

MILWAUKIE CITY COUNCIL  
WORK SESSION  
DECEMBER 3, 2001

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

City Council present: Mayor Bernard and Councilors King and Marshall.

Staff present: City Manager Swanson, Interim Community Development Director Rouyer, Acting Planning Director Gessner, Neighborhood Services Manager Gregory, and Program Specialist Herrigel.

### **Information Sharing**

#### **Johnson Creek Boulevard Improvement Project**

The group discussed ongoing Ardenwald neighborhood concerns with the Johnson Creek Boulevard Project and the City of Portland's limited response to Milwaukie's issues. If Milwaukie were to pull away from the project, it would probably be responsible for reimbursing Portland for the storm sewer work and engineering costs. The Milwaukie City Council asked Portland staff to look at reasonable alternatives, but apparently Project Manager Layden is not following through on neighborhood preferences. **Swanson** said a Portland City Commissioner is probably not that vested in the project, and staff is moving forward.

**Mayor Bernard** feels it is important to get the project the way the neighbors want it. On behalf of its citizens, the City requested the curve be redesigned and straightened, but the map shows it has simply been shifted to avoid the environmental zone.

**Swanson** commented the City of Portland does not appear to understand Clackamas County is responsible for resolving the survey discrepancy issues. **Mayor Bernard** understands County Commissioner Jordan said the Lillie property can be given back after the project.

**Swanson** feels Milwaukie has gone above-and-beyond to pressure the Portland City Council, but there is only so much that can be done to influence what has been a 20-year project.

**Mayor Bernard** suggested moving the utility poles rather than widening the sidewalk to meet ADA minimum standards. The neighbors are mainly concerned that the road is taking up too much space and the curve has not been redesigned.

**Councilor King** will contact Portland Commissioner Hales about these outstanding issues.

### Milwaukie Heritage Projects

**Councilor Marshall** discussed Milwaukie's heritage and asked the other Councilmembers if they felt he should pursue talks with the Oregon Maritime Museum and the Regional Railroad Transportation Museum both of which are looking for new homes. He was given direction to proceed in these discussions as well as investigate potential tourism grants.

### **Centennial Committee Interview**

The City Council interviewed Kelley Howell for a position on the Centennial Committee.

### **Riverfront Board Roles**

Riverfront Board Members present: Chair Steve Loaiza; members Dave Green, Michael Martin, Mike Stacey, Paul Verbout, and Mitch Wall.

**Swanson** said the current fiscal year budget does not include any riverfront development funds. Herrigel has been working with the Board to restore order and help the group evaluate its role. It is also assessing riverfront goals and projects including the boat ramp.

**Herrigel** reviewed the Board's most recent history and its interest in taking over certain tasks. Board proposals include: reappointment of all current members to subsequent terms; inclusion of the boat ramp in the riverfront plan; removal of the Kellogg Treatment Plant; development of a mechanism to receive tax deductible contributions for elements of the riverfront plan; and inclusion of Riverfront Board review in future planning and development processes on or near the riverfront. The Board particularly noted its dissatisfaction with the McLoughlin Boulevard Project's compatibility with the downtown/riverfront plan.

**Loaiza** explained the Board feels it is important for the City Council to make a policy statement about integrating the boat ramp into future improvements. The Board also recommends staggering terms so all members do not go off at the same time.

**Councilor Marshall** suggested 1, 2, and 3 year term expirations. He discussed interest in trying to bring the Oregon Maritime Museum to Milwaukie. The sternwheeler would need a docking facility, and perhaps the City could seek Marine Board funds to further enhance the Milwaukie waterfront.

**Green** cautioned the group about the Marine Board's parking requirements.

**Councilor King** was very concerned about parking and would not support its taking over already limited downtown or waterfront area.

**Mayor Bernard** recommended including the boat ramp in riverfront planning and working with the parking issue. He noted the river is deep at the log dump and could probably accommodate something the size of the sternwheeler.

**Councilor Marshall** said he is having further conversations with the River Queen owners. The owners have a vision of converting it to 8 condos. Right now it is sitting in dry dock and is still a restaurant.

**Mayor Bernard** reminded the group to keep in mind the goal of decommissioning the treatment plant in 5 years.

**Swanson** will talk to the city attorney about a mechanism for collecting riverfront improvement contributions. **Mayor Bernard** said the 501C(3) formed for the Jr. High is paid for and could probably be modified to include riverfront project contributions.

**Herrigel** said the Milwaukie High School Langford Team is developing funding options for phase 1 riverfront improvements.

Board members indicated they were not interested in fundraising for the project. **Councilor Marshall** suggested the Board act as a clearinghouse and identify uses for the contributions.

**Loaiza** said the Board also wants to re-affirm its original purpose. It had no input to the McLoughlin Boulevard Project and downtown development and wants to be part of the process. Connecting with the downtown is key to riverfront development.

**Green** asked that staff spend time bringing the Board up to speed.

**Verbout** is concerned the McLoughlin Boulevard Project design be sensitive to the riverfront particularly regarding noise and access. The link to the riverfront is very important.

**Swanson** said there is still a lot of public process and design work, so the McLoughlin Boulevard Project is still evolving.

**Loaiza** thought the current proposed design made boat ramp access difficult. He acknowledged Herrigel for her work with the Board as well as the continued interest by the Olson family and Gary Klein.

### **Consider Request to Allow Pergolas in Yards**

**Gessner** explained a property owner is asking the City Council to revise the current zoning ordinance standards relating to pergolas and other accessory structures. The intent is to allow the structure currently in question to remain as

well as adopting regulations for future construction. Staff identified several options for City Council: reject the request and proceed with code enforcement activities; initiate a zoning amendment; or advise the property owner to apply for a variance.

**Mayor Bernard** recommended the Zoning Ordinance amendment option. It is documented the property owners received the wrong information and were told they did not need a permit to build the pergola. Zoning issues arose after a neighbor complained.

**Swanson** said there is some discretion, but staff does follow up on complaints. The appropriate venue may be to amend the ordinance, and, if adopted, this case could become moot.

**Councilor Marshall** and **Mayor Bernard** did not support creating an ordinance allowing this one pergola to meet new standards. Councilor Marshall believed there was language in Section 700 to deal with this incident having to do with additions to single family residences or attached garages that would allow a Type 2 administrative review.

