

# CITY OF WILSONVILLE

## CITY COUNCIL MEETING MINUTES

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A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, March 17, 2014. Mayor Knapp called the meeting to order at 7:08 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp  
Council President Starr – excused  
Councilor Goddard - excused  
Councilor Fitzgerald  
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager  
Jeanna Troha, Assistant City Manager  
Mike Kohlhoff, City Attorney  
Sandra King, City Recorder  
Nancy Kraushaar, Community Development Director  
Dan Pauly, Associate Planner  
Mark Ottenad, Government Affairs Director  
Jon Gail, Community Relations Coordinator  
Barbara Jacobson, Assistant City Attorney  
Stephan Lashbrook, SMART Director  
Andrea Villagrana, HR Manager  
Blaise Edmonds, Manager of Current Planning  
Steve Adams, Deputy City Engineer  
Mike Ward, Civil Engineer

Motion to approve the order of the agenda.

**Motion:** Councilor Fitzgerald moved to approve the order of the amended agenda. Councilor Stevens seconded the motion.

**Vote:** Motion carried 3-0.

### **MAYOR'S BUSINESS**

Mayor Knapp briefly reported on the annual Metro JPACT trip to Washington D.C. to meet with Oregon's elected official regarding transportation. Much of the discussion centered on the Federal Highway Trust Fund finances and the looming difficulties in funding and maintaining federal highway transportation infrastructure.

A Proclamation declaring April "Parkinson's Awareness Month" was read by the Mayor and accepted by Kevin Mansfield, Oregon State Director for Parkinson's Action Network. Mr. Mansfield provided information regarding the work of the Parkinson's Action Network to provide education about the disease and raise funds for research.

Upcoming City Council meetings were announced by the Mayor.

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### COMMUNICATIONS

A. Chief Mike Duyck, presented the TVF&R Annual State of the District. Chief Duyck of Tualatin Valley Fire & Rescue presented the state of the District using a PowerPoint presentation. He shared a recap of the 2013 activities, and talked about the local option levy renewal that would be on the May ballot as well as the hands only CPR training offered to the public.

B. Captain James Rhodes introduced Jeff Smith, Wilsonville's new Police Chief. Jeanna Troha, introduced Captain Rhodes who has been promoted in the Sheriff's Office and who, in turn, introduced Jeff Smith, the new Wilsonville Police Chief. Mayor Knapp presented the Wilsonville Police Chief's shield to Chief Smith.

### CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

Ginger Fitch, 29395 SW Camelot Street commented the flashing lights on Barber Street in the school safety zone by Lowrie Elementary School were no longer in place and that signs had been installed to alert drivers. She asked that the change be publicized. Regarding the vacation of portions of the public right of way on 110<sup>th</sup> Avenue she was concerned there was no north/south access for residents and suggested this connection be completed first prior to the vacation. Staff would contact Ms. Fitch since the public comment period for the street vacation was passed.

Michael Davis, 6295 SW Wilsonville Road, expressed a need for a community recreation center accessible to all children, including handicapped. It was explained the City was in the very beginning stages of such a project; a task force will be assembled and all meeting information would be available in the Boones Ferry Messenger and posted on the City's website.

### COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Councilor Fitzgerald – (*Development Review Panels A & B Liaison*) reported on the decisions made by DRB Panel-A at their last meeting. She announced the next meeting dates for the Library Board and that the Tourism Strategy Task Force will meet March 20, 2014 to review public comments and prepare a recommendation to take to the City Council on tourism strategy.

Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*) announced the actions taken by the Planning Commission at their last meeting, and that the Wilsonville Seniors are excited about participating in the recreation and aquatic center task force.

### CONSENT AGENDA

The Consent Agenda items were read into the record by title only by the City Attorney.

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A. **Resolution No. 2454**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With Angelo Planning Group, Inc. (Community Development Project #3001) Contract approval Frog Pond PSA.

B. **Resolution No. 2455**

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Construction Contract With Signal Construction Group LLC For The 2013 Street Lighting Infill Project (Capital Improvement Project #4698).

C. Minutes of the February 20, 2014 and March 3, 2014 Council Meetings.

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

**Vote:** Motion carried 3-0

**PUBLIC HEARING**

Mayor Knapp opened the public hearing on Resolutions 2456, 2457 and 2458 at 8:16 p.m. and read the public hearing protocol. Council members indicated they were familiar with the location of the proposed coffee kiosk based on either visiting the site or purchasing fuel at the gas station at that location; however their familiarity would not influence their decision.

Mr. Kohlhoff noted the Council had adopted procedures for the hearing: the Applicant/Appellant will go first with their presentation limited to 20 minutes. Of those 20 minutes, 5 minutes could be reserved for a rebuttal. The Chief Opponent has also been given 20 minutes to respond. Testimony is limited to the record, except for the issue of circulation in which the Council would take new evidence. If there is anyone who wanted to testify on the issue of circulation, other than the Applicant or part of the Applicant's team or the Chief Opponent and his team, they were welcome to testify for, against, or neutral. Council typically would limit this type of testimony to three minutes.

Mr. Kohlhoff pointed out the titles of the three resolutions all currently read the same, which may lead to some confusion even though the body of the resolution is different. He suggested changing the word "concerning" in the title of each of the resolutions to read as follows and shown in ***bold italics***.

**Resolution No. 2456** - approve

Resolution To Issue An Order By The City Council ***Approving*** The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95<sup>th</sup> Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon. Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

*Or in the alternative*

**Resolution No. 2457** - deny

Resolution To Issue An Order By The City Council ***Denying*** The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95<sup>th</sup> Avenue And Boones Ferry Road. The Subject Site

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Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon.  
Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

*Or in the alternative*

**Resolution No. 2458** - remand

Resolution To Issue An Order By The City Council ***Remanding*** The Appeal Of The Stage II Final Plan Revision, Site Design Review, And Master Sign Plan Revision And Sign Waiver Of A New 450 Square Foot Drive-Thru Coffee Kiosk At The Corner Of 95<sup>th</sup> Avenue And Boones Ferry Road. The Subject Site Is Located On Tax Lot 302 Of Section 2DB, T3S, R1W, Washington County, Oregon.

Applicant/Appellant/Owner Wilsonville Devco, LLC. Application Nos. DB 13-0046, DB 13-0047, And DB 13-0048. (staff – Pauly)

*The Staff Report is included here for background.*

**ISSUE BEFORE COUNCIL:**

Applicant Wilsonville Devco LLC has appealed the Development Review Board's denial of its applications to modify its already approved Stage II Final Plan to allow for a drive through Human Bean Coffee Kiosk.

**EXECUTIVE SUMMARY:**

The DRB denied Wilsonville Devco's applications for a Stage II Final Plan Revision that would have replaced the already approved small mall project with a drive through coffee kiosk and store due to concerns about safety and internal traffic circulation, given the tight nature of the site and the adjoining development's drive through, coupled with traffic to and from the Chevron station. City Council granted the Appeal at the March 3, 2014 City Council meeting. The City Council determined that the appeal would be based on review of the DRB record, with allowance for limited new evidence and testimony relating only to on-site traffic congestion; adequacy, efficiency and safety of on-site pedestrian and vehicle circulation, inclusive of delivery and other larger format vehicles; and Section 4.154, Subsections 4.155(.03)A, 4.400(.02)A and 4.421(.01)C of the Wilsonville City Code.

**EXPECTED RESULTS:**

The Order will be final action by the City Council on the Appeal.

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK Date: 3/6/14

It should be noted that the three attached draft Resolutions are in the alternative, depending on the decision reached by the City Council. It is also important to note that the attached Findings attached to each Resolution are simply proposed Findings to aid the Council as to what the Findings might look like, based on current evidence, without knowing what new evidence might be presented during the Hearing that could lead to a different outcome. Thus, Council members must form their own opinions and reach their own Findings of Fact, Determinations and Conclusions, which may or may not be as written on the draft Resolutions enclosed. If the Council's Findings are significantly different or complex, staff will be tasked with creating new Findings, as directed by Council, which will be brought back before City Council at the next City Council meeting for final review and approval. The next meeting is April 7, 2014 and the 120-day period will expire on April 8, 2014. Thus, unless the Applicant agrees to toll the time period, the remand option is not viable.

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**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups:  
Resolution of the Applications.

**ALTERNATIVES:**

The Council has the following options for consideration:

- 1) To deny the Appeal and Applications, upholding the DRB decision;
- 2) To approve the Applications, overturning or modifying the DRB decision and adopting the original staff report to the DRB, with or without modifications;
- 3) To remand to the DRB (understanding that this is not an option unless the Applicant agrees to extend the deadline for final action by the City).

Option 1 or 2 is recommended by staff given the time constraints for final decision, unless the Applicant voluntarily waives this time limit. Please take special note of the City Attorney's comments with respect to how Council's final Order may be framed.

*End of Staff Report.*

Documents received March 10, 2014 to be included in the record:

- On behalf of Wilsonville Devco, LLC a letter from Steven L. Pfeiffer dated March 10, 2014 to Mayor Knapp, re: Appeal of Denial of The Human Bean Coffee Kiosk; DB 13-0046, DB 13-0047, DB 13-0048
- Submitted by Gary LaPoint on March 10, 2014:
  - CD containing video of turning movements dated March 17, 2014;
  - Gmail message to Steven High at core-mrk.com from Gary LaPoint dated February 10, 2014 9:22 a.m.
  - Gmail message to Gary LaPoint from Steve High dated February 10, 2014 1:37 p.m.
  - Site plans showing Human Bean Entry Truck Turning movement WB-40 Truck
  - Site plans showing Human Bean Exit Truck Turning movement WB-40 Truck
  - Boones Ferry Pointe: State II Final Plan Parking site plan

Mr. Pauly used a power point presentation to identify the site location and provided a brief development history of the site. Previously, together with the Carl's Jr. development there was a 3,150 square foot multi-tenant building proposed for this portion of the site; however, the developer now has requested to replace this 3,150 square foot building with a coffee kiosk. The portion of the site to focus on is the north portion of the property. The coffee kiosk is located in a position to maximize the queuing available.

Mr. Pauly identified the reasons the Development Review Board denied the application:

- Delivery Truck Circulation. As is standard for this type of development there is no delivery dock or parking required, typically a delivery truck will park in the parking lot to make their delivery. The DRB was concerned with the parking and backing of delivery trucks, the safety of pedestrians, and damage to the curb and impractically with the larger WB-40 truck. Since then the Applicant submitted information indicating they have worked with their suppliers to make deliveries in smaller 30-foot trucks.

Staff prepared a condition that would limit deliveries to be made in the smaller vehicles.

- Pedestrian Access and Safety. This concern is related to the truck traffic and the backing movements and pedestrians in the area. In addition, the rest of the site is developed with the Holiday Inn, Chevron Station and Carl's Jr. and recently when the Council updated their transportation systems plan there were new pedestrian circulation standards adopted; which apply

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to this but not to the previous development. The pedestrian circulation paths were displayed on a slide. The pedestrian paths proposed by the Applicant do meet the updated standards; however, the DRB discussed the matter of Human Bean customers walking over from the Holiday Inn and the number of vehicle circulation areas pedestrians would need to walk through. The existing path to the sidewalk was shown, and the connections to the coffee kiosk from the sidewalks. But, there are limited things that are really within the prevue of this application.

- Onsite Traffic and Vehicle Circulation. Mr. Pauly displayed a slide showing the circulation for each of the drive-thru businesses. The Applicant has agreed to pavement markings to divide opposing traffic to aid in circulation and directional exit signs to help customers exit through the Carl's Jr. parking lot rather than the Chevron property. The DRB was concerned with vehicles stacking at the Carl's Jr. drive-thru blocking the exit for the coffee kiosk. The Applicant agreed to an additional condition which would include a stop line with a sign as well as a "do not block" pavement marking to allow traffic to exit the coffee kiosk.
- Traffic Circulation. The City does not require any traffic reports on internal private property circulation. There was no concrete evidence presented that showed the onsite circulation would not work.

