

AGENDA

MILWAUKIE CITY COUNCIL AUGUST 16, 2005

MILWAUKIE CITY HALL
10722 SE Main Street

1964TH MEETING

REGULAR SESSION – 7:00 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**

Clackamas Community College IALEIA Award

3. **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.)*

City Council Work Session and Regular Session Minutes of July 19, 2005

4. **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.)*
5. **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 (AP-05-02) of Planning Commission Decision on North Clackamas Park Ball Field Project (Lindsey Nesbitt)**
 - B. **Appeal of Planning Commission Decision (John Gessner)**
Appellant: Michael Hamersly
Location: 2540 SE Lark Street

6. **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. **Intergovernmental Agreement with Metro (Mike Swanson)**
 - B. **Council Reports**

7. INFORMATION

Public Safety Advisory Committee

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

MINUTES

MILWAUKIE CITY COUNCIL WORKS SESSION

JULY 19, 2005

Mayor Bernard called the work session to order at 6:40 p.m. in the City Hall Conference Room.

Council present: Councilors Barnes, Collette, and Stone.

Staff present: City Manager Mike Swanson; City Attorney Gary Firestone; Community Development/Public Works Director Kenny Asher; Engineering Director Paul Shirey; Community Services Director JoAnn Herrigel; and Information Coordinator Grady Wheeler.

Public Input Process for Riverfront Concept Plan

Ms. Herrigel understood that Council decided to pull this item and would consider it at the August 2, 2005 work session. She provided copies of the two concept plans and discussed the proposed public information process scheduled to begin during Riverfest. Councilor Loomis, who could not attend this work session, recommended that nothing go out to the public if it was not done right. She asked Council for direction on what she should or should not show at Riverfest.

Councilor Stone thought that only the projects underway should be shown.

Ms. Herrigel suggested using the same boards and handouts that were developed for the Sunday Market Community Booth. She was agreeable to holding off on the showing the Riverfront Park Concept Plans at Riverfest.

Mayor Bernard pointed out that Riverfest was one of the few times that large numbers of people were brought together at the Park and expressed some concerns about missing the opportunity. He offered to make announcements inviting the public to the August 2 work session and informing them of the upcoming public input process.

Councilor Collette agreed Riverfest was a tremendous opportunity and was not sure why this was so controversial. It would be a good chance to simply say to the public that these were the ideas on the table and that neither was the final option. On one hand, she respected Councilor Loomis' concerns, but, on the other, she would regret missing the opportunity.

Councilor Stone replied if she did not know what was going on in the City, then she would not understand this was just a piece of the broader development. She agreed there should be some mention of the ongoing process and that it would come before the City Council very soon with an extensive public input process. She did not like to knee-jerk react to things. She understood the interest in

taking advantage of the venue, but many of the people who went to Riverfest did not live in Milwaukie. She thought there were other opportunities to gather public input.

Mayor Bernard agreed, but there were few chances for a mayor to address so many people at one time. Having been the Riverfront Board Chair seven years ago, he could assure the Council that this was not a knee-jerk reaction. Many people had been involved in the process. One of the concepts was adopted in the Downtown Plan, and the other was an amendment or another scheme to consider. Personally, he did not want to see any parking on the riverfront and would be 100% behind finding another way to provide parking. He thought the proposals needed some tweaking.

Councilor Stone recommended that the City Council have a work session.

Mayor Bernard thought with appropriate signage that people could just be invited to look at the concepts and start thinking about what they would like to see. He wanted to hear what people thought about the boat ramp.

Councilor Stone agreed with Ms. Herrigel about showing what was happening now and what would be coming shortly.

Ms. Herrigel said there was already an adopted Plan, and there were environmental and topographical constraints on the property. If people were asked an open-ended question, then the Council would have to be prepared to deal with that input. She suggested a handout that told people to expect a survey in the mail or who to call for more information. She provided board with the two concept plans, an aerial of the existing uses, and the Comprehensive Plan. As Councilor Loomis had pointed out, the City Council would not have a chance to look at this until after Riverfest. She sought Council direction on what, if anything, to take to Riverfest. She could prepare some kind of announcement of the upcoming public input process that encouraged participation.

Councilors Barnes and **Collette** supported that suggestion.

Mayor Bernard suggested that the adopted Plan should have some prominence and people should be asked for input on how it might be changed.

Councilor Collette believed Ms. Herrigel made a good point about putting some parameters on input.

Councilor Stone noted that the Comprehensive Plan showed the park without a boat ramp. People might be stirred up if they were not shown the other two concepts.

Mayor Bernard commented that there was not a big fight when that Plan was adopted.

Councilor Barnes understood the Riverfront Board had two unique ideas, so it was not a cut-and-dried situation. She thought it would make more sense to wait until the Council understood why the Board had two different proposals.

Councilor Stone suggested a brochure that listed the projects happening in Milwaukie along with what would soon be taking place.

The group discussed the format of the informational material. The Council agreed to consider the concept plans at its August 2 work session.

Mayor Bernard adjourned the work session at 6:55 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JULY 19, 2005**

CALL TO ORDER

Mayor Bernard called the 1962nd meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Deborah Barnes, Council President Susan Stone
Carlotta Collette

Staff present:

Mike Swanson, City Manager	Paul Shirey, Engineering Director
Gary Firestone, City Attorney	John Gessner, Planning Director
Stewart Taylor, Finance Director	Willie Miller, Facilities Maintenance Coordinator
Larry Kanzler, Police Chief	Ernie Roeger, Fleet Supervisor
Kenny Asher, Community Development Director	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Recognize Cynthia Nagy for Years of Service to the City of Milwaukie

Mayor Bernard and Council recognized Cynthia Nagy for service to the City of Milwaukie from 1980 to present.

Councilor Collette had felt welcomed by Ms. Nagy from the first day she came on Council and was sad to see her leave.

Mr. Swanson commented on Cynthia's belief in public service and her ability to treat people with a great deal of respect. She would be missed because she was a true professional and a wonderful person with whom to work.

Councilor Barnes said the City would miss her and her legacy.

McLoughlin Boulevard Status Report

Mr. Shirey updated the Council and citizens on the McLoughlin Boulevard Enhancement Project between Kellogg Creek and Scott Street. The construction contract was awarded to West Tech in June in the amount of \$2,359,626. It exceeded the engineer's estimate; however, ODOT signed an agreement to split costs 50/50 that were in excess of the original budget. David Evans & Associates, the construction-engineering firm, would begin surveying after Riverfest. The Antique Mall and Vic's Tavern were demolished and the City encountered some fuel oil contamination in the

soil. The contractor would begin work about August 15, and Mr. Shirey would provide information on lane closures and hours of work after the pre-construction conference. He discussed various ways the City would communicate the inevitable slow downs during the 13-month construction period. Work would begin on the west side of McLoughlin Boulevard. He did not anticipate traffic ever being reduced to one lane nor would traffic be detoured through the downtown or neighborhoods. There may be some night work to minimize peak traffic impacts.

Mayor Bernard asked if there would be a construction advisory at Hwy 224.

Mr. Shirey said that was a good suggestion for the management plan.

Mayor Bernard suggested installing the lamp posts in such a way that it would be easy to hang banners across McLoughlin Boulevard in the future.

Mr. Shirey would make that part of the recommendation.

Councilor Stone liked the idea of night work to minimize congestion and asked if that would impact costs.

Mr. Shirey said he would follow up with Council on that question.

Riverfest Schedule

Mayor Bernard announced the July 23 Riverfest events.

TriMet Update

Phil Selinger, TriMet, provided an update on TriMet/City of Milwaukie projects. A lot of hard work had already been done and there was more to do in the future. TriMet continued to be up to the task and sought Milwaukie's partnership in moving forward. Relative to the larger work program, the Federal New Starts Program was increasingly more competitive, and it was difficult to win approval for regional projects. Local funds were tight even for shovel-ready projects.

