

**Development Review Board – Panel A  
Minutes–January 13, 2014 6:30 PM**

**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, Chris Neamtzu, Daniel Pauly, and Mike Ward

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

**V. City Council Liaison Report**

No report was provided due to Councilor Stevens’ absence.

**VI. Election of 2014 Chair and Vice Chair:**

- Chair

**Lenka Keith nominated Mary Fierros Bower as the 2014 DRB-Panel A Chair. Ken Ruud seconded the nomination. Mary Fierros Bower was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.**

- Vice-Chair

**Lenka Keith nominated Ken Ruud as the 2014 DRB-Panel A Vice-Chair. Mary Fierros Bower seconded the nomination. Ken Ruud was elected as the 2014 DRB-Panel A Chair by a 4 to 0 to 1 vote with Jerry Greenfield abstaining.**

**VII. Consent Agenda:**

- A. Approval of minutes of December 9, 2013 DRB Panel A meeting

**Ken Ruud moved to approve the December 9, 2013 DRB-A meeting minutes as presented. Lenka Keith seconded the motion, which passed 4 to 0 to 1 with Jerry Greenfield abstaining.**

**VIII. Public Hearing:**

- A. **Resolution No. 267. Jory Trail Parking Lot Addition and Modification: Otak, Inc – Representative for CRP Holland Brenchley Estates, LP – Applicant/Owner.** The applicant is requesting approval of modifications to the approved Stage II final plan and Site Design Review plans for Jory Trail Apartments for 40 additional parking spaces and modification of 26 existing parking spaces to add carports. The subject site is located on Tax Lot 100 of Section 14A, T3S, R1W, Clackamas County, Oregon. Staff: Blaise Edmonds

**Chair Fierros Bower** called the public hearing to order at 6:37 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

**Blaise Edmonds, Manager of Current Planning**, announced that the criteria applicable to the application were stated on page 3 of the Staff report, which was entered into the record. Copies of the report were made available to the side of the room.

**Mr. Edmonds** presented the Staff report via PowerPoint with the following key additional comments:

- He entered into the record as Exhibit B3 an email received from Brenner Daniels, Development Director of Holland Partner Group to City Planner Amanda Hoffman agreeing to the elimination of four parking spaces near the right in/right out as recommended by the City. He read the email message and noted that Exhibit B3 was emailed to the Board earlier in the day.
- The application requests A for a revised Stage II Final Plan and site design review primarily involved adding additional parking and new carports to the existing project. He noted the locations of the nearby Napa store and Wilsonville Family Fun Center. The Jory Trail at the Grove Apartments were almost fully occupied, and even though the parking exceeding minimum Development Code parking requirements when approved, there was demand for additional parking on site.
  - He indicated the proposed locations of the additional parking spaces, which included 27 spaces in the southeast corner of the site; 24 carports located mostly at the west end of the project; and 13 spaces in five different locations throughout the site. He noted the trees in the southeast corner next to the apartments would be preserved, and that three parking spaces would need to be removed to create a driveway access to the proposed 27 spaces in the southeast corner.
  - On the Landscape Plan, the Applicant proposed a Pink India Hawthorn hedge, an evergreen flowering hedge that would grow to a substantial size, and Kinnikinnick ground cover to create a nice buffer between SW Parkway and the new parking lot. Two-inch caliber English Oak trees were also being added throughout the site.
- One issue was that the Applicant originally proposed removing two trees in order to add four additional parking spaces close to the entrance on SW Parkway Ave; however, DKS & Associates believed it would be dangerous to have parking so close to a major driveway into the project given the 40 mph speed limit on SW Parkway Ave. The Application had agreed to not remove the trees to create those parking spaces, reducing the original request of 40 new parking spaces to 36 spaces.
  - He reviewed Staff proposed Finding A20 under the Stage II Approval that reflected that change in the proposed number of parking spaces. One critical point was that the proposal would result in the project having 98 spaces above the minimum Parking Code requirements. Hopefully, it would provide sufficient parking so that the upset residents would not cancel their leases and move.
- He concluded that Staff recommended approval of the applications with conditions, displaying a picture of the southeast corner of the site where the new 27 space parking lot was proposed. (Slide 9)

**Jerry Greenfield** noted the location for the hedge seemed very narrow, so tight pruning would be needed.

**Mr. Edmonds** explained the space on the slide appeared narrow, but the actual space for the hedge was approximately two feet wide. He believed that grass was shown extending around the corner toward the driveway entrance, but deferred to the Applicant for clarification.

**Simon Springall** noted the paragraph at the top on Page 17 of 47 in the Staff report regarding a permanent built-in irrigation system referenced proposed Condition PDP 2 at the end of the sentence, but he could not find that condition.

**Mr. Edmonds** replied he did not see a Condition PDP 2 either, but one could be added that all landscape coverage be fully irrigated by an automatic or drip irrigation system. The Development Code required that landscaping be irrigated. The Applicant had fully irrigated the site and he assumed they would irrigate but the Board could add a condition if they wanted to play it safe or delete that last sentence.

**Mr. Springall** asked if the paved trail shown in Slide 6 that ran east-west along the south edge and extended along the west corner of the site would be replaced since the Applicant would not want people walking across the parking lot.

**Mr. Edmonds** replied the trail would be eliminated as he understood the Applicant thought enough sidewalks would now exist along the south side of the apartments for the residents to use as a path.

**Mr. Springall** asked if pedestrian connectivity was being discouraged by moving the trail.

**Mr. Edmonds** deferred to the Applicant. He acknowledged that no pedestrian exit existed through the hedge, adding he believed the Applicant made a conscious effort to focus the pedestrian system down the sidewalk and not through the parking lot.

**Mr. Springall** noted the existing did extend onto SW Parkway Ave near the Napa parking lot.

**Ken Ruud** noticed no changes were proposed to the outdoor lighting and asked if the existing lighting would be moved or be retained.

**Mr. Edmonds** replied there were no proposals for lighting in the new parking area, but it was a discussion topic in the Staff report. In the event the Applicant decided lighting was necessary, a Class I Administrative Review would be required for approval. There was no lighting in the area currently proposed to be a new parking lot.

**Mr. Ruud** noted there were three or four light posts lighting the existing pathway.

**Mr. Edmonds** deferred to the Applicant, adding that Amanda Hoffman had written the Staff report, but had recently resigned from her position so he was not aware of all the details at this time. He confirmed Staff sent notices to the respective departments, including police and fire. He had talked with Ms. Hoffman on her last day and she had not received any comments from those divisions.

**Lenka Keith** asked if the crushed rock path, shown as a dashed line, was the only direct connection between the new parking lot and Building 6.

**Mr. Edmonds** answered yes, noting that crushed rock or bark protected the roots of the trees better than excavating for a concrete pathway.

**Ms. Keith** inquired about possibly installing an elevated wooden path, similar to a deck or ramp.

**Mr. Edmonds** replied that gravel paths were commonly used through natural areas, adding that a wooden path required a lot more maintenance and could be slick during certain times of the year.

**Ms. Keith** stated that her questions stemmed from considering women having to walk through the crushed rock wearing heels, which would be uncomfortable and a possible safety issue.

**Mr. Edmonds** replied women would not want their heels to get stuck in between the wooden boards either.

**Chair Fierros Bower** asked if the number of proposed parking spaces would be sufficient long term.

**Mr. Edmonds** replied the Applicant had looked at every conceivable corner of the site and had maxed out their parking options. He believed the Applicant needed to do more policing on how residents utilized their garages, which should be used only for cars and not storage. Part of the issue was that the Applicant did not anticipate more than one family renting the four-plexes. College students sharing rooms in the four-plexes resulted in many more cars per unit, thereby increasing the parking demand beyond what was originally planned. The Applicant was also trying to attract college students from OIT, but they could speak to the issues that lead to a higher demand for parking.

**Chair Fierros Bower** called for the Applicant's presentation.

**Brenner Daniels, Development Director, Jory Trail at the Grove, Holland Development, 1111 Main Street, Suite 700, Vancouver WA, 98660** stated Jory Trail at the Grove had 324 total units and the original Development Plan had 530 parking spaces, which included 118 garages, 138 carports, and 270 surface spaces. Most of the unanticipated parking demand was coming from roommate situations the two-bedroom units because a lot of the time four people instead of two would be occupying the units, resulting in four cars per unit instead of just two.

- The parking shortage resulted in excess cars parking at the south and southeast end of Ash Meadows at the main entrance to The Grove. In addition, guests were also taking parking spaces during the day, and specifically at night, which prevented some residents from parking near their building.
- At the southeast corner specifically, there was a problem with the zonal parking. People obviously wanted to park by their building, but as the full site plan revealed, Building 6 had the least amount of zonal parking and was the main area that needed the additional parking.
- He confirmed 24 new carports were proposed on the southwest corner of the property.
- Jory Trail was currently 95 percent leased, and the Applicant did anticipate that with the addition of the 27 spaces and modifying the 24 open spaces into carports would alleviate the parking issues and provide a long term solution.

