



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday October 12, 2010, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
 - 2.1 July 27, 2010
 - 2.2 August 10, 2010
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Appeal of Director's Interpretation DI-10-01 on LED signs in downtown
Applicant/Owner: Nabil Kanso
Address: 10966 SE McLoughlin Blvd
File: AP-10-01
Staff Person: Ryan Marquardt
- 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
- 7.0 Planning Department Other Business/Updates**
 - 7.1 Information requested about Light Rail project status and funding
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 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 & text amendments, review procedures, and development review)

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Chris Wilson
Mark Gamba

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, July 27, 2010
6:30 PM

COMMISSIONERS PRESENT

Jeff Klein, Chair
 Nick Harris, Vice Chair
 Scott Churchill
 Lisa Batey
 Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
 Bill Monahan, City Attorney
 Li Alligood, Assistant Planner
 JoAnn Herrigel, Community
 Services Director

COMMISSIONERS ABSENT

Chris Wilson
 Teresa Bresaw

1.0 Call to Order – Procedural Matters

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

2.0 Planning Commission Minutes

2.1 May 25, 2010

Commissioner Batey stated she did not finish reviewing them; therefore she would either need to abstain or ask that they be postponed for the next meeting.

Bill Monahan, City Attorney, explained that public meeting minutes had to be made available to the public in a reasonable period of time. If this set was not available as an adopted version, and since it had been 2 months already, the Commission should at least be making the draft available. He advised it would be best if the minutes were finalized.

Chair Klein stated considering that only 3 of the 5 Commissioners were present, it would be more appropriate to wait 2 weeks.

Commissioner Batey said she appreciated the extension, because she did have some comments for the half she actually got through, and she anticipated having more.

3.0 Information Items - None

42 **4.0 Audience Participation** – This is an opportunity for the public to comment on any item
43 not on the agenda. There was none.

44

45 **5.0 Public Hearings**

46 5.1 Summary: North Clackamas Park North Side Master Plan

47 Applicant/Owner: North Clackamas Parks & Recreation District/City of Milwaukie

48 Address: 5440 SE Kellogg Creek Dr

49 File: CPA-10-01

50 Staff Person: Li Alligood

51

52 **Chair Klein** called the hearing to order and read the conduct of legislative hearing format into
53 the record.

54

55 No Commissioners wished to abstain.

56

57 **Commissioner Batey** stated she did not think it was a bias, but believed it was appropriate to
58 declare that some members of the audience were a part of the group called The Friends of
59 North Clackamas Parks who may comment tonight. She stated for the record that she had
60 participated in some of their meetings or volunteer events in the past year on approximately 3
61 occasions.

62

63 **Li Alligood, Assistant Planner**, reviewed the staff report with these additional comments:

- 64 • She explained that tonight's goal was to determine if the proposed Master Plan provides the
65 right balance for the site. As discussed, it is a highly regulated property, and those
66 regulations will apply at the time of development.
- 67 • She advised the Master Plan had been revised and differed from the one sent out and
68 included in the packet; copies of the revisions were made available at the meeting.
- 69 • The revision involved relocating the driveway to the proposed parking area which was
70 done in response to some concerns from the Friends of Milwaukie Center and the
71 Milwaukie Center Community Advisory Board. She noted that as a conceptual plan it
72 was still a conceptual move.
- 73 • She explained 5.1 Pages 4 and 5 of the packet and Pages 2 and 3 of the draft Master
74 Plan outlined the proposal in more specific terms.

- 75 • She concluded by stating staff found that the application meets the relevant criteria and
76 suggested the Commission recommend approval. She quickly reviewed the list of exhibits
77 distributed to the Commission as follows:
- 78 • Exhibit 1: Alternative Parking Lot Plan
 - 79 • Exhibit 2: Public meeting records
 - 80 • Exhibit 3: Email from Pat Russell sent to staff at about 5:00 p.m. today.
 - 81 • Exhibit 4: Public Involvement Notebook; a couple copies were made available to the
82 Commission for review.
- 83 • She stated that the Applicants had brought additional background materials to the meeting,
84 and one new comment had been submitted.

85

86 **Commissioner Batey** asked if just the Findings are included when a Master Plan is put into the
87 Comprehensive Plan. How much of the documentation would actually be incorporated into the
88 Comprehensive Plan?

- 89 • **Ms. Alligood** clarified that the final version of the written document submitted by the
90 Applicants, and referred to as Attachment 2, would be included in the Comprehensive Plan.
91 This was still a draft.

92

93 The Commission took a brief recess to review the submitted materials and reconvened at
94 approximately 7:05 p.m.

95

96 **Chair Klein** called for comments from the Applicants.

97

98 **Michelle Healey, North Clackamas Parks and Recreation District**, thanked the Commission
99 for considering all the material, City staff for their support with the planning process, the
100 Planning staff, specifically for their assistance with the review and regulatory guidance, and all
101 the other participants. She presented the North Clackamas Park North Side Master Plan
102 (Master Plan) with the following comments.

- 103 • As Ms. Alligood explained, this was a conceptual picture of improvements that might take
104 place at North Clackamas Park in the future. This Master Plan document would help guide
105 future changes. It did not layout exact configurations, sizes or materials, though some
106 suggestions had been received. There was no guarantee that everything would be built.
107 Ultimately, that would be dependent on funding and future regulatory processes. Because it

- 108 is a highly regulated site, she was confident that as things were proposed, the Parks District
109 would return before the Commission.
- 110 • Until such time, the park would generally remain the same with some tweaks here and there
111 during maintenance, as well as work coordinated by Tonia Burns, the natural resources
112 coordinator with the Parks District.
 - 113 • One thing the Master Plan does is help to identify what would not be in the park. For
114 example, no ball fields, basketball or tennis courts, or other such things were proposed for
115 the area. There was a recent question about putting an archery range on the north side of
116 the park. Her staff responded by showing the Master Plan they were working toward getting
117 City approval for. That was the idea of how her team was going to use this.
 - 118 • Since the south side development process had been very contentious and emotional,
119 people really wanted to understand with certainty how the north side of the park was
120 going to be developed in the future, which is why this Master Plan focused on the north
121 side. She noted that some of the current Commissioners had been on the Commission
122 at that time of the south side planning. .
 - 123 • Fortunately, the north side planning process was not as emotional or contentious. There
124 were many varying opinions but a lot more people were at the table during this process.
 - 125 • The Master Plan being proposed is a result of an extensive public process, which began in
126 2006 after the ball fields were built, and has continued until today. North Clackamas Parks
127 and Recreation District (Parks District) was always communicating with people about the
128 Master Plan and the Stewardship Committee (Committee) for the park is updated on the
129 Plan almost monthly.
 - 130 • The public involvement notebook was submitted for the record and contained most of the
131 public input received, and included a list of all the meetings held. The Applicants tried to
132 include meeting minutes as well to show what had been discussed. She apologized that
133 only 3 notebooks were available. More copies would be forwarded to the Commissioners if
134 needed.
 - 135 • As outlined on the list, many groups and individuals were involved in the Master Plan.
136 The Parks District Advisory Board had monthly public meetings where the public could
137 hear about what was happening with the planning process. The City of Milwaukie Park
138 and Recreation Board also reviewed and discussed the Master Plan, as well as the
139 Milwaukie Center Community Advisory Board, Friends of the Milwaukie Center, and the
140 Friends of North Clackamas Park, who were very involved with the south side planning
141 and also very involved during the North Side Master Plan from the beginning. Also

- 142 involved were the Lake Road Neighborhood District Association (NDA); the Oak Lodge
143 Community Council, which is the unincorporated neighborhood association; the
144 Committee; the general public, neighbors and park users in general.
- 145 • As part of this public process and these meetings, a Project Advisory Committee was
146 used and the Committee fulfilled that role.
 - 147 • The initiative to form the Committee came after the south side development to mend some
148 feelings and try to reunite people, as well as to get different stakeholders together to discuss
149 park issues and consider the park as a whole.
 - 150 • The Committee includes representatives from the Friends of North Clackamas Park, the
151 Kellogg Creek/Mt Scott Creek Watershed groups, dog park and horse arena visitors, and
152 athletic field users as well as some neighbors. The Committee also included neighbors
153 from Turning Point Church and Cascade Heights Public Charter School door, as well as
154 representatives from the Milwaukie Center and the City of Milwaukie.
 - 155 • The Committee generally meets monthly, and is still meeting. They describe themselves
156 as ombudsmen to help with problems. The Committee was the Project Advisory
157 Committee during this process, and actually helped prepare the scope of work to do the
158 planning process, and helped define what would be studied. The Committee also helped
159 to define the public process and reviewed the concepts and comments received
160 throughout the process. Lastly, they helped get the word out and encouraged the public
161 to participate.
 - 162 • Feedback for the project was collected during the public meetings and also received through
163 emails and phone conversations. A project website was also available.
 - 164 • For some concepts, a survey was mailed directly to the adjacent neighbors as well as
165 distributed to the neighborhood groups and other groups. She emphasized it was not a
166 scientific survey by any means, but was geared more to gauge peoples' preferences. A
167 survey was also conducted onsite with park users in English and Spanish.
 - 168 • Invitations to the meetings were sent to approximately 500 people, including all directly
169 adjacent neighbors and to people who had been identified as sincerely interested in the
170 park.
 - 171 • The goals of the Master Plan had been established with the community early on, and
172 included enhancing the north side of the park while trying to avoid significantly intensifying
173 the use. The Applicants believed they had achieved that.
 - 174 • As far as priorities and intent, a preference was indicated for retaining and improving
175 existing uses and not adding too many new things.

- 176 • Generally, the Plan involved moving the dog park to the south and east away from the
177 creek, adding some parking and a walking trail, and replacing the existing A-Frame
178 picnic shelter with 2 smaller shelters to allow smaller groups to rent it. There had been
179 some concerns that the big A-Frame attracts big groups, and perhaps smaller structures
180 might be a better alternative due to the number of people.
- 181 • Other items include renovating and moving the bathrooms to a more central location,
182 rearranging where the maintenance building would be as well as the caretaker's
183 building. There was also a small addition to the playground; potentially adding some
184 bouldering elements for older children at the park.
- 185 • She provided further details about elements that might have raised questions, and some
186 submitted items as follows:
- 187 • Dog Park. A Dog Park Working Committee was established during the process as a
188 subset of the Project Advisory and Stewardship Committee to help collect and provide
189 information to guide the planning process regarding the dog park. Several different
190 options were considered: one entailed eliminating the dog park altogether; another was
191 moving it to the south side, making changes, and making it bigger. The Committee
192 discussed the dog park at length, investigating which amenities would improve it to make
193 it a better experience for people. Ultimately, they determined the dog park should remain
194 in the park, be fixed and not any bigger, but perhaps split so smaller or more passive
195 dogs could be separated from larger/aggressive dogs. This was included in the Master
196 Plan.
- 197 • The existing dog park is actually in the riparian buffer for Mt Scott Creek, so one goal
198 is to move it further away. Creating a bigger buffer of about 70-ft of 75-ft deep was
199 proposed, which is beyond that required for the regulatory processes.
- 200 • Moving the dog park to the east and closer to the parking lot was also proposed.
201 Concerns were expressed about dog owners letting their dogs off leash, and having
202 the park closer to the parking lot would provide a more direct route.
- 203 • Buffering the dog park with plants to improve it was also proposed, as adding trees
204 might help limit dogs from barking at people.
- 205 • Parking. During the process, significant feedback was received about adding parking,
206 with comments primarily focused on adding parking to serve the Milwaukie Center
207 (Center).
- 208 • The Master Plan includes replacing the existing gravel parking lot to the left of the
209 Center, next to the A-Frame, with a new parking lot that would also include the area

- 210 where the A-Frame is currently located. Again, the A-Frame would be removed as
211 part of this Master Plan.
- 212 • Based on square footage, the existing lot provides 20 to 25 spaces. The new lot
213 would have about 40 spaces, with 4 spaces set aside for buses that provide senior
214 transportation to the Center.
 - 215 • The Center wanted a secure place to park the buses, as they have had issues
216 with people breaking into the buses when parking them behind the Center. The
217 Master Plan provides a dedicated place for bus parking.
 - 218 • Within that new lot, there would also be the required ADA spaces.
 - 219 • The Community Advisory Board for the Milwaukie Center and the Friends of the
220 Milwaukie Center had been involved throughout the planning process, and had
221 concerns about having the parking lot off of the existing lot.
 - 222 • During the planning process, the Applicants offered one alternative that placed the
223 new parking area directly off the existing lot, but the Center did not want to see that
224 happen. The Applicants agreed with their concerns about the lot being a straight-shot
225 and people driving fast in front of the Center. So the intent was to have it remain as
226 proposed, so that cars still have to proceed around the loop when accessing the
227 parking lot.
 - 228 • The Applicants would like to consider traffic calming options, such as bump outs or
229 installing a raised crosswalk in front of the Center, etc., to ensure traffic moves slowly.
230 The Center was a heavy user of the park and a large constituent, so the Applicants
231 wanted to try to work together to make it as safe as possible for that group.
 - 232 • She explained that an alternative revised parking lot Plan was submitted because the
233 Plan included in the packet did not show the new proposed parking lot where the
234 existing lot is located. Although it was conceptual, visually that was where the lot was
235 supposed to be.
 - 236 • The Applicants researched who currently utilized the parking lot, and found that,
237 primarily, Center patrons were using the parking lot during the day when the Center was
238 open, and not enough parking was close to the Center. People using the Center were
239 parking in the gravel lot or at the Sara Hite Rose Garden. The Applicants wanted to
240 ensure the proposed parking lot worked for them because there was a need for it. They
241 want to make it as safe as possible, and the Applicants believed that would come as the
242 parking lot design was filtered out in the future.

- 243 • Natural Resources. Putting the natural resources element in the park was an extremely
244 important part of this plan. The Applicants heard that loud and clear from individuals
245 involved in the planning process, and so the Applicants had been doing a lot of that work.
246 • She introduced Tonia Burns to discuss the Master Plan, some of its improvements, as well
247 as some of the work being carried out to enhance the resources.

248

249 **Tonia Burns, Natural Resources Coordinator, North Clackamas Parks and Recreation**
250 **District**, said she started working for the Parks District in 2008, but was not involved when this
251 process initiated. When she got the position, they went through the Master Plan and although
252 they did not have a lot of funding to implement these elements, they were on her list of tasks to
253 accomplish. She quickly reviewed several goals and issues to address that were included in the
254 proposed Master Plan as follows:

- 255 • Crushed culverts in Camas Creek need removal for the creek to be open.
256 • Placement of large wooded debris in Mt Scott Creek.
257 • Issues with human access and moving trails away from sensitive zones.
258 • Protective fencing installation to protect natural resource areas, and installing viewing
259 platforms to enable people to experience natural areas while minimizing their impact.
260 • Suggestions of invasive plant removal and riparian plantings.
261 • Assess whether back channel access could be accomplished for fish routes.
262 • Removal of concrete in Mt Scott Creek.
263 • Enhancing the Oak Ash woodland, proposing rotating picnic areas so that understory
264 systems can reestablish.
265 • Meadow enhancement and increasing the buffer of the creeks.
266 • In 2008, the Parks District's Natural Resource Department consisted of her and a hired
267 AmeriCorps intern, and they began working at these tasks. Since that time, they have
268 planted over 2,000 trees, planted over 1,000 live softwood stakes, and spent thousands of
269 hours controlling invasive, noxious, state-listed weeds.
270 • In 2008-2009, they had 26 volunteer work events with volunteers working about 350 hours
271 to help natural resources, and then within the last fiscal year, 33 events were held with
272 almost 1,500 volunteer hours helping with natural resource enhancements in the park.
273 • The Parks District was recently awarded a Nature in Neighborhoods Restoration Grant with
274 the new North Clackamas Urban Watersheds Council. The Parks District will be enhancing
275 the Camas Creek area predominantly and a portion of Mt Scott Creek. The Watershed
276 Council will be working on the adjacent church property to the east.

- 277 • The Parks District was also working with the City and Water Environmental Services (WES)
278 to prepare an application for a Nature in Neighborhoods Capital Grant, which proposes to do
279 many of the items listed as goals and objectives within the North Side Master Plan including:
- 280 • Removing the small crushed culvert near the confluence of Camas Creek and Mt Scott
281 Creek.
 - 282 • Large woody debris placement in the Mt Scott Creek channel and increasing complexity
283 within the in-stream channel.
 - 284 • Installing viewing platforms along Mt Scott Creek.
 - 285 • Removing the concrete within Mt Scott Creek and doing more invasive removal, and
286 riparian planting and enhancement to not only provide more habitat for terrestrial
287 systems but also to increase water temperature which addresses regulatory Department
288 of Environment Quality (DEQ) Total maximum Daily Load (TMDL) requirements.
 - 289 • She concluded that she had more specific information available about the species being
290 planted and the invasives being removed.

291

292 **Commissioner Gamba:**

- 293 • Inquired if any biologists, such as fish biologists, were consulted at any point during the
294 planning process.
 - 295 • **Ms. Burns** replied 'yes,' Oregon Department of Fish and Wildlife (ODFW). During the
296 process the Parks District hired Pacific Habitat Services, Inc. (Pacific Habitat) to do a
297 natural resources review and wetland delineations.
 - 298 • If and when any of these elements within the Master Plan are implemented and need to
299 go through the land use process, the Parks District would have to redo their wetland
300 delineations because of the time lapse.
 - 301 • When Pacific Habitat was doing their natural resources review, ODFW participated in
302 making some of the recommendations put forward by Pacific Habitat. She noted the
303 Commission had received their comments.

304

305 **Commissioner Batey:**

- 306 • Stated she participated in on one of the south side spring work parties and it seemed that
307 Camas Creek was a good success story in terms of replanting and removing invasives. She
308 inquired if any sort of research existed or if Ms. Burns had any experience showing that
309 habitat actually has improved since the 2006 timeframe.

- 310 • **Ms. Burns** replied she forgot to mention that Camas Creek's riparian buffer was fairly
311 narrow and during this time period, they had moved the setbacks to 50 ft, widening the
312 buffers all along the creek, so development-type activities like mowing no longer
313 occurred within those areas. The areas within that setback had all been planted, though
314 not to the level that the Parks District wanted, which was a process they were going
315 through.
- 316 • The Parks District did not have that much at this point in time, although some historic
317 data existed of when certain areas along the creek had been planted. The Applicants
318 could use spherical densitometers to measure the relative light levels at Camas Creek,
319 to verify that they have decreased the solar input at the creek up to this level. She
320 agreed it would be a good idea to do that.
- 321 • Asked if anything else was being done in terms of measuring the amount of water, how late
322 in the year the water was there, etc. She understood Camas Creek did not have water in it
323 year-round.
- 324 • **Ms. Burns** replied they thought there were some springs, but that they were to the west,
325 below the gravel parking area. She believed the area above there, near the Center, does
326 dry out but it is considered a wetland. Wetlands only need to be wet for 14 days out of
327 the year; therefore, based on elements like vegetation, hydrology, and soils, those areas
328 had been declared wetlands and would be protected as such.

329

330 **Commissioner Gamba:**

- 331 • Noted the discussion about removing the crushed culverts did not really talk about whether
332 that meant day-lighting or putting a bridge over the stream.
- 333 • **Ms. Burns** replied that the proposal in the Master Plan was to daylight as the Parks
334 District worked with WES.
- 335 • Asked about under the driveway.
- 336 • **Ms. Burns** explained that making that into a bridge would cost \$800,000. While not
337 completely out of the question, it was too expensive to consider within the grant they
338 were currently applying for.

339

340 **JoAnn Herrigel**, Community Services Director, and City staff liaison to the City of Milwaukie
341 Park and Recreation Board (PARB) made the following comments:

- 342 • The City was a co-applicant in this Master Plan. The City owned the North Clackamas Park
343 site and the Center. The PARB and staff believed this Master Plan before the Commission

344 was a useful tool for guiding the future development of the north side of this park. As noted,
345 the Applicants believed the Master Plan would guide both what they do and do not want in
346 the north side.

347 • The PARB and staff have participated in the development and review of the Master Plan
348 from the very beginning. Even before the Commission got the land use applications from the
349 Parks District for the South Side Master Plan for the ball fields, the PARB had urged the
350 Parks District to move forward with the public process for the north side of the park. She
351 read into record an excerpt from a letter sent to the Parks District Advisory Board in
352 February 2005, and provided to the Commission, in which the PARB stated:

353 *“We fear that the construction of the Ball Field Project and the resulting use of this*
354 *site may have a negative impact on the wetlands, plants, and habitat area to the*
355 *north of the ball field area. It is with this in mind that we suggest that the District*
356 *complete a Master Plan for the portion of North Clackamas Park, located north of the*
357 *entrance drive and bioswales you have proposed on the sports field proposal.”*

358 • The PARB had requested that this effort begin very soon and be completed by the summer
359 of 2005. She wanted to note that the Master Plan was actually something that the PARB
360 and staff had urged the Parks District to do because of the South Side Master Plan and not
361 despite it.

362 • The Committee was formed just after the Ball Field Project was done. She was asked to be
363 the City’s representative and has served on that group since it was formed, conveying
364 information to the PARB regularly about the Master Plan for the north side, as well as having
365 Ms. Burns and Ms. Healey attend and update them on a regular basis.

366 • Comments in general have been very positive, and specific comments included
367 suggestions about day-lighting instead of replacing the culvert; fence placement;
368 modifying the buffer, etc. Copies of the meeting minutes where the PARB heard updates
369 from the Parks District could be provided upon request.

370 • The representatives on the Committee had already been named, but she emphasized
371 that environmentalists and dog park advocates had played a major role in the
372 development of this Master Plan throughout the process.

373 • The process was intended to be as inclusive as possible to meet the needs of all the
374 stakeholders but, as most public processes go, for any one opinion there is usually an
375 opposite opinion. For instance, one person or group might want all the trails paved so
376 people with alternative abilities can use them, while another group did not want paved trails
377 because it added impervious surface to a flood plain area and were too close to creeks;

378 likewise some would say the dog park should be expanded while others believe the dog
379 park should go away completely.

380 • She believed the Parks District and Alta Consulting Services, Inc., the consulting firm
381 that worked with both groups, did the best they could to balance the input gathered from
382 neighbors, advocates for specific park elements, and also from park users. As noted,
383 onsite surveys were conducted. The PARB also reviewed the Master Plan, and their
384 comments were generally favorable.

385 • She expressed her appreciation of the Commission's time, and was happy to answer any
386 questions.

387

388 **Commissioner Gamba:**

389 • Asked if the Applicants had considered in-stream maceration, braiding possibilities, or
390 anything that would bring it more back to what it probably was before people started
391 channelizing that flood plain to help mitigate the flooding, and restore it to a salmon habitat
392 or anything of that nature.

393 • **Ms. Healey** replied that was an important question, but the concept plan did not get into
394 that level of detail. Pacific Habitat looked at some of those elements. It was about trying
395 to balance and allow people to use the site while also improving the resources. The
396 Parks District hired Ms. Burns to use her expertise to assist them while they flushed
397 those things out. For example, when designing the parking lot, they were considering Mt
398 Scott Creek and what was the best thing to do. While working with WES to fit this site
399 into the whole Mt Scott/Kellogg Creek watershed, the Parks District was fortunate to
400 have Ms. Burns in this position to help achieve that goal.

401 • The ideas [for restoration] were there, although not included in the detail she believed
402 they needed in working on some of the projects Ms. Burns had discussed doing this
403 year.

404 • Stated that in establishing a plan, there would be a path a number of feet away from the
405 stream, but in reality, that riparian area might need to be a bigger area to allow braiding to
406 take place. That was why he wondered how much consideration had been given.

407 • **Ms. Healey** replied that the Applicants looked at the existing regulatory environment,
408 and actually made the buffer beyond that. If some of those things changed, the
409 Applicants were still amenable to moving the trail or making some changes at that point.
410 She reiterated that layout and element placement was not set in stone, but the Master

411 Plan did give some guidance. There were still a lot of resource questions that needed to
412 be investigated.

- 413 • **Ms. Burns** understood 2 predominately forested areas on the north side of the creek
414 were being considered by WES as potential off-channel habitat.
- 415 • At this point, she did not believe WES would use the terms “flood abatement” or “flood
416 control” because they were having difficulties using that type of terminology at this point.
417 Therefore, the primary focus would be back channel habitat for fish. The riparian
418 enhancements would be mainly to work more at the DEQ Total Maximum Daily Loads
419 (TMDL) issues of lowering water temperature and other such issues.
- 420 • Clarified that his comment was actually more in that direction. The natural state of that area
421 probably was not a channelized little stream, and therefore it would have done 2 things: it
422 would have mitigated floods to a certain degree naturally and it would have provided better
423 habitat for fish and thrush.
- 424 • **Ms. Burns** noted that at this time, the water flows onto the site and by no means were
425 the elements meant to detour water flow; a trail would not block any of this from
426 happening. It would do what it needs to do and if, due to possible future conditions,
427 things change, then the Parks District would also have to adapt to those changes in
428 order to be good park managers.

429

430 **Chair Klein:**

- 431 • Asked why the Master Plan was only being done on the north section. This was a whole
432 park, but they were only really looking at one portion.
- 433 • **Ms. Healey** explained that a different direction was given when the south side was
434 completed about how the park was to be handled. The Committee really wanted a plan
435 developed for the north side, and the Applicants then proceeded given that direction.
436 She believed they had built up goodwill with people, but now it was truly time to focus on
437 the piece that was not considered during the south side planning, and noted that people
438 did not want to see more ball fiends put on the north side.
- 439 • Asked if everything on the south side was functioning properly, because what the
440 Commission was last presented with was not even close to what was inevitably built.
- 441 • **Ms. Healey** replied that would probably depend on who was asked. Functionally, no
442 stormwater problems existed on the site, and they were able to manage the few parking
443 problems that had arisen.

- 444 • People still talked at length about noise with the Committee. The Parks District had been
445 successful in not exceeding the decibel levels in activities put forward in the application
446 at that time. They did not have a lot of complaints about noise, although some neighbors
447 in attendance could give their own thoughts.
- 448 • Some adjustments were made to the lights after working with specific neighbors who
449 had raised issues.
- 450 • The Parks District had received tremendous amounts of positive feedback from park
451 users who love the south side park facilities. Thousands of people used the park each
452 year, so from a recreational standpoint, it was very successful.
- 453 • She recognized that with every park and project, there would be differences of opinion,
454 but generally it had been a positive improvement to the park and community.
- 455 • Agreed. However, as he saw it, if they planned [the whole area], they could look at the
456 whole park to determine whether or not it was functioning, and be able to take steps to make
457 changes to address any issues with the south side development. Now would be the time to
458 address those issues.
- 459 • Was sure there were impacts now, because the water detention area was now a bioswale. It
460 would be nice to know how those things were functioning because he was sure it had
461 impacts on Camas Creek as it was sitting at this point. The [proposed Master Plan] only
462 considered the impacts that would be made to Camas Creek from the north side. However,
463 the north side has minimal development with the exception of the parking lot which would
464 increase impact. No significant changes were being done on the north side, so he was lost
465 on why the Master Plan would not be all-encompassing.
- 466 • **Ms. Healey** noted Ms. Burns was not with the Parks District at that time to compare
467 Camas Creek now to what it used to be like. From her own anecdotal information, she
468 believed there was quite a lot more habitat, and noted the South Side Master Plan
469 created a new 50-ft buffer on the creek; originally it was mowed up to the edge. Again,
470 many people were happy about the south side, though some remained unhappy.
- 471 • She explained the Parks District was responding to continual questions about what was
472 going to happen to the north side of the park, which was why they did not get into the
473 south side, which could be taken as an existing condition and added to the Master Plan.
474 She understood comments made about wanting the big picture, but the intent was to
475 provide the Commission with the best information available in response to the direction
476 received after the 2006 project.

