

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, February 23, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman, Vice Chair
Teresa Bresaw
Lisa Batey
Chris Wilson
Nick Harris

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brad Albert, Civil Engineer
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

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

2.0 Planning Commission Minutes

2.1 January 12, 2010

Chair Klein stated that he would prefer that lines 701-702 read, "The Harmony Mini-Storage had a very limited impact for the zoning on the site. He ~~did not want another project started on the site~~ **would prefer this project in comparison to what could be built.**"

Commissioner Bresaw moved to approve the January 12, 2010 Planning Commission minutes as corrected. Commissioner Batey seconded the motion, which passed 4 to 0 to 2 with Vice Chair Newman and Commissioner Harris 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: Harmony Mini-Storage Substantial Construction Variance
Applicant/Owner: Hans Thygeson/HT Investment Properties, LLC
Address: 5945 & 5965 SE Harmony Rd
File: VR-10-01
Staff Person: Susan Shanks

Chair Klein called the public hearing for VR-10-01 to order and read the conduct of minor quasi-judicial hearing format into the record.

Susan Shanks, Senior Planner, cited the applicable approval criteria of the Milwaukie Municipal Code as found in 5.1 Page 6 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.

Commissioner Wilson stated that he spoke to teenagers at the site earlier today, but his conversation had nothing to do with the application.

Each Commissioner had visited the site, except Chair Klein. No Commissioner, however, declared a conflict of interest, bias, or conclusion from their 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.

Ms. Shanks presented the staff report via PowerPoint, noting the address of the application had changed from 5900 and 6011 SE Harmony Rd in the original approval to 5945 and 5965 SE Harmony Rd because the address numbers were out of order.

- She clarified that the application for Variance approval was not to revisit the details of the applications previously approved by the Commission, but a request to extend the allowed timeframe in which to use those approvals. The Commission had already granted one extension, which would expire February 27, 2010. The Code did not allow for additional extensions, but the requested variance would extend the timeframe to February 27, 2012, allowing the Applicant time to complete substantial construction and retain the existing Conditional Use approvals.
- She confirmed that the current exit-only driveway would be widened to become entrance and exit, allowing only right turns in and out of the driveway.

Commissioner Batey quoted the unusual circumstances variance criteria stating, "Such conditions may only relate to physical characteristics of the property lot or boundary configurations, or prior legally existing structures." She noted staff had tried to make the case that the variance had to do with slope and engineering, but that was not brought to the attention of the Commission a year ago during the extension request. Everyone knew the economy was probably why the extension was requested, and perhaps City Code should allow for that.

- She had trouble accepting that the quoted Code provision regarding physical issues of the land allowed for a variance in this situation. The Commission approved the physical aspects of the application. She had not heard about any engineering issues in the past 1½ years, and nothing was discussed in the meeting packet.
- She inquired how staff would get around the language of the variance criteria.
 - **Ms. Shanks** appreciated Commissioner Batey's point, adding that staff also struggled with the variance language. Variances could apply to many different sections of the Code as some relate to dimension and others to more abstract concepts.
 - The subject variance was more in the realm of the abstract. The characteristics of the site were complex because of its size and the Water Quality Resource Area, which staff considered when evaluating the physical circumstances of the project and meeting the substantial construction deadline.

Ms. Shanks clarified that the shared driveway had more to do with managing turning movements and access to Harmony Rd than the water quality resources in the area. Harmony Rd was an arterial County road, and the County wanted to keep the driveway as far from the

International Way/Harmony Rd intersection as possible and minimize the number of driveways which were conflict points. She continued with the staff report with added comments and responding to questions as follows:

- A building could be constructed and operational with completed inspections, but not occupied because the City would not issue final occupancy if the parking lot landscaping, striping, Water Quality Resource mitigation, or other external factors were not complete. It was not uncommon for a structure to be complete but the final occupancy not allowed until everything required by the Code and land use approvals was completed. In this case, no rentals could occur until final occupancy was issued.
- She displayed and described a diagram indicating three separate plant communities on the site. Plant Communities A and B were located on the north side of the creek, and Plant Community C on the south side. Plant Community B, closest to the creek, was the most heavily canopied portion of the site, while Plant Community A had a more open tree canopy. Plant Community C was characterized as having the conditions of a neglected lawn, very few trees, and very few invasives. A picture taken in 2008 and included in the Water Quality Resource (WQR) report showed the vegetative conditions of Plant Community C. She reviewed the mitigation proposed for Plant Communities A and C, which also addressed any future invasive plant problems.
- She distributed a copy of the notice sent to all residents within 300 ft of the site. Staff did not hear from any individual residents, but did receive official comments from the Neighborhood District Associations (NDAs), which were favorable and included in the meeting packet.

Commissioner Batey:

- Understood substantial completion was not final completion, so what staff proposed for Building 1 made sense. However, she was concerned that staff proposed to allow the Applicant to return at a later date to construct Building 2. Building only half of the project did not result in substantial completion, which could be achieved if the Applicant scaled down the project and only built Building 1. The idea of an open-ended application to build the bridge and Building 2 at a later date was problematic and bad public policy. Conditions could be completely different by then.
 - **Ms. Shanks** replied that surprisingly, most projects, even Community Service Use (CSUs) applications, gave applicants open-ended approval to build when they wanted. Applicants often obtained approval if they knew codes would be changing to have the development standards in place to build whenever they chose. It was unique that Conditional Uses and Variances had this time constraint for utilizing the approvals.
 - The proposal was to build Building 1 and allow that to represent substantial construction for the project as a whole.
- Stated that with no time limit for Building 2, things like water quality, Title 13 issues, and traffic implications could change over time. Such things did not change much in 2 years, but it was impossible to know how many changes would occur in 10 years.
 - **Ms. Shanks** said she could address Title 13 because when adopted those maps would be fixed, but agreed things like water quality and traffic requirements could change over 10 years. Based on Commissioner Batey's earlier email comments, she was considering attaching an additional condition to help mitigate variables regarding the water quality resource.

Ms. Shanks noted the 120-day clock on this application expired May 12th, but the actual approval expired February 27th. She was not sure how the 120-day clock would work if the hearing was continued. If the project was denied, the Applicant could either resubmit the same or a different project.

Bill Monahan, City Attorney, clarified that the process would toll the February 27th expiration date because the application was initiated before the deadline.

Ms. Shanks displayed and reviewed aerial photos of the site taken from 2001 to 2008 that showed a sequential history of the vegetative changes to the site and surrounding area.

Commissioner Batey:

- Explained that she had requested the aerial photos to see how much canopy cover had been removed from the creek. Four or five large trees were down at the back of the property, allowing more sunlight to reach the riparian area along the creek than before the Harmony Mini-Storage project came along.
- Was concerned about how what landholders did while preparing to sell the land to this Applicant had done to the creek. The aerial photos indicated that the issue was not as bad as she feared because the main line of tree cover had not moved substantially.
 - **Ms. Shanks** said she visited the site and took pictures in 2007. She had not noticed much change in the dense tree cover on the north side of the stream, but she realized that was her subjective opinion.
- Noted that she had only looked at the area from the back of the Panattoni site. There were still some trees along the north side of the stream, but they were smaller than the trees that were down in 2008 that had fallen across the lawn along the back of the riparian area. She had questioned what might have occurred in the ensuing two years, such as blackberry encroachment.
 - **Ms. Shanks** suggested an additional condition of approval could require an update of the 2008 WQR study, specifically Sections 4.0 and 6.0, pertaining to existing conditions and the mitigation plan. This would affirm whether the mitigation plan still made sense or required updating to manage any changes that might have occurred on the site over time, such as invasive encroachment.
 - She clarified that the City's consultants reviewed the application, but that Mart Hughes was engaged by the Applicant, who could address whether Mr. Hughes had reviewed the Variance application

