

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
December 18, 2007**

CALL TO ORDER

Mayor Bernard called the 2020th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor James Bernard and Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone

Staff present: Operations Supervisor Mike Clark, Engineering Director Gary Parkin, Associate Engineer Brenda Schleining, Resource and Economic Development Specialist Alex Campbell, Planning Director Katie Mangle

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****A. Recognize Carlotta Collette for Her Service to the Community as a City Councilor**

Mayor Bernard and Council recognized Carlotta Collette for her service to the community as a City Councilor from January 4, 2005 to November 6, 2007.

B. Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study

Mr. Asher introduced Ms. Wieghart, Metro Project Manager. They were about to enter a new phase of the project.

Ms. Wieghart said they were in the middle of a technical analysis on impacts and benefits for traffic, land use, property, economic development, ridership, air quality and all of those kinds of issues. They will work with jurisdictions and the Federal Transit Authority and publish a draft in April. From the public involvement standpoint they had a safety and security task force, which began in September, and they were wrapping up the recommendations. The Citizen Advisory Committee was meeting monthly and the stationary planning focused initially on the City of Portland with open houses looking at stations from Clinton to Tacoma. In October they went to the public to ask for their vision for the station area. There were two open houses held in November to cover what was heard and to get additional input. Recommendations will go into another phase and could lead to recommendations for additional project elements. It was difficult because of cost constraints and they looked for ways to implement key ideas such as pedestrian and bike access, connections to potential developments and ideas for activity centers around the stations. They will do a similar process with Milwaukie in February. It would be more substantive in that they would be looking at station location options, Harrison, Monroe, Washington, Lake Road, and Bluebird. They will have some information related to ridership and cost to help make the decisions with recommendation for the Milwaukie City Council in March or April.

Councilor Barnes asked for a summary of the previous night's meeting.

Mr. Asher replied about 20 people not including staff made up task force members with representatives from Portland Waldorf School (PWS) and St. Johns. They had similar

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concerns station by station. Possible locations that felt more remote raised concerns and that were not near traffic raised concerns about the level of activity. There were concerns about interaction with traffic and pedestrians. There was safety concerns about recent reports, paying fares, and ability to protect people and property from unruly element. Did not hear a lot of new safety and security concerns. It was interesting that the next decision for the Council prior to Locally Preferred Alternative (LPA) adoption was station location, which would need a community conversation. They heard at least one person recommend none because all were near schools. They intentionally were pushing it back on the calendar until safety and security had a chance to do its thing and do in context of all those things including ridership.

C. First Annual Update on the Street Surface Maintenance Program

Mr. Asher personally thanked the City and Council who used roads and streets, which had been so poorly maintained over the years. They were pleased that one year ago the City Council voted to enact the SSMP and raise local funds to preserve and maintain paving on Milwaukie's major streets. It was a huge step on the part of the City Council. On behalf of the staff working on the program felt like a strong vote of confidence in future, for the City, and the staff. He heard accountability would be key with reporting back to the City Council. He clarified that the program began on July 1, 2007. It was bittersweet in that Milwaukie had stepped up but couldn't mask the statewide infrastructure crisis. He shared remarks from the governor and the Oregon business plan. Transportation this year was high on the agenda. It provided some context so they were not operating in a vacuum. Staff claimed there was not help so they needed to come up with a solution and if the state or federal came up with a solution they would adjust the program. There was good reason not to be hopeful. He heard the governor remark on sustainability but was worried leaders would ask if they get there on old bridges or aging rail system. He went on to throw out some numbers. The Governor was working on a 2009 legislature package and talked with all major stakeholders to form 3 subcommittees to determine how the package would be structured. He did not believe gas tax increase was the only way to go but everything ought to be on the table. The Business coalition transportation put together a package to increase annual registration fees plus a 2-cent gas tax increase and index gas tax to CPI. There was no political will in Salem to raise those taxes and fees.

He will come back to a work session to talk about how this was impacting City and what we were no longer able to do with our share of the gas tax. There had been a 40% increase since 1995 adjusted for inflation with flat revenues. They had managed over the past several years to find matching funds but were no longer able to do that. TI was having a real impact at home. He frankly would feel remise if he did not tell the whole story. Fund 315 healthy, but fund 320 which took care of everything else was in bad shape. He was obligated to tell the City Council and public not just about transportation infrastructure, but also a Metro report that talked about needs in the region. The bus fleet was older than 15 years. Within 20 years bridges will be 100 years old. Columbia bridges will be \$6 billion, which was more than available over the next 20 years. Major collectors and arterials in Milwaukie will be taken care of. The Milwaukie City Council adopted three tools that went into a lockbox fund to take care of major collectors and arterials in Milwaukie that included gas tax, utility tax, and PGE privilege tax.

Mr. Clark reported on the 2 projects completed this summer: 37th Avenue from Lake Road to Hwy 224 and 42nd Avenue improvements from Johnson Creek Boulevard to Howe that included improved drainage and drivability.

Mr. Parkin said there were lessons learned about notification. They did good job with door hangers on main routes, but many on side streets were not aware. They learned they needed to expand the notification area. The length of the project stretched the

inspection resources on 42nd Avenue. Another issue had to do with traffic control and they would be more involved in setting a traffic control plan. Two projects yet to do this year were Washington from 99E past high school and up Oak Street to Monroe. Current condition of Oak Street would be ground and overlay. They were coming up with strategies to maintain business operations.

Mayor Bernard commented last time they paved over drains. Will that be ground?

Mr. Parkin said a big part of the project was grinding down existing asphalt to allow a fresh coat.

Mayor Bernard asked if current projects were well done and preserved trees and helped slow traffic.

Mr. Asher discussed upcoming projects and what had changed from when project was designed. They realized they were over-budgeted year 1, but under-budgeted for Oak and Washington. They moved Logus Road to year 2, as it was a full-street improvement project with green street treatment sidewalk for FY 2008-2009. Also, they would do King Road in year 2, which was almost \$1 million. Storm crews were out this fall and winter raising the tops of drywells so they would not be paved over. Found many storm mains not connected to catch basins. Part of the reason was the drainage system was broken and they were preparing for new surface. They were also doing deflection testing to understand the condition of the sub-base. They needed to understand how bad it was underneath. He referred to the back of staff report, which was the original model upon which the SSMP was passed. The overall condition of the network in 2004 rated 67 out of 100 which was at the high range of satisfactory but declining. The network was still in a state of decline but they think they can stabilize that free fall in a couple of years and at 10-year life of program raise to 75. There were funds in the program to do an assessment every few years.

The workload impacts of project inspection will continue to be an issue but some funds were built into the program. In terms of project costs and amount of money being collected this year there was approximately a 3% increase. It was still early in the life of the program he did not recommend any modifications.

Mr. Campbell said he felt confident with a full year of revenue in next fiscal year it should be \$1 to \$1.1 million. For the current year they used conservative assumptions based on startup. Reasons for difference were they only had ½ year of the privilege tax that was approximately \$150,000 lower. Gas tax at high end of what hoped for in range of \$180,000 to \$190,000. Maintenance fee lower because they lost a month of revenue to equalize the start. They also lost a month of revenue based on accrual. They had a billing error on the commercial side that had to be corrected. They were appropriately conservative for the first year and revenue was close to what was estimated.

Councilor Barnes had a lot of concern about hurting local gas station owners. Seemed some prices were still lower than stations outside the City limits. Have you talked with owners to determine if the tax impacted Milwaukie stations?

Mr. Campbell said if the prices did not change then that meant they were paying the tax. Question about who ultimately paid the tax. If they kept the same customer base then users were paying the tax.

Mr. Asher other kudos to staff - there was some hand wringing over what would do to businesses, so they had an appeal process. The City only received 11 requests for reassessment and all 11 were reassessed. Two properties were determined to have smaller building areas, so staff did follow through. The index goal was to get to 75 and getting to deferred maintenance for all of those streets and falling to point. They were still doing emergency pothole patching. Based on what had been done so far progress

on each goal was satisfactory. They are looking forward to spring projects and the disruption would be well worth it.

Mayor Bernard thought it was a great program and other cities were looking at how it was done as a model.

CONSENT AGENDA

- A. City Council Minutes of the October 16, 2007 Work Session.
- B. City Council Minutes of the October 16, 2007 Regular Session.
- C. Resolution No. 71-2007; A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract and sign a Purchase Order(s) with Hewlett Packard Not to Exceed \$145,000 for the Purchase of Replacement Desktop Computers for the City.

It was moved by Councilor Barnes and seconded by Councilor Stone to adopt the consent agenda. Motion passed unanimously. [5:0]

AUDIENCE PARTICIPATION

- John Otsyula, Milwaukie

Mr. Otsyula had intended to send some comments but was able to attend the meeting. He had the same concerns on the SDEIS after talking with Metro and his attorneys talking with Metro. He wanted the City Council to know some of the things Ms. Wieghart said at the last meeting when he was not present that were not clear regarding the City's responsibility in making recommendations to Metro regarding alternatives. Metro had the final authority. The City made representations for the City and not limited alternatives. While the SDEIS process was still youthful they still had opportunity to present alternatives. There were still alternatives the City could present to Metro on behalf of the people, and he was requesting on behalf of that. If it happens it would save all of us money and especially so we did not have to go to litigation. Voters rejected the final EIS 2 times. In this SDEIS eliminating misrepresented in the sense that Metro jurisdictions will tax Milwaukie to maintain light rail. That was the main reason for the Tillamook Branch. There were high electrical impacts, which might cause such things as leukemia. One more reason to do the right thing and present alternatives so we did not have to go through litigation.

Councilor Stone had these minutes in the packet on October 16 when Ms. Wieghart was present. She asked if the City had authority. She responded that was not correct but went on to say local jurisdictions.

Mr. Otsyula said it was one thing to misrepresent but worse to cover it up in the process of misrepresentation.

Mayor Bernard said he took it to the Metro Council for clarification the South Corridor saw all of the recommendations and the Steering Committee saw all of the alternatives and made the decision.

PUBLIC HEARING

- A. Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements

Mayor Bernard called the public hearing on the appeal of the Planning Commission's denial of AP-07-01 for the property located at 10883 SE Main Street to order at 8:05 p.m.

The hearing was limited to the issues raised in the appellant's notice of appeal. The purpose of the hearing was to consider the appeal of the Milwaukie Planning Commission's denial of AP-07-01 of the Planning Director's interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2) for a proposed project located at 10883 SE Main Street and compliance with certain public area improvement requirements.

Mr. Monahan outlined the code authority and the decision-making process. The applicant had the burden of proving that the application complied with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The appellant had to demonstrate the Planning Commission erred in its decision in the alleged particulars.

Mayor Bernard reviewed the conduct of the hearing.

Mr. Monahan asked if there were any site visits, ex-parte contacts, or actual or potential conflicts of interest. Councilor Barnes had not visited, others had walked by the site. Councilor Chaimov attended the Historic Milwaukie Neighborhood Meeting and Mr. Zumwalt shared his views of the proper outcome of the appeal. He walked with Mr. Parecki about the condition of the sidewalks in front of his building. Contacts did influence his decision.

There were no challenges to any Council member's ability to participate in the decision.

Ms. Mangle provided the staff report. Started as interpretation as part of code 19.3125.b.2. This was not a hearing to amend the code, which would be a separate hearing. The City did have adopted code and the question was staff application by Main/Monroe Partners. Staff had no problems with the project that was proposed. It met design standards and would be a nice addition to the downtown. There were requirements for all development. She went over what she would speak about. She would start with what the public downtown plan was and the public area requirements that went with that. What was the Director's interpretation. What was the interpretation that was made. How the code interpretation applied to the appellant's project.

The City adopted the plan and public area requirements in 2000 and that included the land use framework, streetscape and code, which tied those together. Those two documents were visioning documents and it was the code that was the law. It was important for the community not to think just about activities but making a comfortable streetscape achieved through development. They had been implementing that part of the code since 2000. She and her predecessors had been implementing this section of the code. She provided a list of downtown public area improvements and showed slides of certain projects. Development requirements should be the same whether public or private funds were involved. Many business owners and developers had been contributing over the years and that had been the practice.

She as planning director interpreted the code according to MMC 19.2002.4. She could either interpret when asked by a developer or initiate it. Her interpretation was subject to appeal. She was not able to change the code. She followed legal guidance and drew upon history to understand the intent. She references other adopted documents including the Comprehensive Plan and fundamentally makes the minimum changes necessary to implement the code as written.

She showed an aerial view of the site at 10883 SE Main Street. She reviewed the project timelines. On April 26, 2007 there was a pre-application conference with the applicant who primarily asked about sub-dividing the property and doing a minor land partition. They gave him information about the design review process that he would

have to go through and the public area requirements likely to be required. August 29 he came in with a building permit. They did design review at the staff level and determined the site was not in compliance with the public area requirements. They also looked at the cost of the building permit, which triggered full compliance with the public area requirements. They informed him of both of those decisions on October 5. On October 8 Mr. Parecki submitted an appeal to the Planning Commission, and on October 23 the Planning Commission denied the appeal. Shortly thereafter he filed an appeal with the City Council.

The code section that applied was MMC 19.312.5, Public Area Requirements. She said that thinking about the bigger picture it was important to think about the whole environment created by development downtown. There were three different types of Public Area Requirements; New buildings, large renovations in which the applicant's property and small projects, either interior or renovation projects. She read the code that applied, "Any renovation, expansion or alteration of an existing building that has a permit value that exceeds 50% of the value of the land and existing improvements as determined by the County Assessor Shall comply with Public Area Requirements. The Building Official shall determine development permit value." When thinking about the Director's interpretation "Shall comply" were the 2 words, which were not clear. Those were the two words they focused on. She interpreted it to mean, in consultation with the City Attorney was that the list of improvements must be proportional to the impacts and the existing elements were not required to be replaced. Those were the two interpretations of the code, which she made and applied in this case. She understood the appellant agreed with the interpretation of the code, but the complaint was how it was applied to the project. The appellant's complaint as written on the appeal application was that the City's proportionality analysis was defective and the City hadn't carried its burden under Dolan. They were arguing that the list of improvements were not proportional to the impacts. The key issue for Council to decide was did staff apply the code properly to the application, and specifically are the required improvements roughly proportional to the projects impacts. When reviewing the application in September there was a series of 4 questions that they had to answer. Was the permit value greater than 50% of RMV, yes. The project did have impacts, yes. Did the project impacts warrant full compliance with the Public Area Requirements, yes. Were public area requirements already met, yes.

She discussed the methodology that was based on 2 resources one was the McClure methodology having to do with public extractions and the ITE manual that set out the different uses and assumptions. The assumptions for this sight were that it was one building on one tax lot with 2 distinct sections 1-story and a 2-story. The ITE manual said that assumptions did include basement and gross floor area and specialty retails he chose for the ground floor. They also used information provided by the applicant on the site plan. She showed a cross section of the site.

The first step in doing the analysis was to look at what was the existing use and the general assumption now is that it was general office building. According to the ITE manual that generated 109-week day vehicle trips and the proposed use would change to use to specialty retail on the basement and first floor. That proposed use change would generate 277 weekday vehicle trips or an increase of 168 trips. The conclusion was that there was increase in trips. Part of what the proportionality analysis did was translate the increase in trips to linear feet or area of improvements. It translated trips into a physical improvement area. In the process of doing that calculation the impacts justified an improvement area of 7075 square feet, but in fact the City was requiring approximately 1800 square feet of improvements therefore the required improvement are roughly proportional to the impacts of the project.

Councilor Stone asked if the impact of the project directly related to the increase of vehicle trips.

Ms. Mangle replied that it was. The proportionality analysis was guided by Dolan and Nolan was about the nexus analysis. They also did a qualitative analysis that outlined each improvement. She explained what the plan envisioned for the site and showed concepts that included benches and bike racks. The sidewalk was in good shape, but there was a tree missing and curb did not meet ADA requirements and needed to be replaced. She showed a full list of all the improvements called for in the plan. Once they took out the things that did not need to be replaced the list was reduced, which she showed to Council. When she spoke with Council a few weeks ago at the work session she was asked how much the improvements would cost. The rough order of magnitude cost estimate of the full frontage improvements would have been \$128,000 and the smaller list was \$60,000 and that included conservative design, staging, and contingency. It assumed public contracting requirements.

She said that this code section had an impact on all downtown development and development would contribute to the improvements in the public realm. Along the way they had tried to ease the pain starting at the beginning she had the option of putting this through a Type 2 process, which would have entailed public review, but she opted for the Type 1 process, which has at staff level review. The pre-application meeting was expanded to make sure the discussion included design review and public area requirements. When asked to they considered an alternate valuation methodology. They reduced the public area requirements by considering the existing materials. More recently staff was facilitating a potential Urban Living Infrastructure Grant from Metro to help with future costs.

In summary staff applied the adopted code in a way that was fair to the applicant and true to the community's vision of downtown. The staff finding was the project would have impacts and the City was justified in requiring the improvements and the list of improvements was the right list. She commented that staff did research on what other cities did. The cities researched had different triggers and they do limit it in different ways, but it was very common for cities to require developers to do pedestrian infrastructure improvements as part of a redevelopment project. It was likely that if this project were done in other cities these same improvements would likely be required.

Staff recommended denial of the appeal, support of the planning director's interpretation, and support of the Planning Commission's denial, and that would require the project to construct the improvements that are listed on page 4 of the staff report.

Councilor Stone had a question about applying the real market value versus the assessed value to the project. She wrote down that the process to determine that was determined by the County Assessor. Where did it say in the code that we had to use the assessed value versus the real market value?

Councilor Barnes noted the reference to Section 19.312.5(B)(2) on page 1 of the staff report, "as determined by the County Assessor."

Ms. Mangle said the County generated 2 assessments.

Councilor Stone understood the "determined by the County Assessor" section, but why would the County Assessor not use real market value versus assessed value. That was her question. Would that not change the outcome?

Ms. Mangle replied there was a real market assessed value which staff was using along with taxable assessed value. Two types of assessments came up from the County, the taxable assessed value which was lower and the real market assessed

value, which was slightly higher. The applicant requested that staff use the appraised value, which was higher.

Mr. Monahan explained the City was using the higher County Assessor value.

Councilor Stone said in going through the report it looked like the code was revised in 2000.

Ms. Mangle said it was written in 2000.

Councilor Stone understood that 7 years later this was the first project to trigger this according to a letter she saw here dated September 27. It triggered one section of the municipal code for the first time.

Ms. Mangle had written that. It was possible Mr. Parecki's previous project may have triggered it which was the McLoughlin Building, but it was not applied. Staff did not know for sure because they did not have all the facts.

Correspondence

None.

Mayor Bernard called for a 5-minute recess.

Appellant Testimony

Mr. Parecki had sat before Council many times usually to shed light on some very important issues. Tonight he sat before Council yet again this time once again on a very important matter. As the Council was aware, he had been trying to renovate the building on the corner of Main and Monroe since April this year. He had been able to re-roof, replace windows, and gut the inside. He had contractors on standby since August waiting to complete the renovation. Upon submitting the plans for a building permit he was essentially told he would not receive a building permit unless he agreed to all the public area improvements as demanded by the planning department. We were here tonight to appeal the decision made by the Planning Commission to uphold the interpretation of the Planning Director in demanding all of the public area improvements be made as part of the project. The determination that all of the public area improvements be made was predicated on proportionality analysis performed by City staff. The staff report that Council received 2 weeks ago clearly stated it was to consider whether or not staff appropriately considered proportionality in reviewing the project's impacts and public area improvements.

Before delving into the proportionality analysis, Mr. Parecki provided a brief history of the building. It was built in 1909 and included on the left side the State Bank of Oregon, and Perry's Drug was housed in the right portion of the building. Ms. Mangle referred to that as the 2-story building. In about 1930 The State Bank expanded the building and took over the entire first floor, built a 1-story building adjacent to it on the west side and housed the State Bank in the first building and Perry's Drug on the west side as well as a post office on the west side. All of these were retail uses. Later on in the 1960's, the State Bank building was sold and bought by the Gay Blade, some of you might remember the Gay Blade, which housed the entire first floor of not only the 2-story building but also the 1-story building on the west side. They did a major remodel, added structural supports and created the Gay Blade. It lasted as the Gay Blade until some time in the mid-1980's when Grant Lindquist purchased the property. When Grant Lindquist purchased the property he created a computer sales store as well as a document storage facility and document services for the public. Again it was a retail use. In April 2007 Main / Monroe Investors held a pre-application conference with planning staff. As a result of this conference Main / Monroe Investors were told that they would have to make public area improvements. There was no mention of a

proportionality analysis being conducted to determine whether or not the project would actually trigger the public area requirements. Staff merely quoted the code and expected Main / Monroe Investors to abide by their findings.

Some of the public area improvements seen in the City and referred to by Ms. Mangle in her presentation included the St. Johns Church, which put about \$35,000 of its own money into public area improvements. St. Johns Church was not offered a proportionality analysis to determine whether or not they were required to make those improvements. The real trigger on proportionality was whether or not there was a change in use. Clearly a church to a church was not a change in use. If the City had performed a proportionality analysis for the Church, it would not have been required to make public area improvements. The North Main Project was one of the few projects that did trigger public area improvements. The North Main project was a new construction; there was nothing on the site before. There was a huge change in use; therefore, public area requirements were imposed on the project. The interesting thing about that project was that approximately \$1 million in public area improvements was provided for by the taxpayers, the people of Milwaukie. A loan was taken out to make these public area improvements on behalf of the North Main Village project. He showed another view of the North Main Project. He showed a slide of the old Graham's Bookstore. It did not trigger public area requirements, but he did not know exactly why. The interesting thing about that project was the fact that Graham's Bookstore was a retail use and was converted to an office use, which was against the City code. There was no office use allowed on the first floor in the Downtown Zone. He showed a slide of Wunderland Theater. They made their public area improvements in the amount of \$5,850. Again it went from a theater to a theater. There was no change in use. There should have been no public area requirements made as an imposition on Wunderland Theater. Key Bank made \$45,000 worth of improvements. It went from a bank to a bank. There should not have been public area requirements imposed on this project as well. The Archery place – there were no public area improvements required or made. Springcreek Coffeehouse, the McLoughlin Building, JL Hair Design, as well as Light Chasers. The Council heard and it was insinuated by the City staff that they should maybe have had some imposed on it. It was clear that property was always retail on the first floor and always office on the second floor. There was no change of use on any of those projects. Yet they kept insinuating that some public area improvements should have been made. JL Hair Design was the only one that actually made some public area improvements, but they probably should not have had to. Advantis Credit Union was a brand new project and should have done and did do all the public area improvements. The \$2.25 million project should have incurred a \$225,000 fee on public area improvements. The only thing one can see is 2 lights and 2 or 3 trees. That did not amount to \$225,000. Casa de Tamales was a unique situation where he was being asked for \$4,000 worth of improvements. It went from retail to retail. The interesting thing about his project was that not only were they asking him to put in \$4,000 worth but to put some of the project funds into other people's properties. The next door neighbor and 2 neighbors beyond because he cannot put \$4,000 worth of improvements in front of his property. Hartwell's was part of the North Main project. They had \$300,000 in improvements. They did not have to do any because they were already done by public funds. He pointed out the Main / Monroe Building as it set today. Some of the improvements had been made to the building. He referenced the 1-story building. The interesting thing about that project was that he never said anything would be done to the 1-story building. The plans he submitted only addressed the fact that he would do something to the 2-story building. His application was for the partition of the lot with the intention of tearing down the 1-story building for later development. In their analysis they included his 1-story building in all of their calculations. As he pointed out in the brief history, the property had always been retail use on the first floor, storage in the

basement, and office on the second floor. They want to use the analysis and show that the property's last use was an office use. It made a big difference in the analysis when one changed the number for the trips generated. Thai Cuisine had no public area improvements required. They did a minor remodel. At Classic Memories he did not remember if there was any remodeling done, but there was no building permit taken out if there was any, so no public area improvements were required. He showed the basement area of the 2-story building and noted the condition of the basement. The City would have one believe there could be specialty retail in that basement and used trip generation as if it was specialty retail. The doorway was less than 6-feet high into a closet. The previous use of the 1-story building was a post office and Perry's Drugstores. He showed a slide of the State Bank as it was in his heyday.

Mayor Bernard informed Mr. Parecki he was down to less than 10-minutes.

Mr. Parecki translated the proportionality analysis that was handwritten into a spreadsheet. He had the 11.01 trips for the basement, first floor, and second floor. The entire project was used for a general office building as an existing use. He showed for over 76 years it was always retail on the first floor. All he had to do was show the difference between just changing either including the first floor that was 2500 square feet. The proportionality changed dramatically and showed no public area improvements would have been required. When he submitted the application in pre-application stage, there was no proportionality analysis conducted. That was part of his argument. It should have been. He could have seen what would happen if they had used the proper figures. Part of his argument was that there was no analysis conducted so he wouldn't have an idea of the costs.

Steve Morasch noted there was a statement signed by the prior property owner submitted as part of the record. This was a beautiful facelift that would not increase trips. Staff analysis indicated a change from office to retail, but it seemed clear the prior use was retail. In comparing retail to retail there were no increases in trips, and it was not a change in use. This project was about making the building look more beautiful. He noted problems in the City's clearinghouse process. He discussed public right-of-way improvements and comparisons to the total impact area. This involved a case in which there was an apples and oranges comparison with McClure. This was a facelift project with no change in use and no increase in trips.

Mr. Parecki discussed landscaping requirements. To quote Councilor Loomis from the last session, "just because it was in the code did not make it right. Just because it was in the code did not make it legal." He pointed out the survey completed by the former business owner before this became an issue.

Councilor Barnes read Mr. Swanson's e-mail concerning North Main Village regarding the OHCS loan which was applied for by the City and assumed by Main Street Partners. It picked up the loan balance of \$651,000. She asked Mr. Parecki to define renovation.

Mr. Parecki said it was taking what looked ugly and making it pretty. He considered this a renovation project.

Testimony in Support

- **Brad Carbaugh, Canby**

Mr. Carbaugh moved into Mr. Parecki's McLoughlin Building and offered his perceptions of the debate and equity of how different businesses were treated. He was inclined to believe Milwaukie was not necessarily a place where he, as a small business owner, wanted to do business.

- **Nancy Adair, Milwaukie**

Mayor Bernard indicated he responded to a question from Ms. Adair

Mr. Parecki's project would help would help bring the Downtown area back to a real downtown instead of a ghost town.

- **Charles Maes, business owner**

Mr. Maes said the City required him to make public area improvements without the required proportionality analysis. In addition to the requirements of the construction in front of the Tamale place he was required once again to make public improvements which he did not mind doing. He did not know where it said in the code that he had to make improvements past his property line. He was putting in bike racks and all of the above for something he did not even get to use. If he knew that \$4,000 was going to improve the outside of the building he was at, he was all for it. He would pay it; do not get him wrong he had no problem with that. He wanted the Council to know that he was just there to back Mr. Parecki up because they needed him downtown to make that building and bring more people into the City. He said he had only been open for a month and they have had approximately 3,500 people if not more visit the restaurant in 1 month. The customers come from Gresham, Beaverton, Lake Oswego, Scappoose, and Eugene. The only next little project he would do down the road was to ask people their zip codes. He found nothing better than a nice "Hi" to people that were coming into Milwaukie to be part of the community. There were no stores to keep them here. Once they ate at Hartwell's or Casa de Tamales, they were gone. He urged helping this man out with the improvements he had to make so we can bring more retail downtown. He added he was providing the preacher next door with a nice bench and offered him a gallon of paint to paint the front of his store but he declined.

Mayor Bernard suggested talking about some improvements to the code, which might be considered at another time.

Testimony in Opposition

None.

Neutral Testimony

None.

Staff Recommendation

Mayor Bernard had a question of staff. Did the code define retail? He did a little history. He knew this building and used to buy all his disco clothes at the Gay Blade. It went away because disco went away. He was the President of the Milwaukie Downtown Development Association (MDDA), and if this person said it was retail then he was very wrong. He actually tried to go in the building, and you had to go in and buzz the door and hope someone came. It was a microfiche company. Unless they were selling microfiche, it was no retail business. It was nothing close to retail although it may have been in the past.

Ms. Mangle provided the Milwaukie Municipal Code retail definition. If the Council wanted the ITE definition, she would have to ask Mr. Weigel. Retail trade meant the sale, lease, or rental of new or used products to the general public. Typical uses included but were not limited to grocery stores, specialty stores, drug stores, bookstores, jewelry stores, and video stores.

Councilor Stone said she understood that list was "not limited to" those uses. She asked if a restaurant fell under retail.

Ms. Mangle replied not under the municipal code. When one used the term specialty retail for the analysis that was not using these definitions. It was using the ITE

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APPROVED MINUTES

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definitions, which Mr. Weigel had. In terms of specialty the analysis did include some types of restaurants.

Councilor Stone said she understood as the code was being interpreted restaurant and retail were the same.

Ms. Mangle replied it did not have anything to do with the code interpretation. There were trip assumptions in the ITE Manual that specialty retail included some kinds of restaurants.

Councilor Chaimov asked Ms. Mangle to address the appellant's point that this was really just a retail-to-retail change and a facelift and therefore not appropriate for the kinds of improvements staff said the code required.

Ms. Mangle replied the original assumption was that it was office, and Mr. Weigel said that information came from the applicant who told him it was office before. Staff tried to verify that with the Finance Department, but they did not keep business license records historically. Staff did have the business name, which confirmed that information, so that was what staff went with. In regards to the facelift, the project was not just changing the outside of the building but it was significantly remodeling the interior adding an elevator and making other changes in the building. She had failed to point out which spoke to the point that staff was very clear with the applicant that these improvements did not need to be done with the first phase of the project. They were not required to be done until occupancy. It was not just this building permit but all subsequent tenant improvements covered by the list of improvements. That included not just the aesthetic, ADA, and structural improvements but all subsequent tenant improvements, which would be required to have an occupiable space to create the retail, restaurant, and office uses intended by the application. It was the hope to benefit the applicant and tenant with certainty of what the requirements would be throughout the future of the project and allowing them to forestall the improvements and share them with tenants in the future.

Councilor Chaimov said if in fact the previous use of the building was retail and not office would that have changed the staff analysis.

Mr. Weigel said he was working with the assumption that it was an office use based on conversations he had with applicant early in the process. The only proportionality analysis staff looked at were ones that involved changes in trips. Staff had not looked at any other proportionality analysis that relied on other types of impacts other than trip generation. Staff had not had time to look at that.

Councilor Stone said she was curious. We assumed the building use was office, and now there was a change in use triggering this study. She was curious because this building was an older building. How many years was this building used as retail space?

Ms. Mangle was not able to speak to that and she asked Mr. Weigel how far back they went when looking at trip generation.

Councilor Stone said it did not have to be exact. Was it retail for 70 years or whatever? So it was used for a retail business for longer than it had been used for office if indeed it was an office.

Mr. Weigel responded as Ms. Mangle said the City did not have records that went back that far. In these cases staff looked at the last use.

Councilor Stone asked if the City was compelled to look at the last use rather than the typical use.

Mr. Weigel replied staff looked at the last use, as that was what it knew.

Councilor Stone asked if the City was required to look at and base the proportionality study on its last use or its most typical use.

Mr. Weigel replied he was not aware of any specific requirements.

Councilor Stone understood that it was subjective.

Ms. Mangle thought if one considered the intent, which was to track impacts and if those changed impacts to the public infrastructure. Logically, it would be the most recent years and what had changed. For example, the North Main site had been a Safeway store that had a lot of trips generated. A smaller project might have actually decreased the trips. The point was to think about how it was changing. If one looked back to previous uses prior to the most recent, it was not really achieving that goal. That was the reason it was the practice to look at the most recent uses.

Councilor Stone said they heard Mr. Maes from Case De Tamales the new restaurant in town say that he had over 3,000 people in the last month. That was pretty significant. Yet his public area improvements were much less. They were disproportionate to the amount of people who were coming.

Ms. Mangle replied that Mr. Maes fell into a different category of the code. His project was in the small improvements category. The code said that any of these small improvements had to spend up to 10% of the value of their building permits toward meeting the public improvements. That was what Mr. Maes did as did Cha Cha Cha and some of the other smaller projects as defined by the code and not by staff. She believed staff had worked with Mr. Maes to get the improvements in front of his business, so she would talk to him more. She thought staff had been able to respond to those concerns.

Mr. Weigel added to Ms. Mangle's comments about looking at the last use. Similar to transportation SDC's where one always looked at the last use. If one tried to go back and look at what all the previous uses of that building had been it wouldn't work. As the use changed the transportation system as a whole lost those trips that were there. It was the best practice to look at the last use and the impact on the transportation system as a whole.

Councilor Stone had one more question about the proportionality analysis. She heard Mr. Parecki state that the square footage in the basement was used for the proportionality analysis. Looking at the slides it was pretty obvious it would not be used as retail. If that was used then why was it used?

Ms. Mangle replied that was something the ITE Manual and it directed staff to use the basement square footage. On its front it was not logical. One probably would not put a store there. That space, even though ancillary to the store, could be a storage space or an extra office for the store manager and it was still supporting infrastructure for the retail that allowed more goods to be stored and more capacity with potentially more trips. Fundamentally, it was the ITE Manual that directed staff to include the basement and to include things like hallways and not just limited to the areas most used for retail.

Councilor Stone asked if the ITE Manual was a requirement to be used in this proportionality analysis.

Mr. Weigel responded the ITE Manual was the best way to determine what the impacts of the development were without doing full-blown traffic study.

Applicant Rebuttal

Mr. Monahan said the applicant would be allowed 10 minutes for rebuttal.

Mr. Morasch wanted to rebut some of the discussion, and there was a lot of discussion, so he was not going to try to rebut all of it. He was just going to pick one point that was made about the smaller projects that might generate way more trips than even a larger project yet smaller projects did not have nearly the burden of these public area requirements because of the way the code was written. In this case the way the code was written it was not really applying very fairly to this project. The code said "assessor's value". If one looked at the "assessors value" it was about half of what the true real market value of the property was. If one used the real market value and compared the cost of these improvements to the real market value, it would be under 50%. Then the code would cap it at 10% of the permit value or about \$22,000. That would be the maximum the City could charge to this project. That demonstrated a fundamental unfairness. The facelift part was about half of the total project cost of \$220,000. About \$110,000 was the facelift, and the elevator was another \$80,000. No matter what the uses were ADA would require an elevator to the second floor if the second floor were being used. Now a majority of the cost was either tied up in an elevator, which would be required even if they were somehow able to put offices on the first floor, which could only be done through a variance as the code required retail on the first floor. The code requires retail on the first floor. If anything was changing, it was the code that was triggering it and not this application. The ADA required the elevator. The facelift was to make the building look nicer. Neither of those things changed the use or added to the square footage. If one took those out, it would be under \$40,000, and it would be a small project. That demonstrated how unfair the code was when it was applied to this particular situation and why Dolan stepped in and said the proportionality analysis had to be done.

Mr. Parecki added the City routinely did not do proportionality analysis unless it was challenged. He guessed he was the first one to challenge the City on the analysis part of the project. Everybody else just believed the City and that they had to do these improvements whether or not the proportionality analysis said so. He thought that was a little bit wrong. He wanted to give some of his time to one of the Main / Monroe Investors to say a few words.

Charles Aaron, Portland, Milwaukie business owner and partner in 2 different buildings. He asked when the planning staff's proportionality analysis was actually done. He believed the answer would be it was done after it was challenged. There was a digging in of the heels so to speak of the planning department to prove the case. The intransigence of the building department in its analysis, even when it was pointed out they were wrong in cases, they were not admitting to it. They were still trying to prove their case. He did not understand how when you caught people making errors all the way down the line, and they still would not confess that they were wrong. It was happening all over town. If one misapplied the rules in every single case because the burden of proof was on the City or planning department to show there was a proportional change to the building and there was a change in use that triggered the public area improvements. How can you go to a church that was renovated back into a church and say that they were required to do public area improvements? How can you go to a bank that was a bank that renovated its lobby and say you were now responsible for public area improvements? How can you go to a theater and say to a theater you were responsible for public area improvements because the theater was renovated? Mr. Aaron thought it was a little bit silly and a little bit inconsistently applied.

Close Hearing

It was moved by Councilor Chaimov and seconded by Councilor Barnes to close the public testimony portion of the hearing. Motion passed unanimously [5:0]. Mayor Bernard closed the hearing at 9:39 p.m.

Councilor Chaimov said he did not think it would be so early in his tenure when he would be faced with a vote with which he would be so unhappy. This was a wonderful project that the City ought to encourage. Mr. Parecki was exactly the kind of pioneer that the City ought to be encouraging. He was someone who was willing to put down his own hard-earned money into making our community better. As Councilor Stone pointed out, we have a code that stood in the way of doing what for example Mr. Maes suggested about "trying to help this man out". He thought the City had the wrong code at the wrong time for this City. If the question before Council was should we be changing the code so the public was picking up the cost of public improvements rather than the developers he would be pleased to vote in favor of that. If the question was whether assuming this was an office to retail change has Ms. Mangle interpreted the code correctly, he thought the answer was "yes." She was interpreting and applying the code correctly, and that her office had been helpful and not intransigent. Certainly the code had not been applied as consistently as we might like, but at some point you had to start getting things right and move forward consistently. When you have been operating perhaps incorrectly in the past you begin to look inconsistent until you start applying the rules correctly for a long enough period. Unless someone had a different idea, his intention was to move to remand the matter to the Planning Commission to determine the nature of the occupancy immediately prior to the Main / Monroe acquisition of the property. If the determination was that the occupancy immediately prior was an office and not retail, then he thought Director Mangle's interpretation was correct, and the Council ought to vote to deny the appeal. If in fact, however, this was a retail-to-retail change and he thought the record was cloudy on that point then a different decision might be in order.

Councilor Stone thanked Councilor Chaimov for his comments. She agreed with much of what he said. She was not in agreement though with looking to ... She backed up her comments. We all knew this was a valuable project for our City, and we all wanted to see it happen. She thought from what she heard tonight the interpretation was very subjective in some cases on certain points. The last use versus the more typical use over the life of the building she thought was a point that needed to be addressed and taken into account. She thought the more typical use of the building was indeed retail. She was certainly understanding of Mr. Parecki that he wanted to do improvements to the building. She thought he was willing to do some public area improvements that were reasonable. She agreed with Councilor Chaimov that the Council send this back to the Planning Commission to look at those points and also verify if we should interpret the last use versus the more typical or best use, if you will, of this particular building. She thought that was significant to the project.

Councilor Barnes agreed it was great that Mr. Parecki found another project in the City to work on. She was sure when all was said and done it would turn out to be a beautiful addition to the downtown. Maybe she missed something, but when she read the code, Council was supposed to make a decision. The code said, "Any renovation, expansion, or alteration of an existing building that had 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." Mr. Parecki said he was renovating and the County Assessor came up with a value that exceeded to 64%. The Council was asked to say whether or not Ms. Mangle made a decision interpreting the code that was right or wrong. It was agreed to by the County Assessor and Mr. Parecki, so she may be misunderstanding or missing something that needed clarification.

Councilor Stone said it was confusing to her also. The point was the Council would not even be discussing this if this project had not been triggered by a supposed change of use of the building. If the building was looked at in terms of its last use or however

they wanted to interpret that as being retail-to-retail, then this would not have triggered, if she understood it correctly, the proportionality analysis. That was the question that she and Councilor Chaimov wanted clarified by the Planning Commission in terms of the use of the building.

Councilor Loomis would like staff to clear that up right now because his decision hinged on that also.

Ms. Mangle replied there were 2 issues that were being melded. The trigger for the code section was the building permit value, not the proportionality analysis and not the change in use. The trigger was the building permit value for all of these different types of projects. The interpretation was that we needed to consider the impacts, which could be things like changes in use. Then the question was if the proportionality analysis was done correctly. The proportionality analysis was not what triggered the improvements and was not what triggered the code section. Staff did not always do this full-written analysis. It was always a consideration in every case whether it was a full-written analysis or not.

Councilor Loomis understood if this Council thought it was retail, the last previous use, or the Planning Commission were to determine that then what staff presented would not have changed or what Mr. Parecki's company would have to pay.

Ms. Mangle replied that was the staff recommendation.

Councilor Chaimov followed up because he was fine up to that point.

Ms. Mangle thought she answered it incorrectly. The question was if the determination were that it was retail would the staff recommendation change. The response was staff had not had the time to consider that because it was new information. It was included in the supplemental information that Mr. Parecki submitted the previous Friday. It did not clarify what argument was being made, so staff did not have that information until this meeting. It was new information that was not presented with the initial staff analysis. She could not tell exactly what the recommendation would be.

Mr. Monahan added that was not information that was in front of the Planning Commission, so it was information that was new to the City Council. One option was to consider sending it back to the Planning Commission. With the 120-day time constraints, it might be more prudent if the Council felt there was need for further analysis to keep this matter at the City Council level and have the staff do the analysis and bring it back for the next meeting. That way there would be no notice problems and the like.

Mayor Bernard addressed the notion of subjective interpretation. He felt the code was pretty straightforward and he did not think there was any subjective interpretation. He thought it was a good idea to hold the matter over to the next City Council meeting. He assured the Council he had been in that property numerous times as the Mayor, as a businessman, and Chair of the MDDA president, and that facility was not a retail facility. His interpretation of a retail facility was where people went in and out and bought things on a daily basis. He had been in that building numerous times, and it was not retail. Absolutely not retail. It never was except in the past. He recently went through a variance application on a building that had been there since 1935. That building was a garage, a storage facility, and someone wanted to sell cars. People had parked cars in there since 1935, so what was the interpretation of that. Every single project we did in Milwaukie changed its use. At some point you cannot look back at the very beginning. His traffic impacts when he sold gasoline were huge compared to what they were now. There was no comparison. If he developed someday, could he say it was a 2-car garage in 1925, so obviously he had no traffic impacts. The key was the ITE Manual. You had to use some standard in order to support it legally. That was the standard

used. He would be happy to remand this to the next City Council meeting for further study on the last use of the project but certainly not the history of the use. He did not believe it was necessary to send the matter back to the Planning Commission. He thought that could be done at the staff level.

Councilor Loomis agreed it did not fit Mayor Bernard's definition of retail, but he was not sure it was not retail. His memory of the last operation was they were buying and selling something out of there whether it was walk up. He was a huge fan of what Mr. Parecki was doing in this town. With the North Main project there was a lot of work and executive meetings with a lot of tough choices and decisions and they invested in that property because they felt that was the piece. If we did not invest in our community, how could we ask others to? The City went out on a limb on that one. The goal of the Downtown Plan was "to restore an environment in which people could shop, live, work, and socialize." It was obvious the code had great intentions, but it was hindering the whole purpose. It was hindering private investment. There needed to be a different way to do public improvements. They just had to. He was not a big fan of urban renewal areas, but maybe we could do our own and commit to a situation when a building was improved that as a Council we would take that increased value in property taxes and directly apply it to public improvements. Once that was done, it was done. It did not go on for 10 to 15 years where it was affecting schools, police, and parks. It was just a temporary thing just to help. He thought the City should make the commitment to help private investors and developers who were doing the right thing. The City was asking a lot of them in the design standards. If that being a retail business previously helped even if it was not to the definition of what we all thought of as retail, but the real definition of retail. If it helped move this project along and gave some certainty to Mr. Parecki of what he would pay. He understood Mr. Parecki's concerns about not being able to go into the building until he gave the City so much money.

