A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, April 6, 2015. Mayor Knapp called the meeting to order at 7:08 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:
Mayor Knapp
Councilor Starr
Councilor Fitzgerald - Excused
Councilor Stevens
Councilor Lehan

Staff present included:
Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Barbara Jacobson, Assistant City Attorney
Jon Gail, Community Relations Coordinator
Nancy Kraushaar, Community Development Director
Blaise Edmonds, Manager of Current Planning

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

A. Proclamation Declaring April Parkinson's Awareness Month (Kevin Mansfield Oregon State Director for Parkinson's Action Network.)

Mr. Mansfield thanked Council for their time; he offered that he has Parkinson's disease and volunteers his time providing education about the disease. Mr. Mansfield presented a letter from President Obama recognizing the importance of research for the cure of Parkinson's disease.

Mayor Knapp read the proclamation into the record and presented it to Mr. Mansfield.

B. Recognition for National Service Proclamation (Lara Jones, AmeriCorps)

Lara Jones introduced Heidi Blaire who works in Wilsonville at the CREST Center and spoke about the AmeriCorps Program that works to increase awareness of environmental leadership and civic engagement.

Councilor Starr read the proclamation into the record.

C. Arbor Day Proclamation (staff – Pauly)

Mr. Pauly stated the City has been a Tree City for the past 17 years. He talked about the criteria necessary to be named a Tree City USA.

The proclamation was read by Councilor Lehan.

D. Child Abuse Prevention Month (Tracy Cramer, Development and Communications Coordinator)

Cathryn Burns, Board of Directors of the Children's Center, explained the Children's Center is a member of the National Children's Alliance and a partner in Clackamas County's response to child abuse. It is a private nonprofit medical assessment center serving children and families and educating the public.

Councilor Stevens read the proclamation for the record.

E. Upcoming meetings were announced by the Mayor.

COMMUNICATIONS

A. Chief Duyck, Tualatin Valley Fire & Rescue (TVF&R) Annual State of the District

Using a PowerPoint presentation Chief Duyck presented the Annual State of the District for Tualatin Valley Fire and Rescue.

He provided the percentage and the types of calls TVF&R responded to throughout the past year, noting that as the population grows their response to calls will increase. In the spring TVF&R works with the local school districts to provide education about the perils of inattentive driving through simulated traffic accidents. TVF&R programs also include:

- training students in CPR,
- conducting building inspections,
- conducting fire investigations,
- training landlords on how to make their buildings safer, and
- general safety programs.

Chief Duyck listed the accomplishments for the past year which include:

- passage of a local option levy,
- training 25 recruit / volunteer firefighters,
- deployment of 2 medic units,
- purchased land for future stations,
- created partnerships and pilot projects to reduce the costs of health care, and
- finished construction of the Elligsen Road station and the remodel of the Kinsman Road station.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items ***not*** on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Debbie Laue, 12340 SW Wilsonville Road, thanked the City for the second Frog Pond Open House. She referred to a memo prepared by the Leland Consulting Group and expressed her concern over the infrastructure costs per lot, noted in the memo and felt single level homes were not taken into consideration in these numbers. Her studies show the average 2000 square foot single level home has a $72,000 premium on it when compared to a 2000 square foot two-story home, and she asked if that could be taken into consideration when considering the infrastructure costs of the lot. It seemed to Ms. Laue that the entire cost of the Stafford Road and 65th Avenue intersection improvement costs were being added to the Frog Pond off site infrastructure.

Mr. Cosgrove asked that Ms. Laue provide her data to Mr. Neamtzu. The costs for the intersection improvements were the share of the Frog Pond development, but staff would confirm.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – (Park & Recreation Advisory Board Liaison) reported the Parks and Recreation Board will hear from seven applicants for the Opportunity Grant at their next Board meeting, and that the annual Easter Egg Hunt was successful with 1,000 children participating. The Murase Plaza playground renovations are underway. He noted the Chamber of Commerce has started the process of replacing their chief executive officer.

The Councilor announced Antique Appraisal Day scheduled for April 11th with proceeds going to the Senior Nutrition Program, and the Arbor Day Tree Planting Event set for April 11th in Memorial Park.

Councilor Starr stated he had concerns about the work the consultant is providing on the Frog Pond project and he would continue to "stay on it".

Mayor Knapp read the activities of the DRB.

Councilor Stevens – (Library Board and Wilsonville Seniors Liaison) commented the Library Board is reviewing policy and procedures and the possibility of adding IFRD technology to make check in/out of library materials automatic. The County is evaluating the technology at this point.

The Councilor attended the Frog Pond Open House which was well attended by the public who had the opportunity to learn about the project, and their provide comments via an on-line survey,

which is open until April 12th. She invited the public to attend the Town Hall regarding Ballot Measure 91, and to the Emergency Preparedness Open House scheduled for next week.

D. Councilor Lehan – (Planning Commission and CCI Liaison) announced the Planning Commission will be meeting later this week to conduct work sessions concerning the Willamette River Water Pipeline preferred route; and the draft Memorial Park Work Plan.

The Councilor reported she and the Mayor were in Salem to testify on SB716 which is supported by Clackamas, Columbia and Multnomah counties. Testimony was continued to Wednesday due to the number of people wishing to speak.

Councilor Lehan announced the upcoming Book Notes Concert at the Library on April 11, and the Walk SMART program starting April 29th.

CONSENT AGENDA

Mr. Kohlhoff read the Consent Agenda item into the record.

A. Minutes of the March 16, 2015 Council Meeting.

Motion: Councilor Lehan moved to approve the Consent Agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0

PUBLIC HEARING

Mr. Kohlhoff read Resolution No. 2524 into the record by title only.

A. **Resolution No. 2524**
Resolution To Issue An Order By The City Council Denying The Appeal And Affirming Development Review Board Resolution No. 299 Relating To A Tentative Land Partition For Two Parcels. The Subject Site Is Located On Tax Lot 2700 Of Section 13BA, T3S, R1W, Clackamas County, Oregon. Applicant/Appellant/Owner Gerald And Joanne Downs; Applicant Representative Ronald Downs. Application Nos. AR14-0077; DB15-0006. (staff – Kraushaar/Jacobson)

Mr. Kohlhoff read the title of Resolution No. 2524 into the record. He stated should the Council approve the appeal and deny the DRB Resolution, he requested the Council allow the Staff to bring back the findings at the next meeting.

Mayor Knapp read the public hearing format and opened the public hearing at 8:23 p.m.

The staff report and findings of fact were prepared by Barbara Jacobson, Blaise Edmonds, and Nancy Kraushaar and are included here to provide background.

Beginning of Staff Report.

