

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, NOVEMBER 25, 1997

COMMISSIONERS PRESENT

Michael Smith, Chair
Bryan Cosgrove
Tim Havel
Pat Lent
Terry LaRocque

COMMISSIONERS ABSENT

Charles Stoudt

STAFF PRESENT

Maggie Collins,
Com. Dev. Dir.
Susan Heiser,
Senior Planner
Dan Pava,
Senior Planner
Shirley Richardson,
Hearings Reporter

1.0 CALL TO ORDER

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

2.0 PROCEDURAL QUESTIONS -- None.

3.0 INFORMATION ITEMS

3.1 City Council Minutes -- October 21, 1997

4.0 PLANNING COMMISSION MINUTES -- November 10, 1997

Terry LaRocque moved to approve the minutes of November 10, 1997, as corrected. **Tim Havel** seconded. MOTION CARRIED 3-0 with two abstentions. Pat Lent and Bryan Cosgrove were not at that meeting.

5.0 PUBLIC COMMENTS -- None.

6.0 PUBLIC HEARINGS

6.3 Applicant: Glenn Shirley
Property Owner: Jack Donaugh
Location: 6106 SE King Road
Proposal: Conditional Use Permit to expand the interior space of the
Wichita Town Pub by 2,050 sq.ft.
File Number: CU-97-02

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Chair Smith opened the public hearing on File Number CU-97-02, to allow for the expansion of the existing Wichita Town Pub by 2,050 sq.ft., into existing unused shopping center space. The Application must be consistent with the City of Milwaukie Zoning Ordinance and Comprehensive Plan. The criteria to be addressed are found in Sections 601.2 and 602.6 of the Milwaukie Zoning Ordinance.

Chair Smith 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; two 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

Susan Heiser reviewed the Staff Report with the Commission. The Applicant is proposing to expand the Wichita Pub by 2,050 sq.ft. into existing unused shopping center space. Drinking establishments and other high-impact commercial uses are allowed in the C-G District with Conditional Use approval. She showed overheads of the subject site and the surrounding area. The center abuts areas outside the City.

Surrounding uses in the shopping center include a supermarket, beauty college, video store, delicatessen, and a detached office building. Uses surrounding the shopping center site include mobile home parks to the south and west, a gas station to the northeast, and residential and commercial uses across King Road and Linwood Avenue to the north and east, respectively, and a school site to the northwest.

The Pub is a tavern operation which serves food and alcohol. The Pub also contains pool tables and coin operated game machines. Until recently, live music and dancing were offered approximately twice a month. The Pub operates under a Retail Malt Beverage (RMB) liquor license issued by the Oregon Liquor Control Commission (OLCC). This license permits the sale of malt beverages, wine, and some hard ciders for consumption on the premises.

An application was made with the OLCC in February, 1997, to expand the facility by adding 2,050 sq.ft. for more pool tables, a dance floor area, and a bandstand. Public notice was posted and notification was sent to the Wichita Elementary School and the Linwood Church of Christ. Comments were received from the

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school which resulted in changes to the proposal. The OLCC approved the request with the change that replacing the dance floor and band area with a dining area for non-smokers and restricting live bands to only two nights a year. These same changes are included as part of this Application as recommended conditions of approval.

Staff feels the Application complies with requirements for setbacks, access, and height. The minimum vegetation requirement is not met, and will not be included because there will be no exterior changes to the existing site at this time. This proposal also requires compliance with Section 1400, Standards for Transportation Planning Review. Because there is no new building construction, it does not require full compliance with the TPR requirements. However, the Applicant is required to provide TPR improvements to an amount equal to 10% of the cost of the project. The center property owner is proposing to make parking improvements as part of a separate TPR application. This will be an administrative-level review and Community Development will give notice all neighbors within 150 feet of the site.

This Application has been conditioned that 10% of the cost of the project would have to be spent on improvements. The priority will be bicycle parking as required by the TPR regulations and next would be landscaping improvements.

There is currently an access out to the rear parking lot. The redesign of the area will allow more use and access to this back area. The Applicant is proposing music only two nights a year to address night time noise impacts.

Other concerns include a buffer in the back. The code requires that it be landscaped. There is a concrete brick wall along the south property line; additional landscaping is recommended at the end of the wall. There is a 30-ft. transitional area provided where only 15 ft. is required. This is an adequate buffer for this Application.

No parking lot changes are proposed as part of this proposal. Additional parking spaces and lighting will be added as part of latter site improvements. There have been disturbances in the parking lot but they have not been related directly to the Pub. The Police Department has stated that a majority of the activity in the parking lot is gang related and additional lighting will improve things. The Applicant has noted that he is willing to have a parking-lot monitor plan in place. It has been included as a condition of approval that this plan be reviewed by the Police Department and put into place.

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The current hours of operation will not change. They have not been a concern by the neighbors to date. Staff feels that the hours are adequate and other concerns of night time related noise have been addressed by the limiting of live band music.

The Commission may consider additional conditions of approval in respect to site design, performance, and monitoring. The proposal was forwarded to the Linwood Land Use Committee for their comments and they found that the proposal complies with the city policies. Included in the information submitted is a copy of the OLCC determination and recommendations from the City Civil Engineer, Fire Department, Police Department, and Building Official.

Staff feels the Application meets the necessary conditional use zoning criteria and recommends approval of CU-97-02 based on the findings and conditions as stated in the Staff Report.

QUESTIONS FROM THE COMMISSIONERS

Chair Smith asked if the rear exit is an entrance into the building? **Susan Heiser** stated that this is another fire exit. It is required as part of the expansion to make this accessible from the new restaurant area. Currently, you have to go through the kitchen to get to this door.

Chair Smith asked about limiting the decibel level to address the noise concerns? **Susan Heiser** stated that the Noise Ordinance deals with the concern. The limiting of the band was an issue of the parking lot noise associated with people congregating.

Bryan Cosgrove asked if the parking lot design would come at a later date? **Susan Heiser** stated that the parking lot design is a TPR review and is an administrative-level review. The TPR requirement is 10% of the cost of the project, which will result in bike racks and landscaping.

Terry LaRocque asked where the bike racks will be located? **Susan Heiser** pointed out the proposed five bike racks on the site map. The TPR Plan proposed by the owner would come up to the 15% landscaping requirement and more parking will be provided as well.

Pat Lent asked if the Commission could make suggestions/conditions for the landscaping for the TPR review? **Susan Heiser** stated that the Commission could

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direct how the Applicant would spend the money (TPR requirement); however, the first expenditure priority is bicycle racks.

Tim Havel asked for Staff's interpretation of Item C of Section 602.6, Parking Vehicles and Pedestrian Access. Has this information on where the parking will occur been submitted for consideration? **Susan Heiser** stated that the Applicant does not propose to change the existing parking.

CORRESPONDENCE

Neighbors have come in and requested copies of the Staff Report. One letter was received, which has been submitted to the Commissioners, from the Linwood Mobile Home Estates.

APPLICANT PRESENTATION

Speaking: Jack Donough, President, Wichita Club Corporation, 16676 SE Gurney, Gladstone OR 97027

Mr. Donough stated that he and his partner opened the Pub in 1986 after being a manager of a Safeway store for many years. Within six months of opening, the landlord offered the empty space next door for lease. He took him up on his offer 10 years later. This space has not been leased for the past 12-14 years.

The reason they are expanding is because they need larger office, storage, and bathroom space. They negotiated a lease for the 6,000 sq.ft. and installed a 12x20 walk-in freezer. There is space in the rear for storage of dry goods. **Mr. Donough** opened up MoBetta Deli in October, 1996, which took up about 2,000 sq.ft. of frontage. The Wichita offices were moved to the back of the space that was leased and there were two restrooms in this area that they now use that for staff. This area is about 2,000 sq.ft. These changes opened up about 2,000 sq.ft. of open space within the Pub, which is the reason for this Application.

Mr. Donough stated that because of neighborhood concerns, he decided to discontinue booking bands except for a couple times a year. This addresses concerns about larger crowds drawn by the larger floor and live music.

The Pub has a 100-food item menu. His license does not allow minors on the premises, so food sales reflect the loss because of no family dining. The ratio of food to alcohol sales are 45% food/55% beer and wine. Because of the current conditions at the Wichita, they would like to move all of the games and juke box

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to the new expansion area so when customers come to eat, they will be separate from the game area. They are expanding and enhancing the dining area to draw people who would like to come in and have a quiet meal.

QUESTIONS FROM THE COMMISSIONERS

Pat Lent asked where the juke box will be moved? **Mr. Donaugh** stated that the juke box will be moved from the restaurant area. The dance floor will be eliminated. The juke box cannot be heard outside.

Bryan Cosgrove stated that he lives close to this establishment and he is not aware of a noise problem. **Mr. Donaugh** explained that he had never been cited with a warning or ticket from the OLCC. He has not had any problems associated with the Pub.

Pat Lent asked if additional lighting would be put in the back of the Pub? **Mr. Donaugh** stated that the landlord just put up additional lighting in the back about a week ago. There is no entrance to the Pub in the back. They do not want to encourage access, this is only a fire exit.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Richard McPike, 12002 SE Bavoldy Circle, Milwaukie

Mr. McPike passed out a letters addressing parking problems to the Commissioners. He stated that he is the owner of the Century Market and that he was here tonight to discuss his concerns about parking. Parking is very important; especially for a grocery store. There have been parking problems in the past; it is a difficult situation.

It is assumed that the landlord will increase the parking and make it better. Increased landscaping and more spaces mean smaller spaces and poor circulation in the parking lot. This will be a difficult challenge for tenants and customers alike. The proposed changes will make it more congested and difficult to circumvent the parking lot and get in and out of parking spaces. The parking problems will get worse.

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The noise issue is a problem that all of the tenants in the center try to work around. Mr. Donough has done his best with the circumstances to make things work.

Mr. McPike told of an previous incident where a vehicle drove through the landscaping to get to the Pub. He knows there are problems with gangs in the parking lot. He would like to have the Commissioners look at the overall picture and decide what is the best use for this spot in the center.

QUESTIONS FROM THE COMMISSIONERS

Bryan Cosgrove asked if Mr. McPike's opposition is to the parking problems as stated? **Mr. McPike** stated that parking is his main opposition. The parking is maxed out with the existing use. Adding square footage to this use is compounding the parking problems.

Tim Havel asked how the parking characteristics are on the site during the day? **Mr. McPike** stated that the most crowded times are between Thursday and Friday from 4:00 p.m. to about 9:00 p.m.

Tim Havel asked if this increase in parking is due to the live bands? **Mr. McPike** stated that this is some of it and Mr. Donough has tried to limit the number of times there are bands at the site, but he feels there will still is potential for increasing the problem.

Tim Havel noted that Mr. Donough stated that he will limit his sales to help mitigate concerns about crowding. Will this help with parking concerns? **Mr. McPike** stated that people try to address the problem, but things break down, there are changes, and things keep deteriorating.

Pat Lent asked Staff if these parking problems can be addressed as TPR problems or is it the responsibility of the shopping center owner? **Susan Heiser** stated that the only concern for this Application would be the additional parking needed for the expansion of the Conditional Use. The number of parking spaces existing are adequate for the proposal per the Zoning Code.

Bryan Cosgrove asked if there could be an arrangement made with the shopping center owner to have towing signs, time-limit signs, etc? **Mr. McPike** stated that he has tried 15-minute signs and they get torn down ; they have not worked. There is an enforcement issue; there is no one there to fine the parking offenders.

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Pat Lent asked Staff if there was some process with the City that this tenant can get some relief on the parking issue? **Susan Heiser** stated that the Commissioners could address these issues in their conditions. If the Commission feels that the circulation of the site could be improved, conditions could be imposed.

Tim Havel asked if there was relief in parking when the bank was on the premises? **Mr. McPike** stated that the bank was a heavier user of parking than the state offices that are there now. They too contributed to the problem at those problem times of 4:00 p.m. to 6:00 p.m. on Fridays. Now the state offices have fewer hours and the problem has gotten better.

Speaking: Dick Kelley, Owner, Linwood Mobile Estates, 25124 S. Loma Linda Drive, Beavercreek Ore, 97004

Mr. Kelly stated that he was concerned about the rear entrance, but this has been explained and has changed his outlook. His main concern is about the noise and he would like to see it kept to a minimum. He is satisfied that the Applicant will be responsive to any concerns he has, so he will talk with him directly.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FOR CLARIFICATION

Chair Smith asked if the rear entrance will be used for deliveries? **Mr. Donaugh** stated that it is currently being used for deliveries. There are actually two entrances at the back of the Pub.

APPLICANT'S CLOSING COMMENTS

Speaking: Jack Donaugh,

Mr. Donaugh stated that he had worked for Safeway for 25 years. It is the nature of the grocery store business to be busy from 4:00 p.m. to 9:00 p.m. The complaint that he heard was that the customers from the store could not get out of their car and go right under an overhang. There is no overhang at the grocery store.

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The place he is in has had four failed businesses. Security guards were hired for 6 months to monitor the parking and the conclusion was that the parking problems were with the grocery store and not the Pub.

DELIBERATION AMONG COMMISSIONERS

Chair Smith closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Tim Havel noted that Finding #2 addresses the issue of parking. He asked if this will be addressed with the TPR Review? **Susan Heiser** stated that there are other uses for this area that would generate more parking. This application meets the current code for parking.

It was the consensus of the Commission that the parking problem was a tenant/landlord issue.

Maggie Collins stated that the Commission could change the findings based on testimony heard tonight. She suggested that a sentence be added to Finding #2, "Testimony was given regarding certain periods of parking conflicts with the adjacent grocery."

Bryan Cosgrove moved to approve Conditional Use, CU-97-02, based on the Findings as amended (Finding #2) and subject to the conditions of approval as noted in the Staff Report. **Pat Lent** seconded. MOTION CARRIED 5-0.

Recess was taken at 7:45 p.m. and the meeting reconvened at 7:50 p.m.

- 6.2 Applicant: AT&T/Spencer Vail (Agent)
Property Owner: Clackamas County Housing Authority
Location: 2889 SE Hillside Court
Proposal: Place telecommunication antennas on an existing building;
and a height variance.
File Number: CSO-97-10/VR-97-06

Chair Smith opened the public hearing on File Number CSO-97-10, to allow the placement of telecommunication antennas on an existing building; and File Number VR-97-06, a height variance request for wireless telecommunications antennas on the building roof top. The Application must be consistent with the City of Milwaukie Zoning Ordinance and Comprehensive Plan. The criteria to be

addressed are found in Sections 304.3 and 321.10 of the Milwaukie Zoning Ordinance.

Chair Smith 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; one hand was 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

Dan Pava reviewed the Staff Report with the Commission. The criteria for the CSO has been met as detailed in the Staff Report. The variance request is not necessary because VR-97-05, heard previously, clearly covers this Application and subsequent applications similar to this one. This evening only the CSO will be reviewed.

Staff suggests that in Finding #9 (Page 7), the last sentence should be deleted. It is not necessary to make this part of the Findings and it may be outside of the Commission's jurisdiction to impose, given the interpretation of the Telecommunications Act of 1996. The approval can stand on the remaining findings; which are adequate to meet the criteria of the Application.

Condition #3, Exhibit #1, states: "...The applicant shall provide documentation from Providence Milwaukie Hospital that the proposed wireless telecommunication installation shall not have any deleterious electromagnetic impact on the functioning of medical equipment at the hospital". Staff stated that the appropriateness of Condition #3 will be reviewed by the City Attorney and could be modified if deemed inconsistent with the Telecommunications Act of 1996.

QUESTIONS FROM THE COMMISSIONERS

Pat Lent asked if the intent was to provide documentation as mentioned in Condition #3, to City Staff. **Dan Pava** stated that was the intent, but the appropriateness of Condition #3 will be reviewed. They would not want the wording to invalidate the rest of the findings.

Chair Smith asked if there was a precedent of deleterious effects on hospital equipment? **Dan Pava** stated that CSO-97-08 included such a condition, and that

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the hospital responded there were no impacts based upon testing in the last application for this building.

Terry LaRocque suggested that the word "demonstrating" be changed to "claiming." in Finding #9. This will eliminate the need for deleting the last sentence. It was the consensus of the Commission to make the change to "claiming."

-- "The applicant has submitted calculations ~~demonstrating~~ claiming that radio frequency emissions fall below FCC maximum permissible exposure thresholds."

CORRESPONDENCE -- None.

APPLICANT PRESENTATION

Speaking: Spencer Vail, Agent for AT&T Wireless, 4505 NE 24th, Portland 97211

Mr. Vail stated that he attended the previous hearing for CSO-97-08. There was a specific letter in that file submitted into evidence by the Hospital stating that there was no interference problem. He has contacted the hospital and they have not yet responded. Condition #3 can be eliminated; it is not based on any evidence in the record, nor is it in response to concerns raised in the public hearing.

Otherwise, he has read the Staff Report and is in concurrence with the findings and conclusions.

QUESTIONS FROM THE COMMISSIONERS -- None.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS

Speaking: George VanBergen, 12366 SE Guilford Drive, Milwaukie, OR

Mr. VanBergen voiced concerns about the cellular towers. "School" is still out on these issues; the safety factors have not all been determined. He cited an incident where one of these towers "blew the plumbing out" in the neighboring area.

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Mr. VanBergen stated that this Applicant will have a liability responsibility to the neighbors for any damage or harm to properties in the neighborhood. The general public should be given assurances by the City that they will have an ability to bring lawsuit for provable damage.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

Maggie Collins stated that City liability insurance covers issues such as this.

QUESTIONS FOR CLARIFICATIONS

APPLICANT'S CLOSING COMMENTS

Speaking: Spencer Vail, Consultant, AT&T Wireless, 4505 NE 24th, Portland 97211

Mr. Vail responded to Mr. Van Bergen's statement noting that they are not building a new tower; they are attaching antennas to the roof-top of an existing building.

DELIBERATION AMONG COMMISSIONERS

Chair Smith closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Tim Havel noted that these types of towers are governed by the Federal Communications Commission. If something is found to be detrimental, the FCC will step in and take care of the situation.

Pat Lent stated that the neighborhood association did not express any concerns, so she feels the ones that are directly affected have no comments. She asked if some sort of landscaping could be placed around the accessory building to make it look nicer. **Mr. Pava** stated that the building will be west of Hillside Manor, below grade; landscaping is not needed in this location as it cannot be seen and would serve no useful purpose.

Bryan Cosgrove voiced concern about taking Condition #3 out; this puts the Commission in the position of taking the word of the Applicant. He would like to see some documentation from the hospital before the Application be approved.

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At this time, a straw poll was taken and the majority of the Commission concurred that Condition #3 should be eliminated.

Pat Lent moved to approve Community Service Overlay, CSO-97-10, based on the amended findings (Finding #9) in the Staff Report and subject to the conditions, as outlined in the Staff Report, eliminating #3 renumbering the remaining conditions. **Terry LaRocque** seconded. MOTION CARRIED 5-0

- 6.1 Applicant: City of Milwaukie
Property Owner: N/A
Location: N/A
Proposal: Proposed text and map amendments to Chapter 4 (Land Use) of the Milwaukie Comprehensive Plan; Proposed new text for a Mixed Use Overlay Zone; and Proposed Zone Map Amendments to certain properties in the Regional Center Study Area. Continued from 10/28/97 public hearing.
File Numbers: CPA-97-03, ZA-97-03, and ZC-97-03

Chair Smith re-opened the public hearing on File Number CPA-97-03; ZA-97-03; and ZC-97-03, to allow for deliberation and recommendation to City Council on adoption of Comprehensive Plan Text and Map Amendments, Zoning Text Amendments to add a Mixed Use Overlay Zone, and Zoning Map Amendments to re-zone certain properties to R-O-C and to add the Mixed Use Overlay Zone to certain properties. The Application must be consistent with the City of Milwaukie Zoning Ordinance and Comprehensive Plan. The criteria to be addressed are found in Sections 900 of the Zoning Ordinance and Chapter 2 of the Comprehensive Plan.

Chair Smith asked if there were any conflicts of interest or ex-parte contacts to declare. He then reported that Providence Milwaukie Hospital is a client of his business. He is working on a project on this site. He stepped down from voting or participating in this public hearing and left the meeting. No other members of the Commission declared any conflicts of interest or ex-parte contacts.

Vice Chair Lent took over as chair of the meeting. She asked if any member of the Planning Commission visited the sites; four hands were raised. No one who visited the sites spoke to anyone at the sites or noted anything different from what is indicated in the Staff Report. No one in the audience challenged the

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impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Dan Pava reviewed the Staff Report and amendments with the Commission. The quasi-judicial parts are Comprehensive Plan Map Amendment and Zoning Map Amendment. The recommendation stands from October 28th. Staff recommends approval of the three Applications.

