

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
January 2, 2008**

**CALL TO ORDER**

**Mayor Bernard** called the 2021<sup>st</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Associate Planner Bob Fraley, Civil Engineer Zach Weigel, Community Development/Public Works Director Kenny Asher

**PLEDGE OF ALLEGIANCE****PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****CONSENT AGENDA**

- A. **City Council Minutes**
  1. **City Council Work Session November 6, 2007**
  2. **City Council Regular Session November 6, 2007**
  3. **City Council Work Session November 20, 2007**
- B. **Resolution 1-2008: A Resolution of the City Council of the City of Milwaukie, Oregon Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Date, Establishing the Times of the Said Meetings, and Repealing Resolution 55-2006**
- C. **Resolution 2-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the Clackamas Review, The Oregonian, and The Daily Journal of Commerce as the Papers of Record for the City of Milwaukie**
- D. **Resolution 3-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving a Clackamas County Order to Initiate the Formation of the Clackamas County Extension Service and 4-H District**
- E. **Resolution 4-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Dave Green to the Riverfront Board**
- F. **Resolution 5-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Michael Martin to the Riverfront Board**
- G. **Resolution 6-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Shane St. Clair to the Riverfront Board**
- H. **Resolution 7-2008: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Mitch Wall to the Riverfront Board**
- I. **OLCC Application for Craft Brewers Alliance, Inc., 1750 SE Ochoco Street, Warehouse, change of Ownership**

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

**AUDIENCE PARTICIPATION**

- **Cyndia Ashkar, Oregon City**

Teacher at Portland Waldorf School and member of the Safety and Security Task Force provided an update. One mother at Waldorf who wanted light rail suggested an encasement something like a tunnel. She asked what mitigation might be possible to minimize impacts and was told those investments would not be considered here. She went on the field trip to the Interstate Line. The TriMet safety and security manager stressed that eyes on the station was key to security. She then understood why you would not want to put in tunnel. After the third meeting she starting realizing the conflicting needs for mitigation that existed on the Tillamook Branch line. The last time she spoke to Council, Councilor Barnes said she was sure that the excellence of teachers and curriculum could overcome any adverse effects. She needed to provide City Council with the neurological development piece. She hoped the City Council would consider another alignment and leave the possibility out for a better solution. The National Park Service talked about how a process winnowed out what alternatives to consider. Agencies often mistook the winnowing process as one that allowed them to choose only their favorite alternatives for analysis rather than completing the NEPA full spectrum of environmental analysis. That was saying that you needed a full spectrum of reasonable choices ready to undergo the objective environmental analysis that NEPA dictates. There were studies shown where someone who had done a comparative analysis of the Tillamook Branch found a lot of negatives. They were never really allowed to see in black and white what it might be like for another alignment.

## **PUBLIC HEARING**

### **A. Appeal of Planning Commission Decision to Uphold the Planning Director's Interpretation of Milwaukie Municipal Code (MMC) 19.312.5(B)(2), Public Area Requirements, continued from December 18, 2007**

**Mayor Bernard** reopened the public hearing on the appeal of the Planning Commission's denial of AP-07-01 for the property located at 10883 SE Main Street to order at 7:08 p.m. The hearing was resumed to hear staff's response to questions raised on December 18, 2007 about the prior use of the property.

**Mr. Monahan** asked if there were any site visits, ex-parte contacts, or actual or potential conflicts of interest since the December 18 hearing. There were no site visits, conflicts of interest or ex parte contacts.

**Mr. Morasch** renewed their objection previously done in writing.

**Mr. Monahan** explained the objection suggested Mayor Bernard and Councilor Barnes had prejudged or made a determination as to what their decisions would be.

**Mr. Morasch** said the objection was about the Mayor. With regards to Councilor Barnes their concerns pertained to making sure the City put the Constitution before the City Code and understood that regardless of what the City Code said the City still needed to do the proportionality analysis.

**Mr. Monahan** asked the Mayor if he had prejudged the application, and if the Mayor determined that he felt that he had not prejudged the application and was qualified to sit tonight, then it would be up to the remaining members of the City Council to determine whether the Mayor should sit and make a determination on the matter.

**Mayor Bernard** read a statement into the record. It was difficult if not impossible to ignore personal knowledge. He also understood his role was to maintain an open mind and consider testimony from all perspectives. He had spent almost every day of his life in Milwaukie and on Main Street. He said this was a great project and supported it and he could make a fair and unbiased decision.

**Mr. Monahan** said the final determination was up to the remaining members of the City Council.

**Councilor Stone** would like Mr. Morasch to clarify again the reasons he believed the Mayor should not be participating and the constitutionality issue.

**Mr. Monahan** said the discussion to the challenge of the Mayor needed to be restricted because the constitutionality question was related to another question that would be dealt with during the hearing. That had nothing to do with the challenge to the Mayor.

**Councilor Stone** asked what specific comments the Mayor made at the last meeting.

**Mr. Morasch** said it seemed to him that the Mayor had formed an opinion about the prior use based on his experience over an extended time period rather than evidence. The Mayor was quoted in minutes as saying that, "it was not retail, absolutely not", based on his own experience. So it seemed to him that he had already made up his mind about whether or not the prior use was retail, and it did not really matter what evidence was presented at the prior hearing or this hearing. There would not be any changing of his mind on that issue. Maybe he was saying something different tonight. That was something that did not come to his knowledge at the beginning of the first hearing, but only after the record had been closed for the day that those comments came to light.

**Councilor Chaimov** asked what would be the form of motion that they would need to make in order to continue the Mayor's participation on this issue.

**Mr. Monahan** replied that the form of the motion would be that Mayor Bernard be found to be qualified to participate in the hearing based upon his statement of having not predetermined his vote.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes that Mayor Bernard was qualified to participate in the hearing based upon his statement of having not predetermined his vote. Motion passed 4:0:1 with the following vote: Councilors Barnes, Chaimov, Loomis, and Stone voting aye; Mayor Bernard abstained.**

**Mr. Monahan** said this was a unique hearing. His understanding was that because this was a continuation on one item, the discussion on the prior use of the property, and that the hearing was closed until the Council asked for that additional information. Staff would make a presentation on that issue and others raised since that time and address that publicly. Then the applicant would have the opportunity to speak to address those same issues and the public would be able to speak on the one issue of the additional information that the Council, the prior use of the property.