ISSUE BEFORE COUNCIL:

At a public hearing held on February 23, 2015, the "DRB" voted 5-0 to deny the Applicant's appeal of the Planning Director's Class II Administrative Decision (Application Nos. AR14-0077 and DB15-006). That DRB decision has been appealed by the Applicant to the City Council. The issue on appeal is Condition PFA 27, which condition requires the Applicant to make certain street improvements, which include sidewalk, curb, and gutter along the entire frontage of the proposed land partition. The Applicant argues that this requirement is not roughly proportionate and should be reduced to only require these improvements in front of the smaller of the two partitioned lots where a new second home will be constructed (approximately 40% of the total area).

EXECUTIVE SUMMARY:

The Applicant is appealing Condition PFA 27, which requires certain street improvements, including sidewalk, curb, and gutters (meeting current City requirements for residential street construction), to be placed across the entire frontage of Applicant's parcel as a condition for the partition of that parcel into two separate lots. This partition will allow the Applicant to cause a second home to be built on the property. The Applicant contends that this requirement, as written, is overbroad and should be reduced to only require street frontage improvements across the front of the parcel where the new home will be located and that no frontage improvements should be required across the other half of the parcel, where an existing home is located. The Applicant states that his argument is based on the nexus and rough proportionality standards set forth in the United States Supreme Court case of Dolan v. City of Tigard, 512 US 374 (1994). While the City disputes the applicability of Dolan to this condition, City staff has assumed, for the sake of argument, that Dolan findings could apply and, therefore, made Dolan findings that staff believes satisfy the nexus and rough proportionality tests of the Dolan case, as set forth in the DRB record before City Council.

City Council has determined that this appeal shall be an on-the-record only appeal. Therefore, attached please find the same legal memo submitted in support of the Planning Director's Decision to the DRB and part of the DRB record, which summarizes staff's position. See Record Memo at #5.

As outlined in the memo and on the record, Wilsonville ordinances impose a standard requirement on all development in the City that requires certain street improvements, including sidewalks, curb, and gutter to be placed in front of the developed property. The City Comprehensive Plan, which is the governing law for land use in the City, provides at Policy 3.3.2 that the City shall work to improve accessibility for all citizens to all modes of transportation, and at Implementation Measure 3.3.2.d requires that gaps in existing sidewalks be filled to create a safe and continuous network of safe and accessible bicycle and pedestrian facilities. It is the standard and consistent requirement of the City to require street frontage improvements, including the placement of sidewalks, curb, and gutter, with every new development or redevelopment. Wilsonville City Code Section 4.177(3) requires sidewalks be provided on the public street frontage of all development. City Code Section 4.001(79) defines "development" as "any human-caused change to improved or unimproved real estate." City Code Section 4.005 lists certain activities that are exempt from development permit

requirements, but a partition is not listed as an exception. The condition imposed and at issue is a required condition applied to all partitions, including recently to a three-lot partition located one property away from that of the Applicant, as well as a similar two-lot partition located just a few blocks away from the Applicant's parcel. The requirement imposed upon the Applicant is not in any way unique to the Applicant's property, nor is it based on any development assumptions. It is therefore easily distinguishable from the court case primarily relied upon by the Applicant and from the Dolan findings, as briefed in the attached memo.

Finally, it should be noted, as is provided in the record, that the cost estimate made by engineering staff assumes three criteria that are not applicable if the Applicant elects to perform the work himself, which is an option that he has.

Specifically, the City estimate includes the cost to grind and overlay the entire road area, which is what the City would do if it were doing the work. This is not, however, being required of the Applicant, who can elect to patch only what he disturbs, in accordance with Public Works Standards. Also, the City estimate includes generally higher BOLI wages, which would not be applicable to work done by the Applicant. Finally, the in-lieu-of payment contains a 30% mark-up cushion for the City, if the Applicant elects to shift the risk of performance to the City.

The City must render a final decision regarding the Applicant's appeal by no later than May 4, 2015.

The City Council, as the reviewing body, shall decide if the correct procedure was followed (which is not at issue) and, if so, was the correct or appropriate decision made based on the applicable policies and standards. WC 4.022(.06)B. The City Council has the authority to enter an order to affirm, reverse, or modify, in whole or in part, the DRB decision. WC 4.022(.08)A. In making its determination the Council should set forth its findings and reasons for taking the action.

All standard public notice procedures for the DRB public hearing were followed. The DRB allowed all interested parties to testify during the hearing process. One resident sent in email testimony supporting the condition at issue, which is included in the record. The only other party to present testimony at the hearing was the Applicant Representative, Ron Downs. A public notice of this upcoming appeal public hearing has been published, in accordance with the requirements of the Wilsonville City Code.

Street improvements and sidewalk will benefit the property owner as well as the public relating to public safety.

Final Findings Of Fact, Conclusions Of Law, And Decision By City Council, Rendered On April 6, 2015
Gerald and Joanne Downs Partition
APPLICATION AR14-0007
APPEAL DB15-0006
APPEAL HEARING DATE April 6, 2015
APPLICATION NOS.: AR14-0077; DB15-0006

REQUEST/SUMMARY**:** The Applicant appealed the decision of the Development Review Board ("DRB") DB15-0006, denying the Applicant's appeal of and affirming the Planning Director's Class II Administrative Decisions, Findings, and Conclusions, and Approving a Tentative Land Partition For Two Parcels (Case File AR14-007), incorporating the revised staff report submitted to the DRB. Based on the findings set forth herein, City Council affirms the decision of the DRB. Applicant's appeal to the DRB was limited to Condition PFA 27. Although the DRB public hearing was de novo, meaning the DRB could have considered all aspects of the Director's Decision, the DRB did not make any revisions to that decision and focused solely on the Applicant's appeal of Condition PFA 27, Applicant testifying that his appeal concerned only imposition of PFA 27 across the frontage of the entire parcel, as opposed to his request that it be required only in front of the smaller partitioned parcel where he intended to construct a new home. Thus, our on-the-record review was limited to that same condition.

LOCATION: Tax Lot 2700 in Section 13BA, T3S, R1W, City of Wilsonville, Clackamas County, Oregon

OWNER/APPLICANT: Gerald and Joanne Downs, husband and wife

APPLICANT'S REPS.: Ronald Downs

COMPREHENSIVE PLAN MAP DESIGNATION: Residential 4 - 5 dwelling units an acre

ZONE MAP CLASSIFICATION: Residential Agricultural-Holding

STAFF REVIEWERS**:** Chris Neamtzu, Planning Director
Blaise Edmonds, Manager of Current Planning
Jennifer Scola, Assistant Planner
Steve Adams PE, Development Engineering Manager
Nancy Kraushaar, Community Development Director
Barbara Jacobson, Assistant City Attorney

APPLICABLE REVIEW CRITERIA:

Sections 4.008 – 4.015	Administration Sections
Section 4.022(.01)	Administrative Action Appeal
Section 4.022(.04)	Appeal Notice
Section 4.022(.05)	Scope of Review
Section 4.022(.07)	Review Consisting of Additional Evidence or De Novo Review
Sections 4.030(.01)B.5; 4.034(.05); 4.035(.03)	Class II AR
Section 4.202	Land Divisions General
Section 4.210	Application Procedure
Section 4.120	Residential Agricultural – Holding Zone (RA-H)
Section 4.031	Authority of the DRB
Section 4.113	Standards to all Residential Zones
Section 4.118(.03)C.9	Waiver of Right of Remonstrance
Section 4.167	Access
Section 4.177(.01) and (.02)	Street Improvement Standards
Section 4.177(.03)	Sidewalks
Section 4.236(.01)	Conformity to the Transportation Systems Plan

Section 4.236(.02)	Relation to Adjoining Street System
Section 4.237	Land Divisions General Requirements
Section 4.260(.02)	Improvement Procedures
Sections 4.262(.01) through (.10)	Improvement Requirements
Sections 4.300 – 4.320	Underground Utilities

Other: Administrative Decision AR14-0077
Comprehensive Plan: Plan Policy 3.3.2, Implementation Measures 3.3.2.c and 3.3.2.d.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:
Wilsonville City Council, having reviewed the record and heard oral argument, hereby affirms the decision of the DRB, including imposition of the appealed Condition PFA 27, reaching the following Findings of Fact and Conclusions of Law with respect to that appealed condition:

Section 4.177. Street Improvement Standards. **This section contains the City's requirements and standards for pedestrian, bicycle, and transit facility improvements to public streets, or within public easements. The purpose of this section is to ensure that development, including redevelopment, provides transportation facilities that are safe, convenient, and adequate in rough proportion to their impacts.**

Findings of Fact and Conclusions of Law. This Section of the City Development Code sets the standards for pedestrian, bicycle and transit facilities for public streets, including curb and sidewalk, to ensure that development, including redevelopment, provides safe, convenient and adequate facilities in rough proportion to their impacts. Section 4.177(.03) requires that "Sidewalks shall be provided on the public street frontage of all development." As this property is now being subdivided into two separate lots with two separate homes, the sidewalk/roadway transportation requirements being imposed must cover both properties. City Code requires these improvements to be made at the time of development or redevelopment, and this partition constitutes redevelopment, per Code definition, as found in Section 4.001(79).

City Code Section 4.005 lists certain activities that are exempt from development permit requirements, and a partition is not listed as an exception. This required condition is applied to all partitions, including recently to a three-lot partition located one property away from that of the Applicant, as well as a similar two-lot partition located just a few blocks away. The requirement is not in any way unique to the Applicant's property, nor is it based on any development assumptions. Section 4.177(.01) requires that development and related public facility improvements shall comply with the standards in Section 4.177, the Wilsonville Public Works Standards, and the Transportation System Plan in rough proportion to the potential impacts of development. In the case at hand, the Applicant is not being required to make any additional roadway improvements or deviate from standard sidewalk requirements. The Applicant is not being asked to build the improvements in any area except directly in front of the Applicant's own property. No land is being exacted from the Applicant for the sidewalk. The City Council finds this requirement is in rough proportion to the redevelopment being requested and is in accordance with the standards of the Code and the Public Works Standards, including the Public Works Standard that all sidewalks meet the Americans with Disabilities Act standards. See Public Works Standards, Section 201.2.25a.2.

The City's Comprehensive Plan, which is the City's governing land use regulation, sets forth the requirements for a connected network of sidewalks and requires, at implementation Measure 3.3.2.d, that all gaps in the existing sidewalk network be filled so as to create safe and accessible bicycle and pedestrian facilities. Thus, in accordance with that requirement, as each parcel in the City without sidewalks is developed or redeveloped, the placement of the sidewalk and related curb, gutter and street improvements to current City standards is required to be built by the developer in front of the developer's property, as a proportionate requirement of development. This requirement has been consistently imposed as a developer responsibility as development occurs, thereby resulting in fewer gaps in the sidewalk. Just as the City Code, at Section 2.220, requires the property owner to be responsible for the sidewalk repairs that front the owner's property, so does the Code require the property owner/developer to install those same sidewalks as a proportionate condition of development.
End of Staff Report.

Blaise Edmonds, Manager of Current Planning, provided a brief report using the PowerPoint presentation given to the DRB which has not been changed in any way. Mr. Edmonds identified the location of the property on Canyon Creek Road that Mr. Downs is requesting to partition, in addition to the location of sidewalks in the area.

Sidewalk improvements on Canyon Creek Road were shown. Mr. Edmonds noted originally the subdivision was built in the 1960s as Bridal Trail Acres with paths for riding horses.

The partition request originally went to City Staff, which was approved with conditions of approval.

Mayor Knapp said the hearing was on the record, and no new information is to be introduced that is not already part of the record by the City or the Applicant.

Mr. Edmonds said that was correct, specifically the hearing is on condition PFA-27 which requires certain street improvements including sidewalk, curb, and gutters along the entire frontage of the Applicants parcel as a condition for the partition of that parcel into two separate lots.

Councilor Starr commented this was one place in the City with electrical utilities above ground, and would the City require the installation of sidewalks, only to come back later to tear them up to underground the utilities.

Mr. Kohlhoff the undergrounding of utilities pertains to an entire development being built, not a single family lot partition.

Councilor Starr wondered if there were plans to bury the utilities in the future.

Nancy Kraushaar stated in this partition we've asked that they provide the conduit when the sidewalk is built so the City can underground the utilities at a later date.

Mr. Kohlhoff there is not the requirement to underground the utilities, but there is the requirement to provide the conduit.

Mayor Knapp asked if the sidewalk will be on public or private property and was the applicant donating land for the sidewalk.

Mr. Edmonds said it was in the 60-foot right of way.

Ms. Kraushaar added there was plenty of right of way so no land dedication would be required.

Mayor Knapp asked if the City has consistently applied the same standards to other small developments in this neighborhood and throughout the City where we've had this type of infill development.

Ms. Kraushaar responded all of the partitions since 2005 have been required to have frontage improvements completed at the partition phase of the development throughout the rest of the City as well.

Mayor Knapp wanted to know if the applicant was offered choices similar to what has been offered to other developments whether to build the street improvements themselves or to post funds and have the City install them.

Ms. Kraushaar responded that option was given to this particular partition application and included in the conditions of approval.

Mayor Knapp asked if there was flooding in the neighborhood.

Ms. Kraushaar stated this is a fairly flat area and the high point is in front of the applicant's property, it's very flat and at the top of the drainage, she did not believe they would be flooding themselves.

Councilor Stevens asked where the storm water went.

Ms. Kraushaar thought the applicant could employ the low impact stormwater designs to manage stormwater onsite so there is minimal offsite migration.

Mayor Knapp asked if the existing house is fully served by City services.

Ms. Kraushaar understood they are connected to sanitary sewer, but not water.

Mr. Kohlhoff stated appeal is limited to argument, staff reports, then the applicant will state their case, and staff will reply to the legal arguments. We have asked the arguments be limited to no more than 15 minutes.

