

DEVELOPMENT REVIEW BOARD MEETING  
FEBRUARY 12, 2024  
6:30 PM

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Consent Agenda:

3. Approval of minutes of December 11, 2023 DRB  
Panel A meeting



**DEVELOPMENT REVIEW BOARD PANEL A  
VERBATIM MINUTES EXCERPT  
RESOLUTION No. 422-ParkWorks Industrial Building and Partition**

**December 11, 2023 at 6:30 PM  
Wilsonville City Hall & Remote Video Conferencing**

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**CALL TO ORDER**

A regular meeting of the Development Review Board Panel A was held at City Hall beginning at 6:30 p.m. on Monday, December 11, 2023. Chair Jean Svadlenka called the meeting to order at 6:30 p.m.

**CHAIR'S REMARKS**

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

**ROLL CALL**

Present for roll call were: Jean Svadlenka, Clark Hildum, Yara Alatawy, and Jordan Herron. Rob Candrian was absent.

Staff present: Daniel Pauly, Amanda Guile-Hinman, Miranda Bateschell, Kimberly Rybold, Stephanie Davidson, Amy Pepper, Georgia McAlister, Cindy Luxhoj, Zach Weigel, and Shelley White

**CITIZENS INPUT** – This is an opportunity for visitors to address the Development Review Board on items not on the agenda. There were no comments.

**CONSENT AGENDA**

1. Approval of Minutes of the August 14, 2023 DRB Panel A meeting

**Clark Hildum moved to approve the August 14, 2023 DRB Panel A meeting minutes as presented. Jordan Herron seconded the motion, which passed unanimously.**

**PUBLIC HEARINGS**

2. **Resolution No. 422. ParkWorks Industrial Building and Partition.** The applicant is requesting approval of a Stage I Preliminary Plan, Stage 2 Final Plan, Site Design Review, Type C Tree Removal Plan and Tentative Partition Plat for development of an industrial spec

building with accessory office space and associated road and site improvements at 26600 SW Parkway Avenue.

Case Files:

DB22-0009 ParkWorks Industrial Building and Partition

-Stage 1 Preliminary Plan (STG122-0007)

-Stage 2 Final Plan (STG222-0009)

-Site Design Review (SDR22-0009)

-Type C Tree Removal Plan (TPLN22-0007)

-Tentative Partition Plat (PART22-0002)

**Chair Svadlenka** called the public hearing to order at 6:36 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, ex parte contact, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

**Georgia McAlister, Associate Planner**, announced that the criteria applicable to the application were stated starting 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 and on the City's website.

Presentation references ParkWorks Industrial Spec Development PowerPoint (Exhibit A2)

[Verbatim transcript starts here 9:19]

**Ms. McAlister:** The project site, which is located at 26600 SW Parkway Ave, where the ParkWorks building is to be constructed and future Parcel 5 to be made, is highlighted in yellow on this slide. Highlighted in green is the existing Parkway Woods development and future Parcel 6. (Slide 2)

A significant portion of the northeast section of the existing parcel is within the Significant Resource Overlay Zone. Future Parcel 5 is currently in a greenfield with some parking – existing parking on the site. The site is designated as Industrial in the Comprehensive Plan, and land uses surrounding the property include Industrial to the north, to the east, and to the south, with the I-5 freeway to the west.

Proper noticing for the application was followed for this application. Notice was mailed to all property owners within 250 ft of the subject property and published in the newspaper. Additional posting was placed on the site and on the city's website. No public comments were received during the comment period for the project.

There are five requests before the DRB tonight for the ParkWorks application as listed on the slide, including Stage 1 Preliminary Plan, Stage 2 Final Plan, Site Design Review, Type C Tree Removal Plan, and Tentative Partition Plat. The requests are objective in nature as they involve verifying compliance with City Code.

The Stage 1 Preliminary Plan proposes a new 91,773 square ft industrial office and warehouse building, with parking and associated improvements for the ParkWorks development. The overall development and layout are consistent with the Planned Development Industrial Zone (PDI). Drawings submitted by the Applicant show development on the subject property providing adequate pedestrian, bicycle, and vehicle connectivity along SW Parkway Avenue and Printer Parkway. The proposed development will be accessed off of Printer Parkway and Xerox Drive. (Slide 5)

The Stage 2 Final Plan reviews the function and design of the proposed project, including assuring the proposal meets all the performance standards of the PDI zone. The proposed uses of the development are consistent with the Planned Development Industrial Zone. All services are either available for the site or will be conditions of approval – will be with conditions of approval. The site includes parking, circulation areas, pedestrian connections, and landscaping, meeting or exceeding City standards. As shown on the table on the slide, the structure is 91,773 sq ft in size and is designed as a warehouse and manufacturing facility with accessory office use as well. Shipping and loading area with five dock doors is provided along the eastern portion of the building, as well as an area for trash collection. (Slide 6)

- Truck circulation is separated from the employee and visitor parking area for safety. The project provides 262 parking spaces, which is greater than the 191 required based off the proposed uses. Roughly 20% of the project site and 27% of the parking area is landscaped, exceeding the General Landscaping Standard. Proposed site improvements meet or will meet, with conditions of approval, City standards.
- The traffic study evaluated four intersections as listed on this slide. All intersections will remain Level of Service D or better, which meets the minimum standard of level of service. Staff notes that safety deficiencies were identified in the DKS Traffic Impact Analysis, including a left-turn lane from Parkway Ave onto Xerox Drive. While they are existing streets, Parkway Avenue and Printer Parkway do not meet current Public Works Standards for urbanized roads. Exhibit A2 of the Essential Nexus and Rough Proportionality Findings and Conditions of Approval PF 1 through PF 20 detail the necessary improvements required for safety and to accommodate additional traffic generated by the proposed development. (Slide 7)

The Applicant used professional services to design the proposed industrial flex building using quality materials and design. The proposed building has been designed with the existing campus in mind, referencing the color of the bricks through the rust orange accent colors that's incorporated in the entrances and throughout the façade. Further discussion of the proposed building's northwest façade will be included later within this presentation. The configuration of the site will allow for efficient freight loading and unloading while also creating safe access throughout the parking area for employees and visitors. Landscaping is incorporated throughout the site, providing shade, stormwater mitigation, and aesthetic value. (Slide 8)

As shown on the Applicant's landscape plans, the General Landscape Standard is applied throughout the majority of the site. These [inaudible] are planted generously throughout the parking area and on the perimeters of the site. Landscaping, including a variety of trees, is planted along the west side of the building, creating a more human-scaled environments for pedestrians utilizing the sidewalk. The low screen standard is applied in and along the perimeter of parking areas visible from off-site, including the east and north edges of the site. And sorry, that should be the west and north edges of the site.

The Applicant proposes the removal of 19 trees on the development site. The tree species on-site are a mix of native and non-natives species. The trees proposed for removal are not of high quality according to the arborist report, and removal is necessary for the development of the site. The Applicant proposes replanting 108 new trees on the subject property, which is in excess of the one-per-one mitigation ratio as required by the Development Code. (Slide 10)

The proposed Tentative Plat meets technical platting requirements and demonstrates consistency with the Stage 2 Final Plan, does not create barriers to future development and adjacent neighborhoods and sites. The Applicant proposes to divide the existing parcel for the purpose of the proposed industrial flex building. The partition will result in two parcels with Parcel 5 being 6.418 acres and Parcel 6 being 78.725 acres.

As mentioned earlier, there was further discussion about the building design between the City and the Applicant team, who were very receptive to the suggestions of the City based on what the original design for the building was. On this slide, you can see the view of the proposed project site headed south on I-5. With the proposed project being adjacent to I-5, it will be a prominent building in Wilsonville. The building will be one of the first large industrial developments seen by travelers and vehicles headed south along I-5. Due to the prominence of the building and lack of articulation, variation in color on the corner of the building, it's Staff recommendation that the design is enhanced to reflect the City's goal of harmonious development. (Slide 12)

**Daniel Pauly, Planning Manager:** I will note that this picture is in the northbound lanes looking south. (Slide 12)

**Ms. McAlister:** It is in the northbound lane, but it is looking south. Sorry.

**Mr. Pauly:** Yeah. So, it looks a little different when you're actually looking southbound.

**Ms. McAlister:** It does look a tiny bit different, but that's what Google street view had. Thank you, Dan.

**Mr. Pauly:** Yeah.

**Ms. McAlister:** You get the sense. But on this slide, you can see three different designs for the northwest corner of the proposed building. The elevation at the top of the screen was what was originally submitted for the City to review with the project. As you can see that western corner was really a dark gray color with very little variation there and intended to be painted gray. Without variation and articulation on this portion of the proposed building, its massing was quite overwhelming in size and scale. For that reason, the City asked the Applicant to work on a design that will better meet the objective of harmonious development within the city, as stated in the Wilsonville Code Section 4.400 and 4.421.03. (Slide 13)

- With that feedback, the Applicant then proposed the design you can see labeled, “Revised Design.” This included a perforated metal screening; you see the rust color that reflects the entrances on the southwest corner and northeast corner of the building, as well as the tree design that has been created within that perforated metal. The City agreed with the Applicant that this much better encapsulated the goal of harmonious development within the city of Wilsonville, especially for such a prominent corner.
- However, upon further discussion, the Applicant shared it was a significant cost addition to the project to be erecting that screening for their design choice. As a result, we – you know – the City completely understood, and the intention of the enhanced design is not to burden applicants and developers with extra cost. And so, it was agreed upon between the City and Applicant that conditions of approval will be placed on the application– or on the approval to ensure that there is enhancements on the corner of the building that will satisfy our design standards.
- You can see on the bottom right-hand corner of the slide up for presentation right now, the current proposed design, while it does get up– or get to some of the objectives we had with more color variation and relating to the other portions of the building, it is flat against the building and really only painting is the defining feature of it. And so, it is the Staff’s belief that more enhancement to that area would provide significant value, again, given the prominence of the building.
- There will be some landscaping provided along that corner that is more mature than what might be typical with a new development. That being said, there is fear that's not necessarily sufficient, as you know, trees– one, they take a while to get to their mature height. They also may be removed, replaced. They can decline. And for that reason, a condition of approval asks for more variation in articulation or color and materials.

