

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 22, 2011
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Nick Harris, Vice Chair
Mark Gamba
Russ Stoll
Fuchs
Chris Wilson (*arrived as Public Hearing 5.1 was called to order*)

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Damien Hall, City Attorney
Wendy Hemmen, Light Rail Design Clare
Coordinator

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Batey called the meeting to order at 6:37 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 October 11, 2011

Chair Batey deferred the minutes due to the amount of meeting material the Commission had to read.

Commissioner Fuchs asked that staff email the Commission to let them know which minutes needed to be reviewed for the next meeting.

3.0 Information Items

Chair Batey stated that the new Milwaukie Kitchen & Wine restaurant downtown is awesome and encouraged everyone to try it. She had taken a cooking class there and got many ideas for Thanksgiving dinner.

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings

5.1 Summary: Kellogg Bridge for Light Rail *continued from 11/17/11*
Applicant/Owner: TriMet
File: WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09
Staff Person: Susan Shanks

The following exhibits were distributed to the Planning Commission:

- Two-sheet handout titled, "Oak Tree Exhibit," a memorandum from Mark W. Hynson, Mason Bruce & Girard, dated November 21, 2011, regarding the assessment of the Oregon White Oak at Kronberg Park.

- Green, two-sheet handout from staff, Recommended Findings in Support of Approval, excerpted from Attachments 1 and 2, to include the Pedestrian Bridge dated November 22, 2011.

Chair Batey called the public hearing to order and read the conduct of quasi-judicial hearing format into the record.

Commissioner Wilson arrived at this time.

Chair Batey asked if any Commissioners had any ex parte contacts to declare that were previously undeclared.

Commissioner Gamba stated he had received one email that he forwarded to staff who had forwarded it to the Commission.

- **Katie Mangle, Planning Director**, explained that an email from Dan Platter addressed both hearing items. The part that was pertinent to the Trolley Trail hearing was forwarded to that record and the comments relevant to the Kellogg Bridge hearing were being held back and would be included in the record if the public testimony were reopened at the Commission, City Council, or LUBA. The email had been received after the close of public testimony for the Kellogg Bridge.

All Commissioners declared for the record that they had visited the site. No Commissioners, however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners abstained and no Commissioner's participation was challenged by any member of the audience.

Commissioner Wilson confirmed that he had reviewed the material from the last hearing to prepare to participate this evening as he had missed part of that meeting.

Chair Batey opened the record so staff could present new information requested by the Commission at the last hearing.

Susan Shanks, Senior Planner, stated that the City had hired Mr. Hynson, who visited the site and prepared a memorandum, which had been distributed to the Commission and officially entered into the record.

Mark Hynson, Senior Biologist, Mason, Bruce & Girard, stated he was originally asked to evaluate the tree's condition and any sort of protection measures that could be employed to preserve the tree during the construction of the bridge. He reviewed photos of the tree via PowerPoint that were included in the memorandum. Key comments and responses to Commissioner questions were as follows:

- A large cavity, approximately 2.5 ft long, existed on the backside of the tree in its main central leader. In many cases, such indications of rot and decay extended well above and below the cavity. The cavity had probably been on the tree for many years, but it was a very significant point of failure or weakness in the tree.
 - Farther down in the tree, fungal fruiting bodies or mushroom-like growths indicated some advanced decay. This was also considered a weak juncture or point of attachment of the tree.
 - The tree had a number of very old damaged limbs with very weak attachments, some of which were very dangerous. There was quite a bit of deadfall, or dead material, in the top of the tree.

- His main concern for the long-term structural integrity of the tree was the cavity, which would essentially split the tree in half.
- Essentially, the tree was a hazard and in such a state of decline that it could fail at any time. It was not a question of if the tree would fail, but when the tree would fail.
- In his professional opinion, the tree warranted removal. If the tree was retained, pedestrians should not be walking under the tree until it received extensive care.
- He did not core the tree, but estimated its age to be at least 60 years old. In comparing trees of similar age, a lot depended on the level of care provided. This tree had received no professional tree care whatsoever, so it was in a state of decline. A tree in an urban or park setting needed a tremendous amount of care. The degree of damage and failure was not unusual for a tree of this advanced age.
- Positive arborist reports occurred more often than expected; it depended on the level of care a tree received and a tree's location. Arboriculturists always considered the risk target for a tree. A tree in a farmer's field was not as concerning as a tree like this where people would be in close proximity, which represented a risk for the City. If this tree were in his backyard, he would be under contract to have it removed.

Ms. Mangle reminded that if the Commissioners wanted any further information they should request it now before closing the hearing. There were no further questions.

Chair Batey closed the public testimony portion of the hearing and opened Commission deliberation. Discussion on the four key issues noted at the November 17 hearing continued amongst the Commission and staff as follows:

Oak Tree:

- Given the arborist's report, doing a lot of work to save the tree did not seem prudent. In lieu of a condition for saving the tree, the replacement ratio could be further discussed and revised if necessary.
- The replacement ratio was probably sufficient except in the first set of modified conditions, Attachment 2 dated November 8, 2011. The language in Condition of Approval 10.A.6 stated "a few oak trees." The number and location of the replacement trees should be more specific.
 - Without a master plan and with the planting already done in the park by North Clackamas Parks & Recreation District (NCPRD), a little more flexibility was needed in the condition about the placement of the oaks. The mitigation plan should be reviewed to ensure the right combinations of plants were planted. Some large conifers planted in the park would shade out the oaks, so any oaks needed to be planted separate from where the conifers were located.
- Staff proposed amending Condition 10.A.6 to read, "Incorporate ~~a few~~ oaks into the mitigation plan to replace the one in Kronberg Park that will be removed by this project, and as a means to provide views of the water, which is consistent with the Willamette Greenway View Protection Criterion that applies to this area, oaks should be located in areas where they are most likely to thrive, in consultation with the City and in consideration of recent restoration plantings in Kronberg Park. To facilitate their survival, oaks should also be planted with appropriate understory and ground cover plants."
 - Staff could include some general language about not grinding the stump and retaining parts of the tree onsite in the interest of habitat. The bigger part of the tree could be used as woody debris in the creek. Condition 10.A.6 was specific to mitigation plantings and Condition 11 spoke to Community Service Use (CSU) approval criteria that balance the impacts and benefits. Staff suggested adding new Condition 11.B to require retaining or repurposing the tree onsite.

- Because some other recent plantings were probably conifers and TriMet's application was not looking at that area, staff wanted to provide some flexibility in Condition 10.A.6. The mitigation plan had the replacement ratio built in, so not identifying a specific number of oak trees provided flexibility for having the most oaks in the area, especially if a master plan were developed by the time mitigation would occur.
- No language required TriMet to work with the City as a master plan was developed for the park between now and 2013. Although language did direct TriMet to consult with the City when the plantings were done to see where the master planning process was for the park, the City could not hold up TriMet's project while the City master planned the park.

Plantings

- Condition 10.A.7 of the revised conditions (Attachment 2) stated, "Consider reducing the amount of common snowberry" and adding various other plants. The condition should be worded more strongly; otherwise, the City would get all snowberries.
 - The language was from the City's consultant and could be changed. Staff suggested amending the language to state, "Add more flowering shrubs that provide wildlife habitat. ~~Consider reducing~~ Reduce the amount of common snowberry...and adding add red-flowering..."
 - The letter received from Oregon Department of Fish and Wildlife (ODFW) had a concise paragraph to that very point. Staff included that language directly in Condition 10.A.8, "Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators."

Lighting:

- Given the lower energy alternatives of LEDs, the language regarding all references to lighting should be stronger. The Applicant should be required to present LED options, which had positive aspects for birds, bats, bugs, etc., and resulted in energy savings and reduced maintenance costs.
 - Staff suggested amending Condition 4 to read, "Prior to approval of development permits for the pedestrian bridge, the Applicant or other authorized entity shall propose energy efficient and wildlife friendly pedestrian scale lighting for the pedestrian bridge, preferably LED lighting. The Planning..." A related finding was tweaked in a similar manner.
 - LED was also the direction the Design and Landmarks Committee (DLC) was recommending for the jump span lighting, so staff was uncertain whether LED should be specified, since that lighting would be re-reviewed anyway.
- Condition 4 essentially said the Planning Director would review and approve the particular lighting proposed in consultation with the DLC, but ultimately, the City would still have to approve it per the condition. The condition allowed the DLC to participate in the building permit or Type I development review.
- Some hard and fast language should be included about glare into residential areas, regardless of the light source.
 - Glare was addressed in the Code, depending on the area and type of review. For example, in the Willamette Greenway area, because it was a type of conditional use, Code language addressed no nuisance impacts, prompting the recommended condition about the train light, which had not yet been evaluated. The lighting underneath the jump span was discretely located, and there was no additional lighting on the bridge itself. Pedestrian lighting on the pedestrian bridge was potentially another source that had not been evaluated.
 - Language should be added requiring that pedestrian scale lighting not glare into residential properties and be appropriately shielded.

- Staff suggested adding new Conditions 4A and 4B to separate the issues of the pedestrian scale lighting being energy efficient and wildlife friendly, and the shielding from residential properties. The condition would fall under the umbrella of the Willamette Greenway conditional use criteria.
- Condition 9C on Page 3 of Attachment 2 addressed light from the train. At the last hearing, a baseline was requested of the existing conditions regarding light from the train being shielded by the trees.
 - Staff suggested changing the language of Condition 9C to, "Provide a memo that describes the lighting impacts, if any, from the train light on nearby residential uses and drivers on McLoughlin Blvd as the ~~tracks curve on the Kellogg Bridge~~ train travels through the Willamette Greenway Zone." The approval criteria related to the whole area with respect to nuisance impacts. TriMet was doing the analysis now and agreed to extend the area of the analysis.
 - The proposed language read as if only the impacts to residential uses along the McLoughlin Blvd were being analyzed. The point was to reach the residential uses across Kellogg Lake and not be limited to McLoughlin Blvd.
 - As long as the train was within the Willamette Greenway Zone, anything affected by that source point would be analyzed.
 - "Nearby residential uses" should be closer to the Willamette Greenway reference in the sentence. Other proposed wording was also mentioned.
 - Staff clarified the intent was to cover the whole area, and to capture residential uses as well as the drivers on McLoughlin Blvd. Staff would look into changing the language.
- Staff agreed Condition 6E should be changed to state, "Explore other energy efficient and low-pollutant lighting options with a focus on comparing fluorescent lighting with LED and other feasible lighting opinions." "Feasible" was a fickle word, but this item would return to the DLC for their response and then the Commission would see the language again.

