

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, FEBRUARY 14, 2006

COMMISSIONERS PRESENT

Donald Hammang, Chair
Brent Carter, Vice Chair
Lisa Batey
Teresa Bresaw
Jeff Klein
Dick Newman

COMMISSIONERS ABSENT

Catherine Brinkman

STAFF PRESENT

Alice Rouyer,
Acting Planning Director
Lindsey Nesbitt
Associate Planner
Gary Firestone,
Legal Counsel
Zach Weigel,
Civil Engineer
Mike Swanson,
City Manager
Shirley Richardson,
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA

3.1 Planning Commission Minutes -- January 24, 2006

Commissioner Klein moved to approve the minutes of January 24, 2006 as revised. Councilor Carter seconded the motion.

Ayes: Carter, Batey, Bresaw, Klein, Newman, Hammang

Nays: None

The motion carried 6-0.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT

Speaking: Ann Favorite, 12293 SE 40th Avenue, Milwaukie

Ms. Favorite stated that she wanted to come before the Commission again to give an update on the Educational Service District (ESD) property on Lake Road. The

Lake Road Neighborhood Association members have circulated a petition to seek to create a land trust for preservation of the existing park and green space and to explore with the city the process necessary to designate this property for inclusion in the Master Plan and maps 5 & 7.

She asked what they need to know and what specific designation needs to occur for the park space to be preserved for the neighborhood; what needs to happen to allow those options to proceed.

She made a formal presentation of petitions gathered by Lake Road neighbors. It was given to staff to be made a part of the record. She asked that a copy be returned to her.

Ms. Favorite noted that this space is not on the Milwaukie Master Plan because it was privately owned by ESD. They want to make it clear that this space has historic significance and that people are working towards envisioning this preservation and want the chance to be fairly and equally represented. They would like staff to review the ESD history at the site as many of the commissioners here were involved in it. She concluded that she is in opposition to the sale of this space for the purpose of a housing development or any other high-density housing. The best recommended use for the site is the continued use as it is. The historic relationship between the community and the space is significant; neighbors who have lived there a long time are active and want to preserve this space for the future.

Ms. Rouyer noted that Ms. Favorite is welcome to talk with Susan Shanks, Associate Planner, to answer questions regarding this issue. **Ms. Favorite** stated that Susan Shanks indicated that there will be a pre-application conference and asked if she could have a copy of the materials for that conference. **Ms. Nesbitt** stated that she would make copies of the application and materials available to Ms. Favorite tomorrow.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: Alonzo W. Wertz
Owner: TriMet
Location: 9600 SE Main Street
Proposal: Renovate existing parking lot at the former Southgate Theater into a 329-space TriMet owned park-and-ride facility, involving demolition of the existing building and adding parking and landscaping in the footprint; landscaping in the Main Street frontage; and improving drainage, lighting, safety and aesthetic features
File Numbers: CSO-05-04/TPR-05-04
NDA: Historic Milwaukie

Chair Hammang opened the continued hearing on Community Service Overlay CSO-05-04 and Transportation Plan Review TPR-05-04 to adopt the modified recommended findings and conclusions in support of approval, authorizing construction and operation of a public park and ride facility.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. **Commissioner Klein** stated that he and Commissioner Batey attended a Neighborhood Leadership Association meeting where this project was being discussed by Mr. Zumwalt. Mr. Zumwalt's comments were basically what were testified here and he encouraged the city to push TriMet to move the bus layover from City Hall to this location. Ms. Batey agreed that she attended the same meeting and heard the same testimony. There were no other conflicts of interest or ex-parte contacts declared.

Chair Hammang asked if there was any rebuttal on the ex-parte contact. There was no response from the audience. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Lindsey Nesbit reported that at the January 10th meeting public comment was closed; however, written testimony was left open for 7 additional days (January 11th to 17th) to provide additional comments. Further, 7 additional days were allowed for the applicant and others to respond (January 18th – 24th) and then the applicant had 7 additional days to abut comments received (January 25th – 31st). All the comments received in opposition and applicant rebuttal can be found in Attachments 2 and 3 of the February 14th staff report. Staff also provided written comments to the testimony received (Attachments 1 and 4).

Staff recommends approval of the Community Service Overlay and Transportation Plan Review applications to site a park and ride facility at the former Southgate Theatre site. Staff believes that the applicant has demonstrated compliance with applicable criteria.

On January 17th the applicant revised their plan to increase the outside landscaping up to 15% (minimum required in Manufacturing Zone). Staff believes the applicant has demonstrated compliance with the underlying zone criteria.

Staff believes that the applicant has complied with off-street parking requirements. A new parking area will be provided in the location of the former theatre and that parking complies with dimensional requirements as well as landscaping requirements. The old parking lot will be brought into compliance with code requirements by providing additional landscaping, re-striping, wheel stops, and lighting.

The proposal complies with the Community Service Overlay criteria, including the public benefits test. The revision includes re-striping Main Street which will allow for the required bike lane. The applicant will dedicate 11-feet of right-of-way on Main Street. Staff believes that the 5-1/2 foot sidewalk will adequately serve the site. As conditioned, staff believes the application complies with Section 1400, Transportation Planning Standards and Procedures.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Batey asked for confirmation that no other materials were received. **Ms. Lindsey** said that is correct.

DELIBERATION AMONG COMMISSIONERS

Commissioner Carter voiced concern with regards to the letter from Ms. Colt raising doubt to thoroughness of Item #2 of the Community Service Overlay standard for 15% landscaping. **Ms. Nesbitt** stated that the letter was written on January 17th; the applicant also submitted a revised application on January 17th. That revision increased the landscaping to 15% and a reduction of two parking spaces to comply with the underlying zone requirements regarding landscaping. Item 6.1 on page 31 of the staff report indicate that this application complies with applicable city standards of underlying zone. Staff reviewed the revised site plan confirming it complies with the manufacturing zone's landscaping requirements.

Commissioner Batey asked for comments from the city attorney on the Commission's authority to impose any conditions on removing the buses from downtown Milwaukie. **Mr. Firestone** stated that the Commission has the authority to decide if the applicable standards and criteria have been met. This is a simple Quasi-Judicial land use application; the proposed park and ride is all that is being decided, not other transit issues. Does this application meet the Community Service Overlay requirements and applicable conditions? If the Commission decides there are other things going on outside the context of this hearing, it needs to be addressed to staff, not included in the conditions for this application. This application is for approval of a community service overlay.

Commissioner Bresaw asked if consideration of different artwork was addressed by the applicant. **Ms. Lindsay** stated that she asked TriMet if they had copies of the artwork available; they responded that they don't. Artwork is not an approval criterion for this project.

Ms. Rouyer stated that an art plan for the site has been established. An art committee reviewed and completed an art plan for this application.

Commissioner Batey asked if the cross walks will be safely signed and lighted. **Mr. Weigel** stated that there is a condition of approval to re-strip the cross walk

and a condition that they improve the cross walk ramp on Milport and Main Streets.

Commissioner Klein voiced concern that the surveillance cameras will not be added for several years. **Ms. Nesbitt** stated that this issue is addressed in Condition #1. He would like to see the cameras implemented sooner, possibly amend the condition to read, "...upon approval the cameras will be put in when the parking lot is completed, prior to use."

Ms. Rouyer stated that funds may not be available for this improvement in the project budget and that is why the applicant is requesting implementation of the cameras in three years. They have offered to get the cameras operational as soon as possible.

Discussion followed on suggested amendments to Condition #1:

- Closed circuit television shall be installed and operational as soon as reasonably feasible consistent with TriMet's budget, and no later than three years after opening the park and ride
- Provide direction if reports indicate there is a problem
- Six month/annual reporting requirement that cameras are needed
- Shorten time limit for camera from three years to two years
- Condition requiring a report on incidents occurred and progress made on date of installation of system

Ms. Nesbitt suggested language for Condition #1. "Close circuit television surveillance shall be installed and operational as soon as reasonably feasible and no later than 3 years of the opening of the park and ride. The applicant shall also submit annual security reports to staff and to the Planning Commission regarding property and criminal activities on the site. The report shall also include information from both the transit police and the Milwaukie Police Department. The report shall include a progress status on the funding availability for the proposed installation of the camera."

Commissioner Batey moved to approve applications CSO-05-04 and TPR-05-04 and adopt the modified recommended findings and conditions in support of approval authorizing construction and operation of a public park and ride facility at 9600 Main Street in Milwaukie as stated in the February 14th Staff Report with staff's proposed revisions to Condition #1.

Commissioner Bresaw seconded the motion.

Ayes: Batey, Bresaw, Carter, Klein, Newman, Hammang

Nays: None

The motion Carried 6-0.

Commissioner Klein asked staff to consider the issue of moving the layover of buses at City Hall and looking at the feasibility of other sites. TriMet has

promised that the buses out here would be moved. Could the application be better served if this promise was added to it; he would like to see that the promises made by TriMet be reviewed and appropriate action taken. He is opposed to industrial land be given up if the community service overlay is not as good as it can be.

Chair Hammang stated that TriMet has promised to move the buses from in front of City Hall; he would like to see something in writing from TriMet in response to this issue and that response come back before the Commission.

Ms. Rouyer stated that this has not been an easy issue for this community. There have been two sites considered and a third is now being reviewed. It is on the Community Development work program; this problem has been difficult to solve.

Commissioner Klein stated that he feels that Milwaukie is looked at as a place where these kinds of uses are placed; transit center, half-way house, TriMet stops, etc. things that are taking away from Milwaukie's tax base. There are other sites available that are not in Milwaukie that can take some of these uses.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

Report from City Manager **Mr. Swanson** reported that George Macgregor was hired as the new City Engineer; he comes to Milwaukie from the state of Florida. He is a native Oregonian and his family is in the process of moving back. He will start on February 1st.

As of today, Milwaukie has extended an offer and received acceptance from Katie Mangle, who will be the City's new Planning Director. Ms. Mangle is an Oregonian and currently at URS consulting firm doing transportation planning and has previously worked with TriMet and Oregon Department of Transportation. She will start March 13th.

Mr. Swanson stated that staff will ask TriMet about their promise to move the buses from City Hall and request a response. TriMet cannot move the buses, however, until the City can help them find a place to go.