**Don Hanson, OTAK, 1111 Main Street, Suite 700, Vancouver WA, 98660**, stated that while the Applicant was happy the roommates were occupying those units, they brought more cars than anticipated. The best way to address most of the parking issues was on the southwest corner of the property, which was behind the auto parts store, so no one would be disrupted. In addition, screening already existed on the south side and that location was where the parking was most needed.

- The Applicant completely agreed with the City on eliminating the four spaces near the entry, so 36 spaces were proposed to solve the problem along with some parking property management.
- He confirmed an irrigation system was already present in the subject area that watered the lawn, so it would be modified to fit around the edge of the new parking area.
- Lighting was not shown on the plan; there was a lot of spill over lighting from the public right-of-way from Parkway Ave, as well as the can lighting off the three levels of the building that illuminate the sidewalk.
  - If the parking lot were lit, the Applicant would use the same fixtures as used on the other portions of the property, which he believed were about 16-ft to 18-ft poles and adding those could easily be worked out with Staff when the construction drawings were submitted. He indicated that he would put any additional lighting in parking lot area between two other poles indicated because it

- would illuminate the area that was furthest from a light source.
- He explained that an understory native seed mix was used in the dotted areas of the Landscape Plan near Building 6 because of the over story trees that had been saved. To preserve those native trees, their arborist advised not over irrigating that area and let the native mix flourish.
    - Preserving the trees was the reason for the gravel path, adding they did not want to do any more hard surface area within the canopy of the trees. The path would not be loose gravel, but rather compacted and rolled to create a safe walking surface from the parking lot to the walkway.
  - Additional landscaping would also be placed around the parking lot, giving it a pleasant edge against Parkway Ave, which was the most visible side.
  - He displayed Staff's photo with the street level view (Slide 9), noting that the stakes roughly indicated the parking area and that the over story trees, the existing native trees, were on the right hand side with the auto parts store seen over the hedge to the south.
  - He noted the Applicant had widened the sidewalk all along Parkway Ave to provide a combination bike pedestrian way.

**Mr. Ruud** asked if the two or three existing light posts shown over the path near the hedge would be removed.

**Mr. Hanson** replied the light poles would be retained and indicated that additional light poles could be placed at the turn point in the parking lot. The Applicant did not want any lighting to glare over into the public right-of-way because a controlled light zone ran along Parkway Ave.

**Mr. Springall** said it appeared that the existing lights along the hard trial on the southwest side of the site would have to be removed because they would be in the new parking spaces.

**Mr. Hanson** agreed they would be shifted out of the pavement area and to the north because he anticipated pedestrians would walk along that edge.

**Mr. Springall** asked how pedestrian access would be maintained to Town Center from the south side of the development.

**Mr. Hanson** noted the Applicant's drawing did not show a potential walkway link from the new parking area, but he suggested placing a walkway along the north side of the new parking lot, which would align with where people might walk in the parking lot and link to the gravel pathway creating better connectivity. He agreed with Mr. Springall's assessment that there was a destination to the southeast, the Town Center.

**Mr. Greenfield** asked the height of the hedge.

**Mr. Hanson** replied the intent was for the hedge to rise above the headlights so the residents could still see over it but not have the glare from the headlights.

**Ms. Keith** asked how many one-bedroom units the complex had because she was trying to understand the parking demand as it related to the unit types.

**Mr. Daniels** replied the complex was made up of about 80 percent of one and two bedroom units, 4 percent of four-bedroom units, and the remainder was three-bedroom units. While the four-bedroom units did cause some of the problem, it was mainly the two- and three-bedroom units.

**Mr. Greenfield** asked if all the carports were spoken for.

**Mr. Daniels** replied yes, the majority were, adding the carports were assigned to allow people to park closer to their building.

**Mr. Hanson** summarized that the changes discussed included a walkway link to Parkway Ave directed towards Building 6 past the parking lot and that lighting would be adjusted as required to fit the new circulation and parking pattern.

**Chair Fierros Bower** called for public testimony in favor of, opposed and neutral to the application. There was none.

The Board briefly reviewed the proposed changes to the Staff report that had been discussed and Mr. Edmonds providing language for new Conditions PDB2 and PDB3.

**Chair Fierros Bower** closed the public hearing at 7:18 pm.

**Simon Springall** moved to amend the Staff report with the following changes:

- **Add Exhibit B3.**
- **Amend Finding A20 as shown in Staff's PowerPoint.**
- **Delete the last sentence of the second paragraph on Page 17 of 19, "~~With proposed condition PDB2 this can be accomplished.~~"**
- **Add Condition PDB2, "The Applicant shall install a pedestrian walkway directed toward Building 6 on the north side of the 27 space parking lot connecting the new parking lot to SW Parkway Ave."**
- **Add Condition PDB3, "Maintain existing lighting levels in the parking lot with consideration of additional lighting if necessary for safety."**

The motion was seconded by **Lenka Keith** and passed unanimously.

**Jerry Greenfield** moved to adopt Resolution No. 267. **Simon Springall** seconded the motion, which passed unanimously.

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

- B. 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 95<sup>th</sup> Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. 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

**Chair Fierros Bower** called the public hearing to order at 7:22 p.m. and read the conduct of hearing format into the record. All Board members declared for the record that they had visited the site. No board member, however, declared a conflict of interest, bias, or conclusion from a site visit. No board member participation was challenged by any member of the audience.

**Daniel Pauly, 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** entered several new exhibits into the record as follows:

- Exhibit A3: Email dated January 13, 2014 from Daniel Pauly to Barbara Jacobson noting the dates that information was submitted to Garry LaPoint over the last month on the project.
- Exhibit B4: Email correspondence received from the Applicant on January 8, 2014 regarding patio furniture.
- Exhibit B5: Site Plan, Sheet A1.0 submitted by the Applicant showing maximum queuing for The Human Bean drive-thru.
- Exhibit C4: Comments received from the Public Works Department Plan Review.
- Exhibit D2: Cover letter and Memorandum in Opposition from Wallace W. Lien, which included a number of pictures of the site and several site maps indicating circulation flows for the subject businesses and
- Exhibit D3: Traffic videos and photos submitted by Wallace W. Lien that were included on DVDs and flash drives received January 14, 2014, originally entered into the record as Exhibits D3 and D4.
- Exhibit D4: Letter received on January 14, 2014 from Garry LaPoint via email titled, “Proposed—Convenient Coffee Store Business” requesting a continuance of the public hearing.
- He noted the Cease and Desist Order dated November 19, 2013 that was distributed to the Board was already part of existing Exhibit D1, as was the Washington County document regarding the recording of a Restrictive Covenant.

**Mr. Pauly** presented the Staff report via PowerPoint, noting the site’s location and surrounding properties, with these comments:

- He provided a brief history of the area, explaining that the subject property was part of Edwards Business Center Industrial Master Plan, which dated back to the 1970s and envisioned a variety of industrial and commercial uses typical in that era. The Master Plan designated the subject site as commercial but did not designate a specific type of commercial.
  - Previously, the City had received an application for an office building, which was never built. In March 2013, the Development Review Board (DRB) reviewed an application that included the Carle’s Jr. along with a multi-tenant building.
  - Because the Applicant was *unable* to locate the tenants for the multi-tenant building, they were requesting to replace the multi-tenant building with the proposed coffee kiosk.
- The Stage II Final Plan revision regarded the function of the development along with the traffic, parking, circulation and overall aesthetics. The area subject to the proposed revisions was highlighted in yellow on the Site Plan (Slide 5), and included a 450 sq ft coffee kiosk drive thru with an adjacent patio area surrounded by the drive thru lane as well as landscaping and parking.
  - Traffic. Generally, PM peak hours were used to determine level of service (LOS). While the PM Peak trips shown in the table of Slide 7 were not usual for this kind of project, compared to what was previously planned for the site, it was not an issue in terms of the City’s PM peak levels of service at the adjoining intersections.
  - Parking. The proposed project had 35 spaces, just over the minimum parking requirement of 33 spaces.
  - Circulation. Added Exhibit B5 showed how the drive thru was placed on that area of the site to allow for the maximum queuing of vehicles. A lot of vehicles would be coming in and out, and although the circulation was not ideal, based on testimony and the information received from the traffic consultants in preparation of the Staff report, Staff did not see any criteria that would lead them to believe the circulation would not work. Information about the circulation was available in the videos submitted, but as this point, Staff recommended approval based on the circulation on