Pedestrian Bridge:

- **Commissioner Gamba** asserted that not having the pedestrian bridge as part of the original project was an oversight. TriMet's efforts to try to make the project better for Milwaukie were appreciated and the budget constraints were understood. The Commission's job was to look out for the citizens of Milwaukie, see where something might have been missed in the project, and to try to change that.
 - The Commission was not allowed to address the Habitat Conservation Area (HCA) and Water Quality Resource (WQR) issues because that regarded the future and was not part of this permitting process. The additional damage done to those two areas by going back in and erecting the construction bridge to build the pedestrian bridge later when the City had the money was not minimizing the impact. Those areas would no longer be degraded after the mitigation, so the City would be going back and tearing up a good HCA area to put in the pedestrian bridge.
 - Building the pedestrian bridge during this construction would cost \$1 million and building it in four or five years would likely cost \$4 million or \$5 million. The additional cost made it far more unlikely that the City would ever build the bridge. Grants could probably be obtained for a \$1 million project but not likely for a \$5 million pedestrian bridge. Not building the pedestrian bridge now essentially condemned it to not ever being done.
 - Having the pedestrian bridge could possibly increase ridership on the train. It would certainly increase traffic to downtown Milwaukie because of all the apartments across the lake. Island Station residents would also have easy walking and biking access that they would not have had otherwise.

- One criterion of the Willamette Greenway is air quality. The pedestrian bridge would improve air quality due to the decreased vehicle trips to the train station.
- Two applications were pertinent in addressing the pedestrian bridge issue:
 - The Downtown Design Guidelines required that the pedestrian be a priority in all development projects, as noted in Table 1.a of the green two-page handout, Recommended Findings in Support of Approval, dated November 22, 2011. No pedestrian access existed to or anywhere near the Kellogg Bridge without the pedestrian bridge; it was akin to building a building without a sidewalk in front. It did not meet the Design Guidelines.
 - The Willamette Greenway required "public access to and along the river to the greatest degree possible by appropriate legal means." This project did not increase public access to the Willamette River.
 - The language used in previous versions of the findings referenced the future pedestrian bridge as enabling the project to meet that criterion, but there probably would not be a pedestrian bridge unless it was built now.
 - A finding could not be made on something not planned for, and the "future pedestrian bridge" was referenced in many places. If the Commission could not consider what would happen in the future with regard to protecting the HCA and WQR, how could something that might happen in the future be used as a finding for meeting the City's criteria?
- It did not matter what grant funding was used or how it was paid for, the pedestrian bridge should be built when Kellogg Bridge was constructed. The sidewalks and all the connecting parts did not need to be built at the same time. The only thing that would cause a lot of destruction by being built later was the bridge itself.
- Tim Ramis, City Attorney, stated last week that the Commission could not issue a condition on TriMet that was not within their budget, which limited the Commission's authority to the point that they could not make a legal land use decision and a finding about whether or not the project met the Code.
- The Design Guidelines language in Table 1 states the pedestrian was the priority in all development projects. The Applicant's information stated that the crossing product created no barrier, which was a very different test. It was one thing to create no barrier, but another thing to re-enhance the pedestrian system.
 - **Ms. Shanks** explained the Applicant was addressing the first part of that guideline. The entire guideline stated, "Barriers to pedestrian movement and visual and/or other nuisances should be avoided or eliminated, so that the pedestrian is the priority in all development projects."
 - As far as making a legal land use finding, it was correct that this guideline might not be fully met, but the approval criteria for the design review portion was "substantial consistency with the guidelines", which was why it was a discretionary decision. Taken as a whole, the question was whether the project was substantially consistent with all the design guidelines, which was what the DLC found and staff believed. It was also a discretionary decision for the Commission. The Commission could make a legal finding one way or the other because of the approval criteria language.
- Putting an active train through downtown did create barriers to pedestrians. Getting from the high school to McLoughlin Blvd/Hwy 99E would require crossing the tracks and a pedestrian bridge would eliminate that.
 - It could also be said that building a bridge into Milwaukie increased pedestrian access because people were more likely to walk to the train. It was a mode for more active transportation and conducive to more pedestrian activity.

- There was already an issue in Island Station with children crossing the railroad trestle. With a light rail station as a destination in addition to the high school, more people could be walking the railroad trestle because they do not want to walk around the sewage treatment plant, especially with no convenient alternative.
 - A death occurred off the railroad trestle in the summer of 2010, so this was not an insignificant concern.
- It was a shame the pedestrian bridge was not included in the original project, but it was not TriMet's issue. TriMet should not be required to construct Milwaukie's bridge.
- The pedestrian bridge was almost guaranteed to see a lot of use. There was a lot of housing density on the east side of McLoughlin Blvd.
 - With the Trolley Trail construction next to the sewage treatment plant, people were now walking out onto McLoughlin Blvd in the bike path because the sidewalk was torn up. This was seen on the east side of McLoughlin Blvd as well because no sidewalk existed along the east side.
- TriMet designed the bridge across the Willamette River with extensive bike and pedestrian access. Each of the two, 14-ft lanes penciled out at \$1 million. It was as if that end of the light rail system got the funding and this one did not.
 - The pedestrian bridge was just missed in the planning. People did not realize the extent of the population that could access the station directly if some kind of crossing existed. It was an important piece of infrastructure that would greatly serve light rail and keep more cars out of downtown.

Chair Batey called for a short recess to review the green handout from staff. The Planning Commission reconvened at 7:42 p.m.

Damien Hall, City Attorney, stated the City was limited in the extent of conditions that could be put on the project and was limited by the project budget. If the Commission added a condition that exceeded the project budget, it would call into question how that condition would be treated and how the City would proceed procedurally. Everyone agreed the pedestrian bridge would be a wonderful aspect of the project, but if the objective was to get the pedestrian bridge, it was very unclear that putting a condition of approval requiring the pedestrian bridge would achieve that goal. It would likely shift the issue onto Council at that point, but there was no way to say that condition of approval would result in a pedestrian bridge.

The Commission, staff, and Mr. Hall continued the discussion as follows:

- **Mr. Hall** confirmed that the Land Use Final Order (LUFO) had the authority to keep the Commission from making what they felt was a legal land use decision per Milwaukie's local Code. Any conditioned changes exceeding the budget or the chosen alignment would be preempted by LUFO and the statute creating that LUFO process.
- If the City could get a grant to build the pedestrian bridge, the City would have to attach public infrastructure to TriMet property. TriMet could keep the City from building the pedestrian bridge because of the hassle, liability, etc. While it might be difficult to attach the pedestrian bridge as a condition of approval, the City might not have the legal ability to build it later.
- The final budget had not yet been established. A short list of elements could be included in the project, but the pedestrian bridge was not on that list.
- The Commission's job was not to sort out whether or not the application could be appealed, but to decide what was right for Milwaukie and what met the Code. Creating a condition could result in the pedestrian bridge being put on a short list to at least have a chance to be built.

- The condition did not specify who paid for the pedestrian bridge. It was entirely possible the money would be found, and TriMet would not have to find money in their budget. If the pedestrian bridge was not built before the work bridge was removed in the summer of 2013, it probably would not be built, which was the problem.
- **Mr. Hall** stated the draft conditions did not discuss the pedestrian bridge at all. Staff agreed that a condition could be crafted stating if the funding source materialized before construction was complete, then TriMet would construct the pedestrian bridge. Some caveats existed in that Milwaukie could not adjust TriMet's funding priority.
- With the clarification that the City was not prescribing TriMet's authority to deal with its own budget, a condition could be added that the bridge be built if outside funding for the bridge became available.
 - If they did use the language about building the bridge if the funding became available, the findings or conditions of approval should specify that if the City was building the pedestrian bridge, TriMet would allow the City to build it onto their bridge. It would be a big hurdle if TriMet were not legally required to accommodate it.
- **Mr. Hall** summarized there were two issues. The initial issue regarded who would build the bridge if funding became available before or during construction. The other issue was that the City be entitled, as part of this approval, to add on to Kellogg Bridge at its own expense.
 - Staff preferred consulting TriMet about the feasibility of TriMet building the bridge during the Kellogg Bridge construction should the City find the funding.
 - Staff proposed extending the 4-year expiration date for this project's land use approval, because the project was so large and complex. The Commission might want to consider extending the approval longer. The extension could be somewhat indefinite as long as certain things had not changed. There was a bit more scrutiny if a WQR area was involved because those areas could change more over time than the actual development in the area.

Chair Batey called for a straw poll on the following options:

1. Fully condition the construction of the pedestrian bridge
2. Alter the conditions to encourage, but not require, construction of the pedestrian bridge
3. Approve the application as submitted, without a pedestrian bridge

Commissioner Fuchs said she was leaning between options 1 and 2.

Commissioner Gamba preferred option 1; stating very clearly that this was what the Commission wanted and expected could cause entities to put some effort into making it happen.

Vice Chair Harris favored options 1 and 2, but leaned toward the middle ground as an avenue of success. He hoped middle ground could be found that would permit the construction of the pedestrian bridge at some future date, hopefully while the temporary bridge was in place, and not result in an outright appeal and the pedestrian bridge being stripped out.

Commissioner Stoll supported the middle ground of option 2.

Commissioner Wilson said he was between options 2 and 3, but would choose the middle ground of option 2 only because a future group would decide where the money came from; his concern was that the money would be taken from improvements to neighborhoods.

Chair Batey firmly believed the Commission needed to condition the pedestrian bridge now. If funding were not found in the next year, the pedestrian bridge would not happen no matter how

they conditioned their ability to build it in the future. She supported the conditions on the green sheet.

Commissioner Gamba noted Milwaukie would never be able to fund this; a grant would be necessary.

Commissioner Fuchs stated from her experience, bike and pedestrian projects attached to multimodal projects, especially light rail, were funded by federal grants, not neighborhood improvements. With the current politics for federal grant programs, money would not be taken away from neighborhood projects.

Commissioner Gamba stated if they created it as a condition, TriMet had two options: they could appeal it and probably win, or they could put some effort into looking for grants the City did not know about, could not apply for, or find. If the condition were wishy-washy, no one would put any more effort into getting the pedestrian bridge built.

- **Ms. Mangle** noted TriMet had made it clear they would appeal option 1. They may also help the City find funding, which was staff's hope.

Commissioner Fuchs noted the issue of putting the Commissioners' names on something they did not agree with simply because of the threat of appeal. If City Council wanted to take away the pedestrian bridge, that was their purview.

Chair Batey agreed.

Ms. Mangle confirmed Vice Chair Harris and Commissioner Fuchs would be interested in staff crafting option 2 and then do another straw poll.

The Commission took a brief recess to allow staff to draft a condition based on the Commission's straw poll. The meeting reconvened at 8:19 p.m.

Ms. Mangle stated staff met with the TriMet project staff during the break. She made it clear that she appreciated their participation in trying to come up with a workable middle ground, and understood it did not preclude any appeal or arguments on LUFO. TriMet was happy to participate but reiterated that option 1 would be appealed to LUFO on the grounds the pedestrian bridge was not included in the base project.