Mr. Pauly displayed the three recommended conditions of approval as follows:

1. No vehicles greater than thirty feet (30') in length shall be used to make inventory deliveries to The Human Bean, or future tenant of the kiosk, unless an easement is granted by the neighboring property owner or found to exist by the appropriate legal authority that would allow the maneuvering of larger delivery vehicles.
2. Site circulation to The Human Bean or future tenant of the kiosk, including inventory deliveries and typical customer traffic, shall be accomplished without the use of the curb cut along the property line between the trash enclosures and SW Boones Ferry Road unless an easement is granted by the neighboring property or found to exist by the appropriate legal authority that would allow use of the curb cut and circulation on the neighboring property.
3. The following shall be installed and maintained to aid in site safety and circulation:
  - a. A stop line and stop sign for northbound traffic directly east of the north building line of the Carl's Jr. Restaurant building. The stop sign shall meet ASHTO dimensions standards.
  - b. A "Do Not Block" areas at the entrance of the Carl's Jr. drive-thru lane sufficient to allow traffic through exiting from the north.

The Mayor invited questions by Council of the Staff.

Councilor Fitzgerald asked if how customers would leave if they were parked in front of Carl's Jr. and there were more than seven cars waiting for the drive-thru.

Mr. Pauly thought that situation was typical of fast food restaurants with stacking and internal parking spots. This does allow additional tenant to have a free flow of traffic coming out, or emergency access. Typically in fast food you are going to see some blockage like that when you get a longer queue.

Councilor Fitzgerald it would be the same for either the Carl's Jr. or the coffee.

Mr. Pauly responded where the stop sign and "do not block" does allow a vehicle to access The Human Bean behind the Carl's Jr. line to some extent.

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Councilor Stevens verified a WB-40 was a forty foot truck. She asked if the Applicant was agreeable to smaller delivery truck; was Carl's Jr. agreeable to the condition; and were they in agreement with the "do not block" pavement markings.

Mr. Kohlhoff indicted the Applicant and Objectors could provide testimony in response to the Councilor's questions.

Councilor Stevens asked where the curb cut was located. Mr. Pauly indicated the location on a Power Point slide, noting there was no physical barrier. The goal was to have signs to direct traffic.

Referring to one of the Power Point slides, Mayor Knapp wanted to know the difference between the vehicles shown in grey and those shown in black. Mr. Pauly stated the black vehicles were at the menu board placing their order.

Mayor Knapp asked whose property the curb cut was on. Mr. Pauly explained the location of the property line. Mayor Knapp confirmed the parking spaces above an arrow were for the coffee shop. Mr. Pauly stated they were on the Carl's Jr. and coffee shop property, which is commonly owned by Wilsonville Devco property.

Mayor Knapp asked if there had been discussion about combining the circulation pattern for the drive-thru for Carl's Jr. and coffee shop rather than having them separate. Mr. Pauly had not heard any such discussion. In response to a question about the stacking of cars at the drive-thru Mr. Pauly stated there was more room for vehicle stacking available for the coffee shop than there was for Carl's Jr.

Mayor Knapp referred to a video submitted by the Opposition showing backing maneuvers of a WB-40 delivery truck. Mr. Pauly understood that is the Carl's Jr. delivery truck, which is a similar sized truck as the WB-40 and they were testing out different ideas for circulation to see if a larger truck could work on the site.

The Mayor understood the original plan was to pull into the coffee shop parking and back 180 degrees into the Carl's lot which is not what the truck did in the video, and even in this diagram appears to almost clip the landscape island between Carl's and the coffee shop.

Mr. Pauly stated from staff's view of the video it appeared they were attempting two previous ideas for circulation of the semi that were not proposed at this point.

Mayor Knapp wanted to know if the pattern on the slide showed a pattern that is no longer being advocated. Mr. Pauly stated findings had been made by staff and the DRB, and the DRB rejected this and staff prepared findings, and the Applicant proposed using smaller trucks, and not to use the backing pattern with the smaller trucks. The Mayor asked to see the backing pattern proposed for the 30-foot trucks, which involved backing from the upper right hand position down toward the curb cut and pulling out head forward, and has anyone actually done this with a 30-foot truck. Mr. Pauly did not know; but there was a traffic study and engineering report on this maneuver included in the record.

Mr. Kohlhoff stated a table of the documents submitted by the parties to date has been made a part of the record. Staff has made sure both parties received the information submitted by the other.

Steve Pfeiffer, Perkins Coie, 1120 NE Couch St. 10<sup>th</sup> Floor, Portland, and Appellant's Representative. Mr. Pfeiffer commented Council's questions and Mr. Pauly's responses confirmed his understanding of the primary focus, of the discussion tonight and the issues that we've raised, and the basis for the DRB's

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decision as truck and pedestrian circulation. Mr. Pfeiffer added one of the primary points made below by the Principal Opponent is that vehicular circulation, particularly delivery trucks, should not enter onto their property. That was one of the concerns with the 40-foot truck mentioned by the DRB, there was a concern that a truck could end up on their property. Marc Butorac will speak to the truck circulation analysis and Josh Veentjer will address the vendors' agreement to the size of delivery trucks servicing the Human Bean.

The Applicant will endorse the three additional conditions of approval presented by Mr. Pauly because one reflects information presented to the Council through the additional open record opportunity, which is limiting the length of delivery trucks to the site to 30-feet. The revised circulation plan eliminates any aspect of the additional onsite circulation on the Chevron property which was a concern for the LaPoints. Third, the cross-easement at the property line is a cross easement that essentially allows a break in the common property line for certain kinds of traffic. Mr. Pfeiffer was not concerned with condition number 2 because it is limited to the Human Bean or any future tenants. Mr. Pfeiffer reserved five minutes for rebuttal, and turned the presentation to Josh Veentjer to provide a history of the development of the Boones Ferry Pointe Property, how this evolved from the earlier approved office building that is still available to us to develop today, and the work he has done to come up with a solution to address concerns voiced by the DRB.

Josh Veentjer, 4188 SW Greenleaf Drive, Portland. Since acquiring the property in 2012 he has worked extensively with the LaPoint Business Group, Chevron, and WHI LLC (Holiday Inn) to work out a development agreement which spelled out a majority of the improvements we would make, in part, to improve the shared driveway that would benefit Holiday Inn as well as Chevron to improve the circulation overall to accommodate the Carl's Jr. and future retail. We were approved for a 3,150 square foot retail building. We planned to have a national tenant but they withdrew due to the economy, making it difficult to obtain financing with no tenants in place. At the time we were approached by coffee vendors, we spoke to our neighbors and conveyed that we were looking at this type of business for this site.

The coffee kiosk application is an amendment to a prior approval reducing the building from 3,150 square feet to 450 square feet. A 3,150 square foot retail building could accommodate up to three tenants which would have had a larger impact overall with delivery trucks and cars frequenting the site. Mr. Veentjer thought the coffee use was complimentary in nature with a morning peak and Carl's Jr. with an afternoon peak, where the traffic for each business probably would not overlap.

Regarding delivery trucks Mr. Veentjer worked with the vendors of the Human Bean who cooperated to limit delivery truck sizes to the site, understanding that it is not safe to have a WB-40 truck to the site. In addition, the vendors are willing to comply with delivery hours; Umpqua has agreed to make delivery at 4 a.m.

Mr. Veentjer was agreeable to the additional conditions of approval presented by Planning Staff and noted hearing the concerns raised by the DRB and Planning Staff has provided time to improve on the circulation and pedestrian safety on the site.

Marc Butorac, Kittelson & Associates, Inc. 610 SW Alder Street, Suite 700, Portland. Mr. Butorac stated the diagrams of the traffic circulation need to include the time of the traffic to present a full picture. Truck deliveries will be on the site between 4 a.m. and 5 a.m. when there are few operations going on. The auto-turn analysis of the Umpqua dairy truck was customized to the specific 30-foot truck; the analysis was conservative meaning a non-professional could perform the maneuver. Pedestrians have access to a public sidewalk surrounding the site with separate access to the businesses. Regarding onsite



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traffic circulation the Human Bean generates about 27 vehicles in peak morning hours or one car every two minutes, and business drops off at noon. The drive-thru business for Carl's Jr. in the morning is two-three cars, with their heaviest traffic during lunch hour. The overlaps and conflicts while they are there on paper physically will not be there since they happen at two different times of the day. Mr. Butorac thought the circulation was safe and functional from an operational safety standpoint.

Mr. Kohlhoff noted the 15 minutes had run.

Mayor Knapp invited questions of Council.

Councilor Stevens asked if Umpqua was the only delivery truck visiting the Human Bean; and confirmed customers could walk up to the coffee kiosk. Mr. Veentjer said they focused on that truck since it was the largest; the others were box vans or smaller sized trucks, no more than 22 feet. The coffee kiosk will have one drive thru with a preorder board to expedite delivery of the product to the customer.

Councilor Fitzgerald wanted to know how they would manage long term adherence to the early morning delivery schedule. And that the restaurant is dedicated to focusing on the early delivery time since this is an important aspect of this, reducing the size of the truck and reducing the time window in keeping deliveries at the early time. She wanted to hear how that can be the most dependable outcome.

Mr. Veentjer explained the venders have already confirmed their delivery times and they were willing to comply with the restrictions.

Mr. Butorac added there was a contractual obligation between the Human Bean and Umpqua that is enforceable. And there were more practical things on the ground that Umpqua is looking at, for them to have a reliable delivery schedule so they try to get their trucks out and get deliveries made when there is less traffic on the road and they can come in and out of sites conveniently. There is an incentive for them to make deliveries at this time as well.

Mr. Veentjer said the operator does not want to inconvenience their consumer and they want to adhere to the early delivery schedule just as much.

Councilor Stevens confirmed the Applicant was in agreement with the "do not block" pavement markings and Carl's Jr. was as well.

Mr. Veentjer indicated he would work with Carl's Jr. as they have in the past to find what is acceptable to the City and come up with what is appropriate.

Mayor Knapp asked if the size of delivery vehicle and time of delivery was a common contractual arrangement in this type of business.

Mr. Veentjer stated is very common. Vendors are very accommodating, they want the business and they want to help their customer.

Mayor Knapp asked if the proposed layout was optimal for the site – if they were starting with a blank slate with a Carl's Jr. and coffee drive through would this be the layout they would use to maximize the circulation.

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Mr. Veentjer believed the layout provided adequate queuing for both businesses and uses the space provided the shape of the parcel very well. He worked with a planner and architect to come up with the most efficient plan possible.

The Mayor asked if the developer looked for common accesses for the two drive-thrus rather than each having its own approach. Mr. Butorac stated the drive-thru requires a counterclockwise travel direction to access the driver side window. Mr. Veentjer said the circulation pattern for both businesses is the same, and they share the ingress and egress from the site.

The Mayor wanted to know if the curb cut issue would change the dynamic of this depending on an eventual resolution. Mr. Veentjer did not think the curb cut would change the dynamic at all; there isn't a legal easement in place that was originally established with the development agreement in 2012, and was put into place well into our planning of this site plan.

Mr. Pfeiffer stated their position is the access exists today for both parties to use that curb cut to circulate vehicles to and from their respective properties. And acceptance of the condition for purposes of development of the Human Bean site to not have that cross-circulation is giving up a legal right that we are quite confident we have. But we're happy to do it because we learned at the DRB that despite the history and despite what we thought was a common understanding of what that access easement is, there is no such common understanding, they don't believe the Human Bean traffic in any way can or should use that cross-easement into the Chevron property. That's not an argument we want to have and if it works for the city to impose by condition an assurance that's not going to be the case we will make it work. But we are actually accepting, with that condition, something far less than what we are legally entitled to.

