

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 21, 2003**

CALL TO ORDER

The 1902nd 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

Susan Stone

Staff present:

Mike Swanson,
City Manager

Gary Firestone,
City Attorney

Alice Rouyer,
Community Development/
Public Works Director

John Gessner,
Planning Director

Paul Shirey,
Engineering Director

Jay Ostlund,
Associate Engineer
Steve Campbell,
Code Compliance Coordinator

Jeff King,
Project Manager
Ken Kent,
Associate Planner

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Barnes to consider Other Business item D – Transportation Enhancement Grant Application Support Resolution in the Consent Agenda. Motion passed unanimously among the members present.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the Consent Agenda that included:

1. City Council Minutes of January 6 & 7, 2003;
2. 40th Avenue and 43rd Avenue Stormline Project Bid Award;
3. Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project; and
4. Resolution 4-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Supporting the Request for Transportation Enhancement Funds for Main St. Downtown Improvements.

Councilor Lancaster referred to the IGA with the Oregon Department of Transportation (ODOT). He understands this is a reimbursement process and wants to ensure the state guarantees these funds in light of its current budget crisis.

Shirey said, as the City incurs expenses for the project design and construction, ODOT agrees to make incremental reimbursements.

Councilor Stone referred to the stormline project bid award request. She noticed the bid amounts varied up to \$150,000 and wanted to ensure awarding the contact to the lowest bidder is in the City's best interest.

Shirey said, in order to protect the City, staff did a complete reference check on the contractor to ensure there are no claims. Staff received excellent reports on this firm.

The motion to adopt the Consent Agenda passed unanimously among the members present.

AUDIENCE PARTICIPATION

Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie. In planning for the Centennial Event, it is becoming increasingly clear that crossing McLoughlin Boulevard to access Milwaukie's riverfront is a serious problem. This issue must be addressed, and 1 possible solution is using the Kellogg Lake culvert, which is dry during the summer. He urged the Council to use its influence with Metro to find some Greenspaces money to fund a project that helps people access the riverfront.

Sherri Campbell, 3803 SE Filbert Street, Milwaukie, invited the City Council to attend the Ardenwald-Johnson Creek Neighborhood Association's annual Pajama Night on January 23 at Ardenwald School. Balfour Street residents attended the recent Ardenwald Neighborhood Association meeting and expressed their opinions of Emmert International's proposed relocation of the Sam Marinos house to A Street. Campbell noted the Association supports these residents' comments.

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 announced the applicant Phillip Reich had requested the hearing be continued to the City Council meeting on February 18, 2003. Mr. Reich signed a waiver of the 120 processing requirements.

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

Campbell presented the staff report. Council acknowledged the protest filed by Emmert International at its January 7, 2003 meeting. At that session, the Council heard facts and information and voted to continue the hearing to January 21, 2003. Council directed Emmert International to develop a project schedule with milestones and a date certain for removal of the house. Staff was directed to work with Emmert International to review the project schedule to ensure it adheres to Council expectations and City

regulations. Staff requested that Emmert International representatives speak to the schedule Council requested at the last meeting.

Presentation by Protestor

Emmert International representatives present: Terry Emmert, 10470 SE Hillcrest Drive, Portland; Katie Daniel, 9900 SE Lawnfield, Clackamas; and Greg Arquit 1000 SE 15th Avenue, Portland.

Arquit compiled a report with a brief summary of what has taken place to date, a work in process chronology, and milestone dates as Council requested. The report also contained construction drawings, a work in process master schedule, and proposed A Street improvements.

Daniel said several years ago Emmert International considered developing the subject property. The Housing Authority of Clackamas County (HACC) and Housing and Urban Development (HUD) participated, and, although it would be a matter of time and review by various agency attorneys, there was no opposition to development of that property. HUD criteria would be the granting of the dedication and easement. Daniel discussed the feasibility of a memorandum of understanding (MOU) signed by all parties, HACC, HUD, City of Milwaukie, and Emmert International, that would allow the process to move forward. City staff indicated once the MOU is signed, Emmert International could begin the moving process before all of the HACC and HUD items are accomplished. Emmert International is prepared to submit the permit application by Friday, January 24, 2003 that is required prior to submitting the transportation permit. The foundation plan has been prepared and is part of the building permit. With cooperation of all parties, Daniel believed the house would be moved by April 27, 2003 and occupied by summer.

Arquit added HACC and HUD provided time frames in which their responses will occur, and Emmert International used a conservative approach in preparing the schedule before Council. More than likely, the process can be expedited. He saw no reason to be concerned this project would not come to fruition.

Emmert explained that he owns the subject lot on Balfour Street. He spoke with HACC several years ago about developing that site and got a positive response. He discussed issues related to PGE and the expense involved with moving structures. When the 2 buildings on Washington Street became available, Emmert International obtained only one. Recently, Emmert International was contacted by the City to move the house, and it was the intent to move the second house to the lot near 30th Avenue and Madison Street. Emmert had no idea a 1-1/2 foot variance for the proper setbacks would be required, so he decided to use the alternate lot on Balfour Street. Emmert International has also made provisions and purchased another lot that will be used as a failsafe, but it is farther away and moving costs will be greater. The company can move quickly on its building permit application because only the plot plan will be different. Emmert is confident he will be able to save the building.

Councilor Lancaster commended Emmert International on the amount of work accomplished in a short period of time. It seems to meet the Council's expectations, but he is concerned that there are no commitments in writing from Clackamas County regarding easements.

Daniel said HACC provided a letter stating it has no objections to such a dedication or easement; however, there are other agencies, which must agree before the final decision is made. This would be the purpose of the MOU.

Councilor Lancaster understands the MOU would encompass all of the issues and asked if the Balfour Street neighbor was reluctant to provide a written statement.

Daniel said the easement documents are based on surveys. She has no reason to believe the neighbor would change her mind about signing the appropriate document.

Councilor Lancaster asked if the foundation plan was complete.

Daniel responded that the foundation plan is already drawn.

Councilor Lancaster asked for clarification of the PGE deposit Emmert referred to earlier.

Emmert said the deposit has nothing to do with hooking the structure up to power. The deposit is to send one person out to look at the route and estimate the fee for the wire move. He understands Councilor Lancaster's concern, but Emmert International will do what it takes to comply with agency requirements and get the job done.

Councilor Stone understands occupancy is scheduled for the end of June in the worst-case scenario and asked the best-case scenario.

Daniel said, if the MOU is signed by the first week of February, the entire schedule could be shortened by 5 weeks.

Emmert said the home will be set up so it is pleasing to the neighborhood. A home of this caliber would be better served as an owner-occupied home rather than a rental.

Councilor Barnes is surprised, based on Van Bergen's comments at the January 7, 2003 Council meeting, that the house could be refurbished in 14 days. It sounded as if there were major problems including the heating system.

Daniel said in the report submitted at this meeting is conservative and shows a longer time period.

Emmert said typically it takes about 30 days to complete the rehabilitation process including utility connections. The chart Emmert International provided was established to allow sufficient time, although he hopes to finish sooner. Rehabilitation of a home

that is moved is not of a long duration. He said both the Marinos house and the one next door had been remodeled to add a heat pump and ductwork.

Mayor Bernard asked Emmert if he foresaw any problems with the "failsafe" lot.

Emmert said it is a separate legal lot with no houses on it.

Julie Wisner, 3325 SE Wister Street, Milwaukie. She read a letter into the record from **Linda Montgomery**, former Traffic Safety Board member. Montgomery writes of her concerns after learning the City was contemplating demolition of the Sam Marinos house. This house has been a community landmark for over 80 years, and she feels it would be a great disservice not to do everything possible to relocate the structure to another site in Milwaukie. Montgomery gave examples of decisions made over a number of years which resulted in removal or destruction of architecture that gives Milwaukie its identity. These represent an architectural loss to the community, and Montgomery urged the Council to reconsider any decision that would lead to the destruction of a well-known landmark. The Marinos house is a beautiful example of an early 20th century private home. Montgomery believes there is a responsibility to the community to keep architecturally significant buildings, and it would be a shame not to allow a reasonable amount of time to move the house. Some individuals have claimed the presence of the house has reduced property values in the vicinity; however, tax assessor's records show a steady increase for the past 3 years. Milwaukie police have no record of crimes related to this house. The community must keep its older, finer-built homes for future residents, and she urged against making a hasty decision based on earlier misfortunes. Saving this house supports the City's mission statement. Montgomery asked the City Council to consider the future impact that destroying homes such as this could have on the community.

Julie Wisner asked City Council to remember this is a Centennial year and to honor the community's history. This is not a drug or a biohazard house. It is a house with a vibrant history built by a Greek immigrant for his family. Marinos was a philanthropist, and Wisner cited several examples of his generosity during the Great Depression. He was a man of great integrity who gave back to his community as well as a prominent Portland businessman. Wisner believes the City should make a commitment to preserving these structures. Emmert is the right man to move it, but he needs time. Milwaukie has lost a significant amount of architecture through demolition or relocation. Rich Peterson, the previous owner, wasted a lot of the City's time, and she understands the frustration. Emmert International has a team of professionals that can get the job done in a reasonable timeframe. She implored the City Council to give Emmert the time needed to move this significant piece of architecture and part of Milwaukie's heritage. She is personally committed to the community and its future and feels passionately about giving Emmert International the time it needs to accomplish the relocation.

Martin Wilkins, 3026 SE Balfour, Milwaukie and **Charles Wilkins**, 3122 SE Balfour Street, Milwaukie. Charles Wilkins, a resident since 1969, spoke as property owner of tax lots 9200 and 8800. His property is adjacent to the Emmert property on Balfour

Street. Clackamas County installed a fence about 7 years ago to reduce trespassing, and Wilkins is concerned about maintenance responsibilities if Emmert International is allowed to move forward with its proposal. As yet, Emmert has not repaired the fence from the last time he accessed his property to cut the grass and weeds.

C. Wilkins discussed the history of the 1968 warranty deed for Emmert's property, tax lot 9000, which appears not to be a legal deed because it does not carry right-of-way provisions for a minor land partition (MLP). He believes the lot should be legalized before any residential building is placed on tax lot 9000. Adjacent property owners have not received any notice from the City about the proposed siting of the Marinos house on tax lot 9000. He understands access to the subject property will be from A Street. Any street dedication should include public access to tax lots 9100 and 8800. This action would support the goal of infill development on oversized City lots.

The proposed house move was discussed at length at the January 14, 2003 meeting of the Ardenwald-Johnson Creek Neighborhood District Association. Alternative legal vacant lots were identified which people felt would be better sites for the Marinos house. He requested that the City have a representative at the next Association meeting to provide a status report. Wilkins was somewhat confused by some of the information Emmert International provided at this meeting. He provided photographs of the site.

C. Wilkins read a letter dated January 21, 2003 into the record from Roberta Ojala, 3040 SE Balfour Street, Milwaukie. She owns the adjacent property north of the subject site. She states she is opposed to the plan and would not agree to an easement for water access. She was contacted by an Emmert International spokesperson and had a tentative agreement for the easement only by phone. She said the situation was not clearly explained to her.

Councilor Barnes asked what the general consensus was of the neighbors about Emmert International's proposal.

C. Wilkins said residents were concerned because there are about 5 other legal lots in the neighborhood that have access to Balfour Street and are curious why these lots were not considered. These lots, owned by 1 person, have been abandoned for many years, and code enforcement has been called numerous times.

Councilor Barnes asked, if given an opportunity, would the neighbors support or oppose having the house moved to that site.

C. Wilkins thought they would probably be opposed.

Councilor Lancaster appreciated the amount of research on Wilkins's part. He asked if the objective was simply that he does not want to have a house on that lot or if it would be acceptable only if certain conditions were met.

C. Wilkins said Emmert should have followed the minor land partition process in effect at the time to create a legal lot. Emmert is working on an easement and waterlines, and if the paperwork is submitted to the planning department, it will become a legal lot.

Councilor Lancaster asked Wilkins if he spoke directly with Ms. Ojala.

M. Wilkins indicated he spoke with her.

Councilor Lancaster asked who was clarifying the situation for Ms. Ojala.

C. Wilkins said Ojala was invited to the neighborhood meeting but could not attend and asked him or his son to let her know what transpired.

M. Wilkins said Ojala was unaware of the stipulations of granting a water right-of-way. Someone simply asked her if they could do it but did not explain they would actually own the property.

Councilor Stone understands that if this lot is made a legal lot that Wilkins has no objection to the house being there.

C. Wilkins said it should be a legal lot according the City's land use regulations. As he said in his testimony, 1 of the considerations should be for density infill on several other lots.

George Van Bergen, 12366 SE Guilford Drive, Milwaukie. If the City Council defers or delays its decision on abating the nuisance, the house will be there for 2 more years. This house is a public nuisance and should be abated. Milwaukie is a home rule charter community, and there are certain services a city must provide. He discussed plenary power and the need to rid the community of nuisances like this house. It is an item of personal property, not real property. He came to speak to the abatement issue, not to the land use issues related to a non-conforming property. This old house sits on blocks with boarded windows. If the Council votes to continue this, it should ask for a surety bond that is not refundable if the move is not accomplished by the due date. He believes the abatement should continue because the appropriate results have not been tendered.

Patty Wisner, 3325 SE Wister Street, Milwaukie, and current member of the Milwaukie Design and Landmarks Commission, spoke as a private citizen. She provided a report of facts and documentation meant to educate Council and staff and to refute some of the misinformation given at previous meetings. Wisner read a letter into the record stating her family's support for the preservation of the 82-year old Marinos house presently owned by Emmert International. The house is a significant example of a large, Craftsman, 2-story bungalow architecture unique to Milwaukie. She asked that the Council show its commitment to the City's mission statement by protecting this house from demolition and ensure it is preserved and relocated. She is aware of the difficulties in the process and of citizen concerns about the house being stored at its

current site beyond City-approved deadlines. Milwaukie police department records show no criminal activity related to the house. On January 13, 2003, the tax assessor records showed no decline in either assessed or market values in the surrounding area. These are indications that the house's current location has not been detrimental to the immediate area. She asked the City Council and staff to allow adequate time to relocate the house to a permanent site because demolition would be a great loss to Milwaukie's architectural heritage. The relocation of this well-known, well-built home is in Milwaukie's best interest. Preservation of this significant architectural style will allow future generations the opportunity to live in vintage homes as well as fulfill the City's vision statement. Wisner's report contained a summary of the historic homes already lost in Milwaukie, tax assessor information, and history and question and answer sections specific to the Marinos house. She sees no problem with the house sitting on that site a little longer while waiting for permits and urged Council to allow a reasonable amount of time to work cooperatively with Emmert International to relocate an architectural treasure.

Councilor Stone commented Wisner's report is thorough and well done

Brent Carter, 8806 SE Regents Drive, Milwaukie, Design and Landmarks Commission Chair and Planning Commissioner addressed the City Council as a resident. At some time in the future, the only signs in the City will be "Milwaukie Junction" with arrows pointing to expressways and Tri-Met park-and-rides. The City has a heritage, and he urged preserving it. He suggested looking at the Gilman Village website to see how Issaquah, Washington, created a village by moving its historic buildings to a designated site. As a professional in the field of architecture, he spoke to the goal of preserving the City's heritage. This is Milwaukie's Centennial year and it would be a shame for the public sector to have difficulty in moving one of its sacred landmarks. As the year progresses, Carter urged this issue be resolved by considering the bigger picture. One solution might be the creation of a subdivision for these types of historical buildings. He supports the abatement but asks the Council to be patient and allow time for Emmert International to complete the job.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. For the record, she does live in a Craftsman bungalow style house that was built during the Great Depression, and she assured the Council if these houses were side by side the difference would be clear. She is in favor of preserving architecture but also wants the neighborhood to look as it should. She is tired of seeing a boarded up, ramshackle house on top of stilts. At the last meeting, the Council requested Emmert International to provide a date certain, and Emmert indicated it could have it moved by April 27. She does not believe the word "could" constitutes any sort of certainty in respect to when the house will be removed. She questions the salability of the house. She also questioned whether the property values have increased as much as they could. She disagrees with those testifying that the house being parked on the site for a year has not been a detriment. It erodes the sense of pride of other Lake Road residents, and people are uncomfortable. It is easy to champion the values of preserving architecture if one does not pass the house each day. Brinkman suggested moving the house to another temporary location if the current

plan fails. Emmert indicated he has a storage facility, and perhaps it could be moved there. Lake Road residents and businesses on 21st Avenue have contributed as much as they can be expected in terms of patience. If the storage site is not an option, then perhaps those espousing the virtues of architectural preservation would like to have the house moved next door to them. This house is an embarrassment and people are getting very tired of its sitting there.

Lisa Gunion-Rinker and Matt Rinker, 3012 SE Balfour Street, Milwaukie and regular attendees of Ardenwald neighborhood meetings. Although Gunion-Rinker appreciates the house's architecture, Emmert International's proposal essentially places it in someone's backyard, and no one would ever see it. There are 2-acre lots in this neighborhood that have access to Balfour and Kelvin Streets with abandoned homes on them. Placement on one of these lots would accentuate the special nature of the Marinos house. As a property owner, she is concerned this would set a precedent in the area to open up back lots, and she is opposed to that. She did not believe Ojala understood what people were asking when they talked to her about granting an easement. She stated her opposition to Emmert International's siting the house on the proposed lot on Balfour Street.

Rinker is not opposed to preserving the house but is concerned about the appropriateness of the house on that lot. He understands the Fire District would require a turnaround area. If the County does not allow the turnaround on its property, then it would have to be on the subject lot. This gives rise to a concern with setbacks. It is a beautiful house and will not be seen if it is put on that lot. He is concerned about security and possible trespassing issues from people accessing 32nd Avenue and other streets from Hillside Housing if the fence is removed.

Gunion-Rinker said there is a large Russian community in Hillside. They are wonderful people, and she has personally had no problems.

Staff Rebuttal

Mayor Bernard asked the alternatives are if the neighbor denies the easement.

Shirey said, if the neighbor refuses to grant the easement, then the line could be run to 32nd Avenue across Housing Authority property. The sewer line already goes to 32nd Avenue.

Councilor Stone asked how one accesses the property.

Gessner said 1 possible access is a hammerhead turnaround constructed in accordance with City and Fire Marshall standards at the end of A Street. A portion of the proposed turnaround is on Emmert property, but the City would require additional right-of-way from Emmert to ensure the entire turnaround is within a dedicated City right-of-way. The County Housing Authority has not reviewed this.

Councilor Stone understands the house could be seen from A Street but not from Balfour Street.

Gessner believes that was true. A Street would be extended, and Emmert would be responsible for all necessary improvements. He understands in speaking with Gary DiCenzo, Housing Authority Executive Director, that the approval process would require a survey of residents to determine the acceptability of the proposal. The next step would be consideration by the Housing Board that is comprised of a citizen member and the Clackamas County Board of Commissioners. DiCenzo was reluctant to indicate the likelihood of Housing Authority approval at this time based on what it might hear from the neighborhood. The Board might find it is not in the best interest of the residents of the housing project. It may be 1 to 2 months before a decision is reached because meetings must be scheduled.

Emmert International submitted a timeline at this meeting which staff feels is more accurate than that previously provided. Staff provided copies of an e-mail from HUD which contained sample questions the agency would expect answered prior to granting a dedication.

Gessner said staff believes there are potentially 2 fatal flaws to the project because of uncertainties. One question has to do with the legality of the lot. There are procedural remedies in the event it was created illegally through a minor land partition application. The other issue is that a house may not be placed on a lot without street frontage. Both technical problems can be overcome given the circumstances; however, these will require additional time. Emmert International will have to apply for a minor land partition and variance if it is unable to secure Housing Authority approval. This potentially adds an additional 120 days to the overall time period. Emmert International has not discussed lot legality with staff. The issue before Council at this time is establishing a factual basis for declaring the nuisance. Storage of an unoccupied building is not allowed and does not comply with the City's Zoning Ordinance.

Councilor Barnes asked the normal fee for a Zoning Ordinance violation such as this.

Campbell explained Emmert International has not been cited, but normally it can be up to \$500 per day.

Councilor Lancaster noted Gessner made reference to technical defects and asked if fixing those defects would conflict with the principles the City Council set for the Planning Commission regarding zoning.

Gessner said the criteria for granting a variance are clear. In the event Emmert International does not secure the right-of-way dedication, a variance would be required to construct or place a house on a lot without street frontage. The first criterion is that there are unusual circumstances about the property relating to its physical characteristics or some other physical condition over which the applicant has no control. The Planning Commission recently looked at a similar application in which an illegal lot

was created in 1970. A subsequent property owner sought a minor land partition and variance approval, but it did not pass the Commission's critical examination of the circumstances. The challenge in any variance application is to provide a persuasive argument that it is excusable today. The City's entertaining a minor land partition assumes a disposition that it will not go after the property owner for a violation that occurred over 30 years ago. The application would open testimony before the Planning Commission.

Councilor Stone asked Gessner his opinion on possible negative impacts for the neighbors.

Gessner said the neighbors have explained their issues well. If this were a legal lot, impacts would be ordinary. There is a general acceptance that adjacent vacant lots will be developed in accordance with the Zoning Ordinance with certain acceptable impacts.

Protestor Rebuttal

Emmert was not aware of any problems when he purchased the Balfour Street lot 35 years ago. He has been paying taxes on it, so perhaps he should apply to the taxing division for a refund. Or, he could return the lot to the County, and then the neighbors would have the housing project people closer to them. He will ensure the fence is installed. The neighbors have been kind enough to let him access the lot to take care of the grass and clear berry bushes. He spends \$400 - \$500 a year to maintain this vacant property and feels this is still a country where people have a right to use their land. Water is available by other means, and apparently there needs to be more discussion with the neighbor to change her mind. He intends to install a hi-tech waterline in a 6-inch trench, so there is little concern about having to dig it up in the future. Although he appreciates Van Bergen's comments, people should keep in mind that Emmert International has been involved for only a few months. The house would have been moved to the first lot if it had not been for the 18-inch variance that, in his opinion, is not significant if it saves a building. It is not as much the value of saving an historic structure as much as it is recycling and saving natural resources. The neighbors have no problem if Emmert purchased 1 of the vacant lots across the street, so it is certainly not an issue for them to have the house in their neighborhood. Emmert International has moved historic structures from the Sunnyside Road improvement project to other sites for restoration, and variances far in excess of 18 inches were granted. If Emmert International had known the variance was needed, it would not have made the commitment to move the house. Apparently, this will remain a piece of land without a home on it that matches neighborhood characteristics. The Balfour Street site is his preference, but he does have a standby lot. Moving the house to the Emmert International storage lot is economically out of the question. The lot on Balfour Street is almost 10,000 square feet. The hammerhead turnaround at the end of A Street is an improvement, and if adjacent property owners wished to share the cost, then they could have access to the hammerhead. Or, he can install a spike strip to ensure it is never used since no one seems to want more lots. The home is good quality, and he hopes to see it saved for its recycling and historical value. If the County turns down that site, he

will use the backup lot; in the meantime, Emmert will submit the plans for both sites since the foundation plan is the same in either instance. It is unfortunate the house will not have much visibility, but this is the available lot. He agreed with those speaking in favor of saving the house and the importance of preserving Milwaukie's history. He applauded Carter's suggestion of creating a subdivision for historic homes.

Mayor Bernard asked Emmert how he felt about a performance bond.

Emmert said performance bond are rarely required in this type of circumstance, and he would take offense at adding costs to a preservation project. He would like to see people with a "can do" attitude in this project. He does recognize the issues and difficulties with the County agency. It makes more sense to increase the tax base by moving the house instead of only collecting taxes on a vacant lot. Dogleg lots have been approved in the subject area over the past 3 – 4 years. Although he cannot speak for HUD, he believes the County Commissioners will be supportive.

Councilor Barnes noted one of HUD's questions is the appraised property value.

Daniel believes it is about \$12,300.

Councilor Stone asked the location of the backup lot.

Emmert said it is about 4 – 5 blocks north and 2 – 3 blocks west of the Balfour Street site and near the railroad tracks.

Councilor Stone asked for additional comments on the variance requirement on the first lot.

Daniel said the property line needed to be redrawn because it was currently east to west and needed to be north and south. She understood either the property line would be redrawn or the variance granted, but not both.

Emmert explained this is a corner lot, and, to him, this is a matter of changing the lot line to get full utilization of the property. The original lot would have been a better site, and the house would have fit with the existing neighborhood characteristics.

Mayor Bernard said this is an abatement issue, and the City Council needs to determine whether or not to abate on this piece of personal property. This is not a land use hearing.

Councilor Stone hopes the goal of everyone in the room is to save the structure because of its architectural significance. She understands that if agencies do not approve the proposal then 120 days will be added to the timeline. She hoped all would work together to make it happen even if it means adding more time.

Emmert agreed with Stone's comments and is willing to readdress the variance with his client.

Mayor Bernard asked if the City would be responsible for the cost of running a waterline to that property.

Firestone said not necessarily.

Swanson commented on the amount of time spent on discussing one solution when in reality it is the Council's role to determine whether or not there is in fact a nuisance. A year ago the house was on School District property, and the District was anxious to begin construction. The District planned to demolish the house, but the City got involved through a series of discussions and agreed to allow storage for a period of time. It was not anticipated the City would be itself in this position today. The City began the first abatement process some month's ago when Peterson owned the house, and now the City finds itself in that position once again with Emmert International. The Council's role is to determine whether or not, according to the municipal code, there is a nuisance. This is a fairly simple determination because the code speaks to property used in a manner inconsistent with all state, county, or city land use and zoning regulations and decisions pertaining to the property. It does not speak to the character or nature of the property. Staff has spent a great deal of time dealing with solutions, and he hopes one will be found to this issue. The Council must focus on its decision, which is the question of nuisance or not nuisance. When that decision is made, according to the code, then 10 days are given to abate. If abatement is not done in that time period, then the City can abate the nuisance, which can mean various things to various people. The real issue is whether or not the house meets the code definition of a nuisance. That is not saying it is a bad piece of property or that it does not have some architectural status. It simply means, at least in this instance, is it or is it not used in a manner inconsistent with all state, county, and or city land use and zoning regulations and decisions pertaining to the property. That is the issue. One method of abatement, if the Council determines there is a nuisance, is to find another site for the house. The issue is not where or how to move the structure, but to abate or not to abate. This merely addresses the municipal code.

