

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, APRIL 12, 2005 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters	
3.0 3.1	Planning Commission Minutes December 14, 2004 Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0 6.1	Public Hearings Type of Hearing: Minor Quasi-Judicial Applicant: Providence Milwaukie Hospital Owner: Providence Health Systems Location: 10263 SE 36th Proposal: Applicant is requesting approval to allow up to 20 employees, of an administrative nature, in an existing facility adjacent to hospital property. File Numbers: CSO-05-01 NDA: Ardenwald Staff Person: Keith Jones	Discussion and Motion Needed For These Items
6.2	Type of Hearing: Minor Quasi-Judicial Applicant: PDX Land LLC Owner: PDX Land LLC Location: 2540 SE Lark Street Proposal: Applicant is appealing a Director's Determination and seeking a Commission ruling recognizing four dwelling units for zoning purposes. File Numbers: AP-05-01 NDA: Island Station Staff Person: John Gessner	
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0 10.1 10.2	Other Business/Updates Matters from the Planning Director Design and Landmark Committee Report	Information Only Review and Comment
11.0 11.1 11.2	Next Meeting: April 26, 2005* North Clackamas Park Ball field Application Comprehensive Plan Amendments to Chapter 6 – City Growth and Governmental Relationships *Note – this meeting will be held at Ardenwald Elementary School The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

ast for Future Meetings:

Milwaukie Planning Commission Statement

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

Public Hearing Procedure

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

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

Milwaukie Planning Commission:

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

Planning Department Staff:

John Gessner, Planning Director
Lindsey Nesbitt, Associate Planner
Keith Jones, Associate Planner
Jeanne Garst, Office Supervisor
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission
Through: John Gessner, Planning Director *JG*
From: Keith Jones, Associate Planner *KJ*
Date: April 12, 2005
Subject: Files: CSO-05-01 – Providence Health Systems
 Applicant: Providence Milwaukie Hospital
 Address: 10263 SE 36th Avenue
 NDA: Ardenwald/Johnson Creek

Action Requested

Approve application CSO-05-01 authorizing Providence Milwaukie Hospital to increase employee count from 8 employees to a maximum of 20 and adopt recommended findings and conditions.

Key Issues

1. The hospital has used the house at 10263 SE 36th Avenue as an alcohol treatment clinic for 5 to 8 employees and 18 patients from 1982 to 2004. The converted house is now a hospital call center for up to 8 employees.¹ The hospital requests an increase in the employee cap to 20 administrative office workers.²

Employee access to the building is from the site's rear yard, which connects to the Hospital southeast parking lot. There are 2 additional parking spaces in the front driveway on 36th Avenue. No additions or exterior modifications to the building are proposed. The applicant indicates site access and parking will remain unchanged. The hours of operation are 7:00 a.m. to 6:00 p.m. (See Applicant's Narrative and Plans Attachment 3 and 4 for further details.)

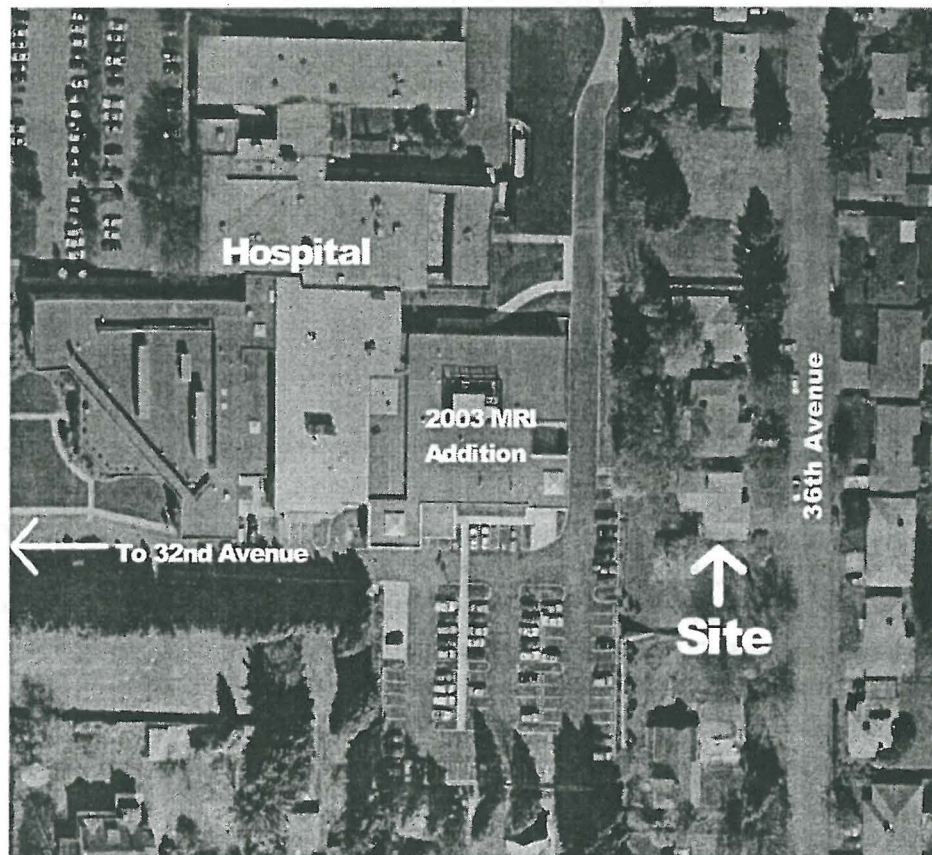
¹ Employee cap imposed under Conditional Use approval C-82-17.

² The hospital indicates that the administrative use includes general office work that does not see outside clients or patients.

2. The Ardenwald/Johnson Creek Neighborhood Association has expressed concern about allowing 20 employees at the site and whether this will set precedence to allow the hospital to convert additional houses along 36th Avenue. (See neighborhood comments Attachment 7.)
3. Staff has encouraged the Hospital to request an umbrella approval that covers employee count and general office use to reduce the need for city review for every future change of business activity at the site. Staff believes this approach can protect neighborhood interests while reducing the regulatory burden on the Hospital.
4. Staff believes the applicant has demonstrated compliance with Community Service Overlay criteria.

Background Information / Site Description

The building fronts 36th Avenue and backs to the Providence Hospital MRI and emergency room addition completed in 2003.³ (See photo below.) The site slopes down from 36th Avenue to the hospital grounds; the building is built into the slope with a daylight basement. The building was previously a single-family house and is residential in appearance from 36th Avenue. The garage has been converted to office space. A staircase and pathway connect the building to the hospital campus. Most of the buildings on 36th Avenue are single-family houses.



³ Approved under CSO-02-05.

Land Use History

The following are dates of land use changes to the property:

- 1963 – The house is constructed.
- 1968 – The site is rezoned from 3R1 to R-7 with a major zoning ordinance rewrite.
- 1982 – A conditional use permit is approved and the house converted to an alcohol treatment facility for 18 patients and 4 to 8 employees.⁴
- 1984 – City adopts community service overlay regulations and hospitals are changed from conditional uses to community service uses.
- 1985 – City issues building permit to convert garage into additional space for the clinic.
- 2002 – The facility becomes a “chemical dependency” clinic and treats patients for both drug and alcohol addiction. Planning Director determines that the change substantially complies with the 1982 conditional use approval.
- 2003 – Hospital adds Emergency and MRI additions and expands parking lot behind the site.⁵
- 2004 – The clinic is converted to a call center for 5 to 8 employees. Since the employee number did not increase, the Planning Director determined the change to be consistent with original conditional use permit.

Analysis of Key Issues

1. Off-Street Parking

The office use requires 7 off-street parking spaces;⁶ 2 are provided on the site. Staff acknowledges that parking demand for 20 employees exceeds minimum zoning requirements. However, the applicant indicates that parking demand will be met by using the adjacent hospital parking lots. The main hospital campus has extra spaces since it provides 374 stalls in excess of the 270 required by the Zoning Ordinance.⁷ The 92-space southeast parking connects to the building with a walking path and staircase. The proposal complies with off-street parking requirements.⁸

2. Community Service Overlay

The applicant must demonstrate that the proposal is in the public interest and the public benefits outweigh the adverse impacts. The proposal must also meet specified approval standards for the use under CSO regulations. Below is a

⁴ C-82-17

⁵ CSO 02-05 and CSO-03-02

⁶ Based on ratio of 1 space to 370 square feet of building area (Section 19.503.9 (G) (7)) and 2,400 square foot building.

⁷ Numbers taken from CSO-03-02 approval for MRI parking lot expansion.

⁸ The Community Service Overlay standards give authority to the Planning Commission to require additional parking if the Planning Commission finds additional parking is warranted.

summary of the applicant's response. (See Applicant's Narrative Attachment 4 for further details.)

Applicant Response:

Public Interest

The hospital provides necessary medical services to the City and surrounding communities with inpatient, outpatient and emergency services.

Public Benefits

This accessory office use is an integral part of the operation of the hospital. The hospital provides patient services and employs approximately 485 high-wage workers, which provide a social and economic benefit to the community. In addition, the hospital makes charitable donations in time, money and resources each year.

Potential Adverse Impacts

The proposed change will not result in greater impacts on the neighborhood in terms of traffic, parking, access and other off-site impacts. The intensity of use has declined since the offices will be for employees only and patients and visitors will no longer visit the site. The proposed changes will only effect the interior of the building and will not result in glare, noise, pollution or other adverse effects to neighboring residential property.

Staff Response:

Staff concurs with the applicant. (See Zoning Compliance Worksheet Attachment 2 for a review of the CSO approval standards.)

Code Authority

Milwaukie Zoning Ordinance Section

19.302 – Residential R-7 Zone

19.321 - Community Service Overlay

19.500 - Off-street Parking and Loading

19.1011.3 - Minor Quasi-Judicial Review

Decision Making Process

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

The Commission has the following options:

1. Approve the application and adopt the recommended findings in support of approval.

2. Adopt additional findings and conditions in support of approval needed to comply with the Milwaukie Municipal Code.
3. Deny the application upon a finding that it does not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by June 11, 2005, in accordance with Oregon Revised Statutes and the Milwaukie Zoning Ordinance.

Comments

1. Charles Wilkins, Ardenwald/Johnson Creek Neighborhood Land Use Chair, made the following comments in an e-mail dated April 3, 2005:

In November of 2004, hospital and neighborhood representatives met. The neighborhood told the hospital they would support a maximum of 9 full-time employees. There are 6 properties along 36th Avenue that the hospital could buy and conceivably convert to office use for 20 employees each. The proposed 20 employees could establish precedence for additional residential conversions and adverse impacts to the neighborhood. Office use of this intensity is not consistent with the R-7 zone that has an average of 2 to 5 individuals per house. Therefore the proposal is not consistent with the community service overlay regulations which do not allow an increase in intensity of a use and require the use to be consistent with the underlying zoning.

2. Neighbor Dorothy Snowhill submitted a letter dated February 18, 2005 and made the following comments:

- Some minor discrepancies were pointed out regarding the size of the property, vicinity map and dimensions missing.
- The narrative states the current use is for 5 to 8 employees. However, 9 were present as well as the Chaplain and safety person upon her inspection in October.
- 26 workstations are shown on the plans, but only 20 employees are being requested.
- The conditional use runs with the land. What happens to the conditional use when a CSO is approved?
- This type of use should not have been allowed in the R-7 zone, but past mistakes have to be lived with.
- What types of systems does the City have in place to enforce conditions of approval since the site could easily be used for 26 people since there are 26 workstations?

Staff Response:

The applicant submitted a revised narrative, dated March 23, 2005, and revised plans on March 25, 2005, that address these concerns. (See the supplemental Applicant's Narrative Attachment 5 and plans Attachment 3.)

Ms. Snowhill submitted a second letter dated March 30, 2005 indicating that she still has concerns with the number of employees and potential to set precedence for additional non-residential use of 36th Avenue. (See Attachment 8.) Attached to the letter were previous letters written by Ms. Snowhill dated October 28, 2002, October 22, 2004 and November 8, 2004.

3. Tom Larsen, Building Official, commented in a letter dated December 22, 2004 that since no additional square footage is proposed, building upgrades are not required.
4. The Fire Marshal commented in a memo dated February 23, 2005, stating that the proposal complies with fire apparatus access and water supply standards.
5. Engineering Department commented the following in a memo dated November 16, 2004:

The proposal scores high enough to require a traffic impact study under the threshold scoring procedure required by City Code. However, as demonstrated on page 10 of the applicant's narrative, there will be no net impact to neighborhood streets since employees are accessing the site from the hospital grounds. No traffic impact study is required.

The building is connected to City water and sanitary sewer. System development charges (SDC) may be charged depending on the number of new fixtures to be added and must be paid by the applicant at the time of building permit.

Attachments

- 1 – Recommended Findings and Conditions in Support of Approval
- 2 – Zoning Compliance Report
- 3 – Site Plan & Building Plan
- 4 – Applicant's Narrative
- 5 – Supplemental Applicant Narrative
- 6 – Letter from Dorothy Snowhill, dated February 18, 2005
- 7 – E-mail from Charles Wilkins, Ardenwald/Johnson Creek Neighborhood Land Use Chair, dated April 3, 2005.
- 8 – Letter from Dorothy Snowhill, dated March 30, 2005 with a October 28, 2002, October 22, 2004 and November 8, 2004 letters attached.

ATTACHMENT 1

Recommended Findings and Conclusions in Support of Approval

1. The applicant is requesting approval of a community service overlay to use the 2,400 square foot two-story building for administrative offices with a maximum of 20 employees. Hours of operation will be Monday through Friday from 7:00 a.m. until 6:00 p.m. Exterior changes to the building as well as changes to site access and parking are not proposed.
2. The hospital converted the building from a single-family house into offices and clinic in 1982 as an approved conditional use (C-82-17). The use changed to a call center for up to 8 employees in 2004. The request to increase the employee count to 20 is a major change from the original approval.
3. CSO-05-01 has been processed and public notice has been provided in accordance with Milwaukie Municipal Code (MMC) Section 19.1011.3 - Minor Quasi-Judicial Review.
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - a. Title 19.302 Residential R-7 Zone
 - b. Title 19.321 Community Service Overlay
 - c. Title 19.500 Off-street Parking and Loading
 - d. Title 1011.3 – Minor Quasi-Judicial Review
5. The applicant is providing the required 7 parking spaces in accordance with Section 19.500. Parking will be provided on the hospital's main campus which has 104 excess parking stalls.
6. The proposal complies with the underlying R-7 Zone section 19.302.
7. The applicant has demonstrated compliance with Section 19.321.4 (D) that the proposed use is in the general public interest and that the public benefits outweigh the adverse impacts as follows:

Providence Milwaukie Hospital provides medical services to the City and surrounding community, a use that is in the general public interest. In addition to medical services, the hospital is a major employer providing an economic benefit to the community. Potential adverse impacts include parking, traffic and increase activity in the neighborhood. Since the office use will be contained within the building and the majority of parking and access will be from the existing main hospital grounds, no adverse impacts have been identified. To limit the traffic and parking impacts within the residential neighborhood parking on 36th Avenue must be limited to the 2 parking spaces located within the driveway. Therefore, the public benefits outweigh the potential adverse impacts.

8. The proposal has been processed as a minor quasi-judicial review per Section 19.321.3 – CSO Notice Requirements. The applicant has submitted the required application material in accordance with Section 19.321.5. The applicant has demonstrated compliance with the approval criteria for Community Service Overlay uses, Section 19.321.4 and 19.321.10.
9. The Fire Marshal reviewed the plans and indicated that the proposal complies with fire requirements.
10. The Building Official indicates that the proposal complies with applicable building code. However, some types of interior work may require building permits.

Recommended Conditions of Approval

1. Prior to doing any interior remodeling that requires a building permit, the applicant shall submit for and receive a building permit and pay required system development charges.
2. The applicant is approved to use the site as office space for up to 20 employees. No more than 20 office workers may be present at the site at one time. Employees may perform any administrative general office duties that do not see outside clients or patients. Change to the use or expansion to the building or site must be approved by the City.
3. The driveway shall not be used for parking of more than 2 vehicles. Employee and visitor parking shall be prohibited along 36th Avenue.

ATTACHMENT 2

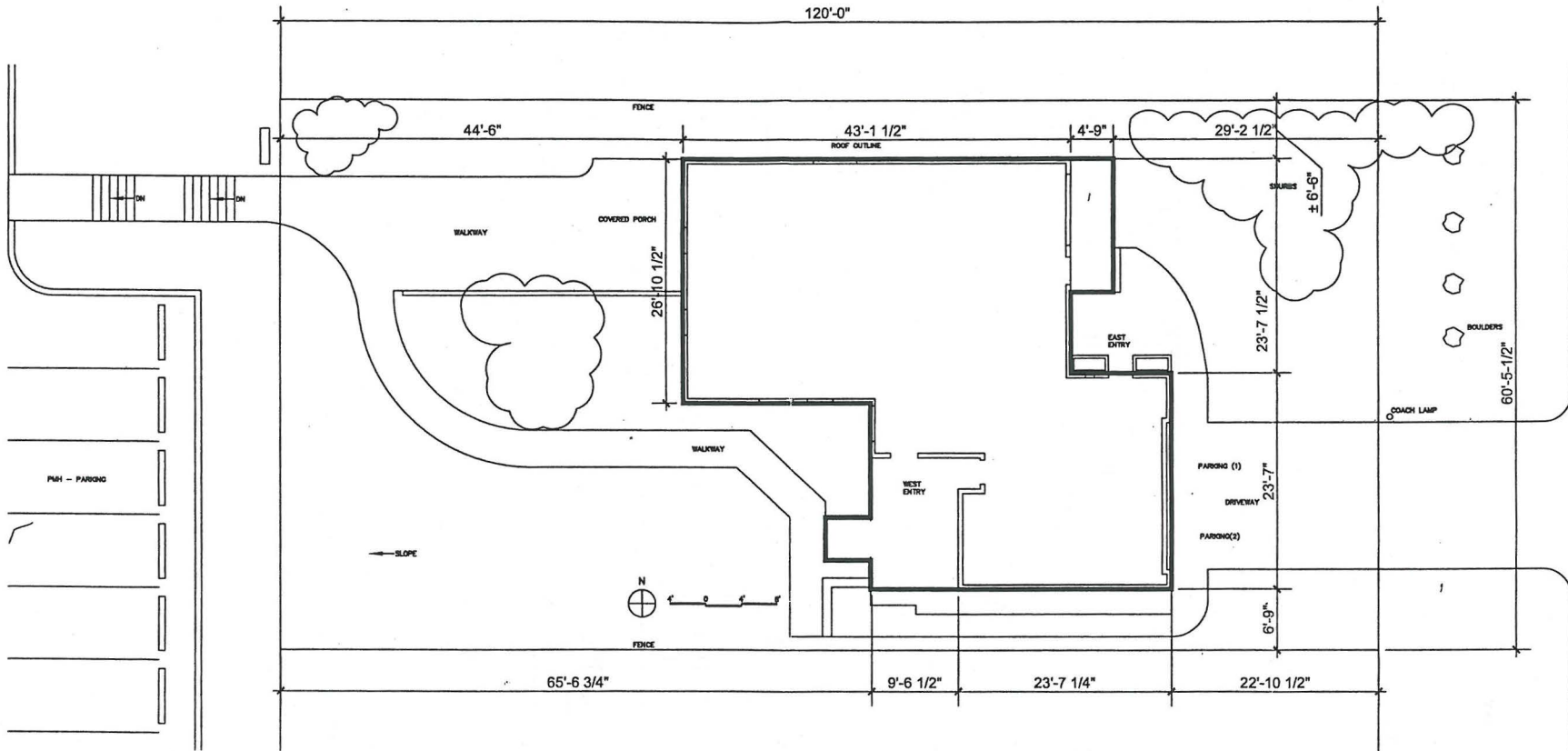
Zoning Compliance Report

1. 19.302 Residential R-7 Zone
Hospitals are community service uses and require CSO approval.

2. 19.321 Community Service Overlay
 - CSO Review Criteria (321.4)
The Planning Commission may attach conditions to mitigate for potential adverse impacts. Staff does not recommend any additional conditions since the facility will operate at regular business hours and the majority of the employees will access the site from 32nd Avenue and not from 36th Avenue and the neighborhood.
 - CSO Design Standards (321.10)
 - a. Utilities, streets and public services
Utilities and streets are existing and adequate to service the use.
 - b. Access
Two parking spaces are located off 36th Avenue, a residential street. The majority of the employees will access the site from 32nd Avenue, a collector street and park on the main hospital campus. The proposal is consistent with this requirement.
 - c. Setbacks
The building is existing and no modifications are proposed that would require additional setbacks.
 - d. Building Height
The building is existing and no modifications are proposed that would require a review of building height.
 - e. Noise Generating Equipment
Noise generating equipment is not proposed.
 - f. Lighting
No new lighting is proposed.
 - g. Hours of Operation
Proposed hours of operation are 7:00 a.m. to 6:00 p.m., which is compatible with surrounding residential uses.

3. 19.1400 Transportation Design Standards
The proposal does not trigger a transportation review or traffic impact study. There are no planned improvements that would trigger frontage improvements.

SE 36th AVENUE



Note: This drawing does not represent an official survey document.
Field measurements are approximate and manually collected.

OPTION HOUSE		
10283 SE 36th Avenue, Milwaukie, OR		
SCALE: 1:150	DATE: Dec. 7, 2004	FILE: PMH_10263-U.dwg
ARCH SITE PLAN		
PROVIDENCE HEALTH SYSTE		
4706 NE GLISAN, PORTLAND, OR 97213		

RECEIVED
MAR 25 2005
CITY OF MILWAUKIE
PLANNING DEPARTMENT

RECEIVED
MAR 2 5 2005
CITY OF MILWAUKIE
PLANNING DEPARTMENT



4' 0 4' 8'

ROOF OUTLINE

COVERED PORCH

OFFICE (U4)
11'-1" X 10'-2"

OFFICE (U5)
12'-2" X 10'-2"

RR(U1)
5'-0" X 5'-1"

RR(U2)
7'-11" X 5'-5"

OFFICE (U3)
10'-1" X 10'-2"

UPPER
HALLWAY
11'-10" X 17'-8"

WEST ENTRY
WEST PORCH

OFFICE (U2)
17'-7" X 13'-8"

KITCHEN
9'-3" X 9'-4"

EAST PORCH

EAST ENTRY

LOWER
HALLWAY
16'-6" X 8'-2"

OFFICE (U1)
19'-7" X 13'-8"

SHURBS

PARKING (1)

DRIVEWAY

PARKING(2)

OPTION HOUSE

10263 SE 36th Avenue, Milwaukie, OR

SCALE: 3/16"=1'	DATE: Dec. 7, 2004	FILE: PMH_10263-U.dwg
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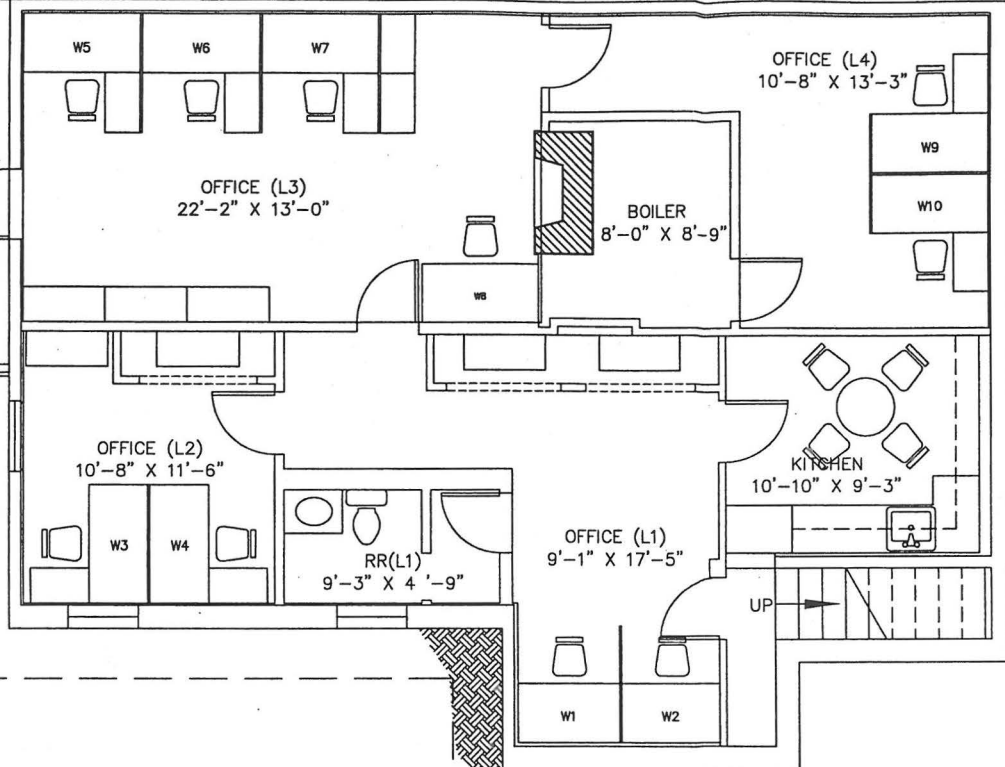
ARCH FL PLAN-UPPER LVL

PROVIDENCE HEALTH SYSTEM

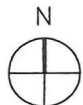
4706 NE GLISAN, PORTLAND, OR 97213

ROOF OUTLINE

COVERED PORCH



RECEIVED
MAR 25 2005
CITY OF MILWAUKIE
PLANNING DEPARTMENT



4' 0 4' 8'

OPTION HOUSE

10263 SE 36th Avenue, Milwaukie, OR

SCALE: 3/16"=1'	DATE: Dec. 7, 2004	FILE: PMH_10263-L.dwg
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ARCH FL PLAN-LOWER LVL

PROVIDENCE HEALTH SYSTEM
4706 NE GLISAN, PORTLAND, OR 97213

PROVIDENCE MILWAUKIE HOSPITAL COMMUNITY SERVICE OVERLAY (CSO) MODIFICATION REQUEST



Presented to:
City of Milwaukie

Presented by:
Providence Health System

Prepared by:
The Bookin Group

February 11, 2005

I. SUMMARY OF INFORMATION

Owner/Applicant: Providence Health System
Dana White, Regional Director, Real Estate/Property Management
4706 NE Glisan, Suite 100
Portland, OR 97213

Representative: The Bookin Group
Stefanie Slyman, AICP
1020 SW Taylor, Suite 760
Portland, OR 97205
503-241-2423 (phone)
503-241-2721 (fax)
slyman@bookinggroup.com

Location: 10263 SE 36th Avenue
Milwaukie, OR

Legal Description: 11E25DC04800

Site Size: 6,723 SF

Comp Plan Designation: Low Density Residential (LD)

Zoning Designation: Community Service Overlay (CSO)

Summary of Request: The applicant requests a modification to the existing CSO approvals to allow up to 20 employees of an administrative nature in the building, which was approved as an accessory to Providence Milwaukie Hospital and legally converted to office occupancy in 1982. This modification will have no measurable impacts on the surrounding neighborhood as all activity will be contained within the office building and there will be no additional traffic, parking, or other deleterious off-site impacts as a result.

II. BACKGROUND

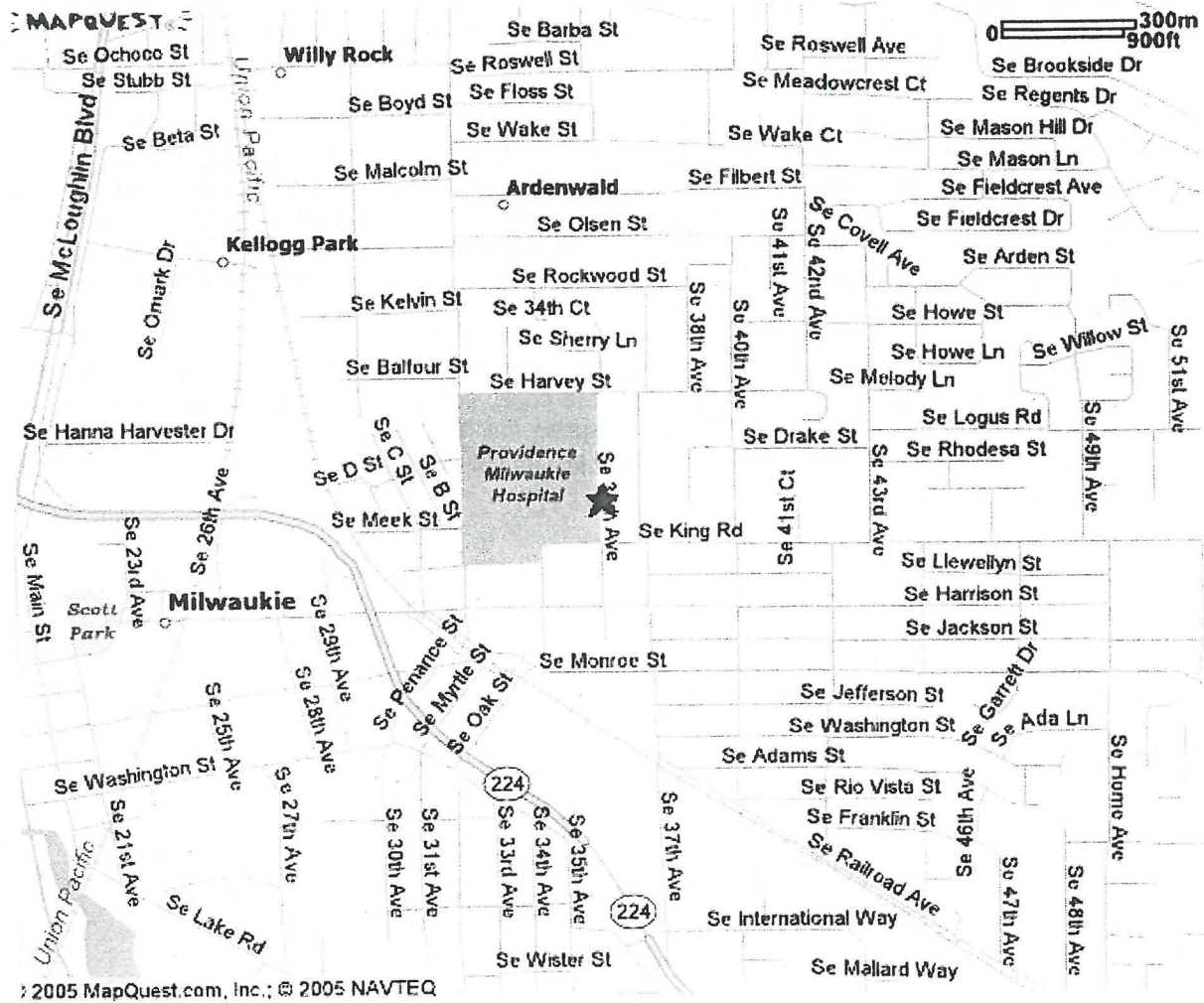
Vicinity. As illustrated in Figure 1, Vicinity Map, the subject site is located at 10263 SE 36th Avenue on the east side of the Providence Milwaukie Hospital (PMH) campus.

Zoning. The site has a Community Service Overlay (CSO) zone, which was applied to the site per the 1984 zoning amendment, which classifies hospitals and their related facilities to Community Service Overlay uses. The use was originally approved as an accessory clinic to the hospital, a Conditional Use. The underlying zone is R-7.

