APPROVAL OF MINUTES FROM MEETING #21

Mr. Komarek asked for approval of minutes from the last meeting held on January 9, 2012.
Councilor Buehner motioned to approve, **Councilor Tierney** seconded the motion. A voice vote was taken, and the motion passed with Lake Oswego **Mayor Hoffman** and **Tierney**, and Tigard **Mayor Dirksen** and **Councilor Buehner** voting 'aye' (4-0).

3. PUBLIC COMMENT

There were no guests in attendance.

4. DISCUSSION OF PRIOR ACTION ITEMS

During last month's meeting **Mr. Komarek** noted **Counselor Tierney** had requested staff bring the Good Neighbor Plan (GNP) list for the Water Treatment Plant back and to annotate where the neighborhood still thought issues were valid for the Oversight Committee to review. **Mr. Komarek** included a memo in the packet dated February 8th that spoke on prior action items and revisited the mitigation lists. The memo provided some history as to when staff received the mitigation lists from the Great Neighbor Committee. It discussed a few of the many things staff has incorporated into the GNP that are not necessarily required by land use but is staff's effort to be the best neighbor they can be in a residential neighborhood. The memo went on to talk about the items that were mitigation requests which were not included in the GNP but were incorporated into the Water Treatment Plant application. **Mr. Komarek** opened the discussion up to the committee for any questions as to why those particular items were not included in the GNP.

Mayor Dirksen asked if staff had formally responded to the Great Neighbor Committee since submitting their list. The guest from last month's meeting commented that some of the items on the Great Neighbor Committee's list were not responded to. **Mayor Hoffman** noted he suggested at the last meeting when staff responds to the neighbors, to not leave those things out, but to respond back and if it is something staff cannot or should not do, it should have an explanation. **Mayor Hoffman** got the impression they were somewhat dismayed staff ignored half their issues. If staff does not agree with their issues then they need to explain why. **Ms. Heisler** stated they received the same list **Mayor Hoffman** received annotated with the reasons why staff was not doing some of the items. She was not sure where the comment came from and stated they were not ignored. **Mayor Dirksen** perceived the issues somehow disappeared based on the guest's comments. **Ms. Heisler** opined it was not the answer they wanted to receive. **Mayor Dirksen** expressed it is important to review their requests and to say which are items that should or can be done and which are items that cannot be done and why.

Ms. Heisler explained she received another list from the planner West Linn hired and paid for to assist this neighborhood in creating lists. Staff had not had the chance review it but this particular list came after a review of the land use application that was submitted. **Mayor Hoffman** mentioned he agreed **Mayor Dirksen** was right in terms that staff needs to respond to all the neighborhood requests. He would like to have a conversation with John Kovash to explain the partnership is listening to his neighbors and voters. The Partnership may disagree but is listening, processing the requests, and giving responses so that John is comforted that West Linn voters concerns are being addressed. **Ms. Heisler** mentioned staff would be meeting with Robinwood the following day and only a core group of people attend the meetings anymore. **Ms. Heisler** would be happy to share the list again with explanations.

Mayor Dirksen believed the only reason staff would need to meet more of West Linn's mitigation requests, beyond what is required by law and what staff feels is appropriate, would be if it were to benefit the partnership and in return they would remove their opposition. If West Linn could get signatures from the neighborhood associations and from the neighbors who have been involved, then it would be worth considering the costs of those other issues. He did not believe they would be willing to guarantee that, so there would be no benefit for the partnership to acquiesce to those other requests. Even if some of the neighbors were agreeable, the partnership has heard from people who have made it clear that regardless of what the partnership does, other than completely go away, they will oppose this to the extent they are able. So there is no reason for the partnership to acquiesce more, it would cost Lake Oswego and Tigard constituents more money to no benefit.