Some of the proposed corrections, additions, and further revisions made to the Application were:

- Exhibit #4, Section 318.9D (Pendleton Site) was left out of the Staff Report. The Commissioners have received an explanatory letter and revised last three pages of the Exhibit which included the Pendleton site and the text that followed.
- Tax Lot 2600, R11E35Aa, 10875 SE McLoughlin, (Owner: Macmillan) had been identified erroneously as designated for a change to Public Lands on the Comprehensive Plan Land Use Map. The lot is privately owned and there is no recommendation to change the Comprehensive Plan land use designation for tax lot 2600.
- Copies of two letters have been provided to the Commissioners that were received this afternoon. One letter is from Karen O'Dowd, MDDA Manager which requests clarification for retail in Subarea 1, particularly Main Street. A letter was also received from Ty Wyman who is here this evening and will address his letter which is in reference to the Murphy Plywood site.
- Exhibit #3, proposed text amendments to Chapter 4 of the Comprehensive Plan, has some minor modification based on comments from Commissioner Cosgrove at the last public hearing.
 - (a) On Page 4RS-8, the townhouse definition has been modified.
 - (b) On Page 4EB-5, proposed Policy #10 has been modified grammatically making it more readable.

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- (c) On Page 4RS-10, third line from the bottom of proposed Policy #7a, has been changed to read, "retail and/or service commercial, and/or offices is encouraged." This is suggested to provide flexibility at the Comprehensive Plan policy level.
- Exhibit #4, Page 1, Section 318.3 (Primary Uses), revised to read, "...the processes identified in Section 318.6..."
- Page 6, Subsection 318.8A1, statement changed to "...proposed development shall incorporate a 1:0.5 to 1:2.0 floor ratio..."
- (a) The last sentence should be changed to, "The parking to be located at the side of the structure..." should be moved to replace text in #4.
- Page 7, #9, shows changed text to reflect that the intent that the underground parking is intended for downtown Milwaukie, Subarea 1.
- (a) In Item #12, changes have been made in response to letters submitted by the MDDA at October 28th public hearing regarding rewording of displays in cafe areas being permitted rather than prohibited.
- On Page 8, #18, the text changed to "...incorporates 7 out of 13 of the requirements." There is now a 13th provision added below in paragraph #19.
- On Page 9, #19, there are changes in 4, 9, 11, and 12 that are in response to testimony at the October 28th meeting.
- On Page 10, Under 318.9A1.a, there is a new paragraph that discusses ground-floor retail being required throughout Subarea 1. The MDDA has submitted testimony and Staff recommends that language proposed in the letter is acceptable. Staff does request that the last sentence, "offices and residential uses may be located on the upper floors..." remain.
- (a) The MDDA also requests numbering of B, C and D. They are now C, D, and E.
- Because of testimony on October 28th, #3 and #4 have been deleted on

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Page 11. A statement was added under the new #3 addressing civic uses appropriate in site 1-6.

- On Page 11, Subsection B.1, Staff recommends that the language change to indicate, "...the site shall be developed with a mix of commercial..."
- At the top of Page 12, "...businesses and industrial uses shall also be allowed on this site..." allows more flexibility in uses at the Murphy site.
- The name of Site 2-6 has been changed to Providence Milwaukie Hospital.
- Site 4-1, McFarland site, has new language that addresses its contamination issue.

QUESTIONS FROM THE COMMISSIONERS

Terry LaRocque asked what other uses besides office and commercial could be allowed to be developed on the contaminated site (Site 4-1)? **Dan Pava** stated that the entire site is zoned R-2 and residential single-family and multi-family uses are allowed. The zoning allows residential, but to remediate the ground to that extent would not be economically feasible. More feasible uses would be a hotel or a motel. Lodging has been incorporated as one of the suggested uses in the mixed-use section of the McFarland site. It could probably not be used for open space.

Maggie Collins stated that the DEQ permitted uses would include parking and a structure for commercial use. The option before the Commission is to sign off for the commercial level of development off that portion of the site that is contaminated.

Terry LaRocque stated that he has no difficulty with this interface of land uses (commercial and single-family residential) separated only by a street unless the commercial use is carefully and sensitively done.

Tim Havel asked if the property owner of McFarland or the DEQ has provided any backup information regarding perspective purchase agreements that limits the land use on this site; or has presented a risk-assessment report that stipulates land-use restrictions? **Dan Pava** stated that in conversations with the property owner for the past eight months, and involved with conversations with DEQ about potential uses on the site. DEQ has asked what the City would be suitable use for the site. It is Staff's position that the bulk of the site be developed with

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residential. There is voluminous information available at the library on clean-up at this site.

Maggie Collins reported that the City has not received a risk assessment report.

CORRESPONDENCE -- None.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS

Speaking: George VanBergen , 12366 SE Guilford Drive, Milwaukie

Mr. VanBergen stated that he has four parcels within this Regional Center; 2326, 2328, 2336, and 2338 Washington Street. He stated that he has three issues to comment on. One, his parcels are not included in a Regional Center subarea. Why aren't his parcels and his neighbors' parcels included in Subarea #1?

The current zoning on his property is R1B. Over the years, this zoning has been applied to a small area.

Mr. VanBergen stated that there has been a gross misrepresentation about the regional plans and 2040. The true economic protection is for preservation of rental spaces in downtown Portland and the assessed valuation of those properties. Milwaukie is an after-thought in this economic protection process.

Mr. VanBergen stated that the MDDA should have gotten their letter out earlier, he has not had a chance to read it tonight. Over the years he has asked to be included in downtown zoning issues. This has not been done. **Maggie Collins** asked Mr. VanBergen what designation he feels would best suit him? **Mr. VanBergen** stated that he would accept an R-O-C designation. He pointed out his property on the site map.

QUESTIONS FROM THE COMMISSIONERS

Bryan Cosgrove asked if this property is included in the Regional Center as a subarea? **Maggie Collins** stated that Mr. VanBergen has two issues. One, whether or not his property should be included in Subarea 1 and the second, is whether he can get a zone change from R1B to R-O-C. The Planning Commission can recommend the R-O-C zoning as part of an action tonight; and

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the noticing at the City Council level could pick up a zone change request.

Mr. VanBergen stated that if there is a change in zoning, he would be included in the mixed use zoning which he would appreciate happening. He voiced concern about the language, "will, wish, suggest, encourage, etc." This encourages non-specificity in what is being planned.

Speaking: Jim Werfelman, 2604 SW Brixton Drive, Gresham, 97080

Mr. Werfelman stated that he was here tonight speaking on behalf of Providence Milwaukie Hospital, specifically site 2-6, Proto-Tool. He has reviewed and supports the changes.

On Page 12 of Exhibit 4, Site 2-6, **Mr. Werfelman** voiced concern about the language of the last sentence, "...The Planning Commission may review development applications for Site 2-6 to determine whether alternative designs are appropriate that meet the intent of Section 318.8A.46 and 21.". This is subjective, open-ended, and very difficult for them, in terms of future planning.

Mr. Werfelman stated that he does not have an issue with the parking. A-6 deals with the orientation of entrances to the street for a residential development. The proposed housing for this site is geared for the medically frail senior population. Because of the special needs of that population, concerns such as security and multiple entrances is very problematic. A-21 has to do with property adjacent to single-family residential area where a 20-foot setback would be required. This setback can be increased depending on the stories of the development. The proposed construction is three-stories tall and the setback requirement can impact what is designed for development on the site.

Mr. Werfelman recommended that A6 and A21 not apply to site 2-6. He is not in opposition to site design review.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Ty Wyman, Murphy Company, 222 SW Columbia, Suite 1400, Portland 97201

Mr. Wyman stated that he was here before the Commission at the last public hearing and stated the Murphy Company's concern about the redevelopment of its

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site under the Plan. The Murphy Company is currently engaged in an on-going site clean-up and redevelopment.

Mr. Wyman stated that his letter submitted today indicates that significant work has been done toward their redevelopment. He asked that the development standards of the BI Zone apply to redevelopment of their site.

QUESTIONS FROM THE COMMISSIONERS

Tim Havel asked if the concern of the Murphy Company is that if a residential use is designated, there would be more site clean-up required? **Mr. Wyman** said no. It has to do more with making a clean break from the current manufacturing designation to a R-O-C Zone with a mixed use overlay. As soon as the R-O-C and mixed use is adopted, the current use of the site becomes non-conforming. If the tenancy was ever lost for more than six months, the site would revert to the R-O-C uses, perhaps requiring redevelopment of the site.

TESTIMONY IN OPPOSITION

Speaking: Bernice Vickerman, 3930 SE Washington, Milwaukie

Ms. Vickerman stated that she is 535 feet from the McFarland location. She reported that she was not informed about this process. She is here tonight to voice concern about proposed zone changes that would allow the possibility of a 5-story building within view from her residence window. She is used to viewing the west hills and watching the sunsets. She also voiced concern about the on-street parking and current parking problems along this street. There is going to be mixed use, which will allow different businesses to come in. How are they going to be able to keep up their neighborhood livability when businesses will decrease the safety factor of the area? **Dan Pava** reported that the proposed mixed-use ordinance would allow a five-story building if all criteria are met. Otherwise a four/three-story building up to 45 feet high can be constructed under the current R-2 zoning without site development review.

Ms. Vickerman asked if the owner of this property has paid for the property at the end of Washington Street. This is a sixty-foot strip, about 1,000-feet long and if it is going to be given away, she would like some too. **Mr. VanBergen?** stated that Milwaukie is composed of a lot of public ways, that were never deeded streets. He cited the trade of a well site for land as an example.

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Ms. Vickerman stated that the City has wells across the street from the site and asked if the contaminated portion of the site will effect City water? **Vice Chair Lent** stated that contamination is not part of the zoning criteria; it is addressed by DEQ. The Department of Environmental Quality will have a file that would be available for view which addresses contamination concerns.

Ms. Vickerman voiced concern that businesses will be put on this site to avoid cleaning up the contaminated area. How can the City get the downtown businesses going when they keep adding more business areas to complete with.

Speaking: David Stark, 3920 SE Washington, Milwaukie

Mr. Stark stated that he has lived at this residence for the past seven years. He is against the proposed zoning changes to the McFarland site. He stated that he moved to Milwaukie for several reasons, one being the neighborhood environment, the proximity to work, and the good living conditions in the Milwaukie area.

Mr. Stark stated that he has a busy work environment and when he comes home, he comes to get away from it all. He likes the peaceful setting he is in. He voiced concern about change to the McFarland site and the possibility of expanded commercial activities, increased noise, pollution, auto and pedestrian traffic, and four/five story residential dwellings. With the designation of mixed use zoning, business potential, or a hotel, the traffic is going to be astronomical. It will be a direct impact to the residents on this street and a decrease in their quality of life.

Mr. Stark stated that he is not opposed to growth and realizes that the site will have to be developed in some way. He would just like to retain the quality of livability of Milwaukie.

Mr. Stark noted that the WRG Design team brought up the point that their development plan would require possible subsidies or economic incentives. He wanted to be on record that it is completely unacceptable to him that Milwaukie provide any incentives to this area.

ADDITIONAL COMMENTS FROM STAFF

Maggie Collins asked Mr. Stark if he was suggesting that nothing be done to the site or if it was his suggestion that the current R-2 zoning remain on the property?

Mr. Stark stated that he has no problem with the R-2 zoning; his main concern is

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about office commercial development, hotels and four/five-story apartment complexes. **Bryan Cosgrove** commented that the current zoning would allow a four/five story building. **Vice Chair Lent** reported that this site was made high-density residential by public testimony at the last Comprehensive Plan review.

Dan Pava stated that under the R-2 designation, conditional uses include offices, motels, and hotels.

QUESTIONS FOR CLARIFICATIONS -- None.

DELIBERATION AMONG COMMISSIONERS

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

Terry LaRocque stated that the area across 37th and across Monroe are established stable areas of the City. There should be some sort of protection for this residential resource area.

As Commissioners, they have to be careful that the infill is suitable to the character of the area. Building heights can be stepped to help with the transition. Design review can be sympathetic to the residential character of the area. He would like to see mitigation addressed in dealing with the interface areas along 37th and Monroe Streets.

Vice Chair Lent asked Staff for clarification of the density in the transition area review and process. She also asked if consideration should be given to the transition area part of the zoning in the changes proposed? **Maggie Collins** stated that the transition area review touches mostly on separation of single-family residential from industrial/commercial, addressing mostly setback distances. It does not address critical design issues.

Tim Havel noted that commercial use in the area, whether it is office, hotel, parking lot, etc., in DEQ language is labeled "industrial" use. DEQ has no commercial use designation for hazardous material sites. If high density housing is placed on an area of contamination, there would need to be extreme engineering measures taken.

Bryan Cosgrove stated that sensitivity will have to be undertaken to put commercial next to this existing residential area. This is a design review issue.

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Maggie Collins noted that Staff's recommendation is that Site 4-1 be considered a priority for further subarea planning.

Terry LaRocque stated that on Page 12, Exhibit 4, Paragraph #3, 2-6, Proto Tool site, the last sentence is too vague. He suggested changing text to read., "Applications for site 2-6 will be subject to a design review. Alternative designs appropriate to meet the intent of Section 3.18.8A, .4, .6, and 21 will be evaluated."

Tim Havel moved to continue deliberation among the Commissioners on CPA-97-03/ZA-97-03/ZC-97-03 to December 9, 1997. **Bryan Cosgrove** seconded. MOTION CARRIED 4-0.

7.0 WORKSESSIONS

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS

10.0 OTHER BUSINESS

10.1 **Historic Resources Commission Report** --

Bryan Cosgrove reported that he can no longer be the Planning Commission representative for the Historical Resources Commission. **Maggie Collins** asked Bryan to submit an official notice to Mike Smith that he is no longer available for that position.

10.2 **Clackamas Regional Center Area Plan Report** -- No Report

10.3 **Community Development Department Report** -- No Report

10.4 **Vice Chair Lent** stated that after January, she will miss six Planning Commission meetings. Maggie Collins asked that she write a letter to Mike Smith letting him know so that some action can be recommended to City Council.

11.0 Next Meeting -- December 9, 1997

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Bryan Cosgrove moved to adjourn the meeting of November 25, 1997. **Terry LaRocque** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 10:00 p.m.



Mike Smith, Chair


Shirley Richardson, Hearings Reporter

**MILWAUKIE PLANNING COMMISSION
AGENDA
Milwaukie City Hall, 10722 SE Main Street
Tuesday, November 25, 1997
6:30 pm**

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Questions	
3.0	Information Items	
	City Council Minutes: October 21, 1997 (upon approval by Council)	Information Only
4.0	Planning Commission Minutes: October 28, 1997	Motion Needed
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings	
6.1	Applicant: City of Milwaukie Owner: N/A Location: N/A Proposal: Proposed text amendments to Chapter 4 (Land Use) of the Milwaukie Comprehensive Plan; and proposed overlay district and mixed use zone to certain properties in the Regional Center Study Area. Continued from 10/28/97 public hearing. File Numbers: CPA-97-03/ZA-97-03/ZC-97-03	Discussion and Motion Needed
6.2	Applicant: AT&T Owner: Clackamas County Housing Authority Location: 2889 SE Hillside Ct Proposal: Place telecommunication antennas on an existing building; and a height variance. File Numbers: CSO-97-10/VR-97-06	
6.3	Applicant: Glenn Shirley Owner: Jack Donaligh Location: 6106 SE King Road Proposal: Conditional Use Permit to expand the interior space of the Wichita Town Pub by 2,050 sq.ft. File Number: CU-97-02	
7.0	Worksession - None	
8.0	Discussion Items	
9.0	Old Business	
9.1	Light Rail Study Update	Information Only
10.0	Other Business/Updates	
10.1	Historic Resources Commission Report	Information Only
10.2	Town Center Area Task Force Report	Information Only
10.3	Community Development Report	Review and Comment

11.0	Next Meeting - December 9, 1997	

The Milwaukie Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please.

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 Community Development Department office at 786-7650.

Milwaukie Planning Commission:

Michael Smith, Chair
Bryan Cosgrove
Tim Havel
Terry LaRocque
Pat Lent, Vice-Chair
Charles Stoudt

Community Development Department Staff:

Maggie Collins, Community Development Director
Dan Pava, Senior Planner
Susan Heiser, Senior Planner
Jeanne Garst, Office Assistant
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

Date: November 25, 1997
120 Day Timeline: 2/27/98

File No.: CSO-97-10

Application: Community Service Overlay for 12 wireless telecommunications antennas and an electronic equipment shelter at Hillside Manor.

Applicant: AT&T Wireless Services and Spencer Vail

Property Owner: Housing Authority of Clackamas County

Location: 2889 SE Hillside Ct. - Assessor's Map 1 1E 25CD Tax Lot 100

RECOMMENDATION:

That the Planning Commission Approve CSO 97-10, based on the findings in this report and any additional findings; and subject to the conditions contained in Exhibit 1.

PROPOSAL:

The applicant proposes to install between 10 and 12 cellular telephone communications antennas on the roof of the Hillside Manor, a nine story apartment building that is approximately 90-feet tall. These 51" by 10" by 4" antennas would be mounted on the parapet and painted to match the building color. A related electronic equipment shelter measuring 12' by 28' and 10' high would be placed 34 feet west of the building. This shelter would be made of earth-tone exposed aggregate panels. No one will be at the site on a daily basis, because it is operated by remote control. While the equipment will be operating 24 hours a day, a maximum of two trips a month for periodic maintenance checks is typical of these sites, according to the applicant. The system will operate in the 870 to 880 megahertz band and the transmitters will generate no more than 100 watts.

Exhibit 2 contains the applicant's narrative addressing the Community Service Overlay and R-3 District Criteria, a vicinity map, roof plan, elevations, a topographic map, antenna product information, and exposure threshold calculations.

This project is a utility similar to other telecommunications facilities listed in Section 321.2.B. of the Milwaukie Zoning Ordinance and may be permitted with approval of an application for a Community Service Overlay Zone. This application does not require a variance to the height standards set forth in Section 321.10.D. Milwaukie Zoning Ordinance. The Planning Commission approved a height variance for wireless telecommunications antennas on this building roof top in case VR-97-05 (also see CSO-97-08) on September 9, 1997. A copy of the findings for that variance is included as **Exhibit 3**.

SITE INFORMATION:

Hillside Manor is a nine story apartment structure situated on a 16.68 acre site (tax lot 100) that is zoned R-3. There are 200 units owned by the Housing Authority on this site, including 50 duet style homes and 100 units in the apartment structure. The apartment structure is a legal nonconforming use. The site is within the Medium Density land use designation as shown on Map 7 in the Milwaukie Comprehensive Plan. Abutting lands to the north are zoned R-7 and developed with single family residences. Providence Milwaukie Hospital is located due east of 32nd Avenue and is also in the R-3 district. Lands to the west and south are zoned Manufacturing. The Union Pacific mainline is immediately west of this property. The site is within the Ardenwald Neighborhood District Association.

DISCUSSION:

Section 1011.3.C of the Milwaukie Zoning Ordinance requires that there be a public hearing before the Planning Commission for minor quasi-judicial reviews. The Commission shall make a decision based on compliance with applicable Comprehensive Plan goals and policies and other implementing ordinances.

Section 321.4 of the Milwaukie Zoning Ordinance states that a community service use may be allowed if the requirements of the underlying zone are met. These requirements are found in Section 304.3. Section 321.10 sets forth the specific community service standards for facilities such as the proposed wireless telecommunications installation. In permitting a community service use, the Planning Commission may impose suitable conditions which assure compatibility of the use with other uses in the vicinity.

Compliance With Comprehensive Plan

This proposal fosters Comprehensive Plan Objective #12, Utilities, (page 5PF-10): that reads, "To ensure that energy and communications services are adequate to meet residential and business needs." The proposal also complies with Policy #1 which follows and states, "The City will coordinate with public utility and communications companies to ensure adequate services are provided, while minimizing negative impacts on residential neighborhoods, scenic and recreational areas." The rapid growth of the new wireless telecommunications technologies has created intense competition for antenna sites to create local service networks. There has been a consequent proliferation of high platform structures such as towers and poles across the landscape: more often than not, each erected by a single provider. The City has been approached by several wireless providers during the past few years seeking approval for siting their facilities at various locations. Using the existing tall structures, such as multistory buildings and municipal water tanks, as antenna platforms, is a way to manage the siting of telecommunications facilities in an orderly way while assuring safe and efficient service delivery in a timely manner for this infrastructure.

Compliance with Zoning Regulations

Section 321.4 of the Milwaukie Zoning Ordinance sets forth approval criteria for this Community Service Overlay and states that the proposal may be allowed if :

- The requirements of the underlying zone are met per Section 304 ; and
- Specific standards for the proposed use are met per Section 321.10.

