

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 7, 2003**

OATH OF OFFICE

Municipal Court Judge Ron Gray administered the oaths of office to Councilors Susan Stone and Deborah Barnes, Interim Councilor Jeff Marshall, and Mayor James Bernard.

CALL TO ORDER

The 1901st meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:10 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes
Larry Lancaster

Jeff Marshall
Susan Stone

Staff present:

Mike Swanson,
City Manager

JoAnn Herrigel,
Program Administrator

Tim Ramis,
City Attorney

Paul Shirey,
Engineering Director

Alice Rouyer,
Community Development/
Public Works Director

Steve Campbell,
Code Compliance Officer

John Gessner,
Planning Director

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

Mayor Bernard announced that Milwaukie had received a grant to administer a fluorescent lamp recycling program.

CONSENT AGENDA

It was moved by Councilor Lancaster and seconded by Councilor Marshall to approve the Consent Agenda that included:

1. City Council Minutes of December 17, 2002;
2. Resolution 1-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the *Clackamas Review* and the *Oregonian* as the Papers of Record for the City of Milwaukie; and
3. Resolution 2-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Dates.

The motion to adopt the Consent Agenda passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING**Appeal of Planning Commission Denial of a Three-Lot Minor Land Partition with Two Flag Lots, File No. MLP-02-07**

Mayor Bernard called the public hearing on the appeal of the Planning Commission's denial of a request for a minor land partition, File No. MLP-02-07, for property located at 5650 SE King Road to order at 6:15 p.m.

Mayor Bernard announced the appeal of the Planning Commission denial of a three-lot minor land partition with two flag lots, File No. MLP-02-07, will be continued to the January 21, 2003 regular Council meeting.

Protest of Nuisance to Abate Property Located at 21st Avenue and Lake Road

Campbell and **Gessner** provided preliminary staff comments related to the protest of the notice to abate a nuisance filed by Katie Daniel of Emmert International on January 2, 2003. The subject of the abatement is a house presently stored on railroad property at 21st Avenue and Lake Road.

Ramis outlined the Council's options in terms of the actions it can take at this time. These were: (1) conduct a hearing at tonight's meeting and reach a decision; (2) conduct a hearing, declare a nuisance, and continue the matter to a date certain; or (3) proceed with the continuance this evening. Ramis did not have a specific recommendation.

Gessner said Emmert has identified a potential lot for the house south of Balfour Street and north of the Clackamas County Housing Authority property on A Street. Although it is not a strong staff recommendation, an extension could clarify some uncertainties about the site. If the site proves viable, the need to take abatement action, to find another house mover, or, failing that, to demolish the house on site would be eliminated. He thought a workable solution might be identified by the January 21, 2003 meeting.

Gessner reviewed the activities that have taken place to date. Emmert worked initially with a property owner at 30th Avenue and Madison Street, but it was determined that variances and certain subdivision actions would be required. Staff advised Emmert it was not a suitable site since the lengthy land use process required would not result in the prompt removal of the house. When it became evident this option would fail, Emmert began considering a property he owns on Balfour Street. There are, however, utility and easement access issues.

Councilor Stone understands Emmert's intent is to move the house, but he has not complied with the given time frame. Emmert International is a widely known company and seems to be reputable and responsible. She asked staff if they had reason to believe Emmert would not comply.

Gessner responded staff is concerned about the overall lack of performance to date.

Councilor Stone does not wish to see the house demolished. The North Clackamas School District did not go through a public process when deciding how to dispose of the structure. In her opinion, Mr. Peterson was not the proper person to take over initial ownership. She felt Emmert should be given time to locate a suitable site, since he took it over from Peterson only about 2 months ago.

Swanson said this has been a challenging issue from the beginning because the City took action when it really was not obligated to do so. There are 2 competing interests: the preservation of an historic structure and the reasonable enforcement of City regulations. Thus far, the City has made a lot of allowances, particularly in Peterson's case, to protect the structure. Whatever action the City takes, Emmert must be impressed with the fact that the house must be moved. In the past 4 to 5 months, he has gotten more phone calls from people who wish to see the house relocated. Both points of view are valid, and Emmert holds the key to maintaining a balance between preservation of an historic structure and upholding the integrity of Milwaukie's code. It is absolutely necessary that removal move forward expeditiously.

Mayor Bernard asked if a motion was required to hold an abatement hearing.

Ramis responded Council has code authority to proceed with the hearing. If it wishes to continue the hearing, it does so by motion.

Councilor Marshall asked if the City has gotten a commitment from Emmert to have the structure removed by a date certain.

Gessner responded Emmert has not provided the City with a removal date.

Councilor Marshall asked if there was any indication of approximately how long it will take to get that commitment.

Gessner said staff knows the required steps but has not identified specific time frames.

Councilor Barnes asked how much time and money the City has spent on trying to resolve this issue.

Campbell estimated about 100 man-hours have gone into the issue.

Mayor Bernard suggested going through with the abatement hearing.

Councilor Lancaster was agreeable to a continuance since there is a reasonable possibility of a resolution. A date certain should be set based on City code and the move executed without extensions. Extraordinary efforts have been made to save the structure, and either Emmert will perform or not.

Councilor Marshall stressed that the date certain must be set in the very near future.

Councilor Barnes asked if the City could require a deposit from Emmert.

Mayor Bernard understands the City could force a bond.

Ramis explained the City could not force a bond without conducting the hearing unless the bond is volunteered. The decision at this meeting is whether or not to continue the hearing. If the Council commits to having a hearing, the message is clear to the parties responsible for the structure that something needs to happen, or on January 21, the Council will determine the City was correct in declaring the nuisance and carry on with the abatement process.

Mayor Bernard was concerned that continuing the hearing would automatically add 2 weeks to what has already been a lengthy process. He understands the Council can determine that a nuisance does exist at this meeting.

Ramis said the City Council could determine at the close of the hearing that the facts establish it is a nuisance.

Mayor Bernard and **Councilor Barnes** were in favor of having the hearing at this meeting, declare the nuisance, and continue the hearing.

Ramis said if that were the Council decision, it would conduct the hearing at this meeting, hear a report from staff, allow Emmert to make a presentation, and at the close, determine whether or not there is a nuisance. If the City Council agrees with staff, it could then declare the nuisance and return on an agreed upon date to impose the sanction. This would create a window of opportunity to solve the problem.

Councilor Marshall suggested that Emmert return at the January 21, 2003 meeting with a date certain for removal of the structure.

Councilor Barnes's concern was that many opportunities have already been extended since the house was moved to the railroad property. A lot of time and man-hours have gone into the issue, and in her opinion it should be moved. Tonight is the night to give Emmert a due date, and, if it cannot be met, then Emmert should pay. The City cannot continue to pick up the tab.

Councilor Marshall said this City Council has been very supportive of having the house moved. At this point, he did not feel 2 more weeks would make a big difference.

Councilor Stone agreed. Even though this issue has been dragging on for more than a year, Emmert has only owned this house for about 2 months. She is dedicated to preserving historic structures and advocated for having a hearing in 2 weeks. There are citizens who did not know this issue was going to be on the Council agenda, and she feels they should have an opportunity to speak on the matter.

Councilor Lancaster did not have a problem with holding the hearing in 2 weeks, but at the end of that hearing there must be a date certain for either removal or abatement.

Katie Daniel and **Craig Arquit**, 11811 SE Hwy 212, Clackamas, Oregon, 97105, represented Emmert International. Daniel said the original site selected for the house had setback issues, which were discovered in early December when the survey was done. Balfour Street is a suitable location, and the style of the house conforms with the surrounding neighborhood. The Clackamas County Housing Authority has stated in writing that it is not opposed to granting an easement or using A Street as access. The contract states the house must be moved as soon as possible, and that will occur once the City gives the necessary planning and building approvals and the utilities are notified. Emmert has only had control of the property for 2 months, and making all the arrangements is time consuming. She was just informed earlier today that water is not accessible from the housing development, and the owner to the north would have to be contacted about granting an easement.

Arquit believes it is reasonable to establish a timeline and make a commitment to moving the house by a certain date. Emmert is sensitive to the issues, but it has been challenging to coordinate things during the holidays. He would like to be able to have approximately a week to establish a viable timeframe in which to move the house. If it cannot be moved to the alternate site, the situation will have to be rectified by other means.

Councilor Stone was in favor of Emmert's returning at the next City Council meeting with that information and providing a status report.

Councilor Marshall wanted a commitment from the other property owner, a schedule with milestones, and a date certain for removal at the next Council meeting.

Councilor Stone asked if the abatement process required a certain timeframe in which to close the issue.

Ramis responded that the municipal code says the City Council will conduct a hearing quickly but also gives board discretion. One possibility for achieving Councilor Marshall's suggestion is to spend the next 2 weeks working with Emmert on a stipulated order. In 2 weeks there will either be an agreement that declares the house to be a nuisance and further that it will be moved by a date certain, or abatement will commence. If that agreement cannot be reached with Emmert, the City Council would conduct the hearing and set the order itself at the close of the hearing.

Councilor Stone commented to the fact that Emmert has only had the property for about 2 months. She does not wish to chastise Emmert International for what took place under Peterson's ownership. She did not want to be presumptuous and not give Emmert time to find another site for the house.

Mayor Bernard said there is a lot of concern in the community about moving the house. Business and property owners in that area are very upset because they feel it is a deterrent to doing business or selling property. He wants to see some action at the next meeting with Emmert providing a date certain for removal or the City will abate.

Councilor Stone agreed the house is unsightly, and something should have been done long ago. However, she would hate to see it demolished because the City Council could not wait a little longer.

George Van Bergen, former owner of the house, feels having the house sitting around the neighborhood is not good and is contrary to living in a community. Due diligence has been performed, and this is a material breach. He was surprised the railroad is not present because under abatement proceedings the lien would be against the land. He is concerned this will be an ongoing issue. The subject house is an old house, but it is not historic. He questioned if the house would comply with current building codes. He believes it is fair to require Emmert to put up a cash surety bond 2 times the amount of the building permit that is refundable if the deadline is met.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. Continued growth of Milwaukie is another issue to consider. It is less important to worry about Emmert's feeling than it is to move the house. People shopping for homes in Milwaukie see this boarded up house and are not interested in buying because of the impression this house leaves. It is an eyesore that detracts significantly from property values and makes the town look like a dumping ground. She urged the City Council to work as hard as possible to immediately remove or destroy the home.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to continue the nuisance abatement protest hearing to the next scheduled City Council meeting on January 21, 2003 at which time the owner of the structure will provide the Council with a schedule that includes a date certain for moving the house from the property, and if the owner fails to provide an adequate agreement from the Council's perspective, then the protest hearing would continue.

Mayor Bernard restated the motion: Emmert will come to the January 21, 2003 Council meeting with a date certain for removing the house. If Emmert does not accomplish this, the City Council will hold a hearing on the abatement.

Motion passed unanimously.

Councilor Marshall further directed staff, with Council's consent, to develop a schedule with 3 or 4 milestones critical to removing the house. If a milestone is missed, then there must be a plan for what happens.

Councilor Stone asked if this is a typical timeline for a process like this. It would seem Emmert needs a certain amount of time to settle all the issues.

Gessner responded this is not a typical timeline for submitting an application.

OTHER BUSINESS

Portland General Broadband Franchise Agreement

Herrigel provided the staff report in which the City Council was requested to adopt an ordinance granting a 5-year nonexclusive franchise to Portland General Broadband (PGB) to use the public rights-of-way within the City to provide telecommunications services. PGB proposes to place above and below ground fiber optics that will be leased to other telecommunication providers. PGB will pay a minimum annual franchise fee of \$4,000 or 5% of its gross revenues earned in providing telecommunications services including the lease or resale of its facilities within the Milwaukie city limits whichever is greater.

Councilor Barnes asked if the proposed franchise fee was typical of the amount given in other cities' agreements.

Karen Lee, PGB counsel, said she has negotiated 8 contracts, and the franchise fees have ranged from \$0 to a \$10,000 fee in the City of Portland.

Councilor Barnes requested the names of the current lessees.

Lee said that issue is addressed in the franchise. The contracts are private, and she was hesitant to provide the lessees' names since the meeting was being televised. PGB agrees to notify the City of these names and addressees so staff can make contact regarding registration obligations and potential franchise agreements.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the ordinance granting Portland General Broadband a nonexclusive 5-year franchise. Motion passed unanimously.

ORDINANCE NO. 1915:

AN ORDINANCE GRANTING TO PORTLAND GENERAL DISTRIBUTION, LLC, dba PORTLAND GENERAL BROADBAND A NONEXCLUSIVE FRANCHISE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF MILWAUKIE.

Intergovernmental Agreement for Qwest Audit

Herrigel provided the staff report in which the City Council was requested to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions to hire a consultant to complete a joint financial audit of Qwest. Milwaukie was 1 of 24 cities that performed a similar audit of PGE in 2001. The group formalized its association and adopted the name Oregon Municipal Audit Review Committee (OMARC). Milwaukie spent about \$2,800 on the PGE audit and netted nearly \$145,000. Milwaukie's share of the Qwest audit, based on population and franchise fees received, is \$10,223.56.

Swanson said notwithstanding his recent interaction with PGE counsel on franchise fees, PGE was very cooperative during the audit. He is not convinced Qwest will do the same. Cities agree Qwest is the next financial audit that should be undertaken.

Herrigel noted cities are adding franchise agreement language stipulating that audit costs are covered by the grantee. This verbiage is included in the PGB agreement.

It was moved by Councilor Barnes and seconded by Councilor Stone to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions for hiring a consultant to complete a joint financial audit of Qwest.

Councilor Lancaster asked if the same 24 cities from the PGE audit are also involved in the Qwest audit.

Herrigel said 52 Oregon cities have Qwest franchises, and the 24 cities from the PGE audit are likely involved.

Swanson believed many PGE franchises are in the metropolitan area, whereas, Qwest serves a broader area.

Councilor Lancaster asked if Milwaukie was moving forward without knowing if other cities were committing to the project.

Herrigel said most cities are moving forward simultaneously.

Ramis commented that conducting these types of audits is part of doing city business. Even without conscious wrongdoing on the part of the franchisees, boundary changes and new construction can lead to some under collection by city governments. He does, however, support future costs being borne by the utility.

Swanson said, with the exception of a small number of cities that were overpaid and had to refund PGE, most participants did receive payments.

Lee added PGE is in the midst of auditing a few remaining cities. She explained that Qwest does cover a different area than PGE.

Councilor Lancaster asked if the Qwest audit is independent of the litigation.

Herrigel said the audit is a separate issue and is based on correctly identifying the number of customers receiving service within a given city boundary.

Councilor Lancaster questioned the cap on Portland's share of the expenses.

It is **Herrigel's** understanding that OAMRC established the cap.

Swanson explained the methodology developed by the consultant will be used for both providers, and Milwaukie will pay only for the Qwest audit.

Councilor Lancaster understands it is a good business practice to perform these audits periodically but hoped there would be another mechanism in place to make them less costly.

The motion to authorize the city manager to sign an IGA for the Qwest audit passed unanimously.

Community Development Block Grant Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project

Shirey presented the staff report in which the City Council was requested to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Milwaukie was awarded \$295,000 in Community Development Block Grant (CDBG) funds. The City's local match is 20% of the total project, or all costs for the design and construction in excess of the amount awarded, whichever is greater. Staff estimates about \$55,000 will be allocated from the street fund and \$25,000 from the storm fund. These funds were approved in the 2002 – 2003 budget. Staff will work with residents to obtain easements for the project.

Councilor Stone asked if the project calls for sidewalks on both sides of Harvey Street and if on-street parking would still be allowed.

Shirey will review the plans and provide an answer.

Rouyer explained sidewalk options are still being considered. Sidewalks on only one side of the street would extend the length of the project; however, Harvey Street has a lot of traffic, so it may be appropriate to construct sidewalks on both sides of the street.

Councilor Stone believes there is parking only on the north side of Harvey Street at this time. She wants to ensure neighborhood involvement will be part of the decision making process.

It was moved by **Councilor Stone** and seconded by **Councilor Lancaster** to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Motion passed unanimously.

Change Date of First Regular City Council Session in February

It was moved by **Mayor Bernard** and seconded by **Councilor Lancaster** to adopt the resolution changing the date of the first regular City Council session in February. Motion passed unanimously.

RESOLUTION NO. 3-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DETERMINING THE FIRST REGULAR COUNCIL SESSION OF FEBRUARY 2003 WILL BE CALLED TO ORDER ON FEBRUARY 3, 2003 AT 5:00 P.M. UNDER THE BIG TENT IN THE CITY HALL PUBLIC PARKING LOT ON MAIN STREET TO MARK THE OPENING CEREMONY OF MILWAUKIE'S CENTENNIAL YEAR CELEBRATION.

North Main Developer Selection Open House

Rouyer announced the North Main Developer Open House has been rescheduled to February 6.

Advisory Board Appointments

Mayor Bernard, with the consent of Council, appointed Gary Hubbard to the Budget Committee and Ed Miller to the Citizens Utility Advisory Board. Carlotta Collette and Kevin McNally, who also interviewed for the Budget Committee position, will be advised

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of other available advisory board vacancies. **Councilor Stone** recommended adding verbiage to letters going out to applicants encouraging neighborhood association involvement.

Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(h) to discuss real property transaction.

Adjournment

It was moved by **Councilor Marshall** and seconded by **Mayor Bernard** to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 7: 30 p.m.

Pat DuVal

Pat DuVal, Recorder

CITY OF MILWAUKIE
CITY COUNCIL AGENDA -- REVISED January 3, 2003
JANUARY 7, 2003

MILWAUKIE CITY HALL
10722 SE Main Street

1901ST MEETING

REGULAR SESSION - 6:00 p.m.

Oaths of Office for Mayor Bernard, Councilor Stone, Councilor Barnes, and Councilor Marshall Administered by Municipal Court Judge Ron Gray.

- I. CALL TO ORDER**
Pledge of Allegiance
- II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- III. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. City Council Minutes of December 17, 2002**
 - B. Resolution 1-2003: Designating Papers of Record**
 - C. Resolution 2-2003: Establishing Meeting Dates for 2003**
- IV. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. Appeal of Planning Commission Denial of a Three-lot Minor Land Partition with Two Flag Lots File No. MLP-02-07 (Kent)**
 - B. Protest of Notice to Abate Nuisance on Property Located on the West Side of 21st Street between Adams and Lake Road, Milwaukie, Clackamas County, Oregon (Campbell/Gessner)**

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

- A. Portland General Broadband Franchise Agreement – Ordinance (Herrigel)**
- B. Intergovernmental Agreement for Qwest Audit -- Herrigel**
- C. Community Development Block Grant Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project – Resolution (Barnett)**

VII. INFORMATION

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

For assistance/service per the Americans with Disabilities Act (ADA), dial TDD 786-7555.

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



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: December 30, 2002
RE: FYI Memo for the Weeks of January 3, 2003 through
January 17, 2003

JANUARY 3, 2003 CITY COUNCIL WORK SESSION

The City Council work session commences at 5:30 P.M. in the Second Floor Conference Room at City Hall. There will be a light dinner and information sharing. Council members will conduct interviews of prospective advisory board members and hear an update from the Centennial Committee.

JANUARY 4, 2003 CITY COUNCIL REGULAR SESSION

- (1) **Designating Papers of Record:** This is an action that we are required to take annually.
- (2) **Establishing Meeting Dates for 2003:** Chapter VI, Section 20 of the City Charter requires that "[t]he council shall hold a regular meeting of the city council at least twice each month in the city at a time and place which it designates."
- (3) **Appeal of Planning Commission Denial of a Three-lot Minor Land Partition with Two Flag Lots/File No. MLP-02-07:** The applicant requested a three-lot partition of a 1.06-acre property located on the south side of King Road west of Stanley. Proposed Lot 1 contains an existing single-family dwelling and fronts on King. Proposed lots 2 and 3 are flag lots. The Planning Commission denied the request, whereupon the applicant appealed to Council.
- (4) **Portland General Broadband Franchise Agreement:** This is a request to approve a five year franchise agreement to provide telecommunications services in the form of dedicated fiber optic infrastructure. PGB proposes to install the infrastructure and to lease it to other users.

- (5) **IGA for Qwest Audit:** This is a follow-up to the PGE audit of a year ago. Many of the same cities who participated in the audit of PGE accounts are now participating in an audit of the phone companies. You w=might remember that many cities gained franchise fees owing to a gain in accounts that had not been accurately reported.
- (6) **Community Development Block Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project:** The request is to authorize the Mayor to sign an IGA with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald Neighborhood. Specifically, this project will complete curb, sidewalk, and storm improvements to King Road from 37th Avenue to 42nd Avenue; sidewalk on Harvey Street from 32nd Avenue to 42nd Avenue; and curb, sidewalk, and storm improvements to 40th Avenue from Harvey Street to King Road. The City was awarded approximately \$295,000 toward the project and is required to provide a 20% match. Clackamas County will manage both the design and construction of the project with technical public involvement support from City staff.

