

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, JANUARY 11, 2000

COMMISSIONERS PRESENT

Donald Hammang, Chair
Judith Borden
Barbara Cartmill
Tracy Cook
Mike Miller
Doug Ouderkirk
Howard Steward

STAFF PRESENT

Alice Rouyer,
Planning Director
John Gessner,
Associate Planner
Gary Firestone,
City Attorney
Shirley Richardson
Hearings Reporter

COMMISSIONERS ABSENT

None

1.0 CALL TO ORDER

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

2.0 PROCEDURAL QUESTIONS -- None.

3.0 INFORMATION ITEMS -- City Council Minutes

3.1 November 15, 1999, City Council Worksession Minutes

3.2 November 16, 1999, City Council Meeting Minutes

3.3 December 7, 1999, City Council Meeting Minutes

3.4 Urban Forestry Ordinance Notice

4.0 PLANNING COMMISSION MINUTES -- December 14, 1999

The Planning Commission minutes of December 14, 1999 were approved as presented with two abstentions. Barbara Cartmill and Howard Steward were not at that meeting.

Ayes: Hammang, Borden, Cook, Miller, Ouderkirk; Nays: None.

5.0 PUBLIC COMMENT -- None.

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6.0 PUBLIC HEARINGS

- 6.1 Applicant: Ellis Eslick Associates Architects
Owner: Clackamas County Education Services District (ESD)
Location: 4011 SE Lake Road
Proposal: Convert existing church into offices and conference rooms to be operated by Clackamas ESD.
File Numbers: CSO-99-06 and TPR-99-09
NDA: Lake Road

Chair Hammang opened the public hearing on File Number CSO-99-06 and TPR-99-09, an action to allow converting an existing church into offices and conference rooms. The criteria to be addressed are found in Sections 1400 and 321 of the Milwaukie Zoning Ordinance.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. **Barbara Cartmill** pointed out that she works for Clackamas County, but she is not involved with the Education Services District. **Doug Ouderkirk** stated that he knows a couple of the architects on this application, just by association. This will not affect either councilor's ability to vote on this issue. There were no other conflicts of interest or ex-parte contacts declared. **Chair Hammang** asked if any member of the Planning Commission visited the site; six 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. An overhead projection was shown of the subject site and the surrounding area. The map indicated the local street distribution system between 37th Avenue and Lake Road with a through driveway connecting these two streets. Intersections were highlighted that were evaluated in the traffic impact analysis.

This Community Service Overlay must satisfy two sets of findings; that the use is in the public interest and that the public benefits outweigh the potential adverse impacts. Staff has concluded that this Application does meet the standards as outlined in the Staff Report. The Commission can impose conditions on the approval of this application so that the potential adverse impacts are minimized, reduced, or eliminated.

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There are two types of potential impacts associated with the use identified. Traffic is one of the impacts. Vehicles traveling eastbound on Lake Road may stack up at the site entrance waiting for an opportunity to make a left-hand turn. Mitigation for this impact is stated in a condition of approval. The other impact is how the site is used. This includes hours of operation, level of activity, duration of activity, lighting, and noise. Numerous conditions of approval have been recommended to limit the use of the site in interest of making the Applicant a good neighbor.

Staff recommends approval of this Application based on a specific set of findings as outlined in the Staff Report with the recommended conditions.

Information was submitted tonight to change some of the recommended conditions:

- Condition #4 limits the noise intrusion caused by heavy equipment in early morning hours. The haulers have agreed to put a "do not pick up before 7:30 a.m." order on this account. It does not need to be a condition of approval.
- Revised Finding #1 indicates that evening use is to be limited to no more than 30 persons.
- Revised Condition #1 includes a statement that the condition on the time of use would not restrict maintenance and janitorial activities.
- Condition #10 has been re-written to clarify that if improvements are required, they will be obtained in the future.

John Gessner reported that additional correspondence had been received from members of the Community. There was a letter dated January 4, 2000, from Ron Naso, Superintendent of Clackamas Schools, asking for support of this Application. A second letter was received on January 10, 2000, from Little Hills Pre-School in support of the Application.

QUESTIONS FROM THE COMMISSIONERS

Chair Hammang asked how much land is on the site? If this land were developed as an R-7 residential density, how many trips would be generated from the residential units? **John Gessner** stated that the zoning is R-10. There could

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be about 38-40 units. The trip generation for single-family homes is around 9-10 trips per unit or 400 trips.

CORRESPONDENCE RECEIVED -- None.

APPLICANT'S PRESENTATION

Speaking: David Campbell, Superintendent, Clackamas Education Service District, Marylhurst University Campus

Mr. Campbell gave the Commissioners a brief explanation of the services offered by the Education Service District. A copy of the District's annual report was distributed to the Commissioners. He noted that the District is governed by a seven-member board that is elected by the general public. This organization provides services to five service departments in the school district. Their primary clients are the school districts of Clackamas County.

They are currently located on the Marylhurst Campus in a dormitory that was converted to an office building in 1970. Because of growth of the services, there are employees in other buildings and scattered throughout campus. This location gives them the opportunity to localize their operation and provide a presence on the east side. This makes them more accessible to the North Clackamas District and other school districts on this side.

There are two departments planned for this proposed site; the Curriculum Instruction Evaluation Department and the Early Childhood Education Department. The superintendent and executive assistant would also occupy these offices. There will be a total of 135 people employed at this location. A number of the Early Childhood employees would not be at the site on a regular basis. This program works with families in their homes, neighborhood pre-schools, classrooms, and other school districts with children from birth to age five. The Early Childhood Program in 1984 served 40 children with severe physical and mental disabilities. The District now serves over 700 youngsters in a much-expanded program under contract with the Department of Education and others. Additional services are offered to schools that they can no longer provide for themselves.

Mr. Campbell stated that they had talked to the Neighborhood Association and it is their goal to be the best neighbor for this site. Some things they could do to help eliminate some of the existing problems would be the development of gates at the access points so that the inappropriate uses that have occurred would be

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stopped. They will work with the City of Milwaukie to correct the lighting so that neighbors are not impacted. They had no part in the design of the lighting, but will take the role in helping find a solution.

The North Clackamas School District has mentioned an interest to hold some meetings at the site. They are located a short distance from the site and they currently have parking and adequate seating difficulties. Being able to hold Board meetings at this site would eliminate these problems. There are not many visitors at these Board meetings. Most of the time there are seven board members, nine staff members, and two board advisors in attendance.

Mr. Campbell stated that they intend to keep the landscaping maintained and make this an attractive site and be the best neighbors they can be. A survey was done of their staff and there is only one employee assigned to this building that lives in a direction that would necessitate an eastbound route on Lake Road and making a left turn into the site. All of the other employees live in areas that bring them from the other direction. He then introduced two architects that were here tonight for a presentation, David Garnand and Mark Vogel.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Mark Vogel, LSS Architects, 1230 SW First Avenue, Portland

Mr. Vogel explained the renovations planned for the site. The first floor requires structural upgrading. The entries will be renovated and the large fellowship hall will be divided into meeting areas and small offices. Existing classrooms will receive desks and become office space on the second floor. There will be no new construction on the second floor. Curriculum and Early Childhood Education will share the top floor.

QUESTIONS FROM THE COMMISSIONERS

Doug Ouderkirk asked if there would be changes to the main entrance? **Mr. Vogel** stated that the main entrance would be remodeled to be a small lobby with office spaces. A Code Study Plan will be submitted with the drawings that will analyze the exiting, etc.

Chair Hammang asked that auto traffic pattern for this site be explained. **Mr. Vogel** pointed out on the site map the traffic pattern on Lake Road to the driveway and from the driveway to Lake Road. Eastbound traffic to the West on Lake Road will make a right turn into the site. Those that come from Highway 224 make a

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left turn at the signal, turn into 37th Avenue, and make an entrance to the site from the back side of the building. The predominate pattern for exiting will be down to Highway 224.

Doug Ouderkirk asked if the parking patterns would change because there are two entrances? **Mr. Vogel** stated that he feels most of the parking will be in the main parking lot. There is limited parking in the back.

Chair Hammang asked about residential property surrounding this site. **Mr. Vogel** stated that there is a fair amount of vacant land that abuts this property before you get to the residential areas off 37th Avenue. They will do what is necessary to avoid traffic into the residential area off of 37th Avenue. There is no left-turn onto 37th Avenue at the bottom of the driveway; cars cannot turn up into the neighborhood area. Employees will be instructed to come in off Lake Road or from Highway 224.

Chair Hammang asked if there is sufficient capacity on 37th Avenue to handle the in and out employee traffic? **Mr. Vogel** stated that there is adequate capacity.

Mike Miller asked for clarification of the Traffic Impact Studies, which only show a 20-car increase from the year 2000 to 2004.

Speaking: Peter Koonce. Kittleson & Associates, 610 SW Alder, Suite 700, Portland

Mr. Koonce stated that his firm completed the Traffic Analysis for the facility. The growth rate over the last several years was used to determine the growth rate for the next four years. The level of service in the report is E for the minor street left-turn movement. The level of service and delay associated with this report is only for this movement. The site has been planned so that the impact of the left turn will be minimized by encouraging employees to make a right-turn from the site on to 37th and accessing Highway 224.

TESTIMONY IN FAVOR

Speaking: Jim Young, 12121 SE 39th, Milwaukie

Mr. Young stated that his property abuts the subject property. He pointed it out on the map. His wife has lived at this residence since 1959. He was residing there when the first application was made for the church. Most of the neighbors were in support of this use.

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Mr. Young stated that he does not see any problems with the Education Service District use. Some of the neighbors have concerns about the traffic, but he feels the applicant has gone to great lengths to study the area and inform their employees to use 37th Avenue as the primary entrance. Lighting is a concern to neighbors on 39th Avenue, but solutions to this problem has been addressed. He, his wife, and several neighbors on 39th are in favor of this proposal.

QUESTIONS FROM THE COMMISSIONERS

Doug Ouderkirk asked Mr. Young if the proposed traffic pattern would pose a problem to the neighborhood? **Mr. Young** stated that the proposed pattern is much better than through Lake Road. There is a lot of foot traffic on Lake Road and he is glad to see that employees are encouraged to use 37th Avenue. It is a straight shot to Highway 224.

QUESTIONS OR COMMENTS

Speaking: James Myers, 12341 SE 41st Court, Milwaukie

Mr. Myers stated that he is a Board Member of the Lake Highlands Homeowners Association which abuts the subject site on the eastern boundary. They are in favor of this application with the conditions that are recommended by staff.

A document has been submitted to the City which outlines concerns of the Homeowners Association. Of major concern is the gating. Nothing was mentioned about keeping the gate locked. He noted that there is an existing problem with drugs, drinking, and loud music at night. Cables have been used in the past with no success. **Mr. Myers** asked that if this application is approved, a condition be imposed that the gates be locked after hours of operation at both entrances.

The lighting issue has been addressed; however, they feel the driveway lights should be turned off after hours of operation. The existing Landscaping looks good and it is hoped that it will be maintained. Concerning traffic, he asked that "right-tun only" signs be posted at both exists.

It is their conclusion that the Education Service District will make a good tenant for this location. They are in favor as long as the stated conditions are met.

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Speaking: Skip Milam, 12004 SE 37th, Milwaukie

Mr. Milam stated that his lot, the lady's lot sitting next to him, abuts the west side of the subject site. This portion of the site is unimproved and he asked what is the future intent of this part of the property? He would not like to see it developed into housing. They do not have a problem with it becoming an expansion parking lot. He pointed out his lot on the site map.

Mr. Milam stated that he agrees with the idea of locked gates. He has seen 4-wheel drive vehicles going into this area and churning up the grass on property. They agree, due to the safety of the neighborhood, that there be a "no left turn" sign at the intersection of 37th Avenue. People come down this street at a very fast rate.

Speaking: Jeff Banalou, 12120 SE 38th Avenue, Milwaukie

Mr. Banalou stated that when his house was built, there was an old house on the property. This house was demolished and there was a sewer line from this house through the church parking lot. His house was connected to this sewer line. The line in the parking lot has been run over and broken several times. He talked with the City, but found no easement for the line. He has paid to have this broken sewer line fixed. He asked if an easement could be set up or some agreement that does not make him responsible for the broken sewer line on the church property?

Alice Rouyer stated that this is not an issue that can be addressed by the Planning Commission. However, a meeting can be arranged with City staff, the Applicant, and Mr. Banalou to remedy this situation.

Mr. Banalou stated that another area of concern is his front yard. When the parking lot was constructed, the property was cut down into the ground. This left his front yard about 15-feet higher with a slope down to the parking lot. Over the years, the soil is beginning to slip. He would like to have a retaining wall constructed to prevent loss of soil from his front yard.

Speaking: Dick Ballard, 11964 SE 37th Avenue, Milwaukie

Mr. Ballard stated that he lives in the bright blue house abutting the subject site. He has in process a minor partition of his property, which abuts the subject site on the west site. An alternate access to his property could be the church driveway. He asked staff about the possibility of using this driveway. He pointed out his property on the site map.

Speaking: Skip Milam, 12004 SE 37th, Milwaukie

Mr. Milam stated that he read in the report that there is no major construction plan within the next 10 years. He wanted to know for the Neighborhood Association what restrictions would be put on future building at this site, what would be the City procedure for construction activity on the site, and will the Association have any say on what changes are made. ?

TESTIMONY IN OPPOSITION

Speaking: Forris Frick, 11658 SE 35th Street, Milwaukie

Mr. Frick stated that there is a series of parking spaces going down to 35th Street. This is all area that is paved and he thought the City was trying to discourage so much pavement.

Mr. Frick stated that this application violates the spirit and letter of the law. This property designated R-10 residential. All surrounding areas on the south, east and west are residential. The original application states that there will be 695 daily trips to and from this facility five days a week. This was altered downward when Lake Road residents objected to the added burden to Lake Road and 37th Street.

The present building at 26,300 sq.ft. is only a beginning. The Application mentions plans to construct another 45,000 sq.ft. of building space. No estimates were given of how much more traffic this will entail. His main concern is the siting of this office building with all the traffic problems in an R-10 neighborhood. When will these concerns be addressed? The fact that an existing church is there should not influence the decision. The traffic will include the 15 transportation vehicles owned by CESD for courier service to its ten outlying districts.

From 1995 to 1998, there were 25 accidents on the Kuehn to Oatfield section of Lake Road injuring 28 people. Education Services has indicated that there will 134 employees in this office. The estimated number of children to have twice-yearly visits to this facility in the year 2000 will be 1,000. This is an increase of 200 over last year. These reviews will put a large demand on meeting space. There may be 220 to 240 people at the facility at one time. It is stated that comings and goings through the day will not exceed 40 vehicles (calculates to 6 people per vehicle).

The land acquired by CESD will not make for good neighbors. The property is beautiful. It is estimated that 38 houses could go into this R-10 area. Estimating that there will be ten trips per day per house is too much. No one in his area goes in and back to their home ten times a day.

Office buildings should be in R-1 zones with all the ensuing traffic problems. This property is still carried on the assessor's rolls as belonging to the Western Conference of the Seven Day Adventist Church. Putting it in the name of CESD will not put it on the tax rolls either. The name should be changed if the property was purchased. This building is a traffic-generating unit. Both entrances to this facility are very steep. There are no sidewalks or bicycle lanes, but deep ditches on both sides of the road. This is going to cause more problems than they can resolve.

QUESTIONS FROM THE COMMISSIONERS -- None.

ADDITIONAL COMMENTS FROM STAFF

John Gessner stated that he has reviewed the feasibility of "right-turn only" signs and they are discouraged from recommending this to the Commission because of enforcement and placing of the sign where it can be effective.

Staff has not specifically looked at what the impacts would be if all of the exiting traffic were required to go to 37th Avenue. Based on the study that was done the 37th Avenue and the intersection at Highway 224 operate adequately. An analysis has not been done to look at what would be the impacts of double or triple the amount of traffic at that intersection. It would be recommended, however, to look at the impacts of 37th Avenue and International Way.

Lighting was recently installed by the Seven Day Adventist Church as a requirement of the original approval. They have a contract with ESD to provide all improvements that were required by the City. Staff is investigating whether or not the lighting plan has appropriate approvals.

Future proposals for the site must follow a procedure. CESD cannot construct any other improvements or expand the use except as defined in this Application. Should this use be expanded in any way, it will have to come before the Commission under a formal land-use application. Neighborhood impacts will be revisited.

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There should be a "right turn only" sign at the 37th Avenue intersection. This was part of the improvements required under the original approval. Staff will work with Mr. Banalou on the issue of the sewer line and retaining wall. Mr. Ballard will need to meet with CESD and staff regarding the use of the 37th Avenue driveway for access to his property. An easement here would eliminate the need for a curb cut on 37th Avenue.