R-3 District Requirements:

Permitted Uses: A wireless telecommunications utility facility may become a permitted use in the R-3 district through the CSO process.

Lot size: The R-3 zoning district lot size minimum for single family detached homes is 5,000 square feet. The area of Tax Lot 100 is 726,580 square feet. The proposed project will not affect the existing lot size.

Yard Setbacks and Height: The front "yard" of Hillside Manor is west of 32nd Street and the rear "yard" would be east of the railroad. It should also be noted that the internal street system is not city public right-of-way. As mentioned above, there is a variance previously granted for this building that allows wireless antennas to be higher than the 50 feet limit otherwise allowed by the CSO process. The entire housing complex on this 16.68 acre site meets the front, rear and side yard setback standards as detailed in the table below.

	Front Yard	Side Yard	Rear Yard	Parking	Height
Required	15 feet	5 feet	15 feet	1 space	50' w/CSO
Provided	40 feet	170 feet	50 feet	1 shared space	91' approved w/VR-97-05

The lot coverage and minimum vegetation coverage currently comply with the R-3 zoning district requirements. While a new 336 square foot equipment shed is proposed, this will not appreciably impact the maximum 40% lot coverage or 35% vegetation/open space standards for the Hillside Manor site.

Off-street parking: Section 500 of the Milwaukie Zoning Ordinance does not list off-street requirements for an unstaffed wireless telecommunications installation, and states that the Planning Commission shall make a determination based upon nationally accepted standards or similar justification. There is ample parking provided around the Hillside Manor complex to afford shared use of one space when maintenance is required this unstaffed facility.

Section 321.10 - Special Standards for Institutions

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

The existing utilities are sufficient to service the proposed wireless telecommunications installation, and no new utilities are required.

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable.

The proposal is to collocate unstaffed wireless telecommunications equipment on an existing building located several hundred feet from 32nd Avenue which is the only access to the Hillside Manor site. While 32nd Avenue is a designated Collector Street, this use will generate fewer than 20 trips per day, and thus it is exempted from this subsection.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two-thirds of the height of the principal structure.

The intent of this standard is to assure that adequate buffering is provided between the proposed antennas and nearby residences. The closest residences are other units within the same Housing Authority development and they are situated more than 140 feet away from the antennas. Given a height of 91 feet, a 61' setback is

required, and the nearest property line (to the west of the proposed antenna installations) would be at least 100 feet away.

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

The Planning Commission approved VR-97-08 on September 9, 1997 granting a variance for wireless telecommunications antennas on top of this apartment building. The maximum height permitted by this variance is 91 feet above average grade. It should be noted that the elevator penthouse exceeds this height and is not subject to the height limitations of the Milwaukie Zoning Ordinance pursuant to Section 411. No AT&T antennas are proposed to be mounted upon the elevator penthouse.

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

The equipment shelter has an air conditioning unit within, but the siting of the shelter to the west (windowless side) of the apartment building and recessed below grade will adequately buffer noise.

F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.

There is no lighting associated with this application.

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

The proposed wireless telecommunications facilities will not require staffing. Routine operation will be accomplished by remote control, and periodic maintenance will typically entail two trips each month.

REFERRALS:

Public Works Comments

The Public Works Department had no objection to the proposal and commented that it has no impact on public facilities such as water, sewer, storm drainage or streets. Public Works did advise that the underground conduit installation be carefully done to prevent damaging drainage lines, and that rain drain lines for the proposed equipment shelter must be run to the existing storm drainage system or through a curb to the parking lot surface (See Exhibit 4).

North Clackamas Fire Prevention District Comments:

The North Clackamas Fire Prevention Office has reviewed this proposal and determined that the equipment shelter shall be provided with a portable fire extinguisher.

Public Comments:

Notices were sent out to all property owners within 250 feet of the site boundaries, as well as to all occupants within the 200 unit Housing Authority complex. No comments have been received.

Neighborhood Association Comments

The Ardenwald Neighborhood District Association Land Use was sent a referral about this application on October 16. The Association was also sent a copy of the completeness letter dated October 30, 1997. No comments have been received.

FINDINGS FOR COMMUNITY SERVICE OVERLAY (CSO-97-10)

1. The applicant is proposing to locate between 9 and 12 cellular antennas on the roof top of the Hillside Manor apartments in Milwaukie. A 12' by 28' equipment shelter is also proposed as part of this application. Section 321 of the Milwaukie Zoning Ordinance requires that the Planning Commission consider a Community Service Overlay application before a decision can be rendered.
2. Community Service Overlay 97-10 requires review through a Minor Quasi-Judicial process as detailed in Section 1011.3 of the Milwaukie Zoning Ordinance. A public notice was published in the Clackamas Review on November 14 and 21, 1997, and also sent to property owners within 250 feet of the subject site on November 5, 1997. The site was posted on November 13, 1997. Referrals were sent out to affected agencies and to the Ardenwald NDA on October 16, 1997.
3. Section 321.4 of the Milwaukie Zoning Ordinance sets forth approval criteria for this Community Service Overlay and states that the proposal may be allowed if the requirements of the underlying zone are met per Section 304 ; and if specific standards for the proposed use are met per Section 321.10. The proposal to use the Hillside Manor roof top as a platform for wireless telecommunications antennas meets the requirements for a Community Service Overlay as specified in the Milwaukie Comprehensive Plan and Zoning Ordinance.
4. The proposal is consistent with the Milwaukie Comprehensive Plan because it promotes both the Public Facilities and Services Element. It fosters Objective #12 Utilities, and complies with Policy #1 under Objective #12.

5. The proposed Community Service Overlay is located in the R-3 zoning district and the Community Service Overlay application does meet the requirements and standards set forth in Section 304.3 A. through K., as detailed in the staff report. The application also meets the specific standards set forth in Section 321.10 as detailed in this staff report.

6. The Planning Commission approved VR-97-08 on September 9, 1997 granting a variance for wireless telecommunications antennas on top of Hillside Manor. The maximum height permitted by this variance is 91 feet above average grade. The elevator penthouse exceeds this height and is not subject to the height limitations of the Milwaukie Zoning Ordinance pursuant to Section 411. No AT&T antennas are proposed to be mounted upon the elevator penthouse.

7. The proposed antennas will not require additional utility or street improvements. However, the Public Works Department noted that the proposed equipment shelter will require connection to the existing storm drainage system.

8. The North Clackamas Fire Prevention Office has reviewed this proposal and determined that the equipment shelter will need to be provided with an approved automatic extinguishing system.

9. The proposed wireless telecommunications antennas and equipment shelter should be fully compatible with the surrounding residential uses. Noise generated by the air conditioning equipment will be adequately buffered by the siting of the equipment shed in relation to the apartment building. Lighting of the facility is not proposed. The proposed use will generate only one or two trips a month and therefore is exempt from the requirement to provide a traffic analysis. The applicant has submitted calculations demonstrating that radiofrequency emissions fall below FCC maximum permissible exposure thresholds.

Exhibits

1. Conditions of Approval
2. Applicant's narrative addressing the Community Service Overlay and R-3 District Criteria, vicinity map, roof plan, elevations, topographic map, antenna product information, and exposure threshold calculations (*note: entire package provided for Planning Commission - other packets contain just the five pages of maps and elevations.*)
3. Findings made by the Planning Commission for VR-97-05
4. Public Works Comments dated October 20, 1997

EXHIBIT 1

CONDITIONS OF APPROVAL FOR CSO-97-10

Community Development Department:

1. The proposed location of up to 12 wireless antennas shall be consistent with the terms and conditions of this application and approval. Locations of the antennas, equipment shelter, coax box, and roof top conduit shall be consistent with what is shown on the Site Plan, Roof Plan, and the South and West Elevations that are a part of Exhibit 2, dated 2/13/97.
2. The lease agreement between AT&T Wireless Services and the Clackamas County Housing Authority shall not prohibit co-location of other antennas on this site. Co-location shall be encouraged when it is feasible.
3. The applicant shall provide documentation from Providence Milwaukie Hospital that the proposed wireless telecommunications installation shall not have any deleterious electromagnetic impact on the functioning of medical equipment at the hospital.
4. Antennas and any visible conduit or equipment on the roof shall be painted to match the building color. The applicant shall submit a color sample to the Community Development Director for review and approval prior to construction of the equipment shed.

Public Works Department:

5. Any underground conduit installation shall avoid damaging building drainage lines. Rain drain lines for the proposed equipment shelter must be run to the existing storm drainage system or through a curb to the parking lot surface.

North Clackamas Fire Prevention Office:

6. The equipment shelter shall be provided with a portable fire extinguisher.

City of Milwaukie Community Development Department

Title: Conditions Submitted by: Staff Date: 11/25/97 # Pages: 1
File Numbers: CSO-97-10 Applicant: AT&T/Spencer Vail Exhibit #: 1



COMMUNITY SERVICE OVERLAY

APPLICANT: AT&T Wireless Services
Attn: Real Estate Manager
1600 SW 4th
Portland, Oregon

REPRESENTATIVE: Spencer H. Vail
Planning Consultant
4505 N.E. 24th
Portland, Oregon 97211

DEEDHOLDER: Housing Authority of Clackamas County
13930 S. Gain
Oregon City, Oregon 97045

SITE LOCATION: 2889 SE Hillside Ct.

LEGAL DESCRIPTION: 1 1E 25CD TL 100
See Exhibit 1

SITE SIZE: Total site is 7.13 acres

ZONING: Residential R-3

PROPOSAL: The applicant proposes to install cellular telephone communications antennas on the roof of the Hillside Manor. The electronic equipment shelter will be located at the west end of the existing apartment building.

RECEIVED

NOV 18 1997

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

City of Milwaukie Community Development Department

Title: Applicant's Narrative Submitted by: Applicant Date: 11/25/97 # Pages: 22
File Numbers: CSO-97-10 Applicant: AT&T/Spencer Vail Exhibit #: 2



DESCRIPTION OF THE PROPOSAL:

The proposed Cell Site will consist of the following components:

- 1) There will be a maximum of 12 antennas arranged into three groups of four antennas each. These groups are located on the north, west and south sides of the building. Initially there will be nine antennas, three per sector. One antenna per group will be added later as service demands increase.

The antennas measure 51" by 10" by 4". (LxWxD)

- 2) An electronic equipment shelter, measuring 12' by 28' by 10' tall building is situated at the west end of the building. It will have an earth toned, exposed aggregate finish. It is oriented in a north-south direction, approximately 18 feet from the west end of the building

See the site plan attached as Exhibits 2-5, and Exhibit 6, the antenna specification sheet, for a depiction of the above information.

BACKGROUND INFORMATION:

The applicant, AT&T Wireless Services of Oregon, Inc.,(AWS) is one of the initial licensees authorized by the FCC (Federal Communications Commission) to provide cellular telephone services in the Portland Metropolitan Area, which includes the City of Milwaukie.

To provide this service, the applicant's engineers have selected several sites in the region for the placement of elevated antenna and related equipment. Each such location is called a Cell Site.

The Cell Site is the basic building block of a cellular telephone system. Each Cell Site is dependant on the other Cell Sites in the system with respect to height, terrain, distance from one another and a myriad of other highly technical factors.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

The existing Cell Sites servicing this area of Milwaukie are at or near their capacity. In addition, this area is subject to numerous "dropped calls" and contains several "shadow areas" where reception is marginal.

Such a situation is below industry standards. It results in inadequate coverage for this area and therefore means the applicant falls short of meeting its obligations not only to its customers but also to its FCC commitments and license requirements.

The solution to capacity problems is not simply to increase the tower height and/or power output of existing Cell Sites serving this area but rather to reduce power and/or height at these existing Cell Sites and create a new one.

This specific site was selected after the applicant's engineers analyzed cellular service along SE McLaughlin Blvd and the Milwaukie Expressway. They developed what is called a "search circle" within which it was necessary for antenna to be located to rectify the problems discussed above.

One of the first steps undertaken by the applicant in pinpointing the exact location for antenna placement within the search circle was to conduct field tests to verify computer models and engineering studies.

The subject site satisfies the engineering standards required for the proposed Cell Site. The existing ground elevation in relation to adjacent cell sites, distances involved, recognition of man-made features and several other highly technical factors that were evaluated by the applicant's engineers have determined that the proposed rooftop antennas will allow for the for efficient operation of system. A lesser height would not allow the proposed facility to "see" other Cell Sites or eliminate the shadow areas that need to be eliminated.

The Hillside Manor structure satisfies all of the engineering and location criteria of the applicant and the owner is willing to lease space. Therefore, no new free standing tower is necessary.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

It should also be pointed out that no one is on the site on a daily basis as the facility is operated by remote control from the applicant's main offices.

The applicant, based on its system wide average, expects to have a maximum of two trips a month to the site by its engineer who will preform periodic maintenance checks. A typical panel type truck is used. No large vehicles will be utilized once the facility has been constructed.

The applicant's system operates in the 870 to 880 MHz (MegaHertz) band. The transmitters used by the applicant will generate no more than 100 Watts ERP. (by industry standards, this is considered a low powered transmitter) This is in compliance with the FCC license requirements.

Parking for the maintenance technician can occur in the existing parking areas that serve the building. No one is at the cell site on a daily basis as the equipment is operated by remote control from the applicant's main offices.

SITE DESCRIPTION:

The proposed cell site location is currently developed with the Housing Authority Hillside Manor, a nine story apartment complex located in the northwesterly corner of Tax lot 100.

There are 28 parking spaces on the front or south side of the complex. On the north side of the building, and at a 10 feet lower elevation, is additional parking for 27 additional vehicles. A driveway around the west end of the building connects the upper and lower parking lots.

This 10 foot difference in grade will be noted on the topographic map attached as Exhibit 7.

SURROUNDING AREA:

To the east more of the Housing Authority complex, consisting of numerous duplexes.

To the north and south is residential development.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

To the west are the Southern Pacific Railroad tracts, and McLaughlin Blvd. with its mixture of commercial and industrial development.

See again Exhibit 7 for a depiction of the surrounding development.

URBAN SERVICES:

The applicant's proposed facility does not require water or sewer services as it is an unmanned and is operated by remote control from the applicant's main switch facility.

Because of this feature and because of the infrequent maintenance checks, there will not be any undue impact on the street nor will there be an impact on the area's traffic.

Telephone and electric services are available at the site.

ZONING HISTORY:

The Planning Commission, on September 9, 1997, approved, with conditions, CSO-97-08 and VR-97-05.

Two of those conditions pertained to the lease agreement between the housing authority and the applicant. A copy of the AWS lease agreement is attached to this application to show:

- 1) that the deedholder consents to the land use application- item 20 on page 9 and
- 2) to have a copy of the lease already in the file in order to negate the need for imposing a similar condition of approval for this application.

ZONING CODE:

Community Service Overlay (CSO)

According to the Zoning Code of the City of Milwaukie, Community Services are required to follow the provisions of Section 321, the Community Service Overlay (CSO). Section 321.2.B.6 Telephone and Microwave Facilities, cover facilities such as the one proposed by the applicant.

The Code, at Section 321.4.A sets forth the approval criteria for a Community Service Use. Following is a listing of those criteria and the applicant's response thereto.

Section 321.4.A: An application for Community Service may be allowed if:

1. "The requirements of the underlying zone are met."

COMMENT: The underlying zone is R-3, Residential. Section 304.3 lists the standards for development in the R-3 zone. These standards are :

- A. Lot size.** minimum lot area is 5000 sq.ft. The subject property is over 7 acres in size.
- B. Front Yard.** The minimum front yard is 15 feet. The placement of the equipment shelter will not encroach into the front yard. It will be well over 100' from SE Hillside Drive.
- C. Side Yard.** The minimum front yard that would pertain to this proposal is 5 feet. The equipment shelter is more than 5 feet from the side lot lines.
- D. Rear Yard.** The minimum rear yard requirement is 15'. The equipment shelter is located beyond this required distance.
- E. Yard Abutting a Major Street.** Section 410 requires a 30 foot yard for properties fronting on SE 32nd, north of Harrison. The subject site meets this requirement.
- F. Off-Street Parking and Loading.** The applicant proposes to use the existing parking and loading areas when providing service to this installation.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

As stated above, the system wide average for maintenance of a cell site is about once or twice a month.

This will result in little, if any, impact on the existing parking and loading area.

- G. Height Restrictions.** There is a height limitation of 2 1/2 stories or 35 feet, whichever is less. This height was exceeded with the approval of the existing apartment complex and by VR-97-05 which allowed for antennas at a height of 91 feet.

The placement of the proposed antennas on the roof will not extend beyond that height. The antennas are to be mounted to the parapet which is at an elevation of 85' 6". The top of the antenna is at elevation 88' 6". The elevator shaft and existing HVAC equipment extend above the roof more than the proposed antennas.

Again see Exhibits 4 and 5 which show the above referenced elevations.

- H. Lot Coverage-** The proposed equipment shelter will cover 336 sq.ft. of land area. The staff report for CSO-97-08 concluded that current development meets the lot coverage requirements for the R-3 zone.

The proposed equipment shelter will cover 0.001 or about 1/10th of 1% of the total site area.

- I. Minimum Vegetation and open space.** This proposal does not include the removal of any existing landscaping.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

According to the comments made in CSO-97-08, current vegetation meets the code requirements and/or satisfies the conditions attached to the Housing Authority's land use approval for this site.

- J. **Access Requirements.** The applicant will use existing access points to SE 32nd and the internal circulation system of the Housing Authority site. No additional access points will be required.
- K. **Transition Area-** The proposed Cell Site will not affect any transition area as defined in Section 413.

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

COMMENT: These sections set forth specific standards for Institutions, Public and Private and for other facilities not covered by other standards. Section 321.10 would be applicable to this proposal. The standards and the applicant's responses thereto are as follows:

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

COMMENT: All needed improvements are in place at the site. The applicant's use will not adversely impact these services. As mentioned above, traffic impact is minimal. There is no demand on the water or sewer system as this is an unmanned facility. Electrical usage is less than a typical single family residence, approximately 1500 kwh per month.

- B. " When located in or adjacent to a residential zone, access should be located on a collector street....."**

COMMENT: As stated above, the proposed use, based on the applicant's system wide average, expects to generate a maximum of two trips a month to the site by its engineer who will preform periodic maintenance checks. A typical panel type truck is used. No large vehicles will be utilized once the facility has been constructed. Existing access and internal circulation systems will be used.

- C. "When in a residential zone , lot area shall be sufficient to allow required setbacks that are equal to two-thirds of the height of the principal structure...."**

COMMENT: The placement of the equipment shelter does not infringe into any of the required setback or yard requirements.

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

COMMENT: The antennas will not extend beyond the highest point of the existing building

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

COMMENT: The equipment shelter has an air conditioning unit. It will be noted on the site plan that this unit is on the south end of the structure and is adjacent to the earthen bank.

The equipment shelter is also on the west side of the apartment complex. This is a windowless wall.

Both these factors will serve as natural buffers for any noise affiliated with the air conditioning units for the apartment complex. The railroad right-of way is the next land sue to the west and should not be impacted by this facility.

The unit will also meet DEQ standards and comply with City noise regulations.

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

COMMENT: No lighting is proposed.

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

COMMENT: The facility will operate 24 hours a day. Normal maintenance will be scheduled during times that do not conflict with the living conditions within the apartment complex.

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

COMMENT: See 3c above

ADDITIONAL FACTORS:

RF EMISSIONS:

The FCC license of AWS states that transmitters associated with the site may not exceed 100 Watts ERP (Effected Radiated Power). This particular facility will operate at 40 Watts. This is considered to be a very low output.

AWS utilizes frequencies in the 870-880 MHz (MegaHertz) band. These frequencies and the 100 Watt ERP maximum authorized by the Applicant's FCC license result in emission well below any regulated standards.

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

The Federal Telecommunications Act of 1996, amongst other things, required the FCC to adopt standards for radio frequency emissions from wireless communication facilities. In a rule making procedure, the FCC adopted standards effective August 1, 1996. A copy of the standards is attached as Exhibit 8.

Emissions are calculated in a unit of measurement termed "milliwatts per centimeter squared (mW/cm^2)". The maximum allowed in the 300-1500 MHz range is $1 mW/cm^2$.

This is based on the formula $f/1500$ or $1500/1500=1 mW/cm^2$ ($1000 u/cm^2$). Using this formula to calculate the applicant's assigned frequency would be the following: $880/1500$ or $.5866 mW/cm^2$ ($586.6 uW/cm^2$).

Exhibit 9 shows the calculations prepared by the applicant's engineers. Maximum emissions are $0.832 uW/cm^2$, less than 7/10th of 1% of the $586.6 uW/cm^2$ allowed. This indicates the proposed use is in compliance with the Federal standards.

