

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, October 9, 2007
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman, Vice-Chair
Lisa Batey
Paulette Qutub
Teresa Bresaw
Charmaine Coleman

STAFF PRESENT

Katie Mangle, Planning Director
Ryan Marquardt, Associate Planner
Bill Monahan, City Attorney
Zach Weigel, Civil Engineer

COMMISSIONERS ABSENT

Scott Churchill

1.0 CALL TO ORDER

Chair Klein called the meeting to order at 6:33 p.m. and read the conduct of meeting format into the record.

2.0 PROCEDURAL MATTERS – None.

3.0 PLANNING COMMISSION MINUTES – None

Approved PC Minutes can be found on the City web site at www.cityofmilwaukie.org.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council Minutes can be found on the City web site at www.cityofmilwaukie.org.

Katie Mangle, Planning Director, stated that during the Joint Session of the DLC and Planning Commission on September 25th, there had been discussion about possible opportunities for training and a request for clarification regarding conflict of interest rules.

Bill Monahan, City Attorney, explained that, aside from class exception, there are two different types of conflict of interest:

- * An actual conflict of interest exists when a Commissioner knows that a pecuniary conflict of interest exists.
- * A potential conflict of interest exists when there is a likelihood that a conflict of interest could occur.
- One question raised at the meeting was "When should a Commissioner make a declaration of a potential conflict of interest?"
 - * When an actual conflict of interest is declared, the Commissioner must step down and not take part in the proceedings.
 - * When a potential conflict of interest is declared, details of the potential conflict are given, but participation in the proceedings is allowed.
 - The Chairman would then go through the potential conflict of interest for community members to challenge the Commissioner.

- o If the Commissioner is challenged, they could choose to step down from the proceedings or the Commission may need to have some deliberation to decide whether to allow that Commissioner to participate.
- Another key question raised was, "At what point in the proceedings is someone required to make the declaration?"
 - * He reviewed the Planning Commission's bylaws, Municipal Code, statute, and some advisory opinions of the Oregon Government Standards and Practices Commission, recently renamed the Ethics Commission.
 - * ORS 244.135 is almost identical to Milwaukie's Municipal Code Provision 2.10.030(F), which states that if there is any actual conflict of interest of a Planning Commissioner, it has to be disclosed at the Commission meeting where the action is being taken.
 - What becomes confusing in this day and age is that a lot of hearings do not conclude with one hearing, but take two, and sometimes three or four hearings.
 - * The main concern is transparency in government. The general rule of thumb he has always recommended to decision makers, particularly members of the Planning Commission and City Council, is to make a declaration at the earliest opportunity available and to try to make the declaration prior to opening the hearing for public testimony.
 - * As a result of reviewing the Staff report and application, Commissioners should have a good idea whether or not a potential conflict of interest exists if it involves property. One may not know if a conflict of interest exists with a business partner or long lost relative.
 - If it is not known that a potential conflict exists and it is not declared at the first opportunity, but it arises during the course of public testimony, he suggests getting the Chair's attention and making the declaration in light of the new information at that point. For instance, "I did not realize that so and so had an interest in that property, but now that I have heard them speak, I do, in fact, have a potential conflict."
 - * If the issue gets continued to a second or third meeting, he recommends the declaration be repeated, taking the conservative route that is in the best interest of the community for the following reasons:
 - 1) To comply with the statute, so if the decision is made that night, the potential conflict is on the record.
 - 2) There might be an entirely different audience at either meeting.
 - 3) Some recent advisory opinions exist in which the State says the declaration only needs to be made on one occasion, but it is unclear whether "occasion" means one time during each hearing, one time during each meeting, or one time during each matter.

Chair Klein asked how far down a potential conflict of interest extends.

- If something impacts everyone in a neighborhood, is that a potential conflict of interest for a Commissioner residing in that neighborhood?
- **Mr. Monahan** replied it was not entirely clear, but a potential conflict of interest exists when a Commissioner determines that there could be a private pecuniary benefit or detriment, either personally or to a relative.
 - According to statute, relatives are: spouse, father, mother, children, brother, or sister. He believed grandparents and grandchildren were recently added.

- * If a matter could affect a business in which a Commissioner has a financial interest, it should be declared.
- * If a matter could impact one's neighbors, but not necessarily an individual Commissioner from a financial perspective, that declaration might not be needed. However, one might feel it important to make the declaration to maintain the integrity of his or her own reputation as well as that of the Commission.

Commissioner Batey asked Mr. Monahan to discuss class exception.

