

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, FEBRUARY 8, 2000

COMMISSIONERS PRESENT

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

STAFF PRESENT

Alice Rouyer,
Planning Director
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

None

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS -- None.

3.0 PLANNING COMMISSION MINUTES -- January 25, 2000

Tracy Cook moved to approve the Planning Commission minutes of January 25, 2000, as amended. **Mike Miller** seconded. MOTION CARRIED 6-0 with one abstention. Howard Steward was not at that meeting.

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

4.0 INFORMATION ITEMS -- City Council Minutes

3.1 January 3, 2000, City Council Worksession Minutes

3.2 January 4, 2000, City Council Regular Session Minutes

5.0 PUBLIC COMMENT -- None.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: City of Milwaukie
Owner: N/A
Location: N/A
Proposal: Review and recommendation to City Council for approval of Municipal Code and Zoning Ordinance Amendments to adopt an Urban Forestry protection program.
File Numbers: ZA-99-02
NDA: All

Chair Hammang opened the public hearing on File Number ZA-99-02, an action to allow consideration of Milwaukie Municipal Code and Zoning Ordinance amendments to implement an Urban Forestry Protection Program. The criteria to be addressed are found in Section 900 of the Milwaukie Zoning Ordinance.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare. He stated that he worked on the original draft of this ordinance six years ago as a member of a citizen's advisory group. He does not feel this will effect his ability to hear and take public comment on this ordinance. **Mike Miller** stated that six years ago, he also was a member of a citizen's group that worked on this particular ordinance. He does not feel it will affect his ability to make a decision on this issue.

Chair Hammang explained that the purpose tonight is to listen and take public comment on this issue. A decision will be made on February 22, 2000. There were no other conflicts of interest or ex-parte contacts declared.

STAFF REPORT

Alice Rouyer reviewed the staff report with the Commission. She stated that tonight the Commission is being asked to consider a package of amendments that include both Municipal Code and the Milwaukie Zoning Ordinance. The purpose of this Ordinance is to implement an Urban Forestry Protection Program. The Commission will take testimony tonight. On February 22, 2000, the Commission will prepare a recommendation to City Council.

In 1994 to 1996 a Tree Committee was formed with the purpose of gaining more protection for Milwaukie's urban forest. A vision statement was created and programs were drafted that related to education and a tree ordinance. In 1996 the Planning Commission and City Council reviewed the draft and the project was shelved for several years. In the summer of 1999, the City Council adopted as

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part of their four-year strategic direction (goals list) the urban forestry ordinance, as being one of their high-level priorities. Staff has been working since then to develop the draft ordinance that is being reviewed today. This ordinance is largely for tree protection, not intended for tree planting or landscaping. Overhead projections were shown of the primary components of the ordinance. The intent is to protect all trees, regardless of size, in public places and in the public right of way, certain trees on private property (groups of trees six inches in diameter or greater on larger properties; and large trees 18-inches in diameter or larger. The last group of protected trees are significant trees.

Permits are required under certain circumstances:

- Removal or pruning of any tree in the public right-of-way and on City owned property.
- Groups of trees on private property. The removal or major pruning of trees at least 18-inches in diameter on any size lot.
- Removal of four or more trees in a calendar year that are at least six inches in diameter, on lots 10,000 sq.ft. or larger.
- Removal and major pruning of significant trees.

A significant tree designation in the proposed regulations is a voluntary program. If a property owner volunteers to have their tree classified as significant, they would be subject to the regulations. The City would develop an inventory of these trees. Characteristics include distinctive size, shape, special botanical significance, significance to aesthetic relationship to natural resource, and association with historical figures, property, or general growth and development of the City.

Major pruning is defined as 20% of the tree's canopy or injuring or cutting of 10% of the root mass. Tree removal permits will be issued if one or more of the following conditions are met:

- A sufficient number of trees are preserved along natural waterways, property lines to serve as buffers, and in sufficiently large areas and in dense stands.
- If an Arborist determines that the tree is unsafe or threatens disruption of public service, or poses a safety hazard.
- The removal is necessary to allow reasonable development or redevelopment of the property.

The process for permitting will include:

- Call the Planning Department to see if a permit is required.
- Submit the application and pay the fee.

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- A ten-day review period is used for staff consideration of the project. During this time the tree removal will be posted and a public hearing can be requested before the Planning Commission. The decision of the Planning Commission can be appealed to City Council.
- If the permit is not appealed, the permit will be issued.

The biggest issue of concern tonight is the regulation of private property. Staff has outlined options in the staff report for the Commission to consider as they deliberate this issue.

There are properties in the City that have a special property tax assessment for farm land or forest use. Staff feels these properties should be exempt from the tree regulations. Language has been added to the regulations to exempt this group.

If an individual landowner does the pruning on their own, they do not need to be licensed. However if a landowner is hiring someone to do major pruning or removal, an Oregon Licensed Professional with a City of Milwaukie business registration is required. Amended language has been added to address this requirement.

City Council makes the final decision on fees. It is Staff's policy to recover 60% of processing costs. Staff is recommending a \$25 fee for administrative tree permits. If appealed, there will be a \$265 fee.

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

CORRESPONDENCE RECEIVED

Alice Rouyer reported that there were a number of pieces correspondence received since the mailing of the packets for tonight's meeting. Copies of all the correspondence received prior to 3:00 p.m. this afternoon has been submitted to the Commission. Copies of this correspondence can be made available to the public if requested.

PUBLIC TESTIMONY

Speaking: Don Wertheimer, 8645 SE 36th, Milwaukie

Mr. Wertheimer stated that he has lived in Milwaukie for 46 years. He also had a business close to here and one in Parkrose. He feels that these amendments are totally and completely unenforceable. People are going to have to be hired as tree police. Commercial development is required to plant trees, shrubbery, sprinkling systems, etc. Then six months later, the company has moved. The plantings are not maintained and no one checks on the site.

He put a business up in Oak Grove and did something illegal. Forty-six years later and he has never heard anything about it. This event did not hurt anyone. It's one thing to make the rules, and he does not feel the City will find people to work for minimum wage to go out and check all the trees in Milwaukie for compliance.

He planted trees 45 years ago that certainly meet a lot of the criteria. If he decides to remove one, for any reason, he feels he should have the right to do so. He could go out and remove a tree and the City would know nothing about it. He went out and canvassed and this was the main comment from many people.

Mr. Wortheimer stated that he is a normal human being and unless the City wanted to pay his taxes, he would like to be able to trim his trees and keep his utility problems taken care of without coming to the City and fighting this ordinance. If this ordinance is approved, he does not see how the City will be able to enforce the rules.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Gene Hatlelid, 4277 SE Johnson Creek Blvd, Milwaukie

Mr. Hatlelid stated that he is opposed to this ordinance. It is a layer of government that will cost way more than will be collected in fees and fines. He considers it a violation of one's personal property rights to have to deal with six-inch trees and eighteen-inch trees. He has submitted his concerns in writing and will be making a presentation on local TV on the areas of this ordinance that he feels are inconsistent and unworkable and probably not enforceable without tree police.

This ordinance started with a committee of citizens; it turns out that of the 12 committee members, only six are from Milwaukie. He is saying no to the whole thing with the exception of regulations concerning Milwaukie public right-of-ways.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Richard Cayo, 4203 Johnson Creek Blvd., Milwaukie

Mr. Cayo read the last paragraph of the last City Council meeting, "Without our voting on the subject, it is inconceivable to me that anything as far reaching, intrusive and expensive as this proposed tree ordinance would be passed into law. A lot of my buddies died in the Korean War and a lot more people died in the Civil, First and Second World Wars, the Vietnam and Dessert Storm Wars. And I know they died trying to keep our system, of us being able to vote on our future, and not having someone like Hitler telling us what our future will be. I feel very strongly the City's property owners should have the right to vote to see if the majority of people want to have a tree ordinance and not have this thing jammed down our throats."

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Roger Cornell, 2708 SE Monroe, Milwaukie

Mr. Cornell stated that he grew up in Milwaukie attended Milwaukie Grammar School, Milwaukie Junior High School, and graduated from Milwaukie High School. He recently purchased a home on Monroe on an acre and half of land. His property has 80 trees, many of which are mature and could qualify as having historical significance under this proposed program.

He has read the proposed Urban Forestry Program. He feels there should be no regulation, permit process or amendments regarding private property. Any regulation of private property violates his fundamental principles, freedoms, and rights as a U.S. citizen. The Planning Commission's obligation must first and foremost be the protection and safeguarding of individual freedoms. Government is responsible to preserve these freedoms.

With every newly enacted regulation, citizens lose yet another liberty and give up more control of their lives to an ever-growing government. This is not about trees, policies, and beautification of the City, but rather that of our basic rights as citizens of the U.S. Our neighbors, family, and friends have every right to do as

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they please with their private property. This includes landscaping, house color, and the number and type of trees on their property.

All three goals outlined in the proposed urban forestry regulations are designed to protect the City's trees, to provide a tool for achieving the vision of the City, provide a tool to respond to concerns about the loss of trees during development, and obtain Tree City USA status, can be achieved without including any regulation or restrictions on private property. USA tree status can be obtained without including any regulations or restrictions on private property. The real problem of concern is the loss of trees during development. If this is the main concern, it should be addressed under development, not private property restrictions.

While building a house in Oregon City several years ago, he had to remove a large Oak tree approximately 80-feet tall. It was in the building footprint and could not be saved. It was a beautiful tree and he tried every way to keep it. He contacted the City and advised them of his intention and was simply requested to plant two trees in its place. There was no permit process, no fees, no inspections, and no difficulties. There was cooperation and a reasonable solution.

Mr. Cornell suggested that a more friendly approach of including property owners in the Urban Forestry Protection Program could include public education, community and civic involvement, tree planting initiatives, encouragement and recognition, and a sense of pride. He recommended that the Planning Commission eliminate any restrictions and regulations of private property under the proposed Urban Forestry Protection Program. He further urged a more friendly approach to encourage property owners to participate in the goals of protecting the City's trees and urban forest.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Kathryn Elliott, 9739 SE 42nd Avenue, Milwaukie

Ms. Elliott stated that she has lived in the Portland area all of her life, as well as her grandparents, her great grandparents, and her great-great grandparents. They have all planted trees everywhere, including the Tillamook Burn area. She planted her first tree at 2-1/2 years of age. The lot she lives on is almost an acre. They have trimmed their own trees for 40 years. They do not need the City telling them what to do or what not to do with the trees in their yard. As far as they are concerned, this is a slap in the face to all landowners, not only in Milwaukie, but also in Portland. This is government putting their hands in her wallet. She wants

the City out of their yard and out of their wallets. This is her yard, her trees, and it is her say.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Don Trotter, 12102 SE 36th Milwaukie

Mr. Trotter stated that he has lived in Milwaukie for about 19 years and has been involved in planning issues during that time. He submitted a copy of his general comments on the proposed amendments. Issues addressed were:

- No cross-reference to the Natural Resource Overlay Zone.
- In Section 6.1-19, the definition of public place does not include school district property.
- In Section 6.1-20, there is no definition of "...aesthetic or physiologically liability..."
- Under Section 16.32.030, he agrees with the staff recommendation to add requirements for the state license and the recommendation to delete the requirement for the City of Milwaukie business registration.
- As stated on Page 20 of the staff report, one purpose of the government is to be steward to the assets of the community. Trees are one of the assets. This section will help protect existing street trees and trees in public places.
- If staff follows the direction In Section 6.1-20, under applicability, staff will not be able to do normal maintenance of City trees. Maybe it should say, "...no major pruning..."
- Who pays the application fee as described in Section 03082(b), the person applying for the permit or the person asking for the hearing. There are no criteria for why a hearing should be held.
- In regards to Section 030(a)2(c) on Page 21 of the staff report, maybe there should be two types of permits, one for removal and one for major pruning.
- How does requiring a permit encourage anybody to plant a tree as indicated on Page 24 of the staff report. Education and incentives would be a better way to encourage planing of trees. There is no place in the document where there is encouragement to plant trees, it is all punitive.

Mr. Trotter stated that in the 20 years of involvement with planning issues in Milwaukie, he has not seen a major problem of trees being removed from private land and residential areas except during development, redevelopment, or because of storm damage. The majority of the people in Milwaukie are proud of the trees on their property and they take very good care of them. Nowhere in the staff report or in proposed legislation is the problem identified. He encouraged the

Planning Commission to review the City of Portland Tree Cutting Ordinance and follow the example for exemptions, for single family residents, in single family residential zones as indicated in the staff report, pages 7 and 8.

One of the purposes of this ordinance is to obtain Tree City USA status. This can be obtained without including private land. He agrees that significant tree protection is good; however, there is no incentive to apply.

This ordinance is a good one and will provide protection of existing trees at the time of development. In paragraph 16051(a)2(a), it states, "...the removal and major pruning of three or fewer trees with a DBH of less than 18-inches are not subject to the exemption paragraph..." This is in conflict with paragraph B(2) which requires information justifying any tree removal.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Kiernan Carney, 9941 SE Stanley, Milwaukie

Mr. Carney stated that he has lived at his residence for approximately 23 years. Generally he has been a supporter of the City; however, he must disagree with this ordinance. It is the homeowner who is best able to determine to what extent the trees on his property should be pruned. It is the homeowner who can best determine if a tree will cause damage to his property. It is the homeowner who ought to best decide if a tree is unsafe. The homeowner should be able to make these determinations without having to pay a fee to the City.

If the Ordinance is adopted and the City decided he could not remove his tree, he would have to pay another fee to appeal. He must speak in opposition to this ordinance.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Natalie Brewer, 11204 SE Home Avenue, Milwaukie

Ms. Brewer stated that she has lived in Milwaukie for over 20 years. She supports and endorses the tree ordinance. She agrees with all three points on Page 6.1 of the proposed ordinance. She believes a tree ordinance will preserve the character of Milwaukie and what your neighbors do affects all of us. If a neighbor cut his tree down it effects her, the community, and his property.

Ms. Brewer stated that protecting and preserving trees could add value to the community and individual properties. She hopes that this ordinance is passed because it is important to her, her home, her children, and her family. She speaks on behalf of her children; they also are in support of this ordinance.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Jeff Brewer, 11204 SE Home, Milwaukie

Mr. Brewer stated that he is in favor of most of the proposal. He feels that this ordinance is a rule that helps keep their neighborhood looking nice. The only change in his neighborhood is when developers are in and they take out groves of trees. This is affecting how his neighborhood looks, how it operates, and affects the value of his home.

There should be some regulation. Anything 18-inches and over should be reviewed by the City and by the neighbors. Groves of trees should be reviewed on how their removal would affect an individual's property or the adjacent neighbor's property. Everyone's land is their personal property, but it is also part of the community. He is in favor of the ordinance.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Sharon Van Horn, 3011 SE Balfour, Milwaukie

Ms. Van Horn stated that for the most part she is in favor of the tree ordinance for the public property and the right-of ways. She is not in favor of this ordinance for private property. She has a 72-foot wide 240-foot deep lot. A 148-foot side of that property is lined with big trees. He husband does the pruning and cutting of these trees. She does not feel they should have to get a permit when her husband needs to prune those trees. It would cost them a fortune, let alone the time off from work to get the permits. The City is taking on a big thing to try to enforce private property.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Katheryn Elliott, 9739 SE 42nd Avenue, Milwaukie

Ms. Elliott stated that there are a lot of elderly people in Milwaukie. She considers herself one of those people. She feels this ordinance will be a big

hardship on the elderly. They will have to pay someone to trim the trees and pay for the permit. They also will worry about the people on their lot.

If the Elliotts had to pay to have the trees trimmed on their lot, they would not be able to afford it. They do have historical trees on their lot. If they don't trim the trees, the neighbors would be yelling and screaming. If they do trim them, neighbors will be calling and reporting that there was no permit. She, as a Milwaukie person, does not want to pay for the permit.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Walt Haynes, 4748 SE Arden, Milwaukie

Mr. Haynes stated that he has been a Milwaukie resident for 20 years and he has watched his trees grow in his back yard for 20 years. Tonight he wanted to express his dissatisfaction with the writing of the zoning ordinance amendments.

This ordinance gives the City the right to regulate the trees on his property. He feels this is too restrictive and requested that the Commission strike all language of the ordinance that reflects private property. He thanked staff for taking late letters and trust that the Commissioners will read and consider the ones submitted.

Mr. Haynes asked which members of the Commission were city officers and non-voting members. **Chair Hammang** stated that all members on the Commission are voting members. Mr. Haynes asked that the Commission consider the testimony given and make a recommendation to City Council to strike all language that refers to private property and send the ordinance back to staff for revisions.

Mr. Haynes stated that Salem has a similar Urban Forestry Program and the residents took up their chain saws prior to adoption of the ordinance and started cutting trees in retaliation. The last thing anyone wants to hear is the sound of chain saws prior to the adoption on April 20, 2000. Staff needs to be more proactive in keeping on a voluntary basis the trees in their yard.

QUESTIONS FROM THE COMMISSIONERS -- None.

Chair Hammang reiterated that a decision and recommendation would be made to City Council from the Planning Commission on February 22, 2000. There will be additional opportunity for public comment before the City Council on March 21, 2000, at 6:00 p.m. in the Council chambers.

Speaking: Gary Nebergall, 8626 SE 30th, Milwaukie

Mr. Nebergall suggested that the City reader-board be used in the future to announce City meetings. These meetings are important to the community and should be announced as much as possible.

Mr. Nebergall stated that he is in the tree business and has been for over 21 years. He is not here to promote himself or his business. He is here because he is outraged at the City to dictate what he does on his own property. He has written a letter about the tree ordinance. He would like to know how an idea of this nature makes it this far in our government? Who asked for such a proposal and who thought there was enough interest to pursue this?

This is not about trees. It is about how far government will push the citizens before they stop. His company, and many other companies like his, takes pride in counseling customers about their trees before removal. They counsel on the heat their house will retain and the pros and cons of tree removal. His future is in pruning trees not removal. If they are pruned today, they will be pruned again in the future. If the tree is removed, there is no return visit.

How can the City think they can make better judgements than the homeowners can. How much money was spent on maintaining public trees. This proposed ordinance is very basic with modest inroads into personal lives. In Lake Oswego, you must have a permit to cut a five-inch tree. It is not uncommon to plant a three-inch tree from the nursery.

There are many trees being planted in the City daily, more than are being removed daily. **Mr. Nebergall** stated that he was appalled in talking to staff to find that no blue-collar tree people were involved in the drafting of this ordinance. He and others in his industry take pride in being professional in their consultation with customers. He encouraged the residents to be patient with the program and not go out cut their trees in retaliation of the ordinance.

Mr. Nebergall asked that a straw vote be taken tonight. He made a motioned to table the ordinance for now. He doesn't see any future in this. The City has spent enough money and he would like to see accountability for the money that has been spent.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Steve Melnichuk, 4520 SE Ryan Court, Milwaukie

Mr. Melnichuk stated that he cut two trees down the other day. One was rotten and the other he just didn't like. They were both 17.999-inches in diameter so he was safe. There are roughly 30,000 acres in Milwaukie and about 30 acres of developable property. These leaves .3 of the land in Milwaukie that can be developed. This is a small piece of developable land that can be controlled with a few rules in terms of development rather than private land.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Shane Moncrieff, 4564 SE Ryan Court, Milwaukie

Mr. Moncrieff stated that there have been over-astounding comments people have made today. It is a majority that if these types of regulations are adopted, single-property landowners should be excluded. Programs for landowners should be incentive based.

Mr. Moncrieff asked the Commission to do a study on what it would cost to implement this program. There was a lot of discussion on additional staff for enforcement of the permits, for maintenance of the trees on public lands and the number of staff required to issue the permits. There are no provisions stated in the ordinance on how this will be paid. He does not want to have the City coming back in a year telling him that property taxes will be raised or other programs have been cut to pay for regulations put in place. There should be an understanding of the costs incurred and to pass that information to the public before the regulations are put in place.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Ron Kitchin 3365 SE Floss, Milwaukie

Mr. Kitchin stated that this is the first time he has ever testified at a Planning Commission hearing. He just heard about this meeting today. He believes in the right of the people to speak. In the last 20 years, the tree industry has moved forward in the care of and preservation of trees. Responsible tree care is guided by responsible people. There is a whole industry that supplies intelligent and competent work with intelligent competent people. Landowners are competent people. We are all landowners with the right to decide about our property. He suggested that for every tree that is removed, the owner or the service would

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replace it in a way that will enhance and improve the property and fit the area and situation. Otherwise, he asked that the government stay out of their lives.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Julie Wisner, 3325 E Wister Street, Milwaukie

Ms. Wisner stated that she has met many times in the council chambers. This time it is over the tree ordinance. She feels this ordinance needs major pruning itself. This ordinance is an over-regulation and an intrusion on private property owners. It tramples on the rights of private property owners and another excuse to collect revenue with excessive application fees and puts unnecessary burden on the homeowner.

Private property owners should be exempt but developers should be restricted to the amount of trees to be cut in order to restrict clear cutting on vacant lots. She believes that people will stop maintaining and pruning the trees on their own property because they don't want to go through the permit process, the waiting, and the fees. Therefore, the trees will become overgrown and hazard to electrical wires and homes and structures.

The idea of planting more trees at the gateway to Milwaukie is a great idea. Requiring developers to plant trees is also a good idea. But collecting more fees from property owners in this way is totally unreasonable and takes away the rights of the property owner to do what they want on the property that they own.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Teri Melnichuk, 4520 SE Ryan Court

Ms. Melnichuk stated that she lives next to a large estate. They have lived in Milwaukie for 20 years. Her children used to walk through a forest on their way to Rowe Junior High. She would give anything if there had been something for developers back then and we'd still have all those trees. Now there isn't very much to develop. She asked that the regulations be limited to developers. The City needs to re-think what they are doing to the private property owners unless they want to develop their private property.

QUESTIONS FROM THE COMMISSIONERS -- None.

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Speaking: Teresa Bresaw, 12744 SE Weedman Court, Milwaukie

Ms. Bresaw stated that involving City government in enforcing new rules for pruning and removing trees is unnecessary and will create more problems than it will solve. On the other hand, educating and encouraging residents in Milwaukie to select trees for planting and proper maintenance of trees along with a voluntary tree-planting program, funded by neighborhood grants, would have more positive results. If the City adds more regulations, there will be increased staff time and additional tax dollars will be spent year after year.

