AGENDA

City of Oregon City, Oregon
Meeting of the Parks and Recreation Advisory Committee

City Hall
Commission Chambers
625 Center Street, Oregon City, OR 97045

Thursday, July 22, 2010
7:00 P.M.

1) Call to order
2) Approval of minutes – May 27, 2010 and June 24, 2010 meetings
3) Citizen comments on issues and items not on the agenda
4) General business
   a) Singer Falls project update
   b) Carnegie Center utilization process final report
   c) Canemah Park grant
   d) Trail & promenade signage design project
   e) End of Oregon Trail site process update
   f) Leland Rd. (Wesley Lynn Park) property purchase
   g) Oak Tree Park and Josephine Street extension
   h) Other general business
5) PRAC member reports
6) Staff reports
   a) Recreation Services update
   b) Parks maintenance update
   c) Volunteer appreciation event reminder – July 29th
   d) Carnegie spray park update
   e) Other
7) Next scheduled meeting date
8) Adjournment

Meeting Minutes

City of Oregon City, Oregon
Meeting of the Parks and Recreation Advisory Committee

City Hall
Commission Chambers
625 Center Street, Oregon City, OR 97045

Thursday, May 27, 2010

Attendance

Members: Steve McAdoo, Ted Schumaker, Bryan Watt, Marty Bertsch, Mike Mitchell, Patrick Sweeney
Staff: Scott Archer, Community Services Director; Denise Kai, Assist. Parks & Rec. Director; Rochelle Parsch, Aquatic & Recreation Supervisor
Guests: Lynn Betteridge, PRAC applicant; Josh Bullfinch

6:45 P.M. – Special Meeting

1) Interview PRAC applicant

1) Regular Meeting

2) Call to order: 7:11 P.M. by Chair Bryan Watt.

3) Approval of minutes – April 22, 2010 regular meeting: approved as written.

4) Citizen comments on issues and items not on the agenda:
   a) Josh Bullfinch presented a proposal to do an Eagle Scout project to build a disk golf course at Singer Creek Park. PRAC members Steve McAdoo and Patrick Sweeney would be interested in helping with the process. Staff will set up follow-up meeting with Josh and PRAC members to discuss further.
5) General business
   a) Oregon City Pool update – *Rochelle Parsch,* Aquatic & Recreation Supervisor gave an overview and Power Point presentation on the Pool facility and programs.
   b) Carnegie Center utilization process: Library interim usage update. June 14 task force meeting and presentation of recommendation to Commission in July.
   c) Canemah Park grant application: Scott Archer will be making a presentation to the Oregon Parks & Recreation Department Local Government Grant committee on June 9th in the Bend area. The grant request is for $253,000.
   d) Trail & promenade signage design project update was provided by staff.

e) End of Oregon Trail site process: Ted Schumaker provided an update on the task force meeting.

f) Parks & public space utility fee: Scott Archer reported that over the next year the city will be exploring a utility fee for funding parks and open space needs.

g) An update was provided on a potential property acquisition adjacent to Wesley Lynn Park.

6) PRAC member reports
   a) Ted Schumaker: Visited McLoughlin Promenade and reported that the restoration project looks great.
   b) Bryan Watt: Reported on the OCST, starting block. Made a proposal to the Commission to help pay for slide for 6th starting block.
   c) Mike Mitchell: Willamette Landings book available to loan if anyone else would like it. Won't be able to attend next month's meeting.
   d) Patrick Sweeney: Was at M.N.A. meeting where signage proposal was presented. Will be having a new child in October. Look forward to utilizing the pool.
7) Staff reports
   a) Recreation Services update: Denise Kai reported on the following:
      i) Concerts
      ii) Summer Camps
      iii) Rivercrest spray park opening delayed until 1st part of July because of roofing issue on restroom/mechanical room building.
      iv) Pioneer Center hazard tree removal. Replacement of removed trees will take place in the fall.
   b) Parks maintenance update
      i) Wesley Lynn picnic shelter project & dedication
   c) Other
      i) Willamette river projects dedication
8) Next scheduled meeting date: *June 24, 2010 – early start for parks tour.*
9) Adjournment: 8:50 PM

Meeting Minutes

City of Oregon City, Oregon
Meeting of the Parks and Recreation Advisory Committee

Thursday, June 24, 2010
5:00 P.M.

