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MILWAUKIE CITY COUNCIL WORK SESSION

December 4, 2007

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Mayor Bernard and Councilors Barnes, Loomis, and Stone

Staff Present: City Manager Mike Swanson, Operations Director Paul Shirey, Community Development / Public Works Director Kenny Asher, Planning Director Katie Mangle.

Wastewater Issues Update

Mike Kuenzi, Water Environment Services (WES), said the main thing he wanted to accomplish at this meeting was to bring Council up to speed on where they were and talk about the impact to Milwaukie. The Citizens Advisory Committee (CAC) was formed in February 2006, and they submitted their strategic recommendation to the Board of County Commissioners (BCC) in September 2006. There were two recommendations, which were to build a new plant and to close the Kellogg Treatment Plant when economically feasible. That recommendation was considered by the BCC for quite a few weeks, and they asked staff to prepare an implementation plan based on the basic recommendation which the Board accepted in December 2006.

He went through the plan and explained the four different elements: construct new capacity to meet the District's immediate needs for current serious problems; complete the conditional assessment of Kellogg Treatment Plant and those issues would be to look at a 10-year operational plan and what would that investment look like, and if they went forward and looked at a longer time period, how would that investment change. A Steering Committee was created to reinstate the regional dialogue to approach wastewater challenges from the community solutions effort, and the Site Selection looked at possible locations. Construction was slated for spring of this year. They completed the assessments of Kellogg and those short-term investments were in the information handout given to Council. Ten-year and beyond investments were in the rate profiles that were being developed now for the new plant because that was part of the whole equation. They should have those costs out in about 2 weeks. The Site Selection Committee began with approximately 15 sites and recommended 3 different locations to the BCC in November 2006. The community wastewater initial dialogue was completed.

Mr. Kuenzi explained the challenges of phase 1 for the immediate work that needed to be done. The Kellogg Treatment Plant was over capacity right now. CCSD1 had been running treatment capacity from Tri-City, which meant that Tri-City would not be able to meet its own growth needs within 3 years. Part of the challenge was how to replace that capacity so that Tri-City was not impacted and still could meet CCSD1 needs. The renewed Kellogg Treatment Plant permit was much more restricted. Another challenge was how to make an investment in Kellogg and still meet the long-term goal of the BCC, which was the decommissioning of the Kellogg Treatment Plant. The Kellogg Treatment Plant was now also a non-conforming use.

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The decision criteria in developing a Phase 1 program was: to relieve the current waste load pressure on Kellogg; avoid development restrictions; reduce the potential for stranded investment that would be abandoned 10-15 years in the future; minimize the impact of CCSD1 on Tri-City; and ensure growth pays its own way through SDCs and other assessment districts.

Capacity Management Plan

Phase 1 essentially focused on the Kellogg Treatment Plant, and that focus would be an investment on the critical systems that need to be refurbished to make it last 10 more years. That investment had been slowing down over the last couple years because they were waiting for this outcome. The second piece was to build interim capacity at Tri-City to divert more flow, and to return the capacity and accommodate growth. The last piece was the transfer conveyance systems between the 2 districts. The cost was \$110 million in 2007 dollars. \$60 million would be invested at Tri-City, about \$7 million at Kellogg, and \$44 million in conveyance improvements. Paying for that would essentially come from a combination of savings and borrowing. CCSD1 had about \$20 million slated to begin construction, and they would need the balance probably through some type of a bond program. He would be working with the BCC in the next couple of weeks to figure out how to do that. Essentially Phase 1 would adjust CCSD1 rates from \$26 per month to \$37 per month. The preliminary numbers were showing about an \$11 increase across the entire service district. The system development charges (SDC) associated with that would essentially be about \$2,200 per connection up to \$5,200. A large portion of that program was still the growth component for which SDCs could be charged. If they looked at the intergovernmental agreement (IGA), the overall concept between the 2 districts was that CCSD1 would build that new capacity at Tri-city under a ground lease contract, and CCSD1 will pay rent for that lease. The idea was then to sell back that capacity when it was needed for growth starting about 2015 to 2025. The incentive was to allow Tri-City to buy that back at 2010 construction dollars as opposed to replacement costs. Then how did CCSD1 benefit from that? It preserved the option to decommission the Kellogg Treatment Plant by minimizing that investment. It also provided the potential to reduce the net cost of the capital program and essentially bring \$63 million back into CCSD1 allowing them to pursue the new plant. It lowered the overall net cost of the Phase 1 program. This could be accomplished in a timeframe that avoided development restrictions. The timeline to have it built was 3 years, and if he missed that date then he would ask the BCC for a moratorium.

They looked at Tri-City's capital needs over the next 20-30 years going it alone without CCSD1. He showed how that would impact its rates. Then they did the same rate profile assuming that they buy back the capital investment from CCSD1 at those specific times that were set. It flattened their overall rate curve. He discussed the escalation cost, which showed the rate in 2033 that was equivalent to today's rate when adjusted for inflation and would be about \$25. The reason for showing that was that when talking about \$30-50 in the future it did not make a lot of sense unless you have a relative base to compare it to. It told Tri-City that their rates would level over time if they agreed with this plan.

How did that impact Milwaukie? The BCC asked them to review what options were available to distribute cash fairly across their entire customer base. Their goal was a fair and equitable sharing of the anticipated cost. They also asked once they got through that to modify the existing wholesale contract that CCSD1 had with Milwaukie. He went through the four different options that he presented to the BCC. When you look at a wholesale contract without district membership

it broke down into 3 cases. Right now the existing agreement had Milwaukie picking up a percentage of operations and maintenance (O&M) costs for the Kellogg Treatment Plant. It did not normally have that capital component other than when amendments had been negotiated. So they suggested for case 1 a proportional O&M cost plus a portion of the \$7 million upgrades and a risk premium. The risk premium was because the District was taking the financial risk with the bonds, and Milwaukie was not. Case 2 was similar only it was a portion of O&M plus a portion of \$66.1 million for existing capacity shortages. The \$66.1 million represented the capacity requirements that the District had right now even if they restricted growth. Case 2 did not have a growth component and it also had the same risk premium as in case 1. Case 3 basically shared the total cost of the Phase 1 program against all the customers plus the risk premium. The interesting thing about case 3 was that since customers were sharing the cost each customer would get a portion of the SDC's that were collected because of the contribution to the entire cost of the program. Case 4 was a wholesale IGA with district membership and annexation. That was very similar to case 3 without the risk premium because if you were in the District you had the same financial obligation as the other customers.

The next graph showed the impact to CCSD1. The impact was not that significant to the District primarily because of the size of the customer base. The impact to Milwaukie on case 1 was similar to today in the \$7 range. Case 2 would be in the \$20 range. Case 3 was approximately \$30, and with annexation in the \$23-\$24 range. It was a pretty significant impact to Milwaukie from a wholesale rate standpoint, and the numbers were fairly close to what the District would experience. The BCC agreed to start working toward putting case 2 in place. They did not feel it was fair to saddle the City with a portion share of the growth if it was not part of the District, but they did feel it was an obligation as a customer to participate in some of the shortfalls. In addition, as they went forward they would like to talk about annexation as a possibility because there were a lot of different avenues.

He talked about community dialogue. He went back to the BCC a couple of weeks ago and asked them to suspend the Site Selection Committee until April 1. The reason was that he wanted one more chance to put a community agreement together in a more structured forum. The purpose in the charter was to create an alliance or partnership agreement. There were four different parts: to find what the cost benefit was for each partner interested in going forward, start to develop the equity and cost allocation models and how that would impact a rate formula, talk about governance models, and to ensure quality management and adequate participation in investment and policy decisions. He was going to put some framework of an IGA in place by April with whoever was still at the table at that point in time. He would essentially ask the city managers to work with staff to develop the elements and then feed that up to a group of elected officials. He hoped to get through that in a 4-5 month and have the basic framework put together. If they could not get there by April he would ask the BCC to go forward with the new plant option or give a different direction.

His next steps were to move forward with community dialogue. He needed to refine the impacts of Phase 1 in their modeling from a rate and SDC standpoint. He needed to secure all of the permits and financing by June so they could start by FY 2008 – 2009. A big portion was to put a new contract in place with Milwaukie as well as the IGA with Tri-City.

Councilor Barnes wanted to know the timeframe of the election of the representatives on the governance structure.

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Mr. Kuenzi said he would meet with the BCC on December 18 to layout the process. He would invite each of the cities to elect its own representative, and he hoped to have the first meeting during the third week of January.

Mayor Bernard commented that currently they were looking at a structure with a middleman. It seemed that this would build a lot of structure and everyone was getting a piece of the pie. The rate appeared to be higher than the Clearwater proposal. Did Milwaukie get a portion of the SDC's when it helped pay for previous upgrades at Kellogg?

Mr. Waugh said there were no SDC arrangements with the City in the existing agreement.

Mr. Kuenzi said at this point the SDC's were purely a District revenue source. It could be argued in a community dialogue that might be part of the equity brought to the table. It was purely contractual and not a District function. He wanted to address Mayor Bernard's other question and explained he was given a very specific charter by the BCC on this, and it was not to go back and look at what was done in the past as a comparison. He was hoping to do that as part of the community dialogue. The reality was they still needed to go through with the immediate program, and we would all share in that.

Councilor Stone asked if Phase 1 was compared with Clearwater.

Mr. Kuenzi said they were not going to look at Clearwater, but it was one of the options in the community approach. It would look different than Clearwater, but they were going to look at that and do some comparisons. A new plant concept would be expensive, and he did not believe CCSD1 could afford it at this time. They needed to do some comparisons to other alternatives.

Mr. Waugh said Clearwater had been some years ago now, and the whole plan would likely be different now in terms of cost and challenges of environmental changes.

City Councilor Interview

Mr. Swanson announced Mr. Lancaster had decided to withdraw because of work obligations. Mr. Lancaster had asked that Council not make an appointment solely with the idea that appointee had to run in March.

Mayor Bernard provided the background and process.

The first interviewee was Mary King

Ms. King said it was an honor to be interviewed for the position because she really enjoyed and was proud of being a former councilor. She read a statement detailing her experience and priorities for Milwaukie.

Mayor Bernard asked, "What do you bring to the position that is unique?"

Ms. King responded that she brought experience, a love of the City, a real ability to establish bridges between people to bring people together for a common cause. She said she brings a good sense of humor. She works well in a group. She respects the differences in everyone.

Councilor Barnes asked, "How will your presence on the City Council positively influence or change the current Council dynamics?"

Ms. King said she had worked closely with all of the Councilors in one form or another. She would like very much to give something to the current council so that everyone could all trust each other, which was very important to her. She

would be well read by the time she got to the meetings and she thought they needed to have a workshop on the communication agreement so they were committed to it and they could count on each other.

Councilor Stone asked, "The City Council is frequently called upon to decide contentious issues, what and how would you personally contribute to bridging the gaps between community members and/or groups?"

Ms. King said she was a good listener. She said her first council meeting was all about light rail and that was a very contentious issue. At that time they were not a cohesive council so they had to work hard for that. She remembered during her first year on council it made her very sad because people would get angry with her and it was hard on her because she wanted to please everyone. Then she learned that you had to really listen, know the facts but you have to be willing to make hard decisions for the betterment of all. The JCB widening project was also difficult and she worked so hard to learn all she could about that and listen to the bicycle people, the walking people and the neighborhood people and again had to make decisions that she didn't like at all. All through that the Council disagreed but then they disagreed behind the doors and worked it out and wasn't afraid to talk to each other.

Councilor Loomis asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do to solve them?"

Ms. King answered getting light rail in the City in an accepted and safe manor was very important. She would like to see it go through and she would work very hard on the site issue. She felt that education was very important and to talk to people and making them feel part of the decision made it much easier. She said what was going on in our Country was going to affect us and whether we knew it or not the citizens of Milwaukie were not sure they were going to have jobs or if they were going to be safe. It was important that our City Council perhaps assume more of a role in working with the federal governments and letting our citizens know we were doing that so we could make sure we were all safe. The City needed to start working on the global warming issue and provide our citizens with the tools so they could work on it too. She was very much an environmentalist.

Second interviewee was Patty Wisner.

Ms. Wisner said she was here because she thought this was an interesting opportunity to experience leadership at the council level. She experienced leadership as a Neighborhood Chair and Vice Chair and commission and committee member. She wanted to learn more about the Council and bring some of her experience to the Council. She had commonalities with council and cared about livability, the library, citizen representation, riverfront and downtown development. She was very concerned about downtown development. She wanted development to be done beautifully that we could be proud of it. We need to be pro-business and help entrepreneurs here in Milwaukie and those who would like to locate her. She was interested in public improvement ordinances and that had been discussed by the DLC and to take another look at it with the DLC, Planning Commission and City Council. She wanted to see a decision made that would bring balance to public improvements that would help small business people re-locate to Milwaukie. She was concerned about transportation, specifically public transportation. There was a lot of regional concern regarding light rail and crime and how that would affect Milwaukie.

Mayor Bernard asked, "What do you bring to the position that is unique?"

Ms. Wisner replied that she was one of the few people who had lived here a long time and had lived here continuously. She has observed Milwaukie every day for over 50 years so she has had a really accurate view of what had gone on in the City. Knowing that Milwaukie used to be a town that was extremely proud of how busy and thriving it was and how much residents had wanted that to continue and had been very dismayed that it had not continued between the 1970's through the 1990's. Finally, we were thankfully seeing some really good activity happening in Milwaukie and seeing some new vibrancy coming in and that was thanks to a lot of effort from not only City Council but the citizen volunteers who had worked so hard to keep working in that direction. She would like to see that continue, and would encourage that as a City Councilor to see Milwaukie reach those goals and become the City that it should have always have been.

Councilor Barnes asked, "How would your presence on the Council positively influence and/or change the current council dynamics?"

Ms. Wisner said she though the current council had a lot of diverse views and sometimes there was a lot of back and forth discussion to reach a consensus, and she said they all had a fairly accurate picture of her leadership style and what she stood for. She had 10 years experience on the DLC, and they were a really dynamic group now. There were some pretty diverse opinions among the members and but they deal with each other amicably and in a friendly matter. They didn't always agree with each other and they sometimes all had different opinions over an issue but they were always able to discuss it in a positive way and they always left their meetings in a really positive mood. It was a real pleasant experience and she had enjoyed being on the committee and she especially enjoyed the dynamic interaction, they respected each other's right to their opinion.

Councilor Stone asked, "The City Council is frequently called upon to decide contentious issues, what or how will you personally contribute to bridging the gaps that occur between community members and our groups?"

Ms. Wisner said what she wanted anyone in Milwaukie to know about her was that this town was in her heart and she was grateful for the town and she wanted others to have that experience. She didn't have allegiances and was not trying to gain points with any political party; she was not trying to gain points with Metro or TriMet. When making a decision she would think how it would affect Milwaukie as a whole and then make a decision. She would be coming in objectively and not with any strings attached to any group. When she listened to citizens that came in she would listen to them and hear what was on their heart and their concerns and she would try to make a decision on any issue, which would keep them safe and thriving in Milwaukie.

Councilor Loomis asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do to solve them?"

Ms. Wisner replied that over everything was growth, growth pressures and learning to deal with what they can do with that and transportation due to the growth. Her core focus would be to promote solutions and development that would not attract crime and were not known documented crime magnets and to promote development and change, which allowed Milwaukie to flourish and decreased the likelihood of crime in the City.

Third interviewee was Greg Chaimov

Mr. Chaimov thanked the Council for their attention and appreciated their consideration in keeping with what he hoped would be his conduct if he could

earn their confidence. He would be keeping his opening statement brief so that he could spend as much time as possible listening. He said when he campaigned last year going door to door and one of the consistent messages that he heard from the Milwaukie citizens was that they wanted a City government that was characterized by civility and by thoughtfulness. He said he could offer someone that and could work with civility and thoughtfulness. He had spent the bulk of his professional life working in a highly charged partisan atmosphere the entire time as a non-partisan staffer. That work he liked to think had given him some experiences that would be of assistance to Council and to the community.

Mayor Bernard asked, "What do you bring to the position that is unique?"

