

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, November 24, 2009
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Dick Newman
Lisa Batey
Scott Churchill
Teresa Bresaw

STAFF PRESENT

Katie Mangle, Planning Director
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Brad Albert, Civil Engineer
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Paulette Qutub
Chris Wilson

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:34 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 October 13, 2009

Commissioner Batey believed Lines 147 and 148 on 2.1 Page 5 cited the wrong intersection.

Ms. Mangle clarified that Washington St and 28th Ave was the right intersection, but amended Lines 147 and 148 for clarification as follows: "Milwaukie sites were close to bus lines, especially some of, *for example*, the smaller storefront businesses at Washington St and 28th Ave."

Commissioner Bresaw moved to approve the October 13, 2009, Planning Commission meeting minutes as corrected. **Commissioner Batey** seconded the motion, which passed 4 to 0 to 1 with **Commissioner Churchill** abstaining.

3.0 Information Items—None.

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

5.0 Public Hearings

5.1 Summary: CSU major modification of NCSD administrative offices
Applicant/Owner: Garry Kryszak/North Clackamas School District
Address: 4444 SE Lake Rd
File: CSU-09-11, TFR-09-05
Staff Person: Ryan Marquardt

Chair Klein called the hearing to order and read the major quasi-judicial hearing format into the record.

Ryan Marquardt, Associate Planner, cited the applicable approval criteria of the Milwaukie Municipal Code (MMC) as found on 5.1 Page 8 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

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

Commissioner Bresaw noted that she lived in the Lake Road neighborhood and that Debbie Patten, Lake Road Neighborhood District Association (NDA) Chair, mentioned that the hearing was coming up. The project was also discussed at the Lake Road NDA meeting.

Chair Klein declared he was a member of the Community Advisory Commission (CAC) for the oversight for the North Clackamas School Board, although he had missed the last 3 meetings in the past 9 months.

All the Commissioners had visited the site, but no Commissioner declared a conflict of interest, bias, or conclusion from a site visit. No Commissioner's participation was challenged by any member of the audience.

Ryan Marquardt, Associate Planner, presented the staff report via PowerPoint.

- He clarified where new parking would be installed and that the gray area on the displayed map indicated the parking area to be repaved.

Brad Albert, City Civil Engineer, reviewed how the Applicant proposed to best solve the site access spacing issue on Lake Rd.

- He believed that the lot near Lake Rd was open for public parking with most of the employee parking located in the area behind the building. He deferred to the Applicant to provide additional information.

Mr. Marquardt noted that written testimony received from Paul Hawkins of the Lake Road NDA was included in the packet. Mr. Hawkins asked about the rationale for placing modular buildings on the site and if the North Clackamas School District (District) had considered alternatives.

- Phone calls were also received from 3 surrounding property owners regarding the application. One call regarded the general placement of the 2 modular buildings on the site. Other concerns involved overflow parking on Freeman Rd during school district board meetings.
- He noted the expanded parking area would provide more parking on site and would hopefully alleviate some of that overflow parking. Additionally, posting "No Parking" signs could be considered on the Freeman Rd frontage because it was not wide enough to support 2-way travel as well as parking.

Staff responded to questions from the Commission as follows.

- **Mr. Marquardt** stated that Code did allow manufactured homes on single-family residential lots within the city.
- He also confirmed that 5.1 Page 3 noted 16 additional parking spaces would be installed, expanding the parking area from 63 to 79 parking spaces.
 - **Commissioner Batey** noted Page 8 of the findings, 5.1 Page 17 of the packet, showed calculations indicating that the application was definitely at the lower end of the off-street parking range required for the proposed use.
- **Mr. Albert** confirmed the applicant performed a preliminary stormwater analysis for

all the runoff from the site and the site met the requirements for runoff. Any additional overflow from the site would connect into the existing stormwater drainage system.

- Two stormwater infiltration facilities would be installed and any overflow would be directed to the existing stormwater facility that ran along Freeman Rd. All runoff from the new impervious area would be captured and directed into the catch basins. A small rain garden also existed as part of the Lake Rd improvements.
- He confirmed the catch basins did not currently exist and would be new to the site.
- **Mr. Marquardt** explained that staff had not considered the relative heights of the existing adjacent buildings. The Community Service Use (CSU) allows a maximum building height of 50 ft, and the proposed buildings of 16-ft to 17-ft high, or even 22-ft high given the site's elevation, were well below that maximum.
- Setback requirements also depended on building height, and the proposed setbacks exceeded the minimum setback requirements for both a 17-ft and 22-ft high building. He agreed that analysis would factor into the public benefits test.

Chair Klein confirmed that no other correspondence had been received regarding the application and called for the Applicant's presentation.

Ron Stewart, Assistant Superintendent, North Clackamas School District, 4444 SE Lake Rd, Milwaukie, OR, introduced his team and reviewed the history leading to the proposed project, noting that the District had outgrown its administrative building, which was built in 1967.

- An open house had been held. While the neighbors wanted to keep the grassy area, they also wanted the District to stay because an apartment complex or condominiums could be built if the District left since the parcel was zoned R-10.
- Regarding concerns about parking on Freeman Rd, District records showed that the extent of the daytime parking involved 6 to 8 cars parked on Freeman Rd for a half-a-day per month during the District Board meeting. Board meetings did not typically cause parking overflow onto Freeman Rd, although the District was aware that 3 meetings had over the last year.
 - Again, the proposal would add parking, which would minimize the parking overflow concern. He believed that 18 (16 is referenced above on line 98?) parking spaces were being added, and noted only 7 to 10 staff positions would be added, some positions were temporary.
 - Alternate building locations on the site were considered on the site as discussed by staff. Existing underground utilities were also a factor.

Rick Givens, Planning Consultant, 204 SE 10th Ave, Canby, OR 97013 stated staff did a thorough job in their report. He reviewed the site plan drawing displayed before the Commission **and entered into the record as Exhibit 1** with the following additional comments:

- The parking expansion would require the removal of 2 trees, but all other existing vegetation would remain untouched.
- The most westerly access to Lake Rd would be closed, with traffic rerouted to allow for visitor parking above and staff parking below.
- One pedestrian access would be provided; an additional access was also indicated that was not shown well on the rendering.
- The conditions of approval required one additional access point on Lake Rd, which was a problem due to grade changes between the road and site. The applicant would work with staff to determine if a stairway could be installed or an

- access point provided at another location that had less grade change.
- The Code was not specific about requiring access for each frontage, but stated “total frontage,” so it was possible that 3 accesses would be required for the 628 ft of frontage on the site. Again, the applicant would work with staff to meet that condition of approval as well.
- Significant improvements would be made to the site to ensure stormwater would be managed as not to impact neighboring properties.
- Another display board, **entered into the record as Exhibit 2**, depicted the proposed architectural changes as required in the conditions of approval. The primary change was the addition of an eave around the perimeter of each new structure, matching the architectural design of the existing building.
 - The structures were not mobile homes, but structures built to full Uniform Building Code (UBC) requirements that were manufactured elsewhere and moved to the site.
 - The elevations were revised to include horizontal siding elements. The applicant was willing to address the 12% glazing on the front elevation.
 - The existing arborvitae hedge would block the view of the building from the adjoining property. The arborvitae was about 15 ft high and only about 5 ft of the building would be seen above the hedge.
 - A foundation structure would be built for the modular building and skirting was proposed. The structure would be attractive once modifications and site improvements were completed.
- Foundation footings would be constructed underneath to level where the ground sloped several feet from front to rear and he assumed they would backfill against those footings.