- this portion of the site.
- Pedestrian Circulation & Bike Facilities. Since the original Stage II Final Plan was adopted, additional standards had been adopted in the City's Transportation System Plan (TSP) to increase pedestrian circulation and bicycle facilities.
    - With all the vehicle circulation interior to the site, the safest and most direct area for pedestrian traffic would be the sidewalk. Separating pedestrians through the middle of the site would be really difficult with the amount of necessary circulation.
    - Good connectivity would be provided by connecting pedestrians to the sidewalk to the west of the site. A pathway would also be provided from the parking spaces on the east side of the property near the trash enclosures up to the coffee drive thru to allow employees to carry trash down to the receptacle location previously approved at the center of the site for easier access by collection vehicles.
    - New Development Code spacing standards required bike racks to have five feet of clearance and to be no more than 30 ft from the main pedestrian entrance. A condition of approval required the Applicant to work with Staff on these particular items since there would be some room on the patio to adjust those distances to ensure all the bike standards were met.
  - Mixed Solid Waste and Recycling Enclosure. No changes were proposed to the original approval. The enclosure was actually oversized since the proposed building was smaller than that previously approved.
  - Site Design Review considered the architecture and materials of a project. The original application for Boones Ferry Point discussed using small town architecture and traditional materials similar to Old Town Square or along Wilsonville Rd.
    - The proposal continued that same theme by using the same brick used on the base of Carl's Jr and similar to what had been proposed on the multi-tenant building. The variety of vertical lap siding and board and batten siding would also match the Carl's Jr but with different colors. Similar to Carl's Jr the new building would also have a tower with the same shape, but with different colors to complement but not look exactly the same as the Carl's Jr Architecturally, Staff believed the proposed building would blend in well with the rest of the site.
    - Most of the landscaping was already installed and provided the necessary landscaping typical for this type of development so Staff definitely supported what was proposed and had been installed.
    - The Applicant used the performance method of the outdoor lighting ordinance. Staff looked at the horizontal foot candles, which were essentially the same low level at the property line as before, and assumed that the vertical foot candles at the property would be similar. No issues had been identified with the outdoor lighting which complied with the Development Code.
  - Revisions were proposed to the Master Sign Plan, as obviously, the building was changing, and a Sign Area Waiver was requested. No changes were proposed to the free standing signs previously approved and built; only the panels would be changed for the appropriate tenants.
    - According to the updated Sign Code, all four facades of the proposed building would be sign eligible. The Applicant only proposed signs on three facades, but each sign's area was allowed to be equal to the linear length of the façade. The Development Code would allow just less than 13 sq ft of signage the north façade and slightly more than 34 sq ft on the east and west facades
      - In the Applicant's submittal requested a waiver to allow the sign on the north facade to be increased to match the other signs, which made sense, architecturally, the sides of the building were the same on that portion.
      - Although the Applicant's measurement method in the submittal did not match the Development Code, the main thing was that the Sign Code revisions allowed more flexibility for future rebranding or new tenants with less process because the prior Sign Code was too specific.
      - Staff recommended approving the waiver as well as 25.4 sq ft on the other two signs which was essentially the area within a rectangle drawn around the entire sign.

- Pictures of the building signs were displayed. The signs were typical of similar tenants in Wilsonville and fit nicely within the architectural feature and the area of the building designed as a sign band.
- The Applicant's directional signs were not exempt from the Sign Code because they were illuminated. The signs were shown to be slightly more than six sq ft, so a condition required that the signs stay within the Code allowed six sq ft.
- A hedge was required for Carl's Jr to screen the menu board from offsite view, but the menu for the proposed coffee kiosk was oriented so not to be visible from offsite, therefore screening was not required. The Staff report noted that if that changed over time, a hedge might be required in the future.
- He noted Staff had specifics on the Development Code criteria regarding circulation and whether the traffic generation met the LOS. Section 4.421 stated, "Drives, Parking, Circulation. With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location number of access points, general interior circulation, separation of pedestrian vehicle or traffic, an arrangement of parking areas that are safe and convenient and in so far as practicable, do not detract from the design of proposed buildings and structures and neighboring properties." He asked the Board to keep that language in mind as they listen to testimony and review submitted materials.
- He reiterated that as Staff prepared the report, no compelling evidence was found indicating that the parking and circulation would not work. It might be less than perfect, but it was acceptable under the Development Code format.

**Lenka Keith** asked about the location of the Thank You and Do Not Enter on-site directional signs.

**Mr. Pauly** indicated the signs' locations on the Site Plan, on the right adjacent to the sidewalk at the drive thru entrance and on the left side of the drive thru exit.

**Ms. Keith** stated her concern was that the landscaping or Do Not Enter sign at the end of the drive thru would block visibility and create conflict between the cars exiting the drive thru and those backing out of the ADA parking space.

**Mr. Pauly** stated most drive thrus have that type of parking and circulation. He noted the traffic consultant might have some ideas about providing extra safety in that area.

**Ken Ruud** asked if the Staff had adequate time to review the new information and if so, did Mr. Pauly recommend any changes based on the new information provided.

**Mr. Pauly** deferred to Mike Ward and Scott Mansur of DKS & Associates since they had more time to review the information, especially the video exhibits. Mr. Ward and Mr. Mansur worked on how the shared driveway functioned, which was one of the biggest questions when all the changes occurred with the development of the property. There seemed to be enough area for queuing and for cars to move around internally, but whether the entrance and exit off 95<sup>th</sup> Ave would remain consistent was the question.

**Mike Ward, City Engineer**, stated the City was predominantly concerned with traffic on the public roadways and intersections, and how those facilities operate, and whether they maintain a LOS "D" and above, which this proposal did. In terms of internal circulation, the City was concerned with safety, but none of the issues raised today gave Staff or the consultants any concern. All the issues that had been raised were things they had already thought about and still believed were as safe as they could be made. There were several instances in the videos where people could be seen pulling into an exit lane, even though big thermoplastic arrows were painted on the ground clearly showing the drivers not going in the

right direction.

- The shared driveway involved development agreements between the City and the owners of Carl's Jr, the Chevron and Holiday Inn, and if everyone would agree, the City would be happy to install Do Not Enter signs on the exit only lanes which could make it a little safer. However, to some degree the issue was people were driving where they were not allowed to drive and the City could not necessarily impact that situation. He asked Scott Mansur to address some of the issues that had been raised today.

**Scott Mansur, DKS & Associates** stated he was the original traffic engineer that reviewed and approved the traffic study for the original Carl's Jr development and also did the supplemental memo dated September 5, 2013 related to the coffee kiosk before the Board this evening, so he had been involved since the beginning. He had reviewed all the information in detail and wanted to respond to a few things.

- With regard to using PM peak hours, City Code Section 4.140 discussed evaluating the peak hour of adjacent streets. In the City of Wilsonville, the PM peak hour was the critical peak analysis period that had been selected and used for the last 20 years when analyzing traffic volumes.
  - The LaPoint Group discussed using the AM peak hour. While there would be considerable additional traffic from the coffee kiosk in the AM peak hour, it was important to realize that those coffee kiosk trips were 90 percent pass by traffic, which was documented in his September 5, 2013 memo. The majority of the traffic going to the kiosk was already on the adjacent street and would be making the maneuver to go in and out of the driveway. He agreed it would add traffic internally to the site, but when analyzing offsite intersections, the proposal would not impact the traffic; it was more of an internal circulation evaluation.
  - The internal circulation was also evaluated along with the type of queuing and storage that would be made, even in the AM peak hour, and he had no concerns that the traffic volume from the kiosk would backup off the Carl's Jr site. While there may be some queuing that backed up onto the Carl's Jr site, he did not see traffic backing up on the Chevron site.
- He noted there was discussion about the LaPoint Group talking to DKS & Associates, and clarified that DKS did not speak to anyone that has been involved in the process, and nothing had been documented from DKS.
  - From his evaluations, some of the information was not correct, so he believed there was some misunderstanding in the discussion, and he recommended that the LaPoint Group go through the City and talk to the Staff who were actually working on the project.
  - Page 13 of the memo from the LaPoint Group referred to the coffee kiosk and a study from Gibson Traffic Consultants, which he also reviewed. That memo referred to the coffee kiosk as a proposed 2,790 sq ft site with a coffee drive thru; however, as indicated in Staff's PowerPoint, the drive thru kiosk would actually be 450 sq ft, making it significantly lower than what the LaPoint Group estimated. The 450 sq ft was consistent with the original memo from DKS. The estimates in the LaPoint Group's memo were based on a little more than five times the kiosk's size, resulting in an inaccuracy.
  - The LaPoint Group also referenced ITE Code 934 and the reference from the Gibson Traffic Consultants was probably an old study that was before the ITE Trip Generation Handbook, which was a national handbook that looks at different uses and creates trip generation rates that are applied per square foot. Code 934 was actually for a fast food use. The September 5, 2013 memo from DKS stated the correct ITE Code for the coffee kiosk was actually ITE 938, which was a coffee shop with drive thru and no indoor seating. Therefore, the references in the LaPoint Group's memo were based on an inaccurate ITE Code for the actual use for the coffee drive thru.
- He concluded that based on DKS & Associates' evaluation and analyzing the information in the LaPoint Group memo, he *agreed* with Mr. Ward that there was no information that would make him recommend any changes that were different from their original reports.

**Mr. Pauly** stated Staff had time to look at the newly submitted information this afternoon and felt comfortable with what they had reviewed, but he certainly understood that the DRB had not been able to view the reading materials and videos mentioned. The Board could either view some of the videos this evening or choose to leave the record open and continue the hearing in order to review them at a later time.