**Ms. Mangle** provided the staff report. Public Area Requirements was the code section in question. Specifically, how staff should apply the term "shall comply with public area requirements." The issue was her direction in interpreting that phrase regarding the impacts of the project and making sure the list of improvements that they required of the project were proportional to the impacts. They could acknowledge that there were existing elements that were not required to be replaced. The applicant's complaint had less to do with the interpretation and more with the application to this project. On October 5, the City gave the applicant a list of required improvements and told him that prior to approving the building permit for the project he had to agree to the list of required improvements and agreed to complete them prior to tenant occupancy. The applicant did not agree and appealed that decision. The building permit was on hold, but once they got the agreement the City stood ready to approve the permit. Staff supported the project and wanted to see it move forward.

**Ms. Mangle** said the key issue was whether or not staff applied the code properly to the project and if the required improvements were roughly proportional to the project's impacts. The Code clearly directed development to contribute to the public infrastructure in downtown and the Supreme Court said that it is okay for cities to make these kinds of requirements as long as we considered proportionality. Staff maintained the project would intensify the use of the site and it would have impacts on the transportation system. Because of those impacts the City was justified in requiring that the applicant contribute some public area improvements. The question was not whether or not the project should be required to make improvements but in what proportion.

**Mr. Monahan** referred to the December 20, 2007 letter from Mr. Morasch that raised 5 challenges that were significant based on the last hearing. The first was the Mayor's involvement. Second was related to whether or not the City was properly following the US Constitution. The challenge was that the applicant did not believe that the Code language left the City with sufficient discretion to conduct a Dolan analysis. However, his opposition was that the City had that authority and in fact followed the Dolan analysis by performing a proportionality analysis by looking at the specifics impacted of the proposed development on the City. The applicant alleged that the City-required exactions were based only on the Code language and in fact it was based upon the Dolan analysis. The allegation that the City had disregarded the US Constitution was not accurate. The next challenge was that the City had to demonstrate proportionality, and the City agreed with that. The City did perform the proportionality analysis. The fourth challenge was that the City's proportionality analysis was defective because it was based on a faulty assumption that the prior use of the property was general office. As the addendum to the staff report showed the information that was taken into consideration from the beginning was an assumption that the property was used as office which was information provided to the City by the applicant. It was not information that was asserted initially by staff. The information that the building was retail was brought forth for the very first time at the last meeting. The purpose of tonight's hearing was to analyze the new information as to whether or not the property was office use or retail and from that the Council needed to make a determination. The answer to that question was that the proportionality analysis was based on the best information available. If there was proof that the prior use was not office then one might want to consider performing a different analysis. The 5<sup>th</sup> challenge was that there were numerous defects in the City's proportionality analysis and the memo that he prepared for Council detailed the six issues raised within the 5<sup>th</sup> challenge. Those were based upon input by the City engineering staff that performed the analysis in a very detailed manner. He believed the presentation would touch on those details.

**Mr. Monahan's** analysis based upon the available information was that City staff had properly prepared a proportionality analysis. Going back to last September staff was brought into the process and asked whether the Code required a proportionality analysis which it determined had to be done. He was confident that the staff had properly applied the City Code to the property and had done a proportionality analysis that met the Dolan requirements as well as the McClure methodology. He did not see any problem in the way staff conducted the analysis. Each time there had been additional information provided that had been taken into consideration. Based on its analysis staff thought the procedure had been properly carried out. It was up to Council to make the determination whether that procedure was accurate based upon the determination it made on the prior use.

**Ms. Mangle** said at the close of the last hearing on December 18 Council asked staff to verify the previous use, and there were some questions about the proportionality analysis itself.

**Mr. Fraley** said at the December 18 hearing Council requested that staff provide more information specifically about whether the last previous known use was retail or office. He reiterated and respectfully submitted that staff from the beginning assumed that the previous use was office, based on what the applicant told staff, and also based on the business registration that had been on file with the City since the business opened in 1986. That registration showed the business that had been there for 20 years was Linco Microsystems. To answer Council's questions about the immediate past use staff looked at a number of sources of information not only on what the applicant had told staff and what the business registration had said, but at the definitions of retail. They took into consideration the business license on file. They looked at the 2003 Clackamas County road system maintenance utility study and the 2007 City of Milwaukie Street Surface Maintenance Program (SSMP). The City reclassified the use based on empirical evidence of what was actually happening at the site to a single tenant office building and based the ITE trip generation rates in calculating the assessed fee for that use. Mr. Fraley conducted a couple of interviews, which included Neil Hankerson, Dark Horse Comics, and Jeff Lindquist, Linco business manager. He found in his conversations with Mr. Lindquist said that Linco occupied the building for over 20 years and moved when Mr. Parecki purchased the property in April 2007. Mr. Lindquist also stated that the business over the years provided document services to government and small businesses clients including document imaging, microfilming and microfishing for their clients. Linco sold equipment, which occurred at their client's location. Mr. Lindquist stated that the business rarely had very many customers or walk through trips one would commonly see for most retail uses. Finally, Mr. Lindquist confirmed the Linco offices were located on the second floor, while the first floor and the one-story portion were used exclusively for document services for their clients. The basement was used for storage. Staff believed based on those findings and on his research regarding the immediate previous use of property that the use was more office than retail. Therefore, staff had not revised its proportionality analysis or recommendation. Staff would do additional research if Council directed.

**Ms. Mangle** discussed the questions of how the information was used and why the most recent use instead of previous use. She would also address some of the questions that arose in Mr. Morasch's letter.

**Mr. Weigel** reminded everyone that the proportionality analysis was required to establish that the public area improvements required by the City's Code was roughly proportional to the impacts of the development. Some of the information needed to conduct a proportionality analysis was the exactions and the impact and to find out what those were. The first item was the exactions. When the City received a building permit the public area improvements were triggered based on the value of the permit, and those public area improvements were the exactions. Initially, the proposed development was required to comply with full public area improvements, which he pointed out for Council. The interpretation made by Ms. Mangle accounted for existing improvements that were already in substantial conformance with the public area requirements so the list of requirements was reduced. Now that the exactions were defined staff needed to determine what the impacts of development were on the transportation system. There were many ways to create an impact on a transportation system, and three of those were listed. The first was an increase in vehicular or pedestrian traffic that occurred when adding floor space or a more intensive use. Second was to change access for vehicles or pedestrians. Third was a change in hours of operation. For example, if the hours were changed such that the traffic was using a street at peak hours an impact was created. For this development the change in the use created a more intensive use and increased vehicle traffic was the impact. The impact was determined by information regarding the existing and the proposed uses. Initially, the applicant stated the previous use was office on all floors and the planning

staff confirmed that with the business registration. At the last Council hearing the applicant said that the previous use was retail. That was when staff was directed to do more research on what the existing use of the building was. He listed the research staff had done since the last hearing to determine the existing use.