He began his update with a discussion of the Milwaukie transit center. Last fall some of the bus lines were interlined and some of the layover presence at the on-street transit center was reduced. He discussed certain exceptions. Overall the on-street presence was reduced from 9 to 4 layover zones. With the closure of the Sellwood Bridge to bus traffic, two other routes that came to Milwaukie were eliminated. The presence at the transit center was somewhat less than last year, and TriMet was looking at what it could do to give back some parking spaces. Several bus shelters were refurbished.

Some time ago the Planning Commission and City Council endorsed the Working Group recommendation to advance a transit center at the Kellogg Lake location south of downtown. That decision was made after an exhaustive Working Group exercise, and one that he believed was very thorough. The Kellogg Lake option emerged after the 8 original options were considered and was selected by the Working Group as having the best combination of those options considered. TriMet heard clearly that there were community concerns with the Kellogg site relating to environmental and visual impacts and open space. TriMet indicated at the time that those issues would be considered in greater detail. Because of the complexity of the light rail project coming through Milwaukie and the fact that the transit center was going to have to be ultimately integral to the light rail project, TriMet believed that the further study of the transit center and

light rail was going to have to be linked. He was mindful of the fact that two phases of the transit center had been discussed. TriMet cannot move forward with the Phase 1 transit center without further study of the light rail project.

At this time, the Southgate site was still officially the locally preferred alternative (LPA) for the transit center. The Working Group process identified some ways that issues at that particular site would be mitigated. TriMet heard loud and clear the Working Group's and City Council's recommendations for the Kellogg Lake site. Those were the starting points for looking at a transit center short- and long-term for Milwaukie. There might be other options or variations of options that emerged in that refining process. The Working Group explored many different options, and TriMet would work with the community and staff to refine the two options currently on the table and explore any other combinations of options. The Kellogg Lake site would go through refinement as the process moved forward.

The next phase of study was a supplemental draft environmental impact statement (SDEIS) that was funded through Metropolitan Transportation Improvement Program (MTIP) in the amount of \$2 million. Local jurisdictions pledged additional funds to cover the \$4.3 million total cost of the further study. Metro staff planned to start the work in early 2006. No funds were available at this time for the design and construction of a Phase 1 transit center. TriMet's discretionary dollars went in part to funding the SDEIS process and to purchase buses.

TriMet also heard a suggestion from the community that it move the existing on-street transit center, at least in the interim, to the former Southgate Theatre site that was recently purchased for a park-and-ride lot. There was a dire need for park-and-ride in this corridor, and Southgate was a very popular lot when it was shared with the movie theatre. There were funds to finish the park-and-ride but not Phase 1 of the transit center.

Mayor Bernard had addressed the Joint Policy Advisory Committee on Transportation (JAPCT) regarding the number of projects going on in Milwaukie and the lack of parking. He wanted JPACT to understand how important it was that parking not move into the neighborhoods.

Mr. Selinger said further action toward getting the site developed as a park-and-ride was held up largely for internal reasons. There was currently an engineering firm working on the design for that site, and the environmental assessment was completed. The land costs were somewhat higher than anticipated so that put pressure on the design budget for the balance of the project. TriMet believed it had a design that would work that included removing the building. He believed the site would serve the needs and be an attractive and functionally efficient asset to Milwaukie. The project would come before the City Council for land use action this September, groundbreaking in January 2006, and opening for use in May 2006.

Mayor Bernard asked if TriMet could have a temporary park-and-ride for those cars displaced by the North Main Village project. He was concerned about waiting until September and thought the lot could be used even though the building had not been demolished.

Mr. Selinger said the ultimate capacity of the lot was 309 spaces in the preliminary plans, and he discussed the feasibility of a staged process. TriMet would work with City staff to make that happen.

Mr. Selinger said the Tacoma Street Light Rail station had consistently been included in the variations proposed between Portland and Milwaukie. That was true for the South/North Project in the 1990's as well as the more recent South Corridor Project. It was an important station location because it provided connections to the Johnson Creek/Ardenwald and Sellwood-Moreland Neighborhoods as well as the Springwater Trail and the 3 Bridges Project. There were no reasonable alternative sites that would serve that part of the community, and it did provide efficient access to SE McLoughlin Boulevard. At JPACT's recent meeting, Mayor Bernard said the region should purchase the property now and protect it for future transportation use. A protective buy was accepted practice in the transit industry; however, there were neither public nor federal funds to make that happen. The region needed to continue that conversation. The LPA and land use final order both identified that station as part of the South Corridor Project. The land use final order was a declaration of intent to build a project and put jurisdictions and the community on notice not to enter into actions that would preclude construction of the project. That land use final order could not preclude development of specific properties by the property owner. It might raise the price for future development, but it could not block development.

The current property owner talked to TriMet during the Working Group process about purchasing the Goodwill site in lieu of the Southgate property. The Goodwill site was not accessible by buses using McLoughlin Boulevard because of the divided facility to pick up park-and-riders. Light rail would have its own access to the site, so the bus paradox would no longer be in place. Any near term use without further detailed study and expense did not seem likely. That was not to say TriMet could not buy it to protect it for future use. Since there was no immediate use or budget, TriMet declined the proposed swap for Southgate. The configuration for light rail through that part of the corridor was tight. TriMet looked at the renderings of the proposed project. Conceivably light rail could be elevated across the private driveways. Presumably, there would be a station integrated with the project that would create a nice connection if done correctly. In any case, it would be difficult to have a park-and-ride facility because those took up a lot of space, either vertically or horizontally. TriMet would want to work with the City of Portland on any development review process with the goal of reserving a slot through that project for light rail. He did not think that a park-and-ride facility, which was very important for the viability of the proposed rail project, was feasible at that location.

Mr. Selinger closed by saying there were a lot of related projects on the table – public projects, private development, and transit projects. The benefits were multiplied when projects were coordinated making a whole that was greater than the sum of its parts. TriMet needed to coordinate with the Milwaukie Downtown Plan as it continued to evolve and needed to keep any high capacity transit light rail project to Milwaukie competitive by promoting downtown development and access by all modes. TriMet also supported Mayor Bernard's proposal to reconvene the South Corridor Steering Committee to work on some unfinished business as well as reviewing some of the

current topics. TriMet continued to value the partnership with Milwaukie Council, staff, and the community.

Councilor Collette said in the Working Group it was found that one of the advantages of the Kellogg Lake site was that the City owned it, and the process could be fast tracked. Groundbreaking could have been as early as this fall, but that was not the case. She asked why the issue had become more complex.

Mr. Selinger said part of the issue was money to build the project as TriMet was on a very lean program. The second issue was that the post-process assessment showed it was entangled with the light rail program. TriMet was nervous about making a commitment to Phase 1 when there were so many unknowns about Phase 2. They could continue to talk about making something happen sooner since the City owned the property. There would still need to be an environmental process.

Councilor Collette was concerned because it had been a very long and difficult process for the City. The Planning Commission and this City Council made their decisions, and now it seemed like the project was being put on the back burner. She felt there was growing support for light rail in general and for that site, so she thought it was important to move forward.

Mr. Selinger said that was a point well taken, and TriMet would continue to work with the Mayor through the other committees.

Councilor Stone understood Southgate was still the LPA. Some time ago there was a discussion of putting the park-and-ride there and moving buses there from the downtown area. She knew that deadline had passed.

Councilor Barnes said the groundbreaking was promised for November 2003.

Councilor Stone said downtown parking in general was a concern. Although some of the buses were interlined and some routes removed, parking would be more difficult when the North Main Village Project was up and running. She understood Mr. Selinger to say that the Tacoma/McLoughlin Boulevard site could not be protected because there was no funding.