**Swanson** said code language would not be developed to particularly exempt this structure. He suggested allowing a week to review the code section Councilor Marshall cited.

### **Proposed Revisions to Subdivision Ordinance**

**Gessner** identified 2 sections to the project: updating application procedures and improving lot and flaglot design standards. The purpose of the revisions is to adhere to state laws and generally refine the process.

The 5 actions requiring city review are: lot consolidation, property line adjustment, partition, subdivision, and replat. Staff recommends lot consolidations and property line adjustments follow a Type 1 administrative approval. It does not recommend any changes to the partition, subdivision, or replat process. The City wishes to assure it follows the same rules as the county surveyor and provide the public with adequate time to review applications. **Gessner** discussed the feasibility of customizing the review process to make minor changes administratively.

The group discussed the importance of notification and concerns with raising neighbor expectations for control. **Councilor Marshall** felt the applicant should absorb any notification costs. **Swanson** pointed out some processes are as simple as a building permit, so some boundaries need to be identified.

**Gessner** will provide options in his subsequent report. The next step in the revision process will be code drafting for Planning Commission review and eventual Council consideration at a public hearing.

**Other**

**Councilor Marshall** suggested a section of each edition of *The Pilot* to explain code related issues. He urged embarking on an incentive program to instill community pride and encourage residents to upgrade their properties to increase the values. He suggested a communication channel with all the appointed advisory boards similar to that of the Neighborhood District Association (NDA) for a quick turnaround of information. Councilor Marshall asked if the police department was ticketing trucks using residential streets, and **Swanson** said Capt. Colt reported the officers have issued some tickets.

**Councilor King** advocated for a beautification award.

**Swanson** announced an executive session to discuss pursuant to ORS 192.660.

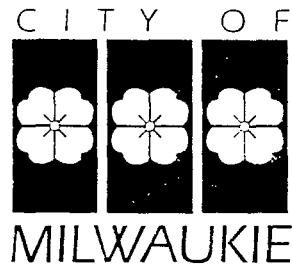
**Adjournment**

**Mayor Bernard** adjourned the work session at 7:25 p.m.

*Pat DuVal*

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Pat DuVal, Recorder



TO: Mayor and City Council  
FROM: Mike Swanson, City Manager  
DATE: November 26, 2001  
RE: December 3 and 4, 2001 Council Agendas and FYI Memo

## **Work Session**

December 3, 2001

City Council Conference Room

City Hall

The work session commences at 5:30 P.M. with dinner and sharing.

(1) At 6:00 P.M. we will be interviewing applicants for the City's Centennial Committee. The Committee is responsible for planning the 2003 Centennial. Michelle is staffing the Committee.

(2) At its last meeting, the Riverfront Board proposed certain tasks and responsibilities. In addition, they are proposing a step toward the eventual inclusion of a boat ramp on the Riverfront. They would like to discuss these matters with the Council and get some sense of whether or not their direction is acceptable. (As far as their concerns about the McLoughlin Boulevard Project, discussions are continuing with Engineering.)

(3) JoAnn and I are meeting with Mike Henley on Thursday, November 29, 2001, and we will have more to present with regard to the Parks District Needs Assessment after that meeting.

(4) The Hov pergola matter has been pending for some time. It is the subject of an enforcement action by the City. The parties agreed to defer any further action pending Council review of the need for the restriction. The Planning Commission reviewed the matter and has passed along some recommendations for Council consideration.

(5) Planning staff will be presenting recommended housekeeping and other changes to the Subdivision Ordinance. The revisions are needed to update the Code based on changes to the Oregon Revised Statutes. The changes will improve application procedures for property line adjustments, lot consolidations, and replats.

(6) I have added a draft memo regarding the Clackamas County Coordinating Committee (CCCC) Agenda Process. Before submitting this to the managers, I would like to make sure the Council is on board. The CCCC was indeed established to discuss matters of common concern. Since its inception, it has focused on specific programs and finances. While these matters are not unimportant, it seems that there are bigger issues of long term concern that the CCCC should focus on. The purpose of my memo is to raise that issue for consideration.

(7) I will need a brief executive session to further discuss the sale of the former Police Department Offices. We will be presenting an offer based on further discussions.

## **Regular Session**

December 4, 2001

Council Hearing Room

City Hall

The regular business meeting will take place at 6:00 P.M.

(1) The Metro Local Share Agreement extends the existing agreement in order to complete two projects: Ardenwald to Springwater Access Capital Improvement and Minthorn North Addition/Acquisition. Both are projects funded by the 1995 Open Spaces, Parks, Trails, and Streams bond measure.

(2) The Resolution Establishing the January 2002 Council meeting dates was agreed upon at the October 15, 2001 work session. This resolution provides notice to the public of the changes.

## **FYI Items**

(1) A list of the NDA holiday parties and schedule changes that we know of at the present time follows:

Neighborhood Holiday Activities:

Linwood -- No December Meeting

Lake Road -- No December Meeting

Historic Milwaukie -- Dec. 10, Holiday Donations for Milwaukie Elementary, 7 p.m.

Ardenwald -- Dec. 11, Christmas Party, 6:30 p.m., with Holiday Donations

Lewelling -- Dec. 15, Christmas Party, 3 to 5 p.m., Holiday Decoration Contest Judging

Hector Campbell -- Dec. 10, Christmas Treats, 7 p.m.

Island Station -- Dec. 20 -- No festivities planned as of now.

(2) We closed on the Safeway property on November 26, 2001. We will be planning an event to take down the sign as a way of recognizing the change.

(3) Reminder: The management staff will be at an all day retreat at PSB on December 3, 2001. We will be focusing on creating a strategy for seeking public input on and implementing the goals. I am recommending that we follow this up with a planning meeting with Council in January. I would also hope that we can use some of that time for discussions among Council members on issues of importance to each.

(4) At a recent meeting he attended, Roosevelt learned of a program administered by the Corps of Engineers that would provide a substantial match for stream restoration projects. In discussions with Corps and ODOT representatives, he learned that the funds could be used for work on the dam and Kellogg Lake. We will be meeting in the near future to begin work on making an application. Nothing formal at this time—just a “heads up.”

(5) You will be receiving notice soon of this year's Citywide Employee Holiday Potluck. It will be on Friday, December 14 at City Hall from 11:30 a.m. to 1:00 p.m.