Commissioner Batey asked why the buses have to be in Milwaukie. **Mr. Swanson** stated that he will explore that issue with TriMet; however, it is obvious that they want to be in this corridor and serve as many people as they can. They would like to be in a municipality that works for them.

Mr. Firestone stated that whatever location TriMet finds, it has to be at a place where the bus routes can feasibly meet. The bus transfer has to be somewhere near Milwaukie; however, it doesn't have to be downtown.

Election of Officers **Ms. Rouyer** stated that at the February 28th Planning Commission meeting there will be an election of officers.

Time Limit Policy **Ms. Rouyer** reported that the Time Limit Policy for Planning Commission meetings requested by the Commission will be presented at the February 28th meeting.

Draft Work Program **Ms. Rouyer** stated that she wanted feedback on the work plan so that it can be passed on information to the new Planning Director. She submitted the draft work program that will be submitted to Council in March. She asked that the Commission review the draft for comments and revisions at the next Planning Commission meeting on February 28.

Commissioner Carter stated that he would like to see the Design and Landmarks Committee continue. It has been his goal to see the design standards apply to the entire city and not just downtown.

Commissioner Carter stated that he would like to have more staff information on advisory/regulatory issues for the Commission. **Mr. Firestone** stated that he is available to make presentations or training sessions to the Commission on issues like ex-parte contacts, advisory issues, regulatory requirements, etc.

Staff was asked to develop a list of issues that can be passed on to the new Planning Director as things to be discussed in the future.

Commissioner Batey stated that the Commission was promised a wetland tour and wetland training.

Commissioner Bresaw asked that the list include the issue of educating the residents about Metro Goal 5; neighborhoods don't know about wetlands and how to respect them.

Ms. Rouyer stated that the work plan will be discussed again at the next meeting.

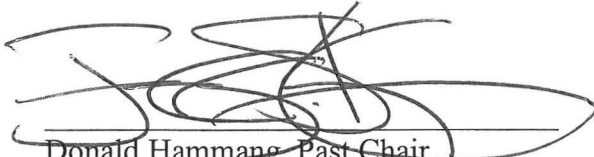
10.2 Design and Landmarks Commission

There will be a meeting on the 22nd in preparation for the Commission meeting on February 28th.

- 11.0 NEXT MEETING -- February 28, 2006
- 11.1 Election of Officers
- 11.2 VR-05-05, Steve Smelser – Drake & 40th
- 11.3 DR-05-01, Broken Arrow Archery Sign – 2044 SE Adams

Commissioner Klein moved to adjourn the meeting of February 14, 2006.
Commissioner Bresaw seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 7:56 p.m.



Donald Hammang, Past Chair
Jeff Klein, Current Chair



Shirley Richardson, Hearings Reporter

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, February 14, 2006 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters Please turn off all personal communication devices during meeting. Thank You.	
3.0 3.1	Planning Commission Minutes January 24, 2006 Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0 6.1	Public Hearings This hearing is continued from January 10, 2006 Type of Hearing: Minor Quasi-Judicial Applicant: Alonzo W. Wertz Owner: TriMet Location: 9600 SE Main Street Proposal: Renovate existing parking lot at former Southgate Theater into a 329-space TriMet owned park-and-ride facility, involving demolition of existing building and adding parking and landscaping in the footprint; landscaping in the Main Street frontage; and improving drainage, lighting, and the safety and aesthetic features File Numbers: CSO-05-04 / TPR-05-04 NDA: Historic Milwaukie Staff Person: Lindsey Nesbitt	Discussion and Motion Needed For These Items
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0 10.1 10.2	Other Business/Updates Matters from the Planning Director Design and Landmark Committee Report	Information Only Review and Comment
11.0	Next Meeting: February 28, 2006 VR-0505 – Steve Smelser – Drake & 40 th DR-05-01 – Broken Arrow Archery Sign – 2044 SE Adams The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Brent Carter, Vice Chair
Lisa Batey
Teresa Bresaw
Catherine Brinkman
Jeff Klein
Dick Newman

Planning Department Staff:

Vacant, Planning Director
Lindsey Nesbitt, Associate Planner
Susan Shanks, Associate Planner
Brett Kelter, Assistant Planner
Jeanne Garst, Office Supervisor
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission

From: Lindsey Nesbitt, Associate Planner *LN*

Through: Alice Rouyer, Interim Planning Director *AR*

Date: February 14, 2006

Subject: TriMet Park & Ride
9600 SE Main Street
Applications CSO-05-04, TPR-05-04, VR-05-04

Action Requested

Approve applications CSO-05-04 and TPR-05-04 and adopt the modified recommended findings and conclusions in support of approval authorizing construction and operation of a public park and ride facility.

Project Description

At the January 10, 2006 Planning Commission meeting the applicant presented a proposal to establish a park and ride facility located at the former Southgate Theater site. The proposal included:

1. Demolition of the 20,000 square foot theatre building and construction of new paving, parking lot striping, and landscaping.
2. Closure of the northerly curb cut onto Main Street for traffic safety.
3. Retention of the existing southerly curb cut on Main Street, which will also be used for truck access to the adjoining property to the south.
4. Reduction of parking spaces from the existing 381 spaces.
5. Improvement to the stormwater drainage system.
6. Renovation of lighting and installation of a pay phone, public art, new bike lockers, and a 6-foot chain link fence along the northerly property line.
7. Increased site landscaping.
8. Sidewalk and planter strip adjustment request to use existing 5.5-foot curb tight sidewalk.

9. 11 feet of right-of-way dedication to accommodate future curb, set back sidewalk and planter strip.
10. Variance request to omit bike lane.

On January 17, 2006, the applicant revised the application to eliminate the bike lane variance. The revised site plan demonstrates that by restriping Main Street, the required bike lanes can be accommodated.

The applicant omitted 2 parking spaces to provide on-site landscaping. Staff believes the revised site plan demonstrates compliance with the manufacturing zone 15% landscaping requirement.

The applicant is still requesting an adjustment to sidewalk and planter strip dimensions and proposes to use the existing 5.5-foot curb tight sidewalk. Adjustments to right-of-way design standards may be granted when the following can be demonstrated:

- a. The existing system is consistent with purposes of Chapter 1400 – Transportation Planning Design Standards and Procedures and the Transportation System Plan.
- b. Existing transportation facilities serving the site are adequately sized and are in useable and safe condition, but do not meet a dimensional standard.

The Engineering Director has reviewed the adjustment request and recommends approval of the adjustment upon finding the existing 5.5-foot curb tight sidewalk adequately serves the site (See Attachment 5 – Engineering memorandum). In previous land use cases, the Supreme Court has ruled that local governments can impose exactions only if the exaction is directly related and roughly proportional to an impact of the development.¹ Any exaction that is not directly related to and roughly proportional to an impact of the development would be unconstitutional. Required frontage improvements must be directly related to or roughly proportional to an impact of the development. The traffic study demonstrates the proposal does not violate the level of service requirements of any intersections within the area of study (See Attachments 1 and 4 for additional analysis).

Extended Comment Period

At the January 10, 2006 Planning Commission meeting, the Commission continued the hearing to February 14, 2006 and allowed submission of additional written testimony as follows:

- | | |
|--------------------------|--|
| January 11- January 17 | 7 days to submit written materials in response to new testimony presented at January 10 hearing. |
| January 18 to January 24 | 7 days to respond to materials submitted between January 11 and January 17. |
| January 25 to January 31 | 7 days for applicant rebuttal. |

¹ Nollan v. California Coastal Commission and Dolan v. City of Tigard.

The applicant submitted comments on January 17, 2006, January 24, 2006 and January 31, 2006 which can be found in Attachment 2 – Applicant' Revised Site plan and Comments. The applicant's revised the site plan submitted January 17, 2006 is included in Attachment 2.

Comments were also received from the law firm representing the north industrial property owners on January 17, 2006, and January 24, 2006, and can be found in Attachment 3.

Staff has responded to comments received in Attachment 1 - Findings and Conclusions in Support of Approval and Attachment 4 – Additional Comments from staff.

Code Authority and Decision Making Process

Milwaukie Zoning Ordinance Sections:

1. 321 Community Service Overlay
2. 500 - Off-street parking and loading
3. 1011.3 - Minor Quasi-Judicial Review
4. 1400 - Transportation Planning, Design Standards, and Procedures

This application is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In quasi-judicial reviews the Commission assesses the application against relevant approval criteria and evaluates testimony and evidence received at the public hearing. The Commission has three decision-making options as follows:

1. Approve the application upon finding that all approval criteria have been met.
2. Approve the application subject to conditions when they are needed for compliance with approval criteria.
3. Deny the application upon a finding that it does not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by May 17, 2006, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

Attachments

1. Revised Recommended Findings and Conditions of Approval
2. Applicant Revised Site Plan and Comments
3. Comments received in opposition
4. Additional comments from staff
5. Engineering Memorandum
6. Additional Comments from Hector Campbell NDA (received January 14, 2006)

Recommended Findings and Conditions in Support of Approval

1. The applicant proposes to construct and operate a 329-space public park and ride transit facility located at 9600 SE Main Street that includes the following:
 - a. Demolition of the 20,000 square foot theatre building and construction of new paving, parking lot striping, and landscaping.
 - b. Closure of the northerly curb cut onto Main Street for traffic safety.
 - c. Retention of the existing southerly curb cut on Main Street, which will also be used for truck access to the adjoining property to the south.
 - d. Reduction of total existing parking by 52 spaces from the existing 381 spaces to 329. 43 parking spaces will be eliminated along the southern property line as needed to comply with the access easement in favor of the southerly adjoining property. Nine additional spaces will be eliminated due to restriping and installation of landscaping.
 - e. Improvement to the stormwater drainage system.
 - f. Renovation of lighting and installation of a pay phone, public art, new bike lockers, and a 6-foot chain link fence along the northerly property line.
 - g. Increase in landscaping from 1.6% of the site to 15%, with new irrigated landscaping along Main Street.
 - h. 11 feet of right-of-way dedication.
 - i. Restriping the roadway to accommodate required bike lanes.
 - j. Adjustment request to use the existing curb tight sidewalk that does not meet width requirements or planter strip requirements.
2. The proposal is subject to the following code sections:
 - a. 321 Community Service Overlay
 - b. 500 Off-street parking and loading
 - c. 1011.3 Minor Quasi-Judicial Review
 - d. 1400 Transportation Planning, Design Standards, and Procedures
3. Public notice of the Planning Commission public hearing has been provided as required by law.
4. The Planning Commission finds that the application is consistent with Section 321 Community Service Overlay Zone. In particular the Commission finds that the use is in the general public interest and that the benefits to the public outweigh possible adverse impacts. The Commission accepts the analysis of benefits and impacts as detailed on pages 5 and 6 of the applicant's application report with additions identified in the staff report. These include, but are not limited to, the following:

Benefits:

- a. The proposal provides conveniently located parking that supports transit. This in turn reduces demand on McLoughlin Boulevard thereby reducing congestion and air pollution.
- b. The park and ride relieves commuter parking pressure in downtown Milwaukie for those commuters with destinations north of the City.
- c. Certain physical improvements that are specific to the proposal benefit the public including:
 1. Closure of the northerly curb cut, which presently does not meet city standards for proximity to intersections.
 2. As conditioned, installation of closed circuit surveillance to reduce crime and assist in criminal prosecution, which will benefit the industrial neighborhood by reducing criminal attraction.
 3. Increased landscaping on the site will improve stormwater quality and reduce run-off.
 4. The proposed landscaping along Main Street improves the appearance of the streetscape and neighboring industrial neighborhood.