- 477 • Believed the Master Plan was a very good concept. Before the ball fields were built, he was
478 certain the dog park was the most popular amenity used besides the Center, and it was nice
479 that those patrons would get some redevelopment.
- 480 • Wanted some clarification about what had happened during the 3 months of testimony the
481 Commission had heard, and then what application was inevitably approved for the south
482 side. He has had questions about that history for a very long time.
- 483 • The Commission approved an application at the end and then it seemed that the
484 Parks District and the Friends of North Clackamas Park appealed the Commission's
485 decision, which was quite a unique thing. He asked for further explanation as to what
486 was going on, maybe outside of the Commission.
- 487 • **Ms. Healey** clarified that the Commission did approve the south side project, which had
488 been emotional and contentious. The Commission's decision was appealed, which then
489 took it to the City Council. The Parks District did not want to get into another 3-month
490 fight before City Council, and therefore tried to get the groups together to find resolution.
- 491 • The groups represented included specific individuals that ultimately formed the
492 Friends of North Clackamas Park group, some staff, and those with baseball and
493 horse arena interests, but she did not believe any dog park people were involved
494 because it was really about the south side.
- 495 • She reiterated it was about finding resolutions to avoid extending the issue for 3
496 more months. Ultimately there was some give and take, and they determined the
497 fighting had gone on long enough. As a result, the Stewardship Committee was
498 formed.
- 499 • Recalled there being a very short time period from when that Plan left the Commission to
500 when it was approved through City Council. If he understood correctly, given the time frame
501 in which it happened, it appeared a lot of that negotiation was going on while the
502 Commission was having its meeting.
- 503 • **Ms. Healey** clarified it was after the Commission made its decision and then it was
504 appealed. To her knowledge, no negotiation took place during the Commission
505 meetings; everyone was sitting at odds with one another during the Commission
506 meetings. She was unaware of any side conversations, and explained she was not that
507 involved after the appeal, but attended one meeting to take notes.
- 508 • Expressed his concern about where the Parks District was and how they could mitigate a
509 good plan down. They had a good plan initially. What assurances did the Commission have

- 510 that this Master Plan would not be mitigated down? Substantial things were different
511 between the north and south sides.
- 512 • A lot of people were interested that came and voiced a number of things. As a result,
513 the Parks District moved into a huge open process, but then the negotiations
514 involved a very small number of people and took a lot of people out of the equation.
 - 515 • He added that the County appealed its own approval.
 - 516 • **Ms. Healey** believed it was appealed first by The Friends then the Parks District joined
517 them to find a solution together. She emphasized it was strictly an attempt to avoid
518 getting back in front of City Council and have another 3-month fight. It was really an
519 attempt to meet in the middle and move things along.
 - 520 • **Ms. Herrigel** commented on the difference between that previous application and the
521 one being considered tonight specifically. That prior application was almost a final
522 design for the south side ball field project that the Commission actually approved to be
523 built. This application was a master plan for elements the Parks District would like to
524 bring before the Commission during final design.
 - 525 • One assurance that this would not get mitigated down was that the Commission
526 would get to see it again in tiny chunks. If and when WES decides to do riparian
527 enhancement projects, they must return to the Commission or at least go through
528 Ms. Mangle and Planning staff to have the approvals according to the HCA, Title 13,
529 the Water Quality Resource area, etc. for each of the elements. To put in the parking
530 lot, the Parks District would have to design it and bring it either through Ms. Mangle
531 or to the Commission. She did not know at this stage if each element had to come
532 back to the Commission, but they might.
 - 533 • The difference was that the Commission would probably see each of these elements
534 in specific form over the next 5 to 10 years. If it was modified or appealed after the
535 Commission's decision, then she believed that was how the process was set up, and
536 she did not know that she or Ms. Healey could change that process.
 - 537 • **Ms. Healey** stated that normally their goal was not to appeal approvals of their projects.
538 She believed the south side plan was a unique and unfortunate process. Although the
539 project turned out well, the process was not good.

540

541 **Chair Klein** called for public testimony in favor of the application.

542

543 **Steve Burliner**, 10824 SE Oak St, #311, Milwaukie, OR, Chair, Stewardship Committee for
544 North Clackamas Park for the current term, stated Ms. Healey and Ms. Herrigel gave a very
545 good description of the Committee. He added that they met every fourth Wednesday of the
546 month at the Center and represented approximately 10 formalized stakeholder groups to serve
547 as ombudsmen to all those various stakeholders, including the baseball and active sports
548 people.

- 549 • One amazing thing about the Committee, which came out of an extremely contentious
550 period and application, was that they reached consensus almost 100% of the time and
551 normally operated on a consensus methodology, rather than a majority vote.
- 552 • At the June Committee meeting, they had 100% consensus to support the North Side
553 Master Plan. Therefore, as Chair he felt it incumbent to personally inform the Commission of
554 that on behalf of the Committee. Not only did they work very hard with Alta Consulting and
555 the Parks District for more than 4 years on helping develop this plan, but that today, they
556 fully supported it.
- 557 • He believed there would naturally be a lot less tendency to mitigate this concept because a
558 large percentage of Committee members that helped developed this Master Plan were
559 former opponents to the active recreation of the South Side Master Plan. He could not
560 imagine who would want to see the current Master Plan drastically changed in concept. If
561 so, they had not appeared yet.
- 562 • He noted Camas Creek was developing into a magnificent micro habitat example, and as
563 such, it was an important tributary to Mt Scott and the Kellogg Creek systems. In the past,
564 Camas Creek was often referred to as 'the ditch that runs through the park.' He discovered
565 that some concerned citizens for the environment decided it should have a real name and
566 went to a great amount of trouble to gather support and have it added to the Geographic
567 Places, State and National Records as a real creek and tributary. And now it was getting
568 tremendous support. The people responsible for that work, Dick and Sally Shook, were
569 present.

570
571 **Commissioner Batey** asked what his perception was with regard to the need for more parking.

- 572 • **Mr. Burliner** believed the Committee saw some need to make the area in front of the Center
573 safer and to add parking, if there was room and without much impact on the natural area.
574 There had been a lot of passive recreation space lost to the south side development. Alta
575 Consulting presented different drafts for the Committee's comments and input.

576 • He noted he has rarely had problems finding parking, although the frequency of his visits
577 has declined. He uses the park to help restore or for a project with the parks. Overall, he
578 treasured the natural areas more than a place for his own active recreation, but he did use
579 that because it was conveniently nearby and not off limits to formal sports only. He used to
580 visit a little more to fly a kite or bring a dog on leash and things of that nature.

581
582 **Anthony Clarke, 13630 SE 120th Way, Clackamas, OR 97015**, stated he was also on the
583 Committee and has been representing the dog park. He noted a lot of people had worked very
584 hard to design this Master Plan; it really was a good plan that they all supported. He had spoken
585 to many people in the dog park and they were excited about the proposed changes; for
586 instance, the inclusion of a small dog area and improvements that would make it a much better
587 park.

588

589 **Chair Klein:**

590 • Was happy that someone representing the dog park was at the hearing. He asked what
591 outreach was created during this process to get the dog people involved.

592 • **Mr. Clarke** replied that interested people had been included in all the meetings. He had
593 personally communicated with people in the dog park. Although there had not been a
594 formal dog group, they recently got a bulletin board to get more information out to the
595 people. Dog park visitors had been generally informed and invited to participate
596 throughout the process.

597

598 **Commissioner Churchill:**

599 • Confirmed that Mr. Clarke had visited other dog parks in the Portland metropolitan area,
600 adding he had visited a few and had always been a bit saddened by what he saw at North
601 Clackamas Park. The proposals for the small dog area and being closer to parking seemed
602 like good improvements. He asked if any topographic or elevation changes seen at other
603 parks in the area were considered.

604 • **Mr. Clarke** replied that he had proposed changes that allow dogs to have high
605 ground/low ground areas, but they were not in that stage of planning yet. He had
606 suggested breaking up sight lines, having some kind of heavy duty equipment or tunnels
607 that the dogs could play on or around. He had looked at most of the big parks in
608 Vancouver, Hillsboro, Beaverton, Lake Oswego, and West Linn. North Clackamas Park
609 had a lot of good things to offer, but there was definitely room for improvement.

- 610 • Explained he just wanted to understand the depth of representation and applauded Mr.
611 Clarke for investigating other sites.
- 612 • **Mr. Clarke** added that people were very happy to have the dog park, and most were
613 satisfied with the size. There was always something they would like to see improved,
614 which was being addressed in the Master Plan.
- 615 • Asked if any other elements were considered that might not be identified in the Master Plan.
616 Gabriel Park has a winter park, which is a great feature that allows the summer park to
617 recover from heavy use and helped control erosion long term. Had anyone considered that
618 as part of the dog park interest or application?
- 619 • **Mr. Clarke** replied he was not sure where that that type of feature would go in North
620 Clackamas because of the limited space. Gabriel Park had the space to have the winter
621 area with sandy ground. He believed the best thing to do in the dog park was to select
622 the best possible surface that would hold up year around. However, having more dog
623 parks in the area would be the ultimate solution to break up the demand at North
624 Clackamas Park.

625

626 **Chair Klein** confirmed that Mr. Clarke was satisfied with the dog park voice that had been put
627 into the master planning process at this point.

628

629 **Commissioner Batey:**

- 630 • Asked about Mr. Clarke's perception of the need for more parking and if he believed more
631 parking was necessary.
- 632 • **Mr. Clarke** replied yes, there was a need for more parking at times. If there was a big
633 event, or several big events, parking could be difficult. Those willing to walk further could
634 certainly find parking; he had never had a problem parking there.
- 635 • He clarified he has used the dog park since 2005, prior to when the ball fields were built,
636 and did not recall ever having a parking problem before then.

637

638 **Dick Shook, 4815 SE Casa del Rey Dr, Clackamas County, 97222**, stated he was a neighbor
639 to the park; his house was right above the dog park overlooking the park's north side. He noted
640 he was a Board member on the Friends of Kellogg Creek and Mt Scott Creek Watersheds as
641 well as the North Clackamas Urban Watersheds Council. He is also a Park Districts Advisory
642 Board member, but was not representing them tonight.

- 643 • He advised Commissioner Batey that Camas Creek flows year round for two-thirds of its
644 length, and has a part-time but vigorous flow, even during the dry summer months.
- 645 • He had attended many of these planning meetings and generally he agreed with the Master
646 Plan as a concept. The devil will be in the details and it would take some initial hashing out
647 to determine what the features would be and how they would finally look.
- 648 • He emphasized that one of the most important features of the Master Plan was the removal
649 of the maintenance road at the confluence of Camas Creek and Mt Scott Creek, noted as
650 the “crushed culvert.” He indicated the location on a displayed map and advised that those
651 culverts were not completely sealed; one of them still flows.
- 652 • The removal of the maintenance road would open up a high-water refuge if done
653 correctly. He believed part of the concept of the Master Plan was to work with the
654 Oregon Department of Fish and Wildlife (ODFW) to provide fish refuge, so juvenile fish
655 could get out of the mainstream during high water flows, as the creek was very spiky and
656 came up and down very fast and vigorously.
- 657 • He noted this area would also provide a great opportunity for some restoration work and an
658 educational opportunity. One thing the Committee was promised by the County was that
659 there would be some money available for educational signs, not only about fish and wildlife,
660 but about watersheds as a whole. The viewing platform shown on the Concept Map would
661 be a wonderful opportunity to provide these storyboard signs and educational opportunities.
- 662 • The dog park was a very popular feature in the park. However, he felt that it was really the
663 wrong place for an off leash dog area and too close to the neighbors. He did believe that it
664 would be much improved with some of the ideas set forth in this concept, as Mr. Clarke said,
665 without sight lines, with more trees, and separating the dogs. He hoped that once people
666 saw what a nice amenity it could be, they would work even harder to locate additional areas
667 for additional dog parks. He did not own a dog, but [dog parks] are an important recreational
668 facility that park goers would like to have.
- 669 • As far as parking, Camas Creek often has standing water in it near the picnic A-Frame, and
670 so people have to park in the creek itself. Therefore, the parking has to be moved or some
671 type of barrier constructed because the buffers are not being maintained in the area across
672 the access road. He added that he has lived at his property since 1976 and has seen the
673 flooding issues often.
- 674 • He clarified parking issues occurred usually when there was an event. He believed it could
675 also be more from dog park visitors and those using the picnic areas rather than visitors to
676 the Center.

677

678 **Commissioner Batey** remembered that during the ball fields' review, Mr. Shook had very
679 compelling photos of the flooding in 2004.

680

681 **Commissioner Gamba** asked Mr. Shook to indicate on the map where flooding occurs.

- 682 • **Mr. Shook** explained that when Mt Scott Creek rises, it backs up Camas Creek to the
683 second footbridge, resulting in flooding.
- 684 • He indicated an area where another footbridge went up into the Casa del Rey
685 neighborhood, noting that the water comes through there as a very heavy flow, enough to
686 make it tough to wade across. There was a downed tree where the water backed up and
687 this last winter, the water came through the area and across into the playground area.
688 Those were the worst areas of flooding that occurred most often.
- 689 • He also indicated where the water backs up and stands. It eventually recedes but the
690 standing water usually lasts a couple days.

691

692 **Chair Klein** called for testimony from those neither supporting nor opposed, but with questions
693 about the application.

694

695 **Eleanor Johnson**, 4343 SE Robin Rd, Milwaukie, OR 97267, Chairperson, Milwaukie Center
696 Advisory Board, said she recently resigned from the North Clackamas Parks and Recreation
697 Board of Directors after serving for 8 years. She was also on the original Stewardship
698 Committee for 2 years, and was familiar with the changes to the Park, and was very proud of it.
699 The process involved with the ball parks project was interesting and resulted in a good concept.

- 700 • She has real concerns about the proposed plan since first hearing about it, namely
701 regarding traffic in front of the Center. Although many elderly are dropped off in front of the
702 Center, the parking lot is a loop. The loop can create a safety hazard for those visitors who
703 park and have to cross in front of traffic. People are not always careful of the elderly, or
704 consider that they do not move quickly or hear well.
- 705 • Often, there is not enough parking in front of the Center because of the many classes and
706 activities during the day, and programs are also being offered in the evening. She felt that
707 with the proposed plan and more people coming into the park, there will be even more
708 traffic.

- 709 • Ms. Healey and her colleagues have worked hard with the Center to work out the traffic
710 issue. She believed it could be worked out, but finding a solution agreeable to everyone
711 would not be an easy process.

712

713 **Commissioner Batey:**

- 714 • Confirmed that Center staff park behind the building, where she counted 30 spaces.
- 715 • **Ms. Johnson** explained the rear parking area was used for Loaves and Fishes. If other
716 cars were parked there all day, the volunteers would not be able to get their cars loaded
717 for deliveries. A “Staff Only” sign was posted. She was a volunteer, but was not at the
718 Center all day.
- 719 • She had visited the park on a Sunday in the summer to see about the parking, and there
720 was a wedding at the Rose Garden, ball games on all 4 ball parks, a company picnic at
721 the A-frame, as well as general public visiting. Wedding attendees often parked at the
722 church and then are transported or walk up.
- 723 • She had thought about the situation a lot. She hated to see too much cement, but
724 perhaps a parking lot could be built at the back of the park so people would not have to
725 walk so far.
- 726 • Asked if the parking situation had worsened since the ball fields were added.
- 727 • **Ms. Johnson** replied no; only if a lot of activities were going on. The person
728 coordinating the park’s programs works with the ball park people to coordinate activities..
- 729 • Said she had never been there when parking was a problem. The gravel lot usually had
730 busses, and 3 or 4 cars parked from dog park visitors.
- 731 • **Ms. Johnson** commented that was fortunate, because it can get filled up, and noted the
732 park is not coordinated for parking; people just park wherever they can.

733

734 **Commissioner Gamba** asked how much the equestrian area was used.

- 735 • **Ms. Johnson** replied that she has never seen anyone using the facility. She has
736 inquired with Lisa Gibson of the Committee about any usage, but she was only
737 contacted once. She was sorry it wasn’t used more; the facility had been laid out very
738 nicely. Understanding why it was not used more might be a consideration.

739

740 Chair Klein called for testimony opposed to the application.

741

742 **Jeannie O'Leary**, 5440 SE Campanario Rd, Milwaukie, OR noted her home's location in
743 relation to the Park, noting she was concerned about moving the dog park. She was unsure how
744 far it would be moved and if it would result in more noise for her, as there was indeed much
745 noise heard from the park. She suggested moving the dog park to the southwest corner in the
746 horse arena area because nothing was there.

- 747 • She asked whether the dog park would remain the same size and simply be moved over a
748 whole section or just partially.

749

750 **Ms. Healey** indicated on a displayed aerial photo that the dog park was currently located in the
751 buffer of Mt. Scott Creek. She stated the proposed Master Plan would move the dog park
752 between 25 ft and 50 ft east, and potentially south another 25 ft to 30 ft, to outside the creek
753 buffer. She clarified where the east end of the dog park would be located.

754

755 **Ms. O'Leary** responded that was right behind her house. She already had to close her windows
756 in the morning because of people yelling; now she would hear dogs, too.

- 757 • She noted that currently many people at the park let their dogs off their leashes, and felt that
758 comments about this just lead to arguments. It seemed that most people think the whole
759 park is the dog park. She saw one dog off its leash go at a little girl.
- 760 • She restated her suggestion about keeping the dog park where it is located or moving it
761 near the horse arena.

762

763 **Nancy Dollar**, 5246 SE Campanario, Milwaukie, OR said she lived right along the creek, north
764 of the park. She was also concerned about the dog park because that whole area is often wet,
765 as is the area to the east where they proposed moving the dog park. The walking bridge across
766 Mt. Scott Creek is often very wet and it was difficult to walk through the current dog park. She
767 did not understand the reasons for moving the dog park.

- 768 • She agreed the dog park should move to the park's southeast corner where it was higher
769 and dryer. She supported dog parks because it was great for dog owners to have such
770 areas, but this was not the best place.
- 771 • The proposed walking trail was a great idea, which she supported since she uses the park
772 for walking.

773

774 **Chair Klein** called for any additional comments from staff.

775

776 **Ms. Mangle** stated staff's comments were limited to clarify points or in response to questions:
777 She noted that according to the MCC Parking Standards, the Center lacked adequate parking,
778 given all the activities taking place solely within the Center. Staff was working with the Center
779 about this issue, but it did not necessarily involve the Master Plan.

- 780 • She clarified that only the existing paved parking area was included in the parking
781 calculations for the Center, not the gravel area or Rose Garden. The Rose Garden was
782 permitted as its own development and underwent a Conditional Use process. The Center
783 was also permitted as its own development. These areas have always been fragmented,
784 which was how the calculations were done. In isolation, the Center did not have enough
785 parking, as heard from Center staff and occupants. Parking was challenging because of the
786 many uses occurring at the Center.
- 787 • She assured that the extensive list of implementation projects underway described by Ms.
788 Burns did not require land use review. Ms. Burns and Ms. Herrigel discussed
789 implementation with staff after the process for developing this Master Plan was completed
790 and reviewed what would, and would not, require permits.

791

792 **Commissioner Batey:**

- 793 • Asked if any recent assessment of the parking existed in the meeting packet or in work done
794 by Alta Consulting or other consultants.
 - 795 • **Ms. Alligood** replied the last parking analysis was done for the ball field application. City
796 staff had not done a parking analysis for this particular application. She explained that
797 staff stated the Center is under-parked because many spaces had been combined into
798 ADA spaces, resulting in a net loss over the years. The Center had not been approved
799 with less than the required amount of parking; the parking had just slowly been reduced.
 - 800 • **Ms. Healey** stated the consultants did not do anything specific during the planning
801 process, but the Parks District staff did some work to address whether parking was really
802 needed. She reported that 356 spaces existed in the park. This assumed 26 spaces in
803 the gravel lot, which included the 4 spaces facing the Center. The Center has 42 spaces
804 in front, 30 irregular spaces, and 12 ADA spaces with 30 spaces behind the Center, one
805 of which is taken by the dumpster. The ball fields and Rose Garden have 257 spaces, 6
806 of which are ADA spaces.
 - 807 • Staff watched the parking situation for 2 days. Depending on time of the day, parking
808 in the gravel lot, in front of the Center, and part of the Rose Garden was generally
809 filled by Center patrons. No one was parking in the ball field lots. The Center's

810 parking lot is not full in the evenings. No official traffic study was conducted but the
811 staff did try to go out and collect information.

- 812 • It was heard through the process that walking long distances was harder for those
813 frequenting the Center, which might have prompted the many comments about
814 needing more parking for the Center.
- 815 • Overall, parking is not a major problem in the park. The parking issue arises during
816 peak use of the Center, the proximity of parking, and the possible need for additional
817 ADA spaces closer to the Center as well.

818

819 The Commission took a brief recess and reconvened at approximately 8:55 p.m.

820

821 **Chair Klein** called for the Applicant's rebuttal.

822

823 **Ms. Healey** stated the Applicant wanted to work with the Center to solve some of the parking
824 issues and were willing to develop further designs about what the parking might be like as the
825 Master Plan moved forward.

- 826 • The Applicants also appreciated comments made about the creek. They were amenable to
827 moving things around to accommodate the creek as they moved ahead with the grant
828 applications to get some of the improvements done.

- 829 • She thanked the Commission and offered to answer further questions.

830

831 **Commissioner Batey:**

- 832 • Understood the Center's concerns and believed the drive access could be reconfigured. She
833 knew a specific parking plan was not being proposed yet, and that a traffic study and
834 whatever else is needed would be presented at a later time.

- 835 • Was especially concerned about adding a drawing with such a big slab of concrete in the
836 Comprehensive Plan. The coverage of the shelters, maintenance facility, etc., was probably
837 less than half of the parking lot pavement coverage.

- 838 • Noted 5.1 Page 31 of the packet, Page 2 of the Application, shows a chart indicating
839 existing and proposed new parking areas. The language discussing parking area as existing
840 would be accurate if only the gravel lot would be paved. However, calling the proposed
841 parking to be placed where the A-frame structure is located in not actually creating new
842 parking, so the chart is not accurate.

843 • **Ms. Healey** responded that although 40 spaces were shown, if a smaller lot would make
844 the Commission feel more comfortable, they were amenable to making that adjustment.
845 Parking was proposed close to the Center and the gravel lot would provide about 25
846 spaces, which was used by the Center and needed to be included in parking
847 calculations. She emphasized the Applicant was not tied to the big parking area, and
848 was willing to make adjustments.

849

850 **Commissioner Gamba** asked if the parking area could be a permeable surface.

851 • **Ms. Healey** replied the Applicant would certainly be willing to consider such options. A
852 really shallow water table was present there, so a geotechnical evaluation would need to
853 be done to determine what could be used.

854

855 **Chair Klein** closed public testimony for CPA-10-01.

856

857 **Planning Commission Discussion**

858

859 **Commissioner Gamba** stated that he liked the application in general, but agreed with
860 Commissioner Batey that plunking a picture of a big parking lot in the Comprehensive Plan
861 tends to lead to expectations. He would be much more comfortable if the lot was smaller and
862 the intention to consider permeable surfaces was included.

863 • He wanted to see more consideration of the flooding as he would like to see flood mitigation
864 to have a strong representation in the plan. Also to consider is what could be done with the
865 riparian areas, such as additional channels, braiding, etc. to increase and improve the
866 habitat areas. Otherwise, the application was acceptable.

867 • He explained that braiding regards the several stands of a creek which are generally dry
868 throughout the year, but are running during the heavy rainfall times of the year. This
869 braiding technique tends to mitigate flooding, and can be manmade. There is a sizable
870 part of the creek in the park, and a lot of effort and national money is being invested in
871 much smaller projects than this to try to restore salmon habitat.

872 • The concept of various parking lots not being big enough for the each separate use seemed
873 bothersome. He agreed with Chair Klein that this is one big park that should have one big
874 plan, and parking should be a part of that. The parking for the rose garden and the Center
875 should be counted in the whole, rather than building more parking that is not necessarily

876 going to be needed. For example, they should not be building the Kmart parking lot for the
877 Christmas rush as it were.

878

879 **Vice Chair Harris** liked the conceptual plan presented to the Commission, but shared the other
880 Commissioners' concerns about a Master Plan that only covers half a facility.

881 • His other concern was that according to the chronological record of public meetings, the last
882 truly public meeting was held 2½ years ago. That is a long time. Neighbors were present
883 that stated they did not see the plan more recently than that.

884

885 **Commissioner Batey** said she had attended some of the meeting held on the Master Plan over
886 the years and believed the Parks District had done a really good job of outreach to relevant
887 parties; so she was less concerned that there were neighbors who did not tune into it until now.

888 • She was still concerned about the expectation that the drawing being considered for the
889 Comprehensive Plan creates a lot of parking, although the Commission did not have the
890 evidence as to whether the parking would be needed or not. That was her main concern.

891 • She would be supportive if specific language addressed wetland restoration. She liked
892 Commissioner Gamba's idea of including language that would encourage the parking
893 surface to be permeable if possible.

894 • She agreed parking should not be built for the worst day of the year, when ball fields are in
895 use; a giant company picnic is going on; a wedding is being held, etc. Parking should be
896 built for the average summer use.

897

898 **Vice Chair Harris** agreed that the Parks District has done a lot of outreach via the Committee
899 and the other committees and groups they work with. However, the Parks District's list identified
900 that the last public meeting and open house was in 2007. It did not refer to a Committee
901 meeting or a meeting with the Milwaukie Center Board, but publicly announced meetings, and to
902 him a difference exists between them.

903

904 **Commissioner Churchill** echoed comments made by the other Commissioners. He could not
905 support this project as part of the Comprehensive Plan without seeing an overall comprehensive
906 look of the entire park. It was short-sighted to isolate a portion and expect a response. Although
907 this was a Master Plan for the north side of the park, with Camas Creek dividing it, he needed to
908 see [the Master Plan] in context of the whole park.

- 909 • He believed underutilized areas at the southwest corner of the park need to be considered,
910 and how that impacts the density of use on the park's north side.
- 911 • He had some concerns about the amount of parking spaces, but believed that would get
912 resolved. He had used the dog park when the A-Frame picnic structure was being used,
913 which created a parking problem for certain peak periods, irrespective of what was
914 happening at the Center. However, people could park at the ball fields and walk over.
- 915 • His biggest objection was that the Commission was seeing a portion, albeit a small portion
916 of the park, and being asked to approve it as a separate master plan.
- 917 • He understood that what the Commission reviewed and approved 4 years ago did not
918 result in what was built. So he believed this application requires a look at the overall
919 master plan of the entire park. This [Master Plan], as a subset of that overall master
920 plan, might be approved once the Commission understood how it fit together.
- 921 • For the record, he would like to look at the dog park use specifically, because it is so close
922 to wetland areas. The dog park is currently used to the point where soil compaction occurs,
923 which leads to erosion, and essentially abuse of the land. He would like the Applicants to
924 consider using the park's southwest corner as a winter dog park. This would have both an
925 ecological and acoustical impact, relieving the pressure on the ecosystem on the north side
926 of the park, and helping transition some of the noise generation to other areas of the park,
927 possibly providing some relief to residents adjacent to the [current] dog park area for a
928 certain time of the year.

929

930 **Chair Klein** agreed with Commissioner Churchill, and believed it was a mistake to not master
931 plan the whole site, which would allow the correction of some of the errors and mistakes that
932 occurred in the past.

- 933 • He really liked the Master Plan for this particular area as presented. The problem was it was
934 not just that area, but a big piece of land with lots of uses occurring and he did not believe it
935 was being considered.
- 936 • He was bothered by the manner in which the last application for the ball fields was
937 approved. He took great pride in the process which allowed people to come and give their
938 input to the Commission, who then made a decision that moved forward. That process was
939 taken away, and a voice was given to a specific group by the County administrator and by a
940 particular County Commissioner at that point in time. He believed that was a grave mistake.

- 941 • He agreed with Commissioner Churchill and believed the whole site should be considered.
942 He would not support the application, though he did like everything in the document. He
943 wanted to look at the whole picture.

944

945 **Commissioner Batey** said she was not opposed to the application, but it needed some
946 tweaking for her to vote yes.

947

948 **Commissioner Gamba** agreed with the logic. Mitigations could occur to take pressure off the
949 dog park area that would involve the south end of the park. It did not make sense, particularly
950 when discussing parking, to separate parking areas and building another parking lot because
951 more parking was needed. It was completely illogical to not look at the whole park as one big
952 picture. Though he liked 90% of the Master Plan, he would vote no.

953

954 **Chair Klein** said his point was that this was a master plan, rather than an application before the
955 Commission right now. There was no dire need, and it was not as if nothing could be built
956 without a master plan, because they built North Clackamas Park.

957

958 **Ms. Mangle** asked the Commission to consider whether they would want to permit certain
959 improvements with a development permit without having this type of a master plan in place. For
960 example, if the Parks District or City was successful in securing a grant to remove the crushed
961 culvert.

962

963 **Commissioner Gamba** answered yes, in his personal opinion.

964

965 **Chair Klein** emphasized there were holes in this Master Plan one could drive a car through.
966 Issues were not being addressed on a greater scale. If the culvert could be fixed with a grant,
967 then bring it before the Commission, which would occur anyway because the whole project
968 could not be funded at this point. The whole project needed to be considered.

969

970 **Commissioner Batey** stated, playing the devil's advocate, if the Parks District gets the money
971 for the culvert removal and comes before the Commission, some will say that a Master Plan is
972 needed before such improvements could be made, as Mart Hughes had stated regarding the
973 ball fields.

974

975 **Commissioner Churchill** replied he would agree, a master plan was needed, and would need
976 to be brought back before the Commission.

977

978 **Chair Klein** noted that although Mr. Hughes stated that the north field needed to be master
979 planned, he interpreted that Mr. Hughes wanted these things done in conjunction. This was why
980 he wanted them done at the same time so review of the whole park would be done at once,
981 rather than piecemealed together. He assumed that he would have said that they wanted to
982 have the Master Plan done and in place by the summer of 2005, which happened to coincide
983 with the development of the parks. If Mr. Hughes was directing the Commission, where was the
984 Commission on this master plan?

985

986 **Commissioner Gamba** remarked that it was 5 years late.

987

988 **Commissioner Batey** explained that the Applicants were in a hard spot. She knew about trying
989 to get funding for the park, and one never knows where a grant will come in. If the Applicants
990 get funding for some piece and do not have a master plan, would people be upset that it was
991 not approved.

992

993 **Chair Klein** asked if rebuilding the culvert would result in an intensification of use.

994

995 **Commissioner Batey** noted that if anything, it would be a de-intensification of use.

996

997 **Bill Monahan, City Attorney**, agreed with Commissioner Batey that the improvement of the
998 culvert will de-intensify the problems that exist at this time.

