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

COMMISSIONERS PRESENT	**STAFF PRESENT**
Jeff Klein, Chair	Katie Mangle, Planning Director
Nick Harris, Vice Chair	Susan Shanks, Senior Planner
Scott Churchill	Ryan Marquardt, Associate Planner
Lisa Batey	Bill Monahan, City Attorney
Chris Wilson	Damien Hall, City Attorney
Mark Gamba (arrived during 3.0 Information Items)	

COMMISSIONERS ABSENT

1.0 Call to Order – Procedural Matters
Chair Klein called the meeting to order at 6:39 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes
2.1 July 27, 2010
Commissioner Batey amended the last sentence in Line 1094 to state, "This ***separate plan limited to the north side*** was exactly what she expected, right or wrong, better or worse."

Vice Chair Harris moved to approve the July 27, 2010, Planning Commission meeting minutes as corrected. Commissioner Batey seconded the motion, which passed unanimously.

2.2 August 10, 2010
Commissioner Wilson moved to approve the August 10, 2010, Planning Commission meeting minutes as presented. Vice Chair Harris seconded the motion, which passed 4 to 0 with Commissioners Churchill and Batey abstaining.

3.0 Information Items
Katie Mangle, Planning Director, announced this was Bill Monahan's last meeting as City Attorney Liaison to the Planning Commission because he was selected to be the new City Manager starting October 18. She added it was great working with Mr. Monahan in this capacity and she believed he would continue to serve the City well in his new position.

Bill Monahan, City Attorney, introduced Damien Hall, an associate in his firm. Mr. Hall holds an undergraduate degree from USC in land use planning and has proven to be a valuable asset to the firm, having done a lot of land use work. He hoped the Commission enjoyed working with him as much as his firm.

Commissioner Gamba arrived at this time.

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: Appeal of Director's Interpretation DI-10-01 on LED signs in Downtown District
Applicant/Owner: Nabil Kanso
Address: 10966 SE McLoughlin Blvd
File: AP-10-01
Staff Person: Ryan Marquardt

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

Ryan Marquardt, Associate Planner, cited the applicable approval criteria of the Milwaukie Municipal Code as found in 5.1 Page 5 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

All Commissioners declared for the record that they had visited the site.

Chair Klein asked if any Commissioners had any bias or conflict of interest to declare.

Commissioner Churchill declared that he had potential bias, but not a conflict of interest. He had done some consulting work for the Applicant several years ago, but did not have a current business relationship with the applicant.

Commissioner Batey stated she had lunch with Dion Shepard, Historic Milwaukie Neighborhood District Association (NDA) Chair. Ms. Shepard had mentioned that the sign in question was not an appropriate choice to complement the Downtown Design Guidelines. Their discussion was more related to general Sign Code issues than this specific application.

No Commissioners abstained and no Commissioner's participation was challenged by any member of the audience.

Bill Monahan, City Attorney, explained that this was an appeal of an interpretation. It is the Planning Director's responsibility to interpret the Development Code as it is written and to apply it fairly to each applicant. If the Code language is found to be outdated or in need of modification, any citizen has the right to suggest to City Council that the Code language be changed and then applied. The obligation under Oregon land use law is that applications are reviewed under the Code provisions that exist at that time. If Code language is changed, a new application could then take advantage of that Code language.

Mr. Marquardt presented the staff report via PowerPoint and addressed comments and questions from the Commission as follows:

- The Applicant could speak to whether the top part of the sign was just a refacing and that only the LED portion was new. He believed the refacing was permitted. The sign poles were not changed, and the sign was a bit smaller because a section on top was removed.
- The Applicant was paying an extra fee of $100 for the Director's Interpretation and $500 for the Appeal fee.
- "Not recommended" was a vague term used in Milwaukie Design Guidelines, which is why the Development Code specifies the need for extra review.

    - The Design Guidelines is an ancillary policy document to the Comprehensive Plan that does not carry as much force as the language of the Code. When there is lack of clarity in the Sign Code's language, staff is forced to turn to such policy-type documents for guidance as to the overall intent of the sign regulations.
    - The portion of the Sign Code staff believed disallowed LED signage stated, "No sign shall be installed or maintained in the DC, DS, DO, DR, and DOS zones, except as allowed under Section 14.12.010 Exempted Signs or otherwise noted in this section." He summarized that Section 14.12.010 allows for signs small enough not to require a sign permit to be installed, such as small window and real estate signs.
- He would not classify the bulk of signs in downtown as not meeting Code; however, many nonconforming signs exist in downtown. Current downtown signage should not be considered a reflection of what Code was seeking.
- The initial application for an internally lit cabinet sign was approved, because it existed from the previous owner. When refacing was proposed, the internally lit component was allowed to continue as a grandfathered-in type of condition.
- The sign height limit on McLoughlin Blvd is higher than on Main St because signs oriented for vehicular traffic are larger than signs that are pedestrian oriented. This sign is 20-ft high and was a grandfathered allowance. A new business could only get a 15-ft sign.
- **Chair Klein** commented that "nonconforming" was a better word than "grandfathered."
- Current code, last reviewed in 2006, states that sign illumination should be directed away from and not reflected upon adjacent premises; that stipulation still applies.
- The Applicant was cited and a court date had been set in municipal court, but the Code Compliance Department asked the judge to set back that date to allow the Applicant time to pursue this course.
- In the proposed light rail station areas, screens are more likely than reader boards because of updated technology. The Sign Code applies to property, not right-of-way, so potentially that issue would have to be addressed. Light rail stations would not have a blanket exception; a Code change might be required.

Mr. Monahan explained this hearing was being held because the Director's Interpretation protects the City by applying the Code language as written to each application. Land use applicants still have the opportunity to challenge that interpretation if they believe there is some ambiguity or room for another interpretation within Code.

Mr. Marquardt confirmed that no other correspondence had been received on this matter other than those included in the agenda material.

Chair Klein called for the Applicant's testimony.

James Crawford, 12620 SW Foothill Dr, Portland, OR, 97225, thanked the Commission for the opportunity to address them and read a statement into the record as follows:

"This question really comes down to whether the sign ordinance prohibits LED illumination. Staff believes it does. We believe that the Code is unclear and ambiguous with regard to the use of LED lighting. In our appeal documents, which I hope everyone had an opportunity to read from the staff report, we have argued that the downtown Sign Code does not provide for signage applicable to a gas station, since the zoning code has zoned out gas stations in the downtown district. Therefore, the gas station is now a nonconforming use.

