

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, APRIL 27, 1999

COMMISSIONERS PRESENT

Donald Hammang, Vice-Chair
Judith Borden
Barbara Cartmill
Tracy Cook
Mike Miller

STAFF PRESENT

Jim Crumley,
Inter. Planning Dir.
John Gessner,
Associate Planner
Janet Wright,
Assistant Planner
Gary Firestone,
City Attorney
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Howard Stewart

1.0 CALL TO ORDER

Vice-Chair Hammang called the meeting to order at 6:00 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 INFORMATION ITEMS -- City Council Minutes, April 6, 1999

4.0 PLANNING COMMISSION MINUTES -- April 13, 1999

Mike Miller moved to approve the minutes of April 13, 1999, as presented.
Tracy Cook seconded. MOTION CARRIED 3-0 with two abstentions. Judith Borden and Barbara Cartmill were not present at that meeting.
Ayes: Cook, Hammang, Miller; Nays, 0.

5.0 PUBLIC COMMENTS

Speaking: Jim Howell, 3325 NE 45th Portland, OR

Mr. Howell stated that he was here tonight representing Association of Oregon Rail and Transit Advocates. He passed out information on a proposal for Tri-Met

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to acquire and use the existing rail bridge across the Willamette River between Lake Oswego and Milwaukie for a transit shuttle.

The South Willamette River study was concluded and no site was identified for a new highway bridge. The recommendation from Metro MPAC is that no new bridge be built across the river.

Not considered in the study were the existing railroad and bridge, which is capable of efficiently carrying thousands of daily commuters. This section of track, owned by Union Pacific Railroad, is called "the Forgotten Bridge" and is currently used for freight. If Tri-Met (or other public body) acquired the line, passenger service could be added. This would make transit more attractive than automobile and would reduce traffic on McLoughlin Blvd. and the Sellwood Bridge.

He concluded that he wanted to make the Planning Commission aware of this proposal. The Transit Center planned for Milwaukie would be an asset to the shuttle. Consideration should be given to a transit site behind the Milwaukie Junior High School, along the tracks to accommodate this as a transit connection.

Vice-Chair Hammang asked for the location of the bridge. **Mr. Howell** stated that this bridge crosses the Willamette River and was built the same time as the Hawthorne Bridge. There is a connection and it could be modified to also provide bicycle and pedestrian traffic if it were in public ownership. He feels that the Union Pacific Railroad would be willing to turn this line over to a public agency. As long as the freight operation could be maintained, it may be possible to get the bridge at little or no cost.

Judith Borden asked what the Association plans to do in the future. **Mr. Howell** stated that the next step would be to convince Milwaukie and Lake Oswego to get Tri-Met and METRO to consider this proposal. Once the line is acquired, funds will be needed to make improvements to the bridge. Funding is available from the Federal Government to upgrade the bridge.

Speaking: Art Lewellen, 3205 SE 8th Street, Portland

Mr. Lewellen stated that he is here before the Commission to make a proposal regarding the Regional Town Center plans. He passed out drawings and maps that describe his design proposal.

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He is proposing that Monroe and Jefferson Streets be closed to McLoughlin and level the parking. By putting the parking next to the highway, it will preserve the view to the River. Having buildings next to the River will only obstruct the views. He suggested leveling up the surface parking and lowering the highway so the view is unobstructed.

The proposal has been amended to create a parking structure underneath the 3-block stretch. With parking underneath it keeps the upper surface level and allows for a pedestrian overpass over the lowered highway.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: Howard Thompson
Owner: Howard Thompson
Location: 3406 SE Olsen Street
Proposal: Minor Land Partition to create 3 lots and a Non-Conforming Use application to continue the use of an existing shop for an auto restoration business on lot 1.
File Number: MLP-98-06/NCU-98-04
NDA: Ardenwald

Vice-Chair Hammang opened the public hearing on File Number MLP-98-06 and NCU-98-04. This is a request to allow a Minor Land Partition to create 2 lots and a Non-Conforming Use Application to continue the use of an existing shop building for an auto restoration business. Criteria to be addressed are found in Section 7.32.040 of the Subdivision Ordinance; Section 302 and Section 1000 of the Milwaukie Zoning Ordinance.

Vice-Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. There were none. He asked if any member of the Planning Commission visited the site; five hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. 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

Janet Wright reviewed the Staff Report with the Commission. An overhead was shown of the subject site and surrounding area. Pictures were also shown of the site. She noted that the Application had been revised for the creation of two lots,

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not three, and to continue the non-conforming use of the auto restoration business. This Application was submitted prior to the adoption of the new partitioning criteria on November 17, 1998, and must be reviewed under the prior criteria.

Staff contends that the partition of the property substantially alters the property enough that the business application should not be allowed to continue. The area around property is intensely residential. With the proposed additional residential lot, this increases the residential uses in the area and puts pressure on the business to conform to view, noise, and DEQ issues, etc.

Staff recommends approval of the minor land partition, and recommends that the non-conforming use of the auto restoration business be denied.

CORRESPONDENCE RECEIVED BY STAFF

Janet Wright stated that no additional correspondence has been received; however, she did receive a call from Michelle Greeley-Roberts, Chairperson of the Ardenwald Neighborhood Association, who stated that they are in support of Staff's recommendation.

QUESTIONS FROM THE COMMISSIONERS

Judith Borden asked what types of complaints have been received on this auto restoration use. **Janet Wright** stated that most of the neighborhood does not like the look of the business. Many cars are parked at the site in various states of repair. Complaints have been received about noise, cars parked on the site, equipment, site appearance, etc.

When the non-conforming use was approved, the Applicant was required to construct a fence to shield the view of the cars. Cars are reported to be parked outside the fence and there are more cars on the site than was allowed in the Non-Conforming Use approval.

Judith Borden noted that one complaint listed was about the expansion of the business. She asked how this expansion impacted more complaints. **Janet Wright** explained that the expansion of the business meant more cars. The number of cars on site, along with the noise, is a complaint of the neighbors.

Mike Miller noted that the Application is proposing two driveways, side-by-side. He asked if there is a concern about the impact of the two driveways and the

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possibility of a third driveway. **Janet Wright** stated that there were no concerns expressed by Public Works.

Mike Miller asked if an Environmental DEQ report will be required before building permits are issued. **Janet Wright** stated that this could be required as a condition of the building permit.

APPLICANT PRESENTATION

Speaking: Howard Thompson, 4310 SE Franklin Street, Milwaukie

Mr. Thompson stated that he is asking to build a house on his property on Olsen Street. He has operated his auto repair shop at this site for the last two years. This business is located on the southeast corner of his property.

In December 1996, he rented the auto-repair shop from Barbara Shulz, who had a legal business, Harold Bottoms Auto Repair.

January 10, 1997 Applied for Business License, paid \$35 fee, and was told that his business license would be mailed to him.

May 9, 1997 A letter was received stating that an auto repair shop was not permitted in the R-7 Zoning District signed by Dan Bartlett.

Mr. Thompson then contacted a former Mayor for the City of Milwaukie, Mr. Bill Hupp. He indicated that the shop had been in operation for 40 years. Bill Hupp and himself met with Senior Planner Dan Pava. It was found that a business license had been issued in 1994/95 and that a letter had been sent to Mr. Bottom stating that he had not renewed his 1996 license.

January 7, 1998 Again applied for a business license and paid a \$35 fee.

January 21, 1998 A letter was received from Dan Pava stating that an auto repair business is a legal non-conforming use at this site. There was a restriction that this non-conforming use was limited to the quonset hut and the immediate surrounding area in the southeast corner of the lot. Further, that the six-foot high fence be built no later than June 30, 1998.

A contractor was hired to build the fence at \$4,000. **Mr. Thompson** then contacted Susan Heiser, Senior Planner, to get the exact location of the fence. He was told that the fence needed to be located 20-feet back from the right-of-way.

Paul Roeger assured him that the 20-foot setback was correct. The contractor was instructed to build the fence in that location.

May 18, 1998 Susan Heiser, Greg Malby, and myself met to confirm the location of the fence. The City asked that the fence be moved 30-feet from its location. He agreed and moved the fence. Later, he received a Revised Notice of Director's Determination that indicates where the non-conforming use is located on the property.

After re-siting the fence, **Mr. Thompson** met with Susan Heiser on his property to confirm the location. Bill Hupp was present at this meeting. Mr. Thompson asked Susan Heiser what could be done with the vacant property on the southwest corner of his lot. She informed him that anything permitted in the R-7 Zoning was legal. Mr. Thompson asked about a new house for himself and Susan Heiser informed him that he would have to apply for a Minor Land Partition and a flag lot. This would be an administrative process and there would be a pre-application meeting. The pre-application meeting was scheduled and held.

September 3, 1998 Met with Janet Wright at the pre-application appointment. He was told that he needed to apply for a Minor Land Partition at the cost of \$980.

October 9, 1998 Application submitted with check for \$980.

November 5, 1998 Letter from Janet Wright deeming the Application complete and stating the need to submit an application for a non-conforming use approval. He thought this was approved on May 18, 1998.

Mr. Thompson contacted Janet Wright and was told that the shop would have to stop doing business and removed before he could get approval to build a new home.

November 13, 1998 Paid \$1,605 for a non-conforming use approval.

December 14, 1998 Letter from Janet Wright stating that the Application was complete.

Mr. Thompson stated that it was never his intent to close his business or tear down his shop. He has spent a lot of time and money to comply with the City's conditions. He

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feels that the staff has no set rules to go by since each planner has changed conditions of his business. He is asking for a house to live in and to continue to operate his business. It has been suggested several times by Janet Wright that he tear down the house that exists on the property and close the business. He does not feel that she can make that decision for him. Susan Heiser originally told him that the decision was administrative to build another house on the property, dividing it into three lots.

When he came to the first Planning Commission meeting, he withdrew the Application for three lots and reapplied for two lots. He stated that he only applied for the third lot originally because he felt he was paying the \$980 for the Minor Land Partition and he could leave the third lot vacant. This is when he was told he was changing the non-conforming use by the way he was accessing the shop.

Mr. Thompson stated that he is here tonight to ask for one flag lot to construct a new house. He asked how the use of his auto repair shop is changing by his adding a house that conforms to legal zoning for this property. A new house will not be detrimental to the neighborhood and will screen the view of the repair shop from the neighbors. He does not understand why he has to pay the non-conforming use fee as his lot is in conformance to the zone. He told the Commission that he would just like to know how he can continue the use of the business and build a new home.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR

Speaking: Bill Hupp, 2626 SE Washington, Milwaukie OR 97222

Mr. Hupp stated that he was a member of City Council for ten years and served two terms as Mayor for the City of Milwaukie. He has lived in Milwaukie since 1957 and has had a business in downtown Milwaukie for 20 years.

Mr. Hupp voiced concern about the confusion in processes that this Applicant has endured with this Application. There has been a number of discrepancies that Mr. Thompson has had to endure. Howard Thompson was born and raised in the City of Milwaukie. He has married and his dream is to own his own business. The garage that was purchased has been in operation for 40 years, many of which Mr. Hupp stated that he had been a customer. Considering this information, records were updated and a license was issued.

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Mr. Hupp stated that this was a pre-existing business. Mr. Thompson would like to build a home and live on his property. He should not have to tear down the business; let him live his dream.

Mr. Hupp then read into the record Milwaukie Mission Statement from the Citizens Handbook, which quoted Mike Richardson, Darkhorse Comics..."I could operate my business anywhere in the world I chose. I chose Milwaukie. The sense of community and can-do attitude makes it a great place to do business." The Vision Statement of the City Council states, "Milwaukie is a good place to live and work which is clean and safe with a government that is responsive and provides quality service. The City of Milwaukie is committed to achieving and maintaining the history and the future that defines Milwaukie and distinguishes it from other areas, a living safe environment including preservation and enhancement of built and natural areas, public and private partnership to maintain business and individual opportunities."

Mr. Hupp reiterated that he is very concerned about the discrepancies in this Application. He was in attendance at the last meeting. After the hearing had been closed, testimony was given by an adjacent neighbor. Mr. Hupp voiced concern that he was not allowed to testify. In conclusion, Mr. Hupp asked the Commission to take into consideration the process this Applicant has gone through when they decide whether he can have his new home and business too.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: David Webb 1209 14th Street, West Linn.

Mr. Webb stated that he is a builder. Mr. Thompson contacted him about his situation. He has done partitioning and subdividing in Milwaukie over the years and he helped Mr. Thompson draw up his site proposal. He met with City staff and he felt there was a bias against this Application, without justification. He asked if there were letters or remarks from people that warranted this difficulty. A remark was made that the neighbors felt the property would be devalued if this lot were allowed.

Mr. Webb stated that he has been an appraiser and real estate broker for 40 years. He does not feel the property value will be devalued by having a \$170,000 home next to this business. The market would not be able to find three comparable sales to substantiate devalue of the property.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Bill Hupp, 2626 SE Washington, Milwaukie OR 97222

Mr. Hupp asked how this Application, which was originally presented as an administrative process, is now a whole new ball game. Why doesn't the City do everything in their power to help their citizens?

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Leona Goldsmith, 3411 SE Olsen, Milwaukie

Ms. Goldsmith stated that her property is zoned for houses, not business. She would like to see this area stay that way. Mr. Thompson has other businesses, at other locations. She is not in opposition to his building a home. She is in opposition to the business.

QUESTIONS FROM THE COMMISSIONERS

Barbara Cartmill asked if the business was there when she purchased her property? **Ms. Goldsmith** stated that yes it was, but when the business was sold, it should have fallen under the grandfather law. The grandfather law should have been discontinued a year later. There was another business there on the street that was a mess, but it has been improved. This property can be cleaned up too.

Speaking: Philip Nelson, 3739 SE Olsen Street

Mr. Nelson is member of Ardenwald Neighborhood Association. The Association concurs with staff's finding for approval and denial. This is the Applicant's property, his business, and his decision on what to do. However, nothing has been said about the effect on the neighborhood or the residents. They have fought for a long time to not have flag lots. They are stuck between a rock and a hard place; they either get a flaglot, which will be the first, or they get a non-conforming business in a neighborhood designed for residential purpose.

This business has been here for years, but it is time that the residents and neighborhoods take priority over business. This is a residential area. The Council had the opportunity to close down this area and restrict it, but they chose to allow

the business to expand. He does not want to see more traffic on this street. He feels this business is where a house should be. He complimented the owner on the work that had been done in cleaning up the business.

Mr. Nelson stated that he agrees with staff; the structure of the property will change. Once divided, the essence of this property changes. It is only a matter of time and someone else down the street will want to do the same thing. This will set precedence.

QUESTIONS FROM THE COMMISSIONERS -- None.

ADDITIONAL COMMENTS FROM STAFF

Janet Wright stated that the non-conforming use approval in May, 1988, was approved for the parcel as a whole. Staff's interpretation of the non-conforming use criteria is that the subdivision, even though the new tentative plan reduced from 3 lots to 2 lots, it alters the property, thereby affecting the previously approved non-conforming use.

Gary Firestone stated that the legal standard in Section 802 of the Milwaukie Zoning Ordinance, provides that, "A non-conforming use may be continued but shall not be altered unless the alteration is approved by the Planning Commission." The issue is whether the use is being altered. Use is defined as, "The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained."

Staff's position is that by changing where the lot boundary is located, it is changing the arrangement of the use." It is the Planning Commission's responsibility to interpret the code and determine whether they agree with staff's interpretation.

QUESTIONS FOR CLARIFICATION

Tracy Cook asked if the Applicant would be living in the newly constructed house? **Mr. Thompson** replied yes.

APPLICANT CLOSING COMMENTS

Speaking: Howard Thompson, 3406 SE Olsen Street, Milwaukie

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Mr. Thompson stated that if he lived on the site in a new home, he would be able to take better control of the aesthetics of the property and the business. He plans to continue to clean up and upgrade the image of the business. He is more than willing to work with the neighbors and their concerns about the way this site looks.

Mr. Thompson stated that at this point he has not done improvements to the repair shop building because he was afraid it would be considered a change in the use. Staff told him that improvements to the repair shop would change the use. He does not want to do anything that will cause him to lose his license. He has offered to re-front the building and make various improvements. It is his understanding that he can only maintain what is existing.

Improvements done include painting the house, construction of a fence, and roofing repairs. He is afraid to do more, in fear of losing his license. Building a home and living on the site will enable him to do a better job of maintaining and improving his property and business.

QUESTIONS FROM THE COMMISSIONERS

Barbara Cartmill asked if the conditional use permit was explained to Mr. Thompson when he purchased the business. **Gary Firestone** explained that there was no determination made before the purchase of the property. Mr. Thompson was given a non-conforming use determination after the purchase and this determination set the perimeters of the non-conforming use.

Mike Miller asked if the Applicant checked to see if the business was in conformance with City regulations before it was purchased. **Mr. Thompson** stated that he rented the shop from the owner before purchase. This shop building was used as a rental. Barbara Shulz, the previous owner, told him that there was a license for the business and that it needed to be renewed. The City stated that they had no record; however, later it was determined that there was a license. Ms. Schulz purchased it in 1973, and before that time, this building was rented out to an auto repair shop.

Mr. Thompson stated that both Dan Pava and Susan Heiser had indicated that the area for the flag lot is not non-conforming. The area around the shop was required to be fenced and was determined to be the non-conforming area. He does not understand how this all works.

Mr. Webb indicated that the non-conforming use determination restricted the use to the south one-third of the property.

DELIBERATION AMONG COMMISSIONERS

Vice-Chair Hammang closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Judith Borden asked if the auto repair shop is a lawful business and if there were no Application, would Mr. Thompson be allowed to continue the business as it exists today? **Gary Firestone** stated that this is a lawful business and Mr. Thompson could continue that business. If it is found that the alteration changes the business, the non-conforming use only continues if the Application is withdrawn.

Tracy Cook asked if Mr. Thompson could build a new house on his property if there was no Minor Land Partition. **Jim Crumley** stated that there can be only one primary use per lot; the house could not be built. **Gary Firestone** stated that there is a possibility of removing the existing house on the lot, and rebuilding a new home. It may have to go through the non-conforming process because it will have two primary uses; repair shop and one house. As long as the lot stays in tact, there is no issue of non-conforming use alteration. **Jim Crumley** stated that the question is whether or not the Applicant should be allowed to modify the non-conforming use by reducing the area of the lot. This is an intensification of the non-conforming use.

Judith Borden asked if the non-conforming use applies only to a portion of the property; not the entire site. **Gary Firestone** stated that this is part of the question of interpretation of what is a non-conforming use. The definition of use can be interpreted as how the property is arranged. This can be interpreted as a change in the arrangement of the property. The non-conforming use portion was a part of the entire lot. The lot is being rearranged. It can also be interpreted that the use is limited to the area of the auto repair shop.

Mike Miller asked if the lot was sold, would the non-conforming use change. **Gary Firestone** stated that the non-conforming use does not change with the sale of the lot. It use can be continued as long as the use is not discontinued for a period of time.

Barbara Cartmill asked for clarification of the Determination of Non-conforming Use. Its states in this document that the auto repair business shall be limited to the one-third southeast portion of the lot. **Gary Firestone** stated that the determination explains what exactly the use is and the restrictions or limits of that use. This can be interpreted to say that this is the non-conforming use and everything else is conforming. It can be interpreted that this is a non-conforming use on the lot. By changing the residence on the lot, it brings an additional residence closer to the non-conforming use. This could be seen as a change in the arrangement. There are some conditions that could be tied to ownership of the lots and the business, but the Applicant would have to agree.

Vice-Chair Hammang asked where this Application was in terms of the 120-day rule? **Janet Wright** stated that Mr. Thompson has signed a waiver to that rule.

Mike Miller noted that there were 12 documents submitted tonight. He would like to have more time to review the documents before making a decision. He suggested that the hearing be continued.

Vice-Chair Hammang re-opened the hearing to allow additional testimony and deliberations.

Mike Miller moved to continue the hearing on File Numbers MLP-98-06 and NCU-98-04, to May 11, 1999, to allow time for the Commissioners to review the information received tonight. **Barbara Cartmill** seconded. MOTION CARRIED 5-0.

Ayes: Borden, Cartmill, Cook, Hammang, Miller; Nays, none.

Recess was taken at 8:50 p.m. and the meeting reconvened at 8:55 p.m.

- 6.2 Applicant: Clackamas County Corrections
Owner: State of Oregon
Location: 9000 and 9002 SE McBrod
Proposal: Request to modify a previously approved Community Service Overlay to allow offenders in crime categories 9 and 10 be housed at the McBrod facility.
File Number: CSO-99-01
NDA: Historic Milwaukie

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Vice-Chair Hammang opened the public hearing on File Number CSO-99-01, a request to modify a previously approved Community Service Overlay (CSO-91-04). Criteria to be addressed are found in Section 321 - Community Service Overlay, and Section 1000 - Administrative Provisions of the Milwaukie Zoning Ordinance.

Vice-Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. **Barbara Cartmill** explained that she works for Clackamas County. She does not work for or have any dealings with the Clackamas County Correctional Facilities and asked if any member of the Planning Commission objected to her voting on this issue. There were no objections stated from the Commissioners. There were no other conflicts of interest or ex-parte contacts declared. **Vice-Chair Hammang** asked if any member of the Planning Commission visited the site; three hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. 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

Janet Wright reviewed the Staff Report with the Commission. An overhead was shown of the subject site and surrounding area. The Applicant is asking for a modification to a previously approved Community Service Overlay (cso-91-04). This proposal specifically excluded category 9 and 10 crime offenders from being housed in the existing facilities at 9000 and 9200 SE McBrod Avenue. They are asking that the previous CSO be amended to allow 11 of the 114 beds approved to be targeted for offenders in the 9 and 10 categories.

CORRESPONDENCE RECEIVED BY STAFF

Janet Wright stated that two neighborhood referrals were received and have been made available to the Commissioners. Several calls were received, mostly to get more information.

QUESTIONS FROM THE COMMISSIONERS -- None.

APPLICANT PRESENTATION

Speaking: Mark Rassmussen, 224 Frances Street, Molalla

Mr. Rasmussen introduced Steve Bracy, Manager of the Residential Center on McBrod. He is the Director of Community Corrections. In 1987, he was director and assistant director of the facilities at this location. In 1992, when the facility was built it was their decision to ask for specifications and limitations on level 9,10, and 11 offenders. In 1989, with sentencing guidelines, these categories were sent to prison. There was no need to deal with this population in their facilities.