Impacts that have been considered include:

1. Loss of tax base.
2. Park and ride traffic and existing conditions of the Main Street and Milport intersection.

Comments were submitted that indicated the use of a transit facility was a zone change, which triggers review and compliance with state wide planning goals, Metro's Title 4, and the Transportation Planning Rule.

A map amendment is not required. The Community Service Overlay (CSO) zone is an existing zone, laid over the entire city. The CSO purpose statement provides for the development of special uses such as schools, daycare facilities, churches, public transit facilities, and parks. Public transit facilities are listed as permitted Community Service Overlay uses (Section 19.321.2(b)(8)). Upon review of applicable code criteria and analysis of the traffic impact study, the Planning Commission finds the project site is an appropriate location for a 329 space park and ride facility.

Comments were also received indicating the proposed park and ride will be used as a future transit center/light rail station. The proposal approved under this action is for establishment of a park and ride facility. The applicant's narrative makes no mention of use of the site as a transit center/light rail station. If the applicant wishes to convert the park and ride into a transit center, submission of a new Community Service Overlay and Transportation Plan

Review application will be required. The site cannot be converted to a transit center without additional formal review.

5. MMC Section 19.314 Manufacturing Zone.

The underlying zone is the Manufacturing Zone. Comments were submitted that indicate the proposed development does not comply with development standards of Section 314. A physical structure is not proposed, therefore building setbacks, height restrictions, and transition area development standards are not applicable. Compliance with off-street parking requirements is addressed in Finding 6. Compliance with access standards is addressed in Finding 7. The applicant's revised site plan dated January 17, 2006, demonstrates compliance with the 15% landscaping requirement.

As conditioned, the proposal complies with MMC Section 314.

6. MMC Section 19.500 Off-street Parking and Loading

Comments were submitted indicating that the parking area does not conform with parking requirements of MMC Section 500-Off-street Parking and Loading. Section 502 states that the standards and procedures of this section apply to uses with nonconforming parking and loading facilities in an attempt to bring them into conformance with current standards when a change in use occurs. The existing parking lot does not comply with current standards. The applicant's January 17, 2006 revised site plan demonstrates an attempt to bring the existing parking area closer into conformance with parking standards by increasing landscaping, providing wheel stops, upgrading lighting, and restriping spaces.

A new parking area will be created in place of the demolished theater site. The new parking area conforms to requirements of the following applicable sections:

503.10 Off-street Parking Space Standards

503.11 Paving and striping

503.12 Curb cuts

503.13 Aisles

503.14 Connections

503.15 Lighting

503.16 Drainage

503.19 Landscaping

As conditioned the proposal is consistent with MMC Section 500 – Off-street Parking and Loading.

7. MMC Section 19.1400 – Transportation

Comments were submitted indicating the applicant failed to provide a transportation plan review analysis. The written narrative submitted September 23, 2005 provides a written response to MMC Section 19.1400 Transportation Planning Design Standards and Procedures. A Traffic Impact Analysis (TIA) and supplemental materials were also submitted. The following provides Planning Commission findings demonstrating compliance with applicable criteria of MMC Section 1400.

- a. MMC Section 19.1404 authorizes the Engineering Director to approve adjustments to transportation facility design standards.

The applicant requested to use the existing 5.5-foot curb tight sidewalk. Table 1409.3 requires an 8-foot sidewalk and a 5-foot planter strip for the 580 feet of frontage along Main Street. The Planning Commission approved the adjustment request upon finding the following:

1. The existing 5.5-foot curb tight sidewalk will adequately serve the site in a useable and safe manner.
2. Requiring construction of 580 feet of new curb, sidewalk, and planter strip is not roughly proportional to the impacts of the proposed development.
3. The applicant dedicated 11 feet of right-of-way, which provides adequate right-of-way to construct future sidewalk and planter strip consistent with dimensional requirements.

Comments were submitted indicating that the City and the applicant did not conduct a proportionality analysis regarding the Nollan and Dolan US Supreme Court cases.

The Planning Commission finds adequate demonstration of proportionality analysis as follows:

The project site has 580 feet of street frontage.

The west side of Main Street is bound by McLoughlin Blvd. and Main Street improvements can not be expanded west. All right-of-way needed to provide required improvements (bike lanes on east and west side of Main street, and new curb, sidewalk, and planter strip on the east side of the street) must come from the applicant's property.

The traffic study demonstrates the proposal does not violate the level of service requirements of any intersections within the area of study, therefore impacts are minimal and mitigation is not required.

Mitigation is not required and requiring reconstruction of curb, sidewalk, planter strip, and roadway configuration of 580 feet of street frontage is not roughly proportional to impacts associated with the proposed development.

The existing 5.5-foot sidewalk will safely and adequately serve the site.

The roadway will be restriped to accommodate required bike lanes.

- b. MMC Section 19.1406 states that any non-residential development adding more than 25 trips per day to an adjacent residential local street requires mitigation of impacts.

The development is located in the Manufacturing Zone and is not located adjacent to a local street. Therefore, a through-trip study was not required.

- c. MMC Section 19.1407 requires new developments to be safe, convenient, and adequate to accommodate the impacts of new development.

Comments were submitted stating concerns with queuing at the intersection of Milport/McLoughlinn Blvd. relating to Main Street.

The Planning Commission finds the traffic study demonstrated after development this intersection will function at an acceptable level of service. The city's traffic consultant, David Evans and Associates, confirms that the intersections located within the study area will have some impact from the proposed development, but will operate at an acceptable level of service.

The Planning Commission finds that the existing 5.5-foot sidewalk will safely and adequately serve the site. The applicant will restripe the roadway to accommodate required bike lanes. 11 feet of right-of-way will be dedicated.

- d. MMC Section 1408.1 requires the submission of a Transportation Impact Analysis (TIA) that demonstrates development impacts on the surrounding transportation system. The TIA provides framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts.

A traffic study was conducted and submitted by DKS Associates and reviewed by the city's traffic consultant David Evans and Associates. The Planning Commission finds that the TIA and supplemental documentation adequately demonstrates impacts and reasonable proportional mitigation of those impacts.

Comments were submitted indicating that traffic problems will occur due to limited points of access onto McLoughlin Blvd and the constrained intersection with Milport. Adding a new high traffic use will further restrict traffic operations in the area.

The Planning Commission finds the TIA conducted by the applicant's traffic consultant, DKS Associates, demonstrates that all study intersections will operate within the City of Milwaukie and ODOT volume

to capacity and level of service (LOS) standards under existing and total traffic conditions. The Planning Commission finds the traffic study also demonstrated that AM and PM peak hours for typical park and ride traffic does not coincide with the AM and PM peak periods of documented truck activity. The highest truck volumes occur during mid-day at which time the traffic study demonstrates the park and ride will generate minor traffic.

Comments were also submitted indicating the applicant failed to provide queuing analysis. The Planning Commission finds that the applicant submitted an operation analysis and simulation with updated 2005 traffic count information as part of the land use application. The city's traffic consultant David Evans and Associates concurs with data submitted by the applicant. The applicant submitted additional analysis of the McLoughlin Blvd./Main Street linkage and can be found in Attachment 2 of the February 14, 2006 Planning Commission staff report.

- e. 1408.3 (B) requires the applicant to demonstrate proportionate impacts to motor vehicle pedestrian, bicycle, and transit facilities related to the development proposal.

The TIA demonstrated that all intersections will operate at an acceptable level of service with the exception of Harrison at McLoughlin Blvd. This intersection will be improved as part of a city capital improvements project, therefore the applicant is not responsible for improvements to this intersection.

The northern access drive will be closed.

Installation of new signs under existing stop signs for each direction on SE Main Street. The signs will say, "Side street does not stop."

The roadway will be restriped to accommodate required bike lanes.

- f. MMC Table 19.1409.3 establishes provision for frontage improvement and required right-of-way dedication.

The applicant will dedicate 11 feet of right-of-way on Main Street and restripe the roadway to accommodate the required bike lanes.

The Planning Commission has approved an adjustment authorizing use of the existing 5.5-foot curb tight sidewalk.

- g. MMC Section 19.1410 establishes standards for pedestrian facilities.

The applicant will reconstruct the existing sidewalk curb ramp on the southeast corner of the intersection of Main Street and Milport Road to meet current ADA requirements and delineate the difference between the sidewalk and the development property. The applicant will construct a flared style sidewalk curb ramp consistent with the Transportation Design Manual standards with yellow pedestrian warning pads.

As conditioned the proposal is consistent with MMC Section 1410.

- h. MMC Section 19.1411 establishes standards for bicycle requirements.

The proposal is for the establishment of a park and ride facility, where vehicles will drive to the site and catch a bus. The buses provide bicycle transportation mechanisms.

- i. MMC Section 19.1412 – establishes transit requirements and standards.

The proposal is for the establishment of a park and ride facility. The proposal is consistent with MMC Section 1412.

- j. MMC Section 19.1413 Access.

The maximum allowable width for industrial uses is 45 feet. The existing driveway is 50 feet wide.

