

**CITY OF MILWAUKIE
CITY COUNCIL AGENDA
JANUARY 21, 2003**

MILWAUKIE CITY HALL
10722 SE Main Street

1902ND MEETING

REGULAR SESSION - 6:00 p.m.

- I. CALL TO ORDER**
Pledge of Allegiance
- II. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- III. CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. City Council Minutes of January 6 & 7, 2003**
 - B. 40th Avenue and 43rd Avenue Stormline Project Bid Award**
 - C. Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project**
- IV. AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
- V. PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. Appeal of Planning Commission Denial of a Three-lot Minor Land Partition with Two Flag Lots File No. MLP-02-07 (Kent)**
 - B. Protest of Notice to Abate Nuisance on Property Located on the West Side of 21st Street between Adams and Lake Road, Milwaukie, Clackamas County, Oregon (Campbell/Gessner)**
- VI. OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*
 - A. Elect Council President (Mayor Bernard)**
 - B. Citizens Utility Advisory Board Annual Work Plan (Board Members/Shirey)**
 - C. Sanitary Sewer Volume Based Billing Update (Ostlund/Shirey)**

- D. **Transportation Enhancement Grant Application Support – Resolution (King/Shirey)**
- E. **Downtown Design Guidelines Project Update (Gessner/Kent)**

VII. INFORMATION

Riverfront Board Minutes of November 6, 2002

VIII. ADJOURNMENT

EXECUTIVE SESSION -- *At the end of the regular meeting, the Council may hold an Executive Session under the authority of Oregon Revised Statutes 192.660 as needed.*

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

The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

CITY COUNCIL WORK SESSION JANUARY 6, 2003

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

City Council present: Mayor Bernard, Councilors Lancaster and Marshall, and Councilors elect Barnes and Stone.

Staff present: City Manager Mike Swanson, Neighborhood Services Manager Michelle Gregory, Community Development/Public Works Director Alice Rouyer, and Engineering Director Paul Shirey.

Information Sharing

Councilor Marshall provided a recent *Oregonian* article about economic development efforts in Molalla.

Councilor Barnes suggested the City look into the feasibility of charging a non-resident fee to Ledding Library users.

The group discussed the status of the cable access studio and its operations.

Centennial Opening Ceremony Update

Gregory gave an overview of the events for the Centennial Opening Ceremony scheduled for February 3. Centennial Committee members Kathy Buss, Jim Newman, and Ed Zumwalt were in the audience. Staff is mailing invitations, and the Clackamas County Board of Commissioners will consider adopting a resolution recognizing Milwaukie's 100th Anniversary at its January 16 meeting. The opening ceremony will include a reenactment of the first Milwaukie City Council meeting in 1903 and a calling to order of the current 1903rd meeting of the City Council. The group discussed the audience participation portion of the agenda during which those honored guests wishing to speak could make their comments. Local drama clubs will provide costumes and props.

The Council discussed several ideas for making this an historical event including a general resolution to kick-off a riverfront park naming contest. Council members indicated they would like a fairly animated script for the reenactment, and requested that the Centennial Committee research the people involved in the first meeting. Councilor Barnes suggested an official photographer be designated, and Mayor Bernard proposed contacting Allan DeLay. Dress rehearsal was schedule for Saturday morning, February 1.

Board and Commission Interviews

The City Council interviewed Gary Hubbard, Carlotta Collette, and Kevin McNally for a position on the Budget Committee and Ed Miller for the Citizens Utility Advisory Board.

The group discussed volume based sewer billing, and Rouyer said staff is preparing a report for the January 21 Council meeting.

The work session adjourned at 6:45 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 7, 2003**

OATH OF OFFICE

Municipal Court Judge Ron Gray administered the oaths of office to Councilors Susan Stone and Deborah Barnes, Interim Councilor Jeff Marshall, and Mayor James Bernard.

CALL TO ORDER

The 1901st meeting of the Milwaukie City Council was called to order by Mayor Bernard at 6:10 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes
Larry Lancaster

Jeff Marshall
Susan Stone

Staff present:

Mike Swanson,
City Manager

JoAnn Herrigel,
Program Administrator

Tim Ramis,
City Attorney

Paul Shirey,
Engineering Director

Alice Rouyer,
Community Development/
Public Works Director

Steve Campbell,
Code Compliance Officer

John Gessner,
Planning Director

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard announced that Milwaukie had received a grant to administer a fluorescent lamp recycling program.

CONSENT AGENDA

It was moved by Councilor Lancaster and seconded by Councilor Marshall to approve the Consent Agenda that included:

1. City Council Minutes of December 17, 2002;
2. **Resolution 1-2003**: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the *Clackamas Review* and the *Oregonian* as the Papers of Record for the City of Milwaukie; and
3. **Resolution 2-2003**: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Dates.

The motion to adopt the Consent Agenda passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Appeal of Planning Commission Denial of a Three-Lot Minor Land Partition with Two Flag Lots, File No. MLP-02-07

Mayor Bernard called the public hearing on the appeal of the Planning Commission's denial of a request for a minor land partition, File No. MLP-02-07, for property located at 5650 SE King Road to order at 6:15 p.m.

Mayor Bernard announced the appeal of the Planning Commission denial of a three-lot minor land partition with two flag lots, File No. MLP-02-07, will be continued to the January 21, 2003 regular Council meeting.

Protest of Nuisance to Abate Property Located at 21st Avenue and Lake Road

Campbell and **Gessner** provided preliminary staff comments related to the protest of the notice to abate a nuisance filed by Katie Daniel of Emmert International on January 2, 2003. The subject of the abatement is a house presently stored on railroad property at 21st Avenue and Lake Road.

Ramis outlined the Council's options in terms of the actions it can take at this time. These were: (1) conduct a hearing at tonight's meeting and reach a decision; (2) conduct a hearing, declare a nuisance, and continue the matter to a date certain; or (3) proceed with the continuance this evening. Ramis did not have a specific recommendation.

Gessner said Emmert has identified a potential lot for the house south of Balfour Street and north of the Clackamas County Housing Authority property on A Street. Although it is not a strong staff recommendation, an extension could clarify some uncertainties about the site. If the site proves viable, the need to take abatement action, to find another house mover, or, failing that, to demolish the house on site would be eliminated. He thought a workable solution might be identified by the January 21, 2003 meeting.

Gessner reviewed the activities that have taken place to date. Emmert worked initially with a property owner at 30th Avenue and Madison Street, but it was determined that variances and certain subdivision actions would be required. Staff advised Emmert it was not a suitable site since the lengthy land use process required would not result in the prompt removal of the house. When it became evident this option would fail, Emmert began considering a property he owns on Balfour Street. There are, however, utility and easement access issues.

Councilor Stone understands Emmert's intent is to move the house, but he has not complied with the given time frame. Emmert International is a widely known company and seems to be reputable and responsible. She asked staff if they had reason to believe Emmert would not comply.

Gessner responded staff is concerned about the overall lack of performance to date.

Councilor Stone does not wish to see the house demolished. The North Clackamas School District did not go through a public process when deciding how to dispose of the structure. In her opinion, Mr. Peterson was not the proper person to take over initial ownership. She felt Emmert should be given time to locate a suitable site, since he took it over from Peterson only about 2 months ago.

Swanson said this has been a challenging issue from the beginning because the City took action when it really was not obligated to do so. There are 2 competing interests: the preservation of an historic structure and the reasonable enforcement of City regulations. Thus far, the City has made a lot of allowances, particularly in Peterson's case, to protect the structure. Whatever action the City takes, Emmert must be impressed with the fact that the house must be moved. In the past 4 to 5 months, he has gotten more phone calls from people who wish to see the house relocated. Both points of view are valid, and Emmert holds the key to maintaining a balance between preservation of an historic structure and upholding the integrity of Milwaukie's code. It is absolutely necessary that removal move forward expeditiously.

Mayor Bernard asked if a motion was required to hold an abatement hearing.

Ramis responded Council has code authority to proceed with the hearing. If it wishes to continue the hearing, it does so by motion.

Councilor Marshall asked if the City has gotten a commitment from Emmert to have the structure removed by a date certain.

Gessner responded Emmert has not provided the City with a removal date.

Councilor Marshall asked if there was any indication of approximately how long it will take to get that commitment.

Gessner said staff knows the required steps but has not identified specific time frames.

Councilor Barnes asked how much time and money the City has spent on trying to resolve this issue.

Campbell estimated about 100 man-hours have gone into the issue.

Mayor Bernard suggested going through with the abatement hearing.

Councilor Lancaster was agreeable to a continuance since there is a reasonable possibility of a resolution. A date certain should be set based on City code and the move executed without extensions. Extraordinary efforts have been made to save the structure, and either Emmert will perform or not.

Councilor Marshall stressed that the date certain must be set in the very near future.

Councilor Barnes asked if the City could require a deposit from Emmert.

Mayor Bernard understands the City could force a bond.

Ramis explained the City could not force a bond without conducting the hearing unless the bond is volunteered. The decision at this meeting is whether or not to continue the hearing. If the Council commits to having a hearing, the message is clear to the parties responsible for the structure that something needs to happen, or on January 21, the Council will determine the City was correct in declaring the nuisance and carry on with the abatement process.

Mayor Bernard was concerned that continuing the hearing would automatically add 2 weeks to what has already been a lengthy process. He understands the Council can determine that a nuisance does exist at this meeting.

Ramis said the City Council could determine at the close of the hearing that the facts establish it is a nuisance.

Mayor Bernard and **Councilor Barnes** were in favor of having the hearing at this meeting, declare the nuisance, and continue the hearing.

Ramis said if that were the Council decision, it would conduct the hearing at this meeting, hear a report from staff, allow Emmert to make a presentation, and at the close, determine whether or not there is a nuisance. If the City Council agrees with staff, it could then declare the nuisance and return on an agreed upon date to impose the sanction. This would create a window of opportunity to solve the problem.

Councilor Marshall suggested that Emmert return at the January 21, 2003 meeting with a date certain for removal of the structure.

Councilor Barnes's concern was that many opportunities have already been extended since the house was moved to the railroad property. A lot of time and man-hours have gone into the issue, and in her opinion it should be moved. Tonight is the night to give Emmert a due date, and, if it cannot be met, then Emmert should pay. The City cannot continue to pick up the tab.

Councilor Marshall said this City Council has been very supportive of having the house moved. At this point, he did not feel 2 more weeks would make a big difference.

Councilor Stone agreed. Even though this issue has been dragging on for more than a year, Emmert has only owned this house for about 2 months. She is dedicated to preserving historic structures and advocated for having a hearing in 2 weeks. There are citizens who did not know this issue was going to be on the Council agenda, and she feels they should have an opportunity to speak on the matter.

Councilor Lancaster did not have a problem with holding the hearing in 2 weeks, but at the end of that hearing there must be a date certain for either removal or abatement.

Katie Daniel and **Craig Arquit**, 11811 SE Hwy 212, Clackamas, Oregon, 97105, represented Emmert International. Daniel said the original site selected for the house had setback issues, which were discovered in early December when the survey was done. Balfour Street is a suitable location, and the style of the house conforms with the surrounding neighborhood. The Clackamas County Housing Authority has stated in writing that it is not opposed to granting an easement or using A Street as access. The contract states the house must be moved as soon as possible, and that will occur once the City gives the necessary planning and building approvals and the utilities are notified. Emmert has only had control of the property for 2 months, and making all the arrangements is time consuming. She was just informed earlier today that water is not accessible from the housing development, and the owner to the north would have to be contacted about granting an easement.

Arquit believes it is reasonable to establish a timeline and make a commitment to moving the house by a certain date. Emmert is sensitive to the issues, but it has been challenging to coordinate things during the holidays. He would like to be able to have approximately a week to establish a viable timeframe in which to move the house. If it cannot be moved to the alternate site, the situation will have to be rectified by other means.

Councilor Stone was in favor of Emmert's returning at the next City Council meeting with that information and providing a status report.

Councilor Marshall wanted a commitment from the other property owner, a schedule with milestones, and a date certain for removal at the next Council meeting.

Councilor Stone asked if the abatement process required a certain timeframe in which to close the issue.

Ramis responded that the municipal code says the City Council will conduct a hearing quickly but also gives board discretion. One possibility for achieving Councilor Marshall's suggestion is to spend the next 2 weeks working with Emmert on a stipulated order. In 2 weeks there will either be an agreement that declares the house to be a nuisance and further that it will be moved by a date certain, or abatement will commence. If that agreement cannot be reached with Emmert, the City Council would conduct the hearing and set the order itself at the close of the hearing.

Councilor Stone commented to the fact that Emmert has only had the property for about 2 months. She does not wish to chastise Emmert International for what took place under Peterson's ownership. She did not want to be presumptuous and not give Emmert time to find another site for the house.

Mayor Bernard said there is a lot of concern in the community about moving the house. Business and property owners in that area are very upset because they feel it is a deterrent to doing business or selling property. He wants to see some action at the next meeting with Emmert providing a date certain for removal or the City will abate.

Councilor Stone agreed the house is unsightly, and something should have been done long ago. However, she would hate to see it demolished because the City Council could not wait a little longer.

George Van Bergen, former owner of the house, feels having the house sitting around the neighborhood is not good and is contrary to living in a community. Due diligence has been performed, and this is a material breach. He was surprised the railroad is not present because under abatement proceedings the lien would be against the land. He is concerned this will be an ongoing issue. The subject house is an old house, but it is not historic. He questioned if the house would comply with current building codes. He believes it is fair to require Emmert to put up a cash surety bond 2 times the amount of the building permit that is refundable if the deadline is met.

Catherine Brinkman, 2513 SE Lake Road, Milwaukie. Continued growth of Milwaukie is another issue to consider. It is less important to worry about Emmert's feeling than it is to move the house. People shopping for homes in Milwaukie see this boarded up house and are not interested in buying because of the impression this house leaves. It is an eyesore that detracts significantly from property values and makes the town look like a dumping ground. She urged the City Council to work as hard as possible to immediately remove or destroy the home.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to continue the nuisance abatement protest hearing to the next scheduled City Council meeting on January 21, 2003 at which time the owner of the structure will provide the Council with a schedule that includes a date certain for moving the house from the property, and if the owner fails to provide an adequate agreement from the Council's perspective, then the protest hearing would continue.

Mayor Bernard restated the motion: Emmert will come to the January 21, 2003 Council meeting with a date certain for removing the house. If Emmert does not accomplish this, the City Council will hold a hearing on the abatement.

Motion passed unanimously.

Councilor Marshall further directed staff, with Council's consent, to develop a schedule with 3 or 4 milestones critical to removing the house. If a milestone is missed, then there must be a plan for what happens.

Councilor Stone asked if this is a typical timeline for a process like this. It would seem Emmert needs a certain amount of time to settle all the issues.

Gessner responded this is not a typical timeline for submitting an application.

OTHER BUSINESS

Portland General Broadband Franchise Agreement

Herrigel provided the staff report in which the City Council was requested to adopt an ordinance granting a 5-year nonexclusive franchise to Portland General Broadband (PGB) to use the public rights-of-way within the City to provide telecommunications services. PGB proposes to place above and below ground fiber optics that will be leased to other telecommunication providers. PGB will pay a minimum annual franchise fee of \$4,000 or 5% of its gross revenues earned in providing telecommunications services including the lease or resale of its facilities within the Milwaukie city limits whichever is greater.

Councilor Barnes asked if the proposed franchise fee was typical of the amount given in other cities' agreements.

Karen Lee, PGB counsel, said she has negotiated 8 contracts, and the franchise fees have ranged from \$0 to a \$10,000 fee in the City of Portland.

Councilor Barnes requested the names of the current lessees.

Lee said that issue is addressed in the franchise. The contracts are private, and she was hesitant to provide the lessees' names since the meeting was being televised. PGB agrees to notify the City of these names and addressees so staff can make contact regarding registration obligations and potential franchise agreements.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the first time by title only. Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to read the ordinance granting Portland General Broadband a nonexclusive 5-year franchise for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Mayor Bernard and seconded by Councilor Stone to adopt the ordinance granting Portland General Broadband a nonexclusive 5-year franchise. Motion passed unanimously.

ORDINANCE NO. 1915:

AN ORDINANCE GRANTING TO PORTLAND GENERAL DISTRIBUTION, LLC, dba PORTLAND GENERAL BROADBAND A NONEXCLUSIVE FRANCHISE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF MILWAUKIE.

Intergovernmental Agreement for Qwest Audit

Herrigel provided the staff report in which the City Council was requested to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions to hire a consultant to complete a joint financial audit of Qwest. Milwaukie was 1 of 24 cities that performed a similar audit of PGE in 2001. The group formalized its association and adopted the name Oregon Municipal Audit Review Committee (OMARC). Milwaukie spent about \$2,800 on the PGE audit and netted nearly \$145,000. Milwaukie's share of the Qwest audit, based on population and franchise fees received, is \$10, 223.56.

Swanson said notwithstanding his recent interaction with PGE counsel on franchise fees, PGE was very cooperative during the audit. He is not convinced Qwest will do the same. Cities agree Qwest is the next financial audit that should be undertaken.

Herrigel noted cities are adding franchise agreement language stipulating that audit costs are covered by the grantee. This verbiage is included in the PGB agreement.

It was moved by Councilor Barnes and seconded by Councilor Stone to authorize the city manager to sign an intergovernmental agreement (IGA) with other participating Oregon jurisdictions for hiring a consultant to complete a joint financial audit of Qwest.

Councilor Lancaster asked if the same 24 cities from the PGE audit are also involved in the Qwest audit.

Herrigel said 52 Oregon cities have Qwest franchises, and the 24 cities from the PGE audit are likely involved.

Swanson believed many PGE franchises are in the metropolitan area, whereas, Qwest serves a broader area.

Councilor Lancaster asked if Milwaukie was moving forward without knowing if other cities were committing to the project.

Herrigel said most cities are moving forward simultaneously.

Ramis commented that conducting these types of audits is part of doing city business. Even without conscious wrongdoing on the part of the franchisees, boundary changes and new construction can lead to some under collection by city governments. He does, however, support future costs being borne by the utility.

Swanson said, with the exception of a small number of cities that were overpaid and had to refund PGE, most participants did receive payments.