Commissioner Bresaw:

- Suggested amending the second sentence of Finding 6.B, 5.1 Page 9 to read, "The Planning Commission finds that there are ***no reasonable and justified*** alternatives to this variance," to provide more descriptive language.
- Requested wording to address changes that might occur in water quality and stormwater standards before Building 2 was finally constructed.
 - **Ms. Shanks** responded that in general, changes to standards were different than land use approvals changing. Typically when submitted, an application is reviewed against the current standards in place at that time.
 - The Applicant could be required to update the WQR report when ready to begin construction of Building 2.

Brad Albert, Civil Engineer, explained that the City's Public Works Standards referenced the most current City of Portland Stormwater Management Manual. When Building 2 came in for construction, the City would review that application to the stormwater management practices required at that time, not today's practices.

Ms. Shanks confirmed that the City received no additional comments regarding the application.

Chair Klein called for comments from the Applicant.

Hans Thygeson, HT Investment Properties, LLC, 2290 Michael Dr, West Linn, OR, thanked staff, and especially Ms. Shanks, for the staff report, adding he agreed with the recommendations.

- He reviewed two display boards that showed the colored elevations of proposed Building 1. Since the application was approved in 2008, the Applicant had completed engineering, architectural, structural, and landscaping plans. The attractive, first-class building would accent and blend well with the apartments and surrounding community. The building would buffer the concrete tilt-up buildings next door.
- He hoped to get approval and begin construction on Building 1 in spring of 2010.
- He clarified that the construction was split-face CMU block with StuccoTek siding, which was a steel siding that looked like stucco. The north elevation facing the creek would be steel siding and split-faced block. The side facing the public had better visual appeal.

Commissioner Batey asked the Applicant's intention regarding Building 2.

- **Mr. Thygeson** replied that the sooner the project was built and occupied, the better. In this economic environment, lease-ups and occupancies were slower, making it hard to warrant such a large project, so the phasing was proposed.
- Building 1 was twice the size of Building 2, and the additional cost was a lot of burden on the project right now. Getting a development loan was uncommon today, so to be at this stage with one building was significant in the current economic environment, let alone two buildings. The bank would say it was too long a lease-up period and Building 2 would not carry itself.
- He hoped to be constructing Building 2 in the spring of 2011. The engineering package had already been started and he had Building 2's elevations with him, but he had not submitted for permit on Building 2 yet.

Commissioner Wilson asked if the Applicant had been required to do a Phase I Environmental Site Assessment and geotechnical report when pursuing financing.

- **Mr. Thygeson** answered 'yes.' No subsurface features were found when the Phase I Environmental Site Assessment was completed. The houses and commercial building on the west side were on septic, so those issues existed on site. Before he acquired the property, the existing improvements connected to the City's trunk line.
- The geotechnical report was also completed. He did not believe that there was any note in the boring logs regarding odorous or stained soils. He had been most concerned with weight loads for the size of building proposed. He provided the geotechnical report to Commissioner Wilson for review.

Commissioner Bresaw asked to see the east elevation of the building facing the apartments and was glad that the building was not orange.

- **Mr. Thygeson** replied that orange was supposed to help lease-up because people driving by think of leasing. However, this project was the new generation of self-storage with inside storage, climate control, and security. Similar facilities were located in Beaverton and Tigard.

Katie Mangle, Planning Director, entered the Carlson Geotechnical Report dated August 26, 2008 into the record as Exhibit F.2.

There were no further questions of the Applicant.

Chair Klein called for public testimony in favor of, opposed, and neutral to the application. Seeing none, he asked for further comments from staff.

Ms. Shanks added that the east elevation would also have vegetative screening with various types of evergreen and deciduous trees to help mitigate the expanse of the building.

