

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, January 12, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Lisa Batey
Teresa Bresaw
Chris Wilson
Scott Churchill (arrived during CSU-09-11)

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelper, Associate Planner
Li Alligood, Assistant Planner
Brad Albert, Civil Engineer
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Dick Newman, Vice Chair
Paulette Qutub

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:35 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 November 11, 2009

Commissioner Batey noted that the agenda should note the November 10, 2009 minutes.

Commissioner Batey moved to approve the minutes for November 10, 2009 as written. Commissioner Wilson seconded the motion, which passed 3 to 0 to 1 with Commissioner Bresaw abstaining.

3.0 Information Items—None

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

5.0 Public Hearings

5.1 Summary: CSU major modification of NCSD administrative offices.
Hearing will be continued to February 9, 2010.
Applicant/Owner: Garry Kryszak/North Clackamas School District
Address: 4444 SE Lake Rd
File: CSU-09-11 *continued from 11/24/09*
Staff Person: Ryan Marquardt

Chair Klein called the public hearing for CSU-09-11 to order at 6:39 p.m.

Commissioner Churchill arrived at this time.

Katie Mangle, Planning Director, stated that the School District requested the hearing be continued to February 9, 2010, to allow time to address some of the issues raised by the Commission and the neighborhood. The Applicant had submitted preliminary revised plans and an additional waiver to extend the 120-day clock. Staff supported the request for additional time.

Commissioner Bresaw moved to continue CSU-09-11 to February 9, 2010. Commissioner Churchill seconded the motion, which passed unanimously.

5.2 Summary: Zone change from R10 to R7
Applicant/Owner: Tim Riley/Clunas Funding Group, Inc.
Address: SE Brae & SE Bowman
File: ZC-09-01 *continued from 11/24/09*
Staff Person: Li Alligood

Chair Klein reopened the public hearing for ZC-09-01 to order and read the conduct of major quasi-judicial hearing format into the record.

Li Alligood, Assistant Planner, cited the applicable approval criteria of the Milwaukie Municipal Code as found on 5.2 Page 4 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

Chair Klein asked if any Commissioners had a conflict of interest or any ex parte contacts to declare.

All Commissioners had visited the site, but no Commissioner declared a conflict of interest, bias, or conclusion from a site visit. No Commissioner's participation was challenged by any member of the audience, nor was the jurisdiction of the Planning Commission to hear the application.

Mr. Monahan suggested that this was the appropriate time for Commissioner Wilson to address how he had prepared for the hearing since he did not attend the prior meeting, where the vote was tied 2 to 2. In order to participate, it was important for all parties to hear that Commissioner Wilson had availed himself of the opportunity to become familiar with the application materials, staff report, and public input received to date.

Commissioner Wilson stated that he had familiarized himself with the issue utilizing the meeting packet and rough draft of the meeting minutes, as well as visiting the site, listening to the audio recording of the hearing, and speaking with a member of the Planning staff.

Chair Klein asked if Commissioner Wilson had questions for the Applicant regarding the materials he had studied so far.

Commissioner Wilson responded "No, not at this time." He noted that when visiting the site, he did not notice any inconsistencies with the materials he had reviewed.

Debbie Zecic, 13076 SE Pennywood Ct, asked about procedure, stating that many of the neighbors were not present tonight because they were told that no further testimony would be accepted. There would simply be a straight vote. She asked if more information was going to be provided.

Mr. Monahan responded that the direction at the end of the prior meeting was that the application was continued to the current meeting for deliberations. However, if new information had been submitted, it could be discussed and the Commission could determine if there was reason to continue the meeting to allow further opportunity for public comments.

Commissioner Batey recalled that at the prior meeting, it was stated that there was potential for new information, and if so, the Applicant would be able to speak and public comment would be allowed.

- **Ms. Mangle** said it was the Commission's decision.

Chair Klein clarified that if the application was reopened to public testimony, only new information brought forward would be discussed.

Ms. Zecic understood that if anything new were brought forward this evening, the hearing would be a continued to some future date.

Chair Klein answered "No," a decision would most likely be reached this evening.

Ms. Zecic said she did not object to a decision tonight, but did object because both she and the person with her had both understood the same thing; that it was specifically stated that there would be a straight vote and no new information.

Chair Klein replied unless new information was brought forward, and if so, the Commission had to allow that new information to come before the Applicant.

Commissioner Churchill recalled the discussion had indicated that public testimony would be closed with deliberation allowed only among the Commissioners. However, new information was presented, which might warrant more public input.

Mr. Monahan clarified that if new evidence was presented that required the opportunity for public review and a continuance was requested, then the Commission was bound by statute to allow that continuance.