999

1000 **Ms. Mangle** asked if it would worth discussing what could be done to change the given Master
1001 Plan and return to the Commission to discuss adoption. She noted that Commissioner Batey
1002 mentioned doing a parking assessment, and that other achievable things were discussed.
1003 Starting over with a whole new master plan was a different ball park. It would be nice to know
1004 where the Commission would be interested in seeing work done.

1005

1006 **Commissioner Churchill** clarified he did not want the entire park master planned, he wanted to
1007 see how the subject North Side Master Plan fit with the master plan for the entire park, which
1008 must exist. If one did not, then the City was doing things in isolation and they might as well be

1009 doing a culvert. The Commission was being asked to approve a master plan on a small portion
1010 of the park, but some thought had to be put into it. This was how things get fragmented, like the
1011 rose garden fragmented with its own parking, and the Center, ball park, and dog park all with
1012 their own parking issues. It was difficult to see how the whole thing would come together. He
1013 believed the Applicants needed to take a broad look to show the Commission that they
1014 understand the entire site and what the long range goals are for the different areas. It did not
1015 have to take a year. Working in isolation was not benefitting the park as a whole, or the
1016 community.

1017
1018 **Chair Klein** stated this was how Milwaukie was built, and was one of the frustrations for the
1019 Commission; streets without sidewalks, no pedestrian access on streets that need it; no bike
1020 lanes. A lot of things were not considered and this was a continuation of that.

1021
1022 **Vice Chair Harris** agreed. Without a plan for the entire park, one cannot clearly see how the
1023 north half would even fit together with the south half.

1024
1025 **Chair Klein** asked about available options. He did not propose throwing the Master Plan out,
1026 but having it go back for some more work.

1027
1028 **Ms. Mangle** requested that the Commission be as specific as possible about the work that
1029 needed to be done.

1030
1031 **Chair Klein** said he wanted to look at how the southern portion of the park was performing,
1032 which seemed to be well, to have as a comparison. He also wanted to consider some
1033 alternative uses throughout the park, and see where some adjustments could be made
1034 regarding the ideas discussed at this time. Looking at this small area for those ideas did not do
1035 it justice.

- 1036 • He believed all the proposed elements should stay in place. The dog park would not be
1037 removed. His ultimate goal would be to actually help the dog park, since it was the most
1038 heavily used element at the park, outside of the Center.
- 1039 • He clarified that some ideas discussed utilized the southeast corner. Alternative sites within
1040 the entire park could be used for the elements mentioned.
- 1041 • If there were uses the City had not heard about or people who had not provided input, the
1042 City needed to get those people involved.

1043

1044 **Commissioner Churchill** agreed. The Commission just needed some context.

1045

1046 **Chair Klein** stated he was very discouraged coming into the meeting, because it seemed not a
1047 lot of discussion had occurred with dog owners, but he felt much better after Mr. Clarke's
1048 comments. It would be nice to consider a bigger picture.

1049

1050 The Commission took a brief recess, and reconvened at approximately 9:20 p.m.

1051

1052 **Ms. Mangle** stated that following discussion, staff and the Applicant requested that the
1053 Commission consider continuing the hearing to a date certain, directing staff to work on the
1054 following five items to see if the Commission's concerns could be addressed:

- 1055 • Provide material about what changed regarding the Commission's decision on the south
1056 side ball fields, since there had been questions about that issue. Staff had the record
1057 and could be very clear about what actually changed between Planning Commission and
1058 City Council.
- 1059 • Discuss what alternatives have been considered with regard to the uses, especially with
1060 the southwest corner of the site. The Parks District did look at some things, and could
1061 explain why those alternatives were rejected, such as the dog park.
- 1062 • Put this Master Plan in the context of the larger park; however, this would not mean
1063 doing this level of planning for the whole park, but putting it in that context to explain or
1064 show on one graphic how those relationships could work together.
- 1065 • Do some work on the shared parking issue. Parking was analyzed during the ball park's
1066 application and the Center was considered. Staff could explain what was learned then
1067 and update it.
- 1068 • Explain the timing of the process with regard to planning and grants, and the 2-year gap.
1069 There were actually some good reasons for that gap.
- 1070 • She clarified that doing this work would not involve hiring consultants, redoing a lot of the
1071 work, or redoing a master plan for the entire site. The Parks District and Planning staff were
1072 happy to review that material for the Commission's information and consideration.
- 1073 • However, if this level of detail was wanted for the entire park, it would probably be better to
1074 withdraw the application. The subject Master Plan was a sub-area type of plan, and
1075 providing more context could address the Commission's specific concerns. She wanted to
1076 ensure the right concerns had been noted.

1077

1078 **Chair Klein** asked what process would follow if the application was withdrawn. Would a master
1079 plan be done for the entire site?

1080

1081 **Ms. Mangle** responded probably not, but that would be best addressed by the Applicants.

1082

1083 **Mr. Monahan** noted the public hearing should be reopened to allow the opportunity for the
1084 Applicants' comments about proceeding given the option discussed. He confirmed that if no
1085 clarification was needed from the Applicant, the Commission could discuss what they thought of
1086 the idea posed by Ms. Mangle.

1087

1088 **Commissioner Gamba** stated he did not believe the provided option addressed the big picture.
1089 While questions would be answered, there would still be a whole park without a master plan;
1090 and a half a park with a master plan. He was curious to know who directed the creation of a
1091 master plan for half a park, which seemed bizarre.

1092

1093 **Commissioner Batey** stated that after the ball fields project, her perception was that the park
1094 had been segregated in 2 halves. This was exactly what she expected, right or wrong, better or
1095 worse.

1096

1097 **Chair Klein** stated it was not what he expected. He hoped there would be ties between the park
1098 areas and the Commission could see how it was functioning. Environmentally, it seemed like it
1099 was functioning very well, but more issues were involved. Certainly the uses were something
1100 that could be considered.

- 1101 • He was fine with continuing the application to a date certain, provided that alternative uses
1102 were considered throughout the park as a whole, not just in the northern portion. There were
1103 things that caused problems, like the dog park functioning year-round where it was located.
1104 He wanted to see other portions of the park being utilized.
- 1105 • When visiting the site today, there were almost as many dog walkers on the southwest
1106 corner of the park as there were in the dog park. People were utilizing that area now. If the
1107 equestrian area visitors were available, now was the time to involve them and address the
1108 area's use. He believed there were better uses for the amount of land in that area.
- 1109 • As long as the application was moving in that kind of direction, he would be happy.

1110

1111 **Ms. Mangle** asked to clarify if it was the Applicant saying that they did look at it, explaining why
1112 the alternative was not selected, or did Chair Klein want to see a master plan showing the dog
1113 park in the southwest corner. She sought clarification because those expectations were pretty
1114 different.

1115

1116 **Commissioner Gamba:**

1117 • Replied he did not necessarily expect to have the Applicant put a winter dog park in that
1118 corner, but he wanted them to look at the whole park and consider the best ways to utilize
1119 the entire area, parking, flood mitigation, environment, use, everything. Before saying he
1120 wanted to see [a master plan] level of planning for the whole park, he wanted to know the
1121 downside.

1122 • **Ms. Mangle** explained that the Parks District staff had said this has been a long,
1123 involved, and expensive process that involved hundreds of people to date. She believed
1124 the agency and people involved were much more interested in implementation,
1125 especially with regard to spending money on the creeks, rather than continuing to do
1126 planning for the whole site. So the whole focus has been on implementation. Limited
1127 funding was available, which was one reason why the Master Plan had been delayed in
1128 coming to the Commission.

1129 • Clarified that acquiring a master plan for the whole area would steal funds from projects that
1130 could go forward immediately, such as removing the culvert.

1131 • **Ms. Mangle** said that projects were already not being done due to lack of funding. No
1132 funding was identified for doing a park master plan for the entire site.

1133

1134 **Commissioner Churchill** said he still believed there were a lot of elephants in the room that
1135 were not being discussed.

1136 • If a culvert grant was trying to be obtained, then bring the project forward. If it needed a
1137 master plan to support that grant, then why isolate and do a master plan on one section?
1138 The City was continuing to do fragmented things in this park and it looked that way.

1139 • He did not expect a fantastic tapestry for the balance of the park. He needed to see a
1140 context of how the subject Master Plan fit with the overall, high level plan for the park.
1141 Funding for a master planning effort might not be available, but internally within the Parks
1142 District, there must be some conceptual plan of long-term use of how they viewed the entire
1143 park. He could not imagine that the City was doing isolated work now, and ignoring the
1144 balance of the park.

- 1145 • This is a big, important part of Milwaukie, and he believed a bigger, broad-brush look was
1146 needed to pull it into context for the Commission. Otherwise, it was like looking at a small
1147 application, but ignoring the neighborhood around it.

1148
1149 **Chair Klein** recalled Ms. Healey's earlier comments about the prior ball field project and not
1150 wanting 3 months of fighting. He believed that fighting for something that is better and good is
1151 the right thing to do and should be done. He hated mitigating, and believed that settling was
1152 something that was always done in Milwaukie. He was aware that the audience may disagree
1153 with the Commission, but the fact is that this was a bigger [project]; it was not just the north side
1154 of the park, or the dog park.

- 1155
1156 • The dog park was extremely important. He believed utilization could occur throughout the
1157 park and that areas of improvement could make the whole place better, rather than
1158 pinpointing certain things, or making one portion the best place possible.

1159
1160 **Commissioner Churchill** added it was not as if the Applicant was being asked to open the
1161 southern half of the park to a giant public hearing process, the Commission just wanted some
1162 context, and show how it fits with the overall fabric of the park.

1163
1164 **Commissioner Batey** believed that it almost sounded like he agreed to what Ms. Mangle
1165 proposed.

1166
1167 **Chair Klein** stated that he was actually in favor of continuing the hearing; he did not want the
1168 application withdrawn. He wanted it to remain before the Commission and be worked on.
1169 Having money available to be spent on other projects, etc., put a bit of a priority on this Master
1170 Plan application.

1171
1172 **Commissioner Churchill** appreciated Commissioner Gamba's comments; it would be
1173 wonderful to have a detailed Master Plan of the entire park. He clarified that he was not
1174 personally asking for that, he was requesting for the context of how this fits within the whole.

1175
1176 **Commissioner Batey** believed the Commissioners agreed that having had a master plan in
1177 2005 for the whole park would have been ideal, but what was realistic to expect at this juncture,
1178 cost wise, etc? She believed what Ms. Mangle was proposing was fine.

1179

1180 **Chair Klein** agreed, reiterating that he wanted the Master Plan to stay on the Commission's
1181 table.

1182

1183 **Ms. Mangle** explained that addressing the 6 items would be a fair amount of work for those
1184 involved. If the Commission did not believe that information would be enough and really wanted
1185 a more detailed master plan, she preferred to know now. She confirmed that the Commission
1186 wanted staff to do the work, which would influence the decision.

1187 • She stated that it could take 2-6 months to prepare the requested information. Continuing
1188 the hearing to a date certain was probably not helpful because staff did not want to re-notice
1189 the hearing for that long period of time.

1190

1191 **Commissioner Gamba** asked if continuing the hearing to a date uncertain would stop projects
1192 that are imminent this summer.

1193

1194 **Ms. Mangle** replied not for this summer.

1195

1196 **Chair Klein** answered yes, this would have rippling impacts.

1197

1198 **Commissioner Churchill** countered that as mentioned, Milwaukie has been a series of jigsaw
1199 puzzle pieces, and this is an important park and he wants to get it right.

1200

1201 **Ms. Mangle** advised that the lack of funding was not a reason not to continue the hearing.

1202

1203 **Ms. Burns** added the Parks District would keep moving on its other projects with the
1204 assumption that the Master Plan would get worked out.

1205

1206 **Commissioner Gamba** added that with the assumption that by and large, the Commission likes
1207 the Master Plan, there was just a little more to the puzzle.

1208

1209 **Chair Klein** invited the Parks District to come back before the Commission should money
1210 become available for the culvert, which was probably the most minuscule thing. It helps. It was a
1211 good thing.

1212

1213 **Commissioner Batey moved to continue the application for CPA-10-01 North Clackamas**
 1214 **Park North Side Master Plan to a date uncertain. Commissioner Churchill seconded the**
 1215 **motion, which passed unanimously.**

1216

1217 **6.0 Worksession Items – None**

1218

1219 **7.0 Planning Department Other Business/Updates**

1220 Ms. Mangle noted an article in *The Clackamas Review* about a tree removal hearing in which
 1221 she was quoted as saying, “We were making this up as we go along.” The statement was true in
 1222 the sense that the City had not had a tree hearing in 7 or 8 years, and no guidance existed in
 1223 the Code about how to conduct one. The hearing was related to the street improvements for the
 1224 Bowman and Brae project for which the Commission approved a zone change. She reminded
 1225 that the Minor Land Partition to create those lots was a Type II decision, which can be
 1226 forwarded/upgraded to the Commission. She advised the Commissioners that it was best not to
 1227 engage in any discussion about the issue, because it could come before the Commission.

- 1228 • The City only regulates trees in Water Quality Resource areas or within the right-of-way. The
 1229 tree removal permit process allows anyone concerned to request a tree hearing. People with
 1230 concerns usually submit written comments.
- 1231 • The tree hearing was held in the middle of the Bowman St right-of-way with about 20
 1232 neighbors. A decision had not been made yet. She noted the tree issue would have come
 1233 up even if the project involved 2 houses instead of 3, because the street improvements
 1234 would have been required regardless. The tree in question was right in the middle of the
 1235 right-of-way.

1236

1237 **8.0 Planning Commission Discussion Items**

1238 **Vice Chair Harris** announced the Concert in the Park Series was starting August 4th featuring
 1239 “Stolen Sweets” at Llewellyn Park. Curtis Delgado and Jim Macy were also feature artists for the
 1240 series.

1241

1242 **9.0 Forecast for Future Meetings:**

- 1243 August 10, 2010 1. Worksession: Natural Resources Overlay project update
- 1244 2. Worksession: Training discussion on holding effective public
- 1245 hearings

1246

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, August 10, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Teresa Bresaw
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Scott Churchill
Lisa Batey

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:36 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 June 8, 2010

Commissioner Gamba moved to approve the June 8, 2010, Planning Commission meeting minutes as presented. Vice Chair Harris seconded the motion, which passed 4 to 1 with Commissioner Bresaw abstaining.

2.2 May 25, 2010

Vice Chair Harris moved to continue the May 25, 2010 Planning Commission meeting minutes to August 24, 2010. Commissioner Wilson seconded the motion, which passed unanimously.

3.0 Information Items – None.

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

5.0 Public Hearings – None.

42 **6.0 Worksession Items**

43 6.1 Summary: Training and discussion on holding effective public hearings
44 Staff Person: Bill Monahan and Katie Mangle

45
46 **Katie Mangle, Planning Director**, said the worksession was a good opportunity to discuss how
47 the process might be made as effective/efficient as possible, to build teamwork amongst the
48 Commissioners, and for the Commissioners to raise any concerns or questions they might have.
49 She noted the questions listed on 6.1 Page 2 of the packet were for discussion as the
50 Commissioners considered their roles on the Commission. She asked each Commissioner to
51 state why they serve on the Commission, and encouraged each Commissioner to then consider
52 their responses when Mr. Monahan continued with the land use hearing training.

53
54 Responses to the questions listed on 6.1 Page 2 were as follows:

55 **Commissioner Gamba** volunteered his time as a Commissioner because he believes the
56 Commission as a body had the opportunity to make changes for the better. When people do
57 not volunteer to work and make changes, it results in the status quo.

58
59 **Commissioner Bresaw** stated the perception she wants members of the public to have about
60 the Commission is to know that the Commission is listening to everybody's comments, and
61 that the Commission cannot reject something just because the public does not want it. There
62 had to be a valid reason why the Commission would reject a project/application. Sometimes
63 the Commission can create conditions to make it a better plan or project, and the neighbors
64 would be happier. Likewise, the Commission should project an image of being fair to all
65 parties, including developers, builders, neighbors, property owners, etcetera. She volunteers
66 on the Commission because she tries to represent the average person, and listen to different
67 points of view.

68
69 **Vice Chair Harris** said he volunteered for similar reasons, and tries to represent the average
70 person and make a difference in the community. He has learned a vast amount in his 6
71 months on the Commission and is starting to feel like he is getting a grip on it, but he is
72 enjoying it too. When the Commission makes a decision, he finds himself analyzing the
73 decision until late into the evening, not necessarily right or wrong, just how the Commission
74 came to the decision. With his son now in college, he believed being on the Commission was
75 an opportunity to participate in the community and better himself at the same time.

76

77 **Commissioner Wilson** said he also volunteers to be part of the community and donate his
78 time and expertise in environmental and geotechnical backgrounds.

79

80 **Chair Klein** agreed that there is a need in Milwaukie for people to step forward and do things.
81 He believed there was apathy throughout the community, which makes it difficult, but if you
82 want something done, you do it yourself. He had always considered that the Commission
83 exists not for the applicant, but to protect the interests of the people living near or being
84 impacted by the application. He takes a lot of pride in that work.

- 85 • He noted one situation in particular that made him uncomfortable this past year, adding it
86 was important to stay focused on what the Commission is here to do.

87

88 **Bill Monahan, City Attorney**, noted that City staff is open to criticism because they have a role
89 to play, which might not always be clearly defined. Through the worksession, he hoped staff
90 would be better able to define their roles, and learn what role the Commission wants staff to
91 have in serving the Commission so it can be more effective.

92

93 **Chair Klein** stated it was important that no questions were left unanswered at the end of the
94 meeting. Others likely have the same questions, and asking what seems to be a basic question
95 often leads to great conversation amongst the group and progresses to bigger issues and a
96 better process.

97

98 **Mr. Monahan** discussed the basic elements of holding a land use hearing, as noted in
99 Attachment 1, responding to questions and comments from the Commission as follows:

- 100 • Quasi-judicial decisions in Milwaukie are made by a citizen body. The City could choose to
101 have an outside hearings officer, but he believed the community preferred having citizens
102 make those decisions, because members of that citizen body would have to live with those
103 decisions. No outside person was coming in and ruling on process. People do not want just
104 process; they want feeling added to the process.
- 105 • Due Process. The primary item in any quasi-judicial decision is the process of due process.
106 Quasi-judicial decisions which are made are specific to one or a few properties, and those
107 properties that would be impacted by the development activity can be identified. Legislative
108 changes affect a multitude of properties, such as those done over the last couple years:
109 TSP changes, Code amendments, Comprehensive Map changes, etc.

- 110 • A quasi-judicial hearing is much like a court proceeding with strict standards that must
111 be followed to make sure all participants have fair dealings. The Commission's obligation
112 is to be a tribunal that follows important procedures that shows the public that the
113 Commission has clearly heard what has been presented in the arguments for and
114 against, has applied the proper criteria to the decision, and makes a decision that is
115 transparent.
- 116 • A due process proceeding requires that the Commission can only make its decision
117 based on the evidence in the record, which includes: any analysis by staff of the original
118 submittal from the applicant; the information submitted by staff in the staff report; any
119 and all oral and written comments the Commission receives before the close of the
120 hearing; and any questions offered to the applicant and their representatives at the
121 hearing, as well as their comments and responses.
- 122 • The applicant is entitled to a decision made by the Commission that is based on that
123 record and supported by findings that illustrate the Commission's thinking when the
124 decision was made.
- 125 • For example, if there were to be a quasi-judicial application for a zone change, the
126 Commission cannot approve it because they like it. The Commission must identify
127 what evidence was presented to cause the Commission to make the linkage
128 between the application, evidence, and the decision. In the case of an approval, the
129 Commission must be sure to address each criterion and show that all the criteria are
130 met for a decision to be supported and approved. If even one criterion cannot be
131 met, the Commission would need to either deny the application and give reasons
132 why the one criterion was not met, or fashion a condition of approval that allows the
133 applicant to make adjustments to their application to meet that criterion.
- 134 • He clarified that Commissioners who have done a site visit are asked to identify what they
135 have seen or heard and who they have spoken with, and identify anything different from
136 what is included in the application.
- 137 • Typically, reading 2-month old news articles are not noted because those articles are
138 not always tracked by legal counsel.
- 139 • Commissioners are obligated to disclose on the record that they saw or heard a
140 presentation or information at a public meeting, on television, in an article, in talking with
141 someone, etc., once they become aware that an application is a possibility. For example,
142 they should be concerned about gaining information specific to that application when

- 143 staff mentions a preapplication meeting, or the agenda notes an upcoming application
144 item.
- 145 • The purpose of such disclosure is to make sure that those at the meeting have the
146 opportunity to observe and understand the Commission's decision-making process,
147 and also to rebut and refute any and all evidence that is in the record, because the
148 applicant is going to say one thing, staff will interpret it a certain way, and different
149 points of view will be heard throughout the hearing.
 - 150 • The Commission's obligation is to make a decision based on balancing the evidence,
151 but does not have to reject any evidence. If two experts give testimony about the
152 impact a project will have on traffic generation, for instance, choose which makes the
153 most sense to the Commission as a body, and explain why, which would go into the
154 findings. The Commission does not have to discredit the other expert's argument.
 - 155 • The need to allow people to challenge and rebut evidence gets to the issues of the ex parte
156 contacts and the site visit. People can only refute information that the Commission is taking
157 into consideration, so they have to hear a Commissioner say, "I talked to someone and they
158 told me the following..." so it is on the record, and now they can try to correct that if they feel
159 it is necessary.
 - 160 • The objective is that when the decision is made, participants involved in the process
161 should leave the room with the understanding that a fair decision was made, any and all
162 information was heard and taken into consideration, and a record and a decision exists
163 that stands up to challenge. Mr. Monahan's job is to guide the Commission to help fill in
164 the gaps, so it is defensible.
 - 165 • In his 3 years of working with the Commission, Milwaukie has not had one Land Use
166 Board of Appeals (LUBA) appeal, which shows the quality of the staff and the
167 decisions made. He briefly explained how the LUBA process works, and how
168 conditioning an application without giving the applicant an opportunity for discussion
169 or rebuttal can lead directly to a challenge at circuit court on just that condition. The
170 threat of going to circuit court would lead City staff and legal counsel to advise City
171 Council to negotiate with the applicant because not only will the condition be thrown
172 out, the City could also have to pay the applicant's attorney fees.
 - 173 • He clarified that the issues with Ed Parecki's property at Main and Monroe involved
174 an appeal of a Code interpretation. Southgate Park & Ride was a LUBA appeal by
175 the neighbors, not the applicant.

- 176 • **Commissioner Bresaw** was surprised that the sidewalk conditioned for the
177 Immoveable Foundation Church was never appealed. Ms. Mangle noted the
178 sidewalk was built.
- 179 • **Ms. Mangle** distributed a table of all Commission decisions made over the last 2
180 years created by Alicia Stoutenburg to prompt recollection of prior decisions and
181 possibly further discussion.
- 182 • With regard to the need to have a transparent process and impartial decision-maker, each
183 Commissioner has an obligation to declare at the start of the hearing whether an actual or
184 potential conflict of interest exists (ORS 244). The Commission needs to be careful with the
185 State Government Ethics rules, because the process of having to go before the Government
186 Ethics Commission because of a complaint can be quite messy, technical, expensive, and
187 embarrassing.
- 188 • ORS 244.135 specifies the distinction between the two types of conflict of interest. A
189 declaration needs to be made at a meeting, along with the facts involved. If Mr.
190 Monahan believes something declared as a potential conflict could be an actual conflict,
191 he may ask some more questions to help the Commissioner clarify the conflict because
192 of the implications.
- 193 • An actual conflict of interest is when the decision *will* have any financial impact,
194 positive or negative, on the Commissioner. If so, then the Commissioner cannot
195 participate in the proceedings, but must make a declaration at that meeting, identify
196 that they cannot participate due to an actual conflict of interest and step down.
- 197 • Potential conflict of interest is when the decision *may* have an impact financially on
198 the Commissioner.
- 199 • The State made the determination that they would like people to participate on volunteer
200 bodies, but not as public officials if they will benefit. ORS 244.135 specifies that
201 Commissioners must handle conflicts of interest in a certain manner, which he reviewed.
202 (6.1 Page 10)
- 203 • He did not believe Commissioner Batey's recusing herself from the Carolyn Tomei
204 application was an actual conflict, because there has to be some certainty that her
205 property would be affected; that she could benefit when selling her property. It was
206 definitely a biased situation, and he believed she was right to be cautious and recuse
207 herself.
- 208 • Conflict of interest declarations must be made at the very first hearing of the matter
209 being considered. If the hearing is continued, a Commissioner needs to make the same

- 210 declaration at the next meeting, because statute requires the declaration to be made
211 when there is potential for the decision to be made. The declaration needs to get in the
212 record for the Commissioner's protection. If the declaration is not in the minutes, the
213 Commissioner should correct the record.
- 214 • All audio recordings of the meetings are on file with the City and can be very
215 effective in addressing any challenges.
 - 216 • If an actual or potential conflict of interest is realized during the hearing, such as
217 realizing a project is adjacent to a family member's property, the Commissioner would
218 need to make the declaration as soon as possible, and state whether the conflict is
219 actual or potential, or a bias.
 - 220 • Once the declaration is made, the Chair must ask if any member of the audience
221 challenges any Commission member.
 - 222 • The Commission should discuss how elaborate that process will be if a
223 Commissioner is challenged. Mr. Monahan stated that he prefers to ask the member
224 being challenged to make their own determination to either answer the challenge or
225 recuse themselves if it does not impact the quorum and the ability of the body to
226 make a decision. If the member feels strongly that no conflict exists and intends to
227 participate, then the body usually determines whether the member should
228 participate. The Commission needs to determine its process preference, to leave that
229 decision with the member, or make the determination as a body about whether the
230 challenged member should participate.
 - 231 • **Commissioner Wilson** noted that one's persistence/insistence creates an air of
232 bias that they will not be able to be fair. If there is a quorum, it seems that they
233 should need to be out.
 - 234 • **Mr. Monahan** agreed that was the most reasonable approach, He typically
235 recommended that the Commission make the ultimate decision about whether a
236 challenged member participates.
 - 237 • The bias question regarded whether one could make a fair decision.
 - 238 • First, Commissioners should not predetermine what the decision will be prior to the
239 hearing. The Commission must be open and give weight to everything coming into
240 and presented during the process.
 - 241 • A Commissioner serving on the Waldorf School Board, for instance, who is
242 vested in a concept being reviewed by the Commission, would not want to give
243 the challengers of that decision an opportunity to cast dispersion on the

- 244 Commission or on the school with the appearance that the deck was stacked in
245 the school's favor with a board member on the Commission. No case law exists
246 where decisions were overturned because of bias; however, bias damages the
247 Commission's integrity. He recommended that Commissioners recuse
248 themselves with regard to bias.
- 249 • **Chair Klein** stated that in reading through an application, one will find the holes they
250 want to find and key in on them. When does having an inquisitive mind and saying
251 the Commission needs to look at a broader picture become a bias? In reading some
252 applications, he has thought, "There is no way this will pass." He felt as though he
253 was creating a bias for himself when reading the application because he did not
254 believe the application had a fair shot.
 - 255 • **Mr. Monahan** advised thinking, "There's no way the application will be approved
256 unless the applicant can adequately address the questions about certain criteria.
257 What information would be needed in order to change my mind?" Rather than
258 thinking, "It cannot be approved" think, "I cannot vote for the application unless
259 I'm convinced." He recommended writing down all the issues and what needed
260 to be seen before coming into the meeting.
 - 261 • If seeking outside counsel, for example, having a Commissioner's friend who
262 is an expert in a specific area review the information to see if they agreed
263 with an error in the application, that person must come to the meeting as an
264 expert so they can be cross-examined.
 - 265 • If a Commissioner disagrees with the data, they should give the applicant an
266 opportunity to check their information, which may require a continuance if the
267 applicant did not bring their expert.
 - 268 • If an authoritative statement on the matter is found on the Internet, print and
269 provide it to staff. Staff can then distribute it to the Commission and applicant,
270 and the applicant can decide how to address it. Applicants' lawyers do not
271 always make the presentation in Milwaukie, which results in much more open
272 dialogue and conclusions are reached without feeling threatened. Lawyers
273 can play the process game and ask for a continuance and for the information
274 obtained.
 - 275 • **Chair Klein** stated that reviewing the packet and getting questions to staff early allows time
276 for staff and the applicant to return with answers. Bringing questions to the meeting can

277 often result in a continuance, and if done too often, the application ends up getting approved
278 because it ran up against the 120-day land use clock.