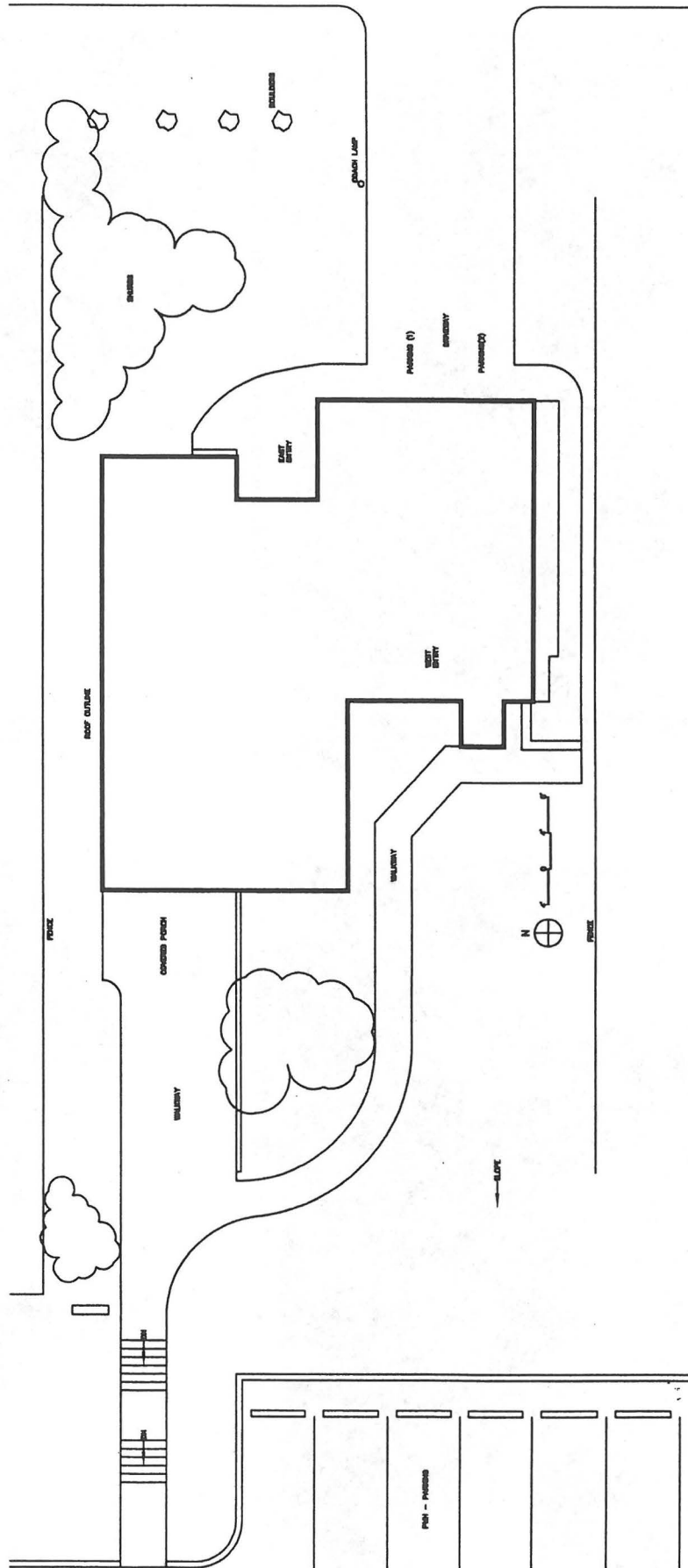
Site Characteristics. As illustrated in the site plan (Figure 2) the 6,723 sf lot is developed with an approximate 2,400 sf single story house built in 1963 that was converted to an office in 1982 (Permit # 8375). The building is similar to others in the area in its design, scale, setbacks, and landscaping. On-site parking is provided for two cars; access is gained by SE 36th Avenue, a local street. A paved walkway and staircase provides access from the rear of the building to the Emergency Department parking lot from which all other access to the Main Hospital is taken. Photographs of the site are presented in Figures 3A and 3B.

Surrounding Uses. The site falls within the Ardenwald Neighborhood District Association boundary. Low-density residential uses lie to the north, south and east of the site. To the west is the remainder of the PMH campus, which includes the hospital, medical offices, and associated parking. Photographs of surrounding uses are presented in Figure 4.

**FIGURE 1
VICINITY MAP**



SE 36th AVENUE



OPTION HOUSE			
10283 SE 36th Avenue, Milwaukie, OR			
SCALE:	DATE:	FILE:	
1:150	Dec. 7, 2004	PMH-10283-U.dwg	
ARCH SITE PLAN			
PROVIDENCE HEALTH SYSTEM			
4708 NE GLENN, PORTLAND, OR 97213			

**FIGURE 2
SITE PLAN**

FIGURE 3A
PHOTOGRAPHS OF SITE



View of SE 36th Avenue looking north. PMH building on left.



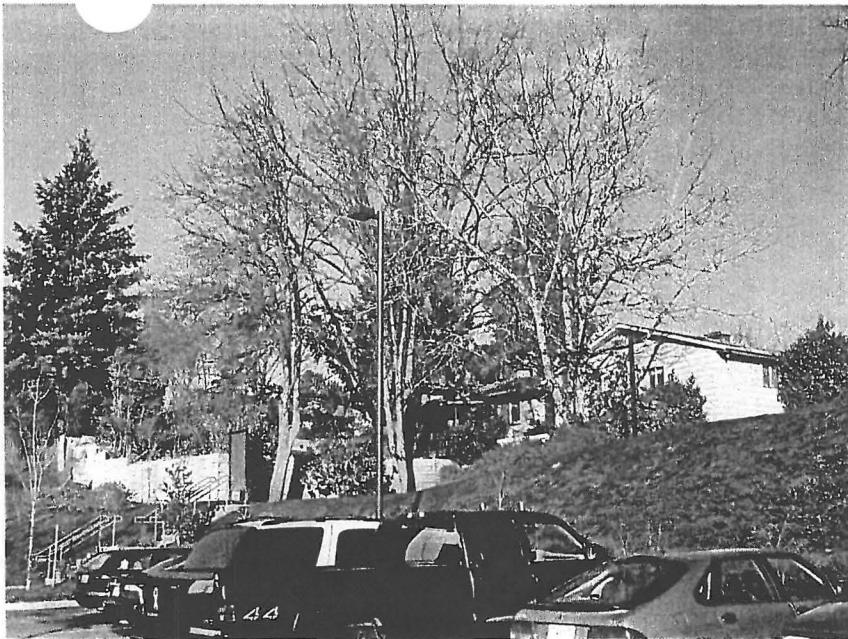
View of PMH building from SE 36th Avenue.



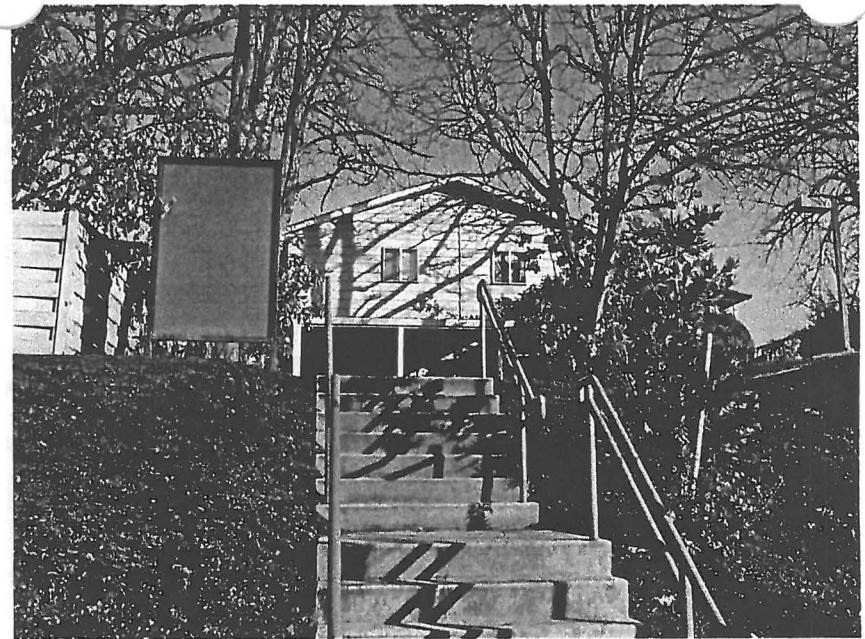
Side yard and undeveloped lot on south side of PMH building.



Side yard on north side of PMH building.



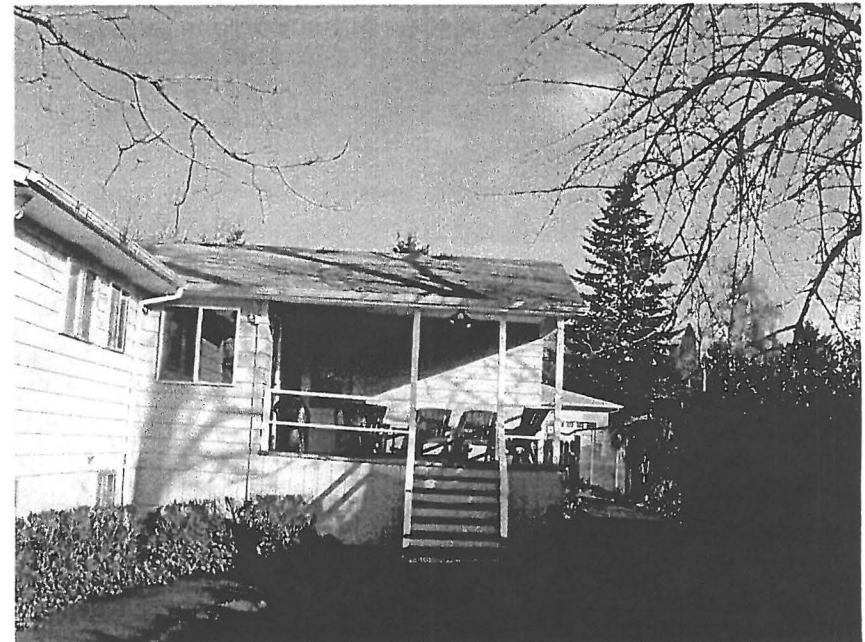
Back of PMH building viewed from main hospital campus.



Stairway from hospital side to main access on the back of the building.

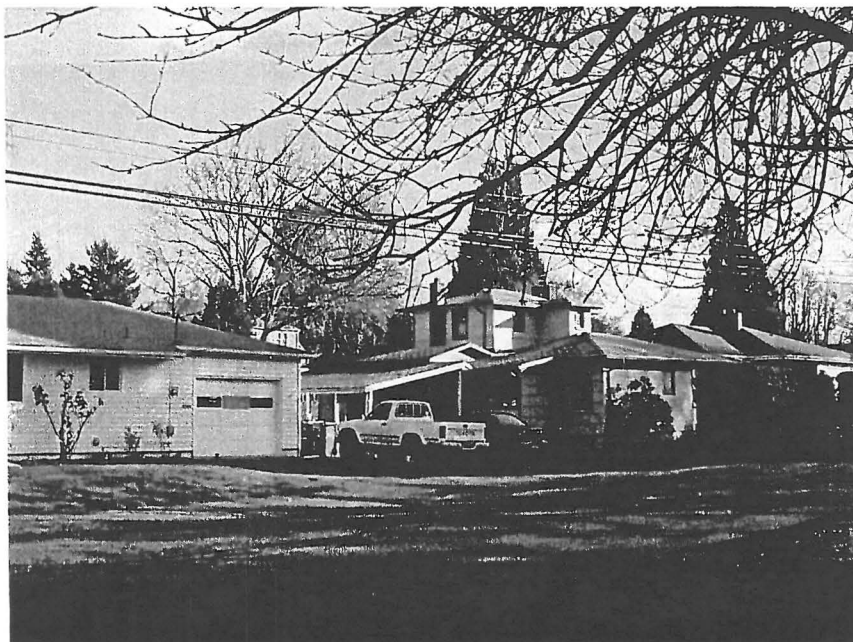


Main entrance on back side of building.

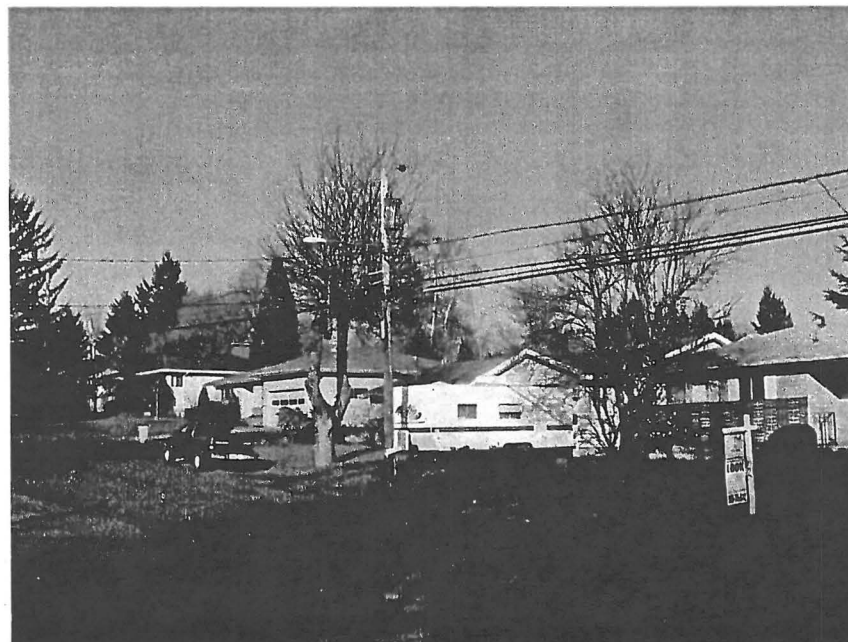


Secondary entrance to building at rear with staff break area.

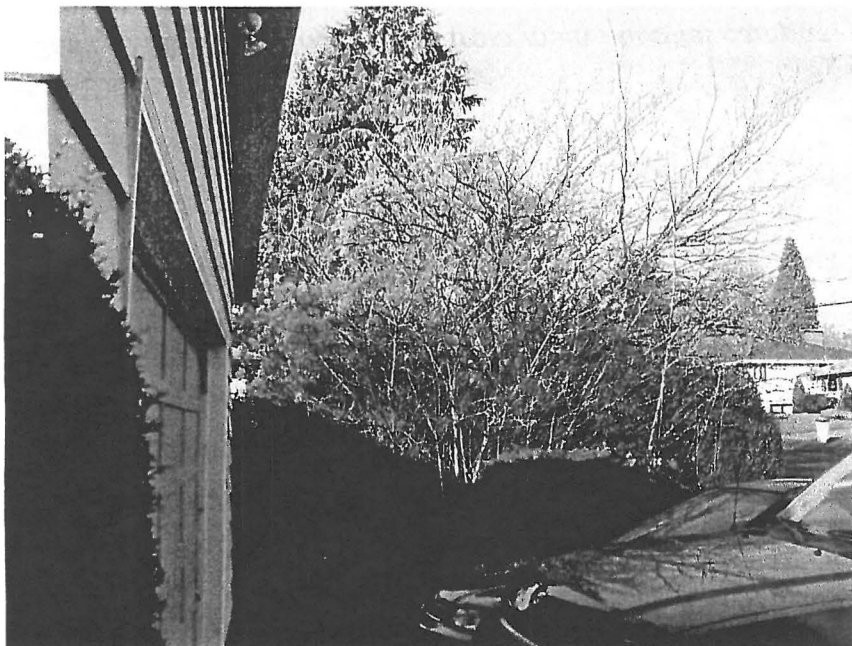
FIGURE 4
PHOTOGRAPHS OF SURROUNDING USES



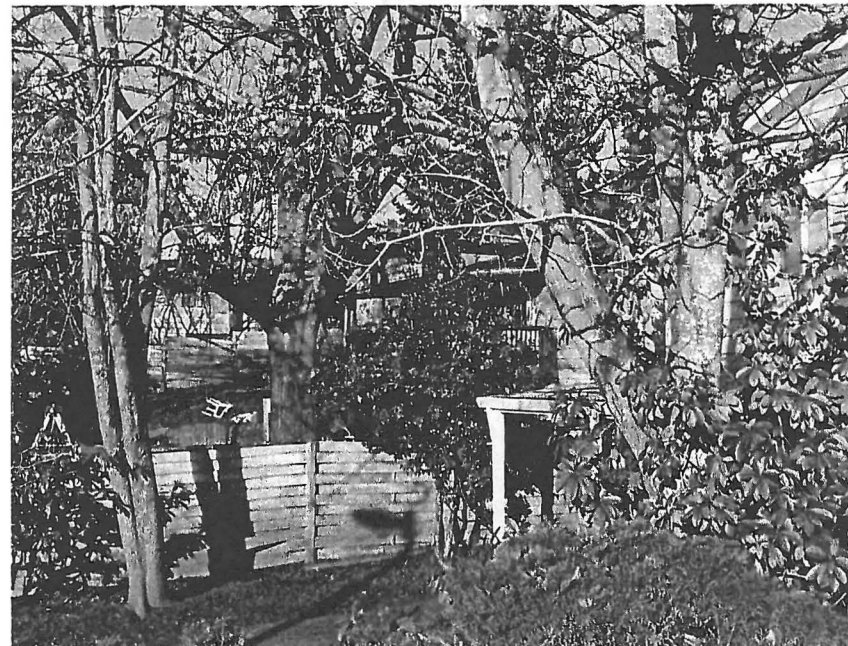
Residential uses opposite PMH building on SE 36th Avenue.



Residential uses opposite PMH building on SE 36th Avenue.



Vegetation screening PMH building from front yard of adjacent residential use to the north.



Vegetation and fence screening PMH building from back yard of adjacent residential use to the north.

Existing Use. Since March 2004, the building has been used as a back-office appointment or "call" center for the Family Practice Clinic, an accessory office use to Providence Milwaukie Hospital. It provides office space for up to eight employees during the hours of 8:00AM – 6:00PM, Monday – Friday. The appointment center does not receive patients or visitors as a regular course of business. Parking spaces for the two employees is provided on site, with the remaining employees parking in the hospital parking lots to the west and accessing the facility from the rear. Between 1982 and 2004, the building was in use as a chemical dependency clinic (Options Clinic) for which it received approval as a conditional use in 1982 (C-82-17). During that time, the building had six to eight employees and approximately 18 patients daily who were received during the hours of 9:00AM – 9:00PM, Monday – Friday.

Land Use History. The following is a summary of the land use cases associated with the subject site and conditions of approval.

- **Minor Modification of CSO Use (3/25/04).** In March 2004, PMH requested to convert the chemical dependency use to a call center. The call center included:
 1. Five to eight employees who take patient calls for appointment scheduling.
 2. No patients or visitors.
 3. Operating hours, Monday through Friday 8:00AM to 6:00PM.
 4. Use of two parking spaces on-site, with the remaining employee parking needs being accommodated in hospital lots.

Per the provision of section 19.321.4.B and C of the Milwaukie Zoning Code, the Planning Director administratively approved a minor change to the existing conditional use C-82-17 based upon four findings summarized below:

1. There was no increase in the intensity of use.
 2. The change did not alter compliance with the underlying zone and its standards.
 3. The change did not significantly affect adjacent property or uses.
 4. The change did not affect any conditions specifically placed on the development by the Planning Commission or City Council.
- **Confirmation of Land Use Compliance for Chemical Dependency Services (10/21/02).** In September 2002, PHS' land use representative requested written acknowledgment from the Planning Director that the site's use as Chemical Dependency Services (Options Program) was in full compliance with the conditions of approval of Conditional Use Permit C-82-17 and that no further land use review was required for the continued operation of the program at the facility. In the request, it was explained that "alcohol dependency treatment" for which the use of the house had been approved in 1982 is synonymous with "chemical dependency", "substance abuse", and "drug addiction treatment" and, therefore, the current use did not vary substantially from that originally approved. The Planning Director issued written confirmation that the use substantially complied with land use approval C-82-17.
 - **Conditional Use C-82-17 (1982).** Approval of the request to use the house as an accessory clinic to Dwyer Hospital for outpatient alcoholism treatment. Conditions of approval were primarily development related, such as drainage and utility improvements, screening, and lighting. The only specific use limitation was that the treatment facility was not to be allowed for detoxification or overnight patients. Although there were no explicit conditions of approval regarding the number of patients, employees and hours of operation, the clinic operated within the limits described in the narrative, the equivalent of 4 FTE employees, a maximum of 18 patients per day and operating hours of 9:00AM – 9:00PM, Monday through Friday.

III. PROPOSED USE

PMH proposes to retain the existing administrative office use function while increasing the maximum number of staff on site, within the maximum office occupancy for the building. This will entail no increase in square footage, exterior site improvements, or change in access, parking or traffic on SE 36th Avenue.

The purpose of this request is to give flexibility to PMH to make changes within these limits on the site, without need of review every time an internal change is proposed. Hospitals frequently reassign administrative staff to various on-campus spaces for a variety of reasons, including but not limited to, the need to accommodate program growth or a higher-priority use, replace discontinued programs or provide temporary accommodations during in-house construction. As an accessory use, administrative offices have the same impacts regardless of the number of specific occupants; that is, these are non-patient activities with few or no outside visitors, they do not involve outdoor activities and they do not change parking and traffic demand or patterns.

For this reason, PMH is requesting a modification to C-82-17 to permit any accessory administrative office function of PMH as long as the use continues to comply with the conditions of approval in the Planning Director decision of 3/26/04, with the following modifications.

1. The number of employees in the building shall not exceed 20, less than the 24 that would be permitted under the occupancy load limit of 1 person per 100 square feet¹. This is discussed in the determination of Building Code Compliance included in Appendix A, which additionally determines that no upgrades, including ADA, are required for this building per this proposed change.
2. There will be no patients using the site and any outside or hospital visitors will enter the building from the west (hospital) side.
3. The building will only operate on weekdays between 7:00AM and 6:00PM.
4. Employees in the building are entitled to use two on-site parking spaces and take access from SE 36th Avenue with the remainder of employee parking accommodated in adjacent hospital lots to the west.

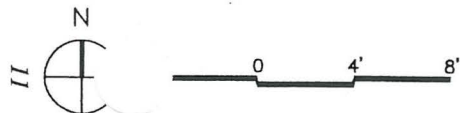
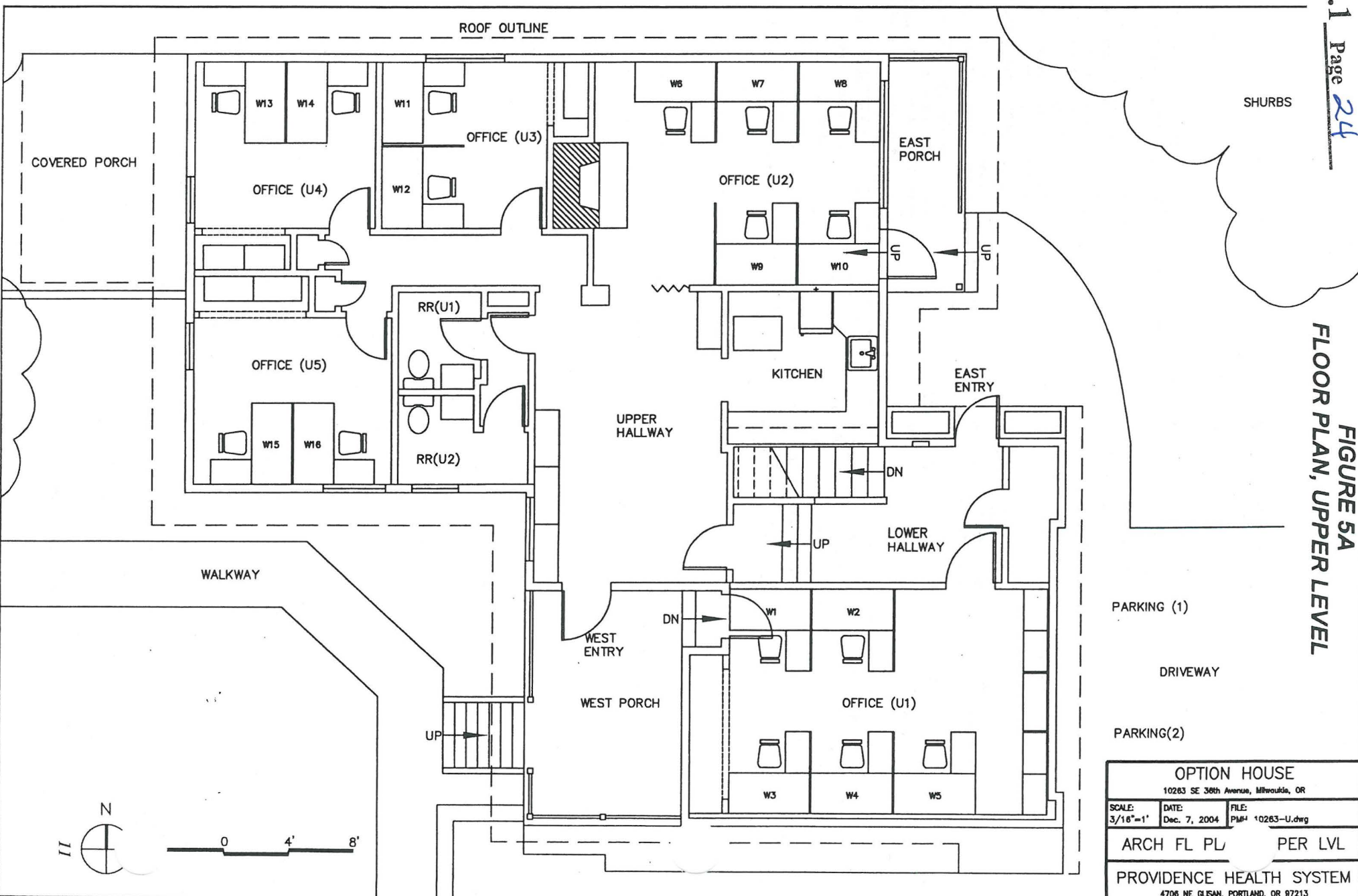
Even with these slight modifications, the continued operation of the building for accessory administrative offices will create no deleterious impacts on the surrounding neighborhood, as summarized in the following table.

¹ The building has a net usable area of 2,476 sf when the interior wall thicknesses and stair area are removed from the gross square footage of 2,964.

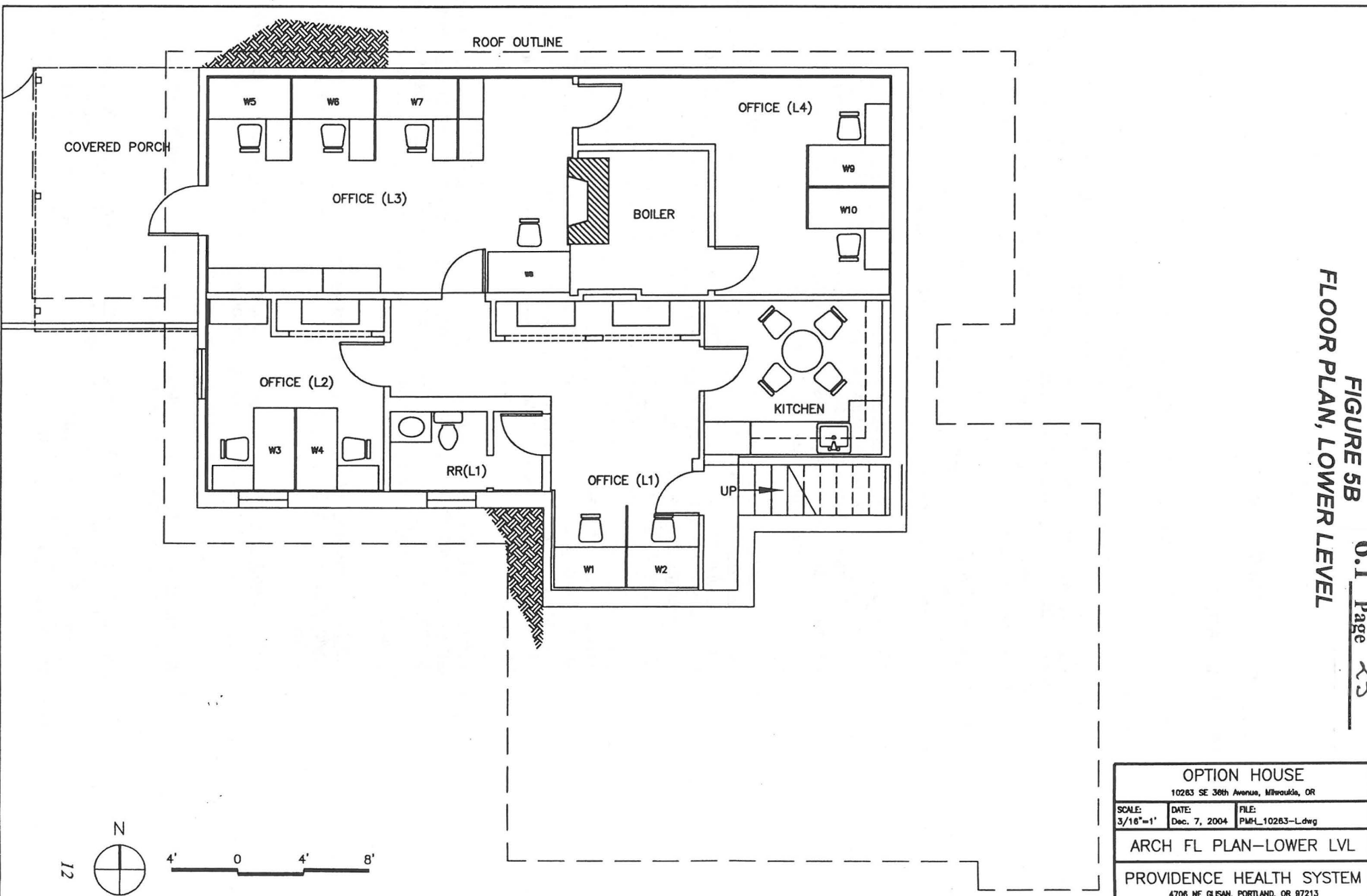
COMPARISON OF IMPACTS OF PMH ACCESSORY USE

FACTOR	ORIGINAL APPROVAL C-82-17 (Chemical Dependency Program)	CURRENT USE (Call Center)	PROPOSED MODIFICATION (Administrative Offices)	CHANGE IN INTENSITY/IMPACT ON SURROUNDING NEIGHBORHOOD
# of employees	4 FTE equivalent (6-8 actual employees)	5 – 8	20	Although the number of employees will increase, there will be no increase in off-site impacts on the "neighborhood" side of the building as these additional employees will continue to park at the hospital and take access the site from the west to the back of the building.
# of patients/visitors	18 patients per day, spread throughout the day	0 patients	0 patients	Decrease in intensity from original approval and same as current use.
Total number of employees, patients and visitors	24 – 26	5 – 8	20	Overall the intensity of the proposed use is within the limits of the original approval and there is no increase in deleterious impacts from the original or current uses.
Hours of operation	M-F; 9:00AM – 9:00PM	M-F; 8:00AM – 6:00PM	M-F; 7:00AM – 6:00PM	Fewer hours of operation from original approval; one hour earlier start time than current use.
Parking amount/ location	2 on site, remainder on hospital campus parking lot.	2 on site, remainder on hospital campus parking lot.	2 on site, remainder on hospital campus parking lot.	No change.

FIGURE 5A
FLOOR PLAN, UPPER LEVEL



OPTION HOUSE		
10263 SE 36th Avenue, Milwaukie, OR		
SCALE: 3/16"=1'	DATE: Dec. 7, 2004	FILE: PMH 10263-U.dwg
ARCH FL PL		PER LVL
PROVIDENCE HEALTH SYSTEM		
4706 NE GLISAN, PORTLAND, OR 97213		



OPTION HOUSE		
10263 SE 38th Avenue, Milwaukie, OR		
SCALE: 3/16"=1'	DATE: Dec. 7, 2004	FILE: PMH_10263-L.dwg
ARCH FL PLAN—LOWER LVL		
PROVIDENCE HEALTH SYSTEM		
4706 NE GLISAN, PORTLAND, OR 97213		

IV. LEGAL JUSTIFICATION

APPROVAL CRITERIA

19.321.4 Authority to Grant or Deny a Community Service Use.

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

1. An application for a community service use may be allowed if the requirements of the underlying zone are met. The underlying zone is R-7; the applicable standards are found in Section 19.304.3. There are no proposed changes to the footprint of the structure or other site improvements that are governed by the underlying zone; therefore, this approval criterion does not apply.
2. Specific standards for the uses found in subsections 19.321.7--19.321.10 are met. Applicable standards are found in 19.321.10, Specific Standards for Institutions – Public/Private and Other Facilities not Covered by Other Standards. These are:
 - A. Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use. The conditions of approval of C-82-17 have been met which required drainage, driveway, lighting, and fencing improvements. No development is proposed that would trigger a need for additional utility, street or other improvements. Does not apply.
 - B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B. The proposed modification produces the same traffic generation as the existing, approved use. With the exception of the two on-site parking spaces used by staff, all other access will be taken from the rear (west side) of the building where it abuts other hospital parking lots and will not result in any trip generation on SE 36th Avenue. Additionally, these hospital-related trips are already accounted for in the overall hospital complex as the proposed use reflects a shifting of staff from one physical location on the campus to another. Does not apply.
 - C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum to two thirds (2/3) of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering. No development is proposed to which this applies.
 - D. The height limitation of a zone may be exceeded to a maximum of fifty (50) feet provided subsection C above is met. No development is proposed to which this applies.
 - E. Noise-generating equipment shall be sound-buffered when adjacent to residential areas. No additional noise-generating equipment is proposed to which this criterion applies.
 - F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets. No new lighting is proposed to which this applies.
 - G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses. The offices will operate Monday through Friday from 7:00AM – 6:00PM. These hours are compatible with the surrounding homes and the

rest of the hospital campus.