Section 1413.3(c)(6) authorizes the City Engineer to allow an increase in the access width when more than 2 lanes are required or there is a need for turning lanes. The need for the driveway width is based upon an easement over the park and ride lot that guarantees truck access to the southerly adjoining property. The 50-foot access drive is necessary to accommodate truck-turning movements.

8. Comments were submitted indicating the applicant's proposal did not comply with variance criteria. The application was revised January 17, 2006 to omit the need for any variances. As conditioned, the proposal complies with applicable development standards without requiring variance approvals.
9. The Oregon Department of Transportation (ODOT) reviewed and commented on the proposal. The project is subject to their continuing permit review. A condition of approval requires ODOT sign-off on the construction plans prior to commencement of construction.
10. Milwaukie Municipal Code requires erosion controls to be installed prior to earth disturbing activities. A condition of approval has been recommended to ensure compliance with this requirement.

Recommended Conditions of Approval

1. Closed Circuit Television surveillance shall be installed and operational within three years of opening the park and ride. TriMet shall coordinate with the Milwaukie Police Chief regarding system development and potential shared access.
2. The applicant shall dedicate 11 feet of right-of-way fronting Main Street to accommodate future planter strip, sidewalk, and bike lane improvements, prior to issuance of any development permits.
3. Prior to commencement of construction for on-site improvements, the applicant shall submit construction plans for ODOT review. This condition does not apply to demolition of the theatre.

4. The applicant shall cut and cap the existing wastewater service line for the Southgate Theater building within 5 feet of the 12-inch wastewater main in accordance with requirements of the City of Milwaukie demolition permit and the 2004 Oregon Structural Specialty Code.
5. The applicant shall abandon the existing water service for the Southgate Theater building at the 12-inch water main on SE Main Street in accordance with requirements of the City of Milwaukie demolition permit.
6. The applicant shall install "Side Street Traffic Does Not Stop" (ODOT sign #OR3-13) under the existing STOP sign for each direction on SE Main Street at the intersection with SE Milport Road.
7. The applicant shall restripe Main Street fronting the project site to accommodate required bike lanes.
8. The applicant shall reconstruct a flared style sidewalk curb ramp consistent with the Transportation Design Manual standards with yellow pedestrian warning pads (MASCO CASTinTACT preferred) at the southeast corner of the intersection of SE Main Street and SE Milport Road.
9. The applicant shall submit full-engineered plans for all public improvements to the City of Milwaukie Planning Department for review and approval before any construction may begin. Construction of the improvements must be completed and final Mylar "as constructed" drawings submitted before the City will approve occupancy of the site. Construction shall be consistent with approved site plan and the property shall be maintained consistent with the approved site plan.
10. The applicant shall pay an inspection fee equal to 5.5% of the cost of the public improvements prior to the start of construction.
11. The applicant shall provide a payment and performance bond for 100% of the cost of the public improvements prior to the start of construction.
12. The applicant shall provide an erosion control plan and obtain an erosion control permit prior to the start of construction of the public improvements.
13. At such time full roadway improvements on Main Street are constructed the applicant and future owners/assigns shall be responsible for constructing the eight feet of on-site landscaping required in Section 503.19 (A)(1), screening the right-of-way from parking area. This will likely result in the loss of parking spaces at that time.
14. 15% of the site must be landscaped. The new parking area to be provided in place of the demolished theater must comply with dimensional and landscaping requirements of MMC Section 500.

~end~



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

January 17, 2006

STEVEN W. ABEL
Direct (503) 294-9599
swabel@stoel.com

VIA MESSENGER

City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Re: TriMet Park & Ride Public Transit Facility

Dear Chairman Hammang and Members of the Commission:

Enclosed you will find twelve copies of the following:

Additional Evidence:

1. Revised site plan dated January 16, 2006; and
2. Revised SE Main Street cross section dated January 16, 2006.

For your convenience TriMet will also separately deliver these two plans to you electronically.

Explanation of Additional Evidence:

1. SE Main Street along the project frontage is restriped as illustrated in the cross section to introduce a northbound, five-foot bicycle lane as follows:
 - a. The existing northbound travel lane is narrowed from 11 feet 9 inches to 11 feet just south of the intersection with SE Milport Road and from 14 feet 6 inches to 12 feet 10 inches at the north edge of the south driveway.
 - b. The southbound travel lane is narrowed from 11 feet 10 inches to 11 feet just south of the intersection with SE Milport Road and remains 12 feet wide at the north edge of the south driveway.
 - c. The northbound left turn lane to SE Milport Road is narrowed from 12 feet 5 inches to 11 feet.

RECEIVED

JAN 17 2006

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

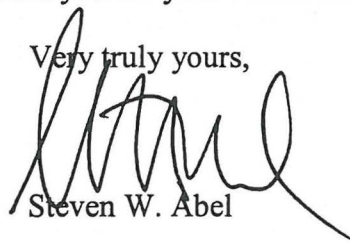


City of Milwaukie Planning Commission
January 17, 2006
Page 2

- d. Between the south side of the intersection with SE Milport Road and the north edge of the south driveway, lane widths transition along with the existing roadway width which tapers from 50 feet to 35 feet 3 inches. The proposed, revised striping yields standard width travel and turn lanes and a minimum standard (5 foot) bicycle lane.
2. The revised site plan illustrates both the proposed restriping of SE Main Street for the northbound bicycle lane and the plan for landscaping 15 percent of the site (up from 9.7 percent with a reduction in parking spaces from 331 to 329). Also shown is the strip extending 11 feet from back of sidewalk into the site being dedicated as right-of-way for a future project to improve SE Main Street to a fully standard cross section, including travel lanes, bicycle lanes, curbs, planting strips and sidewalks.

These materials are submitted pursuant to the Commission's directive holding the record open for an additional 7 days. We understand that any materials that are submitted during the first 7 days may be the subject of rebuttal evidence through 5:00 p.m., January 24, 2006. The applicant reserves its right to present final argument on this matter and will do so, in writing, prior to 5:00 p.m. on January 31, 2006. Thank you for your continued courtesies.

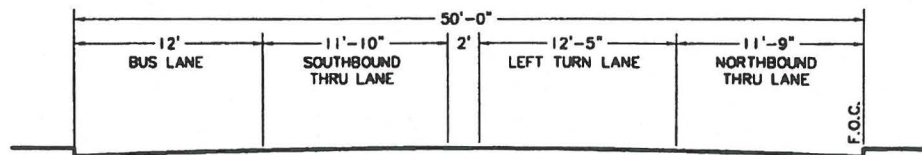
Very truly yours,



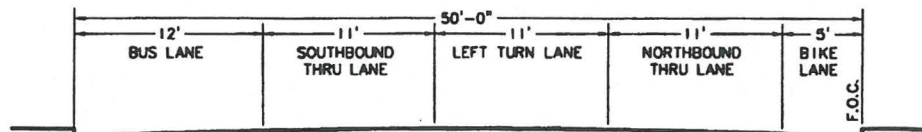
Steven W. Abel

SWA/pjn
Enclosures

cc: Phil Selinger
Alonzo Wertz
Katharine Brendle
Alice Rouyer (via messenger)
Lindsey Nesbitt (via messenger)
Mark Whitlow

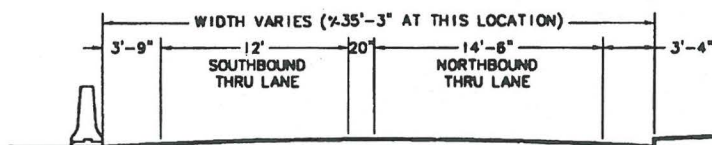


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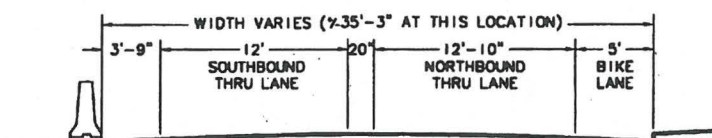


PROPOSED

SECTION AT SOUTH END OF BUS ZONE



EXISTING



PROPOSED

SECTION AT NORTH EDGE OF SOUTH DRIVEWAY

CAPITAL PROJECTS
AND
TRI MET FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