Ms. Monahan addressed the question about placing a time limit on Building 2. The Code did provide open-ended approvals, such as in the CSU provision and did not require that a building had to be constructed within a period of time.

Ms. Mangle suggested that a hard deadline could be given by specifying that everything across the site needed to be done to a substantial completion standard by 2012. If Building 2 was not completed by 2012, the Applicant would have to obtain new land use approvals for that building. The Applicant could choose to phase the project, but would have to do an expansion of a CSU.

Chair Klein questioned where the Commission stood since no clear standard of "substantial development completed" existed. A lot of the work was already completed before a developer actually started construction, such as designing, testing, engineering, etc. The construction portion was the last and shortest thing to be done.

- **Mr. Monahan** explained that was why it was open to interpretation. Substantial completion was an area of the Code that probably required either more definition of "substantial completion," or perhaps another Code provision to identify the timeframe in which approvals are valid.
- **Ms. Mangle** explained that in interpreting "substantial completion," staff wanted the interpretation to apply to many projects, not just the subject application. The Applicant did not necessarily define substantial development as constructing just one building.
- Substantial development should not be so tightly defined that a developer ran out of time before completing construction. However, the intent of the Code was to ensure site conditions did not change significantly before the use was in place. Staff's interpretation seemed like the right balance, while also acknowledging that many projects were completed in phases. The decision was up to the Commission, but another option might be available.
- Believed it was awkward to set a 2012 completion deadline and then tell the developer the project was over even though it was still incomplete. This was a problem in the Code that applied to other issues as well and should be addressed at a later date.
- **Ms. Shanks** noted research completed by staff indicated that substantial construction/completion was defined by other jurisdictions as everything from absolutely complete to just having financing arrangements in place. Staff did not want the bar set so high that the building was incomplete and the owner not be allowed to use it as designed. Staff recognized problems existed with the current Code, but the existing language was what the City had to use at this time.

Commissioner Bresaw suggested requiring completion of Building 1 by 2012 and allowing another year to complete Building 2.

- **Ms. Shanks** responded that according to the City Attorney, it was not possible to require two different dates, but perhaps the Commission could allow more time for the completion of both buildings. For example, require that both buildings be ready for occupancy by February 2013.

Commissioner Batey believed that was a more palatable approach.

Chair Klein called for rebuttal or additional comments from the Applicant.

Mr. Thygeson stated he had been through several land use processes in other jurisdictions, and often there was a 2-year timeframe before development, especially with annexations. A Conditional Use timeframe in this economic environment was a big hurdle for development and a big risk for him as a developer. Not a lot of development was occurring in the area at present. He preferred to have as much leeway as possible, which would help him as a developer, and the City as a whole, in the end.

- If the current zoning was not allowed in 2012, the process for approval was so arduous the first time that it would not pay to reapply for another Conditional Use because Building 2 was on such a small site.
- He believed the project was the best thing that could have happened to the area because of site issues.

Commissioner Batey requested clarification about the Applicant's timeline. Was having a timeline on Building 2 not workable, even if it was more relaxed?

- **Mr. Thygeson** said that the more relaxed the timeline, the better. In two years, he hoped to have Building 2 built and going through lease-up; however, looking back to 2008, no one expected the economy or development banking to be where it was now. Looking ahead, he would like to have some latitude.
- Also, that back site would not warrant the land use actions and the more than \$100,000 required to get the original Conditional Use for the entire site.

Commissioner Harris asked what percentage of Building 1 needed to be leased to proceed with the construction of Building 2.

- **Mr. Thygeson** replied a 40% lease-up was needed. If he saw demand and momentum, he would immediately begin pushing Building 2. Much of the civil and architectural requirements were completed for Building 2, so it would not be as much of a hurdle.

Chair Klein closed the public hearing for VR-10-01 at 7:43 p.m.