Now these people are getting out of prison and the County's ability to deal with them are restricted. If they cannot use this facility, the prisoners will be housed on McLoughlin Blvd. in motels and hotels. Clackamas County Corrections would like to provide this service to this population.

Clackamas County has been there since 1980. In 1968, there was a security facility on these premises. An agreement has been made with OLCC (property owner) and Clackamas County (building owner) agreeing on the 10% bed space limitation. This limitation will assure that these offenders will not overwhelm the facility at any one time. They have no problem with reporting to Community Development what offenders are on the premises.

QUESTIONS FROM THE COMMISSIONERS

Mike Miller asked the male/female ratio. **Mr. Rasmussen** stated that there are currently 114 beds. Twelve of the beds in one facility are dedicated as female bed space. The other facility has a section that can be dedicated to females, but is all male right now.

Mike Miller asked if the residents of these facilities are all from Clackamas County or are they from all over the state. **Mr. Rasmussen** stated that all of the residents are from Clackamas County. The Probation officer places the offender in the facility.

Mike Miller asked if this is the only facility that Clackamas County operates? **Mr. Rasmussen** stated that Clackamas County only has these two facilities.

Judith Borden asked if this Overlay change would effect offenders currently living in the community? Will they come from the hotels and motels in the community to the security facility? **Mr. Rasmussen** stated that only the offenders who are having problems in their community location will be transferred to the facility.

Mike Miller asked what would be the transition period from not having these level offenders to filling the 11 beds requested? Would lower-level inmates be taken out to make room for the higher level offenders? **Mr. Rassmussen** stated that these are issues that need to be worked out with OLCC, the beds would not be filled immediately. They will be filtered in over time. Probably the 10% will be capped within six months.

TESTIMONY IN FAVOR

Speaking: Ed Zumwalt, 1088 SE 29th, Milwaukie

Mr. Zumwalt stated that Mr. Rassmussen and Mr. Bracy attended the Historic Milwaukie NDA meeting and this issue was discussed. The general feeling is against this application; however, he feels that the excellent presentation answered all questions and eased concerns. After the presentation, the vote was unanimous for the application.

QUESTIONS OR COMMENTS

Speaking: Mark Husbett, 659 SE Andover Place, Portland

Mr. Husbett asked for more details on the characteristics of the classification of these level 9 & 10 criminal activities. He would like to know what they mean and what type of behavior elements will be in the community. **Mr. Rassmussen** handed Mr. Husbett information defining these types of criminal activities.

Mr. Husbett then read into the records the statutes of Murder, Manslaughter I, Rape I, Sodomy I, Sexual Penetration I, Assault I, Kidnapping I, Arson I, Burglary I, Robbery I, and Kidnapping II.

Mr. Husbett asked how the work-release program works. If approved, what is the communication with the immediate community as to who these people are and how they can be identified. Other questions asked:

- Is this attracting more of a criminal element to the community than would otherwise be there?
- How many inmates come from Milwaukie?
- What is the success of the program and how can you guarantee success with these higher level criminal categories. What is track record of other facilities?

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- How are these individuals supervised differently than at hotels and motels?
- Where are the current motels and hotel that house these criminals and how does this effect zoning?

TESTIMONY IN OPPOSITION

Speaking: Mark Husbett, 659 SE Andover Place, Portland

Mr. Husbett stated that he is in opposition to increasing the categories of level 9 and 10 at these facilities. This is an unfortunate situation, but to change the categories will be introducing a higher level of criminals to his part of the community and the community in general.

Milwaukie is making plans for zoning for the downtown area. If criminals are being placed in the hotels and motels in the downtown area, how will the zoning be affected? Would the Commissioners who vote for this application need to declare a potential conflict of interest? **Gary Firestone** stated that any commissioner could consider new information. If the information raises a conflict of interest in their minds, then the conflict of interest should be declared at that time.

Mr. Husbett stated that people moved into this community because of zoning. This community character should not be changed to attract a certain element.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FOR CLARIFICATION -- None.

APPLICANT CLOSING COMMENTS

Speaking: Mark Rasmussen, 324 Francis Street, Mollala

Mr. Rasmussen stated that prior to 1968-1992, these category offenders were in state and county facilities. During that period of time, there was no significant increase based on the fact that these offenders were there. After evaluating complaints over a period of nine years, it found there were only 50 negative reports. This is relatively small compared to criminal activity elsewhere in Milwaukie. This is a safer environment than most people would suggest.

These people are already in this area, in this community. This facility is the best way to manage this population. About 65% of the people who complete the program are out over a two-year period. People who are on probation have about an 11% re-offend rate; those on parole, about 33% re-offend.

Speaking: Steve Bracy, 6308 SE Furnberg, Milwaukie

How does program work? This is a supervised program that is staffed 24hrs/7days a week by certified corrections officers. There is counseling staff at both buildings; seven at the 80-bed facility and three at the smaller 34-bed facility. These counselors help the inmates and residents address personal problems and community needs. All leaves from the facility are authorized; a count is taken every hour to determine residency. There must be an out-on-work or approved form of pass to leave the building. Alcohol and drug testing are done randomly at the facility. There is a 98 % clean rate.

What kind of notice is given about what offenders are in the area? Currently there is no notice as to who is in the facility. There is a condition of this application that both the Police and Community Development Department be notified of who is at the facility. Clackamas County Corrections has no problem sharing this information, even to neighborhood associations if they so request. He invited anyone who is interested to come in and look through their card/picture file to see who is there.

Are we bringing a higher criminal element into the neighborhood? Yes, bringing in this criminal element is upping the risk. Currently there is no structured place for this population. This facility will provide the structure and try to get them back on a positive track.

How many are from Milwaukie? A lion's share of the population is from the Oregon City/Milwaukie corridor. A high portion of people under supervision is under 97222 Zip Code.

What is the success rate and impact on the community? There is a consistent successful rate of 70%. How housing 9 & 10 level inmates will impact the community, he does not know. After a period of time, they can go back and get data. He does not feel there will be an impact.

How are these individuals supervised differently than if in a hotel? When an offender is on parole, an assessment is done to determine level of risk to re-

offend. That level of risk is then used to determine level of supervision. The level of supervision in this facility is complete supervision.

QUESTIONS FROM THE COMMISSIONERS

Vice-Chair Hammang asked if this was a locked facility? **Mr. Bracy** stated that the facility is locked. It is locked so no one can get in the doors. This is a minimum-security facility.

Mike Miller asked what is the maximum time an inmate would spend at this facility? **Mr. Bracy** stated that the average time is a year or less; anything over a year is a prison sentence..

DELIBERATION AMONG COMMISSIONERS

Vice-Chair Hammang closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Tracy Cook stated that she would rather see these offenders in this facility rather than the hotels and motels in the community.

Mike Miller stated that he does not want Milwaukie to be known as the housing facility for Clackamas County Corrections. If there is ever a request for expansion, he will be opposed. He hopes that other facilities will be placed in other areas. He asked that the Applicant work with the neighborhood to inform them of the sex offenders in the area.

Tracy Cook concurred that this facility should not be expanded.

Tracy Cook moved to approve CSO-99-01, a request to amend a previously approved Community Service Overlay (CSO-91-04) based on the report Findings and Conditions of Approval, deleting Condition 3, contained in Exhibit 1.

Barbara Cartmill seconded. MOTION CARRIED 5-0.

Ayes: Borden, Cartmill, Cook, Hammang, Miller; Nays 0.

- 6.3 Applicant: Clackamas County Service District No. 1
Owner: Clackamas County
Location: 11525 SE McLoughlin Blvd.
Proposal: Install order control devises at the Kellogg Creek Treatment Plant.
File Number: CSO-99-02/CU-99-01/MC-99-01

NDA: Island Station

Vice-Chair Hammang opened the public hearing on File Number CSO-09-02, CU-99-01, and MC-99-01, to allow the installation of odor control devices at the Kellogg Creek Treatment Plant. Criteria to be addressed are found in Sections 311, 320, 321, and 325 of the Milwaukie Zoning Ordinance.

Vice-Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. **Barbara Cartmill** explained that she works for Clackamas County. She does not work for Clackamas County Service District #1 and asked if any member of the Planning Commission objected to her voting on this issue. There were no objections stated from the Commissioners. There were no other conflicts of interest or ex-parte contacts declared. **Vice-Chair Hammang** asked if any member of the Planning Commission visited the site; five hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the Staff Report. 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

John Gessner reviewed the Staff Report with the Commission. An overhead was shown of the subject site and surrounding area. Clackamas County is seeking approval to construct odor control improvements at the Kellogg Creek Treatment Plant. The proposal requires three separate applications; Willamette Greenway, Community Service Overlay, and McLoughlin Boulevard Overlay.

Discussions with the Applicant resulted in some changes in the Conditions of Approval. John Gessner reviewed those changes with the Commission.

CORRESPONDENCE RECEIVED BY STAFF

Letters were received and passed out to the Commissioners from:

- Letter from Judith Duncan to the Planning Commission Re: Kellogg Creek Treatment Plant proposal to install odor control devices at the Plant.
- Letter from Molly Hanthorn, Land Use Chair for Island Station NDA
- Letter from Janet Koch to Community Development Department

QUESTIONS FROM THE COMMISSIONERS -- None.

APPLICANT PRESENTATION

Speaking: Ted Kyle, Capital Program Management, 16770 SE 82nd Drive, Clackamas, Suite 200

Mr. Kyle introduced Randy Rosane, project manager for the project. To fix the odor problem additional facilities must be built. The director made a commitment to the Island Station Neighborhood Association to have this problem fixed in five years; that was two years ago.

This project will not increase the capacity of the plant to treat wastewater. It will not affect the useful life of the plant. This job is being done for one purpose only, to treat the odor problems. The proposed system has had the best performance record so far for treating a broad spectrum of odors.

Randy Rosane stated that the NCC controls are beneath the 100-year flood plan. If there were a flood, it would impact the operation of the plant. These controls will be moved above ground and enclosed it in a structure. A drawing was shown detailing the improvement. Another drawing was shown of other areas of improvement. A picture was shown of the biofilters indicating what they will look like when they are completed. Landscaping improvements are being planned that will buffer the view from the south.

The biofilter medium is a combination of wood chips and bark dust material. It supports organic life that eats odors. **Mr. Kyle** thanked the Island Station Neighborhood and the Historical Milwaukie NDA for meeting with them and coordinating with them on their efforts. The Neighborhood Association has requested that the Plant work with them on the digester gas incinerator storage project and they look forward to working with them.

It was asked if the cost would be wasted if the plant goes away? Any relief from the odors would be worth the cost. **Mr. Kyle** stated that they will re-coop the cost and the investment will be well worthwhile.

Mr. Kyle stated that he has read the Staff Report and concurs with its findings and conditions. There is a concern about Finding #6, which indicates that this project may extend the life of the plant. This is not true, it is not intended to increase the life of the Plant and it will not increase capacity.

QUESTIONS FROM THE COMMISSIONERS

Vice-Chair Hammang asked what percentage of order reduction is to be realized. **Mr. Kyle** stated that he did not have that information. This project will deal with the waste odor by an organic process. He cannot promise it will get rid of all order, if not, they will continue to look to a process that will.

Mike Miller asked what was the overall cost of the project? **Mr. Kyle** stated that the cost is about \$3 million.

Mike Miller voiced concern about the 40-year old trees being replaced. He asked if all the trees in the fenced area (20 trees) will be removed? **Mr. Rosane** stated that all of the trees that will be removed, would be replaced.

Mike Miller asked if the fence that presently borders McLoughlin Boulevard will be moved closer to the street? **Mr. Rosane** stated that the fence location will remain the same, just extended to the south and brought around to the west side of the existing berm.

Barbara Cartmill asked when the project would be finished? **Mr. Rosane** stated that the project should be done by January.

TESTIMONY IN FAVOR

Speaking: Ed Zumwalt, 1088 SE 29th, Milwaukie

Mr. Zumwalt stated that he is the co-chair of the Historic Milwaukie Neighborhood Association. On April 14th, the Neighborhood Association met with representatives from the Clackamas County Service District #1 and gave a great presentation of the project. The Association was impressed with the project. He believes they are doing the best they can

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Janet Koch, 1962 SE Eagle Street, Milwaukie

Ms. Koch stated that she has submitted a written objection to the proposal. It is said that the project will be an enhancement to the neighborhood. The area where the berm will be placed is up against the embankment of the railroad tracks.

In the last expansion of the Treatment Plant, the neighborhood tried to mitigate, but were told they would not be impacted. They are impacted visually and by the odor.

Ms. Koch stated that she is the closest to the incinerator. She has made numerous phone calls voicing concern about the shaking and rattling. She was told to call the odor control line. She asked why her calls to the Plant received no response?

Ms. Koch stated that she has structural problems. She is not sure if this construction is causing the damage. She is continually subjected to noises and rumbling and she has made several objections. No response has been returned to her.

She is here tonight to personally object to this project. She does not feel any further expansion should be approved. She also voiced concern about replacing the incinerator before finding out what will take its place.

QUESTIONS FROM THE COMMISSIONERS -- None.

ADDITIONAL COMMENTS FROM STAFF

John Gessner reported that the biofilters will be 4-feet above grade and 6-feet below grade. There will be potential view from McLoughlin Boulevard that will need view mitigation. The ducting itself will be running above grade. The ducting may also need view mitigation.

John Gessner pointed out the incinerator on the site map. It is bounded by several large trees. The neighborhood has voiced concerns about the gas incinerator and storage. The Planning Commission has the authority by the CSO process to impose reasonable conditions to insure that the use is compatible with existing uses, such as building location, setbacks, heights, minimize impacts of noise and lights.

Staff has encouraged the Applicant to consolidate future improvements so the Commission would have full understanding of the project.

CITY OF MILWAUKIE PLANNING COMMISSION

Minutes of April 27, 1999

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QUESTIONS FOR CLARIFICATION

Tracy Cook asked Staff if Finding #6 was a concern about the extension of the Treatment Plant? **John Gessner** stated that this is an acknowledgment of some of the concerns of the neighborhood. Staff is not making any determination for the Commission in this regard, only reflecting what was heard from the community.

Vice-Chair Hammang asked if the rumbling that is heard by Ms. Koch is from the turbulence created from the burner exhaust fans? **Mr. Kyle** stated that it probably is the case.

APPLICANT CLOSING COMMENTS

Speaking: Ted Kyle, Capital Program Management, 16770 SE 82nd Drive, Clackamas, Suite 200

Mr. Kyle stated that the odor would not get better unless this project is done. This proposal does not expand the Plant; in fact, it prevents expansion because it uses the land that was designated for expansion to the south. It was concluded in 1996 that expansion of this site was not in the district's interest. This decision was adopted by the County Commissioners.

Randy Rosane stated that the exposed area of the biofilters would be about four feet above ground. The berm area in the back will be about four feet above ground. Basically, the view of the biofilters will be blocked. The ducting will be about 4-5 feet above ground. I will not work underground. The blower station piping will be below ground. There will not be much that can be seen from McLoughlin Boulevard due to the hedges and trees blocking the view.

QUESTIONS FROM THE COMMISSIONERS

Vice-Chair Hammang asked about the noise concerns expressed by Ms. Koch. **Mr. Kyle** stated that this noise is a rumbling sound that happens when the gas ignites. A new process is being reviewed for a new burner that is quieter and contained within the stack itself. This new process is still being reviewed.

Vice-Chair Hammang asked if the Plant is responsive to neighborhood concerns? **Kyle** stated that they try to be as responsive as possible. Their policy is to be a good neighbor.

DELIBERATION AMONG COMMISSIONERS

Vice-Chair Hammang closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Mike Miller stated that this project includes an expansion of the plant that takes away from the waterfront view and creates a closer proximity to the Island Station neighborhood. All of the neighborhoods should be able to review this plan before a decision is made. He would feel more comfortable to delay the decision because there are too many unknowns. The Commission is being asked to approve a proposal that is not yet complete.

Vice-Chair Hammang stated that he doesn't understand findings and conditions or their implications. He would prefer a drawing that is a rendering of the facilities. He feels as if he is filling out a blank check.

Tracy Cook stated that she, too, would like more information.

Mike Miller stated that he does not feel he can support the perception of the Plant being expanded.

Vice-Chair Hammang re-opened the hearing to allow additional testimony and deliberations.

Tracy Cook moved to continue the hearing on CSO-99-02, CU-99-01, and MC-99-01 for Clackamas County Service District Number 1 until May 25, 1999, to allow staff and the Applicant time to prepare more information and to invite more neighborhoods to respond to the Application. **Tracy Cook** seconded. MOTION CARRIED 4-0 with one abstention. **Barbara Cartmill** did not vote.
Ayes: Borden, Cook, Hammang, Miller; Nays, none.

7.0 WORKSESSION -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS


10.1 Historical Resources Commission Report -- No report.

10.2 Community Development Director Report -- None.

11.0 Next Meeting -- May 11, 1998

11.1 MLP-98-06/NCU-98-04

Mike Miller moved to adjourn the meeting of April 27, 1999. **Tracy Cook** seconded.
MOTION PASSED UNANIMOUSLY. The meeting adjourned at 10:17 p.m.



Donald Hammang, Vice-Chair



Shirley Richardson, Hearings Reporter

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 WHICH 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 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 CHAIR PERSON 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 CHAIR PERSON 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 COMMUNITY DEVELOPMENT DEPARTMENT DURING NORMAL OFFICE HOURS FOR INFORMATION ON THE PROCEDURES AND FEES INVOLVED.

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:

Vacant Position, Chair
Judith Borden
Barbara Cartmill
Tracy Cook
Donald Hammang, Vice Chair
Mike Miller
Howard Steward

Community Development Department Staff:

Martha Bennett, Community Development Director
Jim Crumley, Interim Planning Director
John Gessner, Associate Planner
Janet Wright, Assistant Planner
Jeanne Garst, Office Assistant
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter

**CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT DEPARTMENT**

REVISED STAFF REPORT

Hearing Date: April 27, 1999
120-Days: April 12, 1999
NDA: Ardenwald NDA

Date: April 20, 1999
File No.: MLP-98-06/
NCU-98-04

Application: Minor Land Partition to create 3 lots and a Non-Conforming Use Application to continue the use of an existing shop building for an auto restoration business on Lot 1.

Applicant: Howard Thompson

Property Owner: Same

Location: 3406 SE Olsen Street, Milwaukie, Map 11E Section 25DB, TL 900 (See Exhibit 2)

Zone: Residential Zone R-7
.....

BACKGROUND:

A public hearing on this Minor Land Partition application was opened and continued from the January 12, 1999 Planning Commission meeting at the request of the applicant. The applicant stated that he wanted to submit additional information and make changes in the tentative plan reducing the number of lots to be partitioned.

On April 5th the applicant submitted a revised tentative plan reducing the number of Parcels to be created from three to two. This Staff report has been revised to reflect the changes submitted by the applicant.

This Minor Land Partition application was submitted prior to the adoption of the new partitioning criteria on November 17, 1998. Therefor this application must be reviewed under the prior criteria (*See Exhibit 9*). Both of the proposed parcels will be accessed from SE Olsen Street. The site and the surrounding area is zoned R-7 – Residential. The proposal provides lot sizes that are larger than the R-7 zone minimums. *See Exhibit 2-Vicinity Map.*

Total lot area is 34,091 sq.ft. There is an existing single-family residence that is used as a rental by the applicant, on Parcel 1 that is proposed to remain. Parcel 1 also has an auto

repair business that is also proposed to remain. The lot size of Parcel 1 is proposed to be 25,189 sq.ft.

Parcel 2 is a flag lot and measures 75 by 90 feet long with the pole at 143.5 by 15 for a total of 8,902.5 sq.ft. A portion of an existing carport on Parcel 1 is proposed for demolition and will be replaced to meet the City parking requirements of Section 500. Parcel 2 has an existing shed that will also be removed in order to allow for the construction of a new single-family residence.

The Non-conforming use located on the property was previously approved in May of 1998. The Non-Conforming Use consists of an Automotive Business that has been in continuous operation at the site since the early 1940's. *See Exhibit 8 – Chronology of Use.* The applicant would like to continue to operate the automotive business at this site. Staff is recommending that the continuation of this non-conforming use be denied with the approval of the Minor Land Partition.

PROPOSAL:

The applicant is requesting approval of a minor land partition to create two (2) lots from an existing 34,091 square foot lot (.78 acres). Parcel 1 consists of 25,189 sq.ft., Parcel 2 is proposed at 8,902.5 sq. ft. The proposed partition is located in an R7-Residential Zone and is part of the Ardenwald Neighborhood Association. *See Exhibit 3.*

The proposal also consists of an application for the continuation of an Automotive Repair Business as a Non-Conforming Use in an existing shop building located on Parcel 1. A Non-Conforming Use was previously approved for this property on May 18,1998 (*See Exhibit 7—Revised Notice of Director's Determination –Type I Administrative Review*).

RECOMMENDATION:

That the Planning Commission approve MLP-98-05 and deny the continuation of the Non-Conforming Use (NCU-98-04) based on the findings and subject to the conditions contained in Exhibit 1.

DISCUSSION:

Compliance with the Comprehensive Plan

The subject property has a Comprehensive Plan Designation of Low Density Residential that allows up to 6.7 dwelling units per acre. The proposed partition would result in the addition of 2 new dwelling units within the surrounding acre. Therefore, this proposal complies with Comprehensive Plan Objective 4, Policies 4 and 5 of the Residential Land Use and Housing Element. These Policies encourage rehabilitation of existing housing

stock within Low-Density areas and maintenance of the single-family residential character of a neighborhood.

Compliance with Development Standards of the R-7 Zoning District

R-7 Standard Type	Lot #	Lot Area 7,000 Sq.Ft.	Lot Depth 80 Ft.	Lot Width 60 ft.	Front 20 Ft.	Rear Setback 20 Ft	Access 15Ft.
Parcel	1.	25,189 Sq. Ft.	233.5 Ft.	146Ft*	52/130* Ft	20 Ft	
Parcel	2.	8,902.5 Sq. Ft.	90 Ft.**	60 Ft.**			15 Ft.***

- * Auto motive repair business is approximately 130 feet from SE Olsen Street.
- ** The lot depth and width excludes the area included in the pole.
- *** Proposal stipulates a 12-foot wide paved access in compliance with Subdivision requirements that were in effect prior to November 17, 1998.

