CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 17, 2006

CALL TO ORDER

Mayor Bernard called the 1974th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Susan Stone	Carlotta Collette

Staff present:

Mike Swanson, City Manager	Lindsey Nesbitt, Associate Planner
John Pinkstaff, City Attorney	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mr. Swanson introduced John Pinkstaff who was taking Mr. Firestone's place for the evening.

Annual Audit Report

Tom Glogau, Grove, Swank & Mueller, reviewed the audit report. He referred to page 26 and pointed out five funds that had deficit balances at the end of the year. Oregon statute contemplates that each fund would operate at least on a break-even basis. The library services fund had a very small deficit of less than $5,000 in a fund that ran $1.5 million of expenditures. It was dust on the scales in terms of the general fund, so he was not concerned. The park land purchase fund was relatively small and inactive, so that would be easy to cure by transferring money and was not a problem. The community development and engineering funds both had small negative balances and half of what it was the previous year. Those funds existed by charging other funds for their services, so adjusting those charges could easily cure deficits. This administrative services fund was in a similar situation. Although technically these violated Oregon statutes, it did not indicate a mis-spending of money or an overspending of resources that was not curable. The next section identified five funds where expenditures were in excess of appropriations, which Oregon law prohibits. Again, this was not a concern as transferring appropriation dollars from categories that were not over expended could cure it. As long as the fund as a whole was not over expended, the Council met its contract with the voters, which was to not spend more than budgeted. He and Mr. Taylor had discussed how to keep this from occurring in the future.

He referred to page 9, which was a summary of the enterprise fund. The operating funds had a very small fund balance, and the reserve funds had very large balances.

The reserve fund was money set aside for specific purposes, and at its pleasure the Council could move the money back to the operating fund. In this case, the reserve funds did not have as much money because operations would need to draw some of that. Mr. Glogau thought those were the significant portions of the audit report that the Council needed to know about and noted these violations were by no means severe.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the consent agenda. Motion passed unanimously. [5:0]

A. **Milwaukie City Council Minutes**
   1. **Work Session December 6, 2005**
   2. **Regular Session December 6, 2005**
   3. **Regular Session December 20, 2005**

B. **OLCC Application – Roswell Market, 8929 SE 42nd Avenue.**

AUDIENCE PARTICIPATION

- **Tim Salyers, 16480 SE Sterling Circle, Oak Grove.**

Mr. Salyers was the president of the Milwaukie Mustang Youth Basketball Association and a former board member of the Milwaukie Jr. Baseball Association. He discussed the upcoming North Clackamas School District's bond measure. In November a bond measure was proposed that would greatly improve areas schools and should be passed. This bond would include new gymnasiums for Rowe Middle School and Linwood Elementary. As the president of youth basketball he could say these new gyms were a step in the right direction for helping the Milwaukie boys and girls become better basketball players and better students. There were currently 600 boys and girls in the organization, and he was looking to expand so more kids could get involved. There was a great community environment with outstanding coaches and kids in the program. The gyms provided by this bond measure would increase the potential of seeing a kid improve communication skills, self-esteem, and teamwork.

Also in the bond is partial funding for an artificial all-weather turf field at the Milwaukie High School. The original plan for the North Clackamas Park was to have a full-sized soccer field in it. Currently, youth soccer does not use the field at Milwaukie High School, and time for youth football was limited. A turf field at the high school would take pressure off the City of Milwaukie and the North Clackamas Parks and Recreation District to fulfill their promise of developing soccer and football fields.

He heard a rumbling from citizens that the District would not spend enough money in Milwaukie compared to the east side of I-205. There was a tremendous growth in that area, and they needed to build new schools. Obviously that would cost more than doing additions to Milwaukie's schools. He understood that a new high school could be part of the bond measure, and he liked that because that would dilute Clackamas High School's power and population making it less dominant. Though they will be spending more money elsewhere, what would be spent in Milwaukie would be great for its athletics program. Mr. Salyers respectfully requested that the City Council adopt a resolution or write a letter of support to the School District for its bond measure.

PUBLIC HEARING

A. **Findings and Conditions for Norm Scott Subdivision 8555 SE 28th Avenue, Appeal File AP-05-03**

Mr. Swanson explained that the staff person for this item, Mr. Firestone, was ill and requested that the City Council make a motion to continue the hearing to February 7, 2006.

It was moved by Mayor Bernard and seconded by Councilor Stone to continue the public hearing to February 7, 2006. Motion passed unanimously. [5:0]

B. **VR-05-03 and request to amend condition of approval for application CSO-05-02**

Mayor Bernard called the public hearing to order at 7:18 p.m. The purpose of the hearing was to consider a request to amend the conditions of approval for application CSO-05-02 to allow the increase of spill light at the property line from 0.5-foot candles to 1.0-foot candles and to authorize installation of 70-foot lighting poles at North Clackamas Park.

The applicant had the burden of proving that the application was consistent with the City of Milwaukie's Comprehensive Plan and Zoning Ordinance sections 19.301, residential R-10 zone; 19.321 Community Service Overlay; 19.700 variances, exceptions, and home improvement exceptions; and 19.1011.3 minor quasi-judicial review.

All testimony and evidence was to be directed toward the applicable substantive criteria or other criteria in the plan or land use regulation that one believed would apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue would preclude an appeal to the City Council or LUBA based on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Mayor Bernard reviewed the conduct of the hearing.

Conflicts of interest and site visits: The Mayor and all Councilors had visited the site. There were no ex parte contacts or actual conflicts of interest declared. There were no challenges to any Council member's impartiality or ability to participate in the decision.

Jurisdictional issues: There were no objections to the Council's jurisdiction to consider the matter.

Staff report: **Associate Planner Lindsey Nesbitt** provided the staff report. Ms. Nesbitt distributed additional correspondence that was submitted after the packet was prepared. The applicant, North Clackamas Parks and Recreation District (NCPRD), was seeking City Council approval for a variance to exceed the maximum height of the community service overlay (CSO) zone and an amendment to a condition of approval from the previous CSO application that was approved August 2005. The original CSO application was appealed to the City Council, and since it was the final decision maker on the previous, it was brought before the City Council rather than the Planning Commission.

In August 2005 the City Council upheld the Planning Commission's decision to approve development of North Clackamas Park but adopted a modified site plan that authorized development of four youth ballfields. One of those fields would be used as a flex soccer field/ballfield. The approval also authorized additional construction of parking spaces, restroom facilities, a concession stand, walking trails, and numerous areas of natural resource and vegetative enhancements. As part of the application, the applicant proposed lighting for the parking lot and the ballfields. However, in the original application, the applicant proposed 70-foot tall lighting poles, and the code only permits structures to be 50-feet through the CSO process. A condition of approval was adopted requiring the applicant to either reduce the lighting poles to 50-feet, apply for a variance, or apply for a code change to authorize utilities or structures such as lighting poles in ballfields to exceed the maximum height limitation. In this case the applicant took the option of applying for a variance. The applicant was present and was accompanied by the lighting consultant.

The CSO zone allows the adoption of conditions to mitigate potential adverse impacts. A condition was adopted that limited lighting spill onto the adjacent residential properties. Along the south property line, the condition was that the lighting spill could not exceed 0.5-foot candles. The applicant was required to prepare a photometric plan demonstrating that there were no more than 0.5-foot candles along the south property line south of the vegetation. The applicant prepared the plan, and only a few areas exceeded 0.5-foot candles but was less than 1.0-foot candles. The applicant requested an amendment to that condition in case the 0.5-foot candles was exceeded. Staff reviewed the applicant's argument and supported the amendment. The photometric plan did not take into consideration the existing vegetation that would actually block the light. When the poles were installed and lights turned on, it might very well be 0.5-foot candles or lower. There might be gaps in the vegetation where the 0.5-foot candles were exceeded, so the applicant requested the amendment to that condition. Part of the argument was that the existing lights were floodlight, and the new lights would have the latest technology that would do a better job of directing light to the field. The nearest residence was approximately 480-feet away where the candle foot measurement would be "0". There would be no light trespass at the residence. The lights would also shut off at 10:00 p.m. and would be operated in the summer and early fall when 10:00 p.m. was shortly after sunset.

The applicant submitted a variance request to exceed the maximum height limitation. Currently, there were eight poles approximately 64-feet in height, and the applicant proposed to put in new poles that were 70-feet in height. There were three criteria for the variance. The first was that the applicant had to demonstrate there were unusual conditions over which he had no control. In this case, staff believed the unusual condition was the code. Community service uses were permitted in residential zones. The height limitation generally applied to buildings and not lighting poles. They believed the height limitation was not to allow huge 70-, 80-, 90-foot buildings next to residential homes. It did not really take into consideration the community service use of a ballfield. She had done some research and found two examples of variances that were approved for other CSO uses for the construction of cell towers. The argument in this case was that the height limitation of 50-feet did not work for the tower as it needed to be taller, so the signal could be sent without running into buildings. In this case the applicant argued

that with a 50-foot pole, the light would shine differently. When a ballplayer looked up to catch a fly ball the light was directed into their eyes and created temporary blindness. With a 70-foot tall pole, the light would be directed downward and would not shine into the players' eyes. There was a diagram in the site plan showing that. Staff believed those were the unusual conditions. The applicant was required to demonstrate there were no feasible alternatives. In the narrative, the applicant provided four alternatives. One was to provide no lighting. The second was to provide 50-foot poles. The third was to plant additional vegetation along the property line. The applicant would explain the feasibility of each alternative. Staff believed the applicant demonstrated that the 70-foot lighting pole was the minimum necessary to provide adequate, safe lighting for ball players. Staff believed the applicant had demonstrated that the new lights would be better than the existing floodlights with better light control to reduce spill light on adjacent property. The new poles were only 6-feet taller than the existing poles. The applicant would plant vegetation along the property line to help reduce the impacts of light onto adjacent property. Staff recommended approval of the variance application and approval of the amendment to the CSO.

Mayor Bernard understood the variance was requested only on the ballfields and not the parking lot.

Ms. Nesbitt replied that was correct; it was only for the baseball field lighting.

Correspondence:

There was no additional correspondence other than that provided by Ms. Nesbitt earlier in the meeting.

Applicant Presentation

Charlie Ciecko, NCPRD, introduced Senior Planner Michelle Healey and Chris Fout with Sparling Electrical Engineers, and Mark Hadley of W&H Pacific responsible for the design and engineering of this project.

As Ms. Nesbitt indicated the purpose for NCPRD's coming before the City Council was to request several modifications to the August 16, 2005 approval. The first item was a request for a variance on the lighting pole height, and the second was a modification of one of the conditions of approval related to spill light. The Council approved this concept plan on August 16, 2005. Among the major changes to the modified plan were a reduction in parking, elimination of a full-sized soccer field at the west end of the park along with the lighting that had been proposed for that facility. There were enhancements to the walking trail and other elements of the environment, the addition of another restroom, and a small picnic area near the entrance of the park. Condition of approval #5 stated that field light poles would be limited to 50-feet or that the District would come before the City Council and request either a variance or a zone text amendment. After considering the options, the District elected to request the variance that would allow the poles to be mounted on 70-foot metal poles. Taller poles would minimize potential problems with player safety. The lower light poles would have the light shine directly into the players' eyes. They would also minimize the impact of the effectiveness of the shields on the lights. The taller poles minimized spill light into adjacent non-target areas. He referred to staff report page 5.B.4 and the diagram that showed the impact on the angle of the light. The 70-foot poles showed a 55-degree

angle which was steeper than that provided on the 50-foot pole. That caused the light to be more directly in the players' eyes, and light would spill beyond the intended target. The taller the pole, the better one was able to control the targeting of that light. The 70-foot poles appeared to better achieve the objectives to both the District relating the player safety and the City in minimizing the impacts to the surrounding properties.

He referred to page 10 of the application and the options. The first alternative was to not provide lighting at the fields. As indicated in the original land use application and the various public venues at which lighting was discussed, there was a serious and continuing shortage of field space within the District. By adding lighting, the impact of the four new fields was doubled. The District felt and continued to feel that it was very important to provide lights on those fields to get the maximum impact from the significant investment the District was making in this development. The second alternative was to limit the poles to 50-feet. He had explained the problems regarding to player safety and light spill onto non-target areas. The third was to plant additional vegetation along the property border in front of access gates. He pointed out their locations. The District could plant vegetation in front of those gates and eliminate the neighbors' access to their property. The District concluded it would be best to leave those gates, so people had a way to access their property. He understood the property owners felt the same way. The only other criterion that came into play was that the adverse effects that might be the result of the variance should be mitigated to the extent feasible. The District believed the taller pole achieved that objective.

Councilor Collette had heard comments from someone who understood there would be no lights. Was lighting included in as part of the final plan?

Mr. Ciecko replied the lighting was approved as part of the CSO and the other permits that were previously approved by the Planning Commission and City Council.

Councilor Stone asked if the 70-foot poles were a typical height for ballfields.

Mr. Ciecko reported that Clackamas High School has four 80-foot poles and two 70-foot poles on its football field, Lakeridge High School has 90-foot poles on its football field and soccer field, Tualatin Hills Park and Recreation District has two baseball fields all on 90-foot poles, one soccer field on 90-foot poles, and two softball fields on 65-70-foot poles. He understood the Tualatin Hills fields were in residential neighborhoods.

Councilor Stone asked if that was the case then how was it that this proposal came to the Council with 50-foot poles if that was typical usage in a ballfield.

Mr. Ciecko replied that went to the limitations in the CSO portion of the ordinance that limited structure height. As Ms. Nesbitt indicated, that was typically assumed to be for building height, and consideration may not have been given to pole height for athletic field lighting.

Mr. Ciecko said the second proposal related to condition of approval #4(e) that required the District to submit a photometric plan that demonstrated there would be no more than 0.5-foot candle of spill light on the south side of the park's southern boundary. This would be measured south of the existing tree line prior to installing the field lights. Mr. Ciecko pointed out the park's southern boundary and the area of applicability on a map. He referred to Exhibit 3, the photometric plan. There was a line that ran about 190-feet,

and the distance from the south property line was approximately 20-feet. That line indicated where the 0.5-foot candle standard was achieved. To the north of that line, the readings were higher than 0.5-foot candle. To the south of that line, they were equal to or less than the 0.5-foot candle. As Ms. Nesbitt indicated in her presentation, the impact of the existing line of trees was not taken into account by the plan. The applicant felt that if this plan had taken that line of trees into account, then there would be a significant reduction of any spill light into that area, and the District could probably meet the standard. The area in question was quite small and measured less than 0.1-acres. It was in an area currently designated flood plain and/or wetland, so the likelihood of that area ever being developed and subsequently having residential uses impacted by spill light in that area was remote. The applicant proposed an amendment to the existing condition that would say that the photometric plan shall demonstrate no more than 1.0-foot candle south of the existing property line measured behind the tree line. If the tree line were taken into account, the applicant was confident it could meet the condition as it was currently written. The land was undeveloped and the closest residence was 487-feet south and west to this particular area. The one structure located to the south on the plan was an outbuilding and not a habitable structure.

Mayor Bernard asked the meaning of a 1.0-foot candle. He lives 19 blocks from Milwaukie High School and can see the field lights, but he understood the 1-foot candle had to do with what was seen from the ground.

Mr. Fouts, Sparling, 400 SW 5th Avenue, Portland. He explained a foot-candle referred to the amount of light delivered in one square foot. For example, in a room such as an office or council chamber, one tried to deliver 40- to 50-foot candles for the tasks taking place in that room. Outdoor lighting, depending on the activity, could be less. If one stood under a typical residential street lighting system luminaire with a light meter one could measure approximately 4.0-foot candles. Between the luminaries there was substantially less light and would measure about 0.2- to 0.5-foot candles. One could look at that and have an idea of the amount of light delivered in these instances and how that might relate to a larger quantity of light.

Testimony in support

- **John Denny, Kids First of North Clackamas, 11233 SE 27th Avenue.**

Mr. Denny spoke on behalf of the youth groups in the area and expressed excitement with the project. He stressed the importance of having lights to double the use both for practices and games. He discussed the safety and height of light poles. When this project was going forward he spoke with the athletic director of Gladstone High School and told him there might be light poles available. He was excited about that, but those involved with field lighting told him the poles were not high enough for use on the varsity ballfield. Mr. Denny assumed it was a safety issue, and the poles needed to be higher. He urged the City Council to approve the variance so the area could have safe fields that could be used twice a day.

- **Tim Salyers, Milwaukie Youth Mustang Basketball, 16480 SE Sterling Circle, Clackamas County.**

Mr. Salyers like the idea of lights in the park because it doubled the use. It would increase the opportunities for tournaments, evening games, and gave them a niche in

the baseball market. Instead of four fields available during the evenings, there would be eight fields. Currently, the lights were 64-feet with 1980's technology. 2005 technology and 70-foot lights sounded better to him. He thought the glare would be nonexistent, and he was excited about coaching some games under the lights.

- **Rick Frank, Milwaukie Jr. Baseball and Mustang Youth Football, 4485 SE Rhodesa Street.**

Mr. Frank was excited about the prospect of having lights on the field and had looked into the process of getting them installed. Mr. Salyers had commented on the high school renovations included in the bond measure, and Mayor Bernard mentioned that he could see the lights from Milwaukie High School. One of the things in the bond measure would take the old lights down and locate new metal poles closer to the field resulting in less spill light. He assumed those poles would be higher and go through a process similar to this one. The International-Dark Association (IDA), founded by astronomers and others interested in keeping the skies dark at night, stated on its website that it would much rather have higher poles that created less spill light because of the reduced angle and reflection. In 2003, the IDA gave an award to a ballfield complex similar to North Clackamas Park in Tucson, Arizona for its efforts in maintaining the dark sky. The IDA recommended higher poles to promote dark skies. Mr. Frank discussed the safety factors. When lights were at a lower level, they were at more of an angle. When the ballplayers looked up, it was more likely they were looking into that light. In football and baseball, things were coming at the players through the air, so it was important to provide that additional safety and not lose things in the light. The higher poles provided benefits and improved the environment around the fields and the playing area. This was an opportunity to make things better for everyone involved. Parties had worked to build consensus, and this was a smart decision. The lights were needed, and the higher poles would make it better for everyone. He addressed the 0.5- and 1.0-foot candle and suggested going out into the night and try to determine the difference. All of the residences in that area were approximately 400-feet from where that measurement was taken. He encouraged the City Council to approve the variance as this was a win-win opportunity.

Raising Questions:

- **Dick Shook, 4815 SE Casa del Rey Drive, Clackamas County.**

Mr. Shook spoke as a neighbor of the park who lived on the bluff on the north side of the park. His house was about 650-feet from the nearest light standard. He heard during testimony at the public hearings from both the District Advisory Board (DAB) and youth sports that the lights were not necessary. They were a nicety but not a necessity. He had not heard spill light defined. He had seen pictures of lighted ballfields, and it was like a lampshade. Even though one did not have direct light on his property, one could see the glow and the light by standing on his property. It would cut down on the ability to see stars at night, and there would be additional light pollution such as on his deck that faced the park. He agreed if there were going to be poles then they should go with the 70-foot poles. It would cut down the light pollution somewhat. His main concern was that at some point the people who wanted to play baseball games would take a look at the hours and think they might want to triple playing time by turning the

lights off at 11:30 p.m. He was concerned at some time that the hours of lighting might be fudged.

Councilor Loomis would almost guarantee that parents and children would not stay at the park past 10:00 p.m.

Mr. Shook was not that worried about the kids, but he understood the some older groups might use the fields and ask for extended hours.

Mayor Bernard understood there was specific reference to the lights being off at 10:00 p.m., so in order to exceed the time limit, the District would have to go through another variance application.

Ms. Nesbitt replied the code did not limit the time, but the previous approvals and the applicant's narrative indicated specific times approved through the CSO. The applicant could agree to a condition limiting the hours the lights could be turned on. In the future, the applicant would have to come back to the City Council for approval.

Councilor Loomis commented in his experience in coaching youth sports. In Lake Oswego for example people were scrambling to find their equipment when the lights went off at 10:00 p.m.

Ms. Nesbitt understood the ballfield lights were on a timer and would go off at 10:00 p.m., and the parking lot lighting would be on until 10:30 p.m.

- **Susan Shawn, 13655 SE Briarfield Court, Oak Grove.**

Ms. Shawn had one major concern and one comment she wanted the City Council to consider. Her major concern had to do with what she called wetlands #5 at the top of the ballfield. There were a number of light poles in the area, and the light might cause harm to the plants and wildlife in the area. It was poorly protected at this time. The buffers were supposed to be 50-feet. She wondered if there was some way the Council could add another condition that might read, "The light spill, either direct or indirect, into that water quality resource area shall be studied after installation by biology experts, and if found the be harmful, the Parks District shall either adjust the offending lights, or remove them if necessary." She suggested that there be some way to build in a remedial action – just in case.

She recently heard Sheriff Craig Roberts talk about plans to house sex offenders in a motel off McLoughlin Boulevard across from the Bomber Restaurant. Some of them were predatory child sex offenders. She understood the County was trying to house up to 30 people in the motel. The Sheriff's office did not have enough money to pay for a full-time supervisor for that facility to assure community safety and prevent the offenders' returning to jail. She thought an option would be to deny the variance request and suggest to the County that it use that $181,000 for the lights for the immediate community safety need or a similar community development project that the Sheriff might identify. She agreed with Mr. Shook that the coaches did at one time acknowledge they did not need the lights for youth tournament play. The original $3 million for the ballfields was the decision made by the County Commissioners on June 22, 2004 without a community-wide discussion and without taking into account other pressing County needs. She realized it was a stretch and that the City Council would

probably not do it, but she felt compelled to say here was an opportunity to address something that was really a bad move on the County's part.

Mayor Bernard agreed that was likely a stretch and noted frequently money could probably not be moved around in that manner. Grant money was specifically used for certain projects.