Another unique feature of this is the discussion of proportionality in terms of improvements. So, transportation and infrastructure improvements roughly proportional to the impact of a development are required within the city of Wilsonville for all new development. The proposed industrial flex building is no different from other development within the city and thus is required to improve a proportional share of transportation infrastructure adjacent to the development site in accordance to City Code Section 4.177 and the Transportation System Plan (TSP). These improvements include half-street improvements to both Parkway Avenue and Printer Parkway for the

purpose of upgrading the streets to be in compliance with current public work construction standards and the Transportation System Plan, with the Applicant qualifying for SDC credits for any portion of those improvements that exceed their proportion impact and responsibility. (Slide 14)

- The Applicant has objected to the improvements required by the City in regards to proportionality. It is in the Applicant's opinion that the cost of the requirements set forth in the Staff report and associated exhibits are not proportional to the impact of the proposed development and, therefore, would be considered taking as is defined by the Fifth Amendment of the US Constitution and Article 1, Section 18 of the Oregon Constitution. Improvements associated with development have been challenged in the past within other municipalities for takings, the most noticeable of those cases being Nollan versus California Coastal Commission and Dolan versus the City of Tigard, in which Essential Nexus and Rough Proportionality were established. Based on these cases, governing bodies requiring improvements shall only require what is roughly proportional to the proposed development. There is not a universal standard for how rough proportionality is calculated.

For this case, the City has assessed the rough proportionality of the impact of the project in multiple ways, which is included in the Rough Proportionality Analysis in Attachment A2. An important detail to note is proportionality is in relation to the portion of the improvements that are financially responsible of the Applicant versus the proportion of improvements that are financially responsible of the City. All improvements are necessary to be constructed for the proposed development to be safely served by the street network.

I am going to hand over presentation to our developmental– or our Development Engineering Manager, Amy Pepper, to talk a little bit more about proportionality in relation to transportation improvements.

**Amy Pepper, Development Engineering Manager:** Good evening. Thank you, Georgia. As Georgia mentioned, I'm Amy Pepper. I'm the Development Engineering Manager for the City and generally, you don't get to see me up here during the presentation, so bear with me as I get through my presentation. You guys are all likely aware of our transportation planning comes from our Transportation System Plan that helps the City develop it– develop and operate its transportation system consistent with the City's goals and visions. The TSP set standards and policies that serve as a benchmark for determining our transportation needs throughout the City. Many of those needs are addressed through capital projects, and to fund or complete those capital projects, the City relies heavily on developer contributions and fees.

Two high priority projects identified in the TSP are directly adjacent to this project. Both are urban upgrades to Parkway Avenue, classified as a minor arterial, and Printer Parkway, which is classified as a collector in the TSP. The City, as Georgia mentioned, has completed a Rough Proportionality for each of those roads. Next slide.

So, I will just go through the transportation improvements for each roadway separately and give kind of a high-level analysis of some of the more complicated portions of the analysis.

So that SW Printer Parkway urban upgrade, as you see on the screen, has two, 11-ft travel lanes, a 12-ft median and turn lane in the center of the right-of-way, two bike lanes on either side of the road that are buffered with a 2-ft buffer because Parkway is a freight route. One side, the west side of this right-of-way, is I-5, so there is a proposed buffer in that cross-section. And then on the east side are the Applicant's frontage. There's a planter strip, a 5-ft sidewalk, and then a public utility easement. SW Parkway over time has had the necessary right-of-way dedication and public utility easement, so there's no right-of-way dedication or public utility easement required for Parkway. Parkway was initially constructed under the County Road requirements prior to the City's incorporation in the late 1960s, and the cross-section has minimally changed over the years and consists of two, 11-ft travel lanes and a pathway along this project's frontage that doesn't meet the current American with Disabilities Act Standards. There is no bike lane along this frontage on Parkway. (Slide 17)

The TSP project, as I mentioned, calls for all of those improvements listed and the Applicant's responsibility is essentially from the center of the right-of-way east to their property. So, approximately center of the median, which is 5 ft of the median travel lane, bike lane, plus the 2-ft buffer plus the planter strip sidewalk. This half-street improvement is typical requirement for all development within the city. The differences with this development, as Georgia outlined it's in the site plan, it's a component of an overall campus, and over time, that campus has developed and has different requirements for frontage improvements.

Exhibit A2 in your Staff report, you'll find that full legal analysis for rough proportionality, but as I mentioned, I'm just going to highlight a couple of components. These Public Works Standards define the half-street improvement for arterials and collectors as 24 ft from the face of the curb. So that, in this drawing, would be the 6-ft bike lane plus a 2-ft buffer plus an 11-ft travel lane plus five of the feet of the median would be the Applicant's proportional share. (Slide 17)

As I mentioned, because this is already a part of a developed street, part of a campus, in looking at proportionality for the travel lane, the 2-ft buffer and 5 ft of the median, DKS did a traffic analysis and compared the PM peak trips for the overall campus to what the additional, this Lot 5 development, would add to the PM peak trips and found out that the— and calculated that the developer would be required for 19.8%. Each component of the right-of-way is treated separately in that analysis, so a sidewalk is analyzed separately. The bike lane is analyzed separately. And it's more straightforward if you go through the analysis completely.



A portion of the median, 75 ft of the median, is for a turn lane on Xerox Drive that will serve this development. The analysis evaluates the entire frontage, but for that turn lane into Xerox Drive – which Xerox Drive is a private street – the analysis shows that 100% is not public. It is related to multiple properties, but proportionality is really looking at the public impact, so there's no public easement on Xerox Drive, and there's no public benefit for that turn lane, so 100% of that turn lane to Xerox Drive is developer responsibility.

Alternatively, the application also looks at a southbound turn lane onto Printer Parkway, and the DKS evaluation determines that 15.3% is the responsibility of the developer. Unlike Xerox Drive, Printer Parkway will become a City street. Both of the turn lanes, as Georgia mentioned, are related to safety issues. The safety concerns are related to the AM peak hour, and so the analysis for the 15.3% is again looking at the full campus in the AM peak hour and the proportional share of this Lot 5 development in that AM peak hour. And that again equates to 15.3% of the cost of just the left-turn lane into Printer Parkway. Next slide.

The Printer Parkway urban upgrade is similar to the arterial, except it's a collector street, and as shown here, the Applicant is responsible for the half street. Unlike Parkway that was at one point constructed to public standards that have over time changed, Printer Parkway is a current street that's never been constructed to our public standards. The analysis in A2 also talks about other factors into Printer Parkway, but for purposes of the proportionate share, 24 ft of the cross-section is 100% the developer responsibility and additional one ft of that cross-section from the face of curb is eligible for SDC credits. Whatever the developer is not responsible for, they will recoup that money through SDC credits, which is part of Wilsonville Code Chapter 11. (Slide 18)

That's kind of a high-level overview. I'm happy to answer any questions about the analysis. Like I said, each component we went through and analyzed differently because they have different facts sets. So, happy to answer any of those questions.

**Ms. McAlister:** Yes, so that concludes Staff's presentation tonight. As Amy said, happy to answer questions. There will also be a presentation from the Applicant, and so just making sure we address important questions now but leaving space for when we get the information from the Applicant for the greater discussion.

**Mr. Hildum:** I just have one question. These are both fairly large buildings. I'm assuming probably can have lots of truck traffic involved, so is this 75-ft left-turn lane adequate? That's pretty much only one semi-truck.

**Ms. Pepper:** Yes. The ODOT standards, I think, call for less than that as a standard, but during design, we'll calculate the exact length of that left-turn lane, but the DKS traffic study recommended 75 ft for both turn lanes.

**Amanda Guile-Hinman, City Attorney:** I'll just note as well one of the ODOT standards does say that at a higher speed, so at 55 miles per hour—this is a 45-mile-per-hour area—at 55 miles per hour, they recommend a 100-ft turn lane, but since we're not at that speed, we didn't feel that it was appropriate to have it that long.

**Chair Svadlenka:** Do any Board members have questions for the Staff at this time?

**Jordan Herron:** Not right now.

**Chair Svadlenka:** Okay. Thank you. Will the Applicant please come to the podium with the microphone or commence your presentation when unmuted on Zoom, state your name and address and present any testimony you would like to present to the Development Review Board.

**Ms. McAlister:** If you want to share a screen, this is probably your best spot.

**Ryan Craney:** Okay.

**Ms. McAlister:** Let me just get that going for you.

**Ryan Craney, Architect, LRS Architects:** All right. Good evening, everyone. Sorry I'm not great with microphones, so let me know if I need to speak up. My name is Ryan Craney. I am an architect with LRS Architects, and my address is as listed on the speaker card.

**John Olivier, Executive Vice-President of Development, ScanlanKemperBard Companies:** I'm John Olivier. I'm Executive Vice-President of Development with ScanlanKemperBard Companies. My address is listed on the speaker card, and I'm with the Applicant.

**Christe White, Applicant's Legal Counsel, Radler, White, Parks, and Alexander:** I'm Christe White. I'm legal counsel for the Applicant, and my address is listed on the speaker card as well.

Presentation references SKB ParkWorks Design Narrative PowerPoint (Exhibit B7)

**Mr. Craney:** All right. So, we've put together – oops. I think I got the screen shared. Okay. So, we put together this brief presentation to provide some additional insight into our design and illustrate how we are addressing the Wilsonville design standards. We are excited for this opportunity to enhance the ParkWorks campus, and we believe this new facility could attract new companies and additional jobs to the region.

Since the 1970s, this area has been home to innovative industry leaders, including Twist Bioscience, Xerox, and 3D Systems, and it is our goal to use this proposed development as an opportunity to update and elevate the ParkWorks campus while providing new opportunities for the Wilsonville community. All right.