- 279 • The Declaration of Bias question needs to be reinserted into the Chair's initial hearing
280 comments.
- 281 • The provision allowing for additional time to be requested is on the agenda. At the first
282 evidentiary hearing, the Commission must grant a request by anyone for additional time.
283 This can be done by continuing the hearing to take more testimony at the second hearing or
284 holding the record open for at least 7 days for anyone to submit information about anything
285 pertaining to the application. After that 7-day period, the Commission must deliberate based
286 on the new and all other information submitted.
- 287 • If it is not the first evidentiary hearing and the applicant requests more time, it is at the
288 Commission's discretion whether or not to grant a continuance. If new evidence is
289 presented at the hearing that supports the application, a continuance must be granted to
290 allow people to refute the new information. However, if no one challenges the new
291 evidence, the Commission would procedurally be fine if the hearing is not continued.
292 However, with new information, it is always best to continue because the Commission
293 must understand whether or not it adequately addresses the criteria.
- 294 • **Mr. Monahan** believed, for example, the binder of the meetings brought in by North
295 Clackamas Parks and Recreation District to support the public output that they had
296 was technically new evidence. He asked if it addressed the criteria.
- 297 • **Ms. Mangle** said it was a Comprehensive Plan amendment application, and one
298 criterion is public involvement and the binder demonstrated the applicant addressed
299 that criterion. It was more supportive information, but no one had time to review it.
300 The applicant did not intend to put the Commission in that position.
- 301 • Applicants could say they have done research on lighting, for example, and present
302 material supporting their proposal. The Commission could dismiss the evidence and
303 focus on the actual application, or request to see the other research, which would be
304 new information and reason to continue.
- 305 • The Commission can reject evidence if believed not to be pertinent; however, staff
306 recommends bringing the evidence in for the Commission to consider. New information
307 supporting an application does not have to come from the applicant; it could come in
308 from anywhere. Someone opposing the application might bring in new evidence that
309 turns out to be contrary to their position and supports the application, and still qualifies
310 for the need to continue.

- 311 • New comments submitted by mail or email do not count, unless new evidence is
312 presented. If an issue is raised that has not been discussed, it could go toward a
313 criterion and would be new evidence.
- 314 • Raise it or waive it. Staff identifies all the criteria that apply to an application when notice is
315 sent. The City has the benefit of that criteria being all that the application is judged on unless
316 someone during the hearing says that the identified criteria is not all that needs to be
317 considered, noting that criteria were missed, for instance. Do not assume that if someone
318 quotes a policy in the Comprehensive Plan, that it needs to be addressed. The
319 Comprehensive Plan is first, and the Milwaukie Municipal Code (MMC) implements the
320 Comprehensive Plan; they need to be connected. If all the criteria are addressed, the
321 Commission is also addressing the Comprehensive Plan. The Commission must take new
322 criterion raised at a hearing into consideration, if in fact it does apply.
- 323 • The burden of addressing that new criterion is on the applicant. But if not addressed
324 even by the Commission and the decision to approve the application goes up on appeal
325 and LUBA is convinced that new criterion did apply, it could get remanded per the
326 findings based on that criterion. If someone has not raised new criterion, they have
327 waived their opportunity to challenge the decision to LUBA. The City makes that
328 statement as part of the Chair's initial comments.
- 329 • 120-Day Rule. Statues state that an applicant's application must be reviewed locally,
330 including having the ability for a local appeal within 120 days after the application is deemed
331 complete. The statue allows up to 30 days for an application to be deemed complete. If it is
332 not complete, staff is obligated to tell the applicant what items need to be submitted in order
333 for staff to recommend approval. The applicant can decide to submit the new information
334 and has up to 180 days to do so; or at the end of the 30 days, the applicant can inform staff
335 that they are not going to give staff anything further, and are confident the application is
336 complete and approvable. When this occurs, staff generally has a bias, but do not have to
337 declare it, so the application will go to the Commission without a positive recommendation
338 because it does not address all the criteria. Some applicants will tell staff to deem their
339 application complete, and have their experts work to get the application through because of
340 their own tight timeframe. Once the application is deemed complete, whether it is day 1 or
341 day 30, then the final decision must be made within 120 days, which is tight given all that
342 must be done with notices, hearings, issuing findings, and making decisions.
- 343 • **Ms. Mangle** added that staff organizes their work for the Commission around the 30
344 days. Staff first works with applicants to help assure an approvable application. After

- 345 staff has a complete application, they manage everything to get that application to
346 the Commission within 45 days, which includes having 2potential hearings.
- 347 • If running up against the 120-day clock and a continuance is needed, the Commission
348 cannot extend the 120-day clock without the applicant's approval. The applicant is often
349 asked to voluntarily state for the record that they would like a continuance. If the final
350 decision is not rendered within those 120 days, the applicant can proceed to circuit
351 court. If the judge believes the application is approvable based on the information, the
352 judge will approve the application, but will probably not apply any conditions of approval
353 that the Commission would have liked. The applicant can also qualify to receive back
354 part of their application fees.
 - 355 • **Ms. Mangle** brought up a similar issue with the Waldorf School application, which
356 was very controversial. It took a few Commission meetings to deal with all the issues.
357 By the time it did get appealed to City Council, there was little time left on the clock
358 that the Council only had one meeting in which to make their decision.
 - 359 • **Chair Klein** noted when it seemed the 120-day clock might be an issue and more
360 than one or two Commissioners had questions, the applicant will often waive the
361 clock because of the threat of a possible denial.
 - 362 • **Ms. Mangle** noted how not having a quorum for a few meetings could compromise
363 the 120-day clock, allowing approval without any Commission discussion.
 - 364 • It is very important the Commission gather information, and not deliberate during the course
365 of the hearing. Clarifying questions may be asked, but conclusions should not be drawn one
366 way or another. Commissioners can indicate their opinion at the deliberation point, even
367 without enough information for approval. The straw poll can help the applicant to decide if
368 they need more time. If staff senses the applicant is nervous and the Commission is close to
369 denying the application, staff will often request a recess to talk with the applicant about the
370 options of either extending the 120 days by 2 weeks or appealing to Council with the current
371 record.
 - 372 • During deliberations, it is important that the Commission connect the evidence to the criteria,
373 and for the public to hear that they have been heard. Having a Commissioner note and then
374 reiterate what was heard at a meeting makes the public feel that they were heard and
375 understood. Even though they may not have gotten the decision they wanted, people leave
376 the hearing believing the Commission heard and understood their concerns; or they will
377 consider an appeal.

- 378 • When deliberating toward a decision, the Commission can decide if they need more
379 time, or to approve or deny the application. The Commission should craft a condition of
380 approval if that will make the application approvable. The statute has been written to say
381 if at all possible reasonable conditions of approval can be fashioned, they need to be
382 fashioned. The legislature is very much influenced by the development community; it is,
383 after all, the Land Conservation and *Development* Commission (LCDC).
- 384 • Conditions of approval need to be reasonable. The Commission cannot ask for more from
385 an applicant in terms of exactions than is justified by a rough proportionality test. The
386 Engineering staff is doing a better job of justifying why their conditions are required for the
387 record.
- 388 • **Chair Klein** asked if it was up to the Commissioner(s) in opposition of an application to
389 explain where the criteria are not being met, rather than just not liking a project.
- 390 • **Mr. Monahan** replied it depended on the dynamics of the group and what they are trying
391 to get to as an end result. Some commissions want consensus, so perhaps the opposing
392 person should be obligated to state what would change their vote. Other bodies are fine
393 with a 4 to 3 vote. Sometimes people can never be satisfied with a decision, so they will
394 not help craft a condition.
- 395 • **Ms. Mangle** said that would be where the Commission works together to make a
396 decision. At times, she is conscientious of the fact that while a Commissioner may know
397 their position may not be supported by the Code, it is important that they take a stand
398 that may not occur if they were the deciding vote. She believed this was fine. It helps
399 staff to understand the Commission's decisions and reasoning, because staff is trying to
400 reflect the Commission's guidance when talking to applicants earlier in the development
401 process. The more the Commission can craft conditions to address the issues or at least
402 get everyone to express their issues, the more it will help staff with the bigger picture.
- 403 • **Mr. Monahan** agreed it would help staff for the next application, because they are trying
404 to reflect what the Commission needs to make proper decisions. The same with findings,
405 which must be based on the evidence that shows why something is approved. Even if
406 the Commission goes against staff's recommendation, staff will still help the Commission
407 craft the finding if provided with an explanation of the issue.
- 408 • The Commission briefly discussed a minor land partition Type II decision lot where
409 the Commission reversed the Planning Director's decision and whether the findings
410 of that application were supportable.

- 411 • The Commission and staff discussed how this Commission is unique in that they do a lot of
412 deliberating, unlike many commissions. Key discussion points were as follows:
- 413 • Staff preferred more deliberation/discussion. Other planning commissions and city
414 councils take all the information and a couple commissioners may not participate at all in
415 questioning. Then when it is time for deliberation, someone moves for approval, no
416 discussion occurs, it is approved, and no one can understand why the decision was
417 made.
- 418 • **Chair Klein** did not believe the Commission deliberated enough. He wanted their
419 deliberation to be more of an open discussion. Currently, each Commissioner offered
420 their thoughts and then voted, going around the dais. Deliberations should be expanded
421 for the Commissioners to explain their concerns and challenge each other's positions,
422 which can be done civilly, before actually stating their position. The straw poll is good
423 because it provides an overall gauge of how the Commissioners feel, and then the
424 details can be worked out in deliberation, which is where some real processing occurs.
- 425 • **Vice Chair Harris** agreed. He preferred true deliberation versus an expression of
426 opinion and then a decision. The Commission moves directly to a vote.
- 427 • Such deliberation would enable the Commission to counter one another to clarify certain
428 points and help each other in the decision-making process.
- 429 • Changing how deliberations are done might give a person the opportunity to have the
430 time to see where they want to make their stand and move forward. It was difficult to
431 disagree with the majority.
- 432 • **Mr. Monahan** described his role in the process as looking at the process points and helping
433 the Commission understand the interpretations of the criteria. He tries not to jump in and
434 drive the Commission. The community does not want to see a lawyer running the process;
435 they want to see the process at work. If he thinks the Commission might get itself or the
436 organization into a problem due to a statement that may lead to an appeal or litigation, for
437 instance, he will jump in. He is willing to step in and do more, but it's more effective for the
438 Chair to run the process.
- 439 • **Chair Klein** said that he has been trying to bring Mr. Monahan into the conversation
440 more. Mr. Monahan is very respectful of the Commission and what he says will help the
441 Commission with the legal findings and show where the Commission is being supported
442 on an issue or not.
- 443 • **Mr. Monahan** noted staff knows the Code and the subject site better, so he will deflect
444 certain questions to them. When not very vocal at hearings, he may not have anything to

445 contribute, or he is concerned that his comment would be contrary to how business is
446 done in Milwaukie, so he refrains. In serving 7 different cities, he tries to be careful not to
447 mix up codes and procedures.

- 448 • **Chair Klein** liked the idea of acknowledging public comment. In the future, he would
449 review the list of comments and make sure the issues were addressed.
- 450 • The Commission and staff discussed Community Service Uses (CSU) with these comments:
 - 451 • Some jurisdictions do not have CSUs, so why does Milwaukie? The broad scope of
452 CSUs always seems to get the Commission in trouble.
 - 453 • CSUs were the majority of applications reviewed by the Commission and are unique.
454 All schools, religious institutions, government institutions, public utilities, daycares,
455 etcetera, are allowed in any zone, but to go in any zone, it needs to go under special
456 review. Milwaukie's approach is unique. Essentially a CSU is a special conditional
457 use, which every city has, but Milwaukie has a special conditional use for the list of
458 uses. Some cities zone properties as public properties, and then go through
459 development review. The CSU should get more benefit than a typical commercial
460 conditional use would, because it has public benefits. The applicant would get the
461 benefit of the doubt on some things, and be held to a higher standard.
 - 462 • A CSU is like a conditional use for a use that draws from further than the
463 neighborhood. It has more of a community impact, they're either government or
464 nonprofit as opposed to commercial. It was an effort to have a pretty uniform list of
465 criteria that apply to CSUs. Conditional uses typically would have a defined set of
466 conditions that apply to just that unique use, but Milwaukie has batched them
467 together, saying that each use has a potential impact on a surrounding
468 neighborhood. It would not typically fit into this neighborhood unless it is analyzed
469 with a full view and consideration of the surrounding area.
 - 470 • It seems some uses should be allowed and others not allowed; for example, schools
471 and parks should be allowed downtown and in neighborhoods. Many projects in
472 2009 were CSUs, and because they have such a broad perspective, it's difficult for
473 staff because knowing where the Commission will be coming from and on what
474 points is uncertain.
 - 475 • The Code update project is in process, and one key tool being added to the Code
476 is the ability to do development review just on development. Without that tool,
477 many things that the City does differently are inefficient.

- 478 • Certain uses should be allowed in residential areas without an application.
479 However, with an outright permitted use, there would be no way to look at all the
480 impacts on the community.
- 481 • Other communities use a conditional use rather than having a CSU. They go to
482 the effort of having a general set of conditional use criteria that they apply to all
483 conditional uses, or have some specifics that they know historically had been a
484 concern regarding that type of use, like transportation, height, proximity to
485 residential neighborhoods, etcetera.

486

487 The Commission took a short break and reconvened at 8:14 p.m.

488

489 Discussion continued about the questions listed on 6.1 Page 2 as follows:

- 490 • What perception should members of the public have about the Commission?
- 491 • At a Design and Landmarks Committee (DLC) training worksession about a year ago,
492 Chair Becky Ives stated that the DLC wants to be perceived as being a group that is
493 tough but fair, and where everyone knows that they will get a fair shake.
- 494 • The public should feel like the Commission makes wise decisions, whether they come
495 agreeing or disagreeing, and those members of the public should leave understanding
496 the decisions that were made.
- 497 • One problem is when the Commission is not allowed to make the right decision because
498 of a bad rule that is in place.
- 499 • When there is a bad rule, the criteria in existence at the time the application was filed
500 have to be applied. Then the Commission can work with staff to modify the criteria
501 for future applications.
- 502 • Applicants can come in and request a Code change, and sometimes that is a better
503 option, because the Commission can change the Code. Whereas the Commission
504 may not have legal standing to grant the applicant the variance.
- 505 • Such applications force/allow staff to address the 'bad Code' right then, and
506 sometimes the Commission can do a quicker Code change than a Code update
507 project. Code should not be written for one property, but for the whole city.
- 508 • Asking good questions and coming to good sound decisions is very important for the
509 Commission to do. When people leave they may be upset, but at least they will
510 understand how the Commission came to its decision.

- 511 • When the hearing starts to feel like a trial rather than a hearing is most uncomfortable
512 when considering the perception of people in the audience. While the questions might be
513 good ones, how they are phrased and the tone used can be negative.
- 514 • **Mr. Monahan** suggested eliciting information and clarification of what is said. For
515 example, “Mr. Applicant, you have the burden of proof and must show the
516 Commission that you have addressed each and every one of the criteria. Based on
517 what I’ve seen and what staff provided, I’m not seeing it. Can you go into greater
518 detail and is there other information in the record that can help me to agree that you
519 have addressed the criteria.” That style of asking questions would be what the
520 Commission should strive for.
- 521 • Once the answer is given, asking the question again or changing the question just a little
522 to get a different answer is not beneficial for anyone. The answer the applicant provides
523 is the answer, and the Commission needs to take it or leave it.
- 524 • Attachment 3 “How to be a Highly Effective Commissioner” included good points to
525 remember when dealing with the public. The Commission should treat everyone, no
526 matter the education level, dress, background, etc. with respect.
- 527 • Speaking before the Commission or Council can be intimidating. Commissioners
528 should put themselves in the speaker’s shoes, whether the applicant, applicant’s
529 consultants/representatives, citizens, etc. Most people testifying are opposed
530 because they do not want a project to go through and can be upset. It is important to
531 understand what they are trying to do.
- 532 • Sometimes people think they are opposed to an application, but they do not really
533 understand the application. They may question what makes an application approvable,
534 but it really is not the Commission’s responsibility to address. It is better for the record
535 and the audience for the Commission to say that it is a good question, and the applicant
536 should address that on rebuttal. If not, Mr. Monahan will ask the applicant to address the
537 issue.
- 538 • Showing frustration with those with questions will keep them from ever returning
539 before the Commission. Making the applicant’s argument indicates which direction a
540 Commissioner is leaning.
- 541 • Keep in mind most people never come to City Hall. Testifying before the Commission
542 could be their only contact with City government outside of paying a utility bill. The
543 Commission and staff act as good hosts and represent the institution of the City of
544 Milwaukie as well as the community.

- 545 • The person speaking may not have all the information. It takes a lot of time to go through
546 all the papers and maps, or people learn of the hearing last minute.
- 547 • If treated disrespectfully, a person may leave the meeting with complete distrust of the
548 City.
- 549 • Were there any aspects of hearings held over the past year that made any Commissioner
550 uncomfortable?
- 551 • The Milwaukie High School lighting. The Commission did not have the experience, and it
552 took a lot of convincing by the applicant because it was technical. However, nothing
553 could have really been done differently. The convincing factor was that other schools
554 were doing the same thing, and it was working. It was a good outcome, but time-
555 consuming.
- 556 • Some issues that have come before the Commission were too complex for the
557 Commission to really analyze. Traffic analysis is hard to understand. There are times
558 when they will not be able to have a true understanding, and must trust the expert or
559 staff to know that it will work. At times, the Commission, either as an individual or a
560 group, will need to accept the expertise of staff or the City's consultants.
- 561 • Some Commissioners have a very good understanding of the environmental aspects
562 of such sections as .Water Quality Resource (WQR), Willamette Greenway (WG),
563 etc. and have points to use. But in many instances, the Commission had to decide if
564 it fits, and if so, make the subtle changes necessary and move on. The Commission
565 often trusts the experts that have come up with the decision and address the minutia
566 off to the side.
- 567 • The new duplex on 19th Ave in Island Station. Either the WG or WQR rule basically
568 stated no development could take place on that property, and yet the project was
569 approved.
- 570 • **Ms. Mangle** explained it was a variance to the density standard. Code variances
571 help the City avoid situations where so many regulations are imposed on the
572 property that no use is left. That rule does not apply for all applications. Because
573 underlying lots existed, they did not actually have to do the replat and could have
574 built a bunch of skinny houses. The density standard is only triggered on certain
575 types of applications. One variance approval criterion is unique circumstances on the
576 property that are outside of one's control; so the environmental regulations were
577 outside of that control. The applicant could have designed his house to avoid the
578 tree, but could not have moved his property away from the Willamette River.

- 579 • **Mr. Monahan** noted the City has a lot of overlapping obligations. The City is required
580 to meet Metro's housing rule for density, so the overall opportunity to develop
581 undeveloped properties within the community when the City prepared the
582 Comprehensive Plan 30+ years ago had to assign densities to allow that 10 units per
583 acre throughout the community.
- 584 • There is an obligation to allow some reasonable development of property. If so
585 many regulations are made that a developer is able show a judge he cannot
586 make any reasonable economic use of the property, then the City is basically
587 buying that property. Oregonians in Action have been very successful in lobbying
588 efforts. With all the different overlays, this particular property was ripe for that
589 application.
- 590 • Contrary rules exist with one body requiring 10 units per acre, and another body
591 stating nothing can be developed on a WQR.
- 592 • The applicant must apply for a variance, and then the application has to be the
593 minimum impact and intrusion to the property. The Commission would always try to
594 help a developer get the minimum as opposed to having to argue for denial.
- 595 • **Ms. Mangle** stated staff relies on the Commission for wisdom. The Commission
596 can identify problems without being an expert or reading everything, and ask
597 smart questions that help everyone understand. Staff tries to identify the key
598 issues in the staff report and suggest what the important discretionary decisions
599 are.
- 600 • The whole discussion was focused on a 3-ft difference in setback, when the rule
601 stated a house could not be built there. This point was raised a couple times, but
602 being new, this Commissioner thought he was just missing something. What is the
603 hierarchy?
- 604 • **Ms. Mangle** replied staff presented their take on the situation, but there are often
605 different ways to interpret items that are discretionary. Asking questions is
606 important, and she believed the Commission had asked very observant
607 questions.
- 608 • **Mr. Monahan** noted future discussions would address variances and what
609 criteria the Commission wants in order to approve a variance. Staff needs to do a
610 better job of explaining the variance criteria, which is difficult.
- 611 • Local governments tend to craft some criteria to at least make a reasonable
612 evaluation to say they are protecting the community by allowing something in

- 613 with the least impact. But the Commission has to explain to the community how
614 these decisions were made and how the Code applies.
- 615 • Staff held about 10 hours of staff meetings about this issue to determine a
616 finding. Though staff has worked diligently for a decision, the Commission still
617 needs to ask probing questions to make sure they understand the application.
618 A Commissioner may still disagree with staff's recommendation. Some items
619 are difficult for staff to fit into in the context of the hearing. A lot of time is
620 spent figuring out how to communicate and boil key items down into
621 something manageable for the Commission and hearing.
 - 622 • **Ms. Mangle** clarified WQR analysis entailed 'avoid, minimize, mitigate' and did not
623 prohibit building. With the entire property covered, it could not be avoided. Zero
624 density only applies when subdividing land.
 - 625 • **Chair Klein** explained his conclusion to give up the zero density, but standing firm
626 on the setback was simple. The applicant did not have a lot of options, other than the
627 variance for the zero density. Through almost any process, the applicant could have
628 taken litigation and accomplished what they wanted to do. If they wanted to build the
629 house, then there would have been 5 houses on the site rather than 2.
 - 630 • The applicant had a very limited number of options, and the approved option had
631 the least impact. Part of the variance is that there are no other feasible options,
632 but the Commissioners all knew other feasible options were available. The
633 applicant stated he had not looked at any other options, and was intent on
634 proceeding with their initial plan. If the applicant would have presented another
635 drawing or tried something else, he might understand that the proposed option fit
636 best. The applicant did not prove that the proposed option was the best or only
637 option available.
 - 638 • **Commissioner Bresaw** believed it was more of a communication gap. The applicant
639 believed what he proposed was approvable.
 - 640 • **Commissioner Gamba** agreed. The applicant invested time and money creating a
641 proposal based on information he was initially told from staff, and then the
642 information changed.
 - 643 • **Chair Klein** responded that from staff's perspective, the applicant first came in and
644 asked if their sketched plan was okay, staff said yes, but showed them things they
645 need to be concerned about. The applicant took that limited information and had a
646 consultant work on their plan for 9 months without knowing all the rules. They

- 647 returned with completed drawings and staff provided feedback about the areas not
648 being met, having been able to review the plan during the typical 30-day period.
- 649 • **Ms. Mangle** noted the Commission had more power to make changes than staff.
650 Drawings can be changed; built structures are permanent.
 - 651 • An applicant has to do a lot of design and engineering to demonstrate that they
652 meet all the criteria, so they have done a lot of work by the time the project comes
653 before the Commission. Discomfort can result if the applicant must make changes
654 because of the expense involved. However, the burden is on the applicant to meet
655 the criteria. Having complete plans is no reason for the Commission to not make
656 changes to meet the criteria.
 - 657 • Staff does what they can to give applicants good information throughout the
658 process, but they also warn applicants that their project may not pass.
 - 659 • The Harmony Mini-Storage involved voting on a variance that was outside of Code,
660 which stated a maximum of 2 or 3 extensions on time for construction. Commissioner
661 Batey stated that the Code did not provide for the variance that the Commission was
662 giving the developer; it was a time for construction.
 - 663 • **Ms. Mangle** clarified the Harmony Mini-Storage application regarded a variance to
664 the time limit. Several Commissioners disagreed with staff. The Commission knew
665 the applicant could not afford to build, but that is not a factor in meeting the variance
666 criteria.
 - 667 • The first Pond House application was an uncomfortable situation. The Friends of
668 Ledding Library seemed to feel very unappreciated for all the hard work they did, and
669 then were put on the hot seat, like they were doing something bad.
 - 670 • This was an example of where questions could be asked and something could be
671 denied if needed, but there was no reason for people to walk out feeling insulted.
672 Volunteers still have to meet the criteria.
 - 673 • One question raised was whether or not the library was going to stay and if it was a
674 good investment of City resources, which is not a criterion.
 - 675 • But is it? As a CSU, one of the questions asked is does it serve the community
676 and so should the City be utilizing this money for the project. The City continues
677 to dump money into the Pond House; so many aspects add costs and burden to
678 the City.
 - 679 • The impacts are to be considered from a land use point of view, not from a
680 financial point of view.

- 681 • It is a great community facility that people enjoy.
- 682 • How could staff better support the Commission?
- 683 • Have illustrations that show how the proposed project would look; a virtual picture to
- 684 indicate height, mass, etc.
- 685 • Staff cannot provide such illustrations, but can request them from the applicant.
- 686 • Staff had to be careful about measuring and creating illustrations themselves
- 687 because miscalculations could lead to big problems. Staff does a lot of work
- 688 facilitating the process to get the Commission good information, but they do not
- 689 create information.
- 690 • Staff should require the information, but if an applicant submits images with height poles,
- 691 etc., staff should determine if the images/measurements are accurate. Height poles
- 692 placed during the review process could be different than the actual project.
- 693 • Appropriate and accurate reference points are also a factor, and will provide different
- 694 perspectives.
- 695 • Staff does request information from the applicant and could require something.
- 696 • If there is not enough information to know whether the criteria are being met, the
- 697 Commission could request that the applicant return with more view or mapping
- 698 information, etc.
- 699 • Applicants can push back with staff about the costs of extra information etc. But if
- 700 requested at a hearing, the applicant must decide to take a chance on the vote or
- 701 invest the time and money to get an approval.
- 702 • **Commissioner Gamba** stated that for future reference, staff can warn applicants that if
- 703 there are questions about views, he wanted illustrations showing the height poles. It was
- 704 a simple thing to do.
- 705 • **Commissioner Wilson** noted photo simulations were another option and were not that
- 706 expensive.
- 707 • Photo simulations were harder to prove height.
- 708 • **Mr. Monahan** advised that if the Commission was going to ask for more information,
- 709 narrow the focus down so everything is on the record.
- 710
- 711 **Chair Klein** stated that everyone needs to be at the meetings. There have been a lot of
- 712 absences and the Commission makes the best decisions as a group, and as the group grows
- 713 better decisions are being made. Ideas are bounced off of each other even when there are
- 714 opposing views. The commitment needs to be made to Commission.

- 715 • There were three decisions that he felt were wrong:
- 716 • Panattoni because of the exit. The Commission should have requested more
- 717 restrictions on that intersection.
- 718 • The Gramor Development. DKS & Associates had advised not putting the second
- 719 driveway so close to Hwy 224, but the Commission proceeded. It created a
- 720 dangerous situation. It was believed that the applicant agreed to take out the access
- 721 if it did not work.
- 722 • The Hamilton project/remodel. The Commission did that NDA a disservice by not
- 723 requiring the Hamiltons to pay the full fees in lieu of construction (FILOC). Later on,
- 724 the interpretation of what could be done with the FILOC was spread out over an NDA
- 725 rather than retaining the monies for just in front of the property.
- 726 • He drives by these sites frequently and always thinks about these issues. He agreed
- 727 with the developments, but believed these issues should have been better addressed.
- 728 • As a Commissioner, he wants to get decisions as correct as possible, because the
- 729 Commissioners, as citizens of Milwaukie, will live with the best decisions as well as the
- 730 mistakes that have been made. The Commission's work is very important.
- 731

732 The Commission and Ms. Mangle discussed the Commission's role:

- 733 • To represent/protect nearby neighbors from being negatively impacted by poor projects.
- 734 • To facilitate a good process for the applicant, who invests time and money to have an
- 735 approvable application.
- 736 • The City subsidizes the expense of the hearing, so everyone pays for land use
- 737 review.
- 738

739 **Chair Klein** said it is important to remember that staff does a lot of work on the application to

740 get it approvable, or close to being approvable before it comes before the Commission. It's the

741 Commission's responsibility, as the community's conscience, to consider the application, and

742 tweak an application, if necessary, to fit the community in the best way possible.

743

744 **Ms. Mangle** noted the display boards showing the history of the Planning Department and

745 Commission applications.

- 746 • She indicated the rapid staff turnover over a period of 10 to 15 years. Now there was a
- 747 period of stability, enabling staff to do the bigger Code projects, and have more
- 748 confidence in making recommendations.

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Respectfully submitted,

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

Jeff Klein, Chair



To: Planning Commission
Through: Katie Mangle, Planning Director *KM*
From: Ryan Marquardt, Associate Planner
Date: October 5, 2010, for October 12, 2010 Public Hearing
Subject: File: AP-10-01
Applicant: Nabil Kanso, AM Kanso, LLC
Owner(s): Nabil Kanso, 99 Inc.
Address: 10966 SE McLoughlin Blvd.
Legal Description (Map & Taxlot): 1S 1E 35 AA 01900
NDA: Historic Milwaukie

ACTION REQUESTED

Deny AP-10-01. The recommended Findings are found in Attachment 1. This action would uphold the Planning Director's Interpretation (File# DI-10-01) of Title 14, Sign Ordinance, as it relates to LED signage in the downtown zone.

BACKGROUND INFORMATION

A. Related Permit Application

The background of this application begins in 2009 with a sign permit application (Permit #090070). See Attachment 2. The permit was to reface existing signs for the gasoline station at 10966 SE McLoughlin Blvd to change the gasoline brand signage from Arco to 76. The proposed changes to the existing signs were allowed by MMC 14.28.020.A.3, which allows nonconforming signs to be maintained or undergo a change of copy or image without complying with the requirements of the sign code. Any nonconformities related to sign height, area, or internal illumination were allowed to remain.

A condition of approval was added to the sign permit regarding the illumination of the signs. The conditions and notes in the memo were intended to keep the project within the limits of that which is allowed by MMC 14.28.020.A.3, the refacing of an existing sign. The memo clearly prohibited changing the gas price displays to a digital or LED sign.

Despite the conditions of approval, the signage was changed to LED illumination for the gas price displays. This was in violation of the permit approval, and the City proceeded to inform the property owner of the issue. The signage was not modified, and the City proceeded with citing the property for the violation.