Ms. Alligood reviewed the staff report via PowerPoint, with the following additional comments:

- The Applicant submitted a supplemental narrative that provided visual and value comparisons that clarified some concerns presented by the Commission and residents about the type of development that would be seen on an R7 versus R10 lot. However, not all the concerns raised in the November 24, 2009, hearing were addressed.
- Additional background information about the site was distributed to the Commission before the hearing. Commissioner Wilson had requested additional information about the Lake Road Neighborhood District Association (NDA) exploring the option of a park on the site years ago. The yellow, 5-page handout described the meeting where the City discussed the possibility of a park with the Oak Lodge Water District.
- The supplemental material did not change the staff analysis as the proposal continued to meet criteria for the zone change. Staff recommended that the Planning Commission recommend approval of the zone change application to City Council.
- She was not certain the supplemental narrative or yellow handout would be considered new information. The Applicant's narrative clarified information already included in the application and staff report. The new information about the Oak Lodge Water District meeting was from

2002, but was not previously included in the record. The supplemental narrative was included in the staff report published online, but the Water District information was not.

Chair Klein asked if the additional information would justify opening up the public testimony portion of the hearing.

Commissioner Bresaw did not believe the information warranted opening the hearing for additional public testimony.

Commissioner Churchill stated he was not clear where the supplemental information came from when he received the packet, so he appreciated learning that it came from the Applicant. He believed the supplemental information was somewhat deceptive and did not really address the issues.

- He cited the image on 5.2S Page 7 that said, "Most likely Construction with R10 Zoning" versus an R7 Zone shown on 5.2S Page 6. The photographs did not represent the conditions, even massed at that site. The information was new, but did not answer questions regarding the scale and mass of the properties.
- Citing Item D on 5.2 Page 3 of the packet, he agreed that an additional home on the subject site would impact properties to the south, but the entire neighborhood would be impacted as well. The mass and scale proposed on the lots had to be considered.
- Noting staff's comment under Item D stating, "the visual impact of an additional home on the subject site would be insignificant," he said he disagreed with that statement.

Chair Klein interjected and asked if the new information was important enough to open to public testimony, knowing that only the new photographs and Oak Lodge Water District notes could be addressed. The information was worthy for discussion, but the Commission had to determine if the discussion should be opened to the public.

Commissioner Churchill said the new information presented a massing that was appropriate to understand the site. Clarification would be something else, and he believed the public should have the opportunity to comment.

Commissioner Batey stated that Item D addressed one of the issues being debated at the last meeting. She did not believe the supplemental information from the Applicant was useful. The information regarding Oak Lodge Water District had more influence on her, and she considered it to be new information but not a significant amount.

Chair Klein stated he was inclined to allow public testimony only on topics within the yellow handout and the supplement to the staff report.

Mr. Monahan suggested taking a few minutes to allow the public to review the new documents, and then have the Applicant explain the significance of the new information before allowing public comment.

The Commission took a brief recess and reconvened at 7:05 p.m.

Chair Klein called for the Applicant's testimony.

Tim Riley, Clunas Funding Group, 201 B Ave, Suite 270, Lake Oswego, OR, explained that the supplemental material was submitted to address public concerns regarding the visual impact

on the neighborhood of 2 versus 3 homes on the site. For visual comparison, photographs were presented of existing properties on R7 and R10 parcels in the same neighborhood with similar frontage dimensions as the subject site. The idea was to imagine placing the homes pictured on the vacant subject site.

- The R7 photo showed 3 homes on Pennywood Dr at an angle because all 3 would not fit if the picture were taken directly in front. The Brae St photo was taken just south of the site to offer a visual comparison of an R10 parcel.
- As staff mentioned at the previous hearing, the main difference between R7 and R10 was that the houses were closer together. The Applicant believed the photos provided the best way to see both zones side by side.
- The value of the proposed homes was also a big discussion at the prior hearing. The Applicant planned to construct houses that fit in the neighborhood, similar to those pictured. The visual impact comparison provided the best representation of how the Applicant believed things would look, and was the reason for the supplemental material.
- The last page of the supplement noted bullet points that had already been covered, essentially stating the visual impact would not be significant.

Commissioner Bresaw asked for the lot dimensions of the 3 lots pictured from the Pennywood subdivision and the proposed lots for comparison.

- **Mr. Riley** responded that the total width of the 3 Pennywood lots was approximately 240 ft with each lot being approximately 75-ft to 80-ft wide. The R10 lots were roughly 220 ft to 240 ft wide. The subject site was 251-ft wide, but the required improvements had to be accommodated, which would narrow the width, resulting in proposed lots of approximately 70-ft to 80-ft wide by 100-ft deep.