Mr. Selinger did not mean that TriMet could not protect the site. There was no money right now, but the partners could brainstorm about ways to find the funds.

Councilor Stone understood TriMet was interested in carving out a place for light rail to go through that site if it were privately developed although there could not be a park-and-ride.

Mr. Selinger replied that would be up to the City of Portland.

Councilor Stone wanted to feel more comfortable about what would happen with that site. She wanted some reassurance about what was going to happen. She asked if the ODOT site was an option if there could not be a transit center and park-and-ride at Tacoma.

Mr. Selinger replied TriMet would have to develop a Plan B, but he did not know what that would be at this point.

Councilor Stone commented ODOT was certainly discussed a year ago.

Mr. Selinger said it was difficult because the rail project was only through the Draft Environmental Impact Statement (DEIS) and had not gone into preliminary engineering. Any purchase of that site would be assuming some presently undetermined risk. Most were confident that the site needed to be in the final plan, so that risk could be minimal.

Councilor Stone was concerned about having enough land when looking at growth in Clackamas County and meeting the needs for all modes of transportation. Gas prices were also a factor. It was obvious that something was going to be changing. Kellogg Lake was a finite area in which to develop a bus transit and a parking structure. The ODOT and Tacoma sites had a lot more acreage.

Mr. Selinger replied access was a big part of the equation.

Mayor Bernard added that a lot of money was tied up in TEA-21 until the President signed the Transportation Bill.

Mr. Selinger commented that TriMet expected I-205 to be well under construction, but it was held up in the federal quagmire.

Councilor Barnes asked Mr. Selinger what he meant by his statement that the post process assessment made TriMet nervous in response to Councilor Collette's question about why things were slowing down.

Mr. Selinger said it was not making TriMet nervous but a number of concerns needed to be fully explored to determine how the proposed Kellogg Lake plan could be modified to minimize impacts. Last fall things like colors, landscaping, and height were discussed as ways to mitigate those expressed concerns. He believed those issues were closely related to the light rail project and needed to go forward together. The SDEIS process that was funded would begin early next year and take about one year to complete. At that time more might be known about the site so that Phase 1 of the transit center project could be built. It was his understanding that the City Council adopted a resolution as part of the LPA calling for the transit center to be constructed by 2006, so obviously that was not likely to happen. The LPA passed by the Metro Council called for a transit center to be constructed with the opening of Phase 2 of the South Corridor project. Milwaukie's transit center would open before or at the same time as the opening of the I-205 light rail project. He did not remember the reference to breaking ground in 2003, but in any case it would not be by 2006.

Mayor Bernard added at the time that date was suggested, I-205 light rail was also supposed to open.

Councilor Barnes expressed complete disappointment in TriMet. This community worked through a long, arduous process that divided people. Some people told her not to trust TriMet even if it was in writing. This was the second time she had given TriMet an opportunity, and she did not trust that organization any longer. She spoke for herself and not any fellow Council members. Mr. Selinger had told her those buses would be moved out of downtown and there would be a groundbreaking. Mr. Selinger had promised, and it was in writing. That day had come and gone. She understood there was no federal funding and that there were no matching funds. She expected Mr. Selinger as an official to come back to the City Council and explain what was going on. The Council had to answer to the people in the community. That was what made her angry. TriMet let these people down.

Mr. Selinger said Milwaukie was also part of TriMet's community along with other parts of the region.

Councilor Barnes said the people in the back of the room did not think TriMet was serving them. That was her concern because she answered to them. She wanted Mr. Selinger and the agency to at least come forward on a regular basis as a courtesy to provide information. She understood a TriMet staff person went to a neighborhood association meeting and gave them an update. Nobody on Council had heard about it. She did not understand why there could not be an open dialogue.

Mr. Selinger understood Councilor Barnes's concern. TriMet had been working with City staff. He and Mr. Swanson have been trading e-mails, but unfortunately there was not a lot to report. The park-and-ride lot was not moving quickly, and the other projects were struggling to move along in part because TriMet was bogged down in the larger process. He would be glad to talk to Council on a monthly basis.

Mayor Bernard suggested a quarterly report. This Council did stick its neck out when it made its recommendation. He told Metro Councilor Newman that this process needed to move forward. He doubted that light rail would be elevated in order to go over someone's driveway. It would just end. Moving to the ODOT site would not serve the neighborhoods at all.

Mr. Selinger added the dialogue needed to continue to be a team. TriMet was still a partner.

Councilor Stone commented it was not about serving one neighborhood. It was the regional concept of serving everyone.

Councilor Collette said the South Corridor project was about transportation along McLoughlin Boulevard and solving traffic issues associated with getting to Oregon City and Portland. She was amazed when Phase 1 became the downtown Portland transit mall and I-205 putting Milwaukie's issues completely off the table. Somehow the money was found to redo the downtown transit mall as part of the South Corridor project. She was at a loss as to how that fit from an environmental justice perspective. Milwaukie was the low-income community, and it was the community that was not being appropriately served by transit. She asked Mr. Selinger how the downtown mall got moved ahead as part of Phase 1.

Mr. Selinger replied the I-205 corridor had three urban renewal districts along its alignment, and the downtown had two. After a lot of work, the business community came to the table and offered up money through a local improvement (LID) that included Portland State University (PSU) and other large downtown players. A lot of the expensive work was getting light rail from one end of downtown to the other. TriMet was now in a good position to take off from the PSU terminus to get to downtown Milwaukie.

Councilor Collette understood, then, that it could be construed as a phase of the Milwaukie project.

Mr. Selinger said the more costs that were off-loaded from the Milwaukie project, the more competitive it would be in the process. The challenge of getting to Milwaukie was the bridge.

AUDIENCE PARTICIPATION

State Rep. Carolyn Tomei, co-founder of Island Station Neighborhood. The Island Station Neighborhood supported the transit center at the River Road and McLoughlin Boulevard site. That intersection was one of the most dangerous in the City. She lived in that area for almost 40 years, and people used to call it the guillotine because there were so many accidents. If the transit center were built at that site, the intersection would be improved. There would be two new lights, and traffic would be directed to follow McLoughlin Boulevard rather than diverting onto River Road, which was not built to handle the kind of traffic it does today. The Island Station Neighborhood saw a lot of advantages to the traffic's staying on McLoughlin Boulevard. She was concerned about the suggestion that the transit center be moved from the downtown in the interim to the Southgate area. That would be a real detriment to the Island Station Neighborhood as well as the Kellogg Lake Apartments because residents take the bus from downtown Milwaukie. It would be prohibitive for some to walk to the Southgate area to catch the bus. She commended the Mayor and others who spoke out about the transit center and bringing light rail into Milwaukie. There had been a great deal of bloodletting over the years, and the City Council and Planning Commission had gone through hours and hours of testimony to reach such a difficult decision. It was disappointing for the City and the region not to be able to move ahead with that decision after so many years. In addition to Milwaukie, she represented the SE Portland areas of Sellwood, Westmoreland, and Eastmoreland, who were very supportive of light rail. People had been looking forward to the Tacoma property as a transit center site – not a Wal-Mart location – to bring buses and eventually light rail into Milwaukie and other areas. She hoped the City Council would continue to speak up and continue going to Metro and TriMet with the message that people wanted light rail, and they wanted it soon – not 10 years from now. She thanked the Council for speaking up, and she would continue to speak up also.

