

MINUTES

**MILWAUKIE CITY COUNCIL
MARCH 2, 2004**

CALL TO ORDER

Council President Lancaster called the 1929th meeting of the Milwaukie City Council to order at 6:40 p.m. in the City Hall Council Chambers. The following Councilors were present:

Councilor Deborah Barnes
Councilor Joe Loomis

Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Alice Rouyer,
Community Development/Public
Works Director
Larry Kanzler,
Police Chief

Mary Rowe,
Human Resources Director
Paul Shirey,
Engineering Director
Brion Barnett,
Civil Engineer

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda that consisted of the City Council minutes of February 17, 2004. Motion passed unanimously among the members present.

Councilor Barnes announced that Mayor Bernard was in Washington, D.C. with an Oregon contingent seeking federal funding for local transportation projects.

AUDIENCE PARTICIPATION -- None

PUBLIC HEARING

Appeal of Variance Granted by the Public Safety Advisory Committee

Council President Lancaster announced the opening of the hearing continued from February 3, 2004 at 6:45 p.m.

The purpose of the hearing was to consider public testimony on the appeal of the Public Safety Advisory Committee's vision obstruction variance decision for the property located at 9925 SE 37th Avenue.

Staff Report: **Civil Engineer Brion Barnett** presented the staff report on the vision obstruction at the intersection of 37th Avenue and Harvey Street. He confirmed that all interested parties including the appellant Juli Howard, property owner Perry Nordby, and members of the Public Safety Advisory Committee (PSAC) were notified of this hearing.

A resident filed a complaint about a vision obstruction at the above mention intersection. Staff confirmed there was a vision obstruction and gave the property owner a period of time in which to correct it. The problem was not corrected within the allotted time period, and a citation was issued. That citation was appealed to the PSAC, and that Committee granted a variance with conditions. A local resident appealed that variance for a Council determination on the appropriate height of the hedge at that intersection to provide for public safety.

Barnett provided photos of the site that showed the hedge after being trimmed. Staff's recommendation is to further trim the hedge to 36" from the top of the curb, and an orange tape in the photograph indicated that height. Next, Barnett showed a drawing of the intersection.

He reviewed the key points. Clear vision is the amount of area a driver needs at an intersection to make a decision on whether or not it is safe to pull out. There are code requirements, stopping site distance, intersection site distance, and methods for calculating these. The Milwaukie Municipal Code (MMC) states nothing over 30" in height referenced from the top of the curb can be within the 20-foot radius of an intersection. The code also allows the director of public works to modify this requirement in the interest of safety based on engineering judgment. Barnett indicated these areas on a transparency. The PSAC variance allowed the hedge to be 40 – 50 inches in height referenced from the ground. The horizontal limit would extend a total of 28 feet from the existing west curb line on 37th Avenue. The Committee variance is less restrictive than the MMC.

Barnett discussed safe stopping distance, which is essentially how long it takes a car traveling with some initial speed to come to a stop. For example, a car traveling 25 mph would need about 155 feet to stop. At 30 mph, the stopping distance is about 200 feet. There are two components in this: the distance traveled during perception and reaction time, plus the distance traveled while braking. The sight distance at this intersection is 280 feet because it assumes the driver on Harvey Street and the driver on 37th Avenue do not have to do anything abruptly. The driver on 37th Avenue looking to the west only has about 85 – 100 feet of clear vision. This indicated there was not enough time to stop without potentially hitting a car proceeding into the intersection because of the reduced reaction time. This is a stop-controlled intersection with vehicles on Harvey

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Street having the right-of-way. The traffic volume last year was about 2,500 vehicles per day and included TriMet and School District busses. The speeds were about 29 – 30 mph with an existing clear vision of 85 feet. Staff decided to apply a higher standard because of the likelihood of hitting someone in the intersection.

Staff recommended that the driver on 37th Avenue have at least 200 feet of clear vision to the west. If the hedge were cut to 36" from the top of the curb on both ends, there would be about 210 feet of clear vision available. He outlined the alternatives before City Council: overturn the variance and apply staff recommendation of not more than 36" from the top of the curb; overturn the variance and apply the 20-foot radius standard under existing code provisions; uphold the variance; or grant a different variance.

Councilor Stone asked where the hedge was positioned on the property. Would the homeowner have the option of moving the hedge back versus trimming it more? Does it meet City codes in terms of where it is planted right now?

Barnett responded the existing shrubs are on private property. The owner could replant the shrubs; however, from his perspective it would probably be difficult. Staff's main concern is having adequate vision.

Councilor Stone has driven this street many times and did so recently to see if the current trimmed height made a difference. She asked the current height of the hedge.

Barnett said the shrubs are currently 4 to 4-1/2 feet from the top of the curb. This is important because the roadway slopes. For drivers on 37th Avenue looking west, the hedge is actually higher. Staff's recommendation of 36" assumes that the average driver can actually see over the top of the hedge. The recommendation is based on having a sight line over the shrubs.

Councilor Stone commented a lot probably depends on the type of car a person is driving. She has an SUV, so she sits higher. She noted better vision since the hedge was trimmed, but she imagined with a smaller car there would still be a problem. She asked if the orange tape in the photo was the height staff was recommending.

Barnett explained it is 36" at the tape. The rod held by a person in the photo shows that about another foot needs to be trimmed from the east end of the hedge and more than that at the west end because of the slope. Stone was correct in saying that vehicle height impacts the sight distance. The 36" eye height is targeted for the average passenger vehicle.

Councilor Stone asked if the neighbor's fence was an issue.

Barnett said the fence is not an issue.

Councilor Lancaster asked Barnett if he felt the property owner had a full understanding of the issue.

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Barnett said staff has communicated by phone and in person with the property owner. The purpose of staff's going to the site and putting up the tape was to provide a visual reference for Nordby. The tape was put up after the first trimming.

Shirey spoke with Nordby the previous evening at the site after making repeated attempts to reach him by phone. Nordby indicated he intended to trim the hedges to that height and said he had mis-measured the first time. Further trimming has not been done.

Councilor Stone understood Nordby wanted to be in compliance with the staff recommendation.

Councilor Lancaster asked how many bushes would have to be trimmed if the 20-foot radius option were enforced.

Barnett said probably 2 or 3 bushes would have to be trimmed within that 20-foot radius. It is important to note the City's code indicates 30 inches in height from the top of the curb. The flagging in the photo is 36 inches. In his view, this is all right for general intersections safety, but one must look at all the particulars of an intersection. Studies assume drivers at a 4-way stop or an uncontrolled intersection approach and make their decisions differently. Intersections are looked at on a case-by-case basis. Other local governments including Oregon City and Clackamas County have a 20-foot radius standard and also allow for higher standards based on engineering judgment. Clackamas County uses AASHTO and applies it on a case-by-case basis.

Council President Lancaster asked how long the field of vision would be if the 20-foot radius were applied?

Barnett said it would be 85 – 100 feet. In staff's opinion, the 20-foot radius is not adequate for safety.

Councilor Stone asked what the clear vision distance was right now.

Barnett said a driver could see 85 – 100 feet right now.

Councilor Stone understood it would not make a difference as far a clear vision goes if the first two or three bushes were trimmed down to 30 inches.

Barnett said that was correct. It is all based on the height of a normal passenger car driver's eye.

Councilor Stone understood it would not change the stopping distance and the distance staff is recommending for safety.

Councilor Lancaster asked if the picture taken looking west on Harvey Street was at the legal stop line.

Barnett said the photo was taken 10 feet back from the intersection. Based on studies, it is assumed most passenger vehicles have about 7 – 8 feet from the front of the vehicle to the driver's eye. When a driver creeps out into the intersection to see, the front end of the vehicle should not be into the travel way.

Councilor Stone knows when she tries to go west onto Harvey Street from 37th Avenue she barely needs to turn. The lane seems small because cars are allowed to park on the north side, so that lane is a little wider than the south lane. Could anything be done to adjust that? Drivers can see if they pull out farther, but even so she barely needs to turn her steering wheel before she is in the lane. How wide is that lane?

Barnett said the existing roadway is about 30 feet. There is a parking area on the north side that is about 7 – 8 feet with two lanes that total about 22 feet. There is no bike lane. Parking could be moved to the other side of the road, but the problem would still be there.

Councilor Stone asked what the effect would be if parking were moved to the south side and designated the sight distance of 200 feet to be "no parking", so parked cars would not obstruct vision.

Barnett did not believe there would be a net gain. In that scenario, the driver on 37th Avenue would have to see beyond that car. Staff's recommendation is based on how far someone has to be able to see to stop. Drivers still need 200 feet to see.

Councilor Stone suggested a speed bump to slow traffic.

Correspondence: There was no additional correspondence on the matter that was not included with the staff report.