Councilor Loomis understood the District was applying for grants for the lights.

Mr. Ciecko replied there was a grant application into the Baseball Tomorrow Fund, which was a charitable arm of major league baseball for this particular element. That was not the only opportunity to fund installation of lights, however. The District would continue to look at all possible funding sources to make the project whole.

- **Eric Shawn , 13655 SE Briarfield Court, Clackamas County.**

Mr. Shawn said the photometric plan addressed most of his questions, but he raised it for refinement. He commended the applicant for being willing to plant additional vegetation in order to reduce spill light on the south boundary on adjacent private property. He asked that the applicant double check the light spill in the area of what was now wetland #3 – at or near that particular area. Mr. Shawn indicated the area on the map. He believed that wetland would be filled as part of the project, but most of it was on the other side of the fence on private property. He did not think there was a gate at this location or tall trees or foliage along the fence line once the vegetation – mostly blackberries -- was removed. Once that foliage was gone he did not think there was anything to block the spill light. The photometric map showed that ideally there would be very little, and he did not have any reason to doubt the accuracy of the map. He trusted the engineering. He asked that that be double checked and possibly consider planting taller vegetation to block any spill light. He thanked the applicant for being willing to plant additional vegetation.

- **Gloria Koch, 6030 SE Eric Street, Clackamas County.**

Ms. Koch had been a Rusk Road area resident since the 1950's. She provided some background however she did not have any documentation to back up her statements. She thought the lighting was a done deal and that there would not be any lighting except for the parking lot. She attended meetings and hearings since this matter was before the DAB. There was a long list of things they wanted done, and there was only so much money. They asked Kids First to set out their priorities, and lighting was low, if not the last thing, on the list of what they needed to build a competitive baseball complex. The proposal was that they were going to start practices in late spring before school was out. They would begin their games after a certain amount of time and carry them on throughout the summer. They allowed two hours per game. By starting at 6:00 p.m. they could have one game that would end by 8:00 p.m. Then they could go into a second game that would be finished by 10:00 p.m. In the summertime, as stated on page 3, the lighting would be needed to compensate between the times the game was over and dusk. In the summer that was a very short time. It stays light quite late in the summer. This was a very minimal time of usage for these lights; maybe an hour at the most for every time there was a game there on those fields. Yet they were talking about spending thousands and thousands of dollars on the project just to put the lights in and not taking care of any maintenance. She had seen no such provisions in the budget

that included maintenance, and they would have to be maintained. They could not be put up and forgotten. She did not understand the philosophy that this would double the playing hours because it would not. The children were quite young. When they were in the meeting for the Planning Commission last fall, Kids First brought a lot of kids to demonstrate to the Planning Commission the number of children who would be impacted by the use of these fields. Anyone sitting in that room would have noticed that all of the children started going home about 7:00 p.m., and they were all gone by 7:30 p.m. If they cannot attend a meeting on a school night past 7:30 p.m. because they had to go home and go to bed for school the next day, then how could they attend baseball practices in May on school nights when they would need lights from 8:00 p.m. to 10:00 p.m.? They set the example that the kids needed to be at home and in bed by 7:30 p.m. That did not hold with the philosophy that they could hold practices on these fields until 10:00 p.m. at night. What they demonstrated and what they said were opposites. In the summer time when there was no school, it was feasible that the parents might let their kids stay at the park until 10:00 p.m. if there were lights. She had two grandsons, and by 10:00 p.m. at night they needed to be at home. They did not need to be out on a playground. She did not believe the 8:00 p.m. to 10:00 p.m. time span was viable. Not for children of that age as demonstrated by the fact that parents took their kids home.

She asked if there had been any environmental impact study done on what would happen to the four-legged inhabitants of the park when these lights went in and especially in the wetland area? She understood that before something like this was done that there would have to be an environmental impact study.

Mr. Ciecko replied there was an analysis but not an EIS in the federal government sense.

Ms. Koch questioned the need to spend all this money to put the lights in. There was no money to maintain them. In her experience with children of this age she did not see parents allowing their children to stay up this late to practice in the spring and fall. They might in the summer. A lot of money was being used for a purpose that was not there.

- **Pat O'Donnell, 13318 SE Kuehn Road, Clackamas County.**

Mr. O'Donnell commented on the lights in the Park. When they were negotiating the changes for the Park so that everyone would agree, the lights were set aside. He understood youth sports would not need the lights and that there would not be enough money by the time the District got through with everything else. He was a neighbor of the Park, and if they lit it up it would be like looking at a prison yard with little prisoners who should be at home in bed. When they started this, they were not talking about lights. He understood they did not need the lights until he got notice of this meeting.

Rebuttal

Ms. Nesbitt addressed the testimony in opposition. She brought the two notices of decision that were issued for this application. The first was the Planning Commission decision, and the second was the amendments and the decision of the City Council. She addressed the lighting and water quality resource area. That issue came up in the public hearing before the Planning Commission. The application was subject to water quality resource review. They talked about lighting and impacts to the water quality resources. The Code stated that where practicable type, sizes, and intensity of the light

must be placed so they did not shine directly into the natural resource locations. The legal finding in the notice of decision was that the applicant demonstrated the need to provide safe lighting for ballfields, and a condition was adopted requiring the applicant to, where practicable, limit lighting within the water quality resource area so that lighting would not shine directly into the natural resource location. As conditioned, the application complied with MMC 322.10(i), which was the applicable Code section. They did talk about that and what conditions could be legally adopted pursuant to the Code.

Ms. Nesbitt addressed the issue Mr. O'Donnell and other brought up regarding how they got to the modified plan. There were negotiations between the Parks District and the Friends of North Clackamas Park. She had reviewed the notice of decision and the proposed changes that the City Council approved, and lighting was not one of the changes. That was why they were here this evening because conditions were adopted regarding lighting. The original proposal was for 70-foot light poles and was why the condition was adopted requiring the applicant to reduce them to 50-feet, submit the variance, or request a text amendment.

Councilor Collette understood the lighting was included in the agreement.

Ms. Nesbitt replied that lighting was not omitted, and it was included with the findings. She had specific findings in the notice of decision that were upheld by the City Council regarding lighting and the conditions that resulted in this hearing because that was adopted.

Councilor Stone had a question regarding the wetland area in terms of the lighting stipulations where it had to be placed in relationship to the wetlands and not shining directly there. The Council heard testimony that spill lighting was a concern in terms of wildlife. She asked if that had been addressed in terms of how that would affect the environment.

Ms. Nesbitt replied there was originally a condition that there could be no spill light into the water quality resource area. The applicant challenged that because the specific language was "shine directly into" so spill lighting did not shine directly into. That condition was taken out because it did not have any legal standing.

Councilor Stone asked if there was any scientific documentation that would state that spill light was not a good thing in the wetlands.

Ms. Nesbitt said the applicant did not submit scientific documentation addressing spill light into the wetlands. There was no code requiring submission of that material.

Mr. Ciecko added this matter was discussed before the Planning Commission. As he recalled the majority of the science available on the impact of night lighting on wildlife and in particular bird life had to do with tall buildings where the lights were on 24-hours a day and the impacts that lighting had on migration. That issue was discussed in some detail before the Planning Commission. He recalled there was little if any science that would suggest there were any negative impacts associated with limited term night lighting associated with sports fields.

Mr. Fout reiterated that the existing body of evidence of how 24-hour lighting impacts biology mostly pertained to certain specific species or guilds. These had to do with pier lighting affecting salmonoides migrating along a shoreline or migratory birds striking

large towers or buildings. There was no existing body of evidence or studies that related to curfewed lighting systems as they related to athletic fields.

Councilor Collette followed up on Mr. Shawn's comment about the wetland area and if the District would be willing to look at planting additional foliage near wetlands #3 to address additional spill light after the vegetation was removed.

Mr. Ciecko understood that the landscape plan called for enhanced vegetation along the south boundary where there were voids that were not owing to the gates that provided access to adjoining private properties. The answer to Councilor Collette's question was "yes."

It was moved by Councilor Barnes and seconded by Councilor Collette to close the public hearing. Motion passed unanimously. [5:0]

Mayor Bernard closed the public hearing at 8:30 p.m.

Mayor Bernard recommended adding a condition of approval that the lights be turned off at 10:00 p.m.

Ms. Nesbitt said it was stated in the applicant's narrative but not specifically listed in the conditions of approval. If the applicant accepted that condition, then it could be added. She noted the lighting for the ballfields would be shut off at 10:00 p.m. and the parking lot would be shut off at 11:00 p.m.

Mayor Bernard wanted to add the condition of approval that the ballfield lights would be shut off at 10:00 p.m. for the fields.

It was moved by Mayor Bernard and seconded by Councilor Loomis to approve the request to modify the adopted condition of approval that increased the amount of spill light at the property line from 0.5-foot candles to 1.0-foot candles and approve the variance request authorizing installation of 70-foot tall lighting poles and add the condition that the ballfield lights be automatically shut off at 10:00 p.m.

Councilor Loomis stated this was a discussion of a variance and that the lights were already part of the plan. It made it safer for the players, and there was less spillage on the neighborhood.

Councilor Collette saw this as a relatively small decision in that the poles were now 64-feet and the request was for 70-foot poles. It sounded as if there was some mix of opinion but that there was growing support for the compromise plan. She coordinated summer concerts and understood how difficult it was to pack up gear at the end of an event. She felt ballfield lighting was important.

Councilor Barnes noted the nearest house to these lights was 480-feet. Kids do play baseball in the summer and late spring and early fall after 8:00 p.m. at night. She would rather they were playing ball than breaking into houses.

Councilor Stone would vote in support of the variance to make the poles higher because they would cause less spill light and be safer for the players. She commended the District and Friends group for working together on the process. The August proposal was good, and judging by how well they worked together she felt if there needed to be vegetation planted and more buffers added to mitigate the spill light in the

wetlands and residences that that would be done in good faith. She trusted that would happen in this process because it seemed it had been very fair thus far.

Councilor Loomis guaranteed the fields would be used and would be greatly appreciated by those associated with youth sports. This was really needed by the City of Milwaukie and the Parks District. It added a curb appeal for those coming to tournaments from outside the District and showed that the community cared for its youth. The rewards of this project would be awesome for the community and the District. Councilor Loomis commented on Mr. Ciecko's work in getting everyone through this process.

The motion passed unanimously. [5:0]

Ms. Koch asked if there would be a penalty if the lights did not go off.

Mayor Bernard replied that would be discussed with the District.

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeal according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

OTHER BUSINESS

Council Reports

Councilor Loomis discussed comments from the Saturday Coffee. There was a desire on the part of the attendees to have the open public forum back on the work session agenda. It also came up that the City Council needed to meet with its standing committees.

Mayor Bernard noted that he had requested a meeting with the Planning Commission as soon as possible to discuss the shared visions.

Councilor Collette was on the Clackamas Community College School Board, and the school approved and would begin work on the development of the Harmony Campus site as its next expansion. They would be coming to various organizations to discuss the expansion plans for that site. She had been talking informally with people interested in an Arts Commission or foundation in Milwaukie. The Clackamas County Coordinating Committee (C4) met for a retreat and would work on priorities such as transportation projects.

Mayor Bernard would make a State of the Cities address at the Chamber of Commerce along with several other mayors in the area.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 8:45 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
JANUARY 17, 2006

MILWAUKIE CITY HALL **1974th MEETING**
10722 SE Main Street

REGULAR SESSION – 7:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

A. Milwaukie High School Student of the Month
B. Annual Audit Report (Stewart Taylor)

3. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

A. Milwaukie City Council Minutes
1. Work Session December 6, 2005
2. Regular Session December 6, 2005
3. Regular Session December 20, 2005
B. OLCC Application – Roswell Market, 8929 SE 42nd Avenue

4. AUDIENCE PARTICIPATION *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. PUBLIC HEARING *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

A. Findings and Conditions for Norm Scott Subdivision
8555 SE 28th Avenue, Appeal File AP-05-03 (Gary Firestone)
B. VR-05-03 and request to amend condition of approval for application CSO-05-02 (Lindsey Nesbitt)

6. OTHER BUSINESS *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

Council Reports

7. INFORMATION

A. Park and Recreation Board Meeting Minutes, November 29, 2005
B. Riverfront Board Meeting Minutes, November 8, 2005

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

  All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555

- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION
DECEMBER 6, 2005

Mayor Bernard called the work session to order at 5:32 p.m. in the City Hall Conference Room.

Council Present: Councilors Barnes, Collette, and Loomis.

Staff Present: City Manager Mike Swanson; Community Development/Public Works Director Kenny Asher; Community Services Director JoAnn Herrigel; and Planning Director John Gessner.

Proposed Terms for Garbage Franchise

Ms. Herrigel would come before the City Council on December 20 with Code amendments that would make minor changes to the rules, adopt the administrative rules, and approve a resolution granting the franchises. She reviewed the major terms of the franchise, administrative rule procedures, insurance requirements, and performance bonds. The current Code language requiring a $5,000 bond was removed, as it was not practicable. It would be impossible to operate a franchise for a day or two on $5,000 if there were some issue, and few other agencies had that language in their rules. If one franchisee for some reason went into decline, another company would likely pick up that business. The proposed amendments added reference to Down to Earth Day and dead animals. The negotiations with David White went very well, and the extensions were mostly a case of the parties finding adequate time.

The types of changes to the administrative rules had to do with adoption of the rules, removal of archaic and redundant language, adoption of established practices, identification of a formal process for yard debris recycling, and an updated list of recyclables.

Councilor Collette understood the haulers would pick up dead animals.

Ms. Herrigel replied that was true in the City and as long as the animal was in the street. She notified the hauler for that area, and they would dispose of the animal properly according to the agreement. She cannot enforce anything outside the City.

Councilor Barnes expressed her appreciation to the haulers for Down-to-Earth Day.

Zoning Ordinance Amendment regarding Limitations on Repeat Submission of Applications

Mr. Gessner said the ordinance would provide clear direction that established conditions under which an applicant who received a denial from the City could resubmit that application for reconsideration. The primary policy choice was how

long someone should be required to wait if there were no changes to the application. The Planning Commission was comfortable that two years was the appropriate amount of time. The applicant would also have the opportunity to resubmit the application if there was a code change. The final element had to do with the Council being the final decision maker. It was felt that the applicant could resubmit if there were a substantial change in Council composition. The Planning Commission voted to recommend the proposed amendments to the City Council for adoption.

Councilor Collette asked what was meant by a substantial change in composition of the Council.

Mr. Gessner referred to section F. – a substantial change "…occurs if fewer than three Council members who voted to deny the original application remain on Council."

Mayor Bernard thought it seemed odd to create a political mechanism.

Mr. Firestone said many land use decisions made by the City Council were narrowly dictated by the Code. There were other situations in which there was enough discretion that decisions could go either way and became a policy decision. He felt it would be unfair for someone to get a denial in October of an election year on a policy decision that could have gone either way.

Mr. Gessner added there were no specific criteria for legislative changes. He asked Mr. Firestone if annexations should be exempt from this provision.

Mr. Firestone did not see any reasons for annexations to be treated differently, but the City Council could have a reason.

Councilor Updates

- **Councilor Barnes** and Kenny Asher met with School District officials to work on a Community Development Block Grant (CDBG) application for the property located at 2515 SE Harrison for Library annex.
- **Councilor Loomis** announced the Winter Solstice Event on December 10.

Mayor Bernard adjourned the work session at 6:00 p.m.

_____
Pat DuVal, Recorder

CITY OF MILWAUKIE

CITY COUNCIL MEETING
DECEMBER 6, 2005

CALL TO ORDER

Mayor Bernard called the 1971st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes
Joe Loomis
Carlotta Collette

Staff present:

Gary Firestone, City Attorney
John Gessner, Planning Director
JoAnn Herrigel, Community Services Director
Jay Ostlund, Civil Engineer
Paul Shirey, Engineering Director
Brenda Schleining, Associate Engineer
Kenny Asher, Community Development/Public Works Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Update on Economic Development Initiatives

Mr. Asher was joined by Cindy Hagen, Clackamas County, and Charlie Allcock, PGE.

The Economic Development Advisory Committee met about six times and developed a mission statement and several recommendations including next steps. The Milwaukie's quality of life had to do with its citizens having family-wage paying jobs, and its fiscal health depended on its businesses growing and prospering. The strategy focused on supporting existing businesses and welcoming new businesses. The City Council had been active in economic development and adopted a resolution ensuring that Milwaukie was taking part in the regional economic development group. There was also a business visitation program backed by an active economic development advisory group. Many of these efforts were made possible through a Mt. Hood Economic Alliance grant.

A survey of about 40 Milwaukie businesses was completed in December 2004 and were roughly split between professional services, distribution, and manufacturing. Fifty-seven percent of the respondents said that Milwaukie overall was a good place to do business principally because of its location and access to market and customers. In other words, this was a prime location. On the downside was traffic congestion. The Economic Development Advisory Committee made recommendations that could be grouped into

five areas: network building and coordination, local outreach and communication, City government, site improvements, and economic development strategies.

Mr. Asher discussed the three-point strategy: strengthening economic development partnerships, focusing resources and targets, and business retention and outreach. Some of the partners were PGE, Clackamas County, Chamber of Commerce, and Portland Ambassadors. He discussed focusing resources on the North Industrial area, a 300-acre site with limited access and aging buildings but with a lot of latent potential that was of interest not only to Milwaukie but also to the region. Milwaukie was also developing an economic development website, and there were a number of site visits scheduled that addressed the strategy of retention and outreach. He discussed City interdepartmental efforts toward streamlining processes and encouraging economic development. Milwaukie's economic future was intrinsically part or the region's economic future. There was a lot of momentum in Milwaukie with physical redevelopments such as North Main and the McLoughlin Enhancement Project that were all part of the City's strategy.

Mr. Allcock, PGE Economic Development Director, served on the City's Economic Development Advisory Committee. The premise was that a strong economy created a higher per capita income and lowered the poverty rate. When incomes were higher, people were not as afraid to pay taxes and assume some of the burdens associated with social programs. That in turn contributed to good public services and quality of life. The focus was to ensure these elements worked together and that residents and businesses were successful in their endeavors. In any area one saw businesses that served the local economy, but there were a limited number with products or services that were sold outside of the region to bring the fresh dollar. The traded sector businesses drive the economy because every job created likely created one or two others that paid 20% to 30% more. The leveraging effect was a key part of any community's economic development strategy.

Mr. Allock believed the City had taken a major step in creating the Economic Development Advisory Committee. The building blocks of the process were leadership, strategy, services, marketing, and rewards. He provided information on the Regional Economic Development Partners that included cities, counties, and other regional partners who offered a wealth of expertise. The Regional Partners' approach included a mission statement and guiding principles such as the "sum is greater than the parts" and "we are each other's best cheerleaders." Today, businesses were looking for places to thrive – not just survive. Demographics and work force consistently show up as the major issue, and today there were many traded sector businesses with orders but did not have the workforce to fill those orders. Many employees were baby boomers who were approaching retirement age with no young talent coming out of today's school system to meet those replacement needs. He thought Milwaukie could make a significant effort in relationship to the workforce piece by collaborating with the school district and community college. Seventy-five percent of the new jobs would come from existing businesses, so retention was critical. The practice of implementing a continuous improvement process started with ownership and buy-in from key stakeholders and partners, so constant communication was critical. He urged that the City identify its in-charge, go-to person.

The national perception of Oregon and the Portland area was that the planning process was difficult compared to other parts of the country and the world. Many businesses want to make siting decisions in 60-days, and they do a lot of their work on the Internet. The area has not been very aggressive in its outreach and recruitment, and companies felt they were being interviewed to find out if the region wanted them. The Governor has done a lot of work in recruitment and letting companies know that Oregon was open for business.

Mr. Allcock recommended that Milwaukie continue to focus on existing businesses and have certified sites that were shovel ready. The City should be ready to put information about those sites on its website. He stressed the importance of curb appeal as that was a sign that a community cared by spending some of its precious dollars.

Ms. Hagen, Clackamas County Business and Economic Development, addressed business development in the County. Its mission was to "Position Clackamas County as a business destination and leader in the 21st Century economy to grow a sustainable diverse job base." The program was elevated so that it reported directly to the County Administrator and was in partnership with the Tourism Development Council, parks, and libraries. The key point was business retention followed by expansion and recruitment. Other points included business assistance, economic and industrial development, marketing and communication, and economic development leadership. Some of the strengths in Milwaukie were the North Industrial area, the Enterprise Zone, proximity to the Clackamas Industrial area, its leadership in the manufacturing and defense industries, access to transportation infrastructure, rail service and access, and a quality building inventory. Milwaukie's workforce was skilled, educated, and adaptable with low turnover rates. Areas for collaboration were Connect Oregon, rail access, and continued outreach. Milwaukie's recent successes were the expansion of the North Milwaukie Enterprise Zone, the International Way Business Center, the $25,000 Mt. Hood Economic Alliance grant, and $90,000 to WW Metal Fab and Oregon Cutting Systems from the Workforce Response Team.

Councilor Collette asked Mr. Asher who he thought the in-charge person should be for the City.

Ms. Asher sensed it ought not to be a person on Council and thought he would probably fulfill that role for the time being as it was too important an issue to delegate. This was a business of relationships.

Ms. Hagen added that was consistent with what was going on in the region.

Councilor Collette asked Mr. Allcock to elaborate on the certified industrial site comments.

Mr. Allcock said it had to do with ensuring the title was clear and that issues such as wetlands and things of that nature had been addressed. This would give the potential businesses an idea of what they were getting into. Those interested in redevelopment were increasingly concerned about what residues might have been left by a previous company. Businesses were also concerned about the curbside availability of water and sewer capacity.

Ms. Hagen suggested taking full ownership of a certified program in the existing building inventory by identifying the top 10 redevelopment or new tenant sites. The City could do due diligence and perhaps remedy something.

Councilor Barnes expressed appreciation to those who worked on the Economic Development Advisory Committee.