One of the questions that was asked at the last hearing was why do we compare to the existing use and not previous uses? The answer was that they were trying to determine the impacts to the transportation system and associated trips. Prior uses were no longer a part of the system. It was important to keep in mind that the transportation system was constantly changing. There would be many variables if comparisons were made with previous uses including land uses. Comparing against the existing use eliminated those variables to the greatest extent practicable and accurately predicted the impacts on the transportation system today.

The existing use was determined to be office and was compared to the proposed use. Staff applied specialty retail to the first floor and basement area as recommended by the ITE Manual. That defined specialty retail as a small strip shopping center that contained a variety of retail shops similar to a use in a downtown storefront area. At the time of the permit fee calculation the applicant stated that the first floor and the basement would be used for retail and the second floor would be used for office. Also, the construction plans submitted by the applicant stated that the first floor would be retail and the second floor office. Specialty retail is generally applied on all applications in the downtown retail zone. The retail use proposed by the applicant in the downtown storefront zone best fit with the specialty retail category. He showed a slide that compared specialty retail to other applicable use categories for trip generation. The only other category that was less than specialty retail was a health club. Some of the other use categories were much higher such as a fast food restaurant or a 24-hour convenience market. They determined that the existing use was office, and the proposed use was a mix of specialty retail and office. To determine the impact they compared existing office trip generation to the proposed trip generation from the mix of specialty retail and office. The existing use showed 109 weekday trips as a general office building for the entire building. The proposed use showed 277 weekday trips. That had an impact on the transportation system of an increase of 168 vehicle trips.

Once they had all of the information they could determine rough proportionality to meet the Dolan analysis. In this application they used the McClure methodology. It was a standardized methodology for proportionality analysis and related the increase in vehicle trips to the required public area improvements. He addressed a question raised, "Was the McClure analysis appropriate methodology for this applicant?" The McClure case was about right-of-way, but the methodology could be applied to other types of exactions. According to Dolan there must be findings showing the relationship between the development condition of public area improvements and the impact of that development. The McClure methodology established that relationship. The first step was to determine an impact area, which was the area around the development to the nearest collector or arterial roadway. Once the traffic to or from the development left the area it became part of the larger transportation system. The impact area for the proposed development was the area bounded by McLoughlin, Jackson, 21<sup>st</sup> and Jefferson. The second step was to determine an impact ratio. The ratio was the number of vehicle trips from the proposed development divided by the number of vehicle trips within that impact area. It was calculated previously that the number of vehicle trips from the development was 168. He provided a sample spreadsheet showing all of the properties with a use category and the calculated trip generation. The use categories were assigned by the street maintenance fee studies conducted by Milwaukie and Clackamas County, and the trip generation was calculated from the ITE Manual for each category. The number of trips within the impact area was 3,655, and

the impact ratio was 0.0459. The next step was to calculate the exaction ratio and compare it to the impact ratio. The exaction ratio was the area of exaction over the impact area. He showed a map of the area of exaction that was the area that fronted the proposed development property. That assumed that it was in full compliance with all street improvements, and not just the modified list. The exaction was 7,079 square feet. The impact area consisted of all of the public right-of-way located in the impact area boundary. That area was roughly 149,000 square feet. The exaction ratio was 0.0476. In this case the impact ratio was less than the exaction ratio so, in other words, the exactions were more than the impacts. The requirement of full public area improvements was not proportional to the impacts of the development. The question was how much of the public area improvements were proportional and to find out they must say the exactions are equal to the impacts. To find the area of proportional exaction, they took the new exaction ratio and multiplied that by the impact area and from that they got 6,832 square feet. If broken down by the percent of frontage area 96.5% was proportional to the impact of the development. Staff findings were that the required public area improvements were much less than 96.5% of the development frontage and that those public area improvements required were roughly proportional to the impacts of the development. In closing, he said that the proportionality analysis had a lot of technical detail which was necessary to meet Dolan requirements. Staff had been very conservative and gave the applicant the benefit wherever possible within the analysis. Staff believed that the project would increase the use of the site and that the improvements that were required were roughly proportional to the impacts.

**Ms. Mangle** said research had not changed staff's recommendation, and they believed the Code was applied in a way that was constitutionally defensible, fair to the applicant and true the community's adopted plan and policies. The Code clearly required that development contribute to public infrastructure, and the Supreme Court said it was okay to do it this way. The proposed project would increase use of the site. She pointed out the list of requirements on page 4 of the original staff report.

**Councilor Barnes** asked about the slide that showed today's picture and then the future picture of the property. Was that a City artist's rendition? She wanted Ms. Mangle to run down the list of improvements required by the applicant.

**Ms. Mangle** replied the picture was the applicant's artist rendition. She referred to page 4 of the original staff report. On the Main Street frontage there a street tree, street light, bench or trashcan would be required. On the Monroe Street frontage the same would be required as Main Street with the exception that 2 trees would be required. In the intersection 1 bulb out, 2 flowering ornamental trees, landscaping with irrigation, 4 bollards and 2 ADA warning pads would be required. There was a small curb extension existing on the site, but it didn't fall into the category of being sufficient. It was almost flat with the pavement and actually posed a pedestrian hazard.

**Councilor Barnes** she said she wanted to see in a picture form what it looked like if the City added everything that it was requesting. The only thing that seemed to be missing in the rendering was the streetlights and one or two trees.

**Councilor Stone** said was curious to see what the reduced list of improvements would cost the applicant. We were trying to be fair and have everything proportional. How did it compare to the cost of the overall project?

**Ms. Mangle** said the first question was answered in the information presented at the last hearing. The cost of the full frontage improvements was \$128,000. The current reduced list of required improvements was \$60,000. When the engineering department prepared the estimate it was quite possible it would be less. Their estimate was based on public contracting prices. She answered the second question when she talked about proportionality which had to do with impacts and not the project cost. The total project

cost was \$250,000. That did not include any future tenant improvements, which would be additional.

**Mayor Bernard** asked if the developer could do the improvements.

**Ms. Mangle** replied the developer could do the improvements. It was very common for the developer to do so, and there was no reason why the City had to do it.

**Councilor Stone** said in the staff report there were definitions from industry classification system that described retail trade two ways, store and non-store. Could Linco come under the non-store retail definition? Mr. Lindquist said equipment was sold in the client's place of business. In the non-store retail definition in-home demonstration fell under that category. She was wondering if that could be applied in this case.

