

**Wilsonville City Hall  
29799 SW Town Center Loop East  
Wilsonville, Oregon**

**Development Review Board – Panel B  
Minutes–August 24, 2020 6:30 PM**

**Approved**  
September 28, 2020

**I. Call to Order**

Chair **Samy Nada** called the meeting to order at 6:32 p.m.

**II. Chair’s Remarks**

The Conduct of Hearing and Statement of Public Notice were read into the record.

**III. Roll Call**

Present for roll call were: **Samy Nada, Richard Martens, Shawn O’Neil, Ellie Schroeder, and Nicole Hendrix**

Staff present: **Daniel Pauly, Barbara Jacobson, Miranda Bateschell, Kimberly Rybold, Khoi Le, Cindy Luxhoj, Melissa Gitt, and Shelley White**

**IV. Citizens’ Input** This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

**V. Consent Agenda:**

A. Approval of minutes of July 27, 2020 DRB Panel B meeting

**Nicole Hendrix moved to approve the July 27, 2020 DRB Panel B meeting minutes as presented. Ellie Schroeder seconded the motion, which passed unanimously.**

**VI. Public Hearing:**

**A. Resolution No. 382. Magnolia 6-Unit Townhome Development: Base Design + Architecture, LLC. – Applicant for Hillebrand Construction, Inc. – Owner.** The applicant is requesting approval of a Stage II Final Plan, Site Design Review, and Type C Tree Removal Plan for development of a 6-unit townhome development. The site is located at 30535 SW Magnolia Avenue on Tax Lot 2101 of Section 23AB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon. Staff: Cindy Luxhoj

Case Files:	DB19-0047	Stage II Final Plan
	DB19-0048	Site Design Review
	DB19-0049	Type C Tree Removal Plan

**Chair Nada** called the public hearing to order at 6:39 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

**Daniel Pauly, Planning Manager**, introduced the application, noting that these sorts of applications were often pretty difficult for a Board to consider as there was a lot to weigh. Staff acknowledged that any time work was done around people's homes or changes were made to long-established neighborhoods, it could be sensitive. Staff had also acknowledged that with the Applicant while working with them throughout the process. Staff had encouraged the Applicant to have a neighborhood meeting during the preconstruction meeting, which was not required by Code, and they did where they acquired some information from the neighborhood.

- Some legal guardrails were more sensitive when dealing with housing than other development, especially with regard to the term "clear and objective" criteria. Much of the housing reviewed by the City was considered needed housing under State law, so the review was limited to applying criteria that were considered clear and objective, which fell into two categories. Some criteria were easily categorized as clear and objective, such as building height, traffic standards, parking requirements, etc. because the requirement was objective; the criterion was either met or not. Others were more ~~complicated~~ and subjective, such as design criteria. For the City to maintain compliance with State law, such subjective criteria ~~they~~ must be applied in a clear and objective manner. It essentially became a simple yes or no question of whether the Applicant provided evidence that the criteria standards had been met, rather than a spectrum of whether or not it met a certain ideal or interpretation of those standards. The Code needed to be applied in a manner that did not unnecessarily increase the cost or time to construct the project, did not make the project unfeasible, and was otherwise allowed by Code. This all must be considered when dealing with housing.
- There had been a trend, in State law in particular, to make housing standards more clear and objective and to limit the amount of subjective review of housing over time. That said, some of the standards being applied today, or the manner in which they were applied, was different than what may have been applied to Old Town prior to some of the most recent laws.

**Shawn O'Neil** understood Mr. Pauly to say he was giving legal advice, asked if he was speaking as the City Attorney, and declared that he was uncomfortable with Mr. Pauly communicating that that was how the Board should assess tonight's application. He asked Mr. Pauly if he or his predecessor had met with the Old Town Neighborhood Association (OTNA), as had been promised six years ago, and what, if any, progress the City had made to work with that neighborhood to come up with some parameters.

**Mr. Pauly** explained that his was advice that land use planners would give. He was just clarifying the Planning Staff's experience, adding he had spoken with the City Attorney about all of it ahead of time. He was not an attorney and was not giving legal advice, but as a land use planner, he was giving the Board the details of the criteria that applied in these scenarios. In

terms of standards, Ordinance No. 810 adopted the Old Town Design Standards. Staff had worked with the neighborhood to apply those standards in certain circumstances, such as when pulling a building permit with no public review. The entire time, it had been understood that there was a path in which an applicant was either required or had an option to go through the DRB process and apply standards that showed precedence or of a modern interpretation of architecture from the designated timeframe. Staff had done and implemented that, and had issued permits based on those design guidelines. However, none of that was applicable to the present application as it was classified as a multi-family development.

**Mr. O'Neil** asked if Board members were prohibited from voting against the proposed development if they believed it was better suited elsewhere in the city because the law established a requirement that the development would have to go in Old Town. He said he wanted clarification about what he could and could not do as far as his decision-making this evening.

**Mr. Pauly** replied the Board did not make policy, so had no ability to change law. The Board had to apply the law as it existed today, which included the zoning allowance, which consisted of a spectrum of minimum to maximum density that was applied to each parcel. The law on the books on the date an application was applied for was the law that applied. In that sense, the Board did not have the authority to change the number of units allowed on a property.

**Mr. O'Neil** asked if the Board could review how the volume of parking and other aspects of a development would impact the community and its living situation.

**Mr. Pauly** responded only as established in clear and objective criteria.

**Mr. O'Neil** stated that he planned to do that.

**Miranda Bateschell, Planning Director**, clarified the Old Town ordinance that addressed design standards would not apply tonight because the current application was for multi-family. However, there had been a long process that engaged the community, including a number of work sessions and stakeholder interviews conducted by Mr. Pauly with members of that neighborhood, who had been involved in the prior conversation requesting that Staff proceed with those standards. Many of those community members had been present at the hearing when it was adopted.

**Cindy Luxhoj, Associate Planner**, announced that the criteria applicable to the application were stated on page 2 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

**Ms. Luxhoj** presented the Staff report via PowerPoint, reviewing the site's location and background, and describing the Applicant's requested application with these key comments:

- The subject .37 acre site was vacant, as the prior single-family residence had been demolished approximately ten years ago. Surrounding land uses included single-family residential to the south and west and multi-family residential to the north and east.
  - The project site was subject to several land use designations, being designated multi-family, including townhomes, apartments and condominiums, in the Wilsonville Square 76 Master Plan and residential with 16 to 20 units per acre in the Comprehensive Plan. (Slide 4) The site was also included in Area of Special Concern F and located in the Boones Ferry District of Wilsonville's Old Town Neighborhood Plan and subject to the Old Town Overlay Zone. The property is zoned Planned Development Commercial (PDC).
- The Applicant proposed development of six town homes in two, three-story buildings, with three units each, on the site. The proposed density was approximately 16.2 dwelling units per acre, the low end of the 16-20 units per acre designated in the Comprehensive Plan and consistent with the multi-family designation in the Wilsonville Square 76 Master Plan.
  - Design of the site went through several iterations in response to concerns of neighboring residents and the larger Old Town neighborhood about off-street parking, density, building height, privacy, and architecture and to address overall compatibility of development with the Old Town neighborhood aesthetic.
  - The Applicant considered the unique location of the site as a transition point for multi-family development on the north and east to single family homes on the west and south. The project was designed to create a multi-family use compatible with the apartments to the north while being at a scale and with an architectural aesthetic that visually emulated, with a modern interpretation, individual single-family homes to the south.
- Noticing. The proper noticing was followed for the application and included the clarification of background information about the project, outlined adaptations for the hearing process, and provided testimony adopted by the City in response to the Covid-19 pandemic.
  - In addition, the Applicant voluntarily held a neighborhood meeting on October 29, 2019 to provide opportunity for Old Town neighborhood residents to comment on the proposed project. Participants included two representatives of the Old Town Neighborhood Association, as well as other residents of the neighborhood. Key concerns raised during the meeting were off-street parking, project density, building height, privacy, and architecture. The Applicant addressed these concerns in the design of the project.
  - Six comment letters were received in response to the public notice. The letters were included in the Staff report as Exhibits D1-D6. Key concerns raised included traffic congestion, safety, parking, adequacy of services and utilities, consistency with the Old Town Plan and Neighborhood Guidelines, historical context, height, building mass, privacy, tree removal, and property values. Those concerns were addressed in the Summary and Discussion Points sections of the DRB Staff report, as well as in the Findings for each request. Only one neighbor who submitted a letter attended the neighborhood meeting that was held by the Applicant.
  - Specific to construction, traffic, and noise, the location of the property presented some challenges. SW Magnolia Ave dead-ended into a cul-de-sac with no other access to the

site other than through an easement from the apartments to the east and north. Careful attention would need to be paid to the timing of construction traffic and hours during which noise was generated to mitigate and minimize the impacts on nearby residents and along SW Magnolia Ave and 5th St. The Applicant was aware of the concerns and was committed to being respectful during the construction process.