Firestone followed up on the issue of discretion. The Council has a decision to make on whether or not the house is a nuisance, and under the code, this is the Council's sole decision to make. Once it is determined to be a nuisance, if that is the Council's decision, the city manager may cause it to be abated. The word "may" gives the manager and the rest of city staff acting as the city manager's designees to take action and gives authority to take action but does not necessarily require the action to be taken. The Council can give instructions to the city manager as to how his discretion is to be exercised that could involve a timeline. The decision is whether or not the property is a nuisance and is not a land use proceeding. At some time in the future a land use hearing may be required, but the only issue at this point is whether the property is a nuisance or not.

Emmert said almost 2 years ago when the issue came up with the School District, he was assured by City staff that the 2 buildings could be sited on lots he owns in the City. Emmert International did not draw plot plans and was not aware the lines of the lot went crosswise. City staff and Marinos family members contacted Emmert to find out if he could help when the Peterson plan faltered. Emmert International agreed in good faith to do something and submitted a bid to move the house. He understood he would only have to submit a foundation permit application and get his building permit. Subsequently, he had the lot surveyed and discovered there were different lot lines. He was informed he could either switch the lot lines or get the 18-inch variance but not both. He owns the lot on Balfour Street as well as a back up. Deconstructing the house would be expensive and would not save the structure. Emmert is willing to do what is reasonable in order to make the project happen. The City granted Peterson the storage permit without which Emmert would have gotten both buildings and moved them 2 years ago.

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

Council Deliberations

Councilor Barnes understands the land on which the house is being stored is railroad property.

Firestone said the City provided notice to the railroad, but it did not respond. The City believes Emmert International is in charge and has responsibility for the ownership of the personal property, which is the house. To that extent, Emmert can be considered a person in charge. Although nuisances are directed toward the property owner, they are also directed toward the person in charge, and that is how Emmert and Emmert International became involved.

Swanson said the first time the railroad was notified during Peterson's ownership it did respond with a letter saying this was not a case in which they had any interest. This time, the railroad did not respond.

Councilor Barnes requested a copy of the municipal code section defining nuisances. For the record, she is not interested in demolishing this property and understands the family's feelings. She is concerned that there are many who are living and working in the area who do not share the emotional attachment to this structure. They have watched it being stored on this site for 2 years. She understands other residents' concerns and those of Milwaukie High School students. She does not think the house should be stored at its current site any longer.

Councilor Lancaster looks to what is fair and reasonable. Emmert International was tasked with developing a plan with timelines and benchmarks, so the City can track its progress. Emmert has put forth a reasonable effort to comply with Council direction. He does not feel it is fair or reasonable to craft an accelerated program, and Emmert International should have the full opportunity to move the house. Much of tonight's

discussion had to do with land use, and he does not intend to second-guess the Planning Commission. He believes the April removal and June occupancy is reasonable. However, if anything goes wrong in that process, he is ready to move toward abatement.

Councilor Stone agreed with Lancaster's comment. She looks at this house and believes it is architecturally significant and believes the Council should do everything to support the moving of the house. She also supports Emmert's plan to make it an owner occupied house that would benefit the City. She perceives the house not as a nuisance but as an annoyance. It should never have come to this point, but she believes the Council must look at what is in the best interest of preserving this architecturally significant structure. She is not in favor of moving toward abatement at this time. The timelines seem reasonable, and she urged giving Emmert International sufficient time to move the house. If there is some delay in getting Housing Authority approval, she did not see a problem with another 120 days when the house is 85 years old. She does not care where the house is moved but hopes it is to a site in Milwaukie.

Mayor Bernard believes the house is a nuisance that should be abated but is willing to provide direction after it is declared a nuisance. Doing so changes the City's position. He thinks the timelines Emmert provided are reasonable but is concerned land use issues will hold up the move. He is in favor of declaring the structure a nuisance, abating the nuisance, moving the house by April 27, and requiring a \$6,000 refundable performance bond if the house is moved by that date.

Firestone said the nature of a performance bond is that it is posted and then released. The person obtaining the bond pays a certain percentage for the bonding company to issue it. The bonding company is responsible for paying if the action does not take place on time.

It was moved by Mayor Bernard and seconded by Councilor Barnes to declare the structure a nuisance, to abate, and to direct the city manager to request Emmert International provide a performance bond, and move the house by April 27, 2003.

Motion failed with the following vote: Mayor Bernard and Councilor Barnes aye; Councilor Lancaster and Councilor Stone nay.

Firestone suggested several options: make an alternate motion; close the matter because the motion did not receive a majority vote among those present; or continue the matter. If continuation were chosen, the absent Councilor would have to familiarize himself with the entire record.

It was moved by Councilor Lancaster and seconded by Councilor Stone to move forward with the original plan without a performance bond, establish an April 27, 2003 deadline as reasonable for removal of the personal property regardless of where it goes, and if that deadline is not met, the City will go forward with a performance bond or abatement.

Councilor Stone asked if the timeline would be the end of June for occupancy.

Councilor Lancaster said by the end of April the house would be moved and occupancy established by the end of June.

Councilor Barnes understands the City Council is being asked to make a decision on whether or not this is a nuisance. The Council is responsible for making its determination on the legal definition under which she feels there is not choice but to say the house is a nuisance.

Motion failed with the following vote: Councilor Lancaster and Councilor Stone aye; Mayor Bernard and Councilor Barnes nay.

Firestone said there are alternatives that the Council may wish to consider. One is to declare the nuisance but suspend effectiveness of the decision until some point in the future, for example, through April 27, 2003.

Swanson said the Council could declare the nuisance, hold implementation in abeyance until after April 27, 2003 at which time, if the house is moved, the Council could vacate that decision. If Emmert International does not perform and the City has to abate, then there is a lien against the property. He is not as concerned about the performance bond because there is an enforceable lien, and the City does have a budgetary item that would eventually be reimbursed. The effect is to get the finding on the record, hold it in abeyance, and vacate it if there is compliance with the move on or by April 27, 2003, which is the proposed deadline.

It was moved by Mayor Bernard and seconded by Councilor Barnes to declare the nuisance, hold that declaration in abeyance until after April 27, 2003, and that order be vacated if the house is moved by April 27, 2003.

Councilor Lancaster wanted to be clear the motion did not include a performance bond.

Mayor Bernard said a performance bond is not included in the motion.

Councilor Stone asked for clarification of the definition of a nuisance and the Council's obligation to declare it a nuisance.

Firestone said the Council declares a nuisance if it believes the real property is being used in violation of the municipal code including the Zoning Ordinance which does not permit the storage of a structure such as this.

Councilor Stone said the railroad has no problem with the house being stored on that particular piece of property.

Firestone said it is not a question of whether the railroad wants it there. It is a matter of permissibility under the City's Zoning Ordinance and other municipal code regulations.

Councilor Lancaster commented on the letter and the spirit of the law and Council's role in determining what is appropriate under certain circumstances. He feels this motion represents a good compromise.

The motion passed unanimously among the members present.

Councilor Stone requested a 5-minute recess, and there was consensus to do so.

OTHER BUSINESS

Elect Council President

It was moved by **Mayor Bernard** and seconded by **Councilor Stone** to elect **Councilor Lancaster** Council President. Motion passed unanimously among the members present.

Citizens Utility Advisory Board Annual Work Plan

Shirey introduced Citizens Utility Advisory Board (CUAB) members **Bob Hatz**, Chair, **Charles Bird**, and **Ed Miller**. **Betty Chandler** had earlier excused herself from the meeting. The Board was established to advise the Council on the manner in which rates are for City utilities. He reviewed the nine items proposed for review: transportation utility maintenance fee, street light fee, 2003 – 2008 Capital Improvement Plan, system development study and revisions, cost of service study for water services, volume-based sewer rate study, pavement management system, and Portland/Milwaukie sewer rate adjustment.

Bird asked if the Council had any observations or wished to prioritize these projects.

Mayor Bernard said Clackamas County is studying the street maintenance fee issue and is almost ready to present the results to others involved in the study including the City of Milwaukie. Many cities are concerned about street lighting costs and system development charges. He felt the list was complete and in good order.

Councilor Lancaster felt all of the items on the list are critical projects and suggested the Board work on some or all of them concurrently.

Councilor Stone had a procedural comment since Council typically meets with the appointed advisory boards during work session. Would there be a future work session to discuss the items on the list in more detail and provide direction?

Mayor Bernard said typically an appointed advisory group provides a draft program for Council comment and direction. There are many important issues on this list, and he believes it is important to move forward.

Swanson added in the recent goal setting session Council discussed meeting 2 times annually with each advisory board. In 6 to 8 months the Council could schedule a meeting with this group for a status report.

Sanitary Sewer Volume Based Billing Update

Ostlund and **Shirey** provided the staff report updating the Council on the volume based sanitary sewer billing program. The City moved from a purely fixed rate structure to the new program in 2001, which is intended to be revenue neutral. Current figures indicate excess revenue being generated on the residential side. Financial Consulting Solutions Group (FCSG) has been retained to analyze the problem and make a recommendation if necessary.

FCSG identified potential reasons for the increased revenue as well as 3 possible courses of action which includes continuing to evaluate revenue collection trends and possibly amend the July 1, 2003 rate increase; conducting an account-by-account study for possible billing system problems; or immediately adjusting the billing structure to make the system revenue neutral. Staff recommends analyzing the revenue figures in March to determine if it is a "one time" occurrence or if a correction must be made to make the program revenue neutral.

Mayor Bernard agreed with the staff recommendation to evaluate the revenue figures in March before making any changes.

Councilor Barnes asked how much the consultant is being paid.

Ostlund said this study would cost about \$1,500. This is a specialized project for which the staff does not feel it has the necessary expertise.

Councilor Lancaster agreed this may not be a typical year and advised against rushing to make changes that might prove unnecessary. He does believe the program should be revenue neutral.

Councilor Stone agreed it was appropriate to study the program further.

Downtown Design Guidelines Project Update

Kent provided a status report on the Downtown Design Guidelines Project. The purpose of the project underway with the Design and Landmarks Commission (DLC) is to ensure downtown development is consistent with and contributes to the downtown character and vision. The project consists of 3 parts: Design Guidelines; Design

Review Process Code; and Sign Code Amendments. The Planning Commission and DLC will hold a joint public hearing in February with Council consideration in April.

Advisory Board Appointments

Mayor Bernard, with the consent of Councilors, appointed Kevin McNally to the Design and Landmarks Commission.

Resolution Changing March Meeting Dates

The group discussed the March 2003 Council meeting schedule. Members agreed to cancel the first work session of March and hold the first regular session on March 10, 2003. The work session on March 17 and regular session on March 18 will be held as normally scheduled.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution changing the March 2003 Council meeting dates. Motion passed unanimously.

RESOLUTION NO. 5-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, PROVIDING PUBLIC NOTICE OF CHANGES TO ITS MARCH 2003 MEETING TIMES AND LOCATIONS.

Comments on Draft Letter from the Clackamas County Coordinating Committee to the Metro South Corridor Policy Committee

The Council reviewed and commented on a draft letter from the Clackamas County Coordinating Committee to the Metro South Corridor Policy Committee. **Mayor Bernard** said the letter states the combined light rail project should proceed as the Locally Preferred Alternative (LPA) and financed and constructed as a single corridor in 2 phases. The first phase of this single project would be I-205 and the second phase Milwaukie to Portland. Swanson included several bullet points which supported the recommendation by identifying redevelopment opportunities in Milwaukie.

Councilor Barnes asked how the ridership was calculated.

Mayor Bernard said Tri-Met and Metro project ridership. This is not about whether or not Milwaukie wants light rail. The important thing is to take the opportunity to make sure Milwaukie is not overlooked in the transportation system.

Swanson said the Policy Committee is scheduled to meet on January 30 and February 13 in addition to community meetings. Eventually, the whole LPS issue will reach the Planning Commission and the City Council. The Policy Committee will be asked to

reach a decision before the Washington, D.C. trip in March to show the delegation a decision has been reached. He made amendments to the original letter proposed by the Clackamas County Coordinating Committee with 2 thoughts in mind. One is to deal with Washington County's stance that this is in reality 2 projects. Second, it reiterates the 2 phases of the project are linked, and one is no more important than the other.

Councilor Lancaster felt it was consistent with Milwaukie's position.

Councilor Stone is opposed to the light rail alternative because voters did not approve it. She cannot support signing this letter without comments from constituents.

Community Goals

Councilor Lancaster felt the City Council needed to discuss the proposal of adding support of library services to its goals. There are other issues related to that.

Mayor Bernard said these are still in draft form and would be discussed and adopted at a future Council meeting.

Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(1)(d) to consult with labor negotiator and (h) real property transactions.

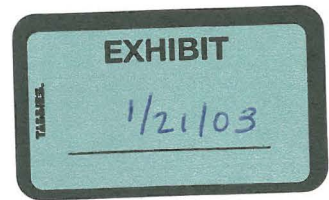
Adjournment

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

Mayor Bernard adjourned the meeting at 9:30 p.m.

Pat DuVal

Pat DuVal, Recorder



January 15, 2003

To The Milwaukie City Council,

I was greatly concerned when I recently learned that the City of Milwaukie was contemplating the demolition of the Sam G. Marinos house. It is my understanding that this wonderful older home has been a landmark in our community for over 80 years and it would be a great disservice to not do everything reasonably possible to relocate this home to another area of Milwaukie.

Like so many other small communities, the City of Milwaukie has made some unfortunate decisions in the past that have resulted in the destruction or removal of some of the wonderful architecture that gives our city its identity. To give just a few examples, The Crystal Springs Log Church, which at one time was located on Harrison Street, was moved to North Clackamas Park. The Milwaukie Episcopal Church (currently identified as the Pioneer Church) was moved to Sellwood in 1960. And what many people consider the greatest loss, the Seth Llewellyn House, which was located on McLoughlin Blvd. for over 90 years, and was torn down in 1940 to make room for the Texaco Station, which now sits on the site.

The removal and/or destruction of these buildings was a huge architectural loss to our community and I would ask the City of Milwaukie to please reconsider any possible decision to destroy another one of our well known landmarks, this beautiful example of an early 20th Century private home. I think that we have a responsibility to the community of Milwaukie to keep as many of our architecturally significant buildings as we can, and to not go the 'extra mile' to keep the Sam Marinos house would be a shame. If the difference in the 'life or death' of this house is mainly allowing enough time for the new owners to arrange for its removal, why not give them a reasonable amount of time to do this?

I understand that one of the reasons our city would like to demolish the house is because some individuals have claimed that the presence of the house on S.E. 21st has reduced property values in the near vicinity. However, a careful check of the records in the Clackamas County Tax assessor's office reveals that there has been a steady gain in property values in close proximity to the house for the last three years. I am also aware that the Milwaukie Police have no crimes related to the presence of this house in their records since the house has rested on the site, since Spring of 2001.

Several times a week, over the last year and a half, I have driven by this beautiful house sitting up on its blocks and thought to myself 'what a waste!' How sad that the owners had not found a site to place this wonderful home on. I was even more concerned when I heard that since the previous owners had not moved the house in the time they were allotted the house was going to be destroyed. This house is an excellent example of

northwest 'Craftman Bungalow' style of architecture and as such is rare for its style and size, and has been a landmark in our community for over 80 years. As a community we need to hold onto our older finely built homes for our future citizens, it is not uncommon for these homes to be sturdy and wonderful to live in when they are 100 to 200 years old. Let's not make a hasty or rash decision based on some mis-information, which will deprive future residents of choosing to live in a fine antique home well into the 21st Century or beyond.

Saving this house would be a decision very consistent with being true to the City of Milwaukie's Mission Statement, "...The City will have a commitment to achieving and maintaining: the sense of place, history, and future that defines Milwaukie and distinguishes it from other areas...". This statement totally fits in its description the Sam G. Marinos house. I think that we as a society are too quick to reach for easy and immediate resolutions to difficult problems or to over-react when our patience is at its limits. I would ask the Milwaukie City Council to consider the future impact that destroying homes with the unique architectural presence of the Sam G. Marinos House could have on our community. Thank you, I really appreciate your time and energy in considering my comments in this matter.

Sincerely,

Linda Montgomery



ARDENWALD/JOHNSON CREEK NEIGHBORHOOD ASSOCIATION MEETING
OF JANUARY 14, 2003

CARLOTTA COLLETTE, Chair, called the meeting to order.

LILLY MOORE displayed the ARDENWALD HISTORY booklet, which Milwaukie High School students prepared for us. She will order ten books for sale now at \$10. each. The book is a compelling history of the area which will appeal to many local residents. Call Lilly at 503-654-6401.

Officer KEVIN KREBS reported that the crime statistics were about the same as last month.

There was no large increase in crime activity for our area. The department solved three burglaries in the 20th and Roswell area committed by one individual, who used a car he stole to store items taken in break-ins. The hospital parking lots have had a number of break-ins and stolen vehicles. One night there were three break-ins and two cars stolen.

1. It appears that someone familiar with the activities of the hospital may be involved. Abuse and domestic violence cases are about the same as last month. Alcohol seems to be a factor in almost all of them. Officer Krebs warned that the economy and winter months seem to escalate these kinds of problems. Super Bowl Sunday will usually incur the most domestic violence disturbances.
- 2.
3. STEVE SATTERLEE from the Milwaukie – Portland Light Rail Coalition briefed us on the proposals and comment opportunities of the South Corridor Transportation Project. The Coalition is seeking public comment for the Draft Impact Statement. The last chance to make comments on the five items which Metro has been looking at is February 7, 2003. The options are as follows:
- 4.
5. Bus Rapid Transit Alternatives. This plan is for the entire length of Mc Loughlin Blvd. from Oregon City to Portland.
- 6.
7. Busway Alternative (Plan showed separate right-of-way for buses.) This traverses McLoughlin to Oregon City, with one option from Milwaukie to Johnson Road or New Hope Church.
8. Milwaukie Light Rail Alternative. This has several design options, one to Oregon City and another to Clackamas and New Hope Church.
9. I-205 Light Rail Alternative. One option was for bus-rapid transit from Portland to Oregon City. The other option was for light rail from Gateway to Sunnyside Road.
10. Combined Light Rail Alternative. Rail transit from Portland to Milwaukie, and bus transit to Oregon City. Alternate option was light rail from Gateway to Sunnyside Road. Both options to be built on a phase basis.

Steve furnished a study of the Description of Alternatives -- Compared to No-Build and a sheet titled Light Rail Talking Points. Also furnished were maps of the five options under consideration. Remember, the cutoff date for comments is 2-7-2003. The A-JC NDA plans to submit a letter.

Public Hearing by Metro Policy Council is Wednesday, 1-29-2003 at 6 PM at the Lents Mason Hall, and 6 PM on 2-4-2003 at the Multnomah County Building, 501 SE Hawthorne in the Board Room. The Metro Council will make a decision of locally preferred alternatives.

JEANNE RINGLEHEIM from the Johnson Creek Watershed Council asked for our help on March 8, 2003. This will be a wetlands planting session. All plants will be donated. About 60 volunteers came out last year. We are asked to host Coffee, Tea, and Pastries, as well as recruit volunteers. Remind them to come equipped with boots and gloves.

Motion made and seconded to use \$50 of our grant money for food. Motion passed. DAVE MAYFIELD will be in charge, Phone Number is 503- 653-5771. Action to begin a 9 AM at 45th and Tideland on March 8. CARLOTTA COLLETTE will meet with the school to prepare information to be sent home with students.

MOVING THE SAM MARINOS HOUSE to Ardenwald. EMMERT INTERNATIONAL has purchased the historic house and plans to move it to a suitable site near Balfour Street. About eight residents from Balfour Street attended the meeting. They presented a map of the area showing the planned location. It is a land-locked parcel with entry only from the housing project on 32nd Avenue when a fence is removed. The lot cannot, however, accommodate a turn-around needed by the Fire Department, nor does it have access to public utilities. This could also open the area to unwanted entry from the housing project.

The neighbors suggested two other lots located on Balfour which could be utilized for this historic house and would have access to public utilities as well as easy fire protection. The group of neighbors will set up a meeting with John Gessner, Milwaukie Planning Director, to pursue the location on site to discuss possibilities.

STORM WATER SYSTEM FOR 40TH AND 43RD. RUTHANNE BENNETT, P.E., Civil Engineer for the City, displayed a map of the area, which has a history of high water problems. Construction is to begin in February before any work will be done on the Johnson Creek project. Contract is to go to the City Council on Jan 21, 2003. For additional information you may call Ruthanne at 503-786-7610.

KATHY BUSS, announced that MARTHA GERMANY, is the Centennial Lead for tree planting -- disease resistant Dogwoods, pink and white. One hundred trees, with 12 to 15 for each neighborhood, is the goal. The trees are caliper, balled, and will have plaques to designate permanent trees. Cost is \$50 per tree, and they asking us to purchase as many trees as we can.

She also asked us to decide what our Centennial Project will be. Under consideration is an island on Johnson Creek Blvd. announcing entry into Ardenwald and Milwaukie. The Ardenwald History book, and touring historic homes and sites are considered.

The Centennial celebration will begin at 5 PM on 2-4-03 with dignitaries present for the ceremony. This is to held in a tent in the lot across the street from City Hall. This will adjourn to City Hall for the birthday cake and performances based on prior Council meetings. The Summer Celebration, headed by ED ZUMWALT, will include a parade on 6-14—03, and a showcase of the waterfront will be featured. There will b e fireworks in July and August on a barge in the river. Volunteers are needed. Please call Kathy Rose at 503-655-3120.

SHERRI CAMPBELL, Vice President, announced that CLEAN UP DAY IS SCHEDULED FOR MAY 3, again at Ardenwald School, as it was last year. The City will assume the cost. Please, no toxic waste will be accepted.

SHERRI also announced that SE UPLIFT has offered a grant of \$650. We are considering a white elephant swap. To qualify, flyers can be prepared about recycling and education.

SHERRI CAMPBELL, CARLOTTA COLLETTE, AND DOROTHY SNOWHILL will meet with MICHELLE GREGORY at 10:30 on 1-29-03 to review by-laws and boundary changes.

SHERRI also announced PAJAMA NIGHT AT ARDENWALD SCHOOL will be on JANUARY 23, 2003, starting at 6:30 PM. Come join the students in your PJ's, and sit and read with and to them. See old friends and make new friends. All students attending will get to take home one or two books.

SHERRI will write a grant for \$1500 to cover the cost of books to be distributed next summer at Adenwald Park.

MARY KING announced a PEACE RALLY AND MARCH on Saturday 1-18-03 at 12:30 PM at SW 9th and Main (Park Blocks) in downtown Portland.

DOROTHY SNOWHILL gave an update on the PROVIDENCE HOSPITAL PROJECT. LINDSEY NESBITT is responsible for the Landscape Plan. TOM NELSON, a new employee, will handle the Building Permit information. The City's contract with Happy Valley was pulled so they could hire Mr. Nelson. He stated that a few items were yet needed from the architect, then the Engineering Department and the Planning Department must review.

I called JOHN GESSNER about the road vacation. He had heard nothing from the hospital.

The architect, SCOTT HARRIS had been in recently and requested to use the vacant lot and the corner of 36th and Dwyer Drive as a Temporary Construction Site. John asked me

how I felt about this. I told John that I would need to contact some of my neighbors.

I contacted 19 residents. We found that we had no objection as long as they adhered to a number of items I listed in a letter to him. The need should have been apparent from the beginning of the project.

I called RICHARD SMITH for an update on the road situation. He stated the Property Management office of Providence had a summary of action taken. He asked DANA WHITE to contact me. I left her a message on her voice mail with my E-Mail address. She responded with nothing new since I advised them last September of the Dwyer heirs. The road will have to be barricaded for construction, but the facility cannot open without the vacation of the road and planting as stated by the Planning Commission.

SE UPLIFT announced a training session for neighborhood activists on January 29, 2003. From 6 PM to 9 PM, at their offices 3534 SE Main Street. Dinner will be served. Contact KELLY CALDWELL at 503-232-0010, X 22.

1/21/03

January 21, 2003

Milwaukie City Council Meeting, January 21, 2003

Subject: PROPOSED SAM MARINOS HOUSE LOCATION ON TAX LOT 900, 1S 1E 25CA

Good evening members of the City Council. I am Charles Wilkins and I am a city resident and have lived at 3122 Balfour St., Tax Lot 9200, since May 1969. Along with my wife, we are home owners and also own the lot and house at 3026 Balfour, Tax lot 8800, since the fall of 1984. It is because of this last mentioned ownership we are very interested in the in the future of the lot number 9000 owned by Mr. Emmert. The west lot line of the Emmert lot lies along the south $\frac{1}{2}$ of the east lot line of our ownership. The south line of both of these lots lies along the north line of the Clackamas County Housing area called Hillside Homes.

It is in this area our interests are most concerned. Up until about seven years ago we had a problem with people and animals from Hillside Homes trespassing onto and across these two tax lots because there was no fence completely along the north line of Hillside Homes. The existing fence had several gaps in it, in the area of the two tax lots, because there existed several deciduous "line" trees. Then Clackamas County removed the "line" trees and after a period of time installed a tall cyclone wire type of fence. I believe, that at the same time, they also removed a "walk through," off the south end of 29th street, due to security problems in the area. Because of the proposed development of the "Emmert" lot who will be responsible for a "no trespassing" security in the area when the Hillside Homes fence is removed?