Mayor Bernard understood the interpretation of the change of use was really the cost of what he had to do and not the fact that he had to contribute. What did the change of use have to do with this?

Ms. Mangle said the change of use had to do with the proportionality analysis that looked at the changing auto trips generated by the site.

Mayor Bernard asked what the difference would be if it was retail-to-retail. If there were no change in traffic, what would the financial impact be? Key Bank did a portion of its public improvements.

Councilor Stone said they were not required to. That was the difference.

Ms. Mangle explained Key Bank did the improvements in the amount of \$45,000.

Councilor Barnes understood Key Bank had a permit value of \$450,000, and its contribution toward compliance was \$45,000.

Mayor Bernard said the church also spent a certain amount on its project because they were required to do so.

Councilor Stone said that was Mr. Parecki's point. Maybe Ms. Mangle could clarify that they were not required to do that. They were told they had to but the way the code was written they clearly did not have to because there was no change of use.

Ms. Mangle said there was no record of a written proportionality analysis. The interpretation they made with this happened August 2007. The code had been in place since 2000 and had been applied by staff at face value until she stepped in and made this change. Most of the current staff was not around during those projects, so she did not know what types of considerations were made.

Mayor Bernard understood Key Bank was required to give that amount.

Ms. Mangle said the City required that Key Bank make those improvements. She did not know the details of what changed in that building. There could have been changes, expansions, and intensifications.

Councilor Stone said this was important for understanding. What Council heard tonight was that Key Bank and the church and the theater were all told they had to do public area improvements. In interpreting the code in fact it was not really required of them. But yet they were told they had to. They did what they were told. If they interpreted the code, the interpretation of the code clearly said they did not have to do that because they were not changing the use. That was what she heard tonight.

Ms. Mangle said that was Mr. Parecki's assertion.

Councilor Stone asked if that was incorrect.

Ms. Mangle did not know because she did not know what the projects entailed and the kinds of intensifications that happened. Until August 2007 staff was not interpreting the code and only applying it at face value, in black and white, as they preferred to do. That was how it was done until the director's interpretation was made this year.

Councilor Chaimov moved to continue the hearing to the City Council meeting on January 2, 2008 for more discussion. Councilor Loomis seconded the motion.

Councilor Stone asked if the reason for holding this over needed to be specified.

Mr. Monahan replied it would be valuable for staff to have direction as to the Council's expectations if there were further analysis to be done to get to a decision point on January 2, 2008.

Councilor Stone said she had hoped to make a motion to amend the motion to give staff further direction.

Councilor Chaimov thought the Council would like to know what was the occupancy of the building immediately prior to the acquisition by Main / Monroe. If one considered it appropriate what were the uses prior to the acquisition if one wanted to evaluate it over time as opposed to immediately prior. He believed the immediate prior use was what was appropriate not over time. That was an issue that needed to be answered so the Council could ultimately make their decision. If staff determined that it was a retail-to-retail use, was there some other calculation or analysis that led staff to believe that there should be some public improvements made even though it was retail-to-retail?

Councilor Stone said basically the Council wanted to see the project get off the ground, and Council needed staff help to do that.

Motion passed unanimously. [5:0]

B. Motion to Consider Continuation of Amendments to the Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

It was moved by Councilor Barnes and seconded by Councilor Chaimov to continue consideration of this matter to the January 15, 2008 regular City Council meeting. Motion passed unanimously. [5:0]

OTHER BUSINESS

A. Code Amendment Related to the Administration of the Collection of the City Motor Vehicle Fuel Tax Chapter 3.40.270 – Ordinance

Mr. Campbell provided the staff report. An error was identified in the previous ordinance related to the collection of motor vehicle fuel taxes. Staff requested approval of the proposed ordinance that would clarify that the City was empowered to contract with any branch of the Oregon State Department of Transportation in order to collect the local fuel tax.

It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings and adoption of the ordinance allowing the City Manager to contract with the Oregon Department of Transportation for collection of the Milwaukie Motor Vehicle Fuel Tax. Motion passed unanimously. [5:0]

Mr. Monahan read the ordinance two times by title only.

The City Recorder polled the Council: Mayor Bernard and Councilors Chaimov, Barnes, Stone, and Loomis voted 'aye.' [5:0]

ORDINANCE NO. 1976:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ALLOW THE CITY MANAGER TO CONTRACT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE COLLECTION OF THE MILWAUKIE MOTOR VEHICLE FUEL TAX.

B. A Resolution Amending the City's Public Records Request Policy to Comply with SB 554 and Repealing Resolution 17-1996 – Resolution

Mr. Monahan reported SB 554, adopted by the 2007 Oregon Legislature, created a process that gave more definition to the public as to its rights in making a request for nonexempt public records. There was a requirement under this law that cities adopt a description of how one would go about making a public record request and what the City's responsibilities were in terms of establishing fees and in terms of responding to such requests. He briefly reviewed the City's responsibilities. He noted a scrivener's error in the draft resolution that would be corrected to final execution of the document.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution adopting reasonable measures to ensure the integrity of its records and effectiveness of its office operations and repealing Resolution 17-1996 with the changes as mentioned.

Councilor Stone heard the City Attorney say there could be public records that the agency could determine were exempt from public view. She asked for examples of what those might be.

Mr. Monahan replied those could be records such as appraisals of real property during negotiations for the purchase of the property, personnel records, and others, which were described under state statute. It was not that the City got to make that determination. It had to follow the guidance of the Attorney General.

Councilor Stone asked if those records were currently available for public inspection.

Mr. Monahan replied they were not. The exempt records were not available to the public at this time. This resolution incorporated the new law and repealed a process the City already had in place to deal with public records requests.

Councilor Stone understood the resolution was in compliance with how the City was currently conducting business.

Mr. Monahan replied it was in compliance with how the City was conducting business and adding more specificity to address SB 554.

Motion passed unanimously. [5:0]

RESOLUTION NO. 72-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REASONABLE MEASURES TO ENSURE THE INTEGRITY OF ITS RECORDS AND EFFECTIVENESS OF ITS OFFICE OPERATIONS AND REPLEAING RESOLUTION 17-1996.

C. Council Reports

Those reports were made during the work session.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Stone to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 10:12 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL DECEMBER 18, 2007

MILWAUKIE CITY HALL
10722 SE Main Street

2020th MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Recognize Carlotta Collette for Her Service to the Community as a City Councilor**
 - B. **Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study (Kenny Asher)**
 - C. **First Annual Update on the Street Surface Maintenance Program (Kenny Asher)**
3. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of the October 16, 2007 Work Session**
 - B. **City Council Minutes of the October 16, 2007 Regular Session**
 - C. **Replacement of Desktop Computers – Resolution (Esther Gartner)**
4. **AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements (Katie Mangle)**
 - B. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 (Mike Swanson)**
6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. **Code Amendment Related to the Administration of the Collection of the City Motor Vehicle Fuel Tax Chapter 3.40.270 – Ordinance (Alex Campbell)**
 - B. **A Resolution Amending the City's Public Records Policy to Comply with SB 554 and Repealing Resolution 17-1996 – Resolution (Bill Monahan)**
 - C. **Council Reports**
7. **INFORMATION**
 - A. **Riverfront Board Minutes, October 9, 2007**
 - B. **Park and Recreation Board Minutes, October 23, 2007**
8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment 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.
- 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

From: Kenneth Asher, Community Development & Public Works Director

Subject: Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study

Date: December 6, 2007 for the December 18 Meeting

Action Requested

None. This is an informational update on progress related to the Supplemental Draft Environmental Impact Statement study ("SDEIS") for the South Corridor Phase 2 Portland-Milwaukie light rail project.

Background

At its September 4, 2007 Council meeting, Council requested regular monthly updates on the Portland-Milwaukie Light Rail SDEIS. This is the second regular update since that request was made.

Project staff, led by Metro, is continuing to work on SDEIS preparation. Most of the work from the past several months has involved internal project coordination and technical research between the Metro team and consultant team (led by Parametrix). Draft Chapters 1 and 2 (the "Purpose and Need" and "Alternatives Considered" chapters) have been submitted to the Federal Transit Administration (FTA) for review, along with the Methods reports, describing how the environmental impacts are to be assessed during the study. These include the following topics:

- Land Use and Economic Activity
- Displacements and Relocation
- Environmental Justice
- Visual Quality and Aesthetic Impacts
- Historic Resources

- Archaeological and Cultural Resources
- Parklands, Recreation Areas, Wildlife and Waterfowl Refuges
- Geology, Soils and Earthquake Impacts
- Ecosystems Impacts
- Hydrology and Water Quality
- Noise and Vibration Impacts
- Air Quality Analysis
- Energy Analysis
- Utilities Analysis
- Public Services
- Hazardous Materials
- Security and Safety
- Financial (Capital Costs, Operating Costs, Cost Effectiveness)
- Transportation (Traffic and Transit Ridership)

Initial results from these studies are being compiled now. They will be available for FTA and jurisdiction staff initial technical review in January.

The project has conducted several Station Area Planning activities over the past few months, including four workshops and open houses that focused on the six proposed stations between SE Clinton Street and SE Tacoma St. These events allowed the project to obtain community input on station area access, design and community planning needs. The proposed Tacoma Station, which is sited just north of the Milwaukie city line, raised several interesting reactions from community participants, including consideration of shifting TriMet's fare zone border south to include the Tacoma Station in zone 2. Access to the station was viewed as crucial and it was noted that the location is hard to get to by car, bike or on foot.

A few community-based suggestions are anticipated to be included as part of the project, including:

- A safe and direct connection to the Springwater Trail
- A station that is safe and attractive for riders at all hours
- Rehabilitation of natural features (Johnson Creek and Tideman Park)

Other community-based suggestions could be explored further as the project gets designed, including:

- Safe bicycle and pedestrian connections from the LRT station to surrounding residential and commercial areas and transit
- Rezoning as appropriate to encourage regional retail (no big box), creative office uses, and "moderate income" housing
- A safe and direct connection to the east of the railroad tracks

- Lighting on the Springwater Trail
- Adaptive reuse of existing industrial buildings
- Concentrated development on the station site and surrounding area
- Preservation of Industrial zones to keep jobs in the area
- Redevelopment of the area between SE Main and SE 25th as “creative office” or flex space
- Retail development on the ground floor of the Park and Ride structure
- Limited Park and Ride parking to foster “neighborhood station” character
- Pedestrian connections between station area and SE 17th and SE Tacoma
- Sidewalks on SE Umatilla between SE 23rd and SE McLoughlin
- A trail along Johnson Creek
- A shared use path along LRT alignment
- A pedestrian crossing at SE McLoughlin and SE Umatilla

The Tacoma station-related materials compiled from the two Station Area workshops are attached to this report (Attachment 1).

A workshop or open house is planned for February in Milwaukie to obtain input on station preferences in Milwaukie. The focus of this meeting will be to inform the selection of Milwaukie stations for the updated Locally Preferred Alternative.

The Safety and Security Task Force toured the entire alignment in November, and is conducting meetings in December to formulate recommendations for the project. (The Milwaukie focused meeting is scheduled for December 17th at Rowe Middle School. Councilors are invited to attend. Project staff should have additional detail on Safety and Security by the time of the update).

The Citizen Advisory Committee has met since the last update to Council. The CAC has identified SDEIS priorities, heard a detailed briefing on the alignment and provided input into the Willamette River Crossing Partnership.

Milwaukie staff attended each of these meetings, as well as a meeting with Rose Villa residents to describe the possible extension to Park Avenue. Milwaukie staff will also be joining project staff at a meeting with the Waldorf Board of Trustees on December 20th. This meeting, requested by the Waldorf School, is part of an ongoing effort to broaden communications between the project and the school.

The next SDEIS update to Council is scheduled for the second meeting in February.

Concurrence

There is no action with which to concur.

Fiscal Impact

Not applicable.

Work Load Impacts

Not applicable.

Alternatives

Not applicable.

Attachments

1. Station Area Workshop Materials (Tacoma Street Station)

WHAT WE SAW



1 JOHNSON CREEK



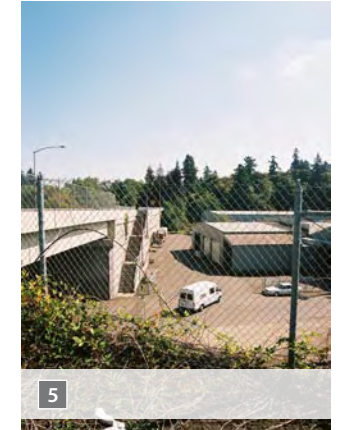
2 EXISTING TRANSIT STOP



3 SIDEWALK ALONG SE MCGLOUGHLIN



4 INTERSECTION OF SE UMATILLA AND MCGLOUGHLIN BLVD - NO PEDESTRIAN CROSSING OPPORTUNITIES



5



NOTE: ALIGNMENTS SHOWN ARE DIAGRAMMATIC AND DO NOT REPRESENT PRECISE PROPOSED LIGHT RAIL TRACK CENTERLINES

WHAT HAPPENS NEXT

TACOMA STATION AREA



PLANNED AS PART OF THE LRT PROJECT

This recommendation is already part of the Portland to Milwaukie Light Rail project.



COULD BE EXPLORED FURTHER

This recommendation is not included in the Portland to Milwaukie Light Rail Project but could help improve the station and adjacent neighborhood. It will be included in a list of potential improvements and will be provided to the City of Portland, Metro and TriMet for further consideration and possible inclusion in the appropriate project or process.



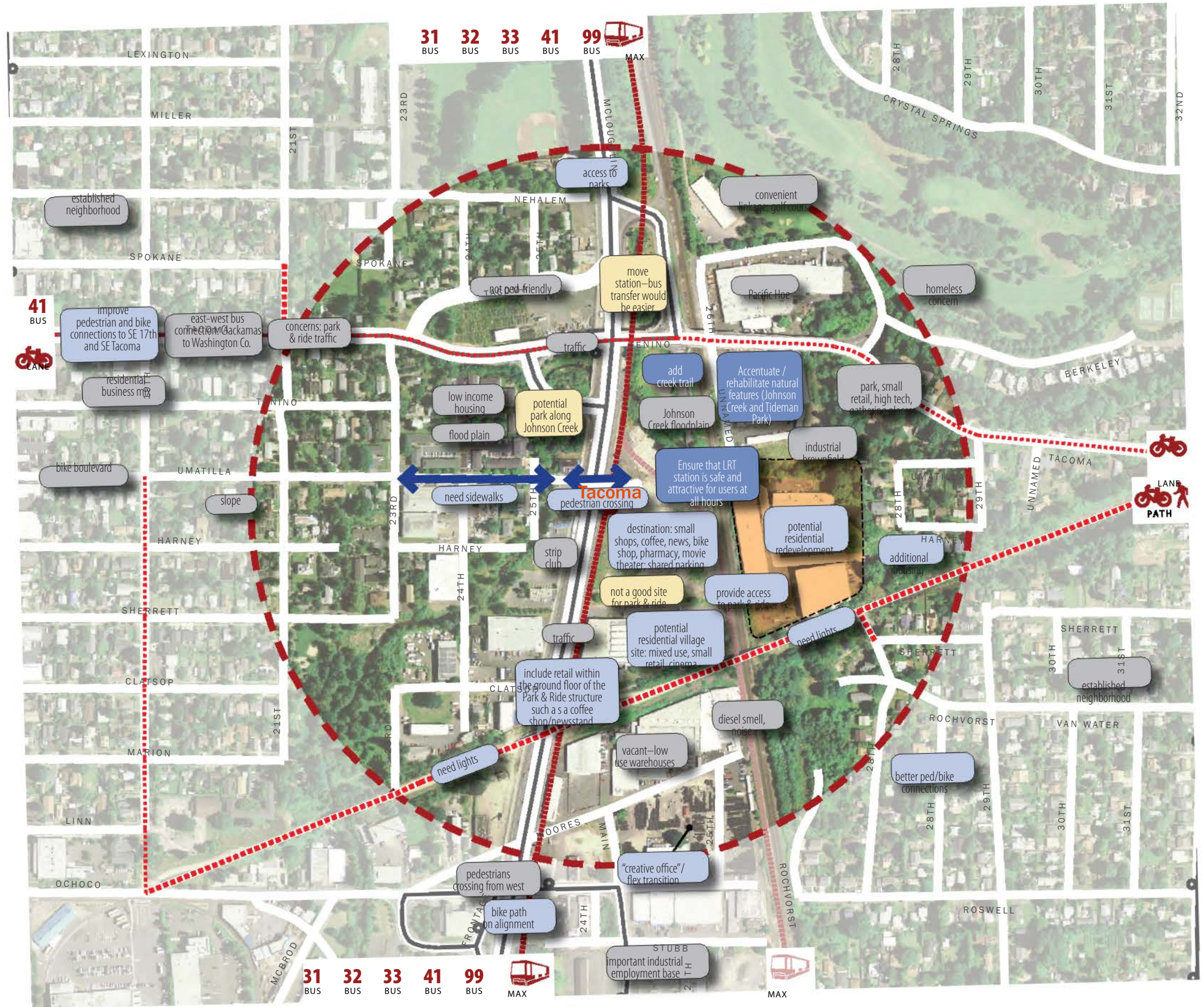
OTHER

This recommendation is being addressed through other planning processes or is inconsistent with City, Regional, or State policy.



PUBLIC COMMENT: CONDITION / CONCERN

This comment has been acknowledged and will help inform the future development of the project.





To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Director of Community Development & Public Works

Subject: First Annual Report on the Street Surface Maintenance Program

Date: December 7 for the December 18, 2007 Meeting

Action Requested

None. This is an update on the Street Surface Maintenance Program and is for information only.

Background

The City of Milwaukie's Street Surface Maintenance Program ("SSMP") was adopted by ordinance on January 2, 2007 and took effect on July 1, 2007. The ordinance provided the basis for determining a street maintenance fee, and instituted an electric utility privilege tax and local gas tax – the proceeds of which are to be used for improving the street surfaces (paving) on Milwaukie's larger streets. As designed and adopted, the Program requires that the city's Public Works Director make an annual report to the City Council regarding the state of the street network and the Program. This is the first annual report, which is described this way in the code:

The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a detailed project schedule for the upcoming year, an updated five (5) year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall Program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.¹

This report is organized into the following six sections:

- Completed Projects
- Upcoming Projects

¹ Municipal Code section 3.25.020C

- Overall Condition of the Network
- Workload Impacts and Overall Program Progress
- Revenue Summary
- Achievement of Program Goals

Completed Projects

The City oversaw the completion of two of the first four projects in the Program's inaugural year. These were the paving of 37th Avenue from Lake Road to Wister, and the paving of 42nd Avenue from Harvey to Johnson Creek Boulevard, both completed during the summer and fall of 2007. Both projects were completed within budget (\$205,000 spent of \$215,000 budgeted), using in-house staff to prepare the bid documents and oversee the construction.

The City solicited bids for the work; four were received, with both jobs going to Eagle-Elsner, the low bidder. Both streets received pavement overlays of 2" of asphalt, raising the pavement condition indices (PCI) of both streets to 100. Before the projects, the PCI for 37th was 53 and the PCI for 42nd was 55.

With the exception of access related concerns (typical for these kinds of projects), staff received only positive feedback from residents in the projects areas. Staff learned, in supervising these first projects, that flagging needs are extensive on projects of this type because of the length of the street impacted and the multiple intersections involved. Staff also learned that the project notification area must be enlarged to include residents on the cross streets.

The other two projects scheduled for Year One (FY 2007-08) are Oak and Washington Streets, as described below.

Upcoming Projects

Staff is preparing to complete the first year of scheduled projects in the spring, with the paving of Oak Street from Highway 224 to Monroe, and Washington Street, from 99E to Oak. These projects will be bid together with construction expected to occur over two weeks. Once complete, the projects will raise the PCI scores from 55 to 100 for Oak Street and from 69 to 100 for Washington. This work will complete the patchwork of old and new pavement in the area around Highway 224 as a result of the recently completed ODOT paving project and the Oak Street Square Development.

The initial review of the budget for the Oak and Washington Street projects indicates that the paving costs may be higher than budgeted by about \$40,000 (\$265,000 budget). The increased cost estimate is due to additional funds budgeted for traffic control in the busy Oak Street intersection with Highway 224 and in the Oak-Washington corridor, and anticipated problems associated with paving on either side of Highway 224.

The Year One budget will absorb this higher expense by scaling back on scheduled crack and slurry sealing work, originally budgeted at \$120,000. Staff has determined that the crack and slurry sealing was over-budgeted in Year One, because only crack sealing need occur (since it is a prerequisite for slurry sealing). It is now planned that approximately \$30,000 will be spent on crack sealing only (prior to slurry sealing next year) leaving the balance of this line item budget for anticipated additional funding needs for the Oak and Washington Street paving. Beginning in Year Two, the SSMP will conduct both crack and slurry sealing on the appropriate streets. Staff will work with Community Services to publicize the areas of town that are to receive slurry seals, since these are likely to happen in concentrated areas each year.

Attachment 1 is the Model Ten-Year SSMP Project Schedule, which lists the streets scheduled for surface maintenance over the life of the Program. Attachment 2 is an updated schedule, which reflects the changes that have occurred to date – principally the move of Logus Road from Year One to Year Two.

Logus Road (Stanley to 51st) was originally listed in the first year of projects, however, is now planned for resurfacing in Year Two (fall of FY 2008-09) given that a large portion of Logus will soon be upgraded with new sidewalk and stormwater improvements this spring and summer. The resurfacing of the street will be the final step in the Logus Road Improvement Project, which will occur in 2008-09 – not in the current fiscal year as originally planned. The remaining capital outlay for the Program is \$120,000 for crack and slurry sealing.

The King Road resurfacing project is still planned for Year Two (FY 2008-09). In preparation for this large project, staff is completing storm system repair work on King Road and evaluating the condition of the road base.² This fall, City Public Works stormwater workers completed maintenance on five drywells in King Road in anticipation of the SSMP work. They raised the tops of the drywells to facilitate maintenance and cleaning operations. In the process, it was discovered that many of the storm mains connecting the street catch basins to the drywells had been damaged, apparently several years ago, rendering the mains useless. The damage was repaired, allowing for much improved drainage of King Road.

Staff would also note that the City's Stormwater Master Plan includes a project to improve stormwater drainage of King Road by installing a pump station at 46th Avenue, connected to the lowest drywell on King Road. (The 2011 project is currently unfunded). Although the drainage improvement is scheduled to occur after the repaving, Street and Stormwater staff do not feel the projects are out of sequence, nor that the new pavement will be at an increased risk without the pump station project. When the pump station project is constructed it is expected to have only minor impact on the King Road pavement. However, staff will consider accelerating the pump project in the City's Capital Improvement Plan update, soon to begin. Stormwater capital funds will need to be identified.

² A Pavement Assessment (Deflection Test) will be done for King Road, as part of \$50,000 Materials and Services budget in Year One.

To remind the Council on the SSMP project selection process, it is noted that these streets were selected based on the pavement condition assessment completed in July 2004 and on staff knowledge of pavement needs and priorities. These first streets are a mixture of fair to good pavements, with rehabilitation treatment (overlays) representing "just in time" work, and failed pavements (King Road) that require more extensive "recovery" work. Addressing the "just in time" streets allows the Program dollars to be spent with maximum efficiency, since the cost per surface area is less than when the street surface "deteriorated to the point where the road base was impacted." Addressing the most used streets with failed pavements is another priority, as the poor condition of these streets has the greatest impact on the community. Another selection criteria is scheduling street improvements to coincide with other improvement projects on streets such as 42nd Avenue, Logus Road, and Lake Road. In addition, the SSMP allocates some funds each year for preventive maintenance (sealing) to extend the life of good pavement surfaces.

Overall Condition of the Network

The Engineering Department maintains a database of overall PCI for the network, which includes assessment data for each and every street surface in the City. The database is updated every 3-5 years based on a visual inspection of the network, and every 10 or so years based on more extensive "deflection" testing. The SSMP includes funds to keep this data current, so to inform the project selection criteria. The assessment is typically done by consultants who travel along every street and rate the condition of the pavement and assign a PCI rating reflecting its condition. The data is processed to provide information on the overall state of the street network and recommend treatment according to available funds.

The last comprehensive evaluation of the street network was completed in 2004. At that time, the average PCI for the City was 67 on a scale of 100 (the high end of the range considered "satisfactory"). In the 3 years since that assessment was conducted, assuming no improvement to the network at all, the network PCI would be expected to drop about 6 points to 61. The two street sections that were paved this year would not dramatically affect the overall PCI.

It is anticipated that the next complete assessment will be done after the fourth year of the Program. The initial years of the Program are well defined with projects such as King Road, and there is little need for a refined prioritization of projects. Furthermore, the overall pavement condition will not change much based on the relatively small amount of pavement improvements in the early years. Staff projects that the system's overall PCI will stabilize after two years, with deferred maintenance fully eliminated after ten years.

Workload Impacts and Overall Program Progress

Based on the first half-year, staff is finding that the workload to implement the SSMP is substantial, but as projected and within work plans for the Community Development, Engineering, Public Works, and Finance Departments. During the first six months of 2007, staff expended more time than expected setting up the Program with the City's Finance Department. This involved ensuring that the utility billing function would be prepared to add and collect the street maintenance fee from all households. On the operations side, staff anticipates continuing to manage the Program within current staffing levels. It has become apparent, as was expected, that project inspection demands cannot be met with in-house staffing alone. The all-day, large-scale nature of the paving process will require contracting for some inspection work on future projects. While this was anticipated in the development of the Program budget, the inspection costs will be higher on future projects than on the first two, which city staff inspected. City staff may be able to carry out the inspection function when the projects are limited to single, short street segments.

Project costs will also rise along with the price of asphalt and petroleum. Overall construction costs are rising at about 3% per year, according to the Engineering News Record, which is within the 4.2% inflation rate built into the Program.

Based on Year One results and information, staff would claim the overall Program progress is on track as designed, and suggests no significant modifications to the Program at this time.

Revenue Summary

The SSMP established a new fund in the city's municipal budget – Fund 315, wherein revenues are collected specifically and exclusively for expenditures described in the Program. The three revenue sources are a street maintenance fee, a local gas tax, and an electric utility privilege tax.

Street Maintenance Fee. Setting up the utility billing for the maintenance fee portion of the Program required staff to determine the number of trips to assign to each developed property in the City and update billing records accordingly. Properties were split into either residential or commercial and assigned trips based on information from the International Traffic Engineers (ITE). Residential properties were assigned a base rate as either single family or multifamily. Non-residential properties were assigned trips relative to the type of activity (ten category types) and building size (or other specified unit).

Information on the process and the trip assignment was provided in mailings included with City utility bills. Non-residential accounts were provided with the opportunity to contest the trip assessment by appealing to the City Engineering Director. Of all the commercial accounts notified about the pending fee, the city received only eleven (11) requests for a reassessment of trips. Of those, seven were reassigned to a more appropriate business category, resulting in a reduction in their monthly fee

(approximately \$80/month total), and four were assigned reduced trip factors based on trip data provided (approx \$130/month total reduction. Two properties were determined to have smaller building areas (approx \$70/month total reduction). No appeals were requested of City Council.

Revenue from the street maintenance fee was projected at \$575,000 for the first year. Reviewing collections over the first four months, revenues are not meeting this expectation. Approximately \$40,000 has been received each month (about 20% under projections) for an annual total of \$480,000. Staff has determined the under-collection is due to the crediting of one month this fiscal year to next year (because of the City's cash accrual accounting basis); missing one month of billing at the beginning of the year to begin all accounts in July; and a miss-billing of some commercial accounts (billing for one month instead of two) discovered this month (December 2007). With these adjustments, staff now projects fee collections of approximately \$480,000.

Local Gas Tax. The two-cent per gallon gas tax was implemented beginning July 1, 2007. Staff worked with ODOT to establish the collection process and the City has begun receiving revenue. Revenue from the local gas tax through October is exceeding projections by more than 100% (\$53,243 collected through October), for an annual amount of \$180,000 (up from \$75,000). The surplus collected in this revenue source will help make up the shortfall in the Maintenance Fee collection and will build the contingency fund.

Under a separate staff report and resolution, staff is seeking to clarify the authority granted to ODOT for collecting the gas tax on behalf of the city. Staff would like to see this housekeeping update enacted, to keep the Program within its designed budget.

Electric Utility Privilege Tax. The Electric Utility Privilege will be collected this spring. Staff has no reason to believe the Year One estimate of \$152,228 will not materialize.

Based on the first four months of revenue, staff projects the total revenue for Year One will be approximately \$810,000. This is slightly more than the \$802,228 budgeted. The updated budget estimate for Year Two is \$1.1 million, slightly over the \$1.0 projected. The ordinance provides for a reduction in the local fees if additional monies are made available by the establishment of county, regional, state or other programs. This year saw no such additional money.

Achievement of Program Goals

The SSMP describes Program goals related to PCI Index, Deferred Maintenance, Maintenance, Stopgap Maintenance, and Program Cost.

PCI Index Goal. The SSMP PCI Index Goal is to bring all major streets to a rating of 75 or better, with adequate maintenance to sustain this level of pavement quality. Staff finds that Year One progress toward this goal is satisfactory.

Deferred Maintenance Goal. The SSMP goal in this area is to eliminate the backlog of deferred maintenance of pavement surfaces on larger streets. Assuming the completion of the Year One projects by July 1 2008, staff finds that Year One progress toward this goal is satisfactory.

Maintenance Goals. The SSMP maintenance goal is to prevent any street from deteriorating to the point of requiring reconstruction. By focusing on streets with PCI scores in the 50's (37th, 42nd, and Oak), staff finds that Year One progress toward this goal is satisfactory.

Stopgap Goals. The SSMP stopgap goal is to continue to adequately fund and repair trouble spots throughout the city, with the expectation that these needs will diminish as the Program continues. Stopgap pothole patching has continued using state gas tax funds. Staff finds satisfactory progress toward this goal in Year One.

Program Cost Goals. The overall revenue goal for the Program is \$1.2 million per year for the first ten years, or \$12 million total. Based on projected Year One collections of \$810,000, staff believes there could be Program shortfalls in later years. However, these concerns are mitigated by several factors: the specific and one-time nature of the Year One Maintenance Fee collections issues; the strong local gas tax collections; the unknown privilege tax collections; the very short backcast on which the projections are based; and the conservative inflator (4.2 percent) built into the Program. Based on all of the above, staff is confident the Program will raise \$12 million and achieve all of its goals for that cost.

Concurrence

This report was prepared by SSMP staff which utilizes FTE from the Community Development, Public Works, Engineering, and Finance Departments. The Citizen Utility Advisory Board also reviewed the report.

Attachments

1. Original Model SSMP Project Schedule
2. Adjusted Year-One SSMP Project Schedule

ATTACHMENT 1

Table1. Model SSMP Project Schedule, Years 1 - 5.

<i>Year</i>	<i>Activity</i>	<i>2006 PCI</i>	<i>Activity Type</i>	<i>Cost Estimate</i>
Year 1	Billing & Program Setup		SSMP Program Expense	\$25,000
	Pavement Assessment (Deflection)		SSMP Program Expense	\$80,000
	Oak Street (224 to Monroe)	55	Overlay/Rehab	\$85,802
	37th Ave. (Lake to Wister)	53	Overlay/Rehab	\$72,162
	Washington St (McLoughlin to Oak)	69	Overlay/Rehab	\$181,098
	42nd (Harvey to JCB)	55	Overlay/Rehab	\$137,283
	Logus (Stanley to 51st)	60	Overlay/Rehab	\$55,019
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
			<i>Total</i>	<i>\$761,364</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$800,000</i>
			<i>Balance</i>	<i>\$38,636</i>
Year 2	King Road (43rd to Hollywood)	40	Reconstruct	\$770,816
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
			<i>Total</i>	<i>\$895,816</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,038,636</i>
			<i>Balance</i>	<i>\$142,820</i>
Year 3	Linwood Ave. (Railroad to Monroe)	79	Overlay/Rehab	\$334,423
	Lake Road (Shell Ln to Kuehn)	53	Overlay/Rehab	\$311,491
	Roswell (32nd to 42nd)	52	Reconstruct	\$252,165
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
			<i>Total</i>	<i>\$1,048,079</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,142,820</i>
			<i>Balance</i>	<i>\$94,740</i>
Year 4	Washington Street (37th to 40th)	66	Overlay/Rehab	\$27,878
	27th (Lake to Washington)	72	Overlay/Rehab	\$103,545
	Harrison Phase 1 (McLoughlin to 42nd)	44	Reconstruct	\$740,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
			<i>Total</i>	<i>\$1,021,423</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,094,740</i>
			<i>Balance</i>	<i>\$73,318</i>
Year 5	Pavement Assessment (Visual)		SSMP Program Expense	\$20,000
	Harrison Phase 2 (McLoughlin to 42nd)	44	Reconstruct	\$200,000
	Railroad Ave Phase 1 (Harrison to Harmony)	44	Reconstruct	\$531,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
			<i>Total</i>	<i>\$926,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,073,318</i>
			<i>Balance</i>	<i>\$147,318</i>

Table 1 Continued. Years 6 -10

<i>Year</i>	<i>Activity</i>	<i>2006 PCI</i>	<i>Activity Type</i>	<i>Cost Estimate</i>
Year 6	43rd (King to Howe) and Howe (to 42 nd)	73	Overlay/Rehab	\$121,074
	River Road (McLoughlin to Lark)	76	Overlay/Rehab	\$95,129
	Railroad Ave Phase 2 (Harrison to Harmony)	44	Reconstruct	\$150,000
	Monroe Street Phase 1 (224 to City limit)	41	Reconstruct	\$431,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
			<i>Total</i>	<i>\$972,203</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,147,318</i>
			<i>Balance</i>	<i>\$175,115</i>
Year 7	International Way (37th to Harmony)	70	Overlay/Rehab	\$373,000
	Monroe Street Phase 2 (224 to City limit)	41	Reconstruct	\$300,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$873,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,175,115</i>
			<i>Balance</i>	<i>\$302,115</i>
Year 8	Harvey Street (32nd Ave past 42nd Ave)	26	Reconstruct	\$303,000
	Home and Wood Avenues	48	Reconstruct	\$688,351
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$1,191,351</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,302,115</i>
			<i>Balance</i>	<i>\$110,764</i>
Year 9	Pavement Assessment (Visual)		SSMP Program Expense	\$30,000
	McBrod Avenue (17th to Ochoco)	27	Reconstruct	\$370,000
	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$1,025,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,110,764</i>
			<i>Balance</i>	<i>\$85,764</i>
Year 10	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Mailwell Avenue (Main St. to Commerce Park)	28	Reconstruct	\$190,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$815,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,085,764</i>
			<i>Balance</i>	<i>\$270,764</i>

ATTACHMENT 2

Adjusted Year-One SSMP Project Schedule

<i>Year</i>	<i>Activity</i>	<i>2006 PCI</i>	<i>Activity Type</i>	<i>Cost Estimate</i>
Year 1	Contractual Services		Testing, King Road eval	\$50,000
	Oak Street (224 to Monroe)	55	Overlay/Rehab	\$105,000
	37th Ave. (Lake to Wister)	53	Overlay/Rehab	\$83,687
	Washington St (McLoughlin to Oak)	69	Overlay/Rehab	\$200,000
	42nd (Harvey to JCB)	55	Overlay/Rehab	\$119,261
	Crack Sealing		Preventive Maintenance	\$30,000
	<i>Total</i>			<i>\$587,948</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$810,000</i>
			<i>Balance</i>	<i>\$222,052</i>
Year 2	King Road (43rd to Hollywood)	40	Reconstruct	\$800,000
	Logus (Stanley to 51st)	60	Overlay/Rehab	\$60,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$125,000
	<i>Total</i>			<i>\$985,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,300,000</i>
			<i>Balance</i>	<i>\$315,000</i>
Year 3	Linwood Ave. (Railroad to Monroe)	79	Overlay/Rehab	\$350,000
	Lake Road (Shell Ln to Kuehn)	53	Overlay/Rehab	\$320,000
	Roswell (32nd to 42nd)	52	Reconstruct	\$260,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
	<i>Total</i>			<i>\$1,080,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,200,000</i>
			<i>Balance</i>	<i>\$120,000</i>
Year 4	Washington Street (37th to 40th)	66	Overlay/Rehab	\$30,000
	27th (Lake to Washington)	72	Overlay/Rehab	\$105,000
	Harrison Phase 1 (McLoughlin to 42nd)	44	Reconstruct	\$740,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$150,000
	<i>Total</i>			<i>\$1,025,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,100,000</i>
			<i>Balance</i>	<i>\$75,000</i>
Year 5	Pavement Assessment (Visual)		SSMP Program Expense	\$20,000
	Harrison Phase 2 (McLoughlin to 42nd)	44	Reconstruct	\$200,000
	Railroad Ave Phase 1 (Harrison to Harmony)	44	Reconstruct	\$531,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
	<i>Total</i>			<i>\$926,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,100,000</i>
			<i>Balance</i>	<i>\$174,000</i>

<i>Year</i>	<i>Activity</i>	<i>2006 PCI</i>	<i>Activity Type</i>	<i>Cost Estimate</i>
Year 6	43rd (King to Howe) and Howe (to 42 nd)	73	Overlay/Rehab	\$121,000
	River Road (McLoughlin to Lark)	76	Overlay/Rehab	\$95,000
	Railroad Ave Phase 2 (Harrison to Harmony)	44	Reconstruct	\$150,000
	Monroe Street Phase 1 (224 to City limit)	41	Reconstruct	\$431,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$175,000
			<i>Total</i>	<i>\$972,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,150,000</i>
			<i>Balance</i>	<i>\$178,000</i>
Year 7	International Way (37th to Harmony)	70	Overlay/Rehab	\$373,000
	Monroe Street Phase 2 (224 to City limit)	41	Reconstruct	\$300,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$873,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,175,115</i>
			<i>Balance</i>	<i>\$302,115</i>
Year 8	Harvey Street (32nd Ave past 42nd Ave)	26	Reconstruct	\$303,000
	Home and Wood Avenues	48	Reconstruct	\$688,351
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$200,000
			<i>Total</i>	<i>\$1,191,351</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,302,115</i>
			<i>Balance</i>	<i>\$110,764</i>
Year 9	Pavement Assessment (Visual)		SSMP Program Expense	\$30,000
	McBrod Avenue (17th to Ochoco)	27	Reconstruct	\$370,000
	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$1,025,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,110,764</i>
			<i>Balance</i>	<i>\$85,764</i>
Year 10	Major Route Overlays TBD		Overlay/Rehab	\$400,000
	Mailwell Avenue (Main St. to Commerce Park)	28	Reconstruct	\$190,000
	Crack/Slurry/Fog Seals		Preventive Maintenance	\$225,000
			<i>Total</i>	<i>\$815,000</i>
			<i>Revenue Est (+ prev bal)</i>	<i>\$1,085,764</i>
			<i>Balance</i>	<i>\$270,764</i>

Cost estimates include 4.2% inflation in construction costs per year. All reconstruction and rehabilitation costs include a 25% contingency and a 2% inspection cost.

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MILWAUKIE CITY COUNCIL WORK SESSION

October 16, 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, Collette, and Stone

Staff Present: City Manager Mike Swanson, Community/Public Works Director Kenny Asher, Associate Planner Susan Shanks, Engineering Director Gary Parkin, and Resource and Economic Development Specialist Alex Campbell.

Transportation System Plan Pre-Adoption Briefing

Ms. Mangle said the draft plan was being mailed to neighborhood associations and the advisory committee. She explained the purpose of the briefing was to go over some of the process and some overviews of the recommendations and there would be time for questions to be answered. The TSP was a plan for the entire City that addressed all modes of transportation. There were state requirements that require that the City to have a TSP plan and we have had one since 1997. From the beginning staff decided with the support of the City Council and Planning Commission to go beyond that and get deeper and tailor it to Milwaukie's issues and in some cases make it broader. There are some issues that are addressed that are not required. Public involvement was critical to make this the community's plan. A lot of the recommendations came from the working group and were vetted by the advisory committee. Staff learned from those who participated and most of them were new to the City so it wasn't really an option for them to sit down and write a plan. The volunteers who offered their time were impressive. There were many places where the chapters connect and people were talking about completed streets with sidewalks and areas for parking and bus stops and facilities that complemented the character of the neighborhoods. This was a plan she felt would serve in the long run.

She said they were able to pretty successfully draft a set of nine TSP goals, which set up the recommendations and fundamentals of the Plan. The goals were livability, safety, provide travel choices, quality design, reliability and mobility, sustainability, efficient and innovative funding, compatibility, and economic vitality. There are projects policies and process improvements that make up the three different types of projects. She said there is a map in each chapter, called the master plan and that was the big idea or the solutions that they were able to come up with that they could build to make the system more complete, safe and function better. They try to take the 20,000-foot view. Some of the key recommendations are that the main traffic problems we have in terms of looking into the future, as the county changes, will be on the highway corridors of Hwy 224 and 99E. Though it has been in the City's plan for a long time to do a corridor study what they learned with this plan is that it is not just a good idea, but it is really something that is in the City's best interest to take the initiative to study. Whatever happens it needs to help knit the City back together again, and not separate it farther from the two parts of the City. They developed some options for increasing truck and freight access in the Industrial area, but it definitely warrants further study. We shouldn't be waiting for the County or Metro

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to initiate and take the lead. We need to expand the tools we use to improve the bicycle network and bike boulevard concept, and develop complete streets to ensure pedestrian connections, and allow more people to choose not to drive. That can also help with some of the drainage problems the City has had especially in the southeast part of the City where there is no curb and gutter system. Also, expanding transit service to cover currently underserved neighborhoods and enhance the facilities that we do have. There are several new policies related to transit; developing the transit center, and ensuring that as high capacity transit comes to City that we push for reserving the time that is gained by converting bus lines into light rail. That time should be kept in Milwaukie so we reinvest that transit service on some of the bus routes. There was some really good policy work that was done by the transit group. They are adopting the downtown parking management policies that have been worked on for a while in the TSP. Throughout there was discussion of ways to practice environmental stewardship, and how we manage to build and plan for the system. All of the master plans had discrete projects, and many of them were capital projects. What is important for everyone to understand when looking at the master plan is that there is not enough money to build all of that, but the good news is the City doesn't have to fund it all. There are Primarily three different ways that those projects will be implemented. Some of it will be through the CIP. They also have access to regional, state and federal funds if they want to apply for grants and get help, and a really important part is that the development that happens in the City will implement many of these projects. A lot of the State requirements for having a having TSP is to make that land use and transportation linked to make sure we understand what development should be required to do, and the impacts that development has on the transportation system. They also need to assess what a development project would need to do to mitigate any impacts they might have. An example was the signal at 43rd Avenue and King Road, which was paid for by the Safeway development.