Attendance

Members: Steve McAdoo, Ted Schumaker, Bryan Watt, Marty Bertsch, Patrick Sweeney, Rachel Gordon
Staff: Scott Archer, Larry Potter, Kathy Wiseman
Guests: Lynn Betteridge

A tour of parks and facilities occurred, per the approximate route:

1) Pioneer Center
2) Richard Bloom Park – Carnegie Library Park
3) McLoughlin House/McLoughlin Promenade/Singer Falls
4) Latourette Park
5) Barclay Park
6) Atkinson Park
7) Waterboard Park
8) Dement Park
9) Charman & Linn Park
10) Old Canemah & Canemah Neighborhood Parks
11) Hazelwood & Hartke Parks
12) Chapin Park
13) Filbert Run future park site
14) Wesley Lynn Park
15) Glen Oak Road future park site
16) Mt. View Cemetery
17) Barclay Hills Park
18) Singer Creek Park

Come join us!

As we show our appreciation to

The Heart of OUR City!

Our annual volunteer recognition and appreciation concert and dinner event.

JULY 29TH, 2010 at Carnegie Park
5:30pm Dinner 6:30pm Live Music

Come show some heart*, and let us know you are "**proud to volunteer**!"

We will serve you a tasty dinner, complete with drink and dessert. A special event filled with Italian sodas, raffle prizes and an evening honoring **YOU**, for all your dedication and support.

We also have a gift for you! For your time and "compassion in action", every volunteer will receive a charm to commemorate this year, 2010.

Volunteers, the HEART of Our City

**** Please wear your red volunteer heart to receive your dinner, etc.***

Music by Marianna and the Baby Vamps
Grilling by BCT
Food served by the City Commission!

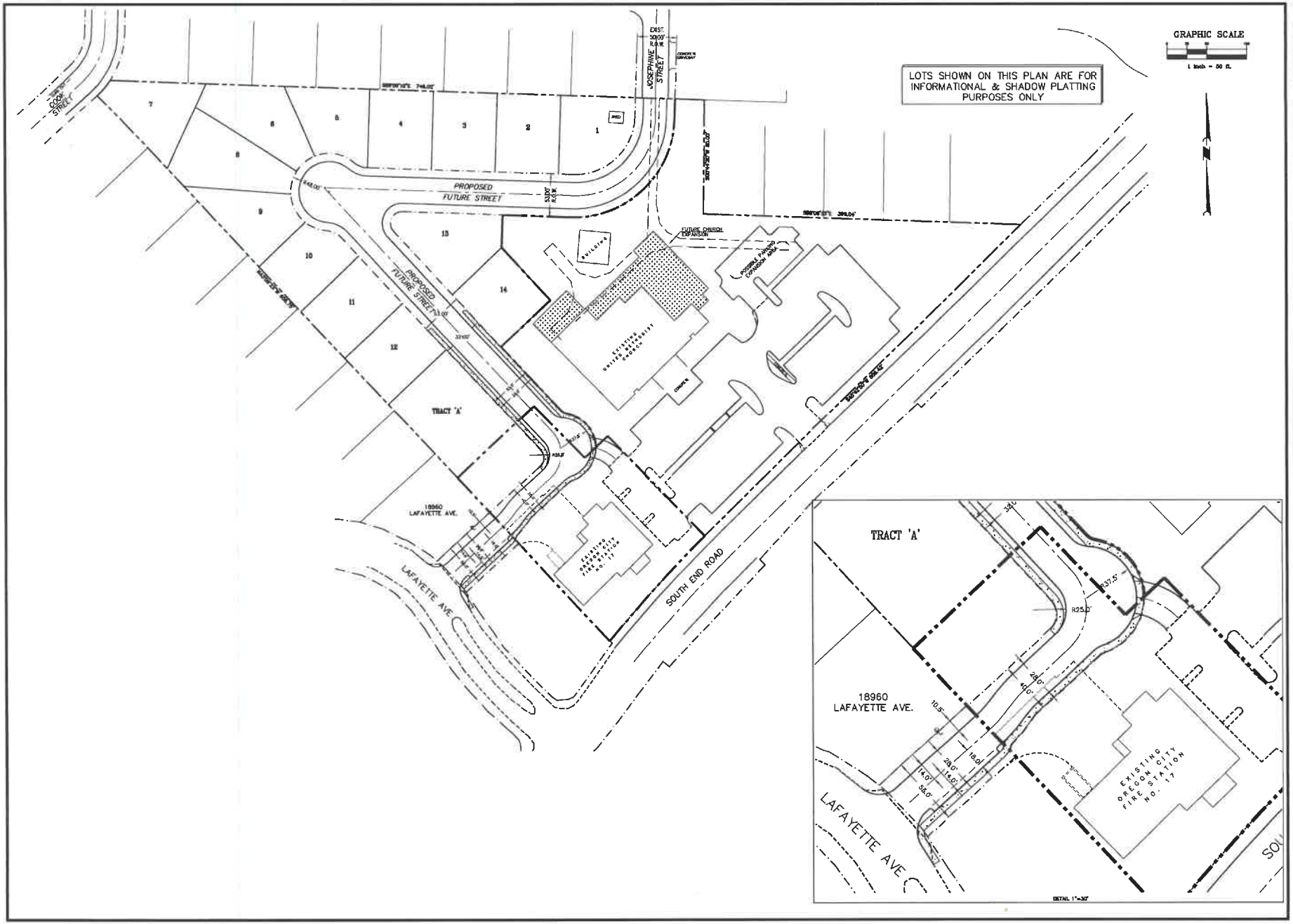
We Volunteers!