OTHER ITEMS OF INTEREST

- (1) We have a planning session scheduled for Saturday, January 11, 2003 from 8:00 A.M. until 12:00 P.M. at City Hall in advance of the January 15 Budget Committee hearing. I am including a copy of the past three Community Goals with this packet for your information. In the next week I will be forwarding some additional information for that meeting. My goal will be to provide some structure so that our time can be productive without establishing any control. (I hope that makes sense.) I would also encourage you to review the briefing papers I prepared over the past month together with the budget memos that have come out during the past couple of weeks.
- (2) We also have a Budget Committee meeting scheduled for the evening of January 15, 2003 at 6:30 P.M.
- (3) I will be out of town taking some vacation time on January 8, 9, and 10, returning on the 11th for the planning session.

Date _____

I wish to address City Council on Agenda Item # _____

Name George Van Dongen

Organization Self

Address 123106 SE Guilford St

Phone 654-4724

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments _____

Marinos House

Date 1/1/03

I wish to address City Council on Agenda Item # V.B.

Name Cathleen Brinkman

Organization _____

Address 2513 SE Lake Rd

Phone 503-653-0278

Speaking in Support

Speaking in Opposition

Raising Questions

Providing Information

Comments _____

→ support of getting rid of house

Date 1/02/03

I wish to address City Council on Agenda Item # VB

Name Greg Arout

Organization EMMEOT INTERNATIONAL

Address 11811 S.E. Hwy 212

Phone (503) 655-7191

Speaking in Support

Speaking in Opposition

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
JANUARY 7, 2003**

MILWAUKIE CITY HALL
10722 SE Main Street

1901ST MEETING

REGULAR SESSION - 6:00 p.m.

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Appeal of Planning Commission Denial of a Three-lot Minor Land Partition with Two Flag Lots File No. MLP-02-07 (Kent)

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- B. Intergovernmental Agreement for Qwest Audit -- Herrigel**

- C. **Community Development Block Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project – Resolution (Barnett)**

VII. INFORMATION

- A. **Center/Community Advisory Board Minutes, November 8, 2002**
- B. **Ledding Library Board Minutes, November 25, 2002**

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

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**CITY OF MILWAUKIE
CITY COUNCIL MEETING
DECEMBER 17, 2002**

Call to Order

The 1900th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Mary King
Larry Lancaster

Jeff Marshall

Staff present:

Mike Swanson,
City Manager

Larry Kanzler,
Police Chief

Gary Firestone,
City Attorney

John Gessner,
Planning Director

Alice Rouyer,
Community Development/
Public Works Director

JoAnn Herrigel,
Program Specialist

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS****Citizen Commendation for Paul Hubbard**

Kanzler presented 13-year-old Paul Hubbard with an Award and Commendation for his bravery and selflessness when confronted by a criminal who forced his way into their home on August 1, 2002.

Recognize Robert Mendenhall for Services as Interim Building Official

Rouyer recognized Robert Mendenhall for his services as Interim Building Official.

Recognize Off-going Councilors

Councilors Mary King, Jeff Marshall, and Brian Newman were recognized for their service to the community as Milwaukie City Councilors. Newman, who served since 2000, resigned effective midnight January 15, 2002 to take a seat on the Metro Council. King and Marshall, both elected in 1998, chose not to run for re-election.

CONSENT AGENDA

It was moved by Councilor Marshall and seconded by Councilor King to approve the Consent Agenda that included:

- 1. City Council Minutes of December 2 & 3, 2002;**
- 2. Resolution 30-2002: A Resolution of the City of Milwaukie, Oregon, Recording the Certified Election Results for the November 5, 2002 General Election; and**

III. A. 2

3. Intergovernmental Agreement with Clackamas County Regarding Repayment of Operations, Maintenance and Capital Improvement Costs at the Kellogg Creek Wastewater Treatment Plant.

The motion to adopt the Consent Agenda passed unanimously.

AUDIENCE PARTICIPATION

Annaliese Hummel, Monroe Street, Milwaukie, urged the City Council to adopt a resolution against war in Iraq and the Patriot Act similar to one recently adopted by the Eugene City Council. She currently pays the City of Milwaukie about \$1,100 in property taxes annually, and she wants to know what is done for her as a resident. There are still no traffic calming devices on Monroe Street, which she feels are needed to decrease or slow traffic particularly at the 28th Avenue intersection. Hummel thinks her utility bill is enormous. She contributes to the health of the community by not using fertilizers on her lawn or dumping chemicals and believes she should be rewarded with a lower rate.

Linda Hatlelid read a statement prepared for Mayor Bernard and Councilors King, Marshall, and Newman. In voting to authorize the intergovernmental agreement with the City of Portland for the Johnson Creek Boulevard Improvement Project Phase III, these Council members sold out the neighborhood for the almighty dollar. The project has become a monster from what was originally proposed 15 years ago. After many meetings with the neighborhood, Portland is still not addressing residents' design concerns. Milwaukie cannot afford to take over Johnson Creek Boulevard from Clackamas County, and Hatlelid suggested letting the County keep the road to avoid future maintenance costs. The most recently signed intergovernmental with the City of Portland has major deletions and mathematical errors that need to be corrected. Hatlelid maintains all of the improvements can be done in the 40-foot right-of-way, which would decrease the amount of right-of-way acquisition and reduce the financial impact on both the City and the property owners. All of this right-of-way purchase is not mandatory to receive federal funds; it is a waste of tax money.

Budget Committee Applicant Interview

The Council interviewed Keith Dow for a vacant position on the Budget Committee.

PUBLIC HEARING

Title 3 Water Quality Resource Regulations, Applications ZA-02-05 and CPA-02-03 -- Ordinances

Mayor Bernard called the public hearing on the proposed legislative zoning ordinance and comprehensive plan amendments to order at 6:50 p.m.

The purpose of the hearing was to consider code amendments that would implement Title 3 water quality resource regulations. **Mayor Bernard** reviewed the conduct of the hearing.

Conflicts of Interest: No councilor declared any potential or actual conflicts of interest. No member of the audience challenged any councilor's ability to participate in the decision.

Staff Report: **Gessner** presented the staff report in which the City Council was requested to adopt ordinances amending the zoning ordinance and the comprehensive plan by establishing water quality resource regulations. He provided a brief overview of the process that began with a Metro Functional Plan requirement to implement regional water quality standards. He summarized the 1990 Natural Resource Overlay Zone, the proposed vegetated buffer, and relaxed regulations for applications that do not negatively impact resources. He explained that the proposed amendments apply only to new development and do not take property. No changes are required for existing yards, gardens, or buildings. He summarized the outreach efforts involved in developing the proposed regulations.

The City Attorney recommended several changes to the ordinance distributed in the Council packet. **Gessner** discussed a change to Section 322.6 – Activities Permitted under Type II Review – based on public comment. Section A would be amended to read: "improvement of existing public and private utility facilitates where..." The purpose of this amendment is to clarify the type of work that must be reviewed. The City's ability to regulate consistent with Council intent would not be impaired. Planning Commission Chair Hammang indicated his support for this amendment.

Councilor Lancaster asked if the City Council would see future actions related to the Metro Functional Plan.

Gessner said the Functional Plan is dynamic at the regional level. At some time, the City Council will consider Goal 5, upland habitat regulations, and Title 7, affordable housing.

Correspondence: None.

Testimony in support: None.

Testimony in opposition: None.

Neutral testimony: None.

Additional Staff Comments: None.

Questions of Clarification: None.

Mayor Bernard closed the public testimony portion of the hearing at 7:10 p.m.

III. A. 4

It was moved by Councilor King and seconded by Councilor Marshall to read the ordinance amending Ordinance 1712 by adopting amendments that implement regional water quality resource regulations for the first time by title only with changes recommended by staff. Motion passed unanimously. The ordinance was read for the first time by title only including the following changes:

Section 1. The findings of fact in support of these amendments contained in application ZA-02-05 are incorporated by this reference and are hereby adopted.

The application and proposed amendments are consistent with Zoning Ordinance 902-Amendment Procedure, 905-Approval Criteria for All Amendments, and 1011.5-Legislative Actions as shown in Attachment 5.

Section 2. Milwaukie Municipal Code Section 19.322-Natural Resource Overlay Regulations, including subsection 19.322.1 through 19.322.18 is repealed.

Section 3. Milwaukie Municipal Code Section 19.807-Destruction of Nonconforming Structure or Use is repealed.

Section 4. Milwaukie Municipal Code Section 19.103-Definitions is amended as shown in Attachment 1.

Section 5. Ordinance 1712 and Milwaukie Municipal Code Title 19 are amended by adoption of the new Chapter 322-Water Quality Resource Regulations as shown in Attachment 2.

Section 6. Water Quality Resource Maps adopted by reference through the new Milwaukie Municipal Code Section 19.322.1(F) are shown in Attachment 3.

Section 7. Ordinance 1712 and Milwaukie Municipal Code Chapter 19 are amended by adoption of the revised Section 807 (Milwaukie Municipal Code Section 19.807)-Destruction of Nonconforming Structure or Use as shown in Attachment 4.; and

Attachment 2; 322.6A Improvement of existing public utility facilities where...

It was moved by Councilor King and seconded by Councilor Marshall to read the ordinance amending Ordinance 1712 by adopting amendments that implement regional water quality resource regulations for the second time by title only with changes recommended by staff. Motion passed unanimously. The ordinance was read for the second time by title only including the following changes:

Section 1. The findings of fact in support of these amendments contained in application ZA-02-05 are incorporated by this reference and are hereby adopted.

The application and proposed amendments are consistent with Zoning Ordinance 902-Amendment Procedure, 905-Approval Criteria for All Amendments, and 1011.5-Legislative Actions as shown in Attachment 5.

- Section 2.** Milwaukie Municipal Code Section 19.322-Natural Resource Overlay Regulations, including subsection 19.322.1 through 19.322.18 is repealed.
- Section 3.** Milwaukie Municipal Code Section 19.807-Destruction of Nonconforming Structure or Use is repealed.
- Section 4.** Milwaukie Municipal Code Section 19.103-Definitions is amended as shown in Attachment 1.
- Section 5.** Ordinance 1712 and Milwaukie Municipal Code Title 19 are amended by adoption of the new Chapter 322-Water Quality Resource Regulations as shown in Attachment 2.
- Section 6.** Water Quality Resource Maps adopted by reference through the new Milwaukie Municipal Code Section 19.322.1(F) are shown in Attachment 3.
- Section 7.** Ordinance 1712 and Milwaukie Municipal Code Chapter 19 are amended by adoption of the revised Section 807 (Milwaukie Municipal Code Section 19.807)-Destruction of Nonconforming Structure or Use as shown in Attachment 4.; and

Attachment 2; 322.6A Improvement of existing public utility facilities where...

It was moved by Councilor King and seconded by Councilor Marshall to adopt the ordinance amending Ordinance 1712 by adopting amendments that implement regional water quality resource regulations including the staff recommended changes. Motion passed unanimously.

ORDINANCE NO. 1912:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE 1712, CHAPTER 100-DEFINITIONS AND 322-WATER QUALITY RESOURCE REGULATIONS, BY ADOPTING CERTAIN AMENDMENTS THAT IMPLEMENT REGIONAL WATER QUALITY RESOURCE REGULATIONS.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to read the ordinance amending Comprehensive Plan, Objective #2 -- Natural Resource Areas for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to read the ordinance amending Comprehensive Plan, Objective #2--

III. A. 6

Natural Resource Areas for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Councilor Marshall and seconded by Councilor King to adopt the ordinance amending Comprehensive Plan, Objective #2-- Natural Resource Areas. Motion passed unanimously.

ORDINANCE NO. 1913:
AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
AMENDING THE MILWAUKIE COMPREHENSIVE PLAN.

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

OTHER BUSINESS

Portland General Electric Franchise Agreement

Herrigel provided the staff report in which the City Council was requested to adopt an ordinance granting a nonexclusive franchise to Portland General Electric (PGE) for 10 years to erect, construct, maintain and operate an electric power system within the City of Milwaukie. The current franchise expires on December 31, 2002. PGE would not agree to change the 3.5% franchise fee, but it did agree to a clause that allows the City to establish a 1.5% privilege tax. Herrigel noted several non-substantive modifications to the proposed ordinance: add word "nonexclusive" to the ordinance title; Section 9(H) to read, "the obligation to pay the franchise fee imposed by Section 9(A) shall survive expiration of the agreement as long as PGE continues to exercise the rights granted in Section (1)...; Section 11(B)(2) the placement and operations of the wireless communications facilities will be consistent with all safety and other applicable regulations, and (3) PGE agrees to the amount of compensation from the third party. The third party shall be contractually responsible for compliance with all safety and other applicable regulations..." In response to a question from Councilor Lancaster, Herrigel explained the franchise agreement would not be affected if PGE is sold.

The group discussed the franchise fee and the feasibility of establishing a privilege tax. Councilor Lancaster would prefer coming to an agreement rather than adding a tax.

Annette Maxon, PGE representative, said the Oregon Public Utilities Commission (PUC) determines service rates and allows a 3.5% operating expense. Anything in excess of 3.5% would print on customers' bills as a separate line item as outlined by Oregon Revised Statutes. PGE will not agree to pay a franchise fee to Milwaukie that is greater than that paid to other communities. She noted the benefits of establishing a privilege tax that could be designated for specific projects such as Milwaukie's riverfront

development. The tax would increase Milwaukie's annual franchise revenue by about \$240,000.

Firestone added a privilege tax would not have to be approved by the voters.

Swanson understands the additional line for the 1.5% is PGE's choice and is not the state saying thou shalt not. He asked PGE counsel if the company would only charge the additional 1.5% if it were printed on bills as a privilege tax.

PGE legal counsel said the PUC allows 3.5% and anything above that must be a pass through; this is a mandatory provision. It would print on customers' bills as a separate item.

Councilor King recommended pursuing the privilege tax proposal.

Councilor Lancaster said the new City Council should make the decision. On the face of it, he is opposed to charging residents more money.

It was moved by **Mayor Bernard** and seconded by **Councilor King** to read the ordinance granting **Portland General Electric** a nonexclusive 10-year franchise for the first time by title only with the amended language. Motion passed unanimously. The ordinance was read for the first time by title only with the following changes:

The title of the ordinance shall read as follows: An Ordinance of the City of Milwaukie Granting Portland General Electric Company a Nonexclusive Franchise for Ten Years to Erect, Construct, Maintain and Operate an Electric Power System within the City of Milwaukie and Setting the Terms and Conditions of the Franchise.

Section 9(H) to read as follows: The obligation to pay the franchise fee imposed by Section 9(A) shall survive expiration of this agreement as long as PGE continues to exercise the rights granted in Section 1....

Section 11(B) shall read as follows: PGE shall allow third parties to place wireless communications facilities on PGE poles provided that (1) the placement will not interfere with PGE's operations, (2) the placement and operations of the wireless communications facilities will be consistent with all safety and other applicable regulations, and (3) PGE agrees to the amount of compensation from the third party. The third party shall be contractually responsible for compliance with all safety and other applicable regulations....

It was moved by **Mayor Bernard** and seconded by **Councilor Lancaster** to read the ordinance granting **Portland General Electric** a nonexclusive 10-year franchise for the second time by title only with amended language.

III. A. 8

It was moved by Councilor Marshall and seconded by Councilor Lancaster for the purpose of discussion to table the PGE franchise agreement until the new City Council is seated.

Councilor Marshall sensed some apprehension in approving the 10-year agreement and felt the new Council would more appropriately consider it. The new Council's vision for the community may be different as it works to deal creatively with budget issues.

Councilor Lancaster was not in favor of postponing the decision if PGE has no intention of accepting a franchise fee in excess of 3.5%. If it is simply an exercise in futility, he prefers moving forward.

Swanson said his question to PGE counsel was for the purpose of clarifying that it is PGE's choice to handle the 1.5% in this manner. He advised that extending the decision beyond this meeting would only mean more time spent in negotiations.

Councilor Lancaster said it appears PGE's decision is purely political and allows any increase to appear as an additional line item labeled privilege tax. At face value, this is a tax increase for residents.

The motion to table adoption of the PGE franchise ordinance failed 1 – 3 with the following vote: Councilor Marshall aye; Mayor Bernard, Councilor King, Councilor Lancaster nay.

The motion to read the ordinance for the second time by title only with the amended language passed 3 – 0 – 1 with the following vote: Mayor Bernard, Councilor King, and Councilor Lancaster aye; no nays; Councilor Marshall abstained.

The ordinance was read for the second time by title only with the following changes.

The title of the ordinance shall read as follows: An Ordinance of the City of Milwaukie granting Portland General Electric Company a Nonexclusive Franchise for Ten Years to Erect, Construct, Maintain and Operate an Electric Power System within the City of Milwaukie and Setting the Terms and Conditions of the Franchise.

Section 9(H) to read as follows: The obligation to pay the franchise fee imposed by Section 9(A) shall survive expiration of this agreement as long as PGE continues to exercise the rights granted in Section 1....

Section 11(B) shall read as follows: PGE shall allow third parties to place wireless communications facilities on PGE poles provided that (1) the placement will not interfere with PGE's operations, (2) the placement and

operations of the wireless communications facilities will be consistent with all safety and other applicable regulations, and (3) PGE agrees to the amount of compensation from the third party. The third party shall be contractually responsible for compliance with all safety and other applicable regulations....

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the ordinance granting Portland General Electric a nonexclusive 10-year franchise with the amended language. Motion passed 3 – 0 – 1 with the following vote: Mayor Bernard, Councilor King, and Councilor Lancaster aye; no nays, Councilor Marshall abstained.

ORDINANCE NO. 1914:

AN ORDINANCE OF THE CITY OF MILWAUKIE GRANTING PORTLAND GENERAL ELECTRIC COMPANY A FRANCHISE FOR TEN YEARS TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC POWER SYSTEM WITHIN THE CITY OF MILWAUKIE AND SETTING THE TERMS AND CONDITIONS OF THE FRANCHISE.

Intergovernmental Agreement with City of Lake Oswego for Dispatch Services

Kanzler provided the staff report in which the City Council was requested to adopt a resolution authorizing the City Manager to sign an intergovernmental agreement (IGA) with the City of Lake Oswego to merge the 2 dispatch centers at Lake Oswego and for Lake Oswego to provide dispatch and 9-1-1 communication services to Milwaukie. He discussed HB 3977 implications to Milwaukie's dispatch center and the quality of service available from the Lake Oswego Center. He briefly discussed the cost savings and enhanced technology that would be available if the dispatch centers merged.

Councilor Lancaster commended the chief on his hard work to leverage resources.

Mayor Bernard added that state funding opportunities could be withdrawn from centers such as Milwaukie's and would likely result in a future financial burden for Milwaukie.

Swanson feels this is a positive move and noted 5 of the 6 Milwaukie dispatcher positions are fully covered. The sixth position will likely be covered next year.

It was moved by Mayor Bernard and seconded by Councilor King to adopt the resolution authorizing an agreement with the City of Lake Oswego for emergency 9-1-1 and dispatch services. Motion passed unanimously.

RESOLUTION 31-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING AN AGREEMENT WITH THE CITY OF LAKE OSWEGO FOR EMERGENCY 9-1-1 AND DISPATCH SERVICES.

III. A. 10

City Council Vacancy and Election

City Attorney Firestone summarized the decisions before Council as a result of Councilor Newman's resignation to take a Metro Council seat. Municipal Code provides for the Council's calling an election. In addition, Newman's resignation, creates a vacancy, and the City Council may decide to appoint someone on an interim basis until the May 2003 election.

Susan Stone, Councilor elect, hopes the new Councilors will be afforded the opportunity to participate in the discussion and decision. In the past, the next highest vote getter has taken the interim seat, or the City Council has gone through an application and interview process.

Brian Newman, 10440 SE 24th Avenue, Milwaukie, felt it was in the best interest of the City Council to consider appointing Jeff Marshall to the interim position. Marshall has served Milwaukie residents with distinction since 1998. He identified several reasons for this recommendation: Marshall has been supported by the public in 2 elections; he is a veteran Council member and would provide institutional knowledge; he has volunteered at a time when volunteers are scarce; and he does not plan to run for office in May.

Ed Zumwalt believes there should be a Charter amendment that defines how Council vacancies are filled in this type of situation. He knows several people who would be interested in applying for the interim position.