If the majority of the residents of Milwaukie want this, then fine. But the majority she has talked to say no. She would rather have the City employee's concentrate on enforcing the present rules and regulations and do it well, efficiently, and fairly. Basic services are already not being met. Look at the road maintenance problems, drainage problems, storm and sewer rates, Kellogg Waste Treatment Plant, development of the Junior High site, the proposed transit center, and downtown development. The City can't do everything and should prioritize according to what the citizens want and can afford to pay for. The proposed ordinance is restrictive to the property owner and gives one more reason people feel unkindly about their local government.

Most homeowners want a nicely landscaped yard with trees but reject the idea of getting permission to prune or cut down trees. The individuals to be concerned with are those with a profit-motive only. The protection of public trees is more important. She asked that the Commission not waste their time and tax dollars in passing an ordinance that the citizens don't want. Individuals can manage their own lives and specifically their own yards.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Paul Munn, 4705 SE Brookside Drive, Milwaukie

Mr. Munn stated that he has been in the tree service industry for over 30 years. He is a certified Arborist. He is totally against the private property ordinance being proposed. People on the Tree Committee were not residents of Milwaukie, only half of them. A few of the people on the Committee were opposed to the ordinance and spoke out against the private property portion of this legislation. He asked which members of that Committee are not residents of Milwaukie and whom do they represent. A lot of the members on the Committee did not make the meetings and there was animosity among the group.

Mr. Munn stated that property values would drop as a result of this ordinance. No one will want to buy a piece of property over which they do not have control. Trees will be ignored and forgotten. People will not trim the trees because of the expense and red tape. Trees that are inspected will suffer from being tested. A lot of trees will be wounded unnecessarily. Testing of these trees will require soil samples, core samples, and tissue samples to determine problems. Most problems are belowground related problems. There is a right and wrong way to trim a tree. People put into a panic situation will not wait; there will be a lot of damage to the canopy in the City of Milwaukie. The trees will be the ones to suffer.

Do people own the property that they have bought and paid for and which they are taxed? The City cannot tell him that they cannot trim and remove their trees unless they assume they own them once they have reached a certain size. If this is the case, he will be submitting a bill to the City for the rent of the space that he has let them grow their trees on. He will also make out a sales receipt for the 53 trees he has planted since moving here. Right now the City owes him about \$5,800 for the plant material. He asked what the City plans on paying for the rent on the space these trees are using. He would like to have this pro-rated back to ten years ago when he planted them.

As a taxpayer, property owner, and certified Arborist, he is completely against this proposed ordinance.

QUESTIONS FROM THE COMMISSIONERS -- None.

Recess was taken at 8:05 p.m. and the meeting reconvened 8:21 p.m.

Speaking: Ron Silverman, 11880 SE 34th Avenue, Milwaukie

Mr. Silverman stated that for the most part he does not support the ordinance. He would prefer that the ordinance address development concerns and leave the private homeowner out. He would like to see protection of trees, such as overgrown trees, or trees that present a safety issue be addressed in this ordinance. He does not feel the City has the means to enforce this ordinance and he would not support an increase in property taxes to support this ordinance.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Gary Nebergall, 8626 SE 30th, Milwaukie

Mr. Nebergall stated that if the City is going to infill as outlined by Metro's design, you couldn't put a 3,000 sq.ft. house on a 5,000 sq.ft. lot and retain magnificent trees. The trees are going to be diminished over time. It isn't the developer, even though he gets the bad rap. He builds the houses. Probably every lot in the City that has been built on, at one time probably had trees on it.

QUESTIONS FROM THE COMMISSIONERS -- None.

Speaking: Katheryn Elliott, 9739 SE 42nd Avenue, Milwaukie

Ms. Elliott suggested that instead of going about this ordinance in this way, the Fire Department goes around each Christmas that gives out trees and flowers. She asked why couldn't they have a day that they give kids a tree to plant? Let them plant them. This is a better idea than coming into the private homes and yards and tell them what to do. She is afraid that there will be people in the middle of the night taking down their trees. The emphasis should be on planting, not cutting.

APPLICANT'S REBUTTAL

Alice Rouyer showed a map which represents the properties in the City that are 10,000 sq.ft. or larger. Properties that are in green are the 10,000 sq.ft. lots; properties in red are publicly owned, and properties in gray are the public right-of-ways. A map was shown which represented properties in the City that are 20,000 sq.ft. in size. She also showed a representation of a 6-inch and 18-inch tree.

Staff asked that the Planning Commission let them know if there is additional information that needed to be made available for the February 22, 2000, meeting.

Chair Hammang closed the public testimony portion of the hearing for ZA-99-02. The hearing will be continued to February 22, 2000, to deliberate on the public input.

The following requests were made for additional information for consideration at that meeting:

- Separation between a single-family residence and a developable parcel.
- Clarity on the issue that a homeowner can prune a tree up to 20 percent of the canopy each year without any regulation.
- Conformity with other existing regulations.
- Hardship issues should be addressed.

CITY OF MILWAUKIE PLANNING COMMISSION

Minutes of February 8, 2000

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- Financial assistance information (fee waiver/reduction).
- Tree testing procedures (is this harmful to the tree).
- Does meeting the Metro requirements prevent saving the trees?

Alice Rouyer explained that the City of Milwaukie has complied with the Metro Functional Plan. There is law that Metro gets a 45-day notice on any new regulations. That notice has been filed and no comments have been received back from Metro. There probably will be no comment because this ordinance is consistent with the Metro Functional Plan.

- Can there be more information on applying the regulations only at the time of development.

Alice Rouyer explained that if you apply regulations that are only applicable at time of development, there is the opportunity for the developer to acquire property and remove the trees before they come in for any application. If the goal is to preserve the trees, there needs to be a way in the regulatory scheme to close that loophole. There could be a list of exemptions or pick a number of a lot size that would more likely be redeveloped in the City. Staff can make maps. There are exemptions in the Portland regulations that may help with this issue. This information will be included in the next staff report.

- Information on the situation where a hazardous tree is on your adjacent neighbor's lot but it may fall over your property line.

Howard Steward stated that he would be out of town at the time of the next meeting. He asked if he would be able to express his opinion in some other form than a vote? **Gary Firestone** stated that if he is not here, he could express his opinion, but he could not vote. It may be possible for Howard Steward to participate by telephone if there are adequate facilities. **Howard Steward** stated that he would just like to submit a written opinion for the public record.

Doug Ouderkirk commended the people who come out tonight and expressed their opinions.

Tracy Cook moved to continue ZA-99-02 to February 22, 2000, Planning Commission meeting for a discussion and final decision. **Judith Cartmill** seconded. MOTION CARRIED 7-0.

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

- 6.2 Applicant: Bedsaul/Vincent Consulting, Inc.
 Appellant: Thomason Auto Group
 Location: 8750 and 8890 SE McLoughlin Blvd.
 Proposal: Appeal of a Planning Director's Determination to void the approval of an expansion of an existing Non-Conforming Use and Transportation Plan Review (NCU-98-02/TPR-98-06) for failure to meet conditions within the allowed time period.

 File Numbers: AP-99-01
 NDA: Business Industrial

Chair Hammang opened the public hearing on File Number AP-99-01, an action to appeal a Planning Director's Determination.

STAFF REPORT

Doug Strickler stated that a letter was received from the Appellant requesting that the hearing be continued until February 29, 2000, in order to allow more Thomason Auto Group and underlying property owners to better understand the issues related to the Thomason facility.

Tracy Cook moved to continue AP-99-01 to February 29, 2000. **Mike Miller** seconded. MOTION CARRIED 7-0.

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

7.0 WORKSESSION -- None.

8.0 DISCUSSION ITEMS -- None.

9.0 OLD BUSINESS -- None

10.0 OTHER BUSINESS/UPDATES

10.1 Matters from the Planning Director

Alice Rouyer stated that on February 29, 2000, there would be three elementary school proposals at that meeting.

10.2 Reliable Credit Exterior Materials Review

Alice Rouyer explained that as one of the conditions of the Planning Commission approval, Reliable Credit was to bring samples of exterior materials and colors for review and approval. There was a provision for the colors to be earth tones.

Erwin Holzman, President of Reliable Credit, provided sample materials for the remodeling of the building located at Main Street and Harrison. These are the same materials that were previously on the building. The materials proposed are pit gray slump block and off-white metal.

It was the general consensus of the Commission that the colors and materials proposed meet the criteria of the condition of approval.

11.0 NEXT MEETING -- February 22, 2000

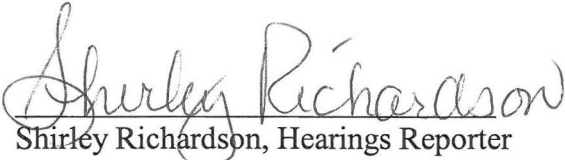
11.1 Deliberation of the Urban Forestry Ordinance

11.2 Matters from the Director regarding Signs

Mike Miller moved to adjourn the meeting of February 8, 2000. **Tracy Cook** seconded. MOTION PASSED UNANIMOUSLY. The meeting adjourned at 9:10 p.m.



Donald Hammang, Chair



Shirley Richardson, Hearings Reporter

AGENDA
MILWAUKIE PLANNING COMMISSION
Milwaukie City Hall
10722 SE Main Street
Tuesday, February 8, 2000
6:30 pm

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Questions	
3.0	Planning Commission Minutes	Motion Needed
3.1	January 25, 2000	
4.0	Information Items	
4.1	January 3, 2000 - City Council Worksession Minutes	Information Only
4.2	January 4, 2000 – City Council Minutes	
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings	
6.1	Applicant: City of Milwaukie Owner: N/A Location: N/A Proposal: Review and recommendation to City Council for approval of Municipal Code and Zoning Ordinance Amendments to adopt an Urban Forestry protection program. File Numbers: ZA-99-02 NDA: All Staff Person: Alice Rouyer	Discussion and Motion Needed
5.2	Applicant: Bedsaul / Vincent Consulting, Inc. Appellant: Thomason Auto Group Owner: Thomason Auto Group Location: 8750 and 8890 SE McLoughlin Blvd. Proposal: Appeal of a Planning Director's Determination to void the approval of an expansion of an existing Non-Conforming Use and Transportation Plan Review (NCU-98-02/TPR-98-06) for failure to meet conditions within the allowed time period. File Numbers: AP-99-01 NDA: Business Industrial Staff Person: Doug Strickler	
7.0	Worksession	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates - Matters from the Planning Director	Information Only
10.1	Reliable Credit Exterior Materials Review (verbal only)	Review and Comment
11.0	Next Meeting: February 8, 2000	
11.1	CSO-99-07/TPR-99-10 – NCSD – 11909 SE Linwood (Linwood Elem)	
11.2	CSO-99-08/TPR-99-11 – NCSD – 5325 SE Logus Rd (Lewelling Elem)	
11.3	CSO-99-09/TPR-99-12 – NCSD – 11326 SE 47 th (Campbell Elem)	
	The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

The Milwaukie Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please.

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.
11. **MEETING CONTINUANCE.** THE PLANNING COMMISSION MAY, IF REQUESTED BY ANY PARTY, ALLOW A CONTINUANCE OR LEAVE THE RECORD OPEN FOR THE PRESENTATION OF ADDITIONAL EVIDENCE, TESTIMONY OR ARGUMENT. ANY SUCH CONTINUANCE OR EXTENSION REQUESTED BY THE APPLICANT SHALL RESULT IN AN EXTENSION OF THE 120 DAY TIME PERIOD FOR MAKING A DECISION."

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
Gracy 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 *ARR*

Subject: Consideration of Milwaukie Municipal Code and Zoning Ordinance amendments to implement an Urban Forestry protection program

Hearing Date: February 8, 2000

Date: February 1, 2000

Action Requested

Recommend approval of an ordinance authorizing the following to City Council:

1. Repeal existing Municipal Code Section 16.32 "Tree Cutting" and replace with a new Urban Forestry code.
2. Adopt Zoning Ordinance Section 1600 "Urban Forestry". This ordinance works together with Municipal Code Section 16.32 to provide standards and procedures for protection of trees during development.
3. Amend Milwaukie Municipal Code Chapter 2.16 "Planning Commission" to give Planning Commission authority to consider and conduct public hearings for tree removal and major pruning permits.
4. Amend Milwaukie Municipal Code Chapter 2.12 "Parks & Recreation Board" to give the Parks & Recreation Board authority to oversee master planning and other long range planning actions related to Urban Forestry.
5. Amend Milwaukie Municipal Code Chapter 17.28 "Subdivision Design Standards" to add "Street Trees" as a new design standard for subdivisions.
6. Repeal Milwaukie Municipal Code Section 17.32.040.F "Subdivision—Partitioning—Flag Lots" to replace with new language consistent with proposed Urban Forestry regulations.
7. Add Milwaukie Municipal Code Section 17.36.020.K to include the planting of street trees as a new required improvement for subdivisions.

- 8. Add Milwaukie Municipal Code Section 17.40.030 "Tree Removal" as a new Environmental Standard for Subdivisions.

Background

The Planning Commission met on the following dates to provide policy direction to staff concerning the City Council goal to implement an Urban Forestry Ordinance:

- August 31, 1999: Joint work session with City Council
- September 28, 1999: Work Session
- October 26, 1999: Work Session
- November 23, 1999: Work session

The Commission sorted through the 1994-1996 work of the citizen Tree Committee, Planning Commission and City Council to guide the discussion about the proposed Urban Forestry Ordinance. Some of the major policy questions considered during these work sessions included:

- 1. Degree of regulation on private property
- 2. Regulating Trees in "Public Places and Public Right-of-Way"
- 3. Advisory Board structure to support the Urban Forestry Program
- 4. Review program budget and overall fiscal impact

In December 1999, staff completed the ordinance amendments and released them for public comment. A public notice was mailed to effected property owners in the City on January 7, 2000 with a brief description of the proposed ordinance and the open house/public hearing dates. The notice also included different ways that citizens could get more information or offer comment to the Planning Commission and City Council. City staff hosted a public Open House on January 19, 2000 to give citizens an opportunity to gather more information and offer comment. Approximately 60 people attended the Open House. All comments received to date via telephone, e-mail, letter and Open House comment cards are attached for your review (see Attachment C and D). Staff will transmit all other comments received between January 31 and February 8 to the Commission at the February 8 hearing.

Purpose of Proposed Urban Forestry Regulations

In response to issues expressed by the 1994 – 1996 citizen Tree Committee, Planning Commission and City Council, the proposed Urban Forestry regulations were prepared to achieve the following goals:

- 1. Protect the City's Trees and Urban Forest. An urban forest can improve air quality, offer noise control, beautify an area, promote neighborhood livability,

prevent noise control, prevent erosion, improve water quality, provide wildlife habitat, and in some cases, improve property values.

2. Provide a tool for achieving the Vision of the City, Neighborhood Visions, and City Council Goals. An urban forestry ordinance responds to issues relating to environmental sustainability and neighborhood livability outlined in the newly adopted Vision Statement and the 1999 – 2004 City Council Strategic Direction. In previous years, the Planning Commission, City Council and neighborhood residents have not had tools to respond to concerns about the loss of trees during development on private property, public property and along streets in established neighborhoods. An urban forestry ordinance provides a tool to address these concerns.
3. Obtain Tree City USA status. A Tree City USA designation from the National Arbor Day Foundation gives Milwaukie national recognition as a community that values trees. To gain the designation, a city must have a community tree ordinance (the ordinance can protect trees on public property, private property or both), a Community Forestry Program, and a City Board or department to oversee the Community Forestry program.

Organization of Public Hearings

In late January, the Planning Commission decided to consider the regulations on both February 8 and February 22. On February 8, the Commission will listen to a staff presentation, hear all public testimony and ask any questions concerning the proposal and testimony presented. On February 22, the Commission will deliberate, discuss and prepare a recommendation for City Council.

City Council is also planning to consider the proposed amendments over the course of two meetings. At the March 20 work session, staff will provide a briefing to Council about the ordinance content and a report about the February 22 Planning Commission recommendation. On March 21, the Council will listen to a brief staff presentation, hear public testimony, ask questions concerning the proposal and testimony presented, and deliberate. If Council needs more time for deliberation and final decision, they may continue their discussion on to the April 4 City Council meeting. All meetings are open to the public.

Municipal Code and Zoning Ordinance Content

Please see Attachment "B" for the package of Milwaukie Municipal Code (MMC) and Zoning Ordinance (ZO) amendments. At the top of each Municipal Ordinance or Zoning Ordinance section is a text box with the Recommended Action. The attached amendments have been prepared in "mark up" format to make it easy for the reader to identify language that is currently included in the Municipal Code or Zoning Ordinance

and to identify language that is proposed. The proposed new language is **underlined and bolded**, and language that is proposed to be deleted is identified with a ~~strikethrough~~.

Below is a brief description of the content included in each section.

MMC Section 16.32 "Tree Cutting".

- 16.32.040: Establishes a permitting process, and approval criteria for removal, major pruning and planting of Street Trees and Trees in Public Places.
- 16.32.050: Establishes a permitting process and approval criteria for removal and major pruning of Trees on Private Land. The Applicability and Exemption section define those properties affected by this section.
- 16.32.060: Establishes a permitting process and approval criteria for removal and major pruning of Significant Trees and Significant Groves of Trees.
- 16.32.070: Establishes Penalties and Mitigation for enforcement of the Urban Forestry Code.

ZO Section 1600 "Urban Forestry". This section works together with MMC Section 16.32 to provide standards and procedures for protection of trees on private property and public property during development.

- 1604: Requires the planting of street trees during development and redevelopment.
- 1605.1: Establishes a permitting process for removal and major pruning of Trees on Private Land. The approval criteria references back to MMC Section 16.32. Establishes a requirement to submit a site plan showing the location of existing trees, to be submitted as part of an application to develop or redevelop property.
- 1605.2: Establishes required protection measures for all trees which are to be retained in areas immediately adjacent to construction.
- 1606: Establishes a process to allow for density transfer and clustering of development as a means to protect existing trees.
- 1607: Establishes a process to allow for setback variances as a means to protect existing trees.

MMC Section 2.16 "Planning Commission". This section gives the Planning Commission authority to consider and conduct public hearings for tree pruning and removal permits.

MMC Chapter 2.12 "Parks and Recreation Board". This section gives the Parks & Recreation Board authority to oversee master planning and other long range actions related to Urban Forestry.

MMC Chapter 17.28 "Subdivision Design Standards". This section establishes a new street tree planting design standard for new subdivisions in the City.

MMC Section 17.32.040 "Subdivision—Partitioning—Flag Lots". This section repeals existing language in the Flag Lot standards that was intended to be in place until the City adopted new Urban Forestry regulations. Replacement language is included.

MMC Section 17.36.020 "Subdivision Improvements". This section establishes street trees as a required improvement in new subdivisions to be provided at the expense of the subdivider or developer.

MMC Section 17.40.030 "Subdivision Environmental Standards". This section establishes tree removal as an Environmental Standard for new subdivisions, requiring consistency with Zoning Ordinance Section 1605.

Public Comment

As of January 31, 2000 staff received 63 written or verbal comments from citizens concerning the proposed regulations. Comments were collected through letters, telephone conversations and at the January 19 Open House. Many of the comments expressed concern about how the proposed regulations would impact private property rights. Staff has addressed many of the broad issues raised, in the comments below.

Analysis/Policy Issues

The following key policy questions were raised during the comment period:

1. Does this regulation balance private property rights and private property regulation?
2. Are the proposed exemptions to the regulations appropriate?
3. Are the Tree Care Professional License Requirements suitable?
4. Are the proposed permit fees appropriate?

Below is the analysis of these questions:

1. **Does this regulation balance private property rights and private property regulation?**

The Planning Commission considered this question extensively this fall in work sessions as the draft amendments were developed. The attached public comments (Attachments C and D) and public testimony received at the February 8 hearing will provide guidance on this question as the Commission deliberates a recommendation to City Council.

Most of the public comment received to date generally supports regulating public property, public right-of-way and significant trees (which is a voluntary program). The concern centers around the applicability of the regulations for private property, found in Section 16.32.050:

1. *Unless excepted under Section 16.32.050(a)(2), a Tree Removal Permit must be obtained for:*
 - a. *The removal or major pruning of any 18-inch or larger dbh (diameter breast height) tree.*
 - b. *The removal or major pruning of 4 or more 6-inch or larger dbh trees in any single calendar year on a single parcel of land or contiguous parcels of property under the same ownership totaling 10,000 square feet or larger.*

Many citizens who commented noted that the parameters described above may be too far-reaching for Milwaukie. Some expressed concern about any regulation of private property. Others suggested that if a regulation is to be adopted at all, it may be more appropriate to adjust the parameters such that it only impacts those properties that are likely to be developed or be redeveloped. This could thereby exempt typical residential home owners on established lots. Ultimately, the Planning Commission should discuss and refine the overall objective of this proposed regulation. If the objective is to provide the Commission with tools to preserve established tree canopy at time of development, the Commission should develop a recommendation that balances this objective with the rights of individual property owners.

The Commission should consider the following parameters when developing a recommendation:

- **Should the proposed amendments regulate the removal and major pruning of single 18 inch dbh trees on lots of all sizes?**

In a review of urban forestry regulations from other area cities, most cities did not regulate the cutting of single trees, but rather regulated the removal and major pruning of "x" number of trees of a certain size in a

calendar year, on a certain size property. The Commission has the option of:

- a. Retaining the parameter, as is.
 - b. Recommending to eliminate the regulations of single trees, instead focusing the regulations on the preservation of groups of trees on large properties.
 - c. Recommending to adjust the dbh higher to 24 inches, 36 inches or larger.
- **Is it appropriate to require a permit for the removal or major pruning of 4 or more 6-inch or larger dbh trees in any single calendar year on a single parcel of land or contiguous parcels of property under the same ownership totaling 10,000 square feet or larger?**

The objective of this parameter is to regulate removal and major pruning of groups of trees on larger properties (those properties more likely to develop or redevelop). The Planning Commission has the option of:

- a. Retaining the parameter, as is.
- b. Adjusting the lot size to 15,000 or 20,000 square feet or larger. Most other area cities regulate tree cutting on parcels larger 10,000 square feet or larger.
- c. Adjust the size or number of trees removed or pruned per calendar year.
- d. Change the parameter altogether to define "developable" and "redevelopable" land. For reference, Portland's tree cutting ordinance defines "regulated property" as all property where trees have not been considered through a previous land use review, and which:
 - Does not have a single family dwelling on it; or
 - Can be further subdivided pursuant to the Zoning or Subdivision Ordinances, whether there is a structure on the property or the property is vacant; or
 - Is not located in a single family residential zone pursuant to the City of Portland Zoning maps; or

- Is not solely used as a single-family residence.