**Chair Fierros Bower** asked what the hours of operation were for the coffee kiosk.

**Mr. Pauly** replied the hours of operation were 5 am to 9 pm, which was also stated in the materials.

**Mr. Ruud** asked what type of specialty vehicles would be entering and exiting the site given the three unique businesses, convenience store/gas station, fast food restaurant, and upscale coffee kiosk, and if there were any concerns with the time of day they would be allowed with regard to the safety of the lot.

**Mr. Pauly** replied one of the issues raised, and seen in the video, was the Carl's Jr delivery truck was not parking at the place designated in the original DRB approval for delivery parking. If the delivery trucks complied with that original approval, it would alleviate some of the issues.

**Mr. Ward** added Staff did question whether a grease interceptor pump truck could pass through that area since the grease interceptor would be placed in the drive thru for the coffee kiosk. Engineering had been told the pumping company had cleared the drive thru as being able to accept the grease interceptor pump truck. Garbage would be collected at the shared station by the Chevron's garbage facility so it would not be directly on the coffee kiosk site. Staff did not anticipate any other large vehicles that would need to enter the site.

**Mr. Pauly** stated the Applicant would be better able to address the nature of the deliveries for The Human Bean. He understood deliveries were to be at the same location as the original approval which was by the trash enclosure. Obviously, it would take some coordination amongst the property owners since at one point in the videos, the Carl's Jr delivery truck and Chevron fuel truck were there at the exact same time, which caused some issues on the site.

**Mr. Mansur** believed that was one good point that was raised because a managed approach would be needed to ensure both facilities were not occurring at the same time. There was also an issue raised regarding emergency vehicles. DKS evaluated the site, which had two entrances and exits to both new businesses, but if both of those areas were blocked at the same time, it would create a problem and need to be worked out.

**Chair Fierros Bower** asked if the Applicant would be sharing the trash enclosures with the other business on the site.

**Mr. Ward** replied the Carl's Jr had its trash enclosure on the south side of the Carl's Jr building, while the Chevron and proposed trash enclosures were adjacent to each other. He noted the enclosure for The Human Bean was highlighted in yellow on Slide 11.

**Mr. Pauly** added they were adjacent, but separate and had different height and depths.

**Simon Springall** noted the water pooling issue in the Staff report and asked Mr. Pauly to explain what was happening and how it affected the application.

**Mr. Pauly** responded the grading for the part of the site affected by the pooling water was not changing with the application. The Building Department was working on obtaining a permit to fix the issue, but

that was being resolved by Building through technical means and based on the necessity to give final occupancy, even for Carl's Jr Nothing that the DRB was looking at would affect that one way or another.

- The real issue was that runoff from the original site, which had been just dirt, was pooling over the area where gas deliveries took place and water mixing with the gasoline could be a big issue. A trench was put in as an ad hoc measure, which also caused issues even in the circulation because it was quite severe and also made some of the parking spots on LaPoint's property not as useable, unless one had tall vehicle. All these items were in the process of being resolved through the parties working with the Building Department.

**Mr. Springall** confirmed there would be four bike parking places on the drive thru and that the report stated the bike rack was too close to the building but too far from the drive thru window. He asked how close it currently was to the building.

**Mr. Pauly** replied it would be about 3½ to 4 ft; he was uncertain of the exact distance. He explained that from Staff's perspective there was room to make adjustments to meet those needs, so just recommending the condition of approval to allow the Applicant to work with Staff would ensure the best location.

**Mr. Springall** said he did not see a problem with it being slightly more than 30 ft from the window because it was close to the building, but having enough space to get the bikes in and out of the bike rack would be most important. He asked if legal counsel had a chance to review the LaPoint memo, which mentioned her name a few times.

**Barbara Jacobson, Assistant City Attorney**, suggested allowing the Applicant to give their testimony along with any other parties, and then once all the testimony had been heard, the Board could discuss the issues and next steps.

**Ms. Keith** asked about the entrance to The Human Bean drive way leading up to the stacking lane. She noted the landscaped projection with the light pole near the six parking spaces and asked if some of those spaces could be moved to the Carl's Jr parking, because she was worried the little projection would force people to face the traffic exiting the drive thru. She wanted to know if there was a way to remedy the issue and not have the projection out there, such as having angled parking that might provide more space.

**Mr. Pauly** noted some required landscaping was also included there. The Applicant only had two extra spaces, so parking was pretty tight. He was sure there could be other solutions and the Applicant could respond to that as well. He knew from his own experience that the Applicant looked long and hard to make parking work and provide the necessary circulation on the tight site.

**Chair Fierros Bower** called for the Applicant's presentation.

**Ben Altman, SFA Design Group**, representing the Applicant, commended Mr. Pauly on his summary of the application, noting he would not spend time repeating the same information, but wanted to focus on a couple things in reference to the site circulation and queuing.

- He noted Exhibit B5 the Board received this evening showed the maximum queuing capability for the two drive ups for Carl's Jr and the coffee kiosk. There was potential for 16 cars to queue up for the coffee kiosk and 18 cars for Carl's Jr and that was without interfering with site circulation exiting or spilling over onto the Chevron site.
- Recognizing people's impatience when waiting in line, he believed the queue would be somewhat self-regulating because people would not stack up and wait ten minutes for a coffee; if the line was backed up too far, they would go to the Chevron or somewhere else. He did not see a situation happening where the traffic backed up clear to the street because people were too impatient to wait in line that long. He believed the self-policing manner provided for on the site was consistent with the

Development Code requirement for providing a safe and convenient circulation pattern.

- Additional pedestrian circulation was provided from the street to the site, as well as from the parking to the back of the building.
- The projection noted by Ms. Keith served two key functions. One, it protected the cars parked there from other vehicles passing between Chevron and The Human Bean. Second, it met the City's Code requirement for a landscape island linked with parking to provide shade tree coverage. The curve of the projection would also help customers find the drive thru lane.
- Regarding the challenges with the truck deliveries, he noted that the original approval designated that the delivery trucks park adjacent to the trash enclosure, which was actually located within the cross easement between the two properties.
  - Since Carl's Jr had been open, Chevron employees had been chasing the trucks out of there, which was why they were not parked where the approval had shown. He agreed truck deliveries still needed to be worked out between the two sites, since there was an issue when the fueling trucks were there in the same general area. It was always the general intent that the delivery trucks would be there for a short period of time and that they might possibly block some parking temporarily, but the main issue was to resolve the deliveries between the two sites, so they would not interfere with each other.
- Regarding the storm drainage, he clarified that the area in question was at the transition between the two sites. The original paving for the Chevron site tapered out and was graded so it sheet flowed off the northwest corner of the site onto what was now the subject Boones Ferry Pointe Site. When this site came in with the current project plan, a ridge was created with the pavement to separate the flow and control the drainage on the Boones Ferry Pointe site, but it was not picked up because it did not top off site enough to show that once the ridge went in, there was nowhere for the water to drain off site again. It was being worked out so the runoff water drained back into the drainage system the Chevron had in the northwest corner of the site.
- He said he had nothing more to add at this point, but knew the Applicant would need to respond to some testimony.

**Josh Veentjer, Wilsonville Devco, LLC**, stated, in response to Ms. Keith's concern about potential accidents between cars exiting the drive thru and handicap vehicles backing up, he noted that identified on the Site Plan opposite of the Do Not Enter sign was a Yield to Pedestrians sign.

**Jerry Greenfield** asked who would be responsible for correcting the drainage problem.

**Mr. Veentjer** replied he was, adding that they had done everything in their power to draft an engineered plan showing specifications of everything that they would do and had submitted that to the City and LaPoint. The City had approved that plan which was ready for permit and the Applicant was waiting for LaPoint's response and approval to provide consent to finish the remedial work on the site.

**Mr. Springall** stated that shortly after the Carl's Jr opened, a large inflatable star was put up as advertising that was not approved. He asked if a large inflatable coffee cup would be put up.

**Mr. Veentjer** answered no. He was not aware of the star until after it was put up by the tenant; It was the tenant's decision, and not within his control. He believed the City addressed that issue almost immediately and the star was taken down.

**Chair Fierros Bower** stated if the vehicles were to queue up in the drive thru as shown in Exhibit B5, she did not see enough room for a vehicle to exit past the vehicles waiting in line. She asked the Applicant to show the Board how a vehicle would exit in that situation.

**Mr. Altman** replied the Board could expect to take one car out of the Carl's Jr link of queued cars for a pass through, because the driveway between Carl's Jr and the nine parking spaces to the east was a two-way flow and a driveway exit for the coffee kiosk. He indicated on the slide the direction and flow of the traffic through the two-way driveway, adding that at the transition point, it would have to be a "good driver policy" where someone would let another through.