Planning Commission Discussion

Vice Chair Newman agreed the unusual circumstances of the application were not covered in the Code. The City Attorney often reminded that the Commission did not set precedents with each vote, although he did believe it sent awkward messages to the public if circumstances were changed for one applicant and not for another. However, the community would benefit from the improvements to the area, since it was a main entrance to the city.

- Regarding the timeline, he had been waiting 5 months for delivery of a countertop, so he could not imagine how difficult it was to coordinate supplies for a project like the Applicant's. Although there were some cloudy points, he supported the project and would vote to approve the application.

Commissioner Bresaw agreed with Vice Chair Newman. The site was difficult to develop and the proposed mini-storage would be the best use in that BI Zone. It was a shame that a creek was present, but it was not a good area for a park because it had development all around it. Building 2 was a concern, but no one knew what would happen in the future. She believed it was reasonable and justified for the variance to extend the timeline a couple of years.

Commissioner Batey agreed with Vice Chair Newman's sentiment. She liked the project from the start. It was the best fit for the property, especially with the traffic issues on Harmony Rd. She still liked the project, but she did not believe that this was what the Code's variance language meant. She wished staff had brought a Code change. She believed the variance criteria should be flexible to allow for economic downturns, but did not interpret them to do so.

- She might be willing to vote yes on the 2-year extension, but there was no way that the completion of one building was substantial completion for two buildings. Based on legal terminology, "substantial" was definitely far more than half and near full completion. If the Applicant chose to end the project with the completion of Building 1, then that would be substantial completion as proposed in the staff report. The idea of leaving Building 2 open-ended and calling the project "substantial completion" did not pass the "smell test." It was very problematic and very poor public policy.
- She might get past the variance criteria issue, but substantial completion issue would keep her from voting for the application.

Commissioner Bresaw asked what would happen if Building 2 was never built in their lifetime.

Commissioner Batey agreed that was possible, and if the Applicant was willing to say that now, that was fine.

Chair Klein asked what if Building 2 was never included in the initial application.

Commissioner Batey replied that [the completion of Building 1] would be substantial completion, and she would agree with the staff report; that building the building without constructing all the sidewalks, etc., was substantial completion, even though that was not full compliance for occupancy. She agreed with that. However, the issue was that Building 2 was included with the idea that it could be constructed at any time.

- Additionally, if it was true that a CSU could be held indefinitely, then the Commission should also be reviewing that in the Code.

Chair Klein pointed out that the high school sign was a similar issue. Once approved, the CSU was out there forever, even though the funding was not available.

Commissioner Batey responded that this was a different Code provision with very restrictive timelines, much more so than other parts of the Code. There was a reason why City Council enacted that provision, and she did not think allowing open-ended changes in other contexts changed the Code requirement in this instance.

- She firmly believed the idea of interpreting "substantial completion" as finishing one building of a two-building project was a very bad idea.
- Allowing a third year for completion of both buildings was a more palatable compromise than calling [completion of Building 1] substantial completion.

Vice Chair Newman added the term "substantial" should not be used. Though it provided flexibility, it was subjective and did not mean anything.

Commissioner Batey explained that "substantial" was seen often in codes. "Significant" was one level and then there was "substantial," which was definitely higher than "significant," but everybody measured them differently, and it depended on the context.

Chair Klein questioned whether "construction" was measured based on actually putting a structure up, or did it include all work from the beginning: design, land use applications, requesting variances, and obtaining funding; in which case, construction involved a much longer timeframe than just putting bricks on the ground.

Commissioner Batey agreed the process had many stages, but no one could believe the definition of construction did not include putting bricks on the ground. She did not believe the public, City Council, or anyone else would think that was what was meant by "substantial construction."

Commissioner Wilson understood that greater than 50% completion was considered substantial, though it should be more in the 70% to 80% range. The Applicant stated that from the beginning he had laid out \$100,000 for the entire site, not just Building 1, including design, engineering, geotechnical, and other work. When Building 1 received final occupancy, he believed the Applicant would be substantially done with the project. He supported the project.