Oak Tree Park

City of Oregon City
P.O. Box 3040
625 Center St
Oregon City, OR 97045
(503) 657-0891
www.orcity.org

Map created with OCMap 2010

06/29/2010



UNITED METHODIST CHURCH

Site Layout Plan

SISUL ENGINEERING
375 PORTLAND AVENUE
GLADSTONE, OREGON 97027
(503) 657-0188

REVISIONS	BY

DATE MAR 2010
SCALE 1"=50'
DRAWN CP
JOB SCL06-163
SHEET 1
OF 1 SHEETS

GARVEY SCHUBERT BARER

MEMORANDUM

TO:	Honorable Mayor and Oregon City Commission
CC:	City Manager Community Services Director Bill Kabeiseman, Assistant City Attorney
FROM:	Carrie Richter, Assistant City Attorney
DATE:	June 29, 2010
RE:	Oak Tree Park and Josephine Street Extension

The Oregon City United Methodist Church has proposed realigning the future extension of Josephine Street, as well as locating a storm detention facility, so that they occupy a portion of land dedicated as park land on the plat of the Oak Tree Park subdivision. Although extending a road through park land may be possible, given the restrictions on the use of dedicated property as well as the City Charter restrictions on park lands, some additional legal hurdles may be required in order to realize this solution.

Background

In 2008, the City approved a partition sought by the Church in order to allow residential development of a portion of the Church's property (Exhibit C). The approved application also included a zone change from R-10 to R-8, a modification of the conditional use to reduce the parcel size for the existing church, and a variance to the maximum lot size requirements permitted for a partition. A condition of approval of the partition was the extension of Josephine Street through the Church parcel to provide for additional connectivity for the neighborhood north of the Church. As originally approved, the new road was to connect to South End Road by running between the existing Fire Station No. 14 and the Church. A copy of the original proposal is attached to this Memorandum as Exhibit B. In 2008, the City transferred ownership of Fire Station No. 14 to Clackamas County Fire District # 1.

The Fire District is opposed to the road extension as proposed in the Church's original partition application. Therefore, the Church is proposing an alternative alignment that places the future Josephine extension behind the fire station and connecting it to Lafayette Avenue As shown on Exhibit D to this memorandum. This alignment requires crossing Oak Tree Park, a small park dedicated to the City pursuant to a subdivision plat recorded in 1973. A copy of portions of the recorded plat is attached to this memorandum as Exhibit E. (Oak Tree Park is highlighted in yellow on both maps.) In addition to locating a road on park land, the parties are also proposing to relocate the storm water detention facility that would serve the future Church property development from behind the Fire Station onto the park land creating a single park / storm water maintenance obligation for the City. According to the engineer hired by the Church, such combination park / stormwater facilities work well as the low flow channel is placed along the edge of the park so that, during dry weather, a majority of the park is usable.

Nature of the Dedication Language

The Oak Tree Park plat contains dedication language that provides as follows:

> "David E. Farr and Virginia M. Farr do hereby dedicate to the use of the public as public ways forever all street, avenues, park areas and easements shown on said map." See attached plat details.

The first question is whether that area has been dedicated as a park such that a road can not be built on the site. Typically, dedication as a "park" would limit the use of the area to park uses. Parks may include roadways, but usually such roads are internal or access roads, not roads that take up a significant portion of the park, such as the one proposed here and a roadway across a park would typically not be consistent with dedication for use as a park. In any event, the language of the dedication (as shown in Exhibit E) does not distinguish between park uses and road uses and "dedicates to the use of the public as public ways forever all streets, avenues, park areas and easements shown on said map." It is likely that, if this issue were brought to a court that the court would find the specific notation of the tract as a "park area" would limit uses to park uses.