Mr. Campbell discussed the assumptions and method going into the financing plan. This was all in present dollars and inflation was not factored in. In recent years the inflation and project cost had outstripped the inflation of our revenues. At some point they needed to limit the number of variables so it is not terribly conservative. On the other hand, it is conservative in that they did not consider any other revenues that did not exist today. It was a projection, which he discussed in round figures. All revenues were about \$60 million including SDC's, gas tax, franchise fees, and street surface maintenance, which was \$23 million dedicated to preservation. They looked historically at what was spent on maintenance, which was another \$30 million leaving about \$7 million over 22 years to contribute to capital projects. Most of revenues were available for operations or capital and about \$215,000 on bike projects. We do struggle to even match the grants that we are able to raise. That \$7 million could fairly rapidly find the grants, which absorbs the \$7 million for grants as a match. If the City wants to do more there are two options that City might look at are to make adjustments to SDC impact fees charged to new development by increasing levels. They will need to do research on how those increases would compare to the development costs in the City versus other cities. The City of Portland had done some good comparative work, and they are confident that we are currently at the low end of development costs. Another issue is or change that we could make is to tighten up credits against SDC's for any transportation infrastructure. A More typical practice would be to only provide those credits if that capital project that they are building is part of the CIP. The credit was really an expenditure of our expected SDC revenues, and the policy would be that the CIP

had been adopted by City Council, and if we forego SDC revenues it should be only for those projects that the money is intended to pay for.

Ms. Mangle explained the difference between the action plan and master plan. The master plan is all the big ideas, and the action plan was what the City could afford with local funds being forecasted. That did not assume a lot of grants and what developers could pay for. They came up with the action plans by using the goals and they asked the question, "how well does this project help achieve these goals?" In addition to the priorities they got from the working groups, each working group set their priorities and then they ranked against each of the goals and then looked at role of the neighborhood association. That is how they came up with overall priority list for all of the projects and the advisory committee helped them refine that and made sure they weren't overlooking anything. Even though the priorities are shown in each chapter it was actually developed as one action plan list as shown in the appendix.

Mr. Campbell said in the appendix that the full list cost reflects the expected City share. They did not count grants as part of the revenue, so they looked at what the expected City contribution would be to that project.

Councilor Stone understood that with \$60 million over 22 years they could do all of the projects on the master plan.

Mr. Campbell replied no. \$60 million is what we have available in all transportation revenues to cover maintenance and operations, and \$7 million of that is what we have available to spend. That includes the new surface transportation fees and taxes. For projects that improved street surface they were thinking that it made sense to pay for the street surface part of that project using the street surface maintenance utility fee.

Ms. Mangle said at the end of the day they tried to make the conservative assumptions. They new a baseline of what we are able to do.

Councilor Barnes said after reviewing this the big issue was grant funding. How much staff time can we afford to spend on writing grants or are we in a position where the City can hire a grant writer for these kinds of projects?

Mr. Campbell responded as far as staff time currently spent on grants it is significantly less than half of his time, and it was cyclical. He also tracked the grants. The City could probably hire two people full-time and they wouldn't have that much success. The granting agencies want match from locality because it indicated support. There are exceptions like the Kellogg Lake restoration for example that may find some share of the local funds. Light rail was like that and the region would look for creative ways of funding. For a lot of the regular street projects he didn't know whom you would ask for that kind of money.

Councilor Collette said what she understood Councilor Barnes to say was when we have the local match would it be useful to hire someone on a contingency basis?

Mr. Campbell replied that we have the capacity to get as many grants as we can match already. We have a number of projects in the pipeline and they are currently struggling to figure out how to pay the local match such as Lake Road and Logus Road.

Mayor Bernard said it is more about the money that comes from JPACT and smaller pockets of money.

Councilor Collette said there are some other grants available for Main Street improvements and small grants for bike paths and beautification projects. Sometimes it takes more staff time to follow up with someone than being at the table when the major funds are divided.

Mr. Campbell said the more creative you get the smaller the grants are. There are a lot of foundations out there that give \$10,000 - \$15,000 grants, but just applying was no guarantee we would get them. They are looking for more needy applicants than the City.

Councilor Collette said the downtown development was a good example in that they prefer those projects to come from the grassroots rather than the city government.

Mayor Bernard said the Lake Road money came from the feds in a different way. Regarding McLoughlin Boulevard he hoped somewhere in this plan and in that case Milwaukie needed to put in a certain amount of money, which was well worth it. When they came through town there was probably a certain match the City had to provide.

Mr. Campbell said he thought it was just an ODOT preservation project. The City was not contributing to that.

Mayor Bernard asked generally if there is a project like that we are not chasing matching dollars.

Ms. Mangle said not necessarily. A good example was the sidewalk and overlay project on Hwy 224. That was an ODOT project and they paid for not only the overlay, their bike/pedestrian planner went and sought funding for the sidewalks. That project didn't involve a lot from the City.

Mayor Bernard said one of the things he thought that was odd was that we had to build a bike lane on McLoughlin Boulevard even though there was a bike path within a few feet. That did not make sense to him when we make a road wider we have to have a bike lane on both sides, which takes up space and actually increase the speed volume on a road.

Ms. Mangle responded that there is not just one type of cyclist. There are families out with their kids riding bikes and the bike commuters who want to get to work as fast as they can and then there are the people in between. That would be one reason to have a path and bike line. She was not familiar with the details of that project, but now there is the commuter route where cyclists can go as fast as they want and there are the cyclists that can go at a slower speed away from traffic in the park. Duplication was not such a bad thing and allowed people to make choices. She addressed the other questions that Mayor Bernard had emailed her, "Was street lighting addressed in the TSP?" She said that it was addressed in two places in the TSP in the transit chapter related to improving bus stops and it was also in the downtown-parking plan. They do have a GIS based inventory of the streetlights that PGE has provided to the City, and Mr. Parkin has been thinking about it in terms of proposed and pedestrian safety in terms of small investments. He also learned that PGE had different kinds of lights, which were more sustainable and would be expensive to make that switch about \$700 per light. The only place where there is a defined program is in the downtown where there is a plan to improve the street lighting, but it may be incremental.

Mayor Bernard said he was concerned about the traffic circle on 34th Avenue. He has heard that trucks go up on the sidewalks and curbs to get around the

circle. If a traffic circle is put in the curbs need to be accommodated so there is room to go around so a truck would not have to go up on the sidewalk.

Councilor Collette asked if that was a freight route? Those circles are used to reduce cut through traffic by freight trucks in neighborhoods.

Ms. Mangle said they need to be well designed not just the circle, but also the entire intersection. The Neighborhood Traffic Calming chapter was a product of two working groups. The traffic group and the street design group talked about a lot of the tools to a great degree. They were asked if they wanted to prioritize the tools and take anything off the table, and they said no they want all of the tools on the table and that the decisions should be site specific. She said they tried to tackle that chapter in two ways. First, it was to remind everyone there were a lot of tools including; education, physical improvement, information and enforcement. Second, was to outline what a process would look like and they would continue to work as it was not fully defined but it was a step in the right direction. They would continue to work with the neighborhoods.

Ms. Mangle addressed the questions about JCB. She said over the course of the last year and half they received a lot of comments, which came from the internet survey, working groups and advisory committees so there were people from all over the city that made comments. What she was including in the hearing packages as they come up are the comments that were received on the drafts because a lot of the comments they received prior to the draft had been accommodated. Since they finished this hearing version of the TSP the only comments she had were about JCB, so hopefully that meant they have successfully addressed the other issues. JCB was challenging because it was in three jurisdictions with only a small section in Milwaukie so they decided to include JCB and 32nd Avenue as a study section although it was not in the City. She said it was important for them to learn about that intersection because it is an important part of our system whether it is in the City or not. They did that and learned that it was failing or close to failing at how a traffic engineer looked at it. Traffic engineers looked at that to make it meet standards. They recommended turn lanes and widening the road and the bridge to make it meet the standards. Staff didn't agree with the engineers about widening the street. They didn't feel it was necessary for the function that the road served in the City, and they realized that the function of that road is more of a collector than an arterial as had been previously designated. In the city of Portland it is designated as a neighborhood collector, and they don't have plans in their TSP or their CIP to do any of that widening. They revised the recommendation not to widen the street or add turn lanes, but because it is already at failure and will probably get worse that anticipating signals at 32, 36 and 42 is a prudent thing to do because we also have the responsibility to make sure that the corridor is managed effectively.

Mr. Parkin said at that intersection the current level of service (LOS) was F, which factors the average waiting time and then the capacity, which is the number of vehicles that could be served even though they had to wait. We would be over capacity, and cause more pollution with cars idling. Taking a minimalist approach even with lights the LOS would still be at F, but the capacity would improve because it would cut the wait time in half.

Councilor Stone said it came out loud and clear at the last Neighborhood meeting that people did not want signals in their neighborhood. Her experience in being in that gridlock was that a turn lane onto 32nd would help to divert some of those cars. At the light at the bottom of JCB when the pedestrian slow point was put in they eliminated what was a wider street that allowed cars to turn right

onto JCB eastbound. We need to have that turn lane back and she said she thought if that turn lane was brought back traffic would flow a lot better.

Mr. Parkin said that was county jurisdiction in that area and to get turn lane they would have to widen the bridge. There was some level of detail, but they aren't projecting when the street would likely fail. Once we have the data it seems prudent to do something to say we should address this. How it actually happens there would have to be further studies. He thought they are better off by at least recognizing and listing this as an issue in the TSP and not just ignoring it.

Councilor Stone said it was failing just at peak hours.

Councilor Collette was very concerned about premise of increasing the flow of traffic would reduce pollution. More people would use JCB if it was easier to get through. She said we should be working to keep cars on highways and keep cars off streets like JCB. She is concerned when signals are put in as being proposed speeds would go up and safety would go down. The Neighborhood was very concerned. She was concerned even if it shows up in the plan then Wal-Mart would have a clean ride from a traffic perspective and she did not want that on the plan.

Ms. Mangle said it is easier for us to require something of a developer if it is in our plan.

Councilor Collette said that if it is in the plan all the City would have to do is require them to put in the signals in.

Ms. Mangle said any development whether it is TriMet park and ride or Wal-Mart or any other development that might be happening along that area they would have to do a traffic study and that traffic study would look at it in much more detail than this plan is, and they would have to address how they would mitigate traffic impact.

Councilor Stone asked how feasible is it to look at those two locations and make another turn lane and how it would help at peak hours.

Ms. Mangle said that 32 and JCB was looked at and the engineers said they would have to widen the bridge to get a turn lane. She said they have to meet engineering standards for safety.

Ms. Mangle said at the Springwater intersection they found 95 bikes per hour so there were safety implications of adding turn lanes, which must be considered. It is in County's TSP. JCB was a neighborhood collector in the City of Portland.

Councilor Stone had questions about changing the classification of JCB. She asked for clarification. Was it a neighborhood collector?

Ms. Mangle said it is considered a neighborhood collector in the City of Portland. We do not have that designation, and it did not come up in the TSP.

Councilor Stone said 10 years ago when they did the initial TSP it was changed from a neighborhood collector and became a neighborhood street, collector. People felt strongly that that street should be a neighborhood collector. Was the reason for changing the classification that we own a small portion of the street?

Ms. Mangle said we don't have that classification. She said that didn't come up during the course of the TSP about re-evaluating the classifications.

Mr. Parkin said our classification of a collector is broad enough that it encompassed a neighborhood type of designation.

Ms. Mangle said that Portland had a much different classification system than any other city in the region. It was tailored to Portland's transportation planning, which was more nuanced than Milwaukie's. The City would be well served by having a simple and straightforward system. Chapter 8 defined what the different systems mean and they weren't just about volumes of traffic but they were also about the different land uses that are served and how they connected across the City. Collector was a broad definition and acknowledged that it did go through neighborhoods.

Councilor Stone said in the original TSP arterials were exempt. She asked why speed bumps are called speed humps, she suggested changing it to bump. The signs call them bumps.

Mr. Parkin said that there is distinction between speed bumps that are in parking lots and the speed hump, which is a more gentle term. The signage uses the word bump as it is more global and it is not to define the speed hump.

Councilor Stone said she was so pleased that this was such a comprehensive plan. She was amazed at the amount of detail in all of the chapters. She asked if there would be any minimization of the use of yellow paint. Overuse of yellow paint detracted from aesthetics. In different jurisdictions they minimized the use of yellow paint.

Mr. Parkin responded that was a maintenance matter and was not addressed in the TSP.

Councilor Barnes asked they could we talk about the SDC situation.

Ms. Mangle said it would be after the plan. They City had a commitment to ODOT to adopt the TSP by the end of the year. Public hearings start next Tuesday with a two-part public hearing at Planning Commission and a two-part hearing at City Council. The Planning Commission hearing would be on 10/23 and finish on 11/13. The City Council hearing would be on 12/4 and finish on 12/18. The goal for 12/18 is a thank-you party for all of the volunteers. The three parts that will be brought forward are the TSP itself which is ancillary document to Comprehensive Plan, and an amendment to the Comprehensive Plan and two minor zoning code changes that were required to stay in compliance with state requirements. The next step is they would continue next year with amendments to the Transportation Development Code (Section 1400) that had been on their work plan, and they would use that to streamline the process and begin incorporating street design ideas into the code to allow those to happen along with the Public Works Standards. There was Policy direction in the TSP to allow more flexible street design and right now there was a rigid street design policy so they will look at the Public Works Standards and the code to make sure they allow the kind of flexibility and livability to breathe through into the projects as they are done. There are some parking recommendations they can start acting on, financing and SDC recommendations that will be part of the work in the next year. They will invite the people involved in street design to be involved in the further work that needs to be done next year.

Councilor Collette said that she has worked on TSP's as a consultant and had a lot of work on public involvement and this process was phenomenal and the involvement was remarkable. It was an award-winning document.

Mayor Bernard said he was very impressed that with all of the questions thrown at you that you spent a lot of time and came up with those answers. He thanked them.

Ms. Mangle said that this was not only a community effort but also a team effort and everyone had worked very hard and the feedback meant a lot to her.

Mayor Bernard adjourned the work session at 6:40 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
October 16, 2007**

CALL TO ORDER

Mayor Bernard called the 2016th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Mayor James Bernard and Councilors Deborah Barnes, Carlotta Collette, and Susan Stone

Excused: Councilor Joe Loomis

Staff present: City Manager Mike Swanson, Community Development & Public Works Director, and Finance Director Valerie Warner

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement Study

Mr. Asher introduced Bridget Wiegart, Metro Project Manager, who joined him in the update on the South Corridor Phase 2 Supplemental Draft Environmental Impact Statement (SDEIS) process. The Study was well underway with targeted public involvement. Mainly consultants were doing studies, and Portland engaged in intense discussions about the location for the Willamette River Crossing. There was good representation from Milwaukie on the Safety and Security Task Force and the Citizen Advisory Committee (CAC).

Ms. Wiegart said there were a lot of discussions during the summer when the Steering Committee considered the options to be studied in the SDEIS. Since then she understood that Mr. Otsyula raised a number of concerns about the National Environmental Policy Act (NEPA) process. She discussed a letter from her director Ross Roberts. Essentially, Mr. Otsyula's concern as Metro understood it was whether the project should have been required to study additional options in the SDEIS and whether or not Metro was in compliance with NEPA. Metro had been in a continuous NEPA process since the late 1990's. There was a DEIS in the late 1990's that considered a variety of modes and alternatives. An Alternatives Analysis (AA) reviewed a variety of modes that included busway, bus rapid transit (BRT), commuter rail, and others. In 2002 the SDEIS looked at bus modes as well as light rail along with a number of different alignments. That resulted in the current locally preferred alternative (LPA) that was adopted in 2003. The history was important because NEPA was a progressive process that allowed one to incorporate the historical reviews and move forward into a narrowing process. As they geared up to do the SDEIS this spring and summer, the Portland Waldorf School (PWS) and others suggested looking at additional alignments within downtown Milwaukie. In response, there was a fairly exhaustive review of alignments on other streets. The City Council recommended to the Steering Committee not to add any of those alignments. That was an appropriate process because the Steering Committee was the advisory group that made all recommendations to the project. It agreed with the recommendation not to include any additional alignments. Metro was the local lead agency and worked with the federal lead agency the Federal Transit Administration (FTA). The agencies had been in

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continuous contact as they were during all environmental reviews. The FTA ultimately signed the environmental documents and certified they were complete. Metro was working with the FTA and in contact with Region 10 staff who had in turn been in contact with Mr. Otsyula. Metro has and will continue to do everything the FTA recommended in terms of responding to those concerns.

Councilor Stone said from all the times Mr. Otsyula came before the Council she understood his point was that the City of Milwaukie did not have the authority to not recommend an alignment. According to NEPA, the City was obligated to pass along any alternative that a citizen brought forward to the lead agency. The City did not have the authority. Was that correct?

Ms. Wieghart responded that was not correct. Part of the NEPA process was taking into account local community perspectives, concerns, and land use. Land use needs were a big part of the City's staff report. Not only Metro but also the FTA wanted to know that the local jurisdictions were being consulted. The local jurisdictions did not have the authority to make the decision about whether an option should be studied in the EIS. Ultimately the Steering Committee made the final decision, and it is based partially on a recommendation from the City.

Councilor Stone thought the fact that it was recommended was the issue. It could submit potential alternatives.

Ms. Wieghart said that was not correct.

Mayor Bernard added the City Council could recommend whether it thought one alternative was feasible or was something the community wanted. Otherwise, the federal government would go ahead with what it wanted which would not be fair to the community either. When he asked for the study, there was a process that resulted in a recommendation to the South Corridor Steering Committee that made the final decision.

Councilor Stone thought the word "study" was an issue and that the City did not have the authority to say a certain alignment should not be studied. They should all be submitted and studied in the process the lead agency was responsible for.

Ms. Wieghart commented briefly on the technical distinctions between what level of study was required. Metro had been in communication with the FTA and believed what was done was appropriate.

Councilor Barnes asked for a list of names of those on the Safety and Security Task Force and who represented Milwaukie.

Ms. Wieghart reported the Safety and Security Task Force had 2 of 6 scheduled meetings, and she encouraged the City Council to attend. It was an open group, and Task Force members were encouraged to commit to making all the meetings. The first meeting was a combination of a presentation from the head of TriMet operations talking about the safety program, design, and those kinds of issues. In a work session small groups of participants had discussions about what issues they wanted to see covered in this Task Force process. Those concerns would be address through the course of the subsequent meetings. The last meeting was a tour of Interstate MAX, which was the newest portion of the line with the most up to date design. It was proving to be one of the safest portions of the line. Most comments had to do with seeing the real, live situations. When the lights went on? When was the garbage picked up? It was a live MAX ride, and people got to see how it really worked. The next meeting was a tour of this alignment with stops at some of the proposed station areas. At the end of December and into January, the recommendation will be coming out of the Task Force and passed along to the CAC.

Councilor Barnes requested a tour of the Interstate line for City Council.

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Mr. Asher said they had focused on safety and security, and he felt it would serve everyone well in the end. Some felt it was a big issue while some felt safe and secure both in their experience in Milwaukie and transit in general. The way the project was designed and operated should take into account this particular alignment in this part of the region. To that end, TriMet was trying to do more than it had before to work with its partners. He suggested a work session with TriMet next month. The City Council had neither the benefit of the tour nor how TriMet operated the system.

Ms. Wieghart reviewed the overall alignment and options adopted by the Steering Committee. In May the Steering Committee adopted the LPA with an extension to Park and Tillamook alignment to Park. At that time there were park-and-ride options at both Sparrow and Park Avenue. They were in the process of doing some traffic analysis to see how many parking spaces could be accommodated at each one. The goal was to achieve about 1,000 spaces in the entire area. Sparrow was a triangular-shaped lot north of Park in a residential area and was smaller than the Park Avenue site. It did not have a signal onto McLoughlin Boulevard and was not as conducive as Park Avenue for a park-and-ride for all of those reasons. Park Avenue could accommodate the 1,000 spaces more compatibly with the community. Park would be studied at 1,000 spaces, and the Sparrow option was eliminated. What were ranges before were solidified in this area. During the refinement phase there was discussion of station locations in downtown Milwaukie at Harrison, Washington, Monroe, Lake Road, and Bluebird. These were configurations that seemed to fit together in terms of spacing but were not necessarily those that would be adopted in the LPA. Originally when they were looking at crossing McLoughlin Boulevard they were only looking at it in an elevated fashion. The Steering Committee in July raised concerns about the cost of going to Park Avenue. As the alignment crossed over Kellogg Lake and at one point over McLoughlin Boulevard at-grade crossings were being considered that would likely reduce the cost. It would also allow an at-grade station on Bluebird which might fit more into the community. In order to have the elevated crossing on McLoughlin Boulevard the line would stay elevated for some distance and would have a different feel in the community. It was being considered both ways. There were a lot of issues with having an at-grade crossing on McLoughlin Boulevard so there were meetings with the Oregon Department of Transportation (ODOT). On the other hand there were some opportunities. ODOT and others had safety concerns about the River Road and 22nd Avenue area, so there was interest in reconfiguring those intersections. Both options would be looked at equally during the DEIS phase. The Bluebird station would be a walk-up station.

Councilor Collette thought a shared use park-and-ride might be useful across the street from Kronberg Park.

Ms. Wieghart said there had been issues with that concept.

Mr. Asher added that the Cash Spot could serve that function and was identified as such in the Transportation System Plan (TSP).

Councilor Stone observed that was another option.

Councilor Collette said even a walk-up station could provide convenient park access via light rail. It did work to serve the Park in any case.

Councilor Stone asked where the at-grade crossing would be located.

Ms. Wieghart replied it would be just south of Kronberg Park. Light rail would cross over Kellogg Lake and be at-grade at the railroad bridge.

Mayor Bernard initially had concerns about the at-grade crossing and the application of light rail on McLoughlin Boulevard.

Mr. Asher felt the project designers and team were taking the Park Avenue extension seriously. A large park-and-ride at that location was preferable to terminating it at Lake Road. He felt it made sense to look at the impacts of a lower-cost alternative.

Ms. Wieghart added they would be looking at the pros and cons. There was going to be an open house in Oak Grove sponsored by Clackamas County to bring those residents into the process. There had been some outreach, but this Park Avenue location was relatively new. She encouraged the City Council to attend the October 29 open house with its neighbors to the south. She provided copies of the newsletter to the Mayor and Councilors.

Mr. Asher said the next big decision point this community had was where to place the stations. In order for the City to come to some collective decision and keep the project on schedule, they were probably looking at January or February to reduce the options to just a couple. Each station had advantages and disadvantages, and there needed to be some kind of process in which community interests were expressed and what served the project best. There were elements that needed to be considered for station locations. For instance, the more competitive the project was the more transit benefit service it provided in terms of speed and ridership. Station locations had an impact on the model Metro ran and made the project more or less competitive for federal funds. The work the Safety and Security Task Force was doing would be an input. It would be important to locate stations in areas that were perceived to be safe now or that could redevelop to become open, visible, and safe. Most communities got benefits from the stations and the redevelopment that could take place. Those were some of the things the City needed to think about as well. The buses still needed to connect with the stations and would have much less impact downtown over time. The transit center as it existed today would be transformed. The bus network needed to work with light rail when it was built. All of those things needed to be considered in addition to local preference. He was working with Ms. Wieghart and her team to put together a process for a constructive discussion and come to some decision after the first of the year. He appreciated any input from Council on how it would like to see that process go.

Ms. Wieghart addressed the timeline that was in the newsletter. The actual analysis part of the environmental review was underway, and people were out measuring things and looking at buildings in the community. The chapters would be published in April 2008 that would lead to a series of public open houses and hearings and culminate in the various elected bodies voting on an LPA in July 2008.

Councilor Collette asked Ms. Wieghart to discuss station-siting meetings so far.

Ms. Wieghart said the focus had been from Tacoma to Clinton, and those stations were pretty well set because there were no design options in those areas. The focus was much more on how people wanted the station to look and feel in the community and what kind of planning needed to be done to achieve things like pedestrian and bike connections and addressing traffic issues. The community was really rolling up its sleeves at the workshop. There were 2 meetings, and each focused on 3 stations. The Team was reviewing the public input and the consultant's technical work for more workshops in November.

B. Rachel's Challenge – Milwaukie High School Senior Project

Alisha White and **Brittany Johnson** discussed their senior project, which was to raise funds to bring Rachel's Challenge to Milwaukie High School. The non-profit program brought the message of a teenage student written one month before she was killed in the Columbine High School shootings. She urged kindness to avoid violence.

CONSENT AGENDA

A. City Council Minutes of August 21, 2007 Regular Session

B. City Council Minutes of September 4, 2007 Regular Session

It was moved by Councilor Barnes and seconded by Councilor Collette to adopt the consent agenda. Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

- **Heather Andrews, Clackamas County**

Ms. Andrews was a bike commuter and recreational biker who was active in the Transportation System Plan (TSP) process specifically with the bike/pedestrian chapter. There was a lot of involvement in the direction of the document. She expressed her full support for City staff's efforts on this document and recommended adoption as drafted. It became evident there was a very healthy bike community in Milwaukie, and she hoped the relationships did not end with the TSP process. She suggested the Council consider establishing a Bike Advisory Committee. She and others planned to make more formal comments at the December 4 adoption hearing.

PUBLIC HEARING

A. Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3

Mr. Swanson discussed the background of this amendment that had been considered monthly since June 2006. Water Environment Services (WES) and the County were working on a number of potentials for wastewater treatment, so it was probably not the time to stick a stick in the hornets' nest by adopting the amendments.

It was moved by Mayor Bernard and seconded by Councilor Barnes to continue the hearing on the amendments to the Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to the regular City Council meeting of November 20, 2007. Motion passed unanimously among the members present. [4:0]

B. Residential Garbage Rate Increase and Service Charge – Resolution

Mayor Bernard called the public hearing on the proposed residential garbage rate increase and distribution of roll carts for the purpose of commingled recyclables to order at 7:45 p.m. The purpose of the hearing was to hear public comments on the proposed increase.

Ms. Herrigel proposed a resolution for equalizing residential garbage rates with those of Clackamas to become effective November 1, 2007, and approving the distribution of roll carts for commingled recyclables by February 1, 2008. Each year the City received financial information from the haulers that stated the revenues generated in the City as well as the expenses for each hauler. Based on that information a rate of return was determined by each hauler and then all 7 collectively. The City then determined if the rate was healthy for the system and if the rate of return was in a range of 8% - 12%. Generally, the haulers did not request a modification. There were times, however, like this year, when the rate of return was actually at or just below 8%. There were other considerations over the coming year that made it necessary to discuss whether next year was going to be healthy enough for the haulers if the rate was not modified at this time. Metro increased its tipping fee \$1.28 per ton effective September 1 at the 2 Portland metropolitan area transfer stations. Additionally, driver wages would go up

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approximately 2.95%, and insurance rates for all employees will go up about 4.79%. Fuel costs were continuing to increase and may reach 7.67% or more.

Given the current rate of return was not that healthy, it was anticipated it would drop over the coming year. Ms. Herrigel spoke with the haulers' financial consultant, representing all 7 companies, and Clackamas County about the notion of equalizing the rates in the City of Milwaukie with those in the County. One reason to do that was to make the allocation of collector costs easier. Milwaukie's 7 haulers were a subset of 23 that services Clackamas County. If rates were equalized, it would make the calculations of revenues and expenditures much easier. Second, the billing would be easier for haulers that had franchise areas both in the City and County. Finally, it would streamline the annual rate review. Currently the haulers submitted all their information to the County that determines the rate of return. After that was done the information was given to the cities, which did the same thing. She would get some assistance from the County, and the City would participate in a more efficient manner.

If this proposal were implemented the haulers agreed to distribute 65-gallon roll carts for commingled recyclables by February 1, 2008, to residential customers. All recyclables except glass and used oil would all go in the same container and sorted at a materials recovery facility.

The major service levels that would be affected by this change were those most often used. The 20- and 32-gallon cans were the most used service levels with 60- and 90-gallon cans being about 27%. The current rate for a 20-gallon can was \$18.02 and would increase to \$20.90. The largest, 90-gallon can would increase by \$5.31. She believed commingling would encourage people to recycle more and to downsize their garbage cans. She provided a current rate sheet for the City of Milwaukie showing the proposed rates. She also provided a Clackamas County rate sheet with the urban rate highlighted that would be analogous to the City of Milwaukie.

Ms. Herrigel noted a letter from Wichita Sanitary Service in support of the modification and the 65-gallon roll cart as soon as possible as there was a tax benefit the hauler might receive from the State. Wichita also requested a month's trial period for the 65-gallon roll carts before customers could ask for smaller containers or bins. She received calls since the work session and the article in *The Pilot* was published, and there were several questions about materials allowed and how to prepare them. All calls were supportive of the program. She noted David White, Joe Cook, and 2 haulers were at the hearing if Council had questions.

Mayor Bernard understood even if rate equalized any increase would still have to come to Council for approval.

Mr. Swanson noted the service level was a weekly number but the rates were monthly.

Councilor Stone recalled the rates were increased a year ago. She was surprised the City was doing it again so soon although she understood it needed to be done. If the haulers had met the 8% - 12% range would the City still be looking at increasing the rates based on the other criteria including the wage increase for the drivers and tipping fee?

Ms. Herrigel replied the haulers did a projection based on where they were now and applied those percentages to this year's numbers to determine what the financials would look like next year. From there they figured out the rate of return. She was hopeful the rate modification would hold for 2 years, but it was difficult to know what costs would do. There was an increase last year but previous to that it was in 2004, and before that it was 2001.

Councilor Stone asked how the increase in poundage of recycled materials might equate to rate fees. If people were going to the commingled cart there might be more recycling. How did that figure in to the haulers' overall return and profit if they brought in more?

Ms. Herrigel cautioned against saying we were going to generate recyclables therefore we were going to save money. Rather we were going to keep rates from increasing as steadily as they might. Instead of spiking, she hoped it would level off and suppress the cost to some extent.

Councilor Stone understood the insurance for all employees was increasing almost 5%. Was that medical?

Ms. Herrigel thought it was medical and liability, but she would confirm that.

Councilor Stone commented in a lot of industries employees absorbed the additional insurance costs.

Ms. Herrigel understood the liability insurance in the garbage industry was high because it was such a physical job.

Councilor Stone did a couple of comparisons between the 60- and 90-gallon carts in terms of the percentage of increase. The 60-gallon was approximately an 11% increase, and the 90-gallon was almost 17%. How did they arrive at that other than just increasing all of them 12%?

Ms. Herrigel replied the rates were usually built from the bottom up. The haulers determine the actual cost of going down a street and the number of stops. They likely also considered the weight of a 90-gallon cart versus a 20-gallon can.

There was no audience testimony or further questions of clarification.

Mayor Bernard closed the public hearing on the proposed garbage rate increase at 8:05 p.m.

Mayor Bernard had never heard any concerns about the rate increase and felt Milwaukie received good garbage service.

Councilor Stone liked that the haulers helped with the neighborhood cleanup day.

Councilor Collette thought commingled recycling would have a major impact on people's habits.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution equalizing the City and County residential garbage rates and approving the distribution of roll carts for commingled recyclables.

Councilor Stone was pleased to see commercial rates would be considered in the coming year.

Motion passed unanimously among the members present. [4:0]

RESOLUTION 60-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE EQUALIZING RESIDENTIAL GARBAGE RATES WITH THOSE OF CLACKAMAS COUNTY EFFECTIVE NOVEMBER 1, 2007, AND APPROVING THE DISTRIBUTION OF ROLL CARTS FOR COMMINGLED RECYCLABLES TO ALL RESIDENTIAL CUSTOMERS BY FEBRUARY 1, 2008.

OTHER BUSINESS

A. Railroad Crossing Safety and Quiet Zone Proposal – Resolution

Mr. Parkin reported the proposed resolution addressed efforts to implement traffic safety at the 3 at-grade railroad crossings and establish a quiet zone as a result of those improvements. Mr. Hales worked to establish the level of community desire for the quiet zone and determine its feasibility. Since the last meeting, staff proceeded with the permit it needed from Oregon Department of Transportation (ODOT) rail and arranged a meeting with the owner of the car wash property on Harrison Street.

Mr. Hales reported this project if implemented would increase safety and accessibility at the 37th Avenue, Oak Street, and Harrison Street crossings of the Union Pacific (UP) mainline. It would also qualify the City for a train horn quiet zone which would eliminate the routine sounding of train horns at 3 of the 4 crossings in this corridor. It would build on an existing community development block grant (CDBG) crossing safety project to install sidewalks and crossing panels at all 3 subject crossings. The proposal had been through an extensive community process including neighborhoods and affected businesses. The proposal had the endorsement of the City Manager, Community Development and Public Works Director, the Operations Director, Resource and Economic Development Specialist, and the Community Services Director. All 7 Neighborhood District Associations also expressed support. Over 165 citizens responded to public outreach as well as Milwaukie MarketPlace, North Clackamas School District, Comfort Care Dental, Bob Dant, Union Pacific Railroad, and ODOT rail.

Mr. Parkin estimated the cost the quiet zone portion of the project to be approximately \$285,000. Funding sources from transportation system development charges (SDC) and fees in lieu of (FILO) construction in the amount of \$200,000. The balance of the money needed was not readily available. The designs for Oak Street and 37th Avenue were nearly done as a result of the CDBG project and were ready for permitting. The City was staying on track with CDBG funding to make sure that part of the project was completed within grant timelines.

Mr. Hales noted this was an issue with a lot of community support. The proposal was primarily about livability and safety. If implemented, the proposal would bring the City in line with rigorous state and federal crossing safety standards and reduce the risk of injuries and fatalities at rail crossing in Milwaukie. These improvements would be in keeping with the City's overall direction toward increased safety and livability. Staff recommended Council adoption of the resolution initiating efforts to improve 3 at-grade rail crossings and establish a quiet zone.

Councilor Collette said Councilor Loomis had wanted to clarify that this would not require the use of gas taxes.

Mr. Swanson replied at the work session Councilor Loomis made an argument that he did not want and did not think it appropriate to identify funds out of existing road and street money because the City had asked for additional street maintenance funds. As the budget officer, he would work to identify the money in next year's budget process. In doing that he would focus on and remember Councilor Loomis's remarks as he did have a point. He would be looking at other sources in going through the budget.

Mayor Bernard believed the resolution was broad enough to allow some work on Harrison Street. It acknowledged the City did not have the funds this year, and staff would continue to work on resolving some of the issues at the Harrison Street crossing.

Mr. Swanson responded the resolution was intentionally broad so the City could begin the permitting process and not delay the CDBG process. The resolution endorsed the idea in order to move onto the next stage with the understanding other issues needed to

be resolved.. He discussed the competing demands for funding. A meeting was scheduled with Mr. Murphy, and hopefully there was a solution there.

Mayor Bernard commented he had spoken with the owners of Purdy's carwash, and they appreciated staff's efforts to accommodate some of his concerns.

Councilor Stone asked if Purdy's was supportive. She understood he had concerns about how his customers would get in and out.

Mr. Parkin replied the owners expressed their desire to have quiet zone implemented but had concerns about access. Staff successfully met those concerns, and they were agreeable to the access option. The fallback solution with left turns would be confusing and was not preferred.

Councilor Stone asked the location of the fourth crossing.

Mr. Hales replied it was the Harmony Road crossing.

Councilor Collette explained it was being redesigned as part of the Harmony Road project. She imagined Mr. Murphy would appreciate the quiet zone as it would likely increase the value of his property for redevelopment.

Mr. Parkin replied Mr. Murphy was in favor of the quiet zone but not all of the improvements.

Councilor Stone asked when that project be completed.

Mr. Parkin responded the CDBG sidewalk work would be done this spring at Oak Street and 37th Avenue. Once funding was secured for the quiet zone the permitting will have been done, so it would be a matter of bidding out the work.

Mr. Swanson added in 2001 the Federal Railroad Administration (FRA) had just promulgated the rules and sought comment. At that time it was a 6-figure estimate with a lot of expensive technology. Staff kept pushing and looked at a lot of alternatives. Now the alternative was \$285,000. The rail people would not approve a permit that did not enhance safety. The initial estimate of \$1 million was not achievable, and today there was a doable option that a small city like Milwaukie could pursue.

Mayor Bernard asked if the City would be responsible for repair and maintenance of the arms and signals.

Mr. Hales replied Union Pacific would be responsible.

Mr. Parkin added the City would be responsible for maintaining the median.

It was moved by Councilor Collette and seconded by Councilor Barnes to adopt the resolution initiating efforts to improve three at-grade railroad crossings and establish a quiet zone. Motion passed unanimously among the members present. [4:0]

RESOLUTION 61-2007:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING EFFORTS TO IMPROVE THREE AT-GRADE RAILROAD CROSSING AND ESTABLISH A QUIET ZONE.

B. Adoption of City Investment Policy – Resolution

Ms. Warner reported the 2004 policy called for a periodic review. She incorporated some updated sample language supplied by the State, changed a sentence to limit the ability of the finance director to delegate investment authority to finance staff, and removed the requirement for a specific audit to be conducted upon extraordinary events

by changing “must” to “may”, and modified the maturity and diversification parameters in the policy.

Councilor Barnes was concerned about changing the requirement for the audit under and extraordinary event considering recent issues in local jurisdictions.

Ms. Warner replied Council could consider a special audit, but even the State had stopped doing turnover audits. With the language change, the City would not be forced to do something that was not well defined.

Mr. Swanson added when a former finance director left in 2001, the auditor did not recommend an audit. If there were an extraordinary event of some kind like theft, then the City would undergo an extensive process to determine the class of felony.

Mayor Bernard added in a certain jurisdiction an audit was not allowed for a number of years. It was about having a tight system.

Mr. Swanson commented these kinds of things were found in random checks of transactions and observed changes in behavior.

Councilor Stone understood the Council would still have the option of a special audit and was a ‘may’ and not a ‘must.’

Councilor Collette noted the City’s overall yield was 8 basis points below OSTF.

Ms. Warner said if the City had put all of its money in the OSTF then it would have had a return on investment that was 8 points higher. Right now the City had a “pool-plus” account with a bank that was always a little better. There was also a CD with a fixed rate for 12 months, but one did not know what the short-term rates would do. She had reviewed the policy, the results of the investment program, and reviewed internal controls.

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the resolution adopting the City investment policy. Motion passed unanimously among the members present. [4:0]

RESOLUTIO NO. 62-2007

A RESOLUTION ADOPTING A CITY INVESTMENT POLICY,

C. Amend Milwaukie Municipal code by Adding Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition – Ordinance

Mr. Monahan reported this was a housekeeping measure modifying the code. The City of Corvallis had an explanatory statement rejected by the County elections officer because it did not have such an authorizing ordinance. In order that the City may put an explanatory statement in a voters’ pamphlet when there was an initiative or referendum, it must have authorizing ordinance. The code would be amended by inserting Section 1.04.100. When directed by the City Council, the city manager, city attorney, or the city recorder were authorized to prepare such an explanatory statement for the Clackamas County voters’ pamphlet.

The voters and citizens expect the City to provide such a statement, so to authorize that and be compliant with election laws, it was important to adopt such an ordinance.

It was moved by Councilor Stone and seconded by Councilor Collette for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code by adding Section 1.04.100 – Authorization to Submit Explanatory Statements Relating to Municipal Legislation Referred or Initiated by Petition.

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Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council. Mayor Bernard and Councilors Barnes, Collette, and Stone voting 'aye.' Motion passed unanimously among the members present. [4:0]

ORDINANCE 1974:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING SECTION 1.04.100 – AUTHORIZATION TO SUBMIT EXPLANATORY STATEMENTS RELATING TO MUNICIPAL LEGISLATION REFERRED OR INITIATED BY PETITION.

D. TOPOFF 4

Mr. Swanson reported on the City's participation in the TOPOFF 4 exercise. The City had done a lot of emergency operations exercises, and those who staffed the EOC's were adept at working together.

E. Council Reports

Councilor Collette attended a Town Hall with Senator Kate Brown, Rep. Carolyn Tomei, and Diane Rosenbaum and the Oregon Downtown Development Association (ODDA) Conference in Albany. She staffed the Farmers' Market community booth, and there was a huge amount of support for what was going on in the City.

Councilor Barnes continued to attend the Wastewater Solutions Committee and taping of the Library reading show would begin this month. She would tape 4 segments for the State of the City address, and she hoped to talk with other members of Council about what they wanted to see in the Milwaukie segment.

Councilor Stone would attend the Site Steering Committee meeting on October 25, and she understood the Clackamas County Board of Commissioners would make a determination on November 6. She attended the Ardenwald NDA meeting and encouraged everyone to go to the Davis Graveyard.

Mayor Bernard attended Ardenwald NDA meeting and the Oregon Economic Development Conference, acknowledged the Dark Horse Comics window improvements, and announced the pumpkin carving contest at the final Farmers' Market of the season.

ADJOURNMENT

It was moved by Councilor Collette and seconded by Councilor Barnes to adjourn the meeting. Motion passed unanimously

Mayor Bernard adjourned the regular session at 8:58 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Esther L. Gartner, Information Systems & Technology Director

Subject: Replacement of Desktop Computers Purchase

Date: December 6, 2007 for December 18, 2007 Council Meeting

Action Requested

Adopt a resolution authorizing the City Manager to execute a contract and purchase order(s) with Hewlett Packard not to exceed \$145,000 for replacement desktop computers for the City.

Background

The City needs to replace its current computer desktops. The current desktops will be six years old when replaced and are no longer an efficient computing platform for staff. The life cycle of desktop computers range between three and four years. The City has been able to extend the life cycle to almost six years while building a sustainable reserve account to fund the purchase of replacement desktop computers.

Upgrades of key computer software, including the City's umbrella financial, business license, payroll, building permit and municipal court application, cannot be performed on the current computers. They lack sufficient processor speed and memory configuration to accommodate the latest versions of key business software. Other key applications dependent on a new hardware platform include Microsoft's Office Suite used on all desktops, AutoCAD for Engineering and ArcGIS for IST, Police and Planning.

It is necessary to replace the desktops to keep current with software releases of all business applications. Several of the City's business applications carry an annual maintenance contract, which stipulates the City must remain current or within one release level of the developer's application version in order to receive product support. As previously stated, the current desktops can no longer support most of the business application upgrades and the City risks not having support for these products without an adequate hardware platform to run the software. In fact, Incode, the City's main

software application vendor, has specified in its upgrade documentation the desktop hardware requirements for its newest application release be computer hardware from a “nationally recognized name-brand” vendor.

Therefore, the Information Systems & Technology (IST) Department, after researching and testing suitable desktops, is recommending the dc7800 business desktop model from Hewlett Packard (HP) as the replacement desktop computer. HP is a participant in the Oregon State SmartBuy program under contract #4144, which creates sustainable savings for taxpayers by promoting collaboration among State agencies and institutions to effectively leverage the State’s purchasing power.