Testimony of Entity Making Decision: **Karen Martin**, Public Safety Advisory Committee Chair, and **Larry Kanzler**, Milwaukie Police Chief and PSAC staff liaison provided the report. Martin summarized the history of the Committee's action based on the information it received. Originally Mr. Nordby came to the Committee looking for a variance. He had to appear in municipal court in 72 hours, so the timeframe was very short. The Committee went to the site on the same night Nordby came to the Committee meeting, and Committee members made some initial thoughts. Steve Campbell and some others marked the street per the City's code so the Committee could determine the right amount of vision. When Committee members returned to the site on the second night, they pulled up to the stop bar and looked down the road. They felt the hedge was a little high and needed to come down to be fully safe. The Committee was working with the idea that they needed to measure from the base of the shrub rather than the top of the curb. The variance PSAC granted was within inches of being to the City's code. Had the Committee known the measurement was from the

curb, it probably would have met the code standards. That information, however, was not clear to the group. The variance was within 8 inches of being within that 20-foot radius. The Committee looked at the site several times, and now new standards, like AASHTO, are being applied to this hedge. When one looks throughout the City using AASHTO standards, this hedge is certainly not the only problem. Nordby has shown he wants to comply and do what is in the best interest of safety. He has cut the hedge lower than what was granted in the variance. Now he needs to do more work, which he says he will do. She does not know what the variance is anymore. Nordby is willing to trim the hedge down to the AASHTO standards but needs to be given time.

Kanzler believed the Public Safety Advisory Committee did diligence to its duties and responsibilities based on the limited amount of information available. The Committee certainly did not have the plethora of information that has been developed since the deadline for the court appearance. If looking at this AASHTO standard, which he brought up to staff, any car parked along that 280-foot stretch is a potential vision obstruction. Based on that standard, there would be no parking in the downtown area. It may be a point of reference for highway access or some unrestricted access to a fast moving freeway. However, for an urban, primarily residential area, he believes some common sense needs to be used in making decisions. We cannot expect to bring a street built 50 – 100 years ago up to a standard that is physically impossible to accomplish. Reasonableness can be applied if situations are looked at individually, and PSAC, he believed, did a good job of that.

Councilor Barnes did not realize the City had committees that had the authority to grant variances, so this came as news to her.

Swanson said this was an unusual situation. He provided background information with approximate dates. In 1994, the City created the Traffic Safety Commission. The code defines a commission as a body that has the power to make decisions, apply facts to standards, and render a decision. For example, the Planning Commission makes decisions. One decision granted the Transportation Safety Commission was the clear vision ordinance. In 1997, the City Council replaced the Traffic Safety Commission with the Traffic Safety Board. The code defines a board as an advisory body that is different from a commission. The action the City Council took in 1997 in creating the Traffic Safety Board repealed all sections of the code dealing with the Traffic Safety Commission with the exception of two. One was basketball hoops in the streets and the other was the clear vision ordinance. What remained in the code was a clear vision ordinance variance process that was heard by the Traffic Safety Commission eliminated in 1997. When the Public Safety Advisory Committee was created, nothing was said about the clear vision ordinance because a search on the Traffic Safety Board did not show up because the clear vision ordinance variance was the responsibility of the Traffic Safety Commission. The opinion was that PSAC basically inherited the line of responsibilities. Once the issue before Council at this meeting is determined, Swanson will clear up that history. Part of the confusion is the fact that things changed in 1997, but not completely.

Councilor Barnes appreciated the fact this is a committee of people who are trying to make things better. Her other concern is why the Committee came up with the least restrictive, lowest degree of safety, according to this report, out of all of the standards. The Public Safety Advisory Committee chose the least.

Martin said the group chose a variance based on the information available at the time. They did not have a choice of three scenarios. The Committee had what it believed was a height requirement from the base of the plant, not the curb. The group was also told 85 – 100 feet sight distance was the current City standard. The Committee went to the site with that information and did what it felt was completely safe. She can drive to that intersection and does not feel unsafe turning on to Harvey Street. PSAC would not choose the lowest degree of safety or put anyone at risk as she feels is being implied, and the group takes offense at that. The Committee did not intentionally do anything that provided the lowest degree of safety.

Councilor Barnes asked Martin if the Committee thought about contacting the engineering department.

Martin responded that Campbell and an engineer marked the street according to code. If the Committee had known it should have measured from the curb, it would have been within code standards.

Kanzler said the Committee acted on the information it had at the time and was expected to make a timely decision.

Councilor Loomis appreciated what Martin had done, and, as Kanzler said, the Committee was under a timeframe and used the information available. Council's decision will not be a reflection of the Committee's efforts. He appreciated the Committee's taking the issue seriously.

Councilor Stone asked why the timeframe was so short.

Kanzler said Campbell issued a citation to the person owning the hedge, and his court appearance was within three days.

Councilor Stone understood the citation was issued in response to a complaint.

Kanzler confirmed the citation was issued in response to a clear vision complaint. The turnaround to either grant or deny a variance had to be done prior to the court appearance date that was in three days. All the PSAC action was done to meet the deadline established by the court summons.

Councilor Stone was confused about the timeline. She understood the complaint went through Campbell.

Kanzler said that was correct. Campbell wrote a citation for Nordby to appear in court.

Councilor Stone asked if the summons to appear in court was 72 hours after the citation was written.

Kanzler said there was a longer period of time.

Councilor Stone understood that Nordby waited until the last minute.

Kanzler was not sure Nordby knew the process. Once he found out he could request a variance, he appeared at the PSAC meeting. He asked for help so he would not have to cut the hedge.

Councilor Barnes understood from the material provided, Nordby was given the notification May 1, 2003. He was also provided with a phone number in the event he needed assistance. The last correspondence sent by certified mail from Campbell to appear in court was in October. Nordby had about six months to respond.

Kanzler said the Committee did not have that information. It was not really relevant to PSAC's taking action based on the established City deadline.

Appellant Testimony: **Juli Howard**, 9705 SE 37th Avenue, Milwaukie. She expressed her appreciation for all the staff time and effort that went into this issue. She realized it was a huge effort that took a lot of time. She filed a complaint about the subject hedge because she feels it is a dangerous corner, and the hedge obstructs the view of Harvey Street traffic. She did not take filing this appeal lightly because it does affect a homeowner in her neighborhood. She does feel her safety, her family's safety, and everyone's safety that uses this corner is more important than a hedge. She did not feel PSAC had the authority based on current code language to have granted the variance in the first place, nor did she feel the Committee did adequate research or had the proper education by consulting the engineering department to make this sort of decision. If one looks at the code chapter 12.24.050, when granting a variance, it says that pedestrian and vehicle safety shall be a primary factor and that aesthetics is not relevant. PSAC granted the variance because of the good faith effort to maintain aesthetic appearance, which totally goes against the code. She felt PSAC disregarded her complaint because her safety is at risk when she uses that corner. She understood the Committee did a site investigation, and they spoke with the homeowner; however, she never had any contact with the group. She urged City Council to support staff's recommendation and apply the standards to that intersection.

Councilor Loomis said in Howard's letter she indicated her experiences on her daily drive home.

Howard uses Harvey Street or 37th Avenue on a daily basis. She drives east, and the road is actually narrower. When she pulls up to where she can see a safe distance, she is actually pulling into oncoming traffic. She then makes a quick left turn onto her street. She does drive a Honda, so it is lower. Her husband drives a 4-wheel drive pickup, and

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she cannot see over the hedge driving that vehicle. She provided photos, and since the hedges were trimmed she could see a TriMet bus, for example. The photo showed her car that was actually out in the street where she has to pull out to see.

Councilor Loomis was familiar with the intersection and understood there was a problem. He asked why she goes home that way?

Howard said she would have the same problem if traveling on Harvey Street because cars still pull out from 37th Avenue to see. She does not feel she should have to make a detour. That corner is unsafe for a lot of people. She thinks since the PSAC granted the variance, the City could be liable if there were an accident.

Councilor Stone asked Howard if she spoke with Nordby before talking to Campbell in code enforcement. Did she know Nordby?

Howard said she did not know Nordby and did not feel comfortable speaking directly to him.

Property Owner Testimony: Nordby was not present.

Audience Testimony: No further testimony.

Appellant Rebuttal: None.

Property Owner Rebuttal: None.

Additional Staff Comments: None.

Questions of Clarification: None.

Close Public Hearing: **Council President Lancaster** closed the public testimony portion of the hearing at 7:30 p.m.

Discussion among Councilmembers: **Councilor Loomis** agreed the intersection is unsafe and supported the staff recommendation. In his mind this raises other questions related to the Safeway development on 42nd Avenue. There will be more traffic on 36th and 37th Avenues, and he asked if it would be feasible to make some of these streets dead end. There are already 2,500 cars on Harvey Street with related noise and detriment to livability. It is a safety issue. He recently filled out some requests to look at putting stop signs at 37th Avenue and King Road. He noted the traffic situation at 32nd Avenue and Harrison Street. There is a lot of speeding on King Road. He is concerned about more cut through traffic because of development and the possibility of accidents. He does not see any improvements to Harvey Street in the near future. Even with the hedge gone, drivers are right at the curb. He is concerned about neighborhood livability

and would like information on dead ending some of the streets and right-turn-only onto 37th Avenue from Harvey Street to make a dead end coming north. He does not see an impact on traffic flow and feels the action would improve livability. Nordby could grow the hedge higher as a sound buffer. Currently, the hedge is definitely a safety hazard, and he appreciated Howard's bringing the issue to Council's attention.

