

MINUTES

MILWAUKIE CITY COUNCIL DECEMBER 16, 2003

CALL TO ORDER

Mayor Bernard called the 1924th meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

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

Staff present:

Mike Swanson, City Manager	John Gessner, Planning Director
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Alice Rouyer, Community Development/Public Works Director	Steve Campbell, Code Compliance Coordinator
Larry Kanzler, Police Chief	

PLEDGE OF ALLEGIANCE

It was moved by Mayor Bernard and seconded by Councilor Lancaster to amend the meeting agenda to include Other Business Item C – Milwaukie Transit Center Working Group Status Report. Motion passed unanimously.

CONSENT AGENDA

It was moved by Mayor Bernard and seconded by Councilor Barnes to remove Item E – Purchase of Laptop Computers for Public Works – from the meeting agenda. Motion passed unanimously.

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

- A. City Council Minutes of December 1 & 2, 2003
- B. Resolution 50-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Date and Repealing Resolution 2-2003;

- C. **Resolution 51-2003: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign and Renew the Intergovernmental Agreement with Clackamas County for a Grant to Maintain the Juvenile Crime Diversion Program;**
- D. **A Resolution of the City Council of the City of Milwaukie, Oregon, Opposing the Formation of an Electric People's Utility District in Clackamas County;**
- E. ~~**Purchase Laptop Computers for Public Works; (Removed)**~~
- F. **Award Contract for Sewer Master Plan;**
- G. **Award Contract for Brookside Storm Sewer Phase III; and**
- H. **Award Contract for Johnson Creek Boulevard HVAC Improvement Project**

Councilor Loomis requested Item D be removed from the consent agenda for discussion.

Motion passed unanimously.

AUDIENCE PARTICIPATION -- None

Ardith Duncan, 12401 SE Guilford, Milwaukie, expressed concern with the adult foster care home being built on the corner of Lake Road and Guilford Drive. The City told the neighbors who had not been informed it is a done deal. It is a business and not a residence.

Patricia Broadwell, 12215 SE Guilford, Milwaukie, addressed the City Council regarding a foster care facility being constructed next to her home. Broadwell feels she has lost \$50,000 in equity. The structure looms over her backyard and pool area. She knew nothing about the construction until the foundation was poured. She went to the Milwaukie building department and was told there was nothing that could be done. She pays \$4,000 a year in property taxes, and what is happening is wrong. She and the others in the neighborhood should have been asked. She plans to have her home appraised, and someone should be liable for her loss whether it is the City of Milwaukie or the state. Broadwell does not intend to lose the equity in her house. The building is a monster and looks like a hotel. The bedrooms are 8 x 10 and all have toilets with a central shower. Does the City follow up on who lives here? It is a business with hired help living upstairs? It is a dormitory with a central desk. No one seems to care that this can happen to anyone. The other foster care home about half a block away at least has adequate parking. She contacted the press to make a commentary but was told her loss was not that important. She is almost 60 and this is her last go round.

Swanson told Council he spoke with Broadwell late this afternoon, and he will ask the city attorney to talk specifically to the federal pre-emption. One issue is local land use regulations, and this house is appropriate in terms of being a single-family residence. The issue presented is that it is apparently planned to be an adult foster home facility. The City is pre-empted by federal siting authority, and there is literally nothing that can be done. The one thing people can do, though it will not help in this situation, is to contact their United States senators and representatives. He understands the policy

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that underlies the federal government stepping in and saying local governments do not have the ability to control the siting of these facilities. There does, however, appear to be a disproportionate number of facilities in certain communities, and Swanson feels the least the federal government could do is address issues of fairness. He sympathizes with people who have fears about what will happen in the future, but he also understands what Congress tried to accomplish. He urged people, at least for the future, to contact their representatives to seek some equity in terms of location.

Broadwell asked if the Planning Commission was aware of this situation and if it went before the Commission.

Firestone said, if a use is permitted outright, a land use approval is not required, and all that is needed is a building permit. Under the Federal Fair Housing Act, all governments are prohibited from any type of discrimination in housing, and that includes discrimination based on the need for specialized housing such as adult foster care. There is a state statute that requires local governments to treat a residential facility for people with special needs with six or fewer residents exactly the same way as it treats a single-family residence. If the facility has more than six residents, it is treated like a multi-family residence. The people working in the facility are not counted as residents. As a result, cities have no choice but to allow these facilities in residential neighborhoods outright. All the City can do is ensure these structures meet zoning requirements such as setbacks and height restrictions.

Broadwell said the structure has a total of 8 bedrooms with 5 of those for foster care. It is a 4,600 square foot house on a 10,000 square foot lot. With the 5 bedrooms downstairs and 3 upstairs, that is more than 6 residents.

Firestone does not know the zoning in that area, therefore does not know the size of the facility allowed. The City has adopted specific standards. The state standard has varied from time to time, and he understands Milwaukie at one time adopted the Clackamas County standard, which may allow more spaces than the state standard. The state standard is the absolute minimum needed to comply with the Federal Fair Housing Act, but more may be required under specific circumstances. For example, if the City allows 8 unrelated people to live in a single-family residence, it must allow a residential facility that provides for 8 people. Firestone understands the City examined the situation and concluded that under its existing code and the Federal Fair Housing Act as applied by state statute that the City could not do anything.

Broadwell said she was not considered, and that is wrong. All City officials have said they would not like this facility built next to their homes. If this went to the Planning Commission, it should have considered this 50-year old, very nice residential neighborhood of mostly ranch homes with swimming pools and next to a Jr. High School. The City had a chance to say "no", but it didn't.

Mayor Bernard said this did not go to the Planning Commission and was not required to do so under the code.

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Broadwell said there are 8 unrelated people. Where is the parking for all of these residents? The structure is a huge box with very little land around it. This is wrong.

Councilor Barnes suggested Broadwell and her neighbors write a letter to *The Oregonian*. Letters to the editor do get published. She asked Broadwell if she had spoken with the owner.

Broadwell approached the owner of the property next door when she first saw the construction begin. The owner was evasive, and when the foundation was poured Broadwell contacted the building department. She was told the building was to code, and that there was nothing she could do.

Councilor Barnes understands Broadwell's frustration. She has 2 group homes in the neighborhood, and they have proven to be very nice neighbors. One was built and the other was opened in an existing home.

While **Broadwell** sympathizes with the residents of these homes, she does not feel people understand her concerns. It is an enormous building with no windows. It is ugly. The Lake Road Association came to her to find out what was going on and how she could let it happen. They told her to stay on and fight it because it is wrong. She wants some compensation so she can build a second story on her house and block it out. She does not want them looking over her roof. This is unheard of – allowing it to be at street level. No one else's is. The houses in the newer development to the west are not. Other houses are built on stair steps. This is a huge looming hotel set up like a dormitory. The building department told her the residents have to live there, and the owners have to live there. Who follows up on that? She bets 6 months after they move in the owners hire some other people to live there because they can afford it. They make a lot of money, then they are gone. She wants everyone to know it can happen in his or her neighborhoods, and it is not right.

Councilor Lancaster asked if this type of enterprise enjoys tax-exempt status.

Firestone replied those operated for profit typically are not tax-exempt and must be licensed.

Councilor Lancaster suggested the City Council submit correspondence to its congressmen. Milwaukie is already penalized by a disproportionately high number of tax-exempt entities that continue to erode the tax base. He encouraged every citizen to take action.

Councilor Stone commented Council sympathizes with Broadwell, and she agrees with Lancaster that senators and congressmen should be lobbied. She would like to see the City somehow enforce design standards so that the structures being built in neighborhoods comply with the existing architecture, so they are not so obtrusive. She thought Broadwell might have an easier time accepting this if the house conformed

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more with the existing standard of architecture in the neighborhood. That is where the City could have some input. She would like to make sure there is something on the books.

Firestone said any design standard for housing, if it is considered needed housing which covers about everything in this state, must be clear and objective. While it can be done, it is not easy.

Mayor Bernard believes Lake Oswego recently adopted that type of ordinance, and Milwaukie should take a look at that.

Councilor Lancaster commented this was a major issue the last time Milwaukie did a revision to its land use ordinances. The City is severely constrained in terms of what it can do.

George Van Bergen, 12366 SE Guilford, Milwaukie, stated this structure definitely is non-conforming to the community. He spoke with the planning department several weeks ago and received the same explanation. The properties all have deed restrictions although they may no longer hold water. The properties were all developed in an R-10 situation, and he has great empathy for Broadwell. She purchased a very expensive house, and this is stuck right up their nose next door. He finds it hard to accept the federal government's having an overlay application. This is similar to the house on the Columbia River, which he believes is still sitting empty. Van Bergen wonders about the permits that will have to be issued because he knows the cost of getting into the house is high. He looks upon this situation as being an inverse condemnation. When something is permitted to go into an area that reduces the value of everyone else's property, this is a condemnation or a taking. This may or may not hold up in court. The house seems to have 8 or 9 bedrooms. Are staff bedrooms counted also, and does it become a multi-use property? The Washington Street house he sold to the School District was moved to Jackson Street, and now it is a half way house for convicts. If the facility on Lake Road does not make it as a senior facility, will it become a place for disadvantaged people? What will be there in 5 years? It could be even worse. He has great empathy for Broadwell and does not blame the sellers because they probably did not have any control over what was going to happen. He does go along with the thoughts of reviewing this problem and having to go along with the federal government. There is a home authority, and these are people's homes. The City, in his mind, should be able to control its own destiny. These people have suffered a terrible loss.

Mayor Bernard hopes the City will look at the issue and help if possible.

Councilor Lancaster said, if the City does look at this, it should also look at what residential neighborhood properties are subject to commercial development. That should be part of the whole solution to the City's defending itself from these federal edicts.

David Aschenbrenner, 11505 SE Home Avenue, Hector Campbell Neighborhood Association Chair, encouraged residents to clear out the gutters and drains in front of their houses to keep their streets free of water. He announced the neighborhood centennial park project at 37th Avenue and Monroe Street is 90% complete and will be completed early this spring.

PUBLIC HEARING

CSO-99-06 Clackamas Education Service District (ESD) Revised Conditions of Approval

Mayor Bernard called the public hearing on the Clackamas Education Service District's (ESD) request to revise the conditions of approval is called to order at 6:35 p.m.

The purpose of this hearing was to consider revising the conditions of approval for CSO-99-06 by modifying business hours and meeting times on the property located at 4011 SE Lake Road.

The applicant has the burden of proving that the modifications are consistent Zoning Ordinance Section 321 – Community Service Overlay, Section 1011.3 – Minor Quasi-Judicial Review, and applicable Municipal Code provision.

All testimony and evidence must be directed toward the applicable substantive criteria just described or other criteria in the plan or land use regulation which one believes to apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue precludes appeal to LUBA based on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court.

Mayor Bernard reviewed the conduct of hearing.

Site Visits: The Mayor and all Councilors have visited the site.

Conflicts of Interest: **Mayor Bernard** announced his wife, Siri Bernard, sent an e-mail supporting the application. He lives next to the site, but he does not have any financial interest in the facility. It will not benefit him. He believes the ESD has been a good neighbor, and he is interest in looking at the proposal.

A member of the audience, who at that point did not identify himself, said he has a problem with the Mayor continuing to speak about the property when his property is associated with it. Anything the Mayor says tends to influence others on the board. He believed the Mayor does have a financial interest because downzoning does affect people. He thought the Mayor should recuse himself.

Mayor Bernard appreciated the comments. He has no financial interest and will not gain financially from this decision.

Councilor Barnes announced she works for the North Clackamas School District 12 and on occasion is paid by ESD for participating in District training. The School District for which she works is part of the Clackamas ESD.

Firestone said the ethics issue is whether or not there is a financial interest in the outcome of the decision.

Mayor Bernard and **Councilor Barnes** stated they would not benefit financially from the decision.

The member of the audience asked if that applies if a member of Council owns property abutting the subject site.

Firestone said that is the Council member's choice to make. The Mayor stated he does not have a financial interest, which typically means an ownership interest or potential share in profits in the property that is the subject of the application. Being a neighbor does not create a direct financial interest. The status as neighbor, in some cases, may so affect someone that the person chooses to recuse oneself. There is no direct financial interest, and the rules recognize the effect on the Council member is the same as it is on a group of people, which in this case is a group of neighbors. In this case, there is a group of people, which is a class of neighbors. The issue is whether the Mayor or any other member of Council can decide the application based on applicable standards without prejudice.

Mayor Bernard said he believes he can do that.

Mayor Bernard asked if any member of the audience wished to challenge any Council member's impartiality or ability to participate in the decision.

Richard Raynor, 12403 SE 41st Court, Milwaukie, objected. The Mayor has a big influence on the Council and has already said his wife is in favor of the application. That is a tip as to what the Mayor is going to say.

Mayor Bernard asked if there were any objections to Council's jurisdiction to consider this matter. There were no objections.

Planning Director John Gessner presented the staff report. He indicated the subject property on a map and its relationship to the neighboring properties. There is access to the site both from Lake Road and 37th Avenue. Most of the parking is located on the southern portion, and Gessner indicated its relationship to the adjoining properties. As part of Council's decision, Clackamas ESD did dedicate and improve a 2-acre area for public park uses. He pointed out the 37th Avenue exit.

Gessner noted 2 date corrections to the staff report. Page 1 should read, "On September 19, 2000, the City Council approved Clackamas ESD's request ..." Page V.4 should read, "... ESD conducted the study, which was accepted by the Council on June 18, 2002 ..."

The Clackamas Education Service District (ESD) is requesting to expand the frequency of meetings and the number of persons allowed to attend for a trial period that would expire May 31, 2004. The original limitations had a lot to do with neighborhood traffic concerns. The Lake Road Neighborhood District Association (NDA) because of traffic concerns on Lake Road and 37th Avenue, appealed the initial application. When the City Council adopted its findings, the meeting times ESD requested for the approval purposes were specified so there would be no questions about when daytime and nighttime uses of the site would be. Additionally, Council wanted assurance the original traffic analysis was reliable.

The Council must use the public benefits test under the City's community service overlay (CSO) regulations to make its decision. There are essentially 2 parts to the test: (1) Is it in the public interest; and (2) Will the public benefits be greater than the potential adverse impacts of the use. Staff identified the possibility of adverse impacts related to additional traffic and additional nighttime activity such as lighting and noise in the parking lot. These are possibilities, however, the Lake Road NDA provided written support of the application. There has been a relative lack of complaints to the planning department, and the probability of there being adverse impacts is relatively low at this point. Staff believes the application complies with the public benefits tests. It is further recommended, if City Council decides to approve the application, that the decision be revocable if there are persistent problems. Staff rarely makes this type of recommendation, but it feels generally comfortable with the proposal.

Gessner concluded that staff believes the application complies with the public benefits test, and that the benefits will exceed the adverse impacts. Staff recommends approval with a revocability provision.

Councilor Lancaster asked how many complaints the City has received to date.

Gessner responded when ESD originally occupied the site there were complaints about lighting in the parking lot.

Councilor Lancaster understands the Lake Road NDA reviewed this request and has given its approval.

Gessner said the packet contains a letter of endorsement signed by the Lake Road NDA officers.

Correspondence: There was no additional correspondence other than what was included in the packet.

Applicant Testimony: **David Campbell**, ESD Superintendent, 4011 SE Lake Road, Milwaukie. There have been a number of occasions in which teachers from the North Clackamas School District and others have had a desire to be involved in coursework ESD could create and provide. The difficulty is that teachers' time is their most scarce resource. The further they have to go for scheduling those types of classes, the more difficult it is for them to take advantage of the offerings. This facility offers excellent meeting rooms that can be used for those types of programs for teachers, and this is one of the reasons for the request.

ESD also gets requests from other groups, for example the Lake Road NDA, who would like to use the facility. The NDA has held one meeting there, and that was the extent of what could be allowed under the current conditions. ESD believes the facility would serve neighborhood groups like this very well as long as meetings were maintained and limited. ESD also gets requests from organizations like the Oregon School Board Association to hold special regional meetings. It would be a great benefit to school board members to be able to attend meetings there. All of these functions add benefit to the community in that attendees use local services such as restaurants and service stations.

When ESD moved into the facility 2 years ago, it pledged to be the best neighbor it could be. In keeping with that pledge, ESD is seeking a trial period from the time the City Council makes its decision to May 2004 with periodic reviews with the Lake Road NDA to make sure problems have not been created for the neighborhood. ESD believes the traffic pattern for staff and others using the building have not and likely will not create a traffic problem. Campbell said ESD is requesting a trial period and believes the value would be significant for the public schools in the area.

Councilor Stone said the letter states it would be extremely rare for attendance to exceed 100 people; however, that is what is being requested. If that is rare, what would be a more common average?

Campbell said generally speaking the meetings would be for a group of 20 – 25 teachers. Occasionally, parent groups wish to meet in the facility with the early childhood program. Those groups might number 30 – 40 at the most. Since ESD has been there, it has never had a meeting that had 100 people. There could be an occasion in which that many school board members might attend. During the trial period, parties will be able to determine if those numbers have an adverse impact.

Councilor Lancaster understands the request is to change the evening time from 6:00 p.m. to 8:30 p.m. Is that to accommodate the schedules of the additional people or more programming?

Campbell responded that is to accommodate teachers' schedules. Typically, ESD tries to schedule a one-day session for 5 hours rather than one-hour sessions for 5 days. The ESD would be allowed that kind of flexibility.

Councilor Barnes asked if there would be user fees.

Campbell said it depends on the group. For example, the Lake Road NDA would pay no user fee. If a group outside of what ESD would consider regular use, a fee might be charged. More likely ESD would not allow such a group to use the facility. He noted these fees have been in effect for Marion Hall, but in reality groups have not met that use standard for a long time.

Councilor Barnes discussed her experience at that facility is that the parking lot is very dark. She understands the neighbors' concerns about lights but is worried about problems with its being so dark.

Campbell commented staff has expressed similar concerns, so some ground level lighting has been installed. ESD believes it can deal with the lighting issues that way without having to turn on the larger lights. The one thing ESD has agreed to with the neighbors is that the lights will not be left on and shining into homes late at night, and he feels ESD can deal with that.

Councilor Barnes noted it is difficult, especially in the evening, turning left from Lake Road to access the facility.

Campbell said a left turn from Lake Road is not supposed to be done at all.

Councilor Barnes explained she has been behind people turning left and has been delayed. Is there a way to make it clearer that left turns from Lake Road to ESD are not allowed?

Campbell said it has been made very clear to ESD staff and others using the facility that they are not allowed to come off Lake Road with a left turn. They are welcome to use Lake Road from east to west and make a right turn. ESD staff is also told they are not supposed to leave the site by making a left turn onto Lake Road. It may happen on occasion, but he does not believe it is ESD staff or visitors. On rare occasions, drivers use this as a cut through. ESD has asked neighbors to let them know when they see cars turning inappropriately.

Councilor Loomis asked that ESD keep the City informed of meeting schedules and anticipated attendance during the trial period.

Campbell said ESD would be pleased to share this information with the City Council as well as the NDA.

Councilor Lancaster asked the typical starting time for evening meetings.

Campbell said the ESD Board meeting starts at 6:30 p.m., and the North Clackamas School District Budget Committee met at 7:00 p.m. last year. Typically, outside groups meet at 7:00 p.m.

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Neutral Testimony: None

Testimony in Opposition: **Richard A. Raynor**, 12403 SE 41st Court, Milwaukie. He provided history on the facility because only one City Council member sat through the last variance application on this property. It is really important to go over what happened. This is R-10 property, and to the best of his knowledge, it is the most valuable property in the City of Milwaukie. As someone said in the previous discussion of the foster home, this is a lovely neighborhood. He personally looked all over the area before he settled there, and he would like to keep it that way.

This property, though he does not know the rationale of the Council at that time, was up for subdivision and houses were going to be built. At the time growth was a "no-no", so they looked for other alternatives. Exactly how this came about, he does not know and is speaking only of what he saw. The Seventh Day Adventist Church wanted to build in the area and got the property. It received temporary permission to go in there although it was R-10 property. Over the course of some time, the Church evidenced the fact that it did not have the funds to both construct and maintain the property. It was like the building of the pyramids. They would have a collection on Sunday, and on Monday, some workers would show up to work for a day. That was it. It went on and on and on. Things like the gravel driveway and dust raised by the construction, for example. They tried, but they did not have the resources.

Raynor did not feel the City really considered the residents at that time. To his knowledge there were no inspections and no final inspection of the property. The Church occupied the facility with no occupancy permit. That is Milwaukie checking into things. Then they had a schism in the Church and decided to put it up for sale. The only bid on it was the ESD. At the time the Jr. High was up for grabs, and the City wanted it. ESD needed some extra space for the Marylhurst people. They could have easily gotten that property and done some joint sharing with the City. But no. They chose to spend millions of dollars on this property. He thinks ESD, a bit arrogantly, bought it without a contingency in the contract that it would receive a variance. It went before the Council, and the Council at the time turned it down. No one is talking about that. Then under appeal ESD came back and said it would do certain things to maintain the residential nature of the property. One was to put in the gate. The second was to put in the park. Mr. Marshall was very enthused he was getting a park for free. One has to note there is no free lunch. Milwaukie pays, or North Clackamas pays. It is just a little green space that they use for lunch. Interestingly enough, there were signs at the entrance of this property that this is ESD property for official business, etc. Just recently, the sign came down, and they welcome people to the property. The gate went in and was good for everybody. It protected the ESD property and stopped any problems at night. The park went in.

Raynor has not really seen any change in the lighting and noted Councilor Barnes's comments on the issue. The lights were so strong, it was like Thomason's car lot in your back yard. People objected to that. This is the problem when you grant a variance

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and allow people to do non-conforming things in a residential area. It is conflicting. You want to go to a meeting and have plenty of light; residents do not want that. ESD agreed to change the lighting in consideration of the residential character of the neighborhood. They really did not do that. Particularly on the entrance strips, the high, bright lights have not changed. He does not know why new variances are being considered when ESD has not met the approval standards of the board before.

The other thing is no one knows how many people are in there. ESD says 30. Raynor was on the property yesterday at 1:30 p.m. and took pictures. There were 72 cars in the lot, and they were coming and going. That is not 30 people. There are over 100 cars there at any given time. Interestingly enough, on 9/11 he saw the lights on with over 100 cars in the lot that evening. What was that about?

This is a residential neighborhood. We look to you to maintain these residential areas. It is not whether ESD should have these meetings. He should say, also, he does not see Lake Road represented. They presented very strongly against this at both meetings. They presented strong objections and never gave in. What has happened now is, like everything else, things change and people change. They are not interested in these things. They were strongly against it primarily because it does not fit. Whether it is nice to rent out facilities in the evening for Boy Scouts or whatever. That was not the issue. The issue was these people were in Marylhurst, and they said they were getting kicked out or it did not fit their needs anymore. They wanted to move a very small group of about 30 people. In their letter dated September 23, 1999, ESD stated not all of the 109 employees would be working at the Lake Road site. ESD goes on to say there will only be 32 full time people. There are over 100 cars at any given time.

It is not a question of being in the public interest. It is what Mr. Marshall said at the time, the residents have a right to what was agreed to when they bought their properties. Raynor believes residents have a right to what was agreed to in the first modification. He was against it at the first hearing; he changed at the second hearing. Councilor Lancaster listened. The question was, who was going to maintain the property? It was a white elephant. It was a huge property that never should have been in the first place. That is the problem with down zoning and non-conforming use. He added the Lake Road association said if you let these people in, this is just the beginning. They will want more. If you look at the plans, they have plans to build on that property. They want to build a complex as they continue to grow with all their programs. They have contracts to rehabilitate drug addicts. They have contracts to rehabilitate felons. The next you know, ESD will want that. They say no, but they have those contracts. When you really consider what happened, it was a down zoning. It was a bad situation. Somebody picked it up who had money. Taxpayers' money to do anything it wants. This Council stood up by first saying no, and then it said sure, we will do it with these conditions. Raynor does not think the conditions should be changing. What next? Pizza parlors? School proms? The point is traffic in the neighborhoods was an issue and non-conforming use in an R-10 zone. He heard people testify the first time that ESD would say things but would not do them. There are over 100 cars back there. Nobody knows what goes on back there except for those who live back there.

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Why is the Lake Road NDA not at this meeting? No one ever asked him what he thought about it. He thinks the Lake Road Civic Association is suffering from the fact it has no one to do the work. Terry did it for years and does not want to do it any more. You do not see a lot of strong people here in opposition. He thinks the people who live there are. It is like the foster home. When something hits home, they jump. People have other things to do. He also pointed out that this thing came up around Christmas the last time when people are going to parties and things and cannot get here. He thinks it is a problem of once a non-conforming is allowed in a residential area for an organization that has unlimited funds, they will continue to press and press and press. They say it is in the public interest, and that is irrelevant.

Councilor Loomis asked Raynor if he attends the neighborhood meetings.

Raynor attended when Centex was going on, but by nature he does not. Theoretically the civic association is illegal. In theory, he is part of the Lake Road Association, but he does not get any information other than what is on the TV channel.

Councilor Loomis recommended Raynor attend the meetings. The City Council does take what the NDAs say into consideration, and the Lake Road NDA wrote a letter of support.

Councilor Barnes noted Raynor lives just down the street from the Lake Road NDA Chair Bob Moore. He is a former teacher and would be happy to talk with him.