Commissioner Batey:

- Asked if modular buildings were proposed rather than an addition to the main building because the District intended a limited duration at the site.
 - **Mr. Givens** replied the District had a very limited budget to address a pressing need for facilities’ improvements. He assumed the District would love to have a new facility as a long-range plan, but it was not possible at this time.
- Asked if the existing school board space in the existing building would be reconfigured to create workspace for employees being added.
 - **Mr. Stewart** responded the intent was to make the existing building less cramped. Human Resources was located partly in a hallway and part of the boardroom was utilized for a large copy machine. The existing boardroom would be converted into the Human Resources office, opening other spaces in the building. The intent was not to create a bigger boardroom, but to use the space as a multi-functional room that combined the conference rooms and boardroom.
 - The ideal, long-range solution was to build a new building that consolidated all the business functions, which was not possible until the economy improved. Adding onto the building was too expensive and might not be a good investment as a temporary fix.

Commissioner Bresaw:

- Asked for the general cost expected for the proposed improvements.
 - **Bill Weston, JJ Henri Co, Inc., 4554 Wildwood St, Lake Oswego, OR**, replied that the cost to purchase and place the modular buildings was more than \$200,000 and the proposed site modifications cost a little more than \$200,000. The total cost for entire project was a bit more than \$1 million and included the

- cost for the interior modifications of the existing building.
- Regarding the fill brought in to level the building footprint areas to a 115-ft elevation, he explained that a pad would be constructed from the existing asphalt grade and built up as the grade sloped, so the modulares would be accessed from the existing grade.
- Requested information about the maintenance costs for the modulares since they were considered temporary buildings and how long the applicant planned to keep them on the site.
 - **Mr. Stewart** responded the modular buildings were built to the same standards as a house, so he anticipated less maintenance being required than for the existing 30-year-old administration building.
 - **Mr. Weston** stated the specifications were not finalized pending approval, but the modulares' quality was comparable to conventional construction. The District did not want to bring in typical modular buildings, so upgrades included additional rooflines and higher quality materials to match the existing building.
- Asked what kind of warranty the manufacturer offered.
 - **Mr. Stewart** suspected it was the same one-year warranty as a brand new school building. Clackamas had modulares that were more than 20 years old; other districts had some older than 30 years.

Commissioner Batey asked if the electrical access would be buried.

- **Mr. Weston** responded that all new electrical service would be underground. He was uncertain about the one existing overhead line that fed the lights.

Janelle Brannan, HPR, 205 SE Spokane St., Ste. 300, Portland, OR 97202

reviewed the site improvements using the site plan (Exhibit 1) displayed before the Commission.

- Currently, stormwater flowed off into the grassy area; no piped private system existed at this time. Infiltration basins were proposed to collect and manage stormwater runoff to avoid saturating the entire grassy area, but only certain designated areas.

Chair Klein commented that the area was open grassland and should be able to absorb stormwater. However, it currently drained off the back of the property and with the proposed improvements; it would simply drain off into a nicer area, and then drain off the back again.

- **Ms. Brannan** explained that the infiltration basins were designed to have 18 in of growing medium with 1 ft of rock below those plantings for storage. Water would go through the growing medium and into the rock storage area if it did not infiltrate quickly enough into the native soils. Infiltration tests completed on the site were relatively good for the area. She was confident that the stormwater would drain.

Commissioner Bresaw asked if HPR was also involved with the stormwater facility on Lake Rd.

- **Ms. Brannan** stated the applicant was required to meet current stormwater management requirements, which meant treating and detaining runoff from the new impervious areas. A small infiltration planter was located onsite with any overflow collected in a catch basin and routed to the public stormwater system across the street. She was not certain how that infiltration basin fit into the Lake Rd frontage improvements, but she was coordinating with the engineer on that project.

Chair Klein clarified that the stormwater runoff currently collected along the back of the property line and ran into the natural ravine that extended past that area into the subject property and across the Christmas tree farm and the vegetable farm.

Commissioner Churchill:

- Asked how the bioswales were designed and if they were intended to screen the buildings. Trees and low growing native plantings in the bioswales could be utilized to screen the site from neighboring properties.
 - **Ms. Brannan** responded that the applicant was required to screen the parking lot from the neighborhood's view. The bioswales located at the south end of the site would be planted with attractive native plantings with some trees on the outskirts.
 - A planting plan was in progress, but was not included in the packet.
 - **Ms. Mangle** suggested that Commissioner Churchill look at the plan provided by Ms. Brannan. **A copy of the plan would be entered into the record (Exhibit).**
- Stated that seeing the planting plan helped because it was drastically different than what was presented on Exhibit 1.

Vice Chair Newman recalled that the District originally planned to sell the property and asked if the applicant had proceeded to talk to anyone about buying the facility.

- **Mr. Stewart** replied that the District had hired Norris, Beggs & Simpson, commercial real estate agent, who had completed an appraisal and talked with developers about options for selling the site. The District did not have money to pay for a move unless they leased a different building. There was a possibility the facility could be sold and additional funds borrowed, but there still would not be enough money.

Chair Klein:

- Confirmed that Norris, Beggs & Simpson had looked at the viability of selling it as a commercial site.
 - **Mr. Stewart** added commercial was the highest and best use of the property.
- Stated if the modular buildings were installed and the economy improved in the future, then potentially the modular buildings would be part of the commercial site.
 - **Mr. Givens** responded that the underlying zoning was R-10 with a CSU overlay, which allowed the school district facility. To approve the site for future commercial use, the Comprehensive Plan and a zone change would have to be approved. The current application before the Planning Commission made no commitments regarding the possible future commercial use of the site.
 - **Mr. Stewart** noted that potential buyers had discussed demolishing the buildings and starting over, so he did not think a buyer would purchase the property for the modular buildings.

Commissioner Bresaw requested a comparison between the costs of adding onto the existing building versus installing a modular building.

- **Mr. Weston** responded that the District had considered several different options of adding on, and it was not only cost, but the lot size was not adequate to allow attaching an addition to the existing building. Additional trees would also have to be removed. Building a new, separate building was not considered.
 - Preliminary estimates indicated it would cost twice as much to build it new as it would for the modulares. The square footage of the previously considered new building was 30,000 sq ft, which was later reduced to 23,000 sq ft. The existing building was 9,000 sq ft and 3,700 sq ft of modular buildings were proposed for a total of less than 13,000 sq ft.

- The challenge was whether paying a higher price for a temporary plan was a good investment since it was not a long-term solution.

Chair Klein understood many options were considered on the site, but the District owned other sites. He asked why this particular site was proposed for the consolidation, particularly since the District had considered selling it.

- **Mr. Stewart** responded that the Applicant looked at all the options, including new construction and leasing. The site located 2 miles away was leased for \$25,000 per year, so purchasing a modular as proposed would save \$25,000 per year. With all the existing functions at the present site, it did not make sense to expand anywhere else.
- He clarified that the old Wichita Elementary School did not provide enough space because it was 40% filled with existing programs. The District had committed to that neighborhood to make the Wichita facility more of a community center, not an administrative center.
- The Wichita facility would also require remodeling the school into offices and updating the systems, which was extremely expensive due to the age of the building.

Commissioner Churchill explained that he wanted to understand the logic of placing a modular versus not adding onto the existing building. He clarified that the overall project would run about \$1 million, which included \$200,000 for site improvements and an additional \$200,000 for the Lake Rd frontage, leaving about \$600,000 for structures.

- **Mr. Weston** noted that site improvements, including onsite parking and infiltrations, would still be required even with a building addition.
- He assured the District would have added onto the building if it was the same price as the modular option.

Chair Klein called for public testimony in favor of, opposed, and neutral to the application.

Dedi Juhala, 12845 SE Where Else Ln, stated that a major concern was stormwater runoff. She had water problems because the developer built the houses on 3 ft of fill. Her property was located in the low part behind the District property. An underground creek flowed through the area and many people on Where Else Ln had sump pumps. She strongly urged that water drainage be addressed; otherwise houses behind the bioswales would have problems.