Ms. Shanks stated the finding would be to augment the pedestrian emphasis guideline. The following language would be added to the first paragraph under a. of the Pedestrian Emphasis Guidelines in Finding Table 1 on 5.1 Page 27, Attachment 1, of the original packet, "However, TriMet will allow the construction of the bridge by any entity. Moreover, TriMet will construct the pedestrian bridge if funding becomes available on or before February 1, 2013 for construction by September 30, 2013." September 30 was the date the construction bridge was to be removed. February 1 regarded the time needed to do the final engineering and design work.

- Information about the grant application that had been submitted would be on the City's website. She encouraged people to contact the funder for the grant that was currently submitted for the pedestrian bridge.
- The corresponding condition would be to modify further Condition 16B, shown on Page 1 of the green handout dated November 22, 2011, to state, "Construct the pedestrian bridge beneath the light rail bridge if funding becomes available on or before February 1, 2013 for construction before September 30, 2013. The pedestrian bridge must connect to each bank

of Kellogg Bridge, but need not include pedestrian walkway connections to the park or nearby streets."

- An ongoing condition of approval would ensure TriMet would allow any entity to construct the pedestrian bridge at any time in the future.

Key discussion points amongst the Commission and staff regarding the newly proposed conditions continued as follows:

- **Mr. Hall** confirmed that based on TriMet's comments thus far, including language about "actively seeking funding" would work, but should be limited to the window between now and February 1, 2013.
 - **Ms. Shanks** would add, "actively seek funding in partnership with the City of Milwaukie" to new Condition 16B.
 - The proposed language added a new Item D to both Conditions 7 and 9, shown on page 1 of the green handout, would be deleted because the additions would not fit with the proposed approach of the revised Condition 16B.
 - Option 2 was separate from the original green handout. The key in the newly proposed language was the overarching finding stating that the application complied; otherwise, it would go more toward option 1.
- **Commissioner Fuchs** felt that the project did not meet the Code. It would be appropriate to make a finding stating the reason for crafting the condition was that LUFO said their decision preempted Milwaukie's Code. This resulted in the Commission making a different discretionary finding than would have been made otherwise.
 - **Chair Batey** agreed that that was the problem. If the project did not meet Milwaukie's Code, which should be first and foremost for the Commission, not LUFO or whether TriMet would appeal.
- The Commission was assuming the City would lose the appeal, but it was possible to win.
 - **Mr. Hall** stated if the Commission and Council fully conditioned the construction of the pedestrian bridge on the light rail bridge and it was appealed up to the LUFO steering committee, the criteria they would apply was whether the pedestrian bridge was necessary for the light rail project.
 - If that was the criteria, what was the purpose of the hearing?
 - **Ms. Mangle** clarified that something was eligible for appeal if the funding was not available for it, then it met that criteria and could be cut.
 - **Mr. Hall** added the funding is sort of a subset of 'necessary and reasonable', which was defined as being within the budget. Winning the appeal would be an uphill battle.
- The pedestrian bridge was not available in the budget because it was not made available. Conditioning TriMet to require the pedestrian bridge outright was a condition to call their bluff about the appeal. The hybrid condition was the best case scenario for getting the pedestrian bridge built.
- **Mr. Hall** confirmed it was perfectly fine for the Commission to have something in the findings that said they were making this finding only because they were constrained by LUFO and they would determine otherwise if assessing only under Milwaukie's Code.

The Commission took another straw poll regarding the newly revised conditions and findings:

Commissioner Gamba indicated he had no change in thought since the last straw poll.

Vice Chair Harris stated that given the conditions the Commission was to work under, the hybrid solution had the best potential, realizing not only a pedestrian bridge, but the opportunity

to build a pedestrian bridge in the future. This was a better option than having the potential of something being sent to appeal and not having anything. He would like to attach the findings from the green handout, but did not believe that would have a lasting benefit, whereas the hybrid condition could provide a lasting benefit.

Commissioner Stoll agreed.

Commissioner Wilson now preferred option 3, approving the project as submitted.

Commissioner Fuchs supported the hybrid condition in the spirit of trying to be a good partner and neighbor. The outright condition was appropriate because Milwaukie should not be treated differently than any other jurisdiction or community. She got the sense Milwaukie was being treated like a second-class citizen in prioritization. At the same time, she did not want to vote for a condition out of spite. Even though more could have been done to be a good partner for Milwaukie, she chose to take the high road and not fight back or have a mud-slinging match.

Chair Batey stated that having been the Island Station Neighborhood District Association (NDA) Chair back in 2007/2008, perhaps TriMet could have done more to recognize the need for this bridge upfront. The bridge was raised by the Island Station neighborhood at that point in time. She did not feel TriMet had treated Milwaukie as second-class citizens. The City did not get organized early enough to make this happen. She would not put it all on TriMet to say they treated Milwaukie different from Portland. She was still inclined to choose option 1, but was willing to go along with the hybrid approach if that was the consensus.

Ms. Mangle clarified the pedestrian bridge was not involved when TriMet presented drawings to the City prior to getting the LUFO. Not every little element as designed today was included in the LUFO, namely the alignment and the station. It did include the minimum operable segment, which included a park and ride in downtown. The LUFO was broadly the elements required to build the alignment and the project's major elements in the Milwaukie segment.

- She was very involved in the discussions with TriMet prior to the LUFO decision and recalled talking about the pedestrian bridge with the Island Station NDA. She could not recall the timing of the conversations, but believed the LUFO was adopted in 2008, which included a broad map of the broad elements. Many detailed elements of the project were being reviewed in the Draft Environmental Impact Statement (DEIS) at that point, and the pedestrian bridge was not one of them.

Ms. Shanks recalled the focus was not about the pedestrian bridge but about having two stations downtown and placing those stations. As the project was refined, different elements were given more scrutiny, and she believed the pedestrian bridge did come later.

Ms. Mangle added that staff pushed TriMet at every point on this project and on the pedestrian bridge. Staff began by ensuring the project would accommodate the bridge, including the design and permitting. Staff had about many wins already.

Chair Batey acknowledged staff had worked hard the last few years to get the conditions the City currently had, but she remembered having conversations with Kenny Asher, Community Development and Public Works Director, early on when Lake Rd was settled on as the station, about how important this bridge was and it was clearly not on his radar screen.

Vice Chair Harris added he would not put the responsibility all on City staff. Different leaders in the City at that time might have missed the mark on this one.

Vice Chair Harris moved to proceed with the hybrid proposed amended conditions of approval and recommended findings as read into the record with the statement that LUFO preempted the Planning Commission from making the finding that would have otherwise been decided. Commissioner Fuchs seconded the motion.

Staff read the following amendments to Finding 1.a and Conditions of Approval 16 and 18 into the record as follows:

- Modify Finding 1.a on 5.1 Page 27 by adding the following language to the end of the first paragraph, "However, TriMet will allow the construction of the bridge by any entity. Moreover, TriMet will construct the pedestrian bridge if funding becomes available on or before February 1, 2013 for construction by September 30, 2013."
 - Add as a concluding statement, "As conditioned, the pedestrian experience is improved to the greatest extent possible within the constraints of the Land Use Final Order."
 - Delete the last line, "The proposal meets this guideline."
- Modify Condition 16 to include Condition 16B, which stated, "Construct the pedestrian bridge beneath the light rail bridge if funding becomes available on or before February 1, 2013 for construction before September 30, 2013. The pedestrian bridge must connect to each bank of Kellogg Lake but need not include pedestrian walkway connections to the park or nearby streets. TriMet must actively seek funding for construction of the pedestrian bridge in partnership with the City of Milwaukie."
- Modify Condition 18 to add Condition 18B as an ongoing requirement "Allow the construction of the pedestrian bridge by any entity."

Mr. Hall suggested restating the motion.

Vice Chair Harris restated his motion moving to adopt the recommended findings and conditions of approval as modified and read into the record. Commissioner Fuchs seconded the motion, which passed 5 to 1 with Commissioner Wilson opposed.

The Commission took a brief recess for staff to display a copy of the proposed revisions to the conditions of approval via PowerPoint. The meeting reconvened at 9:04 p.m.

Ms. Shanks reviewed the revisions to the conditions of approval as discussed by the Commission with these comments:

- Amend Condition 4 so that future lighting for the future pedestrian bridge should be energy efficient and wildlife friendly, preferably LED, and the light should be shielded from the windows on residential properties.
- Amend Condition 6E to reflect the preference that the jump span lighting be LED, which would return to the DLC and Commission for review.
- Modify Condition 9C regarding lighting on the train to state, "Provide a memo that describes the light impacts, if any, from the train light on drivers on McLoughlin Blvd and nearby residential uses as the train travels through the Willamette Greenway zone on the Kellogg Bridge."
- With regard to the mitigation plan:
 - Amend Condition 10.A.6 so oak trees were planted instead of some of the proposed Douglas fir trees. Flexibility was built in to allow the City to consult because Kronberg Park did not have a master plan. The City would also consult about recent plantings

- when placing and planting the new oaks, so they would thrive, and ensure the appropriate understory and groundcover were provided around the new oaks.
- Amend Condition 10.A.7 to be more directive and have the City's consultant's comments about the specific proportions of different understory bushes be as stated.
 - Add Condition 11B to repurpose the remnants of the oak tree, either in Kronberg Park and/or in the pedestrian pathways through the area, and require that the stump not be ground to allow for the possibility of a tree to grow from that particular location.
 - Amend Condition 16B, shown on the green handout, to state, "Construct the pedestrian bridge beneath the light rail bridge if funding becomes available on or before February 1, 2013 for construction before September 30, 2013. The pedestrian bridge must connect to each bank of Kellogg Lake but need not include pedestrian walkway connections to the park or nearby streets. TriMet shall actively seek funding for construction of the pedestrian bridge in partnership with the City of Milwaukie."
 - **Add Condition 18C as an ongoing requirement, stating, "Allow the construction of the pedestrian bridge by any entity."
- **Conditions 16B and 18C were already approved in the prior motion.*

Discussion regarding the revised conditions was as follows:

- Concern was expressed about the wording of Condition 16B stating that pedestrian walkway connections did not need to be included. If funding was available, the walkways should not be excluded.
 - **Ms. Shanks** explained the walkways were not included as part of this review, so the review for their impact to the HCA and WQR area was not a part of the package, so the Commission could not move it forward as a condition.
 - TriMet proposed that the City build the walkways to further the Kellogg Bridge design. If the bridge were not designed to hold the pedestrian bridge, walkways would be a moot point. The grant fund did include the whole package. The findings reflected that the pathways would need to return for additional review because a portion of them were elevated and went through the HCAs and WQR areas.
- **Ms. Shanks** agreed Condition 11B should specify that the 36-in oak tree would be repurposed. Additionally, the tree might be repurposed to build part of the pathway.

