

MINUTES

MILWAUKIE CITY COUNCIL JULY 15, 2003

CALL TO ORDER

The 1914th meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Councilor Barnes
Councilor Lancaster

Councilor Loomis
Councilor Stone

Staff present:

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

JoAnn Herrigel,
Program Administrator
Jeff King,
Project Manager

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard read brief biographies of the first city officials, Recorder Frederick Lechler, Treasurer Charles McCann, and Marshal Jesse Keck. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

AUDIENCE PARTICIPATION

Jason Seibert, 2515 SE Lake Road, Milwaukie. He discussed his background as a long time Milwaukie area resident and his eventual purchase of the house on Lake Road when he got out of the Air Force. It is known as the Pioneer Failing House and at one time was the Milwaukie Museum. It is adjacent to the Lake Road Professional Building that houses several attorneys and accountants. He was pleased to see the business move and bring value into the neighborhood. As the City has grown, Seibert has been impressed by the actions taken to attract new business owners and welcome people to the community. He has thought of coming before the City Council to compliment it on its efforts, but there were constraints on his time with raising a family and conducting his own business.

Seibert asked the City Council to lend an eye and ear to his situation, not to make a decision or force any policy on those good folks who have already helped him. Seibert explained he has been called back to the Air Force. The house is for sale, and he has qualified his buyers. One of the requirements is that they preserve the house. He and his wife spent four years working on the home to overcome the atrocities done by the previous owners. He is looking for someone who will make a long-term commitment to the neighborhood and not paint the house black and put aluminum foil on the windows. He wants someone who will make a commitment to serving the community as much as he wanted to. In this process, he found a buyer. He is an attorney who wants to use the home as an office. This is a trend of businessmen wanting to come to Milwaukie, setting up shop, providing services for the community, and helping the City grow. The potential buyer has already committed to preserving the property. There is 150-year old documentation of this house being in downtown Portland then floated for \$10 dollars to the current Milwaukie Presbyterian site. It was subsequently moved to its present location.

All were saddened when the home stored by the railroad tracks was destroyed. His 3-year old son commented a bulldozer and two trucks were destroying the house. It made Seibert and his family all the more proud they had found a buyer who was going preserve their home. The potential buyer met with the City to start the process of getting the zoning changed from residential to conditional use commercial so he could open his law office there. That process was delayed because of the Safeway development, and there was no time to fit him in. As a result, he has backed out of the deal and no longer wants to buy the home. It would be October or November before he could get an answer on whether the home could be converted back to a commercial property which it was when it housed the Milwaukie Museum.

The process should not take until November for him to find out if he can move his business to Milwaukie. Seibert was not asking the Council to make a decision. He only wanted the Council to be aware there is another home in Milwaukie that is now in danger. He will have to accept the first bid on the house because he has to leave. He had the luxury of helping the community ensure the home would be preserved, but he no longer has a choice because of the process.

Councilor Stone asked when the process with the potential buyer began.

Seibert said it began last month. The buyer was told on Friday as he went through the process. One of the problems is parking; however, the Lake Road Professional Building people provided a note stating they would be willing to let the occupant use their parking lot. No additional parking or manipulation to the property would need to be made. The community is for this with only a little opposition to another commercial building. He did think those objecting understood the house would be preserved as an historical monument on the

National Registry. He needs to let those individuals know that it would be in their best interest when the choice is between an historical home or a home painted black with aluminum foil on the windows. If it is not a lawyer's office, it could be a drug house. Seibert does not want to go off to the Air Force and get a call from his father saying a bulldozer has just chopped it down. He is asking the City Council to watch this and help him get his buyer into the house. Seibert asked the buyer to postpone backing out of the deal, and he has agreed to give it some time. Rouyer had dedicated herself to helping him with the process. He knows this can be done.

Councilor Stone asked Seibert why he thought there was a hold up and why a decision could not be made until October.

Seibert said the response he got was that the development of the Safeway location is on the books and is anticipated to monopolize the Planning Commission meetings. Because of the workload related to that development, Seibert's application is on hold. There are good things and bad things about living in a small community, and it seems the workload here has come into a varying degree of bad. Unfortunately, he and his buyer did not get the process in the works before Safeway. The application would be to change the zone back to commercial conditional use. If someone could say, sure it was the museum before, and it is number 19 on a list of 44 historical homes contributing to the community's historical value. It is already qualified to be a bed and breakfast without any zoning questions at all; that is a conditional use. In fact, because it is on the list of contributing homes, it is one of the only structures that could be a bed and breakfast. He is not asking that it not have to meet code. He just wants to get to the process where the buyer can say he wants to put his money into Milwaukie and do business. Right now it is too uncertain, and the process is taking too long. It is a zoning question, but it is also a matter of time. There is growth because of the good things going on here. If he could turn back time, he would do so.

Councilor Barnes how much time there is to deal with this issue?

Seibert said the buyer was going to back out yesterday. The plan was to close on August 1 if everything fell into line and looked like it would move in a positive direction. The buyer agreed to stay his decision until he was able to talk to staff about what could be done. Seibert can only report that he has spoken with Council and see what can be worked out with the buyer. The potential buyer and owners of the adjacent business have already talked about conjoining the properties with a greenspace park area for community use. These are all great things, but it is coming apart quickly. He hopes to have good information for the potential buyer by the end of the week. The house has been off the market for a month while trying to work through this. Seibert has to sell his home, so unless he can get some kind of positive information that would convince the potential

buyer to purchase the house, he would have to sell to the first person who comes along.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. She said for the record the Seibert family has been a great neighbor. She would like to see a family come along just like them. What is before the City right now is whether to become a Sellwood where all the historic properties eventually turn into commercial because no one wants to raise a family next to a business, or will Milwaukie become an Eastmoreland where there is a strong sense of community and family and residential flavor of people who support the community, the downtown, and other commercial opportunities that exist. She is very much against turning this property into a business. In some general conversations with other neighbors, she believes that sentiment is broad based. Brinkman encouraged the City Council to follow the established process vested with the Planning Commission. It is there for a reason, and although she regrets it takes so long, it ensures due process.

She understands from talking with the Planning Commission the potential buyer has not submitted an application or fee. The buyer was advised of the process when the pre-application was submitted. Part of the process is notice to neighbors. The other reasons to go to the Planning Commission is to provide opportunity for hearing. The final reason is the appeal process, and Brinkman announced her intention to appeal if the conditional use is granted. This house has a lot of historical significance to Portland and Milwaukie. She finds it hard to believe anyone buying the house at the asking price would turn it into a drug house with aluminum foil-covered windows.

Brinkman urged the City Council to follow the existing procedure. She understands the application could not be heard until October. From a brief reading of the code, the Planning Commission has 120 days to make a decision at which time she has 15 days to notify the City of her intent to appeal. The City Council has to provide a hearing within 40 days. At that point in the process, it would be mid-April. She is a fan of the City of Milwaukie and believes it is important that homes, historic and otherwise, be occupied by people who would be there in the evenings and on week ends to patronize local businesses and make sure this is a community that retains a sense of hominess and neighborliness instead of using its historical properties while its other commercial properties are underused.

Councilor Stone asked Rouyer for an update on what has happened thus far with the request. Is the department looking at granting it? Could it be addressed in a timelier manner?

Rouyer said the planning director is out of the office. She does know there has as yet been no application submitted. Typically between the time of submission and the hearing there is about a 45-day period to allow for notice and internal

review. If the application were submitted today, the soonest it could get to hearing, based on all the requirements, would be September 9. That is the Planning Commission meeting at which the Safeway proposal will be heard. When Seibert was speaking of Safeway being in the way, the Commission and staff anticipate a lengthy hearing so likely will not have time for two hearings that night. Staff advised the buyer that October might be the earliest possible hearing date. The Planning Commission has hearings only once a month leaving the second meeting for a work session. There is some flexibility, but it would be up to the planning director and Commission chair to determine the agenda. She is committed to working with Seibert, but September 9 would be the earliest date.

Councilor Stone asked Rouyer to speak to this home's being of historical value to community since it is not yet on the registry. Has staff spoken to the Design and Landmarks Commission about this issue? Maybe something could be done there to expedite that process.

Seibert understands the potential buyer would go through that process.

Rouyer added this house is already on Milwaukie's historic inventory.

Councilor Stone asked if that would protect it from being demolished.

Rouyer said the house is ranked as a contributing property, and there are some safeguards. No property on that list is completely protected from demolition, but there are some safeguards the Design and Landmarks Commission can use. She understands this is more of a use issue than a development issue. For that reason the Commission would not be involved until there is an exterior modification to the property.

Councilor Stone was speaking to the fear of losing this house like the Sam Marinos house.

Seifert said if he has to sell the house to a developer who wants to turn it into a multi-unit or a townhouse, he would not be able to tell them no. It is his fear that the house would be moved or bulldozed to put up a different type of structure.

Rouyer said it is zoned for higher density residential.

Seifert said the lot is deep and meets up with the retirement center.

Update on July 26 Riverfront Event

Herrigel reported on July 26 Riverfront Blast at the Jefferson Street Boat Ramp. The festivities will include dragon boat races, food and craft vendors, a beer tent, music, fireworks, and a toilet seat hurling contest. The event is free, but people are encouraged to donate to the riverfront development project as well as to

bring canned goods for the Annie Ross House. She discussed the advertising efforts.

Mayor Bernard announced the *"Catch the Flicks"* event on August 2 at dusk on the Waldorf School grounds. Sonny and Sharon Phillips and the Portland Waldorf School are sponsoring the event.

CONSENT AGENDA

The consent agenda consisted of:

- A. City Council Minutes of June 9, 2003;
- B. O.L.C.C. Application, Asahi Beer USA, Inc., 9696 SE Omark Drive;
- C. Non-represented Employees FY 2003 – 2004 Salary Schedule and Proposed Cost of Living Adjustment; and
- D. Personal Services Agreement with Clackamas County Cable Access;

Councilor Loomis requested item C be removed for discussion.

It was moved by Councilor Stone and seconded by Councilor Barnes to adopt the remaining items on the consent agenda. The motion to adopt the consent agenda passed unanimously.

OTHER BUSINESS

Annual Solid Waste Rate Review

Herrigel provided the City Council with information on the garbage haulers' rate of return. There is no request to adjust the rates this year. She introduced David White who is representing the haulers after Estele Harlan's retirement. Also present were Jackie Keizer, Wichita Sanitary, and Terry Waddell, Waste Management. Milwaukie has seven franchised garbage haulers, and these are a subset of the 20 County haulers. Each year Milwaukie's seven haulers submit complete financial reports to both the City and the County. Herrigel briefly discussed the review process. Typically, after the City, County, and haulers agree on the expense allocation, the haulers' representative prepares a composite sheet of expenses and rates of return information. If the rate of return is between 8% and 12%, no rate adjustment is requested unless there is a major program change proposed. For 2002, the composite rate of return was 10.29%, so no adjustment is being requested.

Herrigel discussed several related topics. In 2001, the City of Milwaukie increased the residential rate and decreased the commercial rate with the intent of getting closer to an actual cost of service for both types of customers. Residential had historically been subsidized by commercial rates. The Metro disposal fee will increase by 1.4%, which may affect next year's rates slightly. In

a recent sampling of customers, Milwaukie haulers received a 93% satisfaction rating from residential customers and a 97% rating from commercial customers. Staff has begun negotiating with the current solid waste franchisees to complete new agreements to replace the current ones that expire in October 2004. She will keep the Council updated on the progress.

Councilor Lancaster commented, if he had been one of those customers surveyed, he would have been among that 93%. He is a Wichita customer, and they do a great job.

Mayor Bernard discussed recent complaints about garbage truck noise coming from Omark Industrial Park.

Herrigel will look at that during negotiations because there is a conflict between the City's noise ordinance and the haulers' administrative rules.

North Main Mixed Use Site Redevelopment Project Memorandum of Understanding and Vertical Housing Development Zone Program

Jeff King, Project Manager, provided the staff report in which the City Council was requested to take two actions. The first was to authorize the city manager to sign the memorandum of understanding (MOU) with Peak Development, LLC. The second was to authorize staff to apply to the State to create a Vertical Housing Development Zone. The MOU is non-binding but clarifies roles and responsibilities and addresses design, financing, infrastructure, city assistance, adjacent property owner considerations, and scheduling. The site plan prepared in response to Milwaukie's request for proposals (RFP) is undergoing refinement and will be unveiled in September. He pointed out several minor changes to the MOU from the one provided in the Council packet. The city attorney has reviewed the document.

Mayor Bernard hopes the updated drawings will be available soon because there is a lot of interest at the Sunday Market. He appreciated having one at Windhorse Coffee because it attracts a lot of attention.

Councilor Stone referred to MOU page 2, #6 – project assistance. It looks like the City will be responsible for doing traffic studies and obtaining environmental entitlements. What kind of costs will the City incur, and is this something the City would typically assume?

King said, since this is a public/private partnership, the City is taking on certain responsibilities. The City is not required to do all studies. For example, the traffic study will be satisfied with the Kittleson report that is already in progress. There may be some future requirements imposed by the Planning Commission, for example. King spoke to the environmental entitlements and meeting Metro Title 3 requirements.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to authorize the city manager to sign the memorandum of understanding with Peak Development, LLC. Motion passed unanimously.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to authorize staff to apply to the State for a Vertical Housing Development Zone. Motion passed unanimously.

Advisory Board Appointment

Mayor Bernard, with consent of Councilors, appointed Rob Gabrish to the Park and Recreation Board.

Non-Represented Employees FY 2003 – 2004 Salary Schedule and Proposed Cost of Living Adjustment

Councilor Loomis understood items on the consent agenda were routine, and he did not feel, since the motion on this item failed at the last session, it was routine.

It was moved by Councilor Barnes and seconded by Councilor Lancaster to adopt the 2003 - 2004 pay table for management, non-represented, and seasonal employees.

Councilor Loomis stated his reasons for voting no. It has nothing to do with staff. His concern is the City has a budget shortfall. The savings was listed at \$423,000, but that was the amount cut. We do not have that \$423,000 in salaries saved somewhere. When the City has a shortfall and another one is projected for next year, the \$34,000 will be added on next year's for a total of \$68,000. To him that is *The Pilot* or a police officer. He would like to see the City work on things that do not cost anything to keep employees with the City. It was stated at the last meeting that most of the people have made it through the salary steps, so they have been with the City for about 7 years. People do not work here just for the salary. Money is important, but it is not the only thing. Satisfaction, appreciation, and challenge also count. He understands why Swanson brought this recommendation forward because people are working hard for him and making his job easier. He suggested giving preference to hiring people who live in Milwaukie. He has great respect for staff and appreciates their knowledge. He feels he would have an easier time looking staff in the eye and saying no than explaining a yes vote to the voters.

Councilor Stone understands Loomis's concerns; however, this \$34,000 is not all coming out of the general fund. The shortfall is in the general fund, and all the other funds in the City are good. What percentage of the \$34,000 comes out of the general fund?

Swanson said it difficult to say because there are library aids whose positions are funded both by the general fund and the county money. He estimated about 60% of the \$34,000 was out of the general fund.

Councilor Stone asked if this was something the Council considered every year.

Swanson said that is correct, but last year, for example, the Council did not consider non-represented employee cost of living increases until September. Generally, it does come up each year.

Mayor Bernard commented that Swanson did not take the 3% last year and did not want to be included this year. The Council, however, insisted. There was also a 5% increase to employees in health insurance premiums this year. If a company is downsizing, the work still needs to be done. Herrigel has taken over additional work, and Swanson is now in charge of neighborhood services. The planning director has been struggling with reduced staff, and engineers have been retiring. People have to do a lot more, and he intends to vote yes on this increase.

Councilor Lancaster commented that in the course of the work he does with company presidents and CEOs, a strategic issue that comes up is the ability to stay competitive by retaining quality employees. This is instrumental to the success of any business. The City of Milwaukie is an enterprise. Now and next year as the shortfall continues, the City needs to hold on to the quality people it has. The cost of living increase is nothing more than helping them take the bite out of the loss of buying power due to inflation. From a business perspective and his experience, the cost of living increase is a no-brainer.

Councilor Barnes agreed. She truly believes when people ask for more money to pay for their gasoline, grocery, and water bills, the Council has no right to say anything but we understand the positions you are in and we respect you as our City employees. A 3% cost of living increase is not asking for too much.

Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Barnes, Councilor Lancaster, and Councilor Stone aye; Councilor Loomis nay.

Change of Council Meeting Location for National Night Out

It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the resolution changing the August 5 Council meeting location to the Riverfront to observe National Night Out with the neighborhoods. Motion passed unanimously.

RESOLUTION NO. 32-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DETERMINING THE FIRST REGULAR SESSION OF AUGUST WILL BE HELD ON AUGUST 5, 2003, AT THE JOINT NEIGHBORHOOD DISTRICT ASSOCIATIONS' NATIONAL NIGHT OUT.

ADJOURNMENT

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

Mayor Bernard adjourned the meeting at 7:00 p.m.

Pat DuVal

Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
JULY 15, 2003

MILWAUKIE CITY HALL
10722 SE Main Street

1914TH 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 June 9, 2003**
 - B. **O.L.C.C. Application, Asahi Beer USA, Inc., 9696 SE Omark Drive**
 - C. **Non-represented Employees FY 2003 – 2004 Salary Schedule and Proposed COLA**
 - D. **Personal Services Agreement with Clackamas County Cable Access Board**
- 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.)*

None scheduled
- 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. **Annual Solid Waste Rate Review (Herrigel)**
 - B. **North Main Mixed Use Site Redevelopment Project Memorandum of Understanding and Vertical Housing Development Zone Program (King)**

VII. INFORMATION

Park and Recreation Board Minutes, April 22, 2003

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making and final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

Date: 1-15-21

I wish to address City Council on Agenda Item #

Audience Participation — only if there is discussion

Organization Catherine Brinkman | rc: 2515 SE Lake Rd

Address 2513 SE Lake Rd

Phone 653-0278

Speaking in support

Speaking in opposition

to use of home as business

Raising questions

Providing information

Comments

Date: 7/15/04

I wish to address City Council on Agenda Item #

Organization SELF - JASON SEIBERT

Address 2515 SE LAKE RD. MILWAUKIE, OR

Phone 503-786-0750

Speaking in support Speaking in opposition

Raising questions Providing information

Comments

STATUS OF OUR HISTORIC HOME, AND PROCESS UNDER WAY



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
DATE: July 8, 2003
RE: FYI Memo for the Weeks of July 14, 2003 Through July 25, 2003

JULY 14, 2003 WORK SESSION

The work session begins at 5:30 P.M. in the City Hall Conference Room with a light dinner and an opportunity for Council discussion.

- 1. Water Cost of Service Study Recommendation:** This is a report for discussion at the work session. The issue presented is that of an adequate rate for the City's water utility. The rate has remained unchanged for eight years. In April 2003 the City engaged a consultant to perform a water cost of service study. The purpose of the study is to ensure an adequate rate to cover operations and capital costs. Contrary to sound fiscal practices, the rate has not included costs for depreciation. The City's Citizen Utility Advisory Board has reviewed that study and is recommending a gradual increase over the next seven years.

JULY 15, 2003 REGULAR SESSION

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

- 1. Non-represented Employees FY 2003-2004 Salary Schedule and Proposed COLA:** This item was considered at the July 1, 2003 Council meeting. The vote on a motion to approve was 2 to 1, with one abstention. Although appearing to capture sufficient votes of those present to pass, the Charter requires that an issue pass when it receives at least the same number of votes as there are Council members, regardless of the number present and voting. Thus, the motion did not pass. It was requested that it be reconsidered at a meeting at which all Councilors were present.

2. **Personal Services Agreement with Clackamas County Cable Access Board:** The action requested is authorization of a personal services agreement with the Clackamas County Cable Access Board (Board) to operate the City's public access studio facility. The Board was selected to operate the facility early this year at a substantial savings to the City. This contract extends the arrangement for the next year.
3. **Annual Solid Waste Rate Review:** Staff will present the results of the annual rate review for garbage haulers and describe how the process works.
4. **North Main Mixed Use Site Redevelopment Project Memorandum of Understanding and Vertical Housing Development Zone Program:** Two actions are requested. The first is authorization to enter into a Memorandum of Understanding with Peak Development regarding the North Main Project. The second is authorization to proceed with an application to the State for a vertical housing zone. This is the first step in providing a tax abatement for the North Main Project and is an essential component of its financial success.

OTHER ITEMS OF INTEREST

1. At present we are planning to conduct an all day teamwork session with Council on July 31, 2003. Please make certain that you have confirmed that date with Pat. Attendees will be the Mayor, City Councilors, and the City Manager. Sam Imperati will lead the session.
2. Reminder: The next Centennial celebration will be July 26, 2003. Please mark your calendars. I am negotiating with Ed to permit life jackets on the dragon boats. (I'll be in Seattle for an Irish dance competition.)

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION JUNE 9, 2003

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

Councilors present: Barnes, Lancaster, and Stone.

Staff present: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Alice Rouyer, Program Administrator JoAnn Herrigel, and Project Manager Jeff King.

Centennial Event Update

Ed Zumwalt and **Kelly Howell**, Centennial Committee members, updated the Council on the July 26 Riverfront Event that includes music, dragon boat exhibition, and evening fireworks show. Zumwalt expressed his appreciation to Howell for taking on extra responsibilities during his illness.

Margaret Usher, Dragon Sports USA Board member, said she could bring at least 8 teams to the Milwaukie event and suggested intermingling various City Council and staff with experienced rowers.

Mayor Bernard thanked Kelly Howell for all the work he has done on the Centennial Project.

Public Comments

Patty Wisner, Lake Road neighborhood resident and Design and Landmarks Commission (DLC) member. Interested citizens contacted her after they read *The Oregonian* article about moving the Sam G. Marinos house. The article was hopeful the house could be moved. She has been in contact with City Manager Swanson and Planning Director John Gessner who have been courteous enough to contact her from time to time to keep her updated on the situation with the house. Swanson and Gessner have provided documentation of the history of their contact with Emmert International. Swanson called her the previous Friday to let her know it looked like the house would not be moved and that within 5 to 10 days, the house could be demolished. Demolition seemed to be the choice over deconstruction based on costs. Swanson contacted her to let her know demolition could be as early as Tuesday. This was quite shocking for her since the public now believes there is a chance this house could be saved. To move ahead so quickly with the demolition seems to be alarming because it is happening so close to the Milwaukie Centennial Celebration and as a community

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we have been trying to save this house. To actually go forward and demolish a landmark house seems to be quite a bad public relations move on the part of the City. She understands Mayor Bernard does not agree with her on this. If we were looking at Portland, Albany, Gresham, or any community that was having a centennial.... To demolish it right before the celebration starts seems to her a very foolish PR move and a foolish move for actually trying to do something good for the community. She does not think the City needs to rush into this. She knows the history, the disappointment, and frustration of not seeing this move forward as it should. To tell the truth, since she is the DLC commissioner who is talking to both Emmert International and the City of Milwaukie, she gets two completely different accounts as to what has gone down. She is trying to find out where the story is. Each party is passionately defending its position in what has taken place to make this move happen. It looks like this new lot on Jackson is available and legal, and the application is in planning right now. Why do we need to rush and demolish the house this week or even next week when we have not confirmed with planning that this house can be sited here? If Emmert International can give credible proof that it can move that house quickly to that lot and if the City can consider even imposing fines if that deadline is not met, she believes it is in the City's best interest that it can show it can successfully preserve its architecture. It will happen again, and architecture is the only thing left in this. The people die off and go away. All that is left is our architecture. The DLC is trying hard with the design standards just adopted by Council to make sure that beautiful future buildings are built in Milwaukie. Houses that are structurally sound should be saved and recycled as living quarters. It is very irresponsible not to try and recycle our substantial housing stock in this town. There is a lot of stock that is not valuable, but this particular house and other older houses like it are valuable in Milwaukie and have a long life span yet to come. She asked the City Council to try and work with the planning department and Emmert to determine for sure if the City needs to rush ahead with this demolition. She knows there is a contract involved, but Swanson said on Friday there are 5 to 10 days to work with. She has spoken with some City Council members already and knows it has been very supportive of trying to allow enough time for this to get done. She is very dismayed it has not been done in a timely fashion as much as Council is. She does not want to see that house sit up there forever. She wants to see it on a permanent site. She wants the City to be able to do these things successfully as they come up in our community. She appreciated the time to speak before Council. Time could be found to save this house and set a precedent for the future to save homes in Milwaukie.

Mayor Bernard heard Wisner use the terms "quickly" and "rush." Emmert has had the opportunity since October 2002 to move house. Those words do not fit. The truth is it was neither quickly nor rushed. The City is documenting its activities, and he has not seen a lot from Emmert to indicate he has made any effort.

Councilor Barnes understands Wisner's family has been very involved. If it was this important, why did the family not move it?

Wisner said the family does not have the financial resources to do it. The family has not owned the house since 1978. That is why she started a public awareness campaign in January 2001 to try and find a party that would move the house.

Councilor Barnes noted that Wisner mentioned public relations. She asked Wisner if she considered public relations a very important tool for the City right now.

Wisner said she did in many aspects.

Councilor Barnes asked Wisner if she had been on the air today with Lars Larsen.

Wisner responded that she was.

Councilor Barnes asked if that was good public relations for the City of Milwaukie?

Wisner said it was public awareness for a situation that needs to be addressed in the City of Milwaukie.

Councilor Barnes asked if that was good public relations for the City of Milwaukie?

Wisner thought it showed what was going on in Milwaukie from a citizen's point of view and a Design and Landmarks Commission that is trying to preserve historic architecture in Milwaukie.

George Van Bergen, 12366 SE Guilford Drive, Milwaukie. He believes the purpose of this work session is that options have run out, and there is a strong possibility of demolition of the house on 21st Avenue will be coming about in a short time. He purchased that house and adjacent property in the 1970's from Helen Wisner. He remodeled the house and garage, and Van Bergen believed his retirement would be secure with the income from that property. About four years ago, he was approached by the School District to help it pass a bond issue. He gave his time to that effort not realizing it would have an effect on his property. Initially, the District thought it might have to take a few feet of his property. Later the District discovered it would have to take Van Bergen's property, which required another review by the Planning Commission because the school building was designated as an historical site. He did not want to lose his retirement income, and he was personally frustrated. The District sold the house to Peterson for \$1, but his big plans all fell through. The house was then

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moved to 21st Avenue, and the frustration became an outright debacle. The next step was that Peterson sold the house, the personal property, and it has been sitting there for 2 years since the District condemned it. This rouses his frustration to a civic frustration for the City of Milwaukie. He complimented staff and administration for putting up with this situation and spending countless hours talking about it. At some time reality must be defined, and something has to be done. He assumes there is no longer an option on the table but that the full force of effect of a zoning violation has been conducted for all this period of time. Staff can only do one thing, and that is to proceed with abatement and some type of removal, which he assumes, is destruction. He has never wanted the house destroyed and was hoping some solution could be found and implemented. No one has come forward with a solution or time and energy to do something about it. This problem has been left squarely with the City administration to do something about a zoning violation. That is his definition of reality.

Terry Emmert started with the history. Emmert International got involved in October when the City came to the company and asked if he could help save the house along with relatives and so forth. He took on the challenge of trying to save the home. The first thing was to go back to the customer who originally wanted the home right down the street, and Emmert International would have dropped it off with the other home in the same move. He did not have the opportunity because someone else was granted the house. Emmert went back to the customer to find out if he was still interested in the house, and he indicated he was. He told the City no problem; the house would be taken care of and moved to the site. Little did he know his customer would get horsed around for a long period of time because he was told he needed a lot line adjustment, and then he was told he needed a variance. He was also told they would not accept an application because Gessner did to believe in allowing two variances or two changes on one lot, only one. He thought it should have been turned in, accepted, and left up to the Planning Commission to accept or deny the request for the variance. It should not be up to staff or the Planning Director to make up his own mind. Since that was unacceptable, Emmert went to phase two which was to move onto a lot on Balfour Street that he has owned for 36 years. Emmert International started all of that and was almost there when Mr. Gessner informed him he did not have a legal lot. Emmert International checked all the records and found not only did it have a legal lot, but also it was in the City's records that it was a legal lot. But he did not have water or sewer access to hook up to and had to go through HUD to get it. Dealing with the government in that area, he never got an answer. Then Emmert spent \$200,000 and bought a lot on Malcolm Street that was to be divided and already approved by the City of Milwaukie for a subdivision. Unfortunately, it was approved by the City of Milwaukie about two years and two months ago at the time it was purchased. The realtor went to the City, and Mr. Gessner informed her the rules had changed, and a 6-inch variance was needed to pull off a subdivision because it was 6-inches short of road frontage to do what he wanted to do. He went ahead and put earnest money on a piece of property on Jackson Street. On this one,

he decided to go over it with Mike Swanson. Emmert went ahead and found at one time 5 feet were given to a neighbor, so it was only 45 feet. It required no variances, but it did not have the required 50-foot road frontage. So it went down the drain. In the mean time, when Emmert met with the City Commissioners, he mentioned that Mr. Gessner would not accept the plot plans and foundation plans until he had a legal description. Katie Daniel attempted, after Council direction, to submit it and have it pre-approved with a foundation plan. She attempted on six occasions to turn it in and was denied every time. Now we have a lot, which Mr. Gessner said was not a legal lot, but it is a legal lot. The City knows it is a legal lot, so Emmert turned in the plot plan and foundation plan. Gessner has now told us it will take three weeks to approve it. It is legal. It has the proper setbacks. It has sewer and water. All you have to do is look at an eight by sixteen inch footing and an eight inch wall that takes about five minutes to get an approval, then Emmert International would be on its way. He is quite amazed how these things are happening. Then he gets feedback that Mr. Gessner is telling other people that he really does not want to work with Emmert International because the home moved to Jefferson Street is used as group housing. Gessner does not like that even though it is completely within the code. At this particular time, there are all these stories that Emmert International is not attempting. Spending \$400,000 and eight months' of time, Emmert International is attempting to do it in good faith. The lot is there, and if someone would hand carry Emmert the moving permit as fast as he hand carried the demolition permit, the company would appreciate that. Since his time was up, Emmert said he would accept questions.

Councilor Stone asked for an update. She has heard things about what is true and what is not true.

Mayor Bernard said it is no longer in his hands; it is in the hands of the city manager.

Councilor Stone wanted to know what the Mayor and Emmert knew. What is the truth of the matter here in terms of this lot Emmert is looking at. Is it a viable lot, and can the house be moved?

Emmert replied it is a viable lot, and he has an accepted earnest money. He talked to his staff and Swanson about getting an answer and got an extension on the earnest money. All he needs is a building permit, and he will close on it and save the house. He heard back from other people that there were comments from individuals whose names he would not mention saying Emmert International is not being truthful and that the City is doing everything. He would be more than happy to provide transcripts of the conversations between him and Mr. Gessner and him and Mr. Swanson. You can read them and see who is telling the truth about what is being said. If someone wants to question his integrity, have the backbone to do it to his face. Emmert International did this in good faith – it has

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the right place to save the house now. He can move it there. It can be accomplished. Is it profitable? Absolutely not. It is a matter of principle.

Councilor Stone asked Swanson the status. Is it possible to allow Mr. Emmert to move the house to this lot?

Swanson said currently there is a valid contract with a demolition company to abate the nuisance. He does not know how the City would get out of that particular contract. To put things in perspective, on January 21 this matter came before the City Council on a protest to question whether or not there was a nuisance. It was determined at that point that there was, but the decision on whether to impose that as a final judgment was held in abeyance until April 27. If the house could be moved by that point in time, then that decision would be vacated, and the problem would be resolved. At that point in time, the house was still at the site. According to the municipal code, at the point in time at which a nuisance is found, there is a ten day waiting period which the City observed. After the ten-day waiting period, it becomes the responsibility of the city manager to abate. He actually dragged his feet for about a month doing a request for proposal (RFP) to get the demolition expert.

Councilor Stone asked if this was something he had to go forward with to get bids for demolition.

Swanson believed after two years of the house being on that site, it became the choice he felt he had to make.

Councilor Stone asked even though Emmert has only been involved with this house since last October, less than a year.

Swanson said that was correct. The agreement signed specified the house was to be promptly removed. At the time that was happening, there was already a great deal of feeling the issue had gone on long enough. When that agreement was signed it was specifically required that the house be moved, and the word that was used was "promptly." Here we were into May, so he felt a lot of time had passed. It was the City's responsibility at that point in time to do something.