Mr. Chaimov said first was a great depth of experience in dealing with serving on a board and other government bodies throughout the county. He served on the County Vector Control District and was twice selected as Chair. He served as the vice-chair of the county historic review board. He served as the vice-chair of the commission that traveled around the county to formulate the ordinance that the citizens of the County recently passed to increase the BCC from three persons to five persons. Those efforts he liked to think had enabled him to develop skills and work collaboratively in government as well as meeting and getting to know people well throughout the County whose positive view of Milwaukie was important for the City's success.

Councilor Barnes asked, "How will your presence on the City Council positively influence and/or change the current Council dynamic?"

Mr. Chaimov responded that more than anything he hoped to be able to lead by example and by demonstrating the benefits of listening. Despite his profession most people would characterize him as introspective. He spent much more of his time listening than he did talking although he feels it is very important for public officials to make sure when it comes time to talk that talking is done in the most respectful manner and in a way that makes clear to everyone particularly to the people who may not be in favor of a decision on a particular issue. It was important to make it clear to them that their views were heard, valued and if they continue to keep speaking would continue to be valued and when the merits were appropriate they would prevail.

Councilor Stone asked, "The City Council is frequently called upon to decide contentious issues, what or how will you personally contribute to bridge the caps between community members and/or groups?"

Mr. Chaimov said his hope was that he would be able to get out into the community to meet with all of the neighborhood organizations, which were the backbone of this community, to where he would hear from everyone who had a stake in the process and he is aware of that. For example, people in the Linwood neighborhood may have a different view of issues than his neighborhood in Island Station and making sure that he covered the entire community and make sure he was listening to everyone on the issues. That struck him as the best way to make sure that issues that might on the surface be decisive end up not being.

Councilor Loomis asked, "Define the two most critical issues facing this City and describe what you as a City Councilor can or will do to solve them?"

Mr. Chaimov said the number one issue facing the City right now was the tendency of the City to divide into camps. There was a perception among a great number of people in the community that they weren't being heard. They may speak but their words seem to bounce off and allowing those people to feel as if

their views matter even if they didn't succeed. They themselves need to feel they are the government and the government is them. That was the most important thing that this City government could do to make sure that whatever decisions the City Council made were those that everyone in the community could support even if it wasn't their preferred result. From a substantive standpoint from how should the City look some years from now a major challenge to the City right now was how to revitalize the downtown core while at the same time maintaining the character, in particular in the Historic Milwaukie Neighborhood. We needed to be cognizant of the fact that our downtown and that neighborhood were right next to each other, and any time that we were encouraging people to come downtown, which we need to do, we need to make sure that as we were making those decisions we were doing so in a way that took into account the needs of the people that were most likely to be affected by those decisions.

Final interviewee Brendan Eisworth

Mr. Eisworth introduced himself and said he had lived in Milwaukie for 12 years and had owned property here for 9 years. He has had a rental house for 5 years with about an acre property in the Historic Milwaukie neighborhood. He had worked at the Portland Waldorf School for 2 ½ years. He lived, worked and played in Milwaukie. He saw the heart of Milwaukie every day. He ran the Farmers' Market along with the mayor and he had done that for 9 years. His involvement in the market has been a great source of community involvement and celebration and it had turned into something that was amazing and there were people coming from all over to visit the market. Those people saw Milwaukie in a positive light, which was great and he would like to do more things like that and create things like the Farmers' Market and create a community that could be positive and people could see something that was encouraging to potential business owners and potential families that want to move here. He liked to see things like the Farmer's Market and the Waldorf School that was served by wildlife habitat that was environmentally friendly. He would like to do things to clean up Milwaukie. Milwaukie was a beautiful town with a beautiful waterfront but there were things that need be addressed, one of which was what does Milwaukie look like and sound like to people from the outside? What did they see when they came here and would they be willing to move their family here and invest in a home here when there were options to invest across the river? Would they be willing to move their business here when there were opportunities to invest in other areas that are taking off like in Portland? He would like to look and learn from other areas in Portland that have taken off over the years and how find out how we could encourage private investment in Milwaukie so we could have those same things. He wanted a thriving downtown that was clean and beautiful that people could come to and be happy to raise their families in. He and his wife were raising their 1-year old here in Milwaukie and he decided to stay here with two properties and not sell out when the market was better. He could have flipped his second house and instead chose to stay here and raise his child here.

Mayor Bernard asked, "What do you bring to the position that is unique?"

Mr. Eisworth said that he lived here. He walked here tonight and he walked and biked in this town every single day. That was how he got to work. He saw the transit center every single day. His duties at the Waldorf School entitle him to walk around the entire school every day and look for anything that could be hazardous to the school children. He sees what Milwaukie looks like. He eats downtown and gets his hair cut downtown. He lived and breathed Milwaukie. He knew public transportation because he grew up using it in Philadelphia. We

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needed to find out how to improve what we have and that is what he would like to help do.

Councilor Barnes asked, "How will your presence on the City Council positively influence and/or change the current council dynamics?"

Mr. Eisworth said that hopefully he could try to be a unifying force. He hoped that whoever was appointed it would be somebody that could work with everyone on the City Council, as that was needed. We didn't need somebody who came to in with their mind made up on what they wanted to see Milwaukie become. He didn't know what Milwaukie should be become and he can't say that he had the answers of how light rail could happen and what would happen with that. He didn't want anyone on City Council to have his or her mind made up prior to any decision. He wanted them to have open minds to listen to everyone that came to Council no matter who they were. If somebody came to City Council to speak their voice they were coming for a reason not because they didn't have anything better to do. Council should digest what a person had to say and figure out what people were saying. They cared about Milwaukie if they were willing to come here and speak their mind, which was great about Milwaukie. People do care.

Councilor Stone asked, "The City Council is frequently called upon to decide contentious issues, what or how would you personally contribute to bridging the gap that occurs between community members and/or groups?"

Mr. Eisworth said the main thing was letting people be heard. If they had to speak their voice then we have to let them be heard. If we don't let them be heard and we tried to silence them or cut them off or limit them in any way there would be a lot of angry and frustrated people. Council might not agree but they have to listen. He would be open and honest in any decision that was made. Decisions should be transparent unless there is transparency all along the way somebody was going to say that they were not listened to or heard.

Councilor Loomis asked, "Define the two most critical issues facing the City and describe what you as a City Councilor can or will do solve them?"

Mr. Eisworth replied number one was to put Milwaukie in a good light. There was a stigma that Milwaukie suffers from and he was just talking to someone today that grew up in West Linn and they still hear from family members that live over there that speak negatively about Milwaukie. What can we do to show people all of the City attributes? People need to think of Milwaukie as a beautiful place. We needed to be honest with ourselves and look at things like the transit center and be forceful with TriMet and say that we needed lights here. The lack of lighting at the transit center is a threat to citizens and his family that lived and walked here every day. We needed to deal with those kinds of issues. Also, the shopping cart ordinance that has been passed, was up to City Council to make sure that was enforced, which cleaned up our streets.

Mayor Bernard called for a recess.

Appeal Briefing

Ms. Mangle gave a briefing on an appeal that has been filed with the public hearing on December 18. She was giving some background on the code section that applied and showed the chronology of the review process and explained the grounds for the appeal that the appellant had submitted to the City. She said it was a complicated case and wanted to let them hear about it early, and then she would come back on the December 18. She walked through Attachment 6. It involved a property at the corner of Main and Monroe Streets. Main Monroe

Partners, LLC was the applicant, and Mr. Parecki had been the primary representative. In April 26, 2007 when Mr. Parecki was developing the design for the project he had scheduled a pre-application conference with planning and engineering staff. He primarily he talked about land division. There were two buildings on the site, and he was interested in dividing the two. They explained the land division process and also the design review process, which applied to his project. Public area requirements would likely apply along with other requirements such as SDC's. It was a standard pre-application conference as they had with many potential applicants. Staff did make a point in that meeting of encouraging Mr. Parecki that the public area requirements would apply and to discuss and work that out early. He did not come back in until August 31 when he applied for the building permit. The building permit was for a substantial remodel of the building with interior and exterior changes and the exterior changes were subject to design review as mentioned. They spent the next few weeks reviewing plans for compliance with the City Downtown Design Guidelines, and the proposal passed. It planned to do a really nice job of improving the façade with brick veneer and restoring windows in a way that met the design guidelines. In the process of doing that design review they also reviewed the site and not just the building and found that the frontage of the building did not meet design standards. They also gathered information about the size of the building permit, which was approximately \$250,000 and the value of property. She brought Council's attention to public area requirements section 19.B.2. Once they realized that section did indeed apply they also realized that it would be a pretty hefty requirement for that project. She conferred with the City Attorney to see if he had any guidance on how staff needed to apply that part of the code. He said that it was printed in black and white and that it stated, "it shall comply with the public area requirements plan", but we needed to consider direct proportionality. It was the City's legal responsibility to make sure staff was only requiring actions of any developer that are in rough proportionality to their impacts related to that development. At that point she made a code interpretation because there was nothing about proportionality in the code, so staff drew upon other information which was done occasionally. To ensure improvements were proportional to the impacts she asked Mr. Weigel of the engineering staff to prepare a quantitative proportionality analysis. He looked at the changes in use, square footage, trip generation, and equated impact to linear footage. That was a standard type of analysis. It did show sufficient impacts from the project that the City could require the full improvements. She sent a letter to Mr. Parecki informing him of the public improvements and gave him the opportunity to provide his own proportionality analysis. Offering the applicant the opportunity to provide his own analysis of the impacts was not in the downtown portion of the code but was in other sections. Mr. Parecki requested a meeting. He then sent a letter agreeing to spend up to 10% of the building permit value on public improvements or \$25,000. We also needed to consider exactions proportional to impacts plus a nexus analysis that took into consideration the connection. So planning staff did a nexus analysis and they found there were a lot of benefits. The property would benefit from the type of improvements required such as trees, sidewalks, and lighting. On October 5, 2007 they sent a letter to Mr. Parecki that approved his design plans. Then they sent a second, separate letter that outlined the public improvements. There were three areas of the street frontage. There was the Main Street frontage, Monroe Street frontage, and the intersection. She referenced a table that showed what would be required with full compliance. Staff interpreted the code in two steps. First she considered rough proportionality, and the engineering analysis said due to the impacts they could require all those things. In the second code interpretation she made was that

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when the code said the development “shall comply with public area requirements” that didn’t mean that we should tear out everything and make it perfect. If there were a sidewalk even if it was not wide enough or did not match the scoring pattern exactly, then staff would not make anyone tear out that sidewalk unless it was really deficient. The focus would be on adding things that were missing. So using that logic, which would now be applied to all applicants, they were able to reduce the list of improvements, which were included in the October 5 letter to the applicant outlining all of the requirements for the project. Staff asked that Mr. Parecki send a letter that agreed to those improvements prior to releasing the building permit. The improvements would not be required to be completed prior to the certificate of occupancy and covered future tenants as well. Based on that letter, on October 8 Mr. Parecki submitted an appeal to the Planning Commission. The Planning Commission held the appeal hearing on November 13, and the applicant primarily complained that that staff did not do the proportionality analysis correctly. That would be what the Council hearing on the 18th would focus on, and more detail would be provided.

Mayor Bernard asked if the basis of the appeal could only address the proportionality analysis.

Ms. Mangle said first appeal was broad, and the Planning Commission voted 4:2 to deny the appeal. They had asked for clarification on the appeal that was filed on November 20 to City Council, and they clarified that it was about the proportionality analysis and how it was applied to the project. It stated the staff assessment was not properly done and was not constitutionally valid.

Councilor Barnes asked for a total cost estimate for the reduced list of improvements as well as background on Mr. Parecki’s previous project.


Ms. Mangle said a big issue at the Planning Commission hearing was the consistency with which that part of the code section had been applied in general. With his previous application he was not required to do these types of improvements. She believed it was because the McLoughlin Boulevard Enhancement project was under construction at about the same time and that project did end up replacing the sidewalks. They didn’t do any of the other pedestrian amenities and she was not sure what happened. With the Scott Street side on the north of the building there are no requirements for public area because the plan calls for that street to be closed. There were requirements he could have done, and she did not know much about that because she had not started working for the City of Milwaukie at that time. She said there were two times that they found that the code was not applied when it should have been, and those projects were Graham’s Bookstore, and the Archery store project. They were both in 2005 and were \$10,000 building permits that probably would have been required to do \$1,000 level of improvements.

Councilor Chaimov said he would to get guidance from counsel before meeting on December 18.

Mayor Bernard said to go through Mr. Swanson.

Councilor Stone said she also would like the cost of the full list of improvements in addition to the reduced list that Councilor Barnes request for comparison.

Mayor Bernard recessed the work session at 7:02 p.m.


 Pat DuVal, City Recorder

AGENDA
WORK SESSION
MILWAUKIE CITY COUNCIL

DECEMBER 4, 2007

MILWAUKIE CITY HALL

Second Floor Conference Room
10722 SE Main Street

A light dinner will be served.

WORK SESSION – 5:30 p.m.

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Wastewater Issues Update	Mike Kuenzi, WES Director
2.	6:00 p.m.	City Councilor Interviews <ul style="list-style-type: none">• Greg Chaimov• Brendan Eiswerth• Mary King• Larry Lancaster• Patty Wisner	
3.	7:00 p.m.	Recess work session and go into regular session	
4.		Reconvene work session upon adjournment of regular session	
5.		Update on Appeal of Planning Commission decision to deny AP-07-01	Katie Mangle
6.		Adjourn	

EXECUTIVE SESSION

Executive Session: The Milwaukie City Council may go into Executive Session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Director of Community Development and Public Works

From: Katie Mangle, Planning Director

Subject: Appeal of the Planning Director's Interpretation to Require Public Area Improvements Along the Frontage of 10883 SE Main Street

Date: November 21, 2007 for Council work session on December 4, 2007

Action Requested

None. This is a work session briefing to help staff and council prepare for a public hearing on December 18, 2007.

Background

On November 20, 2007, Mr. Ed Parecki of Main/Monroe Investors, LLC submitted an appeal of the Planning Commission's November 13 decision to deny the company's appeal of the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) section 19.312.5.2.b. An appeal of the Planning Commission's ruling is required to be heard by the City Council within 40 days of filing the appeal,¹ and is scheduled for December 18, 2007.

On the form submitted (see Attachment 1), the appellant asserts "the Planning Commission's decision violates the Fifth and Fourteenth Amendments to the United States Constitution because the City has failed to carry its burden to show rough proportionality to justify the City's demanded exaction of Public Area Requirements as required by the US Supreme Court's decision in *Dolan v. City of Tigard*." While this statement explains the grounds for the appeal, it only broadly explicates the reasoning for the appeal and does not specifically detail the issues or findings with which the

¹ MMC subsection 19.1002 and Section 19.1011.3.

appellant disagrees.² Staff has requested these details, and hopes they will be provided prior to December 4, 2007.

Background on the Main/Monroe Investors Project

On August 31, 2007, Main/Monroe Investors, LLC, submitted an application for building permits to renovate the State Bank Building located at 10883 SE Main Street, a 5,000 sq. ft. lot zoned Downtown Storefront (DS). Renovation of the two-story building includes interior and exterior improvements including installation of new brick plate veneer to the exterior of the building, addition of an elevator and egress, and construction of two new bathrooms on the second floor. Future tenant improvements would also contribute to the renovation of the building. While the DS zone allows a full range of retail, commercial, business, service, and retail uses, retail or restaurant uses are required on the ground floor, and office and residential uses are permitted on the upper floors.

The proposed renovation includes exterior alterations to the existing building, so the project was subject to Type I (staff-level) Design Review. On September 27, 2007 staff determined that the proposed renovation conformed to the code and relevant design guidelines, and sent an official letter to the applicant on October 5, 2007 confirming Design Review approval for the project.

Staff review of the building permit application also concluded the project was subject to MMC 19.312.5(B)(2), which states:

*“Any renovation, expansion, or alteration of an existing building that has a development permit value that exceeds fifty percent of the value of the land and existing improvements, as determined by the county assessor, **shall comply** with the public area requirements.”* (Bold added for emphasis)

Planning Director Interpretation

During the course of the review of the appellant’s building permit, the Planning Director made an interpretation to guide how the City should implement the words “shall comply” in MMC 19.312.5.B.2. The Director determined that in establishing what it means for a project to “comply,” the City would consider the following:

1. How public improvements relate to a project’s impacts when determining which improvements the project must construct to comply with the City’s Public Area Requirements. This is an interpretation because, though this follows the City’s approach to implementing MMC 19.1400 (public improvements outside of downtown), and follows the guidance provided to cities by the US Supreme Court

² MMC Section 19.1002 states that “an appeal of a Planning Commission decision shall specify in detail the issues or findings in contention.”

in *Dolan v. City of Tigard* for requiring public improvements, it is not spelled out in the text of MMC 19.312.