Councilor Barnes felt with something this major there should have been time in the six-month period from when Nordby got the citation to when he was supposed to appear in court for him to have done something. The homeowner waited five months but did not take the responsibility to talk to the appropriate people. By then, the Committee did not have time to check with the engineering department.

Councilor Loomis did not think it was fair to say Nordby waited five months without his being at this hearing. It may have taken that long for him to find out PSAC could grant the variance.

Councilor Stone appreciated Howard's request. She has felt for a long time this was a problematic intersection. She also appreciated Nordby's attempts to screen his property. The evidence before her indicates the need to err on the side of safety. This is clearly a safety issue, and drivers need a certain distance to stop particularly when the pavement is wet. She will vote to overturn the variance in the hopes of looking at safety first.

Councilor Lancaster believed staff made a well-reasoned recommendation that was supported by the appellant.

Councilor Stone added it seems like Nordby is willing to comply and has a clear understanding that safety is the overriding factor.

Decision: It was moved by Councilor Loomis and seconded by Councilor Barnes to support the appeal with the staff recommended standard. Motion passed unanimously among the members present.

OTHER BUSINESS

Councilor Loomis attended the Planning Commission hearing on the transit center and expressed his appreciation to Chair Donald Hammang for the manner in which he conducted the meeting.

Council President Lancaster announced the City Council would meet in executive session immediately following adjournment under the authority of Oregon Revised Statutes 192.660(1)(c) -- Performance Evaluations of Public Officers Employees; 192.660(1)(f) -- Exempt Public Records; 192.660(1)(g) -- Legal Counsel; and 192.660(1)(h) -- Real Property Transactions.

5005

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Barnes to adjourn the meeting. Motion passed unanimously among the members present.

Council President Lancaster adjourned the regular session at 7:40 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL MARCH 2, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1929th MEETING

REGULAR SESSION - 6:30 p.m.

I. CALL TO ORDER
Pledge of Allegiance

II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

III. 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.)*

City Council Minutes of February 17, 2004

IV. 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.)*

V. 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.)*

Appeal of Vision Obstruction Variance Decision – Continuation (Brion Barnett)

VI. 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.)*

None

VII. INFORMATION

Ledding Library Board Minutes

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment of the regular session pursuant to ORS 192.660(1)(h) – real property transactions and 192.660(1)(f) – exempt public records.

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

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION FEBRUARY 17, 2004

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Councilors present: Barnes, Loomis, and Stone.

Staff present: City Manager Mike Swanson, Community Development/Public Works Director Alice Rouyer, and Planning Director John Gessner.

Consider Letter of Support for North Clackamas Parks and Recreation District System Development Charges

This item was held over to the regular session.

Information

Mayor Bernard distributed copies of the Orfield report that studied growth and development in the metropolitan region. People have commented that the study states Milwaukie will someday be a slum unless something is done. It does not really say that. Rather it generalizes what Orfield believes should be done for cities that are built out.

Councilor Barnes announced the Milwaukie community theater met and selected the name New Century Players. There is a database of about 90 – 100 interested persons. The first productions will likely be one-act plays held at the Milwaukie High School Theater this summer. The group appointed a nine-member board that includes Siri Bernard, Wilda Parks, and herself. People believe this is a great opportunity for the community, and interested students may use their experience with the theater as a senior project. The group is currently part of Celebrate Milwaukie, Inc. until all of the paperwork is filed with the state.

Mayor Bernard announced he would be in Washington, D.C. with the Joint Policy Advisory Committee on Transportation (JAPCT) the first week of March and will represent the Lake Road Multi-Modal funding package.

Councilor Stone asked about Harmony Road and Railroad Avenue project.

Mayor Bernard said the Railroad Avenue project has been on and off the JPACT list for a long time.

Councilor Stone said it is a dangerous road, and she considers it even more so than Lake Road. There are no shoulders, and the speeds are high.

Mayor Bernard explained that JPACT establishes the list from the projects submitted. He and the city manager went to Washington, D.C. two years ago and tried to get Railroad Avenue on the list. While it looked hopeful at the time, Railroad Avenue was dropped. Part of the reason for its being dropped is the cost because Railroad Avenue would probably have to be built from scratch.

Swanson added there are various project categories in each funding cycle.

Councilor Stone was concerned about safety. Railroad Avenue is largely residential and has an elementary school. There has been more than one fatality as there has been on Lake Road. She asked Bernard if statistics would help make the case for funding.

Mayor Bernard said Railroad Avenue was on the list of projects this year, but it did not make the cut. All the money that was earmarked for the Harmony Road/Railroad Avenue improvements was taken back. Council requested that because it would have cut too deeply into the neighborhoods. There is a lot of competition for limited funds.

Councilor Stone added Lake Road does stand out because a formal study has been done and a plan adopted.

Councilor Loomis discussed working with Brian Newman and Karl Rhode to plan ahead and start campaigning early instead of waiting until the last minute.

Councilor Loomis updated the City Council on the "Student of the Month" program. He suggested expanding the program to recognize citizens, businesses, and employees who are doing good things for the community.

Councilor Stone said when it was active, the Traffic Safety Board had a Milwaukie High School student position. Depending on the student, most of them got involved and reported to the Board on youth traffic safety aspects. They were able to put it on their resumes that they were volunteers for the City. The earlier students get involved, the more they are likely to be involved as adults.

Councilor Stone discussed the Stand for Children chapter that is forming in Clackamas County. The group lobbies for such things as school funding, health and dental care, and after school activities. The kickoff event is on February 28 at Aldercreek School.

Councilor Loomis said the group started in Washington, D.C. and is now based in Portland.

Proposed Budget Calendar for FY 2004 – 2005

The group agreed to meet on March 29 and 31 at 6:00 p.m. to hear departmental budget requests. The Budget Committee will formally receive the budget and budget

message on April 7. The remaining meetings can be scheduled by motion of the Committee.

Reorganization of the Design and Landmarks Commission

Donald Hammang, Planning Commission Chair, and **Brent Carter**, Planning Commission member and Design and Landmarks Commission Chair, were present.

Community Development/Public Works Director Alice Rouyer said in 2000 the structure of the Historic Resource Commission was changed to the Design and Landmarks Commission (DLC) in response to adoption of the Downtown Plan. The purpose for doing that was to provide design review to downtown development. The Planning Department was reduced by one planner position and as a result has been unable to keep up with the workload. It is a question of prioritizing both the Planning Commission and DLC work plans. Gessner worked with both appointed groups to develop a proposal of how to cover the functions as outlined by the code and make it manageable from a workload standpoint.

Planning Director John Gessner said there were several important considerations when the Planning Commission and the DLC started looking at the problem. The main consideration was preserving the function of the DLC to address the community's interest in design-related issues. There are Council work program items that have not been completed. The Planning Commission work plan calls for amendments to the Zoning Ordinance so it better matches community desires in terms of appearance, quality, and function of development. There were some compromises that needed to be made including the ability to staff monthly meetings with the DLC and to carry a separate workload item.

After meeting with both the DLC and Planning Commission, there was an agreement on the Committee approach with some assurances there would be a regular check-in with the Planning Commission. There would be at least one design-related work program item per year. This means the Planning Commission would need to balance priorities with the City Council when reviewing the annual work program. That was an acceptable compromise to the DLC. The other compromise was that there would be no guarantee of a regular monthly meeting. The DLC would meet on an as-needed basis to review land use applications for design standards.

Gessner said if the City Council directs staff to proceed, the next step would be to look at the mechanics of the code to determine how to implement this idea.

Hammang said the parties had to meet the challenge of how to be fiscally responsible because of lack of staff. The Planning Commission does not wish to lose the resource it has in the DLC. He feels this is a solution to keeping expenses low while maintaining the resource. He sees this proposed action mostly as a change of status.

Carter said the DLC is concerned with apathy. Things are slow because of the economy. The DLC's concern is that it not be swept into the closet. The DLC had

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planned to work on expanding the design guidelines to the whole City, but this will have to be delayed. He understands he will have to step down from the DLC as part of the statutes unless that can be changed.

Gessner said as an advisory committee to the Planning Commission, the city attorney feels a joint member would complicate voting and legal proceedings. As a Planning Commissioner, Carter would still be able to provide guidance to the DLC.

Councilor Stone asked about the quasi-judicial hearings the DLC would no longer have authority over. She wanted to make sure it was clearly stated that the DLC would make recommendations to the Planning Commission prior to hearings.

Gessner said that is an important point. There is a requirement that the DLC meet prior to any Planning Commission hearing on a quasi-judicial act for the purpose of providing input. The ordinance will be drafted to make it clear. The Planning Commission, however, would not be stopped from making a decision if the DLC were not able to meet or to attain a quorum.

Councilor Stone asked if the DLC would become a commission again with its current authority when the city budget improves.

Gessner said if funding improves and the City Council wants to re-establish the DLC's authority, the Council could act to do so. He will return to Council in about one month with more specific ideas.

The work session ended at 6:10 p.m.