Total Cost of Ownership (TCO) Considerations:

- **Conservation** - HP uses an 80 Plus power supply in the dc7800 desktop, which means it is 80% efficient at 20%, 50% and 100% loads compared to other current desktop power supplies ranging between 65-75% efficiency. Energy estimates based on a calculation of the number of desktops and reduced Kilowatt hours used show over \$1K in annual savings or \$4.2K in lifetime savings. The 80 Plus power supply meets the new Energy Star 4 guidelines released in July of 2007.
- **Recycling** - HP owns massive e-waste recycling plants, with enormous shredders and granulators that reduce four million pounds of computer components into recycled steel, plastic, mercury and precious metals parts. HP will take back any brand of equipment for recycling. Its own machines are 100 percent recyclable. HP also works with its top suppliers to ensure eco-friendliness and environmental accountability.¹
- **Industry leader** - HP has made The Global 100: Most Sustainable Corporations in the World three years in a row. No other computer manufacturer has accomplished this goal. The Global 100 is a list of publicly-traded companies that, based on research and analysis, have the best developed abilities, relative to their industry peers, to manage the environmental, social and governance (ESG) risks and opportunities they face.²
- **Compliance** – HP has met the Energy Star 4 and EPEAT (Electronic Product Environmental Assessment Tool) standards for desktops required by federal agencies under the Energy Policy Act of 2005 and Executive Order 13423. In fact, the HP dc7800 desktop earned a Silver Star EPEAT rating, meaning it met 15 out of 24 optional points in the EPEAT criteria ratings.
- **Management** – replacing desktops with the same brand and model of desktops containing an Active Management Technology solution allows IST to centrally monitor the health of all computers, addressing predictive failures before actual real failures, which reduces overall staff down time. It also allows IST to produce standardized computer images, which can be quickly and efficiently applied to

¹ Going Green: 10 Green Giants, CNNMoney.com, Fortune,
http://money.cnn.com/galleries/2007/fortune/0703/gallery.green_giants.fortune/10.html

² The Global 100: Most Sustainable Corporations in the World, <http://www.global100.org>

any desktop in the City, returning the desktop to a usable state in about a quarter of the time of a manually loaded computer.

Concurrence

The City Manager, the (former) Finance Director and the IST Director concur as to the budget, cost, need, and benefits of the computer replacement project.

Fiscal Impact

The City has budgeted the anticipated \$145,000 for this project in the current 2007/2008 Computer Reserve budget as an expendable item.

The Computer Reserve fund was established in 2004 as a means to accrue replacement costs for desktop computers, laptops, servers and printers. Every department contributes an equitable amount each year to the fund for replacement of the stated hardware as either equipment fails (beyond reasonable repair) or service warranties expire.

Work Load Impacts

The IST Director will be responsible for purchasing, arranging delivery, finalizing the desktop replacement plan and overseeing the proper disposal of the old desktops.

The IST team will be responsible for receiving in the new equipment, installing, and configuring the new desktops, which include developing standard software loads for the various departments and ensuring applicable network policies are enforced. The IST team will also be responsible for properly wiping the old hard drives to DOD standards and properly recording and disposing of old desktops.

This project has significant work load impact. However, this project was identified as one of the top priority projects for this fiscal year. The IST Department is committed to completing this project by the end of this fiscal year.

Alternatives

1. Approve as recommended. This will result in savings to the city by increasing staff's computing efficiencies and allowing the City to continue to keep pace with new versions of business applications.
2. Deny the request. The City could not continue to utilize the current desktops much beyond the six-year mark. Replacement parts are scarce and expensive. The City would lose technical support and upgrade capabilities of most of its business applications by choosing to run outdated software on an obsolete hardware platform.

Attachments: Resolution

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND SIGN A PURCHASE ORDER(S) WITH HEWLETT PACKARD NOT TO EXCEED \$145,000 FOR THE PURCHASE OF REPLACEMENT DESKTOP COMPUTERS FOR THE CITY.

WHEREAS, the 2007/2008 approved budget for the Computer Reserve Fund includes adequate funding to purchase the specified replacement computer desktops for the City; and

WHEREAS, Hewlett Packard is a certified government vendor with the State of Oregon on the SmartBuy program under contract #4144; and

WHEREAS, the City of Milwaukie is an Oregon Cooperative Procurement Program (ORCPP) member authorized to purchase off the State's SmartBuy contract;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to execute a contract with Hewlett Packard and to sign a purchase order(s) not to exceed \$145,000 for the purchase of replacement desktop computers for the City.

Introduced and adopted by the City Council on December 18, 2007.

This resolution is effective on _____ .

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

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

From: Katie Mangle, Planning Director

Subject: Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements

Date: December 5, 2007 for December 18, 2007 Hearing

Action Requested

Uphold the Planning Commission's decision to deny an appeal of the Planning Director's interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2) resulting in a determination that the applicant's proposed project, located at 10883 SE Main Street, must comply with certain public area improvement requirements.

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." An interpretation of MMC Section 19.312.5(B)(2) was necessary to define what it means for the subject project to "comply" with the public area 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**" (Bold emphasis added).*

Background

In September of 2000, the Milwaukie City Council created a new section of the Zoning Code, including the creation of a new section 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 standards and requirements that private property owners construct public right-of-way improvements when triggered by new construction and building renovations.

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. 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 by creating a continuous high-quality sidewalk environment.

Since the adoption of the *Downtown and Riverfront Plan* and the zoning regulations related to all Downtown development, the City has implemented the public area improvement policy by requiring a number of properties to provide public improvements (see Attachment 6 Planning Commission Staff Report, pg. 52).

Project Description

On April 26, 2007, City staff held a pre-application conference at which staff and Mr. Parecki of Main/Monroe Investors discussed proposed plans to divide the subject property into two parcels. During the pre-application conference, staff also discussed Design Review and public area requirements for the proposed renovation of the two-story State Bank Building located at 10883 SE Main Street building.

On August 31, 2007, Main/Monroe Investors, LLC, submitted an application for building permits to renovate the subject building. The building is sited on a 5,000 sq. ft. lot zoned Downtown Storefront (DS). The renovation of the two-story building includes proposed 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 will contribute to the renovation of the building. In the DS zone, retail or restaurant uses are required on the ground floor, and office, retail, 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 proposed renovation includes exterior alterations to the existing building, and as a result the project was subject to Type I Design Review (staff level 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 a to the applicant on October 5, 2007 confirming Design Review approval for the project (see Attachment 6, pg. 23).

Staff review of the building permit application concluded the project was subject to MMC Section 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 emphasis added)

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

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 two interpretations 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:"

1. The City will consider 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 in *Dolan v. City of Tigard* for requiring public improvements, it is not spelled out in the text of MMC 19.312; and
2. The City will consider 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.

Required Improvements

Following the Planning Director's first interpretation, City staff considered proportionality of required improvements to the project's impacts. Staff performed a proportionality analysis and concluded that the proposed project would increase both pedestrian and vehicular trips, thereby necessitating the construction of public improvements. After considering the Director's second interpretation, staff 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 Table 1 on the following page.

As a condition of approval for the project's building permit, the Director found that, prior to issuing the building permit, the applicant must agree to construct a clearly defined list of public improvements along the frontage of the project site.² An additional condition of approval requires that the improvements be engineered and completed before the City will grant occupancy of the building. The appellant is not being required to complete any of the public area improvements at this time.

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 percent 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*.

² The staff holds that it is preferable to achieve this agreement prior to issuing a building permit, rather than at the next opportunity, which would be prior to the issuance of the certificate of occupancy (after the remodeling project is complete). The specified list of public improvements must be agreed upon by the appellant in order to 1) reduce the risk of misunderstanding about all required improvements; 2) to ensure that the reduced list of improvements will be built either by the appellant or future tenants; and 3) to establish predictability for the community and developer as to the scope of the project prior to the expenditure of additional time and money by both parties.

Table 1 – Improvements Required for 10883 SE Main Street

Full List of Improvements		Reduced List of Improvements
Main Street Frontage	<ul style="list-style-type: none"> • 8 ft concrete parking strip • New curb and gutter (offset curb 1-foot from existing curb line) • 13 ft sidewalk • 1-3 Street trees with grates • 1-2 Street lights (twin ornamental) • Underground all overhead utilities • Street furniture • Bike parking* • City of Milwaukie medallion* 	<ul style="list-style-type: none"> • 1 Street tree • 1 Street light (twin ornamental) • Underground all overhead utilities • Street furniture – 1 bench or trashcan
Monroe Street Frontage	<ul style="list-style-type: none"> • 7 ft. parking strip (asphalt) • New curb and gutter • 12 ft sidewalk • 2-3 Street trees with grates • 2 Street lights (single ornamental) • Underground all overhead utilities along frontage • Street furniture • Bike parking* 	<ul style="list-style-type: none"> • 2 Street trees • 1 Street light (single ornamental) • Street furniture – 1 bench or trashcan
Intersection	<ul style="list-style-type: none"> • 1 Bulb out (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). • 2-4 Flowering ornamental trees • Landscaping with Irrigation • 6 Bollards • 2 ADA warning pads 	<ul style="list-style-type: none"> • 1 Bulb out (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). • 2-3 Flowering ornamental trees • Landscaping with Irrigation • 4 Bollards • 2 ADA warning pads

* Denotes improvements the City is able to provide.

This reduced list in Table 1 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.

The list does not include streetscape elements that already exist, are in general compliance with the *Downtown Riverfront Plan*, and are in reasonable condition. Such 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 below-grade utility lines. Additionally, the list does not include items the City has agreed to provide, which includes bike parking, tree grates, and the City medallion. The City is also willing to

consider Transportation System Development Charge (SDC) credits to support the applicant's project.

Examples from Other Jurisdictions

Preliminary research performed by Angelo Planning Group, the City's land use planning consultant, shows that at least five cities in the region are requiring that private developments contribute a broad range of pedestrian amenities in their downtown zones. These amenities typically include street trees, tree well grates, street furniture, electrical outlets adjacent to street trees, curb extensions, decorative cross-walks, landscaped medians, and median island pedestrian refuges. The cities studied included the Cities of Gresham, Hillsboro, Tigard, Lake Oswego, and Portland. Listed below are the key findings from this research.

- Public area requirements (pedestrian amenities) in downtowns are typically applied to new development that is subject to site plan review. Lake Oswego, like the City of Milwaukie, also requires improvements for redevelopment projects.
- During site plan review, different cities use different thresholds and triggers for requiring public improvements of new development or substantial remodels (see Table 2 for a summary of other jurisdictions' requirements).

Table 2 – Local Jurisdiction Public Area Requirements

	Gresham	Lake Oswego	Hillsboro	Portland	Milwaukie
Can the city require renovation projects to construct pedestrian enhancements?	YES	YES	YES	YES	YES
What triggers the requirement?	Alteration that affects the use or significant elements of the site or exterior building design.	Change of appearance > 50% building elevation Restaurant expansions	Enlargement of a building which increases existing floor area by at least 10%	Value of the proposed alterations is greater than \$120,850.	Permit value relative to value of land/improvements
Limitations to applicability	The code provides an exemption for an addition to an existing developed site that: - adds less than 25% to total existing floor area - adequately meets min. parking requirements - does not change primary use - complies with design guidelines (must meet all 4 to qualify for exemption).		Does not apply to interior remodeling. Only applies to exterior remodeling if the appearance is changed.	Excludes fire/life/safety, ADA, seismic alterations. Exceptions for areas with ground leases Cost of required improvements is limited to 10% of the value of proposed alterations.	
Must the exaction be directly related to and roughly proportional with the project impacts?	YES	YES	YES	YES	YES

Though other jurisdictions have crafted different approaches, it is common for cities to require that the private sector contribute to the improvement of the public realm.

Appeal of the Director's Interpretation to Planning Commission

On October 8, 2007, Mr. Ed Parecki of Main/Monroe Investors, LLC submitted an appeal of the Planning Director's interpretation.

At a public hearing on November 13, 2007, the Planning Commission considered a staff recommendation to deny the appeal. During the hearing, the Planning Commission heard oral testimony and considered written comments for and against the appeal. With six of the seven current Planning Commissioners present, the Commission voted four to two (4-2) to deny the appeal and uphold staff's work (see Attachment 3 – Planning Commission Meeting Minutes, November 13, 2007).

The Planning Commission based its decision to deny the appeal on the following findings:

1. The Planning Director appropriately interpreted MMC Section 19.312.5(B)(2) to include consideration of the project's impacts. Based on advice from the City Attorney, the Commission held that this was in keeping with applicable case law.
2. Staff sufficiently considered the impacts of the applicant's project by using both quantitative and qualitative analyses. Staff established that because the project would significantly increase the number of pedestrian and vehicular trips to the site, the City can require the applicant to construct improvements along the full frontage of the project site. Staff also established the nexus between the project's impacts and the public improvements specified.
3. 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.

Key Issue for Consideration

The key issue before the City Council is whether the Planning Commission incorrectly upheld the Director's Interpretation.

Analysis of Key Issue

On November 20, 2007, Mr. Ed Parecki of Main/Monroe Investors, LLC submitted an appeal of the Planning Commission's November 13, 2007 decision to deny the company's appeal of the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) Section 19.312.5(B)(2). On the appeal form submitted (see Attachment 2), 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*."

- ***City of Milwaukie Proportionality Analysis***

The Planning Commission found that the Planning Director appropriately considered relevant case law requiring cities to consider proportionality as required by the US Supreme Court's decision in *Dolan v. City of Tigard*.

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.

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 6, pg. 31).³ The analysis used a proportionality methodology appropriate for the size of the development and the type of application submitted.

The City's proportionality analysis concluded that the project will result in increased auto and pedestrian trips and therefore increased use of public systems. The analysis found that requiring full street improvements along the property frontage would be proportional to the impacts of the proposed development. Additionally, staff's Design Review findings concluded that the existing project site does not meet current City standards, but that it would upon completion of the public area improvements that the City has planned along the subject property's frontage.

When the application was appealed to City Council, staff prepared a full McClure proportionality analysis for the proposed development. The proportionality analysis using the McClure methodology found that improvement of 96.5 percent of the frontage area, including the intersection, would be proportional to the impacts of the proposed development. The required public area requirements are much less than 96.5 percent of the proposed development's frontage area. Therefore, the recommended public area requirements are proportional to the impacts of the proposed development (see Attachment 8).

- ***Appellant's Proportionality Analysis (with City Response)***

The appellant stated at the November 13, 2007 Planning Commission hearing and at a meeting held on November 27, 2007 between Main/Monroe Investors and Milwaukie Planning staff that the appellant does not take issue with how the Planning Director interpreted the Code. Rather, the appellant disagrees specifically with the methodology and assumptions used for calculating the proportionality analysis.

In a letter dated September 27, 2007, the Planning Director invited the appellant to prepare a proportionality analysis. On November 27, 2007, the appellant finally prepared a proportionality analysis and submitted it to staff. The analysis asserts that City staff erred in a number of ways in calculating trip generation rates for the subject site. Additionally, Main/Monroe Investors used its own methodology for calculating trip generation. The analysis found that Main/Monroe Investors should be responsible for public area improvements along approximately 57 lineal feet of the subject property (see Attachment 9). After evaluating the analysis, Staff has extracted the key points from the appeal and provided written analysis and response below.

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*.

1. The City used the existing basement area in the calculation for "General Office Use."

The appellant asserts that the basement in the existing building should not be factored into the trip generation calculation for the existing use of the building (general office) and should not be assumed to be linked with the specialty retail use, since the basement could not be used as anything else other than storage due to its 7-foot ceiling height.

When calculating trip generation rates, the City included the area of the basement of the building because the Institute of Transportation Engineers (ITE), the publisher of the *Trip Generation Manual*, directs which variables must be used in calculating trip generation for a particular use. In the case of the "General Office Use" land use category, the manual uses gross floor area, not net leasable or rentable area. The ITE *Trip Generation Manual* defines "Gross Leasable Area" (GLA) as the "total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors, expressed in square feet." "Gross Floor Area" of a building is defined as "the sum (in square feet) of the area of each floor level, including cellars, basements, mezzanines...that are within the principal outside faces of exterior walls, not including architectural setbacks or projections." The ITE Trip Generation Manual uses an average trip generation for each use. All retail uses have a storage component that is figured into the retail trip generation rate. Using the basement as storage allows the applicant to use more of the 1st floor space as actual retail space. As a result, including the basement area accurately predicts the trip generation for the proposed development.

2. Renovation plans were only submitted for the two-story building on site, yet the City's proportionality analysis requires public area improvements along the entire site frontage (155 lineal feet).

The appellant contends that because the proposed renovation is only for the two-story portion of the building, public area improvements should only apply at most to the frontage of the two-story building and not to the length of frontage of the site (see Figure 1 below).



The City's analysis used the entire site frontage because MMC 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 assessor only attributes value to tax lots (i.e. land), not portions of buildings. Since the proposed renovation of the two-story building is currently situated on Tax Lot 1400, a 55-foot by 100-foot lot, it is the tax lot that defines the site and related frontage and impact calculations.

3. The first floor and basement area of the building are assumed to be a "Specialty Retail" use.

The appellant holds that the City's proportionality analysis could have used other land use categories from the ITE *Trip Generation Manual* to calculate trip generation rates for the renovated building. In making this argument, the appellant assumes that other uses found in the ITE manual would be more accurate for calculating trip generation rates.

The ITE *Trip Generation Manual* defines "Specialty Retail Center" as "generally small strip shopping centers that contain a variety of retail shops and specialize in quality apparel; hard goods; and services, such as real estate offices, dance studios, florists and small restaurants." The City applies this use category to all downtown mixed-use buildings proposed for development or redevelopment. The specialty retail center category applied to the proposed development is also a conservative category for calculating trip generation for new uses. For example, the applicant has stated that the intended use for the first floor of the proposed development is a quality restaurant. Applying the "Quality Restaurant" land use category from the ITE manual would result in twice the number of trips.

The City's analysis included the "Specialty Retail Center" use in the calculation for the first floor and the basement because the DS zone requires retail or restaurant uses on the ground floor, and office and residential uses are permitted on the upper floors. The submitted building plans stated that the first floor would be used as a "retail, services, or eating" use, so the City's Development Review Engineer asked the appellant how the basement would be used. The appellant replied that it would be primarily used as storage for the retail use on the first floor, possibly for a restaurant. Therefore, applying the "Specialty Retail Center" use to the first floor and the basement of the proposed building is not only the most reasonable and broad category to use, but also ensures consistency when calculating trip generation rates for all new retail uses locating in downtown Milwaukie.

4. Since the proposed development is 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.

The appellant argues that the proposed building renovation is primarily comprised of a building "face lift" to the building façade. The appellant asserts that since the "face lift" portions of the building would not generate any additional trips to the building, and but for the building façade renovation, the proposed renovation would not exceed 50 percent of the assessed valuation, the appellant would only be

responsible for 10 percent of the value of the City's improvement requirements (see Attachment 10).

The City's public area improvement requirements are required to be constructed prior to final occupancy permit. At this time, the City is only requesting that the appellant agree to the reduced list of public area improvements. Future tenant improvements will contribute to the renovation of the building and the reduced list of improvements may be constructed either by the appellant or future tenants.

Further, with respect to MMC Section 19.312.5, in view of the fact that the appellant's permit value (\$225,000 for interior and exterior building improvements) 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.

The City's proportionality analysis demonstrates that the project will result in a significant increase in trips. This analysis is based on the fact that the proposed renovation is converting to accommodate new uses within the building. The City further refined this analysis by identifying those elements that would mitigate for the impacts of the project.

Concurrence

The Planning Commission voted four to two (4-2) to uphold the Director's Interpretation. The City Manager, Director of Community Development and Public Works, City Attorney, and Development Review Engineer all concur with the Planning Director's interpretation and resulting requirements for the appellant's project.

Fiscal Impact

This decision will result in fiscal impact to the City. The City has offered to provide certain public area improvements such as two bike racks and the City medallion. These improvements are valued at \$3,900 (\$3,000 for City Medallion and \$450 per bike rack) and can be accommodated within the City's current year adopted budget.

The City staff time dedicated to both appeals shown below lists the billable hourly rates for all staff involved, including the City Attorney.

Staff	Hours	Hourly Rate⁴	Total
CD & PW Director	30	\$73	\$2,190
Engineering Director	8	\$64	\$512
Planning Director	40	\$64	\$2,560
City Attorney ⁵	19.2	\$145	\$2,794
Civil Engineer	45	\$50	\$2,250
Associate Planner	80	\$44	\$3,520
	222.2		\$13,826

Based on the above calculations, City staff has dedicated over 220 hours on the project since submission of the first appeal, resulting in over \$13,500 of City funds spent on both

⁴ Per City of Milwaukie Fees and Charges, effective July 1, 2007

⁵ Includes total time spent on both appeals for Bill Monahan, Tim Ramis, and 1.2 hours for paralegal, all of Jordan Schrader Ramis PC.

appeals. Future appeals by the appellant will only increase the time and money spent on this project.

Work Load Impacts

The City Council's decision on this matter could impact staff workload should the City Council overturn the Planning Director's interpretation and accept the appellant's interpretation of the proportionality analysis. By overturning the Planning Commission's decision to uphold the Planning Director's interpretation, if City Council does not give staff clear direction on how to implement the adopted code, it will require staff to dedicate additional time to establish a new interpretation to apply to this and other projects. This would impact the Planning staff's ability implement our adopted Planning Commission work program as anticipated for fiscal year 2007-8. Currently, there is an extensive list of current and long-term planning projects, and resources are required, including code amendments, to address problems with the zoning code sections that regulate residential design, transportation requirements and downtown public area requirements. Spending further time on this appeal may delay one or more of these projects.

Alternatives

Appeal hearings are subject to minor quasi-judicial review pursuant to (MMC) Section 19.1011.3. The Planning Commission voted four to two to deny approval of the appeal. The decision has been appealed to the City Council, which renders the final decision and has the following decision-making options:

1. Uphold the Planning Commission's decision to deny the appeal (see Attachment 1 — Final Order Denying Appeal AP-07-02).
2. Uphold the Planning Commission's decision to deny the appeal, but with modifications.
3. Reverse the Planning Commission's decision and approve the appeal, with or without conditions.
4. Continue the hearing to allow for more discussion. The City must issue a final decision by February 5, 2007.

Attachments

1. Final Order Denying Appeal AP-07-02
Exhibit 1 – Findings in Support of Denial of AP-07-02
2. Appellant's Application to Appeal Planning Commission Decision to Deny AP-07-01
3. Planning Commission Meeting Minutes (November 13, 2007)
4. Notice of Decision for AP-07-01 (November 14, 2007)
5. Correspondence Received through December 5, 2007
 - A. Letters in Support of and Against Denial of the Appeal
6. Planning Commission Staff Report with Attachments for AP-07-01 Hearing (November 13, 2007)
7. City Review Chronology

8. Expanded Proportionality Analysis Prepared by Zach Weigel (November 27, 2007)
9. Appellant's Revised Proportionality Analysis (November 27, 2007)
10. Email and Letter from Steve Morasch (December 3, 2007)

CITY COUNCIL OF THE CITY OF MILWAUKIE

FINAL ORDER DENYING APPEAL AP-07-02 AND DENYING APPEAL AP-07-01

Based on the evidence in the record, including evidence provided at a City Council hearing, after duly noticed public hearings, the Milwaukie City Council orders as follows:

1. Appeal AP-07-02 is denied.
2. The Findings in Support of Denial included in Exhibit 1 are adopted as findings of the City Council.

DATE OF COUNCIL ACTION: December 18, 2007

James Bernard, Mayor

EXHIBIT 1

Recommended Findings in Support of Denial of AP-07-01

Findings in Support of Denial

1. On August 31, 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 (AP-07-01) was of the Planning Director's interpretation of the code and subsequent determination of public area requirements.

4. Public notice was provided in accordance with the Milwaukie Municipal Code (MMC) Subsection 19.1011.3 – Minor Quasi Judicial Review. The Planning Commission held a public hearing on November 13, 2007 as required by law.

5. A provision was made for appealing the Planning Commission decision on November 13, 2007 in accordance with MMC Section 19.1002 – Time limit and appeal from ruling of Planning Commission. The decision was appealed on November 20, 2007. The City Council held a public hearing on December 18, 2007, within 40 days of receiving notice of the appeal, as required by law.

6. 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*

7. The City Council 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.

8. The City Council 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.

9. The City Council 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.

10. The City Council 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.



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.

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**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 13, 2007
6:30 PM**

COMMISSIONERS PRESENT

Dick Newman, Vice-Chair
Scott Churchill
Lisa Batey
Teresa Bresaw
Paulette Qutub
Jeff Klein, Chair (arrived at approx. 7:30pm)

STAFF PRESENT

Katie Mangle, Planning Director
Bill Monahan, City Attorney
Susan Shanks, Associate Planner
Robert Fraley, Associate Planner

COMMISSIONERS ABSENT

Charmaine Coleman

1.0 CALL TO ORDER

Vice-Chair Newman called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

2.0 PROCEDURAL MATTERS

3.0 PLANNING COMMISSION MINUTES

- 3.1 February 27th, 2007
- 3.2 August 14th, 2007
- 3.3 September 25th, 2007
- 3.4 October 9th, 2007

The Commission voted unanimously to defer taking action on the Planning Commission minutes until the November 27, 2007 meeting.

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

4.0 INFORMATION ITEMS -- City Council Minutes

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

5.0 PUBLIC COMMENT

This is an opportunity for the public to comment on any item not on the agenda.

Stephen Winstead, Winstead & Associates Architects, 714 Main Street, Oregon City, OR stated he was present to ask for advice on a problem they were trying to resolve regarding the Immovable Foundation Church.

- The church's current landlord has asked them to leave the premises, requiring them to quickly move into an existing building on a site where the church had been granted a Conditional Use in July 2006.
 - * The North Clackamas School District currently occupied a building on the site that was previously approved as a church converted to office space and was now being converted back into a church.

- 52 — A major expansion of the sanctuary is planned, for which Winstead and
53 Associates had prepared many designs and plans.
- 54 * The church needed a place to operate during the expansion and asked Winstead
55 and Associates if they could move into the existing building and operate as a
56 church until the expansion was complete, however, the timeframe for the
57 improvements and move-in were different.
- 58 • He asked if the church could have a change of occupancy and move into the existing
59 building while agreeing to fulfill all obligations of the Conditional Use.
- 60 * While Winstead & Associates was uncertain of the exact time frame, the church
61 agreed that within six months, they could start improvements on the roads, etc.
62 as part of the Conditional Use.
- 63 * The question was what to do between being kicked out of their prior building,
64 moving into the existing building on the new site and the time needed to initiate
65 the aspects of the Conditional Use?
- 66 * There was no question about whether the church would do this; but they found
67 themselves without a home as of the end of the year. This was a unique situation
68 because it was unusual not to have a building to move into.
- 69 * He asked if it were possible to post a performance bond, for example, stating that
70 within six months, the church would initiate all conditions of approval adopted in
71 July 2006.
- 72 — The church was willing to do this, but lacked a mechanism for doing so.
73 There was no way to predict this situation when the Conditional Use was
74 originally granted.
- 75 * He assured he was not asking for leniency on the conditions, but if the church
76 could get a change of occupancy, move into the building, and post a bond that
77 would allow them to initiate the required road improvements within six months.
- 78 — The occupant load was significantly less than what the Conditional Use
79 stated.
- 80 • In response to questions from the Commission, he explained:
- 81 * No conditions of approval had yet been accomplished. The church was starting
82 from scratch but fully understood they had to abide by all conditions.
- 83 * The original date of approval was July 13, 2006. Winstead & Associates
84 Architects had numerous meetings with the City and was finalizing the design
85 and preparing to apply for a building permit. The civil engineering drawings for
86 the improvements were completed.
- 87 * The church was currently located at New Hope and received notice to vacate
88 about three or four weeks ago.
- 89 — They had completed documents requesting a change of occupancy of the
90 existing structure, but were in a catch-22 with not having completed the
91 improvements. They were willing to post whatever bond was needed to
92 proceed.
- 93 * He had consulted the Planning Department, but they did not know what could be
94 done and wanted guidance.
- 95
- 96 **Susan Shanks, Associate Planner**, explained that relatively recently Robyn Savacool
97 of Winstead & Associates had asked if the church could move into the existing building
98 with modifications, what kinds of conditions might be waived or deferred, and what kind
99 of flexibility existed regarding the conditions for the church to get into the building.

- 100 • Due to the atypical nature of the request, Ms. Savacool was asked to prepare a more
101 formal proposal with more detail about the scope of their proposal, such as how long
102 the conditions would need to be deferred and how many people were involved.
103 • She reviewed the proposal with the building and engineering departments who felt
104 the conditions were imposed to mitigate the impact on the surrounding residential
105 areas and that the church needed to meet the conditions before occupying and using
106 the site as proposed.
107 – The impact might be lessened by bringing in fewer people, but there would
108 still be an impact.
109 * There was also concern that the neighborhood would have to deal with the
110 impact for a longer time than originally proposed, as the original proposal stated
111 the construction of the building would be completed in 2010, which was not what
112 the community had understood.

113

114 **Mr. Winstead** stated he then talked to the church and they responded they could get
115 started in six months, so he decided to come before the Commission to negotiate the
116 six-month time frame for starting improvements, since six months was a better than
117 2010.

118

119 **Vice-Chair Newman** summarized that the Planning Department decided that all
120 conditions, except maybe one, needed to be met prior to the building being used as a
121 church again and Mr. Winstead proposed meeting the conditions could start in six
122 months as opposed to 2010.

123

124 **Mr. Winstead** explained that the church wanted to occupy the building for the next six
125 months with a bond, stating they would start meeting outside improvements and other
126 conditions in six months.

- 127 • Timing was not an issue from a building standpoint as they could make needed
128 changes for the building code quickly; they needed more time from the land use point
129 of view.

130

131 **Commissioner Batey** asked when the improvements were expected to be completed.

132

133 **Mr. Winstead** replied they knew they could not get total occupancy on the total structure
134 until all improvements were done.

- 135 • They would keep the low occupant load since construction on the sanctuary was not
136 planned to start until May or June of next year and would take about a year and a
137 half to complete.

138

139 **Commissioner Churchill** asked if the church had received notification from the landlord
140 about termination of the current lease.

141

142 **Mr. Winstead** replied they had received notification about a month ago.

143

144 **Commissioner Churchill** asked if any renewal options were included in the notification.

145

146 **Mr. Winstead** answered he did not know.

147

148 **Commissioner Churchill** stated that having those details would be helpful to the

149 Commission's consideration since the church essentially had a hardship situation.
150 • He also suggested including a plan of action to mitigate issues with the
151 neighborhood, a list of neighborhood-related improvements done to the site, and a
152 tighter time frame than 2010 for commitment to show work was underway rather than
153 just having permits applied for.

154
155 **Commissioner Batey** noted that while the public improvements and church construction
156 were due to start in six months, the public improvements could be completed in a few
157 months, well before a year and a half and not much different from 2010, which date
158 stated by Ms. Shanks.

159
160 **Commissioner Churchill** believed they should also ask for input from the
161 neighborhood; having the neighborhood's support was important in weighing the
162 request. He recalled there being concerns about lighting and vision issues.

163
164 **Mr. Winstead** clarified the Planning Commission's requests as follows:
165 • Provide a realistic time frame to the Planning Department. He added it would be to
166 the church's benefit not to go through the public hearing process again.
167 • Allow the Planning Department the ability to accept a bond as a means or
168 mechanism for the assurance of Conditional Uses, while addressing everything in
169 the Conditional Use to ensure nothing was left out and provide time frames for the
170 completion of all aspects in the Conditional Use.

171
172 **Vice-Chair Newman** was uncertain whether the Planning Department could rule on that
173 in a Type I decision.

174
175 **Ms. Mangle** replied the bond would be the only point of discussion, which had been
176 discussed at the Staff level.

177 • Some projects have used bonds successfully in the past, for example the North Main
178 project; it was successful, enabling some buildings to open earlier, which worked
179 fine. The improvements were done and the bond was closed out pretty quickly.
180 Other projects have been less successful. The previous City Attorney had said
181 calling in a bond was difficult and quite costly, requiring a lot of paperwork and Staff
182 time.
183 • Staff was a bit leery of saying a bond would resolve this situation, because if
184 improvements were not completed quickly by the Applicant, it would be difficult for
185 the City to get them done.

186
187 **Ms. Shanks** added that in general, bonds were not so much linked to occupancy, but
188 provided assurance that the work got done well and completed.

189 • Bonds were accepted, and even required, when public improvements would be
190 happening and were near completion, but in this case, improvements had not been
191 started, so Staff was hesitant in accepting that performance bond.

192
193 **Commissioner Churchill** was concerned that some evidence of the church's lease
194 situation [had been missed](#). [Most leases provide a time period for negotiation](#). It would
195 be useful to see how the church got 45 days out from having to move without knowing
196 what to do.

197

198 **Mr. Winstead** said that while they can go back and provide a letter from the current
199 owner, but it did not remove the bonding aspect.

200 * This was a unique situation that warranted discussion. If the bond did not work,
201 they would have to move and the church had already invested in the property.
202

203 **Commissioner Churchill** recommended creating a good plan of action.
204

205 **Mr. Winstead** replied they would create a plan regarding what would be done and when
206 so Staff would have a little more knowledge of how to handle it.

207 • He thanked the Commissioners for their time.
208

209 There was no further public comment.
210

211 **6.0 PUBLIC HEARINGS**

212 6.1 Type of Hearing: Replat and Variance

213 Applicant: Brian & Vanessa Anderson

214 Owner: Danielle Thompson

215 Location: 11182 SE 52nd Court and 11203 SE Wood Avenue

216 Proposal: A replat of tax lots 1000, 1600, and 1700. Proposal includes a
217 variance request.

218 File Number: VR-07-02, R-07-01

219 NDA: Hector Campbell Staff Person: Bob Fraley
220

221 **Vice-Chair Newman** called the hearing to order and stated the Applicant had the burden
222 of proving the application was consistent with the City of Milwaukie Zoning Subdivision
223 Ordinance, Comprehensive Plan, and any applicable municipal code provisions.

224 • He called for Staff to cite the Zoning Ordinance sections where the criteria could be
225 found.
226

227 **Robert Fraley, Assistant Planner**, cited the following Municipal Ordinances:
228 Milwaukie Zoning Ordinance Sections 19.302, 19.700 and 19.10113.3 as well as
229 Milwaukie Land Division Ordinances 17.12, 17.16, 17.20, 17.28
230

231 **Vice-Chair Newman** read the conduct of hearing format into the record.
232

233 Commissioners Batey, Bresaw, Churchill and Qutub declared for the record that they
234 had visited the site. No board member however declared a conflict of interest, bias or
235 conclusion from a site visit. No board member's participation was challenged by any
236 member of the audience. No Commissioner made any declarations or abstained from
237 the hearing.
238

239 **Mr. Fraley** reviewed the Staff report and responded to the following questions from the
240 Commission:
241

242 **Commissioner Batey:**

243 • Asked if the replat was an actual legal requirement to purchase the property from
244 their neighbor, even though the Applicants were not proposing any construction.

245 * **Mr. Fraley** replied it was required under Oregon Revised Statute 92.

246 • Asked if an option existed to just replat Lot 1600 and the piece of Lot 1700 together?

- 247 * **Mr. Fraley** replied that would create a land-locked parcel and substandard-sized
248 lots, because the required minimum lot area in the zone was 7,000 sq. feet.
249 • Agreed that would be true if they kept the lots separate, but if they merged the more
250 than 3,000 sq. foot piece of Lot 1600 they were purchasing with Lot 1700, which was
251 5,000 sq. feet, it would be well over the 7,000 sq. foot requirement.
252 * **Mr. Fraley** said that was correct.

253

254 **Commissioner Churchill:**

- 255 • Verified the reason for the compound lot line was because of the 7,000 sq. foot limit.
256 • Inquired about the Applicant's intent of the investment.
257 * **Mr. Fraley** replied that he would defer to the Applicants to explain their intent, as
258 far as he knew, they were not proposing to build. Although land division would
259 be possible after a replat, it was not proposed as part of the application.
260 • Requested that Staff explain why Tax Lot 1700 could not simply be purchased
261 outright and left as open space. Why would it need to be divided-was a State code
262 requiring that?
263 * **Mr. Fraley** explained Oregon Revised Statute (ORS) 92 specifically addressed
264 land divisions within the State of Oregon.
265 • Requested explanation of the statute, he understood that a lot line adjustment was
266 not required when an adjacent lot was purchased. An island lot could be purchased
267 and used as a buffer or green space.
268 * **Mr. Fraley** replied that that is correct. Leaving that tax lot as open space was a
269 possibility.
270 • Stated it looked like the intent was to merge the lot line so that a public improvement
271 could be done to the 1835 sq. foot existing house.
272 * **Ms. Mangle** reminded that further development intent was not a criteria, but only
273 background information.
274 * **Mr. Fraley** agreed Tax Lot 1700 could remain as a stand-alone tax lot and the
275 rear portion of Tax Lot 1600 could be replatted as part of Tax Lot 1000.
276 * He reminded that R-7 was primarily a single-family residential zoning district.
277 Permitted uses also included single-family detached dwellings, agricultural or
278 horticultural uses, poultry or livestock other than usual household pets, and any
279 other use similar to the above.
280 * Conditional uses included temporary real estate offices, single-family attached
281 dwellings, senior and retirement housing, and Type 2 accessory dwellings.
282 • Asked if multi-family dwellings were allowed.
283 * **Mr. Fraley** replied single-family attached dwellings were permitted outright.

284

285 **Commissioner Batey** added that residential care facilities were also allowed.

286

287 **Vice-Chair Newman** asked if any correspondence had been received other than the
288 items included in the agenda materials.

- 289 * **Mr. Fraley** replied no public comments were received, except correspondence
290 received from David Aschenbrenner of the neighborhood association expressing
291 support.
292 — The main concern was whether the replat included proposed development.
293 — There was also concern that the new area gained through the replat on Tax
294 Lot 1000 not be used for any type of storage, such as cars, etc.

295

296 There were no further questions of Staff.

297

298 **Vice-Chair Newman** called for comments from the Applicants.

299

300 The Applicants had no comments, but responded to the following questions from the
301 Commission.

302

303 **Commissioner Churchill** asked the Applicants to provide background information about
304 their intent in requesting a variance and a lot line adjustment that fell outside the Type 2
305 approval process.

306 * **Brian Anderson, 11182 SE 52nd Court, Milwaukie**, replied the reason for their
307 request was basically to have a larger lot. At this time, they had nothing in mind
308 other than a garden area

309 • Asked if that could be achieved by leaving the lot as it was.

310 * **Mr. Anderson** replied it might be possible by moving the fence.

311

312 **Commissioner Batey:**

313 • Said she understood why they would want to keep the nice buffer, which was why
314 she had asked why the two pieces being purchased were not just consolidated.

315 * **Mr. Anderson** responded that they had tried. The process had been going on
316 for at least eleven months and had included a lot of engineering surveying and
317 talking with the City.

318 * It seemed like he and his engineers would do what Staff asked and then get hit
319 with stuff like street widths and utilities in the street. He wondered why he was
320 doing all of that when it was the City's street and utilities.

321

322 **Commissioner Bresaw** asked how long the Applicant had lived there.

323

324 **Mr. Anderson** replied that he purchased the house around 1982 or 1984.

325

326 **Commissioner Churchill :**

327 • Asked Staff to comment on the process leading to this point.

328 * **Mr. Fraley** responded that because he took this case when he started this
329 position, he did not have a lot of the background information, but he did know
330 that the Applicant had been asked to provide utility locations on the surveys in
331 the Staff report.

332 • Asked Ms. Mangle what caused these issues to become hurdles? Was there an
333 easier solution and if so, what would it have been?

334 * **Ms. Mangle** explained she had talked with Mr. Anderson numerous times over
335 the last year, discussing different types of land divisions, but ultimately decided
336 this was the solution that met his needs.

337 * **Mr. Anderson** added they originally wanted to keep it as two separate lots, but
338 the easement could not be made, so they had to go with the replat.

339 * **Ms. Mangle** explained the complications had to do with it being a land-locked
340 parcel and many limitations existed regarding street access.

341 * **Mr. Anderson** agreed and explained this had taken quite a while and had been
342 costly on their end.

343 • Asked if the main problem was that adequate easements would not have existed to
344 get past the corner.

- 345 * **Mr. Anderson** replied it was one thing after another, from the easement to
346 expanding their lot, moving it over and giving up some of their frontage for
347 access. They decided to just make it part of their lot.
348 • Surmised they could do a 7,000-foot lot, but it came down to easements being too
349 restrictive.
350 * **Mr. Anderson** responded they just figured they would keep it separate.

351
352 There were no further questions from the Commission.

353
354 Chair Klein arrived at approximately 7:20 p.m.

355
356 **Vice-Chair Newman** called for testimony in favor of, opposed or neutral to the
357 application. There was none.

358
359 There being no rebuttal from the Applicant, Vice-Chair Newman closed the public
360 hearing at 7:27 p.m.

361
362 **Planning Commission Discussion**

363
364 **Commissioner Batey:**

- 365 • Said she had expected to vote against this proposal after reading the packet, but the
366 solution of a separate lot concerned her.
367 * The Planning Commission should be cautious about aggregating lots to a size
368 that was in such great excess of surrounding lots due to the potential for huge
369 care facilities, etc.
370 • Was concerned about the replat, but had no particular qualms with the variance. It
371 sounded like the Applicants had tried [that](#) option and had no other recourse.
372 • Suggested reviewing the Code in terms of facilitating somebody who just wanted to
373 buy some green space without concerns about easements and access.

374
375 **Commissioner Churchill:**

- 376 • Asked in theory, with the approved lot line adjustment would the Applicant be
377 allowed to return later and put in a residential care facility? What were the
378 restrictions on that process?
379 * **Ms. Mangle** responded that residential care facilities were allowed outright in all
380 residential zones as long as they meet the definition of such.
381 * She verified it would not trigger a public hearing review, but could potentially
382 result in increased traffic.

383
384 **Commissioner Batey** commented she would like to see a minimum and maximum lot
385 sq. footage established and suggested roughly 150% of the minimum lot size as a
386 reasonable cap.

387
388 **Commissioner Churchill:**

- 389 • Asked if approval conditions were allowed on a variance request.
390 * **Ms. Mangle** replied conditions would have to be related to the decision criteria.
391 • Asked if it would be possible in this case to apply a deed restriction stating that the
392 titleholder would pass on the use of a residential care facility on the property?
393 * Ms. Mangle answered no.