2. The existing elements in the public right-of-way portion of the site, allowing staff to **not** require reconstruction of those elements already installed, in good condition, and generally consistent with the planned streetscapes.

In making the determination to require public area requirements, the City Attorney, Public Works Director and the Planning Director took the position that the City must also consider proportionality of required improvements to the project’s impacts. City Staff performed a proportionality analysis and concluded that the proposed project will increase both pedestrian and vehicular trips, thereby necessitating the construction of public improvements. After considering the project’s impacts, the Director determined that some, but not all, of the improvements should be required of the project. The list of improvements required by the code and those required under the Planning Director’s interpretation are found in Attachment 3 of this memorandum.

As a condition of approval for the project’s building permit, the Director found that, prior to issuing the submitted building permit, the applicant and the City must agree upon a clearly defined list of required public improvements along the frontage of the project site.³ An additional condition of approval requires that the improvements be engineered and completed before the City will grant occupancy of the building.

On October 8, 2007, Mr. Ed Parecki of Main/Monroe Investors, LLC submitted an appeal of the Planning Director’s interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2).

Planning Commission’s Decision

On November 13, 2007, the Planning Commission held a public hearing and voted 4-2 to deny the appeal, finding that the Planning Director appropriately interpreted MMC 19.312.5.2.b to require public area improvements by considering both the project impacts and the existing condition of the property’s frontage located at 10883 SE Main Street. This was reviewed as consistent with the City’s adopted policy requiring that development contribute to improving the public realm of downtown Milwaukie.

City Council Appeal of a Planning Commission Decision

On November 20, 2007, the appellant filed an appeal of the Planning Commission’s decision. At the public hearing on December 18, 2007, City Council will consider whether the Planning Commission correctly found in support of the Director’s

³ Prior to issuing a building permit, a specified list of public improvements must be agreed upon by the City and appellant in order to establish full disclosure of all required improvements before future building tenants improve and occupy the building.

interpretation that the City must consider a project’s impacts when implementing code section 19.321 - Public Area Requirements, and whether staff appropriately considered proportionality in reviewing the project’s impacts and public area requirements.

The full Planning Commission packet is included in Attachment 2. Staff will help Council familiarize itself with the case at the work session on December 4, 2007.

Attachments

1. Appeal of Planning Commission Decision (November 20, 2007)
2. Planning Commission Packet (November 13, 2007)
3. List of Public Area Requirements



PLANNING DEPARTMENT
 6101 SE JOHNSON CREEK
 BLVD.
 MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
 FAX: (503) 774-8236

Application for Land Use Action

APPEAL of File Number: <u>AP-07-01</u>	<input type="checkbox"/> Admin. I <input checked="" type="checkbox"/> Minor QJ <input type="checkbox"/> Leg. <input type="checkbox"/> Admin. II <input type="checkbox"/> Major QJ
Type: <input type="checkbox"/> Appeal of Planning Director Decision <input checked="" type="checkbox"/> Appeal of Planning Commission Decision	

RESPONSIBLE PARTIES: (Please print or type)

APPLICANT(S): Main/Monroe Investors, LLC		Phone: 503-977-9988
Address:	7677 SW 87 th Avenue, Portland, OR	Zip: 97223
PROPERTY OWNER(S): Main/Monroe Investors, LLC		Phone: 503-977-9988
Address:	7677 SW 87 th Avenue, Portland, OR	Zip: 97223

SITE INFORMATION:

Address: 10883 SE Main Street	Map & Tax Lot(s): 11E35AA01400
Comprehensive Plan Designation: TC	Zoning: DS Size of property: 5000 SqFt

PROPOSAL (describe briefly):

See Attached

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: Historic Milwaukie LUC Chair: Dion Shepard Phone: 503-276-2902

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided with this application package is complete and accurate.

Submitted by: *[Signature]* Date: 11/20/07

THIS SECTION FOR OFFICE USE ONLY:

File #: <u>AP-07-01</u> Fee: \$ <u>505</u> Rcd. by: <i>[Signature]</i>	Date stamp:
Notes:	RECEIVED NOV 20 2007 CITY OF MILWAUKIE PLANNING DEPARTMENT

SEE NEXT PAGE FOR APPLICATION CHECKLIST

Attachment To
City of Milwaukie Application for Land Use Action
Appeal of File Number: AP-07-01
Appeal of Planning Commission Decision

Site Information:

10883 SE Main Street
Milwaukie, Oregon

Proposal:

This is an appeal of the Planning Commission decision in file AP-07-01 on the grounds that the decision violates the Fifth and Fourteenth Amendments to the United States Constitution because the City has failed to carry its burden to show rough proportionality to justify the City's demanded exaction of Public Area Requirements as required by the U.S. Supreme Court's decision in *Dolan v. City of Tigard*. The Planning Commission's decision violates Article I, Section 18 of the Oregon Constitution for the same reasons.



To: Planning Commission
Through: Katie Mangle, Planning Director *KM*
From: Robert Fraley, Associate Planner
Date: November 2, 2007 for November 13, 2007 Hearing
Subject: File: AP-07-01
 Applicant: Main/Monroe Investors, LLC
 Address: 10883 SE Main Street
 Legal Description: 11E35AA01400
 NDA: Historic Milwaukie

Action Requested

Deny the appellant's appeal of the Planning Director's Interpretation and adopt the recommended findings and conditions in support of denial. This action would support the Director's interpretation that the City must consider a project's impacts when implementing code section 19.321 - Public Area Requirements.

Background

On October 8, 2007, Mr. Ed Parecki of Main/Monroe Investors, LLC submitted an appeal of the Planning Director's interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2). The Director's interpretation of this code section resulted in a determination that the applicant's proposed project must comply with certain public area improvement requirements.

Downtown Public Area Improvement Requirements

In September of 2000, the Milwaukie City Council amended a number of sections of the Zoning Code, including the creation of a new section designed to implement the *Downtown and Riverfront Plan Public Area Requirements*, MMC 19.312 Downtown Zones. This section contains all zoning regulations related to Downtown development including design policies and the requirement that private property owners construct public right-of-way improvements when necessitated by the proposed development.

An integral purpose of the *Downtown and Riverfront Plan* and MMC Section 19.312.5 is to reinvigorate and strengthen Main Street's retail framework through the guidance of redevelopment of public spaces in the Downtown zones. To this end, the City's public area improvement requirement policy was established as a planning and economic development

mechanism, requiring that all development and redevelopment projects in downtown contribute public improvement amenities. The goal of these improvements is to build on the assets of the downtown and restore an environment in which people can shop, live, work, and socialize.

Project Description

On August 29, 2007, Main/Monroe Investors, LLC, submitted an application for building permits to renovate the State Bank Building located at 10883 SE Main Street. The subject property is a 5,000 sq. ft. lot zoned Downtown Storefront (DS) and located at the corner of SE Main and Monroe Streets. Renovation of the two-story building includes interior and exterior improvements. Future tenant improvements will also contribute to the renovation of the building. The DS zone allows a full range of retail, commercial, business, service, and retail uses. Retail or restaurant uses are required on the ground floor, and office and residential uses are permitted on the upper floors.

City Review of the Project

The applicant's project is subject to several minor permitting processes, all of which have been processed concurrently with the Building Permit review. The following chronology summarizes the review process to date; explanation of the review requirements follows below.

Date	Activity
April 26, 2007	Pre-application conference, at which staff and Mr. Parecki discuss his proposed project including dividing the land, Design Review requirements, and public area requirements, and other requirements such as System Development Charges.
August 29, 2007	Applicant applies for Building Permit.
September 8-17	Staff reviewed plans, and conducted design review of the project. Engineering, Planning, and Building staff contacted the applicant several times to request additional information, which the applicant provided. Staff determined that the project triggers full compliance with public area requirements, per 19.312.5.b.2. Planning Director consulted with City Attorney regarding consideration of impacts when determining required public improvements.
September 21, 2007	Engineering staff prepared Quantitative Proportionality Analysis
September 27, 2007	Planning Director sent a letter informing the applicant of the public improvements, requesting that he provide a proportionality analysis to determine which elements of the improvements are appropriate for this project.
October 1, 2007	Meeting between Mr. Parecki, Ms. Mangle, and Mr. Fraley.
October 1, 2007	The applicant sent a letter, which stated he would agree to spend up to 10% of the building permit value on public improvements.
October 2, 2007	Planning staff prepared Qualitative "Nexus" Analysis

October 5, 2007	Design Review Approval Letter sent
October 5, 2007	Planning Director sent a letter to the applicant outlining required public improvements.
October 8, 2007	Appeal application submitted.

The proposed renovation includes exterior alterations to the existing building, so the project was subject to Type I Design Review as set forth by MMC 19.312.7, the *Milwaukie Downtown Design Guidelines*, and *Downtown and Riverfront Plan*. On September 27, 2007 staff determined that the proposed renovation conformed to the code and relevant design guidelines, and sent an official letter to the applicant on October 5, 2007 confirming Design Review approval for the project (see Attachment 4).

Staff review of the building permit application concluded the project was subject to MMC 19.312.5(B)(2), which states:

"Any renovation, expansion, or alteration of an existing building that has a development permit value that exceeds fifty percent of the value of the land and existing improvements, as determined by the county assessor, shall comply with the public area requirements."

MMC 19.312.5(B)(2) also stipulates that the City's Building Official shall determine development permit value.¹

In making the determination to require public area requirements, the City Attorney and the Planning Director took the position that the City must also consider proportionality of required improvements to the project's impacts. City Staff performed a proportionality analysis (discussed below) and concluded that the proposed project will increase both pedestrian and vehicular trips, thereby necessitating the construction of public improvements. In a letter from the Planning Director to the appellant dated September 27, 2007 (see Attachment 2), the Planning Director requested that the appellant provide an assessment of the potential impacts the project would have on the public infrastructure, based on his estimate of potential future uses of the completed building. The appellant did not provide an analysis; therefore the City relied on its own findings.

As a condition of approval for the project's building permit, the Director found that, prior to issuing the submitted building permit, the applicant and the City agree upon a clearly defined list of required public improvements along the frontage of the project site. An additional condition of approval requires that the improvements be engineered and completed before the City will grant occupancy of the building. After considering the project's impacts, the Director determined that some, but not all, of the improvements should be required of the project. The list of Improvements required by the City may be found in Attachment 5 and on page 7 of this report.

¹ The City's Building Official determined the development permit value for the project to be \$225,000. According to Clackamas County Assessor, the 2006 assessed land value of the site is \$74,448 and the 2006 assessed real market value of existing improvements is \$278,320 (totaling \$352,768). Since the development permit value is approximately 64% of the value of the land and existing improvements, the project is therefore subject to public area improvement requirements set forth in the *Downtown and Riverfront Plan*.

Director's Interpretation of 19.312.5.B.2

In summary, during the course of the review of the applicant's building permit, the Planning Director made an interpretation to guide how the City should implement the words "shall comply" in MMC 19.312.5.B.2. The Director determined that in establishing what it means for a project to "comply," the City would consider the following:

1. How public improvements relate to a project's impacts when determining which improvements the project must construct to comply with the City's Public Area Requirements. This is an interpretation because, though this follows the City's approach to implementing MMC 19.1400 (public improvements outside of downtown), and follows current case law for requiring public improvements, it is not spelled out in the text of MMC 19.312.
2. The existing elements in the public right-of-way portion of the site, and *not* require reconstruction of those elements already installed, in good condition, and generally consistent with the planned streetscapes.

Key Issues for the Appeal of a Director's Interpretation

The key issues for consideration are:

1. Why was the planning director's interpretation needed?
2. Is the interpretation correct?

Analysis of Key Issues

The appellant has challenged the Planning Director's interpretation related to the application of public area improvement requirements.

Key Issue #1 – Why was the Planning Director's interpretation needed?

As provided under MMC 19.1001.4, the purpose of the Planning Director's interpretation is "to resolve unclear or ambiguous terms, phrases, and provisions within Title 19 - Zoning Ordinance." In relation to this particular case, the City Attorney has advised that MMC 19.312.5, as written, risks requiring improvements of a development that are disproportionate to the project's impacts. Because of this risk, the Planning Director initiated an interpretation of MMC 19.312.5 to better explain the rationale used in applying this section, and to define procedures for implementing this section of the code as it relates to Minor-Exterior Alterations in the downtown zones.

Following an Impacts Analysis that showed the project would increase the use and impacts on public infrastructure, staff found that some, but not all, of the public area improvements were warranted. The text of the code, however, does not provide guidance regarding which improvements should be constructed. What does it mean for a project to "comply" if it is required to construct something less than the full range of improvements illustrated on page 62 of the Public Area Requirements?

An interpretation was necessary to define what it means for the subject project to "comply" with the public area requirements. To do this, the Director relied upon the adopted *Downtown and Riverfront Plan Public Area Requirements*, which allows for some discretion in determining a

development's public area improvement requirements.² The Plan anticipates the need for discretion in cases when it is feasible for improvements to be made incrementally, such as when curb lines must be relocated or sidewalks widened.

Key Issue #2 – Is the Planning Director's interpretation correct?

The purpose for the City's downtown public area requirement policy is to provide continuous standards for improvements to be made to the public right-of-way at the time of development or redevelopment of private parcels. Public area requirements typically include sidewalk, curb, and lighting improvements, as well as provision of street trees and landscaping, street furniture, and bicycle parking.

MMC 19.312.5 does not place a monetary limit upon developer contributions to public area improvements when development or redevelopment value exceeds fifty percent of the land value and existing improvements. Therefore, the code language implies that in such cases, a developer is responsible for *all* public area improvement requirements shown in the *Milwaukee Downtown and Riverfront Plan Public Area Requirements*. Understanding that on one hand the cost of public area improvements could be considered in comparison to the cost of the project, and on the other hand a reasonable relationship must be established between the required improvements and the impact of the development, the issues that emerge are 1) whether the required improvements can be justified through their ability to mitigate the impacts of the proposed development, and 2) what improvements are necessary to fulfill the intent of the *Downtown Plan*. In answering these questions, Staff invoked a methodology that quantitatively and qualitatively responds to the public area improvement requirements. Staff believes that the list of improvements on page 7 both mitigate the impacts of the proposed development, and further the City's goals to revitalize downtown Milwaukee.

Proportionality Analysis

In *Dolan v. City of Tigard*, the Supreme Court found that a local government must apply a "rough proportionality" test to establish a link between the need for an exaction (the improvements) and the impacts generated by a proposed development. *Dolan* also held that "no precise mathematical calculation" is required to meet the rough proportionality standard.

In keeping with the Court's findings, Staff first evaluated the quantitative relationship between the impacts of the proposed development and the need for the improvements (see Attachment 7).³ Engineering Staff calculated the number of weekday vehicle trips generated by the proposed development.⁴ Staff found that based on the square footage and use (general office) of the existing building, it could generate approximately 109 weekday trips. The analysis then turned to the potential uses that may occupy the renovated building and used "Specialty Retail Center" and "General Office Building" to calculate the proposed trip generation.⁵ The proposed

² "...more incremental, property-by-property improvements may be possible. However, in many instances, curb lines will need to be relocated and sidewalks widths may be widened, thereby precluding incremental change. In these cases, changes by individual property owners must meet as many of the requirements prescribed herein as determined by the city Public Works Director and Planning Director." *City of Milwaukee Public Area Requirements*, p.4.

³ This quantitative analysis follows an accepted methodology for determining whether the amount of an exaction is proportional to the impacts created by a development, based on *McClure v. City of Springfield*.

⁴ Trip Generation calculated from ITE Trip Generation Manual – 7th Edition.

⁵ The Downtown Storefront zone requires retail uses on the ground floor of buildings fronting on Main Street, and permits office and residential uses on upper floors.

total trip generation calculated based on these uses equaled 277 weekday vehicular trips, yielding a net weekday vehicular trip generation increase of 168 trips.