3. The hours and levels of operation of the proposed use can be adjusted to be reasonably compatible with surrounding uses. As noted above, the offices will operate Monday through Friday from 7:00AM – 6:00PM. These hours are compatible with the surrounding homes and the rest of the hospital campus.
- B. In permitting a community service use or the modification of an existing one, the planning commission, or the community development director in the case of a minor change, may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:
1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;
 2. Establishing a special yard, setback, lot area, or other lot dimension;
 3. Limiting the height, size, or location of a building or other structure;
 4. Designating the size, number, location and design of vehicle access points;
 5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;
 6. Designation the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or
 7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

These standards refer primarily to site development, which does not apply in this application as no development or site improvements are proposed. Regarding the ability to limit the manner in which the use is conducted, the proposed modification will result in no appreciable difference from the current use. The hours of operation will remain largely the same as the current use (call center) and less than the original approved use (Options Program). Additionally, the hours of operation do not encroach into evening or weekends when the majority of residents are in their homes. Regardless, the office uses occur within the building, and do not generate noise, glare, pollution or any other noxious activities that would affect surrounding uses.

There will be no change in traffic impacts as the additional employees will park on the hospital side of the building in existing parking lots and access the building from the rear via the staircase and walkway. Other than the two on-site parking spaces that provide the only access to the site from SE 36th Avenue and parking, the employees will be virtually invisible to the surrounding neighborhood.

- C. The community development director may approve minor changes in any development permit, provided that such change... The Planning Director has referred this application for a modification to the existing CSO permit to the Planning Commission for a public hearing.
- D. The planning commission will hold a public hearing on the establishment of the proposed community service use. If the commission finds that the establishment of the community service use is in the general public interest and that the benefits to the public outweigh the possible adverse impacts of the use, then the commission may approve the designation of the site for community service use. If the commission finds otherwise, the application may be denied. This approval will result in the application of the community service overlay designation to a particular piece of land, subject to any conditions the planning commission may attach. There are no known adverse impacts to the immediate area or general public from the increase in the number of administrative staff in the building. As demonstrated in

ATTACHMENT 5

RECEIVED

MAR 23 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

DATE: MARCH 23, 2005

TO: KEITH JONES, CITY OF MILWAUKIE

FROM: STEFANIE SLYMAN, CONSULTING PLANNER
THE BOOKIN GROUP

SUBJ: ADDITIONAL INFORMATION FOR PROVIDENCE MILWAUKIE HOSPITAL CSO

Thank you for your call today regarding clarification of the application materials submitted on behalf of Providence Health System for Providence Milwaukie Hospital. First, as you requested, here is a summary of the site and building areas:

Site:	7,238 sf (60.11' x 120.42')
Building:	Gross Square Footage = 2,964 sf
Total Occupant Load:	29 (based on 1 person per 100 square feet)
Proposed Employees	: 20 Full Time Equivalent (FTE)

In the application, a calculation of net usable area of 2,476 sf is provided which is a calculation based upon removing interior wall thicknesses and stair area from the gross square footage. However, the Occupant Load Factor in the Building Code does not require a calculation based upon net usable area, so the Total Occupant Load for the building should be 29, not 24. As requested in the CSO modification, Providence seeks approval of a maximum of 20 employees. This supplemental information additionally clarifies that the proposed use, as well as the existing and previous uses, measure(d) employees on a FTE basis. The proposed maximum of employees may be composed of a combination of 1.0 and less than 1.0 FTE as long as the total does not exceed 20 FTE and the Total Occupant Load.

Second, thank you for forwarding the communication from Mrs. Snowhill regarding questions and concerns about the proposal. Following please find responses to her letter.

"SIZE OF PROPERTY" The site size noted in the application is incorrect and should be 7,238 square feet which is consistent with the site plan for the Emergency Room remodel.

"FIGURE 1 VICINITY MAP" The purpose of this map is to simply identify the location of the subject site within the general vicinity. It is not intended to show the exact boundaries of the campus. Regardless, the precise boundary of the hospital campus is not germane to this application, as the request for the modification does not add or remove property, or adjust the boundary in any fashion.

"SITE PLAN" A dimensioned site plan will be provided.

"COMPARISON OF IMPACTS OF PMH ACCESSORY USE PAGE 10" The existing number of work stations within the building does not correlate to the approved number of employees because some employees work less than 1.0 FTE but still maintain separate work stations.

"FLOOR PLAN UPPER LEVEL" A dimensioned floor plan will be provided.

"FLOOR PLAN, LOWER LEVEL" A dimensioned floor plan will be provided. Regarding the number of work stations as it relates to the number of employees, please refer to the above response related to comparison of impacts. The use of the building by the Chaplain has been on an occasional basis in which the Chaplain and one PMH employee (not patient) use the facility for a one-hour session of spiritual touch and ministry. This use, which occurs once a month or less, is considered to be in the category of occasional visitors and has no measurable impact. Depending

upon the number of work stations needed to accommodate the 20 FTE, a room may or may not continue to be reserved for this infrequent use. Please note, however, that with the exception of the floor plan dimensions, the interior layout of the workspace within the building is not a submittal requirement nor is it subject to land use review; it is illustrative only.

"NEED DEFINITION OF 19.321.47C4" *Our understanding remains that the existing Conditional Use approval was not affected by the reclassification of hospitals and their related facilities to CSO and that modifications to the approval are subject to the CSO standards.*

Please let me know if there is anything else I can provide to clarify the application. Dimensioned site plans will be sent under separate cover.

February 18, 2005

APPLICATION FOR LAND USE ACTION

Community Service Overlay CSO -05-01

Providence Health System – Milwaukie Hospital

SIZE OF PROPERTY - 6,723 square feet - in an R-7 Zone

No dimension shown on Site Plan. Jurgens, Inc., map for the ER remodel shows this lot to be 60.11 x 120.42, for a total of 7,238 square feet. What has happened to the remaining 515 square feet? Was this incorporated into the hospital campus during the ER remodel? If so, this should have been a documented lot line adjustment. We have not viewed such a document. We believe that the City and the Planning Commission should be provided with the filing for this action, and any and all maps on record with the County Surveyor. Such maps and adjustments are then to be recorded with the County, showing the diminished size of the lot and the increased size of the hospital campus. We have no evidence that this has ever been done. The lot as indicated is now R-5 in size.

FIGURE 1 VICINITY MAP

Boundaries for the hospital campus are incorrect. There are at least four private owners left on SE 36th Avenue; Harvey street is not the northern boundary, Dwyer Drive is the northern boundary; and there are at least two private owners left on SE King Road.

SITE PLAN

No dimensions shown for either the lot size or building size.

COMPARISON OF IMPACTS OF THE PMH ACCESSORY USE PAGE 10

Current use – 5-8 for call center. Inspection on 10-19-04 showed 9 work stations on the first floor, plus the Safety man and Chaplain in the basement, for a total of eleven employees.

FLOOR PLAN UPPER LEVEL

No dimensions shown; 16 work stations shown.

FLOOR PLAN LOWER LEVEL

No dimensions shown; 10 work stations

This makes a total of 26 work stations. Their request this time is for 20 employees.

Office (L4) was the former location of the Chaplain and her treatment room. Where will the Chaplain now treat employees?

NEED DEFINITION OF 19.321.47 C 4.

“... an application may be allowed if ... ‘Does not affect any conditions specifically placed on the development by the Planning Commission or City Council.’”

The conditional use permit was placed on the entire property and should be recorded with the County. It runs with the land just as an easement runs with the land. You now wish to place a CSO agreement on the same parcel of land. What happens to the conditional use permit. Should it not be removed or adjusted to reflect the situation correctly?

We have also spent much time and effort to try to solve this problem amicably. Our agreement with Richard Smith and Renee King was to settle for 9 FTE's for the present.

It has appeared in the past that the hospital thought that they could do anything they needed with the conditional use property. Not So. They are now requesting to be able to place 20 employees here. I feel this is a real stretch for this R-7 location, which should not have been allowed the first place. However, we have to live with past mistakes.

What system do you have in place to verify conformance to the CSO in the future? Or will you wait until someone reports a problem? They may very easily place 26 employees in those 26 work stations.

Martha L. Snowhill

Jones, Keith

m: charles I wilkins [carleswilkins@juno.com]
t: Sunday, April 03, 2005 12:05 PM
o: jonesk@ci.milwaukie.or.us
Cc: carlottacollette@comcast.net; desnowhill@cs.com
Subject: PROVIDENCE MILWAUKIE HOSPITAL / CONDITIONAL USE PERMIT REVISION

3122 Balfour St.
Milwaukie, OR 97222
April 3, 2005

Subject: Providence Milwaukie Hospital
Conditional Use Permit
Increase Employees @ 10263 SE 36th

TO: Ken Jones, City of Milwaukie

On or about November 8, 2004, I, Carlotta Collette and Mrs. Dorothy Snowhill, representing the Ardenwald/Johnson Creek Neighborhood Association met with Richard Smith, Providence Milwaukie Hospital [PMH] Assistant Administrator, and Ms. Renee King, Public Relations Officer, PMH, to discuss a new and/or revised Conditional Use Permit for the subject residential house, owned by PMH, but physically located in a R-7 Zone as described and mapped by the City of Milwaukie. After much discussion in which the Land Use Planning and Zoning concepts were explained to the PHM representatives, the last "bone of contention" was "How many PMH employees would be allowed " at the subject site, assuming new Conditional Use Permit would be issued by the City? At the conclusion of this discussion the Neighborhood Association representatives agreed that they would fully support a PMH request for nine (9) Full Time Equivalent(s) as this would not be overly disruptive in the R - 7 zone and would not set an outlandish precedence should PMH acquire another neighborhood residence and wish to place PMH employees in it.

The Tax Map 11E25DC, accompanying the City's March 23, 2005 Notice of Public Hearing shows a minimum of another six lots between PMH ownership and 36th Avenue, which PMH could acquire in the future, conceivably wish to use for administrative purposes and apply for conditional use permits for fifteen to twenty employees. This possible use plus attendant associated automobile traffic, based on the size of each building, would change 36th Avenue to other than a residential street. This process would not be within the concepts of an R - 7 neighborhood with a probable average of two to five persons per residence and a fixed number of cars per house.

In the foregoing, the August 7, 1984 Ordinance #1564 Paragraph 3.4 Authority to Grant or Deny A Community Service Use, Sub paragraphs 1 and 3 are being referred to. Sub Paragraphs 1 and 3 are even stretched by considering the allowance of nine FTE employees at the subject R - 7 house. Paragraph 3, as well as the following paragraph C.1 and C.2 applied to an R - 7 do not allow any permit to "increase the intensity of any use, or the density of residential use" or "Meets all requirements of the underlying zone and specific standards."

In conclusion I feel that the City is not supporting residential neighborhood values, under the R - 7 zone, or any other R zone designation, if it chooses to allow twenty employees in a residential use situated in an R zone.

Submitted by: _____

ATTACHMENT 8

REC 6.1 Page 33

APR 04 2005

March 30, 2005

CITY OF MILWAUKEE
PLANNING DEPARTMENT

At a meeting with John Gessner and Keith Jones on 3-22-05, I was shown a copy of a letter addressed to me dated October 21, 2002 enclosing a copy of Ordinance 1564. I did not remember this letter. However, I found it in my files. This ordinance eliminated the Conditional Use designations in a number of zones, including R-7. My response of October 28, 2002, pointed out that although Ordinance 1564 was effective August 7, 1984, it was not retroactive. The Community Service Overlay zone did not apply to C-82-17, as it was dated in 1982. In addition, I pointed out that the original permit C-82-17 was issued to an assumed business name, Dwyer Hospital. A DBA has no legal right to assume or dispense land transactions. This must be done by the owner of record.

The remainder of my response dated 2-18-05, was pertinent. I find now that this had already been sent to PMH so that they could correct their application. This does not seem fair to me.

On 3-28-05, I picked up a copy of PMH's response to my 2-18-05 review of their application which was done for the A/JC NDA, as I am on the Land Use Committee. Their response was received by the City on 3-23-05, the day after my meeting with them. They did not advise me at the time that they had already forwarded a copy of my 2-18-05 response to PMH. Now I have a copy of their response.

PMH requests a recalculation to the total occupancy load to 29, increase from 24. NOW THEY HAVE ADDED A REQUEST TO MEASURE EMPLOYEES ON AN FTE BASIS. Now we have an explanation for the 26 work stations shown on their drawings. They also contend that FTE designations have been the norm in the past. This is not so. AT least it has never been shown on the permits. The original permit C-82-17 stated explicitly a maximum staff of 4. No mention of FTE's. The Call Center permit dated 3-25-04, indicates 5 - 8 employees (even though we noted 11 work stations on our visit). No mention of FTE's allowed on the permit here either.

The vicinity map is germane to my neighbors. They immediately questioned the PMH ownership,

Even though the Chaplain and one other person use a room only on occasion , they cannot be classified as accessory administrative personnel.

The new transmittal from PMH now requests 20 FTE's, with the ability to go up to 24 and then 29 employees under their Total Occupant Load figures. That's asking a lot of that house. And 20 or 29 people using that break room with only four chairs and a table. I hope Mr. Gessner remembers our discussion about FTE's.

Remember now, the Call Center is covered by the new CSO and Resolution No., 1564. But the old Conditional Use (C-82-17) rode along with it, and has never been addressed, at least, I have never been advised that it has been cancelled. We have a title problem. Kaiser sold the Greeley Street property. Some day Providence may wish to dispose of this property also.

There does not appear to be any process in place to check on these CSO's once they are in place. Unless, of course, you wait for someone to complain. The City should have some way to verify conformance to the items in the permits at least on an occasional basis. Putting a limit on the number of employees has not worked in the past.

19.321.10 B Uses which are estimated to generate fewer than 20 trips per day are exempt from this subsection B. 20 employees -- 20 trips; 24 employees -- 24 trips; 29 employees -- 29 trips. PMH's minimum request for 20 employees would necessitate. Section B's inclusion, as would 20 FTE's or more.

This proposal does not meet the standards of the underlying zone or policy of the Comprehensive Plan for the R-7 Zone. It does not uphold the intent of the Comprehensive Plan and would have an adverse effect on adjoining properties if allowed.

The most troubling part of this is how easy it is getting for them to change zoning on our street. What will stop them from reverting all of the residences they own contiguous to the hospital campus to administrative office use? They now own ten houses and two vacant lots contiguous to their campus. It is unfair to those of us who live on the wrong side of the street. Our property values will just go down. And don't tell me that I hate the hospital. Since last November I have been a patient at Providence PDX and Milwaukie on five different occasions. The hospitals love me because I have wonderful insurance benefits.

Norothy E. Duane
A/SC NDA

Monday, October 28, 2002

RECEIVED

APR 04 2005

Mr. John Gessner, Planning Director
Community Development Department
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Dear Mr. Gessner:

This is in response to your letter of October 21, 2002, and to your telephone call of last week, also.

This is the first time I have been advised of and furnished a copy of Resolution No. 1564, dated August 7, 1984, which established a Community Service Overlay designation for conditional uses under the old Zoning Ordinance No. 1438. Resolution No. 1564 was not retroactive. It does not cover C-82-17. Nor does the current Community Service Overlay Zone CSO apply to the 1982 Conditional Use Permit C-82-17, as it, too, is not retroactive. 7

You asked me in light of old records, time constraints, etc., would I consider dropping all the questionable items we have pointed out about the Option House, which is C-82-17. I told you that you did not answer all of the questions, and I would need to discuss this with some of my neighbors.

You then stated that you had been in discussions with Public Works about the road closure.

You asked us to consider blockage of the road and leaving the roadbed in place. Your concern was for easements. It does NOT seem likely that there are easements buried under the 115 foot roadbed not part of the City's right-of-way. The "Locator Information" the hospital initiated this year should bear this out. I feel certain that any easements you deem necessary will be furnished by the hospital in due course. By Planning Commission meeting dated 3/7/67, Page 4, Item '3, "We will give an easement for utilities to the City, whether the utilities serve the hospital or other property." Easements should have been in place for many years.

NO, WE WILL NOT ACCEPT JUST BLOCKING THE ROAD AND LEAVING THE ROADBED IN PLACE. I have just recently been furnished a copy of the preliminary

meeting of the hospital and the city in January of this year for the ER/MRI addition. At this meeting the hospital requested permission to close the road. We were not advised of this until June of this year.

We can only surmise, that once planted, this area will serve to encompass "green space" which may be needed for future expansion at the hospital. This has been a problem in the past.

Item 1 of your letter:

You state, "Conditions of approval of C-82-17 have been met. (See attached notice of approval dated October 13, 1982)" Page 3 is missing from your transmittal. Item 5 on Page 3 refers to out-patient early alcoholism treatment ONLY. No mention of other substance abuse. Item 6 refers to parking for both patients and employees. Parking allowed for employees only in double-car garage. FINDINGS have not been met. Permit should be issued to legal owner, not an assumed business name (DBA). A DBA cannot receive or grant legal land rights. If a Conditional Use runs with the land, as does an easement, we still have a problem. Reissue permit in name of legal owner.

Item 2 of your letter:

Refers only to early alcohol treatment clinic. No mention of substance abuse. This should not be difficult to adjust to include substance abuse. Community Service Overlay was not in effect when C-82-17 was approved, and the ordinance was not retroactive

Item 3 of your letter:

Ordinance 1564 was not in effect at the time C-82-17 was approved, and it was not retroactive. You stated, "Findings in support of C-82-17 indicated that the clinic was an accessory to the hospital." This was an opinion of your city attorney. However in 1982 the Zoning Ordinance in effect prohibited clinics in the R-7 zone in which it was located. This same restriction stopped a doctor's office from being built in our R-7 zone in 1984.

Item 4 of your letter:

Ordinance 1564 was not in effect at the time C-82-17 was approved. Recording was still shown to be in the county deed files. Change-of-owner notification of conditional use still applies as the CSO was not in effect in 1982.

When recording with the county deed records, the permit must be titled CONDITIONAL USE PERMIT, not Conditions of Use. This was shown in the packet which I furnished you earlier this year. A law must first be passed to allow recording. Milwaukie Ordinance must be changed to reflect this.

Item 5 of your letter:

We have no problem with the garage conversion being consistent with the conditional use. However, the permit should have been adjusted to show this, and to show that the parking of employees was now allowed on the driveway and street (three cars are usually involved.) You only assume that the parking was changed to the driveway. The permit must reflect this, as the permit prohibited parking by patients and employees, other than inside the double garage.

Item 6 of your letter:

Just adjust the permit to reflect what is happening. The permit is not covered by any CSO. All we ask is that the permit is current and correct. We have no problem with the use of the Option House. They have been good neighbors, and the employees sorely need on-street parking. Lets make it legal.

You have assured me that the hospital will provide the necessary clearance from the Dwyers who still hold the underlying fee to the first 115 feet of Dwyer drive west of 36th Avenue. The City Council must still approve such vacation. We will await that action.

Mr. Gessner, you as Planning Director, and Alice Rouyer as Community Development and Public Works Director, have much leeway in adjusting the conditional use. We will be happy if you can adjust the permit to reflect the present circumstances. All we have ever asked is that the City abide by its own zoning ordinance and regulations. Since all of this was approved in 1982, and no CSO was in effect, we question the need for Planning Commission approval. Just let us know of your changes.

Sincerely,



Dorothy Snowhill

10218 SE 36th

Milwaukie, OR 97222

Cc:

Mike Swanson – City Manager

Alice Rouyer, Community Development

Stefanie Slyman, Consulting Planner

Ardenwald/JC NDA Austin Gray – Option House

RECEIVED

APR 04 2005

October 22, 2004

CITY OF MILWAUKIE
PLANNING DEPARTMENT

CONDITIONAL USE C-82-17

In 1982, the hospital was granted a Conditional Use Permit C-82-17, for their rental house at 10263 SE 36th Avenue, which is in the R-7 Zone, for an Alcoholic Treatment Clinic. Later by their own testimony, this quickly evolved into a Substance Abuse Clinic. No change in use was ever requested, nor was it ever approved by the City. Zoning Ordinance for R-7 did not then allow clinics, nor does it allow them now. Actions by neighbors were not deemed adequate. We had to accept the clinic, The Option Unit.

When Providence Milwaukie Hospital (PMH) requested a permit to increase their ER Center, I was asked how I felt about keeping the Option Unit as it was located. I advised the City and PMH that we had no problem with the Option Unit. They had been most compatible as neighbors. No one would object to them remaining. However, we asked that a Change in Use be implemented from Alcohol treatment to Substance Abuse. We also suggested that the permit allow parking for three cars, as that was the norm for the three employees parking. We suggested that this could be accomplished by City staff instead of a Planning Commission meeting. We surprised to learn that the Option Unit was moved to Providence Portland area. Patient access may have entered into this decision, but surely not neighborhood resistance.

On March 19, 2004, the City approved a request for a Minor Modification of C-82-17 to convert the same building from a Substance Abuse program to a Family Practice Call Center. Again, we pointed out that the original permit was for an Alcohol Treatment Clinic. No Substance Abuse program had been legally allowed. Employee parking was said to be adequate at two spaces.

Here again, we were met with a quandary. Clinics were never allowed in R-7, and now we are asked approve office space which is not allowed in R-7 as a Conditional Use or under the Community Service Overlay Ordinance. Conditional Use Permits flow with the land, just like an easement, and remain even though there is a change in ownership. Then after years of struggling with traffic problems on 36th Avenue, a change in leadership at both the City (Mike Swanson) and PMH (Richard Smith), we got our street back. How could we do anything other than approve the request for the Call Center. This appeared to be low-impact on the neighborhood, as well as offering PMH use of their facility. This was a trade-off because PMH had closed the eastern portion of Dwyer Drive and seeded it.

In May of this year we noticed three cars parking at the Conditional Use house. The permit allowed only two cars. We were also informed that the Chaplain was using the basement for what was called "Faith Healing." Emails between Carlotta Collette and Renee King – employee advised of parking restrictions; the Chaplain was conducting pastoral sessions with employees only (Not covered by Conditional Use Permit).

In June and early July, we noticed a third car parking in front of the Cond. Use House. The occupant was leaving one afternoon at about 4 PM when I was backing out of my driveway. I advised him that he was putting his employer in jeopardy by parking there. He introduced himself as the new Safety Manager for PMH, and was unaware of the parking restrictions. I asked him to talk with Renee King about the Conditional Use also.

In July I was invited to the Founder's Day meeting at PMH. This was an opportunity to discuss the Conditional Use Permit with Renee King. I checked with the City to see if PMH had requested a change in use. Not so. On entering PMH, a volunteer tried to direct me, and I explained that I lived on the back street. She said, "Oh, you're that nasty lady." She paused, and then said, "Oh, we used to call you that nasty lady, but we don't any more."

Debra Barnes was also in attendance, so I asked her to accompany me to meet with Renee King. Renee felt that as long as the activity was hospital oriented, they did not need to get prior approval. Not so. I asked her to call John Gessner. John finally had to call her and advise that they needed to ask for a Change in Use.

By letter of July 29, 2004, PMH has requested another Minor Modification to C-82-17 to ask for a change in allowed accessory use from out patient services to administrative offices. They again refer to Option Substance Abuse Program. Wrong, again. Substance abuse was never legally approved by the City. The new use would violate previous conditions of approval for the site. Conditional Use still applies even though it is covered by CSO zoning. How could new uses (more employees) result in fewer impacts on the neighborhood. Under both the Conditional Use Ordinance and CSO Ordinance, change in use must have prior approval..

An inspection on 10-19-04 was as follows:

I called Renee King to advise that Les Wilkins and I will be viewing the house because they had requested a change in use. We are with the Ardenwald Johnson Creek NDA Land Use Committee. I left my number on her cell phone, and when I did not get a return call in a few minutes, I left a message on her voice mail. We entered the house

just before noon, called several times, with no answer. The first floor three bedrooms set up as offices, with desks and computers running; one large meeting room with lots of chairs (living room); kitchen with stove and refrigerator; two bathrooms; entryway. The double garage had five call stations with phones and computers, all manned. The sixth station was unoccupied and held no computer. Basement has a large room with a fireplace and some storage items; kitchen area with sink and appliance hook-ups; a locked door (learned later this belonged to the Safety Manager); A small treatment room with large Master Massage table in the middle; small water fountain; CD player; radio and various small furniture and objects on shelves.

We had just about finished in the basement when Renee King came down the stairs. She was most annoyed with me for entering private property. Les and I explained that we had to view the house to be able to compile a report for the NDA. Renee said that the Planning Commission would hear the request. Les explained that our report would go to the Planning Commission also.

We discussed the treatment room. Renee stated this was not a treatment room. The Chaplain used the room for "healing touch" therapy with their employees only. This is not allowed now under the Conditional Use, nor was it requested in their 7/29/04 letter. By her Email on 5-10-04, she indicated the Chaplain used the room for "pastoral services outreach." Why the need for a massage table?

We asked about the locked door. She stated that it was the Safety Manager. He apparently only works one-half days for PMH and half-days for St. Vincents.

We asked about the three rooms upstairs with computers running. She did not know who used them or what they were used for.

After more talk, Renee will try to set up a meeting with all the employees present. That was fine with us. She called later to say that Dana White from Providence Portland wanted to join us. That is fine with us. The meeting will be held on Tuesday Oct. 26, at 12:30 PM, we are to meet on the patio (back porch). I advised Carlotta. She will join us if she can work it in her schedule.

Permit wants to change hours from 8 AM to 7 AM. No reason given
Permits asks to allow visitors. No explanation. Could this include visitors t the Chaplain?

5 working stations in garage, plus 3 desks on first floor, plus the safety man in the basement, and the Chaplain. This makes 10 employees already. Letter stated that would not exceed 8 employees. Large room in the basement and large room upstairs could be expanded to more uses. Need some information about these.

RECEIVED

APR 04 2005

November 8, 2004

CITY OF MILWAUKEE
PLANNING DEPARTMENT

Carlotta, Les, and I met with Richard Smith, Assistant Administrator of PMH and Renee King, Public Relations Officer of PMH, at the Option house on 36th Street. Les and I have each received three Requests for Change of Use for the Conditional Use at this house in the last month.

The first wanted to include the Safety Man in the count of 8 employees which were authorized in the permit. No mention of the Chaplain's use. Les and I visited the site and found they already had ten employees. Not quite up front with us. We then received a permit request for 13 employees which included the Safety man, but not the Chaplain. Dana White of Providence Portland Regional Real Property, and Renee King met with John Gessner on 10-28-04. He ran them through the process and advised them to make up their minds how they wanted to use the property. He did not want to go through this again next year. They then submitted a new request for 20 employees with only the designation of administrative office use. Not adequate for the permit process. They felt they could use the house anyway they chose since Tom Larsen advised that the house had been converted officially to an "office" occupancy since 1982. Not so. Tom spoke of the Building Code designation only. He knew it had councilors and patients. What else could he call it. The Zoning Code determines the usage. We so advised them.

We also advised them that the house was in R-7 Zone, and even in 1982 when the original Cond. Use Permit was issued, clinics and offices were not allowed in R-7. The City did give them the Cond. Use Permit. Earlier this year when PMH requested to Change the Use of the permit to a Call Center for ~~Primary Care~~ ^{FAMILY PRACTICE} physicians, I approved the change. Low impact employment - 8 employees. PMH had closed down the eastern end of Dwyer Drive, and gave us a quiet street again. This was pay-back time for the hospital. Zone 7 still does not allow offices. But the Conditional Use runs with the land.

After much discussion, we advised PMH to submit a new request for 9 FTE's. This would include the Safety man and the Chaplain. They will need to submit this to the Portland Regional Office. We await their next move.

R. Brownlee



To: Planning Commission

From: John Gessner, Planning Director *JG*

Date: April 12, 2005

Subject: File AP-05-01 Appeal of Planning Director's Determination

Location: 2540 SE Lark Street

Owner: Michael Hamersly

NDA: Island Station

Action Requested

Deny the appeal thereby confirming that no more than 3 dwelling units are allowed for zoning purposes at 2540 SE Lark Street.¹

Background

The appellant requests that the Planning Commission make the following rulings:

- Dismiss the staff determination that no more than 3 dwelling units are allowed.
- Deem that 4 dwelling units are allowed.

In December of 2001, the City ordered the appellant's building at 2540 SE Lark vacated for various building code violations. The building contained 4 dwelling units at that time. Staff subsequently investigated the zoning history of the property and could find no evidence supporting zoning permission for 4 units. After some time, the appellant submitted a formal request for a zoning determination. In response, Staff upheld the prior 3-unit determination in the July 9, 2003 decision. No appeal was filed within the period specified in city code and the appellant made numerous requests for

¹ The building is located on the south side of Lark Street, just east of the 26th Avenue intersection.

reconsideration of the decision.² Staff declined these requests on legal grounds. The appellant submitted a new request for determination, which repeated the prior 3-unit determination. The staff decision was issued on March 8, 2005 and was subsequently appealed. (See Attachment 1 for the decision and related correspondence)

Key Issues

1. **The Staff determination is based upon the following grounds as documented in the March 8, 2005 decision:**
 - a. Milwaukie utility billing records show three historical units of sewer service.
 - b. Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.
 - c. Arguments provided in favor of a finding that four units should be allowed cannot be supported.
2. **The appellant has made the following arguments:**
 - a. An appeal of the July 9, 2003 decision was not filed due to poor health of the appellant's agent.³
 - b. Planning staff erred and provided incomplete information to the appellant as part of the City review of a partition application in 2001.⁴
 - c. The previous owner has stated that the building contained four units during his ownership.⁵
 - d. Information in support of 4-units as required under city code governing non-conforming uses includes the following:⁶
 1. *Building Permit History:* The building was constructed in 1936, no such records exist.
 2. *Zoning Regulations in effect at the time of construction:* Same as above.
 3. *Demonstration that the non-conforming condition existed prior to adoption of applicable code:* There have been 4 electric meters on

² Zoning Ordinance 19.1001.4 requires appeals to be filed within 14-days of the mailing date of the decision.

³ October 14, 2004 letter of Appellant. See Appellant Attachment E.

⁴ MLP-01-03. See letter of Ken Kent, Associate Planner, December 7, 2001, Appellant Attachment #2.

⁵ Documentation not provided.

⁶ Zoning Ordinance 19.809. See Appellant's submission, pages 1- 10.

the building since 1960. Photographs from 1976 demonstrate four units.

- f. *Proof the situation has been maintained over time including:*⁷
1. *Utility Bills:* City billing records are in error.
 2. *Income tax records:* Not applicable.
 3. *Business Licenses:* Not applicable.
 4. *Telephone and Business Listings:* None exist
 5. *Dated Advertisements:* The 1997 sales advertisement indicates 4-units.
 6. *Building, land use, development permits:* None found.

Analysis of Key Issues

The key question for the Commission is:

"Does sufficient evidence exist to support a finding that four dwelling units have been legally present and should therefore be allowed?"

The only matter in question is whether the property legally contains 4 units based on non-conforming rights. Staff believes there is not sufficient evidence and that there is doubt as to some of the appellant's arguments that weighs against finding in favor of the appeal. Staff's reasoning follows:

1. With 3 units, the property is nonconforming with regards to parking, covered parking, and lot area requirements per dwelling. Staff has deemed that 3 units are allowed based on City and County administrative records, which show the property containing 3 units as far back as 1976. The appellant argues that these records are inaccurate.
2. The appellant has not produced business or personal records from prior owners, or other sources that demonstrate city and county records are inaccurate.
3. The presence of 4 electric meters, by itself, is not sufficient evidence that the four units are legal; the circumstances of their installation may only be inferred. It is not unusual for a multifamily structure to have meters for individual units, and a meter for common utilities like outdoor lighting, heating and air conditioning, and the like. Alternatively, it is possible that the four meters were installed to serve four units. Mr. Hamersly has submitted letters from PGE that

⁷ Staff believes business records including tax information should be available. A Business License has historically been required for operating rental units.

indicate service was installed in 1964 and from David G. Allen of Industrial Commercial Electric, that in his opinion the meters date back to the 1960s. (See Appellant Attachment 28 and 32.)

Staff believes that this information, while suggestive, does not discount other compelling evidence, and does not dismiss other explanations as to when the meters were actually installed, and for what purpose.

4. Staff believes that the appellant has not conclusively demonstrated non-conforming rights to 4 units under Zoning Ordinance 19.1001 Director's Determinations and 19.809 Determination of Nonconforming Situations.
5. While not directly germane to the proofs that must be made to demonstrate non-conforming rights to 4 units, the following circumstances have been considered:
 - a. The number of dwelling units was not disclosed in the appellant's 2001 application for minor land partition. Had the partition been approved, the site would have been further reduced below minimum lot area requirements per dwelling.
 - b. The appellant and previous property owners' accepted utility billing and tax assessments based on 3 units for almost 30 years.

Code Authority & Decision-Making Process

Milwaukie Zoning Ordinance Title 19 Section:

809	Nonconforming Situations
1001.3	Directors Determinations
1011.3	Minor Quasi-Judicial Review

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

The Commission has the following options:

1. Deny the appeal and adopt the recommended findings and conclusion.
2. Approve the appeal and adopt findings in support of approval.

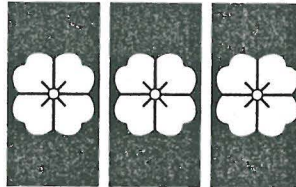
The final decision on this application, which includes appeals to the City Council, must be made by June 28, 2005, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance.