For a couple of years, during this period of time, we allowed Mr. Emmert to move equipment and men across our lot so he could annually control the tall grass and brush growth from becoming a fire source during the summer. This control work was requested by the Milwaukie City Code Enforcement. After several contacts by the City Code Enforcement he also put up a serviceable fence along several sides of the lot. To preform the latest Code Control work he came through the Clackamas County Hillside Homes fence, the fence still has not been completely repaired from that last entry. It has yet to be shown that the entry was authorized by the Clackamas County Housing Authority.

My Tax Lot #9000 research, with the Clackamas County Assessors office and the Milwaukie Planing Department, seems to indicate that the October 4, 1968 Warranty Deed from Albert C. Hoffman, Jr. and Joyce J. Hoffman, Husband and wife [grantors], to Terry W. Emmert and Kathleen Emmert, husband and wife, [grantees], is not a legal deed in that does not carry the necessary rights of way provisions for the minor partitioning of a "created" lot from a legal "parent" lot. The subject deed appears to be in violation of Milwaukie City ordinance #1157 *AN ORDINANCE PROVIDING SUBDIVISION AND OTHER LAND PARTITIONING STANDARDS AND PROCEDURE; PRESCRIBING PENALTIES AND REPEALING ORDINANCE NO 818*. Section 7. [is entitled] *Minor Partitioning; Procedure for Approval*. Ordinance #1157 became effective May 22, 1967, over one year before the existence of the Hoffman/Emmert deed. There is no Planning Department file record for a Tax Lot Minor Partition from Tax Lot #8900. Over the decade, plus years, there has been plenty of "constructive" evidence that tax lot #9000 is not a legal lot. Before any residential building placement on lot #9000 the lot should be "legalized" through a "delayed" minor partitioning procedure.

Milwaukie City Council Meeting January 21, 2003

We have not received any official city notice of the Sam Marinos house siteng on Tax Lot #9000. In preparing this response we therefore have had to partially rely on available non-official information. It is our understanding that access to lot #9000 is to be via an extension of Hillside Homes SE "A" Street. The average scale distance of this dedicated extension is approximately sixty feet. If this street dedication is accomplished through the minor partition process, the dedication should minimally include public access to tax lots #9100 and #8800. This action then would support land use goals for development of housing density infill on oversize city lots.

The proposed Sam Marino house move was discussed extensively at the January 14, 2003 meeting of the ARDENWALD/JOHNSON CREEK NEIGHBORHOOD ASSOCIATION MEETING. Alternative vacant city lots were identified, which would better site the Sam Marino house and are also legal lots with appurtenant public access and services access. Several of these lots are several hundred feet from the Emmert Tax Lot #9000. It is hoped that the city will have a representative at the next neighborhood meeting to give a status report.

For your viewing I have an aerial photograph and several ground on site photographs.

I wish to thank the Council for the time to make this presentation and if there are any questions I will attempt to answer them.

EXHIBIT

1/21/03

Jan 21, 2003

To whom it may concern:

I am Rebecca Ojala and live at 3040 S.E. Balfour St. adjacent to the lot Emmert International proposes to move a large house onto. I am opposed to that plan and would not agree to easement for water access.

I was contacted by a spokesperson of Emmert and had a tentative agreement for easement only by phone call. The situation was not explained clearly to me.

I hope you will accept my vote of opposition in this letter. I am not able to attend the meeting because of work obligations. Please call me if this is a problem.

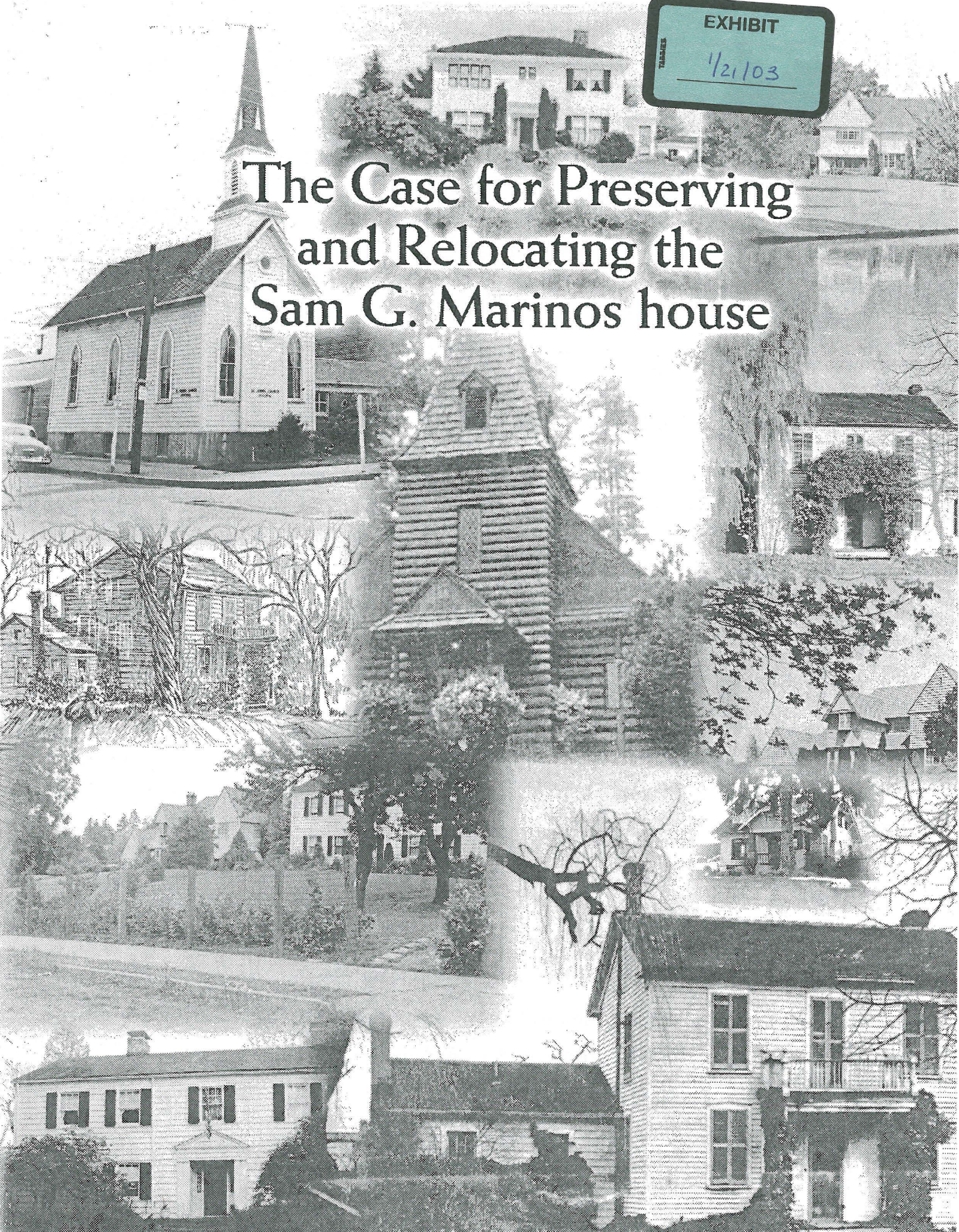
Respectfully,
Rebecca Ojala

503-654-2144

EXHIBIT

1/21/03

The Case for Preserving and Relocating the Sam G. Marinos house



This report provides factual documentation
vital to the decision making process
City Council must make regarding the
relocation and preservation of the
Sam G. Marinos House.

This report was compiled by Patty Wisner,
Design and Landmarks Commission
& Julie Wisner, both granddaughters
of Sam G. Marinos.

City of Milwaukie Mission Statement

The mission of the City of Milwaukie is to maintain and enhance Milwaukie as a good place to live and work, which is clean, safe, responsive, and provides quality services.

The City will have a commitment to achieving and maintaining:

- **the sense of place, history, and future that defines Milwaukie and distinguishes it from other areas;**
- a livable, safe environment, including preservation and enhancement of both built and physical environments; and
- a private and public partnership which provides for the maximization of business and individual opportunities.

In the past several months, City Council has heard a number of reasons to remove the Sam G. Marinos house from its temporary location at S.E. 21st Avenue in downtown Milwaukie.

This document provides factual evidence regarding opinions and assumptions discussed by the public during recent City Council meetings.

1. Is the Sam G. Marinos house a historic Milwaukie property?

- *The Sam G. Marinos house is not currently listed on the Milwaukie Design and Landmarks Commission List of historic properties. The house has not yet been considered for designation by the DLC. The house could be submitted for consideration in the future if it is allowed to be relocated within Milwaukie.*

2. Is the Sam G. Marinos house an architecturally significant design?

- *Yes, the house is a significant example of Craftsman Bungalow design. It is perhaps the largest sample within Milwaukie of this style.*

—Characteristics of Craftsman Bungalow design:

- **Low-pitched gable or hipped roof with wide overhanging eaves and exposed rafters, exposed purlins, and decorative brackets. Exterior chimneys often of cobblestone or rough brick. Rectangular composition with horizontal earth-hugging quality. Double-hung windows with small panes in the upper sash, large windows often flanked by two smaller windows on front facade, and dormer windows with gable, hipped, or shed roofs. Wood-frame or brick construction with rustic surface materials (shingles, rock, rough brick) Porches, verandas, sunrooms, and sleeping porches often supported by tapered porch posts (truncated obelisks).**

(From the book: Architecture Oregon Style – Architecture from 1840 to the 1950s, published in 1983, Professional Book Center, Inc. Portland, Oregon.)

Underlined elements match the design of the Sam G. Marinos home. The roof line has a period design variation common to the era known as a “Dutch Clip” roof.

3. Is the Sam G. Marinos house a known landmark?

- *The house stood on the same site for 79 years on S.E. Washington Street. Many Milwaukie citizens feel that it is a well known building in the Historic Milwaukie Neighborhood. Thousands of citizens were accustomed to seeing the house for 79 years. It is known in the community.*

4. Is the Sam G. Marinos house worth preserving?

- *Preservation is consistent with the City's Mission Statement. In light of the Centennial this year, preservation would be consistent with protecting Milwaukie's heritage, saving the home of a former prominent business man who raised his family here and was a philanthropist to struggling families during the Great Depression in the 1930's.*

5. Has the Sam G. Marinos house caused an increase in crime in the area of S.E. 21st Avenue?

- *Steve Campbell, City of Milwaukie Code Compliance Coordinator, reports that there are no crime reports on file with the Milwaukie Police Dept. during the time the house has temporarily sat on S.E. 21st Avenue.*

6. Has the Sam G. Marinos house caused a decrease in property values along S.E. 21st Avenue?

- *No, documentation provided by the Clackamas County Tax Assessor's office January 13, 2003 shows that property values of tax lots on the east side of S.E. 21st Avenue and the corner of S.E. Washington Street and S.E. 21st Avenue have steadily increased from the date shown on the documentation provided in the next pages from 2000 to the present. **Please see inclosed documents from the County Tax Assessor.***



CLACKAMAS COUNTY

Property Account Summary

Account No.: 00027287 Alternate Property Number: 11E36BC01500
Account Type: Real Property
TCA: 012-002 Located On:
Situs Address: 2036 SE WASHINGTON ST
MILWAUKIE, OR 97222
Legal: 5 MILWAUKIE LT 2 BLK 37

Parties:

Role	Name & Address
Contract Buyer	BERNARDS GARAGE INC 2036 SE WASHINGTON ST MILWAUKIE, OR 97222
Owner	BERNARD JOSEPH M NO MAILING ADDRESS AVAILABLE
Taxpayer	BERNARDS GARAGE INC 2036 SE WASHINGTON ST MILWAUKIE, OR 97222

Property Values:

Value Name	2002	2001	2000
AVR Total	\$93,231	\$90,516	\$87,880
TVR Total	\$93,231	\$90,516	\$87,880
Real Mkt Land	\$58,380	\$57,844	\$56,770
Real Mkt Bldg	\$70,430	\$69,780	\$68,490
Real Mkt Total	\$128,810	\$127,624	\$125,260

Property Characteristics:

Tax Year	Characteristic	Value
2002	Neighborhood	20010: Area 01 commercial
	Land Class Category	201: Commercial land improved
	Change property ratio	2XX: 72.40%

Exemptions:

(End of Report)

Search Criteria

Property No. 00027287

As of Date 01/13/2003

Tax Year

Effective

Tax Year Date

Assessment Date

- Use Start Dates
- Use End Dates

Clear

Search

Summary

Parties

Values

Taxes

Events

Receipts

Other

Value Type	2002 Value	2001 Value	2000 Value	1999 Value	1998 Value
AVR Total	93,231	90,516	87,880	85,320	82,...
TVR Total	93,231	90,516	87,880	85,320	82,...
Real Mkt Land	58,380	57,844	56,770	53,560	49,...
Real Mkt Bldg	70,430	69,780	68,490	64,610	59,...
Real Mkt Total	128,810	127,624	125,260	118,170	106,...
M5 Mkt Land	58,380	57,844	56,770	53,560	49,...
M5 SAV	0	0	0		
MSAV	0	0	0		
M5 Mkt Bldg	70,430	69,780	68,490	64,610	59,...
MAV (Market Portion)	93,231	90,516	87,880	85,320	82,...
Mkt Exception	0	0	0		
ΔV Exception	0	0	0		

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All Values..

Show Certified Values

Compare Values

Print Summary

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Help...



CLACKAMAS COUNTY

Property Account Summary

Account No.: 00027278 Alternate Property Number: 11E36BC01400
 Account Type: Real Property
 TCA: 012-002 Located On: 1500
 Situs Address: NO SITUS ADDRESS, OR
 Legal: 5 MILWAUKIE LT 1 PT LT 8 BLK 37

Parties:

Role	Name & Address
Exempt Tenant	EDWARDS CENTER INC PO BOX 6269 ALOHA, OR 97007
Owner	BUCHWALTER MARIANNE TRUSTEE 135 SE HAWTHORNE BLVD PORTLAND, OR 97214
Owner	SHIPLEY JOAN L TRUSTEE NO MAILING ADDRESS AVAILABLE
Owner	SHIPLEY JOHN L TRUSTEE NO MAILING ADDRESS AVAILABLE
Taxpayer	BUCHWALTER MARIANNE TRUSTEE 135 SE HAWTHORNE BLVD PORTLAND, OR 97214

Property Values:

Value Name	2002	2001	2000
AVR Total	\$62,227	\$60,415	\$58,655
TVR Total	\$0	\$0	\$0
Real Mkt Land	\$79,014	\$78,289	\$76,840
Real Mkt Bldg	\$6,490	\$6,430	\$6,310
Real Mkt Total	\$85,504	\$84,719	\$83,150

Property Characteristics:

Tax Year	Characteristic	Value
2002	Neighborhood	20010: Area 01 commercial
	Land Class Category	201: Commercial land improved
	Change property ratio	2XX: 72.40%

Exemptions:

Tax Year	Description	Count	Amount	Assessment Basis
2002	Leased - Exempt Lessee	1	\$62,227	AVR Total
2001	Leased - Exempt Lessee	1	\$60,415	AVR Total
2000	Leased - Exempt Lessee	3	\$175,965	AVR Total

(End of Report)



CLACKAMAS COUNTY

Property Account Summary

Account No.: 00027296 Alternate Property Number: 11E36BC01600
 Account Type: Real Property
 TCA: 012-002 Located On:
 Situs Address: 2036 SE WASHINGTON ST
 MILWAUKIE, OR 97222
 Legal: 5 MILWAUKIE LT 3&4 BLK 37

Parties:

Role	Name & Address
Contract Buyer	BERNARDS GARAGE INC 2036 SE WASHINGTON ST MILWAUKIE, OR 97222
Owner	BERNARD JOSEPH M JR NO MAILING ADDRESS AVAILABLE
Taxpayer	BERNARDS GARAGE INC 2036 SE WASHINGTON ST MILWAUKIE, OR 97222

Property Values:

Value Name	2002	2001	2000
AVR Total	\$176,913	\$171,760	\$166,757
TVR Total	\$176,913	\$171,760	\$166,757
Real Mkt Land	\$109,970	\$108,961	\$106,940
Real Mkt Bldg	\$134,430	\$133,200	\$130,730
Real Mkt Total	\$244,400	\$242,161	\$237,670

Property Characteristics:

Tax Year	Characteristic	Value
2002	Neighborhood	20010: Area 01 commercial
	Land Class Category	201: Commercial land improved
	Change property ratio	2XX: 72.40%

Exemptions:

(End of Report)

Search Criteria

Property No. 00027296

As of Date 01/13/2003

Tax Year

Effective

Tax Year Date

Assessment Date

Clear

Search

- Use Start Dates
- Use End Dates

Summary

Parties

Values

Taxes

Events

Receipts

Other

Value Type	2002 Value	2001 Value	2000 Value	1999 Value	1998 Value
AVR Total	176,913	171,760	166,757	161,900	157,▲
TVR Total	176,913	171,760	166,757	161,900	157
Real Mkt Land	109,970	108,961	106,940	100,890	92
Real Mkt Bldg	134,430	133,200	130,730	123,330	113
Real Mkt Total	244,400	242,161	237,670	224,220	205
M5 Mkt Land	109,970	108,961	106,940	100,890	92
M5 SAV	0	0	0		
MSAV	0	0	0		
M5 Mkt Bldg	134,430	133,200	130,730	123,330	113
MAV (Market Portion)	176,913	171,760	166,757	161,900	157
Mkt Exception	0	0	0		
ΔM Exception	0	0	0		

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All Values...

Show Certified Values

Compare Values

Print Summary

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Help...



CLACKAMAS COUNTY

Property Account Summary

Account No.: 00027367 Alternate Property Number: 11E36BC02900
 Account Type: Real Property
 TCA: 012-002 Located On:
 Situs Address: 11238 SE 21ST AVE
 MILWAUKIE, OR 97222
 Legal: 263 DUERSTS ADD LTS 3 4 7&8 BLK 2&VAC ST

Parties:

Role	Name & Address
Owner	HORTON FAMILY LTD PRTRNSHP 4188 SE PINEHURST AVE MILWAUKIE, OR 97267
Taxpayer	HORTON FAMILY LTD PRTRNSHP 4188 SE PINEHURST AVE MILWAUKIE, OR 97267

Property Values:

Value Name	2002	2001	2000
AVR Total	\$426,133	\$400,956	\$389,278
TVR Total	\$426,133	\$400,956	\$389,278
Real Mkt Land	\$213,934	\$211,971	\$208,050
Real Mkt Bldg	\$374,760	\$353,330	\$346,790
Real Mkt Total	\$588,694	\$565,301	\$554,840

Property Characteristics:

Tax Year	Characteristic	Value
2002	Neighborhood	20010: Area 01 commercial
	Land Class Category	201: Commercial land improved
	Change property ratio	2XX: 72.40%

Exemptions:

(End of Report)

Search Criteria

Property No: 00027367

As of Date: 01/13/2003

Tax Year: []

Effective

Tax Year Date: []

Assessment Date: []

Use Start Dates

Use End Dates

Clear

Search

Summary

Parties

Values

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Other

Value Type	2002 Value	2001 Value	2000 Value	1999 Value	1998 Value
AVR Total	426,133	400,956	389,278	377,940	366,148
TVR Total	426,133	400,956	389,278	377,940	366,148
Real Mkt Land	213,934	211,971	208,050	196,270	180,000
Real Mkt Bldg	374,760	353,330	346,790	327,160	300,000
Real Mkt Total	588,694	565,301	554,840	523,430	480,000
M5 Mkt Land	213,934	211,971	208,050	196,270	180,000
M5 SAV	0	0	0		
MSAV	0	0	0		
M5 Mkt Bldg	374,760	353,330	346,790	327,160	300,000
MAV (Market Portion)	426,133	400,956	389,278	377,940	366,148
Mkt Exception	18,160	0	0		
AV Exception	13,148	0	0		

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All Values...

Show Certified Values

Compare Values

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Help...

7. Has the Sam G. Marinos house caused a decrease in local business along S.E. 21st Avenue?

- *It is very unlikely. No documentation with statistics has been made public which would support this. In our opinion, it is more likely that business may be affected by:*
 - *Terrorist attacks of 9/11/01*
 - *Long term slump in American economy after 9/11*
 - *Massive layoffs, Oregon's high unemployment rate*
 - *Corporate Scandals*
 - *Substantial Stock Market/401K losses of the middle class consumers*
 - *Consumers holding on to their money in the current economic climate*

8. Is there time to move this house?

- *Yes, if Emmert International and the City of Milwaukie can work cooperatively and provide a realistic time frame to prepare the new lot and follow all required procedures.*

January 21, 2003

To Mayor Bernard and the members of Milwaukie City Council,

Our family would like to express our support for the preservation and relocation of the 82-year-old Sam G. Marinos house presently owned by Emmert International and temporarily located at S.E. 21st Avenue in downtown Milwaukie. The house is a significant example of large, Craftsman 2-Story Bungalow architecture unique to our City. Therefore, we ask that the Council protect this house from demolition and ensure it is preserved and relocated. Taking this action fulfills the Council's commitment to "*achieving and maintaining the sense of place, history, and future that defines Milwaukie and distinguishes it from other areas...*" as stated in the City's Mission Statement.

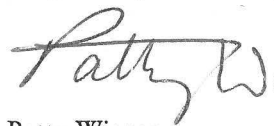
We have followed the difficulties surrounding the relocation of the house to a new lot in Milwaukie. We ask that staff and Council would allow additional project time to successfully relocate the structure to an alternate location, thus avoiding demolition of the home.

We are aware that citizens are concerned that the house has been stored on the current site past City approved deadlines. By checking with the Milwaukie Police, we have learned that the house has not caused a problem with criminal activity. On January 13, 2003 the Clackamas County Tax Assessor's office indicates no decline in property values in the surrounding area of S.E. 21st Avenue. County records show property values have increased steadily based on figures from the Assessor's office dated from 2000 to the present. The house's temporary location has not been detrimental to the immediate area. Therefore, we ask City Council and Staff to allow adequate time to relocate the house to a permanent site. We hope that all necessary steps be taken by Council and staff to avoid any reason to demolish the house. Demolishing this excellent example of Craftsman Bungalow architecture would be a terrible loss to Milwaukie's architectural heritage. Milwaukie has lost significant historic structures in our downtown. It would not benefit our City to lose further examples of significant architecture which visually testify to the history of our City.

The relocation of this well-know, well-built Milwaukie home is in Milwaukie's best interests presently, and in the future. Craftsman Bungalow design is a significant architectural style of early 20th Century residences. It's very difficult, if not impossible to find another house of this size and design within Milwaukie. Vintage Craftsman houses will never be built in Milwaukie again. Milwaukie should preserve our well-built older homes, allowing future generations to enjoy living in vintage homes over 100 years old.

Decisions by City Council to always preserve significant local structures, not destroy them, leaves a valuable legacy for future residents, and fulfills Milwaukie's Vision Statement. Council can fulfill the City's Mission Statement to *preserve our sense of place and history* by allowing Emmert International the time they need to relocate this significant home.

Respectfully submitted,



Patty Wisner



Julie Wisner

History of the Sam G. Marinos House

Milwaukie, Oregon

History:

The Sam G. Marinos house was built in 1922 in Milwaukie, Oregon by Mr. Sam G. Marinos as a family residence. Mr. Marinos was a Greek emigrant who emigrated alone to the U.S. in 1904 at the age of 14. He did not speak English and had about a fourth grade education. He eventually settled in Portland shortly after arriving in the U.S.

Sam Marinos served in the U.S. Navy and was stationed for a time at Fort Stevens, near Astoria, during World War 1. He met Martha Katzki in Portland at a downtown soda fountain where she worked. They married in 1918 during the catastrophic 1918 flu epidemic. Martha was actually sick with the flu while she was taking her marriage vows. She was a German emigrant who emigrated in 1894, at age 4, from Frankfurt, Germany. She and her family settled in Oak Grove, Oregon after losing all of their possessions in the San Francisco earthquake of 1906.

Sam Marinos became a successful business owner in downtown Portland. Both Sam and his



business were very well known in Portland business and society circles. His children's weddings were written up in large articles in the Oregonian Society pages. His business focused on food retailing, and was located in a large store taking up the entire block which is now O'Brien Square near the Bank of California



Building. His store was called "The Basket Grocery" because of a vast collection of baskets of all shapes and sizes which hung from the ceiling. The store imported the finest foods and wines from all over the world. They also specialized in very unusual and rare foods, such as rattlesnake meat. The business catered events for the wealthiest families in Portland and became a well-known landmark during the 20's, 30's and 40's. There was no other store like it in Oregon. His business success allowed Mr. Marinos to be a philanthropist, and he bought homes and provided financial support for five large families during the Great Depression in the 1930's. Hobos riding freight trains through downtown Milwaukie always found a warm welcome and a warm meal at the Marinos' home. The hobo markings on the house's cement retaining wall on Washington Street let other Depression Era transients know that there was kindness and food waiting for them there at Sam and Martha's house.

When it came time to build the family home in 1922, Mr. Marinos was originally planning a colonial style home in East Moreland, but his wife objected. She insisted they build a house near her parents who lived in a small home where the present Milwaukie High School Gym is located. So the Craftsman Bungalow 2-story home was built basically in front of her parents' home with a path leading from the back yard to her parents' front door.

Mr. Marinos chose the best builders and building materials money could buy to build his house, which was built as a family home to last many generations. His tastes were plain and simple so the house was constructed with clean lines and solid woodwork without special frills or ornamentation. The house followed the classic Arts and Crafts/Craftsman design details of tapered heavy porch columns, dutch clip roof lines, ornamental brackets under the roof eaves and a classic sun porch. The couple raised a son and daughter and a foster daughter in the home.