- Stage II Final Plan. The subject property was included in the Wilsonville Square 76 Master Plan, which was an amendment to the original 1971 Comprehensive Plan for 33 acres at the southwest quadrant of the Wilsonville Rd/I-5 interchange. Wilsonville Square 76 was approved in 1976 with land designated for primarily commercial development and a small area of multi-family residential use. Land uses proposed at that time included General, Commercial, Travelers Retail, Service Shops, Retail Equipment, and Multi-Family. Since 1976 the Wilsonville Square 76 area has developed with a range of uses that included multi-family housing, a church, the Fred Meyer Old Town Square retail development, and Wilsonville Subaru. Correct capitalization, titles in slide notes
  - The subject property was designated for multi-family and the only remaining, undeveloped part of the Wilsonville Square 76 area. The proposed townhome development on the vacant site was consistent with the designated multi-family use in the Wilsonville Square 76 Master Plan. (Slide 7)
  - In addition to the Wilsonville Square 76 Master Plan, other planning efforts had added additional land use designations to the area and subject site. The proposed development on the site, as demonstrated in the Staff report findings, was consistent with those designations.
  - According to the traffic memorandum prepared by DKS Associates, the project was estimated to generate five vehicle trips during the PM Peak Hour with four trips going through the SW Wilsonville Rd/I-5 interchange. The low volume of traffic would not significantly impact nearby intersections and therefore, did not require any improvements. The Traffic Study did not identify any concerns with sight distance, and found that the proposed drive aisle provided a sufficient internal circulation and access to the six townhomes.
  - The site had minimal frontage on SW Magnolia Ave, which would be occupied by a portion of the driveway; therefore, no frontage improvements were required. The remainder of the driveway was in an easement granted by the neighboring apartment project, and access was consistent with the City's Transportation System Plan and Public Works Standards.
  - Twelve parking spaces were provided to address neighbors' concerns regarding on-street parking near their homes, double the required minimum. Garages and driveways were of sufficient size for each townhome and satisfied minimum requirements.
  - Townhome entries had individual hardscape pedestrian access from the driveway that was clearly delineated. A pathway between the townhome buildings would facilitate direct pedestrian access through the site from the front of the townhomes on the south to the common area on the north. All pedestrian access was clearly marked, well-lit, and met grading and clearance requirements for ADA compliance.
  - Facilities and services, including utilities, were available and sufficient to serve the proposed development. Both Republic Services and Tualatin Valley Fire and Rescue had

reviewed the proposed plans and indicated site access, circulation, and maneuvering was adequate to meet collection and emergency services requirements.

- Approximately 32 percent of the site was landscaped in planters between driveways and common areas, a shared outdoor recreation space, rain gardens for stormwater management, and lawn and perimeter areas. Approximately 1,300 sq ft was provided in shared recreational space on the north side of the townhome buildings. Amenities included picnic tables, barbecues, and play fitness equipment. An additional 912 sq ft was provided in small, private patio areas for each unit which were separated by large planters to provide privacy to each tenant and separation from shared outdoor areas. Covered balconies were included in four of the six units to provide additional private exterior space.
- Site Design Review. Approximately 3,493 sq ft of the site was covered by the two proposed building footprints, and 5,184 sq ft was covered by landscaping in lawn and planter areas. The remaining 7,526 sq ft was in parking, circulation, and pedestrian areas. There was a single vehicle entry to the site at the southeast corner from an existing cul-de-sac at the north end of SW Magnolia Ave. The two buildings had a gross building area of 10,620 sq ft and included three townhomes each.
  - The townhomes were three-story with a height of 32 ft to the roof gable peak, three ft less than the 35-ft maximum allowed height. The buildings faced south/southeast with entrances to the townhomes, garages, and parking on the south side, and patios, a common area, and landscaping on the north.
  - Storm water facilities were in the site's northeast corner and between the buildings.
  - A raised concrete walkway between the buildings created a pedestrian connection between the circulation area on the south and the open space on the north.
  - The Applicant had considered the surrounding neighborhood scale, as well as the Old Town neighborhood aesthetic, and the requirements of the Old Town Overlay Zone, in designing a development that was compatible with nearby single-family detached homes to the south and west.
  - Appropriate landscaping was provided in areas A through C and E. (Slide 10) Area D was proposed to include five Blue Ice Arizona Cypress trees grouped at approximately 18 ft on center in two locations. No shrubs or ground cover was shown on the plans, but the low screen standard must be met in that landscape area to visually screen the vehicle circulation, driveways, and parking area from the adjacent residential use to the south and to integrate the proposed project with other residences, which required the addition of shrubs to form a 3-ft-tall hedge along a portion of the property boundary. A condition of approval was included to ensure that standard was met.
- Type C Tree Removal Plan. Twelve trees on the project site, and an additional six trees on adjacent property, could be impacted by the proposed development. More than half of the onsite trees were black locust, an invasive species. Other species included one each of Japanese Maple, Norway maple, and elm.
  - The offsite trees outlined in red on Slide 11 would be removed and included one each of Silver Maple, Lodgepole Pine, Sweetgum, Deodar Cedar, and an undetermined deciduous species. The Applicant proposed removing all of the onsite trees and two of

the offsite trees, while preserving and protecting the remaining four offsite trees outlined in teal.

- It was not practical to retain the trees proposed for removal without significant reduction to the size of the proposed building footprint and associated onsite improvements. A letter from KWDS, LLC to the Applicant granted permission to remove the two offsite trees and was included in Exhibit B1 of the Applicant's submitted materials. The 32 trees proposed for planting substantially exceeded the required mitigation.
- She reviewed the key discussion points as follows:
  - Neighborhood compatibility. The project site was uniquely situated at the northern edge of the Old Town neighborhood at a transition point from single-family homes on the south and west to multi-family and commercial development on the north and east. The Applicant understood that balance, respected neighborhood concerns, considered surrounding neighborhood scale and Old Town aesthetics, and designed the townhomes to emulate the requirements of the Old Town Overlay Zone, but with a modern interpretation of the architectural style of houses found throughout the Willamette Valley from the 1880s to the 1930s, and within the standards of the Overlay Zone.
    - The illustration on Slide 13 highlighted some of the style features incorporated into the design, such as a pitched roof, alcoves, roof overhangs, porticos, recesses, enhanced entries, articulation and variation in the building facades, and definition of individual townhomes to appear more as single units.
  - Massing of the buildings on the site evolved from six townhomes in one rectangular building to a staggering of units within the buildings to provide variation and differentiation to splitting the townhomes into two buildings and varying the orientation to reduce the scale and achieve a more residential feel.
  - Building height. To address neighbor concerns about a three-story building on the subject property and how that might threaten the privacy of nearby residents in single and two-story homes, the Applicant proposed a gabled roof with a maximum peak of 32 ft., three ft below the allowed maximum. The Applicant also paid careful attention to other design aspects, such as building orientation, landscaping, and the location of balconies and windows, to further mitigate and minimize the visual connections to the neighboring properties.
  - Architecture. According to research and the Old Town Neighborhood Plan, the majority of houses on SW Magnolia Ave north of SW 5th St dated to about the 1970s, had simple architecture with little ornamentation, and straight lines. Most of the homes were single story, with two older homes that were two-story. The traditional architectural features of the ranch and farmhouse style seen in those homes included simple building form, pitched roof, minimal eaves, covered entries, shingle siding, and varied window sizes. In their supplemental materials, the Applicant provided ample examples of those and other features, and how they were incorporated into the project design.
  - Building materials. The color and texture of the proposed exterior materials blended with the surrounding neighborhood and included light gray Hardieshingle siding, tight knot cedar-stained gray and clear at entries and within alcoves and balconies, light gray

perforated panel for balcony railings, and a dark gray standing seam metal roof. The architecture of the proposed project, with its modern, unadorned design, neutral color tones, and varied natural materials, would fit with other homes on the street and emulate, with a modern interpretation, the architectural style of the houses found throughout the Willamette Valley in the late 1800s to early 1900s. A picture of the materials board was shown on Slide 18.