The property is located within the R-7 (Residential, 7,000-sq. ft. minimum) Zoning District. The proposed Minor Land Partition meets the lot size and configuration requirements (*Exhibit 3*), that were in effect prior to November 17, 1998. The applicant proposes to retain the existing home on Parcel 1. The existing home meets the setback requirements of the zone. New covered parking that meets the requirements of Section 503.3A1 is required as a condition of the MLP approval. The existing home and covered parking would have roughly 17% lot coverage (where 30% is the maximum allowed).

Compliance with Subdivision Criteria

This application was submitted prior to the partitioning changes that were adopted on November 17, 1998 and therefore must be reviewed under the prior partitioning regulations. (*Exhibit 9*).

Chapter 17.32 of the Subdivision Ordinance sets forth the regulations for land partitions. These provisions allow for the creation of lots from parcels that are under single ownership into smaller lots that meet the standards of the zoning ordinance.

Section 17.32.040 Flag lots. States that flag lot partitioning must show that access by means of a dedicated public street is not possible. In addition, considerations will be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right of way could provide suitable access and avoid other flag lots.

Parcel 2 as shown in *Exhibit 3* of the application is bounded by other private property on the south and west sides of the property. If the application to partition this property is approved, the only access available to Parcel 2 is off of SE Olsen Street. The applicant has exhausted all options of obtaining other access to a public right-of-way that would avoid the need to create a flag lot on this property.

The applicant's proposal meets all of the Subdivision Ordinance criteria that were applicable at the time the application was submitted.

Compliance with Non-Conforming Use Criteria

The applicant is asking for approval of a Non-conforming Use to continue the use of a shop building that is used in conjunction with a car restoration business.

A Non-conforming Use (NCU-98-01) approval to operate an automotive repair business was given, subject to conditions, on May 18, 1998. A chronology of the issues at the site related to the automotive repair business and the neighbors is provided at *Exhibit 8*.

Staff contends that even though the applicant has revised the tentative plan from three parcels to two, subdividing the property substantially alters the use of the property thereby affecting the continuation of the non-conforming use that received prior approval, and that applied to the parcel as a whole. Under Section 802:

“A nonconforming use may be continued, but shall not be altered unless such alteration is approved by a the Planning Commission after a public hearing in accordance with subsection 1011.3, Minor Quasi-Judicial review upon a determination that the proposed modifications would result in no more of a detriment to surrounding properties that the existing use”.

The applicant's proposal to subdivide this property substantially impacts, not only the parcel itself, but surrounding properties by maintaining a business in a smaller space surrounded by additional and denser, residential uses.

The applicant has indicated that he wants to construct a single-family residence on Parcel 2, and continue to use the existing gravel driveway to continue to access the existing shop building that house the automotive repair business.

The minor land partition as conditioned in Exhibit 1 is in compliance with the partitioning requirements of Section 17.032 of the Subdivision Ordinance that were in effect prior to November 17, 1998.

Staff is recommending that the continuation of the Non-Conforming Use be denied due to the significant impact on surrounding properties that would result in increased residential uses surrounding the subject Parcel.

Neighborhood Association Comments

No comments have been received from the Neighborhood Association regarding this proposal.

Staff Comment:

The minor land partition as requested has been reviewed for compliance with the zoning requirements for minor land partitions that was in effect prior to the November 17, 1998 amendment, and as proposed meets all of the zoning requirements. Both of the lots access SE Olsen meet the minimum lot area requirement of 7,000 sq. ft. The lot depth requirements are met even with the 5-foot right of way dedication required by the Public Works Department. The dedication will provide sidewalk and drainage improvements to the area, which the NDA has indicated that they want.

Department of Public Works Comments

Exhibit 4 outlines the comments provided by Public Works. Olsen Street is an existing 26-foot asphalt street with curb and gutter and with a 4-foot sidewalk on the south side only. The existing right-of-way is 40 feet wide. Olsen Street is classified as a neighborhood street in the Transportation System Plan (TSP) which calls for a 50-foot right-of-way. The applicant is required to provide a 5-foot wide dedication of additional right-of-way along the entire frontage of the property along Olsen Street.

Sanitary sewer is available from an existing 4-inch line in the center of Olsen Street. The existing house is connected to City sewer through the one existing lateral line into the property. A new lateral will be required from the main line in Olsen Street to each of the two new lots. This will require a permit to open the street. Backfill for any portion of the trench over 4-feet deep in the street must be controlled density fill (CDF).

City water is available from an existing 4-inch line on the south side of the street. The size is adequate to provide domestic water to the proposed additional houses. The City water department has scheduled upsizing this line to 8-inch and adding fire hydrants in fiscal year 2000-2001. The City will install additional meters, as the expense of the owner, for the two proposed lots at the time of building on these lots.

Storm drainage is provided in Olsen Street at the low point to the west of this property. Roof drains may be run to curb or drywells. The existing house and shop must have roof drains connected to the curb or to a drywell. The driveway for the flag lot must have an inverted siphon catch basin connected to the curb or to a drywell. Size of drywells will be determined at the time of building permit application review.

The driveway for the flag lot must be paved a minimum of 12-feet wide with an inverted crown or sloped to one side with a berm along the edge to direct the storm water to a catch basin installed at the low point and piped to the curb or to a drywell. A right-of-way permit is required for all new driveway approaches that are constructed to Olsen Street.

A demolition permit is required to remove the existing garage to construct a flag lot driveway and a building permit must be taken out for construction of a new garage or carport to meet the requirement for one covered parking space prior to issuing any other permits.

The property to the west is not large enough to divide into two parcels, nor is there a potential to extend a street to the south through Rockwood Street. The parcel to the east has potential to be divided, however, there are already two houses on the one tax lot and it is not large enough for a third lot. Therefore, Public Works has no need, nor desire, for any public road dedication for a new street on this property to serve other properties.

An erosion control plan is required to be submitted along with the building permit. System Development Charges will be assessed on the building permits for the new houses for Water, Sanitary Sewer, Storm Drainage, Parks and Recreation, and Transportation.

The applicant has agreed to comply with the Public Works requirements.

Fire District Comments

Exhibit 5 provides the fire district comments regarding this proposal. The applicant must comply with the requirements stipulated by the fire district.

Other Comments

Exhibit 10 provides comments received as a result of the public notice that was mailed to neighbors surrounding the site. These comments were provided as a result of the public notice that was sent to neighbors within 250 feet of the proposed Minor Land Partition.

CONCLUSION:

The proposed Minor Land Partition is consistent with the City's Comprehensive Plan and Zoning Ordinance as enforced prior to the November 17, 1998 amendments. It has been determined that the continuation of the Non-Conforming Use as proposed by the applicant is not consistent with the criteria of Section 800 for approval. The proposed alteration of the lot configuration would allow the business use to stand alone on a newly created lot that is zoned strictly for residential uses. This essentially changes the zoning of a residentially zoned lot and area into a business zone. Staff recommends approval of the Minor Land Partition (MLP-98-06) and denial of the continuation of the Non-Conforming Use (NCU-98-04) for any type of business.

FINDINGS FOR APPROVAL OF MLP-98-06

1. The applicant is proposing a 2 Parcel Minor Land Partition on property zoned R-7. (*Exhibit 3*) Parcel 1 is proposed to be 25,189 square feet and Parcel 2 is proposed to be 8,902.5 square feet. The surrounding area is residential in character and is also zoned R-7.
2. Both of the proposed lots meet the minimum width, and depth criteria of Section 302.3 A. The existing single family residence can meet the requirements of Section 302.3A., B., C., and D., of the R-7 Residential Zone.
3. The proposed Minor Land Partition is consistent with Land Use Objective 4, Policies 4 and 5, of Milwaukie's Comprehensive Plan, in that it preserves existing housing stock and maintains the single family scale of surrounding properties.
4. Partitioning submission requirements are those of Section 17.32 of the Subdivision Ordinance (*Exhibit 9*). The Tentative Plan (*Exhibit 3*) meets applicable standards of Section 17.32.020 of the Subdivision Ordinance that was in affect prior to November 17, 1998.
5. The Department of Public Works has provided comments regarding required Developer installed improvements for utilities and access, and storm drainage connections. (*Exhibit 4*).
6. Public Notice has been issued in accordance with the provisions of Section 1011.3: Minor Quasi-Judicial Review.

FINDINGS FOR DENIAL OF NCU-98-04

7. The proposed partitioning or modification of this parcel results in significant alteration to the Non-Conforming Use currently operating as an Automotive Repair Business.
8. The partition increases residential uses and density and brings those uses closer to the Non-Conforming Use. Section 802 of the Milwaukie Zoning Ordinance states that the continuation of a Non-Conforming Use must not result in additional detriment to surrounding properties.
9. The Non-Conforming Use has a history of Neighborhood complaints regarding the operation of the automotive repair business (Non-Conforming Use) on the Parcel (*Exhibit 8*). The applicant does not propose any change in operation of the

business, to move the business or provide any mitigation to alleviate impacts for the denser residential use.

10. The proposed minor land partition will allow an increase in the number of residences in the immediate area to the Non-Conforming Use.
11. The alteration requested by the applicant results in an increased impact to the residential uses in the neighborhood and the properties abutting the Non-Conforming Use uses by bringing adding residential parcels closer to the Non-Conforming Use.
12. The alteration results in greater detriment to the surrounding properties than the existing use.

EXHIBITS:

1. Recommended Conditions of Approval
2. Vicinity Map
3. Proposed Minor Land Partition Plat Map
4. Department of Public Works Memo
5. Clackamas County Fire District
6. Surrounding Property Map
7. Revised Notice of Director's Determination – Type I Administrative Review
8. Chronology of the Non-Conforming Use
9. Subdivision Ordinance Criteria in effect prior to November 17, 1998
10. Public Comments

EXHIBIT 1

CONDITIONS FOR APPROVAL FOR MLP-98-06

1. Parcel configuration shall be generally as indicated in *Exhibit 3* of the Staff Report.
2. Submittal of the Final Partition Plan shall follow all requirements of Section 17.20 of the City Subdivision Ordinance that was in affect prior to November 17, 1998.
3. The final plat submittal shall include timelines and plans for construction, completion of required improvements and compliance with conditions of approval. This submittal must occur within one year of this preliminary plat approval.
4. The requirements identified in the Department of Public Works Memo dated December 18, 1998 apply. (*See Exhibit 4*).
5. The existing shed on the southeast portion of proposed Parcel 2 shall be removed. A demolition permit is required prior to removal.
6. The existing garage on Parcel 1 shall be removed and replaced to with a new covered parking structure to serve the existing house and replace the covered parking in accordance with Section 503.3A1 of the Zoning Ordinance. A demolition permit must be obtained prior to the demolition of the building.
7. The Non-Conforming Use (Automotive Repair Business) and its existing shop building shall be removed prior to signing the final plat.
8. The automotive business will be moved from the property to a different site or closed down at the site prior to the City signing the final plat.
9. The applicant shall comply with all requirements for access and fire safety of the South Metro Fire District as outlined in *Exhibit 5*.
10. Erosion control permits shall be obtained, as required, from the Department of Public Works, prior to construction.
11. Any deed restrictions proposed by the applicant shall be provided to the City Community Development Department for review to ensure that there are no conflicts with City Ordinances.

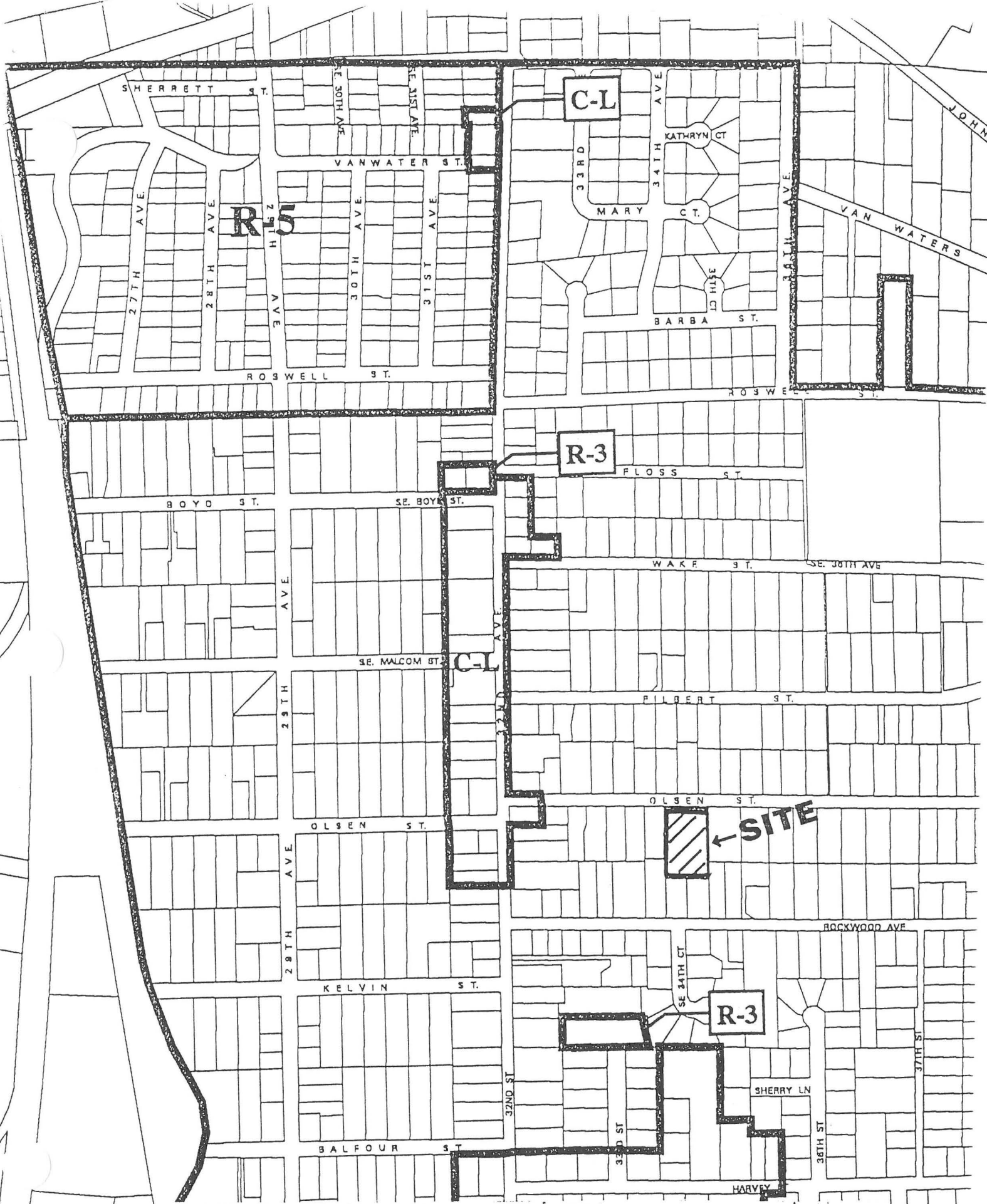
CITY OF MILWAUKIE COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT—Thompson –MLP-98-06/NCU-98-04

April 20, 1999

Page 10 of 10

12. The applicant is required to extend sewer and water services to serve the lots. Sanitary sewer and water facilities are available from mains on SE Olson Street.
13. Utilities shall be installed underground. A five foot-wide right-of-way dedication is required along the entire Olson Street frontage as stipulated by the Public Works Memorandum dated December 18, 1998 (*Exhibit 4*).
14. The applicant shall provide a 6-foot privacy fence around the side and rear property lines of the flag lot (Lot 1), as well as along the west side of the access drive to the 20-foot front yard set back line.



City of Milwaukie Community Development Department

Title: Vicinity Map Submitted by: CD Date: 1/14/99 # Pages: 1
 File Numbers: MLP-98-06 Applicant: Thompson Exhibit #: 2



SE-OLSEN AVE

S

W



EL#00

SIDE WALK

71

EL 101

Scale 1"=40'

EXISTING SHED
TO BE REMOVED

11E 25 DB #900

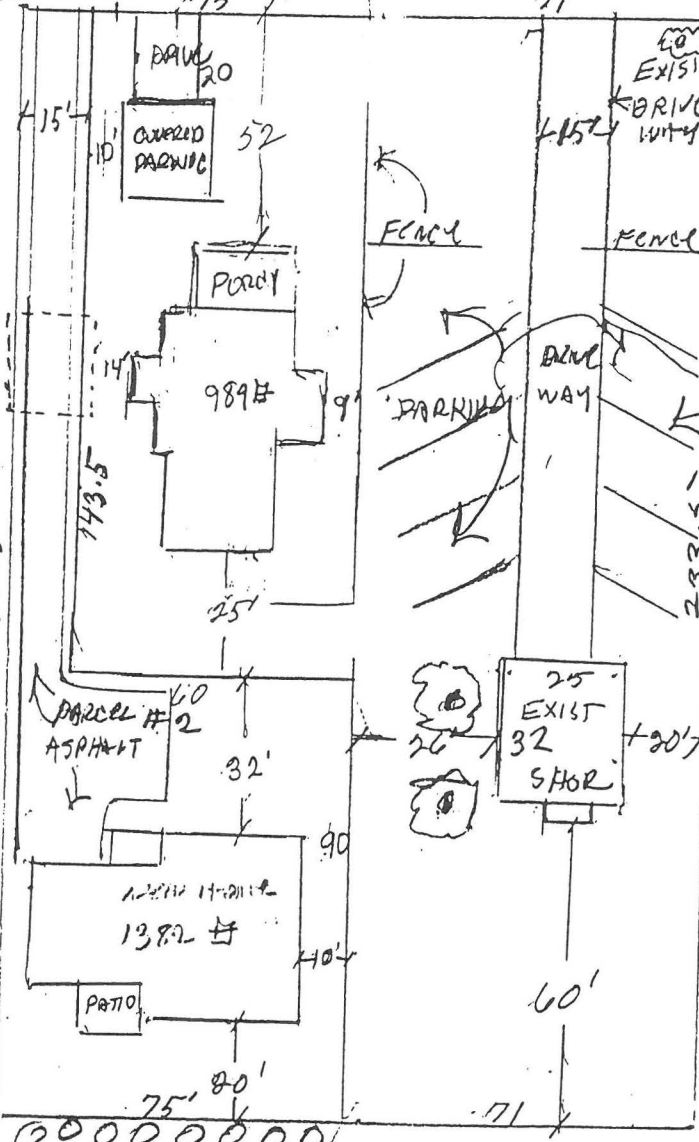
TX 400 900

LOT COVERAGE 80%

EXIST SIDEWALKS

EXIST SIDEWALKS 233.5

EXIST SIDEWALKS 233.5



PARKING SPACES
15' X 28'

EL#101

EXIST HULLY TREES

EL 102

Parcel #1 FEN 9 LOT 6750 #
POLE 2152 #

LOT @ 3406 SE OLSEN AVE

PARCEL 900 OF ROCK WOOD ACRES

Parcel #1 25189 #

CITY OF MILWAUKIE

TAL # 34091 #

CHICKAMAS COUNTY OR

MEMORANDUM

RECEIVED
DEC 18 1998
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger, P.E. *P.R.*
Civil Engineer

RE: MLP-98-06
3406 SE Olsen Street

DATE: December 18, 1998

Olsen Street is an existing 26-foot asphalt street with curb and gutter and with a 4-foot sidewalk on the south side only. The existing right-of-way is 40-feet wide. Olsen Street is currently classified as a neighborhood street in the Transportation System Plan (TSP) which calls for a 50-foot right-of-way. Therefore, we must require dedication of an additional 5-feet along the entire frontage of Olsen Street.

City sanitary sewer is available in the center of Olsen Street. The existing house is connected to City sewer. There is only one lateral into the property. A new lateral will be required from the main line in Olsen Street to each of the two new lots. This will require a permit to open the street. Backfill for any portion of the trench over 4-feet deep in the street must be controlled density fill (CDF).

City water is available from an existing 4-inch line on the south side of the street. The size is adequate to provide domestic water to the proposed additional houses. The City water department has scheduled upsizing of this line to 8-inch and adding fire hydrants in fiscal year 2000-2001. The City will install additional meters, at the expense of the owner, for the two proposed lots at the time of building on these lots.


Storm drainage is provided in Olsen Street at the low point to the west of this property. Roof drains may be run to the curb or to drywells. The existing house and shop also must have the roof drains connected to the curb or to a drywell. The driveway for the flag lot must have an inverted siphon catch basin connected to the curb or to a drywell. Size of drywells will be determined at the time of building permit application review.

The driveway for the flag lot must be paved a minimum of 12-feet wide with an inverted crown or sloped to one side with a berm along the edge to direct the storm water to a catch basin installed at the low point and piped to the curb or to a drywell. A right-of-way permit is required for all new driveway approaches that are constructed to Olsen Street.

A demolition permit is required to remove the existing garage to construct the flag lot driveway and a building permit must be taken out for construction of a new garage or carport to meet the requirement for one covered parking space prior to issuing of any other permits.

The property to the west is not large enough to divide into two parcels, nor is there potential to extend a street to the south through to Rockwood Street. The parcel to the east has potential to be divided, however, there are already two houses on the one tax lot and it is not large enough for a third lot. Therefore, Public Works has no need, nor desire, for any public road dedication for a new street on this property to serve other properties.

System Development Charges will be assessed on the building permits for the new houses for Water, Sanitary Sewer, Storm Drainage, Parks and Recreation, and Transportation.

City of Milwaukie Community Development Department				
Title: <u>PW Comments</u>	Submitted by: <u>PW</u>	Date: <u>1/5/99</u>	# Pages: <u>1</u>	
File Numbers: <u>MLP-98-06/Nov 9804</u>	Applicant: <u>Thompson</u>	Exhibit #: <u>4</u>		

Clackamas County Fire District



Fire Prevention Division

2930 SE Oak Grove Blvd.
Milwaukie, Oregon 97267
(503) 855-8537
Fax -- (503) 655-8880

RECEIVED

JAN 04 1999

CITY OF MILWAUKIE
BUILDING DIV.

To: Janet Wright Assistant Planner City of Milwaukie

From: Tom Crowder Deputy Fire Marshal

Re: MLP ??- 3406 SE Olsen

Date: January 4, 1999

After careful review the **Prevention Division of Clackamas County Fire District #1** wishes to report the granting of this minor land partition to divide an existing parcel into three tax lots, is not in conflict with the **Uniform Fire Code** adopted by the City Of Milwaukie, as long as it meets the following requirements.