To determine how the increased number of auto trips relates to the size of the site's frontage, staff calculated the required improvement for the existing use by dividing the property frontage (155 feet in length) by existing trip generation (108.84 weekday trips), which resulted in 1.42 lineal feet per trip. Staff used the same analysis to determine the required improvement length given the proposed use of the renovated building. Because the proposed development will generate approximately 167.81 additional trips as established above, Staff multiplied the calculated linear feet of improvements required per trip (1.42 lineal feet/trip) by the increase in trips generated by the proposed development (168). This calculation resulted in 238.29 lineal feet of improvements. Based on this analysis, the 155 lineal feet of property frontage is comparably less than the 238 feet of required improvements. Therefore, using this method of calculation, staff concluded that the City could require the applicant to construct improvements along the full frontage of the project site.

However, staff also prepared a qualitative analysis that considered all of the elements within the public area requirements separately (rather than lumping them all together in an "all or nothing" package). This analysis better illustrates the relationship (nexus) between the impacts generated by the development and required public improvements needed to mitigate for these impacts (see Attachment 8). The analysis focuses on all public area improvements required along the frontages of the property on Main and Monroe Streets, as well as intersection improvements called for in the *Milwaukie Downtown and Riverfront Plan Public Area Requirements*. Linked to this analysis are individual public (indirect) and private (direct) benefits the property owner and tenants receive from each improvement. Many of the public improvements focus on needed safety upgrades of the public realm due to additional vehicular and pedestrian trip generation (e.g., bollards, intersection bulbout with pedestrian warning pads, improved lighting, bike parking) but others focus on landscaping improvements and aesthetic enhancement of public areas.

The City's proportionality analysis concluded that the project will result in increased auto and pedestrian trips and therefore additional use of public systems. The Design Review findings concluded that the existing project site does not meet current City standards. Therefore, the proposed project must comply with public area improvements that the City has planned along the subject property's frontage.

Required Improvements

On October 5, 2007, the Planning Director informed the applicant of which public area elements would be required for the project to comply. The Director provided the following list, which includes streetscape elements that anticipate increased use of downtown streets and sidewalks, takes into consideration existing improvements along the property frontage of the site, and excludes a few items that the City is able to provide within existing means. The Director also clarified that the public improvements could be constructed by **either the developer or future tenants**, or some combination of the two, but must be completed prior to building occupancy.

Improvements Required of Owner/ Tenants Prior to Occupancy	
Main Street Frontage	<ul style="list-style-type: none"> • 1 street tree (red maple) • 1 twin ornamental street light • 1 bench and/or trashcan
Monroe Street Frontage	<ul style="list-style-type: none"> • 2 street trees (chanticleer pear or honey locust) • 1 single ornamental street light • 1 bench and/or trashcan
Intersection	<ul style="list-style-type: none"> • 1 Sidewalk extension at the intersection of Main and Monroe. The sidewalk extension should be designed with 15-ft radius and to transition SE Monroe Street from two lanes to three lanes). • Landscaping (low maintenance, providing color and interest). May include 2-3 flowering ornamental trees. • Irrigation for landscaping • 4 Bollards • 2 pedestrian warning pads

The above list of required improvements does not include streetscape elements that already exist, are in general compliance with the *Downtown Riverfront Plan*, and are in reasonable condition. These elements include the sidewalks, curb, and gutter (except in the area of the sidewalk extension); the fountain, the existing tree on Main Street, and the utility lines. Additionally, the list does not include items the City is able to provide, which includes bike parking, tree grates, and the City medallion.

Transportation System Development Charge (SDC) credits will be considered should the applicant wish to reduce the amount of improvements required of the project.

Conclusions

Pursuant to MMC 19.312.5, in view of the fact that the appellant's permit value (\$225,000) is greater than 50 percent of the assessed real market value of the property and existing improvements (most recently assessed at \$353,000 in 2006), it is clear that section 19.312.5 - Public Area Requirements applies to the project. Future tenant improvement permits will ultimately increase the total permit value of the project.

The Planning Director acknowledged that the City should not implement MMC 19.312.5 only as written, without consideration of the project's impacts. The Director therefore initiated an interpretation of the code to ensure that the City considers the impacts posed by the project and arrive at a set of required improvements that appropriately mitigate for the expected increased use of the public infrastructure. In this situation, the Director's interpretation benefited the applicant by concluding that much less than the full range of improvements are required.

Staff prepared an impacts analysis that demonstrates the project will result in an increase in trips, and further refined this analysis by identifying those elements that would mitigate for the impacts of the project.

Staff recommends that the Planning Commission deny the appeal and adopt the findings as outlined in Attachment 1. The City Attorney, Community Development and Public Works Director, and Engineering Director concur with this recommendation.

Code Authority and Decision Making Process

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

Milwaukie Zoning Ordinance Sections:

1. 19.312.5 – Public Area Requirements
2. 19.1001.4 – *Planning Director's Interpretations*
3. 19.1011.3 – *Minor Quasi-Judicial Review*

Appeal of the Planning Director's interpretation is subject to minor quasi-judicial review pursuant to MMC19.1001.4(G) and (H) and 19.1011.3. The decision has been appealed to the Planning Commission, which renders the final decision unless it is appealed to City Council. In quasi-judicial reviews the Council assesses the application against relevant approval criteria and evaluates testimony and evidence received at the public hearing. The Planning Commission has the following decision-making options:

1. Deny the appeal, thereby upholding the Planning Director's interpretation of the code and requiring that the applicant construct public area requirements listed on page 7 of this report.
2. Deny the appeal, thereby upholding the Planning Director's interpretation of the code but modifying the list of required public area requirements.
3. Approve the appeal, thereby reversing or modifying the Planning Director's interpretation of the code.
4. Continue the hearing to allow for more discussion.

Comments

The following is a summary of the comments received by the City. See the corresponding attachments for further details.

- Letter from the appellant's representatives, received November 2, 2007 (Attachment 10).
- Email correspondence from Mr. Doug Naef received November 3, 2007, questioning the wisdom of the public improvements policy (Attachment 12).

Attachments

1. Recommended Findings in Support of Denial
2. Letter from Planning Director containing potential list of required improvements (September 27, 2007)
3. Letter from appellant (received October 1, 2007)
4. Design Review Approval Letter (October 5, 2007)
5. Letter from Planning Director containing final list of required improvements (October 5, 2007)

6. Appeal application (dated October 8, 2007)
7. Quantitative Proportionality Analysis (September 21, 2007)
8. Qualitative Nexus Analysis (October 2, 2007)
9. Pre-application Notes (April 26, 2007)
10. Letter from the appellant's representatives (received November 2, 2007)
11. Email to Ed Parecki (sent October 10, 2007)
12. Email correspondence from Mr. Doug Naef (received November 3, 2007)
13. Implementation of Downtown Public Area Requirements, 2000-2007

ATTACHMENT 1
Recommended Findings in Support of Denial

1. On August 29, 2007, the appellant submitted a building permit application to the City of Milwaukie that, due to its location in the Downtown Storefront zone, is subject to the Public Area Requirements outlined in Milwaukie Municipal Code (MMC) 19.312.5.2.b.
2. On October 5, 2007, a Director's interpretation was made in accordance with MMC Section 1001.4. During the course of the review of the applicant's building permit, the Planning Director made an interpretation to guide how the City should implement the words "shall comply" in MMC 19.312.5.B.2. The Director determined that in establishing what it means for a project to "comply," the City would consider the following:
 - A. How public improvements relate to a project's impacts when determining which improvements the project must construct to comply with the City's Public Area Requirements. This is an interpretation because, though this approach follows the City's approach to implementing MMC 19.1400 (public improvements outside of downtown), and follows current case law for requiring public improvements, it is not spelled out in the text of MMC 19.312.
 - B. The existing elements in the public right-of-way portion of the site, and not require reconstruction of those elements already installed, in good condition, and generally consistent with the planned streetscapes.
3. On October 8, 2007, an appeal was received for Planning Commission consideration, as provided for in MMC 19.1001.4.H. The appeal application states "Renovation of exterior of building. Permit being withheld pending agreement to public area requirements." Staff assumed that the appeal was of the Planning Director's interpretation of the code and subsequent determination of public area requirements.
4. MMC 19.1001.4.H requires that the Planning Commission hold a public hearing within 40 days from when the appeal was filed. This requirement has been met.
5. Public notice was provided in accordance with the Milwaukie Municipal Code (MMC) Subsection 19.1011.3 – Minor-Quasi Judicial Review.
6. The Planning Commission finds that the Planning Director appropriately interpreted MMC 19.312.5.2.b to include consideration of the project's impacts, based on advice from the City Attorney that this was in keeping with applicable case law.
7. The Planning Commission finds that Staff sufficiently considered the impacts of the applicant's project by using both quantitative and qualitative analyses to first establish that because the project would increase the number of pedestrian and vehicular trips to the site, the City could require the applicant to construct improvements along the full frontage of the project site, and then establishing the nexus between the project's impacts and specific public improvements.
8. The Planning Commission finds that the list of required improvements is both proportional to the impacts of the project and also in keeping with the requirements of the Milwaukie Municipal Code and Downtown Public Area Requirements.

9. The Planning Commission denies the appeal upon finding that the Planning Director reasonably interpreted MMC section 19.312.5.2.b by considering not only the written policy but also the City's responsibility to consider the impacts of the project, the needs of the site and the adopted policy of the City to require that development contribute to improving the public realm of downtown Milwaukie.

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September 27, 2007

Main/Monroe Investors, LLC
c/o Edward Parecki
7677 SW 87th Avenue
Portland, OR 97223

RE: 10883 SE Main Street

Dear Mr. Parecki:

Though Bob Fraley, our Associate Planner, will continue to manage the Planning approval of your application, I have decided to write you directly regarding the status of your renovation project at 10883 SE Main Street in downtown Milwaukie. Not only because I value your project as a step forward in the renewal of downtown, but because it triggers one section of the Milwaukie Municipal Code for the first time. Therefore, I am writing to explain the status of your project and outline the information we need to approve your application.

During your April 26, 2007 pre-application conference, and in pre-application notes we sent to you, Planning staff advised that your proposed renovation project would likely be subject to Design Review and would certainly be subject to the Public Area Requirements. Upon review of your building permit submittal, staff has concluded that the proposed alterations to the property are subject to Type I Design Review - Minor Exterior Alteration,¹ which requires staff to review the project for compliance with the Downtown Design Guidelines and Standards. Staff has determined that the proposed renovation conforms to the relevant sections of the Milwaukie Municipal Code (MMC) and Design Guidelines.

Pursuant to the requirements of MMC Section 19.312.5(B)(2), the proposed project is also subject to public area improvement requirements. Section 19.312.5(B)(2) states:

Any renovation, expansion, or alteration of an existing building that has a development permit value that exceeds fifty percent of the value of the land and existing improvements, as determined by the county assessor, shall comply with the public area requirements. The building official shall determine development permit value.

The City's building official has determined the development permit value for the project to be \$225,000. According to Clackamas County assessment and tax information, the assessed land value of the site is \$74,448 and the value of existing improvements is \$278,320 (totaling

¹ As set forth by Section 19.312.7 of the Milwaukie Municipal Code, Milwaukie Downtown Design Guidelines, and Downtown Riverfront Plan.

\$352,768). The development permit value is approximately 64% of the value of the land and existing improvements. Further, staff has concluded that the proposed project will increase both pedestrian and vehicular trips, thereby necessitating the construction of public improvements. The proposed renovation is therefore subject to public area requirements.

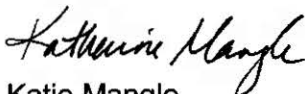
Public area improvement requirements include sidewalk improvements, street trees, street lighting, street furniture, and bicycle parking as illustrated in Attachment A. The City's *Downtown and Riverfront Plan* includes all standards and requirements for public area redevelopment in downtown and can be found on the City's website² and is available in our office. Attachment B itemizes the set of improvements described by the *Downtown and Riverfront Plan* for the subject property (Northwest corner of Main and Monroe streets).

The City recognizes that development exactions must be roughly proportional to the impacts that result from the proposed project. If you do not plan to construct the full set of improvements outlined in Attachment B, please provide me with a "proportionality analysis" that describes the pedestrian and auto trips your project will generate and the improvements you believe are related to that increased demand.

Prior to approving your building permit, Main/Monroe Investors, LLC and the City of Milwaukie must agree upon a clearly defined list of required public improvements, which must be engineered and completed before the City will grant occupancy of the building.

Again, I'd like to reiterate my support for your project. The proposal is to be commended for meeting the City's Downtown Design Guidelines and for bringing greatly needed reinvestment to Main Street. I look forward to working with Main/Monroe Investors, LLC on this exciting proposal.

Sincerely,



Katie Mangle
Planning Director

Copy: Kenny Asher, Community Development and Public Works Director
Tom Larsen, Building Official
Robert Fraley, Associate Planner
Zach Weigel, Civil Engineer
File # DR-07-01

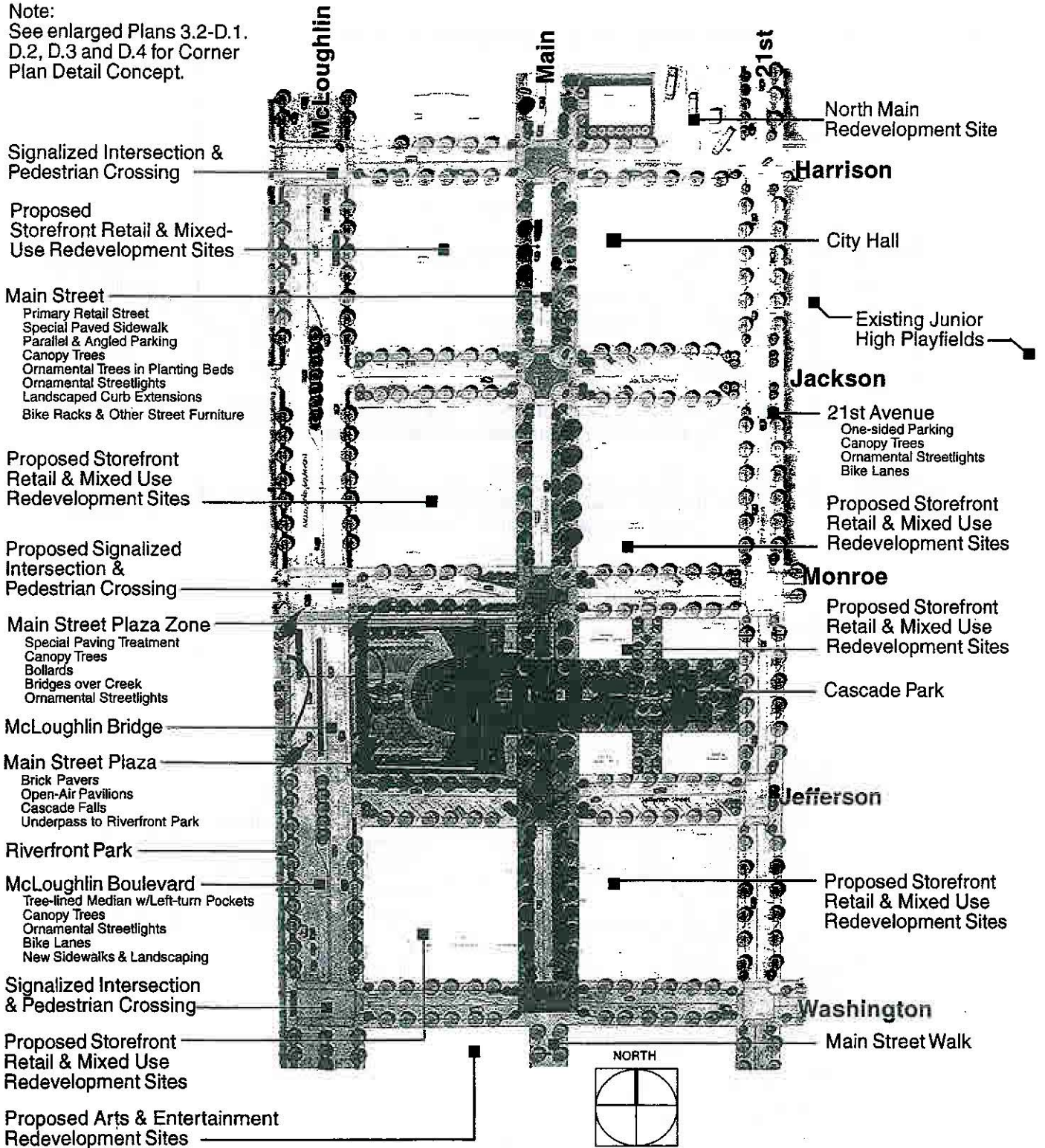
Attachments: Attachment A – Streetscape Illustrative Plan
Street Sections – Section A & J
Design Details – Sidewalks
Attachment B – Public Area Improvement List