**Mr. Veentjer** added Exhibit B5 was a bit deceiving because there was more room on site for circulation than it appeared. The exhibit over exaggerated the extent of the queuing lane because no one would have the patience to wait in a queuing lane that far out on the property. The exhibit illustrated that maximum queuing on the Applicant's site would not conflict with Chevron's property and circulation. Traditionally, these coffee kiosks they have double drive thrus and customers actually order from a person at the drive up window. On this site with one drive thru, the Applicant implemented a pre-order menu, as illustrated in Mr. Pauly's presentation, so orders would be taken at a menu similar to Carl's Jr to speed up the process of the queuing lane.

**Mr. Altman** noted the exit arrows going this way on Exhibit B5 were missing on the drawing.

**Mr. Veentjer** stated they could address the arrows very easily and confirmed they would be painted on the pavement.

**Mr. Springall** stated that he went to look at the site on Sunday so it was pretty quiet, but it looked like the direction for The Human Bean drive thru was to the Carl's Jr side of the parking lot, in the center where the trash enclosures were, rather than on the east side, on the Chevron side. If there was no queuing, it seemed traffic would likely continue straight through and he asked if that would cause an issue or was the Applicant going to specifically sign the traffic for the coffee kiosk to the east.

**Mr. Veentjer** replied the coffee business was very complementary to the Carl's Jr business because their peak would be in the morning when Carl's Jr's was not; so the access and circulation for both businesses would also be complementary. Naturally, when someone drove into the site, they would immediately take a left at the stop bar to enter into through the parking lot in front of Carl's Jr. This would be the primary entrance to the site and where the Applicant preferred to have the vehicles. The intent with the cross easement was to have another access point, but also for the benefit of the consumers to be able to get gas or lunch after they had a cup of coffee.

**Mr. Springall** confirmed that the queue shown in Exhibit B5 for The Human Bean would most likely never be that long, and that vehicles would queue up toward the Chevron.

**Mr. Veentjer** stated approximately 16 vehicles were stacked up for The Human Bean in Exhibit B5, which drafted that way to illustrate the maximum amount of vehicles that could potentially be in either queuing lane at any given time. The likelihood of it happening was probably zero, but it showed the maximum number of vehicles that could be on the Applicant's site without conflicting with Chevron's property.

**George Morris, Holland & Knight, LLP, 111 SW 5<sup>th</sup> Ave., Portland, representing Wilsonville Devco, LLC,** stated as Mr. Pauly mentioned, this property was the subject of the comprehensive development agreement that was entered into between the property owners before the initial development was approved. That development agreement addressed in great specificity many of the issues that were raised about the reciprocal use of the adjoining properties. He added there was also a reciprocal easement agreement that was entered into between the Chevron property and Wilsonville Devco property which contemplated and governed the reciprocal use of the access. Many of the issues raised in Mr. Lien's memorandum were issues that exist between Carl's Jr and Mr. LaPoint's property.

- He noted that Mr. Veentjer had conversations with Mr. LaPoint as early as July about The Human Bean, and the concept that he just found out about it in mid-December was not accurate. He had an email in the file where the Site Plan was emailed to Mr. LaPoint on August 7<sup>th</sup>, and Mr. Veentjer would indicate that he had at least two other conversations with Mr. LaPoint in October about the coffee kiosk, during which no objection was raised until they received the letter placed into the record in November from Mr. Lien.
- Given the fact that Mr. Lien submitted these documents and Mr. LaPoint submitted a letter that everyone received at 3:00 pm today, the Applicant was amenable to leaving the record open for a couple weeks, or however long the City believed it needed to adequately evaluate and address the issues, to ensure a full ventilation of the issues and no one was rushed into making a premature decision, and to allow opportunity for their land use counsel, Steve Pheiffer, respond.

**Mr. Altman** added the Applicant team had not seen the video that mentioned the traffic problems, so they would need to review that and respond in some way. As Mr. LaPoint described it, he understood that it was more related to the exit that the City Engineer spoke about of people entering the exit lane rather than the entry lane. He confirmed there was some confusion with the change in the design of the driveway that still needed to be sorted out by working with the City.

**Chair Fierros Bower** called for public testimony in favor of, opposed, and neutral to the application.

**Wallace Lien, Land Use Lawyer, 1775 32<sup>nd</sup> Place NE, Salem, OR, 97301** apologized for getting the large amount of information to the Board so late, but he sent it as soon as possible as it played into the whole notion of the continuance that the Board heard counsel speak about.

- Mr. LaPoint had sent a letter requesting a continuance, even though he and his son, also an operator, could not attend tonight's meeting, even though they wished to testify directly being the owners of the adjacent property. They had asked him to put together a formal motion for continuance, but he did not believe an open record situation where they did not come back to look and talk would be appropriate because of the videos and new evidence that had come in this evening.
  - He had not seen the queuing map (Exhibit B5) and there were a lot of things the Applicant had not seen either. Their motion for continuance was really to come back physically after the Board and everyone had an opportunity to look at the videos and sort through all the material to have a frank and complete discussion about the issues, rather than trying to sort out all the material provided by the attorneys, now and in rebuttal, which the Board would be stuck listening to or trying to read. He explained that his motion was for a true continuance where the Board sets a time, whether it was two weeks or longer, when the LaPoint's could talk to the Board about the situation and the Board could ask questions after viewing the videos.
- The videos were remarkable and showed a graphic accident that happened in late November at the entrance to this property that was really hard to believe. There was a 20-minute section that involved four different cameras, which was a bit difficult to follow, as one had to track a car from one panel to another, the video was a bit annotated to point things out.
  - The video clearly showed the incredible problems with circulation, not just at the entrance of 95<sup>th</sup> Ave which was a big problem. The accident was caused by a car turning left from 95<sup>th</sup> Ave into the exit row, another car just followed it, and while the third car tried to make it too, but were T-boned by a semi-truck right at that entrance. There were countless entries into the exit areas, U-turns, and exits out of entry areas.
  - He indicated the south access into the Holiday Inn on the Site Plan and noted that video after video showed cars from the Carl's Jr going across the traffic and the wrong way into the Holiday Inn and he indicated other driver errors that create tremendous conflict.
  - There was about a 15-minute file on the video that showed the blockage everyone referred to earlier in the discussion. It was not his client's problem and it was not their delivery truck. Where was Carl's Jr? The burden of proof was on the Applicant's site design, so it was their problem.

- He showed where the Carl's Jr delivery truck parked and the video showed that in order for the truck to get into the spot, it took about three turns for the truck to be able to get in and then it completely blocked the area. From a timing point, it appeared the truck was parked there about 20 to 40 minutes so that entire time, that area, which was identified as the main entrance and exit to Carl's Jr and The Human Bean, would be completely blocked. The video showed the delivery truck sitting in that location and he understood the truck came about three or four times a week, which Carl's Jr would have to confirm. He indicated that the gasoline tanker trucks parked near the trash enclosure when they deliver one to three times a day to the Chevron, and the 15-minute video showed the tankers blocking the entire area to the east across the easement and a delivery truck blocking the entrances to the Carl's Jr and Human Bean, completely blocking vehicle access to Carl's Jr and The Human Bean.
- The manipulations seen on the video were incredible. He indicated some of the amazing maneuvers people did to get around the delivery trucks when both entrances were blocked, including driving and backing into the Carl's Jr drive thru, but Mr. Altman had stated it would get congested sometimes and that people would just turn around and leave.
- The gas station's circulation ran counter clockwise on the site, as indicated in yellow on the drawing labeled, "Chevron Circulation" included in the packet he provided to the Board. He described the traffic circulation for the Chevron, adding that when blockage, queues, or parking issues occur, and a driver hit the area blocked by the delivery truck they would look for another place to go, just as Mr. Altman stated, and likely go against the flow of Chevron's traffic and create conflict, which could be seen on the video. There were no accidents in the 15 and 20 minute videos, but there were probably a dozen near collisions due to people crossing traffic and going head on without following the traffic patterns.
- He noted the area on the site plan with arrows that pointed to each other and asked what if the cars could not go the way the arrows directed because the delivery trucks blocked their path. There was direct conflict even on the Site Plan with the arrows pointing to each other.
- Another reason for the request for a continuance rather than the open record period was because they believed there were some defects in the notice and he had laid those out in his packet. The issues were more technical, but as a land use lawyer he was required to raise everything he could think of because he had to get it into the record and if not, they could not raise it on appeal later.
  - He believed a corrective measure would be to re-notice for the continued hearing, which would fix those items.
- They wanted to ensure that his memo and attachments (Exhibit D2), as well as the DVD and thumb drive, were officially placed in the record. He noted the information on the thumb drive and DVD were identical, but they did not know how everyone would want to access it, so two different ways were provided to access the video. He added Mr. Laidlaw submitted a packet of materials early on and he requested that it also officially be included in the record. (Exhibit D1)
- Another issue he wanted to discuss involved the property line separating the LaPoint Group property from the Devco property. As noted, some reciprocal easements existed, but that land was owned by LaPoint. He and his client's position was that because the City was approving a Site Plan that utilized traffic circulation on the LaPoint property, jurisdictionally the LaPoint's were parties and would need to be signers on the application or it would be jurisdictionally defective. He had laid out all those technically legal matters out in the memo.
- He said he got pinched by Mr. Mansur from DKS regarding the traffic study who said the site was only about 400 sq ft and that the ITE Code was 938, not 934. Mr. Lien stated he had only been handling this case for a week and all he had was the Staff report that had been posted. Attached to the Staff report was a DKS memo from Scott Mansur, which he confirmed was a part of the Applicant's notebook (Exhibit B). The memo identified the land use code for the coffee kiosk as fast food restaurant with drive thru ITE 934, but now Mr. Mansur was stating that it was 938 so he questioned which one was correct. Mr. Lien agreed with Mr. Mansur's report dated September 5, 2013, which stated it was ITE 934, a current designation. He suggested Mr. Mansur look at his own report.