(6) The Ledding Library is accepting donations of new toys from now until December 20. Toys will go to Annie Ross House families and students at Milwaukie's elementary schools.



To: City Managers/Administrators  
District General Managers  
Fire Chiefs

From: Mike Swanson, Milwaukie City Manager  
Kent Squires, Oak Lodge Sanitary District General Manager

Re: Clackamas County Coordinating Committee (CCCC) Agenda Processes

Date: October 29, 2001

In reviewing the first two CCCC agendas, we have become concerned that the focus has been on symptoms rather than the illness. That is, most of the Committee's time has been devoted to discussions of specific problems and how to eliminate each, such as funding for individual services.

Without downplaying the need for adequate funding for member programs, we believe that it is more important *for the long term* that we focus Committee energies on the consequential policy issues. The most important -- and the most intractable -- of these is governance in urban, unincorporated Clackamas County. Therefore, we request that the group of managers discuss, at the earliest opportunity, alternatives for moving the governance agenda item forward.

In addition, we believe that the best use of our time would be to assist the Committee in identifying other policy priorities and in establishing agendas that seek a resolution of those issues. This would not require that the individual program issues be removed from consideration. Rather, we are requesting that major policy issues like the governance issue be identified and priorities for expeditious Committee resolution.

**CITY OF MILWAUKIE  
CITY COUNCIL WORK SESSION AGENDA  
DECEMBER 3, 2001**

**MILWAUKIE CITY HALL**

Second Floor Conference Room  
10722 SE Main Street

***WORK SESSION – 5:30 p.m.***

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>
1.	5:30 p.m.	Dinner and Information Sharing	Group
2.	6:00 p.m.	Centennial Committee Interview	
3.	6:15 p.m.	Riverfront Board Roles	Board/Herrigel
4.	7:00 p.m.	Parks District Needs Assessment	Mike Henley/Herrigel
5.	7:30 p.m.	Consider Request to Allow Pergolas in Yards	Gessner/Rouyer
6.	7:45 p.m.	Proposed Revisions to Subdivision Ordinance	Gessner
7.	8:00 p.m.	Adjourn	

***The Council may vote in work session on non-legislative issues.  
The time listed for each discussion item is approximate. The actual time at  
which each item is considered may change due to the length of time  
devoted to the preceding items.***

*At the end of the work session, the Council may hold an Executive Session under the  
authority of Oregon Revised Statutes 192.660 as needed.*

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

<b><i>The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.</i></b>
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To: City Council

From: Riverfront Board Members

Kathi Cardinalli, Dave Green, Stephen Loaiza, Mitch Wall, Michael Martin, Paul Verbout, Mike Stacey

Date: November 8, 2001

Re: Riverfront Board Roles

In June 2001, representatives of the Riverfront Board met with Council to discuss the status of the Board and their future tasks. Council reaffirmed their support for the Board and asked that the Board develop a list of tasks and responsibilities they felt were important for the Riverfront Board to pursue. Following is the Board's proposal.

- 1) All Riverfront Board members were appointed for three-year terms, beginning on the same date. All Board member terms will expire on March 31, 2002. Board members present at the November 7 meeting agreed that three years was a good term for Board members but requested that council stagger the terms so some positions expired in two years and some in three. Current members understand that they would be asked to reapply for their positions between now and March.
- 2) The Riverfront Board recommends that City Council consider the boat launch, in some form, as part of the Riverfront Plan, without acknowledging any obligation that it remain, and that the Riverfront Board be charged with developing criteria for a boat launch in the Riverfront Plan.
- 3) The Board feels that the removal of the Kellogg Treatment Plant from the Milwaukie Riverfront is integral to realizing the City's long term vision for the Riverfront. To that end, the Board requests that City Council adopt a resolution, publicly affirming that the City of Milwaukie wants the Kellogg Sewage Treatment Plant removed as soon as possible.
- 4) The Board recommends that the City Council establish a mechanism to receive tax-deductible contributions for improvement of the Riverfront.

5) The Board would like to reaffirm their original purpose of “advising and making recommendations to the City Council and providing long-term continuity and short-term problem solving in the successful completion of the Riverfront”. To that end, the Board recommends that Council direct staff to build Riverfront Board review into the (planning and) development processes for the following projects:

- McLoughlin Blvd. (\*)
- Kellogg Treatment Plant removal
- Boat Ramp modification
- Johnson Creek enhancement
- Kellogg Creek modification
- Springwater Trail extension
- Portland Traction line acquisition and development

\* The Riverfront Board is not satisfied with the McLoughlin upgrades that were presented at the October 17, 2001 Riverfront Board meeting and feels that they were not compatible with the vision of the Downtown/Riverfront Framework Plan.



To: Mayor and City Council

Through: Mike Swanson, City Manager  
Alice Rouyer, Interim Community Development Director *AR*

From: John Gessner, Interim Planning Director *JG*

Date: December 3, 2001

Subject: Citizen Request to Allow Pergolas<sup>1</sup> in Yards

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**I. Action Requested**

Consider the citizen request to allow certain structures in yards and provide direction to staff.

**II. Background**

**Key issues**

- *Should yard restrictions be relaxed to allow pergolas?*
- *Should other structures like arbors and trellises also be allowed?*

**History**

Attorney Mari Redman Ives is assisting a property owner to resolve a zoning violation involving a structure that is located in a required yard. In her October 1, 2001 letter to the Mayor and City Council, Ms. Ives requests that the City Council consider a zoning amendment that would allow pergolas within minimum yard setbacks. (A copy of the letter is attached in Exhibit 1.)

The matter was referred to the Planning Commission at its October 9, 2001 work session. The Commission's concerns are summarized below. (See Exhibit 3 for minutes of the October 9, 2001 Commission discussion.)

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<sup>1</sup> A pergola means a structure of parallel columns supporting an open roof of beams and crossing rafters or trellis work. Other similar structures include trellises and arbors. See Exhibit 2 for examples.

- a. The Commission is in favor of allowing pergolas subject to setting development standards.
- b. Solid structures in front and side yards should not be more than 42 inches in height.
- c. Structures should not interfere with visibility at driveways.
- d. Covered pergolas should be prohibited.

**III. Analysis**

**Why require yards?**

Zoning regulations limit lot development in the interest of ensuring adequate light, air and open space. This is typically accomplished through yard setbacks, limitations on building height, and square footage of building footprints, and paved area.