Ms. Shanks read the amended language for Finding 1.a on 5.1 Page 27 regarding the pedestrian bridge as approved in the prior motion. She also read the findings supporting staff's revised conditions and noted the amended findings that addressed the Commission's changes to the Conditions of Approval.

Vice Chair Harris moved to approve File WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09 with the modified Recommended Findings and Conditions of Approval. Commissioner Gamba seconded the motion. Motion passed unanimously.

Chair Batey read the rules of appeal into the record.

- 5.2 Summary: Trolley Trail Modification for Light Rail
 Applicant/Owner: TriMet
 File: MOD-11-01, WQR-11-04
 Staff Person: Susan Shanks

Chair Batey called the public hearing to order and read the conduct of quasi-judicial hearing format into the record. She noted the Commission had opened the hearing on November 8 and continued it to November 22 to allow more time for public testimony and deliberations.

Chair Batey asked if any Commissioners had any ex parte contacts to declare beyond those previously reported.

Chair Batey declared that since the initial hearing, this was discussed briefly at the Island Station NDA meeting. The NDA Chair had expressed some concerns and Chair Batey encouraged her to put those in the record by letter or by testimony, and she was present in the audience.

All Commissioners declared for the record that they had visited the site. No Commissioners, however, declared a conflict of interest, bias or conclusion from a site visit. No Commissioners abstained.

Vice Chair Harris stated he had reviewed the material from the November 8 hearing in order to be prepared to participate.

No Commissioner's participation was challenged by any member of the audience.

Ms. Shanks stated the City had received one written comment, which had been forwarded to the Commission via email. Hard copies were distributed.

Chair Batey called for public testimony in support of the project.

Cindy Tyler, 1959 SW Morrison St, Portland, believed the present undergrowth along the proposed new area for the trail was a virtual who's who of noxious weeds and invasive species. All the noxious weeds and undesirable growth would be removed when TriMet reworked this section for the new trail alignment. The required retaining walls would make it very clear where the trail ended and private property began. The trail as presently proposed would be a tremendous benefit to the community and should be approved accordingly.

Chair Batey called for public testimony in opposition to the project.

Dion Shepard, 2136 SE Lake Rd, Milwaukie, supported having another look to save the sequoias. One was being saved, and she questioned why several in a different location could not be saved. Sequoias were significant trees. So many trees were being removed, so the City, TriMet, or North Clackamas Parks and Recreation District (NCPRD) should see if the path could be moved so those trees could be preserved.

Commissioner Gamba stated that Daniel Platter had suggested saving only one of the trees because they had been planted or grew too close to one another to be healthy. He asked Ms. Shepard's opinion.

- **Ms. Shepard** responded she did not know if they had a professional look at them, but she would like to see one saved.

JoAnne Bird, 12312 SE River Rd, Milwaukie, stated when she was sent the sheaf of material, she focused on the Water Quality Resource (WQR) area, because they lived upstream of that on the unnamed drainage. She was dismayed at the number of trees being removed, including

18 trees that were 10 in in diameter. The 48 trees being planted were not very big. The trees would not grow to the size of the existing ones in her lifetime. She had not thought about removing 2 of the 3 sequoias until reading Mr. Platter's letter. She would like an arborist to look at the sequoias. The project was already all over the WQR area; an extension of one of the retaining walls goes into it as well as another wall under the path to keep it level. She asked why they could not push a little farther into the WQR area to save the sequoia.

Chair Batey asked if she preferred saving all 3 trees or just 1 tree.

- **Ms. Bird** responded that at this point in time, especially since they lost the oak, saving any big trees was very important.

Commissioner Stoll confirmed that the 3 sequoias were just south of the drainage and currently indicated in the center of the trail on the diagram.

Chair Batey stated there was no further public testimony.

Ms. Shanks noted the Applicant had submitted the application, but then revised their landscape, lighting, and WQR mitigation plans, the latter being at staff's direction. On November 8, two green sheets had been distributed with the revised conditions of approval and findings that were a starting point for this discussion.

- She noted that the review extent for the Trolley Trail application included everything on either side of the trail, but not between the light rail and McLoughlin Blvd. A fence would divide the rail from the Trolley Trail property.
- Exhibit P33 of the packet showed the mitigation plan and tree removal for the WQR.

Jeb Doran, TriMet, reviewed the alternative alignment, noting key changes in response to safety concerns expressed by NCPRD and TriMet's Safety and Security Committee. His additional comments and responses to comments and questions from the Commission were as follows:

- The line of trees that were within 3 ft of McLoughlin Blvd would be removed.
 - Within the city limits, 181 trees would be removed, 44 of which required mitigation. The project was currently proposed that 382 trees be planted in the area. This did not include the trees being planted in the WQR areas.
- Early on, TriMet had considered removing two sequoias and keeping the southernmost tree. Based on the Code for minimum impact to the WQR, TriMet determined that the current proposed design minimized the impact to the greatest extent.
- Sequoias were great trees and had habitat quality, but were not native to the area. By removing the 3 sequoia trees, 6, large, mature trees were being saved that were already part of the WQR. This was most consistent with the Code criteria to minimize impacts to the WQR.
- Many noxious weeds were in the area. The weeds could be still be removed if the 3 trees remained, but would require more hand grubbing and working with smaller tools inside of the root zone to protect the trees. Removing the trees would enable TriMet to get the top layer of soil, and remove the weeds along with their root systems when they did the clearing and grubbing to have more of a fresh start.
- Keeping the current alignment and bending the trail back around one Sequoia resulted in the same issue of saving 3 nonnative trees to remove 6 native trees.
 - While sequoias were unique specimens to the area, the 3 subject trees would not reach their full potential, given the condition of their canopies and how closely they were

- planted together. Saving just 1 tree would still impact the 6 native trees due to the construction limit area required for higher retaining walls.
- Removing the 2 northern trees would allow the arc of the trail to shift substantially farther to the south; however, any alignment outside the configuration coming straight across would increase the WQR impact to some degree.
 - There was 10,700 sq ft of impact with the trail, the light rail alignment, and the 18 trees being removed with the revised configuration. TriMet was not only enhancing the area, including 48 trees, but also adding new upland habitat that did not exist today.
 - The alignment really did minimize the impacts to the WQR to the greatest extent possible and met the criteria. TriMet was open to some additional tree plantings to help mitigate for the loss of the Sequoia trees. They had made an honest effort to go above and beyond what the Code required, not only for the WQR areas but for tree mitigation in general. The Code typically required a 1:1 replacement for rights-of-way, and the proposal had a 3:1 to 5:1 replacement.
 - The Water and Resource Mitigation slide was displayed. The green areas indicated where TriMet proposed plantings, in addition to removing the clematis and ivy. The 5-year monitoring and maintenance requirement would also be met.
 - A 6-ft, high welded wire fence was proposed in the 6-ft buffer for the length of the trail section that would protect trail users, especially cyclists traveling fast speeds, from falling into the light rail line.
 - The proposed alignment would retain the largest portion of developable area for a future parcel, as well as preserve the screening elements so highly desired by the community.
 - This alignment allowed the project to stay outside the wetland. The current environmental permits for the project did not account for any impacts to the wetland area and maintaining a good amount of buffer from that area would be desirable.
 - TriMet had been working in a collaborative process with Clackamas County, NCPRD, Urban Green, and many community members. TriMet had done a great job of doing outreach and getting out and talking to people living next to the alignment. Mr. Doran believed TriMet had a pretty high level of buy-in to the alignment with the screening elements, WQR, and planting buffers being provided.
 - The timing of the tree removal was moved due to the migratory bird window, which dictated that trees could not be removed between March 1 and September 30. TriMet was considering two windows of opportunity for tree removal, one in February, and the other in the fall after the window closed.
 - TriMet wanted to leave screening and trees in place for as long as possible as they were valuable to the neighbors. They wanted to time it so the trees were replanted within the shortest window possible.
 - Some specific trees would likely be removed in February to facilitate the work that needed to be done. The rest would be removed in the fall.

Vice Chair Harris appreciated that TriMet came to the hearing with an alternative trail alignment.

Chair Batey called for staff comments.

Ms. Shanks noted Michelle Healey, who had been working with TriMet on this Trolley Trail section, and Sarah Hartung, the City's consultant, would address the Commission.

Michelle Healey, North Clackamas Parks and Recreation District (NCPRD), stated she had looked at the same things Mr. Doran had presented. They would like to be able to save all the trees if they could, but there were always tradeoffs to consider. TriMet had put a lot of thought into the alignment presented, and it was good for the trail as well as for the WQR area. She responded to questions from the Commission as follows:

- NCPRD was currently working with TriMet on an intergovernmental agreement regarding who would maintain the plantings and landscaping along the sides of the Trolley Trail in perpetuity. More than likely, NCPRD would have a big part of that responsibility, but it would be either TriMet or NCPRD. NCPRD wanted to be sure it was well maintained, not only for aesthetics but for safety reasons.
- **Mr. Doran** added TriMet was installing the irrigation and usual maintenance amenities.

Chair Batey commented NCPRD had a wonderful resource in Tonya Burns; her expertise would have been helpful with regard to the plantings in Kronberg Park. She supported any help Ms. Burns could get as well as more funding to the natural area part of the parks budget.

- **Ms. Healey** noted Ms. Burns was reviewing all of this material as well and helping provide comment.

Vice Chair Harris moved to continue the meeting until 10:30 p.m. **Commissioner Stoll** seconded the motion which passed unanimously.

Sarah Hartung, Wetlands and Wildlife Biologist, Environmental Science Associates, Portland, stated her firm had been consulted to look at the plan and investigate the site back in September.

- A spring-type feature was identified at the very bottom of the ravine; it was sort of a wetland and a waterway because groundwater was seeping out of the gravels and substrate at the bottom. The presence of the water at that time of year indicated it had a perennial nature and met the primary protected feature definition. Farther up in the contours was more of an intermittent drainage.
- The wide buffer was a result of it being a primary protected feature and the steep slopes. It was a degraded buffer because of the high dominance of English ivy and clematis. The mitigation plan would really provide a boost in clearing out and replacing the invasive nonnatives with native ground cover and understory. Several native shrubs were also being proposed.
- The retention of a couple Douglas firs, some of the big leaf maples, and the proposed planting of many Western cedars would eventually result in a mixed forest. There was a loss of that resource as those trees grew, but that was why there was a higher replacement ratio.
- Sequoias were not normally found in Oregon, although they did quite well here. She had done a tree survey for the Eastmoreland Golf Course where hundreds of giant sequoias were getting so big they crowded out the natives, used all the water, and caused problems. From a timeline perspective, the subject trees were very young sequoias. Old growth, irreplaceable trees were not being removed. The 3 trees were probably 60 to 80 years old, but the only way to be certain was to do a tree core.

