

**CITY OF MILWAUKIE
PLANNING COMMISSION
SPECIAL MEETING
MINUTES**

**Milwaukie City Hall
10722 SE Main Street
THURSDAY, November 17, 2011
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Nick Harris, Vice Chair
Scott Churchill
Chris Wilson
Mark Gamba
Russ Stoll
Clare Fuchs

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Zach Weigel, City Engineer
Tim Ramis, City Attorney
JoAnne Herrigel, Community Services Director
Wendy Hemmen, Light Rail Design Coordinator

1.0 Call to Order – Procedural Matters

Chair Batey called the special meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes – None

3.0 Information Items

Katie Mangle, Planning Director, noted additional resources were available for questions, including City staff as well as many technical staff from TriMet.

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

5.0 Public Hearings

- 5.1 Summary: Kellogg Bridge for Light Rail (*continued from Nov 8, 2011*)
Applicant/Owner: TriMet
File: WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09
Staff Person: Susan Shanks

Chair Batey called the public hearing on the light rail bridge over Kellogg Creek to order at 6:33 p.m., stating the hearing had been initiated on November 8, 2011 and was continued with the intent of allowing more time for public comment, questions, and deliberation. Public testimony remained open and Commissioners could ask clarifying questions of staff, the Applicant, or those testifying.

Chair Batey asked if any Commissioners wished to abstain or declare an actual or potential conflict of interest. There was none. She asked if any Commissioners had any ex parte contacts to declare since the last meeting.

Chair Batey declared that this hearing was a topic of conversation at her Island Station Neighborhood District Association (NDA) meeting. The NDA Chair had indicated concerns about the preservation of the oak tree. She had encouraged the NDA Chair to testify at this evening's hearing or submit a letter. The NDA Chair was in attendance, so perhaps was intending to do so.

Commissioner Gamba declared he had two phone calls since the last meeting, one from former Planning Commission Chair Jeff Klein, whose written comments reflected the phone discussion and were included in the packet, and another from Matt Menely, who also submitted his comments in writing.

All Commissioners declared for the record that they had visited the site. No Commissioners, however, declared a conflict of interest, bias, or conclusion from a site visit.

Vice Chair Harris confirmed that although he missed the first hearing on November 8, 2011, he had watched the video online and reviewed all the documents included in the packet in order to prepare to participate in tonight's hearing.

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

Chair Batey called for public testimony in favor of the applications.

Dave Aschenbrenner, 11505 SE Home Ave, Milwaukie, Portland to Milwaukie Light Rail (PMLRT) Citizens Advisory Committee (CAC) Member, said he supported the project. He had not been able to watch the video or review the material. Although most CUAB members wanted the pedestrian bridge and have lobbied for it, he understood there were concerns and funding issues involved with the project. Many people were willing to do whatever was needed to get the pedestrian bridge; however, he did not see City staff writing grants or looking for funds other than what the citizens were doing to find funds. Alex Campbell, former Resource and Economic Development Coordinator, who was no longer with the City, used to work on grant funding but now there seems to be another focus in the City. He hoped they could get back to getting some people out there looking for grants and money and lobbying in Salem and elsewhere.

Chair Batey called for public testimony neutral to the applications.

Cindy Tyler, 1959 SW Morrison St, #621, Portland, stated she supported the project, which would benefit Milwaukie and the region, but listed herself as neutral because she believed the pedestrian bridge should be a condition of approval. Constructing the pedestrian bridge would be less expensive while the light rail bridge was being constructed than as a separate project. The environmental concerns at Kellogg Creek demanded as little interference with the creek area as possible. The cost of the bridge was less than 1% of the contingency funds, which could not be spent until substantial completion; however, the pedestrian bridge could be included in the contractor's bid for the project as a whole. The downtown standards demanded that the pedestrian experience and connections were the first and foremost concern in any new construction, which was a legal reason for demanding the bridge.

Chair Batey called for public testimony in opposition to the applications.

Les Poole, 15115 SE Lee Ave, Clackamas County, distributed excerpts of the Supplemental Draft Environmental Impact Study (SDEIS) to staff and Commissioners. He stated he was speaking on behalf of the businesses and citizens on the south side of Milwaukie. He assured he had a lot of input and contact with the local businesses.

- He reiterated he was not trying to stop light rail. He was trying to encourage David Unsworth and TriMet to follow the Land Use Final Order (LUFO), because the design of the bridge and crossing did not meet the de minimis impacts criteria. The distributed material from the original SDEIS was pretty straightforward, stating if TriMet could not find a good way or different way to do the project, maybe they needed to go elsewhere.
- He was opposed to the elevated crossing that appeared to be an attempt to circumvent the mess at Kellogg Lake. Ironically, the filled lot that now was Kronberg Park was carved out of Kellogg Lake Park.
- He was at TriMet months ago and had appeared before City Council countless times. He had repeatedly asked for adequate mitigation there, and asked that Kellogg Lake Park and Kronberg Park be addressed appropriately and combined. He asked how the permits in the process could be valid if they did not have the correct property descriptions. Kellogg Lake Park, identified in the SDEIS and environmental study, had disappeared again.
- Obviously, there was not enough money to design the bridge in a different way, but that was not the issue; they were talking about a bridge and an overpass through public resources, including Kellogg Lake, Kellogg Lake Park, the Trolley Trail, and Willamette Greenway. He anticipated a court case. Additionally, the money might not be available for the County's portion of the project, which would bring them back to ending the line at Tacoma St and bringing an appropriate streetcar into town, which was an alternative he would not oppose.
 - For the last several years, businesses have been kept in a condition of uncertainty about the project.
- He supported a pedestrian bridge, but it was a separate project and should not be in this discussion. He noted the diagram had been provided showing a pedestrian bridge that was not part of this process blocking the view of the historic railroad trestle structure.
- He received a phone call from supporters of Voter Approval of Urban Renewal Measure 3-386, and they did not see the Clackamas County portion of the project being viable or affordable. With \$25 million, plus \$5 million from Milwaukie, and a \$30 million federal match, he asked what the County or Oak Grove got besides the end of the line, what he considered a rape job at Kellogg Lake and the Trolley Trail, and of course, the parking. From the phone call, he believed there would be a petition for a vote on the light rail project, and based on recent events, it could be on the ballot in May.
- The Commission had been put in an awkward position by their predecessors, including Deborah Barnes, Carlotta Collette, and former Mayor James Bernard who never recused himself from the process. Now, this has turned into a real mess.

Commissioner Stoll:

- Thanked Mr. Poole for testifying and said it sounded like Mr. Poole would like the light rail to end at Tacoma St.
 - **Mr. Poole** responded he would like that, but the issue tonight was the hearing's criteria involving Kellogg Lake and what would happen with the Park Ave segment.
- Stated one goal of the light rail project was to get it through Milwaukie and to the edge of the unincorporated area of Clackamas County. As such, it had to cross Kellogg Creek, Kellogg Lake, and would either cross McLoughlin Blvd or be on the other side of McLoughlin Blvd. He asked what Mr. Poole suggested they do if it had to cross Kellogg Lake to get to where it was going to end.