John Gessner acknowledged that the original trip generation rate of 695 differs substantially from the numbers that subsequently were submitted. However, they were comfortable that the revised numbers are reasonable. They have been accepted by staff. The conditions that have been recommended are based on a worse-case scenario that the traffic study has indicated.

QUESTIONS FROM THE COMMISSIONERS -- None.

QUESTIONS FOR CLARIFICATIONS -- None.

APPLICANT'S CLOSING COMMENTS

Speaking: David Campbell, Superintendent, Clackamas Education Service District,
Marylhurst University Campus

Mr. Campbell stated that it is their intent to install gates that will insure security of the property. These gates will be locked after hours of operation. They share the neighbors concerns about damage to the property.

There are two sets of evaluation activities that occur. One is for school-age and one for early childhood youngsters. The 1000 visits includes both activities. The school-aged evaluation is done at Marion Hall at the Marylhurst Campus. Only the early childhood activities will be conducted at this office. This will be approximately 400 children spread over 190 days coming to the site. These evaluations are held three days a week.

The original traffic analysis used all 135 employees as being based at the site everyday for four work days. As stated earlier, a number of these people will not be on the site during the day because they are in the field, others will get there some days during the week, and only a few of the employees are there on a daily basis. This is the reason for the difference in numbers on the traffic analysis study.

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Chair Hammang asked for clarification of the courier trucks used by CESD.

Mr. Campbell explained that there are two courier trucks that provide service and daily delivery to all of the school districts in Clackamas County. One of these trucks will make a stop at this site daily. There is not a fleet of trucks, however, there are a number of pool cars that staff use in lieu of their own cars when they do business travel. The service trucks are primarily housed at Marion Hall at the Marylhurst Campus.

Mike Miller asked if there would be any students bussed to this site? **Mr. Campbell** stated that there are no classrooms at this location. There are no classrooms planned for the future. The only time a study would be bussed to this site would be for some special occasion, like a field trip.

Tracy Cook asked Mr. Campbell if there are any plans for expansion of CESD in the future? **Mr. Cook** stated that they have had a very good relationship with Marylhurst University. As long as they are at Marion Hall, they will not be expanding this site. The reason this site was so attractive to them is that if in the future Marylhurst University decided to no longer lease Marion Hall, this site could be expanded to house all of the faculty. The church had planned an expansion and it is thought that if CESD needs to expand in the future, there would be room. This expansion is not in the immediate future and as long as they are able to stay at Marion Hall, they will continue to operate the two sites.

DELIBERATION AMONG THE COMMISSIONERS

Chair Hammang closed the public portion of the hearing and opened the meeting to discussion among the Commissioners.

Judith Borden stated that she feels the traffic concerns have been adequately addressed. People tend to follow traffic patterns that are the easiest. They prefer not to take a left turn onto a busy street if there is a right-turn alternative. The neighbors as a group seem to support this project.

Mike Miller stated that he has no concerns about CESD's use of the site. He does; however, have a concern about the traffic impacts on Lake Road and the Lake Road neighborhood. He would like to see some assurance to the community that Lake Road will not be over-burdened. He would like to see a "right-turn only" traffic off of Lake Road.

Doug Ouderkirk stated that he feels ESD would be a good neighbor. He agrees that there should be some sort of traffic control on 37th Avenue. He would like to see a sign that would deter left turns.

Chair Hammang stated that there is not enough traffic analysis to substantiate the traffic pattern proposed. He would like to explore the exclusive use of 37th Avenue as the preferred entrance and exit for this site. It would eliminate capacity issues on the other streets.

Tracy Cook stated that she feels CESD will be a nice neighbor. As long as they maintain their concern about neighborhood concerns, things should be a plus for the area. She does have concerns about the traffic. She suggested that the entrance from Lake Road be a one-way in only direction.

Barbara Cartmill stated that she is comfortable with the use by CESD. She is uncomfortable about the traffic management, but not enough to vote against this project. She cautioned the Commission about any piecemeal application of traffic control conditions, because they could have unintended consequences elsewhere. She is in favor of this application.

Howard Steward stated that traffic issues should have covered 37th Avenue on both sides of Highway 224. There are changes in the use of school buildings and the enrollment and these effect Lake Road. ITT Truck training is a part of the traffic on Lake Road. Traffic is an on-going challenge. He has no objection to CESD's use of the site.

Doug Ouderkirk moved to approve applications CSO-99-06 and TPR-99-09 for Clackamas Education Service District with the staff recommended Findings and Recommended Conditions of Approval and the revised findings and conditions in the January 11, 2000, memo from staff. **Howard Steward** seconded the motion. MOTION CARRIED 7-0.

Ayes: Hammang, Borden, Cartmill, Cook, Miller, Ouderkirk, Steward; Nays: None.

Recess was taken at 8:15 p.m. and the meeting reconvened at 8:25 p.m.

7.0 WORKSESSION -- None.

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8.0 DISCUSSION ITEMS

8.1 Future Picture of the City of Milwaukie

Howard Steward voiced concern over newspaper articles regarding a sports company who expressed interest in the soon-to-be-vacated Junior High School and the possibility of Riverdale High School locating at the Pendleton Mill site. He asked if the City has any plans for the whole picture of Milwaukie. The feeling he got tonight is that residents don't want workplaces near their homes. What is the picture that Milwaukie would like to have portrayed. He asked if there is a process in the City whereby the future outlook of Milwaukie is being planned.

Discussion followed on zoning issues, application types, and the makeup of the City's education, residential and business areas. The function of random events will make up the design of the future. City Council is working on a downtown plan for Milwaukie. This issue should come before the Planning Commission for review and approval. **Gary Firestone** stated that Planning can be categorized into two basic areas; long-range and short-range planning. Short-range planning involves land use applications and approvals. Long-range planning is what is in the Comprehensive Plan and other supporting Plans for the City. There are plans underway (such as the downtown plan) which forms the overall picture of Milwaukie.

Howard Steward voiced concern that the business/industrial base in Milwaukie is being lost. People are being drawn to other areas because it is cheaper and closer to more traveled areas. **Chair Hammang** asked if it would be a large project to explore the North Industrial Lands. **Alice Rouyer** noted that there was work done in the last few years on this issue that was not completed. There is a lot of activity going on the north side of town. There is a lot of change in ownership, tenancy, and market conditions. Zoning may need to be changed in that area. This is something that the Commission can work into the work program.

Alice Rouyer noted that a worksession is scheduled for the January 25th meeting to do a work program update. This will inform the Commission on what projects are proposed for the next six months in Planning.

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8.2 Urban Forestry Notice to Property Owners.

Barbara Cartmill passed out a copy of a flyer in protest of the Urban Forestry Ordinance that had been distributed in the community from a concerned resident. She pointed out that the February 8, 2000, open house is mentioned in the pamphlet and in response to the canvassing, many people may be in attendance.

It was asked in the pamphlet whether the City will charge for permits. **Alice Rouyer** stated that there will be a recommendation to City Council that staff permits be \$25-\$30. Council has the final decision. **Gary Firestone** stated that the Planning Commission could always make a recommendation to City Council.

8.3 Urban Forestry Ordinance

Alice Rouyer reported that they have received about 20-30 calls regarding the Urban Forestry Ordinance. There have been a fair amount of questions on the fees, what authority the City has to regulate private property this way, what process will need to be completed to get a permit, etc. She encouraged all the Commissioners to attend the open house and hear some of the comments from the public.

9.0 OLD BUSINESS -- None

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

- 10.1.a Staff Report Revisions **Alice Rouyer** explained that staff is in the process of revising the format of the staff report and materials for public hearings. She asked if the Commissioners had any input on the changes? **Chair Hammang** stated that he felt that the Traffic Analysis data could be more complete. The format of the Traffic Analysis made it hard to glean the information needed to make an opinion. It was a consensus of the Commission that the new format of the staff report was nice and the information is helpful and easy to read.

Judith Borden suggested that the applicable codes for each application be noted in the Staff Report.

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- 10.1.b Sign Ordinance Amendment Discussion **Alice Rouyer** submitted a memo dated January 4, 2000, regarding the Sign Ordinance Amendment. She asked that the Commissioners review the Amendment and make comments on the contents. There is a clause in the Sign Ordinance, which requires that all non-conforming signs be continued for a seven year period. This time is about to lapse. This will be a huge work project and it has not been noted on the work program. A consultant will need to be hired to work with business owners to complete this project.

Staff is recommending that this period be extended to ten years to allow the project to be completed within reasonable time restraints.

Mike Miller stated that he does not have a problem with the three year extension, however he is concerned about the seven-year extension for anyone who is annexed into the City. Existing residents have to comply by the year 2003, whereas annexed businesses have to be in compliance seven years from the time of annexation. They should be required to comply the same as other residents in the City. **Gary Firestone** explained that the annexed businesses do not have an additional seven years. The City is assuming the sign is legal where it is located and becomes non-conforming when annexed. The seven years is the amortization period that was originally provided for to allow them the value for their signs.

Doug Ouderkirk moved to recommend to City Council approval of the amendment of the non-conforming sign section to allow nonconforming signs to be continued ten years instead of seven years. **Mike Miller** seconded the motion. THE MOTION CARRIED 7-0.

Ayes: Hammang, Borden, Cartmill, Cook, Miller, Ouderkirk, Steward; Nays: None.

- 10.1.c Thomason Enforcement Update. **Alice Rouyer** stated that there has been a lot of activity on Thomason over the past few weeks. Shortly after the last meeting, the City received a DMV Dealers Application that required the City's land use approval. Site investigations were made and it was concluded that several conditions of approval placed on the non-conforming use review are not in compliance. The use is being illegally occupied because of failure to meet the conditions. The approval is now void.

Gary Firestone reported that a letter has been issued in response to the DMV Application stating that auto sales is an approved land use on certain portions of the Thomason site. Areas were highlighted that required the non-conforming use

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approval that was subject to the conditions of approval. The City is now taking the position that although originally approved, the approval is now void. There is no approval for auto sales and related used on certain portions of the property.

Alice Rouyer stated that notification was given to Thomason that their approval is void because they failed to show substantial construction within six months of Application approval. Thomason was given a 15-day period to appeal this finding. Tomorrow is the end of that appeal period.

- 10.1.d Ex-Parte Contact Questions and Answers **Alice Rouyer** reported that she included in the packet information on Ex-Parte Contacts. She asked if there were any questions about what is the appropriate role of the Commissioner when speaking to people in the community about legislative items versus quasi-judicial items. **Mike Miller** stated that he lives in the Lake Road area and it is hard not to get into discussions with people when it might jeopardize his decision on a public hearing. He is concerned about what is going on in his residential area.

Gary Firestone stated that there will always occasionally be that type of contact. Under the current statutes and procedural regulations, if any contact does occur, it must be fully reported at the public hearing. After acknowledging that there was a conversation, the Commissioners can participate in the hearing.

In the quasi-judicial concept the conversation must be avoided. At a quasi-judicial hearing the decision must be based, according to law, only on what is presented in the context of the hearing. Previous conversations are not excused. The only valid basis for a decision is what is before you on the record at that hearing.

Mike Miller asked how to handle a situation where you belong to a neighborhood association and an issue comes up that will come before the Planning Commission? **Gary Firestone** stated there are two options; one to absence yourself and ask someone to contact you when the discussion is over and the second option is to participate in the discussion and afterward decide whether you should disqualify yourself for being involved in the process.

Alice Rouyer asked for clarification on how the Commissioners should handle conversations about the Urban Forestry Ordinance when they attend the open house scheduled later in January. **Gary Firestone** stated that the Urban Forest Ordinance is a legislative issue. It affects most properties equally. Because it is legislative, it is appropriate to have contacts with people on this issue if it is

CITY OF MILWAUKIE PLANNING COMMISSION

Minutes of January 11, 2000

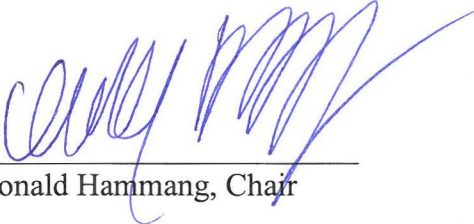
Page 18

declared. The Commissioner needs to be careful to not give the "appearance of bias" on the issue. It is best if the Commissioners just listen to what is being said at the open house.

11.0 NEXT MEETING -- January 25, 2000

11.1 Work Program Update

Doug Ouderkirk moved to adjourn the last meeting of January 11, 2000. **Howard Steward** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 9:25 p.m.



Donald Hammang, Chair



Shirley Richardson, Hearings Reporter

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

Public Hearing Procedure

1. **STAFF REPORT.** EACH HEARING STARTS WITH A BRIEF REVIEW OF THE STAFF REPORT BY STAFF. THE REPORT LISTS THE CRITERIA FOR THE LAND USE ACTION BEING CONSIDERED, AS WELL AS A RECOMMENDED DECISION WITH REASONS FOR THAT RECOMMENDATION.
2. **CORRESPONDENCE.** THE STAFF REPORT IS FOLLOWED BY ANY VERBAL OR WRITTEN CORRESPONDENCE WHICH HAS BEEN RECEIVED SINCE THE COMMISSION WAS PRESENTED WITH ITS PACKETS.
3. **APPLICANT'S PRESENTATION.** WE WILL THEN HAVE THE APPLICANT MAKE A PRESENTATION, FOLLOWED BY:
4. **PUBLIC TESTIMONY IN SUPPORT.** TESTIMONY FROM THOSE IN FAVOR OF THE APPLICATION.
5. **COMMENTS OR QUESTIONS.** COMMENTS OR QUESTIONS FROM INTERESTED PERSONS WHO ARE NEITHER IN FAVOR NOR OPPOSED TO THE APPLICATION.
6. **PUBLIC TESTIMONY IN OPPOSITION.** WE WILL THEN TAKE TESTIMONY FROM THOSE IN OPPOSITION TO THE APPLICATION.
7. **QUESTIONS FROM COMMISSIONERS.** WHEN YOU TESTIFY, WE WILL ASK YOU TO COME TO THE FRONT PODIUM AND GIVE YOUR NAME AND ADDRESS FOR THE RECORDED MINUTES. PLEASE REMAIN AT THE PODIUM UNTIL THE CHAIR PERSON HAS ASKED IF THERE ARE ANY QUESTIONS FOR YOU FROM THE COMMISSIONERS.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** AFTER ALL TESTIMONY, WE WILL TAKE REBUTTAL TESTIMONY FROM THE APPLICANT.
9. **CLOSING OF PUBLIC HEARING.** THE CHAIR PERSON WILL CLOSE THE PUBLIC PORTION OF THE HEARING. WE WILL THEN ENTER INTO DELIBERATION AMONG THE PLANNING COMMISSIONERS. FROM THIS POINT IN THE HEARING WE WILL NOT RECEIVE ANY ADDITIONAL TESTIMONY FROM THE AUDIENCE, BUT WE MAY ASK QUESTIONS OF ANYONE WHO HAS TESTIFIED.
10. **COMMISSION DISCUSSION/ACTION.** IT IS OUR INTENTION TO MAKE A DECISION THIS EVENING ON EACH ISSUE BEFORE US. DECISIONS OF THE PLANNING COMMISSION MAY BE APPEALED TO THE CITY COUNCIL. IF YOU DESIRE TO APPEAL A DECISION, PLEASE CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT DURING NORMAL OFFICE HOURS FOR INFORMATION ON THE PROCEDURES AND FEES INVOLVED.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Judith Borden, Vice Chair
Barbara Cartmill
Tracy Cook
Mike Miller
Doug Ouderkirk
Howard Steward

Community Development Department Staff:

Martha Bennett, Community Development Director
Alice Rouyer, Planning Director
John Gessner, Associate Planner
Doug Strickler, Associate Planner
Jeanne Garst, Office Assistant
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission

From: Alice Rouyer, Planning Director *ACR*

Subject: Information Items: Urban Forestry Ordinance Notice

Date: December 27, 1999

Action Requested
Information only.

Background

Please see the attached notice (reduced from 8 1/2" x 14") regarding the proposed Urban Forestry Ordinance. I have talked to many of you already about the new ordinance at the December 8 NDA Leaders quarterly meeting.

State law requires the City to mail a notice to all affected property owners when amending or creating new land use regulations. Staff will be mailing this notice to all property owners in Milwaukie on Friday, January 7. The notice outlines the proposed ordinance, open house/public hearing schedule and some background information.

I thought the Commission would be interested in receiving a copy of the notice before it is mailed to all property owners in the City.

If you have any questions, please contact me at (503) 786-7654.