- The report also showed 2,790 sq ft, not 490 sq ft, so again, it seemed like when it was convenient, it was smaller and when it was in the report, it was larger. Mr. Lien explained he did not like to get tweaked when he was using the data provided in Mr. Mansur's own report at the hearing.
- He understood the Wilsonville Code wanted the PM peak looked at first, but that did not mean putting blinders on and ignoring reality. Everyone in the room realized that the actual critical peak traffic period for The Human Bean was that period of time in the morning. According to the ITE manual, it was 7 am to 9 am not from 4 pm to 6 pm. The Board was deliberately ignoring the traffic when they blindly followed a code that stated the primary thing they wanted to look at was PM peak when in fact they had a specific use everyone agreed was AM peak. The numbers for AM peak were incredible; the difference between what the DRB approved last year for a small multi-use to a drive thru was incredible.
  - He asked the Board to imagine adding even 200 more traffic trips an hour on that site at 7 am on a Tuesday morning, and to really think about that when they watched the videos, because it simply would not work.
- Regarding the notion of pass by trips, the DKS representative told the Board correctly, but in a backward fashion. When looking at traffic count data from a City perspective, they would look only at the entrance at 95<sup>th</sup> Ave because that was the public facility. So, if a car was already on that facility and it simply pulled in and pulled back out that was a pass by trip. It would not have any impact on 95<sup>th</sup> Ave because it was already in the traffic stream, but once it entered the site, it was longer be a pass by trip, it was an onsite trip. Therefore, the notion of pass by trips did not count only on 95<sup>th</sup> Ave, but once they were on the site, they counted.
  - The numbers and extrapolation completed for the coffee shop further north on I-5 were dramatic: 300 trips and then a ratio was applied. He did not know who talked to who between DKS and LaPoint, but the bottom line was that the ITE use, which the Gibson folks did, also using ITE 934, they found that the AM peak would be 330 trips, which would be 175 in and a 155 out, and that was for the much smaller 1,800 sq ft property in Bellingham, WA. He did not know the exact square footage, but this proposal was larger and the ITE manual used square footage because that was what DKS did in their September 5<sup>th</sup> memo. He had extrapolated the 330 because it was a bigger site, and that was what the ITE said to do, and at 25 percent bigger it came to 419. But if it was not that big, say only 330 or even 200 trips; again imagine that much more traffic when looking at the video, the site simply could not handle the traffic safely or efficiently and therefore it violated the provision of the Wilsonville Code that Mr. Pauly pointed out. The traffic circulation was too much; it was marginal and perhaps functional when they had a multi-tenant building, but with a drive thru with an AM peak of that high of number, it would not work.
- He concluded that he looked forward to returning again after the Board had a chance to look at the video and he had a chance to look at all of Mr. Pauly's report. He noted he only got into the traffic issue simply because he did not have time to do anything else. He appreciated the Board's time.

**Mr. Ruud** confirmed Mr. Lien had visited a Human Bean and asked him to describe their business.

**Mr. Lien** replied he had visited one in Albany and it was almost identical to the one being proposed.

**Mr. Ruud** asked if The Human Bean used a similar process as Dutch Bros Coffee for ordering and waiting for coffee.

**Mr. Lien** replied The Human Bean was a Cadillac and Dutch Bros was a Chevrolet; The Human Bean was more than just driving up either side and getting your order.

**Mr. Ruud** stated it seemed that with 200 cars an hour in one drive thru lane, a little more than three people a minute would be going through the drive thru, which did not seem feasible with specialty coffee

and if multiple people were in the car. During a normal trip to Dutch Bros, it took a lot more than 15 seconds to get his coffee.

**Mr. Lien** said that Mr. Ruud might correct, adding that they did not have any specific information about this particular site and did not even know the right ITE classification to use, the one Mr. Mansur presented tonight or three months ago. He could not emphasize enough that this was the Applicant's problem; they had the burden of proof. If in fact, the deviation from this particular use was such that it was lesser traffic than what the ITE manual stated then it was up to the Applicant to bring that information in and hopefully they could provide that information at the next meeting.

**Mr. Ruud** stated as Mr. Lien mentioned, they had to think through the safety concerns, and he did not think it was feasible for 200 cars in an hour to go through that type of an establishment.

**Mr. Lien** stated he questioned how they would even do 70 cars in an hour based on that traffic. He visited the property several times that week, watched at videos taken over the last month or so, and looked at the report. Even if the report was right, if the PM peak was used with 70 cars and that was what it would be in the morning, could they imagine 70 cars, because he could not imagine 25 more cars that were there for the Carl's Jr now. If there were any issues with a delivery truck, garbage truck, or someone's stalled car it would be grid lock. He asked the Board to think about 70 cars while they watched the videos and how many more cars could really fit in that drive thru.

**Mr. Ruud** asked Mr. Lien to share the timeline of when the videos were captured. He recalled one letter mentioned they were given permission to take video of the site for an 18-hour period on a Sunday through Monday or was selected taping used to create the videos.

**Mr. Lien** replied he had not looked at the video material, but the files he viewed that were emailed to him had dates on them. He believed the accident was November 26, 2013, and then there was a short video on December 2, 2013 and another on December 6, 2013 which showed the blockage. Dates could be seen as the videos were viewed so the Board would know the time period they were viewing.

**Mr. Ruud** stated that it was different to him if they were looking at instances over a six-month period rather than over an 18-hour period due to the frequency. As an example if one went to a mall during the holidays, they could come up with a video of 200 to 500 near misses and incidents.

**Mr. Lien** added part of the problem was that the Carl's Jr just opened so they did not have a long period of time to track the traffic. Each video covered a certain period of time. The video for December 6<sup>th</sup> was 20 minutes long, so the Board would clearly see the chaos that happened during that period of time. The video of the accident was only about 20 seconds, but it was all in actual time.

**Mr. Edmonds** asked if Mr. Lien was proposing to provide to the DRB with the videos to review at their own leisure.

**Mr. Lien** stated a DVD and thumb drive had been provided to the City and he assumed the City could email them.

**Mr. Pauly** stated the files were fairly large, and suggested the Applicant provide additional files for the City to provide.

**Mr. Edmonds** asked counsel if the video had to be presented in a format of a full presentation during a public hearing or could it be sent to the Board members for their review. The videos lasted about an hour.

**Mr. Lien** noted still pictures were included as well the videos.

**Mr. Edmonds** noted some audience members did not get a chance to view the video either, and was concerned whether that was a legal issue if they said they did not get the opportunity to see the video because it was not presented during a public hearing format.

**Mr. Lien** believed it was like any other Staff report or file or traffic report that was available at City Hall; people could go in and view it but it had to be available during that period of time.

**Mr. Edmonds** clarified that if it was to be entered into the record, each Board member would need to have their own copy because they could not share a copy within the group since it would be collaboration outside of the public hearing format. He confirmed at least eight copies would be needed.

**Mr. Lien** stated he had the original information and he would leave the two packets he had with him and obtain six more copies to give the Board members. He noted each packet had two ways of viewing the material and included a DVD and flash drive.

**Mr. Pauly** clarified that the exhibit numbers in the record should reflect one DVD and flash drive as one exhibit.

**Ms. Jacobson** suggested the material be provided to the Applicant first, and then Mr. Lien could send the City a full set to distribute to the DRB.

**Mr. Lien** replied he would consider that.

**Tom Berg, 15871 SE Van Zyl Dr, Damascus, OR**, described his experience with the site, noting that he worked as a contractor for LaPoint Business Group in the subject location as well as others, and was also the primary contractor for the AGC Center, immediately west of the subject site across 95<sup>th</sup> Ave. He was familiar with the development of the Chevron station, the original South Sea's parcel acquired by George Brice who had submitted the office development complex, and with the traffic and impact of 95<sup>th</sup> Ave to Boones Ferry Rd and Commerce Circle, which went around the industrial and office development to the west.