Further, the downtown district has captured the properties along McLoughlin Blvd and lumped them into the Downtown Zoning District. Section 19.312.1 under the purpose of the downtown district states that the purpose of the downtown zoning is to focus pedestrian-

oriented retail uses to the traditional downtown core along Main St, with the emphasis on Main St. The Code ignores the different character, other than the height of the sign, of McLoughlin Blvd, with its high traffic volumes and higher speeds than Main St, making it auto-oriented, which does not support pedestrian-oriented retail. Signage that works on Main St cannot work on McLoughlin Blvd. None of the Main St requirements regarding buildings tight to the sidewalk, store front windows, etc., apply to any of the properties along McLoughlin Blvd, only the side streets and main streets. That is substantiated in the Code Maps, Figures 312.2, 312.4, and 312.5. The Downtown Guidelines are pedestrian oriented. It is a vision and not a regulation.

Within the introduction, it states that "the guidelines do not prescribe specific design solutions, nor are they rigid requirements without flexibility." The guidelines do not speak directly to LED lighting or illumination. The intent was to enhance Main St and the side streets into an urban village. It was described by the planners as kind of the Pearl District look. McLoughlin Blvd does not have that village feel or flavor, nor will it probably ever have it.

The City Code and downtown Sign Code are ambiguous with regard to LED illumination. It neither said that LED lighting is allowed nor that it is prohibited.

[A photo of the original Arco sign was displayed.] The upper portion of the original Arco sign was removed, reducing the overall height of the sign by about 5 ft or less. The new 76 logo is located at the top of the pricing part of the cabinet, and then the pricing part is below that. Some confusion comes from our sign application and the City's response. [Diagram #1 submitted with the application was displayed.] The application clearly shows a sign with digital or LED lighting displaying the pricing. The drawing of the sign is stamped "Approved, City of Milwaukie" with no mention of conditions being applied. The memo dated March 31, 2009, that accompanied it did have conditions. The last sentence in the memo is the one that indicates that it shall not be converted to digital or LED displays. However, changing it to a non-LED display would have materially altered the appearance of the sign. By not rejecting the digital sign as proposed and requiring a resubmission, the permit lacked the clarity it perhaps could have had, and led to confusion on the part of the sign company regarding what was indeed approved.

[Diagram #2 showing the sign as installed was displayed.] A review of Section 14.12.02 Prohibited Signs finds no reference to digital display or LED light sources as being prohibited in any zone. Similar gas stations in the city have utilized LED lighting in their price portion of the sign, just as we have here. Paragraph (O) of that section prohibits pole signs in the Downtown Zone. If LED illumination is allowed in all districts except for the Downtown Zone, it should have been listed here also as a prohibited sign type in the Downtown Zone. By not being included, we had to conclude that LED lighting was not a prohibited sign type in the Downtown Zone.

Section 14.16.02 Residential-Office-Commercial Zone does not specifically allow LED type illumination, but Section 14.12.02 does not specifically prohibit it. Likewise, Section 14.24.02(A) Sign Lighting, addresses exposed lamps and bulbs. Nothing in this section, however, addresses LED lighting, which is technically a diode. That is confusing, and leads us further to believe that LED lighting is not prohibited.

The Downtown District Sign Code does allow internally illuminated cabinet signs under 14.16.060(H). Section 14.04.030 Definitions of the Sign Code provides the following definition of an internally illuminated sign: ""Internally illuminated sign" means a sign which is wholly or partially illuminated by an internal light source, from which source light passes through the display surface to the exterior of the sign." It does not say that the light source cannot be visible. The LED light source is internal and the light passes through a clear surface to the exterior. It sounds like the sign meets the definition of an internally illuminated

cabinet sign. Likewise, the definition of a cabinet sign, in Section 14.04.030 does not say that the display face is required to be obscure. Again, it meets the definition of cabinet sign, but adds confusion to the issue, because we are behind a clear vs. opaque cover, but staff feels that it needs to be not visible.

There is a lack of evidence that the City specifically has prohibited the use of LED lighting in the Downtown District. It allows internally illuminated cabinet signs. By definition, the exposure of the light source through the display surface is not prohibited. It otherwise meets the requirements of Section 14.16.060(H), which is the Downtown Sign ordinance. It is, for these reasons and those elaborated in our narrative, that we respectfully disagree with the Planning Director's Interpretation, and argue that the Code is ambiguous with regard to whether LED lighting displays are specifically prohibited as asserted by staff.

In conclusion, approval of this sign as installed with LED displays for the gas pricing would not be detrimental to the public health, safety, or welfare. It is not detrimental to the surrounding properties. The sign is more attractive, more durable, more energy efficient and less bright overall compared to a traditional fluorescent-lit cabinet sign that would replace it. It uses new LED technology and presents a cleaner, neater appearance, and meets the intent of the Sign Code as stated in Section 14.04.020 under the definitions of purpose of the Sign Ordinance. "

Commissioner Batey believed the Applicant made a good point about there being a disconnect between the graphic stamp "approved" and conditions within the text of the letter. She asked why they did not ask staff for clarification rather than proceeding with the installation.

- **Mr. Crawford** replied it was a comedy of errors. Someone at the sign company saw that what they had submitted was stamped "approved" and that was ordered and installed.
- It was not an intentional slight of the planners' intended approval, but strictly an accident. Mr. Kanso was surprised when it was brought to his attention because he believed that what had been applied for had been approved.
- He could not guarantee that nobody read the letter, but it was missed, especially since it was the very last sentence in the memorandum.

Chair Klein asked what would have been installed if the sign company had read the permit properly.

- **Mr. Crawford** said he could not reply for the Applicant, but noted it was confusing when one applies for and provides drawings for a sign with digital pricing and is told they can have that sign but not digital pricing. The City did not know what it had approved visually.

Commissioner Churchill questioned the assertion that the sign drawing showed LED lighting conclusively. The application did not state "digital" or indicate LED. The numerals could be painted on a card that could be slipped into the space.

- **Mr. Crawford** showed comparable signs using stick-on letters instead of LED, noting that they had a different look without black background behind the letters.

Commissioner Batey said she had seen slide-in plastic cards that looked similar. She was not sure she agreed with the argument that it was an internally illuminated cabinet sign. If so, she understood it would have come to the Commission anyway. Even if that was what the Applicant wanted, they still had a different process to go through.

- **Mr. Marquardt** explained the pre-existing internal illumination was already nonconforming, so the alternative graphic the Applicant displayed would have been approvable without having to come before the Commission.

- Mr. Crawford stated the issue was the ambiguity of the cabinet sign definition; it did not say the light source could not be visible and that caused confusion. If the Code were clear and concise on the matter, the Applicant would not have to ask the Planning Director for an interpretation.

