

MINUTES

MILWAUKIE CITY COUNCIL OCTOBER 19, 2004

CALL TO ORDER

Mayor Bernard called the 1944th meeting of the Milwaukie City Council to order at 6:40 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster	Councilor Deborah Barnes
Councilor Joe Loomis	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	John Gessner, Planning Director
Dom Colletta, City Attorney	Keith Jones, Associate Planner
Stewart Taylor, Finance Director	Lindsey Nesbitt, Associate Planner
Alice Rouyer, Community Development and Public Works Director	Brion Barnett, Civil Engineer
JoAnn Herrigel, Community Services Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Metropolitan Transportation Improvements Program

Ms. Rouyer announced Metro was holding two important listening post meetings on the 2006 – 2009 Metropolitan Transportation Improvements Program (MTIP) and encouraged City Council and public to attend and/or provide feedback on Milwaukie's applications. The City submitted applications for the Lake Road Multi-Modal Enhancements Project and the Downtown Pedestrian and Streetscape Improvements Project. She discussed the \$2.1 million Lake Road safety improvement project that would begin at 21st Avenue and end at Kuehn Road. The second project was downtown sidewalks. Metro will accept written comment from the public until December 6, 2004.

Mayor Bernard understood Lake Road was number four on the list of four at 150% and urged community support. The downtown sidewalk project was well ranked.

Ms. Rouyer provided photos that would make a good case in a Councilor's Metro presentation. She also suggested attendance at the Oregon City meeting where all the Clackamas County projects were being discussed.

Mayor Bernard announced the dedication of the *Welcome to Milwaukie* sign on November 5 at 7:30 a.m. beginning at City Hall with prizes and a continental breakfast. Sharon Klein carved the sign, and the Milwaukie Rotary and the City will sponsor the event.

Advisory Board Interviews

The City Council interviewed **Dan Freinwald** for a vacant position on the Cable Access Studio Ad Hoc Committee and **Marie Watkins** for the Island Station position on the Public Safety Advisory Board. **Dave Green, Reese Mayo, Richard Newman, Shane St. Clair,** and **Mitch Wall** were interviewed for positions on the Riverfront Board.

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 September 5, 2004;
- B. Resolution No. 32-2004: A Resolution of the City Council of the City of Milwaukie, Oregon Amending Resolution No. 44-2003, Relating to the Acquisition of Property for Right-of-Way;
- C. Resolution No. 33-2004: A Resolution of the City Council of the City of Milwaukie, Oregon, Recording the Certified Election Results for the September 21, 2004 Special Election; and
- D. Resolution No. 34-2004: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to sign and Renew the Intergovernmental Agreement with Clackamas County for a Grant to Maintain the Juvenile Crime Diversion Program.

Motion passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

- A. Historic Designation for 9908 SE Cambridge Lane (HR-04-01)

Mayor Bernard called the hearing to order at 7:10 p.m. and announced the hearing was continued from October 5, 2004.

CITY COUNCIL REGULAR SESSION – OCTOBER 19, 2004

Approved Minutes

Page 2 of 10

The purpose of the hearing was to consider changing the historic designation for the property located at 9908 SE Cambridge Lane from "unrankable" to "contributing" as recommended by the Design and Landmarks Commission, Planning Department File No. HR-04-01.

Mayor Bernard reviewed the order of business. The City Council decision would be the final decision of the City. All testimony and evidence was to be directed toward the applicable criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. He reviewed the conduct of the hearing.

There were no potential or actual conflicts of interest declared or challenges to a member's ability to participate in the decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff Report: **Mr. Jones** provided the staff report. In 1988, the City inventoried historic landmark properties and created code in the Zoning Ordinance for protection of those properties. The historic landmark properties were ranked into three categories: unrankable, significant, and contributing. The property at 9908 SE Cambridge was in the unrankable category, and the applicant requested that the property be ranked as contributing. The owner could not get a building permit for any exterior modification until the property was ranked. The applicant based his argument on the worksheet that addressed three main categories: historical association, environment, and architecture, and each of these had subcategories. The applicant ranked the property as being particularly strong because the notable architect Morris Whitehouse designed it. There were no special events on the property. The subject property was not well known as a visual landmark because trees on a private street obscured it. The surrounding setting of the property was excellent because of the Cambridge-Waverly area and the house fit well with the character of the neighborhood. In terms of architecture, it ranked "good" in style and materials. The house did not rank as highly in integrity because modifications in 1968 removed some of its historic features. It was one of the few English-style cottages in the Portland areas.

The Design and Landmarks Commission held a hearing in August 2004 and recommended the City Council adopt the applicant's recommendation to rank it as "contributing" property based on the historic worksheet. This was a Comprehensive Plan amendment to the list and historic map.

Applicant's Comments: **Mr. Lyndon Murray** purchased the house last year when he moved to Milwaukie from France. He was intrigued that the architect who built this house also built the American embassy in Paris. The house was built in 1912, and the cottage that was semi-attached to the house was literally untouched from its 1912 condition. About 50% - 60% of the main house was untouched, but the part that was changed damaged the integrity when the sunroom was removed. The intent, to the best of his ability, was to take the house back to its original design; however, there were

CITY COUNCIL REGULAR SESSION – OCTOBER 19, 2004

Approved Minutes

Page 3 of 10

some practical limitations. The roofline was extended, and that would not change. He would work within the existing footprint, but try to recreate the original sunroom look and feel. Many of the French doors were removed and replaced with fixed windows, and those would not be changed. A Greek-style entrance was added to an English cottage, which he felt was inappropriate. The flat roof extension was supposed to be a carport, and the garage was about 50 feet away. The intent was to pick up the double peak effect of the main house and do that on the cottage to make it look as if it was always that way. Mr. Murray provided photos of the property.

Correspondence: There was no additional correspondence on the matter other than those items included in the packet.

Public Testimony: None.

Additional Staff Comments: None.

Mayor Bernard closed the public testimony portion of the hearing at 7:20 p.m.

Council Discussion and Decision: **Councilor Barnes** asked Mr. Murray what brought him to Milwaukie.

Mr. Murray purchased a business in Beaverton, and his son was a student at Lewis and Clark.

Councilor Loomis commented he visited the residence and hoped that area was included in Milwaukie's demographics. It was a beautiful property.

Councilor Lancaster applauded Mr. Murray's restoration efforts.

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 the Comprehensive Plan to change the historic designation of property located at 9908 SE Cambridge Lane. Motion passed unanimously.

The city manager read the ordinance by title only two times.

The city recorder polled the City Council. Councilors Barnes, Lancaster, Loomis and Stone and Mayor Bernard 'aye'; no nays; no abstentions. Motion passed unanimously.

ORDINANCE NO. 1937:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN TO CHANGE THE HISTORIC DESIGNATION OF PROPERTY AT 9908 SE CAMBRIDGE LANE FROM "UNRANKABLE" TO "CONTRIBUTING."

CITY COUNCIL REGULAR SESSION – OCTOBER 19, 2004

Approved Minutes

Page 4 of 10

B. Downtown Code Amendments, ZA-04-01

Mayor Bernard called the public hearing on the code amendment initiated by the City of Milwaukie order at 7:25 p.m.

The purpose of the hearing was to consider public comment on amendments to Municipal Code Chapter 19.312 – Downtown Zones – as recommended by the Planning Commission and Design and Landmarks Commission, File No. ZA-04-01.

Mayor Bernard reviewed the order of business. The City Council decision would be the final decision of the City. All testimony and evidence was to be directed toward the applicable criteria. Failure to address a criterion or raise any issue with sufficient detail precluded an appeal based on that criterion or issue. He reviewed the conduct of the hearing.

There were no potential or actual conflicts of interest declared or challenges to a member's ability to participate in the decision. There were no objections to the Council's jurisdiction to consider the matter.

Staff Report: **Ms. Nesbitt** provided the staff report. On September 28, 2004, the Planning Commission adopted a resolution recommending that the City Council approve proposed changes to the Zoning Ordinance and Zoning Map. The applicant, the City of Milwaukie Community Development Department, proposed a number of changes to the downtown zone that included permitting townhouses and multi-family residential dwellings in a limited portion of the downtown zone to create a "village concept area." This amendment would only permit multi-family areas in that portion of the downtown storefront zone. The rest of the downtown would remain the same. The second proposal was to allow surface parking lots and curb cuts within 50 feet of Main Street. The third proposal was to permit upper level, unenclosed balconies to project up to 4 feet within the right-of-way subject to fire regulations, building codes, and other safety limitations. The fourth change was to modify the design standards criteria to create more flexibility for the Planning Commission and Design and Landmarks Committee (DLC) in allowing prohibited materials to be used subject to a review process.

Ms. Rouyer summarized the amendments. The Village Concept on the North Main site allowed for townhouses and condominiums where they are not allowed today. Initially, staff looked at just allowing townhouses and multi-family dwellings outright throughout the downtown storefront zone but realized that might create some unintended consequences. Townhouses might not get the City to the kind of density it wanted in the downtown. This particular proposal allowed for a mixture of uses appropriate on the site based on size and configuration of the site.

This proposal identified an issue. The intent was to create a long, continuous row of buildings and retail uses along Main Street. To do that curb cuts and parking lots were

CITY COUNCIL REGULAR SESSION – OCTOBER 19, 2004

Approved Minutes

Page 5 of 10

prohibited within 50 feet of Main Street. In the pre-application process for this project, it was pointed out by the fire marshal that there needed to be emergency access on the north side. That created a regulatory need for the curb cuts. In looking at that design, it was determined the parking could be distributed to allow access from 21st Avenue and Harrison Street and Main Street. Subsequently, there was consideration of an off-street parking lot. There were criteria on staff report page 17 that required the parking lots be adequately screened and that the need for the parking outweighed the design deficiencies. In some cases there would be a community need. In this case, she believed this proposal would be meet the criteria in design review.

There was a residential balcony standard that was currently a development standard, so it would require a variance. Moving it to a design standard required a different review process that would go to the DLC. It would be less onerous but would still require some strong design scrutiny, and she believed it would be very positive. The fourth amendment would allow upper-level, unenclosed balconies to project into the right-of-way. Currently, balconies may project 18 inches into the right-of-way. The City of Portland allows them to project up to 4 feet. Ms. Rouyer believed this could create a very dynamic right-of-way. All of the projections into the right-of-way would have to address fire and building code issues.

Finally, the amendment would change the process to allow the DLC and Planning Commission to consider prohibited materials. There was no way to vary prohibited materials under the current code. The proposal established a process that allowed the Planning Commission and DLC to scrutinize the use of materials like hardy plank.

Mayor Bernard asked if hardy plank was proposed on the first floor. He had no problem with its being used on the upper levels.

Ms. Rouyer responded it was not proposed on the first floor in this project along Main Street. Amendments 2, 3, 4, and 5 would apply to the entire downtown. Number 1 would apply to this site only.

Mayor Bernard asked, then, if prohibited materials on Main Street would be possible at other sites.

Ms. Rouyer said the proposal would allow prohibited materials on the first floor to be considered if an applicant made a request. The burden would be on the applicant to make a strong case that those materials met the intent if the code, design guidelines, and the downtown plan. This outlined a process for considering those kinds of requests.

Councilor Lancaster asked if the City did or did not create a list of prohibited materials in the process.

Ms. Rouyer replied that a list was created.

Councilor Lancaster understood that some of those materials could be taken off the list under certain circumstances.

Ms. Rouyer said that material would continue to be on the list of prohibited materials in the code. The amendment outlined a process for an applicant to make a case to the Planning Commission and DLC for using the prohibited material. The burden was still on the applicant to make the case. There were strong, clear safety guidelines along with strong guidelines in the code that clearly articulated the intent.

Councilor Lancaster understood the existing codes and guidelines would be the criteria for an exception.

Ms. Rouyer read the proposed language, "The Planning Commission may authorize the use of prohibited materials or design features in a public hearing in accordance with the following criteria: the applicant demonstrates that the prohibited material is substantially comparable to an allowed material with regards to quality, appearance, style, architectural effect, and durability. Use of the prohibited materials is consistent with design considerations specified for the particular design element in the Milwaukie Downtown Design Guidelines."

Councilor Lancaster asked if there was any further delineation of what substantially comparable meant.

Ms. Rouyer replied that there was not.

Councilor Lancaster understood then there was a certain level of subjectivity.

Ms. Rouyer stated there was a lot of subjectivity in design review in general and to some extent was a judgment call. She believed all the tools in the code, plan, and downtown design guidelines were very effective.

Councilor Stone reiterated Councilor Lancaster's comments that that popped out at her too. She wondered why the City would have the DLC make a list of prohibited materials because there must have been a good reason for doing that. The only reason she could think the developer would want to try and make a case for using a prohibited material would be to offset some costs. She was not in favor of adjusting what the DLC did in terms of prohibited materials without their input. Did the DLC know this was being proposed?

Ms. Rouyer responded that these amendments went to the Planning Commission in September, and there were public hearings with the DLC. Both the Commission and the Committee recommended these be moved on for the City Council's approval.

Mr. Gessner added there was a hearing with the DLC, and that group unanimously forwarded its recommendation for approval.

Correspondence: There was no additional correspondence.

Public Testimony: None.

Additional Staff Comments: None.

Questions from Council:

Close of Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:40 p.m.

Council Discussion and Decision: **It was moved by Councilor Stone and seconded by Councilor Loomis for the first and second readings by title only and the adoption of an ordinance amending Municipal Code Chapter 19.312 – Downtown Zones.**

Motion passed unanimously.

The city manager read the ordinance by title only two times.

The city recorder polled the Council: Councilors Barnes, Lancaster, Loomis, and Stone and Mayor Bernard 'aye'; no nays; no abstentions. Motion passed unanimously.

ORDINANCE NO. 1938:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 19.312 DOWNTOWN ZONES.

OTHER BUSINESS

Adoption of City Investment Policy

Mr. Taylor provided the staff report. The proposed resolution adopted an investment policy for the City of Milwaukie. ORS 194 sets forth provisions regulating the investment of available cash for local governments. One of the provisions of that chapter was that the governing body of the local government shall establish a written order regarding investment of available cash. That written order was generally provided through an investment policy. The provisions of the statute also requires that the policy be reviewed by an Oregon Short Term Fund Board (OSTFB) which is advisory to the Oregon State Treasury prior to local adoption. The Board reviewed the proposed policy at its September 29, 2004, and did not have any comments or changes.

The City's current investment policy was last reviewed by the OSTFB in August 1993. The proposed policy did make several changes in language to make it more up to date with current banking and investment practices. Substantially, the proposed policy was consistent with the current policy. It maintained the priority of objectives of safety, liquidity, and yield, which meant the foremost priority was to preserve the capital and cash and make sure that it was safely invested. Liquidity means that the cash would mature in investments at time that it as needed for expenditure by the City. The third priority was actual return on investment. In most recent history, the City's investment practice has been to almost wholly invest in local investment pool. The current return was about 1.674%. It was not his intent with the new policy to expand the City's current investment practices because the fixed rates are not returning much at this time. There were not a lot of other options that maintained the type of security that was available in the local government pool. It was a good idea to update the policy and to have it reflect a more current review by the OSTFB.

Mr. Swanson commented this came about when Councilor Lancaster asked about alternate ways to invest City funds. He and Mr. Taylor reviewed what would have been a program that would yield a higher return. The state does, in fact, look to safety and eliminates any risk in terms of local government investment. He and Mr. Taylor realized the policy had not been reviewed since 1993, and it should undergo a more frequent review. Although staff could not do what Councilor Lancaster asked, his suggestion uncovered a situation that had been neglected.

It was moved by Mayor Bernard and seconded by Councilor Barnes to approve the resolution adopting the City Investment Policy. Motion passed unanimously.

RESOLUTION NO. 35-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A CITY INVESTMENT POLICY

Approval of Disposition and Development Agreement for the North Main Mixed Use Site Redevelopment Project

Ms. Rouyer sought approval to allow the city manager to execute the development agreement between the City and the Main Street Partners, LLC for the North Main Project. Execution of this agreement would set the project in motion. On Friday, Mr. Kemper submitted all of the materials for development review to the planning department. The key components of the Disposition and Development Agreement (DDA) were the sale and conveyance terms for the property; a provision to protect the City from loss; project schedule and performance provisions; duties of the developer and developer conditions; City responsibilities including financing and constructing Harrison Street and Main Street public infrastructure improvements, permitting angled-parking on Main Street, assisting in reassigning the state loan to the developer; a developer security deposit; and building the project in a accordance with the plans as negotiated up to this point. The project will undergo a lot of scrutiny by the Planning Commission and DLC during the process.

CITY COUNCIL REGULAR SESSION – OCTOBER 19, 2004

Approved Minutes

Page 9 of 10

Mr. Colletta was available to answer any questions.

Councilor Lancaster asked if there were provisions that spoke to maintaining the project schedule.

Mr. Colletta referred to paragraph 4 on page 3 of the DDA.

It was moved by **Mayor Bernard** and seconded by **Councilor Barnes** to authorize the city manager to execute the **Disposition and Development Agreement (DDA)**. Motion passed unanimously.

ADJOURNMENT

It was moved by **Councilor Barnes** seconded by **Councilor Stone** to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the regular session at 7:50 p.m.

Pat DuVal
Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL OCTOBER 19, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1944th MEETING

REGULAR SESSION - 6:30 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Recognize Milwaukie High School Tech Cadre (Esther Gartner & Grady Wheeler)**
 - B. **Advisory Board Interviews**
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 October 5, 2004**
 - B. **McLoughlin Boulevard Improvements Project, Revised Resolution to Allow for Condemnation If Necessary -- Resolution**
 - C. **Certify September 21, 2004 Election Special Results -- Resolution**
 - D. **Juvenile Diversion Grant -- 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. **Historic Designation for 9908 SE Cambridge Lane (HR-04-01) – Ordinance (Keith Jones)**
 - B. **Downtown Code Amendments (ZA-04-01) – Ordinance (John Gessner)**

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.)*

A. Adoption of City Investment Policy – Resolution (Stewart Taylor)

B. Approval of Disposition And Development Agreement for the North Main Mixed Use Site Redevelopment Project

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

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

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

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

MINUTES

MILWAUKIE CITY COUNCIL OCTOBER 5, 2004

CALL TO ORDER

Mayor Bernard called the 1943rd meeting of the Milwaukie City Council to order at 6:40 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster	Councilor Deborah Barnes
Councilor Joe Loomis	Councilor Susan Stone

Staff present:

Mike Swanson, City Manager	JoAnn Herrigel, Community Services Director
Gary Firestone, City Attorney	John Gessner, Planning Director
Stewart Taylor, Finance Director	Grady Wheeler, Information Coordinator
Alice Rouyer, Community Development and Public Works Director	Brion Barnett, Civil Engineer
Paul Shirey, Engineering Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Disability Employment Awareness Month -- Proclamation

Mayor Bernard read a proclamation naming October as *Disability Employment Awareness Month*.

Recognize Rick Farasy for Contributions to the Island Station Neighborhood

As the City liaison to that neighborhood, **Mr. Wheeler** made several observations about **Mr. Farasy** who served as the Island Station Chair for five years. He really likes people, talking with them, and learning their points of view. In most cases, he learns how to make them laugh and be more comfortable. Over the years, Island Station has had some prickly issues, and Mr. Farasy showed great skill in keeping things on the lighter side. He has also donated a significant amount of time and materials to the Island Station and Lewelling neighborhood pole-topper projects. Mr. Wheeler referred

to an August 2002 *Pilot* newsletter feature regarding Mr. Farasy's involvement and desire to give back to the community.

Mr. Farasy said it was a privilege to serve the community for the past five years; however, most of the recognition goes to Molly Hanthorn and Betty and Jim Mishler for their support. The idea of the neighborhood program is great, and he was happy he could help bring it along in his own humble way.

Mayor Bernard thanked Mr. Farasy and read the award from the Island Station Neighborhood.

Advisory Board Interview

The City Council interviewed **Randall Welch** for a vacant position on the Riverfront Board. **Councilor Loomis** noted that Mr. Welch had volunteered to help with the Riverfrest and appreciated his continued involvement with the City.

Councilor Stone said there were a lot of hot issues surrounding the riverfront development. One of them has to do with the boat ramp and its current condition. She asked for an idea of his vision of the waterfront area.

Mr. Welch said it is like the beaches in Oregon that are owned by the citizens. It is really for all of the citizens and visitors who come to the community. He believed the riverfront needed to be available for all of the people, not just some of the people. His vision would be that the area be developed so people can go to the park. He understood boating was a passion for some, and the situation needs to be weighed. Currently, the ramp seems to split the area and acts as a large parking lot. He hoped the riverfront could be a place of enjoyment for all.

Mayor Bernard explained there were other applicants for the vacant position yet to be interviewed, and the City Council would contact him after that.

CONSENT AGENDA

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

- A. City Council Minutes of September 7 & 21;
- B. OLCC Application for Duffy's Irish Pub, 11050 SE 21st Avenue;
- C. **Resolution No. 29-2004**: A Resolution of the City Council of the City of Milwaukie Extending the Current Franchises of the Seven Franchised Garbage Haulers for a Six-Month Period and Authorizing the City Manager to Sign Agreements to That Effect; and
- D. **Resolution No. 30-2004**: A Resolution of the City Council of the City of Milwaukie, Oregon, Transferring Appropriations for Fiscal Year 2004 – 2005.

Motion passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Historic Designation for 9908 SE Cambridge Lane (HR-04-01)

Mayor Bernard announced that notice was provided for a hearing on an historic property designation for property located at 9908 Cambridge. He opened the hearing at 6:50 p.m. and continued it to October 19, 2004 at a regular City Council session.

A. Convert the Design and Landmarks Commission to a Committee, File No. ZA-04-02

Mayor Bernard called the public hearing on the code amendment initiated by the City of Milwaukie order at 6:55 p.m.

The purpose of the hearing was to consider public comment on an ordinance that amended Municipal Code Chapters 2 and 19, File No. ZA-04-02.

Mayor Bernard reviewed the order of business for the hearing.

Conflicts of Interest or Jurisdictional Issues: No conflicts of interest or jurisdictional issues were declared.

Staff Report: **Mr. Gessner** provided the staff report. One part of the proposed ordinance converted the Design and Landmarks Commission (DLC) to a Committee, and the other takes the Local Contract Review Board off the list of appointed boards and commissions.

This code amendment has gone through a significant process in work sessions with the Planning Commission, City Council and DLC to ensure the language is correct and that the concerns of the DLC were addressed. He believed the proposed ordinance achieves that. The language was identical to the draft presented at a City Council work session.

In effect, the amendments transfer the decision-making authority from the DLC to the Planning Commission, and the DLC is advisory to the Planning Commission and City Council on all matters over which it previously had decision-making authority. The DLC has an important role in design review, architecture, and historic preservation functions.

Mr. Gessner noted a correction to the action requested portion of the staff report. The local contract review board is not recommended for dissolution; rather removal from the list of appointed boards as the City Council performs that function. The adopting ordinance is correct. The purpose for removing the local contract review board from the list of appointed bodies is a housekeeping change.

Mr. Firestone said the Local Contract Review Board was on a list of boards and commission to which the provisions of Chapter 2.10 applied. They do not properly apply to the Local Contract Review Board because it has its own chapter. He recommended deleting the reference in Chapter 2.10.

Correspondence: There was no additional correspondence.

Public Testimony: **Les Poole**, 15115 SE Lee, Milwaukie, 97267. We have some big changes coming, and we have high-density coming. There were issues of who delegates what happens – what we save and what we don't save. He was not involved on the City Council, but he would move cautiously with the first aspect of this recommendation. His only concern was that if you are going to have a committee that is advisory, there is a fine line between how much authority is granted. As you centralize power, sometimes it works great and sometimes it doesn't. That is up to the City Council to decide. He wanted to bring that up knowing there have been some interesting decisions lately involving groups that went astray. Think about where we are going to be in a few years. It is time for big changes, and he is looking forward to that part.

Additional Staff Comments: None.

Questions from Council: **Councilor Stone** commented about dissolving of the DLC to a committee. Mr. Poole brought up a very sound idea that we would not want to have this committee be unable to have some kind of authority over the things that they have expertise on. She voiced this before. It was her concern that the people on this committee largely had backgrounds in architecture, graphic design, and so forth. The DLC has produced fine work for the City in the past. She did not like to see taking these kinds of groups of people, although she understood the motive behind it was that there were limitations in terms of being able to staff these. Staff was being spread too thin; therefore, this consolidation. She strongly encouraged staff to continue to poll these people, keep them in the loop with the Planning Commission and hopefully their voices will not be just advisory but will have a lot more weight than that.

Close of Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:03 p.m.

Council Discussion and Decision: It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and the adoption of an ordinance amending Municipal Code Chapters 2.10, 2.16, 2.18, and 19.323.

Motion passed unanimously.

The city attorney read the ordinance for the first and second times with the changes.

The city recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Lancaster, Councilor Loomis, and Councilor Stone aye; no abstentions.

ORDINANCE NO. 1936:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 2.10 BOARDS AND COMMISSIONS GENERALLY; CHAPTER 2.16 PLANNING COMMISSION; CHAPTER 2.18 DESIGN AND LANDMARKS COMMISSION; AND CHAPTER 19.323 HISTORIC PRESERVATION OVERLAY ZONE.

B. Transportation System Development Charges -- Resolution

Mayor Bernard called the public hearing on the proposed transportation system development charges to order at 7:07 p.m.

The purpose of the hearing was to consider public comment on the proposed increase.

Staff Report: **Mr. Barnett** provided the staff report with Randy Young, Henderson Young and Company. He briefly reviewed the agenda. Because of the public notice requirements, staff asked that the City Council hear the report from staff and consultant along with any public comments, and then continue the hearing to November 2, 2004 to allow for any additional public comment, deliberation, and decision.

