

MINUTES

I. CALL TO ORDER – ROLL CALL

President Fleisher called the meeting to order.

COMMISSIONERS PRESENT: Fleisher, Neill, Shortt, Bennett, Fuentes, Sinclair, Kim

STAFF PRESENT: Cooper, Doughman, Crampton

President Fleisher read the following statement:

“The Planning Commission is placing emphasis on effectively addressing the issues in which we are engaged in a respectful and a timely manner. We ask all parties to hearings and administrative matters during our meetings to assist us with this emphasis by participating in direct and relevant testimony and comments.”

II. COMMUNICATIONS AND NON-AGENDA ITEMS – None

III. APPROVAL OF MINUTES – None

IV. CONSENT AGENDA – None

V. PUBLIC HEARINGS

President Fleisher asked if any Commissioner wished to declare any ex parte contacts or conflicts of interest for any of the public hearing items. He acknowledged he had read a newspaper article and did a brief internet search on the two primary organizations who would be testifying this evening. He did not believe those actions would disqualify him from being objective.

A. Appeal 001-19: Majestic South Huffman II

Request: The Appellants are appealing the Planning Director's decision for Case File No. DR-025-18 Majestic South Huffman II, by contending that the decision erred in regards to the proposed development's compliance with the Development Review approval criteria found in Community Development Code (CDC) Section 12.80.040.H, in particular approval criteria related to the proposed Methodist Meeting House (MMH) monument and protection of the development site's Cultural Resource Overlay (CRO) found in CDC Section 12.27.300. (*Staff: Andrew Crampton*)

Chris Doughman, City Attorney, explained the purpose of a de novo hearing, noting that it meant the Planning Commission was not bound by Staff's decision. It would be as if the Commission was hearing the information anew; however, the Planning Commission could consider the findings and the conclusions from Staff. Legally speaking, the Commission was not bound by any of the Planning Director's [that] decision.

President Fleisher stated that testimony or information provided at either the Historic Landmarks Advisory Committee (HLAC) hearings or to the Planning Director during a development review procedure was in the record. Those testifying tonight could choose not to repeat that information at tonight's hearing.

- The Commission had a request from the Applicant, Majestic Development, to continue the hearing to a date certain, Wednesday, October 9, 2019 in order to continue discussions with the Appellants and to discuss a possible resolution to their objections. The Commission would open the hearing tonight, receive testimony, and ask questions, but would not deliberate until October 9th. At that hearing, the Commission would allow additional testimony based on any revisions to the Methodist Meeting House Monument design and associated conditions of approval.

A video was played narrating the ORS conduct of hearing format.

Andrew Crampton, Planner, cited the substantive applicable approval criteria and presented the Staff report via PowerPoint, noting a series of Staff reports were before the Commission tonight. The first Staff report addressed the bulk of the Appellants' basis of contentions with specific Staff responses to those items. The Staff report issued today provided an overview of the work to-date and referenced the testimony received, both from the Appellants' [both within the Appellants]. Also included was a supplemental Staff report. Key points of his presentation were as follows:

- The Applicant indicated that they had been working with community stakeholders on a potential enhanced Methodist Meeting House Monument design and further additional site evaluation. The hearing would be continued to October 9th to allow both parties more time to address the issues raised in the appeal.
- After tonight's hearing, the record would remain open to allow for additional written testimony to be submitted up to the October 9th hearing. The Applicant had waived their mandamus rights to allow for a final local decision to occur up to October 11, 2019. During that time, the Applicant and the Appellants would work together on resolving the issues addressed in both the appeal and in the Staff report.
- The appeal was based on the following: Information contained in a letter from former Mayor Hughes; inadequate commemoration of the historical importance of the site; the site's classification as a Historic Cemetery; lack of a required Cultural Resource Alteration permit; concern about the Monument's design, size, and scale; inadequate archaeological site analysis; the location of the loading dock street side; and not following Oregon Planning Goal 5.
- He reviewed the site and site planning to-date, as well as the construction and history of the Meeting House. Historical information suggested a small cemetery was associated with the Meeting House and reported burials included as many as five children of Joseph Meek and his Nez Perce wife, Virginia.
- The City commissioned a series of archaeological evaluations of the site and graves in 2002, and also added language to the Comprehensive Plan requiring a Monument to the Methodist Meeting House upon site development. Further site work including remote sensing was done the following year and more was recommended. Also recommended was to limit development in the vicinity of the Methodist Meeting House site. In 2013, ground penetrating radar (GPR) surveys were done.
- The proposed industrial development was an outright allowed site and typically would be approved as a Planning Director's decision.

- A review of a refined Monument proposal had taken place at an HLAC meeting on November 8, 2018, resulting in a series of recommendations regarding financial contributions, an off-site Monument design and written descriptions, and to have the design done by a professional with historical landmark design experience.
- The design was finalized in early February 2019. The Applicant notified the City of their intent to do a phased development, which impacted the installation of the Monument and the timing of frontage improvements. The City requested the Applicant provide a series of Transportation Impact Analysis (TIA) reports. Based on the supplemental TIA and recommended conditions of approval, the City issued the development review decision available in the Staff report.

President Fleisher asked if Staff had any written testimony or petitions to submit.

Mr. Crampton replied the supplemental Staff report contained two pieces of testimony submitted earlier in the week, and an additional piece of testimony that was submitted today by the Appellants' attorney.

President Fleisher called for the Applicant's testimony.

Phillip Brown, Executive Vice President, Majestic Realty, Applicant, stated Majestic was a family-owned company that started in 1948, and had been developing in Hillsboro since 1999. Their first project was the Fred Meyer at Cornelius Pass. The project under discussion tonight represented their fourth project in the City of Hillsboro. Majestic valued the community and their relationships with City Staff and the neighbors.

- Majestic started working on the South Huffman II project approximately 1½ years ago with City Staff. Through their investigations, Majestic was able to determine small amounts of information regarding the Methodist Meeting House, some anecdotal and some of it in writing. Majestic started to work on a plan that would address both the City's concern, HLAC's concern, and concerned citizens' issues.
 - Majestic started developing a series of proposed designs and meeting with both Staff and with HLAC. Those meetings progressed up to a point where, to address HLAC's concerns, a determination was made that Majestic should hire an outside architect who was fully engaged and responsible, and who had built many memorials in the past. The information from the outside architect was presented to HLAC and to City Staff. Various designs were created and were available on computer. The palette was open and at no point did Majestic want to represent that the design created by the independent group was sacred and had to be adhered to.
 - Majestic had been meeting with some of the Appellants and had a couple of phone conversations last week and had offered to HLAC, Five Oaks, or the Appellants, the ability to design the memorial themselves. Majestic also offered to do the design and allow those groups to do the construction for which Majestic would pay up to \$130,000. They had also agreed to enlarge the grassy area and remove the parking spaces directly behind the memorial.