Furthermore, the purpose of the City of Portland Tree Cutting regulation is:

“To regulate the cutting of trees in order to help preserve the wooded character of the City of Portland and protect the urban forest. It is not the intent of this Chapter to regulate the cutting of trees on any single-family lot, which cannot further be divided, upon which a single-family residence already exists. Further, it is not the intent of this Chapter to require a permit for tree cutting in situations where the same activity is already regulated and reviewed by other provisions of the City Code.”

When the Planning Commission considered some of these options in work session in November, one of the factors considered was that it was difficult to easily define “developable or redevelopable” properties. The Commission had concluded at that time that the “lot size” parameter was easier for the most people to understand (and thereby, easier for the City to enforce) than the definitional approach used by Portland above.

2. Are the proposed exemptions to the regulations appropriate?

Section 16.32.050.A.2 define the following tree removal or major pruning permit exemptions on private property:

- a. *The removal or major pruning of significant trees or significant groves of trees. Significant trees and groves may be removed or subjected to major pruning only pursuant to Section 16.32.060.*
- b. *The removal or major pruning of trees in a commercial nursery as part of a commercial nursery operation. A commercial landscaping business that grows its own trees for sale shall be considered a commercial nursery. The sale of one or more trees as timber for commercial timber value shall not be considered part of a commercial nursery operation.*

Staff added “B” as a means to exempt the requirement for tree permits on properties with tree farms, nurseries, or arboricultural uses. Since drafting the regulation, staff would suggest adding another exemption for properties that have a property tax assessment classification for “Non-Exclusive Farm Use” as defined in the Oregon Revised Statutes. According to a recent conversation with

the Clackamas County Assessor's Office, there are approximately four tax lots in the city limits with this designation. These properties are recognized by the State as a farm use and should be therefore be exempt from the proposed regulations.

Staff would recommend that the Planning Commission consider adding the following language to the exemption section:

C. *The removal or major pruning of trees on properties designated as Forest Lands or Agricultural lands for property tax purposes.*

3. **Are the Tree Care Professional License Requirements suitable?**

MMC Section 16.32.030 requires that:

Any person who receives compensation for removing, pruning, or trimming trees in the City of Milwaukie shall hold a valid State Landscape Contractor's license and a City of Milwaukie Business Registration.

This does not require a license for individual property owners who remove or prune trees on their property, but does require the proper licensing for those individuals hired by property owners to remove or prune or trim trees. After speaking with two professional tree service contractors and the State of Oregon Construction Contractor's Board, staff has learned that many tree care professionals hold a State Construction Contractor's Board license in lieu of the State Landscape Contractor's license. The licensing requirements are slightly different, but both licenses require that the contractor obtain bonding and insurance. Therefore, staff would recommend that the Planning Commission consider adding the following language to Section 16.32.030:

*Any person who receives compensation for removing, pruning or trimming trees in the City of Milwaukie shall hold a valid State Landscape Contractor's license **or a State Construction Contractor's Board license** and a City of Milwaukie Business Registration.*

4. **Are the proposed permit fees appropriate?**

The Planning Commission does not have authority to set fees, but can offer a recommendation to City Council. Since this has been an important issue during the citizen comment period, staff wanted to raise the issue with the Planning Commission. In setting application fees, past Council policy is to recover 60% of the estimated costs of processing the application. Staff estimates that a \$25 application fee will recover 60% of the processing costs for most administrative applications. If an application becomes subject to a public hearing, through the review process, staff will recommend that the applicant pay an additional \$265

fee to forward it on to Planning Commission. If another party appeals the Planning Director decision to the Planning Commission, he or she will also be subject to the existing \$265 appeal fee. The Planning Commission should consider these fees and forward input on for City Council consideration.

Alternatives

Based on this analysis, the Commission has the option of considering the following alternatives when deliberating the recommendation to City Council:

Option #1: Do nothing. Recommend no amendments to the existing Tree Cutting regulations in MMC Section 16.32.

Option #2: Recommend that Council approve the regulations as proposed by Staff. This recommendation should incorporate all the amendments included below:

- Add the following language to the Section 16.32.050.A.2 “Exemptions”:

C. The removal or major pruning of trees on properties with the property tax assessment designation “Non-Exclusive Farm Use Land” as defined by ORS 308.370 – ORS 308.407 and designated by the Clackamas County Assessor’s Office.

- Add the following to Section 16.32.030 “Tree Care Professional License Requirement”

*Any person who receives compensation for removing, pruning, or trimming trees in the City of Milwaukie shall hold a valid State Landscape Contractor’s or a **State Construction Contractor’s Board license** and a City of Milwaukie Business License.*

Option #3: Recommend that Council approve the regulations with modifications. The Planning Commission should consider modifications relating to the balance of private property regulation and private property rights. The Commission should include modifications for issues not raised in this report.

Findings in Support of the Municipal Code and Zoning Ordinance Amendments:

Note: A full analysis of this proposal’s conformance with Section 904 and 905 “Amendments” is included in Attachment A. The findings below are a summary of this analysis.

1. The proposed amendments are consistent with the adopted Vision Statement for the City and the 1999-2004 City Council Strategic Direction.

2. The proposed amendments conform with applicable Comprehensive Plan goals, policies and objectives and are consistent with City ordinances, Metro Urban Growth Functional Plan and applicable regional policies.
3. The proposed amendments are consistent with applicable state law, statewide planning goals, and applicable federal regulation.

Recommendation

Staff recommends that the Planning Commission recommend approval of the proposed amendments to City Council (see "Action Requested" section above for full list of amendments).

ATTACHMENT A

**ZONING ORDINANCE AMENDMENT ANALYSIS
APPROVAL CRITERIA OF ZO 904 AND ZO 905**

904 REQUIREMENTS FOR ZONING TEXT AMENDMENTS

904.1 Proposals for zoning text amendments must provide written evidence that the following requirements are satisfied:

A. Applicable requirements of Section 1003.

All requirements of Section 1003 have been met.

B. Reasons for requesting the proposed text amendments.

The purpose of the proposed regulations are outlined in the Planning Commission and City Council staff reports, and are summarized below:

1. Protect the City's Trees and Urban Forest. An urban forest can improve air quality, offer noise control, beautify an area, promote neighborhood livability, prevent noise control, prevent erosion, improve water quality, provide wildlife habitat, and in some cases, improve property values.
2. Provide a tool for achieving the Vision of the City, Neighborhood Visions, and City Council Goals, and Comprehensive Plan policies. An urban forestry ordinance responds to issues relating to neighborhood livability and environmental sustainability. In previous years, the Planning Commission, City Council and neighborhood residents have not had tools to respond to concerns about the loss of trees during development on private property, public property and along streets in established neighborhoods. An urban forestry ordinance provides a tool to address these concerns.
3. Obtain Tree City USA status. A Tree City USA designation from the National Arbor Day Foundation gives Milwaukie national recognition as a community that values trees. To gain the designation, a city must have a community tree ordinance (the ordinance can protect trees on public property, private property or both), a Community Forestry Program, and a City Board or department to oversee the Community Forestry program.

C. *Explanation on how the proposed text amendment is consistent with other provisions of this Ordinance.*

The proposed Zoning Ordinance amendments were written to provide standards and procedures relating to street trees and to the protection of trees at time of development. The proposed regulations are consistent with other development standards and procedures in the Zoning Ordinance.

D. *The approval criteria of Section 905.*

See below.

905 APPROVAL CRITERIA FOR ALL AMENDMENTS

For all proposals, the applicant shall have the burden of proof regarding the following criteria:

A. *The proposed amendment must conform to applicable Comprehensive Plan goals, policies and objectives and be consistent with provisions of City ordinances, Metro Urban Growth Functional Plan, and applicable regional policies.*

The proposed regulations are consistent with the applicable Comprehensive Plan policies and objectives, particularly the Land Use--Neighborhood Element. The proposed regulations are also consistent with the Metro Urban Growth Functional Plan and regional policies.

B. *The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The Planning Commission and City Council shall use its discretion to weight these factors in determining the intent of the proposed zone.*

N/A. The proposed amendment does not involve a development proposal.

C. *The proposed amendment will meet or can be determined to reasonably meet applicable regional, State or federal regulations.*

The proposed urban forestry zoning ordinance amendments are consistent with Statewide Planning Goals, regional and federal regulations. See Statewide Planning Goal analysis below:

1. Citizen Participation: The proposed permitting provides an opportunity for neighborhood and citizen notice, and citizen appeal of a staff-level decision to the Planning Commission.
2. Planning: The proposed regulations establish a permitting process to implement the objectives of the urban forestry protection program. This is considered a “management implementation measure” under Goal #2.
3. Agricultural Lands: Not Applicable.
4. Forest Lands: The proposed regulations will provide an exemption for properties that are identified as Exclusive Forest Use by the Clackamas County Assessor’s Office, in order to preserve a property owner’s ability to use forest lands for harvest and management, as identified in Statewide Planning Goal #4. The regulations also provide an exception for commercial nursery landscaping businesses that grow trees for sale.
5. Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed Urban Forestry regulations will further the overall objectives of Goal 5.
6. Air, Water, and Land Resources Quality. The proposed Urban Forestry regulations will protect the city’s overall air, water, and land resources by giving the City of Milwaukie an opportunity to implement a program that “manages land conservation and development activities in a manner that accurately reflects the community’s desires for a quality environment...”
7. Areas Subject to Natural Disasters and Hazards. While not the primary objective of the regulations, the Urban Forestry ordinance will retain vegetation in areas as a means to prevent erosion.
8. Recreational Needs: Not Applicable.
9. Economic Development: Not Applicable.
10. Housing: The Urban Forestry regulations should not impact the overall housing goals and objectives of the State of Oregon or Milwaukie,

because they will continue to allow for reasonable development as allowed in the underlying zone for private property. Measures such as variances and density transfers/clustering ensure that options for building appropriate densities remain available when the plan proposes to preserve existing trees.

11. Public Facilities and Services. Not Applicable.
12. Transportation: Not Applicable.
13. Energy Conservation: The proposed regulations are consistent with this goal.
14. Urbanization. The proposed Urban Forestry regulations are consistent with the objectives of this goal. Measures such as variances and density transfers/clustering ensure that options for building appropriate densities remain available when the plan proposes to preserve existing trees.
15. Willamette River Greenway. Not applicable.

D. *The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.*

N/A. The proposed amendment does not involve a development proposal on a specific site.

ATTACHMENT B

RECOMMENDED ACTION:

Repeal existing Interim Urban Forestry Code in Section 16.32 and replace with new text as outlined below.

SECTION 16.32 - MILWAUKIE MUNICIPAL CODE URBAN FORESTRY

Chapter 16.32

TREE CUTTING

Sections:

~~16.32.010 — Definitions.~~

~~16.32.020 — Permit for major pruning or removal of street trees or trees in public right-of-way.~~

~~16.32.030 — Permit exemptions.~~

~~Section 16.32.010 — Definitions.~~

~~The following definitions shall apply for terminology, used in this chapter:~~

~~—"Canopy" means area of the tree above the ground, including the trunk and branches, measured in mass or volume.~~

~~—"City" means the city of Milwaukie.~~

~~—"Cutting" means the falling or removal of a tree, or any procedure that naturally results in the death or substantial destruction of a tree. "Cutting" does not include normal trimming or pruning, but does include topping of trees.~~

~~—"Dangerous tree" means the condition or location of the tree presents a clear public safety hazard or an imminent danger of property damage, and such hazard or danger cannot reasonably be alleviated by treatment or pruning.~~

~~—"Dead tree" means the tree is lifeless.~~

~~—"Drip line" means the perimeter measured at the outermost canopy.~~

~~—"Dying tree" means the tree is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.~~

~~"ISA" means the International Society of Arboriculture.~~

~~—"Major pruning" means removal of over twenty percent of the trees canopy, or injury or cutting of over ten percent of the root system, during any twelve month period.~~

~~—"Owner" means and includes, for the purposes of this chapter, any person with a freehold interest in land, or a lessee, agent, employee, or other person acting on behalf of the owner with the owner's consent.~~

~~—"Person" means any individual, firm, association, corporation, agency, or organization of any kind.~~

~~—"Pruning" means trimming or removing any part of the branching structure of a plant in either the crown, trunk, or root areas based on standards of the International Society of Arboriculture (ISA).~~

~~—Relative Value. Relative value may be calculated using the methods described in the ISA's "Guide for Plant Appraisal." The values reflect the value to the public as a whole, rather than to the individual property owner. For example, a tree growing in full public view may have a high public value but be of low value to the property owner.~~

~~—"Removal" means the cutting or removing of fifty percent or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree; or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning, or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.~~

~~"Root zone" means the area of the ground around the base of the tree measured from the trunk to five feet beyond the outer base of the branching system.~~

~~—"Street tree" means any tree located within a street right-of-way.~~

~~—"Topping" means the severe cutting back of the main stem and/or limbs to buds, stubs, or laterals large enough to assure terminal role within the trees crown to such a degree as to remove the normal canopy and disfigure the tree.~~

~~—"Tree" means any living woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a definitely formed crown. (Ord. 1836 § 1 (part), 1998)~~

~~Section 16.32.020 Permit for major pruning or removal of street trees or trees in public right-of-way.~~

~~—A. Applicability. No person shall conduct major pruning or removal of any tree in a public right-of-way, without first receiving a permit issued by the city. Tree pruning, as defined in this chapter, shall not require a permit.~~

~~—B. Review Process.~~

~~—1. A permit application for major pruning or tree removal shall be submitted to the community development department on forms provided by the community development director.~~

~~—2. The applicant shall post notice of the major pruning or removal permit application on the property in a location which is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property.~~

~~—3. The notice shall state that the tree removal permit is pending for trees on the property marked by a yellow plastic tagging tape, shall include the date of posting, and shall state that any person may request that a hearing be held on the application by filing a written request for a hearing within fourteen days of the date of the posting.~~

~~—4. The applicant shall mark each tree proposed to be removed by tying or attaching yellow plastic tagging tape to the tree four to six feet above mean ground level at the base of the trunk.~~

~~—5. On the date that the property is posted, the applicant shall send a letter to the neighborhood district association for the area, to notify the association of the major pruning or removal request.~~

~~—6. The applicant shall file an affidavit stating that the property has been posted, the trees have been marked, and notice has been mailed pursuant to this section.~~

~~—7. The major pruning or tree removal permit shall not be issued for fourteen days from the date of filing of the affidavit to allow for the filing of a request for a hearing. The applicant shall maintain the posting and marking for the full fourteen days.~~

~~—C. Approval Standards. The community development director shall issue a permit for major pruning or removal of trees in a right of way, only if the following criteria are satisfied:~~

~~—1. The proposed work will be done according to ISA standards, and qualified persons will perform the work; and one or more of the following criteria are satisfied;~~

~~—a. It is determined by the arborist that the tree is dead or dying and cannot be saved, according to current ISA standards.~~

~~—b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.~~

~~—c. The tree has lost its relative value as a street tree due to damage from natural or accidental causes, or for some other reason it can be established that it should be removed.~~

~~—d. That the tree has been determined by a certified arborist to be unsafe to the occupants of the property, or adjacent property, or the general public.~~

~~—D. All work performed on street trees pursuant to a permit issued by the community development director under this section shall be done within a sixty-day period from the issuance of said permit, or within a longer period as specified by the community development director. (Ord. 1836 § 1 (part), 1998)~~

~~Section 16.32.030 Permit exemptions.~~

~~—A. Dangerous Tree. If a tree is determined to be a dangerous tree, the community development director may issue an emergency removal permit. The removal shall be in accordance with the ISA standards and be the minimum necessary to eliminate the imminent danger.~~

~~—B. Maintenance. Regular maintenance or pruning which does not require removal of over twenty percent of the trees canopy, tree topping, or disturbance of over ten percent of the root system during any twelve month period.~~

~~—C. Tree cutting anywhere but in a public right of way. (Ord. 1836 § 1 (part), 1998)~~

PROPOSED NEW CODE TEXT

SECTION 16.32 - MILWAUKIE MUNICIPAL CODE
URBAN FORESTRY

16.32.010 Purpose

The purpose of this Section is to implement an Urban Forestry Program, based on Tree City USA standards, to increase the existing stock of trees by insuring that more trees are planted, and to provide protection for existing trees. The vision is 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.

16.32.020 Definitions

Canopy: Area of the tree above ground, including the trunk, branches, and foliage.

Dbh: The largest diameter of a tree measured 4 feet above ground level.

Drip line: The perimeter of the area underneath a tree's canopy.

Dying tree: A tree that is diseased, infested by insects, deteriorating, or rotting, and cannot be saved by reasonable treatment or pruning, or must be removed to prevent the spread of infestation or disease to other trees.

Grove: A stand of three or more trees which form a visual and biological unit.

ISA: International Society of Arboriculture.

Major pruning: Pruning of over 20 percent of a tree's canopy, or injury or cutting of over 10 percent of the root system, during any 12-month period.

Owner: The owner of real property and any person acting for or under the rights of the owner, including any lessee, agent, employee, or other.

Pruning: Trimming or removing any part of the structure of a tree in either the crown, trunk, or root areas.

Public place: Any property owned by the City or the North Clackamas Parks and Recreation District, in fee, not including right-of-ways.

Relative value: Relative value may be calculated using the methods described in the ISA's "Guide for Plant Appraisal." The values reflect the value to the public as a whole, rather than to the individual property owner. For example, a tree growing in full public view may have a high public value but be of low value to the property owner.

Removal: The cutting or removing of 50 percent or more of the crown, trunk, or root system of a plant; the uprooting or severing of the main trunk of the tree, or any act which causes, or may reasonably be expected to cause, the tree to die, including without limitation damage inflicted upon the root system by machinery, storage of materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may result in the loss of aesthetic or physiological viability.

Significant tree or grove of trees: A tree or grove of trees designated as significant pursuant to Section 16.32.060. Each tree in a significant grove of trees is a significant tree.

Street tree: Any tree located within an improved or unimproved street right-of-way.

Tree: Any living, self-supporting woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a definitely formed crown.

16.32.030 Tree Care Professional License Requirement

Any person who receives compensation for removing, pruning, or trimming trees in the City of Milwaukie shall hold a valid State Landscape Contractor's license and a City of Milwaukie Business License.

16.32.040 Street Trees and Trees in Public Places

A. Permit for Major Pruning or Removal of Street Trees or Trees in Public Places

1. Applicability

No person shall conduct major pruning or removal of any street tree or tree in a public place without a permit issued by the City. No person shall conduct any pruning of a tree in a public place without a permit issued by the City. This Section does not apply to significant trees or groves of trees.

2. Review Process

Applications submitted in connection with land use applications subject to a quasi-judicial review shall be processed according to either Zoning Ordinance Section 1011.3 or 1011.4, as appropriate. All other applications for a tree removal permit shall be processed as a Type I Administrative review under Zoning Ordinance Section 1101.1. For all tree removal permit applications, the following procedures shall apply in addition to the otherwise applicable procedures:

- a. The City shall provide a weatherproof notice of the permit application to the applicant. The applicant shall post the notice on the property, in a location that is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property.
- b. The notice shall state that the tree removal permit(s) are pending for trees on the property marked by a yellow plastic tagging tape and shall include the date of posting. For permits subject to a Type I process, the notice shall state that any person may request that a hearing be held on the application by filing a written request for a hearing within 10 days of the date of the posting. If the permit is subject to a quasi-judicial process, the date of the hearing shall be listed.
- c. The applicant shall mark each tree proposed to be removed or subjected to major pruning by tying or attaching yellow plastic tagging tape to the tree 4 to 6 feet above mean ground level at the base of the trunk. The tagging tape shall remain on the tree until the permit is denied or the action authorized by the permit occurs.
- d. Within one working day of the date that the application is deemed complete, the City shall send a letter to the neighborhood district association Chair for the area, to notify the association of the permit request.
- e. The applicant shall file an affidavit stating that the property has been posted, the trees have been marked, and notice has been mailed pursuant to this Section.
- f. If the permit is subject to a Type I process, the tree removal permit shall not be issued for 10 days from the date of filing of the affidavit to allow for the filing of a request for a hearing.

- g. If a public hearing is requested, the application shall follow the procedures of Section 1011.3, Minor Quasi-Judicial review. The Director or applicant may immediately request a public hearing if it appears that the application has potential for controversy or there is difficulty in applying the applicable criteria. If no request for a public hearing is received by the Planning Director, the Director may grant the application, either with or without conditions, without a hearing, if applicable criteria are met.
- h. The Planning Director shall provide notice of the final decision to the applicant, property owner, and all interested persons who inquired about the permit request. If the permit is subject to a Type I process, any action or ruling of the Planning Director may be appealed to the Planning Commission within 15 days after the Planning Director has rendered his or her decision. If an appeal is requested, the application shall follow the procedures of Section 1011.3, Minor Quasi-Judicial review.
- i. If a permit is issued, the permit shall be conspicuously displayed on the site while any actions authorized by the permit are considered.

3. Approval Standards

The Planning Director shall issue permits for major pruning or removal of street trees or trees in public places, only if one or more of the following criteria are satisfied:

- a. There is need for the proposed pruning according to ISA standards.
- b. It is determined by an arborist that the tree is dead or dying and cannot be saved, according to current ISA standards.
- c. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.
- d. The tree has lost its value as a street tree due to damage from natural or accidental causes.
- e. That the tree has been determined by a certified arborist to be unsafe to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings. If an imminent hazard exists, as established by

inspection, the Planning Director may issue an emergency permit for removal. The emergency removal shall be accomplished in accordance with ISA standards and be the minimum necessary to eliminate the imminent danger.