Mr. Asher appreciated those who wanted to partner with Milwaukie. The intent is to develop a three-way agreement for calendar year 2006 and to create a checklist. At the top of the list was sustaining the energy of the people in the community who had already contributed time to ensure Milwaukie was hitting all of its marks.

Mayor Bernard discussed North Clackamas Chamber involvement.

CONSENT AGENDA

It was moved by Councilor Collette and seconded by Councilor Barnes to approve the City Council work session and regular session minutes of October 18, 2005. Motion passed unanimously among the members present [4:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

A. Findings and Conditions for Norm Scott Subdivision
8555 SE 28th Avenue
Appeal File AP-05-03

Mayor Bernard said the Council first heard this matter on November 15, 2005 at which time Council took testimony from the appellant and other interested parties. The public testimony portion of the hearing was closed on that date. The hearing was continued to December 6, 2005 so the Council could consider the findings and conditions in support of the tentative subdivision approval and denial of the street vacation requests. The public comment portion of the hearing has been closed. He asked if any members of Council wished to announce any ex-parte contacts that might have taken place since that November 15, 2005 hearing.

Councilor Barnes stated Mr. Scott's son was in her class and made several comments about it the next day. The son, Andrew, said, "You got my Dad good." Councilor Barnes asked him what he meant, and he said something to the effect that his Dad was before Council and told her his name. Andrew said, "Go get him." That was the entire conversation, and Councilor Barnes told Andrew that she did not want to discuss it any more.

Mayor Bernard was at the same meeting and found out that Andrew was Norm Scott's son. The conversation was about the same.

Councilor Collette recused herself at the previous hearing and had not talked to anyone since.

There were no challenges from the audience.

Staff Report

Mr. Gessner said the details of the revised findings were in the staff report and included in paragraphs 16 – 20. The Mayor had closed the public testimony portion of the hearing. The revised findings were in response to the city attorney's suggestion to address specific testimony regarding the need for the sidewalk along 28th Avenue in relation to the City Codes that required sidewalks as well as establishing that the City had not exceeded its authority that might otherwise be limited by a constitutional decision in *Dolan v. City of Tigard*.

Paul Roeger called a point of order from the gallery to note discrepancies. [Comments inaudible]

Mayor Bernard announced there would be a short break for a discussion with staff after which **Mr. Gessner** recommended tabling the decision to December 20, 2005 in order to work out the details.

Mr. Firestone added that public testimony was closed and deliberation would resume on the date certain of December 20, 2005.

B. Hill Street Reimbursement District for Wastewater Services

Mayor Bernard called the public hearing to order at 8:04 p.m. The purpose of the hearing was to consider public comment on the final assessments for the Hill Street reimbursement district for wastewater service.

Staff Report

Mr. Ostlund provided history on the project. In September 2004, Council awarded the contract for construction, and the project was completed October 2005. Six of the 11 properties in the district connected to the wastewater system. A 20% contingency had been added to address change orders and any unanticipated costs, and because the project was under that amount, the City would refund the six properties that had connected. He indicated the reimbursement district on a map and noted some of the properties were not in the City limits. The lot frontage was used to calculate the numbers, and he compared the estimated and actual costs. Those properties that paid would be refunded the difference. He noted the laterals were connected.

Correspondence – None.

Audience Testimony – None.

Mayor Bernard closed the public hearing at 8:12 p.m.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the final assessments for the Hill Street reimbursement district for wastewater service. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 53-2005:

A RESOLUTION AMENDING RESOLUTION NO. 22-2004, ESTABLISHING THE FINAL ASSESSMENT AMOUNTS FOR THE SOUTHEAST HILL STREET SANITARY SEWER REIMBURSEMENT DISTRICT AND AUTHORIZING A REFUND.

OTHER BUSINESS

A. Acquisition of Property Located at 2808 SE Balfour for Meek Street Stormwater Project -- Resolution

Ms. Schleining reported this was a four-phase storm project to take some of the load off the undersized Harrison Street stormline. There was a solution in the Master Plan to bypass some of the Harrison line down Meek past the public housing project by the railroad tracks. The City was in the process of getting an easement from the County. This project was built from the top down and probably would have been better to do from the bottom up. The City kind of backed itself into the area. She pointed out the natural storm drainage to Roswell Pond. One would see ponding on the property, and most of the water would be absorbed into the ground. The City wanted a legal easement because it was actually already a storm drain; however, about 2/3 more flow would be added by bypassing part of the Harrison line. This land was unique in that it was about a 65% slope along the railroad tracks. It was a very large lot, and the home was located on the far corner of the lot. It was not really usable, buildable land that could be used for much else without engineered fill that would cost more than the property would ever be worth. It was by the railroad tracks and next to the Hillside low-income housing, so it was not top of the line real estate. The City had an appraisal to negotiate with the owners, and it needed to be entered into the record that the City needed the land.

Councilor Collette asked the status of negotiations with the property owners.

Ms. Schleining replied the owner had been cooperative. The appraisal came in at $1,000, and the owner wanted 15-times that amount. The City was cautious about setting a precedent of paying that amount, so staff wanted to be careful about taking all the necessary legal steps. These were the same Ann and Jim Burbach who applied to have the large trees removed. It was an unfortunate incident and had nothing to do with the project, but they were not happy.

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the resolution authorizing acquisition of real property for the Meek Street stormwater project. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 54-2005:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING THE NEED TO ACQUIRE PROPERTY FOR THE PURPOSE OF STORMWATER RUNOFF.

B. Council Reports

- **Councilor Loomis** suggested setting aside a day and preparing a proclamation honoring Milwaukie High School.
- **Councilor Loomis** announced the Winter Solstice event on December 10.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously among the members present. [4:0]

Mayor Bernard adjourned the regular session at 8:21 p.m.

_____
Pat DuVal, Recorder

CITY OF MILWAUKIE

CITY COUNCIL MEETING
DECEMBER 20, 2005

CALL TO ORDER

Mayor Bernard called the 1972nd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Susan Stone	Carlotta Collette

Staff present:

Mike Swanson, City Manager	John Gessner, Planning Director
Bill Monahan, City Attorney	Paul Shirey, Engineering Director
JoAnn Herrigel, Community Services Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Councilor Barnes read the Winter Solstice Event Proclamation expressing the Council's ongoing support.

CONSENT AGENDA

It was moved by Councilor Collette and seconded by Councilor Barnes to approve the consent agenda. Motion passed unanimously. [5:0]

A. City Council Minutes
   1. Work Session November 1, 2005
   2. Regular Session November 1, 2005
   3. Special Session November 8, 2005
   4. Work Session November 15, 2005
   5. Regular Session November 15, 2005

B. Resolution No. 55-2005: A resolution of the City Council of the City of Milwaukie, Oregon, designating the first and third Tuesdays of each month as the regular City Council meeting date, establishing the times of the said meetings, and repealing Resolution No. 37-2004.

C. National Pollutant Discharge Elimination System (NPDES) Interim Report Contract Award.

AUDIENCE PARTICIPATION

Mayor Bernard announced he would limit comments to three minutes. He called on Les Poole as the first speaker.

Councilor Stone had a point of order as to why the comments were limited to three minutes when the usual procedure was five.

Mayor Bernard replied that was his determination as the presiding officer.

Mr. Swanson said the Code did allow the Mayor to set time limits. It also provided that a motion and second of the Council could be made to review any of those rulings. The Mayor in the first instance did set the time limits. If the Council wished and there was a motion to that effect and a second, then that could be taken up.

It was moved by Councilor Stone and seconded by Councilor Loomis to keep the timeline to five minutes as per Council procedure. Motion passed 4:0 with Councilors Barnes, Collette, Loomis, and Stone voting 'aye."

- **Les Poole, 15115 SE Lee, Oak Grove.**

Mr. Poole noted everyone had been through tough times dealing with the situation at the transit center and anxiously awaiting to hear what Mr. Dietrich was planning up the street. Obviously, the parking problem still existed, and some development was being seen. We needed to take care of the parking problem. The buses were still downtown. Part of the reason the buses were still downtown was either because he was a hero or a goat depending on which side of the fence a person was on. He wanted to clarify a couple of things. Last summer he read an interesting article in the *Clackamas Review* about protecting our greenspace. JoAnn Herrigel was interviewed in it, and he kept thinking about the park. He went down there the next day and noticed the greenspace. Why would they have purchased this greenspace that would be useless if it had not been contiguous to the park he had always heard about. He went home and googled "Kellogg Creek Park" which was mentioned in the article by Ms. Herrigel. Nothing came up. He tried Kellogg Lake Park, and he found it. Interestingly, the 3.5-acres down there was designed as a park in 1992. He wanted to clarify a couple of things. He wrote this letter – soap box -- in September 2004 after he realized it was a park. While he was not one to withhold information, he sat back and waited until the opportunity to discuss that presented itself. Because Phil Selinger was coming in to discuss the Wal-Mart site and some other issues he spent a few minutes on the 18th of October requesting City records because it was obvious to him that it was a park. Now it is a park, and we were going to move on to find a good location for the transit center. He certainly was not there to endorse Southgate. It might surprise the Council, but he could be of value in its search. His concerns were twofold. He had not seen any motion to drop option 2.5, and he was certainly not there to demand it. He thought it needed to be on our radar soon. Secondly, he wanted to clarify something he said because he always tried to be real accurate. During our testimony on November 1 he mentioned that Kronberg Park was going to be condemned possibly by the City Council. He mentioned the Planning Commission had denied an application by the property owner and the developer. That was incorrect. Actually, the developer's application had a preliminary conditional approval. It was a minor correction, but he always tried to be real accurate in what he told the Council. The point being that the condemnation of that property was for a park,

and that 3.5-acre park existed and had existed for a long time. That 3.5-acre park was the identical piece of property out of the original purchases that was Kellogg Lake Park. We needed to work on turning Kellogg Lake Park into Kronberg Park. He hoped Carolyn Tomei and some of the other folks that brought up the obvious issues with that intersection would continue to work towards that. If we could fix that intersection it would provide access to Island Station, see some redevelopment down there, and at the same time coincidentally create access to our park. In the future, he hoped he would not be talking about the park any more. There should be a sign up there as was part of the agreement with North Clackamas Parks. Obviously some time after the first of the year, he would like to see that. In closing after he realized it was a park, he interviewed several people on the Council, a former Council member, and a number of people on the Planning Commission. None of them knew it was a park, so obviously we all moved forward, and he understood that. He asked them in hindsight had they known it was a park, would they indeed have moved forward. He got the same answer every time. Obviously, Carlotta was not on the Council at the time. Councilor Loomis – he asked his opinion frankly. He was curious – he had not talked with Councilor Barnes. He asked her if she had any indication it was a park until late October, early November.

Councilor Barnes replied she had not.

Mr. Poole just wanted to know because famous last words – had we known we wouldn't be here. We wouldn't have been here. Let's move forward.

Councilor Collette asked Mr. Poole for the record if he lived in the City of Milwaukie.

Mr. Poole replied he lived at 15115 SE Lee, Oak Grove 97267. Obviously, his family made a $22,000 contribution on the project, so he certainly had standing and appreciated the question. He did not live in Milwaukie, but he was influenced by it.

- **Ed Zumwalt, 10888 SE 29th Avenue.**

Mr. Zumwalt spoke for the Historic Milwaukie Neighborhood Association. Several months ago through efforts of the vice chair, Dion Shepard, the NDA adopted Kellogg Lake Park soon to be re-christened Kronberg Park. Subsequently, they conducted two park cleanups. Mayor Bernard indicated in an interview in *The Oregonian* that he hoped someone would step up and put money in the park so Dena Swanson could realize her dream as the City was strapped financially. The Neighborhood was stepping up. It would apply for a Nature in the Neighborhoods grant through Metro for starters and follow up with other grant applications in the future. They would also pursue other fundraising avenues. Lake Road NDA already assured Historic Milwaukie of its assistance. At the same time, he hoped the City would assist with the Metro grant and others. After all, the City has been derelict in its responsibilities in that area for almost 14 years. He hoped the decision on that site was put to rest and all could go forward with a new sense of harmony.

- **Rosemary Crites, 4917 SE Aldercrest Road, County resident**

Ms. Crites did not live within the voting boundaries of Milwaukie but lived as close to City Hall as many members of the Council. Her family lived at that address for 55 years. With that in mind, she did have a vested interest in the future of the City and how others perceived it in the metropolitan area. She was at this meeting to speak with

Councilwoman Deborah Barnes. In the November 8 meeting, Mayor Bernard moved that the Council authorize the City Manager, Mike Swanson, to discuss with Dena Swanson her intent as to the letter from Dan Bartlett to her that she countersigned and whether she wished to clarify or amend what was stated in the letter. This letter had to do with her wishes to have the property presently known as the Kellogg Lake site to be made into a park and named after he deceased husband Mr. Kronberg. She asked Councilor Barnes if she seconded the motion.

Councilor Barnes believed she had.

Ms. Crites continued. With the seconded motion, it was moved and seconded that the Council authorize the City Manager, Mike Swanson, to discuss with Dena Swanson her intent as to the letter from Dan Bartlett to her that she countersigned and whether she wished to clarify or amend what was stated in the letter, and if appropriate given her response to enter into a written agreement consistent with Ms. Swanson's response. Councilor Loomis did not like that motion and asked that a meeting be set up which would include witnesses to this interaction. Suggested attendees would be Mayor Bernard, Milwaukie City Manager Mike Swanson and/or a designated staff representative, and Councilor Stone to accurately inform her of the history of the siting of the transit center. The purpose of the meeting would not be to propose any thoughts or ideas to develop this property. The sole purpose would be to give Mrs. Swanson all sides of the issue for and against the siting of the transit center on Kellogg Lake. Councilor Collette had stated it was not the Council members' role to negotiate on behalf of the City and to meet on this type of issue. It was staff's role and generally the City Manager's role; therefore, she could not support Councilor Loomis's amendment.

In response to Councilor Collette's statement, Councilor Loomis repeated his amendment and added no other Council member should contact Mrs. Swanson or encourage anyone to contact her. The parties in this amendment should only meet once unless Mrs. Swanson requested further meetings of the group. The City Manager and staff would conduct all negotiations and report back to Council with their recommendations, but he did not see that was necessary – what he was trying to do was to add that as part of the first motion. He wanted to clarify that to Councilor Collette. Councilor Loomis repeated the motion prior to Council's voting. The motion on Councilor Loomis's amendment failed 2 – 3 with the following vote: Councilors Loomis and Stone voting 'aye' and Mayor Bernard and Councilors Barnes and Collette voted 'no.' With the vote, it was agreed by the majority of the Council that only City Manager Mike Swanson would talk with Mrs. Swanson.

Ms. Crites had two questions for Councilor Barnes. After Mike Swanson talked with Mrs. Swanson, did she contact her…after Mike Swanson had a meeting with her.

Councilor Barnes replied she did not at any time after that. No. Never. No e-mails. Nothing. No phone calls. No contact with her whatsoever.

Ms. Crites said okay and said to Councilor Barnes that this was a very small town. She could not go back and forth here.

Councilor Barnes asked Ms. Crites why she was asking that.

Ms. Crites said it was because of the fact she had seen many times when Councilor Barnes questioned people's ethics and protocol.

Councilor Barnes asked Ms. Crites if she was questioning hers.

Ms. Crites said she was.

Councilor Barnes asked Ms. Crites for the proof that she made some contacts because that was what she was insinuating.

Ms. Crites replied she was insinuating that.

Councilor Barnes asked for proof that she had contacted Ms. Swanson at any time. She asked that Ms. Crites give her the proof.

Ms. Crites said the proof – did she have it here this evening? She said she would present it at the next meeting if that was what Councilor Barnes wanted.

Councilor Barnes said to present it as soon as she could because she had not made contact with Ms. Swanson in whatever way, shape, or form after that meeting.

Ms. Crites said okay and indicated she had said what she wanted to say.

- **Larry Lancaster, 10505 SE 55th Avenue.**

Mr. Lancaster was happy to see the two minutes added back. It was very important. He labored long and hard on whether to come before the City Council tonight. Even as he sat at the back of the room, he did not turn in his green card. He knew the rules as he continued to think whether he really wanted to do this or not. At the end, he decided because of after watching – he attended of course the recent public hearing and the subsequent special session – after watching it on tape he felt compelled to come before the City Council and ask a few questions. As he mentioned before in the public hearing – if the City Council recalled his comments it was not so much about the decision of Kellogg Lake but about doing the right thing and the conduct of the Council. He really only had seven questions, and he wanted to hear the answers. He wanted to hear them specifically from Mayor Bernard and Councilor Collette and Councilor Barnes.

First, what was the purpose of a public hearing? He wanted to hear the definition of that.

Mayor Bernard did not intend to be questioned tonight on this issue. He would be happy to answer the questions in the form of a letter.

Mr. Lancaster asked if Mayor Bernard was not willing to make a public response to all of his questions or just this question.

Mayor Bernard replied any of Mr. Lancaster's questions. He and Councilors Collette and Barnes were not on trial.

Mr. Lancaster was not a judge, and he was not creating a trial. He thought this Council was very accountable to the citizens. The fact that Mayor Bernard refused to answer any questions was very telling – and not in a very positive way, by the way.

Councilor Barnes said the purpose of a public hearing was to gather information from the public.

Councilor Collette agreed, but there were also different kinds of public hearings. She suggested early on in setting the first agenda, that that issue not be a public hearing because most people assumed a specific process around a public hearing. They assumed a land use issue with the particular rules and regulations that went with a statewide land use issue. This was not that kind of hearing. She did think the purpose of a public hearing in any case was to hear from the public – take information and comments.

Mr. Lancaster said since Mayor Bernard was not going to answer his questions, so he just put them out there. He wanted to find out why Mayor Bernard chose to deviate from a long-standing tradition of five minutes for public comment and restrict it to three minutes. That was one of the questions he wanted answered.

Did any of you after the discussion of contacting Mrs. Swanson – the instructions were made to the city manager not to contact Mrs. Swanson. Did any of you have a conversation with the city attorney regarding whether it was legal for them to contact Mrs. Swanson.

Councilors Barnes and **Councilor Collette** replied they had not.

Mr. Lancaster said regarding the special session did any of you communicate with each other in any manner prior to that meeting -- whether by telephone, by meeting personally, or by e-mail.

Councilor Barnes and **Councilor Collette** replied that they had.

Mr. Lancaster asked if there was any deliberation regarding the outcome of that meeting ahead of time.

Councilor Barnes and **Councilor Collette** replied there had not. **Councilor Collette** added it was just a question of whether there was going to be a meeting. She thought she might have gone overboard by notifying the neighborhood leadership that there was a proposed meeting.

Mr. Lancaster had another question for the Mayor Bernard for him to submit in writing if that was what he chose. Why did you suddenly at the special session out of the clear blue sky suddenly decide to invoke a whole new set of administrative rules regarding the conduct of the meeting that actually in effect made it more difficult for the Council to communicate? He really wanted some understanding around that.

Mr. Lancaster's last question for all Councilors was that after the decision was made, as he understood it from Dena Swanson that the property was to remain a park, have any of you contacted her after the fact for any reason.

Councilor Barnes said she had not.

Councilor Collette said she had. She called Dena after she heard the final decision and said she was glad she felt good or however she felt and if there was any chance to meet and discuss it further. Ms. Swanson said there was not, and Councilor Collette said that was fine.

Mr. Lancaster asked for a ballpark time when Mayor Bernard would respond.

Mayor Bernard asked Mr. Lancaster to give the questions to the city recorder, and he would likely respond the first week of January.

Mr. Swanson discussed what had occurred after the special meeting. He said, based on the vote in that meeting, he did initiate discussions with Ms. Swanson. They met on November 17, and he provided her with the information she requested. She requested that she have time to talk with her son-in-law who is an attorney and her son who is a stockbroker. Mr. Swanson agreed, and they decided to touch base again after the holiday. They did contact each other the week after Thanksgiving, and she told Mr. Swanson that she would like to meet with him along with her son and son-in-law. They met the Monday of the following week at which time she informed him she wished the provisions of the 1991 letter to be met in full. That meant the entire parcel would be maintained as a park, and the City would proceed with the renaming process. When he met with her, Mr. Swanson felt that his direction from the City Council was not to lobby her but to get a decision from her so they could proceed to the next steps in the whole transit center process. Shortly after that he asked Ms. Herrigel to contact Ms. Swanson and begin the naming process. At the same time Mr. Swanson and Ms. Swanson's son-in-law had been working on two documents. One was a covenant that would basically restate what was in the letter in a form that could be recorded. If anyone looked in the future, then it would show up in the real property records along with the 1992 deed. The second document would be a simple letter from Ms. Swanson stating her decision to implement the full terms of the 1991 letter. He just heard from her son-in-law, and he thought they had the covenant and the language of the letter that would basically foreclose any option of using the property as a transit center. That meant that under the Charter he could execute the covenant and have it recorded. He would also prepare a resolution on January 3 that would basically rescind the October 2004 resolution that dealt with the Kellogg Lake site. The locally preferred alternative (LPA) had not changed and was as it had been adopted by the Metro Council in 2004. Basically the action on January 3 would return the situation back to the LPA, and they would work from there on the transit center issue. He wanted to make it clear in his dealings with Ms. Swanson that he did not feel as if the Council had said in any way that that was the only result he should obtain. It was clear to him that was the decision she wanted to make. She made her decision free and clear, and it did not surprise him after she talked to an attorney. The covenant would be recorded so there was notice to the world. He would get the letter from her, and he would prepare a resolution for Council consideration on January 3.

Mayor Bernard said one of his concerns was that the previous letter was not attached to the title, and that Council had not known about it. He asked if he could have his signature on the document, so that Council actually knew about it in the future.