Commissioner Harris believed the development was a great boon for that section of Harmony Rd. He agreed with the misgivings of leaving it open-ended for Building 2, but believed the Applicant had every intention of building a business as soon as the economy would allow. He did not read that the Code allowed for the variance either, but would vote yes based on the benefit the project would have for the community. It would improve water quality along the stream long-term because the additional plantings would add more shade. The required street improvements would also be beneficial.

Commissioner Batey noted that people seemed to be looking at this as a CSU and a public benefits test. She agreed a public benefit existed, but there was no public benefits test in any of the criteria.

Chair Klein supported the project, although he agreed with Commissioner Batey on many points. He never liked the idea of an open-ended date on anything, because a project should be completed. He reiterated his initial feeling about the project, that what was being built on the site versus what could be built was greatly different. He did not know if the water quality resource would improve, but certainly projects that could be on the site may not be as positive as the mini-storage project. He hoped that the economy turned and Building 2 was built by 2012 or sooner. This wasn't the first time the Code has caused issues.

Commissioner Harris added that his initial read of the application was the same; the variance did not fit but he could not change the Code today.

Ms. Mangle clarified that even if staff had presented a Code amendment, the project was still subject to the Code in place at the time of application, so a Code change would not have helped this application.

Chair Klein believed a majority of the Commission wanted the project to go forward. Though there was discussion about extending to three years, he believed the application should go forward as presented by staff.

Vice Chair Newman and Commissioner Wilson agreed.

Commissioner Bresaw also agreed, adding that having at least one building completed in 2012 was better than possibly having nothing built in 2013.

Commissioner Batey reminded that the Commission had not discussed Ms. Shanks' proposed language about an additional condition related to plantings that would require an update of the 2008 WQR study.

Chair Klein asked to have the suggested language displayed for the Applicant's review.

Mr. Thygeson understood that at the time of construction of the north side of the creek, he would need to have a WQR consultant do a review.

Ms. Shanks explained that her drafted language for the new condition of approval was intended in the context of staff's recommendation, which regarded the south side of the creek. The new condition was based on questions and concerns raised when the last water quality resource was prepared, and whether or not the existing conditions and mitigation plan were still current and appropriate. The language could be also applied to the north side, which was even further into the future.

- Typically, such conditions were enforced after construction when planting was being done. However, it could be done any time through the building permit review process.

Commissioner Wilson asked what the cost was for updating the WQR report.

- **Mr. Thygeson** replied that he generally budgeted for a \$6,000 fee based on past WQR reports. However, this application was a review, so it would cost less.
- He could see that being justified on the north side of creek where there were more issues. However, the south side was basically someone's lawn at one time, yet staff recommended planting about 40 plants and trees, which seemed like a lot.
- More was involved in inspecting the site's swales and ensuring the Applicant's planning was done correctly. The management practices for monitoring invasive plants would go on for three years. The most significant invasive species were blackberries, which were few because the area was too shaded.
- He believed the requirements were overkill, especially on the south side of the creek, but he was willing to cooperate.

Commissioner Bresaw did not believe the point was to have the Applicant spend an additional \$6,000. She asked if the City had its own consultant or staff to supervise to ensure the practices were done or do a final review of some sort.

- **Ms. Shanks** explained that the Applicant paid for the three-year monitoring. Once the plantings were completed and finalized, the three-year monitoring cycle kicked in and an annual report was prepared.
 - She read from the original Pacific Habitat Services report regarding the plan for invasives, "The large-scale removal of blackberries and other non-native species will lead to the unnecessary destruction of tree seedlings and saplings that are currently established in the area. Additional plantings would quickly outgrow the non-native and

invasive plants and form a canopy cover over the blackberries and provide sufficient shade." The report went on to say, "It is recommended, however, that the growth of blackberries be closely monitored and that control measures, including cutting and direct herbicide applications, be employed if the blackberries become a nuisance and threaten to out-compete the native plantings." So as the new plantings took hold, a monitoring process was in place to address invasives if they got out of control over the next three years.