² <http://www.ci.milwaukie.or.us/departments/planning/PAR/PARcovertoc.pdf>

General Circulation Requirements

1.3 Streetscape Illustrative Plan

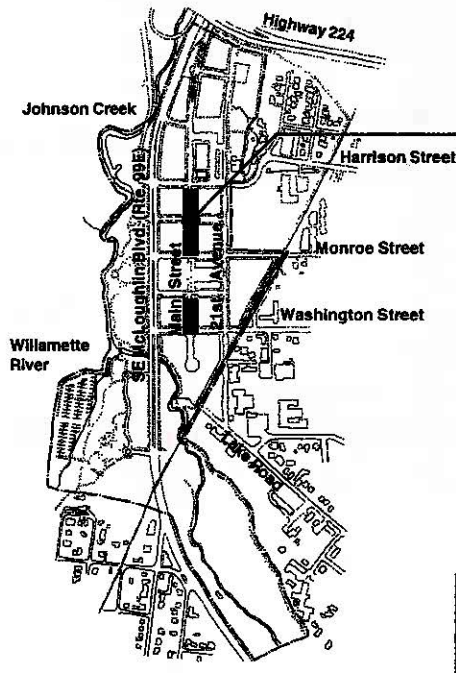
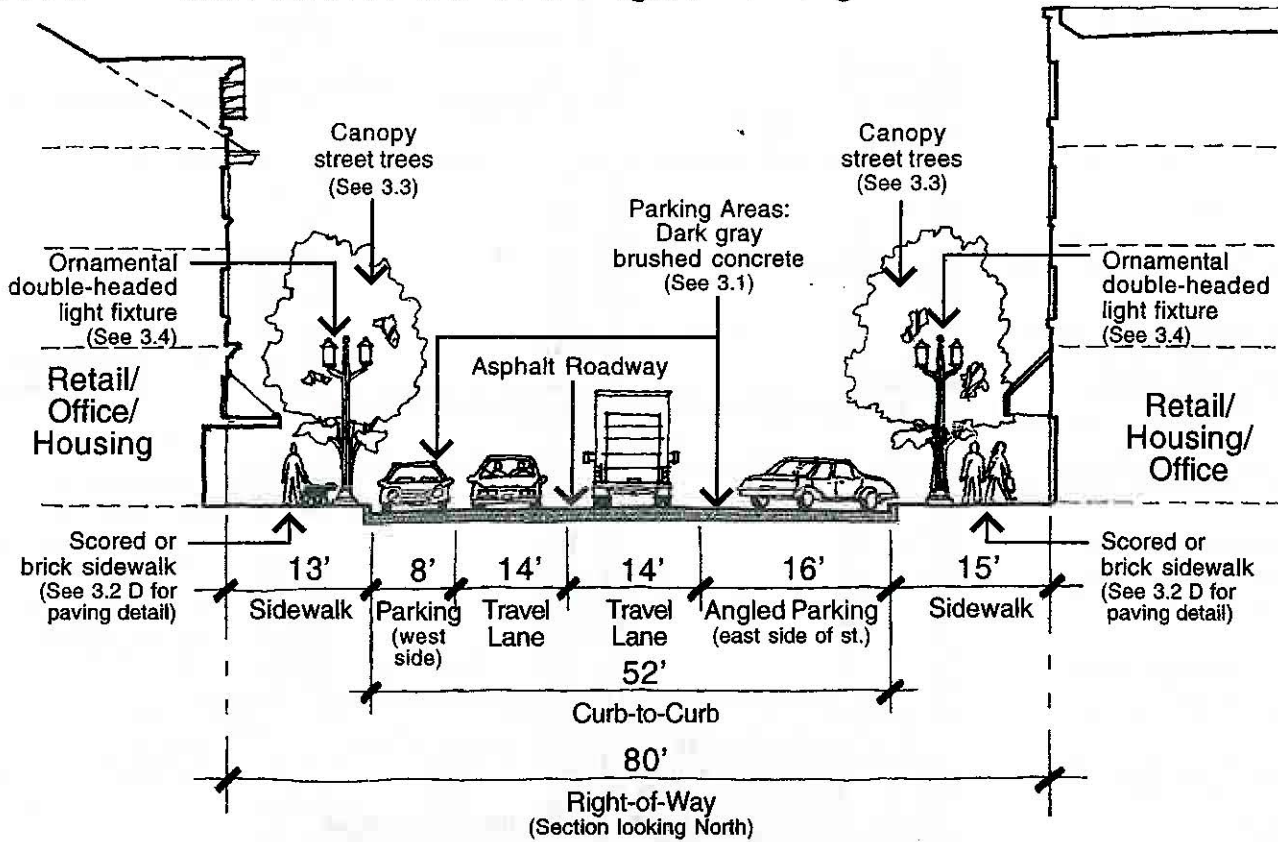
Note:
See enlarged Plans 3.2-D.1, D.2, D.3 and D.4 for Corner Plan Detail Concept.



Street Standards

2.5 Street Sections*

Section A: Main Street Parallel & Angled Parking



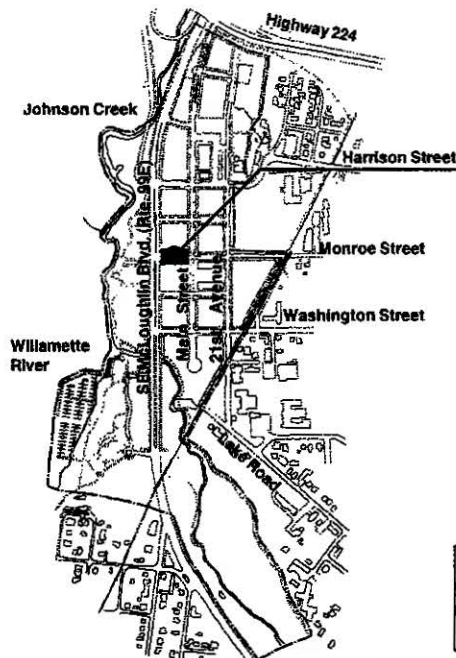
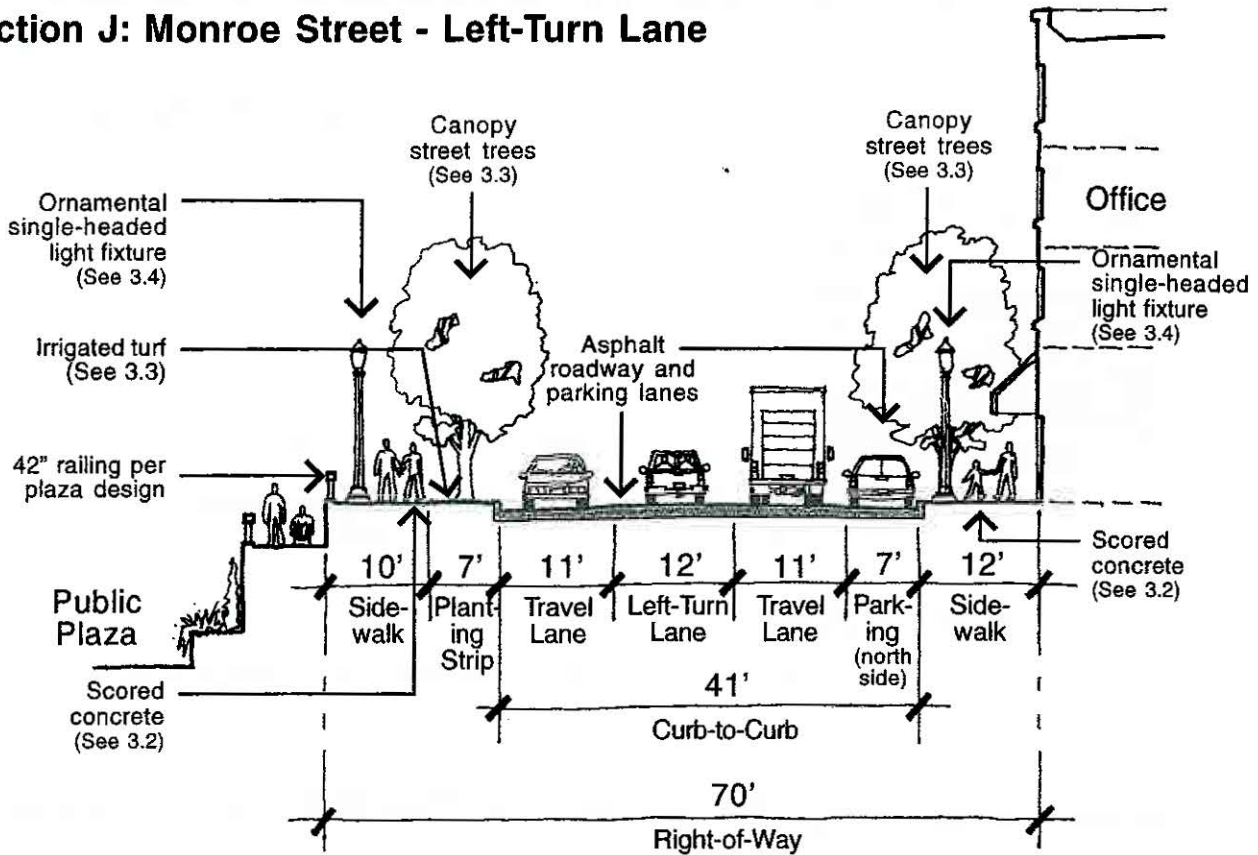
Type A - Main Street

- Washington to Harrison Street (Excluding block with Type D)
- Underground all utilities.
- For Street Furniture, see Section 3.5.
- For Bicycle Facilities, see Section 3.6.

Street Standards

2.5 Street Sections*

Section J: Monroe Street - Left-Turn Lane



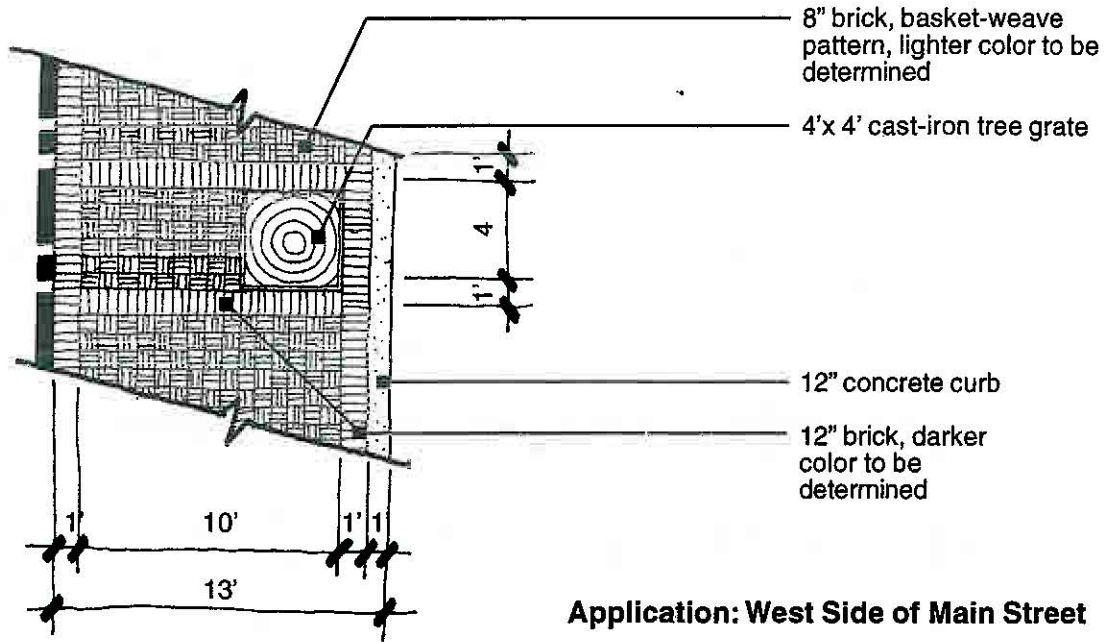
Type J - Monroe Street

- McLoughlin Blvd. to Main Street
- Underground all utilities.
- For Street Furniture, see Section 3.5.
- For Bicycle Facilities, see Section 3.6.

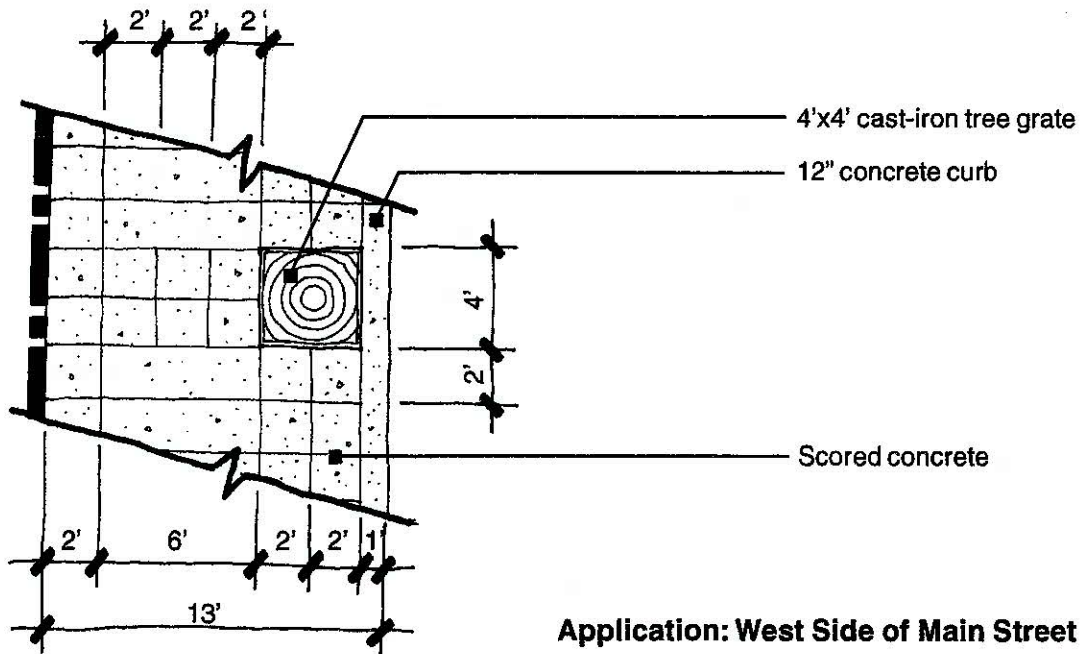
Design Details

3.2 Sidewalks*

D.6 Paving: Main Street - Brick Option Plan Detail @ 13' Sidewalk



D.7 Paving: Main Street - Concrete Option Plan Detail @ 13' Sidewalk



Attachment B**10883 SE Main - Public Area Improvements****Itemized list of Public Area Improvements shown in the Downtown Riverfront Plan**Main Street Frontage

8 ft. parking strip (dark grey brushed concrete)
 New curb and gutter per detail 3.1C (offset curb 1-foot from existing curb line)
 13 ft sidewalk
 Street trees with grates (red maple)
 Street lighting (twin ornamental)
 Underground all overhead utilities along frontage (limited to service lines on Main St)
 Street furniture
 Bike parking
 City of Milwaukie medallion

Monroe Street Frontage

7 ft parking strip (asphalt)
 New curb and gutter
 12 ft sidewalk (per detail 3.2 D.17)
 Street trees with grates (chanticléer pear or honey locust)
 Street lighting (single ornamental lamp)
 Underground all overhead utilities along frontage (some main line poles on frontage)
 Street furniture
 Bike parking

Intersection

Bulb out (design to transition SE Monroe Street from two lanes to three lanes)
 15-ft corner radius
 Flowering ornamental trees (Kwanzan Cherry or Frans Fontaine Hornbeam)
 Landscaping (low maintenance, providing color and interest)
 Irrigation for landscaping
 Bollards
 Pedestrian warning pads

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Main Monroe Investors, LLC

7677 SW 87th Avenue ∞ Portland, OR 97223 ∞ (503) 977-9988

City of Milwaukie
c/o Katie Mangle
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

RECEIVED

OCT 01 2007

CITY OF MILWAUKIE
PLANNING DEPARTMENT

RE: 10883 SE Main Street

Dear Ms. Mangle

This is in response to your letter dated September 27, 2007 and our meeting on October 1, 2007. Please find the attached appraisal of the State Bank Building dated June 26, 2007. The "as is" value of the subject property as of June '07 was \$735,000. As I stated at our meeting, I believe that using the assessor's value (which could be out of date by more than 6 years) is unrealistic. Using a more accurate value, the development value would be approximately 31% of the value of the land and existing improvements.