- **Mr. Poole** suggested they look at the LUFO and realize that for 850 cars of parking, they could save about \$135 million to \$140 million. The Park Ave segment needed to be redesigned, and more than that, the Park Ave segment should be delayed, which would probably stop the project. That would put the end of the line at Lake Rd, which no one in Milwaukie wanted. No criteria stated that light rail had to go into the county, which had resulted after a fraud at Kellogg Lake and Kronberg Park.
- Noted there had been many arguments over the past years about whether light rail was a good project, bad project, or the best project. He personally believed in bus rapid transit, and had raised that idea, but he had accepted the fact that this would be a railroad rather than a busway, and the discussion was past that now.
 - **Mr. Poole** noted that the money was not there. They tried to hijack money from the Sellwood Bridge and other things. The money was never there to extend the line beyond Lake Rd in a manner that would not create major impacts to the public resources. Two years ago, TriMet knew they should build a minimum operating segment as mandated and locate 600 cars at Tacoma St. Now, the design was to phase in phasing. Now they were going to put half the cars from Tacoma St onto a surface lot at Park Ave and eliminate that parking structure.
 - He sincerely believed that anyone wishing to study this further would find that the extension over Kellogg Lake was not required for the project to move forward.
- Stated Mr. Poole was still arguing about alignment. Regardless of how people felt about light rail, a vast majority of the people in Milwaukie did not want the end of the light rail line to be downtown with a parking structure. Basically, Mr. Poole was stating that the current alignment should be thrown out.
 - **Mr. Poole** stated that was not the case. All the studies, including the environmental impact statement and the Locally Preferred Alternative (LPA) report, made it very clear that anyone building a light rail line to Milwaukie that had a \$300 million-plus funding shortage was mandated to build a minimum operating segment.
 - The final Park Ave segment was unnecessary for this project, and there was no money to remedy that. TriMet would have to reapply for more money to properly mitigate and design the Park Ave segment, which they were not about to do in the current environment.
 - The obvious solution would be to modify the minimum operating segment and put more parking north of town where it started, before the lunacy at Kellogg Lake where Deana Kronberg Swanson, the community, and TriMet were deceived. He noted people were watching over him because of how ugly this has gotten.

Commissioner Churchill noted Mr. Poole's handout mentioned Section 4F, and confirmed his concern was that, as proposed, the project did not have minimal impact to Kronberg Park.

- **Mr. Poole** explained the train was directly over the park and about eight-tenths of an acre would be condemned. TriMet tried to shorten the bridge and move the trail farther west, but that encroached on the Water Quality Resource (WQR) area so the trail would be more like a sidewalk and very dangerous for bicyclists. That part of the trail is a critical link between the riverfront and Park Ave, and would have an incredible amount of use with or without light rail. Public safety is not to be compromised for the benefit of any project.
- He noted he would not return without an attorney present, reiterating that he represented many people and the same group that passed Measure 3-386.
- Now that the idea of doing urban renewal at Park Ave was in jeopardy, Park Ave would get the end of the line and all the negative impacts no one wanted. Who would police

that area? What will safety be like where the trail goes into the backyards next to that parking structure? It would be another Town Center..

- He clarified that to avoid major impacts at Kronberg Park, the light rail line was to remain inside and parallel the railroad right-of-way. However, with the highway at the end of park, the only way to make the turn south was to place light rail on top of the Trolley Trail. Major impacts were being created to the Trolley Trail to avoid Kronberg Park.

Commissioner Stoll noted only a tiny portion of the 7-mile Trolley Trail was impacted, and it was to accommodate a regional transportation improvement.

- **Mr. Poole** responded it was not a tiny portion; public resources must be avoided if possible. The tracks could be put elsewhere or the corner of Kronberg Park could be cut off diagonally, though he was not proposing that. If the turn was made earlier into Kronberg Park, which was really Kellogg Lake Park according to the deeds, the mess at Kronberg Park could be cleaned up and light rail would not have to be on top of the trail at all as it crossed the highway. River Rd was such a critically dangerous place anyway.
- In addition, the Willamette Greenway requires that views not be obstructed. He also did not believe Island Station residents realized they would get piers looming over their businesses and backyards. Property values would not increase. It was a lot of money for a mediocre result.
- The Park Ave segment increased project costs from \$900 million to \$1.5 billion resulted when things blew up at Kellogg Lake and light rail had no place to go but to keep heading south. He hoped people would verify his comments by checking the public record.

Commissioner Wilson left the meeting at this time.

Dion Shepard, 2136 SE Lake Rd, Milwaukie, hoped to testify after TriMet addressed some of the concerns expressed at the last meeting. She wanted to discuss the oak tree.

- The oak tree was discussed at the NDA meeting yesterday and they had agreed they cared enough about the tree that they voted to send in letters to help save the tree. She and Ed Zumwalt, Historic Milwaukie NDA Vice Chair, met with Wendy Hemmen, Light Rail Design Coordinator, to try to understand why the tree could not be saved.
 - It seemed one branch going toward the proposed structure could easily be pruned, and the structure would be well within the parameters of the space it needed. Ms. Hemmen explained part of the construction site was in the railroad right-of-way and part was on Kronberg Park, as well as the requirements of the staging for placing pieces of the bridge in place.
 - She understood the challenge of having the tree in the construction zone, but she wanted to see what options or alternatives TriMet had really explored to save the tree.
 - She asked Ms. Hemmen if construction of that particular segment near the oak tree could take place from the opposite side of the existing railroad structure. It would be very complicated to go over or around the tree, but the existing structure was at the same level as the new structure. A temporary construction site could be made just for that segment.
 - She hoped the Commission would ask TriMet the same questions, or perhaps TriMet had looked at other alternatives. It was a 150 to 200-year old tree and replacing it was not a good option.
- In reading the document, she was a bit confused when TriMet referred to the space on Kronberg Park as a construction site as opposed to a staging site. She asked if equipment would be there just before the construction of the elevated structure from Lake Rd to the

side of River Road, or if the equipment would be there until the entire alignment to Park Ave was completed.

- She had read there would be 70 trips a day for the duration of the construction period and asked if the construction plan addressed how emissions, odor, etc., on park land would be handled over however long the project took, and how that smell would be dissipated.

Commissioner Churchill confirmed Ms. Shepard was asking that public testimony be left open until TriMet's comments so she could have a chance to respond. He also clarified she was asking for more details about the use of the staging area proposed on Kronberg Park, and about the mitigation measures for the use of the park.

Chair Batey noted she would defer that question.

JoAnn Bird, 12312 SE River Rd, Milwaukie, stated they had lived in the area for 25 years and she wanted to testify mostly about the oak tree. If the Commission had the political will to say TriMet needed to work around the tree and not over the top of it, the tree could be saved. The Oregon Department of Fish and Wildlife (ODFW) said the oak tree was between 150 and 250 years old. The tree probably existed before Lewis and Clark came to the area. The tree was there when her ancestors settled the valley six generations ago. She did not think this should be taken lightly. It could be pruned and the limb could be moved out of the way. If it were an old structure, they would try to preserve it; but because it was a tree, everyone figured it could be traded for more trees. She had heard the biodiversity lost in one old growth tree could never be replaced. Her husband was an engineer and had commented that this was just a problem to be solved; it could be worked around. She understood expense was an issue, but the whole line was expensive. If they could not mitigate the expense to save one tree, then there was something wrong with the whole social structure and the way they were doing it.

Jeff Klein, 4479 SE Logus Rd, Milwaukie, stated he was testifying in a neutral position. He had talked with some of the Commissioners over the last couple of days, and in those conversations, which were not related to TriMet, many expressed that this was a big application. Right now, the Commission was running up against a pretty tight land use clock, and this was an important project. If the project were so big, complex, and the application so voluminous, the right thing to do would be to make sure they understood the information in the application. If they did not understand all the information and the implications in the application, the Commission should ask the Applicant to extend the 120-day clock. It was important to have the time to look at this. If the Applicant was unwilling to extend the time, they should deny the application and send it through to the next process. If the Commissioners were now confident in the information they had, they should go ahead and vote; but if not, and they felt like something was missing, they should ask for that time. The Applicant and the City were partners, and if TriMet refused to extend the clock, he would deny the application because that is not what good partners do. The importance of this particular project on the city was obvious and it was important to get this right.

Chair Batey noted the handouts from staff contained some of the testimony alluded to during public testimony, and some people who had testified had written letters. Staff also sent a memo from TriMet via email, but no paper copy had been provided to the Commission.

Susan Shanks, Senior Planner, briefly reviewed the comments received and activity that had occurred since the November 8 meeting.