Lee added PGE is in the midst of auditing a few remaining cities. She explained that Qwest does cover a different area than PGE.

Councilor Lancaster asked if the Qwest audit is independent of the litigation.

Herrigel said the audit is a separate issue and is based on correctly identifying the number of customers receiving service within a given city boundary.

Councilor Lancaster questioned the cap on Portland's share of the expenses.

It is **Herrigel's** understanding that OAMRC established the cap.

Swanson explained the methodology developed by the consultant will be used for both providers, and Milwaukie will pay only for the Qwest audit.

Councilor Lancaster understands it is a good business practice to perform these audits periodically but hoped there would be another mechanism in place to make them less costly.

The motion to authorize the city manager to sign an IGA for the Qwest audit passed unanimously.

Community Development Block Grant Intergovernmental Agreement for Design and Construction for King Road/Harvey Street/40th Avenue Sidewalk Project

Shirey presented the staff report in which the City Council was requested to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Milwaukie was awarded \$295,000 in Community Development Block Grant (CDBG) funds. The City's local match is 20% of the total project, or all costs for the design and construction in excess of the amount awarded, whichever is greater. Staff estimates about \$55,000 will be allocated from the street fund and \$25,000 from the storm fund. These funds were approved in the 2002 – 2003 budget. Staff will work with residents to obtain easements for the project.

Councilor Stone asked if the project calls for sidewalks on both sides of Harvey Street and if on-street parking would still be allowed.

Shirey will review the plans and provide an answer.

Rouyer explained sidewalk options are still being considered. Sidewalks on only one side of the street would extend the length of the project; however, Harvey Street has a lot of traffic, so it may be appropriate to construct sidewalks on both sides of the street.

Councilor Stone believes there is parking only on the north side of Harvey Street at this time. She wants to ensure neighborhood involvement will be part of the decision making process.

It was moved by Councilor Stone and seconded by Councilor Lancaster to authorize the Mayor to sign an intergovernmental agreement (IGA) with Clackamas County to allow for the design and construction of the King/Harvey/40th Street and Storm Improvements Project in the Ardenwald neighborhood. Motion passed unanimously.

Change Date of First Regular City Council Session in February

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the resolution changing the date of the first regular City Council session in February. Motion passed unanimously.

RESOLUTION NO. 3-2003:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DETERMINING THE FIRST REGULAR COUNCIL SESSION OF FEBRUARY 2003 WILL BE CALLED TO ORDER ON FEBRUARY 3, 2003 AT 5:00 P.M. UNDER THE BIG TENT IN THE CITY HALL PUBLIC PARKING LOT ON MAIN STREET TO MARK THE OPENING CEREMONY OF MILWAUKIE'S CENTENNIAL YEAR CELEBRATION.

North Main Developer Selection Open House

Rouyer announced the North Main Developer Open House has been rescheduled to February 6.

Advisory Board Appointments

Mayor Bernard, with the consent of Council, appointed Gary Hubbard to the Budget Committee and Ed Miller to the Citizens Utility Advisory Board. Carlotta Collette and Kevin McNally, who also interviewed for the Budget Committee position, will be advised

of other available advisory board vacancies. **Councilor Stone** recommended adding verbiage to letters going out to applicants encouraging neighborhood association involvement.

Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(h) to discuss real property transaction.

Adjournment

It was moved by Councilor Marshall and seconded by Mayor Bernard to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the meeting at 7: 30 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

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

From: Ruthanne Bennett, Civil Engineer

Subject: 40th and 43rd Storm Project Bid Award

Date: January 6, 2003 for January 21, 2003 City Council Meeting

Action Requested

Authorize the City Manager to sign a contract for the 40th and 43rd Storm Project with Camrock Excavation, Inc., in the amount of \$102,857.10. Also authorize the City Manager to approve \$19,142.90 contingency.

Background

The current Surface Water Master Plan has identified the need for stormlines on both 40th and 43rd Avenues.

The installation of 1500 feet of 12"-24" pipe and associated catch basins and manholes on 40th and 43rd Avenues will collect surface water so the water will not contribute to local flooding of yards and garages. Draining storm water from the streets will improve vehicle and pedestrian safety. Elimination of drywells on Meadowcrest Court and Roswell Street will reduce the groundwater problem along Brookside Drive. The surface water collected will be piped to an up-to-date water quality facility. The water quality facility is in Portland just north of this project, between the Springwater Trail and Johnson Creek.

A project vicinity map is attached. Project bid advertising was completed as required and bids were opened January 6, 2003. Twenty-one bids were received, ranging from \$102,857.10 to \$248,895.00, and Camrock Excavation was the low bidder at \$102,857.10. In order to account for project unknowns, staff recommends Council approve an additional 18.6% contingency in the amount of \$19,142.90, which will be included in the purchase order.

Concurrence

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

Fiscal Impact

The approved Storm Fund budget includes \$162,000 for this project.

Funding for this project will consist of \$122,000 from the FY 2002-2003 Storm Fund Budget.

The bids received are listed below.

Contractor	Bid	Contractor	Bid
Camrock Excavation	\$102,857.10	Emery & Sons	\$155,790.00
Lorin Meyer Constr.	\$105,028.50	Moore Excavating	\$157,465.00
C & M Construction	\$128,750.00	Kerr Construction	\$159,365.00
NW Construction	\$129,986.25	Dirt & Aggregate	\$164,440.00
Banzer Construction	\$130,340.00	Geo. Schmidt & Son	\$167,333.50
Canby Excavating	\$134,582.00	Kat Construction	\$179,950.00
Landis & Landis	\$139,872.00	Nutter Corp.	\$179,960.00
Werbin West Contr.	\$145,628.00	Cipriano & Sons	\$180,700.00
Dunn Construction	\$146,950.00	Donald Eudaly	\$184,501.00
D & D Concrete	\$147,385.00	D. M. Construction	\$248,895.00
K & R Plumbing	\$147,919.00		

Work Load Impacts

The workload impact would be the amount of time spent doing normal project management and inspection duties. This project is part of the Engineering and Storm Division's annual work program.

Alternatives

1. Authorize the City Manager to sign a contract as proposed.
2. Elect to do the project at a later date.
3. Elect to postpone this project indefinitely.

III B 40th and 43rd Storm Project Bid Award Map Not available electronically

Hard copy available for review at Front Desk of each City facility or by contacting the City Recorder at 503-786-7502



To: Mayor and City Council

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

From: Paul Shirey, Engineering Director
Brion Barnett, Civil Engineer

Subject: Intergovernmental Agreement (IGA) with Oregon Department of Transportation for the 42nd Avenue Improvements Project

Date: Jan 3, 2003 for the January 21 2003 meeting

Action Requested

Authorize the Mayor to sign an Intergovernmental Agreement (IGA) with Oregon Department of Transportation to allow for the design and construction of the 42nd Avenue Street and Storm Improvements Project.

Background

The City applied for and received an Oregon Bicycle and Pedestrian Program grant, administered by Oregon Department of Transportation (ODOT), in December 2002 to complete curb, sidewalk, and storm improvements to both sides of 42nd Avenue between Johnson Creek Boulevard (JCB) and Olsen Street. The City completed a similar project with ODOT funding in 2000 on Roswell Street from 32nd Avenue to 42nd Avenue. The current ODOT project would connect with three other street improvement projects: the previously constructed Roswell project, the previously constructed Community Development Block Grant project (which ended at 42nd Avenue and Olsen Street), and the scheduled street and storm project on JCB between 36th Avenue and 45th Avenue. Since 42nd Avenue straddles both the Ardenwald and Lewelling neighborhoods, City staff will begin public involvement by attending Neighborhood Association meetings in January and February respectively.

Concurrence

Staff in Community Development, Engineering, the City Attorney’s Office, and the City Manager’s office have reviewed the proposed Intergovernmental Agreement (IGA) and support signing the IGA to proceed with design and construction of the 42nd Avenue Street and Storm Improvements Project.

Fiscal Impact

The City was awarded a maximum of \$200,000 in ODOT funding for the design and construction of the project. Under terms of the attached Intergovernmental Agreement (IGA), the City’s local matching share requirement is:

1. Twenty percent (20%) of the total project cost up to a maximum of \$200,000, or
2. All project costs that exceed the \$200,000 grant.

Staff estimates that the total project cost will be approximately \$330,000. This project is not funded in the 2002/2003 Capital Improvement Program, however, funds from the City Bike and Storm Funds are available (Storm Fund this fiscal year, Bike Fund next fiscal year) to match the grant amount as follows:

\$200,000 from ODOT
\$ 21,700 from City Bike Fund
\$108,300 from City Storm Fund

City staff will work with local residents to obtain easements for the construction of curb and sidewalk radius sections at street intersections and other locations.

Work Load Impacts

The Engineering Department will manage the project with support from the Neighborhood Services as necessary. The project is part of the work program for both departments. The tentative project schedule is as follows:

Project Phase	Start and End Date
Project Planning	Jan. 2003 to Feb. 2003
Design and Engineering	March 2003 to June 2003
Construction	July 2003 to Sept. 2003

Alternatives

The Council has the following alternatives:

- Suggest amendments to the attached Intergovernmental Agreement (IGA).
- Do not authorize the Mayor to sign the attached IGA, and forgo proceeding with the project.

Attachments

Attachment A - IGA with Oregon Department of Transportation

Attachment B – Vicinity Map

1/3/03

Misc. Contracts & Agreements
No. 20473

WALKWAY/BIKEWAY PROJECT AGREEMENT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF MILWAUKIE, acting by and through its Elected Officials, hereinafter referred to as "City."

RECITALS

1. SE 42nd Avenue is a part of the City system under the jurisdiction and control of the City.
2. By the authority granted in ORS 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3a, of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the right of way.
3. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with counties and cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

NOW THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and City plan and propose to design and construct sidewalks on SE 42nd Avenue from SE Johnson Creek Blvd to SE Olsen Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. City has determined that the actual total cost of the Project is estimated to be \$330,000. State shall fund the Project in an amount not to exceed \$200,000, using State Highway Funds. City will provide a match in the amount of \$130,000. City shall be responsible for any portion of the Project, which is not covered by State funding, including any portion of the Project which exceeds the estimated total cost. In the event that the total Project cost is actually less than the original estimate, the State funds shall be limited to a proportionate share of the original estimated amount, based on a percentage calculated using state share and local match.
3. The work is to begin upon execution of the agreement by all parties and be completed no later than October 31, 2004. Maintenance responsibilities shall survive any termination of this agreement.

CITY OBLIGATIONS

1. City shall perform the work described in this agreement.
2. City shall conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project. Actual construction of the Project may be accomplished by City forces, by contract, or by any combination of these methods, as City shall elect.
3. City shall submit a copy of the plans and specifications to State through the State's Bicycle and Pedestrian Program Manager for review and concurrence prior to advertising for a construction contract or prior to construction if City forces will perform the construction work. Concurrence must be received from the State's Bicycle and Pedestrian Program Manager prior to proceeding with the Project. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan.
4. City shall, upon completion of Project, submit to the State's Bicycle and Pedestrian Program Manager an itemized statement of the final actual total cost of the Project.
5. City represents that this agreement is signed by personnel duly authorized to do so by its City Council.
6. City shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval.

7. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
8. Contractor shall furnish to the City, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.
9. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, city, its Contractors, and their Subcontractors shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Oregon Department of Transportation, their officers, agents, and employees from and against any and all claims, suits, actions, losses, damages, costs, expenses, and liabilities of any nature whatsoever resulting from, arising out of, or relating to the activities of City or its officers, employees, subcontractors, or agents under this agreement.
10. City shall be responsible for all costs not covered by State funding. State funding is limited to \$200,000
11. City shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to, retirement system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
12. City shall, upon completion of Project, maintain the Project at its own cost and expense, and in a manner satisfactory to State.

STATE OBLIGATIONS

1. State's Bicycle and Pedestrian Program shall review and must concur in the plans prepared by City before the Project is advertised for a construction contract or before construction begins if City forces shall perform the work. State's Bicycle and Pedestrian Program office shall process all billings submitted by City.

2. Upon receipt of notification that the City is prepared to proceed with the development of Project, State shall deposit with City the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from City of an itemized statement of the actual total cost of the Project, State shall deposit with City a final payment, the sum of \$100,000, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated costs (\$330,000). Should final Project costs exceed the original estimate, extra costs shall be borne by City; the maximum amount of State reimbursement is \$200,000. If final Project costs are less than original estimate, State shall deposit with City a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using state share and local match.
3. In the event this agreement is terminated for any reason, City shall provide an itemized statement of the costs and expenses prior to date of termination. State shall reimburse City for its proportional share of these expenses. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. State certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within State's current appropriation or limitation of current biennial budget.

GENERAL PROVISIONS

1. City, its contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. City shall ensure that each of its contractors complies with these requirements.
2. This agreement may be terminated by mutual consent of both parties.
3. State may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.

- b. If City fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within 10 days or such longer period as State may authorize.
- c. If State fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the work provided in this agreement.
- d. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if State is prohibited from paying for such work from the planned funding sources.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

- 4. If City fails to maintain the facility in accordance with the terms of this agreement, State, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this agreement, or take any other action allowed by law.
- 5. State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
- 6. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this agreement shall not constitute a waiver by a party of that or any other provision.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on February 1, 2000 as part of the Fiscal Year 2002-2003 Local Assistance Bicycle and Pedestrian Program.

The funds are included in the Statewide Programs Section of the 2000-2003 Statewide Transportation Improvement Program (STIP).

The Oregon Transportation Commission on January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the commission.

On January 31, 2002, the Director of the Oregon Department of Transportation approved subdelegation order No. 2, in which the Director grants authority to the Executive Deputy Director for Highways, Executive Deputy Director for Central Services, and the Chief of Staff to approve and execute over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission, or in a line item in the approved biennial budget.

STATE OF OREGON, by and through
its Department of Transportation

By _____
Exec. Deputy Director for Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Mgr./Chief Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

CITY OF MILWAUKIE

By _____
James Bernard, Mayor

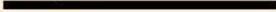
Date _____

APPROVED AS TO FORM

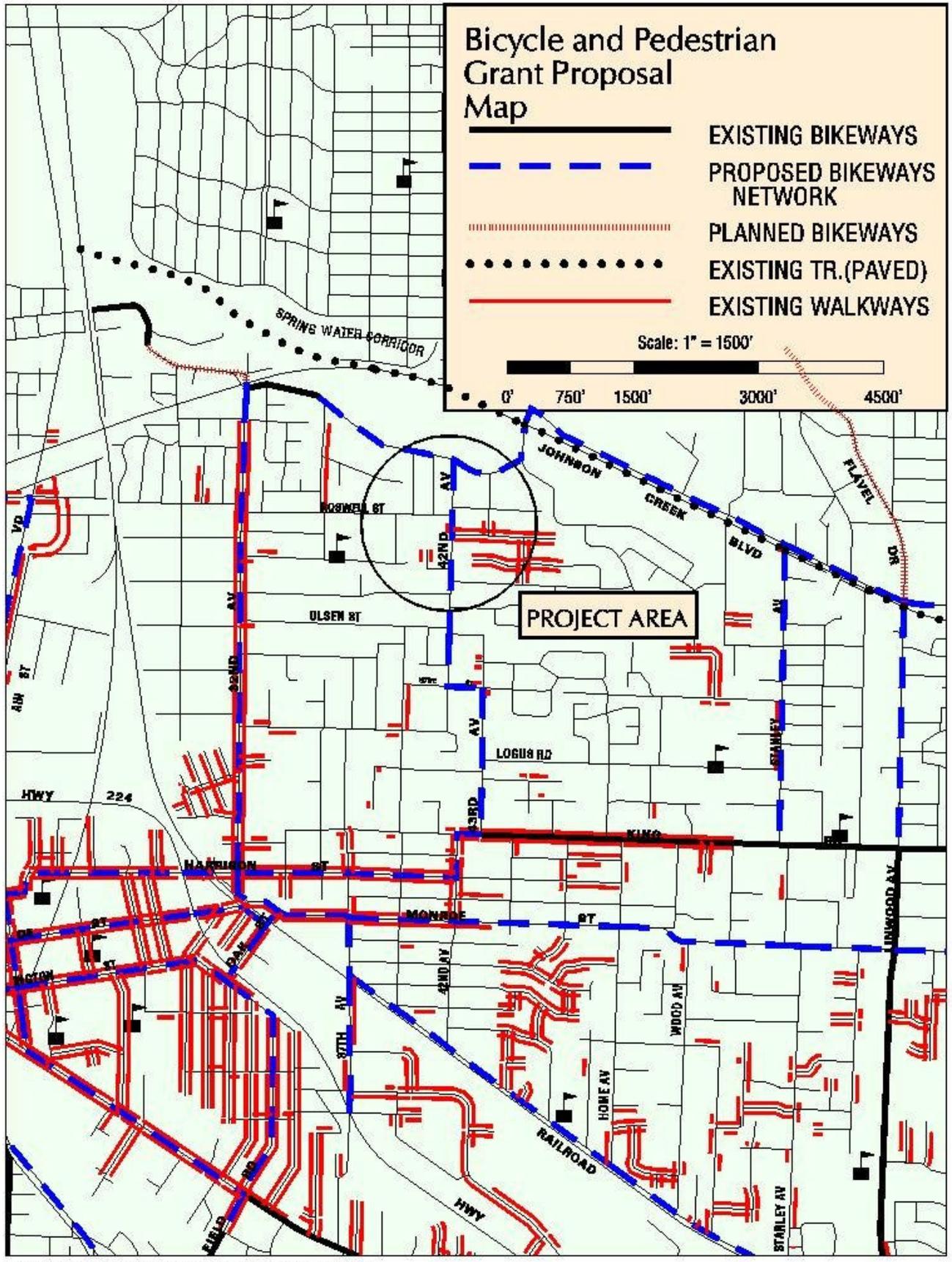
By _____
City Legal Counsel

Date _____

Bicycle and Pedestrian Grant Proposal Map

-  EXISTING BIKEWAYS
-  PROPOSED BIKEWAYS NETWORK
-  PLANNED BIKEWAYS
-  EXISTING TR.(PAVED)
-  EXISTING WALKWAYS

Scale: 1" = 1500'





TO: Mayor and City Council

THROUGH: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works
John Gessner, Planning Director

FROM: Kenneth Kent, Associate Planner

DATE: January 7, 2003

SUBJECT: File: MLP-02-07
Applicant: Phillip Reich
Site Address: 5650 SE King Road
NDA: Linwood

Action Requested

Deny the appeal of the Planning Commission's decision on MLP-02-07 and adopt the recommended findings. (See Exhibit A)

Background

The Planning Commission denied a request for a three-lot minor land partition with two flag lots on October 22, 2002. See Exhibit D for Planning Commission Staff report. The applicant filed an appeal on November 6, 2002, (Exhibit B) which states the following reason for the appeal:

“Denial by Board in contradiction to allowed partition requirements for this partition.”

