

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

**Development Review Board – Panel A
Minutes–February 10, 2014 6:30 PM**

<p>Approved March 10, 2014</p>

I. Call to Order

Chair Mary Fierros Bower called the meeting to order at 6:31 p.m.

II. Chair’s Remarks

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

III. Roll Call

Present for roll call were: Mary Fierros Bower, Lenka Keith, Ken Ruud, Jerry Greenfield, and Simon Springall. Councilor Liaison Susie Stevens was absent.

Staff present: Blaise Edmonds, Barbara Jacobson, Steve Adams, Daniel Pauly, and Mike Ward.

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

V. City Council Liaison Report

No City Council Liaison Report was given due to Councilor Stevens absence.

VI. Consent Agenda:

- A. Approval of minutes of January 13, 2014 DRB Panel A meeting

Lenka Keith moved to approve the January 13, 2014 DRB Panel A meeting minutes. Simon Springall seconded the motion.

Jerry Greenfield noted the following corrections to the minutes:

[Note: additional language noted in bold, italic language]

- On Page 7 of 25, the third bullet of Mr. Pauly’s staff report presentation should state, “Because the Applicant was **unable** to locate the tenants...”
- On Page 10, the second to the last line should read, “LaPoint Group memo, he **agreed** with Mr. Ward...”
- On Page 20, the fifth line of the third bullet should state, “usage for the subject site, **not** the coffee kiosk.”

Ms. Keith withdrew her motion.

Lenka Keith moved to adopt the January 13, 2014 DRB Panel A meeting minutes as corrected. Simon Springall seconded the motion, which passed unanimously.

VII. Public Hearing:

- A. **Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner.** The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95th Avenue

and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision
DB13-0047 – Site Design Review
DB13-0048 – Master Sign Plan Revision and Sign Waiver

This item was continued to this date and time certain at the January 13, 2014 DRB Panel A meeting.

Chair Fierros Bower called the public hearing to order at 6:39 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site.

Jerry Greenfield stated that when he visited the site, he was surprised to find the pavement and curb prepared for the building, which was the subject of the application. He declared for the record that seeing the site preparation would not bias his view of the matter and that he would treat that as if the ground were bare or, at most, that it had been prepared for the previously approved building.

No other Board member declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

Barbara Jacobson, Assistant City Attorney, reminded that the hearing was continued with the record open for 14 days to allow either side to submit additional evidence. In part, the record remained open because both Mr. LaPoints were unavailable to be at the hearing and the Board had wanted to ensure that both Mr. LaPoints had time, and the Applicant was agreeable to the same. Fourteen days were given for any evidence, whatsoever to be submitted with seven days following that time for either side to submit rebuttal evidence. All evidence had been submitted and carefully reviewed by the Staff and Dan Pauly would discuss proposed to the Staff report based on that evidence.

- As a second point of order, she noted the rebuttal period was allowed to avoid a last minute flurry of documents being submitted, especially lengthy submissions such as the CD's presented last time that the Board did not have time to review. Typically speaking, that would have been the rebuttal period; however, because both Mr. LaPoints had compelling reasons for being out of town, she recommended giving each side a brief forum to present final arguments as to their positions as a lot of information had come in. Because rebuttal had already been allowed, she had advised both sides that no new submittal of documents would be allowed. In their last closing statements, both parties would be free to talk about anything that had come in during the new evidentiary period or rebuttal period. The parties would be allowed to address any of that information, but she reiterated that she did not want any new information, for example, if there was a new accident on the site today. She did not want to hear about anything that had not previously been put into the record in some form. She asked that both sides respect that request and keep their remarks concise because the Board did hear at length from both sides earlier. She requested that remarks be kept to ten minutes, noting that Staff would begin, followed by the Applicant and then Mr. LaPoint, or whomever Mr. LaPoint chose to speak with him or on his behalf. Following normal hearing protocol, the Applicant would address the Board last. She confirmed that everyone understood and agreed with her statement.

Daniel Pauly, Associate Planner, reviewed his memorandum dated February 10, 2014, which he entered into the record as Exhibit A4, noting Staff still recommended approval of the project. His comments were as follows:

- At the last hearing, a lot was heard about The Human Bean being a coffee kiosk and that the traffic peak was in the AM, even though the City standard was to look at PM peak traffic for concurrency and to determine compliance with development standards.

- An AM peak traffic study had been completed since the last meeting and the report concluded that, “There are no operating concerns at the study intersections or the project driveway during the AM peak hours.” Therefore, the traffic engineer had no concerns given that study.
- Another ongoing discussion point was internal site circulation and parking, especially for the larger vehicles including delivery trucks. The Applicant worked with City Staff and developed some of their own ideas regarding these issues. Shortly after the last hearing ‘Do Not Enter’ signs were put up and some additional striping and directional signage were proposed to aid traffic circulation.
- Exhibit E of Exhibit B6 showed the delivery truck initially coming through the Chevron property, but then reversing on to the Devco property for unloading. However, some disagreement remained between the property owners regarding the extent of the easement between the properties which was described as “that line.”
 - He reminded that the Development Review Board (DRB) was not the arbitrator of what that easement meant as language in the easement addressed disputes. Essentially, there were two options depending on whether the easement allowed delivery trucks to drive across the LaPoint property. Otherwise, Exhibit B8 showed a workable option for trucks to deliver without using LaPoint’s property.
- He discussed Staff’s proposed amendments to the Staff report as noted in Exhibit A4 as follows:
 - In Finding A31, which discussed functional design of parking, loading and delivery areas, language was added regarding the additional pavement markings and signage, the easement and the alternative circulation plans.
 - He noted that under the Development Code, a truck loading birth or area was not required with this or any other fast food establishment less than 5,000 square feet.
 - In reviewing Wilsonville’s history, truck circulation or semi circulation had not been heavily weighed in review of fast food type uses.
 - In Finding A34, added language discussed the additional signs and pavement markings to aid in the circulation.
 - In Finding B4, involving the design standards under site design review, the added language stated, “Among the design standards is a requirement that special attention be paid to general circulation of parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios, the applicant has demonstrated special attention has been given to site circulation and safe convenient parking areas.”
- He entered the following exhibits into the record:
 - Exhibit B6: Applicant Submittal, January 27, 2014
 - Exhibit D5: Wallace Lien Submittal, January 27, 2014
 - Exhibit D6: Traffic Photos and Videos submitted by LaPoint Business Group, LLC (Posted to the City’s website)
 - Exhibit D7: LaPoint Response, January 31, 2014
 - Exhibit D8: Wallace Lien Rebuttal
 - Exhibit B7: Rebuttal from Applicant, Wilsonville Devco, LLC, dated February 3, 2014
 - Exhibit B8: Truck Turning Movement, February 3, 2014, using only the Devco property
 - Exhibit A4: Staff memorandum dated February 10, 2014 including recommended Finding changes.
- He confirmed that all the additional exhibits were submitted within the allowed 14-day or allowed 7-day rebuttal period.

Ken Ruud stated Mr. LaPoint submitted a letter dated January 29, 2014 that seemed to infer that an agreement existed between the parties and noted Exhibit B6, which he believed included the gate. However there did not seem to be a mutual agreement.

Mr. Pauly clarified Exhibit D7 was the letter from Garry LaPoint that mentioned the fence. Exhibit B7 was the response from the Applicant. There were existing agreements with the operator of Carl's Jr but Staff would concur that was not something the DRB should require.

Ms. Jacobson agreed that because of that disagreement, it did not sound like there was total agreement on everything. The Applicant and Mr. LaPoint could speak to the matter as well.

Mr. Ruud noted the letter seemed to infer there was agreement, but in actuality, no agreement existed at this time.

Ms. Jacobson replied that was her understanding from what she believed to be the case.

Mr. Greenfield asked to what extent, if any, was approval of the Carl's Jr. application predicated on the cross easement.

Mr. Pauly replied the only language in the Development Code that addressed that regarded the purpose of having multiple entrances to prevent trips onto public streets. The second entrance would not be a City requirement because that second entrance would not generate any additional traffic onto City streets. The standard which speaks to having connections between different properties would not be applicable. If that was not shown on the original site plan, it would not have been something that the City would have used as a basis of denial.

Mr. Greenfield asked if approval of kiosk development would be conditioned on the existence of that easement.

Mr. Pauly said if the site circulation could be done on site without using the easement he could not think of any Development Code criteria that would be a basis for that type of condition.

Mr. Jacobson added the first circulation pattern proposed by the Applicant assumed they had a right to use the easement. Through the hearing process, the issue was raised in terms of interpreting that easement, which could not be done by the DRB; that was a separate, contractual matter between the two parties. The Applicant went back when the issue was raised and tried to determine if there was a way to use solely the Applicant's own property for the same circulation, where there would not be a need for that easement if it was determined that there was no easement right. Exhibit B8 assumed that cross easement was not there, which was why Staff recommended a change to the Staff report that incorporated that circulation pattern. The other option would work as well, but the Applicant and Mr. LaPoint would have to resolve that matter privately. The DRB would not be approving the use of the easement because they did not have the ability to do so.

Chair Fierros Bower asked about the Carl's Jr. circulation, noting a diagram showed one way directional arrows toward the drive thru for Carl's Jr. but cars would also be backing out of parking spots and going in the opposite direction of the arrows. The arrows showed one-way travel where it was really a two-way drive lane. She clarified her question regarded The Human Bean coffee kiosk and she was trying to understand the vehicle circulation shown on Exhibit D2. Only one directional arrow was shown in front of Carl's Jr. where there double-loaded parking area was located and it should be shown as two-way traffic.

Mr. Pauly replied that Community Development Director Nancy Kraushaar and the City Engineer suggested painting a line to clarify the division of traffic through that area, as well as arrows in both directions and that change was accepted by the Applicant.