MILWAUKIE PARK & RIDE
MAIN STREET
SECTIONS

DRAWN JHM	DESIGN KB	CHECKED	APPROVED:	DATE: 1-16-06
SCALE: 1" = 10'	FILE NAME: SECTIONS	CONTRACT NO:	SHEET NO: DRAWING 2	

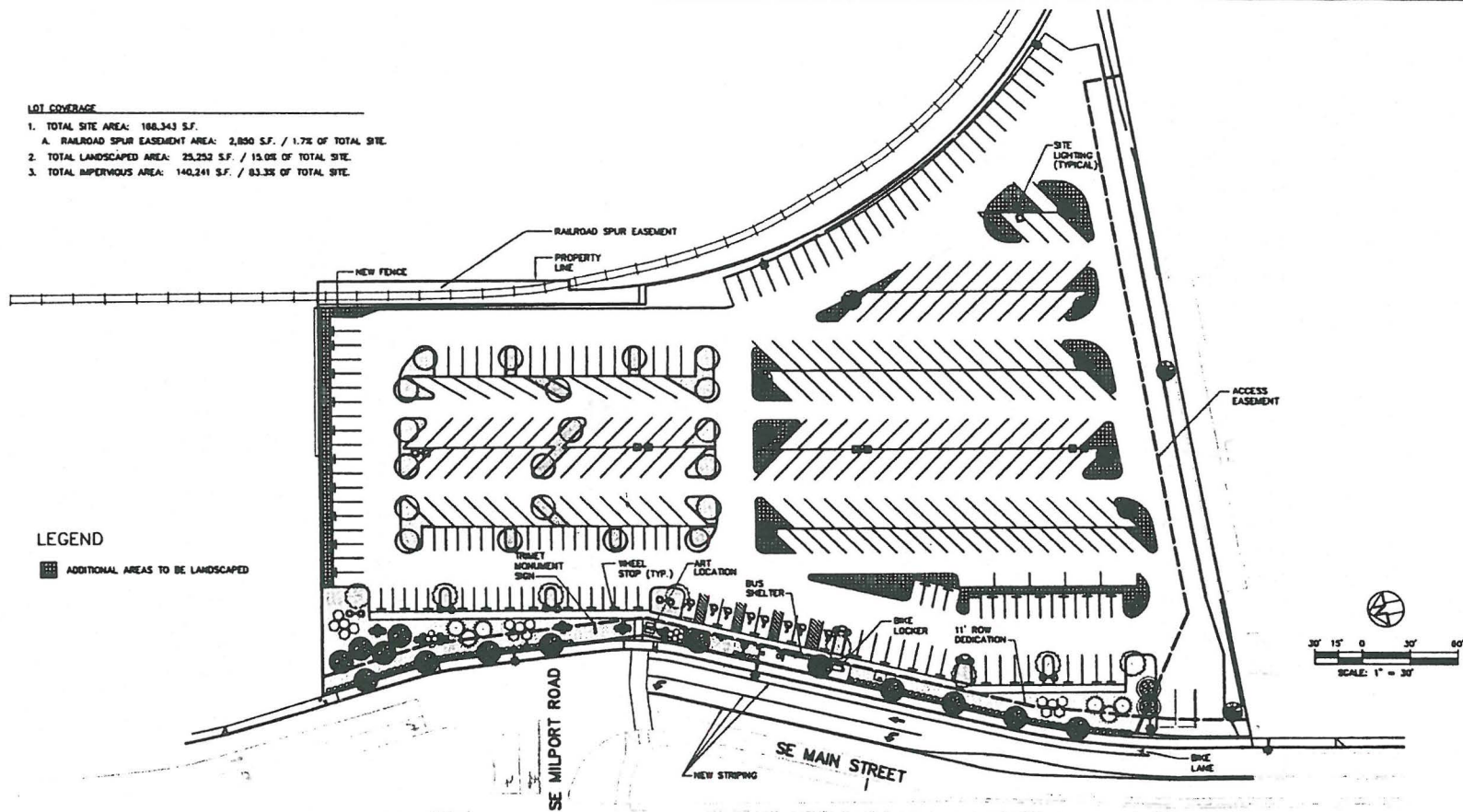
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LOT COVERAGE

1. TOTAL SITE AREA: 188,343 S.F.
 - A. RAILROAD SPUR EASEMENT AREA: 2,850 S.F. / 1.7% OF TOTAL SITE.
2. TOTAL LANDSCAPED AREA: 25,252 S.F. / 13.0% OF TOTAL SITE.
3. TOTAL IMPERVIOUS AREA: 140,241 S.F. / 83.3% OF TOTAL SITE.

LEGEND

ADDITIONAL AREAS TO BE LANDSCAPED



						KD	1/73
						TR	80
						KD	1/73
						TR	80
						PS	1/69
						DW	80
SA	SCH	SP	FPP	EDUCATION	AVERAGE	SCORE	

● TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

TRIOMET

**CAPITAL PROJECTS
AND
FACILITIES DIVISION**
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

MILWAUKEE PARK & RIDE PLAN REVISIONS

DRAWING 1



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JAN 24 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

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STEVEN W. ABEL
Direct (503) 294-9599
swabel@stoel.com

January 24, 2006

VIA EMAIL AND FACSIMILE

City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Re: TriMet Park & Ride Public Transit Facility

Dear Chairman Hammang and Members of the Commission:

This letter is written to respond to the evidence presented by the North Industrial District ("NID") business and property owners through a letter dated January 17, 2006. To the extent that the NID submittal is "argument" it is improper. The Commission's "open record" is restricted to additional evidence only. This letter and the accompanying document are submitted as rebuttal evidence and, in accordance with the Commission's instruction on the record extension, only responds to NID's additional evidence.

1. The Public Benefits Clearly Outweigh Speculative Adverse Impacts.

The NID has submitted a second memorandum from Jerry Johnson of Johnson Gardner dated January 16, 2006. As with the initial submittal by Jerry Johnson, there is no conclusion of detrimental impact to the NID. TriMet respects the value of the NID to the City of Milwaukie. And, recognizing that value, TriMet has demonstrated that the public benefit of the park and ride far exceeds any speculative adverse impacts to the NID.

As pointed out by your Staff in the Staff Report, the applicant has provided an extensive list of public benefits achieved by the park and ride facility. Those benefits can be seen at pages 5 and 6 of TriMet's application. The Jerry Johnson report does not contest those benefits and, remarkably, makes no conclusion as to adverse impact on the businesses.

2. The Transportation System is Adequate to Support the Proposed Use.

It should be noted that the NID has not provided independent evidence of transportation issues, but instead "questions" the analysis prepared by DKS Associates. Included with this submittal is additional transportation information related to the adequacy of queuing at Milport

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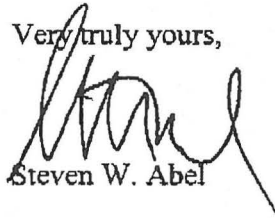
6.1 Page 17

City of Milwaukie Planning Commission
January 24, 2006
Page 2

and Main and the adequacy of the operation of the northbound exit lane from McLoughlin to an intersection with Main Street—items “questioned” by the NID.

The applicant, TriMet, reserves its right to final argument and will submit a final argument on or before January 31, 2006. TriMet appreciates the Commission’s careful consideration of its application.

Very truly yours,



Steven W. Abel

SWA/pjn
Enclosures

cc: Phil Selinger (via email and fax)
Alonzo Wertz (via email and fax)
Katharine Brendle (via email and fax)
Alice Rouyer (via email and fax)
Lindsey Nesbitt (via email and fax)
Mark Whitlow

PortInd1-2217260.1 0074755-00258

DKS Associates
TRANSPORTATION SOLUTIONS

MEMORANDUM

DATE: January 20, 2006
TO: Phil Selinger, Project Planning Director
FROM: R. S. McCourt, P.E., PTOE
Brandy Sularz
SUBJECT: Southgate Park and Ride - Response to Testimony



P04224-007

Based upon the letters submitted by Mark Whitlow of Perkins Coie on January 10, 2006 and January 17, 2006 we have provided response to two specific items called out in those comments.

- January 10 - Item 3A Queuing Analysis Milport/Main as re-argued in the January 17th letter
- January 17 - Item 6 McLoughlin-Main Link Analysis

Queuing Analysis Milport/Main

Data regarding queuing was provided in the materials submitted to the City of Milwaukie in the project application transportation in the appendix of the transportation study. The transportation review of the City of Milwaukie acknowledges this information and finds that this location will "operate adequately upon completion of the park and ride lot" and the staff report notes the limitation of the short spacing in making its findings. The operational analysis and simulation that was conducted as part of the analysis for the park and ride lot (and updated with the 2005 information and site size) indicates that this intersection would perform within the City of Milwaukie's and ODOT's performance standards.

McLoughlin-Main Linkage Analysis

The City of Milwaukie did not identify this intersection in the scoping of the traffic analysis as part of the study area for the transportation analysis. Based upon observations of this location in the peak hour, there is little traffic volume (less than 25 vehicles per hour) and no more than one vehicle is stopped at the Main Street intersection at any one time. The intersection operates acceptably. The claim that this is a primary access point for the industrial district is not supported by data. The counts provided to the City document that Ochoco is the primary access point. This connector to Main Street would operate acceptably with the park-and-ride based upon our observations and knowledge of the travel patterns for the proposed project.



RECEIVED

JAN 31 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT900 S.W. Fifth Avenue, Suite 2600
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main 503.224.3380
fax 503.220.2480
www.stoel.com

January 31, 2006

STEVEN W. ABEL
Direct (503) 294-9599
swabel@stoel.com**VIA EMAIL AND FACSIMILE**City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206**Re: TriMet Park & Ride Public Transit Facility**

Dear Chairman Hammang and Members of the Commission:

This letter is submitted on behalf of TriMet, the Applicant in the above-encaptioned matter. This letter is the final argument in this matter as allowed by the Planning Commission at the conclusion of the public hearing on January 10, 2006.

As the Commission is aware, this is an application for a Community Service Overlay ("CSO") as allowed by Section 321 of the City's zoning code. Community service uses are overlays allowed in any zone within the City provided that the CSO criteria are satisfied.

The proposed park-and-ride use is identified as an allowed use within the CSO provisions as a "public transit facility." Milwaukie Municipal Code ("MMC") 19.321.2.B.8. The authority to grant or deny the proposed CSO is set forth at MMC 19.321.4. The following is a summary of how the applicable criteria in MMC 19.321.4 are met.

A. The Requirements of the Underlying Zone are Met. (MMC 19.321.4.A)

The underlying zone of the site is the City's manufacturing zone ("M"). The requirements of the M zone are satisfied by the Applicant's proposal. TriMet's proposal meets the site development requirements of the zone set forth at MMC 19.314.6 including the relevant restrictions on setbacks, heights, and the requirements for buffering between industrial uses and residential uses. The requirement for 15% landscaping is met by TriMet's proposal as modified in response to concerns raised at the public hearing.

TriMet's proposal is also in compliance with Section 19.500 of the MMC relating to off-street parking and loading. The proposed park-and-ride facility will decrease the amount of

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City of Milwaukie Planning Commission
January 31, 2006
Page 2

parking at the site by 52 spaces from the existing 381 spaces down to 329 spaces. No loading facilities are located at the site.

MMC 19.500 applies in limited fashion to the off-street parking at the proposed park-and-ride. MMC 19.502B, as applied to TriMet's proposal, requires that the lot be improved to be closer to conformity with the requirements of 19.500. MMC 19.502.B. TriMet has improved the parking lot significantly by increasing landscaping, improving lighting and security, and meeting the code's dimensional requirements for parking lots. Through these improvements, the Applicant has satisfied the provisions of Section 19.500.

In addition, with TriMet's modification of its site frontage, its application is in full compliance of the provisions of 19.1400 relating to transportation planning, design standards and procedures. No variances are requested by the Applicant to meet these street frontage requirements.

For these reasons, TriMet's proposal is in complete compliance with the requirements of the M zone.