- She inquired how the oil from cars in the new parking area would be separated from the water runoff going into the bioswales.
- Regarding the bioswale and infiltration basin, the engineer stated that about 3 ft of gravel and planting medium would be used for storage, but the water table was only 2 ft at her house. She had a lake in her side yard all the time.
- She was also concerned about traffic because she already sat for 5 minutes each time she tried to get out onto Lake Rd. She had not been aware that a center turn lane was proposed and asked if it would extend to the east past Freeman Rd.

Mr. Albert clarified that the Applicant was building half the turn lane. The Lake Road Multimodal Improvements project had a center turn lane down Lake Rd from Where Else Ln to Oatfield Rd. The City would consider providing a turn lane all the way to Freeman Wy on the other right-of-way section across from the District property if the required street improvements were built by the Applicant. This should help with left turn lane movements on and off the side streets and driveway accesses along Lake Rd.

- He explained that the center turn lane would end at Freeman Rd. The Lake Road Multimodal Improvements project ended at Where Else Ln. If the application was approved, the Applicant would build the street improvements on their frontage to Freeman Rd before the Multimodal Improvements project began and was completed. Then the City would be able to connect from Where Else Ln to the District site and complete that block; only 90 ft of frontage would be left to complete to Freeman Rd.
 - He confirmed that the center turn lane would not extend east of Freeman Rd, so cars traveling westbound on Lake Rd, turning left into Freeman Rd would not have a center lane to queue into, so the same stack up would occur east of Freeman Rd.
 - The City's right-of-way jurisdiction ended approximately 200 ft east of Freeman Rd before Kuehn Rd. The Lake Road Multimodal Improvements project would no longer extend to Kuehn Rd, but would now stop at Where Else Ln because of funding issues.

Commissioner Churchill confirmed the left turn center lane feeding onto Freeman Rd would not help the westbound traffic from Lake Rd to Freeman Rd under the subject application. It would not solve the problem because it addressed traffic west of Freeman Rd and did not solve the left turn issue into the site.

Chair Klein agreed, adding the idea was that the applicant would pay for the extra 100 ft, since the Multimodal Improvements project was stopping at Where Else Ln.

Ms. Mangle noted that the rendering presented by the Applicant to address conditions in the staff report was different from the proposal. She asked the Applicant to consider how to link the renderings to the staff report because it was not yet submitted into the record.

David Philips, 13230 SE Where Else Ln, stated he lived in the last house on the creek.

- He opposed having modulares on the site because they would degrade the nature of the neighborhood. Based on tonight's testimony, the modulares were on permanent foundations and were not temporary. The District would be better served building buildings on the site.
- Staff stated that having modulars buildings were possible on lots in the neighborhood, and he did not want people getting that idea in the neighborhood. It would have a horrible impact on the existing homes if modulars were moved in on the few remaining lots or any that were subdivided.
- He was concerned because the property dropped off fairly severely at what seemed to be more like an 8 to 10 ft drop and when the modulars were placed on the leveled ground it would be difficult to shield them from the neighborhood with landscaping.
- He was also concerned about stormwater drainage, which had been a problem since the Pennywood development was constructed. The stormwater issues had never been addressed over the years, and the stormwater problems, including sink holes, had gotten worse each year in his backyard.

Commissioner Churchill confirmed that the parking lot south of the existing building was at a 115 ft grade level and at Lot 4 the edge was about 100 ft at natural grade, resulting in a 15 ft difference from the parking level to the lot line.

Chair Klein noted a "North Clackamas School District Modular Building" drawing also indicated the topography, which at the end of the building was 107 ft, resulting in a drop of 7 ft to the back of the building, and about 109 ft to the back of the site.

Commissioner Churchill understood it was coming in at grade at the parking lot.

Chair Klein said he understood the concern.

Mr. Philips stated that if the grade was pulled back, the modular would be sitting at the top of the fence of the adjoining property, with everything going up from there.

Linda Patterson, 4535 SE Pennywood Dr, stated she lived south of the Christmas tree farm. She agreed that the meetings took place once or twice per month.

- Her biggest concern was parking and construction if the application passed. She noted that the picture did not indicate the elevation changes of Freeman Rd. When traveling south on Freeman Rd, the road was on an incline and cars parked on the side of the road made it difficult to see oncoming cars. Not everyone adhered to the 25 mph speed limit.
- She was new to the Pennywood neighborhood, which was a nice neighborhood and she preferred not seeing modulares. She asked if the District planned to build other schools. If so, more employees would have to be hired and she questioned whether the proposed buildings were adequately sized for the future. She did not want the District to spend \$1 million on a project that would be filled to over capacity in 3 years.
- She clarified that parking seemed a problem when 8 to 10 cars were parked once or twice a month during school board meetings between 3:00 to 4:00 p.m. and sometimes on into the night.
- She noted that she was employed and did not travel Freeman Rd at all hours.

Diane Quick, 12694 SE Where Else Ln, stated she lived adjacent to the site and that the 15-ft high arborvitae mentioned earlier were hers. She had attended the District meeting last week and had looked at the drawings.

- She believed the District needed to reconsider what they were proposing. The project would disrupt the neighborhood and the District did not know how long it would be at the facility. The District had discussed selling the property.
- She questioned what the \$1 million project would accomplish. The adjacent neighbors had severe stormwater problems, and no one was sure that those problems would be addressed.
- The District needed to decide what they were going to do. Would they have the building for the next 5 or 10 years, or not? It would be easier to add onto the building and sell the property, or scale down the proposal and install a modular in the parking lot at the end of the existing building where it would sit low and where an access door already existed for their staff.
- This was the first time she had ever opposed the District, and it pained her to speak against them, but she felt that this was wrong. Making temporary arrangements was fine, but it was ludicrous to ask the community to live permanently with a temporary fix while the District might not be there in another year or 2.
- It was interesting that staff said the modulares could not be placed near Lake Rd because it was not aesthetically appropriate to those driving by. She agreed. The modulares were not aesthetically appropriate for the people in the neighborhood either.

Mike Miller, 4206 SE Somewhere Dr, stated his background was in horticulture and plant science. He circulated a picture to the Commission showing 2 unique sweetgum

trees that the District wanted to remove for the proposed parking area.

- He was not opposed to District's efforts to get more space, though he was not certain the proposal was the right approach to obtain it.
- The District's literature identified the 2 sweetgum trees as oak trees, which was false. The rationale for removal was that the drip line was too big to be saved; however, there were large trees preserved in parking lots all over the city with much larger canopies than the impervious areas surrounding them.
 - Sweetgum trees were unique in that they retain their fall colors longer than deciduous trees, making them an asset to the community late into the fall. The picture taken yesterday from Freeman Rd illustrated how the sweetgum trees had retained their leaves while other trees had lost their leaves.
- He asked the Commission to condition the application to require saving the sweetgum trees and reconfiguring the parking lot to protect and preserve them.
- He clarified that he chose not to speak about the modular buildings, although he did understand the problem with them. Modulares were installed as temporary at schools but became permanent. They had their use, but in a residential neighborhood he was not sure they were an appropriate use.
- He confirmed that the proposed island surrounded by parking area did not contain the 2 gum trees. His picture showed oak trees in the background, which he indicated on Exhibit 1. He clarified that the remaining trees on Exhibit 1 shown on the east side off Freeman Rd were all add-ons; no other trees actually existed because it was an open space.

Ms. Mangle entered the photo submitted by Mr. Miller into the record as Exhibit F3.

Vincent Alvarez, 12671 SE Where Else Ln, stated he lived across the street from Ms. Quick and owned the historical property shown as the crosshatched area on Exhibit 1. He knew that neighbors further down had water issues, but he did not foresee such problems on his property.