Councilor Stone asked if that was because the ball was in motion for the abatement process. What is the legal stance in terms of being able to reverse the abatement process? She thinks the goal is to save the house, and she thinks it is a travesty that Milwaukie is in its Centennial year and is about ready to put the sledgehammer to this structure that is of architectural significance. She does not think that speaks very well for PR for the City to see something like that happen. What kind of legal recourse does the City have?

Firestone said the City Council made the decision that became final when the house was still in the same place on the deadline of April 27. That decision is

final. Under the code, it is a nuisance. Ten days after it became a nuisance, the City obtained the right to abate the nuisance. This is standard nuisance procedure. Typically after a decision is final, there is nothing to be done about it. There is a general rule that on a legislative matter, a matter can be reconsidered on motion of someone who voted with the matter. One of the persons who voted in favor of the decision to declare it a nuisance, which he believes was the second time it was declared a nuisance, can move for reconsideration. He believes the decision could be withdrawn on that consideration. This case is a little different because it is essentially a quasi-judicial, but he believes that may be a possibility for this situation.

Emmert said in the meeting with the Commission that graciously gave the time, it was also said by one of the members, "what happens if they are ready to go but need a little bit more time?" That was said in the meeting, which he was sure was recorded, that the City could address it at that time. Emmert International is only being held up by one entity, and that is by getting approval. The thing that is such a travesty, his realtor found another lot, so he went out to look at the lot, which is very close to the house. Emmert said, "This will work; I can get it here." He told the realtor to go to the City and tell them what she needed. She went down and called back saying all she needed to do was a lot line adjustment because it runs the wrong direction. That sounded just like the place he was going to take the house before. The realtor had spoken with John Gessner, and he said "no problem." Emmert told the realtor to write it up. He wrote up an earnest money agreement, and when he looked at the house, he realized it was the same house his customer owned and that he had applied for. The realtor indicated that Mr. Gessner had told her she could split the lot that way. Emmert told her he would not give two variances. He looked at the house, and saw the little back porch could be cut off without affecting the house at all. That other lot really never needed the second variance. Nevertheless, someone else came in with a higher offer, and Emmert International did not get the lot. That is why the company did backup after backup. Also, the City put out an RFP, and Emmert specifically had requested a chance to bid on it. If someone is going to bill him for it, he might as well do it himself. Swanson told Emmert he had been sent an RFP. Emmert said he was blindsided; he was never sent one. He has the same lady opening the mail for the last 20 years, and no RFP ever came to his office. Emmert International was not even on the bid list.

Swanson said Emmert did have a representative call him the Thursday before who indicated she had seen the ad for the RFP in the newspaper. The caller indicated Emmert International wanted to bid on demolishing the house and asked if that could be done. Swanson and the caller discussed the issue, and Swanson told her to call him if Emmert International did not receive the RFP.

Emmert wanted to make the point Swanson told him he would receive an RFP.

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Swanson said there was a specific discussion with the Emmert International representative who saw the legal notice in the newspaper. He had a 15-minute discussion with that person. He informed that person if she did not have it, because he sent it, to please call him so he could get her either an e-mail or hard copy of the RFP.

Emmert said the point is, his company has not been on this job for two years, and he was not mailed an RFP. He thinks that is the main point. In his conversations he did not believe there was a rush to do it. When he talked to the demolition contractor, he told Emmert normally a contract is sent in, the City approves it, and then they sign it. This one was hand carried to the contractor to get it quickly expedited. Real strange because if it is tore down, then there is no issue. Except he does have an issue because Emmert International has made a good faith effort, and two projects are being held up in the City. Both have a tremendous aroma of prejudicial treatment. It is a major issue with Emmert. All he can say is that, since Emmert International has a legal lot, and it will only take a matter of a few minutes to look at a foundation plan because that is all there is in the house move. Most agencies approve these over the counter when they are brought in. To have someone tell him it will take three weeks to tell him if his foundation is okay, how about if we pay an engineer \$500 to stamp the thing and bring it in stamped. If your staff cannot approve he has the proper setbacks within a matter of two or three minutes he would questions why they would be there. All the setbacks are there, and there is not an issue with this lot. He really believes the time should be taken to process it. Emmert thinks somebody should do a little checking, and, as he said, he would be happy to provide his transcripts where he was specifically told by John Gessner the City would not let him turn in a variance; he did not want him to. After he was at a Planning Commission meeting and saw how they handled things, he thinks fairly with his other customer, he had the right to be represented and to have it turned in and accepted. He does not believe someone has the right because he works for an agency to say "no, I'm not going to accept your application." There was no due process.

Councilor Stone felt like she was a judge in a divorce proceeding. Instead of a child being held hostage, the house is being held hostage. She is feeling a lot of tension from Emmert, Swanson, Bernard, Barnes, and maybe a little bit from Lancaster. What is the goal here? Is it not to save the house? At some point everyone is frustrated with how things have gone and how long it has gone on. She is too. She would tell the group something. This house is not a nuisance. If you want to see a nuisance, go walk up 32nd Avenue and start looking at some of those homes, and start looking at some of those apartment complexes up there. Those are what we call chronic nuisances, and those are the sites that need to be abated. Not this place. She would like everyone to take a deep breath, and look across the table at one another and say, "let's try to work this out and try and save this house." This is Milwaukie's Centennial year. The City hardly has any really fine historical structures left. We really do need to be preserving it and

really think about that long and hard before we tear something down that can never be replaced.

Emmert said another thing to remember is that there is an unfair process. All the years he has dealt with the City of Milwaukie, he has been able to get a temporary permit to move a home to a lot before he got a building permit. Because of the unhappy experience with Peterson and the company he chose to hire, he was told he could not ever do that again in the City of Milwaukie. That is like if someone commits a traffic violation with a car, does that mean nobody else will ever be allowed to drive? Emmert International has never failed to follow through and do its projects ever. He really believes this home is very similar to the Simon Benson house in the City of Portland. It is significant, and it is important. It should be saved. We have the land. If he could not come up with site, then he agrees 100% with the City.

Councilor Lancaster wanted to make a point of order. He would like to hear any other public testimony since it is open, and then close it for Council discussion.

Michele Matesi, legal administrator for Terry Emmert. She had two comments. One would be that she senses sincerity from Councilor Stone, and she wished she could see it flow to others in the room. However, she does not really see that. Nobody here wants to argue, and she thinks there is a really good point. What has happened has happened; let's move forward. She did have an important point she felt she had to make. Mr. Swanson and she had several conversations, and there was a very productive meeting at Terry's office. Mr. Swanson made it obvious that he was trying to assist Emmert in keeping the structure. What she is really concerned about and asked Swanson to answer is three days before he signed the contract with the demolition company, she begged him not to sign it. She told him he had actual notice that a legal lot had been found. There were not all the roadblocks from the planning department. There was no need to sign the contract; Swanson was under no legal obligation whatsoever to sign that contract. He had the discretion, and Matesi did not question his authority. She questioned how he exercised it in this situation because when he knew, because she basically pleaded with him, that Emmert International had finally found a lot and could do this. Emmert International was really excited because it was just one door slam after another. She was wondering why, after she basically did that, Swanson turned around as if he were mad at her because she wrote she did not believe it would be prudent for him to sign that contract. She quoted, "I did not believe it would be in the City's best interest." Monday morning, the contract was hand delivered to the demolition contractor, and now he has himself locked into a contract. The only other point she wanted to make was that she read the code, and he did not have the responsibility to abate the nuisance. Swanson "may" in his discretion abate the nuisance. It does not say he "must" abate the nuisance. While she completely understands the frustration as a group and as a community with the length of

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time the house has sat there, and to some people it probably is a eyesore. The bottom line is Emmert International finally found a solution. It is unbelievable to her when the code, which in her opinion should not be an absolutely rigid document anyway, caused him to turn and run the other way. Especially when, talk about public relations, the press is calling, which he would not talk to. People were in an uproar. She thought there was good communication going on a business level. She was like, please don't sign this contract. Then he signed it. That was really all she had to say, but she hoped it was somewhat relevant to the discussion. If Swanson wishes to respond, she would be happy.

Swanson replied Matesi said the code handed him a solution on a silver platter. The code does not hand him a solution on a silver platter. Performance hands him a solution, and he had seen no performance over a period of two years in general on the issue, and over a period from October in this specific instance. At that point in time, he had gone out with an RFP, not three days beforehand. He had gone out with the RFP ten days after April 27. A submittal had been made; someone invested time and effort in doing that. There have been a lot of statements made about "why rush into this?" If anything, he dragged his feet. He dragged his feet from April 27 and where we are today. He made the decision at that point in time that this has simply gone on enough. He had no assurance whatsoever that this piece of property any more than any other piece was going to be a solution or that there was going to any performance to make it a solution.

Matesi asked if that was so after talking to John Gessner about the situation.

Swanson responded it is not up to John Gessner to perform.

Matesi understood Swanson said there was no performance. She asked, even though Emmert International has documented evidence that it has been attempting, in fact bending over backwards, spending hundreds of hours and lots of money, to perform, if Swanson would stand by his statement that he has seen no performance?

Swanson said what has been typical of this particular situation is that we approach a deadline, and as we approach that deadline, nothing much has occurred, and then all of a sudden as we approach the deadline there is a great flurry of activity.

Matesi thought that made sense.

Swanson continued. Those great flurries of activity with a very little time do not often leave time to accomplish anything.

Matesi said fortunately Emmert International is not in that situation as documents show. There was not one little flurry of activity. Emmert International can show it

constantly has been working. Five properties have been selected. When you are talking about an 18-inch variance that never was really even required because all it really needed was a simple lot line adjustment. The planning department, in her opinion, really held up Emmert International on this project. She believes the documents will speak for themselves. She wanted the City Council to be aware that she was e-mailed personally that Swanson did not have to sign the contract or make a decision until he gets in the office on Monday and there is a contract on his desk to execute. Swanson did not have to make that decision, and Matesi wanted to make it clear on the record that in his discretion, which she understands he will stand by, that is what he decided to do. He decided to because the code clearly states that the city manager "may" abate the nuisance, not that he must. Swanson decided at the 11th hour to abate it.

Firestone said there is something he must point out. Matesi said she believed there were five, by his count there are either four or five, properties. With the possible exception of the last one, about which he knows nothing at this time, the previous ones required either a land use approval from the City or some type of easement, consent, or other documents from a neighboring property. In one or two of the situations, the neighboring property owners did not provide their agreement. In the other situations in which a City land use approval was required, either a variance or a lot line adjustment, it is his understanding no application for a variance or a lot line adjustment was submitted.

Matesi said that was true because Emmert International was told it could not submit one.

Firestone said there are clearly two different points of view on this. He has heard two different discussions or versions of what was said. We all just heard what was said by Mr. Emmert. He has also heard that there was never any instruction that they could not submit, but they were given the opinion that if submitted, and this is his understanding but was not party to, they were told an application might not have much chance because variance standards could not be met. There were several deadlines in this case, which were extended and extended by the City. It is his understanding, and based on contemporaneous conversations, Mr. Emmert or someone from his organization was told that an application could be submitted but there would not be time to get a decision by the deadline. No application was submitted.

Matesi said the question then becomes so the City controls the deadline and timing, the City controls the timing on the application. Gee, that's kind of interesting. If someone from the outside looked at that they would probably laugh. They'd go, "well here is the City on one hand saying you can have until this date, but, guess what, we know over here you're not going to have time." So, they won't get it done anyway. That is what is basically being said – in a nutshell.

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Firestone said “no” and asked Matesi not to put words in his mouth. There were pre-established deadlines set in two different cases by the Council. When the Council declared a nuisance there was a deadline. The owner or applicant, first Peterson and later Emmert International, had a certain amount of time to fix the situation. Several days, weeks, months into that time, after a lot of time had passed, something comes to the City. The City’s position is it has been waiting for months and nothing happens. At the last minute, here is a lot that might work. It might work if it goes through a land use approval, which takes as least five to six weeks or maybe longer. At which time there was already a pre-established deadline. That is the situation that occurred in at least one instance. He wanted to clarify it was his understanding all the previous ones either required a land use approval that was never applied for or required something from a neighbor that was never obtained. In none of the previous ones could there have been a move without further action by somebody else. The City staff has a responsibility to enforce the City code. If the code says we need forty feet or we need fifty feet and if less than that the City would require a lot line adjustment or a variance. That is all staff was saying.

Julie Wisner said, as she watches the whole process, the thing we need to keep in mind is the goal to move the house. The goal is to save the house. One good reason is this is the City’s Centennial year. It also backs up the City of Milwaukie’s Mission Statement that addresses preserving historic structures and structures of significance. If she lived in Ladd’s Addition or Laurelhurst this discussion would probably not be happening. They see the significance of the architecture we are talking about. We are surrounded in Milwaukie by HUD houses and post World War 2 houses that truly have no significance. We have the chance to save an architecturally significant building. We have the man who moves most buildings around this region and all over the world. He has moved the Spruce Goose, the Simon Benson House, and the list goes on and on. Six story or more hotels in Texas, and we are arguing tit-for-tat. It’s like he did this, he did that, this person did this, and this person did that. Everybody is pointing fingers when the goal is to save the house. She would like to see everyone take a deep breath and remember what the goal is. She would hate to see this particular structure go the way of so many other structures in Milwaukie. The Luelling House was knocked down for the Texaco station. Now, that’s an aesthetic improvement. The Irwin Adams House was knocked down for the health spa. The other Adams House was moved out to Webster Road. We lost our little pioneer church. We floated it down the river to Sellwood. We are stuck with a lot of post World War housing that needs to be demolished. We need not to think about property values that were brought up in one meeting and that everybody’s property value was going down around the site where the house is. She went to the tax assessor’s office and got the assessments for the last three years. Patty Wisner presented them to Council in an exhaustive report. The property values have, guess what, gone up. There was also concern about crime and that a nuisance usually attracts crime. The Milwaukie Marketplace has one of the highest crime rates in the City along with the transit center. She called

the police department and requested a crime print out on the house on the present site. They had nothing. It does not seem like such a big, bad nuisance when you look at those kinds of things. We have drug houses, meth houses, and all these things. It is a house sitting up on blocks that is in transit. It would not be a good PR move to destroy it. Everyone is watching. The media is watching. We need to save significant structures. We do have a lack of available lots in the near vicinity, but we have one. Emmert has a lot on Jackson Street, and it will work. Emmert moves things. To think he will not move it is ridiculous. That's what he does; there are many examples. She feels the Council needs to give him one more chance to move it. Quit arguing about who did this and who did that. That does not look good for the City either. She thinks the goal here, and the goal of any town interested in saving its structures of integrity, should take another look and say this does not fit the previous molds of all the other things we have done in the City. Let's make some new rules; let's blaze some trails. Say we take pride in our architecture, we will protect it, and we will give a longer timeframe if necessary. Or the Council could go by the book and say it is a nuisance and knock it down. That lot will still be on Jackson and the house could be located there, but you have destroyed it because everybody says it is a nuisance and get rid of it. Then it's gone. You know what? A house like that will never be built again in Milwaukie. They are not building those kinds of houses. You see them all over Laurelhurst, Ladd's Addition, and Eastmoreland, but you don't see them in Milwaukie. What you see is post World War houses that should be bulldozed. But you are going to bulldoze a house that is significant. Frankly, as someone who has volunteered hundreds of hours in the City and spent the last ten years working tirelessly on safety issues in the City of Milwaukie, she would hope the Council would be farsighted enough to see what this house could bring to generations in the future and the pride of our City. To knock it down in the Centennial year frankly flies in the face of everything we should be standing for in the City of Milwaukie. We have let enough things go in the past. Let's let Terry Emmert and Emmert International pick the house up and move it. Just give him the time that he needs, a little more time, and quit fighting over technicalities. Back and forth like tit-for-tat, tit-for-tat. We want to save the house; that is the goal. He can do it. He has a lot. He is ready to move it.

David Mealy has a chiropractic clinic across the street from the house. He is addressing Council as someone who has had to look at the house for two years and is there to encourage the City Council to stick with its decision as hard as it has been and as much as it has bent over backwards. He has heard a lot of accusations, but sometimes you have to make the hard decisions, and not everybody is happy. It seems to him, just from sitting in this meeting for the last twenty minutes that the Council has done everything possible to make it happen, but it just hasn't happened. It is time to do something. He encouraged the Council to stay with the process and do what is right. It is sad a nice house like that might have to be destroyed. If the Council does decide once again to give another chance, he would strongly encourage a set deadline. If it cannot be done in three weeks, it cannot be done. It has been too long, and it is a nuisance

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in the sense it is across the street from the high school. It is an accident waiting to happen. We are in downtown Milwaukie and is a blight on the City character.