Commissioner Churchill:

- Noted the view of the Pennywood properties was looking northwest, and the total lot corners were located way past the photo's edges.
 - **Mr. Riley** replied that the edge of the far lot was not much further than the building, though it was outside the picture.
- Stated the photograph on 5.2 Page 17 appeared deceptive and did not actually address density. The photograph was taken to make the R7 and R10 densities appear similar, but they were not. The lot line differences between the Brae St and Pennywood properties were radically different. A better representation showing where the approximate mass of the buildings would fall on the property would indicate quite a difference in density.
 - **Chair Klein** understood the concern about the photo, but believed that the comparison regarded frontages of 240 ft versus 240 ft, which the project was confined to.
- Clarified his concern was that when the right-of-way adjustments were taken out and the parcel subdivided into the 3 lots, the site would be even more dense, which was not shown in the photos. As noted in Item D, he believed there would be impact to houses to the south.
- Asked why the Applicant did not show the frontage of the R7 property lines. The R10 photograph showed the frontages as well as additional property to the right.
 - **Mr. Riley** explained he chose the best angle he believed would be consistent with each. The angle needed to capture the whole Pennywood frontage would have been so severe, and the middle house or how close the homes were would probably not have been seen. In the R10 photograph, the 2 houses were about as close together as the 2 houses in the R7 photograph.
- Stated that it did not appear so from the aerial photograph, which was his challenge.

Chair Klein called for public testimony in favor of, opposed, and neutral to the application with regard to the new information presented.

Debbie Zecic agreed that the pictures were entirely deceptive. The Applicant neglected to photograph the lot on the corner that was quite large. Various sizes of lots existed in the neighborhood.

- She reiterated her procedural concern, again noting that the Commission indicated at the last meeting that they would only vote tonight and there would be no further public testimony. That was why more people did not attend, especially her neighbors.
- She did not know if what was stated would sway the Commission's decision, but she was troubled by the procedure.
- The minutes indicated it was a clear cut case, that one additional Commissioner was needed to read the minutes and break the tie vote. Testimony was only being given by herself and the developer, and the public was being short-changed if they shared the same understanding.

Chair Klein clarified that generally if new information was brought forward, then that portion was opened to public testimony.

Ms. Mangle offered to find the draft copy of the minutes from the prior meeting.

Mr. Monahan believed it was worthwhile to review the minutes.

The Commission took a brief recess and reconvened at 7:23 p.m.

Chair Klein stated that in the November 24, 2009, meeting minutes, Mr. Monahan did say that no public testimony would be taken at the next meeting.

Mr. Monahan explained that some of the new information was new evidence, and thus he took Ms. Zecic's comments as a request for an opportunity for public comment on that new evidence, including people who were not present tonight.

- ORS 197,763 Section 6c stated that in a continuance hearing, if new evidence was submitted, then there is the opportunity for public response, and during that period, the record was left open.
- He recommended the Commission hold the record open for written submission of comments on the new information for 7 days. At the end of that time, any new written information should be provided to the Applicant. At the next meeting, the first order of business should be to provide the Applicant the opportunity to rebut any new written information received during that 7-day period, followed by deliberations by the Commission.
- During the Applicant's rebuttal to new written comments, if any new evidence was submitted, it would have to be addressed. He cautioned the Applicant to avoid adding new evidence. If no written comments were received in the next 7 days, there was no need for rebuttal.
- Applicants always have the right to bring in new evidence, but run the risk of running afoul of the Commission being given the opportunity to make a decision. He also recommended that the Applicant be allowed to comment on anything stated by Ms. Zecic.

Ms. Mangle added that if the Commission proceeded as discussed, staff would contact all the neighbors who attended the last hearing to be sure they were aware of the new information and continued hearing.

Commissioner Batey stated that it was also contingent on all the Commissioners present being able to attend the next meeting.

Mr. Monahan agreed the scheduling of the continuation should be for a time when the 5 Commissioners present could attend.

Chair Klein confirmed that all the Commissioners present could attend the next meeting in 2 weeks. He confirmed the Applicant did not want to give rebuttal to comments received tonight.

Mr. Monahan clarified that the only rebuttal allowed at the next meeting would be to the written public comments received by 5:00 p.m. on Tuesday, January 19, 2010. There would be no opportunity for public comment at the next meeting, providing the Applicant presented no new evidence.

- He reminded the Commission that it was a two-step process. If anyone felt that everything was not discussed today and the application was approved and sent to the City Council, there would be additional opportunity then for comments.