Chair Klein asked what led to the decision to appeal the Director's interpretation versus using other available options.

- **Mr. Crawford** said that the Applicant had three options: pursue this avenue of questioning the interpretation and perhaps appeal; ask for a waiver, but staff was not confident the application met the criteria to allow one; or incur the $3,500 cost of a Sign Code rewrite.
- The Applicant chose what they hoped to be the most expedient way. The Commission as decision makers had the flexibility to interpret Code where it was not clear, as they believed was the case. Hopefully, the Commission would see that the ambiguity provided opportunity to approve their request. If the Code needed to be fixed after this was approved, the City could pursue that amendment as they updated the Sign Code.

Commissioner Batey asked whether Lake Oswego would allow this sign on Hwy 43.

- **Mr. Crawford** replied he had not dealt with commercial signs in Lake Oswego, only some land use matters related to residential properties.

Commissioner Gamba inquired whether Mr. Crawford was aware of the electrical savings provided by this sign versus a conventional backlit sign.

- **Mr. Crawford** replied he was not certain of the exact difference, but knew it was significant enough that the Applicant had received a nice letter from PGE and the Energy Trust for converting from fluorescent to LED, which is incredibly more efficient.

Nabil Kanso, Owner, 76 Station, 10966 SE McLoughlin Blvd, explained that he has been on the McLoughlin property for 26 years. It was owned by BP/Arco and he was a franchisee. In 2009, he bought the property and wanted to convert from AM/PM Arco into a '76 Station. He saw the potential of improving the property to compete better with other gas stations in the market. Arco had not improved that property for the last 10 years.

- He referred to a letter in the file in which Mr. Marquardt talked about modern lighting and stated that fixtures would all covert to LED light within 5 to 10 years. His particular LED sign was not offensive. LED converts energy and lasts much longer than incandescent lights. The usage of LED signs should be encouraged.
- His business is very competitive, and he has to change prices as his costs fluctuate. Going back to the old sign type, similar to the old Arco sign, would require the use of magnetic letters. They were heavy, and to change them one had to climb a ladder or use a suction cup. Weather and traffic can make this task treacherous. They have experienced near misses with numbers almost hitting a vehicle or cars almost hitting employees changing the sign. In the winter or when weather is cold or windy, numbers can fly around. He was concerned about the safety of his employees.
- He needed a sign that was lit, and he intended to comply with State law. He assured the Commissioners that he had not violated Code intentionally. The comment in the memo was missed. He did not read the permit, because it had to go through the contractor who supplies gasoline, and then it went to the sign people who read it.
    - As a matter of fact, he had not wanted an LED sign because the cost was so high. A normal sign would not have looked as good, but would have been cheaper. He was convinced to purchase the LED sign because it was the future, especially with Fred

Meyer coming in half a mile away with a huge LED sign that might put him out of business anyway.
    - Everyone on McLoughlin Blvd would have an LED sign eventually. The Chevron in Beaverton switched to LED signs on Walker Rd. and 58th Ave.
- When Ms. Mangle and Mr. Marquardt came to him 6 or 8 months later, he really did not know that the sign was not allowed. He agreed to work with the City to see what he could do. This has already cost him a lot of money, and if everyone was going to convert to LED signage in the future, why go through this mess of changing and costing more money?
- He is a small businessman and did everything requested of him. They took the traffic light from Jefferson St and put it down the street. They added a median. They charge him $.02 per gallon for the City to fix the streets. And now they want to take away the LED sign.
- He asserted that he wants to stay at this location. Eight families plus his own depend on this business. He needs to be able to compete. He needs people to look at his sign.
- Besides the cost of getting a loan and buying the property for almost $500,000, he has invested $200,000 in improvements to make the property look nice, so McLoughlin Blvd could look nice.
    - He is not a boutique shop or retail store on Main St. He is on McLoughlin Blvd, facing the water and facing the traffic. He is not downtown; 90% of his traffic comes from McLoughlin. He has loyal customers in Milwaukie who still come and fill up at his station.
- He has watched the Walgreen's sign on Hwy 224 blinking, telling the time and prices. Everything is allowed on Hwy 224, but not on McLoughlin Blvd. He could not comprehend that.
- When Mr. Crawford told him they could challenge the Code, he decided to pursue it. He would like to keep the sign. It does not blink or move, and it takes him a second to change the prices on the sign without the hassles of changing the numbers, using a suction pole or climbing a ladder.

Commissioner Churchill asked if Mr. Kanso had seen the shorter '76 Station signs that were lower than 8 ft tall, or signs that use LED lighting as an internal illuminating source rather than exposed lamps.

- **Mr. Kanso** replied that he had seen lower sign heights in Beaverton, but not on McLoughlin Blvd, adding if his sign were 8 ft high, it would not be visible. The guy next door had a sign as big as his. He had not seen LED used for internal illumination.

Chair Klein called for public testimony in favor, opposed, or neutral to the application.

Ed Parecki, 10600 SE McLoughlin Blvd, Milwaukie, became aware of this application and appeal last week. Previously, he had appealed an interpretation of the Code at the Commission and City Council and was denied both appeals. Within 6 months the Code changed and met almost exactly the arguments they presented to the Commission. He felt sorry for Mr. Kanso because one could not challenge an interpretation, as it was merely an opinion, and there is no way someone's opinion can be changed.

- The Code is very clear as far as not prohibiting an LED light, so there was nothing to interpret. If the Code is ambiguous, then the Commission should vote in favor of the Applicant, not uphold the interpretation.
    - This statement was based on legal authority. Contract law states that if a contract is ambiguous it goes against the person who wrote the contract. The Code is a contract and everyone must abide by that contract. They made an application, it is a contract. He was not a legal expert, but this was his interpretation of the law, since the law is easily interpreted.

Commissioner Batey noted some areas of law state that anything not prohibited is permitted. She asked if he believed the City Code stated that somewhere.

- **Mr. Parecki** stated he had heard it from Mr. Marquardt's presentation.

Mr. Parecki continued that he wanted to see a change in how the City treats business people and be pro-business instead of anti-business. The Applicant was doing nothing that would damage anything the City had been trying to improve. The city was changing for the better; downtown was getting better every day. Milwaukie was a diamond in the rough and people were starting to notice it.