- In Majestic's due diligence during the construction, they were told they needed to do an archaeological study, so they hired SWCA Environmental Consultants, the same consultant the City used for NE Starr Blvd. SWCA asked the Applicant to use GPR across a broad area of the site, but Majestic then asked their consultants to take a specific area and hand dig to see if anything was found. He would not describe it as an exhaustive study, but it was more than was recommended by the consultants.
- For a somewhat forested portion of the site against Starr Blvd, the Appellants asked Majestic if they would be willing to do additional GPR and/or use a scraper to scrape the soil 2 to 3 inches at a time with an archaeologist as well as concerned citizens on site. Majestic agreed and had been discussing the best methodology with SWCA, such as additional GPR, scraping the area, or additional test borings. The consultant had not responded about the test borings, but told Majestic it was possible but it would likely require going back to the State Historic Preservation Office (SHPO) to amend the existing permit for the site.

Dana Krawczuk, Stoel Rives, Land Use Counsel for the Applicant, referred to the work Mr. Brown had described as the reason for their request for a continuance to October 9th. The Applicant was hopeful they would be able to collaborate with the Appellants and bring together a revised set of conditions of approval and an updated design for the Planning Commission's consideration on October 9th. For that reason and in the spirit of collaboration, the Applicant had decided to not respond substantively to the legal issues. The Staff report was extremely thorough and supported the conclusion that no legal basis existed for overturning Staff's decision. The Applicant's team agreed.

- The team was looking forward to continuing to work with the stakeholders to create a solution that worked for everybody. If a resolution was not reached prior to the October 9th hearing, the Applicant's team would present their substantive legal response to all the issues.

Mr. Brown stated the stakeholders had been wonderful to work with and neither side had been adversarial. Majestic was very happy with the progress made, but had suggested the Appellants create a design themselves if one could not be found that met everyone's expectations.

Marc Burns, Senior Vice President, Majestic Realty, stated that Majestic was taking the design very seriously as they knew it was of great importance to the community, to HLAC, and to Five Oaks. He believed they could come up with something in the next couple of weeks that would make all parties very happy. The goal was to walk away with everyone feeling like they had won, and not like they had come up short or feeling scorned. It would take a little more face time and a little more communication but he believed as long as the parties were reasonable with one another, the goal could be accomplished.

- He had been designated, along with their in-house architect and the Studio-MLA contact, to help come up with the design efforts. Already some positive concept design plans had been created that he believed would be meaningful and, with a little bit more time, he believed a decision could be reached.
- He clarified his team hoped to collaborate with the Appellants and present designs to them in the next couple of weeks, so everyone could feel good about their accomplishments at the October 9th hearing.

President Fleisher:

- Asked for clarification on what would cause the Applicant to go back to SHPO.
 - **Mr. Brown** replied that if an agreement was reached to do an additional study on the area against Starr Blvd, where a scraper would be used remove soil to see if any remnants of the Methodist Meeting House or skeletal remains could be found, the Applicant would have to return to SHPO according to SWCA. He clarified that the Applicant wanted to be certain the Appellants were happy with the methodology recommended by the consultants.
- Referred to Mr. Phillips' comment that the team would allow the Appellants to participate directly in the design, and asked for clarification on Mr. Burns' comment that he was working on some designs.
 - **Mr. Burns** replied that the best way to describe the situation was to address how the area would be enlarged, because that was one of the concerns. Once the size of the area was determined, then a scope could be created collaboratively that made everyone happy.
- Stated his interest was in the steps the Applicant would take in the future because it sounded as if they and the Appellants were going in different directions.
 - **Mr. Burns** replied they were letting the City be their voice with HLAC. The Applicant was providing information to the City which was then being passed on. He was not in direct communication, as he should have been, in getting face-to-face feedback. He referred to the slide showing a design that had been met with some sincerity and some positivity from HLAC and Dirk Knudsen during their meeting earlier last week. The Applicant's idea was to take that concept, meet with the Appellants, and figure out a way to expand upon it. They needed to meet and discuss how to make it better.
 - **Mr. Brown** clarified Majestic had offered and were more than happy to base the design on a budget if the Appellants wanted to do so. Majestic hoped to facilitate and enhance the design. He clarified the design would be based on a budget and on an enlarged area.

Commissioner Bennett:

- Referred to the proposed condition that involved a \$50,000 payment to the City in lieu of a larger project on the site, and asked if the Applicant knew what the installation of their current design might cost for a comparison of what the \$50,000 would do for the City.
 - **Mr. Brown** replied the best estimates available ranged from about \$75,000 to \$85,000 for some of the existing designs. The Applicant had talked with the Appellants and City Staff about using the additional \$50,000 earmarked for the north to enhance the budget at the site. He confirmed the \$75,000 to \$85,000 was for design and construction costs.

President Fleisher called for the Appellants' testimony and asked them for profiles of their organizations.

Judith Goldman, Meek Plains Historians, stated she was the great-granddaughter of Joseph L. Meek who was one of the early players in Oregon history. The Meek Plains Historians were not only Meek family but also local people who were interested in preserving the history of the Methodist Meeting House. She estimated the organization had between 13 and 15 members.

Dirk Knudsen, Five Oaks Discovery Coalition, stated he had been involved in the Methodist Meeting House issue for about 2 ½ years. A suggestion was made to create another group due to interests on land uses that were separate from the Meek family's interests, so a small group created the Five Oaks Discovery Coalition. The group consisted of people from Skyline and Hillsboro with about 20 people on an email list receiving the group's reports. The Coalition was not a 501(c)3 or an LLC, but might pursue that depending upon the outcome of the current matter or on the future of the Tualatin Plains. The Methodist Meeting House was their primary interest currently, and they would be working with the Meek family. As North Hillsboro developed, he anticipated the group would continue to stay active in all matters regarding historical issues and in ways they could do preservation on the Tualatin Plains. He estimated four of five members of the Coalition were present at the hearing. He stated he and Ms. Goldmann also represented themselves individually in the appeal.

Ms. Goldmann said that as a Meek family representative, she was particularly interested in this site because they believed as many as five children of Joseph L. Meek and his Nez Perce wife Virginia, were buried there. The children were brought to that location and buried because no formal cemeteries existed in the Tualatin Valley, and the Methodist Meeting House was a house of worship.

- By 1840, settlers were in the area and held church meetings in the summers which were hosted by the Constable family who had allowed the Methodist Meeting House to be built on their property. As far as could be discovered, no dedication of land had been made to any group. The graves were probably marked with wooden crosses or nameplates that would be long gone.
- The building was erected in 1843 to 1844 and the Reverend Jason Lee was a speaker there at different times. A regular congregation was set up led by a minister named Joseph Hosgry. The Methodist Meeting House was recognized by the Methodist Church established in Salem at the time.
- Several of the first settlers had Nez Perce wives including at least four who settled in the area in the midst of winter in 1840. They established their residences near what was called Glencoe and was now part of North Plains and was eventually claimed as territorial land.
- The Territorial Court used the Methodist Meeting House, so it was one of the first seats of government for the Oregon Territory. The importance of the area could not be underestimated, and that was the reason the Appellants hoped a larger and more impressive marker would be made that drew the eye, so current residents could learn a little more about the founding of the area.

President Fleisher asked her to select an example of an impressive marker in the area that was commensurate with her expectations.

- **Ms. Goldmann** selected the Five Oaks commemoration. She clarified the site had a reader board providing information on several areas. The oaks had been reduced to the original five. She acknowledged the scale of the oaks contributed to the commemoration's presence, but the building and the effort taken to illustrate was impressive.