I also believe that the City is misinterpreting the spirit of the law. The law states that a "takings" can take place when the development causes **harm (as opposed to impact)**. I believe that my project is making a positive impact to the downtown zone and furthers the goals of the Downtown Plan. Even though I disagree with the code as it is written I am willing to provide some public area improvements in order to acquire the required permits and proceed with the beautification of the downtown core.

I do not plan to construct the full set of improvements outlined in Attachment B of the aforementioned letter. It is impossible to predict pedestrian or auto trips generated prior to knowing the final tenant. Even though, the impacts of any additional trips generated are positive in nature and will not create any harm to the downtown zone.

In reference to your attachment B, I will agree to install street trees where appropriate and underground all overhead utilities along the frontage of Monroe Street. Should the 10% rule be applied to this project I agree to spend up to the 10% of permit value as imposed by the building official. Please let me know as soon as possible if this is agreeable.

Sincerely,



Ed Parecki
Managing Partner, Main Monroe Investors, LLC

Cc: Jeffrey Bennett, Esq.
Robert Fraley
Zach Weigel
Kenny Asher

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October 5, 2007

Main/Monroe Investors, LLC
c/o Edward Parecki
7677 SW 87th Avenue
Portland, OR 97223

Subject: 10883 SE Main Street – Design Review (DR-07-01)

Dear Mr. Parecki:

This letter is in response to your building permit submittal for the proposed renovation of the State Bank Building located at 10883 SE Main Street, Tax Lot 11E35AA01400. After reviewing your building plans, I determined that the proposed improvements constitute a Minor Exterior Alteration to the building as defined under MMC Section 19.312.6(B)(2) and requires Type I Design Review approval prior to issuance of a building permit:

Based on the plans submitted, Staff has found that the proposed building improvements meet the Design Review standards set forth in Section 19.312.7 of the Milwaukie Municipal Code, by substantially conforming to Milwaukie's Downtown Design Guidelines, and Downtown Riverfront Plan. Staff also reviewed the project site to determine if the existing site conditions comply with the Design Guidelines. Staff concluded from this review that improvements to the public realm are required for the project to fully comply with city standards and guidelines.

As noted in my September 27, 2007 correspondence and discussed during our October 1, 2007 meeting, your project is subject to public area improvement requirements (MMC Section 19.312.5(B)(2)). Main/Monroe Investors, LLC and the City of Milwaukie must therefore agree upon a defined list of required public area improvements prior to the City issuing your building permit. Prior to final building inspection and building occupancy approval, all improvements must be engineered and completed to City of Milwaukie standards. Under separate cover, staff will send you a list of required public area requirements for your consideration.

Main-Monroe Decision ltr_100507.doc

Parecki
10/05/07
2

Sincerely,


Katie Mangle
Planning Director

Cc List:

Planning Commission
City Council
Robert Fraley, Associate Planner
Zach Weigel, Civil Engineer

Mike Swanson, City Manager
Kenny Asher, Community Development and Public Works Director
File # DR-07-01

Attachment 5



October 5, 2007

Main/Monroe Investors, LLC
 c/o Edward Parecki
 7677 SW 87th Avenue
 Portland, OR 97223

Subject: 10883 SE Main Street Public Area Improvements

Dear Mr. Parecki:

As we have discussed, your project is subject to public area improvement requirements as described in Milwaukie Municipal Code Section 19.312.5(B)(2). This letter is in response to your requests that the City 1) reconsider how public area requirements are triggered, 2) provide a list of the improvements the City will require of your project, and 3) offer assistance in completing some of the requirements.

Because your permit value (\$225,000) is greater than 50 percent of the assessed real market value of the property and existing improvements (most recently assessed at \$353,000 in 2006), public area requirements apply to your project. Future tenant improvement permits will increase the total permit value of the project. In accordance with Section 19.312.5(B)(2), staff's proportionality analysis, which finds that the project will result in increased auto and pedestrian trips and therefore additional use of public systems, and Design Review findings that indicate the existing project site does not meet current city standards and guidelines, your building renovation must comply with public improvements that the City has planned along your project frontage.

In determining which improvements to require, I have taken the position that those elements *that already exist and are generally consistent with the streetscapes as planned will not be required*. I have also looked for elements that the City could contribute within current available means. I have made this determination in recognition of the many Downtown Plan goals that this project will achieve, and in acknowledgement of the City's support for your project.

You requested that we consider the "as is" value of the property as appraised on June 26, 2007, instead of the assessed real market value of the land and improvements.

Main-Monroe Proposed PAR Itr_100507.doc

Parecki
10/05/07
2

However, this asks that we depart from the specific methodology described in the Milwaukie Municipal Code section 19.312.5.B.2. The City Attorney has advised me that staff cannot depart from such clear code requirements.

In response to your second request, staff has prepared the following list of public improvements that must be completed by you or your tenants prior to occupancy. The following list includes streetscape elements that anticipate increased use of downtown streets and sidewalks, and takes into consideration existing improvements along your property frontage, and excludes a few items that the City is willing to provide at no cost to you.

Improvements Required of Owner/ Tenants Prior to Occupancy	
<u>Main Street Frontage</u>	<ul style="list-style-type: none"> • 1 street tree (red maple) • 1 twin ornamental street light • 1 bench and/or trashcan
<u>Monroe Street Frontage</u>	<ul style="list-style-type: none"> • 2 street trees (chanticleer pear or honey locust) • 1 single ornamental street light • 1 bench and/or trashcan
<u>Intersection</u>	<ul style="list-style-type: none"> • 1 Sidewalk extension at the intersection of Main and Monroe. The sidewalk extension should be designed with 15-ft radius and to transition SE Monroe Street from two lanes to three lanes). • Landscaping (low maintenance, providing color and interest). May include 2-3 flowering ornamental trees. • Irrigation for landscaping • 4 Bollards • 2 pedestrian warning pads

Again, the above list of required improvements does not include streetscape elements that already exist and are in general compliance with the *Downtown Riverfront Plan* and are in reasonable condition. These elements include the sidewalks, curb, and gutter (except in the area of the sidewalk extension); the fountain, the existing tree on Main Street, and the utility lines. Additionally, the list does not include items the City is able to provide for you, which includes bike parking, tree grates, and the City medallion.

The intent of the *Downtown Plan* public area requirements is to create a pedestrian-oriented environment with a consistent pattern of amenities and aesthetic detail. These improvements will benefit the public, your tenants, and your investment in the property, and the City would certainly welcome a discussion about your providing additional improvements beyond those that have been required. I would remind you that contribution toward these improvements is expected from both you as the developer and the businesses that will tenant the building. It is our experience that the value of tenant improvements in this type of building is significant (estimated at \$100,000 - \$200,000).

The City will issue your building permit the same day we receive a letter from Main/Monroe Investors, LLC confirming that it agrees to construct the required

Parecki
10/05/07
3

improvements listed above. The following conditions will be placed on the building permit:

1. Prior to building inspection and building occupancy, all agreed upon improvements between Main/Monroe Investors, LLC and the City of Milwaukie must be engineered and completed to City standards.
2. Prior to beginning construction of the improvements in the right of way, the following items will need to be submitted:
 - Engineered drawings of the sidewalk extension based on the City's design specifications.
 - Performance bond for 120% of the cost of the improvements in the right of way. This is required of any party doing construction in the public right of way as security for the city to ensure that improvements are completed.
 - Scaled site plan showing all proposed improvements.
 - Right-of-way permit (and applicable permit fees) and Traffic Control Plan. An erosion control permit is required if more than 500 square feet of area is disturbed.

I look forward to working with Main/Monroe Investors, LLC on this project and to receiving your letter of acceptance of these conditions. If you have any questions or concerns, please do not hesitate to contact me at (503) 786-7652.

Sincerely,



Katie Mangle
Planning Director

Cc List:

Planning Commission
City Council
Robert Fraley, Associate Planner
Zach Weigel, Civil Engineer

Mike Swanson, City Manager
Bill Monahan, City Attorney
Kenny Asher, Community Development and Public Works Director
Gary Parkin, Engineering Director
File # DR-07-01

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PLANNING DEPARTMENT
6101 SE JOHNSON CREEK
BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
FAX: (503) 774-8236

Application for Land Use Action

APPEAL of File Number: **DR-07-01**

Type: Appeal of Planning Director Decision
 Appeal of Planning Commission Decision

Admin. I Minor QJ Leg.
 Admin. II Major QJ

OCT 08 2007

RESPONSIBLE PARTIES:

CITY OF MILWAUKIE PLANNING DEPARTMENT (Please print or type)

APPLICANT(S): MAIN/MONROE INVESTORS, LLC Phone: 503 977-9988
Address: 7677 SW 87th AVENUE, PORTLAND Zip: 97223

PROPERTY OWNER(S): - SAME - Phone:
Address: Zip:

SITE INFORMATION:

Address: 10883 SE MAIN STREET Map & Tax Lot(s): 11E35AA01400 1808200

Comprehensive Plan Designation: Zoning: DS Size of property: 50x100

PROPOSAL (describe briefly):

RENOVATION OF EXTERIOR OF BUILDING. PERMIT BEING WITHHELD
PENDING AGREEMENT TO PUBLIC AREA REQUIREMENTS.

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: HISTORIC MILWAUKIE LUC Chair: Phone:

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: *[Signature]* Date: 10/8/07

THIS SECTION FOR OFFICE USE ONLY:

File #: AP 07-01 Fee: \$ 505 Rcd. by: RF	Date stamp:
Notes: Appeal of file DR-07-01 - Public Area requirements tied to approval.	RECEIVED OCT 08 2007 CITY OF MILWAUKIE PLANNING DEPARTMENT

SEE NEXT PAGE FOR APPLICATION CHECKLIST

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PROPORTIONALITY ANALYSIS

Attachment 7

• TRIP GENERATION CALCULATED FROM ITE TRIP GENERATION MANUAL - 7TH EDITION

EXISTING USE : GENERAL OFFICE BUILDING

USE TRIPS : 11.01 TRIPS VS. 1000 S.F. OF GROSS FLOOR AREA ON A WEEKDAY

EXISTING FLOOR AREA : BASEMENT = 2500 S.F.

1ST FLOOR = 4886 S.F.

2ND FLOOR = 2500 S.F.

TOTAL = 9886 S.F.

EXISTING TRIP GENERATION : 9886 S.F. ($\frac{11.01 \text{ TRIPS}}{1000 \text{ S.F.}}$) = 108.84 TRIPS ON A WEEKDAY

PROPOSED USE : SPECIALTY RETAIL CENTER

USE TRIPS : 44.32 TRIPS VS. 1000 S.F. OF GROSS

FLOOR AREA ON A WEEKDAY

PROPOSED FLOOR AREA : BASEMENT = 2500 S.F.

1ST FLOOR = 2500 S.F.

TOTAL = 5000 S.F.

PROPOSED TRIP GENERATION : 5000 S.F. ($\frac{44.32 \text{ TRIPS}}{1000 \text{ S.F.}}$) = 221.60 TRIPS

GENERAL OFFICE BUILDING

11.01 TRIPS VS. 1000 S.F. OF GROSS

FLOOR AREA ON A WEEKDAY

1ST FLOOR = 2500 S.F.

2ND FLOOR = 2500 S.F.

TOTAL = 5000 S.F.

5000 S.F. ($\frac{11.01 \text{ TRIPS}}{1000 \text{ S.F.}}$) = 55.05 TRIPS

PROPOSED TOTAL TRIP GENERATION = 276.65 ON A WEEKDAY

EXISTING STREET FRONTAGE = 155 LINEAL FEET

REQUIRED IMPROVEMENT UNDER EXISTING USE = $\frac{155 \text{ LF}}{108.84 \text{ TRIPS}}$

= 1.42 L.F. OF IMPROVEMENT / TRIP

PROPOSED STREET FRONTAGE = 155 LINEAL FEET

INCREASE IN TRIPS = 276.65 TRIPS - 108.84 TRIPS = 167.81 TRIPS

REQUIRED IMPROVEMENT LENGTH UNDER PROPOSED USE = 1.42 L.F. OF IMPROVEMENT / TRIPS

= 1.42 L.F. OF IMPROVEMENT / TRIP (167.81 TRIPS) = 238.29 L.F. OF IMPROVEMENT

APPLICANT RESPONSIBLE FOR 238.29 L.F. OF IMPROVEMENT

238.29 L.F. OF IMPROVEMENT > PROPOSED FRONTAGE 155 L.F.

∴ FULL STREET IMPROVEMENT IS PROPORTIONAL TO DEVELOPMENT IMPACT

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Attachment 8

10883 Main Street Public Area Improvements Rational Nexus Analysis				
Main Street	Required Public Area Improvement	Development Impact	Public Benefit	Private Benefit
	8 ft. parking strip (dark grey brushed concrete)	Vehicular trip generation increase	Convenient public parking for downtown businesses	Provision of direct vehicular access to property; convenient parking for business patrons
	New curb and gutter per detail 3.1C (offset curb 1-foot from existing curb line)	Vehicular trip generation increase	Stormwater runoff control onto property	Stormwater runoff control onto property
	13 ft sidewalk	Pedestrian trip increase	Reduction in pedestrian congestion	Direct patron access to development site
	Street trees with grates (red maple)	Vehicular trip generation increase/Pedestrian trip increase	Improved pedestrian environment; Grates provide tree well protection; buffers pedestrians from vehicular traffic.	Improved pedestrian environment; attracts patrons to downtown businesses
	Street lighting (twin ornamental)	Vehicular trip generation increase/Pedestrian trip increase	Increased vehicular/pedestrian safety	Improved pedestrian environment; attracts patrons to downtown businesses; increased patron safety.
	Underground all overhead utilities along frontage (limited to service lines on Main St)	Increased intensity of building use	Efficient utility maintenance location; development potential maximization	Maximizes development potential of the property
	Street furniture	Pedestrian trip increase	Improved pedestrian environment	Improved pedestrian and patron environment at building frontage; attracts patrons to downtown businesses
	Bike parking	Pedestrian and bicycle trip increase	Bicycle parking for business patrons; encourages multi-modal attraction to downtown businesses	Bicycle parking for business patrons
	City of Milwaukee medallion	Vehicular trip generation increase/Pedestrian trip increase; Increased intensity of building use	Creates sense of place downtown	Creates sense of place downtown; attracts patrons to downtown businesses
Monroe Street	Public Area Improvement	Development Impact	Public Benefit	Private Benefit
	7 ft parking strip (asphalt)	Vehicular trip generation increase	Convenient public parking for downtown businesses	Provision of direct vehicular access to property; convenient parking for business patrons
	New curb and gutter	Vehicular trip generation increase	Stormwater runoff control onto property	Stormwater runoff control onto property
	12 ft sidewalk (per detail 3.2 D.17)	Pedestrian trip increase	Reduction in pedestrian congestion	Direct patron access to development site
	Street trees with grates (chanticleer pear or honey locust)	Vehicular trip generation increase/Pedestrian trip increase	Improved pedestrian environment; Grates provide tree well protection; buffers pedestrians from vehicular traffic.	Improved pedestrian environment; attracts patrons to downtown businesses
	Street lighting (single ornamental lamp)	Vehicular trip generation increase/Pedestrian trip increase	Increased vehicular/pedestrian safety	Improved pedestrian environment; attracts patrons to downtown businesses; increased patron safety.
	Underground all overhead utilities along frontage (some main line poles on frontage)	Increased intensity of building use	Efficient utility maintenance location; development potential maximization	Maximizes development potential of the property
	Street furniture	Pedestrian trip increase	Improved pedestrian environment	Improved pedestrian and patron environment at building frontage; attracts patrons to downtown businesses
	Bike parking	Pedestrian and bicycle trip increase	Bicycle parking for business patrons; encourages multi-modal attraction to downtown businesses	Bicycle parking for business patrons
Marquette Intersection	Public Area Improvement	Development Impact	Public Benefit	Private Benefit
	Bulb out (design to transition SE Monroe Street from two lanes to three lanes)	Vehicular trip generation increase/Pedestrian trip increase	Increased pedestrian safety	Improved patron safety at intersection
	15-ft corner radius	Vehicular trip generation increase/Pedestrian trip increase	Provides safe turning radius for vehicles	Improved patron safety at intersection
	Flowering ornamental trees (Kwanzan Cherry or Frans Fontaine Hornbeam)	Vehicular trip generation increase/Pedestrian trip increase	Improved pedestrian environment	Improved pedestrian environment; attracts patrons to downtown businesses
	Landscaping (low maintenance, providing color and interest)	Pedestrian trip increase	Improved pedestrian environment	Improved pedestrian environment; attracts patrons to downtown businesses
	Irrigation for landscaping	Pedestrian trip increase; stormwater runoff	Stormwater runoff control onto property	Stormwater runoff control onto property
	Bollards	Pedestrian trip increase	Increased pedestrian safety	Improved patron safety at intersection
	Pedestrian warning pads	Pedestrian trip increase	Increased pedestrian safety	Improved patron safety at intersection