The first is the requirement that fire department access be provided and **maintained** with a minimum access road of 12 feet within a clear space 20 feet in width, a minimum vertical clearance of 13 feet 6 inches and in conformance with City requirements for driveway access. The access road must be of an all weather type which will handle a minimum of 50 thousand pounds weight load. Additionally, addresses must be *visible from the street* on a contrasting background which identifies each site location on the lot. Fire department turnarounds are required when the distance from the street on the access roadway exceeds 150 feet. Finally, there is a requirement that a fire hydrant be within 500 feet of the furthestmost structure on the lot. This can be field verified by the applicant and also by the water department.

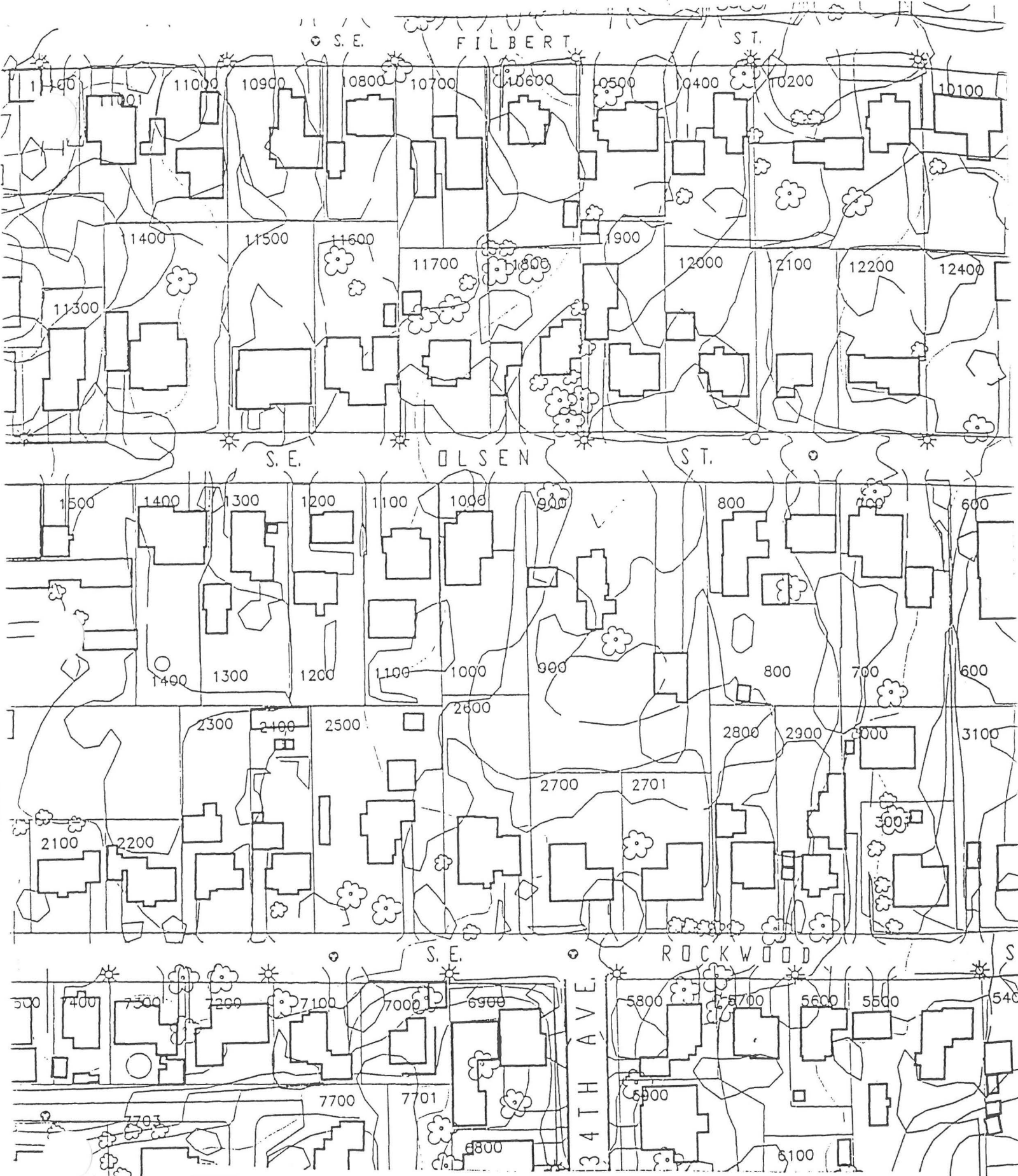
Yours in Fire and Life Safety,


Tom Crowder
Deputy Fire Marshal

City of Milwaukie Community Development Department

Title: Fire Dist Comment Submitted by: CCFD Date: 1/5/99 # Pages: 1
File Numbers: mip-98-06/ncu Applicant: thompson Exhibit #: 5
98-04





City of Milwaukee Community Development Department

Title: Six Prop Map Submitted by: CD Date: 1/5/99 # Pages: 1

File Numbers: MP-98-06/NCU Applicant: Thompson Exhibit #: 6

98-04





May 18, 1998

NCU 98-01

Revised Notice of Director's Determination - Type I Administrative Review

This notice is issued pursuant to Section 1011.1 of the Milwaukie Zoning Ordinance, and shall serve as an official determination by the Milwaukie Community Development Department that an automotive repair business may be operated at 3406 SE Olsen Street as a legal nonconforming use based upon the following findings, and subject to the conditions listed below.

Findings:

1. The subject property is located in an R-7 Single Family Residential Zoning District. In addition to the nonconforming auto repair business and building, there is an existing single-family dwelling located on the property.
2. This area has been zoned for residential uses since Milwaukie adopted a Zoning Ordinance in 1946. It appears as an R-7 district on the 1968 City Zoning Map. Section 800 of the Milwaukie Zoning Ordinance sets forth the procedures governing the maintenance, use, expansion, and cessation of nonconforming uses and structures.
3. There has been an automotive repair business operating at this location for many years. The Community Development Department has on-file approved business licenses for Harold Bonin's Auto Repair at this address. Mr. Bonin operated the business between 1985 and 1996. The property was leased to Jerry Wiese in 1983 for use as an auto repair shop, and leased to Michael Gradt dba Competitive Rebuild from 1973 until 1977. It would appear that all auto repair activities have been limited to the Quonset hut and surrounding one-third acre situated on the southeast portion of tax lot 900 (Map 1 1E 25DB).
4. Mr. Howard Thompson applied for a business license from the City on January 10, 1997. A notice was sent to Mr. Thompson on May 9, 1997 informing him that the operation of an auto repair business in the R-7 Residential District was incompatible with Section 5.04.120 of the Municipal Code. This use cannot be considered a home occupation pursuant to Sections 100 and 401.1.E. of the Milwaukie Zoning Ordinance because it occurs in a detached structure. Additionally, the operator of the repair business does not live on the premises.

Conclusion:

Staff research leads to the conclusion that an automotive repair business appears to have been operated continuously on this property since the time that Zoning was initiated in Milwaukie. This use has been limited to the Quonset hut and immediate surrounding area in the southeast
olsnauto.doc


COMMUNITY DEVELOPMENT • PUBLIC WORKS

City of Milwaukie Community Development Department				
Title: <i>Rev Notice of Dir Det</i>	Submitted by: <i>CD</i>	Date: <i>1/5/98</i>	# Pages: <i>3</i>	
File Numbers: <i>MLP-98-04/NCU 98-01</i>	Applicant: <i>thompson</i>	Exhibit #: <i>2</i>		

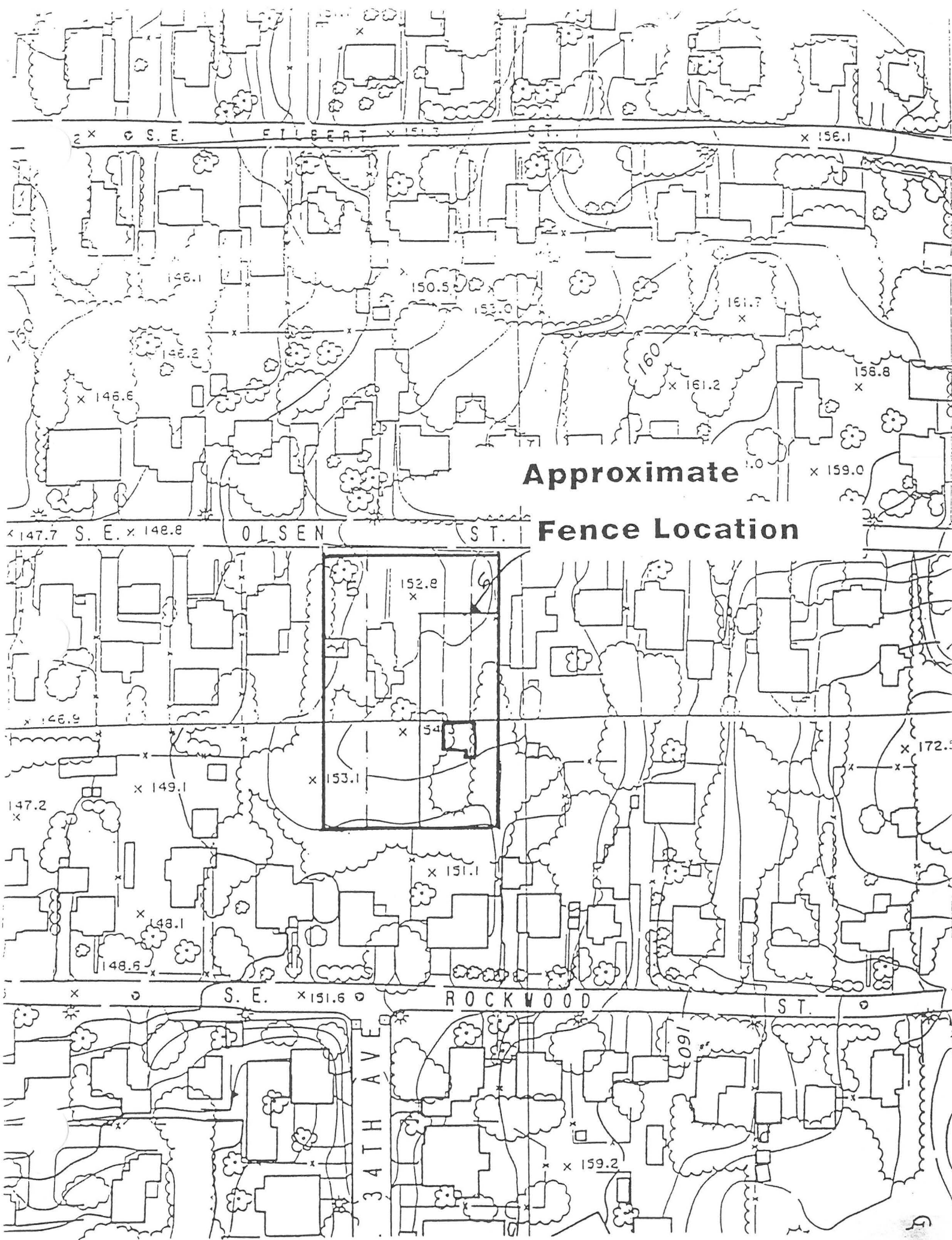
corner of the lot. Therefore, this activity and structure shall be considered legal nonconforming subject to the provisions of Section 800 of the Milwaukie Zoning Ordinance.

Conditions:

1. The automotive repair activities shall be limited to the Quonset hut and surrounding one-third acres, the south-east portion of tax lot 900 (Map 11E25DB). The operation shall be limited to general maintenance including engine, transmission and clutch, electrical, brake, tune-ups and similar work. Body and paint work is specifically prohibited. Dismantled cars used for parts shall not be stored on the site.
2. All vehicles being serviced or related to the operation of this business shall be parked in front of the existing Quonset hut (3406A Olsen Street). There shall be a graveled driveway to the Quonset hut, and a graveled area for no more than the parking of 10 cars shall be allowed. Paving of the site shall be prohibited. The area permitted to be used for auto repair shall be enclosed and screened by a six-foot high solid fence. This fence shall extend from a line approximately equal to the front of the existing residence on the site to the rear property line. A six foot high fence shall not be permitted to extend more that six feet in front of the residence towards Olsen Street. A maximum of 10 vehicles may be kept on the premises in relation to the business. The gravel and fence shall be installed no later than July 30, 1998.
3. No oils or solvents shall be stored outside. All such substances shall be recycled in accordance with Oregon Department of Environmental Quality guidelines and requirements.
4. A maximum of one employee shall be permitted on the premises at any time in addition to the proprietor/owner.
5. There shall be no noticeable noise, smoke, odor, dust, gases, vibration or glare associated with the business operation that would be detectable off of the premises.
6. One four square-foot nonilluminated sign - not exceeding three feet in height if ground mounted - shall be permitted.
7. Any expansion or change in the nonconforming use or structure shall be reviewed in accordance with Section 800 of the Milwaukie Zoning Ordinance. Renewal of the business license for an automotive repair business at this premises shall be contingent upon demonstrated compliance with the conditions stipulated in this Notice of Determination.




Michael Swanson,
Interim Community Development Director



3406 Olsen Street:

- Early 1940's - An auto repair business was established on the site.
- 1946 - The City's first Zoning Ordinance was adopted.
- 1940's - An auto repair business has continued to operate since that time,
Present however, ownership has been transferred four times. The City has approved business licenses for the previous operator based on the non-conforming use status.
- January 1997 - Current owner, Howard Thompson, applied for a business license.
- May 1997 - The license was denied based on the use not complying with the current Zoning Code. Following receipt of the denial, the operator contacted the Planning Department with information regarding the history of the site as an auto repair facility.
- August 1997 - A citizen's complaint was received from a neighbor.
- August - The operator submitted lease agreements and business license
December '97 information dating back to the 1970's. The operator also submitted letters from neighbors and the previous operator to further document the use of the site.
- January 15, '98 - A Director's Determination, to formally document the non-conforming auto repair use of the site was issued.
- April 8th - A letter was received from one of the neighbors stating that the operation had expanded. This complaint was investigated and a copy of the Director's Determination was given to the complainant.
- April 13th - A petition was received from several neighbors stating their concern over the expansion of the use on the site and requesting a hearing before the Planning Commission. The primary complainant was told that an appeal of the Director's Determination would need to be made to hold a public hearing, however, Planning staff would enforce compliance with the January 15, 1998 conditions of approval.
- April 15th - A letter of non-compliance was sent to the operator from planning staff.
- April 16th - An appeal of the Director's Determination was received by planning staff and at tentative hearing date of June 9, 1998 was set.
- April 20th - Four complaints were received from neighbors.

City of Milwaukee Community Development Department				
Title: <u>Chronology of use</u>	Submitted by: <u>CD</u>	Date: <u>1/5/98</u>	# Pages: <u>2</u>	
File Numbers: <u>map 498 06/xxu 98 09</u>	Applicant: <u>Thompson</u>	Exhibit #: <u>8</u>		

- August 21st - Planning staff send letters to all petitioners and complainants indicating that an appeal had been filed and that a tentative hearing had been set.
- May 1st - Planning staff inspected the operation and found it to be in compliance with the January 15, 1998 conditions and issued a letter to the operator stating this.
- May 4th - A letter was received from the Ardenwald NDA stating their concerns with some of the conditions of approval. Of particular concern were conditions requiring erection of a six foot high fence and paving.
- May 5th - A complaint was received that a cargo container had been moved on to the operator's site. A inspection was made by the Planning and Building Departments and the operator was required to move the container from the site.
- May 14th - Planning staff met with the operator and the complainant to mediate and resolve the issues of conflict. This resulted in a revised Director's Determination with new conditions of approval to which both parties agreed. At this meeting, the complainant agreed to withdraw the appeal provided the agreed upon conditions were enforced.
- May 18th - The revised Director's Determination was issued. The revised conditions included further defining the area of operation by specifying the location a six foot fence, limiting the number vehicles kept on the site and prohibiting paving of the site. This Decision was mailed to all neighbors who had previously complained or signed a petition.
- June 23rd - The appeal was formally withdrawn. No comments were received from anyone who was sent a copy of the revised Director's Determination.
- June 29th - A call was received stating that a six foot tall fence was being constructed in a location not in compliance with the May 18th conditions. An inspection was made and a warning letter was posted on the fence.
- June 30th - Further investigation revealed that this fence was being constructed by the adjacent property owner for their single family residence.

To date the only unresolved issue involves the placement of a six foot tall fence between the non-conforming auto repair operation and the single family residence that also occupies the site. The operator would like to continue the six foot fence to within 20 feet of the front yard setback for this property. The complainant believes that this violates the City fence code. Staff has recently received an opinion from the City Attorney that indicates that City fence regulations only apply to perimeter fences. Since this fence would be between two uses on the same site, the City cannot regulate it.

CHAPTER 17.32. PARTITIONING

17.32.010. Approval procedure. A parcel of land or contiguous parcels under a single ownership within the city shall not be partitioned into two or less than four parcels for transfer of ownership or building development so as to conflict with applicable standards for subdivision as set forth in this Section. Such land partitioning, other than subdivision or the creation of a street or way, shall be known as partitioning and shall be approved under the procedure provided in this Chapter.

17.32.020. Submission of plans. There shall be submitted to the Community Development Office, at least fourteen days prior to the Planning Commission meeting at which consideration is desired, four copies of a sketch map eight and one-half inches by eleven inches, or eighteen inches by twenty-four inches in size with the following information:

- A. The date, north point, scale, and sufficient description to define the location and boundaries of the parcel to be partitioned and its location. Topography of land within two hundred fifty feet of all boundaries;
- B. The name and address of the record owner or owners and of the person who prepared the sketch map;
- C. The approximate acreage of the parcel under a single ownership, or if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the minor partitioning;
- D. For land adjacent to and within the parcel to be partitioned, the locations, names, and existing widths of all streets and easements-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, and power poles;
- E. The location of existing structures to remain in place;
- F. The lot layout, showing size and relationship to existing or proposed streets and utility easements;
- G. Such additional information as required by the Planning Commission.

17.32.030. Administrative approval. Minor partition requests shall be processed according to Section 10.05(B) of the Zoning Ordinance, Type II Administrative Review.

17.32.040. Flag lots. Flag lots may be created by partitioning under the following conditions:

- A. Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible. In addition, consideration will be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots.

17.32-1

City of Milwaukie Community Development Department

Title: Part Criteria Submitted by: CD Date: 1/5/98 # Pages: 4
 File Numbers: MCP 98-06/NCU Applicant: thompson Exhibit #: 9
 ax. 04



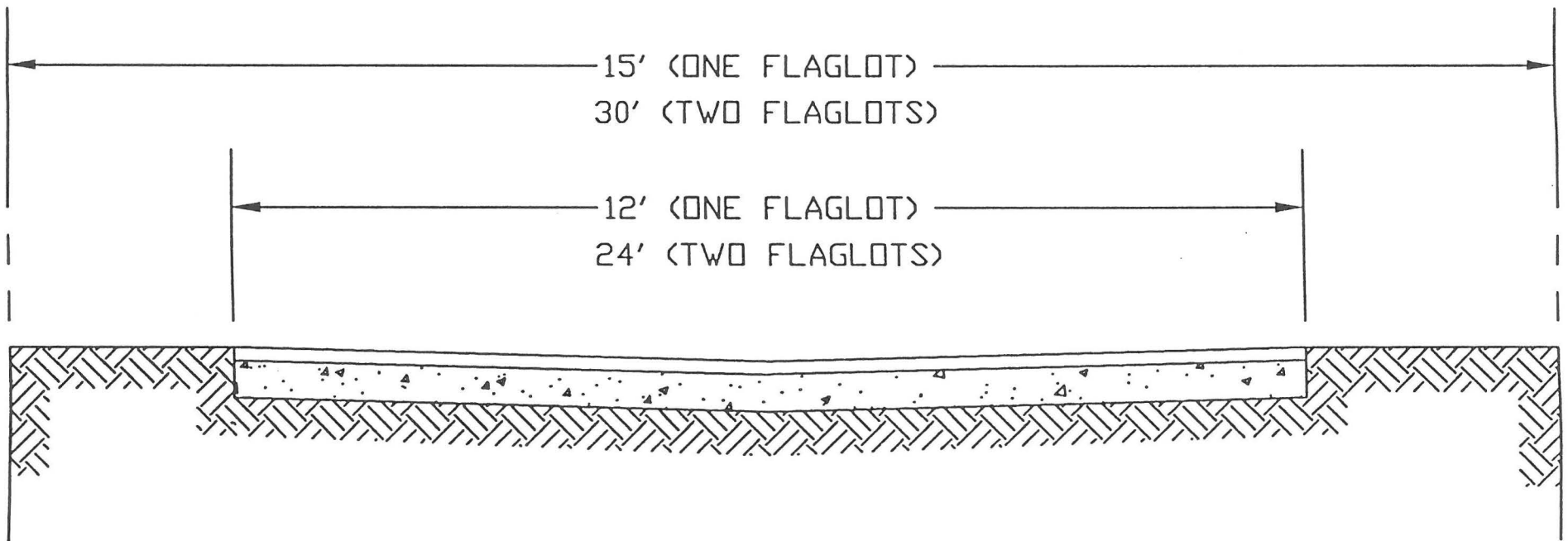
FROM THE SUBDIVISION ORDINANCE, CHAPTER 17.32., PARTITIONING

17.32.040. Flag lots. Flag lots may be created by partitioning under the following conditions:

- A. Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible. In addition, consideration will be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots.
- B. For any flag lot, the minimum width of the access strip will be fifteen feet, twelve feet of which must be paved for the full length of the access strip. The entire length of the access strip shall be kept clear of obstructions to access. These minimum standards may be increased if the Community Development Director determines such is necessary to guarantee adequate and safe access. A paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.
- C. Where two flag lots will have abutting access strips, the combined width of the two access strips shall not be less than thirty feet. A joint access easement shall be created for the two flag lots, which extends to the deepest lot for the full width of the combined access strips. Within the joint access strip, a common driveway with a minimum paved width of twenty feet shall be provided which extends from the street to the deepest parcel. At the end of the joint access easement, a paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.
- D. Proposed flag lots shall be referred to the Public Works Department and the Fire Marshal's office for review and recommendation or decision on appropriate improvements and other requirements to be provided by the applicant. These may include: paved access driveways constructed to residential street standards; special additional easements for utilities; vertical clearance for fire equipment; sewer lines and pumps; water meters and lines for adequate flows and pressures; fire hydrants; special post for display of house numbers at street entrance to access easement; street lights; and assurance of clear vision conditions at access entrance.
- E. Although discouraged by the Planning Commission, development of three or four flag lots in which there are more than two lots in depth from a public street may be considered by the Planning Commission under the variance procedure. Increased standards for improvements in such cases shall be as determined by the Planning Commission with advice from Public Works and other departments as appropriate.