- He was working to restore the stone house to a presentable condition while retaining the historical aspects of the property. He noted that the proposed modulares would be visible from his property.
 - The arborvitae across the street was mostly shorter and the taller ones closer to Lake Rd were scheduled for removal because of storm damage. Most of the arborvitae at the north edge of the property were in horrible condition. Ms. Quick's arborvitae looked good.
- He suggested lowering the elevation of the modulares with a slightly sloped sidewalk down to them from the parking lot.
- The 2 trees in front near the existing building looked terrible and he suggested adding onto the building in that location rather than spending \$1 million on modular buildings. A second story would significantly increase the square footage, and extending it in this way was also an option. He understood it would cost more. Had the District sought \$3 to \$4 million a few years ago to expand the facility, rather than \$1 million, they probably would have got it.
- He did not want to see modulares on the site. He walked his dogs there often using an existing walkway.
- Though other options might cost more, he noted that he had to abide by City requirements when remodeling his house without consideration of expense. He did not believe modulares were the best way to go for the neighborhood.

Debbie Zecik, 13076 SE Pennywood Ct, expressed concern about the parking issues

already mentioned and added that the only access to the neighborhood was Freeman Rd. Employees and visitors would still park in the residential area even with a "No Parking" sign added along the east side of Freeman Rd, and with the added parking spaces since there will be additional employees and parking was not allowed on Lake Rd.

- She was also concerned because Freeman Rd was the only access she had out of her neighborhood. If the northwestern parking access was closed, about 80 cars would be exiting at one spot at quitting time to go up Freeman Rd.
- Others had addressed the unsightliness of the modular buildings. Though current zoning allowed modulares on residential properties in the neighborhood, she also noted that the neighborhood's strict covenants, conditions, and restrictions (CC&Rs) would not allow modulares. She had purchased a home in Pennywood because of such restrictions.

Chair Klein believed the CC&Rs applied only to the specific Pennywood area.

Mr. Marquardt clarified that the regulation regarding modular homes applied to the city generally and any CC&Rs would override that and be specific to the subdivision

Ms. Zecik agreed that was her understanding of CC&Rs.

- She did not believe the modulares were compatible with the area.
- She was also concerned about the District's response in giving a generalization that adding onto the building would cost more. She wanted the specific cost figures. The District also said they had looked into selling the property with Norris, Beggs & Simpson, but she had not heard that the property was actually put up for sale or that the District had seriously considered selling the building.
- There did not seem to be a lot of guidelines as far as what the District was doing.
- The District owned numerous buildings, perhaps Board meetings could be temporarily held in an auditorium, a cafeteria, or at numerous other sites to satisfy the need for additional space.
- She added that numerous residents south of the Pennywood Dr cul de sac, near the District site had sump pumps and she was concerned how the project would affect drainage because it was one hill going all the way down and numerous houses in that corridor had sump pumps.
- The area was all clay soil. She believed the water table might be less than 2 ft.

Pam Michael, 13181 SE Pennywood Ct, said she lived at the very end of Pennywood, which could not be seen on the displayed map, and that she had one of the original homes in the development.

- She had the same concerns as expressed by others. She appreciated the astute questions asked by the Commission, but was concerned about words used such as, "could," "possibly," "might," which were not definite terms. Timing, access, and other items were still very questionable.
- She was concerned that the slide presentation noted the project would allow more community use at the school district building, which would mean more traffic.
 - The neighborhood had tolerated the District's overflow parking on Freeman Rd. Each time she drove by, day or night, she was concerned about having 3 cars fit on the narrow Freeman Rd with the drop off onto the Christmas tree farm. She was surprised more accidents had not occurred.
- There were far more than 8 to 10 cars parking on Freeman Rd for the big meetings; they often came and parked clear down onto the Pennywood Dr. Adding 16 extra

parking spaces would not help when extra employees were added.

- She disagreed with the Assistant Superintendent who said there were only 3 instances in the last several years when cars parked on Freeman Rd, because it had easily happened 3 times in 3 months, if not more frequently.
- She was also concerned about stormwater runoff and did not understand what water sitting in 1 ft of storage would do, except to help it flood more quickly if it did overflow.
- She expressed concern about using Freeman Rd as the main ingress and egress into the District's administration buildings. Many people lived down behind Freeman Rd, and she did not feel a business access should be placed there.
- She was concerned about the modulares. She worked for a school district and temporary modulares do become permanent, which she believed would happen in this case.
- She confirmed that neighbors around her had sump pumps and no basements.

The Commission took a brief recess and reconvened at 8:32 p.m.

Chair Klein requested additional comments from staff.

Mr. Albert clarified that the infiltration swales were designed to capture all the stormwater runoff from the site as it was now as well as the entire new impervious surface area. Currently, the stormwater flowed over the grassy area, which was not really designed to infiltrate all the stormwater runoff from the site. The new facilities should be a significant improvement for capturing all the impervious surface area stormwater from the site, which he did not believe was captured at this time. The improvements should only help the sites to the south of the District office.

- Regarding traffic, the traffic study looked at the intersection of Freeman Rd and Lake Rd. The increased traffic volume from the modular buildings was very small in comparison to the traffic currently generated from the site, presently operating at Level of Service (LOS) B, which was fully functional. The traffic study did not indicate that a left turn lane was needed onto Freeman Rd, which was operating at a high-level of efficiency.

Chair Klein asked about the legal ramifications regarding stormwater runoff, for example, from a parking lot.

- **Bill Monahan, City Attorney** responded that it was the property owner's responsibility to take care of runoff created on their property and divert it into a system as opposed to diverting it onto another person's property. Developers were obligated to handle stormwater runoff. If they created a situation that caused more runoff onto adjacent properties, then there could be a cause for civil action between property owners

Commissioner Batey:

- Asked if a condition of approval could require future testing of how much water flowed from the catch basins with a requirement to upgrade if necessary.
 - **Mr. Albert** clarified that none of the overflow systems were designed for more than a 10-year event, but stormwater from the parking lot, existing building, and the new buildings would be directed to the infiltration basins with the overflow going into the public system on Freeman Wy. All runoff from the impervious area was captured and going into the new infiltration basins. The new parking areas would be contoured to collect all water in a single-point catch basin and piped to

- the infiltration swales. Currently, there was some collection ability on site, but some sheet flow also existed. With the improvements, there would be no more sheet flow off the site. Water would be directed to new water quality facilities.
- **Ms. Mangle** added that it was part of Mr. Albert's job at the time a building permit was pulled to review the topography and design to ensure it met City standards. It was possible to require a future test to be sure the system was performing properly.
 - **Mr. Albert** agreed that it might be possible to require a future test, but asked how a baseline rain event for the year could be established to test in future years. It was difficult to determine whether the test would indicate runoff from the site or just groundwater from that year.
 - Asked if anything could be done along the fence lines before construction begins to measure rain fall between now and when construction begins.

Commissioner Churchill stated that although the site documents were not fully engineered, the parking addition on the southeast corner showed topographic changes proposed around it, but no topographic changes were noted around the pads of the 2 modular units. Full engineering was not available on the infiltration ponds, but the project did appear to push the limit of the site, which was very close to residential. The slope of the land would be increased, so it would be helpful to understand more before the project could be supported.

Chair Klein clarified that he did not believe the site currently caused flooding in the Pennywood area. The water issues were caused when the trout pond, which was the natural retention area, was removed for construction of the Pennywood development. He did not blame the District for having a building that had been there for more than 45 years when the development came in 15 years ago. He was concerned about the immediate neighbors, who he believed would be impacted by the project.

Mr. Marquardt stated that part of the parking on Freeman Rd could be addressed. He asked the Applicant to clarify whether board meetings could be held at times when employees were not at the site, and how many cars would likely be parked during those meetings. The increase of parking spaces onsite should hopefully alleviate the problem of parking on Freeman Rd. Signage that prohibited parking where pavement was not wide enough could also be required on Freeman Rd as part of the project if the Commission believed it necessary.

- The Applicant could have an overflow parking agreement with the Christmas tree farm. Based on the square footage and types of uses, the project fell within the minimum required parking for the site, so based on the Parking Code, they would not be required to find shared parking. However, if having such a contingency would help with the approval, an agreement could be entered into with another private property owner.