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Attachment 9

CITY OF MILWAUKIE

PreApp Project ID #: 07-010PA

PRE-APPLICATION CONFERENCE REPORT

This report is provided as a follow-up to a meeting that was held on 4/26/2007 at 10:00 am

Applicant Name: ED PARECKI
Company: Main/Monroe Investors, LLC
Applicant 'Role':
Address Line 1: 7677 SW 87TH AVE
Address Line 2:
City, State Zip: PORTLAND OR 97223
Project Name:
Description: Lot partition.
ProjectAddress: 10883 SE Main Street
Zone: Downtown Storefront (DS) zone. See Section 19.312 of the Zoning Code.
Occupancy Group:
ConstructionType:
Use: Downtown commercial.
Occupant Load:
AppsPresent: Ed Parecki
Staff Attendance: Zach Weigel, Tom Larsen, Katie Mangle, Susan Shanks

BUILDING ISSUES

ADA: Does not apply to the MLP. Future Tenant Improvements must include a plan for the elimination of architectural barriers (up to 25% of the project budget).
Structural:
Mechanical:
Plumbing:
Plumb Site Utilities: Each lot must have its own water, sewer and storm connection.
Electrical: Contact Clackamas County
Notes: Applicant must demonstrate that the two buildings are structurally independent. Each "new" building must have a 2-hour wall at the property line separating them. A parapet must be

constructed at each wall at the new property line or demonstrate that the buildings meet one of the exceptions to Section 704.11 of the Oregon Structural Specialty Code.

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

FIRE MARSHAL ISSUES

Fire Sprinklers:

Fire Alarms:

Fire Hydrants:

Turn Arouds:

Addressing:

Fire Protection:

Fire Access:

Hazardous Mat.:

Fire Marshal Notes: The fire department has no comments on this partition other than the proposed restaurant will have to meet current building and fire codes.

PUBLIC WORKS ISSUES

Water: The partition of the existing property requires that each new parcel be provided with separate water service. The City of Milwaukie Operations Department will install a water service to the property line for the new lot. The cost is currently \$208.00 for a ¾-inch water meter and \$2,547.00 for installation of a 1-inch water service line. The cost to install the water service line includes the meter setter and meter box. Water service for each individual parcel must be provided prior to recording of the final plat.

The water System Development Charge (SDC) is based on size of water meter serving the property. The corresponding water SDC will be assessed with installation of a water meter. Currently, the water SDC for a 5/8-inch x 3/4-inch water meter is \$970.00 per meter. The water SDC will be assessed and collected at the time of water service connection application.

Sewer: The partition of the existing property requires that each new parcel be provided with separate wastewater service. Wastewater service for each individual parcel must be provided prior to recording of the final plat.

Currently, the wastewater System Development Charge (SDC) is \$893.00 per connection unit. The wastewater SDC is assessed using a plumbing fixture count from Table 7-3 of the Uniform Plumbing Code. The wastewater SDC connection units are calculated by dividing the plumbing fixture count by sixteen. Wastewater SDC connection units will be credited for any demolished fixtures. The wastewater SDC will be assessed and collected at the time the of wastewater service connection application.

Storm: The partition of the existing property requires that each new parcel be provided with separate storm

systems. Storm service for each individual parcel must be provided prior to recording of the final plat.

The storm SDC is based on the amount of impervious surface at the site. One storm SDC unit is the equivalent of 2,706 square feet of impervious surface. Storm SDC unit credit will be given for demolished impervious area from the proposed development. The storm SDC is currently \$1105.00 per unit. The storm SDC will be assessed and collected at the time the building permits are issued.

Street: The proposed development fronts the north side of SE Monroe and the west side of SE Main Street, both collector roads.

Frontage: Chapter 19.1400 of the Milwaukie Municipal Code, herein referred to as the Code, includes standards for transportation planning and design. Code Section 19.1403.1(C) states that development in downtown zones are subject to the following provisions of Code Chapter 19.1400.

1. Section 19.1405.4 – Notice of Coordinated Review

Land use applications shall be referred by the City of Milwaukie to the Oregon Department of Transportation, Metro, Clackamas County, and Tri-Met for comment.

2. Section 19.1408 – Transportation Impact Analysis

Code Section 19.1408.2(B) states that the City will determine whether a transportation impact analysis is required under the threshold scoring method described in the Transportation Design Manual. The proposed minor land partition does not score over the required 100 points under the threshold scoring method necessary to require a transportation impact analysis. As a result, a transportation impact analysis is not required as part of the proposed minor land partition.

3. Section 19.1413 – Access Management

The existing property does not have driveway access to the public right-of-way. As discussed in the pre-application conference, the applicant is not proposing driveway access to the property at this time. In the event driveway access is proposed in the future, the applicant is subject to all the requirements of Code Section 19.1413.

Right of Way: Not Applicable.

Driveways: See the Frontage portion of this report.

Erosion Control: Not Applicable.

Traffic Impact Study: See the Frontage portion of this report.

PW Notes: OTHER SYSTEM DEVELOPMENT CHARGES

The Transportation SDC will be based on the increase in trips generated by the development per the Trip Generation Handbook from the Institute of Transportation Engineers. Trip generation can increase based on addition of floor area or change in use category of the Trip Generation Handbook. The SDC for transportation is \$1511.50 per trip generated. Credits will be given for any demolished structures, which shall be based upon the existing use of the structures. The transportation SDC will be assessed and collected at the time the building permits for tenant improvement are issued.

PLANNING ISSUES

Setbacks: The property located at 10883 SE Main Street is zoned Downtown Storefront (DS). The setbacks for this zone are as follows: front and street side yard setbacks shall be a minimum of 0' and a maximum of 10'. There are no required rear or side yard building setbacks. Encroachments into the right-of-way are regulated by the Building Code not the Zoning Code (e.g. façade treatments and awnings), with one exception. Signs on awnings or signs that otherwise project from the building into the right-of-way are also subject to Sign Code regulations. A sign permit would be needed and a building permit may be needed for these types of signs.

Landscape: There are no landscaping requirements in the DS zone.

Parking: There are no off-street parking requirements in the DS zone.

Transportation Review: Transportation Plan Review (TPR) is required for all land division proposals. A TPR application must be submitted along with your Boundary Change application for concurrent review. Engineering will provide more detailed information on any required street dedications, improvements, and driveway approach requirements in their comments.

Application Procedures: A land division that results in three or fewer lots is a minor land partition (MLP). An MLP application is a Type II Administrative Review, which is a Planning Department staff decision. If a member of the public, the Planning Director, or the applicant requests a public hearing, the level of review is elevated to the minor quasi-judicial level and the Planning Commission reviews and issues the decision. If no public hearing is requested and no appeal is filed, the Type II review process takes approximately 45 to 60 days from the time that the application is deemed complete.

Land use application submission materials are listed below for your convenience. Please refer to the handouts distributed in the meeting for more detailed information.

1. All applicable land use applications with signatures of property owners.
2. All applicable land use application fees.
3. Completed and signed "Submission Requirements Checklist" and "Preliminary Plat Checklist and Procedures" forms.
4. 12 copies of an existing & proposed conditions site plan and a preliminary plat (showing new proposed lot lines, easements, etc.), both to scale. Please refer to Chapter 17.20 Preliminary Plat and the "Preliminary Plat Checklist and Procedures" form given to you at the meeting for more detailed information on what to include on the preliminary plat. For initial completeness review, please submit only 5 copies. More copies will be requested once the application has been deemed complete.
5. 12 copies of a detailed narrative describing compliance with all applicable code sections and design standards, which in this case include the following: Section 19.312.4.B.1 (Downtown Zone Minimum Lot Size Standards); Section 19.312.4.B.2 (Downtown Zone Floor Area Ratio Standards); Section 19.1403.1.C (Downtown Zone Transportation Standards), Section 17.12.040 (Approval Criteria for Preliminary Plat); Section 17.16.060 (Application Requirements for Preliminary Plat); and Chapter 17.28 (Design Standards). For initial completeness review, please submit only 5 copies. More copies will be requested once the application has been deemed complete.

The Milwaukie Municipal Code is available online at <http://www.qcode.us/codes/milwaukie/>.

The land division process is a two-step process. The first step, as described above, is a limited land use decision involving review of the preliminary plat. Once the preliminary plat is approved, you need to submit and obtain approval for the final plat from the City and Clackamas County, after which you must

record the final plat with Clackamas County. Final plat approval criteria and submission requirements can be found in Section 17.12.050, Section 17.16.070, and Chapter 17.24 of Title 17 of the Milwaukie Municipal Code.

Natural Resource Review: The site is not within a natural resource area.

Lot Geography: No unusual lot geometry issues exist.

Planning Notes: BUILDING PERMITS:

Proposed uses will be reviewed at the time of tenant improvement building permit submittal to confirm that they conform to Downtown Storefront (DS) zone allowed uses. Retail uses and eating/drinking establishments are required on the ground floor of the building's Main Street frontage per Section 19.312.4.B.7

With regard to the remaining DS development standards in Section 19.312.4.B, the first two (minimum lot size and floor area ratio) are to be addressed through the land division process. Of the remaining 10 development standards, only two may be applicable to your proposal. If you were to alter any ground floor windows or doors and/or install second floor balconies, then Sections 19.312.4.B.8 and 19.312.4.B.12 would apply and would possibly trigger design review. (See below for more details on design review.) Moreover, there are certain operational provisions in the ground floor window and door standards that are ongoing and that apply to the building's Main Street frontage. Also, if the building's ground floor windows and doors do not currently conform to the development standards in Section 19.312.4.B.8 and if you were to alter the ground floor windows or doors in such a way (made smaller, for example) that made them go further out of conformance, a Nonconforming Structure application would be required.

DESIGN REVIEW:

All new construction and changes to buildings and/or properties in the downtown zones involving exterior maintenance and repair, minor exterior alterations, and major exterior alterations are subject to design review, with one exception. Exterior maintenance and repair that does not require a building permit is exempt from design review.

There are three levels of design review: Type I review, Type II review, and Minor Quasi-Judicial review. The level of review depends upon the nature of the project. Projects triggering Type I design review would be reviewed at the time of building permit submittal. Projects triggering Type II and Minor Quasi-Judicial design review would require submittal and approval of a Design Review land use application before proceeding to the building permit submittal stage. Projects requiring Minor Quasi-Judicial review are first reviewed by the Design and Landmarks Committee and then forwarded to the Planning Commission for a final decision.

In those instances when design review is required, staff will review the land use or building permit application to ensure that the proposed improvements are consistent with the City's adopted design guidelines. The City's design guidelines are available online at:

<http://www.ci.milwaukie.or.us/departments/planning/forms/DowntownDesignGuidelines.pdf>

While these design guidelines apply to all projects subject to design review, the City's design standards, which are located in Section 19.312.6 of the Zoning Code, apply only to major and minor exterior alterations.

Please see the attached table for a summary of the different types of projects that trigger design review, the different levels of review, and the different design criteria that apply. Minor exterior alterations are normally a Type I level of review. However, they may be elevated to a Type II level of review by the Planning Director if the proposal is inconsistent with the City's design guidelines or if the proposal involves a significant change to the architectural character of the building.

At this early stage in your project's development, it is unclear which levels of design review, if any, will be triggered by your project. Please familiarize yourself with Section 19.312.6.B of the Zoning Code (as it defines the different types of exterior work that would trigger design review), and review the information provided below. Please also consult with the Planning Department if you have any questions about what type of work constitutes a major alteration, a minor alteration, or exterior maintenance.

1. Major exterior alterations are defined as including some, but not all, of the following: Demolition or replacement of more than twenty-five percent of the surface area of any exterior wall or roof and floor area additions that exceed two hundred fifty square feet. Staff has discussed your proposal to remove the existing facade to expose the original facade or to re-face the building's facade with a different material. We have concluded that this type of work does not constitute replacement or demolition and is, therefore, not a major exterior alteration. Re-facing the building or removing the existing facade to expose the original facade constitutes the application or installation of exterior sheathing or wall materials, which staff would review and process as a minor exterior alteration.

2. Minor exterior alterations are defined as including some, but not all, of the following: the application or installation of finish building treatments (including windows and other glazing), doors, lintels, copings, vertical and horizontal projections (including awnings), exterior sheathing, and wall materials. Minor exterior alterations do not include the placement of signs. The only design standards that apply to minor exterior alterations pertain to prohibited exterior building materials in Section 19.312.6.C. As we discussed at the meeting, window replacement would be considered a minor exterior alteration as long as the size of the window opening remains the same. Window replacement would be subject to the City's design guidelines and only those design standards that pertain to prohibited window materials in Section 19.312.6.C.3.c.

3. Exterior maintenance and repair includes refurbishing, painting, and weatherproofing of deteriorated materials, and in-kind restoration or replacement of damaged materials. Exterior maintenance and repair does not include replacement of materials due to obsolescence or when associated with minor or major exterior alterations. Exterior maintenance and repair does not include the placement of signs.

PUBLIC AREA REQUIREMENTS:

The amount of public area requirements that you would be required to build and/or install as part of this project is dependant upon development permit value. If the development permit value is less than 50% of the value of the land and existing improvements, as determined by the county assessor, then an amount equal to at least ten percent of the development permit value shall be required to meet the public area requirements. If the development permit value is more than 50% of the value of the land and existing improvements, as determined by the county assessor, then the City would require the project to construct all public area improvements, as identified in the Milwaukie Downtown and Riverfront Plan.

(Relevant pages from the Milwaukie Downtown Riverfront Plan are attached and the entire document can be found here: <http://www.ci.milwaukie.or.us/departments/planning/PAR/PARcovertoc.pdf>.)

The building official will determine development permit value, but it is your responsibility to provide the City with the current assessed value of the land and existing improvements.

Since you told staff that you would most likely develop the project in phases, staff will review each development permit as it is submitted and assess the required public area improvements one permit at a time. We recognize, however, that incremental improvements may not be the most effective way to implement public area requirements and are open to discussing other approaches to evaluating and

implementing these requirements. If you would like to discuss other approaches to meeting the public area requirements, please contact the City in advance of, or at the time of, your first building permit submittal.

If no such agreement is made in advance, the City will assess the required public area improvements one permit at a time, and it will also track the project's cumulative permit value. If the cumulative permit value eventually exceeds more than 50% of the value of the land and existing improvements, then all public area improvements will be required.

In general, please keep the Planning Department informed of your plans, as you know more about how you will phase the work on this building,

ADDITIONAL NOTES AND ISSUES

County Health Notes:

Other Notes:

This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.