Sam Marinos passed away in 1967, at the age of 77, his widow moved in with their daughter, Helen Wisner, in Milwaukie. Martha Marinos passed away in 1975, at age 84. Helen Wisner inherited the house. In the late 1960's the house was rented out as a residence and later in the mid-70's, the house was headquarters for the Three Seasons League of Arts, a local Art Association and Gallery. Mrs. Wisner sold the house in 1978 to George Van Burgen, who used the house for office space for his law practice. Mr. Van Burgen sold the house to the North Clackamas School District in 2000.

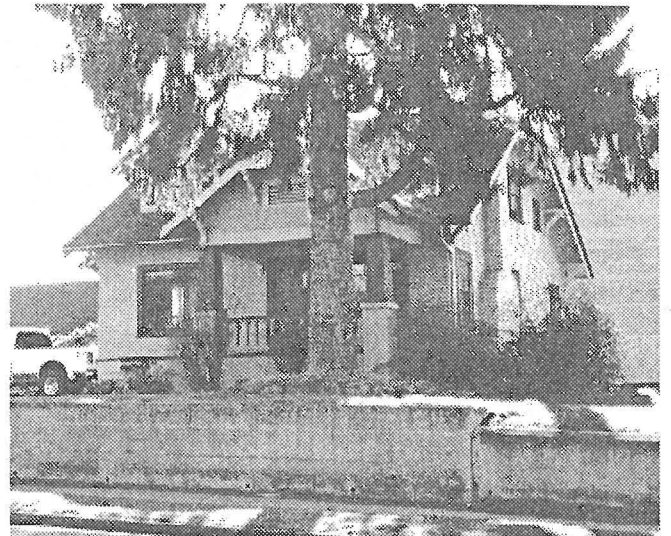
Features:

The house is a classic 2-story Craftsman Bungalow style home with a Dutch-clip roof style and decorative eave brackets. The main floor has a formal dining room, living room, kitchen and breakfast nook, one bath and one bedroom with hardwood floors throughout. The second story has two bedrooms, a half bath and two attics with hardwood floors in the bedrooms and landing. Mr. Marinos supervised the construction demanding very sturdy construction—the house is extremely solid.

Mike Burns, 2001 President of the Historic Preservation League of Oregon inspected the house and deemed it an excellent example of Craftsman Bungalow style and very worthy of preservation and reuse.

The house must be protected and relocated to a permanent lot. Milwaukie has lost the majority of its large stately homes which were easily

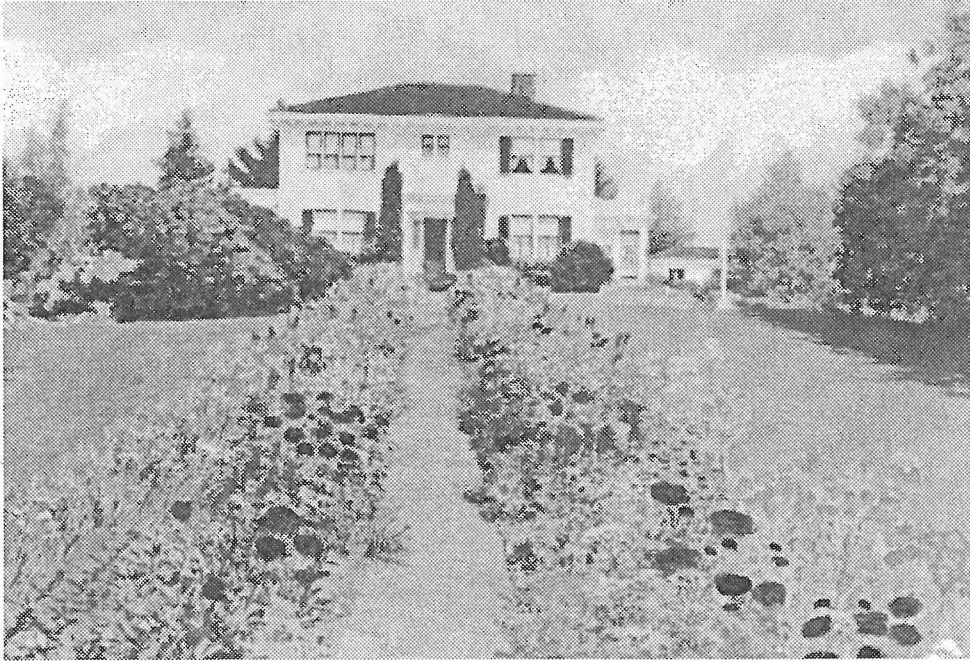
visible in Milwaukie's downtown core. Now, a small number of average sized family homes of significant architectural styles remain and need protection. The Marinos house is the one which is presently at the greatest risk. It's solid construction guarantee that the house has a lifespan for many decades to come. It should be allowed to be relocated and serve as a home for future families looking for a charming, vintage home to enjoy for many years.



The house itself, is tangible evidence of achieving the American Dream in Milwaukie. It is a physical reminder and testament to the courage and hard work of European Emigrants who left forever their country, families and culture to risk all to find a better way of life. Sam Marinos, learned English and worked 18-hour days until his old age to provide a stable home for his family and share the rewards of his hard labor with desperately needy families who were suffering during the great depression. Does Milwaukie have any other citizens in its history with such a record of similar philanthropy? Sam's story and his home are significant reminders of the Milwaukie that once was, and the house must remain as part of the fabric of Milwaukie's heritage, long after we have all passed from the scene.

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Willman Home—located at the present site of Kellogg Bowl on Main Street



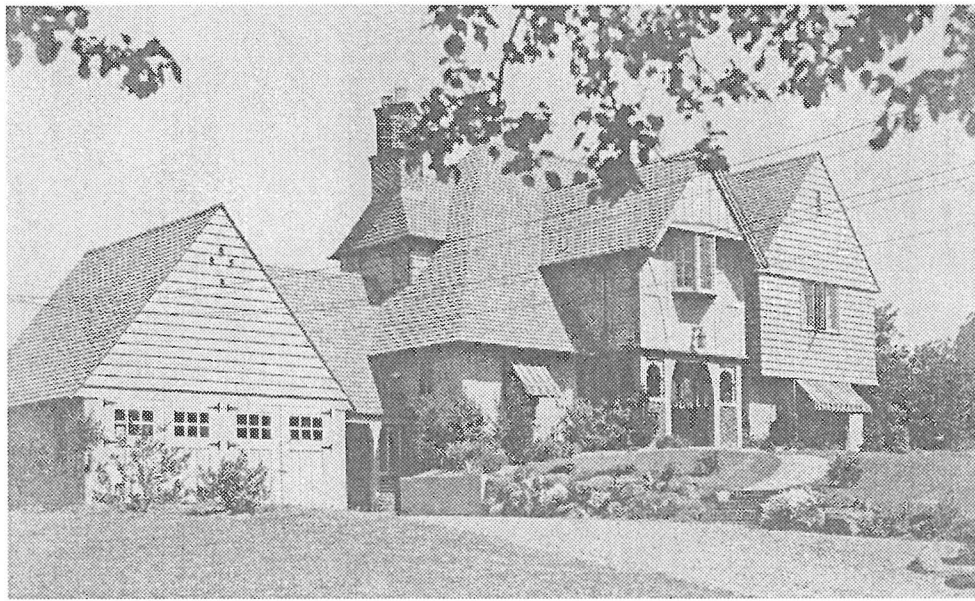
Built approx. 1910–1925



The same site in 2003

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Irwin & Priscilla Adams Home—located at the present site of the Credit Union south of the bowling alley. This English half-timber home was one of the first houses designed after Richard Sundeleaf (famous Portland Architect), graduated from college. Sundeleaf was a college friend of Irwin Adams.



Built approx. 1920–1930



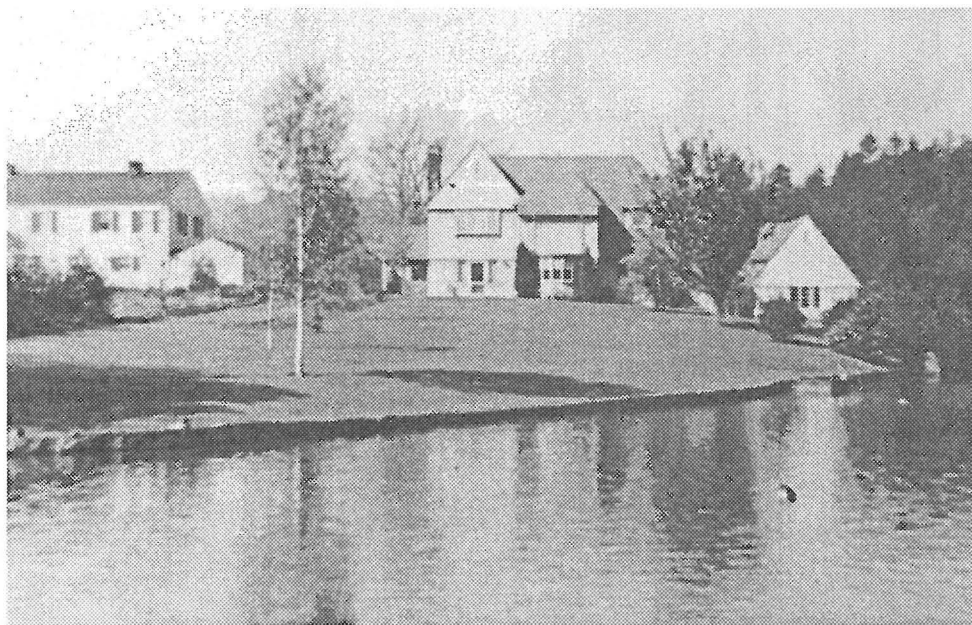
The same site in 2003

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Irwin & Priscilla Adams Home—further views. The Irwin Adams home and Irwin's Mother's home to the right. Anna Adams' home was moved to Rusk Road near North Clackamas Park



1930's



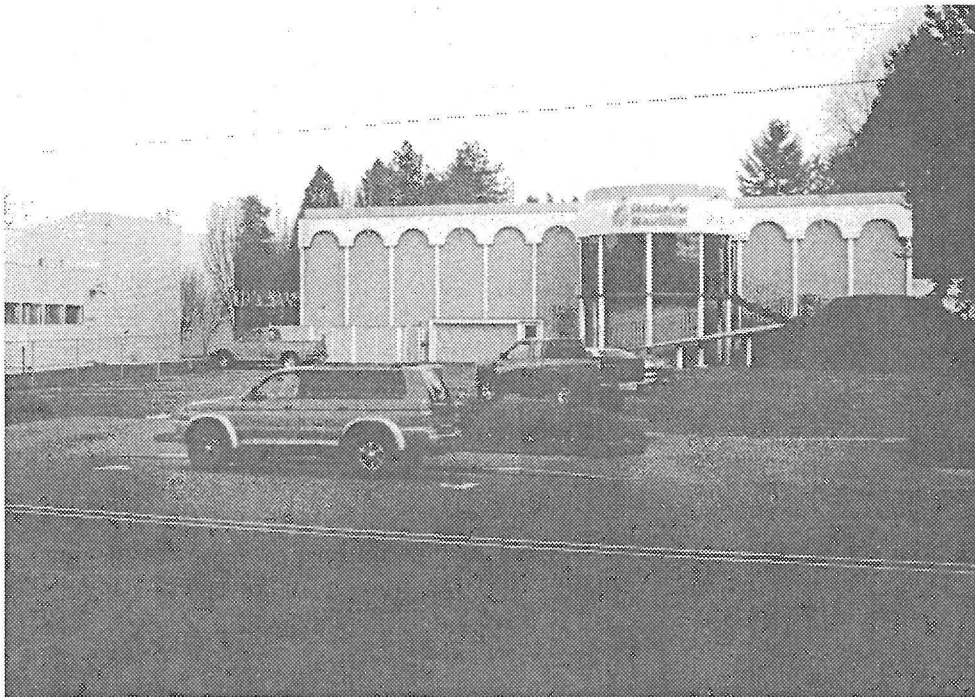
Back views of same properties with pond from Scott property
(Ledding Library would be located to the left of these houses.)

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Anna Adams Home—Moved to Rusk Road near North Clackamas Park in early 1960's.



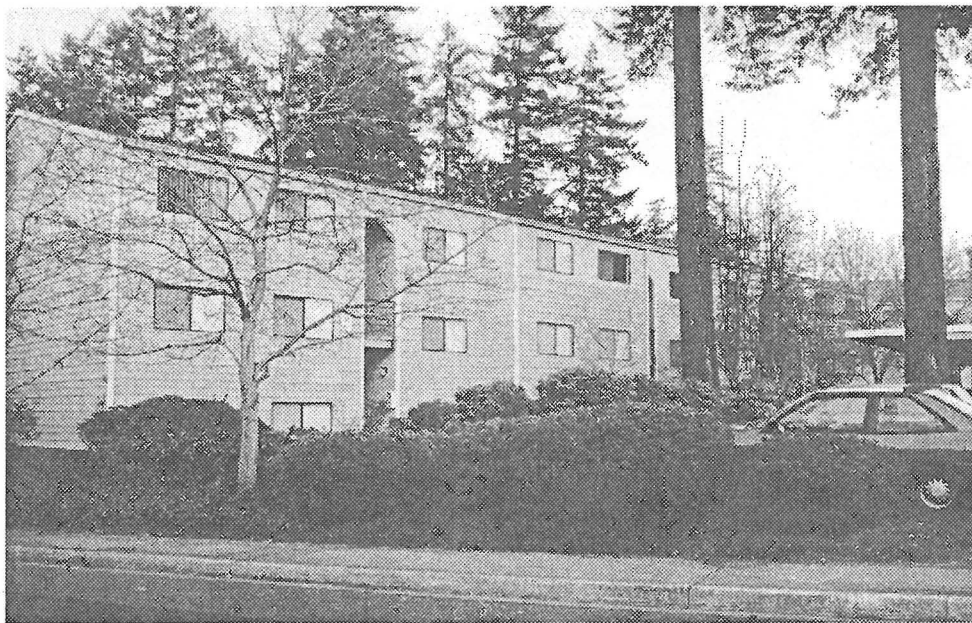
2003



The original site in 2003

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

Crystal Springs Log Church—construction dates unknown. The structure was moved to a site near North Clackamas Park.



The same site in 2003

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

Milwaukie Episcopal Church—Now located near the Willamette River in Sellwood.



Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Seth Llewellyn Home—originally built in 1851, acquired by the Llewellyn family 2 years later. It is said that General U.S. Grant slept here. The house was demolished in 1940.



Original site in 2003

Milwaukie's Historic Architectural Heritage Lost During the 20th Century

The Seth Llewellyn Home—Further views.



THE OLD LUELLING PLACE AT MILWAUKIE
Etched by Paul Keller, Journal staff artist. 3/31/40



THE OLD LUELLING PLACE AT MILWAUKIE

Sketched by Paul Keller, Journal staff artist.

REMINISCENT of an old manse, with moss-hung trees and ivy-grown stoop, is the quaint Luelling home at Milwaukie.

The place is rich in historical background, the story being that General Grant once slept within its walls, and the beginning of the great horticultural industry of the Pacific Northwest goes back to the Luelling family.

Henderson Luelling and William Meek in 1845 at their home in Salem, Iowa, conceived the idea of planting an orchard in the Oregon Country. To that end they started a nursery of some 700 fruit trees in shallow boxes, which they loaded into their wagons when they pulled out to cross the plains in 1847.

At The Dalles they carefully un-

loaded their precious wee fruit trees from the wagons onto a boat for the rest of the 2000-mile journey to their destination—Oregon City and the fertile fields at what is now Milwaukie.

The young trees were set out and prospered, and from the Oregon stock Luelling later planted considerable California acreage, and became the West's first nurseryman.

It is related also that in the gold boom days of '49 Luelling sold Oregon apples to California miners at \$1 apiece.

An interesting little sidelight on Mr. Luelling's development of the fruit industry in Oregon is that he had a Chinese servant named "Bing."

And for "Bing" was named the cherry now known as such.

Romance in Ruins

Lewelling House Is No More

*"Mid pleasures and palaces though
we may roam,
Be it ever so humble, there's no place
like home;
A charm from the skies seems to hal-
low us there,
Which sought through the world is
ne'er met with elsewhere."*

—J. Howard Payne.

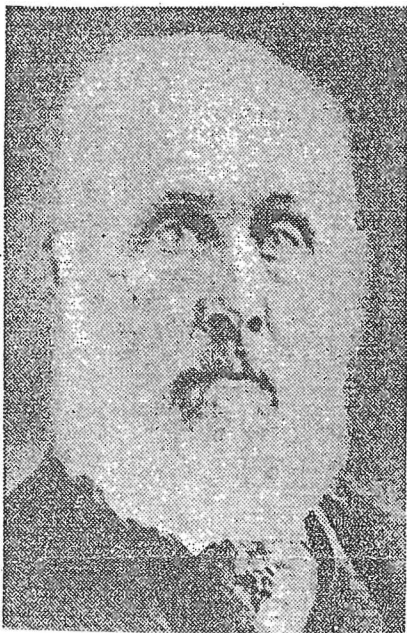
By RICHARD H. SYRING

"They're tearing down the old Lewelling house," voices said lamentably over the telephone to The Journal recently.

"Your last chance for pictures of the Lewelling house," another caller warned shakily.

These were the voices of pioneers, who sadly saw another of their shrines fall under the wrecker's crowbar and his tools of destruction. Progress? Yes. But was a brightly painted, streamlined service station to mark the historical spot where the state's system of initiative and referendum got their start?

Yes, the old Lewelling house at



great, and was the discussion center for all new ideas, social and political movements. Susan B. Anthony, Annie Besant of the Theosophical society, Mary Ellen Lease, the famous lecturer of her day, and others, all spent time at the Lewellings.

At one time the structure heard spiritualism discussed pro and con, and saw it accepted by many Milwaukie residents of that pioneer day. The house was the birthplace for the Oregon Direct Legislation league.

But what Seth Lewelling is best remembered for is his horticulture. He was the state's first horticulturist. He was founder of the Oregon Horticulture society, and one of the founders of the state fair.

He was a man of many interests and occupations. On November 21, 1864, he was a partner with an old friend of Green Castle, Ind., days—Joe Englerth—in a furniture factory. They made all kinds of furniture on what was known as the Wills donation claim, now Willsburg, at Johnson creek and Tacoma avenue.

A deed filed in 1867 reveals they had permission to dam up Johnson creek.

Complete records of Seth Lewelling and his multi-achievements are kept by his step-daughter, Mrs. Herman Ledding, and her husband, in their home at 2105 Harrison street, Milwaukie. A son, Don Lewellyn, is fire chief of Milwaukie. He spells his name a little differently than his father. The family originally came from Wales, where their name was spelled Llewellyn.

The Lewelling brothers, who later were joined by a brother, John, for a while, were born in Greenville, N. C. Although Southerners, they were abolitionists, and there by hangs a tale—the naming of one cherry, the likes of which are in many yards today.

Seth Lewelling helped organize the Republican party in Clackamas county because he was a great admirer of President Abraham Lincoln. Just before the Civil war, the feeling was tense on the Negro slavery question.

That's How We Got 'Black Republicans'

"Because my step-father was an abolitionist, they called him a 'Black Republican'." Mrs. Ledding revealed. "He used to answer them, 'Before I am through with it, I will make it a term of honor, and I'll make you

Mrs. Ledding graduated from Portland high school in 1891. Later she graduated from the University of Oregon law school in 1897. Her husband, now retired, also practices law.

A book found by her cousin in Portland second-hand store really led indirectly to the state adopting the initiative and referendum.

And the now dismantled Lewelling home was the meeting place for much argument and served as headquarters for the movement.

"One day Alfred Lewelling, son of Henderson, found a book in a second-hand store in Portland," Mrs. Ledding remembered. "It was entitled 'Direct Legislation,' by J. W. Sullivan. The volume showed how politicians were betraying the people and making taxes needless through graft and mismanagement.

"A Populist alliance had been organized in Clackamas county, and the grange was then very active. We read this book aloud at alliance meetings. We who were interested had prepared a resolution endorsing the initiative and referendum.

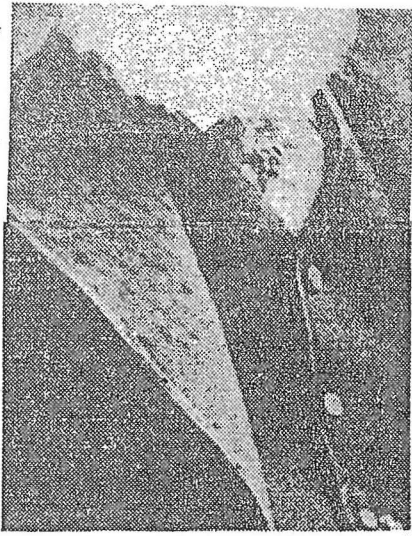
"The Pomona grange voted down. That was too much for me. I left the meeting then and there. However, that afternoon I returned and when Alfred introduced the resolution, I made a talk for it, as did others. It was adopted.

"I was appointed the first secretary of the Direct Legislation league. I was succeeded by W. S. U'ren. Mr. U'ren lived in our home at Milwaukie for three years. He had become interested in direct legislation through the book that Alfred had bought and through constant discussion in our home.

"In the election of 1895, even though I was a candidate on the Populist ticket, Clackamas county was elected. Newspaper files of that day show the part taken by Will R. King in introducing the resolution in the legislature, and the part taken by George C. Brownell of Oregon City.

U'ren still is a practicing attorney in Portland and interested in liberal legislation.

The Waverley Country club grounds course is included in much of the Henderson Lewelling homestead, according to Herman Ledding, v



Seth Lewelling.

Thanks for the cherries.

Milwaukie, built in 1851, has fallen finally into the pathway of progress. Its broad, two-storied face on the corner of Jackson street and the super-highway (McLoughlin boulevard) is seen no more.

Thousands have passed the historic structure, flanked on the left by a huge weeping willow, whose girth measured 14 feet in diameter. There were other trees there—species of the many Seth Lewelling originated—and an aromatic bay tree, probably one of the largest of its kind in the state.

An Elisha Kellogg built the house in 1851. He leased it to a Noah Hubler, who used it as a tavern. Many a steamboat passenger traversed the short distance from the Willamette river to the friendly lodging house.

Shortly before this time, there arrived in the state. Seth Lewelling, his wife, two daughters and a son, from their farm near Salem, Ill. They came because of glowing reports Seth had received from his brother, Henderson, who arrived in the Willamette valley in 1847.

Henderson Lewelling had really brought a "traveling nursery" in his prairie schooner caravan. In long, narrow boxes he planted some apples, pears, peaches, cherries, plums, black walnuts and shellbark hickory nuts. These were placed in two covered wagons.

It is from this stock that Seth Lewelling perfected the Bing and Black Republican cherries, to mention a few of his horticultural achievements.

In 1852, Seth bought the tavern. Because Hubler still held a lease for six months, the Lewellings lived upstairs until the end of that period. He lived in that house until his death in 1897. His second wife, Sophronia V. Lewelling, lived there until she died in 1928. Since then the house has remained furnished but unoccupied.

The Lewelling home was the gathering place for the great and near-

'Black Republicans'

"Because my step-father was an abolitionist, they called him a 'Black Republican'." Mrs. Ledding revealed. "He used to answer them, 'Before I am through with it, I will make it a term of honor, and I'll make you relish Black Republicans'."

"He had originated a very fine cherry, and in about 1861 he named it the Black Republican. And he lived to see those who had called him a Black Republican eat his Black Republican cherries and enjoy them. This cherry is extensively grown in the South, but is known there as the Lewelling cherry."

"Seth had about 100 acres of nursery stock here. He employed 30 to 40 Chinese. One of his foremen was a large Manchu Chinaman, well over 6 feet tall. His name was Bing."

"About that time—it was along in 1885—he perfected a two-cheeked blood cherry, dark in color. It was nearly as dark in complexion as Bing."

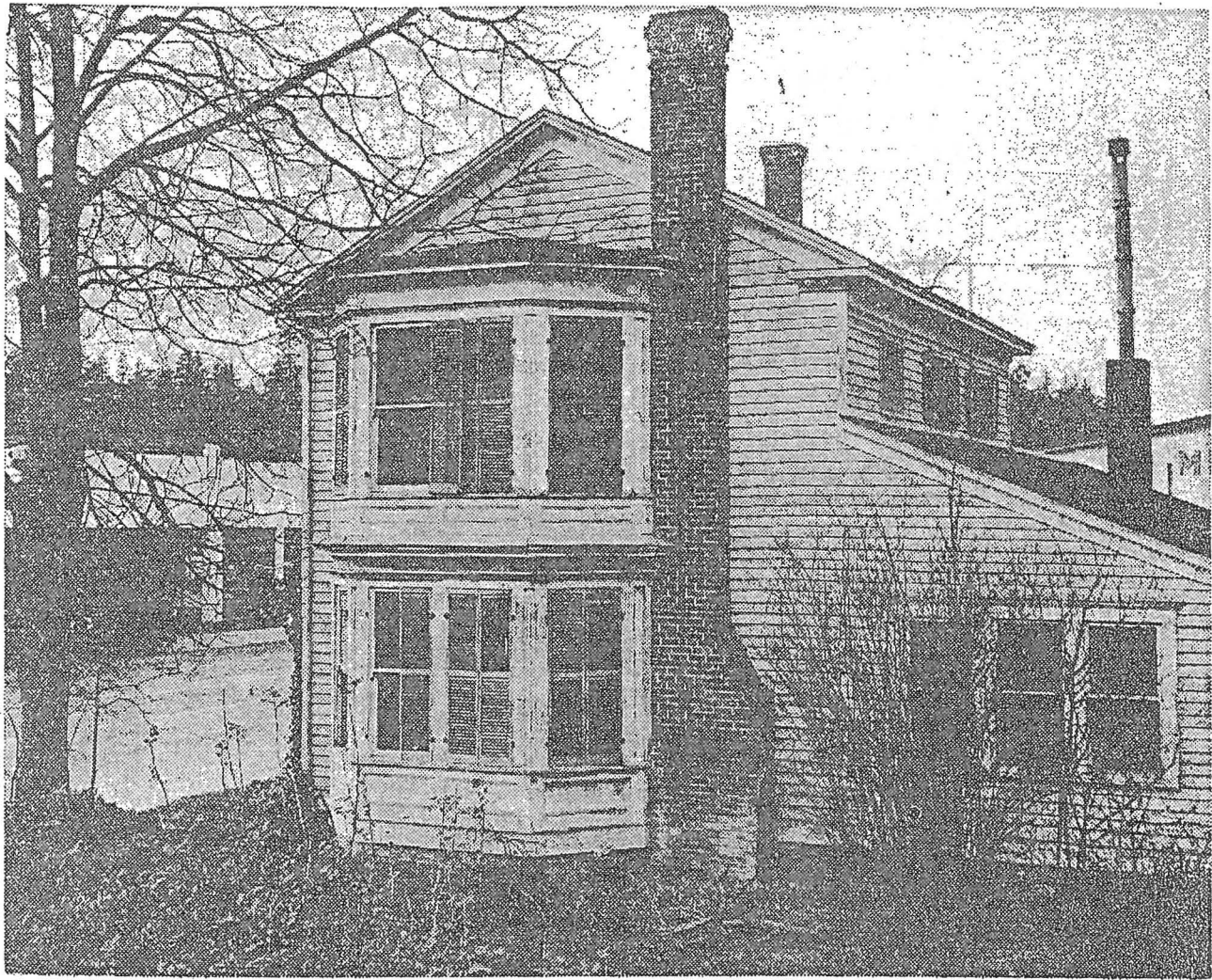
"It was his custom to have one row of cherries that he cared for, and Bing would have the next row. This cherry was originated in Bing's row, so Seth named it the Bing cherry."