Front yards play an important role in the development of residential streetscapes. Side yard setbacks are requirements are typically less than front and rear yards, but are important to providing for light and air between buildings. Also, they provide opportunities for landscaping that can help reduce potential distractions between neighbors caused by normal household activity.

In Milwaukie the residential rear yard setback is the same as the front. It creates the yard space for, at-home outdoor recreation, gardening, small outbuildings, and other pursuits.

**How are accessory structures now regulated?**

Outbuildings, detached garages, gazebos, pergolas and the like are commonly referred to as “accessory structures”. In residential zones, these structures are not permitted in required yards<sup>2</sup>, except as follows:

- a. Pools, decks, and patios when less than 18 inches in height.
- b. Fences and walls along lot perimeters.

<sup>2</sup> The “required yard” is the space between the property line and a structure. Front, side, rear, and street-side yards vary by zoning classification as follows:

	R-10	R-7	R-5	R-3	R-2
front	20	20	20	15	15
rear	20	20	20	15	15
side	10	5/10	5	5	5
corner lot street side	20	20	15	15	15

- c. Architectural features that project from a house including eaves, canopies, unroofed landings, and others.
- d. Side and rear yard setbacks may be reduced to 3 feet for buildings less than 480 square feet when located more than 60 feet from the street.

#### **What design options are available?**

Customary zoning standards can be tailored for accessory structures. They include the following:

- a. Maximum height.
- b. Maximum square footage.
- c. Location restrictions (e.g. rear yard only, certain zones only).
- d. Setbacks from property lines or other buildings.

#### **IV. Concurrence**

City Attorney, Neighborhood Services, Fire, Public Works and Building Departments will be involved in reviewing any code amendment should the request proceed.

#### **V. Work Load Impacts**

Staff estimates it would take 15 to 25 hours to complete a code writing project for this request. Tasks associated with this type of project include the following:

- Research code and legal issues.
- Public information and outreach.
- Planning Commission and City Council work sessions.
- Code writing.
- Coordination and review by City Attorney and other departments.
- Preparation of staff reports and notices.
- Public hearings with the Planning Commission and City Council.

#### **VI. Alternatives**

The Council has three options as follows:

1. **Do not support the request and proceed with code enforcement.**
2. **Direct staff to initiate a zoning amendment, and prepare regulations and design standards for pergolas and other accessory structures.**

*Staff recommends this option should the Council support the applicant's request.*

*An advantage of staff preparing the code changes includes a more inclusive community process and balancing of property owner and neighborhood concerns. Disadvantages may include a longer adoption process. An important consideration is managing staff resources and integrating the project into the current work program.*

3. **Advise the applicant initiate the code amendment through submission of a formal zoning amendment application.**

**EXHIBITS**

1. October 1, 2001 Letter of Attorney Mari Ives
2. Graphic of Pergolas, Arbors, Gazebos
3. Excerpt of October 9, 2001 Planning Commission meeting

**EXHIBIT 1**

TELEPHONE: (503) 659-5535

FAX: (503) 659-5568

E-MAIL: mail@redmanlaw.com

**RECEIVED**

OCT 1 2001

CITY OF MILWAUKIE  
COMMUNITY DEVELOPMENTREDMAN LAW FIRM  
ATTORNEYS AT LAW  
110565 S.E. 23<sup>RD</sup> AVENUE  
MILWAUKIE, OREGON 97222-7517JAMES E. REDMAN  
MARI REDMAN IVES  
HUGH J. REDMAN \*JAMES R. CARSKADON, JR.  
1933-1986

\*Temp. Acc. Div. U.S.M.C., Pentagon

October 1, 2001

Mayor James Bernard  
 City Council Members  
 Jeff Marshall  
 Mary King  
 Larry Lancaster  
 Brian Newman  
 City Hall  
 10722 SE Main Street  
 Milwaukie, Oregon 97222

Dear Mayor Bernard and Members of the City Council:

I represent Laurie and Doyle Hov. Mr. and Mrs. Hov have been informed that a pergola<sup>1</sup> which they constructed on their property is in violation of the City's Zoning Ordinance.

In an attempt to ascertain the nature of the violation, I made a careful review of the Municipal Code. It appears that the Hov's pergola is a structure under the definition of Section 19.1.03; "Structure: Means something constructed or built and having a fixed base or fixed connection to the ground or another structure." The four posts of the Hov's pergola are set in concrete in the ground.

The Hov home is zoned R-5 and sits on a corner lot. Therefore, the Zoning Ordinance requires a side yard at least 15 feet deep. The pergola is in the side front yard. The front yard requirement is met, the side yard is not. According to Section 100 of the Zoning Ordinance, "Yard: Means an open space on a lot which is unobstructed from the ground upward *except as otherwise provided in this Ordinance.*" Structures, unless otherwise provided in the Ordinance, may not infringe on this open space.

The Ordinance provides that fences (which would otherwise meet the definition of a "structure") may be constructed on lot perimeters, with a maximum height of 6 feet for side yards. See Section 401.1. In addition, the Ordinance allows uncovered patios, decks, or swimming pools within the open space designated for a yard. I could find no reference to

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<sup>1</sup> Pergola – a structure usually consisting of parallel colonnades supporting an open roof of girders and cross rafters. Merriam Webster's Dictionary, Tenth Collegiate Edition.

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pergolas or arbors<sup>2</sup>.

With no reference in the Zoning Ordinance or Municipal Code to pergolas or arbors, the best City employees could do was to call the Hov's pergola a fence and require that it be no more than 6 feet high. However, by their very nature as structures meant to be walked under, pergolas and arbors must almost always be more than 6 feet high.

The problem lies in the fact that pergolas and arbors are "structures" under the City Code yet they do not present any of the negatives attributable to locating structures within the minimum setbacks. On the contrary, they are extremely popular yard enhancements, particularly in Milwaukie. There are literally dozens of them within the City. Most can be seen over the gates of picket fences in front yards, at the front property line. These successful attempts by homeowners to add charm and character to their yards should be encouraged and applauded as they improve the City's neighborhoods to everyone's benefit. Furthermore, they do not create the problems the yard requirements are designed to prevent – a loss of light, air and vision.