Sincerely,

City of Milwaukie Development Review Team

BUILDING DEPARTMENT

Tom Larsen - Building Official - 503-786-7611

Bonnie Lanz - Permit Specialist - 503-786-7613

ENGINEERING DEPARTMENT

Gary Parkin - Engineering Director - 503-786-7601

George MacGregor - Civil Engineer - 503-786-7609

Zach Weigel - Civil Engineer - 503-786-7610

Jason Rice - Associate Engineer - 503-786-7605

Brenda Schleining - Associate Engineer - 503-786-7602

COMMUNITY DEVELOPMENT DEPARTMENT

Jeanne Garst - Office Supervisor - 503-786-7655

Patricia Armstrong - Admin Specialist - 503-786-7600

Michelle Rodriguez - Admin Specialist - 503-786-766

PLANNING DEPARTMENT

Katie Mangle - Planning Director - 503-786-7652

Susan P. Shanks - Associate Planner - 503-786-7653

Brett Kelter - Assistant Planner - 503-786-7657

Ryan Marquardt - Assistant Planner - 503-786-765

CLACKAMAS FIRE DISTRICT

Mace Childs - Deputy Fire Marshal - 503-742-2662

RECEIVED



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

NOV 05 2007

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Vancouvercenter, 700 Washington Street, Suite 701, Vancouver, WA 98660 | Phone 360.694.7551 | Fax 360.693.5574 | www.schwabe.com

STEVE C. MORASCH
Admitted in Oregon and Washington
Direct Line: 360-905-1433
E-Mail: smorasch@schwabe.com

November 2, 2007

VIA FACSIMILE (503) 774 8236 AND FIRST CLASS MAIL

Planning Commission
c/o Katie Mangle, Planning Director
City of Milwaukie
6101 SE Johnson Creek Road
Milwaukie, OR97206

Re: Main/Monroe Investors, LLC Appeal - 10883 SE Main Street

Dear Planning Commission:

We represent Main/Monroe Investors, LLC in its appeal of the Planning Director's interpretation of the Public Area Requirements section of the City's code. For the reasons discussed below, we submit that the application of the City's Public Area Requirements to this application would violate the "rough proportionality" test announced by the US Supreme Court in *Dolan v. City of Tigard*, 512 US 374 (1994) because the proposed renovation of 10883 SE Main Street would not add any new trips.

In a letter dated September 27, 2007, City staff recognizes that development exactions such as the City's requested Public Area Requirements must be roughly proportional to the impacts that result from the proposed project. This is a correct statement of the law. In *Clark v. City of Albany*, 137 Or App 293, 904 P2d 185 (1995), *rev denied* 322 Or 644 (1996), the court held that exactions such as right-of-way improvements were subject to the *Dolan* analysis even if the exaction did not require a dedication of real property. The court explained:

"For purposes of takings analysis, we see little difference between a requirement that a developer convey title to the part of the property that is to serve a public purpose, and a requirement that the developer himself make improvements on the affected and nearby property and make it available for the same purpose. The fact that the developer retains title in, or never acquires title to, the property that he is required to improve and make available to the public, does not make the requirement any the less a burden on his

Planning Commission
November 2, 2007
Page 2

use and interest than corresponding requirements that happen also to impale memorialization in the deed records.” *Id.* at 300.

The court reached a similar conclusion in *J. C. Reeves Corp. v. Clackamas County*, 131 Or App 615, 623-24, 887 P2d 360 (1994). *Cf. Rogers Machinery v. Washington County*, 181 Or App 369, 393-400, 45 P3d 966, *rev denied*, 334 Or 492 (2002), *cert denied*, 538 US 906 (2003) (where the court distinguished *ad hoc* determinations requiring the construction of public improvements from legislatively and uniformly imposed impact fees).

The City staff has requested that Main/Monroe Investors, LLC provide the City with a “proportionality analysis of the impacts associated” with the proposed development. The proposed development is a redevelopment of an existing structure. According to the building permit application form, the existing building area is 7,500 square feet, and the new building area after the redevelopment will remain 7,500 square feet. In addition, the general uses for the building will not change as a result of the renovation.

Although a renovated building may attract a higher quality of tenant, there is no evidence to suggest that a renovated building of the same size and same basic uses will generate any more trips than an un-renovated building. There are many types of tenants who would prefer the lower lease rates associated with an un-renovated building but who would generate as many or more trips than the higher quality types of tenants who would be willing to pay higher lease rates for a renovated building. Therefore, since the renovation does not add any existing building area or change the uses from the historical uses of the building, there will be no increase in the number of trips resulting from the proposed renovation. Since the proposed renovation will not generate any new trips, it will not create an impact on the City’s infrastructure. Therefore, the City may not constitutionally mandate any Public Area Requirements as a condition of this renovation.

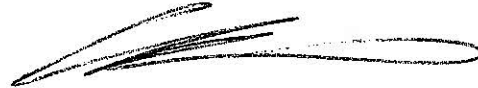
In order for an exaction to be proportional to the impacts of a proposed development, that development must in fact generate at least some impacts. Since this proposed development is merely a renovation of an existing building and does not generate any impacts to the City’s infrastructure, the City may not require any exactions as a condition of approval of this renovation.

If the City desires to construct the Public Area Requirements in the vicinity of the 10883 SE Main Street renovation project, the City should seek a special public works loan, as the City did for the North Main Village project pursuant to Resolution No. 35-2005 adopted by the City Council on June 21, 2005. Since the City has previously borrowed public funds to construct the Public Area Requirements in connection with another private development project, it would be totally inappropriate for the City to require Main/Monroe Investors, LLC to shoulder that burden themselves especially where, as here, the proposed renovation does not cause any impact to the City’s transportation infrastructure.

Planning Commission
November 2, 2007
Page 3

Thank you for your consideration of this matter.

Sincerely,



Steve C. Morasch

SCM:tag
cc: Mr. Ed Parecki

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Attachment 11

Fraley, Robert

From: Fraley, Robert
Sent: Wednesday, October 10, 2007 1:27 PM
To: 'ed@parecki.com'
Cc: Asher, Kenny; Mangle, Katie
Subject: Appeal - 10883 SE Main Street

Dear Mr. Parecki,

In response to your appeal submitted on Monday 10/8, I would like to advise you on the process the City is required to follow for an appeal and clarify the schedule for your hearing.

The Planning Director sent a letter to you on October 5, 2007 detailing the list of public area improvements required for your property frontage. The Planning Director wrote this letter to advise you that one of the conditions of approval of your forthcoming building permit will be confirmation in writing that Main/Monroe Investors, LLC agrees to construct the required public area improvements listed in the letter.

Your appeal application does not clearly identify which decision you intend to appeal. The City has made two decisions on your application: approval of the Design Review application, and an interpretation of the Public Area Requirements section of the code. The City has not denied your building permit. Therefore, staff is assuming that you are appealing the Planning Director's interpretation of the code and determination of public area requirements. This type of appeal is required to be heard by the Planning Commission within 40 days of filing the appeal under procedures established by subsection 19.1001.4 (G&H) and Section 19.1011.3 Minor Quasi-Judicial Review. Because your request is subject to Minor Quasi-Judicial Review, the City is required to notify all property owners within 300 feet of the property not less than 20 days prior to the hearing. This means that the soonest (and latest) hearing date before the planning commission will be November 13, 2007.

Planning staff has begun to process your appeal application. The Planning Commission typically appreciates the opportunity to review the record and applicant's arguments prior to the hearing. You may wish to submit additional information to clarify your purpose and scope of the appeal. If you would like additional information to be included with the staff report to the Planning Commission, please submit such material to me by November 2, 2007. Any information you would like to be part of the record can be submitted to the Planning Department until the day of the hearing, or may be presented at the hearing.

The City recognizes that you would like to begin working on your building as soon as possible. Please understand that your building permit is on hold because Main/Monroe Investors, LLC has not agreed on the required list of public area improvements. Further, because you have submitted an appeal, no building permit can be issued until a decision is made regarding this appeal.

Please let me know if you have any questions about the assumptions or deadlines outlined above.

Sincerely,

Bob Fraley

Robert Fraley
 Associate Planner
 Planning Department
 City of Milwaukie
 101 SE Johnson Creek Blvd
 Milwaukie, OR 97206
 (p) 503.786.7627

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Fraley, Robert

From: Mangle, Katie
Sent: Monday, November 05, 2007 7:57 AM
To: Fraley, Robert
Subject: FW: Subject: 10883 SE Main Street

-----Original Message-----

From: Mangle, Katie
Sent: Monday, November 05, 2007 7:40 AM
To: 'DougNaef@aol.com'; ed@parecki.com
Subject: RE: Subject: 10883 SE Main Street

Hi Doug,

I will forward your comments to the Planning Commission, who will consider this question on 11/13.

thank you,
- Katie

Katie Mangle, Planning Director

City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206
p: 503.786.7652
f: 503.774.8236

-----Original Message-----

From: DougNaef@aol.com [mailto:DougNaef@aol.com]
Sent: Saturday, November 03, 2007 12:03 PM
To: Mangle, Katie; ed@parecki.com
Subject: Subject: 10883 SE Main Street

Hi Karen,

I understand it is just your job to enforce what the council has adopted as guidelines but hope you will express my concern regarding these current rules or guidelines. While I understand and respect the general idea of contributing to the improvement of the public space there needs to be continuity.

This guideline is no different from the County's requirement to put in sidewalks with any new development. There could be no sidewalks in a rural area for miles then a strip of sidewalk because of a new development. It makes no sense and in fact distracts from continuity. I feel these guidelines do the same. There will be few people who put this much money and effort into renovation and they are the ones being penalized for investing in the downtown. Doing basic facade changes will be outside of these "public area requirements" so you will have 90% of the city with nothing and 10% with bike racks, trees and sidewalk improvements? This makes no sense from a planning point of view. I feel the offer of \$22,500 worth of improvements was meeting you half way and the city

can pick up the other half. Monies seem to be available to buy up the entire riverfront and commercial property that should be left to private enterprise yet we cannot spend money to improve downtown to the tune of \$22,500? The lost investment interest on the cities properties would generate this amount in a week. I think the guidelines need to be reevaluated and involve a partnership rather than a financial hardship on potential investors in our community.

Respectfully,
Doug Naef

See what's new at AOL.com and [Make AOL Your Homepage](#).

Attachment 13

Attachment 13

Implementation of Downtown Public Area Requirements, 2000-2007*Application of Downtown Public Area Improvements*

Since the adoption of the *Milwaukie Downtown and Riverfront Plan Public Area Requirements* in 2000,¹ Staff has required public area requirements for a number of properties in the Downtown zones (see Table 1, below). Some developments had permit values greater than 50 percent of the assessed real market value of the property and existing improvements, and were therefore required to comply with the public area requirements. In other cases, alterations, renovations, or expansions of existing buildings involving tenant improvement projects were required by code to provide public area improvements equal to ten percent of the permit value.

Table 1 provides a history of development and related public improvements in the Downtown Zones since 2000. Staff compiled these data from land use files, permit records, and address files created when inquiries from the public are made about specific properties. Projects found in the list include the North Main project located at 10554 SE Main Street, construction of a new building for Electra Credit Union (now Advantis Credit Union) located at 10501 SE Main Street, and tenant-related improvements for Wunderland Theater located at 11011 SE Main Street.

As noted earlier, the subject property is the first property required to complete public area improvements for a renovation since the implementation of MMC 19.312.5. Pursuant to Staff's historical analysis of public area improvement projects in Downtown Milwaukie, it appears that Staff has consistently interpreted Section 19.312.5, but on one occasion inconsistently applied, the regulation. This instance occurred in 2004 when Staff determined that the rehabilitation of and subsequent tenant improvements permits for the building located at 10600 SE McLoughlin were not subject to public area improvements because McLoughlin Boulevard (a State right-of-way) was proposed to be rebuilt to standard by ODOT, and Scott Street was proposed to be vacated. In this case, it seems that Staff either assumed ODOT would take responsibility for improvements along the frontage of McLoughlin Boulevard or unintentionally overlooked the public improvement requirement. However, in 2006, a tenant improvement permit submitted for one of the spaces in the building (JL Hair Design) triggered public area improvements and Staff required that the tenant provide improvements totaling at least 10% of the building permit valuation equaling at least \$3,400 worth of public area improvements along the property frontage.

¹ (Ordinance No. 1880) revised June 7, 2005 (Resolution No. 31-2005)

Table 1: Downtown Public Area Improvements 2000-2007

Year	Casefile #	Permit #	Project/Business	Address	Permit Valuation \$	Comments/Public Improvements
2001	n/a	020141	Electra (Advantis) Credit Union	10501 SE Main Street	2,250,000	Frontage improvements per Public Area Requirements installed.
2002	CSO-02-04	020517	St. Johns Episcopal Church	2036 SE Jefferson Street	350,000	Renovation triggered the 10% requirement for public improvements. Frontage improvements required along Jefferson Street per Public Area Requirements.
2004	n/a	040310	Electra (Advantis) Credit Union	10501 SE Main Street	150,000	No public improvements required; public improvements made under permit #020141
2004	S-04-03 TPR-04-08 VR-01-10 DR-04-01	050246	North Main Village	10554 SE Main Street	4,586,331	Full public area improvements including: sidewalks, street lighting, bicycle parking, street furniture, pedestrian crossing, bus pad, and Tri-Met stop.
2005	n/a	050367	Graham's Book and Stationary	11049 SE Main	10,000	No public improvements required; Converted to offices and did not require LU approval.
2005	n/a	050464	Wunderland Theater	11011 SE Main Street	50,000	Building permit for tenant improvements triggered 10% requirement; \$5,850 paid for installation of bike racks, bench, street tree and grate.
2005	n/a	050519	Key Bank	10888 SE Main Street	450,000	Tenant improvements triggered 10% requirement; Key Bank contributed \$45,000 for construction of the sidewalk extension at Main and Monroe streets and parking re-striping on Monroe.
2005	DR-05-01	050525	Broken Arrow	10605 SE Main Street/2044 SE Adams Street	10,000	No public improvements required
2005	n/a	050144	Spring Creek Coffee House	10600 SE McLoughlin Boulevard	48,000	Pre-application notes dated September 30, 2004 regarding Minor Exterior Alteration of building triggered public improvements. Staff at that time did not require PA because McLoughlin was proposed to be rebuilt to standard and Scott Street was proposed to be vacated. No public area improvements required related to permit 050420.
2005	n/a	050420	Light Chasers, Inc.	10600 SE McLoughlin Boulevard	180.00	No public improvements required
2006	n/a	060495	JL Hair Design	10600 SE McLoughlin Boulevard	34,000	Tenant improvements triggered 10% requirement. At least \$3,400 required to be spent; Staff determined that sidewalk improvements unnecessary and tree installation would be appropriate. Bicycle racks installed in lieu of trees.
2006	n/a	060452	Advantis Credit Union	10501 SE Main Street	27,736	Tenant improvements triggered 10% requirement; required to provide bench, trash receptacle, and bike rack.
2007	n/a	070132	Canby Asparagus Farm/Casa de Tamales	10605 SE Main Street	40,000	Must contribute at least \$4,000 toward public area improvements; 2 tree grates, bike racks, and a bench recommended.
2007	n/a	070216	Hartwell's	10608 SE Main Street	250,000	No public improvements required; Public Improvements completed during North Main project.
2007	DR-07-01	070408	State Bank Building	10883 SE Main Street	225,000	Building permit value triggers full public area improvements including: street lighting, bicycle parking, street furniture, pedestrian crossing,
2007	n/a	070429	Mekong Thai Cuisine	10880 SE McLoughlin	n/a	Plumbing Permit; no permit issued related to interior or exterior renovation, therefore no public area requirements triggered.

Required Public Area Improvements

Intersection

Bulb out
2-3 Flowering ornamental trees
Landscaping with Irrigation
4 Bollards
2 ADA warning pads

Main St. Frontage

8 ft concrete parking strip
New curb and gutter (offset curb 1-foot from existing curb line)
13 ft sidewalk
1 Street tree with grates
1 Street light (twin ornamental)
Underground all overhead utilities
Street furniture – 1 bench / trashcan
Bike parking*
City of Milwaukie medallion*

Monroe St. Frontage

7 ft parking strip (asphalt)
New curb and gutter
12 ft sidewalk
2 Street trees with grates
1 Street light (single ornamental)
Underground all overhead utilities along frontage
Street furniture – 1 bench / trashcan
Bike parking*

All emboldened text denotes Public Area Improvements required by Planning Director. Reconstruction of those elements already installed, in good condition, and generally consistent with the planned streetscapes are not required improvements pursuant to this finding.

* Improvements the City is able to provide.