- Tonight's discussion had been mostly about traffic, the impact on the sites and how they fit in a chronological order with the overall development, along with a few issues with the drainage. He noted the City had done an excellent job trying to control some of the major issues that have occurred on 95<sup>th</sup> Ave.
- He stated that the project, and particularly the drawings before the Board should have encompassed a larger, overall picture because of the nature of the impact. What was not emphasize enough was the size of the Holiday Inn, convention center, restaurant, and bar located directly south of the subject which used the majority of the access at the same entrance onto the subject parcels.
  - The changes made to 95<sup>th</sup> Ave reduced access on the two lanes south bound by removing one of the left turn only lanes for traffic flow and access for bike lanes and sidewalks.
- Since the Carl's Jr development started, he had been involved on a project for the AGC Center. Much of the work was on the exterior and roof, so he observed the subject site and traffic plan many times first hand being adjacent to the site on top of a four-story building which provided a good opportunity to view the site and establish some opinions.
- Regarding the ingress and egress, he said he participated in some of the meetings with City engineers and the planning department and some signage that was supposed to occur out on the street had not yet occurred. First and foremost was giving the Holiday Inn the access through this particular entrance way onto the subject site.

- Again, the Board should be looking at the overall impact on all parties involved, which would be a larger section of the Holiday Inn, all of the Chevron, Carl's Jr, and the proposed coffee kiosk.
- Some of the videos mentioned showed some of the difficulties with traffic that had occurred in the months of November and December and into January. Since the sign was relocated, additional cameras were put up for security on the property and a whole new system was added, so a tremendous amount of data was available that could be extracted to provide the Board all the information they wanted.
- The original plan showed that the multi-use facility on the north end of the property would not have a large effect on overall traffic plan. However, he could see how that could be handled through what was proposed. He knew that if Mr. LaPoint was present, he would talk about the conditions of the easement and that the easement and the development agreement were established with that particular usage for the subject site, *not* the coffee kiosk. They had not been involved with any change in the easements or access through the LaPoint property from any documents that occurred in the development agreement for that particular usage; so the LaPoints should be present.
- He noted all the documentation, videos, and traffic issues were during the winter months which had the lowest volume of the Chevron station.
  - He noted Mr. LaPoint has been involved his whole life in the operation of service stations, gas stations, and convenience stores, but he had developed a reputation in the industry as being first and foremost. This Chevron location has pumped the highest gallon volume in a Chevron station in the three western states and the convenience store was the highest used convenience store in the region.
  - This was a huge impact now, in the middle of the winter when people were not on the roads. He had observed traffic that filled the entire left hand turn lane from the entrance onto the subject site all the way to the corner on 95<sup>th</sup> Ave where Commerce Circle went to the west, which indicated how popular the service station was in prime time.
- Carl's Jr was an asset being an excellent restaurant chain and it showed tremendous popularity. He noted comments made about the operator of Carl's Jr liking the idea of having a coffee kiosk and stated if he was operating a Carl's Jr at any location and was serving 250 to 500 breakfasts an hour and someone told him they wanted a coffee kiosk next door in the driveway, he would find that hard to believe. Coffee would be the number one beverage that they would sell all morning long and he could not believe that to be a common denominator for a good business relationship.
  - He knew that the number one and three items inside the convenience store was coffee; so there was definitely opportunity between those two locations for good coffee to be served. Coffee was also available at Holiday Inn.
- He wanted to emphasize the whole picture of what the gas station traffic looked like, adding that in pumping that much gas, Mr. LaPoint primarily won the game because he had a real high service ratio with people out on the islands. He provided quality service to the customers that came into the station which was why they came back. To continue providing quality service, one thing he needed was traffic flow, which had been designed from the beginning in a counter clock wise rotation that Mr. Lien mentioned, and Mr. Altman was aware of having worked on the site for a long time.
  - He indicated the corner of the canopy of the Chevron station and large concrete pad set up for refueling. He explained that if cars were queued going into the driveway of the Carl's Jr location, the assumption was that people wanting to go to the coffee kiosk would veer to the east toward the station, against the Chevron's flow of traffic, and along the property boundary line and supposed common easement (near the trash enclosures) to access the coffee kiosk. That did not fly very well.
  - The circular flow of traffic going counter clock wise enabled Chevron's customers to get quick and courteous service, but they would be confronted with a lot of oncoming traffic when trying to leave the property. He understood it was a tight site, but obvious problems would be created by approving this type of traffic flow in areas that were private property available to the public.

- The deliveries to both the Carl's Jr and Chevron station had been discussed, but deliveries to a food service location, not a mixed used, office-type facility, would also have to be added. Where were they going to park for deliveries, on the Chevron location?
  - He saw parking stalls and traffic plans that worked for cars, but that area of Wilsonville was an industrial zone with offices and businesses with a lot of boxed vans as well as vehicles with trailers. Where they would park? They could not fit through the drive thru or park at the Holiday Inn because the radii were too tight. Parking a tractor/trailer near the trash enclosures would block the designated fuel location for LaPoint Chevron and the designated parking for Carl's Jr's delivery trucks, which were supposed to be there afterhours.
    - The Holiday Inn parking lot was reconfigured with ingress and egress with this new plan to try to handle some of the problems, but it busted the lot up into smaller areas and put in landscape dividers which did not allow for larger trucks on the site. Big trucks could not park at the Chevron, or Carl's Jr and could not drive around the coffee kiosk, so how would all those people working in that area with those types of vehicles be accommodated?
    - He noted that he, Mr. Pauly, Mr. LaPoint and others were on the site talking about the drainage issue when a boxed van arrived. The person double parked and blocked traffic in the designated truck delivery parking area near the trash enclosures. He noted if that happened again with 400 customers passing through in an hour at seven or eight in the morning was unconsciousness.
    - This was not only something that was an inconvenience for traffic, but it regarded life safety issues and impact on a piece of property not designed for that type of traffic. If the subject area was properly used, it would provide more parking for a very good quality Carl's Jr and also provide services for the trucks and traffic, which should be a primary consideration instead of more density.
- He indicated the location of the fuel tank cover and asked if the City of Wilsonville and DEQ would really allow water to flow across tank filling areas onto a lot. He indicated that there was an extruded curb that directed the water into the existing drainage area and another catch basin which was the subject one for the improper drainage coming off of the new asphalt from the delivery route. He did not want to call it an ingress or egress because that was not the purpose of intent originally discussed when it was a mixed use building.
- He concluded by stating that Wilsonville had the highest volume Chevron in the region, a really good restaurant and he asked the Board to give those businesses an opportunity to grow and operate their businesses, and to be realistic about having the coffee kiosk. The whole site would be impacted.
- He strongly disagreed.

**Chair Fierros Bower** called for the Applicant's rebuttal.

**Mr. Veentjer** stated he appreciated the Boards patience and made the following comments regarding the issues raised:

- One of the biggest areas of concern raised by the LaPoint Group was the ingress and egress onto 95th Ave, and if they referenced the development agreement, the right turn out from the site at 45 to 50 degrees was actually proposed by Mr. LaPoint to service his large vehicles that frequented the site.
- The monument sign of Chevron's was relocated at the request of Mr. LaPoint to create an island and the Applicant complied with that request. All the improvements seen on site and reflected in the shared access agreement were all improvements they made and paid for to the benefit of Mr. LaPoint, Holiday Inn, their tenant and their future tenant.
- With regard to the concerns about the delivery trucks, he noted the deliveries for the Carl's Jr were all new routes since it just opened on November 12<sup>th</sup>, 2013. The agreement, which Mr. Pauly mentioned was in the original approval for the DRB, was that the delivery trucks were to park in front of the trash enclosures where a property line and reciprocal cross easement existed. The delivery trucks had not had an opportunity to park at that designated location, because they have been requested to move

by Chevron.

- The main point of access for The Human Bean was in front of Carl's Jr which was a natural ingress to The Human Bean. On the northeast side of the property was a reciprocal cross easement, and most vehicles entering the site did not know that existed, which was a large benefit to the Chevron customers to go onto the subject property after they have fueled their vehicles.
- He addressed the concern with large vehicles and parking by stating that most of those vehicles were Chevron's consumers. While Mr. Berg had raised a concern about large vehicles parking in front of the trash enclosures, he believed they had to lead by example, because if they parked their large vehicle there other people might think they could park there as well.
- There had been a large discrepancy between the traffic counts The Human Bean might generate. The Human Bean on average completed about \$1,000 a day in business, so between 5 am and 9 pm about 175 to 200 maximum trips would probably be generated per day.
- Regarding the relationship between Dutch Bros and The Human Bean, he noted The Human Bean had 50 locations and Dutch Bros had more than 200. Dutch Bros had been around longer and did a much higher volume of business.

**Mr. Morris** believed Mr. Lien was playing a little bit of a slight of hand with his traffic account. The Gibson Study was done for a building that was about 1,800 sq ft and he extrapolated based on the hypothetical view that the proposed building was 2,700 sq ft, but the building was 450 sq ft, which was in the record, application, and Staff report, so the traffic impact needed to be based on a 450 sq ft building.

