



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday January 24, 2012, 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 November 8, 2011
 - 2.2 November 17, 2011 Special Meeting
 - 2.3 November 22, 2011
 - 2.4 December 13, 2011
- 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
- 6.0 Worksession Items**
 - 6.1 Summary: Residential Development Standards - Accessory Dwelling Units, Accessory Structures (30 minutes)
Presentation: Katie Mangle and Ryan Marquardt
 - 6.2 Summary: Tacoma Station Area Planning project (10 minutes)
Presentation: Susan Shanks
- 7.0 Planning Department Other Business/Updates**
 - 7.1 Update on Bowman and Brae property (5 minutes)
- 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:**
 - January 31, 2012
 - 1. Joint Session with City Council and Residential Development Standards steering committee
 - February 14, 2012
 - 1. Meeting tentatively cancelled
 - February 28, 2012
 - 1. Public Hearing: Residential Development Standards
 - 2. Public Hearing: WQR-11-05 Furnberg St Wetland

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:

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

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelter, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Martin, Administrative Specialist II

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 8, 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, Engineer
 Damien Hall, City Attorney

1.0 Call to Order – Procedural Matters

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

2.0 Planning Commission Minutes

2.1 September 27, 2011

Commissioner Gamba moved to adopt the September 27, 2011, meeting minutes.

Commissioner Wilson seconded the motion, which passed unanimously.

3.0 Information Items

Chair Batey explained that two separate hearings would be opened this evening if the first hearing was not completed. Both hearings related to the southern end of the light rail project, but they were technically two separate land use applications and therefore required two separate hearings.

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

Applicant/Owner: TriMet

File: WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09

Staff Person: Susan Shanks

41 **Chair Batey** called the hearing to order and read the conduct of quasi-judicial hearing format
42 into the record.

43

44 **Susan Shanks, Senior Planner**, cited the applicable approval criteria of the Milwaukie
45 Municipal Code as found in 5.1 Page 10 of the packet, which was entered into the record.
46 Copies of the report were made available at the sign-in table.

47

48 **Chair Batey** asked if any Commissioners had any ex parte contacts to declare.

49

50 **Chair Batey** declared that she spoke briefly with Design and Landmarks Committee (DLC)
51 Chair Greg Hemer after the October 17 DLC meeting about how the meeting for the Design
52 Review application went. Everything related by Chair Hemer was consistent with what was in
53 the meeting packet. She also had a brief conversation with Island Station Neighborhood District
54 Association (NDA) Chair JoAnne Bird, who had reviewed the packet and had some concerns
55 about tree removal. She encouraged Ms. Bird to submit formal comments, which she had done
56 and her comments were in the packet.

57

58 **Commissioner Stoll** said he had attended light rail meetings for about three years and had
59 spoken to many TriMet officials and architectural and engineering consultants who worked for
60 TriMet during that time about many different aspects of the project. However, he had never
61 discussed the merits or approval criteria of the Kellogg Lake Bridge and Trolley Trail
62 modification applications currently under consideration. He was able and would decide the
63 application based on the facts and evidence in the record.

64

65 **Commissioner Gamba** stated he had also attended many of the public meetings and spoke
66 with engineers, planners, and TriMet officials. He had a number of conversations over the years
67 with Milwaukie citizens, none particularly germane to these applications with the exception of a
68 spoken and written conversation this morning with Terry Dolan, a retired TriMet employee and
69 Milwaukie citizen. The written portion of the conversation would be distributed to the
70 Commission. The spoken portion of the conversation involved if Mr. Dolan felt that pushing for
71 the bike/ped bridge was going to be problematic for TriMet, about which he did not have a
72 strong opinion. Commissioner Gamba left the meeting with no clearer thought on the matter
73 than he had going into the meeting. He confirmed with Damien Hall, City Attorney, that the
74 content of the discussion will be included in the record. He confirmed he would be able to make

75 a decision based on the testimony and evidence in the record.

76

77 All the Commissioners declared for the record that they had visited the site. No Commissioners,
78 however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners
79 abstained and no Commissioner's participation was challenged by any member of the audience.

80

81 **Ms. Shanks** presented the staff report via PowerPoint, providing an overview of the Kellogg
82 Bridge for light rail project, which was actually composed of five individual applications because
83 of the nature and location of the proposed bridge. She reviewed the applications and responded
84 to comments and questions from the Commission as follows:

- 85 • She confirmed the project's staging area was on the Kronberg Park property, adding the
86 City would be compensated for the construction access easement.
- 87 • The Willamette Greenway was not anticipated to change; even if the lake were gone, the
88 area would still be part of the overly zone because of Kellogg Creek.
- 89 • The yellow line on Exhibit P5 indicated where a construction management plan (CMP) was
90 required when within 100 ft of the edge of a Habitat Conservation Area (HCA). Even with no
91 impact to the HCA, a CMP was required to ensure erosion control and limited tree
92 disturbance. The south abutment was not close to the other Water Quality Resource (WQR)
93 involved with the Trolley Trail.
- 94 • Regarding Design Review, the Design and Landmarks Committee (DLC) recommended
95 Planning Commission approval with their recommended conditions of approval, which
96 included specific conditions about the abutment wall treatments and lighting under the jump
97 span, Damien Hall, City Attorney, advised that the initial condition regarding the jump span
98 lighting was too discretionary, so the conditions required the proposed lighting return to the
99 DLC with the light rail station review.
- 100 • Planting mitigation had been discussed for the use of the construction staging area as part
101 of the Applicant's mitigation plan.
 - 102 • She confirmed that the Tree Planting Plan for Kronberg Park Exhibit referred to
103 planting only for the swath as indicated along the bank.
 - 104 • During bridge construction 8 trees would be removed on the northern bank as well as
105 8 trees on the southern side of the lake. TriMet would be planting more than the
106 number required for mitigation.
 - 107 • The large oak tree that the Oregon Department of Fish and Wildlife (ODFW) had
108 urged the City to save was in the HCA. The applicant looked at trying to save the

- 109 tree and had an arborist evaluate it. Although the trunk was not in the way of the
110 bridge structure, and the amount of limbing necessary for construction would be so
111 detrimental that tree would likely not survive. Saving the tree was carefully
112 considered because staff knew the community wanted to save the tree.
- 113 • Details regarding site preparation and mitigation for the staging area would be addressed in
114 the development permit phase. Staff was currently reviewing the detailed conduct of
115 construction contract between TriMet and its contractors to ensure the City's standards were
116 in line with TriMet's. Contractors were subject to Milwaukie's ordinances regarding noise,
117 construction hours, etc., and part of the contract involved best management practices with
118 respect to erosion, draining, spill prevention, etc.
 - 119 • Questions regarding soil compaction and treatment were deferred to the Applicant, and
120 staging area reparation, such as hydro seeding, should be specified in the construction
121 easement.
 - 122 • She confirmed that the design of the proposed plantings had been submitted and staff
123 provided recommended conditions of approval that slightly tweaked that planting plan in
124 terms of identifying specific trees and shrubs. Sarah Hartung, the consultant from ESA,
125 did an independent review of the application and believed the plantings were
126 appropriate. She also provided some conditions of approval that made minor tweaks to
127 the plan.
 - 128 • **Chair Batey** noted several comments suggested that more oaks be planted at or above the
129 top of bank, which was not in the referenced area. On Elk Rock Island, Douglas firs were
130 removed because they were shading out the oaks, and many conifers had been planted in
131 Kronberg Park already.
 - 132 • **Ms. Shanks** explained that the tree planting plan would provide more specificity of what,
133 when, and where. The mitigation plan actually showed what was being planted, and staff
134 wanted more details as to where plantings would occur.
 - 135 • Regarding the top of bank issue, as the owner of Kronberg Park, the City was voluntarily
136 agreeing to have mitigation plantings on the park site as a way to mitigate the impacts of
137 the bridge. After review by different City departments, the City would be fine with
138 planting oaks above top of bank. This was currently one of the recommended conditions.
 - 139 • Staff was not aware of any other standalone staging areas within Milwaukie boundaries
140 related to this project. TriMet had asked about using certain areas, such as in the North
141 Industrial Area, but staff explained that any standalone staging area might need to go

142 through Community Service Use (CSU) review since standalone staging was not listed as a
143 use in most zones.

- 144 • **Ms. Mangle** added that there would be staging within the TriMet light rail right-of-way in the
145 construction zone. Staff was not aware of any other staging areas related to this project
146 within the city limits that were not in the TriMet right-of-way, public right-of-way, or other City
147 properties.
- 148 • Specific language required that the plantings along the shore be done in the first planting
149 season following major construction being done. A 5-year monitoring requirement was
150 included to address maintenance responsibilities.

151

152 **Ms. Shanks** briefly overviewed the comments received, notices given, and staff
153 recommendations as follows:

- 154 • Comments received prior to the DLC design review meeting were from City staff, Island
155 Station and Historic Milwaukie residents, and ODFW.
- 156 • Some of the comments were incorporated into the conditions such as requiring specific
157 plantings in the natural resource area. No comments had been received since preparing the
158 staff report for the hearing.
- 159 • The application was referred to the NDAs as well as City departments and State agencies
160 on September 23, and public hearing notices were sent October 19. Signage was also
161 posted in advance of both the design review meeting and this hearing.
- 162 • Staff believed the project complied with all applicable approval criteria and development and
163 design standards, as well as being substantially consistent with the design guidelines. Staff
164 recommended approval of the application with revised conditions as stated in Attachment 2,
165 the goldenrod handout, which Ms. Shanks reviewed.

166

167 **Chair Batey** noted Condition 13.E.(2) on Page 6 of 7, but understood that FEMA review was no
168 longer required.

- 169 • **Zack Weigel, City Engineer**, explained that the FEMA review was struck because the local
170 jurisdiction, not FEMA, was responsible for identifying impacts to the floodway. If there were
171 an impact to the floodway, FEMA would review it.
- 172 • **Ms. Shanks** added that Condition 13.E.(2) had not been revised.

173

174 **Ms. Shanks** concluded that the Commission needed to allow time for a possible appeal of the
175 application to City Council and the 120-day land use decision deadline was January 18, 2012. If

176 continued, the November 22 hearing would be the last hearing for the Commission to make a
177 decision on this application with enough time left for the possibility of appeal.

- 178 • The light rail station land use review process would begin soon. Staff scheduled a
179 preapplication conference with TriMet within the next week and a half. Staff talked with the
180 DLC at a worksession last night about the station design, which was expected to come
181 before the Commission in 2012.
- 182 • A future land use application on the pedestrian bridge connections for the future pedestrian
183 bridge would go through the DLC, because it was in the downtown zone area, as well as the
184 Planning Commission.

185

186 **Chair Batey** called for the Applicant's presentation.

187

188 **Leah Robbins, TriMet**, stated she was filling in for Jeb Doran who was presently unavailable.
189 She introduced several members of the project team and reviewed the presentation via
190 PowerPoint; paper copies were distributed to the Commissioners.

191

192 **Ms. Robbins** and TriMet's project team addressed questions from the Commission with these
193 comments:

- 194 • There would be compaction of the soil at the staging area, and restoration of that area once
195 the bridge structure was complete. The details regarding the restoration had not yet been
196 submitted, but the City would review that with TriMet.
- 197 • In downtown, the site being considered for staging was the area being purchased from
198 Union Pacific Railroad and private property owners located north of Lake Rd. This staging
199 area would be accessed from public rights-of-way and would be used for building the station
200 and access from the north side.
- 201 • TriMet did not anticipate storing large quantities of material in the staging area in Kronberg
202 Park; they were confined to the purchased right-of-way and building the site adjacent to the
203 active freight railroad. There would be transfer of material north and south, but not large
204 quantities.
- 205 • Any staging from Hwy 224 south to Harrison St, Washington St, and beyond would take
206 place within the TriMet right-of-way. Retaining wall work would be done from Harrison St
207 south to Washington St, but that would not become a staging area after the retaining wall
208 was in place. TriMet would be building elements of the civil infrastructure for the rail facility.
- 209 • **Ms. Mangle** noted the geographic area of the application was south of Lake Rd.

- 210 • **Commissioner Churchill** said he wanted to ensure that the true impacts of the different
211 staging sites were clear, as well as the flow in and around the proposed 50-ft wide staging
212 area, which seemed miniscule considering the scale of this project.
- 213 • **Ms. Robbins** explained that TriMet was purchasing a site from Oregon Department of
214 Transportation (ODOT) at Sparrow St, which was currently used as a materials storage
215 site.
- 216 • **Calvin Lee, TriMet Structural Engineer**, explained the temporary piles driven into the
217 water for the construction bridge would be removed at the end of the project. Access for
218 cranes, etc., would be via McLoughlin Blvd/Hwy 99E.
- 219 • TriMet was only allowed to drive the piles within a defined fish window, which was mid-
220 July to the end of September. Therefore, any installation or removal of piles during those
221 times would have minimal effects on fish habitat.
- 222 • **Ms. Robbins** added that part of the mitigation was removal of existing piles currently in
223 the water. This would be done at the end of the construction window.
- 224 • **Commissioner Churchill** noted that avoiding critical access time to the creek for fish
225 habitat was understood, but nothing had been discussed regarding any mitigation for the
226 creek bed itself.
- 227 • **Ms. Mangle** responded that work within the waterway was covered by NEPA permits
228 and the federal process. Mitigation was not discussed in this application, because the
229 City did not have jurisdiction of the waterway.
- 230 • **Ms. Robbins** added that jurisdiction was through the Corps of Engineers permit that was
231 submitted and included as part of the Willamette River Bridge permitting effort. She
232 believed no mitigation was required if the work was done during the fish window. The
233 Corps permit substantiated the removal of the other existing piles as part of the impact
234 mitigation.
- 235 • **Commissioner Gamba** asked if a construction bridge would have to be put back in if the
236 pedestrian bridge was not built during the initial construction window.
- 237 • **Mr. Lee** responded the pedestrian bridge could be done in other ways, but it could cost
238 more. Alternatives exist in terms of the impacts, but those also had costs.
- 239
- 240 **Mark Mikolavich, Project Architect, Waterleaf Architects**, continued with the design review
241 portion of the Applicant's presentation, noting the additional conditions of approval from the
242 DLC, which were included in the staff report. He addressed clarifying questions from the
243 Commission with these comments:

- 244 • The Applicant would address the nesting issue on the column caps. The strategy at this
245 point was to consider putting innocuous, somewhat beveled elements on the ledges to
246 prevent perching; where those were not appropriate, stainless steel wires would be used.
- 247 • The transparent, acrylic sound barrier wall was made of a very durable material. If
248 scratched, a small torch was utilized that softened the surface and made scratches
249 disappear. Sediment that splashed up on the surface of the acrylic material during a rain
250 tended to wash off in the next rain. It was not literally self-cleaning, but it did not appear dirty
251 over time.
- 252 • He was uncertain about the ability of the material to resist tagging, but the very smooth
253 surface would not absorb spray paint. The fact that the 200-ft length of sound barrier was
254 close to the midpoint of the bridge made it relatively difficult to access.

255
256 **Commissioner Churchill** asked how long the staging area would be used at Kronberg Park.

- 257 • **Ms. Robbins** believed the negotiated agreement with the City was to use the park from
258 approximately January 2012 through December 2015 to ensure completion of the project
259 and restoration.

260
261 **Chair Batey** suggested the Commission defer questions for the Applicant to the next hearing
262 date to provide sufficient time for public testimony.

263
264 The Commission discussed concerns about the limited time available to ask questions and for
265 the applicant to respond or return with information to the Planning Commission if the hearing
266 was reconvened on November 22.

- 267 • **Ms. Mangle** reminded that questions could be submitted to staff outside of the hearing and
268 staff could coordinate responses for November 22.

269
270 **Chair Batey** called for public testimony in favor of the project.

271
272 **Greg Hemer, DLC Chair, 5822 SE Harrison St, Milwaukie**, stated that on October 17, the
273 DLC reviewed the Kellogg Bridge design and found it to comply with the downtown design
274 guidelines. The DLC recommended approval with the conditions provided. He noted the key
275 issues regarding the north abutment wall treatments samples, the weathering steel cladding on
276 the jump span but not on the cantilever, the quality and efficiency of the jump span lighting, and
277 the lessened uniformity of the column treatments.

278 **Commissioner Gamba:**

- 279 • Asked if the DLC believed the project met the pedestrian emphasis guidelines to provide an
280 environment where the pedestrian was the priority.
- 281 • **DLC Chair Hemer** responded the pedestrian safety and the environment of the
282 pedestrian experience was met except for the lighting and the jump span gap.
- 283 • Clarified his question was more about whether or not the DLC was fine with the prospect of
284 never having a pedestrian bridge in the structure.
- 285 • **DLC Chair Hemer** replied that personally, he would like the pedestrian bridge in the
286 structure, but the DLC did not discuss if there should be a condition of approval for the
287 pedestrian bridge.

288

289 **Commissioner Churchill** applauded the DLC for questioning the lighting underneath the jump
290 span. He also found the surface mounted industrial looking fixtures inappropriate, and asked if
291 recessed LED lights in the underside of the deck had been discussed with the Applicant.

- 292 • **DLC Chair Hemer** stated more natural and less industrial options were discussed,
293 including LED. The effect of illumination was preferred and not the fixture itself.
294 Adequate lighting for pedestrians was a concern.

295

296 **Chair Batey** called for public testimony in opposition to the project

297

298 **Les Poole, 1515 SE Lee Ave, Clackamas County**, noted his testimony and audience
299 participation at Council meetings in April, May, and June, and at the last Planning Commission
300 meeting. He stated he was quite certain they were not following the Land Use Final Order
301 (LUFO) with this project.

- 302 • If one looked at the LUFO, they would immediately realize that TriMet and the City of
303 Milwaukie had worked very hard to locate the parking, the end of the line, and the
304 undesirable aspects of this project in a variety of places ever since it was hijacked and the
305 attempt was made six years ago to locate it at Kronberg Park.
- 306 • He presented images of Kronberg Park, and stated planting trees and fixing the shoreline
307 was a great idea, but trees had never grown there because of what was underneath that
308 mess.
- 309 • He believed the design itself would suffer a legal challenge.
- 310 • He was not talking about the mitigation of a project, but the protection of resources,
311 Regardless of cost, if TriMet needed to place the structure through parklands, water

312 resources, and partly on top of the Trolley Trail, the key criteria for an acceptable design
313 were not being met, and therefore could not be mitigated.

- 314 • He wanted to know where the at-grade crossing went in this process.
- 315 • He was in favor of the pedestrian bridge. If the end of light rail was going to be dumped at
316 Park Ave after the disaster at Kellogg Lake Park, he hoped TriMet would have had the
317 money to do it in a reasonable manner and with the least impacts. This design failed that
318 test miserably and was foisted on the neighborhood.
- 319 • An open house on the Park Ave segment was held a few months ago at Portland Classic
320 Guitar. The business was no longer there, because at that meeting, a citizen produced a
321 picture that light rail was going to be an elevated bridge over River Rd and the Trolley
322 Trail, and through the Willamette Greenway. The owner was not told that, so did not
323 renew his lease and left two weeks later. The retail space was now empty.
- 324 • He hoped everyone would look at the LUFO and the environmental impact statement and
325 see what it said. He delivered a copy of each to City Council recently. Upon review, the
326 Commission would find that the design over Kellogg Lake to Park Ave needed to be
327 completely redone. Several issues needed to be addressed that had not been discussed at
328 this point. So many complexities existed, not just saving the waterway at Kellogg Lake and
329 bringing the fish back while somehow bringing in light rail. He was not here to argue about
330 bringing light rail to Milwaukie.
- 331 • He assured this project would not survive, adding he would leave some information about
332 the protection of resources.
- 333 • The issues he would like to see addressed included Kellogg Lake Park, the railroad trestle,
334 and the criteria regarding unobstructed views of the Willamette Greenway. He would also
335 like to see live diagrams at some point of what this would look like at Kronberg Park, rather
336 than little sketch drawings.
- 337 • He concluded that it was unfortunate that this issue has ripped the community apart for so
338 many years.

339

340 The information provided by Mr. Poole was distributed to the Commission.

341

342 **Commissioner Churchill:**

- 343 • Asked what the concern was about the material in or under Kronberg Park.
- 344 • **Mr. Poole** responded that for many years there was illegal dumping there, although the
345 top surface had been cleaned up. He explained that the Kronbergs took fill from across

346 the street at what used to be the old shingle mill and was now the sewer treatment plant.
347 A lot of illegal dumping occurred in the 1960s. Around 1980, ODOT wanted to clean up
348 the lake and drain it, but the dam had clogged with debris when opened. The park was
349 an environmental mess, and he believed this design was an attempt to circumvent
350 dealing with the reality at Kellogg Lake, and unfortunately, it put light rail on top of the
351 Trolley Trail.

- 352 • Asked if his concern was about using a portion of Kronberg Park as the staging area and
353 any disturbance through compaction that would affect the water table.
- 354 • **Mr. Poole** responded 'no', his concern was that without an at-grade crossing, the design
355 was unacceptable to the environment. If they made an at-grade crossing when making
356 the big sweeping turn south onto McLoughlin Blvd and across, they had to encroach on
357 the park resulting in there no longer being de minimis impacts. He wanted them to stay
358 out of the park and within the confines of the railroad right-of-way and avoid dealing with
359 that. The reality was that there was a mess under there and building light rail over the
360 park and planting some trees and doing some minor impact mitigation to the site did not
361 meet the criteria of a federally funded project and a Section 4 (f) Resource.

362

363 **Mr. Poole** asked how long the record would be open on this issue after this evening.

364

365 **Chair Batey** responded they would decide that after the end of testimony, but she suspected
366 the record would close tonight, although the hearing would continue.

367

368 **Chantelle Gamba, 10414 SE 24 Ave**, stated that as a DLC Member, she was sorry she could
369 not force the pedestrian emphasis of the design guidelines to require the pedestrian bridge in
370 the project. Moving forward without the pedestrian/bike bridge would be extremely unfortunate.

371

372 **Commissioner Churchill** asked if she had heard any cost estimates for the pedestrian bridge.

- 373 • **Ms. Gamba** recalled \$1.4 million as an estimate mentioned. She noted that building it later
374 would be more expensive..

375

376 **Chair Batey** called for public testimony neutral to the project.

377

378 **Ray Bryan, 11416 SE 27th Ave**, stated he came to highlight his written testimony. He also
379 supported the pedestrian bridge, which would be of great benefit to his neighborhood, the city,
380 and Island Station.

- 381 • It could be argued that the habitat review would require they disrupt the area as little as
382 possible, and by not building the pedestrian bridge with the initial project, they were actually
383 disrupting the area a second time.
- 384 • He also had concerns around the lighting and noise. One thing that had not been discussed
385 was the stormwater runoff from the bridge. One-half inch of rain would produce about
386 15,000 gallons of water that would come to the downtown side of Milwaukie.
- 387 • He was happy to see what TriMet was doing with the mitigation. He preferred that the
388 mitigation be done in an area that would not be disturbed later; so if the lake was drained
389 and grading or changes had to be done to the bank, it would not have to be done in the area
390 that had been replanted.

391
392 **Chair Batey** asked if the proposed sound walls would be adequate and if he had been on the
393 tour to visit places on the alignment and listen to the noise.

- 394 • **Mr. Bryan** responded that he did not go on the tour. His letter did note that lubrication of the
395 tracks was not specifically mentioned and he wanted to make sure that was still part of the
396 plan. However, the lubrication of the tracks just added more concerns about the stormwater
397 runoff. TriMet did a good job of reevaluating the noise with the new bridge design, and now
398 they had some baseline noise amounts and levels that could be referenced if there were
399 concerns about noise after the project was built.

400
401 **Brad Smith, 13621 Fair Oaks Dr, Clackamas County**, said he owned three undeveloped lots
402 in the Island Station area. He heard earlier that there would be no impact to that area, but he
403 also heard that electricity was going to be rerouted and new poles run through Island Station,
404 which would directly impact his lots.

- 405 • The initial plan was to put in the large, industrial-looking poles, and he was very against that.
406 If poles were to be put in, he preferred having three wooden poles than one large cement or
407 steel pole. With the bridge coming in, it was industrial enough.
- 408 • He noted the jump span over Lake Rd was 10.5 ft high and confirmed it was so low because
409 that was the same height as the existing railroad bridge and they were trying to maintain the
410 profile as light rail crossed Lake Rd.