Jeff Horton said his family owns most of the buildings in that general area including Horton Electric and the mental health building at the end of the street. From a business standpoint, he has heard a lot of discussion from people as to why the house is there. He has had issues with the lot he owns next to it. He cannot keep the grass under control because no one can get in there to cut it because of the fences. It is a big nuisance. He does not care one way or another if the house is moved or demolished. The main thing is he wants to say he would like to see it gone because it has been in the neighborhood for two and one-half years. It is time for it to go.

Mayor Bernard had suggested doing a performance bond, which he would have accepted and would still today. He has not seen any performance. He has not seen any performance since October. He did not see any performance before. He would like to see the designs for the house because surely on Jefferson Street it would not be historic preservation of a house. The one on Jefferson is the height of a three-story building in a neighborhood. It is not the house it was. That was a nice house too and would have been great to preserve. It is now three-stories tall on a hillside on Jefferson. It is out of place and is not the same home it was. He questioned what this home would look like once it was moved. We have certainly not rushed. We have not been quick. We have documented and tried everything. No one is being blamed. The law is the law. We agreed at a Council meeting to try and save the house by giving as much time as possible. There does come a time when it ends. How long would that house be at the other site before it was set, or would there be a nuisance there the City would have to fight? That is his concern. He would like to preserve the house too, but we are at a point where we have a contract to demolish it. What do we do about that? What is our legal obligation?

Councilor Stone wanted to know the legal obligation.

Swanson said the City would probably have to talk to the contractor, and he probably has a reliance claim since he has a valid contract. At this point, he probably has a valid contract. He cannot do anything until Swanson signs a notice to proceed, but he cannot withhold that notice unreasonably. The value of the contract is about \$9,000 for the demolition option. The deconstruction option was about \$17,000.

Firestone added the city manager has the authority to issue a notice to proceed, and then work can start. If the notice is held off too long, at some point the contractor has a claim. The amount of time would not be know until we fight about it, but there can be discussions with the contractor. The deadline is to get a notice to proceed.

Councilor Stone said so the contract as signed when?

Swanson said it was signed on Tuesday.

Councilor Stone asked if there was a clause in the contract that says it may be cancelled within so many days after signing it?

Firestone said it does not contain that type of clause. He has not seen the final executed contract, so he would hate to say what it says without it in front of him. There may be some flexibility around the notice to proceed, but it is limited. At some point the contractor may say the City has waited too long and ask for the profit he would have made.

Councilor Stone asked if that was generally how it would work if the contract were cancelled. Would the City be liable for the \$9,000 the contract is worth, or would it be liable for a certain percentage? Is it worded in the contract in any way?

Firestone said typically in a case like this, the contractor would ask for the full amount plus attorney fees, etc. The City would respond by saying the only thing the contractor is entitled to is the profit the contractor would have made because some costs were saved. All he would get is the profit. He does not know if there would be other fees. Attorney fees can make the amount of damages seem insignificant if the fight goes on long enough.

Councilor Stone asked if that were to happen would the liability pass to Emmert. Could that be negotiated if the contract was cancelled to save the City the cost of the contract or whatever the amount would be? Could that be negotiated?

Swanson said anything could be negotiated.

Councilor Lancaster thought a condition of extension could be negotiated.

Firestone added it is always possible to negotiate something. The only time one cannot negotiate, as in this circumstance, an executed contract. One might be able to negotiate something in the context of the contract.

Councilor Lancaster commented on the City's land use ordinances. The City spent many, many years reforming, improving, and correcting them in their virtual entirety. He thought a very good job was done. Some specific community goals were met, and as Mr. Emmert elucidated, that has in a number of cases made it more difficult for some citizens to do some things. On the whole, those changes address all the livability issues in the community very well. He will defend those rules that are in place right now. He has a problem with some of the testimony he heard in that there were a lot of allegations made. On the face of it, he heard allegations of obstruction by staff. John Gessner is not here to defend himself,

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and we heard no testimony from his department. In the five years he has been with the City, Lancaster has found John Gessner to be a totally credible man with high integrity. It has also been his experience there are two sides to every story, and the truth is usually somewhere in the middle. Balancing what everyone has had to say, he assumes Mr. Emmert acted in a timely and expeditious manner within each of these failures. If he makes that assumption, then it simply is what it is based on the City's land use rules. He would probably have expected, though, after the first failure that Emmert's legal staff or others would have learned or determined what the key issues were regarding any property where the house might go rather than making a learning curve with each additional attempt. When this agreement was made in January, we all sat in the Council Chambers and talked about these issues in great detail. As he recalled, he was against a performance bond because he did not believe it was fair. What all agreed to was that 90 days was fair. In fact, Mr. Emmert characterized it as generous, and he felt confident he could get it done by April 27. That time has come and gone, and now we are in June. He cannot speak to the veracity of this latest property and that is ready to go because he has not seen any evidence that it is and does not know that for a fact. He has to say, when he voted at that time, he voted for the City to stick to the agreement. There was a comment by Mr. Emmert regarding the project being a done deal but just needing a little more time. He believed the Council did come to a consensus that if it were absolutely certain that the placement was going to occur and meet all the codes and a small extension was needed, that would be fine. He has to say that is the only condition under which he would remotely consider an extension to the current situation. That has not been presented to him with any level of confidence. Unless there is that possibility and the City Council wants to decide whether some discovery needs to be made to determine that, Lancaster thought the City should proceed with the road it is on.

Councilor Barnes commended Lancaster's comments and agreed with almost everything he mentioned. She wanted to reiterate she felt like staff tonight has been slammed. She talked with Mr. Gessner and Mr. Swanson, and she did not appreciate it. Both have kept Council up to date via e-mail and otherwise on a regular basis. She is concerned when someone testifies that post World War 2 houses in Milwaukie should be bulldozed, since that would take up most of Milwaukie. As for this being a Centennial year, she does not think downtown Milwaukie should have that building. There will be many people at the end of the month in downtown Milwaukie. What kind of a statement does it make when people come into our City for our parade and other activities this month with that house still up on stilts? That is not the public relations she wants the City to have. When people come in and see us for the first time because we are doing a great deal of advertising and public relations to get people from outside the City to come in and spend money. She thinks the deadline has come and gone. The City Council voted and does not have a choice. She understands from counsel that only she or the Mayor may ask for reconsideration. She does not intend to ask for reconsideration. The City has given Mr. Emmert and his company more

than enough time. It is time to move on. We have set boundaries as we do for children, and if they are not met we do not keep slapping their hands and saying "no." We put our foot down and say enough is enough.

Mayor Bernard said Council cannot vote on this issue in a work session. Steve Campbell, John Gessner, and Mike Swanson have kept him apprised of the timelines and good faith efforts each has made to try to save this house. He believes the City has bent over backwards to do this over and over again for two different individuals. He does not blame Emmert at all for this except that every time we seem close to the deadline, something comes up. He would like to see the house saved. Generally, he feels if Emmert can move the Spruce Goose, why can't this house be moved? Why can't it be moved off our streets to a storage facility? He understands there is one on Lake Road right now sitting on someone else's property waiting to be moved. Emmert does have storage facilities. Put a helicopter on it and fly it out of there. The City has certainly put in a lot of time and effort, and he does not intend changing his mind. The city manager is the professional making the decision at this time because the law is the law.

Councilor Stone said this has stood in Milwaukie for over 80 years, and it has been on this lot for about 18 months. It has been under two different owners. The first owner, Mr. Peterson, had a year or better to try to do something with the house. The City has not given Mr. Emmert nearly that amount of time. Everyone is frustrated; they want to see it moved. She certainly does too. Julie Wisner brought up the comment that the house is in transit. It is not a nuisance that is chronic; it is an acute nuisance if you will. It is going to go away, and it is going to go away soon. Preferably it will go away as a result of being moved and salvaged. She thinks it sends a bad message about the community that it is willing to just pick up and destroy this home. Society in general is very impatient. We are a very impatient people, and we are very prone to dispose of things. We are very much a throw away society in all aspects of our lives. She thinks the City needs to put the brakes on and think about what we are going to be throwing away. It is part of Milwaukie's heritage. It is a piece of that. She thinks the City needs to at least look at a way to extend this by maybe negotiating with Mr. Emmert if the City has to cancel the contract and how to recoup that money if indeed the City is liable. Maybe even look at some conditions to be met or a performance bond. It sounds to her like this is a viable lot, and although we did not ask this of Mr. Emmert, she assumes he is thinking the house could be moved in the next few weeks. She does not see that this house will sit there for months and months and months on end. Our Centennial and Festival Daze is right around the corner. What are we going to have – a structure or a heap of rubble for people to look at? She thinks the City really needs to pause and give saving the structure great consideration. Also, put down any ill feelings that might have been occurring between staff and Mr. Emmert. She felt a lot of tension. Councilor Lancaster put it very succinctly when he said you hear one side, you hear the other side, and the truth lies somewhere in between. She

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thinks the City needs to be very cognizant of that. She would be in favor of looking at withdrawing, or at least not having Swanson proceed, with the demolition and really clarifying if this is a viable lot. She asked Swanson to comment on the viability of the lot.

Swanson understands from Gessner that a building permit is probably obtainable. The house is a bit oversized and would probably have to have the sunroom removed in order to get it on the proposed lot. It would have to undergo that change.

Councilor Stone would be willing look at that with conditions to be met and a timeframe. Maybe the City should look at imposing fines if this drags on and on and on.

Mayor Bernard understands legal counsel says this structure has been declared a nuisance by Council vote, and unless two Councilors change that, it is still a nuisance. It is the city manager's responsibility to resolve that nuisance. As far as he is concerned it is no longer Council's responsibility; it is the city manager's. It is up to him.

Councilor Stone said the city manager works for the Council.

Mayor Bernard said the City Council voted that the city manager take care of the nuisance. It was a unanimous vote.

Councilor Lancaster added the Council voted on an agreed upon solution.

Mayor Bernard said there were only four Councilors who voted, so three would have to change.

Councilor Lancaster asked if removal of the sun porch would significantly alter the structure. The idea is to preserve the building, and now we are talking about removing a section.

Swanson understands removal of the sun porch would architecturally alter the structure.

Councilor Stone asked if it was part of the original structure.

Swanson said he did not know.

P. Wisner said it was a later addition to the house. The structural wall would be intact if the sun porch was removed.

Councilor Stone understands the City Council could not vote at this meeting but could carry it over to the regular session.

Councilor Lancaster said, in his opinion, it is appropriate for Councilor Loomis to be present if any decision might alter the previously made decision. The only way he would consider reconsidering was if there was an absolute guarantee that nothing further could possibly cause this not to be a good placement, a good fit into the neighborhood, and all those things that go along with land use laws. It would happen by an exact date. A performance bond, or an instrument of that fashion, would be required this time. The day after failure to comply, demolition would occur. Those are the only conditions under which he would reconsider. Plus, now that the City has a contractual obligation, that increased cost should not be borne by the City. Is it fair for Mr. Emmert to pick that up? That would be for him to decide. Perhaps there could be a community fundraiser to save the building. From his point of view, the City has performed exactly the way it said it would. We had a business agreement; we had a deadline, which has come and gone. Regardless of good efforts or bad efforts, we have reached the end line. If we want to save it, it has to be under extraordinarily strict provisions. Otherwise, we move forward.

Emmert wanted to set the record straight. He does have an idea of how maybe to make it work. He will not let lie what Emmert International has been put through and wants to set the record straight. He will transcribe the conversations. He was told definitely an application would not be accepted for a double variance. He was told the house could not be put on the lot that had 5 feet taken off. It would not be approved; he was not given the opportunity to turn it in. That is why, since time was bad, he switched to another lot. With the Centennial coming up, and he understands the damn thing is right down the street from his building. He understands the chiropractor's and other's hassles. He agrees and understands the 4-plex that is sitting on a piece of property waiting to be moved. He will tell the Council, they will both go to Milwaukie. He has been held up on both. He is sorry, but the buck has to stop someplace. As the Council noticed on his application, he put in \$700 to apply for this building permit last week, and that is good faith. The City took his money. It is not that hard to approve this plan. It is nothing. Everything is done and turned in.

Mayor Bernard asked how long it would take to get the PGE clearance, etc.

Emmert said first of all he has to pay PGE to go out and give him the bid. He has already done that twice, but then his lots were turned down. As soon as his lot is determined legal and buildable and not some magic switch why it cannot be used, he is not questioning the City's zoning ordinance whatsoever. He is questioning not getting an 18-inch variance or a 6-inch because he believes one can, and that is why there are variances. If he gets his building permit, and it is okay, he turns it into the utility companies. All are fairly responsible, and he just had a big drag out with PGE at the Public Utility Commissioner. He believes PGE will become very cooperative from now on. He cannot tell Council which day they will coordinate to all be there at the same time. It depends on crew

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availability. As soon as he is told it is a legal lot and he has a building permit, he will put wheels on it and have it all ready to go. It could be dressed up with signs saying, "being moved for the Centennial" or "historic preservation to cooperate with the Centennial." We could make it a dang event. It would be Milwaukie streets, so the City would issue the moving permit. When the City says to do something, he would have to break the law; he would have to move it without a permit. He has never done that; he will not do it. He would also like the city attorney to check into why he could not have gotten the storage permit which could have been issued instantly unless there was a new ruling.

Firestone said the code does not provide for temporary storage of buildings. When the building was moved originally, the City essentially stretched things to do what it did. It was without a basis in the code. The Council could consider at some point if it wishes to adopt something like this. The City stretched to come up with a solution to allow it to be stored temporarily.

Emmert asked if everyone thought that was the only time that was done.

Firestone believes historical precedent had something to do with the decision to go ahead and do this.

Emmert said the City has done this on numerous occasions in the past.

Firestone pointed out there were a lot of things that were historically done in Milwaukie without reference to whether or not it complied with code. About 4 – 5 years ago, the City realized that when somebody comes in to ask for something the code should be checked first. That has been a change in the way the City is approaching things.

Emmert said the last time he did one was about two years ago. He understands.

Councilor Stone asked the general timeframe to lift wires for the move in terms of getting permits.

Emmert said once he has his permits, it usually takes about two to three weeks. to coordinate the wires. Here again, he is strictly at their mercy. He has no control. Just as he has no control over when the City will give him his building permit. His proposal would be to set it to look attractive, because it does not now. The site should be cleaned up. He would truly prefer to secure the house in a different manner rather than having a fence around it so the grass can be cut and not looking unattractive. To have it on wheels ready to go. If the City tells him he has a legal lot, because he really wants to make sure since he is batting not real good for timing, Emmert International could do that. Something else to consider is the lead paint in the house. Nowadays, it is a different story than it used to be. He knows the house was checked for asbestos but not for lead paint in the environmental report. When a house is moved, that is a moot point since

that problem is not caused. He does not have a problem because it is only fair because the Council talked about instances that caused it not to happen, that a performance bond be requested. He thinks this could be a winning project; this is not a battle. He still needs to City's permission for a permit because he cannot get a moving permit until he gets a building permit. He was surprised staff did not provide Council a copy of the plot pan. He has a receipt for \$682 for plan review. Council must remember all he is asking for is a foundation permit. A foundation for this kind of home costs about \$2,800, but he is paying \$682 just to get a plan approved. He thinks they are charging the plan as a building permit. The home has already been built, and they should not be recharging that. In Clackamas County, we only charge for the cost of the foundation permit. They do not charge for the SDCs because the house was already grandfathered and hooked to the sewer. There is no additional traffic or sewer impact.

Councilor Stone understands Emmert would have no problem with the performance bond.

Emmert said he would not.

Councilor Stone said the City has a contract written up for demolition. The concern would be the liability to the City, and she asked Emmert what he would be prepared to do in terms of negotiation.

Emmert said saving the house is a matter of principle. The demolition contractor called Emmert and asked if the house could be out by Friday, but the City shortened the timeline. He told the contractor there was no way he could get his permit that quickly. Mr. Obrist is a good contractor and a fair person. Emmert could call him, and he would probably want some kind of return. He has known the guy for many years, and he is honorable. Emmert does not think there would be an issue. Maybe that is something the Council could throw on his back. He would take care of it.