Counselor Buehner voiced a concern that once the application is filed, any further contact with that neighborhood constitutes an ex parte contact. **Mayor Hoffman** mentioned it is not with the neighborhood but with their council. **Counselor Buehner** said she would feel more comfortable if it was done in the presence of someone from the department. **Mayor Hoffman** said typically a developer works with the neighborhood between the application and the hearing to talk with the neighbors and accommodate their concerns prior to the hearing. **Counselor Buehner** stated now that the application has been filed she is concerned anything said can be misconstrued and turned into something else in the application process. **Counselor Tierney** stated anything staff would agree to at this point would be in addition to anything that was required by the application. If staff is not talking with a decision maker with regard to the application, he didn't feel it would be ex parte contact. He acknowledged the concern and opined it is perception. He asked if there is a

danger of creating a false perception if the partnership now shuts off contact with those groups and asked if that is a better perception. **Counselor Buehner** thinks once the application is filed, contact should happen in a public meeting.

Mr. Komarek stated staff continues to attend the monthly neighborhood meetings. The partnership is a property owner in the neighborhood association so it is appropriate to provide updates to the association as to what staff is doing. This allows staff to be open and transparent about what is going on. Staff does not want any surprises, just as the association does not like surprises. Staff is careful about making sure they do not give anybody the indication they are willing to go to the next step or agree to something that is not in the best interest of the partnership.

Counselor Buehner stated she is concerned now that it has got down to such a small group of people with a very clear agenda. **Mayor Dirksen** agreed staff would need to be careful about what they say or offer. But staff needs to be there to listen if nothing else. **Counselor Tierney** noted no offer can be made that does not go before the committee.

Counselor Tierney asked out of curiosity what the staff's reaction was to the planner hired by West Linn. **Ms. Heisler** stated she had never seen a city hire professional assistance to a neighborhood. **Mr. Komarek** relayed comments from neighbors questioning the purpose of the project such as "You guys have not demonstrated a need," "You have not demonstrated you need the amount of water you are requesting," "It is inconsistent with public facility plans and statewide planning rule." **Ms. Heisler** stated the neighborhood meetings start with a reading of the conditional use, as the planning commission can condition anything they want, to a degree that they want.

Mr. Komarek noted the reactions have been the same theme staff has been hearing throughout from those particularly zealous opponents of the project. He stated other comments made from neighbors as "Why here?", "Why us?", "Put it in your own backyard". **Counselor Tierney** suggested if the City of West Linn engaged this planner to work with the neighborhood, maybe they would have started off with a more realistic point in the beginning opposed to a repetition of issues that are beyond the City of West Linn. They are state regulatory issues, state permitting issues.

Mr. Koellermeier requested the Oversight Committee recall staff made the decision late in the process to split the GNP between the treatment plant application and the pipeline application. He stated the precedence staff sets is important because the application for the pipeline is even more nebulous as West Linn has chosen to try to make it a conditional use for an underground facility. If the neighbors are of the opinion that the planning commission in West Linn has a broader authority it will only get exacerbated on the pipeline application. The point is to try to set the boundaries so that it's not get perceived as a sign of weakness as staff goes into the next application. **Mayor Hoffman** asked what **Mr. Koellermeier** meant by weakness and he explained it as willingness to acquiesce.

Mayor Dirksen stated he reviewed the requests staff considered appropriate and he agreed with them because they were beyond the scope and others because the requests are completely unconnected with the project. There is no legitimate reason to do them. The partnership would

have to go back to their constituents and explain why they were willing to spend these hundreds of thousands of dollars. **Mayor Hoffman** stated he is comfortable where staff is at.

Mr. Komarek stated with the direction of the committee, staff would follow up with a letter to the association chair and the West Linn city manager, to explain the partnerships position and why the requests would not be considered. **Mayor Dirksen** recommended reiterating those requests staff has agreed to, those specifically from the neighborhood and those that will be done which are required by law to be a good neighbor. He also suggested including costs to show how much extra is being spent to mitigate and minimize the impact.