Recommended Findings and Conclusion in Support of Denial

1. A Director's Determination was issued on July 9, 2003 specifying that that premises located at 2540 SE Lark may contain no more than three dwelling units. A timely appeal against that decision was not made.
2. The appellant resubmitted a request for a Director's Determination that four dwelling units should be recognized for zoning purposes on February 28, 2005. A Director's Determination was issued on March 8, 2005, specifying that that premises located at 2540 SE Lark may contain no more than three dwelling units. The property owner subsequently appealed that decision.
3. The February 11, 2005 letter to the appellant and the March 8, 2005 Director's Determination is incorporated into these findings by reference and contains the appropriate reasoning for denial of the appeal including the following:
 - a. Milwaukie records indicate that three units of sewer service have been historically billed to the property.
 - b. Clackamas County Assessor records indicate the property has been taxed for three dwelling units since at least 1976.
4. The appeal is denied upon the applicant's failure to demonstrate legal non-conforming use status for more than three dwelling units in accordance with Zoning Ordinance Section 809

Attachments:

1. March 8, 2005 Director's Determination
2. Appellant's Documentation



March 8, 2005

Mr. Michael Hamersly
P.O. Box 82921
Portland, OR 97282

Re: Director's Determination for 2540 SE Lark Street

Dear Mr. Hamersly:

This letter is in response to your February 28, 2005 request for a Director's Determination wherein you ask that the City determine four dwelling units should be recognized for zoning purposes. Accordingly, I have considered the request and concluded that the structure may only be used for three dwelling units based on the following as previously documented to you:

- Milwaukie utility billing records indicate three units of sewer service.
- Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.
- Arguments provided in favor of a finding that four units should be allowed cannot be supported.

This determination may be appealed to the Planning Commission under provisions of Zoning Ordinance Section 1001.4. My letters of February 11, 2005, December 28, 2004, November 7, 2003, September 18, 2003, and July 9, 2003 on this matter are incorporated in this decision by reference.

Sincerely,

John Gessner
Planning Director

copy Mike Swanson, City Manager
Gary Firestone, City Attorney
Milwaukie Planning Commission



February 11, 2005

Mr. Michael Hamersly
P.O. Box 82921
Portland, OR 97282

Re: 2540 SE Lark Street

Dear Mr. Hamersly:

This is in response to your additional request for reconsideration of the July 9, 2003 decision finding that no more than three dwelling units are allowed under city zoning regulations. The City of Milwaukie entrusts the Planning Director with the responsibility to apply zoning regulations based on fair consideration of facts and circumstances and to make just and legal decisions accordingly. You have argued that my prior decision should be reversed for the following reasons:

- Your consultant Jim Griffith did not inform you of the July 9, 2003 decision and subsequently passed away following an illness.
- The City of Milwaukie and Clackamas County records have been historically incorrect with regards to the number of dwelling units.
- Historically, the building has had 4 electric meters indicating four dwelling units.

We rely upon our judgment and the credibility of information and circumstances at hand to guide our decision-making. Having revisited the case as often as has been requested, I am confident in our knowledge of relevant facts and circumstances. Accordingly I have again considered the following:

- City of Milwaukie utility billing records have historically assessed the property for three dwelling units.
- Since their 1976 site inspection, Clackamas County has assessed the property for three dwelling units.

Mr. Michael Hamersly
February 11, 2005
Page 3 of 3

- The failure to identify the number of dwelling units in your 2001 application for partitioning casts doubt upon present arguments. As you know that application could not be approved as it did not meet minimum lot area requirements per unit.

This letter confirms the July 9, 2003 decision. There is no further redress through city procedure.

Sincerely,



John Gessner
Planning Director

copy: Mike Swanson, City Manager
Gary Firestone, City Attorney
Tom Larsen Building Official
Lindsey Nesbitt, Associate Planner
Address File

Directors Determination Request

February 28, 2005

RECEIVED

FEB 28 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

February 23, 2005

John Gessner
City of Milwaukie Planning Director
6101 SE Johnson Creek Blvd
Milwaukie, Or 97206

Dear John,

Thank you for your recent response, the letter dated February 11, 2005, to some of my questions and new information raised at our meeting on January 2, 2005. Apparently at the meeting I did not communicate clearly to you that I would like a Second Directors Determination made, and that I do not want your earlier (July 9, 2003) decision reversed. Hopefully now that I have cleared up this mis-communication you will issue a Second Directors Determination.

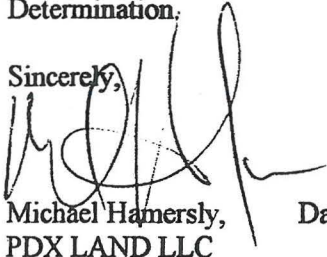
To make sure that we do not have another mis-communication I will go over our previous communications and discussions on this issue in a brief outline bellow (1-10), since you are familiar with this information. Then in more detail with attachments (A - F) that follow. Please contact me if any information is not clear and I will be more then happy to work with you, so we both have the same understanding of this request for a Second Directors Determination

1. As previously agreed and acknowledged that;
2. You, the Director, can make a Second Determination.
3. A previous appeal is not necessary to receive a Second Directors Determination.
4. There is substantial new information that warrants a Second Directors Determination.
5. The original July 9, 2003 was both procedurally and substantively proper. That it does not need to be reversed or appealed That the new information simply requires a Second Directors Determination
6. The City of Milwaukie has finite resources. That the fee for a Second Directors Determination should be made and additional staff needed in excess of the fee will be covered by me.
7. The City can find the staff time to issue a Second Directors Determination since the City just spent the time to issue a three page letter on February 11, 2005, (the original Determination was a one page letter.)
8. The only way I can proceed in the City of Milwaukie Planning is if I receive a Second Directors Determination. I would be unable to make an appeal without a Directors Determination.
9. I would want to appeal the fact my Four-Plex has been Determined to be a Three-Plex. That since I read the facts in this case to support a Four-Plex and you have not. That a third party will have a different view and this is what I have wanted and asked for since September 15, 2003 and have been given several different reasons why City would not preform its public service for me and make a 2nd. Determination.
10. To date all of the Cities previous reasons for not issuing a Second Directors Determination, (see above 1-7), have been met and resolved.

Therefore I am requesting that a Second Directors Determination be made on the 2540 SE Lark St., Milwaukie, OR. 97222, to decide if it has historically been used as a Four-Plex. I will include the fee with this letter. Please see the following attachments which make the case for four-units. Also contained in this letter are attachments that pertain to the February 11, 2005 letter. I believe the February 11, 2005 letter contained errors and have provided documents in support of this claim

Thank you again for your help and time in resolving this matter and I look forward to a Second Directors Determination.

Sincerely,


Michael Hamersly,
PDX LAND LLC

Dated:

2/28/05

ATTACHMENTS A-F

1. We have agreed that the City of Milwaukie planning director can make a second determination on this request under ORS 227.180 (1)(a) Review of action on permit application, and also under City of Milwaukie Code, Section 19.1001.4 D. (See attached A2.) "Decision to Issue. The director shall have the authority to consider the request for an interpretation."

2. I requested a second determination be made on October 12, 2004 and paid the fee. At that time it was denied by you in the form of a telephone message left on my voice mail November 2, 2004. The reason for declining this second request was due to the fact that Mr. Griffith, on my behalf, did not appeal the original determination. We discussed the fact that not filing an appeal does not automatically mean further directors request should be declined. That new information may come to light after the appeal deadline necessitating a second determination. Which is what has occurred in this case.

3. In November 2004 you decided that you did not want to answer questions or help with this matter any longer and recommended in a letter dated November 11, 2004 that I communicate directly to the City Attorney Gary Firestone. (See attached B.) I was surprised by this decision and after writing to you and Alice Rouyer the position was changed and you sent a letter on December 28, 2004. (See attached C.) Informing me "As previously communicated to you, materials submitted on October 14, 2004, do not contain substantial new evidence that would warrant reconsideration of the July 9, 2003 determination." Substantial new evidence is subjective so I needed more information as to what you considered substantial since I felt by providing an additional thirty pages of new information to the previous ten pages is substantial, especially considering that two floors of the building were missed in a 1976 tax appraisal and in the original July 9, 2003 determination and thus my desire for our meeting on 1/2/2005 to better understand how a person ever could meet your definition of substantial.

4. In our meeting on January 2, 2005 we discussed several possibilities to look at this new information that has been uncovered after the July 9, 2003 determination. Not once do I remember asking or arguing to have the July 9, 2003 decision reversed. (See attached D. Letter February 11, 2005 from John Gessner to me.) "You have argued that my prior decision should be reversed for the following reasons:". I have then and now maintained that your original July 9, 2003 ruling was both procedurally and substantively proper and have stated so on a number of prior occasions, (See attached E, letter sent to you from me on October 14, 2004.) In which I state "... I realize and appreciate that you have already made a determination which was both procedurally and substantively proper..." However with the new information discovered and provided to you I am hoping for a different outcome.

I have simply been asking for a second directors determination. (Not an appeal or reversal of the first determination) Please let them drop and we can focus on this request.

5. During the meeting on January 2, 2005 we discussed a second directors interpretation being issued, it was no longer now about not having substantial new information, we both agreed that there is substantial new information. That it was about money and the City not having enough resources to review the new information and make a determination.
6. After receiving the February 11, 2005 letter (See attached D.) it appears that the City can find the time and resources to review all the information in this request. The letter did in my view contain serious errors which I hope to correct in the attachments please see G-U2.

As you know without a directors determination I am unable to appeal this case, which is something I want to do. I believe that we have been looking at the trees so long we can not see the forest and I would appreciate a new set of eyes looking over all the information.

From all our discussion I can see no reason as to why you cannot take ten minutes and issue a second directors determination. The first one was a single paragraph with three sentences on one page as to why you came to your conclusion.(See attached F.) This last letter just discussing this issue was three pages. Again if the \$50.00 fee does not cover you taking ten minutes to simply write the one page, please let me know and I will pay the City the cost of writing the determination.

Thank you again for your help. I look forward to a second directors determination being made.

Chapter 19.1000

ADMINISTRATIVE PROVISIONS

Sections:

- 19.1001 Administration.**
- 19.1002 Time limit and appeal from ruling of planning commission.**
- 19.1003 Form of petitions, applications and appeals.**
- 19.1004 Repealed by Ord. 1907.**
- 19.1005 Concurrent reviews.**
- 19.1006 Filing fees.**
- 19.1007 Applicable standards and criteria.**
- 19.1008 Ex parte contact.**
- 19.1009 Decisions.**
- 19.1010 Repealed by Ord. 1907.**
- 19.1011 Procedures.**
- 19.1012 Recess of hearing.**
- 19.1013 Time limit on a permit for a conditional use or variance.**
- 19.1044 Permits, inspections and occupancy approvals required.**

19.1001 Administration.

19.1001.1 Authority. The planning director shall have the authority to apply, interpret, and enforce the provisions of this title. An appeal from a ruling by the planning director regarding a requirement of this title may be made to the planning commission under provisions of this section.

19.1001.2 Application and Fee Required. Applications and requests for actions authorized under this title shall be made in accordance with provisions of this chapter. Application and other applicable fees as established by resolution of the city council

shall be paid at the time the application or request is submitted.

19.1001.3 Consistency with Statute. Applications for action authorized under this title shall be processed in accordance with Oregon Revised Statutes Chapter 227.178.

19.1001.4 Planning Director's Interpretations.

A. Purpose. The planning director's interpretation process is established to resolve unclear or ambiguous terms, phrases, and provisions within Titles 14-Sign Ordinance, 17-Subdivision Ordinance, and 19-Zoning Ordinance. This process may be used independent of, or concurrent with, applications for a particular permit or land use application. All director's interpretations are subject to appeal in accordance with this section.

B. Requests. A request for an interpretation shall be made in writing to the director. The director may develop guidelines to govern the request process.

C. Independent Interpretations: The director may issue interpretations independent of a request by another party.

D. Decision to Issue. The director shall have the authority to consider the request for an interpretation. The director shall respond within fourteen (14) calendar days after the request is made, as to whether or not an interpretation will be issued.

E. Director may Decline. The director is authorized to issue or decline to issue a requested interpretation. The director's decision to issue or decline to issue an interpretation is final when such decision is mailed.

F. Written Interpretation Mailed. If the director decides to issue an interpretation as requested, it shall be issued in writing and shall be mailed to the person requesting the

6.2 Page 15



By Facsimile and Certified Mail

November 11, 2004

Mr. Michael Hamersly
PDX Land LLC
PO Box 82921
Portland, OR 97282

Dear Mr. Hamersly:

This letter is in response to yours of November 3, 2004, November 4, 2004, November 5, 2004, November 9, 2004, and November 10, 2004. This matter has been referred to City Attorney Gary Firestone, with whom you should communicate directly. Mr. Firestone may be contacted at 503-222-4402. All future inquiries received by the City will be directed to the Mr. Firestone for his response.

Sincerely,

John Gessner
Planning Director

copy: Gary Firestone, City Attorney
Mike Swanson, City Manager
Alice Rouyer, Community Development & Public Works Director
Tom Larsen, Building Official
2540 SE Lark Address File

COMMUNITY DEVELOPMENT DEPARTMENT
Engineering • Operations • Planning • Building • Fleet • Facilities
6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206
PHONE: (503) 786-7600 • FAX: (503) 774-8236

Mr. Michael Hamersly
December 28, 2004
Page 2 of 2

- If a decision under either Section 19.809 or Section 19.1000 is made denying the request, the applicant may appeal to the Planning Commission within specific time limits. As you know, the time period to appeal the July 9, 2003 determination has long expired.
 - Alternatively, there is no legal recourse if the Planning Director declines a request for interpretation under Section 19.1001 as authorized under Section 19.1001.4(E).
5. Your final question is what can you do to have new information considered by the City. The City considers the matter regarding the number of units closed as previously communicated to you.

However, you may submit any substantial new evidence that shows that the previous four units were legal. We will determine whether the additional information is sufficient to justify reconsideration. As previously communicated to you, materials submitted on October 14, 2004, do not contain substantial new evidence that would warrant reconsideration of the July 9, 2003 determination.²

I hope that this letter fully answers your questions. You may wish to speak to your attorney as to whether you have a claim against the seller of the property regarding the number of units or the condition of the building with regards to applicable building code at time of purchase. I can be reached at 503-786-7652 should you wish to discuss this matter.

Sincerely,



John Gessner
Planning Director

copy: Gary Firestone, City Attorney
Mike Swanson, City Manager
Alice Rouyer, Community Development & Public Works Director
Tom Larson, Building Official
Planning Staff
Address File

² You were previously informed of this decision and the application fee was returned.

6.2 Page 17



February 11, 2005

Mr. Michael Hamersly
P.O. Box 82921
Portland, OR 97282

Re: 2540 SE Lark Street

Dear Mr. Hamersly:

This is in response to your additional request for reconsideration of the July 9, 2003 decision finding that no more than three dwelling units are allowed under city zoning regulations. The City of Milwaukie entrusts the Planning Director with the responsibility to apply zoning regulations based on fair consideration of facts and circumstances and to make just and legal decisions accordingly. You have argued that my prior decision should be reversed for the following reasons:

- Your consultant Jim Griffith did not inform you of the July 9, 2003 decision and subsequently passed away following an illness.
- The City of Milwaukie and Clackamas County records have been historically incorrect with regards to the number of dwelling units.
- Historically, the building has had 4 electric meters indicating four dwelling units.

We rely upon our judgment and the credibility of information and circumstances at hand to guide our decision-making. Having revisited the case as often as has been requested, I am confident in our knowledge of relevant facts and circumstances. Accordingly I have again considered the following:

- City of Milwaukie utility billing records have historically assessed the property for three dwelling units.
- Since their 1976 site inspection, Clackamas County has assessed the property for three dwelling units.

Mr. Michael Hamersly
February 11, 2005
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- There is no record that your predecessor in ownership sought to correct the presumed errors with regard to county tax records and city utility charges for the difference between 3 and 4 dwelling units.
- There is no record of subsequent efforts to correct the presumed errors with regard to county tax assessment records for the difference between 3 and 4 dwelling units.¹
- There is no record of communication with the City to correct utility billing records prior to July 2003.
- I communicated with Mr. Griffith both verbally and by mail following the July 9, 2003 decision.

I find that the July 9, 2003 decision stands based on consideration of the circumstances above and as follows:

- I believe that Mr. Griffith was knowledgeable and diligent in representing your interests throughout the period in which I worked with him. In speaking with Mr. Griffith following the July 9, 2003 decision not once did he mention any circumstance of his personal life or health that that would have lead me to reconsider the decision, which I certainly would have out of basic human compassion. I am uncomfortable with your contention that Mr. Griffith did not communicate with you and failed his professional obligations to pursue an appeal due to his health conditions.
- Notwithstanding the above, whether or not Mr. Griffith informed you of the July 2003 decision does not change either the facts of the case nor the applicable law governing appeal rights.
- The City Attorney advised me throughout the review process and I have acted in accordance with that advice.
- The failure to correct tax and utility billing records casts doubt upon the contention that the building has always and properly contained four dwelling units.

¹ However, it is noted that you filed a tax appeal on 12/30/03 erroneously alleging that "City of Milwaukie declared it was not a legal multifamily unit and has denied its use as a living structure"

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Mr. Michael Hamersly
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- The failure to identify the number of dwelling units in your 2001 application for partitioning casts doubt upon present arguments. As you know that application could not be approved as it did not meet minimum lot area requirements per unit.

This letter confirms the July 9, 2003 decision. There is no further redress through city procedure.

Sincerely,



John Gessner
Planning Director

copy: Mike Swanson, City Manager
Gary Firestone, City Attorney
Tom Larsen Building Official
Lindsey Nesbitt, Associate Planner
Address File

PDX LAND LLC

October 14, 2004

Mr. John Gessner
Planning Director
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Request for a second Planning Director's Determination concerning 2540 SE Lark.

Dear Mr. Gessner,

I am writing in hopes of having another determination made on the property at 2540 SE Lark, Milwaukie. I realize and appreciate that you have already made a determination on this property, which was both procedurally and substantively proper. That it is within your power to decide if you will, or will not, make an additional determination. Please take a moment and consider some unfortunate circumstances that might allow you to make another determination.

Over the course of the time needed to reach a determination, the person whom I had hired to work with you, Mr. Jim Griffith, developed cancer and has since passed away from this terrible disease. During the course of his chemotherapy treatments (a four month time frame), he missed deadlines and did not completely research the records to uncover all of the pertinent information needed to provide you an accurate picture of this situation, which, of course, would allow the best determination possible. I was not aware of the seriousness of his personal tragedy until after the deadline had passed and I inquired why it was missed.

Mr. Griffith did ask the City for another decision with out explaining the entire reason (his cancer), for missing the first deadline. I can only speculate to why he did not include this most pertinent information. Perhaps he thought re-determinations were assured if asked for, this was a mistake on his part, he should have fully explained the circumstances.

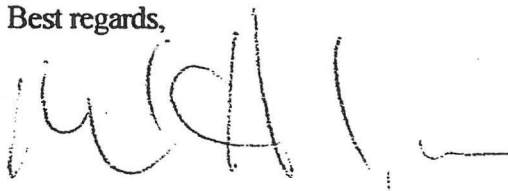
I believe this request to be valid and understandable due to the following circumstances. That the person who was working on this matter became terminately ill with cancer, thereby not uncovering all the pertinent facts which are now included, then became sick following an

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operation, and missed a deadline. Please use your rightful power of office, under Milwaukie's City Code Section 19.1001.5 D; which states "Reactivation of rejected applications may only be made by resubmission of a complete application and fee." I have enclosed the request for another determination, which contains new information, along with previous known facts in this case and the fee. I am hoping that this section of Code was written to help cover these types of unforeseen circumstances and would allow the City to help my family and me by making another determination.

Thank you for your understanding and consideration in this matter.

Best regards,

A handwritten signature in dark ink, appearing to read 'Michael Hamersly', followed by a horizontal line.

10/14/04

Michael Hamersly, Member,
PDX Land LLC.



July 9, 2003

Mr. Jim Griffith
11825 SW Greenburg Road, Suite A3
Tigard, OR 97223-6460

Re: 2540 SE Lark Street

Dear Mr. Griffith:

This letter is in response to your inquiry as to the number of authorized dwelling units at 2540 Lark Street. I have reviewed your February 25, 2003 letter and supporting information wherein you state that four units should be recognized for zoning purposes.

After consideration of your information and city and county records, I have concluded that the structure may only be used for three dwelling units based on the following:

- Milwaukie utility billing records indicate three units of sewer service.
- Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.

This determination may be appealed to the Planning Commission under provisions of Milwaukie Zoning Ordinance Section 1001.4. Please do not hesitate to contact me at 503-786-7652 should you have any questions.

Sincerely,



John Gessner
Planning Director

copy Tom Larsen, Building Official
Paul Shirey, Engineering Director
Alice Rouyer, Community Development & Public Works Director
Planning Commission

REQUEST

**For a Second Planning Director Determination for the Structure on
2540 S.E. Lark Street, Milwaukie, Oregon 97222****REQUEST**

This is a request for a Second Directors Determination be made to allow the continued use of the building located at 2540 SE Lark, Milwaukie, Oregon 97222 as a Four-Dwelling unit as allowed under ORS 227.180(1)(a) Review of action, and in addition too the City Of Milwaukie Code, Section 19.1001.4 D. (See attached 1) which states "Decision to Issue. The director shall have the authority to consider the request for an interpretation. ..."

DISCUSSION

The City of Milwaukie made a decision in November 2001 that concluded the structure located at 2540 SE Lark, Milwaukie, Oregon 97222 was a single-family dwelling that was illegally converted to a Four-Plex. The City of Milwaukie Staff, then on July 9, 2003 made a directors determination that the 2540 Lark structure was a Three-Plex and has been for at least the last thirty five years. We would like a discussion on the original position and how the first decision was incorrect by Two dwelling units and the Thirty-Five year history of the building. Since the City now considers the structure as only a Three-Plex we would like to be informed and discuss which specific unit of the Four-Units and which specific electrical meter of the four meters the City believes was added in the last thirty five years and the information and evidence that led to this conclusion.

Finally we would like a discussion on the information provided to the City in the following ten pages and attachments.

All the information and evidence that I have seen and disclosed in this disscussion has lead me to draw the conclusion that the structure at 2540 SE Lark is a historical Four-Plex that can be shown to have had four dwelling units since the late 1960's.

1. It appears from the letters sent from Mr. Kent with the City of Milwaukie made mistakes in his original evaluation of this structure. Please see his letter dated December 7, 2001 (attached 2) where he states "... The City does not have record of approval to convert this residence into four dwelling units..., it will be necessary to convert the existing building back to a single-family residence... A four-plex in not permitted in the R-5 zone." (R-5 zone see attached 3). It appears Mr. Kent did not even bother to check the Cities utility billing or County assessors records before he wrote the letter and had the building evacuated and closed. How could he not know of Milwaukies chapter 19.800, section 19.801 which specifically states "..., a nonconforming structure maybe continued and maintained in reasonable repair,..." and 19.802 "A nonconforming use maybe continued, but shall not be altered..."(see attachment 4).
2. Mr. Kent's letter does not mention Milwaukies own codes section 19.901 and 19.802 and of legal pre-existing non-conforming uses. One would expect accurate information from the City. I am disappointed that I did not receive accurate information in this letter, and believe this is the largest factor in this Three year fiasco.
3. From the time I received the letter dated December 7, 2001 from Mr. Kent it only took the City of Milwaukie Seven (7) Days to, evict all the tenants, close my building, not even allowing me legal entrance into my own building. I was not

aware of Senate Bill 73 at this time, but I believe Mr. Kent should have known, or at the very least known about Milwaukie's Chapter 19.800. I do not know the why or how he was allowed to ignore these laws, but he did. Leaving us years later still trying to correct his error.

4. I have continued working with the City since December 2001. I received a Certificate of Occupancy Dated 3/1/04 (attached 5). There was one (1) week of physical work to be preformed on the building, specifically plumbing, fire, and electrical work, which the City required me to have completed before the building could be re-occupy. The majority of time, the last two and half years, one hundred thirty (130) plus weeks has been spent trying to prove that I did not buy a single-family home and convert it into a four-plex. We were partially successful with the ruling letter July 9, 2003, (attached 6) That the City found that after consideration of information provided by Mr. Griffith along with City and County records that I did not, in fact, buy a single family home and illegally convert it to a four-plex. I also hope to put to rest the notion that I recently bought a three unit building; then added a unit and an electric meter to make an illegal fourth unit. I hope the following puts to rest any question of my actions and that in deed and fact I bought a four-plex June 1997.
5. I was working with the City prior to December 2001 to split off a lot on this property and had City planners come on to the property, which they would have seen a multifamily dwelling. Who would invite the City on to their property if they illegally converted a single-family home to a four-plex? It does not make sense. Which is another indication that I bought and operated a four-plex legally. I do not know why Mr. Kent and the City ignored this fact too when the December 7, 2001 letter was written.
6. The previous owner Rick Brewer and current owner, me, have both stated that we owned this building in the nineties, myself till present, and the building has been a four-plex during our separate ownership. That Mr. Brewer has stated to Steve Campbell who works at the City and to me, that when he bought the four-plex in the early nineties it was an existing four-plex. I have stated and gone through great expense to show that I bought this building as a four-plex.
7. On a number of occasions the City said if I would say it is a three-plex, I could re-occupy the building and the attorney for the City threatened that if I take this issue to the courts he will have me cited for violations at the building, even though I would not be allowed to correct the violations and charged for six a day. July 30, 2002 letter from Larry Blake, (See attached 7), Letter, August 9, 2002 from Mr. Blake, "does not in any way give permission to your client to either work on the property or have tenants ..." (See attachment 8). So I hired Mr. Griffith in response to this threat of fines to avoid them and litigation cost while my building remained vacant. Then the City tried to pressure me in to agreeing that there are only three units by not letting me work on the building or rent it out until the question of three or four units was settled. Mr. Griffith January 16, 2003 letter "I had a meeting Wednesday afternoon with Ken Kent, Planning, City of Milwaukie, as a follow up to our conversation. He again noted that we could proceed with three units at this time with a "Grandfather" allowance... I asked about the potential of completing the three while we were questioning number four. His comment was that they would not proceed until the forth unit issue was resolved..." (See attachment 9 & 10) This was extremely difficult to refuse. At this time my building hade been sitting vacant for more then a year, I have not been allowed on my property to work on it, I could not rent it, I was losing more then \$4,000.00 every month. I did not know if I would get one or four units unless I took the deal that guaranteed three now. I had no idea when this would end and how much more it would cost; yet still I refused to agree to something that was false. This has cost me more then \$128,330.00 (Yes! One hundred twenty eight thousand three hundred thirty dollars) to have my building sit empty, not collect \$2,035 in rent each month,

then have to pay my mortgage, property tax and insurance at 1,976.00 out of my pocket each month for two and a half years 30 months, on top of this attorney's fees \$2,800.00 and Mr. Griffith's charges \$4,200.00 (does not include my time and the money I was forced to spend on the building for plumbing and repairs that were not needed under current code for a pre-exist non-conforming building) and the personal cost to me of having to sell personal belongings, investments I wanted to keep, and then borrowing from family and friends whom I still owe tens of thousands of dollars to.

8. The forth units value to the building is approximately \$55,000.00, (fifty-five thousand dollars) it does not make financial sense to fight for a forth unit, (the fight has cost more then \$128,000.00 the unit is only worth \$55,000.00, so a loss of \$73,000.00 even if I get the forth unit) but what make sense though is if you have been wronged, you would fight even at significant cost to yourself in the hope of receiving justice.
- Milwaukie's code 19.809 (see attached 11 & 12) request information to help in the determination of nonconforming situations. The following will try to meet the criteria set out in 19.809.1 A., (see attached 12) "Proof that the nonconforming situation was permitted under applicable regulations at the time it was established, including:
 - a) "Copies of building and/or land use permits issued..." The building was built in 1936 and there are no records of plans located at the City or County.
 - b) "Copies of zoning code provisions..." This building was constructed prior to the current zoning laws and the codes have been established to govern these situations, specifically Oregon Senate Bill 73 and Milwaukie's Codes, Chapter 19.800(att. 4)
 - c) "Demonstration that the situation was established before the applicable development code for the community was adopted; and"(attachment 12), this submission in its entirety applies to this request and works to identify this buildings history. Which we have found to be that this building has been a historical (since the 1960's) four-plex. The brief answer is there are four-units at this building with no evidence of recent construction to add a unit. There has been four electrical meters at this building since the 1960's. The other information available, Assessors records, City utility bills, Polk directories either have errors or do not exist to use. Thereby focusing our attention to physical facts, that exists now and in the records. The pictures from 1976, the construction and configuration of the building and the four electrical meters on the building, demonstrate this situation of four living units was established before 1973.
 - B. "Proof that the situation has been legally maintained over time. Evidence that the non-conforming situation has been maintained over time including:" (see attachment 12 for the following a-f,)
 - a) "Utility bills;" Discussed and shown to be in error in original determination of only three units a detailed discussion below.
 - b) Income tax records; not applicable.
 - c) Business licenses; not applicable
 - d) Listings in telephone, business and Polk directories; do not exist for this building as discussed below. (Please see below.)
 - e) Advertisements in dated publications, e.g., trade magazines; and/or, I still have a copy of the original add selling the four-plex June 1997, (see attachment 13). The add states "4-plex for sale, nice, safe, neighborhood, Milwaukie, between River road & Lark. Long term tenants, \$139,000, Possible trade or owner carry. Call..." Printed in the Real Estate classified section of the Oregonian June 1997. This is the add I responded to June 1997 and my notes from my conversation with Mr. Brewer

at that time. (I hope this finally shows that I bought a four-plex and have not added any units.)

- f) Building, land use or development permits. None found and we believe none exist.

DIRECTORIES RESEARCH

9. Research was conducted at the Multnomah County Central Library (see attached 14), to find telephone numbers that serviced the renters in the four-plex from the seventies and eighties. There are not Polk directories that covered Milwaukie at this time. (See attached 14) "I first worked for the library in the late 1970's and at that time there was no city directory coverage for Milwaukie. We only started to have reverse directory coverage when we began subscribing to Cole's directories in the late 1980's, Grace Awering, Humanities" The 1990s till present are Mr. Brewers and my rental records. Thus giving greater weight to the construction, pictures from the 1976 appraisal and the four electric meters from the 1960's.

CONSTRUCTION RESEARCH

10. Mr. Griffith uncovered the fact that this building was constructed in 1936. Prior to the adoption of building codes, this may explain why there are not any building plans or records at the City of Milwaukie or the County.
11. The State of Oregon adopted the State wide building code with Senate Bill 73 in 1973. Therefore this structure should be considered a pre-existing structure that is now non-conforming.
12. The inspector is correct by noting issues that would not be allowed with today's construction, however, as the City pointed out this structure was constructed in 1936 with market fed standards, and no permits or codes to follow. This is typical in pre-existing non-conforming uses, and this is why the State Building Codes Division has noted that structures that were constructed prior to regulations can continue as long as they are maintained in a safe, sound, and sanitary manner.
13. The fireplace (see picture attachment 15 and 16) is an example of the buildings continued use without additions. The entrances are individual and from all appearances of the construction and age of the building to date back at least until the 1970's when the tax assessor's photo was taken (see attachment 15, 17, and B1-18). The City still has not shared with us which of the four units it believes was added after the 1970's and where it was supposedly added. We would appreciate a chance to comment on the Cities opinion of where the forth unit was constructed, where and how it came to have an electric meter, we anticipate receiving the Cities opinion. Especially since we have not been able to find any evidence that would lead us to consider the building had been added on to since the 1970's and thus cannot envision where the supposed "fourth" unit was supposedly added.
14. The existing structure provided four affordable dwelling units, as they have for some time. It's interesting to consider that if the site were divided into two lots, the existing structure could be removed and four dwelling units constructed. Two primary dwelling units could be constructed and each with a "granny flat" or accessory dwelling unit. It is recognized that all four could not be rental units, I only mention this as a density concept, not that it is being considered." (See attachment 21).
15. From a livability issue for Milwaukie and having a four-plex in this residential zone it is interesting to note that this building if not the oldest on its street, is definitely one of the oldest. Created thirty-six years before the Senate bill 73 requiring state wide zoning and sixty-seven years before these current regulations that it still meets density standards for the R-5 zone, due to the large lot on which it is located.
16. Homeowners in this neighborhood would have been aware that it was a multifamily unit prior to buying their homes, so apparently they were accepting of the situation in their neighborhood.

INFORMATION REQUEST

17. We requested, in the last determination, for a copy of the plumbing inspection report and the structural inspection report and are still awaiting this information from the City. We would also like the mechanical inspection report. These three missing reports were mentioned as attachments in the original order (see attached 20) we would appreciate this information so are files will be complete and that we do not proceed without all the information. We are attempting to be as through as possible. We would be most appreciative to receive copies of these missing documents along with the City's opinion of where the fourth unit and electrical meter were added. (Please send them to me along with any other information to P.O. Box 82921, Portland, OR. 97282).