Mr. Greenfield understood the entire discussion occurs under the rubric of Wilsonville Development Code 4.400(.02)A Purpose and Objective of Site Design Review which stated, “Assure that the site development plans are designed in a manner that insures proper functioning of the site and maintains a high quality visual environment.” He noted visual environment was not an issue, but the proper functioning of the site was. The Applicant argued on Page 7 of Exhibit B7, submitted February 3, 2014, that this provision was an “aspirational purpose statement, not a clear an objective criterion, and therefore not directly applicable to the proposed development.” He asked if Staff agreed.

Mr. Pauly believed it was applicable and that Ms. Jacobson would concur. It needed to be considered at a subjective level. For example, a loading berth could not be absolutely required because that was the only way the site would function. The Board must be careful about making specific requirements out of the subjective criteria. The DRB could look at whether or not the proper things were being done in terms of pavement markings and signage.

Ms. Jacobson added that the Board must be looked at the proposal within the constraints of the site itself and the zoning the City has imposed on that site. When an applicant made an application to do what the zoning allowed, sometimes the site was not going to be as optimal as it would in other situations. Both the DRB and Staff had to consider the current site conditions, what the zoning allowed, what conditions were reasonable, and clear and concise that could be legitimately imposed on the site and still allow it to be developed for its intended purpose. She agreed it was subjective and in some cases the Board would be able to provide a better solution than in all cases. The City had direct authority in the public areas and must ensure an optimal traffic situation, but circulation on private property was much more subjective and the public body did not have as much say about what people do on their private property.

Mr. Greenfield said it seemed that Staff made two different findings, one involved facts and the other involved judgment. Clearly, the DRB was bound to take those factual findings as determinative. He asked if the DRB’s determination was constrained when Staff stated that criteria of judgment had been satisfied.

Ms. Jacobson replied that Board members could disagree with Staff.

Mr. Pauly agreed, adding that the end product of a DRB site design review was potential conditions of approval. Site design review also included language about conditions that would create a financial burden, which would also have to be considered.

Mr. Ruud asked for clarification regarding which exhibit was Exhibit B8.

Mr. Pauly replied Exhibit B8 showed the site plan showing the truck circulation with handwritten notes. The first page showed the truck pulling in, in front of The Human Bean, and the second page indicated the backing movements.

Simon Springall noted the exhibit showed a WB40 truck. He believed it had been mentioned that use of this delivery truck would be rare; normally a van would be making deliveries.

Mr. Pauly agreed the truck would be smaller. He reminded no loading birth was required for a truck that size for a 450 square foot building, which involved the subjective aspect of the Development Code. The Applicant could explain how often a truck of this size would make deliveries, but he understood that the drawing represented the worst case scenario.

Ms. Keith asked if there was enough room for people to get through or if The Human Bean drive thru would be entirely blocked.

Mr. Pauly replied the idea was that deliveries would be off peak, or possibly hours when they were closed. He understood that operators did not want trucks delivering when they were busy, so it would be self-patrolling because the Applicant would discourage the truck from coming when any customers were present. By nature with a fast food or quick service establishment, the truck would interfere with at least customer parking, if not circulation.

Ms. Keith questioned whether it was possible for the truck to back out and into the Carl's Jr. parking lot because it did not seem like the radius was large enough to safely maneuver.

Mr. Ruud noted it appeared the truck was going over a curb in the picture.

Mr. Pauly said it would be close. The City's engineers reviewed it and it looked doable to them.

Ms. Jacobson suggested asking the Applicant to address the question.

Mr. Pauly said that obviously, it was a tight site for that sort of truck movement. On the other hand, it would be a non-issue if the Applicant could use the easement.

Ms. Jacobson clarified the Board had to decide based on the circulation of Exhibit B8 because the outcome regarding the other circulation was unknown. If they have the right to use the easement, it would be a better solution for the Applicant. If that did not prove to be the case, this was doable for their business, so that was what the DRB needed to concentrate on.

Mr. Greenfield asked if the application for the Stage II Final Plan Revision effectively vacated the approval of the original application, or the unbuilt part of the original application. In other words, if the City did not approve this revision, would the Applicant be able to build the unbuilt part of the original plan?

Mr. Pauly answered yes. Once a part of the master plan had been constructed, the approval was vested so the Applicant could return and build the multi-tenant building.

Ms. Jacobson clarified the Board had already effectively had the rebuttal, but because Mr. LaPoint was not in town and wished to speak to the Board personally and because the Applicant was agreeable, the Board would hear from both Mr. LaPoints or whoever they wished to speak for their position. After both LaPoints were allowed to speak, the Board would hear from the Applicant. Talking points should be directed at the evidence on the record, including the evidence submitted at the original hearing within the 14 days, and the rebuttal. If Mr. LaPoint wished to talk about any of those things he was free to do so. The only thing being excluded was new evidence because that was after the period had closed. Other than that, the Board could proceed by calling Mr. LaPoint or whoever he had designated. She requested that remarks be kept to 10 minutes.

Chair Fierros Bower called for comments from Mr. LaPoint.

Garry LaPoint, 25410 SW 95th Ave, Wilsonville OR, stated he had one new piece of evidence that he would read into the record per Ms. Jacobson's request that he sent in today after other things were presented.

Ms. Jacobson added that Mr. LaPoint had information he would like to present in rebuttal to the circulation pattern. She would allow that email to be read into the record.

Mr. LaPoint stated so many things had been presented—

Ms. Jacobson interjected that she believed the other side wanted to object to the reading of Mr. LaPoint's email. She suggested that Mr. LaPoint give the rest of his testimony before reading the email.

Mr. LaPoint asked why the information that Staff put forward was on the website and why after the 7-day rebuttal period after the 14-day period, the Applicant rebutted and then Mr. LaPoint rebutted and then the Applicant rebutted his rebuttal. Today, information came forward regarding the circulation, etc., and the Board knew exactly what it said and why it needed to be read into the record tonight.

Jason LaPoint, 25410 SW 95th Ave, Wilsonville OR, explained that they considered Exhibit B8, the circulation plan, to be new evidence and they wanted to rebut it.

Steve Pfeiffer, Attorney, Perkins Coie, stated for the record that he objected to allowing new evidence into the proceeding.

Ms. Jacobson asked if Mr. Pfeiffer had seen it.

Garry LaPoint stated he would not call it new evidence; it addressed some of the questions and concerns raised by Mr. Rudd and Mr. Springall regarding Exhibit B8, the diagram presented after as evidence. He wanted to provide some information that came forward about that diagram.

Ms. Jacobson asked that Mr. LaPoint discuss his other issues before addressing Exhibit B8. She asked Mr. Pfeiffer if he had the opportunity to see the email.

Mr. Pfeiffer answered no, and restated his objection.

Ms. Jacobson suggested he might want to look at it.

Mr. Pfeiffer reiterated his objection.

Mr. LaPoint responded that if Mr. Pfeiffer was going to object to that, then he needed to object to all information presented by Mr. Pfeiffer after the 7-day rebuttal period. He explained that he was presenting rebuttal to Mr. Pfeiffer's rebuttal.

Ms. Jacobson asked Mr. LaPoint to indicate what information Mr. Pfeiffer provided after the 7-day rebuttal period. She believed the circulation drawing was presented during that period.

Jason LaPoint stated the new evidence they would like to rebut was Exhibit B8, because the LaPoints submitted information after the 27th and then the Applicant submitted information, which was new. This did not allow the LaPoints to respond to the information presented. Like the Board, the LaPoints had questions, got answers and wanted to present the answers they had received.

Ms. Jacobson stated the LaPoints were free to answer the DRB's questions about how they believed the circulation would or would not work.

Garry LaPoint stated he would like to address that question later in his testimony, unless Ms. Jacobson and the Board wanted to address it now.

Ms. Jacobson stated he could present his testimony however he chose.

Mr. Ruud asked what the official submission date was for Exhibit B8.

Mr. Pauly replied he received Exhibit B8 at 4:57 p.m. on Monday, February 1, 2014, just before the deadline.

Garry LaPoint asked Mr. Pauly to tell the Board when he submitted the rebuttal to the 14-day.

Mr. Pauly replied that it was before the deadline, he would have to research the exact date.

Garry LaPoint said it was submitted at noon on Friday to allow adequate time for review over the weekend, not on Monday at the last minute. One of his complaints to Ms. Jacobson was that the Applicant rebutted some things in his rebuttal with their rebuttal on Monday, very late in the afternoon. The LaPoints did not get any of that information until five or fifteen minutes before the deadline; whereas they submitted their information at noon, said where they stood, and offered solutions and suggestions. He noted at no time since late October, when they met on the property because of the drainage issue, had anyone from Wilsonville Devco contacted Mr. LaPoint with any questions or concerns. It struck him as funny that the Applicant was going to make such a major change without calling him to see if there were any problems with it. He said that he quickly wanted to say how the easement started, because a lot of this would go into play.

Ms. Jacobson interjected that the DRB would not make any decision on the easement. For purposes of the argument Mr. LaPoint presented, it was being assumed the circulation pattern could not be used unless and until the dispute was resolved. At present, the Board was just looking at the circulation pattern that was last proposed. She added that Mr. LaPoint and the Applicant could agree to the other one later.

Garry LaPoint said it starts out, "The internal site circulation of parking for larger vehicles including delivery trucks remains a discussion point." He had not heard until that evening that it had to be a 5,000 square foot building or larger. He asked Mr. Pauly to confirm if that was what he testified to earlier.

Mr. Pauly responded that language was in the Development Code.