MINIMUM REQUIREMENTS:

- (1) 2" ASPHALTIC CONCRETE PAVING
- (2) 4" 3/4"-0" CRUSHED ROCK (ONE FLAGLOT)
2" 3/4"-0" CRUSHED ROCK (TWO FLAGLOTS)
- (3) 4" 1-1/2"-0" CRUSHED ROCK (TWO FLAGLOTS)
- (4) DRIVEWAYS SHALL HAVE INVERTED CROWN OF 2%. ALL STORM WATER FROM DRIVEWAY SHALL BE CONTAINED BY CATCHBASINS & DRYWELL. THE DRYWELL SHALL HAVE AN OVERFLOW LINE EXTENDING TO STORM SEWER OR STREET RIGHT OF WAY FOR FUTURE STORM SEWER.



TYPICAL DRIVEWAY FOR FLAGLOTS

PARTITIONING

Last Rev. Ord. #1620 3/17/87

17.32.060. Compliance with subdivision requirements. Full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided into small parcels. This provision applies if the parcel of land to be partitioned exceeds two acres and within a year is being partitioned into more than two parcels, any one of which is less than one acre.

17.32.070. Filing of map. When a sketch map has been approved, all copies shall be marked with the date and conditions, if any, of approval. Two copies shall be returned to the applicant, and two copies shall be retained by the Planning Commission.

January 4, 1999

Bob & Linda Tilley
3425 SE Rockwood
Milwaukie, OR 97206

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

RECEIVED

JAN 04 1999

CITY OF MILWAUKIE
BUILDING DIV.

Re: Minor Land Partition (File #MLP-98-06)
3406 SE Olsen

The property at 3406 SE Olsen is directly behind our house at 3425 SE Rockwood.

We are in favor of the proposed partition to three lots and removal of the Non-conforming usage. The lot has been an eyesore for years, has degraded the residential usage of the area and is a possible avenue for the vandalism to our house.

Thank you in advance for taking our viewpoint into consideration.

Bob & Linda Tilley

City of Milwaukie Community Development Department

Title: Public Comment Submitted by: CD Date: 1/5/99 # Pages: 1
File Numbers: mlp-98-06/ncw-98-04 Applicant: Thompson Exhibit #: 10



CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

Hearing Date: April 27, 1999
120 Days - July 23, 1998
NDA: Historic Milwaukie

Date: April 20, 1999
File No.: CSO-99-01

Application: Request to Modify a Previously Approved Community Service Overlay (CSO-91-04)

Applicant: Clackamas County Correctional Facilities

Property Owner: State Of Oregon,
Oregon Liquor Control Commission

Location: 9000 & 9200 SE McBrod, 1 1E26AA,TL 100 (Exhibit 2-
Vicinity Map)

Zone: Manufacturing Zone

PROPOSAL

The applicant is requesting approval to modify the current Community Service Overlay approval (CSO-91-04) to allow offenders of category 9 and 10 crimes admission to their existing facilities located at 9000 and 9200 SE McBrod Avenue.

RECOMMENDATION

That the Planning Commission approve the applicants request to amend a previously approved Community Service Overlay (CSO-91-04), based on the report Findings and Conditions of Approval contained in Exhibit 1.

BACKGROUND

The corrections facility is located Manufacturing Zone (M). (See Exhibit 2 - Vicinity/Zoning Map) The project site is the westerly 1.87 acres of Tax Lot 100 lying between McBrod Avenue and Johnson Creek. The property is owned by the Oregon Liquor Control Commission and was leased to the City of Milwaukie in April of 1970. The City subleased the property to Clackamas County Corrections in July of 1979. The sublease was for a term of 20 years and expires on July 1, 1999.

In 1991 Clackamas County Community Corrections (CCCC) applied for and was approved to replace a 40-bed work-release metal modular facility with a new 80-bed work-release facility. An additional facility on the southern portion of the site also had a 34 resident facility that was allowed to continue.

The conditions of approval for CSO-91-04, (**Exhibit 3**) allowed the facility to be limited to a maximum of 114 residents in the two structures. The clients admitted to the facility were required to be misdemeanor and selected non-dangerous felony adult offenders who have been ordered to Community Corrections in programs under the directive and counsel of the Community Corrections Division. Corrective programs were required to be residential and could have included both work release and drug and alcohol treatment and counseling. No persons whose current offense is a violent and person oriented crime, defined as Crime Category 9,10, and 11 were approved to be housed at this facility.

Other conditions required that any change to the basic work-release or drug and alcohol counseling resident program be submitted to the Community Development Department for review for conformance to the CSO-91-04 conditions of approval.

The February 26, 1999 (CSO-99-01-**Exhibit 4**) application requested a modification to the previously approved CSO-91-04 to allow offenders convicted of category 9, and 10 crimes admission to the facilities. **Exhibit 5** provides a summary of offenses contained in categories 9, and 10. Current capacity of the facility is 114. The request does not increase capacity of the facility and limits the number of those in crime category 9 and 10 to 10% of the 114, which provides eleven (11) beds for these offenders. CCCC has provided a copy of the Correctional Facility Handbook attached as **Exhibit 8** which outlines the correctional facility procedures used at the facility.

DISCUSSION

Title 14 of the City of Milwaukie Municipal Code and the Community Service Overlay Zone (CSO), Section 321 of the Milwaukie Zoning Ordinance, in addition to underlying compliance with the M Zone Criteria, provide the appropriate standards by which a request of this nature is reviewed.

Staff's review for compliance with the necessary findings is provided below:

Compliance with the Comprehensive Plan

The site is designated "Industrial" on the Comprehensive Plan Land Use Designation Map 7.

Compliance with the Zoning Criteria

- A. The Community Service Overlay Zone (CSO) provides for the review of various types of public and private facilities. The Planning Commission has final decision-making authority regarding these issues, after a public hearing per the Minor Quasi-Judicial public review procedures, (Zoning Code Sub-Section 1011.3) which states that an application may be approved if:
1. The requirements of the underlying zone are met; and
 2. The specific standards for the proposed use is met (Section 321.10).
- B. **Section 321.4 B.** In permitting a community service use or the modification of an existing one, the Planning Commission may impose suitable conditions, which assures compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

Staff Analysis

The facility is existing and located in a Manufacturing Zone. The County's request does not expand the size of the facility. The request meets the requirements of the underlying zone.

The CCCC Department request meets the conditions of the Community Service Overlay Zone. The Planning Commission has final decision-making authority regarding this proposal and may impose the conditions of approval included as **Exhibit 1** of this Staff Report or add additional conditions that will lessen any perceived impacts to neighboring uses.

COMMENTS

Neighborhood Association

A referral was sent to all of the City of Milwaukie Neighborhood Associations. These facilities are sited in the Historic Milwaukie Neighborhood Association. A neighborhood meeting was held on April 12, 1999. At that meeting the Neighborhood Association unanimously voted to forward a recommendation of approval to the City regarding the CCCC proposal.

Public Works

The City Civil Engineer's comments are found in **Exhibit 6**. City sanitary sewer and water serve both facilities. Storm drainage goes directly to Johnson Creek, which borders the east side of these facilities.

Since no expansion of these facilities is included in this proposal, Public Works does not have any additional requirements for these properties.

Clackamas County Fire Protection District

The Fire Marshall has stated that there are no fire issues regarding this Community Service Overlay. See **Exhibit 7**.

CONCLUSION

Findings demonstrate that the proposal contained in CSO 99-01 complies with the City Comprehensive Plan, and Zoning Ordinance requirements for approval to amend a previously approved Community Service Overlay CSO-91-02. Staff recommends that the Commission approve the modification, subject to the following Findings and Conditions attached as **Exhibit 1**.

Exhibits:

1. Findings and Conditions of Approval
2. Vicinity Map
3. CSO-91-04 Notice of Decision & Conditions of Approval
4. CSO-99-01 Application to Amend previous CSO
5. Summary of Offenses
6. Public Works Comments
7. Clackamas County Fire Marshall Comments
8. Correctional Facility Handbook, (PC Members Only)

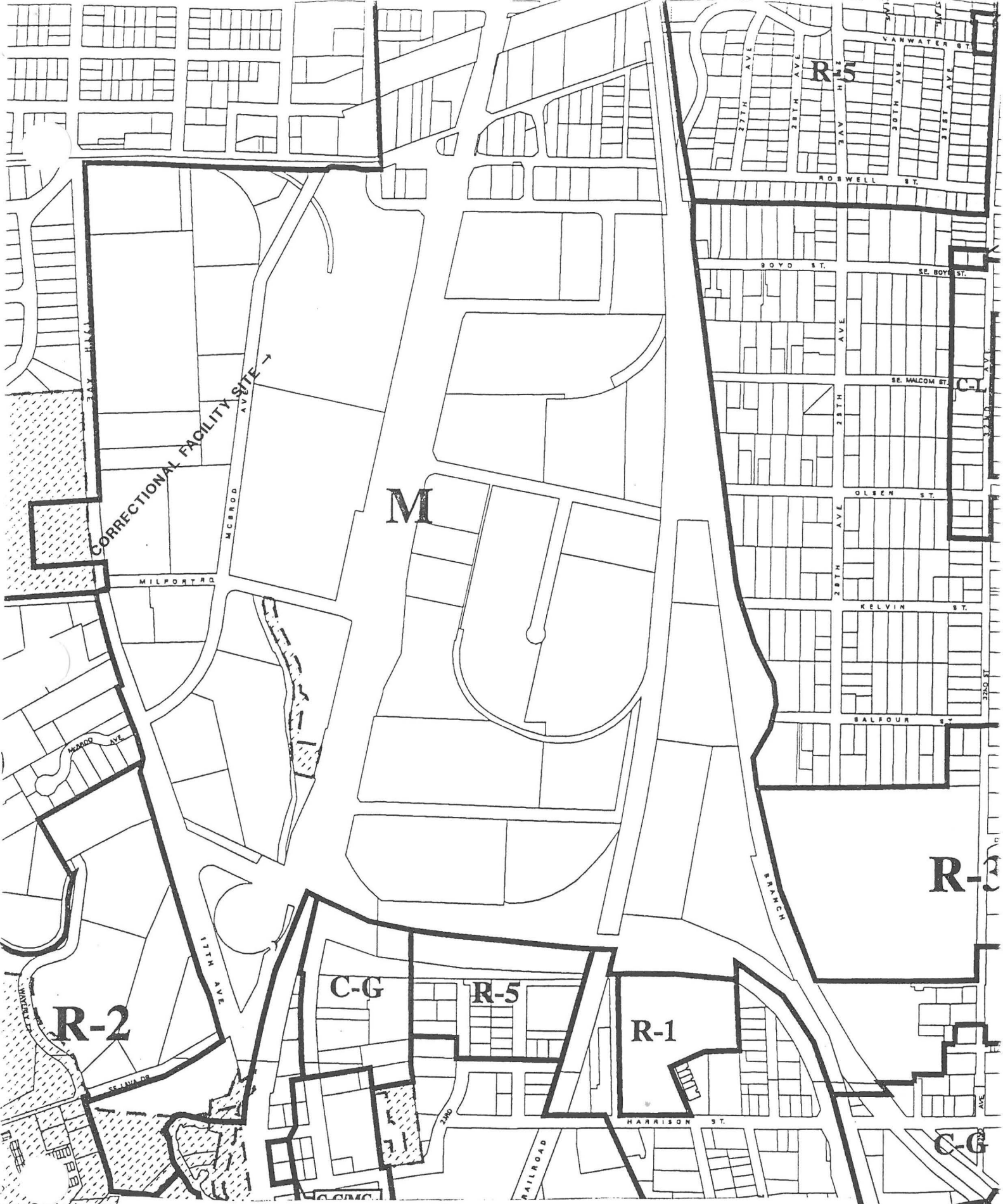
FINDINGS FOR COMMUNITY SERVICE OVERLAY CSO 99-01

1. Clackamas County Community Corrections Staff have addressed and resolved the concerns of the Neighborhood Association.
2. The request meets the Manufacturing zone criteria, Section 314.
3. The request meets the criteria under Section 321.10 of the Community Service Overlay Zone.
4. The request does not increase the previously approved occupancy capacity of the facility from 114 users specified in CSO-91-04.
5. The request limits the number of crime category 9 and 10 offenders to 10% or 11 persons, of the 114 total currently approved for the facility.
6. The land use approval is not a condition on the advisability on the re-negotiation of the sublease.

EXHIBIT 1

CONDITIONS OF APPROVAL

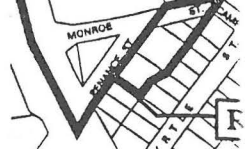
1. Clackamas County Corrections is approved to allow 10% (11 persons) of the previously approved 114 total occupancy of the facility to be those convicted of crime category 9 and 10 offences. See CSO-91-04 Conditions of Approval, Exhibit 4 of the Staff Report.
2. Clackamas County Corrections will not increase the capacity of the facility from the 114 occupants previously approved under CSO-91-04.
3. The sublease for the property with Clackamas County Corrections must be re-negotiated with the City of Milwaukie prior to allowing category 9 and 10 offenders into the facility.
4. Clackamas County Corrections will make every effort to avoid placing high-risk offenders in less secure facilities in the community. High-risk category 9 and 10 offenders will be given priority over low risk offenders for space at the corrections facility.
5. Clackamas County Corrections will provide the Milwaukie Police Department with a list of those crime category 9 and 10 offenders that are housed at the facility.
6. Clackamas County Corrections will provide the Community Development Department with a quarterly report showing the daily and monthly occupancy numbers of offenders residing at the site by crime category.



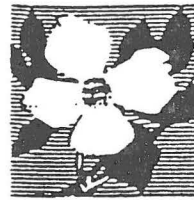
City of Milwaukee Community Development Department

Title: Vicinity Map Submitted by: CD Date: 4/14/99 # Pages: 1

File Numbers: CSO-99-01 Applicant: CCCC Exhibit #: 2



CITY OF MILWAUKIE



COMMUNITY DEVELOPMENT
PUBLIC WORKS

3101 S E. JOHNSON CREEK BLVD

TELEPHONE. 652-4410

Date: July 25, 1991

File # CSO-91-04

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission at a public hearing held on July 23, 1991, with regard to an application by Clackamas County Community Corrections for a Community Service Overlay Review (CSO-91-04) on property located at 9000 SE McSrod Avenue.

At the public hearing, the Planning Commission formally approved the subject application. Conditions of approval were also adopted and are attached to this notice.

Copies of the Staff Report and findings for approval of CSO-91-04 are available upon request.

Any action or ruling of the Planning Commission is subject to appeal to the City Council within 15 calendar days after the date of this notice. Information regarding forms, fees, and the appeal process can be obtained by contacting the City Community Development Department Staff at 652-4410. If no appeal is filed from this decision by August 8, 1991, at 5:00 p.m., this action shall be deemed final.

Maggie Collins

Maggie Collins, Community Development Director

JC/jpg

cc: Interested Persons
Planning Commission members
Tim Corbett, Public Works Director
File

91.00000

City of Milwaukie Community Development Department			
Title: <u>Notice of Dec CSO-91-04</u>	Submitted by: <u>CD</u>	Date: <u>4/14/99</u>	# Pages: <u>10</u>
File Numbers: <u>CSO-99-01</u>	Applicant: <u>CCCC</u>	Exhibit #: <u>3</u>	



CSO-91-04 is approved subject to the following conditions:

1. That the facility be limited to a maximum of 114 residents in the two structures (80 and 34).
2. That the clients admitted to the facility be misdemeanor and selected non-dangerous felony adult offenders who have been ordered to participate in programs under the directive and counsel of the Community Corrections Division. Corrective programs must be residential in nature and may include both work-release and drug and alcohol treatment and counseling.
3. That no persons whose current offense is a violent and person oriented crime, defined as Category 9, 10, or 11 crime outlined by the 1989 Oregon Sentencing Guidelines Statutes shall be admitted into the program.
4. The Applicant shall submit finalized plans for approval by the Community Development Department which will include sufficient detail and shall include, but not be limited to, the following:
 - a. CSO Permit Boundary.
 - b. Natural Resource Boundary Line as identified in the findings.
 - c. Proposed landscaping for the site and parking lot showing the location of all mature trees to be removed or preserved.
 - d. Complete parking layout with isle widths, ingress and egress and location of handicap parking which conform to the standards set out in Section 5.0 of the City Zoning Ordinance.
 - e. Adequate lighting to insure pedestrian safety.
 - f. Location of all buildings.
 - g. Location of all outdoor recreation facilities.

J. Adams

Community Development staff shall submit major modifications to structures proposed or to uses of land that differ from those shown on Exhibit 1 to the Planning Commission for further review.

Adams

The Applicant shall submit for the approval by the Community Development Department a complete landscaping plan for the enhancement of the riparian buffer as indicated in Exhibit #6.

6. The construction of the foundations and "breakaway walls" shall be constructed in accordance with the 1983 Uniform Building Code as recognized by FEMA.
7. All changes to the program procedures and activities outlined in the "Residential Center Program Handbook" dated October 1989 which would have an effect on the terms of this approval shall be reported to the Community Development Department.

*Per
tel
8
Dancy
9-14-89*

The Natural Resource Boundary shall be indicated by the posting of signs which restrict the use of land within the Boundary from recreational uses.

9. Street improvements shall conform to Public Works standards and shall include the extension of sidewalks from the western edge of the Johnson Creek bridge on Ochoco Street to the northern most parking lot of the facility on McBrod Avenue. The sidewalk along McBrod Avenue may be reduced in width to four feet with the concurrence of the Office Engineer.
10. Any change to the basic Work-Release or Drug and Alcohol Counseling resident programs shall be submitted to the Community Development Department for review for conformance to this CSO approval.
11. If sobering rooms are included in the final design of this facility persons shall not be released from the "sobering facility" without assured, or escorted, transportation from the area. Sobering operations shall be reviewed after a 6 month duration and a report presented to the Planning Commission.

MEMORANDUM

TO: PLANNING

FROM: Paul Roeger *PR*
Office Engineer

RE: CSO-91-04
OLCC
Clackamas County Community Corrections

DATE: July 5, 1991

City sanitary sewer and water are available to the site from McBrod Avenue. Additional system development charges will be determined at the time of application for connection.

Full half street improvements must be done before an occupancy permit can be issued for the building, including curb and gutter, sidewalk, storm drainage and appurtenances.

Storm drainage from the parking lot, street and roof drains must be run to Johnson Creek. "Lynch" type catch basins must be used in the parking lot. Storm water must be run through a grassy swale before it reaches Johnson Creek.

A good share of this property is in the Flood Plain and in the Flood Way. All floors to be occupied must be constructed one foot above the 100 year flood elevation or be flood proofed. The 100 year flood elevation is 42.1 feet at the railroad bridge and the floodway width is 240 feet. No structures can be built within the floodway that would obstruct the flow of water and increase the flood height by more than 1.0 feet. A hydraulic analysis must be done for any construction in the floodway and submitted to Public Works for approval.



CLACKAMAS COUNTY

Department of Transportation & Development

June 21, 1991

Maggie Collins
City of Milwaukie
10722 SE Main Street
Milwaukie, Oregon 97222

WINSTON KURTH
EXECUTIVE DIRECTOR

RICHARD DOPP
DIRECTOR
OPERATIONS & ADMINISTRATION

TOM VANDERZANDEN
DIRECTOR
PLANNING & DEVELOPMENT

SUBJ: Clackamas County Work Release Facility
Natural Resource Evaluation

This development is adjacent to Johnson Creek and is, therefore, subject to Section 3.21-A, Natural Resource Overlay Zone Riparian Area. A portion of the existing natural riparian fringe is described in my letter of November 23, 1990 (see attached). The remainder of the stream frontage is similar in nature, having vegetation only on the stream edge and not extending past the top of bank. The proposed development of this site will avoid all existing stream bank vegetation and will maintain a 25 foot wide buffer measured from the edge of low water. Native trees and shrubs will be reestablished within the buffer to form a riparian corridor. The stream bank along the existing development will also re-vegetate along the sidewalk where feasible.

In compliance with Section 3.21.08 (Site Surveys), the 25 foot riparian corridor will be surveyed and will be shown exactly on the final site plan. All major trees outside the 25 foot buffer that are adjacent to the stream will also be located and shown on the final site plan. The re-vegetation plan and specifications will be developed as part of the final plan.

In summary, the proposed development will preserve outright the existing vegetation along the stream. A 25 foot buffer will be established to protect the stream and will be re-vegetated. The exact location of the riparian buffer and the re-vegetation plan will be part of the final survey design.

If you have any questions, please contact me.

J. A. Marshall
J. A. MARSHALL
Technical Services Section

Enclosure

EXHIBIT #	6
DATE	7/23/91
SUBMITTED BY	Stalo
RECEIVED	6/29/91

3. Crime Category 9:

A. Burglary I - If offender was armed with a deadly weapon or caused or threatened physical injury, otherwise it would not apply.

B. Robbery I - Same as above.

C. Kidnapping II

cc: Jono Hildner, DHS Administrator
Terry Gassaway, Director Corrections
Mike McLees, Project Manager
Cyndi Klaetsch, GSA
file



CLACKAMAS COUNTY

Department of Transportation & Development

November 23, 1990

WINSTON KURTH
EXECUTIVE DIRECTOR

RICHARD DOPP
DIRECTOR
OPERATIONS & ADMINISTRATION

TOM VANDERZANDEN
DIRECTOR
PLANNING & DEVELOPMENT

Steve Salvey
General Services
Oregon City, Oregon 97045

NATURAL RESOURCE INVENTORY
FOR CITY OF MILWAUKIE
P.O. Tax Lot 100, Section 26AA, T. 1, R. 1E

I have examined a portion of Tax Lot 100 as indicated on the attached map in red to identify natural resources and vegetation. The soil on this parcel is formed in the recent alluvium on the current flood plain of Johnson Creek. The majority of the site has been disturbed and some amount of filling appears to have taken place over the site. Johnson Creek forms the easterly boundary of the parcel. Through this area Johnson Creek has been channelized and hand placed stone bank protection has been placed on much of the streambank. The streambank on this site has not been rip rapped. However, the natural area adjacent to the stream has been reduced to from 10 to 25 feet in width from the low waters edge.