"During the Chinese riots in Oregon and Washington, Bing and other Chinese lived in our home. The site of our present residence on Harrison street once had the 'China house,' where the Chinese lived."

"After working for us nearly 35 years, Bing returned to China."

"The original Bing cherry tree stood just in front of the present Masonic hall in Milwaukie. This tree was cut down in 1912, when Main street was put through."

The Waverley Country club golf course is included in much of the Henderson Lewelling homestead, according to Herman Ledding, who



The famous old Lewelling house just before its recent demolition.

knows the achievements of his father-in-law.

"Other cherries perfected by Seth were the Lewelling and Lincoln," Ledding said. "In about 1865 he grubstaked Ezra Meeker, who died only a few years ago, after making himself famous by his covered wagon exploits.

"Meeker, early in the spring of the year, set out with 1500 trees in a wagon pulled by oxen. He was to peddle them through Southern Oregon and Nevada. We know that two of the Lincoln variety still are growing in Carson, Nev.

"Lewelling also perfected a grape, Golden prune, Sweet Alice apple and Mother's Favorite pear. Most of them have run out, although we have located some of the Golden prune. In about 1858, he set out the first prune orchard in Oregon, about five acres in Milwaukie.

"He also devoted considerable time to the raising of the Lewelling al-

monds. This almond was a prolific bearer, but had a double kernel, so did not become popular.

"His brother, John, who visited Milwaukie only briefly and then returned to Midwest to take his family to California, settled near the mission of San Jose. He planted 30 acres of fruit in 1853 in Alameda county, California, from stock obtained at Milwaukie. At one time he had the largest cherry orchard in California.

"In 1853, Seth picked 240 pounds of apples from one tree, which his brother took to San Francisco and sold them at \$1 a pound. The gold rush wasn't very old then. By 1856, though, the price of apples had gone down to 25 cents a pound.

"In 1858, Seth brought the first domestic blackberry plant to Oregon. He later sold plants for \$3 each. That same year he brought to the state a number of Wyatt's British Queen strawberry plants."

Seth Lewelling also had holdings in California, and made numerous trips there. At Pleasanton he had an almond and peach orchard, and at Illinois Town, now Marysville, really started the acidulous fruit industry. In 1876, he exhibited Oregon-grown plums and cherries at the California state fair.

Lewelling's first wife, Clarissa, died in the early '80s. A few years later he married Mrs. Sophronia Vaughn Olson. She was the mother of Mrs. Ledding and later became mother of Don, the Milwaukie fire chief.

Lewelling died in February, 1896, at the age of 76. He was buried in the Henderson Lewelling burial plot, which later was deeded to Milwaukie for public cemetery. His second wife, and the last occupant of the historic house, died August 2, 1928.

Additional pictures of the Lewelling house in photos in Roto section today.

In conclusion, the Sam G. Marinos house is part of Milwaukie's Architectural Heritage which needs preservation and protection granted by City Council. Our City has lost too many historically valuable structures. The Marinos house represents the next layer of our heritage from the early 20th Century forward. Please look at all of the facts contained in this report and decide that this City still has time to devote to historic preservation. Please use your power to allow for time to move this house and save it from demolition.

Thank you very much.

EMMERT INTERNATIONAL

City of Milwaukee
A Great Place to Live



City Council Meeting
January 21, 2003

Relocation of the Sam Marinos House



Presented by
Emmert International



HEAVY TRANSPORTATION ENGINEERS
11811 S.E. Hwy 212 • Clackamas, OR 97015 • U.S.A.
Phone: (503) 655-7191 • Fax: (503) 655-3933



EMMERT INTERNATIONAL

Division of Emmert Industrial Corporation

11811 SE Hwy 212 ~ Clackamas, Oregon 97015

Phone (503) 655-7191 Fax (503) 655-3933

Table of Contents

- 1) Project History
- 2) Work in Process Chronology
- 3) Master Work in Process
- 4) Construction drawings
- 5) "A" Street improvement/construction schedule
- 6) Master Construction Schedule



EMMERT INTERNATIONAL

Division of Emmert Industrial Corporation

11811 SE Hwy 212 ~ Clackamas, Oregon 97015

Phone (503) 655-7191 Fax (503) 655-3933

PROJECT HISTORY

Emmert International was contacted by the City of Milwaukie in October of 2002 in order to evaluate relocating the historic 80 year old Sam Marinos House. Unfortunately, the previous owner of the house was unable to establish the necessary criteria for placement of the house within the City of Milwaukie. As a result, Emmert International, the City of Milwaukie, and the previous owner (Richard Peterson) signed an agreement which, in sum, transferred ownership of the structure to Emmert International.

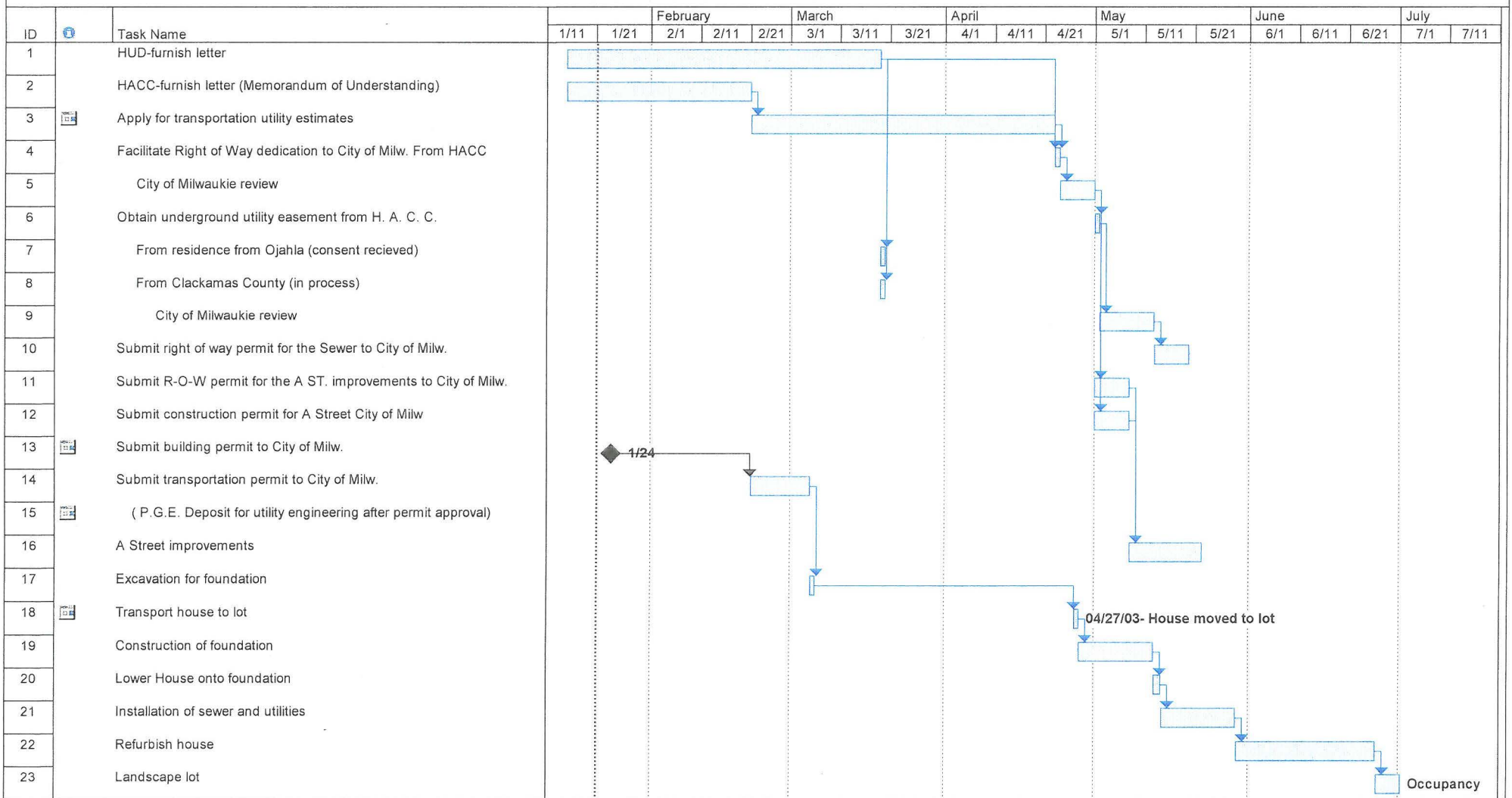
The aforementioned agreement was drafted and signed on 10/31/02. Upon signing the agreement, Emmert International has identified a lot at 3040 S.E. Balfour Street, within the City of Milwaukie and owned by Terry W. Emmert, which will be a suitable lot for the structure. A dedication of right of way and easements are being obtained in order to validate the lot utilization. A written description of the necessary requirements and chronology of these requirements are enclosed for evaluation.

Although placement of the Marinos house has been a cumbersome process for the City of Milwaukie, it is important to make provisions to restore, recycle, and enjoy historic structures of this nature. When taking into consideration the publicity (both good and bad) the Marinos structure has received, we have been overwhelmed by the public's support to save the house.

Emmert International fully understands there are multiple influences which impact the decision process of the Council Members for the City of Milwaukie. However, based on our experience with federal agencies such as the Department of Interior and the National Parks Service, it is apparent that there is a governmental directive to save and preserve historic structures on a nationwide basis.

Given a sufficient timeframe, Emmert International, in conjunction with the City of Milwaukie Council Members, will be able to preserve the historic Marinos structure. We appreciate your time, effort and patience for this relocation process.

Work in Process Chronology

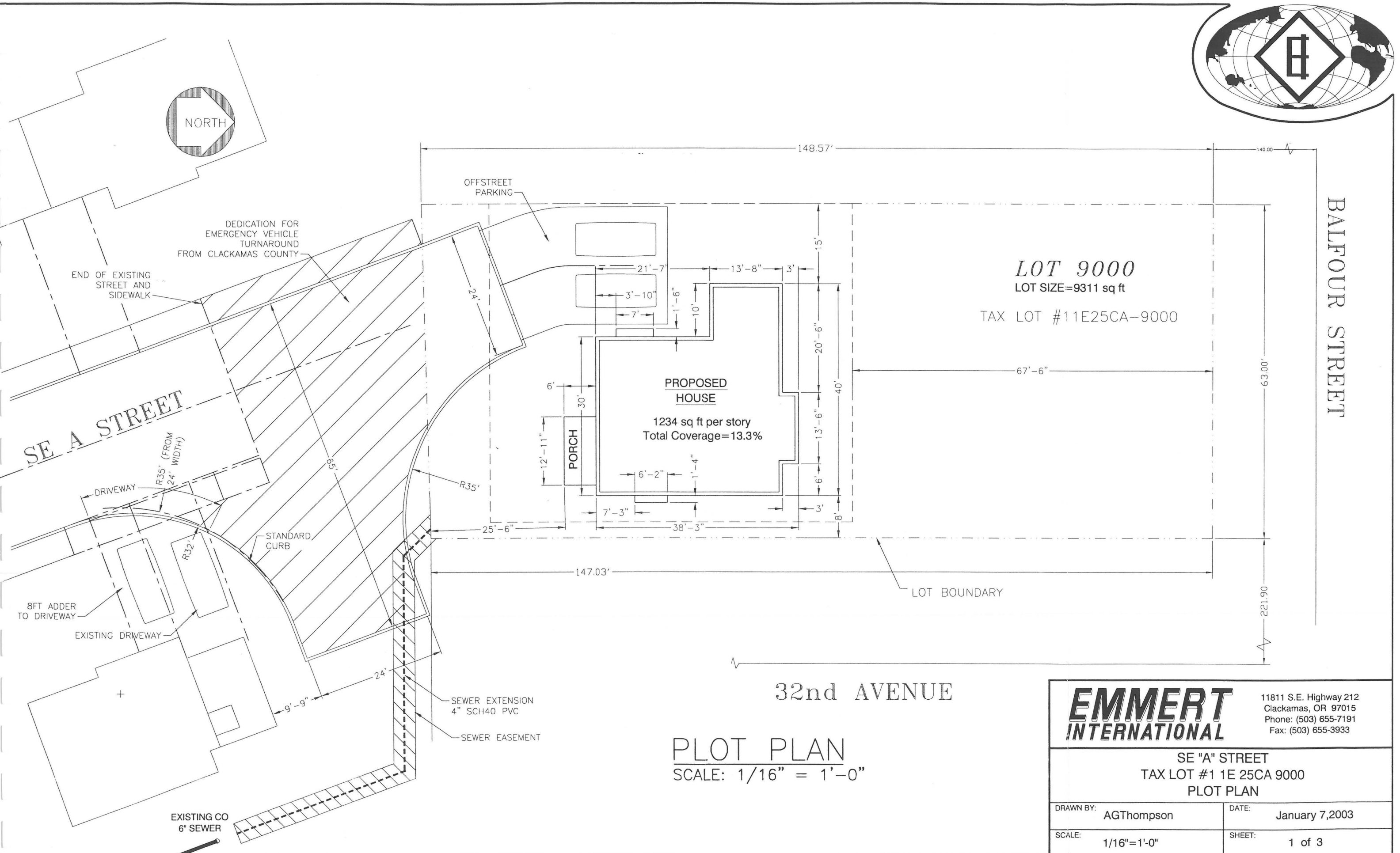
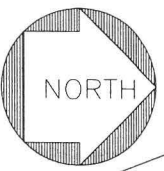
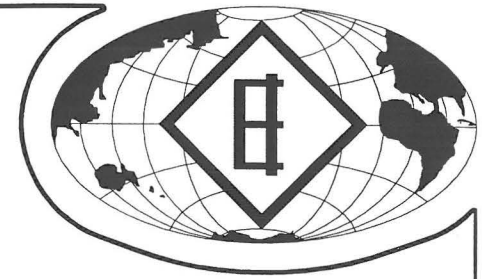


Project: City of Milw. Date: Tue 1/21/03	Task	Milestone	Rolled Up Split	External Tasks
	Split	Summary	Rolled Up Milestone	Project Summary
	Progress	Rolled Up Task	Rolled Up Progress	

TASK DESCRIPTION	CONTACT INFORMATION	CRITICAL PATH	NOTES
Supply HUD with necessary information			
Intended use of property			
What utilities will be required and how will they be installed			
What is the appraised value of the property			
What kind of compensation will H.A.C.C			
Are tenants or tenant org. involved before decisions made			
What kind of burden will this be to the HACC			
Who will maintain property- no haz mat, clean upkeep			
Will landscaping be installed, who will maintain			
How close is the driveway/road to the residents unit			
Submit plans to HUD			
Obtain underground utility easement from H. A. C. C.			
Draft formal letter of request to HACC			
Sign memorandum of understanding with HACC			
HACC to perform survey of			
Perform property Survey			
City of Milw. Approves lot usage			
HUD approves the dedication			
Facilitate Right of Way dedication to City of Milw. From HACC			
Submit right of way permit for the Sewer to City of Milw.			
Submit right of way permit for the A street improvements to City of Milw.			
Submit construction permit for A Street City of Milw			
Submit building permit to City of Milw.			
Apply for transportation utility estimates			

TASK DESCRIPTION	CONTACT INFORMATION	CRITICAL PATH	NOTES
Submit transportation permit to City of Milw.			
Excavation for foundation			
Transport house to lot			
Spot house			
Raise house/remove dollies			
Install footing & pier pad forms			
Inspect footings & setbacks			
Pour concrete			
Strip forms			
Install foundation wall forms			
Inspect			
Pour concrete			
Strip forms			
Mudsil & Post and beam framing			
Post, beam, mudsil inspection			
Lower building			
Post and beam final inspection			
Install electric			
Electric rough in inspection			
PGE hook up			
final inspection			
Excavate right-of-way			
Install water and sewer			
Sewer and Water inspection			
Backfill water and sewer			
Repair landscape			
Plumbing hook up & inspection			
Interior improvements & inspections			

TASK DESCRIPTION	CONTACT INFORMATION	CRITICAL PATH	NOTES
Exterior repairs			
Exterior concrete flatwork			
Driveway, sidewalks, steps etc...			
Landscape			
Occupancy inspection			



PLOT PLAN
 SCALE: 1/16" = 1'-0"









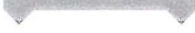


EMMERT INTERNATIONAL 11811 S.E. Highway 212 Clackamas, OR 97015 Phone: (503) 655-7191 Fax: (503) 655-3933	
SE "A" STREET TAX LOT #1 1E 25CA 9000 PLOT PLAN	
DRAWN BY: AGThompson	DATE: January 7, 2003
SCALE: 1/16"=1'-0"	SHEET: 1 of 3
DRAWING NUMBER: EI-10386	REVISION: 0

THIS INFORMATION ON THIS DRAWING IS THE PROPERTY OF EMMERT INDUSTRIAL CORP. NO PART OF THIS DRAWING MAY BE REPRODUCED OR RETRANSMITTED WITHOUT THE EXPRESS WRITTEN CONSENT OF EMMERT INDUSTRIAL CORP. OWNERSHIP OF THIS DRAWING AS ELECTRONIC MEDIA REMAINS WITH HEAVY SYSTEMS ENGINEERING.

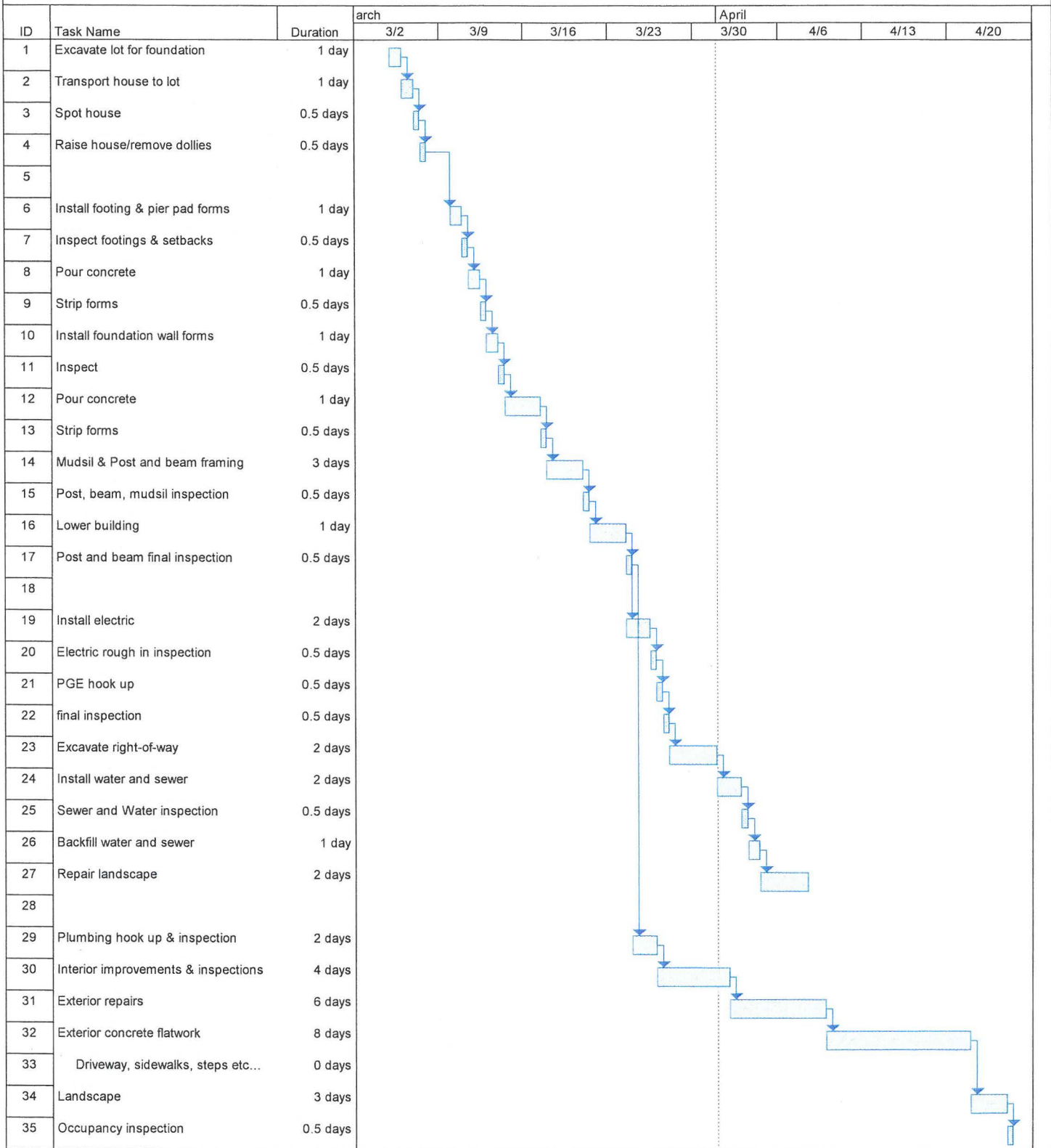
"A" street improvement/construction schedule

ID	Task Name	Duration	Start	Finish	May 11, '03							May 18, '03									
					T	F	S	S	M	T	W	T	F	S	S	M	T	W	T		
1	Survey & Stake lot	1 day	Thu 5/8/03	Thu 5/8/03																	
2	Excavate/Grade	1 day	Fri 5/9/03	Fri 5/9/03																	
3	Set forms	1 day	Mon 5/12/03	Mon 5/12/03																	
4	Inspection	0.5 days	Tue 5/13/03	Tue 5/13/03																	
5	Pour Concrete	1 day	Tue 5/13/03	Wed 5/14/03																	
6	Cure	3 days	Wed 5/14/03	Mon 5/19/03																	
7	Strip forms	0.5 days	Mon 5/19/03	Mon 5/19/03																	
8	Final inspection	0.5 days	Tue 5/20/03	Tue 5/20/03																	
9	Paving	1 day	Tue 5/20/03	Wed 5/21/03																	
10	Final Inspection	1 day	Wed 5/21/03	Thu 5/22/03																	

City of Milwaukie
Balfour Property

Task		Summary		Rolled Up Progress	
Split		Rolled Up Task		External Tasks	
Progress		Rolled Up Split		Project Summary	
Milestone		Rolled Up Milestone			

Master Construction Schedule



City of Milwaukie Balfour property	Task		Summary		Rolled Up Progress	
	Split		Rolled Up Task		External Tasks	
	Progress		Rolled Up Split		Project Summary	
	Milestone		Rolled Up Milestone			

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA -- REVISED
JANUARY 21, 2003**

MILWAUKIE CITY HALL
10722 SE Main Street

1902ND MEETING

REGULAR SESSION - 6:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance

- II. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

- III. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of January 6 & 7, 2003**
 - B. **40th Avenue and 43rd Avenue Stormline Project Bid Award**
 - C. **Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project**

- 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. **Elect Council President (Mayor Bernard)**
 - B. **Citizens Utility Advisory Board Annual Work Plan (Board Members/Shirey)**
 - C. **Sanitary Sewer Volume Based Billing Update (Ostlund/Shirey)**

- D. **Transportation Enhancement Grant Application Support – Resolution (King/Shirey)**
- E. **Downtown Design Guidelines Project Update (Gessner/Kent)**
- F. **Advisory Board Appointments (Mayor Bernard)**
- G. **Consider a Resolution Changing March 2003 Meeting Dates (Mayor Bernard)**
- H. **Review Draft Letter from the Clackamas County Coordinating Committee to the Metro South Corridor Policy Committee (Mayor Bernard)**

VII. INFORMATION

Riverfront Board Minutes of November 6, 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.*

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.

Date 1/21/03

I wish to address City Council on Agenda Item # Item B-

Name Julie Wisner

Organization Citizen

Address 3325 S.E. Wister St Milwaukee

Phone 503-654-7468

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments _____

Date 01/21/03

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

Name BRENT CARTER

Organization WALK HILL

Address 8800 SE PELICIS DR

Phone 503-653-2182

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments _____

Date 1.21.03

I wish to address City Council on Agenda Item # VB

Name Catherine Brinkman

Organization _____

Address 2513 SE LAKE Rd

Phone 503 238 7170

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments _____

Not sure I will need to speak but would like to reserve the right.