ASSESSOR RECORDS RESEARCH

18. Clackamas County Assessor records show that this structure was taxed as three-units, a one-story building with a basement this information was created back in 1976. (Please see attachment 17) Also shown are the three units, A, B, and C. All on the same level. (Please see attachment 15 and 19). The original assessor made mistakes in the description and size of this building.
- a. This structure is not now, nor has it been in since at least 1970 a single level with a basement. It is a three-story building without a basement. (Please see attachment B1-18 and 16; 16 is a recent photo to clearly show the front of the building.) Perhaps the assessor considered the laundry room (see attachment 19, the drawing, middle section B) is below the outside grade by two steps, fourteen inches. One could call this a "basement" as the assessor did (see attachment 17, "remarks.") but it is a stretch to do. It is more typical what is known as a sunken living room. If we do call this area of the building a "basement" Then the building becomes a Four Story building, making the assessors statement even more inaccurate.
 - b. The assessor states that there is 1,419 square feet of living space, (see attachment 19). This is inaccurate since the total is greater. The total living square footage off this building is approximately 3,078 square feet. (Main level, 1,419 + second level, 1,419 + third level, 240 for a total of 3,078 +/- square feet.) The square footage described in the 1976 assessors report completely missed the second and third floor of this building. These missed floors contain approximately 1,659 square feet of living area. Where we believe the fourth unit would have been at this time, 1976.
 - c. One can see in the picture from 1976 (see attachment 16 and B1-18) that this is the same building contained in that picture and still exists virtually unchanged. You can see at least two entries one in front, on the main floor and the second going up the stairs to the second level (see attachment 16, and B1-18.).
 - d. The third story is shown by the window just under the peak of the roof on the front of the building (attachment 15 and 16).
 - e. We do not know why or how these mistakes, missing two floors of the building and 1,659 square feet of living space, were made. What Mr. Griffith purposed was the owner at the time, 1976, lived in the building on the second and third floors, (the third floor is one bedroom accessed only through the second floor unit.) This would give a person the buildings largest, best unit, about 1,100 square feet of living space, three bedrooms, one bathroom with a tub, a fireplace and hardwood floors. The owner simply told the assessor that he only has three rental units in this building. And the mistake in labeling a three unit building when it was three rental units with a large owner unit on the second and third floor, thus a pre-existing four unit building.

- f. If one looks at the design and condition of the entire building it is apparent that it was built prior to 1973, there is not any indication of recent additions and the current configuration and footprint date back at least to the 1960's if not earlier.

UTILITY & SEWER RESEARCH

19. According to Paul W. in the City of Milwaukie Engineering Department this site was connected to the City sewer system in November 1974. He further noted that the City required a 6-inch connecting sewer line, which would have only been required with multiple dwelling units. (Single family-units only required a 4-inch sewer line). The records from the sewer connection did not identify the number of units.
20. On April 20th. 2004 I spoke with Carla Atwood with the City (attached 22) and asked about the utility billing system and how the initial number of units was determined. She said that I would need to come to the City and do a records request. She asked why I wanted them and I explained the difficulty in determining why it was being billed as a three-plex when it is a four-plex. She said the utility bill is determined when the structure was built, using the initial plans.
21. I found out, April 27th. 2004, when I again spoke with Carla Atwood in addition to Pat and Mr. Becker (attached 23). Since no building plan had been submitted to the City back in the 1930's and there is not a building plan on record at the City, Carla, and Pat believe the utility bill for the building on Lark was based on the flawed 1976 Appraisers records from the County which incorrectly identified this building as a three unit building instead of the correct four unit building it was and is. The billing department simply relied on the County records to base its utility bill.
22. The City of Milwaukie sewer records only go back to the 1980's and are in error to the number of units in use at this building at that time. The City only billed for three units when four units were in use. Mr. Becker for the City of Milwaukie, concerning billing information on the City's sewer, that were entered on computer via punch cards; stated that "back in the 1970's punch cards were used and the information is not readable now." Also that the City went to a new computer system and does not have the machines to read the old information. That from the inception of the new system in the 1980's. Confirmed at the meeting that there are not any records available from the City's utility billing department from the 1970's.
23. I received a copy of Single Account Notes Report (attached 24) that the billing department had at one time known that this building was a four-plex. That research done for atwoodc 12/04/2003 states, "Per review from Paul Roeger, property was used as a 4-plex w/ violations. Now, it's a 3-plex and 3 units of sewer and 1 unit of storm is correct. CA".
24. Also of note the City's utility bill sent to me (attached 25 & 26) makes no mention of how many units are counted for billing so none of the previous owners would have known that they were being billed for three units instead of the correct four. (It seems I owe the City back sewer assessment for the forth unit. I hope the City will waive this debt seeing that I could not of know the billing error since the City's bill does not say how many units are being counted on the sewer bill, and the fact that the City has caused me enormous difficulty by labeling this building a single-family unit and closing it.)
25. Jim Griffith spoke with the City of Milwaukie's staff in October 2003 (attached 27) and was told that building utilities have been billed for three units since the inception of the computer system back in the 1980's. The woman to whom he spoke, (Carla was on vacation) noted, "that if there were four units, they need to add the unit to the billing." Jim said "I told her not now!" This indicates the ease to which one can add billing units to the utility bill.
26. I believe this shows that the utility bill is a poor indicator of how many units a building would or would not have shown historically. It appears from Mr. Griffith's conversation a person

can change the utility bill with a phone call. The utility bill was incorrect and billed for three units instead of the correct four for years without correction from the City.

ELECTRICAL RESEARCH

27. PGE notes in the letter dated April 11, 2002 (see attachment 28) "Portland General Electric's records show that service was installed at 2540 SE Lark St 1 in April of 1964... It would be logical to think that if the meter was installed in 1964 in one unit that other units would coincide. However, the meters have been pulled from these addresses. We do show that we did at one time have active service at 2540 SE Lark St 1,2,3,4 and a utility room. However, we are unable to access any records at this time for all accounts other than the address listed above..."
28. One inspector noted that the electrical meters were installed in a manner that would not be allowed today (see pictures attached 29). This is in agreement with are premise that the meters were installed in the 1960's. That current standards and Electric Code would not allow installation of those tandem housing units. Although it would have been typical for an installation in the 1960's.
29. A letter dated 12/18/2002 from Industrial Commercial Electric (see attached 30) Seeking work the electrician notes that the meter housing is so old as to allow theft of electricity. "As work progressed... The duplex meter base assembly's – date back to the sixties, and have bypass jumpers which allow current to flow around a meter to any of the four panels when set, even with the meters pulled. This situation has the potential to cause problems with service work and problems with less than honest renters who may be brazen enough to purposely bypass their meter..."
30. This again indicates that the meters are of the 1960;s vintage, they are in a tandem housing that was appropriate then but inappropriate after the 1960's. It also is in agreement with the premise that all four meters were installed in the 1960's.
31. The City closed the building December 2001, evicted all the tenants then contacted PGE to come and remove the meters from the building even though power can be and was turned off at PGE's pole (see attached 28). Therefore we cannot get the serial numbers from the electrical meters to find out there exact dates of installation. We now must rely upon the above mentioned information and letters from PGE, that it would not install meters without permits from the 1970's moving forward and the letter (attached 31) from Industrial Commercial Electric which identifies the meters housing being circa 1960's (attached 32).
32. PGE stated in a letter dated 8/19/2004 (attached 31) "Since Cities and Counties in the State of Oregon require inspections prior to connection of electricity, PGE abides by these laws – and has for well over 50 years. PGE never has, nor will it now, connect electricity at any location without the property owner first obtaining proper electrical inspections."
33. Therefore one could not add an additional unit and electric meter after the 1970's without getting a permits from the City, because PGE would not install the electrical meter unless those proper permits were issued. There are no permits on record with the City for any additions or added meters; therefore we can safely conclude PGE did not add a meter after the 1970's and the four electrical meters that are on the building today were added before the 1970's making them pre-existing to current (after 1973) codes.
34. Industrial Commercial Electric states in its letter dated 8/25/2004 (attached 32). It finds that the electrical meters on the building at 2540 SE Lark, Milwaukie (please see pictures attached 29). That "There are four meters located in the two tandem meter bases. This specific style of tandem meters, which come as single unit and houses two meters each date back to the sixties. There are two of the tandem meter bases on this building. As you can see they are identical tandem housings, and there is every indication that these were installed at the same time. We can be assured to this because in the early 1970's the tandem meter housings were manufactured larger, per code change. ...". Please note that tandem meter housing shows us

that these electric meters were added two at a time, so only an even number of electric meters have been on this building since the 1960's. The physical evidence indicates the two tandem housing and four meters were installed at the same time in the 1960's.

35. This letter goes on to say; "In conclusion, it is my professional opinion as a licensed and bonded electrician with 26 years of experience, and after checking the records at PGE, the City of Milwaukie, and Clackamas County. That the four meters contained in two tandem meter bases at 2540 SE Lark, Milwaukie, Oregon 97222 date back to the sixties."
36. Again the evidence points to there being four electrical meters in the late 1960's. Most noteworthy was the mention of two tandem housing units, that contain four electrical meters (see attachment 29). There has not been a three electric meter configuration due to the fact if there had been three in the 1960's the building would have to have had one tandem housing unit with two meters and one single housing unit with one meter for a total of three meters. Therefore currently the building would have one tandem housing unit with two electrical meters and two single housing units with one electrical meter in each for a total of four. It did not then nor does it now have a three-meter configuration or a four-meter configuration that contains two single housing units. It has now and has had four-meters, contained in two tandem housing that go back to the 1960's. I believe this gives the clearest indication that this building has historically had four living units, thus making this a four-plex that is pre-existing to Senate Bill 73, and is now governed by the City's code, section 19.801 and 19.802 (attachment 4). Therefore making this building a legal non-conforming four-plex.

SUMMARY

- I spoke with the City's Mr. Kent, and he appears to have made errors too. After reviewing the correspondence Mr. Kent stated in a letter dated December 7, 2001 that "... A four-plex is not permitted in the R-5 Zone. ..." I have since learned that this is not correct and that a person can have a four-plex in Milwaukie's R-5, single-family zone as long as the units were built legally prior to the zoning laws covered in Senate Bill 73 and the City's code, Chapter 19.800. I believe this error on Mr. Kent's part started this process within the City and left it for me to prove that I did not by a single-family house in 1997 and then convert it to a four-plex. I do not believe this process would have occurred if Mr. Kent would have been aware of Senate Bill 73 or the City's own code's, specifically section 19.801 and 19.802. If he was aware of these codes, why did he ignore them?
- The records, sewer bill and County assessor records, used in the July 9th. letter must have always carried very little weight since they have been readily available to the City, and Mr. Kent since the first determination in November 2001, which stated this building was a single-family unit recently converted to a four-plex. These two pieces of information seem to have been virtually ignored by Mr. Kent. I have seen no mention of them in any 2001 reports by him or the City when the decision was made that this was a single-family home that I converted to a four-plex and needed to be closed. I was surprised to see so much weight given to them in the July 9, 2003 determination to use as best evidence that there has historically only been three-units not one or four. The City has had this same information this entire time. The City used the information when it decided that this building was a single-family unit I illegally converted to a four-plex. Now it used the same information sewer bills and assessor information to come up with three units instead of the four units, which I have always maintained, at great cost to family and myself. So I conclude that the City does not highly value the sewer billing and assessor's information since it concluded using it that this was a single-family unit from the information.

- Information from the Clackamas County Appraisal Data is deemed in error due to the fact the person in 1976 who said it was a three plex, described the structure as "2 units on main floor + one in basement." This statement is in error. The building is, in fact, a three-story structure without a basement (see attachment 16 which is a recent picture, 10/04, that clearly shows the third level window which can be seen in the 1976 photo but the view of this window is partially blocked by a branch). The appraiser in 1976 did not describe the second or third floors of this building. He states that this is a three unit building with a total of 1,419 square feet. This building has approximately 3,078 square feet, and has been the same building since at least 1976 as seen in the picture. The appraiser missed approximately 1,659 square feet of living space in this building. The largest and nicest unit is on the second and third floor. It has approximately 1,120 square feet of living space, three bedrooms, one bath with a tub, hardwood floors, a fireplace, and is two stories. This is the missing fourth unit. It has existed since the building was constructed back in the 1930's and is not a recent addition, per photo from 1976. It is apparent that the appraiser made several mistakes back in 1976 incorrectly labeling this building as a three-plex has caused confusion as to the number of units for utility billing to date and they have just carried forward until now when we can correctly re-describe the building as a three level four-plex and submit this accurate description to the County's Appraisers Office and City's utility billing department.
- Used in the July 9, determination was the Clackamas County Appraisal information that is in error, missing the second and third floors and 1,659 square feet of living space. "Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units." (See attachment 6) Therefore the assessor's tax records are not the best evidence and again I believe these records should be giving little weight in determining the number of historical units.
- Carla Atwood and Pat who work at the City informed me that the utility billing for buildings is set up when the building plans are submitted to the City and that they did not know how the City would determine the billing without building plans. The City does not have building plans for this building. After speaking with these different City employee's we concluded that the utility bill at Lark was set up back in the 1970's after the new sewer went in and that the City not having building plans for this building used the flawed Appraisal records that incorrectly identify the building as a three-plex and therefore billed the owners incorrectly for three units instead of the correct four unit building that it is and has been.
- It appears the determination on July 9, placed too much good faith into the City's sewer billing records. "Milwaukie billing records indicate three units of sewer service." (Attached 6) Which in light of the new information provided, the City not being given, nor having a building plan for this building, therefore forced to rely upon Clackamas County Assessor records, which are in error, to base the sewer service at three, when in fact they were giving service to four. This makes City's billing records inaccurate and I believe of lessor value in deterring the historical dwelling density and that little weight should be afforded them in this determination.
- "We feel that the information that we have provided is proof that the structure was in place as a four unit apartment structure, at least back until 1964 when electrical service was installed... As zoning was not adopted until after this date, and the construction codes not adopted until 1973, this makes this a classic pre-existing non-conforming structure, with four units." (See attached 33, Mr. Griffith's original letter for determination.)

- I believe the best evidence available is the physical age of the four electrical meters, construction and condition of this building. These all indicate that this building has not significantly changed nor has had any additions made to it since at least 1973. The Clackamas County Assessor's picture from 1976 shows the same building, with three levels. The four electric meters, contained two at a time in duplex housing, that the a licensed and bonded electrician identify as 1960's era that are on this building to this day. That PGE would not have installed a meter after 1973 with out the buildings owner getting a permit for a new meter from the City. Since there no permits on file at the City or County this leads to the conclusion that the four meters were installed prior to 1973. I believe this evidence should be given the most weight in determining how many units have been historically at this building and how many should be recognized by the City of Milwaukie now. I hope this new information helps to clarify the number of units that could be recognized by the City.

PLEA

This has been a long and difficult process and I hope it is now clear that I did not buy a single-family home and convert it to a four-plex. Nor did I buy a three-plex and add to the building, then install a new meter to create a forth unit. I bought this building as a four-plex, as did the owner before me. I hope this discussion has shown that this building has been a four-plex since at least the late 1960's. That in fact it has historically (prior to the 1970's) been four living units at 2540 SE Lark, Milwaukie, Oregon 97222. I would urge you to agree with this conclusion and recognize this building as a nonconforming, pre-existing use four-plex as allowed by Milwaukie's Code, Chapter 19.800.

Thank you for your time and consideration in this matter. If there any questions or information I can provide for you, please do not hesitate to contact me. I am looking forward to a positive conclusion of this matter.

Respectfully submitted,



Michael Hamersly, Member
PDX Land LLC.

ATTACHMENTS 1-33

19.1001

Chapter 19.1000

ADMINISTRATIVE PROVISIONS

Sections:

- 19.1001 Administration.
- 19.1002 Time limit and appeal from ruling of planning commission.
- 19.1003 Form of petitions, applications and appeals.
- 19.1004 Repealed by Ord. 1907.
- 19.1005 Concurrent reviews.
- 19.1006 Filing fees.
- 19.1007 Applicable standards and criteria.
- 19.1008 Ex parte contact.
- 19.1009 Decisions.
- 19.1010 Repealed by Ord. 1907.
- 19.1011 Procedures.
- 19.1012 Recess of hearing.
- 19.1013 Time limit on a permit for a conditional use or variance.
- 19.1044 Permits, inspections and occupancy approvals required.

19.1001 Administration.

19.1001.1 Authority. The planning director shall have the authority to apply, interpret, and enforce the provisions of this title. An appeal from a ruling by the planning director regarding a requirement of this title may be made to the planning commission under provisions of this section.

19.1001.2 Application and Fee Required. Applications and requests for actions authorized under this title shall be made in accordance with provisions of this chapter. Application and other applicable fees as established by resolution of the city council

shall be paid at the time the application or request is submitted.

19.1001.3 Consistency with Statute. Applications for action authorized under this title shall be processed in accordance with Oregon Revised Statutes Chapter 227.178.

19.1001.4 Planning Director's Interpretations.

A. Purpose. The planning director's interpretation process is established to resolve unclear or ambiguous terms, phrases, and provisions within Titles 14-Sign Ordinance, 17-Subdivision Ordinance, and 19-Zoning Ordinance. This process may be used independent of, or concurrent with, applications for a particular permit or land use application. All director's interpretations are subject to appeal in accordance with this section.

B. Requests. A request for an interpretation shall be made in writing to the director. The director may develop guidelines to govern the request process.

C. Independent Interpretations: The director may issue interpretations independent of a request by another party.

D. Decision to Issue. The director shall have the authority to consider the request for an interpretation. The director shall respond within fourteen (14) calendar days after the request is made, as to whether or not an interpretation will be issued.

E. Director may Decline. The director is authorized to issue or decline to issue a requested interpretation. The director's decision to issue or decline to issue an interpretation is final when such decision is mailed.

F. Written Interpretation Mailed. If the director decides to issue an interpretation as requested, it shall be issued in writing and shall be mailed to the person requesting the



Michael Hamersly
3111 SE Concord
Milwaukie, OR 97267

December 7, 2001

Re: Application # MLP-01-03 - 2540 Lark Street - Tax Lots 21E1BB 2401 and 2403

Dear Mr. Hamersly:

It has come to the attention of the City that the existing residence at 2540 Lark Street has been converted into four dwelling units. You may have received notice of this from the City's Code Enforcement Division. This issue was not identified in the material you provided for application MLP-01-03. The City does not have record of approval to convert this residence into four dwelling units. The existing zoning for the property does not allow this number of dwelling units. In order to proceed with your minor land partition, this issue will need to be addressed. Based on the area of the new lots, once you record the final plat, one single-family residence would be the maximum permitted on each lot.

If you wish to proceed with recording the final plan for MLP-01-03, it will be necessary to convert the existing building back to a single-family residence. It will be necessary to submit a building permit to correct existing code violations and remove all but one kitchen facility.

If you decide not to proceed with the minor land partition, you will still need to correct the number of dwelling units on the property. A four-plex is not permitted in the R-5 Zone. In addition, each dwelling unit is required to have a minimum of 5,000 square feet of lot area. Based on the size of existing Tax Lot 2403, one single-family residence would be the maximum permitted. However, if both tax lots 2401 and 2403 were combined, you could have enough lot area for a duplex, provided you received approval of all necessary building permits and eliminated the additional dwelling units. If you decide to go this route, it could be accomplished by consolidating the two tax lots.

Please contact me so we can discuss how you plan to proceed. If you need any additional information, please feel free to call me at (503) 786-7653.

Sincerely,


Kenneth Kent
Associate Planner

COMMUNITY DEVELOPMENT DEPARTMENT
Engineering • Operations • Planning • Building • Fleet • Facilities
6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206
PHONE: (503) 786-7600 • FAX: (503) 774-8236

19.303

19.303 Residential zone R-5.

In an R-5 zone the following regulations shall apply:

19.303.1 Outright Uses Permitted. In an R-5 zone the following uses and their accessory uses are permitted outright:

- A. Single-family detached dwelling;
- B. Single-family attached dwelling;
- C. Residential home;
- D. Agricultural or horticultural use, provided that:

- 1. A retail or wholesale business sales office is not maintained on the premises, and
- 2. Poultry or livestock other than usual household pets are not housed or kept within one hundred (100) feet of any dwelling not on the same lot, nor on a lot less than one (1) acre, nor having less than ten thousand (10,000) feet per head of livestock;

E. Any other use similar to the above and not listed elsewhere.

19.303.2 Conditional Uses Permitted. In an R-5 zone the following conditional uses and their accessory uses are permitted subject to the provisions of Chapter 19.600:

- A. Temporary real estate office in a subdivision;
- B. Senior and retirement housing;
- C. Type 2 accessory dwelling unit;
- D. Any other use similar to the above and not listed elsewhere.

19.303.3 Standards. In an R-5 zone the following standards shall apply:

A. Lot size: Lot area shall be at least five thousand (5,000) square feet. For single-family attached dwellings the lot area shall be an average of at least five thousand (5,000) square feet per dwelling unit. Lot width shall be at least fifty (50) feet. For interior single-family attached dwellings the lot width shall be at least thirty (30) feet. Average lot depth shall be at least eighty (80) feet.

B. Front yard: A front yard shall be at least twenty (20) feet.

C. Side yard: A side yard shall be at least five (5) feet, and there shall be one (1) additional foot of side yard for each three (3) feet of height over two stories or twenty-five (25) feet, whichever is less, except on corner lots a side yard shall be at least fifteen (15) feet on the side abutting the street. For interior, single-family attached dwellings side yards are not required.

D. Rear yard: A rear yard shall be at least twenty (20) feet.

E. (Repealed by Ord. 1893)

F. Off-street parking and loading: As specified in Chapter 19.500.

G. Height restriction: Maximum height of a structure shall be two and one-half stories or thirty-five (35) feet, whichever is less.

H. Lot coverage: Maximum area that may be covered by the dwelling structure and accessory buildings shall not exceed thirty-five percent (35%) of the total area of the lot.

I. Minimum vegetation: Minimum area that must be left or planted in trees, grass, shrubs, barkdust for planting beds, etc. will be twenty-five percent (25%) of the total area of the lot.

J. Transition area: A transition area shall be maintained according to Section 19.416.

K. Frontage requirements. Every lot shall abut a public street other than an alley for at least thirty-five (35) feet, except as provided in the subdivision ordinance. The lots for interior single-family attached units shall abut a public street for at least twenty (20) feet.

L. Minimum density: Minimum development densities for subdivision, planned development, mixed use development, and other proposals reviewed by the planning commission, pursuant to subsection 19.1011.3, Minor Quasi-Judicial Review,

Chapter 19.800

NONCONFORMING USES

Sections:

- 19.801 Continuation of a nonconforming structure.
- 19.802 Continuation of a nonconforming use.
- 19.803 Discontinuance of nonconforming use.
- 19.804 Improvement of certain nonconforming uses.
- 19.805 Change of nonconforming structure.
- 19.806 Change of nonconforming use.
- 19.807 Destruction of nonconforming structure or use.
- 19.808 Completion of structure.
- 19.809 Determination of nonconforming situations.

19.801 Continuation of a nonconforming structure.

Subject to the provisions of this section, a nonconforming structure may be continued and maintained in a reasonable repair, but shall not be altered or extended unless such alteration or extension is approved by the community development director per subsection 19.1011.2, Type II Administrative Review. A decision will be rendered based upon a determination that the proposed modifications would result in no more of a detriment to surrounding properties than the existing structure. (Ord. 1712 (part), 1991)

19.802 Continuation of a nonconforming use.

A nonconforming use may be continued, but shall not be altered unless such alteration is approved by the planning commission after a public hearing in accordance with subsection 19.1011.3, Minor Quasi-Judicial Review, upon a determination that the proposed modifications would result in no more of a detriment to surrounding properties than the existing use. A nonconforming use that is limited to a portion of a property may not be relocated to a different portion of the property on which it is located or to any other property. (Ord. 1907 (Attach. A), 2002: Ord. 1712 (part), 1991)

19.803 Discontinuance of nonconforming use.

19.803.1 Nonconforming Use Involving a Structure. If a nonconforming use involving a structure is discontinued for a period of six (6) months, further use of the property shall conform to this chapter.

19.803.2 Nonconforming Use Not Involving a Structure. If a nonconforming use not involving a structure is discontinued for a period of six (6) months, further use of the property shall conform to this chapter. (Ord. 1712 (part), 1991)

19.804 Improvement of certain nonconforming uses.

A use which is nonconforming with respect to provision for screening shall provide screening within a period of five (5) years from the effective date of Ordinance 1438 (November 5, 1979). (Ord. 1712 (part), 1991)

MICHAEL HAMERSLY

Certificate of Occupancy

City of Milwaukie, Oregon

Building Division

UNIT 1 STORAGE ONLY

This Certificate is issued pursuant to the requirements of Section 109 of the State of Oregon Structural Specialty Code attesting that at the time of issuance this structure was in conformance with the applicable State codes and with the various ordinances of the City of Milwaukie regulating building construction.

Building Address: 2540 SE Lark Street Date Issued: 3/1/04

Use: Apartment Building Permit No.: 030112 Use Zone: R-3

Occupancy Group: R-3 Type of Construction: V-N

Property Owner: Michael Hamersly Business Owner: Michael Hamersly

Business Owner's Mailing Address: PO Box 82921, Portland OR 97282



Tom Larsen, Building Official

POST IN A CONSPICUOUS PLACE



July 9, 2003

Mr. Jim Griffith
11825 SW Greenburg Road, Suite A3
Tigard, OR 97223-6460

Re: 2540 SE Lark Street

Dear Mr. Griffith:

This letter is in response to your inquiry as to the number of authorized dwelling units at 2540 Lark Street. I have reviewed your February 25, 2003 letter and supporting information wherein you state that four units should be recognized for zoning purposes.

After consideration of your information and city and county records, I have concluded that the structure may only be used for three dwelling units based on the following:

- Milwaukie utility billing records indicate three units of sewer service.
- Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.

This determination may be appealed to the Planning Commission under provisions of Milwaukie Zoning Ordinance Section 1001.4. Please do not hesitate to contact me at 503-786-7652 should you have any questions.

Sincerely,

John Gessner
Planning Director

copy Tom Larsen, Building Official
Paul Shirey, Engineering Director
Alice Rouyer, Community Development & Public Works Director
Planning Commission

COMMUNITY DEVELOPMENT DEPARTMENT
Engineering • Operations • Planning • Building • Fleet • Facilities
6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206

Phone: 503 786-7600 • Fax: 503 774-8736 • Web Site: www.cityofmilwaukie.org

Larry J. Blake, Jr.*
Geordie Duckler, Ph.D.**
Steve J. Rutherford, Of Counsel

* Also a _____ in _____
** Also admitted in California

Jon F. Strock
Attorney at Law
725 Portland Ave.
Gladstone OR 97027

July 30, 2002

CLIENT'S COPY

Re: City of Milwaukie v. Michael Hamersly

Dear Jon:

This letter is in reference to the above-entitled matter and my representation of the City of Milwaukie. Thank you for taking the opportunity to talk to Steve Campbell and myself the other day. Pursuant to our discussion, it appears that it is appropriate that your client be cited at this time. Just because your client is cited, does not mean that an informal resolution is not possible.

I am asking Steve Campbell to review the possibility of citing your client for all the numerous violations at the discussed location. These violations would include electrical, plumbing and mechanical issues as well as the type of structure and its present and past use.

I anticipate there being a total of six (6) violations per day starting December 14, 2001 and continuing until the present. Of course, some of the violations may decrease if the renters have moved out of the property.

All the City wants from your client is to come into conformance with the City Code. It is my understanding that the property is currently listed as a single family dwelling, but there is a possibility that your client may increase that to a triplex if he follows the guidelines and rules to do so.

Please be advised that your client must get all applicable City, County and State authorizations prior to working or modifying on the property so as to ensure the safety of the neighborhood.

If you have any questions, do not hesitate in contacting my office.

Very truly yours,


Larry J. Blake, Jr.
City Prosecutor

LJB/le
cc: Steve Campbell
Jon Henriksen

Larry J. Blake, Jr.*
Geordie Duckler, Ph.D.**
Steve J. Rutherford, Of Counsel

* Also admits

** Also admits

CLIENT'S COPY

Jon Hennicksen
725 Portland Avenue
Gladstone OR 97027

August 9, 2002

Re: City of Milwaukie v. Michael Hamersly

Dear Jon:

This letter is in reference to the above-entitled matter and my representation of the City of Milwaukie. Thank you for taking the opportunity to discuss this case with me on August 8, 2002. Pursuant to our telephone conversation, I contacted Steve Campbell, who informed me that he would turn the water on to your client's property.

Of course, by the City turning the water back on to the property does not in any way give permission to your client to either work on the property or have tenants reside in the property without appropriate documentation, review and permits.

As we discussed, the City of Milwaukie is only interested in your client's compliance with applicable codes. The City is more than ready and willing to work with your client to assure the appropriate use of the building for the safety of the citizens in Milwaukie as well as his tenants.

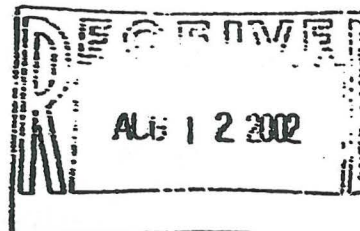
If you client is interested in an informal resolution, please feel free to contact my office. Otherwise, it appears as if your client will be receiving several citations in the near future and this matter will be resolved by the Courts. Of course, I do not believe that would be in your client's best interest based upon his litigation costs as well as exposure to substantial fines.

Very truly yours,

Larry J. Blake, Jr.
City Prosecutor

LJB/lc

cc: Steve Campbell



JIM GRIFFITH & ASSOCIATES, I

LAND / BUILDING USE STRATEGIES

11825 SW Greenburg Rd., Suite A3

Tigard, OR 97223-6460

Phone: (503) 718-1200

Fax: (503) 718-1300

jga0126@netzero.net

Att. 9

6.2 Page 43

January 16, 2003

Mr. Michael Hamersly
2335 NW 145th Ave.
Beaverton, OR 97006

Re: 2540 S.E. Lark Street

Dear Michael,

I had a meeting Wednesday afternoon with Ken Kent, Planning, City of Milwaukie, as a follow up to our conversation.

He again noted that we could proceed with three units at this time with a "Grandfather" allowance. He agreed with me that it would take the removal of the Kitchen to make it a storage unit. He further noted that you would have to have full drawings for the structure.

I asked about the potential of completing the three while we were questioning number four. His comment was that they would not proceed until the forth unit issue was resolved. What is at issue, the City code only allows the non-occupancy of a non-conforming use to remain vacant for six months before losing its non-conforming status. The time line is not running now as there is a conflict with the code, but as soon as that is resolved the six-month issue starts.

From my discussions with staff, I am quite convinced that they will only go for the three units. Ken acknowledged that they recognized the letter from PGE, but their sewer records and Tax records state something else. What I was told, the sewer noted multi-family with no unit count, and we all know the tax records note "3 units". The challenge would be to us to prove that there were four units.

To be able to appeal to the Planning Commission, we will first have to request a Planning Director's Determination, which is done with a letter and a \$50.00 check to the "City of Milwaukie". I have enclosed the requirements for information that needs to be attached to the request. We already have most of this information, but I haven't a clue about tax records, businesses licenses and such. You may want to check the Polk Directory and see how many telephones they had at that address, or if you would like I can check it out.

After the Director makes his determination, we could appeal to the Planning Commission. That would be a public hearing where we would present our case to the Planning Commission and they would make a determination. The down side of that is that they have noted that you would not be able to proceed with the three until this appeal process is completed. This could kill you with time as they have 120 days to respond to your request, but usually this goes much quicker, and the appeal requires public notice before the hearing. I would speculate that we could be looking at up to six months (Plus or Minus), with no guarantee that the planning commission would rule in our favor.

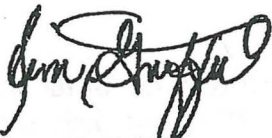
Your option is to go with the three and re-occupy. This will require full plans and the layout of a site plan as we will need to show the City where everyone is going to park as I have a feeling that they will look at current requirements for the parking and setbacks and possibly landscaping.

I asked about the other (upper) lot and Ken mentioned that the second lot has some problem in that he did not think it was listed as a legal unit, and that is why you were in the partitioning process. I hope that means something to you as I am in the dark about that issue. I would suggest we see if we can fit everything on the one lot and after the dust settles, look at the other lot to sell, if they would allow it to be developed. They may insist that it is part of the "Same ownership" with the tri-plex (Four-plex) and therefore cannot be developed under the same ownership.

Michael, you need to think this through and I will be more than happy to discuss the options with you too. However, you know the financial implication of all of this and I do not! Maybe we could go with three at a higher rent and sell off the upper lot. I don't know if that is feasible or not, but its an idea. You know the legal status of the upper lot.

I await your reply and direction.