The Mayor invited speakers in favor of the applicant.

Jeff Brown, 25425, SW 95<sup>th</sup> Avenue, Holiday Inn Manager expressed his support for the Human Bean coffee kiosk.

Can Gjurgvich, 7263 SW Lynnwood Ct., Wilsonville, Carl's Jr. franchisee owner voiced his support of the Human Bean coffee kiosk noting their busy hours of operation are early morning while his restaurant's is later in the day.

Mayor Knapp declared a recess at 9:25 p.m. and reconvened the meeting at 9:30 p.m. He then invited the opposition to come forward and testify.

*The following portion of the testimony is a transcript.*

<b>Gary L. LaPoint</b> 25410 SW 95 <sup>th</sup> Avenue Chevron Station Owner	<i>Mr. LaPoint used a PowerPoint slide presentation during his testimony but did not submit a copy for the record.</i>  I'm not only the developer, the owner and operator of the Chevron and Coca-Cola Fountain Mart, located on the property, my son here Jason LaPoint is the operational manager and Phil is one of our employees that is an IT gentleman that in the event I have trouble with the presentation here he is going to try and help me.  I would first like mention that my wife and I did develop this property fifteen years ago. We actually bought it almost twenty years ago and it has
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	<p>been a family business for us. We were married forty-two years and I've been in the business forty-five years, so I was doing this before I got married.</p> <p>First of all I'd like to say we strongly agree with the DRB and I think when we show you what was stated at the meeting and show you some of the things that maybe were presented tonight; it will clarify why we agree with them and why we are here again tonight.</p> <p>So, Resolution 270 cited concerns about traffic and circulation and you're pretty much aware of what those were. The Development Review Board voted 4-1 to reject that proposal and the staff report of January 6, 2014, finding the application did not satisfy the Wilsonville codes requirements pertaining to safety and circulation.</p> <p>This picture here you can see was taken when they were doing the 95<sup>th</sup> Street improvements, and I want to note a couple of things on here for you. First of all if you follow the pointer here, this lane right here going around here and around to here, I donated that to the city for one dollar. That's 7,814 square feet. The second lane coming around hereafter I sold the property to George Price, and George Price sold it to the Wilsonville Devco people was paid \$107,000 for their property. Mine was actually worth more at the time and was a bigger piece. So that lane out there was a contribution by our group here, you know for this improvement and how to make this whole site work better.</p> <p>The other thing, if you notice on our site here you can see a delivery truck over here, you can see another delivery van here, then there is another delivery over here. We just pulled this off of Google and it just happened to fit into this presentation. Also our whole traffic circulates around this direction here, counterclockwise.</p> <p>This was the original parcel of property that has now been downsized somewhat because of the 95<sup>th</sup> street improvements down here.</p> <p>This is what I agreed to with the development agreement, Josh, Holiday Inn, City, was this development. If you look here you will see there is a ton of parking spots over here. It just seems to be a lot of parking spaces in here.</p> <p>At the time this was proposed and I begrudging agreed to this curb cut, and a little bit later on if you start asking me questions on how that occurred I think you're going to get a whole different feeling on the other side of this story on how that curb cut occurred and the reason I encourage you to maybe do that, is because my fuel truck, which I'll show later on, it delivers right here. So why would I want to jeopardize my only means of business or my main business of fuel that's going to block this thing one to three times a day, a minimum of one. We usually have two to three loads a day. And it's going to be in there and takes 45 minutes to an hour and a half each time it comes in, and it can come in sporadically. They know what we need, they know when we need it, it's all automated and they bring it in and</p>
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	<p>we have a 5-8 minute window to get the truck on the lot. After they are there and they deliver the fuel. If we don't get them in in that 5-8 minutes then they'll go on to their next delivery and then we'll basically run out of gas and we may not get it for 24 hours. So it is really important that this be an area that we have clear most of the time.</p> <p>Also, this is our fuel tanks. Our fuel tanks need service, our turbines are in there our leak detectors, our DEQ inspections, we have big lids, everything we have to maintain. We have things we have to clean out; my employees have to get in there with the lids off and etcetera to do that.</p> <p>Okay, the green was us with a little bit missing over here. This is what we basically don't agree to now. We agreed to the blue area as a site that we agreed to, but not to this development.</p> <p>What we've been experiencing throughout this whole thing is we have tried to make this piece of property separate from this whole development. And the development agreement, the easement agreement here was all with this entire piece of property here.</p> <p>So again we're confused about that. That is the property line going through here, the property line; this is actually the ODOT center over here where the ODOT has their bio-filtration ditch. The sidewalk actually ends on my property right here, and that's landscaping, a fire hydrant and water meters and a few extra things like that.</p> <p>So to answer your question a little earlier, the sidewalk ends right here, and it's basically at this point in time, the sidewalk to nowhere if you are not parked here. And this property line extends down through here, I actually own it down to the easement agreement, or whatever the city calls their right-of-way and back up here.</p> <p>And this is an easement line that I agreed to give to Josh, and to move it back up here down to here, there is no reason to discuss that.</p> <p>Mr. Greenfield, the opponent is the one thing said during the meeting, "the opponent was not calling for a mitigation of the existing problems, only not for amplifying them at any rate not beyond what had already been approved in the perspective of a multi-tenant commercial building." Not a coffee kiosk but a multi (garbled) commercial building which was described in the former application.</p> <p>Mrs. Keith, "the traffic flow was complex enough and she did not believe keeping the traffic on the Devco property was enforceable because there was a column with the Carl's Jr. traffic already."</p> <p>Here is the traffic flow of our fuel and they also come in on this island over here and they also swing out wide here sometimes to get out depending on what kind of vehicle it is. Basically our traffic flow for gasoline.</p>
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	<p>This is our basic traffic flow for the convenience store and if you notice the direction they are going in this area right in here is extremely important to us. You'll see why in a little bit.</p> <p>This is Holiday Inn's traffic flow out the egress here and back onto the shared driveway.</p> <p>So then we have Carl's Jr. traffic into their drive-thru along with all their parking spots here, their parking spots here, and here.</p> <p>Now the one thing that some people ought to take into consideration is people back out of these things and pull into them, some people drive back around this way, and etcetera, but that's basically their drive through traffic pattern.</p> <p>When the retail site was going to be developed here and we agreed to this site plan that had all these extra parking places that Carl's Jr. could encroach on their own property here with their own development, they were miniscule traffic, that's why there's a space kind of blue lines little space because the amount of traffic into here is just considerably less, they may have 50-75 cars per day from the things that he ever talked to me about using here or tenants that he had proposed here, but the coffee shop is just way more traffic. Estimates are 500-700 cars per day.</p> <p>Okay, so now we take our store traffic, Holiday Inn's, and see the thing quit there I can't make it go again, but you get the idea that moving all the traffic there from the previous slides but you've got all of this going on right now.</p> <p>Mr. Greenfield again, "the core issue was whether or not the application met the criteria of WDC4.400 regarding proper function." This is the one thing you hit on a little bit earlier tonight, proper functioning of the whole site.</p> <p>And being as we co-developed this (garbled) part to be their application, and I'm part of this because they use my property. It still lacks the function on our site in using the word "proper".</p> <p>Mrs Keith, "It would be foolish to assume that traffic could be contained entirely within the Devco site unless it was somehow physically blocked. People would drive wherever they wanted." And we are experiencing that now; we've had three accidents on the property since Carl's Jr. opened. Previously to that we had none, we had no accidents I cannot ever recall any type of incident. But since Carl's Jr. opened in November we had a horrendous accident with a semi and an SUV on 95<sup>th</sup>, which is in some of the pervious stuff submitted to the DRB; we had another on-site accident, two vehicles just by the Carl's Jr. ingress there where two vehicles hit in the cross walk area. So physically block is something you might want to keep in mind here as we go along.</p> <p>Again, if you look here now, look at all the parking spaces gone. And this</p>
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	<p>planter area was clear down here before and I'm not sure I can do that, I had two back to back, now I can't show you that, okay. If you go back and look at the other one it was down here farther which gave vehicles the ability to come around here, whatever.</p> <p>Also some of the oversized vehicles were parking here, now Devco has gone out and painted it red and said "fire lane" and "no parking". And it's all red around here and no parking. When I called the fire marshal on it they said they didn't require it so now I'm going like they have a little bit oversized parking available, and they painted it red and put fire lane on it and so I did call the fire marshal and he wasn't aware of it.</p> <p>Again here's the traffic flow now through the coffee kiosk as they propose even through earlier in other presentations they proposed it coming through our lot around this way, they changed it when I said can they do business on their property. This is what they propose now they are going to do and we're all assuming this is exactly what is going to happen.</p>
Jason LaPoint	<p>Just to elaborate on that parking, they running operations and part of our concern is, if you come into their lot with a landscaping trailer or small trailer or oversized van, our lot becomes more viable to park because they really don't have anything available with this site plan that allows for you to be in an oversized vehicle which, in an industrial area where we are at and off of the freeway, you get a lot of those people and they just find our property a lot easier to park on.</p>
Gary LaPoint	<p>And they park in this area right here, and go across to Carl's Jr. and I was just there the other day and a big blue truck was parked there in Carl's Jr. he came out, he came around this way and reversed flow of our traffic and my people had to go out and direct traffic and our customers so that their customer could get out of our lot.</p> <p>Okay, here's the traffic flow that they are proposing that maybe some cars would go through our lot, but it could be the red line, we don't know, they're not open yet.</p> <p>And here's, here we go with all this traffic flow, and this is where I want you to note again, see traffic going against each other and Mayor Knapp pointed out he trades with us so he knows how much traffic can be in there depending on what time of day.</p> <p>This is Keith's again, people tend to take the path of least resistance and whether it was right or wrong, they will drive wherever room was available. And so if we go through this and we see these cars stacked as they did and around here where they're at, I'd like to address the memo from Kittelson.</p> <p>By the Institute of Traffic Engineers which most people like Kittelson and DKS and stuff use, a coffee shop will produce the longest maximum queues of any of the land uses in the study, which studied car washes, banks, they studied a whole bunch of things but the longest maximum queues of any land use in the study was all of the maximum queues occurring in the morning in four of six cases the queues spilled out of the parking lot into the</p>

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	<p>street. These spills would typically happen once or twice a day, or at least only for a few minutes at a time. However one location had a stacking into the street for about 15 minutes in addition to multiple periods of several minutes with cars that would queue in the street.</p> <p>They suggest the average queue is 13 vehicles and you would need at least a minimum of 260 stacking feet for cars, and I got that off of their websites they posted.</p> <p>Again here we've got some queuing here going on. The 41.1503 here is parking and loading delivery areas shall be designed with access and maneuver area adequate to serve the function and needs of the site. Separate loading delivery areas and circulation for customers and employees parking, pedestrian circulation, you can read all that, that's what your code is.</p> <p>Okay, here's my fuel truck, it's parked in here. There is no access now on this easement agreement. Here's the Carl's Jr. truck this is the way he has been parking since they've been open and I couldn't figure it out when I talked to Dan I says, Josh told me that if I would give him this curb cut I told him we could draw that later, that they would deliver after midnight and before 4 a.m. and they would back up into here and unload right here, which would also work for the coffee shop. They could back in here and unload here.</p> <p>What happened in practicality, I was sitting over here having a meeting and I looked over and Carl's truck drove up, drove up, blocked off all my island, made two or three runs to get back in here and parked. And when I talked to Dan about it, he said they don't come, they're not open they don't have any deliveries after midnight. And so that brings us to the point of the coffee kiosk where that's going to happen because Josh told me one thing here and something else totally happened.</p> <p>But as you see here, it totally blocked the ingress there, and beings as that did tell me now where and how are the cars going to get into here?</p>
Mr. Kohlhoff	Four minutes – you have four minutes.
Gary LaPoint	Okay you can see right here where the traffic pattern is going to go with both of these blocked, and people are also blocked inside they can't get out except through the drive thru window.
Jason LaPoint	This has happened to us and we did submit the video where both trucks do show up and we're not even in our busy season. We get one truck a day, maybe two now, we get three or more in the busy months and this is without the coffee kiosk.
Gary LaPoint	<p>There's the truck, there's how it parks, there's pictures of it so you can see how big it is and where it parks.</p> <p>There are four video cameras on one site. This is a truck parked, you can also see it over here and then you can see our gas truck and over here.</p> <p>It's not hypothetical, it did happen, it does happen. So that's just another</p>