Chair Batey noted that Mr. Platter said rare forms of trillium were farther up the water resource and that they should be dug up and moved.

Ms. Bird remarked that yet again, TriMet was giving reasons why something could not be done. She was worried about TriMet's diagram, because it showed trees planted closer to the existing

pathway than if the pathway ran around the sequoias. She was on the fence about whether or not the sequoias were natives.

- The point about the potential loss of the other 6 native trees was not entirely clear in her mind. The path alignment shown was farther away from the sequoias than from the other trees they had planted in the diagram. She strongly suspected TriMet was saying, yet again, "we cannot do this because..."

Chair Batey called for the Applicant's rebuttal.

Mr. Doran clarified that the plantings displayed were for the old alignment and not necessarily how the new planting would be configured. With the new alignment, the screening densities would change.

Commissioner Gamba noted where the preferred path was drawn in relationship to the drip line of the big sequoia tree being saved. He asked why the other alignment could not be pulled in closer to the other trees.

- **Mr. Doran** believed they could move that alignment in closer to those trees and bring that farther to the southeast. But again, anything outside of the straight-through alignment would increase the impact to the WQR. Additional walls would need to be built in the WQR closer to the wetland resource and the spring source itself.
- TriMet was not saying it could not be done, but it was a balance of determining the best way to restore and enhance the area. Saving three trees did not necessarily have an equal ecological benefit to the 6 trees on the other side; it did not balance. In removing 2 of the sequoias, they needed to consider if the benefit of saving that 1 tree outweighed the benefits of keeping the 1 to 6 native big, healthy trees.

Commissioner Fuchs asked the species of the 6 trees that would have to be removed in the alternative alignment.

- **Mr. Doran** believed most were big leaf maples and one was a Douglas fir. They were all natives and all were fairly mature trees.
- **Ms. Shanks** noted the canopy in this area was determined to be all native and in good shape; the understory was completely invasive, resulting in the area being classified as degraded. Saving as much of the canopy as possible was a good idea.
- **Mr. Doran** added it was easier to remove the invasives under the sequoias if they were not there. Work in and around the roots was not as thorough. Getting into the root systems of a lot of the species out there would be vital to the long-term success of the restoration. How those invasives were removed was a key to making this successful.

Chair Batey closed the public testimony for File MOD-11-01 and WQR-11-04.

Commissioner Stoll stated that as much as he would like to see the sequoias saved, he would rather not see further encroachment into the WQR and removal of the big leaf maples. He would rather keep native species and maintain the integrity of WQR as much as possible.

Commissioner Fuchs stated it was all important, not just what was charismatic like the sequoias. The sequoias might be more important to the citizens who have participated than the WQR or the maples. She was on the fence. It was hard to say which was more important.

Commissioner Gamba stated he had spent time at the site and believed they could leave the southern sequoia and not cut down any of the maples. He did not believe it was an either/or

proposition. If the southern sequoia was saved, the bend in the trail could be moved significantly further south. He confirmed that the width of the trail was 12 ft wide with 2 ft shoulders on each side. He indicated on a displayed diagram how the trail could be configured to avoid the other large trees if the sequoia were saved. Essentially, the bend in the trail would start earlier and finish earlier.

Chair Batey said she would have liked to have seen that studied and some testimony about how close the trail could get to the sequoia without damaging the tree's root system too much. The question was whether that one sequoia was worth the cost benefit of all the extra work and extra cost. She did not believe it was worth it.

Commissioner Wilson stated it came down to the safety issue; realignment was not safe. The arborist could condemn all the trees.

Chair Batey stated it was a safety issue if the trail was realigned all the way behind the trees, but Commissioner Gamba was talking about staying with the preferred alignment and bending it around that sequoia.

Commissioner Fuchs asked why TriMet's revised alignment was preferred rather than just following the existing alignment and bulbing the trail out right around the sequoias.

Commissioner Wilson responded that on the trails he had been on, cyclists were jamming down the path. He did not see the practicality of such an alignment, which really created a safety issue, especially with cyclists traveling 10 or 20 miles per hour and someone walking the other way.

Vice Chair Harris offered cyclists travel much faster, 30 miles per hour.

Vice Chair Harris moved to approve the application as presented with the modified recommended findings and conditions of approval provided on the green handout. Commissioner Stoll seconded the motion.

Commissioner Gamba said he wanted to adjust Condition 3.B.2 which discussed vine plantings.

Ms. Shanks said she knew the vine plantings had been debated, but it was outside her expertise. The plantings for the WQR areas were all native, but natives were not proposed for all the plantings outside of the WQR areas.

Carol Mayer-Reed, Urban Design Lead for TriMet, Mayer-Reed Landscape Architects, explained certain kinds of vines were able to negotiate and climb a wall surface. Other vines sprawl on the ground and would not provide the graffiti deterrent quality they were looking for the design of the trail. She did not know of a native vine that would stick to the wall like the nonnative Boston ivy, which was why it was chosen.

Commissioner Fuchs assumed the alternative alignment presented was chosen because of safety issues such as the cycling speeds.

Ms. Mayer-Reed believed that was part of it. In her experience, one did not want to design a trail with a sudden turn for safety reasons, especially around a conifer branched to the ground, because no sight line existed through it.

- When a cluster of trees like these dense branching sequoias grew together as one canopy, there was a lot of dead inside. Removing 2 of the trees would not result in the magnificent single tree they envisioned. The center tree would probably be brown on 2 sides. It was a lot of work for a tree that probably would not meet their expectations.

Commissioner Gamba said he was not fond of plantings things like Boston ivy, and wanted to find a different alternative, even though Boston ivy was not on the invasive list.

Chair Batey stated recently she had seen some kind of vine climbing up a wall that was all different colors and beautiful.

Ms. Mangle stated this condition was almost solely focused on coordinating the information shown in different plans. Some things shown in the landscaping plans were not reflected in the civil plans. To change the species of a planting, which would change the urban design quality and vision, the related criteria would need to be identified. This set of conditions was more related to plan coordination, so if there was a policy related to the recommended change, it would need to be identified.

The Commission consented to use Boston ivy.

Vice Chair Harris moved to approve TriMet's land use application File MOD-11-01 and WQR-11-04 with the modified recommended findings and conditions of approval shown on the green handout. **Commissioner Wilson** seconded the motion. The motion passed unanimously.

Chair Batey read the rules of appeal into the record.

6.0 Worksession Items — None

7.0 Planning Department Other Business/Updates

7.1 Water Master Plan hearing 12/13/11

Ms. Mangle briefly overviewed the Water Master Plan, which would be introduced at the public hearing on December 13, 2011. Also at that meeting, a worksession would be held on the Residential Development Standards project addressing the list of issues the Commission wanted to discuss.

8.0 Planning Commission Discussion Items

Commissioner Fuchs distributed an article on electronic signs that discussed a number of things that Commission did not know.

9.0 Forecast for Future Meetings:

December 13, 2011 1. Public Hearing: CPA-11-02 Water Master Plan *tentative*

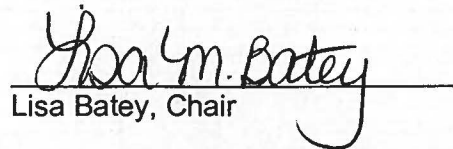
2. Worksession: Residential Development Standards Project –
Multifamily Residential Development & Design; Typology

January 10, 2011 1. Worksession: Residential Development Standards Project – Single-Family Residential Development & Design; Conditional Uses.

Meeting adjourned at 10:33 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for
Alicia Martin, Administrative Specialist II


Lisa Batey, Chair



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday November 22, 2011, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

1.0 Call to Order - Procedural Matters

2.0 Planning Commission Minutes – Motion Needed

2.1 October 11, 2011

3.0 Information Items

4.0 Audience Participation – This is an opportunity for the public to comment on any item not on the agenda

5.0 Public Hearings – Public hearings will follow the procedure listed on reverse

5.1 Summary: Kellogg Bridge for Light Rail *anticipated to be continued from 11/17/11*

Applicant/Owner: TriMet

File: WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09

Staff Person: Susan Shanks

5.2 Summary: Trolley Trail Modification for Light Rail *continued from 11/08/11*

Applicant/Owner: TriMet

File: MOD-11-01, WQR-11-04

Staff Person: Susan Shanks

6.0 Worksession Items

7.0 Planning Department Other Business/Updates

7.1 Water Master Plan hearing 12/13/11

8.0 Planning Commission Discussion Items – This is an opportunity for comment or discussion for items not on the agenda.

9.0 Forecast for Future Meetings:

December 13, 2011 1. Public Hearing: CPA-11-02 Water Master Plan *tentative*

2. Worksession: Residential Development Standards Project – Multifamily
Residential Development and Design; Typology

January 10, 2011 1. Worksession: Residential Development Standards Project – Single-Family
Residential Development & Design; Conditional Uses

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

1. **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. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Lisa Batey, Chair
Nick Harris, Vice Chair
Scott Churchill
Chris Wilson
Mark Gamba
Russ Stoll
Clare Fuchs

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Martin, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, October 11, 2011
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Chris Wilson
Mark Gamba
Russ Stoll
Clare Fuchs
Scott Churchill (arrived during Item 6.1)

STAFF PRESENT

Katie Mangle, Planning Director
Kenny Asher, Community Development and
Public Works Director
Susan Shanks, Senior Planner

COMMISSIONERS ABSENT

Nick Harris, Vice Chair

1.0 Call to Order – Procedural Matters

Chair Batey called the meeting to order at 6:37 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes – None.**3.0 Information Items – None.**

4.0 Audience Participation –This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings – None.

The Planning Commission addressed Agenda Item 7.0 at this time.

6.0 Worksession Items

This item was taken out of order.

- 6.1 Summary: Residential Design Standards Project – Conditional Uses in Residential Zones
- Staff Person: Susan Shanks

Susan Shanks, Senior Planner, distributed a paper copy of her PowerPoint presentation, which she reviewed as part of her staff report. The last three sets of images showed examples

of different building footprints in areas of Milwaukie with various building sizes and were provided as a reference when considering size limits.

The two key questions for the Commission were if the City should allow more Conditional Uses (CU) in its residential zones; and if so, should CUs have limits on location or size, for example, or should that be left to the CU review process.