Garry LaPoint stated he did not read that it was 5,000 square feet under Internal Loading Zone and Circulation. If so, why was there so much discussion prior to the Applicant's development, when he had called Mr. LaPoint to say that he would have to redo his entire site plan because he did not have a loading zone. The Development Code stated that a loading zone was required and an internal truck circulation for that loading zone. This was a big discussion point because a loading zone was required by WDC and nothing he had read in the packet stated 5,000 square feet, and if so, he did not understand why it was ever brought up as a discussion.

- As far as vehicle circulation, the Applicant had proposed, "additional striping and site directional signs to aid in circulation." He believed that aid was the big word there, because videos from his 24-hour cameras showed that signs and markings did not prevent people from going into the egress of the Holiday Inn or circulating in any manner they chose.
- Exhibit E.B6 showed a delivery truck circulating using LaPoint's property for ingress circulation, but parking on Wilsonville Devco property to avoid conflicts with deliveries. He noted they were parking on his lot all the time, not just for deliveries and it was an issue as he barely had enough room to operate their business.

Ms. Jacobson noted the DRB would be instructed that none of the Applicant's operations could occur on Mr. LaPoint's property. If trucks were parking there now, the Carl's Jr. was a separate issue. Tonight's decision regarded what The Human Bean could and could not do. The Applicant proposed circulation that no parking would be on Mr. LaPoint's property.

Garry LaPoint asked whether The Human Bean had its own tax lot. He was confused because Wilsonville Devco had signed all the agreements with him and if it had been separated—

Ms. Jacobson answered no, it was all one property owned by Wilsonville Devco. She clarified that this application was for The Human Bean, the Carl's Jr. application had already been approved.

Garry LaPoint noted that Carl's Jr. and the office complex were all one application. He asked how they were separated.

Jason LaPoint explained The Human Bean was a revised application because the Applicant could not find tenants for the other building. The LaPoints had agreed to a retail multi-unit building and did not have a problem with that; the change was where they had issues.

Garry LaPoint commented that the cart was before the horse. He was confused on how the easement did not make a difference when it was part of the original Wilsonville Devco application. He was confused about how it became separated and one did not mean something to the other.

- He noted Mr. Rudd's prior comment about this being a competition issue, but assured it was not a competition issue whatsoever. He had Covenants, Conditions and Restrictions (CC&Rs) on the property, which Ms. Jacobson had said not to pay attention to. Wilsonville Devco filed a lawsuit that was still ongoing against Mr. LaPoint on whether the CC&Rs applied, so, the Applicant did not even know if he would get to build this project because he had not been to court to find out if he violated the CC&Rs. He noted the Applicant sued him; he had not sued the Applicant.
- He noted another situation where the cart was before the horse, reading, "The easement disagreement will need to be resolved privately by the parties." He questioned why anyone would go through all of the work and expense to everyone before confirming that the easement agreement would hold up. The Applicant could have made a phone call because he had worked and cooperated with the Applicant on many different things, including getting special permission from Chevron to hang their sign on his, placing a monument over the Chevron's sewer line, and adding a red stripe around Carl's Jr. He offered to help the Applicant in any way get through this process, because he had been through it. It took him 2½ years to build his site. In this whole process, the Applicant never called to present this change, which was huge.
- He reiterated it was not competition, he only cared about one thing: that traffic was going in opposite directions through his lot. He was not concerned about the head-on traffic issue that Chair Fierros Bower pointed out on the Applicant's property. He cared about the 3,000 cars on his property. Using Exhibit B8, he indicated that traffic circulated on his site in a counterclockwise direction. He also described how Carl's Jr's delivery trucks park and interfered with that traffic as well as his fuel truck, which did not interfere with Chevron's traffic circulation.
 - When Carl's Jr. first opened, he indicated on Exhibit B8 how cars would travel head on into his outgoing traffic if there was any congestion coming into the Carl's Jr. site. This was his slowest time of year and there had already been three accidents since November. Prior to that, there had not been one accident on his lot in 15 years.
 - He was concerned about the 30 percent to 40 percent increased business volume he would have this summer. The only thing he cared about was the little section near the trash enclosures. He did not want the Applicant's cars coming head on into his cars.
 - DKS indicated that there was no problem and it would work, but he noted there was no competition with DKS in the city. If they were present, he would ask if DKS considered his service station a regular, low volume, 100,000 gallon site, when he did 500,000 to 600,000 thousand gallons in volume. His site was not normal and the Carl's Jr. was not going to be normal; it would get really busy this summer. He was happy for that, but the Applicant must contain their business on their property. He was already having an issue and no one from Carl's Jr. ever came over to address any of this.

- While this might not mean anything to Ms. Jacobson, how this went down meant a lot to him. He noted that two more legal proceedings were already getting ready to be filed next week. If the easement ended up existing, the situation near the trash enclosures was not workable. He suggested asking the operational manager that was there every day.

Jason LaPoint said he was already having trouble because it was easy for ~~over~~ oversized vehicles to park on Chevron's lot and block where their fuel trucks come in. As many as three loads of fuel are delivered per day and the trucks could not be impeded. Although a truck loading zone was not required, the Applicant's delivery truck came at 2:00 or 2:30 in the afternoon. As seen in the video, when both were loading or unloading it was a problem. The LaPoints had no control over when fuel deliveries came, it was automatically monitored. He did not know if The Human Bean could choose when their loads come. The Chevron used CoreMark, the same delivery company as The Human Bean, and CoreMark could not come after business hours. He could not imagine CoreMark packing a separate truck when delivering to the same general location. On busy days in January, he has had to have someone directing traffic and there was no Human Bean. In the summer, business would pick up two-fold and he assumed the Applicant's business would as well, again without The Human Bean. He has talked with Staff to try to find some solution, but he had not figured it out yet. One solution presented in their letter proposed that all Human Bean traffic be kept on The Human Bean's property, which would make his job easier. Since the development occurred, his job had been much harder.

Garry LaPoint said that in trying to be cooperative and make something happen, he paid Ben Altman \$1,600 in December. The LaPoints were trying to find a solution, but were at a disadvantage because the goal posts keep changing every time they got something from somebody. He suggested to Ms. Jacobson that he finish up with CoreMark and some of Jason LaPoint's comments, which he did not consider it evidence, but a continuation of his statements about CoreMark and CoreMark's truck.

Ms. Jacobson said okay and invited Mr. Pfeiffer to come forward.

Steve Pfeiffer, Land Use Lawyer, Perkins Coie, 1120 NW Couch St, 10th Floor, Portland, OR 97209, stated that with regard to the specific issues, Ms. Jacobson made it very clear and was required by law. Having the LaPoints and himself speak tonight was actually exceeding the statutory authority because the record was closed. The public at large was not re-notice that new testimony would be taken, evidence or otherwise, but he was happy on behalf of his clients to allow the LaPoints a chance to come to the microphone. It was with the understanding that they would limit themselves to the information that had been submitted during the very clear, open record, post hearing process the Board had set up; just like every other city. Those were the rules that were set; there were two windows of time and that was the limit.

- Under the statute, the Applicant and only the Applicant was entitled to written argument only, after that second window closed. But again, because of the confusion that the LaPoints' testimony laid out, and he now fully understand the basis for their confusion having listened tonight, the Applicants decided to let the LaPoints have one last word with the clear understanding that it would be evidence only. He had heard very little tonight that was not new information or new evidence. The opponents could call it what they wanted, but he was very concerned for this process because the Board's appeal at Council was on the record. If it were *de novo*, if there was a new evidentiary hearing at Council, he would not have a concern, whatsoever. But, the Applicant would live by these kinds of attitudes on appeal, should it go there, with a record that was flawed because the Applicant was not afforded a chance to rebut this kind of new information. Nobody was on notice of it tonight, it was here.
- Part of him wanted to ask the Board to strike virtually everything they had heard today because the Board could not be separate the information that was already in the record to the vast bulk of new information the LaPoints provided tonight, much of it unsubstantiated. There were answers to almost every allegation they made, but the time had passed for that, that was what the open record period was for; it was extensive, the Board had an extensive hearing and with that, he urged the Board to

take, as the Applicant was assured would be the case tonight, a very hard line from this point on new information.

- He did object to what the LaPoints themselves had conceded as new information in evidence. He objected to that being submitted, it had no place in a process that the Board established in good faith, everyone had participated in, except for these opponents, who were here tonight to try and breach it. The reason City Staff could speak to the Board and answer the Board's questions was because the statute afforded the Board the ability to have *ex parte* contacts at their leisure after the record was closed with City Staff, absolutely without any limitation. That was well established, the Board had used it before when closing the record, the Board asked Staff questions and they answered. When was the last time somebody stood up as an opponent in the audience and demanded to rebut what the Board had learned from Staff after the record closed? Most people in this room understood those rules clearly, some did not. That was why the LaPoints were not in a position to rebut City Staff with new evidence tonight. Honestly, it was very frustrating for him and his clients, who have participated in good faith in this process. He could not come up here and say, "Yes, go ahead and submit new evidence" because it substantially prejudiced their rights as an Applicant and frankly, it destroyed the process that the Board had established. He really had no basis to allow them to say anything more based on what he had heard already, let alone something that the LaPoints themselves admitted was new evidence. So, he was not sure what to do other than to object in advance because of what he had already heard tonight. He had no reason to think it would be any different.

Garry LaPoint stated that this piece of evidence was submitted after the 7-day period, after he submitted his, the Applicant rebutted this information against his rebuttal. The LaPoints did not have a chance to rebuttal that back. That evidence should have never been presented if it was allowed because the LaPoints were told they could submit it up to this deadline and it was telegraphed. This was not any different than what the Applicant did, that Mr. Pfeiffer just objected to.

Mr. Pfeiffer said he would make it very clear a second time. He cited a 2001 Land Use Board of Appeals (LUBA) case called *Norway Development v. Clackamas County*, which absolutely was on point and validated Ms. Jacobson's recommendation to the Board and her advice to the LaPoints' attorney earlier today, and which he had provided to the LaPoints' counsel earlier today and he never responded.