Date 1/19/03

I wish to address City Council on Agenda Item # SB

Name LISA GUNION-RINKER

Organization PROPERTY OWNER

Address 3012 S.E. Balfour St. Milwaukee, OR 97222

Phone 503 659-7807

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments - This historic home would be placed on a lot behind someone's home & would not be viewed by anyone unless they drove into the Hillside Court housing. This is a

Date 1/21/03

I wish to address City Council on Agenda Item # _____

Name ED ZUMWALT

Organization WEST MILWAUKEE

Address 6088 S.E. 29TH

Phone 654-7493

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments _____

I wish to address City Council on Agenda Item # RIVERFRONT

Organization WEST MILWAUKEE

Address 6088 S.E. 29TH

Phone 654-7493

Speaking in Support Speaking in Opposition

Raising Questions Providing Information

Comments _____

Date 1/21/03

I wish to address City Council on Agenda Item # B
Name Patricia Wisner
Organization Oakwood NDA, DLC
Address 3325 SE West St. Milw
Phone 503-654-7468

Speaking in Support Speaking in Opposition
Raising Questions Providing Information

Comments Documentation on key information
Council needs on this issue.

Date _____

I wish to address City Council on Agenda Item # V B.
Name George Van Bergen
Organization Self
Address 12366 Guilford Dr.
Phone 654-4724

Speaking in Support Speaking in Opposition
Raising Questions Providing Information

Comments House Abatement

Date _____

I wish to address City Council on Agenda Item # VB
Name Sheree Campbell
Organization Ardenwald / JCB Neighborhood
Address 3803 SE Filbert
Phone 659-7011

Speaking in Support Speaking in Opposition
Raising Questions Providing Information

Comments PT Night -
+ VB - House - on Balfour?

Date 1/21/03

I wish to address City Council on Agenda Item # V-B
Name CHARLES WILKINS
Organization SELF/RESIDENT
Address 3122 BALFOUR ST
Phone 503-654-4248

Speaking in Support Speaking in Opposition
Raising Questions Providing Information

Comments _____



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: January 10, 2003
RE: FYI Memo for the Weeks of January 13, 2003 - January 24, 2003

JANUARY 15, 2003 BUDGET COMMITTEE MEETING

The full Budget Committee is convening at 6:30 P.M. in the Council Hearing Room at City Hall for a hearing on the General Fund shortfall. The purpose of the meeting is twofold. One is to hear the results of the Council's review of the community goals. The other is to seek additional community input into General Fund priorities. After the December hearing David Aschenbrenner and I heard comments from people about their lack of understanding of the City's budget structure and priorities. (This, despite the number of presentations that were made during the local option campaign—but we will keep at it until we hear it no more.) Thus, we decided that I would do a "Budget 101 Class" after the hearing for those who were interested. That way anyone who wants can stay, and you won't have to sit through it. At the next hearing those folks who want can at least have some background from which they can speak. I'll also commit to scheduling additional meetings if folks want to get a group together. This is something I plan to do during the budget process this year. I also plan to meet with the new Budget Committee member prior to this meeting.

JANUARY 20, 2003 WORK SESSION

Due to the fact that this normal work session date falls on the Dr. Martin Luther King Holiday, **there is no meeting this evening.** Work session items appear on the regular session the next evening.

JANUARY 21, 2003 REGULAR SESSION

The regular session convenes at 6:00 P.M. in Hearing Room in City Hall.

- (1) **40TH Avenue and 43RD Avenue Stormline Project Bid Award:** This is a request that Council award a bid for a project to install 1500 feet of stormlines and associated catch basins and manholes on 40th and 43rd to alleviate local flooding of yards and garages. The project was identified in the Surface Water Master Plan. The bid is recommended to be awarded to the low bidder, Camrock Excavation. Contingencies in the amount of 18.6% of the bid are recommended.
- (2) **Intergovernmental Agreement with ODOT for the 42ND Avenue Improvements Project:** This action is for approval of an agreement with ODOT for Oregon Bicycle and Pedestrian Program grant funding to complete curb, gutter, sidewalk, and storm improvements to both sides of 42nd Avenue between Johnson Creek Boulevard and Olsen Street.
- (3) **Appeal of Planning Commission Denial of a Three-lot Minor Land Partition with Two Flag Lots File No. MLP-02-07:** This matter was continued from the January 7, 2003 Council hearing at the request of the applicant. 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) **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:** This matter came before Council at its January 7, 2003 regular meeting as a nuisance abatement action. At that time the appellant, Mr. Emmert, requested a continuance until the January 21, 2003 Council hearing. Council granted the request, but it further cautioned that it expected a plan for removal with specific dates by which it could measure progress. At the time of this writing discussions were still underway, and, therefore, there is nothing to report at this time.
- (5) **Elect Council President:** The City Charter and Municipal Code require the election of a Council President at the meeting following the seating of any new members of the Council.
- (6) **Citizens Utility Advisory Board Annual Work Plan:** The CUAB is appearing before Council as part of the City's ongoing effort to provide for review and input into its Board and Commission goals and responsibilities. This process normally takes place within the work session environment.

However, because of the Dr. Martin Luther King Holiday, it was scheduled for this regular meeting.

- (7) Sanitary Sewer Volume Based Billing Update:** As we transitioned from the flat rate to the volume based sewer rates we noted a higher than expected number of calls questioning the resulting billings. (We expected a high number of complaints.) On further study we have found that the base year was one in which we experienced a higher than anticipated water usage, and, therefore, we might have some higher than anticipated collections. Our goal is to remain revenue neutral. With that as the goal, we believe that we should continue to monitor the next few months to determine if this is a one-time occurrence or if we need to take action to adjust the rates to ensure that we achieve the goal.
- (8) Transportation Enhancement Grant Application Support:** This action requests support of Council for an application to ODOT for Transportation Enhancement Funds for Main Street Downtown street and sidewalk improvements between Jackson to the north end of the Safeway site.
- (9) Downtown Design Guidelines Project Update:** No action is required, as this is an update only.

OTHER ITEMS OF INTEREST

Senior Librarian Paula Mishaga informed Human Resources of her intent to retire. After working for the Milwaukie Ledding Library for almost 24 years, Paula's last day will be February 14, 2003.

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
JANUARY 21, 2003**

MILWAUKIE CITY HALL
10722 SE Main Street

1902ND MEETING

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- 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. Elect Council President (Mayor Bernard)**
 - B. Citizens Utility Advisory Board Annual Work Plan (Board Members/Shirey)**
 - C. Sanitary Sewer Volume Based Billing Update (Ostlund/Shirey)**

- D. Transportation Enhancement Grant Application Support – Resolution (King/Shirey)
- E. Downtown Design Guidelines Project Update (Gessner/Kent)

VII. INFORMATION

Riverfront Board Minutes of November 6, 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.*

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.

**CITY COUNCIL WORK SESSION
JANUARY 6, 2003**

The work session came to order at 5:30 p.m. in the City Hall Conference Room.

City Council present: Mayor Bernard, Councilors Lancaster and Marshall, and Councilors elect Barnes and Stone.

Staff present: City Manager Mike Swanson, Neighborhood Services Manager Michelle Gregory, Community Development/Public Works Director Alice Rouyer, and Engineering Director Paul Shirey.

Information Sharing

Councilor Marshall provided a recent *Oregonian* article about economic development efforts in Molalla.

Councilor Barnes suggested the City look into the feasibility of charging a non-resident fee to Ledding Library users.

The group discussed the status of the cable access studio and its operations.

Centennial Opening Ceremony Update

Gregory gave an overview of the events for the Centennial Opening Ceremony scheduled for February 3. Centennial Committee members Kathy Buss, Jim Newman, and Ed Zumwalt were in the audience. Staff is mailing invitations, and the Clackamas County Board of Commissioners will consider adopting a resolution recognizing Milwaukie's 100th Anniversary at its January 16 meeting. The opening ceremony will include a reenactment of the first Milwaukie City Council meeting in 1903 and a calling to order of the current 1903rd meeting of the City Council. The group discussed the audience participation portion of the agenda during which those honored guests wishing to speak could make their comments. Local drama clubs will provide costumes and props.

The Council discussed several ideas for making this an historical event including a general resolution to kick-off a riverfront park naming contest. Council members indicated they would like a fairly animated script for the reenactment, and requested that the Centennial Committee research the people involved in the first meeting. Councilor Barnes suggested an official photographer be designated, and Mayor Bernard proposed contacting Allan DeLay. Dress rehearsal was schedule for Saturday morning, February 1.

III. A. 2

Board and Commission Interviews

The City Council interviewed Gary Hubbard, Carlotta Collette, and Kevin McNally for a position on the Budget Committee and Ed Miller for the Citizens Utility Advisory Board.

The group discussed volume based sewer billing, and Rouyer said staff is preparing a report for the January 21 Council meeting.

The work session adjourned at 6:45 p.m.

Pat DuVal, Recorder

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.

III. A. 4

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.

III. A. 6

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.

III. A. 10

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.

III. A. 12

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

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, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works Director
Paul Shirey, Engineering Director *PS*

From: Ruthanne Bennett, Civil Engineer *RB*

Subject: 40th and 43rd Storm Project Bid Award

Date: January 6, 2003 for January 21, 2003 City Council Meeting

Action Requested

Authorize the City Manager to sign a contract for the 40th and 43rd Storm Project with Camrock Excavation, Inc., in the amount of \$102,857.10. Also authorize the City Manager to approve \$19,142.90 contingency.

Background

The current Surface Water Master Plan has identified the need for stormlines on both 40th and 43rd Avenues.

The installation of 1500 feet of 12"-24" pipe and associated catch basins and manholes on 40th and 43rd Avenues will collect surface water so the water will not contribute to local flooding of yards and garages. Draining storm water from the streets will improve vehicle and pedestrian safety. Elimination of drywells on Meadowcrest Court and Roswell Street will reduce the groundwater problem along Brookside Drive. The surface water collected will be piped to an up-to-date water quality facility. The water quality facility is in Portland just north of this project, between the Springwater Trail and Johnson Creek.

A project vicinity map is attached. Project bid advertising was completed as required and bids were opened January 6, 2003. Twenty-one bids were received, ranging from \$102,857.10 to \$248,895.00, and Camrock Excavation was the low bidder at \$102,857.10. In order to account for project unknowns, staff recommends Council approve an additional 18.6% contingency in the amount of \$19,142.90, which will be included in the purchase order.

III. B. 2

Concurrence

Engineering staff coordinated with the Community Development and Public Works Director and with Public Works Operations staff on this project.

Fiscal Impact

The approved Storm Fund budget includes \$162,000 for this project.

Funding for this project will consist of \$122,000 from the FY 2002-2003 Storm Fund Budget.

The bids received are listed below.

Contractor	Bid	Contractor	Bid
Camrock Excavation	\$102,857.10	Emery & Sons	\$155,790.00
Lorin Meyer Constr.	\$105,028.50	Moore Excavating	\$157,465.00
C & M Construction	\$128,750.00	Kerr Construction	\$159,365.00
NW Construction	\$129,986.25	Dirt & Aggregate	\$164,440.00
Banzer Construction	\$130,340.00	Geo. Schmidt & Son	\$167,333.50
Canby Excavating	\$134,582.00	Kat Construction	\$179,950.00
Landis & Landis	\$139,872.00	Nutter Corp.	\$179,960.00
Werbin West Contr.	\$145,628.00	Cipriano & Sons	\$180,700.00
Dunn Construction	\$146,950.00	Donald Eudaly	\$184,501.00
D & D Concrete	\$147,385.00	D. M. Construction	\$248,895.00
K & R Plumbing	\$147,919.00		

Work Load Impacts

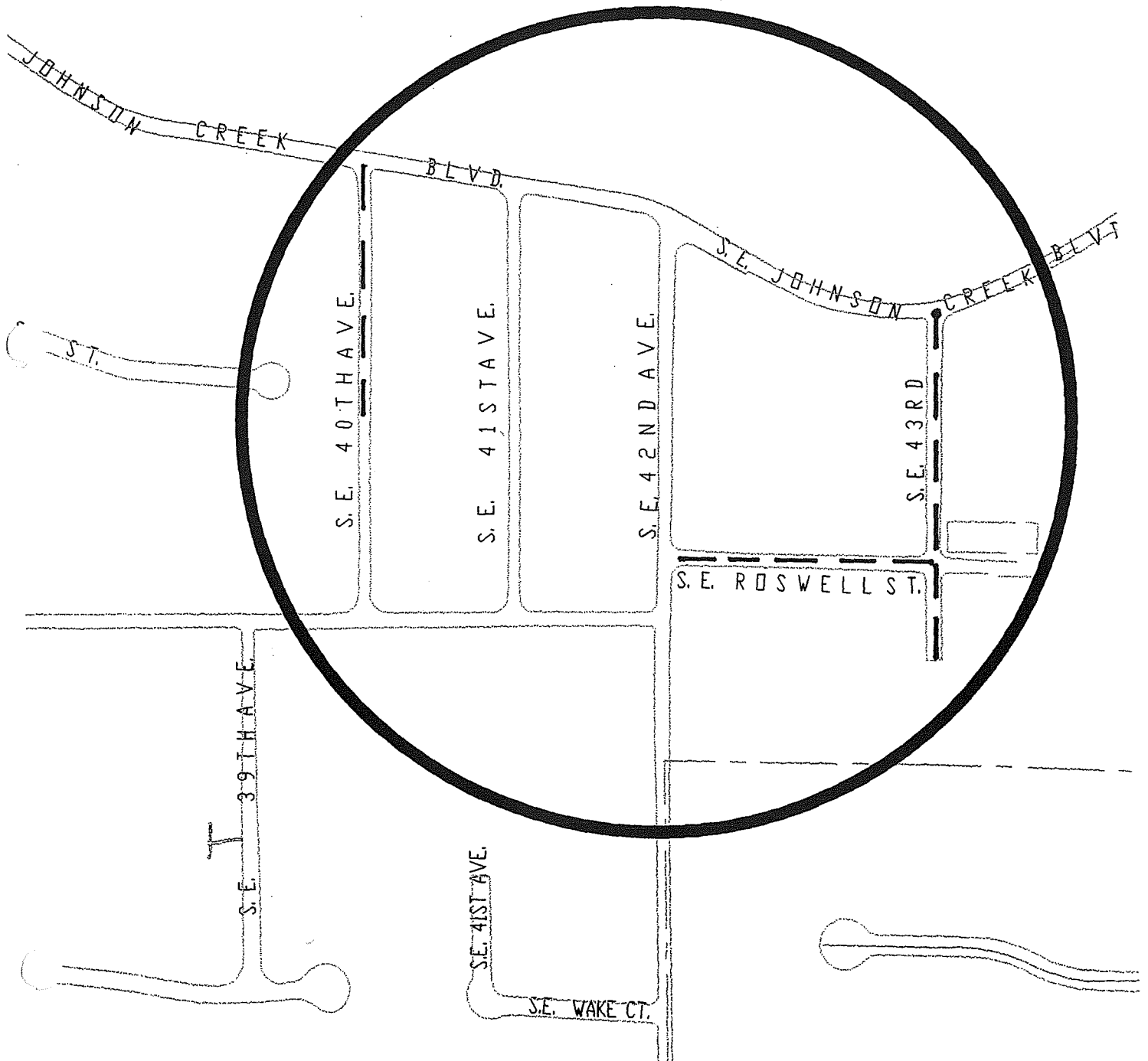
The workload impact would be the amount of time spent doing normal project management and inspection duties. This project is part of the Engineering and Storm Division's annual work program.

Alternatives

1. Authorize the City Manager to sign a contract as proposed.
2. Elect to do the project at a later date.
3. Elect to postpone this project indefinitely.

WATER
QUALITY
FACILITY


40TH AND 43RD STORM PROJECT LOCATION





To: Mayor and City Council

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

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

Subject: Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project

Date: Jan 3, 2003 for the January 21 2003 meeting

Action Requested

Authorize the Mayor to sign an Intergovernmental Agreement (IGA) with Oregon Department of Transportation to allow for the design and construction of the 42nd Avenue Street and Storm Improvements Project.

Background

The City applied for and received an Oregon Bicycle and Pedestrian Program grant, administered by Oregon Department of Transportation (ODOT), in December 2002 to complete curb, sidewalk, and storm improvements to both sides of 42nd Avenue between Johnson Creek Boulevard (JCB) and Olsen Street. The City completed a similar project with ODOT funding in 2000 on Roswell Street from 32nd Avenue to 42nd Avenue. The current ODOT project would connect with three other street improvement projects: the previously constructed Roswell project, the previously constructed Community Development Block Grant project (which ended at 42nd Avenue and Olsen Street), and the scheduled street and storm project on JCB between 36th Avenue and 45th Avenue. Since 42nd Avenue straddles both the Ardenwald and Lewelling neighborhoods, City staff will begin public involvement by attending Neighborhood Association meetings in January and February respectively.

III. C. 2

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 42nd Avenue Street and Storm Improvements Project.

Fiscal Impact

The City was awarded a maximum of \$200,000 in ODOT funding for the design and construction of the project. Under terms of the attached Intergovernmental Agreement (IGA), the City's local matching share requirement is:

1. Twenty percent (20%) of the total project cost up to a maximum of \$200,000, or
2. All project costs that exceed the \$200,000 grant.

Staff estimates that the total project cost will be approximately \$330,000. This project is not funded in the 2002/2003 Capital Improvement Program, however, funds from the City Bike and Storm Funds are available (Storm Fund this fiscal year, Bike Fund next fiscal year) to match the grant amount as follows:

\$200,000 from ODOT
 \$ 21,700 from City Bike Fund
 \$108,300 from City Storm Fund

City staff will work with local residents to obtain easements for the construction of curb and sidewalk radius sections at street intersections and other locations.

Work Load Impacts

The Engineering Department will manage the project with support from the Neighborhood Services 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, and forgo proceeding with the project.

Attachments

Attachment A - IGA with Oregon Department of Transportation

Attachment B – Vicinity Map

ATTACHMENT A

III. C. 4

1/3/03

Misc. Contracts & Agreements
No. 20473

WALKWAY/BIKEWAY PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF MILWAUKIE, acting by and through its Elected Officials, hereinafter referred to as "City."

RECITALS

1. SE 42nd Avenue is a part of the City system under the jurisdiction and control of the City.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3a, of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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

TERMS OF AGREEMENT

1. Under such authority, State and City plan and propose to design and construct sidewalks on SE 42nd Avenue from SE Johnson Creek Blvd to SE Olsen Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. City has determined that the actual total cost of the Project is estimated to be \$330,000. State shall fund the Project in an amount not to exceed \$200,000, using

State Highway Funds. City will provide a match in the amount of \$130,000. City shall be responsible for any portion of the Project, which is not covered by State funding, including any portion of the Project which exceeds the estimated total cost. In the event that the total Project cost is actually less than the original estimate, the State funds shall be limited to a proportionate share of the original estimated amount, based on a percentage calculated using state share and local match.

3. The work is to begin upon execution of the agreement by all parties and be completed no later than October 31, 2004. Maintenance responsibilities shall survive any termination of this agreement.

CITY OBLIGATIONS

1. City shall perform the work described in this agreement.
2. City shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project. Actual construction of the Project may be accomplished by City forces, by contract, or by any combination of these methods, as City shall elect.
3. City shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction if City forces will perform the construction work. Concurrence must be received from the State's Bicycle and Pedestrian Program Manager prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
4. City shall, upon completion of Project, submit to the State's Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
5. City represents that this agreement is signed by personnel duly authorized to do so by its City Council.
6. City shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval.
7. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with

III. C. 6

Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

8. Contractor shall furnish to the City, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, city, its Contractors, and their Subcontractors shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of City or its officers, employees, subcontractors, or agents under this agreement.
10. City shall be responsible for all costs not covered by State funding. State funding is limited to \$200,000
11. City shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. City shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.

STATE OBLIGATIONS

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by City before the Project is advertised for a construction contract or before construction begins if City forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by City.
2. Upon receipt of notification that the City is prepared to proceed with the development of Project, State shall deposit with City the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from City of an itemized statement of the actual total cost of the Project, State shall deposit with City a final payment, the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated costs (\$330,000).

Should final Project costs exceed the original estimate, extra costs shall be borne by City; the maximum amount of State reimbursement is \$200,000. If final Project costs are less than original estimate, State shall deposit with City a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using state share and local match.

3. In the event this agreement is terminated for any reason, City shall provide an itemized statement of the costs and expenses prior to date of termination. State shall reimburse City for its proportional share of these expenses. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. State certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within State's current appropriation or limitation of current biennial budget.

GENERAL PROVISIONS

1. City, its contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. City shall ensure that each of its contractors complies with these requirements.
2. This agreement may be terminated by mutual consent of both parties.
3. State may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.
 - b. If City fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the work provided in this agreement.

d. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if State is prohibited from paying for such work from the planned funding sources.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

4. If City fails to maintain the facility in accordance with the terms of this agreement, State, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this agreement, or take any other action allowed by law.
5. State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
6. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this agreement shall not constitute a waiver by a party of that or any other provision.

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

The Oregon Transportation Commission approved this Project on February 1, 2000 as part of the Fiscal Year 2002-2003 Local Assistance Bicycle and Pedestrian Program. The funds are included in the Statewide Programs Section of the 2000-2003 Statewide Transportation Improvement Program (STIP).

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the commission.

On January 31, 2002, the Director of the Oregon Department of Transportation approved subdelegation order No. 2, in which the Director grants authority to the Executive Deputy Director for Highways, Executive Deputy Director for Central Services, and the Chief of Staff to approve and execute over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission, or in a line item in the approved biennial budget.

STATE OF OREGON, by and through
its Department of Transportation

By _____
Exec. Deputy Director for Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Mgr./Chief Engineer

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

CITY OF MILWAUKIE

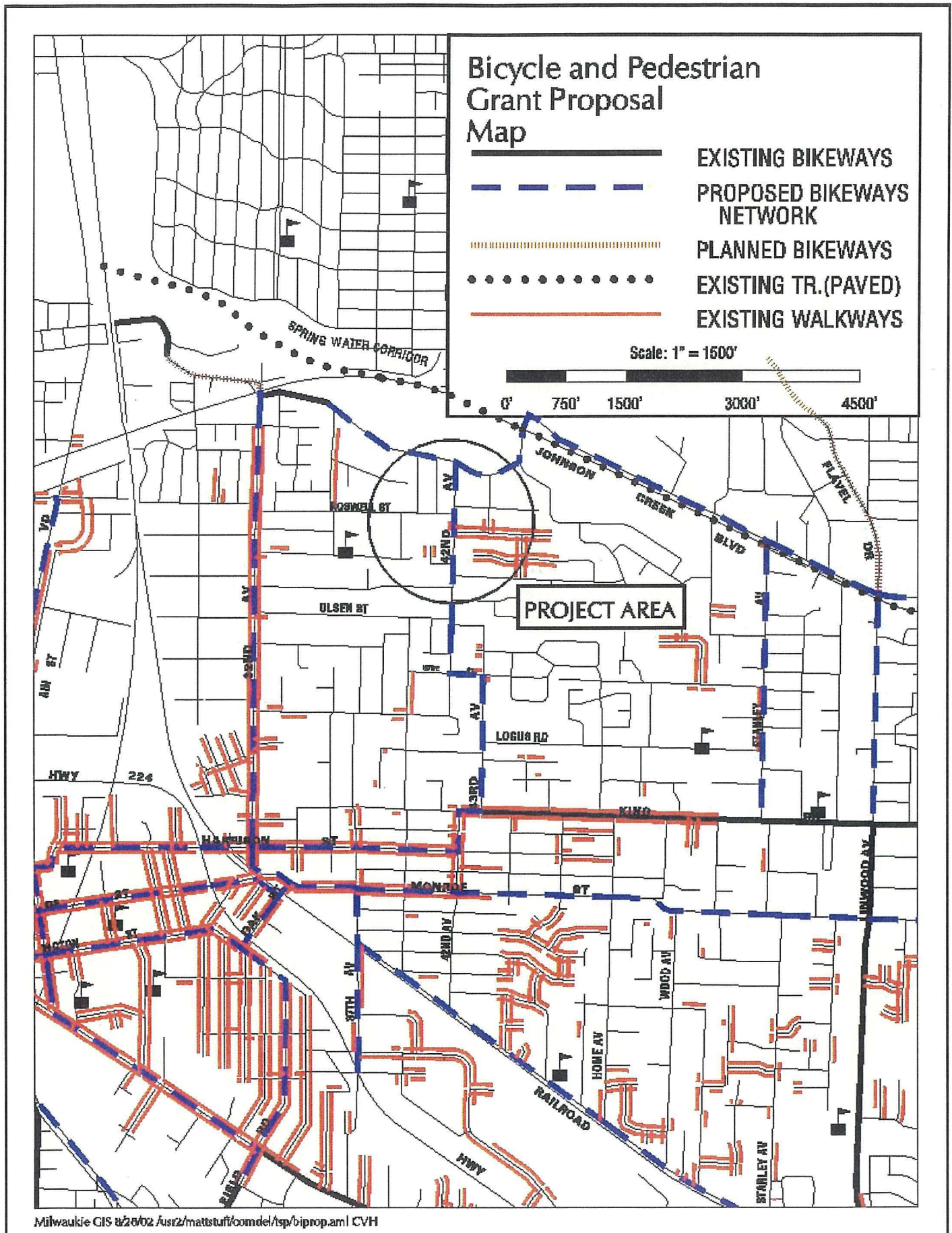
By _____
James Bernard, Mayor

Date _____

APPROVED AS TO FORM

By _____
City Legal Counsel

Date _____





TO: Mayor and City Council

THROUGH: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works *acr*
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.