Pam Michael, 13181 SE Pennywood Ct, asked when staff would mail notification to the public to allow enough time for written comment to be received within 7 days from tonight. She was also concerned about the surrounding neighborhood being notified, not just those who testified at prior hearings.

Ms. Mangle replied that staff would use the best contact information available and hand deliver, call, or email neighbors. The public in attendance was the best conduit to get the word out to the neighborhood.

- She clarified the testimony was limited to the two pieces of new information presented tonight. The hearing would not be started all over again.

Ms. Michael suggested it might be advisable to notify the entire neighborhood, because they may not have been able to attend the previous meeting.

Chair Klein agreed the information was public, but two meetings had already been held. Anyone with concerns that was unable to attend one of the two meetings at this point, needed to get written testimony sent in on time.

Commissioner Batey added that anyone not able to attend the initial meeting could still have submitted written comment and staff would have their contact information.

Ms. Mangle said that staff would also post a sign on the site with updated information.

Ms. Michael said the sign was down for a few days and then went up again.

Commissioner Churchill asked if Ms. Michael was asking for a list of neighbors within the 300-ft radius that she could contact instead of staff. It sounded as though she preferred a re-notice for the 300-ft radius.

- **Ms. Michael** asked that anyone affected by the application should be notified.
- **Ms. Mangle** confirmed the list of notification was public information, so Ms. Michael could pick up a list and notify neighbors. Also, information would be provided to the Lake

Road NDA for their meeting tomorrow night. Staff would use the information and time to make the best effort in contacting the public. She was open to further suggestions.

- She confirmed with Ms. Michael if staff could cross her off the notification list since she was present at this meeting.

Mr. Monahan clarified that the Commission should formally continue to a date certain of Tuesday, January 26, 2010, after leaving the record open until 5:00 p.m. on Tuesday, January 19, 2010, for written comments only about the new evidence submitted by the Applicant as part of the staff report tonight.

Commissioner Batey moved to continue ZC-09-01, TFR-09-04, to a date certain of January 26, 2010, leaving the record open until 5:00 p.m. on January 19, 2010, only for written comments restricted to the two items of new evidence submitted tonight. Commissioner Churchill seconded the motion, which passed unanimously.

5.3 Summary: Minor Land Partition
Applicant/Owner: Planning Resources, Inc./Garry Suazo
Address: 4033 SE Howe St.
File: MLP-08-02, TPR-08-03, VR-08-01
Staff Person: Brett Kelper

Chair Klein called the public hearing for MLP-08-02, TPR-08-03, and VR-08-01 to order at 7:36 p.m. and read the minor quasi-judicial hearing format into the record.

Brett Kelper, Associate Planner, noted the applicable approval criteria of the Milwaukie Municipal Code as found on 5.3 Pages 7 and 8 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

Chair Klein asked if any Commissioners had a conflict of interest or any ex parte contacts to declare.

All Commissioners had visited the site, but no Commissioner declared a conflict of interest, bias, or conclusion from a site visit.

Commissioner Wilson declared that he had talked with the owner during his site visit, which was some time ago. He could not remember his conversation with the owner.

Ms. Mangle advised that if Commissioner Wilson recalled something specific about his conversation with the owner during the meeting, he could share the information at that time.

No Commissioner's participation was challenged by any member of the audience, nor was the jurisdiction of the Planning Commission to hear the application. There were no other ex parte contacts to declare.

Mr. Kelper presented the staff report via PowerPoint, noting that while such applications were normally done as a Type II administrative review, staff brought this application before the Planning Commission because of the variances requested.

- He clarified that the 18-ft access was a proposed easement for access to all 3 parcels off 40th Ave rather than Howe St, though that would not necessarily occur. The existing house was currently accessed via Howe St.

- The carport or detached garage pictured in one drawing located behind the house on Parcel 1 would provide the required covered parking, and would be accessible by Howe St.

Chair Klein noted that access for the 3 lots was not pertinent to subdivision application, but would be reviewed by staff at a later date.

- **Mr. Kelper** agreed, adding that access details for the lots would be worked out during the building permit process for Parcels 2 and 3. Parcel 1 would need to establish a clear access as well.

Commissioner Churchill replied that access did help clarify the impact of the public area improvements. He was trying to understand the special public improvements on 40th Ave. The one access required under the application seemed reasonable.

Chair Klein:

- Asked if there was an overlay that showed the location of the trees that could be reviewed to be sure the access area would not damage the trees.
 - **Mr. Kelper** replied he did not have a slide showing both the trees' location and proposed access. He might be able to show where the proposed access would be located over the proposed compound shared lot line.
- Reiterated that the access was proposed, so was not pertinent to tonight's decision on the subdivision. There might be 3 accessways to the site, but that would be addressed at a later date.

