

CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
FEBRUARY 15, 2005

**CALL TO ORDER**

**Mayor Bernard** called the 1952<sup>nd</sup> 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

Excused: Councilor Stone

Staff present:

|                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                     |
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| <p style="padding-left: 40px;">Mike Swanson,<br/>City Manager</p> <p style="padding-left: 40px;">Gary Firestone,<br/>City Attorney</p> <p style="padding-left: 40px;">John Gessner,<br/>Planning Director</p> <p style="padding-left: 40px;">Stewart Taylor,<br/>Finance Director</p> | <p style="padding-left: 40px;">Paul Shirey,<br/>Engineering Director</p> <p style="padding-left: 40px;">Brenda Schleining,<br/>Associate Engineer</p> <p style="padding-left: 40px;">Grady Wheeler,<br/>Information Coordinator</p> |
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**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

**Milwaukie High School Student of the Month**

The City Council recognized **Agustn Ramos** as the February Milwaukie High School Student of the Month. After having arrived in the United States just four years ago, Agustn grew academically strong and had top grades in his classes. He was a member of the Respect and Tolerance Committee and was part of a group that wrote the new position statement about respect and diversity for the entire school. He was the first junior recognized by the Council for his academic knowledge and leadership.

**Mayor Bernard** welcomed **Justin Stangel** of Troop 144.

**Mayor Bernard** encouraged residents to attend Metro's transportation funding hearings to support Milwaukie's Lake Road Multimodal Improvements Project.

**Annual Financial Report**

**Mr. Taylor** introduced **Tom Glogau** of Grove, Swank and Mueller. He thanked finance staff particularly Judy Serio and Merlin Becker for their work.

**Mr. Glogau** reviewed the significant items in the audit report. He commended Ms. Serio, Mr. Becker, Mr. Taylor and the entire finance department for their work. The audit went very smoothly which spoke highly of the processes that were already in

place. He referred to report page 7 called the "*Statement of Revenues, Expenditures and Changes in Fund Balances – Governmental Funds*" which he likened to the profit and loss statement. The total change in fund balances was \$950,456 which meant the cost of providing governmental services during the year was less than the revenues the City took in associated with providing those services. He noted many cities in Oregon wished they could say that. He attributed this to City employees being cost conscious.

**Mr. Swanson** noted although the City did dip into the general fund, the contingency was not impaired. That was the net change.

**Mr. Glogau** noted the total balance as \$4,625,000, which was in a general sense the amount the City had available on June 30.

**Mr. Swanson** believed water constituted a lot of that. The City did experience a net decrease in its general funds reserves to fund some operations. A majority of that \$4.6 million was probably in the enterprise funds for a specific purpose.

**Mr. Glogau** referred to page 10. Cities existed for the purpose of providing governmental services to citizens and to conduct activities that everyone needed but could not do for themselves such as water and sewer. The governmental funds were subsidized activities and were not provided for a fee. On the other hand, water and sewer activities had customers, and a service was provided in exchange for a fee. The change in net assets for the year was \$66,832. The total operating revenue was \$6,056,000, so this was essentially a breakeven year. This meant the cost of providing services was about the same as citizens were charged.

Page 27 gave instances during the year where the City violated state statutes. The violations were equivalent to driving 36 in a 35 mph zone. There was a violation, but it was not serious and did not have negative repercussions. The over expenditures in those six funds could have been avoided if there had been a transfer of appropriations by June 30. It was a clerical oversight and not a substantive violation of Oregon law. It was a technical violation and was reported, but it was not serious because the City actually had the authority to spend that money. Mr. Glogau referred to pages 68 and 69 and the auditor's comments. In summary, on June 30, 2004 the City was in stable financial condition. The enterprise funds just about broke even for the year, which kept good faith with the citizens. The City paid its bills when they came due.

#### **CONSENT AGENDA**

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the Consent Agenda that included:

- A. City Council Minutes of February 1, 2005;
- B. Intergovernmental Agreement with Oregon Department of Transportation for the 42<sup>nd</sup> Avenue Improvements Project;
- C. North Main Public Professional Development Services Contract Award; and
- D. **Resolution 8-2005: A Resolution of the City Council of the City of Milwaukie, Oregon, in the Matter of Authorizing a Milwaukie/North Clackamas County Enterprise Zone Boundary Change.**

The motion to adopt the Consent Agenda passed unanimously among the members present. [4:0]

Mayor Bernard changed the order of business.

### OTHER BUSINESS

#### Amend Code Section 13.28.120 to Add Public Improvement Credits for Development Subject to Systems Development Charges – Ordinance

Mr. Shirey explained the amendment would allow public improvement credits on certain improvements to the transportation system. Certain improvements might correct an already existing deficiency for which the developer should receive credit.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second readings by title only and the adoption of an ordinance amending Section 13.28.120 of the Milwaukie Municipal Code to add public improvement credits under certain land division and land use approvals. Motion passed unanimously among the members present. [4:0]

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

The City Recorder polled the Council: Councilors Loomis, Barnes, and Collette and Mayor Bernard "aye." [4:0]

#### ORDINANCE NO. 1946:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING SECTION 13.28.120 OF THE MILWAUKIE MUNICIPAL CODE TO ADD PUBLIC IMPROVEMENT CREDITS UNDER CERTAIN LAND DIVISION AND LAND USE APPROVALS.

### AUDIENCE PARTICIPATION

David Aschenbrenner, 11505 SE Home Avenue, Hector Campbell Neighborhood District Association (NDA) Chair. He discussed SB 295 that would give the state authority to redirect traffic citation funds from cities.

Mr. Firestone said the sponsor of that bill was Sen. Prozanski. The basic provisions of the bill would required the City to turn over half of the fines collected in municipal court.

Mr. Aschenbrenner urged people to attend the Town Hall meeting on February 17 with Sen. Schrader and Rep. Tomei.

### PUBLIC HEARING

#### Public Contracting Rules

Mayor Bernard called the public hearing to order at 7:25 p.m. The purpose of the hearing was to give members of the public an opportunity to comment on the findings developed in support of exemptions from the competitive bidding requirements.

Staff report: Gary Firestone, 1727 NW Hoyt Street, Portland. This was a resolution proposing to adopt new public contracting rules with the City Council was acting as the

Local Contract Review Board. He discussed the recent revisions by the 2003 Legislature, which were extensive but not substantive. The statute still allowed local governments to adopt exemptions and procedures that had to be in place prior to March 1, 2005. The City had always adopted its own rules different from the Attorney General (AG) Model Rules. It took the position that it could provide a more clear and simple set of regulations. Further, the AG Model Rules did not provide for exemptions other than those explicitly stated in the statutes. The City felt there were some areas that should be exempt from the requirement to have a formal competitive bidding process.

The proposed rules were largely based on the existing rules, and many of the provisions were the same. There were some tweaks throughout to make them consistent to the statute revisions. Mr. Firestone reviewed the nine sections: competitive process and exemptions, price agreements, brand names or marks, emerging small businesses, formal competitive processes, public improvement contracts, waiver of security bid and performance bond, property disposition, personal services contracts, emergency contracts, and recyclable and recycling purchasing.

State statutes required a public hearing whenever exemptions to competitive bidding or formal requests for proposal requirements were considered. Findings were prepared that justified each of the proposed exemptions. The exemptions were:

- Exemptions of contracts under certain dollar amounts. Staff recommended a \$50,000 threshold that was lower than the \$150,000 provided by statute.
- Contracts for price regulated items
- Library periodicals
- Advertising contracts
- Equipment maintenance repair and overhaul
- Purchases under established price agreements
- Gasoline, diesel fuel, heating oil, lubricants and asphalt
- Investment contracts
- Insurance contracts
- Employee benefit insurance
- Office copier purchases
- Single seller of product
- Contract amendments in a limited amount (including change orders and extra work)
- Affirmative action contracts
- Purchase off contracts by other public agencies
- Oil or hazardous material removal
- Contracts with qualified non-profit agencies
- Ammunition
- Public improvement contracts involving design or construction management

He concurred with staff that there was a good reason for each of these. Some were based on statute and others based on the City's experience that there could be a competitive process that encouraged competition but avoided the expense of the formal process.

**Mr. Firestone** requested that the City Council acting as the Local Contract Review Board adopt the resolution approving these rules.

Correspondence: None.

Testimony: None.

**Mayor Bernard** closed the public testimony portion of the hearing at 7:35 p.m.

**It was moved by Councilor Loomis and seconded by Councilor Barnes to adopt the resolution adopting new public contracting rules and findings. Motion passed unanimously among the members present. [4:0]**

**RESOLUTION NO. 9-2005:**

**A RESOLUTION OF THE CITY COUNCIL OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, REPEALING EXISTING LOCAL CONTRACT REVIEW BOARD ADMINISTRATIVE RULES, ADOPTING NEW PUBLIC CONTRACTING RULES AND FINDINGS, AND STATING THAT THE MODEL PUBLIC CONTRACTING RULES PROPOSED BY THE ATTORNEY GENERAL DO NOT APPLY.**

**Gramor Development, Oak Street Rezoning**

**Comprehensive Plan Map Amendment**

**Transportation Review**

**Files CPA-04-02, ZC-04-02, TPR-04-07**

**Mayor Bernard** called the public hearing on the Comprehensive Plan Amendment CPA-04-02, Zone Change ZC-04-02, and Transportation Plan Review, TPR-04-07 to order at 7:36 p.m.

The Planning Commission considered this request at its January 11 and January 25, 2005 public hearings and recommended Council approval of the land use change and zoning designation with conditions. This was a de novo hearing, and Council recognized all persons wishing to speak on the proposal. Council used the testimony it received in coming to a decision on the proposal.

The purpose of the hearing was to consider the Milwaukie Planning Commission's recommendation to approve the request for a Comprehensive Plan Map Amendment and zone change to property bounded by Oak Street, Campbell Street, Myrtle Street, and Hwy 224. The applicable standards were in Zoning Ordinance Section 905.1 (Amendments) and Comprehensive Plan Chapter 2, Objective 1, Policy 7. Mayor Bernard reviewed the order of business for the hearing.

The applicant had the burden of proving that the Comprehensive Plan amendment and zone change proposal conformed to all applicable criteria of the City's Comprehensive Plan and Zoning Ordinance. All testimony was to be directed toward the applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. Failure to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow a response precluded an action for damages in circuit court. Any party with standing could appeal the City Council decision to the State Land Use Board of Appeals

(LUBA) according to the rules adopted by that Board. Persons with standing were those who submitted written comments or testified and signed the City Council attendance sign-up sheet.

**Mayor Bernard** reviewed the conduct of the hearing.

Site Visits: All Council members present had visited the site.

Ex parte Contacts and Conflicts of Interest: **Mr. Firestone** explained that any discussions other than with staff regarding this matter needed to be disclosed, and that included the Planning Commission.

**Councilor Loomis** spoke with Planning Commissioner Lisa Batey and asked for a summary of the process because he did not have a chance to read the minutes. Ms. Batey believed the applicants were straight up people. She had some questions about the public need. He asked her if there was any discussion about other residents on Myrtle Street, and she did not remember any.

**Councilor Collette** spoke with two Planning Commissioners Lisa Batey and Jeff Klein about concerns that were raised about the project. Traffic and the need for the development were both raised.

**Councilor Barnes** did not speak with anyone. She read the minutes.

**Mayor Bernard** disclosed that the applicant donated to his County Commissioner campaign last year. He considered the matter very carefully and did not believe that would influence him in any way. He felt comfortable that he could render a decision based on the facts of the matter. That was not a conflict of interest.

Challenges to Impartiality or Ability to Participate: None.

Jurisdictional Issues: None.

Staff Report: **Mr. Gessner** stated the Planning Commission forwarded a recommendation to the City Council to approve the Comprehensive Plan and zone change. He was joined by Engineering Director Paul Shirey, Associate Engineer Brenda Schleining, and consultant Randy McCourt of DKS and Associates who was retained by the City to provide independent peer review of the applicant's traffic study.

It was the applicant's burden to demonstrate how it met the code notwithstanding the Planning Commission's recommendation. Many questions the City Council may have would likely be answered through the applicant's testimony. He provided an overhead of the site and indicated the block being considered at this hearing and the Milwaukie Marketplace. He noted an orphaned site next to the property being considered for rezone. The Commission directed staff to look at rezoning that remaining property to commercial. Staff would do that pending City Council's decision on this proposal.

There were two code criteria that needed to be met in order for a Comprehensive Plan amendment and rezoning to occur. Those criteria were found in the Comprehensive Plan and Zoning Ordinance and were very specific as to what the applicant must demonstrate. The first was consistency with Comprehensive Plan criteria that were not only site-specific conditions but also consistency with the economic development, housing, jobs, and transportation policies. The Planning Commission found that the

applicant did demonstrate compliance with those various policies. The Zoning Ordinance was specific with regards to the quality of the site, the location, and the ability to serve the site with needed infrastructure. The Planning Commission found that the applicant did demonstrate compliance with those applicable criteria. The ordinance in the staff report (pages 9 – 18) detailed specifically how the Commission found that the applicant demonstrated compliance with those criteria.

The Planning Commission heard a number of concerns in the two public hearings. Would there be economic impacts to the downtown, and would this development have an adverse impact by drawing market demand away from the downtown? What would the neighborhood traffic impacts be? Mr. McCourt would detail the scope of the traffic work. Mr. Gessner was confident that with Mr. McCourt's watching the City's interest, there would be a good understanding of those impacts both in terms of the Hwy 224/Oak Street intersection and the neighborhoods to the north and south. There were also concerns about the site design. At this point in the process there were neither processes nor criteria to evaluate the proposal. The application would go back to the Planning Commission for a transportation review to evaluate compliance with zoning standards for a C-G zone if approved by Council.

**Mr. McCourt**, 1400 SW 5<sup>th</sup> Avenue, Portland. He provided an overview of how the City evaluated the project's traffic impacts. The City requested that the applicant prepare a traffic analysis for this rezone and that it be comprehensive and provide an understanding of the motor vehicle impacts and alternative mode impacts for pedestrians and bikes as well as neighborhoods considerations.

**Mayor Bernard** asked Mr. McCourt how many years of experience he had.

**Mr. McCourt** had 25 years of experience. The current R-2 zoning had the potential to generate about 600 trips per day with about 55 – 60 trips during the evening peak hour. The proposed zoning would generate about 2,500 per day with about 320 – 330 trips during the evening peak hour. He discussed a variety uses including a shopping center, pharmacy, and grocery store of different sizes and characteristics that would fit on this site. The trips generated were appropriate for those types of uses in a reasonable-case scenario in terms of land coverage. Approximately half of those would come from trips passing by on Hwy 224, Oak Street, or nearby streets that were already on the network but diverted to this site. About 65% would go south toward Hwy 224 versus 35% going to the north toward Monroe Street. Of the trips going to the south of Hwy 224, a little less than half crossed Hwy 224 and the rest got onto Hwy 224. The applicant was asked to look at current conditions and conditions 15 years out. He also studied Hwy 224 and Oak Street and other key intersections. The key impact area was Hwy 224 and Oak Street intersection. The location today was somewhat congested at certain times but did operate acceptably. In the future he found that location approaching capacity. With the proposed rezone, it exceeded capacity and recommended mitigation measures were identified within the proposal to address the deficiency. Oak Street driveways were considered to conform to the City's spacing standards and assured that setbacks for driveways were far enough back for safe access. Local streets such as Sellwood Street and 31<sup>st</sup> and 32<sup>nd</sup> Avenues had less than 20 vehicle trips, which was the criteria for local streets for mitigation. Mitigation was recommended to them in terms of

providing a contribution to the Neighborhood Traffic Management Program and made part of the conditions of the proposal.

**Mr. McCourt** said the most significant improvements were on Oak Street in front of the project site. Today, there were four lanes on Oak Street in front of the Milwaukie Marketplace. He recommended adding a fifth lane and identified a future sixth lane. There would be an exclusive left-turn lane on Oak Street and an exclusive right-turn lane. The exclusive left-turn lane was required for geometry so vehicles were aligned going across the intersection with a complementary left-turn lane in the northbound direction. That improved the operating performance to correct the deficiencies identified in the applicant's study. It also improved queuing conditions on the street so that vehicles did not back up and cover up the driveways. The right-turn lane was identified in the future conditions as a means of further mitigating queuing conditions on the site. Those improvements required right-of-way modifications, right-of-way setbacks, and roadway improvements that were part of the applicant's proposal.

**Mr. Shirey** discussed the lane configurations, when the lanes would be constructed, and the actual cost contributions. He referred to staff report page 150, Attachment 6 that showed the six-lane configuration. This was the mitigation that was developed, and the developer's consultant prepared the drawings that showed a fifth lane that would allow southbound traffic to turn east on Hwy 224. The eventual sixth lane would allow a right turn to on westbound Hwy 224 from Oak Street. Other improvements on the south side of that intersection needed to be made. Most importantly a dedication of 20 additional feet of right-of-way was required on the developer's side of the property to accommodate the full six-lane improvement. It was determined the re-striping at Monroe Street, Oak Street, and Railroad Avenue would fix the problem at the north location. The developer worked on some cost estimates and came up with the unit prices. He asked for credits, which the City can now do because of the ordinance the City Council just adopted at this meeting. With the credits, the developer's total investment was reduced. The citizens would have an enhanced intersection that would not only meet the needs of this development but would also address future traffic needs over the next 15 years. At that period, a sixth lane would be required, and the City would bear that cost. There was a lengthy discussion of cost sharing and both parties agreed to a 50/50 sharing of \$280,000 in improvements for the five-lane fix. The incremental cost of adding the sixth lane was an additional \$80,000, but it would not be needed for another 15 years. The City had greater needs for its scarce resources, so the City chose not to go ahead with the sixth lane at this point. The \$280,000 worth of work was required of the developer as a condition of the rezoning. The funds were in the City's budget for 2005 – 2006.