B. The proposed conditions of approval assure compatibility of the use with other uses in the vicinity. (MMC 19.321.4.B)

The second criterion for a CSO allows the Planning Commission to impose conditions of approval to assure compatibility of the use with other uses in the vicinity. TriMet has demonstrated compatibility with other uses in the vicinity. The principal opposition related to compatibility has focused upon the adequacy of transportation systems. TriMet through the expert testimony of DKS Associates has demonstrated such compatibility by reaching the conclusion that the park-and-ride facility is supported by an adequate transportation system. Along with the finding of an adequate transportation system:

- TriMet has demonstrated that this facility will provide congestion relief in a major regional corridor, provide a convenient service for Milwaukie residents, and remove commuter cars from downtown and North Milwaukie streets.
- TriMet has demonstrated through extensive and updated traffic studies that the operation of this parking lot will not impede truck or any other traffic and will not compromise the commercial value or operating efficiencies of adjacent businesses.



City of Milwaukee Planning Commission
January 31, 2006
Page 3

- TriMet has further shown that traffic generated by the park-and-ride lot will be limited in time (to the two peak commute periods) and that the most logical and likely approach to the facility by most users will not intersect with the predominant movement of trucks.
- New curb ramps to the existing crosswalk across Main Street provide a clear and safe crossing between the outbound bus stop and the park-and-ride facility.

Further supporting the finding of compatibility, TriMet has demonstrated that its improvements will improve public safety by removing an abandoned and obsolete building, improve sightlines to adjacent businesses, and improve security at the site through lighting, installing a pay telephone on the site, providing patrol and, ultimately, CCTC surveillance of the site.

C. The Provisions of MMC 19.321.4.C. are Not Applicable.

These provisions relate to amendments to CSO's and are not applicable to a newly proposed CSO.

D. The Establishment of the CSO is in the General Public Interest and the Benefits to the Public Outweigh the Possible Adverse Impacts of the Use. (MMC 19.321.4.D.)

The list of benefits of the proposed use is significant. The City Staff Report and TriMet's application clearly identify the long list of public benefits achieved by the proposed use and the "possible" adverse impacts of the use.

Public Benefits:

- Restored access at an off-street park-and-ride facility targeting commuters from the south and east of downtown Milwaukee, who otherwise are not within walking distance of a bus line.
- Restored, free park-and-ride access to transit in a primary, congested regional commute corridor currently having no major park-and-ride facility.
- Reduced use of on-street parking spaces in downtown Milwaukee for park-and-ride.



City of Milwaukie Planning Commission
January 31, 2006
Page 4

- Increased options for accessing and using transit service in the congested McLoughlin Boulevard corridor.
- Restored, full use of a currently underutilized parking lot.
- Removal of an obsolete building and proper disposal of constituent hazardous materials, if any are present.
- Improved visibility and public safety within the parking lot resulting from:
 - Removal of the obsolete building,
 - Installation of additional lighting and a pay phone, and
 - Increased activity at the site.
 - Increased on-site landscaping to 15%.
- Frontage landscaping, new and renovated internal landscaping, new striping, additional lighting, artwork and a new monument sign for improved aesthetics to the passerby and as a neighbor to surrounding development.
- Upgraded on-site stormwater facilities.
- Provision of 329, fully code-compliant parking spaces.
- Support for the South Corridor Project, which requires the incremental buildup for transit service leading to light rail transit as identified in the Locally Preferred Alternative that was adopted by the Milwaukie City Council, JPACT and the Metro Council and which is subject to amendment following further study for an off-street transit center conducted in 2004.
- Relief for the loss of City-sponsored parking at the site of the North Main development project, now under construction.
- Possible transitional use of publicly-owned property, which could be required for future correction of design deficiencies with the intersections of SE Milport Road with SE McLoughlin Boulevard and SE Main Street.

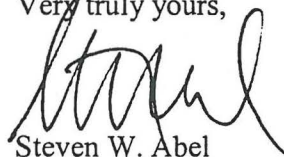


City of Milwaukie Planning Commission
January 31, 2006
Page 5

This long list of benefits far exceeds the possible impacts. The principal impacts to the industrial district have been identified to be impacts on the transportation system, however, as described in this letter and as professionally concluded by DKS Associates, the transportation system is wholly adequate to support the proposed use. The adequate transportation system will not negatively impact businesses or properties in the vicinity of the park-and-ride. Opponents to the proposal have presented no expert testimony rebutting this conclusion.

TriMet appreciates the opportunity to provide these final comments and looks forward to the Planning Commission's decision on this very important public transit facility in the City of Milwaukie.

Very truly yours,



Steven W. Abel

SWA/pjn

cc: Phil Selinger (via email and fax)
Alonzo Wertz (via email and fax)
Katharine Brendle (via email and fax)
Alice Rouyer (via email and fax)
Lindsey Nesbitt (via email and fax)
Mark Whitlow (via email and fax)

ATTACHMENT 3**6.1** Page **24****Perkins
Coie**

Mark D. Whitlow
PHONE: 503.727.2073
FAX: 503.227.2214
EMAIL: mwhitlow@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

January 17, 2006

BY FACSIMILE

Planning Commission
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RECEIVED

JAN 17 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Re: Tri-Met Park & Ride Application – CSO-05-04

Dear Members of the Commission:

This letter is submitted on behalf of the coalition of North Industrial District business and property owners identified in our correspondence dated January 10, 2006. This letter is submitted during the first seven-day "open record" period as stated by the Planning Commission at the initial evidentiary hearing. Please make this letter a part of the public record in this proceeding.

1. Need to Protect North Industrial District Employment Center

At the Planning Commission hearing on January 10, 2006, we submitted a memorandum from economists Johnson Gardner providing a summary of the direct economic benefits provided by the North Industrial District businesses to the City of Milwaukie. As stated in that memorandum, businesses in the North Industrial District generate a total of \$308 million of commerce in the City of Milwaukie, which represents slightly over 17 percent of the City's economy. Also, businesses in the District account for 2,484 jobs in the City of Milwaukie, which constitutes 15 percent of the City's total employment. Businesses in the District support average wages of \$44,300 across all industries affected, which is 20 percent higher than Clackamas County wages for corresponding industries.

Attached to this letter is a supplemental memorandum from Johnson Gardner dated January 16, 2006, which provides an analysis of the tax revenues generated by businesses in the North Industrial District. As stated in the attached memorandum,

[33180-0010/PA060170.069]

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • HONG KONG • LOS ANGELES
MENLO PARK • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

6.1 Page 25**Planning Commission****January 17, 2006****Page 2**

commerce and employment driven by District businesses generate \$27.8 million in state and local tax and fee revenues annually. Of that amount, \$5.4 million is property tax, \$20.8 million is in taxes on business and commerce, and over \$6.7 million is state income tax, which helps fund education at the local level. Local schools receive about \$2.2 million in taxes annually from North Industrial District businesses.

As evidenced by this economic data, more than just a parking lot is at stake in this application. A majority of property owners and business leaders in the North Industrial District have expressed their legitimate concerns to the planning commission regarding the negative impacts of the proposed facility on existing businesses in the area. The functionality of the North Industrial District is in a precarious balance that should not be further encroached upon by the proposed use, which is incompatible with the area and is not proposing to mitigate its impacts. Allowing the proposed parking lot use will undermine the economic growth potential of the industrial district and employment center, and will negatively impact the economy of district and the City of Milwaukie as a whole. The city should not disregard or marginalize the North Industrial District by allowing the proposed non-employment use in a designated employment area.

2. CSO Zone Requires Compliance with Underlying Standards

Under Section 19.321.4 of the Milwaukie Municipal Code (MMC), an application for a community service use may only be allowed if "the requirements of the underlying zone are met." The requirements of the underlying Manufacturing zone include: (a) the parking and loading standards of Chapter 19.500, (b) a fifteen percent landscaping standard, and (c) the transportation requirements and standards of Chapter 19.1400.

Because MMC 19.321.4 expressly states that the requirements of the underlying zone must be "*met*" in order to approve the application of the CSO zone, the above-referenced standards must actually be *met* and cannot be waived through the variance process. To the extent the applicant is requesting variances to any of the standards applicable to the Manufacturing zone, including the fifteen percent landscaping standard or the transportation requirements of Chapter 19.1400, the CSO zone application must be denied.

Specifically, Chapter 19.500 includes a requirement that ten percent of provided parking spaces must be designated for carpool or vanpool use, and also contains specific landscaping and buffering requirements at Section 19.503.19 that are not

Planning Commission
January 17, 2006
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directly addressed in the applicant's narrative. Also, regarding the transportation standards of Chapter 19.1400, neither the applicant nor staff has provided any explanation or justification regarding why the applicant should not be required to construct the actual improvements to the right-of-way, including a bike lane and a landscape strip, rather than deferring these required improvements to some unspecified time in the future. The applicant is relying on the provision of bike lanes in order to avoid providing on-street parking that would otherwise be required by the Transportation Design Manual. However, applicant is not actually providing the bike lanes at this time, and is also not providing the otherwise required on-street parking. If the applicant can be allowed to avoid a parking requirement by providing bike lanes, the applicant must be required to actually provide the bike lanes as part of this new development project.

3. Variance Standards Not Met

The applicant has apparently revised its application to remove certain of its variance requests; however on the current record it is not entirely clear which variances are still being requested, which are being withdrawn, and which standards are proposed for adjustment. The applicant should be required to supplement its application materials to reflect what the applicant is actually applying for. With respect to the requested variances to the right-of-way width, bike lane, landscape strip, and parking standards, the applicant has not satisfied the applicable criteria for the requested variances. The standards require the applicant to establish that there are: (a) "unusual circumstances over which the applicant has no control," (b) "no feasible alternatives to the variance and that the variance is the minimum variance necessary to allow the applicant the use of his/her property," and (c) "adverse effects upon other properties ... shall be mitigated to the extent feasible." The applicant has not met these standards.

4. Lack of Proportionality Analysis

The applicant is being excused from providing otherwise required transportation improvements based solely on conclusory statements in the staff report to the effect that requiring improvements up to city standards would "not be proportionate to impacts" under the Dolan rough proportionality standard. This conclusion cannot be reached in the absence of an actual analysis of the impacts against the costs of the required improvements. The city must provide a proportionality analysis that can be reviewed by the North Industrial District property owners before reaching a conclusion that proportionality does not exist.

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5. Illegality of Prior Park and Ride Use

The staff report suggests that the prior park and ride was a previously existing non-conforming use that was discontinued when the theater was sold in 2000. However, the staff report does not provide any evidence that the park and ride use was ever lawfully established. We submit that the use was not lawfully established through conditional use or other land use permit approval, and therefore was not even a non-conforming use in its previous location. In the absence of a city approval for the park and ride use, it was an unpermitted and illegal use of the property, which cannot be "renovated" or "modified" through the present application. As stated at the hearing, this is a zone change application proposing new development, which must therefore comply with all applicable standards.