Begin transcript.
Ron Downs, Attorney for the Downs family. The issue before you is one of constitutionality of condition PFA-27; it is a narrow issue for you, it's the condition of 150 feet of street frontage which is the requirement of PFA27 for street front improvements versus what I will articulate is actual street frontage of 60 feet. I'm not asking that there be no improvements whatsoever, I'm asking the scope and extent of the improvements being required as part of the condition meets the constitutional standards set down by the Supreme Court set down in Nolan and Dolan vs. City of Tigard that goes back to 1974; recently reaffirmed in 2013 in Koontz vs. St. Johns River Water Management District.

It is a two part standard that has to be answered to meet constitutional muster. The first part is for the condition to pass, there must be a direct relationship between the condition and the actual impact from the proposed project. The second part is the condition must be proportional to the impact from the project in terms of both scope and cost.

This is the law the Supreme Court set down in both those cases. Over the years courts and public entities have applied the Dolan standard in different ways; the Supreme Court in Koontz said, "we meant what we said"; the government must meet the direct relationship standard and the proportionality standard. And this relates directly to all exactions and all permits regardless where there is a fee imposed. The Supreme Court said that is our standard. In Koontz they addressed a number of nuances that had come about since 1974. These standards were affirmed in Koontz Vs. St. John River Water Management District.

How does that work for you folks? In my day job I represent public entities and I appear before boards throughout the state, and my job is to educate you about the law, and what the risk analysis is and options and risks for each option.

There are four questions council needs to be able to address to answer the constitutional analysis:

- What is the project?
  - It is one new residential home.
- What is the actual impact created by this project?
  - The actual impact created by this new residential house is 60 feet of new street frontage, the additional 90 feet of street frontage has been there since my parents' home was built in 1979 there is no new impact created by the original house,
- What are the conditions imposed by government?
  - It's a narrow issue before you, PFA27 and the issue is, is it apropos to exact 150 feet as a condition or is it 60 feet.
- Do the conditions mitigate the actual impact of the project?
  - The conditions as set out impose an additional 90 feet of street frontage which is beyond what the Supreme Court says, the scope of the impact is 60 feet, the scope of the conditions is 150 feet.
  - The house built in 1979 does not create new impact.

Mr. Downs stated his parents' home was built in 1979, there is no new impact created by the existing house. The only actual impact is from parcel 2. The new house the new residential house and the new 60 feet. That is question two that you have to be able to answer. Question 3

is what are the conditions that are imposed by government? And as I said, it is a narrow issue before you, it is PFA-27, and the issue is, is it appropriate to exact 150 feet as a condition, or is it 60 feet that really is the condition that is being imposed. The fifth question is does the conditions that are imposed by government by the conditions, do they mitigate the actual impact from the project, or do these conditions impose a greater obligation on the project? What I would assert is that the conditions as they are set out they impose an additional 90 feet of street frontage which is well beyond what the constitution says. And when you look at the mitigation argument, and when we talked about proportionality the Supreme Court said proportionality both in terms of scope and in cost, again the scope of the impact is 60 feet. The scope of the condition is an additional 90 feet for a total of 150 feet. What is important under the Dolan analysis is that you have to look at actual impact created by this residential home. Again, the house that was built in 1979 does not create any new impact. There is nothing new adding to that parcel 1. So that's the scope.

The second part of this is in the cost. When you deal with the proportionality argument what is the cost? If you apply the formula that staff has applied and I'm not going dispute the formula, I don't challenge the fact that it is ultimately 30% cost factor above is actually works out to 130%, so its if you apply their formula, if it's 60 feet it works out to $18,000, if its 150 feet, it works out to $45,000. So, that is a second part of that proportionality that you have to be able to address under that next question.

Now, to be constitutional, if the conditions are over broad, meaning that they are not directly related or mitigate the actual impact then the conditions as they are written are unconstitutional and subject to being overturned. Or, on the other avenue, it the conditions are not proportional both in terms of the scope and the cost, then the conditions are equally unconstitutional.

The Supreme Court says, and you've seen this in the packet that was provided to you by staff, that staff has to make individual factual findings, individualized factual findings of why this particular condition both meets the direct relationship standard and the proportionality standard. And as you read this, their individual factual findings are based on historical context that is all linked to City Code. City Code says this is essentially one parcel; therefore, this whole entire parcel is subject to that condition.

I would assert that is not an individualized factual finding, that's a finding that is based on City ordinance and Code, and what I would also assert is that City ordinance and Code does not trump the constitutional law or the analysis that is applied by the Supreme Court. You have to have the individual findings and you cannot just rely on Code, it has to be based on fact, and it can't be based on the historical context, it has to be based on this particular partition, and the actual impact created. And they have to mesh.

As this point, the options as I told you, you can either deny it or assert that they go back and revise it. All that I'm asking for is that it is limited to what the constitution says and what the Supreme Court says – 60 feet. We've never, we're on board completely with every suggestion the staff has made, somebody brought up the drainage for water, it's a new idea that staff is recommending they'd like to try it, and I'm completely on board with trying the new idea for rain water to drain, I'm completely on board with that. We're not asking for something for free,

we're asking for our parcel, we're not asking to be subject to more than our fair share. Thank you for having me.

Mayor Knapp asked if there were questions of Mr. Downs. There were none. The Mayor invited staff to make their presentation.

Barbara Jacobson, Assistant City Attorney, presented the City's legal arguments and to address Mr. Downs's issues raised concerning Nolan, Dolan, rough proportionality and whether our conditions are fair and reasonable.

There are the two rhyming court cases as I like to call them Nolan and Dolan. They were both decided by the Supreme Court and they set forth what a City can reasonably require or what a government can reasonably require for an exaction in a development.

Although there are some strong arguments that I could make that the statutory condition imposed by the City in this case does not constitute an exaction, and therefore does not trigger the Nolan and Dolan test, that's a legal issue for debate, so to keep it simple, we have looked at the condition as if Nolan and Dolan did apply, and the bottom line is whether Nolan or Dolan apply or they don't apply, our development requirements have to be fair and reasonable; they have to be roughly proportional both in terms of cost and in terms of impact and I think they are in all cases.

So, to give you a brief primer on Nolan and Dolan, Nolan is a 1987 case, a California Supreme Court case, and it stands for the proposition that an essential nexus must exist between a legitimate government purpose and the imposed development condition. In other words, although the construction of sidewalks is a legitimate government interest the City cannot, for example, require Mr. Downs to build a sidewalk in front of somebody else's property in another neighborhood because that would not be impacted by his project.

The famous Supreme Court case that originates in our own City of Tigard is a 1994 case that requires that the exaction be roughly proportional to the impact of the development. A good example of a disproportionate impact is actually the Schultz v. Grants Pass case that the applicant sites many times in his material. In that case, Grants Pass was dealing with the same thing we are dealing with here, effectively a two lot partition, but instead of looking at it as a two lot partition, they said "in the future in theory this could be divided into up to 20 lots, and if it was 20 lots then both of the adjoining roads would need to be widened, because if we had 20 more families on this property we would need wider roads." So as a condition to the two lot partition, they actually imposed an exaction of taking of land in order to allow the widening of both of those roads.