**Councilor Loomis** asked if the intersection at 32<sup>nd</sup> Avenue and Harrison Street was studied.

**Mr. McCourt** replied that the applicant's traffic engineer looked at about ten intersections including those on Harrison Street at Hwy 224 and 32<sup>nd</sup> Avenue. They found that intersection to be acceptable in the future given the geometry.

**Mr. Gessner** explained the term "acceptable" referred to traffic engineering standards.

**Councilor Collette** understood he looked at Washington, Monroe, Oak, 42<sup>nd</sup>, and 34<sup>th</sup> in terms of impacts. She asked what the impacts were to 34<sup>th</sup> Avenue because it was a cut through for a lot of people. Mr. McCourt had stated that about 65% of the traffic would come from the south with a lot of it using 34<sup>th</sup> Avenue.

**Mr. McCourt** said it would be approximately 30%. The applicant's consultant identified about 160 additional vehicles on 34<sup>th</sup> Avenue and 200 – 250 on Washington Street. That split was how the consultant identified the traffic share.

**Mr. Gessner** addressed the question of public need. He referred to staff report page 11, Finding B that specifically addressed that issue. There was an assumption that a Comprehensive Plan designation was made for a specific reason, and that reason would hold over time. As the world changed, the Comprehensive Plan would need to change. The applicant would describe a real estate market analysis that identified about a 10-acre shortfall of retail-commercial zoning within the City. That was one demonstration of need that the Planning Commission accepted. There were other public needs that the Planning Commission found were being advanced by this project. It increased employment, which addressed specific economic development policies. The site was designated for commercial redevelopment in the Milwaukie Town Center Plan, although the City had yet to adopt implementation measures. There was already a vision adopted by this Council for commercial redevelopment of this area. One assumed that did in fact advance that public need. In this time of fiscal stress, tax base improvement was a public need. The real market value was presently \$3.2 million, and the applicant indicated the post-development property value would increase to about \$5.5 million. There would be a proportional impact in terms of revenues to the City with an expected decrease in demand for public services typically associated with residential uses.

#### Applicant's Presentation

**Matt Grady**, Project Manager, Gramor Development, 19767 SW 72<sup>nd</sup> Avenue, Suite 100, Tualatin, Oregon 97062. He noted that Gramor had been working on this project with the City since August 2004. He introduced Barry Cain, President of Gramor Development; Nick Diamond, Gramor; Jerry Johnson, Johnson Gardner; Todd Johnson and Chris Clemow, Group Mackenzie; and Steve Abel, Stoel Reeves.

**Mr. Grady** reviewed correspondence that was distributed including a set of photographs and a letter from Mr. Abel reiterating some points on a letter submitted by the Pan Pacific Corporation. Milwaukie was a new area, but Gramor has been in business for about 20 years and has done about 35 developments. Gramor focused on the Portland metro region including Canby, Molalla, Lake Oswego, Beaverton, Sherwood, and Clark County. The company was founded on doing small neighborhood centers that typically involved a grocery store with other services around that. Gramor since evolved into mixed-use and residential on the side. He provided photos of a Fred Meyer project in Canby that included brick in the design. Another project in Mill Plain involved a Target with arches and masonry columns and a Baja Fresh that had a fountain and plantings. More attention was being given to detail and making more pedestrian scale developments. The "A" Street Station in Lake Oswego was a two-story structure with office and retail on the bottom floor and tuck-under parking. The architectural style on

that project was governed by Lake Oswego codes that included masonry and lighter wood on the top. The Murray Scholls Town Center project in Beaverton was on 20 acres with 11 buildings that featured awnings, outdoor spaces, a fitness center, and a Beaches restaurant. Gramor managed many of its projects and took pride in its landscape maintenance and zero tolerance for graffiti.

**Mr. Grady** said Gramor provided notice to people living within 300 feet of the project and all the Neighborhood District Association (NDA) chairs were invited to a community meeting. There was a good turnout, and Gramor had individual conversations in the community and particularly with the Historic Milwaukie and Hector Campbell NDAs. In addition to conversations, Gramor made a full presentation at the Hector Campbell meeting and visited the Lewelling NDA. Gramor had a number of ideas of what it wished to do but had not solidified on one particular idea at this time.

He showed an aerial photograph and discussed why the project made sense to Gramor. The site was zoned R-2 with a very small piece of R-1. That spot seemed to Gramor to be a great place for development. The residences were isolated between the railroad track and Hwy 224. Oak Street was a passage serving the Milwaukie Marketplace. Dr. Chung, Comfort Care Dental, was operating under a conditional use permit in that location. He was part of the transition zone on that block, and he agreed to go in under the Gramor application. Dr. Chung was supportive every step of the way and appeared before the Planning Commission. He would probably enjoy having some signs and lights that he cannot have at this time under the current conditional use permit.

Mr. Grady commented on the criteria of approval that included economic development, transportation, housing, and employment. The applicant demonstrated compliance with those criteria, and staff made the finding that it concurred with the applicant's report. There were benefits with increased property values, jobs, and additional neighborhood shopping. He also believed the Oak Street and railroad intersection would actually be a safer place. There were a number of conditions within the February 4, 2005 staff report that described a series of transportation improvements. The first was for five-lanes with a future sixth lane on Oak Street. Gramor would participate fully in the five-lane improvement and would dedicate land for that use. The configurations on Attachment 6 indicated that nothing was required out of Milwaukie Marketplace. The sidewalks and curbs would not have to be rebuilt. The necessary right-of-way would come out of the Gramor side. The applicant did the survey work reflected in these diagrams, which showed an area on the south side that allowed for the proper alignment of the streets and new lanes. Gramor would limit itself to certain prime trip generators that were shown in condition of approval A. Those would actually limit the trips from typical shopping center or shopping center worst-case designation. Gramor would also contribute to neighborhood traffic calming. He believed this would be a positive change to Oak Street and the area itself. He thanked staff for working with the applicant and the multiple competing interests.

**Jerry Johnson**, Johnson Gardner, discussed the public need analysis portion of the project. Milwaukie was in a generally strong retail market with occupancies over 90%. Demographics were strong and improving, and incomes were rising. All of these were things that supported higher retail levels over time. He looked at supply and demand in

the currently retail-zoned parcels to determine if there was a shortage or surplus of demand and found there was about a 10-acre need for locally originating demand sources. This meant that people were shopping but not shopping locally in the City of Milwaukie. Because of that, he found there was support. Additionally, there were public policy goals related to local employment. This development would provide between 60 – 85 jobs with a payroll just over \$2 million annually. There was a section of the Comprehensive Plan that noted new commercial development along McLoughlin Boulevard, 82<sup>nd</sup> Avenue, and Clackamas Town Center lured many people from downtown Milwaukie. He believed this project was consistent with the public policy goals and that Milwaukie had perceived this as a commercial area since Hwy 224 was built and the area orphaned. This project made the highest and best use of the property.

**Councilor Barnes** read the Planning Commission minutes and had some questions. She discussed the number local jobs identified at about 81 with an annual payroll of about \$2 million. That came to about an average annual income of \$23,000. That was not a wage she wanted someone in her town to realize. It was less than \$2,000 a month, and in her opinion it was not that strong. She would like community members to make \$2,000 to \$3,000 minimum. What kind of businesses would Gramor bring in that would pay people \$23,000? She noted some contradiction in the Planning Commission testimony that said, "Prospective tenants cannot locate in Milwaukie now because there is no place that gives them the kind of visibility and quality they want." She requested that the applicant explain that comment.

**Mr. Cain** said there was not a new center like the one being proposed in the City of Milwaukie that prospective tenants wanted to go to.

**Councilor Barnes** understood that right now in the City of Milwaukie there was no open space, no retail environment that people could be proud of.

**Mr. Cain** explained the Marketplace was full. Retail tenants wanted visibility and accessibility and to be in places where people were coming and going. They wanted to be in new, modern facilities that give them the type of situation they need. There has not been much new built in Milwaukie. When Gramor did something new, people would come into town that either had not been looking in Milwaukie because there was nothing new to look at or had been looking but could not find anything that suited their purpose.

**Councilor Barnes** asked which businesses Gramor had contacted who had not been interested in Milwaukie but indicated this development might be it for them.

**Mr. Cain** commented on the types of businesses that would go into this type of development. Gramor had about 40 developments in the Portland area, and by and large they were all full. He guaranteed he did not go to all the effort to build these centers for them to be empty. The type of tenants would be those looking for easy in-and-out and accessibility from cars. There would be restaurants like Baja Fresh, a Cold Stone Ice Cream store, candy store, coffee shop, or a larger restaurant like Newport Bay. There would be people interested in this area if there were good, visible locations. There would also be professional types like real estate, title, insurance, and medical. There were other types of uses that also wanted the visibility and were looking for that type of space.

**Councilor Barnes** understood the higher incomes would go to the professional types versus the kids who worked at the fast food places.

**Mr. Cain** pointed out that kids needed places to work. He just opened a restaurant in Lake Oswego called Five Spice and hired 50 people. There were kids who were bussers to students who were servers to people who had been in the restaurant business for a long time as cooks. That industry had a whole gamut of incomes. Some people open up their own insurance agency or doctor's office, and others start something like a Cold Stone franchise.

These would be different uses than those one would see in a redeveloped downtown. From a retail perspective, people were looking for a shopping experience that might include women's apparel, jewelry, home decorating, bath and body, and kitchen stores. The retailers in the Lake Oswego center were the ones Milwaukie would want in the downtown. He did not see any way this project would hurt future downtown redevelopment, and it would likely help. The proposed development showed that someone could come in and take an area that needed to be redeveloped and build high quality buildings at today's rents and make it successful. Every little bit helped as Milwaukie was trying to redevelop, and he thought this development would have a positive impact. He anticipated the assessed value to be approximately \$8 - \$9 million.

**Councilor Collette** asked Mr. Cain if he had looked at the Milwaukie downtown. Obviously the intent was to redevelop downtown and not to draw business away.

**Mr. Cain** said no he didn't but yes he would. Sometimes all it took was a good start. He was interested, but the downtown was not what brought Gramor here initially. This piece of property was what brought his company. This project could actually be the precursor of Gramor spending more time looking downtown.

**Councilor Barnes** asked Mr. Cain of which development he was most proud and why.

**Mr. Cain** chose Lake View Village. It was fun, and everyone gave his or her hearts and souls to that project. It taught a lesson that in all the developments Gramor did it was worth the time to get into the details. There was a financial and emotional payback.

**Todd Johnson**, Group Mackenzie, 0690 SW Bancroft Street, Portland. The applicant completed a transportation study based on the highest reasonable use. The analysis was not based on any specific development proposal but did include intersections identified by City staff with input from ODOT. He pointed out the intersections on a map. The analysis showed that the impacts anticipated from the proposed development was an increase in primary trips during the PM peak hours by about 36 trips. That was after the diverted, pass by, and shared trips were subtracted. The trips related just to the new development were 36. The impacts from the development could be mitigated at the intersections studied. The transportation facilities in the project vicinity would operate at an acceptable level of service with the proposed zone change and Comprehensive Plan amendment through 2019. City transportation staff previously identified a six-lane roadway section for Oak Street as part of its long-range planning. Because of the needs of the City and the public input on the existing transportation challenges, the applicant agreed to participate in the construction of the improvement. The zone change as conditioned would dedicate right-of-way for the six-lane section

and assist in funding the five-lane prior to occupancy of the future buildings. The intersection at Oak Street and Railroad currently operated at a failing level of service. The existing failure was not the result of the proposed activities on the site, but it actually existed today. The applicant agreed to improve the operation of the intersection by providing some additional lane striping that would increase the capacity of the intersection and provide an acceptable level of service.

Because the project occurred in the vicinity of an ODOT transportation facility, the analysis included an assessment of the Oak Street/Hwy 224 intersection. The project as proposed maintained an acceptable level of service at that intersection throughout the planning period. This was confirmed by ODOT in a letter dated February 1, 2005 and submitted as part of the Council packet. The applicant completed a neighborhood through-trip study that was generally required when more than 25 trips were added to local streets. The study was conducted to address concerns raised by staff and other citizens who participated in the earlier process. The findings were that no local streets were impacted by more than 25 trips. The 85 percentile travel speeds were consistent with the posted 25 mph speed limits. Mr. McCourt testified that there were significantly higher volumes on streets that were generated above the 25, but those were actually collector roadways. An additional 200 trips in that area was not a significant amount compared to the existing volumes. The local streets all had 20 or fewer trips. Even though there were no substantial impacts resulting from the proposed zone change, the applicant agreed to participate in funding traffic calming measures to be identified by the Planning Commission. Mr. Shirey mentioned the out of pocket expenses and the application of TIF credits. It was important to note that the applicant was actually constructing or funding improvements in lieu of paying for the TIF credits. It was not really lessening the out of pocket expenses but paying directly for improvements and was an offset rather than a decrease.

In conclusion, the applicant performed an extensive analysis on the transportation network working closely with City staff to mitigate for anticipated impacts and to improve the transportation network beyond the required share. The proposed Oak Street improvements would lower the travel time by approximately one minute for vehicles leaving the north access of Milwaukie Marketplace, turning left onto Oak Street, and then left on Hwy 224 and continuing east. The proposal included a budget for traffic calming measures and would provide additional benefit to the community beyond the required mitigation for this proposal. The development maintained the required level of service standards and appropriately mitigated for impacts and should therefore be approved.

**Mr. Johnson** provided a handout that clarified the understandings regarding the development impacts and proposed mitigation measures. He referred to Condition A and the clarification of how the limitation on uses that the applicant agreed to would go away. At the time when the applicant could demonstrate that there was additional capacity at that intersection through some other project or City of State funded improvement, then the applicant would be able to come back before the City Council and request that the condition be eliminated. Condition B said the additional right-of-way was coming from the Gramor site and not the neighbor's, and the applicant was trying to get some recognition from staff that those attachments in the packet were close

to what would occur. Survey work was done, and he was confident those five and six lanes would fit. Condition C added reference to the five and six lane cross lane sections in the concept plan and recognized that these five and six-lane sections as proposed were acceptable to staff. That gave staff the assurance that the applicant was committed to participating in those sections as proposed. Some language was added that as part of the redevelopment of the site to include anything that occurred there. Condition F further clarified that the Planning Commission had sole discretion to decide on the appropriate traffic calming measures and clarified the applicant's level of responsibility. Those were not actual mitigation measures that were required, and the applicant proposed the dollar value to limit his liability.

**Councilor Collette** asked if there had been any thought to increasing pedestrian, bike, or other mode of access to the site. She noted the curb tight sidewalk.

**Mr. Johnson** said the applicant did look at different modes of transportation in that area and found this was not a pedestrian-friendly environment. The area was segregated by the railroad and Hwy 224 and did to really have a lot of pedestrian activity. The main focus was to improve the main mode of transportation, which was the vehicle trips. The attentions were focused on how best to move cars. There were pedestrian amenities that Gramor liked to incorporate in its designs, but there was a limited amount of space. In some locations there might be room to meander the sidewalk a bit. If the sidewalk were pulled back further, there would be some additional impacts at the corner because of the narrowness of the site. The sidewalk would be constructed in the ultimate six-lane location to facilitate future expansion. This would lower the cost for the City in the future. There would be a greenspace median or landscaped strip until the six-lane section was constructed.

**Councilor Collette** asked for a description of the access between the two developments.

**Mr. Johnson** said the primary pedestrian connections were at the signals. These would be addressed further in the site design. One of the ideas in this type of retail development was to make it as easy as possible for people to get there

Testimony in Support of the Application:

**David Aschenbrenner**, Hector Campbell NDA Chair, 11505 SE Home Avenue, Milwaukie. The neighborhood had a presentation by Gramor, and the members voted to support the project although Hector Campbell did not directly touch the property. His neighborhood was concerned about the transportation and pedestrian issues. The neighborhood was hoping that ODOT would do some signal changes at the Oak Street intersection and add a left-turn light or stagger the lane turn traffic so that drivers could make left-turns more easily. He understood asking ODOT to do anything on Hwy 224 was not easy. The NDA was also concerned about the railroad crossings but understood it was outside the parameters of this particular project. There were projects in the budget for improvements, and he hoped that some of the money being set aside would help those projects. He understood the applicant looked at the intersection at 32<sup>nd</sup> Avenue and Harrison Street and hoped for some realignment to make it less confusing for drivers. He understood Gramor was not looking for any drive-through types of facilities, and the neighborhood would encourage that not to happen. He

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hoped for a restaurant on the order of McGrath's. The neighborhood felt this was a good development and a first step in telling the community and investors that things were happening in Milwaukie. He commented on the North Main Village project, the King Road Safeway, and the Gramor proposal.