Chair Klein asked about the possibility of having street improvements on Freeman Rd, considering the elevation differences.

- **Mr. Albert** responded that the District side was already improved to the full cross-section. Any development on the Christmas tree farm site would require street improvements along that frontage and any engineering features to accommodate the slope. He did not foresee the City doing the street improvements. Any street improvements would more than likely be upon development.

Commissioner Churchill:

- Asked about Sheet 1 NCS 04, the rendering of the modular buildings, which indicated that from the parking lot into the 2 modular buildings would be straight in off-grade with no drop in elevation. He was unable to confirm the elevation of the finished floor level of the modular buildings.
 - **Mr. Marquardt** deferred to the Applicant.
- Believed it was within 1 ft of the parking lot level adjacent at 115-ft grade, which was what the renderings seemed to indicate.
 - **Ms. Mangle** reminded the renderings were different than the plans originally submitted.
 - **Mr. Marquardt** stated that from his reading of the plans, it looked like the northern portion of the buildings was essentially at grade with the parking area at 115 ft or 114 ft.
- Noted that topographic information around the edges of the modulares was not available, only around the parking lot. The grade would drastically change along the western edge of the modular. Some fill would fall at least 5 ft away toward the adjoining residence.
 - **Mr. Marquardt** replied that was illustrated on the recently submitted landscape plan (**Exhibit**), which indicated some of the grading information, and again deferred to the Applicant.
 - **Ms. Mangle** explained the elevations in the original proposal showed the doors elevated from the ground, which was different from the illustration presented tonight. The intent was to address the concerns but because the revised proposal was not available to review ahead of time, staff was not sure how the two different plans were related.
- Raised the concern that while it was good the Applicant was responding to comments from staff, the staff and the Commission had not had time to look at the application prior to approval or denial.

Mr. Marquardt stated that if the Commission decided to move ahead with approval, the staff wanted to modify the conditions as written to reflect what was shown on the renderings shown on the display boards (**Exhibits 1 and 2**), which better addressed the design intent staff was trying to achieve through the conditions of approval.

Chair Klein asked if the renderings showed a significant enough change from what was submitted with the application that staff would be comfortable with a decision tonight, or was more information needed.

- **Ms. Mangle** replied that was a decision for the Commission to make.

Vice Chair Newman asked for clarification regarding whether the detention ponds would handle the necessary amount of stormwater.

- **Mr. Albert** replied that the water quality swales were required to hold runoff from the increased impervious surface. Runoff from the site could not increase as a result of the site's development. The swales were sized for the amount of impervious surface and the runoff for rain events.
- He agreed the swales would handle the impervious surface, but did not address the inherent groundwater table, which was a problem based on neighborhood testimony.
- He clarified the basic requirement was to address the increase in impervious surface. The applicant's proposed stormwater plan indicated both basins would address all the parking lot runoff area.

Chair Klein:

- Asked who could buy the District structure if the Commission dictated the type of business that could be there under the CSU. Residential was allowed, but a new owner would have to meet the CSU requirements for a commercial application.
 - **Mr. Marquardt** replied any future commercial use would require a zoning change, and the CSU would be a nonissue.
 - **Ms. Mangle** agreed residential development was an outright allowed use of the site. Any other use would require City approval through a new CSU, a new conditional use, or a zone change. Otherwise, without Planning Commission and possibly City Council approval, it would be a residential development and probably not use the existing building.
- Said the logical conclusion was that the site would convert to residential use, if sold.
 - **Mr. Monahan** clarified if a buyer wanted to speculate and purchase the property with the condition that they could get a rezone to General Commercial, like the property across the street, they would have to comply with the approval criteria or a Comprehensive Plan amendment, which would take significant effort.
- Asked if the Commission had enough information to come to a decision tonight. He believed many questions were still unanswered.
 - **Mr. Monahan** stated one option was to identify the gaps in the application and then ask the Applicant to provide additional information. The Commission could continue the application or allow the Applicant the opportunity for rebuttal.
 - He advised that the Commission proceed with asking questions, and then let the Applicant decide if they wanted to address questions tonight or ask for a continuance.

Commissioner Churchill said he was very concerned about “connecting the dots.” As discussed, the proposed rendering was deceptive regarding elevation, though not intentionally, and did not show the 10-ft drop in grade from one corner of the site to the parking lot, or the drop off behind one modular structure. He requested more accurate and detailed site and topographical information, particularly around the basins and the 2 modular structures, to understand the proposed grade changes.

Commissioner Bresaw understood that generally speaking it was less expensive to install the 2 modular buildings, but asked the Applicant to consider just one modular. She sought more facts and financial details about how the Applicant came to the current decision. She was concerned about the future property value for the District. She also wanted clarification about whether the sweetgum trees could be saved.

Vice Chair Newman stated that his questions had already been voiced.

Commissioner Batey asked if **16** new parking spaces were enough, because that was at the lower end of the range required by Code. She also wanted to clarification about preserving the sweetgum trees.

Chair Klein questioned whether this was the best site in the District’s portfolio for expansion. He requested rebuttal from the Applicant.

Mr. Stewart responded that with regard to parking concerns on Freeman Rd, the project would not increase parking demand. The Applicant proposed adding **18** additional parking spaces and only 8 to 10 employees during the workday. During the evening, employees were not there and the added parking spaces would relieve parking on

Freeman Rd.

- Using Exhibit 1, he noted 5 stormwater drain pipes from neighboring properties that flowed from private property onto the District's property. The stormwater issue regarded water coming from the neighboring properties, not from the subject site.

Commissioner Churchill noted the Applicant was also building a boardroom with 64 seats and standing room, which should be factored into the parking calculations.

- **Mr. Stewart** replied he was not sure more people would come to board meetings because of the added seating space. The Applicant hoped the additional **18** parking spaces would help.

Mr. Monahan asked if the Commission wanted to close the public hearing and pose questions for the Applicant to address at the next meeting during rebuttal. The public hearing would have to be reopened for comment on any new information submitted by the Applicant.

Mr. Givens said he was sure the Applicant would want to submit more information for the record and public comment should be allowed at the next meeting.

Mr. Monahan agreed it was good to be transparent and allow for public comment. He suggested that if the public hearing was left open, the Commission should allow for the introduction of new information at the beginning of the next meeting, public comment, and a full rebuttal from the Applicant. The Commission could either restrict public comment to the new information or allow any and all public comment, which would include allowing people who did not participate tonight to testify.

Chair Klein wanted to restrict testimony to new material submitted for the record. Public concerns regarding stormwater runoff and parking issues were understood.

Commissioner Churchill supported keeping the public hearing open for all public comment. Combining comments in a group did not always indicate the depth of the concern. Given the scale of concern in the neighborhood, he wanted to hear everyone's comments.

Mr. Marquardt confirmed that the 120-day clock ended February 6, 2010, allowing time for a continuation. However, not enough time was available to prepare for the December 8th meeting. January 12, 2010, was the next possible date for a continuance.

Following discussion about time restraints given the holiday schedule and time required for any appeal and hearing at City Council, it was suggested that the 120-day land use clock be extended to March 1, 2010.

Mr. Givens agreed to extend the 120-day land use clock to March 1, 2010.

Ms. Mangle noted that audience members who provided contact information would be notified about the application.

Commissioner Churchill moved to continue CSU-09-11; TFR-09-05 to January 12, 2010 date certain. Commissioner Batey seconded the motion, which passed unanimously.

- 5.2 Summary: Zone change from R-10 to R-7
Applicant/Owner: Tim Riley/Clunas Funding Group, Inc.
Address: SE Brae & SE Bowman
File: ZC-09-01, TFR-09-04
Staff Person: Li Alligood

Chair Klein called the public hearing to order at 9:14 p.m. and read the major quasi-judicial hearing format into the record.