But before we jump into the design details, let me orient you to the site. So, as Georgia mentioned, the site is located along the I-5 corridor at the intersection of Parkway Avenue and Printer Parkway. Existing buildings neighboring the site include the ESS Building to the northeast and a 300,000 sq ft business park to the east – I guess I can point at it with the mouse, it's over here – also on the campus. We referenced the scale and materiality of the neighboring context in our design. (Slide 2)

The proposed development will consist of approximately 90,000 sq ft of research and development manufacturing facility, which includes 20,000 sq ft of two-story office space and entrances at the southwest and northeast corners of the site– or of the building, sorry. The south portion of the building will be dedicated as office to bring in plenty of natural light to the building inhabitants and to activate that façade at the main building entrance. The façade is also the most visible portion of the building due to its proximity to the northbound traffic along I-5 and Parkway Avenue, and because of that, we tried to bring as much windows and glazing and openness to that portion of the building.

The building has also been strategically oriented with the loading docks facing east towards the interior of the site. This allows for more visually pleasing façades to the north, south and west, which are all public facing. So, with the office at the south, the loading dock at the east, and the secondary entry at the north, this building doesn't really have a back of house, so we placed the electrical and fire riser rooms in the northwest corner due to its proximity to the public utilities along Parkway Ave, as well as the need for fire and service access to these spaces from the parking lot. While we understand this is not ideal from an aesthetic standpoint, it is important that the electrical service be close to the street to accommodate the potential size and service requirements of future manufacturing tenants. To help complement the building at this corner, we added enhanced landscaping at this corner, which I will cover in a little bit more detail later on in this presentation.

Improvements to the site– we've also added landscaping, bioswales, and updated parking in accordance with the zoning requirements on the site.

So, on each of the four façades we used what we're calling a visual gradient. So on one– at the corners, we're going from a charcoal or a darker tone and fading into a white in the middle and the back to a charcoal tone at the other corner. We did this with the intent to provide visual interest at both highway and pedestrian speeds for those passing by the building. The length of the building is also divided into a series of smaller vertical panels through varied reveals across the façade, just to add rhythm and variation to the design, and also to serve to break this larger mass into smaller sections. What we aren't seeing on this elevation, however, is a significant amount of landscaping that we are adding along Parkway Avenue and Printer Parkway. (Slide 4)

So, as you can see in this rendering, the concentrated landscaping around the entire site will provide a natural transition from street to building. The main building entry, also shown in this rendering, has been articulated using a rust-look metal panel and steel canopies. This is tying back to the steel and brick designs of the neighboring campus buildings. This main entry also is clearly indicated for— or clearly expressed because it indicates the building entrance for any visitor to the site. We applied the same idea of articulation and materiality at the northeast entry, or the secondary entry, on this site, which is shown in this rendering. (Slides 4 and 5)

The corner of ParkWorks Avenue and Printer Parkway was an important part of our design since it marks the entrance to the ParkWorks campus. With that in mind, we are using enhanced landscaping at the northwest corner of the site to focus on the entire campus rather than just highlighting our single building. So, just as a reminder, this northwest corner of the building houses the electrical and fire riser rooms, which are required for the tenant to successfully use the facility. However, we are still trying to provide visual interest at this corner with a visual pattern that relates to the campus and adjacent building entries. We have partnered with the Wilsonville Staff to come up with a solution, and we believe that it satisfies the requirements of the design standards and conditions of approval without removing emphasis on the main entrances of the building. (Slide 6)

So, as I just mentioned, this corner is a major entrance to the ParkWorks campus and as such, we're really committed to making it a pleasant and welcoming experience for anybody coming to the site. For example, the corner was designed to accommodate campus signage, which would be submitted separately under a future signage permit. And you can see a rendering of what this could look like on the screen. (Slide 7)

So, to conclude, our design intends to reflect and elevate the existing ParkWorks campus while embracing the design standards of the Development Code. We look forward to working in partnership with the City of Wilsonville to provide a unique development that can bring new opportunity and additional jobs to the City and its communities. Thank you for your time, and I will now hand it off to Christe to address our concerns regarding the conditions of approval.

**Ms. White:** Thank you. If there's no questions on design, I'll walk into our objections under Dolan to the conditions of approval. Again, Christe White, Land Use Counsel for the Applicant.

Let me start by saying we agree that our development will have some level of impact on the transportation system, and we agree that we should pay our proportionate share for our individualized impacts on that system. But the City's analysis misstates and misapplies the Dolan-Nollan Test. Under Dolan, the City must demonstrate first a nexus between a governmental interest that would furnish a valid ground for denial of the application and the exaction on the property and then, as you heard, that the nature

and extent of that exaction is proportionate—roughly proportionate to the effect of – the impact on the effect of the proposed development.

The City's Dolan analysis does go to great lengths to evaluate the proportionate share of impacts this development will have on the transportation system and then argues, based on that share of impact, that the City's conditions of approval are justified under Dolan. For example, as to Parkway, the City argues that it can justify a maximum contribution of 19.8%, as you've heard, of the construction of 1,000 linear feet of the travel lane. We don't agree that 19.8% is the right percentage, but let's just assume that it's the right percentage for purposes of this analysis. You would then assume, wouldn't you, that our maximum responsibility under Dolan is 19.8%. Those are the City's numbers for our impact on the system. But instead, the City has conditioned the project with a 100% cost of that improvement, not 19.8% of that cost.

To satisfy Dolan, the City actually has to make a finding that 100% of the Parkway improvement costs are roughly proportionate to the impact that at most measures 19.8%. That is a fatal flaw in the Dolan analysis. They didn't make that finding. So we have to start over, and we have to justify how complete construction of a road length is proportionate to the impacts of development that at most have a 19.8% measured impact.

If the response from the City, which I think I heard today in oral argument, is that Dolan allows you to initially require a here wildly disproportionate contribution to your actual impact, if there's a means to later pay you back maybe, a speculative means to make you whole or partially whole or not at all under an SDC credit or an SDC check, that is also fatally flawed. There is absolutely no support in the Federal or Oregon takings case law for the proposition that you can fail the rough proportionality test in the first instance, but nevertheless lawfully impose the condition with a promise or speculation that you'll be made whole and be given an SDC credit that has the same value as your cash upfront to pay the other 81.2% of the cost of that approval.

Instead, Dolan and progeny, they actually require a particularized finding that the exaction that the City extracts is roughly proportional in the first instance to the actual impact and no more. As the Oregon Court of Appeals held in *Hill v. City of Portland*, and I quote, "Applicants must bear the full cost of their proposals while still forbidding the City from engaging in out and out extortion that would thwart the Fifth Amendment right to just compensation." The full cost of our proposal on Parkway, as an example, is 19.8%, according to the City's finding and according to the DKS report and our TIA, 2.8%. Any costs above these percentages would violate Dolan.

The City's Code also requires that the City impose conditions that reflect a proportionate share and no more. Section 4.177 expressly states that the City can only impose public facility improvements, quote, "In rough proportion to the potential impacts." Thus, as to

all the Dolan findings, the City must revise its findings to reflect only our proportionate share and not full build out.

Just kind of a contextual piece of information here on the trip rate, under Table 2 from the updated 2022 Kittleson memo, the project is expected to add 24 PM peak hour trips north of Printer Parkway, which is only 2.5% of the 950 PM peak hour trips on that road, and 25 trips south of Xerox, which is only 2.7% of the existing plus Stage 2 in-process trips against the 907 existing PM peak hour trips. In their revised TIA, DKS agreed with those numbers, and so we do also contest the percentage difference between 2.8% and 19.8%, but that seems like a small issue at this point because we contest the 100% condition of approval for required build out.

There are at least two other significant misapplications of law in the report. The City repeatedly states – and it did here in their oral presentation – that it has met the essential nexus factor because all of the requests derive from adopted Code, your Public Works standards, your TSP cross-section. Nobody contests that you have a TSP cross-section that shows a roadway or that there's a very laudable public objective to have a roadway designed at that cross-section, but that's not enough. In Hill, the Court of Appeals firmly rejected the City of Portland's similar argument and stated quote, “A city cannot evade the requirement that it demonstrate that the impacts of a particular proposal substantially impede a legitimate governmental interest so as to permit the denial of a permit outright simply by defining approval criteria that don't take into account a proposal's impact.”

In other words, it's not enough to just say we have a laudable public objective. You have to take that public objective and define our impact on that public objective and then assess us our rough proportionate share of our impact on that public objective. Simply stating that you have an adopted standard is not enough under Hill and would be rejected again on appeal.

And lastly, we turn to the Schultz line of cases that are used extensively in the City's analysis. Citing to Schultz, the City argues that the Dolan-Nollan analysis does not apply to Code provisions that apply citywide to similarly situated properties, but Schultz and progeny actually support the exact opposite conclusion. As the Court of Appeals stated, quote, “However, we held in Schultz and reiterated in JC Reeves that exactions that are purportedly required by general across the board legislative provisions when they are applied in particular cases are as much subject to Dolan as are conditions that are formulated in case specific settings.” Thus, there really is no legal question that the Court of Appeals will require a Dolan analysis for all of the standards addressed in the Staff report, even if they are generally applicable to like developments across the rest of the City.

This moves us to undergrounding, which wasn't necessarily addressed specifically here in the Staff presentation, but it is well addressed in the Staff report. Your Code section

at 4.300 states, quote, "That the approval of any new development of land within the City will be upon the express condition that all new utility lines, including but not limited to those required for power, communication, streetlight, gas, cable, shall be placed underground."

We are doing that. This is a new development, and all of our new utility lines will be placed underground. But instead of applying that requirement to new lines as the express language of the Code recites, Staff has now extended that requirement to existing lines that are above ground and is requiring that we underground those lines for the good for the public benefit at a cost that's going to exceed \$850,000.

There are three reasons why this will not survive legal scrutiny. One, the Code language itself has no such requirement. Staff is removing the term "new" utility lines and pricing it with "new and old" utility lines in violation of ORS 17410. A city is not permitted to insert words that have been omitted or omit words that have been inserted in construing its Code.

Second, the City can't make an essential nexus argument to such a requirement under Dolan and the Schultz line of cases. The City can't argue that the existing lines have a direct relationship to this development such that the City could justify denying the development because the existing lines exist above ground in the right-of-way next to the building. The project has no impact on the existing overhead lines. In fact, we are undergrounding our utilities that will serve the site and forcing us to underground existing lines does not in this case, quote, "serve a purpose" that would justify prohibiting the development.