Mr. Knudsen opened his testimony with a quote, "It makes my heart sick when I remember all the good words and all the broken promises." He stated he was not suggesting anybody in the room had broken any promises but over time, promises had been broken. The quote was from Chief Joseph whose people were among the wives that came to Oregon with four trappers on the cold Christmas Eve night. They sat in a tent, got wet, and nearly froze to death. His people were amongst the people today, whether they knew it or not. They were in Ms. Goldmann's blood even though she was not a direct descendant, but his people were here. It was appropriate to say those words and it did not take many words to speak the truth.

- The Appellants were at the hearing because they were not willing to stand by and do nothing. He was not suggesting that nothing had been done. It was not easy for him or the other people involved. It cost money to take such actions but over time, he and his neighbors had been effective in activities such as the Orenco Woods Nature Park, the Reserve Golf Course, and the Meridian Tea House under renovation downtown. In the 58 years that he had been in Hillsboro, he had been very committed to this great city, but the city was missing out on the historical side and that was something he was working on.
- The Appellants were serious and were willing to take their challenge to the Land Use Board of Appeals (LUBA). He did not want that to happen; he had been before LUBA five times and it was never fun. The Orenco Woods Nature Park existed because he had gone to LUBA and 3 ½ years had been spent fighting Don Morrisette. It was a very good thing for the city that some citizens stood up and fought. He was here tonight with his neighbors for the same reason.
- He loved the city and City Staff. He and Mayor Callaway were friends. He served the city, as did Ms. Goldmann, and both were former HLAC members. Their groups worked with each other and were very committed to, and very proud of, their city. He thanked the Planning Staff for helping with this complex matter, adding that the Code was sometimes confusing and not always conclusive, in his opinion. Staff had an incredible task to wrestle with in this matter. He had worked with Staff for 35 years and Colin Cooper and his Staff were among the best he had worked with and he wished to recognize them in front of the Commission.
- He thanked Majestic for stepping up in the last couple of weeks. He understood their level of commitment and believed they did not want to face an appeal. The Appellants were totally invested in working with the Applicants.
- Historically, he did not believe the city had done enough. HLAC had been good, he and Ms. Goldmann were on the Board of the Hillsboro Historical Society, but no funding was available and they did not have a building or a museum. He wanted to do more. The recent Mayors had plazas and parks named after them. Starr Blvd was named after a politician who should not have his name on the street because he had been instrumental in the "Grand Bargain" which had made a lot of landowners rich and brought a lot of jobs to Hillsboro, but many believed it was not appropriate.
- As far as he knew, no park, street, or other place existed that honored the areas Native people, the Atfalati or the Kalapuya, nor was it recognized that the Nez Perce and others wove the story of the area from the beginning.

- He called the one-acre site a contract between the City and the State. It was needed to get the State Implementation Plan (SIP) approval for the Governor's Office and Metro to sign off. Indicating Mayor Hughes' letter displayed on a slide, he noted one side had a quote from the Comprehensive Plan that had been implemented by Planning Staff. The second page of the letter stated that no structure should be built within the one-acre site, but that was not happening. He remembered when the commitment was made but now it was not available because as noted by Staff in their response, no language addressed the one acre. Mr. Cooper told him today that it could have been a taking. Farmland worth \$8,000 an acre was brought in, landowners desperately wanted it in, and the city wanted Genentech. Mayor Hughes was able to say SHPO and the State would put an acre aside, but it was not happening. It was conditioned quid pro quo. The land sold for \$250,000; somebody had to give up an acre. Nobody in Hillsboro had given up an acre, and the subject site was the one acre he believed would be set aside. Developments happened weekly in the city and other than in wetlands, the city received nothing and needed to be more proactive.
- In the Appellants' arguments, no matter how much work was done, the Monument as approved was too small. In fact, it was in a planter strip. It did not have any scale or scope to it beyond the planter strip. The Five Oaks site was not huge, but it was big enough at roughly 10,000 ft. It had a mechanism for maintenance and for taking care of the trees which were the developer's responsibility. The proposed Monument because of its size did not reflect the importance of the Methodist Meeting House.
- HLAC found that, "The Monument is small in scale and will leave visitors exposed to visual and auditory intrusions." It would not be a meaningful experience, so a formula was created to do an off-site memorial for \$50,000. It had the Appellants' support, but it could not take priority over the on-site work. The Code said, "The Methodist Meeting House Monument shall be located on the subject property." The Staff report indicated the existing building's location was 75 ft away from the Methodist Meeting House and grave sites. Also, about 50,000 sq ft of the Applicant's structure was on the site.
- Community Development Code (CDC) 12.80.040 H.11 required, "Negative impacts of the development had been sufficiently minimized or mitigated." The Appellants argued that the negative impacts would not be sufficiently minimized or mitigated because the location and scope of the Historical Resource had not been properly characterized in the findings.
- Showing a sketch he made from the approved Monument, he stated the Appellants had not had a chance to consult with Studio-MLA which was required by HLAC. Two meetings had taken place with Staff, so perhaps by proxy the consultation had taken place. Majestic's offer for the Appellants to work with Studio-MLA satisfied HLAC. The Monument was being built on private land and to the extent that the Meek family and the other stakeholders were happy, the Appellants would be very happy with that outcome.
- He noted the site study showed a man sitting on the wall crouched down, and the top of the building could not be seen. What it did not show was that when walking along the building's west façade across from the Shute House at the Methodist Meeting House location, a solid façade of cement was visible. It would be painted and have doors and a bit of articulation, but as his drawing showed, it was not a meaningful Monument and that resulted in the belief that the goal for the Monument had not been achieved.
- Another slide showed how cars would be parked directly behind the Monument and the trees. The building was 40 ft tall and was a massive building for big business. The Appellants understood it had to happen.

- The Shute House was now a National Historic Registry property and was one of two such properties in Hillsboro. The wooded area was logged in 1985; a 1965 aerial photo overlaid on the 1851 map did a lot to show what Ms. Goldmann had testified about. The square hatch represented the plowed area the Constables were farming in 1851, and the Constables' home could be seen at the top of the map. The property was for sale and the black walnut trees still stood there. When standing among the trees, one could look straight back at the Methodist Meeting House site and at the game trail or historic trail that was there when the pioneers arrived.
- The 1965 photo showed a strangely-shaped rectangular piece of woods. The history said the pioneers told the people who came after them, several people had testified, graves and remnants were there.
- Mayor Hughes' map showed Hearth No. 7 in yellow and it was one of the anomalies found in SHPO's 35WN56 which was the area of interest for the Appellants and the area Majestic had agreed to support. None of the Appellants wanted to be angry at the City or at Majestic for not knowing about a burial ground. If remains and remnants were located there, the Appellants wanted them found.
- Friends from the Nez Perce tribe had conducted a ceremony last fall where Charles Axtell, a member of the tribe, had used his techniques to locate and pray over Hearth No. 7. Charlotte Lehan, a former Mayor of Hillsboro and a fairly renowned dowser said 40 to 50 people were buried there. A Human Remains Detection (HRD) dog had sat down within 15 ft of Hearth No. 7. The Appellants believed something was there and would be found. If nothing was found, the Appellants would be grateful to Majestic for doing the work.
- The Appellants wanted a larger appropriate Monument that honored the site and the buried children, wanted more archaeological work to include HRD dogs which he believed had been agreed to, the investigative digging Ms. Goldmann had requested, and a good plan if bones were found because the Internally Displaced People (IDP) report did not provide one. It would most likely be a tribal issue because of the buried tribal children. Also desired was a consulting archaeologist; one was available pro bono to at least have a chair at the table, not to run things, but to hear what was happening and to work with the Appellants and their affiliated organizations.
- The Appellants were working with Majestic. He had been a developer and noted people had a poor opinion of developers. He was used to developers who wanted to go to war over issues such as this one, but Majestic had not done that and he thanked them for it.
- Displaying a photograph of Josephine Meek, he stated she was one of the children buried on the site. She died around her 15th birthday. It was believed she was bedridden for a couple of years as a victim of tuberculosis. Also shown in a photo was her mother, Colonel Joe, and Hiram. They had lost an infant in 1854, Hiram was crushed by a hay wagon on the farm at age 11, and later his brother Dallas died as well, and William HH died as an infant.
- Professor Harvey E. Tobie in his book stated, "Joe Meek, he had been strong for cooperation in the Union. He had been an apostle for goodwill to a mudslinging generation." Mr. Knudsen stated he felt Joe was helping work through the process with the developer and the City.