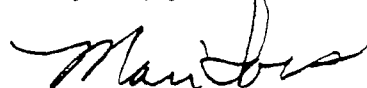
The City's legitimate desire to maintain open space around buildings has unintentionally created a situation where the City is forced to require the removal of architectural yard enhancements which pose no hazard, create no nuisance and whose removal would be a net decrease in the attractiveness of Milwaukie.

Furthermore, in Mr. and Mrs. Hov's case, the City finds itself in the position of requiring the removal of a structure which City employees readily admit improves the appearance of the Hov's yard while at the same time admitting that an unlikely action will be taken against other homeowners with pergolas or arbors. (Enforcement, by necessity, is complaint driven and no other complaints against pergolas or arbors have been received.)

I believe the City Council will be doing good work on behalf of the residents of Milwaukie if they amend the Zoning Ordinance to allow an exception for pergolas and arbors.

I respectfully request the Mayor and the City Council suspend enforcement action against Mr. and Mrs. Hov to allow the time necessary to draft and pass an ordinance allowing pergolas and arbors within the minimum yard setbacks. Your careful consideration of this proposal will be greatly appreciated.

Very truly yours,



Mari Redman Ives

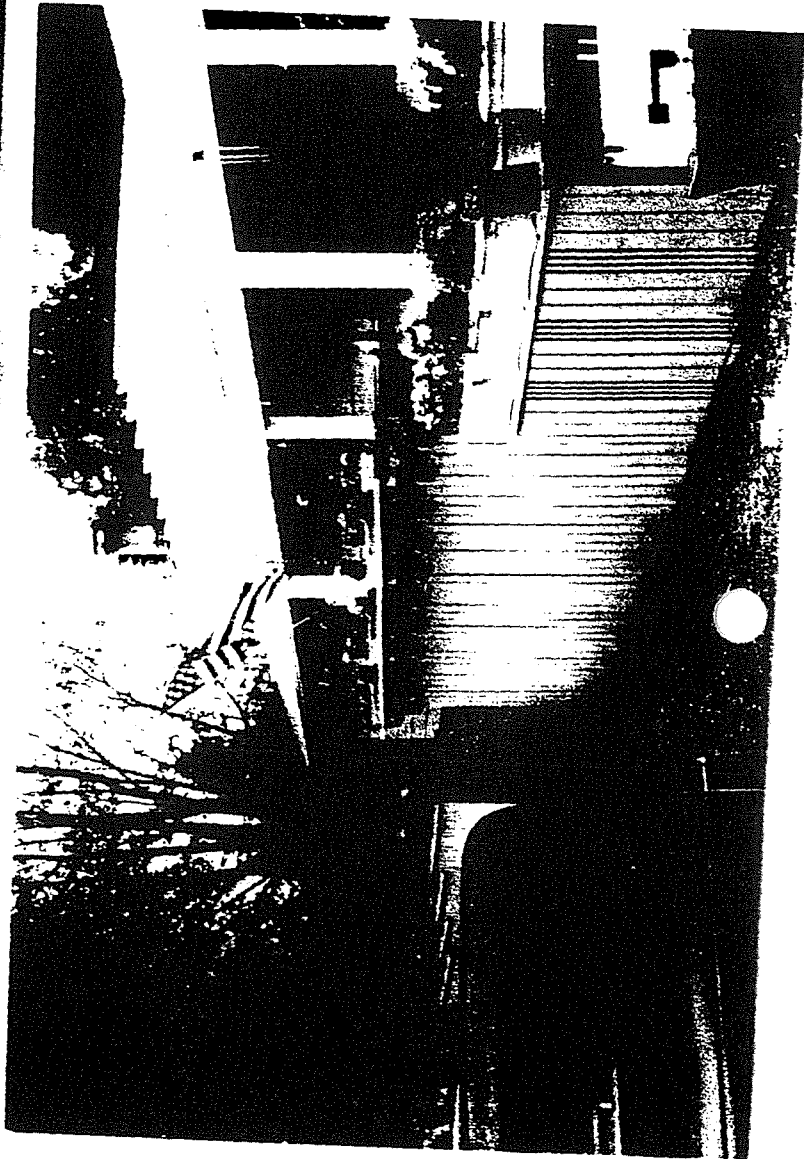
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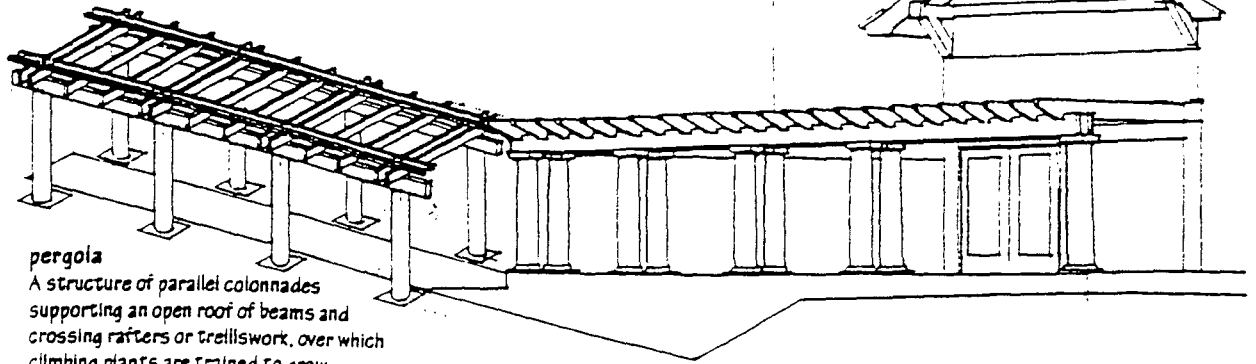
<sup>2</sup> Arbor – a shelter of vines or branches or of latticework covered with climbing shrubs or vines. Merriam Webster's Dictionary, Tenth Collegiate Edition.