- **Mr. Monahan** replied that if, for instance, all Commissioners reside in the same residential zone and that zone is being considered to allow a change of use that a Commissioner may or may not like, that puts them all in the same boat, so to speak. All would be impacted in the same way, in that their property, as well as a larger class of people, is potentially impacted.
- He previously believed that if all the Commissioners were in the same zone and could be affected, they would have a class exception, but a recent case led him to believe differently; class exception is not as available as it was years ago.
 - * In a sewer district case on the coast, a member of the board of directors of the sewer district owned property that theoretically would be impacted if the sewer district chose to close the sewer plant. [The Board member] believed it was a class exception because others on that board had property in the vicinity.
 - However, the analysis looked at how large his property was and what the development potential was.
 - * Subsequently, a class exception may not apply if one person has one acre of land in the zone and another person has five acres, because the economic benefit or detriment may be greater for one than the other.

Commissioner Batey asked, hypothetically, if all the Commissioners lived within a half-mile of the Safeway and the Safeway would increase property values, would that be a class exception since one person would not benefit more than anybody else in the class.

- **Mr. Monahan** replied class exception exists if a person does not stand to benefit in a greater way than someone else in the area. He added if one were a half-mile away, it probably would not be a problem. But if that Safeway resulted in a road being built right next to one's property, whereas a country road was there before, that would be a separate issue.
- He reiterated the circumstances would have to be applied to one's own context.

Chair Klein commented that the subject could be taken to minutia; essentially, it is up to each Commissioner to determine whether a potential conflict exists.

- **Mr. Monahan** said there really is no distinct line that [determines conflict of interest]. Receiving notice of a land use application is often a good rule of thumb, because the City recognizes that people within 300 feet of a development proposal are likely to be interested or affected by that land use action, which is a good starting point.

Chair Klein complimented Mr. Monahan's article featured in the *Business Journal*.

5.0 PUBLIC COMMENT

This is an opportunity for the public to comment on any item not on the agenda. There were no public comments.

6.0 PUBLIC HEARINGS

6.1 MLP 07-06 Viorel Hij – Postponed to 10/23/07 Hearing

Ms. Mangle stated that the minor quasi-judicial hearing needed to be opened and continued to the October 23rd meeting in light of some complicating factors, but mostly due to a delay in receiving an arborist report.

- * Staff was unable to prepare the staff report prior to the deadline for this meeting, but notice had already been sent; this hearing would actually be the official start of this public hearing.

Chair Klein opened the public hearing at 6:50 p.m. and read the conduct of hearing format into the record.

- The purpose of the application is to allow Viorel Hij to partition his property located at 3935 SE Harvey, Milwaukie, OR.

Commissioner Coleman moved to continue MLP 07-06 to October 23, 2007 date and time certain. Commissioner Bresaw seconded the motion, which carried unanimously.

7.0 **WORKSESSION ITEMS**

7.1 Background on Milwaukie Tree Permit and Minor Land Partition policies. These policies are relevant to the MLP 07-06 application.

Ryan Marquardt, Assistant Planner explained that Staff wished to briefly discuss tree permit and minor land partition applications with the Commission since the Planning Commission is not accustomed to hearing them and since the application had some unusual approval criteria or issues regarding trees.

- A minor land partition involves less than four areas of land being divided in one calendar year and has the same street improvement requirements as a subdivision.
- The subject site has four trees in the right-of-way (ROW), causing some conflicts with where the street improvements would typically be located, so a tree removal permit is required even for the improvements associated with the minor land partition.
 - * The only situation in which trees are protected is if they are in the ROW, Willamette Greenway Zone or Water Quality Resource Zone, otherwise applicants or property owners may remove trees without a permit.
- The Applicant wanted to apply for a minor land partition but the applicant applied for a tree removal permit prior to applying for a minor land partition.
 - * The Ardenwald Neighborhood requested a hearing because they were concerned about losing the four trees. Subsequently, the Applicant withdrew the tree permit [request] and applied for a minor land partition.
 - * The planning director decided to increase the level of review on the minor land partition to be heard before the Planning Commission, which is an option Staff has for any Type II application.
- Approval criteria for the minor land partition apply to a preliminary plat and are pretty straightforward.
 - * Division would allow reasonable development of the site, and the plat is not duplicative of any existing plat names. Streets and roads are laid out to conform to existing plats and subdivisions.
- The main application before the Commission would be the minor land partition, and the trees play a major part due to the required improvements.

- * Removing the trees would require a finding based on one of the following criteria in 11.32.020.C.1.a-d:
 - a. It is determined by an arborist that the tree is dead or dying and cannot be saved.
 - b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.
 - c. The tree has lost its relative value as a street tree due to damage from natural or accidental causes, or for some other reason it can be established that it should be removed. He added this could include public or capital improvement projects.
 - d. The tree has been determined by a certified arborist to be unsafe to the occupants of the property, or adjacent property, or the general public.
- * The approval criteria for (c) are pretty broad; if removal of the tree could not be determined for some other reason, findings were necessary to establish why the tree should be removed.
- He concluded that it is possible to meet the approval criteria for the minor land partition, whether or not the trees are retained or removed.