Mr. Swanson said the problem when checking the real property records was that the only thing that showed up was the deed. It said absolutely nothing about any restrictions. He understood at the time the document was recorded, it would not have been acceptable to also record just a simple letter between two parties. He would put this document in a form that was acceptable for recording. When it was recorded with the book and page number, then he would give each member of Council and Ms.

Swanson a copy. Any time anyone went to the files in the County Clerk's Office, the document would show up along with the deed that was recorded in 1992.

Mayor Bernard said one Councilor requested that all e-mails go to the city recorder, but he had not seen any e-mails from that Councilor. Was it not true that those should be produced?

Mr. Swanson believed it was either under the public records law or the section of the Code that allowed Councilors to ask. He would close that loop tomorrow.

Councilor Stone asked Mayor Bernard what he was specifically referring to.

Mayor Bernard said Councilor Stone requested other Council members' e-mails, but he had not seen any of hers.

Councilor Stone said her request did not specify her own e-mails. She got a request – she did not know if it was really a request – it was a statement made by Councilor Collette saying that if she was complying with her own request she would not mind seeing her e-mails. Councilor Stone did not take that as a request. When she got the e-mails, she looked through them and found one from Councilor Collette that specifically addressed that she did not really want to see Councilor Stone's e-mails. Councilor Collette just wanted her to go through the angst of having to produce them. So she did not really take that as a formal request.

Mr. Swanson said he would take the e-mail he got as a formal request and do something about it tomorrow to close the loop.

Councilor Stone said that was fine.

PUBLIC HEARING

A. Findings and Conditions for Norm Scott Subdivision
AP-05-03 by Norm Scott
8555 SE 28th Avenue

It was moved by Mayor Bernard and seconded by Councilor Barnes to continue the hearing on the Norm Scott Subdivision to January 17, 2006. Motion passed unanimously. [5:0]

B. Zoning Ordinance Amendment ZA-05-01, Limitations on Repeat Submissions of Applications – Ordinance

Mayor Bernard called the public hearing to order at 7:32 p.m.

This was a legislative hearing on a Zoning Ordinance amendment initiated by the City. The purpose of the hearing was to consider proposed amendments to the Zoning Ordinance by making clear rules that limited resubmission of denied applications. The City Council decision would be the final decision of the City. All testimony and evidence was to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing are those who submitted written comments or testified and signed the attendance sign-up sheet.

Conflicts of Interest

No potential or actual conflicts of interest were declared. There were no challenges to the Council member's ability to participate.

Staff Report

Mr. Gessner reported the Planning Commission adopted a motion on November 22, 2005 to recommend this amendment to the City Council. No public comments either written or oral were submitted on the proposed amendment. The intent was to prevent the abuse of the land use application and to create certainty for neighborhoods and applicants as to the requirements to perfect the application.

Mayor Bernard recessed the meeting and reconvened at approximately 8:00 p.m.

Mr. Gessner continued. If an application were denied and not appealed, then the applicant would not be entitled to another crack at an application process. The effect of the application was to restrict the resubmission of denied applications unless there were some very specific circumstances including that the application was modified to meet regulations such that it could be approved; that the Code had changed such that an application could be approved; or two years had elapsed. The Planning Commission reviewed the application on November 22, 2005 with a formal recommendation that the City Council adopt the ordinance. The proposed ordinance was discussed at a City Council work session on December 6 for direction. He believed the application complied with all approval criteria for zoning ordinance amendments, and staff requested approval.

For the record, **Mayor Bernard** noted his consent for Councilor Barnes to leave the meeting.

Correspondence: None.

Public Testimony in support, in opposition, or neutral testimony: None.

Close Public Hearing

I was moved by Councilor Stone and seconded by Councilor Collette to close the public hearing. Motion passed unanimously among the members present. [4:0]

Mayor Bernard closed the hearing at 8:06 p.m.

Council Discussion: None.

Council Decision

"It was moved by Councilor Stone and seconded by Councilor Collette for the first and second reading by title only and the adoption of an ordinance amending the Milwaukie Zoning Ordinance (ZA-05-01). Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance two times by title only.

The Council was polled with the following vote: Councilors Collette, Loomis, and Stone and Mayor Bernard 'aye.' [4:0]

ORDINANCE NO. 1954:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDMING THE MILWAUKIE ZONING ORDINANCE BY ADDING A NEW SECTION LIMITING THE RESUBMISSION OF ZONING INTERPRETATIONS AND LAND USE APPLICATIONS WHEN DENIED AND NOT APPEALED.

The Mayor and Council expressed their appreciation to Mr. Gessner for his service to the community as planning director.

C. Code Amendments and Granting Franchises for Solid Waste Management Services – Ordinance and Resolution

Mayor Bernard called the public hearing on code changes related to collection of solid waste and recycling and granting non-exclusive franchises to order at 8:12 p.m. The purpose of the hearing was to consider public comment on the proposed amendments and the franchise.

Staff Report

Ms. Herrigel requested that the City Council take two actions. The first was to adopt an ordinance amending Municipal Code Chapter 13.24 regarding management and collection of solid waste and recycling. The second was to approve a resolution granting non-exclusive franchises for solid waste management services. The City granted the franchises to the seven haulers in 1994, and the original term of those franchises ended October 2004. The Council extended those terms three times so negotiations could be completed and the administrative rules were finalized.

The proposed code amendment formalized practices used in day-to-day operations and updated language to recognize current technology. Ms. Herrigel explained this was a ten-year franchise that was reviewed at year five. If at that time, it was determined an extension was desirable, then five years were added meaning it as a ten-year rolling franchise. There were provisions to terminate the franchise with or without cause. The language also included reference to Down to Earth Day, established the administrative rule process, set a target operating margin of 8% to 12%, and established the franchise fee at 5%. She noted that the city manager approved the administrative rules, so those were not before the City Council.

Correspondence: None.

Audience Testimony

- **Dave White, Oregon Refuse and Recycling Association.**

Mr. White clarified the length of the negotiating period was not a result of controversy but rather that the existing document worked but needed to be clarified. The parties were seeking an approach that protected the City, the customers, and the haulers while creating a document that had a life of its own. Several Milwaukie haulers were present and introduced themselves.

Questions of Clarification: None.

Close Public Hearing: **Mayor Bernard** closed the public hearing at 8:20 p.m.

Council Discussion: None.

Council Decision

It was moved by Councilor Collette and seconded by Councilor Loomis for the first and second readings by title only and the adoption of an ordinance amending the Milwaukie Municipal Code Chapter 13.24 and declaring an emergency. Motion passed unanimously among the members present. [4:0]

Councilor Stone referred to 13.24.050 – adoption and revision of rules. She noticed in the old document it said the "rules and regulations and any amendments thereto, may be approved by the city council, after hearing, following said thirty-day period." Was that no longer included because by Charter the city manager was doing it?

Ms. Herrigel replied certain rule changes, such as accepting plastic tubs but not Styrofoam, would be onerous on the City Council and the haulers. This change would allow the city manager to make change administratively with adequate notice to the public.

Councilor Stone noticed some of the ordinance references were crossed out in places.

Ms. Herrigel replied they were crossed out because they referred to the original ordinance that adopted the code language. The ordinance history was in the code rather than the adopting ordinance.

Mr. Swanson read the ordinance two times by title only.

The Council was polled: Councilors Collette, Loomis, and Stone and Mayor Bernard voting 'aye.' [4:0]

ORDINANCE NO. 1955:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE REGARDING MANAGEMENT AND COLLECTION OF SOLID WASTE AND RECYCLING AND DECLARING AN EMERGENCY.

It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the resolution granting non-exclusive franchises for solid waste management services. Motion passed unanimously among the members present. [4:0]

RESOLUTION NO. 56-2005:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, GRANTING NON-EXCLUSIVE FRANCHISES FOR SOLID WASTE MANAGEMENT SERVICES.

OTHER BUSINESS

A. Time Warner Franchise – Ordinance

Ms. Herrigel requested that the City Council adopt an ordinance granting a ten-year franchise to Time Warner Telecom of Oregon LLC (TWTC) to operate as a telecommunications provider within the City of Milwaukie and authorizing the City Manager to sign a franchise agreement. TWTC actually took over some existing

infrastructure in the right-of-way from AT&T several years ago but had not been using it. When TWTC decided to move some of the wires, it was determined the provider did not have a franchise. The proposed franchise had a term of ten-years, and the City would get a franchise fee of either 5% of the revenue generated by TWTC in Milwaukie or $1,000 per quarter whichever was greater. There was a requirement for a $25,000 bond and insurance, so the parties were ready to move forward once the franchise was approved by the City Council.

Councilor Stone noted the staff report said that TWTC neglected to purchase a franchise at the time it took over this infrastructure. Was that subject to penalty?

Ms. Herrigel replied it was subject to penalty, and a settlement agreement was negotiated in which TWTC would pay the City a lump sum for back payments of the franchise fees.

Mr. Swanson added he just signed that today.

Councilor Collette asked who or what TWTC was serving.

Ms. Herrigel said it was serving a company called Advantus on Main Street. TWTC provided phone service, data transfer, and Internet service.

It was moved by Mayor Bernard and seconded by Councilor Stone for the first and second readings by title only and the adoption of an ordinance granting a 10-year, non-exclusive franchise to Time Warner Telecom of Oregon LLC to operate as a telecommunications provider within the City of Milwaukie and authorizing the city manager to sign a franchise agreement. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance two times by title only.

The Council was polled: Councilors Collette, Loomis, and Stone and Mayor Bernard voting 'aye.' [4:0]

ORDINANCE 1956:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON GRANTING TIME WARNER OF OREGON LLC. A NON-EXCLUSIVE FRANCHISE FOR TEN (10) YEARS TO OPERATE AS A TELECOMMUNICATIONS PROVIDER WITHIN THE CITY OF MILWAUKIE AND AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE AGREEMENT WITH TIME WARNER OF OREGON LLC. IN SUBSTANTIALLY THE FORM OF EXHIBIT A.

B. Council Reports

- **Councilor Loomis** thanked Ms. Herrigel and the Community Services Department and the Park and Recreation Board for their work on the Winter Solstice Event.
- **Councilor Collette** attended the Regional Water Suppliers Consortium and discussed the annual membership fee and services received.
- **Councilor Stone** wanted to look at a date or start thinking about discussing the e-mails. She sent everyone e-mail that morning. She did not know if it should be done in a special session, but she did want to do it as a group and talk about where

the Council was. She thought it was important to do it to foster some team building and have an open and honest discussion about the content. She did not know if the Council wanted to do it on a Saturday. Was there going to be a Council coffee starting in January? She thought it was something to think about – a date. Mr. Swanson noted the second Saturday of January was a long weekend.

Councilor Stone asked if that time would be used to talk about the e-mails or would another time be chosen. She just wanted to get some dates.

Mayor Bernard did not personally care to talk about the e-mails. As far as he was concerned he had no intention to set a date to talk about the e-mails. He knew what the Council's obligations were. Maybe because they were volunteers, they did no quite understand and sometimes strayed beyond that. He was comfortable that the information was provided and did not care to discuss it – and certainly not take extra time to do it.

Councilor Collette made some notes, as she was reasonably upset. She appreciated and encouraged the involvement and interest of all the citizens of Milwaukie in the processes the Council went through. That included people who lived and worked here and had businesses, but she was tired of hearing from people who did not live in this community that took a tremendous amount of time and only seemed to be what once were called outside agitators. She thought the whole deal with the e-mails was a continuation of a very unfortunate process. The sooner they put it behind them the better as a City they would be. The more likely they would be able to build a team and function as a City Council. If Councilor Stone wanted to go forward, then Councilor Collette would do so only after she saw Councilor Stone's e-mails. It was an onerous process that exposed not just the people on the Council but also the people Councilors communicated with who trusted them and assumed, probably wrongly, that their communications would be private. For her it was like being presented with people's diaries. That was why she had no interest in seeing Councilor Stone's or anyone else's. She thought it was unfortunate that this issue was being pushed. She thought the City Council had a huge number of really big and exciting projects that were begun last year, and she wanted to move forward on them. She was tired of going back over old ground and all those clichés, beating a dead horse. She wanted the community to move forward. She agreed it would take team building, but she did not think it meant exposing people in the community and the e-mails they had written to any more public rancor. She wanted the City to work for itself and not have a lot of other people coming in and pushing it back and slapping the City Council. The members were all volunteers who were not paid to do this. It was hard work, and members spent a lot of time doing it. None were doing it with any interest other than to further this City and to build it into the most wonderful community one could live in. She was sick and tired of people who had no interest other than to come in and knock it down over and over again.

Mayor Bernard wished everyone a Merry Christmas and those who lived small lives and kept dragging this on. Councilor Barnes and the other members volunteer. To sit here and accuse her of something that, if she did which she said she did not, she did not do it intentionally was disgusting as far as he was concerned. As Council members they really had to do things on the up and up. He would be happy to tell

Mr. Lancaster that he had talked with Dena Swanson twice. She called and asked him if there was something on the property, and he told her he would call the city manager. The second time she said she had not heard from the city manager, so Mayor Bernard followed up to make sure he called. Those were the two times he spoke with Dena Swanson. It disgusted him that after all the progress that had been made, that the small people who evidently had nothing better to do came to the meetings and accused the Council of improprieties. He was disgusted by it. He loved this community, and he was not going to back away. If they wanted to come and fight him, then he was ready.

Mr. Swanson had been in this business for 33 years. He believed it was Councilor Loomis who asked if anything like this had occurred before, and he replied it had not. Someone he cared about having a reaction or whatever happened. What he saw – he did not see any silos or people not trying to help stabilize the situation. He believed perhaps this was not the night to get into it, and he was a little late. Secondly, he suggested that there were issues to talk about that probably needed to be considered at a different time. He certainly felt differently at the close of this meeting than he normally did. He thought the issues did need to be defined because there were still transit center matters to resolve. The City was faced with a big issue on Clearwater along with many, many other issues. He would rather see the City respond to those in a caring way as opposed to how things had happened in the past. He would share whatever responsibility he had in doing that, but he suggested deferring – but not forgetting – because there were things that needed to be dealt with. He felt there might be a better time. It was not about delay. It was about hoping to set things up to be more successful that they would be if the group tried to wrestle with times and definitions of issues tonight. There were issues that needed to be defined and dealt with.

Councilor Stone was not suggesting a discussion at this meeting. She did think that one needed to happen. One thing they needed to remember was that each was a public official and needed to be accountable. When people came before the Council, she never viewed anyone – she did not care if they were on the side of an issue that she agreed with or not – she never viewed them as being small, as being irritating, as being in any negative way because they were the public regardless of if they lived in the City boundaries or out. Some of the people the Council heard from tonight had families that donated land. She certainly did not think it was appropriate to be putting anyone of our citizens down. The people that elected the Council held them accountable. If they had questions they would come forward sometimes. Unfortunately, that happened.

Mayor Bernard asked if there was a motion to adjourn.

Councilor Loomis agreed with Mr. Swanson and Councilor Stone in respect to the City's having some big issues coming before it. The only way to work together was to address an issue. There were a couple of rules that he read before coming to Council, and he wanted to share one of them. "Think before you speak or act. Your actions reflect on the whole Council and the City of Milwaukie." With that Councilor Loomis seconded the motion to adjourn.

The motion to adjourn passed unanimously among the members present. [4:0]

ADJOURNMENT

Mayor Bernard adjourned the regular session at 8: 44 p.m.

_____

Pat DuVal, Recorder

Milwaukie Police Department

To: Mayor Bernard and Milwaukie City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler, Chief of Police

Date: December 27, 2005

Subject: **O.L.C.C. Application – Roswell Market – 8929 S.E. 42nd Avenue**

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Roswell Market – 8929 S.E. 42nd Avenue.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.

To **Mayor and City Council**

Through: **Mike Swanson, City Manager**
Kenny Asher, Community Development & Public Works Director

From: **Gary Firestone, City Attorney**

Date: **December 21, 2005 for the January 17, 2006 Public Hearing**

Subject: **Norm Scott Subdivision**
Appeal File AP-05-03

Action Requested

Approve findings and conditions in support of the Council's November 15, 2005 tentative subdivision approval and denial of the street vacation requests.

Background

On November 15, 2006, the City Council conducted a public hearing and made a tentative decision approving denying the appeal, upholding the Commission decision with conditions, and denying the requested street vacations.[1] The final decision was deferred based on the advice of the City Attorney to prepare additional findings that address the need for pedestrian improvements along 28th Avenue.

The applicant provided written comments to staff following the December 6, 2005 Council meeting, which have been addressed in the revised findings and conditions. The proposed findings now distinguish street requirements from sidewalk requirements to clearly demonstrate that all required sidewalks are directly related and proportional to the impacts of the subdivision.

Concurrence

[1] On December 20, 2005, the public hearing on this matter was continued to January 17, 2005

The City Attorney and Engineering Director concur with the recommended findings and conditions.

Fiscal Impact

No fiscal impacts have been identified.

Workload Impacts

Not applicable.

Decision-Making Alternatives

The Council may accept the prepared findings as written or modify the findings.

Attachments

Recommended Findings and Conditions.

Attachment 1

Recommended Findings

1. The applicant proposes to replat the 1.5-acre site at 8555 SE 28th Avenue into 4 residential lots and one wetland tract.[2] The existing single-family house will remain on one lot with 3 new lots being created. The following land use approvals have been requested:

   a. Replat 4 lots and one wetland tract.

   b. Variance to not construct road improvements on Depot Street, 28th Avenue and parts of Rockvorst Avenue.

   c. Water Quality Resource review since the proposed subdivision contains a protected water feature.

   d. Transportation Plan Review with Transportation Adjustment to not install a landscaping strip and narrow the required sidewalk width from 6 feet to 5 feet.

   e. Street vacation for 10 feet of right-of-way on Rockvorst Avenue and 15 feet on 28th Avenue.

2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

   a. Title 17 Land Division Ordinance

   b. Title 19.303 R-5 Zone

   c. Title 19.322 Water Quality Resources

   d. Title 19.700 Variances, Exceptions, and Home Improvement Exceptions

   e. Title 19.1400 Transportation Planning Design Standards and Procedures.

3. The applicant has proposed the following street improvements, some of which have been modified by this decision; see details in subsequent findings. All dimensions cited are as shown on the applicant's street and drainage construction plan.

   a. A 200-foot long street within the existing 40-foot Rockvorst Avenue right-of-way consisting of a 28 foot travel way. This work includes grading and paving of approximately 25 feet within the 28th Avenue right-of-way as necessary to transition 28th Avenue to the new

[2] Applications includes AP-05-03, S-04-04, TPR-04-10, VR-04-12, WQR-04-04 replat is for reconfiguration of an existing subdivision. The property is within two existing plats, Ardenwald and Burley Acres.

Rockvorst Street within the subdivision. This cross section provides two travel lanes with parallel parking on one side of the street.

b. A 100-foot long street with a 24-foot travel way within 40-foot right-of-way to be dedicated as part of the subdivision, extending northerly from the Rockvorst right-of-way as needed to provide lot frontage and street access to lots 2, 3, and 4 as measured form the northern end-of- street to the southern tangent of the curb returns at Rockvorst,

c. Approximately 150 feet of a 5-foot, curb-tight sidewalk opposite the site along the east side of 28th Avenue between Sherrett Street and Rockvorst Street. Construction of this sidewalk requires either acquisition of right-of-way or an easement on the lot located at the southeast corner of 28th Avenue and Sherritt Street, which have not been secured by the applicant. Construction also requires relocation of an existing water meter and storm drain. (It is noted that the applicant has requested relief from the requirement to construct any sidewalks on 28th Avenue.)

d. Approximately 235 feet of curb tight, 5-foot sidewalk along the northern side of Rockvorst originating at 28th Avenue and terminating at the northern limit of the new street extending north from the existing Rockvorst right-of-way.

e. Approximately 130 feet of curb-tight, 5-foot sidewalk along the west side of the new street extending north from the curb-return on Rockvorst northerly to the end-of-street. 4. The following specific code provisions regarding street and sidewalk improvements apply to this application.

a. Subdivisions are subject to Zoning Ordinance Section 1400 – Transportation Planning Design Standards, and Procedures per Section 1403.

b. Section 1405.5 specifies that development proposals must comply with street design standards of Section 1400.

c. Section 1407.1 and 1407.2 require that streets and sidewalks be safe, convenient, and “adequate” at the time of development.

d. Section 1407.4 defines “adequate” as being consistent with prescribed design details contained in Section 1409 and the Transportation Design Manual.

e. Section 1409 specifies requirements to comply with adopted street cross sections.

f. Section1410 specifies pedestrian requirements, specifically that *"Public sidewalks are required on the public street frontage of all new development, [and] all land divisions...."*

g. Land Division Ordinance Section 17.28 requires streets to conform to Zoning Ordinance Section 1400.

5. On July 26, 2005 the Milwaukie Planning Commission conditionally approved applications S-04-04, TPR-04-01, VR-04-12, and WQR-04-04, but denied the variances to not install street improvements along the site frontage on 28th Avenue. In addition, the Commission adopted a finding recommending the City Council reject the proposed street vacations. Minutes of the Planning Commission proceedings are made part of this record by reference.

6. The applicant appealed the Planning Commission denial of the variance for relief from the requirement to construct 28th Avenue improvements and right-of-way width of 28th Avenue.

7. The applicant has not demonstrated compliance with standards of ORS 271.080(2). In addition, the Council finds that there is no compelling public interest to vacate the right-of-way given that it may be needed in the future. The requested street vacation is denied.

8. The applicant has not demonstrated compliance with approval criteria for the requested variance relieving the requirement to build a sidewalk along 28th Avenue as follows:

   a. There are physical constraints that might limit the ability to construct sidewalks, thereby potentially satisfying the "unusual conditions" test of Zoning Ordinance 702.1(A).

   b. However, the applicant has not demonstrated that there are feasible alternatives to the variance as required by Zoning Ordinance Section 702.1(B).

   c. The applicant has not demonstrated that there will be no adverse impacts of granting the variance. With additional homes there will be additional demand for safe pedestrian facilities along 28th Avenue. The present substandard condition of 28th Avenue, including narrow pavement width, presents higher risk to pedestrian safety, which would be eliminated by construction of a sidewalk.