The vegetation on the upland portion of this site consists largely of Himalayas Blackberry, *Rubus Procerus* an introduced species now well established in Western Oregon. Where the blackberries are not dominant a mixture of grasses and weeds such as Morning Glory, Milk Weed, Water Hemlock occur. This type of vegetation is indicative of a disturbed site. There is a narrow fringe of more natural vegetation that exists adjacent to Johnson Creek. This vegetation consists prominently of shrubs and small trees with several larger alders occurring toward the northern end of the site. This vegetation is restricted to the streambank where filling has not recently taken place. Along the north of the site there are several large *Alnus Rubra*. There are several small Oregon Ash trees *Fraxinus Latifolia* occurring now as understory. The majority of the streambank to the south is covered with native willow shrubs *Salix*. Several ornamental willow trees have also naturalized along the streambank within this area. There is little natural plant understory along the stream because of the dominance of the Himalaya Blackberry.

RECOMMENDATION: The stream and the limited riparian vegetation is the most significant natural resource on this site. As a

Page 2
Steve Salvey
November 23, 1990

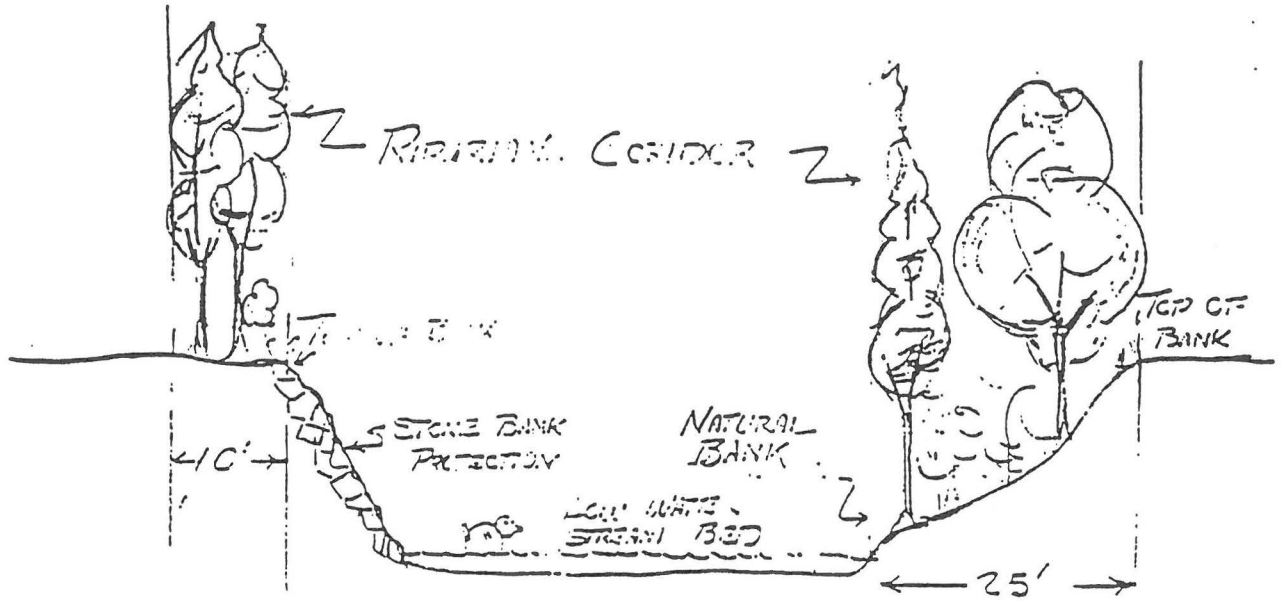
condition of development on this site I would recommend that where the rock bank protection does not occur a riparian corridor be established 25 feet wide extending from the edge of the stream at low water to the top of the bank. The major trees and shrubs to be preserved.

Where the rock bank protection does occur I would recommend that a riparian corridor be established 10 feet in width extending 10 feet back from the top of the rock bank. See attached plan. The riparian corridors to be planted with native plants and shrubs that would occur naturally along the stream corridor. Plant list attached. I recommend this as a minimum standard with additional stream and riparian corridor enhancement as applicable subject to the specifics of the development proposal.

J. C. Marshall

JERRY MARSHALL
Planning and Economic Development Division

RECOMMENDED
MINIMUM REQUIREMENT
FOR JOHNSON CR.
RIPARIAN CORRIDOR



SHRUBS, TREES AND AQUATIC PLANTS FOR WILDLIFE PLANTINGS

Wet Areas

1. Oregon Ash (Fraxinus latifolia)
 2. Hawthorn (Crataegus douglasii)
 3. Willows (Salix sp.)
 4. Cottonwood (Populus trichocarpa)
 5. Red Alder (Alnus rubra)
- Frost hardy, drought tolerant
 - Native tree, useful to over 20 bird species, fruit produced in late fall
 - Easy to establish from cuttings
 - Fast growing, provides good buffer
 - Streams and moist bottom areas

Shallow Ponds

1. Pondweed (Potamogeton sp.)
 2. Smartweed (Polygonum spp.)
 3. Sedges (Carex spp.)
 4. Bulrushes (Scirpus sp.)
 5. Burreed (Sagittarium sp.)
 6. Wapato Duck Potato (Sagittaria latifolia)
 7. Cattails (Typha latifolia)
 8. Spike Rush (Eleocharis spp.)
- Grows in water 1-4' deep
 - Wet soils or shallow water
 - Several species, wet soils or shallow water
 - Shallow water to 1 1/2' deep
 - Edges of ponds, produces large edible seeds
 - Mud flats, to water 1 1/2' deep
 - Wet soils, shallow water
 - Wet soils

Upland Area/Wetland Perimeter

1. Cascara (Rhamnus purshiana)
 2. Blue Elderberry (Sambucus cerulea)
 3. Red Elderberry (Sambucus callicarpa)
 4. Autumn Olive (Elaeagnus sp.)
 5. Chokecherry (Prunus virginiana)
 6. Bitter Cherry (Prunus emarginata)
 7. Dogwood, redosier (Cornus stolonifera)
 8. Crabapple (Malus diversifolia)
 9. Honeysuckle (Lonicera sp.)
 10. Red Cedar (Thuja plicata)
 11. Serviceberry (Amelanchier alnifolia)
 12. Evergreen Huckleberry (Vaccinium ovatum)
 13. Hazelnut (Corylus californica)
 14. Woods Rose (Rosa gymnocarpa)
 15. Red-Flowering Currant (Ribes sanguineum)
- Produces purple fruit, preferred by pigeons and songbirds
 - Fruit highly utilized by pigeons and songbirds
 - Fruits earlier than blue elderberry
 - Nitrogen fixer, produces red berries used by wildlife. Shrub can grow 6-15' high and produce up to 80 lbs. of fruit
 - Produces purple fruit
 - Produces red, juicy, bitter fruit
 - Produces white berries used by game birds, songbirds, and bears
 - Small trees native to Oregon, produces valuable food for wildlife
 - Produces red fruit late in summer, holds fruit into winter
 - Produces good winter cover on moist sites, seeds for birds
 - Dark blue fruit used by birds
 - Prefers shade, blue berries, often planted as an ornamental
 - Provides brushy buffer as well as edible nut
 - Hips eaten by most birds; deer and elk browse foliage
 - Edible berries



COMMUNITY DEVELOPMENT
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7650
FAX: (503) 774-8236

Application for Land Use Action

(Please print or type)

APPLICANT(S):	Clackamas County Correctional Facilities	Phone: (503) 794-3875
Address:	9000, 9200 SE McBrod St, Milwaukie, OR	Zip: 97222
PROPERTY OWNER(S):	Oregon Liquor Control Commission	Phone: (503) 872-5006
Address:	9079 SE McLoughlin Blvd, Milwaukie, OR	Zip: 97222

APPLICATION TYPE (check):

<input type="checkbox"/> Annexation	<input type="checkbox"/> Nonconforming:
<input type="checkbox"/> Appeal (Admin. to PC/PC to CC)	<input type="checkbox"/> Use
<input checked="" type="checkbox"/> Community Service Overlay	<input type="checkbox"/> Structure
<input type="checkbox"/> Comprehensive Plan Amendment (Major QJ/Legislative)	<input type="checkbox"/> Replacement of existing NCU
<input type="checkbox"/> Conditional Use	<input type="checkbox"/> Planned Development (Preliminary/Final)
<input type="checkbox"/> Exception	<input type="checkbox"/> Solar Review
<input type="checkbox"/> Expedited Land Division	<input type="checkbox"/> Subdivision (Preliminary/Final)
<input type="checkbox"/> Historic Resource Review:	<input type="checkbox"/> Temporary Structure
<input type="checkbox"/> Alteration	<input type="checkbox"/> Transition Area Plan Review
<input type="checkbox"/> "Other" Alteration	<input type="checkbox"/> Transportation Planning Review
<input type="checkbox"/> Demolition	<input type="checkbox"/> Variance:
<input type="checkbox"/> Deletion OR Designation	<input type="checkbox"/> 25% or less of Zoning Ordinance standards
<input type="checkbox"/> Lot Line Adjustment	<input type="checkbox"/> Over 25% of Zoning Ordinance standards
<input type="checkbox"/> Major Land Partition	<input type="checkbox"/> Sign Ordinance
McLoughlin Corridor Design Review:	<input type="checkbox"/> Subdivision Ordinance
<input type="checkbox"/> Regular	<input type="checkbox"/> Zoning Ordinance Amendment:
<input type="checkbox"/> With Willamette Greenway Conditional Use	<input type="checkbox"/> Map, Major Quasi-Judicial
<input type="checkbox"/> Minor Land Partition	<input type="checkbox"/> Map, Legislative
<input type="checkbox"/> Natural Resource Review	<input type="checkbox"/> Text, Major Quasi-Judicial
	<input type="checkbox"/> Text, Legislative
	<input type="checkbox"/> Other:

PROPOSAL (describe briefly): Modify existing Conditional Use Permit to allow offenders in Crime Categories 9 and 10, previously excluded, to be housed at both Correctional Facilities.

Location: 9000 and 9200 SE McBrod, Milwaukie Map & Tax Lot(s): Lot 100 11E26AA

Comprehensive Plan Designation: Industrial Zoning: Manufacturing Size of property: 14.17 acres

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: _____ LUC Chair: _____ Phone: _____

ATTEST: I am the property owner or I have attached the owner's authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate. I have attached a proposal description, criteria response, site plan/map, notice labels and map, and other relevant information as required for this application.


Submitted by: *Steve Ray* Date: *2/26/99*

File # *CSO-99-01*

City of Milwaukie Community Development Department

Title: *CSO-99-01 App* Submitted by: *CCCC* Date: *4/14/99* # Pages: *9*

File Numbers: *CSO-99-01* Applicant: *CCCC* Exhibit #: *4*




Department—12/6/95

Memo

RECEIVED

MAR 01 1999

CITY OF MILWAUKIE
BUILDING DIV.

To: Janet Wright, Assistant Planner, City of Milwaukie
From: Steve Bracy, Manager 
CC:
Date: 03/01/99
Re: Amendment to CSO 91-04

Pursuant to our conversation in your office last Friday, attached find address labels for notice to the neighborhood associations. We also briefly discussed some of the conditions OLCC placed on their approval of our application. You indicated it would be beneficial if I provided greater detail about the more relevant conditions, imposed by OLCC, than was provided in Ms. Terry's letter.

OLCC has stipulated, as a condition of approval, that no more than 10% of our offender population can be category 9 and 10 offenders. The combined capacity of our two facilities is 114, therefore, the number of 9 and 10 offenders in residence could not rise above 11 at any given time.

Other OLCC conditions were that we notify all neighborhood groups of our proposal and that Residential Services share in the cost of security improvements to OLCC's facilities.

Also note that I have notified (see attached letter), Mrs. Kris Heiberg of the Sellwood/Moreland Improvement League (SMILE), and Margaret Branson of the Garthwick Neighborhood Association, of our application. For Your information, Mark Rasmussen and I, have attended two meetings with SMILE in the past 18 months concerning this application. It was during our meetings that we agreed to keep these groups up to date on the progress of our application, specifically the public meeting schedule. I have also included SMILE and the Garthwick Neighborhood Assoc. on mailing labels list for the City.

Hopefully I have provided the additional detail you need, if not, let me know what additional information I need to provide.

PROPOSAL DESCRIPTION:

Presently our Conditional Use Permit with the City of Milwaukie excludes the admission of offenders convicted of crimes in categories 9 and 10 as defined by current sentencing guidelines law. We are seeking modification of our current permit to allow offenders convicted of category 9 and 10 crimes admission to our facilities. I have attached a summary of offenses contained in categories 9 and 10 for your review.

Initially, when the current Conditional Use Permit was adopted, it was based on the premise that exclusion of offenders convicted of category 9 and 10 crimes, particularly the sex offender, was in the interest of public safety. It is now clear that despite our best intentions, we have inadvertently increased the risk of harm to the public by not admitting them. At the present time, when these offenders have served their sentences and are released from prison to post prison supervision, they often lack suitable housing, prospects for employment and most of all, the stability of structure to aid them in their transition. Because these offenders are excluded from our facilities, as resourceful as our Parole Officers are, they have few desirable options for housing these offenders and inevitably place them in local motels for expensive short term housing, emergency shelters, or in the absence of these alternatives are forced to allow them to live in their cars, under bridges, in campgrounds, or with undesirable friends or relatives. In these situations effective supervision is severely limited. Because the number of these offenders being released from prison at the conclusion of their sentence is increasing, so is the risk to the community if the exclusion from our facilities remains.

Not only would the requested modification assist in the transition process from prison in terms of better managing public safety risk, it would also enable our Parole Officers to place this category of offender, specifically the sex offender, in a structured environment at any time during the offender's period of supervision if a more secure and structured setting was needed. Currently they do not have this ability and, as sited above, this results in the Parole Officer scrambling to put together marginal alternatives that fall far short of inspiring public confidence or enhancing public safety.

There is no question that a risk to the public is involved with community supervision of this population, but the key question is, given that category 9 and 10 offenders are in our communities, how is the risk best managed? It is now our belief that by allowing these offenders admission to our facilities, we will maximize our ability to provide a more responsible level of supervision to this high risk population and thereby enhance public safety in a significant manner.

As strongly as we believe the requested modification will improve our ability to serve the community, I want to avoid misleading you. Should our request be granted, the practice of placing these offenders or other categories of offenders in motels, shelters, or allowing them to live in their cars, under bridges, and in campgrounds, will not end. I would like to tell you that lifting the current exclusion on category 9 and 10 offenders is the panacea we have all been looking for but it isn't. There is a limit to our space as you know (114 total beds between our two facilities), and we will not be able to admit them all as we would like, however, we can certainly admit a significant number. In the interest of public safety, given the high risk this population presents, we are prepared to give their admission the highest priority.

I have also enclosed a letter from Mark Rasmussen (our Agency Director) to Brent Collier (Milwaukie Police Chief), as well as Chief Collier's response regarding this issue, for your review.

CUO1097



Oregon

John A. Kitzhaber, M.D., Governor

Liquor Control Commission

February 25, 1999

Clackamas County Corrections
Mr. Mark Rasmusson
9000 SE McBrod
Milwaukie, OR 97222

Dear Mark:

During the March 30-31, 1998 Commission Meeting at the Oregon Liquor Control Commission (OLCC), the Commissioners approved with conditions your request to amend the current lease agreement between the State of Oregon and Clackamas County Corrections to add Category 9 & 10 offenders. The Commissioners directed staff to work with the County to amend the lease with regard to security issues, a reasonable limit on the number of Category 9 & 10 offenders to be housed at the County facilities, cancellation provisions and items related to the use of vacant land on the west side of the property.

As we've discussed, Clackamas County Corrections has agreed to share in the cost for additional security at the OLCC. This assistance will help provide a safe environment for the employees of the OLCC. It will also allow Clackamas County Corrections the ability to house Category 9 & 10 offenders in the work release facilities.

I'm sending you this letter so you can move forward with your next steps to gain the appropriate permits from the City of Milwaukie. Upon their approval for Clackamas County Corrections to house Category 9 & 10 offenders, we still need to negotiate the final terms of the amendment to the lease between the State of Oregon and Clackamas County Corrections.

The OLCC appreciates your cooperation in working on the increased security of their facility. Feel free to call me if you have any questions at (503) 872-5151.

Sincerely,

Joan L. Terry
Administrative Services Division Director

JT/smk



CLACKAMAS COUNTY

Department of Community Correc

MARK K. RASMUSSEN
DIRECTOR

September 8, 1997

Chief Brent Collier
Milwaukie Police Department
3200 SE Harrison St.
Milwaukie, Oregon 97222

Dear Brent:

I am writing as a follow-up to our phone conversation regarding our Conditional Use Permit with the City of Milwaukie involving our work release centers in Milwaukie.

I have attached a brief summary of the crime categories which are currently excluded from placement in our facilities. These guidelines took effect in 1992. Prior to 1992, the Conditional Use Permit guideline language was more vague and placement was not prohibited by crime category. We would like to pursue the possibility of altering the Conditional Use Permit language such that sex offenders could be placed in these facilities.

We believe that the current practice of excluding sex offenders from placement in our facilities has created some unintended public safety issues. We are currently experiencing a considerable increase in offenders coming out of the state institutions on parole or post-prison supervision. These offenders generally do not have employment and/or housing. Our work release program works with these offenders to resolve these issues and unfortunately the sex offender population cannot take advantage of these services. In the end, they are placed in local motels with less supervision, less services and the potential for creating greater problems in the community. Our belief is that by allowing this population into the work release program, we will improve public safety. We are aware that this has the potential of becoming a volatile issue. However, since these offenders are already in the community and by allowing them to be placed in our facilities, we will be better able to manage this population and provide enhanced supervision, services and sanctions.

Lastly, I would like to point out that all of the crimes listed under Crime Categories 9, 10, and 11 require the offender to serve prison time under sentencing guidelines. Our request to alter these Conditional Use Permit Guidelines would be

FIELD SERVICES
1024 MAIN STREET
OREGON CITY, OR 97045
(503) 655-8603
FAX (503) 650-8942

CORRECTIONAL FACILITY
9000 S.E. MCBROD
MILWAUKIE, OR 97222
(503) 655-8262
FAX (503) 650-8939

RESIDENTIAL CENTER
9200 S.E. MCBROD
MILWAUKIE, OR 97222
(503) 794-3888
FAX (503) 794-8089

to include placement of Crime Category 10 and 9 only after they have finished their prison sentence and are on parole or post-prison supervision in the community.

If you have any questions or additional concerns, please feel free to contact me at 722-2776.

Mark Rasmussen, Director
Clackamas County Community Corrections

cc: Ris Bradshaw, Sheriff
Steve Bracy, Manager
Dave Koch, Manager
Ingrid Lewis, Manager
Sex Offender Team
Maggie Collins, Milwaukie Planning Department



September 26, 1997

Director Mark Rasmussen
Clackamas County Community Corrections
1024 Main Street
Oregon City, Oregon 97045

Dear Mark

This letter is submitted in response to your inquiry reference my position on modification of your Conditional Use Permit with the City of Milwaukie.

I appreciate the summary of the crime categories which are currently excluded from placement in your facilities. I understand that these guidelines took effect in 1992. While I was not the Chief of Police at that time, I'm certain that this decision was made in behalf of the safety of the community. It doesn't take a police officer to ascertain that category 11, 10 and 9 offenders do pose a serious risk to the community.

I am aware of the considerable increase in sex offenders coming out of the state institutions on parole or post-prison supervision. I am aware that these offenders generally do not have employment and/or housing. It appears that this trend will continue. An increase in offenders, coupled with dwindling resources appears to create a serious dilemma. The current practice of housing these offenders in local motels with less supervision, in my mind, only serves to increase the risk to the community. We are aware of one Milwaukie area hotel that appears to house many of these offenders. A local bar is in close proximity to this hotel. While I will not cite specific instances in this response, I will tell you that Milwaukie Police Officers deal with these offenders on a regular basis. I also feel comfortable in stating that the citizens of Milwaukie would be shocked to know that these offenders reside in their community, with minimal supervision.

I support any program which will increase the supervision of category 11, 10 and 9 offenders. Given the choice of housing these offenders in local motels with minimal supervision and services, versus placement in your facilities, the answer is simple. I would support altering the Conditional Use Permit Guidelines to include placement of Category 10 sexual offenders in your work release program.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent W. Collier", written over a horizontal line.

Brent W. Collier
Chief of Police

Cc: Dan Bartlett, City Manager
Maggie Collins, Community Development Director

PUBLIC SAFETY BUILDING
3200 SE HARRISON
MILWAUKIE, OREGON 97222
PHONE: (503) 786-7400 • FAX: (503) 786-7426

B - ADDRESS APPROVAL CRITERIA:

TEXT OF CRITERIA:

321.4 - Authority to grant or deny a community service use

A) An application for a community service use may be allowed if:

1) The requirements of the underlying zone are met.

- This application is for existing facilities and no new construction is planned

2) Specific standards for the uses found in the subsections 321.7 - 321.10 are met.

- No change to existing permit.

3) The hours and levels of operation of the proposed use can be adjusted to be reasonably compatible with surrounding uses.

- No change to existing permit. Facility hours will continue to be 24/7. Staffing pattern will also continue to be the same as will the number of residents we house.

321.10 - Specific standards for institutions: Public/private and other facilities not covered by other standards.

A) No change from existing permit.

B) No change from existing permit.

C) No change from existing permit.

D) No change from existing permit.

E) No change from existing permit.

F) No change from existing permit.

G) No change from existing permit.



CLACKAMAS COUNTY

Department of Human Services
Community Corrections Division

TERRY L. GASSAWAY
DIRECTOR

DATE: March 8, 1996
TO: Public Safety Coordinating Council
FROM: Mark K. Rasmussen, Manager Residential Services
SUBJECT: Work-Release Entrance Criteria for Clackamas County

Currently our Conditional Use Permit with the City of Milwaukie excludes from placement Category 11, 10, and 9 crimes as outlined by the 1989 Oregon Sentencing Guidelines Statutes. Thus, anyone with one of the following as a current offense would not be allowed placement:

1. CRIME CATEGORY 11
 - A. Murder

2. CRIME CATEGORY 10
 - A. Manslaughter I
 - B. Rape I
 - C. Sodomy I
 - D. Sexual Penetration I
 - E. Assault I
 - F. Kidnapping I
 - G. Arson 1 (If offense represented a serious threat to life or an economic loss greater than \$50.00.)