Chair Klein asked what constitutes the tree being in the ROW, is it based on canopy, root ball or the edge of the trunk.

- **Zach Weigel, Civil Engineer**, responded that the edge of the trunk is usually the determining factor.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS/UPDATES
Project Updates -- TriMet Park & Ride, TSP

TriMet Park & Ride: **Ms. Mangle** reported she had talked with Kenny Asher, Community Development & Public Works Director, and TriMet staff regarding the park & ride.

- She stated that TriMet applied for a building permit earlier in the summer. The plans did not comply with City Council's conditions of approval, so TriMet agreed to revise the plan.
 - * Not having ready access to their OTAK consultants, created a delay in TriMet finishing the plans. OTAK is now finalizing the contract drawings to City Council's conditions.
 - * TriMet expects the bid opening around the end of this year, with construction beginning in the spring and an anticipated opening next summer.

Commissioner Batey confirmed that TriMet proceeding with the building permit had nothing to do with the bus layover facility.

- **Ms. Mangle** added that funding had been allocated for the park & ride through a federal grant for \$450,000 plus \$1 million from TriMet's general fund. TriMet is committed to the park & ride project. Neither the City nor TriMet has a budget line item for the layover facility.

- * The City and TriMet are submitting a joint grant application to the ConnectOregon II Program, a new State program, and are seeking about \$500,000.
- * While the park & ride facility is proceeding, the layover facility would be introduced when funding *is secured* and would require Planning Commission approval because the facility would likely require a major modification [to the CSU] as traffic patterns would change, etc.

Commissioner Coleman asked if a lot of deconstruction would be required to install the layover facility after the park & ride is installed.

- **Ms. Mangle** answered perhaps. The community has wanted both the dissolution of the transit center and construction of a park & ride for a long time, and the pieces are not all going to fit together perfectly. The conceptual plans for the layover facility include bus pullouts on the asphalt area, so tearing it up may not be entirely needed. The biggest expense for the layover facility would be adding an actual building to provide restroom facilities for bus operators.

North Clackamas Park Horse Arena: **Ms. Mangle** stated that Susan Shanks had come several months ago with a request from North Clackamas Park to modify the horse arena and the Commission consented that it was a minor modification and the project was processed as such.

- She reviewed the decision letter and distributed site plans of the arena.

Commissioner Batey verified that portion of the horse arena would be restored to grass.

- * **Ms. Mangle** believed so.

Chair Klein asked if there had been communications with the Friends of North Clackamas Park or other stakeholders and whether those groups favored or opposed the modification.

- **Ms. Mangle** replied both groups favored the proposal, but made it clear that parking and vehicular access should not be added around that part of the park and that park patrons must be informed that driving and parking on the grass is not acceptable.
- * She did not know about any funding issues regarding the project.

Commissioner Bresaw asked if the North Clackamas Parks and Recreation notified the equestrian groups using the facilities.

- * **Ms. Mangle** replied yes; she believed the modification was at the request of those equestrian groups.

TSP Update: **Ms. Mangle** reported the Commission, Council, NDAs and advisory committees would receive copies of the TSP early next week. The TSP is all available on the Web, too.

- A two-part hearing was planned beginning on October 23, 2007 and continuing to November 13 to allow Staff to make adjustments if necessary following further input from the Commission and public testimony.
- * A two part hearing was also scheduled for City Council.

Chair Klein expressed his appreciation of Staff for their long, hard work on the huge TSP update endeavor.

Ms. Mangle announced that Michelle Rodriguez had been hired as administrative staff support and is fantastic, very detail-oriented and a real go-getter. Ms. Rodriguez would be introducing herself and discussing the minutes process with the Commission. Karin Gardner is now working in the Operations Department.

Planning Commissioner Training: Ms. Mangle announced that The Oregon Chapter of the American Planning Association would begin sponsoring Planning Commissioner training, which would be beneficial for new Commissioners and as a refresher.

- She believed they are scheduled during the day once a month for the next six months and would be broadcast on the Web for the next several months.
 - * She would attend the Friday training to insure the training's quality and scope.
- If the Commission was interested, she suggested holding a monthly work session to have the trainings during the Commission's regular meetings.

Chair Klein wanted to coordinate meeting dates considering his wife is expecting on the December 25th and Commissioner Coleman is expecting around January 20th.

There was a brief discussion regarding Commission meeting dates in December and January. Ms. Mangle reviewed potential upcoming applications, adding she would get back to the Commission, since various factors affected whether an application actually came before the Planning Commission for review.