Staff discussed the options available to the property owner for the sign. These included:

- Changing the sign to be in conformance with the sign code regulations.
- Applying for a Director's Interpretation of the section of code that prohibits LED illumination downtown, with the option of appeal to the Planning Commission and City Council.
- Applying for a sign adjustment, per MMC 14.32.
- Applying for a zone change to allow LED signs in part or all of downtown.

The applicant, with input from staff, decided to apply for a Director's Interpretation (DI) of the sign code with respect to LED illumination (see Attachment 3). The DI was issued on August 18, 2010 (see Attachment 4), and the property owner appealed the DI to the Planning Commission on August 30, 2010 (see Attachment 5).

This subject of this appeal is the interpretation of the sign code as established by File # DI-10-01. Though they are related, issues about the sign at 10966 SE McLoughlin Blvd such as the approval of the sign, installation of the sign, and appearance of the sign, do not have direct bearing on the interpretation and should not be relied upon by the Planning Commission as a basis for decisions on this matter.

B. Interpretation of the Sign Code

MMC 19.1001.4 authorizes Planning Director interpretations "...to resolve unclear or ambiguous terms, phrases and provisions...". Such interpretations may be requested by an applicant or initiated by the Director. They are subject to appeal.

Code interpretations are **not a code change**, and must be based on the express language of the regulation and the Comprehensive Plan. In interpreting the code, the Director then refers to legal guidance, historic records that reveal the intent, and other adopted documents.

C. Existing LED Signs Downtown

The applicant has identified two other LED reader board signs downtown. Both of these signs were installed prior to adoption of the ordinance that established the current downtown sign illumination standards. The history of these signs is briefly described in Attachment 6.

D. Site-specific factors in the sign permitting

The sign code does have processes and standards built in for consideration of some individual circumstances. There are some standards that are variable from site to site by their nature. These include sign area based on overall wall area and sign area based on street frontage. Another example is that properties with frontage on McLoughlin are allowed a 15 ft tall sign, while others in the same zone without frontage on McLoughlin are allowed 7 ft tall signs. Some signs, such as internally illuminated cabinet signs, are allowed with discretionary approval by the Planning Commission. Finally, there is an allowance for variability based on the sign adjustment process, which requires Planning Commission approval.

The applicant provides several reasons why LED signage is appropriate for the subject site (page 12 of Attachment 5). Briefly summarized, these are:

- The site is on a 5 lane state highway and is more automobile oriented than pedestrian oriented.
- The site is a non-conforming use that has different signage requirements than other downtown uses.

- It is difficult to change the prices on the sign by hand, and an electronic sign eliminates this problem.

Staff does not dispute the facts raised by the applicant about the site or the advantages that LED signage allows. However, none of these facts fits into a standard or process that would allow staff to grant an allowance for LED signage. The sign adjustment process could potentially be used to approve a sign that is not allowed by the sign ordinance. Staff was hesitant to recommend this approach though, since staff does not believe the applicant would meet the criteria (MMC 14.32).

Some of the points raised by the applicant could be the basis for changing the sign code to allow different signage along McLoughlin Blvd than would be allowed along Main Street. Such a code change is possible, and would need to be initiated by the applicant.

In summary, there are site specific factors that support why an LED sign may be desirable at this site. However, these factors cannot be considered within the current sign regulations as interpreted by staff, and do not appear to meet the criteria for an adjustment.

KEY ISSUES

Summary

Staff has identified one key issue for the Planning Commission's deliberation. The question is:

- **Does the language of the Sign Ordinance prohibit LED illumination downtown?**

Analysis

The Planning Director interprets the sign code as not allowing exposed LED illumination in the downtown zones. Planning staff applied this interpretation when reviewing the request for a sign permit for 10966 SE McLoughlin. The interpretation is explained in detail in the Director's Interpretation (Attachment 4). The main points of the interpretation are:

- The introduction to the downtown sign regulations states that signs in the downtown zones are allowed *only* if they are described in the types of signs that are exempt from permit requirements (MMC 14.12.010) or described in the types of signs allowed in the downtown sign district (MMC 14.16.060).
- MMC 14.16.060.H lists illumination standards for signs in the downtown zones. This section includes allowances for the following signs:
 - Backlit signs;
 - Spot lighting used for indirect sign illumination;
 - Awning sign illumination; and,
 - Internally illuminated cabinet signs.

This section does not list LED signs as a type of illumination that is allowed.

- Given that only exempt signs and signs listed in the downtown sign district are allowed, and LED signs are not described in the section that deals with lighting, the Director's conclusion is that LED signs are not allowed downtown.

In addition to the code language, the City also has design guidelines for the downtown area. Though these guidelines do not have the legal importance of actual code requirements, they are helpful in determining the overall intent and vision for downtown signs. The relevant sections of

the downtown design guidelines are the Sign Guidelines and the sign lighting section of the Lighting Guidelines (see Attachment 7).

The types of signs illustrated in these guidelines do not speak directly to LED signage. However, the graphics and text favor simple signage with external illumination that do not exhibit electronics as a part of the sign itself. Staff believes that LED reader boards and changing signs do not fit within the overall intent of the downtown design guidelines for signs and illumination.

The code language itself is not explicit about whether LED signage is allowed. Staff believes that the above interpretation is the most straightforward reading of the ordinance and is consistent with the design objectives for downtown Milwaukee.

Alternate Interpretation

Despite staff's belief that the above interpretation is the correct one, it is possible to interpret the sign ordinance and come to a different conclusion on whether LED signs are allowed in downtown. This alternate interpretation would be supported by a prior approval of an LED sign downtown under an older sign ordinance and the current allowance for LED signs in other sign districts.

The sign code allows LED reader board signage in the Commercial General zone. The commercial sign district contains the same introductory provision as the downtown sign district: no sign can be installed unless it is an exempt sign or meets the requirements of the commercial sign district. The illumination regulations in the commercial sign district merely state that illumination is allowed and provides some limitation on level of illumination. Because there are not specific types of illumination described in this section, staff has approved LED reader board signs in the commercial sign district. A recent example is the reader board at Oak Street Square at Oak St and Highway 224.

The recent history of the downtown sign district could be read to support a similar interpretation for the current downtown sign district (see Attachment 9). In 2000, the sign code grouped downtown zones into the same sign district as other commercial zones in the city. The standards regarding sign illumination for downtown zones were the same as the current illumination standards for the commercial sign district. An LED reader board was approved in February 2003 under these standards.

In April 2003, a separate downtown sign district was established. The illumination standards for the new district were more similar to the current standards in that specific illumination types were listed (see Attachment 8). Staff reports that accompanied these amendments clearly stated that the intent of the regulations was to allow signs with external illumination, and to require DLC approval for signs with internal illumination¹ (see Attachment 9). Internally illuminated cabinet signs, as a subset of internally illuminated signs, were specifically discouraged, though not prohibited. Signs where LED are directly visible are not specifically discussed in the legislative record for these amendments. If signs with visible LEDs were considered internally illuminated, such signs would have been approvable with DLC review by the April 2003 sign code.

Changes to the sign code in 2006 further modified the section of code regulating illumination of downtown signs. The amendments added approval criteria for internally illuminated cabinet

¹ The definition of "sign, internally illuminated" as "...a sign which is wholly or partially illuminated by an internal light source from which light passes through the display surface to the exterior of the sign." This is the current definition and goes back at least as far as the 1993 sign code.

signs. The phrase from the 2003 code that allowed the DLC to approve internally illuminated signs was not carried through into the 2006 amendments. While internally illuminated cabinet signs were discussed at length during the 2006 amendment process, the issue of other types of internal illumination, such as LED reader boards, was not specifically discussed.

Given this history, there are facts that support the alternate interpretation for LED signage. First, the pre-2003 sign code was interpreted to allow an LED reader board downtown. Second, the sign code between 2003-2006 had a process for the approval of internally illuminated signs, even though they were not allowed outright. Finally, even though the 2006 code amendments removed the provision allowing the DLC to approve internally illuminated signs, there is a lack of evidence that the City specifically sought to prohibit LED signs downtown. Giving weight to these facts would support the interpretation that the policy that allowed LED signage in early 2003 has not been changed, and that this type of illumination should still be allowed.

Staff's supports the interpretation that would not allow sign illumination downtown other than what is described in the code. Though City Council did not enact anything specifically in the language of the code regarding LED signage, they did adopt the downtown design guidelines. By adopting these guidelines, City Council adopted a vision that downtown development, including signs, should move toward the vision shown in the guidelines document. Staff believes that the interpretation prohibiting LED signage downtown is supported both in the language of the code and the overall vision espoused by the downtown design guidelines.

CONCLUSIONS

Staff recommendation to the Planning Commission is to deny the appeal of Land Use File# DI-10-01. This would continue the Planning Department's practice of not allowing exposed LED illumination downtown.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

- MMC 19.1011.4, Planning Director's Interpretations
- MMC 14.16.060, Downtown Zones
- MMC 14.24.020, Sign Lighting

This application is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In quasi-judicial reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

- A. Deny the appeal with the Recommended Findings.
- B. Deny the appeal with modified Findings. These modifications would need to be read into the record.
- C. Approve the appeal, which would have the effect of changing how staff implements the subject code on all sites within downtown. Staff would need to be directed on revisions to the findings to support the appeal.

D. Continue the hearing if more information or deliberation is necessary.

The final Planning Commission decision on this appeal must be made by November 23, 2010, to reserve sufficient time for any appeals to the City Council. The City's final decision must be made by January 1, 2011. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the appeal was given to the following agencies and persons: the Design and Landmarks Committee, and the Historic Milwaukie Neighborhood District Association (NDA). The following is a summary of the comments received by the City. See Attachment 10 for further details.

- **Howard Dietrich:** Does not find the sign at the applicant's property offensive. Encourages the City to allow LED lighting since he believes it will be even more widely used in the future and it is more long lasting and energy efficient than incandescent lighting.
Staff Response: Staff agrees that LED lighting has advantages over traditional incandescent lighting and that its use should be encouraged when internal sign illumination and electronic reader boards are allowed. The issue in this appeal, however, is whether directly visible LED illumination is appropriate for the character of downtown. Property owners downtown are currently allowed to enjoy the energy savings and longevity of LED illumination if the LEDs are used as external sign illumination.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Recommended Findings in Support of Denial (attached)
2. Sign Permit #090070 (attached)
3. Director's Interpretation Application (attached)
4. Director's Interpretation DI-10-01 (attached)
5. Applicant's Appeal application (attached)
6. History of Existing LED Signs Downtown (attached)
7. Downtown Design Guidelines – Signs and Sign Lighting (attached)
8. Previous Downtown Sign Regulations (Ord.# 1917 and 1880) (attached)
9. Staff Reports from ZA-01-03 and ZA -02-01(attached)
 - A. February 25, 2003 page 4 and 5;
 - B. January 23, 2002
10. Comment received (attached)
11. Exhibits List

**Attachment 1:
Recommended Findings in Support of Denial
Land Use File AP-10-01**

1. The City of Milwaukie issued a Planning Director's interpretation (Land Use File# DI-10-01) on August 18, 2010. The interpretation clarified that the Planning Director interprets Title 14, Sign Ordinance, to not allow directly visible LED illumination on signs in the downtown sign district. The interpretation was issued in response to a request by Nabil Kanso for an interpretation on this matter.
2. On August 30, 2010, Nabil Kanso (applicant) appealed the interpretation in File# DI-10-01 to the Planning Commission, as allowed by Milwaukie Municipal Code (MMC) 19.1001.4.G. The appeal is City of Milwaukie land use file# AP-10-01.
3. The City deemed the appeal application complete on September 3, 2010, and heard the appeal at a public hearing on October 12, 2010, within 40 days of deeming the appeal application complete. The procedures for providing notice and conducting the public hearing were done in accordance with MMC 19.1011.3.
4. The Planning Commission denies the applicant's appeal and upholds the interpretation established in File# DI-10-01. This finding is based on the following reasons.
 - A. The Planning Commission finds that the Milwaukie Downtown Design Guidelines, an ancillary document to the Milwaukie Comprehensive Plan, encourages signs and sign illumination to be externally illuminated, as opposed to having electronic illumination integrated into the sign itself.
 - B. The Planning Commission finds that the provisions of MMC 14.16.060.H establishes the types of sign illumination that are allowed in the downtown sign district, and that is directly visible LED illumination as part of a sign face is not listed in these provisions.
 - C. The Planning Commission finds that the introductory clause on MMC Section 14.16.060 allows only the types of signs listed in that section and in MMC 14.12.010 in the downtown sign district.
5. Notice of the hearing for the appeal application was done in accordance with MMC 19.1011.3. The appeal application was referred to the Historic Milwaukie Neighborhood District Association and the Milwaukie Design and Landmarks Committee. A comment was received from Mr. Howard Dietrich that the sign at the applicant's property is not offensive and that the City should encourage the use of LED lighting because of its longevity and energy efficiency compared with incandescent lighting.

SE McGloughlin

156'

10966 SE McGloughlin

20'-6"

SIGN
 Remove top two sign cabinets from existing Main ID sign.
 Replace the remaining sign cabinets between poles with new sign cabinets, as shown on drawing.
 New reduced overall height of sign: 20'-0"

13'

28'

← Existing Arco Star logos: 1' X 1' →
 Replace these logos with:
 33" diameter 76 logos.

Canopy:
 12'-0" Clearance

50'

40'

**PLANNING
 REVIEW COPY**

↑
 ← Existing AM PM wall signs: 3' X 8'-11"
 To be removed.

AM PM Store

30'

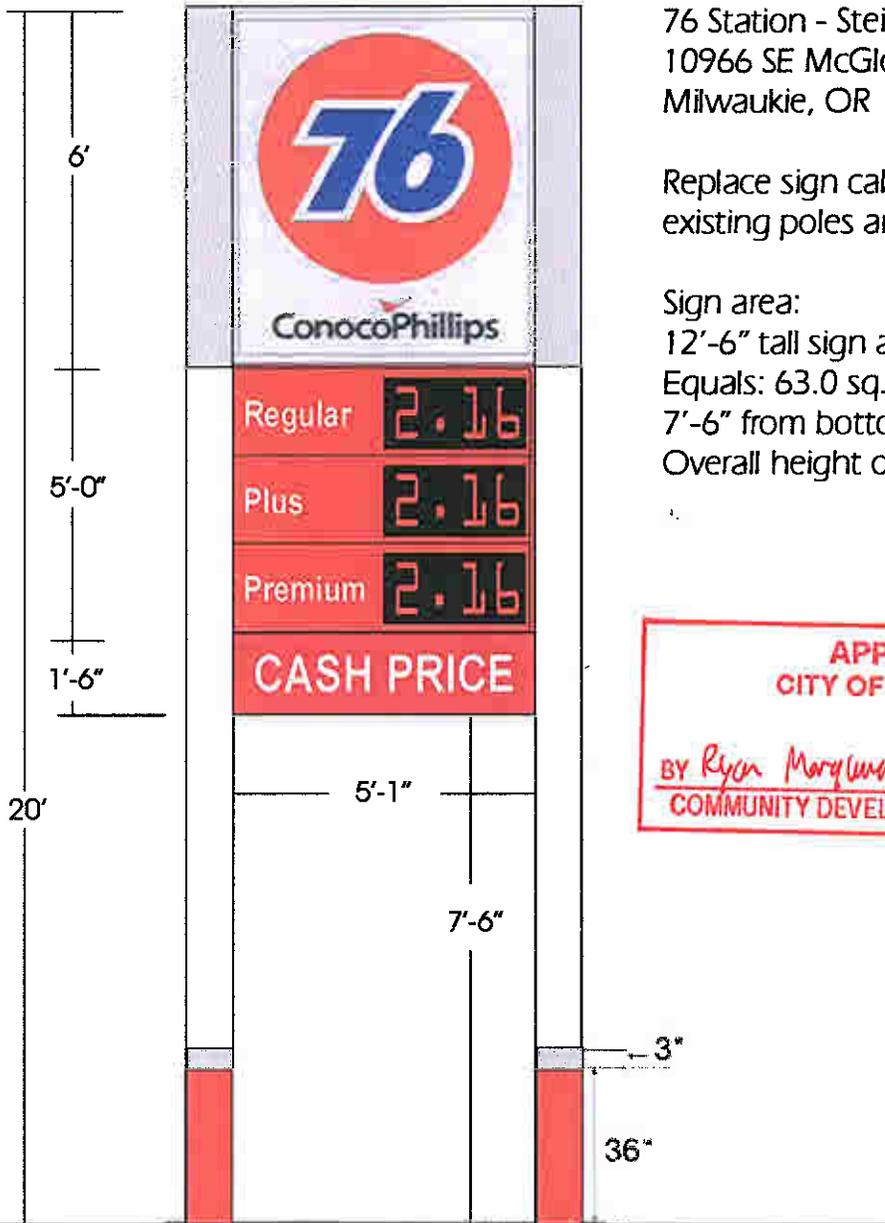
SE Jefferson St.

100'



CASCADE SIGNS & NEON
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Salem, Oregon 97303-0054
503-378-0012 Fax 503-362-8154
www.cascade-signs.com

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out of this world



76 Station - Stein Oil
 10966 SE McLaughlin
 Milwaukie, OR

Replace sign cabinets onto
existing poles and footings.

Sign area:
 12'-6" tall sign area X 5'-1" wide
 Equals: 63.0 sq. Ft.
 7'-6" from bottom of sign to grade
 Overall height of sign: 20'

APPROVED
CITY OF MILWAUKIE

BY Ryan Marylundt *DATE 3/4/09*
COMMUNITY DEVELOPMENT DEPARTMENT

Received for review; (date) _____
 By; (signature) _____

This is an original design created for the exclusive use of the customer. Until transferred by sale, all rights are reserved and it is not to be reproduced in any manner without permission from Cascade Signs & Neon. Salem. OR.

Customer:	Description:
Date:	Type:
Drawn by:	Mount:
Scale:	Location:
Salesman:	Approved by:

Arco to 76 Station
10966 SE McGloughlin
Milwaukie, OR

Existing Main I.D. Sign
Top two sign cabinets to be removed.
All other sign cabinets to be replaced.



To: Building Permit File #090070 – 10966 SE McLoughlin Blvd.
From: Ryan Marquardt, Associate Planner
Date: March 31, 2009
Subject: Sign Permits for 76 Gas Station

Permit #090070 is for the modification of signs at an existing gas station in the Downtown Storefront Zone. The signs to be modified are a sign on the canopy and the freestanding sign on the southwest corner of the property. The signs are permitted subject to the following:

Canopy Sign:

The proposed circular “76” logo is 5.9 square feet in area. The sign is permitted as a wall sign, with the canopy face constituting the wall area. The maximum area allowed by the canopy size is 35 square feet, which is 20% of the canopy face.

The sign is not permitted to be internally illuminated, as this would require approval by the Planning Commission. Any replacement of the existing internally illuminated “Arco” logo cabinet sign that did not utilize the existing illumination would be considered a new internally illuminated cabinet sign. The applicant stated they would not be able to reuse the existing illumination for illumination of the “76” sign.

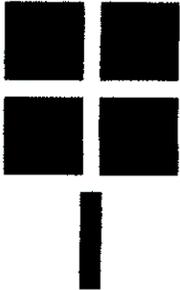
Freestanding sign:

The applicant proposed to modify the existing freestanding sign by removing the upper portion of the sign and re-facing the lower portions of the sign. The sign is a pole sign, which is a nonconforming sign type in the DS zone. The applicant is allowed to reface the portion of the sign as indicated on the approved site plan. The sign may utilize existing internal illumination, but shall not modify any electrical components for the sign. The signs indicating the gasoline prices are allowed to remain illuminated in the same manner as the existing Arco signage, and shall not be converted to digital or LED displays.

ISSUED TO PROPERTY

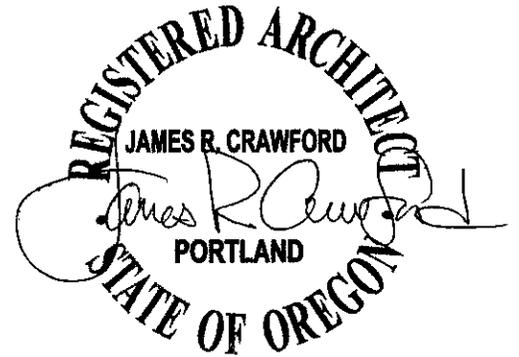
CASCADE SIGN & NEON 10966 SE MCLOUGHLIN BLVD

3/31/2009 marquardtr Notes: 1) Internal illumination of the canopy signs not permitted. 2) Refacing of the freestanding sign approved. Freestanding sign is non-conforming with respect to signs allowed in DS zone. New electric work or modifications to the existing electrical for the sign is not permitted. See memo in permit file.



JAMES R. CRAWFORD, ARCHITECT

ARCHITECTURE AND PLANNING
12620 SW FOOTHILL DRIVE
PORTLAND, OREGON 97225
Voice (503) 643-8193 Cell (503) 349-1339
JRCrawford59@aol.com



Application Documents for Administrative Interpretation of the City's Sign Ordinance Title 14 for the Downtown Zones

Submitted July 26, 2010

APPLICATION SUMMARY

Monday, July 26, 2010

Applicant: Nabil Kanso
AM Kanso, LLC
SW 123rd Avenue
Beaverton, Oregon 97005

Contact: Nabil Kanso
503/ 653-6909
or
Jim Crawford
503/643-8193
503/ 349-1339 (cell)

Narrative Prepared by: James R. Crawford - Architect
12620 SW Foothill Drive
Portland, Oregon 97225

Land Owner: 99, Inc.
SW 123rd Avenue
Beaverton, Oregon 97005

Site Address: 10966 SE McLoughlin Blvd.
Milwaukie, Oregon 97222

Comprehensive Plan Designation: DS (Downtown Storefront)

Zoning: DS (Downtown Storefront)

Previous Applications: Sign Application
New sign for existing business

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APPLICATION NARRATIVE

INTRODUCTION:

The site is located on SE McLoughlin Blvd. (State Hwy 99E) at the intersection of Jefferson Street. The physical address is 10966 SE McLoughlin Blvd. The existing use of the property is a gas station and grocery convenience store. The gas station is an existing non-conforming land use under the existing Zoning.

The existing gas station changed brand from Arco to ConocoPhillips 76, remaining under the same ownership. The use was in continuous operation through the transition. The associated convenience grocery store likewise changed from an AM-PM Market to Mini-Mart 76 Gas.

Due to the change of Brand for the property, new signage was required. The owner made application to the City for new signage, which was approved. The signage permit application is on file at the City.

The applicant proposed replacing the existing freestanding internally illuminated cabinet monument sign with a similar freestanding internally illuminated cabinet monument sign. A photograph of the proposed sign was provided with the application. The proposed sign utilized LED lights to relay pricing information instead of the back lit sign with changeable pricing. The City's application did not request information about lighting or light sources.

When the City issued the approval for the sign, a condition of approval specified "No LED signs allowed". The Sign Company missed this condition on the permit and installed the sign that was proposed, being what it believed was approved.

Subsequently, after the sign was installed, the applicant was notified that the sign was in violation of the City's Downtown Sign Ordinance. The applicant has spoken with the City and desires to keep the sign as installed. To that end, we are requesting an interpretation of Title 14 by the Planning Director. We are providing the enclosed narrative in support of our position.

BACKGROUND:

The property is located along SE McLoughlin Blvd. (Hwy 99E), a State highway, which passes through the City of Milwaukie. Highway 99E is located between the city's riverfront park located west of the highway and the downtown, principally located along Main Street, running parallel to Hwy 99E one block to the east.



View from the South

The character of Hwy 99E (McLoughlin Blvd.) is a 5-lane arterial street connecting Portland to the north with Gladstone and Oregon City to the south. The posted speed limit on McLoughlin Blvd. adjacent to the site is 30 MPH. Typically, a downtown business district has a posted speed limit of 20 MPH. This higher speed along McLoughlin Blvd. does not support the “Pearl District” signage promoted for the Main Street commercial activities.

Generally, Milwaukie’s downtown businesses have not developed fronting onto McLoughlin Blvd. Most of the existing frontage development along McLoughlin Blvd. is parking lots, businesses that front of the east-west oriented side streets or automobile oriented businesses, such as service stations.



Sign with LED pricing lighting.

Despite the current zoning, the character of Hwy 99E remains automobile oriented. The highway is not a “shopping” street, lacking on-street parking or a pedestrian oriented streetscape. The rush of a high volume of through traffic is not supportive of storefront retail. Plans by the City for a pedestrian bridge over McLoughlin Blvd. supports the conclusion that Hwy. 99 is not pedestrian friendly. It does however support automobile accommodating commercial.



Cabinet sign alternative.

Unlike Main Street, at the subject property, the city does not require buildings to be built tight to the sidewalk, nor retail on the ground level nor ground floor windows and openings. The Code clearly differentiates Hwy 99E as being different than Main Street yet the City’s sign ordinance does not make that differentiation. The ordinance does however allow a taller monument sign on McLoughlin Blvd. than elsewhere in the downtown zone, at least implying that there is a distinction.

There are two existing gas stations along Hwy 99E within the city’s downtown area. Both stations are located at the Jefferson Street intersection with Hwy 99E. Under the current zoning designations (the applicant’s station is located in the DS district), both gas stations are non-conforming uses. While non-conforming, they remain a necessary part of contemporary American life.

Being an automobile oriented business, the signage needs to be sized for and readable to passing motorists. The business depends upon visibility to attract passing business.

Gas stations are a unique business with unique signage requirements. The gas station sign is required by state law to include the current price of gasoline offered for sale. Gasoline pricing is variable and the prices can go up or down weekly, if not more frequently. Therefore ease of changing the pricing information is a unique need of this business. Two sign choices exist to accommodate the need for changeable pricing. A cabinet sign with manually changed price numbers or a panel sign with LED pricing numerals.

The applicant applied for and inadvertently installed the later type of sign contrary to the approval conditions. The LED light source on the installed sign is only on the price portion of the sign. The balance of the sign is internally an illuminated cabinet sign. The LED lights do not flash or otherwise distract or attract the attention of motorists. The sign is turned off when the gas station is closed. The applicant requests that the sign be allowed as installed.

SIMILAR NON-CONFORMING SIGNS:



Reliable Credit Union



Chan's Steakery

Two existing businesses along McLoughlin Blvd. currently have signs with exposed bulbs (either incandescent or LED) which are non-conforming signs in the downtown district under the current Zoning Code. These are the Reliable Credit Union at 10690 Harrison Street and Chan's Steakery, located at 10477 Main Street. This second sign uses similar red LED lights as the gas station sign.

The **Reliable Credit Union** sign was permitted in 2005. This was an existing sign that needed to be relocated due to a right-of-way modification at the intersection with Hwy 99E. The previous sign had been located at the intersection and encroached into the modified right-of-way. A new CMU monument was built adjacent to Hwy 99E right-of-way north of the original sign monument. This sign has changing text using white incandescent bulbs. The City approved the reinstatement of the non-conforming sign since the relocation was not voluntary

The **Chan's Steakery** sign was permitted in 2003 as an alteration of an existing sign. The permit allowed for the addition of an LED message display at the bottom of the existing sign. The application indicated a "matrix monochrome message display" and they checked off that the sign was internally illuminated, which was not accurate. The plans by Able Sign Company specified a "LED Reader Board, 2'-0" x 6'-0"."

The existing portion of the sign has a changing neon sign that alternates between "open" and "lounge" every two to

three seconds. The LED sign at the bottom with red changeable text is on about a six-second rotation.

The sign ordinance in affect in 2003 was silent regarding the use of LED lighting on signs. LED lighting is a relatively new light source and the Code did not anticipate the use of LED light sources. The Code (14.16.040) indicated that signs in commercial zones may be illuminated. The 2003 Code stated "No exposed incandescent lamp which exceeds 15 watts shall be used on the exterior surface of any sign so as to exposed the face of such bulb or lamp to any public street or right-of-way". The Code otherwise provided for fluorescent lamps or PAR spot or reflector type bulbs were allowed light sources.

ARGUMENTS FOR APPROVAL:

The stated purpose of *Title 14 Signs* is to regulate the design of all signs visible from the right-of-way. The goal of promoting the "neat, clean, orderly and attractive appearance of the community, provide for the safe installation and maintenance of signs" and to "accommodate the need of sign installers while avoiding nuisances to nearby properties". The sign with LED numeration installed is not contrary to the stated goals and purpose of the Code.

The property is located in the Downtown District and is zoned DS (Downtown Storefront). McLoughlin Blvd. is the western edge of the DS Zone. McLoughlin Blvd. is a 5-lane arterial highway; not a pedestrian shopping street. The standards applicable to Main Street and the various east-west oriented side streets intersecting Main Street are not applicable or appropriate to businesses fronting on McLoughlin Blvd. McLoughlin Blvd. does not share the pedestrian oriented character envisioned for Main Street development.

The business is a gasoline service station. A gas station has unique signage needs and relies on its signage to attract passing business. This business is not located on Main Street; it is not a pedestrian oriented business characteristic of Main Street. The business is located along a high-visibility major arterial street. It is an automobile oriented business.

This gas station is a non-conforming auto dependant business. Automobile Service Stations are a non-conforming use in all Downtown zones. Neither the Code nor the Downtown Guidelines address their unique business characteristics, their unique need for signage or the unique character of McLoughlin Blvd. in the DS Zone.