And remember, this is an impact analysis. Part of the Staff's analysis on undergrounding lines where they found that it met the Dolan test was the benefit that it would provide to the building and to the community. That is not a Dolan analysis. A Dolan analysis is the impact this development has on those existing above-ground lines.

And thirdly, because there's no essential nexus, we don't really have to address rough proportionality, but we didn't mention here in the Staff report the actual cost of that undergrounding. And for your information and as I shared, it's estimated at \$850,000, which would well exceed whatever impact could be conjured up that the project would have on those existing lines.

So, for these reasons, we believe there's a fatal flaw in the Dolan analysis. As the introductory comments from the DRP made clear, we are required to raise these constitutional issues in this proceeding and be sure that we are raising them with sufficient specificity to allow you to respond to them. And so, we do that here, and we've done that in our written materials.

I'm going to move on quickly to the deferral of—in the condition of approval, let me explain it this way. We're a little concerned about the wording of the condition of approval. If we get past these Dolan arguments, it seems fine to engage in a later discussion with the Staff about the concerns about the one corner and whether it's been designed consistent with the design guidelines in a way that's attractive enough from I-5 South, I believe. But what we're going to ask for is some more specificity in that condition. There's a concern that when you defer a design decision in a condition of approval and you don't have a future hearing, that that could be a faulty condition. So, we think it's just wise to add some more definition in that condition of approval.

Let me offer some last comments on concurrency and proportionality. The City's concurrency and proportionality standards should be read together to give meaning to both. Thus, the City shouldn't deny a project because the full improvement is not constructed if requesting the full improvement would violate Dolan. In this case, as presented to you by Staff, you do have a Transportation System Plan with a cross-section for this road. You have a CIP. Of course, there's a public benefit in building out the entire cross-section, and that should be done at some point. But that can't be shouldered under Dolan 100% of the impact on this development that only generates a very few amount of the overall trips and by your own admission, only 19.8% of an impact on that travel lane.

I'm going to make one last statement and then hand it over to John to conclude. The Staff report claims that we included that full roadway improvement in our site plan, so we're precluded from now objecting to it. That statement stung a little bit, and I'll tell you why, and it is wrong as a matter of fact in law. The Staff wouldn't accept our application as complete unless we included the full improvements, so we were in a position where we were not allowed to move forward with this application unless we showed these full site improvements in the application.

We objected, and we objected multiple times but wanted to proceed with the application. So therefore, we included the full improvements on the site plan and also included a very specifically expressed note saying we believe these exceed the proportionality test under Dolan, and this is not an acceptance of this condition, and we continue to object. So to see that in the Staff report was very unfortunate but want to make it very clear that you have every right to continue to object to an unconstitutional condition until such time as the City has made a final decision.

In closing, the City's findings do not satisfy Dolan, and we are requesting right now an extension of the record in this case for seven days for new evidence to contest the Dolan findings, a second seven-day period for rebuttal evidence, and a final seven days for the Applicant's final legal argument. We also understand that we're in the holiday zone, so we are absolutely amenable to shifting these timelines to accommodate people's holidays and vacations.



I now want to turn it over to the Applicant/Owner to offer conclusory remarks.

**Mr. Olivier:** Thanks, Christe. I think Ryan and Christe have done a good job of laying out both the design aspects and our concerns over the conditions. And what I'd like to do in kind of our closing the presentation is provide you a little context in how we got here.

SKB bought this campus from Xerox eight years ago and will continue to own it for another ten years. At the time we bought the property, the majority of the site was used for office and call center space functions. Since acquiring the site, we have converted virtually all of that defunct office and call center space into manufacturing and R&D, bringing over half a million square feet of new employment to Wilsonville, including tenants such as 3D Systems. They were a very small spin off of Xerox. We now have them in 100,000 sq ft on the site. We brought in ESS, a battery manufacturing and technology tenant now occupying over 200,000 sq ft. We brought in Twist Bioscience, a biotechnology firm from the Bay Area now occupying over 200,000 sq ft. So after buying this eight years ago at basically zero occupancy, other than Xerox moving out, we now have it at 100% occupancy. And the campus and the project before you now enhances our— sorry, (cough) excuse me. We're 100% leased on the campus and the project before you will further enhance our ability to attract new R&D employers to Wilsonville by adding approximately 92,000 sq ft of much sought-after R&D manufacturing space in a new best-in-class manufacturing facility.

This conversion, along with the new project, not only diversifies the economy and brings higher paying jobs to Wilsonville, but it actually has the effect of significantly reducing the traffic from what was originally generated on this site under Xerox's ownership. Even after development of the subject project, the application that's before you tonight, including all existing and Stage 2 trips as outlined in the DKS report in your packet, we will be generating approximately 55% to 60% of the traffic that was historically generated by Xerox from this site. This data was also provided by Kittleson Associates to City staff several months ago. And it is this point, if it illustrates—or I'm sorry—it's this point that I believe makes Staff's position here unreasonable. We've made many attempts to get Staff to the table to work through their disproportionate Public Works demands for well over a year with repeated requests for statutorily required Dolan analysis.

Frankly, it was not until the last four months that we were even able to get Staff to begin to consider proportionality. We finally thought we had made progress when we were able to have a meeting with Staff to discuss a development agreement earlier this fall. And in fact, we left that meeting with a handshake agreement on all critical business issues around proportionality and design.

However, after trading at least two turns of a draft development agreement, Staff unexpectedly and without notice halted further work on the development agreement with no reasoning as to why. All we were told was that Staff was no longer interested in

working on a development agreement, but instead would be moving forward with this hearing based on conditions of approval they deemed proportionate. No further rationale or support for their proportionality determination was provided despite the fact we've been requesting that support and evidence for several months.

In fact, we never received any formal analysis until we were provided the draft Staff report seven days ago. All of that time, energy, and opportunity for the last year-and-a-half, wasted. We've made no progress. As Ms. White has stated, their quote, "proportionality analysis" in the Staff report is not correct and does not follow the law. It is erroneous and misguided—it's an erroneous and misguided attempt to try to justify Staff's desires. This is not how you attract new employers to the City of Wilsonville and it's bad form, to say the least.

In closing, I'd respectfully ask that you approve our design and development with reasonable conditions as outlined by Ms. White. To do otherwise sets us on a course for appeal. And all of the legal arguments aside, at the end of the day, even if Staff's interpretation and application of Dolan were judged by LUBA to be correct, the City would have won the battle but lost the war, as our project, encumbered by massive Public Works requirements, would no longer be financially viable. There would be no additional R&D building, no new jobs, no new economic benefits, and all of that would be a bad outcome for everyone. But it's avoidable if you follow the law.

Thank you again for your time.

**Chair Svadlenka:** Thank you. So, at this time, do members of the Board have questions for the Applicant? Yeah. Sorry. Thank you. Yeah, I think.

**Mr. Hildum:** I do not.

**Mr. Herron:** I do not.

**Chair Svadlenka:** I have a couple of questions, actually. So, Ryan, if you don't mind, I have a couple of just site design questions. So, one of them, do you happen to have a diagram, or a slide of the bike parking spaces and where that would be and—

**Mr. Craney:** You can actually see it in this rendering. We have bike parking located at this entrance, and I believe there's also bike parking located at the other entrance. I'm not sure if it's shown on any of the other slides. So, here's additional bike parking as well. (Slide 4)

**Chair Svadlenka:** There was a bird's-eye view of parking. I wonder if it shows it on that. Yeah, right there.

**Mr. Craney:** Yeah, if I can figure out how to zoom. Yeah, so, we do indicate bike parking at both entrances. It's a little difficult to see at this scale. (Exhibit B7, Slide 2)

**Chair Svadlenka:** So, I believe you have allotted for eight spaces, but Staff is requiring ten? So, is that going to be an issue, adding two more spaces into that area would— and long-term spaces, I think versus temporary spaces. Is that correct?

**Ms. McAlister:** 50% need to be long-term.

**City Attorney Guile-Hinman:** Georgia, can you go to the—

**Ms. McAlister:** I can. I'm Sorry.

**Ms. White:** Do you want me to move?

**Ms. McAlister:** 50% of the provided spaces need to be long-term parking spaces.

**Chair Svadlenka:** And, what is the difference in looks for long-term versus temporary?

**Ms. McAlister:** That would be designed to the Code standards I don't have in front of me right now.

**Chair Svadlenka:** Does anyone know what it looks like?

**Mr. Pauly:** Generally speaking, short-term is like, bike racks out front and long-term is like, inside or covered.

**Chair Svadlenka:** Oh, just covered?

**Mr. Pauly:** Yeah—or secure and covered would be the basic terms I'd use to describe it without getting into specifics of the Code.

**Kimberly Rybold, Senior Planner:** Yeah, the Code, I pulled it up. So, weather protected is— it's generally characterized by bike parking for those using the site and who are generally staying at it for several hours, giving them a weather-protected place to park the bicycle.

**Chair Svadlenka:** Okay, thank you. So, Ryan, do you have any example of what that might look like for this site design?

**Mr. Craney:** Typically, I believe on other projects, we've provided that inside of the building space to provide protection. And that's something we've looked at in the floor plans is where we could indicate indoor parking, bike parking. I don't have any examples on our slides, but—

**Mr. Pauly:** Yeah. And that's pretty typical that it's provided inside, and it's something that we inspect for before occupancy.

**Chair Svadlenka:** Okay. All right. Thank you. So, in terms of the rust-colored features, so what it looks like from the slides is that the southwest corner, it looks like it's raised from the building. Is that correct?