**Ms. Mangle** said with all of the other information they found including the interviews, that didn't seem to meet the intent of that definition.

**Councilor Stone** said it was listed as an office business. Was that in place at the time? She was trying to figure out if using that definition would give a different slant to the case.

**Ms. Mangle** responded every office was selling something. The general purpose of the business was to perform a service and retail. They sometimes sold equipment to clients. The service was the bulk of what was happening. They concluded that was not the function of the business when on that site.

#### Correspondence

None.

#### Applicant Response

**Mr. Parecki** responded to Mr. Weigel's comments. The presentation reaffirmed his point and previous comments on previous public area requirements that were imposed on other people. If there was no change in use then there was no impact and there were no public area requirements available to be imposed on. So the bank, church and theater were key candidates using what Mr. Weigel presented. There was no change, so the public area requirements could not be imposed. Points he had been trying to make and the problem with this situation was in April 2007 during pre-application meeting he was told by planning staff that he would have to make public area improvements. That was before they did an analysis and that was the standard operation for the City. They did that regardless of whether the analysis was made. The analysis didn't happen until October when he finally asked how much the improvements would cost and what he would have to do. That was where the constitution came into play. They were not following the constitution because they were not using it correctly. The Dolan case said you would have to do an analysis prior to imposing impacts and the public area requirements were the impact. The question that Ms. Mangle posed was of how much of an improvement would be required. His question was what if any would be required if their analysis was made. You had to step back and do the analysis first, determine impact and then tell the developer what it would cost based on the analysis that determined the improvements.

He never stated that the basement would be used for retail. He pointed out last week that it was virtually impossible to do specialty retail in a basement that had 6'-6" ceilings. They insisted on using that in part of the analysis. He also wanted to point out in the packet that was presented to the City Council - attachment 4 was a document that was prepared by Clackamas County, which was the last page of the staff presentation. If you looked in the notes the County stated that the business seemed to fit best to retail, office, manufacturing, warehouse and service under one roof and emphasized on the

retail. That was from the County and prepared in 2002. The title of that was the Clackamas County Road Maintenance Utility Formation Study Business Classification.

The question that was posed at the last hearing was not what was heard tonight. He believed the Councilors asked what would happen if the building was classified as retail and what would the impacts show. He converted the sheet that Mr. Weigel presented for the proportionality analysis. It showed the existing use as presented was first 2500 square feet of basement, 4886 square feet on the first floor and the second floor was 2500 square feet all using general office and a 11.01 trips per thousand square feet. The proposed use was going to be 44.32 trips per thousand square feet. With staff analysis the question was, was it proportional and were there impacts? The answer was yes, but if they were to change it to a retail use, which would be 44.32 trips the answer would be no. He left everything else alone and only changed from retail to retail and there would be no public area improvements required. Had they done the analysis in April we would not be here tonight. He had offered \$23,000 toward public area improvements and that offer was off the table. He had spent more than that defending his position and would continue to defend. If there were no changes in use there were no impacts or public area improvements. The only projects that had been required per constitutional law had been North Main Village and Advantis Credit Union; nothing else in City would have been required. You could not impose a code that was unconstitutional and then defend it and in the last 7 years impose public area improvements on every single project whether or not they were required.

**Mr. Morasch** followed up on letter he submitted and respectfully disagreed with staff's analysis of the McClure case. One point was when staff showed the exaction area and picture of 4 blocks looking at the impact area. Part of the impact area was Main, Monroe and the right-of-way, but they also included half-street right-of-way around the perimeter of those blocks. McClure did not include the perimeter streets. It only included the internal streets up to the arterial. McClure did not include the half of the arterial in its analysis as staff did. That inflated the denominator, which skewed the fractions. If you looked at the right numbers you would get a completely different analysis. As he pointed out in his letter there were a number of different problems with the City's analysis. It was one thing to say we cannot nitpick too much with the analysis, but the Dolan case did require some rough proportionality. Since the case Dolan had said it did not have to be exact or precise or with mathematical precision, but they still had to be in the ballpark. He was not sure staff's analysis was in that ballpark for the reasons stated in his letter. The perimeter street was one of those reasons. Another reason was that the analysis looked at what they called ultimate build out. They based that on the McClure case, but the McClure case did not look at the non-conforming use issue. Within that impact area there was a gas station, and everyone knew that a gas station caused a lot of trips. Staff's analysis did not include those gas station trips because they said ultimately that would be retail-office mix. He did not think McClure allowed that kind of trip replacement. Also, the McClure case looked at right-of-way dedication so it may be appropriate to look at that area in relation to the total impact area. Staff was talking about improvements within the right-of-way not a dedication of a right-of-way. City staff admitted at the Planning Commission that these were gold-plated improvements and did not have any relationship to the applicant's cost. His final point was if one looked at pedestrian area improvements he thought it was appropriate to look at impacts that the development had on the pedestrian system. They had only heard about impacts on traffic trips. Even if the prior use had been office there were some serious problems with the analysis. If not resolved then they could end up with appeals and court challenges. The evidence showed that there were some good arguments that the previous use was some kind of retail. If that was the case then the whole analysis fell apart. There was a witness ready to talk about the prior use.

**Mr. Parecki** had a comment regarding the estimate of \$60,000. The Bank three years ago did the bulb out and their cost was \$45,000 with no other features. That was years ago. It was hard to believe he could get that short list done for \$60,000.

**Councilor Barnes** understood Mr. Parecki was a successful businessman and had done a world of good for downtown. She asked when he decided to buy the property how he envisioned the outside to look and how to entice people?

**Mr. Parecki** replied the outside of the building was going to entice the people. He would want to add a tree and other things, and he never said he would not do them. That was what the offer of \$23,000 was for. The rendering that was shown was done shortly after he purchased the building before he knew what kind of public area improvements could have been imposed. That was his vision for the building. If he could make the building look like that picture he would have a quality tenant in no time at all regardless of what happened on the outside. Anything that he did on the outside was not really going to affect the traffic patterns or the traffic. The parking would be the parking that was all there was. The trees would not change traffic or pedestrian trips. The lights might help with vision in the evening, but there was nothing happening in the evenings. There was little he would have to do for the public. The improvement was the facelift of the building to bring it back to its original beauty.