She and **Katie Mangle, Planning Director**, addressed questions from the Commission as follows:

- A CU permit ran with the property and the use specifically approved by the Commission. All CU decisions were Type III Commission decisions.
- The Neighborhood District Associations (NDAs) would be part of the process, but had not been specifically approached about this project yet, although some NDA members were on the Residential Development Standards Steering Committee. Ms. Mangle had discussions with David Aschenbrenner about allowing more kinds of uses so people could walk to local neighborhood shops rather than having to go downtown or to big box stores.
- If acceptable to the Commission, staff would introduce the project to the community at the open house scheduled for October 20 and then do whatever outreach is needed.
- This project was completely separate from the Commercial Core Enhancement (CCEP), which was limited to specific geographical areas. This project addressed more of a citywide problem, but on residentially zoned lots along arterial streets, whereas the 32nd Ave and 42nd Ave Corridors Project dealt with commercially zoned lots.
- This project would be a nice compliment to the Corridors Project. For example, areas along 32nd Ave not zoned Commercial would benefit from this proposal.

Discussion amongst the Commission and staff continued with these key comments:

- **Commissioner Gamba** agreed this project was critical to the walkability issue, and although the proposal was moving in the right direction, it did not go far enough. As proposed, retail would not be allowed in some R-7 and R-10 Zones along some arterials, which was an area he would push further.
- Staff clarified that the Residential Design Standards Project was not about rezoning any areas or lots zoned residential along the corridors that traversed the city. This project was more of a Code adjustment project regarding the types of uses that would be allowed conditionally and not about rezoning property. The Corridors Project would be an appropriate place to rezone property.

- 76 • Many uses could already be approved as a Community Service Use (CSU) within these
77 zones; so technically, only a minor amendment was being proposed.
- 78 • **Chair Batey** preferred that this project not be done generally across the zones, but along
79 certain streets, and perhaps not just streets defined as arterials because 32nd Ave might be
80 a good one for the part that was zoned residential. She suggested just naming the streets to
81 be included within the amendment.
- 82 • Should CUs have limits? If any residential property were allowed to have these types of
83 uses, the CU review process still provided a lot of discretion for evaluating impacts and the
84 appropriateness of citing that particular use.
- 85 • **Commissioner Fuchs** was concerned about the potential for the Commission to be
86 accused of showing partiality to certain businesses. The Code should provide some
87 predictability for allowing conditional office type uses on these streets. Without any
88 guidelines, a lot of time and money could be spent to have something not approved or
89 approved but with many conditions.
- 90 • Staff responded that would become a different kind of project. They were definitely not
91 proposing to come up with a new review process or new set of objective standards for
92 certain kinds of uses in certain locations.
- 93 • Something could be included, perhaps as an approval criterion in the CU Review
94 Chapter that the intent of allowing CUs was to result in businesses that served the
95 neighborhood. Such a statement was not really a criterion or hard and fast standard, but
96 would give some indication of whether or not the applicant might get approval, while also
97 provide the Commission more direction by which to judge the application.
- 98 • **Commissioner Stoll** noted there was a lot of room for offices in low-density residential
99 areas. Many businesses would be perfectly fine operating out of someone's home. If the City
100 was going to legalize these types of CUs, they should be allowed just about anywhere.
- 101 • Staff explained that many businesses operating in residential zones fall under the home
102 occupation category, which differed from CUs.
- 103 • A home occupation was when someone lived on a property and operated their
104 business from their home. Employees were allowed and home occupations did not
105 require approvals but had performance measures. As long as the City did not receive
106 complaints or the home occupation did not become a nuisance to the neighbors,
107 home occupation is allowed. Also, the home the business operates from must
108 maintain the character of a single-family home, and it could not look or act like a
109 business.

- Certain businesses were outright prohibited, such as auto repair, and the goods used in the business operation could not be visible to the public. The goal of the home occupation standards was to keep the business invisible.
- CUs did not have to be owner-occupied and allowed for more of a public face to the community.
- In walkable neighborhoods, people get many of their needs met within a 20-minute walk. With fewer limits, someone could have their business a block from their house and not have to commute to other areas. With CUs, the Commission had the discretion to deny the use if a business would be heinous for the neighborhood.
- Businesses that were home conversions were included under CUs in this project.
- Residential Design Standards would only apply to new construction, not to an existing home where someone moved in and wanted a change of use.
- Adding onto an existing residential home [for business purposes] would result in the home no longer being residential in some ways, but commercial and no commercial design standards currently exist. Design standards were use based on and applied to a specific use, not the zone.
- The new CU approval criteria were discretionary enough that the Commission would be able to look at modifications to the building in the CU process. The CU process provided for a lot of discretion in terms of mitigating impacts for things such as eyesores.
- Someone wanting to modify an existing CU did not have blanket approval for the use and the site. Depending on the level of modification, it would be subject to either staff or Commission review, similar to the CSU standard currently in place for modifications.
- **Commissioner Fuchs** believed lot coverage percentage should be limited, not building size or square footage.
- Currently, most CUs did not come with their own set of development standards, but the approval criteria required that the standards of the underlying zone be met. The residential lot coverage, setback, and all those standards would still apply, but not the design standards. Development standards were tied to the zone, not to the use.
- Again, the CU process would enable the Commission to alter things on a case-by-case basis to make the use more compatible.
- CU permits were only revocable if a violation of the approval criteria occurred and/or a condition of approval was not satisfied.

Chair Batey called for public testimony.

144

145 **David Mealey, 5111 SE Lake Rd**, addressed the Commission regarding his R-10 zoned
146 property on Lake Rd, the old Folio farmhouse, with the windmill and the barn. He hoped the new
147 Code would remain simple; adding a 2,500 sq ft limit was what he needed.

- 148 • He stated that the Lake Rd NDA supported his property moving from a home occupation to
149 an outright CU.
- 150 • Currently, his home occupation status had certain limitations. One key item was that the
151 proposal would permit him to put up a little signage, so people would not pass the property
152 and then call to ask for directions as they currently did 90% of the time. Presently, all he was
153 allowed was a 2 ft x2 ft sign.
- 154 • The property lent itself to a small office use more so than a residence.
- 155 • Being able to use the space without it being a split use would be helpful.
- 156 • The property was 1½ acres, of which ¾ of an acre was useful. The parking, if done
157 tastefully, would blend into the neighborhood without being an eyesore, while maintaining
158 the residential characteristics and lending itself to the walkability Commissioner Gamba
159 mentioned.
- 160 • He noted the use and 2,000 sq ft limitations in the proposal, adding he had a chiropractic
161 massage clinic and a yoga studio, which he would love to see added to the lower density
162 residence. If that did not happen, he would shut down the yoga studio, but he would love to
163 be allowed to use the properties in different ways.
- 164 • The benefit to the City, Commission, and residents was that the proposal provided some
165 yardstick to measure things by as some conditions had to be met and maintained, and the
166 Commission would determine whether an application met the conditions. This gave the
167 Commission an element of control and the businessperson something to aim for.

168

169 Staff confirmed that the reference in the current draft to office use being limited to no more than
170 2,000 sq ft was the actual floor area, not the footprint.

171

172 **Marty Stiven, Land Use Planning Consultant, 8 North St, Lake Oswego**, stated she had
173 been working with Mr. Mealey and the City and watching this process for the last year to figure
174 out how Mr. Mealey's business could be allowed not as a home occupation.

- 175 • She understood the concerns about allowing CUs throughout the city, and believed limiting it
176 to arterials was a good way to start. This would open the door for the many nonconforming
177 businesses that already exist.

- The CU process gave the Commission an opportunity to identify every use on every property and judge them on their own merits. Not only did the Commission get to look at the site and use, and require the applicant to meet the CU criteria, but the Commission could also impose very specific conditions of approval for each business for each use in each neighborhood based on each individual site.
- She was concerned about the 2,000 sq ft limitation because what would the business/property owner do if the whole building could not be converted? Was the goal to make nonconforming uses legitimate? A better performance standard than a size limitation was needed, because no matter what size was set, a remnant square footage would result.
- She questioned whether a performance standard was needed because the Commission would review each individual use. A 4,000 sq ft building might be perfectly acceptable in one location, where in a different location it needed to be limited to 1,000 sq ft because of the availability of land for parking, lighting, etc.
- Any proposals would be limited to the same setbacks, lot coverage, and heights as residents, so a building would be compatible in scale to the residential development. As to parking impact, if it were not appropriate, the Commission would not have to approve the application.

Mr. Mealey added that when he was pursuing other commercial properties, it was clear that if the property did not have enough room for parking, it would not be approved. He had looked but numerous properties turned out not to be feasible in terms of parking and other conditions listed under the existing regulations, such as egress and traffic impact. He did not see that this would be any different. Limiting CUs to arterials was important. He would not necessarily want to have a parking lot behind his house if he lived in a residential neighborhood. He liked the discussion about identifying defined roads that lent themselves to these kinds of clear-cut conditions.

Discussion amongst staff and the Commission continued as follows:

- Impacts regarding traffic, site distances, etc., are addressed in the approval criteria for CUs. The underlying concept of the proposed changes was to reduce car trips, and although valid long-term, there would be immediate traffic impacts as people tried to turn into or out of what used to be residential driveways.
- Staff introduced some reasonable requirements in the Transportation Code update for traffic studies, which were previously required no matter what. The Engineering Director would now look at applications on a case-by-case basis to see how that type of business would

operate and impact traffic before deciding if a traffic study was needed. This would be part of the CU review on staff's end.

- Staff added that the City's concurrency policy regarding sidewalk and transportation improvements was rather aggressive, so proportional mitigation was required.
- The City currently allowed CSUs on all these locations, so a large government office building would be allowed, but not a small private office building. This Code change would provide for private offices. While the CSU and CU criteria were different, the City could still require transportation and other analyses. Engineering also requires accesses to be consolidated when necessary.

- If a home occupation wanted a CU for some reason, the owners could still reside there, because the residential use would still be an outright allowed use in the zone. Home occupation standards allow for a wide range of businesses.
- A much larger structure could be built on Mr. Mealey's property and still comply with the setbacks. If he was approved for a CU and decided to replace the current structure with an 8,000 sq ft structure it would be considered a modification and subject to additional review by staff and/or the Commission.
- Staff explained that a number of zones had existing CUs, such as the Type II ADUs only conditionally allowed in all residential zones. However, the CU process for the average person was daunting and could not be done lightly or quickly, so the proposed amendments would not open the floodgates for any rapid or big changes. The proposal would allow some motivated people or the right property and business to get a CU approval. This was not a big risk for the City in terms of suddenly getting lots of big, incompatible CUs in residential zones, whether along arterial streets or not. It was a pretty arduous process to go through and pay for.
- The gains for the City from this proposal included:
 - Having more personal, service-oriented businesses integrated into existing neighborhoods rather than being in single locations spread throughout the city. People might be able to walk down their street to go to doggy daycare, get a cup of coffee, or shop at a resale store, potentially reducing car trips.
 - More property becoming available for people wanting to incubate a small business, or who might otherwise be unable to lease a commercially zoned property.
 - The possibility of converting some nonconforming uses to CUs, changing the regulation framework under which they currently must operate which could be limiting for buying, selling, and changing the property.