6. Traffic Issues

In addition to the traffic related issues raised by the North Industrial District business owners at the previous hearing, the "updated" analysis prepared by DKS Associates fails to include any analysis of the intersection allowing access from northbound McLoughlin onto Main Street south of Highway 224, which is a primary access point for the Industrial District.

For the above-stated reasons, and the reasons stated in our correspondence dated January 10, 2006, the Tri-Met application should be denied.

Very truly yours,

Mark D. Whitlow



MDW:raa

Enclosure

cc: North Industrial District property owners



MEMORANDUM

DATE: January 16, 2006

TO: Mr. Mark Whitlow
PERKINS COIE
1120 NW Couch Street
Tenth Floor
Portland, OR 97209

FROM: JOHNSON GARDNER

SUBJECT: Fiscal Impact Analysis of the North Milwaukie Industrial Cluster

JOHNSON GARDNER was retained by PERKINS COIE to estimate the economic and fiscal contribution made by the North Milwaukie Industrial Cluster and Corridor to the Milwaukie and Clackamas County economies. The cluster is defined in this analysis as industrial and commercial development¹ bounded by SE McLoughlin Boulevard/99E to the west, the Union Pacific Railroad Line to the east, the Milwaukie city boundary to the north and the Milwaukie Expressway/Highway 224 to the south.

This memorandum summarizes key findings with regard to the fiscal impacts, or tax revenue contributions, made by the Industrial Cluster.

TAX IMPACTS

Utilizing Implan methodology, JOHNSON GARDNER estimated the tax revenue impacts of the Industrial Cluster at the State and local levels. Figure 1 below provides a summary of major tax impact categories and taxes paid as a result of Industrial Cluster commerce.

FIGURE 1: TOTAL TAX REVENUES FROM INDUSTRIAL CLUSTER COMMERCE

Tax Origin Jurisdiction / Category	Annual Tax	Tax Origin Jurisdiction / Category	Annual Tax
Business Taxes		Personal Taxes	
<i>State</i>		<i>State</i>	
Profits & Dividends	\$3,711,210	Social Insurance - Employee Paid	\$312,810
Indirect Business Taxes	\$10,650,070	Income Tax	\$6,770,030
Social Insurance - Employer Paid	\$1,014,740		\$7,082,840
	\$15,376,020		
<i>Local</i>			
Property Tax	\$5,389,146		
Total Business-Paid Taxes	\$20,765,170	Total Personal Taxes	\$7,082,840
Total Direct Tax Impact of Milwaukie Industrial Cluster			\$27,848,010

SOURCE: Oregon Department of Revenue, Implan and Johnson Gardner

¹ Data gathered in the course of this study is confidential in nature. For reporting the aggregation of proprietary data in this study, Johnson Gardner follows Oregon Employment Department protocol. Publication of data in aggregate requires at least three firms in a specific industry for data to be released.



JOHNSON GARDNER estimates that commerce and employment driven by the North Milwaukie Industrial Cluster generates \$27.8 million in state and local tax and fee revenues annually.

- Roughly \$20.8 million in tax revenue generated are State-level in nature, largely corporate taxes, fees, social insurance, income tax and other items.
- Tax revenues staying locally are largely limited to property tax at \$5.4 million annually.
- Tax on business and commerce drives the majority of revenues, at nearly \$20.8 million of the \$27.8 million total.
- Persons employed as a result of Industrial Cluster commerce pay over \$6.7 million in state income tax annually, the majority of which funds education at the local level.

Although total tax revenues driven by the Industrial Cluster are sizeable at the State level, local taxes – largely comprising property taxes – are even more significant as a share of total, local property taxes paid in the Milwaukie area. Figure 2 below provides a summary of property taxes generated by the Industrial Cluster, with detail of local jurisdictions that benefit from tax revenues.

FIGURE 2: PROPERTY TAX REVENUES GENERATED BY NORTH MILWAUKIE INDUSTRIAL CLUSTER

Tax Category Jurisdiction	Levy Rate (\$/1,000)	Assessment
Total Property Tax Rate	17.7255	\$5,717,340
Education Levies		
Clackamas Community College	0.5411	\$174,530
Clackamas ESD	0.3590	\$115,800
North Clackamas Schools	4.4715	\$1,442,280
	5.3716	\$1,732,610
Operations & Maintenance Levies		
City of Milwaukie	4.1367	\$1,334,290
Clackamas County	2.4042	\$775,470
Clackamas County Fire District 1	2.2427	\$723,380
North Clackamas Parks	0.4893	\$157,820
Port of Portland	0.0685	\$22,090
Metro - Oregon Zoo	0.0937	\$30,220
County SP	0.1335	\$43,060
County Urban Renewal	0.7617	\$245,690
Vector Control	0.0065	\$2,100
Vector Control Local Option 2005	0.0250	\$8,060
	10.3618	\$3,342,180
Bond Levies		
City of Milwaukie	0.2273	\$73,320
Clackamas Community College	0.2244	\$72,380
Clackamas County Fire District 1	0.1421	\$45,830
North Clackamas Schools	1.1011	\$355,160
Metro	0.1818	\$58,640
TriMet	0.1154	\$37,220
	1.9921	\$642,550

SOURCE: Clackamas County Assessor's Office, IMPLAN & Johnson Gardner



On an annual basis, the Industrial Cluster is estimated to pay \$5.72 million in local property taxes, or roughly 25% of all property tax revenues collected in the Milwaukie area.¹ Property taxes paid by Industrial Cluster commerce fund a variety of local services and bond obligations.

- **Local Education:** Local schools receive \$2.2 million in taxes annually. Including bond levy revenues, North Clackamas Schools are the single-largest beneficiary at \$1.8 million annually.
- **Municipal Services:** The City of Milwaukie, the second-largest beneficiary, receives \$1.4 million in property taxes for operations and maintenance (O&M) as well as bond debt obligation for capital expansion. Industrial Cluster property tax revenue represents over 17% of the City of Milwaukie General Fund property tax revenue budget.²
- **County Services:** Clackamas County, the third-largest beneficiary, receives nearly \$1.1 million annually for various public services including O&M and urban renewal.
- **Capital Expansion:** Property taxes generated support sizeable capital purchases by several jurisdiction, most notably school space and vehicle purchases by the North Clackamas School District (\$355,160). Other beneficiaries include City of Milwaukie capital facilities and equipment needs, community college expansion, fire service vehicles and equipment, metro-area parks and public transportation vehicles and equipment for Tri-Met.

¹ As a percentage of total tax assessed for Clackamas County Tax Code areas 002-012, 012-018 and 012-133, which comprise the great majority of the City of Milwaukie (Clackamas County Assessor's Office, 2005).

² City of Milwaukie Adopted Budget for 2004-2005.

Mark D. Whitlow
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FAX: 503.227.2214
EMAIL: mwhitlow@perkinscoie.com

RECEIVED

JAN 24 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

January 24, 2006

BY FACSIMILE

Planning Commission
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

Re: Tri-Met Park & Ride Application - CSO-05-04

Dear Members of the Commission:

This letter is submitted on behalf of the coalition of North Industrial District business and property owners identified in our correspondence dated January 10, 2006. This letter is submitted during the second seven-day "open record" period. Please make this letter a part of the public record in this proceeding.

At the close of the first open record period on January 17, 2006, the applicant's representative submitted materials to the Planning Commission that appear to indicate the applicant is now agreeing that it must comply with the underlying landscaping requirements of the Manufacturing zone, as we have argued is required under Section 19.321.4 of the Milwaukie Municipal Code (MMC).

Although we are pleased that the applicant has now recognized that it must comply with the applicable city standards, like any other developer, the revisions to the site plan still do not demonstrate compliance with all of the underlying "M" zone requirements, including the parking and loading standards of Chapter 19.500 and the transportation standards of Chapter 19.1400. Nor has the applicant established that its proposed use will be "reasonably compatible with surrounding uses," as required by Section 19.321.4.A.

In our previous testimony, we pointed out that the applicant has not provided an updated or adequate queuing analysis for the dangerous intersection of Milport Road/McLoughlin Blvd as it relates to Main Street and the intersection with Frontage

[33180-0010/PA060240.062]

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Perkins Coie LLP and Affiliates

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January 24, 2006

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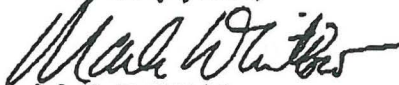
Road on the west side of McLoughlin. Stacking conditions at the east side intersection regularly result in cars and trucks backing up into Main Street. Code Section 19.1405.5 contains approval criteria for the city's transportation planning standards. That section includes a requirement that "the proposed development will not result in hazardous or unsafe transportation conditions or unacceptable level of service impacts that cannot be mitigated." MMC § 19.1405.5.D.

Although the applicant has submitted required information regarding compliance with the landscaping standards, the applicant has not provided adequate evidence on which the planning commission could base a conclusion that the proposed development will not result in "hazardous or unsafe transportation conditions" in the area of the North Industrial District. Because the applicant has not established compliance with this standard, the applicant also cannot satisfy the CSO zone requirement that the levels of operation of the proposed use are "reasonably compatible with surrounding uses," MMC § 19.321.4.A.3.

Given the significance of the North Industrial District to the economy of the city, as established by the economic data attached to our prior submittals, the Planning Commission should not allow Tri-Met's proposed development to proceed without requiring them to provide adequate transportation system mitigation that will alleviate the impacts of the park and ride facility on this important employment area.

For the above-stated reasons, and the reasons stated in our prior submittals, the Tri-Met application should be denied.

Very truly yours,


Mark D. Whitlow

MDW:raa

cc: Steve Abel
North Industrial District property owners

Attachment 4

The following are additional comments from staff in response to written comments received from Perkins Coie on January 10, 2006, January 17, 2006, and January 24, 2006.

1. **The proposed facility will have negative impacts on the economic vitality of the employment area.** (Argument: Traffic problems will occur due to limited points of access onto McLoughlin Blvd. and the constrained intersection with Milport. Adding a new high traffic use will further restrict traffic operations in the area and will negatively impact the continued economic development strength.)