The key results of proposed changes are:

1. Shorter SDC project listing. The existing list is quite lengthy and includes every project in the Transportation System Plan (TSP);
2. The system development charge (SDC) list under the new methodology was reduced to about 18 projects and more closely matches the City's existing resources. Under the old methodology, about 17% of the transportation SDC fund could be used toward a project and other sources had to be tapped to make up the remaining 83%.

3. Net effect was a small rate increase. For example, the increase for a new single-family residence would go up from \$1,340 to \$1,481 or about a 10% increase.

Mr. Young was engaged by the City to prepare the technical research to update and modify the Transportation SDC. His firm has been engaged in this type of analysis for 25 years and brings experience to the project. He was confident the methodology being recommended was consistent with Oregon law, and the outcomes and results of this rate study are defensible and reasonable for the community. The net result of the work is to recommend a net increase of about 10%. The previous SDC was adopted in 1998, so a 10% increase would not be an unreasonable adjustment in terms of cost living adjustments.

He discussed the differences in the methodology. There have been improvements in the state of the art of trip analysis that allow the City to turn to reliable sources that prove that sometimes for some kinds of development, the number of trips is not an accurate representation of the number of trips that impact the City's transportation system. Some people leave one destination and stop on the way to their ultimate other destination. The current system, for example, would count a trip from work to the store as one trip and from the store to home as another trip. We now have the ability and national data set to say that trip was one trip interrupted, not two separate trips. The land use categories in the new rate study acknowledge that data as being much more reasonable. It is used to adjust many commercial and retail freight categories to a more accurate representation of the impact.

Mr. Young provided a summary of the study. In step 1, the projects were evaluated to assure they were consistent with Oregon law and actually added capacity to the system. Specific qualifying criteria were added that the project must improve mobility or reduce congestion in the community. There are two kinds of SDCs that are allowed by Oregon law. The improvement SDCs are projects yet to be built that will meet the needs of future development. Mr. Young discussed the reimbursement SDC. The City is allowed to recapture fees for completed road projects or intersection improvements that have the capacity to serve growth. Of the projects completed in the past few years, and the City may pay itself back from SDC money for six of these. This would allow the City to take \$400,000 to \$500,000 from the existing \$600,000 balance, and pay itself back for improvements already made. Because money is going back into the street fund, there is money available for other projects. It may seem to City Council like a windfall. It is quite legal and could simply be seen as the City's getting back the money it had advanced.

Step 2 was to determine whether there are costs in those projects that are not eligible. State statutes are quite explicit that the projects must add capacity. When the City embarks on a project to improve an intersection or a road, it is rare that money would be spent only to make it bigger or wider or better. It often solves other problems such as safety, access, and vision obstructions. This study identifies

sources of money that will pay for those other non-capacity needs so that what is left is the allowable capacity portion of the project. For example, in the improvements SDC, \$21 million in total projects was identified, but half of that was funding from other sources such as grants or the street fund that will pay for existing deficiencies or safety improvements. The net amount being asked of the SDC payers is the difference. That amount is estimated to be about \$9 million.

Step 3 was to divide that \$9 million amongst all the future anticipated growth using City and regional traffic models. There would be 6,411 more trips in the future than there are today, and they will benefit from the \$9 million.

Step 4 was to determine the cost per trip by dividing that dollar amount by the number of trips. The cost per trip was calculated to be \$1,439.17 for the improvement SDC. It is that cost per trip that is about 10% higher than the current cost per trip.

Steps 5 and 6 were to calculate the trips generated by various types of land uses, and then multiplying the number of trips by the cost. The data set from the Institute of Traffic Engineers (ITE) was used to find the number of trips generated. The example in the report was light industrial which generates about one trip in the p.m. peak hour per 1,000 square feet. Mr. Young went through a theoretical application for a 20,000 square feet light industrial project that would put \$28,200 in the improvement SDC and \$1,420 in the reimbursement SDC. He noted the most intense impact on a system was the p.m. peak hour, and that was the trip number used. The same methodology would apply to any other type of land use.

Councilor Stone asked for clarification. If she understood it correctly this was an additional SDC charge that was being proposed because we already have SDC charges.

Mr. Young said these amounts would replace the current SDCs -- they were not in addition to the current fees. The replacement is about 10% more than developers currently pay.

Mayor Bernard asked how the City was notifying people because when this was done in the County, there was an uproar. He noted a lot of communities are going to 100% and covering all costs. He assumed that was why there were no protests from the development community.

Mr. Barnett said there were two or three notifications including the *Clackamas Review* and the *Daily Journal of Commerce*. The study was also presented to the Citizens Utility Advisory Board (CUAB). He understood from the city attorney that state statute required a 60-day notification period.

Mr. Firestone added ORS requires a longer period, so the second hearing is needed. Statute does require a hearing and that it be 60 days after. Notice must go

to those have requested notice. It does not specify newspaper notice, and no one has asked to be placed on the City's transportation SDC notification list. There is no list, and therefore no requirement for individual notice.

Mr. Barnett commented the official rates and methodology were available to the public on September 3, but no one contacted his office.

Correspondence: None.

Testimony: None.

Mayor Bernard announced the hearing would be continued to November 2, 2004 to allow for the public to review the new methodology.

OTHER BUSINESS

Ms. Herrigel thanked the Milwaukie Rotary for the welcome sign that was installed on the riverfront near 17th Avenue and Harrison Street. There will be an event at the November 5th Chamber Greeter's meeting City Hall.

Ms. Herrigel urged people to buy *Centennial Memory Books*.

A. Agreement with Clackamas Cable Access Board

Ms. Herrigel provided the staff report in which the City Council was requested to authorize the city manager to sign a personal services agreement with the Clackamas Cable Access Board (CCAB) to manage public and government programs. CCAB does business as Willamette Falls TV in Oregon City.

Ms. Herrigel released a Request for Proposal (RFP) for public and/or government studio operations in July 2004 and received three responses. A committee reviewed those responses and recommended that the CCAB proposal be forwarded to the City Council for approval. One option in that proposal was to close the Lake Road studio and divert users to Oregon City. The other alternative was to keep the Lake Road facility open, and Willamette Falls would provide staff to operate it. Staff met with Councilor Barnes regarding her concern about availability of the Lake Road facility equipment to high school students. Willamette Falls agreed and would do everything it could to make that happen.

Ms. Herrigel recommended the City Council authorize the city manager to sign the agreement and keep the Lake Road facility open to accommodate the high school students. There are funds in this year's budget to operate the facility.

Councilor Stone asked in terms of usage of the Lake Road facility right now. How many people use it per month?

Ms. Herrigel responded the studio has 2-3 users on a regular basis, but a lot of equipment is checked out. Mr. Wheeler has been working with the Cable Access Board to encourage more users. Staff is aware that usership is low and wants to make an effort to bring that number up. If that does not work in the next budget cycle, staff would likely recommend closing the Lake Road facility and perhaps going with something less or using the Willamette Falls studio in Oregon City.

It was moved by Mayor Bernard and seconded by Councilor Barnes to authorize the city manager to sign a personal services agreement with the Clackamas Cable Access Board. Motion passed unanimously.

B. Recommendation for the Tillamook Branch Light Rail Alignment and Alternative 2.5 (Kellogg Lake) Transit Center

Mr. Swanson provided the staff report. This was the subject of the September 21, 2004 City Council meeting at which deliberations were held, and members voted 3-2 to support the recommendation as outlined in the resolution. At the end of that meeting, the City Council requested that staff return with a formal resolution that would incorporate both the substance of the decision and outline the various mitigation steps that would be taken. He read the mitigation features:

1. The Tillamook Branch Design Option light rail alignment through the North Milwaukie Industrial District is recommended to be designated in place of the Main Street and crossover alignment within the South Corridor Project as the preferred alternative;
2. The environmental studies required to amend the Report consistent with the recommendations contained in this Resolution be done;
3. Alternative 2.5 (Kellogg Lake) is recommended to replace Southgate as the preferred site for relocation of the existing on-street Milwaukie Transit Center, including the following mitigation and design considerations and direction to City staff as part of the continued project development process:
 - a. Mitigation and design elements related to the transit center relocation address adverse traffic impacts within the Milwaukie Historic and Ardenwald/Johnson Creek neighborhoods, and that the elements be developed with participation of neighborhood representatives and residents and City staff; and
 - b. Mitigation and design elements, including but not limited to architecture, noise containment, landscaping, and lighting, address adverse impacts on the homes adjacent to Kellogg Lake and/or in close proximity to the recommended site, and that the elements be developed with participation of homeowners and/or residents and City staff; and
 - c. Mitigation and design elements address environmental concerns, including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties, that open space enhancements be created where possible, and that the elements be developed with

- participation of the City's Riverfront Board, Parks and Recreation Board, interested citizens, and City staff; and
- d. Mitigation and design features address law enforcement and public safety concerns, and that the features be developed with participation of the Milwaukie Police Department, neighboring residents, and Milwaukie High School staff, students, and parents; and
 - e. Staff explore the potential adverse impacts, if any, on City Hall and Farmers' Market operations, and that mitigation and design elements be developed as appropriate; and
 - f. Mitigation and design elements address issues arising from bus traffic in the downtown while preserving adequate transit options for Milwaukie residents, and that the options be developed with participation of neighborhood representatives, residents, transit users, downtown business representatives, and City staff; and
 - g. Staff initiate appropriate action at the appropriate time with respect to amendment of the *Milwaukie Comprehensive Plan* and the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
4. Development of the transit facilities be coordinated with other projects in central Milwaukie as schedules allow in order to minimize impacts, reduce costs, and achieve the best civic designs, consistent with the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
 5. Staff submit a monthly written activity report to the Council at its second meeting of the month with respect to the above recommendations and mitigation and design initiatives; and
 6. A copy of this resolution and recommendation be forwarded to the South Corridor Policy Committee for consideration in a modified LPA and to TriMet for consideration in advancing project development plans.

He noted that item 5 was added to keep the City Council informed in a report each 2nd meeting of the month and suggested adding this as a regular agenda item.

It was moved by Councilor Barnes and seconded by Councilor Loomis to adopt the resolution recommending the Tillamook Branch light rail alignment and alternative 2.5 (Kellogg Lake) transit center site.

Councilor Stone referred to the third "whereas" on page one regarding an "environmental impact statement that was prepared and public comment was heard."

Mr. Swanson explained that referred to the South Corridor process.

Councilor Stone referred to the sixth "whereas" on the same page where it talks about the "Working Group be designated to examine issues related to the Southgate Crossover Design Option...." Everything she has read and all the literature they have gotten specifically regarding the Working Group charge stated that they were to develop a recommendation or a set of recommendations for resolution of design

issues related to the transit center, future light rail alignment, and park-and-ride facilities located in the LPA referring to the Southgate site. She thought that should be put in the resolution because that was what they were charged to do.

Councilor Stone referred to page 3, section c – mitigation and design elements address environmental concerns including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties. She would like it to say, “potential environmental impacts on Kellogg Lake and wildlife habitat in adjacent properties.”

Councilor Stone commented on deliberation as used on page 2 of the resolution in the third “whereas.” She commented that she did not think the City Council fairly deliberated this issue at all. If you really look at the definition of deliberation, “it is to think about or discuss issues carefully, to weigh in mind and ponder; characterized by, resulting from careful and thorough consideration; characterized by awareness of the consequences; slow, unhurried and steady; allowing time for a decision on each individual action involved.” She did not think the City Council did that. This was a huge decision. In the work session just before coming to Council an hour ago, Councilor Barnes asked that the City Council not make a decision on looking to increase the sewer rates. We were talking about a 1.46% increase – 53 cents. She did not want it to be a hurried decision. This is a decision that has magnitude greater than 53 cents on your sewer bill. She felt the City Council really needed to stop and think about what it was doing here. As far as she could tell from all the literature she received, there was nothing that said we have to move on this quickly. She wanted to reiterate that she thought it would be more prudent for the City Council to look at making sure that we have indeed examined and mitigated the Southgate sites and looked at the ODOT site first before proceeding with this site. She would hate to see the City get itself into litigation, and she thought this was exactly where this was going to head if we did this.

Councilor Barnes clarified that she asked to postpone any decision or discussion until after this meeting adjourned, so the Council would have more time when it went back into work session. That was what she was discussing. She also brought to her attention there is a communication agreement that clearly states several issues, and she thought Councilor Stone was trading water in regards to section 2. She would like that placed on the record. This Council has made a decision and has signed an agreement to that extent.

Motion passed 3 – 2 with the following vote: Mayor Bernard, Councilor Barnes, and Councilor Loomis aye, and Councilor Lancaster and Councilor Stone no.

RESOLUTION NO. 31-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, RECOMMENDING THE TILLAMOOK BRANCH LIGHT RAIL ALIGNMENT AND ALTERNATIVE 2.5 (KELLOGG LAKE) TRANSIT CENTER.

Mayor Bernard announced the work session would reconvene after adjournment of the regular session. The City Council would also hold an executive session pursuant to ORS 192.660 (2) (e) to discuss real property transactions.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 7:40 p.m.

Pat DuVal, Recorder

ATTACHMENT A

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON AMENDING RESOLUTION NO. _____, RELATING TO THE ACQUISITION OF PROPERTY FOR RIGHT-OF-WAY

WHEREAS, City Council adopted Resolution No. _____ on _____ to authorize right-of-way agents to take certain actions relating to the acquisition of property for the McLoughlin Boulevard Improvements Project; and

WHEREAS, because of changes in the design and scope of the project, additional property needs to be acquired and the authority of the right-of-way agents needs to be expanded to allow them to act for the City as to those properties;

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

Section 1: Resolution No. _____ is amended by amending Exhibit 1 to that resolution to read as shown in the attached Exhibit 1.

Section 2: This resolution shall be effective immediately upon passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on _____, 2004.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

By: _____
City Attorney

EXHIBIT 1

Property Owner	Property Address	Tax Lot Number
Gail O. Southwell (Trustee)	10600 SE McLoughlin Blvd.	11E35AA00500
L & B Holzman, LLC (Reliable Credit)	10633 SE Main Street	11E35AA00700, 11E35AA00800
Olson Brothers Enterprises (Texaco)	10700 SE McLoughlin Blvd.	11E35AA01000
City of Milwaukie	10808 SE McLoughlin Blvd.	11E35AA01100
Way Chan (ABC Kitchen)	10880 SE McLoughlin Blvd.	11E35AA01200
Raul Ponce and William Roberts	1906 SE Monroe Street	11E35AA02100
Atlantic Richfield Company	10966 SE McLoughlin Blvd.	11E35AA01900
Universe Corporation (Astro)	11010 SE McLoughlin Blvd.	11E35AD00800
Pacific One Bank	11050 SE McLoughlin Blvd.	11E35AD00700
Glen and Doris Smith (Cash Spot)	10966 SE McLoughlin Blvd.	11E35AD01100
Metro		11E35AD00900
City of Milwaukie	10993 SE McLoughlin Blvd.	11E35AA02200
City of Milwaukie	10937 SE McLoughlin Blvd.	11E35AA02300
WMB Investment Co. (Vic's Tavern)	10901 SE McLoughlin Blvd.	11E35AA02400
City of Milwaukie	10877 SE McLoughlin Blvd.	11E35AA02500
David McMillan (Antique Mall)	10875 SE McLoughlin Blvd.	11E35AA02600
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02700
City of Milwaukie	10799 SE McLoughlin Blvd.	11E35AA02800
City of Milwaukie	10707 SE McLoughlin Blvd.	11E35AA05000



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: McLoughlin Boulevard Improvements Project, revised resolution to allow for condemnation if necessary

Date: October 1, 2004 for the October 19 meeting

Action Requested

Authorize the Mayor to sign a revised resolution authorizing the City of Milwaukie and its right-of-way (ROW) agent (ODOT) to use condemnation, if necessary, to acquire property for the project.

Background

During the October 7, 2003 Council meeting, Council authorized the Mayor to sign an IGA with ODOT for right-of-way (ROW) acquisition and a resolution authorizing the City and its ROW agent (ODOT) to use condemnation, if necessary, to acquire property for the project. The original resolution listed all the properties along the original project limits (Harrison Street to the Kellogg Creek Bridge).

During the design process, the project team determined that a section of existing curb and sidewalk outside the project limits needs to be replaced. The specific section of curb and sidewalk is located on the east side of McLoughlin, between Harrison Street and Scott Street. The replacement is necessary because the existing 2 to 4 inches of curb exposure (distance from the roadway surface to the top of the curb) does not meet the ODOT standard (7 inches) and poses a safety risk to pedestrians.

Additionally, the existing curb along the northeast corner of the intersection of McLoughlin/Harrison is scheduled for reconstruction with a new larger radius curve. This will help larger vehicles trying to negotiate a northbound turn onto McLoughlin.

The larger radius will require an easement from the owner of the Reliable Credit property. The sidewalk construction will also necessitate relocation of the existing door at the tattoo shop located immediately north of Reliable Credit. The revised resolution will allow ODOT to negotiate with the property owners not previously listed in the original resolution.

Concurrence

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the revised resolution and support signing it to enable the ROW acquisition process to proceed.

Fiscal Impact

None, if Council authorizes the Mayor to sign the revised resolution. The current estimated cost of construction is \$2.4 million dollars (this includes a 50% contingency). The total city match for the project is still estimated to be approximately \$220,000 dollars and is appropriated in the City's Streets Fund budget for FY 2004-2005.

If the revised resolution is not signed, the project could be delayed by 2-4 months and the City could incur additional legal fees in an attempt to negotiate with the prospective property owners.

Work Load Impacts

A staff team from the Engineering and Community Development Departments continue to coordinate with ODOT and local Milwaukie residents and representatives as necessary. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Approve revised resolution.
- Suggest amendments to the revised resolution.
- Do not authorize the Mayor to sign the resolution to allow for condemnation.

Attachments

Attachment A – Revised Resolution for ROW acquisition

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
RECORDING THE CERTIFIED ELECTION RESULTS FOR THE SEPTEMBER 21,
2004 SPECIAL ELECTION.**

WHEREAS, Section 13 of the Charter requires the certified elections results be made a part of the record of proceedings of the City Council; and

WHEREAS, the election results from the September 21, 2004 Special Election have been certified by the Office of the Clackamas County Clerk; now, therefore;

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
CLACKAMAS COUNTY, OREGON THAT:**

Section 1: The certified election results, attached hereto as Exhibit "A" and incorporated herein, are hereby made a part of the record of proceedings of the City Council.

Section 2: This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon, on October 19, 2004.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP

SUMMARY REPORT

CLACKAMAS COUNTY, OREGON
SPECIAL ELECTION
SEPTEMBER 21, 2004

FINAL OFFICIAL

RUN DATE: 09/28/04 09:41 AM

REPORT-EL45 PAGE 001

VOTES PERCENT

PRECINCTS COUNTED (OF 10)	10	100.00
REGISTERED VOTERS - TOTAL	11,376	
BALLOTS CAST - TOTAL	3,321	
VOTER TURNOUT - TOTAL		29.19

3-134 MILWAUKIE CITY ANNEXATION MEASURE

VOTE FOR 1

YES	1,565	47.12
NO.	1,756	52.88
Total	3,321	
Over Votes	0	
Under Votes	0	

	R E G I S T E R E D	V O T E R S B C A A L S L T O T A L S	T P U E R R N C O E U N T Y A G E E	3-134 MILWAUKIE CITY ANNEXATION MEASURE			
10 PRECINCTS				Y E S	N O	O V V O T E R S	U V N O T D E E R S
0051 PRECINCT 051	1267	357	28.18	197	160	0	0
0053 PRECINCT 053	1099	313	28.48	136	177	0	0
0054 PRECINCT 054	1030	257	24.95	123	134	0	0
0056 PRECINCT 056	913	253	27.71	98	155	0	0
0057 PRECINCT 057	1219	375	30.76	171	204	0	0
0058 PRECINCT 058	816	297	36.40	144	153	0	0
0060 PRECINCT 060	1270	394	31.02	203	191	0	0
0062 PRECINCT 062	1333	396	29.71	163	233	0	0
0063 PRECINCT 063	1213	348	28.69	183	165	0	0
0064 PRECINCT 064	1216	331	27.22	147	184	0	0
GRAND TOTALS	11376	3321	29.19	1565	1756	0	0

CERTIFIED COPY OF THE ORIGINAL
 SHERRY HALL, COUNTY CLERK
 BY: *Darlene Jensen*
 Deputy
 9-29-04

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AND RENEW THE INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY FOR A GRANT TO MAINTAIN THE JUVENILE CRIME DIVERSION PROGRAM.

WHEREAS, the City of Milwaukie is developing strategies to provide high quality livable communities ; and

WHEREAS, the City Council has directed city staff to develop cost effective programs to improve community livability; and

WHEREAS, first time juvenile criminal offenders need immediate intervention to discourage continued criminal activity ;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the Mayor to sign and renew the intergovernmental agreement with Clackamas County to receive a grant in the amount of \$13,000 to provide juvenile crime intervention for the City of Milwaukie, Oregon.

Introduced and adopted by the City Council on October 19, 2004.

This resolution is effective on October 19, 2004.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler

Subject: Renew Intergovernmental Agreement – Juvenile Crime Diversion Program

Date: September 27, 2004

Action Requested

Adopt a resolution authorizing the Mayor to sign and renew the current Intergovernmental Agreement with Clackamas County, which provides pass-through grant funding for the Milwaukie Police Department's Juvenile Diversion Program.

Background

During the past several years, the resources of the Clackamas County Juvenile Department have been depleted by the increasing demand for juvenile intervention of criminal offenders. In the past, police departments throughout Clackamas County could arrest a juvenile for a crime and refer that juvenile to the Juvenile Department of Clackamas County, knowing full well that there would be some timely sanction imposed by the Juvenile Court. That condition no longer exists.

Prior to the implementation of this program in 2001, when Milwaukie police officer arrested juvenile criminal offenders, and the report of the criminal behavior was referred to the Juvenile Department, routinely there was no sanction levied against the juvenile for their criminal conduct. The Juvenile Diversion Program is filling that gap by addressing, through a diversion panel comprised of local citizens, first time minor offenders.

The purpose of the panel is to listen to the offender's reasons for committing the crime and then negotiate a restitution agreement. This program has successfully used locally sponsored diversion panels to address criminal behavior by first time offenders since the inception of this program. The program has resulted in more than 70% of the first time offenders being held accountable for their criminal behavior, and more than 50% have not re-offended within 18 months of going before the diversion panel. The goal of the program is to get juvenile offenders to acknowledge their involvement in the crime charged, and be held accountable for their conduct. That self acknowledged responsibility serves to dissuade future misconduct.

This years pass-through diversion grant money is reduced from \$24,500 to a total of \$13,000, and even this money is in jeopardy if the State's revenue package doesn't pass this spring. I have purposely delayed presenting renewal of this pass-through grant to Council because of the tenuous commitment of State funding. If voters reverse State funding and tax increases passed by the Legislature in the spring, these monies will terminate and the program will cease. Neither the City of Milwaukie, nor the Police Department budgeted any money to support operation of this program. State funding provides total funding for this program.

This Intergovernmental Agreement will renew the existing agreement between the City of Milwaukie and Clackamas County for \$13,000 to implement and administer the Juvenile Diversion Program from July 1, 2004 to June 30, 2005.

Concurrence

Milwaukie Police Department
City Attorney

Fiscal Impact

Provides \$13,000 in grant funds to operate the Juvenile Diversion Program.

Work Load Impacts

Approximately 20 hours of staff time to prepare and administer administrative program support.

Alternatives

None

INTERGOVERNMENTAL AGREEMENT

(FY'05)
INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
CITY OF MILWAUKIE

I. Purpose

This agreement is entered into between Clackamas County (COUNTY) and **City of Milwaukie** for the cooperation of units of local government under the authority of ORS 190.010.

This agreement provides the basis for a cooperative working relationship for the purpose of continuing the local diversion panel for high-risk juveniles as part of the Clackamas County Juvenile Crime Prevention Plan.

II. Scope of Work and Cooperation

A. **City of Milwaukie** agrees to:

- 1) Assess all youth residing within the boundaries of the North Clackamas School District, who are referred to the Clackamas County Juvenile Department for status offenses, violations, all Class C Misdemeanors and all Class B Misdemeanors and specified Class A Misdemeanors (Exhibit 1, II. 12).
- 2) Complete a Risk Assessment for all youth determined to be eligible to participate in the local diversion program (Exhibit 1, II. 13).
- 3) Enter into and monitor compliance of youth's Diversion Agreement conditions (Exhibit 1, II. 14).
- 4) Coordinate and keep open communications with the Clackamas County Juvenile Department Liaison regarding case planning, progression of the case and final disposition of the case.
- 5) Develop an implement a volunteer services component.
- 6) Complete Quarterly Progress Work Plan (Exhibit 1) and Fiscal (Exhibit 3) reports.

B. **The COUNTY** agrees to:

- 1) Forward copies of appropriate documents, including police reports, to the City of Milwaukie Diversion Program.
- 2) Serve as a centralized depository for all records involving juvenile offenders.
- 3) Provide liaison staff for technical assistance, case consultation and networking as required.

INTERGOVERNMENTAL AGREEMENT

- 4) Accept any and all diversion cases in which the juvenile and/or parents refuse to participate or have failed to adequately complete the local diversion program.
- 5) Allow youth who score two risk factors, on Exhibit 1, II. 13 to be eligible for Clackamas County Juvenile Department funded resources.

III. Compensation

The COUNTY agrees to pay **City of Milwaukie** an amount not to exceed **\$13,390** for the services outlined in Section II.A.

AGENCY shall be paid on a cost reimbursement basis and shall submit invoices and accompanying performance reports as described in Exhibits 2 and 3 attached hereto.