Commissioner Churchill responded that 3 accessways would dramatically change his decision regarding public area improvements, though technically it was part of the site development plan application.

Mr. Kelper concluded the staff report, noting that the 120-day clock had already been extended to a full year, with a deadline of March 3, 2010. Although the timeline was tight, he believed there was time for a continuance to 2 weeks from tonight to allow time for an appeal to the City Council.

Staff responded to questions and comments from the Commission as follows:

- **Mr. Kelper** stated that one condition assured the preservation of the trees in the right-of-way as much as practical when construction of the sidewalks began. A tree preservation restriction of sorts would be placed on the plat requiring the homeowner to submit a report to the Planning Director for review before anything could be done to the trees. As the property changed hands, the restriction would continue to protect the trees.
 - He also clarified that the access easement was on Parcels 2 and 3. The proposed new property line between Parcels 2 and 3 was indicated on the map as a solid jogging line. The Code had standards for allowing a maximum amount of jog and the proposal met it for both parcels. Part of the easement was on Parcel 2 and the square footage indicated the total for Parcel 2. The easement did not come into play when determining the lot area because it was like an overlay.
 - He confirmed that if Parcel 1 took its primary access from 40th Ave, then it would function a bit like a flag lot. Currently, the house fronted Howe St.
- **Brad Albert, Civil Engineer**, confirmed that minimum spacing standards applied between driveways, but the proposal was for a shared access for all 3 parcels, which seemed to make the most sense. Technically, Parcel 2 could continue to take access from Howe St, but access for Parcel 3 was very limited, due to stormwater drainage, and would probably

have to share access with Parcel 1.

- While having a shared access for all 3 sites would reduce stormwater runoff due to the reduced square footage of paving, the real positive was that the ingress/egress for 3 sites would be at just one conflict point. While each parcel could have its own access on either Howe St or 40th Ave, it was beneficial to have one access point, especially with the view corridor created by the trees.
- There was no particular advantage in having access to the parcels off Howe St rather than 40th Ave because both were classified as local streets at this intersection. Howe St was a collector starting a couple of blocks away and from the south; 40th Ave was labeled as a neighborhood route. The Street Classification slide was shown to aid in understanding. If Howe St was a higher class street at the site, the Applicant would be required to take access off 40th Ave, but at this point the choice was the Applicant's.
- **Ms. Mangle** noted that a site plan showing the tree locations, access easement, and the lots was included in the Applicant's material as Attachment 3.b.iii Sheet 3/3.
- **Mr. Kelper** confirmed that one tree would have to be removed to allow for paving. The other trees could probably be saved.
 - He understood concerns about the Applicant changing the orientation of the existing house and clarified that staff was evaluating Parcel 1 for width and depth as it faced Howe St. He utilized the displayed maps to indicate the required front, rear, and side yard setbacks, and where a 6-ft high fence would be allowed.
 - He noted that additional correspondence had been received by staff and distributed an email from Dinnelle Wright, who lived a couple of lots south at 9731 40th Ave. She raised concerns about the variance requests, including some confusion about what was actually being requested. He had responded to her comments via email, and confirmed that she agreed with staff's recommendations.

Chair Klein called for the Applicant's testimony.

Dan Jung, Planning Resources, Inc, 17690 Boones Ferry Rd, Lake Oswego, OR, thanked staff for their help during the application process.

- Overall, the Applicant and property owner agreed with staff's findings and conditions of approval, except that they requested that the Planning Commission consider the requested variance for delaying the improvements on SE Howe St. As a corner property, dedication and improvements were required on 2 streets.
 - Because the current width of 40th Ave was 20 ft, the improvements would be very minimal and pertinent, providing an immediate benefit, especially the asphalt in that location.
 - However, SE Howe St was a uniform 40-ft width and the improvements were also uniform for the most part. It was functioning for vehicles. Putting in additional asphalt and sidewalk improvements along the Applicant's frontage now did not appear to really benefit anyone, because no other parcels on the street would have a sidewalk.
 - The Applicant proposed to sign and record a waiver of non-remonstrance for a future Local Improvement District (LID) instead of completing improvements now.
- He clarified that the access easement was shown to give the property owner options for future development. He was hesitant to say that they wanted to condition the access easement because 2 off-street parking spaces were required. With the one access, getting 2 parking spaces to each lot might be difficult, but he was not sure. Again, the access easement was just a consideration of future development. While recording a plat, it seemed a good time to also record the easement.

There were no questions for the Applicant.

Chair Klein called for public testimony.