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cc: Mr. and Mrs. Hov  
Steven Campbell  
Alice Rouyer  
John Gessner

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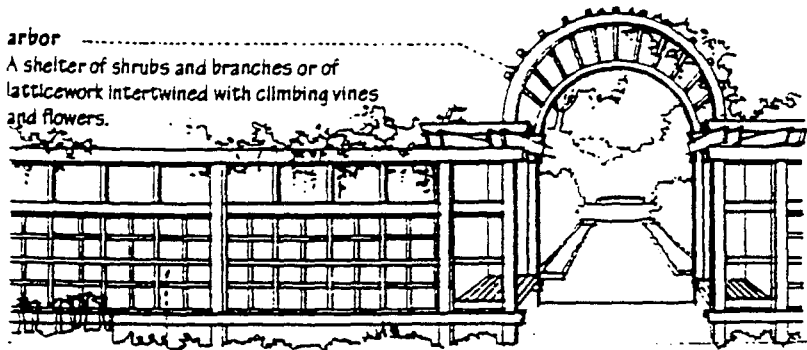




**pergola**  
A structure of parallel colonnades supporting an open roof of beams and crossing rafters or trelliswork, over which climbing plants are trained to grow.

**arbor**

A shelter of shrubs and branches or of latticework intertwined with climbing vines and flowers.

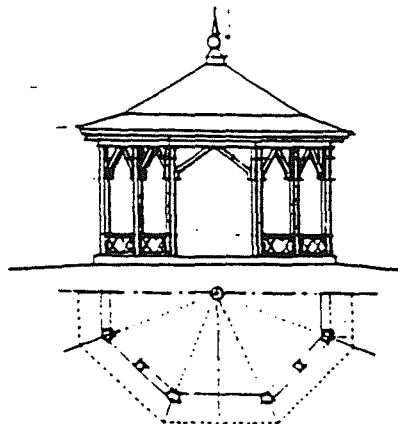


**trellis**

A frame supporting open latticework, used as a screen or a support for growing vines or plants.

**lattice**

A structure of crossed strips arranged to form a regular pattern of open spaces.



**gazebo**

A freestanding roofed structure, usually open on the sides, affording shade and rest in a garden or park.

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

**Barbara Cartmill** asked if there were any neighborhood comments? Staff stated that there were no comments.

**Barbara Cartmill** moved to approve the findings and conditions of approval for applications WG-01-02 and VR-01-05, authorizing construction of a single-family residence and a variance of side yard requirements. Further, staff is directed to work out the issues surrounding Conditions #4 and #5 and to applicable regulations and ordinances. **Mike Miller** seconded the motion. THE MOTION CARRIED 4-0.

Ayes: Cartmill, Crites, Hammang, Miller, Steward

Nays: None.

**Mike Miller** stated that he feels that the time has come when sidewalks and curbs are beginning to be tied together in the City. Only if it were illegal, would he be accepting of removing conditions 4 and 5.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None.

10.0 OTHER BUSINESS/UPDATES

11.0 Matters from the Planning Director

**Alice Rouyer** welcomed Rosemary Crites to the Commission. **Ms. Crites** stated that she has been a resident just outside the boundaries of Milwaukie for most of her life. She spent some years away from Oregon and returned to take care of her parents and has kept the family home. She feels very strongly about the future growth of Milwaukie. She has been involved with city activities for about a year and feels the city will move forward in years ahead. **Alice Rouyer** stated that Ms. Crites has been active with the Design and Landmarks Commission.

**Alice Rouyer** distributed to the Commissioners a letter to Mayor Bernard and members of the Council, dated October 1<sup>st</sup>, from the Redman Law Firm. The City Manager asked that the Planning Commission review this issue and for a recommendation to Council.

The issue of this letter is about property on the corner of 30<sup>th</sup> Avenue and Roswell Street in the Ardenwald neighborhood. This lot has a front-yard setback of 20 feet and a side yard adjacent to a street corner setback of 15 feet. The structure was completed without a building permit and constructed in the building setback. The people who own the property do not want to remove the structure. They are looking for options to not remove

the structure, changing the code, or whatever needs to be done to keep the house. Staff has been working with the applicant to come up with a solution.

The attorney is raising the question of the definition of "structure" in the code. The code allows for some things to encroach into the setbacks; uncovered patios, decks, and swimming pools. The purpose of the setback is to maintain open space. In Milwaukie, anything over 18 inches in height as defined by the Uniform Building Code, or anything that is not an uncovered patio, deck or swimming pool, can't encroach into a setback. Residents are allowed to have a fence 42 inches in height in the front-yard setback. On the side yard, a fence of 6 feet in height is allowed.

This property owner is asking the Planning Commission what they feel is appropriate in terms of allowing for encroachment into the setbacks. The attorney is saying maybe it is appropriate to have an exception allowing structures like this pergola (a structure usually consisting of parallel column aides supporting an open roof of girders and cross rafters).

**Mike Miller** stated that it is his understanding that permanency is if there is a concrete foundation has to meet the same code as a house.

Currently the definition of structure is, "structure means something constructed or built or having a fixed base or fixed connection to the ground or another structure."

**Barbara Cartmill** voiced concern about setting precedence and others wanting an exception.

**Howard Steward** stated that he has a hard time with these kinds of decisions. It would seem that if it doesn't bother the next-door neighbor, it shouldn't bother neighbors farther away.

Speaking: Mari Ives, 14210 SE Harney Street, Portland

**Ms. Ives** stated that she is remodeling her home and has all of her permits. She works in downtown Milwaukie at the Redman Law Firm. The pergola is set in concrete and it is not attached to the house. It does not have a roof it has open girders. Eventually, it will be overgrown with foliage. The Hoves' have a snout-house. Their front yard is their driveway. They are on the street for their side yard and there is a 15 foot wide side yard. When you have this amount of space, there is no room for trees or other interesting things that can be done to dress up your yard and make it more attractive. The house is very plain.

Ms. Hoves' recently became a realtor and aware of what can be done to improve her property and build equity in the home. They have a friend in town that remodeled a craftsman-style home with three pergolas along the property line. These homeowners had all of their permits. When this family was done with the remodeling, the Chamber of Commerce presented them with an award for beautifying the City of Milwaukie. This family is concerned that if their address is revealed, they might be subject to enforcement action. However, this yard was the inspiration for her client's pergola.

There were issues about whether they needed a permit, and one was not secured. After Ms. Hoves' came to her, she walked around Milwaukie and there are dozens of the pergolas in Milwaukie. If you have a small yard, this is a way to make the yard look bigger. This pergola is traditionally put in the setback.

**Ms. Ives** is proposing that the new ordinance would have some restrictions. The pergola would not be allowed to be enclosed, no solid roof, not larger than 40 x 40 feet. This pergola is 10 feet tall and 5 feet wide. The city staff have stated that they find it to be an improvement and more attractive. Staff has purposely not enforced on this because they feel bad about telling the owners to rip the pergola out.