The area north of Harrison Street is identified as an Auto Accommodating Commercial area between Main Street and McLoughlin Blvd (DC Zone). This acknowledges that this strip of commercial property provides for a gradual transition from the Boulevard to Main Street development.

Properties having frontage along McLoughlin Blvd. are recognized in the Code as having unique characteristics that justify modifications to the Sign Code as applied

elsewhere in the Downtown District. Section 16.14.060 (A) (2) allows a doubling of the allowable height of a freestanding sign located along the McLoughlin frontage, as an example.

The purpose of the Downtown zones (19.312.1) is to focus pedestrian-oriented retail uses to the traditional downtown code along Main Street. The pedestrian oriented aspects of the Downtown District are not applicable to this site. The requirement for ground floor retail is limited to properties fronting on Main Street. (Figure 312-1). Ground floor windows and openings are likewise only required on Main Street. (Figure 312-5). This site is not required to build to the street right-of-way. (Figure 312-4).

The City approved the internally lit Cabinet sign installed on the site. Cabinet signs are a non-conforming sign but are allowed by the Code. Section 14.16(H)(5) states that "Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to design review...."

The sign applied for was an internally illuminated cabinet sign above an LED numeral panel. The light emitting diodes are placed behind plexiglass. The Sign Code (Section 14.16(H)) does not say "no LED lights" and the language of the Code is vague and confusing. Unlike other sections of the Sign Code, the Downtown Code does not list "prohibited signs". LED signs are allowed elsewhere in the City's commercial districts.

There are several advantages to the LED lighted price indicators. These include:

- 1) the LED light source is an environmentally superior bulb, using far less energy than fluorescent lamps and being increasingly used for "green" reasons and
- 2) the prices can be changed remotely from inside the station,
- 3) the older backlit cabinet signs require an employee to manually go out to change the prices. This is done either from a ladder, risking injury from falling or with a pole with a suction device to grab or reposition the numbers. This exposes the employee and the public in danger if the pole slips or falls, is caught by the wind or otherwise ends up in the lane of traffic.
- 4) The LED light levels can be dimmed to reduce or manage glare.
- 5) The LED display does not move, flash or change. The illuminated numbers are not a distraction to vehicular or pedestrian traffic.

The sign as installed substantially meets the intent of the design standards and the stated purpose of Title 14. The LED lights are less bright than a cabinet sign with pricing. The LED sign is more attractive than the alternative cabinet sign. It presents a neat, clean, orderly and attractive appearance. It clearly displays the price of gasoline being sold, protecting the public welfare. The LED sign provides a safer

condition for employees required to change pricing information on the sign. It accommodates the needs of the sign applicant and does not create a nuisance to nearby properties. It does not create "sign clutter". And finally, it does not distract motorists since it does not have flashing or changeable text.

The applicant requests an administrative review of the Code and an interpretation of the Code that would allow the desired sign, as installed, to remain. The above narrative has attempted to show that this is a special circumstance related to a specific piece of property and that strict application of the Code would cause an unnecessary hardship on the applicant. Further, the installed sign provides a neater appearance than the alternative cabinet sign. Finally, it has been explained that the nature of business, a gas station, and the location on McLoughlin Blvd. creates a special circumstance related to the sign.



August 18, 2010

Mr. Nabil Kanso
10966 SE McLoughlin Blvd.
Milwaukie, OR 97222

Land Use File: DI-10-01 – Director’s Interpretation of the Light Emitting Diode (LED) Signs in Downtown

Dear Mr. Kanso:

This letter is a Director’s Interpretation as authorized in Milwaukie Municipal Code (MMC) Section 19.1001.4. As explained in MMC 19.1001.4(A), the interpretation process is provided to resolve unclear or ambiguous terms, phrases, and provisions within the Titles 14, 17, and 19 of the Milwaukie Municipal Code.

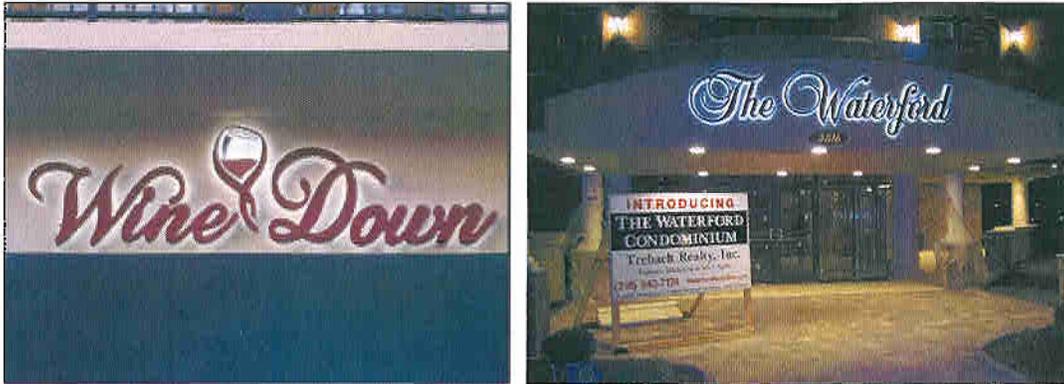
On July 27, 2010, the City of Milwaukie received a request from you regarding the interpretation of the allowance for LED signs in the downtown sign district. For the reasons explained below, it is my interpretation that LED illumination, and LED reader boards that are directly visible, are not allowed outright in the downtown sign district.

Code Language of Title 14 - Signs

The basis of this interpretation is in the introduction to the downtown sign district. MMC 14.16.060 begins with the introductory provision: *“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 as otherwise noted in this section.”* I interpret this provision to mean that if a sign does not fit the description of either the exempted sign section or the signs described in MMC 14.12.060, then the sign is not allowed.

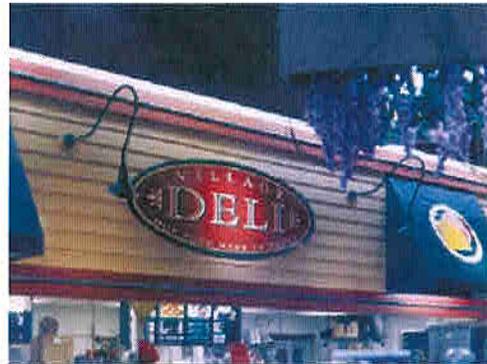
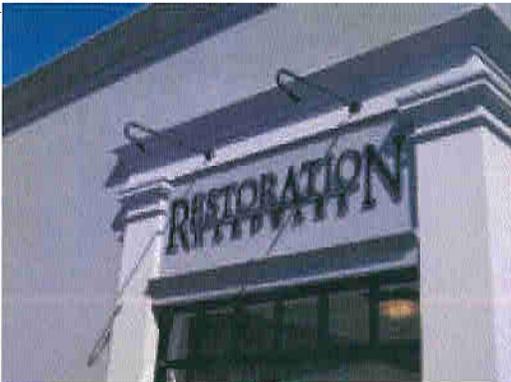
MMC 14.12.010, Exempted Signs, does not have any specific provisions regarding sign illumination. This leaves MMC 14.16.060.H as the applicable illumination regulations for the downtown zones. The signs described in this subsection are as follows:

MMC 14.16.060.H.1: “Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.” I interpret this provision to allow signs similar to the one in Figure 1a and 1b. LED illumination could be utilized for the backlighting in signs permitted by this subsection, though the LEDs themselves could not be directly visible.



Figures 1a and 1 b: Backlit signs with opaque letters.

MMC 14.16.060.H.2: “Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.” I interpret this subsection to allow signs similar to what is shown in Figure 2a and 2b. LED illumination could be allowed as the light source for the indirect illumination, but would need to be appropriately screened from being directly visible.



Figures 2a and 2 b: Signs with indirect illumination.

MMC 14.16.060.H.3: “Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee and approval by the Planning Commission... according to the following criteria:

- a. Sign lighting should be designed as an integral component of the building and sign composition.
- b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
- c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.”

I interpret this subsection to prohibit signs similar to the one in Figure 3 to be prohibited. Signs similar to what is depicted in Figure 4 may be permitted, subject to the approval process in this subsection. It is possible that LEDs could be integrated into an awning sign and approved by the Design and Landmarks

Committee and Planning Commission. This would be allowed on a discretionary basis.

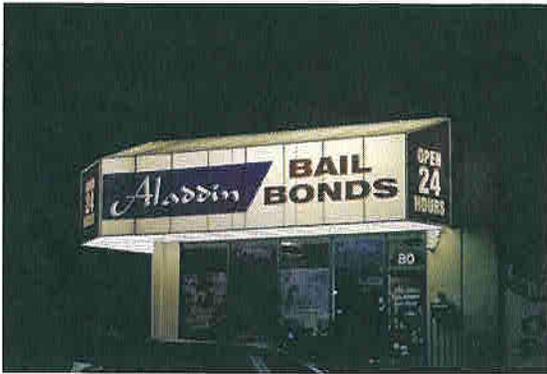


Figure 3: Prohibited illuminated awning sign.

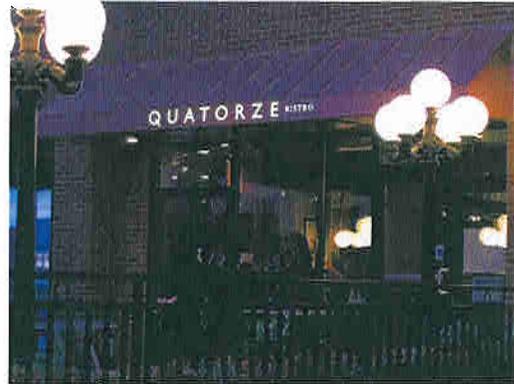


Figure 4: Illuminated features on an awning

MMC 14.16.060.H.4: "Sign illumination shall be directed away from, and not be reflected upon, adjacent premises." This subsection regulates the orientation of lighting fixtures that provide indirect illumination of signs and does not relate to the type of illumination.

MMC 14.16.060.H.5: "Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to design review by the Design and Landmarks Committee and approval by the Planning Commission..." I interpret the signs allowed by this subsection as being similar to the ones illustrated in Figure 5a and 5b. LEDs could be used as an illumination source for internally illuminated cabinet signs, but by the definition of internal illumination, could not be directly visible.

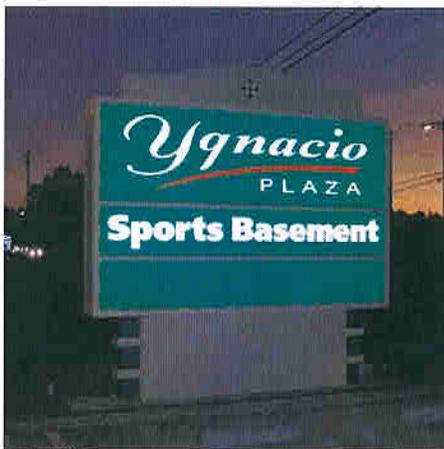


Figure 5 a and 5b: Internally illuminated cabinet signs

MMC 14.24.020 has additional standards for sign illumination in all zones. The last provision of this subsection, MMC 14.24.020.E, states: *In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.* Though

LEDs are not specifically mentioned in MMC 14.24.020, this provision clearly states that the provisions of MMC 14.16.060.H supersede the provisions of this subsection. As outlined above, nothing in MMC 14.16.060.H would allow LED illumination to be directly visible.

Arguments for LED Illumination Allowance

The circumstances that gave rise to the request for a Director's Interpretation are that a freestanding sign at 10966 SE McLoughlin Blvd was refaced. As part of the refacing, LED signs were added that display gasoline prices at the service station on the property. The application for this Director's Interpretation includes several arguments for allowing LED reader board signs. These arguments are summarized as follows:

- 1) McLoughlin Blvd is an automobile oriented road. LED signage that is designed to be seen more by automobile traffic is appropriate in this location even though it may not be appropriate for other parts of downtown. The sign code acknowledges the different character of McLoughlin Blvd by its allowance for taller freestanding signs along this road.
- 2) The LED sign installed at the site does not detract from the overall aesthetics of the site, and is an improvement on the previous sign. As such, it conforms generally to the purpose statements the sign code and the Downtown Design Guidelines. The brightness of the sign can be controlled, and the sign does not flash or change copy in a way that would pose a safety hazard.
- 3) The LED sign uses less energy than other forms of sign illumination. It is also advantageous to have an electronic changing sign because of the safety hazard posed by manually changing gasoline prices along busy streets.

I agree that each of these arguments has merit. However, I may not consider site-specific and business specific factors while processing a sign permit under the existing code.

DI-10-01 – LED Sign Illumination in Downtown Zones
August 18, 2010

Page 5

Conclusion

As described above, I do not interpret the code to allow LED reader board signs in the downtown zones. This interpretation is based on the language of the adopted code and cannot take into account the specific factors in your arguments. Such factors may, however, provide the basis for an application for a variance from the standards of the sign code or a proposal to amend the regulations in the City's sign code.

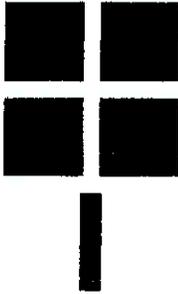
This interpretation may be appealed to the Planning Commission within 14 days of the date of this letter. The appeal process is described in MMC 19.1011.4(G) and (H), and the Appeal application is available on the City's website. The fee for an appeal is \$500.

Sincerely,



Katie Mangle
Planning Director

CC: James Crawford, 12620 SW Foothill Drive, Portland, OR 97225
Sarah Lander, Code Compliance Assistant
File: DI-10-01



JAMES R. CRAWFORD, ARCHITECT

ARCHITECTURE AND PLANNING
12620 SW FOOTHILL DRIVE
PORTLAND, OREGON 97225
Voice (503) 643-8193 Cell (503) 349-1339
JRCrawford59@aol.com



Application Documents for Administrative Interpretation of the City's Sign Ordinance Title 14 for the Downtown Zones

Submitted July 26, 2010



PLANNING DEPARTMENT
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
FAX: (503) 774-8236

Application for Land Use Action

Application Type:	<input checked="" type="checkbox"/> Admin. I <input type="checkbox"/> Minor QJ <input type="checkbox"/> Leg. <input type="checkbox"/> Admin. II <input type="checkbox"/> Major QJ
--------------------------	--

RESPONSIBLE PARTIES: (Please print or type)

APPLICANT(S): NABIL KANSO/AM KANSO LLC	Phone: 503-653-6909
Address: 10966 SE McLOUGHLIN BLVD.	Zip: 97222
PROPERTY OWNER(S): NABIL KANSO/ 99, INC	Phone: 503 653 6909
Address: 10966 SE McLOUGHLIN BLVD.	Zip:

SITE INFORMATION:

Address: 10966 SE McLOUGHLIN BLVD	Map & Tax Lot(s):
Comprehensive Plan Designation: TDS	Zoning: DS Size of property:

PROPOSAL (describe briefly):

REQUEST FOR ADMINISTRATIVE INTERPRETATION OF SIGN CODE IN DOWNTOWN ZONES - ALLOWANCE OF LED ILLUMINATION

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA:	LUC Chair:	Phone:
------	------------	--------

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by:	Date:
---------------	-------

THIS SECTION FOR OFFICE USE ONLY:

File #:	Fee: \$	Rcd. by:	Date stamp:
Notes:			

SEE REVERSE SIDE FOR APPLICATION CHECKLIST



PLANNING DEPARTMENT
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

PHONE: 503-786-7630
FAX: 503-774-8236
E-MAIL: planning@ci.milwaukie.or.us

For all Land Use Applications
(except Annexations)

Submittal Requirements

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the development being proposed to allow for adequate public review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or planning@ci.milwaukie.or.us for assistance with Milwaukie's land use application requirements.

1. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.
Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, photo simulations, etc.
2. **Detailed statement** that demonstrates how the proposal meets all applicable approval criteria, zoning and land use regulations, and development standards.
3. **Site plan(s), preliminary plat, or final plat** as appropriate.
See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.
4. **All required land use application forms and fees**, including any deposits.
Applications without the required application forms and fees will not be accepted.
5. **A signed statement** from all property owners authorizing the applicant to submit the proposal for land use action where the applicant is not the owner of all property included in the proposal.
Applications without written owner authorization will not be accepted.

APPLICATION PREPARATION REQUIREMENTS:

- Five copies of all application materials are required at the time of submittal. Staff will determine how many additional copies are required, if any, once the application has been reviewed for completeness.
- All application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All application materials must be collated, including large format plans or graphics.

ADDITIONAL INFORMATION:

- Milwaukie's community involvement policies are implemented through its Neighborhood District Associations (NDA). Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: <http://www.ci.milwaukie.or.us/nda/nda.html>.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

APPLICATION SUMMARY

Monday, July 26, 2010

Applicant: Nabil Kanso
AM Kanso, LLC
SW 123rd Avenue
Beaverton, Oregon 97005

Contact: Nabil Kanso
503/ 653-6909
or
Jim Crawford
503/643-8193
503/ 349-1339 (cell)

Narrative Prepared by: James R. Crawford - Architect
12620 SW Foothill Drive
Portland, Oregon 97225

Land Owner: 99, Inc.
SW 123rd Avenue
Beaverton, Oregon 97005

Site Address: 10966 SE McLoughlin Blvd.
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Comprehensive Plan Designation: DS (Downtown Storefront)

Zoning: DS (Downtown Storefront)

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APPLICATION NARRATIVE

INTRODUCTION:

The site is located on SE McLoughlin Blvd. (State Hwy 99E) at the intersection of Jefferson Street. The physical address is 10966 SE McLoughlin Blvd. The existing use of the property is a gas station and grocery convenience store. The gas station is an existing non-conforming land use under the existing Zoning.

The existing gas station changed brand from Arco to ConocoPhillips 76, remaining under the same ownership. The use was in continuous operation through the transition. The associated convenience grocery store likewise changed from an AM-PM Market to Mini-Mart 76 Gas.

Due to the change of Brand for the property, new signage was required. The owner made application to the City for new signage, which was approved. The signage permit application is on file at the City.

The applicant proposed replacing the existing freestanding internally illuminated cabinet monument sign with a similar freestanding internally illuminated cabinet monument sign. A photograph of the proposed sign was provided with the application. The proposed sign utilized LED lights to relay pricing information instead of the back lit sign with changeable pricing. The City's application did not request information about lighting or light sources.

When the City issued the approval for the sign, a condition of approval specified "No LED signs allowed". The Sign Company missed this condition on the permit and installed the sign that was proposed, being what it believed was approved.

Subsequently, after the sign was installed, the applicant was notified that the sign was in violation of the City's Downtown Sign Ordinance. The applicant has spoken with the City and desires to keep the sign as installed. To that end, we are requesting an interpretation of Title 14 by the Planning Director. We are providing the enclosed narrative in support of our position.

BACKGROUND:

The property is located along SE McLoughlin Blvd. (Hwy 99E), a State highway, which passes through the City of Milwaukie. Highway 99E is located between the city's riverfront park located west of the highway and the downtown, principally located along Main Street, running parallel to Hwy 99E one block to the east.



View from the South

The character of Hwy 99E (McLoughlin Blvd.) is a 5-lane arterial street connecting Portland to the north with Gladstone and Oregon City to the south. The posted speed limit on McLoughlin Blvd. adjacent to the site is 30 MPH. Typically, a downtown business district has a posted speed limit of 20 MPH. This higher speed along McLoughlin Blvd. does not support the “Pearl District” signage promoted for the Main Street commercial activities.

Generally, Milwaukie’s downtown businesses have not developed fronting onto McLoughlin Blvd. Most of the existing frontage development along McLoughlin Blvd. is parking lots, businesses that front of the east-west oriented side streets or automobile oriented businesses, such as service stations.



Sign with LED pricing lighting.

Despite the current zoning, the character of Hwy 99E remains automobile oriented. The highway is not a “shopping” street, lacking on-street parking or a pedestrian oriented streetscape. The rush of a high volume of through traffic is not supportive of storefront retail. Plans by the City for a pedestrian bridge over McLoughlin Blvd. supports the conclusion that Hwy. 99 is not pedestrian friendly. It does however support automobile accommodating commercial.

Unlike Main Street, at the subject property, the city does not require buildings to be built tight to the sidewalk, nor retail on the ground level nor ground floor windows and openings. The Code clearly differentiates Hwy 99E as being different than Main Street yet the City’s sign ordinance does not make that differentiation. The ordinance does however allow a taller monument sign on McLoughlin Blvd. than elsewhere in the downtown zone, at least implying that there is a distinction.



Cabinet sign alternative.

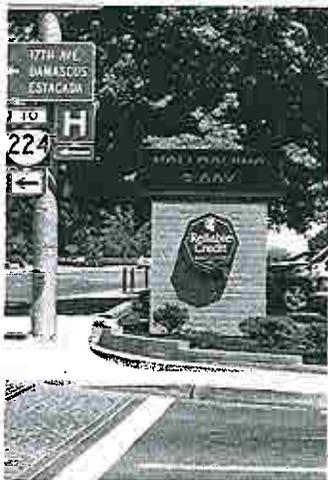
There are two existing gas stations along Hwy 99E within the city’s downtown area. Both stations are located at the Jefferson Street intersection with Hwy 99E. Under the current zoning designations (the applicant’s station is located in the DS district), both gas stations are non-conforming uses. While non-conforming, they remain a necessary part of contemporary American life.

Being an automobile oriented business, the signage needs to be sized for and readable to passing motorists. The business depends upon visibility to attract passing business.

Gas stations are a unique business with unique signage requirements. The gas station sign is required by state law to include the current price of gasoline offered for sale. Gasoline pricing is variable and the prices can go up or down weekly, if not more frequently. Therefore ease of changing the pricing information is a unique need of this business. Two sign choices exist to accommodate the need for changeable pricing. A cabinet sign with manually changed price numbers or a panel sign with LED pricing numerals.

The applicant applied for and inadvertently installed the later type of sign contrary to the approval conditions. The LED light source on the installed sign is only on the price portion of the sign. The balance of the sign is internally an illuminated cabinet sign. The LED lights do not flash or otherwise distract or attract the attention of motorists. The sign is turned off when the gas station is closed. The applicant requests that the sign be allowed as installed.

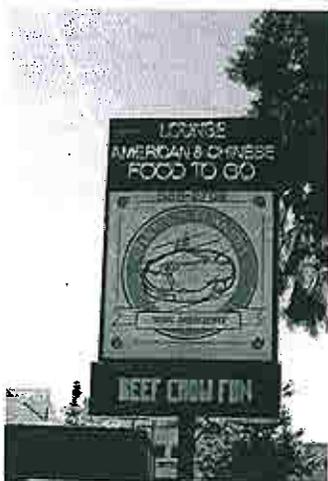
SIMILAR NON-CONFORMING SIGNS:



Reliable Credit Union

Two existing businesses along McLoughlin Blvd. currently have signs with exposed bulbs (either incandescent or LED) which are non-conforming signs in the downtown district under the current Zoning Code. These are the Reliable Credit Union at 10690 Harrison Street and Chan's Steakery, located at 10477 Main Street. This second sign uses similar red LED lights as the gas station sign.

The **Reliable Credit Union** sign was permitted in 2005. This was an existing sign that needed to be relocated due to a right-of-way modification at the intersection with Hwy 99E. The previous sign had been located at the intersection and encroached into the modified right-of-way. A new CMU monument was built adjacent to Hwy 99E right-of-way north of the original sign monument. This sign has changing text using white incandescent bulbs. The City approved the reinstallation of the non-conforming sign since the relocation was not voluntary



Chan's Steakery

The **Chan's Steakery** sign was permitted in 2003 as an alteration of an existing sign. The permit allowed for the addition of an LED message display at the bottom of the existing sign. The application indicated a "matrix monochrome message display" and they checked off that the sign was internally illuminated, which was not accurate. The plans by Able Sign Company specified a "LED Reader Board, 2'-0" x 6'-0"."

The existing portion of the sign has a changing neon sign that alternates between "open" and "lounge" every two to

three seconds. The LED sign at the bottom with red changeable text is on about a six-second rotation.

The sign ordinance in affect in 2003 was silent regarding the use of LED lighting on signs. LED lighting is a relatively new light source and the Code did not anticipate the use of LED light sources. The Code (14.16.040) indicated that signs in commercial zones may be illuminated. The 2003 Code stated “No exposed incandescent lamp which exceeds 15 watts shall be used on the exterior surface of any sign so as to exposed the face of such bulb or lamp to any public street or right-of-way”. The Code otherwise provided for fluorescent lamps or PAR spot or reflector type bulbs were allowed light sources.

ARGUMENTS FOR APPROVAL:

The stated purpose of *Title 14 Signs* is to regulate the design of all signs visible from the right-of-way. The goal of promoting the “neat, clean, orderly and attractive appearance of the community, provide for the safe installation and maintenance of signs” and to “accommodate the need of sign installers while avoiding nuisances to nearby properties”. The sign with LED numeration installed is not contrary to the stated goals and purpose of the Code.

The property is located in the Downtown District and is zoned DS (Downtown Storefront). McLoughlin Blvd. is the western edge of the DS Zone. McLoughlin Blvd. is a 5-lane arterial highway; not a pedestrian shopping street. The standards applicable to Main Street and the various east-west oriented side streets intersecting Main Street are not applicable or appropriate to businesses fronting on McLoughlin Blvd. McLoughlin Blvd. does not share the pedestrian oriented character envisioned for Main Street development.

The business is a gasoline service station. A gas station has unique signage needs and relies on its signage to attract passing business. This business is not located on Main Street; it is not a pedestrian oriented business characteristic of Main Street. The business is located along a high-visibility major arterial street. It is an automobile oriented business.

This gas station is a non-conforming auto dependant business. Automobile Service Stations are a non-conforming use in all Downtown zones. Neither the Code nor the Downtown Guidelines address their unique business characteristics, their unique need for signage or the unique character of McLoughlin Blvd. in the DS Zone.

The area north of Harrison Street is identified as an Auto Accommodating Commercial area between Main Street and McLoughlin Blvd (DC Zone). This acknowledges that this strip of commercial property provides for a gradual transition from the Boulevard to Main Street development.

Properties having frontage along McLoughlin Blvd. are recognized in the Code as having unique characteristics that justify modifications to the Sign Code as applied

elsewhere in the Downtown District. Section 16.14.060 (A) (2) allows a doubling of the allowable height of a freestanding sign located along the McLoughlin frontage, as an example.

The purpose of the Downtown zones (19.312.1) is to focus pedestrian-oriented retail uses to the traditional downtown code along Main Street. The pedestrian oriented aspects of the Downtown District are not applicable to this site. The requirement for ground floor retail is limited to properties fronting on Main Street. (Figure 312-1). Ground floor windows and openings are likewise only required on Main Street. (Figure 312-5). This site is not required to build to the street right-of-way. (Figure 312-4).

The City approved the internally lit Cabinet sign installed on the site. Cabinet signs are a non-conforming sign but are allowed by the Code. Section 14.16(H)(5) states that "Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to design review....".

The sign applied for was an internally illuminated cabinet sign above an LED numeral panel. The light emitting diodes are placed behind plexiglass. The Sign Code (Section 14.16(H)) does not say "no LED lights" and the language of the Code is vague and confusing. Unlike other sections of the Sign Code, the Downtown Code does not list "prohibited signs". LED signs are allowed elsewhere in the City's commercial districts.

There are several advantages to the LED lighted price indicators. These include:

- 1) the LED light source is an environmentally superior bulb, using far less energy than fluorescent lamps and being increasingly used for "green" reasons and
- 2) the prices can be changed remotely from inside the station,
- 3) the older backlit cabinet signs require an employee to manually go out to change the prices. This is done either from a ladder, risking injury from falling or with a pole with a suction device to grab or reposition the numbers. This exposes the employee and the public in danger if the pole slips or falls, is caught by the wind or otherwise ends up in the lane of traffic.
- 4) The LED light levels can be dimmed to reduce or manage glare.
- 5) The LED display does not move, flash or change. The illuminated numbers are not a distraction to vehicular or pedestrian traffic.

The sign as installed substantially meets the intent of the design standards and the stated purpose of Title 14. The LED lights are less bright than a cabinet sign with pricing. The LED sign is more attractive than the alternative cabinet sign. It presents a neat, clean, orderly and attractive appearance. It clearly displays the price of gasoline being sold, protecting the public welfare. The LED sign provides a safer

condition for employees required to change pricing information on the sign. It accommodates the needs of the sign applicant and does not create a nuisance to nearby properties. It does not create "sign clutter". And finally, it does not distract motorists since it does not have flashing or changeable text.

The applicant requests an administrative review of the Code and an interpretation of the Code that would allow the desired sign, as installed, to remain. The above narrative has attempted to show that this is a special circumstance related to a specific piece of property and that strict application of the Code would cause an unnecessary hardship on the applicant. Further, the installed sign provides a neater appearance than the alternative cabinet sign. Finally, it has been explained that the nature of business, a gas station, and the location on McLoughlin Blvd. creates a special circumstance related to the sign.

Attachment 6: Existing Downtown LED Signs

- Reliable Credit

The freestanding illuminated reader board sign at the corner of Harrison St and McLoughlin Blvd has been in existence for at least 10 years. It was approved under a sign ordinance that predates the implementation of the downtown zones. A photo of the sign as it exists today and a photo dating from approximately 1998 are shown below. City records do not indicate the date the sign was originally installed. The sign was moved in 2003 due to the McLoughlin improvement project's acquisition of the portion of the site where the sign was located. Because a public project had required removal of the sign, the owner was allowed to reinstall the sign following the project's completion. The permit to relocate the sign was submitted and approved in 2005 (Permit # 050304), and the sign was installed sometime in 2007.