Ken Dobson, Attorney for the Appellants, stated he had submitted written comments prior to the hearing regarding the Appellants' testimony relating to the applicable approval criteria. He believed the application fell short of compliance with the applicable approval criteria in two areas: First, the first involved the requirements set forth in the Comprehensive Plan implementing measure 30(III)(F) which said, "The City shall require construction of a Monument on that property by the developer. That Monument shall commemorate the historical importance of the Methodist Meeting House." To determine whether or not the application complied with that requirement, the Planning Director turned it over to HLAC for their recommendation. HLAC's recommendation pointed out that the current plan for the Monument on site was inadequate. Also, HLAC found that the off-site Monument proposed to supplement the on-site Monument would be a necessary component of the commemoration of the historical importance. HLAC was saying that, to comply with this requirement, it was necessary to build a Monument off the site.

- HLAC found that the proposed Monument for the property did not meet the requirement to commemorate its historical importance and that it had to be supplemented by an off-site Monument. The Code did not provide for that supplementation. The idea that something had to be built off-site to make the on-site Monument work was a technical violation of the Code, but more importantly it violated the spirit of the Code as it related to a Historical Resource. A Goal 5 Cultural or Historical Resource's value arose from the place where something very important happened. Testimony had been given about what happened at the site and why it was historically important. Paving over the Gettysburg Battlefield, putting up some buildings where Pickett's Charge happened, and then building a Monument five miles away to commemorate it would not be allowed. It was not what the Code required or allowed. If the Commission were to follow HLAC's recommendation, they would have to find the existing proposal did not meet that requirement because according to HLAC, it would have to be supplemented with an off-site Monument which was not allowed under the plain language of the Code.
- Second, CDC 12.50.890 said that if a façade faced adjacent to and was visible from the street, certain requirements needed to be applied. One of the requirements was that loading docks had to be located either within, beside, or behind the building rather than on the street façade. That requirement was triggered when the façade was visible from the street.
 - In response to Mr. Knudsen's noting the issue in the appeal, the Applicant had created what they called a line-of-sight study. He displayed a slide showing what the Applicant had submitted, noting they had said it proved their compliance with CDC 12.50.890 C.2. The Applicant said the loading docks were not visible from the road, but that was not what the Code said. The Code said what triggered a requirement to move the loading docks back from the street was if the façade was visible from the street.
 - The Applicant said they would plant trees to screen the loading docks from view, but that was not what the Code required. The Code requirements were triggered if the façade could not be seen, but the façade was visible and was much larger than the size of the loading dock. To comply with the letter of the applicable approval criteria, the façade should not be visible from the street, not just the loading docks.
- Assuming the Code did say the requirement pertained to the visibility of the loading dock, the building would still not comply because what Majestic proposed would not block the sight line from the street to the loading dock for a number of reasons. First, the shrubs to be planted in the PG&E easement according to the information in the Applicant's application would be 4 ft to 6 ft tall. Anybody over 6 ft tall could walk by and clearly see over them as could people in high-clearance vehicles.

- The Applicant proposed a five-year plan that explained what would take place each year. The Code did not provide a grace period for compliance with the visibility requirement, so saying compliance would be achieved in five years through the growth of the trees was not allowed. However, as soon as the loading dock was built, it would be out of compliance with the Code. The Applicant was proposing a lot of deciduous trees and said they would form a visual barrier, but deciduous trees lose their leaves in the winter which would leave the façade and the loading dock exposed to the site from the roadway.
- Second, the Applicant would have to have a driveway in the area in front of Building No. 1 with the loading dock. The driveway would be big and unobstructed with a clear view to the façade, so no matter how big the trees grew, they would not form a solid hedge and would allow visibility to the façade. Assuming a sight-blocking 8-ft tall hedge was planted, the façade would still be visible when passing the large, unobstructed driveway. If the Planning Commission were to apply the Code as written, they would have to deny the application.
- Before the meeting, he had spoken with Mr. Crampton about a possible open record period and Mr. Crampton expressed that it would be good to have all the testimony at least 10 days prior to the next hearing. That way, Staff could assemble the testimony in a Staff report and make recommendations. Mr. Dobson agreed and believed a more orderly presentation of an open record period's evidence and testimony was needed rather than waiting until October 9th and dumping everything on the Commission, himself, and the Appellants at one time. He proposed that seven days from today, any additional testimony or evidence desired could be submitted. After the initial seven days, the parties would have seven days to submit their rebuttal. In fairness, the Applicant should then be given an additional seven days to respond, as they bore the burden of proof and should have the last word. This process should make any additional testimony available 10 days before the next hearing, and would allow Staff time to make their recommendations.
- He had provided additional comments in the written submission and would be submitting more evidence and testimony.

Commissioner Bennett:

- Noted a big issue in the application had to do with Mayor Hughes' July 2004 letter and the effectiveness of the five items on the second page of that letter, but it was not addressed in Mr. Dobson's materials.
 - **Mr. Dobson** replied that he did not address the legal effect of the Mayor's statements.
- Asked if he agreed that the five items on Page 2 did not bind the City.
 - **Mr. Dobson** responded that he had not made a determination and had not looked at the issue. He believed a possible estoppel argument existed and that the folks in the community relied on those statements to their detriment which lead to the hearing tonight.
- Questioned Mr. Dobson's suggestion of an estoppel in a land-use case and asked him to please look at that issue and brief it for the Commission in his presentation
 - **Mr. Dobson** stated he had not looked at the issue and did not want to comment, but he would discuss looking into the issue with his clients.
- Asked for clarification of the argument that the loading docks could not face Huffman or Starr Blvd.
 - **Mr. Dobson** replied the loading docks could not face the street, but the only loading docks at issue that he was aware of were the ones facing NE Huffman St.