Li Alligood, Assistant Planner, cited the applicable approval criteria of the Milwaukie Municipal Code (MMC) as found on 5.2 Page 7 of the packet, which was entered into the record. Copies of the report were made available at the sign-in table.

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

Vice Chair Newman noted the subject property was adjacent to his own, but he was uncertain if the proposed development could be profitable or harmful to his property. He declared it was best to recuse himself from the hearing and left the dais at this time.

All Commissioners visited the site, but no Commissioner declared a conflict of interest, bias, or conclusion from a site visit. No Commissioner's participation was challenged by any member of the audience.

Ms. Alligood presented the staff report via PowerPoint.

- She clarified that the photographs displayed from the Lincoln Land Institute with regard to density were intended as a broad illustration and that the photograph selection was limited. It was noted that the photos were taken at different elevations and the houses appeared larger. Larger houses were allowed in R-10 zone.

Staff responded to comments and questions from the Commission as follows:

- **Ms. Alligood** clarified that the condition requiring a sizable right-of-way dedication was not part of the zone change, but would be required upon development of the site regardless of the zone. The Applicant's proposed right-of-way was so narrow because only a half-street improvement was required on Bowman St.
 - **Ms. Mangle** reminded that Milwaukie had many strange configurations of streets and lots that had occurred over time. This project was just one example.
- The gray area on the displayed site map indicated a 25-ft dedication for the required half-street improvements.
 - **Mr. Albert** explained that under MMC 19.1400, partitions of any kind were required for right-of-way dedication and street improvements, and only half of the right-of-way is deeded to the City. The City would gain the additional 25 ft for a standard cross-section for street improvements through that area.
- **Ms. Alligood** explained that the dedication was needed because Where Else Ln was a public right-of-way, but very narrow and unimproved. It currently functioned as a walkway, providing driveway access to the 2 sites west of the property. No vehicular access was actually provided to the subject site.
 - **Ms. Mangle** clarified that while the impact of accessing the proposed lots via Where Else Ln did not seem huge, widening Where Else Ln involved impacting other properties, while widening Bowman St only affected the applicant's property, which was an important consideration. Where Else Ln would remain unchanged in the proposed application.

- **Ms. Alligood** noted that the street improvements would be addressed during the building permit application and were somewhat unrelated to the number of parcels on the site.

Commissioner Batey noted the City had just enacted the policy of having development improve streets and provide sidewalks.

Commissioner Churchill believed the core of the application regarded economic interest, creating 3 lots rather than 2, which could in theory have access from Where Else Ln.

- **Ms. Alligood** clarified the question before the Commission was whether to approve the lot partition. The street improvements were the one constant in the scenario.

Commissioner Batey asked about Page 7 of the findings on 5.2 Page16 of the packet where a Metro Regional Land Information System (RLIS) report was quoted, "Of these 7 dividable sites, one is located in the Lake Road neighborhood."

- **Ms. Alligood** clarified that she was referring to the Applicant's property.
- **Ms. Mangle** added that Metro RLIS was the GIS mapping data provided by Metro and not a separate report.

Chair Klein confirmed that no other correspondence had been received other than that noted in staff's presentation. He called for the Applicant's comments.

Tim Riley, Clunas Funding Group, Inc., 201 B Ave, Suite 270, Lake Oswego, OR, representing the Applicant stated he had no additional presentation materials. The staff report did a good job presenting the information. He responded to questions from the Commission as follows:

- If approved, construction would begin during the next building season, starting in May, but he was not sure how many homes could be built.
- The application targeted the selling price per house at about \$300,000. The applicants were not builders, but consulted with other builders who did not believe that higher prices would sell well today or in the foreseeable future.
 - Based on feedback from developers, it would be more difficult to sell 2, more expensive houses on 2 lots. After researching the dedication and costs involved in dividing the lot into 2 parcels, they decided, after learning what was left over after dedication, that R-7 zoning would leave room for 3 lots. There were developers interested in working with 3 lots, but not 2 lots. The decision related to what selling price the area could support.
- While \$300,000 appeared to be on the lower end of the market for that area, recent experience showed that in the current market, prices had to be lowered 25% to 30% from 2-year-old comparable sales.
- The Applicant had talked to developers, but no commitment had been made yet. The feeling was that it would be difficult to continue with two lots, particularly with the cost of the public improvements.
- He explained that the property was taken back in deed in lieu of foreclosure in August 2008. They began working with staff about a year ago on possible options and subdividing the property.

Chair Klein called for public testimony in favor, opposed, and neutral to the application.

David Philips, 13230 Where Else Ln, stated he lived on the one-acre property west of

the subject site. He indicated that most lots in the neighborhood were larger lots, and R-7 was not consistent with the nature of the neighborhood. R-7 lots were too small and would not fit in with existing lots in the area.

- The reasons given for the zone change request did not warrant the zone change. The Applicant's financial gain should be irrelevant.
- Houses in that neighborhood were valued far above \$300,000. His property was valued at \$500,000, as was one adjacent to him. Dick Newman's house was for sale for more than \$600,000. The quality of homes in the neighborhood was much more than \$300,000, and approving the application would bring the neighborhood's home values down.
- R-7 lots were too small for families. Not enough space was available to provide a play area. His property was a liability. Being on a creek in a natural resources zone, he was unable to fence it and it was difficult keeping people, namely kids, out of his yard.

Chair Klein asked if Mr. Phillips objected to there being 2 lots as allowed by R-10 zoning, and if he would see impacts if the lots were accessed via Where Else Ln.

- **Mr. Philips** responded that he would love to see the lot developed. He would be impacted if access was provided via Where Else Ln.
- He noted the point at which Where Else Ln stopped, and where private property then extended. He accessed his property through an easement on an adjacent private lot, previously owned by the Oak Lodge Water District (Water District). It was not a public road at this time.

Debbie Zecik, 13076 Pennywood Ct, stated when she purchased her home, she was told the lot would not be developed because it belonged to the Water District; though circumstances had changed.

- She preferred seeing no houses on the lot, but if it was developed, keeping it to the minimum of 2 houses was desired. For the neighbors immediately north of the parcel, it was inconvenient to have it developed when they assumed it would remain vacant.
- As a realtor, she stated that the \$300,000 price range did not exist in that area because the minimum for a house on Pennywood Ct was \$400,000, even in this market.
- She was also concerned that building a lower cost house would not fit the architecture of the rest of the neighborhood.

Pam Michael, 13181 SE Pennywood Ct, stated when she bought her lot, the realtor assured her that the Water District property would never be developed.

- She believed building 3 houses on the lot would substantially change the makeup and privacy of the neighborhood. She understood that it had to be developed, but asked that the R-10 zoning remain because R-7 was incompatible for the neighborhood.
- She was concerned about \$300,000 being the high base price for the homes when other homes were certainly higher in value and were beautiful homes. She was concerned about the quality of housing the Applicant wanted to build.
- She was also concerned about privacy. The setbacks due to the widening of Bowman St would push the houses closer to the Pennywood area. Children playing in the backyards would be quite close to her property.
- She asked the Commission to oppose the zoning change request.

Mike Miller, 4206 Somewhere Dr, opposed the zone change because the applicant knew the R-10 zone applied when they assumed the property through foreclosure.

- The property could be developed without change and remain consistent with the neighborhood. Variances and zone changes should be used as a last resort, not a first option. It appeared the change was only being requested to maximize profit, and zone changes and variances should not be used for this purpose.
- He expressed concern about a large cedar tree in the right-of-way of Bowman St.
- He was also concerned about connectivity between Where Else Ln and Bowman St.
- He confirmed that the property would not come before the Planning Commission again when it was developed.
 - As an outright permitted development, it would go through the normal building permit process. This public hearing was the last opportunity for the neighborhood to provide input on the process.
- He urged the Commission to reject the application and allow 2 R-10 zoned lots on the Applicant's property.