**Councilor Loomis** commented that one of the conditions was that drive-thru's were not allowed.

**Diane Quick**, 12694 SE Where Else Lane, Milwaukie. She was a 10-year Milwaukie resident. Prior to that, she was president of the Happy Valley City Council. She served on the Clackamas County Economic Development Commission, was Citizen Involvement chair for all of Clackamas County, and served on the Children and Youth Coordinating Council. This was the first time she had ever spoken on behalf of a developer. She read about this proposed development in *The Pilot*. She knew Gramor and knew its quality of work. If they said they would do something, then they would unlike other developers who would promise the moon and pave Mt. Hood if they thought there was a profit. She worked part-time at Chico's in Gramor's Lake Oswego development. She commented on wages and noted that people working in Gramor centers made far above minimum wage. There was something to be said about where one worked. In Lake Oswego, there were part-time people, women who wanted to get back into working as well as college students. Depending on the tenant, these people were trained to be managers and assistant managers and transferred to other stores. She was impressed with what she saw being done in Milwaukie and appreciated the Council and staff. For so many years Milwaukie was segregated by animosity and bad feelings. When one saw a company like Gramor coming into community, one was talking about class and vision. She thought this development would enhance the community. Gramor had little turnover in any of its projects. That could not be said for Pan Pacific in the Milwaukie Marketplace. When reading Pan Pacific's comments, she thought there might be another purpose in speaking about how they wanted to protect their people and access. She believed they wanted to protect their business because Pan Pacific saw a company with a lot of class locating in the City. She saw this as a first step in a partnership with Gramor. Milwaukie was already going to do the Village, and everyone was excited about that project. She knew Barry Cain and his company. She knew what the company did and how they did it. She saw this as a first step to prove to Milwaukie what kind of a developer Gramor was. She thought the Council would see other things happening in the downtown. The kind of businesses that Gramor located enhanced areas and did not take away. She hoped the City Council would go with the Planning Commission's recommendation and thanked the group for putting Milwaukie back on track.

Meeting recessed at 8:50 p.m. and reconvened at 9:00 p.m.

Testimony in Opposition to the Application:

**Julie Wisner and Patty Wisner**, 3325 SE Wister, Milwaukie. They provided a packet of information. **Ms. J. Wisner** was a member of the Milwaukie Traffic Safety Board for 10 year and co-chair of the 34<sup>th</sup> Avenue Task Force that was a volunteer citizen group committed to solving excessive speed and volume problems on 34<sup>th</sup> Avenue. The 34<sup>th</sup> Avenue Task Force, Milwaukie Traffic Safety Board, and City Council worked

cooperatively to install a speed bump pilot project in 1992 that won statewide recognition for Milwaukie from ODOT and the Alliance of Community Traffic Safety. As a Traffic Safety Board member, she helped write the Neighborhood Traffic Management Plan and the Traffic Calming Manual with installation guidelines. She studied neighborhood traffic management issues at Portland State University taught by the City of Portland Bureau of Traffic Management. She worked as a volunteer on several regional transportation working groups including the Regional Center Working Group that focused on cars and freight and laying out truck routes in Milwaukie. She attended numerous traffic management seminars by the City of Portland Bureau of Traffic Management at Portland State University and Oregon State University. Her involvement in traffic issues began in 1986 when Hillman Properties proposed the Milwaukie Marketplace. It caused quite an impact on 34<sup>th</sup> Avenue. Overnight it went from 1,500 cars a day to over 3,500 trips per day when the shopping center doors opened. She had Tom Lancaster's traffic engineering study on 34<sup>th</sup> Avenue from January 1994. There was not a problem before the Marketplace opened. After it happened, the 34<sup>th</sup> Avenue Task Force was formed and reported problems with excessive traffic volumes and speeds. It was believed that 34<sup>th</sup> Avenue was used by through traffic that had neither an origin nor a destination on that street or in the neighborhood. The speed bump program was born, and after that the first neighborhood traffic management plan was introduced to the City of Milwaukie. She worked hundreds of hours with the City of Portland traffic engineers to adapt and downsize their plan for a city of Milwaukie's size. The Traffic Safety Board labored over that document and brought a good program to Milwaukie. It was working. Speed bumps addressed speeds and not volumes, at least those on 34<sup>th</sup> Avenue. They were 22-foot Seminole speed bumps that allowed traffic to flow. They did not address the excessive volumes, which she was told would be addressed later. It was not addressed yet, and that was 1994. The speeds were slower, and she was happy with that. Now the street was threatened with more volumes because of the development at Hwy 224 and Oak Street. The concern of the neighborhood was large volumes of through traffic used 34th Avenue. Through traffic was defined as traffic that had no destination on that street. In the packet she provided a list of trucks on page 16 that used 34<sup>th</sup> Avenue since the Marketplace opened. There were no trucks before. Some of those were Anheuser-Busch, Resers, Englander 18-wheelers, Koala Springs, Miller Beer, Frito Lay, Hostess Cakes, Pepsi, Coca cola, Wonderbread, Ocean Beauty, 7-Up, Dreyers, Entemann's, Albertson's 18-wheelers, Little Debbie's Eagle Snacks, Pierre's, along with Silver Eagle, Parr Lumber, and list went on. From this problem, it took years to get "No Trucks" signs which did help; however, they were still experiencing trucks even with the speed bumps. Trucks were getting lost, and Ms. J. Wisner suggested larger signs at either end of the street. Metro did a study for the Hillman property. During the process of approving the shopping center, Metro kept talking about the traffic study it did. They ran the numbers and found the traffic impact would be low. By its own admission, there would be 773 cars. After the shopping center went in, there were 2,000 more trips per day on her street. She contacted Metro about the study because she wanted to know the validity. Metro was approached to do the traffic study because they thought it would put an undue burden on the streets. When she approached Metro she got a fax (page 19 of the material submitted by the speakers) that said Metro did not produce a formal

report. The scope of work only called for a sketch analysis to determine potential vehicular flows. The City staff was responsible for documentation and presentation of the data from Metro. People thought a comprehensive traffic study was done, but she came to find out it was a sketch analysis. That was long after the problem started. Ms. J. Wisner referred to the City Council notes on page 22 from 1986. The street has been compromised, and the livability would never be the same. In the December 16, 1986, City Council minutes, Public Works Director Steve Hall said staff was concerned about traffic intrusion into the neighborhood and that steps would be taken to minimize any problems. That did not happen. It was not until 1992 that the 34<sup>th</sup> Avenue Task Force was formed and brought the Neighborhood Traffic Management Program to Milwaukie. She personally spent thousands of dollars adding laminated glass windows to abate the noise problem. She erected a six-foot cedar fence to block the view of the 2,000 plus cars that went by each day. She was a lifelong Milwaukie resident and remembered the quality of life people once had. She believed the quality of life could be somewhat restored if there was neighborhood traffic management. Gramor proposed \$10,000 for traffic calming. Ten years ago the five speed humps cost \$4,000, so \$10,000 would not go far. She was on the phone most of the day with Kathy Mulder from the City of Portland Bureau of Traffic Management. She pulled up the entire Oak Street area on her global imaging program. She said that because of the sight distances the dogleg curve and site distance at the top of the hill that 34<sup>th</sup> Avenue was already carrying too much traffic. It was dangerous. There were tons of accidents on that street. The speed bumps did mitigate some of that. The street would need curb extensions which were much more expensive than speed bumps. She wondered about the accountability of the developers for the things that happened to the neighborhood. She went to a seminar called Calming Cascadia at Oregon State University. If all else were equal, most people with a choice between living on a high volume, high speed street or a quieter street would choose the quieter street. They did choose that way. As a result, people with fewer choices resided on streets with poor environments. People with little choice living in a harder environment would care less for their surroundings and inevitably the neighborhood would deteriorate. As the neighborhood deteriorated, people with fewer choices replaced the people leaving, and a variety of social problems began. The trend caused property values to drop and eventually led to ghettos in central areas. Realtors said to her the houses on 34<sup>th</sup> Avenue would have to be devalued because of the amount of through traffic. The through traffic had no destination on that street, and traffic calming could mitigate that as promised in 1986 in the City Council minutes. Drivers had a choice. They could choose a different street. They could quit cutting through the neighborhood. They could stay on McLoughlin Boulevard instead of cutting off to Hwy 224 and skirting over 34<sup>th</sup> Avenue to get to Oatfield. They can stay on McLoughlin Boulevard and go all the way to Oak Grove. Traffic was coming from Oak Grove, and sometimes she followed it. Tom Lancaster also said that one of the objectives of his project was to reduce the amount of through traffic on 34<sup>th</sup> Avenue. She had a lot more to say and wished she had as much time as the developers. She lived for the last 20 years with the impacts left by developers.

**Ms. P. Wisner** discussed traffic impacts after shopping centers were developed. In the early 1990's 3,500 cars were documented. There were at least 3,500 cars going by her house lately. Today, Kathy Mulder told her that was equivalent to having one car every

ten seconds every day. This really impacted livability. She had to listen to constant engine noise and constant loud stereos. There was constantly litter in front of the houses. There were traffic problems. There was speeding sometimes. Sometimes cars were hit. There were little kids on the street. The speed bumps helped but did not solve the volumes. She wanted the City Council to understand from what she heard at the Planning Commission meeting when Gramor stated its traffic counts for one hour of peak time, they said that 36 cars would likely be generated. The City of Portland traffic engineer told her today that that had to be multiplied 10 times to get the daily count of traffic per day. According to the City of Portland that would be 300 – 400 cars per day generated by the new development and not 36. 34<sup>th</sup> Avenue was a local collector intended to carry local traffic in the City of Milwaukie and not to carry regional traffic that should be on arterials. 46% of the trips were regional, non-Milwaukie trips on 34<sup>th</sup> Avenue. She asked that the City Council step up to the plate and seriously look at this livability and traffic problem on a medium density local collector street. It was getting out of hand. People sold their homes and moved away from the neighborhoods, and they had kept up their properties. Now their houses were being bought and not kept up. Property values were going down. It was not pleasant to live on a busy street. One woke up every morning to lots of road noise even on weekends. She also went to bed with a lot of road noise. Only when it snowed and the City was brought to a halt was there a time of quiet. That only happened every few years. She asked that the City of Milwaukie and the developer do a traffic volume mitigation study on 34<sup>th</sup> Avenue and look at and implement a re-routing of non-local traffic from 34<sup>th</sup> Avenue. The material she provided had some layman's ideas of what mitigation measures might be taken. Many of those were suggestions from Kathy Mulder in the City of Portland. Ms. Mulder was familiar with the street and was on site during the speed bump program. Ms. Wisner wanted to see some actual physical changes to drop the volumes and re-route the traffic to the main arterials. It would only cost Gladstone and Oak Grove motorists a few more seconds to route themselves to Hwy 224 without using 34<sup>th</sup> Avenue. She requested the City Council to work with the traffic engineers to make those changes. The report contained factual data and did not contain any hearsay or rumors. She would like to see more development happen in downtown Milwaukie. She spoke with a Gramor employee and he indicated the company had looked at downtown for development but because of the parking requirements Gramor determined the Oak Street site was more economical. She was not sure if that was true or not but that was what she was told as an inquiring citizens. She urged the City Council to help. She lived in a medium density, built-out neighborhood that carried a load of traffic. The neighborhood was willing to do its part as a local collector, and it needed its leaders to help them in order to keep it livable and safe for the children. It became a less pleasant place to live over the past ten years.

**Councilor Barnes** asked if this issue was brought to the Lake Road NDA.

**Ms. P. Wisner** was the NDA chair at one time and had been talking about this for years. They thought the problem was solved. She was alarmed now that there was going to be another development with additional volumes that would impact the street. Gramor said at least 50% of the trips would come from the south, and that meant 34<sup>th</sup> Avenue.

Nothing was taken to the NDA because she and her sister were the most knowledgeable people on this issue in the NDA.

**Ms. J. Wisner** said frankly they did not know the development was going on. Both were working and busy on the night of the NDA meeting.

**Councilor Barnes** asked if they had anything in writing from the City of Portland because it seemed to conflict with what Mr. McCourt reported.

**Ms. J. Wisner** called Portland because she was told the traffic study was only done for one hour and would put 36 more trips on the street.

**Councilor Barnes** understood that Misses Wisner called the woman who worked for the City of Portland and had a discussion.

**Ms. J. Wisner** said Ms. Mulder was very familiar with the street, and she helped them think through strategies in 1992. She was very familiar with what had been going on from the 34<sup>th</sup> Avenue speed bump project.

**Councilor Barnes** understood Ms. Mulder had no knowledge of this developer and the plans.

**Ms. J. Wisner** told Ms. Mulder what was going in at the other end of the street and the size. She did not need much more than that to generate an average daily traffic count.

**Councilor Barnes** asked if Ms. Mulder would provide something in writing representing the City of Portland and provide copies to Mr. Gessner.

**Ms. J. Wisner** said she would ask.

**Councilor Barnes** referred to the Planning Commission minutes in which Ms. J. Wisner was quoted as saying she attended a meeting where business owners pleaded with the City not to let this development go in because it would defeat downtown development. She asked which meeting that was.

**Ms. J. Wisner** replied that was in 1986 with the Milwaukie Downtown Development Association when Hillman Properties proposed the Milwaukie Marketplace. They pleaded with Hillman not to go in because the development duplicated everything that was downtown and would kill it. The cleaners, candy store, restaurants, hair salons, grocery store, pharmacies. Subsequently most of those went out of business. That comment was from 1986 and had nothing to do with Gramor. The Lake Oswego development was lovely. She would be totally in favor of this if it went in the downtown area as long as they met the traffic calming criteria and did not put higher volumes on the street. In 1993, they diagramed closing the Oak Street exit. It was all in the report. It only took drivers 20 seconds to get to Freeman Way, and there were no homes there. There was also an exit from Hwy 224 that brought people back to Lake Road, so they did not have to cut through the neighborhood. It only cost a few more seconds of driving time and gave the residents a lot more livability. Residents did not have a choice but drivers could choose or be routed to a different area. That would be preferable for a neighborhood that was hammered by shopping center traffic. Milwaukie needed to protect its neighborhoods. She had a good friend who wanted to locate here

but said she would not buy in Milwaukie because the City did not protect its neighborhoods. She bought a house in Lake Oswego because that City did.

**Ty Wyman**, representing Pan Pacific Retail Properties, 851 SW 6<sup>th</sup> Suite 1500, Portland, Oregon 97204. He submitted a letter to the City Council. Pan Pacific was focused on the portion of Oak Street from Campbell Street to Hwy 224. The traffic engineer would focus on the issue this rezone would have on that street.

**Todd Mobeley**, Lancaster Engineering, 800 NW 6<sup>th</sup> Avenue, Suite 206, Portland, Oregon 97209. The original traffic impact study done by the applicant showed without the proposed zone change that the intersections on Oak between Hwy 224 and Campbell would operate at capacity. With the zone change in place those intersections both operated over capacity. Pan Pacific requested that that condition be mitigated. The 36 new trips were primary trips only and did not include pass by or traffic coming off Hwy 224. That traffic would impact the intersections along Oak Street.

**Mr. Wyman's** client was not opposed to the proposal per se. Pan Pacific suggested two additional mitigating traffic conditions.

**Mayor Bernard** observed that it was already almost impossible to get out of the Marketplace at almost all of the driveways. He thought Pan Pacific had a responsibility to get involved with Gramor and City staff to partner and improve that section of the street. He thought the Planning Commission's ideas of rezoning the entire area would resolve a lot of the issues and recommended moving in that direction. There were a lot of opportunities with Monroe Street.

**Mr. Wyman** noted the 120-day clock was not running so the parties could be sent off to the windowless room. Pan Pacific was not part of the applicant's outreach.

**Mayor Bernard** commented on a rezone in Omark in which the details were worked out quickly.

**Mr. Wyman** would include the neighbors because they were passionate and had done a lot of work.

**Councilor Barnes** asked Mr. Wyman to address some of the neighbor's concerns. It was not just coming in and out; it had to do with the railroad tracks. Half the town shut down when the train comes through. It was not just a matter of the number of lanes on the street. How did one figure that out because it affected any customer that went to either of the properties? The bottom line was constituents wanted to drive through their own town. She asked if the two of those could help make it work.

**Mr. Wyman** said the planning process in this state worked. Gramor knew the process fundamentally and worked in getting all of the stakeholders sitting down. It could be lengthy with a lot of chairs around the table. He was sure that it could work here and this was not the most difficult traffic management situation in the region. ODOT needed to be at the table because it was the dominant land use planning force. Milwaukie had two state highways going through it. The applicant's counsel spent time on the Portland Planning Commission, and he was very strong in bringing together people with diverse interests to come up with solutions in difficult situations. Pan Pacific would be happy to sit down with Gramor.

### Neutral Testimony

**Ed Zumwalt**, Historic Milwaukie NDA Chair, 10888 SE 29<sup>th</sup> Avenue, Milwaukie. Since the Milwaukie Marketplace went in, it was inevitable that the other block would be developed. The questions before the Council and staff was who would do it, how would it be done, and how good would it be? Would the town be torn apart by the traffic problems? 34<sup>th</sup> Avenue and his neighborhood was incrementally being chewed up and spit out. Every development near the City caused drive-through traffic. Mr. Shirey attend the NDA and fielded question on the Downtown Parking and Traffic Management Plan. This would take care of a lot of the problems in the Historic Milwaukie Neighborhood. Every neighborhood was affected in the perimeter. The new McLoughlin Boulevard project, Murphy property, and MacFarlane property would chew up the neighborhood. He was glad to hear Pan Pacific and Gramor would work together and solve the problems. He always felt the Hwy 224 and Oak Street trip was white knuckle and was one of ODOT's lesser efforts. Just to the north was the railroad. West was the one-car light at Hwy 224 and Monroe Street. Mr. Shirey thought something could be done about that light. Gramor reached out to the community through the neighborhood. The City would want something that was conducive to economic development. This came down to one thing, and it was the Council's and staff's job. The residents did not have a way to control things but could give their input. Neighborhood livability needed to be protected. He was basically in favor of the proposal, but no matter how much the City needed economic development, it needed livability to create a nice town. Gramor would have to be trusted to put in the kinds of businesses residents wanted. Mr. Zumwalt had about 20 people at his NDA meeting.