- 394 • Asked if it would be allowed if the Applicant were willing to do so.
395 * **Bill Monahan, City Attorney** replied that it was not something he would want to
396 see from a local land use decision.
397 — It would be the prerogative of the Applicant to do something like this on their
398 own, unrelated to a land use decision; whether or not it would be right was
399 another question.
400 • Inquired whether an Applicant could say that they care about the neighborhood and
401 the consistency of the land use and agree to put a deed restriction on the parcel that
402 would not allow a residential care facility on the parcel.
403 * **Mr. Monahan** replied he did not know if that, in itself, would run afoul of the Fair
404 Housing Act.
405 — The local government would have a stake in it, but the individual would have
406 to do their own research to ensure they did not create a problem.
407 • Asked if a subsequent buyer would be able to revert to the prior state.
408 * **Mr. Monahan** answered with yes.
409

410 **Commissioner Batey:**

- 411 • Believed the Code's the variance was very good, because it stated, "In granting
412 variances, the Planning Commission, Planning Director...may attach conditions it
413 finds necessary to lessen the impact of the variance on nearby properties, protect
414 the general welfare of the City and achieve the purposes of this title." However, the
415 Commission did not have a basis for rejecting the variance in this case because
416 similar language was not available in the Land Division Ordinance; perhaps similar
417 language was needed.
418

419 **MOTION:**

420 **Commissioner Bresaw moved to approve File Numbers VR-07-02 and R-07-01 for**
421 **the replat of the tax lots and variance request. Commissioner Qutub seconded**
422 **the motion, which passed 5 to 0.**
423

424 **Vice-Chair Newman** read the rules of appeal into the record.
425

426 6.2 TSP Comprehensive Plan and Code Amendments (Continuation of 10/23
427 hearing)

428 Applicant: City of Milwaukie

429 Proposal: Recommend adoption of the Transportation System Plan (TSP)

430 File: CPA 07-01/ZA 07-01 Staff Person: Katie Mangle
431

432 **Chair Klein** called the public hearing to order at 7:37 p.m. and read the conduct of
433 legislative hearing format into the record.
434

435 **Commissioner Batey** confirmed that ex parte contacts were not relevant to legislative
436 hearings.
437

438 **Katie Mangle, Planning Director** briefly reviewed the TSP information presented at the
439 October 23, 2007 meeting with the following additional comments:

- 440 • She noted the following public comments received since the last hearing:

- 441 * Pat Russell, a participant in the Traffic Group, submitted very nice compliments
442 about the process and specifically included comments of support for the Kellogg
443 Lake/McLoughlin Blvd Bridge Replacement Project.
- 444 * Dave Mayfield and the Ardenwald NDA submitted comments regarding the
445 Johnson Creek Blvd improvements; Staff's response was also provided to the
446 Commission.
- 447 – She believed the NDA wrote the letter before seeing the revised
448 recommendations, which reduced the recommendation for Johnson Creek
449 Blvd to only a future signal at 42nd Ave.
- 450 – Michole Jensen, one of the letter's authors, believed a lot of the NDA's
451 concerns had been addressed, although some concerns still existed about
452 the future of the street.
- 453 • She reviewed Staff's responses to questions submitted by the Planning
454 Commissioners prior the hearing as follows:
- 455 * **Commissioner Bresaw** had asked if pedestrian zones must always be six feet
456 wide, green zones always had to be five feet wide, and if the Commission should
457 focus on getting more landscaped area and less pavement where possible,
458 referring to a paragraph stating the widths for pedestrian and green zones.
- 459 – Those dimensions were meant to be very typical and applied to all streets
460 throughout the City, changing the sentence at the bottom of Page 10-4,
461 clarified that local streets with lower traffic volumes could be narrower.
- 462 * **Commissioner Bresaw** had asked for clarification on Page 10-5 about a
463 sentence that showed strikeout. What did it mean for mobility to increase and
464 access to decrease?
- 465 – Staff agreed it was not a very intuitive way of speaking and recommended
466 revising it to be more specific to the intent.
- 467 – **Commissioner Bresaw** explained that [the typical pedestrian zone was at
468 least five feet wide when adjacent to a green zone and at least six feet wide
469 when adjacent to a street zone.](#)
- 470 * **Commissioner Batey** had asked why more off-street bikeways were not
471 included in the plan.
- 472 – The bike committee had raised this topic, which became more of a passing
473 interest as the group became more focused on exploring the bicycle
474 boulevards concept.
- 475 * **Commissioner Batey** also asked if 17th Ave and Railroad Ave could be
476 potential bikeways, rather than having traditional bike lanes.
- 477 – It was easier to call something a walkway or bikeway and deal with a typical
478 cross-section than get into the more detailed design of a bikeway, but there
479 was no reason to not to explore it further.
- 480
- 481 **Commissioner Batey** explained that her thoughts were more conceptual and included
482 good spots for straight-aways and the need for cross-city paths.
- 483 • Her main concern was that the TSP called for sidewalks and bike lanes on 17th
484 Avenue. The City should look at an off-street bike path and consider narrowing 17th
485 Avenue to facilitate that. It seemed to make sense to connect the Trolley and
486 Springwater Trails since they would both be off-street bike paths.
- 487 • She was disappointed to see it framed as sidewalks and bike lanes.
- 488
- 489 **Chair Klein** believed the matter had been discussed, specifically where Clinton St is a

490 bike boulevard [inaudible].

491

492 **Commissioner Batey:**

493 • Clarified she had no qualm with the bike boulevard concept, but it was not an option
494 for 17th Ave, since there was not another street for traffic. The bike boulevard
495 concept was contingent on low traffic volumes and 17th Ave did not apply.

496 * **Ms. Mangle** responded the important thing was that 17th Ave was identified as a
497 high-priority bikeway and walkway. It was the function that was really important
498 as far as designating 17th Ave as a place for the City to invest in bike and
499 pedestrian improvements.

500 * She asked if Commissioner Batey would be more comfortable if the project
501 description were changed to say 'off-street facility' or something similar.

502 • Replied that would be better, adding when she sat in on a bike working group, she
503 heard experienced riders say they would not ride on 17th Ave.

504

505 **Commissioner Churchill** stated that he desired stronger language about the intent to
506 have an off-street bikeway.

507

508 **Ms. Mangle** understood, but was hesitant to do that because there were so many design
509 considerations with regard to the slope, right-of-way, access points, etc. It did not seem
510 appropriate to be designing it at that point.

511 • She said she would be more comfortable at the TSP level raising the different
512 options.

513

514 **Chair Klein** agreed, adding that the TSP was only a framework until funding and
515 alternatives analysis existed.

516

517 **Commissioner Churchill** responded that he understood, but still wanted more teeth in it
518 as this was a serious, serious corridor connecting two major neighborhoods and it was
519 worth considering the strongest language possible without restricting future
520 opportunities.

521

522 **Commissioner Batey** suggested cross-referencing sidewalks and off-street bikeways in
523 several places in the TSP.

524

525 **Ms. Mangle** reiterated that there were some changes between the October 23rd and
526 November 13th version and this was one of the things Staff continued working on. Ms.
527 Shanks had been diligently checking and cross-referencing all master plan lists, so all
528 the recommendations were linked together.

529

530 **Commissioner Churchill** asked if Staff would return to the Commission with different
531 language.

532

533 **Ms. Mangle** preferred that the Commission make a recommendation to adopt with
534 conditions.

535

536 **Commissioner Bresaw** asked if the intention was to have combination off-street bike
537 and pedestrian bikeways [inaudible]; completely different from the street, separating both
538 bikes and pedestrians from the street, not necessarily from one another.

539

540 **Commissioner Batey** agreed that was her point.

541

542 **Chair Klein** interjected that they were putting the cart in front of the horse by asking to
543 design these paths.

544

545 **Commissioner Churchill** disagreed, clarifying that the request was not for design, but
546 for stronger language about design.

547

548 **Chair Klein** believed Staff could do that with a recommendation tonight and coordinate
549 the language later via e-mail because designing it now was not possible.

550

551 **Commissioner Bresaw** agreed.

552

553 **Commissioner Churchill** requested that separated bike and pedestrian areas be
554 strongly considered as a priority for design, leaving it at the design level but saying more
555 than it had just been considered. He emphasized that the connection between the two
556 neighborhoods was so important.

557

558 **Commissioner Batey** added it was a real thing for which the City was applying for
559 money, not just something to get around to in ten years, like so much in the TSP.

560

561 **Chair Klein** asked Staff if they were comfortable formulating language for that portion of
562 the TSP.

563

564 **Ms. Mangle** replied the project description currently stated, "fill in gaps in existing bicycle
565 network with bike lanes." She recommended, "with bicycle lanes or a multi-modal path."

566 • She did not believe it was appropriate to start defining facility types at this level, but
567 she was comfortable with a multi-modal pathway.

568

569 **Commissioner Churchill:**

570 • Wondered how important this issue would appear in the TSP process if someone
571 were looking back at this in a year or two.

572 • Repeated this was a very important leg in the multi-mode pedestrian/bike connection
573 between Sellwood and Milwaukie and suggested a separate line stating that this was
574 a top priority in the TSP.

575 • Wanted to go on record as a Planning Commissioner that this link was one of the
576 strongest links to adjacent neighborhoods along the Springwater Corridor and
577 wanted language in this section of the TSP that supported that.

578 * **Ms. Mangle** clarified it was one of four bicycle projects that were included in the
579 Action Plan, so it was identified as a priority by the bicycle group as one of the
580 most important connections.

581 • Asked if he understood correctly that no more language would be added.

582 • Repeated that he was seriously requesting stronger language in this section about
583 the importance of the topic.

584 * **Chair Klein** commented that in his view, there were so many things in
585 transportation that were priorities that [inaudible].

586 • Noted that they were just handed an attachment about changes to the auto chapter
587 representing an NDA, but there was no NDA on 17th Ave that really supported this;

588 meaning it was a lost link without an advocate, and he wanted to see some
589 increased language supporting it.

590

591 * **Ms. Mangle** suggested an appropriate location to identify 17th Ave, as an
592 important, high-priority connection was where the bicycle group's
593 recommendations were outlined on Page 6-6.

594 – A bullet point could be added, stating "bike lanes or off-street bike paths to
595 make a safe, well-used connection between the Springwater Corridor and
596 downtown Milwaukie."

597 * **Commissioner Batey** suggested if they did not like the language, they could go
598 before City Council and propose changes.

599 • Replied that adding the suggested language could resolve his concern while
600 addressing it at the Commission level.

601

602 **Chair Klein** believed the Commission agreed simple language could resolve the issue,
603 but were arguing over whether that simple language was stressed enough.

604

605 **Commissioner Churchill** did not believe it was.

606

607 **Ms. Shanks** stated that putting it in the Chapter under key projects as suggested was
608 more viable (than in the project list description) because the project list was meant to be
609 a real simple description, not a detailed understanding of the project and its importance.

610 • Similar to a comment made by Pat Russell about the Corridor Refinement Plan as a
611 project for Highways 99E and 224 in Chapter 8. The City really preferred to minimize
612 the highways so that they were not **barriers**, so **Staff** added language to that effect in
613 the Chapter text to emphasize the point.

614

615 **Commissioner Churchill** considered this as one of the highest priorities, and as much
616 as he loved bike boulevards, it should be at the top of the pile.

617

618 **Ms. Mangle** confirmed she was comfortable adding a bullet point on Page 6-6 about the
619 importance of a bike lane or multi-use path.

620 • She explained Ms. Shanks had worked with Gary Parkin to address some of
621 Commissioner Batey's other questions.

622

623 **Ms. Shanks** referenced an email from Mr. Parkin, Engineering Director, addressing
624 Commissioner Batey's question. A lot of good questions were posed about River Rd and
625 the posted speed limits.

626 • She clarified that the big question was why Johnson Creek Blvd (JCB) was being
627 recommended for reclassification and not River Rd.

628

629 **Commissioner Batey:**

630 • Replied that was correct, and also asked why River Rd was a higher classification
631 than Railroad Ave. Those seemed like two glaring examples of roads that were as
632 busy or busier than River Rd and were classified lower than River Rd.

633 * **Ms. Shanks** explained that there was a lot of neighborhood outcry over JCB for
634 many reasons, including intersection improvements and the reclassification, and
635 Staff paid attention to the outcry, but would not have considered reclassification if
636 it did not make sense on many levels.

- 637 * There were two main reasons for the reclassification of JCB;
638 — One main reason was to achieve consistency between two abutting
639 segments in Portland, as well as other sections, such as the short section
640 running through Portland to Milwaukie, back to Portland, and through
641 Clackamas County.
642 — Another reason was that reclassification was consistent with recent
643 improvement investments made within the constrained right-of-way width.
644 * Regarding River Rd, there was a section it abutted that went into the County and
645 was classified in the County system as a minor arterial, which was equal to the
646 City's arterial.
647 — Every jurisdiction uses similar classifications, but because cities have
648 different qualities, terms often vary slightly.
649 — The term "local" is common, but some cities add the prefix "major" or "minor"
650 to street classifications and not every jurisdiction might have that
651 classification.
652 — According to Mr. Parkin, what the County classified as a minor arterial was
653 more equivalent to Milwaukie's arterial classification.
654 • Asked if the chart showing different jurisdictions' classifications was in the opening or
655 Chapter 8.
656 * **Ms. Shanks** replied it was in Chapter 3 - Existing Conditions.
657 * River Rd did not come up as a possibility for reclassification until recently, which
658 was not to say that the City would not consider River Rd for that reason. JCB
659 was brought in fairly late, but when reviewed, it was not felt that reclassifying
660 River Rd was as appropriate.
661 * Regarding specifics, Table 3-4 showed River Rd and Railroad Ave as 20 to 35
662 feet wide; JCB was 30 to 50 feet wide.
663 — The narrower width of River Rd and Railroad Ave represent the current
664 roadway width, not the right-of-way (ROW) width, indicating that they were
665 currently incomplete, not having full road improvements, such as curbs and
666 sidewalks, whereas JCB did.
667 • Asked if the pavement widths in the chart were just the roadbed pavement or if
668 sidewalks were included.
669 * **Ms. Shanks** replied it was the roadbed pavement width on the three-lane
670 section.
671 • Confirmed that JCB was 30 feet at its narrowest point, making it almost the size of
672 the other two at their widest.
673 * **Ms. Shanks** replied that was correct, but the other two roads were definitely
674 incomplete.
675 — If developed according to their classification as arterial or collector, their lanes
676 would be wider and features such as bike lanes would exist.
677 * Regarding posted speed limits, Figure 3-8 showed JCB as being 35 mph, but she
678 believed that might be an error. River Rd was 25 mph, reflecting that there were
679 portions in residential neighborhoods and that the classification was appropriate.
680 * She wondered if they gathered the speed limit information on a County portion of
681 JCB, where the speed limit is higher than the posted 25 mph.
682 • Confirmed that the recorded speed limit was from the outer portion where it crossed
683 the Springwater Trail.
684 * **Ms. Shanks** explained that a classification did not necessarily dictate the speed,
685 because streets often move through different land use areas.

- 686 — Even though Railroad Ave had residences along the north side, there were
- 687 not as many driveways as River Rd. JCB had a lot of driveways and entry
- 688 points, making the speed limit lower.
- 689 — In terms of traffic counts, Mr. Parkin indicated that River Rd was on the lower
- 690 end of an arterial, while JCB was on the upper end for a collector.
- 691 — She was unsure why there were no counts shown for Railroad Ave.
- 692 * In reference to the addendum changes and Ronn Palmer's comments on JCB,
- 693 the tsp recommendation for JCB reflects what the City thinks is most appropriate
- 694 for the city and the neighborhood, though not everyone will agree with that.
- 695

696 **Commissioner Bresaw** clarified that arterials were three lanes or more; collectors, two
697 to three lanes, so the potential existed for widening River Rd, though it would create a
698 huge outcry.

699
700 **Ms. Shanks** replied that classification did matter and hoped they had not implied
701 otherwise, but many other variables are involved in street design. The hope was that
702 future Code changes would allow for more flexibility in street design.

- 703 • She confirmed that three lanes meant one lane in each direction, plus a turn lane.
- 704

705 **Ms. Mangle** clarified that Table 8-2, identifying five lanes on Harmony Rd, was not a list
706 of the City's projects, but one of the Regional Transportation Plan (RTP) Financially
707 Constrained Motor Vehicle Capacity Improvements.

- 708 * Projects in the Milwaukie vicinity were in the RTP, but the TSP did not
- 709 recommend widening Harmony Rd.

710 * It was listed in a few places, including the citywide project list, because it was
711 important for the City to coordinate with projects that affected them, especially
712 the Harmony Rd project, since part of it was in the City. It was also listed as a
713 County project on the citywide project list.

- 714 • She did not believe anyone would assume the City of Milwaukie supported five lanes
- 715 on Harmony Rd, and read Gary Parkin's response into the record as follows: "The
- 716 City is participating in the Project Advisory Committee, which includes citizens
- 717 including leadership from the Linwood NDA and several others, the Policy Review
- 718 Committee, which includes Council Barnes on the Project Management Team. The
- 719 City has been very vocal about wanting to minimize this project, and alternatives to
- 720 widening continue to be evaluated as part of the environmental impact study that is
- 721 underway for this project."

- 722 — Mr. Parkin represented Milwaukie on the Project Management Team and was
- 723 at the table for all these conversations. The five-lane project was proposed
- 724 years ago and was listed in the City's 1997 TSP as a recommended project.
- 725

726 **Commissioner Batey** commented she had talked to Dolly Macken-Hambright of the
727 Linwood Neighborhood Association and needed to call her to clarify the
728 misinterpretation.

- 729 • She reported that Ms. Macken-Hambright had said there was no discussion in her
- 730 NDA about taking a position.
- 731

732 **Ms. Mangle** stated that Ms. Macken-Hambright had been on the TSP Advisory
733 Committee and had copies of everything.

734

735 **Commissioner Churchill** asked if it would be appropriate to include a footnote on Page
736 8-7 under the paragraph discussing the projects listed in Table 8-10 that referred to Mr.
737 Parkin's comments.

738
739 **Commissioner Batey** suggested adding the City had not taken a position in favor of five
740 lanes on Harmony Rd.

741
742 **Ms. Mangle** replied that that might be helpful.

743
744 **Chair Klein** agreed.

745
746 **Ms. Mangle** reviewed Staff's recommendations to:
747 • Downgrade McLoughlin Blvd between Highway 224 and the southern city limits.
748 * In the last five or ten years, the City had worked closely with ODOT to consider
749 this part of McLoughlin as something other than a regional route or a big
750 thoroughfare; it was a Special Transportation Area that allowed the City to do
751 things like the McLoughlin Blvd Project, which was more pedestrian-oriented, and
752 allowed for more congestion than other state highways.
753 * The City and ODOT had already been making decisions to downgrade it from a
754 thoroughfare. When Metro reviewed their region-wide thoroughfares, it was not
755 99E going south because I-5 and I-205 already served that function and would
756 do so better.
757 • There are adopted regional routes called Mobility Corridors, and in Milwaukie these
758 are 99E to 224.
759 * The designation of Special Transportation Area from ODOT and the City's
760 [inaudible] for calming McLoughlin Blvd resulted in the conclusion that it should
761 not be a regional route because the definition of arterial fit better.

762
763 **Chair Klein** called for testimony in favor, opposed to or neutral to the application. There
764 was none.

765
766 There were no further questions from the Commission.

767
768 **Chair Klein** closed the public testimony portion of the hearing at 8:25 p.m.

769
770 **PLANNING COMMISSION DISCUSSION**

771
772 **Chair Klein** asked if everyone was comfortable that Staff knew where the Commission
773 stood on the language regarding 17th Ave or should an email be sent for clarification.

774 * The Commission consented that an email should be sent with, revisions
775 addressing the issues discussed during the hearing.
776 • He verified there were no other issues regarding Harmony Rd and no further
777 clarification required regarding McLoughlin Blvd.

778
779 **MOTION**

780 **Commissioner Bresaw** moved to recommend the adoption of the Transportation
781 System Plan as written, which was filed under CPA 07-01/ZA 07-01, with
782 comments to be forwarded later. **Commissioner Churchill** seconded the motion,
783 which passed unanimously.

784

785 **Chair Klein** thanked and appreciated Staff for more than a year of diligent work.

786

787 6.3 Housekeeping Code Amendments (Continuation of 10/23 hearing)

788 Applicant: City of Milwaukie

789 Proposal: Recommend adoption of housekeeping code amendments.

790 File: ZA-07-02 Staff Person: Katie Mangle

791

792 **Chair Klein** read the conduct of legislative hearing format into the record and called the
793 public hearing to order at 8:29 p.m.

794

795 **MOTION**

796 **Commissioner Batey moved to continue to November 27, 2007. Commissioner**

797 **Bresaw seconded the motion, which passed unanimously.**

798

799 The Commission took a brief recess and reconvened at 8:45 p.m.

800

801 6.4 Type of Hearing: Appeal of Director's Interpretation

802 Applicant/Owner: Ed Parecki

803 Location: 10883 SE Main St

804 Proposal: Appeal of Director's Interpretation

805 File Number: AP-07-01

806 NDA: Historic Milwaukie Staff Person: Katie Mangle

807

808 **Chair Klein** called the hearing to order and stated that the Appellant had the burden of
809 proving that the application was consistent with the City of Milwaukie Zoning and
810 Subdivision Ordinance, Comprehensive Plan, and any applicable Municipal code
811 provisions.

- 812 • He called for Staff to cite the Zoning Ordinance sections where the criteria can be
813 found.

814

815 **Katie Mangle, Planning Director**, cited the following Municipal Ordinance Sections:

- 816 • 19.312.5 -- Public Area Requirements
817 • 19.1001.4 -- Planning Director's Interpretations
818 • 19.1011.3 -- Minor Quasi-Judicial Review

819

820 **Chair Klein** read the conduct of minor quasi-judicial hearing format into the record. All
821 board members declared for the record that they had visited the site. No board member
822 however declared a conflict of interest, bias or conclusion from the site visit. No board
823 member abstained from the hearing.

824

825 **Commissioner Bresaw** declared ex parte communication with the Appellant at the
826 Farmers' Market. She had asked him about his building he was going. He said he was
827 anxious to get things going and was waiting for the Planning Department to approve his
828 permit. The discussion did to relate to the required improvements.

829

830 **Commissioner Churchill** declared ex parte communication with the Appellant but not
831 related to the public area improvements.

832

833 **Chair Klein** declared ex parte communication with the Appellant on a number of
834 occasions at meetings regarding his site, but nothing regarding this appeal in depth.

835

836 **Commissioner Batey** clarified that ex parte contact did not include any contact ever
837 with the Appellant; only contact occurring since the date of this application qualifies.

838

839 **Bill Monahan, City Attorney**, confirmed it would be ex parte contact if it occurred since
840 the time a Commission knew that this issue or application existed.

841

842 **Chair Klein** corrected that his contact would not qualify as ex parte, as it was prior to
843 that time.

844

845 No board member's participation was challenged by any member of the audience, nor
846 was the jurisdiction of the Planning Commission.

847

848 **Katie Mangle, Planning Director**, first clarified that the application was an appeal of the
849 Planning Director's Interpretation of Milwaukie Municipal Code (MMC) Section
850 19.312.5.B2, not an appeal of the Code itself. She presented the Staff report via
851 PowerPoint as follows:

- 852 • MMC 19.001.4 authorized the Planning Director to make interpretations of the Code
853 to resolve unclear or ambiguous phrases and provisions.
 - 854 * Ideally the Code could be implemented as adopted without much interpretation;
855 however, some phrases might become unclear due to changes over time,
856 specific situations that were not envisioned when the Code was written, or case
857 law causing changes in the Code.
 - 858 * It was appropriate and allowable for the Planning Director to issue interpretations
859 either independent of or concurrent with an application and the interpretation was
860 subject to appeal, which is the reason for this hearing.
 - 861 * When a request was made for interpretation, the Planning Director could either
862 issue or decline to issue the interpretation.
- 863 • Some things she keeps in mind when issuing an interpretation:
 - 864 * She is authorized to interpret the Code, not change the Code.
 - 865 * Her responsibility is to implement the Code as closely as adopted as possible.
866 When Code could not be implemented as adopted, other documents were
867 referenced to understand the intent of the Code and could include the
868 Comprehensive Plan, Downtown Plan, a statute or case law.
 - 869 – Sometimes professional standards of best practices are referenced.
 - 870 * Her approach has been to make the minimum change needed to implement the
871 Code as adopted.
 - 872 – She was not empowered to change or waive the Code, but to her best
873 professional ability and judgment, implement the Code as adopted by
874 Council.
- 875 • She noted Mr. Parecki's site on the corner of Main St and Monroe St and described
876 the primary part of the project as the building closest to Main St.
- 877 • She reviewed the timeline of interactions with Mr. Parecki, as well as design review
878 of the project.
 - 879 * April 26, 2007 -- Pre-Application Conference: Mr. Parecki inquired primarily
880 about a land division to split two buildings into two parcels. Staff discussed land

- 881 use issues with Mr. Parecki and outlined the design review process since the
882 project would be subject to the City's Design Review Policy.
- 883 – Public Area Requirements were addressed and acknowledged that because
884 the project was big, staff told him that there might be different approaches to
885 handling the scope of the required improvements.
- 886 – Mr. Parecki was encouraged to talk with the City to work out how to approach
887 the project.
- 888 * August 29, 2007 -- Mr. Parecki had no contact with the City until this date, when
889 he applied for a building permit.
- 890 – Mr. Parecki submitted a full set of plans to the Building Department,
891 Engineering Department and Planning Department.
- 892 – Associate Planner Bob Fraley was assigned to this project and determined,
893 along with other Staff members, that this would be an administrative staff
894 level design review, which could be done concurrently with the building permit
895 because it was minor exterior alteration.
- 896 * During the Design Review process, Mr. Fraley and the Engineering Department
897 asked Mr. Parecki a few clarifying questions, to which Mr. Parecki promptly
898 responded.
- 899 – It was during this time Staff determined that based on the information
900 provided by Mr. Parecki and the building official, the project would trigger the
901 Public Area Requirements (PARs) as well as the section of code requiring full
902 compliance with the PARs.
- 903 – When Staff realized that full compliance with PARs would place a significant
904 burden on the project, they consulted City Attorney Bill Monahan regarding
905 how this part of the Code should be implemented.
- 906 – Mr. Monahan confirmed the City was required to consider the proportionality
907 of impacts to required improvements.
- 908 * October 1, 2007 -- The City wrote a letter to Mr. Parecki stating that his project
909 triggered PARs and requesting an analysis to determine his proportional level of
910 improvement.
- 911 * October 5, 2007 -- Mr. Parecki offered to build public improvements equaling
912 10% of the building permit value.
- 913 – Mr. Parecki considered this to be an appropriate amount, even though it was
914 significantly less than full compliance with the PARs.
- 915 – He did not address the project's impacts in any way or that providing 10% of
916 the improvements would not mitigate the project's impacts.
- 917 * Ms. Mangle wrote two letters to Mr. Parecki: One approved the Design Review
918 and one outlined the required Public Area Improvements and listed the
919 improvements he needed to agree to in order to receive the building permit.
920 They also clarified that while an agreement was required, construction of the
921 improvements needed to be complete before the first tenant moved in.
- 922 * October 8, 2007 -- Mr. Parecki submitted an appeal application that was very
923 brief and did not provide much information about what he was appealing.
- 924 – The City assumed he was not appealing the approval of his design and but
925 the interpretation regarding Public Area Improvements, which he confirmed in
926 an email.
- 927 • The Downtown Plan was developed and adopted in 2000 and had provisions
928 regarding a vibrant downtown as well as making downtown safe through lighting and
929 other features.

- 930 • The streetscape plan was equally important and is implemented through the Code
931 section being discussed.
- 932 * There are three subsections to the Public Area Requirements in 19.312.5, whose
933 purpose was to ensure that the downtown developed not only its buildings, but
934 also the public realm.
- 935 — There are three levels of applicability for this Code Section: new buildings
936 must comply with everything; large remodels and expansions must comply
937 with everything and small projects must apply 10% of the permit value to
938 compliance.
- 939 * She cited the applicable Code Section as follows: "Any renovation, expansion, or
940 alteration of an existing building that has a development permit value that
941 exceeds fifty percent of the value of the land and existing improvements shall
942 comply with the public area requirements. The building official shall determine
943 the development permit value."
- 944 — While it was true that this section not only designated requirements for a new
945 and small development, it did put a burden on the developer to provide public
946 improvements, as well as requiring investment from the private sector in the
947 public realm.
- 948 • The questions Ms. Mangle asked when they were looking at implementing this was
949 not what the Code required of developers, but what impacts would result and what
950 did it mean that a project "shall comply" with Public Area Requirements.
- 951 • Staff's research included considering how other jurisdictions addressed the issue.
- 952 * Milwaukie required renovation projects to construct pedestrian enhancements,
953 which is actually a pretty common practice among cities. In Milwaukie, the
954 requirement is triggered by the permit value relative to land improvement value.
- 955 * Hillsboro requires compliance if there is a substantial change in exterior
956 appearance.
- 957 * Lake Oswego has urban renewal area funding for providing public improvements,
958 but they also require development to provide pedestrian and sidewalk
959 improvements if there is a change in appearance that is greater than 50% of the
960 renovation or a restaurant expansion.
- 961 * Gresham requires all development to do this unless they were exempt based on
962 building, expansion parking, requirements change of use, compliance with design
963 deadlines, etc.
- 964 * All these cities required the exaction be directly related to and roughly
965 proportional with the project impacts, acknowledging that the City needed to be
966 considering proportionality and helping to identify what was meant by "to comply
967 with."
- 968 • She clarified the proportional variation among cities was not based on a percentage.
969 Other cities require full compliance relative and proportional to, the impacts.
- 970 • She explained her interpretation had two parts:
- 971 * The list of improvements must be proportional to impacts.
- 972 * The City needed to consider the existing elements in the public right of way
973 portion of the site, meaning the elements that were already installed, in good
974 condition, generally consistent with the planned streetscapes were not required
975 to be replaced.
- 976 • Key issues regarding the appeal were whether the Planning Director's interpretation
977 was needed and did the Commission agree with this interpretation

- 978 * She believed she had established that the interpretation was needed to
979 determine proportionality.
- 980 * What did it mean “to comply with” PARs?
981 — Her interpretation to consider impacts followed established case law and she
982 interpreted “to comply with” to mean construct public improvements outlined
983 in PARs that were either deficient or missing in proportion to the project’s
984 impacts.
- 985 • Four questions were considered with regard to the site and all were affirmative:
986 * Was this Code section triggered by a permit value greater than 50% of the
987 assessed real market value?
988 * Did the project have impacts?
989 * Did the project’s impacts warrant full compliance with Public Area Requirements?
990 * Were any PARs already [present](#) on the site?
- 991 • The proportionality analysis was a pretty important part of how the City handled the
992 application. After Mr. Parecki stated no impacts were associated with his project,
993 she asked Zach Weigel, the City’s Civil Engineer, to perform a proportionality
994 analysis based on accepted methodology from case law.
995 * Traffic trip generation for an existing office building [\[inaudible\]](#) generated 109
996 weekday vehicle trips. Mr. Weigel used more conservative numbers to give Mr.
997 Parecki a benefit and generated 277 weekday vehicle trips, which is an increase
998 of 168 trips.
999 — Mr. Weigel’s full analysis report was available as an attachment to the Staff
1000 report on Pages 31 of 6.14.
- 1001 * This quantitative methodology compared existing and proposed vehicle trips and
1002 attempted to equate them into lineal feet of improvements. The analysis justified
1003 improvement to the full 155 lineal feet of frontage, because the number of trips
1004 generated would equate to 238 lineal feet of improvements, which exceeded the
1005 frontage on the site.
- 1006 * The conclusion was that there were impacts and the City could require full
1007 frontage improvements.
- 1008 • She asked Bob Fraley to prepare more of a qualitative analysis to try to link the
1009 benefits of the improvements to the project’s impacts.
1010 * Many important elements such as lighting, curb extensions, trees, etc, would
1011 improve the comfort and safety of downtown.
1012 * Staff arrived at their number by adding up the existing elements that did not need
1013 improvement, such as sidewalks that were in fine shape and the drinking fountain
1014 that worked fine, and subtracting this total from the list of improvements.
1015 — The formula the City used is outlined on Page 7 of the Staff report.
- 1016 • In interpreting and applying the Code to the best of their ability staff arrived at a
1017 package of improvements that comply with the code as adopted, while remaining
1018 true to the vision of downtown, which was important to implementing the Downtown
1019 Plan.
1020 * The project would have impacts to the public realm and increase the use of the
1021 City’s infrastructure, meaning the City was justified in requiring these
1022 improvements.
1023 * The list provided on page 7 was actually somewhat of a compromise.
- 1024 • Staff recommended denial of the appeal of the Planning Director’s interpretation.
1025 * This action would support the Code that the project’s impacts must be
1026 considered, as stated in Section 19.321.

1027

1028 **Ms. Mangle** responded to the following questions from the Commission:

1029

1030 **Commissioner Bresaw:**

1031 • Asked who normally wrote the proportionality analysis.

1032 * **Ms. Mangle** responded it typically comes up within Section 19.1400, which
1033 requires the applicant to prepare an analysis if they disagree with the
1034 requirement.

1035 * **Zach Weigel, Civil Engineer** explained that they base it off the Institute of
1036 Transportation Engineers' (ITE) *Trip Generation Handbook*, which engineering
1037 staff is familiar with. A full traffic study was not required.

1038 • Clarified that the Engineering staff could calculate the figures using the handbook Mr.
1039 Weigel mentioned.

1040 * **Mr. Weigel** replied that the trip generation was based on the sq. footage and use
1041 of the building.

1042

1043 **Commissioner Batey** asked if the analysis was based on the last use of the building,
1044 regardless of how long ago.

1045

1046 **Mr. Weigel** replied they generally compare it against the last known use.

1047

1048 **Chair Klein** asked Ms. Mangle to review how the City came up with funding for these
1049 projects.

1050

1051 **Ms. Mangle** responded when the City adopted the Downtown Area criteria, Public Area
1052 Requirements were included with the intent of being implemented over time.

1053 • Previous staff reported the Planning Commission and City Council felt it was
1054 important at that time to get these improvements. For years, development had not
1055 been providing infrastructure support, and the City decided that development should
1056 provide a primary funding source.

1057

1058 **Commissioner Churchill:**

1059 • Asked Ms. Mangle to explain why that exception had occurred.

1060 • The policy has been implemented fairly consistently since 2001.

1061 * **Ms. Mangle** replied that the North Main Project was a public/private partnership
1062 development. Part of the City's responsibility, in addition to owning the land was
1063 to construct the public improvements for that project; the City was essentially a
1064 joint developer. When St. John's Episcopal Church triggered PARs, the City
1065 funded a portion.

1066 • Asked [\[inaudible\]](#).

1067 * **Ms. Mangle** replied that she was uncertain because it was before her time, but
1068 she did know there was a capital improvement project that year. The St. John's
1069 project contributed 10% of their building permit on PARs, so the City matched
1070 that and provided improvements that would not have been made otherwise.

1071 • Asked what triggered the 30%.

1072 * **Ms. Mangle** explained how to calculate the proportional contributions.

1073 * Two categories existed for infill development and redevelopment. The threshold
1074 is the relationship between the building permit value and assessed value of the
1075 building, land and improvements.

- 1076 – If the ratio was over 50%, compliance was mandatory.
1077 – If the ratio was less than that, then 10% of the building permit value must be
1078 spent on compliance.
1079 • Confirmed that in the St. John’s model, they paid their 10% because they were below
1080 50% of the assessed value and asked why the City put in \$30,000 beyond that.
1081 * **Ms. Mangle** replied that between the 10% of the [inaudible] probably not
1082 [inaudible] to construct all of that.
1083 • Clarified that it was seen as an important enough PAR in this case to [inaudible].
1084 * **Ms. Mangle** replied that was likely, but at this time, the City did not have access
1085 to those types of funds, so all they could commit to was providing the bike racks
1086 and a city medallion similar to one which would be placed on Main Street in front
1087 of City Hall soon.

1088

1089 **Ms. Mangle** reviewed PowerPoint photos, noting some businesses and the PARs they
1090 had contributed, including St. John’s Church, Advantis Credit Union (frontage
1091 improvements), Key Bank (large curb extension) and the Wunderland Theatre
1092 (sidewalks, bike racks, trees)

- 1093 • She stated Key Bank’s building permit valuation was about \$450,000 and they
1094 contributed \$45,000 to PARs.

1095

1096 **Commissioner Batey:**

- 1097 • Asked what percentage would be on the amount Mr. Parecki was being asked to
1098 pay.
1099 * **Ms. Mangle** explained that the Code does not address cost as being a
1100 consideration, so they took a logical approach to producing the number. Based
1101 on Key Bank’s bulbout of \$45,000, it would be between \$45,900 and \$55,000, but
1102 no cost estimate had been done.
1103 • Requested to see the previous slide that compared how other cities address PARs
1104 and asked about how other cities calculated their thresholds.
1105 * **Mr. Weigel** explained that regardless of the threshold, improvements still had to
1106 meet proportionality.
1107 • Noted that Milwaukie’s trigger looked higher than most cities, meaning that in theory,
1108 other cities would be triggered at far less than 50% of the property value.
1109 * **Ms. Mangle** agreed and explained the main difference was Milwaukie used
1110 building permit values and other cities probably had other triggers that may have
1111 captured this project in a similar manner.
1112 * It was useful for Staff to remind themselves that not only did the Council adopt
1113 this policy deliberately because the improvements are needed, but also that
1114 Milwaukie’s approach was still valid, even compared to places like Lake Oswego,
1115 where they do have an Urban Renewal Area and a steady stream of funds.
1116 • Stated that it seemed like in Lake Oswego and Hillsboro improvements could be
1117 triggered by far less than 50% of the permit value, meaning they would capture a lot
1118 of applicants from Milwaukie who had only put in 10%.

1119

1120 **Commissioner Bresaw** added that perhaps the PARs in those cities were less than
1121 Milwaukie’s.

1122

1123 **Chair Klein** reminded the Commission to only work within the City of Milwaukie’s Code.

- 1124 • He asked if any correspondence had been received other than those included in the
1125 meeting material.

1126

1127 **Ms. Mangle** responded that they had received a number of letters since the packet was
1128 mailed on November 6 and entered them collectively into the record as Exhibit 1. She
1129 summarized the correspondence as follows:

- 1130 • Letter from Patti Wisner asking the Planning Commission to vote in favor of a
1131 compromise with Mr. Parecki with the Commission meeting him halfway.
- 1132 • Phone call and letter from Rev. Sara Fischer of St. John the Evangelist Episcopal
1133 Church stating that the church was proud of the public improvements they made.
- 1134 * Rev. Fischer believed both the church and downtown were better for it and she
1135 encouraged all property owners to contribute in this way.
- 1136 * Rev. Fischer also contacted Kenny Asher, Community Development Director, by
1137 phone and letter.
- 1138 • Letter dated November 5, 2007 from Richard K. Wheeler of Roseland Piano Co.
1139 requesting that the burden not be placed on a single property owner, but should be
1140 shared by residents as well.
- 1141 • Email from Bill [Oetken](#) of Kellogg Bowl stating that anything Mr. Parecki might add to
1142 the building would be an improvement.
- 1143 • Letter from Ray Bryan on behalf of the Historic Milwaukie NDA stating that on
1144 November 12, the NDA voted unanimously to support Mr. Parecki's request for a
1145 permit, and they encouraged the Commission and City to suspend the PARs until
1146 they could implement them in a consistent manner that worked to encourage
1147 improvements to sustain downtown buildings.
- 1148 • Email from Chantelle and Mark Gamba supporting Mr. Parecki's appeal.
- 1149 * As tenants of the McLoughlin Building, they supported Mr. Parecki as a
1150 developer and property owner and believed the City was being unfair.
- 1151 • Letter from Lawrence [Frolands](#) stating he was indignant that the City rejected Mr.
1152 Parecki's offer of \$22,500 in improvements and then held Mr. Parecki's building
1153 permit hostage.

1154

1155 **Chair Klein** called for the Appellant's testimony.

1156

1157 **Ed Parecki, 10600 SE McLoughlin Blvd, Milwaukie, OR; 10883 SE Main St,**
1158 **Milwaukie, OR; 7677 SW 87th Ave, Portland, OR,** thanked the Planning Commission
1159 for the opportunity to be heard.

- 1160 • He stated that as most were aware, his attempt to renovate the building at 10883 SE
1161 Main Street had been delayed by the Planning Director's interpretation of the Public
1162 Area Requirements. He was asking the Commission to repeal the Director's
1163 interpretation of the Code and release the building permit that had been withheld for
1164 over two months. The Director's reason for withholding the permit was flawed and
1165 anti-business.
- 1166 • He expressed that there had been many instances where the Downtown Plan had
1167 been used to hinder development; one example being when the idea that an
1168 alternative alignment for Light Rail should be considered in the SEIS. Kenny Asher
1169 publicly announced that the Downtown Plan must be honored when making such
1170 decisions, only to permit deviations from the Plan on other occasions.
- 1171 * When the City wanted a development, it went all out to compromise. The Town
1172 Center Project requested certain Code amendments before it proceeded,

- 1173 including raising the height standard, changing the building setback standard,
1174 altering the PAR along Jackson St, and changing the parking standards. The
1175 Planning Director was only hesitant on changing the building setback
1176 requirements.
- 1177 • There had been so many deviations from the Downtown Plan that a transit station
1178 would no longer sit at the old Safeway site and there would no longer be a Main
1179 Street Plaza between Monroe and Jefferson, no grocery store on the north end of
1180 town; 21st Ave would not be extended nor Scott St vacated, and of course the idea
1181 of a walking bike trail along the Tillamook Line was now totally inconceivable. It
1182 appeared that the priorities of the Planning Director change based on the wishes of
1183 Metro. Three-story buildings were not tall enough, so now there were four stories.
1184 Four stories were not enough; go to five.
 - 1185 • This project, if they decided to continue it, met all requirements and aspirations of the
1186 Downtown Plan. The reason for development plans was to ensure a consistent
1187 sustainable set of guidelines to ensure a downtown everyone could be proud of.
 - 1188 • The decision being appealed could be proven to be inconsistent, just as the
1189 implementation of the Downtown Plan has been inconsistent.
 - 1190 * The Code in question stated that any renovation, expansion or alteration of an
1191 existing building with a development permit value that exceeded 50% of the
1192 value of the land and existing improvements shall comply with the PARs.
1193 Furthermore, the Code stated if this value was less than 50% of the land value,
1194 an amount equal to at least 10% of the permit value shall be utilized to meet the
1195 PARs.
 - 1196 * He stated the implementation of these rules had been inconsistent and arbitrary.
1197 He created a chart detailing each project in the last several years that triggered
1198 the PARs (Exhibit A) and reviewed it as follows:
1199
1200 Electra Credit Union (Advantis)
1201 Total Value of Improvements: \$2.25 million
1202 Amount Required by Code: \$225,000
1203 Improvements Made: Two lights, three trees
1204 The Planning Director stated that all frontage improvements for PARs were
1205 already installed.
1206 Electra Credit Union had another renovation worth \$150,000, but the PARs were
1207 not triggered since the original project supposedly completed all requirements.
1208
1209 North Main Village Project
1210 The City paid for all public area improvements and then sold its parcel to Main
1211 Street Partners in a sealed transaction for the assumption of a \$650,000 loan.
1212 The City then added a million-dollar bonus to the deal to pay for the PARs, plus
1213 all infrastructure for the project.
1214
1215 St. John's Episcopal Church
1216 Total Value of Improvements: \$350,000
1217 Improvements Made: A tree, two bulbouts on each corner, two bike
1218 racks and a couple of street lights.
1219 The church was capped at \$45,000 so the City paid the remaining balance of
1220 these \$66,000 improvements.
1221

1222 Graham's Book and Stationary was converted to office and no PARs were paid,
1223 despite the fact that office space on the first floor in the downtown zone was not
1224 to Code.

1225
1226 Classic Memories Motor Cars, 11153 SE 21st Avenue, had a public hearing on
1227 May 8 in which Staff made a presentation, but the PARs were never mentioned
1228 on this project.

1229
1230 McLoughlin Building completion in 2005

1231 The project did not trigger PARs because there was considerable certainty that
1232 the McLoughlin Blvd reconstruction would include all PARs; however, according
1233 to the Downtown Plan, Scott Street was planned to be vacated, meaning no
1234 improvements would be made. Yet when a tenant of the McLoughlin Building
1235 submitted permits for a remodel, the Planning Department imposed the 10%
1236 PARs.