411

412 **Chair Batey** did not believe they meant to say there were no impacts on Island Station. What
413 was being reviewed for the application tonight ended at 22nd Ave and did not include the poles.
414 The Island Station NDA had expressed concerns about the poles as well, but they were not a
415 part of the application being considered this evening.

416 • **Mr. Smith** stated the poles had come to his attention because of the survey stakes on his
417 lots. He went to the City to see why they were there and was told the poles would be coming
418 through. A HCA was adjacent to the tracks on 21st Ave.

419

420 **Dion Shepard, 2136 SE Lake Rd**, had a number of concerns.

421 • She wanted the City to reconsider saving the large oak tree in Kronberg Park. She did not
422 believe a 1:1 replacement ratio was adequate for an oak tree that age. If the branch going
423 toward the light rail structure were removed, she believed the tree could still be saved.

424 • It takes about 30 years for a tree to grow enough to provide the same benefits as a mature
425 tree. TriMet did not intend to replace any trees with larger trees, and the replacement trees
426 were pretty small.

427 • She wanted assurance that there would be no negative impacts to the springs underneath
428 Kellogg Creek when the piles were driven in on both sides of the lake because the
429 restoration on Kellogg Creek was dependent on those springs that would feed the creek in
430 the summertime and keep it cool. There were a number of springs and she hoped TriMet
431 would research this issue.

432 • A noise analysis was done at her end of the property, so a baseline did exist to measure
433 noise once construction was completed. She still had a concern about the noise because
434 where the new structure crossed Kellogg Lake was a quiet part of the neighborhood. She
435 has an apartment above her garage and was concerned how noise would affect renters.

436 • She did not necessarily want to see the bridge and encouraged more plantings, both
437 deciduous and evergreens, be planted to add to the natural area versus strategically placed
438 trees that allow the bridge to still be seen.

439 • TriMet had stated the staging area could be used for up to three years, which was a
440 concern, because without pedestrian access on the bridge and no ability to plan and
441 develop the park, it would be a very uncomfortable place to be with a pedestrian access and
442 then no park to go to. Timing was important. The equipment should be removed as soon as
443 possible so they could work on developing the park.

- 444 • TriMet's presentation showed the trees being planted along the bank, which was rock and
445 chunks of concrete. She hoped that any grading would be done in such a way that the bank
446 could be integrated into the park when it was actually developed.

447

448 There was no further public testimony.

449

450 **Commissioner Churchill moved to continue the hearing to November 22, 2011.**

451 **Commissioner Fuchs seconded the motion.**

452

453 **The Commission** discussed whether to keep the public record open at the continued hearing
454 on November 22 and deliberated about the limiting time frame available for public testimony and
455 to get responses and information from the Applicant.

456

457 **Commissioners Churchill, Wilson, Gamba, and Fuchs** expressed concern about not having
458 public testimony at the next hearing because this hearing was noted as likely to be continued to
459 November 22. No notice was given that there would not be public testimony at that hearing as
460 well. Some people might not have been able to attend this hearing, and the Commissioners did
461 not want to deny them access for public comment at the next hearing.

462

463 **Commissioner Churchill amended his motion to continue the hearing to November 22,**
464 **keeping the record open and allowing for public testimony at that time. Commissioner**
465 **Fuchs seconded the motion.**

466

467 Discussion amongst the Commission continued with these key comments and responses from
468 staff as noted:

- 469 • There were a number of issues and questions, many of which would warrant time to look at
470 concepts or possibilities to bring back to the Commission. Having to ask questions,
471 deliberate, and make a decision all in the same night was very limiting.
- 472 • **Ms. Mangle** responded that questions could be emailed to staff, which staff could share
473 with the Applicant; staff could facilitate that discussion.
- 474 • Asking questions of staff, and staff asking questions of the Applicant, prevented the public
475 from hearing that exchange.
- 476 • **Ms. Mangle** responded it would come back and be reported either in writing shared with
477 the whole Commission or in person on November 22.

- 478 • She agreed the Applicant could waive the 120-day clock, but was not something they
479 had control over.
- 480 • This was a huge project, one of the biggest things to happen in Milwaukie in 50 years. The
481 Commission was restrained by the 120-day clock, but needed time to hear public testimony,
482 deliberate, and study the issues further, as much as possible.
- 483 • **Ms. Mangle** replied that staff had done what they could and met with most of the
484 Commissioners one-on-one to review the application. As on every land use application,
485 staff did not control the clock. Another option would be to set an interim special meeting
486 if the Applicant was available.
- 487 • With regard to waiving the 120-day clock, she believed the Applicant would say that
488 construction of the bridge was tied to the in-water work window, which was really driving
489 the schedule of the application.
- 490 • It was not the Commission's responsibility to respond urgently due to an applicant's lack of
491 planning.
- 492 • If the Commission's major concerns and suggestions had actually been addressed during
493 previous meetings and discussions provided by staff, the Commission would not feel backed
494 into a corner. The major issue had been decidedly ignored, and it would take some work to
495 come to a solution that did not result in the Commission adding a condition that TriMet could
496 not meet.
- 497 • What would happen if the Commission could not make a decision on November 22 or the
498 decision was denial because they could not get the answers or what they wanted?
- 499 • **Ms. Mangle** stated the Commission could not deny the application, so conditions
500 would need to be crafted to address the concerns the best way possible, which was
501 what the DLC did because they had concerns as well.
- 502 • The DLC's concerns were not being addressed in this venue but were being continued.
503 They had summarily taken the lighting of the jump span and moved it to the station
504 hearing. The Commission did not have the option of addressing their concerns at a later
505 date.
- 506 • Some things could be addressed through conditions like that, but that solution would not
507 work for everything.

508

509 **Ms. Robbins** stated the Applicant was happy to be part of an interim meeting before November
510 22. Their team had been working in consideration of the DLC's recommendations on the column
511 treatments and she had some images available. There had been further discussion about the

512 lighting treatments under the jump span and they would be happy to discuss it further between
513 now and November 22.

- 514 • She stated TriMet would have concerns about extending the 120-day timeline and being
515 able to meet their overall construction schedule. She was not in a position to say right now
516 that TriMet would entertain the voluntary waiving of that clock. They could return to the
517 Commission within a week with the impacts of that change.

518

519 **Ms. Mangle** confirmed enough notification time existed for an interim meeting on November 17
520 as long as the hearing was continued to a date certain because the original public notice for
521 tonight's hearing was sufficient.

- 522 • Staff had been doing extensive notification regarding light rail using the City's website, email
523 lists, *The Pilot*, Twitter, Facebook, and all the tools the City uses, extending well beyond the
524 notification requirements for land use.

525

526 **Commissioner Churchill moved to continue the hearing for WG-11-01, DR-11-01, HCA-11-**
527 **01, WQR-11-03, and CSU-11-09 to November 17, 2011 date certain at 6:30 p.m., keeping**
528 **the record open and allowing for public testimony on that date. Commissioner Fuchs**
529 **seconded the motion, which passed unanimously.**

530

531 The Commission took a brief recess and reconvened at 9:08 pm.

532

533 5.2 Summary: Trolley Trail Modification for Light Rail

534 Applicant/Owner: TriMet

535 File: MOD-11-01, WQR-11-04

536 Staff Person: Susan Shanks

537

538 **Chair Batey** called the hearing to order and read the conduct of quasi-judicial hearing format
539 into the record.

540

541 **Susan Shanks, Senior Planner**, cited the applicable approval criteria of the Milwaukie
542 Municipal Code as found in 5.2 on page 7 of the packet, which was entered into the record.
543 Copies of the report were made available at the sign-in table.

544

545 **Chair Batey** asked if any Commissioners had any ex parte contacts to declare.

546

547 **Chair Batey** clarified that one of the ex parte contacts she declared for the last hearing actually
548 pertained to this application, the contact with JoAnne Bird regarding the tree removal along the
549 ODOT gravel pit property on McLoughlin Blvd.

550

551 All Commissioners declared for the record that they had visited the site. No Commissioners
552 however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners
553 abstained and no Commissioner's participation was challenged by any member of the audience.

554

555 **Ms. Shanks** presented the staff report via PowerPoint, reviewing the Water Quality Resource
556 (WQR) application and the modifications proposed between River Rd and Park Ave and the
557 previously approved Trolley Trail Community Service Use (CSU) approval. She explained the
558 Applicant submitted this application at the same time because a substantial amount of grading
559 and earth moving was required, and it made sense to do this now considering the construction
560 timing of the Kellogg Bridge work.

561

562 She responded to clarifying questions from the Commission with these comments:

- 563 • The original application did not have a WQR or a timeline for construction, because that was
564 before the Code change that created expiration dates for applications. Old CSUs did not
565 have expiration dates.
- 566 • The trail section from River Rd to Park Ave would be lit. Lighting levels were not discernable
567 in the photometric plan provided to the Commission because of the paper size. Staff
568 included a condition to ensure there was no increase in lighting levels that was more than
569 what was allowed at the residential edge. The top of slope was deemed a good place to for
570 that measurement. A zero foot-candle reading would not be conditioned, due to the ambient
571 light from McLoughlin Blvd, but no increase would be allowed. A photometric study was
572 required for staff to evaluate.
- 573 • She did not know the cubic feet per second (CFS) of the water in the ravine, but that would
574 be addressed in upcoming testimony.
- 575 • There was no requirement about having a specific CFS to be classified as a primary
576 protected feature. Other thresholds included year-round flow, certain drainage areas,
577 and a year-round seep or spring.

- 578 • She believed the decision to cut the three sequoia trees was because they were located in
579 the middle of the proposed new Trolley Trail alignment. The Applicant could provide further
580 details.
- 581 • The Applicant wanted to maintain a certain distance between the light rail and trail without
582 shifting closer to WQR area, which includes the buffer around the actual water feature. She
583 clarified the trail would cross the WQR area and that the water quality feature went
584 underground into a culvert. The significant slope was a key factor, so the Applicant was
585 putting in a short retaining wall to minimize the grading and fill impacts to the WQR area
586 where the feature goes underground.
- 587 • A consistent distance was maintained between the Trolley Trail and light rail with a minimum
588 6-ft planted landscape buffer between the rail and trail. The cross sections provided by
589 TriMet were good illustrations of the change in grade, but did not reflect the revised
590 landscape and planting plans. Revisions to the landscaping plan had been submitted which
591 eliminated a number of the shrubs between the rail and trail, turning it into more of an eco-
592 seeded area at the intersections.
- 593 • The retaining walls became much larger as they went farther west in the proposed
594 alignment. She did not know if the possible increase in noise to the east was studied as
595 sound reflected off the retaining wall, and deferred to the applicant.
- 596 • Staff was unable to analyze the revised landscape plan prior to the date of the packet, but
597 had since that time. Staff's recommended conditions for the revisions were on the green
598 handouts. The revised findings in support of approval included updated findings on the
599 WQR Plan. She reviewed the revised conditions provided on the light green handout.

600

601 **Chair Batey** confirmed that no further correspondence had been received other than the items
602 included in the packet. She then called for the Applicant's presentation.

603

604 **Leah Robbins, TriMet**, presented the application via PowerPoint, paper copies of which had
605 been distributed to the Commission with the Kellogg Bridge handout. She clarified questions
606 from the Commission as follows:

- 607 • The noise analysis had anticipated retaining walls, so that part of the noise analysis was
608 consistent with what they studied in the Final Environmental Impact Study. An additional
609 noise analysis was done at the south end of the structure for two additional properties that
610 were to be acquired to build the retaining walls. They were able to determine there was no
611 impact to the neighbors on the remaining parcels.

612 • She did not have a technical response regarding the noise reflected off the wall across
613 McLoughlin Blvd to parcels on the east side of McLoughlin, but that information could be
614 provided to the Commission.

615
616 **Ms. Mangle** reminded a vote was needed on whether or not to continue the meeting past 10:00
617 p.m. before continuing with questions from the Commission.

618
619 The Commission concurred that those who had signed up to testify should testify and then the
620 hearing could be continued at that point.

621
622 **Chair Batey** called for public testimony opposed to the application.

623
624 **Les Poole, 1515 SE Lee Ave, Clackamas County**, stated his opposition went back to the
625 LUFO and dovetailed with some things he said earlier in the meeting. He was not trying to stop
626 light rail but had talked with lawyers and had 30 years land use experience. He hoped to be
627 heard.

628 • He would have liked to have seen an appropriate amount of money from TriMet in the
629 original design. If they were going to come across Kellogg Lake and the edge of Kronberg
630 Park, rather than trying to stay out of Kronberg Park and in the railroad right-of-way, they
631 should have condemned the corner of Kronberg Park, mitigating the park, and bringing the
632 overpass at an angle and crossing more diagonally at McLoughlin Blvd/Hwy 99E rather than
633 on top of the Trolley Trail.

634 • He believed the effort made to modify the original plan was a dramatic improvement.

635 • He had the same concerns as Commissioner Churchill. There was no indication of how tall
636 the retaining wall would be, or what it would sound like on the Trolley Trail with the trains
637 vibrating, and the traffic and noise bouncing off of a 25- to 30-ft high retaining wall.

638 • Because light rail was on top of the Trolley Trail for part of the alignment, he believed the
639 alternative analysis was flawed. Given the time of day and the situation, he requested the
640 record be kept open on this issue, at least for written input until November 17. He assured
641 he was not representing himself.

642 • He noted the table was about 6 ft long, and the trains would be 6 ft away from the trail in
643 places with this design. One reaching through the bushes would be pretty close to the train.
644 The pictures showed nicely trimmed trees, but TriMet would not be replacing all the fir trees.

- 645 • A section of the Supplemental Draft Environmental Impact Statement (SDEIS) said, "On the
646 west side of McLoughlin, the project would use a portion of an old street car right-of-way that
647 was purchased by Metro and the parks district for development of the Trolley Trail. Light rail
648 would operate between the trail and McLoughlin Blvd." This was true in places but in other
649 places with this design, TriMet was basically putting a giant concrete roof over the top of a
650 park. The Trolley Trail was a park; a historic public resource. The minimum impact rating for
651 the Trolley Trail impacts in this situation was what would be challenged legally.
- 652 • The Commission was doing a great job trying to mitigate a design based on de minimis or
653 minimum impacts. He found it hard to believe that these were minimum impacts to that park.
654 In fact, he believed the attempt to avoid major impacts at Kronberg Park was how they came
655 up with the design in the first place.
- 656 • The original estimate to go to Park Ave was \$140 million to \$150 million. The LUFO said
657 they were taking 1,200 cars off the street. Now, they were buying more property and still
658 having major impacts on the trail and to the entire watershed. Nowhere in the discussion did
659 he see anything that addressed that they were condemning a portion of a public park. It
660 stated, "As the light rail and trail approach Park Ave, light rail leaves the Trolley Trail
661 alignment to stay on McLoughlin." He did not know how much of the Trolley Trail was being
662 condemned in this process, but he would appreciate an answer next week. He hoped the
663 record would be kept open until November 17.

664

665 **Chair Batey** called for testimony neutral to the application.

666

667 **Michelle Healey, North Clackamas Parks and Recreation District (NCPRD)**, stated the
668 NCPRD had known about this project since they appeared before the Commission with the
669 original land use application for the Trolley Trail. NCPRD recognized this project was very
670 different from what the community first envisioned. Given all the conditions they were working
671 with, TriMet, the City, and all the partners have done a very good job trying to mitigate the
672 impacts and coordinate with NCPRD, and they were cognizant that this trail was an important
673 community asset. She encouraged the Commission to keep moving forward with the project.
674 The trail would never be what the community had envisioned, but TriMet and the City had
675 addressed the concerns NCPDR had had over time.

676

677 **Chair Batey** asked about the issue raised of changing the plantings between the trail and the
678 rail to just ground cover as opposed to trees and shrubs.

679 • **Ms. Healey** responded there were still a lot of trees. Some changes came out of discussions
680 around maintaining good sight lines and safety for people on the trail by avoiding shadowed
681 areas and hiding places. Changes were also made in acknowledgment of the maintenance
682 work required to make sure the Trolley Trail was a nice facility within the city and
683 surrounding area. How the trail would be maintained had yet to be worked out in detail
684 between NCPRD and TriMet, but both were working toward making it a very nice facility.
685 NCPD knew their limitations. Maintenance was secondary to the security issues, but it was
686 part of the discussion.

687
688 **Commissioner Gamba** asked Ms. Healey's opinion about removing the three sequoias versus
689 pushing further into the WQR.

690 • **Ms. Healey** responded there were tradeoffs either way. She personally would have liked to
691 see the trees retained, but did not know the impacts to the WQR by moving further into the
692 area. She believed they were doing their best to make it work, and was glad they were able
693 to maintain the large sequoia around the corner. It was not ideal; NCPRD did not want the
694 trail moved closer to the train because, as Mr. Poole noted, 6 ft was not a very large buffer.

695
696 **Commissioner Churchill** asked how safety versus visual privacy from McLoughlin Blvd was
697 balanced in the landscaping strip between the train and trail.

698 • **Ms. Healey** responded vegetation was wonderful; however, walking on a trail that was
699 heavily vegetated could cause a very uncomfortable sense. Sometimes it was safe, and it
700 was just a feeling, but sometimes some real problems could be encountered. On other parts
701 of the trail where vegetation had been cleared and more eyes were on it, the police informed
702 NCPRD that unwanted characters had moved on. They were trying to keep that in mind as
703 they looked at the entire trail, especially with a long stretch with no outlets along the way,
704 especially since it was dark when getting off the train at 5:00 p.m. at this time of year, which
705 was one reason the lighting was recommended.

706
707 **Daniel Platter, 12320 SE Ave, Milwaukie**, hoped the Commission was aware of how lighting
708 could affect residents close by; light made it difficult to sleep, chased birds away, etc. He
709 proposed that the lighting be contingent on aiming light at the trail. Removing the big trees
710 would already let a huge amount of additional light in from the city and the streetlights.

711 • The main reason he wanted to testify was to emphasize the importance of the trail to
712 Milwaukie citizens. It was the only green space where they could run. Right now, the trail

713 invoked the feeling of running under a huge forest with big trees, which was really beautiful
714 and made one run faster.

- 715 • He proposed moving the trail to the west along the gravel pits. One advantage of moving the
716 trail was that it would be far enough away from the power lines to plant large trees that might
717 not be disturbed for a long time. There was opportunity to have what they have now back
718 again in the future.
- 719 • One way to separate a green space from the ugly sort of spaces was to have large trees
720 above. He understood, based on the arguments, that there probably could not be shrubbery
721 between the trail and highway, but to emphasize what could be done behind the trail might
722 be a way to mitigate for what was being lost. He suggested planting large trees such as
723 oaks, ashes, and maples with native dogwoods underneath. They should be very specific on
724 what TriMet was going to do. He preferred trees with blooms or fall color; it was important to
725 pay attention to detail.
- 726 • He agreed with replanting a lot of trees, but sometimes that meant so many were being
727 planted that none would thrive. Looking forward, he suggested having large trees with some
728 of the replantings be dogwood, which could grow underneath.

729

730 **Chair Batey** asked about the ravine and water where he had done some planting.

- 731 • **Mr. Platter** responded the plantings were going to be destroyed, unfortunately. For nine
732 months of year, the water flowed about 1.5 ft wide and about 2+ in deep. During summer,
733 the water trickled and dripped into the pools.
- 734 • There were also giant trilliums in that area, which was a rare plant. He thought they might be
735 destroyed and felt they should be preserved
- 736 • He clarified that the culvert collapsed last winter and would have to be redone. The culvert
737 had almost looked like a little sandy estuary before last winter and had somehow sunk down
738 to go under the road. He did not know how it was engineered.

739

740 **Commissioner Gamba** asked if his proposal to move the trail further west involved a significant
741 length of the trail or just the portion around the three sequoias.

- 742 • **Mr. Platter** responded there were too many sequoias in that area. They could consider
743 cutting down two of the sequoia and keep the southern one, which would prevent the curve
744 from being too rounded. Sequoias were too large to be planted 10 ft apart, so they would not
745 thrive for long anyway.

746 • He clarified that his comment was not about saving the trees but getting the trail away
 747 from the highway to become more of a green space. If they could not do that, it would be
 748 best to use some of the gravel pit for mitigation. His neighborhood was being hit hard; it
 749 would not be the neighborhood he moved to that had the towering trees. How it would
 750 look in the future depended on how good a job they did now.

751
 752 **Chair Batey** asked if the Commission wanted to ask questions of the Applicant or continue the
 753 hearing.

754
 755 **Commissioner Churchill** supported a continuance because he wanted to hear more about the
 756 apparent increase of reflective noise from the higher wall.

757
 758 **Chair Batey** added the Commission probably had questions about plantings and other items
 759 such as trees.

760
 761 **Commissioner Gamba** moved to continue the hearing on MOD-11-01 and WQR-11-04 to a
 762 date certain of November 22, 2011, keeping the record open and allowing for public
 763 testimony on that date. **Commissioner Fuchs** seconded the motion, which passed
 764 unanimously.

765
 766 **6.0 Worksession Items—None**

767
 768 **7.0 Planning Department Other Business/Updates—None**

769
 770 **8.0 Planning Commission Discussion Items—None**

771
 772 **9.0 Forecast for Future Meetings:**

773 November 22, 2011 1. Public Hearing: WG-11-01 Kellogg Lake Light Rail Bridge
 774 (tentative)

775 2. Public Hearing: MOD-11-01 Trolley Trail for Light Rail (tentative)

776 3. Public Hearing: CPA-11-02 Water Master Plan (tentative)

777 December 13, 2011 1. Public Hearing: WQR-11-05 Furnberg St wetland

778 2. Worksession: Residential Development Standards update tentative

779 **Ms. Mangle** noted that on November 17 at 6:30 p.m., the special meeting continuing the public
780 hearing on the Kellogg Bridge would be held as discussed. On November 22, they would have
781 the continued public hearings on the two applications. The public hearing on the Water Master
782 Plan scheduled for December 13 would not be held, but staff would begin their series of
783 worksessions on the Residential Development Standards which would continue into January.

784

785 Meeting adjourned at 10:25 p.m.

786

787

788

Respectfully submitted,

789

790

791

792

793

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

794

795

796

797

798 _____
Lisa Batey, Chair

**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

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

46
47 **Chair Batey** asked if any Commissioners wished to abstain or declare an actual or potential
48 conflict of interest. There was none. She asked if any Commissioners had any ex parte contacts
49 to declare since the last meeting.

50
51 **Chair Batey** declared that this hearing was a topic of conversation at her Island Station
52 Neighborhood District Association (NDA) meeting. The NDA Chair had indicated concerns
53 about the preservation of the oak tree. She had encouraged the NDA Chair to testify at this
54 evening's hearing or submit a letter. The NDA Chair was in attendance, so perhaps was
55 intending to do so.

56
57 **Commissioner Gamba** declared he had two phone calls since the last meeting, one from
58 former Planning Commission Chair Jeff Klein, whose written comments reflected the phone
59 discussion and were included in the packet, and another from Matt Menely, who also submitted
60 his comments in writing.

61
62 **All Commissioners** declared for the record that they had visited the site. No Commissioners,
63 however, declared a conflict of interest, bias, or conclusion from a site visit.

64
65 **Vice Chair Harris** confirmed that although he missed the first hearing on November 8, 2011, he
66 had watched the video online and reviewed all the documents included in the packet in order to
67 prepare to participate in tonight's hearing.

68
69 No Commissioners abstained and no Commissioner's participation was challenged by any
70 member of the audience.

71
72 **Chair Batey** called for public testimony in favor of the applications.

73

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

85

86 **Chair Batey** called for public testimony neutral to the applications.