9. The applicant has demonstrated compliance with approval criteria for the variance to not install street improvements on Depot Street and a portion of Rockvorst Avenue as follows:

a. The variance waiving improvements on Depot Street is warranted due to the unusual condition that the streets are platted over wetland areas that should not be developed.

b. Constructing improvements would require filling the wetlands, which is not a feasible alternative.

c. Not constructing the improvements preserves the wetlands, which mitigates adverse impacts.

10. The applicant has requested an adjustment to allow a 5-foot curb-tight sidewalk along the new Rockvorst Avenue within the subdivision. Under normal conditions, a 6-foot sidewalk with 5-foot planter strip is required. MMC 19.1404(C) allows adjustments to street improvement standards when an engineering limitation exists and/or when installing required improvements would result in a hazardous or unsafe condition. The applicant has demonstrated that the steep slope of the site creates an engineering limitation to installing the full-width roadway. The applicant's request for an adjustment is approved.

11. The proposal complies with the R-5 zoning standards (Section 19.303) as follows:

a. Three parcels, including the parcel that will contain the existing house, exceed the 10,000 square foot minimum lot size for single-family detached and one lot exceeds the minimum 5,000 square feet for single-family detached.

b. The front lot line for proposed Parcel 2 is the 40-foot line separating the lot from the street. The rear line is the north property line shown as 109.20 feet. The 3 other lot lines are side lot lines.

12. The proposal is consistent with Land Division Ordinance Section 17.12.040 approval criteria for preliminary plat as follows:

a. All parcels comply with standards of the R-5 Zone.

b. The land division allows reasonable development of the site and does not create any need for future variances.

c. The plat name will not duplicate another plat name.

d. The street network is already established in the area. The plat conforms to the surrounding street network.

e. The applicant has submitted a detailed narrative describing how the proposal meets applicable design standards.

13. As modified by variance and adjustments granted under this decision The proposal is consistent with Chapter 1400 Transportation Planning Design

Standards and Procedures which requires compliance with the approval criteria of Section 19.1405.5 as follows:

a. Proposed street improvements comply with applicable standards.

b. A traffic impact study is not required.

c. The proposal will not result in a hazardous or unsafe traffic condition or unacceptable level of service.

14. The applicant has demonstrated compliance with MMC 19.322 and will not be impacting the required vegetative corridors (wetland buffers). The applicant submitted stormwater calculations that demonstrate that stormwater flows from the development will not exceed predevelopment flows as required by Zoning Ordinance Section 322.10 (L). The applicant has proposed a restrictive covenant for wetland protection.

15. The Fire Marshal reviewed the plans and indicated that as conditioned the proposal complies with Fire District regulations.

16. The Building Official reviewed the proposal and as conditioned does not have concerns with the proposal.

17. At the City Council hearing, the applicant argued that the City cannot require the sidewalk along 28th Avenue because the subdivision will have no impact on that stretch of 28th Avenue and because the sidewalk requirement is not roughly proportional to the impact of the development.

    a. The sidewalk along 28th Avenue provides pedestrian access to the Springwater Trail, providing a pedestrian connection to the Trail from the subdivision.

    b. The subdivision plan does not provide for an internal connection from the subdivision to the Trail. Only Lots 2 and 3 abut the Springwater Corridor and therefore have the potential for direct access. However, severe topography substantially limits the ability to construct access to the corridor from either of these lots. In addition, the creation of a shared access for the benefit of the entire subdivision across lot 2 is likely infeasible due to the privacy impacts and maintenance issues related to the unusual shape of the lot, as well as topography,

    c. Two area residents testified at the meeting that residents of the subdivision would use the Trail and would access the trail through 28th Avenue. The City finds the testimony of these witnesses credible.

d. The applicant testified that residents of the subdivision could possibly access the Trail directly without using 28th Avenue. The Council concludes that although there is some possibility of direct access to the trail for at least some subdivision residents, residents of the subdivision would use 28th Avenue for pedestrian access to the trail. Because residents of the subdivision will use 28th Avenue for pedestrian access to the trail, there is a direct relationship between an impact of the subdivision (increased pedestrian use of 28th Avenue), and the requirement to build a pedestrian way along 28th Avenue.

18. The proposed subdivision divides an existing property into four lots and one tract. The tract will remain undeveloped. There is an existing house on the property that will remain on lot 1. The other three lots can be developed with additional single-family homes, or, for two of the lots, with duplexes. The applicant's representative testified that each dwelling unit is expected to generate 9 to 10 vehicle trips per day.

a. Local streets within the City have historically been developed in connection with subdivisions, with subdividers being responsible for construction of local streets. The burden of developing local streets has been borne and continues to be borne by residential properties. The City has followed the approach of requiring subdividers and developers to provide full street improvements within subdivisions and half street improvements on streets adjacent to subdivisions or development. The City's code currently requires that level of improvements.

b. The subdivision is not located adjacent to any collector or arterial street. It is adjacent to local streets, and is several blocks away from the nearest collector or arterial. Residents of the subdivision will have an impact of 9 or 10 vehicle trips per day per dwelling unit, not just on the street within the subdivision, but on local streets between the subdivision and the nearest collector or arterial.

c. The portion of Rockvorst Street to the west of 28th Avenue, is adjacent to the property to the south and will be used primarily by residents of and visitors to the subdivision. The subdivision may be accessed by 28th Avenue via Sherrett Street to the north and Van Water Street to the south of the subdivision. Vanwater Street is opposite the new Rockvorst Street to be constructed as part of the subdivision. Sherrett Street is located on 28th approximately 150 feet north of the subdivision as measured between the centerlines of the Rockvorst and Sherrett Street rights-of-way. This means that vehicles going to or leaving the subdivision may travel along 150 feet of the subdivision's frontage on 28th Avenue, thereby

establishing the connection between subdivision-generated vehicle travel, subdivision-generated pedestrian activity on 28th, and the need for 28th Avenue sidewalks.

d. The physical condition of 28th Avenue along the site frontage is severely substandard. The total 2-way travel surface is 10 to 15 feet for approximately 110 feet along the frontage of the subdivision. No sidewalks are now present. The risk to pedestrian safety will be increased by increased vehicle activity related to the subdivision for those vehicles moving between Sherrett Street and the subdivision.

e. Because the lots are being sized to allow duplexes, and the applicant has indicated an intent to develop duplexes on the lots, the impact of this subdivision on the local street system is greater than one of similar size that would be limited to single-family homes.

f.. The total impact on the local street system in residential areas is the impact of all residential development in the area. Each subdivision or development has a share of that impact. One way of allocating the share of the impact is to make each subdivision or development project responsible for development of internal streets and for development of half street improvements on adjacent streets. This is roughly proportional to the impacts, because the need for street development is based not only on the number of trips generated, but on the length of streets and sidewalks that need to be developed. The total area of the subdivision creates a need for adequate streets to serve and provide access to the subdivision. It is roughly proportional to require full internal street improvements and adjacent half-street improvements.

g. The applicant's proposal includes 515 linear feet of sidewalk as shown on the street and drainage plan, though the applicant has requested elimination of the 150-foot sidewalk on the east side of 28th Avenue. As modified by the City Council, 410 feet (approximate) of sidewalk and an additional approximately 80 feet of pedestrian way is required. The Council waived the requirement to construct a sidewalk along the west side of the new street within the subdivision extending north of the Rockvorst Avenue right-of-way, to help defer the overall cost of providing sidewalk and pedestrian way along 28th Avenue. The City is allowing some of the sidewalk to be built to alternate, less expensive standards. Other design features required by city code that have waived or adjusted include the following:

1. 24-foot travel way width on the new street extending north from Rockvorst instead of the minimum requirement of 28 feet for a street with parking on one side. .

2. The requirement to provide a hammer-head turnaround for service and emergency vehicle use has been waived.

3. The requirement to provide setback sidewalks has been waived. All sidewalks shown are curb tight.

The Council-approved sidewalk and pedestrian way requirements are less than what the applicant proposed on a linear-foot basis and are proportional to the impacts created by the development.

h. The 28-foot Rockvorst Street travel way and the 24-foot travel way at the northerly extension are the minimum necessary to meet the needs of the development for vehicle access and parking and are therefore proportional to the impacts of the subdivision.

19. The property currently contains one single-family home. After the subdivision, there will be a total of four lots, three of which could be developed with duplexes, and potential conversion of the existing residence into a duplex. A total of six new dwelling units is made possible by the subdivision approval. Using the applicant's estimates, those six units generate up to 60 total vehicle trips per day. An average single family home generates 10 vehicle trips and the minimum lot frontage on a public street for a single family home is 50 feet. Many lots have substantially more than 50 feet of frontage. Requiring half street improvements for a normal length single frontage for a single family home is roughly proportional. The total improvements required are about the equivalent of a reasonable length of half street improvements per dwelling unit. The amount of transportation improvements is roughly proportional to the impacts of the development.

20. The Council believes that the correct approach to analyzing the rough proportionality of transportation improvements is to look at the transportation improvements as a whole. The subdivision has an impact on the local street system in the area of the development and all transportation improvements required of the applicant are for local street improvements within and immediately adjacent to the subdivision. However, the Council also finds that the requirement to build the sidewalk is roughly proportionate to the impacts of the development on 28th Avenue.

a. As described in other findings, the Council concludes that residents of the subdivision will use 28th Avenue to access the Trail. The proximity of the Trail makes it likely that there will be substantial

use of the Trail by residents. The proximity of the Trail will attract potential residents of the subdivision.

b. The Council finds that although 28th Avenue will not be a primary access route for vehicular traffic, there will be some vehicular traffic to and from the subdivision on 28th Avenue. This finding is based on testimony that there is currently vehicular traffic on 28th Avenue to and from the property and that vehicular traffic will likely continue during development of the subdivision and after the subdivision is created. The applicant has admitted that 28th Avenue is used and will be used by vehicles going to and from the property.

c. The subdivision therefore will have two impacts on pedestrian traffic on 28th Avenue. The subdivision will provide a portion of the pedestrian traffic on 28th Avenue. Also, the increase in vehicular traffic increases the potential conflicts with pedestrians, thereby increasing the need for a sidewalk.

d. The City is requiring only limited vehicle travel lane improvements to 28th Avenue. Those improvements are limited to extending the asphalt surface to the new sidewalk. Providing a sidewalk contributes to mitigation of the increased impacts on 28th Avenue by reducing pedestrian use of vehicle travel lanes.

e. Pedestrians from the subdivision will use City streets and sidewalks other than those internal to or adjacent to the subdivision when going to or from locations other than the trail. This includes portions of 28th Avenue not adjacent to the property.

f. The requirement to build a sidewalk along 28th Avenue adjacent to the subdivision, given the total pedestrian and vehicle impact from the subdivision on that section of 28th Avenue is roughly proportional to the impacts of the development on 28th Avenue. In reaching this conclusion, the Council considered the fact that the sidewalk will not be required to be built to full City standards (can be narrower and of different, less expensive materials) and also considered the fact that the portion of 28th Avenue is not the only portion of 28th Avenue that pedestrians from the subdivision are likely to use. The City Council also took into account that it may be necessary to build a retaining wall to allow development of the sidewalk. The 28th Avenue sidewalk may be constructed of asphalt. The City Engineer shall determine the construction specification, location, and dimension of the sidewalk.

21. At the City Council hearing, the applicant also disagreed with the condition of approval that a fence in the existing right of way be removed. No one has a right to build a fence in City right of way without a permit, and the

City has the authority to require removals of obstructions in rights of way. The condition requiring fence removal is valid. The City Council notes that the Applicant may apply for a right of way permit that would allow a fence or other screen to provide privacy for applicant's property.

Findings in Response To Applicant's Comments

22. The applicant commented that a path could be built from the Rockwood northerly extension to the Springwater Trail, which would limit or eliminate pedestrian traffic between the subdivision and the trail. No such path is shown on applicant's materials, and applicant did not propose such a path before the tentative decision by the Council. Topographic constraints make such a path questionable. Without such a path shown on the plan, there is no obligation to create such a path, and such a path would cross private property. The Council finds that without a legal commitment for such a path, pedestrian traffic from the subdivision will access the trail through 28th Avenue.

23. The conditions should be more definitive as to the type of sidewalk allowed on 28th Avenue. The conditions have been revised to specify that an asphalt sidewalk and pathway is acceptable.

24. The applicant commented on language in a finding relating to rough proportionality. That finding has been substantially modified and applicant's comments do not apply to the current findings.

25. Applicant argued that there would not be vehicular traffic on 28th from the subdivision. The Council continues to accept the testimony that there will be some traffic, at least as far north as Sherrett. There will also be construction traffic on 28th. The map of the area demonstrates that it is likely that there will be at least some vehicular traffic on 28th between Rockvorst and Sherrett.

26. The applicant commented that Finding 19.d was inaccurate in stating that there were no vehicular travel lane improvements required on 28th Avenue whereas some Improvements were in fact required. Applicant was correct, and the finding has been modified to state that limited vehicular travel lane improvements are required.

Recommended Conditions of Approval

A. The following conditions shall be resolved prior to any earth-disturbing activity and construction of public improvements:

1. Erosion control and construction barriers shall be installed and inspected in accordance with an approved erosion control and grading plan, the wetland and stream buffer flagged, and existing vegetation to remain

protected and marked. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution or sedimentation to the adjacent wetland and buffer. Existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the water quality resource area.

2. As part of the grading permit application the applicant shall submit plans for a sewage ejector pump system for each lot for review and approval by the Building Department. An engineer licensed in the State of Oregon shall design the system.

3. A geotechnical report shall be submitted to the Building Department. The report shall include provision for on-site disposal of stormwater from the roof drains, footing drains and low-point drains for the proposed houses as shown on the approved subdivision plans. In addition, a soils engineering report shall be submitted prior to road and house construction demonstrating compliance with applicable standards given the recent placement of several hundred cubic yards of fill.

4. A final plat application and fee including full-engineered plans for all the public improvements and a narrative stating how the proposal complies with the conditions of approval shall be submitted within 6 months from when the appeal period ends on this preliminary decision (Title 17.24.040). The final plat shall be in compliance with Title 17.24 of the Land Division Ordinance.

5. The engineering plans and final plat shall be consistent with the plans prepared by Buckel Associates dated March 25, 2005 except as modified by this approval. Required improvements shall include the following:

    a. Sanitary Sewer Improvements. The developer must install a new 3-inch sanitary sewer force main in the new street to serve the new lots. Separate private laterals and sewer pumps must be installed to serve each of the new lots. Private sewer pumps must be reviewed by the Building Department as stated above.

    b. Water System Improvements. A new 4-inch water main must be constructed in the new street to serve the four new lots with a 2-inch blow-off at the end for maintenance. One-inch service lines must be constructed to each lot with meter setters and meter boxes. The City will install the meters at the time of home construction after all fees are paid.

c. Street Lighting on Rockvorst Avenue. Streetlights must be installed to City of Milwaukie Public Works standards. Streetlights must have cutoff fixtures so light is shown down to the street and not at neighboring properties.

d. 28th Avenue Improvements. Frontage improvements must be installed on the west side of the street as follows:

1. Standard "C" curb and 5-foot wide sidewalk on the west side of the roadway from Rockvorst to the northern limit of the Sherrett Street right-of-way unless the City Engineer approves an alternate consistent with this approval. The alternate plan may allow for a sidewalk without curbing. Additional paving to fill the gap between the existing edge of pavement and the new curb to provide for a total of 18 feet of pavement width from Rockvorst to the north edge of the Sherrett Street right-of-way, subject to design flexibility in #2 below. A retaining wall may need to be built to support the sidewalk and a portion of the roadway. Engineering plans and calculations must be submitted for final approval of the retaining wall is proposed. The City Engineer shall review the proposal to determine the need for a to prevent vehicles from traveling over the steep portions of the roadway. The fence shall be removed from the right-of-way.

2. A five-foot wide pedestrian path from the northern limit of the Sherrett Street right-of-way to the Spingwater Corridor. The location and design is subject to approval by the City Engineer.

2. The curb and sidewalk design may be modified as needed to address drainage and dimensional constraints within the right-of-way. Access to the existing garage at the end of 28th Avenue shall be protected. Trees shall be preserved to the greatest extent practicable.

3. The existing wood fence shall be removed from the right-of-way.

e. Rockvorst Avenue. 28-foot paved roadway with a 2-foot gravel shoulder on the south side must be installed between 28th Avenue and portion of Rockvorst within the subdivision. The west end of the roadway must be graded and a removable gate installed to allow vehicle access into the wetland area for maintenance purposes.

   Standard "C" curb and 5-foot wide sidewalks shall be provided on the north side of the proposed Rockvorst Avenue between 28th Avenue and the northerly extension of right-of-way that serves the interior lots: sidewalks are required only along the northerly portion of the right-of-way and easterly side of the proposed extension of the Rockvorst right-of-way. The applicant shall provide a driveway connection to the existing residence on the south side of the roadway.

f. The applicant shall submit a report prepared by a licensed arborist demonstrating whether some or all of the trees proposed to be removed at the southwest corner of Rockvorst and 28th Avenue can be saved. If recommended by the report, the applicant shall have the arborist on-site during construction to ensure compliance with any recommendations made.

g. Sidewalks are not required on west side of the proposed northerly extension of the existing Rockvorst right-of-way, between the southerly return of right-of-way along the north side of the Rockvorst.

h. A guardrail shall be installed along Rockvorst Avenue and 28th Avenue to prevent vehicles from going over the steep slope.

i. Signage. A stop sign is required at the intersection of Rockvorst and 28th Avenue for traffic heading east from the site. The applicant shall install all signage in the public right-of-way to accommodate the proposed public improvements and meet standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD) and relevant Oregon supplements. The applicant shall reimburse the City of Milwaukie for any costs associated with the installation.

j. A pre-construction meeting must be held with the contractor and an inspection fee of 5 ½ percent of the public construction cost paid.

k. That a plan be submitted to the satisfaction of the Planning Director showing removal of fill recently placed within the water quality resource buffer, to be executed prior to approval of final plat.

B. The following conditions shall be resolved prior to approval of the Final Plat.

1. A final plat application shall be submitted within 6 months after the appeal period ends on this application and plat recorded with Clackamas County within one year or this preliminary approval shall expire and a new preliminary approval shall be required. An extension of 6 months may be granted (Title 17.04.050).

2. All public improvements shall be constructed in accordance with approved engineering plans or bonded with a 20% contingency per MMC Section 17.24.06.

3. The wood fence located in the 28th Avenue right-of-way shall be removed.

C. The following conditions shall be resolved Prior to issuance of a building permit for the new house:

1. All system development charges (SDC) shall be paid.

2. Applicant's for new house construction shall demonstrate compliance with applicable provisions of this decision.

D. On-going Conditions

Lights from the houses shall not shine directly into the wetland area as required by MMC Section 19.322.10 (I).

~end~

CITY OF MILWAUKIE

To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher Community Development and Public Works Director

From: Lindsey Nesbitt, Associate Planner

Subject: VR-05-03 and request to amend condition of approval for application CSO-05-02

Date: January 3, 2006 for the January 17, 2006 City Council meeting

Action Requested

1. Approve the applicant's request to modify a condition of approval to increase the amount of spill light at the property line from 0.5-foot candles to 1.0-foot candles for application CSO-05-02.

2. Approve application VR-05-03, authorizing installation of 70-foot tall lighting poles at North Clackamas Park.

Background Information and Project History

The North Clackamas Park has served the community since the early 1960's and is the only community park within the City that provides athletic fields for the community. Currently, North Clackamas Park includes two softball fields, an equestrian arena, a soccer field, picnic areas, children's play equipment, a dog run, rose garden, and community center.

In August 2005, after roughly 18 hours of public hearings, the Planning Commission approved Community Service Overlay application CSO-05-02 authorizing development of youth ball fields, parking facilities, and water quality resource enhancements.[1]

[1] Applications CSO-05-02 (main file number) Transportation Plan Review TPR-05-01, and Water Quality Resource Review WQR-05-01.

The Planning Commission's decision was appealed to the City Council. A joint appeal was submitted by the Friends of North Clackamas Park and the North Clackamas Parks District requesting modifications to the site plan approved by the Planning Commission. On August 16, 2005, the City Council upheld the Planning Commission's decision authorizing development at North Clackamas Park and adopted a modified site plan. The final decision authorized construction of the following:

1. Four youth ball fields (one ball field will act as a flex soccer/softball field).
2. Construction of a new parking area.
3. Water quality resource enhancements.
4. Walking trails, picnic facilities, restrooms, and concession stands.

Currently, there are eight 64-foot tall lighting poles at the park. The existing poles and lights are out of date and will be removed with development of the new facilities. The existing lights are floodlights with no measures to reduce light glare or light spill. The applicant is proposing to light the ball fields with 70-foot tall poles.

Analysis of Key Issues

1. Modification to condition of approval request

   At the August 16, 2005, hearing, the City Council upheld the Planning Commission decision and adopted the following condition of approval:

   The applicant shall submit a revised photometric plan demonstrating 0.5 foot candles measured at the south side of the existing tree line along the south property line.

   The Milwaukie Municipal Code (MMC) does not provide lighting standards, shielding requirements, or trespass restrictions.[2] The MMC does, however, authorize the Planning Commission to adopt conditions deemed necessary to mitigate potential negative impacts associated with the proposed development when reviewing Community Service Overlay applications. Staff suggested adoption of a condition to limit lighting trespass on adjacent parcels and recommended the 0.5 foot candle measurement.

