

**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

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

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

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

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

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

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

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

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

- She confirmed the project's staging area was on the Kronberg Park property, adding the City would be compensated for the construction access easement.
- The Willamette Greenway was not anticipated to change; even if the lake were gone, the area would still be part of the overlay zone because of Kellogg Creek.
- The yellow line on Exhibit P5 indicated where a construction management plan (CMP) was required when within 100 ft of the edge of a Habitat Conservation Area (HCA). Even with no impact to the HCA, a CMP was required to ensure erosion control and limited tree disturbance. The south abutment was not close to the other Water Quality Resource (WQR) involved with the Trolley Trail.
- Regarding Design Review, the Design and Landmarks Committee (DLC) recommended Planning Commission approval with their recommended conditions of approval, which included specific conditions about the abutment wall treatments and lighting under the jump span, Damien Hall, City Attorney, advised that the initial condition regarding the jump span lighting was too discretionary, so the conditions required the proposed lighting return to the DLC with the light rail station review.

- Planting mitigation had been discussed for the use of the construction staging area as part of the Applicant's mitigation plan.
  - She confirmed that the Tree Planting Plan for Kronberg Park Exhibit referred to planting only for the swath as indicated along the bank.
  - During bridge construction 8 trees would be removed on the northern bank as well as 8 trees on the southern side of the lake. TriMet would be planting more than the number required for mitigation.
  - The large oak tree that the Oregon Department of Fish and Wildlife (ODFW) had urged the City to save was in the HCA. The applicant looked at trying to save the tree and had an arborist evaluate it. Although the trunk was not in the way of the bridge structure, and the amount of limbing necessary for construction would be so detrimental that tree would likely not survive. Saving the tree was carefully considered because staff knew the community wanted to save the tree.
- Details regarding site preparation and mitigation for the staging area would be addressed in the development permit phase. Staff was currently reviewing the detailed conduct of construction contract between TriMet and its contractors to ensure the City's standards were in line with TriMet's. Contractors were subject to Milwaukie's ordinances regarding noise, construction hours, etc., and part of the contract involved best management practices with respect to erosion, draining, spill prevention, etc.
  - Questions regarding soil compaction and treatment were deferred to the Applicant, and staging area reparation, such as hydro seeding, should be specified in the construction easement.
  - She confirmed that the design of the proposed plantings had been submitted and staff provided recommended conditions of approval that slightly tweaked that planting plan in terms of identifying specific trees and shrubs. Sarah Hartung, the consultant from ESA, did an independent review of the application and believed the plantings were appropriate. She also provided some conditions of approval that made minor tweaks to the plan.
- **Chair Batey** noted several comments suggested that more oaks be planted at or above the top of bank, which was not in the referenced area. On Elk Rock Island, Douglas firs were removed because they were shading out the oaks, and many conifers had been planted in Kronberg Park already.
  - **Ms. Shanks** explained that the tree planting plan would provide more specificity of what, when, and where. The mitigation plan actually showed what was being planted, and staff wanted more details as to where plantings would occur.
  - Regarding the top of bank issue, as the owner of Kronberg Park, the City was voluntarily agreeing to have mitigation plantings on the park site as a way to mitigate the impacts of the bridge. After review by different City departments, the City would be fine with planting oaks above top of bank. This was currently one of the recommended conditions.
- Staff was not aware of any other standalone staging areas within Milwaukie boundaries related to this project. TriMet had asked about using certain areas, such as in the North Industrial Area, but staff explained that any standalone staging area might need to go through Community Service Use (CSU) review since standalone staging was not listed as a use in most zones.
- **Ms. Mangle** added that there would be staging within the TriMet light rail right-of-way in the construction zone. Staff was not aware of any other staging areas related to this project within the city limits that were not in the TriMet right-of-way, public right-of-way, or other City properties.
- Specific language required that the plantings along the shore be done in the first planting season following major construction being done. A 5-year monitoring requirement was included to address maintenance responsibilities.

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

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

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

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

**Ms. Shanks** concluded that the Commission needed to allow time for a possible appeal of the application to City Council and the 120-day land use decision deadline was January 18, 2012. If continued, the November 22 hearing would be the last hearing for the Commission to make a decision on this application with enough time left for the possibility of appeal.

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

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

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

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

- There would be compaction of the soil at the staging area, and restoration of that area once the bridge structure was complete. The details regarding the restoration had not yet been submitted, but the City would review that with TriMet.
- In downtown, the site being considered for staging was the area being purchased from Union Pacific Railroad and private property owners located north of Lake Rd. This staging area would be accessed from public rights-of-way and would be used for building the station and access from the north side.