Steve Males, 4034 SE Howe St, Milwaukie, noted his property's location on the displayed map across the street from the subject property where he has lived for 22 years. He asked that the trees be saved. He heard the comments about the tree on the corner where the sidewalk would be located and did not believe visibility would be an issue if the speed limit was followed.

- He supported improvements that made sense, but did not want sidewalks on Howe St because the proposed sidewalk would dead-end into a fence or tree.
- He asked if the Commissioners had noticed the corner of 40th Ave and Olsen St during their site visit. Houses on 40th Ave were too close to the street to allow for widening.
- The City needed a game plan [about the sidewalk's continuation] before having a partial sidewalk installed. He indicated on the displayed map a corner lot on 40th Ave that had no room for a sidewalk. Sidewalk corners on Olsen St did not even closely meet where sidewalks would extend down 40th Ave heading north. It did not seem feasible to require someone to pay that much money for all that work until a game plan existed. The improvements should be done all at one time.
- He added he did not want sidewalks going out into the street to avoid trees, like the one on Olsen St that caused traffic problems in the snow.
- He had talked with the property owner several times who shared with him that he did not want to get out of doing anything, but he did not want to do foolish things or do something twice.
- He believed the application was a good plan and he hoped it would go forward. He noted the Applicant had no room for a sidewalk at the end house on Howe St. The sidewalk would serve no purpose.

Chair Klein:

- Noted that a sidewalk existed on that corner where it came down 42nd Ave, but not down Howe St.
 - **Mr. Males** asked if there was a definite plan for the street. The picture showing 40th Ave toward Olsen St was very deceiving because the street narrowed and 2 vehicles could not pass there.
- Explained that more right-of-way would be available than currently existed. He understood not wanting to put the car before the horse. However, good street design standards had already been set to ensure the desired design was achieved as development occurs. Essentially, a master plan was in place about what would happen on a particular street, although when those other improvements would happen was another issue.
 - **Mr. Males** responded that to run sidewalks the way the City wanted meant that some homes would have to wait for sidewalks until they were torn down and rebuilt.
- Agreed that was an unfortunate reality sometimes.
 - **Mr. Males** reiterated that doing the sidewalks like that did not make sense. He drove along that street each day and could see what would happen.
- Reiterated that he understood Mr. Males' concern.

The photograph looking east down Howe St was displayed. No view looking the other direction was available.

Chair Klein called for any additional comments from staff.

Mr. Albert verified that the City did want incremental improvements to occur with development, especially on a corner lot, which would start whatever improvements were needed.

- He believed that with the start of the subject project, the City had a game plan for 40th Ave heading north and east on Howe St. The City had always required that the applicant or developer do the improvements at the time of development, but a non-remonstrance agreement put the improvements on the future homeowners of the partition.

Chair Klein called for the Applicant's rebuttal or additional comments, which was declined. He closed the public testimony portion for MLP-08-02, TPR-08-03, and VR-08-01 at 8:25 p.m.

Planning Commission Discussion

Commissioner Wilson:

- Opposed the tree protection restrictions. He did not know if it increased or decreased the value of a property, which was not the issue, but it did establish more rules and regulations that were not desirable. He asked if the tree protection restrictions would go into effect if there was a delay.
 - **Ms. Mangle** responded that once in place, the tree protection would not be permanent, but would impose the same kind of restrictions as if the trees were in the right-of-way. The homeowner would have to obtain City permission through a right-of-way tree permit to remove the trees if they were diseased or had other problems.
- Understood about the trees in the right-of-way, but was concerned about restrictions involving the other trees.
 - **Ms. Mangle** replied the restrictions regarded the trees that would be in the right-of-way under normal circumstances, but would remain still on private property if the variance was approved.
 - **Chair Klein** clarified that the right-of-way would include the trees now, but if the variance moved the right-of-way from 25 ft to 20 ft, the trees would be outside of the right-of-way and not subject to a review if the homeowner wanted to remove them at a later date. He asked staff for input on Ardenwald and the existing tree ordinance.
 - **Ms. Mangle** explained that the City's tree ordinance only protected trees in the right-of-way or water quality resource areas, but not on private property. The main comments submitted from the Ardenwald NDA regarded protecting the trees.
- Stated that private property is private property, and though the right-of-way was public, putting restrictions on private property was not fair.
- Favored delaying the improvements on Howe St. He agreed it did not make sense because the sidewalk would end at an existing fence.

Commissioner Batey disagreed on both counts. The incremental improvements issue had come up often and was debated hotly in her neighborhood. She was sensitive to concerns about placement of the sidewalks in areas where houses were built 5 ft from the right-of-way, which was a recurring issue.