Additionally, the low power and frequencies used by the applicant's equipment are not known to cause interference problems with other electronic equipment, either commercial or household types. The applicant's FCC license also contains specific and strict operation parameters.

There is also no known interference with other types of electronic equipment. Based on issues raised during consideration of and conditions attached to the approval of CSO-97-08, the applicant met with the staff at Providence/Milwaukie to discuss the current application. They do not feel that the proposed facility will adversely impact hospital operations and that a condition requiring testing is not warranted.

CONCLUSIONS:

The proposed cellular telephone tower site is allowable as a Community Service Use in the R3 zone. The applicant has

Community Service Overlay
Ardenwald/Hillside Manor Cell Site

demonstrated compliance with the criteria for approval of such uses. Also it has been shown that the proposed use will not place undue demands on existing urban services.

In addition, it has also been shown that the height requested in the same as or less than that of the existing apartment structure and that it is similar to the height Variance (VR-97-05) recently approved by the City.

The request should be approved as submitted.

SHV/me
as revised
November 17, 1997

1"=100'

3000

S.W. COR. BONNIE VIEW ACRES
PLAT NO. 4

SOUTH LINE OF BONNIE VIEW ACRES

100
16.68 Ac.
2889 - 10368

site

CLACKAMAS COUNTY
HOUSING AUTHORITY

APP
1/16 COR.

STREET

STREET

AVENUE

ST.

HILLSIDE

STREET

STREET

32ND

SEE MAP I I I E 25DC

250'

S.P.R.R.

EXHIBIT 1

W.Y.

SE D PLACE

ST.

MEEK (VAC. 88-24476)

STREET

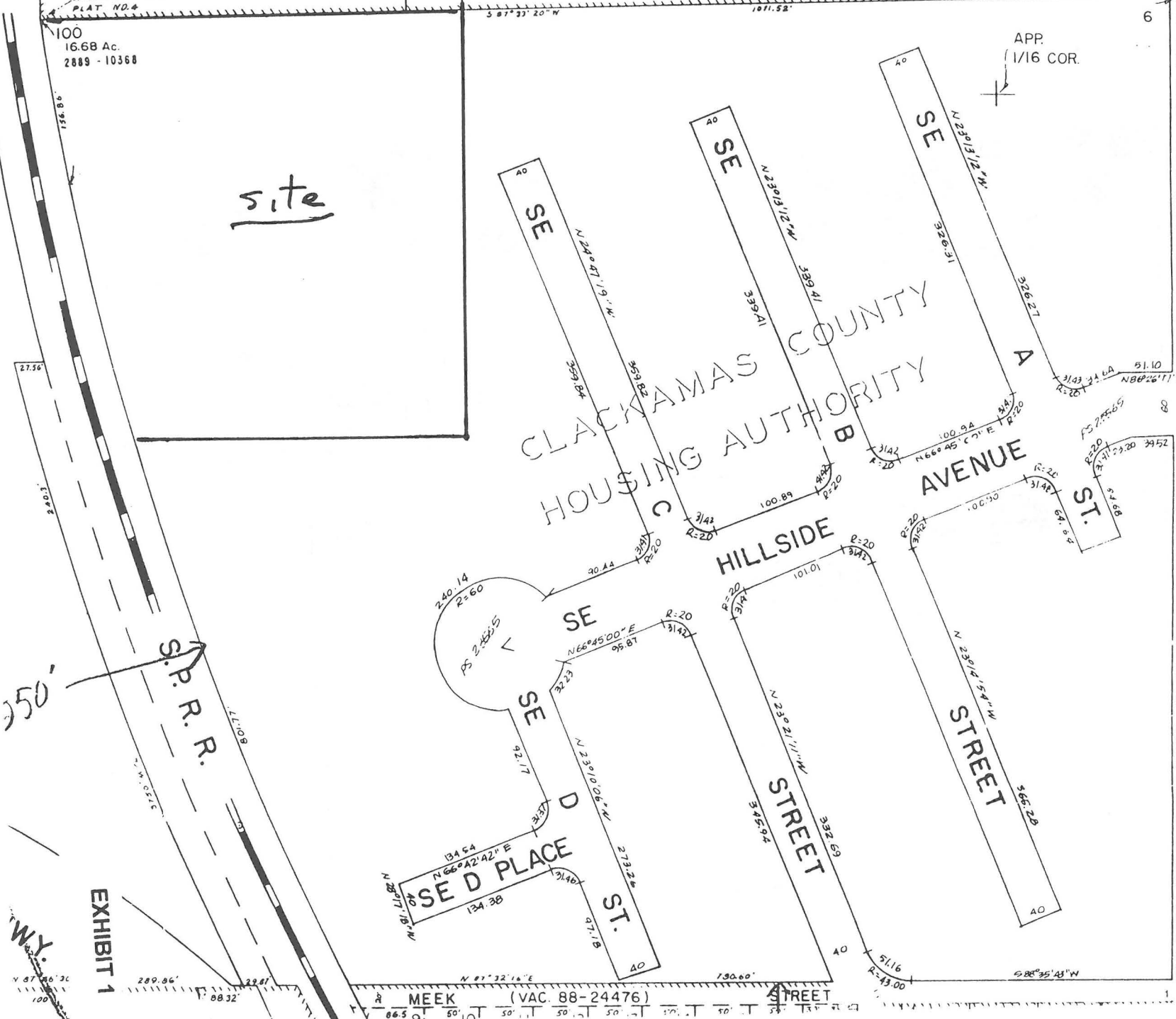
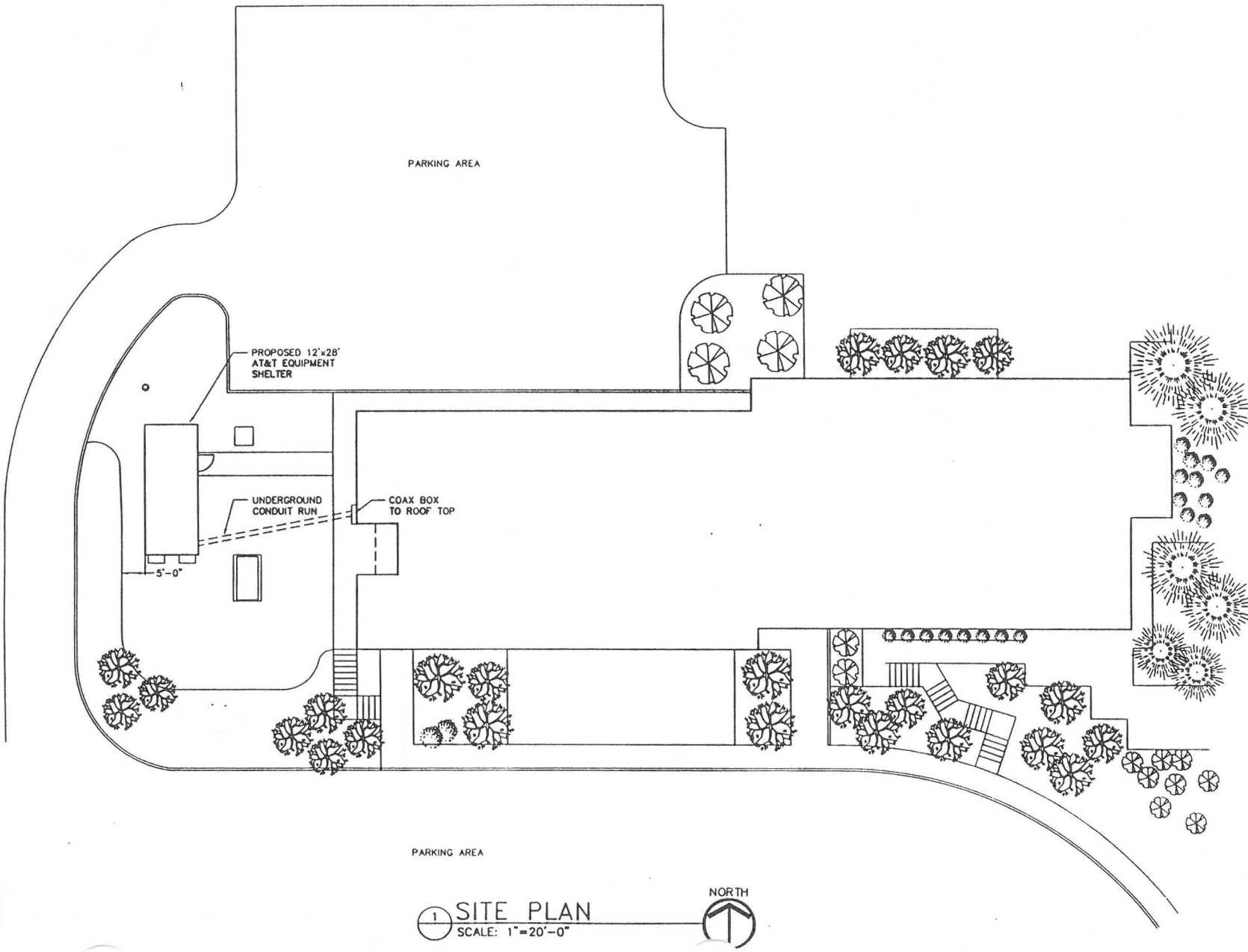


EXHIBIT 2



REVISIONS
9/9/97 PPA

AT&T Wireless Services
AT&T CENTER
TECHNICAL SERVICES
1600 SW 4th AVE., PORTLAND, OR 97201
(503) 243-3333



HILLSIDE MANOR
PROPOSED CELL SITE

DATE: 2/13/97
DR. BY: PPA
PROJ. #
SHEET

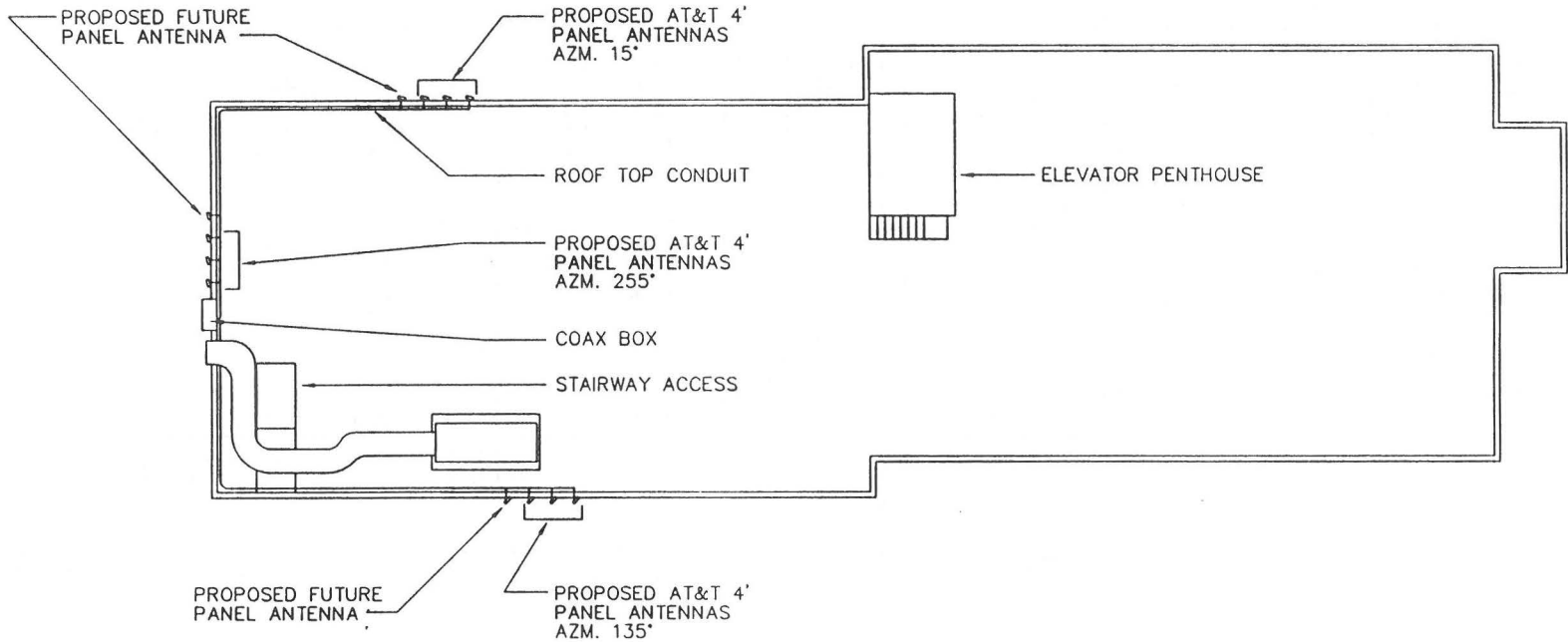


EXHIBIT 3

1 ROOF PLAN
SCALE: 1/16"=1'-0"



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11/13/97 PPA

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 (503) 243-3333



HILLSIDE MANOR
 PROPOSED CELL SITE

DATE: 2/13/97
DR. BY: PPA
PROJ. #
SHEET
2 of 4

PROPOSED COAX
BOX TO ROOF

PROPOSED AT&T 4'
PANEL ANTENNAS
ELEV. AT TOP OF
ANTENNAS =88'-6"

ELEVATOR
PENTHOUSE

ELEVATION AT
PARAPET =85'-6"

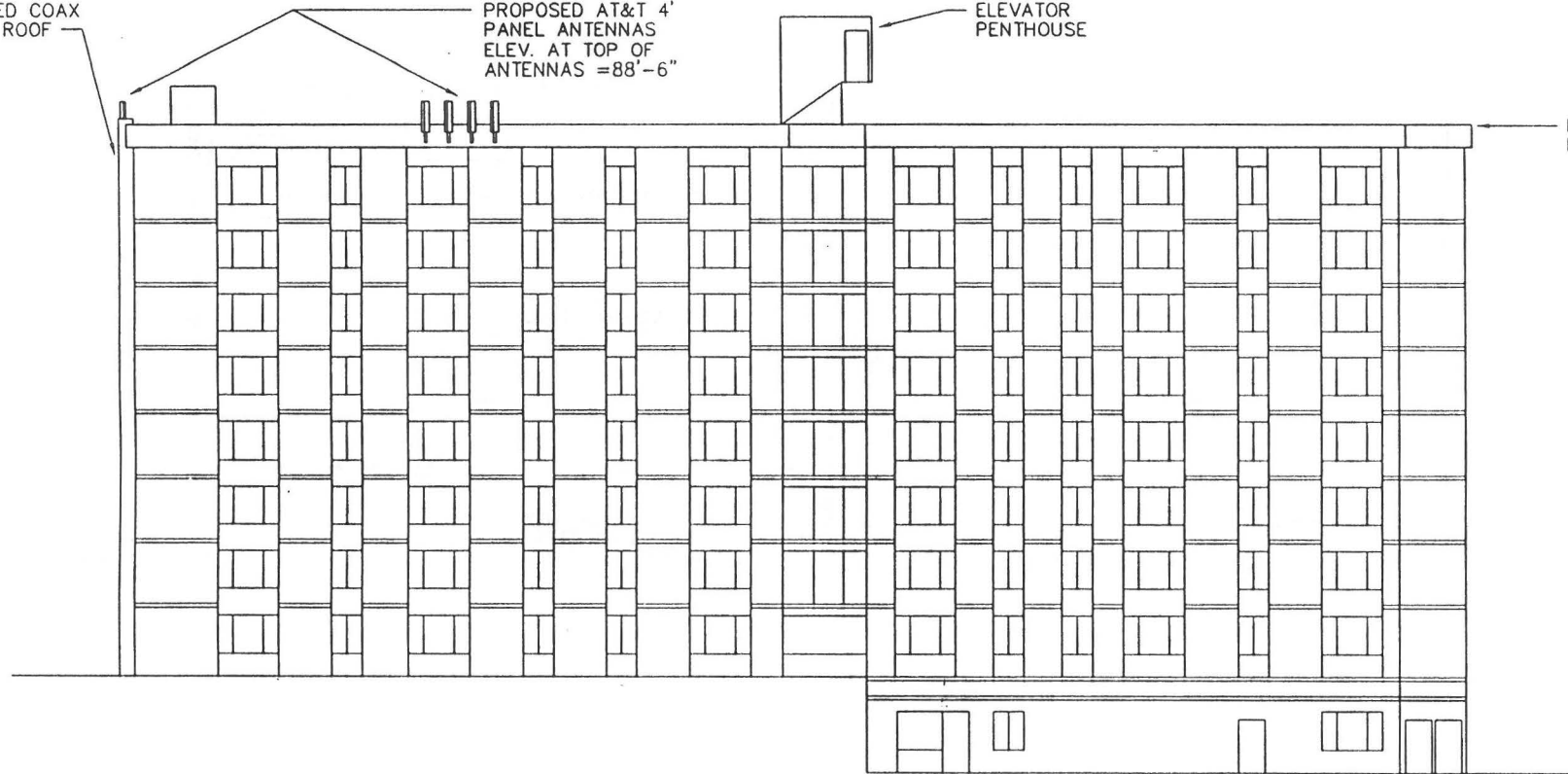


EXHIBIT
4

① SOUTH ELEVATION
SCALE: 1/16"=1'-0"

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11/13/97 PPA

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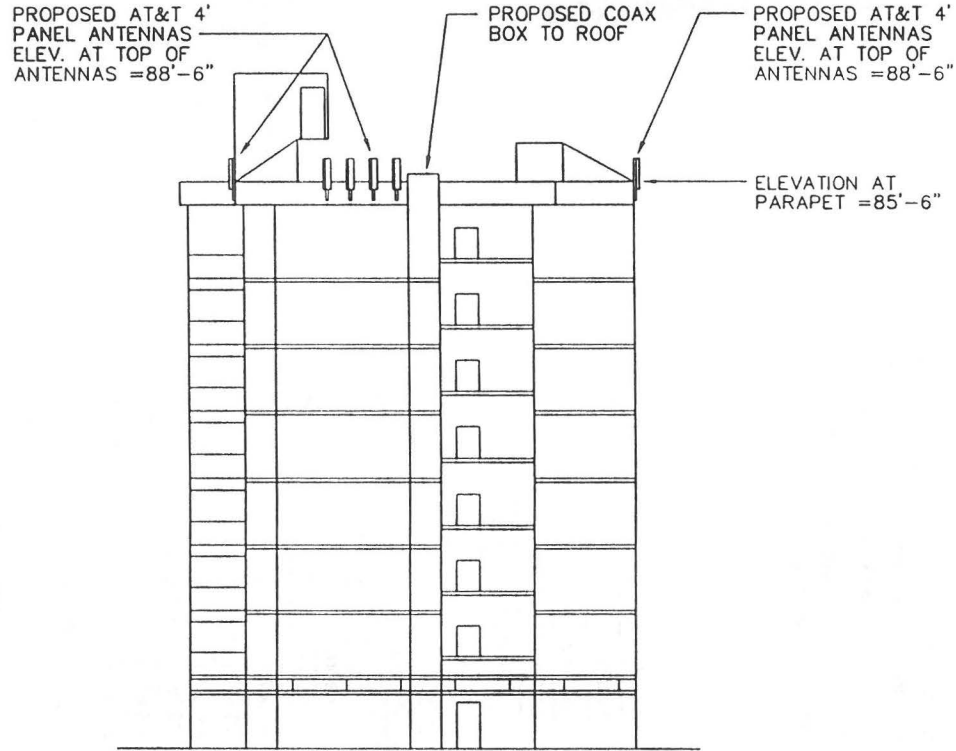


HILLSIDE MANOR
PROPOSED CELL SITE

DATE: 2/13/97
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PROJ. #
SHEET

3 of 4

EXHIBIT 5



1 WEST ELEVATION
SCALE: 1/16"=1'-0"

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DATE: 2/13/97
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SHEET
4 OF 4

SCALA

PROFESSIONAL ANTENNA SYSTEMS FOR
BROADCAST AND COMMUNICATIONS

AMERICELL®

AMERICELL panels are part of a series of Scala professional antenna products for wireless communications, featuring:

- Less tower loading than earlier panel designs, thanks to smaller size and lighter weight.
- Very rugged construction using materials selected for long life and reliability, including silver-plated copper dipoles, anodized aluminum backplate, and gray fiberglass radomes.
- Superior electrical specifications including low VSWR, wide bandwidth, flat frequency response and superb intermodulation performance.