All requests for payment are subject to the approval of the COUNTY and will be submitted to:

Rodney A. Cook, Director
Office for Children & Families
Public Services Building
2051 Kaen Road
Oregon City, OR 97045-4035

IV. Liaison Responsibility

Chief Larry Kanzler will act as liaison from the **City of Milwaukie** for this project. Mark McDonnell will act as liaison from the COUNTY.

V. Special Requirements

- A. The COUNTY and **City of Milwaukie** agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. The COUNTY and the City of Milwaukie agree to indemnify, save harmless and defend each other, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the City of Milwaukie or Clackamas County employees, subject, where applicable, to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7. The conditions described in the Intergovernmental Agreement supercede examples described in exhibits 1 through 3.

During the term of this contract AGENCY shall maintain in force at its own expense, each insurance noted below:

INTERGOVERNMENTAL AGREEMENT

1. Comprehensive General Liability

Required by COUNTY Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of comprehensive general liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

2. Comprehensive Automobile Liability

Required by COUNTY Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of comprehensive automobile liability insurance in the amount of not less than \$500,000 combined single limit for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

3. Professional Liability

Required by COUNTY Not required by COUNTY

AGENCY agrees to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage and malpractice or error and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

4. Additional Insurance Provision

All required insurance shall include the following provision, provided however that professional liability insurance which excludes coverage based upon the presence of indemnification or hold harmless clauses shall not be subject to the requirements of subsection a.:

- a. the insurance shall include the COUNTY as an additional insured and refer to and support the AGENCY's obligation to hold harmless the COUNTY, its officers, commissioners and employees;
- b. the insurance shall provide for 30 days written notice to the COUNTY in the event of cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under the insurance;

INTERGOVERNMENTAL AGREEMENT

- c. the insurance shall provide for written notice to the COUNTY within thirty (30) days after any reduction in the general annual aggregate limit.

- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- D. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the **City of Milwaukie** which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.

- E. This agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

VI. Amendment

This agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this agreement only after the written amendment has been signed by both parties.

VII. Term of Agreement

This agreement becomes effective when this contract is signed by all necessary parties, but not prior to July 1, 2004. This contract will terminate June 30, 2005.

This agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

Upon termination of this agreement, any unexpended balances of agreement funds shall remain with the COUNTY.

INTERGOVERNMENTAL AGREEMENT

GOVERNMENTAL UNIT
CITY OF MILWAUKIE

By

James Bernard
Name (Typed)

Mayor
Title

Date

10722 SE Main
Street Address

Milwaukie, OR 97222-6537
City/Zip

503-786-7555
Phone Number

93-6002212
TIN, FIN or S.S.#

Gary Firestone, City Attorney

Date

Larry Kanzler, Police Chief

Date

CLACKAMAS COUNTY
Chair: Bill Kennemer
Commissioner Martha Schrader
Commissioner: Larry Sowa

Signing on Behalf of the Board:

Irene Fischer-Davidson, Director
Department of Human Services

Date

Approved as to Content:

Rodney A. Cook, Division Director

Date

INTERGOVERNMENTAL AGREEMENT

EXHIBIT 1

SCOPE OF WORK AND PERFORMANCE STANDARDS

- I. AGENCY shall meet all performance outcomes as outlined in attached Work Plan.
- II. Performance Standards:
 1. **Community Based, Holistic Approach**
 - AGENCY programs and services shall be community-focused, incorporating the greatest level of input from multiple stakeholders, including clients, families, and other agencies.
 - AGENCY programs and services shall have ongoing community investment and involvement.
 2. **Family-Centered Programs**
 - AGENCY programs and services shall involve families in all aspects, recognizing that they are the most important teachers, caregivers, and role models for their children.
 - AGENCY programs and services shall support and strengthen families in providing the foundation for the physical, social, emotional, and intellectual development for their children.
 3. **Establish/Maintain Effective Partnerships**
 - AGENCY, in order to enable data linkages, information sharing, and ongoing collaboration between partners to most effectively meet and address needs, shall ensure that appropriate staff attend OCF contractor's meetings, and training sessions, and participate in other activities as required by COUNTY.
 - AGENCY shall develop and promote continuous communications with similar organizations.
 4. **Utilize a Balanced SWOT (Strengths, Weaknesses, Opportunities, Threats) Approach**
 - AGENCY programs and services shall address both the risks/deficiencies, challenges and the strengths/assets/opportunities in their communities.
 5. **Implement Research Based Accountability**
 - AGENCY, in order to ensure programs and services are based on research-based, proven practices, shall complete and submit the Best Practices Assessment as required by OCF. In areas where proven practices are not available, AGENCY is encouraged to develop innovative strategies based on research principles.
 - AGENCY programs and services shall include research-based measurements of success to enable tracking of effectiveness toward meeting planned outcomes. These data shall be monitored by OCF on the Quarterly Work Plan. Quarterly Work Plans are to be submitted on or before date due.

INTERGOVERNMENTAL AGREEMENT

1st Quarter, Jul 1 – Sep 30: due on Oct 29, 2004
2nd Quarter, Oct 1 – Dec 31: due on Jan 31, 2005
3rd Quarter, Jan 1 – Mar 31: due on Apr 29, 2005
4th Quarter, Apr 1 – Jun 30: due on Jul 29, 2005

6. **Reflect and Incorporate Diversity**
 - AGENCY, in order to provide programs and services that meet the needs of diverse cultures and people with disabilities, shall complete and submit the Cultural Competency Assessment and Action Plan as required by OCF.
 - AGENCY, in order to provide programs and services that meet the needs of girls, shall complete and submit the Gender Specific Services Assessment and Action Plan as required by OCF.
7. **Internal Controls**
 - AGENCY shall submit a completed Annual Fiscal Capability Assessment to OCF on or before October 29, 2005.
8. **Funder Recognition**
 - AGENCY shall demonstrate good faith efforts to acknowledge the COUNTY's Commission on Children & Families when communicating with media representatives and when creating and distributing flyers describing services, workshops and other contract related details.
9. **Resource Expansion**
 - AGENCY shall demonstrate good faith effort to secure other funding to increase program capacity, enter into collaborative efforts and initiatives, and/or decrease dependence on long-term Commission on Children and Families funding.
10. **Use of Grant Funds**
 - No grant funds shall be used, directly or indirectly, to promote or oppose any political committee, or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.
11. **HIPAA Compliance**
 - If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), AGENCY agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, if the work performed under this Contract is covered by HIPAA, AGENCY shall comply with the following:

INTERGOVERNMENTAL AGREEMENT

- i. Privacy and Security of Individually Identifiable Health Information. On or after April 14, 2003, AGENCY, its agents, employees and subcontractors shall protect individually identifiable health information obtained or maintained about Department's clients from unauthorized use or disclosure, consistent with the requirements of HIPAA. This Contract may be amended to include additional terms and conditions related to the privacy and security of individually identifiable health information.
- ii. Data Transaction Systems. Any electronic exchange of information on or after October 16, 2002, between AGENCY and COUNTY to carry out financial or administrative activities related to health care will be in compliance with HIPAA standards for electronic transactions published in 65 Fed. Reg. 50312 (August 17, 2000). The following types of information exchanges are included: Health care claims or equivalent encounter information; health care payments and remittance advice; coordination of benefits; health claim status; enrollment and disenrollment in a health plan; eligibility for a health plan; health plan premium payments; referral certification and authorization; first report of injury; and health claims attachments. This Contract may be amended to include additional terms and conditions related to data transactions.
- iii. Consultation and Testing. If AGENCY reasonably believes that the AGENCY's or COUNTY's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, AGENCY shall promptly consult the COUNTY's HIPAA officer. AGENCY or COUNTY may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the COUNTY's testing schedule.

12. Diversion Panel Cases

- AGENCY shall use the misdemeanor classification and criteria for referral to the juvenile diversion panel.

13. Oregon Juvenile Crime Prevention Screen/Assessment

- AGENCY shall assess level of risk in juveniles for determining eligibility for appropriate services using the Oregon Juvenile Crime Prevention Screen/Assessment instrument.

14. Clackamas County Diversion Agreement

- AGENCY shall use the Clackamas County Diversion Agreement with youth participating in the local diversion program.

INTERGOVERNMENTAL AGREEMENT

III. Performance Standards-County:

County shall:

1. Administer this contract in compliance with the Commission on Children and Families Act (Oregon laws 1993), and the Oregon Administrative Rules for the Commission on Children and Families, Chapter 423.
2. Communicate with service providers about contract performance and about Office for Children and Families' operations, standards and objectives.
3. Provide technical assistance to the AGENCY in developing activities to address the needs of minority youth, program contract amendments, wellness referrals, collaborative services, community development projects and resources.

INTERGOVERNMENTAL AGREEMENT

PROGRAM/PROJECT WORK PLAN

2004-2005

Organization: City of Milwaukie	Strategy City of Milwaukie Diversion Panel
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Contact: Chief Larry Kanzler Milwaukie Police Dept. 10722 SE Main Milwaukie OR 97222-6537	Phone: (503) 786-7555 E mail: Kanzlerl@ci.milwaukie.or.us	Report For: (N/A) <input type="checkbox"/> 1st Qtr: July 1, 2004– Sept. 30, 2004 <input type="checkbox"/> 2nd Qtr: Oct. 1, 2004 – Dec. 31, 2004 <input type="checkbox"/> 3rd Qtr: Jan. 1, 2005 – Mar. 31, 2005 <input type="checkbox"/> 4th Qtr: Apr 1, 2005– June 30, 2005
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Outcome Goal:			
<input type="checkbox"/> Goal 1 Strong Nurturing Families	<input type="checkbox"/> Goal 2 Healthy Thriving Children	<input checked="" type="checkbox"/> Goal 3 Positive Youth Development	<input type="checkbox"/> Goal 4 Caring Communities and Systems

High level Outcomes: Reduce Juvenile Arrest Rate	Start Date: Upon Approval	End Date: 6/30/05
--	-------------------------------------	-----------------------------

Specific OUTCOMES: (With Expected Targets)	Performance Measurement Instrument:	Baseline Data	1st Quarter 7/1/04-9/30/04	2nd Quarter 10/1/04-12/31/04	3rd Quarter 1/1/05-3/31/05	4th Quarter 4/1/05-6/30/05	Total or %	Comments
1) 80% of the youth participants will successfully complete an Individual Diversion Agreement (IDA) [OCCF #3.07.01]	1) Results to be reported semi-annually using Juvenile Dept. records as: # youth on IDA's # Successful % Successful	1) 80% success rate measured semi-annually						

INTERGOVERNMENTAL AGREEMENT

<p>2) 80% of the youth participants will not be referred to the Juvenile Dept. for another law violation for a 12-month period of time following termination of services. [OCCF #3.07.03]</p>	<p>2) Results to be reported semi-annually using Juvenile Dept. records as: # Assessed # Successful % Successful</p>	<p>2) 80% success rate measured 6 months and 12 months after program completion</p>						
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<p>OUTPUTS: (Services)</p>	<p>Performance Measurement Instrument:</p>	<p>Baseline Data</p>	<p>1st Quarter 7/1/04-9/30/04</p>	<p>2nd Quarter 10/1/04-12/31/04</p>	<p>3rd Quarter 1/1/05-3/31/05</p>	<p>4th Quarter 4/1/05-6/30/05</p>	<p>Total or %</p>	<p>Comments</p>
<p>1) By June 30, 2005, 44 youth will be referred for diversion program services and be put on an individual diversion agreement (IDA).</p>	<p>1) Reported quarterly as number of youth referred <u>and</u> number of youth being put on an individual diversion agreement (IDA)</p>	<p>1a) 44 youth referred 1b) 44 youth with IDA</p>						

INTERGOVERNMENTAL AGREEMENT

OUTPUTS: (Services)	Performance Measurement Instrument:	Baseline Data	1st Quarter 7/1/04- 9/30/04	2nd Quarter 10/1/04- 12/31/04	3rd Quarter 1/1/05- 3/31/05	4th Quarter 4/1/05 - 6/30/05	Total or %	Comments
<p>2) By June 30, 2005, 44 youth will receive intensive community services to ensure accountability for completing the individual diversion agreement (IDA) to include options not limited to the following services: completion of written essay, participate in counseling, attend drug & alcohol evaluation/ education program, attend victim impact panel, complete specified hours of community service, completion of volunteer service, restitution paid, participate in victim offender mediation program, participate in a personal skills class. Program expected to operate through June 30, 2005.</p>	<p>2) Reported quarterly as number of youth completing 1 or more individual diversion agreement (IDA) options through case management services</p>	<p>2) 85% success rate or 37 youth completing 1 IDA options</p>						

INTERGOVERNMENTAL AGREEMENT

Developmental Activities <i>(Note: Please see Exhibit 1 of the contract for required Developmental Activities)</i>	Measured By and How:	Baseline	1st Quarter 7/1/04-9/30/04	2nd Quarter 10/1/04-12/31/04	3rd Quarter 1/1/05-3/31/05	4th Quarter 4/1/05-6/30/05	Total	Comments
1) Primary provider to update the Office for Children and Families' Best Practice Assessment Survey and Workplan or Gender Specific Services or Cultural Specific Services Self-Assessment. Target: By 12/31/04, update one assessment and wokplan.	1) The number of assessments and surveys completed per year.	1) NA						
2) Participate in any State or County-sponsored Gender and/or Cultural Specific and/or evidence-based training and/or contractor's meeting	2) Meeting Dates; reported quarterly	2) NA						

INTERGOVERNMENTAL AGREEMENT

<p>3) Participants, staff and clients will participate in Juvenile Dept. evaluation & training requirements.</p>	<p>3) Date of training & number attending reported quarterly <u>and</u> Number of pre/post program assessment given reported quarterly.</p>	<p>3) NA</p>						
<p>4) Provider to provide semi-annual update which demonstrates that program is "evidence-based."</p>	<p>4) Submitted with quarterly report period ending 12/31/04 and 6/30/05</p>	<p>4) NA</p>						

INTERGOVERNMENTAL AGREEMENT

EXHIBIT 2

PAYMENT PROCEDURES AND REPORTING REQUIREMENTS

1. PAYMENT PROCEDURES

The compensation authorized in this agreement shall include reimbursable expenses as prescribed in the COUNTY-approved budget in Exhibit 3 and in accordance with OMB Circulars A-87 if agency is a local government, A-122 if non-profit, A-133 if college. This amount does not include expenses for unusual and special activities or materials not included in the scope of services. Such unusual and special expenses will not be incurred without prior COUNTY approval. In addition, expense totaling an amount greater than the total budget for this project shall not be incurred without prior written consent of the COUNTY.

a) **Payment Options:**

AGENCY shall submit a monthly Request for Funds and Fiscal Report within 15 days of the end of each month. COUNTY reserves the right to reduce monthly payment by the amount of unexpended funds during the previous month. The monthly fiscal report shall be in accordance with the approved budget in Exhibit 3.

OR

AGENCY shall submit a quarterly Request for Funds and Fiscal Report within 15 days of the end of each quarter. COUNTY reserves the right to reduce quarter payment by the amount of unexpended funds during the previous quarter. The quarterly fiscal report shall be in accordance with the approved budget in Exhibit 3.

The COUNTY shall make payment to AGENCY within 30 days of receipt and approval of each funds request and fiscal report submittal. AGENCY shall submit a quarterly Program Performance Progress Report in accordance with Exhibit 1, and section 3 of Exhibit 2 of this contract.

Reimbursement request required to be prepared and submitted by AGENCY to the COUNTY shall be accurate and correct in all respects, supported by attached documentation and traceable to source documents through AGENCY's accounting records. Should inaccurate reports be submitted to the COUNTY, the COUNTY may elect to have AGENCY secure the services of a certified accounting firm. Cost of such accounting services are to be borne by AGENCY and not reimbursed from funds authorized by the agreement unless specifically agreed to between AGENCY and COUNTY in writing.

AGENCY shall submit a financial statement covering all expenditures within 30 days following the end of the contract. When the total funds advanced does not equal the AGENCY's total actual expenditures and the total budget, the financial statement shall include either:

INTERGOVERNMENTAL AGREEMENT

- A. A request for reimbursement of program expenditures. Such request shall not bring the total of funds received by the AGENCY in an amount in excess of the budget; or
- B. Contract amendment suitable to both the COUNTY and AGENCY.
- C. The return of all unexpended funds to the COUNTY.

AGENCY shall return all unexpended funds to the COUNTY within 10 days of the contract's termination when such termination is due to the AGENCY's failure to provide services in accordance with the contract.

Withholding of Contract Payments: Notwithstanding any other payment provision of this contract, should the AGENCY fail to submit required reports when due or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, the COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until the AGENCY submits required reports, performs required services, or establishes to the COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of the AGENCY.

2. RECORDKEEPING

AGENCY shall keep detailed records of time and expenditures incurred and funded by this contract. Such records shall adequately identify the source and application of funds for activities within this contract in accordance with the provisions of OMB Circular (A-110 for non-profits, A-102 for local governments). These records shall allow accurate statements pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income in accordance with generally accepted accounting practices.

AGENCY shall maintain a system of internal control comprising a documented plan of all coordinating procedures adopted to account for and safeguard its assets, check the adequacy and reliability of its accounting data, promote operating efficiency, and assure adherence to applicable regulations.

Expenditures shall be supported by properly executed payrolls, time records, invoices, vouchers, or other source documentation evidencing in proper detail the nature and propriety of charges. All accounting documents shall be clearly identified and readily accessible.

Financial records and supporting documents pertinent to this agreement shall be retained by AGENCY for a period of three years from the date of completion of the contract except as follows:

- Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

INTERGOVERNMENTAL AGREEMENT

3. PROGRAM REPORTS

AGENCY shall submit program performance reports for each quarter of the fiscal year. These quarterly reports are to include: 1) cover sheet/request for funds, 2) work plan outcomes, services and development activities performance report, 3) financial statement. The quarterly reports are due to the COUNTY within 30 days of the end of each fiscal year quarter.

AGENCY shall complete and submit other reports as required and supplied by the COUNTY.

4. MONITORING

COUNTY shall evaluate the services provided under this contract primarily by quarterly workplan progress reports. The COUNTY may also conduct on-site monitoring of services. These site visits usually include on-site monitoring of client case files, client/parent/staff interviews, and review of program and agency policies, procedures, and files. COUNTY shall give written notification of problem areas related to performance under this contract, including requirements and time lines of corrective action.

The AGENCY will gather data necessary to complete quarterly workplan performance and budget, and any other reports required by the COUNTY.

The AGENCY will provide the client confidentiality releases necessary to facilitate annual site visits by the COUNTY. Site visit activities include, but are not limited to, review of client case files, program personnel policies, and program services procedures.

At any time during normal business hours and as often as the COUNTY, or other appropriate state or federal representatives may deem necessary, the AGENCY shall make available to the COUNTY for examination all its records with respect to matters covered by this contract for the purpose of making surveys, audits, examinations, excerpts and transcripts.

Should any records not meet the minimum standards of grant administration of the COUNTY, the COUNTY reserves the right to withhold any or all of its funding to AGENCY until such time as the standards are met. The COUNTY may require AGENCY to use any or all of the COUNTY's accounting and administrative procedures used in planning, controlling, monitoring and reporting all fiscal matters relating to this contract.

The COUNTY reserves the right to dispatch auditors of its choosing to any site where any phase of the project is being conducted or controlled in any way. If any audit or examination determines the AGENCY has expended funds which are questionable or disallowed, the AGENCY shall be given the opportunity to justify questioned and

INTERGOVERNMENTAL AGREEMENT

disallowed expenditures prior to the COUNTY's final determination. Any disallowed costs resulting from the final determination shall be remitted to COUNTY from AGENCY's non COUNTY-administered funds, payable by check within 30 days of final determination.

5. AUDIT

AGENCY shall have an annual audit performed of projects funded by this agreement unless specifically waived in writing by COUNTY. Audits shall be performed by an independent certified accountant in accordance with GAO Audit Standards, OMB Circulars (A-133 and A-110 for non-profits, A-128 for local government agencies), and generally accepted auditing standards. Audit schedules shall clearly show statement of COUNTY-funded assets, liabilities, fund balance, revenues, and expenditures separately from non COUNTY-funded assets, liabilities, fund balance, revenues and expenditures.

Auditor shall be selected competitively and AGENCY should contract with auditor to assure proper scope, reports and timelines are maintained.

Audits are not required for cost reimbursement contracts under \$25,000.

Audits are due 120 days after the end of the contract period.

6. CAPITAL PURCHASES

Capital purchases through children and youth services grants are subject to Oregon Administrative Rule 436-10-036 which indicates capital purchases to be the property of the COUNTY unless the COUNTY determines otherwise.

Capital purchases through children and family services grants are defined according to State of Oregon purchasing rules; initial value of more than \$1,000, and a useful life of more than two years.

Capital purchases indicated in the budget of this contract (Exhibit 3) are subject to the COUNTY's capital purchase Reversion Interest policy and procedure; the COUNTY may inventory the condition and use of the capital goods of this contract on a yearly basis.

The capital goods are to be owned by the AGENCY, subject to the COUNTY's right to reclaim ownership should the goods not be used for children and youth services. The AGENCY will notify the COUNTY if any items listed in Exhibit 3 are ever used for purposes other than for children and family services, are ever to be sold, are ever damaged, or ever worn out.

EXHIBIT 3

BUDGET

1. AGENCY shall submit for COUNTY approval a budget indicating the amount of COUNTY funds allocated for project performance as described in the scope of services. Budget shall be in sufficient detail to provide a sound basis for the COUNTY to effectively monitor compliance with the contract.

Any allocations of budgeted costs not directly allocable to the project shall be made in accordance with OMB Circular A-87, A-122 and A-133, and shall be properly documented by budget attachments.

2. Program income defined as amounts generated by the use of COUNTY funds shall be used to expand the program. AGENCY shall keep records to accurately record and report the use of program income.
3. AGENCY and the COUNTY shall administer budget adjustments and balances through the following processes:

ADJUSTMENTS

AGENCY shall not make minor or major budget adjustments without prior written approval of the COUNTY.

Major budget adjustments are defined as:

- those changes that move funds between the major budget categories of Personal Services, Materials and Services, Capital Outlay or Equipment, or
- those changes that exceed 10% within a major budget category.

Minor budget adjustments are those changes where less than 10% of the funds within a budget category (Personal Services, Materials and Services, Capital Outlay or Equipment) are moved between expenditure line items.

The COUNTY, working through the Commission on Children & Families and staff of the Office for Children & Families, will work with the AGENCY to manage budget adjustments.

BALANCES

The AGENCY is to forecast any expected grant balance and notify the Office for Children and Families by April 30 of each fiscal year. See also Payment Procedures in Exhibit 2.

4. Line item budget (COUNTY provided form attached).

**Clackamas County Office for Children and Families
Budget Summary (FY'05)**

Budget Category	JCP Amount	Match (if any)
A. Personnel	\$ <u>11,390</u>	\$ _____
B. Fringe Benefits	\$ <u>2,000</u>	\$ _____
C. Travel	\$ _____	\$ _____
D. Equipment	\$ _____	\$ _____
E. Supplies	\$ _____	\$ _____
F. Construction	\$ _____	\$ _____
G. Consultants/Contracts	\$ _____	\$ _____
H. Other	\$ _____	\$ _____
Total Direct Costs	\$ _____	\$ _____
I. Indirect Costs	\$ _____	\$ _____
TOTAL PROJECT COSTS	\$ <u>13,390</u>	\$ _____
Juvenile Crime Plan Funds Request	\$ <u>13,390</u>	\$ _____
Match Amount	\$ _____	\$ _____



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works Director
John Gessner, Planning Director

From: Keith Jones, Associate Planner

Subject: Historic Designation for 9908 SE Cambridge Lane (HR-04-01)

Date: September 29, 2004 for the October 19, 2004 meeting

Action Requested

Adopt the Design and Landmarks Commission's recommendation to amend the Comprehensive Plan to change the historic designation for the property at 9908 SE Cambridge Lane from "unrankable" to "contributing".

Background

The owner of the house located at 9908 SE Cambridge Lane is requesting that the historic designation of the property be changed from "unrankable" to "contributing". Comprehensive Plan Map #4 (Historic Resource Map) and Appendix 1 (Historic Resources Property List) will be amended by ordinance under this proposal, if approved.

In 1988, the City inventoried historic property and adopted rules for protection. Historic properties were placed in three categories including:

- "significant" - properties with outstanding historic qualities.
- "contributing" - properties with good historic value but not outstanding.
- "unrankable" - properties that are valuable but lack information to rank or not rank them.

The historic regulations contained in the zoning ordinance indicate that “unrankable” property should be ranked once additional information becomes available. No new evidence is known to exist now that didn’t exist in 1988. However, the regulations do not indicate how information would ever become available to rank the property and allow the owner to receive a building permit. A historical account of the house does exist in the book titled “Twas Many Years Since: 100 Years in the Waverly Area 1847-1947” by Elizabeth F. Dimon which was published in 1981.

The Design and Landmarks Commission held a hearing on August 25, 2004 and adopted a recommendation that the City Council approve the request. Historic designation requests are based on the following criteria:

1. The property must be assessed using the Historic Evaluation Worksheet.
2. The proposed ranking must comply with Zoning Ordinance Section 19.905 – Approval Criteria For All Amendments and Comprehensive Plan Chapter 2 – Plan Review and Amendment Process.

The owner indicates that using the information in the book by Ms. Dimon and comparing his property with other historic designated properties in the Waverly area provides sufficient evidence to support a “contributing” designation. This conclusion is based on the fact that the home was designed by a notable architect, Morris Whitehouse, and because the English Cottage style is a rare design. The applicant indicates that the house should not be classified as “significant” mainly because the home is not a highly visible landmark and the original architectural design was modified. The owner proposes to restore the building closer to its original design which includes replacing a sunroom, an original design feature that was removed in the 1960s (see Attachment 4). The proposal complies with the approval criteria to amend the Comprehensive Plan (See Exhibit B of Attachment 1).