Project Description

The applicant is proposing to create three parcels from an existing 1.06 acre property on the south side of King Road, west of Stanley Avenue. Proposed Lot 1 contains an existing single-family dwelling, several detached structures and fronts on King Road. Proposed Lots 2 and 3 are flag lots, with access to be provided through combined flagpoles with a total width of 30 feet, and a shared 12-foot wide paved driveway.

The applicant proposes to satisfy flag lot standards relating to future development potential by dedicating 15 feet of right-of-way along the east property line as an interim measure to allow for development of a public street in the future. The applicant's plan indicates that the property to the east would provide 15 feet of dedication at the time of its development for a total right-of-way of 30 feet.

Analysis

1. The Planning Commission's denial is based on the following:

- There is future development potential on adjacent property that can be served by a jointly dedicated public street. The Subdivision Ordinance requires access to adjacent properties be considered for flag lot applications
- The applicant has not demonstrated that access by means of a public street is not possible, as required by city code.
- Creation of flag lots as an interim measure does not assure construction of a public street that would provide suitable access and avoid other flag lots.
- The applicant's proposal does not assure future street development that supports anticipated development.

See Exhibit C for the Commission's adopted findings in support of denial.

2. The applicant made the following arguments at the Planning Commission hearing:

- A 30 foot right-of-way is adequate for future street development and should be split between the applicant's property and the property to the east.
- The applicant will install sewer and water mains. The neighboring property to the east should provide all street improvements at the time they develop. The applicant believes this would be an equitable split of street development costs.
- The right-of-way proposed by staff would not meet setback requirements.

3. The following addresses issues raised by the applicant. See verbatim minutes for issues raised and discussed at the Planning Commission meeting. (Exhibit E)

A. Applicant's Proposed 30-foot Right-of-Way

1. The applicant indicated to the Planning Commission that staff had recommended a 30-foot right-of-way. Staff's recommendation to the applicant was to locate the right-of-way entirely on his property. The Engineering Division formally

recommended to the Planning Commission a 26.5-foot right-of-way as the minimum needed to provide access and on-street parking.

As identified in the Planning Commission staff report and at the public hearing, the applicant's proposed right-of-way does not provide adequate width to construct an adequate street to serve anticipated development.

2. The applicant proposes to provide for future development potential by dedicating 15 feet of right-of-way and installing sewer and water mains. The applicant proposes that the neighboring property to the east dedicate an additional 15 feet of right-of-way at the time they develop and complete all street improvements within the total 30-foot right-of-way.

At the time the property to the east develops, the City would only be able to require street improvements within the portion of right-of-way they dedicate. The City could not compel them to pave and improve the portion of right-of-way dedicated by the applicant as well.

The applicant's proposed 15-foot dedication and deferred construction of the road at the time the neighboring lot develops does not meet city standards.

The Planning Commission found that a shared 30-foot right-of-way is not adequate for construction of a public street to serve anticipated development on both properties. The Commission also found that the applicant's cost sharing proposal for deferred street improvements is not viable.

B. VariANCES Needed with Recommended Right-of-Way

The applicant identified potential setback issues with the right-of-way proposed by staff. As noted in the Planning Commission staff report, variances would be needed due to dimensional limitations of the parent lot. (See Exhibit D, Page 4) Staff believes the applicant will be able to demonstrate grounds for granting a variance.

Decision-Making Process

The Council has three decision-making options as follows:

1. Deny the appeal, upholding the Planning Commission's decision to deny the requested minor land partition.
2. Grant the appeal, overturning the Planning Commission decision and approving the minor land partition as requested.
3. Grant the appeal and approve a minor land partition, but with conditions that propose a different layout than requested.

The final decision on this application must be made by January 21, 2003 in accordance with Oregon Revised Statutes.

Concurrence

The Public Works Department has provided comments regarding street and utility improvements that would be necessary to develop a public street and proposed lots (See Exhibit D, Attachment 6).

Comments

One letter was received from the Linwood NDA regarding the appeal. (Exhibit G) Comments provided for the Planning Commission hearing are included in Exhibit D, Attachment 7.

Exhibits

- A. Findings in support of Denial, Upholding Planning Commission Decision
- B. Appeal
- C. Planning Commission Notice of Decision
- D. Planning Commission Staff Report
- E. Planning Commission Minutes, October 22, 2002
- F. Figure 4, Transportation Design Manual
- G. Correspondence

EXHIBIT A

Reich Minor Land Partition Appeal for MLP-02-07

Recommended Findings in Support of Denial

1. The Planning Commission held a public hearing on October 22, 2002 and denied application MLP-02-07.
2. The applicant filed an appeal and required fee in accordance with Milwaukie Zoning Ordinance 19.1002 on November 6, 2002.
3. Public notice has been provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.
4. A public hearing was held by the Milwaukie City Council on January 7, 2003.
5. The appellant has not demonstrated that the Planning Commission's denial of MLP-02-07 was in contradiction to Subdivision Ordinance partitioning standards.
6. Findings in support of denial adopted by the Planning Commission on October 22, 2002 are adopted as part of these findings, including:
 - a. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
 - b. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
 - c. There is future development potential on adjacent property that can be served by a jointly dedicated public street.

The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.
 - d. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
 - e. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
 - f. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.
7. Access by means of a dedicated public street is possible because a public street could be built to access the additional lots, subject to the applicant demonstrating grounds for granting a variance.

PA

EXHIBIT B

City of Milwaukie

Appeal Application

Date: 11-6-02

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

Re: File No.(s): MLP-02-07

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: 10-22-02.

Please set a date for the required public hearing for review of this appeal. I have enclosed the appeal filing fee of \$505.

The reasons for this appeal are identified as follows:

BY BOARD
DENIAL IN CONTRADICTION TO ALLOWED
PARTITION REQUIREMENTS FOR THIS PARTITION.
DOCUMENTATION WILL FOLLOW.

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

Sincerely,

[Signature]
Signature(s)

5650 SE KING RD
Address(es)
MILWAUKIE, OR 97222
503-653-5650

October 23, 2002

File(s): MLP-02-07

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 22, 2002.

Applicant(s): Phillip Reich
Location(s): 5650 SE King Road
Tax Lot(s): 12E30DC 04100
Application Type(s): Minor Land Partition
Decision: Denied
Review Criteria: Milwaukie Zoning Ordinance:

- 19.302 - Residential Zone R-7
- 19.1011.3 - Minor Quasi-Judicial Review

Milwaukie Subdivision Ordinance Sections

- 17.32 - Partitioning

Neighborhood(s): Linwood

The Planning Commission's decision on this matter may be appealed to the Milwaukie City Council. An appeal of this action must be filed within 15 days of the date of this notice, as shown below.

Appeal period closes: 5:00 p.m., November 7, 2002

Appeals to the City Council must be accompanied by the appeal fee, be submitted in the proper format, address applicable criteria, and be made on forms provided by the Planning Department. Milwaukie Planning staff (503-786-7630) can provide information regarding forms, fees, and the appeal process.

Findings in Support of Denial

1. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
2. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
3. There is future development potential on adjacent property that can be served by a jointly dedicated public street.

The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.

4. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
5. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
6. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.

John Gessner
Planning Director

cc: Applicant
Planning Commission
Alice Rouyer, Director of Community
Development and Public Works
Paul Roeger, P.E., Civil Engineer
Brion Barnett, Civil Engineer
Robert Mendenhal, Building Official
Bonnie Lanz, Permit Specialist
Tony Cordie, Deputy Fire Marshal
NDA(s): Linwood
Interested Persons
File(s): MLP-02-07



TO: Milwaukie Planning Commission

THROUGH: John Gessner, Planning Director

FROM: Kenneth Kent, Associate Planner

DATE: October 22, 2002

SUBJECT: File: MLP-02-07
Applicant: Phillip Reich
Site Address: 5650 SE King Road
NDA: Linwood

I. Action Requested

Deny MLP-02-07 and adopt recommended findings in support of Denial. (See Attachment 1)

II. BACKGROUND

1. Key Issues

- a. The applicant is proposing to develop a three-lot minor land partition with two flag lots.
- b. The application was submitted prior to adoption of new flag lot regulations under Ordinance 1907. The proposal is subject to Subdivision regulation in effect prior to August 21, 2002.
- c. There is future development potential on adjacent property that could be served by a jointly dedicated public right-of-way. Staff believes that creation of a public street is necessary to develop the property.

- d. The applicant is requesting that flag lots be approved as an interim measure, designed to allow for a future street, with dedication of public right-of-way only, with street construction occurring when adjacent property develops in the future.
- e. Staff believes, that the applicant has not adequately demonstrated that the proposed right-of-way dedication will provide for future development of a street to serve the partition.

2. Summary Description

a. Project Information

Location:	5650 SE King Road
Property Owner:	Phillip Reich
Applicant:	Bruce Nowell
Zone:	Residential R-7
Lot Size	1.06 Acres (46,000 square feet)
Proposed Use:	Three lot minor land partition with two flag lots

The applicant is proposing to create three parcels from an existing 1.06 acre property on the south side of King Road, west of Stanley Avenue. Proposed Lot 1, containing an existing single-family dwelling, a detached shop and carport, a detached two-story garage and detached shed, is approximately 19,400 square feet in area. Lot 2 is proposed as a flag lot with a flag area of 8,245 square feet (excluding the flag pole access). Lot 3 is proposed as a flag lot with a flag area of 9,000 square feet (excluding the flag pole access).

Access to the two flag lots will be provided through a shared 30-foot wide access, with a 12-foot wide paved driveway. The flagpole for Lot 2 will be 20 feet wide and Lot 3 will be 10 wide for total of 30 feet.

To satisfy flag lot standards relating to future development potential, the applicant is proposing to dedicate 15 feet of right-of-way as an interim measure, under the provisions of Section 17.32.040 to allow for development of a public street in the future. The applicant's plan indicates that the property to the east would provide 15 feet of dedication at the time of its development for a total right-of-way of 30 feet.

b. Zoning & Site History

The property is zoned Residential R-7 and was annexed into the City in the 1980s. The properties on each side of the lot are the same size and dimensions. The property to the west is located outside the City but is within

the City's urban growth management area. The property to the east is within the City and zoned Residential R-7. (See Attachment 3)

Correspondence received (See Attachment 7) alleges that the detached 2-story garage is being used as a separate dwelling unit, which is not permitted in the R-7 Zone. The City has record of a building permit for the detached two-story garage approved in 1993. The permit notes that no kitchen facilities are allowed. Staff has investigated and determined that the building has been illegally converted to a dwelling unit. Code enforcement has been initiated.

See Attachment 4 and 5 for the site plan and the applicant's narrative for further project information.

3. Analysis of Key Issues

A summary of key zoning issues follows:

a. Compliance with Subdivision Ordinance

Future Development (Section 17.32.040.A)

Flag lot development may be approved if it can be shown that access by means of a public street is not possible. Consideration is also given to the future development potential of surrounding properties. Flag lot development cannot preclude other inaccessible adjacent or nearby properties from developing, when suitable access could be provided by a jointly dedicated right-of-way.

Staff has determined that the applicant's property and the adjoining property to the east are of sufficient size and configuration to warrant construction of a public street. The adjacent lot is 100 feet wide and 460 feet in deep. A jointly dedicated right-of-way can be accommodated on both properties. The adjacent lot contains a house and detached garage that would need to be relocated or removed to accommodate the additional right-of-way for the remainder of the street in order to meet a street side yard setback.

The applicant was advised that staff would not recommend approval without development of a public street into the site, in accordance with Subdivision Ordinance 17.32.040.A.

The applicant requests that the Planning Commission consider approval of flag lots as an interim measure under the provisions of Section 17.32.040 which states:

“...Where there is the potential for future development on adjacent lots with new roadway development, flag lots may be allowed as an interim measure. In this case, Planning Commission review, as specified in Section 17.32.050, shall be required and the flag lot(s) must be designed to allow for future street development. Dedication of the future street right-of-way will be required as part of final plat approval.”

The applicant is proposes to dedicate 15 feet of right-of-way to provide for future development of a street when the adjacent property to the east develops. The applicant’s revised site plan (Attachment 4) shows a potential 30-foot wide street with a hammerhead turn-around.

Staff believes that a street should be developed at this time as part of lot creation. There is potential for 6 to 10 lots to be developed on the two properties. Staff believes that an adequate street can be constructed at this time to serve the proposed partition. See Public Works comments (Attachment 6) for recommended right-of-way and street section. It should be noted that variances would be needed due to dimensional limitations of the parent lot.

Additional right-of-way acquired from the adjacent property in the future, would allow adequate right-of-way to serve the potential development of the properties. The applicant’s proposed right-of-way width of 15 feet does not provide adequate width to construct a street at this time.

Staff is concerned that the applicant’s proposal to dedicate right-of-way alone will not assure development of the street in the future, and that there are practical difficulties with flag lot approval as an interim measure. Although right-of-way would be acquired with the applicant’s proposal, how the improvements would be funded and constructed are not addressed. In addition, at the time the right-of-way is developed, the disposition of the flag access strip for lot 2 that is not within the proposed dedication would need to be addressed, by either reversion to the parent lot or as additional right-of-way dedication.

At the time a property develops, the owner is responsible for funding required right-of-way improvements along their frontage. Each property can be held responsible for work necessary to center of the right-of-way. Unless funds are established at the time the right-of-way is dedicated, it is not clear how funding could be acquired. The adjacent property would be required to improve their portion of right-of-way at the time of development, but could not be held responsible for the remainder of right-of-way that would be dedicated with the applicant’s proposal. One option to be considered to fund future right-of-way development is formation for an improvement district. This would require all property owners to agree to the district and their responsibility to fund

improvements. However, improvement districts are not typically established for such small projects.

Staff recognizes that the cost of improving a public street to serve the proposed new lots may be high given current land values. Although, the applicant could create one additional lot that may help offset the costs of street improvements, this may not meet the applicant's current needs.

Given the practical difficulties identified above, and the fact that a public street can be developed at this time, staff does not recommend approval of flag lots as an interim measure. Approval of flag lots as an interim measure may be appropriate when it is not possible to building a street at the time of lot creation.

Although, the applicant's proposed lot layout meets the dimensional requirements for lot area, dimension and joint access width for two flag lots, as noted above, the proposal does not meet approval criteria relating to future development. See Attachment 2 for staff zoning summary.

c. Transportation Planning, Design Standards and Procedures

Under Section 19.1400 of the Zoning Ordinance, creation of new lots requires that transportation facilities, including right-of-way, curbs and sidewalk meet current standards at the time the new lots are established. King Road is designated an arterial with a minimum right-of-way of 73 feet. The existing right-of-way is 60- feet. The applicant is required to dedicate 6.5 feet, which is half the needed right-of-way to provide the ultimate 73 feet when property on the north side of King Road develops. Required improvements along King Road will include a 6-foot wide setback sidewalk and a 6-foot wide landscape strip.

4. Code Authority And Decision-Making Process

Milwaukie Zoning Ordinance Sections

- 302 - Residential Zone R-7
- 1011.3 - Minor Quasi-Judicial Review

Milwaukie Subdivision Ordinance Sections

- 17.32 - Partitioning

Under Section 17.32.040 of the Subdivision Ordinance, development of flag lots as an interim measure is subject to minor quasi-judicial review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with approval criteria of the code sections identified above. In quasi-

judicial reviews, the Commission assesses the application against applicable approval criteria and evaluates testimony and evidence received at the public hearing. The Commission has three decision-making options as follows:

1. Approve the application upon finding that all approval criteria have been met.
2. Approve the application subject to conditions when they are needed for compliance with approval criteria.
3. Deny the application upon a finding that they do not meet approval criteria.

The final decision on this application, which includes any appeals to the City Council, must be made by December 4, 2002 in accordance with Oregon Revised Statutes.

III. Concurrence

This application was reviewed and accepted by Public Works and Fire District. The Fire Marshal has accepted access width, fire hydrant location and turn-around area proposed by the applicant, with the condition that no parking is allowed along the access drive.

IV. Comments

One letter was received regarding this application raising concerns about potential impacts of the proposed lots, including driveway access, impacts of development on their existing trees, adequate fire access, and use of detached garage as a dwelling unit. (See Attachment 6) The Linwood NDA did not comment in writing. However, staff spoke with Land Use Chair Bob Hatz, who indicated the NDA did not have objection to flag lots, but had concern that there was adequate access width and use of the 2-story garage as a dwelling unit.

IX. ATTACHMENTS

1. Findings in support of Denial
2. Zoning Summary
3. Location Map
4. Applicant's Revised Site Plan
5. Applicant's Narrative and Plans
6. Public Works Comments
7. Correspondence

ATTACHMENT 1

Reich Minor Land Partition MLP-02-07

Recommended Findings in Support of Denial

1. The applicant proposes to create three parcels, including two flag lots by partition of a 1.06 acre property at 5650 SE King Road.
2. The applicant proposes approval of flag lots as an interim measure including dedication of public right-of-way, without construction of street improvements at the time of lot creation.
3. There is future development potential on adjacent property that can be served by a jointly dedicated public street.