- The comment received from Matt Menely was included in the packet. Written comments received from Dion Shepard, Steve Dorman, and Jeff Klein were forwarded to the Commission via email; hard copies were also distributed.
- The Commissioners had made information requests by email. One set of questions created the supplemental packet, which the Commission had hard copies of as well.
- TriMet submitted more information and would introduce hard copies of that information as exhibits when they were mentioned. These exhibits had also been forwarded to the Commission via email to allow as much time for review as possible.

Chair Batey proposed that the Commission identify major issues and areas of questioning before TriMet came up to testify so they could be approached more systematically. The list would be useful for both questions and Commission deliberation, but would not be an exclusive list. The oak tree and pedestrian bridge were two obvious issues.

The Commission compiled the following list of issues, which were displayed on a board:

- Oak tree in Kronberg Park
- Pedestrian bridge
- Use and square footage of Kronberg Park as a staging area
- Smell/emissions impacts from construction
- Light and noise impacts from the train and construction
- 120-day clock
- Effluent created by the track lube (stormwater)
- Impact of temporary bridge footings on springs in Kellogg Lake
- Jump span as part of station permit
- Lighting for the entire bridge: both on the bridge and the jumpspan as a design aspect of the pedestrian bridge underneath

Chair Batey called for the applicant's testimony.

Dave Unsworth and **Jeb Doran, TriMet**, addressed the topics raised, including questions and concerns raised at the November 8 meeting. Key discussion points and responses to additional comments from the Commission were as follows:

Oak Tree: TriMet believed the oak tree was beautiful and healthy and wanted to find a way to save the tree, if possible. Additional information was distributed to the Commission that included a memo dated November 17, 2011, from Shawn Kummer to Jeb Doran and several diagrams.

The handout was reviewed as follows:

- The memo on Page 1 of the memo highlighted why TriMet and its consultants did not believe the oak tree could be saved. Issues included needing additional staging area beyond that approved in TriMet's current permits and Final Environmental Impact Statement (FEIS) approvals; severe safety risks with regard the lifting over and around the tree, rigorous pruning and limbing, violating industry standards for the root protection zone, and the inability to justify the increased costs with the low probability of the tree's survival. Given these factors, TriMet would comply with staff's proposed condition that required the placement of additional oak trees in and around the future trailhead.
- The diagram on Page 2 showed that the bridge alignment itself impacted some of the tree canopy. In addition, a clearance area was needed to construct scaffolding, for formwork and other activities, not only to get the tubs in place but also to get the bridge deck on the top formed, poured, and completed.

- A large truck was also needed to bring in the bridge pieces. The picture on Page 4 provided an example of how long the girders were as they came in. The longest span would be about 120 ft, and the truck needed to drive out onto the work bridge for the girder to be placed.
- The turning movements for such a large vehicle would impact some of the canopy on the opposite side of the tree, as well as the root protection zone due to the needed height clearances of about 18 ft.
- The diagram on Page 2 was reviewed, indicating the paths the trucks would need to take. As proposed, TriMet would alter the tree canopy on both sides in order to get in and around the tree before the work began. In order to go around the tree, the existing 50-ft easement line, shown in blue, would need to be extended about 40 ft farther into Kronberg Park in order for the trucks to make the turning movement.
- **Commission Stoll** confirmed that TriMet was proposing execution of the tree based on some arborists' judgment; but the tree had probably suffered a number of insults in 150 years. With proper pruning, the tree might survive if TriMet could work in an additional 40 ft of Kronberg Park.
- The project would currently use 10,000 sq ft of the approximate 3.5-acre park. TriMet tried to minimize by design their use of the staging area directly adjacent to where they had to construct.
- While TriMet had saved similar trees in similar circumstances in the past, the hand drawn example on Page 5 illustrated the staging for Pier 5 on the south bank of the creek.
 - Without the tree, the truck would pull up immediately adjacent to where the lift would occur, and a 300-ton crane would lift the piece about 20 ft to 26 ft in the air to get the clearance and then set it into place; a very easy, standard pick. However, with the tree in place, two, 500-ton cranes and a 90-ton crane would be needed, almost tripling the crane impact in and around the tree. The 90-ton crane was needed to construct the two 500-ton cranes. The 90-ft bridge section would need to be lifted more than 80 ft in the air, extended over the tree, and positioned in the bridge by synchronizing the movement of the two cranes.
 - No guarantees exist that the cranes would be able to stay out of the root zone or that the tree would survive.
 - Safety was a significant consideration as workers lift a very large piece of steel almost three times higher than necessary without the tree. The tree canopy's 60-ft width even as pruned could impact the safety lines attached to the section and the workers.
 - TriMet decided that with that kind of impact to the tree, they should look at how to mitigate it and understand its removal, which is why they agreed with the staff's condition.
- Having the tubs brought in from the Union Pacific trestle side would actually be more difficult and dangerous. Besides the difficulty in coordinating the trains, the distance from the centerline of their rail to the centerline of TriMet's southbound rail was actually 25 ft, a very large span to lift something up and reach across.
- The handwritten drawings of the diagram on Page 4 were described. The green items indicating the positions of the delivery truck and crane with the tree removed and the red showing the location of the truck and two cranes if the tree remained. The red circle signified the tree canopy. The total width of the delivery truck and tub would be about 10 ft. The tubs were about 9 ft wide
- **Mr. Doran** explained they had to be outside the space where the bridge was being constructed when the pieces were picked up due to the overhang on some suspended seams that must be supported in order to position the tubs in addition to the piers. They were not going from pier to pier as shown in some of the concrete pictures.

- The overhang of the concrete was 5 ft and the trucks could not be any closer than the width of the column caps.
- The scale of the drawing seemed large.
- **Commissioner Gamba** felt it was easy to see that the tree did not need to be removed.
- **Commissioner Fuchs** noted that on a smaller scale, trees in similar situations often get a disease because they are so damaged, or they fall on a house, or were cut down by nervous homeowners anyway. The choice to remove this tree was made when the alignment choice was decided. Given all the construction, it was almost a moot point.
- The pick structural layout would be much more detailed as TriMet developed the conduct of construction plan. They had not considered the construction sequence with the mindset of trying to save the tree, because that issue had been discussed before with the City, the Commission, the DLC, and internally, and it was concluded that the tree would not be able to be saved. That was why no further details were available about how this would be done with the tree in place. No other pick or crane configurations had been explored other than shown.
 - A “pick” is the process of picking up the steel off the carrier or the staging area and lifting it up, over and into place. This was technically two pick sequences, one with the tree and one without the tree.
- TriMet had spent time with its construction management group looking at different ways to do this and the conclusion was they would still be impacting the tree and its root ball by using two cranes as they moved through the staging area.
- It was possible to work around the tree’s root ball; one option was illustrated on Page 5 with the two cranes, but it posed cost increases, impacts to construction safety, worker concerns with pinch points being created by the tree around the truck, etc. TriMet was not prepared to assume the big liability issue if something went wrong and an accident occurred.
- **Calvin Lee, Structural Engineer, TriMet**, agreed a single crane existed that could do that particular work, so a single crane pick was possible. The question was determining what that particular crane was, its size, reach, and height. The cranes set up in the configuration shown would not be big enough to pick over the railroad. The steel tubs weighed 40 to 60 tons. Picking from the other side of the railroad track would be a blind set, where the crane operator could not see the beam being set on the far side, similar to high-rise construction. He was not aware of a locally available crane big enough for this purpose, but one could be mobilized from another location.
- **Mr. Doran** clarified that the two lines in the displayed plan were actually the centerlines of each set of tracks; the tracks themselves were not shown on the diagram (Page 5). The green box might be drawn a bit too big as this was done today for the purpose of illustration; however, the overall function of how these picks occurred were still as drawn.
- Cost overruns to save the tree had not been calculated. Going from one to two cranes would double the cost of the cranes. Two cranes would only be needed for a couple of weeks for the picks on this section.
 - While cranes do swivel and pivot, the functionality of their lifting capacity was based upon how far they boomed down. The load rating of a crane dropped quite dramatically as it moved away from the center point. At 45 degrees from vertical, 2/3 of its capacity was probably lost. The farther away from the center point that the girder was being held, the lower the capacity of the crane, making an even larger crane necessary. It was a balancing act to determine the size of crane to use.
 - **Commission Churchill** stated crane configurations exist, probably even with a single crane that could pick a 60-ton load at that reach distance, thus providing an option for saving the tree. He asked TriMet to explore options with crane consultants.