### Additional Staff Comments

**Mr. Gessner** addressed a number of items raised in testimony and in questions from the Council. He did not want anyone to believe there would only be 36 trips associated with the Gramor development at peak hours. That number was highly discounted because of the pass-by trips and diverted trips subtracted from the total number. He recommended the applicant address that number.

He addressed Councilor Collette's question about bike lanes. Staff was very concerned about that. The Transportation System Plan (TSP) showed bike lanes on that segment of street. That Plan was created in 1994 - 1997 when conditions were different particularly in regards to signal timing at Hwy 224 and the level of growth. The Planning Commission heard testimony about bike safety concerns. Staff recommended that bike lanes not be included at this time because of the safety issues. There were a number of turning movements happening at those two driveways and a lot of visual activity. Staff felt this might be a place where bikes should be walked on the sidewalk. The other problem was dimensional constraints. He did not feel there was sufficient right-of-way to allow the developer to make good use of his property. There was also a concern that bike lanes on both sides of the street would affect the Pan Pacific property, and Pan Pacific said it would oppose any such plan that would result in a taking of its property. At some point in the future, the next fix of the street should include bike lanes and taking safety concerns into consideration.

Mr. Aschenbrenner raised concerns about pedestrian improvements at Oak Street and Railroad. The application would go back to the Planning Commission for review of site-specific development proposal. At that review, pedestrian access improvements would be considered at the nearby intersections. It was quite unlikely that a crosswalk anywhere other than Oak and Railroad or at Hwy 224 and Oak would be proposed. The amount of activity would create an unsafe crossing if it were at mid-block.

**Mr. Gessner** referred to Mr. Wyman's letter of February 14, 2005. The City Council heard testimony that the development of the site would exceed capacity of Oak Street. With the proposed mitigation, the capacity would be met. He referred to a letter from ODOT that approved the proposed mitigation to meet performance standards. Based on ODOT's letter and Mr. McCourt's report, it was determined the street would meet performance standards and capacity needs following mitigation. Mr. Wyman's letter discussed the Transportation Planning Rule. It required that during Comprehensive Plan amendments or Zoning Map amendments that the City make a finding as to whether or not there as a significant impact to a transportation facility. Typically it applied to roadways and related facilities. Mr. Firestone believed the provision to protect the capacity of the roadway did not apply to private driveways. There was testimony to the Planning Commission on this matter. It would be exceedingly difficult for cities to develop if they had to apply performance standards to individual driveways. He referred to an attachment from Mr. Mobeley with a number of suggestions. At the Planning Commission hearing on this, the applicant indicated these were done or would be done. The requested changes were already incorporated into the conditions contained in the adoption ordinance. Number two called for a scalable plan showing the actual improvements that would happen at the time of site plan review when Gramor returned to the Planning Commission.

**Mr. Gessner** discussed the Hillman project in terms of traffic studies. It had only been about four years since Milwaukie adopted the requirement to conduct traffic studies for development. At the time Hillman did its study, they did not project the traffic 15 years into the future. They only counted traffic on the day it was built. There was a huge difference in how the analysis was conducted now versus then. Given today's standards, that was not the best way of doing business. Additionally, the study did not look at neighborhood through trip impacts. Now, there was a specific requirement for a neighborhood impact review, and that was conducted for this study. The applicant acknowledged there would be an impact and offered to contribute up to \$10,000 to help mitigate the impacts. He noted that it was infrequent for a developer to willingly accept that responsibility. The applicant submitted a letter dated February 15, 2005 with revised conditions. Staff worked with the applicant on these revisions, and they did reflect the changes he requested. Staff supported the amendments and felt they were consistent with the recommendation of the Planning Commission and largely had to do with clarification of the timing, role, or nature of the requirement.

**Councilor Collette** was concerned about the cumulative traffic impacts in that whole area. She asked if a recommendation could be added having to do with a comprehensive multimodal traffic management study and mitigation. People brought up concerns about 32<sup>nd</sup> and Harrison, 34<sup>th</sup> Avenue, Oak Street, and the railroad. She was not saying Gramor should fix them, but if the City was changing the zoning on that block

and the next, then it was an opportunity to look comprehensively at the traffic problems. There were at least half a dozen problem intersections in that area.

**Mr. Gessner** said the problems that the neighborhoods were experiencing were all inherited and came largely with the increased growth on Hwy 224. Travel behaviors were different. People owned more cars and drove more. The transportation funding and improvement process lagged far behind the needs. Cities were playing catch-up and had to deal with some very difficult problems. The project itself could not afford to deal with all of the problems. Milwaukie was doing a couple of things to look at concerns more comprehensively. The main idea was to submit a pre-application request to ODOT and TGM program to re-do TSP. There would not be results from that for two years. He thought it was necessary because of the differences in circumstances between 1994-1997 and now. Staff has been discussing looking at Hwy 224 at Harrison and Monroe Streets. This experience pointed out in very stark terms that the City was grossly unprepared to deal with these types of problems. They were talking about the need, desire, and interest in economic development, and there were two sites that might come online soon – the Murphy and MacFarlane properties. The purpose of this study would be to use some existing funds to identify the potential problems related to those projects. The City Council could direct staff to take a more comprehensive approach.

**Mayor Bernard** commented on the Sunrise Corridor, which would feed onto Hwy 224. ODOT would have to resolve these problems, and it was a good opportunity to partner with Clackamas County and Metro to get some of those intersections fixed. Phase 1 of Sunrise was not that far away.

**Councilor Loomis** thought there were several small things that could be done to improve the flow of traffic. He was concerned about drivers cutting through on Monroe Street. He asked what the love affair was with right turn only arrows? He commented on the intersections of Harrison Street and 32<sup>nd</sup> Avenue and Hwy 224 and 37<sup>th</sup> Avenue.

**Mr. Gessner** would be happy to have a follow-up discussion with ODOT on this issue. ODOT's priority was to keep Hwy 224 traffic moving. Some of the upcoming projects would identify needed fixes particularly at Harrison Street and 32<sup>nd</sup> Avenue. He believed the City was responsible for striping at that intersection.

**Councilor Loomis** noticed that no homeowners or renters appeared and asked if they were all notified.

**Mr. Gessner** said they were notified.

**Mayor Bernard** talked to many of the residents when he was campaigning, and most of them were excited about moving.

**Mr. Gessner** noted there was good attendance at neighborhood meetings and at the Planning Commission hearing. He had not heard of any objections from the property owners and understood they were anxiously awaiting a decision because their lives were on hold pending this decision. All of them had contracts to sell and needed to know what to do next. He understood they were all in favor and had signed consent agreements. He reviewed the tax statements for the area to get a better understanding

of the real market values. About half were billed to the site addressed and apparently owner-occupied and the rest went to another address.

**Councilor Loomis** discussed the other block on Myrtle Street that was not being rezoned and asked if the City Council would be able to put any stipulations on traffic.

**Mr. Gessner** replied that would be subject to the Planning Commission's review of the traffic study for the specific site development.

#### Applicant's Rebuttal

**Chris Clemow**, Group Mackenzie, 0690 SW Bancroft Street, Portland, Oregon 97239. This was a Plan amendment/zone change and not a specific development application. He compared the trip generation of a reasonable worst-case development scenario under the current zone designation and the proposed zone designation. The bottom line was a comparison between the two. For the proposed zone change, he analyzed a 38,000 square foot shopping center as the worst-case development scenario. That development alone would generate 331 trips in the PM peak hour. With that type of development, there would be pass-by trips and shared and diverted trips based on the development's attractiveness for trips on the adjacent roadway system versus new trips. There were 93 new trips that would not have otherwise been out there in the PM peak hour. Those 93 trips were compared against the trip generation of the existing R-2 zoning. It was assumed in the R-2 zoning that there would be 51 apartments and the existing non-conforming medical/dental use. Those combined would generate 57 primary trips. Subtracting the 57 from the 93, one had 36 trips, which were the primary trips. Totally, one would see 331 trips in and out of the driveway but relative to the potential.

**Steve Abel**, Stoel Rives, with 22 years experience and 30 in real estate. Usually in a setting of rebuttal he did not have the opportunity to follow Mr. Gessner who did a very good job of clarifying issues. He did point out the letter written in response to Mr. Wyman's letter that was presented to the Planning Commission before its hearing. Mr. Mobeley's memorandum had four requests for conditions. Each of those conditions was examined by the Planning Commission and satisfied or carried forward in a modified form in the conditions of approval that were ultimately adopted by the Planning Commission. The first two conditions had to do with design showing the five- and six-lane segments. The second had to do with the access point to this particular development that would be considered as part of the site design review. The final one was the six-lane segment. Mr. Shirey's testimony about the need for the lane in about 15 years was consistent with the testimony before the Planning Commission. Those conditions continued to make sense as carried forward from the Planning Commission to the City Council. With the clarification of the conditions that were entered into by Mr. Gessner, the applicant believed those conditions of approval matched with what was testified to and what was required by the Planning Commission and appropriate for this particular development.

**Mr. Cain** said Gramor was committed to leaving an area better than when it came in, and the company felt good about that. In this case the big improvement would be on Oak Street. It would be widened and hopefully something could be worked out with ODOT for a protected left-turn. Gramor spent a lot of time getting all of these properties

together with options and buying some, and that was meaningful. The reason the owners were not here was because they supported the proposal. Many of the property owners on Myrtle Street had also expressed interest; however, it was too big a job with all the property owners involved. Gramor would have an eye across the street. He knew the Planning Commission was concerned about the layout and its being conducive to further redevelopment. Gramor was committed to working through the design review process with its neighbor, staff, and ODOT.

**Mayor Bernard** closed the public testimony portion of the hearing at 10:07 p.m.

Discussion

**Mayor Bernard** agreed there were inherited difficulties. He hoped the groups would work together to solve some of the problems. He owned a house on Myrtle Street in 1973 because he heard it was going to be developed. This area was ripe for redevelopment for as long as he could remember. He discussed downtown redevelopment. The problem was not that someone developed something outside of downtown. The problem was that the City fathers at the time gave up because they felt they could not compete. A lot of those businesses went away not because of the Marketplace but because of change. He spent his whole life downtown and knew all of those people. Probably Hallmark had an effect on Graham's. The restaurants needed to step up and invest in their properties. He was born and raised in a house on the corner of Wister Street and 35<sup>th</sup> Avenue. 34<sup>th</sup> Avenue was always a busy street, and there needed to be some signage. He would like to do some counts on that street, and he could not imagine the traffic volume was that high. His wife's daughter lived on 34<sup>th</sup> Avenue. She purchased her house for very little four years ago, redeveloped it, and the value tripled since she bought it. There were a lot of rentals at the bottom of the hill, and that was why that area was decaying. Citywide, there were 40 – 65% rentals. The Planning Commission did the hardest work and listened to all of the public comments in two hearings. He was a strong believer in the advisory boards and commissions, and he felt the City Council should support them all the way.

**Councilor Collette** agreed that Gramor was looking at an area that already had a lot of problems. This proposed development did not create those problems, and she did not anticipate that the proposed development would fix them. She wanted to see Milwaukie and ODOT working in a comprehensive way to try to repair traffic patterns all around that area. She echoed Mayor Bernard's compliments of the Planning Commission and believed the important questions were asked and answered. She supported their work. She would love to see Gramor develop in downtown Milwaukie. She loved the Lake View development in Lake Oswego, and she believed this was something Milwaukie could do also. She stressed she did not want Gramor just to take its foothold there because the City needed its help downtown too. This area was already in the Comprehensive Plan for commercial development, and it was probably time to make the zone change. She recommended the City Council go along with the rezoning and extend it to the Myrtle Street block and mitigate traffic problems around the entire area. She discussed the feasibility of curb pop-outs on 34<sup>th</sup> Avenue. Living on a busy urban street herself, she identified with the concerns.

**Councilor Loomis** was impressed with not having a lot of neighbors at the hearing screaming about development, and that said a lot about Mr. Cain and Gramor. He thought the development would improve Oak Street and help with the flow. He supported the application. It was impressive when neighborhood organizations supported the proposal. He thought Mr. Cain went about it the right way and would continue to do so.

**Councilor Barnes** commented her peers indicated she might have been a little hard on Mr. Cain. She appreciated the fact that he stood up to her questions. He was obviously an organized developer with an incredible staff. To have this many people with him

spoke to who he was as a businessman. There were other people who came into the community that did not show this level of support and respect, and that said a great deal to her. She invited Mr. Cain to be a part of the economic development team. The Planning Commission worked hard as team members to sort through the tough questions and get the answers. She was impressed with the Commission's work. Finally, she supported the additional jobs being brought into the City. Anything that brought in \$9 million to the tax base gave the City another chance to keep its library open and maybe another officer on the street. She thought if the City continued to have problems with ODOT, then it was time to call the State Representative and Senator and the Governor's Economic Development office to say Milwaukie needed help. She appreciated the hard work by Planning Commission and the applicant.

Decision:

**It was moved by Councilor Barnes and seconded by Mayor Bernard for the first and second readings by title only and the adoption of an ordinance amending the Comprehensive Plan Map from residential high density to commercial and amending the Zoning Map from R-2 to general commercial and adopting the findings and conditions as recommended by the Planning Commission including those revisions as proposed by the applicant and agreed to by staff. Motion passed unanimously among the members present. [4:0]**

**Mr. Swanson** read the ordinance two times by title only with the amendments.

**Part 3. Conditions.**

- a. Land uses including "Grocery stores" greater than 27,000 square feet, "fast food drive thru's", and "Convenience Markets, with and without pumps" as defined by the Institute of Transportation Engineers are prohibited to ensure that site generated traffic does not exceed traffic generation estimated for the purpose of demonstrating compliance with intersection performance standards in effect at the time of this approval. This condition is intended to maintain acceptable level of service for Oak/224 intersection. If the applicant demonstrates transportation facilities are, or can be made adequate in accordance with city transportation adequacy requirements, for the restricted uses above, this condition may be voided by action of the City Council at a public hearing. Modification of this condition is subject to recommendation of the Planning Commission and approval by the City Council.
- b. Sufficient right-of-way from the applicant's site shall be dedicated to accommodate a six lane cross section, thereby allowing construction of a future right turn lane, at westbound Oak onto northbound 224, by the City at the time in the future when it is needed. The City recognizes the need to minimize the right-of-way required to accommodate these improvements. The dedication is estimated to be 20 feet along the south site frontage, and tapering back to the existing right-of-way in the northern portion of the site; this estimate is not prescriptive for determining the actual dedication need. A modification to roadway design criteria may be required and should be allowed to minimize right of way needed along the entire frontage of Oak Street including the existing dental office located on the northwest corner of

- Oak and Campbell. The dedication must be made prior to issuance of any building permits for redevelopment of the site.
- c. At the time of development, construction of road improvements shall be provided to accommodate an additional left turn lane from northbound and southbound Oak Street onto 224, resulting in a five lane cross section. Required improvements include signal reconfiguration, pedestrian and other improvements limited to those required to construct the 5 lane cross section to Oak/Washington Street north and south of 224. The concept plans the applicant has submitted (attachment 6 to the staff report) illustrate the 5 lane cross section improvements required to satisfy this condition. The attachment also shows the 6 lane section contemplated by the City. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site.
  - e. A dedicated right turn lane shall be striped on Oak Street for the movement onto Railroad Ave. A dedicated left turn lane on Railroad Avenue westbound onto Oak shall be striped. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site.
  - f. Specific neighborhood traffic calming improvements shall be determined at the time of development review by the Planning Commission at its sole discretion to provide the greatest public benefit. As a condition of approval on a specific development proposal, the Planning Commission may accept cash contributions up to \$10,000 in-lieu of developer provided traffic calming measure identified by the Planning Commission. Under either scenario, the applicant's responsibility to satisfy this condition shall be limited to a maximum contribution of \$10,000. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site.

The City Recorder polled the Council: Councilors Loomis, Barnes, and Collette and Mayor Bernard "aye." [4:0]

**ORDINANCE NO. 1947:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE COMPREHENSIVE PLAN LAND USE MAP 7 FROM LAND USE DESIGNATION "RESIDENTIAL HIGH DENSITY" TO "COMMERCIAL" AND AMENDING THE MILWAUKIE ZONING MAP FROM "RESIDENTIAL ZONE R-2" TO "GENERAL COMMERCIAL CG" FOR THAT AREA BOUND BY OAK STREET, EXPRESSWAY 224, MYRTLE STREET, AND CAMPBELL STREET.**

**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 meeting at 10:25 p.m.

*Pat DuVal*

Pat DuVal, Recorder

CITY COUNCIL MEETING – FEBRUARY 15, 2005

Approved Minutes

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# AGENDA

## MILWAUKIE CITY COUNCIL FEBRUARY 15, 2005

MILWAUKIE CITY HALL  
10722 SE Main Street

1952<sup>ND</sup> MEETING

### 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 Finance 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. **City Council Minutes of February 1, 2005**
  - B. **Intergovernmental Agreement with Oregon Department of Transportation for the 42<sup>nd</sup> Avenue Improvements Project**
  - C. **North Main Public Professional Development Services Contract Award**
  - D. **Milwaukie/North Clackamas Enterprise Zone Boundary Expansion -- Resolution**
4. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
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. **Public Contracting Rules – Resolution (Gary Firestone)**
  - B. **Gramor Development, Oak Street Rezoning (John Gessner)**  
**Comprehensive Plan Map Amendment**  
**Files: CPA-04-02, ZC-04-02, TPR-04-07**

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.)*

**Amend Code Section 13.28.120 to Add Public Improvement Credits for Development Subject to Systems Development Charges – Ordinance  
(Paul Shirey)**

7. **INFORMATION**

- A. **Center/Community Advisory Board Minutes of December 10, 2004**
- B. **Public Safety Advisory Committee Meeting Notes of January 27, 2005**
- C. **February Transit Center Report**

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.