- 245 • Given the nature of the CU process, the number of properties being discussed, and the fact
246 that this did not regard vacant land necessarily, the proposal did not seem to detract or pose
247 a risk of increasing vacancies in the downtown districts.
- 248 • The City has heard that Milwaukie citizens did not want everything focused on
249 downtown, but that the City pay attention to the corridors. Most land along the arterials
250 was zoned for residential, which was unusual. The fact that there were a lot of home
251 occupations, institutions, nonconforming, and potentially illegal uses along these
252 corridors was an indication that low density residential might not be the best use of land
253 along an arterial. Staff hoped this proposal would help make the corridors healthier in
254 terms of integrating more uses into the community, but in a way that could actually
255 increase the property values because the uses would be fully legal, growing home
256 occupations and not nonconforming.
- 257 • **Chair Batey** said that while the residential portions of 32nd Ave seemed an obvious place for
258 CUs, she could not see upper River Rd and 22nd Ave ever being a viable place for CUs
259 because of the traffic and egress for cars. Even if there was a business geared toward
260 walking, that was probably the single most dangerous place to walk in Milwaukie. The
261 arterial did not seem to be the right measure; listing streets seemed a better way to go.
262 Although River Rd was going to be getting sidewalks, etc., the improvements were not on a
263 large scale and would not happen anytime soon.
- 264 • **Commissioner Fuchs** suggested identifying 42nd Ave and the south frontage of Hwy 224
265 across from the Albertson's shopping center. She agreed the parcel on Hwy 224 between
266 Oak Street Square and Monroe Street should also be included.
- 267 • Successful neighborhoods in Portland were built around intersections or nodes. Opening up
268 a long linear arterial strip might not be an advantage. Identifying nodes of development,
269 such as in the Clinton neighborhood in southeast Portland, would help concentrate and grow
270 20-minute walkable neighborhoods.
- 271 • Staff would check with the City Attorney regarding the legal line where this Code
272 amendment would become a rezone.
- 273 • **Commissioner Churchill** said they were working backwards from the end result
274 envisioned. The ultimate arterial development was Hwy 99 in Milwaukie, which was not what
275 anyone wanted on the City's arterials. Nodes of small neighborhoods were better.
- 276 • Staff noted some areas like 32nd Ave had somewhat of a linear aspect especially with
277 regard to zoning. However, some great viable, bustling neighborhoods existed in
278 Portland that are in corridors, such as the Hawthorne Blvd area.

- 279 • Zoning around the Safeway area was literally just a block, and some businesses wanted
280 to string out from that area. While stringing the zoning out a long way was probably not
281 the way to go, the question was whether the Commission wanted that, and if so, to what
282 point was that acceptable.
- 283 • **Commissioner Wilson** preferred opening it up to the entire city as opposed to nitpicking the
284 map. The Commission could work on it in the future as applications came forward.
- 285 • **Commissioner Gamba** agreed opening it up might keep it from looking like a rezoning.
286 As the gatekeepers, the Commission would strategically look at what made sense for a
287 node.
- 288 • **Commissioner Fuchs** was worried that at that point, they were almost doing away with
289 zoning.
- 290 • **Commission Churchill** agreed, adding they would then just be looking at denial on a
291 case-by-case basis.
- 292 • **Chair Batey** could see the Commission having someone want to do something on a
293 completely residential street that the Commission did not want to allow, and then they would
294 have to justify why it was different from another project they had approved.
- 295 • **Commissioner Fuchs** added it would be on a street that was never planned or built for
296 that amount of traffic.
- 297 • **Commissioners Wilson** and **Gamba** explained that such projects were self-limiting
298 because applicants would still have to abide by the Residential Development Standards.
299 For example, a parking lot could not cover an entire lot because a certain amount of
300 green space is required.
- 301 • The CU aspect was not the core of the Residential Design Standards project. If the
302 Commission's direction was to develop and identify nodes, staff would probably not include
303 CUs in the project. The nodes suggestion would be better suited as its own individual project
304 and would need to be addressed in the Comprehensive Plan.
- 305 • CUs could be limited to arterials and collectors with the areas identified on a map and from
306 there the Commission could attempt to modify it.
- 307 • **Commissioner Churchill** cautioned that once they started that slippery slope and
308 opened it up without controlling the intent, it could get away from them. If the intent was
309 to drive development toward nodes, they should wait until they could identify or limit the
310 areas where that would be allowed.

- This could be accomplished with a Comprehensive Plan change and a zone change for those nodes as a part of a bigger project; however, this would not happen for at least two or three years.
 - Nodes would not be created through the CU process but by a set of standards that worked together with design, uses, and the entire thing. These were corridors. Corridors and main streets were also part of the city, part of healthy neighborhoods, and part of how people get around.
 - Regarding the 32nd Ave and 42nd Ave Commercial Corridor Projects, they would be discussing how to make 42nd Ave more of a node, but 32nd Ave would always be a corridor, a main street. Each area was a little different. Moving forward with the CU proposal would not weaken the other urban design conversations. Even if nodes were the big idea, this project would be a bad tool to achieve that end.
 - Opening it up to the collectors would create some nodes.
 - **Chair Batey** was more concerned about having some control over the design and size, but was less concerned about the strip aspect of it.
 - Rather than having an arbitrary number concerning size, it could be tied either to the scale of the neighborhood or size of the existing building. This same concept was used to govern setbacks, where one could average the setback of the two houses on either side of the proposed project. The new building being constructed would need to stay within some kind of a mean or average of the surrounding buildings.
 - Staff already struggled with the simple setback averaging standard in determining what range should be used as the averaging tool. The CU process provides the Commission a lot of discretion to make decisions versus creating objective standards. Remove the arbitrary size limits was an option.
- The Commission took the following straw polls:
- Should the City allow more CUs in its residential zones?
 - All Commissioners responded 'yes' with the exception of Commission Churchill who responded 'possibly'.
 - Should there be limits on location for the CUs?
 - All Commissioners responded 'yes' with the exception of Commissioner Wilson who responded 'no'.
 - Should there be limits on size for the CUs?

- All Commissioners responded 'yes' with the exception of Commissioners Wilson and Gamba who responded 'no'.

Discussion continued about the CU process addressing the size issue with these comments:

- The CU proposal was not necessarily just for existing buildings, but for residential lots with a new building, a modified home, or the removal and replacement of a home with a new business building.
- If the Residential Design Standards applied, they would already include some things about mass and compatibility with surrounding structures, so an arbitrary size limit might not be needed.
- Concern was expressed about the huge white house on the east side of 32nd Ave possibly being converted to a CU, like doctors' offices; it would not be a residential scale building at that point.
- The CU chapter included approval criteria as well as specific standards for specific kinds of CUs, which were very limited and covered things like surface mining. One standard for yards stated the yard of a CU in a residential zone had to be enough to make the building compatible. The standards could be beefed up to address some of the concerns.
- Since CUs had to come before the Commission to get their use at all, they did not have to be concerned about having a size limit because the Commission could just say 'no'.
- The Commission would need a tool to deny the CU on a very large lot. An appropriate size parcel and appropriate size development by residential standards on a very large lot would result in a very large commercial impact.
- A larger building would need more parking and have more potential traffic impacts. Through the CU process, the Commission could determine that too many impacts existed even without addressing the size of the building.
- Being on a collector or arterial, there were ways around impacts shown in traffic engineering reports.
- Staff had confirmed with the City Attorney that not having any standards and leaving it completely up to Commission's discretion would not open the City up to legal problems.
- Staff would research other cities to find different options or ways to craft some approval criteria or standards for the CU section, or find something not quite as arbitrary as a size limitation.

- **Commissioner Churchill** noted a size limit could be set and then take an exception case on a very large lot. Leaving it wide open would leave them open to many things to have to backtrack and try to constrain.
- The 2,000 sq ft size was a good size for a commercial use in a residential neighborhood even on an arterial. Larger parcels and larger developments would have traffic generation impacts off and on the arterial, which was what they were trying to avoid. They did not want to generate trips but walkable, nodable neighborhoods with their own character.
- He preferred starting with a limit and then the applicant could make a case for exceeding the limit.
- Staff was also directed to look at size differences between existing buildings and scrape-offs. If there was a 2,500 sq ft building and the limit was 2,000 sq ft, what was supposed to be done with the remaining 500 sq ft?
- Staff clarified that the Commission had general concerns about impacts and compatibility with the scale of the neighborhood.

Mr. Mealey reminded that the Code discussed specific uses like offices. The list of CUs was very limited, and that list was being expanded to just a small extent to permit small offices and other things in low-density zones. While the high-density zones allowed retail services, only a half dozen more uses were added, which was important criteria to consider.

The Commission took a brief recess and reconvened at 8:24 p.m.

6.2 Summary: South Downtown – Implementation Strategy

Staff Presentation: Katie Mangle, Kenny Asher

Ms. Mangle stated City Council had adopted the South Downtown Concept as the vision for the area south of Washington Street. Staff wanted to enlist the Commission's feedback on some ideas as the project moved forward. She and Mr. Asher presented the South Downtown Implementation Strategy, noting the changes property owners could make outside of any regulatory changes would be critical to bringing South Downtown to life. A one-page handout was distributed that outlined the latest informational update regarding the project and included the resolution adopted by Council.

Kenny Asher, Community Development & Public Works Director, reviewed the City's history with the Center for Environmental Structure (CES) beginning in 2008, and the humanist development philosophy they worked by. CES had worked with the "Group of 9" to create a Pattern Language for South Downtown that highlighted the aspects of the area that the community wanted to celebrate and preserve.

- Due to communication issues, the City changed firms and partnered with Walker Macy to extract implementable ideas from the Pattern Language, and the project was now in Phase 4.
- He summarized the South Downtown Concept Plan, noting the public space circulation, plaza location, preserved views, and pedestrian connectivity with the light rail station.
- City Council adopted the plan on September 6, 2011. Staff had asked Council to adopt the Concept Plan by resolution. Adoption of the Concept Plan alone was not enough – staff was now working on how to implement the ideas.
- Presented a list of "Important Patterns for Buildings in the South Downtown" and noted that Ms. Mangle and he had reviewed the Pattern Language in depth to tease out the essentials and conflicts and determine the realities of implementation.

Ms. Mangle described the challenges with the concepts, and that holding to the great ideas in the Concept Plan and Pattern Language would require creativity and innovation. She noted that the adopted Downtown and Riverfront Framework Plan and the South Downtown Concept Plan had many similar ideas and concepts, including the mixed-use, people-oriented development; connection to parks and creeks; etc. However, there were specific use and anchor ideas that were different in the South Downtown Concept Plan. She noted the Concept Plan was geared toward smaller scale development and activity rather than bigger scale campus-type development.