- Whether one or two cranes were used, there was still the issue of how much more of Kronberg Park TriMet would need to access.
 - The piece would still need to be lifted over the top of the tree. With adequate reach, the boom could be swung from further north. While swinging such a large item ran the risk of damaging the tree, risks are often taken in high-risk construction, like construction done in The Pearl.
- The Applicant's presentation was too simplistic and alternatives had not been explored.
 - There are ways to install this piece around the tree. The fundamental question was: is it reasonable to expect the tree to survive under two years of construction with this kind of impact, or to follow staff's recommended conditions to mitigate those trees in a planting? TriMet believed that in this particular instance, the safe bet was to mitigate the trees per the letter of the Code.
 - No arborist report had been generated. The memo on Page 6 of the handout was from Landscape Architect Shawn Kummer, an associate with GreenWorks.
 - **Chair Batey** noted a tree could take 15 years to die, and a dying tree did not necessarily mean it could not be a valuable habitat for many years to come.
 - **Commissioner Fuchs** stated disease and trauma were two different things. Given the type of trauma being discussed with the severe pruning and affecting the root zone, an arborist's report would be helpful. The question was whether the tree's end would be drastic or dangerous.

Kronberg Park as a staging area:

- The intent was to use a minimal amount of Kronberg Park to stage during that period of construction. TriMet was using 10,000 sq ft in a 50-ft swath and trying to minimize any impacts on that area.
- The project was being built on Union Pacific property, which avoided the park; the discussion regarded the temporary use of the 50-ft swath during the construction.
- **Ms. Shanks** explained if saving the oak tree were made a condition, TriMet would have to address enlarging the staging area in Kronberg Park with both the City and the Federal Transit Administration (FTA), which would be a process. She was not privy to the ongoing negotiations between the City and TriMet regarding the construction easement agreement. A letter regarding that easement was included in the packet.
- **Ms. Mangle** did not believe any land use codes would prohibit the expansion of the staging area. Not knowing the outcome of those negotiations, a condition could require that X be done if TriMet is able to negotiate with the City for a larger staging area.

Smell/emissions of construction area:

- Diesel trucks would be coming into the site, as well as cranes. On an average day, there were 17,600 cars on McLoughlin Blvd just north of downtown Milwaukie. The number of trucks coming to the site would be significantly less than 1% of that total number of vehicles per day.
- Contractors not operating diesel vehicles turned them off rather than letting them idle. The conduct of construction asked contractor's to pay attention to neighborhood issues such as not idling a truck or car if it was not necessary.
- TriMet agreed to the condition concerning noise impacts during construction. The condition laid out some Code compliance issues that must be addressed, such as hours of construction and obtaining noise variances if noise levels are exceeded.
- Most work would occur during daytime hours, so no light impacts were involved with construction. A portion of work would occur at night, which would require an ODOT permit to

address noise criteria related to spanning over the road without closing McLoughlin Blvd. It was common practice to lift something over a roadway at night.

Revisiting Kronberg Park as a staging area:

- **Commissioner Churchill** asked how soil preparation and proper mitigation for soil compaction and construction impacts would be addressed.
 - Best management practices would be utilized for the soil preparation of the Kronberg Park staging area both for erosion control as well as for constructing the access road. They would work to upgrade the existing access road to be able to handle the construction traffic. The upgrading would include the clearing and grubbing as well as laying down a geotextile fabric followed by 6 to 8 inches of crushed rock gravel on top. It would not be an engineered roadway.
 - At the completion of the project, all the material, including the geotextile fabric would be removed and the standard replant followed. TriMet would comply with all relevant development Code standards that applied to access roads for construction, erosion control standards, and other best management practices.
 - TriMet would also comply with mitigation standards for compaction resulting from the trucks, loads of gravel, etc. but certain details were beyond the scope of land use review. When done, TriMet would remove the material they placed down, put appropriate soils back in and replant it. If something occurred and it did not grow, TriMet would return to fix it.
 - All the impacts that TriMet was required to address for the land use approvals had been addressed and were reviewed by a third-party consultant hired by the City. Per the area of review that TriMet was asked to address in the land use application, the mitigation was deemed appropriate for the use of the property and the compaction or damage to the soil. Those details were included in the application and materials presented at the November 8 meeting.
 - **Ms. Shanks** added that one way the City approached such things was to look at how it wanted the property left. TriMet was required to monitor the property for a certain number of years after the project to ensure the site was left in equal or better condition. Sometimes contingency plans were needed if the original mitigation plan did not hold, so it was an ongoing process and became an ongoing condition of approval as recommended in the staff report.
- Very large cranes, trucks, and a lot of steel coming in would compact the soil and have impacts on the water table immediately adjacent, as well as the land that would be a park, so understanding the details was important.
 - **Ms. Shanks** stated the packet included prior geotechnical studies that concluded the site was pretty stable, and also already compacted because of the type of fill put in there. This was just one indication that there was less of a concern about something sinking, creating a sinkhole or being unstable in that way.

Impact of footings on springs in Kellogg Lake:

- TriMet had been presented information to the Planning Commission for the last year about what was being proposed and what was being done. The design of the bridge had been modified to span the lake itself. Placement of the main piers was outside and above ordinary high water in part to avoid the lake itself. The work bridge would go across the lake and some piers would be placed in the lake itself.
- A geotech analysis had been done, but it did not identify the springs' locations. The springs were not mapped, so there was no way to identify their exact location.

- Staff was not sure the City had jurisdiction over this issue because the City did not regulate in-water work areas and had no related criteria. The issue could be discussed at a future worksession if more information was needed.

Light and noise impacts from the train:

- TriMet had gone through an environmental impact statement regarding noise from the train and had applied the applicable FTA criteria, which had been reviewed. Additional mitigation was proposed on the bridge itself. TriMet believed they complied with the federal rules related to noise.
- TriMet had been conditioned to do an additional study on light from the train prior to the development permit and this was part of the approval criteria.
- A continuing condition required an additional analysis of the light on the train once operational, especially where the train curved on the tracks over McLoughlin Blvd, to understand and mitigate for impacts, if any.

The Commission asked for an update on the lease negotiations involving Kronberg Park.

Kenny Asher, Community Development and Public Works Director, reported that those lease negotiations had not started in earnest. As shown in the letter in the packet, the City signaled its willingness to allow a staging area on the park through the National Environmental Policy Act (NEPA) process and discussed getting to terms with regard to compensation, restoration activities, etc., after final design. The 90% plan set would be published in a matter of weeks. TriMet was getting closer to knowing what would happen in that area. The parameters of the letter were still the City's parameters: no permanent impacts, the duration being as short as possible, and fair compensation.

Mr. Unsworth added that fair compensation was essentially doing and reviewing an appraisal, having it concurred by FTA, and negotiating with the City based on that appraisal.

- He explained that various property acquisitions were involved with the leasing of land at the bridge crossing the Willamette River; some were donations and acquisitions. TriMet had \$5 million in land donated. Some property was leased for some of the staging area to construct the bridge; however, that property was donated by Oregon Health Science University and Zeidel. There were many leases, including a \$2 million lease. TriMet would work through the normal process to negotiate fair market value with the City.

Commissioner Churchill asked that the Commission receive updates as the negotiations progressed.