Raynor did not wish to comment on Bob Moore. He is not his president. Councilor Barnes is a teacher. The last time this was up for a vote, the Mayor at that time was retired from Multnomah ESD. Guess what she voted for? His property does not abut; it is at the end of the cul-de-sac. Moore wrote a letter saying it was okay when he was head of the Lake Highlands Civic Association. There are only 20 people in that development. Moore wrote the letter saying he was in favor of it. That is not representative. Councilor Loomis's point is people should go to the meetings. Those meetings have been focused on Centex, and a person gets tired of listening.

Dan Blaufus, 12293 SE 40th Avenue, Milwaukie. This is relevant because the headlights shine right on his property. He is delighted to have the ESD as neighbors. Campbell has always been pleasant and responsive, and Blaufus could not be happier. He is not necessarily opposed to the proposal, but he is opposed to the extent of the proposal. If he reads it correctly, the ESD would be allowed to have 20 meetings per night that end at 8:30 p.m. Twenty meetings per night is every weekday of the month except 1 or 2. He thinks this is too much. 100 cars leaving at 8:30 p.m. when his kids go to bed at 8:00 p.m. You have to think about this from the worst case. You have to assume ESD will do the most it is allowed. That is why he has a problem with the 5-month trial period. If there are very few meetings in the next 5 months, and it becomes permanent, then a future ESD superintendent who has grandiose ideas about what he or she wants to do with the programs can go to 100 people 20 days per month. That is too much. ESD wants 4 times as many meetings at night but does not want to count

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the 20 meetings per month that start at 3:00 p.m. and end at 8:00 p.m. That is not counted as a night meeting. That is too great an increase. If ESD needs to have 30 people at meetings, Blaufus thinks it is responsible to parrot back to what is really needed now rather than getting permission to have a meeting everyday until 8:30 p.m. There are negative incentives in terms of the neighbors. He appreciates the fact the Mayor lives in proximity to ESD. He does not object to the ESD; they could not be better neighbors. His concern is the extent of the request. He is not sure looking at the modifications for 5 months will not really teach people anything. One has to assume there will be 100 cars in there 20 days per month. It is not that he does not trust the gentlemen from ESD, but he does not know whom he will be asked to trust 10 years from now.

Applicant Rebuttal: **Campbell** commented on 2 issues. The early childhood staff drives the cars that are in Raynor's photos. Those people work a good share of the time in homes in other locales. On occasion, they are at the facility as a total staff. Those are the instances referred to, and those were not outside groups. There continues to be a perception about programs that never have been ESD's. When on the Marylhurst campus, ESD was in a building next to other programs operated by the state and county that did in fact serve people who had been in other kinds of circumstances such as prison. These have never been ESD's programs. The program people at the site include early childhood education, curriculum instruction, superintendent's office, and fiscal office. He wanted to make that clear for the record.

Additional Staff Comments: **Gessner** had 2 comments. He reminded the City Council that if it does approve the modifications, it is effective only until May 31, 2004. The ESD would have to come back to the City Council to specifically request either an extension or permanent institution of the request. The staff report identifies 3 decision-making options. First, if the City Council agrees the application meets the approval criteria, the option is to approve it. Second, if the City Council believes it does not meet the approval criteria, the option is to deny it. Finally, if the City Council believes the proposal does meet the criteria, conditions can be developed.

Councilor Stone said Raynor raised the issue of the number of vehicles at any given time. According to his numbers, they were in excess of what is allowable. Has the City been monitoring this conditional use and developed data that shows whether or not ESD is in compliance?

Gessner said the City does not; however, he believes the City Council authorized up to 109 employees but did not specify the number of cars parked on the property at any given time during normal business hours.

There were no further questions from Council.

Campbell indicated Gessner's comments about vehicle parking were accurate.

Close Public Hearing: Mayor Bernard closed the public testimony portion of the hearing at 6:55 p.m.

City Council Discussion: **Councilor Barnes** firmly believes the neighborhood associations are the links to City residents. When people have concerns, she would urge them to go to their neighborhood leaders. They are the rank and file who are in contact with the City Council and guide its decision-making. If 3 officers of the Lake Road NDA signed a letter indicating they agreed with the proposal on a temporary basis, she takes that as what they have learned from the residents. She urged anyone having a concern to go to the neighborhood leaders and noted there were 3 at this meeting. They make their presence known at the Council meetings and are in regular contact. The City Council heard from people who are not happy and understands about the lighting issue. Every time she has been to the ESD it has been dark, and it is difficult to see. She does not believe there are a lot of teachers who will want to show up for a meeting at 8:00 p.m. They will be there as soon as the school day is over and meet for an hour or two. She does not believe there will be truckloads of teachers.

Mayor Bernard sees an increase from 2 to 8 meetings.

Firestone believes the point being made was a combination of the increase in monthly daytime meetings and the extension in customary business hours. The assumption being that if a meeting began within the customary business hours it would be treated as a daytime meeting.

Councilor Lancaster noted several things he thought were important. Raynor spoke very well the last time. It speaks highly of him that he came in very negatively and changed because of community input and some cooperative problem solving. In Lancaster's mind, Raynor raised an important issue. When he looks at the request, daytime meetings would increase 30% with a population increase of 400%. That is a huge shift. Nighttime meetings are proposed to increase 400% with about 330% increase in population. This is a huge shift in bodies and activity. Not knowing certain what activities have been, maybe those thresholds are being approached now, but we just do not know it. If we make that kind of quantum shift, there could be a dramatic impact to the neighbors and to the community in terms of traffic. That is why he asked the questions about start times, and he said 6:30 p.m. at the earliest. That is good because he was concerned about Lake Road rush hour traffic. Councilor Lancaster also takes to heart that not only do children need to get to bed early, but also oftentimes people work long hours and need to get to bed early. He has a concern about the 8:30 p.m. time. The increase in hours of operation is 22.7%. There are some significant increases across the board. In terms of the trial period, he takes the point there could be a period of time there is not a lot of increase as the new hours go into effect. He feels it would be more appropriate that the trial period be over an entire education cycle to get a true picture of what the traffic will look like.

Councilor Stone agreed with Councilor Lancaster's comments. Not to discredit the NDA, but there are 3 people who signed the letter who are the officers. Whether or not

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this was raised at a meeting and voted on, she has no idea. These numbers seem pretty significant when you look at them from a percentage basis. She has some reservations about that as well. Councilor Stone did not know if there was anything in place that the Council could condition, such as a meeting that was going to last late or if there were more people in attendance than normal. Maybe that is an option.

Councilor Loomis will probably vote in favor. The NDA did vote in favor of this, and everyone who lives in that neighborhood is a member. If anything comes out of this meeting, he wants people to understand the City Council listens to what the neighborhoods say. He urged people to go to the meetings and be heard because it does have an impact. At this point there have been no traffic complaints whatsoever from the testimony he has heard. Raynor said no one knows what is going on unless you go back there. To Loomis, this sounds like they are doing a good job because the neighborhood is not being disturbed. This is a community, and one has to make decisions. There is land there, and it is valuable. In his mind, if that were developed into housing, all it takes is one bad neighbor to ruin the whole neighborhood. It could be a young or old driver or someone who turns the radio up loud or squeals the tires. From what he sees, those problems are not happening. ESD seems to be a good neighbor. He supported Councilor Lancaster's points about conditions going full cycle.

Mayor Bernard commented he did not know ESD had night meetings, and the facility is in his back yard. He believes ESD does a good job with the lighting on his end. Neighbors were concerned about people going into the property and party and that weeds would grow over the fence. He walks through there all the time, and it is really underutilized. Mayor Bernard was at the Lake Road Highlands meeting when members voted, and those few who attended really had no complaints. He intends to vote in favor of the proposal and would support extending the test period to the end of year.

Firestone said the City Council could approve the full request of just a portion of it. The City Council does have the authority to approve less but not more than requested.

Councilor Lancaster said if the City Council makes this a conditional approval, it must be very clear in the criteria used that determine if approval is acceptable on a permanent basis. Will it be based on the number of complaints from adjacent property owners? Or will it be those who live on Lake Road impacted by traffic? How will the City Council decide if there is not an acceptable trial period?

Mayor Bernard urged people to let Council know about complaints via e-mail, surface mail, or by phone or go through the Lake Road Neighborhood District Association or Lake Highlands Neighborhood Association.

Councilor Loomis asked Campbell to notify the City of meetings, so the police department can observe the area.

Gessner said staff sent out notices to all property owners within 300 feet of the subject property. He suggested the next notice ask for specific complaints or problems with the application so staff can accurately report neighborhood experiences.

Councilor Lancaster likes the aspect of those most affected being in the loop. If the notification process is thorough, Council assumes that no complaints means everything is all right.

Councilor Barnes commented ESD holds training during the summer months, and it is a full calendar year operation.

Councilor Lancaster suggested a full-year trial period with a known start date.

Mayor Bernard understands Council may not add time to the trial period.

Firestone said that is beyond what ESD has asked. Under the circumstances ESD is asking to be allowed to do things it is not allowed to do currently. Typically, an applicant is not granted more than requested. The City Council could re-open the hearing to allow ESD to amend the application to request a longer time. If the City Council did that, it would have to allow people to speak in opposition as well.

Councilor Loomis understands if the request were approved as it is, then in 5 months, the City Council would again consider the modification. He asked if the modifications were revocable at any time during the 5-month period if the criteria are not met.

Gessner said that is correct and is part of the conditions of approval.

Councilor Stone had a question about the number of meetings and the number in attendance. She asked if there would be a way to get data in terms of this trial period to determine what night meetings are being held and how many are in attendance. If the trial period were short, she would want to make sure there is a way to evaluate whether ESD is doing what it says it will.

It was moved by Councilor Barnes and seconded by Councilor Loomis to approve the applicant's request to modify business hours and meeting times and to adopt the recommended findings and conditions of approval.

Councilor Lancaster does not like doing things piecemeal. He asked how long it would take if the City Council asked ESD to submit the application correctly.

Firestone understood Lancaster was referring to a longer trial period. The City Council could re-open the hearing now, or it could continue this proceeding and re-open it at a future meeting by asking ESD to submit something in the interim. Again, people would be allowed to testify in support and opposition. If the City Council allows that change to be made at this meeting, it would also have to allow people to address that issue.

Councilor Lancaster said if the City Council were to delay and do it in one action, the affected parties would have another chance to comment.

Mayor Bernard said all the property owners within 300 feet of the site got notice of this hearing and had an opportunity to comment.

Councilor Stone commented on looking at whether or not the City Council wants to re-open the issue to extend the period of time. She asked if the trial period could go through the end of May 2004 and at that time continue the trial period for additional months.

Firestone said that is a possibility. ESD would have to come back to City Council with a new application that would be effective at the end of May 2004 in any case. If ESD chooses not to come back the Council, the use would go back to the current situation. Affected property owners would be notified.

Councilor Lancaster supported that as long as property owners would be notified.

Motion to modify business hours and meeting times and to adopt the recommended findings and conditions of approval passed unanimously.

Mayor Bernard announced that any party with standing might appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights. If you have questions, please call the Planning Department.

OTHER BUSINESS

Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Tree or Tree Limbs – Ordinance, second reading

Mayor Bernard announced the Council has called for the first and second reading by title of an ordinance amending Municipal Code Chapter 8.04 and the first reading of the ordinance was last week.

The city manager proposed an amendment to the language that would read under Section B of 8.04.110 – “Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement cost pursuant to section 8.04.200 C of this chapter, the council may at its sole discretion determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree and/or
2. Assist a low income resident of the city who is responsible for paying the cost of removal and whose income level shall meet the low income eligibility requirement of chapter 13.20. In making this determination, the council shall

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consider using other alternates such as deferred and partial payments to minimize the adverse impact on income.

Mayor Bernard said there were requests to look at low-income assistance.

Swanson said when this ordinance was first considered, the City Council requested a change that was made that evening. That was the amendment he just read, which added language that would require that the City contribute 50% of the cost of removal of a dead, dying, or decaying unsafe tree in the public right-of-way. At the close of the hearing, the issue was also raised of whether or not it was possible to create some assistance for persons responsible for paying for tree removal that might be low income eligible. Over the past couple of weeks, he has spent time thinking about these issues. It appears to him the City Council already has the ability within the nuisance section of the municipal code. Within this section, if the property owner is cited and does not abate the nuisance, then the City has to do so. The cost of that abatement is determined by City Council, and that cost becomes a lien against the property. The City Council has a great deal of discretion in determining that cost that could be 50% of the total cost of the removal. Secondly, the City Council could take into account whether the person responsible for payment is in fact low income. The criteria are identified in other City programs such as water and sewer. There is a Council resolution that adopts the Clackamas County Housing Authority's income requirements for Section 8 housing. Thus, the City does have a recognized standard for determining what low income is. The City Council may adjust costs based on that determination. He also added as part of the language, that the City Council may look at other options such as partial payments and deferred payments.

Swanson said when the proposed ordinance was considered at the last meeting, the City Council requested a change. The amendment he just read added language that would require the City to contribute 50% of the cost of the removal of such tree in the public right-of-way. The issue of creating some assistance to those responsible for removal who might be low income eligible was also discussed. For example, the City could wait for a property to go through an estate preceding.

Swanson believes the lien provisions of the nuisance section do provide the City with an answer to the issues. He prepared language that would appear within that particular section dealing with dead, decaying or unsafe trees or tree limbs within the public right-of-way. He was also careful to state under the low-income provision that the person who must meet the eligibility requirements must be responsible for paying for the removal. He wants to avoid the owner of the house as the responsible party from piggybacking on a renter who may qualify for low-income assistance. He tried to develop language that takes advantage of an existing process to deal with both issues without creating a new program somewhere in the code.

Firestone said, assuming the City Council wants to adopt this language, the City Council would need to adopt a motion reconsidering the earlier motion and essentially

withdrawing it. The City Council would then make a new motion for first and second readings then adoption of the ordinance with this language.

It was moved by Mayor Bernard and seconded Councilor Barnes to reconsider and withdraw the earlier motion. Motion passed unanimously.

It was moved by Mayor Bernard and seconded by Councilor Barnes for the first and second reading by title only and adoption of the ordinance amending 8.04.110 – Nuisances, Weeds, Noxious Growth, Dead and Decaying Trees or Tree Limbs with the language as recommended by the city manager.

Councilor Stone wanted clarification on how the City can determine these safety hazards without a city forester. Are there some criteria in place to make the determination?

Code Compliance Coordinator Steve Campbell said there are several options such as an intergovernmental agreement with the City of Portland. The Oregon Department of Forestry has a program that helps identify unsafe trees on public property.

Firestone added other jurisdictions that have city foresters and may be willing to perform the work.

Councilor Stone asked if the criteria and process will be in written format if the City receives a nuisance complaint?

Campbell said the current complaint procedures would be followed. City staff would complete the first level of investigation and contact a forester if necessary.

Councilor Lancaster thought there might be a way to tie this into college curriculum on a no cost basis.

Councilor Barnes commented there is a forestry program through the Sabin Schellenberg Center.

Campbell has looked into that program. Staff will carry out the first level investigation.

Councilor Loomis added there are also limbs that obscure vision.

Mayor Bernard understands the process is notifying the property owner of the nuisance by mail.

Campbell said staff usually tries to make contact with the owner during the site inspection. The benefit of this is to be on site and explain the hazard. Frequently, this is all that is needed. Depending on the cooperation of the property owner, the City then stipulates the number of days in which the property owner must resolve the problem. Staff can take immediate action if the situation is very dangerous.

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Motion passed unanimously.

The city manager read the ordinance for the first and second times by title only with the subsection that was amended. Subsection B of Section 8.04.110 is now amended to read: "Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement cost pursuant to section 8.04.200 C of this chapter, the council may at its sole discretion may determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree and/or
2. Assist a low income resident of the city who is responsible for paying the cost of removal and whose income level shall meet the low income eligibility requirement of chapter 13.20. In making this determination, the council shall consider using other alternates such as deferred and partial payments to minimize the adverse impact on income.

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Loomis, Councilor Lancaster, and Councilor Stone aye; no nays; no abstentions.

**ORDINANCE NO. 1929:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL
CODE CHAPTER 8.04 – NUISANCES.**

The Council recessed for 5 minutes.

City Manager Review Process

Human Resources Director Mary Rowe provided information on the city manager evaluation process. She provided a summary of comments from 9 staff input forms completed by department managers. She also provided the document to the city manager for his self-evaluation and statement of goals for the next year. Council received an appraisal process form and summary of the department head input. Overall the ratings were exceptional in all categories, and there were only 2 responses in the 34 categories that were not rated as "fully effective" or "exceeds". There were 2 areas where 1 person thought Swanson was "developing". Rowe provided a range of ratings for each category and added some of the comments particularly those that were repeated. All comments made by department heads about Swanson's strengths and weaknesses were included. The next phase of the process is for the City Council to meet and consider the information she provided and make its own comments.

The Council agreed to complete the rating forms and return them to Human Resources in 2 weeks.

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Consider Settlement Agreement with Richard Peterson and Union Pacific Railroad Company

City Attorney Gary Firestone presented the staff report. He reviewed the form of the settlement agreement between Richard Peterson and Union Pacific Railroad through their attorneys relating to the nuisance abatement assessment imposed by the City and the lien directed to be placed on the Union Pacific Property. Essentially both Union Pacific and Mr. Peterson agreed to pay \$2,500 each in return for the City's not imposing the lien and taking no further actions. This would put an end to the matter for the City, Peterson, and Union Pacific. The second order of business would be to adopt a resolution repealing the previous resolutions ordering the imposition of the lien.

It was moved by Mayor Bernard and seconded by Councilor Barnes to accept the settlement agreement with Richard Peterson and Union Pacific Railroad and adopt the resolution rescinding the lien.

Mayor Bernard appreciated these 2 parties working with the City and accepting their accountability. He feels this is a fair and equitable distribution of responsibilities.

Councilor Loomis agreed with the Mayor's comments.

Councilor Barnes also agreed. However, part of the responsibility of being a good corporate citizen and good business owner is to step up to the plate when mistakes are made. When one does not, that only reflects on what kind of businessperson one actually is. If one chooses to take from the community and not give back when at fault, then how can that person be trusted to do business in the future? There is another party in addition to Peterson and Union Pacific that did not step up to the plate and that caused great discomfort for staff, residents, and the Council. This person made a mockery of the City's decisions and took them to the radio airwaves. This person did not have the courage to say he made a mistake and pay an amount equal to the other parties involved. She urged people to remember that in the future when thinking about doing business.

Mayor Bernard amended his motion to approve the settlement with Richard Peterson and Union Pacific Railroad and pursue the third party for full damages.

Firestone suggested making that a separate motion.

The motion to accept the settlement agreement with Richard Peterson and Union Pacific Railroad and adopt the resolution rescinding the lien passed unanimously.

RESOLUTION 52-2003:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE DIRECTING THAT NUISANCE ABATEMENT
ASSESSMENT NOT BE IMPOSED AS A LIEN.**

It was moved by Mayor Bernard that the City of Milwaukie pursue full reimbursement for damages in reference to the house that was located on 21st Avenue by the responsible party.

Councilor Barnes would like to continue, with limited expense to the City, to make sure the third party does not walk away with anything less than a gentle judicial reminder that letters and phone calls shall not be ignored.

Firestone said the motion could state something like “move to direct staff to continue to pursue reasonable legal options against any other responsible party”.

It was moved by Mayor Bernard and seconded by Councilor Barnes to direct staff to continue to pursue reasonable legal options against any other responsible party.

Councilor Lancaster, Councilor Stone, and Councilor Loomis were not prepared to support such a motion without further discussion with legal counsel in executive session.

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

Advisory Board Appointment

Mayor Bernard, with Council consent, appointed Scott Cook to the North Main Developer Selection Committee.

Milwaukie Transit Center Working Group Status Report

Planning Director John Gessner presented an update on the working group process over the past several months in the attempt to identify an acceptable location for the transit center. Meetings have been held with neighborhood groups and representatives from the downtown and north industrial property and business owner group. Eight options were identified in the staff report. He showed the graphic of option 2.5 – the Kellogg Lake Option. This option came at the request of the Milwaukie working group in specific response to Option 2.4 – the Post Office Alternative.

Mayor Bernard met with the Kellogg Lake Apartment management, and it is not particularly opposed to the alternative since new sidewalks would be built to his property and street access improved.

Gessner pointed out the land owned by the City just south of Kellogg Lake. There is a footprint developed by the working group and TriMet and Metro staff that would move all of the busses from downtown to this site. The light rail platform originally proposed in the Locally Preferred Option (LPA) behind Milwaukie Jr. High would be shifted to the parking lot behind Milwaukie Lumber.

He provided draft notes from the December 4, 2003 Milwaukie-only meeting. The group identified what it does and does not like about the alternatives and what could be done to remedy the weaknesses. The process is at a point that many of the working group members are eager to get to the narrowing phase. There will be a citywide open house on January 15, 2004 and the community will have the opportunity to review and comment on the options. The Planning Commission will hold public hearings in February 2004, and these comments will be part of its consideration. The Planning Commission will develop a recommendation for the City Council for an April 2004 hearing. The requested action at that time would be for the City Council to take action on the Planning Commission's recommendation for the purpose of forwarding it to the South Corridor Policy Committee for amendment to the LPA.

It is clear in the process that no matter where the transit center lands, there will be tradeoffs. This has been a very complex process because of the opposing opinions. There has been a very deliberate and rational examination of exactly what the tradeoffs and impacts might be, so the community can come together and knowingly say it understands the potential impacts and benefits.

Community Development/Public Works Director Alice Rouyer added the term "Milwaukie only" refers to meetings without TriMet and Metro staff.

Councilor Loomis wants to ensure the recommendation takes into account what is best for the future of Milwaukie. He does not want another sewage treatment plant situation. The vision for what is best is very important.

Gessner said determining what is best is challenging because there are different impacts at each location. It is hoped the working group delivers that message and incorporates it into the recommendation. There have been a couple of exercises to identify in objective terms what the impacts and benefits might mean. The working group participants have been doing their own calculations, and Gessner feels there will be a good sense of what is best.

Carlotta Collette, Ardenwald-Johnson Creek Neighborhood District Association President, 3905 SE Johnson Creek Blvd., Milwaukie. The working group discussed the options endlessly. Early on, the group wanted to reject all of the industrial options largely because, while the busses were out of downtown, they were relocated to the middle of one of Milwaukie's few industrial areas. This would mean the loss of jobs, parking, and businesses. The neighborhood was concerned about cut-through traffic trying to reach the northern section. Many were concerned that the 2 options would just be the same headaches of the busses idling downtown. She feels the Kellogg Lake site

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would alleviate the downtown concern and create a nice focus on the south end of downtown. It is close enough to downtown that people would be safe taking transit while removing the presence in the core area. The working group will probably end up merging some of the options. The group had discussed an option that would take some parking out of the Kellogg Lake site and move it to the ODOT site on Ochoco. There will likely be a combination of alternatives that will merge the best of all worlds. The working group has talked all along about what is best for Milwaukie and the options that support the goals of the downtown and riverfront plan and maintain the neighborhoods.

David Aschenbrenner, working group member and Hector Campbell Neighborhood District Association Chair. Working group members have learned a lot in the process of meeting with north industrial business and property owners, citizens, and other stakeholders. The group is working seriously to find the solution best for Milwaukie. The goals are to move the transit center out of downtown and find something that will not be a sewage treatment plant type of solution in 10 years. The people involved have spent a lot of time working on the problem, and the group is making good progress. This is a difficult issue because it looks so far into the future. The options range over such a wide area, there will be a combination of the items that move forward and have the best interest of Milwaukie at its core.

Councilor Stone recalled when the LPA issue first came before the City Council that there was a timeline for moving the transit center.

Aschenbrenner believes it is 2006.

Collette said the Kellogg Lake site could be moved on quickly because the City already owns the site, and a condemnation process would not be needed. The Milwaukie-only meetings have been really exciting, and participants have made strong collaborative efforts. Staff has been fantastic in its support.

Aschenbrenner added to follow up on moving the transit center. That could be done on the Kellogg site relatively quickly as a surface bus layover. The parking structure would be an element of light rail. The transit center could move no matter what happens with light rail.

Councilor Stone noted the options all have light rail incorporated. The community spoke loud and clear in its vote that it truly does not want to spend money on light rail. Yet everything is tied into that. It would be nice if the transit center could be moved as the first goal. Then move on to the next step if and when the voters approve funding.

Aschenbrenner understands from TriMet that could be done in the 2006 scenario.

Mayor Bernard added phase 1 was moving the transit center and is not dependent on a vote. If there is a surface lot, will there be a bridge?

Aschenbrenner understands there will not be a bridge. The goal is to get layover busses out of downtown Milwaukie. There will still be full bus service downtown, but the busses would only make their stops and move on. The South Kellogg site would have a small park-and-ride facility.

Other

Mayor Bernard said he would like to hold over the PUD resolution to a future meeting.

Mayor Bernard announced the Council would hold an Executive Session immediately following adjournment of the regular session under the authority of Oregon Revised Statutes 192.660(1)(h) to consult with legal counsel on actual or pending litigation.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 8:50 p.m.