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL FEBRUARY 17, 2004

CALL TO ORDER

Mayor Bernard called the 1928th meeting of the Milwaukie City Council to order at 6:30 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster
Councilor Joe Loomis

Councilor Deborah Barnes
Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Alice Rouyer,
Community Development/Public
Works Director

Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

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

- A. City Council Minutes of February 3, 2004;
- B. Roof Repair of the Public Safety Building;
- C. Liquor License Applications for Oregon Transfer, 9304 SE Main Street and 9696 SE Omark Drive; and
- D. Liquor License Application for Kimmy's Market, 3141 SE Harrison Street.

Motion passed unanimously.

AUDIENCE PARTICIPATION – None.

PUBLIC HEARING – None Scheduled

OTHER BUSINESS

Economic Development Advisory Committee and Business Outreach Program

Project Manager Jeff King presented the staff report in which the City Council was asked to consider the charge statement for a short-term Economic Development

Advisory Committee and define the roles and participation for the Business Outreach Visitation Program. He commented on the economic development proposals being funded in part by a grant from the Mt. Hood Economic Alliance. At the January 2004 Council meeting some of the components were discussed two of which addressed the outreach aspect. He is here to present more detail on those programs.

Both focus on the idea of outreach, retention, and coordination with the business community. The benefit would be a mutual understanding of needs, improved communications, and coordinated public/private strategies. The first consideration is to establish a short-term Economic Development Advisory Committee to accomplish three things: provide an overview and input on the grant projects, offer general information on Milwaukie's strengths and weaknesses, and develop recommendations for City Council on future strategies. He believed the Committee could report to Council in September. It would not be a decision-making body. King reviewed the proposed make-up of the 18-member Committee.

Mayor Bernard suggested requiring a quorum to hold a meeting.

King asked if the City Council was interested in selecting or identifying members for the Committee.

Mayor Bernard said Councilor Barnes volunteered, and the other City Council members did not object. He felt comfortable with King talking with potential members.

Councilor Stone was also comfortable with that since the interview process takes a substantial amount of time. She hopes the membership would be balanced between business and community.

Mayor Bernard suggested the Neighborhood District Association (NDA) leadership select a representative.

Councilor Stone noted one of the proposed membership slots was for organized labor.

King said traditionally organized labor brings a different perspective, and the overall importance of the Committee will be to bring different viewpoints together. Milwaukie has a fair number of distributors, and traditionally they are unionized.

Mayor Bernard felt the list covered most groups.

King will work with staff on names of individuals and will contact the City Council if he has any issues.

Councilor Stone thought that was a good idea, and if any Council member has suggestions he or she should contact King.

King will forward names to Council for input and vetting.

Councilor Barnes suggested contacting Wilda Parks for names of people who have gone through the Chamber Leadership Program.

King said the second piece is the business outreach and visitation program. The benefit will be building relationships between the City and the businesses. He proposed sending 3 to 5 members to a business to gather information on how it views Milwaukie and Oregon in general in order to draft larger strategies. He provided a list of the top employers in Milwaukie. There could be one or two meetings each week with staff, Council, and resources such as the Chamber, county, or state. The businesses would be asked to complete a survey to provide additional information on other economic development resources.

Councilor Barnes would like a packet of information developed to provide to these businesses.

King said a sub-committee that includes Wilda Parks is discussing that type of outreach tool. He discussed eventually moving beyond the top employers to reach other businesses.

Advisory Board Appointments

Mayor Bernard, with consensus from Council, appointed Jamal Harvey to the Cable Access Studio Ad Hoc Committee.

Advisory Board Interview

The City Council interviewed David Colpo for a vacant position on the Budget Committee.

Consider Letter of Support for North Clackamas Parks and Recreation District System Development Charges

Swanson provided a revised draft letter of support for the North Clackamas Parks and Recreation District (NCPRD) system development charges (SDC). The previous draft discussed two weeks ago expressed support to the governing body, the Board of County Commissioners. There were concerns at that time about the per employee charges on businesses. The issue was the timing of the assessment. Since that meeting two weeks ago, the district advisory board met and decided to send the entire SDC package to the County Commissioners. Additionally, the advisory board is attaching a letter recommending that if the Commissioners feel strongly that the non-residential charge is unfair or does not come at a good time, then the Board recommends at least passing the residential rate. The homebuilders have endorsed the residential portion whether or not the non-residential portion is adopted. They have also recommended the commissioners not increase the total SDC assessment to residential.

Swanson understands the County Commissioners will consider the first reading this week, and there is a good chance the Commissioners will look more favorably upon just

an assessment on the residential side. The proposed letter reflects support in light of the changing reality. It does not appear the non-residential charge will be adopted. He does recommend favorable consideration of the draft letter with that new reality in place.

Councilor Stone was concerned about the residential fee going up; it is almost doubled. That does not seem to fall within the rate of inflation over the past ten years. She is also concerned with builders passing this charge along to individuals. She asked for an explanation of the doubling of the residential charge.

Swanson said one approach is to look at the SDCs in terms of where they have been. They were first created in 1994 and have not been increased since that time. Compared to other jurisdictions, NCPRD is at the bottom of the SDC ladder. The proposed increase would put NCPRD at about the mid-point. He assumes the homebuilders perceive some benefit to their marketing capabilities by being able to point out recreation, parks, and open space opportunities to prospective buyers. For the most part, Milwaukie deals with small developers who are also represented in the homebuilders association. The District is competing with other jurisdictions to get people to locate in the area and raise their families. One way to do that is to offer services, and this will help put the District in a competitive position for parks and recreation. The capital improvement plan (CIP) was reduced by about \$100 million in order to get to this proposal. He was impressed with the extent to which the District went to get input from the public on which projects they felt were important. In terms of Milwaukie's projects, there would be a substantial increase to the Riverfront Project, Spring Park, the Trolley Trail, as well as some of the City's smaller parks. Milwaukie's riverfront development is recognized as having district-wide significance.

Councilor Stone understands the SDC for a single-family dwelling is more than it is in Multnomah County.

Swanson noted that Portland voters have approved parks levies over the past several years. If one looks at total dollars, he would guess that Portland is far above NCPRD in terms of property taxes dedicated to parks and recreation.

Councilor Stone has a problem with the charge doubling even though it has not been changed in ten years. It seems a bit much to double it when looking at the rate of inflation. It ultimately gets passed along to the homebuyers.

Councilor Lancaster cannot support a tax of any kind at this time.

Councilor Barnes added up the projects, and Milwaukie would get \$976,000 for its parks and recreation projects. Anything the City Council can do to help the City and its residents is a good investment. She supports the letter.

Councilor Stone asked Barnes how she arrived at that amount.

Councilor Barnes explained she added up the estimated cost of each of the priority 1 projects on the list with specific ties to Milwaukie. These include the Riverfront, Trolley Trail, Spring Park, and various neighborhood parks.

Swanson said SDCs are an attempt to get new construction to contribute to the added demand placed on the system. The theory is those who are here now have been paying all along to create and support the system. New people coming in have their share of the responsibility to pick up their share of the burden. This SDC does not assess people who are here now. It assesses new construction and is an attempt to get them to pick up their fair share of the increased demand on the overall system.

Councilor Loomis said SDCs are a one-time fee rather than a tax. More people means more demand on facilities. He feels poor leadership is the reason SDCs have not been increased for ten years making it impossible to purchase new park land. The District actually has very little in the way of facilities. The growth east of I-205 is putting more pressure on the facilities to the west. Milwaukie is built out. He discussed the four zones in the fee structure. One of the pots of money goes to regional projects such as Milwaukie's Riverfront, Spring Park, and other projects that will benefit the City. He believes it is a smart move on Milwaukie's part to support this proposal because it will benefit the City. Levies have failed because voters did not support the District leadership, but now the new District Director is making great strides. The homebuilders and youth groups support this proposal. Milwaukie cannot take its parks department back, and the City needs to support the District. This SDC proposal offers some great benefits to Milwaukie. The developers have been skating, and they show their understanding of that by supporting the proposal.

Swanson noted the SDC is about 1% of the total cost of a new home.

Councilor Stone commented in terms of the revised letter. What was the reason for not including commercial development?

Swanson guessed the Board recognized there would not be as much use by the businesses, which would have been asked to shoulder a \$5 million burden. He speculates that since both the County and City are looking for new businesses, this was determined not to be a good time to put up any kind of stumbling blocks to commercial development.

Mayor Bernard said those were his comments the last time, and Councilor Lancaster opined the timing was not right. He urged caution until the economy turns around. When people move to a community, they need to share in the burden by paying the SDC. It is a pay as you grow idea. It is also consistent with concurrency – do not build until the infrastructure is there. He personally feels the park system is a very important part that infrastructure. Timing and usage were his issues with the first iteration of the letter. He is not interested in paying more taxes. He contacted the homebuilders to confirm their support, and they do so whole-heartedly. He also had contact with Oak Lodge residents, District Director Ciecko, and Clackamas County CEO Jon Mantay and

their contacts had indicated the timing was bad for a non-residential SDC. He supported the revised letter.