It was moved by Mayor Bernard and seconded by Councilor King to adopt a resolution noting a vacancy on the City Council and directing the City Recorder to call an election. Motion passed unanimously.

RESOLUTION 32-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON NOTING A VACANCY ON THE CITY COUNCIL AND DIRECTING THE CITY RECORDER TO CALL AN ELECTION.

Firestone outlined the options before the City Council to fill the vacancy created by Newman's resignation.

Mayor Bernard read comments into the record urging appointment of an experienced interim Councilor to make informed, critical budget decisions that will affect staff, citizens, and the general direction of the community.

It was moved by Mayor Bernard and seconded by Councilor King to adopt a resolution appointing Jeff Marshall to fill the vacancy as interim Councilor.

Councilor Marshall excused himself from the Council Chambers at 8:10 p.m.

Councilor Lancaster was opposed making a decision at this time and urged an open process, which in his perspective is the essence of good government. He felt the new Council should make the decision. He noted that Marshall has expressed animus against incoming Councilor Stone in the past. He did not wish to circumvent the appointment process and urged waiting until the new Council convenes in January.

Councilor King supported Marshall's appointment based on his expertise and citizen support. She understands he and Stone have had philosophical differences over the Traffic Safety Board, but she feels they can work together.

Mayor Bernard did not feel the process was being circumvented. He has talked with both Councilors elect Stone and Barnes and believes there is sufficient support to appoint Jeff Marshall.

The motion to appoint Jeff Marshall to fill a vacancy on the City Council passed 2 – 1 with the following vote: Mayor Bernard and Councilor King aye; Councilor Lancaster nay.

RESOLUTION NO. 33-2002:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING JEFF MARSHALL TO FILL A VACANCY ON THE CITY COUNCIL.

Councilor Marshall returned to the Council Chambers. He accepted the interim Councilor appointment through the May 2003 election.

Other

Mayor Bernard, Councilor Marshall, and Planning Commissioner Rosemary Crites will host an event to discuss development possibilities with Milwaukie property owners.

Swanson recognized Herrigel and the Park and Recreation Board for planning the Winter Solstice and Christmas Fleet viewing event on the Milwaukie riverfront.

Mayor Bernard announced an executive session pursuant to ORS 192.660 to discuss real property.

Councilor Marshall wanted to make it clear he was not just trying to "hanging on" to his Council position. He had not intend to serve after his term expired, and he feels he accomplished what he and a large group of residents originally set out to do.

III. A. 12

Adjournment

It was moved by Councilor King and seconded by Mayor Bernard to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 8:25 p.m.

Pat DuVal, Recorder



MEMORANDUM

To: Mayor and City Council
From: Pat DuVal, City Recorder
Through: Mike Swanson, City Manager
Subject: Designating Papers of Record
Date: December 16, 2002

Action Requested

Adopt a resolution which designates the *Clackamas Review* and *The Oregonian* as papers of record for the City of Milwaukie.

Background

Oregon Public Meetings Law requires that the public be aware of the deliberations and decisions of the governing body. ORS 193 further defines a newspaper of general circulation and in which newspaper notices may be published.

Recommendation

Staff recommends that the City Council adopt the proposed resolution that designates the *Clackamas Review* and *The Oregonian* as the City of Milwaukie's papers of record. Both newspapers meet the City's public notice needs and State statute requirements.

RESOLUTION NO. 1-2003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE *CLACKAMAS REVIEW* AND *THE OREGONIAN* AS THE PAPERS OF RECORD FOR THE CITY OF MILWAUKIE.

WHEREAS, ORS 192.620, Public Meetings Law Policy, requires an "Informed public aware of the deliberations and decisions of the governing bodies"; and

WHEREAS, ORS 193.010 defines a newspaper of general circulation, and ORS 193-020 defines a newspaper in which public notices may be published; and

WHEREAS, both the *Clackamas Review* and *The Oregonian* meet the needs of the City and the requirements of State statutes,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the *Clackamas Review* and *The Oregonian* as the papers of record for the City of Milwaukie.

Introduced and adopted by the City Council on January 7, 2003.

This resolution is effective on January 7, 2003.

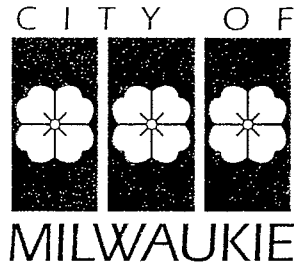
James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP



MEMORANDUM

To: Mayor and City Council
From: Pat DuVal, City Recorder
Through: Mike Swanson, City Manager
Subject: Establishing Regular Meetings
Date: December 16, 2002

Action Requested

Adopt a resolution which continues current practice regarding regular Council meeting dates.

Background

Chapter VI, Section 20, of the Milwaukie Charter calls for regular meetings at least twice a month at a time and place the Council designates. The current Milwaukie Code Section 2.04.070 sets the regular meetings as the first and third Tuesdays of each month.

Recommendation

The City Council may continue the current practice by adopting the attached resolution. If the Council wishes to change the meeting date, time, or place, then the Council should direct staff to prepare an ordinance modifying the Municipal Code.

RESOLUTION NO. 2-2003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE.

WHEREAS, Section 20 of the Milwaukie City Charter requires the City Council to hold a regular meeting at least twice each month in the City at a time and at a place which it designates,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Milwaukie, Oregon, designates the regular Council session will be called to order at 6:00 p.m. on the first and third Tuesdays of each month at the Milwaukie City Hall or designated alternate location as required by the Public Meetings Laws of the State of Oregon.

Introduced and adopted by the City Council on January 7, 2003.

This resolution is effective on January 7, 2003.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP



TO: Mayor and City Council

THROUGH: Mike Swanson, City Manager
 Alice Rouyer, Director of Community Development and Public Works *arp*
 John Gessner, Planning Director *JG*

FROM: Kenneth Kent, Associate Planner *KK*

DATE: January 7, 2003

SUBJECT: File: MLP-02-07
 Applicant: Phillip Reich
 Site Address: 5650 SE King Road
 NDA: Linwood

Action Requested

Deny the appeal of the Planning Commission's decision on MLP-02-07 and adopt the recommended findings. (See Exhibit A)

Background

The Planning Commission denied a request for a three-lot minor land partition with two flag lots on October 22, 2002. See Exhibit D for Planning Commission Staff report. The applicant filed an appeal on November 6, 2002, (Exhibit B) which states the following reason for the appeal:

“Denial by Board in contradiction to allowed partition requirements for this partition.”

Project Description

The applicant is proposing to create three parcels from an existing 1.06 acre property on the south side of King Road, west of Stanley Avenue. Proposed Lot 1 contains an existing single-family dwelling, several detached structures and fronts on King Road. Proposed Lots 2 and 3 are flag lots, with access to be provided through combined flagpoles with a total width of 30 feet, and a shared 12-foot wide paved driveway.

V. 2

The applicant proposes to satisfy flag lot standards relating to future development potential by dedicating 15 feet of right-of-way along the east property line as an interim measure to allow for development of a public street in the future. The applicant's plan indicates that the property to the east would provide 15 feet of dedication at the time of its development for a total right-of-way of 30 feet.

Analysis

1. The Planning Commission's denial is based on the following:

- There is future development potential on adjacent property that can be served by a jointly dedicated public street. The Subdivision Ordinance requires access to adjacent properties be considered for flag lot applications
- The applicant has not demonstrated that access by means of a public street is not possible, as required by city code.
- Creation of flag lots as an interim measure does not assure construction of a public street that would provide suitable access and avoid other flag lots.
- The applicant's proposal does not assure future street development that supports anticipated development.

See Exhibit C for the Commission's adopted findings in support of denial.

2. The applicant made the following arguments at the Planning Commission hearing:

- A 30 foot right-of-way is adequate for future street development and should be split between the applicant's property and the property to the east.
- The applicant will install sewer and water mains. The neighboring property to the east should provide all street improvements at the time they develop. The applicant believes this would be an equitable split of street development costs.
- The right-of-way proposed by staff would not meet setback requirements.

3. The following addresses issues raised by the applicant. See verbatim minutes for issues raised and discussed at the Planning Commission meeting. (Exhibit E)

A. Applicant's Proposed 30-foot Right-of-Way

1. The applicant indicated to the Planning Commission that staff had recommended a 30-foot right-of-way. Staff's recommendation to the applicant was to locate the right-of-way entirely on his property. The Engineering Division formally

recommended to the Planning Commission a 26.5-foot right-of-way as the minimum needed to provide access and on-street parking.

As identified in the Planning Commission staff report and at the public hearing, the applicant's proposed right-of-way does not provide adequate width to construct an adequate street to serve anticipated development.

2. The applicant proposes to provide for future development potential by dedicating 15 feet of right-of-way and installing sewer and water mains. The applicant proposes that the neighboring property to the east dedicate an additional 15 feet of right-of-way at the time they develop and complete all street improvements within the total 30-foot right-of-way.

At the time the property to the east develops, the City would only be able to require street improvements within the portion of right-of-way they dedicate. The City could not compel them to pave and improve the portion of right-of-way dedicated by the applicant as well.

The applicant's proposed 15-foot dedication and deferred construction of the road at the time the neighboring lot develops does not meet city standards.

The Planning Commission found that a shared 30-foot right-of-way is not adequate for construction of a public street to serve anticipated development on both properties. The Commission also found that the applicant's cost sharing proposal for deferred street improvements is not viable.

B. Variances Needed with Recommended Right-of-Way

The applicant identified potential setback issues with the right-of-way proposed by staff. As noted in the Planning Commission staff report, variances would be needed due to dimensional limitations of the parent lot. (See Exhibit D, Page 4) Staff believes the applicant will be able to demonstrate grounds for granting a variance.

Decision-Making Process

The Council has three decision-making options as follows:

1. Deny the appeal, upholding the Planning Commission's decision to deny the requested minor land partition.
2. Grant the appeal, overturning the Planning Commission decision and approving the minor land partition as requested.
3. Grant the appeal and approve a minor land partition, but with conditions that propose a different layout than requested.

V. 4

The final decision on this application must be made by January 21, 2003 in accordance with Oregon Revised Statutes.

Concurrence

The Public Works Department has provided comments regarding street and utility improvements that would be necessary to develop a public street and proposed lots (See Exhibit D, Attachment 6).

Comments

One letter was received from the Linwood NDA regarding the appeal. (Exhibit G) Comments provided for the Planning Commission hearing are included in Exhibit D, Attachment 7.

Exhibits

- A. Findings in support of Denial, Upholding Planning Commission Decision
- B. Appeal
- C. Planning Commission Notice of Decision
- D. Planning Commission Staff Report
- E. Planning Commission Minutes, October 22, 2002
- F. Figure 4, Transportation Design Manual
- G. Correspondence

EXHIBIT A

Reich Minor Land Partition Appeal for MLP-02-07

Recommended Findings in Support of Denial

1. The Planning Commission held a public hearing on October 22, 2002 and denied application MLP-02-07.
2. The applicant filed an appeal and required fee in accordance with Milwaukie Zoning Ordinance 19.1002 on November 6, 2002.
3. Public notice has been provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.
4. A public hearing was held by the Milwaukie City Council on January 7, 2003.
5. The appellant has not demonstrated that the Planning Commission's denial of MLP-02-07 was in contradiction to Subdivision Ordinance partitioning standards.
6. Findings in support of denial adopted by the Planning Commission on October 22, 2002 are adopted as part of these findings, including:
 - a. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
 - b. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
 - c. There is future development potential on adjacent property that can be served by a jointly dedicated public street.

The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.
 - d. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
 - e. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
 - f. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.
7. Access by means of a dedicated public street is possible because a public street could be built to access the additional lots, subject to the applicant demonstrating grounds for granting a variance.

V. 6

PP

EXHIBIT B

City of Milwaukie

Appeal Application

Date: 11-6-02

Milwaukie Community Development Department
City Hall
10722 SE Main St.
Milwaukie OR 97222

Re: File No.(s): MLP-02-07

The undersigned hereby appeal(s) the decision of (check one): Community Development Director, Planning Commission, concerning the action to (check one): approve, deny the above referenced file(s) on the following date: 10-22-02.

Please set a date for the required public hearing for review of this appeal. I have enclosed the appeal filing fee of \$505.

The reasons for this appeal are identified as follows:

BY BOARD
DENIAL IN CONTRADICTION TO ALLOWED
PARTITION REQUIREMENTS FOR THIS PARTITION.
DOCUMENTATION WILL FOLLOW.

I will , will not (check one) be providing additional written materials prior to the public hearing.

Sincerely,

[Signature]
Signature(s)

5650 SE KING RD
Address(es)
MILWAUKIE, OR 97222
503-653-5650



V. 7

October 23, 2002

File(s): MLP-02-07

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 22, 2002.

Applicant(s): Phillip Reich
Location(s): 5650 SE King Road
Tax Lot(s): 12E30DC 04100
Application Type(s): Minor Land Partition
Decision: Denied
Review Criteria: Milwaukie Zoning Ordinance:

- 19.302 - Residential Zone R-7
- 19.1011.3 - Minor Quasi-Judicial Review

Milwaukie Subdivision Ordinance Sections

- 17.32 - Partitioning

Neighborhood(s): Linwood

The Planning Commission's decision on this matter may be appealed to the Milwaukie City Council. An appeal of this action must be filed within 15 days of the date of this notice, as shown below.

Appeal period closes: 5:00 p.m., November 7, 2002

Appeals to the City Council must be accompanied by the appeal fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning Department. Milwaukie Planning staff (503-786-7630) can provide information regarding forms, fees, and the appeal process.

Findings in Support of Denial

1. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
2. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
3. There is future development potential on adjacent property that can be served by a jointly dedicated public street.

The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.

4. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
5. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
6. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.



John Gessner
Planning Director

cc: Applicant
Planning Commission
Alice Rouyer, Director of Community
Development and Public Works
Paul Roeger, P.E., Civil Engineer
Brion Barnett, Civil Engineer
Robert Mendenhal, Building Official
Bonnie Lanz, Permit Specialist
Tony Cordie, Deputy Fire Marshal
NDA(s): Linwood
Interested Persons
File(s): MLP-02-07

EXHIBIT D

V. 9



TO: Milwaukie Planning Commission

THROUGH: John Gessner, Planning Director *JGS*

FROM: Kenneth Kent, Associate Planner *KK*

DATE: October 22, 2002

SUBJECT: File: MLP-02-07
Applicant: Phillip Reich
Site Address: 5650 SE King Road
NDA: Linwood

I. Action Requested

Deny MLP-02-07 and adopt recommended findings in support of Denial. (See Attachment 1)

II. BACKGROUND

1. Key Issues

- a. The applicant is proposing to develop a three-lot minor land partition with two flag lots.
- b. The application was submitted prior to adoption of new flag lot regulations under Ordinance 1907. The proposal is subject to Subdivision regulation in effect prior to August 21, 2002.
- c. There is future development potential on adjacent property that could be served by a jointly dedicated public right-of-way. Staff believes that creation of a public street is necessary to develop the property.

- d. The applicant is requesting that flag lots be approved as an interim measure, designed to allow for a future street, with dedication of public right-of-way only, with street construction occurring when adjacent property develops in the future.
- e. Staff believes, that the applicant has not adequately demonstrated that the proposed right-of-way dedication will provide for future development of a street to serve the partition.

2. Summary Description

a. Project Information

Location: 5650 SE King Road
Property Owner: Phillip Reich
Applicant: Bruce Nowell
Zone: Residential R-7
Lot Size: 1.06 Acres (46,000 square feet)
Proposed Use: Three lot minor land partition with two flag lots

The applicant is proposing to create three parcels from an existing 1.06 acre property on the south side of King Road, west of Stanley Avenue. Proposed Lot 1, containing an existing single-family dwelling, a detached shop and carport, a detached two-story garage and detached shed, is approximately 19,400 square feet in area. Lot 2 is proposed as a flag lot with a flag area of 8,245 square feet (excluding the flag pole access). Lot 3 is proposed as a flag lot with a flag area of 9,000 square feet (excluding the flag pole access).

Access to the two flag lots will be provided through a shared 30-foot wide access, with a 12-foot wide paved driveway. The flagpole for Lot 2 will be 20 feet wide and Lot 3 will be 10 wide for total of 30 feet.

To satisfy flag lot standards relating to future development potential, the applicant is proposing to dedicate 15 feet of right-of-way as an interim measure, under the provisions of Section 17.32.040 to allow for development of a public street in the future. The applicant's plan indicates that the property to the east would provide 15 feet of dedication at the time of its development for a total right-of-way of 30 feet.

b. Zoning & Site History

The property is zoned Residential R-7 and was annexed into the City in the 1980s. The properties on each side of the lot are the same size and dimensions. The property to the west is located outside the City but is within

the City's urban growth management area. The property to the east is within the City and zoned Residential R-7. (See Attachment 3)

Correspondence received (See Attachment 7) alleges that the detached 2-story garage is being used as a separate dwelling unit, which is not permitted in the R-7 Zone. The City has record of a building permit for the detached two-story garage approved in 1993. The permit notes that no kitchen facilities are allowed. Staff has investigated and determined that the building has been illegally converted to a dwelling unit. Code enforcement has been initiated.

See Attachment 4 and 5 for the site plan and the applicant's narrative for further project information.

3. Analysis of Key Issues

A summary of key zoning issues follows:

a. Compliance with Subdivision Ordinance

Future Development (Section 17.32.040.A)

Flag lot development may be approved if it can be shown that access by means of a public street is not possible. Consideration is also given to the future development potential of surrounding properties. Flag lot development cannot preclude other inaccessible adjacent or nearby properties from developing, when suitable access could be provided by a jointly dedicated right-of-way.

Staff has determined that the applicant's property and the adjoining property to the east are of sufficient size and configuration to warrant construction of a public street. The adjacent lot is 100 feet wide and 460 feet in deep. A jointly dedicated right-of-way can be accommodated on both properties. The adjacent lot contains a house and detached garage that would need to be relocated or removed to accommodate the additional right-of-way for the remainder of the street in order to meet a street side yard setback.

The applicant was advised that staff would not recommend approval without development of a public street into the site, in accordance with Subdivision Ordinance 17.32.040.A.

The applicant requests that the Planning Commission consider approval of flag lots as an interim measure under the provisions of Section 17.32.040 which states:

“...Where there is the potential for future development on adjacent lots with new roadway development, flag lots may be allowed as an interim measure. In this case, Planning Commission review, as specified in Section 17.32.050, shall be required and the flag lot(s) must be designed to allow for future street development. Dedication of the future street right-of-way will be required as part of final plat approval.”

The applicant is proposes to dedicate 15 feet of right-of-way to provide for future development of a street when the adjacent property to the east develops. The applicant's revised site plan (Attachment 4) shows a potential 30-foot wide street with a hammerhead turn-around.

Staff believes that a street should be developed at this time as part of lot creation. There is potential for 6 to 10 lots to be developed on the two properties. Staff believes that an adequate street can be constructed at this time to serve the proposed partition. See Public Works comments (Attachment 6) for recommended right-of-way and street section. It should be noted that variances would be needed due to dimensional limitations of the parent lot.

Additional right-of-way acquired from the adjacent property in the future, would allow adequate right-of-way to serve the potential development of the properties. The applicant's proposed right-of-way width of 15 feet does not provide adequate width to construct a street at this time.

Staff is concerned that the applicant's proposal to dedicate right-of-way alone will not assure development of the street in the future, and that there are practical difficulties with flag lot approval as an interim measure. Although right-of-way would be acquired with the applicant's proposal, how the improvements would be funded and constructed are not addressed. In addition, at the time the right-of-way is developed, the disposition of the flag access strip for lot 2 that is not within the proposed dedication would need to be addressed, by either reversion to the parent lot or as additional right-of-way dedication.

At the time a property develops, the owner is responsible for funding required right-of-way improvements along their frontage. Each property can be held responsible for work necessary to center of the right-of-way. Unless funds are established at the time the right-of-way is dedicated, it is not clear how funding could be acquired. The adjacent property would be required to improve their portion of right-of-way at the time of development, but could not be held responsible for the remainder of right-of-way that would be dedicated with the applicant's proposal. One option to be considered to fund future right-of-way development is formation for an improvement district. This would require all property owners to agree to the district and their responsibility to fund

improvements. However, improvement districts are not typically established for such small projects.

Staff recognizes that the cost of improving a public street to serve the proposed new lots may be high given current land values. Although, the applicant could create one additional lot that may help offset the costs of street improvements, this may not meet the applicant's current needs.