- f. The removal or pruning is necessary to allow reasonable development or redevelopment of the right-of-way or public place. The applicant shall demonstrate that any alternative designs that would reduce the extent of tree removal and major pruning were considered. The approval authority may deny the application if other alternative designs are possible which result in greater tree protection without significantly increasing the cost of the development sought by the applicant. No permit shall be issued unless existing trees are protected:
 - i. along natural drainageways and water areas to preserve riparian habitats and to minimize erosion;
 - ii. along property lines to serve as buffers to adjacent property; and
 - iii. where consistent with development, in sufficiently large areas and in dense stands.

4. Expiration

All work performed on street trees or trees in a public place pursuant to a permit issued by the Planning Director under this Section shall be done within a 60-day period from the issuance of the permit, or within a longer period as specified in the permit. All major pruning and removal of trees in the right-of-way by persons other than the City shall be performed by licensed Landscape Contractors.

5. Conditions of Approval

The Planning Director may condition the permit with a requirement to replace any removed tree to ensure compliance with this Section. Any replacement trees shall have a minimum dbh of 2 inches. In such case, the full cost of removal and replacement shall be borne by the permittee.

B. Planting - Street Trees and Trees in Public Places

1. Applicability

No person shall plant a street tree or a tree in a public place without a permit issued by the City.

2. Review Process

An application for a permit to plant a street tree or tree in a public place shall be processed as a Type I Administrative Review under Zoning Ordinance Section 1011.1. The following procedures shall apply in addition to the procedures of Zoning Ordinance 1101.1:

- a. A planting plan shall be submitted as part of the application, in a form and detail as prescribed by the Planning Director.
- b. Planting procedures must follow ISA standards.

3. Approval Standards

The Planning Director shall issue permits to plant street trees when the proposed trees and their location and spacing are consistent with the Milwaukie Urban Forestry Master Plan, once adopted, and any street tree manual adopted under the Urban Forestry Master Plan. The Planning Director may issue permits to plant trees in public places when the proposed trees and their location and spacing are consistent with the Milwaukie Urban Forestry Master Plan and with the controlling agency's intended use of the public place. The Planning Director shall deny any request to plant a tree in a public place if the controlling agency responsible for the public place objects to the planting of the tree.

16.32.050 Tree Removal on Private Land

A. Applicability

1. Unless excepted under Section 16.32.050(a)(2), a Tree Removal Permit must be obtained for:
 - a. The removal or major pruning of any 18-inch or larger dbh tree.
 - b. The removal or major pruning of 4 or more 6-inch or larger dbh trees in any single calendar year on a single parcel of land or contiguous parcels of property under the same ownership totaling 10,000 square feet or larger.

2. Exemptions:

- a. The removal or major pruning of significant trees or significant groves of trees. Significant trees and groves may be removed or subjected to major pruning only pursuant to Section 16.32.060.
- b. The removal or major pruning of trees in a commercial nursery as part of the commercial nursery operation. A commercial landscaping business that grows its own trees for sale shall be considered a commercial nursery. The sale of one or more trees as timber for commercial timber value shall not be considered part of a commercial nursery operation.

B. Tree Removal Permit

The Planning Director shall review a tree removal permit application according to the following provisions:

1. Review Process

Applications submitted in connection with land use applications subject to a quasi-judicial review shall be processed in accordance with either Zoning Ordinance Section 1011.3 or Section 1011.4, as appropriate. All other applications for a tree removal permit shall be processed as a Type I Administrative review under Zoning Ordinance Section 1101.1. For all tree removal permit applications, the following procedures shall apply in addition to the otherwise applicable procedures:

- a. The City shall provide a weatherproof notice of the permit application to the applicant. The applicant shall post the notice on the property, in a location that is clearly visible to vehicles traveling on a public street and to pedestrians walking by the property.
- b. The notice shall state that the tree removal permit(s) are pending for trees on the property marked by a yellow plastic tagging tape and shall include the date of posting. For permits subject to a Type I process, the notice shall state that any person may request that a hearing be held on the application by filing a written request for a hearing within 10 days of the date of the posting. If the permit is subject to a quasi-judicial process, the date of the hearing shall be listed.
- c. The applicant shall mark each tree proposed to be removed or subjected to major pruning by tying or attaching yellow plastic tagging tape to the tree 4 to 6 feet above mean ground level at

the base of the trunk. The tagging tape shall remain on the tree until the permit is denied or the action authorized by the permit occurs.

- d. Within one working day of the date that the application is deemed complete, the City shall send a letter to the neighborhood district association chair for the area, to notify the association of the permit request.
- e. The applicant shall file an affidavit stating that the property has been posted, the trees have been marked, and notice has been mailed pursuant to this Section.
- f. If the permit is subject to a Type I process, the tree removal permit shall not be issued for 10 days from the date of filing of the affidavit to allow for the filing of a request for a hearing.
- g. If a public hearing is requested, the application shall follow the procedures of Section 1011.3, Minor Quasi-Judicial review. The Planning Director or applicant may immediately request a public hearing if it appears that the application has potential for controversy or there is difficulty in applying the applicable criteria. If no request for a public hearing is received by the Planning Director, the Director may grant the application, either with or without conditions, without a hearing, if applicable criteria are met.
- h. The Planning Director shall provide notice of the final decision to the applicant, property owner, and all interested persons who inquired about the permit request. If the permit is subject to a Type I process, any action or ruling of the Planning Director may be appealed to the Planning Commission within 15 days after the Planning Director has rendered his or her decision. If an appeal is requested, the application shall follow the procedures of Section 1011.3, Minor Quasi-Judicial review.
- i. If a permit is issued, the permit shall be conspicuously displayed on the site while any actions authorized by the permit are considered.

2. Approval Standards

The Planning Director shall issue permits to property owners to remove trees only if one or more the following conditions are met:

- a. Sufficient trees are preserved:

- i. along natural drainageways and water areas to preserve riparian habitats and to minimize erosion;
 - ii. along property lines to serve as buffers to adjacent property; and
 - iii. in sufficiently large areas and in dense stands.
- b. The trees to be removed have been determined by a certified arborist to be unsafe to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings. If an imminent hazard exists, as established by inspection, the Planning Director may issue an emergency permit for removal. The emergency removal shall be accomplished in accordance with ISA standards and be the minimum necessary to eliminate the imminent danger.
- c. The trees to be removed are dying or weakened by other injury to an extent that preservation is inadvisable.
- d. The removal is necessary to allow reasonable development or redevelopment of the property in accordance with the permitted uses and standards of the underlying zone. If the removal is connected with development or redevelopment, the applicant shall demonstrate that any alternative designs that would reduce the extent of tree removal and pruning were considered. The approval authority may deny the application if other alternative designs are possible, which result in greater tree protection without significantly increasing the cost of the development sought by the applicant. No permit shall be issued unless existing trees are protected as follows:
- i. along natural drainageways and water areas to preserve riparian habitats and to minimize erosion;
 - ii. along property lines to serve as buffers to adjacent property; and
 - iii. where consistent with development, in sufficiently large areas and in dense stands.

3. Conditions of Approval

The approval authority may attach conditions of approval to ensure compliance with this section including but not limited to a requirement to plant and maintain one or more replacement trees with a minimum

diameter of 2 inches dbh. In such case, the full cost of replacement shall be borne by the permittee.

16.32.060 Significant Trees and Groves of Trees

A. Significant Tree Designation

1. Inventory of Potentially Significant Trees and Groves of Trees

a. The Planning Director shall conduct an inventory of trees and groves of trees within the city that meet the criteria for designation as significant. Inventory information shall include size, location, general tree condition, and maintenance needs of the trees listed. The public shall be encouraged to provide recommendations for inclusion in the inventory.

b. The Planning Director shall update the inventory periodically.

2. Designation of Significant Trees

a. The City Council, Parks and Recreation Board, Planning Commission, Historic Review Commission, a property owner, or any other person, organization, or legal entity may recommend to the City that a tree be designated as a significant tree. If a person other than the property owner recommends designation, the property owner will be asked whether the property owner would agree to the designation. If the property owner does not agree, no further action will be taken.

b. If the tree proposed for designation as significant is included on the inventory of potentially significant trees and the property owner consents to the designation, the Planning Director will designate the tree as a significant tree.

c. If the tree proposed for designation has not been included in the inventory of potentially significant trees, the Planning Director shall determine whether the tree meets the criteria for designation as significant. If the tree meets the criteria for designation and the property owner consents, the tree will be designated as a significant tree. The Planning Director shall create and maintain an inventory of all trees that have been designated as significant. The inventory of potentially significant trees and the inventory of trees that have been designated as significant may be combined in a single document.

3. Designation Criteria

a. Individual Significant Trees

An individual tree shall be considered significant based on one or more of the following findings:

- i. The tree has a distinctive size, shape, age, or location that warrants significant status.
- ii. The tree has special botanical significance as a specimen in the Milwaukie area and larger Portland Metropolitan area.
- iii. The tree is significant due to a functional or aesthetic relationship to a natural resource, such as trees located along stream banks or other wildlife habitat.
- iv. The tree is significant based upon its association with historic figures, properties, or general growth and development of the city, as determined by the Historic Review Commission.

b. Significant Groves of Trees

A grove shall be considered significant based on one or more of the following findings:

- i. The grove is relatively mature and is in a state of health that warrants preservation.
- ii. The grove has a purity of species composition, is of rare or unusual nature, and/or is an exceptional example of a type of forest such as riparian or woodland.
- iii. The grove is comprised of a unique species, including but not limited to, Oregon White Oak, Giant Sequoia, Dogwood, and other native and nonnative species.
- iv. The grove has a crucial functional and/or aesthetic relationship to a natural resource or wildlife habitat.
- v. The grove has historic significance, based on its association with historic figures, properties, or general growth and development of the city, as determined by the Historic Review Commission.

- vi. The grove is over 60 years old, determined by such indicators as:
 - (a) The age of the buildings in the area.
 - (b) The bark character of the tree.
 - (c) Information obtained from residents of the area.
 - (d) The ring counts of nearby stumps for comparison of age.
- vii. The grove has aesthetic qualities worth preserving based on its visibility from the right-of-way or public streets.
- viii. The grove has a significantly high value as determined by the ISA's "Guide for Plant Appraisal."

B. Removal of Significant Trees

1. Applicability

This Section applies only to removal of significant trees, as designated in accordance with Section 16.32.060(A).

2. Review Process

- a. An application for removing a significant tree shall be submitted to the Community Development Department on forms provided by the Planning Director.
- b. The property owner or authorized agent must submit information on the location and size of the parcel; a scaled site plan showing the location, type, and size of the tree(s) in question; and the reason for the desired action.
- c. If justification for removal is based upon the health of the tree, and a visual inspection by the Planning Director cannot establish that the tree or grove is dead or dying, the applicant shall submit a report from an ISA-certified arborist attesting to the condition of the tree or grove.
- d. Applications will be processed as a Minor Quasi-Judicial review under Milwaukie Zoning Ordinance Section 1011.3. The applicant must comply with the notice, marking, and permit display requirements of Section 16.32.050(B)(1).

2. Approval Standards

The application for removal of a significant tree, for reasons other than the health of the tree, shall be approved if the request satisfies one or more of the following criteria:

- a. That the tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or adjacent sites, and that extraordinary maintenance is required to prevent damage to such improvements or property.
- b. That the tree has lost its significance due to damage from natural or accidental causes, or for some other reason it can be established that it is no longer of significance.
- c. The tree to be removed has been determined by a certified arborist to be unsafe to pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings. If an imminent hazard exists, as established by inspection, the Planning Director may issue an emergency permit for removal. The emergency removal shall be accomplished in accordance with ISA standards and be the minimum necessary to eliminate the imminent danger.
- d. The removal is necessary to allow reasonable development or redevelopment of the property in accordance with the permitted uses and standards of the underlying zone. If the removal is connected with development or redevelopment, the applicant shall demonstrate that any alternative designs that would reduce the extent of tree removal and pruning were considered and that alternative designs are impossible or impracticable. No permit shall be issued unless existing trees are protected as follows:
 - i. along natural drainageways and water areas to preserve riparian habitats and to minimize erosion;
 - ii. along property lines to serve as buffers to adjacent property; and
 - iii. where consistent with development, in sufficiently large areas and in dense stands.
- e. If the tree is dead or it is determined by an ISA-certified arborist that it cannot be saved, the application shall be approved.

C. Major Pruning of Significant Trees

1. Applicability

This Section applies only to major pruning of significant trees, as designated in accordance with Section 16.32.060(A).

2. Review Process

- a. An application for major pruning of significant trees shall be submitted to the Planning Department on forms provided by the Planning Director.
- b. The property owner or authorized agent must submit information on the location and size of the parcel; a scaled site plan showing the location, type, and size of the tree(s) in question; and the reason for the desired action. The information and reasons shall address any appropriate criteria. The City shall require the verification of any stated tree illness by an ISA-certified arborist, paid at the expense of the applicant.
- c. Applications for Major Pruning shall be processed as a Type I Administrative review under Zoning Ordinance Section 1101.1. The applicant shall comply with the notice, marking, and permit display requirements of Section 16.32.050(B)(1).
- d. If an imminent hazard exists, as established by inspection, the Planning Director may issue an emergency permit for major pruning without a hearing before the Planning Commission. The major pruning shall be conducted in accordance with ISA standards and be the minimum necessary to eliminate the imminent danger.

3. Approval Standards

An application for major pruning shall be approved if the major pruning is conducted in accordance with ISA standards and the request satisfies one or more of the following criteria:

- a. It is determined by the arborist that the tree is diseased and major pruning, according to current ISA standards, is necessary to save the tree.
- b. The tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject

site or adjacent sites, and major pruning is required to prevent damage to such improvements or property.

- c. That the tree has been determined by an ISA-certified arborist to be unsafe to the pedestrian or vehicular traffic, threaten to cause disruption of public services, or pose a safety hazard to persons or buildings. Major pruning is necessary to resolve the problem.

D. Conditions of Approval

- 1. All permits for removal or major pruning of significant trees shall be issued subject to the following conditions:
 - a. Trees shall be removed or pruned following pruning standards of the ISA. Those standards shall be provided to all applicants by the City at the time the permit is issued.
- 2. The approval authority may attach conditions of approval to ensure compliance with this section including, but not limited to, a requirement to plant and maintain replacement trees for all trees removed. In such case, the full cost of removal shall be borne by the owner.

16.32.070 PENALTIES AND MITIGATION

A. Voluntary Compliance and Penalties

Any violation of the terms of this title, or conditions of approval of any permit issued, is a civil infraction. Each calendar day of violation is a new infraction. Upon discovery of a violation, the City shall notify the violator of the process available for voluntary compliance and the penalty provisions of this Section. The City shall offer the violator an opportunity to enter into a voluntary compliance agreement. If the violator fails to enter into a voluntary compliance agreement, the City may commence proceedings against the violator under the civil infraction procedures of Chapter 1.08 of this Code and take any other action against the violator allowed by law.

B. Nuisance Declared.

The violation of any provision of Chapter 16.32 is a nuisance and may be abated pursuant to Section 8.04.

C. Compliance Process

- 1. Voluntary compliance process. A voluntary compliance agreement shall contain the following:

- a. a commitment by the violator to submit and carry out a tree replacement agreement approved by the Planning Director;
 - b. payment of a fine. The fine will be calculated based upon staff time devoted to the investigation of the violation and review and approval of the voluntary compliance agreement and related compliance inspections; and
 - c. appropriate mitigation measures as described in subsection 16.32.070(C).
2. Penalties. Any person, firm, or corporation causing the removal of a tree protected by this title who does not enter into a voluntary compliance agreement may be required to pay a forfeiture of \$500 or the equivalent of 3 times the appraised value of the tree, whichever is greater. Any judgment in favor of the City in a civil infraction proceeding under this section shall include an award of attorney fees.

D. Mitigation

1. Mitigation shall be required if:
 - a. Any tree is removed or seriously damaged in violation of this title.
 - b. A tree is removed or seriously damaged based on a permit application that contained false or misleading information.Mitigation may be required as a condition of permit issuance.
2. Mitigation may take one or more of the following forms:
 - a. The planting of one or more trees of a type and size approved by the City. If the mitigation is required to compensate for removal of a tree, the replacement shall result in equal or greater relative value. The value can be no less than the cost of the tree replacement as specified by the ISA's "Guide for Plant Appraisal".
 - b. The replacement value of the removed tree to be paid to the City. Such funds shall be used by the City to plant new trees on public property. The value shall be no less than as specified in the ISA's "Guide for Plant Appraisal."
 - c. The planting of one or more trees of a species acceptable to the City, in which the cumulative caliper size of the replacement trees equal the cumulative caliper size of the removed tree(s).

3. Mitigation shall be completed within one year. The owner shall be responsible for the continued health of the new tree(s) including regular watering and maintenance.
4. No final inspection shall be scheduled and no occupancy permit shall be issued for any property where mitigation has been required for violation of this Chapter if the mitigation, other than ongoing care, has not been completed. Any land use approvals for property where mitigation has been required but not completed shall condition issuance of occupancy permits on completion of the mitigation.

E. Other Penalties

Violations of this Title are subject to the mitigation requirements described above plus any penalties set forth in the Milwaukie Municipal Code. The remedies set forth in this Chapter are cumulative and do not limit the City from taking any other legal action.

RECOMMENDED ACTION:

Amend Chapter 2.16.010(G) to give the Planning Commission authority to consider and conduct public hearing for tree pruning and removal permits. See recommended language below.

Chapter 2.16

PLANNING COMMISSION*

Section 2.16.010 Established--Purpose.

The planning commission is lawfully established for the purpose of reviewing and advising on matters of planning and zoning according to the provisions of the comprehensive plan, zoning ordinance, and other planning implementation documents. The commission shall be responsible for, but is not limited to, the following activities:

- A. Keeping current the comprehensive plan and implementing ordinances for the city and urban growth boundary as applicable;
- B. Preparing as necessary legislation that will implement the purposes of the comprehensive plan;
- C. Recommending to the city council plans for regulating future growth, development and beautification of the city, and to review and recommend on regional issues and concerns;
- D. Recommending and making suggestions to the council concerning;
 - 1. The laying out, widening, extending, and locating of public thoroughfares, parking of vehicles and relief of traffic congestion,
 - 2. Betterment of housing and sanitation conditions,
 - 3. Establishment of districts for limiting the use, height, area, bulk, and other characteristics of buildings and structures related to land development,
 - 4. Protection and assurance of access to incident solar radiation, and
 - 5. Protection and assurance of access to wind for potential future electrical generation or mechanical application;
- E. Recommending to the city council plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants' sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities;
- F. Recommending to the city council plans for promotion, development and regulation of industrial and economic needs of the community with respect to business and industrial pursuits;

G. Considering and conducting public hearings on the comprehensive plans and zoning ordinances and similar matters which may include, but are not limited to, zone changes, conditional uses, subdivisions, partitions, and tree pruning or removal permits.

H. Performing all other acts and things necessary to properly carry out the provisions of ORS Chapter 227 that are not specifically addressed by local ordinances and procedures; and

I. Such other activities as the council may assign. (Ord. 1802 § 1 (part), 1996)

Section 2.16.020 Membership--Qualifications.

A. The commission shall consist of seven members appointed by the council, no more than two of whom may be nonresidents. No more than two members shall be engaged in the same kind of occupation, business, trade or profession.

B. No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individual, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. (Ord. 1802 § 1 (part), 1996)

Section 2.16.030 Statement of economic interest.

Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission. (Ord. 1802 § 1 (part), 1996)

RECOMMENDED ACTION:

Add sections to Chapter 2.12.010 to give the Parks and Recreation Board authority to oversee master planning and other long range planning actions related to Urban Forestry. See recommended language below.

Chapter 2.12**PARK AND RECREATION BOARD*****Section 2.12.010 Established--Purpose.**

The park and recreation board is established for the purpose of advising and making recommendations to the city council regarding Milwaukie's recreation programs and facilities. The board shall be responsible for, but is not limited to, the following activities:

A. Surveying recreation and leisure time needs through the neighborhood associations and recommending the roles the city should or ought to pursue in meeting such needs;

B. Serving in an advisory capacity to the city council on the location, service areas, siting, standards, class, number and needs for existing and future parks within the community;

C. Identifying desirable future park locations consonant with established plans and standards;

D. Ensuring the development of a master plan for each park site;

E. Exploring the feasibility of meeting community park and recreation needs through consolidating grounds and programs with local schools;

F. Identifying park acquisition and development priorities and recommending methods of financing;

G. Establishing, evaluating and monitoring maintenance standards of city parks and advising council of the status; and

H. Developing an Urban Forestry Master Plan for review and adoption by the City Council and recommending amendments to City regulations related to the Urban Forestry Master Plan.

I. Recommending actions relating to planting and maintaining trees in parks and public street right-of-ways and determining the appropriate types of trees to be planted in parks and right-of-ways.

J. Working with other City boards, commissions, and departments; other agencies; volunteer organizations; and individuals to distribute educational and promotional material regarding the protection, maintenance, removal, planting, and beneficial effects of trees.

K. Such other activities as the council may assign. (Ord. 1801 § 3 (part), 1996)

Section 2.12.020 Membership--Qualifications.

The board shall consist of seven members appointed by the council, all of whom must be city residents. Whenever possible, persons will be appointed who have demonstrated interest, experience, or expertise in some area of parks, recreation or related services. (Ord. 1801 § 3 (part), 1996)

RECOMMENDED ACTION:

Add Section 17.28.020(Q) "Street Trees" as a new design standard for subdivisions.