Sincerely



James E. Griffith,
President

19.805

19.805 Change of nonconforming structure.

Except for signs, a structure conforming as to use but nonconforming as to height, yard requirements, or lot coverage may be altered or extended provided the alteration or extension does not exceed the height, yard requirements, or lot coverage requirements of this title. (Ord. 1712 (part), 1991)

19.806 Change of nonconforming use.

19.806.1 Nonconforming Use Not Involving a Structure. If a nonconforming use not involving a structure is replaced by another use, the new use shall conform to this title.

19.806.2 Nonconforming Use Involving a Structure. If a nonconforming use involving a structure is replaced by another use, the new use shall conform to this title unless the planning commission, after a public hearing as provided in subsection 19.1011.3, Minor Quasi-Judicial Review, determines that such structure is suitable only for another nonconforming use no more detrimental to surrounding properties than the one to be replaced. (Ord. 1712 (part), 1991)

19.807 Destruction of nonconforming structure or use.

A. If a nonconforming structure is destroyed by any cause to an extent exceeding fifty percent (50%) of its real market value, a future structure on the site shall conform to this title except as provided in subsection 19.807(C).

B. If any structure containing a nonconforming use is destroyed by any cause to an extent exceeding fifty percent (50%) of its real market value, and is not returned to use within

six (6) months by obtaining occupancy approval under applicable building codes, future uses on the site shall conform to this title, except as provided in subsection 19.807(C).

C. Where damage or destruction to either a nonconforming structure, or a conforming structure containing a nonconforming use, occurs by accident or natural hazard, the nonconforming situation may be restored subject to the following:

1. Within one (1) month of the date the damage was incurred, the property owner shall submit notice of intent to restore the nonconforming situation to the planning director.

2. The planning director shall issue acknowledgment of the notice of intent upon receipt and the six(6) month time period in which to repair the premises described in subsection 19.807(B), shall be extended to one (1) year.

3. The planning director may authorize an extension to the one (1) year period, described in subsection 19.807(C)(2), not to exceed six (6) months upon a good faith showing by the property owner that work to restore the premises has been delayed due to legal or other proceedings necessary to resolve insurance claims, business negotiations, architectural or engineering design for reconstruction or acquire needed land use approvals and construction permits. (Ord. 1912 (Attach. 4), 2002; Ord. 1907 (Attach. A), 2002; Ord. 1712 (part), 1991)

19.808 Completion of structure.

Nothing contained in this title shall require any change in the plans, construction, alteration, or designated use of a structure for which a building permit has been issued and construction work has commenced prior to effective date of Ordinance 1438 (November 5,

1979), provided the building, if nonconforming or intended for a nonconforming use, is completed and in use within two (2) years from the time the building permit is issued. (Ord. 1712 (part), 1991)

19.809 Determination of nonconforming situations.

19.809.1 Planning Director's Determination. The planning director shall make a determination regarding the legal status of a nonconforming use, structure, or other applicable zoning requirements in accordance with Section 1011.1 Type I administrative review. Any nonconformity shall be known as a nonconforming situation for the purpose of this section. Determinations of nonconforming situations shall be made using the following criteria.

A. Proof that the nonconforming situation was permitted under applicable regulations at the time it was established, including:

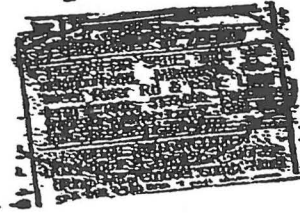
1. Copies of building and/or land use permits issued at the time the use, building, or other condition was established;
2. - Copies of zoning code provisions and/or maps;
3. Demonstration that the situation was established before the applicable development code for the community was adopted; and

B. Proof that the situation has been legally maintained over time. Evidence that the nonconforming situation has been maintained over time including:

1. Utility bills;
2. Income tax records;
3. Business licenses;
4. Listings in telephone, business and Polk directories;
5. Advertisements in dated publications, e.g., trade magazines; and/or

6. Building, land use or development permits.

C. Submission of the applicable fee as adopted by the city council. (Ord. 1907 (Attach. A), 2002)



Pager 818-1457
Rick

How long have you owned it.
Deeds 96-31324 & 95-45630 \$89000, assigned \$69000

1) Why Selling

2) Rents for 435, 400, 350, 385 = ^{Gross} 1470
Laundry Machines, Need pop mech.

3) Built

4) Last Appraisal

97 131,460

96

95

94

Land \$46,310

BL 85, 1:

19 FEB 2003

MULTNOMAH COUNTY CENTRAL LIBRARY
Circulation

Att. 14

Call Number

Stack Call Desk (Oregon)
0-917.95 06625S

Status :

1 other : ..

6.2 Page 48

DYNIX #

793583

TITLE

Salisbury's Oregon City and vicinity directory, containing an alphabetical directory of business concerns and private citizens of the cities of Oregon City, Gladstone, West Linn & vicinity

...

PUBLISHER

Portland, T.W. Salisbury.

DESCRIPT

v.

SUBJECTS

1) Oregon City (Or.) -- Directories.

- - - - More on Next Screen - - - -

Press <enter> to see next screen :

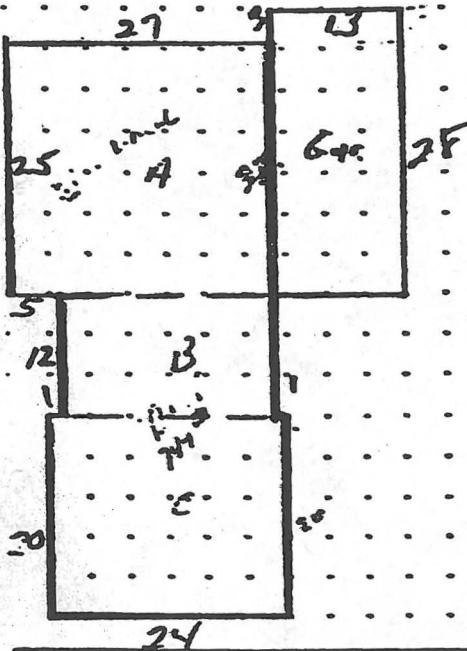
SO=Start Over, B=Back, RW=Related Works, S=Select, C=Copy status

SB=Save Bib, <enter>=Next Screen, SBLIST=Saved Bib List

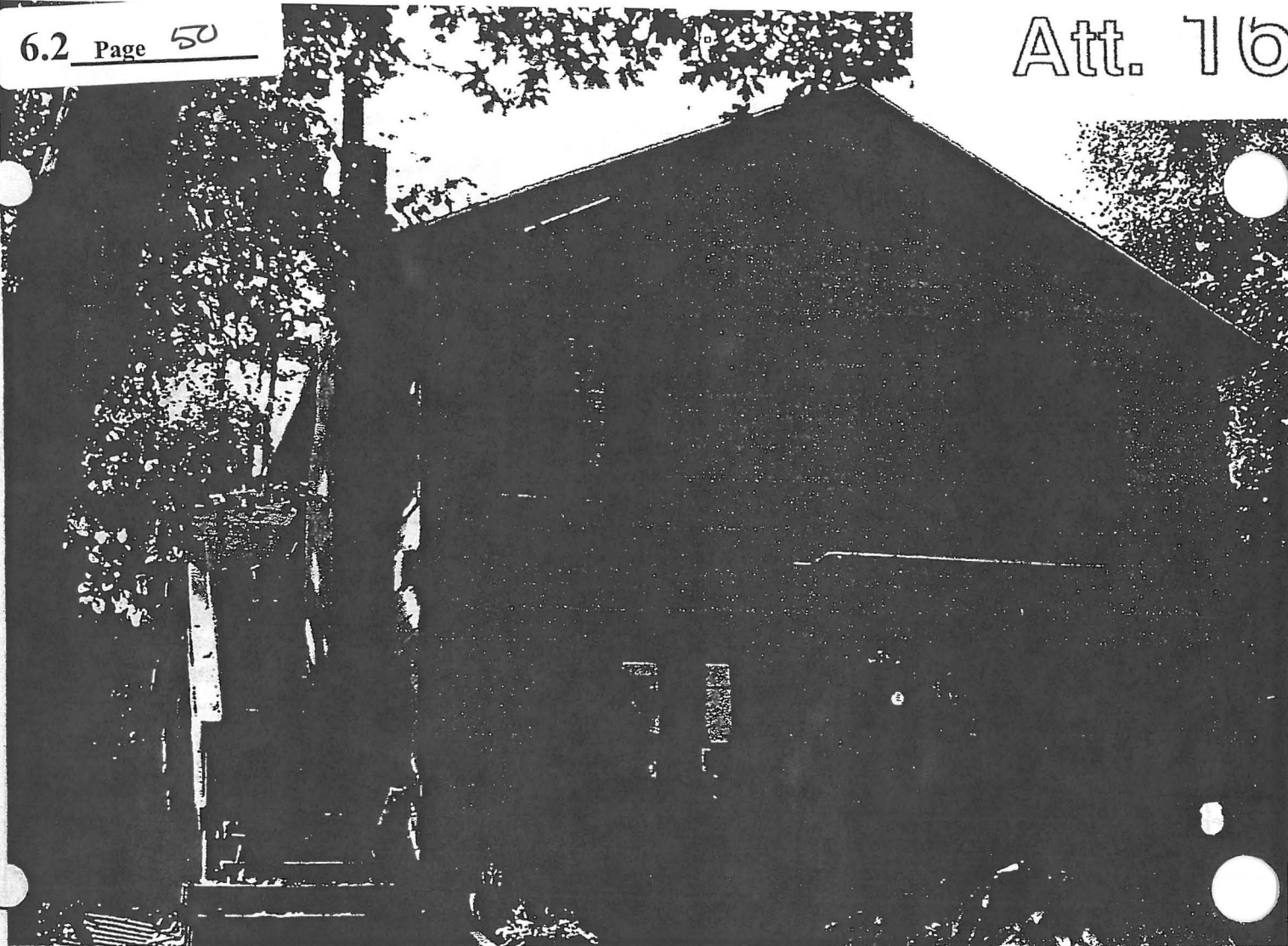
I first worked for the library in the late 1970s and at that time there was no city directory coverage for Milwaukie. We only started to have reverse directory coverage when we began subscribing to Cole's directories in the late 1980s. *Sharon Cushing Hemminger*

BUILDING DIAGRAM

A- $27 \times 25 = 675$
 B- $22 \times 12 = 264$
 C- $24 \times 20 = 480$
1419 #



GARAGE AND OUTBUILDINGS								LAND DESCRIPTION			
GARAGE T.T. DET. BENT. 1/4 1/2 1/2 3/4 T.	DESCRIPTION					DIMEN- SIONS	SQ. FT. AREA	NO.	SOIL TYPE	LAND CLASS	DIMENSIONS OR ACRES
	FOUND	FLOOR	ROOF	WALLS	MISC.						
	CON	CON	FLG R.V.	SPRC		13 x 28	364				5 x 456 87000
						X		2			
						X					
						X		3			2 x 150 40 x 50
						X		4			300
						X		5			
						X		6			
						X		7			
						X		8			
						X		9			
INCREMENTS TO LAND:								TOTAL ACRES 0			
								APPRaiser 10/ DATE			
								APPRaiser RUDATE 13 Apr			
								APPRaiser DATE			



CL 2-70

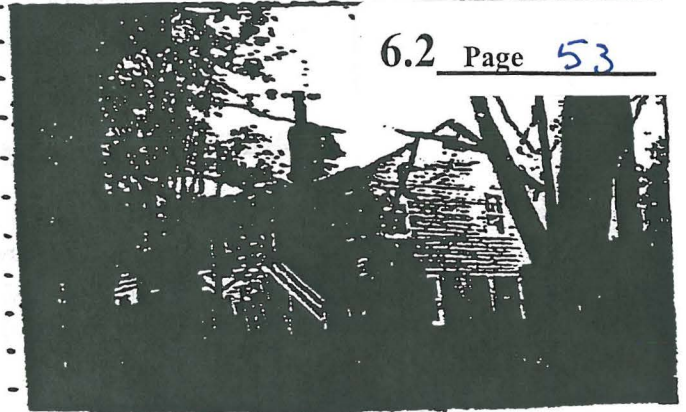
BUILDING DIAGRAM (1976)

Photo (1976)

Att. 19

6.2 Page 53

A- 27x25 = 675
B- 22x12 = 264
C- 24x20 = 480
1419 ft



White
Separate
entrance

White
Separate
entrance

GARAGE AND OUTBUILDINGS

LAND DESCRIPTION

GARAGE	DESCRIPTION					SQ. FT. AREA	NO.	LAND DESCRIPTION		
	FOUND	FLOOR	ROOF	WALLS	MISC.			SOIL TYPE	LAND CLASS	DIMENSIONS & ACRES
ATT. DET. 1/4 1/2 3/4	FOOT	FLOOR	ROOF	WALLS	MISC.	13 x 24	1			51 x 13 1/2
							2			61 x 15 1/2
							3			40 x 12
							4			300
							5			
							6			
							7			
							8			
							9			
INCREMENTS TO LAND:							TOTAL ACRES 01			
							APPRaiser 1/4 DATE 1/3			
							APPRaiser 1/4 DATE 1/3			
							APPRaiser DATE			
							APPRaiser DATE			

Note the
differences
between the
and drawn
building
diagram of the
layout to the
right, and the
picture off the
building to the
far right.

The drawing is
of a one-
story building
and the picture
is of a three-
story building.

An error on
the part of the
assessor back
in 1976.

CITY OF MILWAUKIE
CLACKAMAS COUNTY, OREGON

NOTICE AND ORDER - DANGEROUS BUILDING

A. BUILDING OFFICIAL'S FINDING - Please be advised that the City of Milwaukee Building official has determined that the edifice described below is a DANGEROUS BUILDING that may be subject to forced repair, vacation, or demolition:

Street Address

2540 SE Laak

Legal Description

TAX LOT 21E01BB02401

B. DANGEROUS CONDITIONS: The building official has determined that said building is dangerous according to Section 302 of the Uniform Building Code due to the existence of the following CONDITIONS:

- | | |
|--------------------------------------|-----------|
| 1) <u>Elec - see attachment</u> | 6) _____ |
| _____ | _____ |
| _____ | _____ |
| 2) <u>Plumb - see attachment</u> | 7) _____ |
| _____ | _____ |
| _____ | _____ |
| 3) <u>Mech - see attachment</u> | 8) _____ |
| _____ | _____ |
| _____ | _____ |
| 4) <u>Steelwork - see attachment</u> | 9) _____ |
| _____ | _____ |
| _____ | _____ |
| 5) <u>Fire - see attachment</u> | 10) _____ |
| _____ | _____ |
| _____ | _____ |

NOTICE AND ORDER - DANGEROUS BUILDING

1

476 pics taken

Another point at issue is that the Tax records note that there are three units in the building. This assessment was made in 1977, 1988, and 1991 by the same individual and is the record for today. For anyone that has been there, you are aware that there are four units in the building and they have been that way for a long time, i.e. before permits were required. There are three units noted on the enclosed Tax record, and it states that there are "2 units on main floor & one in basement. This structure has two units on the main floor and two units on the second floor. There is no basement. From the photo on the same tax report, it shows entrances for the second floor via steps and the first floor entrance, the other two entrances are behind the fence. This is also noted by the type and method of construction. For example the fireplace is an original in the two front units. The entrances are individual and appear to this reviewer to be from the same era. It is difficult to envision where the supposed "other" unit was added considering the layout of the units. We have no way of knowing why the Tax Assessor only noted three units. It may well be that they were looking at a primary residence for the owner (The large three bedroom unit), and three rental units, which makes some degree of sense. In other words, the owner's residence and three rental units, which therefore, make a total of four.

Code Section 19.809.1, B. 4, requests information from the Polk directories. The attached written statement from the Multnomah County Central Library notes that there were no records from the Milwaukie area from the 1970's and that their records for Milwaukie do not start until into the late 1980's when the Cole's started the reverse directories. (Copy attached). The current owner purchased the units in 1997

The existing structure provided four affordable dwelling units, as they have for some time. It's interesting to consider that if the site were divided into two lots, the existing structure could be removed and four dwelling units constructed. Two primary dwelling units could be constructed and each with a "granny flat" or accessory dwelling unit. It is recognized that all four could not be rental units, I only mention this as a density concept, not that it is being considered.

The owner has already removed the gas service from the structure, which was a concern of the Fire Marshal's Office Inspector and added new electrical heaters, with benefit of permit, and upgraded the electrical services to the units. There is adequate space available to achieve on-site parking, and to meet other required zoning regulations as a pre-existing non-conforming structure.

The owner is very interested in re-occupying this structure as soon as possible. We feel that the structure is now and has been for a long time a four-unit apartment structure, and there are many indications that they were there long before the codes were adopted, and records kept. As a pre-existing non-conforming structure, we agree that it needs to be maintained as a safe, sound and sanitary residence, and that work needs to be done. However, we are also aware, according to previous owners, that these four units have been utilized for many years as economical living spaces with no complaints from the neighbors. In other words, the owners and tenants have been good neighbors until one tenant complained. Now all four are closed.

NOTES

DATE: 4-29-2004
FROM: MICHAEL HAMERSLY
RE: LARK SEWER QUESTIONS

- Spoke with Carla Atwood at the City of Milwaukie at 3:28p.m.
- I asked her about 2540 SE Lark and the billing history of its sewer system.
- She said that the information in front of her said it (Lark building) was billed as a four-plex of 12/2003. And that she did not have a complete set of records in front of her. I asked how I could get all the records on this building she said that I would have to come in to the City hall and fill out a records request.
- She then asked why I wanted them. I told her I was trying to figure out if it is a four-plex or not.
- I asked her how billing is currently set up she said that when building plans are submitted then the City use the plans to determine the sewer billing.
- I asked if there was not any building records how would the City determine the Bill?
- She said she did not know. And that I might want to ask Paul Roger who is an engineer for the City.
- I thanked her and said I would be in to make the request.

NOTES

DATE: 4-27-2004
FROM: MICHAEL HAMERSLY
RE: LARK SEWER QUESTIONS

- Spoke with Carla Atwood at the City of Milwaukie at 2:18p.m.
- I asked her about the research on 2540 SE Lark and the billing history of its sewer system.
- She said that that is not her department and transferred me to Pat 503-786-7502.
- Pat said she had just gotten my request and she was just starting to delve into the billing history. She asked if I would like her to look at building records too. I did not sound like she was familiar with this property. But she was nice and said she would call me when it was done. I said I would call Friday if I did not hear from her sooner.
- Spoke with a Mr. Becker after I had received a copy of the billing history of the building that only went back to 2/21/1996. I understood that this is when a new and the current billing system was installed. Mr. Becker said that back in the 1970's the City used a punch card system to track utility billing records and that information was now not readable, therefore unavailable to me. That a system was installed in the 1980's and I was unable to get any records from this time period. The only records I got were from the new and current system that was installed in 1996, which were not of help in answering the question of how the billing was determined in the 1970's.
- From what I was told by the staff that since there is not a building plan on file they assumed they looked at the County records which state that the building is a three-plex and thus billed the utility's at the rate's for a three-plex.
- Received a copy of Single account notes report while there.

04-27 4 02:12 PM
ACCOUNT # 06-2750-03

SINGLE ACC ? NOTES REPORT

NOTE T1 PAGE: 1
OCCUPANT

NAME

SERVICE ADDRESS

PDX LAND LLC

2540 SE LARK ST

4/20/2004 atwoodc

Per call from Mike, he is requesting public records of when the property went from a 4 plex to 3 plex. Explained a public records request needs to be completed and some documents would be from Utility Billing and others from PW - planning & zoning or sewer engineering. CA

2/19/2004 atwoodc

Left message for Mike, need to discuss balance. 3-plex. Need payment status. CA

12/04/2003 atwoodc

Per review from Paul Roeger, property was used as a 4-plex w/ violations. Now, it's a 3-plex and 3 units of sewer and 1 unit of storm is correct. CA

8/27/2003 atwoodc

Winter average based on 3 units x 12 system average. CA

6/19/2003 atwoodc

Per Michael, the home is vacant, he will mail the payment 6/19/03. CA

6.2 Page 58

Att. 24

CITY OF



MILWAUKEE

 CITY HALL
 10722 SE MENA STREET
 MILWAUKEE, WI 53222
 (414) 706-7575
 Cycle: 01

6.2 Page 59

Att. 25

SERVICE LOCATION	ACCOUNT NUMBER	DUE DATE	TOTAL AMOUNT DUE
2540 E LARK ST	06-2750-03	5/15/03	51.20

PDK LAND LLC

4/30/03

SUBSEQUENT DATE

METER READING		USAGE IN	WATER METER	BILLING	BILLING
PRESENT	PREVIOUS	100 CU. FT.	(GAL - 1000)	DESCRIPTION	AMOUNTS
234 4/13/03	234 3/14/03	0	12	WATER	3.02
				SEWER	42.08
				STORM	6.10
CURRENT BILLING					51.20

PAYMENTS OR REQUESTS RECEIVED AFTER 4/25/03
ARE NOT REFLECTED ON THIS STATEMENT.

UNPAID	0.00
TOTAL AMOUNT DUE	51.20

 MORE INFORMATION
 ON REVERSE SIDE

 ↑ PLEASE PAY ↑
 THIS AMOUNT

KEEP THIS PORTION

CITY OF MILWAUKEE

MOVING OR BILLING INFORMATION

REPORT SERVICE PROBLEMS _____ 786-7525

10722 SE Main Street

NEW INSTALLATION / METER LOCATION _____ 786-7686

6001 SE Johnson Creek Blvd.

EMERGENCY (After Hours) _____ 786-7500

MILWAUKEE

EMERGENCY (After Hours) _____ 786-7500

MILWAUKEE POLICE _____ 786-7500

Community Room

CLACKSON COUNTY RECREATION _____ 786-7500

FIRE DEPARTMENT _____ 786-7500

MILWAUKEE CITY HALL _____ 786-7500

10722 SE Main Street

Room 1000, 1st Floor

Public Reception _____ 786-7525

City Manager _____ 786-7500

Mayor _____ 786-7500

Deputy Mayor _____ 786-7500

Job Training _____ 786-7500

Municipal Clerk _____ 786-7500

City Recorder _____ 786-7500

Recycling _____ 786-7500

Waste Services _____ 786-7500

MILWAUKEE CITY HALL (Continued)

City Hall _____ 786-7500

Public Information _____ 786-7500

COMMUNITY DEVELOPMENT _____ 786-7500

6001 SE Johnson Creek Blvd.

Room 1000, 1st Floor - 9:00 am

Public Work Dept:

Engineering

Survey

Signs

Snow

Water

Wastewater

Planning Dept.

Building Dept.

Emergency - Information _____ 786-7500

LIBRARY _____ 786-7500

10722 SE Main Street

PARKS & RECREATION _____ 786-7500

10722 SE Main Street

MILWAUKEE CITY HALL (Continued)

CITIZENSHIP ASSISTANCE
SA 1000, 1st Floor
Contact: 786-7500MILWAUKEE COMMUNITY CENTER
6:00 pm, South Milwaukee each month
1000 1st StreetLIBRARY
6:00 pm, South Milwaukee each month
1000 1st Street, Building LibraryPARKS & RECREATION
6:00 pm, 4th Milwaukee each month
City HallPARKS & RECREATION
6:00 pm, 4th Milwaukee each month
City HallPARKS & RECREATION
Schedule of events
Contact: 786-7500TRAFFIC SAFETY AND TRANSPORTATION PLANNING
Schedule of events
Contact: 786-7500

NEIGHBORHOODS _____ 786-7500

10722 SE Main St.

CODE COMPLIANCE _____ 786-7500

10722 SE Main St.

THE MILWAUKEE CENTER _____ 644-5500

1000 1st Street, South Milwaukee

Public Information

Public Information

SOCIETY SERVICES

Public Information

Public Information

Public Information

Public Information

Public Information

Public Information

Public Information

Fax transmittal

To: Michael Hamersly

Fax: 503-659-5400

Company Michael Hamersly

Phone: 503-780-0019

From: Jim Griffith

Date: 10/28/03

Re: Request for a reconsideration

Pages: 3

CC:

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

Good morning Michael

Following is the draft of the letter to John Gessner requesting the reconsideration. Please review it for accuracy and identify changes you feel are necessary, then let me know.

I did talk to the staff about the billing and was informed that the billing has been for three units from the inception of the system in 1980. The lady I spoke to was unaware how the initial number was determined and will discuss it with Carla Atwood when she gets back next Monday and let me know. She noted that if there were four units, they need to add the unit to the billing. I told her not now!

I await your review and comments.

Call me if you have any questions. Jim Griffith

CONFIDENTIAL



Portland General Electric Company
7900 SW Milwaukie Street • Milwaukie, Oregon 97062

April 11, 2002

Michael A Hamersly
PO Box 82921
Portland OR 97282

RE: Installation date of service at 2540 SE Lark St 1

Dear Michael:

We recently spoke with you regarding written documentation of the installation date of a residential service at 2540 SE Lark St 1, Milwaukie OR. This letter is in response to your request.

Portland General Electric's records show that service was installed at 2540 SE Lark St 1 in April of 1964. It is our understanding that this address on Lark St is a four-plex. It would be logical to think that if the meter was installed in 1964 in one unit that the other units would coincide. However, the meters have been pulled from these addresses. We do show that we did at one time have active service at 2540 SE Lark St 1, 2, 3, 4 and a utility room. However, we are unable to access any records at this time for all accounts other than the address listed above.

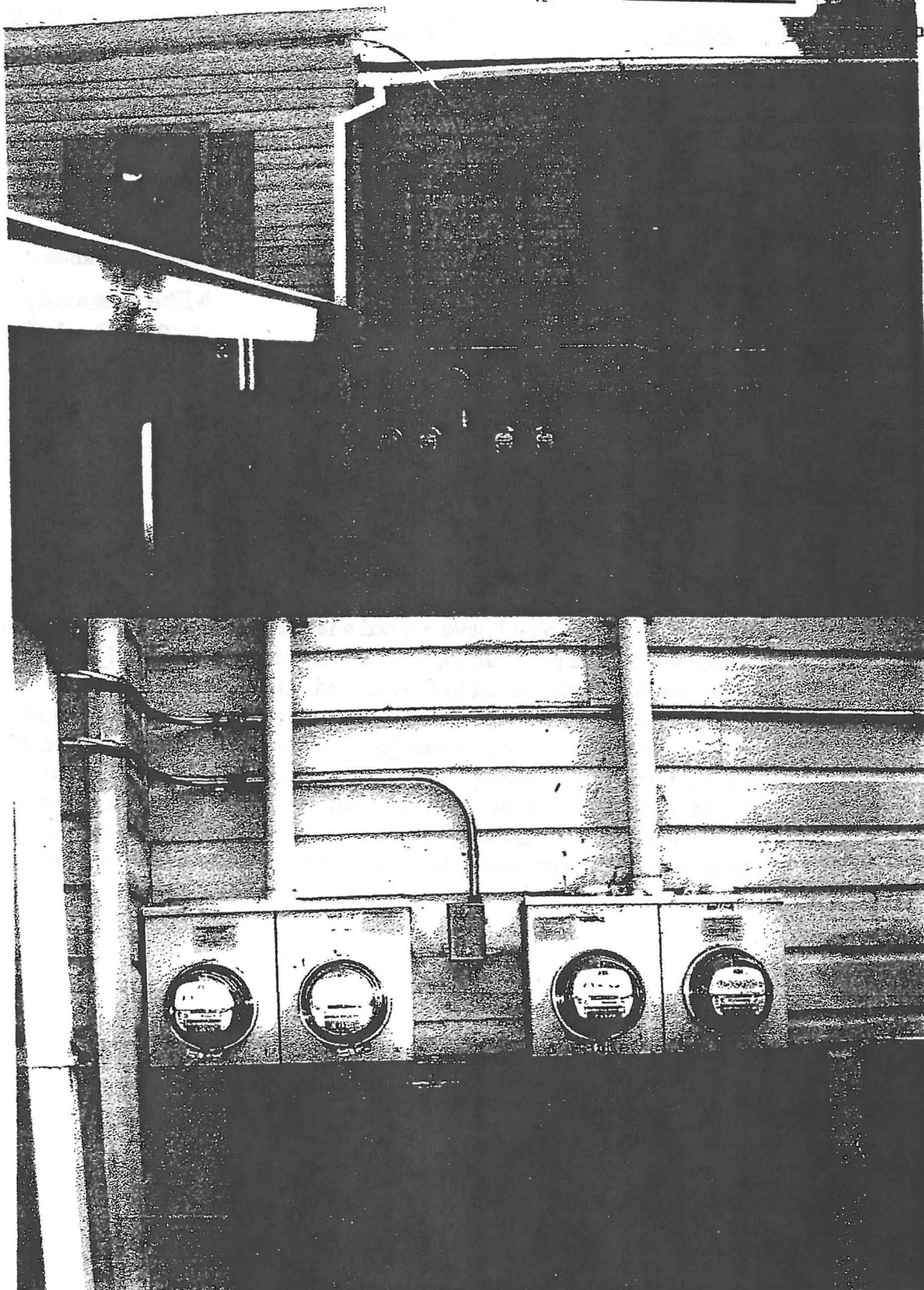
If you have any further questions, please contact PGE or myself. We hope that this letter suffices as evidence of residential service at the above address since 1964.

Regards,

Anne
Bilingual Customer Service Rep
1800.542.8818

~~18~~

29



Industrial Commercial ElectricRESIDENTIAL INSPECTION REPORT

24300 SE Strawberry Dr
Boring, OR 97009
Ph.03-658-5624

Date

CCB # 134038

12/18/2002

2000165

To:

Mike Hamersly
2335 NW 145th AVE
Beaverton, OR 97006

Property address

Mike Hamersly
2540 SE Lark St
Milwaukie, OR

CONDITION OF ELECTRICAL INSTALLATIONS

Mr. Hamersly,

As work has progressed at the Lark street four-plex I have noticed a few things regarding the age and condition of the main service which you should be aware of. The duplex meter base assembly's - date back to the sixties, and have bypass jumpers which allow current to flow around a meter to any of the four panels when set, even with the meters pulled. This situation has the potential to cause problems with service work and problems with less than honest renters who may be brazen enough to purposely bypass thier meter. Although these meters are legal and you are not required to replace them you may consider doing so for these two reasons, taking into account also the age and deteriorating condition of this old service. I am not saying that there is any immediate or imamate danger, I am suggesting that you change this service if you plan on holding this property long term, thereby avoiding future problems. If you want me to design a new main service and work up a price give me a call and I'd be happy to do so.

Sincerely,





Portland General Electric Company
721 SW Salmon Street • Portland, Oregon 97204

6.2 Page 65

Att. 31

August 19, 2004

Michael Hamersly
3111 SE Concord Rd
Milwaukie OR 97267

Re: Customer 70889

Dear Mr. Hamersly:

Thank you for contacting Portland General Electric (PGE). You asked how long PGE has required meters to be inspected before connecting service.

Cities and counties in the State of Oregon, not PGE, require electric and meter inspection prior to connection of electricity.

Since cities and counties in the State of Oregon require inspections prior to connection of electricity, PGE abides by these laws – and has for well over 50 years. PGE never has, nor will it now, connect electricity at any location without the property owner first obtaining proper electrical inspections.

Please let me know if I can be of further assistance.

Sincerely,

Michael Moore

Michael Moore
Customer Service Representative
503-612-3714

Connecting People, Power and Possibilities

Industrial Commercial Electric**RESIDENTIAL INSPECTION REPORT**

24300 SE Strawberry Dr

Boring, OR. 97009

Ph: 503-858-5624

CCB # 134038

08/25/2004

CONDITION OF ELECTRICAL INSTALLATIONS

Michael Hamersly
PO Box 82921
Portland, OR 97282

Property address:
2540 SE Lark St
Milwaukie, Or. 97222

Mr. Hamersly,

At your request I have evaluated the electrical meter bases and the following is my professional opinion (I have been an electrician in Oregon for the last twenty-six years. Licensed and bonded in the State of Oregon.)

The property reviewed is the building located at address 2540 SE Lark St, Milwaukie, OR. 97222. I specifically looked at the main service to determine at what time period it was installed. There are four meters located in the two tandem meter bases. This specific style of tandem meters, which come as single unit and houses two meters each date back to the sixties. There are two of the tandem meter bases on this building. As you can see they are identical tandem housings, and there is every indication that these were installed at the same time. We can be assured of this because in the early 1970's the tandem meter housings were manufactured larger, per code change.

I could not locate any records of when a permit was obtained to install these meters. This is in agreement to my assessment of when the meters were installed. The State of Oregon's building codes division started requiring utilities companies like PGE to verify that an inspector with jurisdiction tag a meter base before installation of a meter by the utility company in this case PGE.

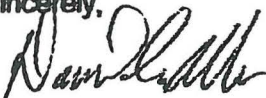
I investigated to find a permit to install the electrical service. I checked with the City of Milwaukie and was told, "that no records exist of a permit".