The applicant has not demonstrated that access by means of a dedicated public street is not possible, as required under Subdivision Ordinance Section 17.32.040.A.
4. As proposed, development of flag lots as an interim measure does not assure development of a public street that would provide suitable access and avoid other flag lots. Therefore, under the provisions of Section 17.32.040.A. of the Subdivision Ordinance, the applicant's proposal precludes the development of adjacent properties.
5. The proposed right-of-way dedication does not provide a funding mechanism that will assure the right-of-way can be developed and adequate transportation facilities provided in the future to support anticipated development.
6. Application MLP-02-07 has been processed and public notice provided in accordance with Zoning Ordinance Section 1011.3 Minor Quasi-Judicial Review.

ATTACHMENT 2

Zoning Compliance Report MLP-02-07

The following report identifies how the project complies with applicable sections of the Zoning Ordinance.

Section 19.302 – Residential Zone - R-7

Proposed lot 1 containing and existing residence, meets all of the requirements for the R-7 Zone, including minimum lot size, width/depth, yard requirements and minimum vegetation.

Proposed lots comply with the R-7 dimensional lot requirements as follows:

LOT	AREA (excluding flag pole)	LOT WIDTH		LOT DEPTH	
		Proposed	Required	Proposed	Required
1	19,040 sq. ft.	70 ft.	80 ft.	272 ft	80 ft.
2	8,245 sq. ft.	85 ft.	80 ft.	97 ft.	800 ft.
3	9,000 sq. ft.	100 ft.	80 ft.	90 ft.	80 ft.

The applicant has identified existing structures along the west property line on lot 1 that do not meet current setback standards. However, these structures were established when the property was outside city jurisdiction, prior to annexation and are therefore, legal non-conforming. The proposed rear setback of lot 1 is approximately 47 feet, which meets the minimum 20-foot requirement. The proposed east side yard is 21 feet, meeting the minimum setback requirement of 10 feet.

Subdivision Ordinance

Chapter 17.32 Partitioning

Section 17.32.040 – Administrative Approval

A. Future development

There is future development potential on adjacent property to the east. For further discussion, see Planning Commission Staff Report sections 3a. And 3b.

B. Lot Size

Excluding the flag pole, the proposed lots meet the minimum lot size of the R-7 Zone as follows:

Lot 1: 20,400 square feet

Lot 2: 8,245 square feet

Lot 3: 9,000 square feet

C. Front Yard

This section requires that the front lot line of a flag lot be the lot line that is most parallel and closest to the street, unless it is not practical due to placement of structures, topography, lot configurations or similar reasons. Both proposed flag lots have sufficient depth to have the front lot line most parallel and closest to the street. However, the applicant proposed to orient the front lot line to the east in order to preserve existing tree.

D. Parking

Proposed Lot 1 provides minimum off-street in accordance with Section 19.500. Proposed Lots 2 and 3 will be required to provide off-street parking at the time of development.

E. Screening and Buffering

The applicant's plans indicate fencing that meets screening and buffering criteria.

F. Tree Mitigation

The applicant has identified three trees to be removed for development. These include two fruit trees and one cedar tree. This code section requires replacement of removed trees at a 1:1 ratio.

G. Access

This section address single flag lots and is not applicable. (See H below)

H. Two Flag Lots

Two flag lots with abutting access strips require a minimum combined width of 30 feet. The applicant's proposal meets this requirement.

Fire access and turnaround have been reviewed by the Fire Marshal. The applicant is proposing the fire turnaround on the parent lot in front of the existing two-story garage.

I. Improvements

See Attachment 5 for comments from Public Works regarding improvements.

- J. Three or more Flag Lots
Not applicable

Section 19.1400 – Transportation Planning, Design Standards, and Procedures

Section 19.1403 Applicability

Under Section 19.1403.B, creation of new lots by partition are subject to the standards of Chapter 19.1400.

Section 19.1407.2 Adequacy Requirement

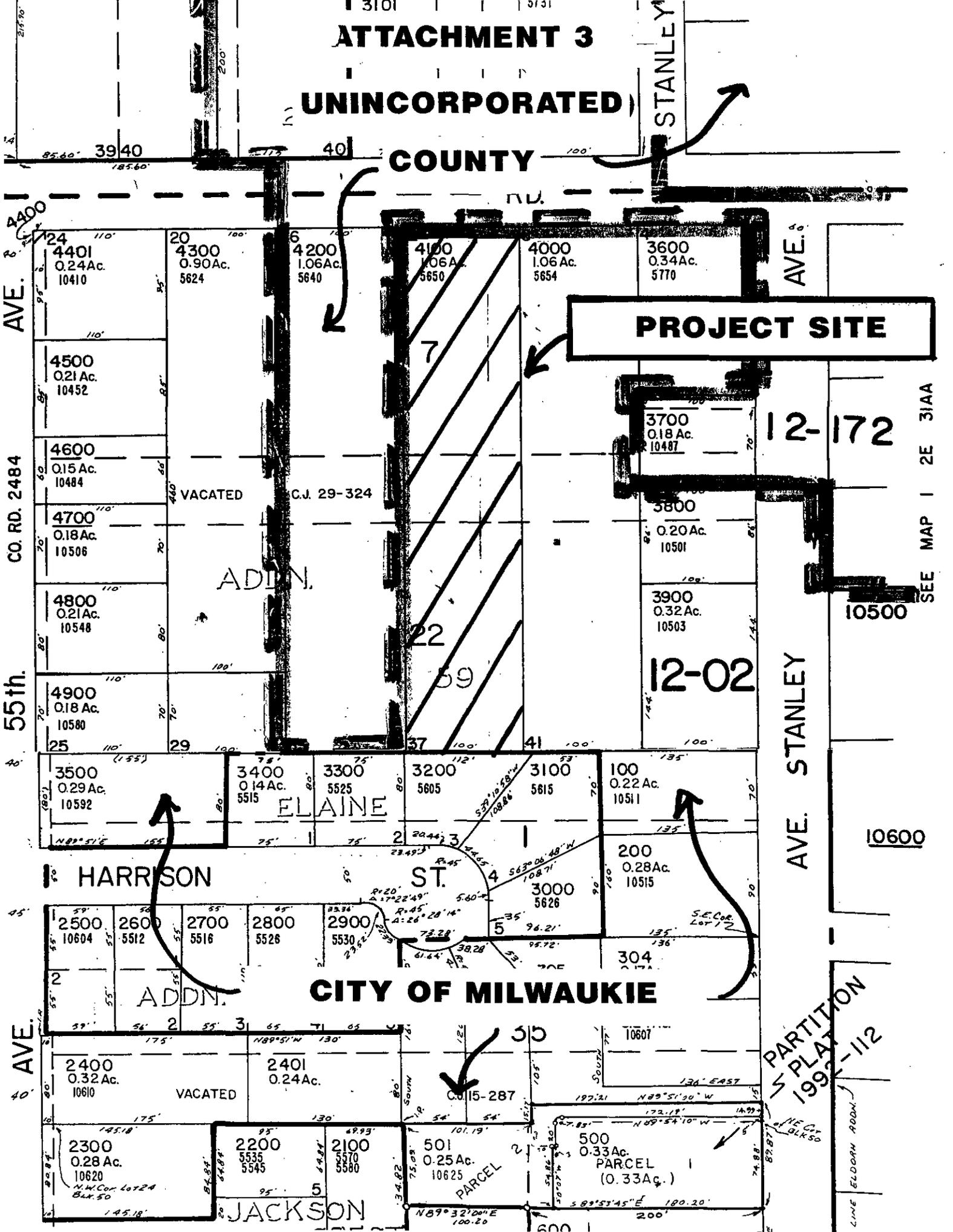
Rights-of-way, streets, sidewalks and necessary public improvements are required to be in place at the time of development.

The applicant has not indicated required right-of-way improvements on the King Road frontage. Compliance with this section requires dedication of 6.5 feet of right-of-way to provide for the ultimate 73 feet for King Road. Construction of a 6-foot wide setback sidewalk with a 6-foot wide landscape strip are required.

Applicant has not demonstrated compliance with Section 19.1400.

ATTACHMENT 3
UNINCORPORATED

COUNTY



PROJECT SITE

12-172

12-02

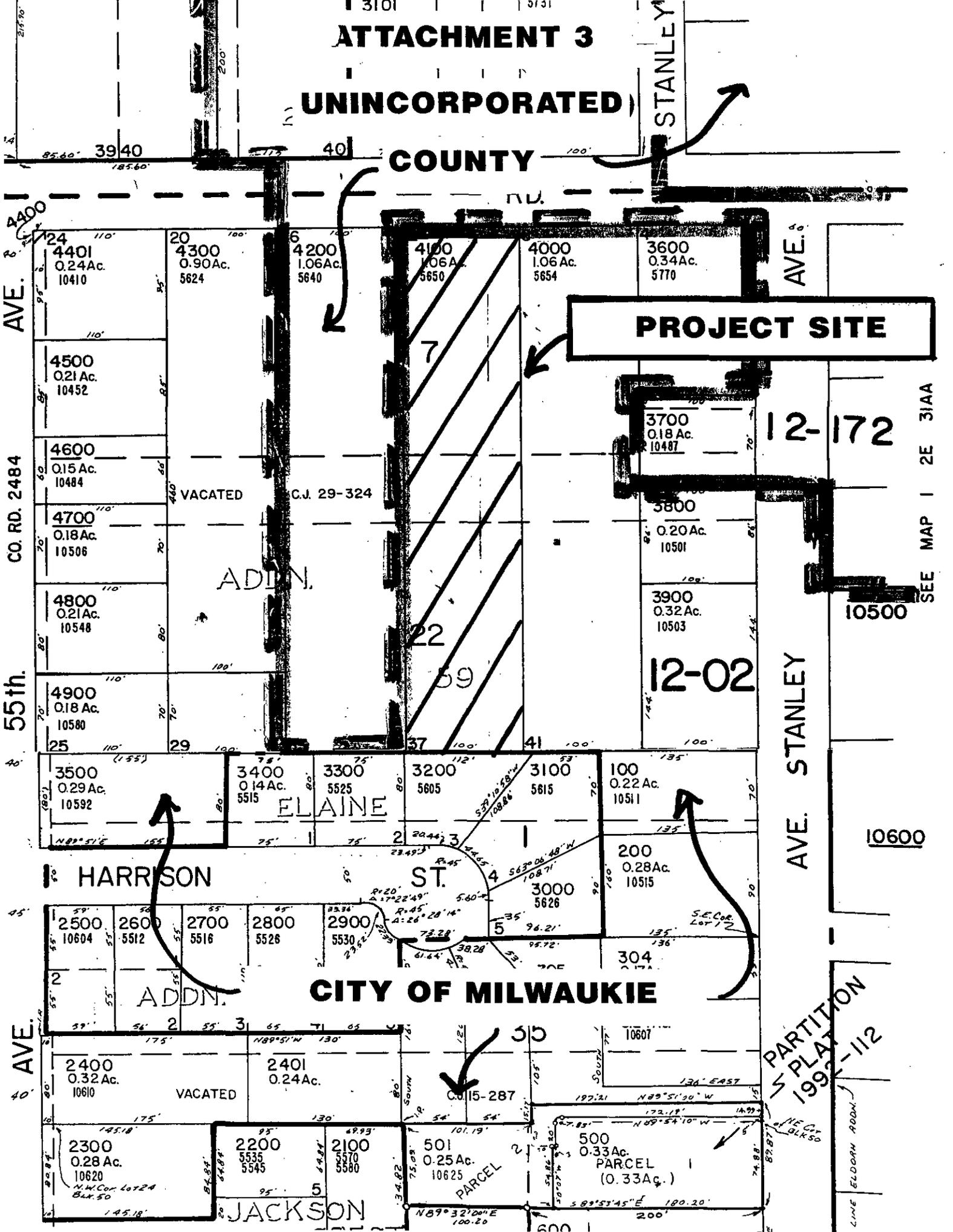
CITY OF MILWAUKIE

PARTITION
PLAT
1992-112

SEE MAP 1 2E 31AA

10600

LINE ELDORAH ADDN.





ATTACHMENT 4

Northwest Automation, Inc. Equipment Design, Repair & General Contracting Services

Oct. 8, 02

RECEIVED

OCT 09 2002

Milwaukie Community Development
Kenneth Kent
6101 SE Johnston Creek Blvd.
Milwaukie, OR. 97206

CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

RE: Amendment to Application MLP-02-07
Philip Reich's Flag Lot Partition Narrative:

Dear Mr. Kent

Please include and attach to Philip Reich's Flag Lot Partition Narrative the following changes and additions to the Land Use application. These changes and addition are consistent with Chapter 17.32 Section 17.32.040 Flag lots.

1. Dedication of land and public right-of-way by deed to the comprehensive plan in the event the adjacent property to the east should it be developed in the future. Outlined in the attached site plan drawing S-1 is location of the future "Hammer Head" half street.
2. Additional spacing between lots two and three have been given in order to meet required set backs in the event of developing of adjacent property.
3. Utilities mains (sewer and water) could be installed at the request of the City Community Development office prior to full compliance of half street standards.

The above is provided for the planning commission's consideration for approval in lieu full compliance of half street standards. To include a half street in this proposed development would require the dedication land area that would prevent full development this property. The ways proposed would allow full development of both properties in the future and will be an equitable split of dedicated land between the two properties. Any questions please call me at (503) 381-3994.

Sincerely,

Bruce W. Nowell

The lot is located near the highest elevation in the local area. Therefore there are NO flood hazards and base flood elevations to list.

There are NO wetlands, water ways, or flood boundaries for this area.

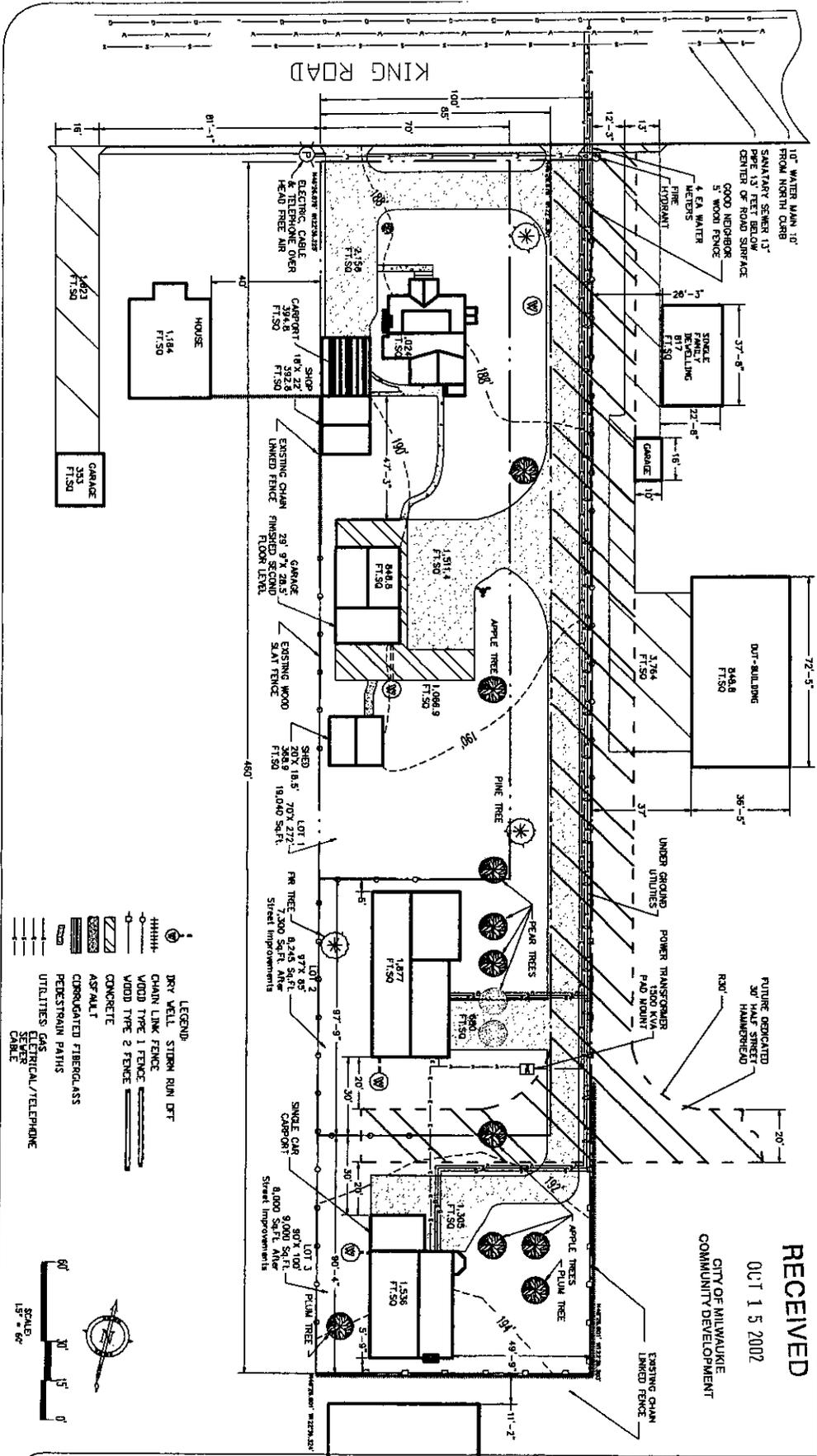
The improvements added to public right-of-way is the addition of a fire hydrant near the Northwest corner of the property. The electrical service will be trenching along the public right-of-way parallel to the North property line.

Dimensional floor plans of the two preconstructed single family homes will be in the application for foundation permits, upon Site Plan approvals.