**Mr. Craney:** The southwest corner—wait, I will go to that slide.

**Mr. Olivier:** It's right there by the office.

**Mr. Craney:** Yeah.

**Chair Svadlenka:** In some of the slides it looks flush, but some of them it looks raised.

**Mr. Craney:** Yeah.

**Mr. Olivier:** Yeah, there you go.

**Mr. Craney:** Can you clarify what you mean by raised?

**Unidentified:** Protruding.

**Chair Svadlenka:** Yeah, protruding from the building.

**Mr. Craney:** Oh, yes. Yes. It is protruding from the surface of the building.

**Chair Svadlenka:** Is it just on the southwest corner because the northeast corner looks like it was raised as well.

**Mr. Craney:** Correct. The northeast and the southwest corner are the same construction, both protruding from the building.

**Chair Svadlenka:** But the northwest and southeast will not be raised?

**Mr. Craney:** Correct. So the northwest corner, since it is not a building entrance, we wanted to treat it slightly differently as to not confuse anybody coming to the site. So, there is different—we aren't using the same metal panel. We're using the metal panel at the entrances to indicate those, and those are protruding, but the northwest is not; it's just painted.

**Chair Svadlenka:** So, you'd mentioned that you wanted more specification from the City on what articulation would mean for that northwest corner. Do you have any design ideas about what it could look like to make it stand out, aside from just the painted rust color?

**Mr. Craney:** So, we've gone back and forth with the City and worked through several options. This is the one that we settled on. The paint was the one that we settled on, that being the best option that doesn't, you know—I'm trying to think of how to word it—but yeah, we settled on this as a good mediation between not trying to make a third entrance because this is really just electrical storage—or electrical and fire riser room here. So, we didn't want to take away from that enhanced landscaping at that corner, so we determined that paint was our best option to both reference the entries and provide some variation at that corner without trying to call too much attention to it, because it is not a significant portion of the building—the program— building program; it's not an entrance. So, we had looked at—I believe Georgia presented we had looked at perforated metal at one time, but that was not cost effective for—yeah.

**Chair Svadlenka:** So, will you have signs at the entrance into the site coming from both Printer Parkway and Xerox Drive indicating where customers would go to and where the main entrances are?

**Mr. Craney:** So John, correct me if I'm wrong, but I think Xerox already has a sign installed, and we were looking at doing a similar signage at the northwest corner that matches that. That would help indicate, yeah, where to enter the campus and how to navigate to the building.

**Chair Svadlenka:** So that could help alleviate some of the confusion if you chose a different—

**Mr. Craney:** Yeah.

**Mr. Olivier:** Yes, and for reference, too, the sign that Ryan had shown in the presentation was actually taken from the permit set of the sign that exists down on Xerox Drive and Parkway. So the sign that exists there is that exact sign today. So, I'm not sure we would design this exact same sign for this location, but it will be our front door, so we obviously want to make sure that it looks nice. (Slide 7)

And I think, just to relate to what Ryan had mentioned, we were really trying to take the focus off of that corner of the building since it is back of house and we have to provide ease of access not only for the fire department, but for the electrical service as well. And so, our thought was, if we don't create some significant design here, once you dress up that corner as our front door to the entrance to the campus with the monument signage, what you're really going to focus on is the front door to the park, not the corner of the building, especially as the landscaping matures. So, we thought our money was better spent on having a really robust landscaping and entrance feature versus trying to spend a whole bunch of money to design a corner of the building that's the back of

house and would ultimately be hidden by landscaping in the future anyway. So, that was the thinking anyway.

**Chair Svadlenka:** Is that where the mature landscaping is going in? So, it's just older trees?

**Mr. Olivier:** Yes, ma'am. Yep.

**Chair Svadlenka:** Okay, great. Thank you. So, I had a question regarding—so this would be for Christe, if you don't mind. So, the 2.8% versus the 19% for the traffic impact, now if I'm—if I read the application correctly, the 2.8% is the traffic impact if you take into consideration all of the traffic on Parkway, you know, all the people that are going to the Costco development and everything like that; all of it. Whereas the 19% takes into account the traffic just for the industrial—

**Ms. White:** From the park.

**Chair Svadlenka:** Right, park [inaudible]. Right.

**Ms. White:** You're correct.

**Chair Svadlenka:** Okay.

**Ms. White:** Yes. And the reason, I mean, I'm hopeful that we can get past our argument about percentages and get to what is roughly proportional. If we're at 100%, we're nowhere. But if we're at somewhere between 2.8% and 19.8%, then we're having a discussion. So, if we get to that discussion, the Dolan analysis is generally, in other jurisdictions, how many trips you're putting onto the system that you're impacting and asking to mitigate for. It is not a percentage of the trips that are coming from existing development within the same site ownership because that's not an individualized or particularized determination based on the actual proposed development. And those trips are already in the background traffic that is using these segments of roadway. So, there can be—I mean, I'll concede that there can be different ways of looking at rough proportionality. I think that was correct when it was stated in the argument, but when you get down to the point where you have to make the particularized determination about what this proposed development – not any other proposed development – but what is the impact of this proposed development when you look at the trips, PM/AM trips, coming from this proposed development onto the streets we're impacting, it's 2.8% as a conservative number. And it is not 19.8%, which is a different equation and ratio altogether and doesn't relate to the number of trips coming from this development onto the street.

**Chair Svadlenka:** I guess I'm just wondering; you know, the road improvement has to be done because of the development, right, and any of the development in the park is going to have traffic that's going to impact it, and the road will have to be improved because of that. So, doesn't it make sense that—I mean, because if there wasn't any development, we wouldn't need to do anything, right? So, doesn't it make sense that it would be a

portion of the traffic from that park because that's who's responsibility it is to improve the road because that's what's causing the road improvements to be needed?

**Ms. White:** So, there's a little break in that logic. I'm following you, but the break is this, that the rest of the development has already been permitted, right? And those trips are already on the system. Under a Dolan analysis—the Dolan analysis is absolutely not based on site ownership. What is this site ownership doing? It is what is this proposed development doing?

But I understand the conundrum that you're explaining here, which is if a roadway needs to be improved and a development comes in and triggers new trips on that roadway, why can't we fix the roadway? The answer is you can fix the roadway, but there's a constitutional limitation on how much you can impose on a private development for fixing that roadway, beyond which it's unconstitutional. And the way your jurisdiction or other jurisdictions work with this is through aggregated proportionate share that will, at some point aggregate enough to fix the roadway and be constitutional. There are also different means of accomplishing that. In most jurisdictions like yours, you have a Transportation System Plan. You have a CIP Plan, and those plans have funding mechanisms to accommodate the proportion that is not the developer's proportion. And I think the development engineer testified that there is a City portion and City obligation on this roadway.

And what our argument is, is we're not paying that City portion. We're paying our portion, and the fact that there is insufficient funds under the CIP for the balance of the improvement doesn't mean that you can increase our proportionate share and still meet Dolan. So, I'm sympathetic that there's a conundrum here, and I think there's ways of working through this. It's unfortunate that those negotiations broke down, and I think there's still the opportunity through this extra record period to perhaps come to a common understanding of what the Dolan limitations are and what you're allowed to impose on us because we certainly want to build this building. And under these conditions of approval, I think you heard John say, we can't build this building. And so we are very invested and interested in getting to that conclusion, so that we can actually construct this; but right now we're not there.

**Chair Svadlenka:** And I just want to make clear, not every—you don't have to—the Applicant is not responsible for 100% of everything.

**Ms. White:** Right.

**Chair Svadlenka:** It's 100% of the left-turn lanes—

**Ms. White:** Right.

**Chair Svadlenka:** —and then 100% of the sidewalk and bike lane, but not the buffer.

**Ms. White:** Right, right. Oh, I—

**Chair Svadlenka:** And those, and not the Parkway road improvements, and the—the outside of the turn lanes; it's only a percent of that.

**Ms. White:** It's a percent of that entire cross-section; so, there's the median, the turn lane, the travel lane, the sidewalk, the bike lane, the planter strip. It's an entire cross-section.

**Chair Svadlenka:** But the turn lanes are separate than the other part—the other cross-section of the road. Right.

**Ms. White:** In the analysis section— in the analysis, the turn lane has been separated, yes. Right.

**Chair Svadlenka:** So, it's just the turn lanes that are the 100%—

**Ms. White:** Yes.

**Chair Svadlenka:** —and then that other cross-section is the 19%.

**Ms. White:** Right. And the discussion that is ensuing here is the discussion that was well on its way under the development agreement and was terminated. So, if we can get back to that conversation, we can get back to that conversation.

**Chair Svadlenka:** Okay. Thank you. Sorry, I had another question for the existing utility lines. So, because the sidewalk now—the existing sidewalk that stretches from Parkway to Xerox—that has to be moved because the building is going to have that setback of 30 ft, so it can't go there anymore, right? I mean, that existing sidewalk is going to be where the building is.

**Mr. Olivier:** Do you mind?

**Ms. White:** No, go ahead.

**Mr. Olivier:** Could I address this—

**Chair Svadlenka:** Yeah, absolutely.

**Mr. Olivier:** —from a practical perspective?

**Chair Svadlenka:** Please. Thank you.

**Mr. Olivier:** So it's kind of a cascading effect. As soon as you—the City says, well, we want you to widen the roadway and do all of these things, you then have to relocate the power lines because they're in the right-of-way. You also have to relocate the sidewalk because they're in the right-of-way. Neither of those—our development, if you just look purely at



where those sit today versus where our building is going to go, our building does not impact either of those.

All of this is triggered by the fact that the City wants to widen the roadway. So as soon as the roadway needs to get widened, the power lines all need to get moved. The sidewalk all has to get relocated. The sidewalk is actually getting relocated closer to our site, not farther away from our site. The power lines are actually getting located closer to our site, not farther away from our site. So that's the real kind of rub, if you will, is as soon as you want one thing, you have to deal with everything.

**Chair Svadlenka:** Right, right. And what's triggering the road being widened is the need for the left-turn lanes because there's no left-turn lanes as it exists.

**Mr. Olivier:** Well, Christe didn't specifically address this, but I will. That need for the left-turn lane, I think if you go in and look at the appendix in those reports, that left-turn lane has been needed long before we came along. It's not triggered because we triggered it. It's been there. It's been a need for a long time, just like the roadway, frankly, has probably needed to have been widened for quite some time. It just was never put on a capital improvements program. So, we just happened to be the person that triggers hey, there's new things going on here. Let's improve things that have needed to have been improved along for a long time. And we're getting hit with the full price tag or much, much higher than what we think our impact to those improvements or those areas are. But both the turn lane and Parkway widening were needed before we came along. And I think the traffic analysis that DKS provided, that's the City's own engineer, demonstrates that.