I also checked with Clackamas County and was unable to locate an electrical permit. This is not unusual for older buildings, especially in Clackamas County, which experienced a flood and lost archived records.

In conclusion, it is my professional opinion as a licensed and bonded electrician with 26 years of experience, and after checking the records at PGE, the City of Milwaukie, and Clackamas County. That the four meters contained in two tandem meter bases at 2540 SE Lark, Milwaukie, Oregon 97222 date back to the sixties.

I am willing to testify to the accuracy of this opinion.

Sincerely,



David G Allen

We feel that the information that we have provided is proof that the structure was in place as a four unit apartment structure, at least back until 1964 when electrical service was installed to units 1,2,3,4, and utility room. There may well have been four units prior to that date with all units on one meter prior to the installation in 1964 but again, however, no records were available. As zoning was not adopted until after this date, and the construction codes not adopted until 1973, this makes this a classic pre-existing non-conforming structure, with four units.

FEBRUARY 11, 2005
NARRATIVE

Mr. Gessner below is a list of what I conclude as errors and omissions in your letter dated February 11, 2005.

I summarized bellow 1-10 and in more detail in attachments G1 through U2. These attachments contain the documents that led me to the conclusions. Please send any and all documents that support your letter as I do not have them.

1. I have not argued to have the July 9, 2003 decision reversed as you stated in your February 11, 2005 letter. I have simply wanted a second directors determination.(see attached G1).
2. The February 11,2005 letter mis-characterizes my point about Mr. Griffith. (See attachment H).
3. City of Milwaukie utility records have been wrong since 1976, due to the fact they relied on the Clackamas county assessors information that has shown to be inaccurate.(See attachment I and I1)
4. The 2/11/2005 letter omits a crucial fact. That being the 1976 tax assessor made a large mistake by missing the second and third floors of this building, leaving out more then half of the living space.(See attachment K and K1)
5. I disagree with your implication that previous owners would go into the tax assessors office to correct a mistake that is unimportant to their tax liability since the assessors has records of the purchase price of the property and can tax accurately from this. (See attachment M)
6. I disagree with your reasoning that there should be a record of me attempting to correct information describing a building from 1976 in the county tax records. I would not have thought to do so since my understanding of property tax is that it is based off my purchase price of the property. Not the description of the building nor how many dwelling units within. (See attachment N)
7. I do not believe I was erroneous in my 2003 property tax appeal as you claim in the 2/11/2005 letter. I am positive it is accurate to say the City of Milwaukie did in fact and deed declare my building at 2540 SE lark to be a single-family home converted to a four-plex, closed the building due to this belief and denied me its use as a living structure. This is from a newspaper article written in the Clackamas review and my first hand knowledge of events. (See attachments O, O1, O2, R, R1, R2, R3, R4 and R5).
8. The 2/11/2005 letter leaves out the fact that the City of Milwaukies utility bill does not state how many dwelling units are being billed then or now. Therefore a person would not know to correct it. (See attachment RR and RR1)
9. In the 2/11/2005 letter you state that Mr. Griffith was diligent in representing my interests. I disagree with your belief here. I believe he was not diligent due to the fact he was diagnosed with cancer, and undergoing chemotherapy treatments at the time of the July 9, 2003 directors decision. I believe because of this health problem he was not able to preform adequately his duties to me. As shown when he informed you that I planned to appeal and asked for the Ordinance that covers the appeal process on September 16, 2003 seven (7) weeks after the appeal period had expired. (See attachments T, T1, T2 and T3)
10. The 2/11/2005 letter points out that I did not identify the number of dwelling units in my application for a minor partition. This is true, what is important here is the reason. It is due to the fact the City's own application does not require or even request that information. (See U and U1s)

ATTACHMENTS G1-U2

Mr. Gessner your letter states (see attachment D.) that you believe I "...have argued that my prior decision should be reversed for the following reasons:"

This is not an accurate portrayal of my position. I have not argued to have your original decision reversed. I have maintained that the original July 9, 2003 was proper. (see attachment E.) "Which was both procedurally and substantively proper." Nor have I "argued", I have simply asked for a second directors determination.

Which has been continually denied to me for no apparent reason. If there is a reason I would like to know what it is and what keeps you from taken thirty minutes to issue a directors determination. In this letter you state that you are (see attachment D.) "Having revisited the case as often as has been requested, I am confident in our knowledge of relevant facts and circumstances." Again it appears that it would be very simple for you to issue a Second Directors Determination.

Please see attachment D the first bullet point, "Your consultant Jim Griffith did not inform you of the July 9, 2003 decision and subsequently passed away following an illness."

The statement is only partially correct. What would be correct is that Mr. Griffith did not inform me of the July 9, 2003 decision until after the appeal period had expired.

This is also a mis-characterization of why I have mentioned Mr. Griffith's cancer and death to you. I have not once conveyed that because of his death your prior decision should be reversed.

What I have conveyed to you is on record (See attachment E), second paragraph "Over the course of the time needed to reach a determination, the person whom I had hired to work with you, Mr. Jim Griffith, developed cancer and has since passed away from this terrible disease. During the course of his chemotherapy treatments (a four month time frame), he missed deadlines and did not completely research the records..."

What is accurate is that I let you know the reason for missing the first appeal period was due to health reasons. Since you had declined a request for a second determination stating due to the fact an appeal was not made on the first directors determination. Your letter November 7, 2003, "... In addition, the determination identified appellate rights, which were not exercised. Accordingly, I must respectfully decline your request." (See attachment H1).

Also my request for a second directors determination made on 10/12/2004. Was again declined by you due to the fact that the determination was not appealed. This reason to decline was left on my voice mail in November, 2004.

The reason I conveyed the information about Mr. Griffiths untimely death is that you would understand I was not wasting the City's resources and had an understandable reason for missing the first appeal period. Which should not matter since even if an appeal period is missed if new information is uncovered at a latter date this should be enough to justify the City using its resources to issue a second directors determination.



November 7, 2003

Mr. Jim Griffith
Jim Griffith & Associates
10915 SE Fairhaven Way
Tigard, OR 97223

Re: 2540 SE Lark Street

Dear Mr. Griffith:

I have received your request for reconsideration of the July 9, 2003 determination regarding the permissible number of units at 2540 SE Lark. I believe the original determination was both procedurally and substantively proper. In addition, the determination identified appellate rights, which were not exercised. Accordingly, I must respectfully decline your request.

Please do not hesitate to contact me at 503-786-7652 should you have any questions.

Sincerely,

John Gessner
Planning Director

copy: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works Director
Gary Firestone, City Attorney

COMMUNITY DEVELOPMENT DEPARTMENT
Engineering • Operations • Planning • Building • Fleet • Facilities
6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206

Phone: 503-786-7400 • Fax: 503-774-8234 • Web Site: www.cityofmilwaukie.org

February 11, 2005 letter, (see attachment D) forth bullet point. "City of Milwaukie utility billing records have historically assessed the property for three dwelling units."

This is one of the reasons you state in this letter as to why you believe the building at 2540 SE Lark should be considered a Three-Plex instead of a Four-Plex. This is surprising since it has been pointed out to you not only was the billing incorrect over the years, which you acknowledge in the second bullet point of this letter (see attachment D.)

The original utility billing was set up on the Clackamas County assessment records and therefore incorrect as you acknowledged in the second bullet point of your letter. (see attachment D.)

Mr. Gessner I thought you were aware of this fact when I gave you this information previously. ((see attachment I1); which is page 6 of the application submitted to the City of Milwaukie, with a cover letter that directed the information to Mr. Gessner on October 12, 2004) .

Specifically number 20. "On April 20, 2004 I spoke with Carla Atwood with the City... She said the utility bill is determined when the structure was built, using the initial plans."

Number 21. "I found out, April 27, 2004, when I again spoke with Carla Atwood in addition to Pat and Mr. Becker (attached 23). Since no building plan had been submitted to the City back in the 1930's and there is not a building plan on record at the City, Carla, and Pat believe the utility bill for the building on Lark was based on the flawed 1976 Appraisers records from the County which incorrectly identified this building..."

The February 11, 2005 letter "Having revisited the case as often as has been requested, I am confident in our knowledge of relevant facts and circumstances." (See attachment D second paragraph, second sentence.)

I am not as confident in your knowledge of this case as I would like, as the above example shows your reliance on the accuracy of the utility bill, from all the information and documentation I have is a mistake. Since we all make mistakes I hope this will be one more reason for you to grant a second directors determination, in case there are more mistakes, I can appeal it and have another person take a look at the case and make the best determination possible.

- f. If one looks at the design and condition of the entire building it is apparent that it was built prior to 1973, there is not any indication of recent additions and the current configuration and footprint date back at least to the 1960's if not earlier.

6.2 Page 75

UTILITY & SEWER RESEARCH

19. According to Paul W. in the City of Milwaukie Engineering Department this site was connected to the City sewer system in November 1974. He further noted that the City required a 6-inch connecting sewer line, which would have only been required with multiple dwelling units. (Single family-units only required a 4-inch sewer line). The records from the sewer connection did not identify the number of units.
20. On April 20th. 2004 I spoke with Carla Atwood with the City (attached 22) and asked about the utility billing system and how the initial number of units was determined. She said that I would need to come to the City and do a records request. She asked why I wanted them and I explained the difficulty in determining why it was being billed as a three-plex when it is a four-plex. She said the utility bill is determined when the structure was built, using the initial plans.
21. I found out, April 27th. 2004, when I again spoke with Carla Atwood in addition to Pat and Mr. Becker (attached 23). Since no building plan had been submitted to the City back in the 1930's and there is not a building plan on record at the City, Carla, and Pat believe the utility bill for the building on Lark was based on the flawed 1976 Appraisers records from the County which incorrectly identified this building as a three unit building instead of the correct four unit building it was and is. The billing department simply relied on the County records to base its utility bill.
22. The City of Milwaukie sewer records only go back to the 1980's and are in error to the number of units in use at this building at that time. The City only billed for three units when four units were in use. Mr. Becker for the City of Milwaukie, concerning billing information on the City's sewer, that were entered on computer via punch cards; stated that "back in the 1970's punch cards were used and the information is not readable now." Also that the City went to a new computer system and does not have the machines to read the old information. That from the inception of the new system in the 1980's. Confirmed at the meeting that there are not any records available from the City's utility billing department from the 1970's.
23. I received a copy of Single Account Notes Report (attached 24) that the billing department had at one time known that this building was a four-plex. That research done for atwoodc 12/04/2003 states, "Per review from Paul Roeger, property was used as a 4-plex w/ violations. Now, it's a 3-plex and 3 units of sewer and 1 unit of storm is correct. CA".
24. Also of note the City's utility bill sent to me (attached 25 & 26) makes no mention of how many units are counted for billing so none of the previous owners would have known that they were being billed for three units instead of the correct four. (It seems I owe the City back sewer assessment for the forth unit. I hope the City will waive this debt seeing that I could not of know the billing error since the City's bill does not say how many units are being counted on the sewer bill, and the fact that the City has caused me enormous difficulty by labeling this building a single-family unit and closing it.)
25. Jim Griffith spoke with the City of Milwaukie's staff in October 2003 (attached 27) and was told that building utilities have been billed for three units since the inception of the computer system back in the 1980's. The woman to whom he spoke, (Carla was on vacation) noted, "that if there were four units, they need to add the unit to the billing." Jim said "I told her not now!" This indicates the ease to which one can add billing units to the utility bill.
26. I believe this shows that the utility bill is a poor indicator of how many units a building would or would not have shown historically. It appears from Mr. Griffith's conversation a person

Your February 11, 2005 letter (see attachment D) fifth bullet point. "Since their 1976 site inspection, Clackamas County has assessed the property for three dwelling units."

This is correct but I do not agree with your

1. logic and
2. you left out the most important fact.

1. Your logic appears to be that if a building is taxed as a three dwelling unit then it is a three dwelling unit. I would beg to differ. Sometimes the Government makes mistakes and miss labels items. I am aware of a number of incidences when the Government has made this type of mistake. Frankly I am surprised that you are not aware of this fact and did not take it into consideration in this decision. Especially since, at our January 2, 2005 meeting I pointed out a mistake was made when this building was labeled by the tax assessor back in 1976, (see attachment K1) who incorrectly labeled the building to have "2 units on main floor & one in basement." The building does not have a basement and has three stories. He missed about 1600 square feet of living space. It was recorded the Clackamas County Government and is there to this day.
2. The factual mistake was made when the person who did the site inspection, took a picture of the building as it was then, drew a diagram of the living units (only on the main floor) and wrote under remarks "2 units on main floor & one in basement." this was and is an incorrect description. It missed the top two floors of this building, approximately 1,600 square feet of living space.

The picture in the assessors file shows the upper three floors clearly and that the building is the same then, 1976 as now.

I find this an extremely important fact, 1,600 square feet of living space missed. This is where the forth unit would be.

Mr. Griffith put forth an explanation to how the assessor made this mistake. Because it is a rental building, a person cannot enter the units without the tenants permission, so the assessor simply spoke with the owner who lived upstairs and the owner simply told the assessor I have three rentals here. The assessor wrote it down and it is now the history.

Apparently you do not look at this fact and mistake of missing two floors and 1,600 square feet as important since it was not mentioned in your last letter dated 2/11/2005.

I believe this fact should be considered when deciding how many units have been in this building historically.

Since we disagree on the importance of this fact, I think that you should make a second directors determination so I can appeal it and have other people look at this fact and other information provided and see what conclusion they draw.

I believe this to be reasonable and fair. If you do not view this request in the same light please let me know why and what I can do to rectify any more problems you may have as discuss earlier in 1-6.

PROPERTY ADDRESS:

2540 S.E. Lark

6.2 Page **77**

BUILT 25 19 36 COST \$ _____ RENT \$ _____		REMODELED 19 _____ COST \$ _____		V. <table border="1"><tr><td>1</td><td>1</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>		1	1								
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INTERIOR INSPECTED	YEAR 77 83 91 03														
YES	NO WH LH WH NH														
		MVD/J													
APPR.	DATE	DWELLING UNITS	UNIT AREA	TOTAL AREA	STORIES										
A4	7/19/76	1 2 3 4	710 (Flow) SQ. FT.	1919 SQ. FT.	1 1 1/2 2										
A1	8/11/82	FOUNDATION	CONC BLK BRICK STONE FRAME WD BLK												
DE	9/5/90	EXTERIOR	DBL SGL BOX SIDING: SEVEL RUSTIC VERT B&B SHAKE: WD ASD COMPO SHEL STUCCO BRICK: VEN SOLID 1 1 1/2 2 STY STONE CONC BLK: PT FUR'D ST												
WPK	8/13/03	ROOF	GAB HIP FLAT PITCH: LOW AVE STEEP SHINGLES: WD COMPO ALUM SHAKES: LT MED HVT BUILT-UP R. BFC. BAR TILE EXP BM												
ZONING															
RESIDENTIAL	R-5	1ST FLOOR	DBL SGL PLY WD H. WD FIR CONC TILE CARPET RMS.: LIV DIN FAM KIT UTIL HALL BATH BR DEN												
MULTI-FAMILY		PARTITIONS	PLASTER DRYWALL COMPO CLD&PA T&G PLYWOOD TRIM: FIR H. WD PANELING:												
COMMERCIAL		OTHER INTERIOR CONST.	CLASS: 3X BUILT-INS: FIR H. WD METAL CAB TOPS: PLASTIC LINO APPLIANCES: ELECT GAS OVEN RANGE DISHWASHER WOOD FAN QUAL: F. A. S												
INDUSTRIAL		LIGHTING	CLASS: LOW VOLT INTERCOM												
AREA IMPROVEMENTS															
SIDEWALKS		PLUMBING	CLASS: 1/1 LAVATORY 1/1 STALL SHOWER 1/1 SINK 3 FULL 1/1 WATER ONLY 1/1 TOILET 1/1 SHOWER DOOR 1/1 LAUNDRY FAC 1/1 SJ 1/1 BATHTUB 1/1 WATER HEATER												
CURBS		HEATING	CLASS: FURNACE: FA GRAY FL W OIL GAS HARD FUEL ELEC.: W UNITS BASEBO GL PANEL CABLE: CLS FL H.W.: BASEBO CONVEC RAD: FL Gas STOVE CHIMNEY TOTAL AREA HEATED: 1419 SQ. FT.												
STREET	A	FIREPLACE	CLASS: 1 STY 2 STY SGL DBL STED CIR NO HEARTHS: 2 PLAIN ELAB. NONE FULL 3 3 3 1419 UNFIN FIN 480 SQ. FT. DAYLIGHT:												
WATER	P	BASEMENT	CLASS: WALLS: CONC BLK FL: CONC WOOD CEIL: PLS DRYWALL COMP PLYWOOD WALL CVR: WSP PLS DRYWALL COMP WD FLR CVR: ASPH TILE CONC LINO												
SEWERS	P		RMS: PLAY BR BATH LNDY GAR NO. RMS. HEAT: SQ. FT.												
ELECTRICITY		ATTIC OR UPPER STORIES	CLASS: NONE 3 3 3 SQ. FT. UNFIN FIN: PLS DRYWALL COMP CLD&I FLR: DBL SGL FIR H. WD ASPH TILE VINYL LINO CARPET LINO SUBFLOOR ONLY RMS: BR BATH HALL NO. RMS. HEAT: SQ. FT.												
SITE CHARACTERISTICS		SPECIAL	PORCH: WD FR CONC RATING: PHYS COND. P F A S FUNC. UTIL. P F A S APPEARANCE P F A S												
TOPOGRAPHY															
VIEW															

REMARKS: **2 units on main floor**
1040 in basement.

PLOT PLAN:

6.2 Page 78

The second page of your letter dated February 11, 2005 first bullet point. (See attachment D1)

"There is no record that your predecessor in ownership sought to correct the presumed errors with regard to county tax records and city utility charges for the difference between 3 and 4 dwelling units."

An interesting statement you make. I am left to wonder who you know that goes into a Government office and says I think my property record is in error and to low so you are not taxing me enough, please correct this error.

That you expect citizens to do this and if they do not you use it as a factor to decided dwelling density. This is definitely an interesting point you make for a Three-plex instead of a Four-Plex.

I am curious, do you know of any case in the Clackamas County Assessors that this has occurred? I do not nor anyone whom I asked knew who would do this. Please let me know the cases that you have seen that leads you to believe that people correcting government records that do not affect them in a negative way.

So now I am curious to see how often this occurs at the County's assessors, Christina was kind enough ask the Clackamas County Assessors Board of Property Tax Appeals (She went in on February 16, 2005 at 9:00 am) and asked how many cases have they seen where people have been asking for a correction in the record, to increase the value of their property and receive for this effort a higher assessment and tax?

Their answer was NONE!

Not one person in the three years these board members have been ruling on tax assessment appeals.

Again we have a different opinion of what people would do in this circumstance. I believe most people let the sleeping dog lie. On the other hand you disagree and believe citizens would go to the government and ask to be taxed at a higher rate.

This is another example of why I believe you should issue a second directors determination. We see this fact differently and I would like to have a third party take a look and draw a conclusion.

Please see the second page of your letter dated February 11, 2005, second bullet point. (See attachment D1).

"There is no record of subsequent efforts to correct the presumed errors with regard to county tax assessment records for the difference between 3 and 4 dwelling units."

There was no need to make an effort to correct the errors (2) contained in the assessors file as to the description of the building for tax purpose. Each time the building 2540 SE Lark sold, the sells price is given to the tax assessor, this is called the real market value, and the tax assessor tax's the building based on the real market value. If the description of the property is in error it would not lessen the taxes for an owner who, like myself recently purchased the property.

I am surprised again, I would have thought you would be aware of how a property is valued and taxed.

Therefore the building could have been describe as a 2 unit dwelling or an 8 unit dwelling and it would not effect my property tax burden. The county assessor would still assess the property tax based on my purchase price of this building.

I hope you will reconsider the importance of there not being a record of efforts to correct the county tax assessment records. I believe it should not be a important factor in deciding the historical number of dwelling units at 2540 SE Lark.

This is the fifth time we interpret information differently and draw different conclusions form it. I believe this shows the need for a second directors determination so I can appeal it and have a third parties interpret this information.

(2.) (please provided your information that would lead you to believe the errors in the tax assessors file are "presumed". I found them to be concrete and would appreciate a chance to look at any information that would cast doubt on their accuracy.

Please see the second page of the letter dated February 11, 2005, second bullet point. (See attachment D1)

"There is no record of subsequent efforts to correct the presumed errors with regard to county tax assessment records for the difference between 3 and 4 dwelling units.1"

1 "However, it is noted that you filed a tax appeal on 12/30/03 erroneously alleging that "City of Milwaukie declared it was not a legal multifamily unit and has denied its use as a living structure"."

Your above accusation that I erroneously alleged informaiotn in my appeal is inaccurate in the extream. The know facts concerning Milwaukies declaration clearly show that the City has repeatedly stated through various employee's that this structure was not a multifamily unit. The facts of such statements are abundant such as, The Clackamas Review article, Letters sent form the City of Milwaukie to me, which I have included, notices posted on the structure by the City denying access and its use as a living structure, Mr. Griffith's and my own correspondences with the City, also the City's attorney letters to my attorney, all confirming my statement and the fact that the City of Milwaukie in deed and fact ruled that the struture at 2540 SE Lark was not a multifamily unit and then did deny me use of the building as a living structure.

This is the oppisite of your above statement. Please send over the information and documents that led you to believe I was erroneous in my appeal. I do not have one item that supports your position nor were any supporting documents included in your 2/11/2005 letter.

The following will contain documents I mentioned above that support my statements and clearly show why I stated in my appeal that the City of Milwaukie did in deed and fact declare the structure at 2540 SE Lark not to be a multifamily dwelling and proceed to deny me not only use as a living structure but even entrance into my own building.

1. **2001 December:** The Clackamas Review Article, " Milwaukie Code Compliance Coordninator Steve Campbell ... found was a single-family hame converted to a four-plex..." (See attachment O1)
2. **2001 December 7:** Letter from Kenneth Kent, "...The City does not have record of approval to convert this residence into four swelling units. ... A four- plex is not permitted in the R-5 Zone. ..." (See attachmetn O2)
3. **2001 December 12:** City of Milwaukie "Notice to vacate - Do not enter - Unsafe to occupy" (see attachments R, R1, R2, R3, and R4)
4. **2002 July 30:** Letter from Larry J. Blake Jr. "... It is my understanding that the property is listed as a single family swelling, but there is a possibility that your client may increase that to a triplex if he..." (See attachment R5)

Inspectors shut down house — and one family spends homeless Christmas

□ One set of tenants in an allegedly dangerous four-plex praises Milwaukie's handling of a possible code-violation crisis — but the resident who notified the city isn't so happy

By David Stroup

dstroup@clackamasreview.com



Campbell

MILWAUKIE — A holiday miracle for one resident of an allegedly illegal Milwaukie four-plex turned into a holiday nightmare for another — as the city scrambled to deal with a building officials say was too dangerous to be occupied.

Milwaukie Code Compliance Coordinator Steve Campbell says officials were tipped to the building — located on the 2500 block of Southeast Lark — by a call from a resident. What they say they found was a single-family home converted to a four-plex, with problems that extended to the building's apparently jerry-rigged plumbing and electrical connections. "Everything without permits," Campbell said. "We don't have records of permits for anything."

The owner of the property, Mike Hamersly, said the home was

→ Turn to Housing shutdown, page A5

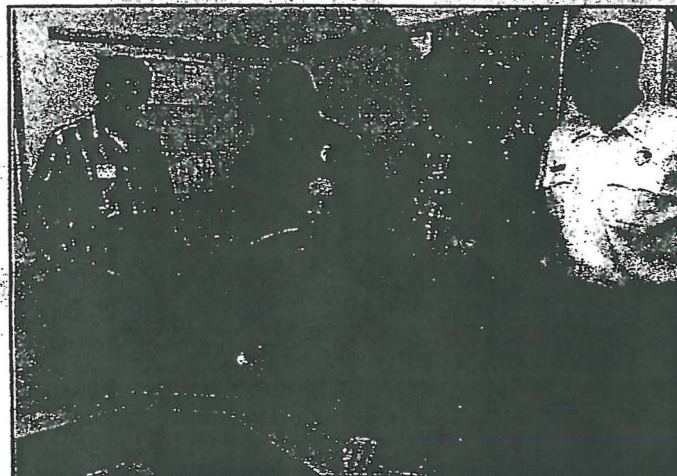


Photo by DAVID STROUP

Milwaukie's housing team (left to right): electrical inspector Dick Kelly, Matt Gilbert of the Milwaukie Police Department (standing), city planner Kenneth Kent (seated), Terry Whitehill (standing), code enforcer Steve Campbell and Deputy Fire Marshal Tony Cordie.

Attachments to February 23, 2005 letter that discuss apparent errors found in Mr. Gessner's letter dated February 11, 2005.



Michael Hamersly
3111 SE Concord
Milwaukie, OR 97267

December 7, 2001.

Re: Application # MLP-01-03 - 2540 Lark Street - Tax Lots 21E1BB 2401 and 2403

Dear Mr. Hamersly,

It has come to the attention of the City that the existing residence at 2540 Lark Street has been converted into four dwelling units. You may have received notice of this from the City's Code Enforcement Division. This issue was not identified in the material you provided for application MLP-01-03. The City does not have record of approval to convert this residence into four dwelling units. The existing zoning for the property does not allow this number of dwelling units. In order to proceed with your minor land partition, this issue will need to be addressed. Based on the area of the new lots, once you record the final plat, one single-family residence would be the maximum permitted on each lot.

If you wish to proceed with recording the final plan for MLP-01-03, it will be necessary to convert the existing building back to a single-family residence. It will be necessary to submit a building permit to correct existing code violations and remove all but one kitchen facility.

If you decide not to proceed with the minor land partition, you will still need to correct the number of dwelling units on the property. A four-plex is not permitted in the R-5 Zone. In addition, each dwelling unit is required to have a minimum of 5,000 square feet of lot area. Based on the size of existing Tax Lot 2401, one single-family residence would be the maximum permitted. However, if both tax lots 2401 and 2403 were combined, you could have enough lot area for a duplex, provided you received approval of all necessary building permits and eliminated the additional dwelling units. If you decide to go this route, it could be accomplished by consolidating the two tax lots.

Please contact me so we can discuss how you plan to proceed. If you need any additional information, please feel free to call me at (503) 786-7653.

Sincerely,


Kenneth Kent
Associate Planner

COMMUNITY DEVELOPMENT DEPARTMENT
Engineering • Operations • Planning • Building • Fleet • Facilities
6101 S.E. Johnson Creek Blvd., Milwaukie, Oregon 97206
PHONE: (503) 786-7600 • FAX: (503) 774-8236

Attachments to February 23, 2005 letter that discuss apparent errors found in Mr. Gessner's letter dated February 11, 2005.

Attachment **R**

CITY OF MILWAUKIE
COUNTY OF CLACKAMAS, STATE OF OREGON

6.2 Page 83

NOTICE TO VACATE

- DO NOT ENTER -

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building or to remove or
deface this notice.

Building Official:
City of Milwaukie

SUBSTANDARD BUILDING DO NOT OCCUPY

**2540 SE Lark
Utility Room**

**It is a misdemeanor to occupy this portion of the building,
or to remove or deface this notice.**

**Structural Safety Division
City of Milwaukie**

Tracking No. SW - 01-016

Building Official

'SUBSTANDARD BUILDING' DO NOT OCCUPY

**2540 SE Lark
Apartment #3**

**It is a misdemeanor to occupy this portion of the building,
or to remove or deface this notice.**

**Structural Safety Division
City of Milwaukee**

Tracking No. SW – 01-017

Building Official

SUBSTANDARD BUILDING DO NOT OCCUPY

**2540 SE Lark
Apartment #4**

**It is a misdemeanor to occupy this portion of the building,
or to remove or deface this notice.**

**Structural Safety Division
City of Milwaukee**

Tracking No. SW - 01-018

Building Official

SUBSTANDARD BUILDING DO NOT OCCUPY

2540 SE Lark

Apartment #1 back bedroom

**It is a misdemeanor to occupy this portion of the building,
or to remove or deface this notice.**

**Structural Safety Division
City of Milwaukee**

Tracking No. SW - 01-019

Building Official

Attorneys at Law

Larry J. Blake, Jr.
 George Duckler, Ph.D.
 Steve J. Rutherford, Of Counsel

Also a
 Also attached in California

July 30, 2002

CLIENT'S COPY

Jon R. Snook
 Attorney at Law
 725 Portland Ave.
 Gladstone OR 97027

Re: City of Milwaukie v. Michael Hennessy

Dear Jon:

This letter is in reference to the above-captioned matter and my representation of the City of Milwaukie. Thank you for taking the opportunity to talk to Steve Campbell and myself the other day. Pursuant to our discussion, it appears that it is appropriate that your client be cited at this time. Just because your client is cited, does not mean that an informal resolution is not possible.

I am asking Steve Campbell to review the possibility of citing your client for all the numerous violations at the discussed location. These violations would include electrical, plumbing and mechanical issues as well as the type of structure and its present and past use.

I anticipate there being a total of six (6) violations per day starting December 14, 2001 and continuing until the present. Of course, some of the violations may decrease if the renters have moved out of the property.

All the City wants from your client is to come into conformance with the City Code. It is my understanding that the property is currently listed as a single family dwelling, but there is a possibility that your client may increase that to a duplex if he follows the guidelines and rules to do so.

Please be advised that your client must get all applicable City, County and State authorizations prior to working or modifying on the property so as to ensure the safety of the neighborhood.

If you have any questions, do not hesitate in contacting my office.

Very truly yours,


 Larry J. Blake, Jr.
 City Prosecutor

LJB/me
 cc: Steve Campbell
 Jon Hennessy

3700 Barbur Building, 3718 S.W. Condon Street, Suite 110, Portland, Oregon 97239
 Telephone: 503.228.6200 Facsimile: 503.228.6222 E-Mail: law@thekenduckler.com

Please see the second page of your letter dated February 11, 2005 (see attachment D1) the third bullet.

"There is no record of communication with the City to correct utility billing records prior to July 2003."

This is a correct statement but I believe it leaves out an important fact. That the City's utility bill fails to state how many units it is billing. A owner such as myself would have no idea that the City's utility records are inaccurate. (See attachment RR1) I see this as the reason there would be no record of communication. Therefore I strongly disagree with your conclusion that the lack of communication on the City's utility bill supports your finding of this structure to be a Three-Plex.



CITY HALL
10722 SE MAIN STREET
MILWAUKIE, OR 97222
(503) 786-7525
Cycle: 01

SERVICE LOCATION	ACCOUNT NUMBER	DUE DATE	TOTAL AMOUNT DUE
2540 SE LARK ST	06-2750-03	9/15/04	51.33-

PDX LAND LLC

STATEMENT DATE 8/31/04

METER READING		USAGE IN 100 CU. FT.	WINTER AVERAGE (DEC - MAR)	BILLING DESCRIPTION	BILLING AMOUNTS
PRESENT	PREVIOUS				
326 8/05/04	289 6/06/04	37	8	WATER	58.37
				SEWER	61.80
				STORM	12.00
CURRENT BILLING					132.17
BALANCE FORWARD					183.50
TOTAL AMOUNT DUE					51.33-

PLEASE SEE INSERTS REGARDING WATER AND SEWER CHANGES.

***PAYMENTS OR REQUESTS RECEIVED AFTER 8/25/04 ARE NOT REFLECTED ON THIS STATEMENT.

***ADDITIONAL PAYMENT OPTIONS: AUTO DRAFT OR AFTER HOURS DROP BOX BY FRONT DOOR. UTILITY BILLING ALSO ACCEPTS DEBIT OR CREDIT CARDS AT CITY HALL.

MORE INFORMATION
ON REVERSE SIDE

↑ PLEASE PAY ↑
THIS AMOUNT

Please see the second page of your letter dated February 11, 2005 (see D1) the fifth bullet point. "I believe that Mr. Griffith was knowledgeable and diligent in representing your interests throughout the period in which I worked with him. ...I am uncomfortable with your contention that Mr. Griffith did not communicate with you and failed his professional obligations to pursue an appeal due to his health conditions."

I disagree with your belief. Mr. Griffith had cancer, was undergoing chemotherapy treatments and was extremely sick from both during July 2003 and died three months later. I believe he was too sick to be diligent. (See attachment T1) It is a copy of the July 9, 2003 letter from you to Mr. Griffith. Please note that it makes no mention that Mr. Griffith only has fourteen (14) days from when the letter was sent to appeal. It states only which Milwaukie Zoning Ordinance under which a appeal can be filed.

Apparently you expect this man who is literally going to be dead within a few months, who wasting away from his chemotherapy treatments to hop in a car as soon as he received your letter to find out when the appeal deadline is for my directors determination. Unfortunately I believe due to health reasons, he was not able to do so. Nor would have expected him to. He was sick and even though I am still dealing with the repercussions of his inaction, he is not the one I fault.