Concurrence

The Design and Landmarks Commission, City Attorney, and Planning Director concur with the proposal.

Fiscal Impact

The proposal will not affect city revenues or expenditures and therefore there are no fiscal impacts.

Work Load Impacts

Two hours of staff time is needed to update the Comprehensive Plan to show the change in designation.

Alternatives

The Council has the following decision-making options:

1. Adopt the Design and Landmarks Commission recommendation and findings in support of a “contributing” designation.
2. Deny the request and maintain the status of the property as “unrankable” and adopt new findings in support of this decision.

Attachments

1. Proposed City Council Ordinance with Design and Landmarks Commission recommended findings in support of the “contributing” designation.
2. Example Historic Evaluation Worksheet
3. Applicant’s narrative.
4. Plans including site plans, floor plans and elevation drawings

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN TO CHANGE THE HISTORIC DESIGNATION OF PROPERTY AT 9908 SE CAMBRIDGE LANE FROM "UNRANDKABLE" TO "CONTRIBUTING".

WHEREAS, the property owner applied for an application (File HR-04-01) to change the historic designation of the property from "unrankable" to "contributing"; and

WHEREAS, the Design and Landmarks Commission conducted a public hearing on August 25, 2004 in accordance with Milwaukie Municipal Code Chapter 19.323.5 and 19.1011.4 and recommended approval to the City Council; and

WHEREAS, the City Council conducted a public hearing on October 19, 2004 in accordance with Milwaukie Municipal Code Chapter 19.323.5 and 19.1011.4; and

WHEREAS, the proposal is consistant with evaluation criteria supporting the "contributing" historic designation; and

WHEREAS, the proposal is consistent with MMC 19.905 and Comprehensive Plan Chapter 2 which governs amendments to the Comprehensive Plan; and

WHEREAS, the Comprehensive Plan Map Amendment implements the change in historic landmark designation for property located at 9908 SE Cambridge Lane from "unrankable" to "contributing"; and

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

- Section 1.** Findings. Findings of fact in support of the proposed amendment is attached as Exhibit A.
- Section 2.** The proposal is consistent with criteria governing amendments to the Comprehensive Plan as shown in Exhibit B.
- Section 3.** Comprehensive Plan Map Amendment. The Comprehensive Plan Map #4 and Comprehensive Plan Appendix 1 Historic Resources Property List are amended so property addressed as 9908 SE Cambridge Lane is ranked as "contributing" historic property.

ORDINANCE NO. _____

Exhibit A

Findings of Fact and Conclusions

1. The applicant has applied for a Historic Resource Designation (HR) application to designate the "unrankable" property at 9908 SE Cambridge Lane as "contributing" in accordance with Section 19.323.5.
2. "Contributing" property must score 43 to 52 points on the evaluation worksheet or 10 in one or more categories. By comparing the property to neighboring historical homes, the property scored a total of 36, with a score of 10 for its Historical Association and, therefore, qualifies as "contributing" property.
3. The applicant has demonstrated that the property scores a 10 under Historical Association since the building was designed by notable Architect Morris Whitehouse and, therefore, shall be ranked as a "contributing" property under Section 19.323.3. The score corresponds with the ranking of 10 for other neighboring houses designed by important local architects Richard Sunderleaf (9712 and 9717 SE Cambridge Lane) and William Widden (9900 SE Cambridge Lane).
4. Comprehensive Plan Map #4 and Comprehensive Appendix 1 Historic Resources Property List shall be changed to reflect the new historic designation.
5. The proposal is consistent with applicable state, regional and Milwaukie Comprehensive Plan policies (Statewide Planning Goal 5 and the Historic Resources Element of the Comprehensive Plan).

Protecting historic resources is Goal 5 of the Statewide Planning Goals. This proposal complies with Goal 5 by designating historic resources.

- d. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

No changes or impacts to public facilities would result from this designation proposal.

- e. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.1400.

The use and underlying R-10 zoning of the property would not change with this designation proposal and would not affect the transportation system.

2. The proposal is consistent with the Comprehensive Plan Chapter 2 – Plan Review and Amendment Process as follows:

Objective #1 – Policy 7 - All Plan amendments will be evaluated based on the following criteria:

- Conformance with the Comprehensive Plan, its goals and policies and spirit.

The proposal is consistent with this section as stated in MMC 19.905 criteria above.

- Public need for the change.

Designating historic property has been identified as a public need in Chapter 3 – Historic Resources Element.

- Public need is best satisfied by this particular change

Public need is satisfied as stated above.

- The change will not adversely affect the health, safety, and welfare of the community.

Public health and safety will not be affected.

- The change is in conformance with applicable Statewide Planning Goals

Designating historic resources is in compliance with Goal 5.

- The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

No functional plan or other regional policies apply.

ATTACHMENT 2

RS 5.A. 9

CITY OF MILWAUKIE

CULTURAL RESOURCE EVALUATION FORM

Criteria for Establishing Significance

Name:	Rank:
Address:	Legal:
Date of Construction:	Zone:
Style:	Land Size:
Type:	Use:

HISTORICAL ASSOCIATION

PERSON/GROUP/ORGANIZATION: Associated with the life or activities of a person, group, organization, or institution that has made a significant contribution to the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

EVENT: Associated with an event that has made a significant contribution to the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

PATTERN: Associated with, and illustrative of, broad patterns of cultural, social, political, economic, or industrial history in the community, state, or nation.

Particularly Strong	10
Strong	7
Some	5
None	0

SUBTOTAL:

ENVIRONMENT

LANDMARK: Significance as a visual landmark.

Symbol for the City	10
Conspicuous/well-known in community	7
Conspicuous/well-known in neighborhood	5
Not conspicuous/well-known	0

SETTING: Significance because current land-use surrounding the property contributes to the integrity of the pertinent historic period.

Excellent	4
Very Good	3
Good	2
Fair/Poor	0

CONTINUITY: Significance because the property contributes to the continuity or character of the street, neighborhood, or community.

Establishes character	7
Important in maintaining character	5
Compatible	3
Incompatible	0

SUBTOTAL:

TOTAL:

9908 SE Cambridge Lane
 Milwaukie, OR. 97222
 503-659-2207 (h)
 503-913-6634 (m)
lyndonM@barcodesupply.com

ATTACHMENT 3

RS 5.A. 12

August 4, 2004

City Of Milwaukie
 Attention: Keith Jones
 Associate Planner
 Community Development
 6101 SE Johnson Creek Blvd
 Milwaukie, OR. 97206
jonesk@ci.milwaukie.or.us

Ref: Building Permit Application for a Historic Resources Designation of an "Unrankable" Property

- 1) Background
 - a) 9908 SE Cambridge Lane, site 38, is listed on Appendix 1 – Historic Resources Property List – as an "Unrankable" property for lack of information and has not been scored.
 - b) The property is identified as "an early important house" in the "Twass Many Years Since", 100 Years in the Waverley Area 1847-1947, Elizabeth F. Dimon, Milwaukie, OR. 1981.
 - c) To the new owners this publication is the only known resource for information on the property and is the source for all historical references to the property.
- 2) Purpose of the Application
 - a) The new owners, Cindy and Lyndon Murray, acquired the property in September 2003 and now wish to renovate the property.
 - b) The last known renovation was done in 1967 (City Building Permit #3028 dated April 14, 1967) during which the character of the property was compromised with the removal of the sunroom and conversion into an lengthened living room and master bedroom, and the addition of a carport attached to the cottage.
- 3) Ranking
 - a) The owners believe the property should be a "Contributing Property" with a score of 36 primarily because of the 10 Ranking on Person under Historical Association . This score is based on similar properties in the neighborhood especially 9900 SE Cambridge Lane (Site 17; Score 27), immediately to the North and 9911 Cambridge Lane (Site 3; Score 50) to the West.

No	Address	History			Architecture					Envirn.			Total
003	9712 SE Cambridge Lane	10	0	0	10	4	2	7	7	5	4	7	56
004	9717 SE Cambridge Lane	10	0	0	10	4	0	7	7	5	4	5	52
006	9911 SE Cambridge Lane	10	0	0	10	2	0	7	7	5	4	5	50
008	10200 SE Cambridge Lane	0	0	0	10	4	0	7	10	5	4	5	45
005	9900 SE Cambridge Lane	10	0	0	3	2	0	3	0	0	4	5	27
038	9908 SE Cambridge Lane	10	0	0	3	2	2	3	7	0	4	5	36

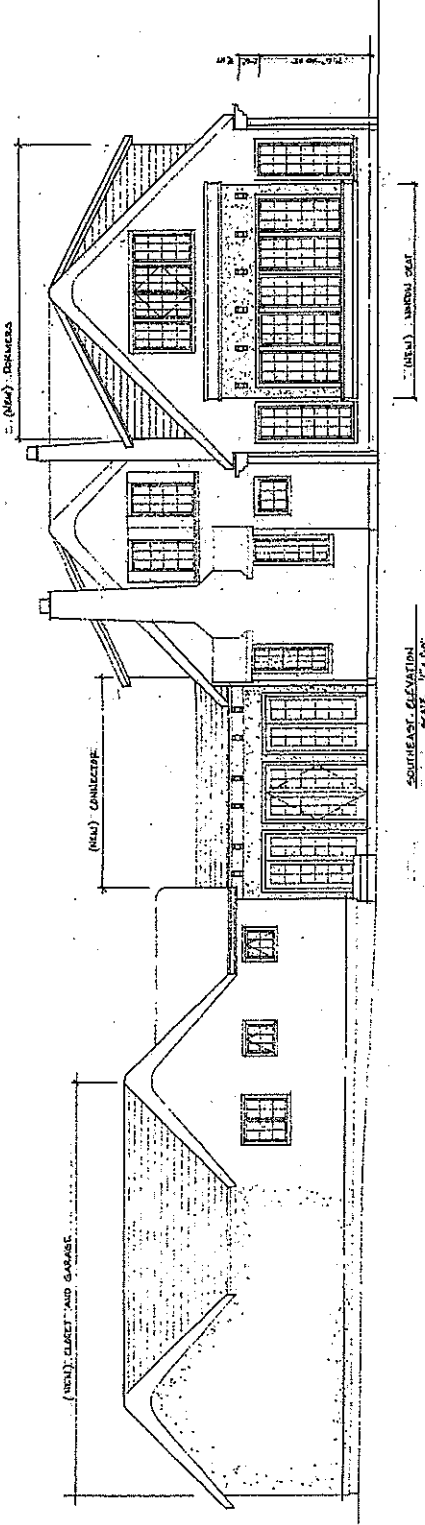
9908 SE Cambridge Lane
Milwaukie, OR. 97222
503-659-2207 (h)
503-913-6634 (m)
lyndonM@barcodesupply.com

RS 5.A. 14

- d) A flat-roofed carport was added to the cottage. The original and still existing garage is almost 50 yards from the house and, as a result, is impractical in a modern context.
- 6) Proposed Changes
- a) Every reasonable effort is being made by the owners to undo the damage done in 1967 to the exterior integrity of the house and to restore the original look and feel of the house while updating the electrical, plumbing systems and optimizing space utilization without adding to the footprint of the house.
 - b) The 1967 extension "unbalances" the house. The owners propose adding dormers that match existing ones to the extension to restore balance. The East side existing dormer will be extended and a new one will be added to the West side.
 - c) The windows in the dormers and at the South end of the house will match the rest of the house and the original as closely as possible. The look and feel of the sun room will be restored.
 - d) The "Greek" style entrance will be removed and weather protection provided by an entrance that picks-up the existing second floor eyebrow.
 - e) The pantry window which was enlarged in 1967 will be put back to its original dimensions.
 - f) The carport will be incorporated into the cottage and made to look as if it were an integral part of the original design. This will be achieved by extending the roof with the same peaks and connector as the cottage and main house and by using the same design for the garage doors as the existing detached garage.
 - g) Currently the cottage is connected to the main house via a covered walkway that is badly damaged with extensive dry rot and is not in a safe condition. The proposed design calls for the connector to be made permanent and converted into an all-weather walkway which includes a relocated utility room. The look and feel will be entirely consistent with the rest of the house.

ATTACHMENT 4

RS 5.A. 15

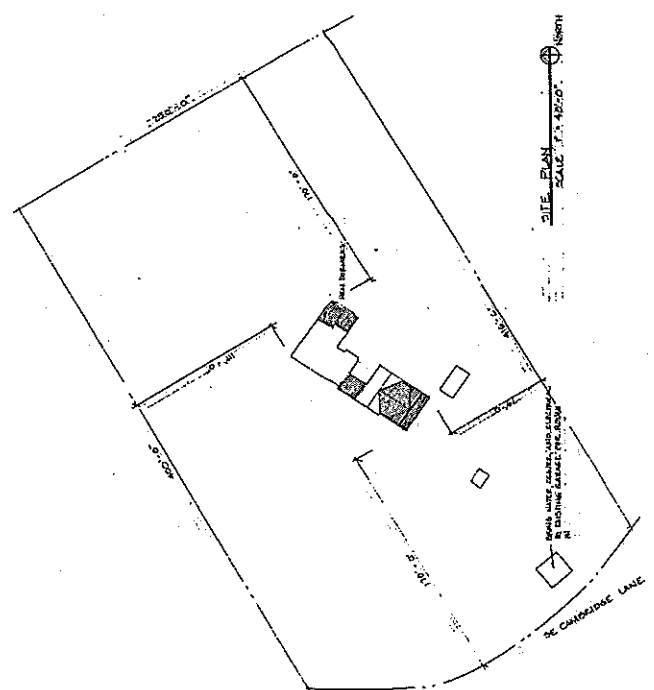


SOUTHEAST ELEVATION
 SCALE: 1/4" = 1'-0"

NO.	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
1	CONCRETE	CU YD	10.00	100.00	1000.00
2	CEMENT	TONS	5.00	50.00	500.00
3	STEEL	TONS	2.00	20.00	200.00
4	BRICK	SQ YD	100.00	100.00	10000.00
5	ROOFING	SQ YD	50.00	50.00	5000.00
6	PAINT	SQ YD	100.00	100.00	10000.00
7	LABOR	HOURS	1000.00	100.00	100000.00
8	PERMITS	FEES	1.00	1.00	100.00
9	INSURANCE	FEES	1.00	1.00	100.00
10	UTILITIES	FEES	1.00	1.00	100.00
11	LANDSCAPE	FEES	1.00	1.00	100.00
12	FOUNDATION	FEES	1.00	1.00	100.00
13	MECHANICAL	FEES	1.00	1.00	100.00
14	ELECTRICAL	FEES	1.00	1.00	100.00
15	PLUMBING	FEES	1.00	1.00	100.00
16	ARCHITECT	FEES	1.00	1.00	100.00
17	ENGINEER	FEES	1.00	1.00	100.00
18	INSURANCE	FEES	1.00	1.00	100.00
19	UTILITIES	FEES	1.00	1.00	100.00
20	LANDSCAPE	FEES	1.00	1.00	100.00
21	FOUNDATION	FEES	1.00	1.00	100.00
22	MECHANICAL	FEES	1.00	1.00	100.00
23	ELECTRICAL	FEES	1.00	1.00	100.00
24	PLUMBING	FEES	1.00	1.00	100.00
25	ARCHITECT	FEES	1.00	1.00	100.00
26	ENGINEER	FEES	1.00	1.00	100.00
27	INSURANCE	FEES	1.00	1.00	100.00
28	UTILITIES	FEES	1.00	1.00	100.00
29	LANDSCAPE	FEES	1.00	1.00	100.00
30	FOUNDATION	FEES	1.00	1.00	100.00

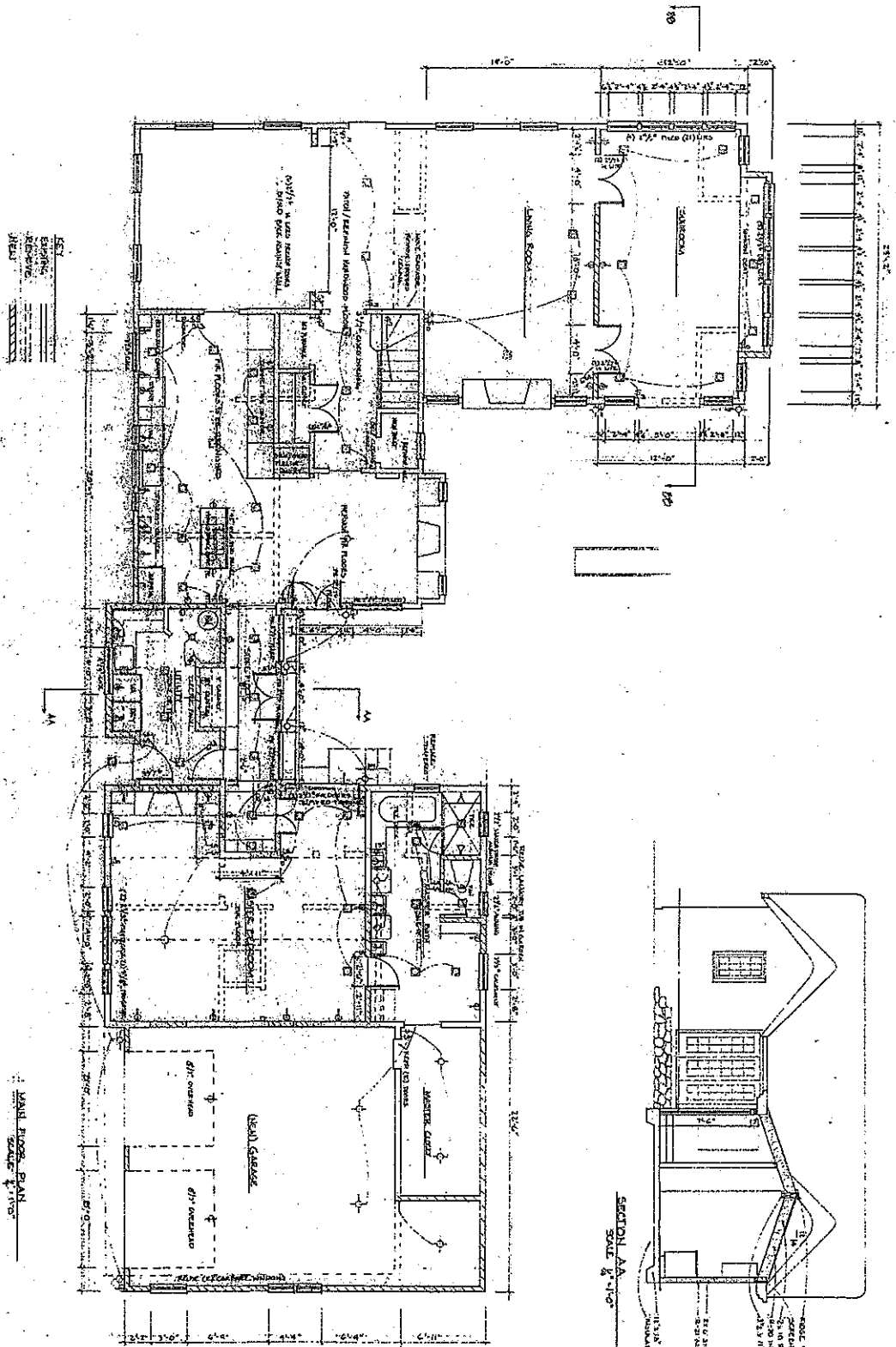
GENERAL NOTES:

1. All work shall be in accordance with the specifications and drawings.
2. The contractor shall be responsible for obtaining all necessary permits.
3. All materials shall be of the highest quality and shall be approved by the architect.
4. The contractor shall be responsible for the safety of all workers and the public.
5. The contractor shall be responsible for the protection of all existing utilities.
6. The contractor shall be responsible for the cleanup of the site.
7. The contractor shall be responsible for the disposal of all waste.
8. The contractor shall be responsible for the maintenance of all equipment.
9. The contractor shall be responsible for the insurance of all workers and equipment.
10. The contractor shall be responsible for the bonding of all workers and equipment.
11. The contractor shall be responsible for the payment of all taxes.
12. The contractor shall be responsible for the payment of all fees.
13. The contractor shall be responsible for the payment of all charges.
14. The contractor shall be responsible for the payment of all costs.



SITE PLAN
 SCALE: 1/4" = 1'-0"

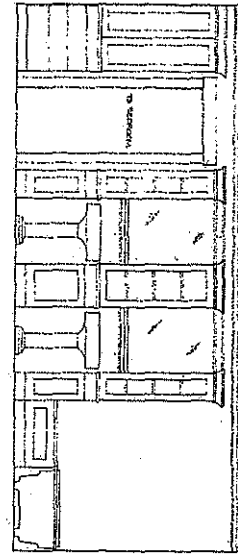
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 CITY OF MILWAUKIE
 PLANNING DEPARTMENT



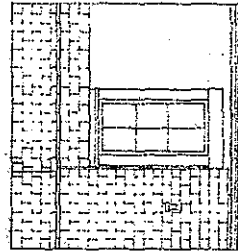
LEGEND
 EXTERIOR FINISH
 INTERIOR FINISH
 WOOD
 CONCRETE
 METAL
 GLASS
 INSULATION
 MECHANICAL
 ELECTRICAL
 PLUMBING

MAIN FLOOR PLAN
SCALE 1/8" = 1'-0"

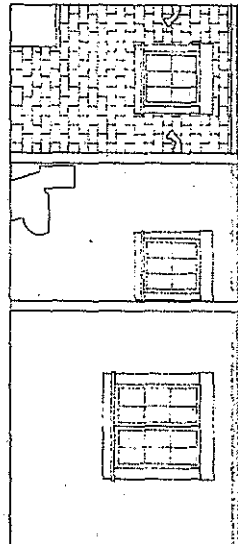
SECTION A-A
SCALE 1/4" = 1'-0"



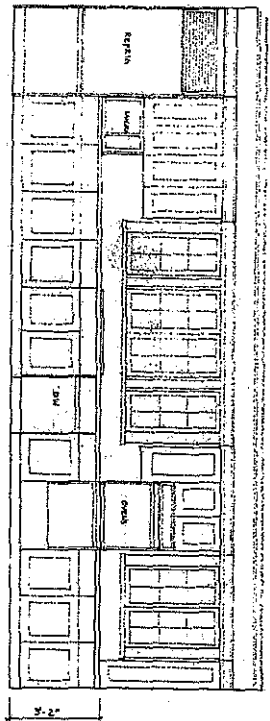
KITCHEN
SCALE 1/8" = 1'-0"



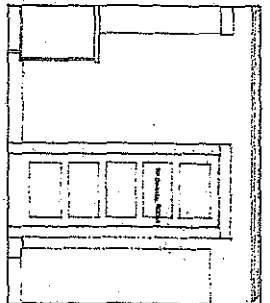
BRICK
SCALE 1/8" = 1'-0"



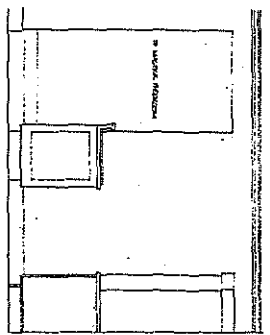
BRICK
SCALE 1/8" = 1'-0"



KITCHEN
SCALE 1/8" = 1'-0"



BRICK
SCALE 1/8" = 1'-0"



BRICK
SCALE 1/8" = 1'-0"



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development & Public Work Director

From: John Gessner, Planning Director
Lindsey Nesbitt, Associate Planner

Date: October 8, 2004 for the October 19, 2004 Council Meeting

File: ZA-04-01

Applicant: City of Milwaukie Community Development

Site Address: Downtown Zones

NDA: All

Action Requested

Adopt the proposed ordinance amending Zoning Ordinance Section 19.312 and the Milwaukie Zoning Map as recommended by the Planning Commission and Design and Landmarks Commission.

Background Information

In September 2000, the City Council adopted the Downtown and Riverfront Land Use Framework Plan. The plan was developed to create more vitality in the downtown, to draw businesses and residents to the downtown, and to connect the riverfront to the downtown. In conjunction with developing the Downtown and Riverfront Land Use Framework Plan, the downtown area was rezoned to allow for a mix of uses including commercial and office buildings, transit center, hotel, multifamily housing, townhouses, and retail along Main Street.

New code language was drafted for the downtown implementing the Downtown Plan. The Zoning Ordinance includes development standards for site development, public area requirements for improvements along streets, and design standards that regulate development in the downtown to ensure an active, attractive, and accessible environment for shoppers, employers, and residents.

In April 2003, the Milwaukie Downtown Design Guidelines were adopted. The guidelines were developed to provide a framework within which to review development in the

downtown and to support and compliment the adopted Downtown and Riverfront Land Use Framework Plan.

The North Main redevelopment site was originally defined in the Downtown Plan and zoning code as a site for a new downtown transit center. In 2001, the City Council abandoned the transit center plan in favor of a public-private venture to develop the site for mixed-use development.

Over the past seven months, a team of Community Development staff and consultants have been working with the developer to prepare the mixed-use project anticipated for the former Safeway site. During the process of creating the proposed plan, the team discovered that in some instances the downtown zoning code needed to be adjusted in order to accomplish the overall goals of the project.

On September 28, 2004, the Planning Commission conducted a public hearing and adopted a motion recommending the City Council approve the proposed code changes and ordinance. On September 29, 2004, the Design and Landmarks Commission adopted a motion concurring with the Planning Commission's September 28, 2004 recommendation.