Effluent created by track lube:

- To avoid wheel squeal on tighter corners, a wayside oiler used a small amount of biodegradable oil. No issues were experienced in other places where it was used. TriMet would get back to the Commission regarding the composition of the oil, but it had been approved through the process to meet the 401(C) water quality certifications.
- Any water that would carry that oil would also go through the water quality treatment facility. Duct banks on each side of the bridge helped prevent water from spilling off the edge. Any water from the bridge would be channeled to stormwater treatment facilities at either Lake Rd or River Rd.
- Although wind driven rain could drive water off the edge of the deck, the plan reflected all of the best management practices currently in the industry. TriMet was required through the development permit process to submit a stormwater management plan for review.

Ms. Shanks suggested the Commission hear how JoAnne Herrigel, from a parks perspective, had been involved in the review and direction to TriMet with regard to the mitigation.

JoAnne Herrigel, Community Services Director, stated she and Ms. Shanks had met with the consultants to review the mitigation. The initial mitigation plan had a block of plants established in one specific area, which they believed should be spread out. They did not know how soon a master plan would be developed for Kronberg Park, and did not want to block any exit from the proposed pedestrian bridge and have to later remove an established line of trees, if and when that bridge was built. The flat pastureland was left open and they tried to plant from the top of the bank and below, in a sort of band that fanned out along the upper edge without blocking the view from the top of Kronberg toward the lake.

- She had been involved in some of the pre-master planning for Kronberg Park. As mentioned at the last Commission hearing, North Clackamas Parks and Recreation District (NCPRD) area volunteers had planted plants there, but they were all centered around the outer edge and mostly to the southeast corner of the property, again, with the intention of not precluding any future development of pathways or passive uses on the property.
- She explained that no master plan existed for Kronberg Park due to lack of money and staff. Over the 18 years she has worked for the City, she had been fairly successful at getting master plans, final designs, and parks built in the city, but it was difficult now with her current level of responsibility, minimal staffing level, and the lack of a parks budget. She had sent a letter asking if NCPRD could possibly help with a master plan for Kronberg Park and to complete master plans for a couple other parks, but she was fairly rebuffed. City Council and staff now needed to decide if they wanted to move forward with a master plan anyway and allocate staff and money or push back on NCPRD as the designated park operators and maintainers to move forward with these things.
- The oak tree in Kronberg Park was nice, and had been brought to her attention at a recent open house. Prior to that, no one in the community had raised the issue to her during the pre-master plan discussion.
 - If the tree could be pruned and avoided without huge construction changes to get around it and compacting the rest of the property or going over the railroad, it might be worth saving. However, the impact of the actual construction might ultimately kill the tree. If the tree was removed, the mitigation should be increased to some extent so the oaks in that area could be increased, and the bigger the better.
 - She was personally not in favor of spending more money and more resources to get around something. The cost benefit analysis really needed to be considered.
 - To her knowledge, an arborist had not looked at the oak tree.

The Commission took a brief recess and reconvened at 8:45 p.m. Discussion regarding the Commission's list of topics continued with these key comments:

Jump span:

- The jump span issue only regarded the lighting under the jump span and not the entire jump span. The jump span was part of the bridge and was being permitted with the subject application, except for the lighting underneath the jump span. The City had already stated that the proposed lights as permitted would not be allowed. The condition of approval required the Applicant to resubmit a different lighting proposal with the light rail station application. The current set of recommended findings and conditions did not include the lighting.

- The jump span would not go unlit, but that one particular issue was being deferred. The conditions staff wrote following discussion at the DLC meeting were not defined enough, and the City Attorney advised that it needed to be a bit more specific. The thought was to have another round of discussions about the issue, and the condition would enable that discussion.

Pedestrian bridge: A handout describing the funding applications for the pedestrian bridge was distributed to the Commission.

- **Jeff Joslin, KLK Consulting, 906 NW 23rd Ave, Portland**, stated they helped prepare the applications. He reviewed the memo that had been provided electronically and now distributed as a paper copy with these key comments:
 - The application was crafted in a manner that identified how the Kellogg Bridge crossing met all the applicable approval criteria as a freestanding element, and then to seek an approval for the pedestrian bridge when and if funding is achievable. The memo focused on criteria that applied to the pedestrian bridge in particular. TriMet, along with the DLC and staff, concluded that the criteria most relevant to the pedestrian bridge were entirely met in a freestanding manner by the Kellogg Bridge with or without the pedestrian bridge, as well as the criteria related to the pedestrian bridge itself.
- **Mr. Mikolavich** noted TriMet was very supportive of the pedestrian bridge and designed the bridge to allow for the pedestrian bridge. Costs had been added to allow the bridge to be placed underneath Kellogg Bridge. The NEPA document clearly stated that clearance was provided for the City to build the pedestrian bridge either at the same time or later. The biological assessment with National Oceanic and Atmospheric Administration (NOAA) Fisheries included the same clearance. The Section 404 Permit from the Army Corps of Engineers and Department of State Lands included that same bridge.
 - The NOAA application included both scenarios of the pedestrian bridge being constructed at the same time and a later date, so the approval provided clearance for both. TriMet would confirm whether the NOAA approval would continue beyond the construction period, and how long the City had to work under that approval.
- At some considerable expense, TriMet had applied for a federal Transportation Investment Generating Economic Recovery (TIGER) grant for money to add the pedestrian bridge. They also put an application together for Connect 3 Oregon funding and greatly assisted the City in applying for some ODOT flex funds. Rather than making a condition of approval, TriMet asked that the focus be on asking the State to fund the pedestrian bridge. Information about the applications and writing support letters urging the State to fund the bridge was in the handout.
- The pedestrian bridge was not in TriMet's project budget. A land use decision had been made on the project under House Bill 3478, which stated that unnecessary approval criteria should not be provided. "Unnecessary" was further defined as not having sufficient funds in the project budget to pay for it. Last year, TriMet lost 6% federal funding and now had 50% federal funding. Approximately \$45 million had to be cut from the project scope, which was felt in a number of different places. The intent had always been to get to Park Ave.
 - **Tim Ramis, City Attorney**, stated the City agreed that adding the pedestrian bridge as an approval condition would not comply with the LUFO.
- Work in the water had to be done within the water construction window, so the temporary work bridge would be removed in 2013. Funding for everything to be built at once had to be secured within this, and probably the next, in-water work window.
- People who wanted the pedestrian bridge should contact the appropriate people with flex funds and let them know that this was a very important issue. TriMet had done that through its application processes and in seeking money to have this occur.

- At the last attempt for the Metropolitan Transportation Improvement Program (MTIP) money, many people in Milwaukie put in comments, but how much had been communicated about how to provide comments this time around was unknown. Milwaukie received MTIP money for a bikeway on 17th Ave, so regional dollars were coming to Milwaukie.
- A temporary bridge would be necessary to construct the pedestrian bridge. The estimated cost for the pedestrian bridge was \$2.4 million, if built at the same time, and that included pedestrian connections costing about \$1.4 million. The boardwalks had to be elevated, and there was some difficult terrain to work around.
 - Building the bridge later would be more expensive. The temporary bridge would cost approximately \$300,000 to \$400,000. TriMet understood it was better to do the pedestrian bridge during the initial construction.
 - TriMet created three online videos showing the application that TriMet had done to find money for the pedestrian bridge. They did most of the third application for the City because TriMet believed it was an important project.
- Most or all the in-water disturbance on this project would be the installation and removal of the temporary bridge because the actual bridge piers would be above the ordinary high water, a modification that resulted from input from the DLC and Planning Commission within the last year. Constructing the pedestrian bridge separately would result in twice as much in-water disturbance.
- On this project, they expected to come in just barely under budget because \$45 million of scope had been cut. The first intent was to look at where it made sense to add those cuts back. Two pedestrian bridges over the Union Pacific railroad in Portland were cut. TriMet hoped to place those bridges later if savings and some breaks in pricing were found. Neither of those bridges required that TriMet go back and disturb a natural area. Again, it would also be better to build those bridges now.