It was moved by Councilor Barnes and seconded by Councilor Loomis to authorize the Mayor to sign the letter of support for the North Clackamas Parks and Recreation District (NCPRD) system development charges (SDC). Motion passed 3 – 2 with the following vote: Mayor Bernard, Councilor Barnes, and Councilor Loomis aye; Councilor Lancaster and Councilor Stone nay.

Mayor Bernard announced the City Council would meet in executive session immediately following adjournment under the authority of Oregon Revised Statutes 192.660(c) – performance evaluation of public officers and employees and 192.660(h) -- real property transactions.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the regular session at 7:15 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development/Public Works Director

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

Subject: Appeal of variance granted by the Public Safety Advisory Committee

Date: February 17, 2004 for the March 2 meeting

Action Requested

Approve an appeal overturning a vision obstruction variance granted by the Public Safety Advisory Committee (PSAC).

Background

A 37th Avenue resident appealed the PSAC's variance decision related to a vision obstruction located on the property at 9925 SE 37th Avenue (southwest corner of the intersection of 37th Avenue and Harvey Street). An existing hedge on the property restricts the vision of motorists on 37th Avenue looking west along Harvey Street (see Attachments "A" and "B" – Existing Conditions). The appeal argued that the variance was granted for aesthetic purposes, and did not consider the safety of vehicles and pedestrians.

The timeline of events leading to the appeal follows:

- May 2003 - Staff received a complaint about a vision obstruction and verified that the obstruction existed and violated Municipal Code Section 12.24 (Attachment "C" – City Code).
- May 2003 - Staff sent a notice to the property owner requesting that the owner correct the vision obstruction (Attachment "D" – Notice of Vision Obstruction).

- July 2003 - Staff verified that the vision obstruction was still present and issued a citation to appear in court (Attachment “E” – Citation).
- July 2003 - The property owner filed for a variance per Municipal Code Section 12.24.050 and the PSAC approved the variance request (Attachment “F” – Variance Agreement).
- Aug. 2003 - Juli Howard appealed the variance decision to City Council (Attachment “G” – Appeal of Variance).

Analysis

Municipal Code Section 12.24 (Clear Vision at Intersections) is intended to protect the safety and welfare of the public in their use of City streets. Clear vision obstructions exist throughout the City. However, due to resource limitations, staff relies on the public to report vision obstructions. Staff then evaluates each complaint on a case-by-case basis. Section 12.24.030C describes the requirements of the “clear vision” area as follows:

“A clear vision area shall contain no planting, fence, wall, structure or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight more than ten percent is allowed to a maximum height of six feet.”

Section 12.24.040A details how to compute the specific area as follows:

“The clear vision area for all street intersections, all street and railroad intersections, and all street and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line, and the edge of a driveway.”

Section 12.24.040B grants discretion to the Director of Public Works (or their designee) to modify the clear vision area based on engineering judgment. Staff evaluated the intersection of 37th Avenue and Harvey and noted the following:

- Harvey Street is a two-lane roadway, is classified as a neighborhood street, and allows parking along only the north side of the road. Vehicles traveling along Harvey Street have the right of way and 37th Avenue is stop controlled.
- The last speed and traffic count on Harvey Street (Fall 1999) showed that the roadway carried 2,500 vehicles a day (including Tri-Met and school bus traffic) and the 85th-percentile speed was 29 miles per hour.
- Under existing conditions, a northbound vehicle on 37th Avenue can see approximately 85 feet to the west along Harvey Street. If the hedge was

- trimmed per the 20-foot radius standard (Section 12.24.040A), approximately 100 feet of clear vision would be available.
- A vehicle traveling eastbound on Harvey Street at 25 miles per hour (mph) needs approximately 155 feet to come to a stop (at 30 mph, 200 feet is needed). The distance needed to come to a stop is also known as the “stopping sight distance.”
 - If the driver of an eastbound vehicle on Harvey Street is 85-100 feet west of 37th Avenue, and they attempt to stop after seeing a vehicle on 37th Avenue proceed into the intersection, the vehicle on Harvey Street would travel 155-200 feet and potentially collide with the vehicle in the intersection.

Based on the preceding information, in the professional judgement of staff, adequate safety is not assured to mitigate against potential vehicle collisions. For this reason, staff supports the application of a stricter clear vision standard to better assure a higher degree of safety compared with the 20-foot radius standard (Section 12.24.040A).

The current standard used by the Engineering Department (and many other municipalities) is contained in the latest edition of “A Policy on Geometric Design of Highways and Streets,” American Association of State Highway and Transportation Officials (AASHTO). The case specific to this appeal is “Case B1 – Intersections with Stop Control on the Minor Road” (see Attachment “H” - AASHTO Standard).

In the case of this appeal, a vehicle that is stopped on 37th Avenue requires a clear line of sight to the west to make a decision to proceed onto Harvey Street. Applying the AASHTO standard, approximately 280 feet of clear vision (distance “b” in Figure 1) is needed to safely accelerate from a stop on the minor road (37th Avenue) and complete a turn onto the major road (Harvey Street).

The AASHTO clear vision requirement is based on the typical time gap a driver finds “acceptable” to make a safe turning maneuver from the decision point on Harvey Street. The 280-foot AASHTO standard assumes that an “acceptable” gap is one that does not require either vehicle to suddenly accelerate or brake to avoid a collision.

After careful consideration, staff is confident that vehicle collisions can still be mitigated if the available clear vision for a vehicle on 37th Avenue is at least equal to the stopping sight distance for a vehicle on Harvey Street. The stopping sight distance for eastbound vehicles along Harvey is approximately 200 feet (based on the 85th-percentile speed of 29 mph on Harvey Street).

Based on field measurements, if the entire extent of the hedge along the Harvey Street frontage is trimmed not to exceed 36-inches in height (referenced from the top of the curb along Harvey Street), approximately 210 feet of clear vision will be

available for a vehicle on 37th Avenue. Two hundred ten (210) feet of clear vision for a vehicle on 37th Avenue, exceeds the stopping site distance of 200 feet for a vehicle traveling 30 mph on Harvey Street, thus mitigating against potential vehicle collisions.

The standard clear vision area set forth in Milwaukie Municipal Code (Section 12.24.040A) and staff’s recommended clear vision area (Section 12.24.040B) are shown in Figure 1 for reference. Applying staff’s recommendation would require the entire hedge along Harvey Street to be trimmed not to exceed 36-inches in height (measured from the top of curb along Harvey Street).

The variance (Attachment “E”) granted by the PSAC is less restrictive than the 20-foot radius standard, staff’s recommendation, and the AASHTO standard. The PSAC variance differs from the other standards in a few key areas:

Standard	Vertical Limits	Horizontal Limits
<i>PSAC (least restrictive, lowest degree of safety)</i>	allows the hedge to be 40 to 50-inches in height, referenced from the existing ground.	extends a total of 28 feet, referenced from existing west curb line on 37 th Ave.
<i>Milw. Municipal Code, 20-foot radius (moderate degree of safety)</i>	allows 30-inches in height, referenced from the top of the curb.	references the existing property line on 37 th Ave., extends a few feet west/beyond PSAC limit.
<i>Staff Recommendation (higher degree of safety)</i>	allows 36-inches in height, referenced from the top of the curb.	references the northbound vehicle lane on 37 th Ave., extends 210 feet to the west.
<i>AASHTO (most restrictive, highest degree of safety)</i>	allows 36-inches in height, referenced from the top of the curb.	references the northbound vehicle lane on 37 th Ave., extends 280 feet to the west.