Staff: The City's traffic consultant reviewed the applicant's traffic impact analysis (TIA) conducted by DKS Associates and found the TIA demonstrated that all study intersections and driveways after the park and ride begins functioning will operate within the City of Milwaukie and ODOT v/c and LOS standards under both existing and total traffic conditions. The City's acceptable level of service is LOS D for all intersections, except those on Oregon Highway 99E. On the level of service requirements for Highway 99E are LOS F for the first hour of the morning or evening two-hour peak period and LOS E for the second hour of the morning or evening two-hour peak period.

The DKS memorandum notes the side-street delays at the intersection of SE Main Street and Milport Road are approximately 40 seconds when considering the long 120 second cycle length at the intersection of McLoughlin Blvd and Milport. This delay corresponds with a level of service E. In addition this intersection has unconventional intersection control, which stops northbound and southbound vehicles, while giving eastbound vehicles a free movement. These deficiencies currently exist and staff believes the addition of traffic generated by the proposed park and ride facility would not have a significant effect on delay at this intersection. The traffic volumes at the intersection are relatively low, and are expected to remain low with the addition of park and ride traffic.

Heavy Vehicle Volumes

The AM and PM peak hours for typical park and ride traffic does not coincide with the AM and PM peak periods of documented truck activity. The highest truck volumes occur during mid-day at which time the traffic study demonstrates the park and ride will generate insignificant traffic.

A majority of heavy vehicles currently access Main Street from the Ochoco Street intersection to the north rather than at Milport road. The revised site plan consists of only one driveway located south of Milport Road, further reducing the potential of conflicts between trucks and park and ride traffic on Main Street north of Milport Road. The City's traffic consultant

reviewed the applicant's heavy vehicle analysis and agrees with its conclusions.

- 2. Siting the Tri-Met facility in the Southgate location is premature, given the status of the City's transportation system planning.**

Staff: The proposal is for the establishment of a park and ride facility. The applicant's narrative does not indicate an intent to use the site as a transit center/light rail station. If the applicant wishes to convert the park and ride into a transit center, submission of a new Community Service Overlay and Transportation Plan Review application will be required. The site cannot be converted to a transit center without additional formal review.

- 3. The applicant's transportation impact analysis is incomplete.**

- a. Failure to provide queuing analysis.**

Staff: The applicant has submitted an operation analysis and simulation with updated 2005 traffic count information as part of the land use application. The analysis included the intersection of SE Milport Road and SE Main Street/ McLoughlin Blvd. The applicant found that the intersection would perform within the City of Milwaukie and ODOT performance standards. The City's traffic consultant, David Evans and Associates, has review the analysis and agrees with the applicant's findings. The applicant provided additional analysis of the McLoughlin Blvd.-SE Main Street linkage and found that this connecting road will operate at an acceptable level (See attachment 2 of applicants rebuttal)

- b. Failure to provide TPR analysis.**

Staff: The applicant submitted a written narrative responding to Section 1400 – Transportation Planning Design Standards and Procedures and submitted a Transportation Impact Analysis along with additional supplemental material. All documents were reviewed by city staff and found to be adequate.

- 4. Applying the Community Service Overlay (CSO) Zone is a map amendment that requires compliance with the statewide planning goals, Metro's title 4 and the transportation planning rule.**

Staff: The comment is incorrect. A map amendment is not required. The CSO zone is an existing zone, laid over the entire city. The CSO purpose statement provides for the development of special uses such as schools, daycare facilities, churches, public transit facilities, and parks. Public transit facilities are listed as permitted Community Service Overlay uses (Section 19.321.2(b)(8)). Upon review of applicable code criteria and analysis of the traffic impact study, the Planning Commission finds the project site is an appropriate location for a 329 space park and ride facility.

5. City code compliance issues.

a. 15% landscaping criteria of underlying zone not met.

Staff: The applicant has revised the proposal to comply with the 15% landscaping requirement.

b. Variance Criteria.

Staff: The applicant has revised their application to omit all variance requests. The applicant will dedicate 11 feet of right-of-way along Main Street and will restripe the roadway to accommodate required bike lanes. A variance for on-street parking is not required, the Transportation System Plan allows omission of on street parking when a bike lane is provided. The site will serve as a transit facility, on-street parking is not be permitted adjacent to the site in order to accommodate bus pick-up and drop-off.

6. Specific landscaping and buffering requirements 503.19.

Staff: The off-street parking code states that the standards and procedures of this section apply to uses with nonconforming parking and loading facilities in an attempt to bring them into conformance with current standards when a change in use occurs. The existing parking area is non-conforming in regards to landscaping requirements. The applicant has revised the application to bring the nonconforming parking area into closer conformance with the parking code by adding areas of landscaping, up grading lighting, and installing wheel stops. A new parking area will be created in place of the demolished theater site. The new parking area conforms to requirements of Section 500, including landscaping.

7. Lack of proportionality analysis.

Staff: Main Street is limited on the west side by McLoughlin Blvd. Normally, the applicant is responsible for providing improvements (curb, sidewalk, planter strip, and bike lanes) on the street adjacent to the site, however in this case, there is no room for construction of required improvements on the west side of Main Street, because it abuts McLoughlin Blvd. Since the west side of Main Street abuts McLoughlin Blvd, there is no room to improve Main Street; it would conflict with travel lanes on McLoughlin Blvd. The applicant must dedicated required right-of-way and construct improvements (in this case bike lanes on both sides of Main Street, and new curb, sidewalk, and planter strip on the east side of Main Street) along the 580 feet of street frontage adjacent to the project site.

The proposed development does not violate the level of service requirements of any intersections within the area of study, therefore impacts are minimal and mitigation is not required. In cases of Nollan v. California Coastal Commission and Dolan v. City of Tigard, the United States Supreme Court has ruled that local governments can impose exactions only if the exaction is directly related to and roughly proportional

to an impact of the development. Any exaction that is not directly related to or roughly proportional to an impact of the development is an unconstitutional exaction. The city is bound to act in a constitutional manner and cannot apply its standards if those standards would result in an unconstitutional exaction. As a result the City cannot condition the applicant to reconstruct the intersection of Milport Road with Main Street and McLoughlin Blvd.

The adjustment has been granted to allow use of the existing 5.5-foot curb tight sidewalk upon finding the existing sidewalk will adequately and safely serve the development. The applicant will dedicated 11 feet of right-of-way to allow for future construction of a setback sidewalk and planter strip. The applicant has also withdrawn the variance request to omit the bike lane. A condition has been adopted requiring the applicant to restripe the roadway to accommodate required bike lanes.

8. Illegality of prior park and ride use.

Staff: This is not a criteria to be reviewed when deciding whether or not the proposed park and ride should be allowed at this site. The applicant has submitted a CSO and TPR application to site a park and ride facility at the former south gate theater site. Attachment 1 of the February 14, 2006 Planning Commission staff report demonstrates compliance with applicable code criteria. Staff believes as conditioned, the proposal complies with all applicable code criteria.

9. Traffic issues

(Argument: 1405.5 requires the proposed development will not result in hazardous or unsafe transportation conditions or unacceptable level of service impacts that cannot be mitigated. DKS Associates fails to include analysis of the intersection allowing access from north bound McLoughlin onto Main street south of highway 224, which is a primary access point for the industrial district.)

Staff: The applicant provided additional analysis of the McLoughlin Blvd. SE Main Street linkage south of Highway 224 and found that the connecting road will operate at an acceptable level (See Attachment 2 of applicants rebuttal). Based on observation, the applicant states that there is very little traffic volume at the linkage intersection in the peak hour. The applicant states that the traffic counts show that SE Ochoco Street is the primary access point to the industrial district and not the linkage road.

MEMORANDUM

TO: Community Development Department

THROUGH: Paul Shirey, Director of Engineering

FROM: Zach Weigel, Civil Engineer

RE: South Gate Park and Ride – 9600 SE Main Street
CSO-05-04 and TPR-05-04

DATE: February 1, 2006

Rebuttal for exceeding width standards on the southern most driveway access at 9600 SE Main Street

Section 19.1413.2(B) of the Milwaukie Municipal Code, herein referred to as the Code, states that curb cuts for driveway access shall be at least 10 feet from the property in all districts other than residential. Curb cuts are not defined by the Code, but are similar to the driveway apron and do not include the end slopes of the driveway. The proposed development is located in a manufacturing zone. The southern most driveway access to 9600 SE Main Street is located 10 feet from the southern most property line. The driveway complies with Section 19.1413.2(B) of the Code.

Section 19.1413.3(C)(6) of the Code states that the maximum driveway width for an industrial use is 45 feet. This section of the Code adds that the maximum driveway widths for industrial uses may be increased if the City Engineer determines that more than two lanes are required based on the need for turning lanes.

An existing access easement serving the property at 9850 SE Main Street is located on the south end of the Tri-Met property, 9600 SE Main Street. The southern most driveway on the Tri-Met property is the access point for the easement. Tri-Met has submitted turning radius templates showing the need for a 50-foot wide driveway access. The submitted templates use a design vehicle that would be expected to use the easement to access the property at 9850 SE Main Street. Also, the property at 9850 SE Main Street is zoned for industrial use.

The City Engineer has determined that additional driveway access space is needed to accommodate vehicles accessing 9850 SE Main Street via the access easement. The 50-foot driveway width proposed by Tri-Met for the southern most access point is acceptable in accordance with Section 19.1413.3(C)(6) of the Code.

Nesbitt, Lindsey

n: David Aschenbrenner [dlasch@comcast.net]
t: Saturday, January 14, 2006 1:07 PM
To: Lindsey Nesbitt
Cc: Paul Shirey; Kenny Asher
Subject: TriMet Comments

Lindsey,

Please ask TriMet to present the artwork that they are planning for the Park and Ride lot at Southgate. The commission should see what they are approving. Also I would like to make sure that the Crosswalks are well marked, lighted and signed for crossings of Main St., Millport and McLoughlin Blvd. If we are putting a Park and Ride at this location we need to make sure it is safe for all users on both legs of their trip. There has not been much said about the returning users that get dropped off on the west side of Main St.

David Aschenbrenner
11505 SE Home Ave.
Milwaukie, OR 97222
503-804-3837