Pat DuVal, Recorder

AGENDA

MILWAUKIE CITY COUNCIL
DECEMBER 16, 2003

MILWAUKIE CITY HALL
10722 SE Main Street

1924th 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 December 1 & 2, 2003;**
 - B. **Council Meeting Dates – Resolution**
 - C. **Renew Intergovernmental Agreement – Juvenile Crime Diversion Program – Resolution**
 - D. **Council Position on the Formation of an Electric People's Utility District (PUD) in Clackamas County – Resolution (Mayor Bernard)**
 - E. **Purchase Laptop Computers for Public Works**
 - F. **Award Contract for Sewer Master Plan**
 - G. **Award Contract for Brookside Storm Sewer Phase III**
 - H. **Award Contract for Johnson Creek Boulevard HVAC Improvement Project**
- IV. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
CSO-99-06 Clackamas Education Service District (ESD) Revised Conditions of Approval (Gessner)

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

- A. Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Trees or Tree Limbs – Ordinance, 2nd Reading (S. Campbell)**
- B. Consider Settlement Agreement with Richard Peterson and Union Pacific Railroad Company (Firestone)**

VII. INFORMATION

- A. Park and Recreation Board Minutes, September 23, 2003**
- B. Planning Commission Minutes, October 14, 2003**

VIII. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment of the regular session pursuant to ORS 192.660(1)(c) performance evaluations of public officers and employees.

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

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

MINUTES**MILWAUKIE CITY COUNCIL WORK SESSION
DECEMBER 1, 2003**

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

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson, Community Development/Public Works Director Alice Rouyer, and Community Services Director JoAnn Herrigel.

Information Sharing

Rouyer asked for Council direction on a request from Metro Councilor Brian Newman for a letter supporting a pedestrian/bike pathway on the railroad trestle between Milwaukie and Lake Oswego. Council agreed staff should prepare such a letter, but also wanted it to stress the importance Milwaukie's other critical transportation needs like the Lake Road Multimodal Plan.

Mayor Bernard announced the City would fly its flags at half-staff in honor of retired Milwaukie Detective Sergeant Lon Loudenback who passed away on November 28, 2003.

Riverfront Park Naming Contest

Herrigel said over 100 suggestions were submitted for the park naming contest. The Park and Recreation and Riverfront Boards reviewed the names and selected three to forward to the Neighborhood District Associations (NDA) for their input. Three NDAs responded by ranking the names, which are now before Council for the final decision. The top names were Centennial Riverfront Park, Milwaukie Riverfront Park, and Harlow Ferry Park, and in each instance, the NDAs ranked Milwaukie Riverfront Park as number 1.

Mayor Bernard liked Harlow Ferry Park for its historic value. **Councilor Loomis** and **Councilor Stone** liked the simplicity of Milwaukie Riverfront Park. **Councilor Lancaster** agreed although he was surprised no one pursued the theme of the two creeks or the Lot Whitcomb.

Council Meeting Schedule

Swanson recommended the Council return to its previous practice of holding work sessions and regular session on one evening. The Charter provides that the Council meet two times each month in regular session, and the Code requires these meetings be on the first and third Tuesdays of each month unless

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notice is given the public otherwise. In January of each year, Council adopts a resolution setting the meeting dates for that upcoming year. If the situation warrants, the City Council may call a work session on another night and notify the public.

Councilor Stone does not believe long meetings are productive and would like to avoid them.

Mayor Bernard and **Councilor Barnes** were in favor of meeting in work session at 5:30 p.m. then going into regular session at 6 p.m.

Councilor Loomis was in favor of the work session at 6 p.m. and the regular session at 7 p.m. In his conversations with staff, they do not seem to like the two night meetings in a row, and this is something that could be done to help out staff when there is no money. He believes this would also be good for citizens.

The group agreed the work session would start at 5:30 p.m. and the regular session at 6:30 p.m. If there are no items for discussion for a work session, that session would be cancelled.

Mayor Bernard adjourned the work session at 6:25 p.m.

Pat DuVal, Recorder

MINUTES**MILWAUKIE CITY COUNCIL
DECEMBER 2, 2003****CALL TO ORDER**

Mayor Bernard called the 1923rd meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

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

Staff present:

Mike Swanson, City Manager	Steve Campbell, Code Compliance Coordinator
Gary Firestone, City Attorney	Paul Shirey, Engineering Director
Alice Rouyer, Community Development/Public Works Director	

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

Councilor Barnes read the history and prophecy of the Milwaukie School graduates written by Adam Keck in 1908. Milwaukie Museum Curator Madalaine Bohl is preparing this series of historical notes in honor of the City's Centennial Year.

Mayor Bernard announced the City flags would be flown at half-mast honoring retired Milwaukie Detective Sergeant Lon Loudonback from sunrise Friday, December 5 until after his funeral on December 6, 2003. Swanson described the request he made to Governor Kulongoski's Office to authorize this action.

Scott Cook, 16721 SE Blanton, Milwaukie, member of Milwaukie Masonic Lodge, was interviewed for a vacant position on the North Main Developer Selection Committee. Cook was involved with the process in its early phases and agreed to apply as the Milwaukie Masonic Lodge representative to replace Michael Davis who recently resigned.

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Councilor Lancaster asked Cook if he thought he could remain objective in the North Main Redevelopment project and any other redevelopment that might take place in the downtown area.

Cook understands the purpose of his involvement is to ensure Lodge interests are addressed with parking as its primary concern. He will do his best to be objective but will work to ensure Masonic Lodge concerns are heard.

Councilor Barnes noted Cook was not a registered voter and asked him if he intended to do so.

Cook recently moved to this location and intends to register soon. He looks forward to being involved with the North Main Project and becoming re-engaged in the process.

Mayor Bernard believes the Milwaukie Masonic Lodge has been a good partner in the process.

CONSENT AGENDA

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

- A. City Council Minutes of November 17, 2003; and**
- B. Water Vulnerability Assessment Contract Award.**

Motion passed unanimously.

AUDIENCE PARTICIPATION -- None

PUBLIC HEARING -- None scheduled

OTHER BUSINESS

Amend Municipal Code Chapter 8.04 – Nuisances, Weeds and Noxious Growth, Dead or Decaying Tree or Tree Limbs – Ordinance

Code Compliance Coordinator Steve Campbell presented the staff report in which the City Council was requested to adopt an ordinance amending Milwaukie Municipal Chapter 8.04. The current code requires that property owners keep noxious vegetation to 8 inches or less. The purpose of the amendment more clearly defines real property and extends owner responsibility to include right-of-way adjacent to the real property. The City currently asks the property owner to keep down vegetation in the public right-of-way and most citizens comply voluntarily.

The amendment further adds a section regarding dead, decaying or unsafe trees or tree limbs. The dangerous tree code addresses the permitting process but does not give the

CITY COUNCIL MEETING DECEMBER 2, 2003

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City authority to require that the unsafe tree be removed. This ordinance would allow staff to make the determination of whether or not the tree is dead and let the property owner move forward. The proposed amendment gives the City the ability to enforce.

Councilor Stone understands the City can enforce a property owner's removal of a dead or decaying tree on both private property and the public right-of-way.

Campbell said that is what this amendment proposes.

Firestone said, for the City to be able to order the removal of a tree on private property, it must be identified as a safety hazard to the public or to the adjacent property. So if a tree were in the middle of a private property and some distance from the property line, the City's ability would be limited.

Councilor Stone asked if it could be written more specifically.

Firestone advised that the City's ability to adopt a reasonable enforcement policy could be restricted if the ordinance is written too specifically. He noted the provision refers to trees that "present a safety hazard to the public or adjacent property." Firestone feels that it is clear and allows a reasonable amount of discretion while stating the tree must be a safety hazard to the public or property.

Councilor Loomis believes this is needed. There are quite a few trees in the City that have been brought to his attention that are on private property and could cause damage to an adjacent building or injure people. There are problem areas in the public right-of-way where trimming needs to be done. He asked Campbell to describe the process if someone has a tree that needs to be removed.

Campbell said the code enforcement department prides itself on voluntary compliance and working with the property owner. He would first meet at the property and look at the tree. If the owner feels the tree is not a hazard, an arborist can be called to make that determination. He would work with the property owner to make tree removal arrangements. Campbell discussed developing a list of contractors who might offer discounted prices. He would work with property owners who have financial constraints.

Councilor Loomis hopes Campbell will follow up on the idea of creating a list of nearby, reliable contractors with estimated prices.

Mayor Bernard agreed a list of contractors who are licensed and insured would be good but did not believe the City could pre-qualify any tree removal contractors.

Councilor Lancaster has major concerns with creating the list of contractors. The city attorney would probably be quick to point out the serious liability involved with a recommended list or contractual pre-arrangement for discounted services. If the City intends to do that, it will have to develop pre-qualification criteria. The City would be

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responsible if the contractor fails to perform. While the concept of helping property owners is great, the issue is bigger than it appears on the surface.

Firestone said the City can create such a list but cannot be too restrictive. If someone wants to be on the list, they can be added. There could be some filtering by categorizing services such as contractors who have agreed to offer a 10% discount. The City cannot restrict who goes on the list as long as the contractor is willing to do the work and meets the basic qualifications.

Councilor Lancaster felt the Council needed to address the policy issue regarding private property and the manner in which a danger to the public is determined. Although he has no problem asking the general public to take care of right-of-way in front of their property, he is concerned about certain Milwaukie neighborhoods that have very large fir trees in the public right-of-way. If the property owner is asked to take full responsibility for those trees, then a serious hardship could be created for that party. The Council needs to think about establishing some sort of process in which property owners can partner with the City and get assistance in remedying the problem. The property owner is already responsible for getting the permit. He has a problem with putting an undue burden on the property owner under certain circumstances.

Mayor Bernard suggested amending the proposed ordinance to read dead or decaying tree limbs. There are a lot of trees along King Road and even on Main Street that have branches hanging in the public right-of-way. If the tree is identified as a great hazard, the tree could be removed and a lien placed on the property. He does have a problem with removing the entire tree and creating a burden for the property owner.

Campbell said he sees some limitations in doing that. The tree that started this process is full-sized, and a portion is torn off and hanging over Van Water Street. There was nothing in the code to deal with that type of situation. He was not sure limiting the amendment to tree limbs would address fully what staff is trying to accomplish.

Firestone proposed another approach for discussion purposes if the City Council is interested in limiting financial impact on a property owner for tree removal. The property owner could be responsible for an established dollar amount above which the City assumes the balance. There could be qualifications such as who planted the tree and who is responsible for its condition. If there is an old tree in the public right-of-way, the City could assume some responsibility over a certain dollar amount.

Councilor Loomis suggested a 50/50 arrangement between the City and the property owner.

Firestone said the Council could use either a dollar amount or a percentage method.

Councilor Lancaster had been thinking in terms of a threshold at which point City participation is initiated. In case where a resident has planted a tree in the public right-of-way that person should take full responsibility for the outcome. He feels it is a

different story if the tree was there when the property owner moved in. He would like to see the City establish a fair maximum threshold that the property owner pays with the City picking up the balance for large existing trees. He asked for an estimate of how many trees were being discussed.

Campbell has not seen a lot. Branches are the biggest issue. There have been about 6 to 10 trees identified as being unsafe. Most residents think it should be the City's responsibility, but there are budget constraints. Some residents have called with concerns about trees on adjacent properties, and staff tries to work out issues through mediation.

Councilor Barnes asked for a cost estimate to remove a large tree.

Councilor Loomis said there are a lot of variables, so it would be difficult to make an estimate.

Firestone added it would also depend on whether the timber is marketable.

Councilor Loomis is in favor of ceiling cost and then the City and property owner going 50/50 on the balance.

Mayor Bernard understands currently fines for cutting trees in the right-of-way go into the general fund, and he suggested that money go to the code enforcement fund for a tree removal assistance program. He recommended considering this proposal during the budget process.

Councilor Lancaster thought all the money should go to the code enforcement fund to address these types of issues in the future. The money from a marketable tree should go to fund the whole activity. Any balance from the proceeds should be banked in code enforcement for future activities in which the City might have liability.

Councilor Stone favors the percentage idea because every circumstance is different.

Councilor Lancaster thought it might be helpful to set a bottom threshold of \$500.00, for instance, above which the percentage scenario would be initiated. This would be similar to an insurance deductible.

Campbell said this ordinance would most likely address larger trees, so the removal costs will be on the high end.

Councilor Lancaster has no problem with the limb aspect because the cost would not be exorbitant; however, big trees are a different matter.

Swanson suggested re-writing section B by adding: "dead, decaying or unsafe tree limbs that present a safety hazard to public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal and if the owner of the

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real property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal.” He used the term net cost in the event some of the tree is sold for lumber.

Mayor Bernard thought the deductible should be included.

Councilor Lancaster asked what an appropriate deductible amount might be.

Councilor Loomis asked Swanson to read the amendment a second time.

Swanson read section B: “dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal and if the owner of the real property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal.” If Council wants to add the deductible, it would be, “the City shall be responsible for fifty percent (50%) of the net cost in excess of the dollar amount of the deductible.”

Councilor Lancaster said now that he has heard it read, it would be simpler without the deductible.

Mayor Bernard asked if he would be responsible for all the trees on Main Street because he planted them as part of a downtown project. Does this mean the City would be responsible for all the trees on Main Street that require removal?

Campbell said the City would be responsible for 50%.

Councilor Lancaster was willing to drop the deductible with the 50/50 arrangement.

Councilor Stone was fine with removing deductible. Looking at this ordinance amendment, she noted a discrepancy with the staff report that does not mention limbs. She supported the 50%.

It was moved by Mayor Bernard and seconded by Councilor Lancaster for the first and second readings by title only and the adoption of an ordinance amending municipal code chapter 8.04 as amended.

Councilor Barnes is concerned about a retired couple with a dead tree they did not plant. 50% might mean no food or medication for a month. She hopes there is a resource for those in the community who are not wealthy and by no fault of their own have a dead tree in their backyard. There must be a list of contractors who would do this type of work pro bono for certain cases.

Councilor Stone asked how much the tree on Van Water would cost to remove.

Campbell said removal would probably cost \$1,500 to \$3,000. The house, he added, is a rental.

Mayor Bernard is confident the City will make the costs as easy as possible on the citizens while being responsible for the protection of others. He is more concerned about those who live next door and are simply mad at their neighbor, so they complain about the tree.

Campbell discussed the possibility of a payment plan.

Swanson commented if the City abates the nuisance, it becomes a lien against the property and security against the eventual payment. These are nuisances, so eventually the City would determine the cost of the abatement and file a lien against the property. At that point some arrangement could be made.

Councilor Stone understands if property owners cannot pay up front, their portion of the cost of removal would automatically become a lien against the property.

Swanson explained the only reason the City would take action is because the tree constitutes a public safety hazard. Only when a property owner refuses, would the City decide it must take action because the tree is a danger to someone else. The City would declare the nuisance and give the property owner a period of time to abate. If the property owner refuses to take action, then the City has the choice of hiring a contractor and taking action to abate. The amount to abate the nuisance would become a lien against the property. The City would do this because the tree constitutes a public safety hazard, and its continued existence would be a concern. That is the only time the City would act.

Firestone pointed out that if staff decides the tree is a nuisance, the Council would hear any objections from the property owner. The Council would set the lien amount at a later date with or without an objection from the property owner.

Councilor Lancaster asked how frequently the City sets up payment plans.

Campbell said payment plans are set up on civil cases.

Swanson commented the last liens set by Council were about \$400 each.

Councilor Loomis thought some of the contractors might offer a payment plan.

Swanson said if there is a dangerous situation, the City has to act to protect the public, but it will also work with the property owner.

Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Loomis, Councilor Lancaster, and Councilor Stone aye; Councilor Barnes nay; no abstentions. Since the vote was not unanimous, the city manager read the

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ordinance one time by title only with the amendment to section B to read: "Dead, decaying or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. If a dead, dying or unsafe tree in any portion of the right-of-way requires removal, and if the owner of the property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal."

Mayor Bernard announced the second reading of the ordinance will be at the December 16, 2003 City Council meeting.

Councilor Lancaster takes Councilor Barnes's comments to heart being a participant in the Walk a Mile Program, which has dramatically changed his perspective.

Amend Municipal Code Chapter 12.04 – Administration of Sidewalk Construction and Repair – Ordinance

Campbell presented the staff report in which the City Council was requested to adopt an ordinance amending Municipal Code Chapter 12.04 related to administration of sidewalk reconstruction and repair. Currently the code requires that property owners keep sidewalks in front of their properties in good repair in terms of cracked and broken panels or other problems that might cause a tripping hazard. Staff would like to extend that language to read "safe condition." This would require the property owner to keep the sidewalk free of trip hazards such as accumulated leaves, acorns, snow, and other types of debris.

Councilor Lancaster asked if property owners who do not have sidewalks would be held to the same standards for the streets in front of their properties.

Campbell said there is already an ordinance in place that addresses public and private property and conditions that would create a nuisance to pedestrian traffic and not limited to sidewalks.

Councilor Lancaster asked if there is a greater cost in meeting the safe level versus the repair level.

Campbell said the proposed amendment speaks to sweeping debris such as leaves, nuts, and snow off the sidewalks. This is a matter of the property owner's responsibility. Staff regularly cautions people that raking leaves into the street is not acceptable because storm drains become clogged.

Councilor Lancaster said certain properties would have a greater burden such as the streets leading to the new King Road Safeway development. He wants to ensure property owners clearly understand their responsibilities.

Campbell said each month there is a "Code Corner" in *The Pilot* newsletter and is one piece of the education process. The second piece is handing out flyers in the downtown

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area. The intent is not to write citations but to have safe, neat sidewalks. The amendment is to clarify the liability is not upon the City.

Councilor Lancaster wants to make sure the standards are clear.

Councilor Stone asked how many miles of sidewalks there are in the City. There are not really that many. Have there been problems?

Campbell was not sure how many miles of sidewalks are in the City. Debris on sidewalks has been brought to his attention several times. Some people think it looks bad, and others have actually complained of injuries from slipping on leaves, stepping on acorns, or tripping on a tree grate.

Mayor Bernard commented on the tree grates and how some downtown business and property owners do not feel responsible for maintenance.

Councilor Loomis understands this is a safety issue and not a beautification issue. If someone trips, who is responsible?

Campbell replied the current code reads that the property owner is responsible.

Firestone explained the amendment simply adds leaf, debris, snow and ice removal and similar maintenance requirements to the existing physical repair requirements.

Councilor Loomis asked if staff could look into grant programs for sidewalk repair.

Mayor Bernard commented the City of Portland has a contractor repair sidewalks, and if the property owner does not pay the contractor, the cost goes against the property as a lien.

Campbell said there are complaints about the cost of sidewalk repair, but it is important to keep walkers safe.

Councilor Stone asked the average cost of sidewalk repair including the permit cost.

Campbell said it depends on how extensive the repair is. If it involves tree roots pushing up a concrete panel, the tree has to be removed and the sidewalk repaired. One panel with the permit fee included can cost \$500 - \$1,000.

Councilor Stone said it seems this is another issue of hardship.

Campbell said the sidewalk repair is already in the code. The proposed amendment adds maintenance to the property owner's responsibilities.

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Councilor Stone realizes the code is already in place, but there is no way to help those with financial needs.

Mayor Bernard said the Council would look into a grant program or some kind of hardship program for sidewalk repair and tree and limb removal.

Campbell said there are likely some assistance programs available.

Councilor Stone asked if homeowner insurance covers any of this.

Campbell replied insurance companies do not do anything until there is a claim.

Councilor Barnes said the difference for her is a person who deliberately causes a code violation versus a person, who through no fault of their own, is required by the City to do something but does not have the money to remedy the situation. She is uncomfortable with an ordinance that does not offer an option for assistance.

Campbell agreed there needs to be a balance.

Councilor Lancaster would like to delineate between gross negligence and benign neglect.

It was moved by Mayor Bernard and seconded by Councilor Lancaster for the first and second readings by title only and the adoption of an ordinance amending municipal code chapter 12.04

Councilor Stone asked if there would be something in this ordinance about hardship cases.

Mayor Bernard said the proposed ordinance refers to sweeping sidewalks in order to remove debris such as leaves, acorns, ice and snow. The repair section of the existing chapter would have to be amended.

The group agreed to look at that element in the future once staff returns with more information.

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

The City Recorder polled the Council: Mayor Bernard, Councilor Barnes, Councilor Loomis, Councilor Lancaster , and Councilor Stone aye; no nays; no abstentions.

**ORDINANCE NO. 1928:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL
CODE CHAPTER 12.04 – ADMINISTRATION OF SIDEWALK
RECONSTRUCTION AND REPAIR.**

Other

Councilor Barnes thanked Madalaine Bohl for preparing historic moments throughout the City's Centennial year.

Mayor Bernard announced the Council would hold an Executive Session immediately following adjournment of the regular session under the authority of Oregon Revised Statutes 192.660(1)(g) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

ADJOURNMENT

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

Mayor Bernard adjourned the regular session at 7:10 p.m.

Pat DuVal, Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE AND REPEALING RESOLUTION 2-2003.

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

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

WHEREAS, the City Council has determined it is an effective use of time and resources to combine the work session and regular session into one evening;

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

Section 1: The regular City Council session will be held on the first and third Tuesday of each month at 6:30 p.m. in the Council Chambers at City Hall, 10722 SE Main Street or designated alternate location as required by the Public Meetings Laws of the State of Oregon.

Section 2: The City Council work session will be held on the first and third Tuesday of each month at 5:30 p.m. in the Conference Room at City Hall, 10722 SE Main Street or designated alternate location as required by the Public Meetings Laws of the State of Oregon.

Section 3: The City Council may recess and reconvene the work session after adjournment of the regular session if discussion of work session topics has not concluded; or the City Council may announce continuation of the unfinished item or items to a future work session.

Section 4: The City Council may schedule additional work sessions if deemed necessary by the members, and further the City Council may cancel any work sessions if there are insufficient agenda topics to warrant convening a meeting.

Section 5: The City Recorder is directed to provide notice to the public of all City Council meetings as required by law.

Section 6: Resolution No. 2-2003 adopted January 7, 2003 is repealed.

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Section 7: This resolution is effective January 1, 2004.

Introduced and adopted by the City Council on December 16, 2003.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:

Pat DuVal, City Recorder

Ramis, Crew, Corrigan & Bachrach, LLP



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Larry R. Kanzler

Subject: Renew Intergovernmental Agreement – Juvenile Crime Diversion Program

Date: November 20, 2003

Action Requested

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

Background

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

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

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

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

This Intergovernmental Agreement will renew the existing agreement between the City of Milwaukie and Clackamas County for \$13,000 to implement and administer the Juvenile Diversion Program from July 1, 2003 to June 30, 2004.

Concurrence

Milwaukie Police Department
City Attorney

Fiscal Impact

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

Work Load Impacts

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

Alternatives

None

RESOLUTION NO. _____

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

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

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

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

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

Introduced and adopted by the City Council on December 16, 2003.

This resolution is effective on December 16, 2003.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document7 (Last revised)



MEMORANDUM OF UNDERSTANDING

Between Milwaukie Police Department and Parrott Creek Child and Family Services regarding Juvenile Diversion Program.

I. Purpose

This Memorandum of Understanding is entered into by Milwaukie Police Department and Parrott Creek Child and Family Services for the purposes of establishing a cooperative working relationship in the delivery of services regarding the Milwaukie Police Department Juvenile Diversion Program. Such program is established and defined by the attached Intergovernmental Agreement between the Clackamas County Juvenile Department and the City of Milwaukie. (See Attachment 1)

II. Scope of Work and Cooperation

- A. In furtherance of delivering high quality services to certain juvenile offenders, the Milwaukie Police Department will,
1. Forward all police reports to the Juvenile Department for determination of eligibility for the Diversion Program.
- B. In furtherance of delivering high quality services to certain juvenile offenders, Parrott Creek Child and Family Services will:
1. Contact the referred offender and/or parents of such offender within seven (7) days of receiving the referral.
 2. Assess and/or interview the offender and/or parents within fourteen (14) days of receiving the referral. The need for additional interviews and/or assessments will be determined by the Parrott Creek Child and Family Services Counselor but should be accomplished in a timely manner.
 3. Parrott Creek Child and Family Services Counselor to maintain records (case files) of every referred offender. Such records to include:
 - a. Dates of case file openings.
 - b. Dates/times of all assessments, interviews and/or counseling sessions.
 - c. Assigned "consequences" and/or sanctions.
 - d. Progress of offender in participating in and completing assigned "consequences" and/or sanctions of final disposition.
 - e. Case closure indicating successful completion by the offender or referral to the Clackamas County Juvenile Department.
 4. Meet with Milwaukie Police Department and Clackamas County Juvenile Department representatives as necessary.

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III. Compensation

CLACKAMAS COUNTY has agreed to pay the City of Milwaukie an amount not to exceed \$13,000 for the services outlined in the attached Intergovernmental Agreement (Attachment 1).

The City of Milwaukie agrees to pay Parrott Creek Child and Family Services the same amount they (Milwaukie) receive from Clackamas County for this program after such funds are received.

IV. Liaison Responsibility

~~Annick Benson~~^{A 15} or other mutually agreed upon employee from Parrott Creek, and Captain James Colt, Milwaukie Police Department, will act as liaisons for this project. Ellen Crawford will act as liaison from the County.

V. Special Requirements

- A. Parrott Creek Child and Family Services and the City of Milwaukie Diversion Program agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations.
- B. The City of Milwaukie and Parrott Creek Child and Family Services each agree to protect and save the other, its elected and appointed officials, agents and employees while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the governmental unit's employees or third parties on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts of omissions of the governmental unit's employees, subcontractors or representatives under this agreement.
- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this agreement, provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- D. Access to Records. The COUNTY, the State of Oregon and the Federal Government and their duly authorized representatives shall have access to the books, documents, papers and records of the City of Milwaukie Diversion Program which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts and transcripts.