Van Bergen said the Emmert group spoke for almost an hour so is hesitant to speak again. He practiced law for over 30 years, and during that time he has become street wise. The only option he saw to what the administration is doing through abatement is a veiled threat of litigation. The validity of a threat is the ability to perform. With an action there is reaction. There is such a thing as mandamus, which is a way for a citizen to force a city to proceed where there has been a declared nuisance. If those things concern the Council, the members should talk to the city attorney. Otherwise the City could be in for a struggle. There was no question in his mind the City has done the right thing. This is a nuisance and should be taken care of without any further delay.

P Wisner believed enough has been said that there looks like there could be a reasonable option discussed at the regular session with a conclusion that does not include demolition of the house. There is some leeway where parties could

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work together. She addressed Van Bergen's comments. Both have been in this community for a long time and having such a vindictive attitude toward persecuting or prosecuting this house situation is not helping this community at all. Van Bergen was paid a very handsome sum for the property by the School District. He was rewarded for owning that property. That house is part of our history and community, and we need to preserve it.

Mayor Bernard asked Wisner to address these issues with Van Bergen directly.

P. Wisner said she was simply speaking in the interest of preserving the community's heritage. Some of the comments have gone un-addressed, and that is why she is here to address them. She believes there is an option. Enough pressure could be applied officially to set a consequence if an extension is allowed. The City Council has every right to set a final consequence and has room to preserve this house, get it moved quickly, and put the whole issue to rest without being destroyers. She asked the City Council to go forward with that.

Mayor Bernard would be happy to see the house at the front of the parade leaving town.

Questions and Comments on June 10 Agenda Items

None.

Transportation Maintenance Fee

Mayor Bernard said he and **Councilor Barnes** would be at the Clackamas County Timothy Lake Retreat where this topic will be discussed.

King provided an update on the Transportation Maintenance Fee Study as the Milwaukie contemplates on how to proceed in the future. In the last couple of weeks, the draft final report on the reason and methodology for the fee has been produced. The proposed ordinance will contain a sunset clause that retires the fee after five years from the effective date of the ordinance. Another key item was to increase the number of average daily trip bins from 7 to 14 to more accurately reflect trips and establish fees. A process improvement will be to actually allow a business, at its own cost, to do a study if it believes its daily trips are less than identified in the *IT Manual*.

The Clackamas County Board of Commissioners has decided to put a transportation fee on the ballot, so this opens up other possibilities to the participating jurisdictions. He discussed the timetable for community outreach that will include an open house in Milwaukie and a prioritized list of projects in Milwaukie that would be done with transportation maintenance fees collected. The final issue was the split between business and residential users, which in Milwaukie is 68% business and 32% residential. The issue is that a fee must

reflect usage, so it does not become a tax. The consultant may be able to look at that in the future.

Mayor Bernard commented if a jurisdiction were able to raise funds in another way, transportation maintenance fee charges per unit could be reduced across the board.

King said under the proposed method each average daily trip would be 23 cents so a household would be \$2.17 per household. Multi-family is a little less. He discussed the business range. The Mill End Store and Providence Milwaukie Hospital would pay about \$500 per month and Albertson's about \$303 per month.

Mayor Bernard said if the per trip fee for single family residential were lowered from 23 cents to 11 cents, the monthly cost per household would be about \$1. Albertson's would be about \$150 per month. These charges seemed more reasonable to him.

King said between lowering the rate for average daily trips and looking at different bin structures, the overall costs could be adjusted.

Mayor Bernard said the City invested money in this study and participated actively. He asked King if it was worth the money. Now the County does not have the political will to implement the transportation fee on its own and may throw it out. What does Milwaukie get out of it?

Rouyer said Milwaukie gets the consultant's deliverable – the data on Milwaukie. The City spent about \$7,000 by working with the County and other jurisdictions. She thinks the collective belief on the part of the County staff was that the cities should pull out at this point. There is not a lot of confidence the transportation maintenance fee would pass if put on the ballot.

Councilor Lancaster said there is probably not a lot of public will to approve something that will cause people to pay more money. He asked if there any discussion or consideration to a phasing in of the fee.

King said the material is valuable in that there is a draft ordinance. The fee could be phased in now that all the work has been done on the methodology and further modified by the jurisdiction.

Councilor Lancaster said this does establish a rate that he felt could be phased in over a period of, for example, three years. Hopefully by that time the economy would be moving, and the relative value of that contribution would be significantly less for the business owner.

King said that would certainly work under this methodology. The formulae are there and can be set anywhere.

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Rouyer explained the rate was based on the lowest estimated need, which was 23 cents. If Milwaukie went on its own without participation in the group, staff would probably have to make some adjustment, but the rate would not be too different. As Bernard suggested, using funds from another source would decrease the total need. There are options, and staff is happy to take direction.

Mayor Bernard commented the City is so far behind in street maintenance it will take many years to catch up. Implementing a 10 cent per trip fee would take a long time to meet current needs, and roads will continue to deteriorate.

Councilor Lancaster said if Milwaukie goes on its own, it might be helpful to explain the road problem to citizen and the estimated costs to make needed repair. In addition, identify the two or three options for paying for maintenance, and then ask people which one they prefer. At least people could make a choice. He would do this through a public education process.

King added there is a lot of information from other communities like Tualatin and Eugene on how they designed their public outreach processes.

Other

Mayor Bernard announced a community open house at the Hi-School Pharmacy on June 11 to view plans for the King Road Safeway.

Clackamas River Water

Rouyer briefly reviewed a memorandum of understanding (MOU) between Clackamas River Water and other water providers including the City of Milwaukie. She discussed a September 2001 intergovernmental agreement (IGA) in support of water quality enhancement projects in the Clackamas River Basin. This is an MOU that defines participants' roles. There are no additional costs beyond those agreed upon in the IGA. Staff requested the City Council authorize the city manager to sign the MOU on behalf of the City of Milwaukie, and Council did so.

PGE Privilege Tax

Mayor Bernard thought this tax might be used in conjunction with the transportation utility fee to reduce the trip rate.

Swanson said at the end of 2002 JoAnn Herrigel negotiated an extension of the franchise fee with PGE; however, the company made it clear it did not wish to increase its existing franchise fee of 3.5% of gross revenues. PGE did agree to permit the City to impose a 1.5% privilege tax to come to a 5% total. The Citizens Utility Advisory Board (CUAB) and staff have been looking at the

possibility of the City's enacting the privilege tax and using the revenues to offset the annual street lighting costs. The City pays about \$300,000 annually out of the street fund. The privilege tax, if enacted, would raise about \$312,000 and would be a one-for-one trade. Basically, the effect would be to release that amount in the street fund for use on projects.

The CUAB would strongly recommend that Council enact the privilege tax. When he looked at it, however, privilege tax revenues would not be dedicated money. It would be new revenue. The City is facing a number of budget challenges including streets as well as the general fund. His point is to consider these general fund challenges as well as the street fund. Swanson wanted to ensure the City Council understands this is a tax, and the effect would be that it would appear on the monthly PGE bill as "City of Milwaukie privilege tax." It is not a great deal of money, probably less than a dollar, but the customer would be reminded 12 times a year. He said his comment is intended to neither persuade nor dissuade. It is something the Council needs to consider before it enacts this type of tax.

When Swanson brought this to the Budget Review Board, it looked like a tennis match. It occurred to him that in trying to get something done, he lost his focus on the whole system. Board members Aschenbrenner, Ball, Michel, and Hubbard discussed the need to look at the full City picture and try to identify where we are in the sense of the whole City, project that out a few years, and then look at potential revenue streams. Going to the well even one time will be difficult with the horrid economy. Milwaukie has a lot of seniors on fixed incomes, and a privilege tax could mean a lot to them. Swanson recommends concentrating on other issues including the North Main Redevelopment Project and the Centennial. He believes the City Council should discuss its priorities and fit the revenue to the bigger picture. He suggested taking a breather and approach issues in a more organized, big picture fashion.

Non-represented Cost of Living Adjustment

Swanson said he put this item on the June 16 Council agenda for consideration. Typically, the Council takes action on the non-represented employee salary schedule. These employees are not members of AFSCME or MPEA. Swanson will recommend a 3% cost of living increase which is the same as represented employees. He realizes it is not easy to discuss cost of living increases during difficult times. The City has reduced its number of employees resulting from the failure of the November 2002 local option tax measure. Many employees in the non-represented group are working a lot longer and a lot harder because the system no longer has the kind of support they used to have. While he knows the times are difficult, he also knows the organization is getting a lot out of these people. For example, it took Lake Oswego eight years to put together a public/private partnership like Milwaukie's North Main Street Project. People are working diligently to make things happen.

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Other


Mayor Bernard is talking to commercial real estate organizations and property owners about doing an advertising campaign. He would like to organize businesses to put this together and perhaps to manage the campaign. Bernard will keep the Council updated and made it clear no City funds would be used.

Councilor Lancaster added businesses are interested in moving out of Multnomah County because of the taxes.

The work session ended at 8:25 p.m.

Pat DuVal, City Recorder



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police 
Date: June 23, 2003
Subject: O.L.C.C. Application – Asahi Beer U.S.A., Inc. – 9696 S.E. Omark

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Asahi Beer U.S.A., Inc. – 9696 S.E. Omark Drive.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



TO: Mayor and City Council
FROM: Mike Swanson, City Manager
SUBJECT: Non-represented Employees FY 2003-2004 Salary Schedule and Proposed COLA
DATE: July 7, 2003

ACTION REQUESTED

Adoption of the City of Milwaukie 2003-2004 pay table for management, non-represented, and seasonal employees.

BACKGROUND

The City annually adopts an updated salary schedule for City employees. Salaries for bargaining unit members are determined by existing collective bargaining agreements and adjusted annually. Salaries for management, non-represented, and seasonal employees are changed by Council action and have historically been the same as for represented employees.

The FY 2003-2004 Pay Table (attached) reflects a 3% cost of living (COLA) adjustment for members of the City's two labor unions. Existing collective bargaining agreements that expire on June 30, 2004 establish the COLA.¹

At your July 1, 2003 meeting I presented a recommendation for a 3% increase in salaries for management, non-represented, and seasonal employees.² The Council considered a motion to approve the recommendation. Two members present voted to approve, one member present voted not to approve, and one

¹ The COLA for AFSCME members is a fixed 3% during the term of the contract. The COLA for members of the Milwaukie Police Employees Association (MPEA) falls within a range with a minimum of 3% and a maximum of 6%. The range was established by an arbitrator's decision. The CPI determines the actual percentage increase within the range.

² In past years the COLA recommendation specifically did not include the Police Chief and the Community Development Director. I have searched for a justification for this omission, and I fail to find a convincing reason. Therefore, I am including both positions in my recommendation.

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member present abstained. The fifth member was excused due to another commitment.

Although the motion received a higher number of affirmative than negative votes, it did not receive sufficient votes for adoption. Section 25 of the Milwaukie Charter of 1975 requires "concurrence of a majority of the **whole council**" to determine any matter before it. (Emphasis mine.) Thus, three affirmative votes are required for adoption regardless of the number of members present.³ In light of the fact that the vote of members present was affirmative, a request was made to resubmit the question at a time when all members were present.

The reasons given for supporting the July 1, 2003 recommendation continue to argue for its adoption. They are:

- ❖ **Preservation of the integrity of the City's pay plan.** Two overriding principles—namely, maintaining both competitiveness in the market as well as internal equity between positions—guide development of the City's salary plan. On the one hand, it is desirable to maintain a salary structure that allows us to attract good people. The City's plan does not maintain the highest salaries among the comparables used. Rather, it seeks to maintain a balance that recognizes the need to contain costs while maintaining both a competitive position in the market and a plan that retains valuable employees. On the other hand, the City's plan recognizes an appropriate differential by maintaining a 5% spread between positions. In light of required bargaining unit increases, the recommended COLA will maintain that internal equity and prevent salary compression between a supervisor and her/his employees. We also have positions that exist both within and without the bargaining unit. An example is Library Aide I. Those working less than half time are not eligible for membership in the bargaining unit. Thus, if the recommended COLA is not applied to them, we have people working in the same position at dissimilar rates of pay.
- ❖ **Recognition of the changing responsibilities and workload of the affected employees.** Each of the employees covered by this

³ In a recent action before Council it was determined that the Charter provision cited established the number of votes required for adoption of any matter before Council. The issue arose because conflict between the cited provision and Milwaukie Municipal Code voting requirements. Section 2.04.300(A) of the Milwaukie Municipal Code provides as follows:

"The concurrence of a **majority of all the council members present** is required to determine any matter before the council. Each councilor must vote on all questions before council unless the member has a conflict of interest which would disqualify the member from voting. If a member abstains, the reason for the abstention shall be entered in the record. Unless a councilor abstains, the member's silence when the vote is taken shall be considered an affirmative vote." (Emphasis mine.)

In cases of conflict between the Charter and the Code, the Charter prevails.

recommendation has assumed more responsibility during the past few years. The recent change in City Managers carried with it a change in management style. Individual employees now possess the responsibility and authority and are expected to make decisions that once were centralized. In addition, as budgets become tighter positions have been eliminated, but the workload has not similarly decreased. Therefore, the affected employees are doing more. The FY 2003-2004 budget eliminated 6.5 positions, representing an annual salary savings of \$423,400. The recommended COLA results in an additional salary cost of \$34,186. The savings more than compensates for the additional cost of this recommendation.⁴

- ❖ **No COLA will result in an effective salary decrease for many of the affected employees.** The City requires an employee contribution for medical coverage. Effective July 1, 2003 premium increases in the City's Blue Cross/Blue Shield plan will require a higher employee contribution, resulting in a reduction in net pay.⁵

In this time of tight personal and government budgets every dollar counts. This recommendation is not an automatic with me. In past positions I have proposed approaches that differ from this, including both no salary adjustment as well as a percentage increase for non-management and a fixed dollar increase (which, if calculated as a percentage of salary, was less) for management.

This recommended increase is based on my experience with both past and present employees I have managed. This employee group is responding to difficult times by meeting the challenges. A major reason for the City's continued forward movement --like the North Main Project--may be attributed to employees who are dedicated to actively serving the public. While basing my recommendation on the reasons outlined above, underlying it is the knowledge, based on daily experience, that those affected by the recommendation are achieving results both for the present⁶ and the future.

FISCAL IMPACT

A 3% COLA was calculated for all positions and included in the FY 2003-2004 budget. Thus, sufficient funds have been budgeted. The annual salary cost of the recommendation is \$34,186.

⁴ At the July 1, 2003 meeting a question was asked regarding PERS. As an addition to the response that was given, it is also important to note that the PERS actuary is recommending a lesser rate due to legislative adjustments to the program. In a June 27, 2003 letter to the PERS Board, the City of Milwaukie rate is recommended to decrease from an original recommendation of 14.90% to 9.47%.

⁵ As an example, the increase in contribution for an employee enrolled in the family plan is \$65.89 per month. The recommendation affects 22 of 115 employees. Not all of these employees are managers or supervisors. Some are exempt from bargaining units by the confidential nature of their work or by working less than .5 FTE. In reviewing insurance coverage, 20 of those employees would experience an actual loss of net pay under this scenario. The other two do not have health insurance coverage through the City.

III. C. 4

WORK LOAD IMPACTS

There are nominal workload impacts to input salary adjustments.

ALTERNATIVES

Council can choose to grant a COLA different from that recommended, including no salary adjustment. Anything less than 3% represents a savings to each affected fund while creating compression within the salary structure between represented employees and management /non-represented employees.

III. D. 1



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel
Subject: Agreement with Clackamas County Cable Access Board
Date: June 27, 2003

Action Requested

Authorize the City Manager to sign a personal services agreement with the Clackamas County Cable Access Board (CCCAB) to manage and operate Milwaukie's Public Access studio located at 6596 SE Lake Rd.

Background

The City signed a personal services agreement with the Clackamas County Cable Access Board in February 2003 to operate Milwaukie's Public Access Studio on Lake Road for \$2500/month. The term of this agreement expired on June 30, 2003. The City Manager authorized an amendment to the previous agreement to allow a one-month extension to avoid a lapse of service.