Ron Swaren, 1543 SE Umatilla Street, Portland. He had been involved with transportation for some time and discussed his background. The whole southeast metropolitan region and northwest Clackamas County needed to be studied further to determine how development objectives tied in with transportation problems. He did not believe Metro was trying to sweep anything under the rug; he believed it was just overextended. He thought everyone should work together to predict and prevent future problems. He suggested an ad hoc committee made up of officials from various cities to exercise some influence with the JPACT to ensure the transportation network was done right. He discussed the upcoming Portland City Council meeting and the numbers of people who wanted to comment on Wal-Mart. Bottlenecks needed to be identified that would occur as the development proceeded. Mass transit routes should be carefully planned to maximize ridership. He suggested utilizing the media more, and noted *The Tribune* was covering those issues. He was concerned that so much federal money went into funding TriMet and understood some of those funds would begin drying up.

Councilor Collette read a letter into the record. A lot of people received a newsletter that mentioned the Milwaukie light rail and transit center in what she thought was a derogatory manner. She invited several people from the Coalition for a Livable Future

on a tour of the Kellogg Lake site, and the following was the letter the group asked to be read into the record:

“I am writing on behalf of the Coalition for a Livable Future (CLF) regarding efforts to bring light rail to Milwaukie, and more specifically the proposed location of a transit center adjacent to Kellogg Lake.

CLF is a collation of 60 community organizations working together to protect, restore, and maintain healthy, equitable, and sustainable communities, both human and natural, for the benefit of present and future residents of the greater metropolitan region.

We are very supportive of efforts to bring light rail to Milwaukie. We believe it would serve as an important link in our regional transportation system, promote development in Milwaukie’s urban center, and increase transportation choices for Milwaukie’s residents. We are pleased that, after considering the options for improving transportation in the South Corridor, Milwaukie residents are growing more supportive of light rail because it will serve their needs, and they have been involved in selecting the best alignment.

Last week, after reading a statement in our journal, *Connections*, which noted that there has been some community concern over the relocation of the transit center to the Kellogg Lake site, Councilor Carlotta Collette offered to take us on a tour of the site. Jim Labbe of the Audubon Society of Portland, Scott Chapman of the Columbia Group Sierra Club, Jonathan Trutt of Northwest Housing Alternatives, and I (Teresa Huntsinger) participated.

We would like to state for the record that we are not opposed to the Kellogg Lake site. On the contrary, it appears to be a viable option. While this site is not physically in downtown Milwaukie, well-designed pedestrian bridges could connect it to both downtown and the riverfront, supporting positive development in each, and providing transit users convenient access to local businesses, cultural amenities, employment areas, parks, restaurants and shopping.

We have been contacted by several residents who were concerned that the development of a transit center on Kellogg Lake would result in a loss of Greenspace and wildlife habitat. The upland portion of the site, where construction would occur, does provide Greenspace and limited wildlife habitat. In our “Regional Equity Atlas” research project, which will be published this fall, preliminary results show that Milwaukie is deficient in parks and Greenspaces in comparison with the rest of the region. We recommend that the approximately two acres of lower quality, but still significant upland habitat lost due to construction of a transit center should be replaced by permanently protecting similar or higher quality wildlife habitat accessible to the public elsewhere in Milwaukie.

Regarding the riparian portion of the site, if transportation funds can be leveraged to restore Kellogg Creek by removing the dam, re-establishing

the stream channel, and enhancing the high value riparian habitat on that site, the proposed transit center could certainly be a net benefit in terms of water quality and fish and wildlife habitat on site, the proposed transit center could certainly be a net benefit in terms of water quality and fish and wildlife habitat values.

Please take these comments into consideration as you move forward on your efforts to improve transit, protect wildlife habitat, and build a strong economy in Milwaukie.

Sincerely, Teresa Huntsinger, Program Director”

Ed Zumwalt, 10888 SE 29th Avenue, Milwaukie. He was glad to see Mr. Selinger at the meeting; however, things seemed to get a little fuzzier. He was confused because he and several people from the Neighborhood and the City went to Metro and listened to them talk about habitat protection. Out of one side of their mouths they were talking about protecting habitat and out of the other side saying let’s pave over Kellogg Lake Park where there was blue heron, osprey, and bald eagle. They said that was brought about by neighborhood people. Carlotta Collette pushed this from the neighborhood level. Now she was on Council, so it was a viable thing for the City. On June 13, two representatives from TriMet came to the neighborhood meeting and said they were going to study a lot of things and were backing off a little from Kellogg Lake. There were 30 people at that meeting. Now it seemed like Kellogg Lake was back in first place. He discussed the 14-points that helped unify the neighborhoods. He attended the Working Group meetings, and some people connected to TriMet said, “Good, we split the neighborhoods.” He urged getting back to grassroots and working together. There was a great thing going with the grassroots efforts, but it got out of their hands when the Working Group started. The big dogs took over. He urged getting back to livability. If Mr. Selinger wanted to talk, he should go to the neighborhoods. Everyone should work together – he heard it said he was holding up progress.

Lisa Gunion-Rinker, 3012 SE Balfour Street, Milwaukie. She was a six-year resident. Light rail and transit were of great importance to her as a younger citizen. She currently, as do many younger residents of her neighborhood, works in downtown Portland. She works on the Hill, so the bus was not an option. She hoped light rail would come through making it easier for everyone to get to work downtown and back home. She currently carpooled, and that was challenging. She was frustrated that things were not moving along faster. As a resident she hoped the City was moving forward. Mr. Selinger’s comments made her feel very frustrated. Light rail was what the City needed. The Tacoma site was perfect for the park-and-ride and preferable to a Wal-Mart. Johnson Creek Boulevard right now was a parking lot between 4:30 p.m. and 6:00 p.m., and she guessed that street was already over capacity. As a concerned citizen, she appreciated all the Council’s work, and she believed it was on the right track. As a younger person in the community, she appreciated that TriMet was present to talk about the issue. She wanted the project up and running again.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the Consent Agenda that consisted of the following:

- A. City Council Minutes of June 21, 2005;
- B. Intergovernmental Agreement of the Regional Water Providers Consortium;
- C. Purchase Vehicles;
- D. Purchase Elevator for the New Operations Building;
- E. Resolution No. 36-2005: A Resolution of the City Council of the City of Milwaukie, Oregon, for the adoption of the National Incident System (NIMS) in the City of Milwaukie; and
- F. Extend Municipal Court Judge Contract.

Motion passed unanimously among the members present. [4:0]

AUDIENCE PARTICIPATION

No further public comments.

PUBLIC HEARING

Amend Milwaukie Municipal Code Chapter 15.20 by Adopting New Regulations Governing the Moving of Oversized Structures over City Streets

Mayor Bernard called the public hearing to order at 8:15 p.m.

The purpose of this hearing was to consider an ordinance that amended Municipal Code Chapter 15.20 by adopting new regulations that govern moving structures over city streets.

Staff Report: **Mr. Gessner** said these regulations were in response to a perceived weakness of the existing regulations, which had been on the books for some time. He discussed the difficulties with the Marinos house about three years ago that he felt could be attributed to the code language. The Council directed staff to find a way to improve some of the regulations; however, the work was delayed due to other priorities at the time. He reviewed the major components of the permit system:

- Temporary storage on lots or streets was prohibited.
- Insurance was required.
- Prior notice to police, emergency providers, Oregon Department of Transportation (ODOT), rail road, and others to speed the application process and not create a hardship situation either for a property owner or a house mover once the application was made.
- Prior demonstration on zoning compliance for the receiving site.
- Approval criteria that included satisfaction of any liens.
- Post notice on the property before the building was moved to provide an opportunity for community comment. There was a mandatory 5-day waiting period before approval to allow for appeals.
- Violation specified in the event there was a breach in regulations.

These regulations were sent to three structure moving companies: NW Structural Moving, Scappoose; Emmert International, Clackamas; and D&R Associates, Gresham. At the July 5 work session, the Council asked that staff review other jurisdictions' regulations, and those were identified in the staff report.

The City received concurrence from all of the involved agencies and parties both internal and external. Mr. Gessner requested that the City Council approve the proposed ordinance.