To the extent Tract A is dedicated solely for park uses, and the city can not use the dedication for a road, the City could not simply convert the use. As the Commission is aware, dedications are not outright grants of property to the City, but are the equivalent of easements to the public for a particular use with the City managing the property for the benefit of the public. *Siegenthaler v. North Tillamook County Sanitary Authority,* 26 Or App 611, 553 P2d 1067 (1976). If property dedicated for a particular purpose ceases to be used for that purpose, the dedicated area reverts to the owner of the underlying property. *Portland Baseball Club v. Portland*, 142 Or 13, 18 P2d 811 (1933). Generally, the holders of that interest are the immediately adjacent neighbors. *Id.* Thus, if a court were to determine that the construction of the proposed road was inconsistent with the area's use as a park,[1] the construction of the road could be enjoined and the land could revert to the neighboring property owners.

Given that uncertainty, in order to ensure that the dedication issue does not cause problems at some point in the future, the prudent course would be to acquire whatever property interest the neighboring property owners hold in the dedicated park area on the Oak Tree Park plat. The acquisition of those interests would eliminate any risk that limiting park uses in that area would allow the area to revert back to the neighboring property owners. The easiest way to accomplish this would be to require the applicant to obtain quit claim deeds from the neighboring property owners foregoing any interest they may still have in the property dedicated as park areas. Our office could work with staff to provide such forms for use by the applicant.

Charter Park Limitations

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[1] There is at least an argument that the dedication language in this subdivision could be read to contemplate that the dedicated areas could be used for either roadways or parks. However, such a conclusion is, at best, unclear.

A more significant issue may be the limitations set forth in the City Charter governing parks. A copy of the entire Charter Chapter governing parks and natural beauty is attached to this memorandum as Exhibit F. Section 42 of the City's Charter identifies 12 specific areas as parks (and some of those parks are also designated "natural" parks). In addition to those 12 named parks, Section 43 of the City Charter provides that "additional parks may be created and land established as parks upon . . . dedication of land as a park." Section 43 goes on to say: "Whenever any real property is designated as a park as provided herein, it is subject to all of the provisions of this Chapter X."[2]

Section 41, which is a provision of Chapter X, provides:

> "The commission may not do any of the following listed acts with regard to any *designated city park* or part thereof without first obtaining approval of the legal voters of the city. Said acts are as follows:
>
> "(a) Sell, lease or otherwise transfer park property.
>
> "(b) Vacate or otherwise change the legal status of any park.
>
> "(c) Construct permanent buildings or structures thereon other than for recreational purposes and park maintenance. In any case where at the date of adoption of this section there are existing structures which do not comply with this provision, such structures and any additions and alterations thereto are excepted from the provisions of this section."

The first question is whether the creation of a new park through the dedication of land as a park (such as occurred with the recordation of the Oak Tree Park plat) results in a "designated" city park. Section 41 only applies to "designated" city parks, while Section 43 discusses creation of additional parks through dedication, but allows the City to "designate" by ordinance real property acquired through other means as parks. One potential view of the Charter would be that only parks that have been "designated" as a park by specific ordinance of the Commission are subject to the limitations in Section 41. An alternative view could be that property dedicated as park land is subject to the limitations of Section 41, because the language discussing "designation" of parks applies only to parks acquired by means other than dedication or gift.

Two factors may influence how the Commission decides to interpret this provision. First, although it does not specifically deal with city parks, section 5 in Chapter II specifies how the charter should be interpreted. It provides that "[t]he charter shall be liberally construed to the end that the city may have

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[2] Section 43 of the City Charter provides as follows:

> "Section 43 - Additional Parks.
>
> "Additional parks may be created and land established as parks upon the acceptance by the commission of a gift to the city for park purposes or a dedication of land as a park. Real property owned or acquired by the city in other manners may be designated as a park by ordinance. Park areas may be specifically designated as natural parks and when so designated shall be maintained as provided in Section 41. Whenever any real property is designated as a park as provided herein, it is subject to all of the provisions of this Chapter X."

all powers necessary or convenient for the conduct of its municipal affairs." Second, the Oregon Supreme Court has held that a local body is entitled to deference when it is interpreting its own charter. *Fifth Avenue Corp. v. Washington Co.*, 282 Or. 591, 581 P.2d 50 (1978) (cited approvingly in *Gage v. City of Portland*, 319 Or 308, 315, 877 P2d 1187 (1994)). Thus, if there are two possible interpretations of a charter provision, the choice of which interpretation is the proper one is for the city to make, not the courts. Ultimately, it is for the Commission to determine whether the limitations in Section 41 apply to all parks within the City, or only to those parks listed in the Charter and those other parks that have been specifically designated as subject to the limitations in Section 41 of the Charter.