   The applicant has requested that the City Council uphold the lighting trespass condition of approval, but allow for an increase from 0.5 foot candles to 1.0 foot candles. The following summarizes the applicant's reasoning for the requested increase (See Attachment 2 - Applicant's Narrative for a full description):

   a. Most areas will meet or be below the 0.5-foot candle requirement (See Attachment 4 – Photometric Plan).

   b. Most spill light occurs where vegetation is lacking. Vegetation is lacking because access gates to neighboring properties are provided. If access gates were removed, vegetation could be planted and spill light greatly reduced.

[2] The 0.5-foot candle limitation is not identified in the MMC.

c. The proposed lighting levels are the minimum necessary for safe play as prescribed by the Illumination Engineering Society of North America (IESNA) standard.

d. The existing lights are unshielded floodlights and spill foot-candles greater than 1.0 onto adjacent parcels. 1.0-foot candles will be an improvement over the existing floodlights.

e. The new lights will have external shielding mounted to the front of the floodlights. The new lights are more efficient in delivering light to the fields and provide better light control.

f. The photometric plan submitted does not take into consideration existing vegetation. Existing vegetation at the property line will greatly reduce spill light. The applicant believes they will be able to achieve the 0.5-foot candles, but since they cannot say for certain, they are requesting the increase.

g. The nearest adjacent residential structure is approximately 487 feet from the lighting pole, where spill light measures 0.0 foot candles.

Staff recommends that the City Council approve the applicant's request to increase the foot candle measurement from 0.5 to 1.0 foot candles for the following reasons:

The photometric plan shows limited areas of impact where the spill light is above 0.5-foot candles. The majority of areas fall below the 0.5-foot candle requirement. The photometric plan overlaid on the aerial photo shows this area is vegetated. The applicant has indicated the photometric plan does not take into consideration the existing vegetation. It is likely that the existing vegetation will reduce spill light and the applicant will be able to achieve the 0.5-foot candle requirement or lower light level.

The ball fields will be lit until 10:00 p.m. during summer and fall months. Impact from ball field lighting will be limited to specific time of year for a short time after sunset. The lights will not remain on throughout the night.

Staff believes the applicant has demonstrated that the updated technology used for the new lights will reduce glare. The applicant has stated the existing floodlights currently produce light trespass greater than 1.0-foot candles. The photometric plan submitted with this application demonstrates that light trespass with the new lights will be less than 1.0-foot candles.

2. Variance request

North Clackamas Park is located in the Residential R-10 Zone where community parks are permitted through the Community Service Overlay (CSO) process. The CSO Zone establishes a maximum height limitation of 50 feet. Lighting poles fall under the definition of "structure" and are therefore subject to the maximum height limitation of 50 feet established by CSO development criteria.

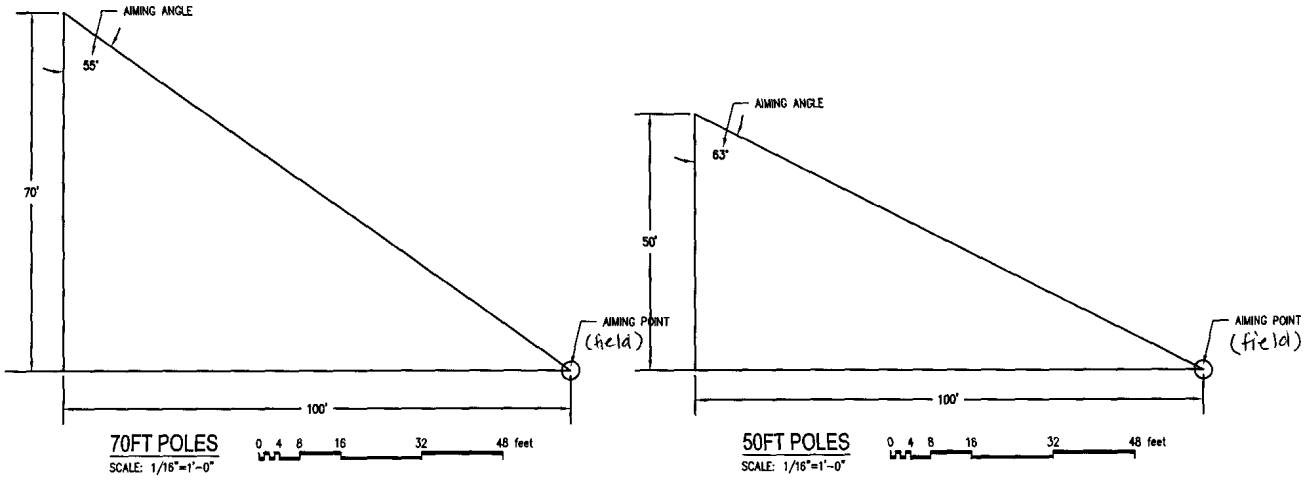
The applicant is requesting a variance to exceed the maximum height limitation in order to construct lighting poles for the ball fields at North Clackamas Park.

The City Council may approve a variance request upon finding that the following criteria are satisfied.

a. Unusual Conditions

That the property in question has unusual conditions over which the applicant has no control.[3]

Applicant response: The 50-foot height limitation imposed by the CSO code is generally attainable for most CSO applications such as churches, schools, and day-care facilities; however, it becomes problematic when applied to parks for sport field lighting. In order to provide safe, efficient lighting that minimizes impacts on surrounding neighbors, the field lights need to be mounted on 70-foot poles. While placing the same lighting on shorter poles would satisfy the CSO code, it would ultimately cause more spill and greater glare for players and the surrounding community.



Staff response: Staff believes that in this case the unusual condition is in the code restrictions. The code does not establish height limitations for structures such as lighting poles. Staff believes the intent of the 50-foot height limitation is to limit structures such buildings in order to prevent construction of large dominating structures that are not consistent with residential areas where CSO uses are often located.

Staff has conducted research and found two previous examples where variances were granted for CSO approvals to exceed the height limitation.[4] In these applications staff and the Planning Commission found that the unusual condition was the height limitation and that, the signal for

[3] Such conditions may only relate to physical characteristics of the lot, property, or boundary configurations, or prior legally existing structures.
[4] Applications VR-98-03 for a 100-foot tall cell tower and VR-99-09 for an 84-foot tall cell tower

the cell towers would not reach necessary destination at the maximum 45-foot height limitation of the CSO zone.[5]

In this case, the applicant argues that the lighting poles will not work at a lower level. A light pole height of 50 feet will create more glare onto adjacent parcels and creates unsafe playing conditions. Staff believes the applicant has demonstrated that the 70-foot poles create the safest playing condition by eliminating the temporary blindness caused when direct light shines into players eyes.

b. No feasible alternatives

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

The applicant has provided three alternatives:

Alternative 1: No field lighting

The applicant has indicated that failing to provide field lighting will severely limit the community's use of the park. The Milwaukie/North Clackamas area suffers from a sever shortage of ball fields. The provision of lights at the park allows for greater community use of the fields and ensures that the children in the community have a safe and healthy place to recreate. Eliminating lighting will cut community use of fields virtually in half.

Alternative 2: Limit light pole height to 50 feet

The applicant has indicated that when light poles are reduced to 50 feet from 70 feet, the aiming angles of lights will become more horizontal. This is necessary to keep the same aiming points on the field and to provide appropriate lighting. In this case, the aiming points will remain the same on the field, and consequently light spill and glare increase. With 50-foot poles, a person looking at fixtures will see noticeably more light and glare than with 70-foot poles. Therefore, 70-foot poles are required in order to minimize negative impacts of glare and light spill on the surrounding community.

Alternative 3: Plant additional vegetation to reduce spill light and glare

Installation of the 70-foot poles will result in the least amount of light spill on adjacent properties. However, there still may be small areas along the southern property boundary where light spill exceeds 0.5 foot candles where gates are provided to allow park neighbors access to the back of their properties. One alternative would be to plant additional vegetation in front of the gates; however this would cut off the neighbors' access to the properties via the park.

[5] The CSO criteria has been amended since 1999 and now has a 50-foot height limitation.

Staff believes the applicant has demonstrated there are no feasible alternatives and that the minimum height necessary to safely light the field and cause the least amount of light trespass on adjacent properties is 70 feet (see diagram above).

Staff believes the applicant has demonstrated that, with lower poles, a person looking at the lights (for example while trying to catch a fly ball) will see more light, creating "temporary blindness." Staff believes the diagram inserted above demonstrates that lower lighting poles will create additional light spill onto adjacent properties.

c. Mitigation of impacts

That adverse effects upon adjacent properties resulting from this variance shall be mitigated to the extent feasible.

Applicant response: The lights will be mounted on 70-foot steel poles and will have shielded luminaries to mitigate problems of glare, off-site visibility, and light spill (see Attachment 3). The increased heights also reduce the amount of disability glare that is experienced by the players, thereby enhancing player safety.

Additional vegetation is proposed along portions of the park boundary (as shown on the approved modified concept plan) which will further block spill light and glare.

The amount of spill light as a result of the 70-foot poles does not exceed 1.0 foot candles beyond the existing tree line, which is equal to or less than typical lighting levels found around the outside of one's home without exterior lights installed. With the existing and proposed vegetation along the park's boundary, a light reading of 1.0-foot candles is unlikely.

Staff response: Staff believes the applicant has demonstrated that impacts associated with the poles will be mitigated, as follows:

The new poles are only 6 feet taller than existing poles.

Lights utilize latest technology and reduce light glare and spill as compared to the existing out of date floodlights.

Where feasible the applicant will plant vegetation to reduce spill light onto adjacent parcels.

Summary

Staff recommends that the City Council approve the applicant's request to increase the foot candle condition limitation from 0.5 to 1.0 foot candles and approve the variance request to construct 70-foot tall lighting poles for the following reasons:

1. Staff has conducted research and found two previous examples where variances were granted for CSO approvals to exceed the height limitation for construction of cell tower poles.

2. Staff believes the applicant has demonstrated that the 70-foot poles create the safest playing condition by eliminating the temporary blindness caused when direct light shines into players eyes.
3. Staff believes the applicant has demonstrated there are no feasible alternatives and that the minimum height necessary to safely light the field and cause the least amount of light trespass on adjacent properties is 70 feet.
4. The existing floodlights are out of date and create lighting trespass on adjacent parcels in excess of 1.0-foot candles. The new lights will utilize the latest technology, provide better control of light, reduce light glare and spill, and be more efficient in delivering light to the fields.
5. Where feasible, the applicant will plant vegetation to reduce spill light onto adjacent parcels.
6. The new 70-foot poles will be 6 feet taller than existing 64-foot tall poles.
7. The photometric plan submitted with the application materials does not take into consideration the existing vegetation. The existing vegetation will help to reduce light trespass. The amount of reduction that will be provided from vegetation cannot be computed as vegetation types and height vary.
8. The nearest existing residential structure will be located approximately 487 feet away from the lighting poles. Spill light at the nearest residential structure measure 0.0 foot candles.

Concurrence

Tom Larsen, Building Official, has reviewed the proposal and submitted comments that are reflected in the recommended conditions of approval.

The Engineering Department has reviewed the proposal and has no comment.

Notice and request for comments were sent to the Lake Road Neighborhood District Association. Comments were not received.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

Milwaukie Zoning Ordinance Sections:

1. 19.301 Residential R-10 Zone
2. 19.321 Community Service Overlay
3. 19.700 Variances, Exceptions, and Home Improvement Exceptions

4. 19.1011.3 Minor Quasi-Judicial Review

This application is subject to minor quasi-judicial review, which requires the City Council 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 final decision on this application, which includes any appeals to the LUBA, must be made by April 1, 2006, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

The City Council has the following decision-making alternatives:

1. Approve the request to modify the adopted condition of approval that increases the amount of light trespass onto adjacent properties from 0.5-foot candles to 1.0-foot candles and approve the Variance request authorizing installation of 70-foot tall lighting poles.
2. Deny the request to modify the condition of approval and deny the Variance request.[6]
3. Remand the matter to the Planning Commission with direction.

Attachments

1 Findings and Modified Conditions of Approval

2 Applicant's Narrative

3 Applicant's Site Plan and Photometric Plan

4 Applicant's Lighting Photographs

5 Site Plan approved by City Council at August 16, 2005 hearing

[6] The City Council may also chose to approve the variance request and deny the modification of condition of approval, or deny the variance and approve the modification to the condition of approval.

Attachment 1

Findings in Support of Approval

1. Applications CSO-05-02, TPR-05-01, and WQR-05-01 were approved by the City Council on appeal August 16, 2005, for development at North Clackamas Park. Approval authorized construction of the following:

   a. Four youth ball fields (one ball field will act as a flex soccer/softball field).

   b. Construction of a new parking area.

   c. Water quality resource enhancements.

   d. Walking trails, picnic facilities, restrooms, and concession stands.

   The applicant must comply with conditions of approval for applications CSO-05-02, TPR-05-01, and WQR-05-01. Action taken by the decision to approve application VR-05-03 and the request to modify one condition of approval only amends the following two items of the August 16, 2005 City Council decision:

   a. Authorizes the construction 70-foot tall lighting poles

   b. Authorizes the change in condition allowing up to 1.0 foot candles of lighting trespass.

2. Application VR-05-02 and the request to modify an adopted condition of approval have been processed and public notice has been provided in accordance with requirements of Milwaukie Municipal Code Section 19.1011.3 Minor Quasi-Judicial Review. A City Council appeal hearing was held January 17, 2006.

3. The applicant has submitted a variance request to exceed the maximum height limitation of 50 feet for Community Service Overlay uses. The applicant seeks the variance request to construct 70-foot tall lighting poles for the 4 proposed ball fields. The City Council found that the following criteria are satisfied:

   a. Unusual Conditions

      The unusual condition is the code restrictions. The code does not establish height limitations for structures such as lighting poles. Two previous examples where variances were granted for CSO approvals to exceed the height limitation have been granted for the construction of cell towers.[7] In these applications the Planning Commission found that the unusual condition was the height limitation and that, the signal for the cell towers would not reach necessary destination at the maximum height limitation of the CSO zone. The lighting poles will not work at a lower level. A light pole height of 50 feet will create more glare onto adjacent parcels and creates unsafe playing conditions.

   b. No feasible alternatives

[7] Applications VR-98-03 for a 100-foot tall cell tower and VR-99-09 for an 84-foot tall cell tower

The applicant has demonstrated there are no feasible alternatives and that the minimum height necessary to safely light the field and cause the least amount of light trespass on adjacent properties is 70 feet.

c. Mitigation of Impacts

- The new poles are only 6 feet taller than existing poles.
- Lights utilize latest technology and reduce light glare and spill as compared to the existing out of date floodlights.
- Where feasible the applicant will plant vegetation to reduce spill light onto adjacent parcels.

4. The site is located in the Residential R-10 Zone. Parks are listed as Community Service Overlay uses (CSO) and are permitted in residential zones subject to CSO review and approval. Parks are subject to development standards of MMC Section 19.301 Residential R-10 Zone and MMC Section 19.321 Community Service Overlay Zone. A variance has been submitted to exceed maximum height limitations of the CSO Zone. With approval of the variance, the proposal complies with MMC 19.301 Residential R-10 Zone.

5. MMC Section 19.321.10 establishes specific standards for public/private institutions and other facilities not covered by other standards. This section addresses development standards such as setback, height, lighting, noise limitations, and hours and level of operation. The maximum height limitation for all structures under CSO criteria is 50 feet. The applicant's proposal includes lighting poles for the ball fields that are 70 feet in height. The applicant has submitted a variance to exceed the maximum height limitation of 50 feet. With approval of the variance application the proposal complies with MMC 19.321.10 height restrictions. MMC Section 19.321 authorizes the Planning Commission and City Council to adopt conditions deemed necessary to mitigate or limit potential negative impacts on adjacent uses. In August 2005 the City Council adopted a condition requiring submission of a photometric plan demonstrating 0.5-foot candles measured at the south side of the existing tree line along the south property line. The applicant submitted a formal request to amend the condition of approval to increase the limitation from 0.5 foot candles to 1.0 foot candles. The City Council authorized the change to the condition of approval. As conditioned, the proposal complies with MMC Section 19.321.

6. Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth-disturbing activities. As conditioned, the application complies with MMC Title 16 Erosion Control.

Conditions of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action. Reference is made to plans submitted with the application submission materials dated February 24, 2005, and March 21, 2005,

revised City Council appeal materials submitted August 2, 2005, and materials submitted December 2, 2005; technical reports listed in Recommended Findings; and minutes of the Planning Commission's public hearings held April 26, 2005, May 10, 2005, and May 24, 2005. Any inconsistency must comply with the most recently submitted application materials.

2. Necessary, grading, erosion control, and plumbing permits shall be obtained prior to commencement of any earth-disturbing activities.

3. An electrical permit shall be obtained from Clackamas County prior to conducting any electrical work on site.

4. In addition to conditions adopted with approval of application VR-05-03, the applicant shall comply with all conditions of approval for applications CSO-05-02, TPR-05-01, and WQR-05-01 adopted by the City Council on August 16, 2005.

5. Ball field lighting poles with attached lights shall not exceed 70 feet in height.

6. For all proposed structures to be located within the 100-year floodplain, submit certification by a professional engineer or architect verifying adequate flood-proofing (MMC 18.04.100 (B)). All proposed work in the 100-year floodplain will require calculations that demonstrate balanced cut-and-fill (18.04.150 (F)).

ATTACHMENT 2

Field Lighting at North Clackamas Community Park

Application for a Structure Height Variance and Modification of a Planning Commission and City Council Condition of Approval

City of Milwaukie, Oregon
December 2, 2005

RECEIVED
DEC 0 2 2005
CITY OF MILWAUKIE
PLANNING DEPARTMENT

North Clackamas Parks and Recreation District
9101 SE Sunnybrook Boulevard
Clackamas, OR 97015

Project:	**Field Lighting at North Clackamas Community Park**
Applicant:	North Clackamas Parks and Recreation District 9101 SE Sunnybrook Blvd Clackamas, Oregon 97015
Property Owner:	City of Milwaukie
Property Address:	North Clackamas Community Park 5440 SE Kellogg Creek Drive Milwaukie, Oregon 97222
MAP& Tax lot #s:	22E06AC00100 22E06AD01000 (Rose Garden) 22E06AB00617 22E06AB00417
Comprehensive Plan Designation:	Public
Zoning Designation:	R-10
Property Size:	45.45 acres
Pre-App. Conference:	N/A
Request:	(1) Approval of a variance of the structure height limitation imposed by Community Service Overlay (CSO) section 19.321 for the installation of new sports field lighting at North Clackamas Community Park, and: (2) Modification of a Planning Commission and City Council condition of approval limiting the amount of spill light permitted beyond the park's south boundary (south of the existing tree line) from 0.5 foot candles to 1.0 foot candles.

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EXHIBITS

Introduction

The North Clackamas Parks and Recreation District (NCPRD) respectfully submits this application for the following:

(1) Approval of a variance of the structure height limitation imposed by Community Service Overlay (CSO) section 19.321 for the installation of new sports field lighting at North Clackamas Community Park, and:

(2) Modification of a Planning Commission and City Council condition of approval limiting the amount of spill light permitted beyond the park's south boundary (south of the existing tree line) from 0.5 foot candles to 1.0 foot candles.

This submission addresses the applicable regulations and review criteria of the City of Milwaukie's Municipal Code (MMC). Per the City of Milwaukie Planning Department, the applicable code section for both of these requests is 19.700 Variances, Exceptions, and Home Improvement Exceptions.

Site plans, lighting diagrams and other supporting materials for this application are attached as exhibits. Additional project information is on file with the City's Planning Department (File AP-05-02 for applications CSO-05-02, TPR-05-01 and WQR-05-01).

Project Background

The North Clackamas Parks and Recreation District (NCPRD) is seeking a variance and modification of a Planning Commission condition of approval to install sports field lighting for the development of four new youth sports fields within the existing 45.45-acre North Clackamas Park (NCP). The site is located at 5440 SE Kellogg Creek Drive, Milwaukie, Oregon and consists of four tax lots – Lot 100, Lot 1000 (Rose Garden), Lot 417 and Lot 617. The park is owned by the City of Milwaukie and managed by NCPRD in accordance with an intergovernmental agreement.

NCP has been used as a community park since the early 1960s. Over the course of the years, a number of recreational components have been added to serve the community, including softball fields (one with lights). NCP is the only park in the city that provides athletic fields for the community. These fields have been heavily used by the community and as a result, have worn to the point where some believe they are unsafe for play. In the summer of 2004, in response to the growing need for ball fields and the poor quality of the existing fields, NCPRD undertook a process to redevelop the park to better serve the community.

On August 16, 2005 (after numerous land use hearings before the Planning Commission and hours of public testimony) the Milwaukie City Council approved an appeal of a Planning Commission decision approving a "modified concept plan" for the development of youth fields and associated improvements at North Clackamas Community Park (Exhibit 1). The City Council concurred with the Planning Commission's decision which found that with conditions, Land Use Applications; CSO-05-02, TPR-05-01 and WQR-05-01 complied with the following sections of the MMC:

- 19.301 Residential R-10 Zone
- 19.321 Community Service Overlay

- 19.322 Water Quality Resources
- 19.500 Off-street Parking and Loading
- 1011.3 Minor Quasi Judicial Review
- 19.1400 Transportation Planning, Design Standards, and Procedures

The City Council's decision upheld all of the conditions of approval included in the Planning Commission's original decision. NCPRD is submitting this land use request in response to two specific conditions included in the final land use decision. The two conditions are as follows:

1. *"....4[e]. The applicant shall submit a revised photometric plan demonstrating: 0.5 foot-candles measured at the south side of the existing tree line along the south property line...."*

2. *" 5. Prior to erecting lighting poles for the ball fields, the applicant shall complete one of the following:*
   a. Reduce lighting pole height to 50 feet
   b. Apply for a variance to increase pole height to exceed the maximum 50-foot height limitation
   c. Apply for a zone text amendment to allow structures such as ball field lighting poles to exceed the maximum height limitation of the Community Service Overlay zone, subject to limitations."