- TriMet did not anticipate storing large quantities of material in the staging area in Kronberg Park; they were confined to the purchased right-of-way and building the site adjacent to the active freight railroad. There would be transfer of material north and south, but not large quantities.
- Any staging from Hwy 224 south to Harrison St, Washington St, and beyond would take place within the TriMet right-of-way. Retaining wall work would be done from Harrison St south to Washington St, but that would not become a staging area after the retaining wall was in place. TriMet would be building elements of the civil infrastructure for the rail facility.
  - **Ms. Mangle** noted the geographic area of the application was south of Lake Rd.
- **Commissioner Churchill** said he wanted to ensure that the true impacts of the different staging sites were clear, as well as the flow in and around the proposed 50-ft wide staging area, which seemed miniscule considering the scale of this project.
  - **Ms. Robbins** explained that TriMet was purchasing a site from Oregon Department of Transportation (ODOT) at Sparrow St, which was currently used as a materials storage site.
- **Calvin Lee, TriMet Structural Engineer**, explained the temporary piles driven into the water for the construction bridge would be removed at the end of the project. Access for cranes, etc., would be via McLoughlin Blvd/Hwy 99E.
  - TriMet was only allowed to drive the piles within a defined fish window, which was mid-July to the end of September. Therefore, any installation or removal of piles during those times would have minimal effects on fish habitat.
  - **Ms. Robbins** added that part of the mitigation was removal of existing piles currently in the water. This would be done at the end of the construction window.
- **Commissioner Churchill** noted that avoiding critical access time to the creek for fish habitat was understood, but nothing had been discussed regarding any mitigation for the creek bed itself.
  - **Ms. Mangle** responded that work within the waterway was covered by NEPA permits and the federal process. Mitigation was not discussed in this application, because the City did not have jurisdiction of the waterway.
  - **Ms. Robbins** added that jurisdiction was through the Corps of Engineers permit that was submitted and included as part of the Willamette River Bridge permitting effort. She believed no mitigation was required if the work was done during the fish window. The Corps permit substantiated the removal of the other existing piles as part of the impact mitigation.
- **Commissioner Gamba** asked if a construction bridge would have to be put back in if the pedestrian bridge was not built during the initial construction window.
  - **Mr. Lee** responded the pedestrian bridge could be done in other ways, but it could cost more. Alternatives exist in terms of the impacts, but those also had costs.

**Mark Mikolavich, Project Architect, Waterleaf Architects**, continued with the design review portion of the Applicant's presentation, noting the additional conditions of approval from the DLC, which were included in the staff report. He addressed clarifying questions from the Commission with these comments:

- The Applicant would address the nesting issue on the column caps. The strategy at this point was to consider putting innocuous, somewhat beveled elements on the ledges to prevent perching; where those were not appropriate, stainless steel wires would be used.
- The transparent, acrylic sound barrier wall was made of a very durable material. If scratched, a small torch was utilized that softened the surface and made scratches disappear. Sediment that splashed up on the surface of the acrylic material during a rain tended to wash off in the next rain. It was not literally self-cleaning, but it did not appear dirty over time.

- He was uncertain about the ability of the material to resist tagging, but the very smooth surface would not absorb spray paint. The fact that the 200-ft length of sound barrier was close to the midpoint of the bridge made it relatively difficult to access.

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

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

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

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

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

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

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

**Commissioner Gamba:**

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

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

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

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

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

- If one looked at the LUFO, they would immediately realize that TriMet and the City of Milwaukie had worked very hard to locate the parking, the end of the line, and the undesirable aspects of this project in a variety of places ever since it was hijacked and the attempt was made six years ago to locate it at Kronberg Park.
- He presented images of Kronberg Park, and stated planting trees and fixing the shoreline was a great idea, but trees had never grown there because of what was underneath that mess.
- He believed the design itself would suffer a legal challenge.
- He was not talking about the mitigation of a project, but the protection of resources, Regardless of cost, if TriMet needed to place the structure through parklands, water resources, and partly on top of the Trolley Trail, the key criteria for an acceptable design were not being met, and therefore could not be mitigated.
- He wanted to know where the at-grade crossing went in this process.
- He was in favor of the pedestrian bridge. If the end of light rail was going to be dumped at Park Ave after the disaster at Kellogg Lake Park, he hoped TriMet would have had the money to do it in a reasonable manner and with the least impacts. This design failed that test miserably and was foisted on the neighborhood.
  - An open house on the Park Ave segment was held a few months ago at Portland Classic Guitar. The business was no longer there, because at that meeting, a citizen produced a picture that light rail was going to be an elevated bridge over River Rd and the Trolley Trail, and through the Willamette Greenway. The owner was not told that, so did not renew his lease and left two weeks later. The retail space was now empty.
- He hoped everyone would look at the LUFO and the environmental impact statement and see what it said. He delivered a copy of each to City Council recently. Upon review, the Commission would find that the design over Kellogg Lake to Park Ave needed to be completely redone. Several issues needed to be addressed that had not been discussed at this point. So many complexities existed, not just saving the waterway at Kellogg Lake and bringing the fish back while somehow bringing in light rail. He was not here to argue about bringing light rail to Milwaukie.
- He assured this project would not survive, adding he would leave some information about the protection of resources.
- The issues he would like to see addressed included Kellogg Lake Park, the railroad trestle, and the criteria regarding unobstructed views of the Willamette Greenway. He would also like to see live diagrams at some point of what this would look like at Kronberg Park, rather than little sketch drawings.
- He concluded that it was unfortunate that this issue has ripped the community apart for so many years.