Given the practical difficulties identified above, and the fact that a public street can be developed at this time, staff does not recommend approval of flag lots as an interim measure. Approval of flag lots as an interim measure may be appropriate when it is not possible to building a street at the time of lot creation.

Although, the applicant's proposed lot layout meets the dimensional requirements for lot area, dimension and joint access width for two flag lots, as noted above, the proposal does not meet approval criteria relating to future development. See Attachment 2 for staff zoning summary.

c. Transportation Planning, Design Standards and Procedures

Under Section 19.1400 of the Zoning Ordinance, creation of new lots requires that transportation facilities, including right-of-way, curbs and sidewalk meet current standards at the time the new lots are established. King Road is designated an arterial with a minimum right-of-way of 73 feet. The existing right-of-way is 60- feet. The applicant is required to dedicate 6.5 feet, which is half the needed right-of-way to provide the ultimate 73 feet when property on the north side of King Road develops. Required improvements along King Road will include a 6-foot wide setback sidewalk and a 6-foot wide landscape strip.

4. Code Authority And Decision-Making Process

Milwaukie Zoning Ordinance Sections

- 302 - Residential Zone R-7
- 1011.3 - Minor Quasi-Judicial Review

Milwaukie Subdivision Ordinance Sections

- 17.32 - Partitioning

Under Section 17.32.040 of the Subdivision Ordinance, development of flag lots as an interim measure is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with approval criteria of the code sections identified above. In quasi-

judicial reviews, the Commission assesses the application against applicable approval criteria and evaluates testimony and evidence received at the public hearing. The Commission has three decision-making options as follows:

1. Approve the application upon finding that all approval criteria have been met.
2. Approve the application subject to conditions when they are needed for compliance with approval criteria.
3. Deny the application upon a finding that they do not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by December 4, 2002 in accordance with Oregon Revised Statutes.

III. Concurrence

This application was reviewed and accepted by Public Works and Fire District. The Fire Marshal has accepted access width, fire hydrant location and turn-around area proposed by the applicant, with the condition that no parking is allowed along the access drive.

IV. Comments

One letter was received regarding this application raising concerns about potential impacts of the proposed lots, including driveway access, impacts of development on their existing trees, adequate fire access, and use of detached garage as a dwelling unit. (See Attachment 6) The Linwood NDA did not comment in writing. However, staff spoke with Land Use Chair Bob Hatz, who indicated the NDA did not have objection to flag lots, but had concern that there was adequate access width and use of the 2-story garage as a dwelling unit.

IX. ATTACHMENTS

1. Findings in support of Denial
2. Zoning Summary
3. Location Map
4. Applicant's Revised Site Plan
5. Applicant's Narrative and Plans
6. Public Works Comments
7. Correspondence

ATTACHMENT 1**Reich Minor Land Partition
MLP-02-07****Recommended Findings in Support of Denial**

1. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
2. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
3. There is future development potential on adjacent property that can be served by a jointly dedicated public street.
The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.
4. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
5. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
6. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.

ATTACHMENT 2

Zoning Compliance Report
MLP-02-07

The following report identifies how the project complies with applicable sections of the Zoning Ordinance.

Section 19.302 – Residential Zone - R-7

Proposed lot 1 containing an existing residence, meets all of the requirements for the R-7 Zone, including minimum lot size, width/depth, yard requirements and minimum vegetation.

Proposed lots comply with the R-7 dimensional lot requirements as follows:

LOT	AREA (excluding flag pole)	LOT WIDTH		LOT DEPTH	
		Proposed	Required	Proposed	Required
1	19,040 sq. ft.	70 ft.	80 ft.	272 ft	80 ft.
2	8,245 sq. ft.	85 ft.	80 ft.	97 ft.	800 ft.
3	9,000 sq. ft.	100 ft.	80 ft.	90 ft.	80 ft.

The applicant has identified existing structures along the west property line on lot 1 that do not meet current setback standards. However, these structures were established when the property was outside city jurisdiction, prior to annexation and are therefore, legal non-conforming. The proposed rear setback of lot 1 is approximately 47 feet, which meets the minimum 20-foot requirement. The proposed east side yard is 21 feet, meeting the minimum setback requirement of 10 feet.

Subdivision Ordinance

Chapter 17.32 Partitioning

Section 17.32.040 – Administrative Approval

A. Future development

There is future development potential on adjacent property to the east. For further discussion, see Planning Commission Staff Report sections 3a. And 3b.

B. Lot Size

Excluding the flag pole, the proposed lots meet the minimum lot size of the R-7 Zone as follows:

Lot 1: 20,400 square feet

Lot 2: 8,245 square feet

Lot 3: 9,000 square feet

C. Front Yard

This section requires that the front lot line of a flag lot be the lot line that is most parallel and closest to the street, unless it is not practical due to placement of structures, topography, lot configurations or similar reasons. Both proposed flag lots have sufficient depth to have the front lot line most parallel and closest to the street. However, the applicant proposed to orient the front lot line to the east in order to preserve existing tree.

D. Parking

Proposed Lot 1 provides minimum off-street in accordance with Section 19.500. Proposed Lots 2 and 3 will be required to provide off-street parking at the time of development.

E. Screening and Buffering

The applicant's plans indicate fencing that meets screening and buffering criteria.

F. Tree Mitigation

The applicant has identified three trees to be removed for development. These include two fruit trees and one cedar tree. This code section requires replacement of removed trees at a 1:1 ratio.

G. Access

This section address single flag lots and is not applicable. (See H below)

H. Two Flag Lots

Two flag lots with abutting access strips require a minimum combined width of 30 feet. The applicant's proposal meets this requirement.

Fire access and turnaround have been reviewed by the Fire Marshal. The applicant is proposing the fire turnaround on the parent lot in front of the existing two-story garage.

I. Improvements

V. 18

See Attachment 5 for comments from Public Works regarding improvements.

J. Three or more Flag Lots

Not applicable

Section 19.1400 – Transportation Planning, Design Standards, and Procedures

Section 19.1403 Applicability

Under Section 19.1403.B, creation of new lots by partition are subject to the standards of Chapter 19.1400.

Section 19.1407.2 Adequacy Requirement

Rights-of-way, streets, sidewalks and necessary public improvements are required to be in place at the time of development.

The applicant has not indicated required right-of-way improvements on the King Road frontage. Compliance with this section requires dedication of 6.5 feet of right-of-way to provide for the ultimate 73 feet for King Road. Construction of a 6-foot wide setback sidewalk with a 6-foot wide landscape strip are required.

Applicant has not demonstrated compliance with Section 19.1400.

V. 20

ATTACHMENT 4



Northwest Automation, Inc. Equipment Design, Repair & General Contracting Services

Oct. 8, 02

RECEIVED

OCT 09 2002

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

Milwaukie Community Development
Kenneth Kent
6101 SE Johnston Creek Blvd.
Milwaukie, OR. 97206

RE: Amendment to Application MLP-02-07
Philip Reich's Flag Lot Partition Narrative:

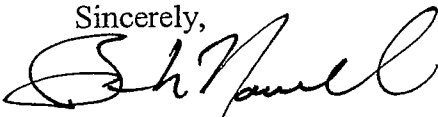
Dear Mr. Kent

Please include and attach to Philip Reich's Flag Lot Partition Narrative the following changes and additions to the Land Use application. These changes and addition are consistent with Chapter 17.32 Section 17.32.040 Flag lots.

1. Dedication of land and public right-of-way by deed to the comprehensive plan in the event the adjacent property to the east should it be developed in the future. Outlined in the attached site plan drawing S-1 is location of the future "Hammer Head" half street.
2. Additional spacing between lots two and three have been given in order to meet required set backs in the event of developing of adjacent property.
3. Utilities mains (sewer and water) could be installed at the request of the City Community Development office prior to full compliance of half street standards.

The above is provided for the planning commission's consideration for approval in lieu full compliance of half street standards. To include a half street in this proposed development would require the dedication land area that would prevent full development this property. The ways proposed would allow full development of both properties in the future and will be an equitable spit of dedicated land between the two properties. Any questions please call me at (503) 381-3994.

Sincerely,



Bruce W. Nowell

V. 12

The lot is located near the highest elevation in the local area. Therefore there are NO flood hazards and base flood elevations to list.

There are NO wetlands, water ways, or flood boundaries for this area.

The improvements added to public right-of-way is the addition of a fire hydrant near the Northeast corner of the property. The electrical service will be trenching along the public right-of-way parallel to the North property line.

Dimensional floor plans of the two preconstructed single family homes will be in the application for foundation permits, upon Site Plan approvals.

Lot 1 square footage = 19,040

Driveway square footage = 4,736.3
 House square footage = 1,024
 Landscaped sq. footage = 13,280 or 70%
 Total structure square footage = 5,760
 Structures lot coverage = 30%

House setbacks (in feet) are:
 North: 50' (front yard)
 East: 16' (side yard)
 South: 47.5' (back yard)
 West: 25'6" (side yard)

Lot 2 square footage = 8,245

Driveway square footage = 680
 House square footage = 1,877
 Landscaped sq. footage = 6,368 or 77.2%
 Total structure square footage = 1,877
 Structures lot coverage = 22.7%

House setbacks (in feet) are:
 North: 5' (side yard)
 East: 31.6' (front yard)
 South: 30' (side yard)
 West: 20' (back yard)
 Structure Height: 14' 6"

Lot 3 square footage = 9,000

Driveway square footage (not including carport) = 1,305
 House square footage = 1,536
 Carport square footage 13.75' x 20' = 275
 External Chimney 5' x 1.5' = 7.5'
 Landscaped sq. footage = 7,182 or 79.8%
 Structures lot coverage = 20%

Total structure square footage = 1,818
 House setbacks (in feet) are as follows:
 North: 30' (side yard)
 East: 49.9' (front yard)
 South: 5'9" (side yard)
 West: 20' (back yard)
 Structure Height: 13'

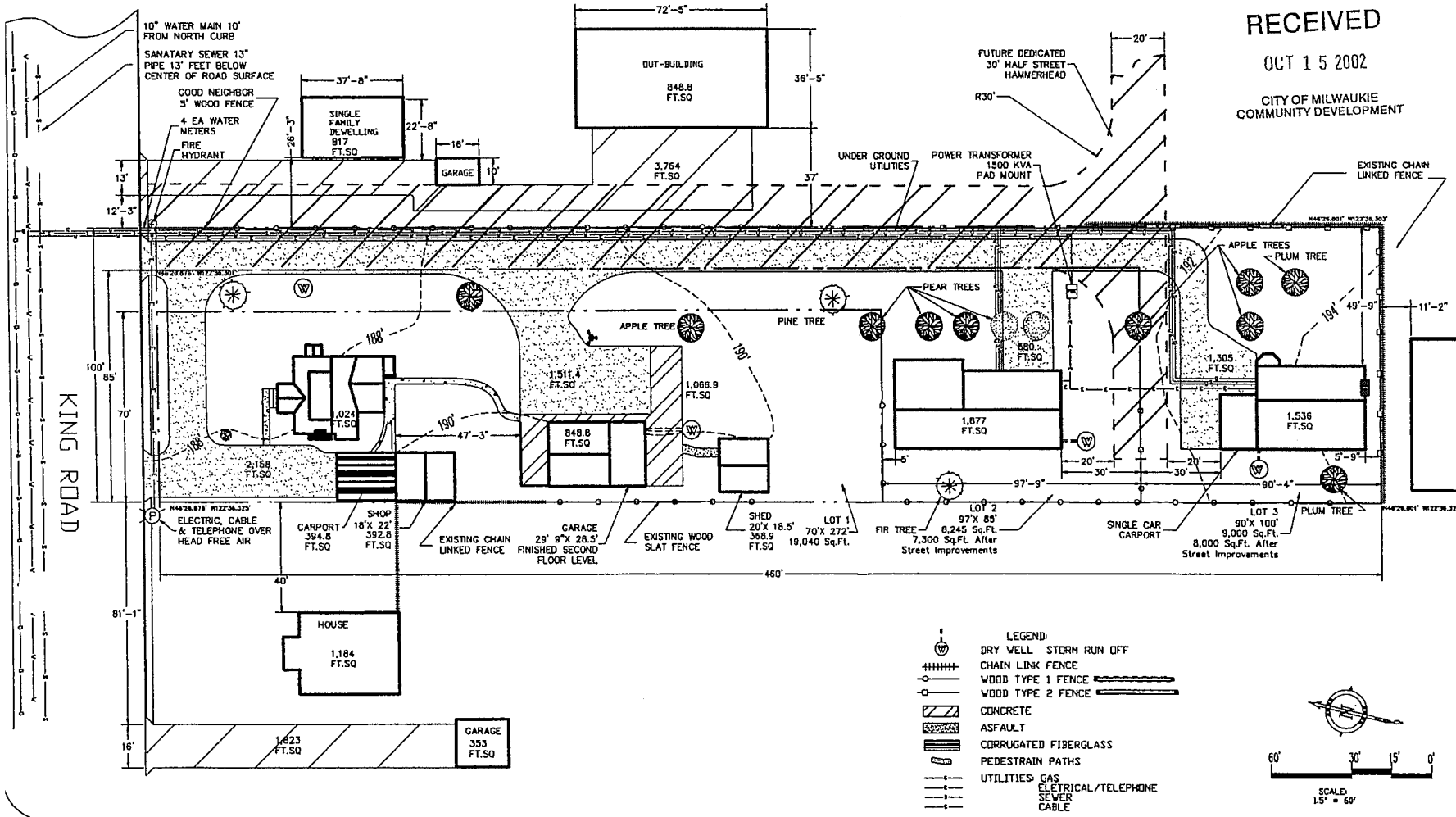
RECEIVED

OCT 15 2002

CITY OF MILWAUKIE
 COMMUNITY DEVELOPMENT

SITE PLAN

REICH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222



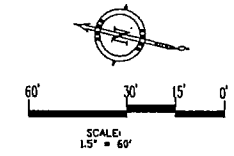
No.	Description/Notes	Date
1	ADDITION OF HAMMER HEAD PROPOSAL & REZONED LOTS	10/22

NORTHWEST AUTOMATION, Inc.
 2335 N Marine Dr.
 Portland, Oregon 97217
 Drawn By: Bruce W. Nowell
 Date: 07/23/02

Sub Division of Real Property
 5650 SE King Road
 Milwaukie, Oregon 97222
 AT
 Map & Tax Lot:
 12230004100
 Zoned R-7

Project	Sheet
10/02/02	S-1

- LEGEND
- ⊕ DRY WELL STORM RUN OFF
 - ++++ CHAIN LINK FENCE
 - WOOD TYPE 1 FENCE
 - WOOD TYPE 2 FENCE
 - ▨ CONCRETE
 - ▧ ASFALT
 - ▩ CORRUGATED FIBERGLASS
 - PEDESTRAIN PATHS
 - UTILITIES: GAS
 - ELECTRICAL/TELEPHONE
 - SEWER
 - CABLE



V. 22

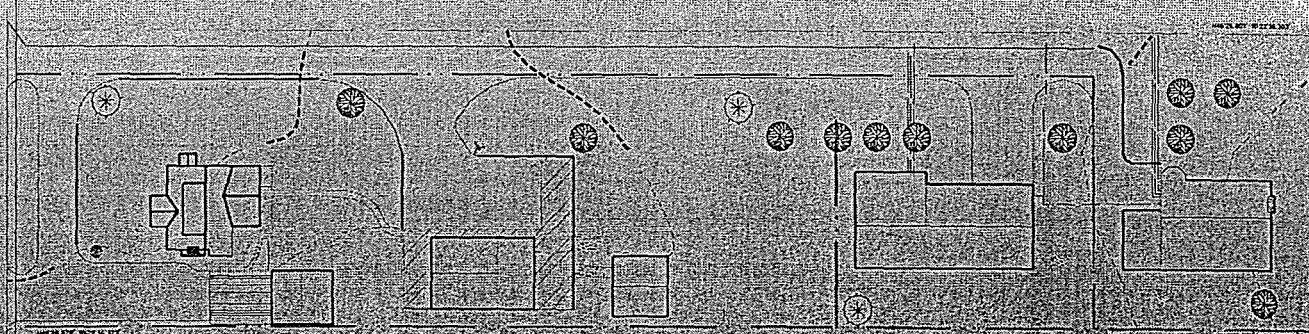
ATTACHMENT 5

RECEIVED
AUG 06 2002
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Flag lot partition documentation of 5650 SE King Road

By Philip Reich Property Owner

Reich Enterprises July 30, 2002



Flag lot partition documentation
of
5650 SE King Road

V. 23

By Philip Reich Property Owner
Reich Enterprises July 30, 2002

Existing uses of property:

The existing property is a one-(1) acre lot, and zoned R7. This lot has the following structures and landscaping:

- A single-family house, with a detached work shop.
- A detached two-car garage that includes a second story with accommodations for an office and/or lodging above garage and potting shed located on the main floor.
- And a gardening shed. This wooden shelter was constructed without any solid foundation.
- The southern portion of the lot is planted grass and (15) trees, fruit, evergreens and other tree types, and has a garden area. This lot was used for horse pasture land some thirty years previously.

Existing non-conforming setbacks:

1. The shop was built in the early 1920's, and was not built by today's standards. The shop does not meet the existing set-back requirements; it sits one-(1) foot or less from the property line.
2. The shed was built prior to the 1940, and also does not meet existing set-back requirements; it too sits one-(1) foot or less from the property line.

Note:

The setback requirements did not exist when these structures were built, and are grand fathered as-built. This property was annexed by the City of Milwaukie in the early 1980's, and all prior development was done under the aegis of Clackamas County.

Proposed utility placement:

The utilities will come from under King Road and the utility pole a few feet from the northwest corner of the lot. The water supply is ten-(10) inch main located on the north side of King Road ten-(10) feet from the curb. The sanitary sewer line runs thirteen-(13) feet under median of King Road.

All the utilities will run under ground in a parallel southerly direction between the flag pole and the east property line. The existing water meter will need to be relocated to the East and three-(3) new meters installed, one of which will be for

V. 24

irrigation of the existing 5650 lot. A new fire hydrant is to be located in the East public right-of-way and fed with a six-(6) inch pipe.

All utilities will be run in a single forty-inch wide trench. Two (4) inch diameter sewer lines will occupy the east side of the trench, and buried approximately four-(4) feet deep. Cleanout access ports will be provided every one hundred-(100) feet. Three-(3) water pipes are to occupy the middle leaving twelve-(12) inches of horizontal clearance for the sewer lines buried two feet below. The electrical feeder will be on the west side at thirty-six-(36) inches, and cable, telephone, and gas services will run between the water and electrical services at least 18 inches deep. This strategy has been discussed and verbally approved by the plumbing inspector, and all mentioned utility companies.

Approval Criteria:

Flag lot requirements:

A. Future Development:

The proposed development will not preclude or hinder any future development on this or adjacent properties. There is no access via an existing street, and development of a dedicated street is not possible or prudent due to existing structures and the width of the property (100 feet). Should the neighbor to the East of the property decide at a future time to partition this property, he could combine his development with the flag lot easements to create a "half-street", as the flags are adjacent to his property line. The neighbor had declared there are no plans to nor does not wish to develop this property.

B. Lot Size:

The dimension of the new southern most lot called Lot 3 from this point on is a 100' x 80', or 8,000 square feet; this does not include the flag of 15' x 380'. Dimension of the adjacent new lot to the north referred to as Lot 2 is 90' x 85', or 7,650 square feet, this does not include the flag of 15' x 290'. Both lots fall within the R7 guidelines.

C. Front Yard:

- a. The front yards of both Lot 2 and Lot 3 are in the middle and to the east of their lots. The intent of this placement is to save the mature trees (both evergreen and fruit trees) on the east side of the property. These front yards will then abut the existing east property line – the same neighboring property that the flag abuts. This meets the requirement of the last sentence of the guidelines.

- b. The front yard of the second new lot will also be oriented to the east for the same reasons.

D. Parking:

There will be no parking on the flags. Parking spaces will be provided on each new lot. There are already sufficient spaces for the existing structures.

E. Screening and Buffering:

There will be a five-(5) foot wide visual and noise buffer between the paved flag driveway and the eastern property line. A five-(5) foot wooden fence will be placed on the eastern property line. A 6-foot wooden fence will be placed on the sides and back of the two new lots.

F. Tree Mitigation:

- a. Lot 3 already has five-(5) mature fruit trees on it, and one that is a 3-inch caliper. Two of the mature trees will need to be taken down to allow for the placement of the house and shared access driveway. Two replacement trees could be added if it found to be necessary.
- b. Lot 2 already has 5 mature trees on it, 1 of which is less than 6 inch caliper (4 fruit and 1 fir).
- c. The already developed lot will need to have one scrub cedar removed which will be replaced with a 2 inch caliber tree being moved from another location of the property. This Curly Willow new location is in the front portion of Lot-1 the northern most lot. A diseased pie cherry tree (75% rotten) will be removed and not replaced. An 18 to 24 inch caliber pine tree is within the thirty-foot of the combined shared flag easement, but is eighteen feet from the eastern property line. Paving 12 feet on the flag, this tree can be preserved. This width has been approved by the District 1 Fire Marshal.