Lot 1 square footage = 19,040
 Driveway square footage = 4,736.3
 House square footage = 1,024
 Landscaped sq. footage = 13,280 or 70%
 Total structure square footage = 5,760
 Structures lot coverage = 30%
 House setbacks (in feet) are:
 North: 50' (front yard)
 East: 16' (side yard)
 South: 47.5' (back yard)
 West: 25.6' (side yard)

Lot 2 square footage = 8,245
 Driveway square footage = 680
 House square footage = 1,877
 Landscaped sq. footage = 6,368 or 77.2%
 Total structure square footage = 1,877
 Structures lot coverage = 22.7%
 House setbacks (in feet) are:
 North: 5' (side yard)
 East: 31.6' (front yard)
 South: 30' (side yard)
 West: 20' (back yard)
 Structure Height: 14' 6"

Lot 3 square footage = 9,000
 Driveway square footage (not including carport) = 1,305
 House square footage = 1,536
 Carport square footage 13.75' x 20' = 275
 External Driveway 5' x 15' = 75'
 Landscaped sq. footage = 7,182 or 79.8%
 Structures lot coverage = 20%
 Total structure square footage = 1,818
 House setbacks (in feet) are as follows:
 North: 30' (side yard)
 East: 48.9' (front yard)
 South: 5.9' (side yard)
 West: 20' (back yard)
 Structure Height: 13'



RECEIVED
 OCT 15 2002

CITY OF MILWAUKIE
 COMMUNITY DEVELOPMENT

SITE PLAN
 REICH ENTERPRIZES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

No.	DESCRIPTION OF IMPROVEMENTS	DATE
1	REVISION OF FOUNDATION PERMITS	
2	REVISION OF FOUNDATION PERMITS	
3	REVISION OF FOUNDATION PERMITS	

FORLEWISER AUTOMATION, Inc.
 2335 N. Monroe Dr.
 Portland, Oregon 97217
 Drawn By: Bruce W. Howard
 Date: 07/26/02

Sold Division of Real Property
 5650 SE King Road
 Milwaukie, Oregon 97122
 Map & Title Lot
 12500000100
 Zoning R7

Date: 10/02/02
 Sheet: S-1

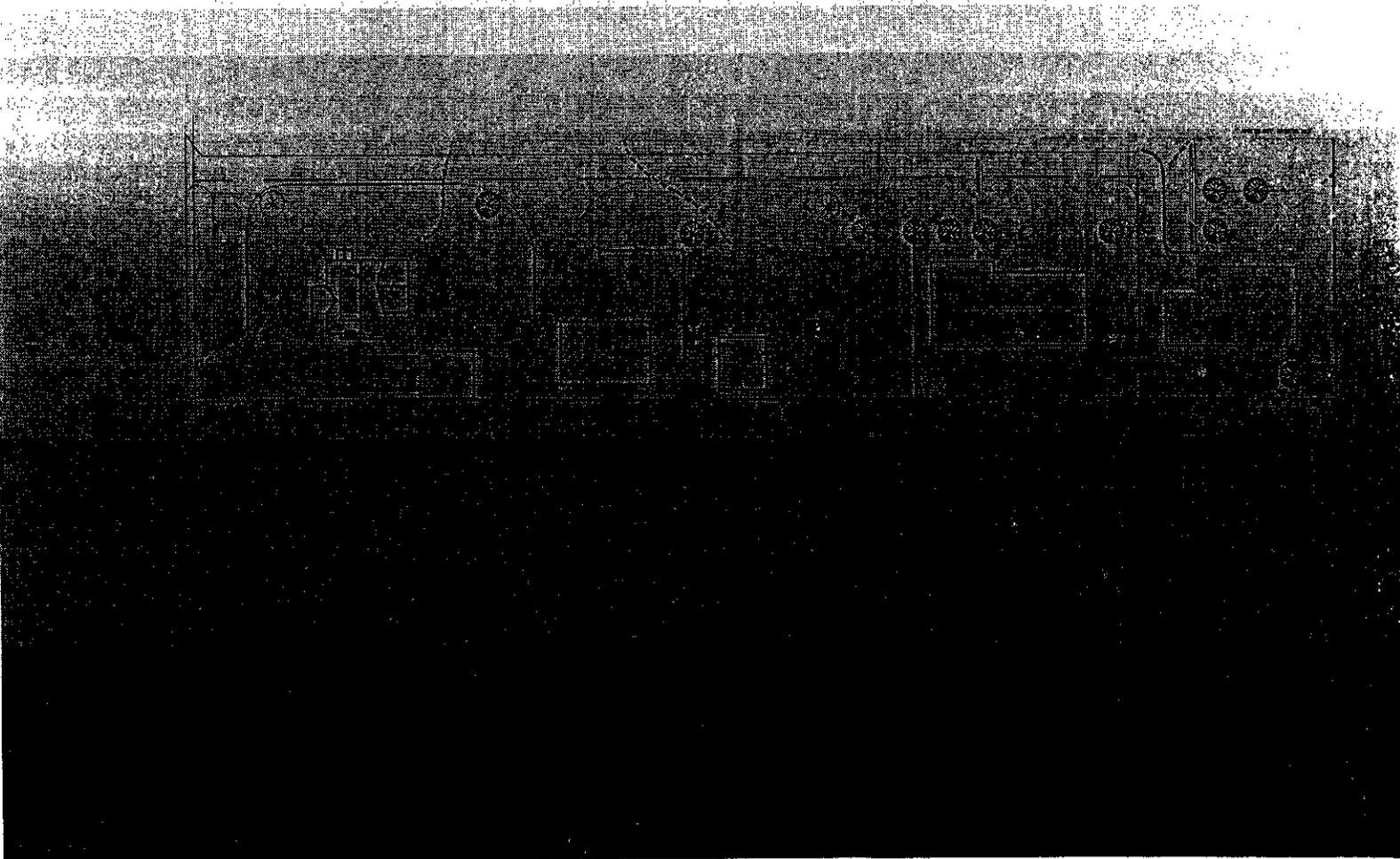
ATTACHMENT 5

RECEIVED
AUG 06 2002
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Flag lot partition documentation of 5650 SE King Road

By Philip Reich Property Owner

Reich Enterprises July 30, 2002



Flag lot partition documentation of 5650 SE King Road

By Philip Reich Property Owner
Reich Enterprises July 30, 2002

Existing uses of property:

The existing property is a one-(1) acre lot, and zoned R7. This lot has the following structures and landscaping:

- A single-family house, with a detached work shop.
- A detached two-car garage that includes a second story with accommodations for an office and/or lodging above garage and potting shed located on the main floor.
- And a gardening shed. This wooden shelter was constructed without any solid foundation.
- The southern portion of the lot is planted grass and (15) trees, fruit, evergreens and other tree types, and has a garden area. This lot was used for horse pasture land some thirty years previously.

Existing non-conforming setbacks:

1. The shop was built in the early 1920's, and was not built by today's standards. The shop does not meet the existing set-back requirements; it sits one-(1) foot or less from the property line.
2. The shed was built prior to the 1940, and also does not meet existing set-back requirements; it too sits one-(1) foot or less from the property line.

Note:

The setback requirements did not exist when these structures were built, and are grand fathered as-built. This property was annexed by the City of Milwaukie in the early 1980's, and all prior development was done under the aegis of Clackamas County.

Proposed utility placement:

The utilities will come from under King Road and the utility pole a few feet from the northwest corner of the lot. The water supply is ten-(10) inch main located on the north side of King Road ten-(10) feet from the curb. The sanitary sewer line runs thirteen-(13) feet under median of King Road.

All the utilities will run under ground in a parallel southerly direction between the flag pole and the east property line. The existing water meter will need to be relocated to the East and three-(3) new meters installed, one of which will be for

irrigation of the existing 5650 lot. A new fire hydrant is to be located in the East public right-of-way and fed with a six-(6) inch pipe.

All utilities will be run in a single forty-inch wide trench. Two (4) inch diameter sewer lines will occupy the east side of the trench, and buried approximately four-(4) feet deep. Cleanout access ports will be provided every one hundred-(100) feet. Three-(3) water pipes are to occupy the middle leaving twelve-(12) inches of horizontal clearance for the sewer lines buried two feet below. The electrical feeder will be on the west side at thirty-six-(36) inches, and cable, telephone, and gas services will run between the water and electrical services at least 18 inches deep. This strategy has been discussed and verbally approved by the plumbing inspector, and all mentioned utility companies.

Approval Criteria:

Flag lot requirements:

A. Future Development:

The proposed development will not preclude or hinder any future development on this or adjacent properties. There is no access via an existing street, and development of a dedicated street is not possible or prudent due to existing structures and the width of the property (100 feet). Should the neighbor to the East of the property decide at a future time to partition this property, he could combine his development with the flag lot easements to create a "half-street", as the flags are adjacent to his property line. The neighbor had declared there are no plans to nor does not wish to develop this property.

B. Lot Size:

The dimension of the new southern most lot called Lot 3 from this point on is a 100' x 80', or 8,000 square feet; this does not include the flag of 15' x 380'. Dimension of the adjacent new lot to the north referred to as Lot 2 is 90' x 85', or 7,650 square feet, this does not include the flag of 15' x 290'. Both lots fall within the R7 guidelines.

C. Front Yard:

- a. The front yards of both Lot 2 and Lot 3 are in the middle and to the east of their lots. The intent of this placement is to save the mature trees (both evergreen and fruit trees) on the east side of the property. These front yards will then abut the existing east property line – the same neighboring property that the flag abuts. This meets the requirement of the last sentence of the guidelines.

- b. The front yard of the second new lot will also be oriented to the east for the same reasons.

D. Parking:

There will be no parking on the flags. Parking spaces will be provided on each new lot. There are already sufficient spaces for the existing structures.

E. Screening and Buffering:

There will be a five-(5) foot wide visual and noise buffer between the paved flag driveway and the eastern property line. A five-(5) foot wooden fence will be placed on the eastern property line. A 6-foot wooden fence will be placed on the sides and back of the two new lots.

F. Tree Mitigation:

- a. Lot 3 already has five-(5) mature fruit trees on it, and one that is a 3-inch caliper. Two of the mature trees will need to be taken down to allow for the placement of the house and shared access driveway. Two replacement trees could be added if it found to be necessary.
- b. Lot 2 already has 5 mature trees on it, 1 of which is less than 6 inch caliper (4 fruit and 1 fir).
- c. The already developed lot will need to have one scrub cedar removed which will be replaced with a 2 inch caliber tree being moved from another location of the property. This Curly Willow new location is in the front portion of Lot-1 the northern most lot. A diseased pie cherry tree (75% rotten) will be removed and not replaced. An 18 to 24 inch caliber pine tree is within the thirty-foot of the combined shared flag easement, but is eighteen feet from the eastern property line. Paving 12 feet on the flag, this tree can be preserved. This width has been approved by the District 1 Fire Marshal.

G. Access:

The shared access strip is 30 feet wide, two consolidated 15-foot wide abutting access strips, will be kept clear of obstructions, and will include a shared utility easement and shared access easement and driveway for all three properties. Emergency vehicles will have an area sufficient for turning around -- the existing turnaround in the already developed Lot 1. The emergency equipment turnaround has been approved by District 1 Fire Marshal.

H. Two flag lots:

The combined width of the access strips will be 30 feet, and a paved driveway twelve-(12) feet wide will be provided. See item "G" regarding the turnaround area.

I. Improvements:

All improvements as stated by the Public Works Department and Fire Marshal's office. A fire hydrant will be installed in the public right-of-way near the northeastern corner of flag of Lot 3. The placement of the hydrant at the property's flag pole entrance more of the community will benefit from its presence. This has been approved by the District 1 Fire Marshal. The installation of the sidewalk and planter improvement required for all new development is a great idea in most cases. In more mature developments where new development is not likely *funds in lieu of* are more appropriate than disrupting the functioning aesthetics of the neighborhood.

A survey by a professional and licensed surveyor (Dick Love) will be done as part of the partitioning process, and will meet the requirements set forth in ORS 92.050.

The Map and Taxlot # is: 12E30DC04100

The legal description of the existing lot follows:

A tract of land located in Sections 30 and 31, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and the State of Oregon, described as follows:
Beginning at the Northeast corner of Lot 9, Block 7, and VACATED MINTHORN ADDITION TO THE CITY OF PORTLAND:
running thence Westerly along the North line of said Block, 100 feet to the Northwest corner of Lot 21 of said Block;
thence in a Southerly direction on a line parallel with Sheridan Street in said addition, 460 feet to the Southwest corner of Lot 37, Block 22, of said addition;
thence in an Easterly direction along the South line of said Block 22, a distance of 100 feet to the Southeast corner of Lot 40 in said Block;
thence Northerly on a line parallel with Sheridan Street in said addition, 460 feet to the place of beginning.

Two easements will be created for this partitioning:

- 1) A utility access easement along the eastern property line five-(5) feet wide, and
- 2) A shared access driveway easement for the entire length of the shared driveway within the flagpole of the new lots.

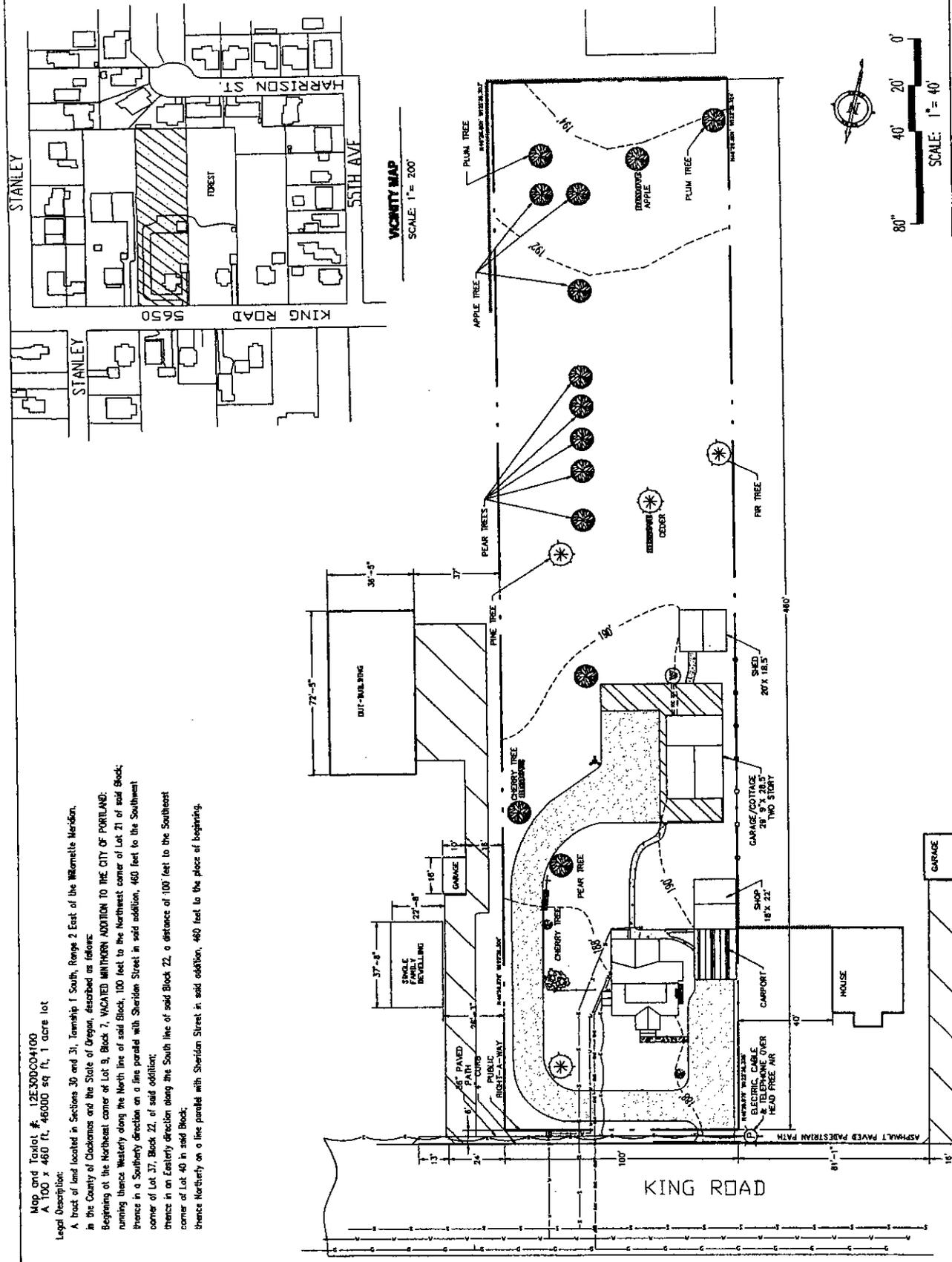
Map and Taxlot # 12E300C04100
 A 100 x 460 ft, 46000 sq ft, 1 acre lot

Legal Description:
 A tract of land located in Sections 30 and 31, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clatsop and the State of Oregon, described as follows:
 Beginning of the Northeast corner of Lot 9, Block 7, VACATED MINOR ADDITION TO THE CITY OF PORTLAND; running thence Westerly along the North line of said Block, 100 feet to the Northeast corner of Lot 21 of said Block; thence in a Southerly direction on a line parallel with Sheridan Street in said addition, 460 feet to the Southwest corner of Lot 37, Block 22, of said addition;
 thence in an Easterly direction along the South line of said Block 22, a distance of 100 feet to the Southwest corner of Lot 40 in said Block;
 thence Northerly on a line parallel with Sheridan Street in said addition, 460 feet to the place of beginning.

COVER SHEET
 REICH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

No.	Revised/Added	Date

GARTH BRIST AUTOMATION &
 2335 N Marine Dr.
 Portland, Oregon 97217
 Drawn By: David W. Allen
 Date: 07/23/02
 AT
 Map No. 12E300C04100
 Zoned R7
 Sold Description of Real Property
 100 x 460 ft
 12E300C04100
 Multnomah, Oregon 97222



The lot is located near the highest elevation in the flood area. Therefore there are NO flood hazards and base flood elevations for this area. There are NO wetlands, water ways, or flood boundaries for this area. The improvements added to public right-of-way is the addition of a fire hydrant near the Northeast corner of the property. The electrical service will be branched along the public right-of-way parallel to the North property line.

Dimensional floor plans of the two preconstructed single family homes will be in the application for foundation permits, upon Site Plan approval.