- She noted one of the written comments noted a correction to Finding A29 on Page 29 of 58 of the Staff report. The location of the closest transit to subject property was inaccurate. Per the SMART service map, the closest stop to the subject property was to the north, at the cul-de-sac at the east end of Bailey St where it met the Fred Meyer shopping center. That correction would be made to the Staff report.
- Staff recommended approval of the request with conditions of the Stage II Final Plan, Site Design Review, and Type C Tree Removal Plan.
- She clarified the traffic study was included in Exhibit B1, which included a trip generation memorandum.
- She also clarified there was no direct access to the transit stop from the subject property due to the gate across the drive aisle at the neighboring apartment complex. Residents would have to go around to access the transit stop.

**Mr. O'Neil** noted his packet went from Exhibit A1 to Exhibit C1. He did not have a traffic study, adding Exhibit B1 was not part of the record.

During a brief discussion, Staff clarified that Exhibit B1 could be found on the City website under Projects Around the City, and the Traffic Study memo was on page 118 of 137 of Exhibit B1.

**Daniel Pauly, Planning Manager**, explained that traditionally, Staff provided the Board with the packet with the Staff report, exhibits that were not in the Applicant's submittal, as well as the Applicant's submittal. The Traffic Study was part of the Applicant's submittal, provided to the Board as a link on the City website. Three additional attachments were provided where the meeting packet was located on the City website. A link to the attachments and the page itself was emailed directly to the Board.

**Richard Martens** asked if the present application required a specific Traffic Study or simply a reference to an existing traffic analysis or data.

**Mr. Pauly** responded that a project this small only required a traffic memo.

**Khoi Le, Development Engineering Manager**, explained that typically, a Traffic Study was required to accompany a land use application if more than 25 PM Peak Trips would be generated. The subject project would only generate five trips, so a full Traffic Study was not required. A three-sheet traffic memorandum was prepared by DKS, which Ms. Bateschell was currently emailing to the Board.



**Mr. Martens** understood that essentially, there was no Traffic Study to even include in the materials packet.

**Ms. Schroeder** asked how DKS got 5 trips with six townhomes and at least six people living in them.

**Mr. Le** replied the industry standards for number of trips generated by single-family home/multi-family development was .85 trips per unit for each unit within the multi-family development. Even though there were six units, the total trip traffic generated by the six-unit development totaled five trips.

**Ms. Schroeder** understood that DKS had taken the usual 25-unit measure, applied it to the six units in the proposed development, and come up with a number of trips that was less than the minimum number of people that would be living there.

**Mr. Le** responded the number of people living in the units is not typically considered. DKS looked at the number of trips generated by the unit. Typically, not everyone in a household would leave the home in separate vehicles during Peak Hours. A trip was only applicable when a resident left in their car between the hours of 4 PM and 6 PM. That was the industry standard in determining number of trips during Peak Hours, the most impactful timeframe to the system during the day.

**Ms. Schroeder** asked why there was only one Peak Hour.

**Mr. Le** clarified there were AM Peak Hours, between 7 AM and 9AM, and PM Peak Hours between 4 PM and 6 PM, the times of day that generated the most congestion in the transportation system. Those were the two time periods during the day that a Traffic Study would look at to measure the number of trips and their impact to the system.

**Chair Nada** asked what the square footage was per unit.

**Mr. Le** responded the formula was not done by square footage as it was a multi-family residential development. Table 1 on Page 1 of the Traffic Memorandum (Page 118, Exhibit B1) showed how the number of trips was calculated. He did not know the square footage of the townhomes.

**Ms. Luxhoj** stated the total square footage for the six units was 10,620 sq ft, or approximately 1,500 to 1,600 sq ft per unit. She confirmed the townhomes were three-story and noted the plan sets contained floor plans for all floors.

**Chair Nada** explained that he was looking at the number of rooms because of parking concerns. He asked what the minimum Code parking requirement was for these homes.

**Ms. Luxhoj** replied the minimum parking requirement was one space per unit, so six would be required for the proposed development, but the Applicant was providing 12 parking spaces.

**Chair Nada** asked what the parking requirement was for a three-bedroom apartment.

**Mr. Pauly** noted that for certain types of multi-family apartments, the number of bedrooms was a factor, but he would have to research that.

**Chair Nada** replied one space was very little, and he believed that more were required for apartments. Perhaps when the Code was written, houses were larger and contained two-and-three-car garages and large driveways, but that was not the case with the proposed development.

**Ms. Luxhoj** explained that according to Section 4.1550 (.03) G, the standard for multiple-family dwelling units of nine or fewer units was one parking space per unit. The Code did not specify the square footage of the units. The requirement was solely based on the number of dwelling units in the development. She noted the minimum was one parking space per dwelling unit, but no maximum was provided.

**Chair Nada** stated that in his opinion, the Code should be changed to also reflect square footage. He asked if a garage and driveway counted as one parking space or two.

**Ms. Luxhoj** replied the Applicant had provided a garage in each of the units, which counted as six spaces, and four units had a driveway. The remaining two spaces were in the access easement on the property's entrance for a total of 12 spaces, double the required number.

**Chair Nada** confirmed with Staff that the Code did not address the size of dwelling units at all in determining number of parking spaces, only the number of dwelling units.

**Mr. Pauly** confirmed size of units was not specified.

**Nicole Hendrix** asked if Staff could speak to neighborhood infrastructure improvements, as neighbors had expressed concern that more housing units were being added, but infrastructure was not being addressed.

**Mr. Le** explained that for each development that came into the City, Staff looked at whether or not existing infrastructure was adequate to serve the new development.

- The location of the proposed application did not have curbs on the street, but did have a storm drainage pipe and a catch basin along the street. The proposed development was located at the north end of the street, which was at a lower point than existing properties to the south. The Applicant had also provided a stormwater facility on-site, so any runoff generated by the development would collect into the system on-site before being released into the City system. The development would not create any additional drainage impact to the existing neighborhood.

- The new development would connect to an existing 18-inch City pipe for sanitary and sewer along Magnolia Ave that went across to the apartment complex to the north of the subject property.
- Water pressure to the existing neighborhood would not change, as the records showed adequate water pressure at this location. The system had approximately 110 status psi, much higher than the normal requirement to adequately serve homes. Typically, a single-family home would have approximately 70 to 80 psi.

**Ms. Hendrix** asked if street and pedestrian infrastructure nearby was not triggered because of the review that was previously done and because the Applicant had satisfied the minimum site requirements.

**Mr. Le** responded that all new developers in the city were required to provide street frontage improvements if their development had frontage along a public street. Typically, the City would ask them to improve the pavement and install a curb and sidewalk for pedestrians. The current project had very limited frontage along Magnolia, and there was not really anything to be improved. For the existing street, Staff looked at pavement conditions, and they were adequate. He had also spoken with the Capital Improvement Program who agreed the pavement on the street in question was adequate, and therefore, the street was not scheduled for any pavement improvements in the next two years.

**Ms. Schroeder** asked for clarification regarding the neighbor meeting and how many neighbors attended.

**Ms. Luxhoj** clarified the City had received six emails and comment letters by the close of the public hearing comment period. Of those, only one individual who submitted a comment letter attended the neighborhood meeting held by the Applicant in October 2019. However, other people who had not submitted comments by letter or email had attended the meeting, including two members of the OTNA. She did not know why the other five people who had submitted comment letters had not attended. She deferred to the Applicant to address how well attended the neighborhood meeting was.

**Chair Nada** remembered that previous traffic studies had provided the level of service (LOS) rankings of nearby intersections, and he did not see one for the proposed development. He asked if there was one, noting he was curious about the ranking of the nearby intersection and whether the proposed development would impact the intersection.

**Mr. Le** explained the proposed development did not require a full Traffic Study because the project only generated about five vehicle trips. He had looked at the 2014 Subaru development traffic study, and the Wilsonville/Boones Ferry Rd intersection was rated at LOS D. He had also looked at the recent study done by DKS approximately two weeks ago, and Wilsonville Rd at Boones Ferry continued to function at LOS D, an acceptable service level for the City.

**Chair Nada** recalled discussion about another road project extending to Brown Rd and asked if that plan was still in the works.

**Mr. Le** stated the Brown Rd was a capital project in the 5-Year Capital Plan, which was handled by the City Capital Project Team and he believed it was in the very earliest stage. He had no particular status update on it, but he knew it had to be completed within five years. He clarified that the 5th to Kinsman Project was another project. It was in the final design stage and should start next year.