VI. Amendment

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

VII. Term of Agreement

This agreement becomes effective upon acceptance by all parties and is scheduled to terminate on June 30, 2004.

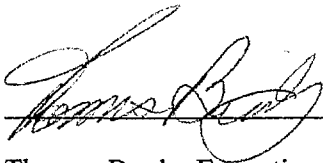
This agreement is subject to termination by either of the parties when thirty (30) days written notice has been provided. Notwithstanding the termination provisions in this agreement, it is the intent of the parties to continue the project indefinitely.

Upon termination of this agreement any unexpended balances of agreement funds shall remain with the City of Milwaukie.

CITY OF MILWAUKIE

PARROTT CREEK CHILD AND FAMILY SERVICES

Mike Swanson, City Manager Date



Thomas Brady, Executive Director Date

7-29-03

(FY'04)
INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
CITY OF MILWAUKIE

I. Purpose

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

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

II. Scope of Work and Cooperation

A. The CITY OF MILWAUKIE agrees to:

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

B. The COUNTY agrees to:

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

INTERGOVERNMENTAL AGREEMENT

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

III. Compensation

The COUNTY agrees to pay the City of Milwaukie an amount not to exceed \$ 13,000 for the services outlined in Section II.A.

Interim payments shall be made on the basis of requests for payment submitted as follows:

* \$3,250 for each quarter pending receipt of an acceptable quarterly report

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

Rodney A. Cook, Director
Office for Children & Families
506 12th Street
Oregon City OR 97045-1629

IV. Liaison Responsibility

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

V. Special Requirements

- A. The COUNTY and the City of Milwaukie agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. The COUNTY and the City of Milwaukie agree to indemnify, save harmless and defend each other, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the City of Milwaukie or Clackamas County employees, subject, where applicable, to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7. The conditions described in the Intergovernmental Agreement supercede examples described in exhibits 1 through 3.
- C. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this contract shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this contract; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- D. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the City of Milwaukie which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.
- E. This agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

VI. Amendment

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

VII. Term of Agreement

This agreement becomes effective when this contract is signed by all necessary parties, but not prior to July 1, 2003. This contract will terminate June 30, 2004.

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

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

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GOVERNMENTAL UNIT
CITY OF MILWAUKIE

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

By

Signing on Behalf of the Board:

James Bernard

Name (Typed)

Irene Fischer-Davidson, Director
Department of Human Services

Mayor

Title

Date

Date

10722 SE Main

Street Address

Milwaukie OR 97222-6537

City/Zip

(503) 786-7555

Phone Number

93-6002212

TIN, FIN or S.S.#

Approved as to Content:

Gary Firestone, City Attorney

Rodney A. Cook, Division Director

Date

Date

Ken Pagano, Police Chief

Date

EXHIBIT 1

SCOPE OF WORK AND PERFORMANCE STANDARDS

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

INTERGOVERNMENTAL AGREEMENT

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1st Quarter, Jul 1 – Sep 30: due on Oct 31, 2003
2nd Quarter, Oct 1 – Dec 31: due on Jan 30, 2004
3rd Quarter, Jan 1 – Mar 31: due on Apr 30, 2004
4th Quarter, Apr 1 – Jun 30: due on Jul 30, 2004

6. **Reflect and Incorporate Diversity**
 - AGENCY, in order to provide programs and services that meet the needs of diverse cultures and people with disabilities, shall complete and submit the Cultural Competency Assessment and Action Plan as required by OCF.
 - AGENCY, in order to provide programs and services that meet the needs of girls, shall complete and submit the Gender Specific Services Assessment and Action Plan as required by OCF.
7. **Internal Controls**
 - AGENCY shall submit a completed Annual Fiscal Capability Assessment to OCF on or before October 31, 2004.
8. **Funder Recognition**
 - AGENCY shall demonstrate good faith efforts to acknowledge the COUNTY's Commission on Children & Families when communicating with media representatives and when creating and distributing flyers describing services, workshops and other contract related details.
9. **Resource Expansion**
 - AGENCY shall demonstrate good faith effort to secure other funding to increase program capacity, enter into collaborative efforts and initiatives, and/or decrease dependence on long-term Commission on Children and Families funding.
10. **Use of Grant Funds**
 - No grant funds shall be used, directly or indirectly, to promote or oppose any political committee, or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.
11. **HIPAA Compliance**
 - If the work performed under this Contract is covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), AGENCY agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, if the work performed under this Contract is covered by HIPAA, AGENCY shall comply with the following:
 - i. Privacy and Security of Individually Identifiable Health Information. On or after April 14, 2003, AGENCY, its agents, employees and subcontractors shall protect individually identifiable health information

obtained or maintained about Department's clients from unauthorized use or disclosure, consistent with the requirements of HIPAA. This Contract may be amended to include additional terms and conditions related to the privacy and security of individually identifiable health information.

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

12. **Diversion Panel Cases**

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

13. **Oregon Juvenile Crime Prevention Screen/Assessment**

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

14. **Clackamas County Diversion Agreement**

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

PROGRAM/PROJECT WORK PLAN - 2003-2004

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Organization: City of Milwaukie			Strategy City of Milwaukie Diversion Panel						
Contact: Chief Larry Kanzler Milwaukie Police Dept. 10722 SE Main Milwaukie OR 97222-6537	Phone: (503) 786-7555 Email: Kanzlerl@ci.milwaukie. or.us	Report For: (N/A) <input type="checkbox"/> 1st Qtr: July 1, 2003 – Sept. 30, 2003 <input type="checkbox"/> 2nd Qtr: Oct. 1, 2003 – Dec. 31, 2003 <input type="checkbox"/> 3rd Qtr: Jan. 1, 2004 – Mar. 31, 2004 <input type="checkbox"/> 4th Qtr: Apr 1, 2004 – June 30, 2004							
Outcome Goal:									
<input type="checkbox"/> Goal 1 Strong Nurturing Families			<input type="checkbox"/> Goal 2 Healthy Thriving Children			<input checked="" type="checkbox"/> Goal 3 Positive Youth Development		<input type="checkbox"/> Goal 4 Caring Communities and Systems	
High level Outcomes: Reduce Juvenile Arrest Rate							Start Date: Upon Approval	End Date: 6/30/04	
Specific OUTCOMES: (With Expected Targets)	Performance Measurement Instrument:	Baseline Data	1st Quarter 7/1/03-9/30/03	2nd Quarter 10/1/03-12/31/03	3rd Quarter 1/1/04-3/31/04	4th Quarter 4/1/04-6/30/04	Total or %	Comments	
1) 95% of these youth will not be referred to the Juvenile Department while participating in the program. [OCCF #3.07.01]	Results to be reported as: # Assessed # Successful % Successful	1) 90% success rate							
2) 80% of the youth successfully completing the local diversion program will not be referred to the Juvenile Dept. for another law violation for a 12-month period of time following termination of services. [OCCF #3.07.03]	Results to be reported as: # Assessed # Successful % Successful	2) 80% success rate							

Exhibit 1

<p>3) 20% or less of the youth re-referred to the Juvenile Dept. for another law violation will be referred for a less serious crime than the original crime. [OCCF #3.07.01]</p>	<p>Results to be reported as: # Assessed # Successful % Successful</p>	<p>3) 20% maximum</p>							
<p>OUTPUTS: (Services)</p>	<p>Performance Measurement Instrument:</p>	<p>Baseline Data</p>	<p>1st Quarter 7/1/03- 9/30/03</p>	<p>2nd Quarter 10/1/03- 12/31/03</p>	<p>3rd Quarter 1/1/04- 3/31/04</p>	<p>4th Quarter 4/1/04 - 6/30/04</p>	<p>Total or %</p>	<p>Comments</p>	
<p>1) By June 30, 2004, 44 youth will be referred for diversion program services with individual diversion agreement to include options not limited to the following services: completion of written essay, participate in counseling, attend drug & alcohol evaluation/education program, attend victim impact panel, complete specified hours of community service, completion of volunteer service, restitution paid, participate in victim offender mediation program, participate in a personal skills class. Program expected to operate through June 30, 2004.</p>	<p>1) Reported quarterly as number of youth referred and number completing individual diversion agreement</p>	<p>1) 70% success rate</p>							

Developmental Activities (Note: Please see Exhibit 1 of the contract for required Developmental Activities)	Measured By and How:	Baseline	1st Quarter 7/1/03-9/30/03	2nd Quarter 10/1/03-12/31/03	3rd Quarter 1/1/04-3/31/04	4th Quarter 4/1/04 - 6/30/04	Total	Comments
1) Primary provider to complete the Office for Children and Families' Best Practice Assessment Survey and Workplan or Gender Specific Services or Cultural Specific Services Self-Assessment. Target: By 12/31/03, complete one assessment and wokplan.	1) The number of assessments and surveys completed per year.	1) NA						
2) Participate in any State or County-sponsored Gender and/or Cultural Specific and/or evidence-based training and/or contractor's meeting	2) Meeting Dates; reported quarterly	2) NA						

Exhibit 1

<p>3) Participants, staff and clients will participate in Juvenile Dept. evaluation & training requirements.</p>	<p>3) Date of training & number attending reported quarterly <u>and</u> Number of pre/post program assessment given reported quarterly.</p>	<p>3) NA</p>						
<p>4) Provider to demonstrate that program is "evidence-based" by 12/31/03.</p>	<p>4) Submitted with quarterly report period ending 12/31/03</p>	<p>4) NA</p>						

INTERGOVERNMENTAL AGREEMENT

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EXHIBIT 2

PAYMENT PROCEDURES AND REPORTING REQUIREMENTS

1. PAYMENT PROCEDURES

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

AGENCY shall submit a quarterly Request for Funds form with their quarterly performance progress report and quarterly financial statement within 30 days of the end of each fiscal year quarter. The quarterly performance progress report shall be in accordance with Exhibit 1. The quarterly financial statement shall be in accordance with the approved budget in Exhibit 3.

Each quarterly request of funds, except for the first, shall be reduced by the amount of unexpended funds during the previous quarter. The COUNTY shall make payment to AGENCY within 45 days of receipt of each funds request submittal.

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

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

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

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

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

2. RECORDKEEPING

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

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

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

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

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

INTERGOVERNMENTAL AGREEMENT

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3. PROGRAM REPORTS

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

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

4. MONITORING

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

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

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

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

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

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

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

5. AUDIT

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

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

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

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

6. CAPITAL PURCHASES

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

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

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

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

EXHIBIT 3

BUDGET

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

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

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

ADJUSTMENTS

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

Major budget adjustments are defined as:

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

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

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

BALANCES

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

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

**Clackamas County Office for Children and Families
Budget Summary (FY'04)**

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

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, OPPOSING THE FORMATION OF AN ELECTRIC PEOPLE'S UTILITY DISTRICT IN CLACKAMAS COUNTY.

WHEREAS, Portland General Electric (PGE) has been serving Oregon for over 100 years; and

WHEREAS, condemnation of this business through establishment of an entirely new government entity with independent taxing powers is a distraction the community does not need as it struggles to maintain existing businesses and government services; and,

WHEREAS, condemnation of private businesses sends the wrong messages to businesses looking to invest in Oregon; and,

WHEREAS, a PUD would add uncertainty to an economy that is strained and would further promote the view that Oregon and Clackamas County are "anti-business;" and,

WHEREAS, a start up government utility would need to go deeply into debt to acquire the facilities of the two companies and such debt would have to be repaid either through rates or through additional taxes; and,

WHEREAS, A PUD condemnation proceeding will result in protracted litigation taking years and millions of dollars to resolve; and,

WHEREAS, creating a new government utility could cost Oregon private sector jobs; and,

WHEREAS, a start-up government utility would own little, if any power generation and would be dependent on the volatile wholesale market for nearly all power supply; and,

WHEREAS, the proposal to form a new People's Utility District in Oregon will increase uncertainty and risk for customers of Portland General Electric; and,

NOW, THEREFORE BE IT RESOLVED, that the Mayor and the city council of the City of Milwaukie oppose the formation of the PUD and the subsequent condemnation and forced government takeover of the assets of the Portland General Electric distribution system in Clackamas County.

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Approved and effective on this _____ day of _____, 2003.

James Bernard, Mayor

ATTEST:

City Recorder



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Esther L. Gartner, Information Systems and Technology Director
Subject: Consent for Purchase of Eight New Laptops for Public Works
Date: December 2, 2003 for December 16th Council Meeting

Action Requested

Authorize the City Manager to sign a purchase order to En Pointe Technologies for the purchase of eight new laptops for the Public Works Division for an amount not to exceed \$26,616.

Background

The Public Works Division (Sewer, Storm, Water, Streets, Fleet and Facilities) has been working on an outdated mobile platform for the past year. The current laptops are just over five years in age and one has already died. The manufacturer no longer supports these laptops and the Information Systems and Technology (IST) Department can no longer acquire sufficient memory, processors and hard drives, nor will the laptops' motherboards support any further upgrades to meet the current software demands of the City. It was decided the Public Works Division should purchase new laptops in order to continue current mobile operations.

The current laptops experienced broken hinges, dents in the frame and broken accessory parts due to the rough nature of the environment with a somewhat fragile piece of equipment. The new laptops needed to have a more rugged casing than standard laptops and be capable of running the City's software for the next four years. The IST and Public Works staff reviewed several models of

III. E. 2

laptops and agreed upon the selection of the Panasonic CF-73 Tough Book model as an excellent replacement for the current failing mobile solution.

The IST Department learned the Clackamas County Sheriff's Department had recently solicited for new laptops for their police vehicles and awarded a bid for the same make and model of laptop desired by IST and Public Works. The City acquired a copy of the County's official RFP and bid award, which stated in section "M" that other governmental agencies could purchase the same or equivalent products from their contract providing they have vendor consent. IST staff contacted the vendor awarded the County's contract, En Pointe Technologies, and they agreed to the City's proposed purchase.

IST did unofficially solicit bids from two other vendors for this exact make, model and configuration and En Pointe Technologies was still able to beat all other bids by several thousand dollars. Therefore, the IST and Public Works Departments would recommend the purchase of eight (8) new Panasonic CF-73 Tough Books from En Pointe Technologies based on the City's ability to purchase off another governmental contract pursuant to PCR 10.115 Purchase Off Contract by Other Public Agencies.

Concurrence

The Sewer/Storm, Water, Streets and Fleet/Facilities Operations Supervisors concur on the selection and recommendation of the new mobile units presented for Council. Tom Averett of the Clackamas County Sheriff's Office agrees to the City of Milwaukie's purchase of mobile units from the County's recent award contract. The City Attorney has also reviewed the legal use of purchasing from Clackamas County's recent contract for the stated laptops as it applies to PCR 10.090 Contract Amendments (Including Change Orders and Extra Work) and 10.115 Purchase Off Contract by Other Public Agencies.

Fiscal Impact

The cost of the laptops is being shared between the Sewer (2), Storm (1), Streets (1), Water (2), Fleet (1) and Facilities (1) groups for the number of laptops required, indicated in parenthesis. The cost per laptop is \$3,327 and includes the Panasonic CF-73 Tough Book base unit and a 3.5" floppy drive. This makes the total cost of eight (8) laptops \$26,616.

This cost is based on the bid award from the Clackamas County Sheriff's Department in August of 2003 for the same make and model laptop. There is a 3.64% percent increase in the City's price over the County's bid due to the upgrade of the processing unit from a 1.4 GHz to a 1.6 GHZ processor. The price difference is acceptable as outlined in PCR 10.090 (b), which states, "...The aggregate cost increase resulting from all amendments does not exceed 20% of the initial contract."

The IST Department will configure the new laptops and transfer existing software and licenses from the old laptops to the new laptops before permanently retiring the old laptops.

Work Load Impacts

The purchase, configuration and customization of the new Public Works laptops have already been scheduled as a project for the IST staff. The IST staff will also properly dispose of the old laptops.

Alternatives

- *Continue the search for a cheaper and less effective laptop solution.*
The solution should not be considered. Over the four to five year life of the laptop it is likely to require additional monies to replace broken parts as was evidenced in the current more fragile laptop units. Purchasing more rugged units befitting the type of work performed by Public Works staff is the better (and more cost effective) choice over time.
- *Do not purchase any laptops at this time.*
This is not a recommended solution. The current laptops cannot sustain the current load of the City's standard software making them incompatible with the City's communication and collaboration platforms. They cannot take the Microsoft security update patches necessary to keep our network secure. They also do not meet the system specifications needed to sustain the new enterprise Geographic Information Systems (GIS) the City is planning to implement later this fiscal year, which has a mobile component. The IST Department has retired one laptop already and repaired two others in order to provide continued mobile operations. Staff can also no longer procure parts to repair these older units.



To: Mayor and City Council

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

From: Jack R. Ostlund Jr., Associate Engineer JO
Paul Shirey, Engineering Director

Subject: Sanitary Sewer Master Plan Award

Date: November 26, 2003 for December 16, 2003 City Council Meeting

Action Requested

Authorize the City Manager to sign a contract for the Sanitary Sewer Master Plan with Crane & Merseeth Engineering/Surveying, in the amount of \$40,873. This amount includes a 10% project contingency.

Background

The current Sanitary Sewer Master Plan was completed in 1994. The plan evaluated and documented the condition of the sanitary sewer system and recommended projects for the Capital Improvement Plan (CIP). A majority of the projects proposed in this plan have either been completed or eliminated from the CIP.

An update to the Sanitary Sewer Master Plan was identified in the 2003-04 CIP. Staff recently advertised a Request for Proposal (RFP) for an update of the 1994 master plan. The update will address the following items:

- Evaluate the current condition of the sewer system.
- Model and evaluate the sewer system for any undersized pipes.
- Recommend CIP improvements for the next 10 years.
- Estimate individual project costs.

III. F. 2 ort -- (Sanitary Sewer Master Plan, RFP Award)

The City received three proposals. The proposals were evaluated based upon the qualifications of the firm and project team, project approach, project understanding, timeframe, and cost. The selection committee consisted of two members of Engineering staff and one member of Public Works staff. Using a point system, the committee recommended Crane & Merseith Engineering/Surveying. The bid summary is shown below:

Contractor	Fee (does not include 10% contingency)
Crane & Merseith Engineering/Surveying	\$ 37,095.00 [\$40,872.75 w/10% contingency]
Wallis Engineering	\$ 50,535.00
CH2M Hill	\$ 55,856.00

Concurrence

The selection committee coordinated with the Director of Community Development and Public Works Operations on this project.

Fiscal Impact

The approved Sewer Fund budget includes \$40,000 for this project.

The total cost for this project is estimated at \$40,873. This figure includes advertising and consulting fees (including a 10% contingency). If the full amount of contingency is needed to complete the project, it will exceed the approved budget by \$873. Funds from the Sewer Fund contingency will be used to supplement any needed additional funds. The Sewer fund contingency has \$315,000 available. The fund is used to cover additional project costs and unanticipated cost overruns.

Work Load Impacts

Managing this project is included in the work plan for Engineering for this fiscal year.

Alternatives

1. Authorize the City Manager to approve the proposal contract.
2. Elect to defer the project to a later date.
3. Take no action.



To: Mayor and City Council

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

From: Ruthanne Bennett, Civil Engineer *RB*
Paul Shirey, Engineering Director

Subject: Brookside Storm Improvements Phase III Bid Award

Date: December 2, 2003 for December 16, 2003 City Council Meeting

Action Requested

Authorize the City Manager to sign a contract for the Brookside Storm Improvements Phase III project with Bedrock Excavation and Construction, Inc., in the amount of \$383,177. This includes a 20% project contingency.

Background

The current Surface Water Master Plan has identified the need for a new stormline on Mason Lane, 42nd Avenue, Fieldcrest, Covell Street, and 43rd Avenue. The installation of 2600 feet of 12"-36" pipe, associated catch basins and manholes on Mason Lane, 42nd Avenue, Fieldcrest, Covell Street and 43rd Avenue will collect surface water to alleviate local flooding of streets, yards and garages. A project vicinity map is attached. Project bid advertising was completed and bids were opened November 25, 2003.

Bids were requested for three alternatives:

Alternative A: rock backfill for the entire project

Alternative B: Controlled density fill on 42nd, rock backfill for other streets

Alternative C: Controlled density fill on 42nd and Mason Lane, rock backfill for other streets

Controlled density fill (CDF), is a concrete slurry and is used to reduce street maintenance cost by providing a more solid sub-base, less conducive to heaving and subsiding. Staff believed that it was important to request bid prices for these alternatives in order to evaluate the possibility of obtaining a higher quality finished product.

The four lowest bids are summarized below:

III. G. 2 rt -- (Brookside Storm Improvements Phase III Bid Award)

Contractor	Bid, Alternative A All Rock Backfill	Bid, Alternative B CDF 42nd	Bid, Alternative C CDF 42nd, Mason
Bedrock Excavation and Construction	\$298,981.35	\$319,314.55	\$411,386.35
N. Santiam Paving	\$422,685.14	\$485,537.71	\$572,420.71
Western Underground	\$431,602.00	\$464,182.00	\$546,382.00
George Schmidt & Son	\$489,115.85	\$509,059.85	\$533,755.85

Twelve bids were received. Bedrock Excavation and Construction, Inc. was the low bidder for each alternative. Staff recommends Alternative B as the best value for the City at \$319,315. Alternative B will reduce future maintenance cost on 42nd Avenue, the busiest street included in this project. In order to account for project unknowns, staff recommends Council approve an additional 20% contingency in the amount of \$63,862, which will be included in the purchase order. Our policy is to recommend a 20% contingency for construction projects.

Concurrence

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

Fiscal Impact

Funding for this project will consist of \$383,177. Funds will be used from both Storm and Street Funds to pay for this project. The Storm Fund will contribute \$362,844 while the Street Fund will provide \$20,333 toward project costs.

The low bid exceeds the \$275,000 budgeted for this project. To address this, staff deferred start of construction of the Meek Street Storm Project until next fiscal year. Design of Meek Street will be completed this fiscal year with construction to follow in July 2004.

Work Load Impacts

This project is part of the Engineering and Storm Division's annual work program.

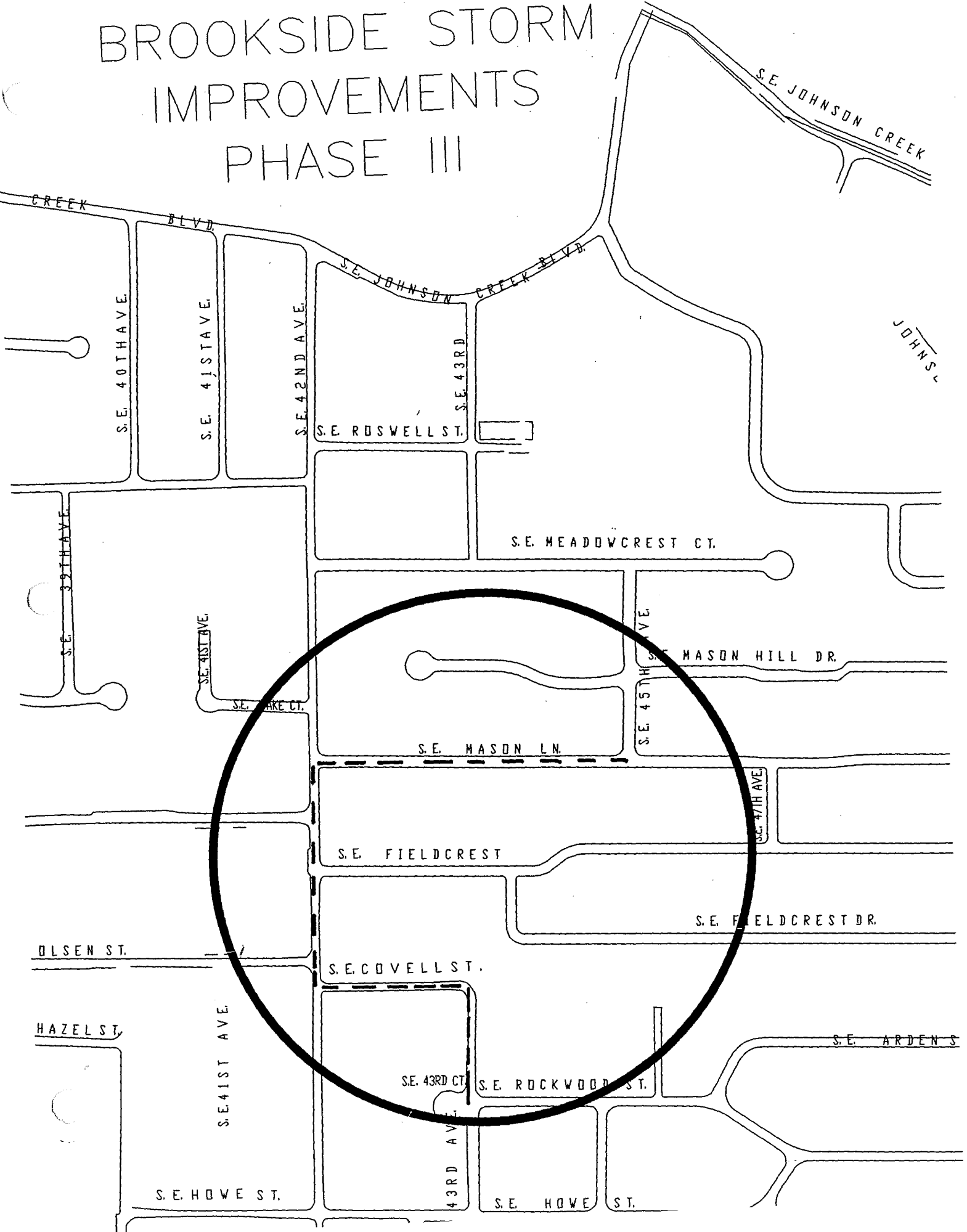
Alternatives

1. Authorize the City Manager to sign a contract as proposed.
2. Elect to do the project at a later date.
3. Take no action.