Lighting on the bridge:

- **Vice Chair Harris** clarified he had a suggested minor modification to the conditions that could be addressed during deliberations.

120-day clock: A schedule was provided to the Commission and reviewed. Key discussion points included:

- The steps TriMet had taken and intended to take were noted. These steps would enable them to build the first work bridge during the first fish window. The LUFO afforded a bit more security knowing that the project had already been approved and the scope of the project was identified. This provided a longer period of outreach and the ability to work with local agencies and jurisdictions.
 - In the last couple of years, TriMet held more than 91 meetings, in addition to the meetings listed, with different business owners, agencies, jurisdictions, and other government bodies.
- One reason TriMet was unwilling to extend the 120-day clock was they were up against the construction window and timelines to get to the construction start of the open fish window on July 15.
- TriMet would start breaking ground in May on some of the bents [near River Rd and work northward to Kellogg Creek which they should reach in July. They could then start building portions of the work bridge on the bank, and then build the work bridge as soon as the fish window started. About 11 weeks of work were required to complete the work bridge, and the fish window was only from July 15 to September 30, a very narrow window to complete the work.

- **Commissioner Churchill** noted some room should be built into all schedules. Starting two or three months earlier would have given the Commission more time to deliberate over the information. A lot of feedback had been received from the public, and the detail the Commission was seeing at this point was not available six months ago. Documents were not at 90% complete yet. The pressure was now being put on the Commission to get this done in essentially two hearings. TriMet was a partner and should allow time for new information to be reviewed.
- **Ms. Mangle** explained that the application needed to get through the Commission and allow time for an appeal at City Council by any party. The clock needed to allow for at least one hearing at Council, if needed.
 - The City Code was clear that all Commission decisions could be appealed to City Council, and that Council was the final decision-making authority. If the City failed to fulfill its responsibility to make a decision within the 120-day clock, Milwaukie would essentially lose its authority to make the decision, and be forced to approve without being able to impose conditions, which was not a good position to be in.
- TriMet confirmed they were not willing to waive the 120-day clock, which Commissioner Churchill found deplorable.

Commissioner Gamba stated for the record that TriMet was doing a great project and he fully supported it.

Mr. Doran did not believe the project would be what it was without the collaborative effort that had occurred throughout the final design, and staff had done a great job guiding them through.

Chair Batey called for further public testimony.

Ms. Tyler suggested using a Sikorsky I7 construction and logging helicopter to lift the tubs immediately adjacent to the oak tree. The helicopter had a much heavier weight rating and the tubs could be lifted and placed without rolling cranes over the root zone of the tree.

Ms. Shepard noted her prior question about the concrete piers being put into the ground by the lake and stated the springs were an important component of the creek restoration. Part of the Army Corps of Engineers' restoration was that a series of ponds would be fed by the springs, and some of the very cold springs would help keep the water cool in the summertime. Regarding the light analysis, the trees TriMet were going to remove along the railroad all the way to McLoughlin Blvd actually helped screen the light from the three to four freight trains that currently came through each day. TriMet was adding 164 trains and there were no plans to put the trees back to help mitigate the light. The light of the trains coming from McLoughlin Blvd across the lake was currently screened and with the trees removed, nothing would block the train lights.

Greg Hemer, 5822 SE Harrison St, stated carbon footprint was defined as the amount of energy that would be used to save something with a carbon footprint, either with a positive or negative impact. When discussing saving the oak tree, there was not only impact on the soil, but impacts related to the fuel required for the extra cranes; the chain saws doing the pruning; and the lifelong maintenance of keeping branches away from the rail. The energy needed to build the two extra cranes and have them shipped would probably be three to four times more of a carbon footprint than the oak tree ever spent in its 150 years of life mitigating. Spending an exuberant amount of energy and impacting everything as a whole to save a 150-year old tree did not make true economic or ecological sense.

Commissioner Gamba stated the pedestrian is to be the priority in all projects, as noted on 5.1 Page 27 of the November 8 packet, yet the DLC approved building a bridge across a lake with no thought whatsoever to pedestrians.

- **Mr. Hemer** replied he personally thought TriMet believed the pedestrian bridge was important. They were caught up in a caveat that said they could not spend any extra funds until the end of the project, which threw off the whole timeline of building the pedestrian bridge. The pedestrian bridge was extremely important, but the issue was whether it was worth holding up the application for something that with or without a condition of approval would actually happen. TriMet may not know if the funds were available until the end of the project.
 - He agreed with the idea that if they were going to put in the temporary bridge, why not just make more permanent.
- As far as the DLC's decision, the Committee knew their review would come before the Planning Commission. No pedestrian access existed at this time over the lake. Pedestrians would be granted access across the lake via light rail. Kronberg was not a destination park now, but it would become one by the end of the project.
- He truly believed that TriMet, the City, and concerned citizens would find the funding to build the pedestrian bridge using the temporary construction bridge and within the window so as not to go over budget. He did not believe a condition for the pedestrian bridge was worth holding up the entire project. He was not willing to spend \$1.4 million of TriMet's money on a condition of approval that would prevent the project from being completed to Park Ave. The rules of the contract stated that if the appropriate funds were there, it would be stretched to Park Ave or else it could end at the Milwaukie terminus. He was not willing to take that gamble.

Commissioner Fuchs asked if the prioritization of projects using the leftover funds was discussed.

- **Mr. Hemer** stated he also sat on the Citizen's Advisory Committee (CAC) for the Portland to Milwaukie light rail line. He recalled that a wish list was developed at the beginning of the project. When the budget came out, TriMet hoped to get a 60% match of funds, but only received a 50% match. The wish list items were eliminated according to the 10% deficit. The wish list items had been prioritized in the sense that some things were deemed more important than others. From what he had seen at the CAC, the pedestrian bridge was one of the items TriMet wanted to scratch off last.

Chair Batey asked if the conditions discussed earlier about light testing applied equally to lighting shining in the other direction.

- **Ms. Shanks** responded the condition was worded to apply where the track curved, because light on the train could sweep as opposed to shining straight ahead. The tracks went straight as they crossed the bridge after crossing McLoughlin Blvd. The condition was not written to address that particular issue or concern.
- She confirmed that the condition addressing mitigation for the plantings being eliminated that currently screened the lights on the heavy rail could be reworked so that the mitigation plantings could provide some screening.

Ms. Shanks introduced Sarah Hartung, the lead biologist who had done the peer review of TriMet's mitigation plan and worked with staff extensively because of the unique nature of the Kronberg Park aspect of the project being on City property. She had reviewed various iterations, provided some direction, and helped craft some conditions.

Sarah Hartung, Wetlands and Wildlife Scientist, Environmental Science Associates, Portland, stated her company provided technical review of the WQR plans and the HCA assessment. She had reviewed the appropriateness of the mitigation plan as well as the specific species proposed.

- The mitigation not only met, but exceeded, Code requirements and was appropriate for the site. The footprint of impact would be mitigated at a 1:1 ratio, but the tree replacement was a 6:1 ratio.
- Planting along the shoreline was one of the best ways to provide an ecological uplift to the lake. Native woody species would be established to provide shade for the water and organic input, which was why riparian plantings were wanted.
- This type of shoreline restoration was standard in the northwest, and the plan had all the elements of success. TriMet would monitor and maintain the plantings for five years with proposed irrigation to establish the plants. All the proposed species were native, hardy, and fast growing. The weed control plan included as part of the mitigation would also continue for five years.
- A more nuanced plan still had to be done that would show how the clustering of trees would ensure views to the lake, etc.