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	<p>picture of that.</p> <p>Is the intent to provide for a safe reasonable and convenient pedestrian access and circulation.</p> <p>Okay, here's our traffic pattern and here's the pedestrian access that everybody is going to take now and the chairman Bower noted if she were staying at the Holiday Inn, she would probably not take the sidewalk, but walk straight across the site to get to the coffee in the morning. People's lives would probably be endangered. We totally agree with her and I totally agree with her. Because with all this traffic here that's the way they're going to go, I'm sorry, but that is.</p> <p>So we've offered a solution that solves all of our problems, I'm talking about mine; whatever problems are on their property you can deal with those. But this solves all the problems, so we offered a solution here.</p> <p>Again I want to show you the sidewalk to nowhere here. What we propose is a fence across the whole thing and across here. Because the spirit of cooperation again with this development and trying to help them we've agreed to put a gate in here, that if they didn't abuse the privilege, which the only thing I want to say real quickly I called up the code enforcer for Wilsonville but to my surprise it was Dan Pauly, I said how do you enforce people's parking on my property, it's a code violation, it was against what they said was going to happen. He says they can't enforce any codes, there's no penalty. So once you agree to let him build whatever he wants he can almost do whatever he wants and there's no repercussion, there's no fine, there's no nothing for somebody violating that code on our property.</p> <p>With respects to vehicle pedestrian circulation including walkways, interior drives and parking, special attention should be given the location, number of access points, circulation, you can read that faster than I can, so we'll go on to how I think Mr. Greenfield summed up the DRB, "the cumulative effect of all the late exhibits, such as tonight again, was to produce a tortured circulation pattern", interesting word tortured, "within the property which simply did not make sense." Technically, which they can prove tonight, which I can prove tonight, technically we can make anything work on paper, but in practicality it doesn't, but technically it could be made to work, but it certainly wasn't efficient or convenient and did not seem to be in good business. And I've got 35 seconds to spare.</p>
Jason LaPoint	<p>I would just like to add too I'm going to be there for the next 15 years and I appreciate my parents handing this down to me, and I'm concerned if it does change brands and is not a Human Bean or a Carl's Jr. or whatever down the road maybe they'll have different sized trucks or different drivers or different something depending on the suppliers to different businesses, is it going to be a Human Bean forever because I'm going to be there for a long time. And once this is in if there's no enforcement I have a concern for the future.</p>
Gary LaPoint	<p>Their comments on Core-Mark they originally proposed that truck pattern. We sent that video out and Josh actually testified at the DRB meeting that</p>



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	they actually performed that maneuver of the auto turn program successfully, it wasn't a problem, but they didn't see the need to present a video.
Mr. Kohlhoff	Time.
Mayor Knapp	Okay, thank you for all your information. Council questions for the opponents to the application?
Councilor Fitzgerald	Thank you. I'm interested in finding out more about, well first of all for the viewing audience and myself, could you give a little physical description of what you mean by "curb cut" in that site, was there a curb there that has been taken out. So to the lay person, what exactly do you mean?
Gary LaPoint	<p>Originally Josh came to me and said he couldn't lease out those buildings and there was, I had a curb in here that went around these parking spots around here. This is a curb all the way along here. On the other side of the curb was approximately 10 feet of landscaping, still on my property at the time. And he came to me telling me that he couldn't lease out his tenant buildings over here, and when he did I said well we talked about all the different suggestions of what he could put in there. He said he had one or two tenants interested but they were concerned about getting through the traffic at Carl's Jr. when they're leaving at night or whatever or maybe their customers, and he says if we could just take that curb out, he says I might be able to get some tenants in there.</p> <p>So I told him earlier it was a super bad idea, my tank is there, I can guarantee you have no rights whatever, but if I take the curb out you have to understand that, that this is not good.</p> <p>Then he came back about three weeks, four weeks later, calls me us, says Gary the city's going to make me redo my entire site plan and I have to start completely over. And I say I feel your pain but I don't know if I can help you there. He said I think you can, he said if you'll let me tell the city that I can use this area through here for a loading zone he says that will satisfy the conditions of the loading zone I think they'll let me have that, and he says, but he says I'll tell you right now he says, we're never going to use it, we're going to come in after midnight and we're going to back up into this area to unload. And I said, Josh we're really what if my truck is there, how are you going to get in, what if my truck comes in after your truck is there and he wants to get out. I said this isn't going to work this is really, really bad. He goes we understand we'll work around whatever you have to but we won't block your truck or anything, and I says man, Josh this is getting bad, but in the spirit of cooperation again, I go okay, go ahead and tell them that.</p> <p>So then after about 2-3 weeks later again, he called me up he says well the city said it was okay, he says, but they're not going to approve it without a curb cut or without an easement agreement. And I said Josh now it makes it a legal thing, this is really bad. I was feeling guilty but I figured okay, I let him write up this amended easement agreement which he did, which is what gave this curb cut and etcetera and then he just felt it was a free reign on my property for anything he wanted. And he still does because the traffic pattern that I'm showing you here is, a lot of it is going to happen, and we already proved if their truck is blocking here, they have to use our property,</p>

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	<p>there's no way that they can't and we watched a truck pulling this way, and this way, and over here, they did all sorts of maneuvers that day and stuff, and no matter what they do they're still going to block their ingress and egress off the shared driveway.</p> <p>And the fact that they still have to use our property to drive up on to back their truck in there. If they just come in like they showed you in the video one time coming in this way, do whatever they have to and back out, they don't need this curb cut and probably the frosting on the cake after Dan Pauly asked me to call Dan, the franchisee, Gergervitch, I'm going to get it wrong, I'm not going to get it right. But he asked me to call Dan and I did, and then I got the shocker of my life, and that was when I found out that the conditions of building this was predicated on this easement agreement over here and Carl's Jr. was just ready to open in three weeks, this is on the record, you can go back and look, October 14<sup>th</sup> because I had great reservations about this and I wasn't going to do it, I wasn't going to sign it, and Josh says I need that easement agreement to get my certificate of occupancy. And I didn't want to do it, and I wasn't going to do it and I thought, man, I committed to this, so I'm going to honor my word. And so on October 14<sup>th</sup> it was notarized, on October 16<sup>th</sup> I hand delivered it to them on site not knowing what he was going to do here, no plan had been presented to me, he had talked about different things, but he never showed me a plan of any kind, and October 30<sup>th</sup> he went down and made a new application to do this.</p> <p>You talk about shot at and missed and whatever done gone and hit, I got it. And I go like wow, and so I don't feel guilty about this at all. Their legal problem with Carl's Jr. is their problem that's not ours, that's not yours. Josh committed to something without ever telling me that. He also told us and the city different things to get what he wanted, and then he comes back with all of this and we just see a mass confusion as Mr. Greenfield did.</p>
Councilor Fitzgerald	Thank you. I have one more question. The painting of the green pedestrian walking paths, can you elaborate is that something you had offered to do, was that discussed with the city? Or is this just a concept.
Gary LaPoint	No, we're agreeable to this.
Jason LaPoint	Those are already there the green paths.
Gary LaPoint	The green paths are already here this is in front of my store; this comes from Holiday Inn on a walkway, this joint with us, and what Mr. Ferrios said she would just cut straight across here like we feel most customers would.
Jason LaPoint	You currently to get to the Human Being from the Holiday Inn take the pedestrian path, walk the green line all the way up to 95 <sup>th</sup> Avenue and then all the way over, and then into the Human Bean. I think we all understand that you don't even know that's an option to get there if you're at Holiday Inn, if you're a new person to Wilsonville, like most guests are in hotels. You probably wouldn't even know that is the way that you have to go safety.
Gary LaPoint	Now if this is blocked off here we have safety and control inside our site again that we've had for 15 years, we no longer have an encroachment over here. And even though Dan and Josh want this curb cut, Dan mentioned he

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	<p>was disappointed in the amount of traffic he was actually getting from my pump island, and he also mentioned if it wasn't for me and my business and what we did they never would have built there to start with.</p> <p>So there are a lot of reasons for us to exist profitably and like we have for 15 years, and not compromise our site or have them have to use our site and to take care of our pedestrians, bicycles and everybody else by forcing them over to the approved sidewalk that worked for 15 years and once you get past this property line here, then again it's back in your ball park, but you guys think is where he should go and what he should do and probably my last comment on the easement agreement, is he has no easement agreement to have a garbage truck come on my property and empty his garbage.</p>
Jason LaPoint	<p>And when we signed that easement for the retail facilities, we knew the time frame that retail most likely would be busy, it's not morning hours like a coffee shop. Our busy hours are morning hours for commuters and so for us when they said coffee shop we immediately were like oh no, now we have their busy hours conflicting with ours. Just like it was their concern to have their businesses coincide with the busy travel times, now one of theirs coincides with one of ours.</p>
Councilor Fitzgerald	<p>I think this is my last question.</p> <p>The gates, the blue, has been proposed or you've put that out there, is that now still possible or has technically is that still possible?</p>
Gary LaPoint	<p>Oh, yes, that can be put in easily at any time. This is actually a fence. This will be some kind of fence you can't cross, probably not over five feet high, four feet is too low, but five feet might work. And it will be a fence here and then you'll have the garbage bins which are high, I wish I would have brought a picture and showed you.</p> <p>The garbage bins are here, and then alongside their trash enclosure is the pavement and over here it's all open, anybody can walk through this. Anybody can walk through this whole area right now or across here, and even though it is landscaped here, I've watched them, all the trucks park here and walk across through it already.</p>
Jason LaPoint	<p>And just so you know this is a fence that is currently there blocking ODOT properties, so there is no way for someone to walk around the backside of this fence, and it would direct all of their pedestrians to the safety walkway.</p>
Gary LaPoint	<p>So we would like to see a condition of approval of having the fence and gate put up. Or just a solid fence, we don't care. We are willing to compromise because we think we've helped their site plan by giving them a loading zone, a loading zone here that Josh originally asked for and now that he's asked for another loading zone over here, or he's proposed this is where they are going to unload.</p> <p>Beings that the city has no code enforcement, then in the easement agreement would be the fact that if they abuse this or whatever we would have a lock too that we could put on that gate that we're going to lock it then until they agree to or the city enforces the use of that gate.</p>
Mr. Kohlhoff	<p>May I ask a question?</p>
Mayor Knapp	<p>Yes, sir.</p>

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Mr. Kohlhoff	The garbage area that appears to be west of the dotted line, is that your property where the two garbage areas are or is that their property?
Gary LaPoint	I have an easement agreement to have that trash on their property. My trash had sat there for several years but it was kind of a little farther towards us on our property, it was actually on our property but it was in our bark dust. We don't need it, we're willing to give it back to them, if they want it they can have it. But they still have no easement to empty theirs. But we have a garbage enclosure that we can still use, but we're actually using it for different storage purpose right now, but we have no problems clearing it out and not using this trash enclosure at all.
Mr. Kohlhoff	But doesn't that easement that you provided them on the circulation situation give them access then to that garbage area?
Gary LaPoint	It doesn't read that way. It says in return or something, I grant LaPoint easement to their trash enclosure and it doesn't say and LaPoint grants us an easement to their trash enclosure, it doesn't say that. You can go back and read it. I know Dan's read it several times because when I pointed out he had no easement for a loading zone, then all of a sudden he couldn't use the spot over here, and then so they had other problems. There have just been multiple problems after problems in trying to help them develop their site and still make it work and not interfere with us.
Jason LaPoint	Just so we're clear here, I mean we offered this as a solution so they can just build tomorrow. As much as we agree with the DRB and Mr. Greenfield and being a tortured traffic circulation and everything else as far as pedestrian safety and what we're here talking about, we're fine with all of that if we can have our business on our property and them do business on their property
Gary LaPoint	<p>And we also agree with the original site plan. If they want to build tomorrow the site plan proposed and that we agreed to and signed all these conditions on and easements, no problem, we still agree with it. They want to put their office building in and reconfigure it to what it should be, which I don't understand how they're configured right now, without even a DRB approval.</p> <p>So we offered two or three solutions here, one, this, build what you said you were going to build etc. which they could start building tomorrow then and not have a problem; or we need this as a solution to our business problems that they've created.</p>
Councilor Stevens	Could you go back a couple of slides, it's a static picture at the beginning. It was the blue and green.
Gary LaPoint	If I had that working I'd just click on a picture and go back to it. There we go, here we go. That shows the
Councilor Stevens	<p>That's the property line? Okay</p> <p>So what you are referring to, I'm assuming, are those trash enclosures that are where the white line is.</p>
Gary LaPoint	The one on the left is mine, the one on the right belongs to the retail office building and that's what it was for.
Councilor Stevens	One is shared.
Gary LaPoint	We just built them side by side all at one time.
Councilor Stevens.	And where the white line is, is where you want to put that gate?