In this case we want standard City streets, and standard City sidewalk improvements in front of the Downs property only. We are not exacting any land; those improvements will all fit into the right of way. This is a good example of proportionate impact. The sidewalk will serve two residences directly on the two lots that it will front, and those are both the Downs' lots. This requirement is based on our Code and does not require anything more of Mr. Downs than would be required of any other developer.

I've got up on the screen the Code provisions related to condition PFA-27 that I will be going through briefly as I run through the rest of what we need to talk about.

Mr. Downs, in his materials, argued that the petition is not a development and that is counter intuitive. All development or redevelopment starts with some form of land use, generally a partition or a subdivision. "Development" in our Code is defined as, "any human caused change to improved or unimproved land." In this case, an improved parcel is being legally changed by the developer into a two lot subdivision, where two houses can be located instead of just one lot with one house. That is going to mean that there is going to be more people living in this area than there have been before. You have to look at it as it's a developer improving the value and marketability of his land by making it available for two homes instead of one.

The partition approval is good for two years. If the applicant makes no further development on the property for the two year period, if it just sits there as it is with just the existing Downs home on the property, after two years the partition approval will expire, we won't abide by it anymore and the applicant will never make those improvements.

Thus the City is not requiring the sidewalk improvements as a condition precedent to granting the partition and building a second home, but rather as a condition of the actual redevelopment of the parcel.

Looking at all of our development requirements as a whole, staff's long standing and consistent interpretation, and the DRBs interpretation says that the partition is of one piece of land into two lots, and therefore both lots that are created by the partition have to have the required sidewalk frontage.

If you are looking at the language (on the slide) the Code is very clear, it says "sidewalks shall be provided on the public street frontage of all development." And there is a requirement in our Comprehensive Plan that says we "must fill in gaps in existing sidewalks and off street pathway systems to create a continuous network of safe and accessible bicycle and pedestrian facilities".

The Code also exempts all activities that are exempt from these development requirements but neither partition nor subdivision is listed as an exemption.

The other issue that Mr. Downs brought up is the cost of the sidewalk, and his argument that he is only putting one new house on the property. But there is already an existing house, and that house may or may not be changed as a part of this, which is up to Mr. Downs, but what is clear is that two different families can now occupy this one piece of property. It is redevelopment of one piece of property and, as a condition of that, the sidewalk needs to go in front of the whole frontage.

The PF condition provides the alternative to pay the money into the City if the developer prefers not to do the sidewalk improvement himself, or the condition also allows the developer to do those improvements on his own, in which case the estimate that is in there is just an estimate, and it is nothing that he pays in. As Ms. Kraushaar and Mr. Downs both mentioned, it is 130 percent

of the estimated cost; if Mr. Downs does it himself that brings the number down from approximately $45,000 to about $32,000 or $33,000. The other things that change, there are no BOLI wages if it is done by the developer himself. When the City does these sidewalk improvements they do a grind and overlay of the whole half street that is the way the City does its road improvements for a sidewalk improvements; however, that is not a requirement under the public works standards. Under the public works standards, there are patching requirements because there is going to be necessarily the infrastructure utilities to service this new property. So the grind and overlay requirement, I think at the DRB hearing we talked about that being, nobody knows what the exact amount of that is, but it is probably a $5,000 cost differential. If you reduce the amount to $32,000-$33,000 for the whole 150 feet, taking away the 30% contingency, you take out the BOLI wages, you take out the grind and overlay, you're looking, we believe in what we discussed at DRB of a number of $20,000-$25,000 for the sidewalk in front of the whole property.

In summary, I think the best case that we can look at is the Schultz case which the applicant sites. That's a case where there is clear disproportionate impact to the development. There Schultz, like here, wanted a two lot subdivision and among other development conditions the landowner was required to dedicate a significant portion of land to the City so the City could widen two roads that might be needed if two lots ever became 20.

In this case, there is zero land dedication and the only requirement is to build standard statutory street improvements along the frontage of the land being partitioned. This requirement is as required by our Code; it's been consistently applied throughout the City. This case, and the Schultz case are in inapposite in terms of the exactions being requested, in fact I would not say this is an exaction, this is a development requirement, and for the foregoing reasons I believe the DRB decision should be affirmed.

Mayor Knapp asked if Councilors had questions of Staff.

Councilor Stevens asked would it be fair to say the owner of parcel 1 is impacted because they no longer can use, once development happens, they cannot walk on partition 2 anymore because it belongs to someone else? Is the impact changed on parcel 1 because that owner can no longer use parcel 2?

Ms. Jacobson responded one of the DRB members made a good point in her analysis, this was a development, it is a developer, a land owner who has a lot; and who wants to divide that lot into two properties so you have two standalone homes. One is existing, one will be built. That home, whether he deeds that land to his son, or he sells it to somebody else, then the properties can be in two separate ownerships. And the idea behind our Code is as properties develop or redevelop, there are development requirements in the Code and one of them is that in front of any new development or redevelopment, you have to have the sidewalk, street improvements built to current Code. So you don't want to have breaks in sidewalks, so you have a little piece of sidewalk in front of lot two, but when the people that live on lot two are trying to walk down the street or citizens for that matter, the sidewalk just dead ends. So it's incumbent of the owner of the larger piece that develops that parcel for his financial benefit, that they put in those

improvements and then the idea is that when those two lots are sold that adds to the value of the lots and that is a recoverable cost.

Councilor Stevens thought the court case with the City of Lake Oswego I think that is what you are getting at, a homebound first owner of a residence will not use the pedestrian system in the neighborhood when the residence is sold to a couple with four young children. So the idea is that over the course of time ownership changes and the use is needed because many people will use that.

Ms. Jacobson stated once the sidewalk is built, the homeowner remains responsible for repairing it. When the development is originally developed the developer of that piece of property is responsible for putting it in, and then it gets sold and it is an integral part of the property that is being sold. And as the governing body making these requirements we cannot look at is it going to be a father and son living next door to each other that go back and forth between their properties as wherever they want however they want, cutting through the middle of the yard or whatever route they plan to take. We have to say this is a developer developing two standalone lots and this is the requirement that we believe is proportionate to that, it is fair, it is reasonable, it is what is imposed on one property over from the Downs property, it's what we imposed on a two lot partition a block away from this property, it's the City standard.

Councilor Starr posed a hypothetical question to insure he understood the Code. In Old Town, if we allowed 'granny flats' into a number of those properties, would we tell them they now need to put sidewalks in even if the granny flat might be in the back yard?