- Stated he was sure Mr. Dobson understood that if the Applicant could not have any loading docks on Huffman, they would need to find another location.
 - **Mr. Dobson** replied the Applicant would have to comply with the applicable approval criteria.
- Said he wanted to be sure he was clear about Mr. Dobson's argument under which no loading docks could face onto Huffman or Staff Blvd.
 - **Mr. Dobson** replied that was correct about Huffman, and if the loading docks were visible from Starr Blvd, the Code said what it said.
- Replied that he wanted to be clear about where Mr. Dobson believed the Code said the Applicant could and could not have loading docks.
 - **Mr. Dobson** responded that loading docks could not be on a street-facing side of a building if the façade was visible from the street, not the loading dock.
- Pointed to Mr. Dobson's earlier argument showing plants in the line of sight covering the loading dock but not the façade.
 - **Mr. Dobson** replied the plants would not completely block the view of the loading dock and they would still be visible in the winter and would still be visible from the driveway.
- Reiterated that he wanted to be clear about whether Mr. Dobson's argument was that the vegetation would need to be high enough to cover just the loading dock or high enough to cover the loading dock and the façade because he believed Mr. Dobson was arguing that it would include the entire façade.
 - **Mr. Dobson** replied that was what the Code said.
- Responded that the Code did not say that.
 - **Mr. Dobson** replied the Code said that it applied where the façade was visible to a street or major pedestrian travel.
- Noted the Code said loading docks, "shall be located beside or behind the building." It did not say the façade, it said the loading dock shall not be located on the street-side façade.
 - **Mr. Dobson** replied the requirement under C2 was triggered if a façade was visible from the street, which was the case in the Applicant's development.
- Replied that he understood, but believed Mr. Dobson had made the argument that the required vegetation would be too short because it would only cover the loading dock, not the loading dock and the façade.
 - **Mr. Dobson** responded that if the vegetation covered the façade, the requirement might not be applicable, but the driveway would still provide visibility. He could not see a way that the requirement under C2 would not apply.
- Reiterated that he was trying to clarify Mr. Dobson's arguments.
 - **Mr. Dobson** replied that his argument was that if the façade was visible from the street, the requirements of C2 would apply and the loading docks would have to be moved to a non-street facing portion of the building.
- Responded that he understood.

Commissioner Kim stated his understanding of Mr. Dobson's presentation was that multiple arguments were made and progressed such that even assuming X was true, the Y argument was made, and even if the Y argument was met according to the Code, the Z argument would follow.

Commissioner Bennett stated he understood that, but was trying to clarify if his argument was X and Y.

President Fleisher interjected to ask for focus on clarification and not resolution; what Mr. Dobson was saying and what the Commission was to consider.

Commissioner Bennett agreed and believed Mr. Dobson had answered that inquiry.

- **Mr. Dobson** stated that Commissioner Kim understood his point.

President Fleisher called for any further testimony from the Appellants.

Jenny Mapes stated she was a researcher and a historical writer and asked the Commission to consider the five Nez Perce women who were the wives of the trappers. They were very young wives who had children when they arrived in the area in December of 1840 when it was cold and snowy. The mothers mixed wheat with water to make a gruel for the children. The women's lives were not easy and two of them died young. By spring, the weather had changed but all five of the men were hired by the Wilkes Exploring Expedition. The wives sometimes accompanied them. They were living a very historical part of Oregon's time. Virginia Meek often said she was lonesome for her people, the Nez Perce. Because of the fact that the little children were buried in the graveyard, she hoped that Majestic would do the ground clearing carefully. HRD dogs had been used and one had marked the spot of the graves as Mr. Knudsen had shown. She believed that during the ground scraping K-9 Cole would be there to distinguish and discriminate between human remains and animal remains. She wanted the children remembered and honored with a good Monument.

President Fleisher asked if Mr. Knudsen believed a probability existed for a resolution based on what was taking place now with Majestic.

- **Mr. Knudsen** replied affirmatively, adding that having been a developer, he had a legitimate interest. Majestic had timelines that were very important to them and he believed they were duly motivated. They might have someone who needed that building sooner than later. He did not speak for everyone but the Appellants as of this date were hopeful that the additional Monument space and additional archaeological work addressed both of their major concerns. Some matters of Code were on the record now thanks to the attorney. The Appellant had every right to withdraw the appeal in good faith upon reaching an agreement that would lead to conditions the Commission and Staff could create. He was confident that all three sides were working very hard, and he agreed with Mr. Brown about having movement and an agreement two weeks from now and not to wait five weeks. He also agreed it was not fair to go into an October 9th hearing with an open record.
- Hillsboro made things work which was why the city was successful. The Appellants felt strongly about the historical side of Hillsboro having a bigger chair at the table going forward, and he believed that was happening. Hillsboro was an inclusive city and a sanctuary city. He was hopeful and optimistic a resolution could be reached.
- After Joe Meek's death in 1875, about 250 people from around Hillsboro showed up spontaneously as he was laid out on the porch on a long table in his best military dress. People came to see his face one more time as he had been such a legend. He had a lot to do with why Americans were not drinking tea and trading in the Queen's currency.

- He read a quote from Professor Harvie Tobie's book written in 1949, noting the Professor had spent 25 years researching Joe Meek, "Ginny lived on, respected and loved until the turn of the century. Blind in her later years, she would sit and hum a haunting Nez Perce melody while from a basket on her lap she would pass lovingly through her fingers "as though they were more precious than gold" the brass buttons from the Marshal's uniform--the last physical remains of a departed glory and greatness. Proudly she said to a visitor who thus observed her, 'No man can run like Joe. No man could fight like Joe. No man like Joe.'"
- He displayed 170-year-old buttons from Colonel Meek's uniform that Virginia had held in her hands, noting they were some of the Meek family's prized possessions.

Joseph L. Meek, Jr. stated he was the great-grandson of Joseph Meek. He hoped that by coming to the hearing and testifying there would be some form of a reasonably-apparent graveyard for the bodies that were buried somewhere on the site. He hoped they could be found through GPR which he believed had not been used in the area yet. He would like to find the grave of his grandfather's siblings and he hoped that if the Commissioners put themselves in his position, they would like that for themselves, also. He thanked the Commission for their time listening to his and others' testimony.

Luk'upsi'-mey, also known as Silas Whitman, Elder and Member, Nez Perce Tribe also known as the Nimiipuu, said he would respond from the information he created for disbursement to the Governor's Office, the Mayor, and the Planning Commission. From what he had heard and seen, he had penned the information he had been witness to, decades of activities destroying cultural resources of the Nez Perce and other treaty tribes in the Columbia River basin. In particular, he had seen burial grounds willfully destroyed by farming, construction, mining, and logging. In several instances, these destructive actions were known to those parties held responsible for their actions. He had seen several times a complete and blatant disregard of the federal agencies and federal regulations protecting tribal burial grounds and village sites. Therefore, when he was advised of the issue regarding the Methodist Meeting House, he was astonished at the crass disregard of the important history it represented in Oregon's illustrious past.