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Gary LaPoint	<p>It could be put there, it could be put back (garbled) we think it would be best here, right were the parking spots end right were this corner here just because then we could put some kind of an access, either that gate or some locking gate that they can get to their trash enclosure.</p> <p>I can tell you I'm probably not going to restrict the garbage truck from picking up, but he doesn't have an easement for it. I mean we can pick fly poop out of pepper like he's done this whole thing, I mean I'm still going to be reasonable, he doesn't have a right to be there.</p>
Councilor Stevens	And your fuel truck comes two and three times a day and it sits there how long?
Jason LaPoint	It's there for at least 45 minutes depending on how much fuel its holding and depending on how many bands since we do have three different grades including diesel.
Gray LaPoint	However the truck is loaded it can take 45 minutes to an hour and a half, because if they've got diesel in the back then they deliver the regular and premium to start with then they've got to move the truck to put the diesel in the diesel tank. It just takes longer to hook, disconnect and everything. And there are four inch hoses draped out there. And we have to be real careful; if a car hits one of those we've got a disaster. I mean, I don't want to talk about it.
Councilor Stevens	So right near where you're closing that gate is where that truck sits.
Gary LaPoint	Yeah, we can deliver on our property as we have for 15 years.
Councilor Stevens	Three times a day for 45 minutes at a time
Gary LaPoint	Minimum.
Jason LaPoint	We are one of the busiest Chevrons in the Northwest and so we get a lot of fuel.
Councilor Stevens	And so you were talking about you got some information off the web where they queued up, do you know where that was?
Gary LaPoint	Counting cars.com
Councilor Stevens	No, what city.
Gary LaPoint	They did it in multiple cities and it was back in
Councilor Stevens	Nationwide?
Gary LaPoint	No, I think they did it some in South Dakota, I can't remember, it was back in that area though. But what we looked at, and I tend to not even agree with it because you wouldn't agree that I pump what I do, because I out pump Costco some months, okay, that's how busy we are sometimes. And depends on how the stars line up.
Councilor Stevens	My question was it wasn't a local company
Gary LaPoint	It wasn't done here locally, no. But when you take the demographics of this site and the fact that Mr. Dan already said they were doing quite well and this is the slowest time of the year, this is the slowest time of the year for all of us, okay.
Councilor Stevens	Because it's not summertime.
Gary LaPoint	Yes, it's not summertime, and he's already doing well, we're down 35-40% from what we do in the summer time, we're way busier. And so right now we have these problems and we only see it getting worse.
Jason LaPoint	I staff people on the busy days to direct traffic into our site. And if you've been there on a Friday you will see somebody out there directing traffic

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	because that's how busy we are.
Councilor Stevens	<p>Yes, I've seen that when I get gas there.</p> <p>So when you saw your fuel truck was there and Carl's Jr. had a delivery, how many times has that happened?</p>
Gary LaPoint	We know of once but we haven't monitored it. We know approximately what time Carl's Jr. comes in and on what days and so we can go back and find out if it's happened again. But we didn't bring you a hypothetical thing here, we brought you something that did happen and so we're not saying it could happen, it did happen.
Jason LaPoint	The thing is they deliver between 2 – 2:30 maybe, give or take 15 minutes, they are there, traffic somewhere around half an hour. When they are parked there, there is a good chance we're going to have multiple times during that part of the day when we get fuel truck deliveries and I can go back
Councilor Stevens	You can continue to get customers, they can't.
Jason LaPoint	Yeah, they're shut off completely.
Councilor Stevens	That's their issue, not yours.
Gary LaPoint	<p>You say that, but the problem is the cars come up the driveway, and they're blocked here so then they come around the corner, and they're blocked, then they start doing a U-turn and they drive up to my pumps, they drive around the wrong way, they start doing all sorts of and we have pictures of that and we can provide videos that show all that. One of the board members said they'll do whatever they want and go wherever they want or whatever, it's really true.</p> <p>We have so many cars going in through this egress right here, that's only supposed to be an egress out, and cars come from Carl's Jr. straight across, and cars come our direction over here. I've seen a Holiday Inn semi; I have videos of this, going out the ingress, blocking all the ingress for all of us, and then drive over the curb. I have a video of that; it's already presented to the city, it's in some of the earlier videos we've submitted to the DRB where it shows that and then we had that major accident right here where a truck coming down here 40 mph hit an SUV broadside and stuff, and so.</p>
Jason LaPoint	Like we pointed out this is all without the coffee kiosk.
Councilor Stevens	I've asked all my questions for now, thank you.
Mayor Knapp	<p>It seems that they have decided, and I guess I would have to ask them if that's true that the approved retail building isn't leasable or isn't viable to the marked for some reason. Doesn't seem like there's been interest in moving that forward. But I read in their submission they are emphasizing they still have the authorization to build that building.</p> <p>What if they do build it, what does it do to all these issues on your site?</p>
Gary LaPoint	<p>It definitely is not going to fix them all. And it may add a little bit, but we still have no problem with the office building being built. I was a big boy when I signed it and I told you why, I got basically coerced into it.</p> <p>I can even show you a picture on their presentation on Stage I to the DRB where he manipulated a picture so when I looked at it it was exactly what he told me, and when the city looked at it the planning commission, it was</p>

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	<p>exactly what he told them. And I go like; my son actually pointed it out. And I go my god; this guy is that good to manipulate a picture to make it do that.</p> <p>And I can show you if Dan or someone can pull up the original application Stage I, I'll take you right down to the picture and show you where he said he's going to park his truck there, and he took two pictures and overlapped them so it shows a truck parked there, and it also showed it parked down where he told the city where he was going to unload. And I go like whoa, like I couldn't believe it, because when I looked at it and agreed to it, this picture was on there and it was exactly what he told me he was going to do.</p> <p>And then when Jason pointed it out, it was exactly what he told the city he was going to do.</p>
Mayor Knapp	I understand what you are saying. I want to be clear. You are convinced that you could operate adequately or workably if they build that retail building?
Gary LaPoint	We could. I honestly believe
Mayor Knapp	It's better for you than building the coffee
Gary LaPoint	The three tenants that would be down there max, maybe one. I could go down there like I talked with Dan and Dan and I talked out in the hallway before we come in here. And I said no matter what happens Dan, you and I are going to work together and we'll have to resolve something here because Josh is going to be gone, he is just the developer. Developer, owner, operator, operator, we have to live with it. Its not good okay, but, I'm pretty sure we could work, Dan just like I am, we are business people and I would like to work with Dan if the office building was built, I think Dan and I could maybe even come up with delivering
Jason LaPoint	Let's go back to the office building, and I'm going to tell you why we can work with the office building. If you look at the office building site plan like we did when we did sign this
Mr. Kohlhoff	It's a retail building, not an office building
Jason LaPoint	<p>Oh, the retail facility, when we looked at that if you notice where their curb this here, this is a big deal to me because a lot of their traffic with oversized vehicles have no place to park. With this configuration you have the ability for an oversized vehicle to take up these parking spots and turn and go in. You don't have that with the coffee kiosk. You also have additional parking spots up here and you have this spot here that may be an oversize vehicle could figure out how to get in if it's a box van without a trailer and didn't have to back up with a short trailer.</p> <p>But this is the big key here; you gotta have some spot for some type of vehicle that's not just a standard car in our area, especially industrial. I mean, where's the guy that's going to cut the grass with the trailer going to park?</p>
Mayor Knapp	I know but if he swings in as you're describing and parks and takes up all of those spaces, then the only way out is through your fuel delivery trucks.
Gary LaPoint	But, when he goes, he is going in the same direction as our traffic, and that's the important thing here. Is when you have the traffic going backwards against your ingress here is bad, and if Dan's analysis of people

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	<p>from my pump island going in there, I have seen it happen and it does, that's alright. But they don't come back out this way they go around to the drive in and they go back out this way.</p> <p>What we have a problem with is people that, not the people coming out, if that was an egress only with signs do not enter, stop, one way only, and etcetera, that would be even more palatable. But that means that nobody goes in this direction which is counterclockwise to or clockwise</p>
Jason LaPoint	<p>To answer your question, in hind sight with what we know now, would we have done it even with the retail shop, I doubt it, and we'd bring up issues. We didn't know what their delivery truck was going to do, we didn't know how their traffic was going to operate. Now we do when we did this</p>
Mayor Knapp	<p>So now that's my question to you. Now that you know what you know, if they are not able to build their coffee drive thru, they already have approval to build the retail building. And so in some sense the answer to one might lead to the other if that were to go that way, and so that's why I'm asking you, if you are prepared to live with the circulation impacts of the retail building.</p>
Gary LaPoint	<p>I say yes. I committed to it, and I'll stick with it. I'm not going to change now. I committed to that and I'm still, I'm okay with it. I mean I still feel that the owners over here like I started to tell you with Dan I could go over there and talk to the owners and tell them what's going on and show them.</p> <p>We're definitely not going to have Holiday Inn traffic or foot traffic or pedestrians all over our lot headed to their lot in this very congested area. And some of the other things they were supposed to do tonight were to [show] how their employees are to get to their trash and stuff. They still haven't pointed out those things. So I mean there are a lot of things the DRB studied and made concern of and they didn't address any of those tonight either. But we're committed to this I signed on to it and I don't have a problem if they build that. And legally they can build it, and I wouldn't fight it because there's no legal stance for me to do anything. And I'm not inclined to do so. Unless he builds a convenience store.</p>
Mayor Knapp	<p>Well that's one of the things that might fit into a retail store</p>
Gary LaPoint	<p>He'll have problems with that.</p> <p>He won round one of the restricted covenants that says no convenience store but it will be an appeal, we're going to appeal that decision. But if he tries to build a convenience store it won't happen, in other words if he, that's considered a store front and that's built like a convenience store that are conventional and etc. but right now that would be a big problem for him. That would be another legal battle.</p>
Mayor Knapp	<p>Council, any other questions?</p>
Councilor Stevens	<p>So just tying in on that, so that could possibly be another Starbucks, an ice cream store and a sandwich shop, and it would be the same, probably more volume of traffic for three different types of businesses. They have to park, get out, and people from the Holiday Inn would be walking across to get Starbucks coffee, you do know that. Pedestrians would be all over the place, I think most of them would use the sidewalk simply because there's so much traffic, I mean I would because it's safer.</p>