How Can I Get More Information?

Questions?

Please call (503) 786-7644 and leave a message. City staff will return your telephone call within 24 hours.

To receive a copy of the proposed ordinance:

Copies can be picked up at:

Milwaukie Public Service Facility
6101 SE Johnson Creek Blvd

Milwaukie City Hall
10722 SE Main Street

Ledding Library
10660 SE 21st Avenue

To receive a copy in the mail, please call (503) 786-7644 and leave a message with your name and mailing address.

How can I provide input?

Written comments received prior to any public hearing will be forwarded to the Planning Commission and City Council. Comments should be submitted to:

Urban Forestry Project: ZA-99-02
City of Milwaukie Planning Department
6101 SE Johnson Creek Blvd
Milwaukie OR 97206
FAX: (503) 774-8236



Public Notice

The City of Milwaukie will hold a public open house and public hearings on the proposed new Urban Forestry regulations. The City has determined that the adoption of this ordinance may affect the permissible uses of your property. You are invited to attend the open house to learn more about the regulations and provide input. At the public hearings, you may give written or verbal testimony to the Planning Commission and City Council. The Planning Commission will forward a recommendation on the proposal to City Council for final decision.

Open House

When: January 19, 2000; 6:30 p.m.
Where: City of Milwaukie Public Safety Building
Community Meeting Room
3200 SE Harrison Street
Milwaukie

Planning Commission Public Hearing

When: February 8, 2000; 6:30 p.m.
Where: City of Milwaukie City Hall
Council Chambers
10722 SE Main Street
Milwaukie

City Council Public Hearing

When: March 21, 2000; 6:00 p.m.
Where: City of Milwaukie Public Safety Building
Council Chambers
10722 SE Main Street
Milwaukie

Notice Required by State Law

Ballot Measure 56, adopted by Oregon voters on November 3, 1998, requires the following statement to be included in this notice:

"This is to notify you that the City of Milwaukie has proposed new land use regulations that may affect the permissible uses of your land and may reduce your property value."

Despite the cautionary language used above, which is provided to comply with ORS 215.503, the City of Milwaukie has not determined that property values will be affected as a result of these actions.

CITY OF MILWAUKIE
Planning Department
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

BULK RATE
EORWSS
US Postage
PAID
Gladstone, OR
Permit No. 30

What are Milwaukie's Current Regulations Relating to Tree Cutting and Pruning?

In 1998, the City Council adopted regulations requiring permits for cutting and major pruning of all trees along public streets and roads. The Council adopted these regulations as a temporary measure. The Council directed City staff to write more comprehensive tree protection regulations in 1999 and early 2000.

Why change the Regulations?

In 1994, a group of Milwaukie residents formed the "Tree Committee" with the following vision:

To distinguish Milwaukie as a "Place of Trees." Each gateway to the City and every public place and parkway will be distinguished by a canopy of colorful and majestic trees.



The Committee worked to gain more protection and recognition of Milwaukie's urban forest. Together with City staff, the Committee developed goals for a new program to protect trees in Milwaukie, including both education programs and regulations.

In July 1999, the City Council adopted goals to protect neighborhood livability and the environment. An Urban Forestry Ordinance is one tool that the Council identified as a way to achieve these goals.

Ultimately, the City is hoping to attain a "Tree City USA" designation for Milwaukie in 2000. The proposed regulations are just one part of the overall plan to protect Milwaukie's trees. Other efforts include an annual Arbor Week celebration, neighborhood tree planting efforts, and developing an Urban Forestry Master Plan.

Questions and Answers about the Proposed Urban Forestry Regulations*

Will my property be subject to the new regulations?

The proposed amendments to Milwaukie's Municipal Code and Zoning Ordinance will protect trees on private property, the public right-of-way, and City-owned property (city facilities and parks, etc.). As proposed, you will need a permit if you are planning to:

- Remove or prune trees that are at least 18 inches in diameter.
- Remove four or more trees in a calendar year that are:
 - At least 6 inches in diameter; and
 - On lots 10,000 square feet or larger (including several lots if they are all in common ownership).
- Remove or prune significant trees. Significant trees have redeeming historical or natural characteristics. The City must complete a significant tree inventory prior to considering any trees for the designation. Any significant tree designation requires the consent of the property owner.
- Remove or prune any tree in the public right-of-way (i.e., along streets or roads) and on City-owned property.

* The proposed regulations are subject to change during the Planning Commission and City Council public hearing process.

Questions and Answers about the Proposed Urban Forestry Regulations* (continued)

What is required if I need a permit?

As proposed, if you need a permit to perform pruning or tree removal, you will be required to apply to the City of Milwaukie Planning Department. To perform the work, you will need to demonstrate that your request meets certain criteria. If your application complies with the criteria, the City will approve your permit. As proposed, any staff-level decision on a tree permit can be appealed to Planning Commission for a public hearing.

How will this affect the value of my property?

State law requires the City of Milwaukie to inform property owners that the adoption of this ordinance may reduce the value of your property. The City of Milwaukie has not determined that property values will be affected. The City has no way to know whether the regulations might increase or decrease the value of your property.

* The proposed regulations are subject to change during the Planning Commission and City Council public hearing process.



To: Planning Commission

From: Alice Rouyer, Planning Director *AR*

Subject: Matter from the Planning Director: Sign Ordinance Amendment

Date: January 4, 1999

Meeting Date: January 11, 1999

Action Requested

Review the amendment request and provide a recommendation to City Council.

Background

The original sign ordinance was approved in March 1993. At that time, the City gave a seven year amortization or "grace period" for nonconforming signs. After that, all signs which do not conform to the size, height, location and other standards of the sign ordinance must be removed. The seven year period will end in March 2000.

In order to adequately enforce this provision, staff must:

1. Complete a city-wide sign inventory to determine which signs are nonconforming. This would require field investigation and sign permit research work.
2. Meet with business owners either separately or in group meetings, send letters and request that the nonconforming signs be removed and replaced with conforming signs at the owner's expense.
3. If signs are not removed within a reasonable period of time, staff would then be required to enforce the regulations either through a voluntary compliance procedure or through a formal court proceeding.

All of these work items are expected to require a considerable amount of time, care and attention. It may be necessary for staff to employ a consultant or contract planner to

COMMUNITY DEVELOPMENT DEPARTMENT
Public Works • Planning • Building • Fleet • Facilities
6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
PHONE: (503) 786-7600 • FAX: (503) 774-8236

10.1.a 2

complete certain parts of this project, in order to allow staff time to keep up with day-to-day work.

Staff is requesting that the seven year period be extended to 10 years. Given the limited resources in Planning, staff is concerned that enforcement of this sign ordinance provision will divert time away from projects that are a higher priority on the City Council and Planning Commission work program. Over the past 18 months or more, staff has received few complaints about nonconforming signs. In three years, staff expects to incorporate this work item into the work program and department budget.

Recommendation

Staff recommends that the Planning Commission recommend to City Council to approve this amendment to extend the nonconforming sign continuation period from seven years to ten years.

ATTACHMENT

Amended Sign Ordinance

RECOMMENDED ACTION:

Amend the Nonconforming sign section to allow nonconforming signs to be continued ten years instead of seven years.

Section 14.28.020 Nonconforming sign.**A. Time Limit.**

1. Nonconforming signs may be continued for a period of ~~seven~~ ten years from the effective date of the ordinance codified in this chapter.

2. Signs located on premises annexed into the city after the effective date of the ordinance codified in this chapter, and which signs do not comply with the provisions of this chapter, shall be brought into compliance with this chapter within a period of seven years after the effective date of the annexation.

3. Any sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all of the provisions of this chapter.

4. Signs in existence on the effective date of the ordinance codified in this chapter which do not comply with provisions regulating flashing signs, use of par spot lights or revolving beacons, revolving signs, or flags, banners, or streamers or strings of lights, temporary or incidental signs, shall be made to conform within ninety days from the effective date of the ordinance codified in this chapter.

B. Notice Given. The city manager or duly authorized representative shall give thirty days' written notice to the owner or lessee of the sign to remove the sign and its supporting structures or to bring it into compliance with this chapter. (Ord. 1733 § 1(1)(Exh. A) (part), 1993)



To: Planning Commission

From: Alice Rouyer, Planning Director *AR*

Subject: Matter from the Planning Director: Ex-Parte Contact Questions & Answers

Date: December 29, 1999

Meeting Date: January 11, 2000

Action Requested

Information only. Be prepared to ask the Planning Director or City Attorney any questions you might have about ex-parte contact.

Background

I have attached some information regarding ex-parte contact and other ethical issues for Planning Commissioners and planning staff. In the past few months, different Commission members have been asking me questions about ex-parte contact. Gary Firestone and I will be prepared to answer any questions you might have under "Matters from the Planning Director" at the January 11, 2000 meeting.

III. ETHICAL ISSUES

Excerpt from
City of Milwaukee
Planning Commission
Training Workshop

May 12,
1998

A. INTRODUCTION

Every applicant is entitled to a fair and impartial hearing. In the course of a particular proceeding, certain situations may arise that challenge the ability of the hearings body to make a decision in an impartial and uninterested manner. These situations include ex parte contacts, site visits, conflicts of interest, and bias. This addendum will discuss how to identify when these situations arise and examine the procedural requirements that should be followed to avoid having a decision reversed or remanded on appeal.

B. EX PARTE CONTACTS

1. What are they?

Ex parte contacts are those contacts by a party on a fact in issue under circumstances which do not involve all parties to the proceeding. Note the three essential elements; unless all three are present, you have not been involved in an ex parte contact. Ex parte contacts can be made orally when the other side is not present, or they can be in the form of written information that the other side does not receive.

Although it is important for public officials to communicate with their constituents, ex-parte communications should be discouraged in favor of the public hearing process. If ex parte contacts do occur, they do not necessarily invalidate the impartial hearings procedure. The procedure outlined below is designed to ensure that a record is made to establish that the hearing process and the members of the hearing body were not biased.

2. What should you do?

The most important thing to remember is this: If an ex parte contact occurs, put it on the record at the very next hearing on the matter, before any testimony is received and before any other proceedings on the matter take place. DESCRIBE THE SUBSTANCE OF THE CONTACT and ANNOUNCE THE RIGHT OF INTERESTED PERSONS TO REBUT THE SUBSTANCE OF THE COMMUNICATION. This must be done as early as possible during the proceedings, at the first hearing after the contact occurs. The court of appeals has held that failure to make such disclosures are not simply procedural errors, but can result in remand of the case to the City.

C. SITE VISITS

At the beginning of each quasi-judicial hearing, the Chairman asks if any Commissioner/Councilor has visited the site of the proposal. Why?

Closely associated with ex parte contacts, the issue of site visits is important because a Commissioner/Councilor may have had an opportunity to gain information outside of the public hearing which may or may not otherwise be part of the record. Since the decision must be based on the evidence in the record, it becomes important that the visit, and any information gained which does not appear in the record, **MUST BE PUT ON THE RECORD IF THE DECISION IS TO BE VALID**. The key to solving the problem created by a site visit is to **MAKE A DISCLOSURE**. As always, the disclosure should be made as early in the process as possible so as to afford the applicant or other interested parties a chance to rebut the evidence is necessary.

D. CONFLICTS OF INTEREST

Generally, conflicts of interest are defined as situations in which you, as a public official taking an official action, have an actual or potential financial interest in the matter before you. ORS Chapter 244 defines the limitations and process for dealing with conflicts of interest.

1. Actual and Potential Conflicts:

An **actual** conflict of interest is now defined as one that "**would**" be to the private pecuniary benefit of the public official, a relative² of the public official, or a business with which the public official is associated. A **potential conflict of interest** is one that "**could**" be to the private pecuniary benefit of the public official, a relative of the public official, or a business with which the public official is associated.

2. What should you do?

The statute describes rules for public officials who have actual or potential conflicts of interest. Commissioners/Councilors must **PUBLICLY ANNOUNCE potential and actual** conflicts of interest, and in the case of an **ACTUAL CONFLICT, MUST REFRAIN FROM PARTICIPATING IN DEBATE ON THE ISSUE OR FROM VOTING ON THE ISSUE**.

There is an exception to the voting restriction if a public official's vote is necessary to meet a requirement of a minimum number of votes to take official action. In this situation, the official is eligible to vote, but still may not participate in any discussion or debate on the issue. We do not recommend utilizing this exception because it creates an appearance of impropriety when a Commissioner/Councilor votes on an issue that would provide a financial benefit to the Commissioner/Councilor or a relative of the Commissioner/Councilor.

². A "**relative**" is defined to include the spouse of the public official and any children, brothers, sisters, or parents of the public official or of the public official's spouse.

To recapitulate the conflict of interest definitions and requirements: A situation that could provide private pecuniary benefit is a **potential** conflict of interest. The public official must only **publicly announce** the potential conflict prior to participating in debate and voting on the issue. In contrast, situation that **would** provide private pecuniary benefit is an **actual** conflict of interest. The public official must **publicly announce** the actual conflict, **refrain from debate and not vote** on the issue.

It is important to remember that even the appearance of an actual or potential conflict of interest is what counts. You need not actually believe you are in a conflict of interest situation to give rise to your duty to disclose it as discussed above. **IF THERE IS ANY DOUBT IN YOUR MIND, MAKE THE DISCLOSURE.** Again, the reason this is important is that we are required to provide an impartial tribunal for deciding the quasi-judicial matters which come before us.

E. PERSONAL BIAS

Personal bias exists when a Commissioner/Councilor is prevented from rendering a fair judgment in a matter because of personal feelings, or an acquaintance or relationship with someone or something involved in the case. Personal bias differs from conflicts of interest because there is no requirement of the potential for financial gain, but only the existence of a relationship.

In situations where there is even the appearance of potential bias, you must **DISCLOSE** the nature of the bias and state whether or not in your opinion it requires disqualification. There is no requirement of disqualification in situations involving simple bias, but Commissioners/Councilors should disqualify themselves if the bias prevents them from being fair and impartial in the matter.

IV. ETHICS LAW

A. Oregon Government Standards and Practices Laws

1. History

- a. Oregon - 1974 Ballot Measure created our laws (now ORS Chapter 244) administered by Ethics Commission until 1993.
- b.. 1993 change - now "Government Standards and Practices Commission" (GSPC).

2. Government Standards and Practices Commission

- a. Composition - Seven volunteers appointed for a single four-year term.
- b. Appointed by:
 - (1) Four by Governor upon recommendation of Democratic and Republican leaders of Oregon House and Senate
 - (2) Three by Governor
 - (3) Must be confirmed by Senate
 - (4) No more than four from one political party.

3. "Public Official" covered by GSPC - ORS 244.020(15)

"Public Official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

4. Code of Ethics - ORS 244.040 - Applies to all "public officials"

- a. Use of public office for personal gain - ORS 244.040(1)

"No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an

unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated."

- (1) To obtain financial gain
- (2) For avoidance of financial detriment
- (3) Public officials are eligible for:
 - (a) Official salary
 - (b) Honoraria
 - (c) Reimbursement of expenses
 - (d) Unsolicited award for professional achievement
- (4) Key Words
 - (a) Financial gain
 - (b) Avoidance of detriment
- (5) Applies to relatives
- (6) Applies to "business with which the public official or a relative of the public official is associated"
 - (a) "Business" defined
 - (b) "Associate" defined
- (7) Employee discounts

b. Soliciting or receiving gifts - ORS 244.040(2)

- (1) More than \$100
- (2) In a calendar year
- (3) From a single source
- (4) Definition of gift - ORS 244.020(8) - Exemptions:
 - (a) Campaign contributions
 - (b) Gifts from family members
 - (c) Food, lodging and travel in conjunction with official appearances
 - (d) Food and beverage consumed with the purchaser
 - (e) Entertainment shared with the provider, value less than \$100 any one occasion and less than \$250 in a calendar year.

- c. Soliciting or receiving employment in return for official action - ORS 244.040(3)
- d. Misuse of confidential information - ORS 244.040(4)
- e. Offering gifts to public officials of more than \$100 - ORS 244.040(5)
- f. Representing paying clients before public board of which person is a member - ORS 244.040(6)

B. Requesting an Opinion From the Government Standards and Practices Commission

- 1. Anyone can request an official opinion
- 2. The Executive Director can issue informal staff opinions
- 3. Caution: Does not provide legal protection against prosecution by the Commission.
- 4. A formal opinion
 - a. Could take up to six months to receive
 - b. Shields the requestor from liability from ORS 244, if the advice is followed - ORS 244.280(3)
- 5. Commission procedures
 - a. File a written complaint
 - b. Confidential preliminary review (ninety days)
 - c. If cause is found to believe a violation occurred, investigative phase begins (last 120 days)
 - d. GSPC then may:
 - (1) Dismiss the case
 - (2) Seek a settlement
 - (3) Continue the investigation
 - (4) Proceed to a contested case hearing (if this is the chosen route, the public official may appear before the GSPC or transfer the case to circuit court)
 - (5) Appeal is to the Oregon Court of Appeals
- 6. Penalties
 - a. Fines and forfeitures

b. Attorney's fees

C. Declaration of potential conflicts of interest - ORS 244.120

1. Potential conflicts - ORS 244.020(7)

"Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated ..."