- She was not concerned about a sidewalk ending at a fence, because through the years the City had seen infill and sidewalks connected. Both 40th Ave and 42nd Ave did have developed sidewalk systems, so Howe St was a natural connector that should be encouraged. This was heard in comments from the NDA and from Ms. Wright. She supported staff's recommendations to not delay the improvements on Howe St.
- The recommendations about the trees were a fair compromise given that the 5 extra feet were not being required for the right-of-way.

Commissioner Bresaw also favored staff's recommendations. It was worthwhile to put a sidewalk on Howe St because the property was 145 ft wide, and people would use it.

- Protecting trees was very important, though she would not want very tall trees next to her house due to safety issues. However, the trees had been there a long time and would hopefully remain longer. If there was a safety issue, the homeowner would be allowed to remove them. She planned to vote in favor of the application.

Commissioner Churchill stated that the site was very unique in Milwaukie and added character. He was reminded of many challenged arterials or even local streets in Mill Valley, Larkspur, and Corte Madera, CA, that had a lot of character.

- The trees added the ultimate traffic-calming device and interesting character to the street. Without them, the street would appear like any other average street in suburban USA, so he liked staff's plan to work around the existing trees.
- He was torn about Howe St after listening to the Applicant and neighbors. Connecting the improvements to 42nd Ave would be the ultimate challenge. However, he supported staff in asking for the improvements now. He wondered if it was possible to transition at the eastern edge of the parcel, so the sidewalk did not run into the fence.
- He complimented staff for the successful compromise on 40th Ave.

Chair Klein preferred sidewalks today rather than in the future, so he saw no reason to delay. He understood it was not desirable to have sidewalks that did not connect, but the requirement had been City policy for years. If the desired improvements were not implemented, then they would never be completed; therefore, unusual adjustments to the Applicant's property were required now to allow for the improvements for the future. He supported staff's recommendations.

- Knowing the Ardenwald NDA's strong point of view regarding trees, he saw no reason to oppose staff recommendations. The trees added value and character to the neighborhood. He walked the street often, so having some pedestrian access would be great.

Commissioner Churchill confirmed that staff had not considered stopping street improvements short of a condition like a fence in the past, but went right up to the property line.

Commissioner Wilson clarified that he loved trees, but asked if precedence was being established to implement tree restrictions on private property or if similar situations happened on other lots.

- **Mr. Kveler** responded that he had discussed that question with Mr. Monahan as research for writing the conditions, because staff was concerned about getting into a taking situation that might require more than was warranted.
- The special circumstance was that the Applicant was requesting a variance, so this was not a normal implementation of the rules. The Applicant was asking for some variation from those rules. One criterion was to determine if anything could be done to mitigate the impacts of the variance. It seemed appropriate to require some protection for the trees in exchange for dedicating 20 ft instead of 25 ft.
- **Ms. Mangle** added that with the variance, essentially the public was giving up the ability to protect the trees. If the Applicant had not requested a variance or the variance was not approved, the public would be able to protect the trees.

Chair Klein added that the Applicant was in support of that condition.

Mr. Kveler noted the following two housekeeping language revisions because the findings were

not reissued for the meeting:

- In Finding 4, the date of the public hearing should state, "~~December 8, 2009~~ **January 12, 2010.**"
- Because an easement granted permission, Condition 3B, which related to trees should note the restriction. Sentence 1 of Condition 3B was amended to state, "A ~~public conservation easement~~ **tree conservation restriction** shall be provided..."
- He asked if Ms. Wright's written comment received today was best included in the findings or referenced as an exhibit.

Mr. Monahan replied that the comment from Ms. Wright just needed to be part of public record. The findings remained as presented unless the Commission found reason to modify them because of something within the testimony.

Ms. Mangle confirmed that the Applicant agreed to the changed wording.

Commissioner Bresaw moved to approve MLP-08-02 and TPR-08-03 allowing the partitioning, and the variance request to dedicate 20 ft to the public right-of-way on 40th Ave; and to deny the variance request to eliminate the on-street parking strip on 40th Ave and eliminate the required street improvements to Howe St; to adopt the recommended findings and conditions in support of approval found in the attachments with Finding 4 changed to January 12, 2010, and Condition 3B amended to reflect tree preservation easement. The motion was seconded by Commissioner Churchill and passed 4 to 1 with Commissioner Wilson opposing.

Chair Klein read the rules of appeal into the record.

6.0 Worksession Items – None

7.0 Planning Department Other Business/Updates

7.1 Planning Commission Notebook page updates

Ms. Mangle distributed additional items to the Planning Commission to go with notebook page updates of the republished Code mailed earlier. The update was a customer service project that would make the Code easier for applicants and the public, and would help staff and the Commission as well. Marcia Hamley put a large amount of work into the project and was continuing to do so.