Attachment

1. Vicinity Map

BROOKSIDE STORM IMPROVEMENTS PHASE III





To: Mayor and City Council

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

From: Kelly Somers, Fleet/Facilities Manager

Subject: HVAC Upgrade Projects

Date: November 26, 2003

Action Requested

Authorize the City Manager to approve purchase orders to Milwaukie Heating and Cooling for HVAC improvement projects that are funded through the Oregon Office of Energy loan proceeds. The two purchase orders total \$24,578.

Background

City Council authorized staff to apply for a low interest loan from the Oregon Office of Energy for heating, cooling and lighting projects in City facilities. Council also authorized the City Manager to sign all documents required to apply for and execute a \$170,000 energy loan from the Oregon Office of Energy. The funds from the loan are being used for projects to reduce energy use and heating and cooling costs at the Library, Public Safety Building, City Hall, and Johnson Creek facility. All projects will reduce energy use, heating and cooling costs, and lighting energy use. They will also improve indoor air quality for the building occupants. The savings over time will be significant. Because of the extent of these projects at these buildings it will be necessary to budget funds to help repay the loan.

These projects were included in the 2003 budget. The projects are:

- 1) Library – Replace two heating/cooling units and upgrade controls
Cost Estimate - \$25,000
Status – Not Completed

III. H. 2 ort – HVAC Energy Projects

- 2) JCB – Replace Three Furnace and Condenser Units, Upgrade HVAC Controls, Outdoor Lighting Upgrade, and Replace Shop Heating System
Cost Estimate - \$80,000
Status – Not completed
- 3) City Hall – Upgrade Controls of HVAC Units
Cost Estimated – \$10,000
Status – Not Completed
- 4) PSB – Replace Motors and Install Motor Drives on HVAC Units and Upgrade HVAC System Controls
Cost Estimate – \$55,000
Status – Not completed

Milwaukie Heating and Cooling has bid on three of the projects and was low bidder on all three. Milwaukie Heating and Cooling has completed one of the projects and is now the low bidder on two additional projects located at JCB in the amount of \$24,578. The total aggregate of the projects is \$36,514, exceeding \$25,000 and requiring Council's approval.

Concurrence

The Director of Community Development and Public Works and City Manager support these projects.

Fiscal Impact

The money will be borrowed from the Oregon Office of Energy as the projects are completed and will be repaid over a 15-year period by the facility maintenance budget. The energy savings that will be achieved by completing these projects will help repay the loans.

Work Load Impacts

These projects are included in the annual work programs for Facilities Staff.

Alternatives

The City Council has the following decision making options:

1. Authorize City Manager to sign purchase orders.
2. Delay projects until a later date.
3. Take no action at this time.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 8.04 -- NUISANCES.**

WHEREAS, Milwaukie Municipal Code Chapter 8.04 defines those acts, conditions or objects related to nuisances within the City of Milwaukie; and

WHEREAS, Section 8.04.110 describes weeds and noxious growth that may be detrimental to the public's health, safety, and welfare; and

WHEREAS, it is further determined in addition to those items previously identified that dead or decaying trees or tree limbs may also be detrimental to the public's health, safety, and welfare,

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

Section 8.04.110 – The Milwaukie Municipal Code is amended to read as follows:

**Section 8.04.110 – Weeds and Noxious Growth, Dead or Decaying Trees or Tree
Limbs**

The following things, practices or conditions on any real property are nuisances. For purpose of this section, "real property" includes any portion of a right-of-way adjacent to the real property.

- A. Grass, thistles, cockleburrs, brambles, wild blackberry bushes, weeds or other noxious vegetation greater than 8 inches in height, that have gone to seed or that are a fire hazard.
- B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. If a dead, dying, or unsafe tree in the right-of-way requires removal, and if the owner of the real property adjacent to the said right-of-way did not plant the tree, the City shall be responsible for fifty percent (50%) of the net cost of the removal.

Read for the first time on December 2, 2003 and moved to a second reading by 4 – 1 vote of the City Council.

Read for the second time and adopted by the City Council on _____, 2003.

VI. A. 2

Signed by the Mayor on _____, 2003.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

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

City Attorney

SETTLEMENT AGREEMENT

The parties to this Settlement Agreement (hereinafter the “Agreement”) are the City of Milwaukie (“City”); Richard Peterson (“Peterson”); and Union Pacific Railroad Company (“Railroad”). All of the above-named entities shall be collectively known as “the Parties.”

On May 11, 2001, the Railroad leased real property located in the City (“Property”) to Peterson on an annual lease for the purpose of storing a residential structure considered to be an historic building (“Building”). The City declared the Building to be a nuisance in January, 2003.

In June 2003, Peterson entered into a contract with the City and Emmert International, Inc. (“Emmert”), whereby Peterson would convey his interests in the Building, Emmert would be responsible for removing the Building from the Property and the City would release Peterson from any outstanding or future costs of nuisance abatement. The Railroad was not a party to that contract.

The City removed the Building from the Property and notified the Railroad in July, 2003 it would be held responsible for the costs of the nuisance abatement (“Dispute”) and that a lien would be placed on the Property in the absence of timely payment.

In October 2003, the City approved a Resolution Authorizing a Lien in the Amount of City Costs for Abating the Nuisance on Real Property Owned by the Union Pacific Railroad (“Resolution”). The City postponed filing the lien, pending settlement discussions.

The Parties have agreed to resolve the Dispute over the nuisance abatement costs as follows:

DRAFT

1. SETTLEMENT TERMS AND CONDITIONS

The City, Peterson and Railroad agree by way of a compromise that the Dispute will be resolved with the payments by the Railroad and Peterson to the City on the following terms and conditions and exceptions:

- A. Peterson will pay Two Thousand Five Hundred Dollars (\$2,500) to the City within 30 days of full execution of the Agreement;
- B. Railroad will pay Two Thousand Five Hundred Dollars (\$2,500) to the City within 30 days of full execution of the Agreement;
- C. The City expressly preserves its ability to pursue legal action against other entities involved in the Dispute, including Emmert International;
- D. The City will not file a lien on the Railroad's property, and will take no further action against Peterson or Railroad in relation to the Dispute, contingent upon receipt by the City of the funds listed in paragraphs 1A and 1B. *As discussed in paragraph 1C of this Agreement, this provision shall not be construed to prevent the City from pursuing other entities in the Dispute;*
- E. Each party shall bear his or its own attorney fees and costs.

2. NO ADMISSION OF LIABILITY

It is fully understood and agreed that this Agreement is a compromise of disputed claims and that the payments and other consideration described herein are not to be construed as an admission of liability by any party, or by any party's attorneys or representatives, by whom liability is hereby expressly denied.

DRAFT

3. FINAL AGREEMENT BETWEEN THE PARTIES

It is further understood and agreed that this Agreement contains the entire agreement between the Parties, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall be final and binding upon the Parties, their insurers, heirs, representatives, executors, administrators, successors and assigns, and shall inure to the benefit of each Party and to the benefit of their respective insurers, heirs, representatives, executors, administrators, successors and assigns.

4. SEVERABILITY

If any of the provisions of this Agreement are declared or determined by any court to be illegal, invalid or otherwise unenforceable, the remaining portions, terms and provisions shall remain in full force and effect.

5. NO RELIANCE ON REPRESENTATIONS

The City, Peterson and Railroad hereby acknowledge that in executing this Agreement they have not relied upon any representations or statements by any other party, any other party's attorneys or any other party's representatives regarding the subject, basis, or effect of this Agreement which is not expressly set forth herein. It is understood that the City, Peterson and Railroad have carefully read this Agreement, know the contents thereof, that it is fully understood and voluntarily accepted and that there is no other agreement, promise or inducement for this Agreement other than the terms and consideration expressed herein.

6. AMENDMENTS

No supplementation, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties.

7. COUNTERPARTS

This Agreement may be executed in as many counterparts as may be deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

VI. B. 4

DRAFT

8. AUTHORITY

Each individual who executed this Agreement warrants his or her authority to do so.

AGREED:

By: _____ Dated: _____
_____, of the City of Milwaukee

APPROVED AS TO FORM:

By: _____
Gary Firestone, OSB No. 87221
Of Attorneys for the City of Milwaukee

AGREED:

By: _____ Dated: _____
Richard Peterson

APPROVED AS TO FORM:

By: _____
Michael D. Walsh, OSB No. 73317
Of Attorneys for Richard Peterson

AGREED:

By: _____ Dated: _____
_____, of Union Pacific Railroad Company

DRAFT

APPROVED AS TO FORM:

By:

Jill Schneider, OSB No. 00161
Of Attorneys for Union Pacific Railroad Company

V:\Clients\UPRR\Milwaukie\Settlement Agreement.doc



To: Mayor and City Council

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

From: John Gessner, Planning Director *JG*

Date: December 5, 2003 for the December 16, 2003 Public Hearing

Subject: CSO-99-06 Clackamas Education Service District (ESD)
Revised Conditions of Approval

Action Requested

Approve the applicant's request to modify business hours and meeting times and adopt the recommended findings and conditions of approval.

Background

On September 12, 2000, the City Council approved Clackamas ESD's request to convert the former church at 4011 SE Lake Road to office uses.¹ Based on neighborhood concerns about traffic and compatibility with surrounding homes, the Council restricted the number, timing, and attendance of meetings. ESD is now requesting that the Council modify those restrictions to allow increased meeting times and attendance for a trial period through May 2004. ESD would seek permanent approval from the Council following the trial period if approved. No site changes are proposed. (See *Attachment 2 – ESD Request and Attachment 3 – Final Order of City Council*)

¹ Council originally upheld an appeal from the Planning Commission thereby denying the proposal on February 15, 2000. ESD provided notice to appeal the matter to the State Land Use Board of Appeals and subsequently entered negotiations with the City resulting in the approval.

V. 2

The following changes to conditions of approval have been requested:²

- a. Increase monthly daytime meetings from 14 to 20, and increase maximum attendance from 25 to 100 persons.
- b. Increase monthly nighttime meetings from 2 to 8, and increase maximum attendance from 30 to 100 persons.
- c. Change customary business hours from “7:00 a.m. to 6:00 p.m.” to “7:00 a.m. to 8:30 p.m.”

The changes have been requested for the following reasons:

- a. Ensure compliance with open meetings laws by making sure that persons who would like to appear at public meetings are not restricted due to attendance limits.
- b. Allow use of the building by community groups including the Lake Road NDA, which has expressed interest in relocating its meetings from Rowe Middle School.
- c. Allow additional opportunities and programs for teacher training.
- d. Allow meetings to be conducted locally to reduce travel cost of using other locations.

Key Issues

1. This application is subject to Community Service Overlay review.³ The Council must find that the use is in the public interest and that the benefits outweigh the potential adverse impacts. It is noted that the Lake Road Neighborhood Association has endorsed the request; see Attachment 4 – Lake Road NDA Letter.
2. A traffic study was conducted following occupancy of the building by ESD and concluded that there were no adverse traffic impacts resulting from ESD’s use of the building.
3. Staff is not aware of any complaints from adjoining residents regarding nighttime use of the facility.
4. Staff believes that as conditioned, the application meets approval criteria and recommends approval through May 2004 as requested.

² The meeting times originally approved were identified by ESD based on its needs at the time.

³ Zoning Ordinance Section 321

Analysis of Key Issues

1. The Council found that the use is in the public interest when it approved the original application in September 2000. Public benefits cited in the Council decision include:
 - a. Service to the community and addition of employment to the city.
 - b. Provision of open space through reservation of a 2-acre neighborhood park.
 - c. Pedestrian access along the interior of the site thereby providing convenient and safe access between Lake Road and 37th Avenue.

2. The use of the site as an office and education training and support center is not changing. However, if the request is granted, its operating characteristics will. Accordingly, the Council must determine whether there are new benefits or adverse impacts under the proposal. The applicant cites the following potential benefits; see also Attachment 5-ESD Correspondence:
 - a. Provide a location for community use.
 - b. Increased service to the education community including local districts, the Oregon School Board Association and the Confederation of School Administrators.
 - c. Reduces travel time and expense for district meetings.

3. Potential adverse impacts associated with the request include increased nighttime noise and parking lot activity. Based on current use, parking lot activity does not seem to be causing problems to abutting property owners. There is a significant supply of parking located at some distance from adjoining residences, which helps reduce impacts. While there is some difficulty with predicting problems of this nature, staff does not believe that the proposed increase in meetings would necessarily result in impacts. Staff does suggest however, that the trial period will be a good measure of whether nuisance impacts will occur. The applicant can address mitigation or changes in site operations to minimize impacts prior to Council authorizing permanent changes, if approved.

4. The applicant has indicated that the additional meetings would take place in the afternoon or would start after the evening commuting rush hour. The Council's approval of CSO-99-06 cited concerns with traffic impacts particularly on Lake Road and required a study be conducted once the site was in full operation.

V. 4

ESD conducted the study, which was accepted by the Council on June 18, 2003, without any need for additional traffic control improvements. Key findings of the study include less trip generation and greater use of the 37th Avenue approach than originally predicted. Based on these findings staff believes that there will be no adverse traffic impacts associated with the request to increase meeting frequency and attendance. However, to ensure that actual operations are acceptable, traffic should be monitored during the trial period for review prior to the Council authorizing permanent changes.

Concurrence

The City Attorney and Engineering Director have reviewed the proposal and are in agreement with analysis and recommendations.

Decision Making Process & Alternatives

The following provisions of the Milwaukie Zoning Ordinance apply:

- 321 Community Service Overlay
- 1011.3 Minor Quasi-Judicial Review

This application is subject to minor quasi-judicial review, which requires the Council to consider whether the applicant has demonstrated compliance with the code sections shown above. The Council has the following alternatives:

1. Approve the application and adopt the recommended findings and conditions in support of approval contained in Attachment 1.
2. Amend findings and conditions in support of approval as needed to comply with approval criteria.
3. Deny the application upon a finding that it does not meet approval criteria.

Attachments

1. Recommended Findings and Conditions of Approval
2. ESD Request and Attachment
3. Final Order of City Council
4. ESD Correspondence

ATTACHMENT 1**Recommended Findings in Support of Approval.**

1. The Council approved CSO-99-06 on September 12, 2000 with the following relevant stipulations:
 - A. Meeting times are limited to 14 daytime meetings per month not to exceed 25 persons per meeting and 2 evening meetings per month not to exceed 30 persons per meeting.
 - B. A traffic study shall be prepared by ESD after occupancy of the building to determine if there is a need for traffic improvements.

On June 18, 2001, the Council accepted the post occupancy traffic study that demonstrated acceptable traffic operations at the two site drives.

2. ESD requests the following changes to the conditions of approval of CSO-99-06 for a trial period through May of 2004 as follows:
 - a. Increase monthly daytime meetings from 14 to 20 and increase maximum attendance from 25 to 100 persons.
 - b. Increase monthly nighttime meetings from 2 to 8 and increase maximum attendance from 30 to 100 persons.
 - c. Change customary business hours from "7:00 a.m. to 6:00 p.m." to "7:00 a.m. to 8:30 p.m."
3. The proposal has potential to result in adverse impacts including increased nighttime noise and parking lot activity. However, the change in meeting times is not expected to result in adverse impacts to neighbors. Disruptions should be minimal since the site has an ample supply of parking located at distance from direct neighbors. The site should be observed to ensure that it will function in accordance with this expectation. The purpose of observation is to identify desirable mitigation or changes to site operations and meeting times.⁴
4. The proposal is not expected to result in adverse traffic impacts since arrivals and departures will not coincide with peak hour traffic conditions. The site should be observed to ensure that the site will function in accordance with this expectation. The purpose of observation is to identify needed traffic improvements or changes to site operations and meeting times.

⁴ Observation of the site as described in findings #3 and #4 can include periodic inspections by city staff, recording complaints by neighbors, solicitation of observations by neighbors, and the like.

V. 6

5. As conditioned, the request is consistent with Milwaukie Zoning Ordinance Section 321- Community Service Overlay Zone. The City Council deemed the use to be in the public interest in its original decision on CSO-99-06. The potential benefits include the following and outweigh the potential adverse impacts:
 - a. Community use.
 - b. Increased service to the education community including local districts, the Oregon School Board Association, and the Confederation of School Administrators.
 - c. Reduces travel time and expense for district meetings.
6. The application was processed in accordance with Milwaukie Zoning Ordinance Section 1011.3.
7. Finding #1 of the September 12, 2000 Final Order of the City Council regarding meeting times, attendance, and daytime business hours is modified by this decision.

Recommended Conditions of Approval.

1. Site operations shall be consistent with Findings #3 and #4 of this decision. The Planning Director shall investigate complaints or actual incidents relating to nighttime disturbances or traffic problems. Persistent problems or complaints shall be investigated for referral to the City Council. This decision may be revoked by the City Council upon finding that the site does not operate as represented by the applicant.
2. This decision terminates on May 31, 2004, but may be extended or made permanent by the City Council under separate application by the applicant.



Clackamas
Education
Service
District

*Dedicated to Excellence
through Leadership and Service*

ATTACHMENT 1

P.O. Box 216
Marylhurst, OR 97036-0216
503 675-4000
503 675-4200 Fax
www.clackesd.k12.or.us

David Campbell
Superintendent

V. 7

September 30, 2003

Mayor James Bernard
Milwaukie City Council
Milwaukie, Oregon

Dear Mayor Bernard and City Council:

On behalf of the Board of Directors and staff at Clackamas Education District (ESD), I respectfully request a trial period modification of the conditional use limitations placed on the ESD office facility located at 4011 S. E. Lake Road.

At the time the conditions were imposed, there were serious concerns expressed by some members of the Lake Road Neighborhood Association that the presence of the ESD at 4011 S. E. Lake Road would create additional traffic issues in the area. Kittleson & Associates, Inc. conducted a follow-up traffic study in March 2002, and reported to the Milwaukie City Council on June 18, 2002, indicating the traffic count was actually less on Lake Road and no higher on SE 37th Avenue than it had been when the original study was conducted prior to occupation of the facility by the ESD. Traffic on Lake Road and SE 37th Avenue may fluctuate somewhat; however, the presence of the ESD has had no negative impact.

It would be our intent, with Milwaukie City Council approval, to conduct the trial period from the date of the action of the Council through May 2004. At that time we would meet with the Association to make sure the changes did not create problems in the neighborhood.

The issuance of the Occupancy Permit was issued based, in part, on the following:

"The building will be occupied during customary business hours, with occasional night time meetings of the ESD Board and North Clackamas School District. The applicant has agreed to maximum limitations on meeting use as follows:

1. 14 daytime meetings per month
2. 25 person maximum attendance at daytime meetings
3. 2 evening meetings per month
4. 30 person maximum evening meeting attendance"

Mayor James Bernard
September 30, 2003

V. 8

Customary business hours were defined as being 7:00 a.m. to 6:00 p.m. I propose for your consideration that customary business hours be redefined as 7:00 a.m. to 8:30 p.m. Language proposed would state that "The building will be occupied during customary business hours, with night time meetings of the ESD Board, North Clackamas School District, education groups, and some neighborhood groups." In addition, the limitations on meeting use would be as follows:

1. 20 daytime meetings per month
2. 100 maximum attendance at daytime meetings
3. 8 evening meetings per month
4. 100 maximum evening meeting attendance

Under public meeting law, all persons who desire to attend a public meeting must be allowed to do so. This would apply to ESD Board meetings, North Clackamas Board or Budget Committee meetings, the Lake Road Neighborhood Association and to any other neighborhood group that might want to conduct an occasional meeting at the ESD. A review of the history of the groups identified would indicate that it would be extremely rare for attendance to exceed 100 persons.

Respectfully submitted,


David Campbell
Superintendent

October 8, 2003

Mayor James Bernard
Milwaukie City Council

Dear Mayor Bernard and City Council:

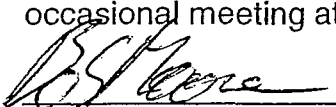
As officers of the Lake Road Neighborhood Association, we are writing in support of the Clackamas Education Service District (ESD) request for a trial period modification in the conditions of occupancy for the ESD facility located at 4011 S. E. Lake Road. We are in support of a trial period extending from the date of the Milwaukie City Council action through May 2004. It is our intent to review the conditions with representatives of the ESD at that time to determine whether a permanent change is acceptable. We write this letter of support because it was our Association that expressed the original concerns about the ESD occupying the facility at 4011 S. E. Lake Road. We have found the ESD to be an excellent neighbor, the problems we were experiencing with inappropriate use of the area prior to the ESD have been eliminated, and traffic has not been negatively impacted by the presence of the ESD.

We are convinced that the additional use the ESD wishes to make of this facility to provide greater service to children and families, to serve all of public education by hosting occasional meetings of education groups, to provide more opportunities for classes and staff development opportunities for the teachers of the school districts in Clackamas County, and to allow neighborhood groups like us to make use of the facility would be a positive step to take. We have read, discussed and agree with the changes being proposed by the ESD. A summary of those changes is as follows:


Customary business hours are redefined as 7:00 a.m. to 8:30 p.m. Language proposed would state that "The building will be occupied during customary business hours, with night time meetings of the ESD Board, North Clackamas School District, education groups, and some neighborhood groups." In addition, the limitations on meeting use would be:

1. 20 daytime meetings per month
2. 100 maximum attendance at daytime meetings
3. 8 evening meetings per month
4. 100 maximum evening meeting attendance

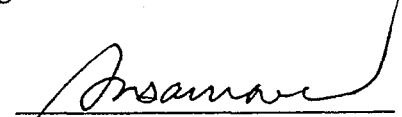
We do recognize that under public meeting law, all persons who desire to attend a public meeting must be allowed to do so. We understand that this would apply to ESD Board meetings, North Clackamas Board or Budget Committee meetings, the Lake Road Neighborhood Association and other neighborhood groups that might wish to conduct an occasional meeting at the ESD.



President



Secretary



Treasurer

IN THE MATTER OF THE
APPLICATION OF CLACKAMAS
EDUCATIONAL SERVICE DISTRICT
FOR COMMUNITY SERVICE
OVERLAY AND TRANSPORTATION
PLANNING REVIEW FOR PROPERTY
LOCATED AT 4011 SE LAKE ROAD

FINAL ORDER OF CITY COUNCIL

CSO-99-06
TPR-99-09

On February 15, 2000 the City Council upheld the appeal against the Planning Commission's decision of Clackamas Education Service District for office use at 4011 SE Lake Road; the Council's decision denied the applications. The City and the ESD entered into mediation and ESD modified its plan to include a two-acre neighborhood park. On July 31, 2000 the Council held a duly noticed public hearing to consider the ESD's modified proposal and adopted a motion to tentatively approve the application subject to adoption of conditions of approval. On September 19, 2000, the City Council approved the application, adopting findings and conditions of approval authorizing Clackamas Education Service District to occupy premises at 4011 SE Lake Road.

The Findings in Support of Approval adopted under this order identify the substantive approval criteria and explain the Council's interpretation of the criteria.

DECISION

The application of Clackamas ESD for Community Service Overlay and Transportation Planning Review is approved subject to the conditions adopted by this order. As conditioned, the modified proposal of Clackamas ESD meets all applicable approval criteria, including Sections 301, 321, 500 and 1400 of the Zoning Ordinance.

FINDINGS

The Council adopts the findings contained in Exhibit 1-Findings in Support of Approval

CONDITIONS

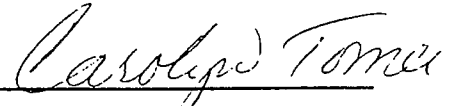
This approval is conditioned on the conditions of approval contained in Exhibit-2 Conditions of Approval.

ANALYSIS AND RESPONSE TO ISSUES

The Council adopts Exhibit 3-Zoning Analysis and Exhibit 4-Response to Appeal.

Approved by the City Council at its meeting held Sept. 19, 2000.

Signed by the Mayor on September 19, 2000



Carolyn Tomei, Mayor

ATTEST:



Pat Duval, City Recorder

"This decision is final and is subject to appeal to the State Land Use Board of Appeals according to the rules of that board."