2. Actual conflicts - ORS 244.020(1)

"Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated ..."

3. How to declare conflicts

4. Participation in decisions

- a. Okay, if there is a potential conflict
- b. Cannot participate if there is an actual conflict
- c. Exceptions

- (1) Public Officials's interest or membership in a particular occupation or class required by law as a prerequisite to the holding of the office.
- (2) Action in the person's official capacity would affect a class consisting of all inhabitants of the state, or smaller class consisting of an industry or other group, including one in which the person, or the other person's relative is associated, is a member or is engaged.
- (3) Membership in or membership on the Board of Directors of a non-profit corporation.

5. Land Use Hearing Context

- a. Due process right to impartial tribunal (Fasano v. Board of Washington County Commissioners)
- b. Decision-maker "free of personal interest or bias"
- c. Challenge to a hearing body's ability to make an impartial decision
 - (1) Ex parte contacts

10.1.b 9

- (2) Site visits
- (3) Conflicts of interest
 - (a) actual
 - (b) potential
 - (c) What to do if they occur
- (4) Personal bias

CHAPTER THREE

**ETHICS AND LEGAL ISSUES, CONFLICTS OF INTEREST,
EX PARTE CONTACT AND OPEN MEETING LAW**

Excerpt from

Planning Commission Training Manual

Planners Training Team. 1995

PLANNING VALUES AND ETHICAL ISSUES

There are two categories of ethical issues with which planning commissions should be concerned; they are as follows:

1. Misuses of your position, and
2. Failure to apply and to advocate for appropriate planning principles and values in your duties.

Examples of the first area are:

- ▶ conflicts of interest
- ▶ ex parte contact
- ▶ other failures to protect due process.

These topics are discussed later.

However, in your daily activities you will find there are other problems that are often more subtle:

- ▶ Information may be leaked to special interest groups (environmental, chamber of commerce, neighbors, opponents, proponents).
- ▶ Issues may be exaggerated for sympathy.
- ▶ Expendable issues may be added just for trading.
- ▶ Pressure groups may be created.
- ▶ Information can be distorted or misrepresented by giving it the wrong emphasis.
- ▶ Technically correct data may be changed because of pressure.
- ▶ Threats or intimidation may be applied (both directions).

Many of these are seen as tactics to be used in the political arena, and for politicians, some, such as forming pressure groups, may be acceptable. However, most are not acceptable for planning commission members. As planning commissioners your job is to

provide good products, but the way you get there is important too. You are there to protect other important values such as equal treatment for all, accessible government and rational decision-making.

In Oregon, one of the important ethics requirements is the annual filing of an ethics statement with the State Ethics Commission. This is an important safeguard for the public and yourself. In case you are ever accused of unethical behavior, a properly completed Ethics Disclosure form on file in Salem can save you considerable difficulty.

The second ethical area with which planning commission members should be concerned is the advocacy for proper planning and the development of your abilities as leaders within your communities. Planning does not occur in a political vacuum. To be of optimum value to your citizens you must speak out in favor of those things which planning represents. And you should advocate for planning as part of your duties as a planning commissioner. In this way the good that planning can accomplish will be achieved in a manner most acceptable to the people of your city or county. The following is a listing of common planning values:

- ▶ Protection of public health
- ▶ Conservation of resources
- ▶ Efficiency
- ▶ Beauty
- ▶ Equity
- ▶ Pluralism
- ▶ Individuality
- ▶ Democratic participation with responsibility
- ▶ Rational management
- ▶ Long-term perspective

Advocacy for these values will help your community become the kind of place you want it to be, and the kind of place you want for your children and their children.

You have been given special power and authority to help the people of your area to a better future. That is a difficult task and it is not easy to know the proper course to take in all cases. These values will help to keep you on course. For you to be successful, and your

community to be successful, you will have to be the one that speaks for these principles and sees that they are used in your commissions's decisions and recommendations. Insist on them with your staff, your governing body and yourself!

CONFLICT OF INTEREST: Use of the public office for private benefit

Definition

Following is typically statutory or ordinance language which defines and prohibits conflict of interest:

Commission members shall not participate in any commission proceeding or action in which they hold a direct or substantial financial interest, or when such interest is held by a member's immediate family. Additionally, a member shall not participate when an action involves any business in which the member has been employed within the previous two years, or any business with which the member has a prospective partnership or employment.

Any actual or potential interest by a commission member in a land use action as described above shall be disclosed by that member at the meeting of the commission where the action is being taken.

Two Tests

Here are two tests to use in assessing potential conflicts:

1. Are you acting as a public official?
2. Would an action cause you, a household member or an associated business a financial gain or loss?

If both questions are answered yes, a conflict exists.

A conflict of interest does NOT exist if

- ▶ you have an interest or membership required by law before you take office,
- or
- ▶ your action affects all people the same or a large class of people the same.

WHAT TO DO IF A CONFLICT EXISTS: Give public notice before taking action.

Be careful about the "appearance" of a conflict of interest too. If someone may assume you have a conflict, explain the situation to avoid the "appearance" of unfairness and possible future criticism.

Personal Bias

Some statutes address only financial conflicts of interest, but it is easy to imagine a situation in which one may be biased for reasons unrelated to financial benefit. When a son or daughter seeks a variance, or a business competitor requests a zone change, one may be so prejudiced for or against a party that one is incapable of rendering a fair, impartial judgment.

A planning commissioner should not participate in a decision if he or she has an actual bias regarding the application. "Actual bias" means prejudice or prejudgment of the facts to such a degree that a planning commissioner is incapable of rendering an objective decision on the merits of the case. This does not mean that you must step down if you have any knowledge of the facts or parties or some leaning in one direction or the other; case law recognizes that an elected body is different than a judge. A planning commissioner should only step down if you truly believe that you cannot make a fair decision on the merits.

Your local ordinances may provide additional requirements addressing conflict of interest, disqualification and nonperformance of duty.

EX PARTE CONTACT

It happens all the time. There's a conditional use permit hearing scheduled next Wednesday. On Sunday, you sit next to an adjoining property owner at a Little League game. He tells you he knows for certain that parking requirements exceed what the applicant is representing. You've just had an *ex parte* contact. So, what do you do at the hearing on Wednesday? Get your conversation into the record!

The federal and state constitutions guarantee everyone's right to DUE PROCESS AND A FAIR TRIAL. Therefore, *ex parte* contacts -- contacts that benefit only one party, are not allowed.

In land use cases, *ex parte* contact usually refers to information received by the decision-maker without all parties present or informed.

Specifically, ex parte contact is contact or information passed between a party with an interest in a quasi-judicial land use decision and a member of the council, board of commissioners or planning commission, when such information is not generally available to other members or other interested parties.

The member shall disclose any pre-hearing or ex parte contacts with applicants, officers, agents, employees or other parties to an application that is before the decision-making body.

Three Tests

Ex parte contact exists when all three of the following circumstances exist:

1. The communication involves the merits of the proposal
2. The communication concerns an issue that then comes before the decision-maker
3. The communication happens where all parties are not given a chance to hear or respond.

Ex parte contact does NOT apply to planning commissioners' or elected officials' communication with staff.

What to do:

Avoid ex parte contacts by tactfully telling people that you have been advised that discussing the issue with them outside of a hearing could jeopardize your ability to rule on the case. Tell them the city attorney and county counsel said you cannot talk to them except at the hearing.

At the first hearing on the matter:

1. place on the record the substance of any written or oral *ex parte* communication; *and*
2. make an announcement at the hearing of a party's right to rebut the substance of the communication.

Ex parte contacts with a member of the decision-making body does not invalidate a final decision or action, provided that the member receiving the contact indicates the substance of the content of the ex parte communication and of the right of parties to rebut the content at the first hearing where the action will be considered or taken.

OREGON'S OPEN MEETING LAW

Oregon's Open Meeting Law (ORS 192.610 - 192.690) requires that decisions of any "governing body" be arrived at openly so that the public can be aware and informed of the body's deliberations and decisions.

A governing body is one with two or more members which decides for or recommends to a public body. The law applies to the state, cities and counties and advisory bodies to those jurisdictions.

Not only must meetings of city councils and boards of county commissioners be "open," but also the meetings of planning commissions, design review boards and other appointed boards or commissions which have the authority to make decisions or recommendations. (In Clackamas County, legal counsel has determined that the official recognized citizen groups -- community planning organizations -- are subject to the open meeting requirements.)

Any time a quorum of the body's membership is present, a meeting exists with a few exceptions. "Closed meetings" (or "executive sessions") are allowed to discuss employment, discipline or labor relations, but decisions on these issues must be made at a public (open) meeting.

Notice of public meetings is required, and the notice must include the time and place and principle subjects to be discussed. Notice should be timed to give "reasonable" advance notice to the public. For "emergency" or special meetings the law calls for 24 hours advance notice.

What's required at the meeting?

Written minutes which give a true reflection of matters discussed must be kept and made available to the public within a reasonable time. However, neither a full transcript nor a recording is required.

Include in the minutes:

- ▶ Names of members present
- ▶ Motions, resolutions, etc., and their disposition
- ▶ Substance of discussions and references to documents

Because a meeting is open to the public means that anyone can attend. But "open" does not mean that anyone has the right to speak. Planning commissions and governing bodies may hold work sessions and other meetings without allowing public comment.

"Conflict of interest situations come up not only when there may be an actual conflict, but also when there may be a perception by others that there is a conflict."

"As a planning commissioner, you will periodically have to grapple with ethical issues ranging from conflict of interest questions to complaints of unfair treatment. This column is the first in a series of efforts to explore issues of ethics for planning commissioners. I will use examples, discuss ethical questions and considerations, and, hopefully, provide some guidance for resolving ethical problems.

One common situation facing planning commissioners involves the potential of a conflict of interest due to a commissioner's "monetary interest" in the outcome of a particular proceeding.

Let me give a hypothetical example: Before a public hearing on a controversial zone change, one of the partners of the development company requesting the zone change introduces himself to you. You realize that your spouse has done accounting work for this individual in the past. Moreover, you know your spouse hopes to land more work from this person in the future.

You have a vague idea that you may have a problem. What should you do? You should first realize that you are faced with a potential conflict of interest situation. The above is only one example of the many forms that such a problem can take.

Conflict of interest questions are part of the larger due process consideration of the impartiality of the planning board or commission. Simply stated, every party before your board is entitled to a fair hearing and decision, free from bias or favor. Having a conflict of interest can threaten that impartiality. Therefore, it is critical that conflicts be identified and dealt with in an appropriate manner.

The key to the hypothetical situation is not just that your spouse worked for the individual in the past. Previous business dealings with someone appearing before your board is not necessarily enough to establish a conflict of interest, although such past business relationships should be publicly disclosed. More troublesome is the fact that you know your spouse hopes to land more work in the future. As a result, it is conceivable that your decision on the requested zoning change could be affected by this.

How should you handle this problem? If it's possible, consult with your commission's attorney. Assuming that your attorney (or you yourself) concludes that there are

reasonable grounds for someone to believe you might not be impartial, then you should publicly disclose the existence and nature of the conflict, and disqualify yourself from deliberating and voting.

Many planning commissioners will also then leave the room until the next item on the agenda is heard. Some commissioners continue to sit with the commission without participating in the discussion or vote. There is no right or wrong way to handle this. Keep in mind, however, that if you remain in the room, you may be creating the suspicion that your presence is an attempt to influence how other commissioners vote. In this situation, you are the best judge of the attitudes of your community, and you should base your action on your own reading of the situation.

Let me offer one additional caution. Conflict of interest situations come up not only when there may be an actual conflict, but also when there may be a perception by others that there is a conflict.

I have seen planning commissioners disclose their relationship with an individual appearing before them, but indicate that they feel they can impartially participate in the deliberations. While this may be appropriate in some circumstances, commissioners run the risk that their credibility may be damaged. On the other hand, commissioners should not claim a potential conflict of interest simply to avoid deliberating on a particularly difficult or controversial matter.

*Before concluding, let me refer you to a particularly useful publication by David Allor. It's called *The Planning Commissioner's Guide*, and is published by the APA Planners Press. It covers in more detail the wide range of conflict of interest situations that can come up, as well as many other problems faced by planning commissioners. Also, take a look at the American Planning Association's "Statement of Ethical Principles for Planning," which is reprinted in the sidebar of this column (copies can also be obtained from the APA, 1313 E. 60th St., Chicago, IL 60637). The "Statement" serves as a guide not just for professional planners, but for local planning and zoning board members as well -- in future columns I will be referencing this important document.*

Finally, if you have any questions or comments about this, or any future column, please feel free to write to me care of the Planning Commissioners Journal."

(C. Gregory Dale, AICP, is a city planner with the Cincinnati, Ohio, law firm of Manley, Burke & Fischer, which, among other things, represents public and private sector clients on planning and zoning matters. Greg is also a past president of the Ohio Chapter of the American Planning Association and regularly speaks at planning and zoning workshops. His column will appear regularly in the Journal.)

"Conflicts of Interest - A First Look" (by C. Gregory Dale, AICP; *Planning Commissioners Journal*, November/December 1991)

STATEMENT OF ETHICAL PRINCIPLES FOR PLANNING:

1. *Planning officials ought to serve the public interest.*
2. *Planning officials ought to recognize the right of citizens to influence decisions.*
3. *Planning officials ought to recognize the long-range nature of planning decisions.*
4. *Planning officials ought to strive to expand choice and opportunity for all persons.*
5. *Planning officials ought to encourage the coordination of activities and efforts in accommodation of all interests.*
6. *Planning officials ought to avoid conflicts of interest.*
7. *Planning officials ought to be thorough and diligent.*
8. *Planning officials ought not to seek or offer favors to special interests.*
9. *Planning officials ought not disclose or improperly use confidential information for financial gain.*
10. *Planning officials ought to insure equal access to public records.*
11. *Planning officials ought to insure that all relevant information is disclosed at public meetings.*
12. *Planning officials ought to maintain the public confidence.*
13. *Planning officials ought to respect the professional code of ethics [published by the American Institute of Certified Planners as a guide to its members].*

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To: Planning Commission

Through: Alice Rouyer, Planning Director *AR*

From: John Gessner, Associate Planner *JG*

Subject: CSO-99-06 & TPR-99-09
Clackamas Education Service District
4011 SE Lake Road

Report Date: January 4, 2000

Hearing Date: January 11, 2000

I. ACTION REQUESTED

Approve applications CSO-99-06 and TPR-99-09 for Clackamas Education Service District authorizing office use of premises located at 4011 SE Lake Road and adopt the staff recommended Findings and Recommended Conditions of Approval.

II. EXECUTIVE SUMMARY

Proposed use

The Clackamas Education Service District is seeking approval of Community Service Overlay and Transportation Design, Planning, and Procedures applications to allow office conversion of the former Seventh Day Adventist Church on Lake Road. The applications meet or can meet approval criteria of applicable zoning regulations. The Planning Commission, however, must make a final determination that the use is in the public interest and furthermore, that the public benefits of the project outweigh its potential adverse impacts.

Staff believes that the use is in the public interest and provides significant public benefits.

Ensuring Compatibility with Neighbors.

To ensure the use will be compatible with its residential neighbors, conditions of approval that minimize potential adverse impacts have been recommended. Recommended Findings and Conditions of Approval begin on page 9.

Reducing and Managing Potential Traffic Impacts

The Lake Road Neighborhood District Association (NDA) and other neighbors have expressed concerns about traffic impacts. A meeting was held with

representatives of the Lake Road NDA, Clackamas ESD, and staff for the purpose of identifying neighborhood concerns, clarification of project details, and discussion of alternatives to reduce potential traffic impacts. The applicant's traffic impact analysis and access alternatives were discussed. Site access alternatives included closing the Lake Road driveway.

The principles that influenced final alternative selection include minimizing traffic and safety impacts in Lake Road and avoiding situations that induce traffic to cut through the nearby neighborhoods. Staff is recommending that site access include unrestricted ingress and egress at Lake Road, unrestricted ingress at 37th Avenue with right turn only egress. This is the same access configuration that was approved for the church. Recommendations to minimize potential traffic impacts on Lake Road are included in this report. No adverse impacts to 37th Avenue are expected.