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

**Kegan Flanderka, Base Design + Architecture, 233 NE 28th Ave, Portland, OR** stated he was the lead architect on the project and was impressed with Ms. Luxhoj's presentation. Work had begun on the project just over a year ago with the property owner, who had worked with the City to understand the potential developability of the lot prior to its purchase. The property owner/client sought to put together a small, multi-family development with an emphasis on tenant amenities and a familial setting through the incorporation of two and three-bedroom units, in-facility parking, common areas, and private patios with the idea that the homes would function more like conventional townhomes and less like apartments.

- During the initial site feasibility and background research, the Applicant had looked at the site's zoning, and particular conditions and constraints around the site, and brought their findings to the client's attention as the site was quite particular due to overlapping zoning designations, site access requirement, and its location at the end of a residential cul-de-sac. The Applicant had gone through a series of iterations with the client as outlined in the Staff presentation. They had conducted a series of design and site analyses to understand how many units could be reasonably built on the lot and still maintain vehicular access, parking, and site amenities, and settled on a six-plex configuration.
- The Applicant had looked at a combination of styles, settling on a townhome typology. To achieve the desired density that was allowed on the site, as well as provide parking, the Applicant decided on three-story structures with below-structure parking. The Applicant had decided on a combination of solid massing orientation and free-standing, individual orientation, which also worked well with the Zoning Code and Old Town Overlay Zone requirements. While a multi-family zone, it was located in the middle of a Single-Family Residential Zone, and in an effort to be mindful of that and to limit the impact that a commercial development could have on site such as this one, the Applicant looked at different ways to break up the structures, deciding on a two-building configuration as a combination of scale, constructability, and cost. The orientation of the individual units to their adjacent units was an additional attempt to break down that scale and create a structure that appeared more residentially scaled in appearance.
- The decision to split the project into two structures was facilitated by the need for pedestrian access to the rear of the facility. The client wanted to provide on-site amenities for tenants, such as common play/workout facilities, private balconies, and common cook and picnicking areas to create a familial setting. That area was then also utilized to function

as both a pedestrian access point and stormwater facility, which resulted in less disturbance to the additional site area and enabled better tenant utilization.

- In August 2019, the Applicant had a pre-application meeting with the City and worked with both the Planning Department and his company's site development engineer to understand the site ramifications of their masking strategy, density, and unique access issues as technically the site had no right-of-way frontage. The client had worked with the adjacent property owner to the north to ensure they were comfortable with what the Applicant was providing.
- Subsequently, the Applicant held a meeting with neighbors on October 29. The applicant had worked with two members of the Neighborhood Association, Monica Keenan and Doug Muench, to provide public notice of the meeting. There were a handful of people in attendance at the meeting, and Ms. Keenan had also contacted several neighbors in an attempt to elicit additional comments. A combination of density, traffic, site access, and privacy issues were discussed at the meeting. The Applicant explained zoning requirements and ultimately adjusted the drive aisle slightly to provide two additional parking spaces at the entry point resulting in double the required parking minimum. Due to neighbor concerns, the Applicant adjusted the direction of the orientation of the two buildings to ensure the predominant view windows on the most western unit were not oriented towards that neighbor's yard. Those were the only adjustments made based on the October meeting.
- The Applicant had since worked through several iterations with Mr. Pauly and Ms. Luxhoj to design the package before the DRB this evening. Throughout that process, Staff's concerns were similar to those echoed by neighbors such as building height, orientation, and density. The Applicant had tried to create a building that achieved the desired density but also provided a tapering down from the adjacent structures to the north, as they understood the challenges from a visibility and access standpoint, and tried to utilize the project as a more residentially-scaled transitional piece between the commercial and multi-family buildings to the north.
  - The other major component the Applicant discussed with Staff was the design standards of the Old Town Overlay Zone. Although the site was zoned PDC and multi-family, it sat within the Old Town Overlay Zone. The Applicant had worked to modify the design aesthetics and language to fit within the Residential Design Standards, the Old Town Design Guidelines, and to blend in with the immediately adjacent properties along the Old Town neighborhood with features such as covered entryways, exposed gable facades, a multitude of window sizes, and similar materials. They also used more durable materials wherever possible while still maintaining a similar character to adjacent homes, which resulted in a multi-family structure that had been manipulated as much as possible to retain some residential scale and to provide a transitional buffer between the larger commercial complexes along Bailey and the structures to the south of the site.

**Ms. Schroeder** confirmed the Applicant had only held one community meeting and asked why another meeting had not been held if attendance was low at the first meeting.

**Mr. Flanderka** responded that it was a voluntary activity that had required a fair amount of work to put together. The Applicant had to pay for the facility in which the meeting was held. Several weeks' notice had been given; they had worked with the Neighborhood Association, and believed at that time that they had achieved the desired turnout. He confirmed the meeting was held on October 29<sup>th</sup> at approximately 6 PM, but was unsure as to the day of the week.

**Ms. Schroeder** noted the Applicant had held one meeting at a time when one group of people could meet but not a subsequent meeting at a different time that might have attracted more people.

**Mr. Flanderka** explained that prior to scheduling the meeting, the Applicant had reached out to Ms. Keenan and Mr. Muench to ascertain an appropriate time to conduct the meeting, and they suggested 6 PM as they believed attendance would be greatest at that time. The Applicant then secured a local venue for the meeting with several weeks' notice. Ms. Keenan also contacted neighbors to ensure comments were available.

**Ms. Schroeder** asked if the City had certain notice requirements, such as within a certain radius of a development site.

**Mr. Pauly** confirmed there were and it was 250 ft.

**Ms. Schroeder** asked if each resident was notified of the meeting.

**Mr. Flanderka** believed they were but did not know for sure.

**Ms. Schroeder** asked if there was an attendance sheet for the October meeting.

**Mr. Pauly** clarified that meetings were encouraged so that Applicants could get a feel for a neighborhood and neighbor feedback, but there was no City requirement.

**Mr. O'Neil** said he believed that community meetings were very helpful, and he was glad they were conducted, but it was not required under the law that neighbors attend. Some neighbors might have thought they were well represented by the neighbors who did attend, as he knew there were some very active people in that area. He believed the comments made by Staff that suggested that only one neighbor attended the October meeting, and now there were comments, was improper because so long as those comments were submitted to the DRB for review and were timely, they should be heard, and those neighbors should be allowed to speak. He believed there was gamesmanship afoot and he did not think that was appropriate.

**Mr. Pauly** interjected that there was no gamesmanship. Staff was simply informing the DRB and everyone had a right to speak and could.

**Mr. O'Neil** reiterated that it was important that everyone be heard. Neighbors were present this evening and emails had been received. He appreciated the Applicant's presentation, the fact that they had conducted a meeting, and the citizens attending tonight's meeting to be heard.

**Mr. Pauly** explained that when Ms. Luxhoj discussed how many people had attended the meeting it was simply a statistic and in no way a judgment on participation. She was simply sharing information, and Staff was in no way discouraging people from attending tonight's meeting to share new evidence.

**Mr. O'Neil** commented he did not believe it was relevant at all and should not have been brought up.

**Chair Nada** called for public testimony in favor of, opposed and neutral to the application, noting testimony would be limited to three minutes.

**Monica Keenan, 9460 SW 4th St, Wilsonville, Old Town** wanted to address some of the questions DRB members had had earlier in the meeting.

- She reminded the DRB that the Old Town Development Plan was clear that sidewalks and curbs were not wanted and that the issue had been discussed for over a decade.
- For neighborhood outreach, flyers had been printed out and they had gone door to door or otherwise reached out to ensure that everyone in the neighborhood had been notified. The evening of the meeting was a busy sports night, and the neighborhood had spent over a decade in meetings developing the Old Town Plan, so there could be meeting fatigue although there was still a high level of interest in participation.
- She thanked the DRB for the parking conversation and agreed the Code should be changed to require more than one spot per unit.
- She had participated as a neighborhood representative in the development of the Old Town Plan and as a member of the steering committee for the Old Town Architectural Standards. Regarding tonight's proposed development, she wanted to support the comments she knew her neighbors would make as they had broken up their testimony amongst themselves so as not to be repetitive.
- Most of their testimony regarding the building height of the proposed structure exceeding the 28 ft two-story standard was adopted in Ordinance No. 810, which Mr. Pauly had explained did not necessarily apply to this lot but neighbors believed it should be given consideration. It was requested that the structures be reduced in height to be more suitable to surrounding homes.
- She asked that the DRB require the developer to revise their design to meet one of the design styles adopted by Old Town. The proposed design, supporting documentation, and Staff report used old language to support the modern interpretation, which was a design style the Old Town Plan did not include. She read an excerpt from page 51 of the Staff report, Finding B41, Building Compatibility, "According to the Applicant's materials, the design team's ambition was to create a modern interpretation of the traditional Main Street reflecting the architectural style of Willamette Valley during the period from 1880 to 1930." That wording had been taken from the old Overlay Zone language. She read another

excerpt from page 12 of the Staff report under Architecture, stating, "Neighborhood residents expressed their appreciation of the Applicant's effort to introduce an architectural style that emulates the design guidelines of the Wilsonville Old Town Stable Family Design Standards. They also expressed several times that they found the buildings to be aesthetically pleasing. As discussed earlier in this section, the Applicant responded to neighbor concerns by designing the townhomes to emulate the requirements of the Old Town Overlay Zone, but with a modern interpretation that meshes with the historical context and aesthetic of the surrounding neighborhood," however, this still referenced an old standard.