A suggestion was given to the Hoves' to consider taking the posts out of the concrete base and attaching them to pier posts. This would eliminate the issue of foundation. The Planning Department rejected this idea.

**Ms. Ives** asked that there be an exception in the code for pergolas and arbors. This pergola was built for Clematis. Bark dust has been put on the banks and there is quite a bit of unimproved road between the fence and asphalt.

**Mike Miller** asked if this is permanently attached to the house. **Ms. Ives** stated that it is very close, but does not touch the house.

**Howard Steward** suggested that if someone builds without a permit, and it meets the standards, the resident can pay after the fact the cost of the permit plus a premium/fee for not having the permit. **Alice Rouyer** reported that people who do build without permits are charged double permit fees if they are caught.

**Alice Rouyer** summarized that the Commission is in favor of setting standards and allowing pergolas to be allowed in the setback subject to some limitations.

**Donald Hammang** stated that he is in favor of some allowances as long as it is on the front street portion of the property. A side yard setback would be allowed as long as it is fronting the street. He asked if this pergola could be viewed as a fence subject to fencing requirements. **Alice Rouyer** stated that this structure is in violation of the fence regulations. The resident was offered to take the pergola down but keep the fence. There is a fence height limitation of 6 feet in front yards. This fencing would not meet those requirements either.

**Rosemary Crites** stated that she likes the look of this pergola, but safety issues should be considered first. Maybe lowering the structure may be a way of solving the problem.

**Mike Miller** stated that he has a problem with structures being built and not meeting the code without a permit. Consideration should be given to the height of the structure because it blocks the view of the adjacent property owners when they are backing out of their driveway. The 4 foot height requirement for front fencing has been a code some a long time.

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It was the consensus of the Commission to recommend to Council:

- Solid structures in the front yard or side yard adjacent to a street cannot be constructed higher than 42 inches.
- Concern was expressed about structures that are attached to buildings.
- Structures cannot be permanently covered.

**Alice Rouyer** reported that Milwaukie would turn 100 years old in the year 2003. Council is planning to further the goals of the city as well as celebrate this event. It was suggested that instead of spending money on a party that Milwaukie spend money on an improvement that Milwaukie can be proud of in celebration of the 100 years. Possibly this celebration could include a park, downtown improvement, library board project, etc. some way to further the goals of the City. There will be a council-appointed citizen group for this Centennial event.

10.1a. Continuation of flag lot discussion from 9/25/01

**Alice Rouyer** stated that she wanted to get feedback on the flag lot ordinance that was passed out to the Commissioners at the last meeting. She asked if there were any issues, concerns, or comments that can be addressed in the next draft.

**Mike Miller** suggested that a full review be done on what constitutes a flag lot. In a previous issue, a situation was shown where a flag lot accessed three lots. The standards on the flag lot shown on the map were a 12 foot paved flagpole. The standards call for a 20 foot paved for any flagpole that accesses more than one house. These standards need to be better defined. This property, under those conditions, could not meet the R-7 requirement without a variance. The standards call for a 30 foot wide strip, with 20 foot paved and a 5 foot access on each side. The plan showed a 7,000 sq.ft. lot with a 12 foot flagpole.

**Howard Steward** stated that for him, the larger issue is density and boundary. Are we better off today than we were 10-20 years ago when there were no restrictions? He is having a hard time finding support for increased density and a tightly held urban growth boundary.

**Rosemary Cites** stated that it depends on the quality of the neighborhood that the flag lot is being added to. When you have flag lots, there tends to be a variety.

**Alice Rouyer** stated that some of the ideas included:

- Increasing the street frontage requirements to more than 20 feet.
- Having increased height and setback relationships to the property lines.
- Modifying the maximum height regulations for development on flag lots.

**Donald Hammang** stated that there should not be a prohibition against flag lots. There has to be design rules. There needs to be a way to accomplish neighborhood distinction.



**To:** Mayor and City Council

**Through:** Mike Swanson, City Manager  
Alice Rouyer, Interim Community Development Director *AR*

**From:** John Gessner, Interim Planning Director *JG*

**Subject:** Proposed Revisions to Subdivision Ordinance

**Date:** December 3, 2001

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**I. Action Requested**

**Review proposed revisions to application procedures for property line changes and provide direction to staff.**

**II. Background**

**Key Issue**

*Are the proposed changes to improve application procedures for lot consolidation, property line adjustment, and replat acceptable?*

**History**

Subdivision Ordinance improvements are part of the Planning Department's work plan for neighborhood livability. The overall project includes modernizing application procedures and improving lot and flag lot design standards. Code revisions for improved application procedures presented here are included in the first phase of the project. The second phase, review of lot and flag lot design will start next month.

The Planning Commission reviewed this matter on August 28, 2001 and directed staff to proceed with public hearings, pending Council comment. The purpose of the first phase revisions are:

1. Make application procedures and code consistent with state law.
2. Update terminology and clarify ambiguous language.
3. Improve administration.

This proposal changes only application procedures. It does affect development standards.

Many of the proposed changes are minor housekeeping amendments. The more substantial changes involve improved application procedures for certain property line changes. (*See Exhibit 1 for draft. Please note that Exhibit 1 does not contain housekeeping amendments, which have little affect on the how the regulations are applied.*)

There are five actions that require city review as follows:

1. *Lot consolidation -- elimination of property line to merge lots.*
2. *Property line adjustment -- change in a property line between two lots.*
3. *Partition -- division of land into less than four lots.*
4. *Subdivision -- division of land into four or more lots.*
5. *Replat -- change to an approved partition or subdivision.*

Existing application procedures for partitions and subdivisions do not need to be changed. However, city regulations have not kept up with state laws concerning procedures to implement property line adjustments, replats, and lot consolidations. Staff recommends that procedures be adopted for these actions to ensure compliance with state law, the subdivision ordinance, and zoning standards.

Benefits to property owners include certainty over the property's legal status, which may come into question on sale of the property or when checked as part of building permit review.

Based on feedback about process expressed by the Council in past zoning code revision projects, the application procedures have been designed to reduce potential difficulty and time delays for the applicant. See summary below.