Zoning Analysis

The applications meet or can meet all requirements of applicable zoning regulations.

III. BACKGROUND INFORMATION

Statistics

Location:	4011 SE Lake <i>See Exhibit 1-Vicinity Map</i>
NDA:	Lake Road
Zone:	R-7 Residential
Lot size:	2.64 Acres
Map & Tax Lot	11E36DA04500

Project Description

Clackamas Education Service District is seeking approval to convert the former Seventh Day Adventist Church to offices. Clackamas ESD provides educational support services to Clackamas County's ten school districts including North Clackamas School District #12. Clackamas ESD is proposing to relocate the Superintendent's Office, Early Childhood Education, and Curriculum and Instruction programs from its Marylhurst campus. In addition, the premises may be used by North Clackamas School District #12 for periodic meetings. These meetings have been included in the summary of building use below.

The early Childhood Education program supports children with disabilities by providing services to families and schools. ESD's Curriculum, Instruction, and Evaluation (CIE) program supports Clackamas County educators. In addition CIE provides English as a Second Language and test scoring and reporting. The ESD also provides school-to-work consulting. The ESD has submitted copies of

January 4, 2000

page 3 of 22

its 1998-99 annual report to be provided to the Planning Commission with this staff report.

Interior remodeling of the former church building is required. No site improvements are proposed. Access will be by means of the existing driveways on Lake Road and 37th Avenue. Offices will be used daily, year-round with evening use up to two times per month for meetings.

A summary of the employee population and meeting activities follows. All activities shown below have been factored into the traffic impact analysis.

Employee Counts

Normal on-site employee count:	109
Peak on-site employee count:	134
Total on-site, full-time employees:	32
Total on-site, year round employees:	21

Visitation and meetings includes the following:

Day-time	14/month
Daytime meeting attendance	25 persons maximum
Evening	2/month
Evening meeting attendance	30 maximum

Clackamas ESD may seek future approvals from the Commission to expand its operations on-site subject to availability of funding.

Site History

In 1984 the site was rezoned to R-10-PD (Planned Development) in association with a residential development proposal. That project was never built and in 1989 the Commission approved application CSO-89-06 of the Seventh Day Adventist Church authorizing construction of a 57,300 square foot church with assembly capacity of 2,100 persons being served by 539 parking spaces. Prior to construction the church modified the development plans. Only 30,208 square feet and approximately 220 parking spaces were constructed.

Minutes of the public hearing on CSO-98-06 indicate the church was to be used primarily for weekend religious service. However, applicant testimony indicates that the building was to be used for meetings with possible attendance of 150 persons. The timing of these meetings is not specified. Daily use included office operations with up to 15 cars per day. The plans also show an area of future building expansion for child education.

Meeting minutes indicate neighbors were concerned with impacts to abutting properties and traffic on Lake Road and 37th Avenue. The Commission imposed conditions requiring minimum setbacks of drives, perimeter fencing, and right

turn exit-only at 37th Avenue driveway. A traffic study was not prepared for the 1989 proposal.

The neighboring land to the south and west has not changed much since 1989. The residential development along the east property line is relatively new with approximately 12 houses having been constructed between 1991 and 1996. A continuous wooden fence runs along the rear yards of these houses.

Recent work on the site is related to completion of landscaping improvements required by the 1989 Commission approval.

IV. ANALYSIS OF PROPOSAL

Zoning Authority

The proposal is subject to Milwaukie Zoning Ordinance Sections 321-Community Service Overlay, 1400-Transportation Planning, Design Standards, and Procedure, and 1011.3-Minor Quasi-Judicial Review.

- Section 1011.3 governs public notice and the application process.
- Section 321 governs the use and defines performance criteria to ensure compatibility with neighbors. Schools, places of worship, governmental offices, civic institutions, and similar uses may be sited in any zoning district subject to Planning Commission approval. . The Education Service District has been deemed to be an eligible community service use.

The Commission may approve a CSO application when it finds the proposal is in the general public interest and the public benefits outweigh potential adverse impacts. In addition, the Commission may impose conditions of approval to ensure compatibility with other uses in the vicinity.

- Section 1400 addresses the adequacy of pedestrian, bicycle, and other transportation improvements.

Evaluation of Zoning Criteria

This section addresses specific aspects of the project that either require conditions be imposed to ensure compliance with performance standards, or require conditions to bring the application into compliance with zoning criteria. A checklist showing staff analysis of compliance with all other standards is included in Attachment 1. A summary of key issues follows.

- Traffic Impact. The proposal use is expected to have traffic impacts at the Lake Road driveway. Conditions have been recommended to minimize potential impacts thereby protecting safety in the street.

- Compatibility with Residential Neighbors. The proposed use has the potential to create nuisances such as noise and lighting. Conditions have been recommended to minimize these impacts.
- On-site Transportation Improvements. The site plan does not indicate all improvements that may be required by the City's transportation related regulations. Conditions have been recommended to ensure compliance with Section 1400.

A description of the manner in which the proposal meets other applicable zoning criteria without requiring conditions is in found in Attachment 1.

Traffic Impact Analysis and Compliance with Section 321, Community Service Overlay.

Section 321.10.B of the Community Service Overlay regulations encourage uses such as the ESD to locate on collector streets and requires investigation of traffic impacts when access to a local street is proposed. A traffic study¹ was prepared since access is located on 37th Avenue, which is a local street. Lake Road is classified as a minor arterial in the City's Transportation System Plan.

Traffic has risen as a primary concern of the Lake Road NDA. See *Exhibit 5-Lake Road NDA Comments*. In response to these concerns, the public hearing originally scheduled for December 14, 1999 was delayed to allow investigation of related issues. A meeting with Lake Road NDA representatives, the applicant and staff was held to address traffic issues. See *Exhibit 3-Draft Minutes of NDA Meeting*.

Potential Traffic Impacts

The applicant's traffic study concludes there will be no adverse impacts to operating level of service of four potentially affected intersections. The applicant states that the intersections will operate at acceptable level of service. Staff is concerned about safety issues at the Lake Road intersection that the applicant's level of service analysis does not directly address. Conditions of approval based on safety concerns at the Lake Road driveway have been recommended. The study intersections and estimated impacts to level of service² are shown below.

¹ The applicant has submitted the following traffic related materials: original report dated November 22, 1999, Letter of Vern Hess, Assistant Superintendent, December 23, 1999, and Technical Memorandum, Kittelson Associate, December 28, 1999. These materials indicate that projected level of service of affected intersections will be acceptable based upon likely trip generation and traffic distribution. The November 22, 1999 study uses a conservative trip generation rate. ESD estimates that actual trip generation will be significantly lower than shown in the study based on observations of ESD traffic at the Marylhurst location. See *Exhibit 4-Description of ESD Operations*. The above referenced materials have been provided to the Planning Commission along with this report.

² Level of Service (LOS) analysis measures such things as delay, number of vehicles, intersection volume and assigns a code A through F to represent operating conditions. LOS A

The only change in level of service occurs at the site drive. Traffic exiting during the afternoon rush hour will be delayed. See *Exhibit 2-Intersection Location Map*.

- **Lake Road and Freeman Way**
a.m. peak, no change in existing LOS B
p.m. peak, no change in existing LOS C
- **Lake Road and Site Drive**
a.m. peak, no change in existing LOS C
p.m. peak, change from LOS C to LOS E
- **37th Avenue and Site Drive**
a.m. peak, no change in existing LOS A
p.m. peak, no change to existing LOS A
- **37th Avenue and Highway 224**
a.m. peak: no change in existing LOS C
p.m. peak, no change to existing LOS C

Although the estimated level of service may be acceptable, traffic impacts are expected to occur. Potential traffic impacts of this project warrant further action to ensure preservation of vehicular, pedestrian, and cyclist safety. The majority of site traffic is expected to use the Lake Road entrance. The addition of turning movements in Lake Road will cause delays in Lake Road as eastbound vehicles turning left onto the site are delayed by oncoming, westbound traffic. Delayed eastbound vehicles may pass stopped vehicles on the right and in the bike lane thereby 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.

These potential safety impacts are directly related to the proposed use and warrant appropriate correction. Staff recommends traffic be observed after the building is occupied by ESD and that any necessary improvements be implemented.

Impacts may also occur if p.m. peak hour traffic exiting the site on Lake Road exceeds estimates. The traffic study indicates site traffic exiting in the afternoon will operate at LOS E. These delays will occur on-site and should not significantly affect in-street traffic. While, LOS E is acceptable for unsignalized intersections, LOS F, the next lowest level is not. Traffic improvements may be required if the site drive is found to operate at LOS F or otherwise result in adverse impacts. Impacts associated with degraded levels of service include inappropriate driver behavior such as unsafe entry of Lake Road traffic. These potential safety impacts are directly related to the proposed use and warrant

represents safe and free flowing traffic. LOS F represents potentially unsafe, congested conditions and excessive delays.

appropriate correction. Staff recommends as conditions of approval, observation of traffic conditions and implementation of appropriate improvements.

No impacts are expected at the site drive and 37th Avenue intersection or the intersection of Hwy. 224 and 37th Avenue.

Neighborhood and Agency Review of Traffic Issues

The proposed development plans and traffic study were sent to the Lake Road NDA, Clackamas County Department of Transportation and Development, and Oregon Department of Transportation (ODOT) for review and comment as required Zoning Ordinance Section 1400. 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.

Compliance with the Public Benefit Test of Section 321.

The Community Service Overlay regulations authorize approval of a community service use if the Commission finds that establishing the use is in the general public interest and that the benefits of the use outweigh its potential adverse impacts. Education Service Districts are created by statute to support public education. Accordingly, the use is believed to be in the general public interest and provide public benefits. The applicant addresses public benefits in the December 23, 1999 letter to staff. See *Exhibit 3-Description of ESD Operations*. The applicant states the benefits include the following.

- Services provided to North Clackamas Schools
- Closer proximity to North Clackamas School District offices on Lake Road resulting in reduced costs of travel time, staff expenses, etc.
- Improved geographic access to Milwaukie families that receive services.
- Quiet operation of the site and promise of being a good neighbor.
- Creation of new jobs.

Balancing Public Benefits and Potential Adverse Impacts

The Planning Commission must determine whether the benefits outweigh the potential adverse impacts. The zoning regulations give the Commission discretion in its consideration of the balance between benefits and impacts. Significant benefits include the value of new jobs in Milwaukie and the related benefits to downtown merchants and others.

Adverse impacts to neighbors can be significantly reduced by conditions imposed on the use. With the proposed conditions, staff believes that the public benefits outweigh the potential adverse impacts.

Compliance with Performance Standards of Section 321.

The following section identifies specific criteria of the Community Service Overlay Zone Regulations. These criteria ensure the proposed use will be compatible with its residential neighbors. Applicant and staff responses are provided.

1. Section 321.F. Lighting shall be designed to avoid glare on adjacent residential uses and public streets.

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.

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 the section "Recommended Conditions of Approval". Implementation of these conditions will significantly reduce the likelihood of neighbors experiencing lighting nuisance.

2. Section 321. G. Where possible, hours and levels of operation shall be adjusted to make the use compatible with adjacent uses.

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

A. 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.

B. 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 in the section "Recommended Conditions of Approval". Implementation of these conditions will significantly reduce the possibility of nuisance-type adverse impacts.

C. 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. A condition ensuring vehicle access has been recommended.

Compliance with Section 1400-Transportation Planning, Design Standards, 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 not required of the Seventh Day Adventist Church since it was approved before adoption of Section 1400.

The application substantially complies with Section 1400. Recommended conditions for on-site bicycle and pedestrian improvements will bring the project into full compliance

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 required for minor development. Up to 10% of the value of all improvements will be allocated to bicycle and pedestrian improvements. A condition requiring pedestrian connection to Lake Road is recommended since a bus stop is located at the site drive.

Compliance with Section 504 Off-street Loading.

The site plan does not indicate required loading spaces, which the site can accommodate. A condition requiring site plan modification and installation of loading spaces has been recommended.

V. RECOMMENDED FINDINGS OF APPROVAL

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. Based on the service provided 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 an average of twice monthly involving not more than 30 persons.
2. Milwaukie Zoning Ordinance Section 321.4.B-Authority to Grant or Deny a Community Service Use, authorizes the Planning Commission to impose suitable conditions which assure compatibility of the use with other uses in the vicinity.
 3. Applications CSO-99-06 and TPR-99-09 has been processed, and public notice provided as required by Milwaukie Zoning Ordinance Section 1011.2.
 4. The proposal is found to be in the general public interest. The expected public benefits identified by the applicant, which include service to the community and addition of employment outweigh potential adverse public impacts, which shall be mitigated by implementation of the adopted conditions of approval.
 5. Milwaukie Zoning Ordinance Section 321, Community Service Overlay requires consideration of comparative public benefits and potential adverse impacts, which include traffic impacts. 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 results in a level of service change from A to 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.
 6. Milwaukie Zoning Ordinance Section 321, Community Service Overlay requires consideration of comparative public benefits and potential adverse impacts. The regulations specify that noise and lighting impacts shall be considered. The proposed use and its incidental activities such as refuse collection, landscape maintenance, and outdoor lighting have

the potential to cause nuisances to surrounding residential properties. This condition warrants implementation of conditions of approval that minimizes the potential for nuisance.

7. 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.
8. As amended by conditions of this approval, application CSO-99-06 complies with the provisions and standards of Milwaukie Zoning Ordinance Section 321-Community Service Overlay Zone.
9. As amended by conditions of this approval, application TPR-99-09 complies with the provisions and standards of Milwaukie Zoning Ordinance Section 1400-Transportation Planning, Design Standards, and Procedures.

VI. RECOMMENDED CONDITIONS OF APPROVAL

1. The use of the premises authorized by Community Service Overlay approval 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 restrictions on meetings specified in this approval.
2. Indoor events not associated with activities authorized by this approval shall be subject to the review and approval of the Planning Director.
3. 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.
4. Refuse pick-up shall not occur earlier than 7:00 a.m. or after 9:00 p.m. weekdays and not earlier than 8:00 a.m. or after 9:00 p.m. on weekends.
5. 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 or security purposes.
6. 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.

7. The site shall not be used for outdoor events without prior Planning Commission approval.
8. The site shall not be used for parking by any use other than on-site Clackamas ESD offices without the prior approval of the Planning Commission.
9. Prior to the issuance of any occupancy approval and subject to Public Works Director approval, the applicant shall install a "No Passing In Bike Lane" 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.
10. The applicant shall 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 not be limited to physical separation of the road and bike lane, crosswalks, signage, traffic control, traffic demand management, and the like. These improvements shall be completed no longer than one year from the effective date of this approval and shall be subject to the review of the Planning Commission. The applicant shall monitor traffic activity and prepare a report identifying traffic patterns. The report shall specify recommendations for mitigation where warranted. Improvements required by this condition of approval shall be based on observed conditions and shall be directly related to use of the Lake Road driveway. The traffic study shall be reviewed by the Planning Commission in a public hearing thereby ensuring notice to neighbors and opportunity for participation.
11. 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 review and 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.
12. 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. 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.

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13. Prior to the issuance of a building permit, the applicant shall amend the site plan to the satisfaction of the Planning Director showing bicycle and pedestrian improvements that are required by Section 1400.
14. 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.
15. 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 a site inspection and other investigations as needed to ensure compliance with conditions of this approval prior to granting occupancy approvals.
16. Prior to any approval for temporary occupancy and issuance of certificate final occupancy the applicant shall install a sign indicating "No Parking in Fire Lane" on south side of the existing fire access gate located at the end of 39th Avenue.

ATTACHMENTS

1. Zoning Compliance Summary
2. Supplemental Traffic Information
3. Review Comments

EXHIBITS

1. Site Plan Reduction
 2. Study Intersection Map
 3. Draft Minutes of NDA Meeting
 4. Description of ESD Operations, Vern Hess, Assistant Superintendent December 23, 1999
 5. Lake Road NDA Comments
 6. Neighbor Comments
-

ATTACHMENT 1, ZONING COMPLIANCE SUMMARY

Compliance with Section 1011.3, Minor Quasi-Judicial Review

Section 1011.3 requires a public hearing before the Planning Commission and specifies procedures for holding a pre-application conference, notification of neighbors, issuance of public notice, and Commission decision-making. A pre-application conference with the City's Development Review Team was held. Neighbor and public notice has been provided in accordance with Section 1011.3

Compliance with Section 321, Community Service Overlay

These standards govern physical development and operating characteristics of the use.

1. **Section 321.10.A.**

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

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.

2. **Section 321.10. B.** See Staff Report, Traffic Analysis.