3. CRIME CATEGORY 9
 - A. Burglary I (If offender was armed with a deadly weapon or caused or threatened physical injury, otherwise it would not apply.)
 - B. Robbery I
 - C. Kidnapping II

In addition, we have an agency policy which limits our taking individuals who require medication to control their behavior.

ec39

City of Milwaukie Community Development Department

Main Office
Corrections

Title: Sum of Offenses Submitted by: CCCC Date: 11/14/99 # Pages: 1
 File Numbers: CSO-99-01 Applicant: CCCC Exhibit #: 5



FAX 650-8942
FAX 650-8939

MEMORANDUM

RECEIVED

MAR 18 1999

CITY OF MILWAUKIE
BUILDING DIV.

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger, P.E. *[Signature]*
Civil Engineer


RE: CSO-99-01
9000 and 9200 SE McBrod Avenue

DATE: March 18, 1999

City sanitary sewer and water serve both facilities. Storm drainage goes directly to Johnson Creek, which borders the east side of these properties.

Curb and sidewalk exist along the frontage of McBrod Avenue.

Since no expansion of these facilities is included in this proposal, Public Works does not have any additional requirements for these properties.

City of Milwaukie Community Development Department				
Title: <u>PW Comments</u>	Submitted by: <u>PW</u>	Date: <u>4/14/09</u>	# Pages: <u>1</u>	
File Numbers: <u>CSO-99-01</u>	Applicant: <u>CCCC</u>	Exhibit #: <u>6</u>		

Clackamas County Fire District



Fire Prevention Division

2930 SE Oak Grove Blvd.
Milwaukie, Oregon 97267
(503) 655-8537
Fax - (503) 655-8880

To: Janet Wright Assistant Planner City of Milwaukie

From: Tom Crowder Deputy Fire Marshal

Re: CSO 99-01

Date: March 17, 1999

RECEIVED

MAR 17 1999

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

My office has no issues with this CSO

Yours in Fire and Life Safety,

Tom Crowder
Deputy Fire Marshal

11300 S.E. Fuller Road • Milwaukie, OR 97222 • (503) 655-8534

City of Milwaukie Community Development Department

Title: CCFD Comment Submitted by: CCFD Date: 4/14/99 # Pages: 1
File Numbers: CSO-99-01 Applicant: CCCC Exhibit #: 7



CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

April 19, 1999

Proposal: Install odor control devices at Kellogg Creek Treatment Plant

File No's. Community Service Overlay - CSO-99-02
Willamette Greenway Conditional Use - CU-99-01
McLoughlin Boulevard Overlay - MC-99-01

Applicant: Clackamas County Service District No. 1

Owner: Clackamas County

Location: Kellogg Creek Water Treatment Plant
11525 SE McLoughlin Boulevard

NDA: Island Station

Zones: Limited Commercial Zone C-L, McLoughlin Boulevard Overlay
and Willamette Greenway Overlay

Map & Tax Lot 1 1E 35AD 01500

RECOMMENDATION

It is recommended that CSO-99-02, CU-99-01, and MC-99-01 be approved based upon the findings of this report, and further that the approval be subject to the conditions listed in Exhibit 1 - Recommended Conditions of Approval.

EXECUTIVE SUMMARY

Clackamas County Service District #1 is seeking approval to construct odor control improvements at the Kellogg Creek Water Pollution Control Plant. See application report by Adolfson Associates, March 1999. The proposal requires three separate applications pursuant to Milwaukie Zoning Ordinance Sections 320-Willamette Greenway, 321-Community Service Overlay, and 325-McLoughlin Boulevard Overlay. These applications are each subject to the minor quasi-judicial review procedures of Milwaukie Zoning Ordinance 1011.3.

Cause for the Proposal

It is commonly known that the treatment plant occasionally creates odor nuisances. It is not known what formal cause for action, if any or what planning program of Clackamas County Service District has resulted in the development of the odor control project at this time. The applicant is expected to address this issue, and the condition of the existing odor control systems at the public hearing.

Proposed Near Term Construction & Likely Future Construction

The applicant is seeking approval to construct odor control facilities, replace the digester gas incinerator, and install a new digester gas storage vessel. Specific construction plans for the odor control facilities have been submitted. Plans are not available for the gas digester and storage vessel; these improvements are expected to be made at some time in the future. The odor control plans provide for increasing air treatment capacity in the future by adding a blower and increasing the depth of the organic medium and increasing coverage of the aeration basins.

Potential Impacts and Proposed Mitigation

The proposed construction may result in noise and view impacts. The residential neighborhood to the south may be subject to noise impacts. The level of potential noise is not known at this time. The applicant is proposing to construct a sound wall around the blower station. Many on-site trees are to be removed. Replacement trees are proposed along the perimeter of the construction site. A planted berm is shown at the southern end of the construction site.

Compliance with Milwaukie Regulations

Staff finds that based upon the recommended conditions, the proposal complies with the applicable provisions of the Milwaukie Zoning Ordinance.

BACKGROUND

Project Summary. See Exhibit 2 - Site Plan

The short-term project consists of the following: new biofilters, collection & delivery ducts, blowers, basin covers, relocated electrical controls, lighting, sound walls, landscaping and plantings.

The longer-term project, for which use-approval is now being sought, consists of replacing the digester gas incinerator and installing a new gas storage tank.

Biofilters

The proposal calls for the construction of six 1,800 square foot organic odor filters (biofilters) to be located at the south east corner of the plant in an area presently maintained as lawn. Odorous air is delivered to the biofilters where odor is reduced by natural processes. A blower and duct system collects air from aeration basins, primary clarifiers, influent junction box and influent pump station wet well, the headworks building, and the solids handling building.

Biofilter design consists of partially sub-grade open topped concrete basins that hold organic matter (wood chips & compost material). Odorous air is distributed through the organic medium. The above grade component consists of a 4-foot concrete wall. A blower station is located adjacent to and northerly of the biofilter area. A 9-foot sound wall is to be constructed around the blower station.

Air ducts will be installed at collection sites and routed to the biofilters.

Aeration Basin Covers

New covers on certain section of the aeration basins are proposed to confine foul air for collection and distribution to the biofilters. The collection system contains

Relocated Electrical Room

An existing below grade electrical room is to be relocated to prevent future damage from flooding.

Replace Digester Gas Incinerator

Gas is collected from the digesters and burned-off at the gas incinerator located at the southwest corner of the site. The incinerator is a suspect odor source and is proposed to be replaced, though specific construction plans are not now available. The Service District is seeking-use approval for replacement of the incinerator. The digester is closest of the site facilities to southerly adjacent houses. Under the recommended conditions of approval, construction plans would be reviewed administratively with neighborhood input. There would also be an option for the plans to be brought back to the Commission. Specific considerations should be given to protecting adjacent residences from impacts.

New Digester Gas Storage

The site plan shows a location along the southern property line for a new gas storage tank just east of the gas incinerator. Construction plans are not available at this time. It is not known whether the tank is to be above or below grade. The Service District is requesting use-approval at this time. Under the recommended conditions of approval, construction plans would be reviewed by staff with neighborhood input. Also, there would be an option for the plans to be brought back to the Commission. Specific considerations should be given to protecting adjacent residences from impacts.

Lighting

Three new freestanding light poles are proposed. The applicant states light will not be directed into residential areas.

DISCUSSION

Compliance with Milwaukie Regulations

The applicant has addressed approval criteria for the applicable section of the Milwaukie Zoning Ordinance. See Exhibit 3 - Application Report, prepared by Adolfson Associates, March 1999. Staff finds that the applicant's evaluation of applicable criteria is generally consistent with the intent and provisions of the regulations. Discussion of each set of criteria follows.

Milwaukie Zoning Ordinance Section 320 - Willamette Greenway Zone, WG

The purpose of the WG Zone is to protect scenic, historic, economic, and recreational values of lands along the Willamette River. The entire site is located in the WG zone. Development in the WG zone is subject to conditional use standards of Milwaukie Zoning Ordinance Section 600-Conditional Uses and specific criteria of Milwaukie Zoning Ordinance 320.6-WG Zone criteria. Section 600 establishes the minor quasi-judicial review process and requirement to record conditions of approval with the County Clerk. There are no review criteria specific to public utilities in Section 600.

Staff finds the applicant has adequately addressed the review criteria of the WG zone and that the proposal is consistent with review criteria. This finding does not include the digester gas incinerator and gas storage tank, for which there are no specific construction plans. It is believed however, that these improvements can be designed, located, and mitigated consistent with the provisions of WG regulations.

Milwaukie Zoning Ordinance Section 321 - Community Service Overlay

The treatment plant is considered a "utility" as used in the Community Overlay Zone. Community Service uses are permitted in any zone. Utilities are subject to the review procedure and criteria of the Community Overlay Zone. The Planning Commission may impose conditions to assure compatibility of the use with others in the area pursuant to Milwaukie Zoning Ordinance Section 321.4.B. Such conditions may include limits on noise, light, location of activity, and the like. Specific review criteria are found in Milwaukie Zoning Ordinance 321.10. Standards relevant to this review involve primarily noise and lighting. The applicant states that potential noise and light impacts will be mitigated by sound buffering walls and appropriate location and design of lighting. Provisions should be made to ensure adequate mitigation is achieved. The proposed conditions of approval include such provisions.

Staff finds the applicant has adequately addressed the review criteria of the CSO zone and that the proposal is consistent with review criteria subject to ensuring adequate performance of proposed mitigation of noise and lighting impacts. This finding does not include the digester gas incinerator and gas storage tank, for which there are no specific construction plans. It is believed however, that these improvements can be designed, located, and mitigated consistent with the provisions of CSO regulations.

Milwaukie Zoning Ordinance Section 325 - McLoughlin Boulevard Overlay

The McLoughlin Boulevard Overlay Zone is intended to strengthen the relationship between the downtown business district and the Willamette River by improving visual, pedestrian and transportation features. The proposed improvements are expected to have a minimal effect on values the overlay zone seeks to improve. Landscape planting along the McLoughlin right-of-way is proposed to mitigate potential view impacts.

Staff finds the applicant has adequately addressed the review criteria of the McLoughlin Boulevard Overlay Zone and that the proposal is consistent with review criteria subject to ensuring adequate performance of proposed mitigation potential view impacts.

Milwaukie Zoning Ordinance Section 311 - Limited Commercial Zone C-L

The C-L zone provides for a variety of retail, office, and personal service uses. The treatment plant is permitted in the C-L zone pursuant to Milwaukie Zoning Ordinance Section 321-Community Service Overlay. Standards for development in the C-L zone are found in Milwaukie Zoning Ordinance 311.3. Staff finds the applicant has adequately addressed the review criteria of the C-L zone and that the proposal is consistent with the review criteria except as follows.

The C-L regulations require consideration of Milwaukie Zoning Ordinance Section 413-Transition Area. These regulations apply when commercial, multifamily, or industrial development is proposed within 100-feet of areas zoned for lower density uses. The applicant's report (Adolfson Associates, March 1999) states that the nearest lower density use is located more than 250-feet south of the project. The area to the south is zoned Residential R-5. The zone boundary coincides with the treatment plant property boundary which is less than 250-feet but greater than 100-feet from the project site.

Milwaukie Municipal Code, Chapter 18.04 - Flood Hazard Areas

The project site is shown on the City's official flood map as being in the 100-year flood area. All such areas are subject to special construction requirements. The applicant has indicated that the site should not be subject to these regulations based on topographic conditions that demonstrate the area is actually not in the flood hazard area. The City's topographic maps support the applicant's position. The Municipal Code contains a provision that the Public Works Director may interpret the map and available information and determine the actual flood boundary location.

Review of Incinerator and Gas Storage Construction Plans

The applicant was advised by staff to identify all on-site improvements presently under consideration by the Service District. Accordingly, the digester gas incinerator and gas storage tank are shown on the site plan even though construction plans are not yet available. The Service District is seeking use- approval for these improvements now.

The intention is that construction plans would be reviewed when available. Staff believes this would be appropriate providing the following:

- a. That this proposal is acceptable to the Planning Commission and neighborhood;
- b. that provisions are made for staff and neighborhood review; and
- c. that the applicant is required to demonstrate compliance with all applicable standards; and
- d. that the Commission authorizes staff to impose reasonable conditions to ensure compliance with applicable review criteria; and
- e. that the plans will be forwarded to the Commission in the event of any disagreement over the interpretation of applicable criteria.

COMMENTS

Island Station Neighborhood District

"After a presentation and a walk-through of the plant and the area that will be impacted by this application, the Land Use Comm. for Island Station can see no objection to the application or the findings of staff. It should be noted that we wish to be involved if and when plans are completed to replace or alter the digester gas incinerator and storage area." Molly Jo Hanthorn, Island Station Land Use Chair, April 14, 1999

MDDA

"The proposed changes to the Kellogg Creek Treatment Plant are very much needed to protect the air quality of the nearby downtown district and neighborhoods. My concern is the City of Milwaukie's desire to eliminate this plant in the near future. Would this project extend the useful life of the plant? If so how long? Would the cost of these changes be recouped within the time frame projected by the city to eliminate this facility? James M. Bernard, President, MDDA April 12, 1999.

Milwaukie Public Works Department

"Public works has no objection or concerns with the installation of odor control and other improvements proposed for the Kellogg Creek Water Control Plant. Improvements to the odor control will be beneficial to the surrounding community. An erosion control plan and application is required to be submitted with the building permit application if more than 500 square feet of earth is disturbed."
Paul Roeger, P.E., Civil Engineer, April 9, 1999.

Clackamas Fire Protection District

The District has reported it has no objections to the proposal

FINDINGS FOR APPROVAL OF CSO-99-02, CU-99-01, and MC-99-01

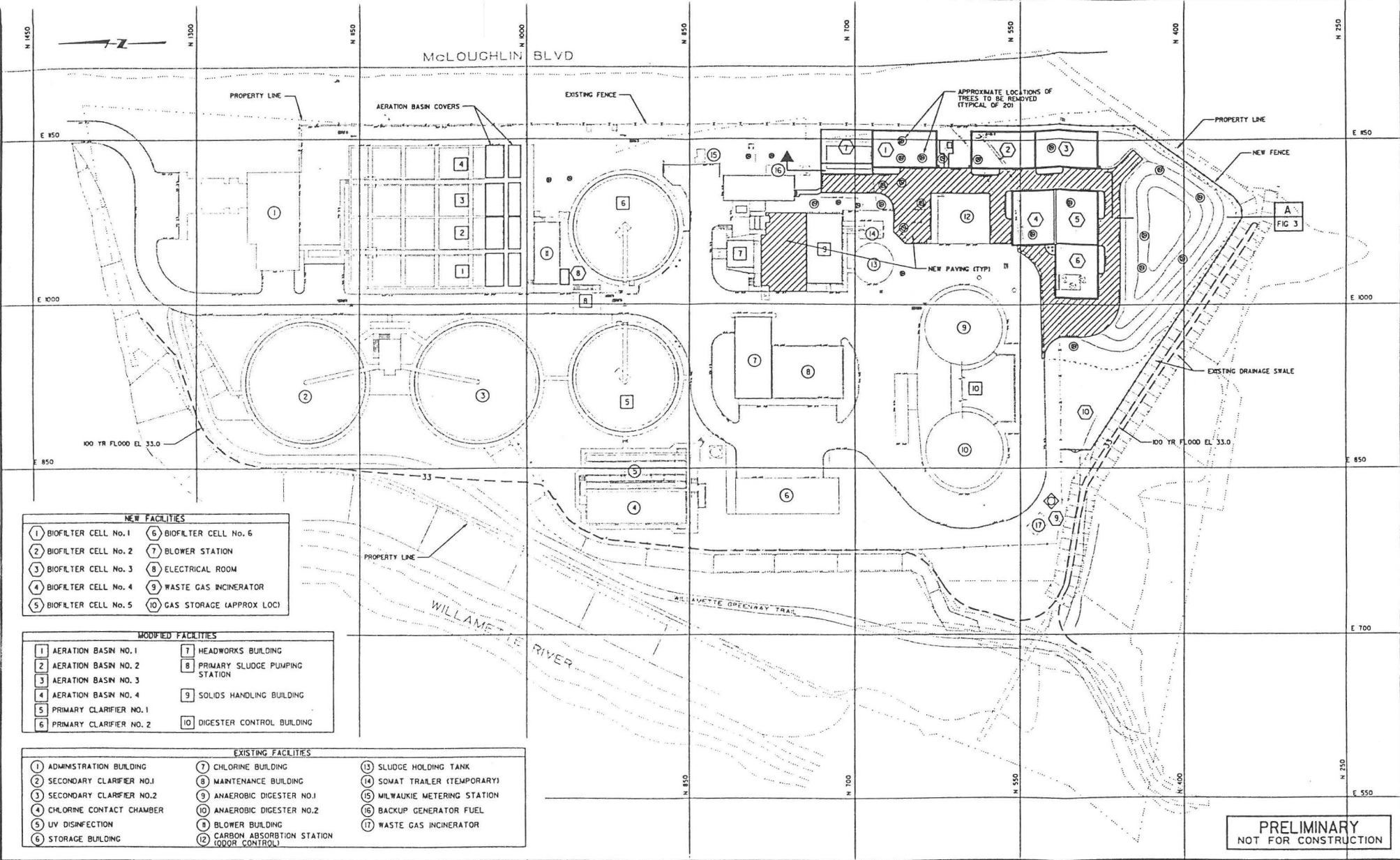
1. The applications include two phases: biofilter and related improvements and digester gas storage and incineration. Construction plans for biofilter and related improvements have been reviewed for compliance with specific review criteria. Improvements for gas storage and incineration have received conceptual review only.
2. The applications have been processed in accordance with the provisions of Milwaukie Zoning Ordinance 1011.3 Minor Quasi-Judicial Review.
3. The applications meet the individual criteria and have been processed in accordance with Milwaukie Zoning Ordinance Sections 311-Limited Commercial Zone C-L, 320-Willamette Greenway Zone WG, 321-Community Service Overlay Zone CSO, Section 325-McLoughlin Corridor Overlay Zone MC.
4. The residential uses to the south should be protected from any adverse impacts associated with the proposed improvements.
5. The applications, as conditioned, assure that potential adverse view, noise, and lighting impacts will be mitigated and result in minimal adverse impacts.
6. The Planning Commission acknowledges community interest in the long-term removal of the treatment plant in consideration of building a stronger downtown business district, preserving property values and supporting residential neighborhoods. While the odor control improvements, if effective, will be beneficial, there is concern that plant improvements in general may extend the economic life of the plant. Such extension may be contrary to the long-term interest in removal of the plant.
7. The applicant has indicated that potential view, noise and light impacts will be adequately controlled after construction. The actual performance of mitigation features and the ability to protect nearby residences shall be the measure by which the mitigation, and applicable conditional use and other standards are evaluated. Mitigation shall be required to perform as indicated by the applicant.

EXHIBITS

- Exhibit 1 Recommended Conditions of Approval**
- Exhibit 2 Site Plan**
- Exhibit 3 Application Report, Adolfson Associates, March, 1999**

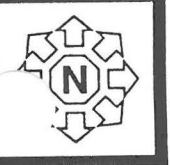
EXHIBIT 1 - RECOMMENDED CONDITIONS OF APPROVAL

1. That the applicant record the notice of decision and related conditions on the County Land Records as required by Milwaukie Zoning Ordinance Section 600-Conditional Uses and that proof of recording be submitted to the satisfaction of the Planning Director prior to the issuance of a building permit.
2. That the applicant obtain formal confirmation of flood hazard boundary location prior to issuance of a building permit.
3. That architectural treatment of proposed sound walls be designed to minimize view impacts. The final design is to be submitted to the satisfaction of the Planning Director prior to the issuance of a building permit.
4. That subject to the Commission's acceptance, the process for future review of gas incinerator and gas storage be in accordance with the following.
 - a. that provisions are made for staff and neighborhood review; and
 - b. that the applicant is required to demonstrate compliance with all applicable standards; and
 - c. that the Commission authorizes staff to impose reasonable conditions to ensure compliance with applicable review criteria; and
 - d. that the plans will be forwarded to the Commission in the event of any disagreement over the interpretation of applicable criteria
5. That confirmation of compliance with prior approvals (with regards to required plantings) be submitted to the satisfaction of the Planning Director.



City of Milwaukie Community Development Department

Title: Site Plan Submitted: Applicant Date: 4/20/99 # Pages: 1
 File Numbers: 050-99-02 / CA-99 Applicant: Clackamas County WES Exhibit #: 2
MC-99-01



CONDITIONAL USE, COMMUNITY SERVICE, AND
MCCLOUGHLIN CORRIDOR DESIGN REVIEWS FOR
ODOR CONTROL IMPROVEMENT PROJECTS
AT THE
KELLOGG CREEK
WATER POLLUTION CONTROL PLANT
MILWAUKIE, OREGON

Prepared for:

CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
Water Environment Services
A Department of Clackamas County
16770 SE 82nd Drive, Suite 200
Clackamas, Oregon 97015

Prepared by:

ADOLFSON ASSOCIATES, INC.
333 SW Fifth, Suite 600
Portland, Oregon 97204

March 1999

City of Milwaukie Community Development Department

Title: App. Report Submitted by: Applicant Date: 4/20/99 # Pages: 18
File Numbers: CSO-99-02 CU-99-01 Applicant: Clackamas County WES Exhibit #: 3
MC-99-01



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MCLOUGHLIN CORRIDOR DESIGN REVIEW FINDINGS	9

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Figure 3. Bio-filter Section View	2
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INTRODUCTION

The Clackamas County Service District No. 1 (the District) proposes to make odor control and other improvements to the Kellogg Creek Water Pollution Control Plant (WPCP). The plant is located in the City of Milwaukie, between McLoughlin Boulevard and the Willamette River, south of Jefferson Street and north of SE Eagle Street (Figure 1). The facility currently has odor control collection and treatment systems that do not meet the desired level of odor control desired by the surrounding community. The odor control system improvements are proposed to reduce wastewater treatment process related odors in the vicinity of the WPCP. Other improvements are proposed to relocate electrical equipment to an above ground location to prevent damage from flooding and to increase the efficiency of digester gas handling and waste gas incineration. No expansion of the plant capacity or operations is proposed.

The project site is zoned C-L, Limited Commercial, with McLoughlin Corridor and Willamette Greenway overlays. A pre-application conference was held on February 25, 1999 to address the proposed project. At the conference the City of Milwaukie staff stated that the project required Willamette Greenway Conditional Use, Community Service, and McLoughlin Corridor Design Review approvals.