87

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

98

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

100

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

- 105 • He reiterated he was not trying to stop light rail. He was trying to encourage David Unsworth
106 and TriMet to follow the Land Use Final Order (LUFO), because the design of the bridge and

- 107 crossing did not meet the de minimis impacts criteria. The distributed material from the
108 original SDEIS was pretty straightforward, stating if TriMet could not find a good way or
109 different way to do the project, maybe they needed to go elsewhere.
- 110 • He was opposed to the elevated crossing that appeared to be an attempt to circumvent the
111 mess at Kellogg Lake. Ironically, the filled lot that now was Kronberg Park was carved out of
112 Kellogg Lake Park.
 - 113 • He was at TriMet months ago and had appeared before City Council countless times. He
114 had repeatedly asked for adequate mitigation there, and asked that Kellogg Lake Park and
115 Kronberg Park be addressed appropriately and combined. He asked how the permits in the
116 process could be valid if they did not have the correct property descriptions. Kellogg Lake
117 Park, identified in the SDEIS and environmental study, had disappeared again.
 - 118 • Obviously, there was not enough money to design the bridge in a different way, but that was
119 not the issue; they were talking about a bridge and an overpass through public resources,
120 including Kellogg Lake, Kellogg Lake Park, the Trolley Trail, and Willamette Greenway. He
121 anticipated a court case. Additionally, the money might not be available for the County's
122 portion of the project, which would bring them back to ending the line at Tacoma St and
123 bringing an appropriate streetcar into town, which was an alternative he would not oppose.
 - 124 • For the last several years, businesses have been kept in a condition of uncertainty about
125 the project.
 - 126 • He supported a pedestrian bridge, but it was a separate project and should not be in this
127 discussion. He noted the diagram had been provided showing a pedestrian bridge that was
128 not part of this process blocking the view of the historic railroad trestle structure.
 - 129 • He received a phone call from supporters of Voter Approval of Urban Renewal Measure 3-
130 386, and they did not see the Clackamas County portion of the project being viable or
131 affordable. With \$25 million, plus \$5 million from Milwaukie, and a \$30 million federal match,
132 he asked what the County or Oak Grove got besides the end of the line, what he considered
133 a rape job at Kellogg Lake and the Trolley Trail, and of course, the parking. From the phone
134 call, he believed there would be a petition for a vote on the light rail project, and based on
135 recent events, it could be on the ballot in May.
 - 136 • The Commission had been put in an awkward position by their predecessors, including
137 Deborah Barnes, Carlotta Collette, and former Mayor James Bernard who never recused
138 himself from the process. Now, this has turned into a real mess.

139

140 **Commissioner Stoll:**

- 141 • Thanked Mr. Poole for testifying and said it sounded like Mr. Poole would like the light rail to
142 end at Tacoma St.
- 143 • **Mr. Poole** responded he would like that, but the issue tonight was the hearing's criteria
144 involving Kellogg Lake and what would happen with the Park Ave segment.
- 145 • Stated one goal of the light rail project was to get it through Milwaukie and to the edge of the
146 unincorporated area of Clackamas County. As such, it had to cross Kellogg Creek, Kellogg
147 Lake, and would either cross McLoughlin Blvd or be on the other side of McLoughlin Blvd.
148 He asked what Mr. Poole suggested they do if it had to cross Kellogg Lake to get to where it
149 was going to end.
- 150 • **Mr. Poole** suggested they look at the LUFO and realize that for 850 cars of parking, they
151 could save about \$135 million to \$140 million. The Park Ave segment needed to be
152 redesigned, and more than that, the Park Ave segment should be delayed, which would
153 probably stop the project. That would put the end of the line at Lake Rd, which no one in
154 Milwaukie wanted. No criteria stated that light rail had to go into the county, which had
155 resulted after a fraud at Kellogg Lake and Kronberg Park.
- 156 • Noted there had been many arguments over the past years about whether light rail was a
157 good project, bad project, or the best project. He personally believed in bus rapid transit,
158 and had raised that idea, but he had accepted the fact that this would be a railroad rather
159 than a busway, and the discussion was past that now.
- 160 • **Mr. Poole** noted that the money was not there. They tried to hijack money from the
161 Sellwood Bridge and other things. The money was never there to extend the line beyond
162 Lake Rd in a manner that would not create major impacts to the public resources. Two
163 years ago, TriMet knew they should build a minimum operating segment as mandated
164 and locate 600 cars at Tacoma St. Now, the design was to phase in phasing. Now they
165 were going to put half the cars from Tacoma St onto a surface lot at Park Ave and
166 eliminate that parking structure.
- 167 • He sincerely believed that anyone wishing to study this further would find that the
168 extension over Kellogg Lake was not required for the project to move forward.
- 169 • Stated Mr. Poole was still arguing about alignment. Regardless of how people felt about light
170 rail, a vast majority of the people in Milwaukie did not want the end of the light rail line to be
171 downtown with a parking structure. Basically, Mr. Poole was stating that the current
172 alignment should be thrown out.
- 173 • **Mr. Poole** stated that was not the case. All the studies, including the environmental
174 impact statement and the Locally Preferred Alternative (LPA) report, made it very clear

175 that anyone building a light rail line to Milwaukie that had a \$300 million-plus funding
176 shortage was mandated to build a minimum operating segment.

177 • The final Park Ave segment was unnecessary for this project, and there was no money
178 to remedy that. TriMet would have to reapply for more money to properly mitigate and
179 design the Park Ave segment, which they were not about to do in the current
180 environment.

181 • The obvious solution would be to modify the minimum operating segment and put more
182 parking north of town where it started, before the lunacy at Kellogg Lake where Deana
183 Kronberg Swanson, the community, and TriMet were deceived. He noted people were
184 watching over him because of how ugly this has gotten.

185

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

188 • **Mr. Poole** explained the train was directly over the park and about eight-tenths of an
189 acre would be condemned. TriMet tried to shorten the bridge and move the trail farther
190 west, but that encroached on the Water Quality Resource (WQR) area so the trail would
191 be more like a sidewalk and very dangerous for bicyclists. That part of the trail is a
192 critical link between the riverfront and Park Ave, and would have an incredible amount of
193 use with or without light rail. Public safety is not to be compromised for the benefit of any
194 project.

195 • He noted he would not return without an attorney present, reiterating that he represented
196 many people and the same group that passed Measure 3-386.

197 • Now that the idea of doing urban renewal at Park Ave was in jeopardy, Park Ave would
198 get the end of the line and all the negative impacts no one wanted. Who would police
199 that area? What will safety be like where the trail goes into the backyards next to that
200 parking structure? It would be another Town Center..

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

205

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

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

222

223 Commissioner Wilson left the meeting at this time.

224

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

- 227 • The oak tree was discussed at the NDA meeting yesterday and they had agreed they cared
228 enough about the tree that they voted to send in letters to help save the tree. She and Ed
229 Zumwalt, Historic Milwaukie NDA Vice Chair, met with Wendy Hemmen, Light Rail Design
230 Coordinator, to try to understand why the tree could not be saved.
- 231 • It seemed one branch going toward the proposed structure could easily be pruned, and
232 the structure would be well within the parameters of the space it needed. Ms. Hemmen
233 explained part of the construction site was in the railroad right-of-way and part was on
234 Kronberg Park, as well as the requirements of the staging for placing pieces of the
235 bridge in place.
- 236 • She understood the challenge of having the tree in the construction zone, but she
237 wanted to see what options or alternatives TriMet had really explored to save the tree.
- 238 • She asked Ms. Hemmen if construction of that particular segment near the oak tree
239 could take place from the opposite side of the existing railroad structure. It would be very
240 complicated to go over or around the tree, but the existing structure was at the same

241 level as the new structure. A temporary construction site could be made just for that
242 segment.

243 • She hoped the Commission would ask TriMet the same questions, or perhaps TriMet
244 had looked at other alternatives. It was a 150 to 200-year old tree and replacing it was
245 not a good option.

246 • In reading the document, she was a bit confused when TriMet referred to the space on
247 Kronberg Park as a construction site as opposed to a staging site. She asked if equipment
248 would be there just before the construction of the elevated structure from Lake Rd to the
249 side of River Road, or if the equipment would be there until the entire alignment to Park Ave
250 was completed.

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

254

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

259

260 **Chair Batey** noted she would defer that question.

261

262 **JoAnn Bird, 12312 SE River Rd, Milwaukie**, stated they had lived in the area for 25 years
263 and she wanted to testify mostly about the oak tree. If the Commission had the political will to
264 say TriMet needed to work around the tree and not over the top of it, the tree could be saved.
265 The Oregon Department of Fish and Wildlife (ODFW) said the oak tree was between 150 and
266 250 years old. The tree probably existed before Lewis and Clark came to the area. The tree was
267 there when her ancestors settled the valley six generations ago. She did not think this should be
268 taken lightly. It could be pruned and the limb could be moved out of the way. If it were an old
269 structure, they would try to preserve it; but because it was a tree, everyone figured it could be
270 traded for more trees. She had heard the biodiversity lost in one old growth tree could never be
271 replaced. Her husband was an engineer and had commented that this was just a problem to be
272 solved; it could be worked around. She understood expense was an issue, but the whole line

273 was expensive. If they could not mitigate the expense to save one tree, then there was
274 something wrong with the whole social structure and the way they were doing it.

275

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

291

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

295

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

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

306

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

311

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

- 313 • Oak tree in Kronberg Park
- 314 • Pedestrian bridge
- 315 • Use and square footage of Kronberg Park as a staging area
- 316 • Smell/emissions impacts from construction
- 317 • Light and noise impacts from the train and construction
- 318 • 120-day clock
- 319 • Effluent created by the track lube (stormwater)
- 320 • Impact of temporary bridge footings on springs in Kellogg Lake
- 321 • Jump span as part of station permit
- 322 • Lighting for the entire bridge: both on the bridge and the jumpspan as a design aspect of the
323 pedestrian bridge underneath

324

325 **Chair Batey** called for the applicant's testimony.

326

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

330

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

334 The handout was reviewed as follows:

- 335 • The memo on Page 1 of the memo highlighted why TriMet and its consultants did not
336 believe the oak tree could be saved. Issues included needing additional staging area
337 beyond that approved in TriMet's current permits and Final Environmental Impact
338 Statement (FEIS) approvals; severe safety risks with regard the lifting over and around
339 the tree, rigorous pruning and limbing, violating industry standards for the root protection

- 340 zone, and the inability to justify the increased costs with the low probability of the tree's
341 survival. Given these factors, TriMet would comply with staff's proposed condition that
342 required the placement of additional oak trees in and around the future trailhead.
- 343 • The diagram on Page 2 showed that the bridge alignment itself impacted some of the
344 tree canopy. In addition, a clearance area was needed to construct scaffolding, for
345 formwork and other activities, not only to get the tubs in place but also to get the bridge
346 deck on the top formed, poured, and completed.
 - 347 • A large truck was also needed to bring in the bridge pieces. The picture on Page 4
348 provided an example of how long the girders were as they came in. The longest span
349 would be about 120 ft, and the truck needed to drive out onto the work bridge for the
350 girder to be placed.
 - 351 • The turning movements for such a large vehicle would impact some of the canopy on the
352 opposite side of the tree, as well as the root protection zone due to the needed height
353 clearances of about 18 ft.
 - 354 • The diagram on Page 2 was reviewed, indicating the paths the trucks would need to
355 take. As proposed, TriMet would alter the tree canopy on both sides in order to get in
356 and around the tree before the work began. In order to go around the tree, the existing
357 50-ft easement line, shown in blue, would need to be extended about 40 ft farther into
358 Kronberg Park in order for the trucks to make the turning movement.
 - 359 • **Commission Stoll** confirmed that TriMet was proposing execution of the tree based on
360 some arborists' judgment; but the tree had probably suffered a number of insults in 150
361 years. With proper pruning, the tree might survive if TriMet could work in an additional 40 ft
362 of Kronberg Park.
 - 363 • The project would currently use 10,000 sq ft of the approximate 3.5-acre park. TriMet tried to
364 minimize by design their use of the staging area directly adjacent to where they had to
365 construct.
 - 366 • While TriMet had saved similar trees in similar circumstances in the past, the hand drawn
367 example on Page 5 illustrated the staging for Pier 5 on the south bank of the creek.
 - 368 • Without the tree, the truck would pull up immediately adjacent to where the lift would
369 occur, and a 300-ton crane would lift the piece about 20 ft to 26 ft in the air to get the
370 clearance and then set it into place; a very easy, standard pick. However, with the tree in
371 place, two, 500-ton cranes and a 90-ton crane would be needed, almost tripling the
372 crane impact in and around the tree. The 90-ton crane was needed to construct the two
373 500-ton cranes. The 90-ft bridge section would need to be lifted more than 80 ft in the

- 374 air, extended over the tree, and positioned in the bridge by synchronizing the movement
375 of the two cranes.
- 376 • No guarantees exist that the cranes would be able to stay out of the root zone or that the
377 tree would survive.
- 378 • Safety was a significant consideration as workers lift a very large piece of steel almost
379 three times higher than necessary without the tree. The tree canopy's 60-ft width even
380 as pruned could impact the safety lines attached to the section and the workers.
- 381 • TriMet decided that with that kind of impact to the tree, they should look at how to
382 mitigate it and understand its removal, which is why they agreed with the staff's
383 condition.
- 384 • Having the tubs brought in from the Union Pacific trestle side would actually be more difficult
385 and dangerous. Besides the difficulty in coordinating the trains, the distance from the
386 centerline of their rail to the centerline of TriMet's southbound rail was actually 25 ft, a very
387 large span to lift something up and reach across.
- 388 • The handwritten drawings of the diagram on Page 4 were described. The green items
389 indicating the positions of the delivery truck and crane with the tree removed and the red
390 showing the location of the truck and two cranes if the tree remained. The red circle signified
391 the tree canopy. The total width of the delivery truck and tub would be about 10 ft. The tubs
392 were about 9 ft wide
- 393 • **Mr. Doran** explained they had to be outside the space where the bridge was being
394 constructed when the pieces were picked up due to the overhang on some suspended
395 seams that must be supported in order to position the tubs in addition to the piers. They
396 were not going from pier to pier as shown in some of the concrete pictures.
- 397 • The overhang of the concrete was 5 ft and the trucks could not be any closer than the width
398 of the column caps.
- 399 • The scale of the drawing seemed large.
- 400 • **Commissioner Gamba** felt it was easy to see that the tree did not need to be removed.
- 401 • **Commissioner Fuchs** noted that on a smaller scale, trees in similar situations often get a
402 disease because they are so damaged, or they fall on a house, or were cut down by
403 nervous homeowners anyway. The choice to remove this tree was made when the
404 alignment choice was decided. Given all the construction, it was almost a moot point.
- 405 • The pick structural layout would be much more detailed as TriMet developed the conduct of
406 construction plan. They had not considered the construction sequence with the mindset of
407 trying to save the tree, because that issue had been discussed before with the City, the

- 408 Commission, the DLC, and internally, and it was concluded that the tree would not be able
409 to be saved. That was why no further details were available about how this would be done
410 with the tree in place. No other pick or crane configurations had been explored other than
411 shown.
- 412 • A “pick” is the process of picking up the steel off the carrier or the staging area and lifting
413 it up, over and into place. This was technically two pick sequences, one with the tree and
414 one without the tree.
 - 415 • TriMet had spent time with its construction management group looking at different ways to
416 do this and the conclusion was they would still be impacting the tree and its root ball by
417 using two cranes as they moved through the staging area.
 - 418 • It was possible to work around the tree’s root ball; one option was illustrated on Page 5 with
419 the two cranes, but it posed cost increases, impacts to construction safety, worker concerns
420 with pinch points being created by the tree around the truck, etc. TriMet was not prepared to
421 assume the big liability issue if something went wrong and an accident occurred.
 - 422 • **Calvin Lee, Structural Engineer, TriMet**, agreed a single crane existed that could do that
423 particular work, so a single crane pick was possible. The question was determining what
424 that particular crane was, its size, reach, and height. The cranes set up in the configuration
425 shown would not be big enough to pick over the railroad. The steel tubs weighed 40 to 60
426 tons. Picking from the other side of the railroad track would be a blind set, where the crane
427 operator could not see the beam being set on the far side, similar to high-rise construction.
428 He was not aware of a locally available crane big enough for this purpose, but one could be
429 mobilized from another location.
 - 430 • **Mr. Doran** clarified that the two lines in the displayed plan were actually the centerlines of
431 each set of tracks; the tracks themselves were not shown on the diagram (Page 5). The
432 green box might be drawn a bit too big as this was done today for the purpose of illustration;
433 however, the overall function of how these picks occurred were still as drawn.
 - 434 • Cost overruns to save the tree had not been calculated. Going from one to two cranes would
435 double the cost of the cranes. Two cranes would only be needed for a couple of weeks for
436 the picks on this section.
 - 437 • While cranes do swivel and pivot, the functionality of their lifting capacity was based
438 upon how far they boomed down. The load rating of a crane dropped quite dramatically
439 as it moved away from the center point. At 45 degrees from vertical, 2/3 of its capacity
440 was probably lost. The farther away from the center point that the girder was being held,

- 441 the lower the capacity of the crane, making an even larger crane necessary. It was a
442 balancing act to determine the size of crane to use.
- 443 • **Commission Churchill** stated crane configurations exist, probably even with a single
444 crane that could pick a 60-ton load at that reach distance, thus providing an option for
445 saving the tree. He asked TriMet to explore options with crane consultants.
 - 446 • Whether one or two cranes were used, there was still the issue of how much more of
447 Kronberg Park TriMet would need to access.
 - 448 • The piece would still need to be lifted over the top of the tree. With adequate reach, the
449 boom could be swung from further north. While swinging such a large item ran the risk of
450 damaging the tree, risks are often taken in high-risk construction, like construction done
451 in The Pearl.
 - 452 • The Applicant's presentation was too simplistic and alternatives had not been explored.
 - 453 • There are ways to install this piece around the tree. The fundamental question was: is it
454 reasonable to expect the tree to survive under two years of construction with this kind of
455 impact, or to follow staff's recommended conditions to mitigate those trees in a planting?
456 TriMet believed that in this particular instance, the safe bet was to mitigate the trees per
457 the letter of the Code.
 - 458 • No arborist report had been generated. The memo on Page 6 of the handout was from
459 Landscape Architect Shawn Kummer, an associate with GreenWorks.
 - 460 • **Chair Batey** noted a tree could take 15 years to die, and a dying tree did not
461 necessarily mean it could not be a valuable habitat for many years to come.
 - 462 • **Commissioner Fuchs** stated disease and trauma were two different things. Given
463 the type of trauma being discussed with the severe pruning and affecting the root
464 zone, an arborist's report would be helpful. The question was whether the tree's end
465 would be drastic or dangerous.
- 466
- 467 Kronberg Park as a staging area:
- 468 • The intent was to use a minimal amount of Kronberg Park to stage during that period of
469 construction. TriMet was using 10,000 sq ft in a 50-ft swath and trying to minimize any
470 impacts on that area.
 - 471 • The project was being built on Union Pacific property, which avoided the park; the
472 discussion regarded the temporary use of the 50-ft swath during the construction.
 - 473 • **Ms. Shanks** explained if saving the oak tree were made a condition, TriMet would have to
474 address enlarging the staging area in Kronberg Park with both the City and the Federal

475 Transit Administration (FTA), which would be a process. She was not privy to the ongoing
476 negotiations between the City and TriMet regarding the construction easement agreement.
477 A letter regarding that easement was included in the packet.

- 478 • **Ms. Mangle** did not believe any land use codes would prohibit the expansion of the staging
479 area. Not knowing the outcome of those negotiations, a condition could require that X be
480 done if TriMet is able to negotiate with the City for a larger staging area.

481

482 Smell/emissions of construction area:

- 483 • Diesel trucks would be coming into the site, as well as cranes. On an average day, there
484 were 17,600 cars on McLoughlin Blvd just north of downtown Milwaukie. The number of
485 trucks coming to the site would be significantly less than 1% of that total number of vehicles
486 per day.
- 487 • Contractors not operating diesel vehicles turned them off rather than letting them idle. The
488 conduct of construction asked contractor's to pay attention to neighborhood issues such as
489 not idling a truck or car if it was not necessary.
- 490 • TriMet agreed to the condition concerning noise impacts during construction. The condition
491 laid out some Code compliance issues that must be addressed, such as hours of
492 construction and obtaining noise variances if noise levels are exceeded.
- 493 • Most work would occur during daytime hours, so no light impacts were involved with
494 construction. A portion of work would occur at night, which would require an ODOT permit to
495 address noise criteria related to spanning over the road without closing McLoughlin Blvd. It
496 was common practice to lift something over a roadway at night.

497

498 Revisiting Kronberg Park as a staging area:

- 499 • **Commissioner Churchill** asked how soil preparation and proper mitigation for soil
500 compaction and construction impacts would be addressed.
 - 501 • Best management practices would be utilized for the soil preparation of the Kronberg
502 Park staging area both for erosion control as well as for constructing the access road.
503 They would work to upgrade the existing access road to be able to handle the
504 construction traffic. The upgrading would include the clearing and grubbing as well as
505 laying down a geotextile fabric followed by 6 to 8 inches of crushed rock gravel on top. It
506 would not be an engineered roadway.
 - 507 • At the completion of the project, all the material, including the geotextile fabric would be
508 removed and the standard replant followed. TriMet would comply with all relevant

- 509 development Code standards that applied to access roads for construction, erosion
510 control standards, and other best management practices.
- 511 • TriMet would also comply with mitigation standards for compaction resulting from the
512 trucks, loads of gravel, etc. but certain details were beyond the scope of land use review.
513 When done, TriMet would remove the material they placed down, put appropriate soils
514 back in and replant it. If something occurred and it did not grow, TriMet would return to
515 fix it.
 - 516 • All the impacts that TriMet was required to address for the land use approvals had been
517 addressed and were reviewed by a third-party consultant hired by the City. Per the area
518 of review that TriMet was asked to address in the land use application, the mitigation
519 was deemed appropriate for the use of the property and the compaction or damage to
520 the soil. Those details were included in the application and materials presented at the
521 November 8 meeting.
 - 522 • **Ms. Shanks** added that one way the City approached such things was to look at how it
523 wanted the property left. TriMet was required to monitor the property for a certain
524 number of years after the project to ensure the site was left in equal or better condition.
525 Sometimes contingency plans were needed if the original mitigation plan did not hold, so
526 it was an ongoing process and became an ongoing condition of approval as
527 recommended in the staff report.
 - 528 • Very large cranes, trucks, and a lot of steel coming in would compact the soil and have
529 impacts on the water table immediately adjacent, as well as the land that would be a park,
530 so understanding the details was important.
 - 531 • **Ms. Shanks** stated the packet included prior geotechnical studies that concluded the
532 site was pretty stable, and also already compacted because of the type of fill put in
533 there. This was just one indication that there was less of a concern about something
534 sinking, creating a sinkhole or being unstable in that way.

535

536 Impact of footings on springs in Kellogg Lake:

- 537 • TriMet had been presented information to the Planning Commission for the last year about
538 what was being proposed and what was being done. The design of the bridge had been
539 modified to span the lake itself. Placement of the main piers was outside and above ordinary
540 high water in part to avoid the lake itself. The work bridge would go across the lake and
541 some piers would be placed in the lake itself.

- 542 • A geotech analysis had been done, but it did not identify the springs' locations. The springs
543 were not mapped, so there was no way to identify their exact location.
- 544 • Staff was not sure the City had jurisdiction over this issue because the City did not regulate
545 in-water work areas and had no related criteria. The issue could be discussed at a future
546 worksession if more information was needed.

547

548 Light and noise impacts from the train:

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

558

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

560

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

569

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

- 572 • He explained that various property acquisitions were involved with the leasing of land at the
573 bridge crossing the Willamette River; some were donations and acquisitions. TriMet had \$5
574 million in land donated. Some property was leased for some of the staging area to construct
575 the bridge; however, that property was donated by Oregon Health Science University and

576 Zeidel. There were many leases, including a \$2 million lease. TriMet would work through the
577 normal process to negotiate fair market value with the City.

578

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

581

582 Effluent created by track lube:

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

594

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

597

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

- 606 • She had been involved in some of the pre-master planning for Kronberg Park. As mentioned
607 at the last Commission hearing, North Clackamas Parks and Recreation District (NCPRD)
608 area volunteers had planted plants there, but they were all centered around the outer edge

609 and mostly to the southeast corner of the property, again, with the intention of not precluding
610 any future development of pathways or passive uses on the property.