**Chair Svadlenka:** So, John, you had mentioned that SKB only plans on owning the property for another ten years. Was that just an example of something or is it an actual plan?

**Mr. Olivier:** Well, no. So, we've owned it for eight. We've recently refinanced and recapitalized it, and the business plan— with every asset we own, we have a business plan, and it has a life cycle to it. We actually really love this campus. We'd love to own it for as long as we can own it, but we have partners and so at some point in time, our partners may decide that they want to sell the property, but that's not slated for another ten years or so. But we like it. We feel like we've put a lot of time and energy into making it better, and we're going to continue to do that in the near term.

**Chair Svadlenka:** Okay. Thank you. You also mentioned that you've reduced traffic. So how? How, if you've brought in more people working at more office space?

**Mr. Olivier:** So that's a good question. So, we actually had Kittleson and Associates prepare an analysis that is—I don't know if it's in the Staff report, but it was provided to the City in our materials and our review of the DKS analysis. And so what we decided to do is to look back at the uses that Xerox had—you know, the functions that Xerox had on the site during the time of their ownership. And we asked DKS to use the trip generation

manual, the IT trip generation manual, which I think—I'm no traffic engineer, but I think that's the standard for calculating trip generation based off of uses in certain square footages. We knew what square footages—or what functions, how much square footage for each function that Xerox had because they had all those plans. So, we asked Kittleson to run an analysis based on all of those square footages to look at what the trip generation was from all of those uses. And in a nutshell, the reason the trip generation was so high for Xerox was because they had hundreds of thousands of square feet being used for office and call center uses. So, there's a tremendous number of people coming to the site on a daily basis to manage phones, make phone calls, and work in cubicles. I don't know if you ever saw the Xerox property back when Xerox was in there, but it was hundreds of thousands of square feet of nothing but cubicles, cube farms.

So after we acquired the property, we took away all of those office uses, and we converted it into industrial and manufacturing. So, the intensity of use of the site has really gone down from a trip standpoint or people coming onto the site and bringing their cars. And so, if you use that same analysis, and you look at the square footage that we have today plus our new square footage that we're going to bring to the site, we generate somewhere between 55 and 60% of the trips that historically were coming onto the site during Xerox's ownership. And I think that material is—or that analysis is in your packet. If it's not, we'll make sure that in the seven-day period that we get you that analysis so that you could see that.

**Chair Svadlenka:** Yeah, I believe it was in there. Yeah. Thank you. Thank you. So that actually means that many less employees as well too, right?

**Mr. Olivier:** It does mean that there are less people, but I think you would also find that the jobs that we're bringing are more technical in nature. It's advanced manufacturing and R&D, so the jobs tend to be higher-paying jobs, although there's fewer people. That's correct.

**Chair Svadlenka:** Thank you. Okay. Thank you very much. Does any other Board member have any questions for the Applicant this time?

**Mr. Herron:** I have one. So, the \$850,000 price tag on the undergrounding of the existing utilities, was that for the utilities that you anticipate putting in that will already be undergrounded plus the existing, or is that just the existing?

**Ms. White:** John, do you want to?

**Mr. Olivier:** Yeah, if you don't mind. Yeah. So that was just the existing. We had our contractor price how much it would cost to take all of those power lines that are out there today and relocate them and put them underground. It had nothing to do with the utilities that we are doing. And that's both our cost to actually build the trenches, put the conduit in, but also the cost we'd have to pay to PGE to have them come out and pull conduit—pull lines through all of that conduit because there are a lot of lines out there.

**Mr. Herron:** Thank you.

**Chair Svadlenka:** Does any other Board member have any questions for the Applicant at this time?

**Mr. Hildum:** No.

**Chair Svadlenka:** Okay. Thank you very much.

**Mr. Olivier:** Thank you.

[Meeting pauses]

**Chair Svadlenka** called for public testimony regarding the application and confirmed with Staff that no one was present at City Hall to testify and no one on Zoom indicated they wanted to testify.

The Board took a brief recess to allow Chair Svadlenka to recover from coughing, and the meeting was reconvened at 8:04 pm.

[Meeting in recess]

**Chair Svadlenka:** Okay. We will reconvene the public hearing now. Thank you. Do Board members have any additional questions of Staff, the Applicant, or other members of the audience?

**Mr. Hildum:** No.

**Mr. Herron:** No.

**Chair Svadlenka:** I have a question for Staff. So, can you comment on the need for expanding Parkway, and if this has been an existing need or just—or as a result of this, the new project?

**Ms. Pepper:** So as I mentioned in my presentation, the TSP identifies Parkway as needing urban upgrades, and a majority of those projects in the TSP, they are relying on developers to construct those half-street improvements. So, Printer—so Parkway from the southern border of this project all the way north to the Costco development does need half-street improvement or full-street improvements ultimately for that urban upgrade. So, it has been identified for a long time how those deve—how those improvements happen is typically with development.

**Chair Svadlenka:** That makes sense.

**City Attorney Guile-Hinman:** And if I may add – I'm trying to pull up the page site really quick— there are, I think it was, six or seven specifically listed reasons why the essential nexus exists, which is what I think you're getting at. Yes, I believe it's been listed on Page 76 of—well, it's showing as 76 of 236 in my—in the online version. And it specifically talks about—I'll just refer to it, so you all don't have to flip through. It's that, “The proposed development is taking access from both Parkway and Printer Parkway. The proposed development will generate new freight and vehicle traffic. Parkway is a 45-mile-per-hour street. Other developments within the larger Xerox campus are industrial uses that generate significant freight and vehicle traffic on Parkway. Parkway is designated as a freight route and minor arterial. Parkway’s cross-section is currently deficient as a minor arterial and freight route, and State and Federal traffic guidelines recommend safety improvements for Parkway to prevent significant vehicle crashes.”

**Chair Svadlenka:** And those seven items establish nexus.

**City Attorney Guile-Hinman:** I think we made— thank you, Chair. Sorry to interrupt you. I cut you off. We made essential nexus analysis for each of the improvements, so that's one of, but I would say that generally encapsulates the Parkway improvements—the requirements for the Parkway improvements.

**Chair Svadlenka:** And can Staff comment on the halted development agreement?

**City Attorney Guile-Hinman:** I guess I can take a shot at that. Several of the Staff members here were included in it, and although it doesn't go to the criteria before you all, I think since it was brought up, it's something to mention. I think where—it sounds like the Applicant is open to and has actually requested additional time, and so Staff is open to continuing discussions with the Applicant after this.

The initial issue that arose when we—when the negotiations were going on is that the Applicant—originally, it was always contemplated the Applicant would do the half-street improvements. And then in a meeting, the Applicant—well, not in a meeting, in the initial draft of the development agreement, the Applicant had flipped that where the City would do all the improvements. And that was very much a 180 of what we had been talking about.

We worked through that issue, and then the next issue was that—the issue of the allocation of the SDC credits that the Applicant will be—will get if the oversizing or the part that's the City responsibility is done by the Applicant. That calculation—whenever SDC credits are provided, they're provided because that's the part that the Applicant is not responsible for. That's the whole point. And the Applicant had taken—had calculated the SDC credits as part of their portion of their cost, not the City's portion of the City's cost.

And so, when we had been talking about numbers, essentially, again, it did a 180 of the numbers that we were talking about. The City, in response did say, you know, that's not

something that the City's in a position to do. And also what the City did as a result of that was—normally, well, our City standards require that freight routes are constructed with concrete pavement. And so that's—since because of all of this, the City has determined that concrete pavement is not something that we're going to require because you can't pave a half-street with concrete and a half-street with asphalt. And given that we were not going to be able to do—to come to an agreement about the full cross-section improvements, it didn't make sense to require concrete pavement for the half-street that we were requiring, so we took that requirement out of—as part of this analysis.

**Chair Svadlenka:** And am I correct with the SDC credits—so the Applicant would pay for it, and then what's ever the credit, they would get the credits, the SDC credits, and then that could be used either for future projects or be refunded? Is that typically how it works?

**City Attorney Guile-Hinman:** Yeah. So, it really depends on the timing of the improvements. Generally, public improvements are done first, and you get an SDC credit that's then applied to your building—you get charged SDCs at the issuance of building permit. So, if your public improvements are done before your building permit is pulled, then you can use that credit for your building permit. And then, you know, depending on how much is left, that's what you would pay if you have additional SDCs you have to pay.

If the public improvement for some reason comes after the building permit is pulled, then in other settings, what you would use is you would use that SDC credit for a future development that you may have. What the City has done, because particularly with industrial development, it—SDC credits have a lifespan of ten years; that's written in statute. And, for a lot of industrial development, they don't happen in ten years. You don't see a future development in a 10-year time frame. So, the City has a policy of with industrial development that we issue a refund check in lieu of doing the credit with the acknowledgment that in all likelihood a credit wouldn't—could potentially not get used.

**Chair Svadlenka:** Thank you.

**City Attorney Guile-Hinman:** Amy can correct me if I said anything incorrectly, but—

**Ms. Pepper:** Amanda was correct, yes.

**Chair Svadlenka:** Thank you. Okay. What, if any, discussion does any Board member wish to have to help ensure they have gathered all the information they need to make a decision? I note this is different than the discussion we will have to deliberate once a motion is made. Discussion at this point should focus on ensuring understanding of the facts presented and clarifying particular points, rather than expressing conclusions, which we will do in a few minutes.

**City Attorney Guile-Hinman:** Chair, if I may, I would like to clarify one item because there was several—there were discussion points about it, and I just want to make sure that the

Board is clear on this. The Applicant had talked about that the City had pointed out that the Applicant had submitted all the improvements, and they had actually objected to submitting all the improvements. The reference was specifically about the improvements to Printer Parkway. That was a proposed site improvement that was provided, and then the Applicant also did a full off-street—or an off-site public improvement as well that included Parkway.