Counselor Tierney mentioned the letter could also point out the potential of a new franchise fee. **Mr. Komarek** stated that would be discussed at the February 13 West Linn council meeting. **Counselor Tierney** asked what revenue the partnership generates in West Linn. **Ms. Heisler** answered it could be a privilege tax based off lineal feet of pipeline. **Mr. Komarek** said it could be based on a percentage of revenue the partnership generates from the sale of water to Lake Oswego and Tigard citizens. **Mr. Donaldson** asked if this would apply to their pipeline as well. **Ms. Heisler** stated that was her understanding. **Mayor Dirksen** stated a franchise fee is specifically limited, a privilege tax can have any conditions they want. **Ms. Heisler** reminded the committee that discussion would happen at the West Linn council meeting. **Mayor Hoffman** asked where the genesis of this came from, if it was a league of Oregon Cities thing, and if other cities are doing it. **Mr. Komarek** replied staff heard it from the City Manager last week and was the result of a comment from the Great Neighbor Committee, if the partnership is going to have pipelines in their roadway, then why doesn't the city charge them a fee?

Counselor Tierney asked to clarify the land use in West Linn and how staff thinks things will play out. **Mr. Komarek** answered a memo was prepared by the planning director in February 2010 with advice for staff on standards to calculate disturbance and sensitive areas, it included utilities above or below ground. That was when staff first started thinking about the alignment through Mary S. Young Park. It was those same disturbance standards staff felt they could not overcome in terms of the total disturbance area and they started looking at HDD. Staff spent eight months and close to a million dollars looking at an alternate route that went underneath city owned property. Yet the strictly construed memo said it was a disturbance, as it went above or below ground. If staff had known they might have sought a clarification prior. Staff learned of the memo at the January pre-app.

Mr. Komarek referenced a prior email sent regarding the 20mgd pipeline option to Tigard and noted staff would be not seeking an endorsement or direction from the Oversight Committee at this meeting as staff is moving forward with the design of the pipeline. Assuming that it would be a 36" diameter not a 30" diameter, the partnership needs to make a decision on that pipe. Staff plans to have that discussion with the committee in April as part of an overall discussion on the 30% overall program estimate. Staff will present updated estimates for all the facilities and possible options to consider to reduce costs.

Mayor Hoffman asked if all the water was just for Tigard or if it would be possible to sell to Washington County looking ahead 20 or 30 years. **Mr. Komarek** answered that staff is looking at this pipeline as being flexible to be able to get water to the other side of the region. Whether it goes all to Tigard or to some portion elsewhere remains to be seen. **Mayor Hoffman** asked if there

was a way to figure out if there would be a market in 20 or 30 years in Washington County. **Mr. Koellermeier** replied Washington County is a bed of growth for the Portland metropolitan area. If there is going to be a demand in the future, the two likely increasing water sources which are Hagg Lake and the expansion of the water treatment plant are both problematic. Both have their own sets of issues. He couldn't speculate how staff could conclude who would need water and when. **Mayor Hoffman** added it would be helpful if staff could figure out if it is possible in 20 or 30 years that areas of Washington County may need water. It would help with this decision.

Counselor Buehner mentioned there are connections both to Tualatin Valley and to Beaverton and both seem likely possibilities given the facts. **Mr. Koellermeier** noted both have their own facility plans to follow, but the partnership does have physical connections and either through existing pump stations or even small additional pump stations water can be moved to Beaverton from Tigard pretty easily. **Mayor Hoffman** thought it would be helpful if someone could determine in 2030 water could come from the Clackamas River through West Linn, Lake Oswego and Tigard and continue to be pumped to Beaverton. Not that the partnership supports growth but can get money back on the investment. **Mayor Dirksen** asked if staff thinks regionally people will ask the question what is the limit or how far can we go. The answer is we can continue to grow until we run out of water. In the long-term that is the limiting factor and when improvements are being made to a water source it should be done to the maximum allowable because eventually the region is going to need it. **Mayor Hoffman** added apartments take up less water than single family houses and if there are a thousand new apartments they are going to need water. **Mr. Komarek** added to keep in mind this was not necessarily about getting water to Tigard but about whether or not an asset that is almost 50 years old by the time this partnership is done, should continue to be used. It will need to be replaced at some point. Do we make the investment now rather than wait. It would be 6 million to replace today and it is only get to more expensive if it's replaced 25 years from now. **Mayor Dirksen** added as areas become more developed the restrictions will increase. **Mr. Komarek** stated upsizing the pipe now eliminates the worry of having to build a third pipeline later, creating some long term supply flexibility in our system. **Counselor Tierney** said he sees the benefit of doing this and if there is an excess of water it can be sold to others and our ratepayers will pay less. **Counselor Buehner** agreed and felt this was a relatively low cost to do this now. She opined that there are people out there who will need the water because Portland water is becoming obscenely expensive.