- There was nothing wrong with the sign Mr. Kanso was providing. He was spending easily in excess of $10,000 for the sign. The option was to have him do an internally illuminated sign, which would be quite ugly and approved without coming before the Commission.
- He did not understand why Mr. Kanso had to ask for a reinterpretation of the Code when the Commission had the authority to just change the Code to make it right so no question existed about what applicants could or could not do. They all want to abide by the Code because that is the right thing to do, but when the Code is not clear, either they ignore it or they try to interpret it.
- The Code should be changed so that it was clear. One should not have to be an attorney to try to figure out what the Code means.
- The purpose of a sign is to attract people to a business. The City was trying to attract people to their downtown area and that was all this sign was doing. It was not detracting. It was a very attractive sign, much nicer than what was there before and what could be there if they denied the Appeal.
- He asked that the Commission not let this cost the Applicant another $15,000 for the next level of appeal.

Commissioner Wilson expressed that changing the Code was a pretty big request, but option three, approving the appeal, seemed a little easier. He asked what Mr. Parecki would suggest as the alternative findings.

- **Mr. Parecki** suggested as the finding, “We find the proposed sign as built is much more attractive than a sign that could have been built strictly according to the Code, another 5 ft higher and glaring with internal illumination.”
- If built according to the current Code, the sign could be another 5 feet higher and the Commission would have no choice but to approve it.

Chair Klein noted that an alternate interpretation could be found on 5.1 Page 4. He called for additional comments from staff.

Mr. Marquardt made the following comments:

- He clarified that staff had prepared findings for denial of the appeal. If the Commission wanted to uphold the appeal, then that discussion and the rationale being used for doing so would need to be captured.
- Staff agreed the sign was not aesthetically unpleasant and that it was odd that an internally illuminated cabinet sign could have been allowed, whereas a nicer looking LED sign with gas prices was not allowed. However, this appeal was really about how the Sign Code was interpreted downtown-wide, and how all signs within the downtown district are treated.
    - If LED or reader board-style signage was allowed, it could be anywhere within the downtown zone. It was a broader issue than this one particular sign.

- As far as the internal illumination of cabinet signage and Mr. Crawford's point about light passing through a display surface, staff would not consider the clear casing or even a transparent surface in front of an LED or a diode or any incandescent light to be a display surface as much as just a covering. Reader board signage with clear plastic would not be categorized as an internally illuminated sign.

Commissioner Batey recalled that the Applicant had testified that the Code is different as it relates to McLoughlin Blvd and asked if new construction in a block fronting McLoughlin Blvd today would have different setbacks and other rules than if built on Main St.

- **Mr. Marquardt** stated that current zoning on the property would apply. He displayed a map showing downtown zoning and noted the setbacks vary from 0 to 10 ft in the downtown zones for storefronts and offices. Those setbacks were the same whether along McLoughlin Blvd or 21st Ave. Main St was a bit different because everything is supposed to be at the "build-to" line.

Chair Klein called for the Applicant's rebuttal. There being none, he closed the public testimony for AP-10-01 at 7:52 p.m.

Chair Klein understood that the City could not control the content of a sign, but asked if any difference existed between LED signs where the content was stagnant, flashing, scrolling, or one showing a graphic.

- **Mr. Monahan** understood the question was if the Commission approved this LED sign, would that open the door for any type of graphic display of LED downtown and deferred to the Code.
- **Mr. Marquardt** explained that there is a general prohibition on signs that change more than once every 10 seconds.
- **Ms. Mangle** added that changing content was a separate provision from the lighting issue.

Planning Commission Discussion

Commissioner Churchill explained that LEDs, or diodes, and light bulbs are filaments encased in a glass shroud, adding that new sources of light will be created as technology advances. The City was trying to avoid exposed lamp sources, whether LED or otherwise, and see only the effect of the illumination but not the source. Other municipalities were trying to control the effect of LED lighting because some believe it is offensive as a bare lamp or bare source of illumination. LEDs were now being used inside of light fixtures and getting shielded so they glow, and that could be called cathode or neon or other sources.

- He saw Mr. Marquardt's stamp of approval on the drawing, but did not see "LED source" stated anywhere. Just because the numbers' font appeared to be a certain typeface did not indicate it was approved to use an LED source, which would have been pretty specific in his approval.
- He appreciated the scale of the sign being reduced, and he believed solutions existed for lower signs that seem to function well enough for downtown areas that care about not having a lot of very high signs.

Commissioner Gamba:

- Asked if staff typically approved the light source within a sign, such as specifically approving that the sign be lit by fluorescent tubes, incandescent bulbs, or other means.
  - **Mr. Marquardt** answered yes, adding that generally an applicant includes electrical diagrams with their application so staff could see the source of the illumination and they

default to what applicants propose. In this case, it was not exactly clear what was proposed, which is why the condition was placed on the approval to make it clear that the LED or digital was not the sort of change being approved.
    - As far as the sign permit, staff assumed that the existing internal illumination was being used and that the sign was being refaced. Staff was not looking at a new sign with regard to the electrical portion.
- Asked if the language of staff's approval would specifically state, "We hereby approve this internally lit sign, which is being internally lit by a fluorescent tube."
    - **Ms. Mangle** explained staff is not concerned about which technologies are used as the light source for internally illuminated cabinet signs.
- Concluded the fact that the specific type of illumination was not stated on the application in question and was no different than any other permit.

Chair Klein noted many different ways exist to light something. The interpretation regarded the desired outcome staff wanted to see, regardless of how the sign was lit.

- **Mr. Marquardt** further explained if a new sign with an internal illumination was proposed, the applicant would include wiring or some electrical permit. If it met the standards, staff would approve the sign as proposed.
    - It was the applicant who determined the light source. Whether LED or a fluorescent light source was proposed on the inside, staff would approve the application if it met the illumination standards in the Code.
    - Conditions are imposed on the application if staff determines modifications are needed to make the sign comply with the standards.
- In this case, the idea was that Applicant was just refacing the sign and using the existing internal illumination.

Commissioner Gamba:

- Stated that McLoughlin Blvd was not Main St or part of the walkable downtown. The sign that was approved was an internally lit cabinet sign, so there was no argument there. The only problem was that the lighting being used was the best, newest, most efficient, most sustainable, and the future form of lighting on the market. **I**t did not matter that LED lighting could be used internally to illuminate. The Commission was making a point of disapproving the future.
- Supported LED lighting, but believed it was a matter of how it was applied. The intent of the Code was to not have a harsh source of bare illumination. The sign directly across the street was an internally lit cabinet sign and more glaring and harsh than the sign in question.
    - **Mr. Monahan** interjected that the issue was not about the sign, but the interpretation of the Code being properly applied to the request.
- Stated the Code was wrong. Secondly, staff did a beautiful job writing how the Code could have been interpreted differently and still have been correct, thus allowing the sign.
    - **Mr. Monahan** agreed that could be the Commission's determination if it disagreed with the Director's interpretation.
- Said if the Commission agreed that LED is a more beneficial lighting source than anything else available, and all that was left was interpreting this particular bit of Code, which was a bad piece of Code, then it seemed clear that staff did not interpret it correctly. There was no downside to deciding that the alternate interpretation was appropriate. It would keep a man from paying to replace a superior sign with one that was inferior and it would reduce the electrical usage.