- 611 • She explained that no master plan existed for Kronberg Park due to lack of money and staff.
612 Over the 18 years she has worked for the City, she had been fairly successful at getting
613 master plans, final designs, and parks built in the city, but it was difficult now with her current
614 level of responsibility, minimal staffing level, and the lack of a parks budget. She had sent a
615 letter asking if NCPRD could possibly help with a master plan for Kronberg Park and to
616 complete master plans for a couple other parks, but she was fairly rebuffed. City Council
617 and staff now needed to decide if they wanted to move forward with a master plan anyway
618 and allocate staff and money or push back on NCPRD as the designated park operators and
619 maintainers to move forward with these things.
- 620 • The oak tree in Kronberg Park was nice, and had been brought to her attention at a recent
621 open house. Prior to that, no one in the community had raised the issue to her during the
622 pre-master plan discussion.
 - 623 • If the tree could be pruned and avoided without huge construction changes to get around
624 it and compacting the rest of the property or going over the railroad, it might be worth
625 saving. However, the impact of the actual construction might ultimately kill the tree. If the
626 tree was removed, the mitigation should be increased to some extent so the oaks in that
627 area could be increased, and the bigger the better.
 - 628 • She was personally not in favor of spending more money and more resources to get
629 around something. The cost benefit analysis really needed to be considered.
 - 630 • To her knowledge, an arborist had not looked at the oak tree.

631

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

634

635 Jump span:

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

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

648

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

651 • **Jeff Joslin, KLK Consulting, 906 NW 23rd Ave, Portland,** stated they helped prepare the
652 applications. He reviewed the memo that had been provided electronically and now
653 distributed as a paper copy with these key comments:

654 • The application was crafted in a manner that identified how the Kellogg Bridge crossing
655 met all the applicable approval criteria as a freestanding element, and then to seek an
656 approval for the pedestrian bridge when and if funding is achievable. The memo focused
657 on criteria that applied to the pedestrian bridge in particular. TriMet, along with the DLC
658 and staff, concluded that the criteria most relevant to the pedestrian bridge were entirely
659 met in a freestanding manner by the Kellogg Bridge with or without the pedestrian
660 bridge, as well as the criteria related to the pedestrian bridge itself.

661 • **Mr. Mikolavich** noted TriMet was very supportive of the pedestrian bridge and designed the
662 bridge to allow for the pedestrian bridge. Costs had been added to allow the bridge to be
663 placed underneath Kellogg Bridge. The NEPA document clearly stated that clearance was
664 provided for the City to build the pedestrian bridge either at the same time or later. The
665 biological assessment with National Oceanic and Atmospheric Administration (NOAA)
666 Fisheries included the same clearance. The Section 404 Permit from the Army Corps of
667 Engineers and Department of State Lands included that same bridge.

668 • The NOAA application included both scenarios of the pedestrian bridge being
669 constructed at the same time and a later date, so the approval provided clearance for
670 both. TriMet would confirm whether the NOAA approval would continue beyond the
671 construction period, and how long the City had to work under that approval.

672 • At some considerable expense, TriMet had applied for a federal Transportation Investment
673 Generating Economic Recovery (TIGER) grant for money to add the pedestrian bridge. They
674 also put an application together for Connect 3 Oregon funding and greatly assisted the City
675 in applying for some ODOT flex funds. Rather than making a condition of approval, TriMet
676 asked that the focus be on asking the State to fund the pedestrian bridge. Information about

677 the applications and writing support letters urging the State to fund the bridge was in the
678 handout.

679 • The pedestrian bridge was not in TriMet's project budget. A land use decision had been
680 made on the project under House Bill 3478, which stated that unnecessary approval criteria
681 should not be provided. "Unnecessary" was further defined as not having sufficient funds in
682 the project budget to pay for it. Last year, TriMet lost 6% federal funding and now had 50%
683 federal funding. Approximately \$45 million had to be cut from the project scope, which was
684 felt in a number of different places. The intent had always been to get to Park Ave.

685 • **Tim Ramis, City Attorney**, stated the City agreed that adding the pedestrian bridge as
686 an approval condition would not comply with the LUFO.

687 • Work in the water had to be done within the water construction window, so the temporary
688 work bridge would be removed in 2013. Funding for everything to be built at once had to be
689 secured within this, and probably the next, in-water work window.

690 • People who wanted the pedestrian bridge should contact the appropriate people with flex
691 funds and let them know that this was a very important issue. TriMet had done that through
692 its application processes and in seeking money to have this occur.

693 • At the last attempt for the Metropolitan Transportation Improvement Program (MTIP)
694 money, many people in Milwaukie put in comments, but how much had been
695 communicated about how to provide comments this time around was unknown.
696 Milwaukie received MTIP money for a bikeway on 17th Ave, so regional dollars were
697 coming to Milwaukie.

698 • A temporary bridge would be necessary to construct the pedestrian bridge. The estimated
699 cost for the pedestrian bridge was \$2.4 million, if built at the same time, and that included
700 pedestrian connections costing about \$1.4 million. The boardwalks had to be elevated, and
701 there was some difficult terrain to work around.

702 • Building the bridge later would be more expensive. The temporary bridge would cost
703 approximately \$300,000 to \$400,000. TriMet understood it was better to do the
704 pedestrian bridge during the initial construction.

705 • TriMet created three online videos showing the application that TriMet had done to find
706 money for the pedestrian bridge. They did most of the third application for the City
707 because TriMet believed it was an important project.

708 • Most or all the in-water disturbance on this project would be the installation and removal of
709 the temporary bridge because the actual bridge piers would be above the ordinary high
710 water, a modification that resulted from input from the DLC and Planning Commission within

711 the last year. Constructing the pedestrian bridge separately would result in twice as much in-
712 water disturbance.

713 • On this project, they expected to come in just barely under budget because \$45 million of
714 scope had been cut. The first intent was to look at where it made sense to add those cuts
715 back. Two pedestrian bridges over the Union Pacific railroad in Portland were cut. TriMet
716 hoped to place those bridges later if savings and some breaks in pricing were found. Neither
717 of those bridges required that TriMet go back and disturb a natural area. Again, it would also
718 be better to build those bridges now.

719

720 Lighting on the bridge:

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

723

724 120-day clock: A schedule was provided to the Commission and reviewed. Key discussion
725 points included:

726 • The steps TriMet had taken and intended to take were noted. These steps would enable
727 them to build the first work bridge during the first fish window. The LUFO afforded a bit more
728 security knowing that the project had already been approved and the scope of the project
729 was identified. This provided a longer period of outreach and the ability to work with local
730 agencies and jurisdictions.

731 • In the last couple of years, TriMet held more than 91 meetings, in addition to the
732 meetings listed, with different business owners, agencies, jurisdictions, and other
733 government bodies.

734 • One reason TriMet was unwilling to extend the 120-day clock was they were up against the
735 construction window and timelines to get to the construction start of the open fish window on
736 July 15.

737 • TriMet would start breaking ground in May on some of the bents [near River Rd and work
738 northward to Kellogg Creek which they should reach in July. They could then start building
739 portions of the work bridge on the bank, and then build the work bridge as soon as the fish
740 window started. About 11 weeks of work were required to complete the work bridge, and the
741 fish window was only from July 15 to September 30, a very narrow window to complete the
742 work.

743 • **Commissioner Churchill** noted some room should be built into all schedules. Starting two
744 or three months earlier would have given the Commission more time to deliberate over the

745 information. A lot of feedback had been received from the public, and the detail the
746 Commission was seeing at this point was not available six months ago. Documents were not
747 at 90% complete yet. The pressure was now being put on the Commission to get this done
748 in essentially two hearings. TriMet was a partner and should allow time for new information
749 to be reviewed.

750 • **Ms. Mangle** explained that the application needed to get through the Commission and allow
751 time for an appeal at City Council by any party. The clock needed to allow for at least one
752 hearing at Council, if needed.

753 • The City Code was clear that all Commission decisions could be appealed to City
754 Council, and that Council was the final decision-making authority. If the City failed to
755 fulfill its responsibility to make a decision within the 120-day clock, Milwaukie would
756 essentially lose its authority to make the decision, and be forced to approve without
757 being able to impose conditions, which was not a good position to be in.

758 • TriMet confirmed they were not willing to waive the 120-day clock, which Commissioner
759 Churchill found deplorable.

760

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

763

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

766

767 **Chair Batey** called for further public testimony.

768

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

772

773 **Ms. Shepard** noted her prior question about the concrete piers being put into the ground by the
774 lake and stated the springs were an important component of the creek restoration. Part of the
775 Army Corps of Engineers' restoration was that a series of ponds would be fed by the springs,
776 and some of the very cold springs would help keep the water cool in the summertime.

777 Regarding the light analysis, the trees TriMet were going to remove along the railroad all the
778 way to McLoughlin Blvd actually helped screen the light from the three to four freight trains that

779 currently came through each day. TriMet was adding 164 trains and there were no plans to put
780 the trees back to help mitigate the light. The light of the trains coming from McLoughlin Blvd
781 across the lake was currently screened and with the trees removed, nothing would block the
782 train lights.

783

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

793

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

- 797 • **Mr. Hemer** replied he personally thought TriMet believed the pedestrian bridge was
798 important. They were caught up in a caveat that said they could not spend any extra funds
799 until the end of the project, which threw off the whole timeline of building the pedestrian
800 bridge. The pedestrian bridge was extremely important, but the issue was whether it was
801 worth holding up the application for something that with or without a condition of approval
802 would actually happen. TriMet may not know if the funds were available until the end of the
803 project.
- 804 • He agreed with the idea that if they were going to put in the temporary bridge, why not
805 just make more permanent.
- 806 • As far as the DLC's decision, the Committee knew their review would come before the
807 Planning Commission. No pedestrian access existed at this time over the lake. Pedestrians
808 would be granted access across the lake via light rail. Kronberg was not a destination park
809 now, but it would become one by the end of the project.
- 810 • He truly believed that TriMet, the City, and concerned citizens would find the funding to build
811 the pedestrian bridge using the temporary construction bridge and within the window so as
812 not to go over budget. He did not believe a condition for the pedestrian bridge was worth

813 holding up the entire project. He was not willing to spend \$1.4 million of TriMet's money on a
814 condition of approval that would prevent the project from being completed to Park Ave. The
815 rules of the contract stated that if the appropriate funds were there, it would be stretched to
816 Park Ave or else it could end at the Milwaukie terminus. He was not willing to take that
817 gamble.

818

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

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

828

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

831 • **Ms. Shanks** responded the condition was worded to apply where the track curved, because
832 light on the train could sweep as opposed to shining straight ahead. The tracks went straight
833 as they crossed the bridge after crossing McLoughlin Blvd. The condition was not written to
834 address that particular issue or concern.

835 • She confirmed that the condition addressing mitigation for the plantings being eliminated
836 that currently screened the lights on the heavy rail could be reworked so that the mitigation
837 plantings could provide some screening.

838

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

843

844 **Sarah Hartung, Wetlands and Wildlife Scientist, Environmental Science Associates,**
845 **Portland,** stated her company provided technical review of the WQR plans and the HCA

- 846 assessment. She had reviewed the appropriateness of the mitigation plan as well as the specific
847 species proposed.
- 848 • The mitigation not only met, but exceeded, Code requirements and was appropriate for the
849 site. The footprint of impact would be mitigated at a 1:1 ratio, but the tree replacement was a
850 6:1 ratio.
 - 851 • Planting along the shoreline was one of the best ways to provide an ecological uplift to the
852 lake. Native woody species would be established to provide shade for the water and organic
853 input, which was why riparian plantings were wanted.
 - 854 • This type of shoreline restoration was standard in the northwest, and the plan had all the
855 elements of success. TriMet would monitor and maintain the plantings for five years with
856 proposed irrigation to establish the plants. All the proposed species were native, hardy, and
857 fast growing. The weed control plan included as part of the mitigation would also continue
858 for five years.
 - 859 • A more nuanced plan still had to be done that would show how the clustering of trees would
860 ensure views to the lake, etc.

861

862 Commissioner Gamba:

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

880

881 **Commissioner Churchill:**

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

890

891 **Ms. Shanks** displayed and reviewed the mitigation plan presented at the first hearing, noting
892 the areas bubbled in red were considered permanent impact areas. Although replanted, they
893 would not be replanted to the degree required by the HCA Code, because the areas were
894 underneath a bridge structure or a permanent pathway existed. The slide showed the potential
895 pedestrian pathway to connect to the pedestrian bridge. TriMet was proposing that this area
896 basically mitigated for those permanent impacts.

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

902

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

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

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

913 • **Ms. Mangle** added the City did not have jurisdiction over the issue and had not asked Ms.
914 Hartung to consider it.

915

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

918

919 **Ms. Shanks** continued with staff comments as follows:

920 • The City did not have the consultant look at the pilings and temporary construction bridge
921 because the Code addressed the riparian area and land based disturbance, not the in-water
922 disturbance. These issues were reviewed by other agencies with the authority to review in-
923 water work. The Code also did not have any standards and did not allow the authority to
924 consider future projects. While the pedestrian bridge was a future project, no platform was
925 provided to evaluate impacts to future projects.

926 • Regarding additional impacts to the area where a second construction bridge might be
927 installed if the pedestrian bridge funding was delayed, the Commission could decide
928 whether they wanted plantings there now or leave it open.

929 • When evaluating the mitigation plan it was important to consider the competing goals,
930 including balancing restoration and mitigation, a pedestrian pathway to a future
931 pedestrian bridge, and maintaining views to Kellogg Lake while not encumbering
932 Kronberg Park.

933 • The oak tree was actually within the HCA and not the WQR area. That particular section
934 where the tree was located in Kronberg Park was subject to clear and objective review.
935 Technically, the Applicant met the clear and objective standards and provided the
936 appropriate number of replacement and shrub trees. In this case, a tree of that size was
937 required to be mitigated 12:1 plus 58 shrubs, which the Applicant was exceeding.
938 Technically, it was not a discretionary review.

939 • The part of the oak tree issue that was discretionary regarded the CSU approval criteria.
940 The Commission needed to decide if a condition was needed to ensure that the CSU
941 criteria were met with regard to the impacts from the project. Some findings or conditions
942 could be changed with respect to the CSU approval criteria as well as potential
943 mitigation for the tree.

944 • With respect to the 120-day clock, the Applicant provided their schedule when they came for
945 worksessions and with their submitted application. Staff was struggling within the same
946 timeframe as the Commission. The 120-day clock was set by statute so staff and the

947 Commission were bound by that timeframe unless the Applicant extended the clock, and
948 they could not be forced to make such an extension. In trying to facilitate the application's
949 review, staff had gotten the application to the Commission earlier than normal, so they had it
950 for about a month and a half so far.

- 951 • She reiterated the need to leave room in the clock for a possible City Council appeal;
952 otherwise, all the Commission's good work would be undone.
- 953 • The application was subject to specific approval criteria, so the Commission needed to look
954 at those and craft findings related to specific approval criteria and to support any changes or
955 additions to conditions of approval. She was prepared to guide the Commission to the
956 needed findings or conditions to support their decision.

957

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

966

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

969

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

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

979

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

982

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

985

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

987

988 **Commissioner Churchill** stated many unanswered questions remained and some would affect
989 the conditions of approval with regard to the application. He was not comfortable at this point,
990 which was why he was pushing for the extension of the 120-day clock. He was interested in
991 hearing the comments of other Commissioners. He would have to go back and review the
992 conditions and findings of approval or denial before he could address some of his concerns.

993

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

995

996 Planning Commission deliberations continued with the following key comments:

- 997 • Issues, such as the lighting and plantings were easier; the Commission could provide
998 suggested changes to the conditions to Ms. Shanks.
- 999 • It was cheaper and easier to build the bridge without the oak tree there. Old growth trees
1000 were precious, and 99.9% had been cut down. As noted earlier, they would probably put the
1001 effort into protecting an old building. This was not only an old tree but was also habitat for
1002 other animals.
- 1003 • The carbon footprint argument was briefly discussed.
- 1004 • Having an arborist's report regarding the survivability of the tree would be helpful in
1005 determining whether they should put all this money into saving it. It was surprising that
1006 no arborist's report was ever generated on the oak tree.
- 1007 • **Ms. Mangle** stated there was not enough time to get an arborist's report by
1008 November 22. TriMet had tried, but was unable to get one over this last week.
- 1009 • If the Commission required the tree to be saved, TriMet would find less expensive ways
1010 to go around it than the two big cranes.
- 1011 • A reasonable effort should be made to save the tree, but a single tree was not worth a
1012 great deal of additional cost as long as it was mitigated by other oak plantings. The

- 1013 ability to mitigate a 150-year-old oak tree with 5-year-old saplings was questioned; it
1014 would take more than the Commissioners' lifetimes to have that growth back.
- 1015 • The Commission was not provided enough information to make a decision. They did not
1016 know how much more the project would cost to save the tree and they did not have an
1017 arborist's report. Legally, where did that leave the Commission?
 - 1018 • **Mr. Ramis** explained if the Commission imposed a condition due to insufficient
1019 information that the Applicant disagreed with, the Applicant could appeal to City
1020 Council. If the Applicant did not prevail at City Council, they could go to a steering
1021 committee, which was a body that would arbitrate the dispute and essentially deprive
1022 the City of jurisdiction.
 - 1023 • If it got to that point, an arborist's report and cost determination could probably be
1024 obtained within that time so City Council could make a decision.
 - 1025 • Staff clarified that the new, recently adopted, appeals process actually specified that
1026 City Council appeals were on the record so no new evidence was allowed. New
1027 arguments were permitted, but not new evidence.
 - 1028 • One option was to add a condition that required an arborist's report, and depending
1029 on that arborist's report and staff's agreement, x, y, or z would happen.
 - 1030 • A condition of approval requiring an arborist's report and staff's analysis was a good
1031 idea. The condition could be worded such that if an arborist believed the tree would
1032 survive the construction traffic around it, it would have to be saved. If the arborist did not
1033 think the tree could be saved, specific remediation would have to occur to replace
1034 plantings in that area that would have the secondary benefit of replacing the shielding
1035 trees being removed.
 - 1036 • The City could hire an arborist, so there would be two arborist's reports. A lot of
1037 flexibility existed within an arborist's report.
 - 1038 • **Mr. Ramis** agreed that was an issue. The Applicant might want to disagree, because
1039 of the discretion in the reports. If so, the City would need to provide a procedure,
1040 which would take time and put them in a place where they no longer complied with
1041 LUFO and the authorizing statute, because they had not reached a decision in the
1042 time period. Creating a condition not workable for the project was a concern.
 - 1043 • The Commission discussed the time period for getting an arborist's report, and decided
1044 one could be obtained fairly quickly.

- 1045 • **Mr. Ramis** stated if this was the direction of the Commission, staff would work to
1046 craft a condition, but they also wanted to consult with the Applicant to see if
1047 something workable could be created.
- 1048 • The Commission consented to direct staff to work with the Applicant to get arborists'
1049 reports and provide at an estimate of the cost to save the tree.
- 1050 • **Mr. Ramis** stated the challenge would be in drafting a condition that created a
1051 relatively objective test because the Commission would not have the opportunity to
1052 review data.
- 1053 • Having additional information would influence the decision being made. Three arborists
1054 should be consulted in case two arborists had opposing views.
- 1055 • The Commission discussed the parameters for crafting the condition.
- 1056 • **Mr. Ramis** stated the Commission would have to let staff know how to craft the
1057 condition with regard to some test or judgment to be exercised or some amount over
1058 which they would not spend. The Applicant could comment on language staff might
1059 develop, but could not give any more evidence about that question because the
1060 record was closed. The Commission had the discretion to reopen the record for such
1061 evidence if the Applicant wanted to present it.
- 1062 • **Commissioner Gamba** presented that building the pedestrian bridge now would cost \$1
1063 million, and \$3 million to \$5 million to build the bridge later. If built later, a second temporary
1064 bridge would need to be constructed with more piles and the resultant damage. It made
1065 logical sense to build the bridge now, as the percentage of the pedestrian bridge within the
1066 entire project was very small. The sidewalks and pedestrian connections could be built later.
- 1067 • Was it in the Commission's authority and the City's best interest to require the bridge to
1068 be built? Was it likely to stand up to the process the Applicant might engage in if building
1069 the pedestrian bridge were conditioned?
- 1070 • The Commission had some clear places to stand on at least five of the applications: the
1071 WG, WQR, HCA, CSU, and DR applications. The design guidelines were very clear in
1072 stating that the pedestrian was the priority in every construction project. This very large
1073 construction project was cutting through the middle of the city and for the bulk of the
1074 distance, the pedestrian was completely ignored. Pedestrians and bicyclists were not
1075 ignored on another similar TriMet bridge project.
- 1076 • The HCA and WQR stated the Applicant needed to minimize the impact, but TriMet
1077 would double the impact by building the pedestrian bridge at a later date.

- 1078 • **Commissioner Churchill** noted that 5.1 Page 27 of the November 8 packet also discussed
1079 the pedestrian emphasis guidelines. The other end of the light rail line got the design
1080 attention to pedestrian access, and Milwaukie got the short end of the stick on a TriMet
1081 design. Now Milwaukie was told to pay for its pedestrian bridge, whereas it was incorporated
1082 into the design features as light rail crossed the Willamette River. It was discriminatory and
1083 unfair. He would not support the application without a pedestrian bridge included in the
1084 project.
- 1085 • **Commissioner Stoll** clarified that the City, not TriMet, would be doubling the impact when
1086 they built the pedestrian bridge. If there was an existing pedestrian bridge, TriMet would be
1087 required to build a pedestrian bridge with the light rail bridge.
- 1088 • **Commissioner Gamba** noted applicants are still required to build sidewalks in front of a
1089 new building if no sidewalks exist. TriMet was in essence building a new building without
1090 building a sidewalk.
- 1091 • **Commissioner Churchill** added pedestrian emphasis was required on such major projects
1092 and none existed.
- 1093
- 1094 • **Commissioner Fuchs** asked the City Attorney to reiterate previous comments about the
1095 State not allowing the Commission to impose a pedestrian bridge condition.
- 1096 • **Mr. Ramis** explained that the statewide system used to grant local governments a great
1097 deal of authority to say 'no' to land use applications. The legislature concluded that the
1098 traditional system provided under Senate Bill 100 did not work for large projects that had
1099 to be approved by a number of jurisdictions and they created a process that limited the
1100 authority of local government in some significant ways. Cities did not approve the route
1101 or the project elements. Once there was a LUFO, the route and project elements were
1102 approved. The sole area the City was allowed to exercise discretion was when attaching
1103 conditions, and even that was limited.
- 1104 • Conditions could be attached as long as they were authorized by the local zoning
1105 Code and the condition did not violate the reasonable condition standard. The
1106 definition stated if the project element being discussed was not funded, it could not
1107 be imposed because in effect, that would be denying that particular element, and the
1108 City did not have that authority. In imposing conditions, the Commission needed to
1109 be mindful of whether the project could actually pay for the conditioned element.
- 1110 • The Commission had three options: approve the project with a reasonable condition;
1111 attempt to deny the project, which could not be done because the City did not have that

1112 authority; or impose a very aggressive condition that went beyond what the project could
1113 support. They did not have that authority either. The third option would be played out if
1114 the applicant appealed the Commission decision to City Council. If the Council still
1115 imposed the condition or still denied the application, it would go to a steering committee,
1116 not the usual LUBA process, where it would be arbitrated under the standards of the
1117 statute.

- 1118 • He did not know if it was possible to impose a condition that the pedestrian bridge be
1119 made number one on the wish list, but he would certainly attempt to defend it.
- 1120 • **Ms. Mangle** stated part of the problem was that contingency money would not become
1121 available until after the construction bridge was to be removed in the summer of 2013.
1122 The wish list was developed earlier in the project when all the needed elements were
1123 trying to be identified. When federal funding decreased, fewer items were able to be
1124 funded in the base project.
- 1125 • **Ms. Shanks** understood that the pedestrian bridge was not on the wish list, because it
1126 was actually never part of the project. The wish list was actually a recalibration list, so
1127 when the project got less funding from the federal government, the things that were
1128 already in the project had to be recalibrated.