3. **Section 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.

Staff: All setbacks comply with this provision. The minimum yard setback is 56 feet. All other setbacks exceed 100 feet. There are no proposed changes to the exterior of the building.

4. **Section 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.

Staff: The height of the existing building is thirty-two feet, six inches. No changes to height are proposed. The existing building complies with this provision.

5. **Section 321.10.E.**

Noise-generating equipment shall be sound-buffered when adjacent to residential areas.

Staff: There is no plan to install noise-generating equipment on the site. Planning staff has not received not received complaints about noise from mechanical units.

6. **Section 321.10.F.** See Staff Report, Zoning Analysis.
7. **Section 321.10.G.** See Staff Report, Zoning Analysis.

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

The proposal complies with the following applicable provisions of Section 1400.

- Section 1400, Transportation Planning, Design Standards; and
 - Section 301, Residential Zone, R-10; and
 - Section 400, Supplementary Regulations; and
 - Section 500, Off-street Parking and Loading, and Procedures, and
 - compliance with any applicable corridor plan.
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 leaving no opportunities for consolidation. 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.** This section specifies standards for sidewalks, bike lanes, streets, park strips, and right-of-way widths. 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 will be required.
 3. **Section 1405.1. Right-of-way dedication and improvements.** 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. They are not typically required for minor renovations.

4. **Section 1405.2, Streets.** This section specifies that major and minor arterials shall have a landscaped median. This requirement seems to apply in the cases of new road construction or major roadway improvements. The potential traffic impacts created by ESD do 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. They are not typically required for minor renovations.
5. **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 condition requiring pedestrian connection to Lake Road is recommended since a bus stop is located at the site drive
6. **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 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. They are not typically required for minor renovations.
7. **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. They are not typically required for minor renovations.
8. **Section 1405.5, Adjustments by the Community Development Director.** This section contains administrative provisions for modification of Section 1405 standards. The section does not apply to this application.

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,** calls for 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.
10. **Section 1408, Building Orientation,** establishes maximum building setbacks and requires buildings have their main entrance oriented to the street. This section does not apply to existing development.
11. **Section 1409, Redevelopment,** allows reductions of minimum required parking for redevelopment projects that provided transit improvements. The site already provides an excess of on-site parking. No transit improvements have been proposed.

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.	58%	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. After review of the section it has been determined that proposal complies with all potentially applicable provisions.

Compliance with Section 500, Off-street Parking and Loading

Parking was constructed to meet the needs of the former church. Existing parking is substantially in excess of the minimum requirement for office use. Compliance with parking requirements of Section 500 is demonstrated in the following table. Floor areas figures were calculated from floor plans dated "Dec. 99". These figures differ from calculations shown on the applicant's site plan. Staff believes that the figures taken from the December, 1999 plans are correct.

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

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ATTACHMENT-2, SUPPLEMENTAL TRAFFIC INFORMATION

Trip Generation

Estimates of trip generation determine the potential impact to affected intersections. The applicant's November 22, 1999 study conservatively estimates 695 trips per day based on a trip generation rate of 4.66 trips per day per employee. The trip rate is defined by the Institute of Traffic Engineers Trip Generation Manual for the category "single tenant office building". This trip rate exceeds the average rate for this category by 1.05 trips. The report also factors 70 additional trips per day for on-site meetings.

The December 28, 1999 traffic study refinements reduce the estimated trip generation to 465 per day based on observations of traffic at the Marylhurst Campus.

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 if approved. A copy of the ECO plan for the ESD Marylhurst site has been provided to the Planning Commission with this report.

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

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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")

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ATTACHMENT 3, REVIEW COMMENTS

COMMENTS

Lake Road NDA

See Exhibit 5-NDA Response for comments of Paul Hawkins, Forris Frick, and Teresa Bresaw.

Neighbor Comments

See Exhibit 6-Neighbor Comments for letters of Richard Raynor, and Bob Moore.

Public Works, Paul Roeger, P.E., Civil Engineer, November 19, 1999

The building is served with City sanitary sewer from an 8-inch line at the end of 39th Avenue, a private street. The building has a small pump station that pumps the sewerage from the building to a manhole at the top of the hill. Additional system development charges (SDC's) will be based on the number of additional plumbing fixtures added to the building. The SDC's will be determined at the time of review of a building permit application.

The site is served by a City water main through the property from Lake Road to 37th Avenue with fire hydrants and a meter near the building. Additional SDC's will be based on the number of additional plumbing fixtures added to the building. The SDC's will be determined at the time of review of a building permit application.

Storm drainage for the site is collected, detained and run to the State Highway right-of-way. Additional SDCs will be based on additional impervious surface added to the site. It does not appear there will be any impervious surface added to the site at this time.

The site has access to both Lake Road and 37th Avenue. The main driveway is from Lake Road and has separate right turn and left turn exit lanes from the site. The driveway to 37th Avenue is considered a secondary driveway and supposed to be used for access to Highway 224 only, under the original approval for the church. The church was going to close the 37th Avenue driveway during the week and only have it open during church activities. However, that is not practical with the proposed use by ESD.

Transportation SDCs will be based on the proposed use as a "single tenant office building", which generates 11.57 trips per 1,000 square feet of floor area. Credit will be given for the trips generated by a church, 9.11 trips per 1,000 square feet. The difference, 2.46, will be multiplied by \$140 per trip and multiplied by the 26.3 thousand square feet for the existing floor plan. The SDCs will be determined at the time of review of a

building permit application. When the building is expanded, the full 11.57 trips per thousand square feet will be used for the addition. The trips generated by this use will not change the level of operation of Lake Road or 37th Avenue. *(The Public Works Department uses trip generation rates to determine system development charges pursuant to provisions of the Milwaukie Municipal Code. Trip rates referenced in this staff report are used for two distinctly different purposes: traffic impact analysis and system development charge assessments. The difference between trip rates used for system development charges and the rate used evaluation of traffic impact is acceptable. However, the Public Works Department may adjust trip rates used for SDC assessment to more closely reflect the rate used for traffic impact analysis.)*

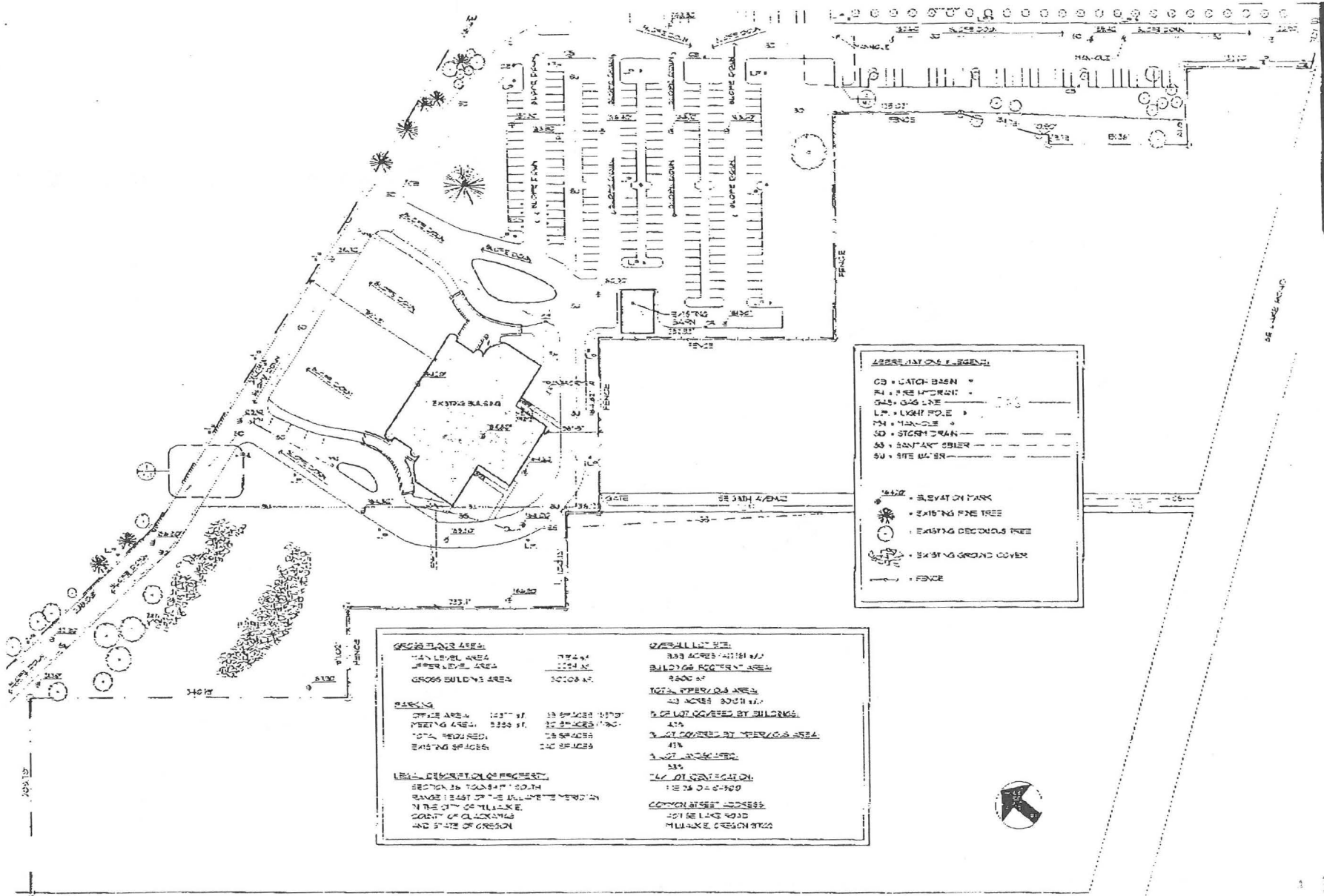
Since this is an interior remodel, no Erosion Control permit will be required. Should landscaping be done, an erosion control permit may need to be taken out, if more than 500 square feet of soil is disturbed.

Oregon Department Of Transportation:

Verbal communication from Sonja Kazen: ODOT has no concerns or comments

Clackamas County Development and Transportation

Verbal communication from Chris Christofferson: Clackamas Transportation has no concerns or comments.



ABBREVIATIONS & LEGEND

- CB = CATCH BASIN
- FI = FIRE HYDRANT
- GL = GAS LINE
- LP = LIGHT POLE
- TM = MAN-HOLE
- SD = STORM DRAIN
- SB = SANITARY SEWER
- SU = SITE UTILITY

- STAIR = STAIR ON TANK
- ET = EXISTING TREE
- ED = EXISTING DECIDUOUS TREE
- EGC = EXISTING GROUND COVER
- F = FENCE

GEOMETRIC AREAS		OVERALL LOT SIZE	
TAN LEVEL AREA	7174 SF	300 ACRES (4151) A7	
UPPER LEVEL AREA	1124 SF	BUILDING FOOTPRINT AREAS	
GROSS BUILDING AREA	10108 SF	2800 SF	
PARKING		TOTAL SPERVAZON AREAS	
OFFICE AREA	1427 SF	43 ACRES (5928) A7	
MEETING AREA	2250 SF	5 OF LOT COVERED BY BUILDINGS	47%
OTAL REQUIRED	28 SPACES	3 OF LOT COVERED BY SPERVAZON AREA	41%
EXISTING SPACES	240 SPACES	1 OF LOT UNCOVERED	33%

LEGAL DESCRIPTION OF PROPERTY
 SECTION 26 T00S41N R03E
 RANGE 1 EAST OF THE MERIDIAN 120 WEST 1/4
 IN THE CITY OF MILWAUKEE
 COUNTY OF CLACKAMAS
 AND STATE OF OREGON

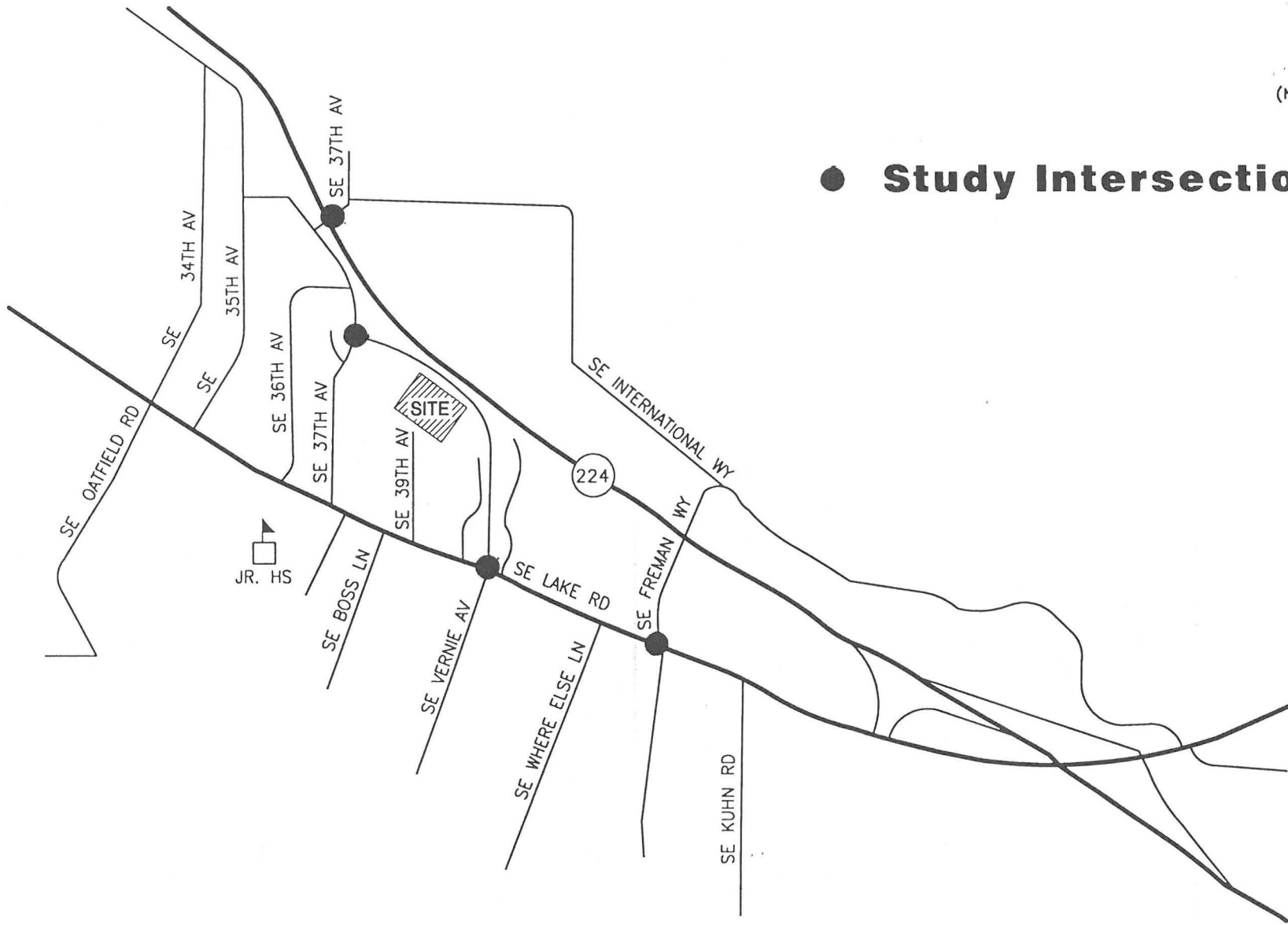
COMPARATIVE ADDRESS
 201 SE LAKE ROAD
 MILWAUKEE, OREGON 97122

SITE PLAN
 1" = 100'-0"



NORTH
(NOT TO SCALE)

● Study Intersections



6.1 24

EXHIBIT 2

SITE VICINITY MAP

CLACKAMAS EDUCATIONAL SERVICE DISTRICT
MILWAUKIE, OREGON
NOVEMBER 1999

FIGURE
1



Memo to: Teresa Bresaw, Lake Road NDA
Forris Frick, Lake Road NDA
Paul Hawkins, Lake Road NDA
David Campbell, Clackamas ESD
Vern Hess, Clackamas ESD
Judith Gray, Kittelson Associates

From: John Gessner, Associate Planner

Date: December 21, 1999

Re: December 14, 1999 Neighborhood/ESD meeting.

Please see attached draft minutes of the meeting held on December 14, 1999 to discuss ESD traffic related issues. I wrote these by memory so I expect there might be corrections or revisions. Please review and make comments and corrections where needed. I would like to include the minutes with our staff report to the Planning Commission. To be included in the final edition, I would need your comments no later than December 28.