- **Ms. Mangle** added that the proposed displayed condition was intended to address questions raised by the Commission about the change in existing conditions. It would only be appropriate to add if the Commission was concerned that things had changed a lot since the application was originally reviewed in 2008.

Chair Klein noted that after viewing the aerial photographs, it did not look like there was a lot of change.

Commissioner Batey noted the pictures only showed changes in the tree canopy, which had not changed significantly; however, if the Applicant was not successful in constructing Building 2, then there would be more problems. Also as written, he really did not have obligations on the north side of the creek. She believed the north side of the creek was more of an issue than the south side, which was largely lawn.

Chair Klein understood the north side of the creek would always be more shaded from the sun.

Commissioner Batey:

- Added that if the Applicant did construct Building 2, the clearing required would essentially remove most of the invasives.
 - **Mr. Thygeson** clarified they would stay out of the buffer area along the north side of the creek, so the construction of Building 2 would not interfere with the vegetative corridor on the north side. The full canopy in the buffer area was so large that he did not see that it would be impacted either way. The bridge, which was addressed significantly in the initial application, was the only thing that would affect that area.
- Begged to differ with Mr. Thygeson on that, but said she would not belabor the point. She believed the removal of the trees had already impacted the area, the full effect of which would not be known until further research was done, and that expertise brought to bear.
 - It was now two years after initial report. If construction of Building 2 did not begin for another two years, that was four years after the initial assessment, and who knows what had changed on the site. Neither the Commission nor the Applicant was expert in that area and no expert had looked at that yet. The Pacific Habitat report, dated January 3, 2008, was already two years old.

Chair Klein asked if staff would still recommend approving the Variance after hearing this evening's discussion.

- **Ms. Shanks** stated that although the WQR report was two years old, it was not uncommon to see even older ones, such as for North Clackamas Park, where it took a long time to complete construction. There was a monitoring process in place that occurs after construction, plus the Water Quality Resource area was highly regulated. Applicants were not allowed to cut down trees in Water Quality Resource areas, but could cut trees in other parts of the site.
- She wished she knew definitively about what trees were cut down and by whom, and whether it occurred when the property was still in the County.

- She and the City's consultant had visited the site and believed the WQR report did reflect the conditions accurately at that time and that the mitigation plan was appropriate. With the monitoring, she believed any invasive issues could be mitigated.
- The Applicant would be required to replant the trees if the cut trees impacted the site, but trees that were already down would not require mitigation if they did not actually have an impact. She did not believe anyone present knew whether the cut trees impacted the site.
- **Ms. Mangle** clarified that the storage facility part of the Conditional Use approval had the time limit and was expiring, not the WQR approval. The bridge had a WQR permit for construction, so if someone rented the north half of the property to a business that was allowed outright in the BI zone, the bridge could be built for that with the permits already in place. The use as a storage facility required the Conditional Use and when considering granting special permits, other aspects of the project came into the purview because it was a discretionary discussion.

Commissioner Bresaw did not believe the additional condition was needed if the process was monitored and construction practices did not damage the Water Quality Resource area.

Commissioner Wilson agreed.

Commissioner Batey understood the three-year timeframe for monitoring invasive plants started when the Applicant constructed Building 1, and asked if a new three-year monitoring timeframe would begin if Building 2 was constructed a year later.

- **Ms. Shanks** believed that was the intent. The timeframe applied as soon as the mitigation plantings were in, so if the north side of the creek started later, then the monitoring process would also start later.

Chair Klein clarified that no conditions were being added to the application. He was reluctant to make an environmental error, but since there would be lots of eyes on the project, he did not believe the additional condition was necessary at this time.

Commissioner Bresaw asked about her language suggestion for Finding 6.B. Rather than saying there were no alternatives to the Variance, state that there were no reasonable and justified alternatives, which was more of a pragmatic result.