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

**Commissioner Churchill:**

- Asked what the concern was about the material in or under Kronberg Park.
  - **Mr. Poole** responded that for many years there was illegal dumping there, although the top surface had been cleaned up. He explained that the Kronbergs took fill from across the street at what used to be the old shingle mill and was now the sewer treatment plant. A lot of illegal dumping occurred in the 1960s. Around 1980, ODOT wanted to clean up the lake and drain it, but the dam had clogged with debris when opened. The park was an environmental mess, and he believed this design was an attempt to circumvent dealing with the reality at Kellogg Lake, and unfortunately, it put light rail on top of the Trolley Trail.

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

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

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

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

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

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

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

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

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

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

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

**Brad Smith, 13621 Fair Oaks Dr, Clackamas County**, said he owned three undeveloped lots in the Island Station area. He heard earlier that there would be no impact to that area, but he

also heard that electricity was going to be rerouted and new poles run through Island Station, which would directly impact his lots.

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

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

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

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

- She wanted the City to reconsider saving the large oak tree in Kronberg Park. She did not believe a 1:1 replacement ratio was adequate for an oak tree that age. If the branch going toward the light rail structure were removed, she believed the tree could still be saved.
- It takes about 30 years for a tree to grow enough to provide the same benefits as a mature tree. TriMet did not intend to replace any trees with larger trees, and the replacement trees were pretty small.
- She wanted assurance that there would be no negative impacts to the springs underneath Kellogg Creek when the piles were driven in on both sides of the lake because the restoration on Kellogg Creek was dependent on those springs that would feed the creek in the summertime and keep it cool. There were a number of springs and she hoped TriMet would research this issue.
- A noise analysis was done at her end of the property, so a baseline did exist to measure noise once construction was completed. She still had a concern about the noise because where the new structure crossed Kellogg Lake was a quiet part of the neighborhood. She has an apartment above her garage and was concerned how noise would affect renters.
- She did not necessarily want to see the bridge and encouraged more plantings, both deciduous and evergreens, be planted to add to the natural area versus strategically placed trees that allow the bridge to still be seen.
- TriMet had stated the staging area could be used for up to three years, which was a concern, because without pedestrian access on the bridge and no ability to plan and develop the park, it would be a very uncomfortable place to be with a pedestrian access and then no park to go to. Timing was important. The equipment should be removed as soon as possible so they could work on developing the park.
- TriMet's presentation showed the trees being planted along the bank, which was rock and chunks of concrete. She hoped that any grading would be done in such a way that the bank could be integrated into the park when it was actually developed.

There was no further public testimony.

**Commissioner Churchill moved to continue the hearing to November 22, 2011.**  
**Commissioner Fuchs seconded the motion.**

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

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

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

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

- There were a number of issues and questions, many of which would warrant time to look at concepts or possibilities to bring back to the Commission. Having to ask questions, deliberate, and make a decision all in the same night was very limiting.
  - **Ms. Mangle** responded that questions could be emailed to staff, which staff could share with the Applicant; staff could facilitate that discussion.
- Asking questions of staff, and staff asking questions of the Applicant, prevented the public from hearing that exchange.
  - **Ms. Mangle** responded it would come back and be reported either in writing shared with the whole Commission or in person on November 22.
  - She agreed the Applicant could waive the 120-day clock, but was not something they had control over.
- This was a huge project, one of the biggest things to happen in Milwaukie in 50 years. The Commission was restrained by the 120-day clock, but needed time to hear public testimony, deliberate, and study the issues further, as much as possible.
  - **Ms. Mangle** replied that staff had done what they could and met with most of the Commissioners one-on-one to review the application. As on every land use application, staff did not control the clock. Another option would be to set an interim special meeting if the Applicant was available.
  - With regard to waiving the 120-day clock, she believed the Applicant would say that construction of the bridge was tied to the in-water work window, which was really driving the schedule of the application.
- It was not the Commission's responsibility to respond urgently due to an applicant's lack of planning.
- If the Commission's major concerns and suggestions had actually been addressed during previous meetings and discussions provided by staff, the Commission would not feel backed into a corner. The major issue had been decidedly ignored, and it would take some work to come to a solution that did not result in the Commission adding a condition that TriMet could not meet.
- What would happen if the Commission could not make a decision on November 22 or the decision was denial because they could not get the answers or what they wanted?
  - **Ms. Mangle** stated the Commission could not deny the application, so conditions would need to be crafted to address the concerns the best way possible, which was what the DLC did because they had concerns as well.
  - The DLC's concerns were not being addressed in this venue but were being continued. They had summarily taken the lighting of the jump span and moved it to the station