Councilor Collette asked for clarification of why the donor site had to conform to zoning.

Mr. Gessner replied that had to do with historic preservation regulations. The City had the ability to hold off on a demolition permit while other options were sought. Staff wanted to ensure the City's historic regulations were covered.

Mayor Bernard noted the clause that would allow the City Council to step in the event of a necessity.

Mr. Gessner said the City Council might waive any provision of these regulations upon finding that it was in the public interest to do so.

Public Comment

None.

Correspondence: **Mr. Gessner** received an e-mail from NW Structural Moving that had been included in the July 5, 2005 work session staff report that indicated that company felt the regulations were consistent with what it might expect.

Mayor Bernard closed the public hearing at 8:21 p.m.

Discussion among Council members:

None.

Decision:

It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings and adoption of the ordinance amending Milwaukie Municipal Code Chapter 15.20. Motion passed unanimously among the members present. [4:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Councilors Barnes, Collette, and Stone and Mayor Bernard voted 'aye.' [4:0]

ORDINANCE NO. 1952:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE CHAPTER 15.20 BY ADOPTING NEW REGULATIONS GOVERNING MOVING OF OVERSIZE STRUCTURES OVER CITY STREETS.

OTHER BUSINESS

Amend Milwaukie Municipal Code by Adding New Chapter 9.07, Public Urination and Defecation as Prohibited Conduct – Ordinance

Chief Kanzler recommended the amendment that would allow the police department to take action to prevent urination and defecation in public. There was an increased problem over the past 12 to 14 months that initially appeared to be during the night shift

when people relieved themselves in a public place. He also received notice from City staff about incidents in the City Hall parking lot and surrounding landscaping and near the bus facilities. This ordinance would allow the police department to cite people for public urination and defecation into the municipal court with a fine of \$750 per activity. The City Attorney and police officers supported his recommendation for adoption. He noted other cities within the region had similar ordinances. The officer would cite the person into court, and the municipal court judge would make the assessment.

It was moved by Councilor Collette and seconded by Councilor Barnes for the first and second readings and adoption of the ordinance amending Milwaukie Municipal Code by adding a new Chapter 9.07. Motion passed unanimously. [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Councilors Barnes, Collette, and Stone and Mayor Bernard voted 'aye.' [4:0]

ORDINANCE NO. 1953:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADDING A NEW CHAPTER 9.07 TO PROHIBIT PUBLIC URINATION AND DEFECATION.

Goal 5 Update

Jack Hoffman, Metro Policy Advisory Committee (MPAC), and **Paul Ketchum**, Metro, provided the Goal 5 update. Metro had been working on its fish and wildlife program since 1996, and the result was an educational, voluntary, incentive, and regulatory program to protect stream corridors, which he indicated on a map. Those land owners with fish and wildlife habitat would be receiving Measure 56 notices in about two weeks telling them Metro was in the process of adopting regulations that might affect property values. The program will go before Metro Council in September for approval, and then on to the Land Conservation and Development Commission (LCDC) for acknowledgement. Cities would have two years to comply by either using or modifying their current programs or by adopting a district plan. The program did not apply to existing residential property. If one wanted to build or expand into the corridor, there would be some requested restrictions. All cities would be required to remove barriers to habitat-friendly development such as clustering and setbacks.

Mr. Ketchum added that part of the Nature in the Neighborhood Program included technical assistance to the local jurisdictions to determine which compliance options were the best and to help develop code provisions.

Mr. Hoffman said the concept was to avoid, minimize, and mitigate through a region-wide effort that included 25 cities and 3 counties.

Councilor Collette asked Mr. Hoffman if he had a sense of the types of questions property owners would ask when they received their Measure 56 notices.

Mr. Hoffman said Milwaukie would have to substantially comply with the region. No one had to remove his lawn or garden or existing buildings. Someone could demolish a structure and build a new one as long as the footprint was the same. The existing program may not be much different than what was already in effect. Public hearings and the public process would likely begin summer 2006.

Councilor Stone asked how this applied to government-owned land.

Mr. Hoffman said the regulations applied to public and privately owned land.

Mr. Ketchum added those areas already managed for high intensity recreational uses would not be subject. He discussed Metro's Internet mapping tool.

Mr. Hoffman discussed the map revision process and noted that Metro would accept and process Measure 37 claims.

Mr. Ketchum would send copies of the Measure 56 notices to the City Council.

Consider PERS Financing Program – Resolution

Mr. Taylor said the Council had heard a presentation from Carol Samuels of Seattle-Northwest Securities on an alternate method for the City's paying the unfunded actuarial liability (UAL) with PERS. City of Milwaukie employees participated in the PERS system, so at each pay period, the City sent employee and employer contributions to fund the future retirement benefits for employees. A portion of the contribution sent to PERS represented funding the cost of future for those retiring from PERS. Currently, part of that contribution was funding an unfunded portion of those benefits based on an actuarial projection out 23 years. The unfunded liability for the City of Milwaukie as of December 31, 2003 was \$3.2 million. Under state law, municipalities may enter into pension obligation bonds with the proceeds going to PERS as a lump sum payment. The City would have a debt service on those bonds with the current low interest rates. The liability at PERS accrued at 8%, and current market rates were less. He discussed possible risks. The proposed resolution indicated the City's interest in participating in a pool.

Mayor Bernard understood this resolution expressed the City's intent to proceed, and staff would return to Council with information on the pool.

Mr. Taylor said that was correct plus it would authorize staff to request the specific lump sum amount from PERS. There were some minor costs at this point for the information.

Councilor Barnes called a local jurisdiction and was told it would not be in the best interest of the City because it owed such a small amount, and there was some risk involved.

Councilor Collette contacted her cousin who was a CPA. Initially, he said the amount did seem to be low, and the \$53,000 annual savings was not substantial. He had noted it was a good time to finance but needed more time to review the proposal.

Councilor Stone asked if the City Council had to adopt this resolution in order to get the amount of the PERS liability.

Mr. Taylor replied that was correct because of the pooled situation. He believed the total expense to the City for this phase was about \$1,700.

Mr. Swanson noted Milwaukie's \$3 million liability was relative depending on the size of the organization's budget. The risk would be that the market went lower. This proposed action would fix that portion of the budget that tended to fluctuate. Milwaukie would not be one of the big players in the pool, but the impact would be the same on relative terms. He believed it was the proper thing to do.

Mayor Bernard agreed and supported the staff recommendation to begin this phase.

Councilor Stone asked how long the payment period was and if the resolution should include reference to the 8% interest rate. She also suggested that it read, “will reduce costs for participating governments.” If the Council decided not to do this, the City could still fund it for 23 years.

Mr. Taylor said that rate was established every biennium in the Legislature, so the City had to estimate its budget without those rates.

Councilor Stone asked how other professionals felt about this program.

Mr. Taylor spoke with several agencies, and some were going to participate while others were not. The bond would be for a period of 23 years, and the City would save approximately \$53,000 annually.

Mayor Bernard recessed the meeting at 9:03 p.m. and reconvened at 9:08 p.m.

Mr. Taylor referred to resolution page 3, Section 3 – Delegation, which authorized the City Official to pursue issuance of the bonds. He asked the City Attorney to comment on the opportunities for the City Council to reverse the direction.

Mr. Firestone said as the resolution was drafted, the City Manager was authorized to make the decision on whether or not to proceed. It did not provide for its going back to the City Council. The Council could adopt the resolution as stated, and then have a second motion directing the City Manager to provide individual notification to each Council member 24 hours before taking action.

Councilor Stone asked if it could be stated that the final decision had to come back to Council.

Mr. Firestone said timing would be an issue. These were drafted to satisfy Seattle-Northwest Securities’ concerns about how the process might work. If the City Council did have concerns and wanted to know terms, it could make a motion directing the City Manager to advise the Council members individually. The mayor or two council members could call a meeting if necessary.