- 1237 • He was asking the Commission to use common sense. In the seven years since the
1238 Code was implemented, only three major public area improvements had been made,
1239 two of which were publicly funded. One project sits with over 7,000 sq. feet of vacant
1240 commercial space. How much have these PARs really helped North Main Village?
1241 • He was only asking for his building permit so he could continue his project. Holding
1242 his permit hostage was unconscionable.
1243 • He implored them to reconsider the Planning Director's interpretation of the Code,
1244 release the permit, and establish a moratorium on this flawed law and work together
1245 to find a solution to make downtown Milwaukie what the citizens envisioned seven
1246 years ago.

1247

1248 Mr. Parecki responded to the following questions from the Commission:

1249

1250 **Commissioner Batey** asked if there was one requirement he believed was too
1251 expensive.

- 1252 * **Mr. Parecki** replied it was a moot point to look at which ones were possible,
1253 because he had already offered the City \$22,500 and they rejected it.
1254 – He could have leased the property out as-is and not been required to do any
1255 public area improvements. That has never been his plan, but it was an
1256 option. He could lease it to an antique store and do minimal renovation.
1257 * One of the problems with the interpretation was the Code used the assessed
1258 value, but the assessed value was nowhere close to what he paid for the
1259 property.
1260 * He explained that the assessed value, according to the Assessor, was less than
1261 the purchase price he paid. The Code did not state 10%; it stated at least 10%,
1262 so if the Planning Director wanted to interpret it by the Code, he could still be
1263 required to do 100% of the improvements, because that was at least 10%.

1264

1265 **Commissioner Churchill** asked if one of Mr. Parecki's concerns was the difference
1266 between the appraised and assessed values.

- 1267 * **Mr. Parecki** replied that that was his logic in offering \$22,500 and getting 10% of
1268 that value, but that 10% is meaningless since the Code states at least 10%. The
1269 City could come back and say, "Thanks for the \$22,500 but the Code states at
1270 least 10% so we want more." He stated that he has since rescinded his offer.

1271

1272 **Commissioner Qutub** asked if it would be okay if the City asked only for the 10%.

1273 * **Mr. Parecki** responded the City had rejected his offer of 10%.

1274

1275 **Chair Klein** believed they were considering for what the Code stated.

1276 • The 10% was not really in play because of what was outlined in the Code. The
1277 interpretation Ms. Mangle came up with was because a number of those things were
1278 already done, all requirements did not have to be met. Looking at the dollar value
1279 was not really representative, because it has to match Code.

1280 * **Mr. Parecki** stated that another problem with the Code lacked a cost cap.

1281 — KeyBank paid \$44,000 for one bulbout and a small amount of landscaping,
1282 which was nowhere close to what was required across the street.

1283 — The interpretations had been very inconsistent for the last seven years; no
1284 one could plan for inconsistencies.

1285

1286 **Chair Klein:**

1287 • Understood Mr. Parecki's frustration and commented that one difficulty was that the
1288 Downtown Plan and Code were pretty congruent at the time of adoption [inaudible]
1289 and asked Mr. Parecki if, when he compiled the information on other applications, he
1290 had looked at the fact that some development had already been done, which
1291 lessened some of the requirements for other projects.

1292 * **Mr. Parecki** replied that he looked at that and cited North Main Village as an
1293 example where Hartwell's put in \$250,000 worth of improvements and were not
1294 required to do any PARs because the City did it for them.

1295 * Another inconsistency was evidenced when **Canby** Tamales was required to do
1296 \$4,000 of PARs, but they did them in front of three other stores.

1297 • Explained that sometimes fees-in-lieu of might apply for the good of the area rather
1298 than one location.

1299 * **Mr. Parecki** stated that it would have been a great idea to have a Local
1300 Improvement District for downtown and have all improvements apply to the
1301 district.

1302 • Asked Staff if there was any history on a Downtown Improvement District.

1303 * **Ms. Mangle** replied not to her knowledge.

1304 * **Kenny Asher, Community Development Director** explained that a business
1305 association had existed in downtown, but not a traditional Business Improvement
1306 District.

1307 • Confirmed that Mr. Parecki had rescinded his offer of \$22,500 and was asking the
1308 Planning Commission to overturn the Planning Director's decision.

1309 • Asked Mr. Parecki what his desired result was and if he intended to reinstate his
1310 \$22,500 offer.

1311 * **Mr. Parecki** replied he would like to have a building permit so he could improve
1312 the property.

1313 • Asked if a Code Amendment application was needed to overturn this decision.

1314 * **Mr. Monahan** explained that the Planning Director applied the relevant section of
1315 Code adopted by the community several years ago that addressed a renovation
1316 of this size.

1317 — The Code stated that the 10% provision could not be applied to this project.

- 1318 – It seemed that Mr. Parecki did not want to make any PARs, but to eliminate
1319 or change any part of the Code would require the Council to pass a Code
1320 Amendment.
1321 – The Planning Commission's only ability with this application was to consider
1322 Ms. Mangle's interpretation; not change the Code.

1323

1324 **Commissioner Churchill** noted that Ms. Wisner's letter requested a compromise
1325 between the City and Mr. Parecki, and asked if any middle ground existed from Mr.
1326 Parecki's perspective.

1327 * **Mr. Parecki** replied that he would have to discuss it with partners.

1328

1329 **Commissioner Bresaw:**

1330 • Believed that Public Area Improvements were very important and wanted to see
1331 them carried out. The last paragraph of Ms. Wisner's letter stated that perhaps
1332 phasing in the improvements after the business was established and could afford the
1333 time to complete the improvement projects.

1334 * **Mr. Parecki** did not think it made good business sense to write a blank check to
1335 the City, which was essentially what he was asked to do. The City did not tell
1336 him what the improvements would cost.

1337 • Disagreed.

1338

1339 **Commissioner Churchill** verified Mr. Parecki was not prepared to offer a compromise
1340 proposal at this point.

1341 * Mr. Parecki repeated he would have to discuss it with his partners.

1342

1343 **Chair Klein:**

1344 • Stated the initial public area improvement list could have been a whole lot worse and
1345 it appeared as if that the list was brought down according to Ms. Mangle's discretion,
1346 but the inability to suspend current Code made the situation difficult.

1347 * **Mr. Parecki** responded the Commission could reinterpret the Code.

1348 • Did not believe the Commission could reinterpret it.

1349 * **Mr. Parecki** replied that the purpose of this hearing was to reinterpret the Code
1350 because it had been misinterpreted in his opinion.

1351

1352 **Commissioner Churchill** stated they would have to determine the Planning Director
1353 actually did misinterpret the Code.

1354

1355 **Mr. Monahan** agreed. They would have to consider what Ms. Mangle gave as her
1356 justification of how she interpreted the Code and weigh it against the evidence Mr.
1357 Parecki submitted.

1358 • The question was whether the Code was being properly interpreted and properly
1359 applied. He understood Staff to say that they had interpreted the provision specific to
1360 this application.

1361

1362 **Steve Morasch, Attorney, Schwabbie, Williamson & Wyatt, 1211 SW 10th Avenue,**
1363 **Portland, OR, 97201,** representing Mr. Parecki, stated the main thing he wanted to
1364 discuss was the legal issue of the Dolan requirement for rough proportionality.

1365 • While the City did a rough proportionality analysis, he believed a fatal flaw existed.

- 1366 * If the Commission agreed this flaw existed in the rough proportionality analysis,
1367 then the constitution trumped anything in the City's Code, giving the Commission
1368 authority to reverse that particular aspect of the Planning Director's interpretation
1369 and allow the development to move forward without all these public area
1370 improvement requirements.
- 1371 • The Dolan and City of Tigard case was a 1994 case that went clear to the U.S.
1372 Supreme Court, and in a landmark decision, imposed this new test on local
1373 governments, doing two things:
- 1374 * One, the court said it was the City's burden, so unlike traditional land use
1375 applications where the Applicant must demonstrate the burden of proof, the City
1376 had the burden of demonstrating that there was, in fact, rough proportionality.
- 1377 * Second, it imposed the rough proportionality test itself, which said the impacts of
1378 the proposed development must be considered on one hand, and then weighed
1379 against the exactions the local government sought to impose on that proposed
1380 development.
- 1381 • It was at this point he believed the City's analysis broke down because the City's
1382 analysis assumed that a change in use resulted from this proposed development.
- 1383 * Looking at what the development was, the trigger in the Code was a renovation
1384 project, basically a facelift of the building. No new sq. footage was being added
1385 and no change in use resulted from this facelift.
- 1386 * In footnote 5 on page 5, the Staff report made clear that the change in use the
1387 City was relying on to show the additional 168 trips, the ground floor now
1388 becoming retail, did not result from the facelift.
- 1389 — Footnote 5 stated the result was from the Downtown Storefront Zone, which
1390 required retail uses on the ground floor of buildings fronting Main Street. That
1391 caused the change in use, not the building renovation.
- 1392 * If his client decided not to do the renovation and leave the building in its current
1393 state, he could come with a new tenant, a coffee shop, bookstore, video store,
1394 etc. All these uses would be retail uses that would generate more traffic than an
1395 office use. Those business types would all be allowed on the ground floor and
1396 could be accomplished without this expensive facelift. In which case, no public
1397 area improvements would be triggered.
- 1398 • Therefore, there was no impact as a result of the facelift, because it was not causing
1399 the change in use. The Municipal Code had to be interpreted in light of Dolan; as the
1400 chart said, every city must look at proportionality and there were none here because
1401 no additional trips resulted from the facelift, but from the provision in the Zone Code,
1402 which would be there whether or not the Appellant spent all this money on this
1403 particular facelift.
- 1404
- 1405 **Commissioner Churchill** clarified that Mr. Morasch assumed the actual tenant
1406 improvements after the facelift would be viewed individually, for example if a tenant took
1407 a second floor and made \$50,000 worth of improvements, 10% of that \$50,000 would be
1408 legitimate as public area improvements.
- 1409
- 1410 **Mr. Morasch** responded if the tenant did a \$50,000 improvement and City Code stated
1411 10% of that improvement.
- 1412 • He explained the space could be leased out without doing any improvements or very
1413 few improvements, in which case the Code did not require payment for any public
1414 area improvements.

- 1415 • He clarified he was referring back to the point in time before Mr. Parecki started this
1416 process. He confirmed the building had been gutted and minimal improvements
1417 were now necessary.

1418
1419 **Commission Churchill** understood the logic that the facelift did not trigger trip
1420 generation in itself, but following that thread, the interior renovations to make it habitable
1421 might trigger certain...

1422
1423 **Mr. Morasch** explained the before and after situation needed to be logically considered;
1424 the before situation being before he tore out the interior of the building.

- 1425 • If you follow the analysis that some money would be needed to reconstruct the
1426 interior of the building, it might require \$50,000 which was less than 50% of the
1427 value, resulting in the 10% trigger according to City Code, and \$5,000. He
1428 previously offered \$22,500. If the amount were only \$5,000 the hearing would not be
1429 taking place.

1430

1431 **Vice-Chair Newman:**

- 1432 • Commented it was the fact that it was being renovated, no matter what was being
1433 done, in that the threshold was the ratio being met by the true market value.
1434 * **Mr. Morasch** corrected the Code used assessed value; if true market value were
1435 used, again, they would be using 10% because they were clearly less than 50%
1436 of the true market value.
1437 • Inferred if that was the amount of money spent in renovation, would not that same
1438 thing apply to the Federal government for ADA improvements for instance, no matter
1439 what was being done as long as a renovation was done, ADA modifications were
1440 required.
1441 * **Mr. Morasch** said they were not challenging ADA modifications but the City's
1442 public area requirements.
1443 • Replied that it was being broken down, a facelift or whatever it might be.
1444 * **Mr. Morasch** stated ADA requirements would not trigger new trip generation
1445 either. As stated by Staff, two things trigger trip generation, expansion of floor
1446 area and a change in use. The project had no floor area expansion and the
1447 change in use was not triggered by the facelift, but by the Downtown Storefront
1448 Zone requiring retail on the ground floor, which would apply even without the
1449 facelift.
1450 – Again, if the building were left alone, retail tenants would be acquired for the
1451 ground floor and pay little or no PARs.

1452

1453 **Chair Klein:**

- 1454 • Asked who should pay for public area improvements.
1455 * **Mr. Morasch** stated as public requirements; they should be paid for by the
1456 public.
1457 • Remarked in looking at the Downtown Plan and how the City Code was written, then
1458 the City in 2000 determined that the burden was to be placed on the developer...
1459 * **Mr. Morasch** interjected, that violated the constitution in this case and
1460 constitution trumps. He suggested a more appropriate method for allocating
1461 these kind of burdens would be to have a Local or Business Improvement District
1462 (LID/BID), encompassing the downtown area to split the costs of the public

- 1463 improvements according to frontage or lot size for instance by downtown
1464 properties, who would also benefit for the improvements.
1465 — Of course, the challenge was getting the property owners to agree to a LID,
1466 which often resulted in cities developing elaborate ways to get property
1467 owners to agree, even if they do not.
1468 — Then the problem was that the Supreme Court said when cities do that, they
1469 must still be mindful of the constitution, which requires that impacts of each
1470 proposed development be considered.
1471 • Asked how Lake Oswego did it if their approach was more aggressive than
1472 Milwaukie's.
1473 * **Mr. Morasch** replied that the rough proportionality analysis was still required on
1474 a case by case basis.
1475 * If the project proposed an increase in floor area, rather than just the facelift, then
1476 the Commission could easily demonstrate an increase in trips.
1477

1478 **Mr. Monahan:**

- 1479 • Stated Mr. Morasch outlined the Dolan case quite well. There was a proportionality
1480 requirement, which was what Staff had done, applying the facts as they knew them
1481 from this development application to the Code and made the determination that the
1482 PARs they listed were in fact related to the impacts.
1483 — The Commission had to determine whether it agreed that there was that
1484 rough proportionality. What was heard was that a mere renovation was not a
1485 change of use, and Staff suggested that the renovation yielded the ability for
1486 the change of use and the need for the PARs. The Commission needed to
1487 decide if that connection existed or not.
1488 — As the current Code read, if a tenant came in simply for a change of use, he
1489 understood the change of use would be [a bit difficult since the building was
1490 built for office use, so a change of use would be difficult to accomplish unless
1491 the first and second floor was utilized in a manner not designed for retail use.](#)
1492 • Understood the application would lead to a renovation that would create retail space
1493 on the first floor, which would then yield the potential for the change of use.
1494

1495 **Mr. Parecki** noted that the traffic study on the North Main project yielded 322 vehicle
1496 trips per day for the entire project, which was more than 100 new units, including
1497 commercial and residential.

- 1498 • Staff stated his one project of 5,000 sq. feet would yield 277 vehicle trips. There was
1499 something wrong proportionately with that picture.
1500

1501 **Mr. Monahan** responded the standards used to make those traffic estimates were based
1502 on ITE manual used nationwide. He assumed a similar analysis was done for the North
1503 Main project; however residential used a different number of vehicle trips per day than
1504 general commercial or office.
1505

1506 **Commission Batey** asked if Mr. Morasch could identify a jurisdiction that would not
1507 impose PARs on such a project, apart from those with LIDs. She commented that many
1508 landowners lived out of state, so getting support for a LIDs would be particularly
1509 challenging.
1510

1511 **Mr. Morasch** answered Vancouver, adding the downtown did not have the same

1512 ordinance as Milwaukie.

1513 • He believed if the Code were redrafted, a more appropriate trigger mechanism would
1514 be a change in trips rather than the cost of improvements, so when an actual impact
1515 hit a certain threshold, then public area improvements would be required.

1516 * The City might also consider restructuring its Code, so when a person did a fairly
1517 minor modification to their building, but changed the use to one that generated
1518 more trips, that would be a trigger because of impact, similar to a system
1519 development charge (SDC) ordinance that considers impact.

1520 • However, they were there to apply the current ordinance, but in a way that complied
1521 with the overriding constitutional concern.

1522 * For instance, improvements made to the bottom floor were not where the bulk of
1523 expense was, most of the money was being used to create a nice façade, which
1524 did not change trips.

1525 * That was their point, most of the money was going to create a nice façade and
1526 as written, the City's Code penalized improvements to make a building look nice.
1527 Property owners making only minor tenant improvements inside received not
1528 only the 10% rule, but 10% of a much smaller amount of money since that permit
1529 cost less due to less expensive work.

1530

1531 **Chair Klein** explained that it sounded like an amendment to City Code he was outlining,
1532 which was not the application before the Commission.

1533

1534 **Mr. Morasch** corrected he was not outlining an amendment, but was explaining how it
1535 might be amended to achieve a result more in line with the Dolan test.

1536 • He clarified his argument was that basically the facelift portion, which was triggering
1537 improvements under the Code, was not what was causing the trips or creating the
1538 impact, so the City could not put an exaction on this Appellant based on a facelift that
1539 did not trigger a change in use.

1540

1541 **Commission Bresaw** asked how many trips per day the Appellant would expect
1542 regarding the proportional impact analysis.

1543

1544 **Mr. Morasch** stated it would be zero increased trips because the facelift was not
1545 triggering the change in use and therefore not appropriate to consider in the rough
1546 proportionality analysis. The reason the analysis resulted in 168 new trips was due to
1547 the change in use of ground floor from office to retail.

1548

1549 **Commission Bresaw** stated pragmatically, there probably would be more traffic
1550 [inaudible].

1551

1552 **Mr. Morasch** said that even with the facelift, he could do more minimal improvements
1553 and tenants would be using it. Many retail uses could be put in the building without the
1554 renovation.

1555 • Renovation enabled the Appellant to attract higher quality tenants, but not
1556 necessarily tenants that would generate more traffic trips.

1557

1558 There were no further questions for the Appellant.

1559

1560 **Chair Klein** called for testimony in favor of, opposed and neutral to the application.

1561

1562 **Tim Clouse, Vice-President of Information Technology and Facilities, Advantis**
1563 (formerly Electra) **Credit Union, 1050 SE Main Street**, Milwaukie, said his primary issue
1564 with Mr. Parecki's situation regarded proportionality, not so much the change of use. He
1565 believed the City did a fine job of applying the regulation, but the regulation itself was
1566 unjust.

- 1567 • For the changes he proposed and wanted to bring into the City, he was being unfairly
1568 penalized.
- 1569 • The Electra build out was about \$2.25 million with a total cost for public
1570 improvements of about \$85,000. Mr. Parecki's renovation project was only about
1571 \$225,000, but he was left with a \$45,000 to \$50,000 bill.
- 1572 • While he understood price did not apply to land usage, price always applied in the
1573 business world. This seemed very out of proportion with what Mr. Parecki was trying
1574 to accomplish.

1575

1576 **Commission Bresaw** asked if most of Electra's public improvements were sidewalks.

1577

1578 **Mr. Clouse** answered yes, the sidewalks, wiring and lights; burying the utilities was a big
1579 part of cost.

1580

1581 **Randall Fish**, resided at **12824 SE Maplewood Ct** and had a business on Jefferson
1582 Street believed the issue boiled down to the proportionality analysis. Mr. Weigel stated
1583 the analysis was standardized and driven by a handbook.

- 1584 • He questioned if it was strictly by that analysis and if so, the numbers should be
1585 similar to the North Main project. Obviously a significant amount of improvements
1586 were done and they met the entire 50% according to figures shown this evening.
- 1587 • If there was 7,000 sq. feet of office space and completed improvements met that, the
1588 analysis results for the proposed 5,000 sq. foot project seemed like they should be
1589 equivalent if a standardized formula was used.
- 1590 * It did not seem that was done according to testimony, because a deficiency of
1591 100 or so trips existed for 2,000 sq. foot more office space.
- 1592 • If what actually happened was applied and the 7,000 sq. foot of vacant office space
1593 actually met the standardization from the handbook about the projected foot traffic,
1594 they would be at that level. He did not believe that level had been reached yet.
- 1595 * The 238 sq. foot of improvements was a larger number than what was actually
1596 being generated from improvements being done. For example, even though
1597 North Main met the full standard of improvement requirements, it was not
1598 generating any foot traffic at this point; it was vacant.
- 1599 • He believed applying the bookwork or standard formula was flawed. It assumed that
1600 doing the improvements would increase the foot traffic. In North Main, the
1601 improvements were done, increasing storefronts and serviceability of the area, yet
1602 foot traffic had not increased.
- 1603 • He was not opposed to increasing public improvements, but the 50% rule applied to
1604 Mr. Parecki showed a 238 increase in foot traffic, but he did not necessarily believe
1605 that was accurate. It was also not an accurate analysis compared to the North Main
1606 project regarding the foot traffic generated by the improvements.
- 1607 • He agreed with the Applicant's counsel that it was not necessarily the facelift that
1608 changed the foot traffic, but the actual use.

- 1609 • Did this mean the application met the 50% or the 10% to start with? If it boiled down
1610 to what determination was made as to how that rule applied to Mr. Parecki, he
1611 believed it should go back to the 10%, if that, because the historical record showed
1612 that improvements did not necessarily increase foot traffic in the area.
- 1613 • Obviously some improvements were important to the beautification and development
1614 of the entire downtown area, but the City should come up with some of that.
1615 Considering how much money was invested in North Main by the City to beautify the
1616 downtown area, he believed it should be applied equally, or at least use the historic
1617 record applied to this case.

1618
1619 **Charles Aaron, 1875 SE Exeter, Portland**, which was in Sellwood, also had an office in
1620 Milwaukie on McLoughlin. He said the traffic studies that had him a bit flummoxed with
1621 regard to the number of trips and how they equated from office to retail space and the
1622 increased trips for retail space.

- 1623 • The number of trips was shown to increase by 168 trips per day for 2,500 sq/ft of
1624 retail space on the first floor.

1625
1626 **Chair Klein** stated the basement had 2,500 sq/ft; the first floor, 4,886 sq/ft and the
1627 second story had 2500sq/ft.

1628
1629 **Mr. Aaron** explained that the rear of the building was being demolished and would be
1630 curtailed to 2,500 sq/ft on the bottom floor.

- 1631 • North Main had more than 9,000 sq. feet of retail space with an estimated 322
1632 vehicle trips per day for the entire complex, which included more than 100 residential
1633 units, something in those two numbers did not make sense.
- 1634 * Any business in Milwaukie would be thrilled to have 168 visits to their retail space
1635 per day. He did not believe a gas station on McLoughlin had that many visits.
- 1636 * Of the 55,000 cars using McLoughlin everyday, he did not see 168 trips on a side
1637 road as a significant impact that would trigger anything. Having that vehicular
1638 traffic would probably be a relief to other downtown businesses.
- 1639 • He disagreed with the comment about landowners not living in Milwaukie. Mike
1640 Richardson, himself, the mayor and several people present, all lived and worked in
1641 Milwaukie and were dedicated to the downtown area and wanted to see something
1642 important happen.
- 1643 * He did not believe Mr. Parecki would have become involved in the project if he
1644 did not want to see the downtown flourish.

1645
1646 **Commissioner Batey** explained she probably made the comment about landowners
1647 living out of state too glibly; although the mayor had told her on several times that was
1648 partly why the Downtown Development Association never really flourished and why the
1649 landowners did not lobby for things of interest like getting rid of the sewage treatment
1650 plant.

1651
1652 **Mr. Aaron** stated most small business owners were people who actually worked in the
1653 buildings they owned, such as the eye doctor, piano maker, oral surgeon, etc.

- 1654 • All were small business owners who took pride in the buildings they were
1655 purchasing, but were being held back. In business economics, one could not afford
1656 to renovate a building and get the rents needed to make those improvements; it just
1657 was not economically feasible.

- 1658 • He noted the mayor called an emergency session because the North Main project
1659 was not economically viable if the City did not do all the public area improvements for
1660 that project.
1661 * If a large developer who paid effectively nothing for the land had the City saying
1662 the project was not economically viable unless the City invested heavily in the
1663 public area improvements, then something was wrong.
1664 * An economically viable project began about the same time as North Main by DR
1665 Horton Homes who bought the land [inaudible] the Trolley Barns in Sellwood, for
1666 \$2.5 million and also installed the sidewalks and infrastructure for the project.
1667 — There was something wrong about the City having to fund a developer who
1668 was effectively given the land plus \$400,000 in [order to take it in](#) public area
1669 improvements.
1670

1671 **Carmen Myer**, owner of the building at 11008 SE Main Street, stated she planned to put
1672 a restaurant on the first floor. She read testimony from a letter she submitted for the
1673 record on behalf of her and her husband supporting the project.
1674

1675 **Commissioner Churchill** inquired about the proposed renovations to accommodate
1676 their restaurant.
1677

1678 **Ms. Myer** responded that only painting was planned at this time, so they could just get
1679 the restaurant opened. The restaurant was currently located in Sellwood at 16th and
1680 Bybee.
1681

1682 There were no further comments regarding the application.
1683

1684 The Commission took a brief recess and reconvened at 10:45 p.m.
1685

1686 **Mr. Monahan** explained this process was a bit confusing as an appeal of the Director's
1687 interpretation. He advised erring on the side of giving the Applicant the opportunity to
1688 get as much information into the record as possible so the Commission could digest, ask
1689 questions and determine if there was an opportunity for a compromise.

- 1690 • He suggested asking questions of Staff first so the Applicant could hear the
1691 Commission's concerns and then respond to those comments. The Commission
1692 would obviously want to come to a conclusion tonight.
1693

1694 **Chair Klein** called for additional comments from Staff.
1695

1696 **Ms. Mangle** made the following comments:

- 1697 • She emphasized that the hearing was not about the quality of Mr. Parecki's project.
1698 As stated many times, it was a great project. It implemented the Downtown Plan and
1699 was a project that everyone wanted to see.
1700 * She also noted the hearing was not about a code change or legislative hearing to
1701 address problems with the Code.
1702 • As far as the building permit triggering a PAR, the project was a renovation project
1703 and therefore the Code applied. It was not a facelift, as described; it was a large
1704 project with \$250,000 in interior and exterior renovations.

- 1705 * The Code did not discuss where the renovation funds were to be spent and the
1706 investment Mr. Parecki was making in both the interior and exterior of the
1707 building did trigger the improvements as well as a change in use.
- 1708 * It was a building permit on a project set up for a new use on the ground floor that
1709 would actually only increase the building permit value as tenants improved their
1710 spaces.
- 1711 * With the list of improvements, Staff had defined for Mr. Parecki what would be
1712 required of the whole project, including the tenant improvements that are to
1713 come.
- 1714 • She explained the question was really how to apply this Code Section and Staff
1715 found it applied as presented.
- 1716 * There were impacts; the level of trips to the site would increase as the use
1717 changed from office to retail.
- 1718 * By reducing the number of required improvements from what was originally
1719 outlined in the Downtown Plan PAR, Staff reduced the amount of required
1720 improvements significantly and believed they were proportional to the level of
1721 increase in trips.
- 1722 • She responded to specific issues raised about inconsistencies and assessed value
1723 versus purchase price:
- 1724 * She had been at the City for about 1½ years and Staff definitely tried to be
1725 consistent. That did not mean every piece of Code had been consistently
1726 applied throughout the City [inaudible]. While there might have been
1727 inconsistencies in the past that did not give license to be inconsistent now.
- 1728 – Staff was reminded on most every application that everyone complains that
1729 their neighbor did not have to do public improvements five years ago.
- 1730 – Again, the City decided at one point that it was important for development to
1731 contribute, so now Staff tried to ensure that happened.
- 1732 – She reminded that at the pre-application meeting with Mr. Parecki, Staff
1733 described the Code requirements and made a point of describing what the
1734 improvements could be, knowing he had already expressed concerns about
1735 the PAR with the JL Hair Salon. They actually discussed it with the Planning
1736 Commission last winter, so Mr. Parecki was aware of them.
- 1737 – He could have requested Code amendments. He had expressed frustration
1738 about the Town Center Project getting Code amendments, but they were
1739 applying for Code amendments that would then be processed through the
1740 City's process.
- 1741 – Mr. Parecki had every right and ability to do the same thing, but did not.
- 1742 * The Code specifically stated that the City must use the County's assessed value
1743 of the property to do the calculation.
- 1744 – Mr. Parecki had asked if another number could be used, and Staff considered
1745 that, but Mr. Monahan advised that the Code was very specific about the
1746 methodology, it could not be just made up. While a different approach might
1747 have some validity, [this was](#) what the City had.
- 1748
- 1749 **Mr. Wiegel** addressed questions about traffic and the proportionality analysis.
- 1750 • In calculating the trips, he considered the first floor and basement switching from
1751 office to specialty retail, which accounted for 5,000 sq. feet.

- 1752 • There was discussion about comparing that to trip generation at North Main, which
1753 had 7,000 sq. feet of retail, but their trip generation seemed to only have more 100
1754 trips.
1755 * He had not seen the North Main traffic study, but North Main and the proposed
1756 development had significantly different uses. Residential, especially multi-family
1757 residential development had very low trip generation per dwelling unit compared
1758 to a specialty retail center or office use.
1759 • Also the North Main development did a full blown traffic study with their proposal and
1760 likely studied other similar uses in the Portland Metro area, and then compared and
1761 used those figures instead of using the ITE Manual.
1762 • The Applicant was not required to do a full blown traffic study with this application, so
1763 Staff was using the best information available on trip generation, which was the ITE
1764 Trip Generation Manual.
1765 * Staff applied a conservative use to the specialty retail center Mr. Parecki
1766 proposed, which could include many different uses.
1767 * Applying a restaurant use to the development would result in a much higher trip
1768 generation than the conservative approach Staff actually used.
1769 * The construction plans Staff reviewed stated that the Applicant proposed a retail
1770 use at the site, which was what Staff based their information from.
1771 * When calculating the fees, he had called Mr. Parecki a few times to ask clarifying
1772 questions about where the changes were coming from, where he was changing
1773 from office to retail, and that was how he got that information that the second
1774 floor would be office and the first and bottom floor would be retail.
1775

1776 **Commissioner Churchill:**

- 1777 • Asked if he visited the site and looked in the basement.
1778 * **Mr. Weigel** replied he did not go inside the building.
1779 • Appreciated the ITE analysis, but he had been inside the building and found it hard
1780 to imagine trip generation coming from that basement. The ceiling heights were
1781 quite low.
1782 • Wondered if that had also been considered.
1783 * **Mr. Weigel** replied the ITE Manual was based on gross floor area, which covered
1784 most anything enclosed.
1785

1786 **Chair Klein:**

- 1787 • Asked if the Applicant had done a full blown traffic analysis was it possible that the
1788 trip generation numbers would have been different.
1789 * **Mr. Weigel** replied yes, the numbers would have been different, but he was
1790 uncertain whether it would be higher or lower.
1791 — He clarified that a trip was to and from a place, one person going to and
1792 leaving a location equaled two trips. A single-family house had 10 trips per
1793 day.
1794 * **Ms. Mangle** added that trips also included deliveries, employees, etc.
1795 • Clarified that the existing trip generation of 108 did not necessarily represent the
1796 number of trips now, but represented the number generated because of the sq.
1797 footage and ITE equation, just as the 276.
1798

- 1799 **Kenny Asher, Community Development Director** commented that this was an
1800 interesting case for him to hear. As many knew, Community Development oversees

- 1801 Planning, Building and Engineering but also functioned to get development in the
1802 community. Testimony received tonight accused him of being anti-development.
1803 • He wanted to address the fundamental issue that there was truth on all sides of the
1804 situation, as often was the case.
1805 * He believed strongly that Staff's work and interpretation was impeccable. He had
1806 no issues with how it was done and what the interpretation was.
1807 * He also believed the Applicant and other business owners who testified had
1808 made a fair case that this was difficult.
1809 • The only issue he wanted to raise was that the Downtown Plan, which he believed
1810 everyone subscribed to, was a bit removed from the reality of downtown today.
1811 * Main Street, often referred to as a "gold-plated" street, was planned to be a very
1812 nice street with a lot of amenities that cost money yet that was the plan and
1813 aspiration the community put before Staff to implement.
1814 • The City had a plan and was only starting to deal with implementation. It was indeed
1815 an eye-opener when confronted with this kind of requirement. However, he did not
1816 necessarily believe it was anti-business or anti-development, or wrong for Milwaukie
1817 or bad for downtown businesses. A lot of refining was needed and maybe some new
1818 tools.
1819 • He said he would love to be able to do far more on this application, but given the
1820 Code and redevelopment tools available, he believed this was the best approach.
1821 He was glad the issue had been raised.
1822

1823 **Mr. Parecki** made the following comments:

- 1824 • Mr. Weigel had mentioned 5,000 sq. foot of retail space, but as mentioned, the
1825 basement had a 7-foot ceiling, making it impossible to have a retail space in such a
1826 dungeon. Based on that alone, half the trips predicted would be generated by the
1827 proposal.
1828 * He was willing to compromise based on that small fact alone. Half as many trips
1829 would be generated because the space could not be used for retail office space.
1830 • Based on that, and since the delay had cost him quite a bit of money and lost time,
1831 lawyer fees and other costs, he was willing to make a compromise and offer half of
1832 what he originally offered, putting a cap of \$11,250 as his contribution to PARs.
1833 • He believed there was room for negotiation, but was uncertain if this was the
1834 appropriate time.
1835 • He noted he could also let the building sit idle until the property was reassessed,
1836 which would be at the purchase price, because they wanted the highest assessed
1837 value possible in order to get the tax money. He would then return in another year
1838 and reapply, then he would be under the 50% rule and the 10% rule would trigger,
1839 resulting in everything back where they started, except he would meet the
1840 requirements, the Code would be interpreted again.
1841

1842 **Commissioner Churchill** asked how much of the \$225,000 in project costs was
1843 dedicated to the exterior renovation.

- 1844 * **Mr. Parecki** answered it was about half. Part of the reason was he was putting a
1845 new exterior wall on the inside of the building and was also adding an elevator to
1846 meet ADA requirements. He had many fixed costs that needed identified early.
1847

1848 **Vice-Chair Newman** asked about the claim that the City's interpretation of the Code
1849 was unconstitutional.

1850

1851 **Mr. Monahan** explained the difference of opinion regarded whether or not a renovation
1852 actually triggered impacts. He believed they were in agreement that there was an
1853 impact and the exactions applied were based on a rough proportionality test. Did the
1854 Commission believe that this renovation did that and also did it agree with the analysis
1855 conducted to determine what the impact was and the list of exactions?

1856 • He believed they agreed on the application of the Dolan test and what it meant, but
1857 application of it to this project was the question.

1858

1859 There being no further comments from the Commission or the Applicant, Chair Klein
1860 closed the public testimony portion of the hearing at 11:12 p.m.

1861

1862 **Planning Commission Discussion**

1863

1864 **Commissioner Churchill:**

- 1865 • Complimented Staff for the thorough analysis considering the restrictions of the
1866 Code.
- 1867 • Commented it was a difficult situation seeing a lot of City funds being put into North
1868 Main that resulted in downtown improvements, and then having this individual owner
1869 doing it on a shoestring with their own cash flow. However, one had to consider the
1870 Code.
- 1871 • Stated the Dolan vs. Tigard case was very convincing; Mr. Morasch made a
1872 compelling argument about including the facelift's portion of the investment, which
1873 resulted in a public area improvement and triggered impacts. It did seem unfair in
1874 some ways.
- 1875 * The "Cha Cha Cha" restaurant was simply painting the front of their building, and
1876 Mr. Parecki probably could have as well, but that was not in the best interest of
1877 the City, which was why DLC Chair Patty Wisner stated the proposal was well
1878 above the minimum standard and had recommended a compromise.
- 1879 • Was torn between looking for a compromise and not intentionally overruling Staff's
1880 hard work and reasonable analysis, given the tools they had.
- 1881 * Should the Commission be looking beyond that and consider a reinterpretation of
1882 applying those tools? For him, it was the methodology of the application and he
1883 wanted to see if a compromise could be reached.
- 1884 • Suggested a reevaluation of the portion of the exterior improvements versus the
1885 tenant interior improvements, which would trigger trip generation in the ITE analysis
1886 and was responsible for public area improvements, whereas the skin, which was a
1887 huge visual benefit to the community, should not be a penalty to the Applicant.

1888

1889 **Commissioner Batey:**

- 1890 • Believed many good points were made about the burden on business, how to attract
1891 business and the balance to be struck and perhaps the Code did not do that very
1892 well. Perhaps fair market or the last sale value should be used or a cap considered
1893 rather than assessed value.
- 1894 • Would certainly be interested in a package of suggested Code changes and seeing
1895 more detail about what comparable jurisdictions do, however the City had the Code
1896 that it did, though other City's might have more burdensome requirements.
- 1897 • Encouraged the City to consider the basement, adding that maybe the impacts
1898 needed a second look.

- 1899 • Was inclined to support the Planning Director's interpretation with the caveat that the
1900 basement sq. foot to be reviewed.

1901

1902 **Commissioner Bresaw:**

- 1903 • Agreed with both Commissioners that the ITE Manual's approach of using gross sq.
1904 floor area did not seem to be the best or most accurate for the impact and wanted to
1905 see more compromise as well.

1906 * Even though she believed the interpretation was [inaudible] and done correctly,
1907 the proportionality analysis could be wrong.

- 1908 • Offered that as far as the public area improvements the Applicant had to pay for,
1909 perhaps the City could possibly help with [inaudible].

1910

1911 **Commissioner Qutub:**

- 1912 • Also complimented Staff on doing an outstanding job.
1913 • Agreed with Commissioner Churchill's comments.
1914 • Was convinced that Mr. Parecki's cost should be reconsidered because the
1915 basement area's impact should have been considered and was a big part of
1916 [inaudible] impact.
1917 • Believed that because other projects were able to get help from the City, a
1918 compromise should be made on what was being requested, perhaps a cap could be
1919 determined that both sides could agree upon.

1920

1921 **Commissioner Newman:**

- 1922 • Agreed with the others' comments.
1923 • Emphasized his love for the project, which did fantastic things for the community.
1924 • Stated the City's Code was clear, unlike 'substantial' language used in another
1925 section.
1926 • Wished there were ways the formula could account for a basement that could not be
1927 used; but it still needed to be counted according to Code.

1928

1929 **Chair Klein:**

- 1930 • Agreed with Commissioner Churchill's comments.
1931 • Stated that with regard to the proportionality analysis and trips being generated, the
1932 basement was included on the existing use, although it was for an entirely different
1933 trip generation than the current analysis for proposed trip generation.
1934 * It was difficult to rationalize that it generated 108 trips now or would create 168 in
1935 the future.
1936 • Also loved the project; Mr. Parecki's vision was an investment in the city.
1937 • Would have liked to see this as a different application, rather than trying to overturn
1938 the Planning Director's interpretation, perhaps a code amendment would have been
1939 better. It was a difficult situation because of the Code that had been implemented.
1940 • Knew the City had spent a lot of money to install sidewalks and PARs in other areas,
1941 but saw that as an investment in the city. Milwaukie had been stagnant for so long
1942 and needed a jump start so he considered that investment seed money that created
1943 a domino effect and resulted in a return on the investment. The Downtown District
1944 would inevitably help the neighborhoods.
1945 * Unfortunately, someone must pay for the renovations for downtown to achieve
1946 the City's vision and 7 years ago, the City decided that cost would fall on

1947 developers. While he did not necessarily think it was fair, it went back to the
1948 Code.

1949 • Believed Ms. Mangle made the correct interpretation on the Code.

1950

1951 **Commissioner Churchill** asked for clarification about the relook potential of the case,
1952 given the information presented tonight. Would Staff consider revisiting an application of
1953 methodology, deducting the facelift costs from the budget and relooking at the
1954 basement? Essentially, he was looking for a compromise.

1955 • Was there room in the Planning Director's interpretation for a relook? He suggested
1956 taking a brief recess to see whether or not there was room for that consideration.

1957

1958 **Ms. Mangle** did not believe Staff could separate the interior and exterior costs of the
1959 project, since it was a clear part of the Code.

1960 • She said there were some questions about the proportionality analysis and wanted to
1961 consult with Mr. Weigel regarding the basement portion.

1962

1963 The Commission consented to take a brief recess and reconvened at 11:27 p.m.

1964

1965 **Ms. Mangle** said that in response to Commissioner Churchill's question about the
1966 proportionality analysis excluding the basement because it was not usable for retail
1967 according to testimony provided, Staff agreed and adjusted the proportionality analysis
1968 accordingly.

1969

1970 **Mr. Weigel** explained that by removing the basement's sq. footage from both the
1971 existing and proposed uses, the existing trip generation came to 82 on a weekday,
1972 rather than 108, and the proposed became 165, rather than 276 trips. However, this
1973 was still more than double the number of trips, so Staff would still find that full frontage
1974 improvements could be required.

1975

1976 **Ms. Mangle** added that Staff was not recommending the full frontage improvements be
1977 required. The Planning Commission sought a compromise and she explained that the
1978 provided list was a compromise considering the number of improvements that could
1979 have imposed on the Appellant.

1980

1981 **MOTION:**

1982 **Commissioner Batey moved to uphold the Planning Director's interpretation on**
1983 **File Number AP-07-01. Commissioner Newman seconded the motion, which**
1984 **passed 4 to 2 with Commissioner Churchill and Commissioner Qutub opposing.**

1985

1986 Chair Klein read the rules of appeal into the record.

1987

1988 **7.0 WORKSESSION ITEMS -- None**

1989

1990 **8.0 DISCUSSION ITEMS**

1991

1992 **Commissioner Churchill** inquired about the request from the September 25th Joint
1993 DLC/Planning Commission meeting for an interpretation from legal counsel regarding
1994 the issue of ethics code in the State statute.

1995

1996 **Ms. Mangle** explained Mr. Monahan had given a presentation to the Commission, but
1997 Commissioner Churchill had been absent. Staff made a point of preparing more detailed
1998 minutes, and they would be provided to the DLC at their November meeting.

1999
2000 **9.0 OLD BUSINESS – None**

2001
2002 **10.0 OTHER BUSINESS/UPDATES**

2003 Project Updates-Purdy’s Classic Memories Motor Cars, at 11153 SE 21st Ave.
2004 **Ms. Mangle** proposed that she provide the update at a later date. She confirmed the
2005 report was a positive one.

2006
2007 **11.0 NEXT MEETING:**
2008 November 27, 2007—Planning Commissioner Training, Waldorf School Post-
2009 Occupancy Traffic Study

2010
2011 **Commissioner Batey** requested an update on sign code enforcement for the next
2012 meeting.

2013
2014 Meeting adjourned at 11:35 p.m.

2015
2016
2017 Respectfully submitted,

2018
2019
2020
2021
2022 Paula Pinyerd, ABC Transcription for
2023 Michelle Rodriguez, Administrative Assistant

2024
2025
2026
2027
2028 _____
2029 Jeff Klein, Chair

2030



November 14, 2007

File(s): AP-07-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on November 13, 2007.

Applicant: Main/Monroe Investors, LLC
Location: 10883 SE Main Street
Tax Lot: 11E35AA01400
Application Type: Appeal
Decision: Appeal Denied
Review Criteria: Milwaukie Zoning Ordinance:

- 19.312.5 – Public Area Requirements
- 19.1001.4 – Planning Director's Interpretations
- 19.1011.3 – Minor Quasi-Judicial Review

Neighborhood: Historic Milwaukie

The Planning Commission's decision on this matter may be appealed to the Milwaukie City Council. An appeal of this action must be filed within 15 days of the date of this notice, as shown below.

Appeal period closes: 5:00 p.m., November 29, 2007

Appeals to the City Council must be accompanied by the appeal fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning Department. Milwaukie Planning staff (503-786-7630) can provide information regarding forms, fees, and the appeal process.

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.