So, one thing that I have not heard necessarily is our objections about Printer Parkway. I have heard objections about Parkway, and the 19.8% is about Parkway. So, I just want to clarify about that those are two separate conditions of approval. They're not tied together. So, I also do want to—because I'm saying this, I do also want to give the Applicant the opportunity to comment on that, to clarify and to make sure that you all have the information you need when you go into your discussion. So, I don't know if the Applicant wants to comment on Printer Parkway, specifically.

**Ms. White:** Thank you very much for the opportunity to clarify. We object to all of them under the Dolan analysis and believe it needs to be recalibrated for all improvements. Thank you.

**Chair Svadlenka:** Thank you. Next is an opportunity for Board members to discuss any proposal to add, remove, or modify conditions of approval. This opportunity allows discussion amongst the board or with Staff as well as allows the Applicant an opportunity to respond.

**Mr. Hildum:** I'm thinking that maybe we should postpone this decision until both the City and the Applicant can agree upon paying the cost of the road improvements on Parkway. I think Printer Parkway can be handled later since that's pretty much all on private property still. Thank you.

**Mr. Herron:** I agree with that. I think it's hard to come to some conclusions without that taken care of first, so I agree.

**Yara Alatawy:** Me, too.

**Chair Svadlenka:** Would Staff like to comment?

**City Attorney Guile-Hinman:** Yeah. And again, I might ask Ms. White to come back up here. I know this is a little unorthodox, but I did hear that the Applicant—the Applicant is entitled to request certain extensions, and I believe there was three, seven-day extensions requested, but that there was also the potential for—understanding that we're in the holidays right now. So, I'm wondering if maybe we can get on the record an extension time frame that maybe the Board could then vote to continue the hearing to.

**Ms. White:** Sure. Great suggestion. So under State law, when you ask for a seven-day extension, it comes in three parts, normally. New evidence in the first seven days—I know you guys

seem very good at this process so—and then seven days of rebuttal, and then a final seven for final legal argument, which would be in total a 21-day span. Recognizing that we're at December 11th right now, I realize that can hit at a time when it's uncomfortable to be putting evidence in the record and writing final legal argument. So, we're flexible for modifying those timelines in any way that works for Staff and works for the DRB.

**City Attorney Guile-Hinman:** And I believe that based on the—if accounting for the three seven-day periods, the next Development Review Board meeting for this panel is January 8th.

**Ms. White:** Okay.

**City Attorney Guile-Hinman:** I don't know how the—I don't know if Planning Staff have any comments about January 8<sup>th</sup> though.

**Mr. Pauly:** No, we're planning on—we plan on having other items on the agenda that night, so, I mean, it would be a full meeting, but we plan on meeting.

**City Attorney Guile-Hinman:** January 8<sup>th</sup>, I'm seeing a head nod. So, Ms. White, we have a continuance form, but what we can do, Chair, is have somebody make a motion to continue—so, we would just continue the public hearing in that case, if you're open to that, or do you want to just do the closing the public hearing and doing the written?

**Ms. White:** I think we should do the record extension so we can do final legal argument before the continued hearing—

**City Attorney Guile-Hinman:** Okay.

**Ms. White:** —and have an opportunity to review that. So, if we're meeting on January 8<sup>th</sup>, I would just back into what we do between December 11<sup>th</sup> and January 8<sup>th</sup> and then have the final hearing and record close on January 8<sup>th</sup>.

**City Attorney Guile-Hinman:** Okay. So, the record will—

**Ms. White:** Stay open.

**City Attorney Guile-Hinman:** Yeah.

**Chair Svadlenka:** So, it's a continuance.

**Ms. White:** Sure.

**City Attorney Guile-Hinman:** Well, yeah. I want to make sure we get the language, right—

**Chair Svadlenka:** Stay open, yeah. Right.

**City Attorney Guile-Hinman:** —because it matters, right? So, what we're saying is closing the public hearing but keeping the written record open.

**Ms. White:** Exactly.

**City Attorney Guile-Hinman:** Yes.

**Ms. White:** And then moving to January 8<sup>th</sup> for deliberation and decision.

**Chair Svadlenka:** Okay. So, to close the public hearing, do I need to go through any other—?

**City Attorney Guile-Hinman:** Yes, I just want to make sure because I can see I've got Ms. Bateschell standing back there. One of the other things is—I apologize we're doing this in public meeting—

**Ms. White:** That's okay.

**City Attorney Guile-Hinman:** —but typically with these extensions that are requested by the applicant, it extends the whole 120-day period.

**Ms. White:** Yes.

**City Attorney Guile-Hinman:** I want to make sure that we're being mindful of if you want to appeal that you have the appeal right with City Council.

**Ms. White:** Yes.

**City Attorney Guile-Hinman:** And their next—you would have 14 days to do that. So, you're hearing would still be—or your decision would still be on the 8<sup>th</sup>, but 22, so the next Council meeting would be February—

**Mr. Pauly:** They're cancelling that first one.

**City Attorney Guile-Hinman:** That's—I'm being mindful of that. So, February 22<sup>nd</sup> would be the next Council meeting to hear an appeal. So, you can close the record and have the written—close the public hearing and have the written record kept open until—for the January 8<sup>th</sup> meeting, where every—where the materials then would be due—

**Ms. Rybold:** I believe that packet is going out on the 28<sup>th</sup> of January, the Thursday.

**City Attorney Guile-Hinman:** Of December, you mean?

**Ms. Rybold:** Of December. Yes, December.



**City Attorney Guile-Hinman:** I don't think we'll meet the three, seven-day periods, then.

**Ms. White:** I'm not thinking that we need a rebuttal evidence period.

**City Attorney Guile-Hinman:** Okay.

**Ms. White:** And so, really this is about the evidence in the record and providing final legal argument around our disagreements on Dolan and the opportunity, frankly, to meet with you in that time period. And because of that, and I'm sorry, too, for going back and forth about this, but the more you talk, the more it's making me think about what would be the appropriate thing, and maybe what the appropriate thing is to not close the hearing—

**City Attorney Guile-Hinman:** Yeah.

**Ms. White:** —to continue the hearing to January 8<sup>th</sup>, and then in the interim between today, December 11<sup>th</sup>, and January 8<sup>th</sup>, we will file whatever we need to file in terms of legal argument and have the opportunity to talk this through.

**City Attorney Guile-Hinman:** Yeah, I agree. I think that makes the most sense.

**Ms. White:** Okay. Great.

**Chair Svadlenka:** So, I'll make a motion to continue the public hearing.

**City Attorney Guile-Hinman:** Yep. To date certain of January 8<sup>th</sup>.

**Ms. White:** Back to your suggestion.

**City Attorney Guile-Hinman:** It just takes us lawyers a little bit longer to get there.

**Ms. White:** And, that's embarrassing so...

**Chair Svadlenka:** Okay. So, I move to keep the public hearing opened and continued until the January 8<sup>th</sup>, 2024, DRB Panel A meeting. Do I have a second?

**Mr. Hildum:** I'll second.

**Chair Svadlenka:** All in favor say, "aye".

**Mr. Hildum:** Aye.

**Chair Svadlenka:** Aye.

**Mr. Herron:** Aye.

**Ms. Alatawy:** Aye.

**Chair Svadlenka:** So, the motion passes 4 to 0.

**Ms. White:** Thank you.

**Chair Svadlenka:** Thank you.

**Miranda Bateschell, Planning Director:** Can I clarify and confirm what date we have extended the 120-day timeline of final decision until?

**City Attorney Guile-Hinman:** If I heard Christe correctly, it's going to be through the Council meeting. Yes, on February—so, and I said that was February...

**Mr. Hildum:** 22<sup>nd</sup>.

**City Attorney Guile-Hinman:** 22<sup>nd</sup>.

**Ms. Bateschell:** So that's the date we want to put on this?

**City Attorney Guile-Hinman:** Yeah. Well, probably February 23<sup>rd</sup> just—

**Ms. Bateschell:** Okay.

**City Attorney Guile-Hinman:** —so they can make a decision.

[End of Verbatim transcript]

2. **Resolution No. 423 Frog Pond Petras Homes Subdivision.** The applicant is requesting approval of Annexation to the City of Wilsonville and rezoning of approximately 2.02 acres, a Stage 1 Preliminary Plan, Stage 2 Final Plan, Site Design Review of parks and open space, Tentative Subdivision Plat, Middle Housing Land Division, and Waiver for an 11-lot residential subdivision.

Case Files:

DB23-0008 Frog Pond Petras Homes Subdivision

-Annexation (ANNX23-0002)

-Zone Map Amendment (ZONE23-0002) -Stage 1 Preliminary Plan (STG123-0003)

-Stage 2 Final Plan (STG223-0005)

-Site Design Review of Parks and Open Space (SDR23-0006)

-Tentative Subdivision Plat (SUBD23-0002)

-Middle Housing Land Division (MHLD23-0002)

-Waiver (WAIV23-0003)

***The DRB Action on the Annexation and Zone Map Amendment is a recommendation to the City Council.***

**Chair Svadlenka** called the public hearing to order at 8:23 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, ex parte contact, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

**Cindy Luxhoj, Associate Planner**, announced that the criteria applicable to the application were stated starting 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 and on the City's website.