Commissioner Batey explained that in approving the Variance, the Commission was finding that there were no alternatives because that was what the Code said.

The Commission agreed that changing Finding 6.B was not necessary.

Chair Klein supported the Variance. Development took a long time overall. The Applicant had passed 50% completion at this point because construction was the easy part. Under the existing economic conditions, he would even say the Applicant was 99% done because it was a tough time to build and funding was difficult. He realized the difficult economy did not justify a variance, but he would address that later.

Commissioner Bresaw moved to approve VR-10-01 and adopt the recommended findings and conditions of approval in Attachments 1 and 2, extending the Conditional Use to February 27, 2012. **Commissioner Wilson** seconded the motion. The motion passed 5 to 1, with **Commissioner Batey** opposing.

Chair Klein read the rules of appeal into the record.

The Commission took a brief recess and reconvened at 8:20 p.m.

6.0 Worksession Items - None

7.0 Planning Department Other Business/Updates

7.1 Summary: Officer Elections

Vice Chair Newman announced his resignation effective immediately. Technically, he could attend the next two meetings, but his house had sold quickly and he was moving to a condo in downtown Portland. He said that as a superintendent, he worked with school boards for 36 years and believed the Milwaukie Planning Commission was professional and made thoughtful decisions for the benefit of the City with no thought about personal interests. If anyone wanted to know their city, he recommended getting on the Planning Commission. He thanked staff and the Commission for giving him the opportunity to learn so much and to work with such great people.

Chair Klein commented that he would miss Vice Chair Newman as a resource. He appreciated the mentorship he provided and thanked him for all that he had done for the City of Milwaukie. He had made a lot of very good decisions. He would always remember that Vice Chair Newman once said, "Jeff was right."

Chair Klein opened the discussion about officer elections. Commissioner Bresaw nominated Chair Klein for another year.

- He stated that he saw his appointment to the Commission ultimately coming to an end. His present term would expire March 31, 2011, and he was eligible for another four-year term. He assured he did not have plans to leave in the next 12 to 24 months.

Commissioner Bresaw nominated Jeff Klein as the 2010 Planning Commission Chair. Commissioner Batey seconded the nomination, which passed unanimously.

Chair Klein noted that he would be missing some meeting dates during this summer.

Commissioner Bresaw nominated Nick Harris as the 2010 Planning Commission Vice Chair. Commissioner Batey seconded the nomination, which passed unanimously.

8.0 Planning Commission Discussion Items

Ms. Mangle made the following announcements:

- The City would receive a \$50,000 Smart Growth Code Assistance Grant from the State to work on procedures, the "Dry Rot Code project," and Residential Standards. She wanted to begin working on the Commercial Zone standards, but that would not be funded by the grant. She hoped to accept the grant during one of the March City Council meetings.
- The bylaws were going before City Council next week for Consent Agenda approval, after which the Commission would be provided a final copy.
- The Natural Resources Overlay Project Advisory Group meeting would be held Wednesday, February 24th to discuss the Code. Commissioner Churchill would be attending, but everyone was also welcome. The project would likely come before the Planning Commission in the next month. A lot of information was available on the website.
- She encouraged the Commissioners to attend the light rail open house scheduled at Milwaukie High School for Thursday 4:30 p.m. to 7:00 p.m.

9.0 Forecast for Future Meetings:

March 9, 2010

Joint Worksession with DLC

1. Light Rail briefing
2. City Hall Sculpture Garden

March 23, 2010

1. Public Hearing: ZA-10-01 Parking Code Amendments

Ms. Mangle briefly reviewed the upcoming meetings, noting that not many comments had been received about the Parking Code Amendments. Staff had discussed the amendments with the NDA leadership group.

Meeting adjourned at 8:32 p.m.

Respectfully submitted,

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



Jeff Klein, Chair

NICK HARRIS, Vice Chair