Dedi Juhala, 12845 SE Where Else Ln, stated she had not heard about the project until this evening. She confirmed there would be no vehicular extension from Bowman St to Where Else Ln, only a pedestrian and bicycle sidewalk connection. She asked if the City had a long-term plan to make a connection from Bowman St through to Where Else Ln and Somewhere Dr.

Ms. Mangle stated a street connection was possible if all of the lots on the west side developed, but that connection was not shown as a connection the City was actively seeking in the Transportation Systems Plan (TSP). Such a connection would not result from a City project, but it was possible if many of the lots were developed, for example into a subdivision, over time.

Chair Klein added that there were many substantial lots back there and any property owner could break their 50,000 sq ft lot into smaller lots, which was how the Pennywood neighborhood was developed.

Ms. Juhala said she knew properties could be condemned for the common good and remembered seeing a long-range, 40-yr or 50-yr plan that showed all those roads connected.

Ms. Alligood reiterated that it would require a great deal of development in the surrounding sites before that would happen.

Ms. Mangle assured that connection was not shown in the TSP.

Chair Klein called for additional comments from staff.

Staff made comments and answered questions as follows:

- Although Where Else Ln was undeveloped and very narrow, it was currently a public right-of-way. The City did not have plans to develop it at this time, but it is publicly owned.
 - Where Else Ln continued to the elbow and officially ended at this property. It was not private property from the Applicant's property to the end.
- Properties west of the Applicant's site were sparsely developed, but were zoned for much higher development. Under the current zoning, there was potential for much

denser development in the area. The larger R-7 lots were single-family sites, but were dividable and developable at much higher densities.

- **Ms. Alligood** did not know what the Water District used the property for or if the existing pump house south of the site was functioning. She did not know why the Pennywood subdivision was not able to use the property, which would have extended Pennywood Ct.
 - **Commissioner Bresaw** recalled the Lake Road NDA wanted to make the Water District property into a park about 7 years ago, but it was sold to a private developer.
- The public comment expressing concern that the zone change was being requested strictly for financial reasons was submitted anonymously. The commenter had appeared publicly to present his concern.
- Using Attachment 2B, staff explained that vehicles would access Parcel 3 from Bowman St, not from Where Else Ln due to the street improvements and narrow 15 ft wide right-of-way on Where Else Ln, which was too small to allow for increased traffic. Improving the street to TSP standards would involve other properties as well as the Applicant's property.
- The shading on the slide titled Key Issue #1 was incorrect. At the corner, the new paving would end at Dick Newman's property.
- Staff clarified how the street would function as a typical 2-lane street section and verified the location of existing and new paving.
 - Engineering and site improvement decisions were actually applied at the time of permit application, whether 2 or 3 homes were constructed.
- Three flag lots currently took access off the end of Bowman St.
- **Ms. Mangle** clarified that Where Else Ln did not exist for the purposes of the application and was essentially a gravel driveway. It was right-of-way, but met the standards for a bike path, not a street.

Chair Klein called for the Applicant's rebuttal.

Mr. Riley explained that the motivation for requesting the zone change was the degree of public improvement required to develop the site, which was more than anticipated or more than was typical for lot development. The Applicant was not motivated by money and decided to pursue a tighter zone change regardless.

- The Applicant talked with staff about whether it was appropriate to change to R-7. The property to the north was R-7 and equivalent R-7 to the east, so it made sense that pursuing the zone change would not alter the character of the neighborhood.
- The approximate selling price was the Applicant's guess as to what they could sell a home for today.
- If development proceeded, building permits would be required and single-family design standards would have to be met, helping to ensure the project fit the neighborhood's character.
- The Applicant's intent was to move forward in developing the site, and the R-7 zone change appeared to make the most sense at this point.

Commissioner Bresaw asked if the Applicant would hire a developer to do the development, but still maintain control over the property until it was developed and built.

- **Mr. Riley** replied that the Applicant was not successful in selling the vacant land, so was looking to maintain ownership while working with a developer to develop the vacant land that was otherwise not marketable at this time.

Commissioner Churchill asked if the property was purchased without the Applicant realizing the degree of public area improvements that would be required.

- **Mr. Riley** answered yes, and clarified the Applicant actually got the property back in a foreclosure. In researching development options, they realized the extent of public area improvements and determined that a zone change was necessary to minimize their loss. R-7 would allow for 3 lots to balance the public area improvements costs against the sale price of the properties. No developers were interested in working on a 2-lot solution because of the public area improvements required up front, but there was interest in developing 3 lots.

Chair Klein closed the public testimony portion of ZC-09-01 and TFR-09-04. Since it was past 10:00 p.m., he confirmed the Commission could come to a conclusion and the meeting time was extended.

Planning Commission Discussion

Commissioner Churchill believed that the application request was financially motivated. As noted, the Commission expected the City to require public area improvements. He considered the Applicant's parcel as the gateway into the character of the neighborhood to the south. He did not support the zone change request and wanted to leave the site as R-10 with 2 parcels because of the neighborhood character and because the rezoning was only financially driven.

Commissioner Bresaw disagreed, although she loved large lots. She lived near the subject property, which had been vacant for a long time, probably because of the economic climate. She preferred 2 houses on the lot, but wondered how long it would sit vacant. She believed 3 houses would work if done well.

Commissioner Churchill did not believe many developers would consider developing the property even with 3 lots. Sometimes one had to look past the immediate return and see what was good for the quality of a neighborhood.

Commissioner Bresaw reiterated that the lot had been vacant a long time and that she would like to see some improvement.

Commissioner Batey supported the application. It was a transitional area with varying sizes of homes and lots on all sides. She did not see a third house versus 2 houses as a significant burden on the road or the Pennywood neighborhood. Even if the zoning change request was financially driven, that should not be a reason to deny it.

Commissioner Churchill believed the premise and core issue was to not use financial motivation as a reason for a zoning change or variance.

Chair Klein noted, as mentioned by Mr. Miller, the Applicant's financial hardship should not necessarily play a part in the application. What was the point of having zoning if it was not enforced?

Commissioner Batey:

- Asked if the staff report included the Code language.
 - **Ms. Mangle** replied the findings were in the staff report. She clarified the financial hardship criteria was part of the variance criteria, not the zoning criteria. While

- financial hardship certainly could be a factor and a possible reason for denial, it was not the only factor.
- **Ms. Alligood** cited MMC19.905.1.B, on 5.2 Page 13, which stated the requirement "that the anticipated development must meet the intent of the zone" and listed 5 subsections. It was not the only criteria listed.
 - Stated the City was receiving a benefit from the street improvements and the improved pedestrian and bike connection between Bowman St and Where Else Ln. Although the public benefits would happen whether 2 or 3 lots were developed, if making 3 lots meant the development was more likely to occur, that was worth the rezoning.

Chair Klein noted the Applicant was looking to minimize their loss, but he preferred that they maximize their profit. It seemed the Applicant needed to sell the property to get it out of their portfolio. A \$300,000 home was not typical of the area, but would likely be constructed. He preferred the Applicant target the \$500,000 range, which would not happen on an R-7 lot.

- He recalled previous applicants wanting to build a quality product, but that was not the final result.
- Unfortunately, building designs were not available for zoning change requests; otherwise the Commission could confirm that the Applicant proposed a great project. However, the Commission was not looking at a great project, but rather how the property could be divided and then left at the mercy of the builder.
- He noted the Commission still seemed to be at a tied vote.

Mr. Monahan stated a motion would be appropriate. If no majority of the Commission voted to approve or deny, the application could go to City Council with no recommendation from the Commission. If a majority decision was not possible, the meeting could be continued and one or both of the absent qualified members of the Commission would be expected to review the record and participate in another vote.

Commissioner Batey said that she would not be at the next meeting.

Mr. Monahan noted Commissioner Batey's absence was a consideration if the Commission continued the meeting.