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	<p>But you could have all that volume coming and going, picking up a lunch, like Big Town Hero, and all that, and you're okay with all that kind of traffic. Which again would also go through probably your area because of the line up from Carl's Jr. so they're going to go around the other way so they don't have to jam up there to get to the other three types of businesses?</p>
Gary LaPoint	<p>It's a retail space; they could put in whatever they want. I disagree with you on traffic, I don't think those businesses generate the kind of traffic that the only drive-thru coffee shop in the city of Wilsonville is going to have in an area that the service station has five times the business that a normal service station does. The C-store does four times the normal business C-store, and the Carl's Jr. already says he's successful and he's going to get busier. I don't think that type of business there or the ones you suggested are that popular all the time. They're going to have certain times that they are, but I don't think that they are.</p>
Jason LaPoint	<p>Here's what I think. A higher volume business like that would look at the parking and go we can't make money in this spot, and they're not going to go in there. Maybe that's why he had some trouble getting some tenants, I don't know. Plus Dan, his other developer Carl's Jr. having competitive food on site may not be something that he would want either. So it would be I think a hard deal for a major franchise as such that sell food items to want to be in that particular, versus an insurance company or somebody else like that.</p>
Gary LaPoint	<p>If you look at the original site plan it said insurance, and it had all these different faces on there; that he showed what type of tenant he is looking for, but if he had those we still wouldn't have a problem with it. That wouldn't be; if you looked here they're made to pull up and park. Versus the other made to drive thru. There's a considerable difference and there's lots of parking here.</p> <p>And I just don't believe that the amount of people that would patronize that business and that particular location would cause any concern to us traffic flow wise or whatever.</p>
Councilor Stevens	<p>Even if there were three different businesses there?</p>
Gary LaPoint	<p>I've seen Quizno's and those things in different spots, they're never that busy, and Subway, they get people, they drive up, their noon rush is going to correspond with Carl's Jr. and Dan would like that so he may have an input with Josh saying I want you to put that business in there.</p>
Jason LaPoint	<p>Again, when we saw this time frame when we're busy is morning and afternoon when people get to work and people leave work. A noon rush is one of our slower times, which is why we didn't think it was a really big deal, because even if they had a lot of traffic at that time, we're not that busy at that time.</p>
Gary LaPoint	<p>And Carl's Jr. was the same way they're busy time was a slower time for us and so it worked out well for us to have them have a busy noon rush. But their morning was slow, ours is busy, our evening rush is just crazy. I mean it's just insane that's why we have to have a person out there guiding people onto the pump island.</p>
Councilor Stevens	<p>And Carl's Jr. rush isn't busy at dinner time?</p>
Gary LaPoint	<p>Haven't been. No, not dinner, I don't think they have a</p>

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Jason LaPoint	I think they have a traffic study for that, but what I remember is their noon rush and their morning and their noon rush and mid-to late morning and middle of the day till about 2 p.m. is their biggest rush. And then after that it's not on the scope of what they'd say is busy.
Councilor Stevens	Thank you.
Mayor Knapp	<p>We probably need now to give them; well we need some other testimony that we need to take and then we'll need to let the rebuttal occur. So thank you for your presentation. Leave your equipment there in case you need to come back up. I don't think that would be a problem.</p> <p>I have a speaker card for Mr. Wallace Lien. No? Okay. Are there any other speakers who would like to speak as to opposition to the application? And I see none.</p> <p>If that's the case and there are no other speakers, would the applicant like to rebut?</p>
Steve Pfeiffer	<p>Mayor Knapp, members of the Council, it's with no small amount of frustration that I come up here after an hour of direct testimony. Some of it fancifully, little of it factual. Not much we agree with except for one exception.</p> <p>This is hind sight. Contrary to what you've heard there was a development agreement entered into. It did not specify any use of this Human Bean pad. It said unspecific, non-specific retail use on the site. Everybody was aware there was a range of retail uses that could occur. More importantly, it required as a condition of the development agreement that Mr. LaPoint execute a cross easement. The cross easement was off to the left, it was relocated for reasons entirely different in our understanding than what he just relayed to a commonly agreed to other location. All completely agreed to by Mr. LaPoint. A cross easement allowing reciprocal easement, everybody agreed to it; Carl's Jr., the retail, Holiday Inn, and LaPoint. It allowed cross circulation of vehicles.</p> <p>I don't have any concerns about their hind sight, and their late thinking and conclusions in the search of facts which is much of what you've just heard. But I have a lot of problem with them changing their position, reversing course. Frankly the reasons I find inexplicable misrepresenting the discussions that have happened below in an effort for some reason, and I think I have my sense of why, they would oppose as what doesn't make a lot of sense, as you've just allowed, a reduction from 3,000 square feet of not office, they kept saying office, that's about as fictional as anything. It's a retail building, it could be an office it could be a retail, and as you point out it could be a Starbucks, it could be a Quizno's, it could be a full range of retail that goes in there. Mark will speak to the trip generation associated with that increase.</p> <p>It's just very frustrating to hear that somehow this was all agreed to because we came to them and asked. It was part of a common development plan that the city wanted us to put into play for a site that had a range of uses in it.</p>

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	<p>Everyone knew there was going to be a single drive aisle access. Everyone knew there was going to be tight circulation. They agreed to that cross easement down there. We couldn't force a private cross easement on anybody. And now they, surprise, come up with let's just put a gate on a cross easement that as a matter of law, is binding on all the property owners.</p> <p>We frankly may not have a problem with that gate because we can agree to the condition and contrary to Mr. LaPoint we fully intend to comply with any condition you might impose. The problem is, Carl's Jr. built in direct reliance on that cross easement being in place. It's a record, it's on everybody's title. I don't know if they would have constructed if they thought a gate was coming in the future, but I know they have a cause of action if the gate were brought there particularly at Mr. LaPoint's suggestion if it were imposed. We can't control that and agree to a gate when our tenant was completely legitimately built in reliance upon it.</p> <p>The other thing I find notable, most of the complaints you have heard tonight have to do among an accident, that I'm still trying to connect to our site on 95<sup>th</sup>, is concerns about Carl's Jr. and Carl's Jr. isn't before you its approved and built and you can't impose any conditions at this stage on Carl's Jr.</p> <p>We're dealing with the last piece and trying to (garbled) certainty in a highly fluid if not obviously volatile environment. Carl's Jr. is what it is. It's like any other land use that's allowed to be developed. It's interesting they have no legal objection to Carl's Jr. and I think that's in large part because they have no opportunity, because they were fully aware of it, participated, agreed to it and let the appeal clock expire.</p> <p>There's a lot of revisionist history here and if you reduce it to its common denominator the other thing that's most notable about their presentation just now, they never spoke to the one thing the DRB did not have available to it as a tool, which is the conditions that Dan put on the screen that we readily agreed to. Everything they said tonight, with a lot of embellishment, was said to the DRB. But the DRB because we didn't have the opportunity to present any new evidence, they couldn't, unless it came up on their own, but staff really couldn't present it, they didn't have the conditions that we've worked out with staff, that staff has worked out before you tonight. That would solve the problems they raise.</p> <p>We frankly aren't bothered by their fuel truck blocking our legally entitled cross easement. Because for the same reason we can live with the conditions that say none of our vehicular traffic will enter into their site. Again much more restrictive than our legal rights. We don't care if they block that easement with a fuel truck. And I'm still trying to figure out how their choice to block the cross easement on their property should justify denial of our ability to build and circulate entirely on our site. Somehow affect site circulation or compatibility with adjacent use. It's a little</p>
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	<p>difficult to understand.</p> <p>They didn't speak to any of that. They didn't talk about the efficacy of it, how it's going to work other than the fact that nobody is going comply with conditions of approval in the City of Wilsonville and the City of Wilsonville has no teeth.</p> <p>As a practical matter that apocalyptic view would basically prevent you and your staff from ever proving anything. You take the position the conditions are unenforceable and therefore worthless, then you're pretty much in a different world, and that's a tough one.</p> <p>I can only take you back to our testimony. I think we've met the standard, we've provided the tools that the DRB wasn't aware of and most importantly the fall back, it's not an office as they keep denying to themselves, it's a retail building. And that may very well be the only use that goes in there and it won't be a lesser issue in regard to this it will amplify the same concerns you've just heard. With the 30 seconds I have left I need Mark to speak to some of the misinformation you've just heard about queue lengths, the source of that study and trip generation associated with that office building.</p>
Marc Butorac	<p>A couple points. On the trip generation and the comparison of the retail to the Human Bean in the DKS report dated January 27<sup>th</sup> in the record, it was 27 trips versus 28 trips in the peak PM hours, so basically dead even between the two.</p> <p>The queuing study cited, which I believe is the IT study from the Dakotas. That's a fairly old study and is based on the classic the high school kid in there with a cash register, non-automated, you pull up you order the coffee, they kind of stumble around and come back, I have a high access location. This is a little bit more highly automated system that the orders come in, its computerized, and a lot of different access to the service time is more expedient here.</p>
Mr. Kohlhoff	Time. Unless you want to ask them.
Mr. Pfeiffer	I have to ask if we could finish the sentence given how much time they just had. I'm sorry, but.
Mayor Knapp	Are there other pertinent points regarding the traffic study that Council should hear?
Marc Butorac	I think there's 30 seconds at best that might be helpful.
Mayor Knapp	Then I guess I would like to hear those answers.
Marc Butorac	The other two issues that come out of that, again the peaking periods you heard from their testimony you heard it from me, they are different. We're talking also about five trucks, we have a Carl's Jr. truck, we have a Human Bean truck, and it sounds like they have in a peak period three of their fuel trucks. That is a slice of time during a very 24-hour type system. All the stuff that we talked about, if it occurs, and maybe it did occur once, that isn't in itself a safety and operation issue. Is there cars backing onto the street onto 95 <sup>th</sup> ? No. Are there times when cars may have to slow down in the parking lot, yes, that occurs every day, every life, every situation. So I

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	<p>think you're good there.</p> <p>Final piece on this cross easement, I agree with Mr. Pfeiffer on this, just take this for the last piece. There's a garbage truck that goes to those two garbage dumpsters every day, it crosses that easement it served both properties. So by that there is an operation of a truck going back and forth where that truck parks every day to unload garbage. So there is a legal easement that's there and operation as we see it today. Thanks.</p>
Mayor Knapp	Council, any further questions for the applicant? Hearing none, thank you very much.
Mr. Kohlhoff	<p>I would just like to add one thing.</p> <p>If there is a condition that is part of the development agreement we can enforce them. We have zoning conditions; we can enforce conditions under the zoning code that are placed on applications. So I'm not quite sure I understand what the conversation was about enforcement.</p> <p>Now there's an issue here where they have a private easement. And we're not able to enforce the private easements, but as far as conditions go if they are lawful conditions, we can enforce our lawful conditions.</p>
Mayor Knapp	<p>Okay.</p> <p>We've asked for testimony from the public on both sides of this. I guess I will ask one last time if there is any member of the public that hasn't testified and would like to testify.</p> <p>I'm seeing none. I therefore am open to a motion to deal with the hearing. The options are either to close it or to continue it. And that probably pertains to what direction you think we are going. In my mind if a decision is imminent then closing probably is appropriate; if a remand is probable that requires acquiescence because of the time line. Correct Mr. Kohlhoff?</p>
Mr. Kohlhoff	Yes. I believe the 120 days runs on April 8 <sup>th</sup> .
Mayor Knapp	April 8 <sup>th</sup> . Okay.
Councilor Stevens	So in that line of thinking, so we have new conditions that have been agreed upon since the DRB hearing. Correct?
Mr. Kohlhoff	Right. You had evidence since the DRB hearing.
Councilor Stevens	And new conditions that have been (garbled)
Mayor Knapp	Proposed not
Councilor Stevens	The applicant has agreed to
Mayor Knapp	They said they would accept them, they have not been implemented.
Councilor Stevens	Right. Right. So, it could be remanded back to the DRB hearing if the time line was waived for the DRB to consider – I'm just asking the question – to consider those conditions? Is that correct?
Mr. Kohlhoff	That's possible if the applicant would waive the time and toll the time period to do that.
Mayor Knapp	The other thing is the opponent also offered a set of conditions they felt would resolve it which the applicant has not agreed to. But the opposition has said if they did this we think that would be adequate also.
Councilor Stevens	But the opponent is not the applicant.