11.0 NEXT MEETING: October 23, 2007—1st part of the TSP Public Hearing and Hearing on MLP 07-06

Commissioner Newman announced he would not be present for the October 23 meeting.

Forecast for Future Meetings: November 13, 2007 -- 2nd part of the TSP Public Hearing and an appeal on Mr. Ed Parecki's project.

Ms. Mangle reported that Mr. Parecki is appealing Staff's interpretation of the Code, though not a lot of specific information was provided in the appeal application. Appeals are subject to the minor quasi-judicial rules, all the noticing requirements, etc. November 13, 2007 is the closest time to hold the Planning Commission hearing.

- In an email sent today she had stated that although Mr. Parecki had talked to the Planning Commission and City Council about his concerns, she advised not discussing the matter from this point forward. If Mr. Parecki made comments that was fine, but she suggested not engaging in a conversation.

Mr. Monahan added it was important to keep the process as clean as possible, and insure that both Planning and City Commissioners are able to participate by avoiding biases and ex parte contacts. Commissioners should avoid making declarations of their opinions so [their participation] would not be contestable, and they would be able to look at all sides and make the decision at the hearing.

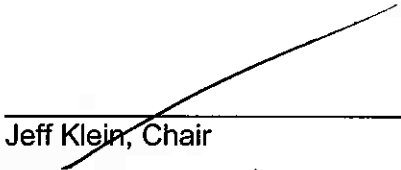
Commissioner Coleman recalled Mr. Parecki was concerned with timeliness; is it certain he would be able to go through the appeal timeframe? *If the appeal were heard on the 13th, would the decision be made then to move forward; how would the appeal delay this project?*

Ms. Mangle responded that Staff was doing their best to be clear about the timeline, deadlines and the process, so he understands that the appeal will delay the project.

Meeting adjourned at 7:20 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription for
Michelle Rodriguez, Administrative Assistant



Jeff Klein, Chair



DICK NEWMAN, VICE CHAIR

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, October 9, 2007 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. Thank You.	
3.0	Planning Commission Minutes None Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings	Discussion and Motion Needed For These Items
6.1	MLP 07-06 Viorel Hij – Postponed to 10/23/07 Hearing	
7.1	Worksession Items Background on Milwaukie Tree Permit and Minor Land Partition policies. These policies are relevant to the MLP-07-06 application.	Information Only
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates Project Updates – TriMet Park & Ride, TSP	Information Only Review and Comment
11.0	Next Meeting: October 23, 2007 – 1 st TSP Public Hearing; Hearing on MLP-07-06 The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	
Forecast for Future Meetings: November 13, 2007 – 2 nd TSP Public Hearing		

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.
12. **TIME LIMIT POLICY.** All meetings will end at 10:00pm. The Planning Commission will pause hearings/agenda items at 9:45pm to discuss options of either continuing the agenda item to a future date or finishing the agenda item.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Jeff Klein, Chair
Dick Newman, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Paulette Qutub
Charmaine Coleman

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Associate Planner
Bob Fraley, Associate Planner
Brett Kever, Assistant Planner
Ryan Marquardt, Assistant Planner
Michelle Rodríguez, Administrative Assistant
Marcia Hamley, Administrative Assistant
Paula Pinyerd, Hearings Reporter

To: Planning Commission

Through: Katie Mangle, Planning Director 

From: Ryan Marquardt, Assistant Planner

Date: October 2, 2007 for October 9, 2007 Work Session

Subject: File: MLP-07-06
Applicant: Viorel Hij
Address: 3935 SE Harvey Street
Legal Description (Map & Taxlot): 1S1E25DA09600
NDA: Ardenwald

On October 23, 2007, the Planning Commission will hold a public hearing to consider a minor land partition for the property at 3935 SE Harvey Street, File# MLP-07-06. Ordinarily, the Planning Commission does not review minor land partition applications. However, the street improvements required for the site would require removal of four street trees, and has been brought before the Planning Commission because of this matter.

The Planning Commission does not typically hear applications either for minor land partitions or street trees removal permits. Staff would like to take some time during the work session on October 9 to discuss why the Commission is hearing this application and the approval criteria involved.

The basic points that staff will review are:

- The background of a tree permit for these four trees from July 2007, including the City's procedures and approval criteria for street tree removal.
- Approval criteria for a minor land partition, and the applications associated with the partition.

Staff believes that the application to be heard is essentially straightforward, but has details and variables that complicate the matter. We hope the work session discussion will provide context for the Commission's upcoming consideration of the partition, street improvements, and trees that are part of the application. The intent of having the discussion is to allow the Commission to feel comfortable as decision makers for the application.