Commissioner Churchill moved to deny ZC-09-01 and TFR-09-04. Chair Klein seconded the motion. Chair Klein, Aye; Commissioner Churchill, Aye; Commissioner Bresaw, Nay; Commissioner Batey, Nay. Motion failed due to a tied vote.

Commissioner Bresaw said the Commission could assume the owner would develop the property nicely with 2 houses or the property could sit vacant for a long time.

Chair Klein stated he felt safer leaving the zoning as it was. .

Commissioner Churchill agreed that leaving the parcel as is was better than having the density of 3 houses with unknown designs. That risk was higher with 3 lots than 2, and would change the character of the immediate neighborhood to the south.

Chair Klein added that having 2 lots would force the Applicant to consider the significant street improvements and build a quality house that they could still profit from. There was

a reason the parcel had not been developed for a very long time.

Commissioner Churchill believed the market would come back and support 2 higher quality homes.

Commissioner Batey noted the Code language on 5.2 Page 13, MMC 19.905.1.B stated, "taking into consideration the following factors:..." but did not provide much of an argument for denial of the application. Some could be argued either way. Given factor a) "the site location and character of the area," bigger houses and bigger lots were on one side of the parcel while the other side had comparable sizes of houses and lots to what is being discussed.

Chair Klein asked what the point was of having zoning on any property if those criteria could be used for this area. Would it not just come before the Planning Commission if someone wanted to build R-7 or R-10? They could decide not to build the lot for any reason.

Commissioner Batey believed that zoning designations should not be seen as the "Holy Grail" and irreversible. Zoning designations were reversed all the time, such as in the Gramor subdivision. She disagreed with Mr. Miller's comment that zoning designations should always be a last resort. She did agree with him about variances, however, because the variance language stated that no feasible alternatives could be available. That was not what the subject Code language stated.

Chair Klein did not believe better quality houses, ones representative of the neighborhood, would be built by making the lots smaller.

Commissioner Batey pointed out that the Commissioners were not developers.

Commissioner Churchill said there was the issue of site location and character of the area. Increasing the density of parcels on a piece of land would change the character of that land.

Commissioner Batey agreed that in principle Commissioner Churchill was correct, but this parcel was between 2 different areas. It was not like an R-7 island was being built in a whole R-10 area.

Commissioner Churchill stated the parcel touched 2 pie-shaped lots in Pennywood to the north. There was enough density in adjacent neighborhoods, but not the Bowman St neighborhood, which the parcel was a part of.

Commissioner Batey agreed, but noted the length of Bowman St to the east must be considered, not just the density across Bowman St.

Commissioner Churchill said he viewed the creek side parcels as their own density and their own neighborhood character. Therefore, 2 lots respected the character of that neighborhood better than 3 lots.

Chair Klein agreed.

Commissioner Bresaw did not believe the Commissioners would change their votes.

Chair Klein agreed, adding that he did appreciate the discussion. He asked if the application should go to City Council since the vote appeared to remain tied.

Mr. Monahan replied that the Code did not specify sending it to City Council, although the Commission had that ability. The Commission could also continue the hearing to a date when the present Commissioners could attend along with one other member who was not currently present.

Ms. Mangle believed that the Commission had to recommend approval. She referenced MMC 19.1011.4.d, "Upon a recommendation of approval of the proposed amendment by the Planning Commission, a report recommending approval shall be provided to the City Council." She believed the Commission was at a deadlock.

Mr. Monahan said that the Commission had to make every effort to allow for a decision by the Planning Commission. If a tied vote resulted, even with the other members present, then alternatives had to be discussed. It was not a denial because there was not a consensus. He believed the Commission would then have to consider taking the application to City Council. He suggested the Commission determine available dates when the present Commissioners could attend, along with one or both of the other members, who could review the application and the record.

Chair Klein expressed concern about having a Commissioner make a decision when they were not present to see all the materials and hear all the testimony in person.

Commissioner Bresaw suggested the other Commissioners could listen to the tape.

Chair Klein agreed being present at the hearing said it all, and asked for opinions from the Commission. Noting the time, the meeting was extended another 15 minutes.

Commissioner Batey stated if another Commissioner was willing to review the materials and the record, the Commission might be able to give a resolution to the City Council.

Chair Klein offered that if the Commission sent the application to City Council at this time, fresh ears would hear the issue.

Commissioner Batey understood that the application could not go to Council with a tie vote.

Mr. Monahan clarified that the Code language preferred that the decision be made by the Planning Commission. The opportunity existed for a decision because the 2 absent Commissioners could provide a majority vote in one direction or another. He recommended the Commission make the effort to do that. The Code did not address a split decision being made, but the best alternative to no decision was to send it to City Council. Either way, an extension of the 120-day clock was needed from the Applicant.

Ms. Mangle explained that a decision tonight would go to City Council within the 120-day land use clock, which expired January 20, 2010. Continuing the hearing beyond tonight would require an extension of the 120-day land use clock by the Applicant; but that could not be required. If the Applicant chose not to waive the 120-day land use clock that would force the application to City Council.

Mr. Monahan added if the Applicant did not extend the 120-day land use clock, it could force the Commission to make a decision. Ms. Mangle's interpretation was that a denial would not get the application to City Council, unless there was an appeal.

Chair Klein surmised that the Commission needed to determine whether the absent Commissioners were interested in participating in a decision, and when all 4 of the Commissioners present would be available for a continued hearing.

Mr. Monahan responded that the Commission could not decide at this point whether one or both of the other Commissioners would be present. The best option was for the 4 Commissioners present to decide which meeting they all expected to attend. The application would be continued to that meeting and provide the information and direction to the other 2 Commissioners that it was up to them to get up to speed.

Ms. Mangle recommended continuing the application to January 12, 2010, which would require delaying the Riverfront Park hearing. The application could always be moved if needed.

Chair Klein said that because Commissioner Batey would not be present at the next meeting, an extension was needed from the Applicant. He asked the Applicant if they were willing to extend the 120-day clock to March 1, 2010.

Mr. Riley agreed to extend the 120-day land use clock to March 1, 2010.

Commissioner Batey moved to continue ZC-09-01 and TFR-09-04 to a date certain of January 12, 2010. Commissioner Bresaw seconded the motion, which passed unanimously.

Mr. Monahan explained that the Commission would pick up during the meeting with deliberations because the public hearing was closed. No additional testimony would be accepted. The Commissioners would be asked about any ex parte contacts, so he advised that the Commissioners present also refrain from such contacts.

6.0 Worksession Items –None.

7.0 Planning Department Other Business/Updates-None.

8.0 Planning Commission Discussion Items

Chair Klein noted he had sent the Commissioners a memo about food carts, which was interesting. He had discussions with people who said food carts did not actually build value in the downtown area, and would actually hurt people investing in a downtown restaurant. The argument was sound and he would bring it up for discussion at a later date.

Commissioner Batey asked what was happening with the Lake Road Multimodal Improvements project. She thought it would be built by now. She understood the project was funded to Where Else Ln.

Ms. Mangle said that because of the federal funding, the project had to go through environmental review. The federal funding did not fund 100% of the original plan but did

fund the stretch that Mr. Albert indicated earlier on the diagram.

Mr. Albert added that the project was at about 50% design and pushing forward to 70% design plans, which should be seen soon. Building would probably not begin this summer due to the acquisition of rights-of-way along Lake Rd. He believed the project was slated to begin in 2011.

9.0 Forecast for Future Meetings:

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| December 8, 2009 | 1. Public Hearing: MLP-08-02 et al 4033 SE Howe St.
partition |
| January 12, 2010 | 1. Public Hearing: DR-09-01 Riverfront Park
2. Public Hearing: A-09-03 ROW Annexation for NE Sewer
Extension |

Meeting adjourned at 10:45 p.m.

Respectfully submitted,

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


Jeff Klein, Chair