**Councilor Stone** wanted to clarify how the County had this business listed.

**Mr. Parecki** said this was the first time he had seen the document. When he purchased the building the business was packing up. He may have looked at it and thought it looked like an office and could have said that based on what he saw, but if he had realized that there was a proportionality analysis that was going to be conducted he would have done some more research himself.

**Councilor Stone** had questions about new information. That was something she had not seen before. What was the definition of retailing? Was it correctly listed as a business? That was the crux. Was there a change of use? It put some doubt in her mind about the prior use. She had no idea there were different classifications of retail.

#### Testimony in Support

- **Grant Lindquist**

**Mr. Lindquist** spoke about the history of the building that Mr. Parecki bought. He had purchased the building in October 1985. At the time he purchased the building the City license that he got was for retail and had been since he had been there. There were no restrictions on that building. The only type of business had been retail. It had been there way back before WWII. So nothing had changed. On the main floor of the building he had a petition to build and divide up the building inside, and the building inspectors approved it. Just inside the main entrance of the building there was a customer waiting room to keep customers from going back into production and equipment areas. They had to come in and wait for the person they wanted to see. The receptionist would discuss equipment or supplies that would be taken care of at that time. If they came in for information they were given the information that they wanted to see. A lot of people did not know what microfilm or microfiche was. It was strictly retail. They bought from a manufacturer and supplier, and they used that equipment. The customer waited in that room, but both doors were locked for a reason. That kept them out of the confidential files they were dealing with in those rooms. If someone wanted service they had to ring the buzzer. It was no different from a doctor's office or a lawyer's office. There was nothing new invented at that point. There was equipment outside of the waiting room to show that they were retail and not a manufacturer. They bought that equipment from manufacturers. The basement was

used for storage of confidential records and document prep before microfilming. The first floor was used for retail sales. If someone wanted supplies such as film or paper they would sell it to them right on the premises. It was no different from what the Blade did. If you wanted a suit they sold it to you. On the first floor there was equipment for purchase or demonstration. The second floor was office space and a conference room for customer training sessions. The total operation was that it was retail. They did nothing in manufacturing. It was strictly a retail operation.

**Mayor Bernard** asked him to describe a customer that came to his business. Compared to the Blade when a customer went in to buy a suit, would a person from the general public go in and buy a piece of equipment?

**Mr. Lindquist** replied he could buy it and either walk out with it or have it delivered. He said the general public had come in and bought equipment.

**Councilor Chaimov** asked in a given day how many paying customers would come in to do business.

**Mr. Lindquist** replied that he did not know. He did not keep track. He was president of the company and kept track of the dollars billed out. He was interested in what generated the invoice. He was only into the numbers.

**Councilor Stone** asked if his customers were served not only in this building, but also in their homes or places of business? How did you advertise your business?

**Mr. Lindquist** went to different shows, had brochures and advertised in the yellow pages.

- **Jeff Lindquist, Oregon City**

**Mr. Lindquist** asked if the City of Milwaukie normally did an exit interview of businesses that left the City? According to this gentleman that was standard practice. He was set up on that. He was not given permission to talk here tonight about his findings, and he was not told that he was coming here talking about that. He asked if that was the regular way that the City of Milwaukie did business. He was told the City was doing interviews with businesses that left Milwaukie and said he wanted to find out why my business left. He felt it was a set up. He was not told it was about this meeting and Mr. Parecki or about anything that was going on. If that was the way the City did business that was not a very good way. He did not do business that way. He was very upfront with his customers. As far as the retail end of it  $\frac{3}{4}$  of the business was in selling equipment. How many people had really gone through the building? People might have rung the bell but did not wait and actually come in. They had a room full of equipment. They did scanning for customers and sold scanners to the general public. They went out and installed those scanners in people's homes and taught them how to use it. They didn't just do microfilm. It seemed like everything here was about microfilm. The name of their company was Linco Microimage Systems. They sold equipment to people who wanted scanners in their homes. A lot of the time they had to order equipment from their primary distributor. Basically they had to order the equipment in and either took it to their house or business or they picked them up. They demonstrated equipment so the customer could see what they were going to be purchasing. Most of the people that bought from them did show up at their office to see the wide array of equipment they had to offer. He felt like he was not given a fair opportunity to talk when the gentleman called him.

**Councilor Barnes** asked how he found out about this hearing?

**Mr. Lindquist** said he saw the sign on the building and heard his dad was going to be here.

- **Jerry Foy, Clackamas County**

**Mr. Foy** was born and raised in Milwaukie and had a good history of what occurred on Main Street. That building had been retail as long as he could remember, which went back to 1949. It only changed use when the company in there now bought it. He had been in commercial development, specifically retail, for over 40 years so he knew the nuances of retail use. He believed they could qualify for specialty retail. Along with that he could not see how the City could construe that that basement was retail. If he understood the dimensions right and if it is a 6'-6" ceiling it was nothing but storage. He could assure that Mr. Parecki would have a hard time leasing basement for retail. He wanted to reinforce that that area had been retail. He added there had been no street improvements on that side of Main Street since it was always retail. When it was strictly retail even prior to the bank being there it handled the traffic conveniently. He did believe with limitations of parking along Main Street that existing development or improvements probably would work well as far as utilization went.

Testimony in Opposition

None.

Neutral Testimony

None.

Staff Recommendation

**Ms. Mangle** addressed Councilor Stone's question about the retail classifications. One of the important points she failed to make was that non-store retailers were still organized to serve the general public and in their understanding it was not what that business was doing. They certainly did not contend it was not a commercial property. Council needed to keep in mind these types of uses were mechanisms for assessing the traffic impacts, which was the point. It was not only how the specific property was used but consistently throughout the County and City. Data estimated to be generated from this site by the County's 2003 study showed that the level of traffic was comparable to that of an office or about 11 – 12 trips per thousand square feet. The use was one mechanism that they used to come to the estimation of trips that they were really interested in and that had been consistent over time. 11 was the number that they were using with that historic assessment.

**Mr. Weigel** said on the last page of staff report it said that it changed building code to 700 industrial to go with the 770 business park ITE code, which seemed to best fit the retail, office, manufacturing, warehouse under one use. In the ITE Manual the trip generation for a business park was 12.7 per 1000 square feet of gross floor area similar to an office use and not a retail use.