Katie Mangle
Planning Director

cc: Applicant
Planning Commission
Kenny Asher, Community Development/Public Works Director
Katie Mangle, Planning Director
Gary Parkin, Engineering Director
Zach Weigel, Civil Engineer
Tom Larsen, Building Official
Mace Childs, Deputy Fire Marshal
NDA: Historic Milwaukie
Interested Persons
Files: AP-07-01

Fraley, Robert

From: Mangle, Katie
Sent: Tuesday, December 04, 2007 12:00 PM
To: Fraley, Robert
Subject: FW: Clackamas Review on Parecki case

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

From: Bresaw, Teresa [mailto:tbresaw@water.ci.portland.or.us]
Sent: Wednesday, November 21, 2007 1:41 PM
To: Mangle, Katie
Subject: RE: Clackamas Review on Parecki case

Katie,

I've been on vacation the last couple of days, and will have tomorrow off as well. Not knowing of the filed appeal, I was still planning on sending my comments to Jim Bernard, Mike Swanson, Kenny A. and yourself. So now maybe you can put this on the public record for the appeal.

Think the decision we (Planning Commission) made was legal, but still understand the apparent inequities for the public area improvements. The code needs to be changed in reference to this and can discourage quality development. I would like the city to be fair and help Mr. Parecki pay for some of these public area improvements. I think the city did try to be fair and has already made some compromise, but would like fairness to be the priority over defending the code as written.

Since the outside of the building is going to be refaced in brick, that in itself will improve the outside for the public to appreciate. This of course doesn't count as a true public improvement, but the value of the building will increase to the benefit of all, helping Milwaukie meets its goal of a nicer downtown. I can't say what is exactly fair, but hope that agreeable terms can be reached for both parties.

Sincerely,
Teresa Bresaw
Planning Commission member
Resident of Milwaukie

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

From: Mangle, Katie [mailto:MangleK@ci.milwaukie.or.us]
Sent: Wednesday, November 21, 2007 10:25 AM
To: Lisa Batey; Charmaine Coleman (E-mail); Dick Newman (E-mail); Jeff Klein (E-mail); Paulette Qutub (E-mail); Scott Churchill (E-mail); Teresa Bresaw (E-mail)
Cc: Shanks, Susan
Subject: RE: Clackamas Review on Parecki case

Hi everyone,
Yesterday afternoon, Mr. Parecki filed an appeal on the decision. We are preparing for a 12/18 hearing.

- Katie

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

From: Lisa Batey [mailto:lisabatey@msn.com]
Sent: Wednesday, November 21, 2007 10:12 AM
To: Mangle, Katie; Charmaine Coleman (E-mail); Dick Newman (E-mail); Jeff Klein (E-mail); Paulette Qutub (E-mail); Scott Churchill (E-mail); Teresa Bresaw (E-mail)
Cc: Shanks, Susan
Subject: Clackamas Review on Parecki case

All: I just wanted to give everyone a heads up that a reporter from the Clackamas Review

seems to be calling around looking for views on the Parecki appeal. I told him I couldn't comment on a pending matter, as I assumed our decision was being appealed to City Council. --Lisa

PUBLIC RECORDS LAW DISCLOSURE:

This e-mail is a public record of the City of Milwaukie and is subject to public disclosure unless exempt from disclosure under Oregon Public Records law. This email is subject to the State Retention Schedule.

Patricia M. Wisner

November 13, 2007

Planning Commission
City of Milwaukie
c/o Katie Mangle, Planning Director
6101 S.E. Johnson Creek Road
Milwaukie, OR 97206

Exhibit #1
Received at PC/DCC
Public Hearing
Date: 11/13/07
By: KM

Dear Members of the Planning Commission,

I'm writing you to communicate my position on Mr. Ed Parecki's appeal to be granted a reduced amount of Public Area Requirements spelled out in Milwaukie Municipal Code 19.312.5B.2 and further described in the downtown design guidelines, as this pertains to his renovation of the State Bank Building at 10883 S.E. Main Street in downtown Milwaukie. **Since Mr. Parecki has proven that he and his investment partners can successfully renovate and improve an older building in our city and transform it into a highly desirable business location and destination for community commerce, I strongly urge you to take positive steps in aiding Mr. Parecki to be able to complete his current project in a cost effective and timely way as possible.**

Since I have served on the Design and Landmarks Commission, (now currently a committee), since 1997, I'm very aware of our downtown design guidelines and the necessity to wisely apply those guidelines and city ordinances to new projects and renovations. For more than ten years, few citizens have been as vocal as myself in advocating the much needed improvement in the quality of design and architecture in our downtown. I also appreciate the hard work our planning staff accomplishes in enforcing our design guidelines and ordinances so that Milwaukie does improve and revitalize the downtown core in a high quality manner.

Currently, as these new projects materialize, we are actually learning from new experience, whether our guidelines and ordinances are working successfully or not, to achieve our goals to expedite revitalization and beautification of our downtown. Every new project puts these guidelines and ordinances to the test. We learn together the positive and negative effects of their implementation. **Added experience with these guidelines and ordinances may give the City reason to reevaluate their effectiveness in achieving downtown revitalization goals. With that in mind, the Planning Commission needs to take very seriously the financial hardship caused by the current ordinances, on private businesses which invest private money to improve Milwaukie's downtown.** Critical thinking and common sense need to be consistently applied to each new renovation or new development project. "Going by the book" and rigidly applying ordinances with a "one size fits all mentality" without granting modification through variances to individual projects may cause more long-term harm to our community lasting for many years to come.

Unfortunately, Milwaukie has earned a negative reputation in the region for not being friendly to private business, and throwing too many road blocks and regulations at potential developers, causing these developers to spend their money elsewhere in more friendlier pro-business communities. Clients of my business who are developers with multi-million dollar projects are not interested in Milwaukie, partly due to their perception of Milwaukie having a negative reputation toward business. Our city has suffered from this region-wide perception for decades. **Sadly, the combination of elected officials, city staff, and community volunteers making decisions causing these obstacles to business revitalization have happened since 1970. Our community has long been paying the price for these decisions, and frankly Milwaukie citizens are dissatisfied with the stagnation which has lasted for decades.**

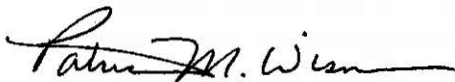
It's time to apply agility, flexibility and vision to how we make decisions and send a loud and clear message that Milwaukie is eager for business growth and very welcoming to quality investment and commerce. And if our Planning Commission, City Staff and City Council don't start sending those messages right away in the face of a golden opportunity for that to happen, then Milwaukie's negative reputation of constipation and inertia will continue indefinitely. In addition, the above mentioned decision making bodies are failing in their duties to act in Milwaukie's best interests—facilitating a thriving downtown core and community.

Main Monroe Investors, LLC's investment resources do not equal Microsoft, Bank of America or other national multi-billion dollar corporations. There is a finite amount of money Mr. Parecki can invest in the State Bank Building renovation, he is willing to take a calculated risk to do a much needed privately funded renovation which would be extremely beneficial to Milwaukie over the long term. **Simply stated, it is highly beneficial for Milwaukie to have a beautifully renovated historic building housing a high quality restaurant business attracting hundreds of community members to the heart of our downtown daily with 50% of the currently required Public Area Requirement improvements, than to have the building sit derelict, have no high quality restaurant and no Public Area Improvements indefinitely.**

We need our Planning Commission and Planning Staff to utilize their combined intelligence to see the wisdom in an equitable compromise of 50% of the required public improvements for this project. It's a win-win for all parties concerned and a big win for Milwaukie's citizens who have been waiting and waiting and waiting decade after decade to see a project of this caliber completed on Main Street. **A 50-50 compromise does not diminish the design guidelines or ordinances in any way, instead it communicates a real-world understanding that each project is unique, some require unique consideration and approved variance to bring long-term benefits to Milwaukie.**

In conclusion, I'm asking the Planning Commission to vote in favor of a compromise where Mr. Parecki and the Planning Department meet each other half way. This project is in need of such a solution to get it up and running on Main Street. And there are other ways to fund the remaining 50% of improvements on the property, either by grant funding or perhaps phasing in the improvements after the business is established and can afford to complete the improvement projects. Milwaukie has a critical need to have a highly visible privately funded renovation project completed as quickly as possible—sending a message throughout the region that Milwaukie knows how to efficiently facilitate successful projects with private business. If Milwaukie can make the right decisions, speeding commercial growth and vitality in downtown, its going to get a lot of notice from the region and increased business activity and investment in the near future.

Sincerely,



Patricia M. Wisner
President, Wisner Design, Inc.
Chairman, Design and Landmarks Committee, Milwaukie

3325 S.E. Wister Street
Milwaukie, Or 97222
503.654.7468

Received at PC CC
Public Hearing

Date: 11.13.07
By: [Signature]

November 13, 2007

Planning Commission
c/o Katie Mangle, Planning Director
6101 SE Johnson Creek Road
Milwaukie, OR 97206

RE: Public Area Requirements

Dear Planning Commission Members:

This letter is in response to the Ed Parecki appeal scheduled for November 13, 2007. Carmen and I purchased the building at 11008 SE Main Street last May and are in the process of putting in a restaurant on the ground level. We have basically three thoughts regarding the PAR code.

First, the code appears to be somewhat ambiguous in that the 10% rule is a minimum and not necessarily a cap. We understand that the City will try to designate certain public area improvements that should fall within the correct dollar amount. However, if we are unable to find a contractor willing to do the job for the "anticipated" dollar amount, we are still liable for the full cost of the designated public improvements. That could theoretically result in any percentage above 10 percent of the improvement value. We feel that a cap on this fee would be easier to budget than relying on an approximation.

Second point is that we feel this code is really a disincentive to develop in downtown Milwaukie. I work as a commercial appraiser and see projects in Portland where the Portland Development Commission provides large grants, beneficial loans, and development agreements in which the developer virtually is taking on minimal to no risk. This is done in order to meet the city's goals of developing neighborhoods that otherwise wouldn't likely be developed. I'm currently working on just such a project at N. Interstate Avenue and Killingsworth. We've also read newspaper articles about Oregon City offering easy-term loans to a restaurant with the goal having them locate in a specific area of town (which the restaurant did). We feel the Milwaukie PAR code would tend to have the opposite effect on encouraging development.

And thirdly, this fee may seem harmless enough to some, but when you are operating on a tight budget, an additional 10% cost is no minor inconvenience.

Sincerely,



Brian A. Meyer
brian.meyer@pgpinc.com

Carmen Meyer

~~3543~~
11008 SE MAIN ST.
Milwaukie, OR.

Fraley, Robert

From: Mangle, Katie
Sent: Tuesday, November 13, 2007 11:19 AM
To: Fraley, Robert
Subject: comment on AP-07-01

Reverend Sara Fischer from St. John's called Kenny Asher 11/13/07. She stated that St. John's and downtown are better off because of the improvements they did, and that it makes sense to ask for the improvements.



ST. JOHN
THE EVANGELIST
EPISCOPAL CHURCH

*Founded 1851
on the Banks of the Willamette*

November 13, 2007

Planning Commission
C/o Katie Mangle, Planning Director
6101 SE Johnson Creek Road
Milwaukie, OR 97206

Dear Ms. Mangle and members of the Milwaukie Planning Commission,

As one response to the letter sent earlier this month to downtown Milwaukie property owners, I am writing "with my thoughts and concerns on requiring private investors to make Public Area improvements."

I came to be part of the downtown Milwaukie community in January, 2005, when I became Rector of St. John the Evangelist. After Sunday services on January 30th, my first official act was to preside over the dedication of our new addition on the west side of the church property at 2036 SE Jefferson Street. My arrival at St. John's coincided with the completion of a major building project that continues to be a great source of pride and joy to our Building Committee and to the St. John's parish family.

The project included a series of public improvements to our block: new sidewalks, street trees, landscaping, street lights, wheelchair ramps, and other improvements. I was not part of the initial planning and construction process and therefore missed out on the actual permitting process with its attendant negotiations over the exact amount spent on these much-needed public improvements. I believe that our contribution was capped at ten percent of our construction costs in spite of the fact that the improvements cost far more. However, I can fairly say that at St. John's we are almost as proud of these improvements as we are of our new building. The fact that "the outside matches the inside" in terms of quality of work, collaboration, and forward-thinking design speaks well of the City and of our parish Building Committee. Overall, the partnership between the church and the City has been a positive and productive one. We are happy to share in the responsibility for the renewal of our downtown area.

It is an exciting time to be in downtown Milwaukie and I hope that all the downtown property and business owners welcome new developments and changes to our downtown landscape. I can think of no better way to encourage future growth and pride of ownership than for today's developers to invest in the public areas surrounding their properties.

If I can provide you with any additional information, I hope you will not hesitate to contact me.

Best regards,

The Rev. Sara Fischer, Rector

Cc: Bruce Fontaine, Sr. Warden, Walt Ellis, Jr. Warden, Ross Lehmann, Building Committee

Fraley, Robert

From: Mangle, Katie
Sent: Tuesday, November 13, 2007 10:18 AM
To: Fraley, Robert
Subject: FW: ED PARECKI

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

From: kellogg Bowl@comcast.net [mailto:kellogg Bowl@comcast.net]
Sent: Tuesday, November 13, 2007 9:59 AM
To: Mangle, Katie
Cc: KATIE MANGLE
Subject: ED PARECKI

I THINK ANY THING ED WANTS TO DO WITH THE BUILDING WOULD BE AN IMPROVEMENT, WITHOUT SPENDING A RIDICULAS AMOUNT OF MONEY THAT THE CITY WANTS HIM TO DO. IT WOULD TAKE YEARS TO RECOUP. THINK ABOUT IT IF ANY MEMBER OF THE PLANNING COMMISSION WAS IN THE SAME POSITION AS ED. I BET THEY WOULD THINK DIFFERENT.
BILL OETKEN
KELLOGG BOWL

Fraley, Robert

From: Mangle, Katie
Sent: Tuesday, November 13, 2007 8:16 AM
To: Fraley, Robert
Subject: FW: Ed Pareki hearing

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

From: Ray Bryan [mailto:bryanchambers99@earthlink.net]
Sent: Monday, November 12, 2007 10:52 PM
To: Mangle, Katie
Cc: Dion.Shepard; Ed Parecki; pemczum
Subject: Ed Pareki hearing

Katie,

Good morning! Please forward this information to the Planning Commission. Last night , November 12, the Historic Milwaukie NDA voted unanimously to support Ed Pareki's request for a permit to remodel his property. The motion also requested that the city suspend the public open area requirements of the downtown code until it is reviewed and implemented in a manor that is **consistent**, and works to encourage improvements to existing downtown buildings.

My own opinion is that I welcome improvements like those that Ed Pareki has done. I like restoring the existing buildings. I appears that the language in the existing code may not be encouraging existing land and business owners to improve their property and the statute may not be evenly enforced. We all want what is best for Milwaukie so please consider making some improvements to the existing code.

Sincerely,

Ray Bryan

Fraley, Robert

From: Mangle, Katie
Sent: Monday, November 12, 2007 1:57 PM
To: Fraley, Robert
Subject: FW: Letter to The Planning Commission

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

From: Chantelle Gamba [mailto:chantelle@markgamba.com]
Sent: Monday, November 12, 2007 1:50 PM
To: Mangle, Katie
Subject: Letter to The Planning Commission

To: The City of Milwaukie Planning Commission
Re: Appeal of Ed Parecki and Main/Monroe Investors, LLC

Dear Commissioners,

As owners of another downtown Milwaukie business, Mark Gamba Gallery, we are writing in support of Ed Parecki's appeal.

Ours' is a small company that would have rented space in another part of the Portland area had Mr. Parecki not renovated The Milwaukie Building at 10600 SE McLoughlin Blvd. We were thrilled to have a lovely space available to rent, at a reasonable cost, so close to our Milwaukie home and the Portland Waldorf School, which our three children attend. We feel strongly that it was, in part, Mr. Parecki's frugality and creativity in the renovation that allowed tenants such as ourselves to afford such a rental space.

Mr. Parecki is neither part of a large development firm, nor is he a man out to make a quick buck, he is a man that is interested in the long-term vitality of this town and has shown that to be the case by purchasing and renovating buildings in our struggling downtown, bringing in businesses and consumer dollars. Forcing Mr. Parecki to personally write a blank check for street improvements is going to give other small investors pause before making a purchase here. Let's create a thriving downtown where others want to invest!

We feel it prudent of the Planning Commission to consider the overall improvement of the downtown area that Mr. Parecki's building will bring and forgive him the costly public improvements. People won't come to Milwaukie for the pretty new street lamps. People will come to Milwaukie to patronize businesses that want and/or need. Let's fill that need first.

Respectfully,

Chantelle and Mark Gamba

Mark Gamba Gallery
10600 SE McLoughlin Blvd.
Suite 104
Milwaukie, OR 97222
503-353-9111

Fraley, Robert

From: Mangle, Katie
Sent: Thursday, November 08, 2007 10:34 AM
To: Fraley, Robert
Subject: FW: Public Area Requirements

Hi,
Could you please collect this (and future) comments, and bring them to the hearing on Tuesday?
thanks,
- Katie

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

From: Eye Clinic of Milwaukie [mailto:eyeclinicofmilw@qwest.net]
Sent: Thursday, November 08, 2007 10:15 AM
To: Mangle, Katie
Cc: ed@parecki.com
Subject: Public Area Requirements

November 8, 2007

Planning Commission
City of Milwaukie
c/o Katie Mangle, Planning Director
6101 SE Johnson Creek Road
Milwaukie, OR 97206

Re: Public Area Requirements

Dear Ms Mangle:

My name is Lawrence Froland and I am a local optometric physician in Milwaukie. I have practiced here for 33 years (Eye Clinic of Milwaukie, P.C.) and own my building. I recently received information about Main/Monroe Investors, LLC being required to agree to construct a list of required public area improvements before a building permit will be issued for their property at 10883 SE Main Street.

I am very indignant that the City of Milwaukie would reject Main/Monroe's offer of \$22,500 in improvements and basically hold them hostage before a building permit is issued.

I am a previous member and Chair of the Milwaukie Downtown Development Association and worked for years trying to improve the core business area and vitality of Milwaukie. It seems to me, intuitively, that your city code requirement is counterproductive to any business or property owner in the downtown area if they want to develop, redevelop or improve their property. We have worked for years to improve the look of downtown Milwaukie and this requirement (if applied inconsistently and financially unfairly) is a disincentive to everyone.

I urge the Planning Commission to put a moratorium on Milwaukie Municipal Code 19.312.5B.2 until common sense prevails and that they meet with property owners and businesses and investors to agree on a vital future for the downtown area.

Sincerely,

11/8/2007

November 8, 2007

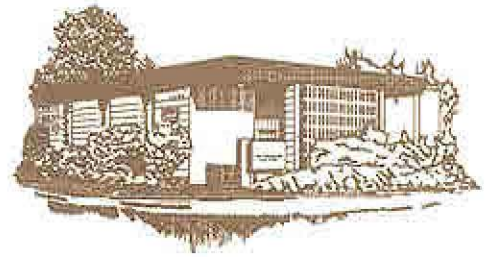
Page 2 of 2

Lawrence A. Froland, O.D.

RECEIVED

NOV 27 2007

CITY OF MILWAUKIE
PUBLIC WORKS



Eye Clinic of Milwaukie, P.C.

Doctors of Optometry

Lawrence A. Froland, O.D.
and Associates

November 8, 2007

Planning Commission
City of Milwaukie
c/o Katie Mangle, Planning Director
6101 SE Johnson Creek Road
Milwaukie, OR 97206

Re: Public Area Requirements

Dear Ms Mangle:

My name is Lawrence Froland and I am a local optometric physician in Milwaukie. I have practiced here for 33 years (Eye Clinic of Milwaukie, P.C.) and own my building. I recently received information about Main/Monroe Investors, LLC being required to agree to construct a list of required public area improvements before a building permit will be issued for their property at 10883 SE Main Street.

I am very indignant that the City of Milwaukie would reject Main/Monroe's offer of \$22,500 in improvements and basically hold them hostage before a building permit is issued.

I am a previous member and Chair of the Milwaukie Downtown Development Association and worked for years trying to improve the core business area and vitality of Milwaukie. It seems to me, intuitively, that your city code requirement is counterproductive to any business or property owner in the downtown area if they want to develop, redevelop or improve their property. We have worked for years to improve the look of downtown Milwaukie and this requirement (if applied inconsistently and financially unfairly) is a disincentive to everyone.

I urge the Planning Commission to put a moratorium on Milwaukie Municipal Code 19.312.5B.2 until common sense prevails and that they meet with property owners and businesses and investors to agree on a vital future for the downtown area.

Sincerely,

A handwritten signature in black ink that reads "Lawrence A. Froland". The signature is written in a cursive style and is positioned below the word "Sincerely,".

Lawrence A. Froland, O.D.



ROSELAND PIANO CO.

11380 SE 21st Avenue Milwaukie, OR 97222
P: (503) 654-1888 / F: (503) 496-0299
Email: rick@roselandpiano.com

11-05-07

Katie Mangle, Planning Director
6101 SE Johnson Creek Road
Milwaukie OR 97206

Dear Ms. Mangle,

I am writing in response to an appeal by a Mr. Ed Parecki for downtown Milwaukie business/property owners to contact your office regarding "Public Area Requirements".

I have seen the artist's rendition of Mr. Parecki's design work, and feel it would be a major asset to the Milwaukie community. I applaud the concept, and hope it will be an inspiration to other downtown property owners. I have also seen the list of required "Public area" improvements that Mr. Parecki will be required to pay for.

I contend that property owners, whether commercial or residential, should be required to maintain public areas such as adjoining sidewalks. However, because the "Public Area" improvements are of benefit to the community as a whole, I think the community, not the property owner, should pay for these.

I have often heard it said that Milwaukie is not business friendly. I can understand that, in the context of these PAR issues. It is difficult at best, to run a small business, but facing added financial requirements to do business in this community are not incentives to relocate or to stay here, and certainly not to invest in the "face" of our downtown.

I am 100% in favor of the design review process, and embrace the concept of a community identity. I believe Mr. Parecki's restoration of his property is thoroughly in line with the planning commissions goals.

I'd like to suggest that there is a better way to fund these PAR projects. The property owner is already bearing the burden of the rebuilding costs; why not raise funds for these projects through a combination of increased business licenses fees, or something similar to the recent road use fee. Maybe a slight increase in property taxes, with funds dedicated to the "public area" improvements. In any case the burden should not be solely on the single property owner or strictly on business owners in general, but should be shared by the residents as well. It benefits the entire community.

Sincerely,
Richard K. Wheeler



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.

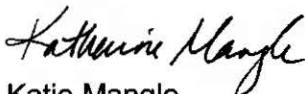
Public area improvement requirements include sidewalk improvements, street trees, street lighting, street furniture, and bicycle parking as illustrated in Attachment A. The City's *Downtown and Riverfront Plan* includes all standards and requirements for public area redevelopment in downtown and can 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

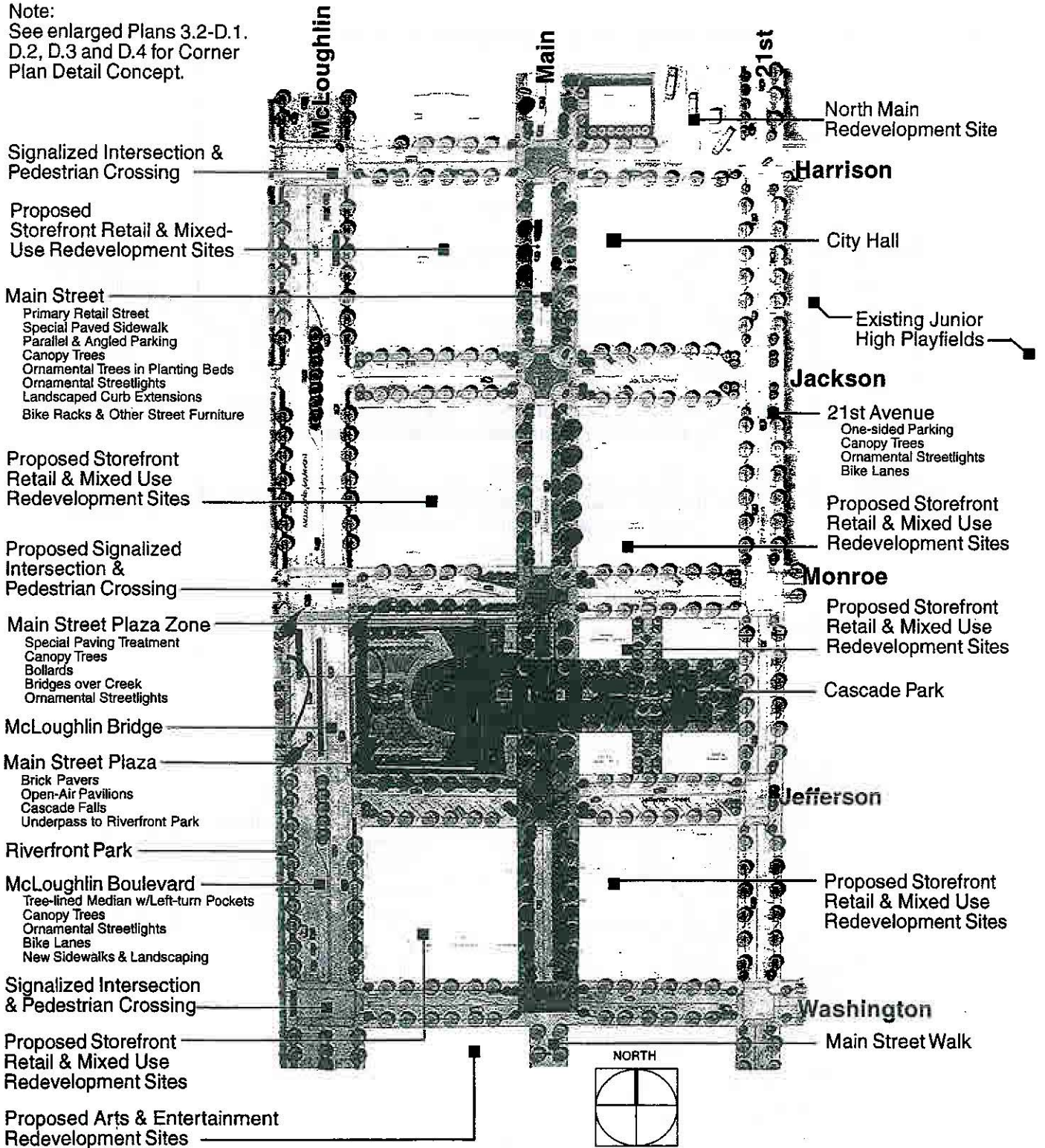
Attachments: Attachment A – Streetscape Illustrative Plan
Street Sections – Section A & J
Design Details – Sidewalks
Attachment B – Public Area Improvement List

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

General Circulation Requirements

1.3 Streetscape Illustrative Plan

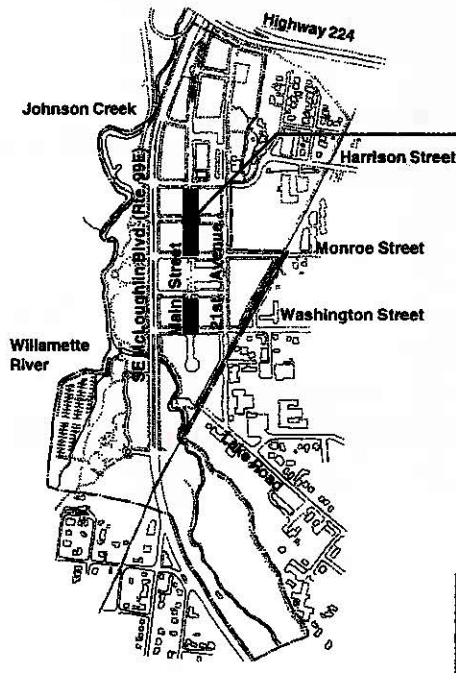
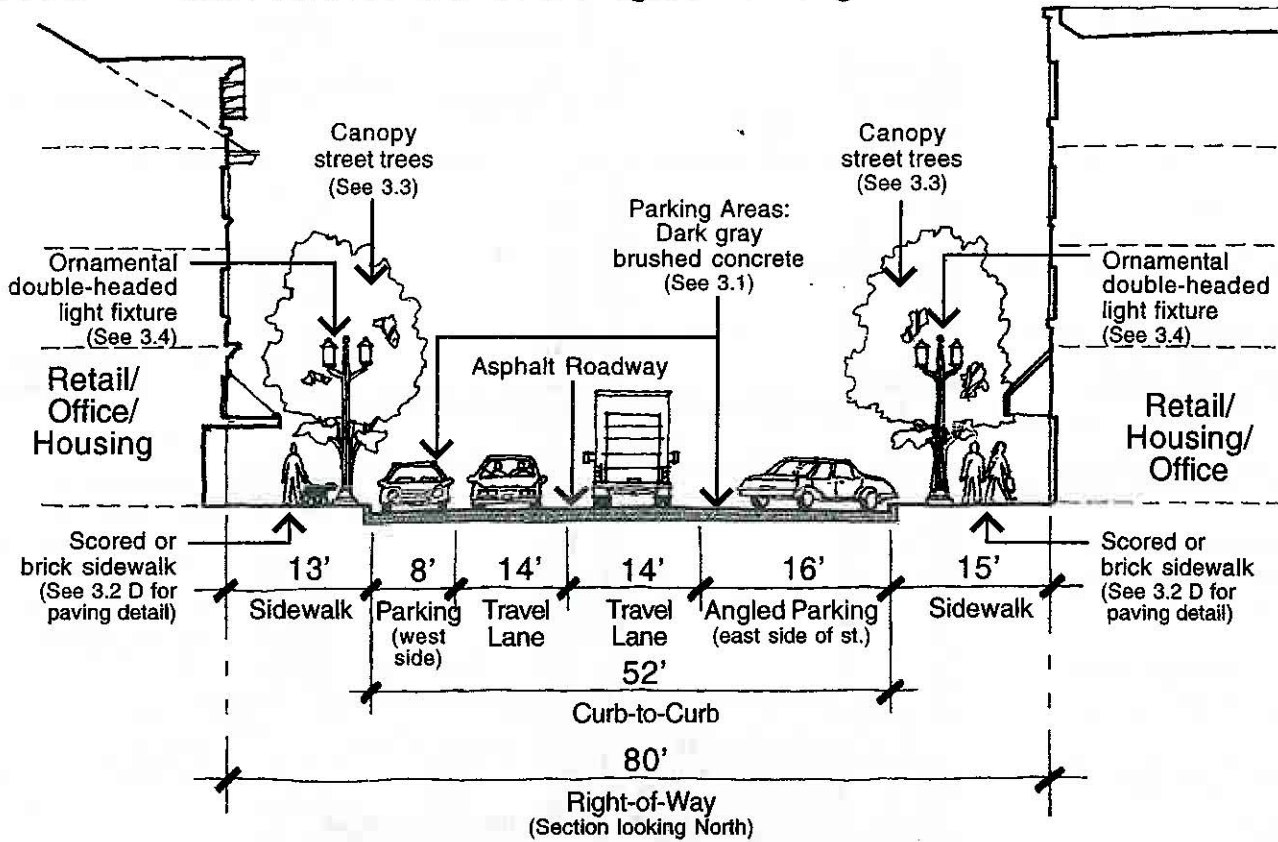
Note:
See enlarged Plans 3.2-D.1, D.2, D.3 and D.4 for Corner Plan Detail Concept.



Street Standards

2.5 Street Sections*

Section A: Main Street Parallel & Angled Parking



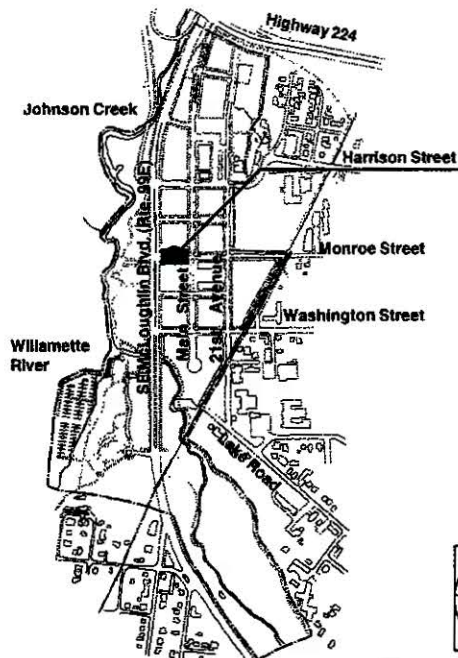
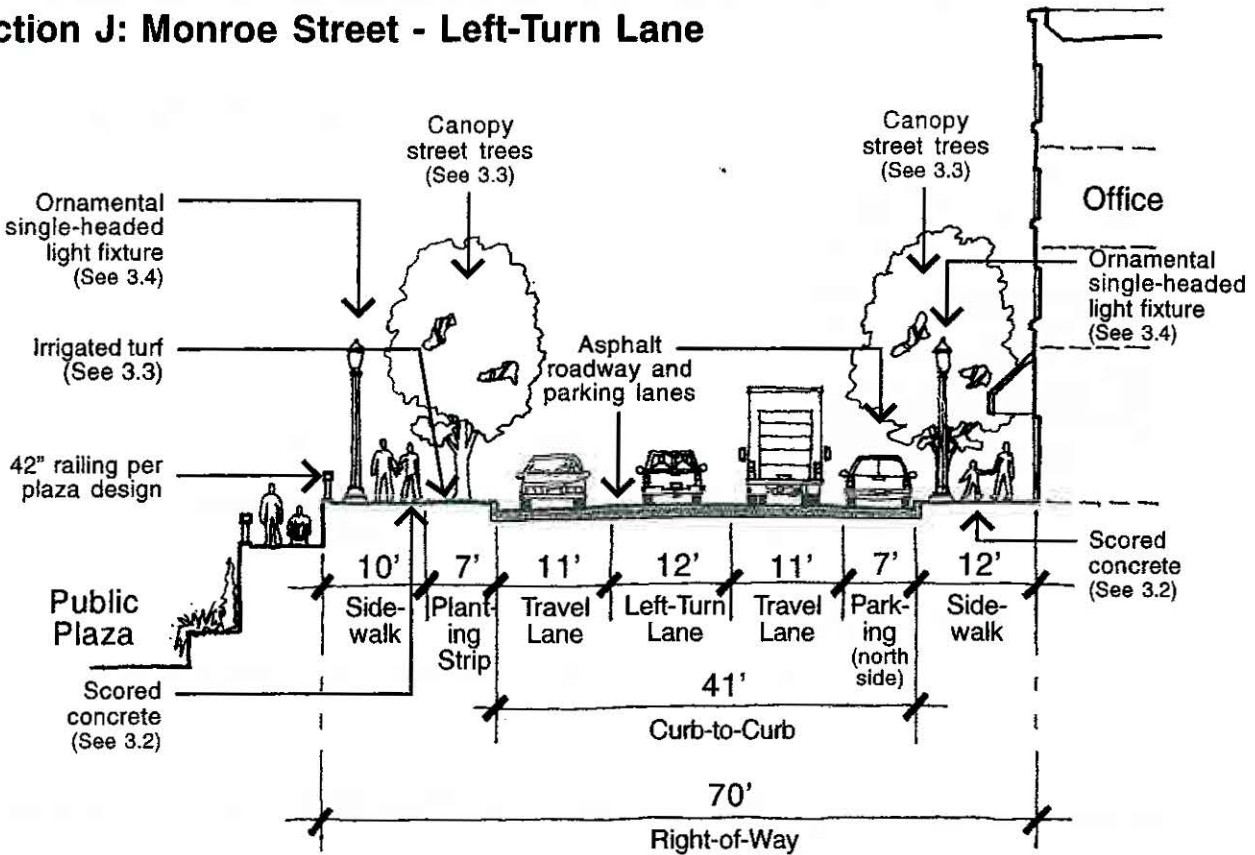
Type A - Main Street

- 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



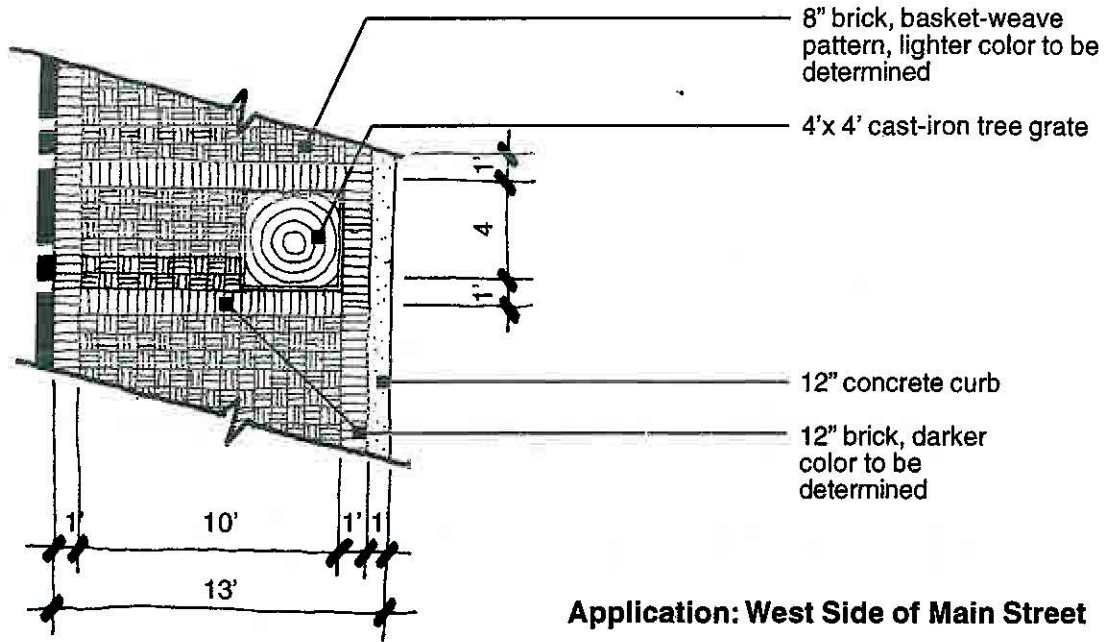
Type J - Monroe Street

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

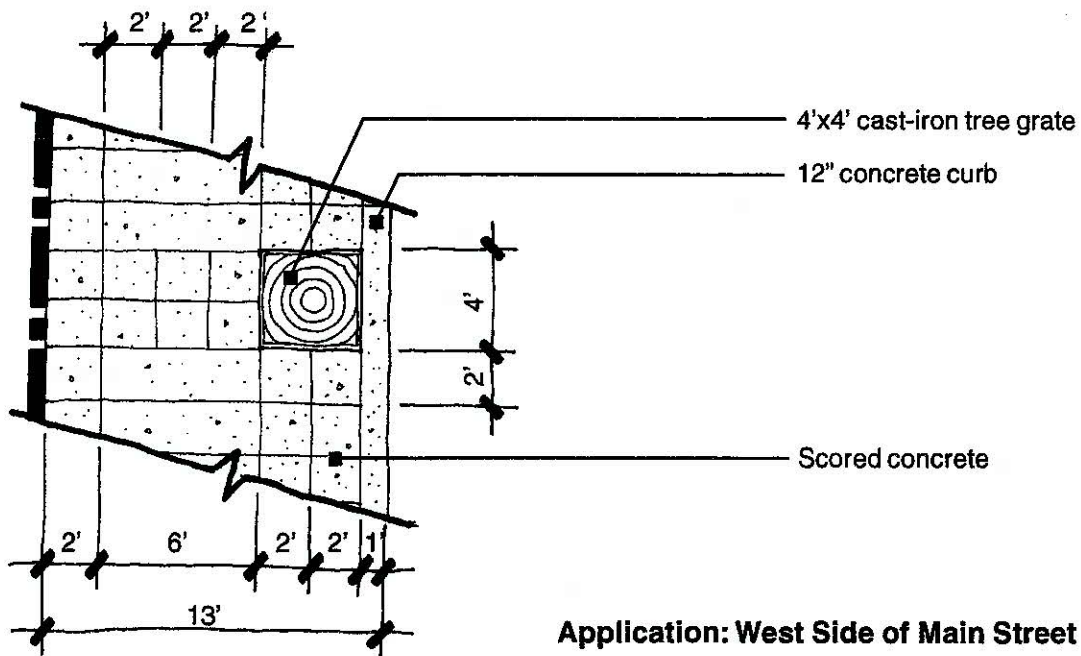
Design Details

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,

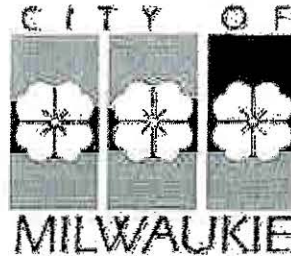

Katie Mangle
Planning Director

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



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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.

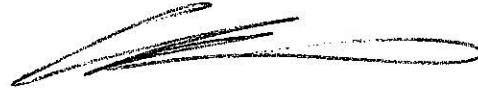
In order for an exaction to be proportional to the impacts of a proposed development, that development must in fact generate at least some impacts. Since this proposed development is merely a renovation of an existing building and does not generate any impacts to the City’s infrastructure, the City may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

A handwritten signature in black ink, appearing to read "Steve C. Morasch". The signature is written in a cursive style with a long horizontal stroke at the end.

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 improvement. 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.

ATTACHMENT 7

Chronology of Review Process

The following chronology summarizes the review process to date.

Date	Activity
April 26, 2007	Pre-application conference, at which staff and Mr. Parecki discussed his proposed project including dividing the land, Design Review requirements, and public area requirements, and other requirements such as System Development Charges.
August 31, 2007	Applicant applied for Building Permit.
September 8-17, 2007	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 to discuss the requirements and the proportionality analysis.
October 1, 2007	The applicant sent a letter that 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.
November 13, 2007	Planning Commission votes (4-2) to uphold the Planning Director's Interpretation.
November 14, 2007	Notice of Decision sent to appellant.
November 20, 2007	Appeal of Planning Commission decision submitted.
November 27, 2007	Meeting between Mr. Parecki, Mr. Aaron (partner Main/Monroe Investors), Ms. Mangle, and Mr. Fraley to discuss appellant's proportionality analysis.
December 3, 2007	Email and letter received from Steve Morasch clarifying scope of City Council appeal.

MEMORANDUM

TO: Community Development Department
THROUGH: Gary Parkin, Director of Engineering
FROM: Zach Weigel, Civil Engineer
RE: Proportionality Analysis – McClure Methodology
AP-07-02 - 10883 SE Main Street
DATE: November 27, 2007

I provided a proportionality analysis as part of my review of Building Permit #070408 for a commercial alteration at 10883 SE Main Street. The proportionality analysis was a similar methodology to McClure, relating the increase in vehicular trips associated with the development to the required street improvements. The analysis I used was a simplified method appropriate for the size of the development and the type of application submitted. The analysis found that full street improvements along the property frontage are proportional to the impacts of the proposed development.