- The 2001 case made it very clear, and LUBA ruled in exactly these situations, under the statute if new information is submitted after a record is closed, any party may ask to have the record reopened to rebut, unless the local government sets up a procedure, as LUBA pointed out, where the first window of an open record was extended after the hearing, which the DRB did, and the local government sets up a second window for surrebuttal to information that came in in the first window, which the DRB had also done. LUBA acknowledged in that case, and in other cases, that was perfectly acceptable and the Board could cut off rebuttal. Most pay very clear attention to that, watch, and that was why they enter rebuttal in the second round. In this case, what the Board did was absolutely correct; LUBA has affirmed as much, and there could be no doubt that the information the Applicant submitted at 4:57 p.m., in a timely way, was absolutely correctly submitted under the Board's procedure and was due no rebuttal opportunity at any level. That was the gist of that case.
- He could not help it if somebody did not understand or play by the established procedures the Board put in place. However, he did have to object when the Board deviated from those procedures to their substantial prejudice where the Board's appeal at Council was on the record. Exhibit B8 was submitted appropriately during the record period and was directly in response to the LaPoints' wide ranging, free ranging testimony in the first two week window. The LaPoints have not alleged otherwise; that was notable. They could not point out anything in the Applicant's submittal that was not responsive to the first window. The Applicant supplied the mailing list to prove the LaPoints received notice. The Applicants supplied Exhibit B8 because it was directly in response to all the LaPoints' wild allegations in the first record period. The Applicant answered, not with evidence, but the question of the gate, politely explaining why they could not because it was relied upon by Carl's

Jr. from prior agreements of record that they entered into; Carl's Jr. relied on that access being in place under the development agreement.

- In 35 years of these hearings, he had not been in this situation, where somebody had pressed and not accepted the procedure that, unless he missed something in the last hearing, was pretty laid out from his review of the minutes, and LUBA has affirmed that approach. To deviate from that now put the entire proceeding and the Board's decision, ultimately, at risk.

Mr. Greenfield asked if Mr. Pfeiffer had seen the opponents' February 3, 2014 submission prior to his February 3rd submission.

Mr. Pfeiffer replied yes, adding it was notable because he was surprised anybody would submit before their time was right.

Mr. Greenfield asked if that was proper.

Ms. Jacobson answered yes; they could submit anytime during that 7-day period or not submit at all.

Mr. Greenfield explained what he meant specifically was whether sharing that submission was proper.

Ms. Jacobson replied that Staff had said they would post it when it came in and that was what—

Mr. Pfeiffer interjected it was actually a matter of public record by law.

Mr. Greenfield understood everyone knew that possibility existed.

Ms. Jacobson answered yes, adding unfortunately, that was part of the game that gets played; everyone waits until the last minute, which was why the Board tried to do the 14-days and then the 7-days to avoid a situation like this. The point was to not have more argument, but because Mr. LaPoint was out of the country, she had spoken with the Applicant who agreed to allow this conversation. She respected that the Applicant did come along to try to give everybody a fair opportunity.

Mr. Pfeiffer clarified the Applicant had allowed the conversation with the full understanding that it would be based exclusively on the record established by the 27th.

Ms. Jacobson stated it was to be based all on the record, no new evidence, so if the Applicant was objecting, the Board would let Mr. LaPoint summarize, in his own words, what issue he had.

Jason LaPoint asked to comment before his father finished. He noted he was obviously not a lawyer, and not really good at the game, or whatever this was. He knew this was his family's business which he had to run it for the next 20 to 30 years and pass it to his son, hopefully. He had concerns as he mentioned. Regardless of whatever was legally done incorrectly, by submitting it too early or whatever, he assured that he did respect the procedure, but he was a novice. This did affect his family and he would like to continue to run the business like they had for the past 15 years and keep it going, hopefully.

Ken Ruud confirmed Jason LaPoint was the everyday operations manager for Chevron. Exhibit B8, which was determined to have come in within the allowable time, proposed the Applicant solely performing business on the Wilsonville Devco property. Garry LaPoint mentioned the big concern regarded the area on the Chevron property. He asked if Mr. LaPoint would have any issues if everything held true and the Applicant's daily business stayed solely on the Wilsonville Devco as identified on Exhibit B8.

Jason LaPoint replied he did not have any issues if everything could be within the traffic patterns the Applicant submitted and everything could work solely on Wilsonville Devco's property; that was the

LaPoints' sole concern. How people pulling in would read everything or whether they would comply with a sign was known. The Chevron had people standing out there, and drivers did whatever they wanted to do. If the traffic did stay on their property without any other changes that was fine.

Mr. Ruud commented in a perfect world.

Garry LaPoint noted the Applicant's submittal included a sidewalk to nowhere that was brought out onto his property and put people in a dangerous truck loading zone and traffic circulation area. There was no safe way to get people to any other sidewalk, which was why the LaPoints had proposed the fence and a gate, which he indicated on a displayed map. The gate was a compromise on Mr. LaPoint's part to let the Applicant use a loading zone for the two big trucks Wilsonville Devco identified in their information. Another problem was that people cut straight across here, so continuing the fence to the end of the Applicant's property would insure that pedestrians, specifically from the Holiday Inn, did not cut through the lot to get coffee. Exhibit B8 did not show the painted sidewalk that had been there for 15 years which brought bicyclists and pedestrians back to that point. He was concerned about the Applicant's proposal of dumping people off near the trash enclosures and leaving that area open, not only because of the traffic concerns, but pedestrians from the Holiday Inn and other areas would want to get espresso at The Human Bean. People would not walk around the perimeter of the site to reach The Human Bean when they could cut straight across the property. That was the reason the LaPoints proposed the fence. This [Exhibit B8] did not work for the LaPoints at all given the amount of traffic in there and etc. He wanted to discuss the concern he had with the truck.

Ms. Jacobson interjected, noting Mr. LaPoint had been allowed double the original time limit. She advised that he use his last minute for a wrap up on that piece.

Garry LaPoint stated there would be no winners or losers tonight because whatever the decision was, it would continue from here. He could absolutely assure the Board that because it affected them, they would take it somewhere. They had tried to explain that this was a major traffic and safety issue for the LaPoints with pedestrians, bicycles and their internal circulation. Wilsonville Devco's property was not his concern; the Board could deal with the Applicant however it wanted. But where the Applicant had affected his property and people were coming head on at each other and pedestrians going into nowhere land on his property impacted his insurance and his customers, the people he had to worry about. The amount of choke points shown on the Applicant's site plan did not work for Chevron at all. He hoped the Board would consider that his business had been there 15 years. Ms. Jacobson stated that how the easement occurred could not be considered, but he believed the Board would have a little different feeling about the proposal. He would be able to explain the easement at some point in time as the application moved forward. In closing, he asked the Board to consider the Chevron's traffic and the impact the application had on the Chevron as well as the trouble the LaPoints have had already. Jason LaPoint had called him and asked how to deal with this because he was out of answers. There was no answer with the traffic patterns the Applicant proposed on the site. He noted he was still cooperative, as he had said to the Applicant and Staff in the beginning. He had presented the gate and fence issue in good faith to ensure the Applicant would have a delivery area and a place to get in, probably, safely and it would work. But, the Applicant could not just close their eyes and make demands and not care what happened to the LaPoints. The Chevron did not use any part of the Applicant's property at this time. He did not need it, unless he put in a coffee shop where his truck loading zone was and have traffic come through that area; imagine the traffic then. If the Applicant could just stay on their property and do their business that would be great. He offered to answer any questions.

Mr. Springall asked about the pedestrian access from The Human Bean along the south side of the site.

Garry LaPoint replied Exhibit B8 was not a good picture, a site plan within the materials showed a sidewalk that was required by him that comes from Holiday Inn across the front of his store and then down across the pump islands and connects to the existing sidewalk. That was the way he wanted pedestrians and bicyclists to travel. He did not want them cutting through the high traffic volume area.

Mr. Pauly explained that the sidewalk as originally proposed was meant to provide pedestrian access to the parking along the north side as well as limit the crossing for an employee coming from The Human Bean to the trash enclosure. Those were the two reasons Staff requested that a sidewalk be put along that north side. The sidewalk was not intended to connect to the Chevron property.

Garry LaPoint displayed Exhibit D7 titled, "Safety Solutions for Pedestrians/Employees/Deliveries" and indicated how people were being led and dumped into the parking area and the Applicant said there would be something painted on LaPoint property.

Mr. Springall noted Staff had said that sidewalk was not intended for the Chevron property.

Garry LaPoint replied that was what they say, but if you came from The Human Bean outside seating area, for example, and were going to the Holiday Inn or the Chevron, which way would you go? He did not have a problem with people coming across here back to the sidewalk a painted sidewalk that was located in a slow area for the Chevron, which usually had a person out there directing traffic. The LaPoints had good control over this area, but when pedestrians went the other way, they had less control. The Applicant's answer was to have the sidewalk just end on his property and then painting something on his lot. He had explained why the fence should be there. If the Applicant did consider writing up an easement, they should get something to allow the garbage truck to pick up their garbage because there was no provision to pick up Wilsonville Devco's garbage off of the Chevron's lot.

Ms. Jacobson believed that question could also be addressed to the Applicant because it was part of their application.

Chair Fierros Bower called for the Applicant's testimony.

Ms. Jacobson suggested that the Applicant address the question about the sidewalk before their time started. She asked that the Applicant limit their testimony to 10 minutes, but obviously, they had not—

Mr. Pfeiffer stated the Applicant's team would be fine with 10 minutes. In light of Ms. Jacobson's suggestion, he would have Mr. Veentjer explain Exhibit B8, which was in the record, and that it represented what the opponents just pointed out.