Exhibit 1-Recommended Findings in Support of ApprovalCSO-99-06 & TPR-99-09

1. Clackamas Education Service District is proposing to occupy the premises at 4011 SE Lake Road and locate the ESD's Superintendents' Office, Early Childhood Education, and Curriculum and Instruction programs. The proposed activities include administrative and program functions including normal expected occupancy of 109 employees. The employee population consists of full time, part-time and seasonal positions. Daytime office hours are expected to be between 7:00 a.m. and 6:00 p.m. Evening use is limited to periodic meetings expected to average twice monthly and involving not more than 30 persons.
2. On January 11, 2000 the Planning Commission conditionally approved applications CSO-99-06 and TPR-99-09 of Clackamas Education Service District thereby authorizing use of the premises at 4011 SE Lake for office use. The decision was subsequently appealed to the City Council. The appeal was processed in accordance with provisions of Milwaukie Zoning Ordinance Section 1002-Time Limit and Appeal from Ruling of Planning Commission.
3. On February 15, 2000 the Council upheld the appeal and denied the land use applications. Thereafter, Clackamas ESD filed notice of intent to appeal the Council's decision with the State Land Use Board of Appeals. Reference is made to the Planning Commission's January 12, 2000 notice of decision and the City Council's March 7, 2000 final order.
4. Clackamas ESD and the City agreed to mediate the City Council's decision to uphold the appeal. As a result of the mediation, ESD modified its proposal to include reservation of a two-acre neighborhood park, construction of walkways, installation of picnic tables, and allowing public use of the walkways, and parking lots when related to park use. (Reference plan entitled "Nature Park" by Ellis Eslick Associates)
5. A public hearing of the City Council was held on July 31, 2000 for reconsideration of ESD's modified proposal. The hearing was conducted and public notice provided in accordance with Zoning Ordinance Section 1011.3-Administrative Provisions, Minor Quasi-Judicial Review. The Council adopted a motion tentatively approving the modified applications CSO-99-06 and TPR-99-09 and directed staff to prepare findings and conditions of approval for final adoption. On September 19, 2000 the Council passed a motion adopting these findings and conditions.
6. Milwaukie Zoning Ordinance Section 321.4.B authorizes the City Council to impose suitable conditions to ensure compatibility with neighboring uses. In addition, Zoning Ordinance Section 321.10 specifies development standards that are designed to ensure compatibility with

neighboring residential uses. The Council finds that conditions of approval are needed and appropriate to ensure the use is compatible with surrounding uses.

7. Milwaukie Zoning Ordinance Section 321.4.D authorizes the City Council to approve a Community Service Overlay Use when the following conditions are met:

- a. Establishment of the use is in the public interest; and
- b. the public benefits of the project outweigh its possible adverse impacts.

8. The proposal is found to be in the public interest pursuant to Zoning Ordinance 321.4.D. Public benefits include the following:

- a. Service to the community and addition of employment
- b. Provision of public open space and improvements address neighborhood needs without public cost of acquisition and maintenance.
- c. Notwithstanding the recreational value of the park, the open space reservation has significant public value since it is protected from development.
- d. ESD is allowing public access through the site along its internal walkways, thereby giving nearby residents convenient and safe access between destinations on Lake Road and 37th Avenue.

9. The Council finds that the project may result in the following adverse impacts. These impacts shall be mitigated to acceptable levels through conditions specified in this decision.

a. Unauthorized use of the park may result in nuisances to neighbors. Potential impacts of park use on neighbors must be controlled and public safety must be ensured. Based on Milwaukie Police Department review of the proposal conditions that address the following issues are warranted.

- 1. posting of signs that give notice of hours of use and park rules
- 2. location of picnic tables to reduce potential noise complaints
- 3. ensure good visibility of the picnic area
- 4. limit hours of operation to daylight hours
- 5. ensure police access through a trespass agreement

Rules governing the park's use and provisions to ensure enforcement are warranted. ESD has offered to enter into intergovernmental agreements that establish use rules, and that authorize police access to the site.

b. The applicant has submitted traffic impact analyses that identify future impacts associated with the proposed use, on-site activities,

and employee population. The use will create new weekday peak hour turning movements of Lake Road. The November 22, 1997 traffic analyses shows that the eastbound left-turn onto the site from Lake Road results in a level of service change from A to C.

- c. Eastbound vehicles entering the site will queue in Lake Road waiting for westbound traffic to clear thereby permitting a left turn onto the site. Stacking of vehicles in Lake Road has the potential to result in new vehicular conflicts at the site drive. In addition it may result in eastbound motorists passing delayed vehicles on the right by using the bike lane. Passing in the bike lane jeopardizes cyclist and pedestrian safety and may also conflict with vehicles turning between Lake Road from Vernie Lane. This condition warrants the implementation of appropriate traffic safety improvements.
 - d. Southbound vehicles exiting the 37th Avenue driveway may result in adverse safety impacts due to substandard road geometry at the top of the 37th Avenue hill. Traffic control implements are warranted and can effectively eliminate adverse impacts by prevention of southbound exits from the 37th Avenue driveway.
 - e. The proposed use and its incidental activities such as landscape maintenance and outdoor lighting has the potential to cause nuisances to surrounding residential properties. Outdoor lighting and landscaping activities can be regulated by conditions of approval to adequately mitigate impacts to neighbors.
 - f. Unauthorized nighttime use of the drives and parking areas such as loitering has a significant potential to create noise and other nuisance to the detriment of nearby residential neighbors. Limiting nighttime vehicle access to the site will reduce the potential for nuisance and minimize related adverse impacts.
10. The public benefits of the proposal outweigh its potential adverse public impacts, which shall be mitigated through conditions of approval that are specified in this decision.
 11. The proposed park is directly related to the overall benefits of the project. Benefits of the park must be maintained in order to preserve the Council's finding that the public benefits outweigh the possible adverse impacts. Accordingly, a condition that requires ESD to continue to provide and maintain the park is warranted. ESD has indicated that it will maintain the park as long as it owns the property.
 12. ESD has offered reduce future development potential of the site by removing the neighborhood park from the lot area available for zoning purposes. To execute this offer, a condition requiring exclusion of the park from total lot area for zoning purposes is appropriate.

13. This Community Service Overlay Zone approval applies to the applicant only pursuant to Milwaukie Zoning Ordinance Section 321.
14. As amended by conditions of this approval, application CSO-99-06 complies with the provisions and standards of Milwaukie Zoning Ordinance Sections 302, 321, 500, and 1400. The complete zoning analysis is contained in Exhibit 1.
15. The appellant has failed to demonstrate that the modified proposal does not meet applicable approval criteria. Findings in response to the appeal and the appellant's testimony at the July 31, 2000 public hearing are summarized in Exhibit 2

Exhibit 2 Conditions of Approval CSO-99-06 & TPR-99-09

1. The final site and development plans shall be consistent with plans submitted for approval. (Reference Sheets A2.0, A2.1 dated December 1999 and Sheet Site Plan- Sheet A1.1 dated November 15, 1999 of Ellis Eslick Architects and Associates)
2. Use of the premises is limited to the hours of operation, activity-types, and maximum employee population specified in the findings of this decision. North Clackamas School District #12 may hold meetings on-site as an incidental use of the building. The combined use of the building by ESD and the School District shall not exceed attendance and other restrictions specified in findings of this decision. This condition does not restrict interior maintenance or janitorial activities.
3. The site shall be developed, maintained, and used at all times consistent with the final approved site plan.
4. The building, site, or use may not be altered without prior review by the Planning Director for determination of consistency with conditions of this approval.
5. Indoor events not associated with activities that are authorized by this approval shall be subject to the review and approval of the Planning Director.
6. The applicant shall submit a report to the City Council no later than April, 2000 identifying the status of compliance with conditions of approval.
7. Motorized equipment for landscape maintenance or other outdoor activities shall not be operated earlier than 7:00 a.m. or later than 7:00 p.m. weekdays and not earlier than 8:00 a.m. or later than 9:00 p.m. on weekends.
8. Parking lot and drive lighting shall be illuminated only during times in which the building is occupied, as specified in the findings of this decision, or as needed for emergency purposes.
9. Mechanical equipment that results in exterior noise shall not be installed without the prior approval of the Planning Director, who shall review the proposal for potential noise impacts to the neighbors.
10. The site shall not be used for outdoor events without prior Planning Commission approval.
11. The site shall not be used for parking by any use other than on-site Clackamas ESD offices and incidental park use without the prior approval of the Planning Commission.
12. The applicant shall be required to install reasonable and appropriate safety devices or make roadway and other traffic improvements necessary to minimize threats to vehicle, pedestrian and cyclist safety resulting from eastbound left turn movement and vehicles passing in the bike lane on

Lake Road. Such improvements may include but are not limited to physical separation of the road and bike lane, crosswalks, signage, traffic control including turn movements restrictions, traffic demand management, and the like.

To determine the type of improvements, needed, the applicant shall monitor traffic at the 37th Avenue and Lake Road driveway and prepare a report identifying traffic conditions including level of service, accident history, pedestrian and bicycle activity. The study shall be conducted during the school year and with full occupancy of the building, but not later than one year from the effective date of this approval.

The report shall specify recommendations for mitigation where warranted by adverse traffic conditions. Improvements required by this condition shall be based on observed conditions and shall be directly related to use of the Lake Road and 37th Avenue driveways. The traffic study shall be reviewed by the City Council in a public hearing within one year of the effective date of this approval thereby ensuring notice to neighbors and opportunity for participation.

Required traffic improvements shall be completed within a reasonable time period to be established by the City Council in its review of the traffic study.

13. Prior to issuance of a building permit, the site plan shall be amended to show details of security gates to be installed at the Lake Road and 37th Avenue driveway entrances. Joint access shall be provided to the Milwaukie Police Department and Clackamas Fire Department. The design of the gate shall be subject to the mutual approval of the Milwaukie Police Chief, Clackamas Fire Marshal, and Planning Director. The type of lock to be used and means of access shall be specified by the Police Chief and Fire Marshal.
14. Prior to issuance of a building permit the site plan shall be amended to show the location of all refuse collection and pick-up areas. These areas shall be located to minimize impacts to residential neighbors.
15. Prior to the issuance of a building permit, the applicant shall submit project costs and value of land and improvements for the purpose of determining the value to be assigned to transportation related improvements pursuant to Section 1400.
16. Prior to the issuance of a building permit, the applicant shall amend the site plan to the satisfaction of the Planning Director to show improvements required by Section 1400 including installation of bike racks and construction of a hard-surface pedestrian connection from the Lake Road right-of-way to the building.
17. Prior to the issuance of a building permit, the site plan shall be amended to the satisfaction of the Planning Director to show required loading areas in accordance with Section 504-Off-street Loading Standards.

18. Prior to issuance of a building permit, the site plan shall be amended to the satisfaction of the Public Works Director and Planning Director showing the following:
 - a. Installation of traffic control channels that restrict vehicle movements to the right turn only at the 37th Avenue driveway.
 - b. Installation of a "right turn exit only" sign at the Lake Road driveway exit.
- ✓ 19. Prior to the issuance of any occupancy approval and subject to Public Works Director approval, a "No Passing In Bike Lane" sign shall be installed at the applicant's cost in an appropriate location near the Lake Road entrance. The location is to be determined mutually by the Public Works Director and Planning Director. Care shall be taken in determining the location to prevent avoidable impacts to abutting property owners.
- ✓ 20. Prior to any approval for temporary occupancy and issuance of certificate final occupancy the applicant shall install a sign indicating "No Parking Fire Lane" on south side of the existing fire access gate located at the end of 39th Avenue.
21. Prior to approval for temporary occupancy the site plan shall be revised to show the following:
 - a. Relocation of picnic tables away from the westerly adjoining residential properties. Picnic tables shall be located no closer to the property line than 25 feet.
 - b. The type, size, and location of landscape planting shall not impede visibility of the picnic area. The site plan shall show landscape plantings that meet this condition.
- ✓ 22. Prior to approval for temporary occupancy, the applicant shall submit for City approval an intergovernmental agreement that specifies use regulations for the park and public use of on-site walkways, and grants police access to the site as needed to enforce those regulations or respond to complaints and illegal or unauthorized activities. The agreement shall specify means to implement the following.
 - a. posting of signs that give notice of hours of use and park rules
 - b. ensure good visibility of the picnic area
 - c. limit hours of operation to daylight hours
- ✓ 23. ESD shall maintain the park and public access along site walkways for so long as this Community Service Overlay approval applies to the property.
24. The two-acre park shall not be included as lot area for zoning purposes.
25. Prior to approval for temporary occupancy, the applicant shall submit for City approval an intergovernmental agreement that executes condition #22, #23 and #24.

- ✓ 26. Prior to approval for temporary occupancy, all park and trail improvements shall be completed and inspected to the satisfaction of the Planning Director.
- × 27. Prior to approval being issued for temporary or final certificate of occupancy, the applicant shall submit to the Planning Director a detailed narrative of all actions taken to comply with all conditions of this approval. The Planning Director shall conduct site inspection and other investigations as needed to ensure compliance with conditions of this approval prior to granting occupancy approvals.

Exhibit 3-Analysis of Zoning Compliance CSO-99-06 & TPR-99-09

Compliance with Section 1400-Transportation Planning, Design Standards, and Procedures

Section 1400 requires that new institutional development and renovations provide transportation improvements in accordance with specified standards. Up to 10% of the project cost must be spent on specific transportation improvements for projects such as ESD's proposal; bicycle and pedestrian facility improvements are the first priority in meeting transportation standards.

Transportation related improvements were not required of the Seventh Day Adventist Church since it was approved before adoption of Section 1400.

The application substantially complies with Section 1400. Conditions for on-site bicycle and pedestrian improvements will bring the project into full compliance. Section 1400 requires compliance with the following additional zoning provisions:

- 301-Residential Zone, R-10; and
- 400- Supplementary Regulations; and
- 500- Off-street Parking and Loading, and Procedures, and
- compliance with any applicable corridor plan.

The proposal complies with applicable provisions of Section 1400 as follows:

1. Section 1404, Access Control Standards and Guidelines.

This section requires site driveways to be designed in accordance with applicable corridor plans, highway plans, and the Milwaukie Transportation System Plan. The Lake Road Multimodal Plan addresses access management. Access management strategies typically seek to improve roadway capacity by controlling the spacing and number of driveways. The plan recommends against consolidation of existing driveways due to the expected adverse property impacts for the comparatively small public benefit gained. Opportunity for access to the site is restricted to the existing site driveways due to lot configuration. The drives are already constructed, and no changes are proposed. Improvements required by this section would normally be required for new construction or major renovation. They are not typically required for minor renovations.

2. Section 1405, Transportation Improvement Standards

Standards for sidewalks, bike lanes, streets, park strips, and right-of-way widths are specified in table 1405. These design features would be considered first-order priorities for new development when right-of-way improvements abutting a site are required. They are not typically required for minor renovations. Since no site improvements are proposed, no improvements under Table 1405 will be required.

3. **Section 1405.1. Right-of-way Dedication and Improvement**

The right-of-way widths along the property's frontage on Lake and 37th exceed minimum required widths. Improvements required by this section would normally be required for new construction or major renovation. This section does not apply to the present application.

4. **Section 1405.2, Streets**

This section specifies that major and minor arterials shall have a landscaped median. This requirement applies to new road construction or major roadway improvements. The potential traffic impacts created by ESD do not warrant installation of a landscaped median. Although, the Lake Road Multimodal Plan recommends installation of medians, selection of median location and coordination with other recommended improvements is expected to occur under a possible future proposal for comprehensive improvements to Lake Road. Street improvements would normally be required for new construction or major renovation. This section does not apply to the present application.

5. **Section 1405.3, Bike Lanes and Bikeways**

This section requires that bike lanes be provided on both sides of public streets. Lake Road is a designated bikeway in the City's Transportation System Plan. Bike lanes are already in-place along the north and south side of Lake Road. There are no bike lanes on 37th Avenue, which is not a designated bikeway. Bikeways would normally be required for new construction or major renovation. This section does not apply to the present application.

6. **Section 1405.4, Sidewalks**

Similar to requirements for bike lanes, sidewalks are required along both sides of public streets. Lake Road is designated a walkway in the Transportation System Plan. There are no raised sidewalks on Lake Road. The bike lanes function as sidewalks. 37th Avenue does not have sidewalks, nor is it a designated walkway. Sidewalk improvements are proposed for Lake Road as part of improvements recommended by the Transportation System Plan. Sidewalks would normally be required for new construction or major renovation. This section does not apply to the present application.

7. **Section 1405.5, Adjustments by the Community Development Director.**

This section, which contains administrative provisions for modification of Section 1405 standards does not apply to this application.

8. **Section 1406.1, General Walkway Standards**

Walkways connecting the right-of-way to buildings are required for the purpose of improving pedestrian accessibility. The site does not now have dedicated walkways between the building and Lake Road and 37th Avenue. Internal circulation improvements are typically reviewed for minor development. Up to 10% of the value of all improvements will be allocated to bicycle and pedestrian

improvements. A provision requiring pedestrian connection to Lake Road is included in conditions of approval.

9. Section 1406.3, Connections between Developments.

Vehicular and pedestrian connections are required between development sites and adjacent commercial, office, and institutional uses. This section does not apply since there are no such neighboring uses.

10. Section 1407, Transit Stops

Transit stop improvements when requested by Tri-met. The section does not apply since the project does not meet traffic generation thresholds for transit improvements.

11. Section 1408, Building Orientation

Maximum building setbacks and buildings entrance oriented to the street are required. This section does not apply to existing development.

12. Section 1409, Redevelopment

Reductions of minimum required parking for redevelopment projects that provided transit improvements are allowed. The site already provides an excess of on-site parking. No transit improvements have been proposed.

Compliance with Section 500, Off-street Parking and Loading

Parking was constructed to meet the needs of the former church. Existing parking is in excess of the minimum requirement for office use. Compliance with parking requirements of Section 500 is demonstrated in the following table. Floor area figures were calculated from floor plans dated "Dec. 99."

Sec. 500	Standard	Floor Area*	Spaces required	Spaces Provided
Office use	1 space per 370 s.f.	26,485 s.f.	72	220 total on-site
Assembly space	1 space per 60 s.f.	4,315 s.f.	71	220 total on-site

Compliance with Section 504 Off-street Loading. The site plan does not indicate required loading spaces, which the site can accommodate. Modification of the site plan modification and installation of loading spaces is required as a condition of approval.

Compliance with Section 302 Residential Zone R-10

The proposal complies with the R-10 zone as shown in the following table.

R-10 Zone	Standard	Existing	Complies?	Proposed
Lot Size	7,000 s.f minimum	9.69 acres	yes	no change
Lot Width	70 ft. minimum	70 ft. +	yes	no change
Lot Depth	100 ft. minimum	100 ft. +	yes	no change
Front Yard	20 ft. minimum	56 ft. +	yes	no change
Side Yard	10 ft. minimum	56 ft. +	yes	no change
Rear Yard	20 ft. minimum	56 ft. +	yes	no change
Height	2 ½ stories or 35 feet whichever is less	32 ft. 6 in.	yes	no change
Building Coverage	30% of lot area maximum.	4.9%	yes	no change
Minimum Vegetation	35% of lot area.	62.8%	yes	no change
Access on right-of-way	35 ft. minimum	70 ft. +	yes	no change
Minimum Density	3.5 to 4.4 units per acre	not applicable	not applicable	not applicable

Compliance with Section 400, Supplemental Regulations

Section 400 contains numerous regulations that affect all types of development. The proposal complies with all applicable provisions of Section 400.

Compliance with Section 321.10 Specific standards for institutions: public/private and other facilities not covered by other standards

1. **321.10.A. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than 20 trips per day are exempted from this subsection 321.10.B**

Applicant: Access to the building is located along SE Lake Road. Vehicular traffic will enter via a private drive between 40th and 41st Avenue from SE Lake Road.

Staff: Access is located on Lake Road and 37th Avenue. Lake Road is a minor arterial and 37th Avenue is a local street. Minor arterials have higher capacity than collector roads. The applicant was advised by staff to prepare a traffic study to identify the potential impacts on nearby intersections.

Traffic has risen a primary concern of Lake Road neighbors. Neighborhood concerns over traffic impacts have been communicated to staff. In response to these concerns, the Planning Commission's public hearing originally scheduled for December 14, 1999 was delayed to allow investigation of related issues. A special meeting with Lake Road NDA representatives, the applicant and staff was held to address traffic issues.

One driveway on Lake Road and one driveway on 37th Avenue now serve the site. The Commission restricted the 37th Avenue driveway exit to right turn only when it approved the Seventh Day Adventist Church. Entering the site at this location was allowed from northbound and southbound directions, but it was to be used on weekends only. The Commission did not restrict use of the Lake Road driveway.

Traffic Impact Evaluation

The applicant's traffic studies address estimated trip generation; distribution of site generated traffic, accident history, and potential traffic impacts and mitigation. The following studies were submitted:

- Kittelson & Associates, Executive Summary-Traffic Impact Analysis, October 27, 1999
- Kittelson & Associates, Traffic Impact Analysis, November 22, 1999
- Kittelson & Associates, Site Access Evaluation/Revised Trip Generation Estimate, December 28, 1999
- Kittelson & Associates, Comparative Trip Generation Estimate, June 28, 2000
- Kittelson & Associates, Access Turning Movement Restrictions Analysis, July 25, 2000

Trip Generation

Estimates of trip generation determine the potential impact to affected intersections. The applicant's November 22, 1999 study estimates 695 trips per day based on an equation method for estimating trip generation. The report also factors an additional 70 trips per day for on-site meetings.

The December 28, 1999 traffic study provides two refinements that reduce the estimate provided in the estimated trip generation to 465 per day based on average trips rates published by the Institute for Traffic Engineering and 315 trips based on actual observations of ESD programs at its Marylhurst Campus. These rates include 70 trips per day associated with meetings.

Potential Traffic Impacts

The traffic studies indicate that there will be no adverse impact to level of service at the studied intersections. Although the estimated levels of service may be acceptable, traffic impacts are expected to occur.

Potential traffic impacts warrant further action to ensure vehicular, pedestrian, and cyclist safety. The majority of site traffic is expected to use the Lake Road entrance due to proximity to commuter routes. The addition of turning movements in Lake Road will cause delays in Lake Road. Eastbound vehicles turning left onto the site will be delayed by oncoming, westbound traffic. The in-street delays may result in delayed west bound vehicles passing in the bike lane subjecting cyclists and pedestrians to unacceptable safety risks. Passing in the bike lane may also result in traffic conflict with vehicles entering or exiting Vernie Lane.

Traffic engineers use "level of service" measurements to describe operation of intersections. Level of Service (LOS) A represents little to no delays, and adequate capacity, safe traffic conditions. LOS F indicates congestion, delays, and may indicate unsafe traffic conditions. The traffic study also indicates site traffic exiting in the afternoon will suffer a LOS E. These delays will occur on-site and should not significantly affect in-street traffic. LOS E is acceptable for unsignalized intersections, but LOS F, the next lowest level is not. Traffic improvements may be required if the site drive is found to operate at LOS F. Future observation of traffic conditions and provide appropriate improvements has been recommended as a condition of approval.

37th Avenue is of particular concern because of its substandard geometry at the top of the hill located south of the site's driveway. Increases in either north or southbound traffic on 37th Avenue between Lake Road and Hwy 224 may result in traffic safety impacts due to road conditions at the top of hill. Accordingly measures that restrict southbound exiting traffic from the site drive are warranted.

Mitigation of Traffic Impacts

The site should be monitored to identify the appropriate actions needed to address potential impacts associated with delays in Lake Road. A condition requiring site correction of deficiencies based on observations is recommended as a condition of approval.

The applicant's July 25, 2000, Access Turning Movement Restrictions Analysis indicates that restricted turn movements onto 37th Avenue would help alleviate concerns about traffic impacts due to road geometry. Clackamas ESD has indicated that it would accept a condition to install turning movement restrictions at the 37th Avenue driveway to alleviate these concerns.

Lake Road Multimodal Plan

In 1997 the City Council amended the Milwaukie Comprehensive Plan by adoption of the Lake Road Multimodal Plan. The plan recommends numerous options for bicycle, pedestrian, access management, transit, and roadway improvements based on expected traffic growth. Recommended roadway improvements include sidewalks, bike lanes, and dedicated left turn lanes.

State transportation funding was sought for this project in 1998, but the project failed to qualify. The next funding cycle begins in three years. It is believed that acquisition of state funding will continue to be difficult. Funding by bond measure would be an alternative to state funds.

Traffic Reduction: Employee Commute Options

Employee trip reductions may result from implementation of ESD's required employee commute options program. The State of Oregon requires employers with more than 50 employees at a site to prepare and maintain an auto-trip reduction program. These programs, (known as Employee Commute Options or ECO), are intended to reduce work based auto trips through employer provided incentives or work-program features. Methods to reduce employee auto trips include car pooling, on-site cafeteria, bus stop improvements, transit use bonuses, and guaranteed rides home in the case of emergency or other need. Clackamas ESD currently has an ECO program at its Marylhurst location and will be required to implement one at the Lake Road site.

Traffic Reduction: Transit Availability

Employee trip reductions are facilitated by close availability of bus service. Eastbound and westbound stops for Tri-Met route 29-Bus service are located on Lake Road at and opposite the site driveway. Stops are made on the ½ hour during morning and evening peak commuting periods. Route 29 runs between the Milwaukie Transit Center and Clackamas Town Center. Transfers to other routes are available at a number of stops. (Source: Tri-Met, "Your Guide & Map, Bus•Max, September 13, 1998")

Neighborhood and Agency Review

The proposed development plans and traffic study (November 22, 1988) were sent to the Lake Road NDA, Clackamas County Department of Transportation and Development, and Oregon Department of Transportation (ODOT) for review and comment. Sonya Kazen of ODOT Development Review returned verbal comments to staff indicating ODOT had no concerns with the application. Chris Christofferson of Clackamas Transportation and Development has also verbally indicated that their department has no concerns with the proposal.

2. **321.10.B. Utilities, streets, or other improvements necessary for the public facility or institutional use shall be provided by the agency constructing the use.**

Applicant: No major changes are proposed for utilities, streets, or any other improvements.

Staff: The previous property owner has installed all site improvements. The site plan indicates there are no proposed changes to any utility, street, or other exterior improvements.

3. **321. 10. C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.**

Applicant: The building size and height and lot size will remain as they are right now. We don't plan to make changes to the exterior of the building or lot size.

Staff: All setbacks comply with this provision. The minimum yard setback is 56 feet. All other setbacks exceed 100 feet.