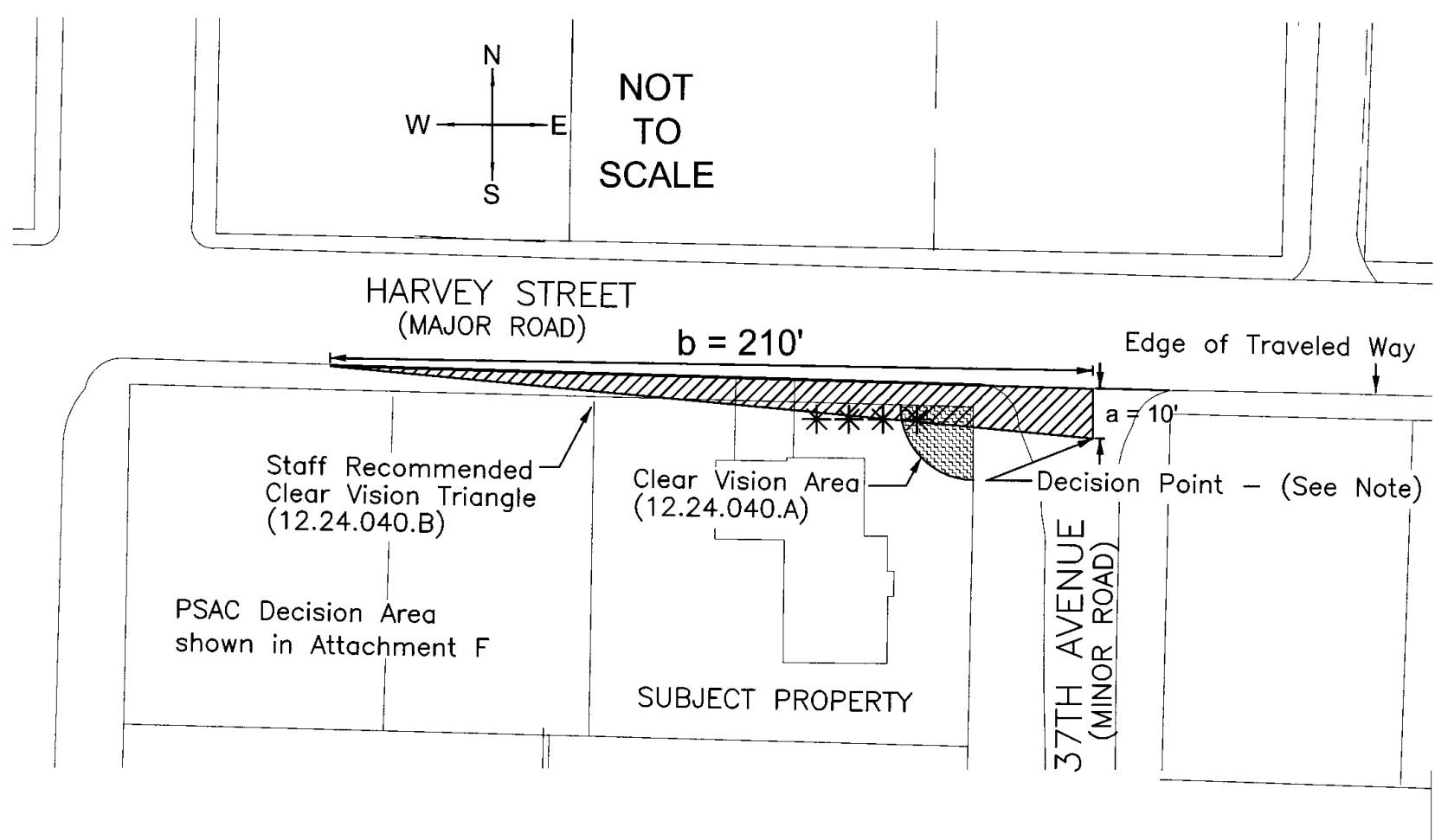


Figure 1 - Standard clear vision area (section 12.24.040A) and staffs recommended clear vision area (section 12.24.040B)

* Note - Space needed for a driver to negotiate a turning movement measured from edge of roadway

The appeal of the PSAC variance argued that the variance was granted for aesthetic purposes, and did not consider the safety of vehicles and pedestrians. Staff reviewed code section 12.24.050B, which details the specific provision for granting variances to the standard and is presented as follows:

“Vehicle and pedestrian safety shall be the primary factors in decisions when variances are considered. The type of intersections, site characteristics, types of vehicle controls, vehicle speed, traffic volume and other similar items are factors to be considered. The standards set forth in the Traffic Engineering Handbook on intersection sight distance and any other appropriate standards shall be considered. Aesthetics and length of time fences or vegetation have existed are not relevant factors.”

The arguments that form the basis for granting a variance are essentially the same as the arguments used in the appeal (safety is the primary factor, aesthetics are not a relevant factor). The PSAC variance decision does not refer to vehicle and/or pedestrian safety standards as the primary basis for the variance. The PSAC variance decision outlined in Attachment F states that the variance was granted as a “good faith effort to provide the applicant with the aesthetic appearance of his home, yet provide a safe access for vehicles traveling north.”

Staff believes that the PSAC did not go far enough in considering safety standards in their decision. Therefore, staff concurs with the appellant that the variance lacked relevant supporting information related to safety, and that aesthetics are not a relevant factor.

Recommended Findings and Conclusions in support of appeal

1. Under existing conditions, a northbound vehicle on 37th Avenue can see approximately 85 feet to the west along Harvey Street. The available clear vision along Harvey Street does not adequately insure for vehicle and pedestrian safety, and does not mitigate against potential vehicle collisions.
2. The PSAC variance does not refer to vehicle and/or pedestrian safety standards as the primary basis for the variance as required by Section 12.24.050B.
3. The PSAC variance provides the lowest degree of vehicle and pedestrian safety compared with the 20-foot radius standard (Section 12.24.040A), staff’s clear vision recommendation (Section 12.24.040B), and the AASHTO standard.
4. The AASHTO standard (280 feet of clear vision) provides the highest level of mitigation against vehicle collisions.
5. Vehicle collisions can still be mitigated if the available clear vision for a vehicle on 37th Avenue is at least equal to the stopping sight distance for a vehicle on Harvey Street.
6. The stopping sight distance for eastbound vehicles along Harvey is approximately 200 feet (based on the 85th-percentile speed of 29 mph on Harvey Street).

7. If the entire extent of the hedge along the Harvey Street frontage is trimmed not to exceed 36-inches in height (referenced from the top of the curb along Harvey Street), approximately 210 feet of clear vision will be available for a vehicle on 37th Avenue (assuming the driver is located 10 feet back from the traveled way on Harvey Street).
8. Two hundred ten (210) feet of clear vision for a vehicle on 37th Avenue exceeds the stopping site distance of 200 feet for a vehicle traveling 30 mph on Harvey Street, thus mitigating against potential vehicle collisions.
9. Staff finds that providing 210 feet of clear vision to be a suitable compromise that considers existing conditions on the subject property, without sacrificing vehicle and pedestrian safety.
- 10. Staff recommends that the variance be overturned to insure the safety and welfare of the public in their use of City streets. To mitigate against potential vehicle collisions, the clear vision standard should be applied as follows:**
The entire extent of the existing hedge along the Harvey Street frontage of the property at located at 9925 SE 37th Avenue shall be trimmed not to exceed 36-inches in height (measured from the top of curb along Harvey Street).

Alternatives

Council has the following alternatives:

- Concur with appeal, overturn the PSAC variance, and apply staff's recommendation for clear vision (mitigates against vehicle collisions).
- Concur with appeal, overturn the PSAC variance, and apply the 20-foot radius standard (section 12.24.040A, provides a moderate level of safety, does not mitigate against vehicle collisions).
- Uphold original variance granted by the Public Safety Advisory Committee (provides the lowest level of safety, does not mitigate against vehicle collisions).
- Grant a different variance.

Attachments

Attachment A - Existing Conditions

Attachment B - Existing Clear Vision Along Harvey Street West of 37th Avenue

Attachment C - City Code Section

Attachment D - Notice of Vision Obstruction

Attachment E - Citation

Attachment F - PSAC Variance Agreement

Attachment G - Appeal of Variance

Attachment H - AASHTO Standard

ATTACHMENT A – EXISTING CONDITIONS



** Looking southwesterly along Harvey Street at the property and bush obstruction located at 9925 SE Harvey Street

ATTACHMENT B – EXISTING CLEAR VISION ALONG HARVEY STREET WEST OF 37th AVENUE



** Looking westerly along Harvey Street from the northbound lane of 37th Avenue, at a point 10-feet south of the traveled way on Harvey Street.

Chapter 12.24

CLEAR VISION AT
INTERSECTIONS

Sections:

12.24.010	Purpose.
12.24.020	Definitions.
12.24.030	Requirements.
12.24.040	Computation.
12.24.050	Variance.
12.24.060	Enforcement.
12.24.070	Liability.
12.24.080	Violation of Section 12.24.030—Penalty.

12.24.010 Purpose.

The purpose of this chapter is to maintain clear vision areas at intersections in order to protect the safety and welfare of the public in their use of city streets. (Ord. 1679 § 1, 1990)

12.24.020 Definitions.

As used in this chapter:

A. "Fence" means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.

B. "Street" means the entire width between right-of-way lines of every way for vehicular and pedestrian traffic and includes the terms "road," "highway," "lane," "place," "avenue," "alley" and other similar designations.

C. "Clear vision area" means that area, as computed by Section 12.24.040, which allows the public using the city streets an unobstructed view of an intersection.

D. "Person" means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

E. "Driveway" or "accessway" means the point at which a motor vehicle gains ingress or egress to a property from a public road or highway. (Ord. 1679 § 2, 1990)

12.24.030 Requirements.

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 12.24.040.

C. A clear vision area shall contain no planting, fence, wall, structure or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight

12.24.030

more than ten percent is allowed to a maximum height of six feet. (Ord. 1679 § 3, 1990)

12.24.040 Computation.

A. The clear vision area for all street intersections, all street and railroad intersections, and all street and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line, and the edge of a driveway.

B. Modification of this computation may be made by the director of public works, or his designee, after considering the standards set forth in the Traffic Engineering Handbook on intersection site distance after taking into consideration the type of intersection, site characteristics, types of vehicle controls, vehicle speed and traffic volumes. (Ord. 1679 § 4, 1990)

12.24.050 Variance.

A. Variances from the provisions of this chapter may be granted by the traffic safety commission.

B. Vehicle and pedestrian safety shall be the primary factors in decisions when variances are considered. The type of intersections, site characteristics, types of vehicle controls, vehicle speed, traffic volume and other similar items are factors to be considered. The standards set forth in the Traffic Engineering Handbook on intersection sight distance and any other appropriate standards shall be considered. Aesthetics and length of time fences or vegetation have existed are not relevant factors.