Key Issues

1. The City of Milwaukie Community Development Department, the applicant in this application, has submitted a package of code amendments to Section 19.312 Downtown Zones. The amendments are submitted in support of the North Main Redevelopment Project slated for a Planning Commission hearing on December 14, 2004.
2. The City is proposing the following code changes to the Downtown Zone:
 - a. Townhouses and ground floor multifamily housing are not presently permitted in the Downtown Storefront (DS) Zone. The proposed change will permit townhouses and multifamily development in a limited portion of the Downtown Storefront Zone. This provision is implemented through designation of the area as the "Village Concept Area".
 - b. Presently, surface parking lots and driveway curb cuts are not permitted within 50 feet of Main Street. The proposed code amendment will permit surface parking lots and driveway curb cuts within 50 feet on Main Street subject to specific limitations including Planning Commission review and approval.
 - c. Presently, unenclosed upper level balconies are not permitted to project into the right-of-way.

The proposed amendment will permit unenclosed upper level projections up to 4 feet into the right-of-way subject to Fire, Building, and other code limitations.

- d. The proposed amendment will modify design standard criteria to create more flexibility for the Planning Commission and the Design and Landmarks Commission in allowing expressly prohibited materials to be used subject to a review process.
3. Staff believes the applicant has demonstrated compliance with applicable approval criteria and recommends approval.

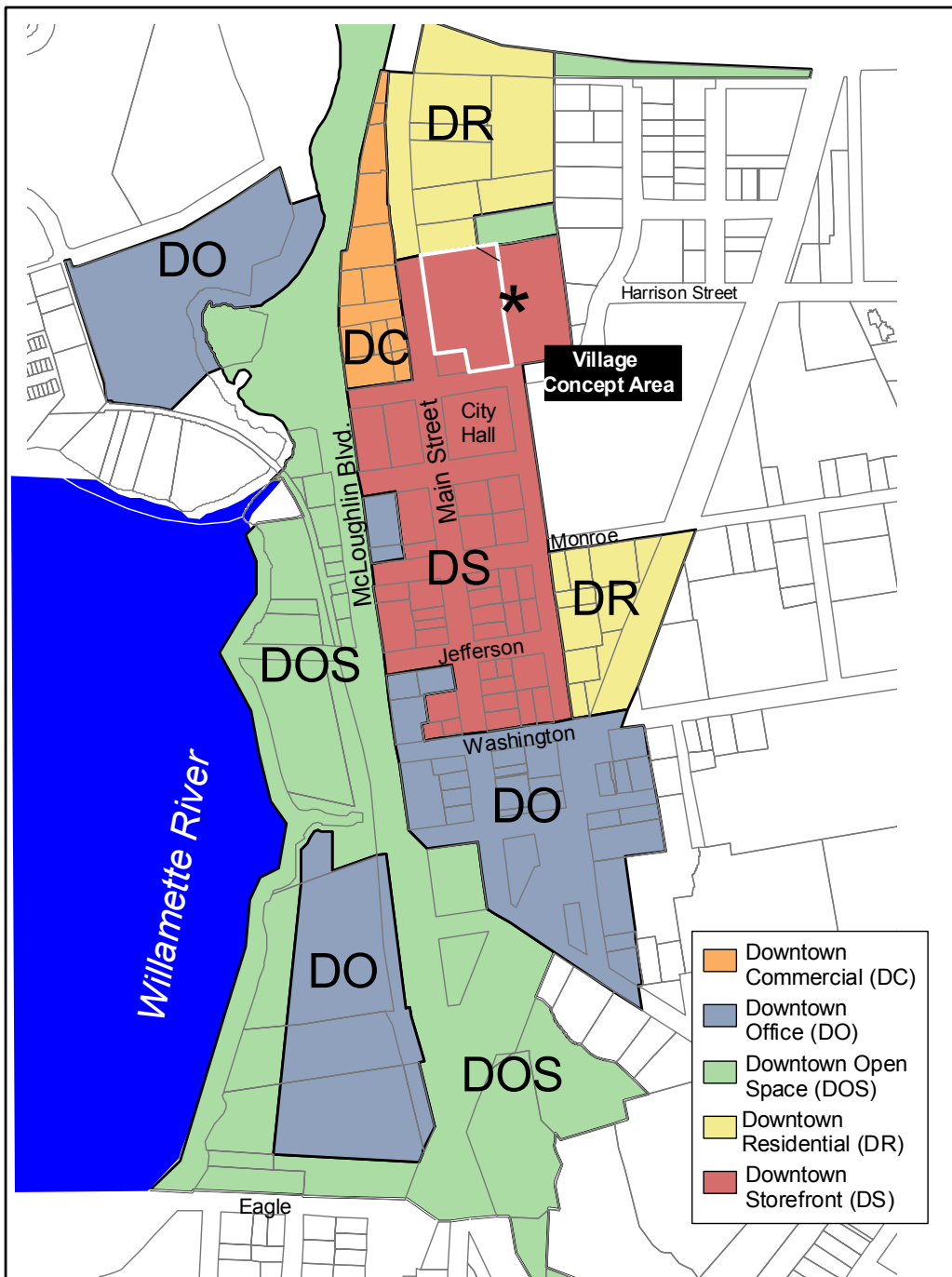
Analysis of Key Issues

1. Creation of the “Village Concept Area” and allowing townhouses and multifamily housing in a limited portion of the Downtown Storefront (DS) Zone.

The purpose of the DS Zone is to preserve and enhance the commercial “Main Street” character of downtown Milwaukie. The DS Zone allows for a full range of retail, service, business, and residential uses. Retail uses are required on ground floors fronting on Main Street. Office and residential uses are permitted on upper floors.

Staff believes the proposed change is reasonable as follows:

- Townhouses and ground floor multifamily housing will be permitted only on the Safeway site, thereby preserving desired commercial development potential on other sites zoned DS (See map below).
- The site of the Village Concept Area was previously planned for transit center development. With that proposal having been abandoned, it is appropriate to look at suitable alternate uses on the property.
- Commercial uses will still be provided along the ground floor of Main Street.
- Mixed-use residential development supports the downtown.
- The City Council has given prior policy direction to develop a mixed-use project on the site. The proposed “Village Concept Area” code amendment implements that policy.



2. Proposed curb cuts and surface parking lots within 50 feet of Main Street.

The DS Zone is defined by a continuous facade of buildings close to the street with adjacent on-street parking particularly along Main Street. Off-street parking is not required for developments in the DS Zone. The applicant is proposing to amend the code to permit surface parking lots and curb cuts within 50 feet of Main Street subject to the following limitations:

- a. The Planning Commission must approve the request.
- b. The applicant must demonstrate that the overall project meets the intent of the code by providing a continuous facade of buildings close to Main Street.
- c. The off-street parking area is visually screened from view of Main Street.
- d. The community need for the off street parking in the area outweighs the need to provide a continuous facade of buildings for the development site.

The applicant is requesting to amend this portion of the code for the following reasons:

- a. Allowing surface parking lots will assist new developments with meeting adequate fire code provisions.¹
- b. The amendment will give the Commission the discretion to modify this requirement, taking into account the shortage of on-street parking and off street parking in certain areas of the downtown.
- c. The Commission will have the authority to permit surface parking lots and curb cuts within 50 of feet Main Street when it finds that the value of the off-street parking outweighs the need to maintain a continuous facade of buildings.

3. Allow upper story balconies and projections into the right-of-way

Currently, provisions regulating balconies are listed in the Landscaping and Open Space section of the Development Standards. The code also establishes minimum dimensions of 6 feet in depth by 8 feet in width for balconies.

The applicant proposes to move the code section governing balconies out of the development standards section and relocating it into the design standards section. Moving this section to Design Standards will allow dimensions of balconies to be modified through the Modifications of Design Standards rather than going through a standard variance process.

Currently, upper level balconies are not permitted to project into the right-of-way. The applicant is proposing to insert a provision that will permit unenclosed upper level

¹ Fire code provisions require fire truck access to all sides of buildings that do not have frontage on a public street.

balconies to extend into the right-of-way no more than 4 feet.² The applicant has indicated this provision will allow developers to flexibly use the right-of-way space for outdoor upper level balconies provided other fire, building, and public works standards are met.

Staff believes that balconies encourage outdoor use of space and add to the mixed use and residential character of downtown.

4. Modification to design standards.

The downtown design standards are intended to encourage building design and construction with durable high-quality materials. They are intended to support the development of a cohesive, attractive, and safe downtown area and encourage private investment. The standards are intended to be clear and objective.

The developer for the North Main project has expressed interest in using prohibited materials and window treatments. The applicant is proposing to amend the modification of design standards criteria to allow the modification and use of prohibited materials subject to limitations.

The modification will allow developers to modify various design standards using approval criteria other than the typical variance criteria. The applicant believes this will offer the Planning Commission and the Design and Landmarks Commission flexibility in granting modifications that will both meet the intent of the code and positively contribute to the appearance of the downtown.

5. Staff believes the applicant has demonstrated compliance with applicable approval criteria. (See Exhibit 3 of the proposed ordinance for details.)

The key code change with regard to land use is the "Village Concept Area". Section 905(b) (1) requires consideration of six elements. The following summarizes the applicant's response. See also applicant's narrative.

Site Location and Character of the Area

The proposed code amendments for the North Main site support and enhance the character of the area. The character of the area and uses adjacent to the site are commercial/retail, public service (Ledding Library, City Hall) and open space.

Predominant Land Use Pattern and Density of the Area

The current land use pattern in the downtown is a mix of commercial/retail, municipal services and open space. It is surrounded by a dense residential neighborhood.

Mitigation Measures

² Subject to building, fire, safety, and public works standards.

The proposed code amendments support increased density but is not expected to create the need for any significant mitigation measures. The Milwaukie Downtown and Riverfront Land Use Framework Plan and Downtown Zoning Code call for accommodating increasing density in the downtown. Generally, there is capacity in the downtown to support increased density. Existing water, sewer, power and phone services are adequate. Some upgrade of the storm system may be needed but can be accommodated.

Any project development will require a transportation impact analysis and full development review process. Traffic and transportation study may reveal the need for some mitigation such as improving safety at the intersections of 21 and Harrison and Harrison and Main Streets. Potential mitigation measures will be identified at the time of development review.

Expected Changes in the Development Pattern

The "Village Concept Area" implements proposed changes in the development pattern by allowing first floor residential uses on the former Safeway site. No other changes to existing or planned land use patterns are expected.

Need for Use allowed by Amendment

The need for the proposed first floor residential use comes from existing downtown planning polices that encourage downtown housing and City Council direction with regards to the specific redevelopment proposal for the former Safeway site.

Lack of Suitable Alternative Site already Zoned for the Use

Because of the uniqueness and the goals of the project, there are no other alternative sites already zoned for the use. This project best fits in the downtown with its mix of commercial/retail shops, housing and high- density development. It is a unique site that is highly visible in the downtown. An innovative village concept area is sought because of the site's high visibility and impact as a catalyst for future revitalization in the downtown.

Code Authority and Decision Making Process

Milwaukie Zoning Ordinance Sections:

1. 19.900 Amendments
2. 19.1011.4 Major Quasi Judicial Review
3. 19.1011.5 Legislative Actions
4. 19.1400 Transportation Planning, Design Standards and Procedures

Comments

Historic Milwaukie Neighborhood District Association (NDA) (Verbal comments from Ed Zumwalt) – Historic Milwaukie is in support of the North Main project, but is concerned

about traffic control. The NDA expressed concern with future traffic and the number of trips that will be generated by the proposal, as well as how the additional traffic will be managed.

Concurrence

The Planning Commission, Design and Landmarks Commission, City Attorney, and staff concur with the proposal.

Fiscal Impact

There are no expected fiscal effects of the proposed amendments, as they would not directly affect budget revenues or expenditures.

Work Load Impacts

There are no workload impacts of the proposed amendment other than administrative tasks including legal notice and records management normally associated with code amendments.

Alternatives

The Council has the following decision-making alternatives:

- a. Adopt the proposed ordinance.
- b. Reject the proposed ordinance.
- c. Direct staff to modify the proposal and return for further consideration.
- d. Take no action.

Attachments

1. Applicant's Narrative
2. Adopting Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 19.312 DOWNTOWN ZONES

WHEREAS, the Planning Commission conducted a public hearing on September 28, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900 and adopted a resolution recommending the City Council adopt the proposed code changes; and

WHEREAS, the Design and Landmarks Commission reviewed the proposal in an advisory capacity on September 29, 2004, and adopted a motion concurring with the September 28, 2004 Planning Commission action; and

WHEREAS, the City Council conducted a public hearing on October 19, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900; and

WHEREAS, the requested code amendments implement the following:

1. Designation of the former Safeway site at Harrison Street and Main Street in downtown Milwaukie as the "Village Concept Area", formerly planned for a transit center.
2. Housekeeping changes as needed to accommodate first floor housing in the Village Concept Area in areas not fronting on Main Street.
3. Allowing parking and curb cuts on Main Street under certain circumstances, which acknowledges the desire to provide parking at the time of development thereby minimizing parking conflicts and ensuring adequate parking for shoppers, businesses, and prospective downtown residents.
4. Authorizing upper story projections into the right-of-way to accommodate desirable architectural features like residential balconies.
5. Clarifying that "prohibited" exterior building materials may be authorized in certain cases.

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

Section 1. The proposed amendments to the Milwaukie Municipal Code Chapter 19.312 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 2: All changes to section citations and references required by adoption of the amendments are automatically adopted.

Section 3 The proposed amendment to Section 19.312, Figure 19.312 –1, Downtown Zoning Map, showing the zoned “Village Concept Area” as in Exhibit 2, is hereby adopted and incorporated into the Zoning Ordinance and Zoning Map.

Section 4. Findings of fact in support of these amendments as described in Exhibit 3 are hereby adopted.

Read for the first time on _____ and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

James Bernard, Mayor

ATTEST

APPROVED AS TO FORM
Ramis Crew Corrigan Baccrach, LLP

Pat Duval, City Recorder

City Attorney

Ordinance No. _____

Exhibit 1

Amendments to Milwaukie Municipal Code Chapter 19.312¹

1. Amend Section 19.312.2 (A) as follows:

Downtown Storefront (DS) The downtown storefront zone is established to preserve and enhance the commercial “Main Street” character of downtown Milwaukie, ensuring that new development in areas designated DS is compatible with this desired character. This zone allows a full range of retail, service, business and residential uses. Retail uses are required on the ground floors of buildings fronting on Main Street. Office and/or residential uses are allowed on upper floors. Industrial uses are not allowed. The desired character for this zone includes buildings that are built to the right-of-way and oriented toward the pedestrian, with primary entries located along streets rather than parking lots. A “Village Concept Area” has been established in the DS zone to allow a broader mix of uses on a city-owned site adjacent to the library, City Hall, a high density residential area to the north, and existing Main Street storefront uses. These uses include townhouses and multifamily apartment/condominium buildings.

2. Amend Table 19.312.3 Downtown Zones Use Table as Follows

- a. Change the code in the Downtown Zone column code from “N” to “L (1)” in the “Townhouse” row.
- b. Change code in the Downtown Zone Column from “N” to “L(10)” in the “Multifamily, apartment/condominium” row.

3. Amend Section 19. 312.3(G)(1) Limited Uses as follows:

(Explanatory Note: Section 19.312.3 (G) describes limitations that apply to use categories identified in Table 19.312.3.)

1. Townhouse development is permitted only in a limited area of the downtown residential zone as identified on the zoning map (see “Transitional Residential Area” on Figure 19.312-1). This limited use provision is intended to provide an opportunity for owned,

¹

- a. Underlined text is to be inserted and ~~strike through~~ text to be deleted.
- b. Certain changes are also described by narrative without the use of strikeout or underlined text.
- c. There shall be no change to unmarked existing text and to any text that is not specifically included herein.
- d. “*Explanatory notes*” that appear in this exhibit do not amend the code.

attached housing at a minimum density of ten units per acre. Townhouse development is permitted only in a limited area of the downtown storefront zone as identified on the zoning map (see “Village Concept Area” on Figure 19.312-1. Townhouses shall not be located within 50 feet of the Main Street frontage within the “Village Concept Area”.

4. Amend Section 19.312.3(G) Limited Uses by adding the new subsection 19.312.3(G)(10) as follows:

10. Multifamily apartment/condominium building development is permitted only in a limited area of the downtown storefront zone as identified on the zoning map. See “Village Concept Area” on Figure 19.312-1.

5. Amend Footnote #2 of Table 19.312.4 Development Standards as follows:

(Explanatory Note: This is a housekeeping amendment as needed to establish minimum lot sizes for townhouse development authorized in the “Village Concept Area” under this ordinance.)

2. ~~Townhouse lots in the transitional residential area~~ may be as small as seven hundred fifty square feet. All other lots created in the DR zone shall be a minimum of five thousand square feet.

6. Amend Section 19.312.4(B)(10)(c) regarding offstreet parking as follows:

c. Off-street surface parking lots (including curb cuts) shall not be located within fifty feet of the Main Street right-of-way. The Planning Commission may permit off-street parking lots and curb cuts within 50 feet of the Main Street right-of-way only on the finding in a public hearing that:

i. The overall project meets the intent of providing a continuous facade of buildings close to Main Street;

ii. The off-street parking area or curb cut is visually screened from view from Main Street; and

iii. The community need for the off-street parking area or curb cut within 50 feet of Main Street outweighs the need to provide a continuous façade of buildings in that area.

7. Repeal Section 19.312.4(B)(11)(b).

(Explanatory Note: This amendment combined with amendment #8 below, relocates the dimensional standards for residential balconies from 19.312.4 to 19.312.6.)

8. **Amend Section 19.312.6(C)(1) by adding a new subsection 19.312.6(C)(1)(d) as follows:**
- d. Residential Balconies.
 - i. Balconies for residential units shall have a minimum depth of six feet and minimum width of eight feet.
9. **Amend development standards of Section 19.312.4(B) by adding new subsection 19.312.4(B)(12) as follows:**
- 12. Right-of-Way projections. Right-of-way projections of up to four feet are permitted in all downtown zones for upper-level, unenclosed balconies. All applicable building, fire, safety and public works standards shall also be met prior to permitting such balcony projections.
10. **Amend modification of design standards of Section 19.312.7(J) as follows:**
- (Explanatory Note: This amendment corrects a prior editing omission in the second paragraph of 19.312.7(J).)*
- A modification to a design standard may be granted at a public hearing in accordance with Section 19.1011.3 when all of the following criteria ~~is~~ are satisfied:
11. **Amend Section 19.312.7 by adding a new section 19.312.7(K) authorizing the use of materials prohibited under 19.312.6(C) as follows:**
- K. Consideration of prohibited materials or design features. The planning commission may authorize the use of prohibited materials or design features specified in 19.312(C) subject to the following criteria:
 - 1. The applicant demonstrates that the prohibited material is substantially comparable to an allowed material with regards to quality, appearance, style, architectural effect, and durability.
 - 2. Use of the prohibited materials is consistent with design considerations specified for the particular design element in the Milwaukie Downtown Design Guidelines.

Exhibit 3

Findings of Fact and Conclusions

1. The proposed zoning map amendment is consistent with Milwaukie Municipal Code 19.1011.4 Major Quasi Judicial Review provisions for amending the Zoning Map as follows:
 - a. Public notice and property owner notice was conducted in accordance with Section 19.1011.4(B).
 - b. The Planning Commission conducted a public hearing on September 28, 2004, and forwarded a recommendation to the City Council to approve the zoning map changes in accordance with Milwaukie Municipal Code 19.1011.4(D).
2. The proposed legislative amendments to the Zoning Ordinance are consistent with Milwaukie Municipal Code Section 19.1011.5 as follows:
 - a. Public notice and property owner notice was conducted in accordance with Section 19.1011.5(A).
 - b. The Planning Commission conducted a public hearing on September 28, 2004 and forwarded a recommendation to the City Council to approve the zoning amendments in accordance with Milwaukie Municipal Code 19.1011.5(B).
3. The proposed amendments have been processed in accordance with Milwaukie Municipal Code Chapter 19.900 Amendments as follows:
 - a. The reason for the zoning map change is to acknowledge the City Council's policy change from the prior transit use to mixed use development thereby extending high density residential uses to the site.
 - b. The code amendments implement the following:
 1. Designation of the former Safeway site at Harrison Street and Main Street in downtown Milwaukie as the "Village Concept Area" which was formerly planned for a transit center.
 2. Housekeeping changes as needed to accommodate first floor housing in the Village Concept Area in areas not fronting on Main Street.
 3. Allowing parking and curb cuts on Main Street under certain circumstances, which acknowledges the desire to provide parking at the time of development thereby minimizing parking conflicts and ensuring adequate parking for shoppers, businesses, and prospective downtown residents.

4. Authorizing upper story projections into the right-of-way to accommodate desirable architectural features like residential balconies.
5. Clarifying that “prohibited” exterior building materials may be authorized in certain cases.

4. The amendments have been evaluated in accordance with Milwaukie Municipal Code Section 19.905, which requires demonstration of the following:

- a. Conformance to applicable comprehensive plan polices, consistency with provisions of city ordinances, the Metro Urban Growth Management Functional Plan, and applicable regional policies.

Consistency with the Comprehensive Plan

The Downtown and Riverfront Land Use Framework Plan, which was made part of the Comprehensive Plan under Ordinance 1880, includes the development principle of maintaining a continuous retail facade along Main Street. The code amendment allowing parking and curb cuts on Main street modifies the above principle by acknowledging the desire to provide parking while substantively complying with continuous building facade requirements thereby minimizing parking conflicts and ensuring adequate parking for shoppers, businesses, and prospective downtown residents.

The public information and outreach process for the proposed amendments was consistent with applicable citizen involvement policies of Milwaukie Comprehensive Plan Chapter 1.

Consistency with City Ordinances

The Downtown and Riverfront Land Use Framework Plan principle of continuous building facade along Main Street is implemented through the following provisions of the Milwaukie Municipal Code:

1. Figure 312-4 Required Build-to Lines
2. Section 19.312.4(B)(5)(c) Zero Front Yard Allowance.
3. 19.312.4(B)(10) Off Street Parking.
4. 19.321.2(A) Characteristics of the Downtown Storefront Zone

By adoption of this ordinance exceptions to the continuous building facade are expressly authorized. Therefore no inconsistency between the amendment and the related code provisions exists.

Consistency with the Functional Plan and Regional Policies

There are no directly applicable functional plan or other regional policies.

- b. Future development must meet the intent of the proposed zone change taking into account numerous considerations. The relevant code change with regards to this criterion is allowing residential development on the ground floor in the Village Concept Area approved under this ordinance and allowing curb cuts and parking along Main Street under certain circumstances.

The intent of the Downtown Storefront Zone as adopted under Ordinance 1880 includes the following:

1. Preserve and enhance the “Main Street” character of downtown Milwaukie.
2. Support a full range of retail, service, business, and residential uses.
3. Require retail uses on Main Street.
4. Allow office and residential uses on upper floors.
5. Construct buildings close to the street.

The relevant amendments adopted under this ordinance refines the intent of the Downtown Storefront zone by expressly allowing first floor housing in the Village Concept Area and allowing parking on Main Street when a project provides a substantial building facade along the street.

Section 905.1(B) Considerations

The proposal has been evaluative with respect to the six considerations of Section 905.1(B). It has been determined that the site is suitable for the proposed Village Concept Area and that the concept area supports the existing pattern of development in accordance with the adopted Downtown and Riverfront Land Use Framework Plan.

- c. Section 19.905.1(C) also specifies demonstration of compliance with regional polices, but adds state and federal policies as well. City code and polices that govern the code amendment process are consistent with statewide planning goals. There are no directly applicable federal policies.
- d. Section 19.905.1(D) requires consideration as to whether new demands for public services related to an amendment will constrain development potential within the affected service area. The relevant code change is the adopted allowance of first floor housing within the Village Concept Area. The primarily affected facilities include water, sewerage, and stormwater systems. Adequate capacity exists in these systems to serve existing and potential development contemplated by the proposed amendment and the development achievable under the Downtown and Riverfront Land Use Framework Plan.

- e. Section 19.905.1(E) requires consideration of the effect of an amendment on the functional classification, capacity, and level of service of the transportation system. The relevant code change is the adopted allowance of first floor housing within the Village Concept Area. Existing uses allowed in the Downtown Storefront zone include several that have a higher trip generation rate than residential. Therefore the overall potential traffic impact of development is associated with allowed uses that have higher trip generation than first floor residential development that may result from the amendment.
- 5. By the same reasoning above, Milwaukie Municipal Code 19.1403, has been satisfied. The proposal does not increase development potential over existing potential in comparison to presently allowed uses.
- 6. The Downtown and Riverfront Land Use Framework Plan will be amended to eliminate the transit center originally proposed for the former Safeway site located on Harrison Street and Main Street.

(End of Exhibit)



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Stewart Taylor, Finance Director

Subject: Resolution – Adopting City Investment Policy

Date: September 22, 2004 for October 5, 2004 City Council Meeting

Action Requested

Approve the resolution adopting a City Investment Policy.

Background

Oregon Revised Statutes Chapter 194 sets forth the regulations for county and municipal finance administration. Among the provisions is a requirement that surplus funds be invested according to a written order of the governing body. The written order is generally provided through an investment policy adopted by the County Commission or City Council. Before a governing body can adopt an investment policy, the policy must be submitted to the Oregon Short Term Fund Board (OSTFB) for review and comment. The investment policy should be reviewed and readopted by the governing body following a change in the investment environment or following turnover in a key staff position.

The current investment policy for the City of Milwaukie was last reviewed by the OSTFB in August, 1993. Because of changes in the investment environment and turnover in both the City Manager and Finance Director positions, it is appropriate for the City Council to review and readopt the City's investment policy

The proposed policy was reviewed by the OSTFB on September 29, 2004. The policy incorporates minor changes to the existing policy that create additional investment opportunity while maintaining the priority of objectives for safety, liquidity and yield.