- She had attended the Applicant's October 2019 meeting and recalled that those in attendance . . . [inaudible]. The consensus at the October 2019 meeting was that the project as proposed looked more like an infill project from Portland rather than something designed for Old Town Wilsonville. The disconnection from the neighborhood was also illustrated with the lack of parking as it was clear that the surrounding street lacked the ability for overflow or guest parking. A follow-up email had been sent to Cait Sylvain at Base Design Architecture after the October 2019 meeting, and after a discussion with neighbors, to advise them of building height concerns. At the October 2019 meeting, the Applicant had referenced a four-story structure that was a block away, not next door to the site as the Applicant had said it was, and as such the proposed three-story homes would not fit in with the other homes at the end of the street.
- In the email, the neighbors had also requested that the Applicant look at the architectural PDF standards developed for the neighborhood and design something without a modern interpretation that used Old Town Standards. Old Town residents had spent many years developing their plan. She asked the Applicant to support that time spent by making revisions to the proposed project that would support the Old Town Plan and while doing so to remember scale as their criteria as the project was not a buffer, was not in scale with the neighborhood, and the schematic in the materials packet that looked north on Magnolia brilliantly illustrated its size and incongruity with the neighborhood.

**Ms. Hendrix** said she appreciated the clarification on the sidewalks.

**Steve Van Wechel, 30730 SW Magnolia, Wilsonville, OR** stated he had lived in Old Town for 33 years. He had been the first president of the Old Town Neighborhood Historical Association, was the current president of the Boones Ferry Historical Society, and a member of the City of Wilsonville Arts, Culture, and Heritage Committee. As he only had three minutes, he would not have time to comment on the design of the tin roofs and whether or not they related to an 1880-1900 type design. The additional traffic, on top of the 4,000 cars forced upon them over on Boones Ferry Rd, landscaping, materials, parking, and the transition between two-story to one-story becoming three-story made no sense.

- The entire project was based on zoning from a plan that was nearly 50 years old. When he had moved to Wilsonville, there were 4,700 people; there were now 25,000. Things had changed and the Plan needed to change. The zoning for the subject lot stank and if it had been done appropriately, the neighborhood would not be testifying tonight.



- From a historical perspective, the City had worked with the Neighborhood Association for 18 months to put together the Neighborhood Plan along with a Plan book that gave samples of what would be appropriate in the neighborhood. The massing of a three-story building did not fit anywhere in Old Town or the Plan. There was nothing suggested in the Old Town Overlay Zone that would allow a three-story building, let alone two of them. While paint colors and materials could be discussed, it did not change the fact that a three-story building did not fit the Old Town Plan and did not work in the area.
- The Old Town Neighborhood Association was trying to maintain the historic integrity of the original area of Wilsonville, as they were the only part of Wilsonville that could claim being the original area. Subsequently, they were trying to maintain the large lots, open space, and streets without curbs or gutters. The proposed plan went against all of that.

**Mary Elizabeth Harper** read the following statement from neighbors Sharon and James Olson into the record:

"We have been married for 34 years and residents of SW Magnolia Ave for the past 30 years and have raised our family here. I think I echo the concerns of most residents in expressing unease over what appears to be an inequitable response to justified concerns over the Magnolia Townhouse Project. Specifically, we, as residents, are particularly struck by the Planning Division's conditions of acceptance of the Stage II Final Plan that lists a plethora of detailed provisions for a bike rack, plants, ground cover, solvents, landscaping, etc., but none that deal with the major concerns regarding compliance, livability, safety, and needs of all current residents directly impacted by this proposal.

As homeowners and residents, who have a great deal invested in our families, our homes, our community, and one another, we would greatly appreciate you listening to our concerns, not only based on the merits, but also as though this were happening to you in your neighborhood and the negative impact it would have in your life, your family, and your investment. One example of inequity that always appears as a note stands out in my mind, and that is the language of page 13 of the DRB review under Discussion Points wherein it is noted, and I quote, 'The limited site access will be challenging when development occurs. Careful attention will need to be paid to the timing of construction traffic and hours during which noise is generated to mitigate and minimize impacts on residents of the neighboring properties and along SW Magnolia Ave and SW 5th St. This Applicant is aware of this concern and committed to being respectful during the construction process.'

My question is, where are the specific details and conditions of how the Applicant will be aware and respectful of noise and hours of construction during the construction process if this monstrosity project is forced upon us? More importantly, why is this not addressed in the conditions of acceptance on behalf of residents whose lives will be significantly impacted? With all due respect, I feel that the language would be similar to a homeowner responding in a general manner to the City's request to pay taxes by saying we are aware of your concern, but be as respectful as that, with no actual commitment or specifics."

- She stated that there was more to her neighbors' statement but there was not enough time to read it.

**Mary Elizabeth Harper, 30605 SW Magnolia Ave, Wilsonville, OR** stated that she had one of the few two-story homes in the area and her house was more than 100 years old and part of the historic overview of Old Town. The original owner had owned most of the land surrounding the home, and over time, as he sold off the land, he milled the wood from the trees to make the floors of her home. She wanted the antiquity and history of her 100-year-old home preserved and did not want a three-story monstrosity that would be invasive to her and her neighbors' privacy. Her home was representative of Old Town.

**Douglas Muench, 30950 SW Fir, Wilsonville, OR** stated he had lived at his address for 18 years. He was excited for new construction to Old Town that respected the neighborhood. He was a staunch proponent of property rights, adding it was great that people could invest and build projects, but he had two primary concerns with the proposed development. He agreed with previous comments regarding scale and massing in that the proposed development was out of place. Although it was presented as a transition, it was not. The Boones Ferry Apartments were already enough of a transition and he felt sorry for neighbors who lived on that street. There were ten units near Fir Ave that were wrapping up construction and it was very invasive. He believed it might look good once trees were installed, but it still changed the whole character of the neighborhood. The proposed project on Magnolia would invade neighbors' privacy and completely change their view.

- His other primary concern was parking. The existing neighborhood lots in question were not actually very big, but deep and narrow with narrow street frontage. Consequently, after work hours, there was no parking. It was all taken. The City's allowance for one parking space regardless of a dwelling's square footage was not reasonable. Most people did not park in their garages and the driveways of the neighborhood homes were small. The Applicant had crammed two parking spaces in the complex entry. Tenants' visitors would try to park on Magnolia. He asked that more consideration be given to parking as he believed it was the biggest problem.

**Sandi Lawrence, 30555 SW Magnolia, Wilsonville, OR** explained she would have loved to have attended the October 2019 meeting but was on vacation. They had owned their home for 27 years and it was adjacent to the subject property. She pointed out that the Plan showed her home as a two-story single-family home, but it was a one-story bungalow home built in 1920. She directed Board members to her written statement submitted August 20 and included in a referenced document beginning on page 66. Specifically, she asked that the building height on the proposed townhomes be reduced. It was not to scale with Old Town, surrounding properties, or with City Ordinance 810, and that included her property as an affected property in that document. The proposed development was being pushed as a part of Square 76, all that went with that, and was being promoted as a transitional buffer between Old Town and the commercial development in Square 76 and beyond.

- When the nearby apartments were to be built, the owner of the property did not want to sell her single-family home and lot to the developers and they built it without her lot included.

The subject property did not access or front either Bailey St or Boones Ferry Rd. Magnolia Ave was the only access and that was fully within the Old Town neighborhood. The Architectural Plan for Old Town specifically stated two-story buildings with a maximum height of 28 ft, which had been created to support the scale and massing of Old Town. The proposed development was a part of Old Town because its only access was on a single-family home street in Old Town and should follow Old Town guidelines.