G. Access:

The shared access strip is 30 feet wide, two consolidated 15-foot wide abutting access strips, will be kept clear of obstructions, and will include a shared utility easement and shared access easement and driveway for all three properties. Emergency vehicles will have an area sufficient for turning around -- the existing turnaround in the already developed Lot 1. The emergency equipment turnaround has been approved by District 1 Fire Marshal.

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H. Two flag lots:

The combined width of the access strips will be 30 feet, and a paved driveway twelve-(12) feet wide will be provided. See item "G" regarding the turnaround area.

I. Improvements:

All improvements as stated by the Public Works Department and Fire Marshal's office. A fire hydrant will be installed in the public right-of-way near the northeastern corner of flag of Lot 3. The placement of the hydrant at the property's flag pole entrance more of the community will benefit from its presence. This has been approved by the District 1 Fire Marshal. The installation of the sidewalk and planter improvement required for all new development is a great idea in most cases. In more mature developments where new development is not likely *funds in lieu of* are more appropriate than disrupting the functioning aesthetics of the neighborhood.

A survey by a professional and licensed surveyor (Dick Love) will be done as part of the partitioning process, and will meet the requirements set forth in ORS 92.050.

The Map and Taxlot # is: 12E30DC04100

The legal description of the existing lot follows:

A tract of land located in Sections 30 and 31, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and the State of Oregon, described as follows:
Beginning at the Northeast corner of Lot 9, Block 7, and VACATED MINTHORN ADDITION TO THE CITY OF PORTLAND:
running thence Westerly along the North line of said Block, 100 feet to the Northwest corner of Lot 21 of said Block;
thence in a Southerly direction on a line parallel with Sheridan Street in said addition, 460 feet to the Southwest corner of Lot 37, Block 22, of said addition;
thence in an Easterly direction along the South line of said Block 22, a distance of 100 feet to the Southeast corner of Lot 40 in said Block;
thence Northerly on a line parallel with Sheridan Street in said addition, 460 feet to the place of beginning.

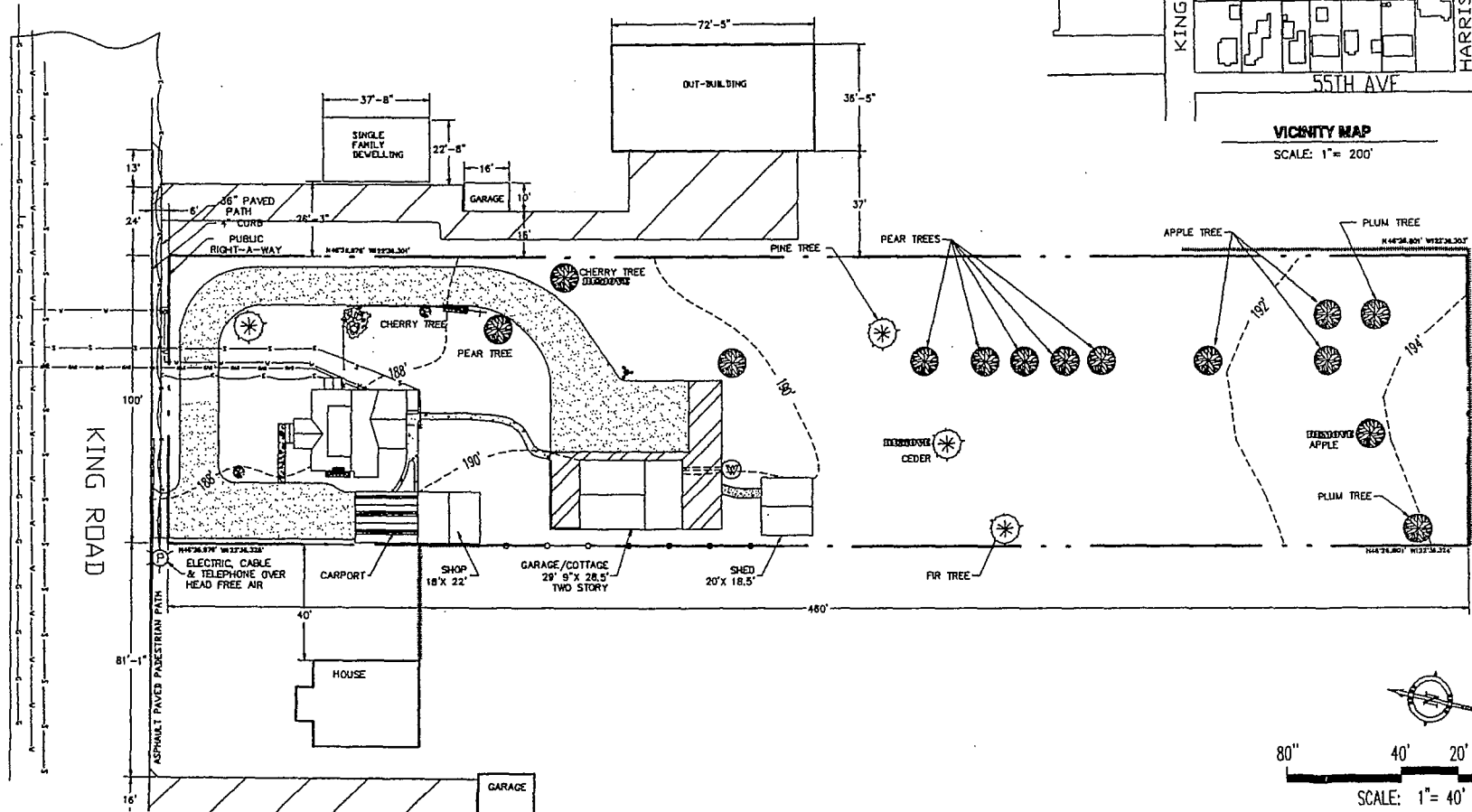
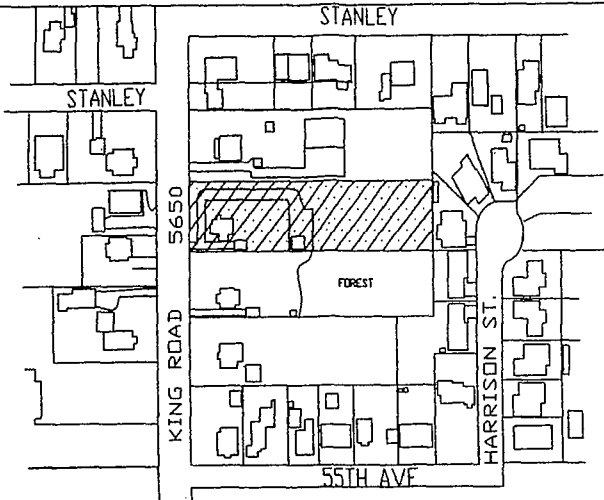
Two easements will be created for this partitioning:

- 1) A utility access easement along the eastern property line five-(5) feet wide, and
- 2) A shared access driveway easement for the entire length of the shared driveway within the flagpole of the new lots.

Map and Taxlot #: 12E30DC04100
 A 100 x 460 ft, 46000 sq ft, 1 acre lot

Legal Description:

A tract of land located in Sections 30 and 31, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and the State of Oregon, described as follows:
 Beginning at the Northeast corner of Lot 9, Block 7, VACATED MINTHORN ADDITION TO THE CITY OF PORTLAND; running thence Westerly along the North line of said Block, 100 feet to the Northwest corner of Lot 21 of said Block; thence in a Southerly direction on a line parallel with Sheridan Street in said addition, 460 feet to the Southwest corner of Lot 37, Block 22, of said addition; thence in an Easterly direction along the South line of said Block 22, a distance of 100 feet to the Southeast corner of Lot 40 in said Block; thence Northerly on a line parallel with Sheridan Street in said addition, 460 feet to the place of beginning.

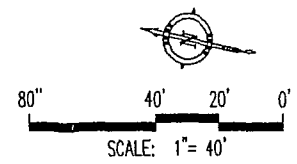


COVER SHEET

REICH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

No.	Portland/Name
NORTHEAST AUTOMATION, 2335 N Marine Dr. Portland, Oregon 97221	
Drawn By: Bruce W. N Date: 07/25/02	
Said Division of Real Property 5650 SE King Road Multnomah, Oregon 97222	
AT Map & Tax Lot 12E30DC04100 Zoned R-7	
Sheet	C-

V. 27



The lot is located near the highest elevation in the local area. Therefore there are NO flood hazards and base flood elevations to list.
 There are NO wetlands, water ways, or flood boundaries for this area.
 The improvements added to public right-of-way is the addition of a fire hydrant near the Northeast corner of the property. The electrical service will be trenchd along the public right-of-way parallel to the North property line.

Dimensional floor plans of the two preconstructed single family homes will be in the application for foundation permits, upon Site Plan approvals.

Lot 1 square footage = 20,300
 Driveway square footage = 4,736.3
 House square footage = 1,024
 Landscaped sq. footage = 14,540 or 71%
 Total structure square footage = 5760
 Structures lot coverage = 28%

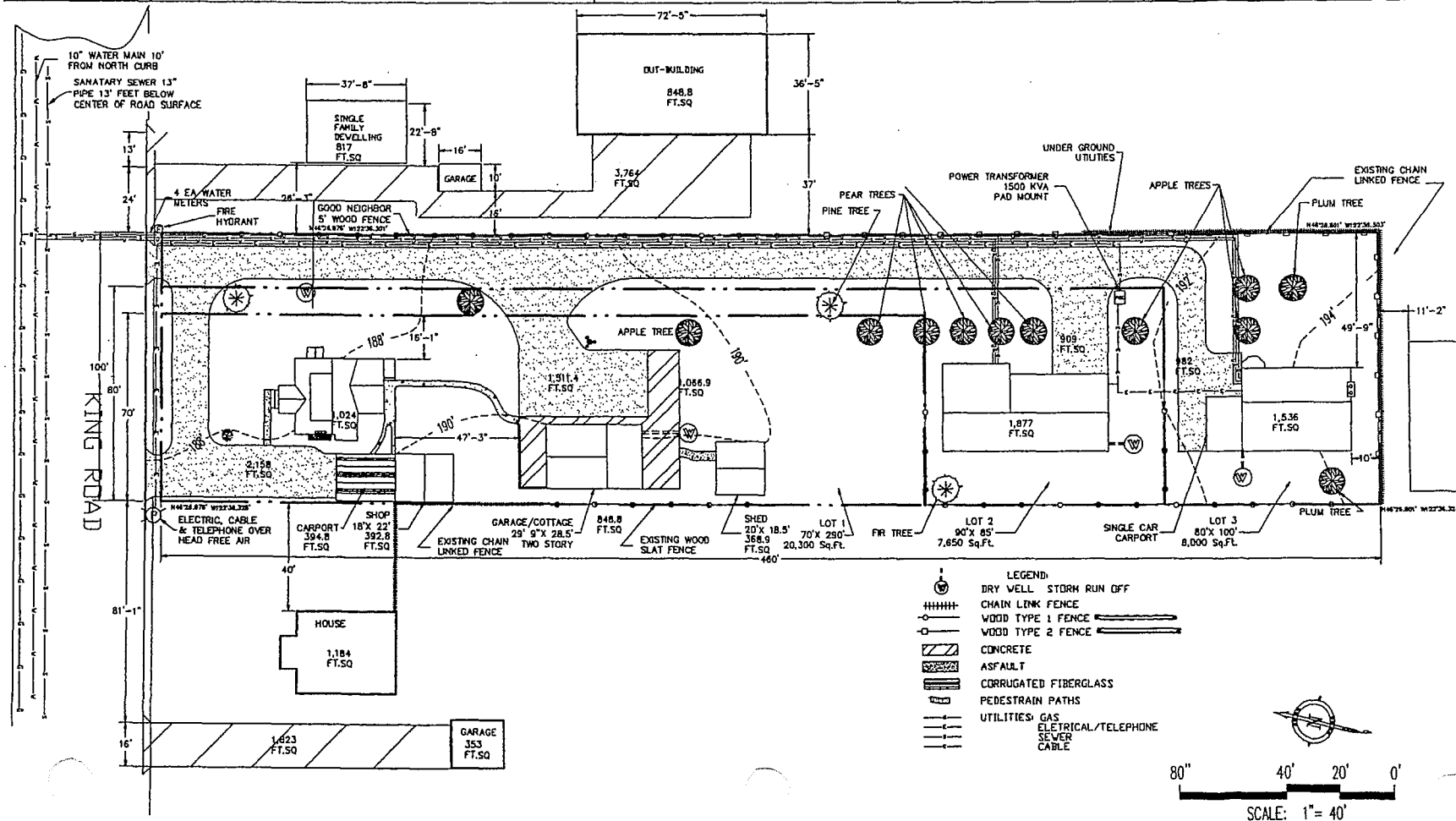
House setbacks (in feet) are:
 North: 50' (front yard)
 East: 16'1" (side yard)
 South: 47.5' (back yard)
 West: 25'6" (side yard)

Lot 2 square footage = 7,650
 Driveway square footage = 1,023
 House square footage = 1,877
 Landscaped sq. footage = 4,750 or 62%
 Total structure square footage = 1,877
 Structures lot coverage = 24.5%

House setbacks (in feet) are:
 North: 10' (side yard)
 East: 31.8' (front yard)
 South: 20.8' (side yard)
 West: 20' (back yard)
 Structure Height: 14' 6"

Lot 3 square footage = 8,000
 Driveway square footage (not including carport) = 1,024
 House square footage = 1,536
 Carport square footage 13.75' x 20' = 275
 External Chimney 5' x 1.5' = 7.5'
 Landscaped sq. footage = 5,258.25 or 65.7%
 Structures lot coverage = 21.5%
 Total structure square footage = 1,818

House setbacks (in feet) are as follows:
 North: 15' (side yard)
 East: 49.9' (front yard)
 South: 10' (side yard)
 West: 20' (back yard)
 Structure Height: 13'



SITE PLAN

REICH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

No.	Revisions/Notes	Date

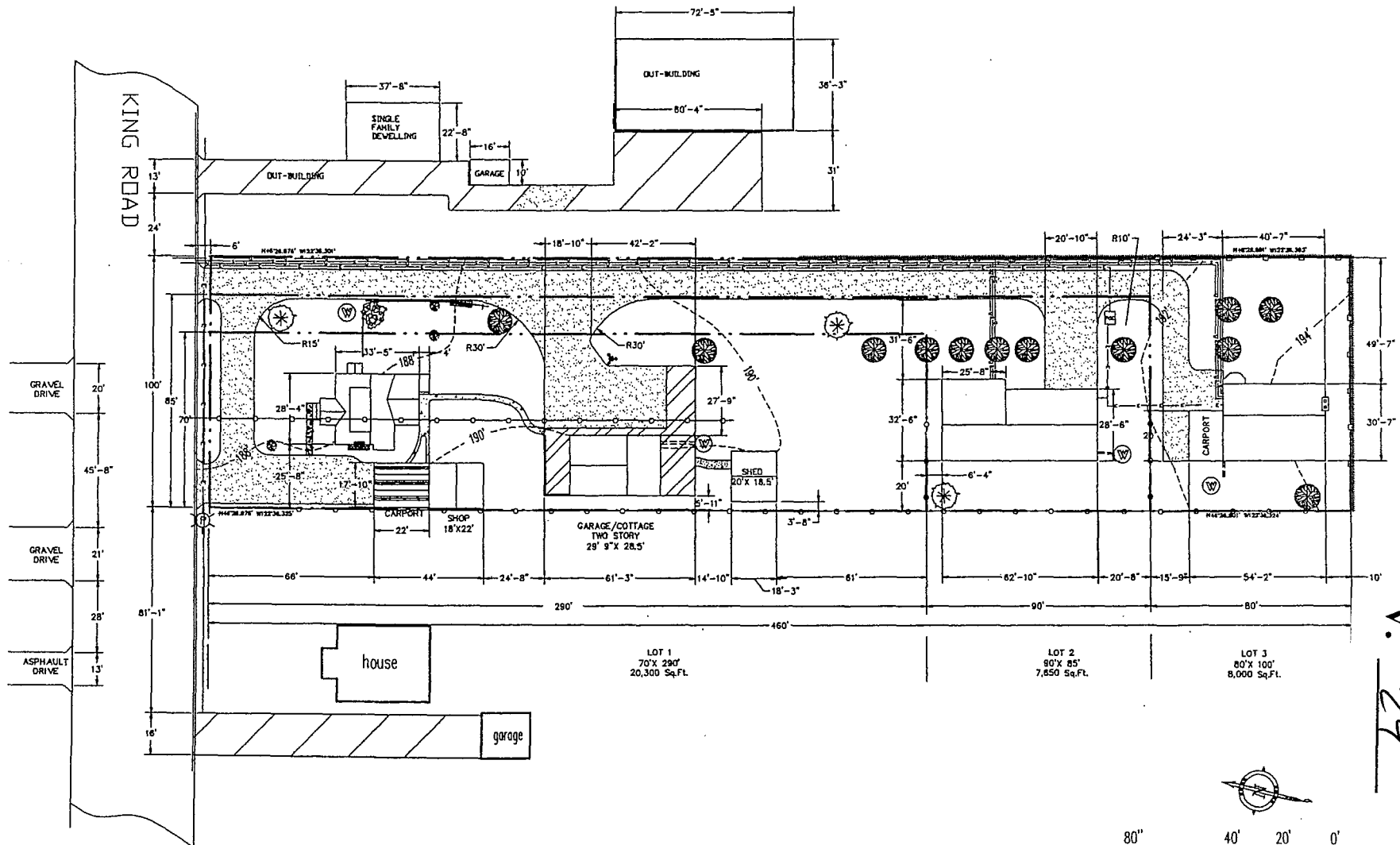
NORTHWEST AUTOMATION, Inc.
 2335 N. Marine Dr.
 Portland, Oregon 97217
 Drawn By: Bruce W. Howe
 Date: 07/25/02

Said Division of Real Property
 9550 SE King Road
 Multnomah, Oregon 97222

AT
 Map 9 Tim Lot
 12500004100
 Zoned R-7

S-1

KING ROAD



DIMENSIONAL LAYOUT

REICH ENTERPRISES
5850 SE KING ROAD
PORTLAND, OREGON 97222

No.	Description/Remarks

NORTHWEST AUTOMATION, I
2333 N Marine Dr.
Portland, Oregon 97217

Drawn By: Bruce W. No
Date: 07/25/02

Sub Division of Real Property
5850 SE King Road
Multnomah, Oregon 97222

AT
Map # Tax Lot:
125500004100
Zoned R-7

Project	Sheet
Date	D-

V.
29



80' 40' 20' 0'
SCALE: 1" = 40'

ATTACHMENT 6MEMORANDUM

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger *PR*
Civil Engineer

RE: MLP-02-07
5650 SE King Road

DATE: October 7, 2002

King Road is an existing 48-foot wide asphalt street with curb and asphalt sidewalks on both sides. It is classified as an "arterial" street. The existing right-of-way width is 60-feet. Table 19.1409.3 of the Milwaukie Municipal Code requires an additional right-of-way dedication of 6.5-feet along the entire frontage to provide for an eventual full right-of-way of 73-feet. The additional dedication will allow for a 6-foot sidewalk and a 6-foot landscape strip.

A new street must be constructed along the east side of this property to serve the new lots. A hammerhead turnaround must be installed at the south end to allow for emergency vehicles to turn around. Right-of-way width must be 26.5-feet with a 26-foot street with curb on the west side only, and a 6-foot curb tight sidewalk installed on an additional 7-foot easement. This allows for two 10-foot travel lanes and a 6-foot parking strip. An additional dedication of 9 to 10-feet from the property to the east will be required at the time the property is developed. This will allow for an additional 2-feet of street width, curb and 6-foot curb tight sidewalk on the east side.

City water is available in King Road from an existing 10-inch main on the north side of the street. A new 6-inch main will be required to the fire hydrant location. A 4-inch main is required to serve the new meters beyond the fire hydrant. The Fire Marshal is requiring a fire hydrant to be located within 250-feet of all buildings. Exact location will be determined at the time of review of the engineered construction drawings. New water meter locations must be shown on the engineered plans, also. The system development charge (SDC) for water for a new single-family residence is \$1,095.00. Meter costs will be assessed at the time the building permit is issued.