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
FEBRUARY 1, 2005**

**CENTENNIAL QUILT DEDICATION**

**Mayor Bernard** dedicated the Centennial Quilt that was recently installed in City Hall. He especially thanked Eileen Fitzsimmons for playing a huge role in making the quilt a reality and Nancy Dietrich for donating the materials. Council further thanked all who contributed to the creation of this wonderful gift.

**JoAnn Herrigel**, Community Services Director, expressed her appreciation to **Morgan St. Jean** who did all of the planning to get the Centennial Quilt hung.

**CALL TO ORDER**

**Mayor Bernard** called the 1951<sup>st</sup> meeting of the Milwaukie City Council to order at 7:10 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,<br>City Manager    | Stewart Taylor,<br>Finance Director  |
| Gary Firestone,<br>City Attorney | Paul Shirey,<br>Engineering Director |

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

**CONSENT AGENDA**

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda that included:

- A. **Resolution 6-2005**: A Resolution of the City Council of the City of Milwaukie, Oregon Appropriating a 2004 Homeland Security Grant;
- B. **Resolution 7-2005**: A Resolution of the City Council of the City of Milwaukie, Oregon Authorizing Execution of Deeds in Favor of the Oregon Department of Transportation;
- C. Memorandum of Understanding with Oregon Department of Transportation and Special Transportation Area (STA) Management Plan for McLoughlin Boulevard; and
- D. City Council Minutes of January 4, 8, and 18, 2005.

The motion to adopt the Consent Agenda passed unanimously. [5:0]

## AUDIENCE PARTICIPATION

None.

## PUBLIC HEARING – NONE SCHEDULED

## OTHER BUSINESS

**Mr. Swanson** reported on several items.

He announced that Art Ball resigned from the Budget Committee. He was a good person to work with and a valuable member of the Committee.

### Metropolitan Transportation Improvement Projects (MTIP)

**Mr. Swanson** discussed the project selection and funding process and provided handouts on the topic. Milwaukie had several proposals that were submitted for funding one of which was actually put forward by Metro and TriMet for South Corridor planning. The original request was for \$3.7 million, and it was recommended at the level of \$2 million. Milwaukie also submitted the town center street and sidewalk improvement project for Main and Harrison Streets and 21<sup>st</sup> Avenue. That project was recommended for \$.45 million. The third project was Lake Road Multimodal, which was not put forward for further consideration in the MTIP process. Congressman Blumenhauer authorized the project in the amount of \$3 million with a total project cost of \$6 million. President Bush never signed the bill authorizing the \$3 million. Milwaukie requested MTIP funding in order to make up that \$3 million, but it was not recommended for further consideration. Milwaukie would resubmit a \$6 million request to the current Congress. Congressman Blumenauer and staff have been very helpful, and Mr. Swanson believed there would be a substantial authorization for Lake Road. Whether that would be signed into law was another question.

**Mr. Swanson** reviewed the 12 MTIP funding categories – planning, bike trail, pedestrian, regional travel options, transportation-oriented development, transit, road capacity, road reconstruction, boulevard, freight, large bridge, and green streets. Lake Road was in the road reconstruction category. Within each of those categories there were a number of projects that went through several cut processes. Lake Road and three other road reconstruction projects made the first cut, but none were recommended for funding. Of the four projects, Lake Road was ranked fourth. Milwaukie would have to leap over three other projects in order to get funding. The anticipated funding was \$62 million, and the recommended programs totaled \$57 million. That left \$5 million to be allocated in all the categories “recommended for further consideration in final cut” and below. The cost of those recommended for further consideration totaled \$23 million. It was a very difficult process, and there was a rationale for trying to fund certain categories. Road reconstruction seldom did well because it was not really future-oriented. It was not as if Lake Road was one of the few projects not to be funded. The City would now turn its attention to Congress.

**Mayor Bernard** thought there should be a life-safety category. There was already one fatality on Lake Road, and it was getting busier. At some point, it needed to be said that nothing more could be added. He was a member of the Joint Policy Advisory Committee on Transportation (JPACT), and some very talented people threw projects

on at the last minute. For example, 172<sup>nd</sup> Avenue was not on the original list. It moved up the list because evidently someone offered to do some job-based development. The Oregon City Amtrak station was not on the list either. Last year Washington County added some projects that bumped Lake Road off the list. This meant putting the Lake Road project on year after year and trying to make it happen. Clackamas County as a group was still supporting a package that included Lake Road. He discussed the number of jobs that would be created by a \$6 million project on Lake Road.

**Councilor Barnes** asked the original question. After reviewing and getting some good information from Metro Councilor Brian Newman, her question remained. The last e-mail from the Lake Oswego representative to JPACT had two misconceptions. This woman said Milwaukie was being taken care of because the request for light rail was accepted at \$2 million. Neither she nor Councilor Loomis remembered that request, so she asked Councilor Newman about it. Her concern was this Lake Oswego representative took that as gospel and sent the e-mail out with the misconception that Milwaukie requested \$2 million for light rail. Her concern was that there was a breakdown in communication with the Lake Oswego representative who seemed to believe Milwaukie requested money for a \$2 million engineering study that was actually a TriMet request. That had nothing to do with Milwaukie. Why was TriMet getting \$2 million to fund a study that they should take care of themselves?

**Mayor Bernard** explained it was a regional project. She defined the \$2 million as Milwaukie's project, but light rail was not Milwaukie's project.

**Councilor Barnes** wanted that information passed along to this representative. Her second issue had to do with preparing a formal letter to the League of Oregon Cities (LOC) regarding school speed zones. She wanted to convey the message that if the legislature required one more change in signage that it should also provide the funding. She understood from Mr. Shirey that Milwaukie spent about \$10,000 to change the signs the first time. She proposed that the City Council send a letter to the LOC asking it to lobby the legislature to say that if the legislature changed its mind again on the speed zone signs, then the legislature should provide funding to cover the cities' costs for enforcing this change.

**Councilor Stone** would change the letter to say not "if" but "when." The legislature definitely needed to change things because it was too confusing. She supported the proposed letter because cities have spent hundreds of thousands of dollars implementing this new law, and it did nothing but confuse motorists. In her opinion it made certain streets even less safe. On 32<sup>nd</sup> Avenue, the flashing yellow beacons were gone, and the signs read, "when children are present" and not "when lights are flashing." In her opinion that street was very dangerous to cross, and there were lots of children on it all the time. 32<sup>nd</sup> Avenue was an example of a street that was not fully protected by this new law. She supported sending LOC a letter asking it to lobby the legislature to get funding to change the signage if new regulations were passed.

**Councilor Collette** supported the proposed letter. This was an example of another unfunded mandate, and cities no longer had the discretionary funds to change out the signage each time the legislature made a decision.

**Councilor Loomis** suggested that letters going to Milwaukie's legislators as well.

**Mr. Shirey** would provide the costs of the signage change.

**Councilor Barnes** said when listening to a local talk show, a state representative said it was the League of Oregon Cities and all the local cities that came up with the plan to generate additional revenues.

**Mr. Swanson** distributed a letter from Portland State University regarding the North Clackamas Annexation Study Group.

### **Executive Session**

**Mayor Bernard** announced the City Council would meet in executive session pursuant to ORS 192.660 (h) – consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

### **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 meeting at 7:25 p.m.

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Pat DuVal, Recorder



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Paul Shirey, Director of Engineering  
Brion Barnett, Civil Engineer**

**Subject: Intergovernmental Agreement (IGA) with Oregon Department of  
Transportation for the 42<sup>nd</sup> Avenue Improvements Project**

**Date: Jan 28, 2005 for the February 15 meeting**

### **Action Requested**

Authorize the Mayor to sign a new Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) to allow for the continued design and construction of the 42<sup>nd</sup> Avenue Street and Storm Water Improvements Project.

### **Background**

The City applied for and received an Oregon Bicycle and Pedestrian Program grant administered by ODOT in December 2002 to complete curb, sidewalk, and storm water improvements to both sides of 42<sup>nd</sup> Avenue between Johnson Creek Boulevard (JCB) and Olsen Street. The City entered into an IGA with ODOT in February 2003 to complete the project work. Under the terms of the IGA, all project work was to be completed by October 31, 2004.

Due to work load demands staff was unable to complete the project work prior to the IGA expiration date. Staff coordinated with ODOT to issue a new IGA to allow the City additional time to design and build the project. Under the terms of the new IGA (see Attachment A), all project work must be completed by October 31, 2008.

### **Concurrence**

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the proposed IGA and support signing it in order to proceed with design and construction of the 42<sup>nd</sup> Avenue Street and Storm Improvements Project.

### **Fiscal Impact**

The total project cost is estimated at \$365,000. This exceeds the \$330,000 cost estimate in the IGA due to additional design and construction costs associated with existing trees in the public right-of-way. The City must pay all costs in excess of the \$200,000 grant. A breakdown of the costs follows:

|                     |           |
|---------------------|-----------|
| ODOT Grant Funding: | \$200,000 |
| City Funding:       | \$165,000 |
| Total Project Cost  | \$365,000 |

The proposed 2005/2006 budget includes \$165,000 for the City's share of the project and is allocated between streets and stormwater.

### **Work Load Impacts**

The Engineering Department will manage the project with support from Neighborhood Services as necessary. The project is part of the work program for both departments.

### **Alternatives**

The Council has the following alternatives:

- Suggest amendments to the attached IGA
- Do not authorize the Mayor to sign the attached IGA

### **Attachments**

Attachment A – IGA with Oregon Department of Transportation

## **WALKWAY/BIKEWAY PROJECT AGREEMENT** **Project Name: 42<sup>nd</sup> Avenue Sidewalk Construction**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the Milwaukie, acting by and through its elected officials, hereinafter referred to as "Agency."

### **RECITALS**

1. SE 42<sup>nd</sup> Avenue is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in ORS [366.514](#), funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of [Article IX, Section 3\(a\)](#), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. Agency and State entered into agreement 20473 on February 11, 2003, to provide funding for this Project. This Agreement expired prior to completion of the Project, but after State contributed \$100,000 towards completion.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

### **TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to design and construct sidewalks on SE 42<sup>nd</sup> Avenue from SE Johnson Creek Blvd to SE Olsen Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. Agency has determined that the actual total cost of the Project is estimated to be \$330,000. State has already provided funding in the amount of \$100,000, which was expended under Agreement number 20473. State shall provide additional funding for the Project in an amount not to exceed \$100,000. Agency shall provide a match in

the amount of \$130,000 and shall be responsible for any portion of the Project which is not covered by State funding.

3. The term of this Agreement shall begin on the date all required signatures are obtained. Construction shall be completed no later than October 31, 2008. The Agreement shall terminate upon completion of construction and final payment, or five calendar years, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. Agency shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
3. Agency shall, upon completion of Project, submit to State Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
4. Agency represents that this Agreement is signed by personnel duly authorized to do so by the City Council.
5. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval.
6. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279.312](#), [279.314](#), [279.316](#), [279.320](#), and [279.555](#), which hereby are incorporated by reference. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. Agency shall require its contractor to indemnify State and name State as a third party beneficiary of the resulting contract and shall carry at a minimum personal

injury and property damage insurance with a single limit of \$1,000,000 for all claims arising out of a single accident or occurrence. Agency shall also insure that the contractor also provide an additional \$1,000,000 excess insurance coverage over the basic \$1,000,000 coverage. Each annual aggregate limit shall not be less than \$2,000,000 when applicable. The contractor shall include Agency and State as named insured on policies issued for this Project, or shall furnish an additional insured endorsement naming the same as additional insured to the contractor's existing public liability and property damage insurance. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees as additional insured. Agency shall provide a copy of the certificate to State prior to construction of the Project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.

8. Agency shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of Agency or its officers, employees, subcontractors, or agents under this Agreement.
9. Notwithstanding the foregoing defense obligations under paragraph 8 above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$200,000.
11. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt

under ORS [656.126](#). Agency shall ensure that each of its subcontractors complies with these requirements.

13. Agency shall, upon completion of Project, maintain the Project at its own cost and expense and in a manner satisfactory to State.

## **STATE OBLIGATIONS**

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by Agency.
2. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency the sum of \$100,000. When added to the initial deposit from Agreement number 20473, the final deposit will equal the State's share of the originally estimated costs (\$200,000). Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement under this Agreement is \$200,000. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.

- c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If any funds are remaining from the advance deposit, they shall be refunded to State.
  4. State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  5. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on November 17, 2003 as part of the Fiscal Year 2004-2007 Local Assistance Bicycle and Pedestrian Program. The funds are included in the Statewide Programs Section of the [2004-2007 Statewide Transportation Improvement Program \(STIP\)](#).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 3, Paragraph 12, which authorizes the Director and Deputy Director, Highways to

Agency/State  
Agreement No. 22280

approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

On October 8, 2004, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, Paragraph 10, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

The City of Milwaukee, by and through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
City Counsel

Date \_\_\_\_\_

Agency Contact:  
City of Milwaukee  
Attn: Brion Barnett, Associate Engineer  
6101 SE Johnson Creek Blvd  
Milwaukee, OR 97206

STATE OF OREGON, by and through its Department of Transportation

By \_\_\_\_\_

Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Bicycle/Pedestrian Program Manager

Date \_\_\_\_\_

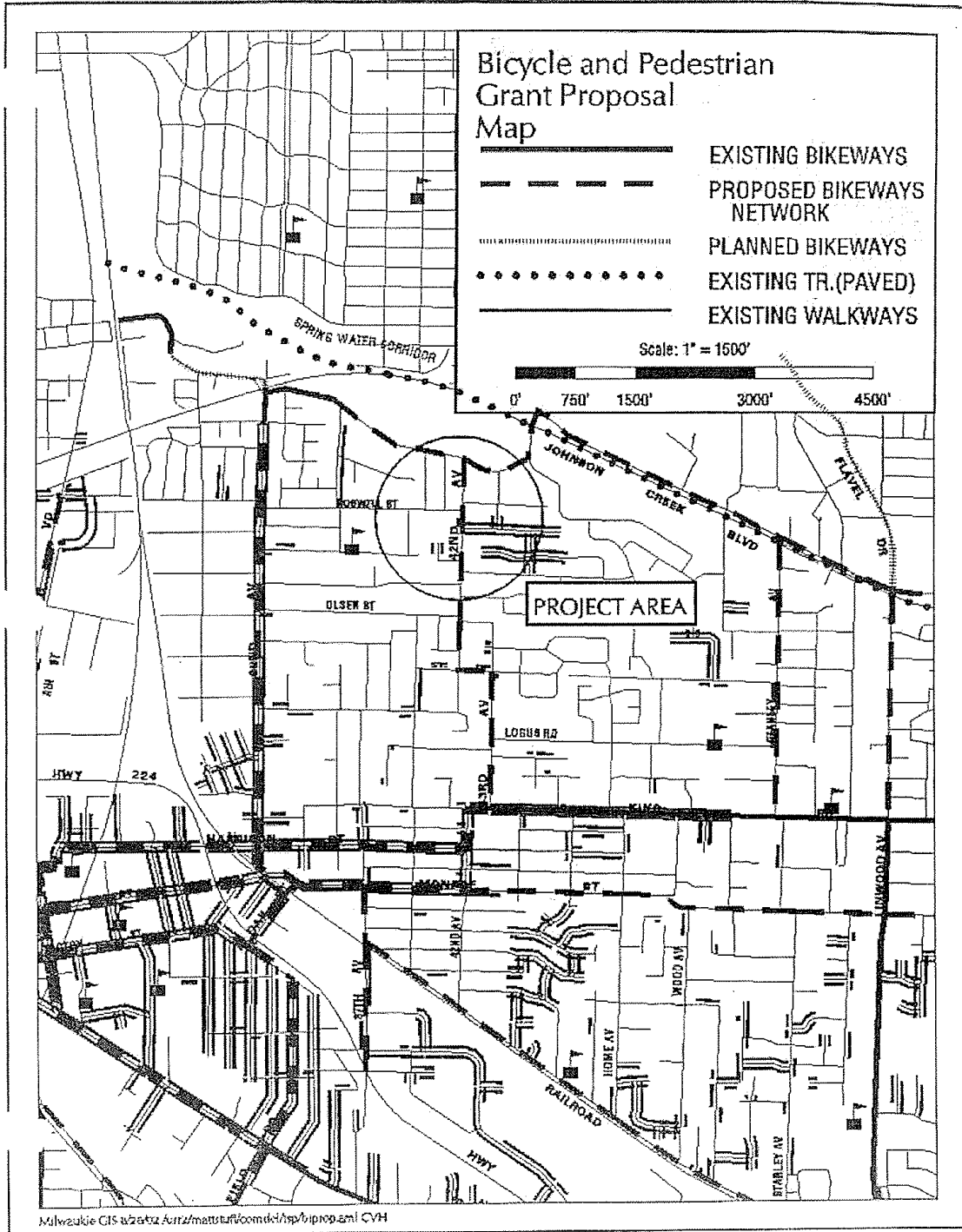
By \_\_\_\_\_  
Region 1 Manager

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

Exhibit "A"





**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Jeffrey King, Project Manager**

**Subject: North Main Public Professional Development Services Contract Award**

**Date: February 1, 2005 for February 15, 2005 Council Meeting**

**Action Requested**

Authorize the City Manager to sign a contract for Professional Development Services-North Main Redevelopment Project with Shiels Oblatz Johnsen in the amount of \$13,075.00

**Background**

This contract will provide services to assist the City in bringing the North Main Redevelopment project to the ground breaking and construction stage. City staff has been assisted with professional development consulting services since the initial conception of a mixed-use project for the former Safeway site. The consulting team of Shiels Oblatz Johnsen provides critical technical assistance and professional expertise with mixed-use projects. They have helped the City successfully guide the project through developer qualification, developer selection, development of the Memorandum of Understanding and Development and Disposition Agreement, and planning approval. This contract is for the next phase of services including meeting coordination and oversight of construction documents and permitting processes that will bring the project to both onsite and offsite construction.