Councilor Stone understood the City Council could have a special meeting to look at this again for final adoption.

Mr. Firestone said generally speaking the resolution anticipated that the City Official would take action. Based on what he heard, this would provide Council a way to step in if something looked wrong.

Councilor Stone was concerned there was not a full Council at this meeting.

Mayor Bernard said if the City wished to participate in this issuance, Seattle-Northwest needed to be notified by July 21.

Councilor Stone asked how the City Manager would determine the issuance.

Mr. Taylor replied his determination would be based on the current rate, composition of the pool, and the final lump sum amount from PERS. The pricing for the entire issue was expected to be in place in September.

It was moved by Councilor Collette and seconded by Mayor Bernard to adopt the resolution authorizing participation in the limited tax pension bonds, Series 2005. Motion passed 3 – 1 with Councilor Barnes voting against.

RESOLUTION NO. 37-2005:

A RESOLUTION AUTHORIZING PARTICIPATION IN LIMITED TAX PENSION BONDS, SERIES 2005.

It was moved by Councilor Collette and seconded by Mayor Bernard that the City Manager attempt to advise each Council member individually before taking action under Section 3 of the resolution authorizing participation in limited tax pension bonds, series 2005. Motion passed unanimously among the members present. [4:0]

Other

- **Mayor Bernard** would attend the MPAC meeting to discuss cities' concerns about developments outside of downtown areas.
- **Councilor Stone** met with Mike Richardson of Dark Horse Comics and Mr. Swanson to discuss economic development in the downtown. Mr. Richardson was very involved several years ago when the City was developing its concept plan, and he had one that was very similar. She believed it would be good to engage him.
- **Councilor Collette** was meeting with Neal Hankerson of Dark Horse. Dark Horse representatives had met with the Historic Milwaukie Neighborhood Association to review its plan. She noted that the theatre was opening an arcade and thought it might be a good thing to try to influence what was taking place. **Councilor Stone** was concerned that communication be fostered so the City knew these things were happening. **Councilor Collette** said that was one of the goals of the team she was pulling together because there was no communication process in place. **Councilor Barnes** thought the issue of what was being provided to young people needed to be revisited.
- **Councilor Barnes** announced the Tourism Action Plan meeting on July 28th.

ADJOURNMENT

It was moved by Mayor Bernard and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously among the members present. [4:0]

Mayor Bernard adjourned the regular session at 9:25 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager, Kenny Asher Community Development Director, John Gessner, Planning Director

From: Lindsey Nesbitt, Associate Planner

Subject: Appeal (AP-05-02) of Planning Commission decision on North Clackamas Park Ball field Project

Date: August 3, 2005 for the August 16, 2005 City Council meeting

Action Requested

Uphold the Planning Commission's decision on applications CSO-05-02, TPR-05-01, and WQR-05-01, authorizing construction of improvements to North Clackamas Park, and the adopt modified site plan and revisions to the Findings and Conditions in support of approval as identified in the appeal.

Background Information and Project History

Planning Commission hearings were held on April 26, May 10, May 24, June 14 and July 12, 2005. On July 12, 2005, the Commission approved the applications and adopted findings and conditions in support of approval. The Commission's approval authorized the following development at North Clackamas Park (See Attachment 5- Plan Approved by the Planning Commission):

- Four youth baseball/softball fields with irrigation.
- One full-size soccer field.
- 230-space parking area.
- Water quality resource area enhancements.
- Walking trails.

- Improvements to Kellogg Creek Drive that include construction of a sidewalk and intersection improvements at Rusk Road and Kellogg Creek Drive.
- New picnic tables, concession stand, and restroom facilities.

The Friends of North Clackamas Park submitted an appeal on July 27, 2005. Concerns with the Planning Commission's decision can be found in Attachment 2.

Parks District staff conducted a number of meetings with Friends of North Clackamas park to discuss their concerns. Through these meetings the parties agreed to changes that modify the site plan approved by the Planning Commission. The revised plan differs from the plan approved by the Planning Commission as follows:

1. Creation of shared soccer and ball field.

The revised plan proposes a flex baseball/soccer field by reducing the size of the soccer field and relocating it to ball field #4. Due to the decrease in size of the soccer field, use of the soccer field will be limited to youth 8 years of age and younger. The relocation of the soccer field will create a larger open area on the west side of the park and will provide a buffer between the park and residential areas.

2. Reduced parking area.

The 230-space parking area will be reduced to 196 spaces. The Planning Commission approved a parking ratio of 43 spaces per field. With the creation of the flex baseball/soccer field, only 4 fields can be used at the same time, which supports the reduction in parking spaces. The reduced parking aids with traffic concerns. The amount of impervious surface in the park will also be reduced, resulting in less stormwater run-off.

3. Creation of an entry pavilion and information center.

The reduction in parking spaces allows for the creation of a covered entry pavilion and information center, which will give the park a greater focus on community and park events.

4. Modification to the layout of walking paths.

The trail along the western portion of the site will be modified and will circle around the ball fields.

5. A tot-lot play area will be constructed in the western portion of the park near the knoll.

6. The plan has been revised to eliminate stormwater detention in the parking lot. Detention will be provided in a swale adjacent to the parking area.

7. The access drive to the horse arena will be widened to accommodate vehicle and horse trailer parking.

At its August 1, 2005, meeting the North Clackamas Parks and Recreation District Advisory Board voted unanimously to approve the modifications to the development plan at North Clackamas Park. On August 2, 2005, the Friends of North Clackamas Park submitted a joint letter with the North Clackamas Park District that withdrew concerns listed in the July 27, 2005 appeal. The letter also requested the City Council approve the proposed modifications to the plan and modifications to findings and conditions adopted by the Planning Commission that reflect the changes on the site plan.

Staff has reviewed the proposed modifications of the site plan and believes they are consistent with applicable sections of the Milwaukie Municipal Code (See Attachment 1 Findings and Conditions). Staff recommends the City Council uphold the Planning Commission decision and adopt the modifications to the site plan as identified in the revised appeal materials submitted August 2, 2005, by the Parks District and Friends of North Clackamas Park.

Key Issues

On July 12, 2005, after roughly 18 hours of public hearings, the Planning Commission approved the proposed development to North Clackamas Park upon finding the applicant demonstrated compliance with applicable code criteria. The following summarizes the Planning Commission's findings:

1. Community Service Overlay (CSO) Criteria
 - a. Public benefits test

A key component of the CSO section is the public benefits test, where the applicant has the burden of demonstrating that the proposal is in the interest of the general public and that benefits to the public outweigh any potential negative impacts.

The Planning Commission found that the proposed development and street improvements will be an improvement to the existing park, thus providing a greater public benefit. Attachment 1 provides findings that list public benefits and potential negative impacts. Attachment 1 also provides conditions deemed necessary to mitigate potential negative impacts.

The revised joint appeal indicates that the modified plan provides additional public benefit with the relocation of the soccer field by creating more open space along the western portion of the park site. The open space will also act as a buffer for the residential properties that abut the western portion of the site. The revised plan includes a reduction of parking spaces, which result in a reduction of impervious area and may potentially reduce flooding impacts. The reduced parking area allows for the creation of an entry pavilion and construction of a bio-swale that will detain and filter storm water before draining into the natural system.

b. Criteria for citing and improving parks

The Planning Commission found, as conditioned, the proposal complies with applicable CSO development standards (See Attachment 1, Findings and Conditions in Support of Approval).

2. Traffic and Transportation

The applicant submitted a transportation impact study (TIS) for the proposed park development which documented the adequacy of the transportation system to serve the proposed use and the expected impact of the proposal on the surrounding transportation system. The Planning Commission found that the data and methodology used in the applicant's TIS are adequate.