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Mayor Knapp	<p>Right. But if it went back to the DRB that would be in the mix of that discussion.</p> <p>So we need to do something with the hearing at this point. My inclination is to suggest that we close it because even if we were to remand with an agreement it would seem like we have taken all the testimony that's here to be offered tonight.</p>
Councilor Fitzgerald	I have a procedural question to clarify. If we close the hearing today and, I want to get to the timing issue. So April 8 the final decision has to be made unless both parties agree to more time?
Mr. Kohlhoff	The applicant, it's the applicant's issue (garbled) 120 days.
Councilor Fitzgerald	So the applicant could agree to extend that 120 day period?
Mr. Kohlhoff	They could agree to toll it for a period of time, depending on what that period of time is, I assume it would go. If you're thinking about a remand back to the DRB, without their agreement would not be within the 120 day period of time so you would not have made a decision on this case in which that would then allow them to take it to Circuit Court for their application.
Councilor Fitzgerald	Because it wouldn't be feasible to make the April 8 <sup>th</sup>
Mr. Kohlhoff	Time frame.
Mayor Knapp	The 120 days runs from when they apply originally.
Mr. Kohlhoff	When it's deemed complete, their application is deemed complete.
Mayor Knapp	After their application. So my suggestion would be that we close the hearing, but that requires a motion. What's the Council's pleasure?
<b>Motion to close hearing.</b>	<p>Councilor Fitzgerald: Your Honor I move that we close the hearing. Councilor Stevens: Second.</p> <p>It's been moved and seconded that we close the public hearing. All in favor say Aye. Passes 3-0.</p> <p>The public hearing is closed at 10:39 p.m.</p> <p>We would need a motion on the application in order to formally have discussion.</p>
Councilor Stevens	Can we just ask the question; is a waiver of the time possible, can we ask that question? So at least we know if it's on the table or off the table.
Mayor Knapp	<p>I don't know if it's that simple. I think it depends on what answer they think if forthcoming whether or not.</p> <p>I guess I would like to say a few things at this point. I think there are valid concerns in the opposition. I think there is valid belief that the proposal will work on the part of the applicant. The DRB, in my reading of it, seemed to struggle with the sort of non-specific nature of the Code in talking about conserving the character and surrounding sites and structures and all of those kinds of components, which are not easily quantified.</p> <p>My personal experience has been that the circulation patterns on this site are difficult to comprehend when traffic is heavy and that it is not immediately apparent where everybody is going. And I have I guess I believe when everybody is in the busy season that it won't be better. It will be more</p>

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	<p>convoluted than it is now.</p> <p>So in light of that observation it seems to me that the question becomes whether the additional circulation of the coffee shop would be a major conflict with the standards set forth in our code. And that is the crux that it comes down to.</p> <p>There were several quotes of Code, but I don't have in front of me, and wish I did at this point what those specific Code sections are. Are they in the report, staff at some point?</p>
Mr. Kohlhoff	Staff addressed the Code provisions in their original report that is in your packet.
Mayor Knapp	The specific ones about compatibility, is that 4.400(.02)?
Councilor Fitzgerald	Do we need a motion to discuss?
Mr. Kohlhoff	Dan can come up and assist in pointing those out in his report.
Mr. Pauly	<p>Another technical thing to note Mayor, the relationship between the Stage II plan and site design review.</p> <p>Those Code sections 4.4 something are part of site design review. So if there is a circumstance where the Stage II criteria aren't met then there's no point in looking at site design reviews really, because we can't have site design review without the underlying Stage II in place.</p>
Mayor Knapp	So what is our code reference on the Stage II that we're talking about?
Mr. Pauly	That would be Section 4.155.
Mayor Knapp	I'm on 47 of 50, which
Councilor Stevens	Page 23 of 92.
Mr. Pauly	<p>I should have had this Code reference memorized by now I've looked at it enough.</p> <p>It is 4.155(.03a) as the functional design of parking, loading and delivery.</p>
Mayor Knapp	And then "C" is parking, loading areas, safe and convenient access.
Mr. Pauly	Another thing that is a subtle, is "C" is parking areas, while "A" is parking, loading or delivery areas. So there is a difference.
Mayor Knapp	"A" is broader?
Mr. Pauly	"A" is broader. While "C" is specific to parking areas.
Councilor Stevens	<p>So the very last sentence of that section, Explanation of Finding, I'll just read it, "Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic."</p> <p>So staff felt that at least for the pedestrian side of it the sidewalks and everything that that was safe and adequate?</p>
Mr. Pauly	<p>Again there is a difference and there is in the DRB discussion how far you can reach beyond the site. When you just look at the part that is under review here, really they have done everything that they can.</p> <p>If you're walking across from Holiday Inn isn't ideal, but part of it, a good chunk of that path is adequate per view of what we (garbled)</p>
Councilor Stevens	You can't go across
Mr. Pauly	The sidewalk across the Chevron property and Holiday Inn property

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Councilor Stevens	Thank you.
Councilor Fitzgerald	Dan could you, we've heard a lot of things mentioned, one of the challenges of these kinds of situations is statements are made, and they may or may not be applicable to the narrow scope that we are expected to address tonight. Could you just once again define what we are looking at tonight? And which Codes, even if you just said it, if you could just say that once again please.
Mr. Pauly	<p>I would be happy to.</p> <p>So as listed in the Executive Summary of the Staff Report, Section 4.154 has to do with the pedestrian facilities; Subsection 4.155 (.03a) has to do with the functional design of parking, loading and delivery areas.</p> <p>And then from there you get into there are some criteria and the Site Design Review 4.400, 4.402a, 4.421(.01c)</p> <p>However if those really are hand in hand with 4.155 and 4.154 because those Stage II functional more objective standards really are the basis for making the findings on Site Design review.</p> <p>And if you make negative findings for those earlier sections then there is no need to look at Site Design review.</p> <p>I realize that is kind of an odd relationship.</p>
Mayor Knapp	Okay, let's look for a minute at 4.155(.03a)
Mr. Pauly	I would say that was probably the most key criteria
Mayor Knapp	Parking, loading and delivery areas shall be designed with access and maneuvering area. Access and maneuvering area adequate to serve the functional needs of the site and shall: (1) separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas.
Mr. Pauly	Something to note there Mayor is there is in the Code there is code required loading in the area.
Mayor Knapp	Does the Code require loading for this site?
Mr. Pauly	It does not.
Mayor Knapp	It does not. Okay. So the delivery areas, is that the component we're talking about trucks bringing supplies to businesses here?
Mr. Pauly	As I explained in the finding, it is typical for this type of use to have the delivery areas in the customer parking. I can't think of any use of this type where that is not the case around town.
Mayor Knapp	So that kind of is in conflict with what this says already.
Mr. Pauly	It's the fact that, the way I've explained that is that required loading and delivery area, if you have truck dock requirements at a larger retail center, that those are separated. But where it's a shared area then it's really not applicable in that sense.
Mayor Knapp	<p>And then number two says, "to the greatest extent possible, separate vehicle and pedestrian traffic."</p> <p>Well it already is qualified so it's not an absolute; it says do the best you</p>



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	can.
Mr. Pauly	And also that existed prior to recent adoption of 4.154 which gives a lot more objective and detailed standards for separation of pedestrian and vehicle traffic, including requiring the raised curbs and those sort of things.
Mayor Knapp	But those don't apply in this case?
Mr. Pauly	Those do apply. That's where 4.154 that I mentioned.
Mayor Knapp	Lots of qualifiers, reasonably smooth, reasonably correct.
Mr. Pauly	I'll also mention here so I don't have to switch the computers, Councilor Stevens asked that I put the conditions back up, I actually printed them out.
Mayor Knapp	So, number two condition that you are proposing says, "unless an easement is granted or found to exist by appropriate legal authority"; the applicant contends it already exists by appropriate legal authority and that would negate number two if that is accurate.
Mr. Pauly	Correct. Essentially the City, you've heard it from both sides, and though we've heard arguments and we might be able to draw a conclusion (garbled) or another, we really don't, we're not, this isn't the body that arbitrates what that easement is. The easement agreement, the easement itself spells out who's going to arbitrate that. So that's assuming at some point that will be arbitrated and cleared up what that easement means and then it can function as according to that arbitration.
Mayor Knapp	So do we have any history about how much strength there is in the need in 4.155(.03a) to serve the functional needs of the site? What does "serving the functional needs" mean?
Mr. Pauly	I think in this case you really have to spell out, and site specific what the needs are. In this case, for example, there is the need to get customers and to circulate the customer traffic, there's a need for the deliveries. And so as I read that it requires an analysis of what the particular needs of this site are.
Mayor Knapp	But the legal question in front of us is not whether those needs serves this; whether those functional needs serve the existing adjacent business, that's not the question in front of us.
Mr. Pauly	Correct. Because assumingly it's been found previously that those functional needs are met with the existing site design. There is that criteria of impacting adjacent businesses, but
Mayor Knapp	Where is that worded?
Mr. Pauly	I know that there is some language under Site Design Review, I'm trying to recall if this, it talks about on site. Admittedly with Wilsonville's planned development process that on site is not necessarily a precise terminology.
Mayor Knapp	Can you direct us to anything that says the impact on adjacent businesses is a legal criterion?
Mr. Pauly	The only one I know of is under Site Design Review, that is subsection
Mayor Knapp	But that's contingent on site development, right.
Mr. Pauly	Right. Which under Section 4.421(1c) it talks about, under Site Design Review, drives, parking, circulation it says, "do not detract from the design of proposed buildings and structures and the neighboring properties."  But again site design review, Stage II is where you are actually talking about the function of the site, where Site Design Review is the details, the architecture, but also in terms of this saying it supports the Stage II. It's consistent with the Stage II and maybe you may add a couple signs or