- The apartments to the north that bordered the subject property were two stories high and the surrounding homes on all other sides were single story. She asked how a three-story building with Scandinavian design could be considered a transition from single-family homes with Old Town design standards. The development as proposed would overwhelm the surrounding properties rather than blending in. She asked Board members to study the photos on page 12 of Exhibit A1 as evidence that the proposed building would neither blend nor be a transition. The focus should shift from trying to be a part of Fred Meyer and instead work to blend in with Old Town and the Overlay that was developed by the neighborhood in conjunction with the City of Wilsonville to protect the special historical part of Wilsonville.
- She concluded that she agreed with all previous comments.

**Alexandria Garfield, 30625 SW Magnolia Ave, Wilsonville, OR** stated that she agreed with those who testified so far and thanked them for their testimony.

**Rose Case, 9150 SW 4th St, Wilsonville, OR,** stated she currently lived next door to the two-story, 10-plex and that building already was overwhelming the rest of the homes around it. She had been an active participant in the conservation of Old Town since moving there in 1987, and a constant pain in the City's side. She had a background in archaeology and history, and when she arrived in Old Town Wilsonville, she knew it was a piece of the history and culture of the area and that it needed to be preserved. She had been on the West Side Task Force and part of the Old Town Overlay. Prior to that, she had fought the City over a new sewage treatment plant in Old Town that would have caused malodors all the way to Wilsonville Rd and across I-5 to the park.

- She agreed with all previous comments. She and her neighbors had a problem with the size of the structure. She had put her heart into the Old Town community, and it deserved to be preserved. At one point, she had brought in the State Archeologist, who stated that Old Town was the only remainder of the architectural history of transportation in Oregon as they had started with horse and buggy and on to steamboat, and then to railroad, to 1958 when the bridge came in and I-5 moved from Boones Ferry Rd to its present location. Up until that point, Wilsonville had been the transportation hub of the Willamette Valley. She was giving her heart to the Board to push along the preservation of what the city had, something the City needed to understand and embrace because she did not believe it did.

**Chair Nada** asked Ms. Case if she had been aware of the October 2019 meeting.

**Ms. Case** replied that at the time of the meeting, she was fighting the regular flu and so did not attend. She appreciated her fellow citizens on the Board and that they were listening.

**Shelly Mendoza, 30595 SW Magnolia Ave, Wilsonville, OR** stated she had lived at her current address approximately six years and was unable to attend the October meeting because she commuted to and from Salem, and often was not home until later in the evening. She agreed with all of the previous comments from her neighbors and had met with them on the previous Sunday where they shared concerns and ideas. She had had concerns about water pressure, but since that had already been addressed, she added that some of the main things that attracted her to Old Town was how quiet the neighborhood was and how beautiful and historic the community buildings were. She lived in a two-story home, but was still concerned about the mass and space of the new development.

**Chair Nada** asked Ms. Mendoza if she was aware of the meeting in October 2019.

**Ms. Mendoza** replied that she could not remember if she was aware of it or not. She remembered receiving notices about the bridge development and was unsure if perhaps she was conflating notice for the bridge development with the current proposed development.

**Chair Nada** called for the Applicant's rebuttal.

**Mr. Flanderka** stated he had no rebuttal, but was happy to answer questions.

**Ms. Hendrix** asked if there would be street signage that indicated no visitor parking.

**Mr. Pauly** noted it was a very rural street with no such signage.

**Mr. Le** added that per the fire department, no parking was allowed in the drive aisle.

**Chair Nada** confirmed there were no further questions from the Board and closed the public hearing at 8:51 pm.

**Chair Nada** called for a brief recess and reconvened the meeting at 9:00 pm.

**Richard Martens moved to approve Resolution No. 382 with the Staff report as amended to correct Finding A29 on Page 29 of 58 to accurately reflect the nearest transit stop location. Nicole Hendrix seconded the motion.**

**Mr. O'Neil** said he appreciated Ms. Keenan's and Ms. Harper's presentation this evening. They were articulate, prepared and represented the community as a whole, even those who could not attend the October 2019 meeting. He found it telling that neither the City nor the Applicant presented any rebuttal evidence, which spoke volumes about the organization of the community when they presented their concerns. The presentation by the Old Town community had been long-standing. They articulate well. They try to work with the City, and it was

obvious to him that the current proposal had failed and there should be further discussion and consideration of the community.

**Ms. Hendrix** agreed that the proposed building looked out of place, but also understood that the Board had to follow whether or not a proposed project met Code requirements. She was conflicted because objectively, it met the standards but felt there was a bigger picture.

**Ms. Schroeder** stated she agreed with her colleagues' comments. Based on remarks from the community, it appeared that the proposed development did not address their concerns at all as the proposed development seemed to violate the two-story, 28-ft condition that was part of the Old Town Plan. She was unsure how the proposed development fit into that Plan, but could tell that it would not be well-received. Additionally, she was concerned that it would affect the quality of the neighborhood, but understood Mr. Pauly's comments at the beginning of the meeting.

**Mr. Martens** was concerned about how much latitude the DRB had. He agreed that the proposed development might not match the surrounding neighborhood, particularly to the south. However, the property was zoned for multi-family, had been vacant for at least ten years, and a developer had acquired it and had proposed a building it was zoned for. Therefore, he was concerned about a no vote because it met the Code and zoning requirements, and it was not the role of the DRB to vote no because a project was disliked. Their role was to determine whether or not a project fit within Plan constraints as laid out by the City.

**Ms. Schroeder** stated she agreed with Mr. Martens that a developer had the right to develop land as it was zoned. However, what she had heard from the community was that if the Applicant had proposed a two-story, 28-ft high building, had applied creativity to allow for visitor parking, etc., and perhaps met more often with the community, that neighbors could have gotten behind the plan. Additionally, neighbors hated the modern design. The developer did not seem to care about the neighborhood.

**Mr. O'Neil** echoed Ms. Schroeder's concerns and added that the Old Town community had had the Subaru dealership go in, a very large project, but for that project the Applicant had taken the time to understand the sensitivities of the neighborhood via several meetings. Given the historic concerns raised by the Old Town community, the proposed development warranted more meetings, thoughtfulness, and effort. He agreed that neither the City nor the developer demonstrated enough effort, and because they failed to present any rebuttal testimony, as an adjudicator, he found that they failed to make their case.

**Chair Nada** noted that he observed a deep disconnect between City Code, the planning, and what the neighbors wanted. The Parking Code appeared very outdated and written when home lots were quarter-to-half-acre in size. Today, homes were jammed onto small lots which impacted parking. He believed one community meeting was not sufficient and hoped for more communication between the Applicant, the City, and neighbors. Although he did not like the Code as written, especially the Parking Code, he understood the DRB was bound by it. He also

wondered what the point of public comment was if the DRB had to decide on a project strictly based on whether or not that project met Code requirements. He trusted the Staff to present accurate materials that fit within Code parameters to the DRB for review. He believed the Applicant should have spent more time with the neighbors. He agreed with Mr. Martens that the site was planned and zoned for a project, such as the one proposed. He understood it was not possible to make everyone happy, but did not think sufficient effort had been done in this case. He reiterated that the Applicant should have spent more time communicating with neighbors as it would have been a much easier process. He understood it was tough as the lot was very small. He believed the minimum number made no sense, as six units on such a small lot was ridiculous and left no space for anything else.

**Ms. Schroeder** stated that the number of people at the October 2019 meeting was completely inadequate. When she was a developer, she always had a sign-in sheet at meetings and always knew exactly how many people had attended.

**Mr. O'Neil** stated that he became concerned when a developer put Staff in the position to advocate for a development, which he believed happened more often than it should. It was the developer's obligation to follow through, establish the relationships, and present their case.

**Chair Nada** asked what recommendations the DRB wanted to provide to the Applicant and Staff in the event the application was not approved.

**Barbara Jacobson, City Attorney**, confirmed the motion and second on the floor needed addressed and if the motion failed, another motion could be made.

**The motion failed 1 to 4 with Richard Martens in favor and Ellie Schroeder, Shawn O'Neil, Nicole Hendrix, and Chair Nada opposed.**

**Mr. Pauly** explained the Board could continue the hearing to the next meeting, leave the record open, and advise Staff what to bring back, such as specific criteria the Board believed was lacking. He clarified that the height in the document did not apply to the proposed application because it only applied when approving building permits. A request for a single-family or duplex would not go to the Board, only to the Building Division where Staff checked it against the Pattern Book and either approved it or not. The Pattern Book did not apply to projects that came before the Board. Some Applicants in the past had used the Pattern Book as a precedent or for ideas for Old Town design, but it only actually applied for the issuance of a building permit for a single-family home, not for multi-family projects that went before the DRB.