I hope this gives you enough time. Comments can be faxed at 774-8236, e-mailed at gessnerj@ci.milwaukie.or.us, mailed to 6101 Johnson Creek Blvd (97206), or hand delivered. Please call at 786-7652 should you have any comments. Thanks again!

DRAFT

Summary Minutes of December 14, 1999 meeting on ESD traffic issues.

Location & Time 7:00 p.m. City Planning Offices, 6101 Johnson Creek Blvd

Attendance: Forris Frick, Lake Road NDA
Teresa Bresaw, Lake Road NDA
Paul Hawkins, Lake Road NDA
David Campbell, Clackamas ESD
Vern Hess, Clackamas ESD
Judith Gray, ESD/Kittelton Associates
John Gessner, City of Milwaukie Planning Department

I. Introductions were made and meeting began shortly after 7:00. asked the group when it would like to adjourn. The group agreed that it should try for adjournment at 8:00. John Gessner introduced the agenda as follows.

1. Introductions
2. Why we are here, what we hope to do, what we will not do.
3. Clarify project details & information sharing.
4. Review neighborhood traffic concerns.
5. Identify alternatives
6. Adjourn

II. Item #2 of the agenda was discussed. J. Gessner indicated the meeting was called on request of the Planning Department and thanked all for their attendance. J. Gessner indicated the purpose of the meeting was to share information, clarify neighborhood traffic concerns, and to develop potential alternatives regarding traffic management that staff could recommend to the Planning Commission. J. Gessner then indicated that the group would not "do the Planning Commission's job", discuss non-traffic-related issues, and address the appropriateness of the use.

Mr. Frick expressed concern that the use issue warrants discussion because without the use there are no traffic issues. After some discussion on the matter J. Gessner indicated ESD was determined by staff to be a use allowed under the Community Service Overlay regulations and that it was the Planning Commission's would determine its appropriateness and balance the public benefit versus impacts in its review of the land use application. J. Gessner pointed out that the purpose of the meeting was to identify traffic management issues so that staff could make recommendations for correcting potential problems in association with a recommendation to approve the use. It was noted that potential solutions

to traffic issues would not be needed for a recommendation to deny the proposal. Concerns were raised about future expansion of the use. J. Gessner pointed out that the applicant would be required to submit a new application for future changes.

- III. Item #3 of the agenda was discussed. Mr. Frick raised questions about warehousing and related truck traffic. David Campbell explained the warehousing needs of ESD and general use of the Marylhurst location. Mr. Campbell indicated that the Lake Road location would not be used for bulk storage of materials for distribution to off site locations. Issues of evening use, hours of operations conferences were raised. Mr. Hess indicated typical daytime hours would be ____am until ____ p.m. He stated that only two individuals arrive before 8:00 a.m. Evening meetings would be limited to one or two a month and would be attended by less than ____ persons. Mr. Campbell indicated no conferences would be held. Attendance at daytime meetings would be limited to staff and would not exceed _____persons.
- IV. Mr. Hess introduced traffic counts taken at the Marylhurst office and indicated that the counts are significantly less than estimated in the traffic study. Mr. Hess provided copies of the traffic counts to the group.
- IV. The fourth item of the agenda was discussed. J. Gessner indicated the Planning Office had received comments from neighbors and the NDA. He summarized the comments on a poster for discussion. The summarized comments are as follows.
- change form church to office use
 - proximity to schools
 - bicycle and pedestrian safety
 - through traffic passing left turning vehicles in the bike lane
 - gate site entrances during off-hours
 - hours of operation
 - install speed bumps on site drive
 - close Lake Road driveway
 - existing traffic on Lake Road is too high
 - impacts of future expansion
 - existing traffic on Lake Road is too high
 - local traffic v. through traffic

There was general discussion on each of the above items. J. Gessner pointed out that many of these issues were also raised in the Lake Road multi-modal plan.

V. The fifth item of the agenda was discussed. The following table shows summary conclusions.

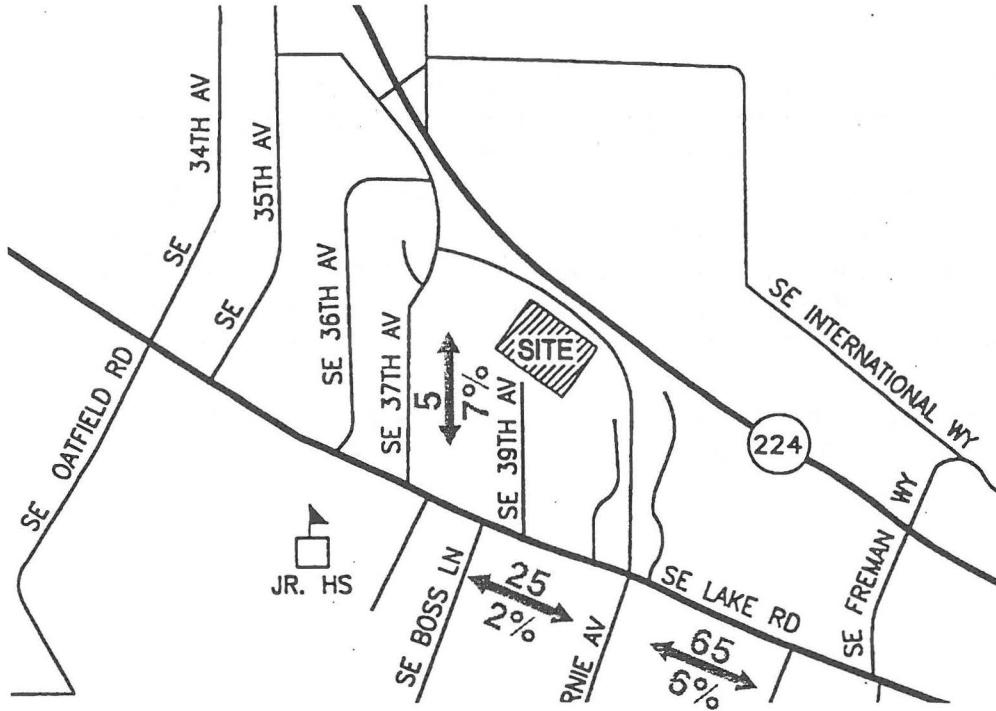
Alternative	Pro's	Con's
No Lake Road eastbound left turn onto the site	Eliminate in-street eastbound stacking Eliminate potential for east bound through traffic passing in east bound bike lane	May shift traffic impacts to 37 th
Install east bound left turn lane for Lake Road site drive access	Reduce in-travel lane stacking Improves safety to bikes and pedestrians	Changes to front yards for road widening Cost Design requirements that require street improvements on the east side of the site drive
Hire local residents	May reduces potential trips	Hard to enforce Limited effectiveness
Full Lake Road access w/ 37 th right turn exit, 37 th drive north and south bound entrance.	Distributes traffic and may reduce stacking in Lake Road. May reduce traffic in neighborhood	Does not reduce potential for eastbound stacking in Lake Road.
Install Lake Road sidewalks	Improves pedestrian safety	Funding not presently available Short ESD property frontage reduces would result in very short sidewalk
Lake Road westbound entrance only	Eliminates in-street stacking	May encourage alternate trip seeking through neighborhood Potential impact to 37 th Ave & Edison
Traffic Demand Management	Good potential for trip reduction	Effectiveness is dependent on aggressive compliance.

There was general discussion on the alternatives. J. Gessner pointed out that the goals for evaluating and comparing the alternatives were Lake Road safety, minimizing traffic impacts to the neighborhoods such as alternative route seeking, and minimizing impact to the Edison and 37th intersection. At some point in the discussion Ms. Kittelson introduced information regarding impacts to 37th Avenue traffic if the Lake Road driveway was closed; a handout was provided to the group. The

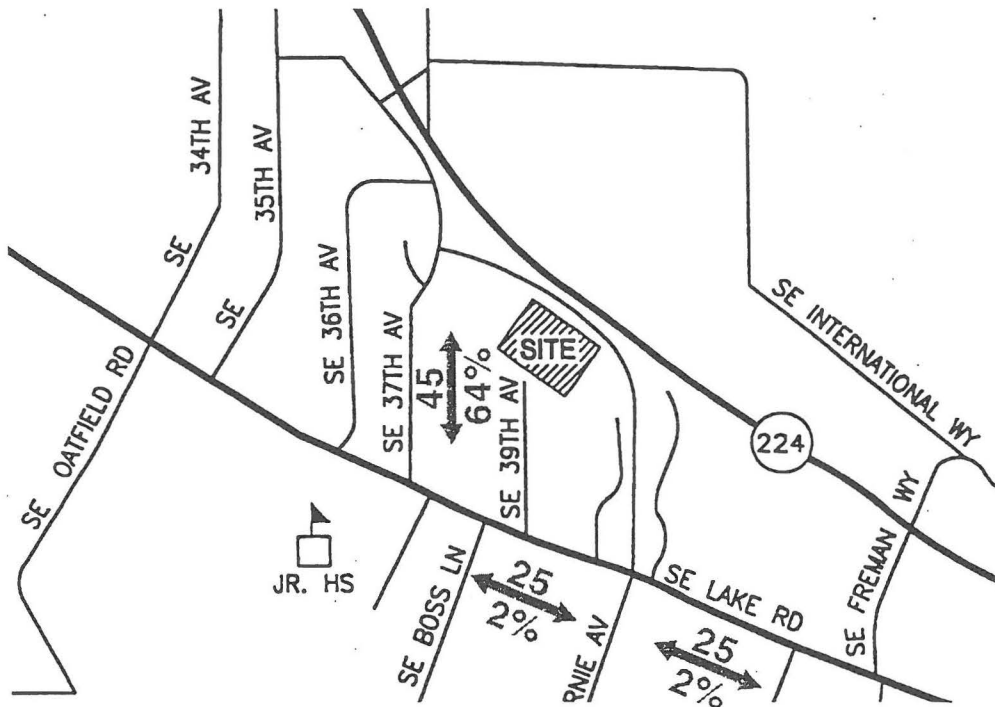
information shows a significant increase in 37th Avenue traffic. There was general agreement that increasing traffic in any of the residential neighborhoods was undesirable and that 37th Avenue. There was no clear conclusion on which of the alternatives were preferred. J. Gessner indicated that the Planning Department would be investigating the alternative for adding an eastbound left-turn lane at the site access drive. Afterwards Planning staff would consider the alternatives and make a selection for recommendation to the Planning Commission.

- VI. The participants were thanked for their participation and the meeting adjourned at 9:00 p.m.

PROPOSED ACCESS PLAN
LAKE RD. AND 37TH AVE. DRIVEWAYS



37TH AVE. DRIVEWAY ONLY

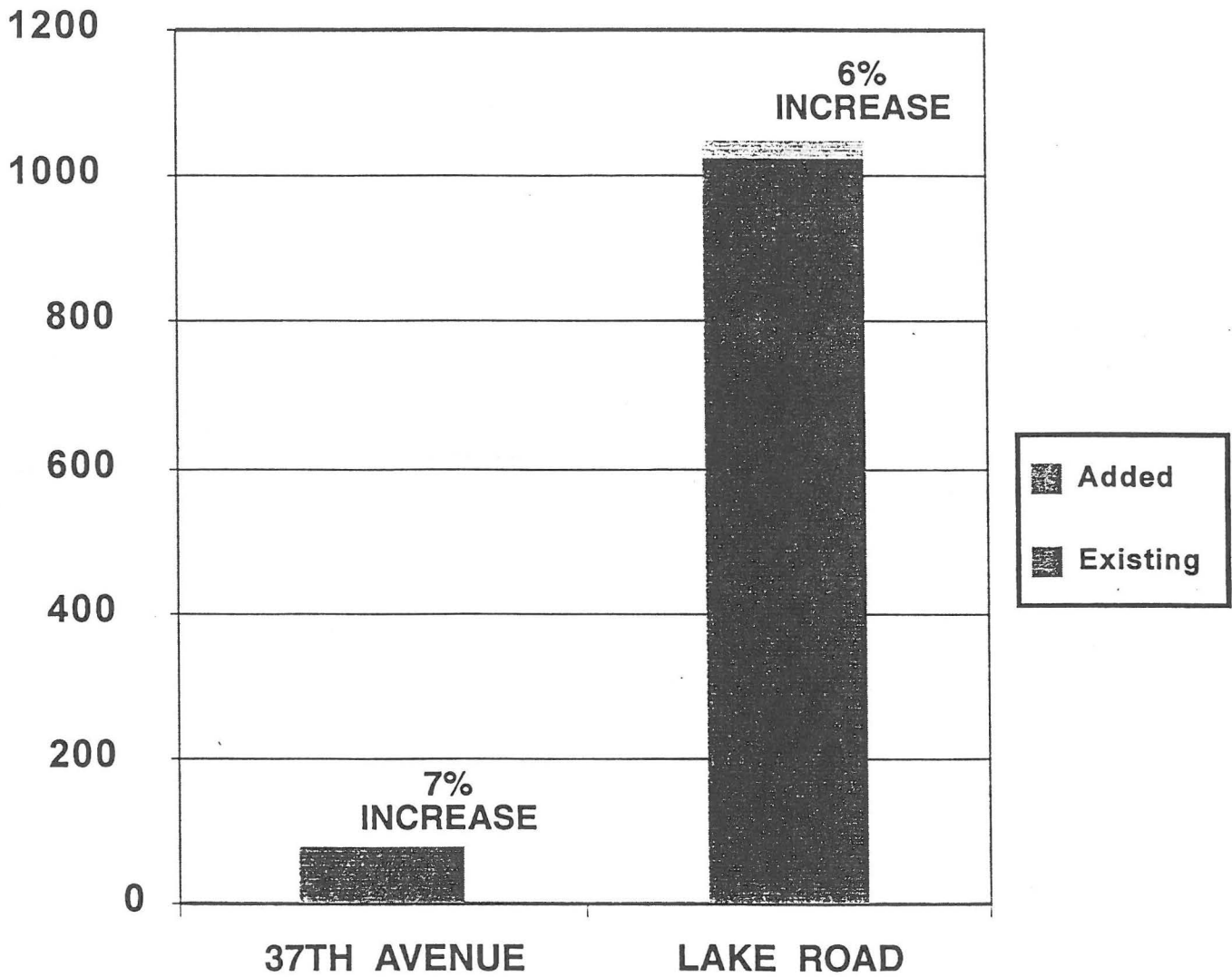


ADDED TRAFFIC VOLUME COMPARISON^N
WEEKDAY PM PEAK HOUR

CLACKAMAS EDUCATION SERVICE DISTRICT
MILWAUKIE, OREGON

DECEMBER 1999





**ADDED TRAFFIC
WEEKDAY PM PEAK HOUR**

CLACKAMAS EDUCATION SERVICE DISTRICT
MILWAUKIE, OREGON

DECEMBER 1999



6.1 32

*Dedicated to Excellence
through Leadership and Service*

P.O. BOX 210
Marylhurst, OR 97036-0216
503 675-4000
503 675-4200 Fax

David Campbell
Superintendent

December 23, 1999

RECEIVED
DEC 23 1999
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

Mr. John Gessner
Associate Planning Director
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97222

Dear Mr. Gessner,

This letter is in response to your request for additional information regarding our application for a conditional use permit for the property at 4011 SE Lake Road and specifically responding to section 341.4 D of the Community Service Overlay Zone. First, let me state that I believe that Clackamas Education Service District (ESD) will have minimal adverse impact on the local community. I know that a few citizens have expressed concerns about the additional traffic that will be generated on Lake Road and specifically, eastbound traffic that will be making left-hand turns onto the property's Lake Road entrance. Part of their concern is based on the traffic engineer's determination that the 134 employees identified in our application will generate 695 trips per day. I believe, however, this number of trips is too high of an estimate for the following reasons:

1. Although the three programs scheduled to move to this site employ 134 employees (Early Childhood Education-115, Curriculum and Instruction-17, and the Superintendent's Office-2), not all of those employees will work at this site. The actual number of employees who will have office space at this site is 109.
2. Not all of the 109 employees identified above will be working at this site on a daily basis. Many of our employees in the Early Childhood Program only work part-time, some as little as one day per week. In addition, most of the 109 employees work at school sites most of the time and only come to the office site for meetings and to do necessary office work connected to their job.
3. Of the 109 employees, only 32 are full-time employees whose primary work location will be the Lake Road site. In addition, there are 11 part-time employees assigned to this site.
4. Only 21 of the 109 employees work twelve months per year. The rest of the employees work only during the school year (185 days per year) or an extended school year (210 days per year).

passenger was killed on Highway 43 close to our Marylhurst property when a driver passed a Tri-Met bus on the right-hand side as the passengers were disembarking. After further thought regarding this issue, we would recommend posting a sign reminding drivers that it is unsafe and illegal to leave the road to pass another vehicle.