**TITLE 17 — MILWAUKIE MUNICIPAL CODE
SUBDIVISIONS**

CHAPTER 17.28

DESIGN STANDARDS

17.28.020 Streets.

Q. Street trees. Street trees shall be planted by the developer within the planting strips of any new subdivision or partition in accordance with:

- 1. The Urban Forestry Master Plan and any manual prepared pursuant to the Urban Forestry Master Plan.**
- 3. Standards and planting permit requirements of Milwaukie Municipal Code Section 16.32.040(B) and Zoning Ordinance Section 1600.**
- 4. The timing for installation and security requirements of other public improvements as prescribed in Section 17.20.060.**

RECOMMENDED ACTION:

Replace Section 17.32.040(F) with new language to be consistent with the new Urban Forestry regulations.

**TITLE 17 — MILWAUKIE MUNICIPAL CODE
SUBDIVISIONS**

CHAPTER 17.32

PARTITIONING

Section 17.32.040 Flag lots.

Flag lots may be created by partitioning under the following conditions:

~~F. Tree Mitigation~~

~~All trees 6 inches or greater in diameter, as measured at the lowest limb, or 4 feet above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least one evergreen or deciduous tree, of a species known to grow in the region, shall be planted at an appropriate ratio as mitigation for tree removal. At planting, deciduous trees shall be a minimum of 2 inch caliper and evergreen trees shall be a minimum of 5 feet tall. This standard shall control until the City adopts an urban forestry ordinance to superseded this provision.~~

F. Tree Removal and Replacement

If tree removal or major pruning is proposed as part of an application for flag lots, the tree removal or major pruning shall be consistent with Zoning Ordinance Section 1605.

RECOMMENDED ACTION:

Add Section 17.36.020(K) as a new required improvement for subdivisions.

**TITLE 17 — MILWAUKIE MUNICIPAL CODE
SUBDIVISIONS**

IMPROVEMENTS

Sections:

Section 17.36.020 Required Improvements.

If any part of the subdivision is within the city, the following improvements shall be installed at the expense of the subdivider.

K. Street Trees.

Street trees shall be installed in accordance with the Urban Forestry Master Plan and any manual prepared pursuant to the Urban Forestry Master Plan.

RECOMMENDED ACTION:

Add Section 17.40.030 “Tree Removal” as a new Environmental Standard for subdivisions. The new standard requires compliance with the Tree Protection and Tree Removal requirements outlined in Zoning Ordinance Section 1605.

**TITLE 17 — MILWAUKIE MUNICIPAL CODE
SUBDIVISIONS**

Chapter 17.40

ENVIRONMENTAL STANDARDS

Sections:

Section 17.40.010 Environmental protection.

Developments approved through this title must conform to the requirements of the environmental protection subpart of the community development ordinance (Title 16 of this code). Particular note should be made regarding requirements relating to excavation in landslide-prone areas. (Ord. 1440 § 9.01, 1979)

Section 17.40.020 Solar energy.

Street and orientation of lots shall be designed to take maximum advantage of solar energy potential. (Ord. 1440 § 9.02, 1979)

Section 17.40.030 Tree removal.

If tree removal or major pruning is proposed as part of an application to subdivide or partition property, the tree removal or major pruning shall be consistent with Zoning Ordinance Section 1605.

RECOMMENDED ACTION:

Adopt a new Zoning Ordinance Section 1600 “Urban Forestry.” This ordinance works together with Municipal Code Section 16.32 to provide standards and procedures for protection of trees during development.

**SECTION 1600
URBAN FORESTRY**

1601 PURPOSE

The purpose of this Section is to provide standards and procedures relating to street trees and to the protection of trees at the time of development.

1602 APPLICABILITY

The standards and procedures of Section 1600 shall apply to all new development and redevelopment for which a building permit is required.

1603 DEFINITIONS

The definitions of Milwaukie Municipal Code Chapter 16.32 apply to this Section.

1604 STREET TREES

Street trees are required for any construction, renovation, expansion, or alteration of an existing use or portion of a use that is adjacent to an improved public right-of-way and has a development permit value that exceeds 50 percent of the assessed value of the land. Permit value shall be determined by the Building Official. A street tree planting permit must be obtained as provided in Milwaukie Municipal Code Section 16.32.040(B). The location and spacing of street trees shall be consistent with the Milwaukie Urban Forestry Master Plan, once adopted, and any street tree manual adopted under the Urban Forestry Master Plan. Existing street trees may be used to meet the requirement, if the location and spacing is consistent with the Milwaukie Urban Forestry Master Plan and any street tree manual adopted under the Urban Forestry Master Plan.

If the development permit value is less than 50 percent of the land value, then an amount equal to at least 2 percent of the development permit value shall be utilized to meet the street tree requirements.

1605 TREE REMOVAL AND PROTECTION

1605.1 Tree removal permit

A. Applicability

1. This Section applies to the removal and major pruning of trees 6 inch dbh or larger during any construction, reconstruction, renovation, expansion, or

alteration of an existing use or structure for which a building permit is required, except as exempted in 1605.1.A.2.

2. The following activities are not subject to Section 1605:
 - a. The removal and major pruning of 3 or fewer trees with a dbh of less than 18 inches.
 - b. The removal or major pruning of significant trees and significant groves of trees. Significant trees and significant groves of trees may be removed or subjected to major pruning only in compliance with Section 16.32.060 of the Milwaukie Municipal Code.
 - c. Activities relating to trees in right-of-ways and public places. Trees in right-of-ways and public places are subject to Milwaukie Municipal Code Section 16.32.040.

B. Application information

If tree removal is proposed as part of an application to develop or redevelop property, the applicant shall submit the following information as part of the application:

1. A site plan showing the location, size, and species of all trees of 6-inch dbh or greater and any significant tree or grove. Groves of trees to be protected do not need to have each tree individually delineated; however, the number of trees in each grove shall be included. The site plan shall indicate which trees are to be preserved and which trees are to be removed.
2. Information justifying any tree removal, including, but not limited to, building or access locations, parking areas, existing development on the property, relevant easements, utility locations, and grading.
3. A protection plan for all trees proposed to be preserved consistent with the standards of 1605.2.B, which indicates how those trees or groves will be protected from soil compaction, construction activities, grade changes, and soil erosion. This protection plan may be part of the landscape plan incorporating other landscape requirements.
4. Where the trees proposed for removal cannot be maintained because of their health, the Planning Director may request the verification of a qualified arborist, at the property owner's expense, to confirm the health of the trees.

C. Review process

The approval authority shall be the decision-making authority for the related development application. A tree removal permit pursuant to Section 16.32.050 of the Milwaukie Municipal Code must be obtained for the removal or major pruning of trees subject to this Section. Tree removal and major pruning in connection with development must comply with both this Section and Section 16.32.050 of the Milwaukie Municipal Code.

D. Conditions of approval

The approval authority may attach conditions of approval which include, but are not limited to:

1. Retaining trees along natural drainageways and water areas to preserve riparian habitats and to minimize erosion.
2. Retaining trees along property lines to serve as buffers to adjacent property.
3. Retaining trees in sufficiently large areas and in dense stands.
4. Relocating the proposed structure(s) to retain trees, if the relocation can be accomplished without increasing costs to the proposed development by more than 2 percent of the total improvement value, excluding land cost.
5. Planting and maintaining replacement trees with a minimum diameter of 2-inch dbh, unless a different size requirement is specified by the approval authority.

1605.2 Protection of trees during development**A. Applicability**

Protection measures shall apply for all trees which are to be retained in areas immediately adjacent to construction. The applicant shall submit a plan, consistent with the terms of any tree permit approval, showing required protection measures prior to issuance of building permits. When construction is proposed within a significant grove, or when significant trees are located within a site proposed for development, a plan outlining these protection measures shall be prepared by an ISA-certified arborist.

B. Protection measures

Protection of trees to be retained shall be accomplished by, but not limited to, the following:

1. Restricting the filling, excavation, stacking or storing of any materials or equipment, or compacting of the earth in any way within the area defined by the drip line of any tree to be retained.
2. Erecting and maintaining fencing, or placing hay bales on the drip line, to protect roots. In addition, the applicant may provide supervision whenever equipment or trucks are moving near trees.
3. Where the grade level is to be raised adjoining a tree to be retained, the applicant may construct a dry rock wall or rock well around the tree. The diameter of this wall or well shall be greater than or equal to the tree's drip line.
4. Restricting the installation of impervious surface material within the area defined by the drip line of any tree to be retained.

5. Restricting the lowering of the grade level around any tree to be retained within the greater of the following areas:
 - a. The area defined by the drip line of the tree.
 - b. An area around the tree equal to 1 foot in diameter for each 1 inch of tree caliper.
6. Pruning of branches and roots, fertilizing, and watering as appropriate for any trees to be retained.
7. Excavations and driveways shall not be located within 6 feet of any tree, or within 80 percent of the distance between the drip line and the tree trunk, whichever is the greater distance. During such excavation or construction, this distance shall be protected and no temporary building, building material, vehicle, or debris shall be kept within this area. Exceptions to this distance may be approved upon a favorable report by a certified arborist.
8. Before starting the erection, repair, alteration, or removal of any building or structure within the drip line or designated distance from a tree that is to be retained, there shall be a sufficient fence to prevent injury to the tree from construction activity (directly or as a result of soil compaction in the root area).

1606 DENSITY TRANSFER AND CLUSTERING

1606.1 Density transfer defined

Density transfer is the result of the authorization, through a City land use approval for the increase of allowable density on one lot through the placement of density restrictions on another lot. The lots affected by the density transfer shall be treated as a single lot for zoning regulation purposes, and the density of the use on the combined lots may not exceed the zone limitations.

1606.2 Clustering defined

Clustering is the placement of various elements of a development on a single lot in an arrangement that would not otherwise be permitted by the zone limitations.

1606.3 Approval criteria

Density transfer and/or clustering may be approved if the following requirements are met:

- A. tree removal is not feasible or is less desirable than preservation, taking into account any adverse impacts from the density transfer;
- B. the natural resource value of the trees is such that removal of the trees is not desirable;
- C. the density standards of the primary zone are not exceeded for the overall properties involved; and

- D. the treed area is preserved by:
 - 1. designation as a common area to be protected as a natural area by a home owner's association or enforceable restrictive covenants not subject to modification without approval of the City; or
 - 2. other measures offering equivalent protection as approved by the City Attorney.

1606.4 Review process

The Planning Commission shall review applicable development requests involving density transfer and clustering, in accordance with Section 1011.3.A., C, and E.

1606.5 Conditions of approval

The Planning Commission may attach conditions to achieve the purposes of Section 1600 and Milwaukie Municipal Code Section 16.32. All density transfer decisions shall include a condition requiring a notice to be recorded for each separate lot, limiting the use and densities in accordance with the approvals.

1607 VARIANCES TO PROTECT TREES

1607.1 Setback variances to protect trees

A variance of up to 50 percent of the side, front, and/or rear yard setback requirement may be authorized by the approval authority if necessary to retain trees or groves of trees.

1607.2 Approval criteria

The approval criteria for a variance under this Section are:

- A. there are no feasible alternatives to the variance and the variance is the minimum variance necessary to allow the applicant to retain trees or groves of trees, while granting the use of the property in a manner allowed by the standards of the primary zone;
- B. the variance will not create significantly adverse effects on other properties; and
- C. the variance is required to adequately protect the natural resource value of the trees.

1607.3 Review process

The procedures of Section 703 and 704 shall be applied to a request for a variance under this Section.

1607.4 Conditions of approval

The approval authority may attach conditions necessary to achieve the purposes of Section 1600 and Milwaukie Municipal Code Section 16.32.

Comments from Open House (January 19, 2000)

Name unknown	Less regulation, less government! This is an insult to my intelligence. How dare anyone suggest I need to ask permission. Please give us credit for being able to think. We are already overburdened with regulation. Private property is not the real issue.
Name unknown	I have lived in Milwaukie since 1946 and have a number of trees that need pruning every year. I am not in a position to pay every time they need pruning. I live on a fixed income. I am sorry but I don't agree with this proposal.
Name unknown	What is done if big tree is on adjoining lot and owner doesn't want to get permit to prune? Permit application process seems pretty complicated. Couldn't interns/volunteers be used to process applications to keep costs down? What will be done with permit fees? What is going to be done in planting of new trees?
Name unknown	I do not appreciate the City saying what we can do on our own property. The cost of the permit is bad. Most citizens know what is right or wrong on their own property.
Name unknown	You need to stop and first identify the problem: i.e. how big is it and address it specifically – development. This is yet another example of government interfering with my rights as a property owner. I am not a child and do not need to ask permission every time I want to do something. This is still the USA. If development is the problem, then work that issue!
Name unknown	Removal of trees larger than 18 inches should also have landscaping consideration if nothing will grow under a cedar tree. Should I be stuck with no grass or flowers because a tree I don't like is there?
Name unknown	I love trees and do everything to keep them growing and healthy. But, I don't like being told what to do or how much to pay for a permit to do anything on my property!
Name unknown	Don't tell me what I can or can't do with my trees.
ident	I would like to see data (pilot studies, cased examples, etc.) regarding the big-term survivability of your policy and the affected trees. Also, your removal policy of "reasonable development or redevelopment of the property" is nebulous at best. Who decides that? What alternate tree-saving designs are there that do not add a lot of cost of us, the landowners? Also, this forum is completely unacceptable. You are presenting your ideas to a group but no facilitating group feedback. Basically, you are advertising your plan while ignoring the "silent majority" by this meeting. Many people do NOT feel comfortable talking one on one about this subject. It is a public issue. It needs a public discussion.
Joe Atkerson	Anything that has to do with private property needs to have a city vote.
Kathy Carlman	Some of us neighbors have fruit trees and flowering trees and like to keep them short. The pruning permit is really bad – to keep us from that. Also, some of the older trees are on property lines and not too healthy and the neighbor refuses to remove them. Having a permit will make it even harder. I don't like this permit idea at all.
Bev Carlson	No restrictions without a vote. I don't want anyone regulating trees. This should be left up to the homeowner. Why not give out free trees instead of telling us what we cannot do and charging fees. First, don't have taproots that grow too tall for residence safety. California limits tree heights. Would you like me to gather more information about this?
Barbara Edmonds	In your new plan I think it would be a good idea to consider the prevention of problems that might develop in the future. Perhaps, when a building permit is issued, the "urban forester" or staff could advise the homeowners/builders about planting too close to the property line. A few years down the road some trees get way out of hand and the neighboring property is bothered by too much shade, unwanted leaves/debris, or even dangerous limbs. Advice about tree growth, potential size, root stability, etc. would pay off in fewer future problems.
Chris Frick	A bureaucratic attempt to take away our civil rights in the name of beautification. Planting trees on city property is already established. It is the City's business to take care of it. Now they want to take away my rights to control my trees, which I do. This innocent sounding "urban forest legislation" will be very expensive.

Urban Forestry Contacts and Comments

Last revised January 31, 2000

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Pat Greene	I am very supportive of this proposed regulation. One concern I have is for the thinning of stands to promote native species. It would be useful to spell out those circumstances in which entire plant communities would be managed. I would love to volunteer my 200 year-old oak tree as a significant tree – open grown with a full crown and no irrigation. I am a landscape architect (with the Forest Service) and would love to volunteer – so call me. It would be wonderful if an educational and/or incentive element could be included in this effort. People prune their trees so badly it would be better to just cut them down. We have a chance to leave an important, significant biological legacy for generations to come.
Paul Hawkins	You're barking up the wrong tree. I know – I own two acres of them.
Larry Hultquist	I am concerned for all the important issues ruining our city because you are so concerned with a love for trees. My mailbox keeps getting robbed. Last week some "hot wheels kids" ran over four of them. They drive past late at night with stereos blasting. They race through red lights but let's keep the livability of Milwaukie.
Maggie Hultquist	I do not believe the City has the right to tell people they cannot cut or trim trees on their own property. We have paid for this land and we pay property taxes and you need to mind your own business. If it's city or state owned, then you can do what you want. I love to have trees around but, if I choose to cut one down for whatever reason, I have the American right to do so.
Edith Jones	Proposals such as this should be put to the vote of the people. It's not fair that others tell us what we may do with trees on our property. Our property is very deep with many trees that need to be cut because of disease and age. Why should we be made to pay for a permit to improve our property?
Shawn Means	Why is this needed? Do we need such a regulatory burden to get "tree city" status? What is the benefit to me as a property owner of this regulation? Why should I agree to give the City say-so in how I choose to landscape my property.
Steve Melnichuk	This program should deal only with public property and not private property. Also, an final decisions by planner and, hence, city council, must be approved by a public vote!!
Teri Melnichuk	We are totally against this program. We were told by a staff member that this program was developed because citizens were concerned about developers. Make programs for developers and leave us alone!
Shane Moncrieff	Has the City studied the impact to the budget for this program? The public should know the budget effect for such items as: permitting office; regular staff for approval process; significant tree inventory; enforcement; maintenance of public land. Please publish available information. Please provide better explanation of the potential impact to my property value because of this regulation. What has happened to the property values of other similar communities that have adopted similar regulations? Circumstances to apply for a permit are too restrictive. I live on one acre by Kellogg Creek. This property contains many trees. A particular grove of fruit trees requires pruning each year (maintenance). Permitting would be a time consuming process. Limit S/B raised to 10 or more in a calendar year for 10,000 – 50,000 properties.
Donald & Sally Myers	We have been homeowners in Milwaukie since 1962. We and our neighbors have been maintaining our trees without any help? from the city all these years and we feel that these regulations would infringe on our constitutional rights, as we are the ones that own the property and pay taxes on our property including ones to the City of Milwaukie. Do not tell us what to do on our property.
Ray Nuding	I am a supporter of having trees in our neighborhood. I have planted many trees on my property as well as taken trees down that have died or blown over by windstorms. This proposal is way too excessive. There are times when I have neglected pruning my fruit trees and to catch up it is necessary to cut more than 20 percent in a year. I would thin' that fruit trees should be exempted from this proposal. It is my understanding that "totally dead" trees would also need a permit to remove them...maybe they could (should) be exempted also.

Urban Forestry Contacts and Comments

Last revised January 31, 2000

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ly Reese	I think allowing the trees to grow is a great idea. There are several old trees in Milwaukie and I do not feel a committee should determine which trees should come down. I believe contractors who do new building should get permission but private parties should be allowed to make their decisions on what should happen on their own property. If some people in Milwaukie want to keep the trees, why don't these people pay the permit fees? I for one can't always come up with \$25+ for a permit, plus pay for cutting down or pruning a large tree. I like the trees and wouldn't cut any down without good reason, but I don't think the government should be involved with this.
AL Ritchie	I am not aware of the Milwaukie public being unable to manage their trees. I also find it difficult to perceive city hall being concerned with aesthetics at the neighborhood level. As I write this I can look from my front window down Howe St. laden with trash and garbage.
Francis Stohosky	The private property clause in this ordinance will be fought. It is not necessary, and it is unwanted. I did not buy my property to have it regulated this way, and I will not bear the burden of/for others. This will be fought legally, financially, and by recall petition. Remove private property from the ordinance (continued.)The city has indicated it cannot establish a value or determine the effect on property values. I can. It will be significant and I will expect direct reimbursement from the city. If the city wishes to protect trees from development, the city should regulate the development – NOT the people who refuse to develop their property. Kill this. Remove private property from the ordinance. If the City wishes to "save trees", the City can buy the property. Reduce infill (housing – recall the last zoning change). I will not bear the burden for this. I will legally challenge it. I will hold the City accountable for all liability and loss of use.
Susan Trotter	I believe that the proposed regulations impinge too greatly on individual property rights. I agree with statements that apply to trees on public right of way and City property and removal of trees when seeking a building permit. I disagree with establishing a permit process for pruning and removing trees as needed on private property. I have planted the trees on my property and accept responsibility for their maintenance.
Patty Wisner	I will comment in more depth after I've read the report more thoroughly, but my initial reaction is that this ordinance is too invasive for the average residential property. It "micro manages" personal property in an unnecessary way. It is too restrictive to personal property owners. Permit application fees are way too high - \$5.00 max would be reasonable. We need regulation to direct big developers and prevent them from destroying stands of trees. Pruning on private property should not be regulated.
John Wyatt	Trees on my property belong to that property. I am responsible for the care and maintenance of them. Unless the City plans to assume that responsibility, stay out of my business.
Cathy Zacharias	For the most part, I am all for saving the trees. I think it is great that Milwaukie is taking this on but I have some major concerns. We have many trees 18" in diameter and many need pruning. I didn't read anywhere as to how many trees could be taken out or pruned per permit. Is there a limit? 2. An arborist must determine whether or not a tree can be taken out. Who pays for the arborist to come out? 3. Where does the money for the permit go? What do you do with the money? 4. If I decide to add on to my house at a later time and I have many trees to be taken out (18" or significant or both)...is there a chance I would be declined the permit in order to preserve the trees?
Ron Zacharias	This idea sucks. The government trying tell us what to do. Their fingers into everything. The homeowner can't do anything by himself. Got pay tree arborist to do the job.

Comments from Phone/Office Contacts

Name unknown	Hung up before being transferred.
Name unknown	Request that regulations be withdrawn.
Billy	Concerned with permit to prune every year.
Bonnie	What to do re: "Wild Trees."
Rene	Questions re: current usage/tree regulations.
Tony	Question about when regulation will take effect. Has a problem tree he wants down.
David Aschenbrenner	Compared to other communities.
Linda Fuentes	Thought overall proposal is reasonable. Concerned about regulation of single trees.
Pam Hahn	Concern with when ordinance would be passed.
Walt Haynes	Wants option.
Lois Hearing	Pruning questions, time to get permit, cost of permit, what is routine maintenance, qualifications of tree company.
Gerry Kaylar	Want to be able to vote on issue. Seems to be concerned with pruning.
Gary Michael	Positive comments about the ordinance.
Gary Nebergall	Safety concerns. City needs to be sure that City respects professional arborists' opinions. Concerned about private property regulations. Would rather see us regulate public property only. Where is the liability for the City?
Andy Netter	Strongly opposed to the tree ordinance. Can take care of his own trees. Doesn't need City intervention.
Marcia Simonson	Emergency issue.
Francis Stohosky	Opposed to the private property part of regulations; not in keeping with mission statement from Tree Committee. Charge for the permit. Significant trees okay. App., it only to development. Liability issues.