- The Methodist Meeting House as the first church on the Tualatin Plains in 1844 also had a cemetery that contained the remains of five Nez Perce children. The little ones whom the Nez Perce called *lil'uks* still remained in repose waiting to be honored and remembered. These were the children of Joseph and Virginia Meek. Mrs. Meek was also the daughter of the Nez Perce Chief Thunder Eyes from another generation before the history that had been recorded of the Nez Perce war and the time forward. Thunder Eyes had been baptized as Chief James.
- Virginia Meek had two sisters who were also married to mountain men who moved to the Tualatin Plains. It was known that other Nez Perce women also married similar menfolk working in the mountains and who eventually moved to the Tualatin Plains. Those native womenfolk were blessed with the strength and commitment to raise their families as best they could, traditionally, in a new environment and society. The Methodist Meeting House was a place that allowed their natural piety and their strong belief in the Creator to be good wives and mothers. This should not be forgotten; they were like anyone else.

- This past spring, he and his relatives conducted a Nez Perce ceremony of blessing and protection for the remains interred at the Methodist Meeting House. Within the burial grounds there, they sensed the sacredness as noted in other tribal sites that they had visited and worked upon. Therefore, he recommended that urgency and positive actions necessary to carry out the state and local responsibilities under law and tribal traditions out of respect for the deceased members of the *Nimiipuu*.
- Because information indicated the graves might be located in an area subject to immediate industrial development, he urged the administrative authority under State Law and in recognition of Federal Law be used to ensure that the sites in question were fully explored with appropriate technologies including, but not limited to, GPR as a means to locate the graves. He further requested that all reasonable means were utilized to protect and memorialize the graves until a full assessment could be made.
- State Law and recognition of Federal Law would prompt the formal involvement of the Nez Perce Tribe and the Confederated Tribes of the Umatilla Reservation. Right now, because it was a local matter, they were not willing to step in and talk about it, but once state or federal regulations were utilized, the tribes would want to be consulted.
- He asked for attention to be given to this important matter with due haste, and the actions requested by the Meek family descendants and those of other descendants be carried forward. He was reminded of his five granddaughters, or grandnieces. Their mother, his niece, was married to a descendant of the James family and lived in Lapwai, ID, so he had a stake in this matter also. The tribe had been looking for descendants residing in the Nez Perce and Umatilla Reservation areas and were working with them to note that their people, their relatives, would need their help spiritually, traditionally, and through appeals to their local tribal governments.
- He confirmed Mr. Knudsen and the Meek folks had been in touch with him to keep him updated on the Monument. He believed the Idaho and Umatilla sides would want to see a storyboard describing the Methodist Meeting House in general, but created in a memorial style to include the names of all the people who were party to the settlement of the Meeting House before it was dismantled. That would mean recognizing the burial ground. He was asked by one of the grandchildren if the burial ground there would be recognized. He knew a recognition existed from people outside the family and that the matter would have to be settled first before a full-blown storyboard could be done. He saw places from Oregon's history that had been memorialized along the highway and hoped an issue like this, which was probably a cornerstone of Oregon history, would be put together with everyone's willful input in recognition of the hard work the Meek descendants did there. He looked at what had been developed by the family and he had been struck by how they had pulled out a history that had been unknown even to the tribes that one of them, Bear Claws, was a half-sister to Young Chief Joseph, and that her father was the revered Chief Thunder Eyes. They wanted to see the story promoted. They had seen the pictures of Virginia Meek and Bear Claws. In Idaho, when faced with these situations, they tried to give them much exposure in what people were reading. Often, it was just words, and the monuments were used for target practice. In this instance, the location needed to focus on what was there because it was Oregon history.

- The Nez Perce women, his ancestors, had an integral part to play. They tried to develop an affection for the Word they were told was in that book, and interpreted the meaning of what had been preached to them as a way to improve their actions. That was the way they approached their survival. They wore warm clothes at that time. The menfolk stopped dressing in furs, beads, and buckskins and dressed instead in suits and took up occupations to develop Oregon.
- With that, the tribes would impose upon the Governor and others concerned with this to treat it as a very serious, historical matter. Also, something should be done to capsulize the issue and use it for education, especially for children from elementary school and up who needed to hear the story to be aware of the histories that existed in Oregon.
- He confirmed Mr. Knudsen was aware of his ideas and feelings, but wanted to see the design first before he would be satisfied. He trusted that would be done, but the Monument would need to include things that showed the uniqueness of the site's history, as Hillsboro was unique. It should include the things that meant something to the memory his people held. The tribes knew of traditional things from long ago, but there was a gap in history for which information was provided from people like Mr. Knudsen and others. The Monument would be a vehicle for future education for children and adults, so when viewed it was all fairness. He did not want the site covered with a parking lot.

Commissioner Bennett asked if Mr. Whitman believed GPR was an appropriate or an adequate method for locating human remains.

- **Mr. Whitman** replied the GPR was a machine and people who operated it had to be good at their jobs and know what to look for. Tribal members used their own skills and, by the lay of the land because they had seen it so many times, could accurately guess where interments were located. Cadaver dogs also served a purpose. Bones needed forensic evaluation. Ground probing could be done with long poles with sharpened ends. It was effective because what was pulled up could be looked at and more digging done. However, the tribes had found entire small cemeteries raided that way on several reservations and the items were sold on a black market or kept. One of his nephews had returned from one of the desert wars and told him he had seen the effectiveness of GPR, and that the machinery had been improved.

David Ellis stated he was an archaeologist for a private consulting firm in the region, but he was speaking for himself tonight. He had worked in the Pacific Northwest for almost 43 years, and for more than 30 years in Washington County. He led the study for the City's Industrial Site Certification Process in 2004 and was the one who recorded the site 35WN56. The earlier reference to possibly removing the topsoil to expose the native soil underneath, what archaeologists called a plow zone, was one of his recommendations in the 2004 report. He had also led the effort in 2006 to explore potential graves on the Genentech property.

- The 2004 report had a section called, "The Elusive Methodist Meeting House" which had a very comprehensive discussion of the record for the Meeting House and the associated graves. It triggered his interest, and it was why he had been following the developments in that area over the last 15 years.

- In preparing for testimony this evening, he reviewed the most recent reports done in 2013, 2016, and 2017 and a challenge was that those three studies were done for separate projects so they took slightly different approaches and covered slightly different ground. It was necessary to weave all the information together for a more comprehensive view of what had been done archaeologically. GPR was a very useful tool for identifying graves, but it was important to bear in mind that GPR, and an associated remote sensing technique called magnetometry that had also been done on the site, simply identified anomalies in the ground without informing on what they were.
- The sensitivity in identifying potential graves using remote sensing was that it was still necessary to do some digging to establish what was there. The ideal when identifying graves was to minimize the ground disturbance because of the potential for disturbing the remains. It was why the newer technique of Historic Human Remains Detection Dogs (HHRDD) was used. Dogs had an incredible sense of smell and could distinguish human remains from non-human animal remains, but the procedures had limits. He had prepared a much more detailed written testimony that he would submit to the record.
 - All the available methods had limits which was crucial to bear in mind. Used individually or collectively, no guarantee existed that graves would be identified. In this case, individuals were interred 150 to 160 years ago. The burial practices at that time were much simpler than today, and western Oregon soils tended to be highly acidic which resulted in rapid decomposition of human remains and of organic materials such as wooden coffins, clothing, and shrouds.
- Based on maps from previous work, an estimated 15 to 20 percent of the archaeological site had no remote sensing done. The limits of the available archaeological data made it challenging for the City to meet some of the requirements under the Code, particularly for mitigating or minimizing negative effects because those were unknown.
- In his written testimony he provided three recommendations:
 - Use of HHRDD;
 - Use of an IDP. The conditions referred to an IDP but it was specific to work only within the archaeological site. The site needed to be expanded to a much larger area in order to have a defined response for any discoveries outside of it;
 - More comprehensive monitoring by an archaeologist, particularly one with experience in human osteology, that extended outside the archaeological site because its focus was narrowed too tightly to a small area within the development property.