- First, he wanted to say that the Applicant was in favor of Staff's recommendations as modified up through and to Mr. Pauly's points tonight, as well as the conditions and additional findings.
- He could not recall whether Exhibit B8 had been incorporated verbatim as a recommended condition of approval. However, a more generic condition stated anything the Applicant represented became a condition. And because Exhibit B8 had been presented as the Applicant's modification, the Applicant regarded that as binding on the Applicant if the Board approved the application. The Applicant had no problems with that to the extent the Board felt the need to modify it, which was the Board's province.
- After Mr. Veentjer finished, he would explain the concerns with the gate because it was kind of linked to Exhibit B8.
- He first asked Mr. Veentjer to explain what was intended with Exhibit B8, but then agreed to address the sidewalk discussion since Exhibit D7 was already displayed.

Josh Veentjer, Wilsonville Devco, 4188 SW Greenleaf Dr, Portland, Oregon, 97221, clarified that Exhibit B8 was The Human Bean Truck circulation which illustrated the WB 40 truck, which would be the

largest vehicle used by CoreMark to deliver to the site. He understood from The Human Bean that CoreMark could be very accommodating. Due to The Human Bean's 450 square foot coffee kiosks, the sites were generally smaller and tighter, and CoreMark could be very accommodating on their deliveries.

- The WB 40 truck was illustrated as a worst-case scenario; it was not ideal, but feasible. He understood there were concerns about whether the truck could circulate properly as illustrated on the site plan. He explained that Exhibit B8 was created using an engineering program called AutoTURN, a very conservative program, and they were able to make it work with AutoTURN.
- This past week the Applicant had Carl's Jr. delivery truck, the WB 40 truck, maneuvering on the site to help illustrate with the AutoTURN program. No photos or video had been submitted, as they did not believe it was necessary.
 - Exhibit B8 was to show that the Applicant could strictly utilize their site for delivery, entering upon and in front of Carl's Jr. and exiting upon the same route.

Mr. Springall asked that Exhibit B8 be displayed for the discussion about the trucks. The Board could then return to the pedestrian discussion.

Mr. Ruud stated the program seemed to depict the truck was going over the curb.

Mr. Veentjer replied it did appear that way, which was why he stated that AutoTURN was very conservative. The truck maneuvered just fine, physically on the site.

Mr. Ruud asked whether this was new information that could be considered, as it was done after.

Blaise Edmonds, Manager, Current Planning, said it sounded similar to a new accident that Ms. Jacobson did not want to discuss.

Ms. Jacobson believed the Board had to go with what the drawing illustrated. She assumed, if the Board imposed a condition, this would be the pattern and the Applicant would not be able to go on anyone else's property. If the Applicant could not make it work, they would need to get a smaller truck.

Mr. Veentjer stated they were agreeable to that. As stated, a loading area was not required, but they had been working consistently throughout the process to be cooperative with the City and the LaPoints to create a feasible plan. Up to this illustration (Exhibit B8), they had worked on multiple other illustrations, cooperating with the City to gain feedback from Staff leading up to the plan.

Mr. Pfeiffer explained if the Board was to approve the application which would automatically include Exhibit B8, that as a mandatory condition, the Applicant would be required to maintain all deliveries on site, whether larger trucks were frequent, infrequent or otherwise, to be in compliance. The Applicant had reason to believe the nature of the deliveries were infrequent.

- He stated that the Board had heard a lot of testimony in opposition to Carl's Jr.; its operations, its presence, how it circulates and the like, and it was important to note that those issues were not before the Board tonight. Moreover, this case had seen more than its share of prior reviews with regard to Carl's Jr. and these overall properties.
- Being relatively new to the discussion, he was very surprised to hear concerns regarding the on-site circulation, the presence of an easement, whether the easement was valid and the like, when it had been memorialized in the development agreements in the record.
 - That easement had been addressed at the Stage I to Stage II and was endorsed by the opponents in the development agreement. The easement called for retail development on the Applicant's site and Carl's Jr. went in with that in mind. There was no objection to the Carl's Jr. and now they were hearing concerns that Carl's Jr. was violating the easement, the easement did not exist, and so on.

- The easement had no bearing on the decision, but it would play out in itself by others in the courts. For purposes of their review, the Board was urged to focus on this site, its issues, the circulation and what conditions could solve that.
- Carl's Jr. was committed at this point, as they had gone through the process, including the development agreement, with the expectation that that recorded easement would be in place and allow their traffic to go to and from the gas station site.

Mr. Veentjer explained that the development agreement spelled out the reciprocal cross easement that gave each other's consumers—or each other—access onto each other's property. The Applicant also gave an easement for LaPoint's trash enclosure on their property. The trash enclosures for both The Human Bean and Chevron were adjacent to each other and accessible by the trash company.

Mr. Springall asked the intent of the proposed striping from the end of the pathway to the northeast. The Applicant had proposed, in a later amendment, striping toward the Chevron convenience store, which Mr. LaPoint stated he did not want.

Mr. Pauly noted Mr. LaPoint had not signed the application, so the Board would not necessarily approve that through this action. If Mr. LaPoint was agreeable to the striping, Staff could probably do it administratively at a later time.

Mr. Springall understood it really did not impact that. He recalled Staff had stated earlier that the purpose of the sidewalk was primarily for The Human Bean employees to access the trash enclosure.

Mr. Pauly corrected the sidewalk was for to provide access from the parking stalls up to The Human Bean outside of the travel lanes. He noted the parking stalls belong to The Human Bean given the parking numbers throughout the site..

Mr. Veentjer explained they had designed the sidewalk along the northern portion of their property line to provide a safe passageway for the pedestrians who park their vehicles in those stalls on the northeast side of the property to be able to access The Human Bean.

- He believed Mr. Springall was referencing an exhibit the Applicant submitted with their rebuttal, where in lieu of the fence Mr. LaPoint proposed, the Applicant would be willing to extend their sidewalk onto Mr. LaPoint's property with his permission and cooperation. And then from the end of that sidewalk, there would be pedestrian striping to Mr. LaPoint's front door, which would provide a very safe passageway to the corner.

Mr. Pfeiffer added that to the extent that Exhibit D7 did include any improvements the Applicant proposed on their property, misguided or not, the Applicant had no problem eliminating improvements that were not confined on their site, pedestrian walkways included. He did agree with the LaPoints that the Applicant should not be imposing something on their site, as a result of the Applicant's misunderstanding or otherwise, or attempts to solve something that may or may not be a real problem. He confirmed the Applicant would not be concerned if the walkways were to be removed to the extent that they were off site.

Mr. Springall stated the Board's approval would not actually mandate the Applicant to draw a line over Mr. LaPoint's property.

Mr. Pfeiffer confirmed that was another way of saying he would prefer the Board did not. He explained it would be a complicated situation to have a condition of approval that the Applicant could not implement because someone would not let them do it.

Mr. Springall asked, regarding the intended pedestrian access to The Human Bean, which route someone would expect them to take from Holiday Inn to The Human Bean.

Mr. Veentjer replied along 95th Avenue.

Mr. Pauly stated Staff did look at that closely. Obviously a sidewalk could not be put diagonally through the site. In their analysis, that was the most direct route considering the other site constraints.

Mr. Veentjer stated three access points were provided to The Human Bean from every direction, which was more than adequate.

Mr. Springall inquired whether bicycle access was also intended to go via 95th Ave with access across the drive thru to the front of The Human Bean.

Mr. Veentjer answered yes. There was an ADA pathway from the corner of the intersection and along the side of 95th Ave was the closest, most direct pathway that the Staff found adequate.

Mr. Springall explained that, as a bicyclist, he would avoid gas stations wherever possible, given all the conflicts and there was not much reason for a bicyclist to be in a gas station.

Mr. Pfeiffer confirmed there was no existing sidewalks in the north/south drive aisle parallel to the property line. He noted the Applicants were happy to address any questions on Exhibits B7 or B8.

- He reiterated that Carl's Jr. was not a focus of tonight's review. To the extent that a mistake was made regarding whether Carl's Jr. should have been designed the way it was, in the classic land use sense, Carl's Jr. had already been vested, approved and was beyond appeal.
- Currently, before the Board was a narrow modification of a Stage II for purposes of a [unknown] use, still within a retail with less traffic impact. If it was a different circulation plan, the Applicant hoped that with Exhibit B8 they had developed a plan, together with the sidewalk or headway plans, that confined any and all impacts to their site.
- The Applicant remained confused as far as how they had reached this point through the Stage I, Stage II and the particularly development agreement with the cross easement being in place and still have this debate.
- The last point of discussion was the gate. He suspected a provision existed in the Code with language stating that where possible or where practicable, cross easements and cross circulation be provided to minimize curb cuts, and other good reasons, between properties. Property owners typically did not like this provision because of the liability associated with someone leaving another property while driving through their own, but it was accommodated on occasion.
 - This situation was unusual, as this had already been resolved by the property owners in the interest of a more uniform development concept in form of the development agreement. He noted another easement had been terminated and this cross easement was put in place.
 - Seeing the cross easement in place was a surprise, as it was not the historical approach of retail neighbors unless a unique circumstance existed, such as a single curb cut on a state highway that required the need to funnel traffic to one or two specific points. In this case, the cross easement was in place after the negotiation of the development agreement, and called for and acknowledged retail uses on both sides with ingress and egress to both properties.
 - That debate had been a source of frustration, but in working through it, the Applicant believed this last solution, together with B8, to the extent that the Board could avoid imposing improvements for pedways offsite or markings, was probably the best solution possible.
 - The gate was a problem, not just for The Human Bean, but he believed the Applicant could probably live with the gate notwithstanding the fact that, by their interpretation of that easement, it was a serious limitation of an easement that was otherwise available to serve both properties. The Applicant could

probably live with the gate to make everyone's life easier.