- Lot consolidations are simple applications that require no discretion to determine conformance with zoning requirements. Consequently it follows a simple Type I administrative process.
- Property line adjustments are currently processed under administrative review with an option for public hearing. Like lot consolidations, property line adjustments involve simple determinations of compliance with zoning standards. Staff recommends the current application process be simplified to a Type I Planning Director decision. This would eliminate the option for a public hearing.
- Replats, (changes to approved partitions or subdivisions) can involve both simple and complex reviews. The draft regulations require Planning Commission review for any changes to partitions

or subdivisions originally decided by the Commission except when it is determined by the Planning Director that the proposed change is minor.

### **Next Steps**

If the Council directs staff to proceed, a final draft will be prepared for a Planning Commission public hearing on February 12, 2001 and Council adoption hearing on March 19, 2001.

### **III. Concurrence**

The proposed regulations have been reviewed and approved by the City Attorney and Director of Engineering. The County Surveyor reviewed and commented on the proposed draft and many changes were made to the original draft in response. The City Attorney, Director of Engineering, and County Surveyor will review the final draft prior to adoption.

### **IV. Fiscal Impact**

Staff will propose revised application fees as needed to minimize fiscal impact of administering application requirements.

### **V. Work Load Impacts**

No new work load impacts are expected since the regulations improve existing review requirements.

### **VI. Alternatives**

1. Take no action.
2. Direct staff to proceed with public hearings on this project subject to any changes suggested the Council in this work session.. (*Staff recommends this option.*)

### **EXHIBITS**

1. Proposed Code Revisions for Application Procedures

WS. 6 4**CHAPTER 17.24 LOT CONSOLIDATION, PROPERTY LINE ADJUSTMENT AND REPLAT****17.24.010. Purpose.**

This chapter outlines procedures and criteria for lot consolidation, adjustment and reconfiguration of property lines. The chapter is intended to provide some flexibility in the adjustment of lot boundaries within the context of State law.

**17.24.020. Applicability and review process.**

## A. Limitations.

No more than one property line adjustment may be approved between two abutting units of land within one calendar year. An application affecting more than one property line and more than two abutting units of land within one calendar year shall be processed as a replat rather than a property line adjustment.

## B. Procedure.

1. See Table 17.24.020 for a summary of application and review procedures based on the type of change requested.

2. The Planning Director may modify the procedures identified in Table 17.24.020 for changes to previously approved partitions or subdivision as follows:

a. Minor quasi-judicial review may be required in the following situations:

- i. When the Planning Commission approved the original land use action; and
- ii. the proposed change is inconsistent with the original approval; or

b. Minor quasi-judicial review may be changed to Type II review, or a Type II may be changed to a Type I review upon finding the following:

- i. The proposal is consistent with applicable standards and criteria;
- ii. the proposal is consistent with the basis and findings of the original approval; and
- iii. the proposal does not increase the number of lots.

3. An increase in the number of lots within the original boundaries of a partition plat shall be reviewed as a subdivision when the combined number of existing lots that are proposed to be modified and proposed number of new lots exceeds 3.

**Table 17.24.020 – Application & Review Procedures**

Action	Type I	Type II	Minor Quasi-Judicial
<b>1. Lot Consolidation other than replat</b>			
a. Legal lots created by deed.	X		
<b>2. Property Line Adjustment</b>			
a. Any adjustment that is consistent with the Oregon Revised Statutes and this Ordinance.	X		
b. Any adjustment that modifies a plat restriction.		X	
<b>3. Partition Replat<sup>1</sup></b>			
a. Any modification to a plat that was decided by the Planning Commission.			X
b. Parcel consolidation.	X		
c. Actions not described in 3(a) or (b).		X	
<b>4. Subdivision Replat</b>			
a. Any change to a plat restriction.			X
b. Increase of 4 or more lots within the parent subdivision.			X
c. Increase of 3 or fewer lots within the parent subdivision.		X	
d. Boundary change to 3 or fewer lots.		X	
e. Consolidation of 3 or fewer lots.	X		
f. Actions not described in 4(a) through 4(e).			X

**17.24.030. Approval criteria.**

The applicant for a lot consolidation, property line adjustment or replat shall demonstrate compliance with the following:

A. Milwaukie Municipal Code 19.400 (Supplementary Regulations), Milwaukie Municipal Code 19.1300 (Solar Access Protection), and Milwaukie Municipal Code 17.28 (Land Division Design Standards).

B. Consistency with the underlying zone, including minimum density standards.

<sup>1</sup> Includes reorientation of originally platted lot lines.

- C. Site access is or can be made consistent with city standards.
- D. The boundary or other change will allow reasonable development of the lot.

**17.24.040. Submittal requirements.**

An application for a lot consolidation, property line adjustment, or replat consists of a completed application signed by all property owners involved in the proposed application, the appropriate fee, narrative to address the approval criteria of subsection 17.28.030, additional application information as may be required by administrative practices, and a plan showing the following details:

- A. Scale, north arrow and date of map;
- B. Tax map and lot number identifying each property involved in the application;
- C. Adjacent rights-of-way, with width shown;
- D. Location, width and purpose of any recorded easements and/or plat restrictions;
- E. The area of each affected lot, before and after the lot consolidation, property line adjustment or replat;
- F. Proposed property lines and dimensions of each lot affected by the application; and
- G. Location of existing structures to remain and proposed structures, with setbacks shown to all existing and proposed lot lines.

**17.24.050. Monumentation, Survey and recording.**

- A. Monuments and plats and are required in accordance with Oregon Revised Statutes Chapter 92.
- B. Recording instruments for boundary changes, subdivisions, partitions, and replat shall be submitted to the County Surveyor within six months of city approval.
- C. Prior to recording a lot consolidation, property line adjustment, subdivision or partition plat or replat, the applicant shall submit the recording instruments to the City for a determination of consistency with city code and required approvals.
- D. Surveys must be filed with the County Surveyor in accordance with Oregon Revised Statutes 92 and 209.250.
- E. Lot consolidations for units of land legally created by metes and bounds descriptions may be recorded by deed subject to approval of the County Surveyor.
- F. Subdivision and partition plats, replats, and property line adjustments must be recorded by plat.

F. Prior to recording with Clackamas County, the applicant shall submit required recording instruments to the Planning Director for a determination of consistency with city code and required approvals.

G. The applicant for a lot consolidation, property line adjustment or replat shall submit a copy of the file survey or recorded plat to the City no later than 15 days after recording with the County Surveyor.