- He stated that the Applicant was happy to continue leaving the record open, but were opposed to renouncing the hearing and a motion for a continuance, but he would leave that to Ms. Jacobson to decide and if she felt the City needed to do that, she could advise the Applicant.
- There was a lot of discussion about the cross easements and it was very important to understand that the development agreement was entered into about a year and half ago, and the easements were negotiated last summer, long after Mr. LaPoint was aware that Wilsonville Devco was proposing The Human Bean coffee kiosk at that location. Mr. LaPoint even supported the idea in his earlier conversations with Mr. Veentjer, and at one point, asked if he could manage the restaurant. The reciprocal easements and access agreement were negotiated, signed and recorded.
- The first time the Applicant had heard any dismay about the coffee kiosk being located was in the letter from Mr. Lien to Mr. Veentjer in which he suggested the operation of a coffee kiosk was a convenience store and that matter was now in litigation at Washington County, and as Ms. Jacobson correctly advised Mr. Laidlaw, it was a private matter of litigation between the parties.
- He noted that Mr. Berg was not aware that he represented Carl's Jr and spoke to Mr. Gjurjevich on the way to tonight's hearing that they were very much in favor of the Coffee Bean restaurant going in at this location, so any indication the application did not meet with the Carl's Jr approval was incorrect.

**Mr. Veentjer** added Carl's Jr favored The Human Bean so much they were actually the franchise operator; that was how complementary the business was to Carl's Jr.

**Mr. Morris** clarified that they were the franchisee.

**Mr. Pauly** suggested having Mr. Mansur address the discrepancies mentioned.

**Chair Fierros Bower** called for a brief recess at 9:28 pm and reconvened the meeting at 9:33 pm.

**Mr. Mansur** responded to some of the comments raised about the September 5, 2013 memo, noting that he had reviewed it again and there were no discrepancies in the memo.

- He explained that Table 1 referred to the original traffic study and the two land uses that were assumed: one was the fast food and drive thru, which was actually the 2,790 sq ft Carl's Jr, and a

specialty retail center which was a little more than 3,000 sq ft. He clarified that he was referring to Table 2 on the next page, which regarded the current proposal and showed the size of Carl's Jr changed to 2,867 sq ft, and The Human Bean was 430 sq ft, which was the correct ITE land use code 938 for a coffee kiosk with a drive thru.

- The letter from the LaPoint Group referred to the coffee kiosk as 2,790 sq ft and they applied the fast food ITE Code 934, but both the square footage and ITE coder were incorrect. Table 2 of the DKS memo indicated the ITE Code was 938 and the square footage was 430.

**Mr. Ward** added that even if the 1,800 sq ft was compared to a 450 sq ft facility, which was exactly a quarter of the size, and it was incorrectly assumed to be fast food and not the coffee generation, there would be a quarter of the trips in and out. Using that analysis and assuming it was similar to an I-5, Bellingham, WA in and out, instead of going from 330 to 412, 330 would be divided by four, which brought the trips down to about 82 trips.

- He said Mr. Mansur had noted a more conservative number, at about 100 trips, which was a trip in and a trip out. So the Bellingham equivalent, if the coffee kiosk was incorrectly assumed to be a fast food restaurant, would provide for 41 separate vehicles, or a vehicle every minute and a half. Mr. Mansur's analysis revealed that the coffee kiosk would handle a vehicle roughly every minute or slightly less. Those numbers were in line with the numbers the Applicant had provided as far as financials, and that was during AM peak hours, the morning rush. He clarified the coffee kiosk would serve a vehicle every minute to a minute and a half on average which totaled between the opposition's 41 to 65 vehicles being served in an hour.

**Mr. Springall** requested clarification from counsel about the discussion to leave the record open or have a continuance.

**Ms. Jacobson** replied the Board had two options. Although she was not worried about renoticing, she believed Mr. LaPoint's attorney was asking to have a continuance that kept the record fully open so the next time the Board met, on February 10<sup>th</sup>, the record would be completely left open and the Board would continue the hearing so that new people could come in and testify. For example, Mr. LaPoint could come in and give new testimony, as could the Applicant, and both sides could have people come in and testify in favor or in opposition of the application.

- The second option of leaving the record open was a bit more limiting because more written evidence could come in. In both instances, the Board would have time to review the video and all the other information that has come into the record tonight.
- The Board could continue the hearing, keeping the record fully open and allowing anyone to testify that wanted, or leave the record open to written testimony and at that point in time, request if someone wanted to make one to present additional evidence based the written testimony.
- If the Board was inclined to hear directly from Mr. LaPoint when he returned, she would continue the hearing and keep the record fully open; and she believed that everyone was open to a continuance.

**Mr. Ruud** asked to hear from the Applicant, as he heard one to two weeks was requested.

**Mr. Veentjer** stated the Applicant would agree to a continuance of two weeks to allow sufficient time for additional documentation and provide the Board time for a review and to make a decision.

**Mr. Edmonds** believed the Board would have to meet February 10<sup>th</sup> because the City could not meet the noticing requirements within two weeks.

**Ms. Jacobson** noted that this Board would not meet again until February 10<sup>th</sup>, and moving the hearing to a different DRB panel would not be fair to anyone. Staff would put the hearing on as the first agenda item for February 10th. She believed the application had until April to go through the land use process.

**Mr. Morris** agreed it did not make sense to start again with a new panel.

**Ms. Jacobson** confirmed that February 10<sup>th</sup> worked for the Applicant and reviewed the options available to the Board.

**Mr. Springall** confirmed the Board could leave the hearing open or closing the hearing and reopen the record at the February meeting.

**Chair Fierros Bower moved to continue the public hearing for Resolution No. 268 to February 10, 2014. Simon Springall seconded the motion.**

**Mr. Ruud** stated he was fully open to coming back on February 10<sup>th</sup> for further discussion, but after hearing the concerns from Mr. LaPoint's letter, he believed it was more about competition rather than traffic flow or the business itself. Mr. LaPoint had raised those issues with the City in the past and the City and Applicant have incorporated quite a few of his suggestions into the design for the existing Carl's Jr. Experts from both the City and Applicant had prepared, shown studies, assessed the situation, and had given the Board feedback that it would be safe, even though it would be tight and not ideal; but Wilsonville was a growing city and this issue would come up more often as more people come into the city.

**Mr. Pauly** added that the Board was likely to receive a pile of new materials last minute for the hearing in February. Pushing the decision to March could make meeting the 120-day land use deadline tight if there was an appeal to City Council. The Board could also leave the hearing open for two weeks in order to receive all the materials from both sides a couple weeks before the actual meeting date to be able review the submitted materials and be up to speed to be able to deliberate and make a decision on February 10<sup>th</sup>.

**Ms. Jacobson** confirmed the Board could keep the record open and allow additional testimony but make a cut off time for entering any additional material.

**Mr. Pauly** suggested identifying a deadline date for the material to be submitted.

**Mr. Morris** stated from the audience that would be the Applicant's preference.

**Mr. Ruud** understood Mr. LaPoint was on vacation outside the continental US until February 5<sup>th</sup>.

**Mr. Pauly** said Mr. LaPoint had called him today and he did have access to a computer to provide written testimony.

**Ms. Jacobson** noted the Board could allow materials to come in until February 6<sup>th</sup> which would help Mr. LaPoint's counsel and then the Board would decide on the 10<sup>th</sup>. She added there was always the option to continue the hearing or leave the record open again, but it would probably give them more assurance to get it done.

**Mr. Greenfield** clarified Staff was not suggesting a continuance, but leaving the record open until February 6<sup>th</sup> to avoid having material coming in on that day, and then the matter would be decided on February 10<sup>th</sup>.

**Mr. Pauly** suggested that the Board consider how much time they would need to feel comfortable with the volume of material that might be received before making its decision in February.

**Ms. Keith** stated that she preferred two weeks.

**Ms. Jacobson** agreed with leaving the record open for two weeks because it would allow either side time to review the materials and respond within seven days.

**Chair Fierros amended her motion to hold the record open until January 27, 2014. Simon Springall seconded the motion, which passed unanimously.**

**Mr. Pauly** reviewed the exhibits entered into the record, confirming that Exhibit D3 was the videos submitted on DVD and flash drive. He confirmed that he would also email the Board the exhibits list.

**Mr. Ruud** noted Mr. Greenfield was moving to the Planning Commission and asked if there was any issue with a new member coming on the Board who did not hear the testimony this evening.

**Ms. Jacobson** responded that the timing was not ideal. The new member could participate after listening to the full record; otherwise, the Board would still have a quorum without Mr. Greenfield.

**Mr. Pauly** confirmed Mr. Greenfield's first Planning Commission meeting would be Wednesday, February 19<sup>th</sup>, so technically, he could still continue on the Board for the February 10<sup>th</sup> meeting.

**Ms. Jacobson** asked if everyone was clear on how they were going to proceed.

**Mr. Morris** confirmed he understood correctly that the record would be kept open for two weeks, they would have seven days to respond and the next hearing would be on February 10, 2014.

**IX. Board Member Communications:**

There was none.

**X. Staff Communications:**

There was none.

**XI. Adjournment**

The meeting adjourned at 9:54 p.m.

Respectfully submitted,

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