Staff recently advertised a Request For Proposals (RFP) to select a Professional Development Consulting Team for the North Main Redevelopment Project. In order to comply with public contracting law regarding dollar threshold limits, the

City was required to solicit for additional services through a formal RFP process. The RFP addressed the following work items:

- Assistance with overall project coordination of the North Main Redevelopment Project.
- Oversight of the Final Design/Construction Documents for the onsite improvements.
- Oversight and coordination of the permitting for onsite improvements and preliminary/final engineering for offsite improvements.
- Manage meetings with the Project Management Team and City Development Team.

The City received two proposals. The proposals were evaluated on five criteria: experience and qualifications of the firm, qualifications of the project team, project understanding and approach, public project experience, and cost. The selection committee using a point system of 100 points selected Shiels Oblatz Johnsen as the finalist. Contractors who bid were:

### **Contractors**

Vickers Nelson Associates  
1420 NW Lovejoy Street, Suite 416  
Portland, OR 97209

Shiels Oblatz Johnsen (SOJ)  
520 SW Sixth Ave, Suite 400  
Portland, OR 97204

The key points that led to the selection of SOJ. Include:

- Extensive experience with urban mixed use projects
- Strong familiarity and understanding of the project. SOJ has provided on-going development services to the project since its inception.
- Strong public involvement experience
- Within budget

### **Concurrence**

Community Development staff and City Manager concur with this contract award.

### **Fiscal Impact**

The total cost for this project is \$13,075.00. Payment for the contract will come from current City budgeted funds available for this project.

**Work Load Impacts**

The Community Development Project Manager and will manage this contract. This project is included in the work plan for this fiscal year.

**Alternatives**

1. Authorize the City Manager to approve the personal services contract.
2. Elect to defer the project to a later date.
3. Take no action.



**To: Mayor and City Council**

**Through: Mike Swanson, City Manager**

**From: Jeffrey King, Project Manager**

**Subject: Milwaukie/North Clackamas Enterprise Zone Boundary Expansion**

**Date: January 27, 2005 for February 15, 2005 Council Meeting**

**Action Requested**

Approve a resolution expanding the Milwaukie/North Clackamas Enterprise Zone boundary by three parcels at the east end of International Way

**Background**

The City of Milwaukie, Clackamas County and the City of Portland have been partners in the Milwaukie/North Clackamas Enterprise Zone since December 4, 1997. The Enterprise Zone program provides a financial incentive to encourage industrial businesses to invest in expanding facilities and equipment, hiring more employees and paying better wages with benefits. The program offers three to five-year property tax exemptions to qualified industrial businesses in the Milwaukie and Clackamas Areas (see map attached).

The City of Milwaukie and Clackamas County staff recommends a boundary expansion of 9.3 acres encompassed in 3 tax lots that are zoned for industrial use (see map attached). The City recently annexed the largest of the lots, a 6.49-acre parcel now owned by Panattoni Development Company. The other two adjacent lots remain in unincorporated Clackamas County. All three government sponsors must vote to support the change.

This boundary expansion is critical to the development and marketing of the International Way Business Center located at the corner of International Way and Harmony Road. Enterprise Zone incentives can also help improve the quality of

the development by lowering the initial costs to businesses. The proposed 80,000 square foot International Way Business Center will be constructed by Panattoni Development Company. The Planning Commission approved the project on January 11<sup>th</sup>, 2005. The project will include five light industrial buildings ranging in size from 12,000 – 20,000 square feet. It is estimated that the development could support the creation of 100 new jobs. This type of flexible light industrial space is in great demand and will help meet the expansion and relocation needs of existing and new businesses.

There are already three businesses interested in locating in the park and in applying for the Enterprise Zone program. This proposed boundary expansion would benefit the local area through increased employment opportunities, higher assessed value to support public services and greater industrial land utilization in Milwaukie.

The process for Enterprise Zone boundary expansion requires supporting resolutions from all three partners in the program. A draft resolution, approved as to form by City of Milwaukie counsel, is attached for review. After all organizations have approved the resolution, the Enterprise Zone boundary expansion request is forwarded to the Oregon Economic Development Department for approval. Clackamas County Commissioners are expected to pass a resolution at their February 3<sup>rd</sup> meeting. The resolution is also expected to come before the Portland City Council shortly. If all parties are supportive, it is estimated that the boundary could be officially expanded by March. This timeframe supports the construction schedule and summer 2005 opening date of the International Way Business Center development.

### **Concurrence**

Community Development, Planning and the City Manager have reviewed this project. They concur with the expansion request.

### **Fiscal Impact**

Enterprise Zone incentives provide abatement from property taxes for eligible companies, excluding land, for a 3-5 yr period. Speculative buildings that are constructed without a specific business occupant and new jobs are not eligible. Upon expiration of the enterprise zone benefits, all property is fully taxed.

### **Work Load Impacts**

Existing staff is managing this project. It is part of the existing Community Development staff work plan. Clackamas County staff administers the enterprise zone on behalf of the City of Milwaukie. County staff works in close coordination with City staff.

**Alternatives**

- Approve the resolution supporting the boundary expansion as presented
- Approve the resolution supporting the boundary expansion with modifications
- Decline to support the resolution

**Attachments**

- Enterprise Zone Boundary Resolution
- Existing Enterprise Zone
- Proposed Expansion Area Maps

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN THE MATTER OF AUTHORIZING A MILWAUKIE/NORTH CLACKAMAS COUNTY ENTERPRISE ZONE BOUNDARY CHANGE.**

**WHEREAS,** This matter coming before the City Council acting as the governing body of the City of Milwaukie; and

**WHEREAS,** It appearing to the City Council that in 1997, Clackamas County, the City of Milwaukie and the City of Portland successfully applied for an enterprise zone, which was designated as the Milwaukie/North Clackamas Enterprise Zone by the Director of the Oregon Economic Development Department on December 4, 1997; and

**WHEREAS,** It further appearing to the City Council that this Enterprise Zone and the three to five-year property tax exemption that it offers for new investments in plant and equipment by eligible business firms are critical elements of local efforts to increase employment opportunities, to raise local incomes, to attract investments by new and existing businesses and to secure and diversify the local economic base; and

**WHEREAS,** It further appearing to the City Council that officials of Clackamas County, the City of Milwaukie and the City of Portland are agreed in requesting a change in the boundary of the Milwaukie/North Clackamas Enterprise Zone that would add 9.5 acres in three tax lots in approximately the areas indicated in the attached map(s) (Exhibit 1) and legal description (Exhibit 2), such that the amended Enterprise Zone would be configured according to the attached map and description; and

**WHEREAS,** It further appearing to the City Council that this change in the boundary of the Milwaukie / North Clackamas Enterprise Zone would be instrumental in the development of an 80,000 square foot industrial development with 5 buildings that could create an estimated 100 jobs. This would benefit the local area through increased employment opportunities, higher assessed value to support public services and greater industrial land utilization in Milwaukie.

**NOW, THEREFORE, BE IT RESOLVED**

1. That the City of Milwaukie requests a change in the boundary of the Milwaukie/North Clackamas Enterprise Zone as shown in the attached maps and legal descriptions; and
2. Clackamas County, the enterprise zone manager, is hereby authorized to prepare and submit technical memoranda to the Oregon Economic Development Department, along with this resolution and other necessary documents, verifying that the requested boundary change to the " Milwaukie/North Clackamas Enterprise Zone" complies with the requirements of ORS 285.585 and section 2, chapter 835, Oregon Laws 1997, so that the request herein may be approved by

order of the Director of the Oregon Economic and Community Development Department; and

- 3. The three jurisdictions requests that the Director of the Oregon Economic and Community Development Department waive the distance maximum of 25 miles overall and/or of 15 miles between separate areas within the Milwaukie/North Clackamas Enterprise Zone pursuant to this requested boundary change; and

Introduced and adopted by the City Council on February 15, 2005.

This resolution is effective on February 15, 2005.

\_\_\_\_\_  
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

\_\_\_\_\_  
Pat DuVal, City Recorder

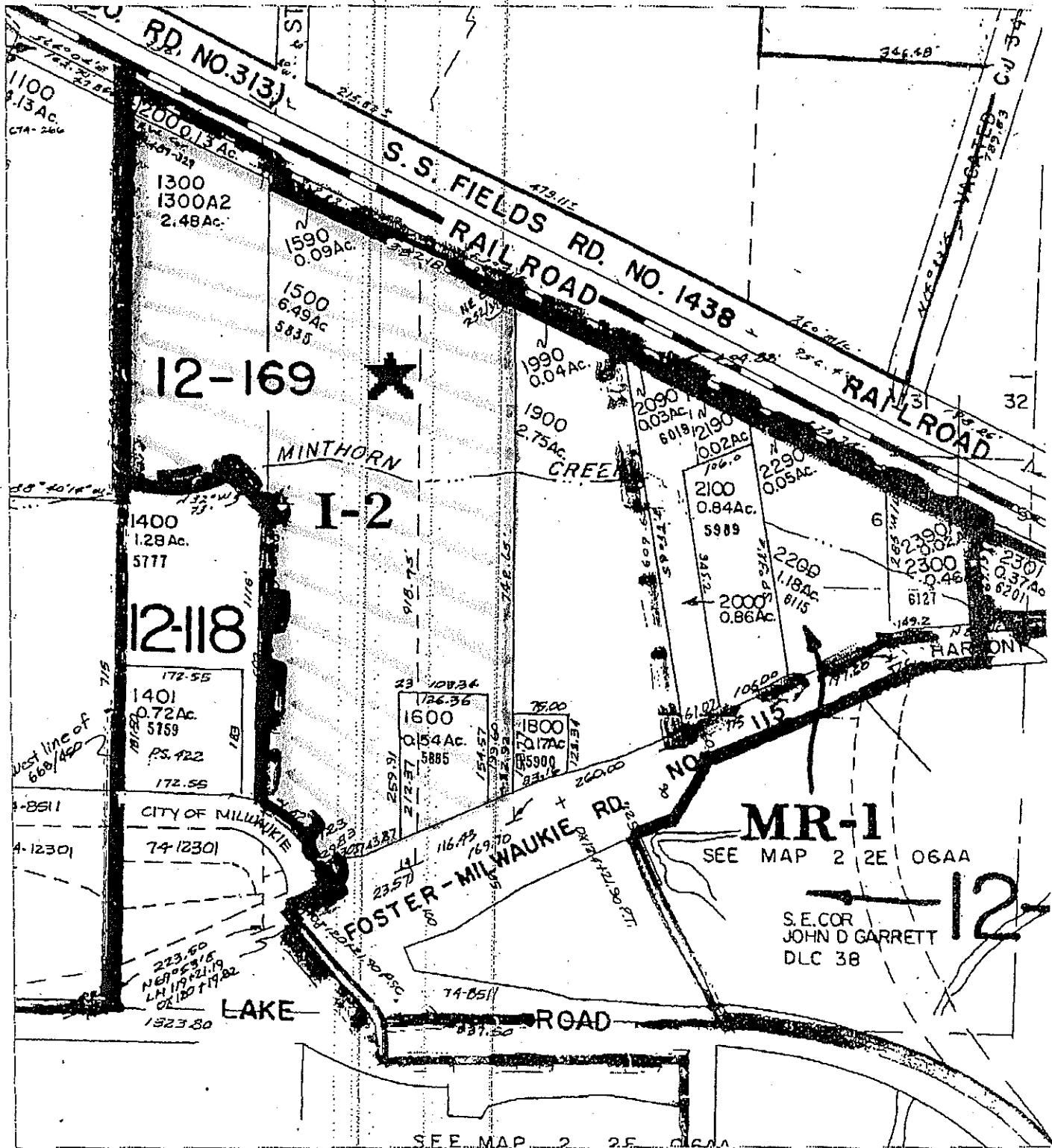
\_\_\_\_\_  
City Attorney

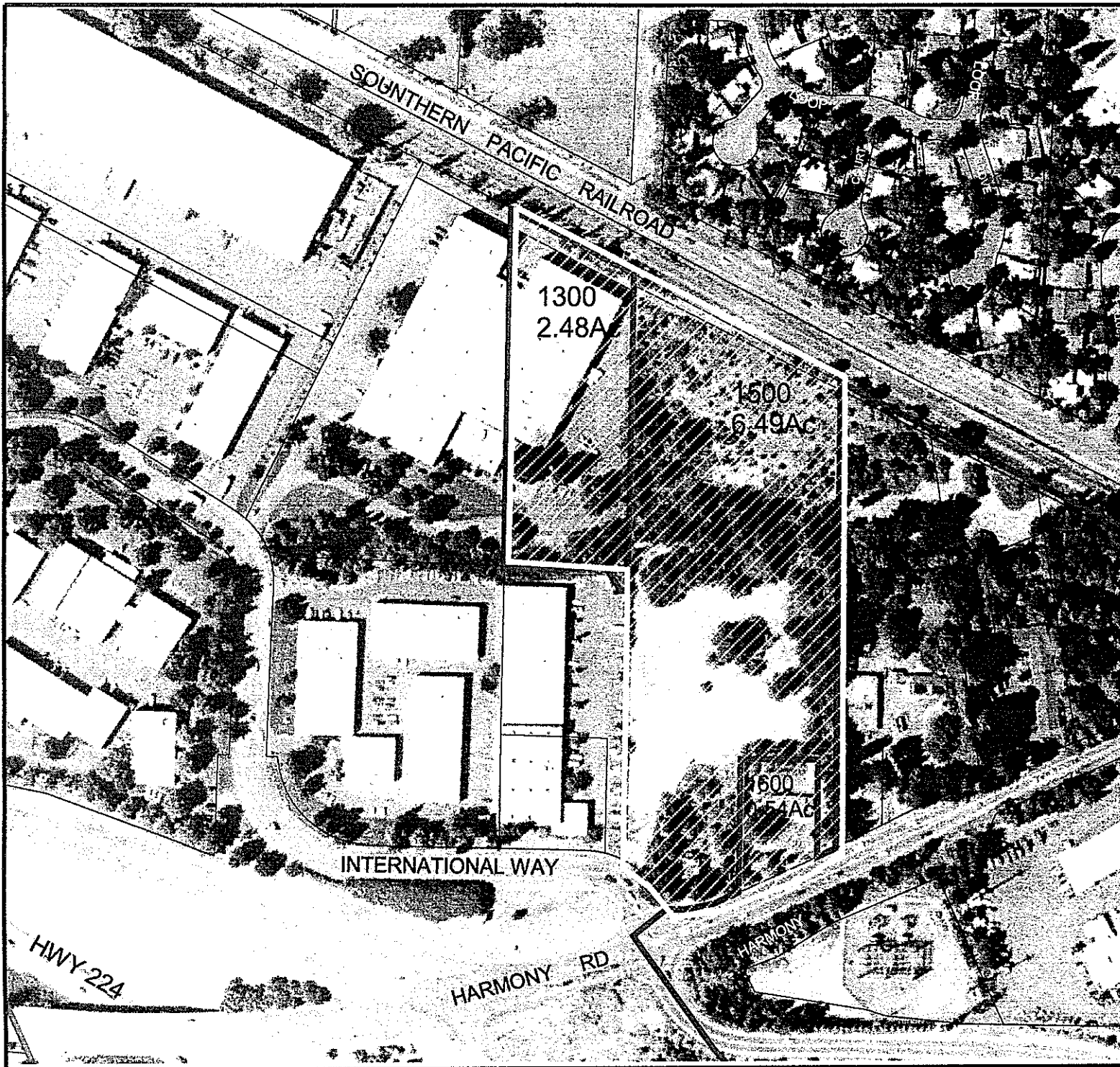
# TICOR TITLE INSURANCE



North

This map is furnished for illustration and to assist in property location. The company assumes no liability for any variation in dimensions by location ascertainable by actual survey.