- He confirmed there was time before a final decision needed to be made. The 120-day land use clock would expire on October 23. If the matter was continued to the September 23 DRB B meeting, that would allow time for the proposal to go up to Council. There was enough time for the Board to provide Staff direction on what Staff should provide at the next meeting. Alternatively, the Board could note the precise criteria where the proposal fell short as grounds for denial and pass a resolution to deny the proposal.

**Ms. Jacobson** added if the proposal was denied, it would be good if the DRB gave reasons for the denial, but if they chose not to, the denial would still stand. If the denial was appealed to City Council with no reasons given, Council would only see the denial, but no reasons why. However, if the DRB believed there was more that the Applicant and Staff could do to alleviate neighbors' concerns, it could be continued to the September 23 meeting and the DRB could specify the areas of concern that required more information.

**Chair Nada** recommended that the Applicant set up a meeting with the neighbors.

**Ms. Jacobson** clarified that although it was a good idea to conduct another meeting, it was not required by City Code. If the developer chose to have another meeting, it would provide an opportunity to address some remaining questions and perhaps, the Board would feel more comfortable about approving the application as presented or with modifications. She reiterated that the DRB could continue the matter to allow the developer and Staff to work on it further or deny it and let it go to the next step.

**Mr. Pauly** stated it would be helpful for Council to have reasons for the denial. It would be more defensible. Otherwise, if Council had questions, they would simply remand it back to DRB for further consideration, as Staff had seen done in the past.

**Chair Nada** recommended the developer conduct another meeting with neighbors and address the proposed height of the building. He understood that did not mean the neighborhood would get everything it wanted, but he hoped for some middle ground to be attained. That would make him more comfortable in approving the application.

**Mr. O'Neil** asked Mr. Pauly if he had said earlier that the height issue was not before the DRB.

**Mr. Pauly** clarified that the height issue was very much before the DRB because height as a concept was clear and objective. The question was which maximum height limit applied to the project.

**Mr. O'Neil** stated he preferred to continue Resolution 382 to the next DRB regular meeting to allow the developer to reach out to the community and address the issues, especially height. He asked that City Staff assist with that so the neighbors could be heard.

**Ms. Jacobson** confirmed that Mr. O'Neil wished to continue and leave the record open. She also confirmed the Board wanted clarification on height requirements and to see the developer reach out to community one more time. She asked if there were other things the Board wanted clarification on.

**Mr. O'Neil** noted that if Ms. Jacobson was stating that the Applicant had no obligation whatsoever to meet with the community, they would be right back where they were again.

**Ms. Jacobson** replied that Mr. O'Neil could include another meeting recommendation as a part of his motion. Although there was no legal requirement for the developer to do so, it could give them some guidance. She asked if Mr. O'Neil had any other concerns based on tonight's presentation and testimony that he would like Staff to follow-up on, including and besides building height.

**Mr. O'Neil** responded that he had parking and traffic concerns.

**Ms. Hendrix** noted there were questions around the building design and Old Town standards and she wanted clarification on those.

**Shawn O'Neil moved to continue Resolution No. 382 to September 28, 2020 date certain, leaving the record open to encourage the Applicant to work with the neighborhood to discuss issues of height, design, parking, and traffic.**

**Mr. Pauly** noted that the DRB could follow-up after the meeting with further clarification because each concern listed was a clear and objective criterion. Staff understood the preference, but asked the DRB what additional guidance they had or wanted clarified.

**Mr. O'Neil** stated his motion was based on the Applicant's lack of effort to work with the community on getting the community's input incorporated into the project. He appreciated Staff's work, but believed the onus now fell upon the Applicant between now and the next meeting.

**Chair Nada** stated that if he understood correctly, there was not a clear yes or no answer at present. He said he would be comfortable voting yes if he saw the Applicant go the extra mile and try to reach out again and attempt to reach a compromise.

**Ms. Schroeder seconded the motion, which passed unanimously.**

**Mr. Pauly** confirmed the proposal would be re-addressed at the September 28 meeting and reminded everyone that there was no requirement that the Applicant meet again with neighbors. It was a suggestion only and up to the Applicant.

## **VII. Board Member Communications:**

### **A. Results of the August 10, 2020 DRB Panel A meeting**

**Daniel Pauly, Planning Manager**, highlighted the two items reviewed by DRB Panel A, noting both had been continued to the Board's next meeting.

### **B. Recent City Council Action Minutes**

There were no comments.

The DRB proceeded to Agenda Item VIII.B Town Center Loop Safety at this time.



## VIII. Staff Communications

### A. Change of Use and New Tenants

**Daniel Pauly, Planning Manager**, responded to discussion regarding the bowling alley changing to a grocery store by reminding the DRB that when they approved a development, they approved a use, not a specific tenant. Tenants could change over time with minimal additional City review, an approach typical across jurisdictions. There were four use categories: legal conforming, legal non-conforming, conditionally allowed, or prohibited. Legal conforming matched the zone, was allowed at present, and allowed when approved. Legally non-conforming was allowed when it was approved, but not allowed at present. Conditional use was a conditional use permit, and prohibited, could not be approved at all, within the subject alone.

- These categories were addressed in the Development Code in Section 4.141, Change of Use, where two scenarios were discussed. The first was a use that was not specifically approved through the Plan Development process, and the second was a use that was specifically approved. An example of the first scenario would be a mini, multi-tenant commercial center such as a strip mall where the mall was approved before any individual tenants were known. An example of the second scenario would be the Subaru dealership, which was approved as a specific car dealership. In the first scenario, any use permitted in the zone could go into that tenant space and remain a legal conforming use, whether it was a Fred Meyer, a bank, or a dental office. In the second scenario, if the Subaru closed and the building was to be used by another tenant, as long as the tenant did not exceed the parking or traffic typical of uses in the zone, it would be allowed.
- The Stage II Final Plan, by definition, was anything consistent with that Plan was a legal conforming use, even if the underlying zoning was different. An example was the Charbonneau development, where a few single-family subdivisions were built in an area zoned commercial, but approved as residential in the Stage II Final Plan. Stage II was critical, and any use allowed under that Stage II Final Plan, without an expiration date, was allowed to continue. The Smart Food Service proposal was a Stage II approval. Whether or not Stage II approvals moved into a non-conforming status was being explored by the Staff and City, especially while they were looking at possibly updating some residential standards that had been the same for many years. For conditional use circumstances, the conditions would still have to be met.
- Because the allowance for a change of use was broad and limited without very much additional land use review, it was important for the Board, when looking at a new development, to consider the lifecycle of the building and development, and potential changes over time, particularly when making decisions about commercial and industrial projects. When there was a change of use, there was the potential for a traffic study, administratively, to see whether there were additional STCs that were owed, but it was not something that typically went before the Board.

**Ellie Schroeder** remembered Mr. Pauly stating at the previous meeting that the Board must not consider the individual tenant to approve or not. However, a Burger King, for example, would not cause traffic backup, whereas an In and Out Burger would. She asked if she was correct in

assuming that the DRB could not take into consideration the additional traffic that would be generated by an In and Out Burger because the Code currently prohibited that.

**Mr. Pauly** confirmed that was correct, especially when the use was almost precisely the same even though one chain might be more popular than another, and the system did not reflect that. Grand openings in particular were usually very busy.

**Ms. Schroeder** stated she had been to In and Out Burgers in other states that had been open for years, and they were still backed up. She did not understand that part of the Wilsonville City Code, which she believed belied the problems that could be caused by a similar tenant with a similar use, but that was more popular. It was naïve because popularity did matter.

**Khoi Le, Development Engineering Manager** responded that when a traffic study was done, they normally looked at what the common denominator was for obligatory trip generations. When the manual was put together, research was done on a number of burger restaurants, and that was how the traffic data was collected, and a particular number arrived at for that particular use. For example, a burger restaurant would be observed, and data collected from various chains, and DKS would determine how many peak hour trips a burger restaurant would generate based on that information. If a new burger restaurant was proposed, the traffic engineer would take the previous information gathered for burger restaurants and apply it to the new proposal. If one burger restaurant vacated a building and another one moved in, there was no need for a new traffic study. The manual the traffic engineers used was updated every few years. If a certain use became problematic, the traffic engineer would take that into consideration and possibly increase the number. In atypical use cases that were not outlined in the manual, the City required the applicant collect the data from the actual store. Dutch Bros. was a recent example of that, as the City had asked Dutch Bros. to collect data from other Dutch Bros. outlets in nearby cities.