hearing. The Commission did not have the option of addressing their concerns at a later date.

- Some things could be addressed through conditions like that, but that solution would not work for everything.

**Ms. Robbins** stated the Applicant was happy to be part of an interim meeting before November 22. Their team had been working in consideration of the DLC's recommendations on the column treatments and she had some images available. There had been further discussion about the lighting treatments under the jump span and they would be happy to discuss it further between now and November 22.

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

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

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

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

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

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

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

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

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

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

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

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

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

- The original application did not have a WQR or a timeline for construction, because that was before the Code change that created expiration dates for applications. Old CSUs did not have expiration dates.
- The trail section from River Rd to Park Ave would be lit. Lighting levels were not discernable in the photometric plan provided to the Commission because of the paper size. Staff included a condition to ensure there was no increase in lighting levels that was more than what was allowed at the residential edge. The top of slope was deemed a good place to for that measurement. A zero foot-candle reading would not be conditioned, due to the ambient light from McLoughlin Blvd, but no increase would be allowed. A photometric study was required for staff to evaluate.
- She did not know the cubic feet per second (CFS) of the water in the ravine, but that would be addressed in upcoming testimony.
  - There was no requirement about having a specific CFS to be classified as a primary protected feature. Other thresholds included year-round flow, certain drainage areas, and a year-round seep or spring.
- She believed the decision to cut the three sequoia trees was because they were located in the middle of the proposed new Trolley Trail alignment. The Applicant could provide further details.
- The Applicant wanted to maintain a certain distance between the light rail and trail without shifting closer to WQR area, which includes the buffer around the actual water feature. She clarified the trail would cross the WQR area and that the water quality feature went underground into a culvert. The significant slope was a key factor, so the Applicant was putting in a short retaining wall to minimize the grading and fill impacts to the WQR area where the feature goes underground.
- A consistent distance was maintained between the Trolley Trail and light rail with a minimum 6-ft planted landscape buffer between the rail and trail. The cross sections provided by TriMet were good illustrations of the change in grade, but did not reflect the revised landscape and planting plans. Revisions to the landscaping plan had been submitted which eliminated a number of the shrubs between the rail and trail, turning it into more of an eco-seeded area at the intersections.
- The retaining walls became much larger as they went farther west in the proposed alignment. She did not know if the possible increase in noise to the east was studied as sound reflected off the retaining wall, and deferred to the applicant.
- Staff was unable to analyze the revised landscape plan prior to the date of the packet, but had since that time. Staff's recommended conditions for the revisions were on the green handouts. The revised findings in support of approval included updated findings on the WQR Plan. She reviewed the revised conditions provided on the light green handout.

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

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

- The noise analysis had anticipated retaining walls, so that part of the noise analysis was consistent with what they studied in the Final Environmental Impact Study. An additional noise analysis was done at the south end of the structure for two additional properties that were to be acquired to build the retaining walls. They were able to determine there was no impact to the neighbors on the remaining parcels.
- She did not have a technical response regarding the noise reflected off the wall across McLoughlin Blvd to parcels on the east side of McLoughlin, but that information could be provided to the Commission.