Another point that you may have overlooked was the fact Mr. Griffith did not have the Milwaukie Zoning Ordinance that govern the appeal. So from July 9, 2003 decision until you sent them to him in your October 3, 2003 letter. (See attachment T1.5) Where you state "... Please find a copy of the requested zoning section enclosed. ..."I believe this clearly shows that Mr. Griffith was not diligent in representing my interests and that he did not inform me of the appeal period during July 2003 until weeks after it had already expired and was then too late to appeal.

Again his inaction due to poor health is shown in his letter to you on September 16, 2003, asking for those codes. "... However, He has requested that I notify you that he will be appealing your determination to the Planning Commission as allowed by Ordinance Section 1001.4. Would you please be so kind as to supply me with that section of code (1001.4), and..." See attachment T2)

You acknowledge receiving the previous September 16, 2003 letter, with the letter you sent in response to Mr Griffith. (See attachment T3).

Again we disagree on an subject and draw different conclusion from the same information (the above letters). In your letter you state your belief "Mr. Griffith was knowledgeable and diligent in representing my interest." and I believe the opposite occurred, back by my experience with this subject and the letters I included.

And again I believe this shows the necessity of a second directors determination so I can appeal it and we can have a third party take a look.

6.2 Page 92



July 9, 2003

Mr. Jim Griffith
11825 SW Greenburg Road, Suite A3
Tigard, OR 97223-6460

Re: 2540 SE Lark Street

Dear Mr. Griffith:

This letter is in response to your inquiry as to the number of authorized dwelling units at 2540 Lark Street. I have reviewed your February 25, 2003 letter and supporting information wherein you state that four units should be recognized for zoning purposes.

After consideration of your information and city and county records, I have concluded that the structure may only be used for three dwelling units based on the following:

- Milwaukie utility billing records indicate three units of sewer service.
- Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.

This determination may be appealed to the Planning Commission under provisions of Milwaukie Zoning Ordinance Section 1001.4. Please do not hesitate to contact me at 503-786-7652 should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Gessner".

John Gessner
Planning Director

copy Tom Larsen, Building Official
Paul Shirey, Engineering Director
Alice Rouyer, Community Development & Public Works Director
Planning Commission



October 3, 2003

Mr. Jim Griffith
10915 SE Fairhaven Way
Tigard, OR 97223

Re: 2540 SE Lark

Dear Mr. Griffith:

This letter is in response to yours of October 1, 2003, wherein you request a copy of Zoning Ordinance Section 1001.4 and documentation of utility billing. Please find a copy of the requested zoning section enclosed. You may contact Carla Atwood, Milwaukie Finance Department, directly at 786-7544 for billing documentation. You may also contact the County Assessor to confirm that the property has been historically assessed for three units.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gessner".

John Gessner
Planning Director

copy: Address file

6.2 Page 94

JIM GRIFFITH & ASSOCIATES, INC.

LAND / BUILDING USE STRATEGIES

10915 SW FAIRHAVEN WAY

Tigard, OR 97223-3828

Phone: (503) 718-1200

Fax: (503) 718-1300

jga0126@netzero.net

September 16, 2003

Mr. John Gessner,
Planning Director
Community Development Department
City of Milwaukie
6101 E.S. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: 2540 SE Lark Street

Dear Mr. Gessner,

Since your determination of three units at the structure located at 2540 SE Lark Street, the owner has been working to bring the structure up to code for occupancy.

However, He has requested that I notify you that he will be appealing your determination to the Planning Commission as allowed by Ordinance Section 1001.4.

Would you please be so kind as to supply me with that section of the code (1001.4), and also, you noted in your report that the utilities billings indicated three units at that location. Would you also provide me a copy of that information? When I inquired about the sewer service I was informed that there was an oversized line that would indicate a multi-unit structure, but they had no information of the number of units. That's the reason for the request.

Thank you for your assistance and I look forward to your reply with the requested information.

Sincerely



James E. Griffith,
President

Cc Michael Hamersly



September 18, 2003

Mr. James E. Griffith
Jim Griffith & Associates
10915 SW Fairhaven Way
Tigard, OR 97223

Subject: 2540 SE Lark Street

Dear Mr. Griffith:

I have received your September 16, 2003 letter, wherein you provide notice of the property owner's intent to appeal my July 9, 2003 determination of the permissible number of dwelling units at 2540 SE Lark Street. Please be advised that the appeal period for the determination expired 14 days following its issuance in accordance with Milwaukie Municipal Code Section 1001.4. Accordingly, the determination is final and no further city appeal is available on this matter. As a point of reference, my July 9, 2003 letter provided notice of the appeal process for such determinations.

Please do not hesitate to contact me at 503-786-7652 should you have any questions or if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "John Gessner", is written over a horizontal line.

John Gessner
Planning Director

copy: Gary Firestone, City Attorney
Alice Rouyer, Community Development & Public Works Director
Mike Swanson, City Manager
Tom Larsen, Building Official

6.2 Page 96

Please see the third page of your letter dated February 11, 2005 (see attachment D1) first bullet. "The failure to identify the number of dwelling units in your application for partitioning casts doubt upon present arguments. ..."

I hope the following fact will remove those doubts. The City of Milwaukee's application does not ask for the number of dwelling units.. (See attachment U1)

If I would have known up front that having the four-plex on my property would prevent me from partitioning my land it would have saved me:

1. \$3,258.00 and the six months of working on the project.
2. The fees paid to the City of Milwaukee for the application.
3. I would not have had the survey done until after the application had been approved. I had no idea that the City would not approve this partition for information it did not even ask for in its very own application.
4. I have spoken with planners in the past about this being a four-plex, specifically when I bought the four-plex and again with Janet Wright 2/3/99. Who let me know it was ok to have a four-plex in the R-5 zone. (See attachment U2)
5. The failure of the City of Milwaukee to ask for this crucial information in its application (see attachment U1) is in my view to blame for me not identifying the number of dwelling units.

Why does the 2/11/2005 letter state that due to not identifying the number of dwelling units casts doubt on the rest of my information? How would I have known then I should provide information, being the number of dwelling units, when it is not asked for? Also I have not ever partitioned a piece of property with any structure on it. Again since I have not had experience in that process how am I supposed to know to include information that is not asked for. On the other hand I believe Milwaukee's application should ask for the number of dwelling units on a property since it is a deciding factor.

I hope the above facts and information puts to rest your concerns about why the units were not identified. I do resent that this was used to cast doubts on my present arguments. I do not believe it should. I hope you will look at them again without the doubts.



COMMUNITY DEVELOPMENT
6101 SE JOHNSON CREEK
MILWAUKIE, OREGON 971

6.2 Page 97

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

Application for Land Use Action

(Please print or type)

APPLICANT(S): <u>Michael Hamersly</u>	Phone: <u>780-0019</u>
Address: <u>3111 SE Concord, Mil. OR 97</u>	Zip: <u>97267</u>
PROPERTY OWNER(S): <u>Same</u>	Phone:
Address:	Zip:

APPLICATION TYPE (check):

- ☐ Annexation
- ☐ Appeal (Admin. to PC/PC to CC)
- ☐ Community Service Overlay
- ☐ Comprehensive Plan Amendment (Major QJ/Legislative)
- ☐ Conditional Use
- ☐ Exception
- ☐ Expedited Land Division
- ☐ Historic Resource Review:
 - ☐ Alteration
 - ☐ "Other" Alteration
 - ☐ Demolition
 - ☐ Deletion OR Designation
 - ☐ Home Improvement Exception
- ☐ Lot Line Adjustment
- ☐ Major Land Partition
- ☐ McLoughlin Corridor Design Review
- ☒ Minor Land Partition
- ☐ Mixed Use Overlay
- ☐ Natural Resource Review

- ☐ Nonconforming:
 - ☐ Use
 - ☐ Structure
 - ☐ Replacement of existing NCU
- ☐ Planned Development (Preliminary/Final)
- ☐ Solar Review
- ☐ Subdivision (Preliminary/Final)
- ☐ Temporary Structure
- ☐ Transition Area Plan Review
- ☐ Transportation Planning Review
- ☐ Variance:
 - ☐ 10% or less of Zoning Ordinance standards
 - ☐ Over 10% of Zoning Ordinance standards
 - ☐ Sign Ordinance
 - ☐ Subdivision Ordinance
- ☐ Zoning Ordinance Amendment:
 - ☐ Map, Major Quasi-Judicial
 - ☐ Map, Legislative
 - ☐ Text, Major Quasi-Judicial
 - ☐ Text, Legislative
- ☐ Other:

PROPOSAL (describe briefly): We propose a minor land partition, to correct the improper creation of lot 2403 (created in 1975) and to maximize the use of our land.

Location: 2540 SE Lark Mil. OR. 97222 Map & Tax Lot(s): R 21 E 011 B B 02401 + 2403

Comprehensive Plan Designation: _____ Zoning: R-5 Size of property: 2401 = 8,300. 2403 = 2,600
Total = 10,900

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

NDA: _____ LUC Chair: _____ Phone: _____

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

Submitted by: Mil. Hamersly Date: 5/2/2001

APPLICATION FOR LAND USE ACTION

PAGE 2

Minor Land Partition

Review type: Administrative II

APPLICATION CHECKLIST

- | | |
|-------------------------------------|-------------------------------------|
| ☒ | A. Describe proposal |
| ☒ | B. Address approval criteria |
| ☒ | C. Submit site plan/map (12 copies) |
| ☒ | D. Other specific requirements |
| ☒ | E. Submit notice labels and map |
| ☒ | F. Pay fee |

A

DESCRIBE PROPOSAL

In your own words, describe what you propose to do and why (use additional pages if necessary):

See attached

APPLICATION FOR LAND USE ACTION

PAGE 3

B

ADDRESS APPROVAL CRITERIA (on a separate sheet of paper)

You will need to show how your request relates to the approval criteria. For a Minor Land Partition, please address the following criteria:

Comprehensive Plan Goals and Policies:

- Planner will determine if applicable and provide copies of appropriate Comprehensive Plan pages.

Zoning Ordinance Sections:

- All parcels must meet lot size standards of the applicable zone.

Other Criteria:

- Subdivision Ordinance, Sections 17.32.020 and 17.32.040
- Compliance with Sections 92.050 and 92.060 of the ORS.

TEXT OF CRITERIA:

From the Subdivision Ordinance (Title 17 of the Municipal Code):

17.32.020. Submission of plans.

There shall be submitted to the Community Development office four copies of a site plan eleven inches by seventeen inches, or eighteen inches by twenty-four inches in size with the following information:

- A. The date, north point, scale, address, assessor reference number, and legal description;
- B. The name and address of the record owner or owners and of the person who prepared the site plan;
- C. The approximate acreage and square feet of the parcel under a single ownership, or if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the minor partitioning;
- D. For land adjacent to and within the parcel to be partitioned, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and right-of-ways; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
- E. The location of existing structures, identifying those to remain in place and those to be removed;

TEXT OF CRITERIA CONTINUED:

- F. The lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;
- G. The existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees, topography, and other structures;
- H. The applicant shall provide a conceptual plan of complete subdivision or partitioning of the subject property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all other options for access—including shared driveways, pedestrian accessways, and new street development—have been investigated; and
- I. Such additional information as required by the Planning Director or Planning Commission.

17.32.040. Flag lots.

Flag lots may be created by partitioning provided the following standards are met. In reviewing a flag lot application, the lot size, lot dimension, setback, lot coverage, minimum vegetation, and height limit requirements of the underlying zone shall be applied. Additionally, specific site development criteria adopted for the neighborhood district in which the site is located shall apply.

A. Future development.

Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible. In addition, consideration will be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots. Flag lot partitioning shall not preclude the development of surrounding properties. Where there is the potential for future development on adjacent lots with new roadway development, flag lots may be allowed as an interim measure. In this case, Planning Commission review, as specified in subsection 17.32.050, shall be required and the flag lot(s) must be designed to allow for future street development. Dedication of the future street right-of-way will be required as part of final plat approval.

B. Lot size.

The area of the access easement (flagpole) shall be deducted from the gross acreage of the flag lot. The flag or development portion of the lot shall be equal to or greater than the square footage of the underlying zone.

APPLICATION FOR LAND USE ACTION

PAGE 5

TEXT OF CRITERIA CONTINUED:

C. Front yard.

The front yard of the flag lot shall be measured from the front lot line. The front lot line is the line that is most parallel and closest to the street, excluding the pole portion of the flag lot. If this standard is not practicable due to placement of structures on the subject or adjacent lots, topography, lot configurations, or similar reasons, then the front lot line will be the other property line that abuts the access portion of the flag or easement.

D. Parking.

No parking shall be permitted along the access easement (flagpole) portion of any flag lot or within the improved turnaround area for emergency vehicle access.

E. Screening and buffering.

A 5-foot-wide visual and noise buffer shall be provided along the property line of the adjacent property that abuts the access for the flag lot. This buffer is intended to protect the affected dwelling(s) located on adjacent parcels and must extend from the rear lot line to the required front yard setback for the adjacent lot. This buffer shall consist of:

1. a minimum 5-foot-high site-obscuring wooden fence or masonry wall; and/or
2. a vegetative landscape screen consisting of trees and shrubs of sufficient size to provide effective screening within two years of planting. Trees shall be a minimum 2-inch caliper, and shrubs shall be a minimum of 5 gallons at time of planting. All required vegetation must be maintained and survive for a minimum of two growing seasons.

In addition, the rear and side yards of the development area (flag) shall be screened from adjacent property with a 6-foot-tall wood or masonry fence.

F. Tree mitigation.

All trees 5 inches or greater in diameter, as measured at the lowest limb, or 4 feet above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least one evergreen or deciduous tree, of a species known to grow in the region, shall be planted at an appropriate ratio as mitigation for tree removal. At planting, deciduous trees shall be a minimum of 2-inch caliper and evergreen trees shall be a minimum of 5 feet tall. This standard shall control until the City adopts an urban forestry ordinance to supersede this provision.

APPLICATION FOR LAND USE ACTION

PAGE 6

TEXT OF CRITERIA CONTINUED:

G. Access.

For any flag lot, the minimum width of the access strip will be 20 feet, 12 feet of which must be paved for the full length of the access strip. The entire length of the access strip shall be kept clear of obstructions to access. Access to flag lots shall be consolidated into a single shared driveway wherever practicable, including consolidation of the access of the parent lot. These minimum standards may be increased if the Planning Director determines such is necessary to guarantee adequate and safe access. A paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.

H. Two flag lots.

Where two flag lots will have abutting access strips, the combined width of the two access strips shall not be less than 30 feet. A joint access easement shall be created for the two flag lots, which extends to the deepest lot for the full width of the combined access strips. Within the joint access strip, a common driveway with a maximum paved width of 20 feet shall be provided which extends from the street to the deepest parcel. At the end of the joint access easement, a paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.

I. Improvements.

Proposed flag lots shall be referred to the Public Works Department and the Fire Marshal's office for review and recommendation or decision on appropriate fire and traffic safety improvements, and other requirements to be provided by the applicant. At a minimum, these shall include recommendations on: vertical clearance for fire equipment; sewer lines and pumps; water meters and lines for adequate flows and pressures; fire hydrants; special post for display of house numbers at street entrance to access easement; street lights; and assurance of clear vision conditions at access entrance. Additional improvement requirements—such as paved access driveways constructed to residential street standards; special additional easements for utilities; necessary traffic safety devices; or half-street, curb, and sidewalks—may also be recommended.

APPLICATION FOR LAND USE ACTION

PAGE 7

TEXT OF CRITERIA CONTINUED:

J. Three or more flag lots.

The Planning Commission shall discourage development of three or four flag lots in which there are more than two lots in depth from a public street. When requested, such proposals must be considered by the Planning Commission under the variance procedure. Increased standards for improvements in such cases shall be as determined by the Planning Commission, with advice from Public Works and other departments as appropriate.

From the ORS:

92.050 Requirements of survey and plat of subdivision and partition. (1) No subdivider shall submit a plat of a subdivision or partition for record, until all the requirements of ORS 209.250 and the plat requirements of the subdivision or partition have been met.

(2) The survey for the plat of the subdivision or partition shall be of such accuracy that the linear error of closure shall not exceed one foot in 10,000 feet.

(3) The survey and plat of the subdivision or partition shall be made by a registered professional land surveyor.

(4) The plat of the subdivision or partition shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot or parcel shall be numbered consecutively. If used, blocks shall be lettered or numbered. The lengths and courses of all boundaries of each lot or parcel shall be shown. Each street shall be named.

(5) The locations and descriptions of all monuments found or set shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown.

(6) The location, dimensions and purpose of all recorded and proposed public and private easements shall be shown on the subdivision or partition plat along with the county clerk's recording reference if the easement has been recorded with the county clerk.

(7) The area of each lot or parcel shall be shown on the subdivision or partition plat.

(8) In addition to showing bearings in degrees, minutes and seconds of a degree and distances in feet and hundredths of a foot, the following curve information shall be shown on the subdivision or partition plat either on the face of the map or in a separate table:

- (a) Arc length;
- (b) Chord length;
- (c) Chord bearing;
- (d) Radius; and
- (e) Central angle.

TEXT OF CRITERIA CONTINUED:

(9) The surveyor submitting any subdivision, condominium or partition plat that is within one-half mile of an established geodetic control monument, that has been approved by the National Geodetic Survey or has been approved by and filed with the county surveyor, shall, by field survey according to Federal Geodetic Control Committee guidelines for third order class II, show the measured angles and distances from the geodetic control monument to the initial point of a subdivision or condominium or to a monumented boundary corner of a partition. If there is an azimuth mark for the geodetic control monument or if there is another geodetic control monument that is intervisible to the primary geodetic control monument, the bearings shall be based, if practicable, on the bearings between the geodetic control monument and the azimuth mark or the intervisible geodetic control monument.

(10) Notwithstanding the provisions of subsection (3) of this section, the county surveyor may waive the requirement of a distance and bearing to a geodetic control monument if the subdivision or condominium, or partition thereof, has previously furnished the required information.

92.060 Marking certain points of plats of subdivisions and partitions with monuments; specifications of monuments; monuments placed before recording. (1) The initial point of all subdivision plats shall be marked with a monument, either of concrete or galvanized iron pipe. If concrete is used it shall not be less than 6 inches by 6 inches by 24 inches and shall contain not less than five cubic inches of ferrous material permanently imbedded in the concrete. If galvanized iron pipe is used it shall not be less than two inches in inside diameter and three feet long. The monument shall be set or driven six inches below the surface of the ground. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision or condominium. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

(2) In subdivision plats, the intersections, points of curves and points of tangents, or the point of intersection of the curve if the point is within the pavement area of the road, of the centerlines of all public streets and roads and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of concrete, galvanized iron pipe, or iron or steel rods. If concrete is used it shall be as described in subsection (1) of this section. If galvanized iron pipe is used it shall not be less than three-quarter inch inside diameter and 30 inches long, and if iron or steel rods are used they shall not be less than five-eighths of an inch in least dimension and 30 inches long. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

APPLICATION FOR LAND USE ACTION

PAGE 9

TEXT OF CRITERIA CONTINUED:

(3) All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

(4) Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot.

(5) Monuments shall be set with such accuracy that measurements may be taken between monuments within one-tenth of a foot or within 1/5,000 of the distance shown on the subdivision or partition plat, whichever is greater.

(6) All monuments on the exterior boundaries of a subdivision shall be placed and the monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to the recording of the plat of the subdivision if the registered professional land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in ORS 92.070 (2) and if the person subdividing the land furnishes to the county or city by which the subdivision was approved a bond, cash deposit or other security as required by the county or city guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in ORS 92.065.

(7) All monuments on the exterior boundary and all parcel corner monuments of partitions shall be placed before the partition is offered for recording. Unless the governing body provides otherwise, any parcels created that are greater than 10 acres need not be surveyed or monumented.

APPLICATION FOR LAND USE ACTION

PAGE 10

C

SUBMIT SITE PLAN/MAP (12 copies)

A sample of how your site plan/map should look is shown on the next page. For a full and accurate evaluation of your proposal, we need the following information on your site plan/map:

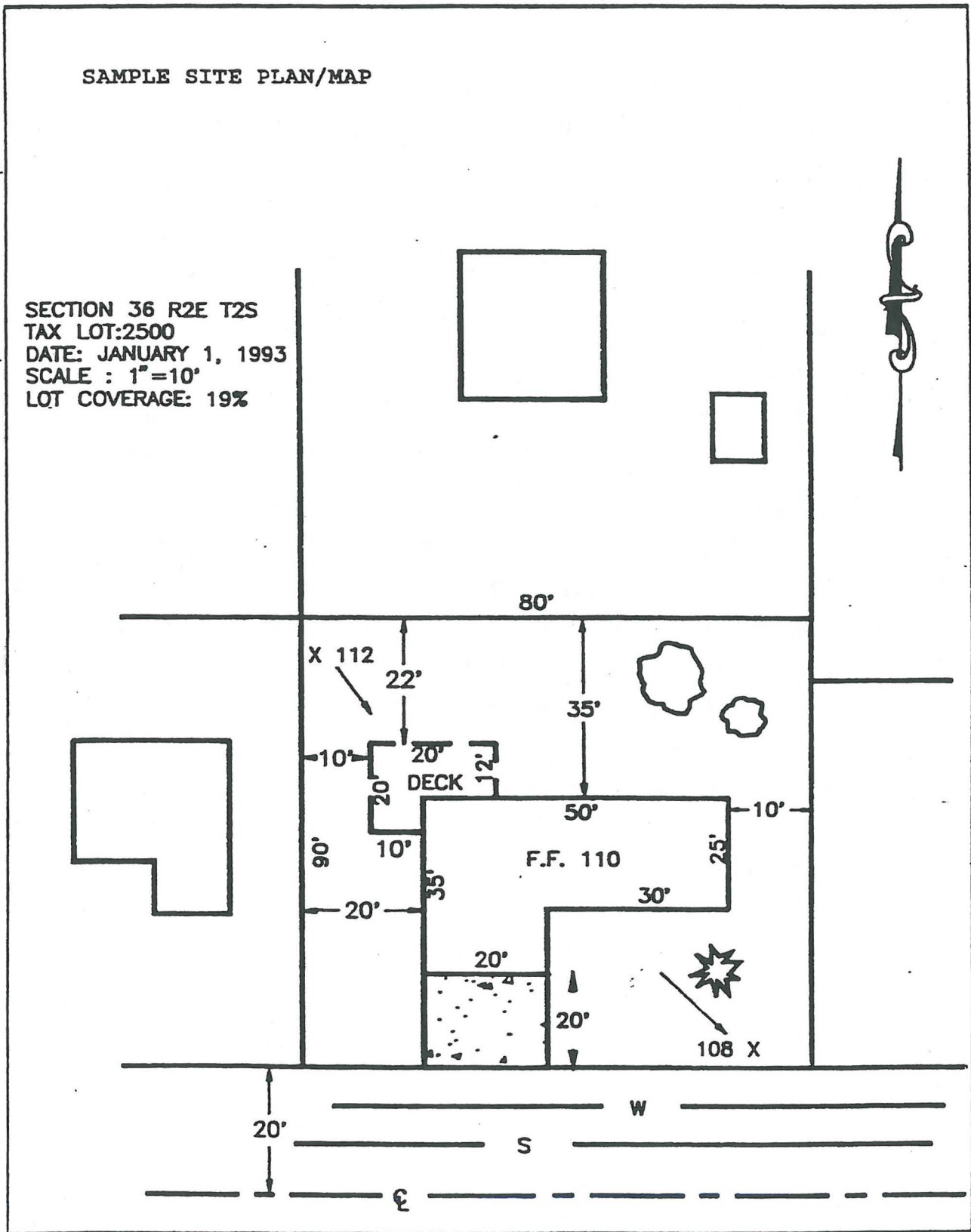
1. Drawn legibly
2. Lot dimensions
3. Building foot print with dimensions (including all projections, raised decks, and covered patios)
4. Distance from structures to property lines and edge of pavement
5. North arrow and scale (1" = 10' maximum; i.e., 1" = 10' or less)
6. Location of existing and proposed utilities
7. Location of all easements
8. Location of mature trees and landscaping, both existing and proposed. (Prefer 1 of existing, 1 of proposed.) Area to be landscaped shall be calculated as percentage of site area.
9. Lot coverage (percentage of total area covered by structure<s>, calculated)
10. Maximum and minimum elevations and direction of slope for each floor level, top of building, and driveway
11. Location of driveways, walkways, paved areas, and disabled access (indicate type of surface)
12. Parking, including space numbers, configurations, size and width, access, maneuvering areas, disabled parking details, and calculations of required number of spaces.
13. Legal description, tax lot identification, and common street addresses

APPLICATION FOR LAND USE ACTION

PAGE 11

SAMPLE SITE PLAN/MAP

SECTION 36 R2E T2S
TAX LOT:2500
DATE: JANUARY 1, 1993
SCALE : 1"=10'
LOT COVERAGE: 19%



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APPLICATION FOR LAND USE ACTION

PAGE 12

D

OTHER SPECIFIC REQUIREMENTS

A preapplication conference may be desirable or required for this action. Please discuss this with Community Development staff.

Please provide the information requested below.

1. The name, phone number, and address of your engineer or surveyor (if appropriate):

Name N/A Phone _____

Address _____ Zip _____

2. Number of total parcels proposed 2 Approx. acres .25

3. Show how each parcel complies with minimum zoning standards, as indicated below:

Minimum zoning standards for parcels in the R-5 Zone:

Area: 5,000 sq. ft. Width: 50' ft. Depth: 80' ft.

Parcel 1 measurements: 2401

Area: 6,283 sq. ft. Width: 62' ft. Depth: 104' ft.

Parcel 2 measurements: 2403

Area: 5,017 sq. ft. Width: 61' ft. Depth: 112' ft.

Parcel 3 measurements:

Area: N/A sq. ft. Width: _____ ft. Depth: _____ ft.

APPLICATION FOR LAND USE ACTION

PAGE 13

E

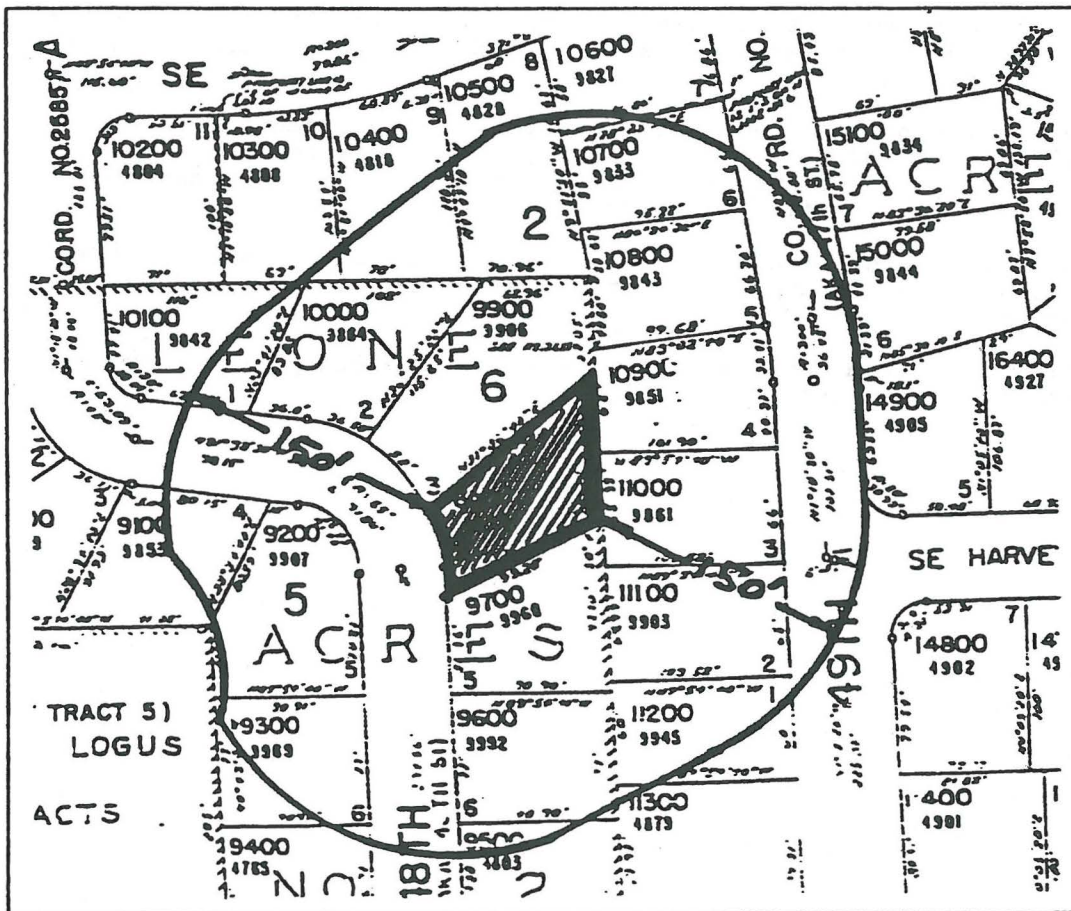
SUBMIT NOTICE LABELS AND MAP

We are legally required to notify surrounding property owners and residents of your proposed action. To do that, we need you to provide us with notice labels. To determine who to include on the labels, you first need to create a notice map. (We need a copy of this map, too.)

Creating the notice map (sample below)

To determine all the property owners and residents within 150 feet of your site, you will need a copy of the County Assessor's Map of your site (available at their office at 168 Warner Milne Road in Oregon City, 655-8671).

On that map, draw a line out 150 feet from each side of the lot. Then, use a compass to determine the 150-foot distance from each corner of the lot. Draw a circle along these points. All tax lots within, or partially within, this boundary must be included.



Creating the notice labels (sample on next page)

You can use your list of tax lots within the circle on the notice map to create notice labels which include all property owners and residents for those tax lots. A list of property owners and situs addresses for these properties can be obtained from the County Assessor's Office; or you can get them from a title insurance company.

Please use Avery labels #5160, available in Planning Dept. (see sample).

Each label should be typed in the following order:

- Tax Map and Tax Lot Number
- Name (or Occupant)
- Address

Please be sure your labels are in alphanumeric order, by tax map and lot number. Also, be sure to include your name and address (applicant) and the property owner's name and address (if different from applicant).

If the mailing address of a property owner is different from the situs address, please address a second label to "Occupant" at the situs address.

For apartments, we need one label for each apartment to "Occupant," address, and apartment number (see sample). To determine whether apartments are in the area, you may have to walk or drive the notification area.

For out-of-town or out-of-state business property owners, please also include the address for the nearest local branch of the business.

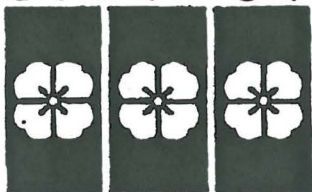
Where more than one tax lot has the same owner, please combine into one label (see sample).

-03-99 WED 10:55 AM CITY OF MILWAUKIE

FAX NO. 503 774 8236

P.01

CITY OF



MILWAUKIE

Fax Cover Sheet

Date: 2/3/99 Time: AMNumber of pages (includes cover): 5TO: Wayne HamerslyFROM: Janet Wright

Community Development/Public Works

6101 SE Johnson Creek Blvd.

Milwaukee OR 97206

PHONE: (503) 786-7653

FAX: (503) 774-8236

x: 243 6018

MESSAGE: Included in the FAX
are the R-S Residential Zone
Criteria for Permit Uses &
the Dev. Standards - See 503.3

Please Call me at 786-7653
after you have had time to
look at the information. &
we can discuss the issues
further

Thanks
Janet Wright

INTERESTED PERSONS SIGN-UP SHEET rd

PLANNING COMMISSION

Meeting date: April 12, 2005

PLEASE PRINT

Name	Address (including Zip Code)	Phone	Agenda Item #
Wayne Hamersly	13200 S.E. NIXON AVE MI 47222	503 659-5400	☐ 6.1 ☒ 6.2
RICHARD SMITH	PROVIDENCE MILWAUKEE HOSPITAL 10263 SE 36 th AVE.	(503) 513-8300	☒ 6.1 ☐ 6.2
MARTIN CASILLAS	2553 SE DOVE	(503) 654-8085	☐ 6.1 ☐ 6.2
RENE' WIEGE	2553 SE DOVE	11	☐ 6.1 ☐ 6.2
D. Shanthall	10218 SE 36	654-0731	☒ 6.1 ☐ 6.2
Charles Wilbur	3122 SE Balfour St	654-4248	☒ 6.1 ☐ 6.2
Chris Williams	10241 SE 36 th AVE	503-854-9426	☒ 6.1 ☐ 6.2
Stu Hayman	3635 SE KING RD 97222	503-86-0674	☐ 6.1 ☐ 6.2
Ernest Palmer	10250 S.E. 36 th AVE	503-659-5829	☒ 6.1 ☐ 6.2
Samuel Palmer	" " " "	" " "	☒ 6.1 ☐ 6.2

INTERESTED PERSONS SIGN-UP SHEET

PLANNING COMMISSION

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[illegible]