- Chan's Stakery

The freestanding sign at Chan's Stakery, illustrated below, also includes an electronic display. The permit was approved by the Planning Department on February 26, 2003. The downtown design guidelines were an officially adopted document at the time of approval. However, the approval occurred before the 2003 sign code amendments that placed the downtown zones into their own sign district. As a result, the illumination standards were the same as for other commercial zones within the City. This section of code does not list specific types of allowed sign illumination. The rationale for approval of this reader board sign is the same as the current approval for reader board signs in other commercial zones in the city.



The presence of these signs has limited bearing on the subject of this appeal. Both of these signs were approved under sign codes that were substantively different than the regulations for the current downtown sign district. They are also both counter to the type of signs illustrated in the downtown design guidelines. In staff's view, these signs are a legitimate part of Milwaukie's downtown sign milieu, but are not a type of sign that should be constructed by future downtown development.

Lighting Guidelines

Milwaukie Downtown Design Guidelines

Sign Lighting

Guideline

Sign lighting should be designed as an integral component of the building and sign composition.

Description

Sign lighting may provide interest not only during nighttime but also daytime. Sign lighting should be oriented toward pedestrians along adjacent streets and open spaces.

Recommended

- “Gooseneck” lighting that illuminates wall-applied signs.
- Sign silhouette backlighting.
- Incandescent or fluorescent bulb or low-voltage lighting.

Not Recommended

- Backlight vinyl awning sign lighting.
- Interior plastic sign lighting.
- Metal halide, neon or fluorescent tube sign lighting.
- Signs lit by lights containing exposed electrical conduit, junction boxes or other electrical infrastructure.



Recommended: Gooseneck lighting that illuminates a wall sign (SW 5th and Alder, Portland)



Not Recommended: Exposed utilitarian lighting (SW Salmon and 9th, Portland)



Sign Guidelines

Sign guidelines are organized by sign type. Sign guidelines include specific descriptive requirements of recommended and not recommended signs. Sign types include:

- Wall Signs
- Hanging or Projecting Signs
- Window Signs
- Awning Signs
- Information and Guide Signs
- Kiosks and Monument Signs
- Temporary Signs

Visual examples are included as models for design and review purposes. They are intended to provide designers and the Design and Landmarks Commission a means to recognize recommended and not recommended sign types.

Sign Guidelines

Milwaukie Downtown Design Guidelines

Intent

Each development or building represents only a small portion of the downtown as a whole, but contributes significantly to the overall visual image of downtown. The uniform application of sign guidelines addressing type, location, size and quality will ensure a visually pleasing downtown environment.

Signs may provide an address, identify a place of business, locate tenants, or generally provide directions and information. Appropriately designed, signs can also reinforce the downtown's character and provide visual interest. Regardless of function, signs should be architecturally compatible and contribute to the character of the area. Signs should be good neighbors - they should not compete with each other or dominate the setting due to inconsistent height, size, shape, number, color, lighting or movement.

Code Requirement:

The following guidelines do not supersede sign codes. They are instead intended to supplement the City's sign code. All required permits can be obtained through the Milwaukie Planning Department. Please refer to the City of Milwaukie's Sign Ordinance for complete requirements and approval procedures.



Recommended: Signs that are highly graphic and oriented toward the pedestrian. (Vancouver, BC)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Wall Signs

Guideline

Signs should be sized and placed so that they are compatible with the building's architectural design.

Description

Signs should not overwhelm the building or its special architectural features. Signs should not render the building a mere backdrop for advertising or building identification.

Recommended

- Wall signs should be located along the top, middle or at the pedestrian level of buildings.
- Signs should be incorporated into the building architecture as embossing, low relief casting, or application to wall surfaces.
- Signs may be painted or made with applied metal lettering and graphics.
- Signs should be durable and long lasting.
- Signs may incorporate lighting as part of their design.
- Signs should be located as panels above storefronts, on columns, or on walls flanking doorways.

Not Recommended

- The material, size and shape of signs that overwhelm, contrast greatly or adversely impact the architectural quality of the building.



Recommended: Signs incorporated into architectural design (NW 23rd and Everett, Portland)



Not Recommended: Oversized sign (NW 10th and Burnside, Portland)



Not Recommended: Building facades designed primarily to serve as a sign (NW 20th and Burnside, Portland)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Hanging or Projecting Signs

Guideline

Hanging signs should be oriented to the pedestrian, and highly visible from the sidewalk.

Description

Signs should not overwhelm the streetscape, and should be compatible with and complementary to the building architecture and any awnings, canopies, lighting, and street furniture.

Recommended

- Any required sign lighting should be integrated into the facade of the building. (See lighting guidelines.)
- Signs should be very graphic and constructed of high quality materials and finishes.
- Signs should be attached to the building with durability in mind.

Not Recommended

- Signs interfering with sight lines that may create a safety hazard, obstruct or block views.



Recommended: Hanging signs (Oak Street, Hood River, Colorado Blvd., Pasadena, CA, False Creek Waterfront, Vancouver, BC, NW 23rd and Glisan, Portland)



Not Recommended: Overscaled Hanging signs that block, obstruct or dominate views (City Walk, Los Angeles, CA)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Window Signs

Guideline

Window signs should not obstruct views through windows.

Description

Window signs should be oriented to pedestrians rather than motorists. They should be an integral component of the storefront design.

Recommended

- Neon or other illumination is only appropriate if installed as interior signs.
- Interior applied lettering or graphics.

Not Recommended

- Painted window signs.



Recommended: Interior neon sign indicates retail use only (NW 23rd and Irving, Portland)



Not Recommended: Window advertising sign (SW Broadway and Washington, Portland)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Awning Signs

Guideline

Awning signs should be used as alternatives to building or wall signs. They should be designed as a means to attract attention to a shop, office or residential entrance.

Description

Awning signs should not dominate or overwhelm the building; rather, the awning should serve as mere backdrop for building or tenant identification.

Recommended

- Awning signs generally should occur at only one location on a single building.
- Signs painted on fabric awning valances.
- Signs applied to, embossed on or attached to canopy edges.

Not Recommended

- Signs located on second or upper story awnings.
- Lighting of awning signs either externally or internally.



Recommended: Sign compatible with and integrated into architecture of building (SW 10th and Alder, Portland)



Not Recommended: Vinyl awning sign (N Lombard and N Denver, Portland)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Information and Guide Signs

Guideline

Directional signs should be small scale and of consistent dimensions, and located in a visually logical order. These signs also should provide on-site directional information.

Description

Directional signs - those intended to identify and direct vehicular and pedestrian traffic to various on-site destinations - may be provided along roadways and within all multi-parcel developments, consistent with the City's Sign Code.

Directional signs should be designed consistently throughout a project. All signs shall be fabricated from the same materials, with a consistent color palette and common graphic theme. The use of materials compatible with adjacent architectural design is encouraged.

Recommended

- Location at entries to parking lots or service areas.
- Signs in internal courtyards, along walkways, or at plazas.



Recommended: Pedestrian scaled directional signs (Portland Art Museum, Saturday Market, Portland)



Recommended: Low scaled auto-oriented directional sign (N Interstate and N Denver, Portland)

Sign Guidelines

Milwaukee Downtown Design Guidelines

Kiosks and Monument Signs

Guideline

Directory monument information signs should illustrate the layout of a development, and list and locate uses or tenants within.

Description

These signs should be highly graphic, constructed of durable materials and consistent with architectural and landscape themes. They should be scaled to and easily approached by pedestrians rather than passing motorists.

Recommended

- Kiosks that provide directional information and additional space for public announcements or flyers.
- Vandal-resistant painted or cast metal sign monuments.
- Compatibility with adjacent architecture and established downtown streetscape elements.

Not Recommended

- Freestanding monuments at primary building entries, forecourts or plazas.
- Wood construction, glass, plastic or other non-durable materials.
- Internal illumination.
- Wildly contrasting colors or graphics that are highly distracting.



Recommended: Information kiosk oriented to pedestrians (Pearl Street Mall, Boulder, CO)



Not Recommended: "Suburban-styled" monument signs at building entries (Second and Morrison, Portland)

Sign Guidelines

Milwaukie Downtown Design Guidelines

Temporary Signs

Guideline

Signs identifying short-term uses or activities should be allowed on a temporary basis if consistent with the design character of the surrounding area.

Description

Temporary signs should not obstruct pedestrian access or disrupt the visual quality of downtown. Sandwich board signs should be located within close proximity of the use identified. Temporary signs should be used only during hours in which businesses are open.

Recommended

- Easels and chalkboards.
- High quality professionally-painted and -designed sandwich boards.

Not Recommended

- Signs which impede or obstruct pedestrian access.
- Poor quality “homemade”-looking sign construction, painting, graphics or lettering.
- Attachments of balloons, banners or flags.
- Advertisements for products or services.



Recommended: Temporary signs constructed of durable materials (Broadway and Morrison, Portland)



Recommended: Small chalkboard as temporary sign (NW 21st and Johnson, Portland)



Not Recommended: Poorly executed and maintained temporary signs (NW 6th and Everett, and SW 3rd and Ankeny, Portland)

CHAPTER 14.16—SIGN DISTRICTS

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2. Height and/or clearance.

An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is 8 feet from the sidewalk or ground level to the lowest portion of the awning, or suspended sign, whichever is lowest.

3. Number.

One awning sign per frontage per occupancy is permitted.

D. Daily display sign.

1. Area.

The maximum permitted area of a daily display sign shall be 8 square feet per display surface and 16 square feet overall, with a maximum height limit of 6 feet above ground level.

2. Number.

One daily display sign per business is permitted.

3. Location.

A daily display sign must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.

E. Illumination.

Signs in C-N zones may have external illumination, in addition to lighting as noted in Section 14.24.020. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.

14.16.040. Commercial zone.

No sign shall be erected or maintained in the C-L, DS, DC, DO, DOS, C-G, and C-CS Zones, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding sign.

1. Area.

The maximum permitted display surface area of a freestanding sign shall be computed on 1½ square feet of area per lineal foot of street or highway frontage for the first 100 feet of such frontage, plus 1 square foot of area for each foot of frontage over 100 feet, but not exceeding 300 square feet of sign area per display surface for each sign, or a total of 1,200 square feet for all display surfaces as authorized in Section 14.16.040.A.4.

2. Height and/or clearance.

The maximum height of any portion of a sign or sign structure shall be 25 feet from ground level at its base regardless of location. The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be 14 feet in any driveway or parking area. In the DS, DC, DO, and DOS zones, properties without frontage on McLoughlin Boulevard are limited to a maximum freestanding sign height of 7 feet.

3. Location.

No freestanding sign, or any portion of any freestanding sign, shall be located on or be projected over any portion of a street, sidewalk, or other public right-of-way or property except that those currently existing may project over such right-of-way for a distance not to exceed 2 feet.

4. Number.

One multifaced freestanding sign shall be permitted on a street or highway frontage. Where a frontage exceeds 300 feet in length, 1 additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a projected or roof sign.

B. Wall sign.

1. Area.

Wall signs shall not exceed in gross area 20 percent of the face of the building to which the sign is attached or on which the sign is maintained. This includes signs painted directly on the building surface.

2. Height and/or clearance.

No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number.

No limit, dictated by area requirements.

C. Projecting signs.

1. Area.

Projecting signs shall not exceed in gross area 20 percent of the face of the building to which the sign is attached or on which the sign is maintained. However, if a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed 20 percent of the face of the building.

2. Height and/or clearance.

No projecting sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher. Overhead clearance and projection into public rights-of-way shall be maintained so that no sign shall project within 2 feet of the curb nor beyond the distances specified in the following table:

Table 1 Projection of Signs Into Public Rights-of-Way	
Clearance	Maximum Projection into Public Right-of-Way
Less than 8 feet	Not permitted
8 feet	1 foot
8 to 16 feet	1 foot plus 6 inches for each foot of clearance in excess of 8 feet
Over 16 feet	5 feet

3. Location.

No projecting sign shall be located within 20 feet of another projecting sign. Of two signs not conforming to this provision, the first lawfully erected sign may remain.

4. Number.

Only 1 projecting sign will be permitted on the same business frontage. No projecting sign shall be permitted on the same premises where there is a freestanding sign or roof sign.

D. Roof signs.

1. Area.

Total sign area for roof signs shall not exceed 1 square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located.

2. Height and/or clearance.

The maximum height of a roof sign shall not exceed 8 feet above the highest point of the building. All roof signs shall be installed or erected in such a manner that there shall be no visible angle iron or similar sign support structure.

3. Location.

No roof sign shall be erected unless and until approved by the Fire Marshal after a finding that the site, type, and location of the sign will not substantially interfere with fire fighting. Roof signs may not project over the parapet wall.

4. Number.

Roof signs are permitted instead of, but not in addition to, projecting signs or freestanding signs.

E. Awning sign.

1. Area.

The maximum permitted display surface of an awning sign which is painted onto, attached to, or affixed to, the surface of an awning, is 25 percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area 1 square foot per 1 lineal foot of awning length.

2. Height and/or clearance.

An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is 8 feet from the sidewalk or ground level to the lowest portion of the awning, or suspended sign, whichever is lowest.

3. Number.

One awning sign per frontage per occupancy is permitted.

4. Illumination of awning signs.

Awning signs shall have external illumination only in the DS, DC, DO, DR, and DOS zones. Internal illumination is prohibited in these zones.

F. Under-marquee signs.

1. Area.

Under-marquee signs shall not exceed 6 square feet per display surface or 12 square feet in overall sign area.

2. Height and/or clearance.

Under-marquee signs must have 8 feet of clearance below the lowest portion of the sign and the ground below.

3. Location.

Under-marquee signs shall not project within 2 feet of the curb.

4. Number.

No limit, dictated by area requirements.

G. Billboard signs.

Billboard signs existing at the effective date of this Ordinance shall be permitted to remain and be maintained in reasonable repair, but may not be replaced or relocated.

CHAPTER 14.16—SIGN DISTRICTS

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H. Daily display sign.

1. Area.

The maximum permitted area of a daily display sign shall be 12 square feet per display surface and 24 square feet overall, with a maximum height limit of 6 feet above ground level.

2. Number.

One daily display sign per business is permitted.

3. Location.

A daily display sign must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.

I. Illumination.

Signs in commercial zones may be illuminated. Within 500 feet of any residentially zoned property when fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 425 milliamperes rating tubes behind a plexiglass face with tubes spaced at least 7 inches, center to center. No exposed incandescent lamp which exceeds 15 watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.

14.16.050. Manufacturing zone.

No sign shall be erected or maintained in an M or BI zone, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding sign.

1. Area.

The maximum permitted area of a freestanding sign shall be computed on 1½ square feet of area per lineal foot of street or highway frontage for the first 100 feet of such frontage plus 1 square foot of area for each foot of frontage over 100 feet, but not exceeding 250 square feet of sign area per display surface for each sign, or a total of 1,000 square feet for all display surfaces.

2. Height and/or clearance.

The maximum height of any portion of a sign or sign structure shall be 25 feet from ground level at its base regardless of location. The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be 14 feet in any driveway or parking area.

14.16.040

14.16.040 Commercial zone.

No sign shall be erected or maintained in the C-L, C-G and C-CS zones, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign.

1. Area. The maximum permitted display surface area of a freestanding sign shall be computed on one and one-half square feet of area per lineal foot of street or highway frontage for the first one hundred feet of such frontage, plus one square foot of area for each foot of frontage over one hundred feet, but not exceeding three hundred square feet of sign area per display surface for each sign, or a total of one thousand two hundred square feet for all display surfaces as authorized in Section 14.16.040A4.

2. Height and/or Clearance. The maximum height of any portion of a sign or sign structure shall be twenty-five feet from ground level at its base regardless of location. The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be fourteen feet in any driveway or parking area.

3. Location. No freestanding sign, or any portion of any freestanding sign, shall be located on or be projected over any portion of a street, sidewalk or other public right-of-way or property, except that those currently existing may project over such right-of-way for a distance not to exceed two feet.

4. Number. One multifaced freestanding sign shall be permitted on a street or highway frontage. Where a frontage exceeds three hundred feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a projected or roof sign.

B. Wall Sign.

1. Area. Wall signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. This includes signs painted directly on the building surface.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. No limit, dictated by area requirements.

C. Projecting Signs.

1. Area. Projecting signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. However, if a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed twenty percent of the face of the building.

2. Height and/or Clearance. No projecting sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher. Overhead clearance and projection into public rights-of-way shall be maintained so that no sign shall project within two feet of the curb nor beyond the distances specified in the following table:

**Table 14.16.040
Projection of Signs Into Public
Rights-of-Way**

Clearance	Maximum Projection Into Public Right-of-Way
Less than eight feet	Not permitted
Eight feet	One foot
Eight to sixteen feet	One foot plus six inches for each foot of clearance in excess of eight feet
Over sixteen feet	Five feet

3. Location. No projecting sign shall be located within twenty feet of another projecting

14.16.040

sign. Of two signs not conforming to this provision, the first lawfully erected sign may remain.

4. Number. Only one projecting sign will be permitted on the same business frontage. No projecting sign shall be permitted on the same premises where there is a freestanding sign or roof sign.

D. Roof Signs.

1. Area. Total sign area for roof signs shall not exceed one square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located.

2. Height and/or Clearance. The maximum height of a roof sign shall not exceed eight feet above the highest point of the building. All roof signs shall be installed or erected in such a manner that there shall be no visible angle iron or similar sign support structure.

3. Location. No roof sign shall be erected unless and until approved by the fire marshal after a finding that the site, type, and location of the sign will not substantially interfere with fire fighting. Roof signs may not project over the parapet wall.

4. Number. Roof signs are permitted instead of, but not in addition to, projecting signs or freestanding signs.

E. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to or affixed to the surface of an awning is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall.

The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning, or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

F. Under-Marquee Signs.

1. Area. Under-marquee signs shall not exceed six square feet per display surface or twelve square feet in overall sign area.

2. Height and/or Clearance. Under-marquee signs must have eight feet of clearance below the lowest portion of the sign and the ground below.

3. Location. Under-marquee signs shall not project within two feet of the curb.

4. Number. No limit, dictated by area requirements.

G. Billboard Signs. Billboard signs existing at the effective date of the ordinance codified in this chapter shall be permitted to remain and be maintained in reasonable repair, but may not be replaced or relocated.

H. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be twelve square feet per display surface and twenty-four square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per business is permitted.

3. Location. A daily display sign must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.

I. Illumination. Signs in commercial zones may be illuminated. Within five hundred feet of any residentially zoned property when fluo-

14.16.040

rescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to four hundred twenty-five milliamperes rating tubes behind a plexiglass face with tubes spaced at least seven inches, center to center. No exposed incandescent lamp which exceeds fifteen watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets. (Ord. 1917 § 3 (Exh. B) (part), 2003; Ord. 1916 § 3 (Exh. B) (part), 2003; Ord. 1880 § 6 (Exh. A) (part), 2000; Ord. 1733 § 1(1)(Exh. A) (part), 1993)

14.16.050 Manufacturing zone.

No sign shall be erected or maintained in an M or BI zone, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign.

1. Area. The maximum permitted area of a freestanding sign shall be computed on one and one-half square feet of area per lineal foot of street or highway frontage for the first one hundred feet of such frontage plus one square foot of area for each foot of frontage over one hundred feet, but not exceeding two hundred fifty square feet of sign area per display surface for each sign, or a total of one thousand square feet for all display surfaces.

2. Height and/or Clearance. The maximum height of any portion of a sign or sign structure shall be twenty-five feet from ground level at its base regardless of location. The minimum clearance below the lowest portion of a freestanding sign and the ground below shall be fourteen feet in any driveway or parking area.

3. Location. No freestanding sign, or any portion of any freestanding sign, shall be lo-

cated on or be projected over any portion of a street, sidewalk or other public right-of-way or property except that those currently existing may project over such right-of-way for a distance not to exceed two feet.

4. Number. One multifaced freestanding sign designating the principal goods, products, facilities or services available on the premises shall be permitted on a street or highway frontage. Where a frontage exceeds three hundred feet in length, one additional freestanding sign is permitted for such frontage. No freestanding sign shall be permitted on the same premises where there is a roof sign.

B. Wall Sign.

1. Area. Wall signs shall not exceed in gross area ten percent of the face of the building to which the sign is attached or on which the sign is maintained. This includes signs painted directly on the building surface.

2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.

3. Number. No limit, dictated by area requirements.

C. Roof Signs.

1. Area. Total sign area for roof signs shall not exceed one square foot for each lineal foot of street frontage of the parcel of real property on which the sign is to be located.

2. Height and/or Clearance. The maximum height of a roof sign shall not exceed eight feet above the highest point of the building. All roof signs shall be installed or erected in such a manner that there shall be no visible angle iron or similar sign support structure.

3. Location. No roof sign shall be erected unless and until approved by the fire marshal after a finding that the site, type and location of the sign will not substantially interfere with fire fighting. Roof signs may not project over the parapet wall.

14.16.050

4. Number. Roof signs are permitted instead of, but not in addition to, freestanding signs.

D. Awning Sign.

1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to or affixed to the surface of an awning is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

E. Billboard Signs. Billboard signs existing at the effective date of the ordinance codified in this chapter shall be permitted to remain and be maintained in reasonable repair, but may not be replaced or relocated.

F. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be twelve square feet per display surface and twenty-four square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per business is permitted.

3. Location. A daily display sign must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the prem-

ises, subject to the standards of Section 14.20.040.

G. Illumination. Signs in manufacturing zones may be illuminated. Within five hundred feet of any residentially zoned property when fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to four hundred twenty-five milliamperes rating tubes behind a plexiglass face with tubes spaced at least seven inches, center to center. No exposed incandescent lamp which exceeds fifteen watts shall be used on the exterior surface of any sign so as to expose the face of such bulb or lamp to any public street or public right-of-way. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets or other property. (Ord. 1880 Exh. A (part), 2000: Ord. 1733 § 1(1) (Exh. A) (part), 1993)

14.16.060 Downtown zones.

No sign shall be erected or maintained in the DC, DS, DO, DR and DOS zones, except as allowed under Section 14.12.010 or as otherwise noted in this section.

A. Freestanding Sign. In the downtown zones, freestanding signs shall be monument type only. The sign face shall be no less than sixty percent of the total area of the monument. Pole signs are prohibited.

1. Area. The maximum permitted display surface area of a freestanding sign shall be computed on one square foot of area per lineal foot of street or highway frontage.

a. In the DO zone the maximum area shall not exceed forty square feet per display surface and eighty square feet overall.

b. In the DR and DOS zones the maximum area shall not exceed thirty-two square feet per display surface and sixty-four square feet overall.

14.16.060

2. Height and/or Clearance.
 - a. In the DC, DS and DO zones, free-standing signs are limited to a maximum height of seven feet. Properties with frontage on McLoughlin Boulevard may have free-standing signs with a maximum height of fifteen feet and shall only be located along the McLoughlin Boulevard frontage. Freestanding sign height shall be measured from the top of the sign to the lowest finished grade within a six foot horizontal distance from the sign.
 - b. In the DR and DOS zones freestanding signs are limited to a maximum height of six feet above grade.
3. Number. One freestanding sign is permitted on a street or highway frontage.
- B. Wall Sign.
 1. Area. The maximum permitted area of a wall sign shall be twenty percent of the building face.
 - a. In the DR and DOS zones the maximum permitted area of a wall sign shall be sixteen square feet.
 2. Height and/or Clearance. No wall sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is higher.
 3. Number.
 - a. Dictated by area requirements.
 - b. In the DR and DOS zones one wall sign is permitted in addition to one freestanding sign.
 4. Location. Limited to the building surface or surfaces facing the public right-of-way only.
- C. Awning Sign.
 1. Area. The maximum permitted display surface of an awning sign which is painted onto, attached to, or affixed to, the surface of an awning, is twenty-five percent of the surface of the awning measured in vertical distance times length. For a sign hung or suspended underneath an awning, the sign shall

not exceed in area one square foot per one lineal foot of awning length.

2. Height and/or Clearance. An awning sign may not extend higher than the point at which the roofline intersects the exterior wall, regardless of the existence of a parapet wall. An awning sign may not be located higher than the first floor of a building or fifteen feet, whichever is less. The minimum clearance below an awning on which signage is hung or displayed is eight feet from the sidewalk or ground level to the lowest portion of the awning or suspended sign, whichever is lowest.

3. Number. One awning sign per frontage per occupancy is permitted.

D. Daily Display Sign.

1. Area. The maximum permitted area of a daily display sign shall be eight square feet per display surface and sixteen square feet overall, with a maximum height limit of six feet above ground level.

2. Number. One daily display sign per business is permitted.

3. Location. A daily display sign must be located on the premises with which it is associated, but not within required landscaped areas, except that a daily display sign may be allowed within the public right-of-way or off the premises, subject to the standards of Section 14.20.040.

E. Projecting Signs.

1. Area. Projecting signs shall not exceed in gross area twenty percent of the face of the building to which the sign is attached or on which the sign is maintained. However, if a projecting sign is located on the same building face as a wall sign, the total of all sign surfaces shall not exceed twenty percent of the face of the building.

2. Height and/or Clearance. No projecting sign shall extend above the roofline at the wall or the top of a parapet wall, whichever is

14.16.060

higher. No projecting sign shall project more than five feet from a building. Overhead clearance and projection into public rights-of-way shall be maintained so that no sign shall project within two feet of the curb nor beyond the distances specified in the following table:

**Table 14.16.050
Projection of Signs Into Public Rights-of-Way**

Overhead Clearance	Maximum Projection Into Public Right-of-Way
Less than eight feet above finished floor/grade	Not permitted
Eight feet above finished floor/grade	One foot
Eight to sixteen feet above finished floor/grade	One foot plus six inches for each foot of clearance in excess of eight feet
Over sixteen feet above finished floor/grade	Five feet

3. Location. No projecting sign shall be located within twenty feet of another projecting sign. Of two signs not conforming to this provision, the first lawfully erected sign may remain.

4. Number. Only one projecting sign will be permitted on the same business frontage. No projecting sign shall be permitted on the same premises where there is a freestanding sign.

F. Under-Marquee Signs.

1. Area. Under-marquee signs shall not exceed six square feet per display surface or twelve square feet in overall sign area.

2. Height and/or Clearance. Under-marquee signs must have eight feet of clear-

ance below the lowest portion of the sign and the ground below.

3. Location. Under-marquee signs shall not project within two feet of the curb.

4. Number. No limit, dictated by area requirements.

G. Illumination. Internally illuminated cabinet signs are discouraged in the downtown zones. Internally illuminated signs may be permitted subject to design review approval by the design and landmarks commission per the procedures outlined in Section 19.1011.3. In considering internally illuminated signs, the design and landmarks commission shall use the downtown design guidelines as approval criteria, as provided under subsection 19.312.7F. All other illuminated signs may be permitted subject to the following:

1. Backlit or "halo" illuminated signs with individual letters are permitted as illuminated signs.

2. Par spot or reflective type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.

3. Awning signs shall not be illuminated, either internally or externally unless approved by the design and landmarks commission.

4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises. (Ord. 1917 § 3 (Exh. B) (part), 2003; Ord. 1916 § 3 (Exh. B) (part), 2003; Ord. 1733 § 1(1) (Exh. A) (part), 1993)

public hearing before the DLC. Smaller changes that do not effect the architecture of a building and create an inconsistency with the design guidelines will be reviewed by staff.

The following are the key elements of the proposed design review process.

- New construction and significant changes to buildings are reviewed at a public hearing by the Design and Landmarks Commission against design guidelines.
- The review process has been minimized for minor work/projects by allowing staff review (Type I) of those changes that will not significantly alter the architectural character of a building, with staff having discretion to "kick up" to a Type II review.
- DLC may grant modifications to design standards with findings, rather than through a variance. Design standards are closely tied to the architecture of a building. This provision is included to allow flexibility when an acceptable design solution meets the intent of the particular design standard as well as the design guidelines.
- DLC is the review authority for variances to development standards. Development standards include building height, floor area ratio and street setbacks. These elements can have bearing on design and the overall context of the downtown and therefore staff believes any variation is appropriate for consideration by the DLC.
- "Stand alone" residential¹ development is exempt from design review. This exemption is necessary to meet state law requirements that development involving "needed housing"² have the option to only be subject to clear and objective standards. The subjective nature of design guidelines and a design review process does not meet this requirement.
- Mixed-use buildings require design review for non-residential portion. Residential portion of the building only subject the design standards or may elect full design review.

Downtown Sign Code

The draft downtown design guidelines include specific guidelines for signs. It was determined that rather than have a majority of signs in the downtown subject to a design review process, that key elements of the sign guidelines be included in the Sign Ordinance. This would allow most signs to be reviewed and approved through administrative sign permits, rather than through a potentially lengthy design review application. Only those signs that have potential to impact the design character of downtown would require design review approval by the DLC.

¹ "Stand alone" residential is a development that is entirely residential with no mixed use.

² Needed housing under Oregon's Statewide Planning Goals and Guidelines means types determined to meet the need shown for housing within an Urban Growth Boundary. Until housing target numbers are met for in the Metro region, all new housing is considered "needed."

The following are the key elements of proposed sign code amendments to be consistent with design guidelines.