Specifications:

Frequency range	806-894 MHz (broadband)	
Gain	13 dBd	
Impedance	50 ohms	
VSWR	< 1.3:1	
Intermodulation (2x40w)	IM3: -150dBc	IM5: -160dBc
Polarization	Vertical	
Front-to-back ratio	>20 dB	
Maximum input power	500 watts	
H-plane beamwidth	65 degrees (half-power)	
E-plane beamwidth	14 degrees (half-power)	
Electrical downtilt	0, 6, or 12 degrees	
Termination	N or 7/16 DIN female	
Weight	13.4 lb (6.1 kg)	
Dimensions	51 x 10 x 4 inches (1295 x 254 x 102 mm)	
Equivalent flat plate area	3.5 ft ² (0.33 m ²)	
Wind survival rating	120 mph (200 kph)	
Shipping dimensions	65 x 11 x 5 inches (1651 x 279 x 127 mm)	
Shipping weight	19 lb (8.6 kg)	
Mounting	Fixed and tilt-mount options are available for 1.25 to 15 inch (32 to 381 mm) OD masts. 0° electrical downtilt panel can be inverted.	

See reverse for order information.

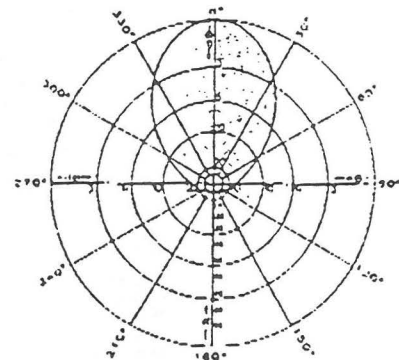
AP13-850/065

65° PANEL ANTENNA

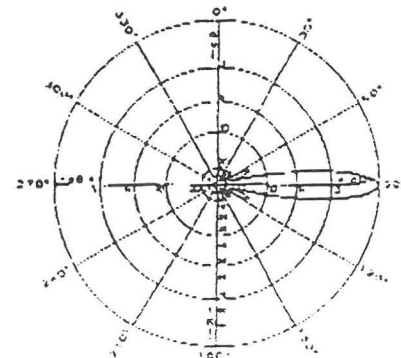
13 dBd gain

806-894 MHz (broadband)

0°, 6°, or 12° electrical downtilt



H-plane
Horizontal pattern - V-polarization



E-plane
Vertical pattern - V-polarization

SCALA ELECTRONIC CORPORATION

Post Office Box 4580

Phone: (541) 779-6500

Medford, OR 97501 (USA)

Fax: (541) 779-3991

<http://www.scala.net>

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EXHIBIT 6

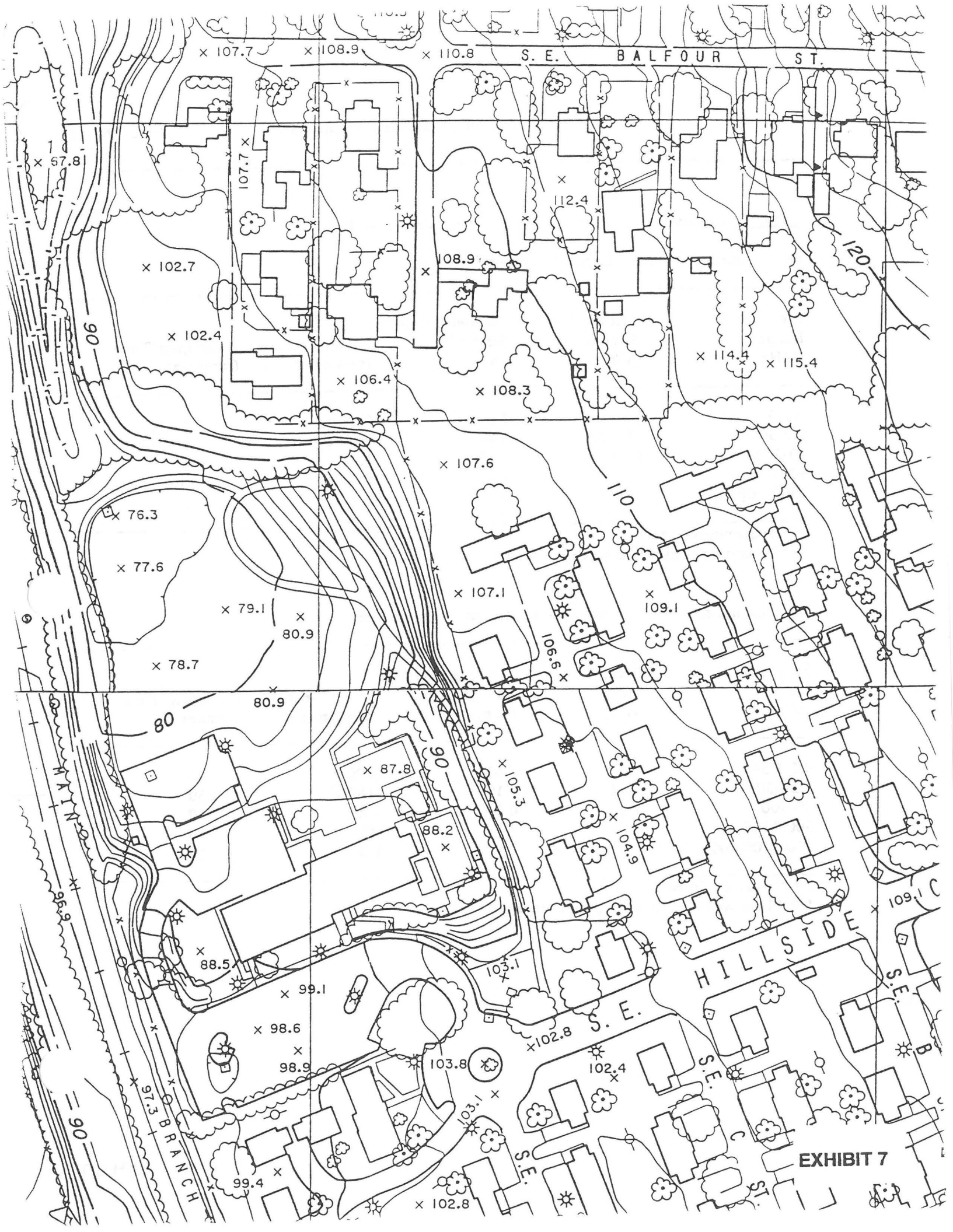


EXHIBIT 7

Table 1. Limits for Maximum Permissible Exposure (MPE)

(A) Limits for Occupational/Controlled Exposure

Frequency Range (MHz)	Electric Field Strength (V/m)	Magnetic Field Strength (A/m)	Power Density (mW/cm ²)	Averaging Time (minutes)
0.3-3.0	614	1.63	(100)*	6
3.0-30	1842/f	4.89/f	(900/f)*	6
30-300	61.4	0.163	1.0	6
300-1500	--	--	f/300	6
1500-100,000	--	--	5	6

f = frequency in MHz

* = Plane-wave equivalent power density

(B) Limits for General Population/Uncontrolled Exposure

Frequency Range (MHz)	Electric Field Strength (V/m)	Magnetic Field Strength (A/m)	Power Density (mW/cm ²)	Averaging Time (minutes)
0.3-1.34	614	1.63	(100)*	30
1.34-30	824/f	2.19/f	(180/f ²)*	30
30-300	27.5	0.073	0.2	30
300-1500	--	--	f/1500	30
1500-100,000	--	--	1.0	30

f = frequency in MHz

* = Plane-wave equivalent power density

Ardenwald

Radio Frequency Power Density for Cell

11-Sep-97

Height Radiation Center: 90

feet

ERP/Channel (watts):

25

Measurement Height: 4

feet

Antenna:

CTY6012

			19	9	5		
Distance From Tower (feet)	Angle Below Horizon (degrees)	Antenna Vertical Pattern (dB)	Distance From Antenna (feet)	Channels Power Density (uW/cm ²)	Channels Power Density (uW/cm ²)	Evening Hours Power Density (8PM - 6AM) (uW/cm ²)	
0	90.0	-26.9	86.0	0.050	0.025	0.015	
10	83.4	-23.9	86.6	0.098	0.049	0.029	
20	76.9	-23.0	88.3	0.116	0.058	0.035	
30	70.8	-22.6	91.1	0.119	0.060	0.036	
40	65.1	-22.2	94.8	0.120	0.060	0.036	
50	59.8	-21.1	99.5	0.141	0.071	0.042	
60	55.1	-20.3	104.9	0.153	0.076	0.046	
70	50.9	-18.7	110.9	0.197	0.099	0.059	
80	47.1	-18.2	117.5	0.197	0.099	0.059	
90	43.7	-18.2	124.5	0.176	0.088	0.053	
100	40.7	-19.0	131.9	0.130	0.065	0.039	
110	38.0	-21.0	139.6	0.073	0.037	0.022	
120	35.6	-25.4	147.6	0.024	0.012	0.007	
130	33.5	-25.4	155.9	0.021	0.011	0.006	
140	31.6	-25.3	164.3	0.020	0.010	0.006	
150	29.8	-17.8	172.9	0.100	0.050	0.030	
160	28.3	-17.8	181.6	0.090	0.045	0.027	
170	26.8	-12.8	190.5	0.260	0.130	0.078	
180	25.5	-12.8	199.5	0.237	0.119	0.071	
190	24.4	-12.8	208.6	0.217	0.108	0.065	
200	23.3	-9.1	217.7	0.467	0.233	0.140	
210	22.3	-9.1	226.9	0.430	0.215	0.129	
220	21.4	-9.1	236.2	0.396	0.198	0.119	
230	20.5	-6.4	245.6	0.683	0.342	0.205	
240	19.7	-6.4	254.9	0.634	0.317	0.190	
250	19.0	-6.4	264.4	0.589	0.295	0.177	
260	18.3	-6.4	273.9	0.549	0.275	0.165	
270	17.7	-4.3	283.4	0.832	0.416	0.250	
280	17.1	-4.3	292.9	0.779	0.389	0.234	
290	16.5	-4.3	302.5	0.730	0.365	0.219	
300	16.0	-4.3	312.1	0.686	0.343	0.206	
320	15.0	-4.3	331.4	0.608	0.304	0.183	
340	14.2	-2.7	350.7	0.785	0.393	0.236	
360	13.4	-2.7	370.1	0.705	0.352	0.211	
380	12.8	-2.7	389.6	0.636	0.318	0.191	
400	12.1	-2.7	409.1	0.577	0.288	0.173	
450	10.8	-1.4	458.1	0.621	0.310	0.186	
500	9.8	-1.4	507.3	0.506	0.253	0.152	

600	8.2	-0.6	606.1	0.426	0.213	0.128
700	7.0	-0.6	705.3	0.315	0.157	0.094
800	6.1	-0.6	804.6	0.242	0.121	0.073
900	5.5	-0.1	904.1	0.215	0.107	0.064
1000	4.9	-0.1	1003.7	0.174	0.087	0.052
1500	3.3	-0.1	1502.5	0.078	0.039	0.023
2000	2.5	0.0	2001.8	0.045	0.022	0.013
2500	2.0	0.0	2501.5	0.029	0.014	0.009
3000	1.6	0.0	3001.2	0.020	0.010	0.006
4000	1.2	0.0	4000.9	0.011	0.006	0.003
5000	1.0	0.0	5000.7	0.007	0.004	0.002
6000	0.8	0.0	6000.6	0.005	0.002	0.001
8000	0.6	0.0	8000.5	0.003	0.001	0.001
10000	0.5	0.0	10000.4	0.002	0.001	0.001

Assumptions:

"A-Band" Cellular Transmitter Frequencies are 869.04 to 879.99 MHz and 890.01 to 891.48 MHz.

All exposures will be in the far-field region since the longest wavelength is 14 inches. This implies that the antennas will be over 100 wavelengths from any point of exposure.

All calculations include a reflection coefficient of 2.56 (60% reflected energy from the ground).

Calculations are worst case based on point of exposure being at maximum of the horizontal radiation from the directional antennas.

AT&T Wireless Services - Engineering Department

be provided with an approved automatic extinguishing system, as per the Milwaukie Building Official. The installation of a portable fire extinguisher may also be required. Conditions have been added to address these concerns.

RECOMMENDATION 1:

- 1) Staff recommends approval of Variance 97-08, based on the following conclusion and findings, and subject to the conditions in Exhibit 1.

CONCLUSION:

Findings for a variance to allow the proposed location of wireless antennas on the existing Hillside Manor can be made. Therefore, staff recommends that the Planning Commission approve the proposed variance.

- A. **That the property in question has unusual conditions over which the applicant has no control. Such conditions may only relate to the physical characteristics of the property, lot or boundary configurations, or prior legally existing structures.**

The subject property is positioned so that, as opposed to other properties, a wireless communication antenna on this site will provide adequate wireless service to the Milwaukie area. The location of acceptable sites is determined by topography, distance from other base stations, proximity to traffic corridors, and other technical features of the communications operation. Because of this site's special qualities, the applicant does not have the opportunity to locate the antennas on another site which might require less of a height variance.

- B. **That there are no feasible alternatives to the variance and that the variance is the minimum variance necessary to allow the applicant the use of his/her property in a manner substantially the same as others in the surrounding area.**

Wireless telecommunications antennas need to be situated high enough over the surrounding terrain to provide effective coverage to the surrounding service area. Such facilities have been installed on rooftops, street lights, steeples, free-standing monopole and lattice towers and guyed towers. Clackamas County Housing Authority is requesting the ability to generate income from the lease of wireless antennas, just as other public entities have done. The height proposed is as low as can be functional on this site. The proposed antennas will not protrude beyond the height of the existing elevator shaft.

City of Milwaukie Community Development Department

Title: YR-97-05 FINDINGS Submitted by: Staff Date: 11/25/97 # Pages: 2
File Numbers: CSO-97-10 Applicant: AT&T/Spencer Vail Exhibit #: 3



- C. **That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible.**

Concerns about the placement of wireless telecommunications antennas include the health impacts of electromagnetic fields and radio frequency interference with other appliances such as televisions and radio. The Federal Telecommunications Act of 1996 and Federal Communications Commission rules regulate both radio frequency interference and allowable exposure standards. Information submitted by the applicant shows that on this site, power density levels produced by the proposed equipment will be far below the FCC permitted standards at each of the receiving sites studied. The receiving sites included nearby detached residences as well as the apartments on the top floor of Hillside Manor (Additional information on this issue can be obtained from the file). The possibility of consolidating a number of antenna users on this existing structure minimizes impacts on the surrounding properties and area because it results in fewer additional structures and mitigates against further visual blight.

RECOMMENDATION 2:

- 2) **Staff recommends approval of Community Services Overlay CSO-97-08, based on the following conclusion and findings, and subject to the conditions in Exhibit L.**

CONCLUSION:

The proposed Community Services Overlay is consistent with the City's Comprehensive Plan and meets the requirements of the CSO Zoning District. Staff recommends that CSO-97-08, as conditioned, be approved.

FINDINGS FOR COMMUNITY SERVICES OVERLAY CSO-97-08

1. The applicant is proposing to locate 10 cellular antennas and four equipment panels on Hillside Manor in Milwaukie. A Community Service Overlay in accordance with Section 321 of the Milwaukie Zoning Ordinance must be reviewed before a decision can be made regarding this proposal.
2. The proposal is consistent with the Milwaukie Comprehensive Plan because it promotes the goals of the Public Facilities and Services Element, Objective #12 Utilities, and complies with Policy #1.
3. The proposed use will not require additional utility or street improvements and no concerns regarding public improvements were identified by the Department of Public Works.

MEMORANDUM

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger *PR*
Civil Engineer

RE: CSO-97-10/VR-97-06
2889 SE Hillside Court

DATE: October 20, 1997

Public Works has no objection to the placement of antennas on Hillside Manor or the placement of the equipment shelter adjacent to it. This placement will have no effect on any City utilities or the street system. However, in installation of the underground conduit, care must be taken not to damage any existing underground drainage lines for the existing building.

Raindrain lines for the proposed equipment shelter must be run to the existing storm drainage system or through a curb to the parking lot surface.

RECEIVED
OCT 20 1997
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

City of Milwaukie Community Development Department

Title: Public Works Memo Submitted by: Staff Date: 11/25/97 # Pages: 1
File Numbers: CSO-97-10 Applicant: AT&T/Spencer Vail Exhibit #: 4



CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

Date: November 25, 1997
120 Days - 2/20/98

File Nos.: CU-97-02

Application: Conditional Use Permit - Wichita Town Pub
Applicant: Jack Donaugh, President - Wichita Town Pub, Inc.
Property Owner: Essex Portfolio LP, KP Chang
Location: 6106 SE King Road, Milwaukie
Tax Lots: R12E31AA2100 (Exhibit 2)

PROPOSAL

The applicant proposes to expand the existing Wichita Town Pub by 2,050 sq. ft., into existing unused shopping center space. The site is located within the City's General Commercial (C-G) Zoning District. Drinking establishments and other high-impact commercial uses are allowed in the C-G District with Conditional Use (CU) approval. This proposal also requires compliance with Section 1402 standards for Minor Transportation Planning Review (TPR). This section requires that a cost equal to 10% of project valuation must be spent towards bike racks and other TPR improvements. The property owner (KP Chang) is making a separate application for parking lot improvements and to construct an addition on the detached office building on this site. The Transportation Planning Review for the proposed pub expansion will be combined with the review of the office building addition.

RECOMMENDATION

That the Planning Commission approve the Conditional Use (CU 97-02) to add expand the Wichita Pub drinking establishment area by 2,050 sq. ft.

BACKGROUND

The Wichita Town Pub is a tavern operation, serving food, (breakfast, lunch, and dinner), and alcohol. The pub also contains pool tables and coin operated game machines. Up until recently, live music and dancing were offered approximately twice a month. The pub operates under a Retail Malt Beverage (RMB) liquor license issued by the Oregon

Liquor Control Commission (OLCC). A RMB license permits the sale of malt beverages, wine, and some hard ciders for consumption on the licensed premises.

In February 1997, Wichita Town Pub, Inc. made a application with the OLCC to expand their facility by adding 2,050 sq. ft. for more pool tables a dance floor and bandstand area in the vacant portion of the main shopping center building. At that time, the OLCC posted public notice at the site, and sent notification to the Wichita Elementary School and the Linwood Church of Christ, which are within 500 feet of the site. Comments received from the school resulted in revisions to the original proposal, and on July 21, 1997 the OLCC approved the expansion request with caution (Exhibit 4). The OLCC "caution" was that the pub must operate as described by the applicant in his letter to the Wichita Grade School Principal (Exhibit 3 page 4). These changes include replacing the dance floor and band area with dining area for non-smokers and restricting live bands to only two nights a year.

Following OLCC approval, remodeling construction began without notification to the City. A stop work notice was issued and the applicant has since been working with building and planning staff to obtain the necessary permits.

SITE INFORMATION

The Wichita Town Pub is part of the Wichita Town Center shopping center located at southwest intersection of King Road and Linwood Avenue. Other uses within the shopping center include a supermarket, beauty college, video store, delicatessen (also operated by the Pub), and a detached office building. Uses surrounding the shopping center site include mobile home parks to the south and west, a gas station to the north-east, and residential and commercial uses across King Road and Linwood Avenue to the north and east, respectively.

DISCUSSION

The Conditional Use regulations provide specific criteria to guide the review and approval of particular land uses (Zoning Section 601). The Planning Commission has final decision-making authority after a public hearing per the minor quasi-judicial public review procedures, (Zoning Sub-section 1011.3). A Conditional Use may be approved if the Commission finds:

Section 601.2

- A. The use meets the requirements of a conditional use in the zone currently applied to the site. (C-G, Sections 313.2F & 602.6)
- B. The use meets the standards for the underlying zone. (C-G, Section 313.3A- L)

- C. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use. (Chapter 4 - Land Use)
- D. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvement and natural features.
- E. The proposed use is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

The burden of proof that this criteria is met is the responsibility of the applicant. The applicant has submitted materials to support this application (Exhibit 3).

In reviewing Conditional Use applications, the Commission must also consider the conditional use standards of Section 602. For this particular use, Section 602.6 sets standards for high-impact commercial uses which must be applied to the proposed expansion of a drinking establishment in the C-G Zone. Finally, when permitting a Conditional Use, the Planning Commission may impose conditions and restrictions that uphold the intent of the Comprehensive Plan and mitigate any adverse effect upon adjoining properties.

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

Compliance with the Comprehensive Plan

The site is designated Commercial on the Comprehensive Plan Map. The following Comprehensive Plan policies apply to this proposal:

1. **Land Use Element - Economic Development, Objective 1: To encourage an increase in the overall economic development activity in the City (including the retention of existing businesses).**

The applicant states that the area to be used for expansion has been vacant for approximately 13 years. The addition of this space to the existing operation will allow the applicant to provide a wider variety of services and better accommodate existing services. The proposal is consistent with this objective.