Concurrence

None required.

Fiscal Impact

The policy establishes parameters for short-term investment of surplus City funds.

Work Load Impacts

Managing the City's investments is included in the duties of the Finance Director.

Alternatives

1. Approve the policy as proposed.
2. Modify the policy.
3. Do not approve the policy.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING A CITY INVESTMENT POLICY

WHEREAS, Chapter 194 of the Oregon Revised Statutes sets forth the regulations for county and municipal finance administration; and

WHEREAS, the statute provides that surplus funds be invested according to a written order of the governing body; and

WHEREAS, the written order consists of an investment policy reviewed by the Oregon Short Term Fund Board and adopted by the City Council; and

WHEREAS, the current City investment policy was last reviewed by the Short Term Fund Board in August, 1993; and

WHEREAS, the policy suggests a periodic review by the City Council and comment by the Short Term Fund Board upon turnover in key personnel and changes in the investment environment; and

WHEREAS, the proposed policy has been reviewed by the Short Term Fund Board and incorporates changes to the existing policy that create additional investment opportunity for available city funds; and

WHEREAS, the primary objective of the investment policy continues to be preservation of capital and protection of investment principal.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON:

The investment policy attached as Exhibit A dated October, 2004 is hereby adopted.

BE IT FURTHER RESOLVED that this resolution shall be effective immediately upon its passage.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:

Pat DuVal, City Recorder

Ramis, Crew, Corrigan & Bachrach, LLP



Investment Policy
October, 2004

City of Milwaukie Investment Policy

I. Scope

This policy shall apply to all investable funds of the City of Milwaukie except for deferred compensation fund assets, pension fund assets, and assets of restricted trust and escrow funds. Included under the provisions of this policy are financial assets of general operating funds, enterprise funds, special revenue funds and any other funds not specifically excluded which are recognized in the City's Comprehensive Annual Financial Report.

The investment portfolio will have seasonal and operational fluctuations but will typically range between twelve and fourteen million dollars. Funds will be invested in conformance with all cited city, state and federal regulations.

II. Objectives

The primary objectives, in priority order, of investment activities shall be safety, liquidity and yield.

Safety. Preservation of capital and protection of investment principal are the foremost objectives of the investment program.

Liquidity. The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This will be accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands. Furthermore, since all possible cash demands cannot be anticipated, securities in the portfolio will be limited to those with active secondary or resale markets. A major portion of the available surplus funds shall be deposited in the Local Government Investment Pool (LGIP) in order to achieve next-day liquidity for short-term needs.

Yield. The investment portfolio shall be designed with the objective of attaining a market value rate of return throughout budgetary and economic cycles. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The portfolio shall be limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed.

III. Standards of Care

Prudence. The standard of prudence to be used for managing the City's assets is the "prudent investor" rule which states, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for

investment considering the probable safety of their capital, as well as the probable income to be derived.”

The overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally risk-free and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security before maturity is in the best long-term interest of the City.

The City’s Custodial Officer (ORS 294.004 (2)) and staff acting in accordance with this investment policy, written procedures, and Oregon Revised Statutes 294.035 and 294.040 and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price change or other loss in accordance with ORS 294.047, provided that these deviations and losses are reported as soon as practical and action is taken to control adverse developments. Losses that are sustained in the City’s portfolio shall be charged against current or future investment earnings.

Ethics and Conflicts of Interest. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall disclose in writing to the City Manager any material interests they have in financial institutions that conduct business with the City. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio.

Officers and employees shall comply with ORS 244.040 (Code of Ethics), ORS 244.120 (Methods of Handling Conflicts), GARS Article 3.15 (Standards of Conduct), any amendments to these provisions, and any Code of Ethics applicable to employees that the City may adopt in the future.

Delegation of Authority. The ultimate responsibility and authority for the investment of City funds resides with the City Council. The City hereby designates the Finance Director as the Custodial Officer for the City’s funds. The Custodial Officer shall invest City funds in accordance with ORS Chapter 294, Public Financial Administration, and with this investment policy. This policy shall constitute a “written order” from the City Council per ORS 294.035. The Custodial officer, with the consent of the City Manager, may further delegate the authority to invest City funds to additional City finance personnel.

Subject to required procurement procedures, the City may engage the support services of outside professionals in regard to its financial program, so long as it can be demonstrated or anticipated that these services produce a net financial advantage or necessary financial

protection of the City's resources. External service providers shall be subject to Oregon Revised Statutes and the provisions of this investment policy.

IV. Safekeeping and Custody

Agencies. Investment and safekeeping services shall only be made in qualifying obligations offered through agencies and instrumentalities of the United States as qualified pursuant to ORS 295.005 to 295.165. In addition, all financial institutions and broker/dealers must provide the following, as appropriate:

- Audited financial statements
- Proof of National Association of Securities Dealers (NASD) certification
- Proof of state registration
- Certification of having read and understood the City of Milwaukie's investment policy
- Certification of agreement to comply with the City of Milwaukie's investment policy

An annual review of the financial condition and registration of participating financial institutions and broker/dealers shall be conducted by the Custodial Officer.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis in accordance with ORS 294.145 (4) and (5). It is the intent of the City that all purchased securities be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

Except for the State of Oregon Local Government Investment Pool, time deposit open accounts, Certificates of Deposit and savings accounts, all investment securities purchased by the City, and all purchased securities under the terms of a City approved Master Repurchase Agreement, shall be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a City approved custodian bank, its correspondent bank or the Depository Trust Company (DTC).

Internal Controls. The Custodial Officer shall establish and maintain a system of written internal controls consistent with this policy designed to prevent the loss of public funds due to fraud, error, misrepresentation or imprudent actions by third parties or by employees of the City. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. Written internal controls shall be reviewed and tested at least annually or upon any extraordinary event such as turnover of key personnel or the discovery of inappropriate activity.

Accounting Method. The City shall comply with all required legal provisions and generally accepted accounting principles (GAAP) relating to investment accounting. The accounting principles are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants (AICPA), and the Financial Accounting Standards Board (FASB).

Annual Audit. The Custodial Officer shall establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. The review shall include the following issues:

- Control of collusion,
- As much as possible, the separation of transaction authority from accounting and record keeping,
- Custodial safekeeping,
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary,
- Clear delegation of authority to subordinate staff members, and
- Written confirmation of transactions for investments and wire transfers

In addition, an independent special review by an external auditor should be conducted upon any extraordinary event such as turnover in key personnel or the discovery of any inappropriate activity.

Pooling of funds. Except for cash in certain restricted and special funds, the Custodial Officer shall consolidate cash balances from all funds to maximize opportunities for investment and investment earnings. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

Collateralization. All bank deposits, time deposits, certificates of deposit, and savings accounts, shall be collateralized through the collateral pool for any excess over the amount insured by an agency of the United States government in accordance with ORS 295.015 and ORS 295.018. The Custodial Officer is responsible for insuring that a Certificate of Participation has been issued to cover City deposits.

V. Investment Parameters

All investments of the City shall be made in accordance with Oregon Revised Statutes: ORS 294.035 (Investment of surplus funds of political subdivisions; approved investments), ORS 294.040 (Restriction on investments under ORS 294.035), ORS 294.135 (Investment maturity dates), ORS 294.145 (Prohibited conduct for custodial officer), ORS 294.805 to 294.895 (Local Government Investment Pool). Any revisions or extensions of these sections of the ORS shall be assumed to be part of this investment policy immediately upon being enacted.

Maturities and Diversification. To the extent possible, the Custodial Officer shall match investments with anticipated future cash flow requirements. Investment maturities shall generally be less than 90 days but may exceed 18 months upon specific City Council approval of a written investment policy. Prior to City Council approval, the investment policy must be submitted to the Oregon Short Term Fund Board for review and comment. The policy must include guidelines concerning maximum investment maturity dates.

Maturities shall be consistent with the following:

- At least fifty percent of the actual portfolio must mature within 93 days.
- Up to 25 percent of the actual portfolio may mature in over one year.
- No investment may mature in over three years.

Diversification shall be consistent with the following:

- At least 10 percent of the actual portfolio must be in U.S. Treasury and/or U.S. Government Agency securities.
- No more than 25 percent of the actual portfolio may be in Bankers Acceptances or Repurchase Agreements.
- No more than 25 percent of the actual portfolio may be in time certificates of deposit.
- No more than 30 percent of the actual portfolio may be invested in any one financial institution with the exception of the Local Government Investment Pool to the extent allowed under ORS 294.810.

VI. Other Investment Guidelines

Prohibited Conduct. Oregon State Statutes have addressed several areas of prohibited conduct for the Custodial Officer when making investments, ORS 294.145. Specifically, the Custodial Officer shall not:

- Make a commitment to invest funds or sell securities more than fourteen business days prior to the anticipated date of settlement of the purchase or sale transaction,
- Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest,
- Lend securities to any person or institution, except on a fully collateralized basis, and except when such lending is specifically permitted under an investment policy adopted pursuant to ORS 294.135 (1)(a), or
- Pay for any securities purchased by the custodial officer until the officer has received sufficient evidence of title thereof. Evidence of title shall be consistent with modern investment, banking and commercial practices and may include physical possession, book entry and automated recordation of such title. However, the Custodial Officer may instruct one or more custodian banks, as defined in ORS 295.005, to accept or release securities as the Custodial Officer considers advisable to be held in safekeeping for collection of principal and interest or other income.

Performance Evaluation. The Custodial Officer shall periodically establish a benchmark yield for the City's investments. Considerations for establishing the benchmark yield shall include the current yield on the State of Oregon Local Government Investment Pool, and the average yield on the three-month U. S. Treasury Bill. When comparing the performance of the City's portfolio, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return.

Policy Review. This investment policy shall be reviewed periodically by the Custodial Officer, the City Manager and the City Council. The policy shall be submitted to the Oregon Short Term Fund Board for review and comment if the City intends to invest in maturities exceeding 18 months or if material changes are made since the last OSTF Board review.

(Revised 10/2004)



To: Mayor and City Council

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

From: Jeffrey King, Project Manager

Subject: Approval of Disposition And Development Agreement for the North Main Mixed Use Site Redevelopment Project

Date: October 4, 2004 for October 19, 2004 Council Meeting

Action Requested

The City Council is requested to authorize the City Manager to execute the Disposition and Development Agreement (DDA) between the City and Main Street Partners, LLC in support of the North Main Redevelopment project.

Background

In November 2001, the City purchased the former Safeway site in downtown Milwaukie with the intention of teaming with a private developer to create a mixed residential and retail project on the site. Staff has now progressed to requesting the Council to authorize the City Manager to sign the final DDA with the developer. The DDA is a legally binding agreement that defines the terms of the real estate and development deal between the City and the developer, including property conveyance to the developer. The DDA also outlines the formal obligations of each party.

The City has completed several steps in advancing a partnership to redevelop the North Main site into a mixed-use project with retail space, for sale housing and rental units. The process began in April 2003, with Council's selection of Peak Development to enter into negotiations with the City to develop the site.

In July 2003, City Council approved a Memorandum of Understanding (MOU) between Peak Development and the City. The MOU is a non-binding agreement that gave Peak the right to negotiate exclusively with the City. It also outlined the goals and responsibilities of both parties. The MOU also set up the parameters for the Disposition and Development Agreement (DDA). In the spring of 2004, Tom Kemper of KemperCo was added to the developer's team. An entity called Main Street Partners LLC was created. On April 20, 2004, Council consented to the assignment of the MOU from Peak Development to Main Street Partners, LLC. The content of the original MOU remained the same. The assignment of the MOU helped insure a smooth transition and maintained the same vision, goals and responsibilities that the City outlined in the original document. Since that time, Community Development staff, the City Attorney, and the developer have been preparing and refining the DDA.

The key components of the DDA include:

- Sale and conveyance terms for the property;
- Predevelopment Loan provisions including protection of City from any loss;
- Project Schedule/timely performance provisions by the Developer;
- Duties of the Developer and Developer Conditions;
- City Responsibilities/Conditions, including:
 - terms for financing and constructing Harrison and Main Street public infrastructure improvements;
 - permitting angled parking on Main Street; and
 - assistance in assigning the November 2001 State property purchase loan to the developer;
- Developer obligation to provide \$25,000 security deposit;
- Project financing;
- Developer obligation to construct project in accordance with approved plans; and

The DDA sets out clear responsibilities for each party. The document outlines the legal performance standards and obligations needed by both the City and developer.

Concurrence

The Director of Community Development & Public Works, City Manager and the City Attorney drafted the DDA with the developer. Staff and the City Attorney recommend Council approval of this document.

Fiscal Impact

The DDA outlines several long-term City financial obligations:

- The City is required to construct approximately \$750,000 in off-site public infrastructure improvements. Work includes the extension of 21st Street and sidewalk and streetscape improvements. The improvements will be funded by a Special Public Works Fund (SPWF) loan from the State Economic and Community Development Department and City of Milwaukie Transportation SDCs. The SPWF will be amortized over 20 years with an annual cost of approximately \$55,000.
- Vertical Housing Tax Abatement of City property taxes worth approximately \$105,150 will be provided to the project over ten years.
- Sale and conveyance of the "Safeway site" property to Main St. Partners, LLC. for the amount of the Community Incentive Loan Fund balance. The balance is estimated at \$650,000 at the time of sale in the late spring of 2005. Main Street Partners LLC will assume the loan payments.

Long-term project benefits include:

- The project will provide \$184,096 in City SDCs (not including parks SDC);
- The project will provide the City with an estimated \$2,180,000 in property taxes over 20 years after deducting for the Vertical Housing Tax Abatement.

Work Load Impacts

Existing staff and consultant are managing this project. They are part of existing Community Development staff work plan and budget.

Alternatives

1. Approve DDA as presented.
2. Approve DDA with modifications.
3. Delay approval of DDA for further review.
4. Decline to approve DDA.

Attachments

Disposition and Development Agreement with exhibits

ATTACHMENT 1

DISPOSITION AND DEVELOPMENT AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR CONVEYANCE

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (Agreement) is made and effective _____, 2004 by the CITY OF MILWAUKIE an Oregon municipal corporation (the City), and MAIN STREET PARTNERS, LLC, an Oregon limited liability company ("Developer").

Recitals

- A. The City is the owner of certain real property located in the City of Milwaukie, Clackamas County, Oregon, which is more particularly described in the site map attached as Exhibit AA" and the legal description contained in Exhibit "B" attached (the Property).
- B. The City has determined it is in the public interest to provide for development of the Property as a pedestrian oriented, mixed-use residential and commercial project. Developer has been selected by the City to acquire and develop the Property in conformity with principles and guidelines adopted by the City and substantially set forth in Exhibit "C" attached hereto (the "Project"). The Project is anticipated to contain not less than eighty (80) separate residential units, not less than eight thousand (8,000) square feet of ground floor commercial space oriented to Main Street, and other site improvements identified in Exhibit "C".
- C. The City and the Developer are interested in providing for certainty as to the nature and scope of the development of the Project, the terms upon which the Developer will acquire the Property from the City, any off-site improvements that will be required for the Project, and the costs that will be borne by the respective parties with regard to the Project and off-site improvements.
- D. To memorialize the understanding of the parties as to the respective rights and obligations of the parties with regard to the Project, the City and Developer enter into this Agreement pursuant to ORS ' 94.504 et seq.
- E. These recitals are an integral part of, and are incorporated in, the Agreement of the parties set forth hereafter.

Agreement

IN CONSIDERATION of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Developer agree as follows:

1. Agreement to Convey Property. In consideration of the promises of the parties contained herein, the City agrees to convey to Developer the Property, and Developer agrees to acquire the Property from the City, contingent upon satisfaction or waiver of all terms and conditions contained in this Agreement on or before the dates provided in the schedule set forth in Exhibit "D"

attached, subject to potential extensions of time as set forth below.

2. Project Ownership, Management and Control. The qualifications and identity of the Developer are of particular concern to the City and were an essential element in the selection of Developer by the City for the development and continuing management of the Property. No voluntary or involuntary successor in interest of Developer will acquire any rights or powers under this Agreement except as mutually agreed by the City and Developer. The Developer has advised the City that, at the closing of the conveyance of the Property from the City to Developer or as soon thereafter as practical, ownership of that portion of the Project described as "Building A" in Exhibit "C" will be transferred to a special purpose limited partnership or limited liability company in which Developer (or KemperCo, or an affiliate of KemperCo) may be the general partner or managing member having control of the ongoing design, construction and management of the said portion of the Project, but in which Developer, KemperCo or an affiliate of KemperCo may hold less than a one percent (1%) ownership interest. The City hereby gives its approval to such a transfer of a portion of the Project, provided however that the Developer will give prior notice of any such transfer to the City, which notice shall contain information relating to the status of the constituent parties or entities of the proposed transferee sufficient to allow the City to determine the qualifications thereof (the "Transfer Notice"). The City will have the right to reasonably object to such transfer if, in the exercise of the City's good faith business judgment, the transferee, or any of its constituent parties or entities, is not qualified for participation in the Project, provided however, that the City may not object to a transfer to a transferee which is a limited partnership or limited liability company with is the pass through vehicle for low income housing tax credits to an experienced tax credit investor providing tax credit equity and KemperCo or an affiliate is the general partner or managing member of that passthrough entity. If the City has any such objection, it shall advise Developer in writing within fifteen (15) days of receipt of the Transfer Notice from Developer. In the event the City has not given notice of any objection the Developer within said fifteen (15) day period, then the City shall be deemed to have no objection. For purposes of this Agreement, an "affiliate" of KemperCo shall mean an entity in which KemperCo and/or Tom Kemper holds not less than a twenty five percent (25%) ownership interest and is in a position of management or effective control.

3. Conveyance and Escrow Instructions. The City and Developer understand and agree that the Developer may desire a Community Incentive Fund loan, secured by the Property, to be used to finance predevelopment costs of Developer associated with the Project (the "Predevelopment Loan"). Because the Predevelopment Loan would be secured by the Project, the City will be a co-obligor under the terms thereof. Provided that the Property has sufficient equity to support the Predevelopment Loan, the City agrees to act as such co-obligor, and to permit the Property to be used as security for the Predevelopment Loan, subject to satisfaction in the sole and exclusive discretion of the City, of the following conditions:

3.1 Developer enters into an indemnification agreement acceptable to City holding the City harmless from any loss arising from the Predevelopment Loan;

3.2 Developer executes and delivers to the City a promissory note in the principal amount and at the interest rate of the Predevelopment Loan, payable at the time of

conveyance of the Property to Developer pursuant to this Agreement;

3.3 Developer provides security for said promissory note in the form of a deed of trust naming the City as beneficiary with regard to real property owned by Developer, or other form of security that is acceptable to the City, together with an assignment of Developer's right, title and interest in and to all documents, studies and materials prepared by Developer or Developers agents with regard to the Project or the Property, including without limitation, surveys, studies, plans, specifications, construction and other drawings, condominium documents, owners' association documents, plats, engineering and architectural plans, specifications, renderings and drawings (collectively, the "Work Product").

3.4 Developer provides to the City, at Developer's sole expense: (i) such environmental, title, survey, engineering and other studies relating to said property as the City may request; (ii) an appraisal of the property establishing that there is sufficient equity in the property so that the principal amount of the promissory note, when added to other financial encumbrances on the property, shall not equal more than eighty percent (80%) of the appraised value of the property; (iii) insurance coverage satisfactory to the City; and (iv) such other and further information and documentation as the City may require to determine that the risk associated with the Predevelopment Loan is acceptable.

4. Project Schedule/Timely Performance Required/ Extensions. The parties agree that is critical to the public interest that the Project be completed in a timely manner. The City and Developer have agreed upon a schedule for the performance of essential components of the Project contained in Exhibit "D" attached hereto and incorporated by this reference. In the event the Developer is unable to perform a required action within the time provided in Exhibit "D", the Developer may, by written notice to the City given not less than ten (10) days prior to the date for such action set forth in Exhibit "D", extend the time for the performance of such action for sixty (60) days after the date set for such performance in Exhibit "D". In the event the Developer does not perform each action set forth in Exhibit "D" within the times provided (subject to extension as provided above) the City may terminate this Agreement or agree to an additional extension of time for such performance. The City will provide notice of termination or extension within fifteen (15) days after the date for performance of an act as provided in Exhibit "D" or as extended by the Developer as provided above. Failure of the City to provide notice of termination within the time specified will be deemed an additional extension of fifteen (15) days.

5. Disposition of Property.

5.1 Terms of Purchase. The City agrees to sell, and the Developer agrees to purchase, the Property in consideration for the promises of Developer described in this Agreement and the assumption by Developer of that certain Community Investment Fund loan for which the City is now obligated, which loan has an agreed principal balance of Six Hundred Fifty Thousand Dollars (\$650,000.00) at the date of this Agreement.

5.2 Time of Conveyance. The City will convey the Property to Developer

in accordance with Section 5.10 of this Agreement.

5.3 Escrow.

5.3.1 Escrow Agent. Upon execution of this Agreement, the parties shall deliver a copy of this fully executed Agreement to Chicago Title Insurance Company, 888 SW Fifth Avenue, Suite 930, Portland, Oregon 97201, Telephone Number (503) 973-7400, Attn: Diane Petterson (the "Escrow Agent"). The City and Developer hereby authorize Escrow Agent to take necessary steps for the closing the transaction described herein pursuant to the terms of this Agreement.

5.4 Conditions Precedent to Developer's Obligation to Close. Developer's obligation to close the transaction described in this Agreement is expressly contingent on satisfaction or waiver by Developer of all of the following conditions precedent:

5.4.1 Approval of Title by Developer.

5.4.1.1 Preliminary Title Report. Within five (5) days of the effective date of this Agreement, Developer, at Developer's expense, shall obtain a Preliminary Title Report issued by the Escrow Agent, describing the Property, listing the Developer or the Developer's designee as the prospective named insured, and showing as the policy amount the total Purchase Price, and shall also deliver to Developer copies of all agreements, reports, studies, contracts, notifications, plats, surveys and other reports and documents pertaining to the Property or its condition or use (the "Documents") in the possession of the City or the City's agents. The Escrow Agent shall also deliver to Developer copies of any financing statements filed against the Property and true, correct and legible copies of all instruments referred to in such Preliminary Title Report as conditions or exceptions to title to the Property, including liens.

5.4.1.2 Title Objections. In the event the Preliminary Title Report should show any exceptions other than the Permitted Exceptions (defined below), Developer shall deliver to The City written notice of disapproval of exceptions within ten (10) days of Developer's receipt of the Preliminary Title Report. Failure of Developer to disapprove of any exception within such time shall be deemed an approval.

5.4.1.3 The City's Removal of Exceptions. In the event Developer shall disapprove any exceptions to title, The City, within five (5) days of written notice of disapproval by Developer, notify Developer in writing of those disapproved exceptions that The City agrees to remove, or will not remove, prior to the Closing.

5.4.1.4 Developer's Remedies. In the event Developer does not approve all title exceptions and The City is unable or unwilling to remove the disapproved exceptions prior to Closing, the Developer may, in Developer's sole discretion, (i) suspend performance of its obligations under this Agreement at no cost to Developer and extend the Closing Date until the exceptions the City has notified Developer will be removed have been removed; or (ii)

terminate this Agreement, in which event all the rights and obligations of the parties under this Agreement

shall be null and void; or (iii) agree to close this transaction subject to all unremoved exceptions. In no event shall the City be required to remove or to reimburse Developer for the removal of any lien or other exception to title created by Developer's activities with respect to the Property.

5.4.1.5 Permitted Exceptions As used herein, the term "Permitted Exceptions" means:

(a) The standard printed exception for encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises to the extent allowed by applicable rules and regulations unless Developer obtains a survey of the Property, at its sole expense, and Developer obtains the right to object to any exceptions that would be disclosed by an accurate survey.

(b) The standard exception as to the lien for taxes, limited to the period during which Closing is scheduled to occur for which said taxes are not yet due and payable.

(c) Any exception contained in the Preliminary Title Report that has been approved by Developer.

(d) Any lien or encumbrance created by Developer, including any from Developer to The City.

5.5 Failure of Conditions Precedent. In the event of a failure of any condition precedent to Developer's obligation, the escrow and the rights and obligations of Developer and the City under this Agreement shall terminate and the parties shall thereafter have no duties or obligations pursuant to this Agreement except those specifically described herein as surviving termination.

5.6 Parties in Possession. The City warrants that as of the close of escrow there will be no rental agreements, contracts, leases or other agreements affecting the use or occupancy of the Property.

5.7 Authority of The City. The City warrants that it has the authority to execute this Agreement, to enter into the escrow contemplated herein, to perform all of its obligations hereunder, and that the party executing this Agreement on behalf of the City has been fully authorized by appropriate resolution to bind the City to the terms and provisions hereof.

5.8 No Option or Right of First Refusal to Acquire Premises. The City represents that no person or entity has any right of first refusal or option to acquire any interest in the property or any part thereof.

5.9 Environmental. To the best of City's knowledge without investigation, there are no existing or pending claims civil, criminal or administrative proceedings against The City relating to hazardous materials. To the best of the City's knowledge without investigation, no hazardous materials have been discharged upon, brought upon or stored on the Property in violation of applicable law or regulations. As used herein "hazardous materials" means any substance the presence or discharge of which is regulated by any federal, state or local law or ordinance relating to the protection of the environment or public health.

5.10 Closing.

5.10.1 Closing Date. The closing (the "Closing") of the sale of the Property by the City to Developer shall occur in escrow in the offices of the Escrow Agent within thirty (30) days of the satisfaction or waiver of the conditions set forth in Section 3 of this Agreement (the date of the Closing being the "Closing Date"). The transaction contemplated in this Agreement is "closed" when the Deed (as defined below) to be delivered by the City is recorded, all other documents required by this Agreement are executed and delivered, and the Purchase Price is paid through escrow to the City as provided in this Agreement.