Lot 1 square footage = 20,300
 Driveway square footage = 4,736.3
 House square footage = 1,024
 Landscaped sq. footage = 14,540 or 71%
 Total structure square footage = 5760
 Structures lot coverage = 28%

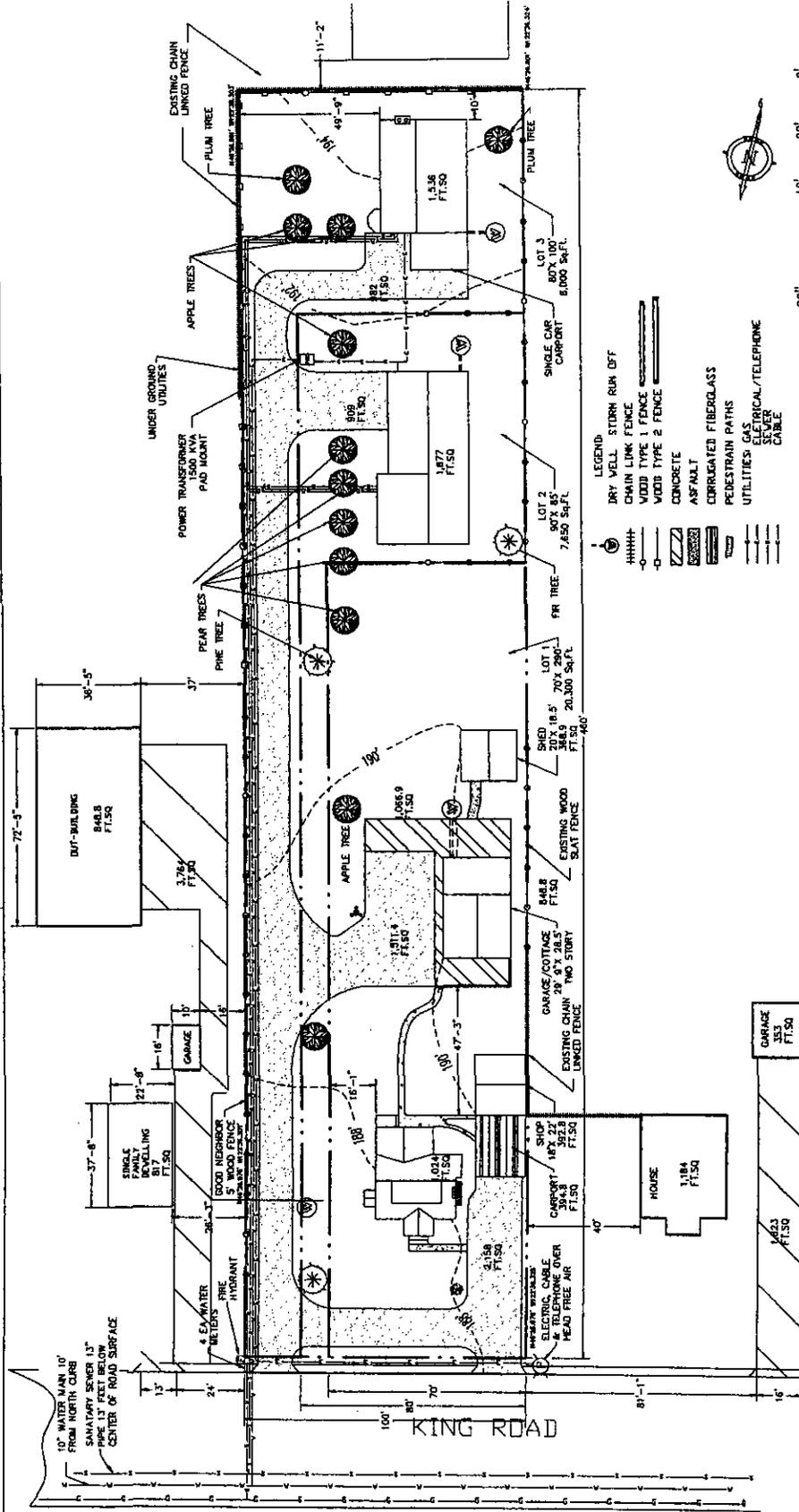
House setbacks (in feet) are:
 North: 50' (side yard)
 East: 161' (side yard)
 South: 47.5' (back yard)
 West: 25.6" (side yard)

Lot 2 square footage = 7,650
 Driveway square footage = 1,023
 House square footage = 1,877
 Landscaped sq. footage = 4,750 or 62%
 Total structure square footage = 1,877
 Structures lot coverage = 24.5%

House setbacks (in feet) are:
 North: 10' (side yard)
 East: 31.6' (front yard)
 South: 20.6' (side yard)
 West: 20' (back yard)
 Structure height: 14' 6"

Lot 3 square footage = 8,000
 Driveway square footage (not including carport) = 1,024
 House square footage = 1,536
 Carport square footage 13.75' x 20' = 275
 External Chimney 5' x 1.5' = 7.5
 Landscaped sq. footage = 5,258.25 or 65.7%
 Structures lot coverage = 21.5%

Total structure square footage = 1,816
 House setbacks (in feet) are as follows:
 North: 15' (side yard)
 East: 49.9' (front yard)
 South: 10' (side yard)
 West: 20' (back yard)
 Structure height: 13'



REIGH ENTERPRISES
 5650 SE KING ROAD
 PORTLAND, OREGON 97222

KREWECHER AUTOMATION, Inc.
 Portland, Oregon 97217
 503-255-1100
 152500001100
 S-1

MEMORANDUM

TO: COMMUNITY DEVELOPMENT

FROM: Paul Roeger
Civil Engineer

RE: MLP-02-07
5650 SE King Road

DATE: October 7, 2002

King Road is an existing 48-foot wide asphalt street with curb and asphalt sidewalks on both sides. It is classified as an "arterial" street. The existing right-of-way width is 60-feet. Table 19.1409.3 of the Milwaukie Municipal Code requires an additional right-of-way dedication of 6.5-feet along the entire frontage to provide for an eventual full right-of-way of 73-feet. The additional dedication will allow for a 6-foot sidewalk and a 6-foot landscape strip.

A new street must be constructed along the east side of this property to serve the new lots. A hammerhead turnaround must be installed at the south end to allow for emergency vehicles to turn around. Right-of-way width must be 26.5-feet with a 26-foot street with curb on the west side only, and a 6-foot curb tight sidewalk installed on an additional 7-foot easement. This allows for two 10-foot travel lanes and a 6-foot parking strip. An additional dedication of 9 to 10-feet from the property to the east will be required at the time the property is developed. This will allow for an additional 2-feet of street width, curb and 6-foot curb tight sidewalk on the east side.

City water is available in King Road from an existing 10-inch main on the north side of the street. A new 6-inch main will be required to the fire hydrant location. A 4-inch main is required to serve the new meters beyond the fire hydrant. The Fire Marshal is requiring a fire hydrant to be located within 250-feet of all buildings. Exact location will be determined at the time of review of the engineered construction drawings. New water meter locations must be shown on the engineered plans, also. The system development charge (SDC) for water for a new single-family residence is \$1,095.00. Meter costs will be assessed at the time the building permit is issued.

City sanitary sewer is available in King Road from an existing 8-inch main in the center of King Road. A manhole must be constructed over the main in King Road with a new 8-inch main extended in the new street with a manhole at the end. Separate laterals must be installed to each of the new lots. The SDC for sanitary sewer for a new single-family residence is \$893.00.

Storm drainage in this area is handled by drywells. Separate drywells must be installed for the existing house and garage, the new houses, and the new street. Catch basins must be installed in the new street to collect the storm water. Sizing of the drywells will be done when reviewing the building permits and the engineered drawings for the street improvements. The storm water SDC is \$473.00 per new single-family residence.

Attachment 6

An erosion control plan and permit application must be submitted along with the engineered drawing for the public improvements and with each building permit application. The erosion control must be installed before any earth is disturbed.

The transportation SDC for a new single-family residence is \$1,339.80, and the Parks and Recreation SDC for a new single-family residence is \$950.00. No traffic impact study is required for this minor land partition.

Conditions of approval should be stated as follows:

1. An additional right-of-way dedication of 6.5-feet is required to provide for the new 6-foot setback sidewalk along the entire frontage of King Road.
2. A new street must be dedicated along the east property line 26.5-feet wide with a 7-foot easement adjoining the dedication for sidewalk installation.
3. A new street must be constructed in the newly dedicated right-of-way 26-feet wide with a curb on the west side only. A 6-foot sidewalk must be constructed along the lot with the existing buildings at the time the street is constructed. A 6-foot sidewalk must be constructed along the two southern lots at the time houses are placed on them.
4. A turnaround meeting Fire Department standards must be constructed between the lot for the existing house and the next lot south. The turnaround must also be dedicated as public right-of-way.
5. Engineered plans for all public improvements must be submitted for review and approval before any construction starts.
6. The developer must install the sanitary sewer main and laterals to the property as part of the public improvements construction.
7. The developer must install the water main and services and meter setters and meter boxes as part of the public improvements construction.
8. Roof drains from the new houses must be piped to a drywell. Street drainage must be collected in catch basins and piped to a drywell.
9. The new driveway approaches must be ADA accessible.
10. The existing house, if it does not have an existing storm system for the rain drains, must pipe the rain drains to a new drywell.
11. All SDCs for the new houses must be paid at the time the building permits are issued.
12. An erosion control plan and permit application must be submitted along with the engineered public improvement plans and with each building permit application.
13. The public improvements must be installed or they must be fully funded, with a 20 percent contingency, before the City will sign the partition plat.

ATTACHMENT 7

OUR PROPERTY IS LOCATED AT 5640 SE KING ROAD, TO THE IMMEDIATE WEST OF 5650 SE KING ROAD. WE HAVE LIVED AT THIS LOCATION SINCE FEBRUARY, 1985. THIS PROPERTY HAS BEEN IN THE FAMILY SINCE 1970.

THE FOLLOWING ARE CONCERNS WE HAVE, WHICH WE WOULD LIKE THE PLANNING DEPARTMENT OF THE CITY OF MILWAUKIE TO CONSIDER PRIOR TO A FINAL DECISION REGARDING THE PROPOSED FLAG LOT APPLICATIONS AT THE STREET LOCATION OF 5650 SE KING ROAD.

1. CONCERN WITH THE LOCATION OF THE PROPOSED DRIVEWAY AND THE BUSY INTERSECTION OF STANLEY AND KING. THE PROPOSED DRIVEWAY TO SERVICE THE PROPOSED FLAG LOTS IS APPROXIMATELY 50 FEET FROM THE INTERSECTION OF STANLEY AND KING, TURNING NORTH. THE LEFT TURN LANE FROM KING TO STANLEY NORTH IS VERY BUSY. OFTEN CARS WILL ENTER THE CENTER TURN LANE AT 55TH TO MAKE THE TURN NORTH ONTO STANLEY FROM KING ROAD.

2. CONCERN WITH HOUSING BUILT BACKING TO OUR EAST PROPERTY LINE. ENCLOSED IS A LETTER OF RECOMMENDATION FROM COLLIER ARBOR CARE. WE HAVE CONCERN REGARDING ROOT DAMAGE THAT COULD BE CAUSED FROM ANY CONSTRUCTION EQUIPMENT OR DIGGING OR SCRAPING AT THE BASE OF THE TREES. WITHIN THE PAST 2 WEEKS, WE HAVE HAD A HUGE DEBRIS PILE POSITIONED UNDER OUR DOUGLAS FIR TREES FROM 5650 SE KING WHICH COULD DAMAGE THE ROOTS AND SUFFOCATE THE TREES. WE WOULD LIKE TO HAVE THIS PILE REMOVED IMMEDIATELY FROM THE PROPERTY TO ENSURE IT IS NOT PUSHED ONTO OUR PROPERTY. WE WOULD LIKE TO HAVE THE PROPERTY OWNER AT 5650 INSTALL A BARRIER FENCE ALONG THE PROPERTY LINE, PRIOR TO ANY ACTIVITIES TO ENSURE THERE ARE NO QUESTIONS BY HEAVY EQUIPMENT DRIVERS OR WORKERS OF THE PROPERTY LINE. THE FENCE WILL BE INSTALLED FOLLOWING AN INDEPENDENT SURVEY BY THE PROPERTY OWNER AT 5650 OF THE PROPERTY LINE. WE WOULD LIKE TO REQUEST THE PERMANENT FENCE BE INSTALLED WITH CONSIDERATION OF OUR TREES AND

VEGETATION. WE WOULD LIKE TO HAVE THE FENCE BE THE TALLEST ALLOWED WITH A LIVING HEDGE TO PROTECT OUR WILDLIFE AND VEGETATION THAT LIVE IN THE FOREST ENVIRONMENT.

3. FIRE DANGER WITH THE FOREST AND THE DRIVEWAY BACK TO THE PROPOSED HOUSES. WE WOULD LIKE TO EXPRESS OUR CONCERNS REGARDING THE WIDTH OF THE DRIVEWAY BACK TO THE END OF THE PROPERTY, BEING WIDE ENOUGH TO ENSURE FIRE EQUIPMENT WOULD HAVE AMPLE ACCESS TO THE REAR OF THE PROPERTY AT ALL TIMES. WE ARE CONCERNED THAT THERE COULD BE A PROBLEM OF CARS BEING PARKED ON THE DRIVEWAY, HAMPERING THE ACCESS FOR FIRE AND/OR RESCUE VEHICLES. WE ASK THAT NO PARKING AT ANY TIME/TOW ZONE SIGNS BE POSTED ALONG THE DRIVEWAY AND THAT CITY POLICE HAVE THE AUTHORITY TO MONITOR OR HAVE ACCESS TO THE DRIVEWAY IF ILLEGAL PARKING IS TAKING PLACE, WITH THE AUTHORITY TO TOW.

4. WE ARE CONCERNED, IF THIS APPLICATION IS APPROVED, THAT THERE IS A TIME LIMIT FOR THE COMPLETION, AND THAT CONSIDERATION FOR NEIGHBORS IS ADDRESSED. WHEN THE GARAGE WAS BUILT, OFTEN HAMMERING AND WORK WOULD CONTINUE PAST 11PM. WE WENT SEVERAL TIMES TO ASK IF WORK COULD PLEASE STOP, DUE TO OUR CHILDREN AND SCHOOL HOURS. WE ALSO WERE UNDER THE ASSUMPTION THAT THE GARAGE MENTIONED ABOVE WAS JUST THAT, A GARAGE, SINCE WE DID NOT RECEIVE ANY NOTIFICATION FROM THE CITY OF MILWAUKIE, WHICH WOULD BE REQUIRED IF IT WAS A LIVING QUARTERS TO BE USED AS A RENTAL. THIS "GARAGE" HAS HAD FULL TIME TENANTS IN THE UPSTAIRS UNIT SINCE IT WAS BUILT.

WE FEEL KING ROAD HAS 4 BEAUTIFUL LOTS OF OVER 1 ACRE EACH (5624 IS SHY OF 1 ACRE) RIGHT NEXT TO EACH OTHER AND THAT IT WOULD BE A SHAME TO SPLIT UP ANY FUTURE POSSIBILITIES THESE LOTS COULD HAVE.

WE SUBMIT THESE CONCERNS TO BE CONSIDERED WHILE

REVIEWING THE PROPOSED FLAG LOT APPLICATION
REQUESTED AT 5650 SE KING ROAD. WE WANT TO BE SURE IF
THIS PROJECT IS APPROVED, ALL THE RULES AND
REGULATIONS SET BY THE CITY ARE BEING FOLLOWED AND
MET.

ENCLOSURES INCLUDE PHOTO'S, NEWSPAPER ARTICLE, LETTER
FROM COLLIER ARBOR CARE.

THANK YOU.

KAREN AND DAN LIEBERT
5640 SE KING ROAD
MILWAUKIE, OREGON 97222
503.654.4578

**Exhibit D Attachment 7 – Pictures
not available electronically**

**Hard copy available for review at Front Desk of each City facility or by contacting
the City Recorder at 503-786-7502**



COLLIER
ARBOR CARE

Environmentally Friendly... Since 1937

11814 SE Jennifer St., Clackamas, OR 97015

August 6, 2002

Karen Liebert
5640 SE King Rd
Milwaukie OR 97222

2002 COLLIER ARBOR CARE PROPOSAL

Below are my recommendations and estimates. If you have any questions or wish to schedule this work, please give us a call.

The following are my recommendations with regards to your trees and the potential home sites to be located adjacent to your property. Given the size and species involved I would recommend the following precautions to be taken to safeguard the health of the trees along your east and west property lines.

- No vehicular traffic, construction equipment movement or material storage occurs within the drip line of any tree along the property lines. The drip line is defined as a vertical line running from the tip of the longest branch down to the soil line. In most cases this distance is approximately 20 feet.
- A barrier fence should be installed around the proposed "No Traffic Area", prior to any activities to ensure that root damage does not occur.
- The brush pile to the east that has been repositioned under the Douglas Firs should be removed to deter possible root suffocation.
- In general, keeping all traffic, trenching and other construction activities as far away from your trees as possible is recommended.

Thank you,

Phil Wich
Certified Arborist

27th Annual STREET OF DREAMS

Venerable trees one of site's big assets

By KENDRA HOGUE

STAFF WRITER

Most of the time, landscaping is one of the last things to get done on a home-show site.

But when large, old trees are part of the equation — as they were at this year's Street of Dreams site at Atherton Heights in Lake Oswego — planning for their preservation must be a priority early in the process.

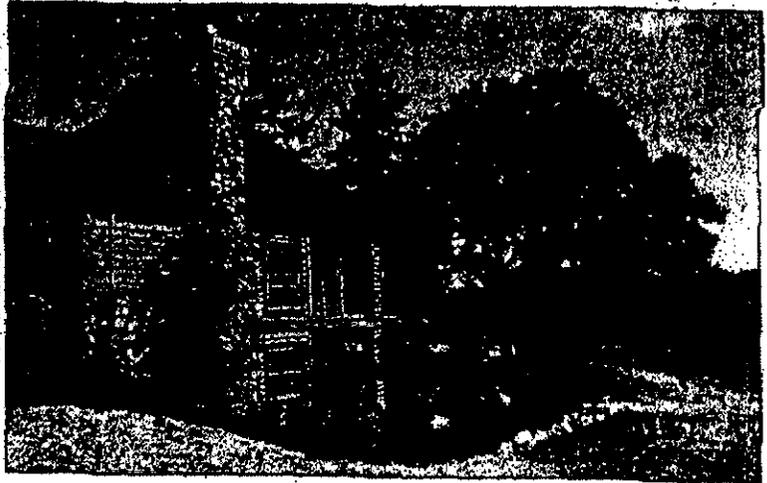
"I was part of the development team," said arborist Terrill Collier, of Collier Arbor Care in Clackamas. "I got involved this time last year."