1129
1130 **Vice Chair Harris moved to continue the public hearing to a date certain of November 22,**
1131 **2011, at 6:30 p.m. Commissioner Stoll seconded the motion, which passed unanimously.**

1132

1133 **6.0 Worksession Items**

1134

1135 **7.0 Planning Department Other Business/Updates**

1136 **Ms. Mangle** stated that last week City Council approved the final Electronic Sign Code
1137 amendments with an emergency ordinance. The email she had sent to the Commission
1138 summarizing what she thought the Council would approve had occurred. She distributed a copy
1139 of the new Sign Code, which was already in effect.

- 1140 • She clarified that the emergency ordinance had gone back in.

1141

1142 **Commissioner Gamba** commented it was moot because they exempted the North Main St
1143 area altogether, so 24 billboards could go up in North Main St.

1144

1145 **Commissioner Stoll** replied that would be impossible because of the frontages.

1146

1147 **8.0 Planning Commission Discussion Items**

1148

1149 **9.0 Forecast for Future Meetings:**1150 November 22, 2011 1. Public Hearing: MOD-11-01 Trolley Trail for Light Rail *continued*1151 2. Public Hearing: WG-11-01 Kellogg Lake Light Rail Bridge *continued*

1152 December 13, 2011 1. Public Hearing: CPA-11-02 Water Master Plan

1153 2. Worksession: Residential Development Standards update

1154

1155 Meeting adjourned at 10:31 p.m.

1156

1157

1158 Respectfully submitted,

1159

1160

1161

1162

1163 Paula Pinyerd, ABC Transcription Services, Inc. for

1164 Alicia Martin, Administrative Specialist II

1165

1166

1167

1168

1169 _____
Lisa Batey, Chair

1170

CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 22, 2011
6:30 PM

COMMISSIONERS PRESENT

Lisa Batey, Chair
 Nick Harris, Vice Chair
 Mark Gamba
 Russ Stoll
 Fuchs
 Chris Wilson (*arrived as Public Hearing 5.1 was called to order*)

STAFF PRESENT

Katie Mangle, Planning Director
 Susan Shanks, Senior Planner
 Damien Hall, City Attorney
 Wendy Hemmen, Light Rail Design Clare
 Coordinator

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Batey called the meeting to order at 6:37 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 October 11, 2011

Chair Batey deferred the minutes due to the amount of meeting material the Commission had to read.

Commissioner Fuchs asked that staff email the Commission to let them know which minutes needed to be reviewed for the next meeting.

3.0 Information Items

Chair Batey stated that the new Milwaukie Kitchen & Wine restaurant downtown is awesome and encouraged everyone to try it. She had taken a cooking class there and got many ideas for Thanksgiving dinner.

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 11/17/11*

43 Applicant/Owner: TriMet

44 File: WG-11-01, DR-11-01, HCA-11-01, WQR-11-03, CSU-11-09

45 Staff Person: Susan Shanks

46 The following exhibits were distributed to the Planning Commission:

- 47 • Two-sheet handout titled, "Oak Tree Exhibit," a memorandum from Mark W. Hynson, Mason
48 Bruce & Girard, dated November 21, 2011, regarding the assessment of the Oregon White
49 Oak at Kronberg Park.
- 50 • Green, two-sheet handout from staff, Recommended Findings in Support of Approval,
51 excerpted from Attachments 1 and 2, to include the Pedestrian Bridge dated November 22,
52 2011.

53

54 **Chair Batey** called the public hearing to order and read the conduct of quasi-judicial hearing
55 format into the record.

56

57 Commissioner Wilson arrived at this time.

58

59 **Chair Batey** asked if any Commissioners had any ex parte contacts to declare that were
60 previously undeclared.

61

62 **Commissioner Gamba** stated he had received one email that he forwarded to staff who had
63 forwarded it to the Commission.

- 64 • **Katie Mangle, Planning Director**, explained that an email from Dan Platter addressed both
65 hearing items. The part that was pertinent to the Trolley Trail hearing was forwarded to that
66 record and the comments relevant to the Kellogg Bridge hearing were being held back and
67 would be included in the record if the record opened at the Commission, City Council, or
68 LUBA. The email had been received after the close of public testimony for the Kellogg
69 Bridge.

70

71 All Commissioners declared for the record that they had visited the site. No Commissioners,
72 however, declared a conflict of interest, bias, or conclusion from a site visit. No Commissioners
73 abstained and no Commissioner's participation was challenged by any member of the audience.

74

75 **Commissioner Wilson** confirmed that he had reviewed the material from the last hearing to
76 prepare to participate this evening as he had missed part of that meeting.

77

78 **Chair Batey** opened the record so staff could present new information requested by the
79 Commission at the last hearing.

80

81 **Susan Shanks, Senior Planner**, stated that the City had hired Mr. Hynson, who visited the site
82 and prepared a memorandum, which had been distributed to the Commission and officially
83 entered into the record.

84

85 **Mark Hynson, Senior Biologist, Mason, Bruce & Girard**, stated he was originally asked to
86 evaluate the tree's condition and any sort of protection measures that could be employed to
87 preserve the tree during the construction of the bridge. He reviewed photos of the tree via
88 PowerPoint that were included in the memorandum. Key comments and responses to
89 Commissioner questions were as follows:

- 90 • A large cavity, approximately 2.5 ft long, existed on the backside of the tree in its main
91 central leader. In many cases, such indications of rot and decay extended well above and
92 below the cavity. The cavity had probably been on the tree for many years, but it was a very
93 significant point of failure or weakness in the tree.
- 94 • Farther down in the tree, fungal fruiting bodies or mushroom-like growths indicated some
95 advanced decay. This was also considered a weak juncture or point of attachment of the
96 tree.
- 97 • The tree had a number of very old damaged limbs with very weak attachments, some of
98 which were very dangerous. There was quite a bit of deadfall, or dead material, in the
99 top of the tree.
- 100 • His main concern for the long-term structural integrity of the tree was the cavity, which
101 would essentially split the tree in half.
- 102 • Essentially, the tree was a hazard and in such a state of decline that it could fail at any time.
103 It was not a question of if the tree would fail, but when the tree would fail.
- 104 • In his professional opinion, the tree warranted removal. If the tree was retained, pedestrians
105 should not be walking under the tree until it received extensive care.
- 106 • He did not core the tree, but estimated its age to be at least 60 years old. In comparing trees
107 of similar age, a lot depended on the level of care provided. This tree had received no
108 professional tree care whatsoever, so it was in a state of decline. A tree in an urban or park
109 setting needed a tremendous amount of care. The degree of damage and failure was not
110 unusual for a tree of this advanced age.

- 111 • Positive arborist reports occurred more often than expected; it depended on the level of care
112 a tree received and a tree's location. Arboriculturists always considered the risk target for a
113 tree. A tree in a farmer's field was not as concerning as a tree like this where people would
114 be in close proximity, which represented a risk for the City. If this tree were in his backyard,
115 he would be under contract to have it removed.

116

117 **Ms. Mangle** reminded that if the Commissioners wanted any further information they should
118 request it now before closing the hearing. There were no further questions.

119

120 **Chair Batey** closed the public testimony portion of the hearing and opened Commission
121 deliberation. Discussion on the four key issues noted at the November 17 hearing continued
122 amongst the Commission and staff as follows:

123 Oak Tree:

- 124 • Given the arborist's report, doing a lot of work to save the tree did not seem prudent. In lieu
125 of a condition for saving the tree, the replacement ratio could be further discussed and
126 revised if necessary.
- 127 • The replacement ratio was probably sufficient except in the first set of modified conditions,
128 Attachment 2 dated November 8, 2011. The language in Condition of Approval 10.A.6
129 stated "a few oak trees." The number and location of the replacement trees should be more
130 specific.
- 131 • Without a master plan and with the planting already done in the park by North
132 Clackamas Parks & Recreation District (NCPRD), a little more flexibility was needed in
133 the condition about the placement of the oaks. The mitigation plan should be reviewed to
134 ensure the right combinations of plants were planted. Some large conifers planted in the
135 park would shade out the oaks, so any oaks needed to be planted separate from where
136 the conifers were located.
- 137 • Staff proposed amending Condition 10.A.6 to read, "Incorporate ~~a few~~ oaks into the
138 mitigation plan to replace the one in Kronberg Park that will be removed by this project, and
139 as a means to provide views of the water, which is consistent with the Willamette Greenway
140 View Protection Criterion that applies to this area, oaks should be located in areas where
141 they are most likely to thrive, in consultation with the City and in consideration of recent
142 restoration plantings in Kronberg Park. To facilitate their survival, oaks should also be
143 planted with appropriate understory and ground cover plants."

- 144 • Staff could include some general language about not grinding the stump and retaining
 145 parts of the tree onsite in the interest of habitat. The bigger part of the tree could be used
 146 as woody debris in the creek. Condition 10.A.6 was specific to mitigation plantings and
 147 Condition 11 spoke to Community Service Use (CSU) approval criteria that balance the
 148 impacts and benefits. Staff suggested adding new Condition 11.B to require retaining or
 149 repurposing the tree onsite.
- 150 • Because some other recent plantings were probably conifers and TriMet's application was
 151 not looking at that area, staff wanted to provide some flexibility in Condition 10.A.6. The
 152 mitigation plan had the replacement ratio built in, so not identifying a specific number of oak
 153 trees provided flexibility for having the most oaks in the area, especially if a master plan
 154 were developed by the time mitigation would occur.
- 155 • No language required TriMet to work with the City as a master plan was developed for the
 156 park between now and 2013. Although language did direct TriMet to consult with the City
 157 when the plantings were done to see where the master planning process was for the park,
 158 the City could not hold up TriMet's project while the City master planned the park.

159 Plantings

- 160 • Condition 10.A.7 of the revised conditions (Attachment 2) stated, "Consider reducing the
 161 amount of common snowberry" and adding various other plants. The condition should be
 162 worded more strongly; otherwise, the City would get all snowberries.
- 163 • The language was from the City's consultant and could be changed. Staff suggested
 164 amending the language to state, "Add more flowering shrubs that provide wildlife habitat.
 165 ~~Consider reducing~~ Reduce the amount of common snowberry...and ~~adding~~ add red-
 166 flowering..."
- 167 • The letter received from Oregon Department of Fish and Wildlife (ODFW) had a concise
 168 paragraph to that very point. Staff included that language directly in Condition 10.A.8,
 169 "Add herbaceous plant species to the native grass species mix to provide a food source
 170 for native pollinators."

171 Lighting:

- 172 • Given the lower energy alternatives of LEDs, the language regarding all references to
 173 lighting should be stronger. The Applicant should be required to present LED options, which
 174 had positive aspects for birds, bats, bugs, etc., and resulted in energy savings and reduced
 175 maintenance costs.
- 176 • Staff suggested amending Condition 4 to read, "Prior to approval of development permits
 177 for the pedestrian bridge, the Applicant or other authorized entity shall propose energy

- 178 efficient and wildlife friendly pedestrian scale lighting for the pedestrian bridge,
179 preferably LED lighting. The Planning..." A related finding was tweaked in a similar
180 manner.
- 181 • LED was also the direction the Design and Landmarks Committee (DLC) was
182 recommending for the jump span lighting, so staff was uncertain whether LED should be
183 specified, since that lighting would be re-reviewed anyway.
 - 184 • Condition 4 essentially said the Planning Director would review and approve the particular
185 lighting proposed in consultation with the DLC, but ultimately, the City would still have to
186 approve it per the condition. The condition allowed the DLC to participate in the building
187 permit or Type I development review.
 - 188 • Some hard and fast language should be included about glare into residential areas,
189 regardless of the light source.
 - 190 • Glare was addressed in the Code, depending on the area and type of review. For
191 example, in the Willamette Greenway area, because it was a type of conditional use,
192 Code language addressed no nuisance impacts, prompting the recommended condition
193 about the train light, which had not yet been evaluated. The lighting underneath the jump
194 span was discretely located, and there was no additional lighting on the bridge itself.
195 Pedestrian lighting on the pedestrian bridge was potentially another source that had not
196 been evaluated.
 - 197 • Language should be added requiring that pedestrian scale lighting not glare into
198 residential properties and be appropriately shielded.
 - 199 • Staff suggested adding new Conditions 4A and 4B to separate the issues of the
200 pedestrian scale lighting being energy efficient and wildlife friendly, and the shielding
201 from residential properties. The condition would fall under the umbrella of the
202 Willamette Greenway conditional use criteria.
 - 203 • Condition 9C on Page 3 of Attachment 2 addressed light from the train. At the last hearing, a
204 baseline was requested of the existing conditions regarding light from the train being
205 shielded by the trees.
 - 206 • Staff suggested changing the language of Condition 9C to, "Provide a memo that
207 describes the lighting impacts, if any, from the train light on nearby residential uses and
208 drivers on McLoughlin Blvd as the ~~tracks curve on the Kellogg Bridge~~ train travels
209 through the Willamette Greenway Zone." The approval criteria related to the whole area
210 with respect to nuisance impacts. TriMet was doing the analysis now and agreed to
211 extend the area of the analysis.

- 212 • The proposed language read as if only the impacts to residential uses along the
 213 McLoughlin Blvd were being analyzed. The point was to reach the residential uses
 214 across Kellogg Lake and not be limited to McLoughlin Blvd.
- 215 • As long as the train was within the Willamette Greenway Zone, anything affected by
 216 that source point would be analyzed.
- 217 • “Nearby residential uses” should be closer to the Willamette Greenway reference in
 218 the sentence. Other proposed wording was also mentioned.
- 219 • Staff clarified the intent was to cover the whole area, and to capture residential
 220 uses as well as the drivers on McLoughlin Blvd. Staff would look into changing
 221 the language.
- 222 • Staff agreed Condition 6E should be changed to state, "Explore other energy efficient and
 223 low-pollutant lighting options with a focus on comparing fluorescent lighting with LED and
 224 other feasible lighting opinions." “Feasible” was a fickle word, but this item would return to
 225 the DLC for their response and then the Commission would see the language again.

226

227 Pedestrian Bridge:

- 228 • **Commissioner Gamba** asserted that not having the pedestrian bridge as part of the original
 229 project was an oversight. TriMet’s efforts to try to make the project better for Milwaukie were
 230 appreciated and the budget constraints were understood. The Commission's job was to look
 231 out for the citizens of Milwaukie, see where something might have been missed in the
 232 project, and to try to change that.
- 233 • The Commission was not allowed to address the Habitat Conservation Area (HCA) and
 234 Water Quality Resource (WQR) issues because that regarded the future and was not
 235 part of this permitting process. The additional damage done to those two areas by going
 236 back in and erecting the construction bridge to build the pedestrian bridge later when the
 237 City had the money was not minimizing the impact. Those areas would no longer be
 238 degraded after the mitigation, so the City would be going back and tearing up a good
 239 HCA area to put in the pedestrian bridge.
- 240 • Building the pedestrian bridge during this construction would cost \$1 million and building
 241 it in four or five years would likely cost \$4 million or \$5 million. The additional cost made
 242 it far more unlikely that the City would ever build the bridge. Grants could probably be
 243 obtained for a \$1 million project but not likely for a \$5 million pedestrian bridge. Not
 244 building the pedestrian bridge now essentially condemned it to not ever being done.

- 245 • Having the pedestrian bridge could possibly increase ridership on the train. It would
246 certainly increase traffic to downtown Milwaukie because of all the apartments across
247 the lake. Island Station residents would also have easy walking and biking access that
248 they would not have had otherwise.
- 249 • One criterion of the Willamette Greenway is air quality. The pedestrian bridge would
250 improve air quality due to the decreased vehicle trips to the train station.
- 251 • Two applications were pertinent in addressing the pedestrian bridge issue:
- 252 • The Downtown Design Guidelines required that the pedestrian be a priority in all
253 development projects, as noted in Table 1.a of the green two-page handout,
254 Recommended Findings in Support of Approval, dated November 22, 2011. No
255 pedestrian access existed to or anywhere near the Kellogg Bridge without the pedestrian
256 bridge; it was akin to building a building without a sidewalk in front. It did not meet the
257 Design Guidelines.
- 258 • The Willamette Greenway required "public access to and along the river to the greatest
259 degree possible by appropriate legal means." This project did not increase public access
260 to the Willamette River.
- 261 • The language used in previous versions of the findings referenced the future
262 pedestrian bridge as enabling the project to meet that criterion, but there probably
263 would not be a pedestrian bridge unless it was built now.
- 264 • A finding could not be made on something not planned for, and the "future
265 pedestrian bridge" was referenced in many places. If the Commission could not
266 consider what would happen in the future with regard to protecting the HCA and
267 WQR, how could something that might happen in the future be used as a finding for
268 meeting the City's criteria?
- 269 • It did not matter what grant funding was used or how it was paid for, the pedestrian bridge
270 should be built when Kellogg Bridge was constructed. The sidewalks and all the connecting
271 parts did not need to be built at the same time. The only thing that would cause a lot of
272 destruction by being built later was the bridge itself.
- 273 • Tim Ramis, City Attorney, stated last week that the Commission could not issue a condition
274 on TriMet that was not within their budget, which limited the Commission's authority to the
275 point that they could not make a legal land use decision and a finding about whether or not
276 the project met the Code.
- 277 • The Design Guidelines language in Table 1 states the pedestrian was the priority in all
278 development projects. The Applicant's information stated the crossing productor created no

- 279 barrier, which was a very different test. It was one thing to create no barrier, but another
280 thing to re-enhance the pedestrian system.
- 281 • **Ms. Shanks** explained the Applicant was addressing the first part of that guideline. The
282 entire guideline stated, "Barriers to pedestrian movement and visual and/or other
283 nuisances should be avoided or eliminated, so that the pedestrian is the priority in all
284 development projects."
 - 285 • As far as making a legal land use finding, it was correct that this guideline might not be
286 fully met, but the approval criteria for the design review portion was "substantial
287 consistency with the guidelines", which was why it was a discretionary decision. Taken
288 as a whole, the question was whether the project was substantially consistent with all the
289 design guidelines, which was what the DLC found and staff believed. It was also a
290 discretionary decision for the Commission. The Commission could make a legal finding
291 one way or the other because of the approval criteria language.
 - 292 • Putting an active train through downtown did create barriers to pedestrians. Getting from the
293 high school to McLoughlin Blvd/Hwy 99E would require crossing the tracks and a pedestrian
294 bridge would eliminate that.
 - 295 • It could also be said that building a bridge into Milwaukie increased pedestrian access
296 because people were more likely to walk to the train. It was a mode for more active
297 transportation and conducive to more pedestrian activity.
 - 298 • There was already an issue in Island Station with children crossing the railroad trestle. With
299 a light rail station as a destination in addition to the high school, more people could be
300 walking the railroad trestle because they do not want to walk around the sewage treatment
301 plant, especially with no convenient alternative.
 - 302 • A death occurred off the railroad trestle in the summer of 2010, so this was not an
303 insignificant concern.
 - 304 • It was a shame the pedestrian bridge was not included in the original project, but it was not
305 TriMet's issue. TriMet should be required to construct Milwaukie's bridge.
 - 306 • The pedestrian bridge was almost guaranteed to see a lot of use. There was a lot of housing
307 density on the east side of McLoughlin Blvd.
 - 308 • With the Trolley Trail construction next to the sewage treatment plant, people were now
309 walking out onto McLoughlin Blvd in the bike path because the sidewalk was torn up.
310 This was seen on the east side of McLoughlin Blvd as well because no sidewalk existed
311 along the east side.

- 312 • TriMet designed the bridge across the Willamette River with extensive bike and pedestrian
313 access. Each of the two, 14-ft lanes penciled out at \$1 million. It was as if that end of the
314 light rail system got the funding and this one did not.
- 315 • The pedestrian bridge was just missed in the planning. People did not realize the extent
316 of the population that could access the station directly if some kind of crossing existed. It
317 was an important piece of infrastructure that would greatly serve light rail and keep more
318 cars out of downtown.

319

320 **Chair Batey** called for a short recess to review the green handout from staff. The Planning
321 Commission reconvened at 7:42 p.m.

322

323 **Damien Hall, City Attorney**, stated the City was limited in the extent of conditions that could be
324 put on the project and was limited by the project budget. If the Commission added a condition
325 that exceeded the project budget, it would call into question how that condition would be treated
326 and how the City would proceed procedurally. Everyone agreed the pedestrian bridge would be
327 a wonderful aspect of the project, but if the objective was to get the pedestrian bridge, it was
328 very unclear that putting a condition of approval requiring the pedestrian bridge would achieve
329 that goal. It would likely shift the issue onto Council at that point, but there was no way to say
330 that condition of approval would result in a pedestrian bridge.

331

332 The Commission, staff, and Mr. Hall continued the discussion as follows:

- 333 • **Mr. Hall** confirmed that the Land Use Final Order (LUFO) had the authority to keep the
334 Commission from making what they felt was a legal land use decision per Milwaukie's local
335 Code. Any conditioned changes exceeding the budget or the chosen alignment would be
336 preempted by LUFO and the statute creating that LUFO process.
- 337 • If the City could get a grant to build the pedestrian bridge, the City would have to attach
338 public infrastructure to TriMet property. TriMet could keep the City from building the
339 pedestrian bridge because of the hassle, liability, etc. While it might be difficult to attach the
340 pedestrian bridge as a condition of approval, the City might not have the legal ability to build
341 it later.
- 342 • The final budget had not yet been established. A short list of elements could be included in
343 the project, but the pedestrian bridge was not on that list.
- 344 • The Commission's job was not to sort out whether or not the application could be appealed,
345 but to decide what was right for Milwaukie and what met the Code. Creating a condition

- 346 could result in the pedestrian bridge being put on a short list to at least have a chance to be
347 built.
- 348 • The condition did not specify who paid for the pedestrian bridge. It was entirely possible the
349 money would be found, and TriMet would not have to find money in their budget. If the
350 pedestrian bridge was not built before the work bridge was removed in the summer of 2013,
351 it probably would not be built, which was the problem.
 - 352 • **Mr. Hall** stated the draft conditions did not discuss the pedestrian bridge at all. Staff agreed
353 that a condition could be crafted stating if the funding source materialized before
354 construction was complete, then TriMet would construct the pedestrian bridge. Some
355 caveats existed in that Milwaukie could not adjust TriMet's funding priority.
 - 356 • With the clarification that the City was not prescribing TriMet's authority to deal with its own
357 budget, a condition could be added that the bridge be built if outside funding for the bridge
358 became available.
 - 359 • If they did use the language about building the bridge if the funding became available,
360 the findings or conditions of approval should specify that if the City was building the
361 pedestrian bridge, TriMet would allow the City to build it onto their bridge. It would be a
362 big hurdle if TriMet were not legally required to accommodate it.
 - 363 • **Mr. Hall** summarized there were two issues. The initial issue regarded who would build the
364 bridge if funding became available before or during construction. The other issue was that
365 the City be entitled, as part of this approval, to add on to Kellogg Bridge at its own expense.
 - 366 • Staff preferred consulting TriMet about the feasibility of TriMet building the bridge during
367 the Kellogg Bridge construction should the City find the funding.
 - 368 • Staff proposed extending the 4-year expiration date for this project's land use approval,
369 because the project was so large and complex. The Commission might want to consider
370 extending the approval longer. The extension could be somewhat indefinite as long as
371 certain things had not changed. There was a bit more scrutiny if a WQR area was
372 involved because those areas could change more over time than the actual development
373 in the area.

374

375 **Chair Batey** called for a straw poll on the following options:

- 376 1. Fully condition the construction of the pedestrian bridge
- 377 2. Alter the conditions to encourage, but not require, construction of the pedestrian bridge
- 378 3. Approve the application as submitted, without a pedestrian bridge

379

380 **Commissioner Fuchs** said she was leaning between options 1 and 2.

381

382 **Commissioner Gamba** preferred option 1; stating very clearly that this was what the
383 Commission wanted and expected could cause entities to put some effort into making it happen.

384

385 **Vice Chair Harris** favored options 1 and 2, but leaned toward the middle ground as an avenue
386 of success. He hoped middle ground could be found that would permit the construction of the
387 pedestrian bridge at some future date, hopefully while the temporary bridge was in place, and
388 not result in an outright appeal and the pedestrian bridge being stripped out.