Commissioner Batey agreed the Sign Code needs work. Some aspects that Mr. Parecki wanted revised should be, but others might not achieve what he wanted. The Sign Code has been on the work plan since the 2006 revisions were done to address content issues regarding an Oregon Supreme Court decision. That process allowed no opportunity to have community dialogue about the signage citizens wanted in downtown or the Sign Code language. Given that dialogue, perhaps this kind of sign would be acceptable. She would advocate for no pole signs and have only low monument-style signs.

- The Commission had to interpret the Code under which the application was made. McLoughlin Blvd was certainly different than Main St, but to think that McLoughlin Blvd would always be the McLoughlin Blvd it was now would really short change the Riverfront Plan. The Commission had to consider and strive for McLoughlin Blvd becoming a more pedestrian-friendly, pedestrian-oriented street, and again, the monument signs come into play there. The City should be looking at Lake Oswego and Beaverton where they have more restrictive sign codes.
- They did not want to drive out Mr. Kanso or other gas stations in the area. She was sorry the Applicant went to this expense, but she did not see rewarding somebody who ignored the terms of their approval, and she was concerned about the impact the decision would have on other downtown signs.
- Many nonconforming signs were in downtown, but there were actually an increasing number of conforming signs, which she reviewed. She believed it would be wrong to go in the opposite direction of the changes made in 2006, although the Code text was, admittedly, incomplete. Some things did need more attention, but this was wrong.
- Of the three signs in a row, Mr. Kanso's was the most attractive. It was better than the gas station next to it and the bank, but that was not the test, and not what the Code required.

Chair Klein interjected that he did not believe the terms of the approval were ignored by the Applicant.

Commissioner Gamba noted that Commissioner Batey admitted the sign was far better looking than the other two signs nearby. If the Applicant was forced to replace the subject sign with what was approved, the city would get a sign much more like the one next door.

Commissioner Wilson believed the subject sign was pedestrian-friendly because fewer lumens shined off the sign. Ten or fifteen years from now, Milwaukie would have such an improved downtown where people would be walking. The new '76 Station sign put off so little light and gets the job done. One could walk right by and not have any bright light shining in their face.

- It did not look like the pedestal-type signs from Irvine, CA, but he did not know the City intended to go in that direction.

Chair Klein noted the question was whether digital was LED or reader board.

Discussion amongst the Commission and staff continued, including these key comments:

- The fact that the Code limited blinking content to every 10 seconds showed the City does not want lights that are nuisances; this was not a nuisance type of a light.
    - If Chopsticks across from City Hall installed an LED reader board that changed and showed menu options that would be a tough call, even if the changing content met the timing required by Code. Being able to review the design or have static text might make a difference.

- **Mr. Monahan** clarified that the Commission was making a Code interpretation that would direct staff in the future when applying this same Code. Future application of the Code by staff would be based on this decision. The decision would not be setting precedent, so much as giving the Planning Director an interpretation as to the meaning of the Code and how to apply it.
- A Code decision was made favoring Mr. Parecki's argument 6 months later. Would this argument be revisited as they continued to revamp Code, but also with regard to the light rail station coming in?
  - While the Code changed 6 months after Mr. Parecki's appeal, the proposed Sign Code changes were not expected in the near future because staff was working on so many other Code projects. Mr. Kanso would not likely be in that same situation.
- The Commission could not get hung up on the fact that the source was LED. Using an LED diode as a wall wash would light a sign without any of the objectionable direct sources of illumination. An LED source could be used to internally illuminate a sign. If a series of small incandescent light bulbs were in the shape of a letter or number, rather than LEDs, they would be talking about an exposed lamp source. The Sign Code was prohibiting exposed sources of illumination. Considering the intent of the Code, Ms. Mangle's interpretation was correct.
- Directing the Planning Director toward LED lighting was a positive thing. The Applicant's sign would not set precedent toward the rest of the signs in downtown. The property was already a nonconforming use and the sign was nonconforming, taller than currently allowed.
  - **Ms. Mangle** explained that although the sign was nonconforming, if any nonconforming or conforming sign proposed to have exposed LED added, the same piece of Code applied. The fact that the existing sign was nonconforming in one avenue did not mean it could be nonconforming in all avenues.
  - She clarified this was not a hearing on the sign, use, application, or how staff handled the application. The hearing was only about how the Code was applied to this situation. If the Commission decided to use an alternate interpretation, then staff would continue to apply that interpretation throughout downtown any time someone asked this question.
- As far as the glaring of the exposed bulbs, the existing '76 Station sign was far less glaring than the sign across the street that was internally lit with no visible bulbs. Given what was approved, the sign that would be allowed to be built was more glaring.
  - There was no foot-candle limit for the illumination source inside an internally lit cabinet sign. Although no foot-candle limit existed for the outside of an illuminated cabinet sign, a nuisance provision limited light trespass at not more than half a foot-candle.
- **Vice Chair Harris** agreed that this was a difficult situation and suggested framing this with a condition of approval. He agreed the current sign was more attractive and energy efficient, but he did not believe it complied with the current Code. The Commission was here to validate whether or not the Planning Director had interpreted the Code correctly. They could not make a decision that was going to remap what would happen all over downtown.
- This decision would not impact other cases because it was already nonconforming.
- It would lead the interpretation by staff of similar applications with exposed LED light signs on Main St.
- Would this drive the Design and Landmarks Committee and maybe the Commission in the future to start looking more carefully at what kind of LEDs were used?
- Could findings be written to limit the interpretation to McLoughlin Blvd because the Code language applied to all of downtown?
  - There was already a separation because signs could be 15 ft high on McLoughlin Blvd, and only 10 ft high on Main St.