Proposal Narrative

North Clackamas Park is unique in that is the only community park in the City of Milwaukie that provides athletic fields for the community. Currently the park includes two softball fields (one lighted), an equestrian arena, a soccer field, picnic areas, children's play equipment, a dog run, the Rose Garden, Milwaukie Center and open recreation areas.

The City's Comprehensive Plan identifies North Clackamas Park as a "community park" and states that community parks should include a number of structured recreational components including athletic fields with lights. Additionally, the City's plan states that the City will strive to develop appropriate facilities, improve access to existing parks and enlarge existing parks when possible. Consistent with these goals, NCPRD is seeking authorization to install field lighting on all four of the new youth fields to allow maximum use of the fields and improve access to the park by the community.

Because the park is a public facility, development of the park is subject to land use approval through a CSO. The CSO code limits structure heights to a maximum of 50 feet as long as the underlying zoning criterion is met. The 50 foot height limitation imposed by the CSO criteria is generally attainable for other CSO applications such churches, schools, day care facilities, etc; however, in the case of North Clackamas Community Park, the CSO restricts NCPRD's ability to provide safe and efficient lighting for the new fields in the park. The objectives of this proposed variance are to assure player safety and to minimize glare and light spill onto adjacent properties. In order to accomplish these objectives, the proposed lights need to be installed on 70-foot poles (typical for field lighting today). The park meets the 50-foot height limitation for all other improvements on site.

Existing Conditions - Lighting

Presently, one of the two existing softball fields on site is lighted using unshielded floodlights mounted on steel poles (see photographs, Exhibit 2). The existing poles are 64 feet tall. The removal of these existing floodlights will reduce the impacts of direct glare and spill light into surrounding

areas. These outdated flood lights have poor lighting control and no shields, and therefore produce direct glare and spill light.

Proposed - Lighting

As explained, NCPRD is proposing new sports field lighting for the four new youth ball fields. Lighting the new fields will provide the maximum benefit to the community by allowing the fields to be used for two games or practices each evening, as opposed to only one for unlighted fields. Specifically, Class III lighting, equipped with shielding that will minimize "spillage" onto adjacent areas, is proposed for the four softball/baseball fields. The softball/baseball infields will be lighted to an average maintained lighting level of 50-foot-candles, the outfields to an average level of 30 foot-candles. The new lighting system is designed to meet the requirements for safe play as prescribed by the Illumination Engineering Society of North America (IESNA) Standard RP-6.

The luminaries at the four fields are proposed be mounted on 70 foot steel poles, typical for athletic field lighting systems. The luminaries are designed to mitigate the problems of direct glare, off-sight visibility and spill light. Steel poles are proposed to avoid the misalignment of the lights associated with the twisting of wood poles.

The shielded lights use standard spun parabolic reflector technology designed to be more efficient than older-generation flood lights. The lights use an additional external shielding mounted to the front of the floodlight. The external visor extends away from the top of the reflector a minimum of 12 inches. This visor will wrap around the upper hemisphere of the floodlight a minimum of 180 degrees. The external visor reduces spill light by blocking the light that is not directed to the surface being lit. Furthermore, the visors reduce direct glare by minimizing direct views of the bulb and reflector from offsite locations. This lighting system provides the maximum reduction of spill light that would fall beyond the fields. The system consists of 136, 1500-watt floodlights on sixteen poles.

Compared to unshielded floodlights, the proposed luminaries are more efficient in delivering light to the fields and provide better control of light to reduce negative impacts. The proposed system is recognized by the International Dark-sky Association (IDA) as "good" luminaries for this application. The IDA is a non-profit advocacy group dedicated to reducing the negative impacts of lighting on the nighttime sky (www.darksky.org).

The amount of spill light produced by the new field lighting will be minimal. The closest field to adjoining property (Field #2) is located about 20 feet away from the south park boundary. The adjacent land in this area is undeveloped and includes floodplain and wetlands making future development opportunities limited at best. The amount of calculated spill light produced by the proposed system falls below 0.5 foot-candles at a distance of approximately 20 feet beyond the property line. This calculation, however, does not consider the existing tree line along the park's boundary. The existing trees and foliage will block a majority of spill light from falling beyond the boundary of the park. The amount of spill light is shown on the attached lighting plan (Exhibit 3). The extensive buffer of trees and intervening vegetation surrounding the site will mitigate the impact of direct glare by screening views of the floodlights (see photographs, Exhibit 4). However, some direct glare may be visible from surrounding properties, depending on the specific location.

Egress lighting will also be provided at the fields. This lighting system would supply a low lighting level to allow for egress from the fields after the field lighting has been turned off. The egress

lighting will consist of full cutoff luminaries mounted near the top of the field lighting poles (to avoid installing additional poles specifically for this purpose). The egress lighting would operate for a short period (about 30 minutes) of time following the completion of scheduled field use.
All lighting systems will be operated by an automatic programmable lighting control system. Lights for the fields will be operated separately so that they can be individually turned off when not in use. All field lighting will be used for scheduled play only and will be turned off by 10 p.m.

Other lighting at the site includes parking lot and minimal exterior building perimeter lighting for the restroom/concession and maintenance buildings. The parking lot lighting consists of full cutoff luminaries mounted to 30-foot steel poles. The parking lot lighting is designed to achieve a minimum of 0.6 foot-candles over the entire surface as prescribed by IESNA RP-20. Parking lot lighting will be automatically shut off at 11 pm.

Lighting Pole Height (Condition 5)
Condition of Approval 5 (see page 2) requires that NCPRD do one of three things prior to erecting new sports field lighting a NCP: reduce the light pole heights to 50 feet; seek a zone text amendment; or request a variance. Because the 50-foot pole height creates potential safety concerns for players and increases off site spill and glare, the Milwaukie Planning staff has recommended that NCPRD request a variance to increase the lighting pole height to 70 feet at the park rather than applying for a zone text amendment of the CSO code.

As previously described, lighting is currently provided on field number one and the pole heights are approximately 64 feet. This lighting will be removed as part of the approved renovation of the park. New lighting is proposed on each of the four youth fields to allow for the maximum benefit of the community. For the safety of players and to avoid excessive light spill on adjacent property owners the proposed lights need to be installed on poles 70 feet tall.

In summary, reasons that support this variance request include:

- The City of Milwaukie's Comprehensive Plan designates NCP a "community park". The plan states that a community park should serve resident's city wide, and should include "major structured recreational facilities such as lighted baseball and soccer fields". Furthermore, the plan states that the City should maximize the use of existing facilities.

- The park is a unique use in the city and the only site that provides athletic fields. Installation of the new lighting system on taller poles provides the best field lighting available and allows for the maximum use of the fields by the community.

- 70-foot poles result in less light spill onto adjacent properties by focusing light downward towards the fields at a sharper angle than 50-foot poles would allow.

- 70-foot poles with "visors" reduce glare for players, spectators and adjacent properties.

- 70-foot poles provide the safest playing conditions for players by eliminating the temporary "blindness" caused when direct light shines into player's eyes (which occurs with shorter poles).

- The current field lighting is installed on poles 64 feet tall. The new lights would be only 6 feet taller.

- 70-foot poles allow the fields to be lighted at the standard recommended for safe play by the Illumination Engineering Society of North America.

- There is a low likelihood of significant development on the properties south of the park due to the presence of streams, wetlands and flood plain.

Spill Light - Photometric Plan (Condition 4 [e])

Condition of approval 4 [e] (see page 2) requires that NCPRD submit a photometric plan that demonstrates 0.5 foot-candles of spill light on the south side of park's boundary (south of the existing tree line) prior to erection of the new lighting system. Due to site constraints, NCPRD is unable to produce a photometric plan that demonstrates 0.5 foot-candles along the entire distance of the south and part of the east property boundary beyond the tree line. Natural and manmade site constraints (e.g., existing park amenities such as the horse arena, the drainage swale and large trees), limit the orientation of the fields and new parking lot, which results in a small area of spill light exceeding 0.5 foot-candles beyond the tree line.

Installation of 70 foot light poles, with shielded luminaries, will result in the least possible amount of light spill on the adjacent properties. However, even with the best available technology and taller poles, there may still be small areas along the property boundary where the spill light might exceed 0.5 foot-candles beyond the tree line. As shown on Exhibit 3, the highest potential for light spill onto adjacent properties (0.9 foot-candles) is located approximately 10 feet south of the property line near light pole "C4" on Field #2. Lesser amounts of light spill (in excess of 0.5 foot-candles) extend south of the property line in an arc that is approximately 190 feet long and 20 feet wide. The photometric plan demonstrates anticipated spill within the arc to range between 0.5 and 0.9 foot-candles. **Note: **The submitted photometric plan does not take into account the amount of spill light that will be blocked by the existing tree line, which is dense in this area of potential spill. Thus, actual spill measurements will be significantly lower than shown in Exhibit 3. Additionally, the actual measurement of lighting levels can be affected by ambient lighting conditions at the time of measurement. For example, 1 foot-candle is the amount of light typically found outside of one's home without lights being installed (1 foot-candle would come from sources such as street lighting, neighboring homes, etc).**

In addition to the small area adjacent to Field #2, the photometric plan shows the potential for spill in excess of 0.5 foot-candles in small areas adjacent to the new parking area on the east side (approximately 12 feet at its widest point). The highest reading is 0.7 foot-candles. Again, spill light will be blocked by existing or new vegetation that will be installed as part of the approved park improvement.

Along the park boundary light spill beyond 0.5 foot-candles will have little to no impact on adjacent residential structures. The closest residential structure is approximately 487 feet, where spill light from the fields measure 0.0 foot-candles. The closest "non residential" structure is about 11 feet from the boundary and has a spill light level of 0.1 foot-candles. Furthermore, the adjacent land in this area is undeveloped and includes steams, floodplain and wetlands making future development opportunities limited at best.

Existing ordinances regarding light trespass are limited. Most ordinances have been written to address dusk to dawn lighting systems that are not curfewed. These ordinances do not take into consideration the lighting of athletic fields. A reasonable spill light standard adopted in other jurisdictions is to allow higher levels of light trespass associated with athletic fields. For example, Washington County's code allows for a maximum of 2.0 foot-candles of light trespass for athletic fields. Additionally, two fields lighted in 2003 at Oregon City High School provided for a stricter maximum of 1.0 foot-candles of light trespass.

Based on the small amount of light spill shown on the photometric plan, the fact that most, if not all, of this spill light will be blocked by existing and new vegetation, and the undeveloped status of the adjacent property, NCPRD is requesting that the City approve the submitted photometric plan and grant NCPRD flexibility to install the new lighting with spill light levels not to exceed 1.0 foot-candles measure from the south side of the tree line along the south boundary.

In summary, reasons that support this request for a modification to the current condition include:

- The photometric plan does not take into account the existing and newly proposed vegetation along the boundary that will block most of the spill. Unfortunately, there is not an accurate or precise method by which to quantify the amount of light spill that will be blocked by the vegetation.

- Existing ordinances regarding light trespass are limited and do not take into consideration the lighting of athletic fields. As a result, some other jurisdictions have adopted standards of 1 to 2 foot-candles for athletic fields.

- The amount of spill light shown in the submitted photometric plan does not exceed 1.0 foot-candles beyond the existing tree line, which is equal to or less than ambient lighting levels typically found around a residential building.

- There is a significant amount of space between the adjacent residences and boundary of the park. The closest structures to the park boundary are outbuildings (e.g., sheds). In most cases, the residential structures closest to the south boundary are south of Kellogg Creek and buffered by additional vegetation. The closest residential structure to the south boundary is approximately 487 feet away. Please see the attached aerial photographs (Exhibit 5) which show the proximity of existing adjacent residences to the park's property boundary.

- The adjacent land in this area is undeveloped and includes streams, floodplain and wetlands making future development opportunities limited at best.

- Some areas that experience spill light beyond 0.5 foot-candles correspond to the location of gates for neighbors to access their properties. Approving the submitted photometric plan allows the District to maintain access for the neighbors as opposed to planting additional vegetation to screen spill light.

- There is some minor spill (just beyond the park boundary) as a result of the parking lot lighting; however, this spill will be screened by proposed new vegetation on the east.

Parking lot lighting is proposed at the minimum 0.6 foot-candle level for the safety of all park users.

- The public benefits of the new field lights greatly outweigh any adverse impacts from the minimal amount of spill on the adjacent undeveloped properties.

SECTION 19.700 VARIANCE

19.701 Variances.
The planning commission, design and landmarks commission as provided in Section 19.312.7H or planning director may authorize variances from the standards and requirements of this title within the limitations prescribed in Section 19.702. In granting a variance, the planning commission, design and landmarks commission or planning director may, in addition to the time limitations of Section 19.1013, attach conditions which it finds necessary to lessen the impact of the variance on nearby property, protect the general welfare of the city, and achieve the purposes of this title. (Ord. 1917 § 2 (Exh. A) (part), 2003; Ord. 1916 § 2 (Exh. A) (part), 2003; Ord. 1849 (part), 1999)

19.702 Circumstances for granting variances.
A variance may be granted only when the planning commission or planning director finds all of the following criteria are satisfied.

19.702.1 Criteria for Granting Variances.

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

Response:
North Clackamas Community Park (NCP) has a number of unusual conditions beyond NCPRD's control that support the approval of a variance for lighting pole height of 70 feet and modification of the Planning Commission's Condition of Approval regarding spill light to 1.0 foot-candles. These conditions are explained below:

Light pole height:

- The 50-foot height limitation imposed by the CSO code is generally attainable for most CSO applications such as churches, schools, and day care facilities; however, it becomes problematic when applied to parks for sports field lighting. In order to provide safe, efficient lighting that minimizes impacts on surrounding neighbors, the field lights need to be mounted on 70-foot poles. While placing the same lighting on shorter poles would satisfy the CSO code, it would ultimately cause more spill and greater glare for players and the surrounding community.

- Natural and manmade constraints on site limit the layout of the fields and therefore the placement of the lights. The submitted lighting plan shows the necessary pole layout to provide the appropriate and safe level of lighting for baseball/softball fields. There is insufficient space to move the poles to reduce the increased amount of spill light and glare that would be caused by 50-foot poles. 70-foot poles significantly reduce glare and spill light.

- NCP is unique in that it is the only active use park of its kind in the city. The purpose of the park is to serve residents throughout the city and provide a safe place for youth and families to recreate. The park is designated a "community park" in the City of Milwaukie's Comprehensive Plan. The plan states that a community park should serve resident's city wide, and should include "major structured recreational facilities such as lighted baseball and soccer fields". Furthermore, the plan states that the City should maximize the use of existing facilities. Without proper field lighting the use of the fields at NCP would be limited to only one practice or game per evening, rather than the two on lighted fields, resulting in an inconsistency with the goals adopted in the City's Comprehensive Plan.

Spill Light – Photometric Plan

- In an effort to preserve existing uses in the park and protect natural features, the area for the fields is constrained by the drainage swale and buffer to the north, the knoll and equestrian arena to the west and the existing parking lot on the east. As a result, field #2 is approximately 20 feet away from the south park boundary which causes some minor spill beyond the boundary to the south. However, the majority of spill will be blocked by existing mature vegetation.

- The photometric plan does not take into account the existing and newly proposed vegetation along the boundary that will block most of the spill. Unfortunately, there is not an accurate or precise method by which to quantify the amount of light spill that will be blocked by the vegetation.

- Existing ordinances regarding light trespass are limited and do not take into consideration the lighting of athletic fields. As a result, other jurisdictions have adopted reasonable standards of 1 to 2 foot-candles for athletic fields.

- Neighbors to the south access the back side of their properties from the park because they are unable to access this portion of their properties due to the presence of Kellogg Creek. Because of this access, there are some breaks in the vegetation along the fence line that would otherwise block additional spill light.

- There is a significant amount of distance between the adjacent residences and boundary of the park. The closest structures to the park boundary are outbuildings (e.g., sheds). In most cases, the residential structures closest to the south boundary are south of Kellogg/Mt Scott creeks and buffered by additional vegetation. The closest residential structure to the south boundary is approximately 487 feet away and is located south of Mt. Scott Creek. Furthermore, there is a low likelihood of significant development on the properties south of the park due to the presence of streams, wetlands and floodplain. Please see the attached aerial photograph (Exhibit 5) which shows the proximity of adjacent residence to the park's property boundary.

- The highest estimated spill light measurement (south of the existing tree line) shown on the submitted plan is 0.9 foot-candles, spill light measurements do not exceed 1.0 foot-candles anywhere beyond the existing tree line. This amount of light is minimal, and is

less than the amount found around a typical residential home (1.0 foot-candles is equivalent to the amount of light around the outside a home without lighting installed).

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

Response:

There are no feasible alternatives to installing lights on 70-foot poles and accepting the submitted photometric plan (1.0 foot-candles maximum) that would provide safe and efficient lighting for the fields at NCP. Listed below are three alternatives and a discussion of why they are not feasible.

Alternative 1: Do not provide lighting at the fields.

Failing to provide lighting for the ball fields at NCP severely limits the community's use of the park. The Milwaukie/North Clackamas area suffers from a severe shortage of ball fields. The provision of lights at the park allows for greater community use of the fields and insures that the children in the community have a safe and healthy place to recreate. Field lighting allows two games or practices per evening on each field where only one is feasible on unlighted fields. This provides the youth in the community at least four additional games or practices per evening. Eliminating lighting will cut the use of the fields by the community virtually in half. The benefits of the lighted fields outweigh any potential negative impacts from the taller poles and minimal light spill on the adjacent (undeveloped) property. Therefore, given the severe shortage of athletic fields in the Milwaukie area, the fact that the park is identified as "community park" appropriate for lighted sports fields in the City's Comprehensive plan, and that it is the only facility of its kind in the city, this alternative is not acceptable.

Alternative 2: Limit light pole heights to 50 feet.

When light poles are reduced to 50 feet from 70 feet, the aiming angles of the lights will become more horizontal (less steep of an angle). This is necessary to keep the same aiming points on the field and to provide appropriate lighting (see the attached sketch in Exhibit 6). In the case of NCP, the aiming points remain the same on the field, and consequently light spill and glare increase. With 50 foot poles, a person looking at light fixtures will see noticeably more light and glare than a 70-foot pole. This could be compared to high and low beams on a car. The low beams are typically aimed down while high beams are aimed more parallel with the ground. This allows the high beam light to travel greater distances. To an observer, the high beam would have more glare and light than the low beam. This holds true even when taking into account the different power output between high and low beams. Therefore, in order to minimize negative impacts of glare and light spill on the surrounding community, 70-foot poles are required.

Alternative 3: Plant additional vegetation along the property border in front of access gates to reduce light spill and minimize glare.

As previously explained, the installation of light poles at 70 feet will result in the least amount of light spill on the adjacent properties. However, even with the best available technology and higher pole heights there still may be small areas along the southern property boundary (south of the existing tree line) where the spill light exceeds 0.5 foot-candles. In some cases, these areas are specific to sections along the southern boundary where gates are provided to allow park neighbors access to the back of their properties. One alternative would be to plant additional vegetation in

front of the gates; however this would cut off the neighbor's access to the properties via the park. (NCPRD has already included additional vegetation along some portions of the park boundary as part of the approved modified concept plan). This alternative is not acceptable.

C. That adverse effects upon other properties that may be the result of this variance shall be mitigated to the extent feasible. (Ord. 1849 (part), 1999)

Response:
The effects of the taller poles on other surrounding properties are mitigated to the extent feasible as described below.

- NCPRD is proposing to install the best available technology for sports field lighting to help minimize light spill and glare. As previously explained, the lights will be mounted on 70-foot steel poles and will have shielded luminaries to mitigate the problems of glare, off-site visibility, and light spill. The lights are directed down at a steeper angle, providing more effective use of the external shields that limit glare and light spill. The increased heights also reduce the amount of disability glare that is experienced by the players thereby enhancing player safety.

- The proposed field lighting will operate from dusk to 10 p.m. during in-season months only. Low level egress lighting will operate for an additional 30 minutes for the safety of park users exiting the fields. New parking lot lighting will be turned off automatically by 11 p.m. All of the lights will be operated by an automatic programmable lighting control system and each field will operate separately so that the lights can be individually turned off when not in use.

- Additional vegetation is proposed along portions of the park boundary (as shown on the approved modified concept plan) which will further block spill light and glare.

- Lastly, the amount of spill light as a result of the 70-foot poles does not exceed 1.0 foot-candles beyond the existing tree line, which is equal to or less than typical lighting levels found around the outside of one's home without exterior lights installed. Additionally, with all the existing and newly proposed vegetation long the park's boundary, the chance that a light reading of 1.0 foot-candles (horizontal) occurs is unlikely. Furthermore, the presence of floodplain, streams and wetlands on the adjoining properties to south likely limits the extent of future development and the chance that the light would have an impact on additional development in the future.