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. A. 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. A. 6

PA

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. A. 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



TO: Milwaukie Planning Commission

THROUGH: John Gessner, Planning Director *JG*

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. A. 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.

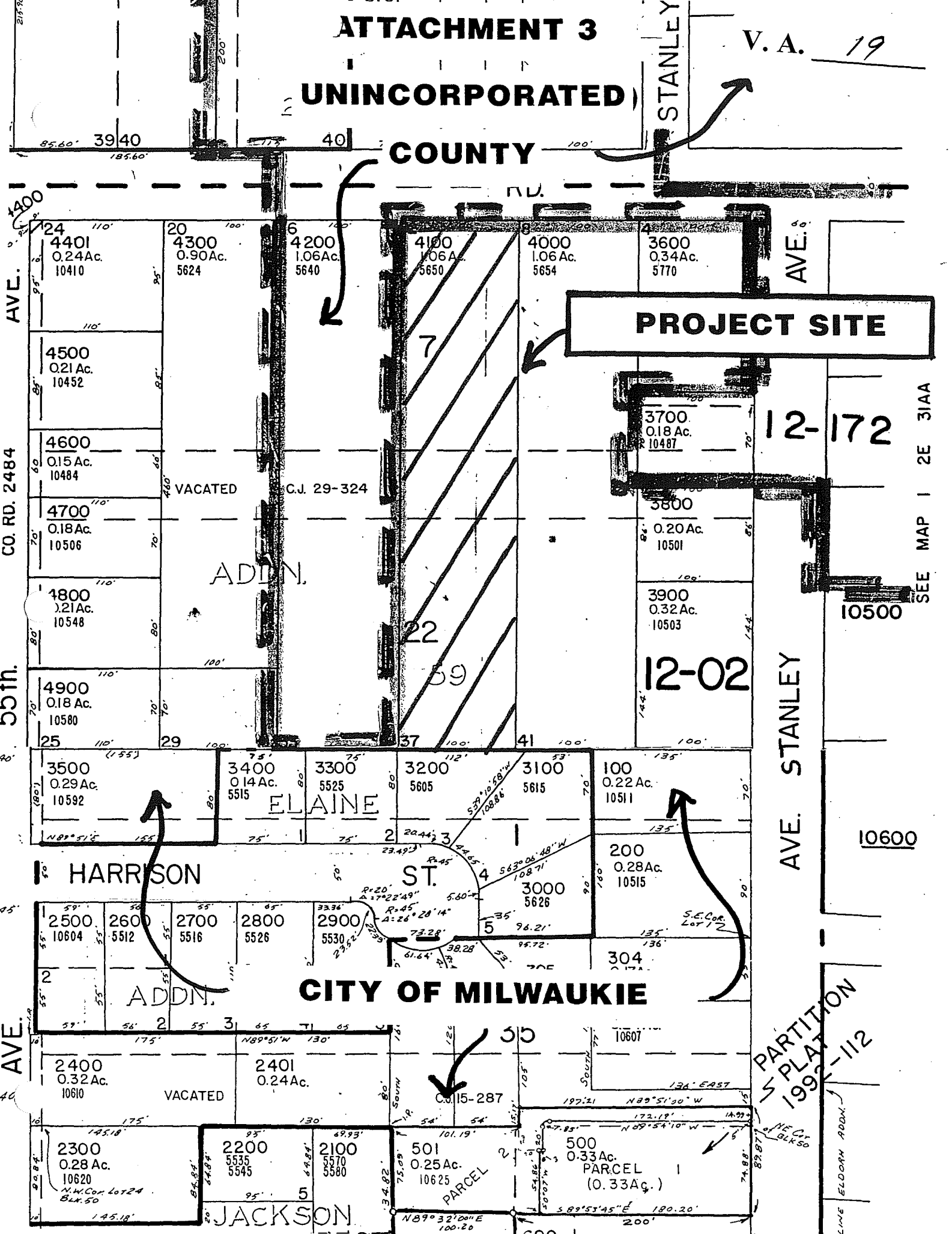
Applicant has not demonstrated compliance with Section 19.1400.

ATTACHMENT 3
UNINCORPORATED

V. A. 19

COUNTY

STANLEY



AVE. 1400
CO. RD. 2484
55th.

AVE. 40

AVE.

12-172
10500

PROJECT SITE

12-02

AVE. STANLEY

10600

PARTITION
S PLAT
1992-112

CITY OF MILWAUKIE

ELDORA ROAD

24 4401 0.24Ac. 10410
20 4300 0.90Ac. 5624
6 4200 1.06Ac. 5640
4100 1.06Ac. 5650
4000 1.06Ac. 5654
3600 0.34Ac. 5770
4500 0.21Ac. 10452
4600 0.15Ac. 10484
4700 0.18Ac. 10506
4800 0.21Ac. 10548
4900 0.18Ac. 10580
25 3500 0.29Ac. 10592
3400 0.14Ac. 5515
3300 5525
3200 5605
3100 5615
100 0.22Ac. 10511
200 0.28Ac. 10515
3000 5626
304
2500 10604
2600 5512
2700 5516
2800 5526
2900 5530
2400 0.32Ac. 10610
2401 0.24Ac.
2300 0.28Ac. 10620
2200 5535 5545
2100 5570 5580
501 0.25Ac. 10625
500 0.33Ac. PARCEL 1 (0.33Ac.)
10607
10600

V. A. 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 split of dedicated land between the two properties. Any questions please call me at (503) 381-3994.

Sincerely,

Bruce W. Nowell

V.A. 21

re 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 trrenched 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%

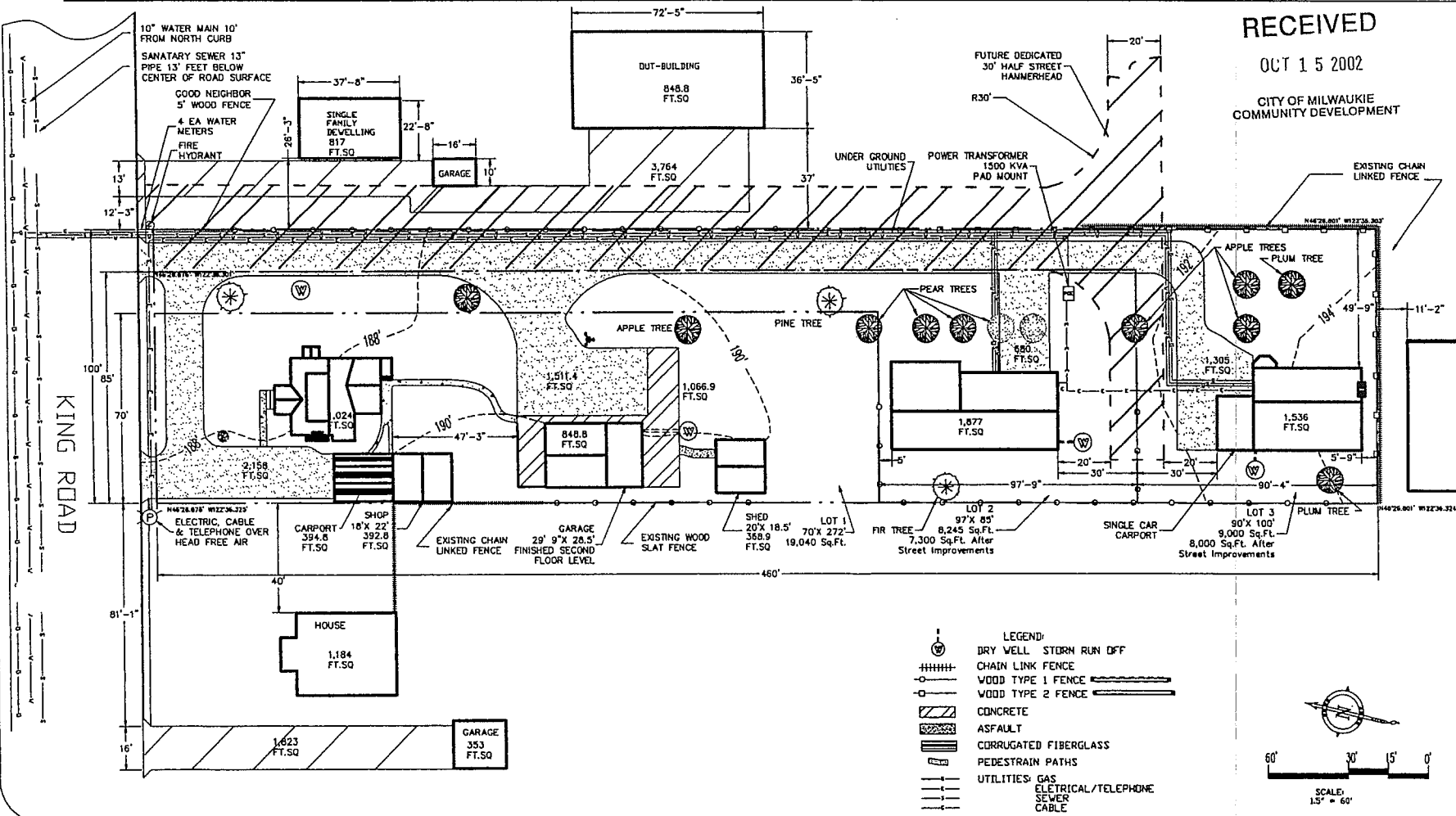
House setbacks (in feet) are:
 North: 50' (front yard)
 East: 16' (side yard)
 South: 47.5' (back yard)
 West: 25'6" (side yard)

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.	Revision/Change	Date
1	ADDITION OF HAMMER HEAD PROPOSAL & RETAINED LOTS	10/2/02

NORTHWEST AUTOMATION, Inc.
 2335 N Marine Dr.
 Portland, Oregon 97217

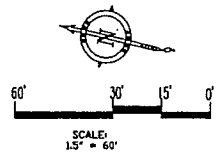
Drawn By: Bruce W. Nowell
 Date: 07/23/02

Sud Division of Real Property
 5650 SE King Road
 Milwaukie, Oregon 97222

AT
 Map & Tax Lot:
 126300004100
 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
 - ASPHALT
 - CORRUGATED FIBERGLASS
 - PEDESTRIAN PATHS
 - UTILITIES: GAS
 - ELECTRICAL/TELEPHONE
 - SEWER
 - CABLE



V. A. 22

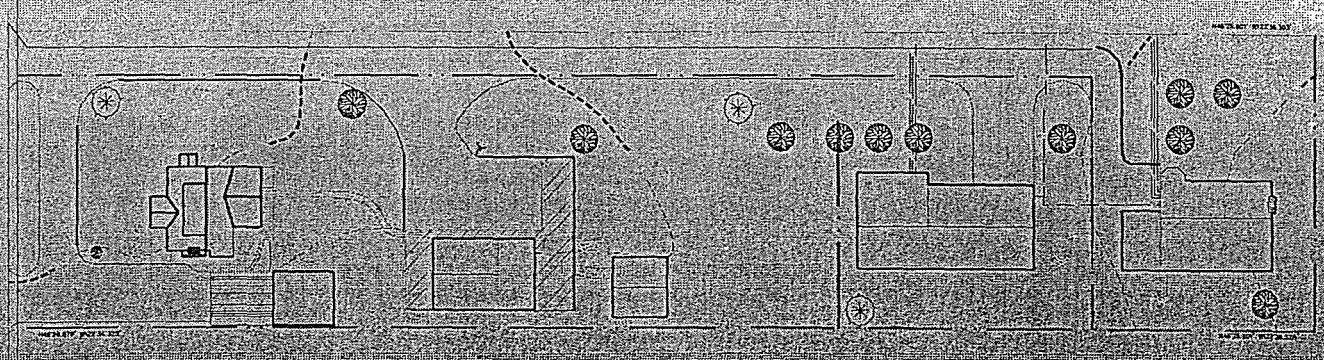
ATTACHMENT 5

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



V. A. 23

Flag lot partition documentation of 5650 SE King Road

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

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 caliper 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 caliper 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.

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.

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 trenched 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%

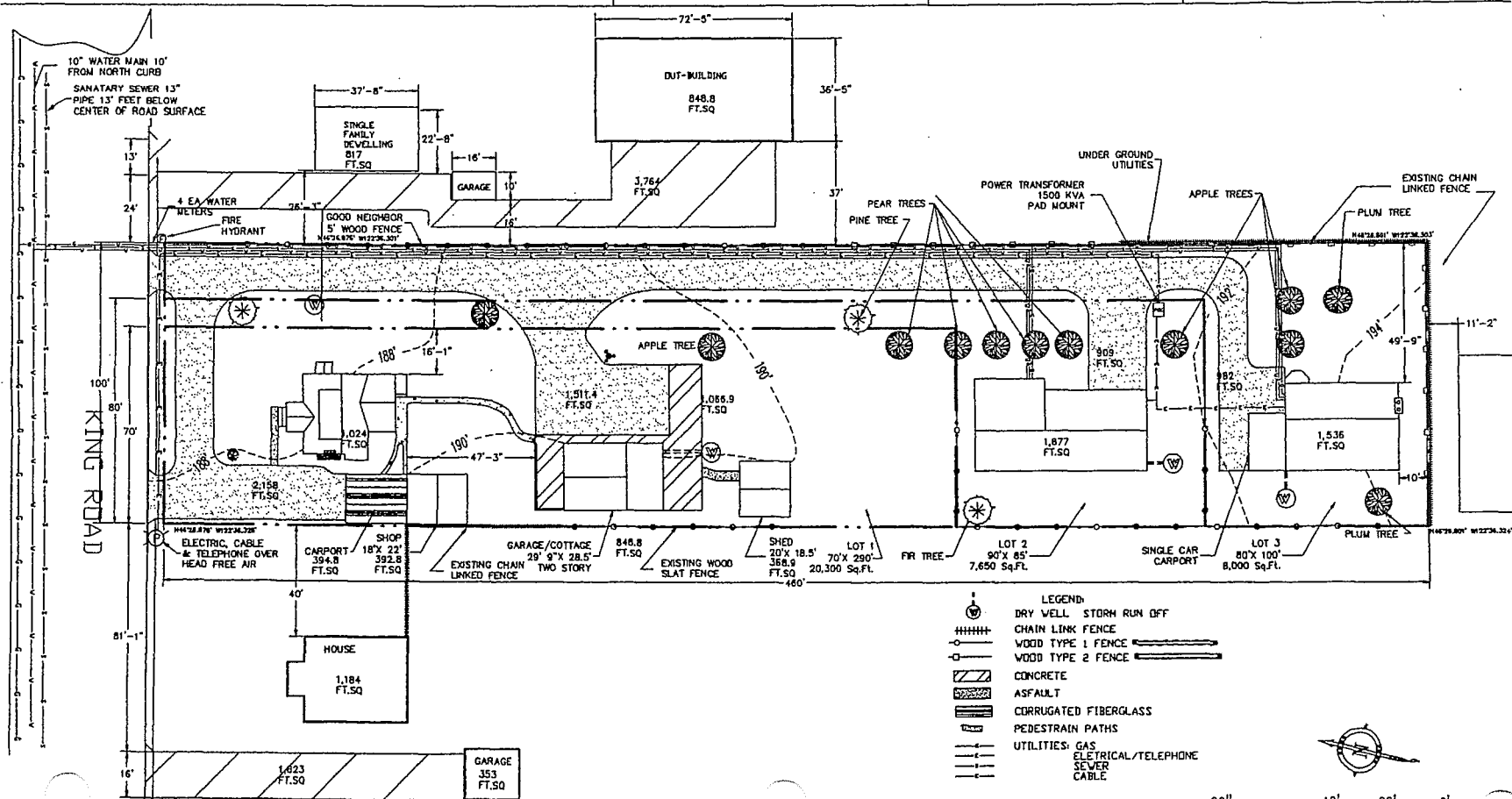
House setbacks (in feet) are:
 North: 50' (front yard)
 East: 161" (side yard)
 South: 47.5' (back yard)
 West: 25'6" (side yard)

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%

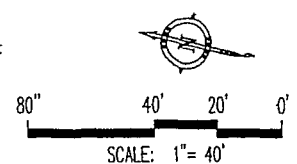
House setbacks (in feet) are:
 North: 10' (side yard)
 East: 31.8' (front yard)
 South: 20.8' (side yard)
 West: 20' (back yard)
 Structure Height: 14' 6"

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'



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



SITE PLAN

REICH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

No.	Revision/Name	Date

NORTHWEST AUTOMOTIVE, Inc
 2335 N Marine Cr.
 Portland, Oregon 97217

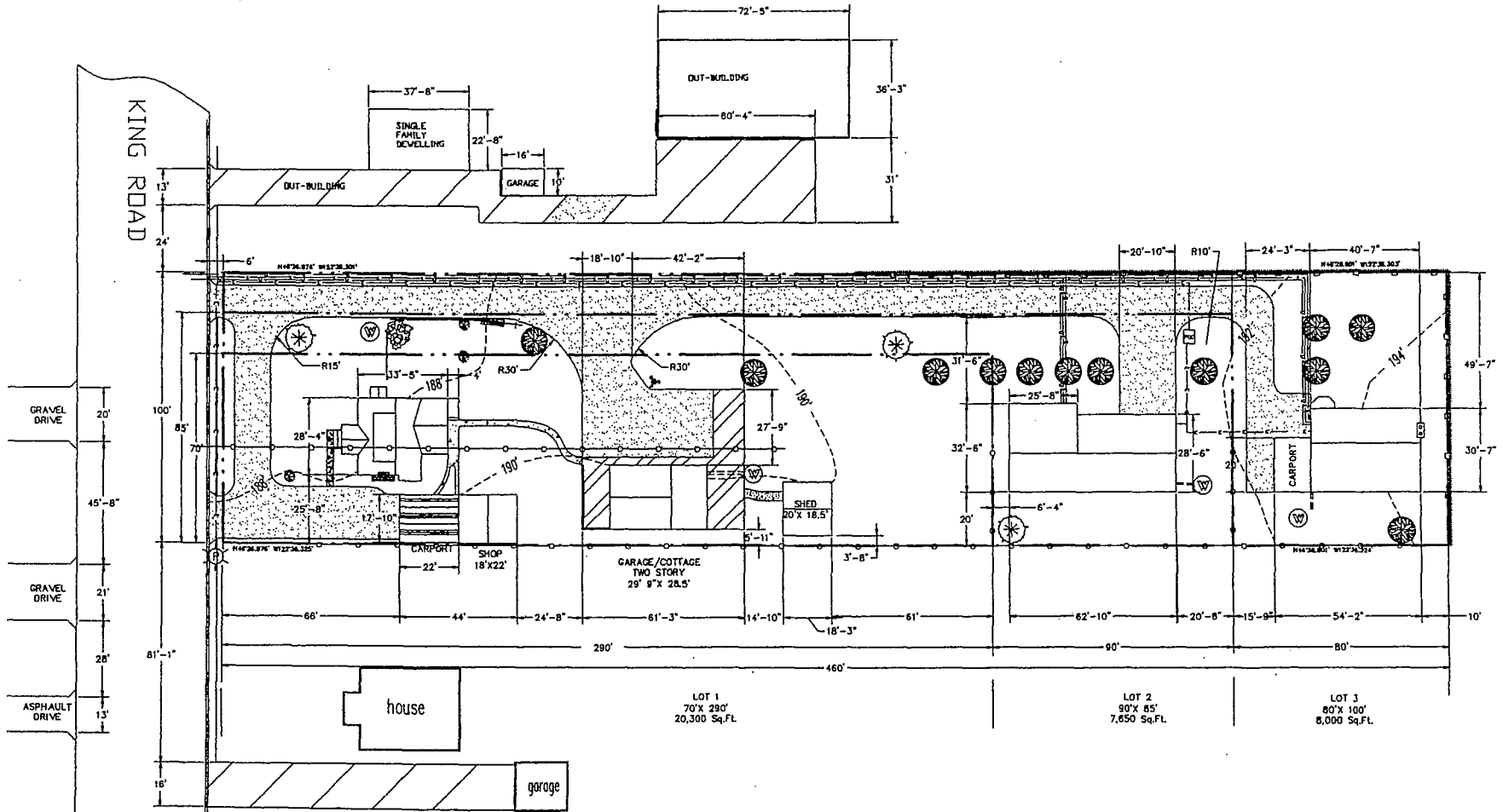
Drawn By: Bruce W. New
 Date: 07/23/02

Sub Division of Real Property
 5650 SE King Road
 Multnomah, Oregon 97222

AS
 Map & Tax Lot
 12230004100
 Zoned R-7

S-1

KING ROAD



house

garage

LOT 1
70' X 290'
20,300 Sq. Ft.

LOT 2
90' X 85'
7,650 Sq. Ft.

LOT 3
80' X 100'
8,000 Sq. Ft.

DIMENSIONAL LAYOUT

REICH ENTERPRISES
5650 SE KING ROAD
PORTLAND, OREGON 97222

No.	Description/Access	R.

FOR THE AUTOMATED
Dr.
97217
V.A.
Property
97222

62 29

100
D-1



SCALE: 1" = 40'

V. A. 30

ATTACHMENT 6

MEMORANDUM

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. A. 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.

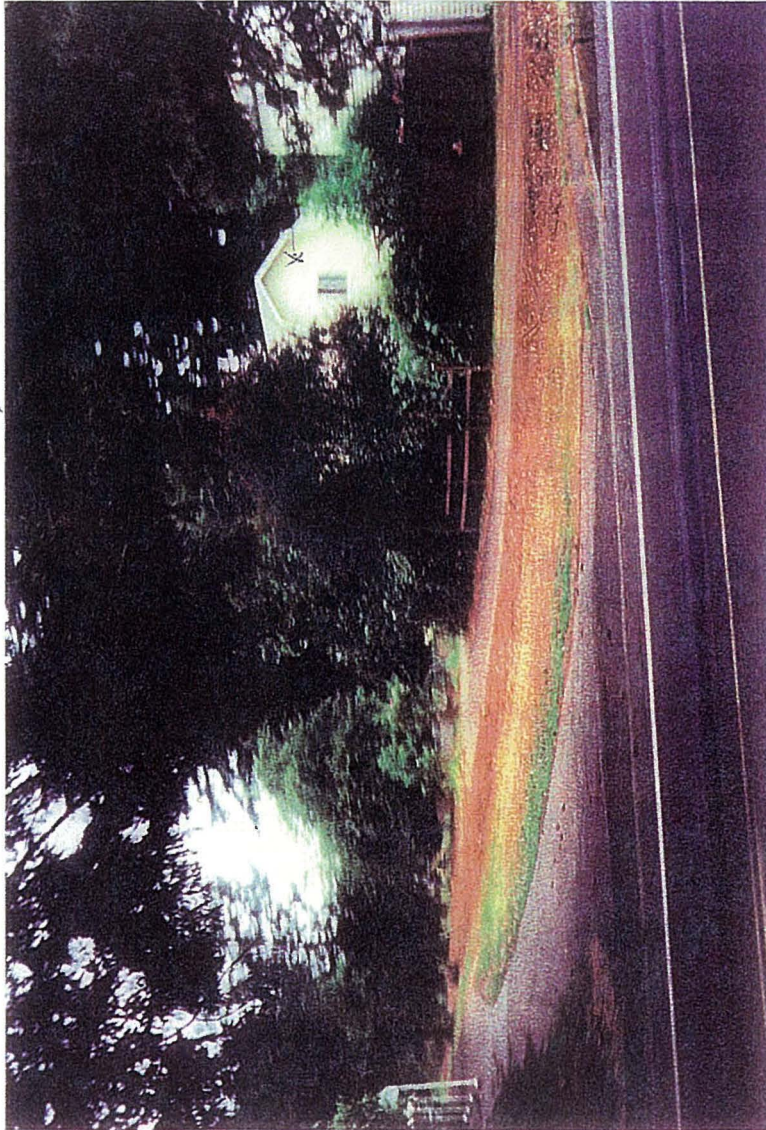
KAREN AND DAN LIEBERT
5640 SE KING ROAD
MILWAUKIE, OREGON 97222
503.654.4578

see King
on
Forest of

View from King Road
& Stanley (worth)

"Garage" now used
as living quarters

app. property line

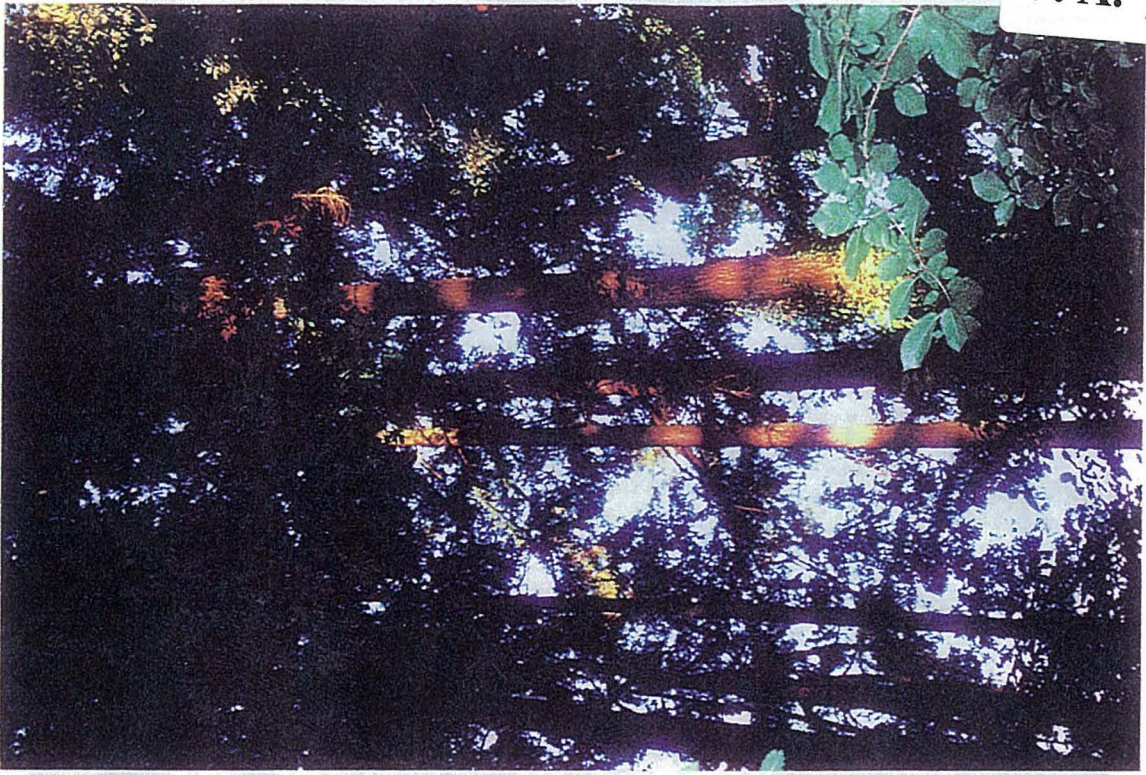


V. A. 36



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

looking up through
our trees



our path through
the Forest





pile of
brush
noted in
concern
#2



pile of
brush onto
our
trees
noted in
concern #2



V. A. 39 ER

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.