President Fleisher asked if the City or the citizens undertook his three recommendations, would the findings be conclusive as to whether remains were there or not.

- **Mr. Ellis** replied the historical record was meager about what was on the site and where it was located. He recommended using every tool available, but it would still not provide 100 percent certainty.

Commissioner Sinclair asked what was the suggested amount of expansion of the search area for human remains.

- **Mr. Ellis** replied that the IDP should apply to all ground-disturbing activity associated with the development. Currently, the IDP was focused on the archaeological site rather than the entire property. In his written testimony, he also recommended a monitoring archaeologist be present for all ground-disturbing activity up to 300 ft east of the road, admittedly a rather arbitrary number. Right now, an archaeologist was to be present only in reference to the remote sensing anomalies within the archaeological site

Tonya Macalino, Hillsboro Arts and Culture Council, and Hillsboro Historical Society Board of Directors, stated she was the author of The Gates of Aurora series set in Hillsboro. Because of the series, she had spent the last five years researching the history of the town. She was at the hearing to emphasize that the Monument at the Methodist Meeting House should properly commemorate its historical importance. According to her research, the importance of the site is twofold: The building was the second organized church built in the Oregon Territory but even before the building was constructed, the site had already been used for worship. The site was one of Jason Lee's early ministries. Jason Lee was the one who encouraged settlement of the Oregon Territory. As the only public building on the Plains, it also served as a courtroom. Important early legislation took place at the Methodist Meeting House, such as actions on donation land claim jumping and a hearing on whether card playing was sinful. During a period of Native American unrest in 1855, a stockade was built around the building to protect local families. The Meeting House was the center of Hillsboro's beginnings as a town and as an economic and governmental powerhouse in the early Oregon Territory.

- The second important aspect was the graveyard with the remains of the children of Joe and Virginia Meek. Joe Meek was a huge deal back then; he was Oregon Territory's Daniel Boone or Kit Carson. He had a famous bestseller. He was the one to finally force the vote on whether the up-for-grabs Territory should become part of the Union. Later, he was the one to complete a trip to Washington, D.C. in the middle of winter, part of the way on foot, in order to convince Congress to make the Territory part of the Union so it could have access to the U.S. Militia. He was well-liked, very persuasive, and was the cousin-in-law of the President. The bones of the children from him and his Nez Perce wife, a woman who found herself unwittingly bridging the gap between two clashing cultures, were likely destroyed when the grove known to shelter them was harvested and turned into farmland. It was their story that was plowed under without a proper memorial.
- A bench and a placard that would never be seen by the public was no way to thank the giants on whose shoulders the city now stood. The struggles they faced with racial conflict and in attempts to create laws that recognized their evolving culture and preserved their moral Integrity were struggles being faced right now. Learning from our own community story and making the story available to all offered the same community the ability to grow and evolve into its best possible self. A site with such richness to share needed a memorial with the impact that drove home that message and left the visitor full of reflection and moved with the need to create a beautiful, amazing change.
- This was not the first or second time a historical site had been threatened in Hillsboro. With a proper historical preservation plan in place, Hillsboro would not find itself backed into a moral and legal corner like this again.

Delilah Marvell, stated she was professionally a historic writer for almost 25 years and had just published her 18th book. She had invested in a historic building in downtown Hillsboro which would become the Meridian Tea House. She wanted to create more than a business; she wanted to create a preserved destination that brought others to a better understanding of the past which was being erased by shopping malls and condos. The decision to proceed with erasing history by giving just a small sliver of it as opposed to presenting history as it was, went against everything she had come to admire about Hillsboro and Washington County. It was a lost opportunity to preserve and create a destination site that would bring people from across the country not only to visit Hillsboro, but to partake in history.

- Washington County had invested in the Washington County Museum to protect artifacts and, above all, history. As Jackie Kennedy, who was passionate about historic preservation, once said, "If we don't care about our past, we cannot hope for a future."
- In researching her own building, she learned Washington County records were available on microfiche, but the original records had been destroyed. So much that was erased by doing that. The Washington County Museum told her they would had loved to have taken those records, yet they were not consulted. Those activities represented missed opportunities for the community's future, not just the past.
- Hillsboro was given the gift of knowing history before digging into the land. She asked that all the appropriate steps be taken to preserve that history, because perhaps more than five graves would be discovered. She noted the Commission would be setting a precedent for the future as well as the past.

Joyce Meek Reynolds stated she was a granddaughter of Joseph L. and Virginia Meek and was representing the North Plains Historical Society. She thanked the Commission for taking the proper steps to preserve the important history in the Tualatin Valley, the Hillsboro area, and in the North Plains. The community was in transition, and it was necessary especially for the children to grasp hold of the past. She supported the inspiration to get the project moving.

President Fleisher called for the Applicant's rebuttal.

Mr. Burns stated he wanted to describe the procedure Majestic used so it was not glossed over. In working with the City of Hillsboro on the entitlement plan, Majestic had to develop a study of the entire site which involved using different techniques such as hand shoveling, GPR, and test pits. All of that information was put together by the same consulting group and archaeologists the City had used. The information was then sent to the State of Oregon through SHPO who went through the plan and made comments. Majestic had a plan approved by the State.

- So there were no misconceptions, he noted Majestic had an IDP before any construction started, and an archaeologist on site who prepared the entire team before excavation began of the foundations, roads, and parking. Everyone was taught what to look for. In addition, in specified areas per the study, Majestic would have an archaeologist on site monitoring all the work that went to its deepest level. He did not want the public to believe that Majestic threw something together and was done. A whole plan was in place. In the event anywhere on site human remains were discovered, all activity would stop. The City would be called in, the archaeologists would be present, the State would be called in, and all construction would stop. Majestic would not try to get something passed quickly so they could go on their way.

- Part of the confusion for Majestic had been the lack of conclusive evidence on any one site in the historical record. Some of the evidence pointed to the subject site, some to Genentech, some to the north side of Huffman, and some to the west of Starr Blvd. Majestic wanted the public to know they were not trying to do anything in a haphazard fashion. They had worked with the City, HLAC, archaeologists, and the State on the plan, and the plan had been approved and was in place.
- In addition, Majestic had been meeting with the Appellants for an enhanced program and an enhanced study to help satisfy any additional questions. He believed it was important for everyone to know Majestic had put a lot of time and effort into the project, it had been approved by the State, and was on the record.

Ms. Krawczuk stated the Applicant respectfully disagreed with the three-week open record period, in part because the Applicant's team had elected this evening to focus on bringing collaboration and solutions to the table. If a solution could not be reached, the Applicant wanted their opportunity to make their full presentation which would not be afforded if the 21-day open record period was in place. The Applicant would like the open record period to be in place until the October 9th hearing.