The TIS demonstrates that the proposed project will increase through vehicle trips on Kellogg Creek Drive. The Planning Commission adopted a condition requiring the applicant to construct improvements on Kellogg Creek Drive to improve safety for vehicles and pedestrians. The street improvements will mitigate traffic impacts associated with the proposed development. The proposed improvements include:

- Widening Kellogg Creek Drive to 28 feet to create two 14-foot travel lanes.
- Construct a pedestrian sidewalk along the north side of Kellogg Creek Drive.
- Create a 90-degree intersection at Kellogg Creek Drive and Rusk Road.

The applicant is required to provide mitigation of traffic impacts that are proportional to the estimated impact the development will have on the existing transportation system. The applicant indicated they will pay for the full cost of the above-mentioned improvements, thereby exceeding the proportional mitigation requirement.

3. Water Quality Resource (WQR) Review

The property contains 3 identified water quality resource areas: Mt Scott Creek to the north and west of the site, a wetland located in the northwest corner, and a drainage swale that bisects the park from east to west and drains into Mt. Scott Creek.¹

The Commission reviewed the applicant's development plan and WQR enhancement mitigation plan and found as conditioned, the proposal complies with applicable criteria of the WQR standards (See Attachment 1 – Findings and Conditions).

The Commission reviewed and approved the following permitted activities to be constructed within the WQR area.

¹ The wetland to the north of the creek does not fall within the development area.

- Construction of paved and gravel walking trails.
- Buffer enhancements and vegetative plantings.
- Storm treatment facilities in the form of detention bio-swales.
- A portion of the existing roadway falls within the buffer area. The drive will be resurfaced and a sidewalk will be constructed.

To ensure consistency with development requirements of WQR criteria conditions were adopted requiring tree preservation, tree and vegetative protection and special construction measures.

The applicant will provide voluntary and required mitigation within and adjacent to the WQR areas for filling two pocket wetlands, and for the construction of walking trails and the bio-swales.

Attachment 1 – Findings and Conditions provides further analysis.

5. Stormwater Management

The WQR code states that storm flows within and to natural drainage courses shall not exceed pre-development flows. The city hired a consultant, LDC Design Group, to review the applicant's hydrological report. LDC Design Group reviewed the report and concluded the following:

- Calculations presented in the report adequately model stormwater run-off for preliminary design level analysis.
- The estimated post development flows are slightly less than predevelopment flows. A change in the curve number (CN) can alter post development flows.² A change in the CN value from 77 to 76 would result in a post development flow that slightly exceeds predevelopment flow.

The preliminary hydrological report proposed detention of stormwater within the parking area and in a bio-swale adjacent to the parking area. Concerns were raised regarding the parking lot detention.

Based upon consultant review and recommendations and the concerns raised regarding parking lot detention, the Commission adopted the following conditions:

- a. The applicant must submit a final hydrological report that details the CN value to ensure accuracy.
- b. The revised final hydrological report must be revised to omit parking lot detention and provide detention elsewhere on the site.³

² The CN value is a way of calculating run-off by classifying land use and soil type.

³ The modified plan calls for fewer parking spaces, which creates space for storm water detention. The new plan shows a larger bio-swale and omits parking area detention. A

6. Flood Plain

A portion of the site lies within the 100-year flood plain. The code requires demonstration of balanced cut and fill for development within the flood plain areas. The Planning Commission approved the application, finding the applicant demonstrated compliance with balance cut and fill. The Parks District will have to resubmit balance cut and fill calculations to reflect the proposed changes identified in the appeal materials.

Concurrence

Not applicable.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

Milwaukie Zoning Ordinance Sections:

1. 19.301 – Residential R-10 Zone
2. 19.321 – Community Service Overlay
3. 19.322 – Water Quality Resource
4. 19.500 – Off-street Parking and Loading
5. 19.1011.3 - Minor Quasi-Judicial Review
6. 19.1400 – Transportation Planning, Design Standards, and Procedures

This application is subject to minor quasi-judicial review, which requires the City Council to consider whether the applicant has demonstrated compliance with the code sections shown above. In quasi-judicial reviews the Commission assesses the application against approval criteria and evaluates testimony and evidence received at the public hearing.

The final decision on this application, which includes any appeals to the City Council, must be made by August 16, 2005, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

The City Council has the following decision making alternatives:

1. Approve the appeal which modifies the plan in accordance with the agreement reached between the North Clackamas Parks District and the Friends of North Clackamas Park.

hydrological report demonstrating how the swale will function and the volume of water it is design to handle needs to accompany the revised plan.

2. Deny the appeal, which would uphold the Planning Commission approved plan, but with no changes.
3. Remand the matter to the Planning Commission with direction.

Attachments

- | | |
|--------------|---|
| Attachment 1 | Findings and Conditions of Approval |
| Attachment 2 | July 27, 2005, Friends of North Clackamas Park appeal materials |
| Attachment 3 | August 2, 2005, revised appeal materials submitted jointly by Friends of North Clackamas Parks and the Parks District |
| Attachment 4 | Revised Site Plan |
| Attachment 5 | Site Plan approved by the Planning Commission |

Planning Commission staff reports for the April 26, May 10, May 24, June 14, and July 12, 2005, Planning Commission meetings can be obtained by contacting Lindsey Nesbitt at 503-786-7658.

The following application materials may be viewed at the Johnson Creek office: Applicant's Narrative, Wetland Report, Traffic Report, Stormwater Report, and full size site plans. Contact Lindsey Nesbitt at 503-786-7658 to view materials.

The Planning Commission meetings were televised. Tapes of the broadcast can be viewed at the Ledding Library.

Attachment 1

The following are the Findings and Conditions in support of approval adopted by the Planning Commission on July 12, 2005. The revisions of appeal submitted by the Friends of North Clackamas Park and the North Clackamas Parks District (revisions submitted August 2, 2005) are shown below to reflect the requested amendments of the site plan. The changes are identified using strike out and underline. The modifications are underlined.

Findings in Support of Approval

1. The majority of the proposed development area is located within the southern portion of the site. Application materials submitted February 24, 2005 and revised materials submitted March 21, 2005, describe a proposal to construct the following:
 - a. Four youth softball/baseball fields.

Fields 1 and 3 will each have a 225-foot foul line with a 225-foot radius outfield fence. Field #2 will have a 200- to 210-foot foul line and outfield radius to reduce impacts to the natural resource area and prevent encroachment into a required 50-foot buffer around the WQR area. Field #4 will have a 250-foot foul line and a 280-foot radius. Due to the proposed size all fields will accommodate youth softball and lower levels of youth baseball. Field #4 will accommodate youth baseball for ages up to 13-14 years.

The fields will include the following:

 - Full back stops
 - Perimeter fencing (6 feet on field 1 and 2, and 10 feet on field 3 and 4)
 - Option for foul ball netting
 - Maintenance access gates
 - Bleachers (mobile 5 rows accommodating 35 persons per field)
 - Dugouts
 - Bicycle parking and drinking fountains at the inner concourse
 - Skinned infields and turf outfields
 - Optional electronic scoreboards
 - Pole mounted lighting
 - Irrigation
 - b. A drop-off plaza located at the walkway entrance into the 4 fields.