**Ms. Mangle** wanted to remind Council of one of the points of information was the interview with Neil Hankerson of Dark Horse Comics. He told them that he did not remember ever seeing anyone entering the site. He saw a lot of loading/unloading so there was certainly activity. That testimony was not that they did not sell things, but it was not an active storefront and did not generating a lot of traffic. One of the points she also wanted to clarify was that contrary to what Mr. Parecki stated in the beginning of his testimony that one of the things that Mr. Weigel showed in his presentation was that a change of use was not the only way for a project to have impacts. There were many ways for projects to have impacts on the transportation system including vehicle and pedestrian uses. Those included changing locations, the building functions, and adding capacity to a building internally. They believed there would be a change in use. The other thing to keep in mind was that there were many different future uses that we could

be considered, and they had taken care to be very conservative with their estimates of future uses so when Mr. Parecki was going through his spread sheet and said if we changed the one cell to retail it all went away. One could also say it was going to be a high-capacity, sit-down restaurant and change another cell and say that even if you agreed the ground floor was retail now that it actually could generate more than the 45 trips per day that they were estimating. Staff had been pretty conservative in estimating the future trips, and it was important to keep that in mind. With regards to the timing of the analysis brought up by Mr. Parecki. She clarified that during the pre-application conference referenced on page 110 of the December 18 report staff did not tell Mr. Parecki they knew exactly what the requirements would be for the project. In fact, what they did was recite the Code section that applied and said because they did not have an application and did not have his building plans. It listed all of the different thresholds. For example, staff did not know the value of the building permit. They had no idea if he would be in the 10% or full compliance category and they closed by saying, "Since you told staff that you would most likely develop the project in phases, staff would review each development permit as submitted and assess the required public area requirements one permit at a time. We recognize however that incremental improvements may not be the most effective way to implement public area requirements and are open to discussing other approaches to evaluating implementing these requirements." They encouraged him to contact the City in advance of or at the time of the first building permit submittal. Then they told him how they planned to proceed if that did not happen. That did not occur, so staff was put in the position of reacting to the application. Once they had that application they did do a proportionality analysis (page 79) that listed the timelines. Once they figured out that they had the application in hand and figured out that full compliance for the public area requirements would have been required by Code on September 21 she asked the engineering staff to prepare the quantitative proportionality analysis. Prior to the first letter she sent to Mr. Parecki outlining the requirements on September 27 they did take a moment to do an internal proportionality analysis before sending Mr. Parecki the list of requirements. In that same letter she also invited him to do his own proportionality analysis. Staff was not ignoring its responsibility, but it was instead saying that the applicant always had the opportunity to provide his own, which Mr. Parecki did not do. She also wanted to clarify the question about the basement use. They consider the basement use to be supporting space for the first floor use. For instance, if there was a retail space on the first floor that meant when you have basement space available for storage you are able to more fully use the ground floor for retail because you did not have to store products, have your office or have supporting functions on the first floor. Primarily they did that because the ITE Manual directed them to do that. The Manual considered the basement space to be part of the first floor space. The reasoning was because it made the first floor space more readily available for active use. In response to Mr. Lindquist's frustration about the call from Mr. Fraley she respectfully disagreed that it was a setup. They wanted to take great care not to ask leading questions or share what the City's stand on this was so that staff would not be influencing the answers. They tried to take the most neutral approach as possible which was what Mr. Fraley did. In fact, when Alex Campbell learns that a company plans to leave the City he calls to find out the reasons for leaving. It was not necessarily routine thing, but it was not unheard of. The intent was to ask open and not leading questions.

**Mr. Weigel** addressed the questions raised about using the perimeter streets. The uses that fronted that perimeter were used and if you took away both the area of that frontage and the uses that were fronting it both the numerator and denominator would decrease with roughly the same result. Also, with regards to substituting the gas station with full build out condition, as stated in the letter by the City attorney, the gas station was a non-conforming use downtown. When staff did a proportionality analysis it

needed to compare against uses that were expected in that zone. If there was a subdivision in the middle of a rural area and you were to compare against the rural area surrounding that it would skew the results. The McClure analysis recommended looking at full build out conditions in those situations to have a fair analysis of what the impacts would be. Mr. Parecki brought up the Key Bank requirements, which were completed last year. That project replaced a significant portion of sidewalk done in a grid pattern consistent with the downtown plan, which was a significant cost that was not included in the cost estimate for Mr. Parecki's improvements. Key Bank also installed landscaping with that project.

**Ms. Mangle** acknowledged that a lot of what they were talking about was estimates. They were using the best information they had and the best professional process and methodology to estimate how the project would increase the intensity in the downtown. At gut level they felt this project would result in a more intense use of the site. They had done a lot of work, as is their responsibility, to quantify that to the best ability. They recognized that was an estimate and that was their best estimate. The applicant was also making an estimate. At this point it was an estimate and nobody had perfect information, but they felt that they implemented the Code as constitutionally required. They put their best estimate forward and they studied by it using many factors including prior uses, anticipated future uses, balancing between impacts and exactions, and standards such as the ITE Manual. Finally, the staff recommendation was that Council deny the appellants appeal and adopt the recommended findings and conditions in support of denial. That would result in supporting the director's interpretation of the code, which apply not only to this application but also to future applications in the downtown area, and require the project to construct the improvements listed on page 4 of the December 18 staff report.

**Councilor Stone** understood the hard look at our Code and the interpretation of it was triggered for the first time by this project because it was a change of use.

**Ms. Mangle** replied that this was the first application that triggered this specific section of the Code during her tenure, and the history of the Code section. She sought guidance from the City Attorney to check to make sure it was done correctly. It was not directly related to this application and would apply to all.

**Councilor Stone** asked what prompted the more detailed look at the Code and was it because of the office to retail use?

**Ms. Mangle** replied it was not. The impact analysis was where the change of use came in.

**Councilor Stone** asked if there was discretion in using the 1,000 square feet of the basement and being classified in terms of retail.

**Mr. Weigel** said there was no storage space use category. Storage was a part of another type of use such as retail or manufacturing.

**Councilor Stone** asked if the ITE Manual mandated it as storage or was there some discretion.

**Mr. Weigel** replied the Manual directed it be considered retail storage.

**Councilor Loomis** thought it sounded as if one story building had been eliminated.

**Ms. Mangle** responded the single story building was included but not figured in because it would still be office use. They compared apples to apples. If you took out the basement in both before and after it didn't matter or change the conclusion of the analysis. It was that type of consistency that was most important, and they did not feel there was not a good reason to go against the ITE Manual. It was not the law, but it

was the best professional practice. It provided a consistency so that Mr. Weigel would apply the same kind of methodology to every application he was reviewing. Relying on those kinds of authorities was very important to his work.

**Mayor Bernard** observed it was reliance on those authorities that allowed one to support a decision made at any level.