The proposed 03-04 budget for the Public Access facility assumes an operating cost of \$30,000 for the CCCAB. Council's approval is required to approve a personal services agreement for this amount.

By way of background, the CCCAB services contain the following elements:

- The Milwaukie Public Access facility is being operated as a sub-studio of Willamette Falls Television and is called WFTV-Milwaukie. Under this arrangement, Milwaukie's studio at its Lake Road site and is open four hours a day, five days a week.

III. D. 2

- Milwaukie users (including Fire District #1) have full privileges at WFTV in Oregon City (709 Main Street). They may use that facility Mon-Fri, 9 am to 9pm and Saturday from 9 to 5 (closed Sat in summer).
- WFTV staff are responsible for operating the Milwaukie studio. CCCAB is prepared to hire additional staff if necessary to fulfill their obligation to Milwaukie.
- The CCCAB is to meet Milwaukie's obligation to Fire District #1 of 30 hours/month is met.
- The staff person(s) responsible for the Milwaukie studio attends all CCCAB meetings and updates the CCCAB on studio issues. In addition, minutes of all board meetings, plus a quarterly report of programming, training, programs submitted and hours of equipment usage are provided to Milwaukie along with an annual audit report..
- The services provided by the CCAB cost Milwaukie \$2,500/month.

Concurrence

This agreement has been reviewed by the City Attorney and the City Manager. The Budget Committee approved the budget for the public access studio and forwarded it to Council assuming the CCCAB would operate the facility for up to \$30,000 for the year.

Fiscal Impact

The current fiscal year budget contains adequate funding for this agreement.

Work Load Impacts

None

Alternatives

Deny the City Manager the authority to sign a personal services agreement leaving the studio without an operator after July 31.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel *JH*
Subject: Annual Solid Waste Rate Review
Date: June 26, 2003

Action Requested

Review for July 15 meeting presentation by staff.

Background

Review of the financial data submitted to the City by the haulers shows a 10.29 % rate of return before taxes for the twelve-month period including January through December 2002. This is 2.24% lower than the rate of return reported for January through December of 2001.

The rate of return allowed by the City provides for reinvestment in capital equipment and facilities and a reasonable profit for the business. The City also considers the prevailing benchmark for rate of return established by Clackamas County. The rate guidelines in Clackamas County state that if the operating margin is in the range of 8% -12% then no adjustment up or down will be made. Staff does not recommend a rate change this fiscal year and the haulers have requested no rate change.

Attached you will find a consolidated summary of the financial data submitted to the City by the garbage haulers and a summary of comparative rates for garbage and recycling services around the region.

CITY OF MILWAUKIE
Consolidated Summary of Detail Cost Reports Data
2002

	Consolidated 2002	%	Consolidated 2001	%	Projection - 2002	
MILWAUKIE GROSS REVENUE	2,904,836	100.00%	2,878,394	100.00%	0.92%	2,931,560
MILWAUKIE EXPENSES						
Employee Related:	945,014	32.53%	893,605	31.05%	3.50%	978,089
Direct Cost of Operations	713,245	24.55%	662,838	23.03%		
General & Administrative	231,769	7.98%	230,767	8.02%		
Vehicle & Equipment Related:	419,827	14.45%	391,603	13.60%		434,911
Fuel	53,884	1.85%	56,700	1.97%	8.73%	58,588
Repair & Maintenance	127,983	4.41%	97,781	3.40%	2.42%	131,080
Depreciation	140,500	4.84%	123,266	4.28%	2.42%	143,900
Recycling Bins	812	0.03%	19,194	0.67%	2.42%	832
Supplies	3,997	0.14%			2.42%	4,094
Insurance	29,369	1.01%	37,463	1.30%	7.61%	31,604
Rentals	30,224	1.04%			2.42%	30,955
PUC/Licenses/Fees	12,035	0.41%	12,422	0.43%	2.42%	12,326
Interest	21,023	0.72%	44,777	1.56%	2.42%	21,532
Disposal Fees	947,310	32.61%	973,108	33.81%	1.50%	961,520
Franchise & Comm. Fees	117,491	4.04%	121,662	4.23%	0.92%	118,572
Dispatch Service/Subcontracts	475	0.02%	4,386	0.15%	2.42%	486
Training & Worker Safety	5,142	0.18%	4,189	0.15%	2.42%	5,266
Office:	37,174	1.28%	31,351	1.09%	2.42%	38,074
Office Rent	10,822	0.37%	2,796	0.10%		
Depreciation-Bldg & Equipment	4,823	0.17%	3,601	0.13%		
Repair/Maintenance-Office	1,597	0.05%	2,087	0.07%		
Cleaning	2,402	0.08%	232	0.01%		
Office Supplies	8,367	0.29%	10,585	0.37%		
Equipment Rental	443	0.02%				
Postage & Freight	8,720	0.30%	12,050	0.42%		
Advertising & Public Education	2,745	0.09%	3,777	0.13%	2.42%	2,811
Contributions	920	0.03%			2.42%	942
Professional Fees	10,387	0.36%	55,460	1.93%	2.42%	10,638
Insurance	3,634	0.13%	3,665	0.13%	7.61%	3,911
Telephone	9,646	0.33%			2.42%	9,879
Utilities	2,681	0.09%	15,960	0.55%	2.42%	2,746
Property Taxes/ Licenses/ Fees	11,385	0.39%	11,353	0.39%	2.42%	11,661
Dues & Subscriptions	10,062	0.35%	6,823	0.24%	2.42%	10,306
Travel, Meals & Lodging	1,233	0.04%			2.42%	1,263
Professional Meetings & Seminars	185	0.01%	2,803	0.10%	2.42%	189
Bad Debts	6,780	0.23%	20,562	0.71%	2.42%	6,944
Corporate Overhead	65,805	2.27%			2.42%	67,397
Amortization	-	0.00%			2.42%	-
Interest	189	0.01%	209	0.01%	2.42%	194
Miscellaneous	12,575	0.43%	21,146	0.73%	2.42%	12,879
TOTAL EXPENSES	2,610,660	89.87%	2,561,662	89.00%		2,678,679
ADJ. TO EXPENSES	(4,686)	-0.16%	(44,039)	-1.53%		(9,372)
OTHER - PER CLACKAMAS CO.						
ALLOWABLE EXPENSES	2,605,974	89.71%	2,517,623	87.47%		2,669,307
NET BEFORE TAXES	298,862	10.29%	360,771	12.53%		262,253
RETURN ON REVENUE	10.29%	10.29%	12.53%	12.53%		8.95%

**SUMMARY OF RESIDENTIAL COLLECTION RATES
MAY 2003**

	BEAVERTON	CLACKAMAS COUNTY	FAIRVIEW	GRESHAM	MILWAUKIE	PORTLAND	TROUTDALE	WASHINGTON COUNTY
RESIDENTIAL MONTHLY RATES								
20 gal. can	\$15.50 \$15.50 (1)	\$18.45 (2) \$16.55 (3) \$19.50 (4)	\$18.02 (5) \$20.45(6)	\$17.00 (5) \$19.16 (8)	\$16.40	\$16.35 \$19.10 terrain (7) +\$3 non-curb (8) +\$1 distance (9)	\$13.50 (10) \$16.10 (11) \$16.20 (12) \$16.80 (13)	\$18.06 urban (14) \$21.06 urban distant (15) \$16.13 rural (16) \$19.13 rural distant
32 gal. can /cart	\$17.50 \$18.00 (1)	\$21.10 (2) \$19.50 (3) \$22.75 (4)	\$20.40 (5) \$22.83(6)	\$19.00 (5) \$21.15 (6)	\$19.90	\$18.75 \$21.50 terrain +\$3 non-curb +\$1 distance	\$15.80 (10) \$18.30 (11) \$18.40 (12) \$19.10 (13)	\$19.65 urban (14) \$22.65 urban distant \$17.50 rural (16) \$20.50 rural distant
35 gal. cart	N/A	\$21.10 (2) \$19.50 (3) \$22.75 (4)	\$21.53 (5) \$24.01 (6)	\$20.20 (5) \$22.35 (6)	N/A	\$20.10 \$21.50 terrain	\$17.25 (10) \$19.80 (11) \$19.90 (12) \$20.60 (13)	N/A
60 gal. cart	\$29.50	\$29.30 (2) \$29.75 (3) \$32.30 (4)	\$28.82 (5) \$31.75 (6)	\$26.50 (5) \$28.65 (6)	\$26.90	\$24.90 \$27.65 terrain	\$21.05 (10) \$23.60 (11) \$23.70 (12) \$24.40 (13)	\$28.51 urban (14) \$26.26 rural (16)
90 gal. cart	\$37.00	\$34.30 (2) \$33.90 (3) \$36.50 (4)	\$32.49 (5) \$34.92 (6)	\$30.00 (5) \$32.15 (6)	\$29.90	\$28.30 \$31.05 terrain	\$26.60 (10) \$29.10 (11) \$29.20 (12) \$29.90 (13)	\$33.72 urban (14) \$31.20 rural (16)
EXTRA YD	\$3.00/bag	\$2.60/32 gal.	\$2.80/bag	\$2.50/32 gal.	\$2.60	\$1.50/bag	\$2.40/bag	\$1.00/bag
YD FREQ.	Weekly	Weekly	Weekly	Weekly	Weekly	E/O week	Weekly	E/O week
FRANCHISE FEE		5%	4%		3%	5%	5%	3%

(1) Effective 7/1/03

(2) Urban (add \$3.00 surcharge for non-curb side)

(3) Rural (add \$3.00 surcharge for non-curb side)

(4) Distant rural (add \$3.00 surcharge for non-curb side)

(5) With 32 gallon YD

(6) With 60 gallon YD

(7) Terrain charge is for hilly/difficult access homes.

(8) Non-curb side surcharge is for a collection location more distant than curbside

(9) Excess distance surcharge is anything in excess of 75' from the curbside and is in addition to non-curb charge.

(10) Without YD (exemption required)

(11) 32 gallon YD

(12) 35 gallon YD

(13) 60 gallon YD

(14) Inside Metro boundary. Includes weekly recycling and e/o week yard debris.

(15) Distant service is between 5' and 50' of the curb.

(16) Outside Metro boundary. Includes monthly recycling service.



To: Mayor and City Council

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

From: Jeffrey King, Project Manager *JK*

Subject: North Main Mixed Use Site Redevelopment Project
Memorandum of Understanding and Vertical Housing
Development Zone Program

Date: July 1, 2003 for July 15, 2003 Meeting

Action Requested

- 1) Authorize the Mayor or City Manager to sign the Memorandum of Understanding (MOU) between the City and Peak Development, LLC. for the redevelopment of the North Main Site.
- 2) Authorize staff to apply to the State of Oregon for Vertical Housing Development Zone on the North Main site.

Background

At the July 1, 2003 meeting, staff appeared before Council to provide an update on the North Main mixed-use redevelopment project being developed by Peak Development, LLC. At this meeting staff presented information and sought direction from Council on the MOU, scheduling, design process, and financing. The discussion included information on the State Vertical Housing Development Zone Program. The City negotiating team, including Community Development staff and consultant, Kim Knox, have been meeting with the Peak team every other Tuesday since May.

VI. B. 2 t -- (North Main Project Approvals)

Staff is now seeking Council approval of the MOU and authorization to apply to the State for the Vertical Housing Development Zone Program.

The MOU is a non-binding agreement that gives Peak the right to negotiate exclusively with the City (see attached copy of the MOU). It also outlines the goals and responsibilities of both parties. The MOU also sets up the parameters for the Disposition and Development Agreement (DDA). Following a successful execution of the MOU, staff will proceed in developing a DDA. The DDA is a legally binding agreement that defines the terms of the real estate and development deal with the City and the formal obligations of each party. Staff will be preparing the DDA for Council consideration in August/September.

The key components of the MOU include:

- Agreements and understandings of each party
- Concept Modification
- Project Financing Gap
- Infrastructure
- City Assistance
- Adjacent Property Owner Considerations
- Project Schedule

The Vertical Housing Development Zone provides for partial tax exemption for ten years for certified projects that consist of a ground floor or lower floors of commercial use activity and an upper floor or floors of residential use (see attached program description). A partial tax exemption is provided at 20% of assessed value on land and improvements for each floor up to four floors of residential use with a maximum partial tax exemption of 80%. The tax abatement would be in place for ten years.

The Peak Development mixed-use project is the first of its kind for downtown Milwaukie. Because of this "trailblazer" status and the fact that lower rents and sale prices are realized in Milwaukie compared to much of the metro area, the partial tax exemption is necessary to make the project work financially. Even with the exemption, project finances and cash flow are tight.

The Vertical Housing Development Zone requires a two- step process. The first step is to apply to the State Oregon Economic & Community Development Department (OECDD) for creation of the Zone and to notify all other taxing districts. The zone, in this case, is limited to the North Main (former Safeway) parcel only. Once the zone is approved, the second step is for the applicant, Peak Development to apply to the City for the partial tax exemption. For this project, Peak will apply for a 60% property tax exemption. This will provide approximately \$205,000 to the project over 10 years. However because the site is currently City owned, it will provide new property taxes in year one. Total new

property taxes to the City alone over 10 years will be approximately \$136,857 and \$3,161,157 over 50 years. See attached table for more information

Concurrence

Community Development staff and the City Manager's office support signing the MOU and making application for the Vertical Housing Tax Development Zone.

Fiscal Impact

Staff will keep Council apprised of the details of the real estate transaction and project financing. Under the Vertical Housing Development Zone Program, a total of \$205,000 in City property tax will be abated to the Project over the first 10 years. The North Main project will also provide \$136,857 in new property taxes to the City over this 10-year period.

Work Load Impacts

This project is being managed by existing staff and consultant. The project is part of existing Community Development staff work plan and budget.

Alternatives

1. Approve MOU and application for Vertical Housing Development Zone Program.
2. Approve MOU with modifications.
3. Delay approval of MOU and authority to apply for a Vertical Housing Tax Development Zone for further review.
4. Decline to approve MOU and authority to apply for a Vertical Housing Tax Development Zone.

Attachments

1. Memorandum of Understanding
2. Vertical Housing Property Tax Chart
3. Vertical Housing Development Zone Program Description

NORTH MAIN STREET PROJECT

Memorandum of Understanding

Peak Development

City of Milwaukie

This Memorandum of Understanding (MOU) is a non-binding agreement between Peak Development (Developer) and City of Milwaukie (City). The State of Oregon Department of Housing and Community Services (DHCS) is a party to the purchase and sale agreement for the North Main Street Project ("Project") and has partnered with the City of Milwaukie and are included in the review of the MOU. The MOU is establishing principles that are intended to be incorporated in future agreements for the development of the property.

Through a competitive and public process, Peak Development was selected by the City of Milwaukie as the developer for the North Main Street Project Site ("Site") described in Attachment A.

Peak Development and City of Milwaukie in cooperation with the State of Oregon are entering into agreements to assure development of the property. It is agreed that the property will be developed as a mixed-use urban development with the intent of meeting the community vision and development objectives set out by the Milwaukie City Council (Attachment B). All parties agree to work towards producing a high quality, financially viable building. The purpose of the MOU is to define behavior and responsibilities of the parties to the agreement, which will lead to the profitable and successful development of a high quality development at the heart of Milwaukie's downtown.

Definitions

As needed

Agreements and Understandings

1. Property Owner:

- Prior to purchasing the site, the City leased the Site at a cost of \$7,500 per month for 50 months.
- The City purchased the property for \$750,000 using a 1%, 15-year loan provided by the State Community Incentive Fund.
- The State of Oregon continues to be an important participant through the purchase and sale agreement and development goals outlined in the loan.
- The City has demolished the Safeway building at a cost of \$ 51,847

VI. B. 5

2. **Developer:**

- Developer is committed to the long-term ownership and will be directly responsible for management of the Project.
- City will negotiate exclusively with the Developer through the execution of the MOU.
- Upon the execution of this MOU, Developer agrees to submit an “Option Fee” of \$25,000 in the form of a certified check, as a fee for the right to negotiate exclusively with the City during the Option Period. The Option Fee is to be retained by the City without the obligation to pay the interest thereon. Actual interest earned, if any, shall be credited to, and become part of the fee. If the Developer negotiates in good faith, but fails to reach an agreement with the city staff, then the Option Fee shall be refunded to the Developer. If the Developer fails to negotiate in good faith, then the City shall retain the Option Fee.
- It is agreed that the Developer is expected to approach individual property owners or institutions at its discretion for purchase, options or other development agreements.