Mr. Burns said he echoed Mr. Brown's statements and had nothing further to say right now.

President Fleisher stated it seemed like the Applicant was making a tremendous effort and hoped a resolution would be reached.

Commissioner Shortt said the process had been fascinating and believed she had a history lesson tonight. She was very proud to be a citizen of Hillsboro and to watch collaboration and cooperation rule the day. The meeting tonight had focused on solutions, and she was confident that if the collaboration continued among all three parties, a solution was well within grasp. She encouraged all parties to be tolerant of one another, accepting, and willing to be open to new ideas. She was proud of each person who took the time to come to the meeting because it showed a strong sense of community in Hillsboro.

Commissioner Bennett:

- Referred to earlier testimony about the view toward the buildings in the east from the proposed Monument. He noted a reference had been made that the buildings were rather monolithic and confirmed they were concrete tilt-up.
 - **Mr. Brown** replied the building was very similar in appearance to the buildings at Majestic's Topgolf development nearby. The proposed project would have a much more enhanced landscape pallet than the other property.
- Asked what the surface of the building would look like. Did it have any texture, crenulation, anything that would break up a massive plane?
 - **Mr. Brown** replied it would have glass in various corners as well as articulation. Majestic had worked hand-in-hand quite a lot with City Staff on the appearance of the building.
- Stated he was certain Majestic had done detailed site development plans and asked how deep the planned excavation would be, especially for the western side of the site where there was concern about the burial grounds.
- Asked if he was correct that the depth was approximately 7 ft.
 - **Mr. Brown** [off-mic response]

Ali Zaré, Vice President and District Manager, Majestic Realty, stated that section of the property would have additional fill that would probably be a couple of feet deep, and excavation that would probably not be more than 3 ft to 4 ft.

Commissioner Bennett asked if cut and fill would take place.

- **Mr. Zaré** stated the cut would be necessary to build the foundation. In order to balance the site in that area, fill would be necessary and excavation would take place below the existing grade only where footings would be built. Gravel would be placed on top of the fill and a slab on top of the gravel.

President Fleisher confirmed there were no further questions for the Applicant and called for any comments from Staff.

Colin Cooper, Planning Director, stated Staff would withhold final comments, but he would make a note of the request for the 21-day open record structure suggested by the Appellants' attorney. City Staff used that structure routinely to create order; however, a unique collaborative negotiation was being conducted and, as the Applicants' attorney had noted, to go to that level of process rather than holding the hearing open to October 9th would prevent the admission of new evidence. It would significantly limit the amount of time that the two parties had to work together. While it would potentially create more work in the end if no agreement was reached or new information was presented, it would allow freedom to create the solutions heard tonight. He clarified that Staff was recommending the Planning Commission hold the record open until the October 9th hearing, continue tonight's hearing to a date certain, October 9th, and receive new testimony if the October 9th hearing occurred because the appeal was not dropped.

- He confirmed a supplemental Staff report would be provided seven days in advance of the hearing with additional information. Staff hoped that all parties would reach a resolution, and the conditions of approval would solidify the agreement through a decision by the Planning Commission. He also confirmed the

Commissioner Bennett confirmed Mr. Cooper was suggesting that the record be left open through October 9th and that the Commission would be working on the fly with new information if a hearing were held that night.

President Fleisher stated the expectation was that the Commission in all probability would reach a finding on October 9th.

- **Mr. Cooper** replied Staff would ask the Commission to make their findings on October 9th because Staff had only two days beyond that date to prepare their materials, and would be working hard in advance to prepare for success.

President Fleisher asked Mr. Knudsen and the other groups to please submit any additional comments as early as possible. He understood the decision was important and asked for some leeway in time.

Commissioner Bennett respectfully disagreed with Staff's recommendation because of the writ of mandamus in which the Applicant's had waived their rights to a decision until October 11th. It meant that if the Commission was to first receive new information from the Applicant in response to what the Appellants had submitted already, received new information from the Appellants, and maybe received new information from Staff all on the night of October 9th, it would be forced to go through a process that night and come out with a decision. It would create an incredible amount of pressure for the Commission. He believed a relief valve could be created by saying all additional information had to be submitted one week ahead of the October 9th hearing. He recommended the deadline for submission be October 1st or October 2nd, which would at least give Staff the time to assemble the information and get it to the Commission to digest before the hearing. The Commission had been given a lot of information and if they received an additional significant amount, he was unsure if they could reasonably and prudently digest all of it on the fly.

President Fleisher stated that was the sentiment behind his comment as well. He asked the City Attorney or the Planning Director if a legal requirement existed if testimony or comments were submitted on October 8th. He believed the audience understood the Commission was asking for enough time to review additional information submitted, and confirmed they would review it.

- **Mr. Doughman** stated he was correct. If the hearing was continued which the Commission would necessarily be doing, it was legal for information to be submitted to the Commission at the October 9th hearing. However, it was possible to set up a deadline and, based on his experience in other local hearings, people respected those deadlines.
- **Mr. Cooper** clarified that the City would seek to issue a Staff report by October 2nd with the hoped-for resolution. The bulk of the material would be available for the Commission and other people to review in the normal amount of time.

Commissioner Bennett stated if all parties were asked to submit any further written evidence or argument by Wednesday, September 25th, three weeks from today, it would give Staff a week to digest and prepare a Staff report to post on Wednesday, October 2nd and would give the Commission a full week for review. Then the only concern would be digesting any new information received on October 9th.

President Fleisher said the Commission had been told they could request that as a courtesy, but could not make it an obligation.

Commissioner Bennett stated he understood, but agreed with the City Attorney that parties would respect those kinds of requests.

Mr. Cooper said that out of the sense of collaboration among the parties, Staff was comfortable with Friday, September 27th for submission of additional material as it would give them a bit more time. Staff wanted to make sure all parties involved had as much time as possible, and recognized the opportunity for further massaging of the information. Staff would try to assemble the bulk of the materials by September 27th.

President Fleisher said he would appreciate it if Mr. Knudsen shared that information with his collaborators.

Mr. Cooper noted it was not a hard-and-fast requirement, but the request was for those wishing to provide further testimony or information to allow Staff enough time to consolidate any new material for the Planning Commission. The City Attorney had said the record was open until the hearing on October 9th.

Vice President Neill moved to continue the Planning Commission hearing on Appeal 001-19 to October 9, 2019, date certain, seconded by Commissioner Shortt. Motion passed unanimously.

VI. UNFINISHED BUSINESS – None

VII. PLANNING COMMISSION COMMUNICATIONS OR REPORTS – None

VIII. NEW BUSINESS – None

IX. STAFF REPORTS AND INFORMATION

A. Planning Director's Report (*Staff: Colin Cooper*)

Colin Cooper, Planning Director, reminded of another significant hearing next Wednesday, September 11, 2019, to hear the Jackson East continuation. Any questions could be directed to Staff. He also reminded that any Commissioner who might not be present or who was not present at the hearing on August 14th to please review the record to be able to participate fully.

ADJOURNMENT

There being no further business, President Fleisher adjourned the meeting at 8:35 pm.

Charles Fleisher, President

ATTEST: _____
Gretchen Olson, Secretary