- The problem was that Carl's Jr. entered, built, financed and operates in reliance upon that easement recorded as it was required under a recorded development agreement. When Carl's Jr. was approached about the easement, it was very difficult to explain why they should remove it from their business model and depriving themselves, or agree to let the Applicant deprive them, of an easement right enjoyed as a matter of law.
- Questions were raised earlier about whether the gate could be imposed if it were premised on The Human Bean concern without regard to prior approvals, including the development agreement. He believed the Board would have to find the basis for the gate, specific and unique to the extent to which The Human Bean could or could not meet the criteria. All of the Board's conditions must be linked to one or more of the development standards that need to be conditioned, or you can't find compliance and, it could not be based on any traffic, vehicular or freight mobility or delivery traffic associated with Carl's Jr. As noted by Staff, he did not see a basis to impose that gate.
 - Secondly, he was considering what would happen if the gate were imposed in the land use decision where it probably was contrary to the legal easement rights, of a third-party like Carl's Jr. The situation was pretty complicated at that point because they were not even a party of the proceedings that literally undid some of what they relied upon.
 - These were the reasons for the no, which he did not take to be evidence as much as a fact that the Applicant had to respond and do they did with that answer and reason for no, which was explained in that February 7th submittal—or 3rd rather.
- The Applicant was available for any questions. He apologized for making the procedural situation more difficult than it needed to be with regard to new evidence, but it was a unique situation, and he had to be mindful of the record process. Had the Board not established a very clear, two-stage process and simply left the record open, he stated that unequivocally, Mr. LaPoint would be correct in demanding or asking that the record be reopened to respond to information. This was very clear and had been clear since ORS 197.763(6) was adopted many years ago to deal with this situation. That was why cities, such as Wilsonville, developed the phased approach, and LUBA ruled in 2001 that was the way to stop a process from going on forever. He believed Staff would say that was why over the years, the Board and others had developed the exact approach put in place, but the approach only worked if it worked.

Mr. Veentjer stated that he and his partners, three principles including himself, of Wilsonville Devco had contributed a lot through businesses and projects throughout the state as native Oregonians. Upon entering this situation of acquiring the property on behalf of Carl's Jr., they were excited but understood it came as a very complex site with some challenges, costly challenges. They entered the situation with a team approach from day one, as indicated in the development agreement established in 2012, with Holiday Inn, LaPoint Business Group and the City as a party amongst themselves. The Applicant had been very cooperative on every level, dedicating a portion of their site to add another egress lane to the shared driveway to improve circulation. Wilsonville Devco gave Mr. LaPoint the right turn out for his trucks and paid to move his sign. Everything had been outlined in the development agreement, but throughout this whole process, they had been very cooperative and generous, and were very happy that they had been able to accomplish what they had to date, to almost complete. They were very hopeful they could complete one of the entrances to the City of Wilsonville, as they found what had been accomplished so far had been very complementary to what the City was trying to achieve in their overall design. The Applicant hoped the residents and workforce could enjoy the project, 100 percent complete for many years to come. He thanked the Board for their patience and time throughout the process.

Chair Fierros Bower read the hearing format for the remainder of the meeting and began to declare the public hearing closed.

Mr. Springall interjected.

Ms. Jacobson advised the Chair to make sure the Board was ready.

Mr. Springall said he was listening to the Chair's wording and noted that he did have a few questions. He believed Mr. Pauly mentioned approval would include all of the attached exhibits, as well as all evidence submitted by the Applicant. Some of the items submitted by the Applicant were not necessarily appropriate to the approval. For example, the painted lines and some things mentioned and described in later responses from the Applicant seemed to be a bit out of scope of this proposal. He requested clarification about whether any particular amendments needed to be made, if the Board was to approve the application.

Mr. Pauly confirmed that Mr. Springall meant things like the sidewalks off the property. He explained that generally, the site circulation and pavement, it could be understood, and it was clear in the record, that with passage of time, they were different iterations of similar things. The latest version was the one the Board was adopting. In terms of things that were offsite, it would be wise to be specific that the Board was not approving that.

Ms. Jacobson added that everything submitted by the Applicant, Mr. LaPoint, or anyone else who submitted written or oral testimony, would be included in the record and needed to be noted as part of what Staff had looked at in the Staff report, which was the reason for listing out the exhibits. She clarified that two circulation patterns were proposed. One assumed an easement right, which was in dispute. Because of that dispute, the circulation pattern was reconfigured by the Applicant to be fully on their property, which was something the Board would want to make clear. Mr. Pauly had attempted amending the Staff report to do that. When making a resolution, the Board should clarify that the approval was based on the circulation occurring 100% within the Applicant's own property, and not trespassing onto Mr. LaPoint's property in any way.

- Regarding the sidewalk, Mr. LaPoint submitted a letter that stated some items that would make the development work for him. The Applicant attempted to respond to the letter and a sidewalk was one of the items offered. However, as pointed out by Mr. Pfeiffer, the Applicant could not be told to put a sidewalk on Mr. LaPoint's property. She believed the Applicant had indicated a willingness to do that, and if he and Mr. LaPoint had further discussions, they could come back to Staff and ask for any approvals required to do that. For tonight's purposes, the Board needed to be clear they were not ordering anything to happen on Mr. LaPoint's property. The proposal had to be fully contained within the Wilsonville Devco site, which happened to be where both the Carl's Jr. is and where the proposed Human Bean would be.

Mr. Pauly restated, to ensure it was correct on the record, that there was a scenario where the Applicant could go through the arbitration described in the easement document, and find that it was okay for Wilsonville Devco to take trucks across Mr. LaPoint's property. If that was the case, he wanted to be clear whether the Board was okay with the alternative circulation plan.

Ms. Jacobson said that was a good point. That plan was an acceptable circulation if a legal right existed to do so. For purposes of granting the application, there had to be an alternative that the Board was certain was legal. The only alternative the Board was certain was legal this evening was the one that was fully contained within the Wilsonville Devco property.

Mr. Greenfield confirmed that if a subsequent agreement were struck to allow that access through the easement, it would not require any further approval.

Mr. Pauly stated that was why the Board might want to be careful, if that was their will, to not close that door if it ended up being agreeable to the parties or being as of right. A possibility existed, regardless of whether Mr. LaPoint liked it or not, that a legal right had already been granted to the Devco property

owner as determined through another legal proceeding. The Board should be cautious as this could be a scenario that came up, and to not inadvertently close the door on something that the Board did not want to.

Ms. Jacobson explained if that was something the Board wanted to do, Staff could help phrase a resolution. She reiterated the only thing that could be approved tonight was something that could operate without going onto another party's property that was not the Applicant's property.

- She advised the next step was for the Board to ask for a motion to amend the Staff report to include the additional exhibits. And then, a motion was needed to either accept Staff's recommendations or to add clarifying language that all the Board was approving was the circulation pattern that was wholly contained within the Devco property, but agreeing, should it be determined that a legal right to use the easement existed, that was also fine with the DRB, but the Board could not say it was allowable or not.

Ken Ruud moved to approve the Staff report adding Exhibits B6, D5, D6, D7, D8, B7, and B8, which were submitted within the allowed timeframe agreed upon by both parties, and Exhibit A4, submitted to the Board earlier today. Lenka Keith seconded the motion.

Mr. Greenfield confirmed the Board was not voting to approve the application, but to approve the Staff report with the inclusion of all the exhibits.

Mr. Ruud confirmed that the hearing had not been closed.

Ms. Jacobson apologized, saying the hearing must first be closed.

Chair Fierros Bower closed the public hearing at 8:35 pm.

Ken Ruud moved to accept the Staff report, including Exhibits A4, B6—

Mr. Greenfield interjected, saying that was not what he heard.

Mr. Pauly asked if the exhibits were being added or if the whole Staff report was being accepted as written.

Mr. Edmonds noted the Staff report made a recommendation for approval.

Mr. Pauly clarified if the intent was only to add the exhibits then that should be stated.

Ken Ruud amended his motion and moved to add to the Staff report, Exhibit A4, submitted to the Board earlier today, as well as Exhibits B6, D5, D6, D7, D8, B7, B8, which were submitted before the agreed upon timeframe for response and rebuttal from both parties. Lenka Keith seconded the motion, which passed unanimously.

Ms. Jacobson stated now the Board would look to a motion, if someone wanted to make it, to approve the recommendation in the Staff report as amended by Exhibit A4, or additional recommendations or clarifications could be made in the motion as well.

Ken Ruud moved to reject Resolution No. 268. Jerry Greenfield seconded the motion.

Ms. Keith commented that the traffic flow was complex enough and she did not believe keeping The Human Bean traffic on the Devco property was enforceable because there was a problem with the Carl's Jr. traffic already. Additional traffic on the site would just compound the problem.

Mr. Ruud agreed, adding his big concern was the one exhibit the Board could consider tonight, Exhibit B8. He appreciated that Mr. Veentjer noted this was the worst-case scenario, it was a scenario and ~~it was the~~ one before the Board. According to what was depicted in Exhibit B8, which was what the Board could actually consider, the truck could not operate/maneuver adequately within the space.

Mr. Springall understood the Board could amend the report with the requirement to clarify that it was possible, in practice, to maneuver a WB 40 truck to be able to deliver to The Human Bean entirely within the Devco property.

Mr. Ruud replied that was new evidence presented by the Applicant.

Mr. Springall said he was not talking about new evidence, but that the Board could require conditions in order to approve the application.

Mr. Pauly confirmed the Board could make conditions in order to make the application approvable, which could be anything from modifying a curb to doing any number of things.