Urban Forestry Contacts and Comments

Last revised January 31, 2000

Page 5

Comments from Letters

RB Adams	See staff report.
Marla J Almeida	See staff report.
Richard Cayo	See staff report.
Earl D Cook	See staff report.
Forris Frick	See staff report.
Gene & Margaret Hatlelid	See staff report.
Linda Hatlelid	See staff report.
Donald A Hughart	See staff report.
Larry Hultquist	See staff report.
Thom Kaffun Park Services Manager N Clack Parks & Rec Dist	See staff report.
Steve Merrin	See staff report.
Stanley H Walker	See staff report.
Mr & Mrs Edward West	See staff report.

LETTERS AND CORRESPONDENCE

1/11/2000

I have difficulty in visualizing
"majestic trees" with the new
traffic regulatory lights at the
entrance to our freeways &
expressways. Perhaps I am
missing a symbiotic relationship?

R.B. ADAMS
12316 SE REDWOOD
MILWAUKIE, OR.

RECEIVED**JAN 14 2000****PUBLIC WORKS**

Urban Forestry Project: ZA-99-02
City of Milwaukee Planning Dept.

6.1 56

1-11-00
RECEIVED

JAN 14 2000

PUBLIC WORKS

The best way to LEARN is from experience - Other Peoples - if you're SMART

I Lived And Walked in East Moreland for 17 years. TREES do not belong in PARKING STRIPS! 50 YEARS AGO people didn't know ANY better - but we should now. Roots from these TREES CAUSE CONSIDERABLE DAMAGE to SIDEWALKS AND PEDESTRIAN ANKLES.

Also the root system of a tree SPREADS NEARLY AS MUCH AS the upper branches. Lets put these roots under concrete + pavement?

FALL CLEAN UP + ICE + wind DAMAGE isn't much fun or cheap.

I don't believe the government should regulate cutting + pruning on PRIVATE PROPERTY. I can't see spending our TAX OR PRIVATE dollars for TREE PERMITS AND INSPECTORS! This is ONE more example of government EATING AWAY at our individual FREEDOM.

Sincerely

Marla J. Almeida

Marla J. Almeida
3507 SE Roswell Street
Milwaukee, OR 97222

01-31-00

6.1 57

URBAN FORESTRY PROJECT: ZA-99-02
CITY OF MILWAUKIE PLANNING DEPT.
6101 S.E. JOHNSON CR. BV. RECEIVED
MILW. OR

FEB 01 2000

CITY OF MILWAUKIE
PLANNING DEPARTMENT

LADIES & GENTLEMEN;

I'M SURE YOU HAVE FIGURED
OUT BY NOW THAT I AM TOTALLY
OPPOSED TO ANY TREE ORDINANCE
ON PRIVATE PROPERTY — BECAUSE
OF OBVIOUS REASONS.

✓ ENCLOSED ARE QUESTIONS I
WOULD APPRECIATE ANSWERS ON-
DATED JAN. 28-2000

✓ ALSO ENCLOSED ARE COPIES OF
MY FOREST "SET ASIDE" DESIGNATION
PLUS COPIES OF MY "FLYER".

✓ COPIES OF A LETTER I WILL READ
TO THE CITY COUNCIL — DATED
01-31-00

V.T.Y — Richard Capps



January 25, 2000

Richard Cayo
4203 SE Johnson Creek Blvd.
Milwaukie, OR 97222

Dear Mr. Cayo:

This letter is in response to questions I have heard in the community regarding the proposed Urban Forestry Ordinance. Some members of the public have expressed concern about how the ordinance may impact tree farms or other commercial nursery businesses. The proposed ordinance addresses this issue in the following way:

Commercial nursery businesses are listed as under the "Exemptions" section (Section 16.32.050(A)(2)). This means that tree removal activities in commercial nurseries are exempt from the tree removal permit requirement, provided that they meet the following parameters outlined in the proposed regulations:

The removal or major pruning of trees in a commercial nursery as part of the commercial nursery operation. A commercial landscaping business that grows its own trees for sale shall be considered a commercial nursery. The sale of one or more trees as timber for commercial timber value shall not be considered part of a commercial nursery operation.

I hope this clarifies this matter for you. If you have any further comments or questions, please do not hesitate to call me at (503) 786-7654.

Sincerely,

Alice Rouyer
Planning Director

THIS IS THE "DUMBEST"
LETTER I HAVE SEEN IN
MY LIFE.

cc: City Council
Dan Bartlett, City Manager
Martha Bennett, Assistant City Manager
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

01-31-'00

City of Milwaukie
10722 Main Street
Milwaukie, OR 97222

Re: City's new proposed tree ordinance

Dear Sirs or Madam:

My name is Richard Cayo. I live at 4203 SE Johnson Creek Blvd. in Milwaukie, Oregon. Approximately 7 years ago I planted trees on 2 1/2 acres of my land and applied for a "FOREST SET ASIDE" which I received. This lowered the taxes on my 2 1/2 acres of land. The reason I did this was:

#1 To keep the encroachment of civilization at bay as long as possible;

#2 If I needed to cut some of these trees and sell them to survive on in my old age I would have them available;

#3 If I didn't need to cut any of them to survive on, when I died the land and trees would be available for the city to purchase at a reasonable price and use as a park for future generations to use and enjoy.

BUT... after reading the proposed rules of the new tree ordinance, this land would become TOTALLY worthless because:

#1 Neither myself nor anyone else could cut any amount of the trees. They HAVE to be thinned out in the next 5 years for proper growth;

#2 No one in the world would buy my property since they could NOT cut any amount of the trees either to thin them or harvest them.

This makes the property absolutely worthless to anyone ---except to the city for a park--- for no payment. I have worked all my life for this nest egg.

You people leave me no choice but to go in and CUT all 600 of these trees BEFORE you pass this ordinance so I can protect the value of my land. You are totally defeating your purpose of saving the trees since my prediction is that this city will lose 1/8 to 1/4 of its present trees because of your upcoming ordinance. Many people will cut their trees before you people sign the ordinance. I KNOW this will happen because I've personally delivered over 500 of my attached flyers and after one has gone 8 to 10 blocks, the chain saws start firing up behind as we deliver these flyers.

Too bad for ALL of us. PLUS, too bad for thousands of beautiful trees.

I invite each and every one of you to come to my place and look at the ponderosa pines, cedars of Lebanon, douglas firs and western red cedars before I cut them down so you can see what you are accomplishing.

If you people pass this ordinance you are nothing but butchers and you are totally defeating the purpose of preserving our trees.

I also have 21 fruit bearing trees on my property and I suppose I'll have to get a permit every fall when I prune them.

All I can say about this is "THINK"!

Richard Cayo

P. S.

Without our voting on the subject -

It is inconceivable to me that anything as far reaching, intrusive, & expensive as this proposed tree ordinance would be if passed into law.

A lot of my buddies died in the Korean war & a lot more people died in the civil, 1st & 2nd world wars - the Vietnam & desert storm wars & I know they died trying to keep our system of us being able to vote on our future & not having someone like Hitler telling us what our future WILL be.

I feel VERY strongly the cities property owners should have the right to vote to see if the majority of people want a tree ordinance & not have this thing jammed down our throats.

RECEIVED

JAN 31 2000

PUBLIC WORKS

Jan. 28, 2000

Urban Forestry Project; ZA-99-02
City of Milw. Planning dept.
6101 S. E. Johnson Cr. Bv.
Milwaukie, Oregon.

Dear Sirs or Madam:

After reading your proposed tree ordinance I am appaled at what I see.

I would appreciate answers on the following:

- # 1 - Where is the " Grandfather Clause " exempting existing Forest Set asides & existing orchards, etc ?
- # 2 - How will the E S A (Endangered Species Act) and the N M F S (National Marine Fisheries Service act 4 (d) rule) affect this proposed ordinance ?
- # 3 - I here by request that the City comply with L C D C's Goal 4 and Goal 5 (copies attached)
- # 4 - On the green pages # 3 - who pays for the inventory of all the trees on our property ?
- # 5 - On the green pages # 4 (b) you refer to a certified arborist. Who chooses who that is & who will pay for this service?
- # 6 - 16.32.030 **Quote**; Any person who receives compensation for removing, pruning or trimming trees in the city of Milwaukie shall hold a valid State Landscape Contrs. license AND a city of Milwaukie business license - unquote.
SO - if I go next door & help my 80 year old neighbor trim her fruit treea & take down some wind damaged limbs that are still hanging in the tree & then shebakes me a nice apple pie for this - that means I have been paid for my services & I have to go to school & get a State Landscape Contractors License. I already have a Milwkie City License (which costs \$72.00 per year)
Why are these licenses necessary ?
- # 7 - 16.32.040 -2d Adjacent land owners should be notified - not just the chair of the neighborhood assoc.
3-(d) Who determines when the tree has lost it,s value ?

3 - (f) says: removal or pruning W/O significantly increasing the cost of development. Who determines ?

3 - f - I - II - III

Existing trees protected goes against above.

5 - tree replacement - should say: same type as removed.

16.32.050 - Tree removal on private land should be DUMPED or VOIDED .! ! If planning director determines imminent hazard on private land - why do we need a permit & who pays ?

2 (d) What is "reasonable development"? Also re-planting should be required by developers of same type as removed.

16.32.070 (A) Compliance process - how much time to comply voluntarily.

(c) Why would the person get a fine when they are voluntarily complying ? ?

8 - If a high wind comes & blows down a few of my trees - I suppose I'll get fined for having them in the 1st place so the wind could blow them down.

I - Do we need a permit to make cord wood out of them ?

Do we need the sign off by an arborist ?

Must we get a city license to clean up the mess ?

What do we do with all the branches & leaves ?

Must we get a permit to burn them or haul them to McFarlands ?

Maybe it would be simpler for us if we all just deeded our land over to the city right now & be done with it.

V T Y,

Richard Cayo

4203 S.E. JOHNSON CR. BV.

MILWAUKIE, OR 97222

(503) 659-1951

THE MILWAUKIE PILOT

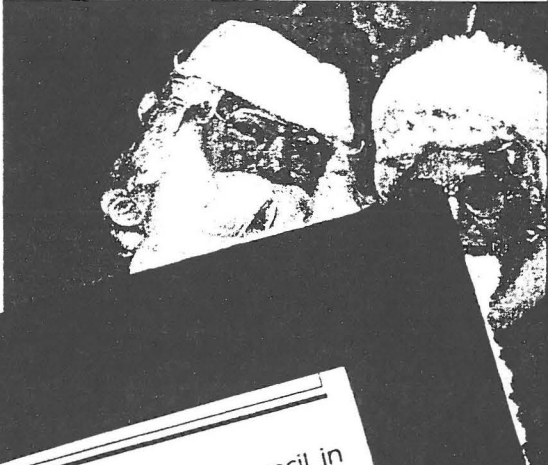
PROVIDING THE CITIZENS OF MILWAUKIE WITH INFORMATION
VOLUME 9, ISSUE 12 HAPPY HOLIDAYS!

Milwaukie's Local Leader

So much more than Santa

For the past 40 years Leslie Peake and his wife Freda have been Mr. and Mrs. Claus for Milwaukie's young and old.

Last year they had 9 different engagements as the couple from the North Pole. They were...



City looks to protect trees

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 urban forestry program, including both education programs and regulations. Ultimately, the City is hoping to attain a Tree City USA designation for Milwaukie in 2000.

Consideration of a new Urban Forestry Ordinance is now underway. City Staff has been meeting with the Plan-

Please see **Trees** on page 4

Trees from page 1

ning Commission and City Council in public work sessions this fall to develop parameters for the new regulations. The City has an ordinance requiring a permit for tree removal in the public right-of-way. The new ordinance could regulate tree removal on private property for trees meeting specific criteria. Your input is needed as the City considers any future regulations. In January, the City will:

- Distribute an information summary about Urban Forestry regulations and programs to Neighborhood District Associations.
 - Mail a flier to property owners describing the proposed regulations. The flier will provide a schedule for a Public Open House, and Planning Commission/City Council public hearings. This flier will outline options for obtaining more information and giving public input on the proposal.
 - Host an Open House on Jan. 19 at 6:30 p.m. at the Public Safety Building to describe proposed regulations and collect citizen comments.
- If you have any questions about Urban Forestry, please contact Planning Director Alice Rouyer at 786-7654. ☒

THE MILWAUKIE PILOT

The new millennium is just around the corner and the City stands ready for the potential problems that may accompany it. It's been predicted that computer driven systems will crash because their dating chips will confuse Jan. 1, 2000 with Jan. 1, 1900. As far as the City's concerned, all of its systems have been checked and are Y2K ready.

But nobody's certain just how far-reaching this problem may be, or if it will be a problem at all, and for that reason the City of Milwaukie will assess staff needs beginning 3 p.m. on Dec. 31. Three-fourths of the City's emergency response staff will be available throughout the New Year holiday and all police will be on and leave for the period of Dec. 29 through Jan. 15, 2000 has been put on hold.

Manager Dan Bartlett says staff will be available to cover all of the City's

Please see **Y2K** on page 4

RY LANCASTER ■ JEFF MARSHALL

IN'S

2 Council Downtown the City signs in

3 The latest the new P ground run examines T

8 Calendar of B Boards and C Neighborhood meetings.

Dec. 22, 1999

Dear fellow citizen;

IF we have a tree ordinance there are 2 things that I'm sure WILL happen;

1 - You as an individual will lose your rights to do what you wish with your own trees. (And possibly land)

2 - The city will have to hire MORE people to administer & control all these new ordinances - thereby costing us a bundle in payrolls. (our tax dollars)

We not only cannot do what we want with our own property ! - - we have to pay someone to tell us what we can & can't do.

The previous residents in this area have lived here for hundreds & maybe thousands of years & we've had no problems with the trees to date. The trees haven't revolted or gone to war.

All of a sudden Metro wants more power & control over our lives SO - they have thought up this tree ordinance - -

GOOD LUCK , SUCKER

If you want to stop this - - call or write the people pushing this down our throats;

MAYOR TOMEI tel, 786-7510

CITY MANAGER BARTLETT tel, 786-7501

JEFF MARSHALL - PARKS & TREES ARE HIS " BABY "

tel, 786-7514

P. S. You might even have to pay for the permit to cut your tree plus having to pay the forester to cut it down.

The way to stop this in its tracks is request (or demand) that the city council does NOT adopt a tree ordinance BUT - if they go ahead & do it anyway - recall them from office.

OREGONIANS IN ACTION

December 21, 1999

Dear Richard --

This is in response to your December 16th letter about the proposed tree ordinance.

We object strongly to such ordinances. If the public wants private landowners to preserve trees on their own land, the public should bear the burden -- buy the property, or a conservation easement.

Unfortunately, governments can get away with tree cutting restrictions so long as they leave the owner with some use of his property (generally, a landowner has to lose everything to get anything -- it's a license to steal!) One of our highest priorities is securing court decisions and/or legislation that will require compensation for "partial" takings that result from regulatory restrictions.

However, there are ways to fight such regulatory over-reaching.

On the political front, mobilize as many landowners as you can to testify against the ordinance. Fortunately, because of OIA's Measure 56 approved by the voters last year, the city must send mailed notices to affected landowners. Beyond this, the more news coverage you can get, the more opposition can be mobilized.

Opponents should stress the basic unfairness of requiring individual landowners to bear burdens the public should bear, the ever present danger of trees and limbs falling on people and property, unwanted shade in many situations, etc.

Opponents should also raise objections to provisions in the ordinance that are not clear and objective. This is a new requirement OIA was able to get into state law (House Bill 3410). Failure to comply would be appealable.

Opponents should also demand that the city comply with the detailed requirements of LCDC's Goal 5 rules. They include going through an "environmental, economic, social and energy" (EESA) analysis before adoption of such an ordinance. Also, despite what the city may say, LCDC cannot require the city to adopt such restrictions.

Opponents should also stress city liability for "regulatory takings." The city would clearly be liable for takings if all use is denied, and there may be liability if less than all use is denied.

Please let me know if you would like further details. We want to help as much as we can.

Sincerely,



Mailing address: P.O. Box 230637 Tigard, OR 97281-0637

*Street address: 8255 S.W. Hunziker Road, Suite 200 Tigard, OR 97223
(503) 620-0258 FAX (503) 639-6891*



CLACKAMAS COUNTY

6.1 66

Department of Assessment and Taxation

RAY ERLAND
COUNTY ASSESSOR

June 24, 1993

RICHARD S CAYO
4203 SE JOHNSON CREEK BLVD
MILWAUKIE, OR 97222

RE: Map # 12E30BB01400 Code # 012-002
Account Key # 70817
Total Acres: 2.62

Dear RICHARD CAYO:

You have applied for designation as Forest Land on the above described property. Upon inspection we have designated 1.62 acres as Forest Land.

Approved lands are subject to a future review of management practices by the Oregon State Forester who may recommend changes be made.

Any appeal from this decision should be made directly to the Department of Revenue within 90 days after this notice.

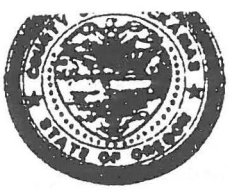
If you have any questions concerning this action, please do not hesitate to contact our office.

Respectfully,

RAY ERLAND, COUNTY ASSESSOR

Al Uney
Senior Appraiser

RE:LM:AU/ben



CLACKAMAS COUNTY

6.1 67

Department of Assessment and Taxation

RAY ERLAND
COUNTY ASSESSOR

June 23, 1993

RICHARD S CAYO
4203 SE JOHNSON CREEK BLVD
MILWAUKIE, OR 97222

RE: Map # 11E25AA00100 Code # 012-002
Account Key # 28
Total Acres: .49

Dear RICHARD CAYO:

You have applied for .49 acres to be designated as Forest Land on the above described property. Upon inspection we have approved .49 acres as requested.

Approved lands are subject to a future review of management practices by the Oregon State Forester who may recommend changes be made.

If you have any questions concerning this action, please do not hesitate to contact our office.

Respectfully,

RAY ERLAND, COUNTY ASSESSOR

Al Uney
Senior Appraiser

RE:LM:AU/ben



GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.

USES

Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in ORS 527.722.

Uses which may be allowed subject to standards set forth in this goal and administrative rule are:

1. uses related to and in support of forest operations;
2. uses to conserve soil, water and air quality, and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment;
3. locationally dependent uses;
4. dwellings authorized by law.

IMPLEMENTATION

Comprehensive plans and zoning provide certainty to assure that forest lands will be available now and in the future for the growing and harvesting of trees. Local governments shall inventory, designate and zone forest lands. Local governments shall adopt zones which contain provisions to address the uses allowed by the goal and administrative rule and apply those zones to designated forest lands.

Zoning applied to forest land shall contain provisions which limit, to the extent permitted by ORS 527.722, uses which can have significant adverse effects on forest land, operations or practices. Such

zones shall contain numeric standards for land divisions and standards for the review and siting of land uses. Such land divisions and siting standards shall be consistent with the applicable statutes, goal and administrative rule. If a county proposes a minimum lot or parcel size less than 80 acres, the minimum shall meet the requirements of ORS 527.630 and conserve values found on forest lands. Siting standards shall be designed to make allowed uses compatible with forest operations, agriculture and to conserve values found on forest lands.

Local governments authorized by ORS 215.316 may inventory, designate and zone forest lands as marginal land, and may adopt a zone which contains provisions for those uses and land divisions authorized by law.

GUIDELINES

A. PLANNING

1. Forest lands should be inventoried so as to provide for the preservation of such lands for forest uses.
2. Plans providing for the preservation of forest lands for forest uses should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Before forest land is changed to another use, the productive capacity of the land in each use should be considered and evaluated.
2. Developments that are allowable under the forest lands classification should be limited to those activities for forest production and protection and other land management uses that are compatible with forest production. Forest lands should be available for recreation and other uses that do not hinder growth.
3. Forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use.
4. Road standards should be limited to the minimum width necessary for management and safety.
5. Highways through forest lands should be designed to minimize impact on such lands.
6. Rights-of-way should be designed so as not to preclude forest growth whenever possible.
7. Maximum utilization of utility rights-of-way should be required before permitting new ones.
8. Comprehensive plans should consider other land uses that are adjacent to forest lands so that conflicts with forest harvest and management are avoided.



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[On to Goal 5](#)

[Back to the Land Use Information Center Home Page](#)
[Back to the PPPM Home Page](#)





GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability.

The following resources shall be inventoried:

- a. Riparian corridors, including water and riparian areas and fish habitat;
- b. Wetlands;
- c. Wildlife Habitat;
- d. Federal Wild and Scenic Rivers;
- e. State Scenic Waterways;
- f. Groundwater Resources;
- g. Approved Oregon Recreation Trails;
- h. Natural Areas;
- i. Wilderness Areas;
- j. Mineral and Aggregate Resources;
- k. Energy sources;
- l. Cultural areas.

Local governments and state agencies are encouraged to maintain current inventories of the following resources:

6.1 71

- a. Historic Resources;
- b. Open Space;
- c. Scenic Views and Sites.

Following procedures, standards, and definitions contained in commission rules, local governments shall determine significant sites for inventoried resources and develop programs to achieve the goal.

GUIDELINES FOR GOAL 5

A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.
2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.
3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.
4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.
6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.
7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(23).

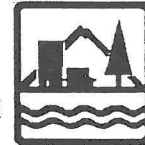
B. IMPLEMENTATION

1. Development should be planned and directed so as to conserve the needed amount of open space.
2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.
3. The efficient consumption of energy should be considered when utilizing natural resources.
4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.
5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.
6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.
7. Local, regional and state governments should be encouraged to investigate and utilize fee

- acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.
8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.
 9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.
-



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[Back to the PPM Home Page](#)

Jan. 20, 2000

Urban Forestry Project; ZA-99-02
City of Milwaukie Planning Dept.
6101 S. E. Johnson Cr. Bv.
Milwaukie, Or. 97222

RECEIVED
JAN 31 2000
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Dear Sirs or Madam;

I am TOTALLY OPPOSED to ANY kind, shape or form of tree ordinance in Milwaukie ! ! !

See attached flyer.

After I digest the content of your proposed ordinance I will have much more to say about it over the next month and a half.