**Mr. Monahan** said the staff had adopted the use of the ITE Manual, which was a recognized professional document that was constantly updated to take into account the changing uses. They were constantly doing case studies on different types of traffic generation, so when you adopted that as your standard your obligation was to keep it as pristine and follow each and every one of the procedures and definitions. It was recognizing the law and a uniform way of interpreting traffic impacts.

**Councilor Stone** asked if the public area improvements were triggered by the change of use?

**Ms. Mangle** replied it was triggered by the building permit value in relation to the value of the property. That ratio is what determined which of the three categories the project would have to build. If it was a new building they had to do everything. If the value of the permit was more than 50% of the County's assessed value of the land and building, the Code said, "Shall comply with public area requirements." If less than 50% then the Code said, "shall contribute 10% of the value of the building permit." In her tenure and in most of the City's experience so far in downtown all of the projects had either been in the new building category or lower than 10% category. The reason why this was a director's interpretation was they came to a point triggered by the application and realized the Code as written was not sufficient. She directed staff not to follow the Code, which was not what they usually did. They did that very carefully in October 2007. If Council upheld this interpretation of the Code it would be how they processed it from now on in all three categories.

**Councilor Stone** understood 10% of the value of this project would be \$25,000.

**Ms. Mangle** said it was based on the permit value and could be a little bit less. Also, then it would only partially comply, and any future tenant improvements regardless of cost if the initial project was only assessed and was required to contribute 10%. The frontage would not comply and future tenants improvements would be required to do so. The improvements that the City had required of the project right now would bring it into full compliance and cover future tenants as well.

**Councilor Stone** discussed change of use. She thought she heard the applicant say there were other businesses in the downtown that the City could not impose public area improvements on because they were not changing use. That is what was making her think that the change in use from a business office to retail was prompting some of the public area improvements. Was that true?

**Ms. Mangle** replied the trigger for this Code section was the building permit value. Mr. Parecki was correct in saying that the City should be considering the impacts and proportionality on all of those. He was not correct in saying that the only way to have an impact was through change of use. You could be expanding the hours of operation, internal configuration and other ways of increasing the intensity of the site. Change of use was one way, but it was not the only way.

#### Applicant Rebuttal

**Mr. Morasch** said regarding the nonconforming use of the gas station transportation staff said under the McClure analysis you had to look at uses that would be expected under full build out. That was arguably correct; however, if you look at the use expected and not the use right now there was a gas station, which will likely be there 10 or 20

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years so even though the gas station was non-conforming there was no evidence that it was going anywhere he thought the City had to look at the gas station. Staff wanted to rely on strict application of the ITE Manual when it supported the analysis that they came up with, such as the basement issue. When it did not support that analysis, then they were backing off and saying there were other impacts and other ways of calculating impacts besides strictly looking at the ITE Manual. He was talking about retail / non-retail use as the prior use because they had heard a lot of evidence that the prior use was, in fact, retail. If one looked at the ITE Manual and applied specialty retail, then it would show no change in the impacts. When it came to the basement they were committed that they had to strictly apply the ITE Manual. What the ITE Manual said was when looking at uses and floor areas use the gross floor area, which by definition included the basement area. His question was why did the basement not support the office on the 2<sup>nd</sup> floor for storage just as much as it did the retail. Why were they counting it all as retail and not counting at least half of the basement as office? It was because the 2<sup>nd</sup> floor was office not retail. Under its analysis staff should be looking at it that way and not solely converting it to retail.

**Mr. Parecki** asked do we want to see this project finished to its fruition or do we want to start from scratch? That was his bottom line at this point. He was so tired of this process and trying to convince somebody that he had not lied once. He stuck to his story because it was the truth. He wanted to see the project finished and flourishing with the accolades of a successful project. If they had looked at the proportionality analysis prior to impacts, things might have been different. He might not have bought the building. He could have made a different offer. When he saw the building in the inspection it looked to him like an office. He did not know the history. The proportionality analysis should happen prior to the impacts. He was at a standstill. The City was saying he couldn't have the building permit until he paid up. It was the attitude that you do not get a permit until he did what they said. That offended him and he did not think that was how the City should run its business.

**Mr. Morasch** said as a follow up the initial staff determination said that the public area improvements were supposed to be a condition of occupancy not of issuing the building permit. He did not see any reason why staff had delayed the issuance of the building permit for construction. He could see why they may hold up final occupancy, but why did they hold up the initial construction of the interior improvements to the building on the front end. They did not feel that there was any basis for staff to continue withholding the building permit.

**Councilor Loomis** asked about holding up the permit. He thought he had read that Mr. Parecki could continue construction and pay these requirements at the end of the construction prior occupancy.

**Ms. Mangle** responded what the City required was agreement – a letter – agreeing to the improvements and agreeing to complete them prior to final occupancy. They were not requiring that they be built now or on any particular time schedule. They thought that gave Mr. Parecki flexibility and certainty. It was possible for staff to delay this decision until the occupancy stage, but they felt strongly it would make the situation worse. It was only an acknowledgement agreeing that the improvements would be done, and Mr. Parecki could decide to pass that onto future tenants. Having the agreement delayed seemed like bad business.

**Councilor Stone** understood the value of the project was \$250,000. Mr. Parecki's requirement for public area improvements was 10% of the value?

**Ms. Mangle** replied no. The Code section said the applicant had to comply with public area requirements because the building permit value was greater than 50% of the value of the land and the property. If it were less than 50% of the value then it would be 10%.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to close the Public Hearing. Motion passed unanimously. [5:0]**

**Mayor Bernard** called for a 5-minute recess.

#### Council Discussion

**Councilor Chaimov** said that Council should be thankful to have such excellent presentations by both the appellant and City staff. If the question before them was, "do we want Mr. Parecki to finish his project quickly" he thought the answer would be a resounding yes. As he thought through how to come to a decision on this matter he reminded himself that he was serving as a judge and not a policy maker which made a great deal of difference in how he approached the issue. If the question was, "did staff follow the facts, law and the constitution when interpreting and applying the City Code" for him the answer was yes. Regardless of how the prior use was labeled there would be sufficient additional affects to trigger the required improvements. If the question was, "should we require those improvements" he was pretty sure that is answer would be no. The people who sat in the seats before this Council passed a Code that said yes. Until that Code was amended, the Council had to follow it. There ought to be a code that said that Milwaukie was open for business. We ought to have a code that welcomed, with open arms, a person like Mr. Parecki and his project. It frustrated him that we did not have that code and he was hopeful that they could have that in the near future.