City sanitary sewer is available in King Road from an existing 8-inch main in the center of King Road. A manhole must be constructed over the main in King Road with a new 8-inch main extended in the new street with a manhole at the end. Separate laterals must be installed to each of the new lots. The SDC for sanitary sewer for a new single-family residence is \$893.00.

Storm drainage in this area is handled by drywells. Separate drywells must be installed for the existing house and garage, the new houses, and the new street. Catch basins must be installed in the new street to collect the storm water. Sizing of the drywells will be done when reviewing the building permits and the engineered drawings for the street improvements. The storm water SDC is \$473.00 per new single-family residence.

An erosion control plan and permit application must be submitted along with the engineered drawing for the public improvements and with each building permit application. The erosion control must be installed before any earth is disturbed.

The transportation SDC for a new single-family residence is \$1,339.80, and the Parks and Recreation SDC for a new single-family residence is \$950.00. No traffic impact study is required for this minor land partition.

Conditions of approval should be stated as follows:

1. An additional right-of-way dedication of 6.5-feet is required to provide for the new 6-foot setback sidewalk along the entire frontage of King Road.
2. A new street must be dedicated along the east property line 26.5-feet wide with a 7-foot easement adjoining the dedication for sidewalk installation.
3. A new street must be constructed in the newly dedicated right-of-way 26-feet wide with a curb on the west side only. A 6-foot sidewalk must be constructed along the lot with the existing buildings at the time the street is constructed. A 6-foot sidewalk must be constructed along the two southern lots at the time houses are placed on them.
4. A turnaround meeting Fire Department standards must be constructed between the lot for the existing house and the next lot south. The turnaround must also be dedicated as public right-of-way.
5. Engineered plans for all public improvements must be submitted for review and approval before any construction starts.
6. The developer must install the sanitary sewer main and laterals to the property as part of the public improvements construction.
7. The developer must install the water main and services and meters as part of the public improvements construction.
8. Roof drains from the new houses must be piped to a drywell. Street drainage must be collected in catch basins and piped to a drywell.
9. The new driveway approaches must be ADA accessible.
10. The existing house, if it does not have an existing storm system for the rain drains, must pipe the rain drains to a new drywell.
11. All SDCs for the new houses must be paid at the time the building permits are issued.
12. An erosion control plan and permit application must be submitted along with the engineered public improvement plans and with each building permit application.
13. The public improvements must be installed or they must be fully funded, with a 20 percent contingency, before the City will sign the partition plat.

ATTACHMENT 7

OUR PROPERTY IS LOCATED AT 5640 SE KING ROAD, TO THE IMMEDIATE WEST OF 5650 SE KING ROAD. WE HAVE LIVED AT THIS LOCATION SINCE FEBRUARY, 1985. THIS PROPERTY HAS BEEN IN THE FAMILY SINCE 1970.

THE FOLLOWING ARE CONCERNS WE HAVE, WHICH WE WOULD LIKE THE PLANNING DEPARTMENT OF THE CITY OF MILWAUKIE TO CONSIDER PRIOR TO A FINAL DECISION REGARDING THE PROPOSED FLAG LOT APPLICATIONS AT THE STREET LOCATION OF 5650 SE KING ROAD.

1. CONCERN WITH THE LOCATION OF THE PROPOSED DRIVEWAY AND THE BUSY INTERSECTION OF STANLEY AND KING. THE PROPOSED DRIVEWAY TO SERVICE THE PROPOSED FLAG LOTS IS APPROXIMATELY 50 FEET FROM THE INTERSECTION OF STANLEY AND KING, TURNING NORTH. THE LEFT TURN LANE FROM KING TO STANLEY NORTH IS VERY BUSY. OFTEN CARS WILL ENTER THE CENTER TURN LANE AT 55TH TO MAKE THE TURN NORTH ONTO STANLEY FROM KING ROAD.

2. CONCERN WITH HOUSING BUILT BACKING TO OUR EAST PROPERTY LINE. ENCLOSED IS A LETTER OF RECOMMENDATION FROM COLLIER ARBOR CARE. WE HAVE CONCERN REGARDING ROOT DAMAGE THAT COULD BE CAUSED FROM ANY CONSTRUCTION EQUIPMENT OR DIGGING OR SCRAPING AT THE BASE OF THE TREES. WITHIN THE PAST 2 WEEKS, WE HAVE HAD A HUGE DEBRIS PILE POSITIONED UNDER OUR DOUGLAS FIR TREES FROM 5650 SE KING WHICH COULD DAMAGE THE ROOTS AND SUFFOCATE THE TREES. WE WOULD LIKE TO HAVE THIS PILE REMOVED IMMEDIATELY FROM THE PROPERTY TO ENSURE IT IS NOT PUSHED ONTO OUR PROPERTY. WE WOULD LIKE TO HAVE THE PROPERTY OWNER AT 5650 INSTALL A BARRIER FENCE ALONG THE PROPERTY LINE, PRIOR TO ANY ACTIVITIES TO ENSURE THERE ARE NO QUESTIONS BY HEAVY EQUIPMENT DRIVERS OR WORKERS OF THE PROPERTY LINE. THE FENCE WILL BE INSTALLED FOLLOWING AN INDEPENDENT SURVEY BY THE PROPERTY OWNER AT 5650 OF THE PROPERTY LINE. WE WOULD LIKE TO REQUEST THE PERMANENT FENCE BE INSTALLED WITH CONSIDERATION OF OUR TREES AND

VEGETATION. WE WOULD LIKE TO HAVE THE FENCE BE THE TALLEST ALLOWED WITH A LIVING HEDGE TO PROTECT OUR WILDLIFE AND VEGETATION THAT LIVE IN THE FOREST ENVIRONMENT.

3. FIRE DANGER WITH THE FOREST AND THE DRIVEWAY BACK TO THE PROPOSED HOUSES. WE WOULD LIKE TO EXPRESS OUR CONCERNS REGARDING THE WIDTH OF THE DRIVEWAY BACK TO THE END OF THE PROPERTY, BEING WIDE ENOUGH TO ENSURE FIRE EQUIPMENT WOULD HAVE AMPLE ACCESS TO THE REAR OF THE PROPERTY AT ALL TIMES. WE ARE CONCERNED THAT THERE COULD BE A PROBLEM OF CARS BEING PARKED ON THE DRIVEWAY, HAMPERING THE ACCESS FOR FIRE AND/OR RESCUE VEHICLES. WE ASK THAT NO PARKING AT ANY TIME/TOW ZONE SIGNS BE POSTED ALONG THE DRIVEWAY AND THAT CITY POLICE HAVE THE AUTHORITY TO MONITOR OR HAVE ACCESS TO THE DRIVEWAY IF ILLEGAL PARKING IS TAKING PLACE, WITH THE AUTHORITY TO TOW.

4. WE ARE CONCERNED, IF THIS APPLICATION IS APPROVED, THAT THERE IS A TIME LIMIT FOR THE COMPLETION, AND THAT CONSIDERATION FOR NEIGHBORS IS ADDRESSED. WHEN THE GARAGE WAS BUILT, OFTEN HAMMERING AND WORK WOULD CONTINUE PAST 11PM. WE WENT SEVERAL TIMES TO ASK IF WORK COULD PLEASE STOP, DUE TO OUR CHILDREN AND SCHOOL HOURS. WE ALSO WERE UNDER THE ASSUMPTION THAT THE GARAGE MENTIONED ABOVE WAS JUST THAT, A GARAGE, SINCE WE DID NOT RECEIVE ANY NOTIFICATION FROM THE CITY OF MILWAUKIE, WHICH WOULD BE REQUIRED IF IT WAS A LIVING QUARTERS TO BE USED AS A RENTAL. THIS "GARAGE" HAS HAD FULL TIME TENANTS IN THE UPSTAIRS UNIT SINCE IT WAS BUILT.

WE FEEL KING ROAD HAS 4 BEAUTIFUL LOTS OF OVER 1 ACRE EACH (5624 IS SHY OF 1 ACRE) RIGHT NEXT TO EACH OTHER AND THAT IT WOULD BE A SHAME TO SPLIT UP ANY FUTURE POSSIBILITIES THESE LOTS COULD HAVE.

WE SUBMIT THESE CONCERNS TO BE CONSIDERED WHILE

V. 34

REVIEWING THE PROPOSED FLAG LOT APPLICATION
REQUESTED AT 5650 SE KING ROAD. WE WANT TO BE SURE IF
THIS PROJECT IS APPROVED, ALL THE RULES AND
REGULATIONS SET BY THE CITY ARE BEING FOLLOWED AND
MET.

ENCLOSURES INCLUDE PHOTO'S, NEWSPAPER ARTICLE, LETTER
FROM COLLIER ARBOR CARE.

THANK YOU.

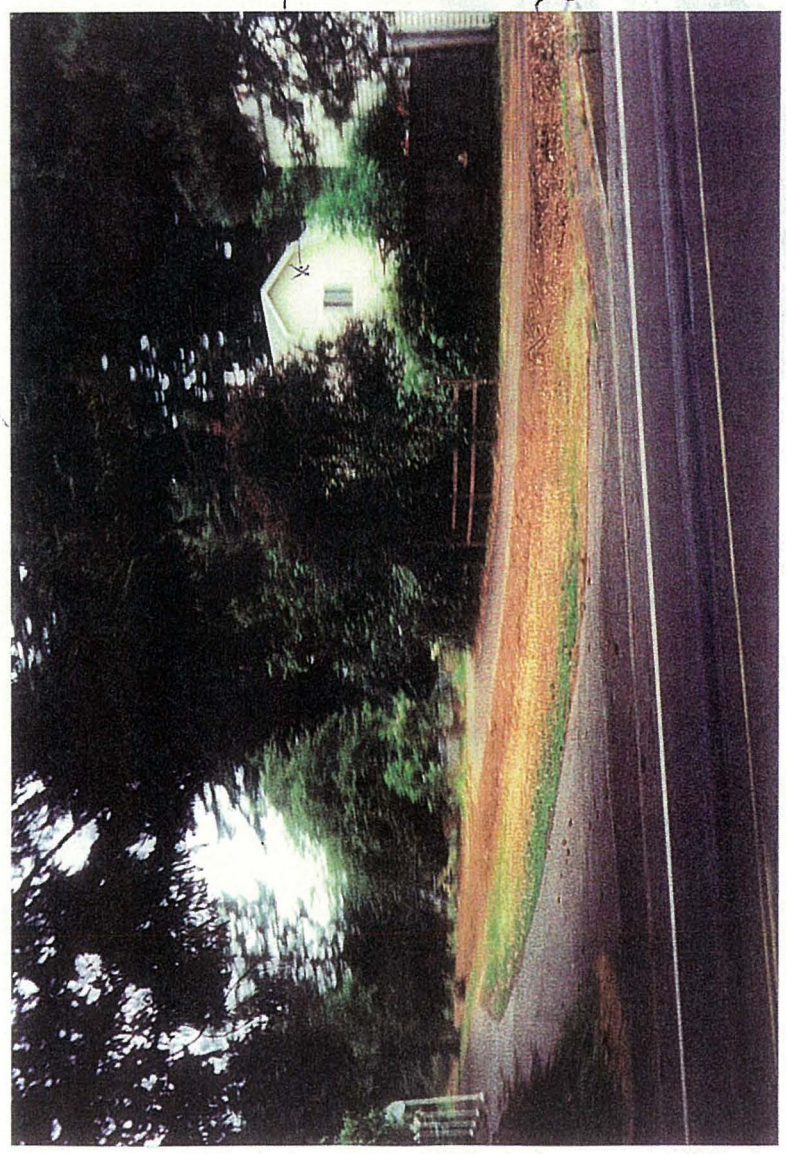
KAREN AND DAN LIEBERT
5640 SE KING ROAD
MILWAUKIE, OREGON 97222
503.654.4578

Forest of 5000
acres
S of King

View from King Road
& Stanley (worth)

"Garage" now used
as living quarters

App. property line



Attachment 7

V. 36



Dan Liebert on
the path in the Forest,
"Oregon Grape" and "Trillium"
in front of Dan

Looking up through
our trees



over path through
the forest





pile of
brush
noted in
concern #2



pile of
brush onto
our trees
noted in
concern #2



V. 39
COLLIER
ARBOR CARE

Environmentally Friendly... Since 1937

11814 SE Jennifer St., Clackamas, OR 97015

August 6, 2002

Karen Liebert
5640 SE King Rd
Milwaukie OR 97222

2002 COLLIER ARBOR CARE PROPOSAL

Below are my recommendations and estimates. If you have any questions or wish to schedule this work, please give us a call.

The following are my recommendations with regards to your trees and the potential home sites to be located adjacent to your property. Given the size and species involved I would recommend the following precautions to be taken to safeguard the health of the trees along your east and west property lines.

- No vehicular traffic, construction equipment movement or material storage occurs within the drip line of any tree along the property lines. The drip line is defined as a vertical line running from the tip of the longest branch down to the soil line. In most cases this distance is approximately 20 feet.
- A barrier fence should be installed around the proposed "No Traffic Area", prior to any activities to ensure that root damage does not occur.
- The brush pile to the east that has been repositioned under the Douglas Firs should be removed to deter possible root suffocation.
- In general, keeping all traffic, trenching and other construction activities as far away from your trees as possible is recommended.

Thank you,

Phil Wich
Certified Arborist

27th ANNUAL STREET OF DREAMS

Venerable trees one of site's big assets

By **KENDRA HOGUE**

STAFF WRITER

Most of the time, landscaping is one of the last things to get done on a home-show site.

But when large, old trees are part of the equation — as they were at this year's Street of Dreams site at Atherton Heights in Lake Oswego — planning for their preservation must be a priority early in the process.

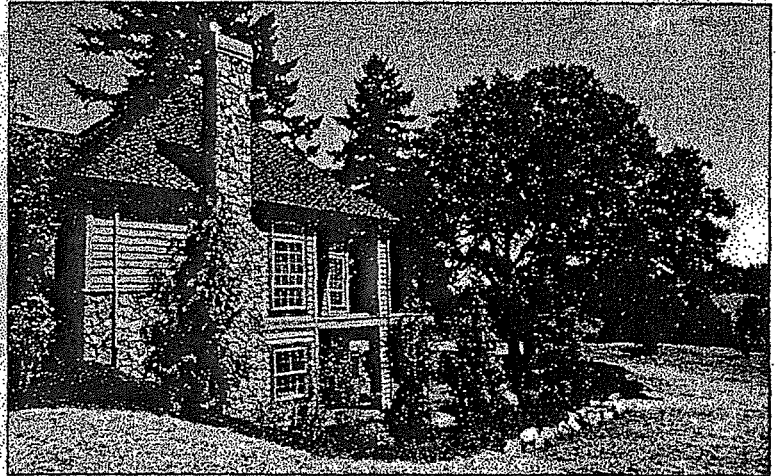
"I was part of the development team," said arborist Terrill Collier, of Collier Arbor Care in Clackamas. "I got involved this time last year."

What Collier did was take an inventory of trees on the 15-acre site and consider which trees should be preserved and how. He then drew up what's called an "arbor plan" or "tree protection plan," something that's required for developments in Lake Oswego and several other communities in the Portland metropolitan area.

"In the last 10 years, this has become a normal thing to do," Collier said. "Part of the reason we do it is it's required by the city of Lake Oswego, but we also had some very nice trees on the Street of Dreams site that would be very nice to preserve."

At the top of Collier's keeper list was a 70-foot-tall Oregon white oak and three large Douglas firs more than 100 feet tall. Collier estimates the oak is 125 to 150 years old and the firs are 70 to 100 years old. A hawthorn and 17 other smaller firs were also preserved. Collier guesses a portion of the site was a former Christmas tree farm.

The oak became a star attraction at the aptly named Cottage by the Tree, by Blazer Development. The



JOHN M. VINCENT

A 70-foot-tall Oregon white oak became the star attraction at the site of Blazer Development's Cottage by the Tree.

tree provides shade over much of the back yard and filters sunlight into the kitchen.

Protecting the trees during the site development and construction process meant tagging them for preservation and erecting a fence around each tree's drip line, the point to which the tree's branches reach. Collier said the distance that needs to be fenced off is usually 1 foot from the tree for every inch in diameter. The oak required a fence 36 feet in diameter.

Collier said the show's contractors also were warned not to compact, dig into or smother potential

root areas, which can reach beyond a tree's drip line. Installing grass and irrigation over the roots of trees unaccustomed to large amounts of water also is a no-no, since it can cause root rot.

The end result, said Collier, is well worth the effort.

"Trees are an amenity to the site, not an impediment," Collier said. "People want to live near trees, not in a clear-cut."

RESOURCES

- Terrill Collier, Collier Arbor Care, 1814 S.E. Jennifer St., Clackamas; 503-722-7267; www.collierarbor.com

EXHIBIT E

CITY OF MILWAUKIE PLANNING COMMISSION
Minutes of October 22, 2002
Page 2

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DRAFT

6.0 PUBLIC HEARINGS

- 6.1 Type of Hearing: Minor Quasi-Judicial
Applicant: Philip Reich
Owner: Philip Reich
Location: 5650 SE King Road
Proposal: The applicant is proposing to partition a one-acre parcel into 3 lots.
File Number: MLP-02-07
NDA: Linnwood

Chair Hammang opened the minor quasi-judicial hearing MLP-02-07 to consider the proposal to allow a minor land partition. The criteria to be addressed can be found in Zoning Ordinance Section 302 - Residential Zone R-3; Section 19.10113 - Minor Quasi-Judicial Review; and Milwaukie Subdivision Ordinance Section 17.32 - Partitioning.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; three hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Ken Kent reviewed the staff report with the Commission. This application is a proposal to create three lots by minor land partition of a 1.06 acre property. The proposal includes two flag lots which would share a joint access way. The application was submitted prior to the recent adoption of new flag lot standards in August and is subject to previous code sections.

Criteria require that it be shown that access by a public street is not possible. Also consideration must be given to surrounding properties of potential development from those adjoining properties through which a jointly dedicated public street could be constructed that would avoid additional flag lots. Staff has determined that a public street is possible and a street can be constructed on this lot at this time. There is development potential on the property to the east. It, in combination with the applicant's lot, provide development potential and both lots could gain access through a jointly dedicated public street.

Flag lots may be approved on an interim basis where there is future development potential on adjacent properties. This requires Planning Commission approval and that is why this application is before the Commission this evening.

The applicant is proposing approval of flag lots as an interim measure. The applicant is proposing to dedicate 15 feet of right-of-way on the east property line to provide for

V. 42

future construction of the street when the property on the east develops in the future. The proposal includes a comparable 15-foot dedication on the adjacent property as well.

Staff has determined that an adequate street section can be provided on this lot at this time. The street would provide two ten-foot travel lanes, a 6-foot parking lane and a 6-foot sidewalk.

In order to have the preferred housing orientation fronting to the street, a variance of 6-1/2 feet would be needed to the 80-foot lot depth in the R-7 Zone. This amount would fall under the minor variance category. It is staff's belief the variance may be appropriate to provide public access in this case.

Staff does not believe that the applicant's proposal to dedicate right-of-way as an interim measure will assure that street development can be constructed in the future when the adjacent property develops. There are questions of funding, timing mechanisms, and how to address the flag access strips at the time of future development.

It is staff's opinion that flag lots as an interim measure would only be appropriate when it can be shown that a street cannot be developed at this time on the lot. Staff recommends denial of this application based on the recommended findings attached to the staff report.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE

John Gessner reported that no written correspondence from the NDA was received, however there was verbal comments received from Bob Hatz as land use chair. Dolly MackenHambright neighborhood association member, indicated her objections to John Gessner. These objections were not transmitted to the Commission through correspondence.

There was no other correspondence received other than what was indicated in the staff report.

APPLICANT PRESENTATION

Speaking: Bruce Noel, 2361 St. Helens Highway, Portland, OR 97231

Mr. Noel stated that he is asking for approval to create the two parcels for residential dwellings. This was requested in compliance with the required criteria. The proposal included the construction of a flag lot roadway which allows for future street development. Dedication for future street right-of-way would be offered as a recorded deed of trust and is shown on attachment 4, Page 6.1-13 of the staff report. The dedication would be designed to the standards of an alley. A copy of the information

received from the Public Works Department, Neighborhood Street Cross Section Figure 4 was submitted as part of the record.

There is potential for development on the adjacent property to the east; however, the landowner does not wish to, nor plan on ever developing the land. Meeting the requirements of the street proposed by Paul Roeger, City Civil Engineer, it would leave only 15 feet-4 inches of setback that would prevent them from meeting the requirements. It would also mandate an inequity and force dedication of land.