- Reduces the height and area of freestanding signs.
- Limit awning signs to first floor of building and/or no higher than 15 feet.
- Discourage internally illuminated cabinet signs, requiring design review by DLC.
- All other internally illuminated signs require design review by DLC.
- Backlit, individually lettered signs permitted.

Membership in the DLC

The Milwaukie Municipal Code does not currently provide for a Planning Commission member to sit on DLC and limits sitting on more than one board or commission. A proposed amendment to Section 19.323.4 of the Zoning Ordinance would allow one member of the Planning Commission to simultaneously serve on the Design and Landmarks Commission.

Decision Making Process

As a joint public hearing of the Planning Commission and Design and Landmarks Commission, the following are the decisions-making procedures for each commission:

Design and Landmarks Commission

- Section 2.18.010.D of the Milwaukie Municipal Code establishes the Design and Landmarks Commission's authority to "review and recommend appropriate design review processes and procedures to the City Council."

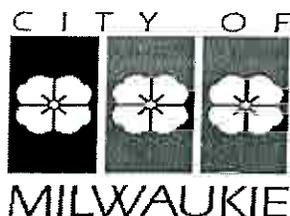
Planning Commission

- Compliance with the Comprehensive Plan and Zoning Ordinance

Zoning amendments are subject to approval criteria contained in the Zoning Ordinance and must be consistent with Comprehensive Plan policies. Staff believes the proposal is consistent with both. The analysis that demonstrates compliance is found in Attachment 4.

- Applicable Code Provisions

Zoning Ordinance: 900 – Amendments & 1011.5 – Legislative Actions



TO: Milwaukie Design and Landmarks Commission

FROM: Alice Rouyer, Interim Community Development Director *ACR*
Kenneth Kent, Associate Planner *KK*

DATE: January 23, 2002

SUBJECT: Item II – Sign Ordinance Amendment for Downtown Zones

Based on the sign guidelines developed for the Downtown Design Review Project, staff feels it is appropriate to consider amendments to the Sign Ordinance to better reflect the intent of the Design Guidelines. The current sign regulations for the Downtown Zones are for the most part the same as the standards contained in the Commercial Zone and Residential-Office-Commercial Zone portions of the Sign Ordinance. These standards apply throughout the City. Given the higher design standards for the downtown, it makes sense to have compatible sign regulations. If the intent is to have signs that are consistent with the character of the downtown, it would be more effective to set the minimum standard through ordinance rather than through guidelines.

Staff is seeking the following input and direction from the DLC regarding Downtown sign standards:

1. Are amendments to the Sign Ordinance appropriate?
2. Are the proposed sign standards adequate?
3. Should the DLC review internally illuminated signs?
4. Are there other sign types or sign locations that should be subject to DLC review?

The proposed design review process for Downtown does not include review of signs by the Design and Landmarks Commission (DLC). This was discussed in general and the consensus was that it may not be appropriate for every sign to be considered by the DLC. As it is currently structured, the existing Sign Ordinance provides the overall authority for the type, size and location of signs. The Sign Guidelines would only be advisory. Therefore, if we do not have a review process for signs, other than an administrative staff review, we have limited ability to impose any of the sign guidelines.

In order to minimize the review process for signs while still achieving the intent of the proposed sign guidelines, staff has drafted an amended sign code for the Downtown Zones that incorporates the intent of the sign guidelines and includes review of certain signs by the DLC. In this way, signs that can be approved by staff will be more in keeping with the design standards established for the Downtown, while providing for a discretionary review process before the DLC for those signs that have potential aesthetic impacts.

The following briefly summarizes the key points of the draft sign standards for the Downtown Zones.

Freestanding sign height –Currently freestanding signs in the Downtown Zones that have frontage on McLoughlin can be 25 feet in height. For those properties without frontage on McLoughlin the maximum height is 7 feet. The proposed standards reduce the height for properties fronting McLoughlin to 15 feet. The area of a freestanding sign under current standards can be up to 300 square feet per display surface. The proposed downtown standards reduce the maximum area to 50 square feet per display surface with a maximum of 100 square feet of total area. The proposed code also prohibits pole signs as a type of freestanding sign. The proposed regulations require that freestanding signs in the Downtown Zones be of a monument type only where the base of the sign is equal to with width of the sign face.

Illumination - Currently, internally illuminated signs are permitted in the Downtown Zones, except for awning signs. Current standards require that awning signs in the Downtown Zones have external illumination only. The draft sign guidelines encourage use of external illumination, such as “gooseneck” lights and back lit, “halo” type signs. Based on this sign guideline, the proposed sign code requires that all signs in the Downtown Zones have external illumination. Internally illuminated signs may be permitted, subject to approval by the DLC.

Awning Signs -The height of awning signs is currently limited to a point where the roof intersects the exterior wall. The proposed regulations limit awning sign height to the first floor of the building.

Roof Signs – Under the current standards, roof signs are permitted in all but the Downtown Residential Zone. Given the Downtown Design Guidelines, it is staff’s opinion that roof signs would not be consistent with character of the Downtown. The proposed regulations do not allow roof signs in the Downtown Zones.

DLC Sign Review - The DLC would review requests for internally illuminated signs. Requests for variances to Downtown sign standards would be considered by the DLC.

Murals/Public Art – The current sign standards include an exemption for painted wall decorations, when not accompanied by a written message. This has been interpreted to allow murals. However, the distinction between a mural as art and a mural as a sign can be difficult given constitutional law regarding free speech. The proposed sign code amendments eliminate the exemption that applies to murals. Murals would then be

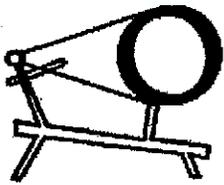
considered as wall signs in terms of permitted size and would be limited to 20 percent of the wall on which they are located.

The question of murals ties into review of public art. Under the current draft of the design review process for the Downtown, public art is subject to review by the DLC. The DLC may wish to discuss the type of art that are anticipated. The draft Design Guidelines address art that is a part of a particular development. A question to consider is whether the DLC should be the body to review all public art in the Downtown Zones.

Attached is a copy of the proposed amendments to Sign Ordinance with proposed deletions shown on ~~striketrough~~ and additions shown in underline. Just the portions of the code that are to be changed have been provided. In terms of how this fits into the overall process of the Downtown Design Review Project, tonight's meeting is intended to receive comments from the DLC, and then for staff to follow-up with revisions to be brought back at a public hearing along with the Design Guidelines and Design Review code. Also attached is an updated project schedule that has the DLC conducting a public hearing on February 27, 2002, followed by the Planning Commission on March 26, 2002 and City Council on May 7, 2002.

Exhibits

- A - Draft Downtown Sign Code Amendments
- B - Sign Guidelines portion of the Downtown Design Guidelines
- C - Updated Project Schedule



Oregon Worsted Company



Mill End Store



Real Estate September 23, 2010

Ryan Marquardt
Associate Planner
City of Milwaulkie Planning Department
6101 SE Johnson Creek Blvd
Milwaulkie, Oregon 97206
503-774-8236

Re: Ap-10-01 Uion 76 Station

Milwaulkie Planning Commission

Modern Lighting Fixtures will all convert to LED Lights within 5 TO 10 Years.

This particular sign is not offensive.

LEDs conserve energy and last much longer than incondesent lighting. We should encourage there usage.

Sincerely,


Howard N. Dietrich Jr.

cc Nabil Kanso
10966 SE McLoughlin Blvd.
Milwaulkie, Oregon



To: Planning Commission

From: Katie Mangle, Planning Director
Susan P. Shanks, Senior Planner

Date: October 5, 2010 for October 12, 2010 Worksession

Subject: Land Use and Development Review Process Tune-Up
Code Amendment Project Briefing #5

ACTION REQUESTED

None. This is a briefing for informational purposes only. Staff is seeking feedback from the Commission on the proposed changes to the Conditional Use and Amendments chapters and on the addition of a new Development Review chapter.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **September 2010:** Briefing #4 on Land Use and Development Review Process Tune-Up Project, with a focus on variances and nonconforming situations.
- **August 2010:** Briefing #3 on Land Use and Development Review Process Tune-Up Project (formerly Review Procedures Code Amendment Project), with a focus on variances and nonconforming situations.
- **July 2010:** Briefing #2 on Review Procedures Code Amendment Project, with a focus on time limits and extensions of land use approvals.
- **May 2010:** Briefing #1 on Review Procedures Code Amendment Project, with a focus on project goals and the City's code history and current review procedures.
- **March 2010:** Staff provided the Commission with a copy of the intergovernmental agreement between the City and the State of Oregon that commits the City to prepare draft code amendments based on priorities that were identified in the 2009 Smart Growth Code Assessment Final Report.
- **October 2009:** Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.
- **September 2009:** Design and Landmarks Committee held a worksession to discuss the residential design standards element of the code assessment project.

- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 Smart Growth Code Assessment Final Report.
- **August 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.
- **July 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.

B. Discussion Items

If you have not already done so, please review the existing Conditional Uses (Chapter 19.600) and Amendments (Chapter 19.900) chapters in addition to the materials attached to this report.

Conditional Use Chapter

Conditional uses are those uses that are identified as being conditionally allowed, as opposed to being outright allowed, in any given base zone or overlay zone. A use may be a conditional use in one zone and an outright allowed use in another. A duplex, for example, is conditionally allowed in the R-7 and R-10 Zones but outright allowed in the R-5 Zone. Attachment 1 shows which uses are conditionally allowed in each zone.

Conditional use regulations are used to evaluate whether a specific conditional use is appropriate for a specific location and to ensure that impacts and compatibility concerns are addressed. A draft outline of this chapter is attached for your review (Attachment 2). Below is a summary of the changes that staff is proposing.

- Addition of "Purpose" and "Applicability" sections.
- Clarification that intensification of an existing conditional use requires Type III review.
- Addition of new review process and approval criteria for minor modifications to existing conditional uses (CU) that mirrors existing provisions for minor modifications to existing community service uses (CSU).
- Updated approval criteria that better address compatibility issues and impacts from proposed conditional uses.
- Updated conditions of approval that provide more direction to decision makers.
- Relocation of time limits and approval extensions to new Procedures chapter.
- Reorganized "Conditional Use Permit" section for clarity and ease of use.
- Clarification that a legally established use currently identified in the code as a conditional use is a defacto conditional use, even if: (1) it had previously been identified as an outright allowed use or nonconforming use and/or (2) it had not previously undergone conditional use review.
- Addition of a policy that provides for the loss of conditional use rights if the conditional use has been discontinued for a period of three or more years.

Map and Text Amendment Chapter

The map and text amendment process is used to amend the Milwaukie Comprehensive Plan and specific titles in the Milwaukie Municipal Code. A draft chapter is attached for your review (Attachment 3). Below is a summary of the changes that staff is proposing.

- Addition of “Purpose” and “Applicability” sections that clarify that amendments to the Comprehensive Plan and Titles 14, 17, and 19 are all subject to this chapter.
- Addition of procedures for amendments to the Comprehensive Plan that includes approval criteria (currently these are contained in the Comprehensive Plan).
- Reorganized approval criteria that reflect the nature of the amendment being proposed.
- Addition establishing the authority of the City to distinguish between quasi-judicial and legislative zoning map amendments, including suggested thresholds.

Development Review Chapter

The purpose of the new Development Review chapter is to encourage quality development and ensure compliance with the standards and provisions of the zoning code through an efficient and effective land use review process that is separate and distinct from the building permit review process. Since the code lacks a formal development review process, staff currently does this review under the umbrella of the building permit review process, which is both ineffective and inappropriate. The new Development Review chapter would essentially formalize and legalize what staff is already doing, while providing a platform from which to apply additional standards created by future code projects.

Though creation of a new Development Review chapter would create the *process* by which new development is reviewed, the City would use it to implement its existing industrial, commercial, and residential standards. The next phase of this project will address some of the deficiencies with these standards, specifically as they relate to single-family and multifamily site and building design.

As currently conceived, Type I Development Review would apply to proposals that do not require discretionary review and are not anticipated to significantly impact surrounding properties. This review would ensure compliance with basic land use regulations, including use provisions and clear and objective development and design standards. New single-family homes and additions to existing homes would be exempt, and transition area review standards would be incorporated into this review process. Type II Development Review would apply to proposals that are larger and more complex relative to Type I Development Review proposals, and have the potential to impact surrounding properties. This review would ensure compliance with basic land use regulations and discretionary design standards.

Development Review would be different from Design Review in that it would apply to all development, not just downtown development, and would include a review of the whole site for compliance with relevant development and design standards. Staff plans to coordinate the drafting of the new Development Review chapter with the existing downtown Design Review provisions to avoid duplication and conflict.

C. Next Steps

The Planning Commission is scheduled to review and discuss the following draft chapters at its meeting on November 9, 2010:

- Conditional Uses
- Variances
- Nonconforming Uses and Development
- Map and Text Amendments
- Review Procedures
- Development Review

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. List of Conditional Uses (attached)
2. Draft Chapter Outline: Conditional Uses (attached)
3. Draft Chapter: Map and Text Amendments (attached)

ATTACHMENT 1

List of Conditional Uses by Zone

Use Category	Description of Use	Use Conditionally Allowed in the Following Zone(s)
Residential Uses		
Single-Family	• Single-family detached dwelling (includes manufactured dwelling)	CL
	• Residential home	CL
	• Single-family attached dwelling	R10; R7; CL
	• Type 2 accessory dwelling unit	R10; R7; R5; R3; R2
Multifamily	• Multifamily condominium or apartment dwelling	R3; R2.5; CL
	• Senior and retirement housing	R10; R7; R5; R3; R2.5; R2; CL
	• Congregate housing facility	R3; R2.5; CL
Lodging	• Boarding, lodging, or rooming house	R3; R2.5; R2; R1B; R1; ROC
	• Hotel or motel	R2; R1B; R1
	• Bed and breakfast	HP
Commercial Uses		
Office	• Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists	HP
	• Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific or statistical organizations	
	• Executive, administrative, design, or product showroom offices	R3; R2.5; R2; R1
Retail	• Offices, studios, or clinics of accountants, architects, artists, attorneys, authors, writers, dentists, designers, engineers, investment counselors, landscape architects, management consultants, physicians, surgeons, psychologists whose activities generate a minimal amount of traffic	CL
	• Offices of administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, scientific or statistical organizations whose activities generate a minimal amount of traffic	
Retail	• Bank or Financial Institution	CL
	• Retail commercial uses such as food store, drugstore, gift shop, and hardware store selling shelf goods primarily	CN
Service	• Food store or supermarket	HP
	• Drug and/or variety store	
	• Convenience store	
	• Retail specialty shops	
	• Boutiques	
	• Craft shops	
	• Gift shops	
• Galleries		
Service	• Bookstores	CN
	• Antique shops	
	• Art and music studios	
	• Personal service businesses such as barber, tailor or dressmaker, laundry, dry cleaning, shoe repair, computer services, bicycle repair, office equipment and services, electronics repair, photographer, and instruction studio	
	• Business services	
	• Sign painting shop	
Service	• Plumbing, heating, ventilation, or electrical shop	CG
	• Sheet metal shop	CG
	• Repair, maintenance, or service of the type of goods to be found in any permitted retail trade establishment	CL
Restaurant	• Funeral Home	CG
	• Animal hospital or boarding kennel	HP
Restaurant	• Catering services	CG
	• Restaurants	HP
Vehicle Related	• Drinking establishment	CG
	• Parking facility	CL
Entertainment	• Marina and boat sales	CG
	• Auditorium or stadium	
	• Motion picture theater	
Entertainment	• Entertainment use (theater, etc.)	BI; MU (Area 2)
	• Theater	
	• Public and private community buildings, indoor and outdoor recreational facilities, such as swimming pools, racquetball clubs, athletic clubs, health and exercise spas, gymnasiums, tennis courts, playground	
Other	• Adult entertainment business (subset of High Impact commercial)	M
	• Trade or commercial school	CL
	• High-impact commercial	CL; CG; M
Other	• Mini-warehousing, mini-storage, public storage, and similar commercial facilities that lease storage space to the general public	BI; MU (Area 2)

NOTE: Most of the uses listed on this table are also allowed outright in at least one zone.

Use Category	Description of Use	Use Conditionally Allowed in the Following Zone(s)
Industrial Uses		
	<ul style="list-style-type: none"> • Contractor's storage yard • Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses 	CG
	<ul style="list-style-type: none"> • Natural Resource Extraction 	M
Public Uses		
Public Spaces	<ul style="list-style-type: none"> • Community centers for civic or cultural events • Community meeting building • Youth center 	HP; BI; MU (Area 2);
Other Uses		
	Agricultural or horticultural use	CL; CG
	Temporary real estate office in a subdivision	R10 ; R7; R5; R3; R1B; R1
	Boat Ramp	DOS
	Private Noncommercial Dock	WG
	Marina	R2; R1B; R1

NOTE: Most of the uses listed on this table are also allowed outright in at least one zone.

CONDITIONAL USES

Draft Chapter Outline

NOTE: This document is a draft outline for discussion purposes. It will be the basis for the proposed code language, but is not the draft proposed code language.

I. Purpose Statement

The purpose of the conditional use regulations is to evaluate the establishment of certain uses that may be appropriately located in some zoning districts, but that may only be permitted if appropriate for the specific location for which they are proposed.

Conditional uses are not outright allowed uses. Although they may serve important public and private interests, they are subject to conditional use review because they may change the desired character of an area or adversely impact the environment, public facilities, or adjacent properties. The conditional use review process allows for the establishment of conditional uses when they have minimal impacts or when identified impacts can be mitigated through conditions of approval. The review process also allows for denial when concerns cannot be resolved or impacts cannot be mitigated.

Approval of a conditional use shall not constitute a zone change and shall be granted only for the specific use requested subject to such modifications, conditions, and restrictions as may be deemed appropriate by the review authority.

II. Applicability

This chapter applies to development identified as a conditional use in the base or overlay zone in which the development is proposed. This chapter applies to the establishment of new conditional uses and the modification of existing conditional uses.

III. Review Process

Establishment of a new conditional use or intensification of an existing conditional shall be reviewed by the Planning Commission pursuant to a Type III review process.

Minor modification of an existing conditional use shall be reviewed by the Planning Director pursuant to a Type I review process.

IV. Approval Criteria

Approval criteria for the establishment of a new conditional use or the intensification of an existing conditional use:

- The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.
- The operating and physical characteristics of the proposed use will be reasonably compatible with and have minimal impact on nearby uses.
- All impacts have been identified and will be mitigated to the extent practicable.
- The proposed use will not have unmitigated nuisance impacts from noise, odor, and vibrations greater than usually generated by outright allowed uses at the proposed location.
- The proposed use will comply with all applicable development standards and requirements of the underlying zone and any overlay zones, except as modified by the standards in this

chapter.

- The proposed use will comply with all applicable Comprehensive Plan policies related to the proposed use.
- Adequate public facilities will be available to serve the proposed use at the time of occupancy.

Approval criteria for the minor modification of an existing conditional use:

- The proposed modification will not increase the intensity of the use at this location.
- The proposed modification will comply with all applicable development standards and requirements of the underlying zone and any overlay zones, except as modified by the standards in this chapter.
- The proposed modification will not negatively impact nearby uses, protected natural features, or public facilities.
- The proposed modification will not alter or contravene any condition specifically placed on the existing use by a review authority.

V. Conditions of Approval

The Planning Commission, or Planning Director in the case of minor modifications, may impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and/or to protect the public's health and safety from adverse impacts caused by the proposed use. Conditions may include but are not limited to the following:

- Limiting the hours, days, place, and manner of operation.
- Requiring design features that minimize environmental impacts such as those caused by noise, vibration, air pollution, glare, odor, and dust.
- Requiring additional front, rear, or side yard width.
- Limiting building height, size, or location or limiting lot coverage.
- Limiting or otherwise designating the size, number, or location of vehicle access points.
- Requiring additional landscaping or screening of off-street parking and loading areas.
- Limiting or otherwise designating the location, intensity, and shielding of outdoor lighting.
- Requiring berming, screening, or landscaping and designating standards for its installation and maintenance.
- Requiring and designating the size, height, location, and materials for fences.
- Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, and drainage areas.

VI. Conditional Use Permit

- Applicant must record the decision with the County
- Approval runs with the use (not the land)
- Use must be operated according to approved permit
- Process for future review for noncompliance or unanticipated impacts:
 - Require compliance with existing conditions of approval
 - Suspend permit pending compliance with conditions of approval
 - Amend conditions of approval to mitigate previously unidentified impacts
 - Revoke permit if noncompliance continues

VII. Conditional Use Status

- Automatic Conditional Use Status: A legally established use currently identified in the code as a conditional use is a defacto conditional use, even if: (1) it had previously been identified as an outright allowed use or nonconforming use and/or (2) it had not previously undergone conditional use review.
- Loss of Conditional Use Status: A conditional use that has been discontinued for more than three years loses its conditional use rights.

VIII. Conditional Use Development Standards

- No changes proposed to existing conditional use development standards.

Proposed Amendments to Chapter 19.900

October 5, 2010

Commentary

This is a rewrite of the existing Chapter 19.900. The numbering and references in this rewrite are to the draft proposed new code structure as of October 2010.

The purpose statement establishes the relationship between the Comprehensive Plan and the land use regulations in the code.

The applicability section is intended to clarify what amendments are covered by the amendment procedures in this section.

Any change in a land use regulation (as defined by ORS 197.015) should be processed per this section. Though most land use regulations are in Title 14, 17, or 19, a provision is proposed that would make this applicable to any land use regulations within the Milwaukie Municipal Code.

Exemptions have been added for sections of existing code where there is a process for modifying zoning or Comprehensive Plan maps that is not an actual map amendment.

A section is proposed for addition to Chapter 19.200 that would reference this section (19.913). This would make a reference at the front in the ordinance about how changes to the ordinance are changed. Sections of the existing 19.200 may need to be modified or moved into this proposed section of code.

Definitions for "text change" and "map change" should be considered in order to clarify what constitutes a change to the map versus what can be corrected or changed administratively.

19.913 AMENDMENTS**19.913.1 PURPOSE**

The purpose of this section is to provide a process for approval of amendments to the City's Comprehensive Plan and to land use regulations within the Milwaukie Municipal Code. The approval process related to the Comprehensive Plan amendments is intended to ensure compliance with State laws and administrative rules, including the 19 statewide land use planning goals, and the Metro Code Title 2, Functional Plan. The approval process related to amending land use regulations are intended to insure compliance with the Comprehensive Plan.

The goals and policies of the Comprehensive Plan are implemented, in part, through the land use regulations of the Milwaukie Municipal Code. The sections of the Municipal Code that most directly related to implementation of the Comprehensive Plan are Title 14, Signs; Title 17, Land Division; and Title 19, Zoning.

19.913.2 APPLICABILITY

The procedures of Section 19.913 are applicable to the amendments described below.

- A. Amendments to add, modify, or delete the text of the Milwaukie Comprehensive Plan or its ancillary documents.
- B. Amendments to add, modify, or delete the text of Titles 14, 17, and 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.
- C. Amendments to change the maps of the Milwaukie Comprehensive Plan, including maps within ancillary documents. Changes to these maps resulting from actions taken by Section 19.1104, Expedited Process, are exempt from the procedures of Section 19.913.
- D. Amendments to change the "Zoning Map of Milwaukie, Oregon", which is the map established by Section 19.203. Changes to this map resulting from actions taken by Section 19.422.17, Boundary Verification and Map Administration, and Section 19.1104, Expedited Process, are exempt from the procedures of Section 19.913.

Commentary

The existing procedures in Chapter 19.900 have been moved to the procedures chapter and are not included here.

The Comprehensive Plan amendment approval criteria are essentially the same criteria that exist in Chapter 2 of the Comp Plan. Some minor modifications have been made to make them easier to apply during the hearings process.

The process and criteria for zoning text changes are fairly simple. The proposed changes remove the approval criteria from current 19.905 that seemed more related to site specific zone map amendments.

The language of the approval criteria have been slightly modified from the existing code to make them easier to apply during the hearings process.

19.913.3 COMPREHENSIVE PLAN AMENDMENTS

Applications for changes to the Milwaukie Comprehensive Plan shall be called a Comprehensive Plan Amendment.

A. Review Process

Changes to the Milwaukie Comprehensive Plan described by Subsection 19.913.2.A or C shall be processed as a Type IV Review per the procedures of Section 19.1004.

B. Approval Criteria

Changes to the Milwaukie Comprehensive Plan shall be approved if the following criteria are met.

1. The amendments are in conformance with the Comprehensive Plan.
2. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the comprehensive plan or land use map.
3. The public need is best satisfied by this particular change.
4. The change is in conformance with applicable State Statutes and Administrative Rules, such as the Statewide Planning Goals and Transportation Planning Rule.
5. The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

19.913.4 MILWAUKIE MUNICIPAL CODE AMENDMENTS

Applications for changes to the text of land use regulations within the Milwaukie Municipal Code shall be called a Zoning Text Amendment, regardless of the individual Titles involved.

A. Review Process

Changes to Title 14, Title 17, or Title 19 of the Milwaukie Municipal Code, or any land use regulation as defined by ORS 197.015, described by Subsection 19.913.2.B shall be processed as a Type IV Review per the procedures of Section 19.1004.

B. Approval Criteria

Changes to the Milwaukie Municipal Code described by Subsection 19.913.2.B shall be approved if the following criteria are met.

1. The proposed text amendment is consistent with other provisions of the Milwaukie Municipal Code.
2. The proposed amendment is consistent with the Comprehensive Plan.
3. The proposed amendment is consistent with the Metro urban growth management functional plan and applicable regional policies.
4. The proposed amendment is consistent with applicable federal regulations.

Commentary

The process for reviewing amendments to the Zoning map is proposed to change. Zoning map amendments may be treated differently depending on the size of the area included in the proposal. Changes that affect large geographic areas are legislative in nature in that they are policy decisions. Changes to smaller areas are quasi-judicial in nature in that they apply existing policies and procedures to individual circumstances. Legally, there is no definite threshold for what constitutes a legislative zone change versus a quasi-judicial zone change. The review process in the proposed code reflects this uncertainty but gives some guidance, and defers to the City Attorney to make the decision about which process is appropriate.

The approval criteria have been modified to focus less on the specifics of what development might occur within a zone and more on the general compatibility of the proposed zone in relation to existing surrounding zones. It is presumed that the development that will occur will comply with the relevant standards and criteria imposed by the zone.

Proposed Code Amendment

19.913.5 AMENDMENTS TO THE ZONING MAP OF MILWAUKIE, OREGON

Applications for changes to the Zoning Map of Milwaukie, Oregon shall be called a Zoning Map Amendment.

A. Review Process

1. Changes to the zoning map described in Subsection 19.913.2.D may either be processed as a Type III Review per Section 19.1003 or a Type IV review per Section 19.1004. The City Attorney shall have the authority to determine the appropriate review process for each individual Zoning Map Amendment. This decision is not a land use decision per ORS 197.015 and is not subject to appeal.

Generally, Zoning Map Amendments that affect 5 or more property owners or encompass more than 2 acres of land should be considered legislative in nature, and subject to Type IV Review. Zoning Map Amendments that involve fewer property owners and encompass a smaller area of land should be considered quasi-judicial in nature, and subject to Type III review.

2. Changes that affect both the zoning map and text of Titles 14, 17, and 19, or other land use regulation of the Milwaukie Municipal Code shall be processed as a Type IV Review per the procedures of Section 19.1004. These changes are subject to the approval criteria of Subsection 19.913.4.B and 19.913.5.B.

B. Approval Criteria

Changes to the Zoning Map of Milwaukie, Oregon shall be approved if the following criteria are met.

1. The area of the proposed zone change is compatible with the surrounding area based on the following factors.
 - a. Site location and character of the area.
 - b. The predominant land use pattern and density of the area.
 - c. Expected changes in the development pattern for the area.
 - d. The need for uses allowed by the proposed zone amendment.
 - e. The availability of suitable alternative areas of the same or similar zoning designation.
2. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided.
3. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.700.
4. The proposed amendment is consistent with the Metro urban growth management functional plan.
5. The proposed amendment is consistent with the Comprehensive Plan goal, policies, and land use designation map.
6. The proposed amendment complies with the state Transportation Planning Rule.

Commentary

19.913.5.C - E

No changes have been proposed for these existing sections of code.

Note: Staff needs to coordinate these subsections to ensure that they do not conflict with approval time limits that are being considered as amendments to the procedures chapter.

Proposed Code Amendment

C. Conditions of Approval

Conditions of approval may be applied to zoning map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, state, or federal regulations. Conditions of approval may include actual construction of facilities or a performance contract, bond, or escrow account to assure installation of public facilities to specified standards.

D. Modification of Official Zoning Map

For zoning map amendments not involving conditions of approval, Community Development staff shall modify the official zoning map of the City at such time as the ordinance of adoption goes into effect. For zoning map amendments involving conditions of approval, zoning map modification shall not occur until all conditions of approval are satisfied by verification by appropriate City staff.

E. Revocation

If conditions of approval are not met within 2 years of ordinance adoption, the Planning Commission shall hold a public hearing to consider the revocation of the approved zoning. This review shall follow the procedures of Subsection 19.1011.3 Minor Quasi-Judicial Review. The Planning Commission may also, upon determination that the applicant is making satisfactory progress towards completing conditions of approval, grant a one-time extension not to exceed a maximum of 2 years.