C. A property owner or the owner's agent may initiate a request for a variance by filing an application with the city within ten working days of warning or citation for violation.

D. Any decision of the traffic safety commission may be appealed to the city council without fee within ten working days of receipt of the traffic safety commission's written decision.

E. Fees for the variance application to the traffic safety commission shall be set by resolution of city council. (Ord. 1679 § 5, 1990)

12.24.060 Enforcement.

The provisions of Chapter 1.08 shall be used to enforce this chapter. Enforcement procedures shall be suspended while an application or appeal for a variance is being considered. Enforcement procedures shall resume upon denial of a variance. (Ord. 1679 § 6, 1990)

12.24.070 Liability.

The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by Section 12.24.030. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this chapter. (Ord. 1679 § 7, 1990)

12.24.080 Violation of Section 12.24.030—Penalty.

Violation of Section 12.24.030 is punishable, upon conviction, by a fine of

12.24.080

not more than two hundred fifty dollars.
When the violation is a continuous one,
each day the violation continues to exist
shall be deemed a separate violation.
(Ord. 1679 § 8, 1990)

ATTACHMENT D – NOTICE OF VISION OBSTRUCTION



May 1, 2003

Perry A. Nordby
9925 SE 37th Avenue
Milwaukie, OR. 97222

SUBJECT: VISION OBSTRUCTION
SUBJECT ADDRESS: 9925 SE 37th

Dear Mr. Nordby:

It has come to our attention that there may be a code violation at the property you own at the above address. The hedge on the Harvey Street frontage of your property is overgrown and obstructing the clear vision for safe operations of traffic on the corner of 37th Avenue & Harvey Street.

It is the City's policy to provide you with the opportunity to correct these problems before we pursue formal enforcement actions. Please carefully note the following information regarding this matter:

These violations pertain to the City of Milwaukie Ordinances;

Section 12.24.030 Requirements.

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 12.24.040.

- Please correct the situation by May 16, 2003 by taking the following steps:

1. Properly cut or remove all vegetation that is overgrown and obstructs the clear vision area.
 2. Maintain the vegetation so it does not create an unsafe situation for pedestrians or vehicles.
 3. Cut back corner vegetation on the intersection of 37th Avenue and Harvey Street so that it does not cause a vision clearance problem for vehicles pulling out onto Harvey Street.
- This property will be reevaluated for your voluntary compliance by the above-mentioned date. At this time I would like to offer to you any assistance possible to help remedy this problem.

If you have any questions or if I can offer you any assistance regarding this matter, please contact this office at (503) 786-7605.

Thank you for your cooperation. We appreciate your help in keeping Milwaukie safe and livable.

Sincerely,

Jack R. Ostlund Jr., Associate Engineer

ATTACHMENT E - CITATION



October 17, 2003

Sent by Certified Mail

Perry Nordby
9925 SE 37th
Milwaukie, OR 97222-

UNIFORM CITATION & COMPLAINT OF ORDINANCE VIOLATION CITATION TO APPEAR IN COURT

Please find enclosed a Citation to Appear in Court for a nuisance at the following address:
9925 SE 37th MILWAUKIE, OR 97222

The citation is for the following nuisance:

Chapter 12.24 Clear Vision at Intersections Section 12.24.030

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges or other vegetation or projecting overhanging limbs thereof, which obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses or controls the property to remove or trim and keep trimmed any obstructions to the view.

It is important to the City to be consistent and fair when enforcing its ordinances. At this point, the City must issue the enclosed Citation to Appear in Court. In the citation, you will find information regarding your scheduled court appearance and a description of the code violation.

If the court finds that a violation of the above-mentioned code was committed, the court may assess a penalty, as well as court costs. Each day's violations may be deemed as a separate offense with fines not to exceed \$500 per violation. You shall be required to pay these costs in addition to your costs for abatement.

The City of Milwaukie issues a Citation to Appear in Court as a last resort. We are optimistic that you will resolve this violation at the earliest possible time to avoid future citations.

Issued By:

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

Steve Campbell
Code Compliance Coordinator

10722 SE Main Street
Milwaukie, Oregon 97222
503-786-7545
campbells@ci.milwaukie.or.us

ATTACHMENT F - PSAC VARIANCE AGREEMENT



August 1, 2003

Mr. Perry Nordby
9925 S.E. 37th Street
Milwaukie, OR 97222

SUBJECT: Variance Agreement - Vision Obstruction Finding of PSAC Site Inspection

Ref: Summons 96037

Dear Mr. Nordby:

This is to notify you that the Public Safety Advisory Committee conducted a site inspection of your property on Thursday, July 24, 2003 and found that you can qualify for a variance as authorized by Milwaukie City Code 12.24.050 "Variance." The variance will be granted provided you comply with the following standards and cut your hedge not to exceed the following specifications:

From the west curb line of SE 37th Street west along S.E. Harvey for a distance of twenty-six (26) feet your hedge shall not exceed forty-inches (40) in height as measured from the ground; then continuing west along S.E. Harvey an additional two-feet (2) the hedge shall not exceed fifty-inches (50) as measured from the ground. (See Attached Sketch)

This variance is being granted as a "good faith" effort to provide you with the esthetic appearance of your home, yet provide a safe access for vehicles traveling north on S.E. 37th as that traffic merges with traffic on Harvey Street. By signing this variance you agree to abide by the stipulations of the variance.

MILWAUKIE POLICE DEPARTMENT
3200 SE Harrison
Milwaukie, Oregon 97222
PHONE: 503-786-7400 • FAX: 503-786-7426

Should you fail to maintain sight clearances established by this variance you understand that the City can issue a summons to appear in court to force compliance.

I have indicated a place for you to affix your notarized signature. Records staff at the Milwaukie Police Department will notarize your signature, at no cost, if you contact them during normal business hours. If you stipulate to the conditions of the variance please affix your notarized signature and forward to the Police Department no later than August 20, 2003.

Thank you for bringing this matter to the attention of the Public Safety Advisory Committee and allowing the system to support your grievance.

Yours truly,



Karen Martin
Chair
Public Safety Advisory Committee

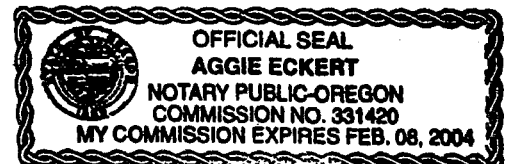
Cc: Steve Campbell, Code Enforcement – Neighborhood Services
Neighborhood Chairs
Judge Gray, Milwaukie Municipal Court

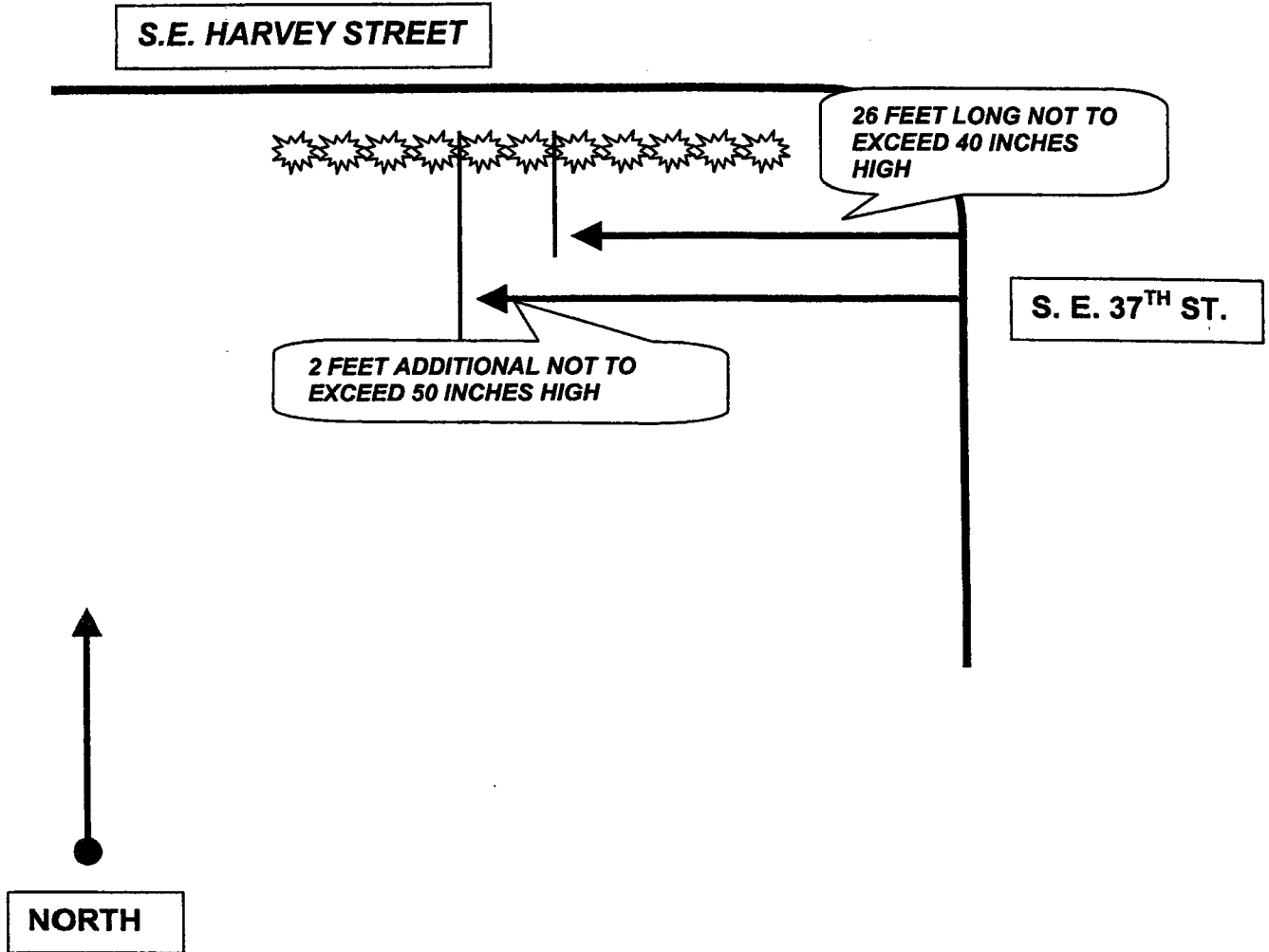
Variance Agreement and Acknowledgement signed this 6th day of August, 2003.