- **Chair Klein** noted this hearing had many similarities to Mr. Parecki's case. He believed that a Code amendment should have been done, not an Appeal to the Director's Interpretation; however, $3,500 was considerably more than $600. If this were a Code amendment, they might find in favor of this moving forward
- **Mr. Monahan** offered to help the Commission craft findings if they could indicate a preference one way or the other. The direction of the Commission was unclear at this point and counsel did not want to steer the Commission.
- The difficulty with a Director's Interpretation was figuring out where staff went wrong. The existing '76 Station sign was better than other signs downtown, but that did not necessarily make it right.
- **Mr. Monahan** explained the point of an appeal to either the Commission or City Council was because an applicant disagreed with staff interpretation. The burden was on the applicant to provide convincing information for disagreement with staff's decision.
- **Commissioner Gamba** believed the Applicant provided convincing information. The point was that the Commission was to render an opinion. Should the Commission do the wrong thing because bad Code was written 15 years ago?
    - It was not an opinion on one sign. The only question was whether staff interpreted Code correctly. The Commission was not crafting Code at this time, but had to abide by the Code that currently existed.
    - They should be changing the Code; the point was that LEDs were not specifically disallowed.
    - The Code basically sets out what is allowed. One could not disallow every possible situation or foresee every lighting source.
- Mr. Kanso's arguments explained the reality of being a business owner. Mr. Kanso had participated in beautification projects and wanted to do business in Milwaukie. He had already spent a great deal of money on the existing sign.
- **Chair Klein** said that although he sided with Mr. Kanso, he believed Ms. Mangle interpreted the existing Code correctly.
- A majority of the Commission believed the existing sign was better than what would be approved and the right thing was to look for some legal loophole to find that Ms. Mangle's interpretation was not correct.

Mr. Monahan reminded the core issue was to determine if the Director's interpretation was the correct reading of the Code language. If not, the Commission could go in a different direction.

- The Commission could determine that the Code language needed to be amended, but that would be a different process. The initiation of a Code amendment could be done by the Applicant or by the City and were independent determinations.
- The decision before the Commission tonight was not whether to initiate a Code amendment or change the Code, but to address the question at hand about whether the interpretation was correct.

Chair Klein called the straw poll asking whether the Commissioners believed Ms. Mangle interpreted the Code correctly. Chair Klein, Vice Chair Harris, Commissioners Batey and Churchill voted to uphold the interpretation. Commissioners Gamba and Wilson voted no.

The Commission took a brief recess and reconvened at 8:47 p.m.

Chair Klein:

- Stated that while the majority of the Commission agreed Ms. Mangle made the correct interpretation, the sign application should be considered again. City Council had the option

to look at this on a broader scale and to place more emphasis on the possibility of doing a Code amendment.

- **Mr. Monahan** explained Council could initiate a Code amendment and change staff's work plan to suggest that a Sign Code review be given priority and added to the list. The Commission could phrase a letter requesting that Council give priority to the Sign Code amendment and consider the difficulty the Commission had deliberating this issue along with any concerns the Commission might have.

- Noted the Applicant was working through Code Compliance and had an ongoing Code violation before the Municipal Court, which seemed to be in limbo at this point.
  - **Mr. Monahan** stated the judge would determine whether to decide the case or put it on hold. Information could be provided to the judge, also. Council could initiate a Code amendment and make the judge aware of its concern for this particular application.
  - If the Commission made a determination that supported staff, the Applicant had the right to appeal to Council, and it was possible that parallel tracks could be pursued regarding an alternative solution for the sign.
  - The Applicant could appeal to Council, but also request that Council consider a Code amendment. If the Applicant believed the process to change Code was actually going to occur, they could determine whether or not to follow through with an appeal to Council.
  - He clarified that he was not suggesting tabling the application while the Commission sent a letter to Council.

Further discussion continued as follows:

- The sign would be approved in the General Commercial Zone. The only place it was not specifically approved was in the pedestrian-oriented downtown section of central Milwaukie. McLoughlin Blvd was not part of the pedestrian-oriented downtown and was not comfortable for pedestrians.
- What McLoughlin Blvd is and what they wanted it to become were two different things.
  - If it was to become part of that walkable, quiet, comfortable zone, the City should be making the changes needed for it to be a completely different place. All they were deciding now was whether a particular bulb was allowed to light a sign from the inside because someone made that area part of downtown versus a General Commercial Zone.
- There were plenty of nonconforming uses downtown and as those uses change ownership or function, the nonconformity would go away.
- During the Sign Code revisions in 2006, having sign permits expire had been discussed. The Commission had wanted all nonconforming signs to be gone by 2020 and that was still in the Sign Code.

Chair Klein stated the provided scenario was not an easy one, but it was something the Applicant could find support for and he believed the Commission could give some direction on their vote as it moved forward.

Commissioner Wilson noted the Commission was also presented with an alternative interpretation, which was a reasonable look at the Code. If the Commission determined the alternative was correct, did not that also mean that staff was correct since they wrote it?

- **Mr. Marquardt** acknowledged staff had written the alternative interpretation. When people asked about whether an LED reader board sign could be approved downtown, staff's initial interpretation of the Code was that unless LED was specifically listed, it was not something that was allowed, which was how staff has applied the Code.

- Staff could see both sides, so in fairness of trying to present an option before the Commission, the alternative interpretation was viable. It was not the one they had been using or one they favored, but it was an alternative that staff wrote.

Commissioner Gamba confirmed that using the alternative was entirely up to the discretion of the Commission.

Commissioner Churchill moved to deny the appeal AP-10-01 and uphold the Planning Director's Interpretation of File DI-10-01 of the Sign Ordinance. Vice Chair Harris seconded the motion. The motion passed 4 to 0 to 2 with Commissioners Wilson and Gamba opposed.

Chair Klein:
- Believed the Commission should give direction to staff at this point.
  - **Mr. Monahan** advised that based on this discussion and the Commission's opinions about the Code and its application to such situations, the Commission suggest that Council initiate a review of the Sign Code to determine the appropriateness of allowing some range of LED or other similarly lit signs.
  - He added the City should make this information available to anyone considering a sign alteration. If Council did initiate a Sign Code amendment, it would be an opportune time for them to participate in that process and wait for a decision to be made.
- Clarified the Commission would suggest Council specifically consider what an LED sign is and what the interpretation should be on the McLoughlin Blvd Corridor. In theory, Council would consider the bigger picture, but would likely redirect the Commission to address that issue in light of the entire Sign Code. An argument had been made here that there be a broader public input.
- Noted that Council might not find in favor of the Applicant and decide the rules set out for McLoughlin Blvd should be the same as for Main St.

Commissioner Churchill said he had understood the Commission was asking Council to accelerate looking at the Sign Code. He was concerned about the vote and then the add-on direction to Council. He preferred not to look at individual cases. He wanted to have Council direct staff to accelerate their look and bring Sign Code forward in the work plan so it could address exactly these kinds of issues.

Chair Klein agreed the Code needed to be addressed, but the Applicant also needed to find resolution.

Commissioner Churchill stated appealing to Council would give the Applicant another body from which to get an interpretation.
- **Mr. Monahan** agreed that the Applicant could appeal to Council to overturn the interpretation. Council would consider both the Director's and Commission's interpretations and determine whether the Commission had made the best decision. It would add another layer of authenticity to the interpretation.