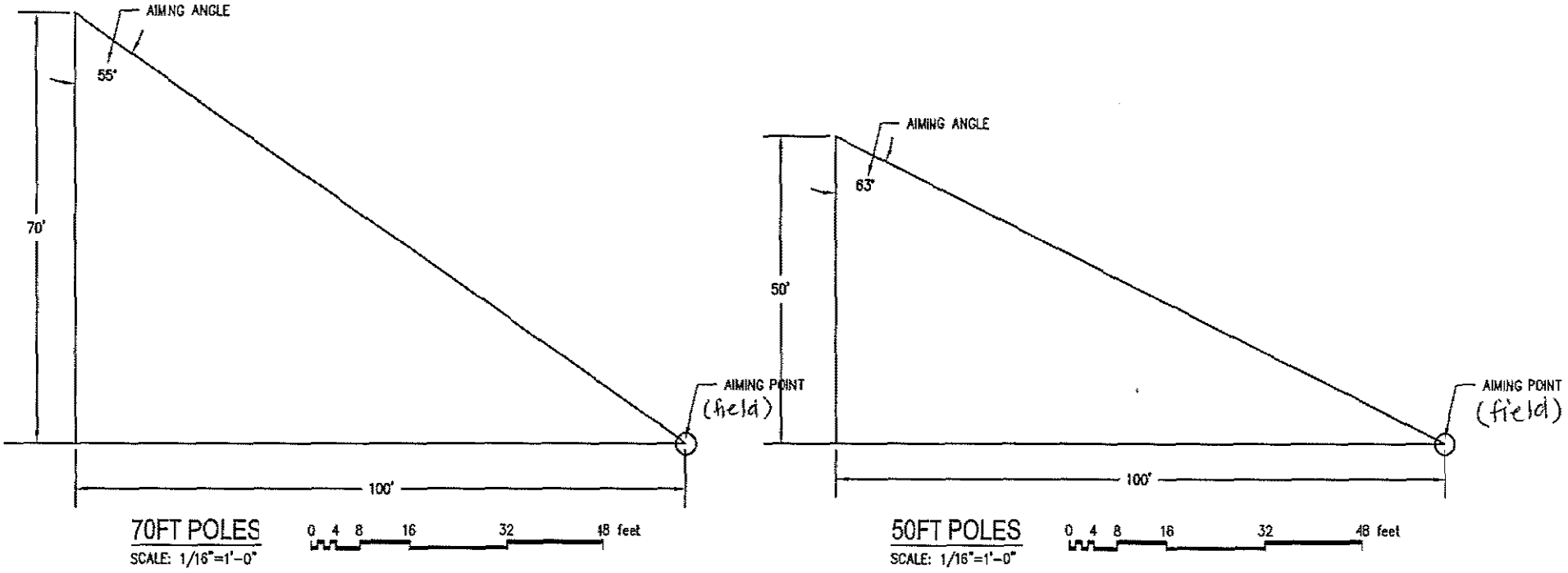
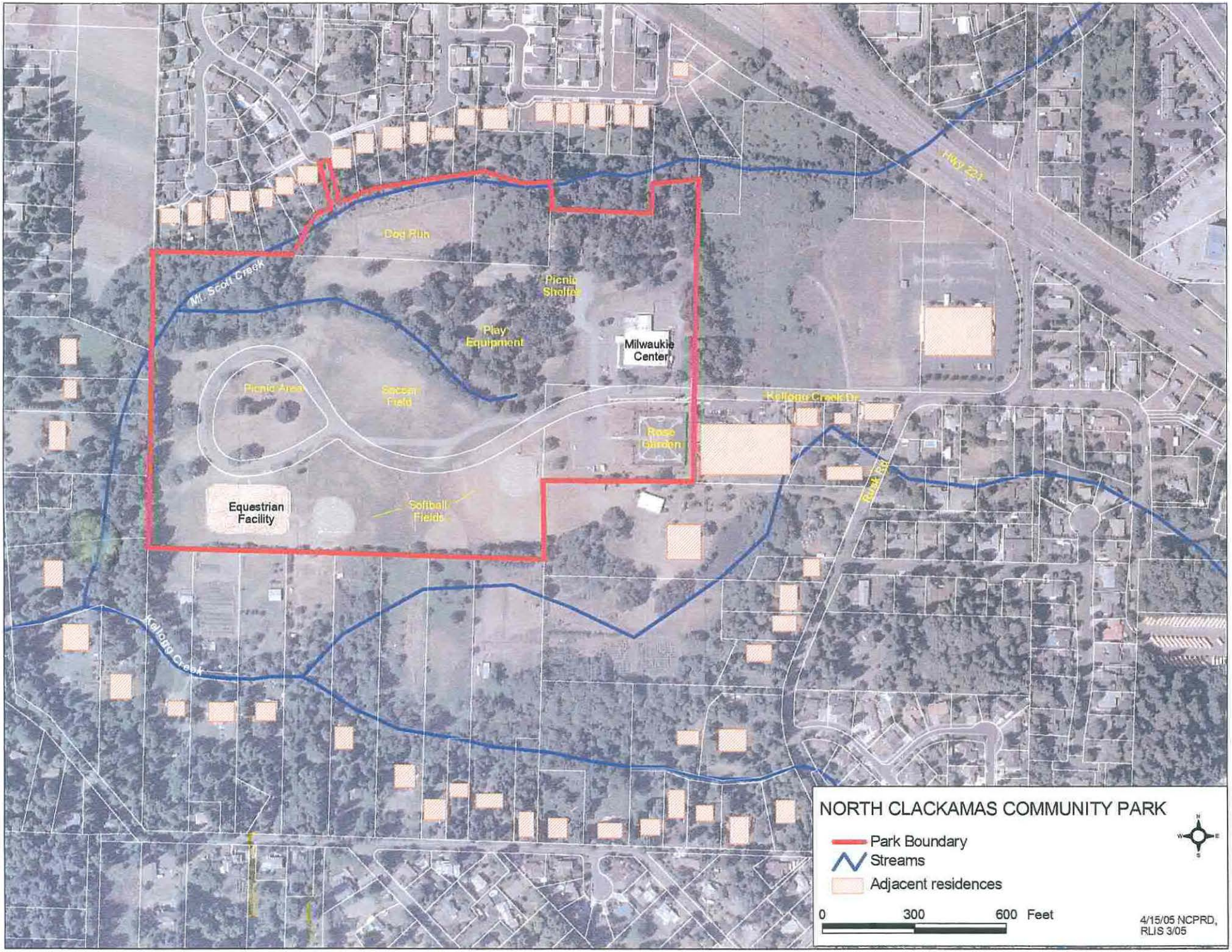


Exhibit 5


Dog Run
Mt. Scott Creek
Picnic Shelter
Play Equipment
Milwaukie Center
Picnic Area
Soccer Field
Kellogg Creek Dr
Rose Garden
Equestrian Facility
Softball Fields
Kellogg Creek
Hwy 224
Fuller Rd
NORTH CLACKAMAS COMMUNITY PARK
Park Boundary
Streams
Adjacent residences
0
300
600 Feet
4/15/05 NCPRD, RLIS 3/05

ATTACHMENT 3

Applicant's Site Plan and Photometric Plan

Do to size this item is not included in electronic packet. A copy is at Front Counter of each City facility and will be on display at the Council meeting.

Pictures of existing light structures at North Clackamas Park

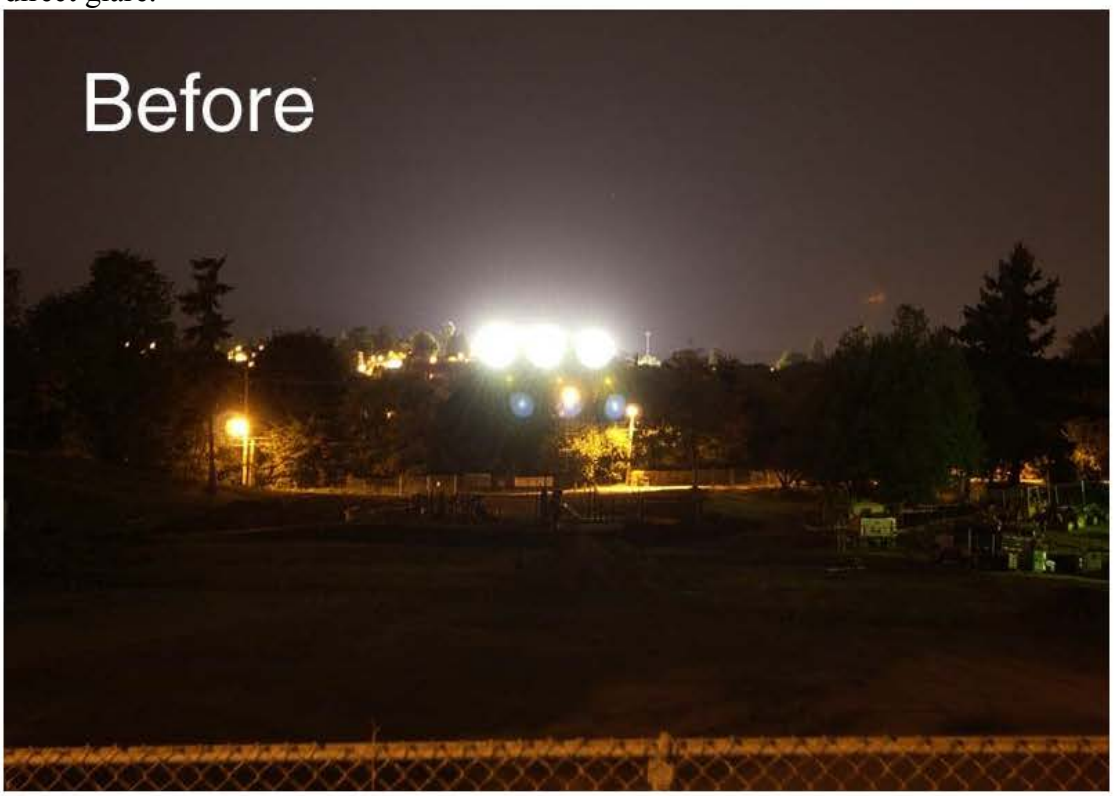
Exhibit 2

From the beginning of the loop road toward proposed fields 1 and 2

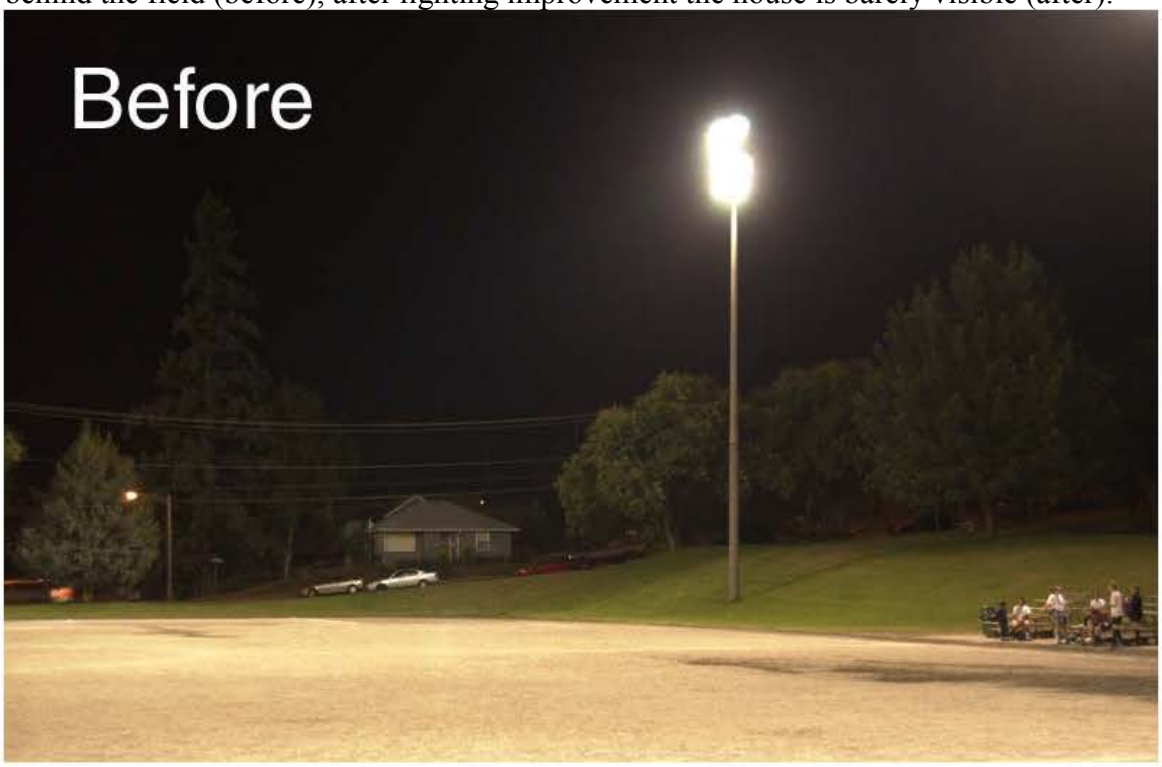
Vegetation along the property line from center field of proposed field 2

Vegetation along the property line from right field of proposed field 2

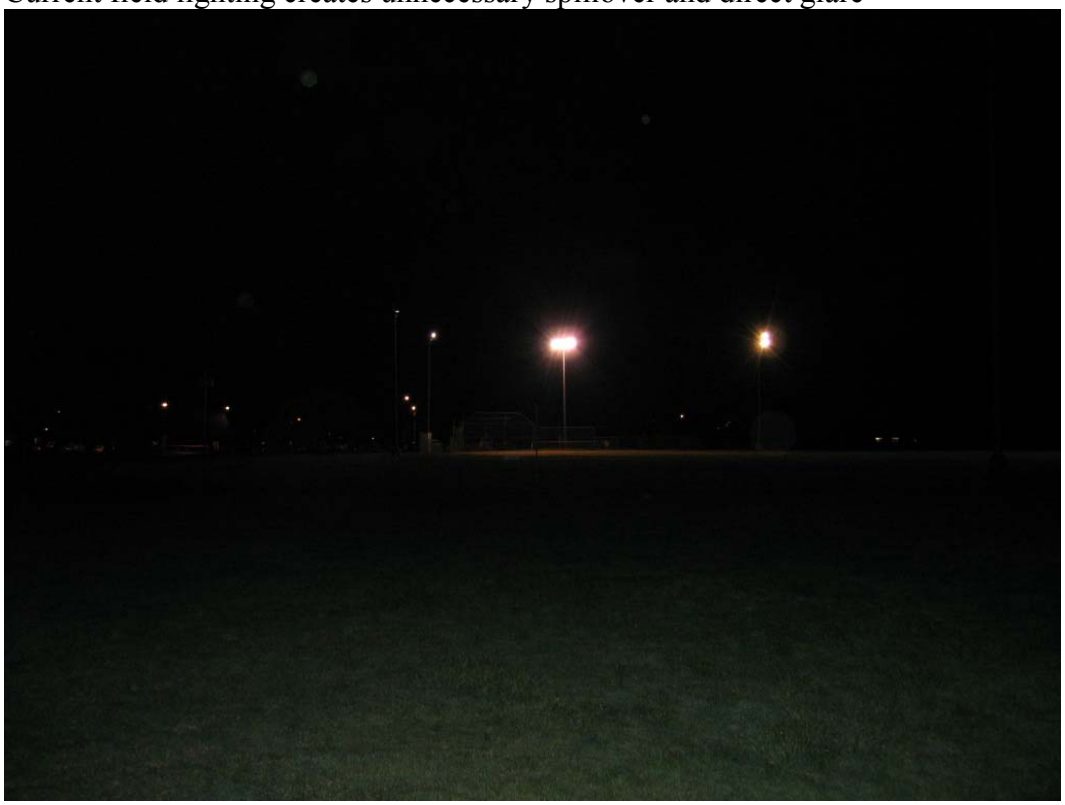
The following example illustrates how improvements to lighting can significantly reduce direct glare.



These pictures, provided by Sparling, show examples of how improved lighting reduces light spillover and direct glare. As shown below light spillover illuminates the house behind the field (before), after lighting improvement the house is barely visible (after).



Current field lighting creates unnecessary spillover and direct glare



ATTACHMENT 5

Park & Recreation Board
PARB

Tuesday, November 29, 2005
7:00 PM to 9:00 PM
Regular Meeting

MINUTES

Attendees: Kate MacCready, Ray Harris, Sherri Dow, Mart Hughes, Sonny Newson
Absent: Rob Gabrish, Kathy Buss
Staff: JoAnn Herrigel, Joan Young

Minutes: Harris motioned to approve minutes of October 25. Newson seconded and the motion passed 5-0.

The group reviewed the Intergovernmental Agreement (IGA) between the City and the North Clackamas Parks and Recreation District signed in 1992. Each section was reviewed and concerns with each section were noted. Following is a summary of this discussion.

Section	Issue/Concern	Proposed solution
A 1 – Service Dist	Out of date list	District provide list of future goals (Master Plan) Need updated list + Include trail system + Need to consult with City during master plan review process
A 2 - Service Dist	Old – completed	SDC/capital improvement funds to City – need language to include how SDCs spent
A3 - Service Dist	Dated	Remove
A1 - City	Need language re: the City's involvement in prioritization	Add (?) paragraph stating District needs to ask City for priorities. Keep list general.
A2 - City	Update attachment #1 + Check naming process + Park sign language (para – 4)	 + Hierarchy of City vs District for naming? + Consistency on signs important ("owned by City"
A3 - City	+Para 1 +Update attachment (para 2)	+Remove $ and add "unless identified in the district's Master Plan +Need to include process part in negotiation. + Need language re: District maintenance of City improvements
B1 - District	dated	Remove section in parentheses
B2 – District	dated	Remove "beginning Sept 1, 1992" – need new date
B3 - District	dated	Remove entirely
B4 - District	Capital items don't	Update attachment #2 – expand list of

	include facilities like play structures, restrooms etc.	maintenance responsibilities
B1 - City	dated	Remove
B2 - City	How is NDA work in parks accounted for? City parks not on attachment 1	Remove most language? + City will advise on maintenance levels (attach 2) +Add City maintenance responsibilities for these parks (what does City do vs District do?
C 1, 2 and 3	Remove dates	+District tells city what can be provided and City gives input on its priorities + Keep general responsibilities and remove dates + Remove 2
C 1 - City	Remove dates Remove #1	
C 2 - City	Add	City will coordinate with District
D 1 - District	6% increase Q	+ May need to keep "minimum level" +? current level + What is needed/desired
D 2 + 6 District	Need standards for operation, maintenance and capital – remove date	+ Craft language for discussion + Replace/create attachment 4
D 3 - District	Obsolete	delete
D 5 - District	Remove language	"consistent with…" "approved by the city
D 1- City	obsolete	remove
D 2- City	obsolete	remove
D 3- City	Change language	"Milw Center policies will be developed by the CCAB
D 4- City	Is this how it should be structured?	Ask CCAB to review and craft language
D 5 - City	Why is info re: City parks under Milw center?	delete
D 6- City	Add	"City council or its designee"

Parking Lot:

- Preamble
- Process issues
- Definition of terms

The group decided that the next meeting (December 27) would be used for general business and that the discussion of the IGA would be tabled until January.

Harris motioned that the general meeting time begin at 6 pm and end at 8 pm. MacCready seconded and the motion passed, 5-0.

Riverfront Board Meeting Minutes
November 8, 2005

Attendees: Martin, Wall, Green, St. Clair, Stacey, Klein
Absent: Darling
Staff: Herrigel

Minutes: Wall motioned to approve the minutes of the October meeting. Klein seconded and the motion passed, 3-0-3. Wall noted that the September minutes had never been approved due to lack of appropriate quorum. The September minutes were tabled until the December Board meeting.

Concept Plan Input Process:

Herrigel summarized the survey data that had been collated so far:

Surveys Mailed to 97222 (Residential and Commercial)	16,400
97222 Surveys Input to date	1,779
Non-97222 Surveys input to date	14
Total Input to date	1793
Option # 1	371 (21%)
Option # 2	1351 (75%)
Neither or both	71 (4%)
Highest Overall amenity	Picnic facilities (4.12)

Priority Ratings for all surveys	
Picnic Facility	4.12
On-site parking	3.99
Open Space	3.85
Boat Dock	3.74
Off Site Parking	3.65
Play Equipment	3.63
Boat Ramp	3.51
Amphitheatre	3.28

Priority Ratings for Option 2	
Picnic Facility	4.34
On-site parking	4.12
Open Space	3.97
Boat Dock	3.96
Off Site Parking	3.64
Play Equipment	3.61
Boat Ramp	3.51
Amphitheatre	3.28

- Predominant comments were regarding the boat ramp and parking.
- Six things the most people said they want to do in the park (no specific order): Boat, Concerts, Picnic, Playground, Relax/view, Walk/Bike

Board comments:

- What are the amenity priorities for the minority (those who chose Option 1).

- What is the deadline for survey submission?
- St Clair made a motion to: "Cut off public input on December 1 and come up with a Riverfront Board recommendation at the December 13th meeting to send to Council with the staff report summarizing the data collected." Motion was seconded (after amendment of cut off date) by Klein. Motion passed 6-0.
- Staff should send data to Riverfront Board by December 9th for discussion at the December 13th meeting.
- St. Clair asked if he could get a copy of the Excel data so he could play with it. He also requested that all the comments be sent to the Board members for review.

Herrigel said the next steps would be for staff to take the data and the Board recommendation to the City Council along with a proposal for developing a third concept. She proposed having a combined meeting with City Council, Riverfront Board and Parks Board members to integrate the public comments and arrive at a "compromise" concept. She said she though there should be a facilitator for that meeting and noted that Gill Williams has offered to draw up any plan that results.

Green suggested that Mike Faha of Greenworks might be willing to facilitate this type of meeting. Herrigel and Green agreed to ask Faha if he would do that.

Donation Receipts

Herrigel said she had requested an opinion from the Finance Director on the tax deductibility of donations to the City and he had been reticent to provide guidance. She was checking with other private sector folks to see what they might "need" in order to donate funds. St. Clair suggested that Herrigel get the By Laws of Celebrate Milwaukie Inc. and a copy of their determination letter.

Wall suggested that Herrigel seek a formal opinion from a tax lawyer regarding tax deductions allowed for Riverfront donations to the City.

St. Clair noted that if the City could not offer tax deductions to donors that we might establish a foundation. He said that he had set up at least three of them and that they weren't very hard to set up.

City Updates:

- North Main construction began November 5
- November 15 is the Council hearing on the Wastewater rates
- Mcloughlin Blvd. construction will move to the east side in December
- Herrigel said she would check to see when the Lake Rd water line project would be completed

Next meeting: December 13th at 6pm

All Board members and their families are invited to Gary Klein's house on December 19th to watch the Christmas Ships.