389

390 **Commissioner Stoll** supported the middle ground of option 2.

391

392 **Commissioner Wilson** said he was between options 2 and 3, but would choose the middle
393 ground of option 2 only because a future group would decide where the money came from; his
394 concern was that the money would be taken from improvements to neighborhoods.

395

396 **Chair Batey** firmly believed the Commission needed to condition the pedestrian bridge now. If
397 funding were not found in the next year, the pedestrian bridge would not happen no matter how
398 they conditioned their ability to build it in the future. She supported the conditions on the green
399 sheet.

400

401 **Commissioner Gamba** noted Milwaukie would never be able to fund this; a grant would be
402 necessary.

403

404 **Commissioner Fuchs** stated from her experience, projects attached to multimodal projects,
405 especially light rail, were funded by federal grants, not neighborhood improvements. With the
406 current politics for federal grant programs, money would not be taken away from neighborhood
407 projects.

408

409 **Commissioner Gamba** stated if they created it as a condition, TriMet had two options: they
410 could appeal it and probably win, or they could put some effort into looking for grants the City
411 did not know about, could not apply for, or find. If the condition were wishy-washy, no one would
412 put any more effort into getting the pedestrian bridge built.

- 413 • **Ms. Mangle** noted TriMet had made it clear they would appeal option 1. They may also help
414 the City find funding, which was staff's hope.

415
416 **Commissioner Fuchs** noted the issue of putting the Commissioners' names on something they
417 did not agree with simply because of the threat of appeal. If City Council wanted to take away
418 the pedestrian bridge, that was their purview.

419
420 **Chair Batey** agreed.

421
422 **Ms. Mangle** confirmed Vice Chair Harris and Commissioner Fuchs would be interested in staff
423 crafting option 2 and then do another straw poll.

424
425 The Commission took a brief recess to allow staff to draft a condition based on the
426 Commission's straw poll. The meeting reconvened at 8:19 p.m.

427
428 **Ms. Mangle** stated staff met with the TriMet project staff during the break. She made it clear
429 that she appreciated their participation in trying to come up with a workable middle ground, and
430 understood it did not preclude any appeal or arguments on LUFO. TriMet was happy to
431 participate but reiterated that option 1 would be appealed to LUFO on the grounds the
432 pedestrian bridge was not included in the base project.

433
434 **Ms. Shanks** stated the finding would be to augment the pedestrian emphasis guideline. The
435 following language would be added to the first paragraph under a. of the Pedestrian Emphasis
436 Guidelines in Finding Table 1 on 5.1 Page 27, Attachment 1, of the original packet, "However,
437 TriMet will allow the construction of the bridge by any entity. Moreover, TriMet will construct the
438 pedestrian bridge if funding becomes available on or before February 1, 2013 for construction
439 by September 30, 2013." September 30 was the date the construction bridge was to be
440 removed. February 1 regarded the time needed to do the final engineering and design work.

- 441 • Information about the grant application that had been submitted would be on the City's
442 website. She encouraged people to contact the funder for the grant that was currently
443 submitted for the pedestrian bridge.
- 444 • The corresponding condition would be to modify further Condition 16B, shown on Page 1 of
445 the green handout dated November 22, 2011, to state, "Construct the pedestrian bridge
446 beneath the light rail bridge if funding becomes available on or before February 1, 2013 for

447 construction before September 30, 2013. The pedestrian bridge must connect to each bank
448 of Kellogg Bridge, but need not include pedestrian walkway connections to the park or
449 nearby streets."

- 450 • An ongoing condition of approval would ensure TriMet would allow any entity to construct
451 the pedestrian bridge at any time in the future.

452

453 Key discussion points amongst the Commission and staff regarding the newly proposed
454 conditions continued as follows:

- 455 • **Mr. Hall** confirmed that based on TriMet's comments thus far, including language about
456 "actively seeking funding" would work, but should be limited to the window between now and
457 February 1, 2013.

- 458 • **Ms. Shanks** would add, "actively seek funding in partnership with the City of Milwaukie"
459 to new Condition 16B.

- 460 • The proposed language added a new Item D to both Conditions 7 and 9, shown on page
461 1 of the green handout, would be deleted because the additions would not fit with the
462 proposed approach of the revised Condition 16B.

- 463 • Option 2 was separate from the original green handout. The key in the newly proposed
464 language was the overarching finding stating that the application complied; otherwise, it
465 would go more toward option 1.

- 466 • **Commissioner Fuchs** felt that the project did not meet the Code. It would be appropriate to
467 make a finding stating the reason for crafting the condition was that LUFO said their
468 decision preempted Milwaukie's Code. This resulted in the Commission making a different
469 discretionary finding than would have been made otherwise.

- 470 • **Chair Batey** agreed that that was the problem. If the project did not meet Milwaukie's
471 Code, which should be first and foremost for the Commission, not LUFO or whether
472 TriMet would appeal.

- 473 • The Commission was assuming the City would lose the appeal, but it was possible to win.

- 474 • **Mr. Hall** stated if the Commission and Council fully conditioned the construction of the
475 pedestrian bridge on the light rail bridge and it was appealed up to the LUFO steering
476 committee, the criteria they would apply was whether the pedestrian bridge was
477 necessary for the light rail project.

- 478 • If that was the criteria, what was the purpose of the hearing?

- 479 • **Ms. Mangle** clarified that something was eligible for appeal if the funding was not
480 available for it, then it met that criteria and could be cut.

- 481 • **Mr. Hall** added the funding is sort of a subset of 'necessary and reasonable', which
482 was defined as being within the budget. Winning the appeal would be an uphill
483 battle.
- 484 • The pedestrian bridge was not available in the budget because it was not made available.
485 Conditioning TriMet to require the pedestrian bridge outright was a condition to call their
486 bluff about the appeal. The hybrid condition was the best case scenario for getting the
487 pedestrian bridge built.
- 488 • **Mr. Hall** confirmed it was perfectly fine for the Commission to have something in the findings
489 that said they were making this finding only because they were constrained by LUFO and
490 they would determine otherwise if assessing only under Milwaukie's Code.

491

492 The Commission took another straw poll regarding the newly revised conditions and findings:

493

494 **Commissioner Gamba** indicated he had no change in thought since the last straw poll.

495

496 **Vice Chair Harris** stated that given the conditions the Commission was to work under, the
497 hybrid solution had the best potential, realizing not only a pedestrian bridge, but the opportunity
498 to build a pedestrian bridge in the future. This was a better option than having the potential of
499 something being sent to appeal and not having anything. He would like to attach the findings
500 from the green handout, but did not believe that would have a lasting benefit, whereas the
501 hybrid condition could provide a lasting benefit.

502

503 **Commissioner Stoll** agreed.

504

505 **Commissioner Wilson** now preferred option 3, approving the project as submitted.

506

507 **Commissioner Fuchs** supported the hybrid condition in the spirit of trying to be a good partner
508 and neighbor. The outright condition was appropriate because Milwaukie should not be treated
509 differently than any other jurisdiction or community. She got the sense Milwaukie was being
510 treated like a second-class citizen in prioritization. At the same time, she did not want to vote for
511 a condition out of spite. Even though more could have been done to be a good partner for
512 Milwaukie, she chose to take the high road and not fight back or have a mud-slinging match.

513

514 **Chair Batey** stated that having been the Island Station Neighborhood District Association
515 (NDA) Chair back in 2007/2008, perhaps TriMet could have done more to recognize the need
516 for this bridge upfront. The bridge was raised by the Island Station neighborhood at that point in
517 time. She did not feel TriMet had treated Milwaukie as second-class citizens. The City did not
518 get organized early enough to make this happen. She would not put it all on TriMet to say they
519 treated Milwaukie different from Portland. She was still inclined to choose option 1, but was
520 willing to go along with the hybrid approach if that was the consensus.

521
522 **Ms. Mangle** clarified the pedestrian bridge was not involved when TriMet presented drawings to
523 the City prior to getting the LUFO. Not every little element as designed today was included in
524 the LUFO, namely the alignment and the station. It did include the minimum operable segment,
525 which included a park and ride in downtown. The LUFO was broadly the elements required to
526 build the alignment and the project's major elements in the Milwaukie segment.

527 • She was very involved in the discussions with TriMet prior to the LUFO decision and
528 recalled talking about the pedestrian bridge with the Island Station NDA. She could not
529 recall the timing of the conversations, but believed the LUFO was adopted in 2008, which
530 included a broad map of the broad elements. Many detailed elements of the project were
531 being reviewed in the Draft Environmental Impact Statement (DEIS) at that point, and the
532 pedestrian bridge was not one of them.

533
534 **Ms. Shanks** recalled the focus was not about the pedestrian bridge but about having two
535 stations downtown and placing those stations. As the project was refined, different elements
536 were given more scrutiny, and she believed the pedestrian bridge did come later.

537
538 **Ms. Mangle** added that staff pushed TriMet at every point on this project and on the pedestrian
539 bridge. Staff began by ensuring the project would accommodate the bridge, including the design
540 and permitting. Staff had about many wins already.

541
542 **Chair Batey** acknowledged staff had worked hard the last few years to get the conditions the
543 City currently had, but she remembered having conversations with Kenny Asher, Community
544 Development and Public Works Director, early on when Lake Rd was settled on as the station,
545 about how important this bridge was and it was clearly not on his radar screen.

546

547 **Vice Chair Harris** added he would not put the responsibility all on City staff. Different leaders in
548 the City at that time might have missed the mark on this one.

549

550 **Vice Chair Harris moved to proceed with the hybrid proposed amended conditions of**
551 **approval and recommended findings as read into the record with the statement that**
552 **LUFO preempted the Planning Commission from making the finding that would have**
553 **otherwise been decided. Commissioner Fuchs seconded the motion.**

554

555 Staff read the following amendments to Finding 1.a and Conditions of Approval 16 and 18 into
556 the record as follows:

- 557 • Modify Finding 1.a on 5.1 Page 27 by adding the following language to the end of the first
558 paragraph, "However, TriMet will allow the construction of the bridge by any entity.
559 Moreover, TriMet will construct the pedestrian bridge if funding becomes available on or
560 before February 1, 2013 for construction by September 30, 2013."
- 561 • Add as a concluding statement, "As conditioned, the pedestrian experience is improved
562 to the greatest extent possible within the constraints of the Land Use Final Order."
- 563 • Delete the last line, "The proposal meets this guideline."
- 564 • Modify Condition 16 to include Condition 16B, which stated, "Construct the pedestrian
565 bridge beneath the light rail bridge if funding becomes available on or before February 1,
566 2013 for construction before September 30, 2013. The pedestrian bridge must connect to
567 each bank of Kellogg Lake but need not include pedestrian walkway connections to the park
568 or nearby streets. TriMet must actively seek funding for construction of the pedestrian bridge
569 in partnership with the City of Milwaukie."
- 570 • Modify Condition 18 to add Condition 18B as an ongoing requirement "Allow the
571 construction of the pedestrian bridge by any entity."

572

573 **Mr. Hall** suggested restating the motion.

574

575 **Vice Chair Harris restated his motion moving to adopt the recommended findings and**
576 **conditions of approval as modified and read into the record. Commissioner Fuchs**
577 **seconded the motion, which passed 5 to 1 with Commissioner Wilson opposed.**

578

579 The Commission took a brief recess for staff to display a copy of the proposed revisions to the
580 conditions of approval via PowerPoint. The meeting reconvened at 9:04 p.m.

581

582 **Ms. Shanks** reviewed the revisions to the conditions of approval as discussed by the
583 Commission with these comments:

- 584 • Amend Condition 4 so that future lighting for the future pedestrian bridge should be energy
585 efficient and wildlife friendly, preferably LED, and the light should be shielded from the
586 windows on residential properties.
- 587 • Amend Condition 6E to reflect the preference that the jump span lighting be LED, which
588 would return to the DLC and Commission for review.
- 589 • Modify Condition 9C regarding lighting on the train to state, "Provide a memo that describes
590 the light impacts, if any, from the train light on drivers on McLoughlin Blvd and nearby
591 residential uses as the train travels through the Willamette Greenway zone on the Kellogg
592 Bridge."
- 593 • With regard to the mitigation plan:
 - 594 • Amend Condition 10.A.6 so oak trees were planted instead of some of the proposed
595 Douglas fir trees. Flexibility was built in to allow the City to consult because Kronberg
596 Park did not have a master plan. The City would also consult about recent plantings
597 when placing and planting the new oaks, so they would thrive, and ensure the
598 appropriate understory and groundcover were provided around the new oaks.
 - 599 • Amend Condition 10.A.7 to be more directive and have the City's consultant's comments
600 about the specific proportions of different understory bushes be as stated.
 - 601 • Add Condition 11B to repurpose the remnants of the oak tree, either in Kronberg Park
602 and/or in the pedestrian pathways through the area, and require that the stump not be
603 ground to allow for the possibility of a tree to grow from that particular location.
- 604 • Amend Condition 16B, shown on the green handout, to state, "Construct the pedestrian
605 bridge beneath the light rail bridge if funding becomes available on or before February 1,
606 2013 for construction before September 30, 2013. The pedestrian bridge must connect to
607 each bank of Kellogg Lake but need not include pedestrian walkway connections to the park
608 or nearby streets. TriMet shall actively seek funding for construction of the pedestrian bridge
609 in partnership with the City of Milwaukie."
- 610 • ****Add Condition 18C as an ongoing requirement, stating, "Allow the construction of the**
611 **pedestrian bridge by any entity."**

612 ****Conditions 16B and 18C were already approved in the prior motion.**

613

614 Discussion regarding the revised conditions was as follows:

- 615 • Concern was expressed about the wording of Condition 16B stating that pedestrian walkway
616 connections did not need to be included. If funding was available, the walkways should not
617 be excluded.
- 618 • **Ms. Shanks** explained the walkways were not included as part of this review, so the
619 review for their impact to the HCA and WQR area was not a part of the package, so the
620 Commission could not move it forward as a condition.
- 621 • TriMet proposed that the City build the walkways to further the Kellogg Bridge design. If
622 the bridge were not designed to hold the pedestrian bridge, walkways would be a moot
623 point. The grant fund did include the whole package. The findings reflected that the
624 pathways would need to return for additional review because a portion of them were
625 elevated and went through the HCAs and WQR areas.
- 626 • **Ms. Shanks** agreed Condition 11B should specify that the 36-in oak tree would be
627 repurposed. Additionally, the tree might be repurposed to build part of the pathway.

628

629 **Ms. Shanks** read the amended language for Finding 1.a on 5.1 Page 27 regarding the
630 pedestrian bridge as approved in the prior motion. She also read the findings supporting staff's
631 revised conditions and noted the amended findings that addressed the Commission's changes
632 to the Conditions of Approval.

633

634 **Vice Chair Harris** moved to approve File WG-11-01, DR-11-01, HCA-11-01, WQR-11-03,
635 CSU-11-09 with the modified Recommended Findings and Conditions of Approval.
636 **Commissioner Gamba** seconded the motion. Motion passed unanimously.

637

638 **Chair Batey** read the rules of appeal into the record.

639

640 5.2 Summary: Trolley Trail Modification for Light Rail
641 Applicant/Owner: TriMet
642 File: MOD-11-01, WQR-11-04
643 Staff Person: Susan Shanks

644

645 **Chair Batey** called the public hearing to order and read the conduct of quasi-judicial hearing
646 format into the record. She noted the Commission had opened the hearing on November 8 and
647 continued it to November 22 to allow more time for public testimony and deliberations.

648

649 **Chair Batey** asked if any Commissioners had any ex parte contacts to declare beyond those
650 previously reported.

651

652 **Chair Batey** declared that since the initial hearing, this was discussed briefly at the Island
653 Station NDA meeting. The NDA Chair had expressed some concerns and Chair Batey
654 encouraged her to put those in the record by letter or by testimony, and she was present in the
655 audience.

656

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

660

661 **Vice Chair Harris** stated he had reviewed the material from the November 8 hearing in order to
662 be prepared to participate.

663

664 No Commissioner's participation was challenged by any member of the audience.

665

666 **Ms. Shanks** stated the City had received one written comment, which had been forwarded to
667 the Commission via email. Hard copies were distributed.

668

669 **Chair Batey** called for public testimony in support of the project.

670

671 **Cindy Tyler, 1959 SW Morrison St, Portland**, believed the present undergrowth along the
672 proposed new area for the trail was a virtual who's who of noxious weeds and invasive species.
673 All the noxious weeds and undesirable growth would be removed when TriMet reworked this
674 section for the new trail alignment. The required retaining walls would make it very clear where
675 the trail ended and private property began. The trail as presently proposed would be a
676 tremendous benefit to the community and should be approved accordingly.

677

678 **Chair Batey** called for public testimony in opposition to the project.

679

680 **Dion Shepard, 2136 SE Lake Rd, Milwaukie**, supported having another look to save the
681 sequoias. One was being saved, and she questioned why several in a different location could
682 not be saved. Sequoias were significant trees. So many trees were being removed, so the City,

683 TriMet, or North Clackamas Parks and Recreation District (NCPRD) should see if the path could
684 be moved so those trees could be preserved.

685

686 **Commissioner Gamba** stated that Daniel Platter had suggested saving only one of the trees
687 because they had been planted or grew too close to one another to be healthy. He asked Ms.
688 Shepard's opinion.

689 • **Ms. Shepard** responded she did not know if they had a professional look at them, but she
690 would like to see one saved.

691

692 **JoAnne Bird, 12312 SE River Rd, Milwaukie**, stated when she was sent the sheaf of material,
693 she focused on the Water Quality Resource (WQR) area, because they lived upstream of that
694 on the unnamed drainage. She was dismayed at the number of trees being removed, including
695 18 trees that were 10 in in diameter. The 48 trees being planted were not very big. The trees
696 would not grow to the size of the existing ones in her lifetime. She had not thought about
697 removing 2 of the 3 sequoias until reading Mr. Platter's letter. She would like an arborist to look
698 at the sequoias. The project was already all over the WQR area; an extension of one of the
699 retaining walls goes into it as well as another wall under the path to keep it level. She asked why
700 they could not push a little farther into the WQR area to save the sequoia.

701

702 **Chair Batey** asked if she preferred saving all 3 trees or just 1 tree.

703 • **Ms. Bird** responded that at this point in time, especially since they lost the oak, saving any
704 big trees was very important.

705

706 **Commissioner Stoll** confirmed that the 3 sequoias were just south of the drainage and
707 currently indicated in the center of the trail on the diagram.

708

709 **Chair Batey** stated there was no further public testimony.

710

711 **Ms. Shanks** noted the Applicant had submitted the application, but then revised their
712 landscape, lighting, and WQR mitigation plans, the latter being at staff's direction. On November
713 8, two green sheets had been distributed with the revised conditions of approval and findings
714 that were a starting point for this discussion.

715 • She noted that the review extent for the Trolley Trail application included everything on
716 either side of the trail, but not between the light rail and McLoughlin Blvd. A fence would
717 divide the rail from the Trolley Trail property.

718 • Exhibit P33 of the packet showed the mitigation plan and tree removal for the WQR.

719

720 **Jeb Doran, TriMet**, reviewed the alternative alignment, noting key changes in response to
721 safety concerns expressed by NCPRD and TriMet's Safety and Security Committee. His
722 additional comments and responses to comments and questions from the Commission were as
723 follows:

724 • The line of trees that were within 3 ft of McLoughlin Blvd would be removed.

725 • Within the city limits, 181 trees would be removed, 44 of which required mitigation. The
726 project was currently proposed that 382 trees be planted in the area. This did not include
727 the trees being planted in the WQR areas.

728 • Early on, TriMet had considered removing two sequoias and keeping the southernmost tree.
729 Based on the Code for minimum impact to the WQR, TriMet determined that the current
730 proposed design minimized the impact to the greatest extent.

731 • Sequoias were great trees and had habitat quality, but were not native to the area. By
732 removing the 3 sequoia trees, 6, large, mature trees were being saved that were already
733 part of the WQR. This was most consistent with the Code criteria to minimize impacts to the
734 WQR.

735 • Many noxious weeds were in the area. The weeds could be still be removed if the 3 trees
736 remained, but would require more hand grubbing and working with smaller tools inside of
737 the root zone to protect the trees. Removing the trees would enable TriMet to get the top
738 layer of soil, and remove the weeds along with their root systems when they did the clearing
739 and grubbing to have more of a fresh start.

740 • Keeping the current alignment and bending the trail back around one Sequoia resulted in
741 the same issue of saving 3 nonnative trees to remove 6 native trees.

742 • While sequoias were unique specimens to the area, the 3 subject trees would not reach
743 their full potential, given the condition of their canopies and how closely they were
744 planted together. Saving just 1 tree would still impact the 6 native trees due to the
745 construction limit area required for higher retaining walls.

746 • Removing the 2 northern trees would allow the arc of the trail to shift substantially farther
747 to the south; however, any alignment outside the configuration coming straight across
748 would increase the WQR impact to some degree.

- 749 • There was 10,700 sq ft of impact with the trail, the light rail alignment, and the 18
750 trees being removed with the revised configuration. TriMet was not only enhancing
751 the area, including 48 trees, but also adding new upland habitat that did not exist
752 today.
- 753 • The alignment really did minimize the impacts to the WQR to the greatest extent
754 possible and met the criteria. TriMet was open to some additional tree plantings to
755 help mitigate for the loss of the Sequoia trees. They had made an honest effort to go
756 above and beyond what the Code required, not only for the WQR areas but for tree
757 mitigation in general. The Code typically required a 1:1 replacement for rights-of-
758 way, and the proposal had a 3:1 to 5:1 replacement.
- 759 • The Water and Resource Mitigation slide was displayed. The green areas indicated where
760 TriMet proposed plantings, in addition to removing the clematis and ivy. The 5-year
761 monitoring and maintenance requirement would also be met.
- 762 • A 6-ft, high welded wire fence was proposed in the 6-ft buffer for the length of the trail
763 section that would protect trail users, especially cyclists traveling fast speeds, from falling
764 into the light rail line.
- 765 • The proposed alignment would retain the largest portion of developable area for a future
766 parcel, as well as preserve the screening elements so highly desired by the community.
- 767 • This alignment allowed the project to stay outside the wetland. The current environmental
768 permits for the project did not account for any impacts to the wetland area and maintaining a
769 good amount of buffer from that area would be desirable.
- 770 • TriMet had been working in a collaborative process with Clackamas County, NCPRD, Urban
771 Green, and many community members. TriMet had done a great job of doing outreach and
772 getting out and talking to people living next to the alignment. Mr. Doran believed TriMet had
773 a pretty high level of buy-in to the alignment with the screening elements, WQR, and
774 planting buffers being provided.
- 775 • The timing of the tree removal was moved due to the migratory bird window, which dictated
776 that trees could not be removed between March 1 and September 30. TriMet was
777 considering two windows of opportunity for tree removal, one in February, and the other in
778 the fall after the window closed.
- 779 • TriMet wanted to leave screening and trees in place for as long as possible as they were
780 valuable to the neighbors. They wanted to time it so the trees were replanted within the
781 shortest window possible.

- 782 • Some specific trees would likely be removed in February to facilitate the work that
783 needed to be done. The rest would be removed in the fall.

784

785 **Vice Chair Harris** appreciated that TriMet came to the hearing with an alternative trail
786 alignment.

787

788 **Chair Batey** called for staff comments.

789

790 **Ms. Shanks** noted Michelle Healey, who had been working with TriMet on this Trolley Trail
791 section, and Sarah Hartung, the City's consultant, would address the Commission.

792

793 **Michelle Healey, North Clackamas Parks and Recreation District (NCPRD)**, stated she had
794 looked at the same things Mr. Doran had presented. They would like to be able to save all the
795 trees if they could, but there were always tradeoffs to consider. TriMet had put a lot of thought
796 into the alignment presented, and it was good for the trail as well as for the WQR area. She
797 responded to questions from the Commission as follows:

- 798 • NCPRD was currently working with TriMet on an intergovernmental agreement regarding
799 who would maintain the plantings and landscaping along the sides of the Trolley Trail in
800 perpetuity. More than likely, NCPRD would have a big part of that responsibility, but it would
801 be either TriMet or NCPRD. NCPRD wanted to be sure it was well maintained, not only for
802 aesthetics but for safety reasons.