Ms. Jacobson clarified Councilor Starr was referring to accessory dwelling units. In the last section of the Code displayed on the screen, Section 4.005, that section of the Code lists certain development activities that would not trigger new improvements like the sidewalk improvement, and one of those is an accessory dwelling unit. That is a specifically listed exemption, where as a subdivision partition is not a specifically listed exemption.

Councilor Starr asked when the Code was put into effect, and how long has the homeowner lived in their house.

Mr. Edmonds said the first subdivision Code was adopted around 1972. The house was there in 1979.

Ms. Jacobson thought the current homeowner has lived in the home for a long time, and that is the reason why there was not a sidewalk in front of the property now, because at the time the home was built there was not this requirement in the Code.

Councilor Starr understood all development and developing this standalone lot, this same house that is sitting there with nothing changing is actually development. This is the question I think is the root of all of it. If I drove by it two years ago, and I drive by it two years from now, I'm going to look at it and say "there was no development in front of that house". Maybe the other one, but not that house. How are you getting to development?

Ms. Jacobson explained the definition of development is "any human caused change to improved or unimproved real estate". So this is improved real estate, there is a home on it. The change that is being made to it the first change in any development is to get the land use authority to be able to do something different on the property, to redevelop the property. What the Downs' are doing is they want to redevelop one property, one homestead property if you will, into two separate properties. Instead of one lot, there will be two lots, and both of those will be free to be marketed, there will be a new property built on the second lot, or at least that's the reason for the partition right now. However, like I said earlier and to your point if you drive by there today, and it looks like it looks now, and you drive by two years from now, and it looks like it looks now, then two years from now, if they have not requested an extension, this partition approval would have expired, they will not have been required to put in a sidewalk anywhere, they'll still be in that grandfathered state because they have not made any improvements to that redeveloped property.

Ms. Kraushaar added it has changed because it is one big lot now, and there will be two tax lots as a result.

Councilor Starr understood the two tax lots, and that one lot will change because of development

Mr. Kohlhoff felt the issue is the act of partitioning is an act of development. It's just that simple. Just like a complaint that you would have as a part of a trial, so you're thinking about the physical part of adding the house. But part of development is also the act of partitioning and asking for and getting granted a partition. And that's part of development under the Code.

Councilor Starr asked if there was legal standing that says development includes what the old property was that doesn't' change. Is there anything that says that somewhere that we can go to?

Mr. Kohlhoff pointed the out the old property is changing, it is not remaining one big lot, it is becoming two lots, and that's the change that is occurring, that is the partition, that's the development, that's the first part of the process of developing it. So that is a development process, so the lot is changing.

Ms. Jacobson suggested removing the Downs family from the scenario – it's a large lot owned by a developer who wants to capitalize on the value of a big piece of property that can be divided into smaller pieces of property, so that they can be marketed as two separate properties. The land use procedure to do that is the development or redevelopment of an underutilized property, perhaps, into a property that is more than one property that can be sold to two separate buyers. It is an increase in the value of what you've got. Even though you may not change the house that sits for the time being on one lot, you are creating a separate second lot that can be sold and marketed and the requirement then is triggered under our Code is, that it is a redevelopment of your larger parcel through a land use action, and then subsequent development.

In conjunction with that also the City is required to provide services to that parcel that were not required before. For example the City will now have to provide sewer and water to this new house. The old house has the option to have City water provided to it. It's been suggested to the

developer at the time it is provided to the new house, it would make sense for them to run a line into the old house. Whether they do that or not is up to them.

Ms. Kraushaar stated the City is not making them connect to the water for the existing residence.

Councilor Starr asked to use his phone to look up the word "development".

Mr. Kohlhoff, stated 'development' is defined in City Code and that is how it has been interpreted, and it was Council's job to interpret it based on City Code. Going to an outside source for a definition of development was outside the record.

Councilor Lehan thought Councilor Starr was on the right crux of the matter, because she was stumbling over this as well. That is has parcel 1, is it the same -- but it's not the same. That is the crux of the matter, has it changed or not? And it has changed. It's not the same property it was before. It has a smaller frontage, it has been diminished, I guess you would say. It is just not the same property that it was before. The density in that neighborhood, even the density in those two lots has now greatly increased. It has doubled, the density has doubled in what used to be one, is now two. So it absolutely has changed, but that is what I was stuck on also. But I think the answer is not what is development, the answer is has number one changed? And it has changed, it is not the same property, it wouldn't sell for the same amount, it doesn't have any number of the attributes that it had before, and it certainly now is in a denser neighborhood. Even if the neighborhood is only those two lots.

Ms. Jacobson said that goes to why the condition is triggered, because there is more density, there will be ultimately two different families living on the property, there will be different families living, now there is three new families living on the property that was partitioned into three lots just one property down, and that's why they had to put the sidewalk in front of their properties, even while just the first two were built.

Mayor Knapp asked Ms. Jacobson to address the applicant's statement that this is a constitutionality question.

Ms. Jacobson explained this goes to the Nolan and Dolan case. She did not think it fell under the exaction of those cases. But that is a legal argument that the courts have been back and forth on. In the Koontz case he talks about says an exaction can be more than a taking of land because that was really the issue with Nolan and Dolan, those both involve land exactions. And then there was for quite some time a split among the Circuits about whether if you required off-site improvements or you required the payment of a fee whether that actually fell under the Nolan/Dolan test. Our courts still would not treat this, I don't believe, as a Nolan/Dolan kind of situation, so it wouldn't be under the same constitutional provision that you might be citing if you were making a Nolan/Dolan argument, but there is still a requirement that any kind of a fee imposed or a tax or a taking imposed by a government must be fair and reasonable and proportionate. And so there would be definitely an argument that could be made whether it would fall under the Dolan/Nolan test that would be something for the courts to determine. I think that there is a distinction here, and this is not an exaction of any land and it is not an off-site improvement, it is off site in terms that it is in the right of way, but it fronts only the property

at issue here. It does not go beyond it, it is not a street widening to accommodate the additional density, and it is a sidewalk to serve the two properties as well as the general public. Yes, if a court could look at this and find that it was an un-proportionate condition of development then they could find that to be a violation of constitutional property right.

Mr. Kohlhoff added the question is what we are presenting, even if you do apply the proportionality test, obviously it meets from our position that has been argued, the essential nexus test under Nolan, but it also is within the rough proportionality of cost and scope as well. It doesn't have to be equal; it just has to be roughly proportional. So the dollars are not excessive in that regard, the scope is limited to the sidewalk area. It is clearly under the City Code provisions. The other way that cities might do this is part of an argument there is assessment types of things, but we're not dealing with that, where properties are prorated on assessment basis for sidewalks. When you look at the rough proportionality it is clearly within that cost and scope.

Mr. Cosgrove clarified Mr. Kohlhoff was talking about a local improvement district, which City Council could enforce or impose.

Mr. Kohlhoff indicated that was correct, but the City was not dealing with that, from an argument point of view, if you're going to ask for rough proportionality, that falls right into it.