2. **Land Use Element - Commercial Land Use: District Centers, Objective 9: To provide maximum convenience to City residents for regular and convenient shopping needs by concentrating commercial uses into selected commercial clusters.**

The Comprehensive Plan identifies Wichita Town Center as a District Center, (serving 6,000 to 10,000 people and typically containing a bank, supermarket,

drug/variety store, gas station, etc.). As a local tavern, the proposed use is compatible with the uses intended to be located within a District Center.

3. **Land Use Element - Commercial Land Use, Policy 3: To ensure that future improvements and land use changes provide adequate visual buffers to adjacent residential areas, including such devices as landscaping and fencing.**

The City Civil Engineer has reviewed this proposal and found that public facilities are sufficient to serve the proposed use (Exhibit 5). Additionally, existing site landscaping and fencing is provided to create a visual buffer to the adjacent residential areas. The proposed expansion of the existing pub facility is consistent with this guideline.

The proposed Conditional Use is consistent with the Milwaukie Comprehensive Plan.

Compliance with the Zoning Criteria

The Wichita Town Pub is located within the C-G Zoning District. Pursuant to Section 313.2F, drinking establishments are permitted in the C-G District with Conditional Use approval. The proposal meets all the C-G development standards as described below:

	C-G Requirement	Existing	Proposed
Lot size	none	3.2 acres	No change
Setbacks -			
King front yard	10 ft.*	30 ft	No change
Rear yard	15 ft.**	33 ft.	No change
Side yard	15 ft.**	30 ft.	No change
Linwood front yard	10 ft.*	75 ft.	No change
Street Access	35 ft.	306/255 ft.	No change
Height	45 ft.	20 ft.	No change
Lot coverage	85 % max.	27 %	No change
Min. Vegetation	15 % min.	11%***	No change
Parking	52/137	52/145	No change

* Per Section 410 - Major Streets

** Per Section 413 - Transition Area

*** Existing Nonconforming

The above table demonstrates that the existing development on this site complies with all C-G Zone requirements with the exception of landscaping. The proposed expansion does not include new building construction and is not sufficient to require full compliance with landscaping or TPR requirements. Pursuant to Section 1402, however, the applicant is required to make TPR improvements to an amount equal to 10% of the cost of the project. The project has been conditioned to require that these funds be spent towards bicycle parking and landscaping improvements.

The proposal also complies with the specific standards for high-impact commercial uses (Section 602.6):

A. Nearness to dwellings, churches, hospitals, or other uses which require a quiet environment.

The site is immediately adjacent to residential uses to the south and the west, and the Wichita Elementary School is within 250 feet. The applicant has revised his proposal to address the concerns of the school (Exhibit 3 page 4). Some of these revisions are included as conditions of approval. Additionally, Zoning Code Section 413 requires that Transitional Areas, including setbacks and landscaping, be provided for commercial uses which abut residential designated parcels. The table above shows that the site provides a 30 foot transition buffer where 15 feet is the minimum required. Additionally, a dense landscape buffer is provided along the west property boundary and the south property line is protected by an eight foot tall cement block wall. A condition of approval has been recommended to require that additional landscaping be provided along the south property line towards the east side where the block wall ends.

B. Building entrances, lighting, exterior signs, and other features which could generate or be conducive to noise or other disturbance for adjoining uses.

The main access to the pub is from the front doors which face King Road. The proposed expansion will make the secondary access, from the rear of the building, more accessible to the public. No other changes are proposed. The school has argued that noise from bands has been disruptive. The applicant has indicated that due to the limited interior space, the band had to locate near the front door. With the proposed expansion, the band will be located within the new area, far from the front door. Additionally, the applicant has determined that bands will only be permitted at the site two nights a year - on New Years Eve and Halloween. This restriction has been added as a condition of approval.

C. Parking vehicles and pedestrian access and circulation could contribute to noise or attract habitual assembly or unruly persons.

Police reports have indicated that there have been incidents within the Wichita Town Center parking lot. These incidents, however, have not been traced to pub patrons. In meeting with the Wichita Elementary School Parent- Teacher Associations, the applicant stated that he would monitor the parking lot for anything that would be of concern to the neighborhood. A requirement to provide and implement a parking lot monitoring plan is included in the conditions of approval.

No parking lot changes are proposed as part of this proposal. The owner of the site will be providing parking improvements as part of the TPR for the overall site. The preliminary plans for the Wichita Town Center TPR shows parking lot improvements including: the increase in the number of parking spaces and parking lot reconfiguration; landscaping over 15 % and designed in compliance with Section 500 parking lot development standards; and lighting improvements. Additional improvements will be made to the lighting under the eaves along the store frontages to provide increased lighting for the pedestrian walkway. This should improve night-time visibility and discourage loitering

D. Hours of operation.

The current hours of operation are not proposed to change. The pub is currently open seven days a week: 6:00 am until 12:00 midnight on Sunday; 6:00 am to 1:00 am Monday and Tuesday; and 6:00 am to 2:00 am Wednesday through Sunday. These are standard hours of operation for a tavern and have not been a concern to the neighbors. Concerns regarding night-time noise have been addressed by the applicant limiting live bands to only two nights a year.

E. In addition to consideration of the above with respect to building and site design, the Planning Commission may attach conditions or standards of performance and impact, and methods for monitoring and evaluating these, to insure that such establishments do not become unduly or unnecessarily disruptive.

Staff has provided recommended conditions of approval as Exhibit 1 of this report. The Commission may wish to consider revision these conditions or adding additional ones after taking public testimony on this proposal.

COMMENTS

Neighborhood Association

This proposal has been referred to the Linwood Land Use Committee for their comments. The Linwood LUC found that the proposal complies with City policies. (Exhibit 6)

Oregon Liquor Control Commission

The OLCC has referred copies of their recent RMB licenses expansion approval and supporting correspondence for the Commission's consideration (Exhibit 4). The OLCC conducted a fairly comprehensive review of this proposal including meeting with the school teacher-parent association and checking with the police department. The revisions proposed by the applicant as part of the OLCC permit have been incorporated into this report and the conditions of conditional use permit approval contained in Exhibit 1.

City Departments

The City Civil Engineer has provided comments which are included as Exhibit 5 of this report. Written comments were not received by the Fire Marshal on this issue, however, the applicant has provided a copy of the Fire Department inspection conducted on August 13, 1997 (Exhibit 3 page 5). Any additional concerns will be addressed through the building permit process.

The Building Official has noted that the applicant made application for a building permit for the proposed remodel and safety inspections have been conducted. The applicant has been prohibited from occupying this area until all City approvals have been obtained. Finally, the City police department has reviewed this proposal and recommends approval.

CONCLUSION

Staff suggests that the above analysis demonstrates that the pub expansion proposed under CU 97-02, as proposed and conditioned, complies with the City Comprehensive Plan and Zoning Ordinance requirements for Conditional Use approval. Staff recommends that the Commission adopt the following findings and approve the proposal, subject to the conditions attached as Exhibit 1.

FINDINGS FOR CONDITIONAL USE - CU 97-02

1. That the proposed expansion of the Wichita Town Pub would result in the expansion of a drinking establishment. Drinking establishments, (also defined as high-impact commercial uses), are listed as a conditional use in the City's General

CITY OF MILWAUKIE COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT - Wichita Town Pub CU 97-02

November 25, 1997

Page 8

- Commercial (C-G) zone which is applied to the site (Section 313.2F). The proposal provides adequate fence and landscape buffers to the adjacent residential uses and the limitation of live bands to only two nights a year will eliminate any potential noise impacts to the neighboring uses. Therefore, the proposed expansion complies with the specific conditional use standards for high-impact commercial uses (Section 602.6).
2. No exterior changes will be made to the existing building and adequate parking is available within the shopping center parking lot to serve the proposed expansion. Additional landscaping is required along the south property line to improve the transitional buffer to the residential properties to the south. Therefore, the proposed expansion of the existing pub use meets the standards for the C-G zone.
 3. As a neighborhood tavern, the proposal meets the need for uses in the City's District Center commercial areas. The proposal also allows for the retention of an existing commercial business and is currently served with all necessary public facilities. Additionally, the existing development provided sufficient fence and landscape buffers to create a visual buffer for the adjacent residential areas. Therefore, the proposal satisfies the goals and policies of the applicable Land Use Element Objectives and Policies of the City's Comprehensive Plan.
 4. The proposed expansion is located within existing vacant area within the Wichita Town Center shopping center. This is a 3.2 acre, relatively flat site. The shopping center has been in operation for over 30 years. No changes will be made to the existing site development. Therefore, the characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvement and natural features.
 5. Public transit is available along King Road and Linwood Avenue. The Public Works Department has reviewed this proposal and found that all public services needed to serve this expansion are available to the site. Therefore, the proposed use is timely, considering the adequacy of transportation systems, public facilities and services existing for the site.

Exhibits:

1. CU 97-02 Recommended Conditions of Approval
2. Location Map
3. Applicant's Supporting Statements for CU Approval
4. OLCC RMB License Report and Supporting Materials
5. Comment from the Civil Engineer
6. Comments from Linwood Land Use Committee
7. Site Maps

EXHIBIT 1

CONDITIONS OF APPROVAL

1. This CU approval shall be for the 2,050 sq. ft. expansion of the Wichita Town Pub to allow the addition of pool tables and a non-smoking dinning area. Minor changes to the approved plan may be permitted by the Community Development Director.
2. The applicant shall provide additional landscaping along the east end of the south property line, where the block wall ends. A detailed landscape plan, showing the type, size and location of all plant materials, must be submitted. The plan shall also include irrigation details. This plan shall be submitted for review and approval to the Community Development Department prior to issuance of the building permit for pub expansion.
3. The applicant shall be required to contribute an amount equal to 10% of the valuation of this expansion project towards TPR improvements identified in Section 1400. The first priority shall be for bicycle parking for a minimum of 5 bikes. This condition may be met as part of the subsequent TPR review of improvements to the Wichita Town Center site. Plans for these improvements must be reviewed and approved by the City prior to the issuance of the building permit for pub remodel. If construction of these items is not completed prior to a request for the Certificate of Occupancy for the pub, the applicant may submit a performance bond equal to the amount of 10% of the valuation of the project must be submitted to the City.
4. Live bands shall not be permitted to play at the Wichita Town Pub except on New Years Eve and Halloween. The applicant must submit a request to the Planning Commission for review and approval to have live music at any other times of the year.
5. The applicant shall submit a parking lot monitoring plan which details proposed method for parking lot surveillance from the hours of 8:00 p.m. to closing. Such plan shall be reviewed by the Community Development Department and the Police Department for approval and implementation.
6. The applicant shall post signs within the Wichita Town Pub public area to inform patrons that they should be aware of school children and drive carefully during the hours of 3:00 p.m. to 6:00 p.m. weekdays. The applicant shall submit their posting plan to the Community Development Department for review and

CITY OF MILWAUKIE COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT - Wichita Town Pub CU 97-02

November 25, 1997

Page 10

approval. The approved postings shall remain in a predetermined visible location for the life of this use.

7. The applicant shall be required to pay Sewer Development Charges, to the Public Works Department, for the additional sewer connections proposed as part of this development.
8. The applicant must obtain a building permit and Certificate of Occupancy from the Building Department prior to commencing operation within the expanded area.

TEXT CRITERIA:

601.2 Applicant's Responsibilities:

The following are answers to questions 601.2 A thru E inclusively. Given in alphabetical order, 602.1 thru 602.3 and 602.6.

- A. The present existing use meets the requirements of a conditional use at this site. In accordance to section 313 General Commercial Zone "CG" of the present Milwaukie zoning code, section 313.2 Conditional uses permitted, line F, drinking establishments are a permitted conditional use.
- B. The facility in question is within a space which is part of a larger Commercial Strip development. At time of construction the development must have met all criteria imposed by the existing zoning codes then in-forced. Therefore, it would be safe to assume that all the underlying requirements such as setbacks, heights and parking percentages of lot coverage and landscaping have been met. It is our understanding that the complex owner proposes site modifications to the parking lot, to be submitted under separate application.
- C. According to the Comprehensive Plan, the site of this facility is within a commercial overlay area. Therefore, one may assume that it is within the parameters and objectives of the Comprehensive Plan.
- D. One may assume that the characteristics of the existing site such as size, shape, location, topography and site improvements have been more than satisfactory to sustain the existing pub and the other mall tenants. Additional parking should not be a problem especially if you review the increased space as existing square footage that was considered in the original overall parking design requirements.
- E. As to the proposed use impacting public transportation, proposed on existing public facilities, proposed on existing services in the area; the answer is no. The Pub already exists. The purpose of this request is to increase the Pub square footage from existing spaces within the mall. Should employees or patrons not drive, they can avail themselves of public transportation on King RD. and Linwood Ave. There will be no impact on schools or parks. The only impact on services will be the addition of two water closets and four lavatories to the sewer load

602 Standards Governing Conditional use:

The following are answers to Standard Requirements: 602.1 and 602.6.

- 602.1 Yards: Yards are existing. The foot print of the existing building will now change.
- 602.2 Height: The exterior of the building will not change. The present height limitations imposed for construction will remain.
- 602.3 Property access will not change. The two accesses on both Linwood Ave and King Rd. are to remain. However the possibility exists that in the redevelopment of Site Plan by the Mall Owner under separate permit may change locations of the driveways.

City of Milwaukie Community Development Department

Title: Supporting Info Submitted by: Applicant Date: 10.23.97 # Pages: 6 3
File Numbers: _____ Applicant: _____ Exhibit #: _____



TEXT OF CRITERIA:

602.6 High- Impact Commerical use:

- A. The particular designated area of the Pub is not relatively close to anything, noise pollution or trespass to adjacent areas are at a minimum. Most concerns should be given to the parking areas. In reviewing an area 250' - from the perimeter. The following uses were found.
1. Across Linwood Ave to the east, there is one vacant lot and five simple family residence. They are buffered by Linwood Ave. 100' of open parking space and 40' of building.
 2. To the south we find two single family residences and a Mobil Park. These are buffered by a 33' alley, 8" concrete block wall and 35' of building interior space.
 3. To the west we find a Mobil Park which is buffered by 150' of the Sentry Super market and a 33' alley.
 4. To the north we have a mixed use of the Witchita grade school, five residences and a Clinic. These are buffered by building outside wall, 220ft. of open parking and King Rd. An additional 20ft. of front yard set back.
 5. Primary use of the site is generally from 3:00 PM to closing. This does not interfere with normal school hour. Please see exhibit #1 for schools concerns and the satisfactory solutions.
- B. Building entrance, lighting and signage shall remain as existing.
- C. Parking and pedestrian access shall remain as existing. However the site layout will be changed by property owner under separate permit to create additional parking spaces. Any concerns for this matter should be addressed to the building owner.
- D. Hours of operation are set by the Oregon Liquor Commission. See exhibit #1 for further information.
- E. Conditions: The owner and operator of the Pub realizes that special conditions may be attached to this permit and must work to live within the framework of those conditions.

July 25, 1997

Wichita Town Pub, Inc.
Jack Donough, President
6106 SE King Road
Milwaukie, OR 97222

LIQUOR
CONTROL
COMMISSION

EXTENSION OF PREMISES - GRANT WITH CAUTION

Re: WICHITA TOWN PUB

Dear Mr. Donough:

At the Commission meeting on July 21, 1997, the Commissioners approved your request to extend your premises into an adjacent area in the building. In doing so, they cautioned you to operate as you proposed, to ensure that your business does not have an adverse impact on the area.

Commission staff noted that you responded to community objections to your request by changing some elements of your proposal. You are encouraged to continue to work cooperatively with any neighborhood and school organizations if problems related to your business operation do occur.

If you have any questions about this caution, please call Investigator Karen Keith at 872-5216.

Sincerely,



Alisa Larsen
License Procedure Coordinator
Regulatory Process Division

/al

c: file
Keith

Karen Lachman, Principal
Wichita Grade School

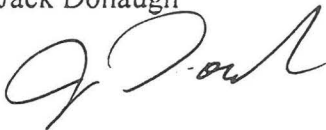
Dear Karen,

After attending the PTSA meeting at the school on May 20th, I realize the concern of the staff and the parents of the children who attend the school. I along with the Oregon Liquor Control Commission would like to arrive at a solution to this problem so that we may absolve this matter. These are the actions in which the Wichita Town Pub are offering to make so that this will be an easy transition for all involved.

1. We will post signs to remind customers that children leave the Wichita Grade School between the hours of 3 and 6 pm, to please drive with care and caution.
2. We will continue to monitor our parking lot for anything that would be of concern to the neighborhood.
3. We will monitor our sales, if we exceed \$376.00 on a daily average, (what we have lost since 1995 per day) we will shorten our hours of operation, as well as cut back on our outside advertising.
4. We are willing to have a monthly meeting with a committee of your choice, to go over any problems that the Wichita Pub may be the cause of. We may then be able to act upon them in a more timely manner.
5. I will give your committee a *direct* hot-line to contact me if anything occurs between our meetings that may need my immediate attention or action.
6. The Wichita will put a non-smoking area where the bandstand and dance floor were going to be. In effect eliminating any noise that leaves the building.

If you have any other suggestions or concerns, I would be more than happy to look them over and see what I could do about them.

Jack Donough



President, Wichita Town Pub Inc.

cc: Tracy Yerman, WKPT President
Karen Keith, OLCC
Davis Wright Tremaine, LLP

- Reg. Insp.
- Follow-up Insp.
- Spec. Insp.

CLACKAMAS COUNTY FIRE DISTRICT
 OFFICE OF FIRE MARSHAL
INSPECTION NOTICE

Page _____ of _____

Business Name: WICHITA TOWN PUB. Date 8-13, 1997

Occupant/Owner JACK DONAUGH Occupancy A

Address 6106 SE KING Rd., MILW. Oregon (Zip) 97222

The following fire safety deficiencies must be corrected in compliance with applicable state and local fire prevention laws:

- #1 1. PROVIDE SECONDARY EXIT WAY FROM POOL ROOM AREA.
- #2 COMPLETE WITH ONE HOUR FIRE RATED ENCLOSURE.
- CONCERNING NEW ADDITION
- #2 2. PROVIDE ILLUMINATED EXIT SIGNS TO INDICATE EXITWAY.
3. WALL MOUNT EXTINGUISHER IN KITCHEN STORAGE AREA.
4. REMOVE EXTENSION CORD AT DEFRIGERATION
5. BRING STORAGE TO 18" BELOW SPRINKLER PROTECTION.

Failure to correct the above conditions by 9-13-97 will make you liable to prosecution. Should fire result from such conditions you may be liable for damages to persons or property under provisions of ORS 479.190.

CLACKAMAS COUNTY FIRE DISTRICT
 OFFICE OF FIRE MARSHAL
 11300 S.E. Fuller Rd.
 Milwaukie, OR 97222
 (503) 655-8537

- First Notice
- Second Notice
- Final Notice

Fire Marshal Representative Jane C. Villanueva

Presented to Paul Arbes

5

Hennebery Eddy
Architects **FAX**

Date: 2 October 1997

To: Mr. Glenn Shirley, Architect
Fax: 656-6763

From: Tim Eddy
Pages: This one.
RE: Wichita Town Center HEA #97020

Message: Dear Glenn,

As discussed, we have researched the area leased by each of the tenants at the Wichita Town Center, have met with Susan Heiser of the City of Milwaukee and have determined the number of parking stalls required for the Center in its current configuration and tenancy.

We have reviewed the site plan you have prepared and find it generally consistent with the site with the exception of the configuration and footprint of the existing office building and the configuration of the tenants in the retail building. The office building was expanded in the early 1980's and approximately 540 SF was added filling in the notches on the west side of the building. The video store in the northeast corner of the retail building is not indicated on your plan.

Our current scheme for the renovation of the parking lot will require moving the bicycle parking proposed on your plan. Please contact me to discuss this issue.

It is unlikely that our land-use application for the parking area renovation and expansion of the office building will be prepared for submittal along with your conditional use application for the Pub expansion. We expect that you will proceed with your application independently.

Our summary of the current parking requirements are as follows:

Existing Use	Area/Occupancy	Required Stalls
Grocery Store	Total Service Area=15,600 SF Storage Area=3,900 SF	78 4
Pub & Deli	As per Susan Heiser	52
Video Store	As per Susan Heiser (1,600 SF)	7
Beauty School	45 students max. at once (4,587 SF)	15
Office Building	3,750 SF net office area	15
Total Req'd	Before Reductions	171
Allowed reductions	20%	(34)
Total Req'd	After Reductions	137

If you have any questions, please don't hesitate to contact me.