Mr. Komarek stated this topic will be brought back in April for final decision making in context with all the other pieces. **Mayor Hoffman** asked if the decision making process and the paper include the regional content. **Ms. Heisler** answered it would be good to have the philosophical and planning sense behind it. **Mr. Komarek** added the regional transmission and storage strategy the consortium developed several years ago shows that location of Bonita and 72nd as the hub for the region at all four quadrants. Having a pipeline go there gives the flexibility to connect all the sources. **Counselor Buehner** added she is especially thinking about Beaverton because of all the new acreage they brought in to the urban growth boundary all the way out to Tile Flat. It would be very difficult for Beaverton to service that area with its current water supply. **Mayor Dirksen** added the water they are already providing is coming from the other direction but the more demand there is in the Aloha and Hillsboro area and at the intersection of Hwy 26 and 217, basically means there is less water to come down to the rest of Beaverton.

5. GNP LIST FOR PIPELINE ACTION

Mr. Komarek stated staff met with West Linn planning on the water plant application and they handed out a list of the adopted mitigation requests for the plant. There is a column for pipeline with an "X" through noting many of the mitigation requests made for the plant apply to the pipeline.

6. PROGRAM UPDATE BY MAJOR TASK

Mr. Prock referenced the summary of what has been going on in the program. Highlights being for the water treatment plant, the raw water and finished pipeline elements. Staff is moving towards March for having the 30% design documents complete along with the supporting estimates which will help hone in better on what staff thinks future costs will be. Those three projects out of the total program budget total up to 140 million in construction costs. The raw water intake, Waluga reservoir and the Bonita pump station plans will not be at the 30% stage for several months. Staff will be going with the engineer's best guess about changes that might impact the original budget that was used for cost estimating for the capital supplies facility plan.

Mr. Prock stated regarding water rights, the schedule remains as portrayed last month. Things are still moving ahead and staff does not anticipate court accepting any further delays. **Mr. Komarek** mentioned the resolution potentially extending out to Summer 2013 reflects the latest updates that he has from outside counsel as to the whole process. **Mayor Hoffman** asked if staff has a fallback position if the partnership was to get a court appeal or something unexpected. **Mr. Komarek** answered counsel is not anticipating something that would cause staff to seek a legislative fix. He reminded the committee staff does have a final order and they could move forward on the project. It does not preclude staff from moving forward into construction. According to the city's legal counsel Jeff Ring, the one outcome that could be possible would be it would get remanded back to the department for some further information.

Counselor Tierney asked if staff anticipates construction for these elements in advance of summer 2013. **Mr. Komarek** answered yes, stating that staff is looking at the earliest potential construction start date to be the second quarter of 2013. **Counselor Tierney** asked if the last brief is in May, if it takes a full year from then. **Counselor Buehner** stated court needs to schedule oral arguments and usually they get an order out within 6 months after all arguments. **Mr. Komarek** stated he was told because of the unique nature of this case being the first one under the new rules that the appellate court will most likely provide a written opinion and that will take some time. He also reminded the committee again that staff does have a final order. **Counselor Buehner** added in worst case scenario is the partnership would lose everything and be unable to take water from the river. **Mr. Koellermeier** stated the first 16 of the 32 is certificated and the courts cannot take that. The schedule was built trying to resolve all the legal issues before the construction dollars were invested. Worst case paths will cross. **Counselor Tierney** asked if there was a time frame on the water treatment plant for West Linn to act on the conditional use. Committee informed him it was 120 days. **Mayor Hoffman** asked when the application was completed. **Mr. Komarek** answered that it was submitted on January 17th and they have 30 days to deem it technically completely. If it is technically complete by February 17th then the 120 days begins then. Or they can say it is not technically complete, staff would respond and then another 30 days would be added. It has been included in the schedule and staff is assuming that an incomplete will be given.