In addition to the information above, I would like to point out that Clackamas ESD is actively engaged in an Employee Commute Options program (ECO) in cooperation with the Department of Environmental Quality to reduce the number of employee trips to work in their personal vehicles. I am enclosing a copy of our current plan. Please note that for the purposes of this plan only full-time employees whose regular worksite is on the Marylhurst Campus are included in this program. As part of our plan you will note that we are involved in telecommuting, carpooling, compressed workweeks, etc. One thing that is not mentioned in our ECO, but is relevant here and that is the ability for us to manage our employees' and guests' traffic flow by issuing information and directions to the site that would avoid the need to make left-hand turns off Lake Road. We will also be providing an on-site employee kitchen and eating area, which should also reduce the number of employee trips.

A few complaints were raised about the parking lot lighting by citizens when we met with them at the Lake Road NDA meeting in October. It is my understanding that the lights, as they have been constructed, were a requirement of the City of Milwaukie. As far as the ESD is concerned, we have no need for all of the parking lot lights that currently exist on the property. The ESD seldom has evening meetings (generally, 1-2 per month) and the meetings are generally of very small size (generally, 10-20 people).

Now I would like to discuss the benefits we believe Clackamas ESD will bring to Lake Road and the greater Milwaukie Community. First, I would like to submit our annual report (10 copies have been included). The information in this document should provide you with general overview of the variety of services and benefits that we provide to school districts and the community. You will find program overviews for both the Early Childhood program and the Curriculum, Instruction and Evaluation program that will give you a better understanding of the services these two programs provide. The report should also indicate to you the level of involvement we have with the schools and community in the North Clackamas School District (see page 29).

The schools in North Clackamas enroll approximately 27% of the students served by Clackamas ESD. The site on Lake Road will provide us with a great opportunity to enhance our service to the teachers, administrators, and students of the North Clackamas District. The proximity to the North Clackamas District office will not only increase our overall effectiveness in working with your schools, but it should also result in saving to the North Clackamas District in terms of staff time, travel expenses, etc.

In addition to direct services to your schools, you will note on pages 16 and 17 that our Early Childhood Education Services Department provides services directly to families in your community through our early intervention/special education, migrant preschool, and Oregon Headstart Prekindergarten programs. All of the families that we serve in your community will be better served by the fact that we will be closer to them and therefore, making it easier for them to access our services.

5. A recent survey of the traffic pattern of the 134 employees taken during the week of December 6-10, indicated that the actual number of trips that would have been generated to the Lake Road site is as follows:

Monday	Tuesday	Wednesday	Thursday	Friday
204	222	212	206	272

6. The additional number of trips (not counting the employee trips identified above) generated by all meetings held by the ESD during the week of December 6-10 was as follows:

Monday	Tuesday	Wednesday	Thursday	Friday
44	28	14	0	0

Not all meetings, however, will be held at the Lake Road site. The ESD will continue to hold meetings at our Marylhurst facility.

7. Most of the trips indicated above were not during rush hour periods (7-9 a.m. or 4-6 p.m.), this is a result of the fact that most employees start their work day at a school site.

It was evident at our meeting of December 14, with the representatives of the Lake Road NDA that their primary concern was the impact of eastbound vehicles on Lake Road making left-hand turns on to the property particularly during rush hour traffic. In an effort to identify the potential for this scenario, I plotted the home addresses of all 134 employees above. I discovered that only ten of those employees live in the area bordered on the west by the Willamette River on the east and south by I-205 and on the north by Highway 224. It would be my belief that all other employees would enter the property from the east off Lake Road or would enter the property off Highway 224 and 37th. I have enclosed a map of the area with employee home locations marked. I can provide you with a list of ESD employees' home addresses, if that is needed.

Of the ten employees that I identified living in this area, only three would probably approach the property on Lake Road from an eastbound direction. The other eight employees (home locations marked in green) normally start their workday at a school site outside the identified area. Of the three remaining employees (home locations marked in pink), one works five days per week, the second would normally come to the Lake Road site only two mornings per week and the third employee only works one day per week. Therefore, based on this information, the total number of left-hand turns off Lake Road generated by the 134 employees would be eight per week.

At the December 14, meeting we discussed several alternatives that would alleviate problems created by left-hand turns made off of Lake Road. I would like to say, however, that no amount of traffic engineering and road design can overcome poor judgement and illegal driving habits. Even with a left-hand turn lane, a Tri-Met

Another benefit Clackamas ESD will bring to the area will be as a good neighbor and protector of the property. I know that the previous tenant did not fulfill requirements that were made several years ago, and as a result the property has become a nuisance, with reports of drag racing, partying, and other activities that have been annoying to the neighbors. I can assure you that Clackamas ESD will have a very quiet operation on this site and we will be unobtrusive to the neighborhood. In addition, we will care for the property so that the buildings and grounds are always well maintained. We will also be installing security gates so that the property will be inaccessible for unauthorized activities.

Finally, in addition to being a service agency to the schools and to the community and being a good neighbor, Clackamas ESD will also create jobs for people in your community. We offer a wide variety of jobs in professional, technical, and clerical positions that will be open to community members. If you should need additional information, please do not hesitate to contact me at 675-4002.

Sincerely,

A handwritten signature in black ink, appearing to read "Vern Hess", with a long horizontal flourish extending to the right.

Vern Hess
Assistant Superintendent


LAKE RD NDA
TERESA BRESAW
CO-CHAIR
MILWAUKIE, OR

RE: FILE# CSO-99-06/TPR-99-09

Dear Mr. Gessner,

Residents of Milwaukie are very concerned about the consequences of the Clackamas Education Service District moving into the Lake Rd. area. Lake Rd. is pretty much at capacity now with local as well as pass through traffic. We think an increase will result in not only congestion, but serious safety hazards for cars, bicyclists, and pedestrians. Their transportation study showing 695 trips generated each weekday puts Lake Rd. over acceptable limits for the people who have to turn out from driveways and side streets. There are two schools on Lake Rd. with Milwaukie High being at one end of Lake Rd. and Rowe Middle School located a short distance from the proposed access to the new Clackamas Education Service District building. The 26,300 sq. ft building can easily accommodate an increasing density of use in the future adding even more cars daily to our already congested Lake Rd. We oppose access from Lake Rd. to their office site and suggest Edison street off of Hwy 224 as their access. 37th has no congestion southbound of the expressway and has better connectivity with less disruption to residences. A traffic consultant or engineer can recommend changes to Edison & 37th for safety concerns on access and sight restrictions as well as needed sidewalks. This is far preferable than any access from Lake Rd to the CESD building since congestion on Lake Rd. cannot be designed to disappear. The combination of no turn lanes and congestion on Lake Rd. increases the chances of accidents with cars attempting to go around stopped cars. Considering school children and others who walk and bike without any sidewalk for minimal protection, we're increasing their risk if we choose to allow Lake Rd. to be their access driveway. If safety concerns are of paramount importance than Lake Rd. access will be blocked to the proposed site.

Sincerely,


Teresa A. Bresaw

Nov. 29, 1999

RECEIVED

NOV 29 1999

CITY OF MILWAUKIE
PLANNING DEPARTMENT

To John Gessner, Assoc. Planner
Planning Dept.
City of Milwaukie
5191 SE Johnson Cr. Blvd.
Milwaukie, OR 97222

Subject: CS0-99-06/TPR-99--09

Proposal--Conversion of Church Building in a R-10 Zone into
a Commercial office building by CESD (Clackamas Educational
Services District)

Lake Road Land Use Committee very strongly advises against
the conversion for said use for the following reasons:

1. This area is not zoned for commercial use. It is a residential area (A-10) and as such should remain that, even though the church is gone that built the building. This does not change the zoning.
2. The proposed addition of 695 estimated additional daily trips would impact already over taxed Lake road traffic. The 37th St. exit has a right turn only admonition, therefore traffic coming out this way attempting to get back to Lake Road or Oatfield would have to filter through 36th, 35th or 34th streets, all residential streets.
3. The stipulation that ESD plans to add 45,000 sq. ft. of space in the future is given. The existing 14,300 sq. ft. building expects to generate 695 daily trips. What kind of an estimate would 14,300 plus 45,000 so, ft (59,000 sq. ft.) generate in increased traffic?
4. This property was considered a good neighbor when it was developed by a church. Churches can be sited almost anywhere. A commercial effort such as ESD would certainly make the surrounding residential neighborhood less liveable.

I don't believe the 26 pages of "traffic counts" with the application would make very good reading for the commuters that now experience delays on Lake Raod during peak hours!

Forris B. Frick

Forris B. Frick, Chr.
Lake Road Land Use Committee

RECEIVED
DEC 13 1999
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

Neighborhood Land Use Referral

Date routed: 11/19/99	Tentative Planning Commission hearing date: 12/14/99	Comments due by: 11/29/99
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Application type: Community Service Overlay	File #(s): CSO-99-06/TPR-99-09
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Procedure type: Minor Quasi-Judicial

Applicable City policies and criteria:

Comprehensive Plan:	Chapter 4 - Land Use
Zoning Ordinance:	Section 321 - Community Service Overlay
Sign Ordinance:	Section 1400 - Transportation Plan Review
Subdivision Ordinance:	

Applicant: Ellis, Eslick Associates Architects
for Clackamas County ESD
Address: 5200 SW Macadam, Suite 370
Portland OR 97201
Phone: 223-6963

Proposal location: 4011 SE Lake Road
Reference parcel #: 11E36DA04500
Zoning: R-10
Proposal: Convert existing church into offices and conference room to be operated by Clackamas Education Services District.

Comments: (attach separate sheet if necessary)

FACTS: The property is zoned RESIDENTIAL.

2. A Church was permitted because traffic would only impact the neighborhood on weekends.
3. Kids walk on LAKE ROAD TO ROWE or wait for the bus to MILWAUKIE ELEMENTARY.
4. According to SECTION 1407.2 ; there is a potential for 695 trips ; EVERYDAY - using the LAKE ROAD driveway.
5. The "City" could require the applicant to use the upper entrance (37th) and restrict the LAKE ROAD driveway to EMERGENCY vehicles.
6. THE BUSINESS/ INDUSTRIAL PARKS IN OUR COUNTY HAVE SPACE AVAILABLE.

Paul Hawkins
LAKE ROAD L.U.C.

RECEIVED**DEC 14 1999****PUBLIC WORKS**

Richard A. Raynor
12403 S.E. 41st Court
Milwaukie, Oregon 97222
(503) 653-3497
Phuff777@AOL.com
December 9, 1999

Planning Department
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie OR 97222

Re: Seventh Day Adventist Church now owned
By Clackamas ESD
File # CSO 00-06/TPR 99-09

Gentlemen:

I oppose the proposed conversion of the church property at 4011 S.E. Lake Road, Milwaukie, to offices and a "conference room". This is a large church with a major open space. No mention is made of what type and size of conferences are to be held.

I oppose rezoning for the following reasons:

1. This rather large "commercial" structure was built in the midst of quality residences (R-7). It was approved since it was a church. It should stay that way. Such downzoning is at odds with the Land Use of the Milwaukie Comprehensive Plan. If this fails, is Costco next?
2. This conversion to a 5 day + use of facility has significant negative impact on residential property in Lake Highlands. Such increased use has negative impact on Lake Road and on the driveway neck off of Lake Road. Obviously, traffic will be significantly increased at peak traffic hours.
3. No mention is made of planned use for "conferences" and how many will attend.
4. The recently installed commercial parking lighting is inconsistent with a driveway abutting prime residential property. What was a quiet, normal neighborhood is now adjacent to a commercial parking lot.

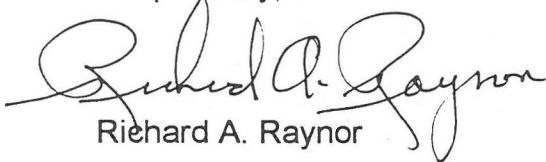
5. The Community was not informed adequately. The property was operated for more than seven years without an Occupancy Permit. The Planning Report was issued on December 5, 1999 for a December 14 hearing. Citizens should be given more time to present issues.

Since I believe this rezoning will be approved, I ask the following actions be required for approval:

1. To mitigate traffic impact on Lake Road and the impact on property owners on 40th Avenue and 41st Court, a gate be installed at the Lake Road "entrance". The gate can be opened when "conferences" occur.
2. The day-to-day entrance should be off 37th Avenue. This entrance is very close to Route 224, a major 4 lane highway, and is not in close proximity to residences. It would reduce the traffic impact on Lake Road and Lake Highlands.
3. Speed bumps should be installed on both entrances. Drag races began after the church closed.
4. The commercial 30 foot light standards on both entrances should be replaced with residential driveway lights, minimizing impact on residences abutting the Lake Road entrance. Now it's as if a used car lot was placed next to our property.
5. The property shall not be rented for non-Clackamas ESD activities.

I appreciate the opportunity to present my views.

Respectfully,



Richard A. Raynor

cc: Mayor Carolyn Tomei

Lake Highlands Homeowners Association
P.O. Box 220180
Milwaukie, OR 97267
December 8, 1999

To: City of Milwaukie, Planning and Zoning

The Lake Highlands Homeowners Association make the following concerns known regarding the zoning change to allow the Clackamas Education Service District to operate adjacent to our property.

1. Times of operation regulated between 7:00 am and 10:00 pm
2. Lighting of the parking area within times of operation, 7:00 am to 10:00 pm
3. Type of activity or function of facility made known to the association
4. Maintain the facility a gated grounds locked after operation hours
5. Maintain a landscape plan along our border

We welcome a good neighbor to our community and wish the best for your successful operation.

Thank you,

Bob Moore, President Lake Highland Homeowners Association

Note: Jim Myers, Landscape Manager, plans to attend your meeting

RECEIVED

DEC 13 1999

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT



To: Planning Commission
From: Alice Rouyer, Planning Director *AR*
Subject: Matter from the Planning Director: Sign Ordinance Amendment
Date: January 4, 1999
Meeting Date: January 11, 1999

Action Requested

Review the amendment request and provide a recommendation to City Council.

Background

The original sign ordinance was approved in March 1993. At that time, the City gave a seven year amortization or "grace period" for nonconforming signs. After that, all signs which do not conform to the size, height, location and other standards of the sign ordinance must be removed. The seven year period will end in March 2000.

In order to adequately enforce this provision, staff must:

1. Complete a city-wide sign inventory to determine which signs are nonconforming. This would require field investigation and sign permit research work.
2. Meet with business owners either separately or in group meetings, send letters and request that the nonconforming signs be removed and replaced with conforming signs at the owner's expense.
3. If signs are not removed within a reasonable period of time, staff would then be required to enforce the regulations either through a voluntary compliance procedure or through a formal court proceeding.

All of these work items are expected to require a considerable amount of time, care and attention. It may be necessary for staff to employ a consultant or contract planner to

complete certain parts of this project, in order to allow staff time to keep up with day-to-day work.

Staff is requesting that the seven year period be extended to 10 years. Given the limited resources in Planning, staff is concerned that enforcement of this sign ordinance provision will divert time away from projects that are a higher priority on the City Council and Planning Commission work program. Over the past 18 months or more, staff has received few complaints about nonconforming signs. In three years, staff expects to incorporate this work item into the work program and department budget.

Recommendation

Staff recommends that the Planning Commission recommend to City Council to approve this amendment to extend the nonconforming sign continuation period from seven years to ten years.

ATTACHMENT

Amended Sign Ordinance

RECOMMENDED ACTION:

Amend the Nonconforming sign section to allow nonconforming signs to be continued ten years instead of seven years.

Section 14.28.020 Nonconforming sign.

A. Time Limit.

1. Nonconforming signs may be continued for a period of ~~seven~~ ten years from the effective date of the ordinance codified in this chapter.

2. Signs located on premises annexed into the city after the effective date of the ordinance codified in this chapter, and which signs do not comply with the provisions of this chapter, shall be brought into compliance with this chapter within a period of seven years after the effective date of the annexation.

3. Any sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all of the provisions of this chapter.

4. Signs in existence on the effective date of the ordinance codified in this chapter which do not comply with provisions regulating flashing signs, use of par spot lights or revolving beacons, revolving signs, or flags, banners, or streamers or strings of lights, temporary or incidental signs, shall be made to conform within ninety days from the effective date of the ordinance codified in this chapter.

B. Notice Given. The city manager or duly authorized representative shall give thirty days' written notice to the owner or lessee of the sign to remove the sign and its supporting structures or to bring it into compliance with this chapter. (Ord. 1733 § 1(1)(Exh. A) (part), 1993)