Tim Eddy 

Hard Copy by Mail: No
cc: File, Mr. James Fluge, Colliers International 227-2447

519 SW PARK AVENUE SUITE 410
PORTLAND OREGON 97205
(503) 227 4920 FAX
(503) 227 4860 TEL
HEArchs@aol.com

6



July 25, 1997

Wichita Town Pub, Inc.
Jack Donough, President
6106 SE King Road
Milwaukie, OR 97222

LIQUOR
CONTROL
COMMISSION

EXTENSION OF PREMISES - GRANT WITH CAUTION

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If you have any questions about this caution, please call Investigator Karen Keith at 872-5216.

Sincerely,



Alisa Larsen
License Procedure Coordinator
Regulatory Process Division

/al

c: file
Keith

City of Milwaukie Community Development Department

Title: OLCC Comments Submitted by: OLCC Date: 10-28-97 # Pages: 21
File Numbers: CU 97-02 Applicant: Wichita Town Pub Exhibit #: 4



SUMMARY

APPLICANT(S): Wichita Town Pub, Inc.

TRADE NAME: WICHITA TOWN PUB

ADDRESS: 6106 S.E. King Road

CITY: Milwaukie COUNTY: Clackamas ZIP: 97222

TYPE OF LICENSE: Retail Malt Beverage ACTION: Extended/Remodel Premises

RECOMMENDATION:

Subject: Retail Malt Beverage request to extend/remodel premises.

GRANT with caution to operate as proposed.

[Signature]
Cheryl Gettis 7/8/97

LICENSE PROCESS:

TO RSC C-HANSEN

REGULATORY STAFF COMMITTEE'S RECOMMENDATION TO ADMINISTRATOR:

NIENSTADT		
MR. BRINKHOFF:	<input checked="" type="checkbox"/> GRANT [] REFUSE	<i>with caution to operate as proposed</i>
MS. IGNOWSKI	<input checked="" type="checkbox"/> GRANT [] REFUSE	
MS. FOX	<input checked="" type="checkbox"/> GRANT [] REFUSE	

ADMINISTRATOR: *Grant to Commission with Caution* EVANS DATE: 7-15-97

COMMISSION ACTION: *4-0 grant w/ Caution* DATE: 7-21-97

RECEIVED
JUL 09 1997
① OLCC LICENSE DIVISION

OREGON LIQUOR CONTROL COMMISSION
Regulatory Field Services

Subject: License Investigation for RMB
Request Extend Premises

Date: July 7, 1997

Wichita Town Pub, Inc.
WICHITA TOWN PUB
6106 SE King Road
Milwaukie, Oregon 97222

BACKGROUND

Jack Donough, corporate principal of Wichita Town Pub, Inc. is also currently licensed at six other locations. Wichita Town Pub, Inc. does not have any record of compliance actions in the last two years at this location.

Jack Donough as a corporate principal of R. J.'s Pub, Inc. has two violations at RJ's WICHITA PUB in Tualatin. The September 24, 1992, violation was for sale to a minor and the April 26, 1997, violation was for sale and service to a visibly intoxicated person. In both cases, the licensee paid a \$390.00 fine in lieu of a six day suspension.

APPLICABLE CRITERIA / RELEVANT FACTS:

OAR 845-05-026(2)(a) The licensed premises will be located within 500 feet in urban or suburban area of the boundary (measured property line to property line) of a elementary or secondary school; . . . and will adversely impact the facility.

FACTS:

1. Wichita Town Pub, Inc. holds an RMB license in the City of Milwaukie at a location that is within 500 feet of the Wichita Elementary School.

Wichita Town Pub, Inc. Is currently licensed with an RMB license at this location. The premises is in a shopping center which also holds a Sentry Food Market, Milwaukie Beauty School, a deli, and a video store. This is a tavern operation with pool tables and coin operated game machines. The licensee currently offers live music with dancing approximately twice a month at this location. The licensee offers a breakfast, lunch and dinner menu and sells a substantial amount of food for a tavern.

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2. On February 27, 1997, Wichita Town Pub, Inc. requested approval to add 1800 square feet to the existing premises by expanding into unused retail space adjacent to the existing licensed premises. Wichita Town Pub, Inc. planned to add additional pool tables, a bandstand and a dance floor. The licensee did not intend to change his current operation except for the additional space and three new pool tables.

Because this is a significant change in the existing operation, I posted a public notice on March 7, 1997, and notified Principal Karen Lachman at Wichita Elementary School and the Linwood Church of Christ by letter. I received no response from the Linwood Church of Christ.

3. On March 20, 1997, I received a letter objecting to the extension of premises from the Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee written by the WKPT President, Tracy Yerman.

In her letter, the reasons Ms. Yerman cited for their objection included:

- ▶ noise from the live bands;
- ▶ disorderly activities in the parking lot;
- ▶ public urination and vomiting by patrons; trespassing on private property;
- ▶ inadequate parking resulting in patrons parking in the school parking lot;
- ▶ adding space will increase traffic and the risk of accidents involving children leaving school;

4. Inspector Gary Knight contacted the Milwaukie Police Department about police calls to this area of Milwaukie to determine if there were problems we were unaware of at this location.

They sent us a list of the calls to that area of town and agreed that there are problems in the parking lot area in front of the Wichita Town Pub. However, the Milwaukie Police found in their investigations that these problems can not be linked to patrons of the Wichita Town Pub.

5. On April 14, 1997, I met with Tracy Yerman and Principal Karen Lachman at the Wichita Elementary School to discuss the concerns. Annette Nielsen,

Subject: License Investigation for RMB
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chairperson of the Wichita Elementary School Parent Advisory Committee was also scheduled to attend but had to cancel because of a sick child.

In our meeting, Ms. Yerman said that the concerns expressed in her letter by the members of the Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee were generated by the proposed expansion not by the existing business.

Ms. Yerman stated that there were two problems which could be linked to the Wichita Town Pub. The noise when bands played at the Wichita Town Pub and patrons of the pub urinating in public. She said you could hear the band several blocks away whenever the door to the premises was opened. If someone called the premises to complain, they would turn down the music. Ms. Yerman also said that during the summer patrons of the Wichita Town Pub would walk home through the neighborhood and urinate and sometimes vomit in neighbor's yards.

I asked Ms. Yerman to give me specific or approximate dates and times for these problem incidents, but she was unable to do so.

6. On May 20, 1997, I met with the Wichita Elementary School Parent Teacher Association, the Wichita Elementary School Parent Advisory Committee, Principal Karen Lachman, and licensee Jack Donough at Wichita Elementary School to discuss the proposed extension of premises at Wichita Town Pub.

I spent the first part of the meeting presenting information on how the OLCC responds to neighborhood livability issues, including definitions, our specific authority, and how the Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee could help.

Then, Licensee Jack Donough, explained to the committee members why he wanted to expand his licensed premises, and how he intended to use the additional space. He showed the proposed floor plan and how he believed that the expansion would prevent the occasional noise problems caused by the bands playing near the front door.

Annette Nielsen, chairperson of the Wichita Elementary School Parent Advisory

Subject: License Investigation for RMB
Request Extend Premises

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Committee, raised the issue of the committee's concerns about an increase in traffic, parking and noise problems for discussion.

Mr. Donough offered several changes in his proposed operation which were directed at reducing the concerns of the committee members.

The Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee were to discuss Mr. Donough's proposed changes and notify me if they wished to withdraw their objections. I informed them that I would proceed with my investigation and make a recommendation whether or not they withdrew their objection. After the meeting, several committee members indicated verbally that they were satisfied with Mr. Donough's proposals.

7. On May 20, 1997, Principal Karen Lachman stated that the school has not taken an official position on this request to extend the premises. She hoped that the objections could be resolved through discussion and compromise.

GOOD CAUSE:

8. During the meeting on May 20, 1997, Mr. Donough presented some changes in his original proposal in order to address the concerns of the Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee. The licensee agreed to:
 - ▶ Put in non-smoking dining seating in the part of the expanded area originally designated for a dance floor and bandstand.
 - ▶ Post signs to remind customers that children leave the Wichita Elementary School between the hours of 3:00 pm and 6:00 pm and to please drive with care and caution.
 - ▶ Monitor the parking lot for anything that would be of concern to the neighborhood.
 - ▶ Willing to meet monthly with a committee from Wichita Elementary School Parent Teacher Association and Parent Advisory Committee to discuss any

Subject: License Investigation for RMB
Request Extend Premises

Date: July 7, 1997

Wichita Town Pub, Inc.
WICHITA TOWN PUB
6106 SE King Road
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- problems created by Wichita Town Pub and act on them in a timely manner.
- ▶ Provide corporate principal Jack Donaugh's direct telephone number to contact him if anything occurs between the committee meetings which needs immediate attention or action.
 - ▶ Reduce hours of operation and advertising if the gross sales for the business exceed the average gross sales for the business in 1995.

The Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee were to discuss these changes and let me know if they withdrew their objection.

9. On May 28, 1997, Mr. Donaugh put these proposed changes in a letter addressed to Principal Karen Lachman and sent a copy to me.
10. Neither I nor Mr. Donaugh have received any response to his letter or to the proposal he made during the May 20, 1997 meeting.

DISCUSSION:

Wichita Town Pub is within 500 feet of the Wichita Elementary School and the proposed extension of premises could have a negative impact the school. Karen Lachman, principal of the Wichita Elementary School, and the school district have not taken an official position on this request to extend the premises at the Wichita Town Pub. Principal Lachman recognizes the concerns presented by the Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee about this request to expand the Wichita Town Pub and thought they should be discussed.

Tracy Yerman, president of the Wichita Elementary School Parent Teacher Association, and Annette Nielsen, chairperson of the Wichita Elementary School Parent Advisory Committee, were the primary objectors representing the members of their association and committee. Ms. Yerman and Ms. Nielsen were concerned about the potential for increased problems with noise, traffic and parking creating a negative impact on the school. They talked about past problems with noise, public urination, traffic and parking which they associated to the patrons of the Wichita Town Pub. Ms. Yerman and Ms. Nielsen unable to provide me any specifics about the incidents they were describing.

(6)

Subject: License Investigation for RMB
Request Extend Premises

Date: July 7, 1997

Wichita Town Pub, Inc.
WICHITA TOWN PUB
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None of the objectors were concerned about the existing business and its operation, but with the potential for more problems with the extension.

During the meeting with Wichita Elementary School Parent Teacher Association and the Wichita Elementary School Parent Advisory Committee, the licensee made some changes in his proposal in order to reduce the concerns expressed by the committee members. We also discussed how the committee members could document any incidents which might occur, meet regularly with the licensee and work to resolve them before they become problems.

The only problems that could be factually related to the Wichita Town Pub and its patrons were the occasional complaints about the noise from the bands that play at the Wichita Town Pub twice a month. Under the licensee's proposal the band will play only twice a year, at Halloween and New Years Eve. The proposed extension of premises will allow the licensee to move the band away from the entrance where they have been in the past and reduce the likelihood of noise problems.

Mr. Donaugh contacted Ms. Yerman, the original objector in her capacity as president of the Wichita Elementary School Parent Teacher Association, about the letter he sent confirming his proposed changes. Mr. Donaugh stated that Ms. Yerman told him over the telephone that she was satisfied with the changes he listed in his letter.

CONCLUSION:

The criteria does not apply. The premises is within 500 feet of the Wichita Elementary School, but Principal Karen Lachman does not object to the extension and there is no factual basis to establish that the proposed extension will negatively impact the school.

Subject: License Investigation for RMB
Request Extend Premises

Date: July 7, 1997

Wichita Town Pub, Inc.
WICHITA TOWN PUB
6106 SE King Road
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ADDITIONAL INFORMATION:

Financing

Wichita Town Pub, Inc. estimates the remodeling and extension of premises will cost \$4,000. The funding for these changes will come from the profits of the existing business.

Premises Operation:

The premises is currently open seven days a week, 6:00 am until 12:00 midnight on Sunday; 6:00 am until 1:00 am Monday and Tuesday; and 6:00 am until 2:00 am on Wednesday through Saturday. The licensee offers food service between 6:00 am and 9:00 pm daily. The premises currently has approximately 40 dining seats in the licensed premises. In the extension the licensee will add non-smoking dining seating. The licensee will also move one pool table into this expanded area and add three additional pool tables.

The licensee will have live music twice a year, at Halloween and at New Years Eve. The licensee will move the non-smoking dining seating to open an area for the band to play. The licensee will post signs which remind patrons to drive with care and caution between 3:00 pm and 6:00 pm because children are leaving school.

RECOMMENDATION: Grant request to remodel and extend premises with a caution to operate as proposed.



Karen Keith, License Investigator

July 7, 1997
Date

March 27, 1997

Tracy Yerman, WKPT
6031 SE King Road
Milwaukie, OR 97222-2696

Dear Ms. Yerman;

My name is Jack Donough, I am the owner of the Wichita Pub in Milwaukie, Oregon. I also own the Wichita Pubs that are located in Clackamas, Oregon City, Gresham, Portland, Tualatin and the Deli which is located next to the Wichita Pub in Milwaukie.

I will try to address most of your concerns with this letter. The most pressing problem that you address in your letter to the OLCC, is the added business and traffic our expansion would create. I feel that our business would increase at most by five percent, if that. There has been added business in the area in the past year or so that has caused a negative impact on my gross sales. 'Old Chicago' opened about a year ago and we lost about 15% in sales. 'Pitchers and Plates' opened on St. Patrick's Day, of this year and we lost another five percent. 'Pitchers and Plates' is located in the Milwaukie Industrial Park in the old 'Oasis' nightclub.

Our main reason for expansion is designed to move our bandstand and dance floor approximately 90 feet from our front door to the rear of the new addition. This will definitely alleviate any noise that leaves the building on nights that we have bands. The bandstand and dance floor is now located approximately 10 feet from our front doors. We book bands about 20-25 weekends a year and do not intend to increase our bookings at all. The other reason for expansion is to add three more pool tables so that there is less congestion on the present operation of our pool tables. The only problems we now have at the Wichita are arguments over who's turn it is at the tables and the bumping into one another because of the cramped conditions.

I have now addressed about 90 percent of your concerns regarding: more traffic, more parking, more people and more noise it just won't happen. Some of the other concerns that you addressed in your letter I have absolutely no knowledge of. There has never been an accident at Linwood and King Road attributed to the Wichita Pub. The intersection was classified as a high impact intersection for accidents long before we opened for business and it is still. But not because of the Wichita Pub. I know of no muggings in my parking lot that was caused by a patron of mine. One of my customers was mugged by a group of young thugs, they were never caught. I have never been notified by the OLCC, the Milwaukie Police or by any resident about patrons of the Wichita Pub relieving themselves in the neighborhood yards. If I was ever given information on this matter, such as, the time, date, names, descriptions maybe I could resolve this matter. Wichita policy involving fights is that you will be barred forever if

you are involved in one. Our incident logs, which are filled out nightly by all bartenders and waitresses on duty, reflect only four fights in the past three years. There are more fights than that at one hockey game. There are more police calls in one year from the closest high school, junior high school, and the grade school than I have had in my 11 years of operation at the Wichita Pub.

Something about my patrons: I personally know two attorneys, a vice president from Precision Cast Parts, a dentist, three US Bank employees, computer programmers, numerous beauty school students, a "retired" ladies golf team that eat lunch here twice a week and dinner at least once a week, after eight in the evening. Business people from Johnson Creek Blvd and 82nd Avenue. An owner of a construction company, the owner of the largest and nicest trailer park in the southeast area, hard working construction people from framers to cement finishers, electricians, plumbers, tile setters, the employees of Sentry Market, police officers, high school teachers, football coaches people from all walks of life. The people that I have mentioned above, including myself and my wife, and many more that DO NOT CONSUME ALCOHOL! Not everyone that enters my establishment come in to drink. They come in to have dinner and socialize with their "neighbors". For the most part these and many more of my customers live, work, own homes, pay hefty property taxes and their children attend these local schools. We have from time to time made mistakes of over serving and have had a few problems. I have worked very hard on this matter and will continue to do so.

The reason we have customers that don't drink is because we are a full service restaurant. Serving breakfast, lunch and dinner as well as having sandwiches available after the grill has closed. We have one of the largest menus in the Milwaukie area. Our food sales to alcohol sales ratio is about 40% food 60% alcohol, which is very large for a RMB licence. We are not required by law to sell any food at all. We were one of the first taverns in the Portland metro area to offer food from 6am-10pm at night. We also are allowed to sell beer to go but we do not take advantage of that privilege. We have never sold beer to go. I have never witnessed my customers milling around in front of the pub, but I have seen kids ages 12-17 years old loitering between Sentry Market and the video store. I have signed a "letter of exclusion" along with the rest of the tenants of the Wichita Town Center, to the city of Milwaukie to impose a loitering ordinance to alleviate most of these problems. If I were a lady I wouldn't want to walk past some of these young skinheads to shop at sentry either! You must know of the problems that are happening at the Clackamas Town Center due to these teenaged kids. One last thing-on any given Friday or Saturday night, which are our busiest nights of the week, there are 20-30 available parking spaces in front of the beauty school that are never taken. I do not understand why a customer would park across King Road in the school parking lot rather than just around the corner of the pub where access is closer and safer. I have made inquiries about this situation and have found no basis for this accusation. I have been told by some of my customers that the trailer park across the street from the school has very limited parking and when they have visitors they sometimes park in the school parking lot. You may want to speak with the owner of the park if the parking in your space is a problem. Appropriate signage may also help alleviate the parking problem. I

would be very happy to sit down with anyone from the school to talk with you about your concerns and see if we can resolve them.

Sincerely



Jack Donough
CEO, Wichita Pub

JD/au

cc: Oregon Liquor Control Commission
Marv Nepom, Attorney
Oregon Restaurant & Bar Association

Karen Lachman, Principal
Wichita Grade School

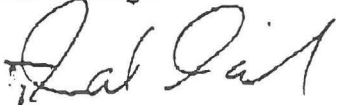
Dear Karen,

After attending the PTSA meeting at the school on May 20th, I realize the concern of the staff and the parents of the children who attend the school. I along with the Oregon Liquor Control Commission would like to arrive at a solution to this problem so that we may absolve this matter. These are the actions in which the Wichita Town Pub are offering to make so that this will be an easy transition for all involved.

1. We will post signs to remind customers that children leave the Wichita Grade School between the hours of 3 and 6 pm, to please drive with care and caution.
2. We will continue to monitor our parking lot for anything that would be of concern to the neighborhood.
3. We will monitor our sales, if we exceed \$376.00 on a daily average, (what we have lost since 1995 per day) we will shorten our hours of operation, as well as cut back on our outside advertising.
4. We are willing to have a monthly meeting with a committee of your choice, to go over any problems that the Wichita Pub may be the cause of. We may then be able to act upon them in a more timely manner.
5. I will give your committee a *direct* hot-line to contact me if anything occurs between our meetings that may need my immediate attention or action.
6. The Wichita will put a non-smoking area where the bandstand and dance floor were going to be. In effect eliminating any noise that leaves the building.

If you have any other suggestions or concerns, I would be more than happy to look them over and see what I could do about them.

Jack Donough



President, Wichita Town Pub Inc.

cc: Tracy Yerman, WKPT President
Karen Keith, OLCC
Davis Wright Tremaine, LLP

OPERATING DATA QUESTIONNAIRE

APPLICANT WICHITA PUB TRADE NAME Wichita Pub PHONE 654420
RESS 6106 SE KING RD. CITY MILWAUKIE OR ZIP 97232

DAYS AND HOURS OF OPERATION:

	Business Hours	Dining Room Hours (If different)
Sunday	<u>6am</u> to <u>midnight</u>	<u>6am</u> to <u>9pm</u>
Monday	<u>6am</u> to <u>1am</u>	<u>6am</u> to <u>9pm</u>
Tuesday	<u>6am</u> to <u>1am</u>	<u>6am</u> to <u>9pm</u>
Wednesday	<u>6am</u> to <u>2am</u>	<u>6am</u> to <u>9pm</u>
Thursday	<u>6am</u> to <u>2am</u>	<u>6am</u> to <u>9pm</u>
Friday	<u>6am</u> to <u>2am</u>	<u>6am</u> to <u>9pm</u>
Saturday	<u>6am</u> to <u>2am</u>	<u>6am</u> to <u>9pm</u>

MEALS SERVED AND HOURS:

Breakfast 6am to 11am Lunch 11am to 3pm Dinner 3pm to 9pm

SEASONAL VARIATIONS: Yes No (If yes, explain)

TYPE OF DECOR STYLE AND ATMOSPHERE: (Explain) WESTERN STYLE - T-111 + CEDAR DECK. w/ WOOD BAR STOOLS + TABLES.

ENTERTAINMENT: Yes No (If yes, check appropriate)

Live Music Coin Operated Games
Dancing Card Games/Games of Chance
Performers Pool Tables
Recorded Music Other (Describe)

The Remodel will only consist of removing non bearing walls, painting a cement floor - installing T-111 + cedar on existing walls.