Ms. Jacobson explained the Board could accept the circulation pattern the Applicant represented would work entirely on their property, but condition that it must work entirely within their property, and if not, that was the risk the Applicant would be taking and they would not be able to operate if they could not operate entirely within their property. The Applicant would have to change their trucks, or whatever was needed. The Board did not have to know if the trucks could maneuver completely around or would go up on the curb to do it, but the Board could condition that the Applicant must operate within the site, and there could be no operation on Mr. LaPoint's property, unless and until the easement issue was resolved.

Mr. Ruud understood and appreciated that approach, but voiced concern about whether that could be enforced. The evidence before the Board was that trucks tend to enter the property and did not necessarily go where they were supposed to regardless of the signs. There were issues today, which he understood concerned the Carl's Jr. property not The Human Bean property. He was concerned that what he was looking at tonight, even though it was a worst-case scenario, did not work and his assumed the program would find a way that would work, and this did not work. The Board could discuss modifications to sidewalks, but that brought into question was how far the curb was from the property line and whether that met Code; it just opened up other questions in his mind, rather than it being nice and clean.

Mr. Greenfield stated he was not stuck on the truck problem. It seemed to him that a much more fundamental issue existed. The core issue was whether the application met criteria in WDC 4.400, regarding proper functioning of the whole site. The opponent argued that it did not and much of the evidence the opponent presented was to that point. The Applicant asked the Board to disregard much of the evidence as pertaining to the previously approved Carl's Jr. development and, therefore, not within the scope of the present application. He agreed with this argument as it regarded to traffic videos and their analysis, which described existing conditions that could not be attributed to the proposed coffee kiosk and were not to remain to this application. However, to the extent that those problems already existed, that would be exacerbated by this development. He must agree with the opponent that the existing conditions were pertinent and could not be disregarded. The opponent was not calling for a mitigation of existing problems, only for not amplifying them at any rate not beyond what had already been approved in prospect of the multi-tenant commercial building, which was described in the former application.

- The cumulative effect of all the late exhibits was to produce a tortured circulation pattern within the property, which simply did not make sense. Technically, it could be made to work, but it certainly was not efficient or convenient, and it did not seem to be good business.

Chair Fierros Bower added that originally an office building was planned for the corner and now it was a coffee kiosk. These were two different uses that generate different types of traffic in addition to pedestrians traveling to and from the site. She noted if she were staying at the Holiday Inn, she would probably would not take the sidewalk, but walk straight across the site to get coffee in the morning. Peoples' lives would probably be endangered in that not a very safe circulation was created for pedestrians or vehicles entering and exiting the site. She was hesitant with the way the circulation was laid out. She had been taught that pedestrian safety was the first priority when a site plan was laid out and the paths, circulation, and routes that pedestrians might take are considered. As much as she would like it to work, the proposed plan did not work for her, as she had concerns with the layout and the way it was proposed at this time.

Ms. Keith agreed, adding that people tend to take the path of least resistance and, whether it was the right or wrong property, they would drive wherever room was available. Traffic was already an issue and she believed the site would be compounded by adding additional traffic.

Mr. Greenfield said if the application reached the appeal stage, LUBA would read the whole case and it seemed both sides had defects in their presentations. There were also serious defects in the opponents' presentation, though some had been corrected in later submissions. It seemed that the bottom line was that the Chevron business would be seriously damaged by the approval of this application. To the extent that the proposed circulation was voluntary and depended on self-policing and good manners, as noted by Mr. Altman in the previous hearing, any approval based on self-policing and good manners was probably not very sound.

Mr. Ruud asked for clarification about the Chevron property being seriously damaged with approval of the resolution.

Mr. Greenfield apologized, saying he had misspoke; he was going through a previous stage of consideration. He clarified that if the Board's approval was conditioned on self-containment within the Carl's Jr./kiosk property, the Chevron would have minimal harm. The only harm would result from increased traffic on the shared driveway, which had not really been an issue to date. If that condition exists, then the harm was probably minimal. He stated then they were left with a very difficult and chaotic traffic pattern within the Carl's Jr. site.

Mr. Springall believed a lot of the chaos shown on the video and described by the opponent was largely caused by circulation issues with the delivery trucks. He noted Exhibit B8 showing delivery trucks on the two Devco properties would largely address many of the circulation issues, in addition to some clear signage improvements and a clear intent to keep circulation, including deliveries, for The Human Bean and Carl's Jr. traffic within the Devco property also existed.

- He was unsure the traffic pattern could be classified as chaotic; it was certainly tight. He noted the Board might be influenced by the truck-reversing maneuver, which would be an unusual situation but that truck drivers were trained for.
- The other issue mentioned was pedestrian access. Both as a cyclist and pedestrian, he would avoid traveling through a gas station, particularly from the Holiday Inn to The Human Bean, so walking onto the sidewalk on 95th Ave would be very reasonable. He was unsure whether the concerns were that serious, noting the Applicant had addressed each concern one by one. The circulation was tight, but not chaotic.

Ms. Keith believed 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 if something was in their way, they would find another way. She confirmed that she did not believe the plan would work without the gate.

Chair Fierros Bower imagined having the property heavily patrolled would help keep people from doing what they were not supposed to be doing.

Mr. Ruud believed the Board had given the opponent quite a bit of time to consider and had made many concessions toward the opponent, especially at that last hearing. He asked whether the Board would consider reopening the hearing to give the Applicant a chance as well.

Ms. Jacobson stated the Board certain could if they wanted, but if additional information existed that might be helpful, the Board could continue the hearing and ask the Applicant to return.

Mr. Pauly confirmed the 120-day land use clock would end April 8, 2014.

Mr. Edmonds added that included any appeal to the City Council.

Mr. Greenfield asked what was likely to change in the time period between now and the next meeting.

Mr. Ruud explained he was suggesting reopening the record tonight to give the Applicant a little time to address concerns the Board raised.

Ms. Jacobson stated the Board could reopen the hearing again if the Board had a question for the Applicant.

Mr. Greenfield believed the parameters had been pretty well plumbed.

Ms. Jacobson explained the Board had the Applicant stating that they had looked at this and that, regardless of how close the truck looked on the drawing, that they could and would do what it took to stay within their own space. She understood the situation was not perfect. The site had always been constrained and was when the Carl's Jr. application came forward, and it would remain constrained. All the signage in the world could be installed and people could still drive in the opposite way. It might take a while for the situation to work out.

- The Board had limited ability to restrict what took place on private property and had no authority whatsoever to say the Applicant could cross over onto Mr. LaPoint's property. If the Board were to consider approving the application, they needed to be clear that the Applicant had to stay within their own site, unless and until their dispute concerning the easement was resolved because the easement would be a key factor in allowing things to flow more smoothly. The dispute would take some time to resolve. If the Applicant represented they could do it this way and approval was given to do so, the Applicant would have to work within that parameter and that would be their burden. She believed the Applicant had stated that they could do that. The Board just had to decide in looking at the land use regulations and Staff report, in addition to questioning Staff without reopening the record, if needed, whether or not the application could be approved based on strict compliance with the circulation presented, staying completely off Mr. LaPoint's property.

Mr. Greenfield believed the core issue did not involve discrete criteria that could simply be checked. The general criteria of safety and efficiency, and he hated to call it subjective because it was not exactly that either, was efficient in making maximum use of that property. The property was efficient to the point of being overbuilt. In some respects, it was overbuilt in that too much was going on in such a small, contained area. The property was under built with respect to the absence of some facilities that ought to be there and usually were in a fast food restaurant application, namely and especially in an industrial area such as this, a place where trucks could pull in and park; where adequate parking was available for a maximum customer base; and where safe and convenient parking of customer cars existed. In those respects, it seemed the site was under built to cram in a new high volume, which had not really been discussed, as much as 40 to 60

cars per hour through the tight site would overburden it considerably. The situation did not make good sense to him. He would hate to be responsible, or even feel responsible, for mishaps that could occur as a result of the over built situation in which he had some hand in approving.

Chair Fierros Bower called the question.

The motion passed 4 to 1 with Simon Springall opposed.

Chair Fierros Bower read the rules of appeal into the record.

The Board took a brief recess and reconvened at 9:09 pm.

B. Resolution No. 269. 110th Avenue Street Vacation: Stacy Connery, AICP, Pacific Community Design, Inc. – Representative for Fred Gast, Polygon Northwest Company – Applicant/Petitioner. The applicant is requesting approval of a request for the City to vacate portions of SW 110th Avenue between SW Mont Blanc Avenue and SW Tooze/Boeckman Road. Staff: Daniel Pauly

Case File: DB14-0001 – Street Vacation

The DRB action on the Street Vacation is a recommendation to the City Council.

Chair Fierros Bower called the public hearing to order at 9:09 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No other board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No Board member participation was challenged by any member of the audience.

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

Mr. Pauly noted that street vacations were not typical for the Development Review Board (DRB). The last street vacation was completed for Fred Meyer and went through the Planning Commission because the Fred Meyer application had not been approved at that point. This vacation was presented to the DRB because it was related to an application the DRB had previously reviewed for Phases 3 and 4 East of Villebois, which were contingent upon approval of the 110th Ave street vacation. He noted the decision was a recommendation to City Council, as laid out in the City's Code and the statute that City Council takes action on this type of application by ordinance. He presented the Staff report via PowerPoint with these key additional comments:

- He briefly reviewed the history of street's layout, using several slides to depict the progression of the connection through Villebois from 1997 to 2008 when the historical alignment of 110th Ave began changing. He also described the various traffic routes used as 110th Ave changed over time and how portions of the 110th Ave right-of-way were essentially converted into Costa Cir beginning in 2012, and improved from a two-lane, rural road to having two lanes with bike lanes and sidewalks.
- Using an overlay on the 2012 slide, he indicated three additional tracts shown in red that were proposed to be vacated and would become park areas, as shown in the plans the DRB had previously reviewed and approved contingent upon this action. The orange indicated how the north/south connectivity would come into a roundabout at what would be Costa Cir and Villebois Dr, and then come up a new segment of Villebois Dr to the existing roundabout just west of the Boeckman Bridge and then onto Tooze Rd.