- 803 • **Mr. Doran** added TriMet was installing the irrigation and usual maintenance amenities.

804

805 **Chair Batey** commented NCPRD had a wonderful resource in Tonya Burns; her expertise
806 would have been helpful with regard to the plantings in Kronberg Park. She supported any help
807 Ms. Burns could get as well as more funding to the natural area part of the parks budget.

- 808 • **Ms. Healey** noted Ms. Burns was reviewing all of this material as well and helping provide
809 comment.

810

811 **Vice Chair Harris** moved to continue the meeting until 10:30 p.m. **Commissioner Stoll**
812 **seconded the motion which passed unanimously.**

813

814 **Sarah Hartung, Wetlands and Wildlife Biologist, Environmental Science Associates,**
815 **Portland**, stated her firm had been consulted to look at the plan and investigate the site back in
816 September.

- 817 • A spring-type feature was identified at the very bottom of the ravine; it was sort of a wetland
818 and a waterway because groundwater was seeping out of the gravels and substrate at the
819 bottom. The presence of the water at that time of year indicated it had a perennial nature
820 and met the primary protected feature definition. Farther up in the contours was more of an
821 intermittent drainage.
- 822 • The wide buffer was a result of it being a primary protected feature and the steep slopes. It
823 was a degraded buffer because of the high dominance of English ivy and clematis. The
824 mitigation plan would really provide a boost in clearing out and replacing the invasive
825 nonnatives with native ground cover and understory. Several native shrubs were also being
826 proposed.
- 827 • The retention of a couple Douglas firs, some of the big leaf maples, and the proposed
828 planting of many Western cedars would eventually result in a mixed forest. There was a loss
829 of that resource as those trees grew, but that was why there was a higher replacement ratio.
- 830 • Sequoias were not normally found in Oregon, although they did quite well here. She had
831 done a tree survey for the Eastmoreland Golf Course where hundreds of giant sequoias
832 were getting so big they crowded out the natives, used all the water, and caused problems.
833 From a timeline perspective, the subject trees were very young sequoias. Old growth,
834 irreplaceable trees were not being removed. The 3 trees were probably 60 to 80 years old,
835 but the only way to be certain was to do a tree core.

836
837 **Chair Batey** noted that Mr. Platter said rare forms of trillium were farther up the water resource
838 and that they should be dug up and moved.

839
840 **Ms. Bird** remarked that yet again, TriMet was giving reasons why something could not be done.
841 She was worried about TriMet's diagram, because it showed trees planted closer to the existing
842 pathway than if the pathway ran around the sequoias. She was on the fence about whether or
843 not the sequoias were natives.

- 844 • The point about the potential loss of the other 6 native trees was not entirely clear in her
845 mind. The path alignment shown was farther away from the sequoias than from the other
846 trees they had planted in the diagram. She strongly suspected TriMet was saying, yet again,
847 "we cannot do this because..."

848

849 **Chair Batey** called for the Applicant's rebuttal.

850

851 **Mr. Doran** clarified that the plantings displayed were for the old alignment and not necessarily
852 how the new planting would be configured. With the new alignment, the screening densities
853 would change.

854

855 **Commissioner Gamba** noted where the preferred path was drawn in relationship to the drip
856 line of the big sequoia tree being saved. He asked why the other alignment could not be pulled
857 in closer to the other trees.

- 858 • **Mr. Doran** believed they could move that alignment in closer to those trees and bring that
859 farther to the southeast. But again, anything outside of the straight-through alignment would
860 increase the impact to the WQR. Additional walls would need to be built in the WQR closer
861 to the wetland resource and the spring source itself.
- 862 • TriMet was not saying it could not be done, but it was a balance of determining the best way
863 to restore and enhance the area. Saving three trees did not necessarily have an equal
864 ecological benefit to the 6 trees on the other side; it did not balance. In removing 2 of the
865 sequoias, they needed to consider if the benefit of saving that 1 tree outweighed the benefits
866 of keeping the 1 to 6 native big, healthy trees.

867

868 **Commissioner Fuchs** asked the species of the 6 trees that would have to be removed in the
869 alternative alignment.

- 870 • **Mr. Doran** believed most were big leaf maples and one was a Douglas fir. They were all
871 natives and all were fairly mature trees.
- 872 • **Ms. Shanks** noted the canopy in this area was determined to be all native and in good
873 shape; the understory was completely invasive, resulting in the area being classified as
874 degraded. Saving as much of the canopy as possible was a good idea.
- 875 • **Mr. Doran** added it was easier to remove the invasives under the sequoias if they were not
876 there. Work in and around the roots was not as thorough. Getting into the root systems of a
877 lot of the species out there would be vital to the long-term success of the restoration. How
878 those invasives were removed was a key to making this successful.

879

880 **Chair Batey** closed the public testimony for File MOD-11-01 and WQR-11-04.

881

882 **Commissioner Stoll** stated that as much as he would like to see the sequoias saved, he would
883 rather not see further encroachment into the WQR and removal of the big leaf maples. He would
884 rather keep native species and maintain the integrity of WQR as much as possible.

885

886 **Commissioner Fuchs** stated it was all important, not just what was charismatic like the
887 sequoias. The sequoias might be more important to the citizens who have participated than the
888 WQR or the maples. She was on the fence. It was hard to say which was more important.

889

890 **Commissioner Gamba** stated he had spent time at the site and believed they could leave the
891 southern sequoia and not cut down any of the maples. He did not believe it was an either/or
892 proposition. If the southern sequoia was saved, the bend in the trail could be moved significantly
893 further south. He confirmed that the width of the trail was 12 ft wide with 2 ft shoulders on each
894 side. He indicated on a displayed diagram how the trail could be configured to avoid the other
895 large trees if the sequoia were saved. Essentially, the bend in the trail would start earlier and
896 finish earlier.

897

898 **Chair Batey** said she would have liked to have seen that studied and some testimony about
899 how close the trail could get to the sequoia without damaging the tree's root system too much.
900 The question was whether that one sequoia was worth the cost benefit of all the extra work and
901 extra cost. She did not believe it was worth it.

902

903 **Commissioner Wilson** stated it came down to the safety issue; realignment was not safe. The
904 arborist could condemn all the trees.

905

906 **Chair Batey** stated it was a safety issue if the trail was realigned all the way behind the trees,
907 but Commissioner Gamba was talking about staying with the preferred alignment and bending it
908 around that sequoia.

909

910 **Commissioner Fuchs** asked why TriMet's revised alignment was preferred rather than just
911 following the existing alignment and bulbing the trail out right around the sequoias.

912

913 **Commissioner Wilson** responded that on the trails he had been on, cyclists were jamming
914 down the path. He did not see the practicality of such an alignment, which really created a

915 safety issue, especially with cyclists traveling 10 or 20 miles per hour and someone walking the
916 other way.

917

918 **Vice Chair Harris** offered cyclists travel much faster, 30 miles per hour.

919

920 **Vice Chair Harris moved to approve the application as presented with the modified**
921 **recommended findings and conditions of approval provided on the green handout.**

922 **Commissioner Stoll seconded the motion.**

923

924 **Commissioner Gamba** said he wanted to adjust Condition 3.B.2 which discussed vine
925 plantings.

926

927 **Ms. Shanks** said she knew the vine plantings had been debated, but it was outside her
928 expertise. The plantings for the WQR areas were all native, but natives were not proposed for
929 all the plantings outside of the WQR areas.

930

931 **Carol Mayer-Reed, Urban Design Lead for TriMet, Mayer-Reed Landscape Architects,**
932 explained certain kinds of vines were able to negotiate and climb a wall surface. Other vines
933 sprawl on the ground and would not provide the graffiti deterrent quality they were looking for
934 the design of the trail. She did not know of a native vine that would stick to the wall like the
935 nonnative Boston ivy, which was why it was chosen.

936

937 **Commissioner Fuchs** assumed the alternative alignment presented was chosen because of
938 safety issues such as the cycling speeds.

939

940 **Ms. Mayer-Reed** believed that was part of it. In her experience, one did not want to design a
941 trail with a sudden turn for safety reasons, especially around a conifer branched to the ground,
942 because no sight line existed through it.

- 943 • When a cluster of trees like these dense branching sequoias grew together as one canopy,
944 there was a lot of dead inside. Removing 2 of the trees would not result in the magnificent
945 single tree they envisioned. The center tree would probably be brown on 2 sides. It was a lot
946 of work for a tree that probably would not meet their expectations.

947

948 **Commissioner Gamba** said he was not fond of plantings things like Boston ivy, and wanted to
949 find a different alternative, even though Boston ivy was not on the invasive list.

950

951 **Chair Batey** stated recently she had seen some kind of vine climbing up a wall that was all
952 different colors and beautiful.

953

954 **Ms. Mangle** stated this condition was almost solely focused on coordinating the information
955 shown in different plans. Some things shown in the landscaping plans were not reflected in the
956 civil plans. To change the species of a planting, which would change the urban design quality
957 and vision, the related criteria would need to be identified. This set of conditions was more
958 related to plan coordination, so if there was a policy related to the recommended change, it
959 would need to be identified.

960

961 The Commission consented to use Boston ivy.

962

963 **Vice Chair Harris** moved to approve TriMet's land use application File MOD-11-01 and
964 WQR-11-04 with the modified recommended findings and conditions of approval shown
965 on the green handout. **Commissioner Wilson** seconded the motion. The motion passed
966 unanimously.

967

968 **Chair Batey** read the rules of appeal into the record.

969

970 **6.0 Worksession Items** — None

971

972 **7.0 Planning Department Other Business/Updates**

973 7.1 Water Master Plan hearing 12/13/11

974 **Ms. Mangle** briefly overviewed the Water Master Plan, which would be introduced at the public
975 hearing on December 13, 2011. Also at that meeting, a worksession would be held on the
976 Residential Development Standards project addressing the list of issues the Commission
977 wanted to discuss.

978

979 **8.0 Planning Commission Discussion Items**

980 **Commissioner Fuchs** distributed an article on electronic signs that discussed a number of
981 things that Commission did not know.

- 982
- 983 **9.0 Forecast for Future Meetings:**
- 984 December 13, 2011 1. Public Hearing: CPA-11-02 Water Master Plan *tentative*
- 985 2. Worksession: Residential Development Standards Project –
- 986 Multifamily Residential Development & Design; Typology
- 987 January 10, 2011 1. Worksession: Residential Development Standards Project – Single-
- 988 Family Residential Development & Design; Conditional Uses.
- 989

990 Meeting adjourned at 10:33 p.m.

991

992

993 Respectfully submitted,

994

995

996

997

998 Paula Pinyerd, ABC Transcription Services, Inc. for

999 Alicia Martin, Administrative Specialist II

1000

1001

1002

1003 _____

1004 Lisa Batey, Chair

1005

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, December 13, 2011
6:30 PM**

COMMISSIONERS PRESENT

Lisa Batey, Chair
Nick Harris, Vice Harris
Chris Wilson
Mark Gamba
Russ Stoll

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelder, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Batey 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 October 11, 2011

Chair Batey moved to postpone the October 11, 2011, Planning Commission minutes. No second motion was required.

2.2 October 25, 2011

Chair Batey noted a small typo on Line 227 of 2.2 Page 7.

Commissioner Stoll moved to approve the October 25, 2011, Planning Commission minutes as amended. Commissioner Fuchs seconded the motion. Commissioners Wilson and Harris abstained.

3.0 Information Items

Katie Mangle, Planning Director, informed the Commission that due to mid-year budget reductions, the City would no longer produce formal meeting minutes. Staff will use Granicus software to take "action minutes" to accompany the video recording, which will be available

42 online and archived. However, there will be a minimal written record of the minutes for the
43 Commission to approve and sign.

44

45 Ms. Mangle also noted that the agenda was reordered for the worksession to be held first and
46 the public hearing to follow.

47

48 **4.0 Audience Participation** – This is an opportunity for the public to comment on any item
49 not on the agenda. There was none.

50

51 **5.0 Worksession Items**

52 5.1 Summary: Residential Development Standards Project Update: Multifamily
53 Residential Development and Design; Typology
54 Staff Person: Katie Mangle and Ryan Marquardt

55

56 **Ryan Marquardt, Associate Planner**, presented the staff report via PowerPoint and noted the
57 timeline of the project. He outlined several aspects of the draft code amendments, including wall
58 area and setback, transition measures, cottage cluster housing, review process, and rowhouse
59 design requirements.

60

61 **6.0 Public Hearings**

62 6.1 Summary: Water Master Plan
63 Applicant: City of Milwaukie
64 File: CPA-11-02
65 Staff Person: Ryan Marquardt and Zach Weigel

66

67 **Chair Batey** called the hearing to order at 7:40 p.m. and read the conduct of legislative hearing
68 format into the record.

69

70 **Ryan Marquardt, Associate Planner**, noted that staff was requesting the Planning
71 Commission recommend adoption of the Water System Master Plan as an ancillary document
72 to the Comprehensive Plan. The purpose of adopting the master plans as ancillary documents
73 into the Comprehensive Plan was to coordinate the master plans within one overall document.

74

75 **Zach Weigel, Civil Engineer**, reviewed the proposed amendments and the purpose of a water
76 system master plan with regard to the needs of the water system for the existing and future
77 water systems, improvement projects, and maintenance.

78
79 **Walt Meyer, West Yost Associates**, reviewed the current water system, including capacity and
80 storage, current and buildout demand, aquifers, standards, and the need for capital
81 improvement projects throughout the city. Currently utility billing was only covering operating
82 cost, but in order to provide a sustainable water system, rates would need to be increased.

83
84 **Ms. Mangle** clarified that the decision to raise rates lied with City Council.

85
86 **Gary Parkin, Engineering Director**, and **Beth Kelland, Citizen's Utility Advisory Board**
87 **(CUAB) Vice Chair** addressed the Commissioners' questions regarding past litigation of
88 triethylamine contamination from industrial entities. The Commission agreed that a separate
89 worksession was needed to address the issue.

90
91 **Commissioner Fuchs moved to recommend adoption to City Council of the Water**
92 **System Master Plan, File #CPA-11-02. Commissioner Stoll seconded the motion, which**
93 **passed unanimously.**

94
95 **7.0 Planning Department Other Business/Updates**

96 7.1 Transportation System Plan – Light rail-related amendments

97 Staff described the project and informed the Commission that it has been tabled until spring
98 2012.

99
100 **Damien Hall, City Attorney**, and the Commission reviewed and discussed the appeal of the
101 Planning Commission decision on the Kellogg Bridge for light rail application, File # WG-11-01.
102 The hearing was scheduled for January 3, 2012.

103 7.2 Planning Commission Notebook Update Pages – Item Cancelled

104
105 **8.0 Planning Commission Discussion Items**

106

107 **9.0 Forecast for Future Meetings:**

108 January 10, 2011 1. Worksession: Residential Development Standards Project
109 update: Single-Family Residential; Conditional Uses

110 2. Information: 6-month Commission Work Plan Forecast

111 January 24, 2011 1. Public Hearing: Transportation System Plan amendments
112 *tentative*

113 2. Worksession: Residential Development Standards Project
114 update: Accessory Dwelling Units; Accessory Structures

115

116

117 Meeting adjourned at approximately 9:42 p.m.

118

119

120

121

Respectfully submitted,

122

123

124

125

126

Alicia Stoutenburg, Administrative Specialist II

127

128

129

130

131 _____
Lisa Batey, Chair

132

133 Note: The information presented constitutes summarized minutes only. The meeting video is
134 available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.

135



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director

From: Ryan Marquardt, Associate Planner

Date: January 17, 2012, for January 24, 2012, Worksession

Subject: Residential Development Standards Recommendations – Accessory Structures and Accessory Dwelling Units (briefing 3 of 3)

ACTION REQUESTED

None. This is a briefing for discussion only. This is the last of 3 worksessions scheduled to prepare the Planning Commission for the first hearing on code amendments related to the Residential Development Standards (RDS) project.

BACKGROUND INFORMATION

History of Prior Actions and Discussions

- **January 10, 2012:** RDS Briefing 2 of 3 - The Commission was briefed on topics in the RDS code amendments, focusing on single-family dwelling design standards, garage standards, height and mass regulations, and conditional uses in low-density residential uses. Please refer to the staff report from this meeting for a complete listing of prior actions and discussion on the RDS project.
- **December 13, 2011:** RDS Briefing 1 of 3 - The Commission was briefed on topics in the RDS code amendments, focusing on multifamily standards, cottage cluster housing, rowhouses, and land/building ownership configurations.
- **October 25, 2011:** The Commission was briefed on the proposed code amendments for the Residential Development Standards project and identified topics for further discussion.
- **2010-11:** Staff briefed the Commission on multiple occasions regarding the scope and progress of the project. The Commission held two joint study sessions with Council to discuss key issues.

RESIDENTIAL DEVELOPMENT STANDARDS PROJECT TOPICS

This section of the report describes the topics that staff will cover at the worksession on January 24, 2012.

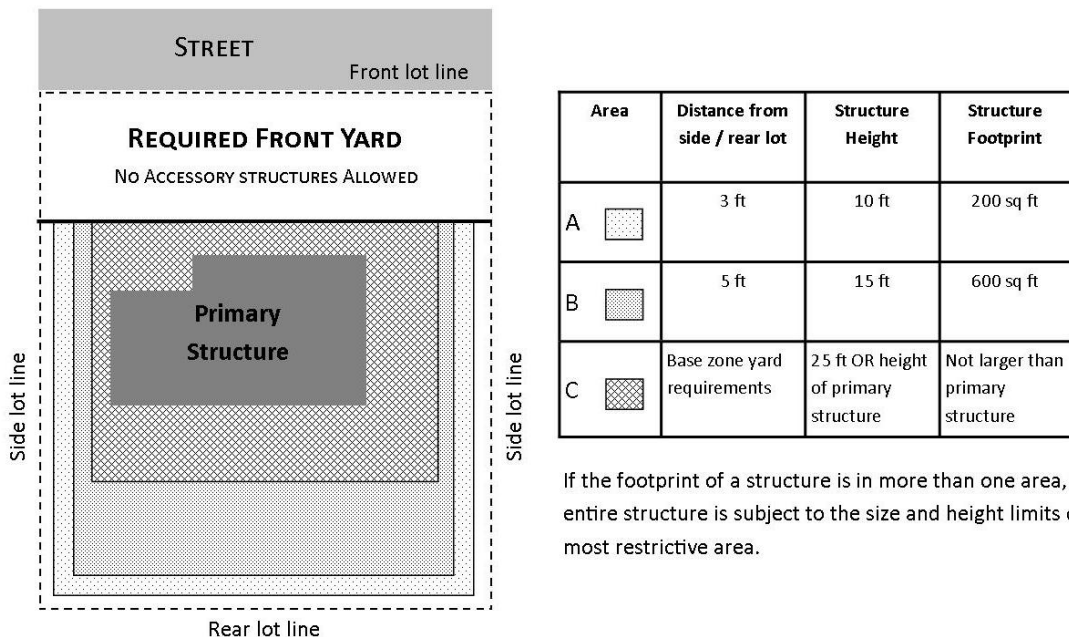
A. Accessory Structures and Detached Accessory Dwelling Unit Development Standards

Staff has heard from many Milwaukie property owners, and from participants in the RDS project, that the current accessory structure standards are too stringent and should be relaxed somewhat. This sentiment was particularly true for large lots that have adequate space to place a larger structure where it will have few if any impacts to surrounding properties.

Development standards (height, size, setbacks) are the same for accessory structures, regardless of whether the structure is used as an Accessory Dwelling Unit (ADU) or other use such as a garage or shed. There are two reasons for applying the same standards regardless of use. First, many impacts of an accessory structure to a neighboring property (blocked views, shading, aesthetic appearance) are independent of use. A large garage close to a property line may actually be more detrimental to a neighboring property than the presence of a small ADU in the same location. Second, consistent development standards may allow property owners to more easily convert accessory structures to an ADU. Modifying the footprint, location, or height of a legally existing accessory structure is difficult; requiring such modifications for converting a structure to an ADU may make such conversions infeasible.

The fundamental concept for the detached ADU and accessory structure standards is that smaller and shorter accessory structures would be allowed closer to lot lines, and larger and taller structures would be allowed if setback further. The figure below illustrates the proposed height, setback, and mass regulations.

Figure 1 – Proposed Height, Mass, and Setbacks for Accessory Structures



If the footprint of a structure is in more than one area, the entire structure is subject to the size and height limits of the most restrictive area.

Structures in Area A in the diagram are allowed to be relatively close to side and rear lot lines. The height and size thresholds for structures in Area A correspond to a structure's maximum height and size before a building permit is required. Because no building permit is required, Planning staff will generally not review these structures for compliance with setbacks. Having less restrictive setback standards mean that there is a higher likelihood that the property owner will place the structure in a location that meets the required setbacks.

Structures in Area B correspond closely to the current standards for accessory structures. The height and setback requirements are not proposed to change; the maximum footprint size allowed on most lots is proposed to increase from 500 sq ft to 600 sq ft.

Structures in Area C must meet all of the setbacks that apply to a primary structure. The maximum height allowed is the lesser of 25 ft or the height of the primary structure, and the structure footprint cannot be larger than that of the primary structure.

B. Specific Accessory Dwelling Unit Standards

In addition to the standards described above, additional development and design standards are proposed to apply to an accessory dwelling unit. The size of a detached ADU is limited to the lesser of 800 sq ft or 75% of the floor area of the primary structure. Detached ADUs must also be setback at least 10 ft from the front yard, measured from the point of the primary structure that is closest to the front lot line.

Some design standards would apply only to attached ADUs (in which a 2nd dwelling unit is placed within the same structure as the primary dwelling). The standards specify that the entrance to the ADU not be located on the same façade as the entrance to the primary dwelling, and that stairs or landings leading to the ADU may not be located on the front façade of the building. If an attached ADU is created by building an addition, the addition would be required to match the primary dwelling in terms of siding, window orientation and trim, and eaves.

No additional design standards are being proposed for detached accessory dwelling units. Staff considered incorporating standards that would require a detached ADU to be compatible in some way with the primary structure. However, such standards are likely to require duplication of styles or materials that may not be desirable, and would be overly prescriptive for the design of the ADU.

Staff received a suggestion that yurts be allowed as a detached ADU, and this allowance has been included. A yurt would need to include proper kitchen and sanitation facilities and meet building code standards for safety and durability to be permitted as an ADU. Yurts would be subject to the same development standards as other accessory structures, but would be specifically exempt from the requirement about using materials that are typically used in residential construction.

ADU regulations from several other jurisdictions were reviewed in drafting the revised ADU standards for Milwaukie. These other standards are included in Attachment 1 for reference.

C. Other Considerations for Accessory Structures

Planning Commission asked staff to discuss the potential for "grandfathering" existing accessory structures that wouldn't meet the proposed development or design standards, and also temporary versus permanent accessory structures.

“Grandfathering”

The “grandfathering” issue mostly concerns proposed restrictions on PVC and tarps. In nearly all cases, the development standards for accessory structures are becoming less restrictive, which means that few structures would become nonconforming with respect to the new standards.

The proposed restriction on PVC and tarps for accessory structures is that these materials cannot be used on accessory structures that are visible from the right of way. Staff added this provision in response to comments from NDA meetings that expressed opposition to these structures. The new rules for materials would not apply to legally established structures, as described below, and PVC/tarp structures that are not visible from the street. The thresholds for PVC/tarp structures being legally established are:

1. For structures with a footprint less than 150 sq ft, evidence that the structure was in place prior to enactment of the RDS code amendments. A site photo or aerial photo with a clear date would be adequate evidence.
2. For structures with a footprint of 150 sq ft or more, evidence that the structure was in place prior to August 2002 when requirements about building materials were enacted. Photos or building permits would be adequate evidence.
3. The structure meets the applicable setback, lot coverage, and other requirements in place at the time of installation, and obtained a building permit if one was required.

Staff suspects that many existing PVC/tarp accessory structures in the city probably violate standards other than the requirements for materials, such as setback and lot coverage. PVC/tarp structures attached to a primary structure are likewise illegal, since the building code prohibits attaching them to the primary structure. “Grandfather” or nonconforming rights for these structures is a moot point since they were not legally established.