- She reported that the Harmony Mini-Storage application, which required a Conditional Use when annexed into the City, had been caught up in financing and other development problems, then started to come together last month. However, the application did not have enough time to be substantially complete within the time limit allowed by Code. The Applicant was working closely with Susan Shanks and submitted an application this week for a 2-year variance from the time limit requirement to allow time for construction.
 - The Applicant requested a 1-year variance, but staff advised that before going through the process he should be sure the variance allowed enough time to build a bridge and substantially complete the work, meaning everything except for the trees and striping in the parking lot. The intent was to encourage the Applicant to just complete the project.
- She requested preliminary reactions to the variance before a lot of work was put into it. The intent was to not have to bring the 2-year variance back before the Commission. Pre-application activity was high, but Harmony Mini-Storage was the only large commercial project happening in the City right now.

Commissioner Batey commented that improvements were needed for the wetlands if nothing else.

Chair Klein noted it was important to remember what could be built on the site versus what was proposed. The Harmony Mini-Storage had a very limited impact for the zoning on the site. He would prefer this project in comparison to what could be built. It would be nice if the Applicant would break ground, but he did not have a problem with the 2-year extension.

Commissioner Churchill commented that developers who have an opportunity to delay something often bring the project right up to the time limit again, perhaps selling later. However, a decision had to be made whether the entire process started again or the time variance was approved. He suggested having a progress milestone.

- **Ms. Mangle** replied that a milestone could be explored to nudge the Applicant along.

Commissioner Batey asked about the house conversion on Harmony Rd.

Ms. Mangle replied that the house conversion was going forward, but instead of a minor remodel of the residence to office space, the house would be torn down for a new building. The Applicant wanted to do the project right instead of fussing around with the old house. She did not believe the project would return to the Planning Commission, because the project would only require a building permit

8.0 Planning Commission Discussion Items

Commissioner Batey confirmed with Marcia Hamley that the blank #10 of the republished Code handout could be removed from the Notebook because it was superseded by the Public Works Standards.

Commissioner Bresaw noted that the grade of the house on Vernie Ave was high compared to the next lot. She asked how it would tie into the Lake Rd widening and sidewalk improvements.

Mr. Albert answered that the Lake Rd improvements were consistent with the Lake Rd Multimodal Plan. The Vernie Ave sidewalk ended at a keystone wall. Any improvements further down would require fill and a retaining wall. The sidewalk would remain straight.

9.0 Forecast for Future Meetings:

- | | |
|------------------|--|
| January 26, 2010 | 1. Public Meeting: CSU-08-05 post-decision requirement to review Pond House parking and uses
2. Worksession: Planning Commission Bylaws
3. Worksession: Light Rail briefing Part 1 |
| February 9, 2010 | 1. Public Hearing: CSU-09-11 NCSD administrative offices <i>cont'd from 1/12/10</i> |

Ms. Mangle reviewed the upcoming meeting schedule, noting that the January 26, 2010, meeting agenda might need adjusting depending on the length of the Bowman & Brae zone change hearing that was just continued. The Bylaws might be postponed to another meeting.

- The DLC would have a similar Light Rail briefing on January 27, 2010. A Light Rail meeting was planned for March 9, 2010, as a joint worksession with the Planning Commission and the Design and Landmarks Committee (DLC). TriMet would be presenting more specific details about the proposal for the Milwaukie area. Design review meetings would be held

eventually.

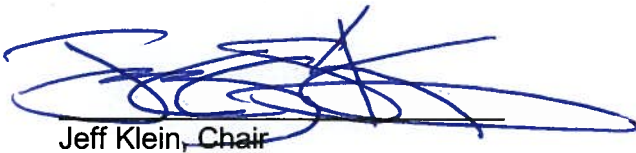
Chair Klein believed the January 26 Light Rail briefing was very important because if it was moved to February 9, it conflicted with the Ardenwald NDA meeting. He wanted the NDA to have the opportunity to attend.

Ms. Mangle updated that Mr. Marquardt was working hard with JoAnn Herrigel and her consultants on the Riverfront Park application. The plan was to place it on the agenda for the February 23, 2010, meeting. The DLC had recommended approval of the design review portion of the application with some conditions and post-approval review. The Water Quality Resource application was the difficult part. Staff had reviewed and requested more information from David Evans & Associates. The application was not quite ready for the Planning Commission, but hopefully it would be by February 23, 2010.

Meeting adjourned at 8:58 p.m.

Respectfully submitted,

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



Jeff Klein, Chair