They have shown that the means of dedicating a street is not possible. The proposal shows that it would be possible for the adjacent property to develop to current standards. It would take creative designs to meet current codes for any future development of the adjacent property to comply as a flag lot development given the new standards.

A deed-of-trust of dedicated right-of-way along the property line would assure the development of the street in the event of future development of adjacent property as the city would require during the partitioning approval process. Installation of water and sewer mains as described in Mr. Roeger's memo could be performed and paid for as interim to the public street development as an equitable cost split between the development now and in the future, leaving the paving the responsibility of the future developer as required for permitting.

QUESTIONS FROM THE COMMISSION -- None.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Evelyn Knudsen,

Ms. Knudsen stated that she owns the property next to the subject site. She is concerned about the interim road being gravel and not wide enough for other cars to go both directions. She voiced concern about the access for police cars, emergency vehicles, etc. The traffic pattern from Stanley is difficult now and she cannot image another street so close to the intersection.

If this street is not wide enough for a regular road, who would take over the maintenance of this street? She asked how long the interim lasts. If this applicant moves, how will the roadway be maintained?

V. 44

Speaking: Dan Libert, 5640 SE King Road

Mr. Libert stated that he is on the west side of the subject site. He explained that half of his 1.06 acres is forest and he would like to keep it that way. He is concerned about fire hazard with development so close. An arborist has reviewed the border of trees and any development would hurt his forestland.

Mr. Libert stated that he would like to keep his property in the family. They have had the land since 1969 and would like to protect it so it can be passed on to his children.

Speaking: Kari Libert, 5640 SE King Road

Ms. Libert cited an example of the kind of traffic problems that could become a potential hazard should this type of development be approved. A car was trying to turn into their driveway across the street. Their driveway would become a roadway that could possibly extend to Stanley. This would add to the traffic onto Stanley. This car had a hard time getting into their driveway and almost caused an accident. This happened around 5:00 p.m. If this application is approved, there will be many car accidents if no signage or stop lights are put up to regulate traffic there.

Ms. Libert voiced concern about the trees in the back. The trees canopy over the property line and if construction is not done properly, the trees may die. The four surrounding lots have potential of becoming a large area for multi-family housing in the future.

ADDITIONAL COMMENTS FROM STAFF

Ken Kent stated that in staff's analysis of this lot, it was determined that an adequate street section could be developed at this time on this lot and still meet the setbacks for the existing house. The additional lots could provide adequate size, however there would be a potential variance for lot depth.

The proposed street section is within a 26-1/2 foot right-of-way dedication. The current proposal for the two flag lots will require 30 feet for joint access. The proposed street dedication will be slightly less than that required for the flag access poles. The right-of-way section would include two travel lanes at 10-feet wide and a 6-foot parking lane. This would abut the property line with a 6-inch curb and a 6-foot sidewalk would need to be constructed in an easement on each of the lots. The total section of the roadway is approximately 30-feet; however the dedication itself is 26-1/2 feet.

There is a question of whether 15 feet dedicated by this property would assure adequate right-of-way on the adjacent property. With the current 15 feet, a road could not be built now. There are questions on how this road will be financed in the future if it is not built at this time. When the adjacent property is developed there needs to be a financing mechanism established so this section of right-of-way can be built. The flagpoles would

have to be addressed because the current 15 feet does not include flag access for lot 2. It will need to revert to either the existing property, or become additional right-of-way. It is unclear on how this can be processed.

John Gessner explained that the difference between what the applicant is proposing and what staff is recommending is the overall size of right-of-way that will be needed in the future. The previous standard for alleys accommodates only two travel lanes and no on-street parking. Current standards show that no on-street parking can become a problem for neighbors.

There is no assurance or process that the roadway improvement will be constructed in the future. There is no funding guarantee that the roadway will be built in the future.

QUESTIONS FOR CLARIFICATION -- None.

APPLICANT'S CLOSING REMARKS

Speaking: Philip Reich, 5650 SE King Road, Milwaukie

Mr. Reich stated that this has been a frustrating process. The half street being proposed was discussed with Paul Roeger initially. There were no objections to the proposal until the staff report. This caught him by surprise. He is proposing to put in the water, electrical, and sewer sufficient to accommodate future development on the other side. He feels this is his allowance towards the development of a half street. It would be up to the adjacent property owner to pave the street.

Development costs for the water, electrical, and sewer improvements will be about \$30,000. The pavement of the half-street would cost about \$30,000. He feels this is an equitable split. Deeding of the land is also equitable. He does not understand why it is being said that there is no process for the future development of the street.

To address the concern about emergency access, he stated that the original proposal has been submitted to the Fire Marshal and it was approved based on vehicle access on 12-foot of paving for flag lots. No-parking signs must be placed.

Mike Miller asked Mr. Reich for his interpretation of the difference between a half street and a flag lot? **Mr. Reich** stated that a half street is a 30-foot alley as defined by Paul Roeger. If a half street was dedicated it would mean that 15 feet is given by both sides to pave and provide services towards this street. There is adequate room for setbacks should the other side develop.

Howard Steward asked if the applicant planned on putting in curbs and sidewalks? **Mr. Reich** stated that it is not his intent to put in curbs and sidewalk at this time because this is an interim flag lot. He does plan on paving the 12-foot of driveway.

V. 46

Mike Miller asked if the applicant plans on putting in a flagpole or half-streets for his proposed units? **Mr. Reich** stated that he is proposing to put an interim flag for these units and setting aside land deeded to the city should the neighbor decide to develop a half-street in the future. He will be putting in the services for a half street, should they occur in the future.

Speaking: Bruce Noel, 23616 St. Helens Highway, Portland

Mr. Noel stated that if they provide for the sewer system and water main, these services would be deeded over to the city, even though there is a flagpole paving on the surface. The city would then take over the responsibility of the utilities from that point on.

Chair Hammang explained that he feels the applicant is stating that the reason to accept the proposal is because the applicant is putting in streets and sewer for a future development on the opposite side. This is the applicant's fair share of future street development.

DELIBERATIONS AMONG THE COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened the meeting to discussion among the commissioners.

Ken Kent explained that the intent was not a half street to serve both properties. The proposal is for a half street right-of-way to serve this property. When the adjacent property develops, additional right-of-way will be acquired and additional street width paved. It is not intended to have the full development within a 30-foot right-of-way.

John Gessner stated that staff's recommendation is that the proposed 15-foot dedication with the 12-foot driveway is not adequate.

Gary Firestone stated there are two standards to be considered; the general legal standard and specific standards relating to width. The general standard in Section 17.32.040(a) states: "Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible." This puts the onus on the applicant to establish that a dedicated public street is not possible. The code standards refer to a 30-foot access street, with a maximum pavement of 20-feet, minimum of 12 feet. It is staff's position that a half street would satisfy the dedicated public street requirement; anything less than that would not.

Howard Steward asked if there was a recommendation from the city engineer regarding this roadway. **Gary Firestone** noted that there is a memo from Paul Roeger dated October 7th addressing street issues.

John Gessner stated that Public Works recommended a 30-foot right-of-way, but this would have been placed entirely on the proposed applicant. There was a question on how that would be located.

Howard Steward moved to deny MLP-02-07 and adopt recommended findings in support of denial. **Mike Miller** seconded the motion.

Ayes: Borden, Bresaw, Miller, Steward, Hammang; Nays: None.

THE MOTION CARRIED 5-0.

Recess was taken at 7:35 p.m. and the meeting reconvened at 7:45 p.m.

6.2 Type of Hearing: Minor Quasi-Judicial
Applicant: City of Milwaukie
Owner: N/A
Location: N/A
Proposal: A request for approval of a Zone Amendment to amend regulations that govern placement of wireless communication cell towers and antennas.
File Numbers: ZA-02-04
NDA: ALL

Chair Hammang opened the legislative hearing ZA-02-04 to consider adoption of a resolution recommending that the City Council approve the proposed code changes to the Zoning Ordinance as contained in Attachment 1. He asked if any member of the Planning Commission wished to abstain? There was no response.

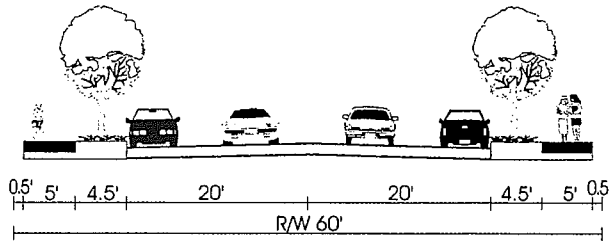
STAFF REPORT

Lindsey Nesbitt reviewed the staff report with the Commission. This is a request that the Planning Commission adopt a resolution recommending that City Council approve the proposed code changes to the Zoning Ordinance addressing standards governing the siting of wireless communication facilities.

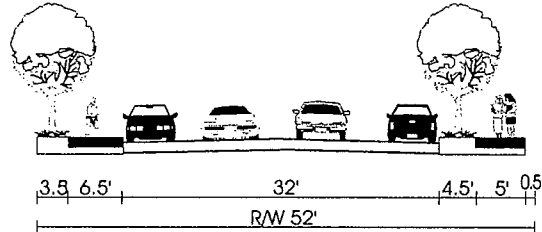
Currently the city regulates wireless communication facilities (WCFs) through the Community Service Overlay process. This process allows cell towers to be placed in a residential zone. City Council has asked staff to draft regulations that address specific cell tower issues.

Over the last year staff has developed the proposed regulations based upon feedback from the City Council, Planning Commission, Neighborhood District Associations, industry stakeholders, and the City Attorney. The local government has the right to develop regulations, however there are guidelines not to make these regulations too restrictive.

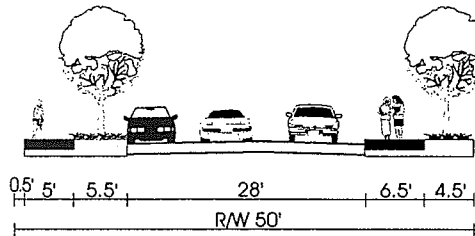
EXHIBIT F



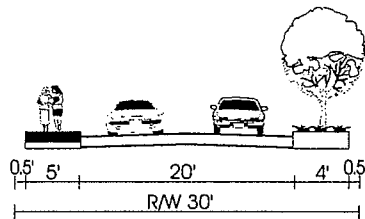
Commercial/Industrial 60'
On-street Parking



Neighborhood Residential 52' >1500 vpd
On-street Parking



Local Residential 50' <1500 vpd
One Side On-street Parking



Alley 30'
No On-street Parking

Notes:

1. Use of landscape strip typically symmetric about street cross section. Samples show examples of landscape strip and curb tight sidewalk for reference.
2. Sidewalk 5' minimum with landscape strip. Where sidewalk is curb tight, provide 6' sidewalk on Local/Neighborhood Street, not including curb width. For alley minimum sidewalk 4.5', for cul-de-sac minimum sidewalk 5' (not including curb width).



CITY OF MILWAUKIE, OREGON – PUBLIC WORKS DEPT.

LOCAL/NEIGHBORHOOD STREET CROSS SECTIONS

Figure 4

EXHIBIT G

Linwood Neighborhood
Association
12341 SE 67th Ct.
Milwaukie, Oregon
97222

V. 49

November 12, 2002

Mayor and City Council,
City of Milwaukie
10722 SE Main St.
Milwaukie, Oregon 97222

Dear Mayor and Council;

In response to the recent appeal filed regarding the desired flag lot at 5650 SE King Road, Milwaukie, we would like the City Council to consider the following very carefully in its review:

- 1 The neighbors on either side of the property in question are very much opposed to this variance, one due to the possible adverse affects to a stand of trees on his property (and possibly to the tree canopy of the area in general), and one because of traffic and safety issues that will make that corner much less safe due to the additional people using this specific roadway access;
- 2 The flag-lot as proposed, would create an encumbrance on one of the lots next door. This could adversely affect the value and livability of that lot now and into the future. This variance is against that owner's wishes and solely for the benefit of the appellant;
- 3 The houses that would be moved onto the proposed, reconfigured lot do not fall under many of the rules currently in place for onsite stick-built housing in the City and therefore the owner is under no obligation to be sure that said housing starts out in good condition, much less remains as an asset to the Milwaukie rental housing market;
- 4 The wood fencing in the initial proposal is not a viable permanent answer to property development due to the rapid weather-degradation of wood fencing in general; and,
- 5 There is nothing in this variance request that can be construed to be an enhancement to the neighborhood or the community at large.

ad hoc land-use review: Acting Chair, Edie Kerbaugh

and

Acting Treasurer, Dolly Macken-Hambright

RECEIVED
CITY OF MILWAUKIE
NOV 14 AM 7 16



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Program Administrator

Subject: Portland General Broadband Franchise

Date: December 16, 2002

Action Requested

Approve an ordinance granting a five year, nonexclusive franchise to Portland General Distribution, LLC, dba Portland General Broadband, an Oregon Limited Liability Company, to use the public rights of way within the City to provide telecommunications services.

Background

In 2001, Portland General Broadband (PGB) registered with the City as a prospective telecommunication provider under our Telecommunications Ordinance. They describe the company as a "carrier's carrier". They propose to provide dedicated fiber optic infrastructure and make fiber optic bandwidth available on a lease basis. That is, PGB would not provide services but would lease fiber to other entities so that others could provide services. PGB will install conduit, vaults, ducts and fiber by using already open trenches provided by PGE, other franchised utilities and the City. In addition, PGB will string fiber on power poles. PGB has targeted a one-mile stretch in Milwaukie along Highway 224 for installation of fiber.

After the submittal of the registration and the development of a draft franchise, PGB put negotiations with the City on hold. Last month, PGB approached the City to renew negotiations. The proposed franchise has been agreed to by staff from PGB and the City. The major elements of the franchise are as follows:

- Five year term
- PGB will pay the City the greater of:
 - A minimum franchise fee of \$4000 per annum; or,

VI. A.

2

- Five percent (5%) of its gross revenues earned in the provision of telecommunication services including the lease or resale of its facilities within the City

- The bonding requirements of the City Code may be satisfied by the provision of either a surety bond, a letter of credit, or funds deposited in an escrow account with an acceptable financial institution. PGB is proposing to establish the escrow account in the near term and switch over to a letter of credit in the future.
- PGB will be held to all of the provisions of Chapter 3.13 of the Milwaukie Municipal code (regulating telecommunications facilities), including the obligations to obtain permits before installation, relocate facilities at the City's request and remove unauthorized facilities.
- PGB will notify the City of names and addresses of all lessees. This will allow staff to contact lessees regarding their obligation to register with the City and, potentially, to pursue a franchise themselves.

Concurrence

The City Manager, the City Attorney and engineering staff concur with this staff proposal.

Fiscal Impact

The City will receive at least \$4,000 in franchise fees annually from PGB until such time as the gross revenue earned by PGB in the City exceeds that amount. In addition, future lessees may also be obliged to pay a franchise fee.

Work Load Impacts

Engineering staff will review plans presented by PGB for installation of fiber and related equipment. The Program Administrator will contact lessees and review their registration for the need for franchises.

Alternatives

- Approve the attached ordinance granting a franchise to PGB.
- Deny approval of the attached ordinance and direct staff to continue negotiating with PGB.

AN ORDINANCE GRANTING TO PORTLAND GENERAL DISTRIBUTION, LLC, dba
PORTLAND GENERAL BROADBAND A NONEXCLUSIVE FRANCHISE FOR THE
PROVISION OF TELECOMMUNICATIONS SERVICES
WITHIN THE CITY OF MILWAUKIE

WHEREAS, Portland General Distribution, LLC, dba Portland General Broadband, an Oregon Limited Liability Company, hereinafter referred to as "Grantee", wishes to provide telecommunications services within the City of Milwaukie and to construct facilities in city rights of way for those purposes; and

WHEREAS, Grantee has applied for a franchise pursuant to the City's Code, and the City has reviewed said application and has determined that it meets all the requirements of the City's Code and should be approved, subject to the terms and conditions stated herein;

Now, therefore,

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: Grant of Franchise. The City of Milwaukie ("City") hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the City to provide telecommunications services, subject to the following limitations:

(a) Grantee is hereby authorized to provide only those services as stated on the Application of Registration submitted by the Grantee. Grantee agrees that it shall not permit a third party to provide video services over the Grantee's network installed in the City rights of way.

(b) This franchise is subject to all applicable provisions of the Milwaukie Municipal Code, Chapter 3.13, specifically including but not limited to the requirements for insurance, indemnification, and performance security required by the Code, unless specifically otherwise stated in this franchise.

(c) Grantee shall maintain a clause in its standard Facilities Agreement to be signed by all lessees of Grantee's conduit or fiber optic lines authorizing the Grantee to disclose the lessee's business name and address to the City. Upon entering into a new lease agreement with a new lessee, Grantee shall provide a one-time notice of the lessee's business name and address to the City.

Section 2: Term. The term of this franchise shall be five years, commencing with the effective date of this Ordinance.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights of way throughout the City, as the City limits may exist now or in the future.

VI. A. 4

Section 4: Franchise Fee.

(a) As consideration for the use of the City's rights of way, Grantee shall remit to the City the greater of:

- (i) a minimum franchise fee of \$4000 per annum; or,
- (ii) five percent (5%) of its gross revenues earned in the provision of telecommunication services including the lease or resale of its facilities within the City. The calculation of this fee shall be subject to any applicable rules of the Oregon Public Utility Commission and any applicable provisions of the Oregon Revised Statutes.

(b) Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45th day of each quarter will be assessed interest at the rate of one and one half percent per month until paid.

(c) The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. Any difference of payment due the City following audit shall be payable within thirty (30) days after written notice to the Grantee, and shall bear interest at the rate of 9 per cent per annum. In the event the audit discloses that Grantee has underpaid by more than 2% of its annual payment obligation, Grantee shall pay the City's expenses of performing the audit.

Section 5: Franchise Acceptance and Conditions.

(a) *Acceptance.* Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Manager a written statement accepting the terms and conditions of this franchise grant. Timely filing of such acceptance shall be a condition of this franchise becoming effective.

(b) *Insurance.* The insurance requirements of Section 3.24.080(H) of the City Code may be satisfied by grantee self-insurance, provided Grantee submits a certificate of such insurance to remain in full force throughout the term of the franchise and in a form acceptable to the City. Such self-insurance shall fully protect the City to the extent of Grantee's indemnity obligations, and the approval of such written certificate shall be a condition of this franchise becoming effective.

(c) *Performance surety.* The bonding requirements of Section 3.13.070 (J) of the City Code may be satisfied by one of the following:

- (i) a surety bond, or
- (ii) a letter of credit issued by an acceptable financial institution, or
- (iii) funds deposited in an escrow account with an acceptable financial institution on or before the date this agreement is approved by the City Council.

(d) *Abandonment of facilities.* At such time as Grantee intends to discontinue using or to remove any telecommunications network facility or facilities within the City, Grantee shall submit a specific plan for such discontinuance or removal to the City Engineer or designee and shall gain the City Engineer's approval. The City Engineer may allow Grantee to abandon in place any facility or facilities, may require the Grantee to remove or modify the facility or facilities within the public

rights of way or other public place or property, may cause the facility or facilities to be removed at the Grantee's expense, or may take any combination of these actions. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time that Grantee's property is completely removed and all restorations to the public rights of way or other public places or property have been completed, Grantee shall be responsible for all necessary repairs, relocations, and maintenance of the facility or facilities in the same manner and degree as if the facility or facilities were in active use, and the Grantee shall retain all liability for such facility or facilities.

Section 6: Franchise nonexclusive. The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights of way.

READ for the first time at the regular meeting of the City Council, City of Milwaukie, Oregon, on the _____ day of _____, 2003.

READ for the second time and passed by the City Council, City of Milwaukie, Oregon at the regular meeting on the _____ day of _____, 2003.

Signed by the Mayor on _____, 2003.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

Approved as to form:

Ramis, Crew, Corrigan & Bachrach
City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Program Administrator

Subject: Qwest Audit

Date: December 16, 2002

Action Requested

Authorize the City Manager to sign an Intergovernmental Agreement (IGA) with other participating Oregon jurisdictions for hiring a consultant to complete a joint financial audit of Qwest.

Background

In 2001, a group of 24 Oregon cities joined together to fund an audit of Portland General Electric Company (PGE). This group of Cities formalized their association and adopted the name Oregon Municipal Audit Review Committee, or, OMARC. The City of Milwaukie contributed \$2,728 toward the audit of PGE. We received \$144,767 from PGE in April of 2002 as a result of inaccuracies discovered during the audit.