What Collier did was take an inventory of trees on the 15-acre site and consider which trees should be preserved and how. He then drew up what's called an "arbor plan" or "tree protection plan," something that's required for developments in Lake Oswego and several other communities in the Portland metropolitan area.

"In the last 10 years, this has become a normal thing to do," Collier said. "Part of the reason we do it is it's required by the city of Lake Oswego, but we also had some very nice trees on the Street of Dreams site that would be very nice to preserve."

At the top of Collier's keeper list was a 70-foot-tall Oregon white oak and three large Douglas firs more than 100 feet tall. Collier estimates the oak is 125 to 150 years old and the firs are 70 to 100 years old. A hawthorn and 17 other smaller firs were also preserved. Collier guesses a portion of the site was a former Christmas tree farm.

The oak became a star attraction at the aptly named Cottage by the Tree, by Blazer Development. The



JOHN M. VINCENT

A 70-foot-tall Oregon white oak became the star attraction at the site of Blazer Development's Cottage by the Tree.

tree provides shade over much of the back yard and filters sunlight into the kitchen.

Protecting the trees during the site development and construction process meant tagging them for preservation and erecting a fence around each tree's drip line, the point to which the tree's branches reach. Collier said the distance that needs to be fenced off is usually 1 foot from the tree for every inch in diameter. The oak required a fence 36 feet in diameter.

Collier said the show's contractors also were warned not to compact, dig into or smother potential

root areas, which can reach beyond a tree's drip line. Installing grass and irrigation over the roots of trees unaccustomed to large amounts of water also is a no-no, since it can cause root rot.

The end result, said Collier, is well worth the effort.

"Trees are an amenity to the site, not an impediment," Collier said. "People want to live near trees, not in a clear-cut."

RESOURCES

• Terrill Collier, Collier Arbor Care, 1814 S.E. Jennifer St., Clackamas; 503-722-7267; www.collierarbor.com

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
PHILLIP REICH EXTRACT
TUESDAY, OCTOBER 22, 2002

COMMISSIONERS PRESENT

Donald Hammang, Chair
Judith Borden
Teresa Bresaw
Mike Miller
Howard Steward

COMMISSIONERS ABSENT

Rosemary Crites

STAFF PRESENT

John Gessner,
Planning Dir.
Ken Kent,
Associate Planner
Julie Sabin,
Associate Planner
Lindsey Nesbitt,
Assistant Planner
Shirley Richardson,
Hearings Reporter

1.0 CALL TO ORDER

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

- 6.1 Type of Hearing: Minor Quasi-Judicial
Applicant: Philip Reich
Owner: Philip Reich
Location: 5650 SE King Road
Proposal: The applicant is proposing to partition a one-acre parcel into 3 lots.
File Number: MLP-02-07
NDA: Linnwood

Chair Hammang opened the minor quasi-judicial hearing MLP-02-07 to consider the proposal to allow a minor land partition. The criteria to be addressed can be found in Zoning Ordinance Section 302 - Residential Zone R-3; Section 19.10113 - Minor Quasi-Judicial Review; and Milwaukie Subdivision Ordinance Section 17.32 - Partitioning.

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

STAFF REPORT

Ken Kent reviewed the staff report with the Commission. This application is a proposal to create three lots by minor land partition of a 1.06 acre property. The proposal includes two flag lots which would share a joint access way. The application was submitted prior to the recent adoption of new flag lot standards in August and is subject to previous code sections.

Criteria require that it be shown that access by a public street is not possible. Also consideration must be given to surrounding properties of potential development from those adjoining properties through which a jointly dedicated public street could be constructed that would avoid additional flag lots. Staff has determined that a public street is possible and a street can be constructed on this lot at this time. There is development potential on the property to the east. It, in combination with the applicant's lot, provide development potential and both lots could gain access through a jointly dedicated public street.

Flag lots may be approved on an interim basis where there is future development potential on adjacent properties. This requires Planning Commission approval and that is why this application is before the Commission this evening.

The applicant is proposing approval of flag lots as an interim measure. The applicant is proposing to dedicate 15 feet of right-of-way on the east property line to provide for future construction of the street when the property on the east develops in the future. The proposal includes a comparable 15-foot dedication on the adjacent property as well.

Staff has determined that an adequate street section can be provided on this lot at this time. The street would provide two ten-foot travel lanes, a 6-foot parking lane and a 6-foot sidewalk.

In order to have the preferred housing orientation fronting to the street, a variance of 6-1/2 feet would be needed to the 80-foot lot depth in the R-7 Zone. This amount would fall under the minor variance category. It is staff's belief the variance may be appropriate to provide public access in this case.

Staff does not believe that the applicant's proposal to dedicate right-of-way as an interim measure will assure that street development can be constructed in the future when the adjacent property develops. There are questions of funding, timing mechanisms, and how to address the flag access strips at the time of future development.

It is staff's opinion that flag lots as an interim measure would only be appropriate when it can be shown that a street cannot be developed at this time on the lot. Staff recommends denial of this application based on the recommended findings attached to the staff report.

QUESTIONS FROM THE COMMISSIONERS -- None.

CORRESPONDENCE

John Gessner reported that no written correspondence from the NDA was received, however there was verbal comments received from Bob Hatz as land use chair. Dolly MackenHambright neighborhood association member, indicated her objections to John Gessner. These objections were not transmitted to the Commission through correspondence.

There was no other correspondence received other than what was indicated in the staff report.

APPLICANT PRESENTATION

Speaking: Bruce Noel, 2361 St. Helens Highway, Portland, OR 97231

Mr. Noel stated that he is asking for approval to create the two parcels for residential dwellings. This was requested in compliance with the required criteria. The proposal included the construction of a flag lot roadway which allows for future street development. Dedication for future street right-of-way would be offered as a recorded deed of trust and is shown on attachment 4, Page 6.1-13 of the staff report. The dedication would be designed to the standards of an alley. A copy of the information received from the Public Works Department, Neighborhood Street Cross Section Figure 4 was submitted as part of the record.

There is potential for development on the adjacent property to the east; however, the landowner does not wish to, nor plan on ever developing the land. Meeting the requirements of the street proposed by Paul Roeger, City Civil Engineer, it would leave only 15 feet-4 inches of setback that would prevent them from meeting the requirements. It would also mandate an inequity and force dedication of land.

They have shown that the means of dedicating a street is not possible. The proposal shows that it would be possible for the adjacent property to develop to current standards. It would take creative designs to meet current codes for any future development of the adjacent property to comply as a flag lot development given the new standards.

A deed-of-trust of dedicated right-of-way along the property line would assure the development of the street in the event of future development of adjacent property as the city would require during the partitioning approval process. Installation of water and sewer mains as described in Mr. Roeger's memo could be performed and paid for as interim to the public street development as an equitable cost split between the development now and in the future, leaving the paving the responsibility of the future developer as required for permitting.

QUESTIONS FROM THE COMMISSION -- None.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION

Speaking: Evelyn Knudsen,

Ms. Knudsen stated that she owns the property next to the subject site. She is concerned about the interim road being gravel and not wide enough for other cars to go both directions. She voiced concern about the access for police cars, emergency vehicles, etc. The traffic pattern from Stanley is difficult now and she cannot image another street so close to the intersection.

If this street is not wide enough for a regular road, who would take over the maintenance of this street? She asked how long the interim lasts. If this applicant moves, how will the roadway be maintained?

Speaking: Dan Libert, 5640 SE King Road

Mr. Libert stated that he is on the west side of the subject site. He explained that half of his 1.06 acres is forest and he would like to keep it that way. He is concerned about fire hazard with development so close. An arborist has reviewed the border of trees and any development would hurt his forestland.

Mr. Libert stated that he would like to keep his property in the family. They have had the land since 1969 and would like to protect it so it can be passed on to his children.

Speaking: Kari Libert, 5640 SE King Road

Ms. Libert cited an example of the kind of traffic problems that could become a potential hazard should this type of development be approved. A car was trying to turn into their driveway across the street. Their driveway would become a roadway that could possibly extend to Stanley. This would add to the traffic onto Stanley. This car had a hard time getting into their driveway and almost caused an accident. This happened around 5:00 p.m. If this application is approved, there will be many car accidents if no signage or stop lights are put up to regulate traffic there.

Ms. Libert voiced concern about the trees in the back. The trees canopy over the property line and if construction is not done properly, the trees may die. The four

surrounding lots have potential of becoming a large area for multi-family housing in the future.

ADDITIONAL COMMENTS FROM STAFF

Ken Kent stated that in staff's analysis of this lot, it was determined that an adequate street section could be developed at this time on this lot and still meet the setbacks for the existing house. The additional lots could provide adequate size, however there would be a potential variance for lot depth.

The proposed street section is within a 26-1/2 foot right-of-way dedication. The current proposal for the two flag lots will require 30 feet for joint access. The proposed street dedication will be slightly less than that required for the flag access poles. The right-of-way section would include two travel lanes at 10-feet wide and a 6-foot parking lane. This would abut the property line with a 6-inch curb and a 6-foot sidewalk would need to be constructed in an easement on each of the lots. The total section of the roadway is approximately 30-feet; however the dedication itself is 26-1/2 feet.

There is a question of whether 15 feet dedicated by this property would assure adequate right-of-way on the adjacent property. With the current 15 feet, a road could not be built now. There are questions on how this road will be financed in the future if it is not built at this time. When the adjacent property is developed there needs to be a financing mechanism established so this section of right-of-way can be built. The flagpoles would have to be addressed because the current 15 feet does not include flag access for lot 2. It will need to revert to either the existing property, or become additional right-of-way. It is unclear on how this can be processed.

John Gessner explained that the difference between what the applicant is proposing and what staff is recommending is the overall size of right-of-way that will be needed in the future. The previous standard for alleys accommodates only two travel lanes and no on-street parking. Current standards show that no on-street parking can become a problem for neighbors.

There is no assurance or process that the roadway improvement will be constructed in the future. There is no funding guarantee that the roadway will be built in the future.

QUESTIONS FOR CLARIFICATION -- None.

APPLICANT'S CLOSING REMARKS

Speaking: Philip Reich, 5650 SE King Road, Milwaukie

Mr. Reich stated that this has been a frustrating process. The half street being proposed was discussed with Paul Roeger initially. There were no objections to the proposal until the staff report. This caught him by surprise. He is proposing to put in the water,

electrical, and sewer sufficient to accommodate future development on the other side. He feels this is his allowance towards the development of a half street. It would be up to the adjacent property owner to pave the street.

Development costs for the water, electrical, and sewer improvements will be about \$30,000. The pavement of the half-street would cost about \$30,000. He feels this is an equitable split. Deeding of the land is also equitable. He does not understand why it is being said that there is no process for the future development of the street.

To address the concern about emergency access, he stated that the original proposal has been submitted to the Fire Marshal and it was approved based on vehicle access on 12-foot of paving for flag lots. No-parking signs must be placed.

Mike Miller asked Mr. Reich for his interpretation of the difference between a half street and a flag lot? **Mr. Reich** stated that a half street is a 30-foot alley as defined by Paul Roeger. If a half street was dedicated it would mean that 15 feet is given by both sides to pave and provide services towards this street. There is adequate room for setbacks should the other side develop.

Howard Steward asked if the applicant planned on putting in curbs and sidewalks? **Mr. Reich** stated that it is not his intent to put in curbs and sidewalk at this time because this is an interim flag lot. He does plan on paving the 12-feet of driveway.

Mike Miller asked if the applicant plans on putting in a flagpole or half-streets for his proposed units? **Mr. Reich** stated that he is proposing to put an interim flag for these units and setting aside land deeded to the city should the neighbor decide to develop a half-street in the future. He will be putting in the services for a half street, should they occur in the future.

Speaking: Bruce Noel, 23616 St. Helens Highway, Portland

Mr. Noel stated that if they provide for the sewer system and water main, these services would be deeded over to the city, even though there is a flagpole paving on the surface. The city would then take over the responsibility of the utilities from that point on.

Chair Hammang explained that he feels the applicant is stating that the reason to accept the proposal is because the applicant is putting in streets and sewer for a future development on the opposite side. This is the applicant's fair share of future street development.

DELIBERATIONS AMONG THE COMMISSIONERS

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

Ken Kent explained that the intent was not a half street to serve both properties. The proposal is for a half street right-of-way to serve this property. When the adjacent property develops, additional right-of-way will be acquired and additional street width paved. It is not intended to have the full development within a 30-foot right-of-way.

John Gessner stated that staff's recommendation is that the proposed 15-foot dedication with the 12-foot driveway is not adequate.

Gary Firestone stated there are two standards to be considered; the general legal standard and specific standards relating to width. The general standard in Section 17.32.040(a) states: "Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible." This puts the onus on the applicant to establish that a dedicated public street is not possible. The code standards refer to a 30-foot access street, with a maximum pavement of 20-feet, minimum of 12 feet. It is staff's position that a half street would satisfy the dedicated public street requirement; anything less than that would not.

Howard Steward asked if there was a recommendation from the city engineer regarding this roadway. **Gary Firestone** noted that there is a memo from Paul Roeger dated October 7th addressing street issues.

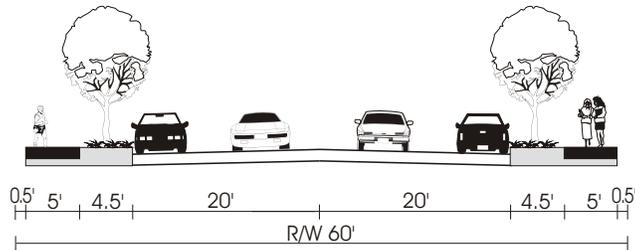
John Gessner stated that Public Works recommended a 30-foot right-of-way, but this would have been placed entirely on the proposed applicant. There was a question on how that would be located.

Howard Steward moved to deny MLP-02-07 and adopt recommended findings in support of denial. **Mike Miller** seconded the motion.

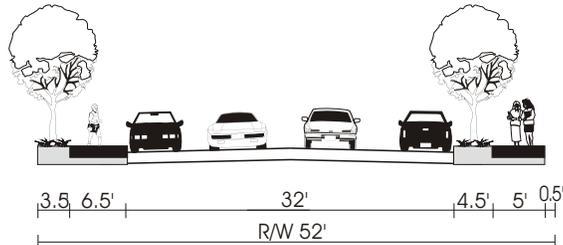
Ayes: Borden, Bresaw, Miller, Steward, Hammang; Nays: None.

THE MOTION CARRIED 5-0.

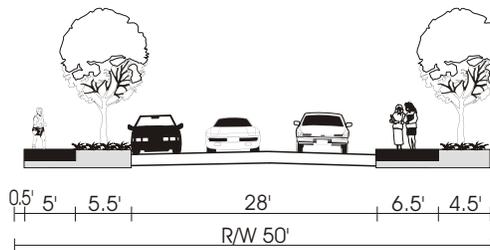
Recess was taken at 7:35 p.m. and the meeting reconvened at 7:45 p.m.



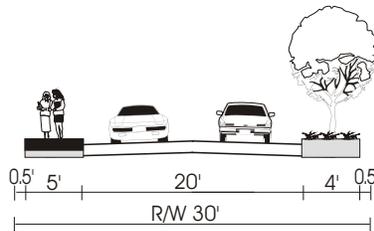
Commercial/Industrial 60'
On-street Parking



Neighborhood Residential 52' >1500 vpd
On-street Parking



Local Residential 50' <1500 vpd
One Side On-street Parking



Alley 30'
No On-street Parking

Notes:

1. Use of landscape strip typically symmetric about street cross section. Samples show examples of landscape strip and curb tight sidewalk for reference.
2. Sidewalk 5' minimum with landscape strip. Where sidewalk is curb tight, provide 6' sidewalk on Local/Neighborhood Street, not including curb width. For alley minimum sidewalk 4.5', for cul-de-sac minimum sidewalk 5' (not including curb width).



CITY OF MILWAUKIE, OREGON – PUBLIC WORKS DEPT.

LOCAL/NEIGHBORHOOD STREET CROSS SECTIONS

Figure 4

EXHIBIT G

Linwood Neighborhood
Association
12341 SE 67th Ct.
Milwaukie, Oregon
97222

November 12, 2002

Mayor and City Council,
City of Milwaukie
10722 SE Main St.
Milwaukie, Oregon 97222

Dear Mayor and Council;

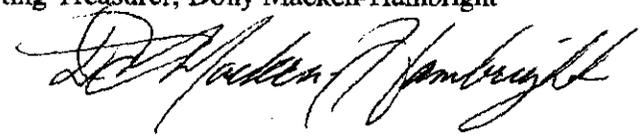
In response to the recent appeal filed regarding the desired flag lot at 5650 SE King Road, Milwaukie, we would like the City Council to consider the following very carefully in its review:

- 1 The neighbors on either side of the property in question are very much opposed to this variance, one due to the possible adverse affects to a stand of trees on his property (and possibly to the tree canopy of the area in general), and one because of traffic and safety issues that will make that corner much less safe due to the additional people using this specific roadway access;
- 2 The flag-lot as proposed, would create an encumbrance on one of the lots next door. This could adversely affect the value and livability of that lot now and into the future. This variance is against that owner's wishes and solely for the benefit of the appellant;
- 3 The houses that would be moved onto the proposed, reconfigured lot do not fall under many of the rules currently in place for onsite stick-built housing in the City and therefore the owner is under no obligation to be sure that said housing starts out in good condition, much less remains as an asset to the Milwaukie rental housing market;
- 4 The wood fencing in the initial proposal is not a viable permanent answer to property development due to the rapid weather-degradation of wood fencing in general; and,
- 5 There is nothing in this variance request that can be construed to be an enhancement to the neighborhood or the community at large.

ad hoc land-use review: Acting Chair, Edie Kerbaugh

and 

Acting Treasurer, Dolly Macken-Hambright



RECEIVED
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MILWAUKIE
NOV 14 AM 7 16

**V. Public Hearing B Protest of Notice to Abate Nuisance on
Property Located on the West Side of 21st St. between Adams and
Lake Road, Milwaukie
Not available**



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Council President Election
Date: January 21, 2003

Action Requested

Elect a Council President.