5.10.2 Deliveries to Escrow Agent. In connection with the Closing, the following shall occur, and the performance or tender of performance of all matters set forth in this Section 5.10 shall be mutually concurrent conditions:

5.10.3 The City's Deliveries. On or before the Closing Date, the City, at the City's cost and expense, shall deliver the following into escrow:

5.10.3.1 Statutory Special Warranty Deed ("Deed"), fully executed and acknowledged by the City, conveying to Developer the Property free and clear of all encumbrances other than the Permitted Exceptions;

5.10.3.2 An ALTA standard coverage owner's title policy in the amount of the total Purchase Price that shall insure fee simple, indefeasible title to the Property in Developer, subject only to the Permitted Exceptions; provided that Developer shall have the right to order an ALTA extended coverage owner's policy. The City shall be responsible for and pay the premium for the standard ALTA owner's policy; and Developer shall pay the additional premium for an ALTA extended coverage owner's policy, together with all related expenses.

5.10.3.3 Certificate executed and sworn to by the City (a) confirming the City's United States taxpayer identification number and (b) stating that the City is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of the United States of America of 1986 and otherwise in compliance with §1.1445-2T of the regulations promulgated thereunder.

5.10.4 Developer's Deliveries. On or before the Closing Date, the Developer shall deliver into Escrow an assumption by Developer of the Community Investment Fund

loan described section 5.1 of this Agreement, such sums as are necessary to fully pay the Predevelopment Loan, and Developer's share of closing costs and prorations.

5.11 Closing Costs/ Prorations. The City and Developer shall each pay one-half of all escrow fees. Developer shall pay the cost of recording the Deed, and the City shall pay the cost of an ALTA standard coverage owner's policy of title insurance. Developer shall pay the additional premium necessary for an ALTA extended coverage owner's policy of title insurance, if Developer shall desire such extended coverage, together with all other attendant costs for such extended coverage. Ad valorem and similar taxes and assessments relating to the Property shall be prorated between the City and Developer as of the Closing Date, the City being charged and credited for the same up to such date and Developer being charged and credited for the same on and after such date. If the actual amounts to be prorated are not known at the Closing Date, the prorations shall be computed on the basis of the evidence then available; when actual figures are available a cash settlement shall be made between the City and Developer. The provisions of this Section 5.11 shall survive the Closing.

5.12 Authority Documents. Developer and the City shall, if requested by the other party or the Escrow Agent, furnish satisfactory evidence of their authority to consummate the sale and purchase contemplated by this Agreement.

5.13 Possession. The City shall deliver to Developer possession of the Property on the first full day after completion of the Closing.

6. Additional Duties of Developer. In addition to the other duties of Developer described in this Agreement, Developer shall be responsible for the following:

- a) Preparing and submitting design review, subdivision and building permit applications.
- b) Preparing and submitting application for Vertical Housing Tax Exemption.
- c) Securing financing including bonds, tax credit equity, private equity, construction loans.
- d) Restructuring CIF loan prior to 11/01/04.
- e) Securing TOD and other grants from Metro.
- f) Constructing buildings and site improvements substantially consistent with Exhibit "C" and using best efforts to meet the schedule outlined in this Agreement.

7. City Responsibilities: In addition to the other duties of the City described herein, the City shall be responsible for the following:

- a. Preparing applications and securing approval of code and street improvement standards amendments.
- b. Facilitating restructuring of the CIF loan.
- c. Assisting in securing Metro grant as requested.

- d. Transferring Site at closing.
- e. Design funding and substantial completion of construction of public infrastructure improvements described in Exhibit "E" at an estimated cost of \$750,000 to be completed no later than issuance of certificate of occupancy for the first building in the Project.
- f. Authorization of angled parking on the east side of Main Street consistent with Exhibit "C".
- g. Dedicating 21st Avenue right-of-way as part of the Developer's subdivision application.
- h. Provide Developer with available procedures for financing of Systems Development Charges payable by reason of the Development of the Property.

8. Developer's Conditions: The Developer's obligation to purchase the Property is subject to Developer's satisfaction or waiver of each of the following conditions:

- a. A subdivision has been approved and building permits have been issued by the appropriate governmental agencies for the construction of the Project in substantial compliance with Exhibit "C".
- b. Financing is obtained that would generally be considered satisfactory by industry standards for projects similar to Exhibit "C". Financing includes assumption of the CIF loan, commitment of Metro grant funds, bond allocation, tax credits, and securing market equity and approved construction loans.
- c. Vertical Housing tax exemption is granted.
- d. A title company has made a commitment reasonably satisfactory to Developer that it will issue to Developer an owner's title insurance policy.
- e. City is not in default of any material term, provision or covenant of this Agreement.

9. City Conditions: The City's obligation to convey the Property to Developer is subject to the City's satisfaction or waiver of the following conditions:

- a. Developer has prepared and submitted construction plans substantially consistent with the Plans identified in this Agreement and the City has reviewed and approved these Plans.
- b. Developer has proposed and City has approved the development entity that will construct and hold title to the Property and Project. Developer may add members to Developer subject to the prior written approval of the City, provided however that the City's approval will not be unreasonably withheld, conditioned or delayed. Upon notice from Developer, which will include the names of the individual or legal persons who will be members and information regarding the business background of said individual or legal persons who will be new members of the entity, the City will approve or object by written notice to Developer given not later than fifteen (15) days after the date of notice from

Developer. In the event the City fails to give such notice of objection within the stated time, approval of the City will be deemed given.

- c. Developer has provided financial information satisfactory to the City that the financial capacity of the participants in the development entity is sufficient to carry out the obligations of the Developer and to construct the Project.
- d. Developer has provided the City evidence that construction financing for the Project on the has been or can be obtained by the Developer.
- e. Developer has submitted a request for conveyance of the Property.
- f. Developer has successfully arranged for an assumption of the Community Investment Fund loan by the Developer.
- g. Developer is not in default under any material term, provision or covenant of this Agreement.

10. Conveyance of Property "AS IS". Except as to the representations and warranties of Seller set forth in this Agreement, Developer acknowledges and agrees that it has conducted its own investigation into the status of the Property and its suitability for Developer's intended use, including an investigation as to the release or presence on the Property of any materials that may be deemed to be hazardous to human or animal health or to vegetation or the environment, and in agreeing to acquire the Property from the City has relied exclusively on its own investigation and not on any representations made by the City or its agents or employees. Developer agrees to acquire the Property pursuant to this Agreement in its "as is" and "where is" condition with all faults, both latent and patent, without warranty of any nature by or from the City except as otherwise set forth in this Agreement.

11. Security Deposit. Simultaneously with execution of this Agreement, Developer shall pay to the City a deposit in the amount of Thirty Two Thousand Five Hundred Dollars (\$32,500.00), a portion of which shall be in the form of a credit to Developer for a prior deposit in the amount of Twenty Five Thousand Dollars (\$25,000.00), receipt of which is acknowledged by the City, as security for the performance of the obligations of the Developer pursuant to this Agreement. In the event of any default by the Developer in the performance of its obligations hereunder, the parties acknowledge and agree that fixing the actual damages that will be incurred by the City as a result of such breach would be difficult or impossible to fix, and therefore agree that the amount of the said deposit will be liquidated damages to be retained by the City. The amount of liquidated damages recited herein has been determined by the parties in good faith as being a reasonable approximation of the damages that may otherwise be incurred by the City, and the parties therefore agree that the City shall retain such liquidated damages as its exclusive remedy in the event of a breach of this Agreement by the Developer. By the initials of their representatives appearing below this paragraph, the parties acknowledge and agree to the terms of this provision providing for liquidated damages.

City: by _____

Developer: by _____

12. Approved Plans. Developer will prepare and submit to the City for written approval construction plans and specifications and related documents, including preliminary and final building plans, site plans and landscape plans in sufficient detail to obtain required building permits

(collectively, the "Plans") at the time set forth in Exhibit "D". During the process of preparation of the Plans, City staff and consultants and the Developer will hold regular progress meetings to coordinate the preparation of, submission to, and review of the Plans by the City. City and Developer will communicate and consult informally as frequently as the City deems reasonably necessary to ensure that the formal submittal of any documents to the City can receive prompt consideration. Developer understands and agrees that the City and the North Main Street Building Committee established by the City shall have input with respect to major revisions or corrections of the Plans. When the Plans have been approved by the City, a copy thereof will be attached to this Agreement as an amended Exhibit "C" and will be incorporated herein.

13. Development in Compliance with Approved Plans. Developer will develop the Property and construct improvements thereon in accordance with, and without material change from, the Plans to be attached hereto as Exhibit "C". After attachment to and incorporation of the Plans into this Agreement, any material changes to the Plans shall require the prior written approval of the City.

14. City Assistance and Applications. In support of the Project, the City agrees that it shall provide, at its expense: (i) the traffic study required for approval of the Project; (ii) Title 3 environmental entitlements; and (iii) surveys and a complete application for lot line adjustments required for construction of the Project in compliance with the Plans.

15. Continuing Contractual Obligations. The obligations, duties and agreements of the parties shall be continuing obligations to be performed by the parties from time to time for the term of the Agreement as required to effect the intent of the parties in entering into this Agreement as set forth in the Recitals.

16. Compliance with ORS 94.504.

16.1 Compliance With Code Requirements. With the exception of those requirements satisfied or modified by this agreement, development of the Property will be subject to the procedures, substantive requirements, infrastructure requirements, and charges in effect in the City of Milwaukie at the time of the making of any application required for the Project.

16.2 Assumptions, Provision of Services and Change In Circumstances. For purposes of ORS 94.504 (6), the parties acknowledge that the assumptions underlying this Agreement relating to the ability of the City to serve development of the Property are those set forth in the comprehensive plan. Other questions relating to the City's ability to provide services, other than transportation and street improvement services, to development of the Property (or any portion thereof) will be determined at such time as a development application is actually filed with respect to the Property or any portion thereof. For purposes of ORS 94.504(2), the parties further agree as follows:

16.2.1 Duration of Agreement: Unless earlier terminated, the duration of

this Agreement shall be seven (7) years.

16.2.2 Permitted Uses: The Property may be used for all uses permitted under the zoning in effect on the effective date of this Development Agreement, or as changed pursuant to application to the City, and as set forth in Exhibit "C" hereof.

16.2.3 Density: The Property shall be developed substantially in compliance with Exhibit "C" hereof.

16.2.4 Height and Size: No structure shall be of a greater height or size than permitted by the zoning in effect on the effective date of this Development Agreement.

16.2.5 Reservations/Dedications for Public Purposes: Reservations or dedications of portions of the Property for public purposes shall be controlled by City ordinances in effect on the effective date of this Development Agreement.

16.2.6 Fees & Charges: Fees and charges imposed on development of the Property shall be in accordance with those in effect on the effective date of this Development Agreement at the time that development occurs.

16.2.7 Compliance Review: If subdivision of the Property is accomplished in phases, a schedule and procedure for review of compliance with this Development Agreement shall be adopted at the time of preliminary subdivision approval.

16.2.8 Infrastructure & Services: Responsibility for providing infrastructure and services not addressed in this Development Agreement will be established pursuant to ordinances and regulations in effect at the time of application of for preliminary subdivision approval.

16.2.9 Effect of Changes in Policies: If there is a change in federal, regional or state laws or rules, or in any other circumstances affecting compliance with this Development Agreement, then the parties shall perform their respective obligations under this Development Agreement to the maximum extent permitted by the then prevailing circumstances, except that Developer=s obligations hereunder will be extinguished if all conditions precedent to Developer's obligation to acquire the Property cannot be performed fully.

16.2.10 Remedies: In the event that the City is unable to perform its obligations as set out in this Agreement, after the Developer has performed its obligations hereunder, the Developer or its successor(s) shall be entitled to seek specific performance of the City=s obligations and such other equitable relief as may be available in the absence of an adequate remedy at law.

16.2.11 Right of Assignment: The rights, powers, duties and obligations of Developer pursuant to this Development Agreement are fully assignable to successor(s) in interest in

ownership of the Property, subject to approval by the City as provided above.

16.3 Public Expenditures. Nothing in this Agreement shall require the City to expend monies in the future, said obligations being subject to the absolute discretionary ability of the City to appropriate (or not appropriate) funds in any amount for the development of the Property, subject to the City's budgetary processes.

17. Term and Survival of Obligations. As set forth in Section 16.2.1, the terms and conditions of this Agreement shall remain in effect for a period of seven (7) years from the effective date hereof. The City acknowledges that certainty as to costs associated with development of the Property and related public infrastructure improvements and assurance of the possibility of development of the Property are the purposes for entry into this Agreement by Developer. In accordance with that acknowledgment, the City agrees that it shall perform its obligations under this Agreement in good faith and in as timely and expeditious a manner as is practicable.

18. Notice. As the terms notice or notices are used herein as between the parties, such term shall mean a written document, explaining the reason for the notice, and the same shall be mailed by United States Postal Service via certified mail, return receipt requested, addressed as follows:

To the City

Alice Rouyer
Community Development/Public Works
Director
City of Milwaukie
10722 SE Main
Milwaukie, OR 97222

With Copy to:

Gary F. Firestone
Ramis Crew Corrigan & Bachrach, LLP
1727 NW Hoyt Street
Portland, OR 97209

To Developer:

With Copy to:

Such notice shall be deemed to have been given on the date placed in the U.S. Mail, and sent by fax to counsel, whether actually received by the addressee or not. The parties shall, as a matter of convenience and courtesy, send each party receiving notice a copy of said notice by facsimile or electronic means, or by courier, Federal Express, or similar service, but such notifications shall not

be deemed authorized notice as required hereby. The parties may from time to time amend the above addresses and names by written notice given the other party.

19. Full Authority. Each of the parties and signatories to this Agreement represents and warrants that each has the full right, power, legal capacity and authority to enter into and perform the parties' respective obligations hereunder and no approval or consents of any other person are necessary in connection therewith.

20. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract, the latter shall prevail; but, the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. Further Assurances and Additional Documents. Each of the parties hereto shall execute and deliver any and all additional papers, documents, or other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder to carry out the intent of the parties hereto. The parties shall execute and deliver all other appropriate supplemental agreements and other instruments and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between the parties, and as against third parties. This Agreement requires the parties to agree upon various items at different times in the future. The parties will cooperate in good faith, and will deal fairly with one another, in an attempt to fulfill the expectations of the parties as reflected in this Agreement and to facilitate the full performance of this Agreement by the parties.

22. Attorney Fees. If a suit, action, arbitration or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorney fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration or other proceeding, the amount of fees shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

23. Survival. The warranties, representations, covenants and agreements made in this Agreement by each party shall survive the delivery of any deed or bill of sale and shall be and remain in full force and effect.

24. Waiver. Failure of any party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

25. Time. TIME IS OF THE ESSENCE with respect to the performance of the duties and obligations of this Agreement.

26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same Agreement.

27. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction. Any recitals set forth at the beginning of this Agreement are contractual and shall be considered or referred to in resolving questions of interpretation or construction.

28. Modifications or Amendments. No amendment, change, or modification of this Agreement shall be valid, unless in writing and signed by all the parties hereto.

29. Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

30. Entire Agreement. This Agreement and those other agreements described in the Recitals constitute the entire agreement between the parties, integrate all of the terms and conditions mentioned herein or incidental hereto, and supersede all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

31. Schedule of Exhibits. The exhibits to this Agreement are as follows:

- | | |
|-----------|---|
| Exhibit A | Map of Site |
| Exhibit B | Property Legal Description |
| Exhibit C | Plans and Specifications |
| Exhibit D | Project Schedule |
| Exhibit E | Public Infrastructure Improvements Plan |

MAIN STREET PARTNERS, LLC, an Oregon limited liability company.

By: _____
Its: _____

THE CITY OF MILWAUKIE, an Oregon municipal corporation,

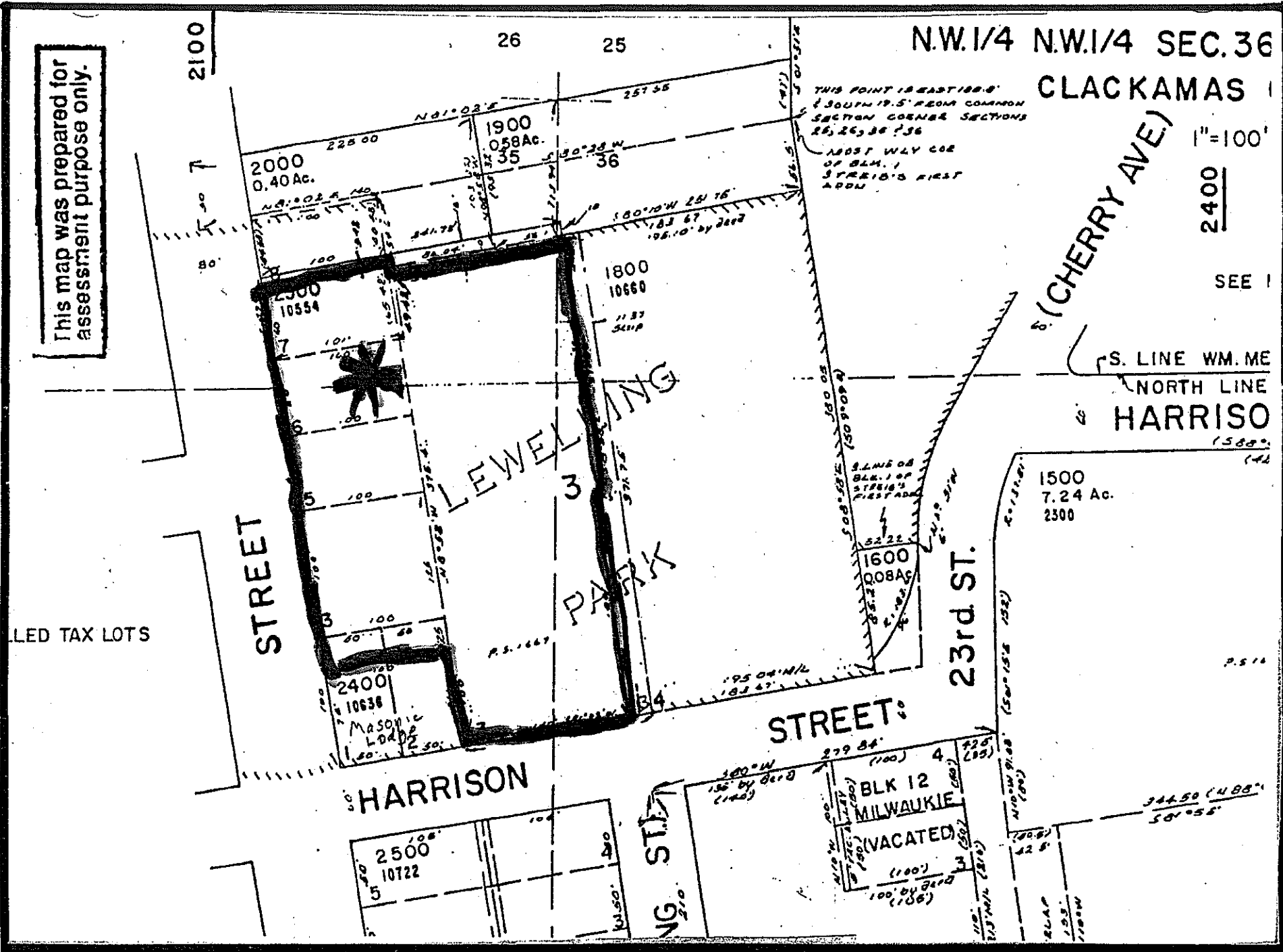
By: _____
Its: _____

EXHIBIT A

Map of Site

EXHIBIT A - MAP OF SITE

This map was prepared for assessment purpose only.



Plat Map

EXHIBIT B

Property Legal Description

EXHIBIT B

LEGAL DESCRIPTION

PARCEL I:

Part of the William Meek Donation Land Claim No. 50, in Township 1 South, Range 1 East, of the Willamette Meridian, and part of Block 3, LEWELLING PARK, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a point in the Northerly boundary of said Block 3 which is South 113.94 feet and East 5.06 feet from the corner common to Sections 25, 26, 35 and 36; thence South 8°58' East 6.00 feet to the true point of beginning of the parcel herein described; thence South 8°58' East 371.36 feet to a point in the Southerly boundary of said Lot 3 and Block 3 and the North line of Harrison Street; thence South 81°02' West on the Southerly boundary of said Lot 3 and Block 3 and North line of Harrison Street 140.00 feet to the Southeast corner of Lot 2 in said Block 3, LEWELLING PARK; thence North 8°58' West on the Easterly boundary of Lot 2, a distance of 75.00 feet; thence South 81°02' West parallel with the Northerly line of Lots 1 and 2, Block 3, LEWELLING PARK, 100.00 feet to a point on the West line of said Lot 3 and Block 3 and the East line of North Main Street; thence North 8°58' West along the Westerly line of Lot 3 and Block 3 and the East line of North Main Street 245.00 feet to the Southwest corner of Lot 7 of said Block 3; thence North 80°10' East 101.00 feet along the South line of Lot 7 to an iron rod; thence North 8°58' East 49.42 feet to an iron rod; thence North 80°10' East 140.75 feet to the true point of beginning.

EXCEPTING a tract of land in Lot 3, Block 3, LEWELLING PARK, more particularly described as follows:

Beginning at a point in the Northerly boundary of said Lot 3 which bears South 113.94 feet and East 5.06 feet from the corner common to Sections 25, 26, 35 and 36, Township 1 South, Range 1 East, Willamette Meridian; thence South 8°58' East 377.36 feet along the Easterly line of a tract of land conveyed to Heinrich Streib by Deed recorded January 26, 1907 in Book 98, page 81, Deed Records of Clackamas County, Oregon, to a point in the Southerly boundary of Lot 3 and Block 3 and the North line of Harrison Street and the true point of beginning of the tract herein described; thence South 81°02' West along the Southerly boundary of Lot 3, 5.00 feet; thence North 8°58' West on a line drawn parallel to the Easterly line of said Heinrich Streib Tract a distance of 180.00 feet to a point; thence North 81°02' East a distance of 5.00 feet to a point located in the Easterly line of said Heinrich Streib Tract; thence South 8°58' East along the Easterly line of said Heinrich Streib Tract 180.00 feet to the true point of beginning.

PARCEL II:

Part of the William Meek Donation Land Claim No. 50, Township 1 South, Range 1 East, of the Willamette Meridian, all of Lot 7 and part of Lots 3 and 8, Block 3, LEWELLING PARK, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a point which bears South 113.94 feet and East 5.06 feet from the corner common to Sections 25, 26, 35 and 36, Township 1 South, Range 1 East, Willamette Meridian; thence South 08°58' East 6 feet; thence South 80°10' West 140.75 feet to a point that is one foot distant from the Easterly line of Lot 7, Block 3, LEWELLING PARK, when measured at right angles thereto; thence South 08°58' East 49.42 feet parallel with the Easterly line of said Lot 7 to a point of intersection with the Southerly line of said lot projected Easterly; thence South 80°10' West along the Southerly line of said Lot 7 and the projection thereof 101 feet to a point on the East right of way line of North Main Street; thence North 08°58' West 65.42 feet; thence North 80°10' East 241.75 feet; thence South 08°58' East 10 feet to the point of beginning.

EXHIBIT C

Plans and Specifications

EXHIBIT D

Project Schedule

EXHIBIT D
Project Schedule
Milwaukie Mixed Use
Main Street Partners, LLC
10/05/2004

JV LLC agreement signed	April 2004
Schematic design	June 2004
Development Selection Committee approval	July 2004
preapp conference	April 2004
Code adjustment process	
Council discussion	June 2004
Filing code amendment package	August 2004
Planning Commission Consideration	November 2004
City Council approval	January 2005
Community Outreach	
open house	May 2004
neighborhood meeting	August 2004
Development agreement*	December 31, 2004
Design Review	
Package to DLC	June 2004
DLC Meeting for advisory review	July 2004
Potential second review with DLC	September 2004
Formal submission*	November 30, 2004
DLC Formal review	December 31, 2004
Planning Commission Consideration	January 31, 2005
Subdivision	
Same track as design review	January 31, 2005
Formal submission*	November 30, 2004
Design Development	
Building Dept review	June 2004
Building Dept review followup meeting	July 2004
Building Dept secondary review	August 2004
Tax exemption	March 2005
Construction financing commitment	May 2005
Bond application	November 2004
Construction drawings	March 2005
Permits	
Submit*	April 29, 2005
Pull permit	August 2005
Bond closing	August 2005
Commence Construction*	August 31, 2005
Complete Construction*	August 31, 2006

* Essential components as identified in Disposition and Development Agreement, Paragraph 4

EXHIBIT E

Public Infrastructure Improvements Plan

EXHIBIT E -1

Public Infrastructure Improvements Plan

Project Location: Three block faces on Main Street and Harrison Street, Intersection of Main and Harrison Streets, Extension of 21st Street and Intersection of 21st Street and Harrison Street.

Project Boundary Summary: Beginning at the northwest corner of the North Main Redevelopment Site approximately four feet east of the Main Street right-of-way; to the Main St. right of way; then north briefly; then to the centerline of Main Street and then to the entire Main Street and Harrison Street intersection; down Harrison Street at the south side curblin and ten feet behind the right of way on the north side extending to ten feet south of 21st Street; and 225 ft of a new extension of 21st Street between the curblin of the Ledding Library on the east side and 22 feet on the North Main Redevelopment Site on the west side of 21st Street extension. See illustrated boundary on North Main Redevelopment site plan page.