- A close-up of the exact areas to be vacated was displayed and he explained that the in between areas not being vacated would remain right-of-way either at the intersection of Villebois Dr and Berlin Ave or, further up, at what would be Stockholm Ave and Villebois Dr.
- Figure 8 from the Villebois Village Master Plan showed the historical alignment of 110th Ave in black and the plan from 2005 showed 110th Ave as an existing street that would be replaced as Villebois developed. He noted Barber St and Villebois Dr, plus the new alignment of Tooze Rd and Boeckman Rd, all replacing the historic alignment of 110th Ave throughout that area. Figure 7 was the Street Plan from the Villebois Village Master Plan that also showed parts of 110th Ave being replaced with Villebois Dr.
 - A map from the Transportation System Plan (TSP) also showed a red X for a road closure, so City documents, both the Villebois Village Master Plan and TSP clearly displayed portions of 110th Ave being eliminated and replaced by alternative circulation patterns.
- The phasing for Phases 3 and 4 East was based on the current ownership, and Polygon Northwest had either closed or was close to closing on the purchase of both properties. As allowed by Code, Polygon already had the phasing approved administratively because it made more sense to build in it different phases. Building the park areas that would replace 110th Ave, as well as the new segment of Villebois Dr, were all part of the Phase 1 development, which Polygon hoped to complete this year.
 - According to State statute, all adjacent property owners sign the petition when a right-of-way is vacated. In this case, two owners were Polygon, or entities controlled by Polygon, and the third was Mr. Bischoff, who signed an agreement to sell, and if the purchase had not closed, it would soon.
 - The right-of-way being vacated would return to the adjacent property and then be platted as part of those subdivisions' property as park tracts.
- He noted that people do travel via 110th Ave all the time and a number of inquiries were received from the public as they saw the notice. Over the years, many questions were asked about when sidewalks would be provided at 110th Ave. Polygon's plan would provide that sidewalk and bike connectivity north/south through Villebois. Those with inquiries were directed toward information and no feedback had been received about any concerns about portions of 110th Ave being eliminated.

Mr. Greenfield asked the age of the street plan.

Mr. Pauly replied the street plan for this area with 110th Ave going away and Villebois Dr was part of the original Villebois Village Master Plan, which dated back to 2003. This particular street plan was dated 2013 because the 2013 amendment placed the streets into what was formally the Living Enrichment Center.

Ms. Keith asked how traffic would be diverted when the street was closed.

Mr. Pauly said many of those details would be worked out with the contractor. The City was very aware of wanting to minimize closures and detours.

Steve Adams, Development Engineering Manager, noted it was well understood between the City and the developer that the impacts to the traveling public were to be minimized. The situation would be similar to what was done last summer when Grahams Ferry Rd was rebuilt and Grahams Ferry Rd and Barber St were rebuilt as a roundabout. The City negotiated with that contractor to close the road for about three weeks, except for local traffic, and do as much as possible ahead of time. This project would be the same way. Not knowing exactly how the contractor would handle it, the City would have to negotiate, but he estimated the project taking about four weeks, perhaps.

Mr. Pauly noted the stockpile and explained that a fair amount of grading was required to build in the area. The actual level of the road would change and that could also extend the length of the project because a lot of earth had to be built up and moved around.

Mr. Adams said he did not have an exact date, as that would have to be negotiated, but it had all been brought up in early discussions between the City, Polygon and Pacific Community Design. A contractor had not been hired yet. During the interim, the detour route would be Barber St to the roundabout, north of Tooze Rd and then over. The detour would just be a few short blocks out of the way. Currently, not many cars were traveling north on 110th Ave, and 80 percent of those that did turn left and go out to Sherwood. Those drivers would now travel down Barber St, up Grahams Ferry Rd and turn left to go to Sherwood.

Mr. Springall asked if the Villebois Dr north connection would be built and opened before the closure of 110th Ave for Wilsonville centric traffic coming towards Villebois along Boeckman Rd.

Mr. Adams answered no, adding it would be built but not open. He envisioned that Villebois Dr would be built south of the roundabout up to where it connects to 110th Ave, and at that point, 110th Ave would be shut down so Villebois Dr and Costa Cir could be built out and connected. Just like Barber St and Grahams Ferry Rd, much of the project would be built ahead of time and at the very last minute, the road would be shut down, demolished and rebuilt; however, that portion of Villebois Dr would not be usable as it would dead end and go into a shallow street network that was built for this subdivision. It would have no connecting streets until the work was completed. Coming from Wilsonville heading west, one would travel to Grahams Ferry Rd, turn left and travel back in on Barber St to access a Villebois residence for that period of time.

Mr. Springall said it was a frustrating situation for that central Wilsonville connection on Boeckman Rd. The Boeckman Bridge had just been reopened after being closed for so long and essentially that connection would be closed again, unless one was traveling toward Sherwood.

Mr. Adams explained that no other alternative existed. The City had known this would occur for 11 years as the plan was first passed in August of 2003. The developer came in with an application, which went to DRB the previous year, and the plans were currently being reviewed.

- He agreed it would have been better to do the project when the Boeckman Bridge was closed, but noted that 110th Ave had been used as the detour. If 110th Ave and Boeckman Rd were closed, Barber St would have been the detour and residents on Barber St would have complained about the 5,000 vehicles using their street each day. He did not believe any alternative would have worked well, people would complain about traffic regardless.

Mr. Springall asked how long the street was expected to be closed when neither street would be available

Mr. Adams confirmed with Jim Lange that it would be three or four weeks. Construction on this portion would begin in late summer, around September. Nothing had been negotiated yet. All that existed was a condition stating that the City would negotiate and would work on the minimal time.

Jim Lange, President, Pacific Community Design, 12564 SW Main St, Tigard, OR, stated this project had been in the works for a long time. He reinforced Mr. Adam's comments, noting the Applicant had waited for a strategic time to do the project. They did not want to do it when the Boeckman Bridge was closed because it would leave only one way out, which they did not believe would be good. The second element they wanted to complete was the Barber St Extension so now Barber St traversed the site. One could get to Graham's Ferry from anywhere in Villebois, including north and south that way as well as

east and west via Boeckman Rd.

- The anticipated construction sequence was to first grade the site and the road would not be touched. Grading would occur on both sides of the road and take six weeks. Next, they would lay all the underground utilities which would involve a few crossings of 110th Ave that would be trenched in a day, plated over and completed. Those closures would be temporary as they trenched across the road.
 - On the east side, the road from 110th Ave down to the traffic circle would be completed. It would still be barricaded off and the roundabout would be built on the other side of the road. So both sides would be paved and the utilities installed, so the streets would just need to be connected. The closure would allow just enough time to tear out pavement, lay and compact the base, lay the curbs and pave it, which he believed would be completed in a couple weeks, if not sooner.

Mr. Adams suggested a minimum of three to four weeks just to provide some coverage, noting that whenever two weeks were promised and not delivered, people tended to get upset.

Mr. Springall noted the homes on the east side of I-5 in the Lowrie School District and that school buses had to divert when Boeckman Rd was closed. Traveling along Boeckman Rd toward the school along these roads would be a much shorter trip than having to travel out to Grahams Ferry Rd and back through Villebois.

Mr. Lange commented everyone would be happy if the project were completed before school opened.

Mr. Ruud asked about whether it was up to the City to build the road and if funds had been set aside.

Mr. Adams explained that in the development agreement with Polygon Northwest, the City was the responsible party for certain items in Tonquin Meadows. He noted the piece of Villebois Dr in brown leading up to Boeckman Rd on the map was offsite development and all on urban renewal land. The City wanted a connection to Boeckman Rd and part of the development agreement was that the City would pay 100 percent of that because it was not developer-driven. For the rest of Villebois Dr, the City was responsible for the bike lanes. The developer was only responsible for building 24 feet of travel lane to get to and from his site. Any time bike lanes were added to a residential subdivision, the City reimbursed that cost.

- In addition, the developer was responsible for building a local residential street and typically, two inches of additional rock were laid under a Villebois Dr style street. The City would reimburse for the extra rock, as it was a structural difference not required for a residential development. Funds had been set aside for this project, which went to DRB a year ago. The City knew Polygon planned to build the project and a Capital Improvements Plan (CIP) account of approximately \$350,000 had been set aside for reimbursement of the City's share of Villebois Dr. Another account had been set aside for the City's reimbursement of some water line work also occurring in the same subdivision, so funds were available to pay for the work.

Chair Fierros Bower called for public testimony in favor of, opposed or neutral to the application. Seeing none, she closed the public hearing at 9:34 p.m.

Simon Springall moved to accept Resolution No. 269. Ken Ruud seconded the motion, which passed unanimously.

VIII. Board Member Communications: None

IX. Staff Communications

Blaise Edmonds, Manager, Current Planning, thanked Jerry Greenfield for being on the DRB and remaining on the Board for a second public hearing on The Human Bean. He believed Mr. Greenfield's wisdom was amazing and that he had provided valuable input for the short time he was on the Board.

- He noted that City Council had approved Kristen Akervall who lived on the east side of Villebois and was an operations analyst. He and Chris Neamtzu would meet with her next Friday. If a Panel A meeting was held in March, she would be there to fill Mr. Greenfield's shoes.

The Board members thanked Mr. Greenfield for his work and wished him luck on the Planning commission.

Mr. Greenfield stated he would take his experience from the DRB to the Planning Commission.

Mr. Pauly noted that several of his fellow Planning Commissioners had been on the DRB. Having taken Code revisions through the Planning Commission, he knew that having DRB experience was very valuable at the Planning Commission.

X. Adjournment

The meeting adjourned at 9:37 p.m.

Respectfully submitted,

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