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

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

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

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

- He would have liked to have seen an appropriate amount of money from TriMet in the original design. If they were going to come across Kellogg Lake and the edge of Kronberg Park, rather than trying to stay out of Kronberg Park and in the railroad right-of-way, they should have condemned the corner of Kronberg Park, mitigating the park, and bringing the overpass at an angle and crossing more diagonally at McLoughlin Blvd/Hwy 99E rather than on top of the Trolley Trail.
- He believed the effort made to modify the original plan was a dramatic improvement.
- He had the same concerns as Commissioner Churchill. There was no indication of how tall the retaining wall would be, or what it would sound like on the Trolley Trail with the trains vibrating, and the traffic and noise bouncing off of a 25- to 30-ft high retaining wall.
- Because light rail was on top of the Trolley Trail for part of the alignment, he believed the alternative analysis was flawed. Given the time of day and the situation, he requested the record be kept open on this issue, at least for written input until November 17. He assured he was not representing himself.
- He noted the table was about 6 ft long, and the trains would be 6 ft away from the trail in places with this design. One reaching through the bushes would be pretty close to the train. The pictures showed nicely trimmed trees, but TriMet would not be replacing all the fir trees.
- A section of the Supplemental Draft Environmental Impact Statement (SDEIS) said, "On the west side of McLoughlin, the project would use a portion of an old street car right-of-way that was purchased by Metro and the parks district for development of the Trolley Trail. Light rail would operate between the trail and McLoughlin Blvd." This was true in places but in other places with this design, TriMet was basically putting a giant concrete roof over the top of a park. The Trolley Trail was a park; a historic public resource. The minimum impact rating for the Trolley Trail impacts in this situation was what would be challenged legally.
- The Commission was doing a great job trying to mitigate a design based on de minimis or minimum impacts. He found it hard to believe that these were minimum impacts to that park.

In fact, he believed the attempt to avoid major impacts at Kronberg Park was how they came up with the design in the first place.

- The original estimate to go to Park Ave was \$140 million to \$150 million. The LUFO said they were taking 1,200 cars off the street. Now, they were buying more property and still having major impacts on the trail and to the entire watershed. Nowhere in the discussion did he see anything that addressed that they were condemning a portion of a public park. It stated, "As the light rail and trail approach Park Ave, light rail leaves the Trolley Trail alignment to stay on McLoughlin." He did not know how much of the Trolley Trail was being condemned in this process, but he would appreciate an answer next week. He hoped the record would be kept open until November 17.

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

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

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

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

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

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

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

- **Ms. Healey** responded vegetation was wonderful; however, walking on a trail that was heavily vegetated could cause a very uncomfortable sense. Sometimes it was safe, and it was just a feeling, but sometimes some real problems could be encountered. On other parts of the trail where vegetation had been cleared and more eyes were on it, the police informed NCPRD that unwanted characters had moved on. They were trying to keep that in mind as they looked at the entire trail, especially with a long stretch with no outlets along the way,

especially since it was dark when getting off the train at 5:00 p.m. at this time of year, which was one reason the lighting was recommended.

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

- The main reason he wanted to testify was to emphasize the importance of the trail to Milwaukie citizens. It was the only green space where they could run. Right now, the trail invoked the feeling of running under a huge forest with big trees, which was really beautiful and made one run faster.
- He proposed moving the trail to the west along the gravel pits. One advantage of moving the trail was that it would be far enough away from the power lines to plant large trees that might not be disturbed for a long time. There was opportunity to have what they have now back again in the future.
- One way to separate a green space from the ugly sort of spaces was to have large trees above. He understood, based on the arguments, that there probably could not be shrubbery between the trail and highway, but to emphasize what could be done behind the trail might be a way to mitigate for what was being lost. He suggested planting large trees such as oaks, ashes, and maples with native dogwoods underneath. They should be very specific on what TriMet was going to do. He preferred trees with blooms or fall color; it was important to pay attention to detail.
- He agreed with replanting a lot of trees, but sometimes that meant so many were being planted that none would thrive. Looking forward, he suggested having large trees with some of the replantings be dogwood, which could grow underneath.

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

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

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

- **Mr. Platter** responded there were too many sequoias in that area. They could consider cutting down two of the sequoia and keep the southern one, which would prevent the curve from being too rounded. Sequoias were too large to be planted 10 ft apart, so they would not thrive for long anyway.
  - He clarified that his comment was not about saving the trees but getting the trail away from the highway to become more of a green space. If they could not do that, it would be best to use some of the gravel pit for mitigation. His neighborhood was being hit hard; it would not be the neighborhood he moved to that had the towering trees. How it would look in the future depended on how good a job they did now.

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

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

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

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

**6.0 Worksession Items—None**

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

**8.0 Planning Commission Discussion Items—None**

**9.0 Forecast for Future Meetings:**

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

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

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

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

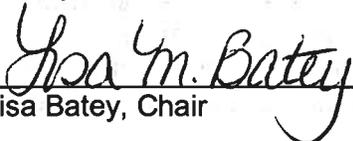
2. Worksession: Residential Development Standards update tentative

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

Meeting adjourned at 10:25 p.m.

Respectfully submitted,

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

  
\_\_\_\_\_  
Lisa Batey, Chair