4. **321.10.D. The height limitation of a zone may be exceeded to a maximum height of 50 feet provided subsection 321.10.C is met.**

Applicant: The height of the existing building is thirty-two feet, six inches. We do not plan to change this.

Staff: The existing building complies with this provision.

5. **321.10.E Noise-generating equipment shall be sound-buffered when adjacent to residential areas.**

Applicant: There is no plan to install noise-generating equipment on the site. The existing mechanical equipment will remain, most of which is internal.

Staff: To the best of our knowledge the City has not received complaints about noise from mechanical units. A condition of approval requires prior Planning Director review and approval for installation of new outdoor mechanical equipment.

6. **321.10.F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.**

Applicant: Lighting will give the same impact as it currently does to neighboring residents. See site plan for light poles, and see building elevations for wall mounted building lights. Lighting in the parking area will only operate when the building is occupied, typically no later than 6:00 p.m. These are controlled automatically.

Staff: The existing site lighting has been recently installed. The Commission's approval of the Seventh Day Adventist Church required that staff review a lighting plan and that lights be "...directed away from adjacent residential properties...." Staff has received complaints about outdoor pole mounted lighting prior to the time that ESD took control of the property. On December 28, 1999 an evening site inspection was made to determine the scope of the problem. Based on this inspection it has been determined that many neighbors are significantly affected by parking lot lighting. Action to correct this problem has begun.

7. **321.10.G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.**

Applicant: The hours and levels of operation are outlined in the cover letter of this application. They are compatible with residential use.

Staff: Compatibility with abutting residential neighbors is described in terms of the following potential impacts.

1. Traffic.

Traffic is discussed in a preceding section. Implementation of these conditions of approval will significantly reduce the potential for adverse impacts to traffic, pedestrian and cyclist safety.

2. Hours of Operation.

The applicant has indicated that hours of operation will be weekdays 7:00 a.m. to 6:00 p.m. Evening meetings of no more than 30 persons are expected to occur twice monthly. Evening meetings generally end by 10:00 p.m.

3. Noise from operation of mechanical equipment, landscape maintenance equipment, refuse collection, on-site vehicles, outdoor activity, and night-time activity.

Conditions that regulate such activities have been specified conditions of approval. Implementation of these conditions will significantly reduce the possibility of nuisance-type adverse impacts.

3. Parking lot and site lighting.

Existing light nuisance will to be corrected under enforcement actions with the Seventh Day Adventist Church.

The applicant has indicated that nighttime lighting will be limited to hours of operation only, and that the amount of lighting on-site now exceeds their needs. Evening meeting attendance is not expected to attract more than twenty cars, which will park close to the building thereby eliminating the need for perimeter site lighting.

Conditions that restrict lighting to hours of occupancy have been specified in Conditions of Approval. Implementation of these conditions will significantly reduce the likelihood of neighbors experiencing lighting nuisance.

4. Unauthorized use of driveways and parking lots.

The applicant has experienced nuisance trespass on the property and has verbally indicated they will install gates at the Lake Road and 37th Avenue entrances. The gates will be designed to permit on-site emergency response. Installation and use of the gates will significantly reduce the likelihood of nuisance and adverse impact to the neighbors.

Milwaukie Police and Clackamas Fire Departments have requested access to the site for emergency and public safety response.

Exhibit 4-Response to Appeal CSO-99-06 & TPR-99-09

1. **The appeal against the Planning Commission decision on ESD stated that the Commission failed to consider traffic conditions on Lake Road.**

The City Council heard and considered substantial testimony about Lake Road and area traffic from neighbors, staff, ESD and its traffic consultants. In its deliberation, the Council considered all matters of record related to traffic including the following reports, information and testimony.

- A. *Traffic studies dated October 27, 1999, November 22, 1999, December 28, 1999, and June 28, 2000, July 25, 2000 and expert testimony presented at public hearings*
 - B. *Correspondence from ESD on traffic issues dated December 23, 1999*
 - C. *Staff reports and staff testimony presented at public hearings of the Planning Commission and City Council.*
 - D. *Oral and written neighborhood testimony presented at public hearings of the Planning Commission and City Council.*
 - E. *The adopted conditions of approval require the applicant to make traffic improvements and conduct future traffic studies, based on the Council's consideration of potential traffic impacts.*
2. **In testimony to the Council on July 31, 2000, the appellant acknowledges that the use is in the public interest.**

The appellant's position supports approval of the application. Under Zoning Ordinance Section 321 the Council must find that a proposed Community Service Overlay use is in the public interest.

3. **In testimony to the Council on July 31, 2000, the appellant states that the applicant's first traffic study reported expected trip generation at 695 trips per day. This estimate was then reduced to 120 trips, then again to 40 trips.**

ESD's original traffic study (Kittleson, 10/27/99), estimates 695 daily trips based on conservative trip generation rates published in the Trip Generation Manual prepared by the Institute of Transportation Engineers. On December 23, ESD submitted a trip generation estimates of 315 trips per day based on observations of programs at existing ESD offices. These estimates have been accepted by the City as being reliable and representative of potential future trip generation at the Lake Road site.

The record does not contain evidence to support the appellant's statement that ESD reduced trip generation rates to 120 and 40 trips per day.

4. **In testimony to the Council on July 31, 2000 the appellant indicated that the park would be closed on weekends and holidays.**

ESD has specified that the park will be open for daytime use on all days. The appellant's statement on hours of park use is not supported by the record.

5. **In testimony to the Council on July 31, 2000 the appellant stated that the possible traffic impacts of ESD office use are unacceptable and that the site should be developed for housing.**

The Council heard testimony that, the annual traffic generated from a 34 lot subdivision, which represents maximum potential development, would more than double the annual traffic generated by Clackamas ESD. The June 28, 2000 traffic study prepared by Kittelson & Associates indicates that estimated annual traffic from ESD is 63,880 trips. A 34-lot subdivision is estimated to result in 134,420 trips.

The Council finds that although the ESD use of the site will create some traffic impacts, the traffic impacts will be mitigated by compliance with the transportation-related conditions of approval. The impacts, as mitigated, are acceptable and are less than the impacts that would result from maximum development of the site for permitted uses. The public benefits outweigh the adverse impacts.

Gessner, John

From: dcampbel@clackesd.k12.or.us
Sent: Monday, December 01, 2003 3:12 PM
To: gessnerj@ci.milwaukie.or.us
Subject: Community Benefit

Good afternoon, John:

There are a number of additional benefits that would be realized if the requested modifications of the conditions of use for the Clackamas ESD Milwaukie facility located at 4011 SE Lake Road are granted. One of the services we provide teachers from the school districts we serve is to organize opportunities for classes and workshops that are targeted to the improvement of instruction. Our current conditions make it impossible to offer these learning opportunities in our Milwaukie facility, but we have many teachers that would be able to take advantage of these kinds of opportunities if we could offer them here. The problems created by scheduling the classes further away is a very real deterrent. Thus, there would be significant benefit to the teachers of the North Clackamas School District particularly, but others as well if we could schedule learning opportunities for them here.

Likewise, opportunities to partner with the Oregon School Boards Association (OSBA) and the Confederation of School Administrators (COSA) to enable board members and school administrators to attend functions at this facility would be of benefit to the school districts we serve. We would be saving travel time and expense for the administrators and board members of the school districts we serve even while they participated in valuable learning experiences here. These groups, in particular, would provide additional benefits as people would patronize the restaurants and other businesses in the area, just as the ESD employees already do.

A third benefit to the community would be that groups like the Lake Road Neighborhood Association could hold meetings in this facility. Because it was created to accommodate meetings, it lends itself better to those kinds of things than other options now available to such groups. The ESD also operates all 12 months of the year so there would be no problem hosting groups that meet over the summer months. Because school buildings are generally closed during July and August, groups that have relied on school buildings for meetings have difficulties with finding a place to meet in the summer months. Since we have occupied this building, we have had several inquiries about whether meetings could be held here, to which we have replied no, but we do know the interest exists. We have policies that govern the use of any of our facilities by outside groups so we can provide the benefit to the local community but we would be under no obligation to any we determined were such that we preferred not to have them here.

Please let me know if you need further information.

DC

David Campbell, Superintendent
Clackamas Education Service District
Phone: 503-675-4003
FAX: 503-675-4200
dcampbel@clackesd.k12.or.us



Park & Recreation Board

PARB

Tuesday, September 23, 2003

7:00 PM to 9:00 PM

Conference Room – City Hall

MINUTES

Attendees: Mart Hughes, Kathy Buss, Ray Harris, Rob Gabrish, Sherri Dow

Staff: JoAnn Herrigel, Joan Young

Absent: Kate McCready

Visitors: Sonny Newson

Open Period: Herrigel introduced Sonny Newson, a prospective PARB member. Sonny said he would be submitting his application that night.

Minutes:

Minutes of the July 22 meeting were approved as written.

City Staff Updates:

Homewood – CSO

Herrigel said she would be submitting a land use application to the Planning Commission for a Community Service Overlay for Homewood Park by October 24.

Metro funds return

Herrigel said she had completed all work proposed for the remaining local share projects and had a remaining balance of about \$24,000. She had reviewed all of the park projects currently underway in the City and had determined that of all the projects, Homewood Park natural area path would be most eligible for local share funding. She discussed the project with Metro and came to an agreement with Metro staff that Metro would approve a \$10,000 transfer to Homewood Park for a pathway if the City would return the remaining \$14,000 to Metro for use on the Trolley Trail. Herrigel took this proposal to Council in early September and it was approved.

Trolley Trail – stall

Herrigel noted that the Trolley Trail working group had reconvened to discuss a proposal by Thelma Haggemiller and Dick Jones to modify the width and surface materials designated for specific parts of the Trolley Trail. Several abutters of the trail attended that meeting to express their concerns. Herrigel said that based on these concerns and the input from the working group, Metro and NCPRD staff have decided to halt the approval process for the master plan until further research can be completed and presented to the working group. PARB members made the following comments:

- It would be a shame to jeopardize the funding that's been allocated for this project. When the working group reconvenes the group asked to be invited and they hoped other advocates would also be invited.
- Why couldn't the gravel be laid for the entire path and then the surface materials be applied later (like the Springwater Trail)?

VII. A 2

Spring Park – master plan

Herrigel reported that a Spring Park master plan work session had been convened and the input from that meeting was being developed into a Master Plan to be submitted to the Planning Commission. A two phase master plan, with phase one being the development of a pocket park and phase two being the enhancement of the on-site wetland and path system was presented to Public Works at a pre-app meeting in September. Herrigel has drafted Phase I and is now beginning Phase II.

Comments:

- Street parking should ultimately be included in the master plan as well a friendly acquisition of any available adjacent property. Lack of parking discourages a legitimate use of the park

Lewelling Park – CDBG funds

Herrigel said she was working with Clackamas County and City staff to see if CDBG funds might be available to complete the sidewalks at Lewelling Community Park.

Dogwoods for Centennial

Herrigel gave an update of the Centennial tree planting process and noted that she'd identified over 30 locations for trees in City Parks. Kathy Buss noted that a map would be developed to show where all the Centennial trees are located in the City.

Riverfront

Herrigel noted that Metro's Council had done a tour of Milwaukie's Riverfront recently. Herrigel will be drafting a flier for fundraising for the park. She also reminded the group of the December 20th closing ceremony at the riverfront. Similar to last year's Solstice event, there will be a bon fire, food, music and viewing of the Christmas Ships. She reminded members about the Riverfront Park Naming meeting on October 14, 2003.

District Updates

Park Rules

Herrigel said that Charlie Ciecko had drafted park rules for parks in the District and she had provided comments from City staff. She noted that the major concerns City staff had had were the City's ability to enforce with City staff and into municipal court rather than to a Hearings Officer. The District was awaiting input from their legal counsel regarding the City's issues.

Hughes asked if it would be possible to include Elk Rock Island in the set of parks the rules apply to. Herrigel said she would look into it.

Tax abatement

Herrigel and Hughes described a request that the City of Milwaukie had submitted to the District regarding tax abatement for the Peak Development at the old Safeway site in Milwaukie. The DAB discussion resulted in an advisory to the BCC that a plurality of members saw no benefit to the park district. Hughes noted that he reviewed this request with an eye toward its benefit or detriment to the District. He said City staff had not made it clear that the Peake Development would lead to further development or an increase in adjacent property values that would compensate for the loss of tax income. in the downtown area. No analysis or projections of future tax value was provided. Nor was there an analysis of increased service demand. Herrigel noted that despite the DAB's recommendation, the County Commission had approved tax abatement for both the District and the County.

Priority setting

Joan Young gave the group an update of the priority setting process the District is just completing. She handed out a set of priorities that the DAB will forward to the BCC. Young said staff at the District have been asked to assume a 95% budget for this fiscal year. She said the District will also look at what overhead costs can be covered with other sources of funds and whether some services can be spun off to other agencies that already provide that service. She said an Advisory Committee was to be convened to review Aquatics Park operation and maintenance issues. Kandi Ho and Commissioner Kennemer were identified as contacts for this effort. Kandi Ho is the interim director of the Aquatics Parks following Jeff Milkes departure.

Two District working groups have been recommended: one would focus on Recreational Services and the other would focus on Marketing and Public Relations

Harris motioned to adjourn, Dow seconded, and the meeting adjourned.

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, OCTOBER 14, 2003

COMMISSIONERS PRESENT

Donald Hammang, Chair
Teresa Bresaw
Brent Carter
Rosemary Crites
Mike Miller
Howard Steward

COMMISSIONERS ABSENT

Judith Borden

STAFF PRESENT

John Gessner,
Planning Dir.
Lindsey Nesbitt,
Associate Planner
Brion Barnett,
City
Gary Firestone,
Legal Counsel
Shirley Richardson
Hearings Reporter

1.0 CALL TO ORDER

The meeting was called to order at 6:35 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 CONSENT AGENDA -- Planning Commission Minutes

Mike Miller moved to approve the September 9, 2003, Planning Commission minutes as corrected. Commissioner Crites seconded the motion. MOTION CARRIED 6-0.
Ayes: Bresaw, Carter, Crites, Miller, Steward, Hammang; Nays: None.

Mike Miller moved to approve the September 23, 2003, Planning Commission minutes as presented. Commissioner Carter seconded the motion. MOTION CARRIED 5-0.
Teresa Bresaw abstained; she was not present at that meeting.
Ayes: Carter, Crites, Miller, Steward, Hammang; Abstentions: Bresaw; Nays: None.

4.0 INFORMATION ITEMS -- City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: North Clackamas School District
Owner: North Clackamas School District
Location: 3606 SE Lake Road
Proposal: Review of a post-occupancy traffic study for Rowe Middle School. The traffic study was prepared in accordance with conditions of approval for the expansion of the school under application CSO-00-01.
File Number: CSO-00-01
NDA: Lake Road

Chair Hammang opened the minor quasi-judicial hearing for Community Service Overlay CSO-00-01 to consider a post-occupancy study for Rowe Middle School. **John Gessner** reported that there are no specific criteria to be addressed because this was in satisfaction of a Planning Commission condition of approval for the expansion of Rowe Middle School. The applicable criteria at that time were found in Section 321 - Community Service Overlay.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. There were none. He asked if any member of the Planning Commission visited the site; 5 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Brion Barnett reviewed the staff report with the Commission. There was concern for the children and pedestrians crossing the marked cross-walks on Lake Road in the vicinity of the school. The condition requested a post occupancy traffic study to evaluate the safety and present it to the Planning Commission. One of the conditions was that the school was to use adult crossing guards at the cross-walk until such time that the follow-up study showed that conditions were adequate to remove the condition for the use of the adult crossing guards.

Staff has reviewed the report by Lancaster Engineering but is concerned that the scope and findings may not adequately address the actual field conditions. The study did not elaborate on whether any pedestrians crossed at locations other than the marked cross walks, and also needs further clarification regarding the methodology used for the analysis of the adequate pedestrian gaps.

Staff requests that a hearing continuance be granted to November 25, 2003, to allow the applicant to clarify these details in an addendum to this study.

QUESTIONS FROM COMMISSIONERS

Commissioner Steward asked why a public hearing was scheduled when the study was not adequately completed? **John Gessner** stated that the inadequacy of the study was found after the notice of the hearing. After receiving numerous telephone calls from concerned neighbors, it was felt that a hearing was necessary to allow public and applicant testimony. The additional testimony will give information to better assist staff's review of the applicant's revised information.

CORRESPONDENCE -- None.

APPLICANT PRESENTATION

Speaking: David Church, 12451 SE Fuller Road, Milwaukie

Mr. Church stated that he represents North Clackamas School District in this matter. He agrees with staff's summary of the issue. The traffic study was prepared based on post-occupancy requirement of the Planning Commission for the school. It has been submitted and more information has been requested. He feels that it is a good idea for them to listen to any public testimony to address questions and concerns from the community.

Based on Mr. Lancaster's findings, there are no significant pedestrian safety problems in the area around Rowe Middle School. They are in agreement with that study. There are some issues regarding the methodology. The executive summary indicates that while there are some issues with pedestrians, the average number of pedestrians in the morning was light. A gap study was done and Mr. Lancaster's findings were that the gaps were allowable under the traffic control criteria set forth. There were recommendations on a stop sign and a future left-turn lane to avoid congestion when buses and parents are entering the school. There was no strong recommendation that any further signalization or traffic control for pedestrians was needed. It was requested that a safe walk route map be prepared for the students who attend Rowe Middle School; he agrees with this recommendation.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Miller noted that Condition #9 states that "...adult crossing guards will be provided in front of the school to assist safe student crossings on Lake Road unless it is shown by future study that the practice is not warranted." He asked why the school district chose to ignore that condition and not provide the adult crossing guards? In his personal travels during mornings and afternoons, in that area, he has never seen an adult crossing guard. In fact, what he observed was kids running across the street in places other than where the cross-walks are. **Mr. Church** stated that it was his understanding that the adult crossing guards were provided up until the end of the last school year. Based on the findings of the study done in June, adult crossing guards were not provided

this school year. If the guards were not used last year, he is unaware of it. He will check into the matter and report back to the Commission. Normally, crossing guards are not provided for middle-school aged students at any of the schools; however, the condition required the adult crossing guards.

Commissioner Carter noted that this is a public facility; after school curriculum activities, athletic facilities, etc. He feels that what is being proposed is strictly for school hours and asked if the public safety concern should be considered 24 hours a day, 7 days a week?

Proposed flashing lights will be placed at the cross-walks and the photos in the report only show existing conditions. He would like to see a map indicating where the flashing lights will be placed. **Mr. Church** stated that some flashing lights already exist. The report did not recommend flashing lights that would be activated every time the cross-walk is used. Based on the report's traffic car counts, it does not recommend providing pedestrian crossing lights.

Mr. Church stated that as a public facility, they come under the jurisdiction of the Community Service Overlay requirements. However, the school resources are limited in providing safety for the people who use the facilities. Municipal requirements will be met, but financially, they are not in the position to provide crossing guards when there is no school.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF -- None.

QUESTIONS FROM THE COMMISSIONERS -- None.

Commissioner Miller moved to continue the hearing for CSO-00-01, Clackamas School District post-occupancy traffic analysis report to November 25, 2003. **Commissioner Carter** seconded the motion. **MOTION CARRIED 6-0.**

Ayes: Bresaw, Carter, Crites, Miller, Steward, Hammang; **Nays:** None.

- 6.2 Appellant: Milwaukie Planning Director
 Applicant: AT&T Wireless and RealCom Associates
 Owner: Portland General Electric
 Location: Right-of-Way in front of 11693 SE 32nd Avenue
 Proposal: An appeal of a decision by the Milwaukie Planning Director authorizing applicants to install wireless communications equipment on a utility pole located in the public right-of-way.
 File Number: CSO-03-03
 NDA: Lake Road

Chair Hammang opened the minor quasi-judicial hearing for Community Service Overlay CSO-03-03 to consider a staff referral of an administrative decision to approve for Commission confirmation or rejection. The applicable criteria may be found in the Milwaukie Zoning Ordinance, Section 19.321.11 - Wireless Communication Facilities.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; 3 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

John Gessner and Lindsey Nesbitt reviewed the staff report with the Commission. **Mr. Gessner** explained that comments were received from the subject site neighbor, Mr. John Moran, in opposition to the proposed application. Staff felt that it would be best to have the Planning Commission hear these concerns and are asking for Commission confirmation of staff's approval of this application.

Lindsey Nesbitt reported that in August, 2003, staff reviewed and approved a Type II Administrative Review application for the attachment of wireless communications antennas to an existing utility pole. Photos were shown of the proposed equipment. The applicant is proposing to replace the existing utility pole (32-feet high) with a similar wood utility pole (47-feet high). The reasoning for the height increase is to comply with minimum separation requirements between the utility lines and antennas. Three panel antennas will be placed on the top of the pole as well as four small utility equipment cabinets at the bottom of the pole (13-feet from grade).

Staff found that the application was consistent with the wireless communication ordinance governing attachment of antennas to utility poles. The maximum height the pole can be extended is 15-feet. The applicant has decided to provide the cabinets on the pole as opposed to in the right-of-way or on private property. The co-location of utility poles complies with the goals of the wireless communication ordinance to enhance the

ability to provide comprehensive service to the community while minimizing the number of towers and encourages facilities to be co-located to existing structures (utility poles).

Once an administrative decision is made, notice is mailed to neighboring parcels, within 300 feet, for review and comments. Comments were received from Mr. John Moran whose main objections were to the number of equipment cabinets and proposed location of the equipment cabinets.

Staff worked with the applicant and Mr. Moran to come to some resolution, however, it was determined that the applicant's needs and Mr. Moran's needs cannot be addressed at staff level and it is placed before the Commission this evening. There are three options for resolution:

- Approve the application upon finding that it complies with all the applicable criteria
- Approve the application subject to conditions for compliance with the applicable criteria
- Deny the application upon finding that the application does not meet the approval criteria

Staff recommends that the Commission confirm staff's decision authorizing the installation of new wireless communications facilities.

QUESTIONS FROM COMMISSIONERS

Chair Hammang asked if this equipment has been used anywhere else in Milwaukie? **Ms. Nesbitt** stated that the equipment has not been used in the City of Milwaukie; however the applicant has provided information on similar locations (Attachment 3 of the Staff Report).

Commissioner Carter asked that future reports dealing with property have the property lines shown on a plot map. **Ms. Nesbitt** stated that the property lines were not shown because this location is in the right-of-way. An overhead was shown of the subject site and surrounding areas. The proposed pole is located in the right-of-way adjacent to Mr. Moran's property.

CORRESPONDENCE -- None.

APPLICANT PRESENTATION

Speaking: Paul Slotemaker, RealCom Associates, 506 SW 6th Avenue, Suite 900, Portland, OR 97204

Mr. Slotemaker stated that he represents RealCom Associates in this matter. He agrees with the staff report with a few minor changes:

- Submission of new site plan drawings.
- One of the findings was that the location of the equipment could not be lower than 13 feet. The applicant is proposing to raise three of the equipment cabinets up so the bottom is at 15 feet, a five-foot increase in height. This was requested by PGE, owner of the utility pole. Mr. Moran had requested that the cabinets be raised above the neighbor's line of site.
- One of the equipment cabinets will be located 7-1/2 feet high so that the meter reader can walk up and read the equipment. He asked that this cabinet not be subject to the finding that equipment cannot be lower than 13 feet.

AT&T is in the process of upgrading their wireless network. There are coverage holes where you cannot initiate or receive telephone calls in Milwaukie. There is a localized hole at this site that needs to be filled. The area is entirely residential and requirements do not allow new mono-poles or location on roof tops. The only option left is a utility pole site or some other pole facility. There are no towers within this area. This site was chosen because it provided the height needed.

Mr. Slotemaker stated that he has talked with Mr. Moran on several occasions to resolve the differences. The applicant is proposing to paint the cabinets a brown color to blend into the pole as much as possible. Other concerns raised were screening by landscaping.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked for clarification of the additional 15-foot extension. **Mr. Slotemaker** stated that the taller pole will be a replacement wooden pole that will be placed in the same proximity of the existing utility pole.

Commissioner Miller asked if consideration was given to locate their equipment at an existing utility located at 34th Avenue on SE Sellwood (4 blocks away)? **Mr. Slotemaker** stated that the 34th Avenue location is outside the area where the facility needs to be located. The proposed site is on the extreme north edge of the search ring. The 34th Avenue location is for Quest land-line telephones.

Commissioner Carter asked if landscaping considerations had been addressed for screening the equipment from Mr. Moran? **Mr. Slotemaker** stated that he talked to Mr. Moran about planting landscaping on his property. This would give him control on where the trees can be placed so that he could get the screening that he desires. He is free to plant a tree on his property, however, they were not able to come to a resolution. The code does not require the landscaping.

Mr. Slotemaker stated that this location was chosen because the elevation of the ground is highest at this point within their search ring. There is no other mono-pole to co-locate.

This is a residential area, to move to another location would put the same issue near someone else's property.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: John Moran, 11693 SE 32nd Avenue, Milwaukie

Mr. Moran stated that this facility will be a mass structure in his front yard. He just spent \$75,000 upgrading his home. This structure will devalue his property. He brought in a piece of 4-inch conduit and showed it to the Commission as an idea of what this equipment will look like on the utility pole (a big structure). He is glad the cabinets are being placed higher on the pole. Other neighbors have complained about the placement of the equipment.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked about the placement of the conduit. **Mr. Moran** stated that the conduit would go from the 15-foot mark to the panels and 6-12 inches extended out from the pole. The existing pole is located about a foot off the curb line.