Chair Klein added that Council could also expedite a Code amendment for McLoughlin Blvd.
- **Mr. Monahan** said it would make sense to limit the request to Council, because Council might be concerned about a long process, and the judge might also be concerned about putting a citation into abeyance for a long period of time.

Commissioner Batey noted the Applicant only had a limited amount of time to appeal to Council and whether or not a Code amendment would yield any fruit before the time they had to make a decision to appeal was uncertain.

- **Mr. Monahan** agreed Council might decide not to take action on any recommendation by the Commission until after the quasi-judicial process on the appeal is completed. He clarified they were just discussing scenarios; there was no way to determine what direction Council might go.

Commissioner Churchill stated the Commission needed to decide what direction or comments they should pass onto Council.

Chair Klein reiterated that he was hoping to give the Applicant an opportunity to find resolution. The McLoughlin Blvd issue was a good question to be asked.

Ms. Mangle noted that the decision on the application had been made, and offered that the Commission could ask the Applicant to return with a proposed Code change as a suggestion, not an application. Then, the Commission would actually have something more specific in hand to address the LED issue and could decide whether to recommend that Council initiate that change. Addressing this one issue would be a 4-month process, but it might be easier to deal with something that was more specific.

Chair Klein interjected that he hated writing Code for one issue and that was what they would be doing.

Commissioner Batey believed that even if the Commission limited this to signage on McLoughlin Blvd, there were other issues besides LED or no LED. She did not know how to look at it, even if it were limited geographically.

Chair Klein added there was no guarantee the Applicant would be able to continue the sign as it existed, but addressing the Code issue would bring in a broader discussion.

- **Mr. Monahan** advised that staff could restate the recommendation, and the Commission could write a letter asking the judge to consider the potential Code amendment and to delay the court process, if that was what the Applicant wanted. The Applicant might want a decision.

Ms. Mangle restated the recommendation that the Commission invite the Applicant to return with a suggested Code amendment and that the City could then decide if it wanted to initiate through a legislative process. It was a suggestion by the Applicant, not a formal application or proposal so the $3,500 charge would not apply.

- Secondly, the Commission would direct staff to prepare a letter for the Commission to send to the judge advising him that though the Commission believed the citation was based on a correct interpretation of Code, the Commission was questioning whether the Code was appropriate for the city, which would just provide background information for the judge.
- If Council initiated the Code amendment, it would then return to the Commission as a worksession and begin the legislative process, which would include public hearings. However, it was unclear whether that was something Council would do.

The Commission consented to proceed with Ms. Mangle's recommendation.

Chair Klein read the rules of appeal into the record.

The Commission took a brief recess and reconvened at 9:18 p.m.

6.0 Worksession Items

6.1 Summary: Land Use and Development Review Process Tune-Up briefing #5: Review Conditional Uses, Amendments, and Development Review draft chapters
Staff Person: Susan Shanks

Susan Shanks, Senior Planner, stated all the changes being proposing were in the meeting packet. The proposed changes to the Conditional Use and Amendments Chapters were very straightforward and had no major policy changes. Staff was comfortable enough with these chapters to continue unless the Commission had concerns.

- She reminded that the project was on a fairly tight timeline due to the grant funding involved. The City also wanted to be able to do as much as possible with the Residential Design Standards.
- Drafts would be presented to the Commission on November 9, 2010, and staff would create a third draft following the Commission's direction at that meeting, so there was still time for input.
- She suggested the Commission review the material on the Conditional Use and Amendments Chapters and contact her with any questions or concerns they had on those two chapters in particular.

Discussion about the draft Conditional Uses Chapter was as follows:

- 3 or more years seemed too long before a Conditional Use approval expired.
  - 6 months was the time period for the loss of a legal and nonconforming use, so perhaps middle ground could be found. Maybe how long the conditional use has been in effect should be a factor, although that might be too complicated for the Code to distinguish.
  - One year sounded appropriate.
  - Harmony Mini-Storage was an example of a recently approved conditional use, but the proposed Code addressed conditional uses that had already been operating and the time period allowed for that conditional use to continue once operations stopped.
    - Two large sheets in the packet include the list of currently identified conditional uses in Milwaukie, which can be found in Commercial zones and Historic Resource zones, such as a bed & breakfast. Many duplexes are conditionally allowed in certain residential zones, and outright allowed in others.
- In some ways, the structure defines the use; the structure and use are often intermingled.
  - With this amendment, a duplex vacant longer than the time period would no longer be allowed to be used as 2 separate dwelling units. It would have to be modified into a single-family house or the owner would have to come before the Commission to get reestablished as a conditional use.
    - Separately metered units might have to return to a single-metered unit. This limit could be a way to control multi-family use in a single-family dwelling.
  - How could they distinguish between uses where the structure is so integral?
- Many other jurisdictions' codes have a 3-year time limit provision for conditional uses.
  - If something goes away, should the City have this in place to protect the neighborhood from a commercial use that was conditionally allowed in residential zone? Identifying every scenario would be difficult to do and a lot of great adaptive reuses can occur. Many things can change that cannot be anticipated that are not necessarily bad.
- Picking the right timeframe seemed like the key. A year was not enough, but 3 years might be too long.

- Shortening the time period to less than 3 years was uncomfortable. The duplex was a perfect example. If the renters moved out, and the owner was unable to find a new tenant within a year, they would not own a duplex anymore.
  - The City probably would not see a lot of conditional uses expire. More obvious cases would be when a business moves back in to a long vacant building, for example. The risk of having duplexes negatively affected was pretty low.
- A 3-year timeframe was more business friendly.
- If a conditional use is a good use for a neighborhood as a whole, citizens would support reinstating a conditional use if the time limit lapses so 3 years would be fine, although a shorter time frame was preferred.
- Neighborhoods can change enough that the Commission should review these cases to add different mitigations. A lot can change in 3 or 5 years and tolerances might change.
- With economic fluctuations, they would want to protect businesses that are forced to stop due to lack of business, but then want to start up again. The City would not want to put them through more hoops.
  - Though a business is not actively operating, certain things would indicate the use is still active, like maintaining a business license.
- The Commission needed to decide whether they were comfortable with this clause; if the timeframe of the clause needed to be changed, or if more analysis was needed due to concern about how it might affect existing conditional uses.

Ms. Shanks provided a brief overview of the City's experiences and challenges of not having a defined process for development review, and described the objectives and proposed changes of the new Development Review Chapter.