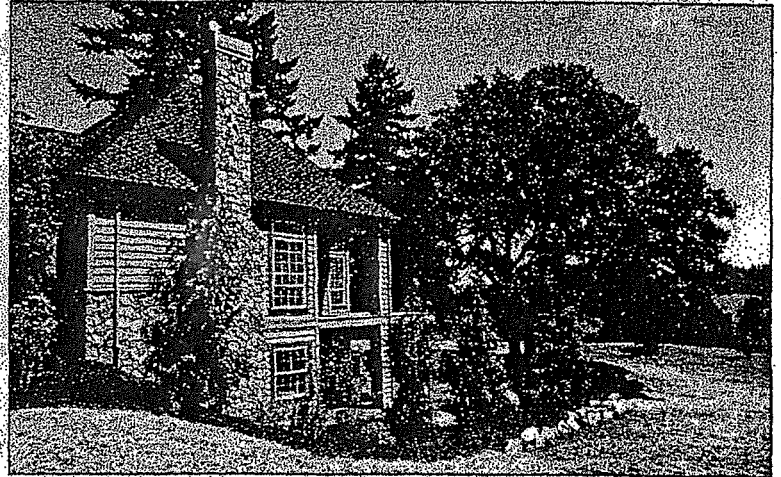
"I was part of the development team," said arborist Terrill Collier, of Collier Arbor Care in Clackamas. "I got involved this time last year."

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

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. A. 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 MackenHambricht 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. A. 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. A. 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.

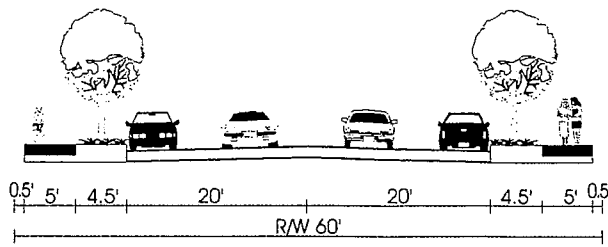
STAFF REPORT

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.

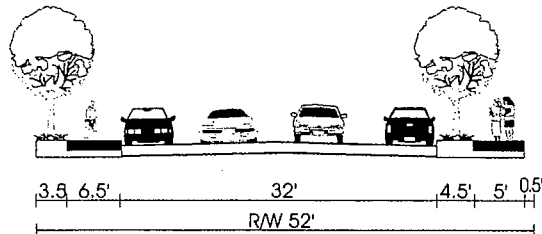
Currently the city regulates wireless communication facilities (WCFs) through the Community Service Overlay process. This process allows cell towers to be placed in a residential zone. City Council has asked staff to draft regulations that address specific cell tower issues.

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.

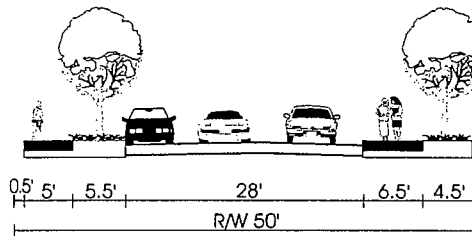
EXHIBIT F



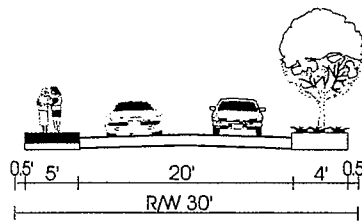
Commercial/Industrial 60'
On-street Parking



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. A. 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-Hambricht



RECEIVED
CITY OF MILWAUKIE
'02 NOV 14 AM 7 16



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Council President Election
Date: January 21, 2003

Action Requested

Elect a Council President.


Background

City Charter Section 24, *President of the Council*, and Municipal Code Chapter 2.04.040, *Presiding Office -- Designated*, states following the seating of any new duly elected members of the Council, the Council shall elect a president from its membership. In the absence of the mayor, the Council president is the presiding officer but has no more than one vote.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Paul Shirey, Engineering Director 

Subject: Citizen Utility Advisory Board Work Plan for '02'03

Date: January 2, 2003 for January 21, 2003

Action Requested

Review work program and provide feedback to the Board

Background

Each year appointed Boards are required to meet with the City Council to review the Board's work plan for the coming year. The Citizen Utility Advisory Board (CUAB) is scheduled to meet with the Council on January 21, 2003.

The following is a summary of the possible work program item that have been reviewed by the CUAB.

1. Transportation Utility Maintenance Fee	Explore options for establishing a fee, based on use of the roads, that will be used to maintain the city's street system. Make recommendations to Council.
2. Street light fee	Consider creating a street light fee in order to free up state gas tax revenue for transportation capital projects.
3. 2003-2008 CIP	Review and make recommendations to Council on the Capital Improvement Plan for next 5 years.

VI. B. 2 rt -- (title of report)

5. SDC study and revisions	Review, revise and update each of the utility SDC's. Review results of consultant study to update the Master Plan for Stormwater.
6. Cost of Service study for water services	Review and make recommendations regarding study to determine if rates are covering cost to provide service. May require rate increase.
7. Volume-based sewer rates study	Review results of study aimed at explaining why the new rates for sanitary sewer service are generating excess revenue. Make recommendations regarding rates.
8. Pavement Management system	Provide input on efforts to implement a pavement management system to better manage maintenance of street system.
9. Portland/Milwaukie sewer rate adjustment	Change the rates for those customers who buy Milwaukie water, but send the effluent to Portland for treatment. The rate change will allow Milwaukie to collect sewer fees consistent with Portland to avoid subsidizing customers for the difference in treatment costs.



To: Mayor and City Council

Through: Mike Swanson, City Manager
 Alice Rouyer, Community Development Director
 Paul Shirey, Engineering Director *RS*

From: Jack R. Ostlund Jr. *JRO*

Subject: Sanitary Sewer Volume Based Billing

Date: December 20, 2002 for January 21, 2003 Meeting

Action Requested

Review and provide feedback.

Background

In September 2001, City Council passed a resolution that changed residential sewer billing from a fixed to a variable charge. A rate increase was approved in July 2002 to meet the prescribed rate schedule. In recent months, the City of Milwaukie has collected revenue in excess of what is necessary to remain revenue neutral. We have retained Financial Consulting Solutions Group (FCSG) to analyze the problem and, if necessary, make recommendations to correct the problem.

RATE STRUCTURE	2000/2001 CURRENT RATES		2001/2002 PROJECTED RATES	
	Fixed *	Volume (>16 ccf)	Fixed *	Volume (per ccf)
Residential (Incl. MFR)	\$ 36.25	\$ -	\$29.00	\$0.70
Low-Income Residential	16.81	-	\$14.50	\$0.35
Commercial	36.25	2.30	\$29.00	\$2.50

*Fixed Charge is imposed per unit for residential, per account for Commercial

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RATE STRUCTURE	2002/2003 PROJECTED RATES		2003/2004 PROJECTED RATES	
	Fixed *	Volume (per ccf)	Fixed *	Volume (per ccf)
Residential (Incl. MFR)	\$ 22.00	\$ 1.40	\$15.00	\$2.10
Low-Income Residential	11.00	0.70	\$7.50	\$1.05
Commercial	22.00	2.80	\$15.00	\$3.00

*Fixed Charge is imposed per unit for residential, per account for Commercial

In September 2002, staff discovered that our volume based sewer billing system had generated approximately an additional \$25,000 over projected system residential revenue for the billing cycle ending August 31, 2002. This resulted in a 6.9% increase in revenue over last year for the same billing cycle. After consulting with FCSG, we discovered there could be several possible reasons for this:

- 1) The software used to calculate customers bills was not calculating them correctly.
- 2) During summer months customers used more water than estimated.
- 3) When the rate study was done the data used did not give a true statistical picture of Milwaukie water use and resulted in skewed rate tables.

In July 2002, the second prescribed rate table was instituted from the FCSG study that established the rate structure for the next five years that placed greater emphasis upon the variable portion of the billing structure and less on the fixed portion. FCSG's analysis of sample water bills concluded that they were being calculated correctly, indicating the billing software is calculating the winter average and amount due accurately. These sample bills included six customers who had complained of high bills. The complaints seem to be a result of "sticker shock" from their high water use.

The FCSG report indicated that the 2002 data for the billing period in question deviated from the 2000 data used to generate the rate tables. The 2000 data seemed to be appropriate for projecting year 2001 consumption as well as previous years. Based on evidence to date, we believe that the 2002 billing period was an above average year for water consumption. Further, there is reason to believe that the old flat fee structure resulted in considerable under-collection because of the large number of zero consumption accounts for past years. The consultants indicate that the key difference between the raw data used to set the rate structure and the most recent summary reports is, simply, the volume of water that was billed. The actual amount billed was 755,802 ccf (100 cubic feet). The study projected that 656,372 ccf of water would be billed or

a difference of 99,430 ccf (for details see chart below). This would result in an over-collection of revenue.

Table 1. Data Comparison and Estimated Revenue Impacts

<u>Rate Component</u>	<u>Study Projections</u>	<u>Actual Performance</u>	<u>Difference (Actual – Study)</u>	<u>Estimated Annual Revenue Impact</u>
<u>Units/Accounts Billed</u>	<u>9,437</u>	<u>9,374</u>	<u>(63)</u>	<u>\$(8,250)</u>
<u>Volume Billed (ccf):</u>				
<u>Residential</u>	<u>656,372</u>	<u>755,802</u>	<u>99,430</u>	<u>\$139,202</u>
<u>Commercial</u>	<u>195,178</u>	<u>222,524</u>	<u>27,346</u>	<u>\$75,202</u>
<u>Estimated Total Revenue Impact from Projections:</u>				
<u>Annual Over-Collection (Under-Collection)</u>				<u>\$206,154</u>
<u>Monthly Over Collection (Under-Collection)</u>				<u>\$17,179</u>

FCSG's report contained two recommended courses of action:

- 1) On July 1, 2003 or the beginning of the next fiscal year, the City will establish, by resolution, the final step to fully implement the volume based billing system. This would make the first two quarters of the year as an opportunity to review customer records and evaluate the current system and make any needed adjustments. If the analyzed data proves to be valid and meeting the planned system projections, the city can adopt the current adopted rate table for 2003/04. If the analyzed data shows adjustments are needed to remain revenue neutral, the changes can be made at this time.
- 2) The City could review the billing data on an account-by-account basis. This approach may expose miscalculations that our small original sample did not. If we chose this option, FCSG could aid in the analysis.
- 3) Immediately do an analysis to adjust billing structure to attempt to make system revenue neutral.

Concurrence

Engineering is coordinating with Finance staff on this study and will continue to work together on appropriate solutions.

Fiscal Impact

There is no debt impact upon the city. However, it is our mission to ensure the volume based billing remains revenue neutral and that the City recovers the cost of providing the service

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Work Load Impacts

Additional staff time will be required to complete the study with consultant assistance if necessary. Also, staff will be required to manage additional studies if the problem continues.

Alternatives

1. Take more time to evaluate revenue collection trends. Evaluate again in late March and possibly amend the adopted July 1, 2003 rate increase.
2. Conduct an account-by-account study for possible billing system problems.
3. Immediately do an analysis to adjust billing structure to attempt to make system revenue neutral.

Recommendation

Staff recommends analyzing the revenue figures again in late March to determine if this was a "one-time" occurrence or if action is needed to achieve revenue neutrality.



To: Mayor and City Council

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

From: Jeffrey King, Project Manager

Subject: Authorization and Resolution to a Transportation Enhancement Program Grant Application

Date: January 10, 2003 for January 21, 2003 meeting

Action Requested

- A) Authorize staff to proceed with a grant application for the Traffic Enhancement Program to the Oregon Department of Transportation (ODOT) for street and sidewalk improvements on Main St. between Jackson St. to the north end of the Safeway site in the City Hall/Downtown area. Improvements follow standards set out in Milwaukie Downtown and Riverfront Plan-Public Use Requirements.
- B) Adopt a resolution in support of Milwaukie's Transportation Enhancement Program grant application.

Background

The Transportation Enhancement program provides federal highway funds for projects that strengthen the cultural, aesthetic, or environmental value of the transportation system. The program is administered by the Oregon Department of Transportation (ODOT). Applications are due February 7, 2003 for projects to be constructed in the 2004-2006 time period.

To be eligible the project must fit into one of twelve "transportation enhancement activities". The Main St. Enhancement project falls into the "Bicycle and Pedestrian Facilities". This grant gives the City the ability to begin implementing street design standards that were detailed in the Milwaukie Downtown and Riverfront Plan-Public Area Requirements. The project would make design improvements on Main St. between Jackson and the north end of the Safeway site. It will serve as a demonstration project for other areas in the downtown. The project compliments a number of efforts designed to revitalize the downtown and

waterfront. These projects include the North Main Safeway Mixed Use plan, Electra Credit Union Facility, the new transit center further up Main St., and the multi-million dollar grant to improve and beautify McLoughlin Blvd in the downtown area.

The North Main Enhancement project will consist of canopy street trees, scored or brick sidewalks and crossings, curb extensions/bump-outs, bike lane, possible angled parking, and ornamental double-headed light fixture and street furniture. The grant application is for \$379,658.

Concurrence

Community Development, Planning, and Engineering Departments all support proceeding with proceeding with the application process for the Main Street Enhancement Project.

Fiscal Impact

Federal Funds can provide up to approximately ninety-percent (89.73%) of the project, while the City is required to provide a local match of approximately ten percent (10.27%). Based on this, staff estimates that the total city match for the Main St. Enhancement project will be approximately \$38,991. If approved the City must provide this match. The likely funding source is from the State Gas Tax Fund. The Traffic Enhancement grant program acts on a reimbursement process for payment of the federal share.

Work Load Impacts

A staff team from the Engineering and Community Development Departments will complete the application and participate in the public involvement process. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Decide to endorse this project.
- Decide to endorse a different project
- Decide not to proceed with the application process for Main St. Enhancement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING THE REQUEST FOR TRANSPORTATION ENHANCEMENT FUNDS FOR MAIN ST. DOWNTOWN IMPROVEMENTS.

WHEREAS, The project will improve and enhance multimodal transportation access in the downtown; and

WHEREAS, the Main St. Improvement Project supports the on-going redevelopment and revitalization of the downtown; and

WHEREAS, the project is part of the Milwaukie Downtown and Riverfront Plan;

NOW, THEREFORE, BE IT RESOLVED that the City Council supports the application by the City of Milwaukie to the Transportation Enhancement Fund for Main St. Downtown Improvments and authorizes staff to submit the application, including the commitment to provide provide a match of 10.27%, currently estimated at \$38,991.

Introduced and adopted by the City Council on January 21, 2003.

This resolution is effective on January 21, 2003.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document2 (Last revised)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, PROVIDING PUBLIC NOTICE OF CHANGES TO ITS MARCH 2003 MEETING TIMES AND LOCATIONS.

WHEREAS, the City Council has determined the March 2003 meeting dates must be changed in order to ensure the ability to constitute a quorum to conduct city business; and

WHEREAS, the Municipal Code Chapter 2.04.070 states that the City Council must provide notice of any changes to its regularly scheduled meeting times and locations;

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

- Section 1: The first City Council work session of March is cancelled.
- Section 2: The first regular City Council meeting of March 2003 will be called to order at 6:00 p.m. on Monday, March 10, 2003 in the City Hall Council Chambers.
- Section 3: The second City Council work session of March 2003 will be called to order at 6:00 p.m. on Monday, March 24, 2003 in the City Hall Conference Room.
- Section 4: The second regular City Council meeting of March 2003 will be called to order at 6:00 p.m. on Tuesday, March 25, 2003 in the Public Safety Building Community Meeting Room.
- Section 5: The City Recorder is directed to provide notice of meetings as required by law.
- Section 6: This resolution is effective upon adoption.

Introduced and adopted by the City Council on January 21, 2003.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

APPROVED AS TO FORM:

Ramis, Crew, Corrigan & Bachrach, LLP

DRAFT for consideration

(Date)

Metro
South Corridor Policy Committee
600 NE Grand Avenue
Portland OR 97232-2736

Dear Policy Committee Members:

The Clackamas County Coordinating Committee (CCCC), which is comprised of elected officials from the cities of the county, Clackamas County and special districts, have reviewed the transit options in the SDEIS in the context of the expansion of the Urban Growth Boundary by Metro. Metro's decision to expand the boundary by over 13,000 acres in Clackamas County directs the majority of new growth to Clackamas County over the next twenty years. Major transportation investments must occur in the County and its cities if our regional land use planning is to be successful.

After analysis of the transit options as outlined in the SDEIS the CCCC supports the Combined Light Rail option as the Locally Preferred Alternative (LPA) for the following reasons:

- The Urban Growth Boundary expansion of over 13,000 acres in Clackamas County.
- Estimated population of 70,000 in the newly urbanized area of Damascus with an estimated 40,000 jobs will have access to the regional rail & bus system.
- The Clackamas Regional Center will double in population and employment over the next twenty years
- Traffic volumes on the Eastside have experienced rapid growth, i.e. McLoughlin and I-205 and the construction of new rail & bus system improvements will provide needed mobility options to travelers in those corridors.
- Connectivity of the Gateway and Clackamas Regional Centers with light rail as suggested in the regional 2040 Plan.
- Redevelopment opportunities will occur in the North Milwaukie & the downtown area with light rail plus the relocation of buses from the downtown.
- Over 60,000 riders will be added to the light rail system and bus network .
- Rapid bus service will be built between Milwaukie and Oregon City enhancing service to the Oregon City Regional Center.
- Over 7,200 construction jobs will be created providing a major economic benefit to the region.

We believe Combined Light Rail project ought to proceed as the LPA under a phasing approach with I-205 Light Rail as the first phase and Milwaukie to Portland Light Rail as the second phase.

Sincerely,



TO: Mayor and City Council

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

FROM: Kenneth Kent, Associate Planner *KK*

DATE: January 21, 2003

SUBJECT: Downtown Design Guidelines Project Update

Action Requested

No action is required. This is a status report on the Downtown Design Guideline project.

Background

The Design and Landmarks Commission (DLC) has been working on design guidelines and a design review process for the downtown. The project is ready for the formal adoption process and is scheduled for City Council adoption on April 1, 2003.

The design guidelines and the design review process will assure that development in the downtown will be consistent with and contribute to the character of downtown as well as the vision of the Downtown and Riverfront Framework Plan.

This project consists of three parts:

1. Design Guidelines;
2. Design Review Process Code; and
3. Sign Code Amendments for consistency with design guidelines.

The following is a brief summary of each of the elements of the project.

Downtown Design Guidelines

The design guidelines will be used by the Design and Landmarks Commission and staff to assess how well a proposed development fits within the context of downtown. As proposed, all new development, additions, remodels and renovations within the Downtown Zones will be reviewed against the design guidelines. A development proposal would not need to comply with each and every guideline, but would need to show their project is substantially consistent with the guidelines. It will be the DLC's role to determine how well a project meets the guidelines, considering the overall design of the project and how it relates to surrounding buildings and the downtown.

The guidelines address five design elements:

1. Milwaukie Character Guidelines: Milwaukie's unique "sense of place" as an All-American riverfront town that is hospitable and family oriented;
2. Pedestrian Emphasis Guidelines: Addresses the ways in which buildings and spaces may be designed to create convenient, comfortable, human-scaled environment that people will want to be in, where the pedestrian is the priority;
3. Architecture Guidelines: Promotes quality development while reinforcing the individuality and spirit of Milwaukie. Architectural criteria address such features as doors, walls, windows, silhouette and roofline;
4. Lighting Guidelines: Lighting that encourages nighttime patronage of businesses and restaurants, and creates and atmosphere of festivity and activity; and
5. Sign Guidelines: Sign that make it easy to locate and identify businesses, but never overwhelm either buildings or landscape. Encourage signs that are of a highly graphic format that is complementary to downtown with a strong pedestrian orientation.

In addition to the proposed design guidelines, projects in downtown are subject to the existing Development Standards and Design Standards in the Downtown Zones section of the Zoning Ordinance. Development Standards are minimum zoning standards, such as building height, floor area ratio and street setbacks. Design Standards are zoning standards that require specific minimum dimensions and materials for walls, widows and roofs. The design guidelines are intended to work in conjunction with the minimum criteria of the Development Standards and Design Standards and will serve to address design character, quality and consistency.

Design Review Process

The following are the key elements of the proposed design review process.

- New construction and significant changes to buildings are reviewed by the Design and Landmarks Commission against design guidelines.
- The review process has been minimized for minor work/projects by allowing staff review (Type I) of those changes that will not significantly alter the architectural character of a building, with staff having discretion to "kick up" to a Type II review.
- DLC may grant modifications to design standards with findings, rather than through a variance. Design standards are closely tied to the architecture of a building. This provision is included to allow flexibility when an acceptable design solution meets the intent of the particular design standard as well as the design guidelines.
- DLC is the review authority for variances to development standards.
- "Stand alone" residential¹ development is exempt from design review. This exemption is necessary to meet state law requirements that development involving "needed housing"² have the option to only be subject to clear and objective standards. The subjective nature of design guidelines and a design review process does not meet this requirement.
- Mixed-use buildings require design review for non-residential portion. Residential portion of the building only subject the design standards or may elect full design review.

Downtown Sign Code

The following are the key elements of proposed sign code amendments to be consistent with design guidelines.

- Reduces the height and area of freestanding signs.
- Limit awning signs to first floor of building and/or no higher than 15 feet.
- Discourage internally illuminated cabinet signs, requiring design review by DLC.
- All other internally illuminated signs require design review by DLC.
- Backlit, individually lettered signs permitted.

Next Steps

- February 25, 2003, joint Planning Commission and Design and Landmarks Commission Public Hearing, Recommending Adoption to the City Council.
- April 1, 2003, City Council Adoption.

¹ "Stand alone" residential is a development that is entirely residential with no mixed use.

² All new housing in the Metro region is considered "needed."

VI. E. 4

Concurrence

The City Council discussed the Downtown Design Guideline Project and provided direction on November 6, 2001 and July 16, 2001. The Design and Landmarks Commission has conducted a number of meetings and provided their input on the project. The Planning Commission reviewed the overall concept on September 25, 2001. The proposed design guidelines, design review code, and sign code changes have been reviewed by staff and the city attorney.

Alternatives

1. Proceed with adoption schedule as proposed.
2. Provide direction to staff to revise the adoption schedule.
3. Provide direction to staff regarding proposed design review process.

Riverfront Board Meeting
November 6, 2002
Minutes

Members Presents: Verbout, Green, Wall, Klein, Stacey

Members Absent: Loaiza, Martin

Guest: Gill Williams

Wall motioned to accept the minutes as written, noting he found them "accurate and scintillating". Verbout seconded, and minutes were approved 5-0.

The note taker (JoAnn, WAY too tired, Herrigel) noted only the discussion points that seemed to win consensus (that is, all comments were NOT recorded.) Following is a list of those points:

- Gill Williams has a layout for a sign that was designed a while back
- Can the Multi-Use Trail be modified without repercussions from CAMAQ (the source of funds for the Trail)
- What do we call this plan?
 - "Phase I of the Concept Plan for A Milwaukie Riverfront Park" seemed to be the most popular idea (I think)
- Gill's concept plan should be modified as follows:
 - Remove the word "temporary" from the parking area near the boat ramp
 - Remove the small parking lot off of McLoughlin in the northeast corner of the plan
 - Insert the proposed McLoughlin Blvd improvements
- Wall noted that there should be a distinct relationship drawn on the sign between the concept plan (a conceptual proposal) and the actual Riverfront/Downtown Master Plan (a design adopted into the Comp Plan)
- The sign should have a Phone # of someone that can answer questions about the plan and any potential donations- (JoAnn's number seemed acceptable).
- Paul and JoAnn will work on the text of the sign and will get text to Gill who will integrate it into the computer file for the concept map.
- Time frame: Goal is to get sign done (installed) by date of the Christmas event on the Riverfront (Dec 21 ???).
- Attendees liked a Kiosk style sign – Herrigel will check with Planning regarding sign restrictions.
- Any text regarding donations should emphasize the tax deductibility of all contributions
- Gill should highlight the north end of the concept map to identify the first phase

VII. 2

- The group asked that the Marine Board respond in writing to the list of criteria the Riverfront Board had developed for Boat Ramp modification. They asked that the response to the list of criteria be a major topic of discussion at the next meeting.
- The next meeting was scheduled for December 17 at 6pm. Wall said he would contact Loaiza regarding his ability to attend the next meeting.
- Gary Klein extended an invitation to all board members to come to a gathering at his house on December 10 to view the Christmas Boats and to tour his newly remodeled home.

Mitch Wall motioned to adjourn and Stacey seconded. Meeting adjourned at 8:15.