In 1993, the District submitted a land use application for odor control and landscape improvements (File #s CSO-93-05, CU-93-04, NR-93-03, MC-93-02). Upon approval of this application, landscape plantings were implemented including native vegetation along the Willamette River. New native trees and shrubs are proposed as part of the present application to enhance the vegetative buffer between the facility and surrounding uses without obscuring views to and from the river.

PROJECT DESCRIPTION

The proposed project will provide improvements and additions to the existing odor collection and treatment system. The project is composed of three parts: (1) Odor Control System Improvements; (2) Odor Control Digester Gas Incinerator and Gas Storage Improvements; (3) Primary Pump Station Motor Control Center Relocation.

1. Odor Control System Improvements

The odorous air treatment system will consist of six 1,800 square foot biofilters (see Figures 2 and 3). The biofiltration beds will be excavated approximately six feet below the existing grade. The biofilter will have concrete containment walls and will be lined with a Hypalon liner. The walls will project approximately four feet above ground. The lower portion of the biofiltration beds will contain air distribution ducting that will be overlain with biofilter media (e.g., wood chips and bark compost material). The media will be initially installed at a depth of three feet, with provisions to increase the media depth to 4 feet in the future. The biofilters are

designed to be covered in the future. Covers will be low profile aluminum construction which will extend approximately 2 feet above the biofilter walls.

These biofilters will be capable of treating 22,000 cubic feet per minute (cfm) of odorous air at startup, with a potential future treatment capacity of 30,000 cfm by adding covers and increasing the media depth.

The primary air moving systems include:

- a. foul air collection system,
- b. blower station, and
- c. foul air delivery system.

The foul air collection system is designed to confine and collect foul air from the anoxic/anaerobic zone of the aeration basins, the primary clarifiers, the influent junction box and influent pump station wet well, the headworks building, and the solids handling building. This system is comprised of new covers above the anoxic/anaerobic zone of the aeration basins, and above and below ground collection ducting which will operate under negative pressure. The collection system includes provisions to cover the balance of the aeration basin area and additional ducting to collect an additional 8,000 cfm from the aeration basins should the District deem that necessary in the future.

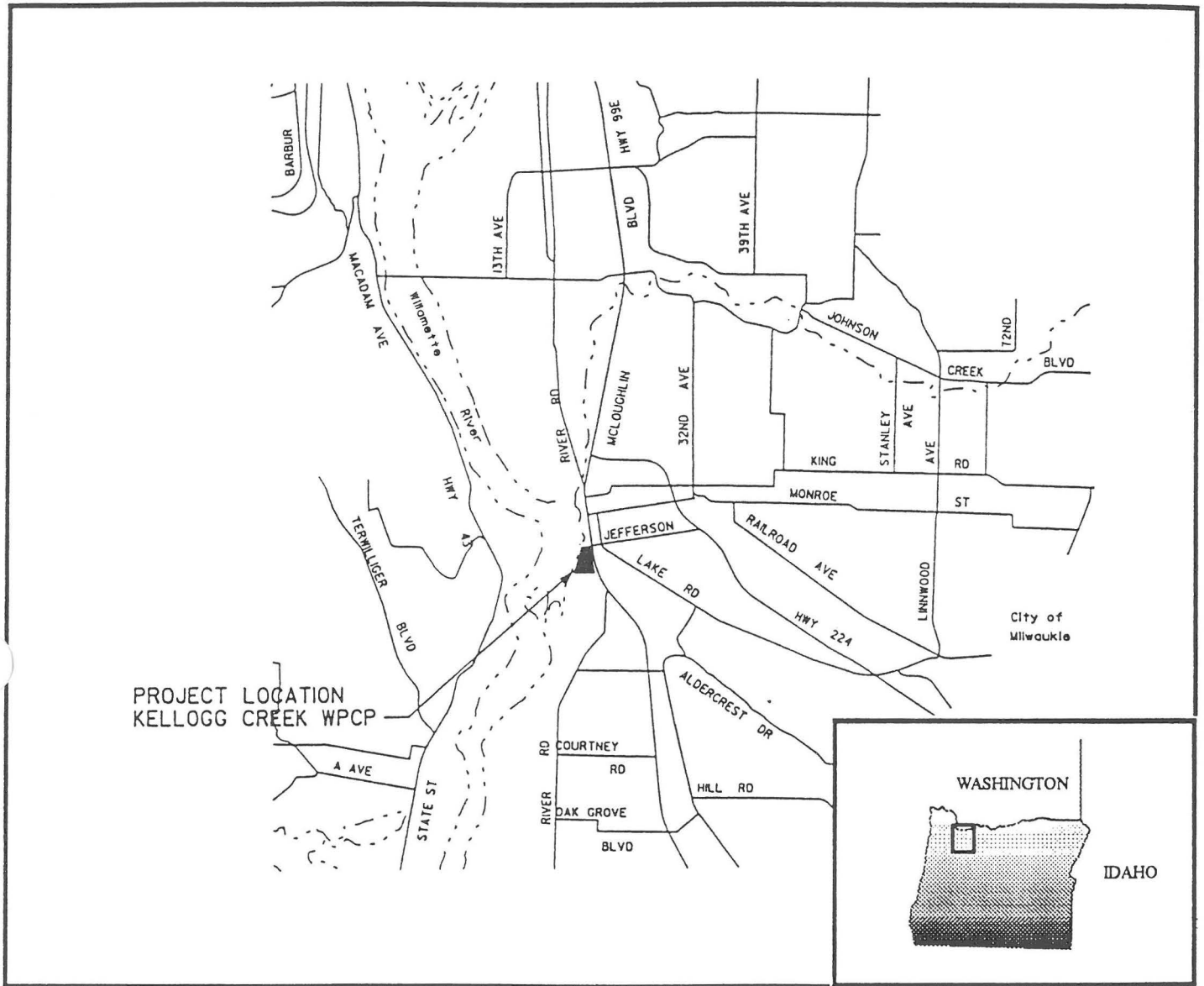
The blower station is designed to draw foul air through the collection system and deliver it to the biofilters for treatment. Two blowers will provide one-duty and one-standby backup system for 100 percent blower capacity redundancy. The blower station will accommodate a third blower, if the system capacity is to be increased from 22,000 cfm to 30,000 cfm in the future.

The foul air deliver system will consist of below ground ducting from the blower station to each biofilter. This system will include an above ground run of ducting adjacent to each biofilter to station balance control dampers necessary to divide the total airflow equally amongst the six bio-filters.

The existing site security fence at the southern end of the WPCP property will be relocated to the northern edge of the existing grass drainage swale south of the new biofilters as shown on the Site plan (Figure 2). Spoils from the biofilter excavations will be used to construct a new landscape berm south of the new biofilters, which, together with proposed landscape plantings (Figure 4), will help screen the biofilters as viewed from the south. The berm area is located above the 100-year flood elevation (33.00) as shown on the site plan.

2. Odor Control Digester Gas Incinerator and Gas Storage

The existing gas digester incinerator, another source of odor, is located in the southwest corner of the plant. This proposal calls for the replacement of the existing incinerator with newer technology. In addition, a low-pressure gas storage device



NORTH

Scale: 1" : 1 mile

VICINITY MAP

Kellogg Creek Water Pollution Control Plant

FIGURE 1



would be installed as a part of this improvement. These improvements are in the conceptual development phase at this time. The improvements are proposed to be located in the vicinity of the existing waste gas incinerator as shown on the site plan (Figure 2). However, alternate locations are also under investigation at this time.

3. Primary Pump Station Motor Control Center Relocation

The existing primary sludge pump station and its motor control center and control panel are located underground below the WPCP's existing north-south plant roadway. The pump station and electrical equipment experienced flooding when a pipe ruptured inside the station causing damage to the electrical equipment. This improvement provides for replacing the motor control center and control panel above ground in a weather-proof rated electrical enclosure to be located on the south side of the existing Aeration Basin Blower Building as shown on the site plan (Figure 2).

CONDITIONAL USE FINDINGS

The following section addresses the approval criteria for Willamette Greenway Zone conditional use. Language from the City of Milwaukie Zoning Ordinance is in *italics*.

Section 320.6, Willamette Greenway Conditional Use Approval Criteria

The following shall be taken into account in the consideration of a conditional use:

- A. *Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan.*

Findings: The existing plant was originally constructed in 1974 and complies with the state definition of an urban use. Proposed improvements are contained within the existing WPCP property boundary.

- B. *Compatibility with the scenic, natural, historic, economic, and recreational character of the River.*

Findings: The existing conditions along the river at this location are characterized by the presence of the greenway trail, landscape plantings, and the adjacent WPCP facility. The Kellogg WPCP has been in operation at this waterfront location for approximately 25 years. Native vegetation, such as red-osier dogwood and willow, was planted along the Willamette River during the previous odor control improvements to the facility. A grassy swale bordered by trees is located to the south, between the WPCP and a residential area. To the north is a park and the Jefferson Street boat ramp. The McLoughlin Boulevard setback area, to the east, is landscaped with trees and an evergreen hedge along the fence line.

The proposed odor control improvements and landscaping will be implemented in a manner compatible with the existing character of the site. New and existing plantings along the greenway will provide screening for the proposed improvements. The improvements will not change the natural, historic, economic or recreational character of the Willamette River.

C. Protection of views both toward and away from the River.

Findings: Proposed native plantings contained in the landscape plan (Figure 4) will protect and enhance views from the east and from the Island Station neighborhood toward the river. The new biofilters will be four feet tall and will not obstruct views toward or away from the Willamette River. Proposed ducting will be located adjacent to and be screened by existing buildings of greater height. The preliminary location for the gas incinerator and storage is at the southeast portion of the site adjacent to the tallest existing structure at the site (anaerobic digester #2) is approximately 150 feet east of the Willamette Greenway trail. The proposed locations of the improvements are intended to avoid obstruction of view corridors between the river and local residences and points to the east.

D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the River, to the maximum extent practicable.

Findings: The proposed development is generally on the east and south sides of the plant, and is a significant distance from the Willamette River. No development is proposed in the open space or vegetative buffer between the facility and the river. Numerous trees and shrubs were previously planted between within this buffer area. The landscape plan (Figure 4) calls for additional tree and shrub plantings along the southern side of the site, which will provide aesthetic enhancement in the vicinity of the river.

E. Public access to and along the River, to the greatest possible degree, by appropriate legal means.

Findings: The proposed improvements will not change public access to and along the Willamette River.

F. Emphasis on water-oriented and recreational uses.

Findings: The proposed improvements will improve conditions for both existing and potential future water-oriented and recreational uses by reducing odorous gas emissions from the WPCP. No physical changes to existing water-oriented and recreational uses are proposed.

G. *Maintain or increase views between the Willamette River and downtown.*

Findings: The proposed development will maintain views between the Willamette River and downtown, as discussed under Criteria B and C above. Proposed native plantings will provide additional screening of the facility and thereby enhance views.

H. *Protection of the natural environment according to regulations in the Natural Resource Overlay Zone.*

Findings: The Riparian Areas Natural Resource Overlay Zone boundary is located 25 feet inland from the mean high water line as established by the Oregon Division of State Lands (Subsection 322.2.A). No development or disturbance to vegetation, soils, or water resources is proposed within this zone. In general, the proposal will enhance the natural environment and habitat value at the site through replacement of exotic vegetation (removed to implement the proposed improvements) with native trees and shrubs.

I. *Advice and recommendations of the Design Review Committee, as appropriate.*

Findings: Findings in support of a McLoughlin Corridor Design Review for this project are provided in the last section of this application.

J. *Conformance to applicable Comprehensive Plan policies.*

Findings: The following Comprehensive Plan policy related to the Willamette Greenway was considered to be applicable to this proposal:

Through the Willamette Greenway conditional use process, setbacks shall be established on a case-by-case basis for uses not water-dependent or water related so that they are directed away from the river.

No encroachment within established greenway setbacks is proposed. The improvements are located on the east and south sides of the existing WPCP; no improvements are proposed within 150 feet of the bank of the Willamette River.

K. *The request is consistent with applicable plans and programs of the Division of State Lands.*

Findings: All proposed work is located outside of navigable waterways, wetlands, and above the ordinary high water mark of the Willamette River. There are no Division of State Lands programs or plans applicable to this project.

L. A Vegetation Buffer Plan meeting the conditions of subsection 320.8.A-C.

Findings: No development or disturbance to existing vegetation is proposed within the 25-foot vegetation buffer along the Willamette River. The buffer area, which includes red-osier dogwood, willows, poplars, and pine trees, will be preserved. For these reasons, the proposal meets the applicable conditions of 320.8.A-C.

COMMUNITY SERVICE FINDINGS

The following discussion presents findings for the community service overlay criteria found in Section 321. Language from the City of Milwaukie Zoning Ordinance is in *italics*:

Subsection 321.4.A Authority to grant or deny a community service use

An application for a community service use may be allowed if:

1. The requirements of the underlying zone are met.

Findings: The underlying zone district is Limited Commercial (C-L). The proposal meets the requirements of the C-L zone as follows (from Subsection 311.3):

A. Lot Size

Findings: The proposal is not a residential dwelling, so the lot size standard does not apply.

B. Front Yard

Findings: No front yard setbacks apply except as provided in subsection E below.

C. Side Yard

Findings: No side yard setbacks apply except as provided in subsection F below.

D. Rear Yard

Findings: No rear yard setbacks apply.

E. Yard abutting a major street

Findings: Section 410 requires a setback of 50 feet from centerline of McLoughlin Boulevard. The proposed new biofilters are approximately 60 feet from the McLoughlin Boulevard curb and therefore more than 50 feet from the street centerline.

F. Transition area

Findings: The closest area designated for lower density use is the residential area located more than 250 feet south of the proposed improvements. The transition area standards apply within 100 feet of lower density uses and therefore do not apply to this proposal.

G. Access

Findings: No changes to site access from public streets are proposed.

H. Off-street parking and loading

Findings: No changes in off-street parking or loading are proposed.

I. Height restriction

Findings: The height restriction for a C-L zone is three stories or 45 feet, whichever is less. The highest structure (ducting) proposed as part of the biofilter project is 14 feet; this ducting will be adjacent to and below the height of existing buildings. The height of proposed biofilters will be four feet. The height of the existing incinerator is approximately 35 feet; a replacement incinerator and storage vessel would not exceed this height.

J. Open use

Findings: The proposed improvements do not include areas such as open storage or outside uses. The odor control improvements will be screened by a combination of evergreen and deciduous plantings, and an earthen berm, which are both contained within a fenced area.

K. Minimum vegetation

Findings: Approximately 50 percent of the total area of the lot will be left or planted with trees, grass or other vegetation, which meets the 15 percent minimum standard.

2. *Specific standards for the uses found in subsections 321.7-321.10 are met.*

321.7 *Specific standards for schools.*

Findings: No development related to schools is proposed.

321.8 *Specific standards for nursing or convalescent homes.*

Findings: No development related to nursing or convalescent homes is proposed.

321.9 *Specific standards for churches, convents, and related facilities.*

Findings: No development related to churches, convents, or related facilities is proposed.

321.10 Specific standards for institutions: public/private and other facilities not covered by other standards.

- A. *Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.*

Findings: The District will provide all necessary utilities and other improvements.

- B. *Access when located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than 20 trips per day are exempt from this subsection 321.10.B*

Findings: No changes in access are proposed. Access to the WPCP is on a collector street at the north end of the site, while the nearest residential road is south of the site.

- C. *Lot size in a residential zone.*

Findings: The project site is not located within a residential zone.

- D. *The height limitation of a zone may be exceeded to a maximum height of 50 feet provided subsection 321.10 is met.*

Findings: The height limit of the C-L zone will not be exceeded by this proposal.

- E. *Noise-generating equipment shall be sound-buffered when adjacent to residential areas.*

Findings: New blowers equipment is located away from residential areas. However, noise from the blower equipment will be sound-buffered by a proposed sound wall as a precautionary measure.

- F. *Lighting shall be designated to avoid glare on adjacent residential uses and public streets.*

Findings: Three free standing light poles are proposed internal to the facility. The lights will not be directed into residential areas or public streets. The proposed lighting type is consistent with the existing lighting at the facility previously approved by the City.

- G. *Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.*

Findings: No change in hours and levels of operation are proposed.

3. *The hours and levels of operation of the proposed use can be adjusted to be reasonably compatible with surrounding uses.*

Findings: As noted under Subsection 321.10.G above, no changes in the current hours or levels of operation are proposed. The Kellogg WPCP is not a solid waste facility; therefore, criteria 321.4.A.3.a through h do not apply.

McLOUGHLIN CORRIDOR DESIGN REVIEW FINDINGS

The following section addresses the findings pertaining to the development review criteria, development standards, and design guidelines for the McLoughlin Corridor Design Review. Language from the City of Milwaukie Zoning Ordinance is in *italics*.

325.8.B Development Review Criteria

1. *The standards of the primary zone district.*

Findings: As discussed in the findings under Criterion 321.4.A.1 above, the proposal meets the standards of the primary zone district.

2. *The development standards of subsection 325.5*
(see below)
3. *The design guidelines of subsection 325.6*
(see below)
4. *Conformance with Comprehensive Plan policies regarding McLoughlin Boulevard, the downtown, and riverfront area.*

Findings: The following McLoughlin Boulevard policies were considered to be applicable to this proposal:

The visual and land use relationship between downtown areas of Milwaukie and this waterfront will be improved.

Vegetative plantings outlined in the landscape plan (Figure 4) will visually enhance the area between downtown and the waterfront. These plantings include native vegetation along the southern side of the WPCP, as well as extension of the existing landscaping along McLoughlin Boulevard. These plantings and the proposed odor control improvements will increase the plant's land use compatibility with downtown areas and the waterfront.

Visual and pedestrian amenities will be required along the downtown portion of McLoughlin Boulevard. These include street trees...and pedestrian supportive features on the right-of-way.

The portion of the site along McLoughlin Boulevard is currently landscaped and no street trees will be removed. The existing hedge will be extended to

the south to screen the proposed bio-filters from McLoughlin Boulevard. Additional landscaping details are included in the landscape plan (Figure 4).

Compliance with Subsection 325.5 Development Standards

- A. *Standards of the primary zoning district are applicable except where superseded in this Section. If a conflict of standards arises, the standards of the MC Overlay Zone will govern.*

Findings: As discussed in the previous two sections, standards of the C-L zone district are met.

- B. *Setback from McLoughlin Blvd: A setback of 10 feet is required from the McLoughlin Boulevard planned right-of-way for one- and two-story buildings. Three-story and greater buildings require 15-foot setback.*

Findings: No one- or two-story (or greater) buildings are proposed adjacent to McLoughlin Boulevard.

- C. *Landscaping: In addition to the landscaping provisions of the primary zoning district, the McLoughlin Boulevard setback area shall be landscaped. Street trees shall also be provided no more than 5 feet from the planned right-of-way and spaced no more than 40 feet apart.*

Findings: The McLoughlin Boulevard setback area will be landscaped according to the landscape plan (Figure 4), which calls for extending the existing hedge along the fence line. Existing street trees within the McLoughlin Boulevard setback area will be preserved.

- D. *Access provisions*

Findings: No changes to access drives or curb cuts are proposed. Subsections 1-5 are not applicable.

- E. *Design plan: For properties zoned MC, a design plan shall be required for new development of vacant lots or redevelopment of existing properties. The plan shall incorporate the design guidelines of Subsection 325.6 (see below).*

Findings: Proposed project improvements are addressed in a design plan that meets the design guidelines as discussed below.

Compliance with Subsection 325.6 Design Guidelines

- A. *Building and sites shall be designed using the following principles:*

1. *Sites shall be developed so that buildings utilize existing on-site natural features in their design, to the maximum extent possible.*

Findings: The proposed improvements take advantage of the site's flat terrain and are designed around natural features including the existing swale and vegetation. On-site natural features will be preserved with the exception of approximately 20 trees that will require removal. All trees requiring removal will be replaced on a 1:1 basis as shown in the Landscaping Plan (Figure 4). Proposed plantings will enhance the existing open space areas to the south of the property.

2. *Assure that building placement and orientation and landscaping allow ease of security surveillance.*

Findings: Placement and orientation of proposed improvements will allow continued ease of security surveillance. Landscaping will occur at the perimeter of the WPCP, leaving the interior open.

3. *Design building with shapes, colors, materials, textures, lines, and other architectural design features which enhance the character of the district and complement the surrounding area and development, considering, but not limited to, the following techniques:*

- a. *Use color, materials, and architectural design to visually reduce the scale and impact of large buildings;*

Findings: The proposed gas incinerator and storage improvements are steel construction and proposed to be painted with earth tone colors. Trees will be planted in the vicinity of the proposed construction to visually buffer the structures.

- b. *Use building materials and features that are durable and consistent with the proposed use of the building, level of exposure to public view, and exposure to natural elements.*

Findings: Proposed development will be consistent with the existing facility. The biofilters will be constructed of grey concrete, wood, and chips. As addressed above, the gas incinerator and storage improvements are proposed to be constructed of steel and painted with earth tone colors.

4. *To the extent possible, screen or mask roof-mounted mechanical equipment, except solar collection apparatus, from view.*

Findings: No roof-mounted mechanical equipment is proposed as part of this application.

5. *Orient major service activity areas (e.g., loading, delivery, and garbage collection, etc.) of the development away from McLoughlin Boulevard.*

Findings: No changes to major service activity areas are proposed.

6. *Arrange use and buildings to maximize opportunities for shared circulation, access, parking, loading, pedestrian walkways and plazas, recreation areas, and transit-related facilities.*

Findings: Limited changes to circulation and walkways are proposed to improve overall site circulation. The proposed biofilters and other improvements are arranged in a compact manner to maximize shared access and circulation at the site.

7. *Provisions for bus shelters, bike racks, street furniture, kiosks, drinking fountains, art sculptures, and/or other pedestrian and transit amenities should be considered and coordinated with City standards.*

Findings: The project site is located more than 50 feet from McLoughlin Boulevard. No changes to pedestrian and transit amenities are proposed, with the exception of new vegetation plantings along the McLoughlin Boulevard setback area.

8. *Protect or enhance natural amenities (such as the Kellogg Lakefront, Kellogg and Johnson Creek frontages, and associated wooded areas) and incorporate them into the site design.*

Findings: Adjacent natural amenities, which include the drainage swale south of the WPCP, will be enhanced through the planting of native vegetation.

9. *Provide landscaping that improves the appearance and aesthetics of the McLoughlin Corridor.*

Findings: The landscape plan (Figure 4) provides for aesthetic improvements to the McLoughlin Corridor through the installation of trees and shrubs to extend the existing vegetative buffer.