Perry Nordby, property owner 9925 S.E. 37th Avenue.

Notarized by Aggie Eckert, date: 8/8/03

My Notary expires 02/08/04





**Stipulated minimums for variance – August 1, 2003
Public Safety Advisory Committee – Karen Martin, Chair**

ATTACHMENT G - APPEAL OF VARIANCE

Rec'd 8/15/03 1:10 PM
DHO

8/14/03

TO: Mayor & City Councilors
FROM: Juli Howard
SUBJECT: Appeal of Public Safety Advisory Board Variance Decision

I am utilizing my right to appeal the variance granted to Mr. Nordby at 9925 SE 37th Ave.

I submitted a complaint with Code Enforcement regarding a vision obstruction at the above address. The corner, in which Mr. Nordby lives, is dangerous due to a hedge of arborvitae on Mr. Nordby's property. The hedge does not allow you to get a view down the left side of Harvey Street from 37th Ave. because the hedge is too close to the street as well as too tall.

I don't believe the variance given to Mr. Nordby provides citizens the safety at the corner that we all deserve. The variance was granted as a "good faith effort" as well as to "maintain the aesthetics appearance of his home."

If you refer to the Milwaukie Municipal Code Section 12.24.050 it states Vehicle and Pedestrian Safety shall be the primary factors in decisions when variances are considered. It also states that aesthetics and length of time fences and vegetation have existed are not relevant factors. Again, if you review the variance it clearly states the safety committee granted the variance for aesthetics purposes and basically disregarded the complainants concern about the safety of cars and pedestrians at the corner.

Tri-met and other cars use Harvey Street all day long and they usually are traveling faster than the posted speed limit. That makes it very dangerous for someone stopped on 37th Ave. if they cannot see on-coming traffic. I have almost been hit on two separate occasions.

I have lived on 37th Ave. for over 9 years and have thought this intersection was dangerous. I have submitted a complaint prior to the latest one when a citation was issued to Mr. Nordby. Then I found out that he appealed to the Safety Committee and they approved a variance. While I don't think Mr. Nordby should be fined I do feel the vision obstruction on his property should be moved in towards his property, reduced to 30" or removed to protect pedestrian and vehicle traffic.

According to the code I don't believe the Public Safety Advisory Committee had the authority to grant the variance. Furthermore, I hope you will overturn the committee's variance decision and either direct Mr. Nordby to move the hedge towards his property or cut the hedge to a minimum of 30", which is what the code states for a corner property.

I would not have filed this complaint if I did not feel it was a serious safety issue. I hope you will confer with the Engineering Department Staff and their Standards Handbook. If you follow those guidelines you will see the variance should never have been granted, and should be overturned.

I would encourage council to visit the site in your car and try and look to the left. You will then experience what I do on a daily basis when I am driving home.

I appreciate your attention to this matter.

Regards,

A handwritten signature in cursive script that reads "Juli Howard".

Juli Howard
9705 SE 37th Ave.
Milwaukie, OR 97222

ATTACHMENT H – AASHTO STANDARD

Intersections

Metric				US Customary			
Design speed (km/h)	Stopping sight distance (m)	Intersection sight distance for passenger cars		Design speed (mph)	Stopping sight distance (ft)	Intersection sight distance for passenger cars	
		Calculated (m)	Design (m)			Calculated (ft)	Design (ft)
20	20	41.7	45	15	80	165.4	170
30	35	62.6	65	20	115	220.5	225
40	50	83.4	85	25	155	275.6	280
50	65	104.3	105	30	200	330.8	335
60	85	125.1	130	35	250	385.9	390
70	105	146.0	150	40	305	441.0	445
80	130	166.8	170	45	360	496.1	500
90	160	187.7	190	50	425	551.3	555
100	185	208.5	210	55	495	606.4	610
110	220	229.4	230	60	570	661.5	665
120	250	250.2	255	65	645	716.6	720
130	285	271.1	275	70	730	771.8	775
				75	820	826.9	830
				80	910	882.0	885

Note: Intersection sight distance shown is for a stopped passenger car to turn left onto a two-lane highway with no median and grades 3 percent or less. For other conditions, the time gap must be adjusted and required sight distance recalculated.

Exhibit 9-55. Design Intersection Sight Distance—Case B1—Left Turn From Stop



Ledding Library Board January minutes

6:30 PM, January 26, 2004
Ledding Library

Meeting called by:

Tom Hogan

Attendees:

Attendees: Mark Docken, Pat Healy, Tom Hogan, Pat Lent, Sue Trotter, Michael Welling.

Absent: Ed Zumwalt

Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

The second sentence of the WeLL section should read: "They probably will not poll voters about tax rates for the library levy."

Minutes approved as corrected

Librarian's report

Cynthia gave out a LNIB spreadsheet showing projected revenue from the proposed 5 year library countywide levy and projected expenditures based on the present budget. Board members expressed concern about the amount given for the city contribution.

Facility Planning Committee

A donation from the Rowe family was made to the Friends to be donated to the library foundation once it is formed or to cover expenses for the application for foundation status. Joe Sandfort and Molly Hanthorn have written by-laws and articles of incorporation, but there are other projects that they need help with before filing with the IRS and the state. Tom has spoken with an attorney who specializes in non-profit law who can be consulted, and Mayor Bernard suggested seeing a CPA instead. Officers have not been recruited for the foundation. The Board suggested contacting Carol Kay about possible Friends members who would make good candidates.

Sue Trotter suggested that it was time for the Board to report to the City Council on the facility project. The committee now has a cost estimate and report from the architect, and an estimate for the design phase. Cynthia will contact Mike Swanson and Pat Duval about scheduling a time during a council work session.

WeLL

Michael and Tom reported that the WeLL committee is working on establishing PAC status. At their next meeting, they will assess costs for various projects that a consultant could provide. The group is asking Friends organizations to donate \$1500 to pay for the voters' survey. Tom has consulted an attorney about the legality of Friends groups contributing to a PAC.

2004-05 budget

The senior librarians will be meeting with Mike Swanson in mid-February for the first budget discussion. Ideas for the narrative were discussed. Everyone agreed that it was important to point out where we were last year, what changes have resulted this year, and what it would take to recoup losses in circulation.

Board members will work on a list of "talking points" for their presentation to the budget committee.

January 2004 Report Ledding Library

Circulation:

- Circulation dropped by 8% from January 2003. Fines have increased by 27%.
- The network has begun emailing patrons courtesy reminders about items approaching their due date. We have already received very positive feedback from patrons about this new service.

Children's services:

- Librarian Jana Hoffman is the chair. of the network Children's Services Committee. She has been working with network administrator Joanna Rood and representatives from the Washington Country Cooperative Library Network on negotiations for corporate sponsorship of our summer reading program. With our network committee, she has been coordinating plans for the 2004 program, including publicity and printing.

Library database and website:

- A network committee is currently working on ways to improve the appearance and usefulness of the information that appears on the on-line catalog. Title entries are lengthy and cumbersome to use.
- Library staff and volunteers have entered indexing for the Milwaukie newspaper into our website. The obituary project will soon be completed.

Library collection:

- There is now an adult collection of Russian materials that complements the children's collection that has been available for a couple of years. We have distributed publicity about this new addition to various outlets in the area, such as churches, restaurants, and grocery stores. Students at PSU have helped with flyers and press releases. The children's department publicizes through the school district.
- Ledding Library has received notification from the State Library that the CD Minimum Advertised Price antitrust litigation is nearing completion. We will receive approximately 400 music cds as a result of this court decision. Information about this suit can be obtained at <http://www.musiccdsettlement.com/english/default.htm>