Because the application has been appealed to both the Planning Commission and City Council, staff has conducted the full McClure proportionality analysis for the proposed development. The assumptions and information used as part of the analysis are summarized as follows:

- The land use information was obtained through City of Milwaukie records, conversations with the applicant, and construction plans submitted with the building permit. The basement and half of the first floor is converting from general office use to specialty retail use.
- The Institute of Transportation Engineers defines Gross Leasable Area as the total floor area designed for tenant occupancy and exclusive use, including any basements, mezzanines, or upper floors, expressed in square feet. The proposed development of the basement is considered gross leasable area and must be included in the trip generation calculation.
- The impact area is established as the four square blocks surrounding the proposed development property. The impact area boundary is the center of right-of-way for SE Jefferson Street, SE 21st Avenue, SE Jackson Street, and SE McLoughlin Boulevard.
- The Specialty Retail Center use applied to the proposed development is a conservative estimate of trip generation. The applicant has stated that the intended use of the basement and 1st floor is a restaurant, which has a much higher trip generation than the specialty retail use.
- The McClure methodology allows for substitution of non-conforming uses with expected uses within the impact area. Including an non-conforming use within

the impact area can skew the results of the proportionality analysis. For example, there is a gas station within the impact area of the proposed development. A gas station is a non-conforming use within the downtown zones. As part of the proportionality analysis, the gas station was substituted with a mix of office and retail similar to that within the impact area.

The proportionality analysis using the McClure methodology found that improvement of 96.5% of the frontage area, including the intersection, is proportional to the impacts of the proposed development. The recommended public area requirements are much less than 96.5% of the proposed development's frontage area. Therefore, the recommended public area requirements are proportional to the impacts of the proposed development.

McCLURE PROPORTIONALITY ANALYSIS

- 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. (11.01 TRIPS/1000 S.F.) = 108.84 TRIPS

PROPOSED USE: SPECIALTY RETAIL CENTER

USE TRIPS: 44.32 TRIPS VS. 1000 S.F. OF GROSS LEASABLE AREA ON A WEEKDAY

PROPOSED FLOOR AREA: BASEMENT = 2500 S.F.
1ST FLOOR = 2500 S.F.
2ND FLOOR = 0 S.F.
TOTAL = 5000 S.F.

PROPOSED TRIP GENERATION: 5000 S.F. (44.32 TRIPS/1000 S.F.) = 221.60 TRIPS

GENERAL OFFICE BUILDING

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

BASEMENT = 0 S.F.
1ST FLOOR = 2500 S.F.
2ND FLOOR = 2500 S.F.
TOTAL = 5000 S.F.

5000 S.F. (11.01 TRIPS/1000 S.F.) = 55.05 TRIPS

PROPOSED TRIP GENERATION TOTAL = 276.65 TRIPS

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

IMPACT RATIO = $\frac{\# \text{ VEHICLE TRIPS FROM DEVELOPMENT}}{\# \text{ VEHICLE TRIPS WITHIN IMPACT AREA}} = \frac{167.81 \text{ TRIPS}}{3655 \text{ TRIPS}}$

IMPACT RATIO = 0.0459

EXACTION RATIO = $\frac{\text{AREA OF EXACTION}}{\text{IMPACT AREA}}$

AREA OF EXACTION = AREA OF HALF-STREET IMPROVEMENT FRONTING DEVELOPMENT PROPERTY

SE MAIN STREET FRONTAGE = 50.1 A (40 FT) = 2004 S.F.

SE MONROE STREET FRONTAGE = 105 A (35 FT) = 3675 S.F.

NW CORNER OF MAIN & MONROE = 40 A (35 FT) = 1400 S.F.

TOTAL = 7079 S.F. (ASSUMING FULL STREET IMPROVEMENTS)

EXACTION RATIO = $\frac{7079 \text{ S.F.}}{148847 \text{ S.F.}}$

EXACTION RATIO = 0.0475

IMPACT RATIO < EXACTION RATIO ∴ EXACTION IS NOT PROPORTIONAL

WHAT IS PROPORTIONAL AMOUNT OF IMPROVEMENT?

ALLOWED AREA OF EXACTION = IMPACT RATIO (IMPACT AREA) = (0.0459)(148847 S.F.) = 6834 S.F.

PERCENT OF FRONTAGE IMPROVEMENT = 96.5%

THE IMPROVEMENTS REQUIRED BY PLANNING COMMISSION ARE MUCH LESS THAN 96% OF THE DEVELOPMENT PROPERTIES FRONTAGE. AS A RESULT THE RECOMMENDED IMPROVEMENTS ARE PROPORTIONAL TO THE IMPACTS OF THE DEVELOPMENT.

PROPORTIONALITY ANALYSIS - McCLURE METHODOLOGY
10883 SE MAIN STREET

Tax Lot	Address	Use	ITE Code	Gross Floor Area (sf)	Use Trip Generation	Trip Generation (vph)	Fronting Road	Frontage Length (ft)	ROW Width (ft)	Frontage Area (sf)	
11E35AA01100	Parking Lot	Parking Lot	N/A	0	0	0	Jackson Street	105	80	4200	
11E35AA01200	10880 SE McLoughlin Blvd	High Turn Over Restaurant	932	1476	127.15	vpd / 1000sf	McLoughlin Blvd. Corner Monroe Street	159.3 40 105	90 45 70	7168.5 1800 3675	
11E35AA01300	10801 SE Main Street 10817 SE Main Street 10821 SE Main Street 10835 SE Main Street 10851 SE Main Street 10863 SE Main Street 10879 SE Main Street	Specialty Retail Specialty Retail Specialty Retail Health Club Specialty Retail Specialty Retail	814 814 814 814 814 814	2940 1200 1080 1500 1800 1200	44.32 44.32 44.32 32.93 44.32 44.32	vpd / 1000sf vpd / 1000sf vpd / 1000sf vpd / 1000sf vpd / 1000sf vpd / 1000sf	130 53 48 49 80 53	McLoughlin Blvd. Corner Jackson Street Main Street Corner	53.1 35 105 162.3 40	90 45 80 80 40	2389.5 1575 4200 6492 1600
11E35AA01400	10883 SE Main Street	General Office	710	9886	11.01	vpd / 1000sf	Main Street Monroe Street Corner	50.1 105 40	80 70 35	2004 3675 1400	
11E35AA01500	10909 SE Main Street 10921 SE Main Street	Specialty Retail Specialty Retail	814 814	4664 3675	44.32 44.32	vpd / 1000sf vpd / 1000sf	Main Street Monroe Street Corner	87.84 105 40	80 70 35	3513.6 3675 1400	
11E35AA01600	10933 SE Main Street	Specialty Retail	814	3675	44.32	vpd / 1000sf	Main Street	34.84	80	1393.6	
11E35AA01700	10955 SE Main Street	Specialty Retail	814	3224	44.32	vpd / 1000sf	Main Street	30.92	80	1236.8	
11E35AA1800	10999 SE Main Street	Specialty Retail	814	5880	44.32	vpd / 1000sf	Main Street Jefferson Street Corner	56.4 105 40	80 70 35	2256 3675 1400	
11EAA01900*	10966 SE McLoughlin Blvd	Specialty Retail General Office	814 710	5000 5000	44.32 11.01	vpd / 1000sf vpd / 1000sf	Jefferson Street McLoughlin Blvd Corner	105 157.5 35	70 90 45	3675 7087.5 1575	
11EAA02100	1906 SE Monroe Street 1912 SE Monroe Street	Specialty Retail General Office	814 710	851 4160	44.32 11.01	vpd / 1000sf vpd / 1000sf	McLoughlin Blvd Monroe Street Corner	52.5 105 45	90 70 35	2362.5 3675 1575	
11E36BB02600	10818 SE Main Street	Specialty Retail	814	5900	44.32	vpd / 1000sf	Jackson Street Main Street Corner	105 101.64 40	80 80 40	4200 4065.6 1600	
11E36BB02700	10415 SE Main Street	General Office	710	30586	11.01	vpd / 1000sf	Main Street	110.76	80	4430.4	
11E36BB02800		Walk In Bank	911	3000	156.48	vpd / 1000sf	Monroe Street	210	70	7350	
11E36BB02900							21st Avenue Jackson Street Corner Corner Corner	212.4 105 40 35 30	60 80 35 30 40	6372 4200 1400 1050 1200	
11E36BB03100	10902 SE Main Street	General Office	710	8274	11.01	vpd / 1000sf	Monroe Street	157.5	70	5512.5	
11E36BB03500							Main Street Corner	52.5 35	80 40	2100 1400	
11E36BB03200	10956 SE Main Street	General Office	710	5512	11.01	vpd / 1000sf	Main Street	52.5	80	2100	
11E36BB03300	2001 SE Jefferson Street	Medical-Dental Office	720	2081	36.13	vpd / 1000sf	Main Street Jefferson Street Corner	105 105 40	80 70 35	4200 3675 1400	
11E36BB03301							Jefferson Street Corner	52.5 40	70 35	1837.5 1400	
11E36BB03400	2025 SE Jefferson Street	Medical-Dental Office	720	6208	36.13	vpd / 1000sf	Jefferson Street	52.5	70	1837.5	
11E36BB03700	10951 SE 21st Avenue	General Office	710	2880	11.01	vpd / 1000sf	Jefferson Street 21st Avenue Corner	52.5 105 35	70 60 30	1837.5 3150 1050	
11E36BB03600	2036 SE Monroe Street	Specialty Retail	814	2205	44.32	vpd / 1000sf	21st Avenue Monroe Street Corner	105 52.5 30	60 70 35	3150 1837.5 1050	

*The existing use is a Gas Service Station, which is not an allowed use in the downtown zone. The Gas Service Station use cannot be compared to other uses in the downtown zone. For the analysis, Staff has used a mix of retail and office similar to other downtown uses.

Total Vehicle Trips (vpd) = 3655
Total Area of Frontage Improvement (s.f.) = 148847

ATTACHMENT 9

Proportionality Analysis

"Planning Department Calcs"

Corrected Calculations

Existing Use: **General Office Building**
 Use Trips: 11.01 vs. 1000 sqft of Gross Floor Area on a weekday

Existing Floor Area:	Basement:	2500	1
	1st Floor	4886	2
	2nd floor	2500	
	Total	9886	

(See Note 1)	2500
	2500
	7500

Existing Trip Generation 108.8449
 (Based on 11.01 Trips/1000SqFt) 11.01 8

82.575

Proposed Use: **Specialty Retail Center**
 Use Trips: 44.32 Trips/1000 SqFt of Gross Floor Area on a Weekday 44.32 9

Specialty Retail Center
 44.32 Trips/1000 SqFt of Gross Floor Area on a Weekday

Proposed Floor Area:	Basement	2500	3
	1st Floor	2500	4
	Total	5000	

Basement	0
1st Floor	2300
Total	2300

Proposed Trip Generation: 221.6
 (Based on 44.32 Trips/1000SqFt)

101.936

General Office Building
 11.01 Trips/1000 SqFt of Gross Floor Area on a Weekday

General Office Building
 11.01 Trips/1000 SqFt of Gross Floor Area on a Weekday

1st Floor	2500	5
2nd Floor	2500	
Total	5000	

1st Floor	0
2nd Floor	2500
Total	2500

Proposed Trip Generation: 55.05
 (Based on 11.01 Trips/1000SqFt)

27.525

Proposed Total Trip Generation: 276.65

129.461

Existing Street Frontage (Lineal Feet) 155 6

100

Required Improvement Under Existing Use 1.424045

1.21102

Proposed Street Frontage 155 7

100

Increase in Trips 167.8051

46.886

Required Improvement Length Under Proposed Use:
 (Required x Increase # of Trips) 238.9621

56.7799

Required Improve. Length GT Frontage? Y

N

Therefore FULL Street Improvements NOT Proportional to Development Impact!

Notes: (Analysis done by City Engineer and presented to Planning Commission)

- 1 Existing basement was used in calculations for general office trips
- 2 1st Floor area of 4886 included the one story building
- 3 Proposed basement area treated as specialty retail
- 4 1st floor area of 2500 assumed as specialty retail
- 5 1st floor area counted twice (once as specialty retail and once as general office)
- 6 Street frontage included entire site (submitted plans only included the two story portion of the site)
- 7 Proposed street frontage included the "second" site
- 8 Used "average" trips generated
- 9 Used "average" trips generated - and assumed specialty retail

"Planning Department Calcs"

Existing Use: General Office Building
Use Trips: 11.01 vs. 1000 sqft of Gross Floor Area on a weekday

Existing Floor Area:	Basement:	2500
	1st Floor	4886
	2nd floor	2500
	Total	9886

Existing Trip Generation 108.8449
(Based on 11.01 Trips/1000SqFt)

Proposed Use: **Specialty Retail Center**
Use Trips: 44.32 Trips/1000 SqFt of Gross
Floor Area on a Weekday

Proposed Floor Area:	Basement	0
	1st Floor	2300
	Total	2300

Proposed Trip Generation: 101.936
(Based on 44.32 Trips/1000SqFt)

General Office Building

11.01 Trips/1000 SqFt of Gross
Floor Area on a Weekday

	1st Floor	0
	2nd Floor	2300
	Total	2300

Proposed Trip Generation: 25.323
(Based on 11.01 Trips/1000SqFt)

Proposed Total Trip Generation: 127.259

Existing Street Frontage (Lineal Feet) 100

Required Improvement Under Existing Use 0.918739

Proposed Street Frontage 100

Increase in Trips 18.41414

Required Improvement Length Under Proposed Use:
(RequiredxIncrease # of Trips) 16.91779

Required Improve. Length-GT Frontage? **N**

Fraley, Robert

From: Morasch, Steve [SMorasch@SCHWABE.com]
Sent: Monday, December 03, 2007 2:32 PM
To: bill.monahan@jordanschrader.com
Cc: Fraley, Robert; Ed Parecki; Mangle, Katie
Subject: Appeal of Planning Director's Interpretation to Require Public Area Improvements Along the Frontage of 10883 SE Main Street



MAIN/MONROE/
City of Milwaukie:...



propotionality
analysis 2.xls

Bill,

I understand that the planning staff has requested additional information regarding this appeal. The notice of appeal that was filed raised the detailed issue appealed, which is a challenge to the City's proportionality analysis under Dolan. We are not challenging any of the other issues or findings the City made, such as the City's interpretation that the code could be applied in a constitutional manner by undertaking a Dolan analysis. What we are challenging is that the City's Dolan proportionality analysis is defective and that the City has not carried its burden under Dolan.

The City's request for "additional details" strikes me as being a request for the details of our client's arguments supporting the issues being appealed. There's no legal requirement for an appellant in a land use matter to detail all of its arguments in advance of the hearing. However, our client is willing to share additional information and the arguments that it has currently developed with the City without waiving its right to add to these arguments at the hearing.

Much of the information provided in this email has previously been provided to the City, so I don't think there are any surprises here. I have copied staff so they can include a copy of this email in the record for this matter, and I hereby request that this email and its attachments be made part of the record for this appeal.

I have attached a copy of my prior letter to the Planning Commission detailing arguments as to why the City's Dolan analysis is defective. I have also attached a proportionality analysis prepared by my client showing numerous errors in the City's analysis.

In addition to the arguments made in the attachments to this email, I would also refer to my oral testimony at the Planning Commission hearing and will let you know that I plan to make essentially the same arguments to City Council. What we have here is a face lift of a building. The face lift portions of the improvements would not generate any new trips, and but for the facelift portions of the improvements the proposed development would not exceed 50% of the assessed valuation, so the Public Areas Requirements would be capped at 10% under the City's code. Under these circumstances, the City cannot justify the exaction.

If you have any questions regarding any of these arguments, please let me know. Thanks.

Steve C. Morasch
Schwabe Williamson & Wyatt
700 Washington Street, Suite 701
Vancouver, WA 98660
Direct Dial: (360) 905-1433
Facsimile: (503) 796-2900

<<MAIN/MONROE/City of Milwaukie: letter to planning commission.DOC>>
<<propotionality analysis 2.xls>>

To comply with IRS regulations, we are required to inform you that this message, if it contains advice relating to federal taxes, cannot be used for the purpose of avoiding penalties that may be imposed under federal tax law. Any tax advice that is expressed in this message is limited to the tax issues addressed in this message. If advice is required that satisfies applicable IRS regulations, for a tax opinion appropriate for avoidance of federal tax law penalties, please contact a Schwabe attorney to arrange a suitable engagement for that purpose.

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

December 3, 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

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
December 3, 2007
Page 3

Thank you for your consideration of this matter.

Sincerely,

Steve C. Morasch

SCM:tag

cc: Mr. Ed Parecki





To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Ordinance Amending City Code 3.40.270

Date: December 3 for December 18, 2007

Action Requested

Adopt Ordinance (Attachment) amending City Code related to the administration of the collection of the City Motor Vehicle Fuel Tax. Ordinance clarifies that the City may contract for collection of the tax with any branch of the State Department of Transportation.

Background

City staff used an amalgamation of several other local motor vehicle fuel tax ordinances as a basis for City Ordinance 1970. Most local jurisdictions in Oregon contract with the Motor Vehicle Fuels Tax Group of the Oregon Department of Transportation (ODOT).

The section of Code that was originally adopted as part of Ordinance 1970 empowers the City Manager to contract with the Motor Vehicles Division of ODOT for collection of motor vehicle fuel taxes. However, as a result of a reorganization of ODOT that took place in the 1990s, the Motor Vehicle Fuels Tax Group is no longer within the Motor Vehicles Division. (In fact, the Motor Vehicles Division, as such, no longer exists.)¹ Therefore, the language in the proposed ordinance makes clear that the City Manager can contract with any division of ODOT to collect local fuel taxes.

¹ For the administrative history of ODOT, Council may wish to consult http://bluebook.state.or.us/state/executive/Transportation_Dept/transportation_dept_history.htm.

Concurrence

Staff consulted with the City Attorney and City Recorder on the best course of action. Both concurred that an Ordinance correcting the City Code on this point was appropriate.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

If Council were to leave the code section as currently written, the City could be forced to take on collection of the motor vehicle fuel tax itself. This would place a significant workload impact on City staff.

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ALLOW THE CITY MANAGER TO CONTRACT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE COLLECTION OF THE MILWAUKIE MOTOR VEHICLE FUEL TAX.

WHEREAS, the collection of the Milwaukie Motor Vehicle Fuel Tax is essential to the fiscal health of the Street Surface Maintenance Program; and

WHEREAS, the City Council does intend for the City Manager to contract with the Fuels Tax Group of the Oregon Department of Transportation (ODOT) for the collection of the Milwaukie Motor Vehicle Fuel Tax; and

WHEREAS, the Fuels Tax Group is under the Finance and Administration Branch of ODOT;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Section 270 (“Administration”) of the Motor Vehicle Fuel Tax Chapter (Chapter 3.40) of the Milwaukie Municipal Code shall be revised to read as follows:

The city manager or his designate is responsible for administering this chapter. In addition, the city manager may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation of certain sections of this chapter. If the Department of Transportation is chosen as an authorized agent of the city, then the modifications outlined below shall apply: (a) The fuel handler's penalty of Section 3.40.070(C) shall be reduced to \$100.00. And if the Department determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.40.070 and this section may be waived. (b) The fuel handler's monthly reporting requirements of Section 3.40.120 and 3.40.130 shall be waived.

Section 2. This ordinance shall be effective 30 days after passage.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

ATTACHMENT 1

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: A Resolution Amending the City's Public Records Request Policy to Comply with SB 554 and Repealing Resolution 17-1996
Date: December 18, 2007

Action Requested

Approve the resolution adopting reasonable measures to ensure the integrity of City records and effectiveness of its office operations, recognizing SB 554 changes, and repealing Resolution 17-1996.

Background

In 1996, the Milwaukie City Council adopted Resolution 17-1996 related to public records requests that both recognized and respected every person's right to inspect nonexempt public records (ORS 192.420) and established protective measures to maintain the integrity of public records or to prevent interference with the duties of records custodians (ORS 192.440). During the 2007 Legislature, the Oregon Newspaper Publishers Association sponsored Senate Bill 554 which modified certain requirements for public records requests. The Governor signed the Bill into law on June 19, 2007, and the changes will become effective January 1, 2008.

The proposed resolution incorporates SB 554 requirements into the City of Milwaukie's current practices. Chiefly, the Measure sets out requirements for how public bodies respond to records requests and requires that written procedures be available for those wishing to make public records requests. SB 554 requires a city to respond in writing to a public records request in as timely a manner as possible. The written response must formally acknowledge the receipt of the request and include at least one of the following ways:

1. A statement that the public body is not in possession of the records;
2. A request from the public body for clarification of the request;
3. Copies of the requested records;
4. A statement that the public body is in possession of at least some of the requested records, the amount of time the public body needs before the records will be available to the requestor, and a cost estimate for providing the records;

5. A statement that the public body is uncertain if it is in possession of the records and the amount of time the public body needs to search for the records; or
6. A statement that the public records are exempted from public disclosure under state and federal law.

Additionally, the public body is required to publish a written procedure for public records requests that includes the name or names of persons that public records requests may be submitted to, the fees associated with the request, and how those are calculated.

Adoption of the proposed resolution would update the City's current practices and bring the City of Milwaukie into compliance with recently adopted legislation.

Concurrence

The City Attorney reviewed and concurred that the proposed resolution brings Milwaukie into compliance with recent modifications to the Public Records Laws.

Fiscal Impact

None.

Work Load Impacts

None.

Attachments

1. Text of SB 554
2. Resolution 17-1996, to be repealed
3. Proposed Resolution

Senate Bill 554

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Newspaper Publishers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires public body to respond to written request for public record as soon as practicable and without undue delay. Provides that response must contain certain information.

Requires public body to make available written procedure for making public record requests.

A BILL FOR AN ACT

1
2 Relating to public records; amending ORS 147.421, 192.440 and 802.183.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 192.440 is amended to read:

5 192.440. (1) The custodian of any public record that a person has a right to inspect shall give
6 the person, *[on demand]* **upon request:**

7 (a) A *[certified]* copy of the public record if the public record is of a nature permitting copying;
8 or

9 (b) A reasonable opportunity to inspect or copy the public record.

10 **(2) A public body shall respond to a person who makes a written request for a public**
11 **record as soon as practicable and without undue delay. The response must acknowledge re-**
12 **ceipt of the request and must include one of the following:**

13 (a) A statement that the public body does not possess, or is not the custodian of, the
14 public records.

15 (b) Copies of all requested public records for which the public body does not claim an
16 exemption from disclosure under ORS 192.410 to 192.505.

17 (c) A statement that the public body is the custodian of at least some of the requested
18 public records, an estimate of the time the public body requires before the public records
19 may be inspected or copies of the records provided and an estimate of the fees that the re-
20 quester must pay under subsection (4) of this section as a condition of receiving the public
21 records.

22 (d) A statement that the public body is the custodian of at least some of the requested
23 public records and that an estimate of the time and fees for disclosure of the public records
24 will be provided by the public body within a reasonable time.

25 *[(2)]* (3) If the public record is maintained in a machine readable or electronic form, the custo-
26 dian shall provide a copy of the public record in the form requested, if available. If the public record
27 is not available in the form requested, the custodian shall make the public record available in the
28 form in which the custodian maintains the public record.

29 *[(3)(a)]* (4)(a) The public body may establish fees reasonably calculated to reimburse the public
30 body for the public body's actual cost of making public records available, including costs for sum-
31 marizing, compiling or tailoring the public records, either in organization or media, to meet the

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in boldfaced type.

1 person's request.

2 (b) The public body may include in a fee established under paragraph (a) of this subsection the
 3 cost of time spent by an attorney for the public body in reviewing the public records, redacting
 4 material from the public records or segregating the public records into exempt and nonexempt re-
 5 cords. The public body may not include in a fee established under paragraph (a) of this subsection
 6 the cost of time spent by an attorney for the public body in determining the application of the pro-
 7 visions of ORS 192.410 to 192.505.

8 (c) The public body may not establish a fee greater than \$25 under this section unless the public
 9 body first provides the requestor with a written notification of the estimated amount of the fee and
 10 the requestor confirms that the requestor wants the public body to proceed with making the public
 11 record available.

12 (d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those
 13 filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for fur-
 14 nishing copies, summaries or compilations of the public records are those established by the Secre-
 15 tary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

16 [(4)] (5) The custodian of any public record may furnish copies without charge or at a substan-
 17 tially reduced fee if the custodian determines that the waiver or reduction of fees is in the public
 18 interest because making the record available primarily benefits the general public.

19 [(5)] (6) A person who believes that there has been an unreasonable denial of a fee waiver or
 20 fee reduction may petition the Attorney General or the district attorney in the same manner as a
 21 person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The
 22 Attorney General, the district attorney and the court have the same authority in instances when a
 23 fee waiver or reduction is denied as it has when inspection of a public record is denied.

24 (7) **A public body shall annually review and make available to the public a written proce-**
 25 **cedure for making public record requests that includes:**

- 26 (a) **A person and address to which public record requests may be sent;**
- 27 (b) **The amounts of and the manner of calculating fees that the public body charges for**
 28 **responding to requests for public records; and**
- 29 (c) **Any other information that will assist a person seeking public records of the public**
 30 **body.**

31 [(6)] (8) This section does not apply to signatures of individuals submitted under ORS chapter
 32 247 for purposes of registering to vote as provided in ORS 247.973.

33 **SECTION 2.** ORS 147.421 is amended to read:

34 147.421. (1) If a public body is the custodian of any of the following information, upon the re-
 35 quest of the victim, the public body shall provide to the victim any of the following information of
 36 which it is the custodian and that is about the defendant or convicted criminal:

- 37 (a) The conviction and sentence;
- 38 (b) Criminal history;
- 39 (c) Imprisonment; and
- 40 (d) Future release from physical custody.

41 (2) A public body, in its discretion, may provide the requested information by furnishing the
 42 victim with copies of public records. The public body may charge the victim its actual cost for
 43 making public records available as provided in ORS 192.440 [(3)] (4).

44 (3) As used in this section:

- 45 (a) "Criminal history" means a description of the prior arrests, convictions and sentences of the

1 person.

2 (b) "Future release" means the projected or scheduled date of release of the person from con-
3 finement, the name and location of the correctional facility from which the person is to be released
4 and the community where the person is scheduled to reside upon release.

5 (c) "Imprisonment" means the name and location of the correctional facility in which the person
6 is confined.

7 (d) "Public body" has the meaning given that term in ORS 192.410.

8 **SECTION 3.** ORS 802.183 is amended to read:

9 802.183. (1) The Department of Transportation may establish fees reasonably calculated to re-
10 imburse it for its actual cost in making personal information available to a person or government
11 agency authorized under ORS 802.179 to obtain the information. Fees established under this sub-
12 section are subject to the provisions of ORS 192.440 [~~(3) to (5)~~] **(4) to (6)**.

13 (2) The department may adopt rules specifying conditions that must be met by a person or gov-
14 ernment agency requesting personal information under ORS 802.179. Such conditions may include
15 but need not be limited to:

16 (a) Providing reasonable assurance of the identity of the requester;

17 (b) Providing reasonable assurance of the uses to which the personal information will be put, if
18 applicable;

19 (c) Showing that the individual whose personal information is to be disclosed has given permis-
20 sion for the disclosure, if permission is required; and

21 (d) Submitting a written request for the personal information in a form prescribed by the de-
22 partment.

23

RESOLUTION NO. 17-1996

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REASONABLE MEASURES TO ENSURE THE INTEGRITY OF ITS RECORDS AND EFFECTIVENESS OF ITS OFFICE OPERATIONS.

WHEREAS, according to ORS 192.420, every person has the right to inspect any nonexempt public record of the City of Milwaukie subject to reasonable procedure, and

WHEREAS, the City of Milwaukie recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner, and

WHEREAS, the State Attorney General suggests that public bodies establish protective measures to maintain the integrity of public records or to prevent interference with the duties of the records custodians, and

WHEREAS, the State Attorney General recommends there be a process in which the public has opportunity to comment on these measures;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Milwaukie, Oregon, that:

1. The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties.
2. All requests to inspect a public record should be in writing when possible with the date, name, address, and signature of the person making the request.
3. The request form must contain, if known, a statement of sufficient specificity to determine the nature, content and probable department in which the record is located.
4. The City shall respond to all public document requests within seven days or explain why more time is needed for a full response. One such reason for delay would be an instance where staff needs to consult with the City Attorney's Office to obtain legal advice prior to releasing documents for inspection. This will be necessary when the City is presented with a physically extensive or legally complex request for disclosure of public records.

5. The City shall not create any new documents or customize any existing documents in response to a records request.
6. If the public record is maintained in machine readable or electronic form, staff shall provide copies of the public record in the form requested, if available. If the record is not available in the form requested, it shall be made available in the form in which it is maintained.
7. A person making a public record request may personally inspect the requested document during normal business hours. A City staff member should be present while any original public records are being inspected to insure protection of the documents.
8. Providing nonexempt public records is a governmental activity covered by the Americans with Disabilities Act (ADA). The City will provide an opportunity for individuals with disabilities to request an alternative form.
9. A staff member must review the requested document to make certain the record does not contain any exempt information before releasing the public record for inspection. If a document does contain exempt information, a copy, in lieu of the original, will be provided for inspection with the exempt portion blanked out.
10. Original public documents may not be taken out of the City's custody.
11. City records shall be released only under the conditions that the records are "public" records; the records are not exempt from disclosure under ORS 192.410 - 192.505.
12. The annual city fee resolution establishes charges for the cost of this service to reimburse the City for its actual cost in making public records available. Such calculations shall include costs for summarizing, compiling, or tailoring a record, either in organization or media, to meet the person's request. Actual cost includes time spent by staff in locating the requested records, review the records in order to delete exempt material, supervising the inspection of original documents, and copying the records.
 - Staff should estimate the charges for responding to a records request and require prepayment of the estimated charges before acting on the request if the amount is over \$30.00. If the actual charges are less than the prepayment, any overpayment must be promptly refunded.
 - Actual staff time may be charged regardless of whether copies are provided. This would apply to a request that is extraordinary and would significantly disrupt the regular discharge of staff person duties.
 - Copies of documents provided by a routine file search will be charged at a copy rate established by resolution of the City Council.

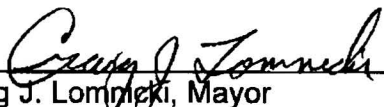
*fees
- see Book*

13. Fee Waivers or Reduction

- Copies of public records may be furnished without cost or at a substantial reduction if the department head determines the waiver is in the public interest because making the record available primarily benefits the general public.
- A person requesting a waiver of charges shall file a written request to include his/her identity, the purpose for which he/she intends to use the information, and whether he/she can demonstrate the ability to disseminate the information to the public. The department head will review the waiver request while also considering the requester's ability to pay and any financial hardship on the City that might arise from granting the waiver.
- Copies of routine materials requested by the news media will be made without charge. Any non-routine materials requested by the news media will be charged at the fee set by resolution of the City Council.
- Copies of routine materials personal to a requester will be furnished without charge except for police reports. Any non-routine materials requested will be charged at the fee set by resolution of the City Council.
- Copies of routine materials requested by any Milwaukie elected official or appointed advisory body member will be furnished without charge if the request relates to information needed in his/her official capacity. Any other materials requested will be charged at the fee set by resolution of the City Council.
- Routine materials are defined as those items already regularly produced during the city's regular course of business.

Introduced and adopted by the City Council on April 16, 1996.

By


Craig J. Lomnicki, Mayor

ATTEST:



Pat DuVal, City Recorder

APPROVED AS TO FORM: *(as amended by Council)*


O'Donnell, Rappis, Crew, Corrigan & Bachrach

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REASONABLE MEASURES TO ENSURE THE INTEGRITY OF ITS RECORDS AND EFFECTIVENESS OF ITS OFFICE OPERATIONS AND REPEALING RESOLUTION 17-1996.

WHEREAS, according to ORS 192.420, every person has the right to inspect any nonexempt public record of the City of Milwaukie subject to reasonable procedures; and

WHEREAS, the City of Milwaukie recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner; and

WHEREAS, the State Attorney General suggests that public bodies establish protective measures to maintain the integrity of public records or to prevent interference with the duties of the records custodians; and

WHEREAS, the State Attorney General recommends there be a process in which the public has an opportunity to comment on these measures;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Milwaukie, Oregon, that:

Section 1: City Council Resolution 17-1996 is repealed.

Section 2: The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties.

Section 3: All requests to inspect a public record shall be in writing when practicable with the date, name, address, and signature of the person making the request or sufficient e-mail metadata for the City to make an appropriate response.

Section 4: The request must contain, if known, a statement of sufficient specificity to determine the nature, content, and probable department in which the record is located.

Section 5: The City shall respond to a person who makes a written request for a public records as soon as practicable and without unreasonable delay. The response will acknowledge receipt of the request and include one of the following:

- a. A statement the City does not possess, or is not the custodian of the public record;
- b. A statement from the City that it needs clarification of the request;
- c. Copies of all requested public records for which the City does not claim an exemption from disclosure under ORS 192.410 to 192.505;
- d. A statement that the City is the custodian of at least some of the requested public records, the amount of time the City needs before the records will be available to the requestor, and a cost estimate for providing the records;
- e. A statement that the City is uncertain if it is in possession of the records and the amount of time the City needs to search for the records; or
- f. A statement that the public records are exempted from public disclosure under state and federal law.

Section 6: The City shall not create any new documents or customize any existing documents in response to a records request.

Section 7: If the public record is maintained in a machine readable or electronic form, the City shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the City shall make the public records available in the form in which it is maintained.

Section 8: A person making a public record request may personally inspect the requested document during normal business hours. A City staff member shall be present while any original public records are being inspected to insure protection of the documents.

Section 9: Providing nonexempt public records is a governmental activity covered by the Americans with Disabilities Act (ADA). The City will provide an opportunity for individuals with disabilities to request an alternative form.

Section 10: A staff member must review the requested document to make certain the record does not contain any exempt information before releasing the public record for inspection. If a document does contain exempt information, a copy, in lieu of the original will be provided for inspection with the exempt portion redacted. The cost of having legal assistance to redact material can be included in the fee charged.

Section 11: Original public documents may not be taken out of the City's custody.

Section 12: City records shall be released only under the conditions that the records are public and not exempt from disclosure under ORS 192.410 – 192.505.

Section 13: Fees

- a. The City will establish a fee in its annual fee resolution that is reasonably calculated to reimburse the City for the actual cost of making public records available, including locating the requested records, reviewing the records to delete exempt material, supervising a person's inspection of original documents to protect the integrity of the records, summarizing, compiling, or tailoring a record, either in organization or media, to meet the person's request. A request that is extraordinary and would significantly disrupt the regular discharge of duties will be charged whether copies are provided or not. The City may charge for search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. Copies of documents provided by a routine file search will be charged at a copy rate established in the annual fee resolution.
- b. The City may include a fee established to reimburse for the costs of time spent by the city attorney in reviewing the public records, redacting materials from the public record into exempt and nonexempt records. The City fee may also include the cost of time spent by an attorney for the City in determining the application of the provisions of ORS 192.410 - 192.505.
- c. The City may not establish a fee greater than \$25 unless the requestor is provided with written notification of the estimated amount of the fee and the requestor confirms that he/she wants the City to proceed with making the records available.
- d. Prepayment shall be required if the amount of the request is greater than \$25. If the actual charges are less than the prepayment, any overpayment shall be promptly refunded.

Section 14: Fee Waivers or Reductions

- a. Copies of public records may be furnished without cost or at a substantial reduction if the City Records Officer determines the waiver is in the public interest because making the record available primarily benefits the general public.

- b. The department head will review the waiver or reduction request while also considering the requestor's ability to pay and any financial hardship on the City that might arise from granting the waiver. A three-part analysis will be used to evaluate fee waiver or reduction requests to determine (a) whether a waiver or reduction is prohibited by law, (b) whether the waiver meets the public interest test because making the record available primarily benefits the general public, and (c) whether to grant a fee waiver or reduction.
- c. Copies of routine materials personal to a requestor will be furnished without charge except for police reports. Any non-routine materials requested will be charged at the fee set by City Council resolution.
- d. Copies of routine materials requested by any Milwaukee elected official, appointed advisory board, or representative of a recognized neighborhood association will be furnished without charge if the request relates to information needed to act in one's official capacity. Any other materials requested will be charged at the fee set by City Council resolution.
- e. Routine materials are defined as those items already regularly produced.
- f. A person who believes there has been an unreasonable denial of a fee waiver or fee reduction may petition the district attorney.
- g. The City shall annually review and make available to the public a written procedure for making public records requests that includes:
 - i. A person and address to which public record requests may be sent;
 - ii. The amounts of and the manner of calculating fees that the City of Milwaukee charges for responding to requests for public records; and
 - iii. Any other information that will assist a person seeking public records of the City of Milwaukee.

Section 14: The City will annually review and make available to the public a written procedure for making public records requests that includes:

- a. A person and address to which public records requests may be sent;
- b. The amounts and the manner of calculating fees that the City charges for responding to requests; and
- c. Any other information that will assist a person seeking public records of the City.

Section 15: This resolution is effective on January 1, 2008

Introduced and adopted by the City Council on December 18, 2007.

James Bernard, Mayor

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

ATTEST:

Pat DuVal, City Recorder

City Attorney

Riverfront Board Meeting
Minutes
October 9, 2007

Attendees: Wall, Green, Martin, St.Clair, Seagler, Klein, Stacey
Staff: Herrigel
Guests: Ed Zumwalt

Minutes: Stacey motioned to approve August meeting minutes and Seagler seconded. Motion passed 5-0-2. Abstainers were absent from the August meeting.

Status of Town Center Project Review

Herrigel said that no actions had been taken since the Board's last meeting on land use approvals for the Town Center (also called Olson Point). She said that although Planning Commission had discussed the types of code changes that MIGHT be necessary at a work session in August, to date there has been no actual plan submittal by the project. Herrigel said that she would keep the board apprised of any land use applications that are made.

Comments by the Board:

Seagler:

- How far east would the four story designation go?
- Worried there is going to be a wall along McLoughlin Blvd
- We want the downtown core to be inviting - if we have a wall along McLoughlin we won't achieve that
- Wish we could stagger the stories so they step back from the river side of the development
- Seems appropriate for the Riverfront Board to fight to protect the connection between the river and downtown
- I strongly oppose changing the code at all

Green:

- To me, it's not about 4 verses 5 stories at all, but rather how the building is staggered. It depends on how the building is designed and "stepped"

Seagler:

- I did like this design option compared to the others considered for this site

Green:

- The downtown plan requires either public funding or another method for driving development. There doesn't seem to be any movement to develop a downtown plaza
- There's not really a plan that Planning Commission goes by for how things should develop and where

St Clair:

- Maybe we need a plan like this....

Seagler:

- Please keep us posted (on the Town Center project) and don't let anything slip by us without us knowing

Project Updates

Riverfront Design: Herrigel reported that she had met with ODOT that week to discuss the change in access required for the Riverfront Park design. She noted that while ODOT staff is cooperative, this access issue remains difficult due to lack of a warrant for a light at the new intersection and the fact that the County owns the property that the new access would use.

Johnson Creek Watershed Council Auction: The Auction was to be at 6 pm on Oct 11.

Light Rail SDEIS process: Herrigel said the SDEIS was underway and only the Tillamook alignments would be evaluated. She noted that there would be Safety and Security Task Force meetings, Citizen Advisory Committee meetings and other open houses during the SDEIS process.

Klein Point Grant: The Johnson Creek Watershed Council was awarded a \$45,000 grant for the design and engineering of the mouth of Johnson Creek (including the south bank – Klein Point). Herrigel will work with Council staff to develop a scope and get an RFP out for this project.

Sternwheeler Rose: Herrigel reported that talks with the Paul Simonis continued regarding the use of the Cash Spot site and mooring of the Sternwheeler Rose in Milwaukie Bay. She said she'd provided Simonis with a list of issues he would need to address inside the building, in the parking lot and in the bay before moving forward with a lease. She said she had a draft of a lease completed and would convey it to Simonis shortly.

Seagler and St Clair expressed support for the Sternwheeler coming to Milwaukie and hoped that the City would do what they could to accommodate the company. Herrigel noted that while the City is supportive of this project, staff has some concerns about the Cash Spot site use as well as permitting issues for mooring the boat in the Willamette. Wall added that any agreement the City signs should contain a clause regarding the Sternwheeler company cooperating with the City's development of the Riverfront.

Meeting Date and Time

Green said that he may have a recurring conflict with the second Tuesday of the month if his firm won a contract they'd bid on recently. He asked if the group would consider permanently rescheduling the Riverfront Board to another day each month if they did win the contract. The group agreed that the 4th Tuesday of the month would work and asked that Herrigel let them know if this switch was to be made.

Klein motioned to adjourn, St. Clair seconded and the motion passed 7-0.

Park & Recreation Board

PARB

Tuesday, October 23, 2007

7:30AM

City Hall – Conference Room

10722 SE Main Street

Minutes

Type of meeting: Regular

Attendees: Mart Hughes, Sherri Dow, Kate MacCready, Ray Harris, Val Hubbard, Bob Cooper

Staff: JoAnn Herrigel, Joan Young, Kevin Cayson

Minutes

September minutes approved 6-0 with edits.

New members: Herrigel noted that the Board was down one member and anyone interested should be referred to her. Val Hubbard suggested Peg from North Main (mntarbox@comcast.net)

Harris: Lewelling NDA members concerned about Lewelling Community Park and high bushes. Herrigel said she was to look at the Park with the Landscapers the next week and they would try to cut back the bushes.

Hubbard asked if the City ever had internships. Herrigel said they did and any referrals would happily be accepted.

City Updates

- Ardenwald acquisition: Herrigel said that the City is trying to acquire two properties in the Ardenwald neighborhood and a purchase and sale agreement has been drawn up.
- Spring Park: Staff is working on a parking design for the park and then a meeting with the landscape design firm to integrate the parking will be held.
- Homewood: staff is working with Sarah Smith from the Hector Campbell neighborhood to identify all changes needed to the park design before issuing an RFP for installation of the mini park in the southeast corner of Homewood Park.
- Herrigel said she had met with District staff once regarding the IGA update. She said the District seemed open to most of the proposed changes and that District staff had visited the various parks the City would like maintained. Herrigel noted

that pending the conclusion of these negotiations that a landscape company would be maintaining Lewelling and the Riverfront area along McLoughlin Blvd. Other parks such as Homewood would be maintained by corrections crews or other contractors.

- This year' Solstice event at the Riverfront will be December 14 at 5 pm.

District Update

- Dan Zinzer celebrating his 30th year with the County
- Recruiting for Planner 2, Rec Supervisor and Natural Resource Person
- North Clackamas Park North side plan meeting to be held Oct 24 at 6 pm.
- Statewide Oregon Parks Association awarded North Clackamas Park ballfield project with a "Best Design" award
- A new climbing wall has been installed at the aquatics park (20 feet tall), that uses a belaying system and can hold two people at a time
- Cayson noted that it's leaf season and raking and blowing has taken a lot of time lately
- Approval for redoing the horse arena has been granted but as soon as the rock was in it started raining and work had to halt.
- SDCs go to the BCC for second reading this week
- BCC gave a plaque to the District regarding the ballfield. It will be installed at the park soon
- Young noted that the Milwaukie Rotary will do yard work for low income folks – any referrals should be sent to Joan
- Hubbard noted that the Lion's Club helped out with the recent downtown cleanup and is interested in continuing this type of event

Herrigel noted that the December meeting falls Christmas Day. Dow made a motion to cancel the December PARB meeting. MacCready seconded and the motion passed 6-0.