# Clackamas County

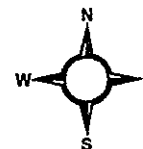
 City Boundary

Entire Area

 Taxlot

Total Square Footage:  
406,237.65

Total Acres: 9.51

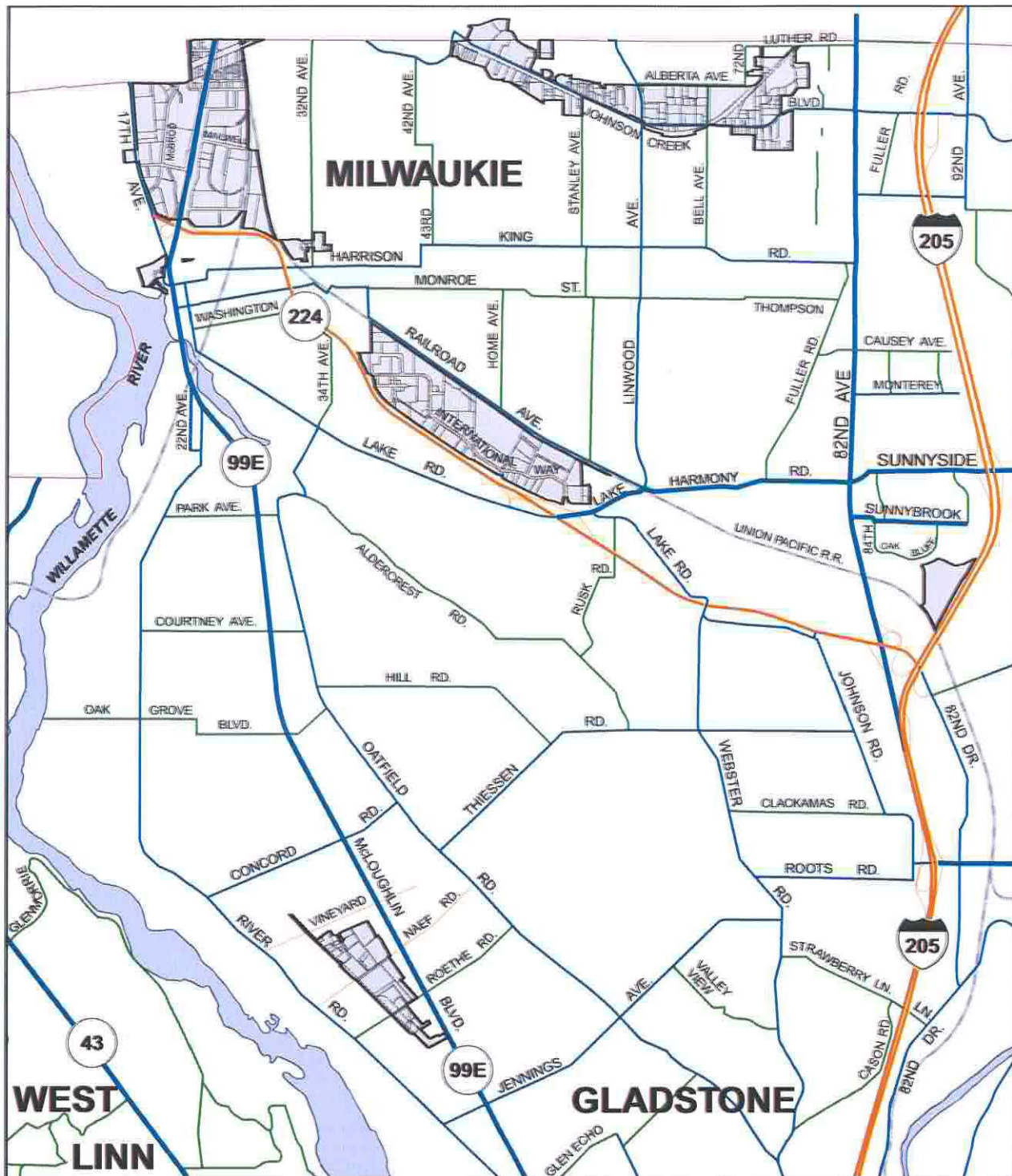


GEOGRAPHIC INFORMATION SYSTEMS

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
611 SE S. HAYWARD ST.  
CLACKAMAS, OREGON 97015

The information on this map was derived from digital databases from Clackamas County's GIS. Care was taken in the creation of this map but it is provided "as is". Clackamas County cannot assume any responsibility for any errors, omissions, or positional accuracy, and therefore there are no warranties which accompany this product. Although a Foundation from Local Property may have been used in the creation of this product, it is not a part of this product and is not a part of a Land Survey. Users are advised to verify information on this product before making any decisions.

# ATTACHMENT 3



DEPARTMENT OF TRANSPORTATION  
AND DEVELOPMENT  
502 Abernethy Road  
Oregon City, OR 97045

## Milwaukie / North Clackamas Enterprise Zone

This tax abatement program provides a financial incentive for industrial businesses to expand their facilities, invest in machinery, and hire new employees.

-  Enterprise Zone Boundary
-  Cities



**To: Milwaukie Local Contract Review Board (City Council)**

**Through: Mike Swanson, City Manager**

**From: Gary Firestone, City Attorney  
Pat DuVal, City Recorder**

**Subject: Public Contracting Rules**

**Date: January 13, 2005**

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**Action Requested**

**Adopt the attached resolution adopting new public contracting rules and findings in support of exemptions from formal bidding or proposal processes and rejecting the Attorney General model rules.**

**Background**

The last legislature adopted major changes to Oregon's public contracting statutes. Most of the changes take effect March 1, 2005, when the existing ORS Chapter 279 will be replaced by three new chapters, ORS 279A, 279B, and 279C.

The City's existing public contracting regulations, both procedural regulations and exemptions from the competitive bidding/proposal requirements will become ineffective on March 1 unless the City adopts new regulations expressly rejecting the Attorney General model rules.

The Attorney General rules are procedural only, so at a minimum, new regulations are needed to keep exemptions beyond the exemptions provided in the statutes. Furthermore, the Attorney General rules tend to be bureaucratic, lengthy and cumbersome.

The regulations contain most of the same provisions as the City's existing public contracting rules. Changes include:

- (1) Increasing the dollar amount for the exemption for contracts under a specified amount from \$25,000 to \$50,000. Contracts over \$25,000 must still be approved by the Local Contract Review Board (the Council), but can come to the Council after a process other than a formal competitive process.
- (2) Clearer provisions regarding protests.
- (3) Elimination of some exemptions that have not been used or that are unnecessary given the higher dollar threshold for the competitive process requirement.
- (4) Various technical modifications to comply with the revised statutes, including changes to the first tier contractor disclosure requirements.

### **Key Issues**

Should the City adopt new public contracting rules?

What should the threshold be for a formal competitive process? (The draft rules set the threshold at \$50,000, but the amount can be increased or decreased.)

### **Concurrence**

The City Attorney, City Manager, Finance Director, and Director of Engineering concur with the proposed regulations.

### **Fiscal Impact**

The regulations are intended to provide regulations that result in the most efficient contracting policy and procedures. Failure to adopt the regulations, in particular the exemptions, could result in increased transaction costs for the City without any cost savings from reduced contract costs. Adoption of the new rules is not likely to have a fiscal impact compared to current practice, but failure to adopt could have a negative fiscal impact.

### **Work Load Impacts**

The amendment is not likely to affect workloads of City staff. Failure to adopt could result in an increase in workload.

### **Alternatives**

The Council has the following decision-making alternatives:

1. Do not adopt the regulations, which would result in the Attorney General model public contracting rules being applicable. In that situation, the state statutes would apply directly, which exempt goods and services contracts under \$150,000 and public improvements other than transportation under \$100,000. The exemptions the City currently provides but are not contained in state law would not be applicable.
2. Adopt a revised set of regulations.

Attachment: Proposed Resolution, Including proposed Public Contracting Rules and Findings in Support of Exemptions.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, REPEALING EXISTING LOCAL CONTRACT REVIEW BOARD ADMINISTRATIVE RULES, ADOPTING NEW PUBLIC RULES AND FINDINGS, AND STATING THAT THE MODEL PUBLIC CONTRACTING RULES PROPOSED BY THE ATTORNEY GENERAL DO NOT APPLY.**

**WHEREAS**, the City of Milwaukie has previously adopted and used rules applicable to public contracting, including rules covering procedure and rules governing exemptions; and

**WHEREAS**, the legislature has adopted new statutes applicable to public contracting and revised rules have been drafted to comply with the new statutes;

**WHEREAS**, the City Council determines that the revised draft rules better suit the needs of the City than the proposed Attorney General model rules; and

**WHEREAS**, the City of Milwaukie finds that there will be future need for the City to enter into public contracts and that it is therefore appropriate for the City to adopt public contracting rules, consistent with the state Public Contracting Code;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Milwaukie, Oregon:

Section 1: Adoption of Rules. The City Council, as the Local Contract Review Board hereby adopts rules attached as Exhibit A pursuant to the authority granted the Board by Milwaukie Municipal Code Chapter 3.05, Local Contract Review Board. These rules shall apply to all contracting, purchasing, and disposing of surplus personal property by the City of Milwaukie.

Section 2: The Local Contract Review Board adopts the findings in support of exemptions included in the attached Exhibit B.

Section 3: The model rules adopted or to be adopted by the Attorney General do not apply to contracting for the City of Milwaukie.

Section 4: This resolution takes effect immediately upon adoption and the rules adopted under Section 1 shall be effective as to contracts that have not been advertised or entered into as of March 1, 2005. However, the public contracting rules in existence prior to this resolution shall remain in effect as to any contract entered into prior to March 1, 2005 or for which an invitation to bid or request for proposal is or has been advertised prior to March 1, 2005.

Introduced and adopted by the City Council of the City of Milwaukie,  
Oregon, on February 15, 2005.

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James, Bernard, Mayor

ATTEST:

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Pat DuVal, City Recorder

APPROVED AS TO FORM:

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Ramis, Crew, Corrigan & Bachrach, LLP  
City Attorneys



**To: Mayor & City Council**

**Through: Mike Swanson, City Manager**

**From: John Gessner, Planning Director**

**Date: February 4, 2005 for the February 15, 2005 Hearing**

**Subject: Gramor Development  
Oak Street Rezoning  
Comprehensive Plan Map Amendment  
Transportation Review  
Files CPA-04-02, ZC-04-02, TPR-04-07**

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### **Action Requested**

**Support the Planning Commission recommendation to change the land use and zoning designation allowing commercial redevelopment of the site and adopt the recommended findings and conditions of approval.**

### **Background**

The applicant proposes to redevelop the block bounded by Oak Street, Campbell Street, Myrtle Street, and Expressway 224 by demolition of existing homes and subsequent construction of a shopping center.<sup>1</sup> The proposal requires a change in land use designation and zoning as well as an evaluation of traffic and transportation issues.<sup>2</sup> The block presently contains a mix of single and multifamily homes and some commercial uses.

The Planning Commission conducted public hearings on January 11, 2005 and January 25, 2005 and adopted a motion recommending the City Council approve the

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<sup>1</sup> See the attached applicant's report for details of approval criteria.

<sup>2</sup> The existing use designation and zoning are High Density Residential and R-2 Residential respectively. The requested change is Commercial land use and CG – General Commercial zoning.

proposal with conditions on the rezoning requiring certain road improvements described in following sections.<sup>3</sup>

### *Site History & Existing Conditions*

Most of the existing houses in the 2.7-acre block were constructed in the late 1920's and 1940s prior to adoption of zoning regulations. The development pattern is typical for the area with a predominance of 5,000 square foot lots; area zoning has been multifamily (R-2) since the 1970s. The site contains two four-plexes, which were built in the late 1960s and early 1970's following construction of Expressway 224. The site also contains two offices, one of which will be demolished for subsequent commercial development.<sup>4</sup>

The adjacent Milwaukie Market Place site remained largely agricultural through the early 1990s when it was rezoned and subsequently constructed. Many of the surrounding land uses, with the exception of the Milwaukie Public Safety Building were in place in the 1960s.<sup>5</sup>

### *Land Use Patterns and Policy*

The present designation of the site as "High Density Residential" memorializes the development pattern that predates city planning efforts and land use changes brought about by construction of Expressway 224. The Oak and Myrtle Street blocks between the railroad and Expressway 224 make up a residential island within the commercial and industrial corridor stretching from the north industrial area southeast, through the Market Place and Business Industrial zone.

In 1998, the City designated the Murphy Plywood site located at 32<sup>nd</sup> and Harrison and McFarland site located at Oak, 37<sup>th</sup> and Railroad for high density mixed use development as part of the town center planning process. Access to transportation is a significant influence on retail, commercial, and industrial locations as evidenced by changes following construction of Expressway 224. Staff believes the proposed land use change is consistent with economic forces that have shaped the 224 corridor.

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<sup>3</sup> Draft minutes of these hearings are posted at the Planning Commission page of the city website [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org).

<sup>4</sup> The dental office on the corner of Campbell and Oak will remain; the small office on the corner of Oak and Expressway 224 will be demolished.

<sup>5</sup> This includes the residential block on Myrtle and commercial uses on Harrison Street. The McFarland site north of the Market Place has been vacant since the 1960s. The recently constructed Milwaukie Providence Medical Office Building on 32<sup>nd</sup> Avenue was constructed on the site of a former manufacturing operation.

While the City has policies encouraging preservation of existing housing, the larger question this proposal asks is, "Does it make sense given the location of the site?" If approved, it is likely there would be interest in rezoning the remaining residential properties north of Myrtle Street.

### **Key Issues**

1. Comprehensive Plan Map and Zoning Changes are subject to specific criteria including the following:<sup>6</sup>
  - There is public need for the change.
  - It will not adversely affect the health, safety, and welfare of the City.
  - Adverse development effects can be mitigated.
  - Public facilities, including the transportation system are adequate, or can be made adequate.
  
2. The applicant offers the following in support of the proposal:
  - There is market demand for additional retail development in the City, and hence a public need for the change.
  - Transportation and other public facilities already are, or can be made adequate to serve the development.
  - The project is consistent with the Milwaukie Comprehensive Plan, Statewide Planning Goals, and rezoning criteria.
  
3. Traffic and Transportation issues include the following:<sup>7</sup>
  - Oak Street must be widened to improve traffic flow and minimize adverse impacts to Market Place driveways.
  - Striping improvements that add dedicated turn lanes at the Oak Street and Railroad Avenue intersection are needed now.
  - The proposal will increase area traffic. Neighborhood traffic calming in surrounding neighborhoods is recommended.
  - Implementation of required road and intersection improvements, including "who pays for what?" The developer is responsible for a share of the costs associated with street improvements.

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<sup>6</sup> See Comprehensive Plan Chapter 2 – Plan Review and Amendment Process and Zoning Ordinance Chapter 900 – Amendments.

<sup>7</sup> The Neighborhood Through Trip Study is attached. The Traffic Study will be provided on request to staff. See also the attached January 12, 2005 memo from the City's consultant DKS Associates.

- Conditions of approval to ensure safe and adequate traffic conditions are recommended.
4. Staff believes that as conditioned, the application is consistent with approval criteria. The analysis of approval criteria is included in the following section, and the Recommended Findings and Conditions are found in Exhibit 1 of the attached Ordinance. As conditioned, the Comprehensive Plan and Zoning changes become effective only upon satisfaction of conditions of approval.
  5. Staff recommends that the required Oak St. improvements be incorporated into the Capital Improvement Plan if needed and that system development charge credits be provided for the value of the land dedication and associated developer contributions for the required improvements. City participation in the funding of the roadway improvements will likely be necessary due to legal limitations.

### **Analysis of Key Issues**

#### 1. Conformance to Comprehensive Plan Policies

Reference is made to page 13 through 32 of the applicant's report, which details relevant policies. Staff believes the application is consistent with the Comprehensive Plan as indicated in the following summary:

- a. The application has been processed and been subject to public review consistent with Chapter 1 Citizen Involvement.
- b. The proposal is consistent with specific criteria of Chapter 2- Plan Review and Amendments including:
  - *Conformance to Comprehensive Plan as detailed in this report.*
  - *There is a public need for expanding commercially zoned land.*

The market analysis submitted by the applicant demonstrates the need for up to 10 acres of commercially zoned land. The proposal also advances other public objectives including increasing employment potential in accordance with planned jobs capacity; bringing the site into conformance with the Town Center Plan, which calls for commercial development; and increasing tax base in the present time of fiscal stress.<sup>8</sup>

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<sup>8</sup> The Town Center Plan, adopted as part of the Comprehensive Plan calls for commercial land use and development of the area bounded by Campbell, Oak, Harrison, and 224.

- *The public needs cited above are best met by the proposal.*
- *The change is consistent with applicable Statewide Planning Goals.*<sup>9</sup>

Comprehensive Plans and implementing ordinances must be consistent with Statewide Planning Goals. Goal 9 Economic Development requires cities to zone adequate land for needed economic uses. Goal 11 Public Facilities and Services requires cities to plan for services sufficient to meet the needs of land uses consistent with adopted plans. Goal 12 Transportation requires consideration of impacts to transportation facilities at the time of a plan or zoning change.<sup>10</sup>

- The change to commercial land use will not adversely affect the health, safety, and welfare of the community.
- c. The application is consistent with Chapter 4 for economic development and commercial centers including the following:
- Objective #1 supports expanding overall economic activity in the City including ensuring adequate supply of land for commercial uses and supports implementing the Town Center Plan.
  - Objective #6 encourages expansion of commercial land uses designated for such based upon consideration of historical commitment to commercial use, access to transportation network, protecting local streets from excess traffic, lack of suitable alternate sites; compatibility with adjoining uses, and compliance with the Town Center Plan.
2. The Zoning Ordinance requires consistency with the following criteria:
- a. *Conformance with applicable Comprehensive Plan and regional policies.*  
Staff believes the applicant has demonstrated substantial compliance.
- b. *The anticipated development will meet the intent of the zone taking into consideration the following factors:*
1. *Location and character of the area.*
  2. *Predominant land use and density.*

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<sup>9</sup> See pages 8-9 of the applicant's report for details.

<sup>10</sup> Transportation Plan Rule 660-012-0060 requires the City to ensure that impacts to Expressway 224 be identified and mitigated. ODOT staff concur that the proposal meets this requirement. See page 6 of this report for additional discussion.

3. *Potential for mitigating development effects.*
4. *Expected changes in the area.*
5. *The need for uses allowed in the requested zone.*
6. *Lack of suitable alternative sites.*

The location and character of the area is dominated by the Union Pacific tracks, Expressway 224 and the Market Place. Traffic and transportation impacts can be satisfactorily mitigated including neighborhood impacts. As previously suggested, redevelopment of the remaining residential area on Myrtle Street should be expected if this application is approved.

The applicant has submitted a market study indicating the need for additional retail land in the City; staff believes the report's conclusion is reasonable. The study is included in the attached Applicant Report.