Staff believes that legally established PVC/tarp structures have adequate “grandfather” rights through the provisions of the zoning code for nonconforming structures, and that additional “grandfathering” should not be considered.

Temporary Structures

Currently, the only allowances for temporary structures are as a temporary dwelling when a permanent structure is destroyed, and for structures associated with temporary events. Staff has researched a sample of other municipal codes in the area and has not found other cities that have temporary structure allowances beyond what Milwaukie already has. The Planning Department does not treat temporary structures differently than permanent structures for zoning purposes, meaning that the intended duration the structure will be on a site has no bearing on the development standards that apply.

Staff recommends that this practice be continued with the RDS amendments. The proposed RDS accessory structure standards have an implicit allowance for temporary structures. The structures allowed in Area A in Figure 1 would not require a building permit and are not subject to any design standards if they are not visible from the street. This creates an outright allowance for structures that would typically be considered temporary (under 10 ft tall, small footprint, inexpensive materials), and does not impose any timelines by which the structure has to be removed. Crafting an allowance for temporary structures requires consideration of appropriate size limits and locations, and staff suggests that the limits proposed for Area A are already appropriate thresholds.

If the Commission does want to explore further allowances for temporary structures, it should consider placement and size limits, as well as the appropriate time limits. Allowing temporary structures may also increase staff's 'current planning' workload. If the Commission decides that further allowances should be made, it may necessitate tracking the installation of these structures. This would also entail follow-up visits, additional communications with the property owner, and possibly enforcement for properties to ensure that structures are removed. These are not complicated tasks, but would increase the overall departmental workload for Planning, Building, and Code Enforcement.

D. Additional Topics to be Discussed at the Meeting

Staff is preparing additional materials for follow-up discussion from the January 10, 2012 worksession. Materials on the following topics will be presented at the meeting:

- Lot Coverage – 'real world' examples illustrating the proposed lot coverage reduction for large lots
- Side Yard Height Plane – graphics that show how different roof styles fit within the proposed limits.
- Code "User Guides" – information pieces for property owners and developers that tell what development standards apply to different types of development (single-family dwelling, rowhouse, ADU, etc.) and illustrate developments that would or would not meet the standards. See Attachment 2 for a draft user guide on single-family and duplex development.

Planning Commissioners are encouraged to contact staff prior to January 20th if there are materials on other topics they would like presented at the meeting.

ATTACHMENTS

1. Accessory Dwelling Unit Regulations from Tigard, Oregon City, Lake Oswego, Clackamas County, and Portland (attached)
2. Single-family Dwelling and Duplex Code User's Guide (attached)

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- F. Structure and Façade Design: All dwellings, except temporary dwellings approved pursuant to Subsection 1204, shall include at least three of the following features visible to the street (if on a corner lot, visible to the street where the dwelling takes access):
1. A covered porch at least two feet deep.
 2. An entry area recessed at least two feet from the exterior wall to the door.
 3. A bay or bow window (not flush with the siding).
 4. An offset on the building face of at least 16 inches from one exterior wall surface to the other.
 5. A dormer.
 6. A gable.
 7. Roof eaves with a minimum projection of 12 inches from the intersection of the roof and the exterior walls.
 8. Roof line offsets of at least 16 inches from the top surface of one roof to the top surface of the other.
 9. An attached garage.
 10. Orientation of the long axis and front door to the street.
 11. Cupolas.
 12. Tile or shake roofs.
 13. Horizontal lap siding.
- G. Accessory Dwelling Units: Accessory dwelling units shall be subject to the following development standards:
1. The square footage of an accessory dwelling unit shall not exceed six percent of the area of the lot of record on which it is located, or 720 square feet, whichever is less.
 2. Yard setbacks for an accessory dwelling unit shall be the same as those required for a primary dwelling.
 3. Only one accessory dwelling unit per lot of record is allowed.
 4. An accessory dwelling unit may:
 - a. Be a detached structure;

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- b. Be attached to another accessory structure; or
 - c. Share at least one building wall, or portion thereof, with the primary dwelling, provided that the accessory dwelling unit has a separate entrance. "Wall" does not include a breezeway, porch, or awning.
5. The exterior finish materials of the accessory dwelling unit shall be the same as, or visually match, those of the primary dwelling.
 6. The front yard setback shall be no less than the setback of the front façade of the primary dwelling excluding the porch, garage, and architectural features.
 7. If an accessory dwelling unit is attached to a primary dwelling, the accessory dwelling entrance(s) shall be on the side or rear of the structure. An exception to this requirement may be granted if there is no ground-level access to the accessory dwelling unit, or if the primary dwelling has additional front entrances prior to the development of an accessory dwelling unit and the total number of entrances is not increased. Exceptions shall be subject to Planning Director review pursuant to Subsection 1305.02.
 8. In addition to the required parking space(s) for the primary dwelling, one additional off-street parking space located behind the front yard setback line shall be provided for the accessory dwelling unit.
 9. Owner occupancy of either the accessory dwelling unit or the primary dwelling shall be required. A deed restriction requiring owner-occupancy of one of the dwelling units shall be recorded prior to issuance of a building permit for the accessory dwelling unit.
- H. Condominiums and two- and three- family dwellings: Shall be subject to design review pursuant to Section 1102.
- I. Attached Single-Family Dwellings: In addition to the design standards in Subsection 301.08(F), attached single-family dwellings shall be subject to the following design standards:
1. Minimum Street Frontage: 25 feet.
 2. Minimum Front and Rear Yard Setbacks: 20 feet.
 3. Minimum Side Yard Setback: 10 feet opposite the common wall. No setback shall be required from any side property line where two dwelling units share a common wall.
 4. Maximum Lot Coverage: 50 percent.

Lake Oswego

50.30.010 Specific Standards for Secondary Dwelling Unit.

A secondary dwelling unit may be allowed in conjunction with a single-family dwelling by conversion of existing space, by means of an addition, or as an accessory structure on the same lot with an existing dwelling, when the following conditions are met:

1. The site is large enough to allow one off-street parking space for the secondary unit in addition to the required parking for the primary dwelling.
2. Public services are to serve both dwelling units.
3. The number of occupants is limited to no more than two persons in the secondary unit.
4. The unit does not exceed one bedroom and an area of 800 square feet, or a total FAR of 0.4:1 for all buildings. No more than one additional unit is allowed.
5. The unit is in conformance with the site development requirements of the underlying zone and LOC Chapter 45.
6. The following minimum area standards shall be met:
 - 1 person - 250 square feet.
 - 2 persons - 500 square feet.
7. One unit shall be occupied by the property owner. The owner shall be required to record a declaration of restrictive use in the appropriate county clerk deed records prior to issuance of a building permit for the secondary dwelling unit on the lot. The declaration shall state that use of the parcel is subject to compliance with the City of Lake Oswego's secondary dwelling unit requirements (LOC 50.30.010), including the requirement that one of the dwellings on the lot be occupied by the property owner to permit usage of a secondary dwelling unit on the lot.
8. The reviewing authority may impose conditions regarding height modifications, landscaping, buffering and orientation of the secondary unit to protect privacy of the neighbors.

(Ord. 2316, Added, 03/05/2002)

Oregon City

17.54.090 - Accessory dwelling units.

An accessory dwelling unit (ADU) is defined as a self-contained residential dwelling unit located on the same lot as a single-family dwelling, but is not a recreational vehicle. The habitable living unit provides basic living requirements including permanent cooking, and toilet facilities. It may be located either within the same building as the single-family dwelling unit or in a detached building.

A. The purpose of allowing an ADU is to:

1. Provide homeowners with a means of obtaining, through tenants in the ADU or the principle dwelling unit, rental income, companionship, security, and services.
2. Add affordable housing units to the existing housing inventory.
3. Make housing units available to moderate-income people who might otherwise have difficulty finding homes within the city.
4. Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle.
5. Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are installed under the conditions of this Section.

B. Standards and Criteria.

An ADU shall meet the following standards and criteria:

1. The design and size of the ADU shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health, and any other applicable codes.
2. Any additions to the existing dwelling unit shall not encroach into the existing setbacks in the underlying zone. However, access structures (e.g. stairs or ramps) may be allowed within the setback if no access can be provided to the unit without encroaching into the setback area.
3. The ADU may be attached to, or detached from, the principle dwelling unit.
4. Only one ADU may be created per lot or parcel.
5. The installation of an ADU shall be allowed in single-family zones subject to the specific development, design, and owner-occupancy standards in this section. ADUs are not permitted on the same lot as a nonconforming use.
6. The ADU shall not exceed the height of the principle dwelling unit.
7. The property owner, which shall include title holders and contract purchasers, must occupy either the principle dwelling unit or the ADU as their permanent residence, for at least seven months out of the year, and at no time receive rent for the owner-occupied unit.

8. In no case shall an ADU:
 - a. Be more than forty percent of the principle dwelling unit's total floor area; nor
 - b. Be more than eight hundred square feet; nor
 - c. Be less than three hundred square feet; nor
 - d. Have more than two sleeping areas.
9. Detached ADUs:
 - a. Shall comply with the requirements OCMC Chapter 17.54.010 — Accessory Buildings and Uses including building footprint, height, placement, exterior building materials, etc.
 - b. In the historic overlay district pursuant to OCMC Chapter 17.40, shall be subject to the Design Guidelines for New Construction in Historic Districts.
10. The ADU shall be compatible with the principle dwelling unit, specifically in:
 - a. Exterior finish materials.
 1. The exterior finish material must be the same as the principle dwelling unit; or
 2. Visually match in type, size and placement the exterior finish material of the principle dwelling unit.
 - b. Trim must be the same in type, size, and location as the trim used on the principle dwelling unit.
 - c. Windows must match those in the principle dwelling unit in proportion (relationship of width to height) and orientation (horizontal or vertical).
 - d. Eaves must project from the building walls at the same proportion as the eaves on the principle dwelling unit.
11. Parking.
 - a. Purpose. The parking requirements balance the need to provide adequate parking while maintaining the character of single-dwelling neighborhoods and reducing the amount of impervious surface on a site.
 - b. The following parking requirements apply to accessory dwelling units.
 1. No additional parking space is required for the accessory dwelling unit if it is created on a site with a principle dwelling unit and the roadway for at least one abutting street is at least twenty-eight feet wide.
 2. One additional parking space is required for the accessory dwelling unit as follows:
 - i. When none of the roadways in abutting streets are at least twenty-eight

feet wide; or

- ii. When the accessory dwelling unit is created at the same time as the principle dwelling unit.

C. Application Procedure.

Application for a building permit for an ADU shall be made to the building official in accordance with the permit procedures established in OCMC 15.12, and shall include:

1. A letter of application from the owner(s) stating that the owner(s) shall occupy one of the dwelling units on the premises, except for bona fide temporary absences, for seven months out of each year.
2. The registration application or other forms as required by the building official shall be filed as a deed restriction with Clackamas County Records Division to indicate the presence of the ADU, the requirement of owner-occupancy, and other standards for maintaining the unit as described above.
3. The building official shall report annually to the community development director on ADU registration with the number of units and distribution throughout the city.
4. Cancellation of an ADU's registration may be accomplished by the owner filing a certificate with the building official for recording at the Clackamas County Records Division, or may occur as a result of enforcement action.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

Portland**CHAPTER 33.205****ACCESSORY DWELLING UNITS**

(Amended by: Ord. No. 171879, effective 2/2/98; Ord. No. 174263, effective 4/15/00; Ord. No. 175837, effective 9/7/01; Ord. Nos. 175965 and 176333, effective 7/1/02; Ord. No. 178172, effective 3/5/04; Ord. No. 178509, effective 7/16/04; Ord. No. 178927, effective 12/31/04; Ord. No. 179845, effective 1/20/06; Ord. No. 183598, effective 4/24/10)

Sections:

- 33.205.010 Purpose
- 33.205.020 Where These Regulations Apply
- 33.205.030 Design Standards
- 33.205.040 Density

33.205.010 Purpose

Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply

An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards

- A. Purpose.** Standards for creating accessory dwelling units address the following purposes:
 - Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;
 - Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
 - Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and
 - Provide adequate flexibility to site buildings so that they fit the topography of sites.
- B. Generally.** The design standards for accessory dwelling units are stated in this section. If not addressed in this section, the base zone development standards apply.

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

1. Creation. An accessory dwelling unit may only be created through the following methods:
 - a. Converting existing living area, attic, basement or garage;
 - b. Adding floor area;
 - c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or
 - d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.
2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household.
3. Other uses.
 - a. An accessory dwelling unit is prohibited on a site with a Type B home occupation.
 - b. An accessory dwelling unit is allowed on a site with an approved Bed and Breakfast facility if the accessory dwelling unit meets the standards of Paragraph 33.815.040.B.1.
4. Location of entrances. Only one entrance may be located on the facade of the house, attached house, or manufactured home facing the street, unless the house, attached house, or manufactured home contained additional entrances before the accessory dwelling unit was created. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks.
5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.
6. Maximum size. The size of the accessory dwelling unit may be no more than 75 percent of the living area of the primary dwelling unit or 800 square feet, whichever is less. The measurements are based on what the square footage of the primary dwelling unit and accessory dwelling unit will be after the accessory dwelling unit is created.
7. Exterior finish materials. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the house, attached house, or manufactured home.
8. Roof pitch. The roof pitch must be the same as the predominant roof pitch of the house, attached house, or manufactured home.
9. Trim. Trim must be the same in type, size, and location as the trim used on the house, attached house, or manufactured home.
10. Windows. Windows must match those in the house, attached house, or manufactured home in proportion (relationship of width to height) and

orientation (horizontal or vertical). This standard does not apply when it conflicts with building code regulations.

11. Eaves. Eaves must meet one of the following:
 - a. The eaves must project from the building walls the same distance as the eaves on the house, attached house, or manufactured home;
 - b. The eaves must project from the building walls at least 1 foot on all elevations; or
 - c. If the house, attached house, or manufactured home has no eaves, no eaves are required on the accessory dwelling unit.

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

1. Setbacks. The accessory dwelling unit must be at least:
 - a. 60 feet from the front lot line; or
 - b. 6 feet behind the house, attached house, or manufactured home.
2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.
3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site.
4. Conversion of existing detached accessory structures.
 - a. In RF through R2.5 zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 110-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.110.250.C, Setbacks.
 - b. In R3 through IR zones, conversion of an existing detached accessory structure that is in a front building setback required by Table 120-3 is not allowed. Conversion of an existing detached accessory structure that is in a rear or side building setback is allowed as provided by Subsection 33.120.280.C, Setbacks
 - c. If the accessory dwelling unit is proposed for an existing detached accessory structure that meets any of the standards of Paragraphs C.7 through C.11 and Paragraphs D.2 and D.3, alterations that will move the structure out of conformance with the standards that are met are not allowed;
 - d. If the accessory dwelling unit is proposed for an existing detached accessory structure that does not meet one or more of the standards of Paragraphs C.7 through C.11, the structure is exempt from the standard it does not meet. If any floor area is added to the detached accessory structure, the entire structure must meet the standards of Paragraphs C.7 through C.11.

33.205.040 Density

In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

Tigard
Chapter 18.710
ACCESSORY RESIDENTIAL UNITS

Sections:

18.710.010 Purpose
18.710.020 Standards
18.710.030 Approval

18.710.010 Purpose

- A. Purpose. This chapter provides clear and objective standards for the establishment of accessory residential units in detached single-family residences to achieve the following:
1. Increase energy efficiency in large and/or older homes;
 2. Increase the number of affordable housing units;
 3. Increase residential densities with minimal impact on the quality or character of existing neighborhoods;
 4. Allow small households to retain large houses as residences;
 5. Permit young households to achieve home ownership;
 6. Provide needed space for elderly family members, teenagers and/or returning adult children.

18.710.020 Standards

- A. Location. As noted in the use tables (18.510.1 and 18.520.1), accessory residential units are permitted as limited uses in all zones where detached, single-family dwelling units are permitted.
- B. Limitations. An accessory residential unit is permitted providing there is compliance with all of the following standards:
1. An accessory residential unit may be created within or as an addition to a detached single-family dwelling. For the purposes of this chapter, “addition” means the sharing of a common wall with the primary residence. A garage may not be converted to an accessory residential unit unless it is rebuilt as part of the primary structure;
 2. An accessory residential unit may not exceed 50% of the size of the primary unit, up to a maximum of 800 square feet;
 3. The number of residents permitted to inhabit the accessory residential unit is regulated by the State Building Code;
 4. Either the primary or accessory residential unit must be owner-occupied;
 5. A primary residence in which an accessory residential unit has been created may have only one home occupation;

6. In addition to the number of parking spaces required for the primary residence, as established in Chapter 18.765, one parking space shall be provided for the accessory residential unit. This parking space shall be paved and/or covered;
7. The front door of the accessory residential unit shall not be located on the front facade of the primary unit unless the door is already existing;
8. There shall be compliance with all development standards established in the base zone. (Ord. 09-13)

18.710.030 Approval

- A. Approval process. To obtain approval to create an accessory residential unit, the applicant must demonstrate compliance with all of the requirements in Section 18.710.020 above by means of a Type I procedure, as governed by Section 18.390.030. ■



User's Guide: Single-Family & Duplex Design Standards

OVERVIEW

The purpose of design standards is to promote high quality design that precludes blank facades that lack connection to the street or human-scaled detail. These standards are intended to promote attention to detail, human-scale design, and street visibility, while affording flexibility to use a variety of building styles. Examples of specific issues addressed include windows, entrances, façade articulation and design, and garage orientation and design.

Architectural styles. These design standards do not require any particular architectural style. In fact, they are intentionally flexible to allow for creativity. Any photos within this guide are intended to illustrate the intent of the requirement. You are not required to mimic the architectural style within the photo.

New building vs. an addition. If you will be designing and constructing a new single-family home or garage, that building will need to comply with all of the design standards. If you are planning an addition to an existing home that is 300 square feet or more and visible from the street, or conversion of an attached garage to living space, only the area being altered is subject to the design standards.

Manufactured homes. These design standards apply to placement of a manufactured home on a site outside of a manufactured home park. Additional applicable standards can be found in Milwaukie Municipal Code (MMC) Section 19.506.

Please refer to MMC Subsection 19.505.1 for the complete design standard regulations.

OTHER REGULATIONS

New residential dwellings are subject to the following sections of the City's zoning ordinance, Title 19:

- 19.300 Use Zones: uses allowed in each zone, development standard such as setbacks and lot coverage.
- 19.500 Supplementary Development Regulations: yard exceptions, design standards, etc.
- 19.600 Off-Street Parking and Loading: off-street parking requirements.
- 19.700 Public Facility Improvements: sidewalks, street improvements, etc.

ADDITIONAL STANDARDS

Rowhouses are subject to specific standards regarding access from the street. See MMC Title 12 Chapter 12.16 and MMC Title 19 Subsection 19.505.1.6 for the standards.

FOR MORE INFORMATION

If you have questions, contact the Planning Department at 503-786-7630 or planning@ci.milwaukie.or.us, or visit the Planner on Duty at 6101 SE Johnson Creek Blvd. The Milwaukie Municipal Code is available online at <http://www.qcode.us/codes/milwaukie/>.

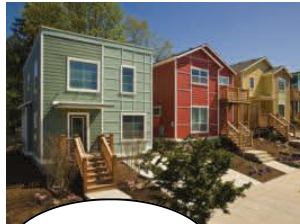
Design Standards: Single-Family Dwellings

MMC Subsection 19.501.1

The single-family design standards are style-neutral, but focus on community design goals aimed at creating safer streets and attractive, human-scale development.

These standards apply to new single-family dwellings, new duplex dwellings, new rowhouses on individual lots, new garages, conversions of street-facing garages to living space, and expansions larger than 300 sq ft that are visible from the street.

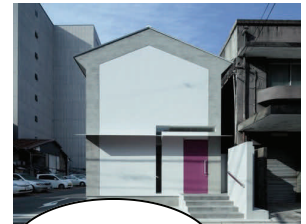
Eyes on the Street: At least 15% of the area of each street-facing façade must be windows or entrance doors.



This



Or This



Not This

Main Entrances: Must be no further than 8 feet behind the longest street-facing wall of the building and face the street OR be at an angle of no more than 45 degrees from the street or open onto a porch.



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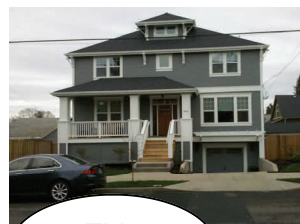


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Articulation: Street-facing facades must incorporate at least 1 to 3 design elements from the list in MMC 19.505.1.C.1; the number is determined by the length of street frontage.



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Or This



Not This

Detailed Design: All homes must include at least 5 of the features of MMC 19.505.1.C.4 on any street-facing façade.



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Or This



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Additional Design Standards: Duplexes

MMC Subsection 19.505.1.C.5

The duplex-specific standards apply *in addition to* the single-family dwelling design standards, and are aimed at making the duplex structure appear as much like a single-family dwelling as possible. To achieve that aim:

- The height of each of the units must be within 4 feet of each other.
- The exterior finish of the structure must be the same for both units.
- The eaves must be uniform for the entire structure.
- The trim must be the same in type, size, and location for the entire structure.
- Windows must match in proportion and orientation for the entire structure.

Below: The top left photo shows 1 main entrance to a converted duplex. The top right photo shows a duplex on a corner lot with each entrance facing a separate frontage. The lower left photo shows a duplex on a corner lot with both entrances facing the same frontage. The lower right photo shows a converted duplex with 2 entrances that do not meet the “main entrance” standard.



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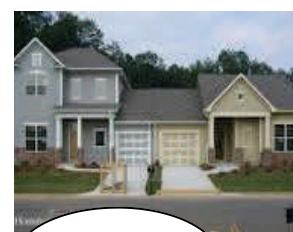
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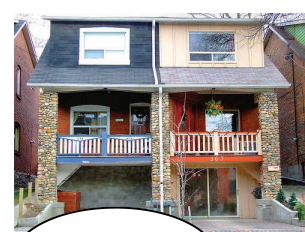
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Above: The top photos show side-by-side duplexes that share similar height, exterior finish, roof pitch, and window proportion and orientation. The duplex units in the lower photos differ significantly in height (left) and materials, roof pitch, and trim.

- For duplexes on corner lots, each entrance is required to face a separate street frontage.
- Where an existing house is being converted, it is allowable to have one main entrance with internal access to both units.
- For duplexes facing one street frontage, the following standards apply.
 - * Only 1 entrance is required to face the street.
 - * Where more than one entrance to the structure faces the street, each separate entrance is required to meet the single-family dwelling main entrance standards.
 - * A second entrance is not allowed within 10 feet of the side or rear property line.

Design Standards: Garages

MMC Section 19.505.2

The design standards are intended to prevent garages from obscuring or dominating the street-facing facade of a dwelling and to provide for a pleasant pedestrian environment in residential areas.

The standards apply to all new attached and detached garages on properties with a single-family detached dwelling, duplex, or rowhouse when the street-facing facade of the garage is located within 50 feet of the front property line. Rowhouses are subject to additional standards regarding garages and parking (see MMC 19.505.5 for applicable regulations).

Setback: The front of the garage can be no closer to the front lot line than the front of the house, with the following exceptions:

- The garage may extend up to 5 feet in front of the house if there is a covered front porch and the garage does not extend beyond it
- The garage may extend up to 5 feet in front of the house if it is part of a two-story facade that has a window at least 12 square feet in area on the second story that faces the street.

Right, top: The house on the top left has a 2 story garage that has a window of at least 12 square feet. The house on the top right has a covered porch and the garage does not extend beyond it. The garages in the lower photos dominate the streetscape.



This



Or This



Not This



Not This

Width: The width of a street-facing garage may not exceed 35% of the width of the street-facing wall of the house, or 12 feet, whichever is greater.

Right: The garage on the left does not dominate the front facade or obscure the entrance. The garage on the right does both.



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Not This

Orientation: Garages may be side-oriented to the front lot line if at least 15% of the street-facing wall is windows or doors. The side of the garage is included in the calculation of facade area.

Right: The garage on the left contributes to the transparency of the facade; the facade is at least 15% windows and doors. The facade of the house on the right is less than 15% windows and doors.



This



Not This