SEATING CAPACITY: - The new part

Restaurant Lounge Invest. Verified Seating Yes No
Banquet Exterior Invest. Initials
Other (Explain) Total 40 - APPROX.

CHANGE IN OPERATION: Yes No (If yes, describe)

ARE STRUCTURAL CHANGES TO PREMISES PROPOSED? Yes No (If yes, explain) JUST REMOVING A WALL.

WILL ANY PORTION OF THE PREMISES BE LEASED OR UNDER CONTROL OF ANOTHER INDIVIDUAL?

Yes No (If yes, explain)

[Signature]
Signature of Applicant

3/6/97
(Date)

[Signature]
(Signature of Applicant)

3/6/97
(Date)

Wichita Town Pub Inc
King Rd

To whom it may concern:

My name is Jack Donough, I am the President of The Wichita Towne Pub Inc. Located at 6106 SE King Rd. Milwaukie OR. The Wichita Towne Pub Inc. on Feb 1st 1996 leased from Essex Portland L.P. approx 3000 sq feet next door to the Wichita Towne Pub.

The address of the property is 6110 SE King Rd, it had been vacant for about 13 years. The Wichita Towne Pub Inc. leased to me Jack Donough - (President) approx 1200 sq feet of frontage to own and operate as a delicatessen. I would like to open up the walls of the Wichita Towne Pub and incorporate the remaining 1800 sq feet for PUD use and warehouse. I have enclosed a drawing of the Pub as it is now set up with a sketch of the addition.

I would appreciate your approval on this matter

Thank you very much

J Don

659-3591 - 2/25/97

(14)

OREGON LIQUOR CONTROL COMMISSION

STATEMENT OF FUNDING

How much money will it cost to start the proposed business? Describe the cost to begin operating.

\$ <u>1300</u>	Leases	\$ _____	Real Property
_____	Business	_____	License Fees
_____	Equipment	_____	Liquor Liability Insurance or Surety Bond
<u>4000</u>	Construction	_____	Operating Funds
_____	Remodeling	<u>5300</u>	Other (Describe)
_____	Inventory		

TOTAL COST TO START THE BUSINESS: 5300

How will you pay for the business? Describe the source and location of the money. YOU MUST ATTACH PROOF OF ALL FUNDS USED TO PURCHASE YOUR BUSINESS.

Attach copies of bank statements, savings accounts, real estate closing documents, brokerage accounts, loan papers, promissory notes or any other documents showing how you got the money.

AMOUNT	LOCATION (bank, cash, etc.)	SOURCE (loan, income, etc.)
\$ <u>50,000</u>	<u>U.S. BANK - CHECKING</u>	<u>INCOME</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Loan committal of \$ _____ from _____ to be repaid at _____ per month for _____ years.

Other money source (explain) _____

Applicant's Signature [Signature]
Date 3/4/97

CAUTION: Giving false information may be grounds to deny your license.

(16)

March 7, 1997

Oregon

Linwood Church of Christ
10110 SE Linwood Ave
Milwaukie, Oregon 97222

LIQUOR
CONTROL
COMMISSION

Liquor License Application

Wichita Town Pub, Inc.
WICHITA TOWN PUB
8106 SE King Road
Milwaukie, Oregon 97222

The OLCC has received an application from Wichita Town Pub, Inc. for an extension of the premises of the Retail Malt Beverage (RMB) liquor license at the above named premises. A RMB liquor license is issued to taverns and permits the sale of malt beverages and wine containing not more than 14 percent alcohol by volume and hard cider containing not more than 10 percent alcohol by volume for consumption on the licensed premises. This license allows any legal form of entertainment. Alcohol may legally be sold from 7:00 am to 2:30 am every day.

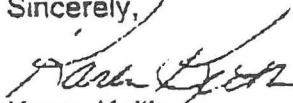
Wichita Town Pub, Inc. is proposing to add 1800 square feet to the existing premises. He does not intend to change his current operation except to add the space for four additional pool tables and a dance floor. The licensee currently has occasional music and country-western line dancing.

If your organization wishes to provide the Commission with factual information concerning whether there is a basis to grant or deny this license under the OLCC's licensing standards, please write to me at the following address:

OLCC
Karen Keith, License Investigator
P.O. Box 22297
Milwaukie, OR 97269-2297

Please respond within 15 days of the date of this letter so that I may process this application in a timely manner. I will share your information with the applicant, make it a part of the public record, and consider it when making a final decision. If you have any questions, please call me at our Milwaukie office at (503) 872-5218.

Sincerely,



Karen Keith
License Investigator

March 7, 1997

Wichita Elementary School
Karen Lachman, Principal
8031 SE King Road
Milwaukie, Oregon 97222

Oregon

LIQUOR
CONTROL
COMMISSION

Liquor License Application

Wichita Town Pub, Inc.
WICHITA TOWN PUB
6106 SE King Road
Milwaukie, Oregon 97222

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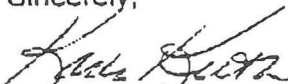
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OLCC
Karen Keith, License Investigator
P.O. Box 22297
Milwaukie, OR 97269-2297

Please respond within 15 days of the date of this letter so that I may process this application in a timely manner. I will share your information with the applicant, make it a part of the public record, and consider it when making a final decision. If you have any questions, please call me at our Milwaukie office at (503) 872-5216.

Sincerely,



Karen Keith
License Investigator

18

NORTH CLACKAMAS SCHOOL DISTRICT
WICHITA KIDS-PARENTS TEACHERS ASSOCIATION
6031 SE King Road . Milwaukie, Oregon 97222-2696
(503-653-3697)

Karen Lachman, Ph.D.
Principal

Tracy Yerman
WKPT President

March 17, 1997

RECEIVED

OLCC
Karen Keith, License Investigator
PO Box 22297
Milwaukie OR 97269-2297

MAR 21 1997
REGULATORY FIELD SERVICES
Oregon Liquor Control Commission

Dear Ms. Keith:

I am writing this letter on behalf of Wichita School's parent-teacher organization in cooperation with the school's Advisory Committee. We at Wichita School feel that if Wichita Pub is allowed to expand their business by 1,800 square feet in order to provide a bigger dance floor and more tables, then they also need to address some of the residents' concerns on providing adequate parking for the patrons of the pub, Milwaukie Beauty School, Sentry Market, and Great American Video. On a busy night some of the parking is already spilling over into our school parking lot which is located across the street.

Our other concern is the added number of people for dancing and drinking, which encourages behavior unfavorable to our neighborhood after hours. In reading *The Milwaukie Review* on a weekly basis, I have read several different articles in the police log section that pertains to problems in the area around the Wichita Pub. An example of these problems are fights in the parking lot, a mugging, and a lot of people just hanging around. It is unknown if the people causing these problems are patrons of the Wichita Pub, but the added customer base that they would attract would definitely not help the situation. In talking to several different residents of the neighborhood, we feel it unsafe to be able to go into Sentry Market after 8 p.m. due to a lot of unsavory-looking individuals just hanging out around the pub.

Karen Keith
Page 2
March 17, 1997

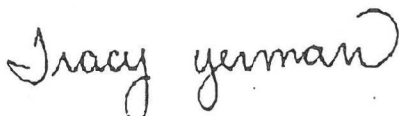
As a school we are concerned that the added business would mean added traffic at the intersection of Linwood and King Roads. The risk of accidents would naturally increase. When some of the pub patrons have consumed too much alcohol and decide to walk home, some of them vomit and relieve themselves in the neighborhood yards. I have personally witnessed this and, in talking to neighbors, they have also witnessed these undesirable behaviors. We notice this problem more in the summer.

Because our students frequent the video stores and market, we are concerned about the students being exposed to potentially harmful circumstances due to patrons leaving the pub being under the influence of alcohol.

Also, as a resident of the Wichita area, I have concerns about the live bands that the pub hires to play. In the past when there have been bands, the noise after hours has been a real issue. I live on Wichita Avenue, about two blocks away from the pub, and the live music echoes through the parking lots and our backyards, and it is as if we are right inside the pub listening to the bands. I hope we do not have this problem again.

These are the most serious of our concerns. We would like to see how they will be addressed and what the owners plan to do to help the various situations. Before the OLCC allows this expansion, we hope our concerns will be addressed and solutions are found agreeable to all of the neighborhood so we can all be good neighbors to each other.

Sincerely,



Tracy Yerman
WKPT President

MEMORANDUM

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger, Civil Engineer *PR*

RE: CU-97-02
6106 SE King Road

DATE: October 23, 1997

The complex this business is located in fronts on both King Road and Linwood Avenue. Both are asphalt streets with curb and sidewalk and storm drainage. Access is from both streets. All off-site public improvements are adequate to serve the proposed addition.

This business is currently served by City sanitary sewer and water. Additional system development charges (SDC's) for both will be assessed at the time of issuing a building permit based on the number of fixture units added.

All proposed work is within the existing walls of the building, therefore no impervious area is being added under this proposal. Thus, there will be no additional SDC for storm drainage.

Also, since the work is interior, there will be no erosion control permit required.

City of Milwaukie Community Development Department

Title: Comments Submitted by: Civil Engineer Date: 10.23.97 # Pages: 1
File Numbers: CU 97-02 Applicant: Wichita Town Pub Exhibit #: 5



Neighborhood Land Use Referral

Date routed:
10/23/97

Tentative Planning Commission hearing
date: November 25, 1997

Comments due by:
11/7/97

Application type: Conditional Use

File #: CU-97-02

Procedure type: Minor Quasi-Judicial

Applicable City policies and criteria:

Comprehensive Plan: Chapter 4 - Economic/Commercial Land Use
Zoning Ordinance: 313, 600
Sign Ordinance: N/A
Subdivision Ordinance: N/A

Applicant: Jack Donaligh
Address: 16676 SE Gurnee
Gladstone OR 97027
Phone: 657-1894

Proposal location: 6106 SE King Road
Reference parcel #: 1 2E 31AA 2100
Zoning: C-G
Proposal: Expand interior space of Wichita Town Pub by 2,050 sq ft into existing unused space behind delicatessen.

Comments: (attach separate sheet if necessary)

OCT 29, 1997
THE LINWOOD NEIGHBORHOOD ASSN., AFTER
REVIEWING THIS LAND USE REFERRAL, FILE # CU 97-02,
AGREE THAT SAID PROPOSAL MEETS ALL CITY POLICIES
AND CRITERIA.

Robert J. Harty

CO-CHAIR

LINWOOD NDA LAND USE COMM.

City of Milwaukie Community Development Department

Title: Comments Submitted by: Linwood NDA Date: 10-29-97 # Pages: 1

File Numbers: CU97-02 Applicant: Wichita Town Pub

Exhibit #: 6





November 18, 1997

Sen. Ron Wyden
259 Russell Senate Office Building
Washington, D.C. 20510

Dear Sen. Wyden:

The City of Milwaukie strongly opposes the effort of the Federal Communications Commission to preempt local zoning regulations of cellular, radio, and television towers. The FCC's proposal would in effect make that agency a "Federal Zoning Commission" for such facilities and structures.

The City of Milwaukie has been very expedient in processing telecommunication requests. Three such applications have been processed by the Planning Commission within the last six months. All of these applications have not been controversial and have been approved within 30 days from the date the application was complete. This is significant given the State of Oregon's rigorous public notice requirements. We believe that our current review process is adequate, addressing both the concerns of the neighbors as well as the time constraints of the applicant.

Congress expressly preserved local zoning authority over cellular towers in the 1966 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC now proposes to use this limited authority to review and reverse any cellular zoning decision which it finds is "tainted" by radiation concerns, even if the decision is otherwise permissible and legal. The FCC, in fact, is proposing that it can "second guess" the true reasons for a municipality's decision, need not be bound by the stated reasons given by a municipality, and doesn't even need to wait until a local planning decision is final before it takes action.

Our citizens could very well be concerned about the radiation from cellular towers. The City cannot prevent them from mentioning such concerns in a public hearing. But the FCC is saying in its rule making that if any citizen raises this issue, that is a sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed. This could happen even if the municipality expressly states that it is not considering such statements and that the decision is completely valid on other grounds.

The FCC has also issued a proposed rule that would require municipalities to act on zoning requests for broadcast towers within 21 to 45 days. Failure to act would result in the request automatically being granted, even though it did not comply with local zoning ordinances. Such zoning decisions could, at most, be based only on safety considerations. Property values, aesthetics, and environmental effects would not be allowed in the decisions. Furthermore, all appeals of denials or partial denials would go to the FCC, not to local courts.

COMMUNITY DEVELOPMENT • PUBLIC WORKS
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206
PHONE: (503) 786-7600 • FAX: (503) 774-8236

Both Congress and the judiciary have long recognized that zoning is a peculiarly local function. This FCC proposal represents an unprecedented intrusion into local affairs. It violates a basic premise that zoning be a local action on which the Federal government cannot and should not intrude. It also violates the Federal telecommunications statutes which preserve local zoning authority and prevent the FCC from becoming involved in zoning matters. It also infringes upon freedom of speech and the right to petition government for municipalities and their residents by threatening to penalize those that express concern over radiation from cellular antennas, even if they do so in ways specifically allowed.

Regarding broadcast towers, it would violate constitutional and other protections by allowing some of the tallest structures ever built (in some cases over 2,000 feet high) to be constructed without any local approval and impose timing constraints which bear no relation to local zoning procedures or constitutional protections. It would also improperly prevent property values, aesthetics, or environmental concerns from being considered in zoning broadcast and TV towers and even specifies that safety considerations are not paramount.

The City hereby requests that you oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

Very truly yours,

Michael Smith, Chair
Milwaukie Planning Commission

cc: Attached list

Copy List

Senator John McCain
241 SROB
Washington, DC 20510-0303

Senator Conrad Burns
187 SDOB
Washington, DC 20510-2603

Senator Kay Bailey Hutchison
283 SROB
Washington, DC 20510-4304

Senator Slade Gorton
730 SHOB
Washington, DC 20510-4701

Senator Dianne Feinstein
331 SHOB
Washington, DC 20510-0504

Representative Tom Bliley
2409 RHOB
Washington, DC 20515-4607

Representative W. J. Tauzin
2183 RHOB
Washington, DC 20515-1803

Representative Edward J. Markey
2133 RHOB
Washington, DC 20515-2107

Representative John D. Dingell
2328 RHOB
Washington, DC 20515-2216

Representative Bob Goodlatte
123 CHOB
Washington, DC 20515-4606

Representative James Moran
1214 LHOB
Washington, DC 20515-4608

Representative Bart Stupak
1410 LHOB
Washington, DC 20515-2201

Representative Joe Barton
2264 RHOB
Washington, DC 20515-4306

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National League of Cities
1301 Pennsylvania Ave, NW, 6th Floor
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National Association of Counties
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Mr. Kevin McCarty
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U.S. Conference of Mayors
1620 Eye Street, 4th Floor
Washington, DC 20006

Ms. Cheryl Maynard
Government Affairs Coordinator
American Planning Association
1776 Massachusetts Ave. NW, 4th Floor
Washington, DC 20036

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Commissioner Designate Gloria Tristani
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Commissioner Susan Ness
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Shaun A. Maher, Esq.
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1776 Massachusetts Ave. NW, 4th Floor
Washington, DC 20036



November 21, 1997

Dear Planning Commissioners:

Please find enclosed three pages to replace pages 13-15 of Exhibit #4 Revised (ZA-97-03). Section 318.9.D. was inadvertently left out of the revisions made to address testimony presented to the Commission on October 28, 1997.

Please also note that the pages of your copy of Exhibit #4 may be out of order. They are all there but you may need to unstaple the document and turn the pages around for proper sequencing.

I regret any inconvenience this has caused.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pava", with a long horizontal flourish extending to the right.

Daniel Pava, AICP
Senior Planner

cc Maggie Collins
File ZA-97-03

D. Subarea 6

1. Site 6-1 (Pendleton Site)

This site shall primarily be developed to include medium to high density residential at ~~25 dwelling units~~ uses up to 40 units per acre in a mixed use setting. The provisions of Section 318.8.A.1. shall not apply to Site 6-1. The Planning Commission may review development applications for Site 6-1 to determine whether the proposed residential to commercial floor area ratio meets the intent of this ordinance.

318.10 Consistency with Underlying Zones

The MU Overlay Zone is anticipated to overlay a number of different zones. The following Section addresses area where the MU Overlay will control in development.

- A. **R-O-C** - The uses and processes stipulated in the MU Overlay Zone supersede those identified in the R-O-C Zone. The minimum lot size shall be 5000 square feet, and the density shall be controlled by the MU Overlay and the Comprehensive Plan alone. No yards are required. The height restriction is based on the MU Overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. Use restrictions are superseded by those in the MU Overlay Zone.
- B. **C-G** - The uses and process stipulated in the MU Overlay Zone supersede those identified in the C-G Zone. The minimum lot size shall be 5000 square feet, and the density shall be controlled by the MU Overlay and the Comprehensive Plan alone. No yards are required. The height restriction is based on the MU Overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. Use restrictions are superseded by those in the MU Overlay Zone.
- C. **C-C** - The uses and process stipulated in the MU Overlay Zone supersede those identified in the C-C Zone. The minimum lot size shall be 5000 square feet, and the density shall be controlled by the MU Overlay and the Comprehensive Plan alone. The height restriction is based on the MU Overlay height allowance. Use restrictions of the C-C Zone are superseded by the requirements of the MU Overlay Zone. The lot coverage requirement and transition area requirement are removed in favor of the site design process.

- D. **C-L** - The uses and process stipulated in the MU Overlay Zone supersede those identified in the C-L Zone. The minimum lot size shall be 5000 square feet, and the density shall be controlled by the MU Overlay and the Comprehensive Plan alone. The height restriction is based on the MU Overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. No special frontage requirements are included for condominium or interior single-family attached structures. No outside storage is allowed, with the exception of garbage dumpsters which are screened by a solid wood fence with a gate or fully contained individual storage units associated with residential uses.
- E. **CL/MC** - The uses and process stipulated in the MU Overlay Zone supersede those identified in the CLMC Zone. Uses allowed subject to MU Overlay Zone requirements control, however, the prohibited uses in Section 325.4 of the MC Overlay Zone apply. Applications for development in a CL/MC/MU Zone will be controlled by the requirements of both the MC and MU Overlays. If a conflict arises between the standards of the underlying zone, the MC Overlay and the MU Overlay, the MU Overlay provisions will govern. Compliance with the requirements of these zones will be assessed in a combined Site Design/Conditional Use Permit application.
- F. **R-5** - The uses and process stipulated in the MU Overlay Zone supersede those identified in the R-5 Zone. The minimum lot size shall be 5000 square feet, and the density shall be controlled by the MU Overlay and the Comprehensive Plan alone. Yard setback requirements do not apply. The height restriction is based on the MU Overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. No separate requirement for access for interior single-family attached unit shall apply.
- G. **R-1-B** The uses and process stipulated in the MU Overlay Zone supersede those identified in the R-1-B Zone. Minimum Lot size is 5000 square feet, but density is controlled by the MU Overlay and the Comprehensive Plan only. Yard setback requirements do not apply. The height restriction is based on the MU Overlay height allowance. The lot coverage requirement and transition area requirement are removed in favor of the site design process. No separate requirement for access for interior single-family attached unit shall apply.
- H. **WG** The requirements of the Willamette Greenway Overlay Zone control when in conflict with the provisions of the MU Overlay Zone. Compliance with the Willamette Greenway Overlay requires that a Conditional Use Permit be reviewed and approved. When a Willamette Greenway Zone

and an Mixed Use Zone both overlay a property, a single Site Design/Conditional Use Permit application may be processed. The fee set for the Site Design/Conditional Use Permit shall be the fee paid for the combined application.

- I. **NR** The requirements of the Natural Resources Overlay Zone and the MU Overlay Zoning District both apply to a property which is subject to both Overlay Zones. An NR application must be processed prior to or concurrent with a development proposal under the MU Overlay Zone. If a project is determined not to be subject to the MU Overlay zone but is also an NR Zone property, a separate determination of the applicability of the NR zone must be made.

318.11 Validity of Uses

In the MU Overlay Zone, uses prohibited by this overlay zone that were legally established or occupied on or prior to the effective date of this overlay zone shall be considered to be legal non-conforming uses.

318.12 Nonconforming Uses

- A. Milwaukie Code provisions regarding construction of, discontinuance, improvement, or change of nonconforming uses, as contained in Section 800 are applicable to uses within the MU Overlay Zone.
- B. In addition to meeting requirements as specified in Section 800, development proposals involving nonconforming uses or structures must also comply with the setback, landscaping and access standards of the MU Overlay Zone.