Discussion regarding the Development Review Chapter was as follows:

- The Procedures Chapter included provisions about building height and when a requirement for showing a ridgeline or eave line on a structure, perhaps by using story poles, should apply.
  - Drawings and illustrations often do not accurately relay the scale or mass of a structure. Contractors would erect poles on the site to show the proposed finished height and give the Commission a better image of the finished project before approving height or mass. **Commissioner Churchill** agreed to provide codes to staff from other cities that include that requirement.
  - Staff sometimes needs to push applicants to provide materials that give enough information to understand the project, but it could be a battle. The City's submittal requirements checklist was recently updated to be clear that submitting just a narrative or even minimal elevation drawings was not enough. The applicant is responsible for providing enough information to convey their project to the review authority. Staff would have no issues codifying that.
    - A Type I Director's Decision could also require story poles if there were any ambiguities about the project.
  - Staff intended to coordinate the Development Review Chapter with Downtown Design Review to avoid overlap. Staff would review the Procedures Chapter to see where requiring story poles could fit, because a section already existed on submission requirements.
- Staff had already talked at length with the subcommittee about the Code amendments. Staff wanted to spare the Commission the minutia, but also ensure the Commission knew the direction staff was headed, especially with this project. Eventually, the Commissioners would

be getting a lot of material at once, and staff wanted them to feel comfortable and not overwhelmed.

Ms. Mangle asked Mr. Monahan to respond to the Commission's clear direction about nonconforming uses and limiting the ability of nonconforming structures to rebuild in the case of a fire. After researching this item, imposing such limits was found not to be a good idea.

Mr. Monahan reminded that the suggestion was if a nonconforming structure was totally destroyed by fire, the City could prohibit the structure from being rebuilt. Staff talked to consultants and looked at what other communities do. Typically, codes allow property owners to rebuild as long as a fire was accidental, not caused by the property owner.

- The City is concerned because that ability to rebuild has existed over the years and people have been relying on those nonconforming uses. They might have refinanced their development and that bank might have an expectation that the nonconforming structure would continue to be in place. Fire insurance might specify that the structure be rebuilt to certain specifications.
- The issue becomes a public policy question. Once the Code is changed such that a total loss due to fire negates the ability of someone to rebuild a nonconforming structure, it would definitely be challenged and be something that they would hear a lot of input on. Every conceivable nonconforming structure would be discussed during the process.
- The idea was also contrary to what neighboring jurisdictions had. A property owner or developer within the city of Portland would have an expectation that the same type of code would spill out into the suburbs.
- There are exceptions in other parts of the country, where if more than 50% of a structure is lost, some codes do not allow rebuilding. The prevailing code in this area was to allow someone who has full destruction due to a fire to rebuild a nonconforming structure. The City of Tigard had the 50% rule.

Discussion regarding the destruction of nonconforming uses included the following comments:

- The 50% rule was used in areas outside of Portland, such as in parts of Washington, Idaho, and California. One reason was to restore view corridors or solar access for adjacent parcel owners that might be blocked by a nonconforming structure's mass.
    - That might be why the Portland Code language talked about allowing the footprint to be rebuilt. It might not allow the same height, but one could take advantage of the same criteria such as setbacks, off-street parking, etc., that exist within an established neighborhood. A significant amount of footprint might be lost if the owner had to comply with the current standards.
- Retaining the footprint would be more tolerable than bulk and mass and height.
- Most nonconforming structures in Milwaukie involve setbacks, not nonconforming heights. The vast majority of nonconforming structures in Milwaukie involves how close buildings are to front, side, or rear property lines.
- Staff often gets calls from appraisers and title insurance companies asking whether a structure destroyed by fire could be rebuilt; currently the answer is yes. There is a connection between being able to obtain and maintain insurance and many owners might not be able to be covered if this policy were changed.
- **Damien Hall, City Attorney,** raised the possibility of differentiating between damage to and the complete destruction of a nonconforming structure. Most cities' codes specify that nonconforming structures cannot be rebuilt after a total loss with the idea of phasing them out over time.

    - However, as mentioned, the use becomes a concern not just the structure. Rebuilding a single-family residence in place of a destroyed corner store in a residential zone would not enable the owner to recoup their investment into the property as anticipated. The issue would become a policy shift. From a legal aspect, it was really a City policy decision and would likely result in some outcry from property owners should rebuilding be prohibited.
- If the condition of nonconformity was usually pertaining to setback, how hampered would an owner be to rebuild within Code setback limitations?
    - Many lots in Milwaukie have odd shapes and configurations on which it might be difficult to meet the current standards and still have a buildable lot.
    - The locations of all nonconforming structures are unknown. Staff could only map nonconforming uses with about 80% certainty, but not nonconforming structures.
    - It would be a large policy shift, which could be done if the Commission felt strongly about it, but the full implications would not be understood, because they did not know all the situations or all the people who would be put at risk.
- Could a provision be drafted that provides an exemption for true hardship cases? So many nonconforming structures could easily be phased out. Many bigger lots existed where setback would not be an issue.
    - If the insurer was rebuilding a structure, and Code required it to be rebuilt differently, the insurer could deny payment. The same concerns would apply to third party financing.
    - From the setback aspect, if the structure burned to the ground and it was reasonably possible to build the same footprint within the setback requirements, they might be able to require that for simple cases.
    - Multiple situations might apply to cases that seemed simple at first, such as height limitations, floor area ratio, parking, or environmental zones.

Ms. Mangle assured that staff would be bringing a draft and would try to find the sweet spot in terms of policy direction. They could talk more on this issue when they had the draft.

7.0 Planning Department Other Business/Updates

7.1 Information requested about light rail project status and funding.

Ms. Mangle said she would email access to information online about the project's status, adding that Community Development and Public Works Director Kenny Asher could be contacted with questions.

8.0 Planning Commission Discussion Items

There were none.

9.0 Forecast for Future Meetings:

October 26, 2010
1. Worksession: Comprehensive Plan discussion

November 9, 2010
1. Worksession: Wastewater Master Plan *tentative*
2. Worksession: Land Use and Development Review Process Tune-Up (Briefing #6) Review Draft Chapters (conditional uses, variances, nonconforming uses & development, map and text amendments, review procedures and development review)

Ms. Mangle said she would send an email about two upcoming projects she wanted to discuss. At the October 26 meeting, she wanted to begin discussion about the Residential Design Standards project, adding that architect Marcy McInelly of SERA Architects/Urbworks would be

present. The other project, called Commercial Core Enhancement Program, which regarded planning and implementation work throughout Milwaukie.

Meeting adjourned at 10:04 p.m.

Respectfully submitted,

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

Jeff Klein, Chair