V T Y,

Richard Cayo

Richard Cayo

4203 S. E. JOHNSON CR. BV.
MILW. OR.

(503) 659-1951

Monday, January 17, 2000

Alice Rouyer
Planning Director
City of Milwaukie
10722 S.E. Main Street
Milwaukie, OR 97222

RECEIVED

JAN 25 2000

PUBLIC WORKS

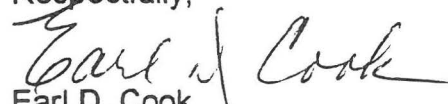
Ms. Rouyer,

A public outreach effort by "volunteers" interested in taking inventory of city owned "Significant Trees," as reported in the *Milwaukie Pilot* may have merit. But, any expenditure of public funds to shop around a proposed ordinance to restrict individual property owner's rights will raise more than "a few eyebrows."

Plans of an Urban Forestry Program and ordinance, governing an individual property owner's right to plant and/or remove trees by permit, on his or her own property, is outrageous. This is simply another strategy for revenue enhancement, or, separating taxpayers from their money through the permit process. Taxpayers are looking for prudent management from their City and County Government, not growth and expansion through "feel good" programs. The storm damage sustained by torn and toppled aging and diseased trees over the weekend would be perpetuated by such an ordinance. The legacy of this region has been the sustainable growth and harvest of trees.

City ordinances do not enhance livability, but place a restrictive price tag on it. Property values will be adversely affected.

Respectfully,


Earl D. Cook
6512 S.E. Queen RD.
Milwaukie, OR 97222

RECEIVED

JAN 27 2000

PUBLIC WORKS

January 26, 2000

Urban Forest Project ZA-99-02
 City of Milwaukie Planning Dept.
 6101 SE Johnson Cr. Blvd.
 Milwaukie, OR 97206

The heading of this set of regulations starts out as an oxymoron. The definition of a forest is " a large tract of land covered with trees; an extensive wood." So as you see Urban--a city or town, and a large tract of trees are two different things.

The Municipal codes adopted in 1998 which apply to street and city property trees, Sec. 16.32.010, 16.32.020, and 16.32.030 adequately address the public owned areas and their trees and care.

The people want government to be efficient and accountable.

In no way does this proposed ordinance do what it says it intends to do. Sec. 16.32.010--Quote "Purpose to increase the existing stock of trees by insuring that more trees are planted." Unquote! The city already has the ordinances to plant all the trees they want on city owned land.

Restrictions on Private Property

Section 16.32.30 Require a city permit, a certified arborist's decision, a professional State Landscape Contractor's license and Milwaukie City Business License to remove, prune or trim trees. This will not be efficient nor accountable. It will only raise the cost to us as individuals to get the work done and increase the bureaucracy that will have to be fed to accomplish the right to do the work.

Sec. 16.32.40--Street trees and trees in public places This is already well addressed in 16.32.010, 16.32.020, 16.32.030 or Sec. 1011.3 or 1011.4 as appropriate.

The added qualification of needing a certified arborist to do any of the work is a definite over kill.

Section 16.32.050 Tree removal from private land This section is by far the most odious part of the whole Urban Forest regulations.

Here follows 8 pages of regulations on a persons private property to satisfy several committees, a certified arborist, a city licensee and State qualified Landscape contractor to cut any tree on my property over 18" DBH!

Section 16.32.070 Penalties and Mitigation

A person will be subject to civil action and mitigation if we continue to do what we have been doing ever since the

city of Milwaukie was established, managing our trees on private land.

Urban Forestry Regulations are not what Milwaukie needs to continue to be the nice city we have all enjoyed living in for the past and will enjoy in the future.

TREE CITY USA may be a dream for some, but it will be more of a nightmare for most.

Forris Frick

Forris Frick
Land Use Committee Chr.
Lake Road Neighborhood Assn.


 A logo consisting of the word "TREES" in a bold, sans-serif font, enclosed within a rectangular border that has a slightly distressed or hand-drawn appearance.

I DO NOT WANT A TREE ORDINANCE IN MILWAUKIE.

1. This ordinance will distinguish Milwaukie as a place of few trees because many people are and will take trees out before an ordinance is adopted.
2. Property owners have a right to prune, trim and/or remove trees on their property without paying for a permit that may or may not give them permission to do so. To some this might be considered a tree topping.
3. We do not need recognition for having lots of trees.
4. Disallowing flag lots would save a large quantity of trees.
5. Education programs on trees, urban forestry are already in affect without a tree ordinance.
6. A Milwaukie tree ordinance will force many individuals to prematurely remove trees which will disallow Milwaukie as a Tree City USA designation.
7. We do not need Tree City USA acclaim!
8. We do not need tree regulations on private property.
9. We do not need a permit to remove trees on private property.
10. We should not have to pay (taxes) for a permit to deal with trees on one's own property.
11. City will hire more people to enforce and control these new ordinances, which is a financial burden we do not need.
12. Milwaukie will not assume financial liability for trees on my property.
13. This area already has a multitude of trees without tree ordinances on private property.
14. Pay for a permit and pay someone to cut and/or trim trees is a financial burden to homeowners that most cannot or will not bear.
15. Why should I have to pay for a permit to trim, and/or prune or remove a tree I already own?
16. **DO NOT ADOPT** a tree ordinance.
17. Taxpayers can not afford The City to buy all trees in The City and accept liability. This is not an option.
18. A tree ordinance is unfair by requiring landowners to bear burdens the public should bear, the ever-present danger of trees and limbs falling on people and property unwanted shade, too much debris, etc.
19. Milwaukie needs to go through an "environmental, economic, social and energy" analysis before the adoption of such an ordinance. Milwaukie taxpayers do not need the financial burden of this study.
20. We do not need comprehensive tree protection regulations either temporary or permanent.
21. If this tree ordinance is adopted, Milwaukie will be distinguished as a town without a canopy of colorful and majestic trees because people will remove most of them before the ordinance takes affect.
22. We have coexisted with trees without an Urban Forestry Ordinance.
23. Arbor Week, tree plantings and developing a modified Urban Forestry Master Plan can be done without a tree ordinance.
24. I can protect my own trees without a city ordinance.
25. If I choose to cut down 4 or more trees, it will be my decision not The City's decision.
26. It should be my choice to remove and/or prune significant trees.
27. The City has no right to trespass to determine properties with significant tree inventories.
28. A certified arborist will be too costly to property owners.
29. Property development should not be controlled by City's alternative designs, but by property owner design.

30. No need for staff-level decisions and/or appeal to Planning Commission for a public hearing. Property owner is in charge, not The City.
31. Planning Commission, meetings, etc. not necessary without tree ordinance.
32. Financial burden to save a diseased tree is too costly or will Milwaukee pay for all expenses?
33. I might call it minor trimming of a tree and The City calls it major pruning – no way to define it and agree.
34. Trees on my property should have value to property owner specifically without city jurisdiction.
35. To fill out necessary paper work to city and/or planning commission – Will this be paid for by The City – People have lives and need not spend an exorbitant amount of time and energy to plead property owners requests regarding trees.
36. Posting notice of whatever is an invasion of property owner privacy.
37. Without a tree ordinance, neighborhood association would not have to be involved.
38. Post property, mark trees and mail notices – Too much for trees that are on private property.
39. Two weeks to prune and/or remove a tree, NOT.
40. Community development director sounds like a new job for someone with a salary of \$85,000 to \$125,000 a year.
41. ISA – Qualified person – Who determines this. I think I am qualified to trim, major prune and/or remove any tree on my property without the need of a certified ...
42. How many city arborists will be employed? An added costly financial burden to taxpayers.
43. Tree planting programs do not require city adoption of a tree ordinance.
44. Johnny Appleseed concept should be allowed and encouraged not thwarted or stopped.
45. Permits to plant trees sounds like justification to get more money out of its taxpayers.
46. Permits to cut trees (top, remove, etc) sounds like justification to get money out of its citizens.
47. Time restraints on topping, cutting, removal is too severe.
48. Significant trees are such without city authenticating such.
49. Penalties and mitigation sounds like more money for local government.
50. Just what we need, one more commission probably with above average salaries too.
51. Commission dictating trees or not on private property – NOT.
52. Urban Forestry Master Plan can exist without a tree ordinance.
53. Recommendation relating to planting and maintaining trees (on private property) in parks and public street right of way and determining the appropriate types of trees to be planted. On private property, in parks, right of way can work without a tree ordinance.
54. Working with other city boards, commissions and departments, other agencies, volunteer organizations and individuals to distribute educational and promotional material regarding the protection, maintenance, removal, planting and beneficial effects of trees can be done without tree ordinances.
55. We do not have copies of Urban Forestry Master Plan.
56. We do not have “any manual” proposed pursuant to the Urban forestry Master Plan.
57. Some trees might have a growth pattern of their own which does not fit into your 20% of tree canopy. (Branches need to be cut off when needed not based on a certain 20% portion of a tree.)
58. Tree debris is costly to remove from one’s own yard. With the added expense of permits, the potential of yard debris accumulation will be even greater than without a tree ordinance. This will increase the potential for fire danger all year long, especially during the summer months.
59. Any further tree ordinance adoption needs to be put aside for a reasonable amount of time and is not necessary and not required, until there is a problem.
60. I suspect that Power, Cable TV and Telephone Companies will object to City of Milwaukee controlling the maintenance of trees that interfere with their transmissions and will require their input for tree additions and removal.

61. Policy of Milwaukie appears to be "anti-tree" whether or not there is a tree ordinance since they continue to plan for high density housing, flag lots, etc.
62. It will appear far too complicated to try and define fruit versus native versus non-native versus shrubs with respect to planting, removing, trimming, major pruning and spraying for insect and other disease damage.
63. Topping of trees would appear to be impossible to define accurately to satisfy any tree ordinance, insurance co., property owner, neighbor; city, county state and federal interests; etc.
64. It is not necessary to incur the expense and elaborate computer program and operator to keep track of an entire database of tree types, tree size, tree location, tree ownership and whether or not permits were issued, to add, remove and/or prune trees.
65. As of this writing, I have not talked to a single person who is in favor of this tree ordinance. It appears to me that it will lower the entire tax base of Milwaukie because property values will go down when it is disclosed to potential buyers that they have to contend with a complicated, City of Milwaukie, bureaucratic tree ordinance.
66. Will there be penalties for tree ordinance violations? Consequences?
67. IN ALL OF MY READINGS, I HAVE NOT SEEN ANYTHING THAT INDICATES THERE HAS BEEN, IS OR WILL BE, A PROBLEM WITH TREES. SINCE NO ONE HAS STATED A PROBLEM WITH TREES THERE IS NO NEED TO COME UP WITH THIS UNNECESSARY TREE ORDINANCE SINCE NO PROBLEM HAS CLEARLY BEEN STATED!!!!

Gene Hatlelid
4277 SE Johnson Cr. Blvd.
Milwaukie, OR 97222

Margaret Hatlelid
4277 SE Johnson Cr. Blvd.
Milwaukie, OR 97222

Linda Hatlelid
8617 SE 36th
Milwaukie, OR 97222

Donald A. Hughart
11801 S.E. Wood Ave.
Milwaukie, Ore. 97222
645-6288

City of Milwaukie,
Alice Rouyler:

Dear Madam:

My name is Donald Hughart, with my brother and sister we own the lots 11801, 11823, and 11825 S. E. Wood Ave, a total of 1.85 acres. There are approximately 50 trees over six inches, twenty of them over eighteen inches, several are three or four feet in diameter. We have and will continue to care for them, we have not cut one down for several years, but from time to time it is necessary to prune or remove a tree.

To require us to submit to a time consuming and expensive permit process would be a burden and probably an expensive burden, and we do not approve the cities invading this area.

It would be discriminatory in that we would be required to do much more than others to meet your stated goal of making Milwaukie into the Arbor City.

If an ordinance of this type is enacted over our objection, it should include two things, first the application should be simple and economic, even for retired persons such as I am. Second, since the city would be taking over the management of these trees, the city should assume financial responsibility for any damages caused by them.

I will be out of town till the middle of next month, but after that if you have any questions, I would be happy to talk with you.

Sincerely



Donald A. Hughart

RECEIVED

JAN 19 2000

PUBLIC WORKS

Alice Royer

Concerning your Urban Forestry Program
How ridiculous, to issue permits to
cut down trees on my property. I
continue to see the New Council
slowly taking away my rights. If
I want to cut down my trees, be-
cause of damage to my roof, or
to allow proper light for my garden
or my lawn to grow properly I should
be allowed to. I see these Councilers
on T.V. not allowing a man to build
houses on his property because he may
destroy animal habitate. This is
foolish. As he would provide jobs
in this community & to stimulate
new growth, which I can tell
some of them are against.

(over)

I moved to Milw. in 1968 & saw it growing & developing. Now it is stagnating with older run down houses & lots of renters. I am upset at these on the council who are against houses & new growth. Shame on you that my son will have such a hard time in getting a house in years to come as these prices escalate. more state/city permits & all the restrictions & fees you folks keep putting on us inflating these prices for us.

Thanks for

Nothing

Larry Hultquist

5575 S.E. Monroe

653-5925

RECEIVED

JAN 13 2000

PUBLIC WORKS



**NORTH
CLACKAMAS**
PARKS & RECREATION
DISTRICT

January 19, 2000

Alice Rouyer, AICP
Planning Director
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, Oregon 97206

Subject: REVIEW OF URBAN FORESTRY REGULATIONS

Dear Mrs. Rouyer:

I have reviewed the Urban Forestry Regulations for the City of Milwaukie. I will address my comments as it relates to the information received.

16.32.020 Definitions

We have two indications of tree sizes in the document. One that relates to Dbh and caliper size. I would recommend we use caliper size for all tree sizes due to the standards adopted by the Oregon Nursery Association.

16.32.030 Tree Care Professionals License Requirement

I would recommend we eliminate the City of Milwaukie Business License as long as they have a State of Oregon Contractors license. Most of the tree companies are located outside the City limits of Milwaukie and this seems to be additional paper work that does not related to the quality of the contractor.

16.32.040 Street Trees and Trees in Public Places.

4. Expiration

I would add at the end the last sentence, "City shall be performed by a licensed Landscape Contractor" **in the State of Oregon.**

Page 2

REVIEW OF URBAN FORESTRY REGULATIONS

5. Conditions of Approval

I would recommend deletion of the dbh size of trees and insert caliper size of 2 ½-inches as this relates to the Oregon Nursery Association Standards. If you used the dbh size of trees four feet from the ground level the cost of the tree may be \$300 to \$400 dollars because the caliper size may be 3 to 4 inches at the base of the tree.

One thing I would recommend is stump grinding of the trees removed especially within the public ROW. In some cases additional trees will be planted and it is kind of hard to work around a stump that sticks above ground and is unsightly.

B. Planting – Street Trees and Trees in Public Places

3. Approval Standards

It indicates within this paragraph the Milwaukie Urban Forestry Master Plan. I realize this plan has not been completed yet. I hope the Urban Forestry Master Plan will contain an approved street tree-planting list especially for street trees in public spaces and ROW. I would add somewhere within this paragraph that an approved **street tree-planting list** will be provided.

Thank you for giving me the opportunity to respond to the Urban Forestry Regulations for the City of Milwaukie. If you have any question on the above please give me a call or send me an e-mail.

Sincerely,

Thom Kaffun
Park Services Manager
thom@co.clackamas.or.us

6.1 85
RECEIVED
JAN 12 2000
PUBLIC WORKS

Steve Merrin
5131 SE Logus Rd.
Milwaukie, Or 97222

Urban Forestry Project: ZA-99-02
City of Milwaukie Planning Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Dear Sirs,

I am in receipt of your notification regarding your proposed tree regulations. In reviewing the document, I am astounded at the audacity of the city and government in general in thinking they have the right to tell me what to do with my property. Where does it all stop? With each passing day it seems governments take it upon themselves to mother the public. I am quite capable of managing my own property and assets without the benevolent help of big brother. If you want to control my trees, then you are welcome to make an offer on my property.

I can understand why you may want to prevent the wholesale destruction of large parcels of trees during development. This, however, should be covered during the permitting and approval process.

I have swallowed many fees and even the inclusion against my will into your "wonderful" city. At this point, I have reached my fill of your social engineering and draconian dictates. Please be assured that if this law passed, and I want to prune or cut down a tree on my property, I will not be asking for your permission.

Sincerely,


Steve Merrin

RECEIVED

JAN 14 2000

PUBLIC WORKS

Stanley H. Walker
11620 S.E. Linwood Ave.
Milwaukie, OR 97222
January 12, 2000

Alice Rouyer, Planning Director
City of Milwaukie
10722 S.E. Main St.
Milwaukie, OR 97222

SUBJECT: Proposed ordinance relating to trees on private property.

Dear Ms. Rouyer:

I have been reading articles in the Milwaukie Pilot in regard to obtaining a "Tree City USA" designation. As a resident of Milwaukie for nearly 50 years, I believe it is fine if a volunteer citizens' committee wishes to conduct a survey of the city's trees and provide free advice for those who seek it, BUT, I have serious concerns when I foresee the expectation of spending public money to either conduct a survey and/or provide other than incidental advice.

In addition, the concept of requiring a property owner to secure a permit in order to remove a tree on his own property is ludicrous. This is grossly irresponsible and does not fit with our culture in Milwaukie. To suggest that the city should hire some "expert" with public money to tell a private landowner what he can do with his own trees is way out of line. If such an ordinance is successful it is certain that the city will impose a fee for the landowner to obtain the permit to maintain his own property. Until the city pays the property tax I don't see why some bureaucrat should make such decisions and be given such power.

Milwaukie has been a pleasant place to live these many years. I don't believe that ordinances enhance the livability of our community. An old saying to the effect that "... that government governs best which governs least..." makes a lot of sense and should be the by-word of every employee of our city. LESS IS MORE!

Thank you,


Stanley H. Walker

RECEIVED

JAN 12 2000

PUBLIC WORKS

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5131 SE Logus Rd.
Milwaukie, Or 97222

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City of Milwaukie Planning Department
6101 SE Johnson Creek Blvd.
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Steve Merrin

RECEIVED

JAN 14 2000

PUBLIC WORKS

Stanley H. Walker
11620 S.E. Linwood Ave.
Milwaukie, OR 97222
January 12, 2000

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City of Milwaukie
10722 S.E. Main St.
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Thank you,


Stanley H. Walker

6.1 89

8793 S.E. 35th Ave
Milw. One 97222

Jan. 24, 2000

Urban Forestry Project ZA-99-02

To Whom it My Concern,

In regards to your proposed regulations for the so called "Milwaukee Place of Trees," Count us as being totally opposed to your having the "say so" as to whether we can cut or remove our fruit trees on our own yard without your permission.

Sincerely
Mr. & Mrs. Edward West

RECEIVED

JAN 25 2000

PUBLIC WORKS



To: Planning Commission

Through: Alice Rouyer, Planning Director *AR*

From: Doug Strickler, Associate Planner

Subject: NCU-98-02/TPR-98-06

Report Date: January 27, 2000

Hearing Date: February 8, 2000

Action Requested

Deny Thomason Auto Group's appeal of the Planning Director's determination that the approval granted in NCU-98-02/TPR-98-06 is void by operation of law pursuant to Milwaukie Zoning Ordinance, Section 1013.

Code Authority and Substantive Criteria

Milwaukie Zoning Ordinance, Section 1013 – Time Limit on a Permit for A Conditional Use or Variance

Statistics

Location: 2403 Ochoco Street, 2389 and 2415 Moores Street
(See Exhibit #1 – Vicinity Map)

NDA: Milwaukie Industrial

Zone: M - Manufacturing

Lot size: 2403 Ochoco Street – Approximately 9500 sq. ft.
2389 Moores Street – Approximately 32,368 sq. ft.
2415 Moores Street – Approximately 37,536 sq. ft.

Map and Tax Lot: 11E25BB-5600, 2500, and 2800

Background

On February 3, 1999, a Revised Notice of Decision (See Exhibit #2) granted approval for Thomason Used Cars to expand its nonconforming use, subject to conditions of approval listed in the notice. A recent inspection (December 20, 1999) found that the conditions of approval had not been met (See Exhibit #3). An inspection of the records indicates that no application for building permits pursuant to NCU-98-02/TPR-98-06 has

ever been made. The Milwaukie Zoning Ordinance deems an approval void after six months unless substantial construction pursuant thereto has taken place. Consequently, the Planning Director determined that the approval for NCU-98-02/TPR-98-06 was void and mailed notice of that determination to Thomason Auto Group on December 28, 1999. (See Exhibit #4)

The applicant objects to the determination that applications NCU-98-02 and TPR-98-06 are now void. They cite delays in the sale of the business, the need to acquire additional funding and personnel changes as mitigating factors in justifying the lack of work pursuant to NCU-98-02/TPR-98-06. (See appeal application; Exhibit #5)

Conclusion

A Revised Notice of Decision approving NCU-98-02/TPR-98-06 contingent upon the satisfaction of thirteen conditions of approval was issued on February 3, 1999. Thomason was required to comply with all of those conditions if it wished to expand their use onto tax lots 5600, 2500 and 2800 legally. The Milwaukie Zoning Ordinance deems that approval of a non-conforming use is void after six months unless substantial construction pursuant to the use has taken place. A search of Building Department records and an inspection of the premises found that there was no evidence of substantial construction or any preparation for any such construction. Consequently, according to the provisions of Section 1013 of the Milwaukie Zoning Ordinance, the Planning Director was correct in her determination that the approval granted in NCU-98-02/TPR-98-06 was void.