In August 2002, OMARC asked Oregon cities if there was any interest in a financial audit of Qwest and Verizon. Some cities have franchises with both Verizon and Qwest, and some, like Milwaukie, have a franchise with only one. 52 of the cities in the state that have Qwest franchises, of which Milwaukie is one, expressed interest. OMARC is now asking cities that are interested in pursuing the audit to sign an IGA and commit to paying a portion of the total cost of the audit. Milwaukie's cost allocation, based on population and franchise fees received, is \$10,223.56. The amount for this audit is higher than the PGE audit because two companies are being audited and because the City of Portland's contribution has been capped at \$55,000 due to their expense with a recent Qwest litigation.

VI. B. 2 port -- (Qwest audit)

The OMARC steering committee has selected Maximus, the firm that completed the PGE audit, to conduct the Qwest and Verizon audits. The total cost of the audits is \$500,000.

Concurrence

The City Manager concurs with the staff proposal.

Fiscal Impact

The City would contribute \$10,223.56 toward the total cost of the audit. Adequate funds have been allocated in the 02-03 budget to cover this contribution. The City would stand to benefit financially from any inaccuracies found during the audit.

Work Load Impacts

In order to minimize the cost of the audit, staff will need to dedicate some time to comparing Qwest customer lists to addresses in the City. During the PGE audit, staff put in about 40 hours on this task.

The Program Administrator will monitor the audit process and relay information to the City Manager, Council and the Finance Director.

Alternatives

Authorize the City Manager to sign the IGA for the Qwest audit.

Deny the City Manager authority to sign the IGA for the Qwest audit.

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is entered into no later than December 20, 2002 ("Effective Date") between all of the municipalities listed in Exhibit A. Each of the municipalities listed in Exhibit A may be referred to individually herein as a "Party" and collectively as the "Parties".

Recitals

- A. The incumbent local exchange company(s) ("Franchisee"), which is the subject of this "Telecommunications Financial Review Services" for the City of _____ is _____.
- B. The Parties desire to hire a consultant ("Consultant") to review and analyze revenues received from incumbent local exchange carriers as compensation for the rights and privileges to operate in the public right-of-way. The specific incumbent local exchange carriers, and the mechanisms under which these payments are made, may vary as between the Parties, however, the revenue base is uniform throughout and consistent with state statute.
- C. There are savings available to the Parties by aggregating the review and analysis, retaining a Consultant to assist them in such review and jointly providing funds to pay such Consultant.
- D. This Agreement is made under the provisions of Oregon Revised Statutes (ORS) 190.003 to 190.030. ORS 190.010 authorizes municipalities to enter into intergovernmental agreements for the performance of any or all functions and activities that a Party to this agreement has the authority to perform.

Agreement

The Parties agree to the following:

1. The Parties desire to retain a Consultant to work with the Parties in reviewing and analyzing franchise fees paid by Franchisee to the Parties, including but not limited to an evaluation of gross revenue calculations, and developing procedures to be used by member Parties in comparing customer database lists received from Franchisee with internal databases ("Consultant Services"). In performing the services, the Consultant shall analyze franchise, utility license, permit or other fees paid to the Parties by Franchisee, pursuant to the Parties' respective telecommunications franchises, permits or licenses, for up to ten (10) calendar years. In addition, the Consultant shall obtain Franchisee customer lists to assist the Parties in the database comparison portion of the Consultant Services.

VI. B. 4

2. The Parties hereby delegate authority to the City of Hillsboro to enter into a personal services contract with the Consultant on behalf of all of the Parties. The Parties acknowledge and agree that the City of Hillsboro's standard personal services contract will be used for the procurement of the Consultant Services.

The Parties further delegate to the City of Portland and the City of Hillsboro ("Joint Lead Agencies") and the City of Hillsboro ("Managing Agency") the authority to make administrative decisions on behalf of the Parties. The Joint Lead Agencies and the Managing Agency shall make reasonable efforts to keep the Parties informed of any decisions made on behalf of the Parties.

3. Each Party shall share in the cost of paying the Consultant to perform the work as outlined in the RFP.
4. The amount in Exhibit A labeled *Total Contract Cost* for the Consultant Services may only be modified through separate written agreement signed by authorized representatives for each of the Parties to this Agreement.
5. The percentage used in Exhibit A to determine the amount of the Consultant contract that is considered fixed may only be modified through separate written agreement signed by authorized representatives for each of the Parties to this Agreement.
6. Each Party shall be responsible for paying a share of the Fixed Costs relating to the Consultant Services, as shown in Exhibit A. The Fixed Cost allocation is non-refundable in the event a Party should withdraw from this Agreement.
7. Each Party shall be responsible for paying a share of the Variable Costs, defined as the Total Cost of the Consultant Services less the Fixed Costs, which shall be apportioned as shown in Exhibit A.
8. Each Party shall remit its share of the Fixed Cost to the Managing Agency within thirty (30) days after executing this Agreement. Upon finalization of the cost allocation for the Consultant Services, each Party shall remit any remaining unpaid share of the total Fixed Cost to the Managing Agency. The City of Hillsboro shall prepare and submit invoices to each Party immediately after the Agreement is executed and the cost allocation is finalized.
9. The Managing Agency shall prepare and submit Variable Cost invoices to each Party as soon as reasonably possible. The Managing Agency will include, with each invoice, all back-up information reasonably related to the invoice. Each Party shall pay its pro-rata share of the Variable Costs within thirty (30) days of the date of the invoice.

10. The Parties acknowledge and agree that in the event a Party withdraws from this Agreement, Exhibit A, shall automatically be updated and revised to reapportion the Variable Cost among the remaining Parties.
11. Any Party may terminate their participation in this Agreement so long as the terminating Party meet all of the following requirements (a) the terminating Party must provide seven (7) days prior written notice to both the Managing Agency and the Joint Lead Agencies; (b) such notice must actually be received by both the Managing Agency and the Joint Lead Agencies prior to the inception of any Variable Costs; and (c) the terminating Party must submit full payment to the Managing Agency of any Fixed Costs owed to date by the terminating Party.
12. This Agreement shall terminate upon the earlier of five (5) years from the Effective Date or until completion of the Franchisee Telecommunications Financial Review. This Agreement may be terminated earlier upon mutual written consent of the majority of the Parties.
13. The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction.
14. Time is of the essence in the performance of this Agreement.
15. This Agreement is for the benefit of the Parties only. Each Party agrees to indemnify and hold harmless each other Party and its officers, officials, employees, agents and volunteers, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or rising out of services performed, the omission of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying Party and its officers, officials, employees, agents and volunteers. In addition, each Party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of that Party under this Agreement.
16. No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by authorized representatives for each of the Parties.
17. Any Party may institute legal action to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The Parties, by signature below of their authorized representatives, consent to the *in personam* jurisdiction of that court.

VI. B. 6

18. Performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
19. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement will not be affected or impaired in any way.
20. This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements, oral or written, regarding the same subject.
21. This Agreement may be executed in any number of counterparts by any one or more of the Parties hereto, and all of these counterparts will be one Agreement. To facilitate execution of this Agreement, the Parties may execute by facsimile transmission the counterparts of the signature pages.

***Signature Section for Intergovernmental Agreement for Consultant
Telecommunication Financial Review Services:***

Name: _____

By: _____

Date: _____

Franchisee subject to Telecommunication Financial Review Services:

_____ Qwest


_____ Verizon

_____ Both – Qwest and Verizon



To: Mayor and City Council

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

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

Subject: Intergovernmental Agreement (IGA) with Clackamas County for the King/Harvey/40th Avenue Improvements Project

Date: December 23, 2002 for the January 7 2003 meeting

Action Requested

Authorize the Mayor to sign an Intergovernmental Agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood.

Background

The City applied for and received a Clackamas County (CC) Community Development Block Grant (CDBG) in 2001 to complete improvements to various streets in the Ardenwald neighborhood. Specifically, this project will complete curb, sidewalk, and storm improvements to King Road from 37th Avenue to 42nd Avenue; sidewalk on Harvey Street from 32nd Avenue to 42nd Avenue; and curb, sidewalk and storm improvements to 40th Avenue from Harvey Street to King Road. The City completed a similar project with CDBG funds in 2000 on 42nd Avenue from Olsen Street to Harvey Street. The current CDBG project would connect with the previously constructed CDBG project.

Concurrence

Staff in Community Development, Engineering, the City Attorney's Office, and the City Manager's office have reviewed the proposed Intergovernmental Agreement (IGA) and support signing the IGA to proceed with design and construction of the King/Harvey/40th Ave. Improvements Project.

VI. C. 2

Fiscal Impact

The City was awarded \$295,000 in Community Development Block Grant (CDBG) funding towards the design and construction of the project. Under terms of the attached Intergovernmental Agreement (IGA), the City's local matching share requirement is the greater of:

1. Twenty percent (20%) of the total cost of the project, or
2. All costs for the design and construction which exceed the available \$295,000 in CDBG funding.]

City staff has estimated that the total project cost will be \$375,000 and will be paid for with approximately \$55,000 from the City Street Fund and \$25,000 from the City Storm Fund. These monies are available in the approved 2002/2003 City Street Fund and City Storm Fund. Additionally, City staff will work with local residents to obtain easements for the construction of curb and sidewalk radius sections at street intersections.

Work Load Impacts

Clackamas County will manage both the design and construction of the project. A staff team from the Engineering and Community Development Departments will provide technical support and coordinate as necessary with the Clackamas County and local Milwaukie residents and representatives as necessary. The project is part of the work program for both departments. The tentative project schedule is as follows:

Project Phase	Start and End Date
Project Planning	Jan. 2003 to Feb. 2003
Design and Engineering	March 2003 to June 2003
Construction	July 2003 to Sept. 2003

Alternatives

The Council has the following alternatives:

- Suggest amendments to the attached Intergovernmental Agreement (IGA).
- Do not authorize the Mayor to sign the attached IGA

Attachments

Attachment A – IGA with Clackamas County

**INTERGOVERNMENTAL AGREEMENT
BETWEEN**

**CLACKAMAS COUNTY DEPARTMENT OF HUMAN RESOURCES
COMMUNITY DEVELOPMENT DIVISION
AND
THE CITY OF MILWAUKIE**

I. Purpose

- A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Milwaukie (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the design and construction of curb, sidewalk and storm drainage improvements on Harvey Street, King Road and 40th Avenue within the Ardenwald neighborhood of the City of Milwaukie. The design and construction of these improvements are herein referred to as the PROJECT.

II. Scope of Responsibilities

- A. Under this agreement the responsibilities of the CITY shall be as follows:
 - 1. At the request of the County, the CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
 - 2. To the extent necessary the CITY shall obtain any easements or approvals necessary to allow access onto private property. At the time of execution of this Agreement, it is believed that no access onto private property will be necessary; City shall identify the boundaries of the Project area and the engineer and Contractor shall be required to advise City of any need for access beyond the Project area. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
 - 3. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the appropriation and expenditure of funds by the CITY as provided by Oregon Statute.
- B. Under this agreement the responsibilities of the COUNTY will be as follows:
 - 1. The COUNTY agrees to obtain necessary engineering design services and act as agent of the CITY for purposes of preparing plans and specifications, obtaining bids and contracting for all construction work.

VI. C. 4

INTERGOVERNMENTAL AGREEMENT
Clackamas County and the City of Milwaukie
Page 2

The COUNTY will receive written approval from the CITY prior to awarding any PROJECT contracts for design or construction, and any changes, modifications, or amendments as necessary to serve the public interest.

2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project.
 3. The COUNTY agrees to provide and administer available Community Development Block Grant (CDBG) funds granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.
 5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

III. Compensation

- A. The COUNTY will apply CDBG funds in the amount of 80% of the total cost of the PROJECT up to a maximum COUNTY contribution of \$295,000. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. The CITY agrees to contribute the greater of:
 1. Twenty percent (20%) of the total cost of the PROJECT, or
 2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- D. In the event a construction contractor is entitled to payments for work completed after \$295,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments.

- E. The CITY shall transfer all requested funds to the Community Development Division within fourteen (14) working days of the invoice by the COUNTY. All checks shall be made payable to Clackamas County and mailed to the following address:

Attn: Susan Troxell
Clackamas County Finance
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

IV. Liaison Responsibility

Brion Barnett will act as liaison from the CITY for the PROJECT. Chuck Robbins will act as liaison from the COUNTY.

V. Special Requirements

- A. The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Subject to the limits of the Oregon Tort Claims Act, each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, that once the CITY accepts the Project following the design and construction phases, it will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefor.
- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; 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 which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

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Clackamas County and the City of Milwaukie
Page 4

- E. This Agreement is expressly subject to the debt limitation 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. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- F. Conflict of Interest. No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- G. Insurance. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable the CITY shall be required to maintain flood insurance.
- H. Nondiscrimination. The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- I. Handicapped Accessibility. The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- J. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the

INTERGOVERNMENTAL AGREEMENT
Clackamas County and the City of Milwaukie
Page 5

amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.

- K. Evaluation. The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- L. Audits and Inspections. The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- M. Acquisition. If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

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

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending five (5) years after close-out of the COUNTY's participation in the entitlement CDBG program.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
 - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment A, resulting from material failure by the CITY to comply with any term of this Agreement, or;
 - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.

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Clackamas County and the City of Milwaukie
Page 6

D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

CLACKAMAS COUNTY

CITY OF MILWAUKIE

Chair: Larry Sowa
Commissioner: Michael Jordan
Commissioner: Bill Kennemer

Signing on Behalf of the Board

Irene Fischer-Davidson, Director
Department of Human Services

By: _____

Date

Date

ATTACHMENT A

VI. C. 9

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
 - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

North Clackamas Parks and Recreation District
Milwaukie Center/Community Advisory Board
Minutes of November 8, 2002

Members Present: Jim McCready, Eleanor Johnson, Janet Witter, Joan Staley, Sharon Phillips, Carol Storment, Joan Newman, Ben Tabler, Molly Hanthorn
Excused: Alice Neely
Absent: Marc Burnham, Kim Buchholz
Staff: Cheryl Nally, Lin Dahl
Guest: Julie Ouellette, Leasing Director, Miramont Pointe

Call to Order: The meeting was called to order by Eleanor Johnson at 10:00 am. The minutes were approved as printed.

Lin Dahl, Facilities Use Coordinator, introduced herself to the Board, distributed an outline of her job duties and challenges and a chart showing the revenue history for the Center and Park for the past several years. Lin discussed the many responsibilities and tasks in her job description and answered questions from Board members.

North Clackamas Parks Board: Eleanor reported on the last meeting. Trolley Trail report was given by a representative from Metro. More dollars are needed and there will be several public meetings concerning the plan. The District Master Plan will soon go to the County Commissioners for approval. Kim Buchholtz and Ben Tabler were reappointed to the Center Board. The outdoor pole sign the Friends want to put up was approved.

Budget Committee: no meeting.

Program and Services: no meeting.

Nutrition and Transportation: no meeting, but Ben reported that home delivered meals are up to 200 per day with about 100 getting weekend meals. Thanksgiving Dinner fund-raiser is on November 17. There was some discussion regarding the loss of the Providence car and funding however there are no plans as yet.

Building Review: no meeting

History: no meeting

Centennial: Sharon reported that the Opening Ceremonies will be February 3, 2003. The quilting project is going forward. The Waldorf School, North Clackamas Parks District, and the Historic Milwaukie Neighborhood are sponsoring old time outdoor movies on the Waldorf grounds the evening of July 19 and August 2, 2003.

Friends of Milwaukie Center: Eleanor reported the Lumberjack Breakfast had over 350 attendees and lots of great volunteers. Entertainment books are still on sale.

Director's report: Joan Young and Pat Kennedy are attending the Oregon Association of Senior Centers meeting in Bend. Election results mean we must start immediately to cut at least \$300,000 for the coming budget year. Staff losses will probably be necessary. Respite coordinator, Vicky Gray attended a Brookdale Respite Grant Recipients conference in Missouri. The staff is working on privacy regulations for medical related records we have for our programs.

Meeting adjourned 11:00 a.m.

m. hanthorn, secretary

North Clackamas Parks and Recreation District
Milwaukie Center Division
Monthly Report for November, 2002

Programs/Services:

The Center's Emergency Firewood Program is kicked off each year in November at the Lumberjack Breakfast by a diligent volunteer work party that includes Rotary Club members and Boy Scout Troops. Around 50 low income seniors and folks with disabilities are served each year with wood from this program.

The Friends of the Milwaukie Center got permissions and permits in order, purchased and mounted a large outdoor reader board sign in the entrance to North Clackamas Park. Announcements of fund-raisers and events at the Milwaukie Center will be displayed, along with other Parks District news.

Partnerships are an important way of accomplishing things at the Milwaukie Center. A partnership with the North Clackamas Arts Guild provides the organization a place to hold meetings and the community gets the benefit of a multitude of quality art workshops and classes, regular art displays, plus an annual Art Show and Sale – a real cultural boost to the area! Master Gardeners of Clackamas County currently meets at the Milwaukie Center monthly for a reduced fee while providing bi-annual soil testing and workshops for the community-at-large.

Fund-raising:

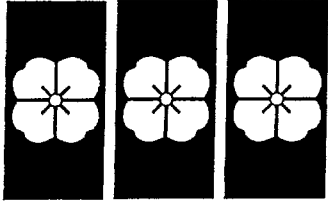
The Lumberjack Breakfast was a huge success this year due to tremendous volunteer effort and wonderful donations of food from United Grocers, Safeway and a local egg farm. Over 350 community members were fed, and lumberjacks reved up their chainsaws to cut and stack wood for the Emergency Wood Program to help older adults in our community. This event is co-sponsored by Milwaukie Rotary Club and the Friends of the Milwaukie Center. Proceeds support the continued development of the Sara Hite Memorial Rose Garden.

On Sunday November 17, at the Famous Thanksgiving Family Dinner, over 150 people enjoyed a complete Thanksgiving Dinner sponsored by the Milwaukie Center Nutrition Program. \$750 was netted from the event with all proceeds supporting Meals on Wheels services in North Clackamas County.

Up-coming Events:

- Adult Holiday Party – Thurs, Dec 19, 1- 2:30 pm, sponsored by the Friends of the Milwaukie Center
- Red Cross Blood Drive – Thurs, Jan 2, 1-5 pm at the Milwaukie Center
- Diabetes Education Fair – Sat, Jan 18, 8:30 am – 2 pm, workshops and vendors galore
- See's Candy Sale – Mon-Fri, Jan 22 – Feb 14, benefits Milwaukie Center Transportation Program
- Bridal Dreams Bridal Fair – Sat, Feb 1, 10 - 5 pm, sponsored by the Friends of the Milwaukie Center

CITY OF



MILWAUKIE

Ledding Library Board November minutes

November 25, 2002 6:30 PM
Ledding Library

Meeting called by: Pat Healy

Attendees: Attendees: Pat Healy, Tom Hogan, Sue Trotter, Michael Welling, and Ed Zumwalt.
Absent: Mark Docken
Staff: Cynthia Sturgis

Agenda topics

Approval of minutes

Approved as written.

Librarian's report

The children's library staff is developing a books-on-cd collection.

Cynthia met with Alice Rouyer, Jeff King, and Mike Swanson to review the memo of library concerns about the extension of 21st Avenue, loss of parking spaces, and restricted expansion space. Alice and Jeff presented suggestions for alleviating some the parking problems. Cynthia brought their topographic drawing and an overlay with suggested changes. Shared parking will also be a suggestion to contractors who reply to the city's RFP.

The board questioned the library site listed as Lewelling Park on the planning department drawing. Members made and passed a motion to have Cynthia contact Alice about this.

Libraries for Tomorrow

Sue, Joe, and Cynthia attended the library network meeting to discuss the problems of compression and the effects on collection of property tax revenues for future districts or levies. Sue suggested copies of the handouts be sent to board members. A copy of proposed formulas for reimbursement to cities will also be sent.

The next meeting of the LNIB and the Libraries for Tomorrow committee will be held on Thursday, December 5th at 2:00 at the Network office. Further discussion and recommendations will be made concerning future formulas. This is a public meeting and library board members were encouraged to attend.

Library budget

Because of the defeat of the city operating levy, the City Council will hold public hearings in January to discuss what areas of the city budget to reduce. Cynthia will notify board members when dates are set.

The city manager has frozen hiring for any new vacancies and has requested that departments look at areas to reduce spending without affecting services. The librarians asked him if the library should stop buying circulating materials now, and he advised that service not be reduced until the Council makes a decision in January.

Board vacancy

The board's newest member, Michael Welling, was introduced to all. He has been working on the library's Facility Planning Committee for the past year.

Cynthia is trying to make contact with Anna O'Guinn about a formal resignation and to invite her to a farewell get-together with board members after the December 16th meeting.