**Mr. O'Neil** stated Mr. Le comments highlighted why he believed that when a Starbuck's went into the old Arby's location, they should have been required to conduct a traffic study with respect to their other locations, because the crosswalk at the subject Starbuck's was dangerous even back when it was Arby's. He had alerted the City when the Starbuck's was proposed that the crosswalk should be fixed. The yellow crosswalk signs were put in because of the concerns he had raised, but those were temporary fixes. If an In and Out Burger was put in, it made sense to do a survey of other In and Out Burgers statewide to assess their traffic patterns and issues. He suggested that the City revamp portions of the City Code that addressed pedestrian crosswalks and traffic control.

**Mr. Le** agreed with Mr. O'Neil. When people looked at an intersection, there was a perception that people were driving really fast and it was dangerous. The City would also conduct a fact-check if a complaint was received from a concerned citizen regarding speeding or dangerous intersections. He had looked at the most recent traffic study conducted by DKS for crashes and injuries in Wilsonville, and this particular intersection had none. Whenever Staff was contacted by concerned citizens, DRB Board members, or City Council members about certain intersections

or issues, they checked into the data. If the data backed up the concerns, they would address it. Initially Dutch Bros. had fought the City's request to install the protective crosswalk, but the City was able to show them data collected from other Dutch Bros. outlets that showed evidence that warranted a new crosswalk.

**Chair Nada** asked if it was not a Dutch Bros, but a small coffee shop, and ownership changed after approval, would it go through the same process and analysis.

**Mr. Le** explained that every time there was a change of use that required a land use application, Staff would ask that a traffic study be conducted. If the change did not trigger a land use application, the only time a traffic study might be required was during tenant improvement during the building permit process. For example, if a developer applied for a land use permit to build a 30,000 sq ft warehouse that was comprised of 10,000 sq ft of warehouse space, 10,000 sq ft of manufacturing space, and 10,000 sq ft of office space, a traffic study would have been triggered. If that tenant subsequently moved out and another business came in and changed up how the square footage was used, they might only need a building permit. If it was routed to other departments, especially the Engineering Department, the change in square footage use would trigger a traffic report to determine any traffic changes between the new and previous uses. Otherwise, there was no mechanism for the City to conduct a traffic report.

**Chair Nada** understood that if a non-chain burger restaurant vacated a location and an In and Out Burger moved in, it would pass under the radar, no changes would be made, and neither the DRB nor City Council would have any say.

**Mr. O'Neil** explained that Arby's had been dead for years, then a Starbuck's went into that location, and there was no hearing on that, so he believed Chair Nada was correct. He further explained that the DRB would not have an opportunity to hear it. As far as he knew, the City would still have to publicize the business change, but there was no hearing.

**Chair Nada** asked if the City had any sort of say in these matters at all.

**Mr. O'Neil** read an email he received from then Planning Director Chris Neamtzu:

"Hello, Sean. Starbuck's proposed minor modifications to the building and landscaping that were processed and made through a Class II Administrative Review. The majority of the building remains the same with just repainting. The site was originally approved as a fast-food drive-thru. Starbuck's is an outright permitted use at the site, so the scope of this review was only exterior upgrades. The upgrades to the building and landscaping are much needed as the building was becoming an eyesore. Public notification consistent with City Code was provided to the surrounding property owners on May 9," Although, he noted that as a tenant, he did not get any post notices, "and timelines for City action. This was the final decision replaced in three community locations." He concluded noting there was an opportunity to comment, it was published, but it was an informal process as opposed to going in front of the DRB.

**Mr. Pauly** noted that in that case, as well as with Black Bear Diner, for example, there were exterior changes to the building, so it went through review. One situation that caught the City by

surprise was when Lam's sold out to Safeway. All Safeway had to do was put up their sign. There was no City input, notice, or review. Safeway simply requested a sign permit.

**Mr. O'Neil** noted that when Black Bear Diner replaced Denny's, there was a DRB hearing.

**Mr. Pauly** explained that use was not discussed in that case, only architectural changes. It was a Site Design Review, the Stage II was not involved, all the bears were just being added.

**Ms. Schroeder** said that regarding the proposal for a grocery store to move into the old bowling alley location, she noted that the bowling alley had been there for 20 years, so at some point, a new use should trigger a review. Twenty years ago it worked. It might not work now. The Code should reflect that a review should be conducted after a certain period of time to determine if conditions were still similar and a previous approval still worked.

**Mr. Pauly** stated that Stage II approvals were good forever. This topic had come up previously when the Town Center Code was adopted to replace the PDCTC Code. At that point, Staff did not have a good solution, so it was not changed. However, Staff would be addressing the issue again within the scope of the Residential Code work that would be done over the next year. Perhaps if half the numerical standards for a zone changed, at that point all the Stage IIs in that zone would enter a non-conforming status. He had not gotten any guidance from the Planning Commission or City Council on the topic, but Staff would discuss it up with them within the next year.

**Chair Nada** believed that if a business changed, it should be an opportunity for a review and for it to go through the process again. Currently, there appeared to be a loophole in the Code such that if a similar business type moved into a location, the size and popularity of the previous business versus the new business was not addressed from a traffic standpoint or any other standpoint. He believed two points needed addressed. First, how far from a specific purpose has been approved for a building until it can go back again into the circle in terms of getting approved. And second, all loopholes should be closed so a new owner, especially a big chain, could not come in without even a traffic study being generated.

**Mr. O'Neil** noted that he appreciated Mr. Pauly and all of the Staff, but he had become pessimistic after six years on the Board because promises had been made that issues would be looked into and changes would be made and they were not. He was disillusioned with the City as a bureaucracy. Although Staff presented, in good faith, that an issue would be addressed and changed, it never happened. He believed all the concerns raised this evening were legitimate and should be addressed. He wondered if the City just waited it out until a Board member's term was up and then hoped whatever the issue was in question would be forgotten about and subsequently never changed. As a volunteer who tried to listen to the citizens, their concerns, and review these proposals, it was disappointing when the bureaucratic structure of the City did not make those changes.

**Mr. Pauly** said he appreciated Mr. O'Neil's comments. He noted that particular topic was part of a scope of a project that was actually funded and being worked on.

**Mr. Le** commented that he had worked for West Linn and Tigard for over a decade prior to Wilsonville, and traffic concerns associated with the use of a building was universal, especially number of trips. For example, if a developer wanted to build a shopping mall and wanted to pay a certain SDC for it based on the traffic data collected for a shopping center, the City could use that money for other infrastructure improvements around the city. For example, at some point the shopping mall could have a tenant that would create more traffic, in which case the City would ask the developer to pay more for that additional traffic. Conversely, a tenant could move in that generated a lot less traffic, in which case the developer might ask the City for a refund. He believed they needed to develop a leverage to determine when the need for additional information would be triggered.

The Board proceeded to Adjournment at this time.

#### B. Town Center Loop West Safety

This agenda item was addressed following Board Member Communications.

**Khoi Le, Development Engineering Manager**, stated when the traffic study was done for the Dutch Bros, DKS had looked into the suggestion to remove the crosswalk at Starbuck's and direct foot traffic to the more protective crosswalk that would be built as part of the Dutch Bros. development. A protective crosswalk was safer, and the new location away from the Town Center Lp intersection would help mitigate congestion and spillback into the intersection during peak hours. Once the protective crosswalk was installed, the existing striping in the crosswalk at Starbuck's would be removed. He confirmed the crosswalk would have a pushbutton to initiate flashing red and yellow lights to signal traffic to stop.

**Mr. O'Neil** asked if a 'No Crossing' sign would be erected at the site of the former Starbuck's crosswalk. He was concerned people would still unsafely cross there anyway and open the City up to liability.

**Mr. Le** responded that at all intersections pedestrians automatically had the right to cross whether it had lights or stripes or not, so the City could not mandate no crossing, but could erect signage guiding pedestrians to the next intersection with a safer crossing.

**Mr. O'Neil** reminded that on Wilsonville Rd, signage and a bar had gone up that said something like 'Not a Crosswalk', which did a great job deterring people from crossing there.

**Mr. Le** clarified he was thinking about a different kind of sign that would direct people to the safer crosswalk at the next intersection, but he was open to looking at other signs and discussing it with DKS to determine the best signage for the location.

**Mr. O'Neil** reiterated that the Starbuck's crosswalk was unsafe, and pedestrians should be directed to the new, safer crosswalk at Dutch Bros.

**Ms. Schroeder** stated that she agreed with Mr. O'Neil, as every effort should be made to keep pedestrians safe.

The Board returned to Agenda Item VIII.A Change of Use and New Tenants at this time.

**IX. Adjournment**

The meeting adjourned following Agenda Item VIII.A Change of Use and New Tenants at 10:12 p.m.

Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for  
Shelley White, Planning Administrative Assistant