To the extent the Commission determines that dedicated parks, such as the one dedicated in the plat of Oak Tree Park are subject to the limitations in Section 41, that section limits the City's ability to (1) vacate or change the legal status of a park, and (2) construct buildings or structures on the park.[3]

The limitation on vacating a designated park is relatively straightforward – Oregon law allows cities to vacate property dedicated to a city. This is seen most typically for undeveloped streets, but also applies to dedicated city parks. When dedicated property is vacated, the property reverts to private ownership. Under this provision of the Charter, the City cannot vacate such a park without a vote of the citizens of Oregon City. Here, rather than vacating the park, the City would be converting the land from one type of public use to another.

As far as changing the "legal status" of a park, the Charter does not provide much information about the term "legal status." One likely interpretation would mirror what occurred in a recent case in the city of West Linn, *Dodds v. City of West Linn,* 222 Or App 129, 193 P3d 24 (2008). In that case, West Linn acquired a .4 acre parcel through foreclosure. The city initially classified the property as "city-owned," but later, by resolution, designated the property as "open space natural area." Two months later, after a new mayor and city council had taken office, the city council removed the "open space natural area" designation and the former mayor challenged that action. The Court of Appeals ultimately dismissed the case for unrelated reasons, but this type of "re-designation" from city park to some other status, with the concomitant avoidance of the limitation in Section 41, may be the purpose of the limitation on the change of legal status. With that in mind, depending on how the Commission interprets the change in legal status provision of Section 41, the use of park land as a street could be considered a "change in legal status," because that area of the park is no longer available for park purposes.

The final limitation prohibits the construction of certain permanent buildings or structures at Charter Parks for purposes other than recreation or park maintenance. A "structure" is defined by OCMC 17.04.1215 to mean "anything constructed or erected that requires location on the ground or attached to something having location on the ground." Although roads are typically separately described and distinguished from structures, it appears that a road for non-recreational purposes could be viewed as a structure, requiring a vote of the citizens.

It is important to note that, with all of these limitations, the Charter does not absolutely prohibit the activities such as change in status or the construction of permanent non-recreation structures. Instead, the Charter provision requires the City Commission to receive voter approval for such an action. Although this process makes these activities subject to voter review, the history of this provision

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[3] Section 41 also limits the ability of the City to transfer any aspect of ownership of park property, including leasing of park property, but that limitation is not implicated by the Church's proposal.

indicates that the voters are willing to consider such situations. For example, in 1999, the voters approved the construction of the regional visitors' center in Kelly Field Park. Similarly, in 2003, the voters approved the grant of an easement to a few property owners adjacent to Singer Creek Park. It does not appear that the voters of Oregon City have categorically rejected a proposed use of a Charter Park, although the number of issues presented has been relatively few.

CONCLUSION

The use of the park tract in the Oak Tree Park plat presents two issues.

The first issue involves the use of dedicated land that may be inconsistent with the purpose of its dedication. There are methods to resolve this issue, assuming neighboring property owners are cooperative. If neighboring property owners are not cooperative, this may place a significant hurdle in the way of the Church's proposed transportation solution.

The second issue involves the limitation on the use of parks contained in the City's Charter. To the extent it applies to this area, Section 41 of the City Charter limits the ability of the Commission to take certain actions in the park. If Oak Tree Park is subject to section 41, it would limit the ability of the City to change the legal status of Oak Tree Park, and that may affect the ability of the applicant to build the road. In addition, Section 41 limits the ability to build structures such as roads for non-recreational purposes. Therefore, if the City wished to proceed with converting a portion of Oak Tree Park to a road or a storm water detention use, voter approval may be required, depending on the Commission's interpretation of these provisions.

EXHIBITS

A. Vicinity Map / Aerial Photo

B. Approved Minor Partition MP 07-11 showing South End Road connection (plat not recorded).

C. Notice of Decision & Conditions of Approval for planning files ZC 07-05, CU 07-07, MP 07-11 & VR 07-05.

D. Proposed new subdivision showing alternate road crossing Oak Tree Park to Lafayette Street.

E. Recorded plat of Oaktree subdivision with park dedication language (1973).

F. Oregon City Charter Chapter X - Parks and Natural Beauty

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