3. **Concept Design:** It is agreed that the Developer will continue to refine the conceptual design included in the Request for Proposal, which will result in a revision or modification while in substantial conformance with the provisions of the proposal submitted by the Developer as part of the selection process (Attachment C).

4. **Concept Design Modifications:** The City and Developer will work together through the conceptual design process to address issues of: future site intensification or development phases, configuration and level of amenities for the 21st accessway ownership of undeveloped land, incorporating flexible building design options to accommodate a variety of active ground floor uses, building scale, reconsideration of appropriate construction methods for condominiums; re-design of the pedestrian link between main Street and the library and site landscaping. If appropriate, the City agrees to revisit the list of prohibited building materials in the City’s code.

5. **Project Financing:** Achieving a high quality mixed-use building in downtown Milwaukie will require public financing assistance. The City and Developer will work together to pursue the following options to promote the development objectives adopted by City Council:

- Tax abatement. The Developer has requested that the City consider a 60% tax abatement as allowed by the Vertical Mixed-use Zoning statute adopted by the State.
- Gap financing. Analysis of the preliminary building concept contained in the developer’s Proposal shows a \$650,000 gap between the Developer’s equity sources and the estimated cost of the Project. To fill a portion of this gap, the Developer will pursue a grant from Metro’s TOD Program and other sources. The City may consider phased SDC payments, grants, partial SDC waivers, phased land payments and a potential land write down.

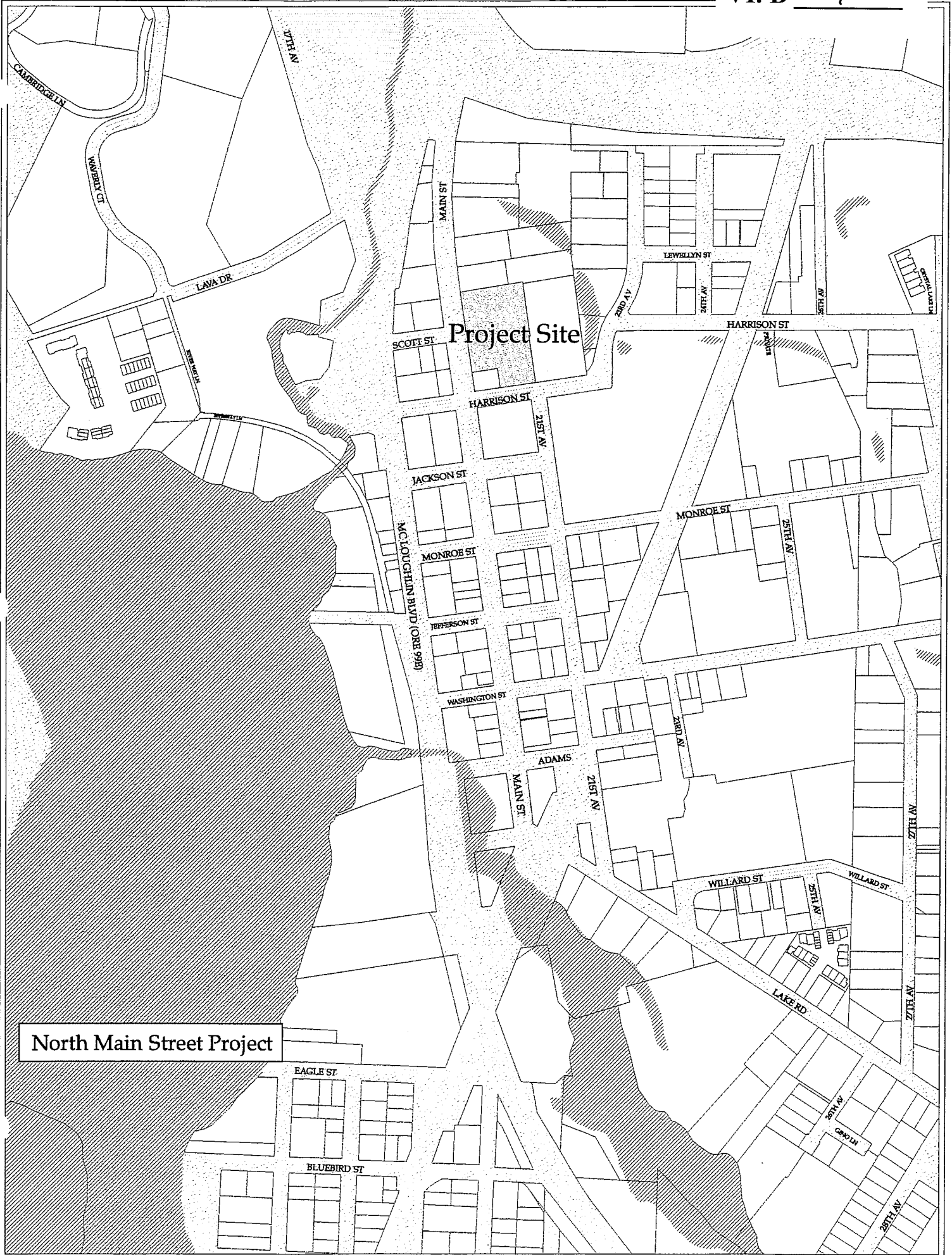
6. **Project Assistance.** To help facilitate the Project, the City will provide the following:

- Traffic studies. City will conduct studies needed as part of the development review process.

- Environmental entitlements. City will obtain Title 3 environmental entitlements needed to develop the site.
 - Lot line adjustments. City to secure adjustments needed to develop the site.
 - Stakeholder coordination. City staff to assist with facilitating relationships and coordination public stakeholder groups.
 - City coordination. City to provide a lead staff contact for the Project to facilitate zoning and permit approvals among City departments. The City will also designate a representative to present the project to City Council that is separate from staff involved with planning review and approval.
7. **Tax Credit Application:** As part of the conceptual design process, the Developer and City will identify a milestone date for determining whether or not the project will include tax credits. THIS CLAUSE MAY BE REMOVED PENDING REVIEW OF MARKET RATE PROJECT FINANCING ASSUMPTIONS.
8. **Unit Mix:** As part of the Concept Design process, the Developer and City will identify a milestone date for determining where condominiums would be included in the Project and what legal, design or other issues need to be addressed as part of a Disposition and Development Agreement.
9. **Infrastructure:** The City's Public Area Requirements anticipate that the Developer will be responsible for the following street improvements:
- Main Street and Harrison Street Frontages. New sidewalk development, street trees, streetlights, furniture and bicycle rack installation.
 - Overhead utilities along Main Street. Required to be underground between Harrison and the north end of the Site.
 - 21st Avenue. Developer and City will work together to identify appropriate Developer improvements needed.
10. **Adjacent Property Owner Considerations:** Nearby property owners have expressed concerns and issues that the Developer must consider as part of the Conceptual Design process:
- Library visibility should be maintained from main Street and Harrison
 - Shared off-street library and Masonic Lodge parking
 - Design compatibility with the library, Masonic Lodge and Main Street retail
 - Parking compatibility with Main Street retail activities and a sensitivity to on-street spaces for existing downtown businesses.
 - City to lead discussion regarding 21st accessway with affected property owners.
11. **Schedule:** City and Developer agree to make best efforts to meet the schedule of completing the conceptual design, financing, final design, permitting and construction documents prior to 6/28/04. A detailed schedule is attached as Exhibit D.
12. **Interim Use of Site.** City will be storing materials on the site and will be responsible for removal when construction is ready to begin on the building. City grants the Developer

VI. B. 7

access to the site for purposes of installing promotional signs regarding the development, consistent with City sign policy.



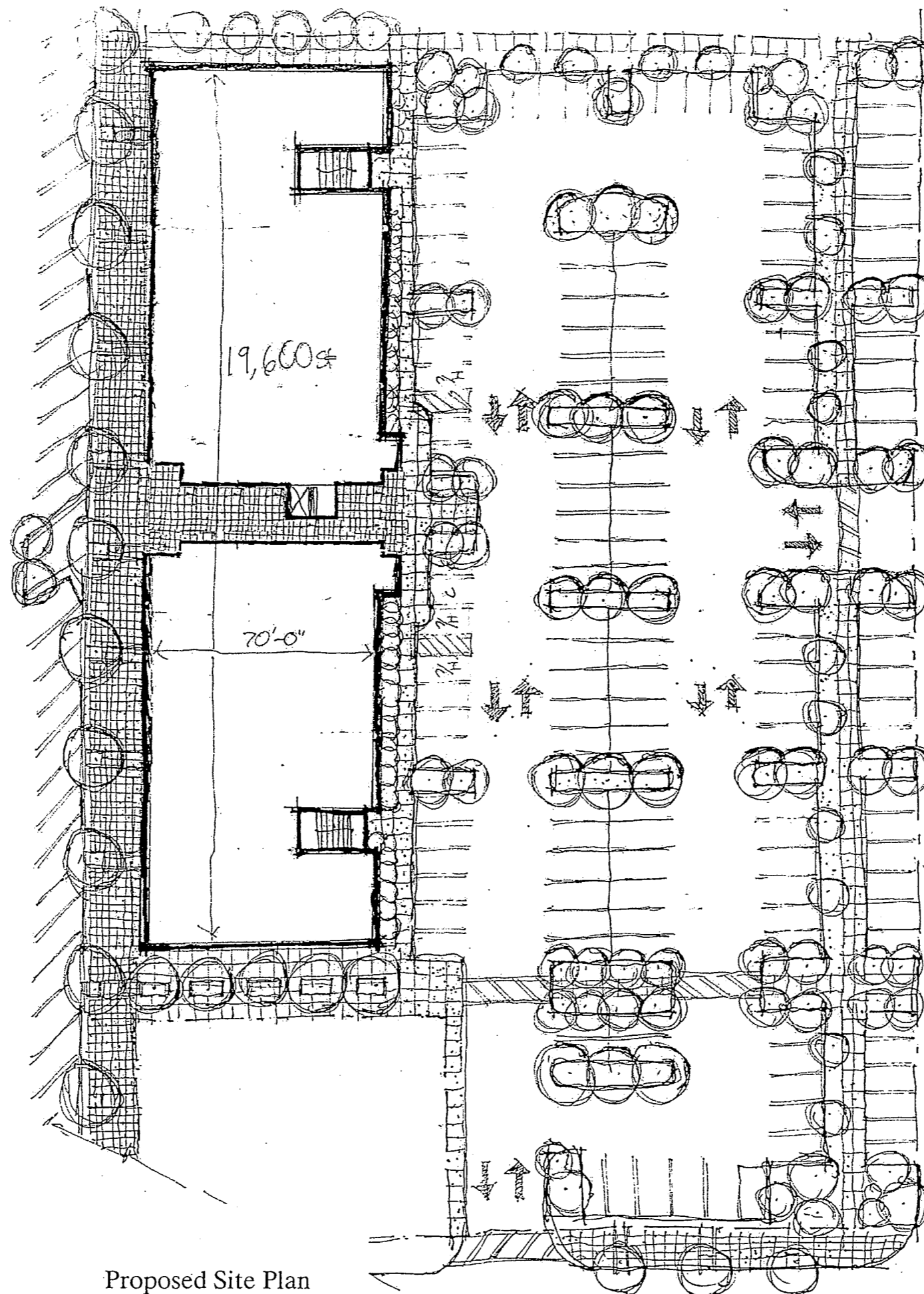
Community Vision & Development Objectives for the North Main Project

Over the past two years, City Council and staff have had many opportunities to listen to redevelopment ideas for the site generated by various community members

- Redevelopment should be high quality. This site is viewed by the City as a major catalyst to future development in the downtown. The Downtown Design Standards and Guidelines provide a good framework for projects that are considered to be compatible in the downtown.
- The proposal should incorporate a mixture of uses, including active ground floor uses oriented to Main Street.

A project offering dwelling units available to a mixture of incomes is desirable, provided it includes a proportion of market-rate units.

- A condominium project with “for sale” units is highly desirable.
- Active building entrances, balconies, decks and porches overlooking Main and 21st Streets are essential.
- Green building components are desirable, including but not limited to existing building deconstruction, selection of recycled building materials and energy efficiency elements.
- A public gathering space should be incorporated into the site design. This space could provide an attractive link between Main Street and the library.
- Some ground-floor uses of interest to the community are:
 - Specialty grocery store
 - Library expansion area
 - Post officeNo financial feasibility analysis has been completed for these uses.
- Any redevelopment proposal on this site should offer a reasonable civic and financial return to the City.
- Parking supply in the downtown is a sensitive community issue. Voluntarily providing a supply of off-street parking on the site is highly desirable from a marketing and community perspective.



Proposed Site Plan

First Floor Retail = 19,600 SF

Parking (on site) = 46 Stalls
 Parking (off site) = 50 (estimated)
 Total Retail Parking = 96 Stalls

Second - Third Floor Apartments =

8 Two Bed Units	Parking = 12 Stalls
34 One Bed Units	Parking = 34 Stalls
42 Total Units	Total Parking = 46 Stalls

Fourth Floor Condominiums =

10 Two Bed Units	Parking = 20 Stalls
4 One Bed Units	Parking = 4 Stalls
14 Total Units	Total Parking = 24 Stalls

Total Parking = 116 Stalls on site
 Total Parking = 50 Off Site (estimated)

Grand Total Parking = 166 Stalls

MYHRE·GROUP
architects

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t 503.236.6000 f 503.236.7500 www.myhregroup.com

Milwaukie
 Mixed Use
 Scale = 1/30
 12.24.03





Front Elevation
N.T.S.

Concrete Masonry Unit Base

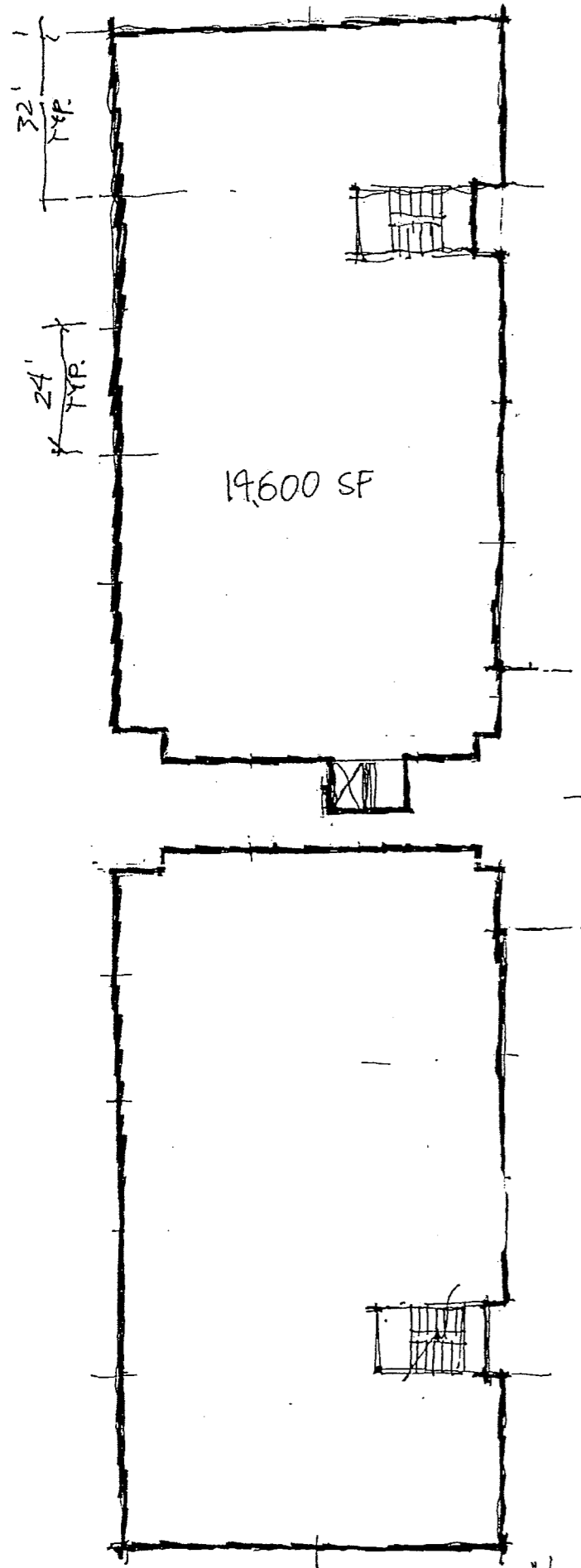


Rear Elevation
N.T.S.