Background

City Charter Section 24, *President of the Council*, and Municipal Code Chapter 2.04.040, *Presiding Office -- Designated*, states following the seating of any new duly elected members of the Council, the Council shall elect a president from its membership. In the absence of the mayor, the Council president is the presiding officer but has no more than one vote.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Paul Shirey, Engineering Director

Subject: Citizen Utility Advisory Board Work Plan for '02-'03

Date: January 2, 2003 for January 21, 2003

Action Requested

Review work program and provide feedback to the Board.

Background

Each year appointed Boards are required to meet with the City Council to review the Board's work plan for the coming year. The Citizen Utility Advisory Board (CUAB) is scheduled to meet with the Council on January 21, 2003.

The following is a summary of the possible work program items that have been reviewed by the CUAB.

1. Transportation Utility Maintenance Fee	Explore options for establishing a fee, based on use of the roads, that will be used to maintain the city's street system. Make recommendations to Council.
2. Street light fee	Consider creating a street light fee in order to free up state gas tax revenue for transportation capital projects.
3. 2003-2008 CIP	Review and make recommendations to Council on the Capital Improvement Plan for next 5 years.

5. SDC study and revisions	Review, revise and update each of the utility SDC's. Review results of consultant study to update the Master Plan for Stormwater.
6. Cost of Service study for water services	Review and make recommendations regarding study to determine if rates are covering cost to provide service. May require rate increase.
7. Volume-based sewer rates study	Review results of study aimed at explaining why the new rates for sanitary sewer service are generating excess revenue. Make recommendations regarding rates.
8. Pavement Management system	Provide input on efforts to implement a pavement management system to better manage maintenance of street system.
9. Portland/Milwaukie sewer rate adjustment	Change the rates for those customers who buy Milwaukie water, but send the effluent to Portland for treatment. The rate change will allow Milwaukie to collect sewer fees consistent with Portland to avoid subsidizing customers for the difference in treatment costs.



To: Mayor and City Council

Through: Mike Swanson, City Manager
 Alice Rouyer, Community Development Director
 Paul Shirey, Engineering Director

From: Jack R. Ostlund Jr.

Subject: Sanitary Sewer Volume Based Billing

Date: December 20, 2002 for January 21, 2003 Meeting

Action Requested

Review and provide feedback.

Background

In September 2001, City Council passed a resolution that changed residential sewer billing from a fixed to a variable charge. A rate increase was approved in July 2002 to meet the prescribed rate schedule. In recent months, the City of Milwaukie has collected revenue in excess of what is necessary to remain revenue neutral. We have retained Financial Consulting Solutions Group (FCSG) to analyze the problem and, if necessary, make recommendations to correct the problem.

RATE STRUCTURE	2000/2001 CURRENT RATES		2001/2002 PROJECTED RATES	
	Fixed *	Volume (>16 ccf)	Fixed *	Volume (per ccf)
Residential (Incl. MFR)	\$ 36.25	\$ -	\$29.00	\$0.70
Low-Income Residential	16.81	-	\$14.50	\$0.35
Commercial	36.25	2.30	\$29.00	\$2.50

*Fixed Charge is imposed per unit for residential, per account for Commercial

RATE STRUCTURE	2002/2003 PROJECTED RATES		2003/2004 PROJECTED RATES	
	Fixed *	Volume (per ccf)	Fixed *	Volume (per ccf)
Residential (Incl. MFR)	\$ 22.00	\$ 1.40	\$15.00	\$2.10
Low-Income Residential	11.00	0.70	\$7.50	\$1.05
Commercial	22.00	2.80	\$15.00	\$3.00

*Fixed Charge is imposed per unit for residential, per account for Commercial

In September 2002, staff discovered that our volume based sewer billing system had generated approximately an additional \$25,000 over projected system residential revenue for the billing cycle ending August 31, 2002. This resulted in a 6.9% increase in revenue over last year for the same billing cycle. After consulting with FCSG, we discovered there could be several possible reasons for this:

- 1) The software used to calculate customers' bills was not calculating them correctly.
- 2) During summer months customers used more water than estimated.
- 3) When the rate study was done the data used did not give a true statistical picture of Milwaukie water use and resulted in skewed rate tables.

In July 2002, the second prescribed rate table went into effect according to the adopted and newly revised rate structure, which places greater emphasis upon the variable portion of the billing structure and less on the fixed portion. FCSG's conducted an analysis of sample water bills, including six customers who had complained of the increases. In fact, the bills are being calculated correctly, indicating the billing software is calculating the winter average and amount due accurately.

The FCSG report indicates that the 2002 data for the billing period in question deviated from the 2000 data used to generate the rate tables. The 2000 data seemed to be appropriate for projecting year 2001 consumption as well as previous years. Based on evidence to date, we believe that the 2002 billing period was an above average year for water consumption. Further, there is reason to believe that the old flat fee structure resulted in considerable under-collection because of the large number of zero consumption accounts for past years. The consultants indicate that the key difference between the raw data used to set the rate structure and the most recent summary reports is, simply, the volume of water that was billed. The actual amount billed was 755,802 ccf (100 cubic feet). The study projected that 656,372 ccf of water would be billed, a difference of 99,430 ccf (for details see chart below). This results in an over-collection of revenue.

Table 1. Data Comparison and Estimated Revenue Impacts

<u>Rate Component</u>	<u>Study Projections</u>	<u>Actual Performance</u>	<u>Difference (Actual – Study)</u>	<u>Estimated Annual Revenue Impact</u>
<u>Units/Accounts Billed</u>	<u>9,437</u>	<u>9,374</u>	<u>(63)</u>	<u>\$(8,250)</u>
<u>Volume Billed (ccf):</u>				
<u>Residential</u>	<u>656,372</u>	<u>755,802</u>	<u>99,430</u>	<u>\$139,202</u>
<u>Commercial</u>	<u>195,178</u>	<u>222,524</u>	<u>27,346</u>	<u>\$75,202</u>
<u>Estimated Total Revenue Impact from Projections:</u>				
<u>Annual Over-Collection (Under-Collection)</u>				<u>\$206,154</u>
<u>Monthly Over Collection (Under-Collection)</u>				<u>\$17,179</u>

FCSG's report contains several options for City action:

- 1) The adopted schedule calls for full implementation of the volume based billing system on July 1, 2003. Between now and then the first two billing periods of this year could be further evaluated. If the analysis showed that revenues collected meet the planned system projections, then the city would allow the adopted rate tables to take effect for 2003/04. If the data showed adjustments are needed to remain revenue neutral, changes can be considered at that time.
- 2) Or, the City could review the billing data on an account-by-account basis which may expose any miscalculations that our small original sample did not. FSCG could aid in the analysis.
- 3) Or, the City could implement an immediate rate structure adjustment.

Concurrence

Engineering is coordinating with Finance staff on this study and will continue to work together on appropriate solutions.

Fiscal Impact

There is no debt impact upon the city. However, it is our mission to ensure the volume based billing remains revenue neutral and that the City recovers the cost of providing the service

Work Load Impacts

Additional staff time will be required to complete the study with consultant assistance if necessary. Also, staff will be required to manage additional studies if the problem continues.

Alternatives

1. Take more time to evaluate revenue collection trends. Evaluate again in late March and possibly amend the adopted July 1, 2003 rate increase.
2. Conduct an account-by-account study for possible billing system problems.
3. Immediately do an analysis to adjust billing structure to attempt to make the system revenue neutral.

Recommendation

Staff recommends analyzing the revenue figures again in late March to determine if this was a “one-time” occurrence or if action is needed to achieve revenue neutrality.



To: Mayor and City Council

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

From: Jeffrey King, Project Manager

Subject: Authorization and Resolution to a Transportation Enhancement Program Grant Application

Date: January 10, 2003 for January 21, 2003 meeting

Action Requested

- A) Authorize staff to proceed with a grant application for the Traffic Enhancement Program to the Oregon Department of Transportation (ODOT) for street and sidewalk improvements on Main St. between Jackson St. to the north end of the Safeway site in the City Hall/Downtown area. Improvements follow standards set out in Milwaukie Downtown and Riverfront Plan-Public Use Requirements.
- B) Adopt a resolution in support of Milwaukie's Transportation Enhancement Program grant application.

Background

The Transportation Enhancement program provides federal highway funds for projects that strengthen the cultural, aesthetic, or environmental value of the transportation system. The program is administered by the Oregon Department of Transportation (ODOT). Applications are due February 7, 2003 for projects to be constructed in the 2004-2006 time period.

To be eligible the project must fit into one of twelve "transportation enhancement activities". The Main St. Enhancement project falls into the "Bicycle and Pedestrian Facilities". This grant gives the City the ability to begin implementing street design standards that were detailed in the Milwaukie Downtown and Riverfront Plan-Public Area Requirements. The project would make design improvements on Main St. between Jackson and the north end of the Safeway site. It will serve as a demonstration project for other areas in the downtown. The project compliments a number of efforts designed to revitalize the downtown and

waterfront. These projects include the North Main Safeway Mixed Use plan, Electra Credit Union Facility, the new transit center further up Main St., and the multi-million dollar grant to improve and beautify McLoughlin Blvd in the downtown area.

The North Main Enhancement project will consist of canopy street trees, scored or brick sidewalks and crossings, curb extensions/bump-outs, bike lane, possible angled parking, and ornamental double-headed light fixture and street furniture. The grant application is for \$379,658.

Concurrence

Community Development, Planning, and Engineering Departments all support proceeding with the application process for the Main Street Enhancement Project.

Fiscal Impact

Federal Funds can provide up to approximately ninety-percent (89.73%) of the project, while the City is required to provide a local match of approximately ten percent (10.27%). Based on this, staff estimates that the total city match for the Main St. Enhancement project will be approximately \$38,991. If approved the City must provide this match. The likely funding source is from the State Gas Tax Fund. The Traffic Enhancement grant program acts on a reimbursement process for payment of the federal share.

Work Load Impacts

A staff team from the Engineering and Community Development Departments will complete the application and participate in the public involvement process. The project is part of the work program for both departments.

Alternatives

The Council has the following alternatives:

- Decide to endorse this project.
- Decide to endorse a different project
- Decide not to proceed with the application process for Main St. Enhancement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING THE REQUEST FOR TRANSPORTATION ENHANCEMENT FUNDS FOR MAIN ST. DOWNTOWN IMPROVEMENTS.

WHEREAS, The project will improve and enhance multimodal transportation access in the downtown; and

WHEREAS, the Main St. Improvement Project supports the on-going redevelopment and revitalization of the downtown; and

WHEREAS, the project is part of the Milwaukie Downtown and Riverfront Plan;

NOW, THEREFORE, BE IT RESOLVED that the City Council supports the application by the City of Milwaukie to the Transportation Enhancement Fund for Main St. Downtown Improvments and authorizes staff to submit the application, including the commitment to provide provide a match of 10.27%, currently estimated at \$38,991.

Introduced and adopted by the City Council on January 21, 2003.

This resolution is effective on January 21, 2003.

James Bernard, Mayor

ATTEST:

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

Pat DuVal, City Recorder

City Attorney

Document2 (Last revised)



TO: Mayor and City Council

THROUGH: Mike Swanson, City Manager
Alice Rouyer, Director of Community Development and Public Works
John Gessner, Planning Director

FROM: Kenneth Kent, Associate Planner

DATE: January 21, 2003

SUBJECT: Downtown Design Guidelines Project Update

Action Requested

No action is required. This is a status report on the Downtown Design Guideline project.

Background

The Design and Landmarks Commission (DLC) has been working on design guidelines and a design review process for the downtown. The project is ready for the formal adoption process and is scheduled for City Council adoption on April 1, 2003.

The design guidelines and the design review process will assure that development in the downtown will be consistent with and contribute to the character of downtown as well as the vision of the Downtown and Riverfront Framework Plan.

This project consists of three parts:

1. Design Guidelines;
2. Design Review Process Code; and
3. Sign Code Amendments for consistency with design guidelines.

The following is a brief summary of each of the elements of the project.

Downtown Design Guidelines

The design guidelines will be used by the Design and Landmarks Commission and staff to assess how well a proposed development fits within the context of downtown. As proposed, all new development, additions, remodels and renovations within the Downtown Zones will be reviewed against the design guidelines. A development proposal would not need to comply with each and every guideline, but would need to show their project is substantially consistent with the guidelines. It will be the DLC's role to determine how well a project meets the guidelines, considering the overall design of the project and how it relates to surrounding buildings and the downtown.

The guidelines address five design elements:

1. Milwaukie Character Guidelines: Milwaukie's unique "sense of place" as an All-American riverfront town that is hospitable and family oriented;
2. Pedestrian Emphasis Guidelines: Addresses the ways in which buildings and spaces may be designed to create convenient, comfortable, human-scaled environment that people will want to be in, where the pedestrian is the priority;
3. Architecture Guidelines: Promotes quality development while reinforcing the individuality and spirit of Milwaukie. Architectural criteria address such features as doors, walls, windows, silhouette and roofline;
4. Lighting Guidelines: Lighting that encourages nighttime patronage of businesses and restaurants, and creates an atmosphere of festivity and activity; and
5. Sign Guidelines: Signs that make it easy to locate and identify businesses, but never overwhelm either buildings or landscape. Encourage signs that are of a highly graphic format that is complementary to downtown with a strong pedestrian orientation.

In addition to the proposed design guidelines, projects in downtown are subject to the existing Development Standards and Design Standards in the Downtown Zones section of the Zoning Ordinance. Development Standards are minimum zoning standards, such as building height, floor area ratio and street setbacks. Design Standards are zoning standards that require specific minimum dimensions and materials for walls, windows and roofs. The design guidelines are intended to work in conjunction with the minimum criteria of the Development Standards and Design Standards and will serve to address design character, quality and consistency.

Design Review Process

The following are the key elements of the proposed design review process.

- New construction and significant changes to buildings are reviewed by the Design and Landmarks Commission against design guidelines.
- The review process has been minimized for minor work/projects by allowing staff review (Type I) of those changes that will not significantly alter the architectural character of a building, with staff having discretion to "kick up" to a Type II review.
- DLC may grant modifications to design standards with findings, rather than through a variance. Design standards are closely tied to the architecture of a building. This provision is included to allow flexibility when an acceptable design solution meets the intent of the particular design standard as well as the design guidelines.
- DLC is the review authority for variances to development standards.
- "Stand alone" residential¹ development is exempt from design review. This exemption is necessary to meet state law requirements that development involving "needed housing"² have the option to only be subject to clear and objective standards. The subjective nature of design guidelines and a design review process does not meet this requirement.
- Mixed-use buildings require design review for non-residential portion. Residential portion of the building only subject the design standards or may elect full design review.

Downtown Sign Code

The following are the key elements of proposed sign code amendments to be consistent with design guidelines.

- Reduces the height and area of freestanding signs.
- Limit awning signs to first floor of building and/or no higher than 15 feet.
- Discourage internally illuminated cabinet signs, requiring design review by DLC.
- All other internally illuminated signs require design review by DLC.
- Backlit, individually lettered signs permitted.

Next Steps

- February 25, 2003, joint Planning Commission and Design and Landmarks Commission Public Hearing, Recommending Adoption to the City Council.
- April 1, 2003, City Council Adoption.

¹ "Stand alone" residential is a development that is entirely residential with no mixed use.

² All new housing in the Metro region is considered "needed."

Concurrence

The City Council discussed the Downtown Design Guideline Project and provided direction on November 6, 2001 and July 16, 2001. The Design and Landmarks Commission has conducted a number of meetings and provided their input on the project. The Planning Commission reviewed the overall concept on September 25, 2001. The proposed design guidelines, design review code, and sign code changes have been reviewed by staff and the city attorney.

Alternatives

1. Proceed with adoption schedule as proposed.
2. Provide direction to staff to revise the adoption schedule.
3. Provide direction to staff regarding proposed design review process.

Riverfront Board Meeting
November 6, 2002
Minutes

Members Presents: Verbout, Green, Wall, Klein, Stacey

Members Absent: Loaiza, Martin

Guest: Gill Williams

Wall motioned to accept the minutes as written, noting he found them “accurate and scintillating”. Verbout seconded, and minutes were approved 5-0.

The note taker (JoAnn, WAY too tired, Herrigel) noted only the discussion points that seemed to win consensus (that is, all comments were NOT recorded.)

Following is a list of those points:

- Gill Williams has a layout for a sign that was designed a while back
- Can the Multi-Use Trail be modified without repercussions from CAMAQ (the source of funds for the Trail)
- What do we call this plan?
 - “Phase I of the Concept Plan for A Milwaukie Riverfront Park” seemed to be the most popular idea (I think)
- Gill’s concept plan should be modified as follows:
 - Remove the word “temporary” from the parking area near the boat ramp
 - Remove the small parking lot off of McLoughlin in the northeast corner of the plan
 - Insert the proposed McLoughlin Blvd improvements
- Wall noted that there should be a distinct relationship drawn on the sign between the concept plan (a conceptual proposal) and the actual Riverfront/Downtown Master Plan (a design adopted into the Comp Plan)
- The sign should have a Phone # of someone that can answer questions about the plan and any potential donations- (JoAnn’s number seemed acceptable).
- Paul and JoAnn will work on the text of the sign and will get text to Gill who will integrate it into the computer file for the concept map.
- Time frame: Goal is to get sign done (installed) by date of the Christmas event on the Riverfront (Dec 21 ???).
- Attendees liked a Kiosk style sign – Herrigel will check with Planning regarding sign restrictions.
- Any text regarding donations should emphasize the tax deductibility of all contributions
- Gill should highlight the north end of the concept map to identify the first phase

- The group asked that the Marine Board respond in writing to the list of criteria the Riverfront Board had developed for Boat Ramp modification. They asked that the response to the list of criteria be a major topic of discussion at the next meeting.
- The next meeting was scheduled for December 17 at 6pm. Wall said he would contact Loaiza regarding his ability to attend the next meeting.
- Gary Klein extended an invitation to all board members to come to a gathering at his house on December 10 to view the Christmas Boats and to tour his newly remodeled home.

Mitch Wall motioned to adjourn and Stacey seconded. Meeting adjourned at 8:15.