**Councilor Loomis** agreed with Councilor Chaimov. His opinion was that it was frustrating and he wished it could have been handled a different way. Staff did follow the code as written, which was probably done with great intention. He thought about what codes meant and to him he thought they were created for public health and safety, and we had gotten so far out there of trying to tell people what they do and what they are responsible for instead of going back to the original reason why a code was made. In this case it was not fair but it was the code. We wanted people to invest in the downtown and be in the downtown. If they were successful we were going to stick it to them. It made no sense to him. He always believed that Milwaukie was going to develop and it was only a matter of time and what was holding it up was that the landowners were waiting to get a good value for the property. He saw with the code as more of a hindrance. We need to fix this. We can't help Mr. Parecki tonight but hope to do so before the building was finished.

**Councilor Barnes** agreed with Councilors Chaimov and Loomis. It was difficult for her because Mr. Parecki and his attorney provided a lot of information. They had been asked to fulfill our obligation that the Code was enforced. Back when the Council made this decision, there were only two choices: do we make the taxpayers pay for the changes? or do we have the developer pay? She wanted to think of a way in the future that it was not on the backs of the taxpayers for the changes or the developers. The City needed to explore a way without hurting the taxpayers or the people that want to invest in Milwaukie.

**Councilor Stone** said this was a difficult decision because what they were required to decide was whether or not staff correctly interpreted the Code. There were definitely some issues with the Code and that would need to be examined, but unfortunately that would not happen before making this decision. It was sad to see the Code discouraging development. She thought that when the Code was written it was done with the spirit of enhancing development. She knew everyone on Council and staff wanted to see Mr. Parecki's development because it would be beautiful. She was sincerely hoping to think of a creative way to make it happen for Mr. Parecki. She did not see any recourse in being able to say that the planning director was interpreting the Code incorrectly. She

said that staff needed to commit to help Mr. Parecki get this done and commit some resources to getting these public improvements completed downtown.

**Mayor Bernard** agreed with everything that had been said although he had a different perspective. He hoped someday to develop his property, and he would be proud to put the investment in the community. That was what any developer does. The North Main Village occupancy was held up until a sidewalk slope was corrected. He had attended some pre-application conferences. He had heard that it was suggested that an analysis should have been done at the pre-application conference. The pre-application meetings were held to sit down and talk about the project. There were two downtown design manuals handed out and there was an opportunity to sit down and talk about it. Respectfully, that business was never retail. If one looked at the Code it was to serve the general public. It served a business or those needing high-speed scanners, and he could not imagine the general public was buying those scanners. He had been in that office a number of times, and the light in the lobby was seldom on. He hoped that they found a solution. He was excited about the project, but he would be voting to support the planning director's decision.

**It was moved by Councilor Chaimov and seconded by Councilor Barnes to uphold the Planning Commission's decision to deny the appeal. Motion passed unanimously. [5:0]**

**It was moved by Councilor Chaimov and seconded by Councilor Loomis to direct the staff to review the current code and report back to the Council as soon as practicable with possible amendments that will strike a better balance between public and private investment in the public infrastructure for downtown. Motion passed unanimously. [5:0]**

**Councilor Stone** wanted to suggest a motion that staff work with Mr. Parecki to facilitate the development of his project to ensure it would happen. It would take some creative genius on the part of staff and some compromise on the parts of both staff and Mr. Parecki. She would like to see this project come to fruition.

**Mayor Bernard** agreed that it was important, but his concern was that should this go to litigation we didn't have the ability to discuss this issue.

**Mr. Monahan** said that if it did go to litigation they had opportunity to have discussions with the applicant and it would be worthwhile to pursue. It was always preferable.

**Councilor Chaimov** asked if Councilor Stone's intent was to influence the staff's priority of resources so that this becomes the top of their list of matters that they were working to accomplish.

**Councilor Stone** replied it was not necessarily to change to the priority of staff's work. This was a priority for our City. It was a goal to build on the assets of downtown and restore an environment in which people could shop, live, work and socialize, and it was for that reason that she was asking.

**Mr. Swanson** said that staff was already engaged in working on amendments. There were issues. In many ways the discretion that the planning director had to make some minor adjustments on issues were severely limited and often times led to results that caused more work. An issue they were working on was expanding consistent with the intention behind the code on the planning director's discretion. They had identified this issue as being one. Consider the historical perspective this code amendment was adopted in 2000, and 2 years prior to that the City had gone through a period where 3 City Council members were recalled. The City had made a number of attempts to form a TIF, which did not meet with the approval of the citizens. In many ways it might seem like a neurotic approach, but it was a logical approach given the history. It was

inconsistent. He was happy to hear that Councilor Chaimov's motion was to strike a balance between public and private investment because that was what was really necessary. So there were a number of issues currently being pursued. He noticed that an item on the next Planning Commission meeting agenda was about code amendments. There was a lot of work to be done and staff was actively pursuing those and have been for some time. They would continue to work with Mr. Parecki to come to some conclusion. Many of these issues had been identified and were actively being pursued by staff. They knew there was an inconsistency between their stated desire to develop and how that would be financed.

**Councilor Stone** said that she believed the Code was not private development/small business friendly at this point. She asked if any code amendments could be applied to this applicant's project.

**Ms. Mangle** said the Code that applied to any project was the Code that was in place when the application was submitted. For example, if we had something ready to adopt in two weeks Mr. Parecki could withdraw his application and resubmit.

**Mr. Swanson** said that Mr. Asher reminded him that they were also working closely with Metro, and Milwaukie was 1 of 4 communities that were part of the new urban infrastructure program. Milwaukie and Metro had a good working relationship, and they hoped to be able to secure some dollars and help satisfy priorities.

**Mayor Bernard** requested that Mr. Parecki speak with Metro regarding funds to help defray the project costs. He read the Land Use Board of Appeals (LUBA) information.

## **OTHER BUSINESS**

### **Council Reports**

**Councilor Barnes** and Ms. Ragel met to discuss the Arts Committee. A meeting was scheduled for Wednesday, February 27 at 6:30pm in the City Hall conference room.

**Councilor Chaimov** said that some residents had requested information from CCFD #1 on what they were spending our money on now that Milwaukie was annexed into the District. Chief Kirchhofer would work with Ms. Ragel to schedule a presentation.

### **ADJOURNMENT**

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

**Mayor Bernard** adjourned the regular session at 9:42 p.m.

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Pat DuVal, Recorder