Mayor Knapp asked how the concession factor figures in. If the City built the sidewalk, the street would be ground with an overlay; but if the developer installs the improvement that does not need to be done, just install the curb, gutter and patch the street. And if the City has said costs were 130% due to uncertainties, time wise moving forward when the work would be done, what the future costs would be, but we say to the applicant, if you want to do it, within our approval period you don't have to pay the extra 30% you can do it, resulting in the difference in the BOLI wages between what the City would do. It seemed to the Mayor that the applicant has been offered concessions by the City that mitigate his potential cost, does that factor into proportionality relative to the size of the project.

Mr. Kohlhoff said it did.

Ms. Kraushaar added one of the reasons it was offered is that there is a street with reasonable pavement conditions, and there will be a cut made in the pavement to put in the curb and gutter, and to patch those using the City's public works standards for trench patches we felt was appropriate for the magnitude for this development. The Code is clear, "sidewalks shall be provided on the public street frontage of all development."

Mayor Knapp asked if Council had other questions of staff, there were none, and he invited the applicant to rebut.

Mr. Downs addressed the questions the Councilors asked, starting with Councilor Stevens. You had talked about the impact, the definition of impact and what I will tell you is the cases say when you look at the impact, you are looking at the impact created by somebody that lives on the property, well is that an impact because they can't walk onto the other persons property, the

original property. What the court says is you have to focus on the actual impact created to the system, to the city's system. So, how many times is the new parcel going to have somebody drive in and use the driveway to that new parcel? That's an impact to the system. Another impact to the system would be usage of water, the City water, that's an actual impact to the system. So what the courts say is when you focus on the impact, you don't focus necessarily on what is happening on parcel one, because that's been there, that's old impact, there is nothing new created by that impact. You focus on the new parcel. The impact to the system created by that, that is what the court says. And in this particular case that would be water, sewer, sanitation, the underground conduits for the electricity, that is going to have an impact to the system because there's going to be more uses of electricity, there's going to be more traffic in and out of the driveway onto Canyon Creek, those are the impacts, it's as simple as that. That's what the court says. That's my take on it.

Councilor Starr you talked about the act of, this is a part I didn't address; I addressed this before the DRB, the issue of the definitions within the City Code. And it's really, you can argue it both ways because there are definitions within the City Code for development, there are definitions within the City Code for partition, and there is a separate application process. So if you look at this, and I gave up on that argument at this point because it was, the City says "it's the way we've done it, it's our definition, it's how we interpret it" and quite frankly I thought that, from my standpoint, I'm better off just focusing on what the court says. But at the DRB I looked at it as, when you partition property you fill out an application, you pay a fee for that partition. When that process is done, then you start all over again, and you file it with the county and you get a separate tax lot, you pay the fees to the county. Now you finally have the partition complete. That's one particular definition "partition". Then you go back in and you pay the fees to develop that parcel. In my mind as I interpret it, the definitional section within your own City Code is two different definitional terms, partition being one, development being a second, partly because there are separate fee structures that apply to that, there are separate application processes that applies to that. Why would you impose upon a land owner two separate applications, two separate fee structures if you are under your own Code going to call it "development", and treat it as one. You are arguing it both ways, you're saying were going to make you pay two fees and fill out two applications but we're going to call it, just so we can exact, make you build a sidewalk for the entire thing. You can't have it both ways. Now, so I offer those points to your question.

And Mayor Knapp you asked about the constitutionality issue. Koontz is clear, I actually, this is just a blurb and it's in your materials, it's just a blurb, it says that, this is in the section that talks about subdivision law and growth management, it's a treatise on land use law, and it talks about that, it says that, "in Koontz, that restated Dolan and extended Dolan to reach all permit conditions, including those requiring the expenditure of funds." And the reason that you have to think about it, and the reason that Koontz came about in 2013 is because we have what's being imposed right here. We have a lot of cases that come across throughout the nation where cities try to say, "well we're going to treat this differently, we're not going to call it a Nolan, or a Dolan case because it is treated under City Code, therefore Dolan doesn't apply." And the Supreme Court said "enough", I mean they said "We meant what we said". In fact if you go to the Oregon State Bar CLE books, there's a whole section, and it's titled "We Meant What We Said" and it can be overturned, it is subject to appeal and being overturned under that analysis.

And the courts clear, you have to meet that proportionality and direct relationship, and when they said actual impact from the project. Those aren't my words, those are words from the court, and the court is focusing on the project and what staff didn't address was, what is the project? Staff says the project is the whole thing because our Code says so, but that's not a factual finding, that's a Code finding. And when the Code goes up against, gives you a different interpretation of what the Supreme Court says, the Code unconstitutional.

Now they want to talk about the fact that the Knorrs' to the north did three, they went ahead and submitted the funds for all three. Well did they hire a legal attorney, did they fight it? I can't address whether they did or didn't, and quite frankly it's not part of the record, so it's not fair for me to address. All I can do is address what the law is and what the constitutionality is and I said that there are some very serious questions that have to be asked, or answered.

And I will wrap up on just a few extra points. What I will point out to you in staff's rebuttal, that I did not hear them answer the question as to what is the project. I think they actually asserted that the project was two different lots, or the same lots. They said two things, they say repeatedly that it serves two residents, yet only one new residence is being created, so which way is it, is it two residences or one? They again continue to apply City Code, but that's not a factual finding. They talk about the fact that this older residence, to answer your question it was 1979 was when that house was built and when my family moved there. What may happen down the road with that house it doesn't really have any bearing on today, and I think your point, Councilor Lehan's point was well taken, is that you have to look at what is created by this one project. And to impose it on, let's say it's not Mr. Downs' son, let's say it's somebody else, is it fair to require somebody else buying that second piece of property to build a sidewalk on somebody they don't even know, or in this case what they are trying to do is impose that condition on Mr. Downs to build it.

And the last thing there was a question about if it was a developer? Well, we're dealing with apples and oranges in that scenario. A developer comes in as they do, they are building houses, they are tearing down houses you'd see if you drove down there in the past month, they tear down the house and they are building, therefore the conditions apply to all of those because it is multiple projects, every singly house applies. So, that meets the Dolan analysis.

Councilor Stevens you brought up the City of Lake Oswego case, let's the City of Lake Oswego case if you want to understand how that was, that was a major commercial building, and the issue for the City of Lake Oswego council was, you had, when they had this piece of property, and you had residential neighborhood on one side of this property where this big, huge, I think it was a hotel corporate office, and on the other side you had retail businesses. And the issue was the residential neighborhood being able to walk the path to get to the retail development. And what the courts talked about in that case was the fact that by requiring this path, to go through there, it allows the residents to connect to the other side, it not only did that, but it serves the people who work in the building. We were talking about one parcel there. Quite frankly I can bring up another point that the court made the Court of Appeals made, that actually are consistent with what I'm arguing to you today. But the point being that's an apples to oranges case is because that was a huge commercial building and there were a lot of different points that were made about the fact that employees all benefit from this pathway that goes through this

parking lot of this commercial building. So, those are my final points, thank you. I can answer any questions if you have any.