Mr. Komarek stated staff met with the West Linn planning director to address a list of questions they had in regard to the application. Staff was pleased with the discussions that were had and are

optimistic that a technically complete decision will be given. If not, the items that need to be addressed should be minimal. He added the schedule anticipates it will be appealed to council and an appeal had been included.

Counselor Tierney asked if any issues have surfaced regarding Gladstone's pipeline. **Mr. Komarek** answered that a meeting was held with City Administrator Pete Boyce and their public works supervisor two weeks ago. They are starting to articulate and ask about the partnership being in their community. More conversations will be held with them. **Mr. Komarek** stated applications for pipelines in Gladstone and West Linn have not been submitted yet, they will be scheduled in April. **Ms. Heisler** added the river intake application is approved. **Counselor Tierney** asked if it would be appropriate to have a mayor to mayor conversation in Gladstone. **Ms. Heisler** stated next steps are for **Mr. Komarek** to walk some of the streets with Gladstone's public works representatives.

7. COMMUNICATIONS UPDATE

Ms. Heisler handed out a few media articles written in the past couple weeks, as well as a 2012-2013 Communications Goals and Objectives plan which outlined the timeline for land use, permitting, design, and what needs to be communicated to the various groups. The plan is broken up by the facility within each community. She noted this year the focus is on getting the land use in Meldrum Bar Park permitted and outreach along the entire pipeline through Gladstone. She noted these are goals and objectives, not specific strategies. These types of things depend on the audiences which can sometimes change around each facility and who may be impacted.

Ms. Heisler also noted that GNP for Waluga had an initial start a year ago then the process stopped since at the time, it seemed the facility would not be designed and permitted until later. However the process has started again and three meetings have been held. The group has been good to work with and the biggest issues that have come up are security, earthquakes, the aesthetics of the plant and tank, construction safety, and neighbor impact. A meeting to be held on February 29th will be regarding the pathway. She explained the property is split down the middle between the Lake Forest and the Waluga neighborhoods. On the Lake Forest neighborhood plan they have a map that shows a pathway going through the property. However the Waluga neighborhood does not want the pathway. **Ms. Heisler** noted the pathway does not need to go there and that a new design would be the answer. The news will be conveyed during the February 29th meeting. **Mayor Hoffman** asked if this was the map that was included in Kim Gilmer's city wide pathway trail map. **Ms. Heisler** answered that it is on a trail map that has not yet been adopted.

Mayor Hoffman asked the status of the Lake Corporation and how staff is dealing with the work that will be under the lake. **Mr. Komarek** answered that staff has informed them of the needs to acquire an easement. He has been speaking with Jeff Ward to work on putting together the necessary documents that are needed for the appraisal and the offer to them.

8. FUTURE AGENDA ITEMS

Mr. Komarek brought up March's meeting date as there is a conflict for some of the committee and the meeting was decided to be pushed back a week to March 19, 2012. April's meeting was also discussed and pushed back one week from its normal schedule to April 16, 2012. Also

mentioned in next month's meeting, **Mr. Komarek** will be talking about what staff will be presenting to the committee in April which will include the proposed budget.

9. NEXT MEETING DATE

The next Oversight Committee meeting will be Monday, March 19, 2012, from 6:00 p.m. to 7:00 p.m. in the Oswego Conference Room at the West End Building in Lake Oswego.

10. ADJOURN

Mr. Komarek adjourned the meeting at 6:58 p.m.

Attachments: None

Approved: _____