Commissioner Gamba:

- Asked if the process of rebuilding a temporary bridge in five to ten years with the resultant pilings and shore damage would meet the HCA and WQR criteria of least damage.
 - **Ms. Hartung** responded it was not ideal, but there were ways to make sure the additional impacts were compensated.
- Understood it could be re-mitigated. The qualifications were that they do only minimum damage, and doubling the damage in no way qualified as minimum.
 - **Ms. Hartung** explained the mitigation for permanent impacts would be located in a portion of Kronberg Park outside the construction easement. Restoration would occur in the construction easement because the denuded vegetation was being replaced. The mitigation required would not be impacted as it was beyond the construction easement. Plantings in the construction easement were not part of the mitigation required for the permanent impacts.
- Asked about the impacts of driving and removing the piles a second time.
 - **Ms. Hartung** stated that in her permitting experience, it was understood that there were minor pulses of turbidity and impacts to the sediment when a piling was installed. Although there would be minor impulses of turbidity but usually state and federal agencies did not see that as a significant impact because it was not permanent.

Commissioner Churchill:

- Asked if the firm was considered an expert in WQRs.
 - **Ms. Hartung** replied 'yes' in terms of permitting for development and redevelopment.
- Asked about her knowledge about the springs in the Kellogg Creek or lake area.
 - **Ms. Hartung** stated she did not want to conjecture without knowing more about the hydrology or the extent of the springs. She could get back to the Commission with that information.
 - While her firm normally did more surface water and wetland investigations, they could tap into subsurface information and map the springs through other firms.

Ms. Shanks displayed and reviewed the mitigation plan presented at the first hearing, noting the areas bubbled in red were considered permanent impact areas. Although replanted, they

would not be replanted to the degree required by the HCA Code, because the areas were underneath a bridge structure or a permanent pathway existed. The slide showed the potential pedestrian pathway to connect to the pedestrian bridge. TriMet was proposing that this area basically mitigated for those permanent impacts.

- A simple reseeding was proposed on the top, flat area of Kronberg Park because no one knew what was going to be happening with the park.
- The area that would be redisturbed if a second temporary construction bridge were needed for the future pedestrian bridge was indicated in blue. The mitigation for the permanent impacts would not be disturbed.

Ms. Shepard indicated on the diagram that the trees currently shielding the lights from the trains were located next to the old bridge and under the new bridge.

Commissioner Churchill asked about the depth and number of pilings needed for the temporary work bridge.

- **Ms. Hartung** responded the piling installation was not part of her review because of how the Code was written. It was understood from a state and federal permitting standpoint that there could be pulses of turbidity during installation, but not plumes going downstream for hours and hours. Typically, the agencies did not want to see any kind of plume of sediment. There were different methods and variables when it came to driving the pilings. She was not aware of the number of piles or their depth.
- **Ms. Mangle** added the City did not have jurisdiction over the issue and had not asked Ms. Hartung to consider it.

Ms. Hartung clarified the name Himalayan blackberry had been changed to Armenian blackberry, which was mentioned in the HCA report.

Ms. Shanks continued with staff comments as follows:

- The City did not have the consultant look at the pilings and temporary construction bridge because the Code addressed the riparian area and land based disturbance, not the in-water disturbance. These issues were reviewed by other agencies with the authority to review in-water work. The Code also did not have any standards and did not allow the authority to consider future projects. While the pedestrian bridge was a future project, no platform was provided to evaluate impacts to future projects.
- Regarding additional impacts to the area where a second construction bridge might be installed if the pedestrian bridge funding was delayed, the Commission could decide whether they wanted plantings there now or leave it open.
 - When evaluating the mitigation plan it was important to consider the competing goals, including balancing restoration and mitigation, a pedestrian pathway to a future pedestrian bridge, and maintaining views to Kellogg Lake while not encumbering Kronberg Park.
- The oak tree was actually within the HCA and not the WQR area. That particular section where the tree was located in Kronberg Park was subject to clear and objective review. Technically, the Applicant met the clear and objective standards and provided the appropriate number of replacement and shrub trees. In this case, a tree of that size was required to be mitigated 12:1 plus 58 shrubs, which the Applicant was exceeding. Technically, it was not a discretionary review.
 - The part of the oak tree issue that was discretionary regarded the CSU approval criteria. The Commission needed to decide if a condition was needed to ensure that the CSU criteria were met with regard to the impacts from the project. Some findings or conditions

could be changed with respect to the CSU approval criteria as well as potential mitigation for the tree.

- With respect to the 120-day clock, the Applicant provided their schedule when they came for worksessions and with their submitted application. Staff was struggling within the same timeframe as the Commission. The 120-day clock was set by statute so staff and the Commission were bound by that timeframe unless the Applicant extended the clock, and they could not be forced to make such an extension. In trying to facilitate the application's review, staff had gotten the application to the Commission earlier than normal, so they had it for about a month and a half so far.
 - She reiterated the need to leave room in the clock for a possible City Council appeal; otherwise, all the Commission's good work would be undone.
- The application was subject to specific approval criteria, so the Commission needed to look at those and craft findings related to specific approval criteria and to support any changes or additions to conditions of approval. She was prepared to guide the Commission to the needed findings or conditions to support their decision.

Mr. Ramis stated staff was correct that the 120-day limit was a real impediment to the City's authority. Not reaching a decision within 120 days would enable the Applicant to proceed to Circuit Court where they would be able to assert that the application should be approved. The City would lose jurisdiction and the decision would be made by a Circuit Court judge. The burden of proof would also shift from the Applicant to the City. It would be the City's responsibility in Circuit Court to argue and persuade a judge that something about the application would violate the City's Code or Comprehensive Plan. Having insufficient time to review the information was not a consideration in Circuit Court.

Chair Batey called for the Applicant's rebuttal or additional comments in response to the public testimony. There was none.

Chair Batey asked if using a helicopter was too outrageous, considering the costs and complications associated with the various crane configurations.

- **Mr. Lee** replied it would be a very challenging option. In this particular case, air splices needed to be done. When the girders were picked and placed, the crane and beam were held in position while splice bolts were put in place. The boltholes were 1/16 of an inch greater than the bolt, so it was challenging to utilize a crane and hold everything in place while trying to insert the bolt and it would be much more difficult doing the same thing using a helicopter. They had not investigated the cost of renting the helicopter versus that of renting a larger crane to reach over the tree or railroad.

Chair Batey closed the public hearing on WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, and CSU-11-09 at 9:56 p.m.

Vice Chair Harris moved to continue with the hearing until 10:30 p.m. Commissioner Gamba seconded the motion, which passed unanimously.

Chair Batey asked if the Commissioners needed further information before voting.

Commissioner Churchill stated many unanswered questions remained and some would affect the conditions of approval with regard to the application. He was not comfortable at this point, which was why he was pushing for the extension of the 120-day clock. He was interested in

hearing the comments of other Commissioners. He would have to go back and review the conditions and findings of approval or denial before he could address some of his concerns.

Chair Batey summarized that the big issues were the pedestrian bridge and oak tree.

Planning Commission deliberations continued with the following key comments:

- Issues, such as the lighting and plantings were easier; the Commission could provide suggested changes to the conditions to Ms. Shanks.
- It was cheaper and easier to build the bridge without the oak tree there. Old growth trees were precious, and 99.9% had been cut down. As noted earlier, they would probably put the effort into protecting an old building. This was not only an old tree but was also habitat for other animals.
 - The carbon footprint argument was briefly discussed.
 - Having an arborist's report regarding the survivability of the tree would be helpful in determining whether they should put all this money into saving it. It was surprising that no arborist's report was ever generated on the oak tree.
 - **Ms. Mangle** stated there was not enough time to get an arborist's report by November 22. TriMet had tried, but was unable to get one over this last week.
 - If the Commission required the tree to be saved, TriMet would find less expensive ways to go around it than the two big cranes.
 - A reasonable effort should be made to save the tree, but a single tree was not worth a great deal of additional cost as long as it was mitigated by other oak plantings. The ability to mitigate a 150-year-old oak tree with 5-year-old saplings was questioned; it would take more than the Commissioners' lifetimes to have that growth back.
 - The Commission was not provided enough information to make a decision. They did not know how much more the project would cost to save the tree and they did not have an arborist's report. Legally, where did that leave the Commission?
 - **Mr. Ramis** explained if the Commission imposed a condition due to insufficient information that the Applicant disagreed with, the Applicant could appeal to City Council. If the Applicant did not prevail at City Council, they could go to a steering committee, which was a body that would arbitrate the dispute and essentially deprive the City of jurisdiction.
 - If it got to that point, an arborist's report and cost determination could probably be obtained within that time so City Council could make a decision.
 - Staff clarified that the new, recently adopted, appeals process actually specified that City Council appeals were on the record so no new evidence was allowed. New arguments were permitted, but not new evidence.
 - One option was to add a condition that required an arborist's report, and depending on that arborist's report and staff's agreement, x, y, or z would happen.
 - A condition of approval requiring an arborist's report and staff's analysis was a good idea. The condition could be worded such that if an arborist believed the tree would survive the construction traffic around it, it would have to be saved. If the arborist did not think the tree could be saved, specific remediation would have to occur to replace plantings in that area that would have the secondary benefit of replacing the shielding trees being removed.
 - The City could hire an arborist, so there would be two arborist's reports. A lot of flexibility existed within an arborist's report.
 - **Mr. Ramis** agreed that was an issue. The Applicant might want to disagree, because of the discretion in the reports. If so, the City would need to provide a procedure, which would take time and put them in a place where they no longer complied with

- LUFO and the authorizing statute, because they had not reached a decision in the time period. Creating a condition not workable for the project was a concern.
- The Commission discussed the time period for getting an arborist's report, and decided one could be obtained fairly quickly.
 - **Mr. Ramis** stated if this was the direction of the Commission, staff would work to craft a condition, but they also wanted to consult with the Applicant to see if something workable could be created.
 - The Commission consented to direct staff to work with the Applicant to get arborists' reports and provide at an estimate of the cost to save the tree.
 - **Mr. Ramis** stated the challenge would be in drafting a condition that created a relatively objective test because the Commission would not have the opportunity to review data.
 - Having additional information would influence the decision being made. Three arborists should be consulted in case two arborists had opposing views.
 - The Commission discussed the parameters for crafting the condition.
 - **Mr. Ramis** stated the Commission would have to let staff know how to craft the condition with regard to some test or judgment to be exercised or some amount over which they would not spend. The Applicant could comment on language staff might develop, but could not give any more evidence about that question because the record was closed. The Commission had the discretion to reopen the record for such evidence if the Applicant wanted to present it.
 - **Commissioner Gamba** presented that building the pedestrian bridge now would cost \$1 million, and \$3 million to \$5 million to build the bridge later. If built later, a second temporary bridge would need to be constructed with more piles and the resultant damage. It made logical sense to build the bridge now, as the percentage of the pedestrian bridge within the entire project was very small. The sidewalks and pedestrian connections could be built later.
 - Was it in the Commission's authority and the City's best interest to require the bridge to be built? Was it likely to stand up to the process the Applicant might engage in if building the pedestrian bridge were conditioned?
 - The Commission had some clear places to stand on at least five of the applications: the WG, WQR, HCA, CSU, and DR applications. The design guidelines were very clear in stating that the pedestrian was the priority in every construction project. This very large construction project was cutting through the middle of the city and for the bulk of the distance, the pedestrian was completely ignored. Pedestrians and bicyclists were not ignored on another similar TriMet bridge project.
 - The HCA and WQR stated the Applicant needed to minimize the impact, but TriMet would double the impact by building the pedestrian bridge at a later date.
 - **Commissioner Churchill** noted that 5.1 Page 27 of the November 8 packet also discussed the pedestrian emphasis guidelines. The other end of the light rail line got the design attention to pedestrian access, and Milwaukie got the short end of the stick on a TriMet design. Now Milwaukie was told to pay for its pedestrian bridge, whereas it was incorporated into the design features as light rail crossed the Willamette River. It was discriminatory and unfair. He would not support the application without a pedestrian bridge included in the project.
 - **Commissioner Stoll** clarified that the City, not TriMet, would be doubling the impact when they built the pedestrian bridge. If there was an existing pedestrian bridge, TriMet would be required to build a pedestrian bridge with the light rail bridge.
 - **Commissioner Gamba** noted applicants are still required to build sidewalks in front of a new building if no sidewalks exist. TriMet was in essence building a new building without building a sidewalk.

- **Commissioner Churchill** added pedestrian emphasis was required on such major projects and none existed.
- **Commissioner Fuchs** asked the City Attorney to reiterate previous comments about the State not allowing the Commission to impose a pedestrian bridge condition.
 - **Mr. Ramis** explained that the statewide system used to grant local governments a great deal of authority to say 'no' to land use applications. The legislature concluded that the traditional system provided under Senate Bill 100 did not work for large projects that had to be approved by a number of jurisdictions and they created a process that limited the authority of local government in some significant ways. Cities did not approve the route or the project elements. Once there was a LUFO, the route and project elements were approved. The sole area the City was allowed to exercise discretion was when attaching conditions, and even that was limited.
 - Conditions could be attached as long as they were authorized by the local zoning Code and the condition did not violate the reasonable condition standard. The definition stated if the project element being discussed was not funded, it could not be imposed because in effect, that would be denying that particular element, and the City did not have that authority. In imposing conditions, the Commission needed to be mindful of whether the project could actually pay for the conditioned element.
 - The Commission had three options: approve the project with a reasonable condition; attempt to deny the project, which could not be done because the City did not have that authority; or impose a very aggressive condition that went beyond what the project could support. They did not have that authority either. The third option would be played out if the applicant appealed the Commission decision to City Council. If the Council still imposed the condition or still denied the application, it would go to a steering committee, not the usual LUBA process, where it would be arbitrated under the standards of the statute.
 - He did not know if it was possible to impose a condition that the pedestrian bridge be made number one on the wish list, but he would certainly attempt to defend it.
 - **Ms. Mangle** stated part of the problem was that contingency money would not become available until after the construction bridge was to be removed in the summer of 2013. The wish list was developed earlier in the project when all the needed elements were trying to be identified. When federal funding decreased, fewer items were able to be funded in the base project.
 - **Ms. Shanks** understood that the pedestrian bridge was not on the wish list, because it was actually never part of the project. The wish list was actually a recalibration list, so when the project got less funding from the federal government, the things that were already in the project had to be recalibrated.

Vice Chair Harris moved to continue the public hearing to a date certain of November 22, 2011, at 6:30 p.m. Commissioner Stoll seconded the motion, which passed unanimously.

6.0 Worksession Items

7.0 Planning Department Other Business/Updates

Ms. Mangle stated that last week City Council approved the final Electronic Sign Code amendments with an emergency ordinance. The email she had sent to the Commission summarizing what she thought the Council would approve had occurred. She distributed a copy of the new Sign Code, which was already in effect.

- She clarified that the emergency ordinance had gone back in.

Commissioner Gamba commented it was moot because they exempted the North Main St area altogether, so 24 billboards could go up in North Main St.

Commissioner Stoll replied that would be impossible because of the frontages.

8.0 Planning Commission Discussion Items

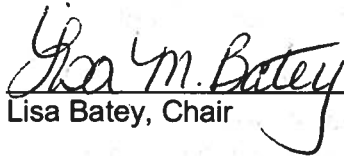
9.0 Forecast for Future Meetings:

- | | |
|-------------------|---|
| November 22, 2011 | 1. Public Hearing: MOD-11-01 Trolley Trail for Light Rail <i>continued</i> |
| | 2. Public Hearing: WG-11-01 Kellogg Lake Light Rail Bridge <i>continued</i> |
| December 13, 2011 | 1. Public Hearing: CPA-11-02 Water Master Plan |
| | 2. Worksession: Residential Development Standards update |

Meeting adjourned at 10:31 p.m.

Respectfully submitted,

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



Lisa Batey, Chair