Mayor Knapp asked if the Council had questions of the applicant, they did not. So that is all of our scheduled input on this hearing, which would make it appropriate for a motion to either close the hearing or if there were a reason to continue it to annunciate that reason.

Motion: Councilor Lehan moved to close the public hearing. Councilor Starr seconded the motion.

Vote: Motion carried 4-0.

The Mayor declared the public hearing closed at 9:36 p.m. and stated it was appropriate to have a motion before the Council was to have any discussion.

Motion: Councilor Lehan moved to adopt the Resolution No. 2524 and Order upholding the decision of the DRB. Councilor Stevens seconded the motion.

Councilor Lehan said she was struggling with this because she was originally stuck on the first property hasn't changed so why would we require something different of them. But the light bulb went on when it occurred to me that indeed, number one has changed, because it is now half the size it was before, not half but significantly smaller than it was before. It also means that, and I would also say that system impacts, community impacts are entirely different issue than the sidewalk. Because I'm just looking at this sidewalk as this frontage with these two properties, there are now potentially twice as many people walking on them just from this property. We've doubled the amount of people walking on the frontage of this, even if we're talking only about people generated from these two properties, its twice as many as it was before. Whether they come out of their house and turn to the left or turn to the right, there are twice as many people in the front of this. And so I can see the rational that staff, that I was struggling with in the beginning, that staff is so clear about, and that is this is a subdivision albeit a tiny subdivision, it is still a subdivision in total that used to be one property, and now it is two properties. It's twice the impact just on those two frontages. And that makes it logical that of course you would require this change for the frontage. So that's my thinking on it without getting too far in the weeds of Nolan and Dolan.

Councilor Stevens said she was thinking about the definitions of 'development' and I think there are so many documents where the first part of that document is the definitions, way beyond city; you have to define what your terms mean. And so I think using the City has created a definition for the term of development and as Mr. Kohlhoff has said, the partitioning is part of the development, it is part of that definition. And there is a change; I really appreciate Councilor Lehan's comments about the fact that number one has changed, it is smaller. Does development have to mean bigger? No necessarily, development could mean smaller, but development means change via the partition so I think there has been, and the density issue is just another part of that, there is change to both pieces and to that neighborhood. It's important to understand what the terms mean.

Councilor Starr commented having had some things explained to me and then re-reading the Code I think that the Code was very well written and gets to the point that it was trying to make, and so if I did a development three years ago, I'd totally agree with Councilor Lehan. However, I think this Code was perfected over time and what the homeowners bought into and how this has changed over time I think the Code requires them to do what they need to do with the now and the future, but not the past. And so I can't get to the point where we would make them do something based on what they bought into because of what we want. I mean it makes sense to put in more sidewalks; it's not going to look good to have a sidewalk and then no sidewalk. I think the value of the house will come up if they put in a sidewalk, but I'm stopping short of putting a gun to their head and say you have to build a sidewalk, because I don't think that was what they brought into when they brought the house, and I think that they are protected as their lawyer said with the constitution. So I'm stopping short of that, I'm all for the sidewalk needing to go in where there is an upgrade to land, but not where they bought into originally. Thank you.

Mayor Knapp stated it was certainly an interesting discussion. He understood the comments Councilor Lehan has made, and I think I agree with those. I understand the comments Councilor Stevens has made and those closely parallel thoughts that I was having also. With regard to Councilor Starr's viewpoint I don't think we're holding a gun to anybody's head, they don't have to do anything. They bought a big lot with a single house on it in 1979, they can have a big lot with a single house on it in 2015 and not do anything, that's what they bought into, that's what they still have and they are free to have it. But if they want to start developing and building a saleable lot then they have chosen not to just have what they had in 1979, and they are undertaking the development process that prepares either parcel or both parcels for future activity. And they could not undertake activity on either parcel without going through this preliminary development step of partitioning, and arrive as their apparent goal of having two legal lots to do whatever they are hoping to do with them. I believe I'm persuaded by staff's explanation of the proportionality of what the stipulations are of this condition. PFA-27 and it is a modest requirement in terms of dollars, there is a nexus to both lots, and there is no extension beyond this applicant's ownership. I believe it would meet the test of proportionality and I think that it is well within the legislative authority of a municipality to set their development Code to have reasonable standards and within those standards to define development as the City has done. I don't think that it would be successfully argued that the City doesn't' have authority to do that or that the City is reaching beyond a proportionate impact, especially when you're looking at the dollars and look at the concessions that the City has made in what they would require dollar wise it sounds to me like it already is far less dollars than what would be required at a full street grind, 130% estimate, BOLI wage, public project even on the 60 feet. So it's kind of a tempest in a tea pot in my mind. I understand that the applicant feels strongly about it. It would seem to me to get everybody further ahead if they could agree while they might not agree from the legalistic standpoint, it would benefit everybody to move forward appropriately, and I think the City has made significant concessions in that direction to the point that it is clearly proportionate to the magnitude of the project. So my stance would be that the City has met that test.

Mayor Knapp asked if the council had additional comments to make, there were none, and he called for the vote on the motion to adopt Resolution No. 2524 which denies the appeal and affirms the Development Review Board Resolution 299, etc. in this case.

Vote: Motion carried 3-1. Councilor Starr votes No.

The Mayor stated if you desire to appeal this decision to LUBA you must make application stating the grounds for the appeal and file the appeal with LUBA as proscribed by state law.
End of transcript.

CITY MANAGER'S BUSINESS

Mr. Cosgrove announced the date of the next Leadership Academy. The Budget document is almost completed and should be delivered to the Budget Committee two weeks prior to the first Budget Committee meeting. Final touches are being made to the Tourism Committee, and also a Metro Enhancement Committee. Representative Davis hosted a meeting in Wilsonville regarding the Stafford UGB issue; however, the City has not taken a position on that matter. In addition Rep. Davis has arranged for the Leadership Academy to tour the capital in Salem.

The City Manager indicated he would be meeting with David Harms who would be providing a mockup of the City logo and tag line, and that the City was accepting applications for the Library Board vacancy.

LEGAL BUSINESS – There was no report.

ADJOURN

Mayor Knapp adjourned the Council meeting at 9:52 p.m.

Council moved into an Executive Session pursuant to ORS 192.660(2)(f) Exempt Public Records and ORS 192-660(2)(h) Litigation at 9:57 p.m. All Councilors were present save Council Fitzgerald who was excused. Staff included Bryan Cosgrove, Mike Kohlhoff, Barbara Jacobson, and Sandra King. The Executive Session adjourned at 10:25 p.m.

Respectfully submitted,

_____
Sandra C. King, MMC, City Recorder

ATTEST:

_____
Tim Knapp, Mayor