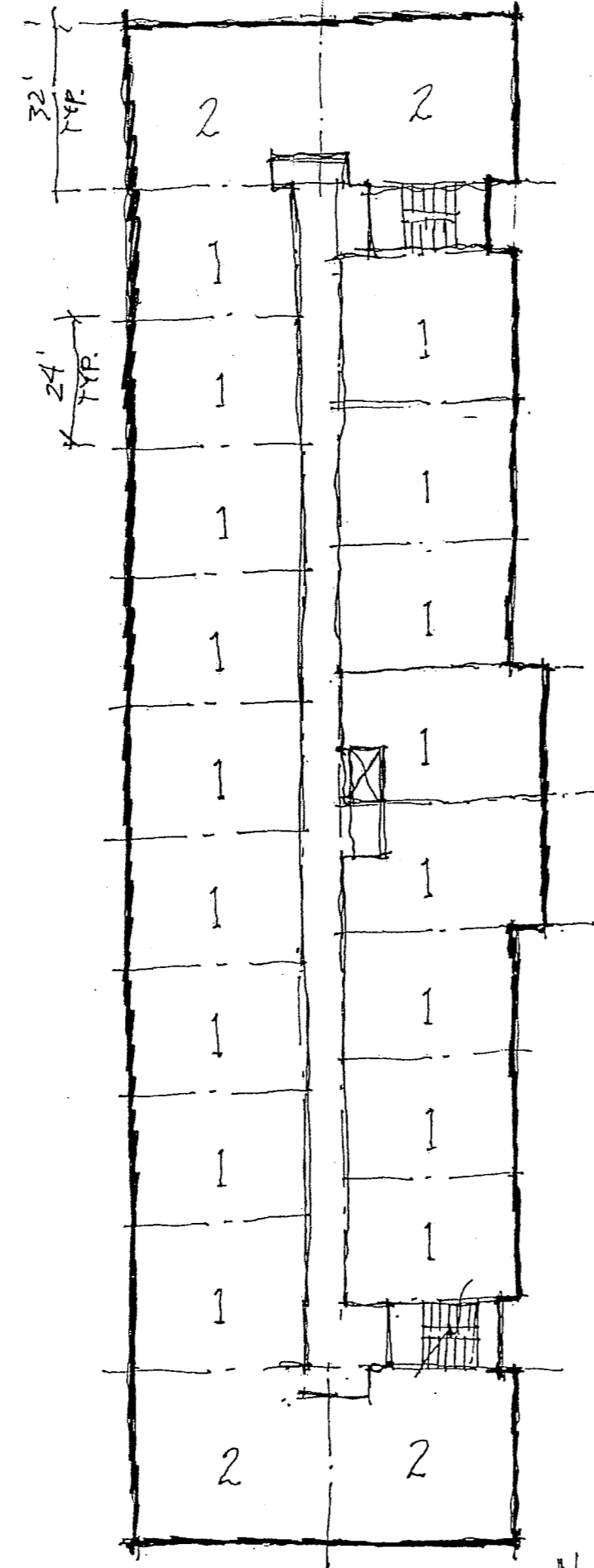
Concrete Masonry Unit Base

MYHRE · GROUP
architects

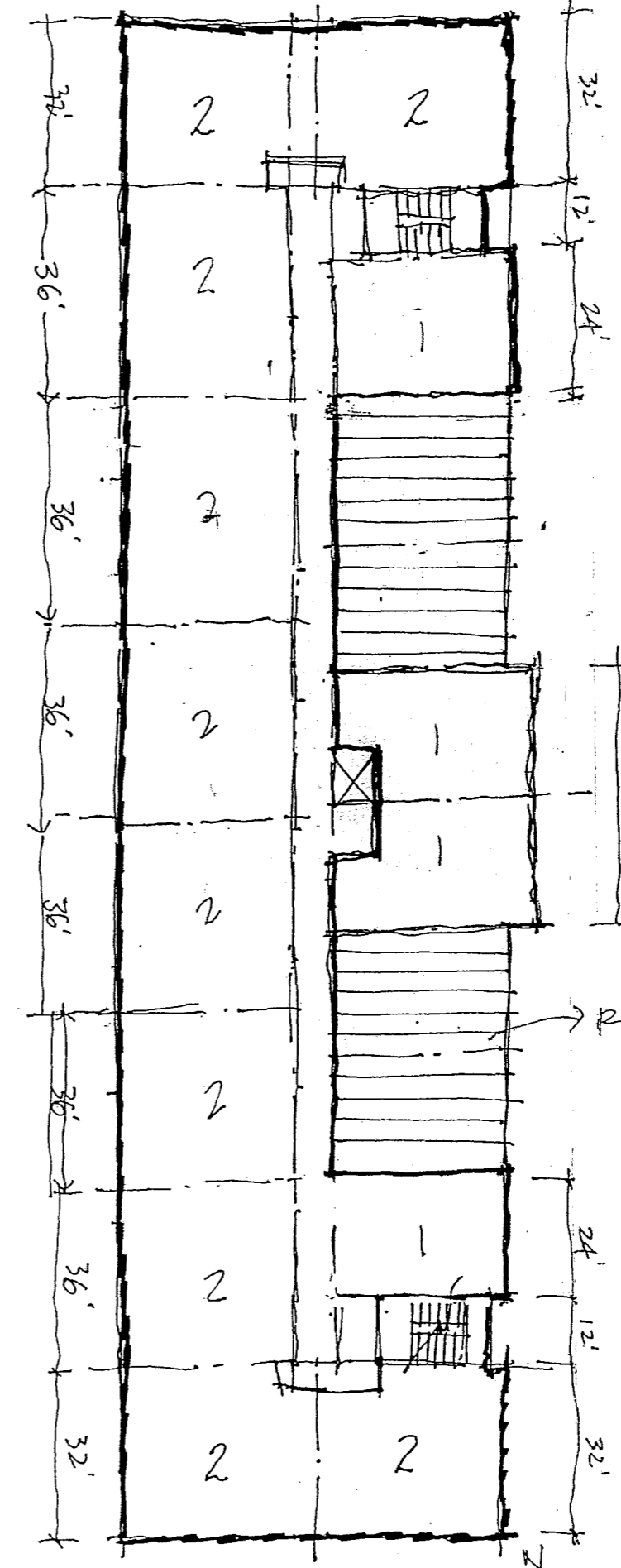
Milwaukie
Mixed Use
12.24.03



First Floor Retail



Second - Third Floor Apartments



Fourth Floor Condominiums

First Floor Retail = 19,600 SF

Second - Third Floor Apartments =

8 Two Bed Units	1152 SF Two Bed Units
34 One Bed Units	1024 SF Two Bed Units
42 Total Units	768 SF One Bed Units

Fourth Floor Condominiums =

10 Two Bed Units	1152 SF Two Bed Units
4 One Bed Units	1024 SF Two Bed Units
14 Total Units	768 SF One Bed Units

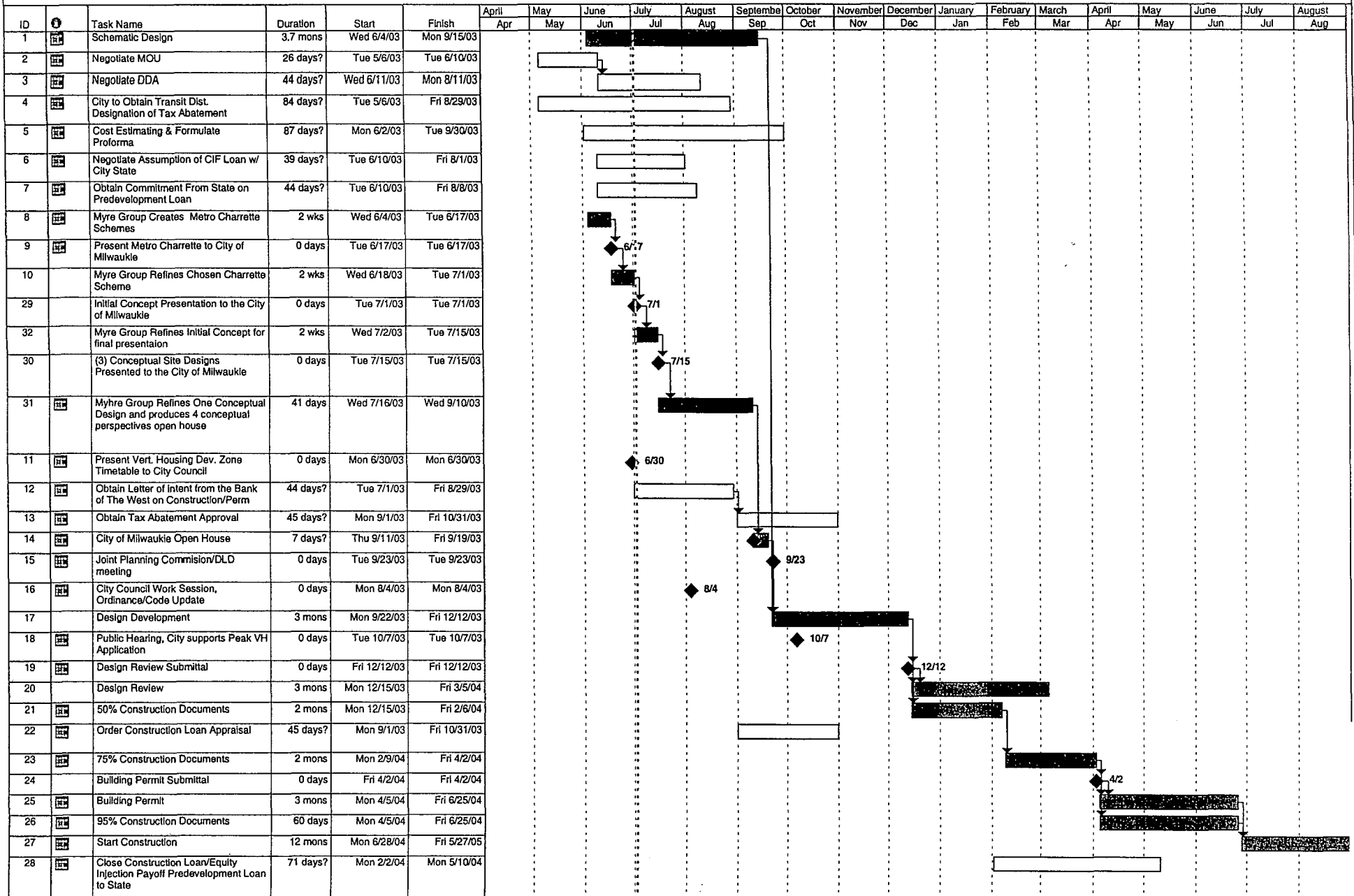
2 ADDITIONAL ONE BEDS CONDOS

ROOF BELOW

MYHRE GROUP
architects

105 SE Taylor Street, Suite 307 Portland, Oregon 97214
t 503.236.6000 f 503.236.7500 www.myhregroup.com

Milwaukie
Mixed Use
Scale = 1/30
12.24.03



Project: Milwaukie-Sched-043003
Date: Wed 7/2/03

Task Progress Summary External Tasks Deadline
Split Milestone Project Summary External Milestone

EXHIBIT D

V.I.B. 14

Attachment 2

**North Main Mixed Use Redevelopment
Peak Development, LLC**

Vertical Housing Development Tax Abatement City of Milwaukie Only				
Time Frame	Tax Revenue from Peak Project w/abatement (This is the proposal that is being recommended.)	Tax Revenue from Peak Project w/o abatement (This assumes that the Project would go forward without an abatement or other tax incentive, which is doubtful.)	Tax Revenue from Safeway w/remodel (This assumes the former use with a remodel.)	Tax Revenue from Current Use (City owned/exempt property)
Years 1-10	\$136,857	\$341,856	\$56,594	\$0
Years 11-50	\$3,024,300	\$3,024,300	\$500,250	\$0
Total Property Tax	\$3,161,157	\$3,366,156	\$556,844	\$0

Assumptions:

City Tax Rate: \$6.538/1000 AV

Land Value: \$700,000

Peak Project Assessed Value: \$6,813,354

Safeway with Remodel Assessed value: \$1,127,000

3% annual AV growth rate

Attachment 3

Vertical Housing Development Zone General Information

The 71st Legislative Assembly approved SB 763, the vertical housing development zone legislation. The new law provides for partial tax exemption for certified projects that consist of a ground floor or lower floors of commercial use activity and an upper floor or floors of residential use. A partial tax exemption is provided at 20% of assessed value on land and improvements for each floor up to four floors of residential use with a maximum partial tax exemption of 80%.

Applications may be filed by cities, cities and counties, or counties with the consent of a city for proposals within incorporated cities. Applicants are required to provide formal written notice to all taxing districts within the proposed vertical housing development zone. Applications will be received and reviewed by regional teams for department action on each application. A proposed zone must be located in concert with a *light rail station, a transit oriented area, or within a core of an urban center*. The department will provide a formal notification to the applicant and the county assessor of the action taken. The decision of the department, to approve or deny the request, is not subject to appeal. An applicant for an approved zone designation may request the department to terminate the zone at any time after designation, if projects have been certified they will receive the partial tax exemption for the full term of the obligation.

Following zone designation a private developer, public/private partnership, or other entity may apply for certification of a vertical housing development project. An application is filed with the department and received and reviewed by the regional teams. A project may include new construction, reconstruction or rehabilitation. The department may approve or deny an application for project certification, Actions of the department are to appeal in the manner of a contested case. The department will notify the county assessor, the applicant and others of its final decision. Once the building activity is complete and a certificate of occupancy or temporary certificate of occupancy has been issued for the project, the partial tax exemption shall be applied in the following tax year at the approved rate (20% for each floor of residential use up to 4 floors) and for the following nine years. In the event a change in use is made to either the residential or commercial uses of a certified project, the county assessor may disqualify the project from partial tax exemption in the next assessment year.

Peak Development, LLC is seeking a 60% tax exemption for the North Main project.



Park & Recreation Board

PARB

Tuesday, April 22, 2003

7:00 PM to 9:00 PM

Conference Room – City Hall

MINUTES

Attendees: Mart Hughes, Kathy Buss, Rob Gabrish, Sherri Dow, Kate McCready

Staff: JoAnn Herrigel

Absent: Joan Young, Ray Harris (unfortunately he was locked out...)

Meeting called to order by Chair Hughes at 7:08 PM

Open Period: No audience

Minutes:

Minutes were not approved due to lack of quorum.

Update on Board Members

Herrigel introduced Kate McCready and Rob Gabrish. Kate was appointed by Council and Rob will be approved soon. Herrigel also noted that Ayla Montgomery had expressed interest in the Board.

Trolley Trail Support Letter

Herrigel asked if there were any comments on a draft letter of support for the Trolley Trail she'd sent to members via e mail. The following suggestions were made:

- Emphasize the regional nature of the trail
- Emphasize that the trail provides an alternative type of transportation
- Emphasize the importance of a safe way to travel along McLoughlin
- Clarify that preliminary engineering will be for the whole trail and construction only for three segments

Hughes said Herrigel could sign the letter for him.

Historic Walk

Herrigel reminded members that the Downtown Historic Walk would be May 18 at 1:00. She encouraged anyone interested in helping to call Joe Loomis.

Staff Updates

There was a general discussion of the Park District meetings that had taken place since the last PARB meeting. Following were some concerns expressed:

- How much of the reorganization will actually be forwarded to the County Commissioners for approval (even after all the testimony against the reorganization, no changes seem to have resulted)
- We need someone (as District Director) to look at the big picture regarding how to run the District
- Staff should meet with Charlie Ceiko (the interim Director)
- The job description for a new Director should include people skills and consensus building
- The District should switch to a ORS 206 type of organization

VII. 2

- The master plan still hasn't gone to the County Commissioners – but DAB passed a resolution to send it to them at their last meeting
- There was a general concern about who would make the decision on who the new Director would be. It was suggested that the DAB should be involved and that the decision making should be done within the District, if possible.

Other

It was suggested that new members of the PARB be provided with the District Master Plan, a map of parks in the City and a final District budget.

The meeting adjourned at 8:50.