Mr. Asher clarified that along with Council's endorsement of the Concept Plan, the resolution included a work plan for the Planning and Community Development Departments, which involved zoning code changes and other work to allow for the implementation of the Concept Plan and light rail station area plans. He reviewed the aspects of the Pattern Language that would be carried forward:

- The granularity and texture pattern allowed for development of the area over time with incremental changes, to make it more livable and comfortable. There would need to be a balance between flexibility and restrictions of development.

- The pattern that new construction is unregulated was inconsistent with other patterns and went too far. Although the City wanted to allow for faster transitions for development, there still needed to be some regulation.

Mr. Asher added that for early implementation, the Community Development Department understood that there needed to be more activity in that part of town. Some ideas for “small moves” to start using the area included adding a mid-week Farmers’ Market, cleaning and painting buildings, adding food carts, closing the street for events, etc.

- Work for the light rail station and with property owners was still continuing.

Comments and questions from the Commission were addressed by Mr. Asher and Ms. Mangle with additional discussion as noted:

- One suggestion for a “small move” was to have a band and food booths to create some kind of critical mass element in South Downtown on first Fridays. One month, the Clackamas County Parks and Recreation District had a kids van doing kids’ activities. The City should have things to get people to South Downtown and start thinking about it as place to go.
- Some of what used to be abandoned or nasty little parking lots were now some of the most hopping places in the entire city of Portland because of food carts. Nothing brings people together like little collections of great, cheap food.
 - Something to be considered with the food carts was their impact on the downtown restaurants, although the increased activity might encourage more business for them.
- An information kiosk could be placed in the plaza with a conceptual drawing including Kellogg Creek, Riverfront Park, and South Downtown so that people visiting the site would get excited about all the different plans.
- There should be something for teens in the area other than just a pizza place. This issue of doing whatever possible to connect with the high school had been brought up a lot during the Advisory Committee.
 - High school students liked the food cart idea as well.
- **Commissioner Churchill** agreed with compelling smaller scale development discussed in the second bullet of the staff report on 6.2 Page 3 but some existing buildings still did not have the appropriate scale for that plaza, such as the post office building.
 - Regarding the point that commercial space could receive occupancy space with minimal interior finishes, he stated that when trying to develop a fabric off a plaza like that,

encouraging commercial space to receive occupancy permits with minimal interior finishes could lead to the wrong scale development in that area.

- If the post office building, for example, was not encouraged to really break the scale down, it could detract from the concept of the plaza and the development in the area.

- Mr. Asher responded that the tension in the Concept Plan was captured in those two patterns. On one hand, they wanted a place that could develop with a certain quality of almost yeoman-like, do-it-yourself, noncorporate, organic approach to development, which meant the Codes could not be too prohibitive. There needed to be a certain freedom to allow individuals to exercise their construction or craft. In this planning process, people got excited that this really was about the community and about real people doing real work in creating and using the area. They were trying not to lose that creative element while also trying to protect the area from being downtrodden or ramshackle. Protecting plaza and outdoor spaces, the scale of buildings and how to address public spaces, etc., were all important, but also created that tension.
 - Staff discussions regarded this area coming together over time, and maybe the rules would change over time. If the plaza was not finished in the first five years, maybe they did not need to hold those buildings to the standard of protecting the plaza but encourage life and reuse in the area. They could get to the point where adjustments are needed, because the place was maturing and the plaza was in their sights, so at that point, the buildings had a different job to do.
 - Trying to insert that fourth dimension of time into the regulatory framework was one way to deal with the tension, because the job of the place would change over time.
 - If the existing buildings remained for a long time and low rent uses are allowed forever, the City would not get some of the qualities and spaces desired. On the other hand, if certain qualities and spaces were required on Day One, they would not get the life and artisan quality that people wanted.
- Staff was asked to remind the Commission who owned the parcels indicated on Pages 14 of the parcel framework and Page 22 of the Walker Macy plan.
 - The .13 acres on the southwest corner of Washington St and Main St was owned by Dr. Belori, the dentist. Everything else in the lighter shade of purple was owned by the City. Across Main St, the .13 acre, .08 acre, .26 acre and .13 acre was owned by the Bernards. The .26 acre and .18 acre was owned by the Shipleys. Across Adams St to the south, the .37 acre, which people called the post office building, was also owned by the Shipleys. Everything in yellow overlapping the light rail station, and the .16 acre on

the east side of the light rail station in purple, would all be owned by TriMet. Even though today it was a combination of Union Pacific and private ownership, TriMet would acquire that property for the light rail project. The triangle site to the east of the light rail platforms hopefully would be sold for development to do the train station building which was an idea that came from this planning process.

- **Commissioner Churchill** noted it came down to two primary landowners, the Shipleys and Bernards. He asked how the City would encourage development of those parcels in a way that reinforced the organic growth so it becomes the fabric they were trying to achieve from earlier studies, given the existing compilation.

- **Mr. Asher** replied that was another tension. Everyone in the community might love the plan except for the property owners, and they needed to be careful about that because laws exist that would protect their property rights.

- They needed to think about the sequencing of development and desired outcome, but also the common sense of incremental development.

- The garage in the Bernard holdings was particularly well suited for an adaptive reuse in short order. As an example, the auto shops in Portland that have become brew pubs. The configuration of the building facing Washington St is tailor-made for that idea, which has been shared with Mr. Bernard.

- Issues exist about where retail use is allowed, but three buildings were present that had potential. The idea was not to think about South Downtown as one ultimate plan, but to plan for a process of enlivening the area by changing the zoning.

- The City needed a zoning code that worked over time and with different scales of buildings.

- One issue was that the current downtown zoning Code mandated the ultimate build-out now, which was one thing holding them back. The block with Bernard's Garage was a perfect case study. The owners had bigger visions, but were limited by the zoning. Redevelopment using new buildings, old buildings, or a combination was possible that met the goals of the Pattern Language. Code language was needed to allow for all those scenarios, but insisted on what is important.

- The areas across Washington St and across 21st Ave would be the first areas outside the South Downtown area to be impacted by new development, as well as the area right across from the light rail station. Would the new zoning tools apply to those areas as well?

- 543 • **Ms. Mangle** replied 'no'. The study was very specific to the South Downtown area
544 largely because it was so highly redevelopable. In that way, it was different from areas
545 north of Washington St.
- 546 • One aspect of the Commercial Core Enhancement Program was a downtown Code
547 refresh. They had a good vision, but some Code elements were hindering them from
548 realizing that vision. They hoped to do the refresh for all of downtown. In trying not to
549 hold that off for too many years, staff had been identifying the low hanging fruit for
550 that project. Similar to the CUs conversation, the City might be able to allow a more
551 robust list of uses with a few small changes and without having to turn it into a huge
552 project.
- 553 • Staff was thinking about the whole area, while also trying to limit the scope, because
554 all the work being done was so specific to this area, and they wanted to respect that.
555 Also, in terms of workload management, staff wanted to make sure they were not
556 biting off more than they could chew.
- 557 • The original group talked about the South Downtown project being a Genesis point,
558 where they changed the way things were done and then that would spread throughout
559 the city.
- 560 • The .18 acre lot owned by the Shipleys across from the post office would be a great
561 backdrop for a series of food carts. It would not have to be right on the plaza center, but
562 would certainly draw to downtown and feed to the high school.
- 563 • Adams St would have to be closed sooner rather than later because of light rail, so with
564 that parking lot plus the Adams St right-of-way, there was quite a bit of space for that
565 type of thing.
- 566 • In thinking about next steps, it was important to remember that the area would be torn up
567 almost entirely on the 21st Ave side as soon as the light rail construction began. They
568 needed to be careful about what they took on and tried to pull off during all the construction
569 activity.
- 570 • The little section of Lake Rd between Main St and 21st Ave was being renamed by Council
571 direction to Main St, as a continuation of Main St, which was a good change.
- 572 • The light rail project would provide quite a few street improvements, and maybe staff would
573 figure out how to get improvements on Adams St as well. The construction would be
574 unfortunate, but a lot of the streetscapes would become a lot nicer as a result of the light rail
575 project.

- During light rail construction, at least one lane of 21st Ave would have to stay open because emergency vehicles could not make it under the existing railroad trestle.
- The presence of the construction was important to consider when wanting to draw high school students to the plaza for lunch to spark vitality in South Downtown.

Ms. Mangle stated staff would return for additional discussion on this issue.

The Commission continued to Item 9.0 Forecast for future meetings at this time.

7.0 Planning Department Other Business/Updates

7.1 Neighborhood Corridors Project: 32nd and 42nd Avenues

This item was taken out of order and addressed following 5.0 Public Hearings.

Ms. Mangle explained the Commercial Core Enhancement Program has been envisioned as a multifaceted Planning project to deal with various issues such as economic development, urban renewal, downtown and commercial area enhancement. The City was awarded a grant by Metro of more than \$200,000 to do that work, but it was now stuck in a lawsuit, limiting access to the funds. Staff has been considering what to move forward on without the grant, and decided to focus on the 32nd Ave and 42nd Ave corridor areas. The project would not be very complex, but would require a lot of neighborhood and property owner involvement, specifically from commercial property owners in the area. Key items to address would be zoning and policy changes to nurture economic development and maintain a nice scale. Some Planning budget funding would be dedicated to the project, and a team of Portland State University graduate students from the Planning program would be recruited to help with outreach, including interviewing property owners, etc. This project would probably start up in early 2012. Parts of the project would involve uses, building design standards, and could include signs.

7.2 Electronic Signs Project: Council Hearing

Ms. Mangle stated staff was preparing for a City Council public hearing on October 18 on the Electronic Sign Code Amendments package adopted by the Commission last month. She wanted to ensure that at least one Commissioner attended the hearing so Council could hear directly from someone on the Commission. Councilors expressed concerns about three aspects of the proposal, the time limit, size limit, and retroactivity, which involved whether proposed time

The Commission had deliberately stated that the standards would apply to all signs regardless of when they were constructed.

- Ms. Mangle** confirmed the forecast was still accurate and briefly reviewed the upcoming meeting items. Chair Batey was the only sitting Commissioner when the CSU was previously approved for the Ukrainian Bible Church; this modification was minor comparatively. She sought direction about how to navigate through the Residential Design Standards Project without having to repeat policy discussions at the Commission that were addressed by the Steering Committee. She encouraged the Commissioners to meet for a study session with Ms. Shanks if needed. Staff tentatively scheduled two hearings for the Kellogg Lake Bridge and Trolley Trail applications.

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644 Meeting adjourned at 9:17 p.m.

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Respectfully submitted,

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Paula Pinyerd, ABC Transcription Services, Inc. for

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Alicia Martin, Administrative Specialist II

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Lisa Batey, Chair