Estimated Project Cost: \$750,000

Work Scope Items:

- 13 foot wide scored concrete sidewalks and 12" curb on Main Street block face; 10 foot wide scored concrete sidewalks and 12" curb on Harrison Street face; 6 foot wide scored concrete sidewalks and 12" curb on east side of new 21st Street Extension block face
- 6 foot wide planter strip on east side of new 21st Street Extension block face
- Utility undergrounding on Main Street block face
- Removal and disposal of asphalt, curb and concrete
- Landscaped curb extensions at Harrison and Main St. and 21 Street Extension and Harrison St.
- 17' – 19' angled parking on a portion of Main Street block face; 8' wide parallel parking spaces on Harrison Street block face; Dark gray scored parking zone on Main St. and Harrison St.
- 5 foot wide bike lane on Harrison Street block face
- New extension of 21st Street. Approximately 200 feet plus long from the edge of Harrison St. to its terminus beyond the library entrance, and 22 feet wide. Grade and surface with AC pavement.
- Install traffic calming device such as roundabout, teardrops or refuge at intersection at 21st Street and Harrison Street
- Canopy trees with radial tree grates on Main, Harrison and 21st Street extension faces.

EXHIBIT E -2

- Flared steel trash receptacles; Black ornamental bollards at certain intersections; Victorian-era styled bench made of wood with cast-iron frames; Black "Hitchin' Post" bike racks
- Black Twin Ornamental Streetlights on Main Street block face; Black Single Ornamental Streetlights on Harrison Street and 21st Street Extension block faces
- Dark Gray scored concrete crosswalks on Main Street between south west side of Main Street and east side of Main Street and on Harrison Street between north side of Main Street and south side of Main Street; Asphalt or tinted scored concrete intersection and Main and Harrison Streets

EXHIBIT C.2

MYHRE GROUP

KEY NOTES

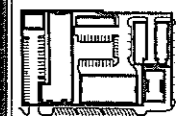
- ① VARIANCE REQUIRED FOR PARKING ENCROACHMENT AT MAIN STREET ENTRANCE TO NORTH LOT.
- ② PARKING LOT FOR RESIDENTS ONLY. SIGNS ARE REQUIRED AT ENTRY DRIVES INDICATING NO VISITOR PARKING. ALL SPACES TO BE NUMBERED AND ASSIGNED.
- ③ 8'-0" HIGH SCREEN ART WALL TO PARKING LOT.
- ④ TRASH AND RECYCLING ROOM FOR BUILDING RESIDENTIAL TENANTS.
- ⑤ TRASH AND RECYCLING ROOM FOR BUILDING RETAIL TENANTS.
- ⑥ DRIVABLE CURBS AND SURFACE WITH LOW PLANTINGS WHERE INDICATED ON LANDSCAPE PLANS.
- ⑦ PARKING BOLLARDS
- ⑧ 6'-0" HIGH CHAIN LINK SCREEN FENCE ALONG PROPERTY LINE

PARKING COUNT

NORTH LOT	33
CENTER LOT	31
TOTAL	64
ROW HOUSE	3
GARAGE	20
TOWNHOME	10
TOTAL	97

PARKING SIZE BREAK DOWN

COMPACT	28
STANDARD	36
TOTAL	64



BUILDING KEY PLAN

DLC SUBMITTAL

MILWAUKIE MIXED USE

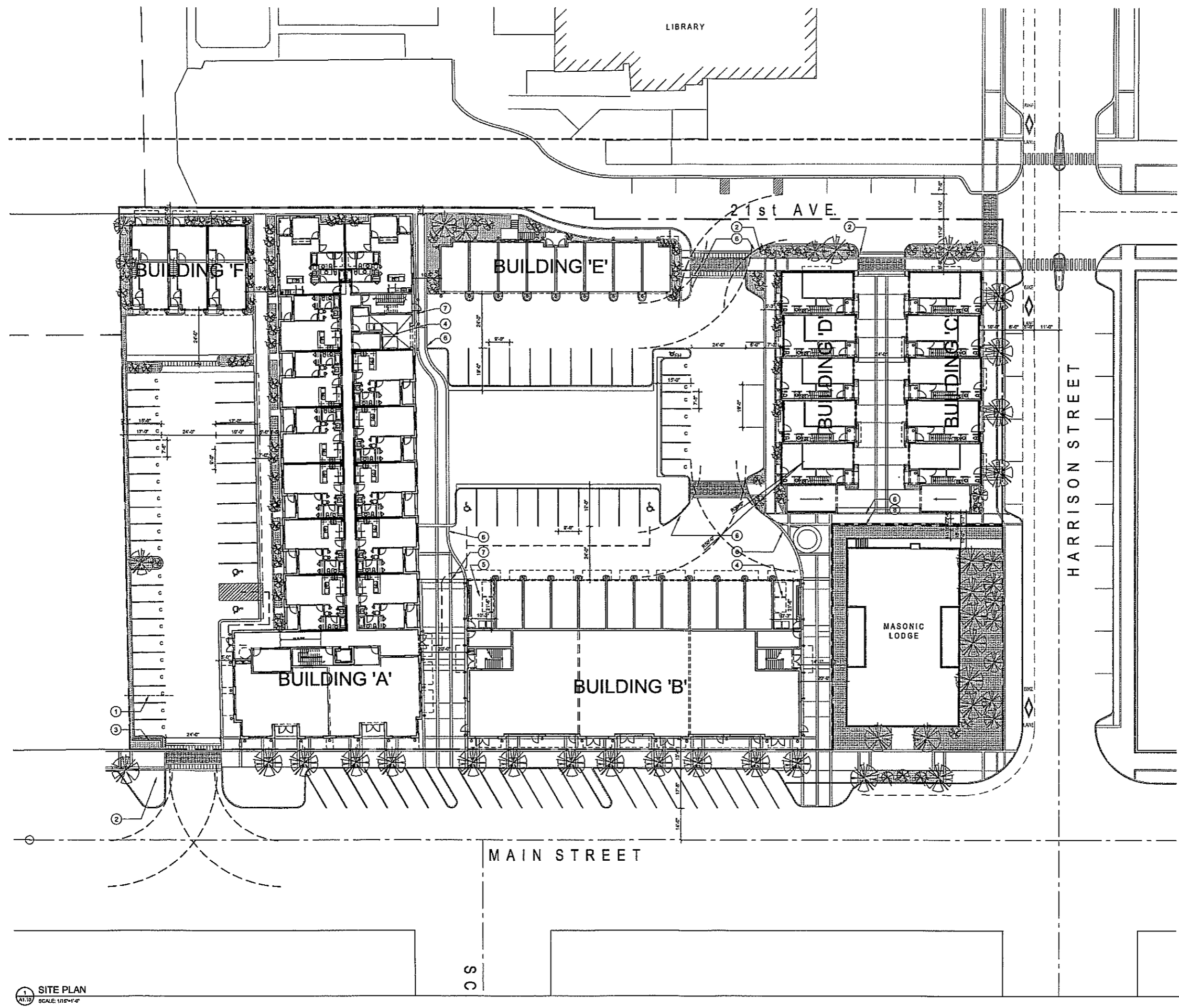
INTERSECTION OF MAIN AND HARRISON MILWAUKIE, OREGON

NO.	REVISIONS

PM: MELISSA STILES

JOB NO: 040300
DATE: 05.10.04
FILE:

A1.10
FIRST LEVEL SITE PLAN



1 SITE PLAN
SCALE: 1/8"=1'-0"

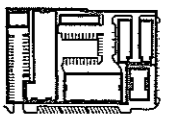
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EXHIBIT C.5

MYHRE-GROUP ARCHITECTS

1000 NE Oregon Street, Suite 200, Portland, Oregon 97232
 Phone: 503.228.1100 Fax: 503.228.1101
 www.myhre.com

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BUILDING KEY PLAN



MASONIC LODGE

BUILDING C

LEDDING LIBRARY

3 SOUTH STREET ELEVATION
 SCALE: 3/32" = 1'-0"



BUILDING A

BUILDING B

MASONIC LODGE

2 WEST STREET ELEVATION
 SCALE: 3/32" = 1'-0"



BUILDING C

BUILDING D

BUILDING E

BUILDING A

BUILDING F

1 EAST STREET ELEVATION
 SCALE: 3/32" = 1'-0"

DLC
 SUBMITTAL

MILWAUKIE MIXED USE

INTERSECTION OF
 MAIN AND HARRISON
 MILWAUKIE, OREGON

NO.	REVISIONS

PMC: MELISSA STILES

JOB NO: 040300
 DATE: 09.10.04
 FILE:

A3.00

STREET
 ELEVATIONS

MILWAUKIE MIXED USE PROJECT
 1000 NE OREGON STREET, SUITE 200, PORTLAND, OREGON 97232
 ARCHITECT: MYHRE-GROUP ARCHITECTS
 DATE: 09.10.04
 SCALE: 3/32" = 1'-0"

EXHIBIT C.8

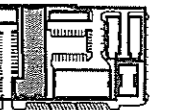
KEY NOTES

① NOT USED

MYHRE GROUP

1000 North Lake Street, Suite 1000, Portland, Oregon 97227
 (503) 228-1100, Fax: (503) 228-1101, www.myhre.com

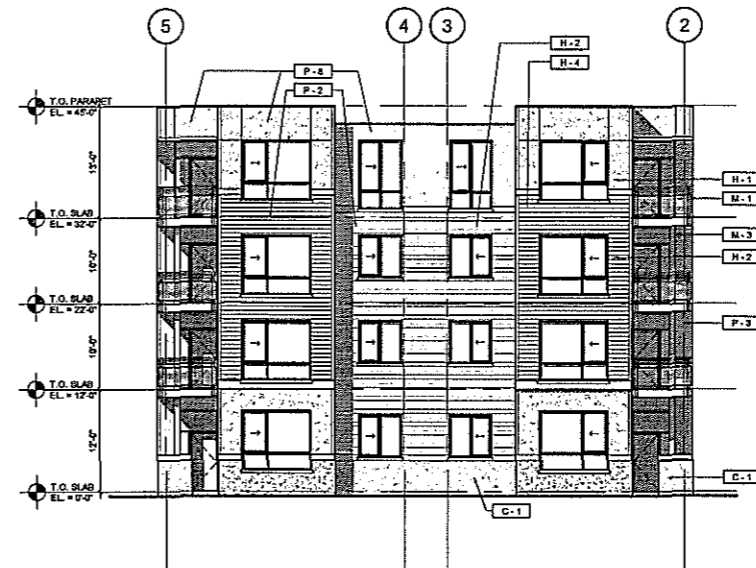
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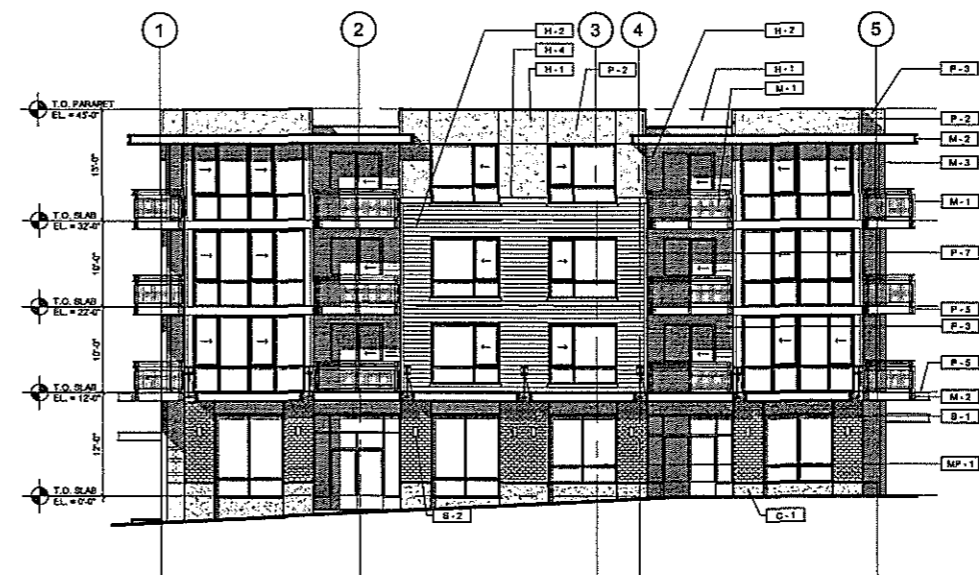
BUILDING KEY PLAN

SHEET NOTES

1. NOT USED



2 BUILDING 'A' - EAST ELEVATION
 SCALE: 1/8" = 1'-0"



3 BUILDING 'A' - WEST ELEVATION
 SCALE: 1/8" = 1'-0"

LEGEND

- P-1 PAINT - GUMLEAF, SEE SPEC
- P-2 PAINT - LIGHT TOPAZ, SEE SPEC
- P-3 PAINT - SEPTEMBER LEAF, SEE SPEC
- P-4 PAINT - SPANISH GOLD, SEE SPEC
- P-5 PAINT - IRON HORSE, SEE SPEC
- P-6 PAINT - CAMOUFLAGE, SEE SPEC
- P-7 PAINT - TERRAWOOD, SEE SPEC
- P-8 PAINT - OLD PHAROS, SEE SPEC
- WO-1 WOOD TRELLIS
- WO-2 WOOD BEAM
- WO-3 WOOD BRACKET
- B-1 BRICK VENEER
- C-1 CONCRETE
- G-1 GLASS CANOPY
- H-1 HARDI-PANEL SMOOTH
- H-2 HARDI-PLANK LAP SIDING
- H-3 HARDI-SHINGLE-SIDE SHINGLE SIDING
- H-4 HARDI-TRIM TRUMFASCIA
- M-1 METAL BALCONY/RAILING
- M-2 METAL CANOPY
- M-3 METAL POST
- MP-1 METAL PANEL STOREFRONT
- R-1 COMPOSITE ROOF
- S-1 SIGNAGE
- S-2 SIGNAGE

MILWAUKIE MIXED USE

INTERSECTION OF MAIN AND HARRISON MILWAUKIE, OREGON

REVISIONS	

PM MELISSA STILES

JOB NO: 04300
 DATE: 09.10.04
 FILE:

A3.11

BUILDING 'A' ELEVATIONS

EXHIBIT C.9

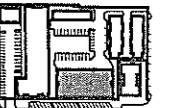
KEY NOTES

⊖ NOT USED

MYHRE GROUP

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BUILDING KEY PLAN

SHEET NOTES

1. NOT USED

DLC
SUBMITTAL

MILWAUKIE MIXED USE

INTERSECTION OF
MAIN AND HARRISON
MILWAUKIE, OREGON

LEGEND

- P-1 PAINT - GUMLEAF, SEE SPEC
- P-2 PAINT - LIGHT TOPAZ, SEE SPEC
- P-3 PAINT - SEPTAEMER LEAF, SEE SPEC
- P-4 PAINT - SPANISH GOLD, SEE SPEC
- P-5 PAINT - IRON HORSE, SEE SPEC
- P-6 PAINT - CAMOUFLAGE, SEE SPEC
- P-7 PAINT - TERRA WOOD, SEE SPEC
- P-8 PAINT - OLD PHAROS, SEE SPEC

- WO-1 WOOD TRELLIS
- WO-2 WOOD BEAM
- WO-3 WOOD BRACKET
- B-1 BRICK VENEER
- L-1 LATTICE WORK
- C-1 CONCRETE
- G-1 GLASS CANOPY
- H-1 HARDI-PANEL SMOOTH
- H-2 HARDI-PLANK LAP SIDING
- H-3 HARDI-SHINGLE SIDE SHINGLE SIDING
- H-4 HARDI-TRIM TRIM/FACIA
- M-1 METAL BALCONY/RAILING
- M-2 METAL CANOPY
- M-3 METAL POST

- MP-1 METAL PANEL STOREFRONT
- R-1 COMPOSITE ROOF
- S-1 SIGNAGE
- S-2 GROUND

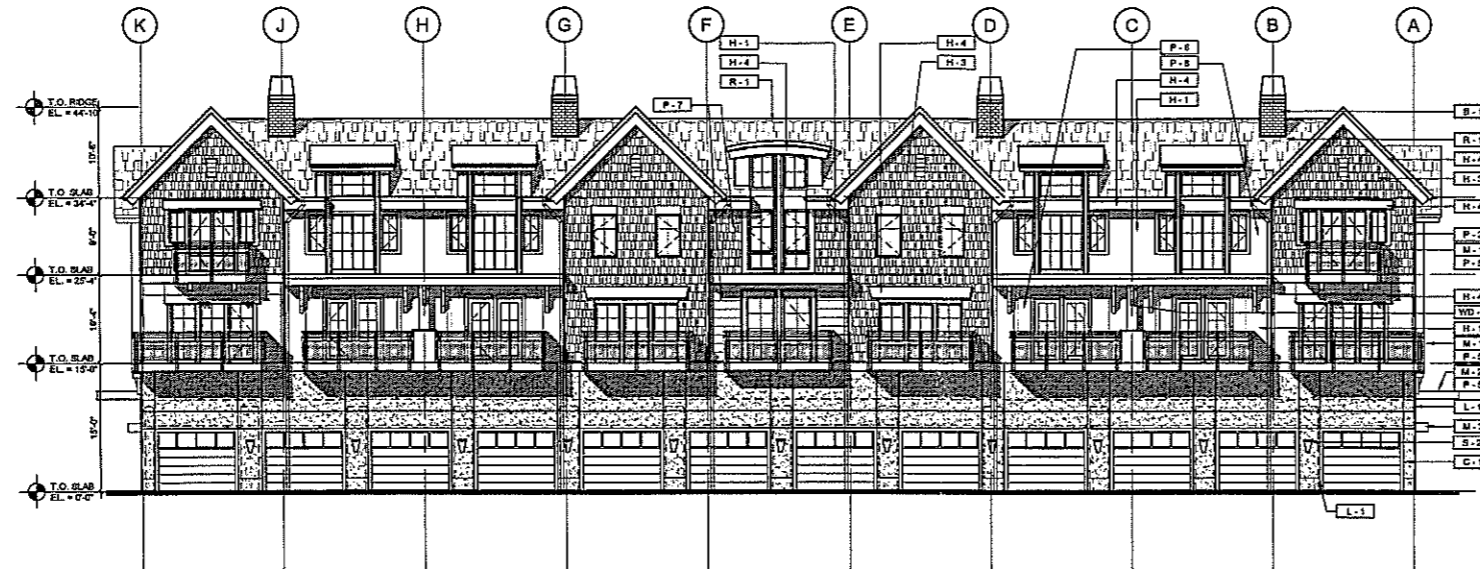
REVISIONS

PRE MELISSA STILES

JOB NO: D46200
DATE: 09.13.04
FILE:

A3.20

BUILDING 'B'
ELEVATIONS



BUILDING 'B' - EAST ELEVATION

SCALE: 1/8" = 1'-0"



BUILDING 'B' - WEST ELEVATION

SCALE: 1/8" = 1'-0"

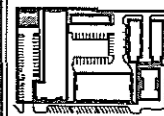
EXHIBIT C.13

MYHRE GROUP

KEY NOTES

⊙ NOT USED

⊙ WHERE SHOWN, PORTS TO BE INSTALLED WITH THE PORTS TO THE INTERIOR OF THE BUILDING. SEE SPEC FOR PORTS TO THE EXTERIOR.



BUILDING KEY PLAN

SHEET NOTES

1. NOT USED

DLC SUBMITTAL

MILWAUKIE MIXED USE

LEGEND

- P-1 PAINT - OUMLEAF, SEE SPEC
- P-2 PAINT - LIGHT TOPAZ, SEE SPEC
- P-3 PAINT - SEPIEMER LEAF, SEE SPEC
- P-4 PAINT - SPANISH GOLD, SEE SPEC
- P-5 PAINT - IRON HORSE, SEE SPEC
- P-6 PAINT - CAMOUFLAGE, SEE SPEC
- P-7 PAINT - TERRAWOOD, SEE SPEC
- P-8 PAINT - OLD PRARIE, SEE SPEC

- WD-1 WOOD TRELLIS
- WD-2 WOOD BEAM
- WD-3 WOOD BRACKET
- B-1 BRICK VENEER
- C-1 CONCRETE
- G-1 GLASS CANOPY
- H-1 HARDI-PANEL SMOOTH
- H-2 HARDI-PLANK LAP SIDING
- H-3 HARDI-SHINGLE-SIDE SHINGLE SIDING
- H-4 HARDI-TRIM TRIMFASCIA
- M-1 METAL BALCONY/RAILING
- M-2 METAL CANOPY
- M-3 METAL POST
- MP-1 METAL PANEL STOREFRONT
- R-1 COMPOSITE ROOF
- S-1 SIGNAGE
- S-2 SCOFF

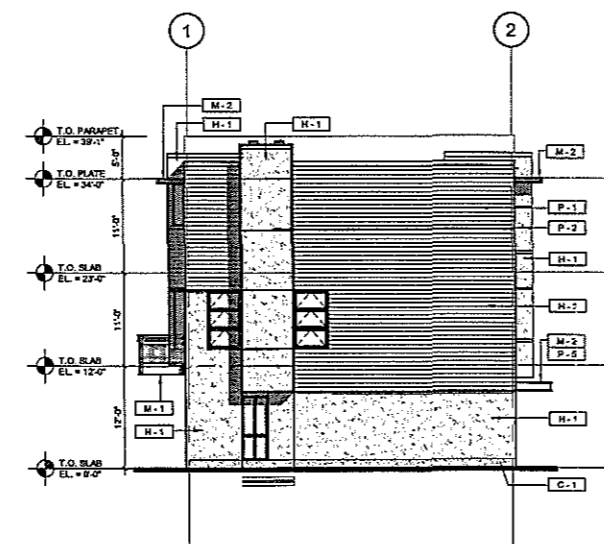
REVISIONS

PRE: MELISSA STILES

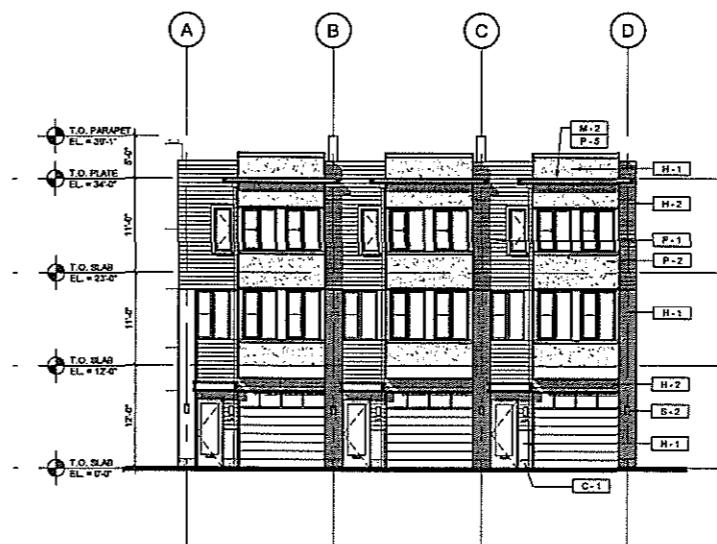
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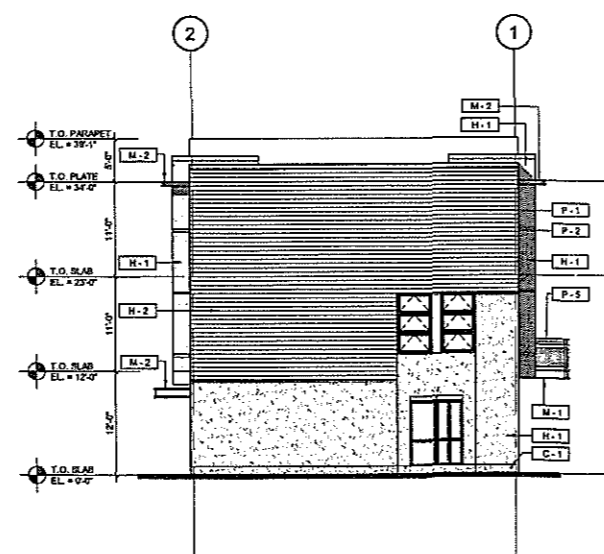
BUILDING 'F' ELEVATIONS



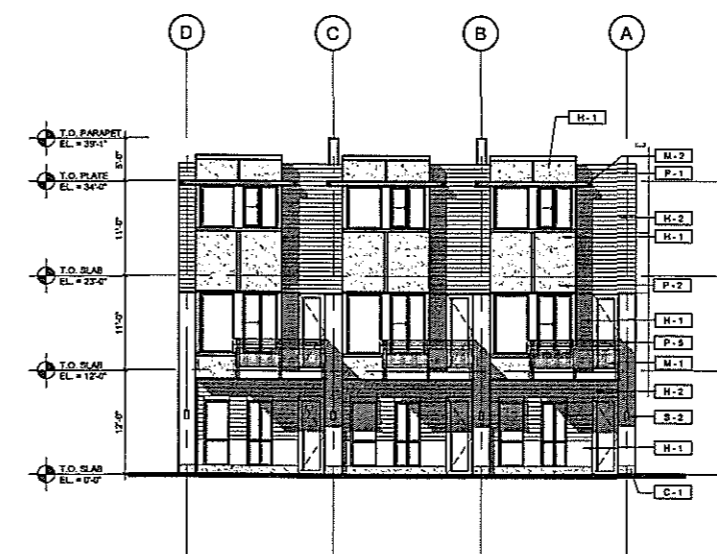
4 BUILDING 'F' - NORTH ELEVATION
SCALE: 1/8" = 1'-0"



2 BUILDING 'F' - WEST ELEVATION
SCALE: 1/8" = 1'-0"



3 BUILDING 'F' - SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



1 BUILDING 'F' - EAST ELEVATION
SCALE: 1/8" = 1'-0"