Findings in Support of Denial of the Appeal

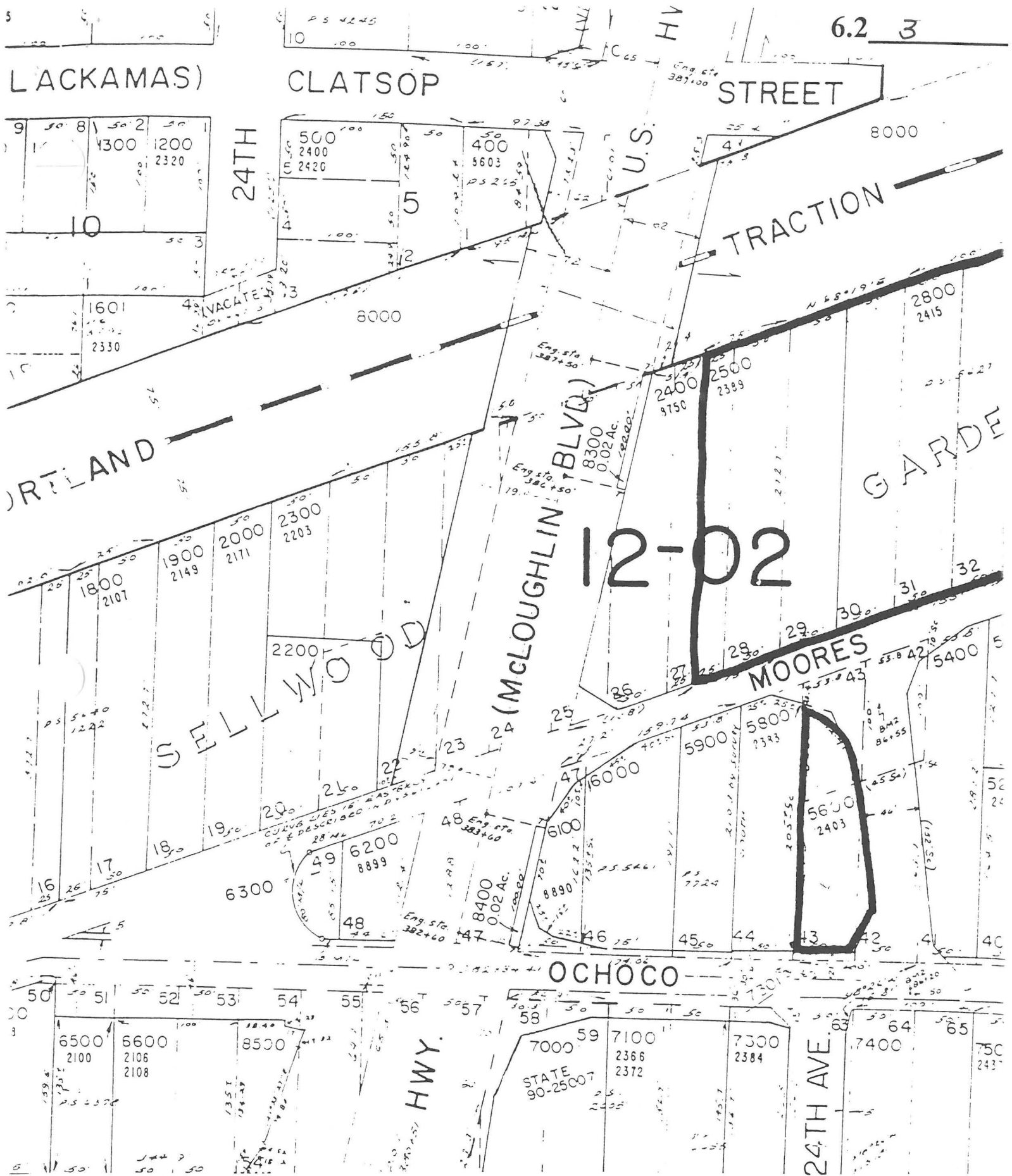
Recitals found above in the background section constitute findings.

Recommendation

Deny Thomason Auto Group's appeal of the Planning Director's determination that the approval granted in NCU-98-02/TPR-98-06 is void by operation of law pursuant to Milwaukie Zoning Ordinance, Section 1013.

Exhibits

1. Vicinity Map
2. February 3, 1999 Revised Notice of Decision for NCU-98-02/TPR-98-06
3. December 20, 1999 file notes on site visit by Lisa Nasshahn
4. December 28, 1999 Planning Director Letter voiding approval of NCU-98-02 and TPR-98-06
5. Appeal Application

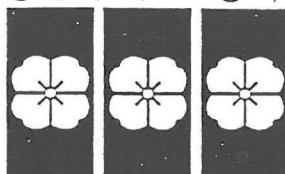


City of Milwaukie Community Development Department

Title: Vicinity Map Submitted by: Staff Date: 2/8/00 # Pages: 1
 File Numbers: AP-00-01 Applicant: Thomason Auto Group Exhibit #: 1
 (NCU-98-02 / TPR-98-06)



C I T Y O F



MILWAUKIE

February 3, 1999

NCU-98-02/TPR-98-06

REVISED NOTICE OF DECISION

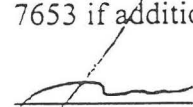
This is official notice of action taken by the Milwaukie Planning Commission at a Public Hearing held on Tuesday, December 8, 1998, regarding an application for the expansion of a Nonconforming Use (NCU-98-02) and a Transportation Plan Review (TPR-98-06) for their business located at 5800 SE Moores & Ochoco Streets and shown on Map 1S, 1E, Section 25BB, Tax Lot(s) 2500, 2800, 5600 and 7100.

The business is located on the following legal tax lots in the City of Milwaukie, Clackamas County, Oregon; Map 1S, 1E, Section 25BB, TL(s) 2400, 2500, 2800, 5600, 5800, 5900, 6000, 6100, and 7100.

After taking testimony at the December 8, 1998 Planning Commission Meeting regarding the application, the Planning Commission approved the applicant's request to expand non-conforming use activities to the properties identified as Tax Lot Nos. 2500, 2800, and 5600; and denied the applicant's request to expand onto Tax Lot No. 7100, based on the public testimony and the findings contained in the Staff Report.

On December 22, 1998, an appeal was filed, and subsequently withdrawn on February 1, 1999. Attached with this Revised Notice is the Amended Findings and Conditions of Approval which provides that the 120-day time limit to vacate the premise on Tax Lot 7100 (2366 SE Ochoco) begins on the date of the withdrawal of Appeal (February 1, 1999).

Copies of the Staff Report, documentation of the Appeal, and other written materials are available upon request. Community Development Department can be contacted at 786-7653 if additional information is required.



 Jim Crumley, Interim Planning Director

Cc: Martha Bennett, Assistant City Manager, CD
 Jim Brink, Public Works Director
 John Bennett, Building Official
 Paul Roeger, Civil Engineer
 File: NCU-98-02/TPR-98-06

Attachment: Exhibit 1: Amended Findings & Conditions of Approval

City of Milwaukie Community Development Department

Title: Rev. NOD Submitted by: Staff Date: 2/8/00 # Pages: 4
 File Numbers: AP0001 Applicant: Thomasan Auto Group Exhibit #: 2
 (NCU-98-02/TPR-98-06)



NONCONFORMING USE FINDINGS NCU-98-01

1. The applicant is requesting the expansion of a non-conforming use in accordance with the provisions of Section 801 of the Zoning Ordinance. No adverse comments have been received from other departments or agencies, or from the Historic Milwaukie NDA.
2. This application is being process as a Minor Quasi-judicial Review per Subsection 1011.3 of the Zoning Ordinance.
3. The proposal brings the current illegal expansions into compliance with the code and allows the applicant to use the site in conformance with the Zoning Ordinance.
4. The Finance and Insurance Building is not approved as a part of the application as it's primary use is as office space.
5. The modifications that have occurred have resulted in no more of a detriment to the surrounding properties than the existing legal non-conforming uses that were previously approved.

TRANSPORTATION PLANNING RULE FINDINGS TPR-98-01

1. The Transportation Planning Review has been processed in accordance with Section 1011.3 because the review required a Minor Quasi-judicial Review.
2. The development permit value will be less than 50% of the land value, and therefore full compliance with the requirements of Sections 500 (Parking) and 1400 (Transportation Planning, Design Standards and Procedures) is not required.
3. McLoughlin Blvd is designated as a Regional Street in the Comprehensive Plan (Automobile Master Plan, Figure 6.10). A coordinated review has taken place pursuant to Section 1403.2 of the Zoning Ordinance. Referrals were sent to Clackamas County, Tri-Met, and ODOT.

CONCLUSION

Staff has determined that the findings above demonstrate that application NCU-98-01 and TPR-98-06 satisfy the Zoning Ordinance requirements for continuation of the non-conforming use and Transportation Planning approval. Therefore the project can be approved, subject to the conditions attached as **Exhibit 1**.

EXHIBIT 1

CONDITIONS OF APPROVAL NCU-98-01/TPR-98-06

1. ~~The~~ applicant shall complete the expansion in accordance with the approved proposed site plan as shown in **Exhibit 5** except that the use of the 2366 SE Ochoco site for auto storage or office use shall not be allowed. The applicant has 120 days to vacate the 2366 SE Ochoco from the date of the withdrawal of the Appeal (February 1, 1999).
2. ~~The~~ applicant shall install the landscaping in accordance with the approved ~~Land~~ landscaping plan attached to the Staff Report as **Exhibit 10**.
3. ~~The~~ Finance and Insurance Building is denied as a part of the Nonconforming use approval.
4. The applicant must obtain any required building permits for the completion of the ~~im~~provements at the site.
5. ~~The~~ applicant will comply with the Public Works requirements as set forth in **Exhibit 8** and **Exhibit 9** of the Staff Report. Curbs and Sidewalk must be ~~conn~~ected on Moores Street from McLoughlin Blvd. to Main Street including a standard ADA driveway approach near McLoughlin Blvd. A right-of-way permit is required for this work and inspection forms are required before pouring. Erosion control permit must be obtained as required by Public Works.
6. Storm drainage is extended on site from Ochoco Street. Extension of that system is permitted with a plumbing permit. Full construction plans must be submitted to the Plumbing Department for review along with a plumbing permit application. All catch basins must be inverted siphon (Lynch type).
7. A proper driveway approach is required if the applicant wants to have access to ~~the~~ eastern part of their lot from Main and Ochoco Street if this area is not to be landscaped. If access is not proposed at either of these locations, landscaping ~~along~~ the entire property line is required. If access is desired at these locations, a ~~plan~~ showing width and location must be submitted to the Public Works Department along with an application for a Right-of-Way permit. All driveway ~~approaches~~ must meet current ADA access requirements. Public Works will provide the applicant with a standard detail for the construction of these ~~approaches~~.
8. ~~The~~ applicant must obtain any and all approvals or permits necessary from the Oregon Department of Transportation for the completion of improvements along

or in the State Highway. Those approvals must be provided to the City prior to the issuance of a building permit for any improvements at the site.

9. The Banner signage will be removed at the site. The applicant will provide information to employees at the site regarding the City sign permit requirements prior to the installation of any sign on the premises.
10. The applicant shall address the fire access standards as determined by the Fire Marshall and obtain any approvals necessary prior to the issuance of a building permit for any improvements at the site.
11. A plan showing the locations of bicycle racks to be installed at the site will be provided prior to the issuance of a building permit. The bicycle racks must meet the requirements of Section 505 of the Zoning Ordinance and must be installed prior to the issuance of the Certificate of Occupancy.
12. Curbs and sidewalks are required to be constructed around the perimeters of the sites contiguous with 8990 SE McLoughlin Blvd.
13. A landscape plan shall be submitted for the North side of Moores Street, that is compatible and comparable with the landscape plan that was approved and included as Exhibit 10 of the Staff Report.

Thomason Site Inspection
 December 20, 1999
 10.00 am
 Lisa Nasshahn

On the above date, at the time indicated, I inspected the Thomason site. I was accompanied in the inspection of the interior of 2366 SE Ochoco by Mary Davis, Thomason _____. The addressing in the area is confusing (addresses on buildings don't appear to match those listed on our address map), so I will refer to the site per the key below.

Part A: 1S2E25BB tax lots 5600, 5800, 5900, 6000, 6100 are Thomason's main sales site on the block bounded by Moores (north side), Main (east side), Ochoco (south side), and McLoughlin (west side).

Part B: 1S2E25BB tax lots 2400, 2500, 2800 are located north of the main sales site, across Moores Street.

Part C: 1S2E25BB tax lots 2200 and 2300 are west across McLoughlin from Part B and appears to be an auto sales use.

Part D: 1S2E25BB tax lot 7100 is south of the main sales site and is the location of the noncomplying office use.

Conditions of Approval of NCU-98-01/TPR-98-06:

1. The applicant shall complete the expansion in accordance with the approved proposed site plan as shown in Exhibit 5 except that the use of the 2366 SE Ochoco (**Part D**) site for auto storage or office use shall not be allowed.

Today's site inspection verified that office uses and auto storage uses have been vacated from Part D. Some rooms are in use for file storage and handling. I was not able to view one locked room in the office portion of the building because Mary Davis "didn't have the key to the room."

2. The applicant shall install the landscaping in accordance with the approved landscaping plan attached to the Staff Report as Exhibit 10.

Exhibit 10 does not appear to be a landscaping plan. I have interpreted the December 10, 1998 Planning Commission minutes to refer to the applicant-submitted blue line Landscape Plan dated 11/18/98. Landscaping has not been installed in accordance with this plan.

3. The Finance and Insurance Building is denied as a part of the Nonconforming use approval.

Office uses have been vacated from Part D.

4. The applicant must obtain any required building permits for the completion of the improvements at the site.

It appears that no building permits have been obtained, nor applications submitted. In a telephone conversation with Mary Davis today, December 20, she

City of Milwaukie Community Development Department

Title: Site Visit Notes Submitted by: Staff Date: 2/8/00 # Pages: 3
 File Numbers: AP00-01 Applicant: Thomason Auto Group Exhibit #: 3
 (NCU-98-02/TPR-98-06)



noted that they have been awaiting a property transfer to generate some funds for improvements. She stated that the transfer was completed on December 13, 1999.

5. The applicant will comply with the Public Works requirements as set forth in Exhibit 8 and Exhibit 9 of the Staff Report. Curbs and sidewalk must be connected on Moores Street from McLoughlin Blvd. to Main Street including a standard ADA driveway approach near McLoughlin Blvd. A right-of-way permit is required for this work and inspection forms are required before pouring. Erosion control permit must be obtained as required by Public Works.

Sidewalks have not been installed along Moores St. frontage of Part A. The Moores St. frontage of Part B lacks curbs and sidewalks.

6. Storm drainage is extended on site from Ochoco St. Extension of that system is permitted with a plumbing permit. Full construction plans must be submitted to the Plumbing Department for review along with a plumbing permit application. All catch basins must be inverted siphon (Lynch type).

I am uncertain about compliance at this time.

7. A proper driveway approach is required if the applicant wants to have access to the eastern part of their lot from Main and Ochoco Street is this area is not to be landscaped. If access is not proposed at either of these locations, landscaping along the entire property line is required. If access is desired at these locations, a plan showing width and location must be submitted to the Public Works Department along with an application for a Right-of-Way permit. All driveway approaches must meet current ADA access requirements. Public Works will provide the applicant with a standard detail for the construction of these approaches.

Neither landscaping or, alternatively, standard driveway approach(es) have been installed.

8. The applicant must obtain any and all approvals or permits necessary from the Oregon Department of Transportation for the completion of improvements along or in the State Highway. Those approvals must be provided to the City prior to the issuance of a building permit for any improvements at the site.

I am uncertain about compliance at this time.

9. The banner signage will be removed at the site. The applicant will provide information to employees at the site regarding the City sign permit requirements prior to the installation of any sign on the premises.

I observed a banner sign suspended from the front of the building at Part C. Two other temporary signs were leaning against a post and a light pole along the McLoughlin Blvd. frontage.

10. The applicant shall address the fire access standards as determined by the Fire Marshall and obtain any approvals necessary prior to the issuance of a building permit for any improvements at the site.

I am uncertain about compliance at this time.

11. A plan showing the locations of bicycle racks to be installed at the site will be provided prior to the issuance of a building permit. The bicycle racks must meet the requirements of Section 505 of the Zoning Ordinance and must be installed prior to the issuance of a Certificate of Occupancy.

I am uncertain about compliance at this time.

12. Curbs and sidewalks are required to be constructed around the perimeters of the sites contiguous with 8990 SE McLoughlin Blvd.

There are no sidewalks along most of the Moore St. frontage of Part A.

13. A landscape plan shall be submitted for the North side of Moores Street, that is compatible and comparable with the landscape plan that was approved and included as Exhibit 10 of the Staff Report

No landscape plan has been submitted for the north side of Moores St., Part B.



Dan Powell, Vice President of Finance
Thomason Auto Group
1 SW Columbia Street, Suite 1110
Portland, Oregon 97258

December 28, 1999
10:30 AM

Re:

- Supplemental Dealer/Rebuilder Business Certificate Application for Thomason TY LLC DBA Thomason Used Cars; business location is 8890 SE McLoughlin, Milwaukie Oregon.
- Failure of Thomason Used Cars to comply with the Conditions of Approval of NCU-98-02/TPR-98-06.

Dear Mr. Powell:

The above-listed certification and accompanying approval letter is enclosed with this letter. Please note that the location approval is valid only for 11E25BB tax lots 5800, 5900, 6000, 6100 and 2400. Tax lots 11E25BB 5600, 2500, 2800 and 7100 are not included in the location approval.

A Revised Notice of Decision dated February 3, 1999 granted approval for Thomason Used Cars to expand its nonconforming use, subject to the conditions of approval listed in the Notice (see the attached Revised Notice of Decision for NCU-98-02/TPR-98-06). The decision granted approval to expand the use to tax lots 5600, 2500 and 2800. It denied approval to expand to tax lot 7100 (2366 SE Ochoco St.), and required Thomason to vacate it within 120 days. According to a recent inspection, tax lot 7100 has not been completely vacated by Thomason.

The Notice included thirteen conditions of approval. Thomason is required to comply with all the conditions of approval if it wishes legally to use tax lots 5600, 2500 and 2800. That is, Thomason's occupation of these tax lots is contingent upon compliance with the conditions listed. Further, the Milwaukie Zoning Ordinance (MZO) provides for expiration of approvals after six months, if "substantial construction" pursuant to the decision has not taken place (see MZO Section 1013, attached).

On December 20, 1999 at 10:00 am, with permission of Thomason Auto Group, my staff inspected the exterior of the site, as well as the interior of the building at 2366 SE Ochoco (tax lot 7100) for compliance with the conditions of approval of NCU-98-02/TPR-98-06. The inspection revealed that the conditions of approval of NCU-98-02/TPR-98-06 have not yet been met. Note that the Milwaukie Zoning Ordinance (MZO) Section 1013 provides that the approval is void after six months unless substantial construction pursuant to the approval has taken place. No evidence indicates that Thomason has undertaken substantial construction to implement the conditions of approval. Therefore, the approval granted in NCU-98-02/TPR-98-06 is void.

City of Milwaukie Community Development Department

Title: Director's Letter Submitted by: Staff Date: 2/8/00 # Pages: 2
 File Numbers: AP00-01 Applicant: Thomason Auto Group Exhibit #: 4
 (NCU-98-02/TPR-98-06)



The determination that the approval is void may be appealed to the Milwaukie Planning Commission. An appeal of this action must be filed within 15 days of the date of this letter. All Appeals must be accompanied by the applicable fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning Department. The fee for an appeal is \$265. The appeal must specify the issues or findings in contention so as to afford the Planning Commission and interested parties an adequate opportunity to respond to and resolve each issue.

Appeal expiration date: 5:00 PM, January 12, 2000

The determination to void the approval means that Thomason Auto Group must reapply for a Nonconforming Use Review and a Transportation Planning Review to request approval to expand the existing legal nonconforming use on tax lots 5800, 5900, 6000, 6100 and 2400 onto tax lots 5600, 2500 and 2800. To avoid enforcement action, contact the City of Milwaukie Planning Department for application materials as soon as possible.

If you have any questions, please feel free to telephone me at 786-7654.

Sincerely,



Alice Rouyer
Planning Director

Enclosures:

- Revised Notice of Decision, NCU-98-02/TPR-98-06,
- Milwaukie Zoning Ordinance, Section 1013,
- Thomason DMV Supplemental Dealer/Rebuilder Business Certificate Application,
- Attachment Letter from Milwaukie Planning Department to DMV Business License Unit.

City of Milwaukie
Appeal Application

Date: 1/12/2000

Milwaukie Community Development Department
City Hall
10722 SE Main St.
Milwaukie OR 97222

Re: File No.(s): NCU 98-02 / TPR 98-06

The undersigned hereby appeal(s) the decision of (check one): Community Development Director, Planning Commission, concerning the action to (check one): approve, deny the above referenced file(s) on the following date: 12/28/99.

Please set a date for the required public hearing for review of this appeal. I have enclosed the appeal filing fee of \$265.00

The reasons for this appeal are identified as follows:

THE APPLICANT OBJECTS TO THE PLANNING DIRECTOR'S DECISION TO VOID THE APPEAL OF AN EXPANSION OF A NON-CONFORMING USE + TRANS. PLAN PERMITS, FOR THE EXPANSION OF AN EXISTING AUTO SALES BUSINESS @ 8750 + 8990 SE MCLOUSTON BLVD. (THOMASON TOYOTA)
THOMASON TOYOTA WAS SOLD TO ASBURY AUTOMOTIVE CORP, WHO HAS 51% CONTROLLING INTEREST IN THOMASON TOYOTA. AN ELEVEN MONTH DELAY IN THE SALE OF THOMASON TOYOTA, PLUS THE ESCALATING COSTS OF COMPLYING WITH CONDITIONS OF APPEAL FOR NCU 98-02 / TPR 98-06, PREVIOUSLY OBTAINED ADDITIONAL FUNDING THAT HAD TO HAVE ASBURY APPEAL. APPROVED ADDITIONAL FUNDING LEFT + THAT POSITION WAS JUST FILLED IN OCT, 1999.

I will will not (check one) be providing additional written materials prior to the public hearing.

Sincerely, Bruce Vincent, Pres.

Bedsaul/Vincent Consulting
agent for Thomason Auto Group

DAN POWELL
THOMASON AUTO GROUP
PORT. OR 97258
BEN FRANKLIN PLAZA
ONE SW COLUMBIA
SUITE 1100

BEDSAUL/VINCENT CONSULTING
825 NE 20TH, SUITE 300 PORT. OR 9723

Bruce Vincent
Signature(s)

Address(es)

City of Milwaukie Community Development Department

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File Numbers: AP00-01 Applicant: Thomason Auto Group Exhibit #: 5
(NCU-98-02 / TPR-98-06)