Speaking: Tim Freeman, 11742 SE 32nd Avenue, Milwaukie

Mr. Freeman submitted a drawing (craft-paper model) showing the scale of the pole, conduit and equipment cabinets, 6-feet from the bottom of the pole. He asked why the location wasn't on Lake Road where there are commercial uses and apartment complexes which wouldn't be impacted as much?

Speaking: Don Babbitt, 11707 SE 32nd Avenue, Milwaukie

Mr. Babbitt stated that he is opposed to this application because the cabinets will be placed on his side of the road. He pointed out his property boundaries on the aerial photo. He asked if staff has confirmed the road right-of-ways. He thinks that the location of the existing pole is on private property.

John Gessner stated that property boundaries were not verified south to Wister Street because they were not germane to the application. They do believe that the existing pole is in a public right-of-way. The property lines shown on the photo are from a Metro data base. Metro gets its tax information from Clackamas County. There could be an error in the mapping, but staff believes this to be the best information available. This information can be confirmed.

Mr. Babbitt stated that he resides in a half million-dollar house; why would he want a cell tower in front of that home at his front door. This will devalue his property too.

Speaking: Jennifer Moran, 11693 SE 32nd Avenue, Milwaukie

Ms. Moran stated that she recently remodeled her home. As part of that remodel they requested a two-story garage as an accessory structure to their property. Because of R-5 zoning, the two-story garage was not allowed. This application involves a 47-foot structure (5 stories). She submitted pictures of her front door showing how close the structure will be to her home.

Ms. Moran stated that she understands that the City has the opportunity to increase their budget through funds from AT&T for putting the cell tower in. It is her understanding that once a cell-site is opened, other companies will piggy-back on that site. This will result in multiple panels making the site more conspicuous.

The structure sits 20-25 feet from their daughter's window. She is concerned about the noise that will be coming from these units. AT&T suggested that she view their tower at 39th and Couch Street to see what the facility looks like. She visited the site and there are no visible cabinets and the site is located on a busy street with traffic coming and going. The house where this pole was located was up for sale. This was not a comparable site as this location was not in a residential neighborhood. She submitted a letter with her concerns.

Ms. Moran stated that where the pole ends (right-of-way) and road continues is private property. There is no place for AT&T to maintain the poles or park their vehicles. The only access will be in front of her home or her neighbor's home. This is a busy corner; not a lot of space for construction.

ADDITIONAL COMMENTS FROM STAFF

John Gessner stated that any application coming in to piggy-back on this pole would be subject to staff review. **Gary Firestone** stated that the Planning Commission could place a condition on this application that related to limited size and equipment (number of cabinets or conduit) rather than size and location. **Lindsey Nesbitt** stated that there are minimum separation requirements between antenna and utility poles. Putting additional antenna from another carrier is not possible because of separation requirements.

John Gessner stated that the noise levels could be conditioned by the Planning Commission. If the nighttime noise readings became a disturbance it would warrant mitigation.

The City is not pursuing these types of installation for financial benefit. There is a franchise fee that the applicant is responsible for to site the facility in a public right-of-way.

APPLICANT'S CLOSING COMMENTS

Speaking: Paul Slotemaker, 506 SW Sixth Avenue, Suite 900, Portland, OR 97204

Mr. Slotemaker stated that they have tried to decrease the appearance of their facilities as much as possible. Devaluation of property is not a criterion in the code they needed to address. An AT&T Study was submitted showing property values in Lake Oswego and the conclusion that there was no adverse impact to property values because of AT&T facilities. The conduits that run from the utility cabinet to the transmission boxes cannot be reduced in size. There are standards in place that require certain measurements.

The portion of 32nd Avenue that the facility will be located on is in the public right-of-way. There is a private portion to 32nd Avenue and he pointed that section out on a site map. There is no room on this utility pole to locate additional antennas. The equipment cabinets have air convection motors and the noise is comparable to a home computer. The code does address nighttime ambient noise levels and this unit is in compliance. A comparison noise analysis could be done before and after construction. A buffer can be initiated if there is found to be a difference.

QUESTIONS FROM THE COMMISSIONERS

Chair Hammang asked if the equipment cabinets could be buried? **Mr. Slotemaker** stated that the code does not allow burial of the cabinets. Only if the equipment is too large and not feasible to locate on the pole, can it be buried. The applicant has demonstrated that the equipment can fit on the utility pole.

John Gessner asked if it is technically possible to place the cabinets in the ground. **Mr. Slotemaker** stated that technically it is feasible, but he does not feel it is a better solution. The air-conditioning cabinets would have to be located above ground that would produce a fair amount of noise. He is not sure how large the air conditioning unit covering the vault would be.

Commissioner Steward asked how large the intended coverage area is? **Mr. Slotemaker** stated that the area runs North to SE Madison Street; south to SE Park Avenue, east to SE Shell Lane and west to SE McLoughlin Blvd.

Chair Hammang asked if the units could be broken down to smaller sizes? **Mr. Slotemaker** stated that the conduits could be split into individual units, but it would result in weakened signals.

DISCUSSION AMONG THE COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened it up to discussion among the Commissioners.

John Gessner reported that the code is clear that the cabinets shall be located on the pole unless it is technologically infeasible. Staff does not believe the Commission could impose a condition requiring the cabinets to be put underground.

Gary Firestone stated that the Commission has the authority to approve or deny based on compliance on the standards the City has adopted. The Commission cannot deny when the code states that it should be allowed.

Commissioner Steward stated that he sees no evidence of need, any interest by AT&T to bury the equipment. Other commissioners agreed. It was asked if the equipment could be placed on a pole on the school property.

Commissioner Carter stated that no one wants to deal with blocking of their views, but this is something that will continue to be an issue. This is a precedence setting issue; if approved, this opens up the allowance of pole additions in residential areas.

Gary Firestone stated that there is a possibility of locating on the school property. The Commission has the option of directing staff to prepare amendments to deal with problems of the existing code. For this application, the findings have to be based on the code as it exists today. This does not necessarily set **precedence** as the code can change. The Commission must decide under the current code whether the applicant is entitled to have their application approved under the standards in the existing code. Grounds for denial must be found in the code.

Speaking: John Moran, 11693 SE 32nd Avenue, Milwaukie

Mr. Moran asked if the code addresses the Commission approving the application but conditioning a different site. **John Gessner** stated that this application deals with a specific location chosen by the applicant. There are no provisions in the code for the Planning Commission to modify the location of the pole unless that modification is necessary for the application to comply with code. There are no location specific criteria in the code so he does not feel the Commission has the ability to condition an application to another location.

Commissioner Bresaw moved to adopt the staff decision authorizing installation of utility pole mounted wireless communications antenna at 32nd and Wister Street including the findings and conditions of approval. Further additional conditions imposed that:

- Limit the amount of equipment to what is shown on the revised site plan received tonight.
- A noise reading shall be taken after the cabinet is in place. If the ambient night-time noise exceeds ambient night time noise prior to construction, the cabinet will be sound buffered to pre-construction readings.
- No additional equipment can be added to the pole.

- **The equipment shall be placed as shown on the revised drawings (height).**
- **The blank side of the structure is to face the residence at 11693 SE 32nd Avenue.**

Recess was taken at 8:36 p.m. and the meeting reconvened at 8:45 p.m.

Chair Hammang reopened public testimony portion of the hearing for the limited purpose of allowing testimony as to whether or not any of the equipment proposed could be reduced in size.

Speaking: Paul Slotemaker, 506 SW Sixth Avenue, Suite 900, Portland, OR 97204

Mr. Slotemaker stated that he talked to Mr. Moran about the size of the equipment cabinets. He contacted AT&T engineers in regards to the size of the cabinets. This is the smallest cabinet for this site. Typically, wireless facilities have cabinets that are the size of refrigerators, possibly 3-4 at one site. The proposed size (3'x 1'x 8") is a reduction of what could be placed there. If you go down to two cabinets, it cuts down the effectiveness of the site in half. The units cannot be stacked.

Speaking: Jennifer Moran, 11693 SE 32nd Avenue, Milwaukie

Ms. Moran stated that the front yard and side yard are the only areas her children have to play. She asked what happens if a Frisbee/ball gets stuck in the cabinet. There is no fencing around the proposed site and there will be children playing around it and who is liable for accidents that happen on this location.

There were no additional comments. **Chair Hammang** closed the public testimony portion of the hearing and opened it up to deliberation among the Commissioners.

Commissioner Crites seconded the motion. MOTION CARRIED 6-0.

Ayes: Bresaw, Carter, Crites, Miller, Hammang; Abstentions: Steward; Nays: None.

6.3	Applicant:	Ken Sandblast
	Owner:	Kevin and Shawna Mixon
	Location:	Rusk Road
	Proposal:	Place a 4-plex on property located in the R-3 zone
	File Number:	CU-02-01
	NDA:	Neighboring – Lake Road

Chair Hammang opened the minor quasi-judicial hearing for a Conditional Use to consider the placing of a 4-plex on property located in the R-3 zone. The applicable criteria can be found in the Milwaukie Zoning Ordinance, Section 19.304 - Residential R-2; Section 19.500 - Off-street Parking and Loading; Section 19.600 - Conditional Uses;

Section 19.1011.3 - Minor Quasi Judicial Review; and Section 19.1413.3 - Number and Size of Driveways.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; 3 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

John Gessner reviewed the staff report with the Commission. On May 22, 2003, a denial decision was rendered on this application, however, the applicant was given the opportunity to submit additional information to relieve the denial. All of the information specified in the Commission decision was not received. The applicant was notified of this. The application was modified from the original application. The question tonight is whether the applicant has satisfied the conditions specified in the May 22nd approval. Staff recommendation is that the applicant has not provided adequate information.

Page 6.3-11 shows a letter dated August 12, 2003, which specifically identifies the procedural requirements that were contained in the Commission approval. By July 11th, the following need to be done:

- Fire access turnaround
- Mitigation of potential negative impacts with regard to driveways
- Compliance with MMC Section 18.04 - Food Hazard Regulations

Staff does not feel the applicant substantively address these issues. There was not an adequate response by the required time limit. The application was revised to take access off of Weiko Way, along the property line to the west. By modifying the application, it introduces a new set of impacts to adjoining properties that were not addressed by the Commission in its first review. The applicant did not adequately address mitigating impacts to adjoining properties in the original application.

At the corner of Weiko Way there is a duplex on one side and an adult foster care home on the other side. Staff believes that the problems with regards to drainage, fire access and driveway design and mitigation of adverse impacts to adjoining property owners can be resolved with proper design. It is not resolved in the present application.

The applicant is proposing a change of the driveway coming down Weiko Way with the curb cut into the site. Everything else remains pretty much the same. There is a site plan that the Fire Marshall will sign off on. Using an infiltration pond is not the best thing to do because the site is in the flood plain. There are other drainage solutions; however it may involve the consent of other parties. It may be possible to run drainage down an

existing drainage easement on the property of Leroy Massey. This would require new piping because Mr. Massey has suffered property damage from this drainage-way in the past. It is a solvable problem but it will require more work on the part of the applicant and other parties, plus city review.

A detailed driveway construction plan has not been received. In order to construct the plan proposed, there would need to be relocation of the drainage easement and possible removal of trees from Mr. Massey and the neighbor to the south of the proposed site. Nor has mitigation been proposed for the reduction of impacts to Mr. Miller's property and the adjoining duplex.

Staff has not received the calculations that demonstrate that Mr. Massey's property complies with the minimum vegetation requirements due to increased paving on the driveway. There are two standards that govern how residential properties are developed. One is the maximum footprint of buildings on the site and the other minimum vegetation. Documentation has not been received that demonstrates adding the driveway is consistent with the R-3 regulations and with Mr. Massey's property. All of these are solvable problems.

QUESTIONS FROM COMMISSIONERS - None.

CORRESPONDENCE

John Gessner reported that he received a call from Mr. Steve Miller today indicating that he was recently awarded an easement over the area of driveway of Mr. Massey's property for certain purposes. He will exercise those rights to object to any driveway on this easement. Staff has not confirmed this information at this point.

APPLICANT PRESENTATION

Speaking: Ken Sandblast, 7160 SW Fir Loop, Suite 201, Portland, OR

Mr. Sandblast stated that he is the land use planning consultant for this project and Mr. Seisel is the civil engineer on this case.

There were three primary issues at the May, 2003 hearing:

- Impacts of the adjacent property owners
- Flood plain issue
- Access on to Rusk Road

At the conclusion of the May hearing, the adopted findings indicated that the Rusk Road access was not adequate or safe. They had indicated at that hearing that they would explore alternative access. Shawna Mixon immediately began pursuing negotiations for that easement knowing that the Rusk Road access was fatal to her proposal. This took

the majority of the 60-day period to finalize the deal. A copy of the easement was negotiated, signed and recorded prior to the 60-day timeline.

The alternative site plan is included in the staff report as attachment #2, Page 6.3.7. The site plan addresses the question about the adequacy of the turning radiuses and concurrent access for vehicles on Rusk Road. It provides for the 20-foot minimum access across Mr. Massey's property up to the public right-of-way at Weiko Way. This information was submitted with Mr. Seisel's information of the flood plain analysis and storm system design requirements. This information was provided fully expecting staff review and other governmental agency review. It was not his understanding that staff review was to be included in this time frame. The resulting comments from staff are captured in Lindsey Nesbitt's letter of August 12th regarding the Fire Marshall's review of the revised site plan, revised application for mitigation to Weiko Way and some details about the flood plain and storm water system.

Mr. Seisel responded with that information with more detailed information about the flood plain as well as the impacts that may or may not be associated with the design on the site in correspondence at the end of August.

Procedurally, they take issue with the fact that there was some final deadline at the end of 60 days. They were attempting to address the three major issues; the most fatal one being the access to Rusk Road. Shawna Mixon took it upon herself to go out and negotiate private property rights, access and find another way in that meets the code. There are some issues that staff raised and they do not agree that there are fatal flaws left in this application. The key issues left are potential adverse impacts, drainage concerns, and a condition of approval to provide detailed construction plans that are required to show how this driveway will comply. He first became aware of the landscaping requirement for the revised proposed driveway last week. The aerial photograph indicates that there is over 40% of his property currently vegetated which satisfies the standard.

They believe they have come to the point where the site plan has resolved its fatal flaws. The primary issues with regards to flood plain, access and mitigation can be addressed. Ms. Mixon has been talking regarding the storm water issue (piping across Mr. Massey's property) and mitigation for potential adverse impacts. There is a 30-foot wide strip of land with a 20-foot wide easement that will be paved. There is area in there to do some mitigation. They would like to get some direction from the Planning Commission about what it feels is appropriate for mitigation.

QUESTIONS FROM THE COMMISSIONERS

Chair Hammang asked when Mr. Sandblast feels they substantially complied with the information for the Commission. **Mr. Sandblast** stated that he believes they provided the information on July 11th. The information was reviewed by staff and additional information was requested based on that review. Subsequent information was submitted August 29th.

Speaking: Tom Seisel, 375 Portland Avenue, Gladstone, OR

Mr. Seisel stated that the two letters from his office were not included in the staff report. The letters were dated July 11th and August 17th addressing storm drainage and flood plain issues. **John Gessner** acknowledged that both the letters were received and they did address the flood plain issues as Mr. Seisel indicates.

Mr. Seisel stated that this is unique flood plain mapping in this subject area. The City of Milwaukie flood plain map shows this property outside the 100-year flood plain in the 500-year flood plain. It would take a flood event greater than the 100-year event to flood the property according to the Milwaukie Flood Plain Maps. The Clackamas County Flood Plain Maps show this property well within the 100-year flood plain. Milwaukie's map was done in 1980 and Clackamas County's map was done in 1987 for the Corps of Engineers (FEMA). It would be his recommendation to Ms. Mixon that any construction be done above the 100-year flood plain per the Clackamas County flood plain map. This can easily be done.

Assuming Clackamas County is correct, the cut and fill issue and balance can be met by removing material from the site for parking lot area creating some additional flood plain storage area.

At the time the letters were being prepared, it was not known whether Ms. Mixon would get an easement for storm drainage. In his August 17th letter he encouraged that an easement be secured because it would provide a more positive flow system out of the site. Having talked to Mr. Massey, he feels comfortable that the easement will be obtained. If these negotiations fail, there is an alternative method of an infiltration facility. Geotechnical testing can confirm the infiltration rates. His recommendation would be an in-ground storage retention system for the site.

QUESTIONS FROM THE COMMISSIONERS

Chair Hammang asked what type of soil was on the site? **Mr. Seisel** stated that the soil is silty-clay (.2-.6 inches per hour).

Commissioner Miller asked if the detention system add to the problem instead of relieving the problem. **Mr. Seisel** stated that the recent thought now is that if you are near the downstream of a creek that has flooding problems, it is better to release it without detention. The higher you go, the more need for detention. This site is low on the Mt. Scott Creek drainage stream, but it is about midpoint of the intersection with Kellogg Creek. Kellogg Creek has significant drainage problems. He would recommend detention either way. If the city does not want detention, the site could be built without detention.

TESTIMONY IN FAVOR

Speaking: Leroy Massey, 13021 SE Weiko Way, Milwaukie

Mr. Massey stated that Shawna Mixon came to him some time ago regarding her access problems. She is not getting much support from the adjacent neighbors of her property. She purchased the property thinking she would be able to develop it.

Mr. Massey stated that the subject site is a nice piece of property and that it should never flood; there is a 100-acre retention facility right in front of it. The tax payers have spent 2-1/2 million dollars on that detention and it has never worked. The gates have never been closed. He just recently learned that there is a five-year study being done on the detention facility here.

Mr. Massey stated that he granted Ms. Mixon permission to use his driveway under certain conditions. He is willing to work through city staff to satisfy any requirements for the driveway into her property.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Shawna Mixon, 16255 SE Norma Circle, Milwaukie

Ms. Mixon stated that her original pre-application conference was February 21, 2002. At that time, she thought she would be able complete the process herself. Having never done this before and after giving permission to extend the 120 days in September, it was recommended that she hire a planner. Ken Sandblast was hired the next day and he has been working with her in processing this project.

This has been a long process and she has tried to comply with what the city has asked of her. The Rusk Road access is a deeded access; it is not an easement. This was done 40 years ago and there is a home on the back that has been using that easement for many people. She did not hear about the access problem until about 13 months into the application process.

The main issue about Rusk Road is that it has a dangerous turning radius. If they cannot use this, it makes her property land-locked. She has been advised that if this radius is dangerous, she may be liable for the people who are using the road. This means that whatever access she comes up with must be available to the people in the back portion of her property.

Ms. Mixon stated that a lot of these issues have come up well into the application process and she has been dealing with each issue as it appears. She agrees and is willing to meet the requirements. All the concerns now are fixable and doable. She does not feel this is a new application. She did not change anything; issues keep surfacing that alters the original application.

Ms. Mixon stated that she has spent money to buy an easement to provide access for herself and the people on the other end of her property when she owns property that goes to Rusk Road. She is open-minded to whatever issues remain and she will continue to do what the city requests.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Miller asked if it was the city or the county that restricted use of Rusk Road? **Ms. Mixon** stated that the county was concerned about the turning radius. The turning radius issue was previously addressed. There is a right-of-way as the driveway goes out to Rusk Road. She inquired why the county does not flare the right-of-way and was told that if the city wants you to go in from some other way, you have to follow their regulations. She felt she didn't have an option.

Commissioner Miller asked if the applicant would have been able to meet the pavement and buffer requirements of the driveway to Rusk Road? **Ms. Mixon** stated that the paving and buffers were addressed and there was an issue with the fencing on sides of the driveway. She did meet with the Fire Department and the feedback from them was a concern that the fire hydrant be within 150 feet. The Fire Marshall did not raise the issue of buffers or paving.

QUESTIONS OR COMMENTS - None.

TESTIMONY IN OPPOSITION

Speaking: Tony King, 12951 SE Rusk Road, Milwaukie

Mr. King stated that he is in opposition to this development. The largest concern is the flooding issue. He has seen this property flood three times; he has lived here since 1994. He pointed out the flooding situation on the site map. He feels that this development will cause more drainage damage to his house. He has seen two families lose everything they own in one house; why bring more people into this situation.

Mr. King indicated that the fire hydrant in his yard does not work, just in case this is the fire hydrant referred to in previous testimony. There will be another two years before the county will allow the detention facility to function. Every year he wonders whether he will be flooded. He doesn't store anything on the floor that he doesn't want damaged.

ADDITIONAL COMMENTS FROM STAFF

John Gessner stated that Mr. Seisel is correct about the discrepancy between the county and city maps; however, there is no doubt that the property is in the 100-year flood plain. The fact that the county has a detention basin up-stream does not eliminate the need for the city to apply its flood regulations which are based exclusively on how the area is

mapped. There are FEMA regulations that require the flood regulations. There are a number of properties in this area that are considered "repeat loss" properties. FEMA has requested that the city do what it can to purchase these properties. There is a long history of flooding in the area.

There was no traffic impact study required for this application. The city did not provide direction to seek out Weiko Way for the access. When this was presented to staff, it was seen as a reasonable alternative to Rusk Road. Weiko Way is much better because there is a wider access and greater opportunity for buffering. Staff would support the use of the Weiko Way driveway; it is the applicant's decision.

The question was asked what would stop residents from using the Rusk Road easement? If the Planning Commission finds that the applicant should address some of the issues discussed tonight, staff would recommend coming back at a future hearing with a proposal for some sort of fence or structure to be built along the access so that back residents could not use it. The Weiko Way access could only be used.

The questions before the Commission on this application are:

- Did the applicant substantially comply with the requirements set forth in the May 22nd decision?
- Consider the testimony tonight in terms of assessing how close this application is to potential approval – drainage issues, driveway construction plan with impacts to adjoining property owners

QUESTIONS FROM THE COMMISSIONERS - None.

APPLICANT'S CLOSING REMARKS

Speaking: Ken Sandblast, 7160 SE Fir Loop, Suite 201, Portland OR 97223

Mr. Sandblast stated that he didn't want to discount Mr. King's testimony; he lives out there and understands what's going on regarding drainage. The applicant believes that, based on Mr. Seisel's observations and the city's regulations will require that this building be sited one foot minimum finished floor elevation above the 100-year flood plain.

There has not been a traffic impact study; Ms. Mixon was referring to the analysis of the turning radius onto Rusk Road.

Mr. Sandblast asked that the Commission engage in dialog with regards to what the adverse impacts are for the driveway as proposed on the revised site plan. This will provide guidance for Mr. Massey's consideration. Ms. Mixon is willing to do what is appropriate. He hopes that the decision tonight will be constructive direction to the parties involved to conclude this matter. They believe it is close and that these issues can be resolved. Possibly the Planning Commission could direct that the parties work

together to prepare revised conditions of approval to bring back to the Commission for review and decision.

Two of the four trees will be saved by using this revised site plan. These trees will provide a physical barrier and the parking area will be required to have a curb.

QUESTIONS FROM THE COMMISSION

Chair Hammang asked if the applicant believes they have all the materials necessary for a successful application today? **Mr. Kenblast** stated no, primarily with regards to how the mitigation will take place for the adverse impacts on the driveway. The applicant has provided extensive information about the alternatives for storm water. Mr. Massey is willing to entertain an easement; it's just a matter of doing the construction engineering, which is a condition of approval.

Chair Hammang temporarily closed the public testimony portion of the hearing subject to reopening for future hearings.

Rosemary Crites stated that she lives on the Scott Creek. She understands Ms. Mixon's problem with the purchase of this property, but she doesn't understand why she would want to build in a flood plain. It is very dangerous; it does flood. Year after year FEMA pays out millions of dollars to property owners who have lost their property.

Chair Hammang asked for interpretation/clarification of the text in the staff report, "...If required materials are not submitted within the 60 day extension. The denial of this application is not effective unless until 60 days from May 13th have elapsed without submission of additional materials. Although this decision is final for the Planning Commission, it will cease to be final if the applicant submits additional materials within the 60 days." **Gary Firestone** stated that the notice of decision was clear that the applicant was required to submit something additional within 60 days. The applicant did submit something different and the issue is whether the submission was sufficient to meet what was required under the decision. The applicant was required to submit materials addressed in the May 13th 2003 staff report. That staff report identified key issues and the question is whether those materials were submitted in the 60 day timeline.

Chair Hammang stated that the applicant has acknowledged that there are still pieces needed for a complete application as of this date. **Commissioner Miller** stated that his concern is that the 60 days were provided to meet the pieces that were not in place at that time. In 60 days, if all the pieces were not there, the application would stand as denied. Looking at the application today, there are still four pieces missing.

Commissioner Miller moved to reaffirm the denial decision because the required additional materials were not submitted at the end of the 60-day time period per the Planning Commission request. **Commissioner Bresaw** seconded the motion.
MOTION CARRIED 6-0.

Ayes: Bresaw, Crites, Miller, Hammang; Abstentions: Carter, Steward; Nays: None.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

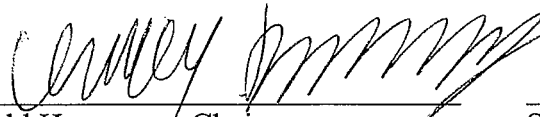
10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director -- None.


11.0 NEXT MEETING -- October 28, 2003

Mike Miller moved to adjourn the meeting of October 14, 2003. **Rosemary Crites** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 10:24 p.m.



Donald Hammang, Chair



Shirley Richardson, Hearings Reporter