**Ms. Luxhoj** presented the Staff report via PowerPoint, briefly reviewing the project's location, zoning, and surrounding features, the background related to the Frog Pond Area Plan and subsequent Frog Pond West Master Plan, as well as the application requests for the proposed 11-lot subdivision with these comments:

- She noted a typographical error in Condition of Approval PDD 6 on Page 11 of the Staff report would be corrected to state, "Frog Pond ~~Terrace~~ ***Petras Homes Subdivision***" in the adopted Staff report.
- Proper noticing was followed for this application, with the public hearing notice mailed to property owners within 250 ft of the subject property, on-site posting, and publication in the *Wilsonville Spokesman*. No public comments were received during the comment period for the project.
- Annexation was proposed for Tax Lot 200, which includes 2.02 acres. The property is surrounded on all sides by land previously annexed to the City, with other subdivisions in Frog Pond West. The City Council public hearing for the Annexation and Zone Map Amendment is scheduled for December 18, 2023. The proposed Zone Map Amendment would rezone Tax Lot 200 from Clackamas County Rural Residential Farm Forest – 5 Acre to the City's Residential Neighborhood (RN) Zone, which was consistent with the Comprehensive Plan Map's Residential Neighborhood designation, as well as with the Frog Pond West Master Plan.
- The Stage 1 Preliminary Plan generally establishes the proposed residential use, number of lots, preservation of open space, and block and street layout consistent with the Frog Pond West Master Plan. Specifically, in regard to residential land use unit count, the proposed Stage 1 Preliminary Plan is located entirely in Small Lot Sub-District 10. (Slide 8)
  - The proposed 11 lots were the minimum proportional density calculation for the site and allowed for future development that meets all dimensional standards for lots on the site. The configuration of lots as proposed would allow for build out of Sub-District 10 consistent with the Master Plan recommendations. (Slide 9)
- The Stage 2 Final Plan addressed the general development pattern within the subject property, including such elements as lot layout and size, block size and access, and street layout. These elements of the proposed subdivision generally demonstrated consistency with development standards established in the RN Zone and Frog Pond West Master Plan. (Slide 10)

- The Applicant proposed installing necessary facilities and services concurrent with development of the proposed residential neighborhood. No new streets were proposed as the project was surrounded by existing streets with SW Stafford Rd on the east, SW Frog Pond Lane on the south, and SW Windflower Street on the north. The lots in Frog Pond Crossing were to the west. However, the proposed project would add its proportional share to the surrounding streets through right-of-way dedication and would be installing required improvements to City standards.
- The location of blocks and planned pedestrian connections in Tracts A and D generally align with those shown in the Street Demonstration Plan, providing pedestrian access between SW Frog Pond Lane and SW Windflower Street as well as between SW Windflower Street and SW Stafford Road, as illustrated by the red arrows on the Site Plan.
- The proposed modifications do not require out of direction pedestrian or vehicular travel, nor do they result in greater distances for pedestrian access to the proposed subdivision from the surrounding streets than would otherwise be the case if the Street Demonstration Plan were fully adhered to.
- Site Design Review addresses elements of the public realm for consistency with the Frog Pond West Master Plan that focuses primarily on proposed parks and open space within the subdivision. R-5 Sub-Districts require 10% of the net developable area to be in open space, of which 50% is to be usable open space. Because the project contained a portion of the R-5 Sub-District 10, the standard applied. (Slide 11)
  - Based on the net developable area of the site, the minimum open space requirement was 8,798 sq ft with minimum usable open space of 4,399 sq ft. The Applicant proposed open space in Tracts A, C, D, and E of the site with pedestrian connections in Tracts A and D outlined in red. Overall, 10,791 sq ft or 12% of the site would be open space with 8,524 sq ft in usable open space, exceeding the requirements.
- The Tentative Subdivision Plat met technical platting requirements, demonstrated consistency with the Stage 2 Final Plan, and therefore, the Frog Pond West Master Plan, and did not create barriers to future development of adjacent neighborhoods and sites.
- The Applicant elected to have the Middle Housing Land Division reviewed concurrently with the Tentative Subdivision Plat subject to review by the Development Review Board. As required, the tentative middle housing land division is shown on Sheet P-07 of the Applicant's plan set separate from the Tentative Subdivision Plat on Sheet P-06. Sheet P-07 clearly identified the middle housing units as being created from one or more lots created by the subdivision. (Slide 13)
  - The proposed middle housing land division allows for the creation of separate units of land for residential structures that could otherwise be built on a lot without a land division. The units of land resulting from a middle housing land division were collectively considered a single lot, except for platting and property transfer purposes. Through this middle housing land division, the Applicant proposed creating 20 middle housing units from 10 parent lots with one lot, Lot 11, remaining a standard lot with an area of 3,626 sq ft. The resulting middle housing units ranged in area from 2,025 sq ft to 2,448 sq ft.
  - The preliminary Middle Housing Land Division Plat met the allowance of middle housing units and demonstrated compliance with the Middle Housing rules and statutes. Each

parent lot could contain at least one dwelling unit but may contain additional units consistent with the allowance for middle housing.

- The requested minimum lot frontage waiver involved discretionary review by the Board. Per Development Code Subsection 4.237.06, each lot within a subdivision must have a minimum frontage on a street or private drive. The minimum lot width in the RN Zone for lots in a Small Lot Sub-District is 35-ft with some exceptions. The DRB could waive lot frontage requirements where, in its judgment, the waiver of frontage requirements would not have the effect of nullifying the intent and purpose of the standard, or if the DRB determined that another standard was appropriate because of development's overall characteristics.
- As proposed, Lots 4 through 6 front Tract D, which was a shared open space with a pedestrian connection, and take vehicular access from the private alley in Tract B. Pedestrian access was provided along the front of the lots via the pedestrian connection in Tract D, which connected to the public right-of-way in SW Windflower Street to the west and SW Stafford Lane to the east. The Applicant specifically requested the waiver to enable development of the subject site consistent with the proportional density range of 11 to 14 lots established for this portion of the R-5 Small Lot Sub-district 10, while providing the required usable open space and pedestrian connections in Tracts A and D and other site improvements.
- Pursuant to Subsection 4.118.03.a, a waiver must implement or better implement the purpose and objectives listed in the subsection. The subject site was constrained by its 2.02-acre size, the street layout created by adjacent subdivisions, and access limitations on SW Frog Pond Lane and SW Stafford Road. The Applicant, therefore, specifically requested this waiver to allow flexibility of design that responded to site-specific features and conditions of the project, while providing a development that was equal to or better than that resulting from traditional lot land use development.

**Chair Svadlenka** asked why the green, north-south street shown in the Proposed Plan on the Street Demonstration Plan looked narrower than the next street going north-south above it. (Slide 10)

**Ms. Luxhoj** clarified the actual streets were shown in gray and the pedestrian connections were shown in green in both the Master Plan and Proposed Plan. The Applicant was proposing the pedestrian connection in the location it was anticipated in the Master Plan. The.

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

**Glen Sutherland, Planner, AKS Engineering and Forestry, 12965 SW Herman Rd, Suite 100, Tualatin, OR, 97062**, thanked Staff for the great presentation and noted the Applicant, Adrian Petras from Petras Homes, was attending on Zoom. [Petras was not present as confirmed by City staff] He presented the Applicant's presentation via PowerPoint as follows:

- The proposed project was at the prominent corner of Frog Pond Lane and Stafford Road, and reiterated the site was part of Sub-District 10, which was actually designated to be R-5 Small Lot. The site was approximately two acres, on which the Applicant had proposed 11 lots in keeping with the Frog Pond West Master Plan. (Slides 3 and 4)

- The site was hemmed in quite a bit by existing and approved features, some of which were under construction currently, and some of which would be very soon. The site was tucked into a corner with SW Windflower Street to the north, SW Frog Pond Lane to the south, and SW Stafford Road to the east. The requested frontage waiver was necessary because the Access Management Standards for Lots 4, 5, and 6 in the northeast corner of the property could not be met.
- Pedestrian access would be provided through Tract D at the northern edge, and vehicular access would be through Tract B, the private alley running through the site. As stated, the proposal met all the proposed goals of the Street Demonstration Plan. The envisioned pedestrian connections for this corner site were being provided to connect to bicycling facilities in Frog Pond Lane and Stafford Road, and the density requirements were also being met. (Slide 5)
- The Applicant planned to submit Middle Housing for 21 total units on 10 lots of the development. Right-of-way would be provided for the widening of Frog Pond Lane and Stafford Road. And again, those pedestrian connections would allow easy pedestrian and bicyclist access from SW Windflower to those adjacent connector and arterial streets. And, as always, this project would provide its proportionate system development charges to fund off-site public improvements.
- He concluded by thanking the Board for its time, as well as Staff for their time and effort in reviewing these materials.

**Clark Hildum** asked if the narrow roads were adequate for large emergency vehicles, such as fire trucks.

**Cody Street, Project Manager, AKS Engineering and Forestry**, responded, yes, most of the fire access would be provided from the major frontage roads: Windflower, Stafford, or Frog Pond Lane. The application had been reviewed by TVF&R, which provided a service provider letter indicating the road widths were adequate.

**Chair Svadlenka** asked if a slide was available showing what the 21 homes would look like on the 11 lots.

**Mr. Sutherland** replied the Board had the Middle Housing Land Division plan, adding that some conceptual elevations were submitted as part of the application.

**Mr. Pauly** reiterated that the Board was severely limited under statute and rules to what it can consider in terms of what happened on the lots.

**Mr. Sutherland** stated the conceptual elevations were designated as Appendix M in the Master Exhibit List. Basically, the units were duplexes with the exception of Lot 11, which would have a single-family home because there was not enough space to meet the lot size requirements needed to have a middle housing lot.

**Chair Svadlenka** confirmed no Board members had any questions for the Applicant.

**Chair Svadlenka** called for public testimony regarding the application and confirmed with Staff that no one was present at City Hall to testify and no one on Zoom indicated they wanted to testify.

**Chair Svadlenka** confirmed there were no further questions or discussion and closed the public hearing at 8:53 pm.

**Clark Hildum** moved to approve the Staff report, amending the second sentence of Condition of Approval PDD 6 to state, “Frog Pond Terrace Petras Homes”. The motion was seconded by Jordan Herron and passed unanimously.

**Chair Svadlenka** moved to adopt Resolution No. 423 including the amended Staff report. **Clark Hildum** seconded the motion, which passed unanimously.

**Chair Svadlenka** read the rules of appeal into the record.

**BOARD MEMBER COMMUNICATIONS:**

3. Results of the September 25, 2023 DRB Panel B meeting
4. Recent City Council Action Minutes

There were no comments.

**STAFF COMMUNICATIONS**

There were none.

**ADJOURN**

The meeting adjourned at 8:57 p.m.

Respectfully submitted,

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