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	<p>striping or something under Site Design Review, but it wouldn't be making a basis of the function of the site independently of State II through the Site Design Review criteria.</p> <p>In terms of Stage II criteria there is nothing that I can think of at this moment that talks about the impact on an adjacent property.</p>
Mayor Knapp	If that's the case, then the question is whether the applicant is meeting these needs internally on functional needs of the site, separation, which is a narrower set of criteria than much of what the opponents have argued.
Mr. Pauly	The onsite, I don't know if you have opinion on this Mr. Kohlhoff, which could be read as to what extent, the site can be considered kind of the extent you are impacting directly. If you have a phased development like this where it is functional as a site, it can probably be read to mean a broader area beyond just this component as well.
Mayor Knapp	Mr. Kohlhoff this seems like an important question. Are you able to give us any guidance?
Mr. Kohlhoff	I think you correctly read the criteria, parking, loading or delivery area shall be designed with access and maneuvering area adequate to serve the functional needs of the site.
Mayor Knapp	So the question is what is the site? Is the site the tax lot the applicant is dealing with?
Mr. Kohlhoff	Yes, it is the area that is before you, that's the site you are dealing with.
Mayor Knapp	And does not extend onto the adjacent site.
Mr. Kohlhoff	No, not unless the adjacent site is part of and has been made part of by some sort of agreement
Mayor Knapp	Reciprocal access agreement?
Mr. Kohlhoff	Right, right, right. They're denying that. So it takes that away.
Mayor Knapp	Okay, at this point I guess, we have such a small group here in terms of the number of people,
Mr. Kohlhoff	You did talk about the 155(.03d) parking connectivity, right?
Mayor Knapp	Where possible parking shall be designed to connect with parking areas on adjacent sites so as to eliminate
Mr. Kohlhoff	4.155(.03)D "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements."
Mayor Knapp	It doesn't push it into multiple public street accesses
Mr. Pauly	That's why I didn't mention it as one of the criterion because it doesn't really affect the public street.
Mayor Knapp	And it's also under the qualifier "where possible" and so you could argue that in a given case it is or is not possible.
Mr. Kohlhoff	I'm just suggesting it's the only thing I think we have with connectivity.
Mayor Knapp	<p>And I'm not finding that that is germane.</p> <p>I'm going to put a motion on the table and then I would like to have some more specific discussion. I'm sorry this is going so long.</p>
Councilor Fitzgerald	Your Honor, may I ask if we might want to before making that motion, make a motion to agree to extend our meeting a little later.
Mr. Cosgrove	You read my mind. You were to do that at 10:00 o'clock.
Mayor Knapp	Yeah, where we were at at 10:00 was in the middle of testimony so I didn't

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<b>Motion to extend meeting.</b>	<p>ask for that. So. We are under the difficulties of approaching 120 day time line and we have just heard all of the testimony, would the Council like to continue this tonight, and if so make a motion to continue it?</p> <p>Councilor Fitzgerald: I move that we continue our meeting the City Council meeting of March 17<sup>th</sup> for up to another 60 minutes, at which time maybe we'll have another vote.</p> <p>Councilor Stevens seconded the motion.</p> <p><b><u>Vote:</u></b> All in favor please say "Aye", passes 3-0.</p>
Councilor Stevens	Before we make a motion we still never had our question answered whether or not we can remand back to, or are you going to make that motion?
Mayor Knapp	Well the difficulty is that the applicants motivation to agree to that or not agree to that is dependent upon the pending outcome, and so there's no absolute answer to whether it is available or not, unless they feel it is to their advantage, and the answer to that is what's happening, in my judgment.
<b>Motion</b>	<p>I'm going to make <b>a motion that we approve Resolution 2456 which approves the appeal and reverses the DRB.</b></p> <p>Councilor Fitzgerald seconded the motion.</p> <p>It's been moved and seconded, so discussion.</p> <p>The reason for the motion is that I do not see a legal basis within our Code to withhold approval. Within the wording we have been discussing the most applicable that I see is 4.155(.03)A, and I do not see wording that would allow adjacent properties congestion to be the factor that would control.</p> <p>There, the wording that is recommended by staff points out the potential for adjudication of the easement question and it seems to me that that easement question is the primary source of potential conflict on the adjacent site. And our action cannot answer that question. That is a question that derives from an existing agreement, a purported existing agreement that has its own resolution to whatever answers that comes up with. I don't believe that I see anything in our Code that would protect that agreement from this application, nor probably should it.</p> <p>So, I'm looking at the barest facts I can to distill down to what our Code says about the criteria and applying that as directly as I can to the facts we have heard. I don't see anything to hang my hat on that says this proposal is unreasonable and outside of our Code because of these potential impacts on the adjacent property that would primarily flow through that curb cut. Therein is my reasoning for the motion as I've made it.</p>
Mr. Kohlhoff	May I ask a question?

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<b>Suggested amendment to motion.</b>	With regards to your motion, the recommended additional conditions of approval that the applicant agreed with or would agree to, is that part of your motion as well? And if so let me suggest that if it were, you could simply do it, call it 1.1; 1.2; and 1.3 and they can fit in under the Findings of Fact, Determinations and Conclusions approving the application and the introduction under number 1 to that.
Mayor Knapp	<b>Yes, I would like my motion to include the recommended conditions from staff as 1.1, 1.2, and 1.3 as just described by the City Attorney. Would the second agree to that?</b>
Councilor Fitzgerald	<b>I would amend my second accordingly. I second the motion as described.</b>
Mayor Knapp	Councilor Stevens, did you wish to comment?
Councilor Stevens	<p>Yes, just a couple of things. Clearly this is a struggle for this Council at this late hour, and I appreciate the arguments made from both sides of this tough decision. I also appreciate the work that the DRB has put into this, I think we as a Council appreciate the work that our volunteers do and the efforts they put into these tough decisions, as well as staff; staff has put a lot of work into this made their recommendations.</p> <p>The one think that I struggle with is with any development here throughout town, it's hard to predict what the future is going to be, how successful a business is going to be or unsuccessful it's going to be.</p> <p>The fact that we can say this X business is going to create this amount of traffic, there are lots of models, but putting in three businesses there, even two businesses there could generate as much traffic as a coffee kiosk idea. I wish we could just know what the future is going to be, but we don't we have to wait and see.</p> <p>The other think I find compelling is that the other two adjacent businesses, the Holiday Inn and Carl's Jr. are in support of this coffee kiosk. And if anything, I would think the Holiday Inn because they have such a challenge of getting their traffic out onto 95<sup>th</sup>, would not want to see more traffic coming into that shared driveway.</p> <p>I just wanted to make those points. And especially that we really respect the work the DRB does in doing the work that they do to make sure the City has good development and grows in a very thoughtful way.</p>
Mayor Knapp	<p>I certainly concur with those comments with regard to our volunteers. We mean no disrespect to them in this.</p> <p>I frankly feel like this design is convoluted, difficult, not optimal, and problematic; I don't know what else to say. It seems to me like a poor layout trying to squeeze too much out of too small a site. I'm not happy with that, but I don't see that I have a legal basis to change that. And the fact that the Carl's Jr. is already up and running and of course the fuel station has been there for a period of years and been up and running and it's difficult with incremental development to do what you might do with a clean slate and a whole plan for the whole site, which is one of the reasons we in Wilsonville advocate planned development. Because we can take all</p>

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	<p>of those related considerations into effect and I just don't see how that's possible at this time, as near as I can see and as near as I can understand, the legal criteria we are bound to.</p>
Councilor Fitzgerald	<p>Thank you. I think you have both made really good points that I agree with so I won't repeat those.</p> <p>I wanted to address the conditions of approval that I think encompass a lot of the discussions in the DRB and a lot of the point made by both sides. And we're going to be expecting people to adhere to the Code and also the spirit of the decision.</p> <p>That the reduced length of delivery vehicle that has been agreed to I think has been a big help. The understanding, so some of these things are less absolute than others, but I like the spirit of the conditions of approval and number two does the best job possible in addressing all of the discussions about the easement over which we have no control here beyond what's described in the condition. And we are bound to operate within the legal interpretation of the Code, and I agree with you Mayor that I don't think we have any other, there is no explicit violation of the Code here.</p> <p>And I think that we are just going to have to depend on all the people involved including all the future customers, hopefully they will behave in the best possible way, and if not, our Code Enforcement, our traffic people are going to have to help us there.</p> <p>But I think this is where we are and I did want to say one more thing about this idea of a retail building which is pretty large footprint there with who knows if that's enough parking spaces at all. I mean you never know if the potential business that was going to come in there would be one of the fill in the blank really successful donut stores that we've seen come and go, some really successful video game operation that people just come flooding in there, or would it be some failing business that just doesn't draw any customers and goes bankrupt and it's empty. We don't know. And I think that we just can't guess what the future businesses that might have gone into that other proposed idea would be.</p> <p>So I'm in support of this.</p>
Mayor Knapp	<p>I'd like to clarify that if this motion passes, these become the additional conditions of approval, not the recommended conditions of approval.</p>
Mr. Kohlhoff	<p>That's correct, and if you would like, with your motion, if you like us to do anything further with crafting any of your comments into findings or specific findings along those lines we could still bring those back to you after you make your motion if you include that on the 7<sup>th</sup>.</p>
2 <sup>nd</sup> Amendment to motion suggestion	
Mayor Knapp	<p>I don't know how to word that, I mean we've had so much discussion about so many things.</p>
Mr. Kohlhoff	<p><b>Move this with these particular findings, 1.1, 1.2, and 1.3 in addition to those findings that are in the staff report as indicated to the City Council hereby adopts the staff report dated January 6, 2014 as amended by the Planning Division Memorandum dated February 10, 2014, but modifies and amends as follows" and that would be 1.1, 1.2</b></p>

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	<b>and 1.3.</b>  And further <b>direct staff to review Council's comments and to craft additional findings in line with the Council's comments tonight.</b>
Mayor Knapp	I think that sounds prudent. So I would so amend. Would the second agree?
Councilor Fitzgerald	Agreed.
Mayor Knapp	So the <b>motion contains that wording as outlined just now by the City Attorney.</b>  Is there other discussion that we need to have?  I will then call for the vote on Resolution 2456 as has been described in great detail. All in favor please say "Aye".  <b>Vote: Motion carried 3-0.</b>  Thank you all, I appreciate your attention, great discussion.
Mr. Kohlhoff	There is an appeal period, 21 days from when the decision becomes final. It obviously won't become final until we present you with the final document on April 7 <sup>th</sup> . I just wanted to make sure the record was clear on that as well.
Mayor Knapp	Yes. So I also need to read, "if you desire to appeal the decision to LUBA you must make application stating the grounds for the appeal and file the appeal within the LUBA period of appeal as prescribed by State law."
	<i>End of transcript portion of the meeting.</i>

Mr. Cosgrove recommended polling the audience to see if anyone wanted to testify during the public hearings for Ordinance No. 735 and Ordinance No. 737 and suggested if there were not, to hold those two items over until the April 7, 2014 Council meeting and forego the City Manager and City Attorney Business sections. Mr. Cosgrove recommended conducting the URA business.

**Motion:** Councilor Fitzgerald moved to amend the agenda as described by the City Manager. Councilor Stevens seconded the motion.

**Vote:** Motion carried 3-0.

Ordinance No. 735 and Ordinance No. 737 will be carried over to the April 7, 2014 City Council meeting.

**B. Ordinance No. 735 – 1<sup>st</sup> hearing**

An Ordinance Amending City Of Wilsonville Miscellaneous Code Provisions To Prohibit Smoking At Or Within Twenty Feet Of A Bus Stop Or Transit Shelter. (Staff – Lashbrook)

**C. Ordinance No. 737 – 1<sup>st</sup> reading**

An Ordinance Of The City Of Wilsonville Amending Chapter 10 Of The Wilsonville Code By Adding Section 10.240 Control of Dogs and Amending Section 10.430 Penalties. (staff – Kohlhoff)

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**CONTINUING BUSINESS**

A. **Ordinance No. 736** – 2<sup>nd</sup> Reading

An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110<sup>th</sup> Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C. (Staff – Pauly)

Mr. Kohlhoff read Ordinance No. 736 into the record on second reading by title only.

Mayor Knapp wanted to know when the alternative route would be available.

Steve Adams, explained staff would know more once a contractor was hired, at that point alternatives can be discussed. A detour will be established during the construction period for residents.

**Motion:** Councilor Fitzgerald moved to approve Ordinance No. 736 on second reading. Councilor Stevens seconded the motion.

**Vote:** Motion carried 3-0  
Councilor Starr - excused  
Councilor Goddard - excused  
Councilor Fitzgerald - Yes  
Councilor Stevens - Yes  
Mayor Knapp - Yes

**CITY MANAGER'S BUSINESS** – there was no report.

**LEGAL BUSINESS** - there was no report.

**ADJOURN**

Mayor Knapp adjourned the meeting at 11:23 p.m.

Respectfully submitted,

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Sandra C. King, MMC, City Recorder

ATTEST:

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Tim Knapp, Mayor