Staff believes that there are few, if any, comparable sites as well suited for land use conversion to commercial rezoning. This conclusion is based upon consideration of proximity to major transportation route, neighborhood impacts, and displacement of existing uses at other locations.

- c. *The proposed amendments are consistent with applicable regional, state, or federal regulations.*

There are no known regional or federal regulations applicable to this project. The proposal is consistent with state regulations governing transportation impacts as described below.

- d. *The amendment demonstrates that existing or planned public facilities can accommodate the proposal without restricting potential development within the service area.*

Water, sewer, and storm facilities in the service area of the site are adequate to accommodate the project and future development.

- e. *The proposed amendment is consistent with the performance standards of the transportation system.*

The applicant has conducted a traffic impact analysis and neighborhood through-trip study, which are under review by city staff, the City's traffic consultant, and ODOT. A summary of issues is provided below:

1. The proposal will require widening of Oak Street to accommodate 5 lanes now and 6 lanes in the future.

2. Traffic calming has been identified for neighborhood streets north and south of the site. Recommendations for specific measures will be made at the time the site is developed.
3. System Development Charges will be adjusted to accommodate developer costs where improvements increase system capacity.
4. The recommended conditions ensure that the development will not exceed trip rates that were used to demonstrate consistency with intersection performance standards; and to ensure implementation of required mitigation measures.

### **Decision Making Process**

Council action on this application must be made no later than March 10, 2005 in accordance with statutes limiting the time period in which land use applications must be decided.

### **Concurrence**

The City Manager, City Attorney, and Engineering Director concur with the recommendation.

### **Fiscal Impact**

The total real market value of the site is \$3.2 million based on Clackamas County Tax Assessor records. The applicant indicates the assessed property value after commercial development will be approximately \$5.5 million dollars, thereby increasing revenues to the City and other taxing entities. Demand for governmental services associated with residential land use will decrease due to loss of existing housing. These services include library, police, safety, public schools, and general governmental services. Demand for governmental services for commercial uses are typically lower than for residential. Staff believes the project will result in fiscal benefits.

### **Work Load Impacts**

Approval will likely result in development applications that will require staff review.

### **Alternatives**

The Council has the following decision making alternatives:

1. Approve the proposal.
2. Approval the proposal with modifications.
3. Deny the proposal on the applicant's failure to demonstrate compliance with approval criteria.

**Attachments**

1. Proposed Adoption Ordinance
2. Applicant's Report
3. Neighborhood Through-Trip Study
4. January 12, 2005 Memo of Randy McCourt, DKS Associates
5. February 1, 2005 ODOT Memo
6. Schematic Drawing Showing Intersection Improvements



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager

**From:** Paul Shirey, Engineering Director

**Subject:** Amend Code to Add Public Improvement Credits for Development Subject to Systems Development Charges

**Date:** January 31, 2005 for Council meeting on February 15, 2005

### **Action Requested**

Approve an Ordinance amending Section 13.28.120 of the Milwaukie Municipal Code to add public improvement credits under certain land division and land use approvals.

### **Background**

As a condition of land use approval, developers of property are often required under the terms of the Code to make improvements to the city's street system to accommodate the increased traffic the development is predicted to generate. These types of improvements sometimes, but not always, correct what is referred to as a "pre-existing deficiency" in the system. At times, due to the physical constraints and characteristics of the street system, improvements may exceed what is actually needed for the development and provide additional capacity to accommodate future traffic needs. In the interest of fairness, both types of improvements, whether fixing an existing problem, or providing additional capacity, should be eligible for credits against the system development charge (SDC) for transportation even if the project is not on the SDC capital improvements list.

The proposed code language includes criteria that must be met to qualify for one or both credits. Fixing an existing problem is eligible for a "reimbursement fee" and providing capacity for future traffic is eligible for an "improvement fee". The improvement credit must be proportionate to the remaining "unconsumed", post-

development capacity. Authority to determine credits is granted to the Engineering Director.

### **Concurrence**

The Engineering Department coordinated with the City Attorney on this proposal.

### **Fiscal Impact**

The City will be able to direct scarce street funds to other needs and will benefit from the construction of improvements to the street system.

### **Work Load Impacts**

The Engineering Director will be required to administer request for credits.

### **Alternatives**

- 1) Adopt the proposed Ordinance as recommended
- 2) Adopt an alternative Ordinance
- 3) Do not adopt the proposed Ordinance

### **Attachment**

1. Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AMENDING SECTION 13.28.120 OF THE MILWAUKIE MUNICIPAL CODE TO ADD PUBLIC IMPROVEMENT CREDITS UNDER CERTAIN LAND DIVISION AND LAND USE APPROVALS.**

**WHEREAS**, the construction of public improvements is a benefit to the city and the public at large; and

**WHEREAS**, developers in certain land division and land use projects can assist the city by constructing needed public improvements that are not required to accommodate the development, as a condition of approval for their private developments; and

**WHEREAS**, it is fair and reasonable that in those certain cases that the developer receive systems development charge credit for providing necessary public improvements.

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. Milwaukie Municipal Code Section 13.28.120 is amended by adding the following new subsection G.

- G. A credit may be given to a permittee for the costs of a public improvement provided by the permittee pursuant to a land division or land use condition of approval (other than a qualified public improvement) on acceptance of the improvement subject to the requirements of this section.
1. Credit may be given only for public improvements that cure existing deficiencies or provide excess capacity beyond that needed to accommodate the development. The fact that a facility is not extended to the property being developed is not an existing deficiency.
  2. A reimbursement fee credit may be provided only to the extent that the public improvement cured an existing deficiency.
  3. An improvement fee credit may be provided only to the extent that the public improvement provides excess capacity to meet the needs of future growth.
  4. The maximum total credit shall take into account the extent of use by the development on which the condition of approval requiring the public improvement was imposed. For example, if the total cost of a public improvement is \$100,000 and the development will use 10% of the capacity of that improvement, the total credit may not exceed \$90,000.

5. When a permittee seeks a credit for a capital improvement that is not a qualified public improvement the following process shall be applied:
- (i) The permittee shall submit a written request for a credit and obtain preliminary conceptual approval for the credit from the City Director of Engineering prior to beginning work on the capital improvement.
  - (ii) The permittee and the City Director of Engineering shall meet and establish the maximum credit that will be allowed for the improvement prior to construction. The maximum credit will be based on at least one cost estimate prepared by an engineer and shall take into account the limitations on credit established in this Section.
  - (iii) A request for final determination of credit shall be filed by the permittee in writing no later than 30 days after written acceptance of the improvement by the City. The final determination shall be made by the Director of Engineering and shall be based upon actual project cost, with adjustments as provided by this section, but shall not exceed the maximum credit established under this subsection.

Read the first time on \_\_\_\_\_, 2005, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_, 2005.

Signed by the Mayor on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:  
Ramis, Crew, Corrigan & Bachrach, LLP

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

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**North Clackamas Parks and Recreation District  
Milwaukie Center/Community Advisory Board  
Minutes of December 10, 2004**

**Members present:** Kim Buchholz, Sharon Phillips, Carolyn Mills, Joan Staley, Jane Hanno, Katie Rudolfelt, Ben Tabler, Jim McCready, Kathi Schroeder, Malinda Jakob, Molly Hanthorn

**Member Excused:** Eleanor Johnson, Chuck Petersen

**Guests:** John Mullin, Dick Jones, Joan Rowe

**Staff Present:** Joan Young, Cheryl Nally, Jan Wirtz

**Call to Order:** Chair Kim Buchholz called the meeting to order at 10:05 am. Joan Staley moved for adoption of the minutes as corrected. Kathi Schroeder seconded the motion which passed unanimously. Joan Y., Joan S. and Katie R. were thanked for the gala decorations and delectable treats. There was no correspondence.

**Special Topics/Discussion Item:** John Mullin discussed the partnerships Clackamas County has with focal points to deliver social services to clients. The Milwaukie Center is one of these focal points. At this time, there is much uncertainty about funding for the next budget year. A number of state-funded programs may be cut or simply unfunded. Some John mentioned included Relative Adult Foster Care, Disability Employment, Oregon Health Program and the Long Term Care Program. Advocacy work from everyone is more important than ever this year. John distributed some informational material. Board members are encouraged to e-mail, write or call your elected representatives early and often to remind them of the need for continuing support of services. Joan Y. will keep the Board informed as issues arise.

**Board/Committee Reports**

**Executive Committee:** Did not meet.

**NCPRD Board:** Joan Y. reported for Eleanor. Some fee changes were approved. Two new members were appointed to the Budget Committee. Roy Wall gave some updates for 05-06 Budget. North Clackamas Park draft plan for amplified sound at the Park was presented and returned to staff for more work. Dog concerns were again raised by neighbors and some dog walkers. Presentation of the Concept Plan for ballfields will be presented to the Parks Board on December 22 at 6 pm at the Milwaukie Center.

**North Clackamas Aquatic Park Task Force:** Molly reported that the group, working with a facilitator, narrowed the number of suggestions and ideas from previous meetings and public input to three areas for further study: Partnerships, Facilities changes (specific), Sponsorships. The group will next meet on January 19, 2005.

**Budget & Finance:** Did not meet.

**Programs and Services:** Met for the first time with Jan Wirtz, the new Recreation Supervisor. The Travel Desk has recruited some new volunteers and the day trips are

very successful. Travel has contributed \$4,800 to recreation services. Cheryl N. reported that staff is working on realistic projections of services that can be delivered in the next budget year. Talks with Happy Valley are ongoing and including potential social service delivery.

**Nutrition & Transportation:** Ben reported continuing problems with the steam table electrical hookup. A large rate increase for liability insurance for buses is an unwelcome surprise.

**Building Review:** Did not meet.

**Friends of the Milwaukie Center:** Adult Holiday Party is December 16<sup>th</sup>.

**Center Report:** Jan Wirtz was introduced. Jan has worked in the district for ten years at the Aquatic Park. She will be based at Milwaukie Center and Aquatic Park now. Joan also announced Mary Paige Rose has been hired as Marketing Director and recruitment for Volunteer Coordinator is nearing completion. Copies of the new program guide were distributed and admired. Cheryl announced she had just learned that 40 doses of flu vaccine were available and would be given to our most needy clients. Joan Rowe was introduced as a prospective Board Member.

Meeting adjourned at 11:10 am.

m. hanthorn, secretary

North Clackamas Parks and Recreation District  
**MILWAUKIE CENTER DIVISION**  
Monthly Report for December, 2004

***Programs/Services:***

Many seniors lower the cost of heating their homes by using a wood stove or fireplace. The Center has revitalized our Emergency Firewood Program this year and to date have provided 33 loads of wood to older adults in our community. The social service staff regularly refer people with lower incomes to the Energy Assistance programs coordinated by Clackamas County Social Services.

The Nutrition Program packed, froze and delivered over 1,100 frozen meals in December in addition to fresh Meals on Wheels provided Monday through Friday during the month. The frozen meals are made available to all Meals on Wheels recipients for weekend and holiday meal needs.

Many thanks to Bob's Red Mill, Costco and Winco who regularly provide donations to the Nutrition Program, saving the program thousands of dollars each year in food costs.

Fall term Computer, Country Line Dancing, Ballroom and Pattern Dancing, and Fitness class sessions were completed by mid-December. These classes – and more – begin again January 2005.

The Center Singers Group were busy in the holiday season with Monday practices and then performing at Rose Villa Retirement Center on Dec. 14, singing to an appreciative audience with great enthusiasm.

Travel Program volunteers worked with the Transportation Program to take two full busses of folks out to enjoy a special evening trip to view the lights at Portland International Raceway and Izzy's pizza for dinner. The Travel Group also works with several vendors, making it possible most recently for a number of patrons to enjoy overnight trips on a Mexican Riviera cruise, and to Victoria, BC.

The Friends hosted the annual Holiday Party for older adults in our community on December 16 with over 175 people in attendance to hear the Chuck Karsun Band play holiday and big band tunes. Santa and Mrs. Claus made an appearance as light refreshments were served.

The Friends participated in the North Clackamas Chamber of Commerce Non-Profit Showcase in December. This is an excellent and very well attended event for the Friends to make their presence known to Chamber members.

The Friends conducted an Estate Planning Seminar on December 6th. Attorney Phillip Hingson and Investment expert Scott McCampbell spoke to attendees about planning estates. A Friends representative spoke about making bequests to charitable organizations such as the Friends of the Milwaukie Center.

***Fundraising:***

The annual Transportation Program fundraiser, See's Valentines candy sale will begin January 18 including chocolate candy bars, chocolate Valentine hearts, and assorted chocolates. They will be available in the Milwaukie Center lobby from 10am-1pm M - F, or call Marty 653-8100 to order.

The Quilt Show is coming March, 2005! The beautiful "Tulip Cross-Stitch" quilt will go to a lucky person on March 19 at the drawing held 3:30pm at the Milwaukie Center. Raffle tickets are on sale for \$1.00 each at the Gift Shop, proceeds fund classes and programs sponsored by North Clackamas Parks District.

## **PUBLIC SAFETY ADVISORY COMMITTEE MEETING NOTES**

January 27, 2005

Present:

Larry Kanzler, Chief of Police

Karen Martin – Campbell Neighborhood Association

Ray Bryan – Historic Milwaukie Neighborhood Association

Dolly Macken-Hambright – Linwood Neighborhood Association

Susanna Pai – Lake Road Neighborhood Association

Cheryl Ausmann-Moreno – Ardenwald Neighborhood Association

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The meeting was called to order at 6:10 p.m.

There were two nursing students present – they needed to attend a community meeting as part of their schooling requirements.

Karen asked if everyone read the minutes from the last meeting. Dolly made a motion to accept them. Ray seconded the motion. Passed unanimously.

Karen had everyone introduce themselves.

Chief said that he is on the Board for the Oregon Association Chiefs of Police. There is a bill before the legislature now authorizing Milwaukie to use photo radar. We don't have enough resources to deal with all our traffic issues.

The Chief handed out copies of an article from the League of Oregon Cities Bulletin regarding Senate Bill 295 - it proposes to strip cities of half of all traffic fines collected from offenses ticketed by officers within city boundaries. The bill redistributes these fine proceeds to the State School Fund (for driver education) and the Police Standards and Training Account (for police officer training). A letter was prepared to send to Senator Kate Brown and Representative Carolyn Tomei stating that the PSAC opposes the bill. Ray asked if other chiefs knew about this – and he will contact the West Linn PSAC and advise them.

The Chief will be attending training next month regarding crimes perpetrated against senior citizens and won't be here for the meeting. Captain Colt and Sergeant Dye will be attending in his stead. Sgt. Dye will discuss traffic issues in the City. We had one speed monitor stolen recently.

The Chief discussed the annexation of the Clackamas Town Center. It is the number one place for stolen cars in the state. It needs a proactive approach to deal with the crimes. The City has hired a consultant to work on the project. We would have to double the size of the police department in order to handle the call load. It would have to be done in

stages. There is a potential for getting a Boys & Girls Club (in conjunction with the Portland Trailblazers) built there. We would also have an opportunity to open a police precinct and municipal court system there

Kaiser Hospital will be opening up 22 – 23 beds that will be available for mental health patients. Milwaukie has a big problem dealing with mental health patients.

Bicycle Safety Grants (from \$800 - \$5,000) – Ray asked if there would be an interest in that. Chief said we have had bicycle rodeos in the past – with bicycle-trained officers. We could involve the Fire Department also.

Cheryl said her neighborhood association wants to set up a Neighborhood Crime Watch. The Chief said it's a privately owned business now. The Chief suggested that they do some research to verify if there is a problem or not. He also suggested attending the Citizen's Academy to become more informed about police procedures.

The Chief gave everyone a tour of the building.

Meeting was adjourned at 7:40 p.m.

Next meeting is scheduled for February 24<sup>th</sup>, 2005.



**TO: MAYOR AND CITY COUNCIL**  
**FROM: MIKE SWANSON, CITY MANAGER**  
**DATE: FEBRUARY 4, 2005 FOR FEBRUARY 15, 2005 AGENDA**  
**RE: MONTHLY TRANSIT CENTER REPORT**

Resolution 31-2004, adopted by the City Council on October 5, 2004, requires that staff submit a “monthly written activity report . . . with respect to the . . . recommendations and mitigation and design initiatives” regarding relocation of the transit center. That report is required to be submitted at the Council’s second meeting of the month.

The January report was verbally delivered to Council at the January 18, 2005 Council meeting. Nothing has changed since that report. Points made at that time were as follows:

- A request was made of staff as to when the South Corridor Policy Steering Committee would reconvene to consider amendments to the existing LPA Report. In checking with regional representatives, no date has been set for any meeting of the Committee. There were discussions at the regional level as to the next steps that should be undertaken to move the project. I will notify Council at the earliest opportunity at such time as I learn of any regional public meetings on this issue. There has been no change in the status of this issue. No one is missing an opportunity to submit testimony or any other information regarding the transit center.
- TriMet will be submitting a land use action seeking approval of a park and ride for the Southgate site. I do not have either a timeframe for a submittal or a date for any hearing on the issue.
- Regional staff believes that the proposed Milwaukie Light Rail line impacts the transit center decision, and, therefore, I expect little progress on relocation of the transit center until the environmental work on the light rail line is completed. That work is slated to begin in 2006. However, there is a significant financial issue standing in the way of completion. The cost of the work is estimated at \$4.3 million, of which \$2 million has been recommended from MTIP funds. The source for the \$2.3 million balance is uncertain, but a significant amount will most likely be raised from local, regional, and state government stakeholders in the region.