- c. Pedestrian concourse with bulletin board and signage between fields with concession and restroom facilities. Additional restroom facilities will be constructed at the east side of the park.
- d. ~~Full-size~~ An youth soccer field accommodating youth play for ages 8 years and younger (~~360~~ 90 feet by ~~230~~ 60 feet). ~~to be relocated near the west end of the site.~~ The soccer field will act as a flex baseball/soccer field with field #4. ~~A trail system will connect the soccer field to the parking area and the ball fields.~~
- e. New ~~230~~ 196-space, landscaped parking area that will bring the total on-site parking spaces to ~~352~~ 318.⁴ The parking area will also accommodate truck and horse-trailer parking.
- f. Enhanced pedestrian crossing from the existing parking area (adjacent to Rose Garden) to the Milwaukie Center. The crosswalk will be raised to allow for better delineation of pedestrian areas and to slow vehicles entering and exiting the park.
- g. Water quality resource area enhancements. Vegetation will be planted to create and enhance a 50-foot buffer around an existing drainage swale.⁵ All enhancement areas will be planted with native plant species and seed mixes as shown on the applicant's site plan and vegetation plan in Attachment 2 Development Plans.
- h. The horse arena will remain, however, the dimensions of the arena may be reduced.
- i. The picnic area near the west end of the site will be enhanced with new picnic tables on concrete pads.
- j. Construction of maintenance facility shed.
- k. Other park amenities such as trash receptacles, benches, environmental education "storyboards", and fencing will be provided.
- l. Tot lot playground structure located in the western portion of the park.
- m. Improvements to Kellogg Creek Drive that include widening the street and the construction of a sidewalk along the north side of the street. The applicant will also reconstruct the intersection of Kellogg Creek Drive and Rusk Road to increase vehicle safety.
- n. An eight-to-twelve-foot-wide paved and ADA compliant perimeter trail system.

⁴ The March 21, 2005, Development Plans demonstrate a 233-space parking lot. The applicant indicated at the May 10, 2005, hearing that in order to preserve an existing tree, 3 spaces will need to be removed.

⁵ The drainage swale is identified on the City's water quality resource map.

2. The applicant has submitted the following technical studies:
 - a. Traffic Impact Study prepared by Lancaster Engineering, submitted February 24, 2005.
 - b. Two traffic addendums prepared by Lancaster Engineering, submitted April 4, 2005, and April 11, 2005.
 - c. Wetland delineation report prepared by Pacific Habitat Services, submitted February 24, 2005.
 - d. Hydrology Analysis Report prepared by W&H Pacific, submitted April 15, 2005.
 - e. Revised Hydrological Analysis Report prepared by W&H Pacific and submitted May 6, 2005.
3. Applications CSO-05-02, WQR-05-01, and TPR-05-01 have been processed and public notice has been provided in accordance with requirements of Milwaukie Municipal Code Section 19.1011.3 Minor Quasi-Judicial Review. Public hearings were held on April 26, 2005, May 10, 2005, May 24, 2005, June 14, 2005, and July 12, 2005. A City Council appeal hearing was held August 16, 2005.
4. The Planning Commission approved applications CSO-05-02, TPR-05-01, and WQR-05-01 on July 12, 2005. The appeal period closed at 5:00 p.m. Friday, July 29, 2005. A group by the name of Friends of North Clackamas Park filed an appeal on Wednesday July 27, 2005. On August 2, 2005 the Friends of North Clackamas Park amended their appeal by submission of a letter to withdraw points of concerns listed in the July 27, 2005 appeal. The amended appeal included a signed letter by the Friends of North Clackamas Park and the North Clackamas Parks District requesting the City Council to uphold the Planning Commission's July 12, 2005 decision of approval and adopt modifications to the site plan approved at the July 12, 2005 public hearing.
5. The North Clackamas Park has a comprehensive plan designation of Public. The proposed development for North Clackamas Park is consistent with the Comprehensive Plan. The plan designates North Clackamas Park as a community park and states that a community park should be as follows:
 - a. A large citywide facility.
 - b. Serve a special function.
 - c. Located on arterials or other major routes.
 - d. Have major structured recreational facilities such as lighted baseball and soccer fields.

The Comprehensive Plan also states that the City will strive to develop appropriate facilities, improve access to the existing parks, and enlarge existing parks when feasible.

6. The site is located in the Residential R-10 Zone. Parks are listed as Community Service Overlay uses (CSO) and are permitted in residential zones subject to CSO review and approval. Parks are subject to development standards of MMC Section 19.301 – Residential R-10 Zone and MMC Section 19.321 – Community Service Overlay Zone. The proposal is consistent with MMC Section 19.301- Residential R-10 Zone.

7. MMC Section 19.321.4 (D) Public Benefits Test

The applicant has demonstrated that the proposal is in the interest of the general public and that, as conditioned, benefits to the public outweigh any potential negative impacts.

a. Public Benefits

The applicant identified the following public benefits:

- 1) The horse arena will remain.
- 2) The large oak tree and knoll, located at the west end of the park ~~near the loop drive~~, will be preserved.
- 3) A new ~~full-size~~ youth soccer field for children 8 years of age and under soccer field will be provided. The field will be a shared flex field with ball field #4.
- 4) Access to adjacent properties will be preserved.
- 5) The North Clackamas Park is the District's largest community park. Community parks are intended to serve the entire community with a variety of recreational uses and are specifically intended to be utilized for sport field purposes.⁶
- 6) New ~~230-196~~-space parking area that will also accommodate horse trailer parking.
- 7) Improvements to pedestrian crossing will be provided.
- 8) Approximately 57,760 square feet of environmental enhancements and mitigation will be provided, including the establishment of a 50-foot buffer around the drainage swale, as shown in the Development Plans submitted March 21, 2005. Approximately 10,300 square feet of upland oak and ash plantings will be provided adjacent to the vegetative buffer.
- 9) The development will provide needed sports facilities. Currently, the NCPD only provides 3 baseball fields and 3 soccer fields (2 of which are not regular size). Approximately 2,500 youth play organized baseball or softball in the North Clackamas area and there are currently more than 62 youth soccer teams. As population of the area increases, it is anticipated that participation levels in youth sports will also rise, creating the need for additional facilities.

⁶ Milwaukie Comprehensive Plan Objective 5, Policy #4.

- 10) The proposed project will create new and safe ball fields. It has been noted by users of the current ball fields that the existing condition of the fields are unsafe for play due to poor drainage and lack of irrigation. It has been stated by some park users that the existing fields have outlived their lives.
- 11) The proposed fields will provide opportunities for youth sports. Public schools have had to scale back on sports programs due to budget constraints. The ability to provide needed facilities for youth is a key component of providing constructive opportunities for leisure time, promoting a sense of community, development of “team” skills, and a foundation for the development of healthy lifestyles.
- 12) The existing picnic area on the knoll in the western portion of the park will be enhanced.
- 13) A new integrated, accessible trail system will enhance recreational walking, jogging, and environmental learning opportunities for all ages.
- 14) New restroom facilities will replace existing portable restrooms.
- 15) Currently vehicular traffic has unrestricted access to the entire project area. Each year hundreds of vehicles park on turf areas where leaking petroleum products are either absorbed into the soil or washed away into adjacent water resources. The proposed plan creates a parking area that includes oil and sediment traps and a bio-swale system to clean the stormwater.
- 16) The proposal includes the creation of a 50-foot buffer along the drainage swale. Currently the turf extends to the edge of the resource area.
- 17) The applicant notes that the proposed uses are consistent with the intended purpose of a “community park” and collectively provide countless public benefits that include:
 - a. Efficient use of limited land and financial resources.
 - b. Provision of desperately needed facilities that promote constructive use of leisure time and healthy lifestyles.
 - c. Improved player safety, park maintenance, park aesthetics.
 - d. Maintenance/enhancement of existing uses and addition of new recreation opportunities and facilities.
 - e. Improved stormwater and parking management.
 - f. Improved habitat value.
 - g. Improved park security.

- 18) At the April 26, 2005, hearing, the Planning Commission heard testimony about shortage of adequate facilities and the community need for the ball fields.

b. Potential Negative Impacts

The applicant modified the proposed plan, where practicable, to mitigate potential negative impacts. Impacts that were identified during the public meeting process are addressed below. The following demonstrates how the applicant modified the proposal to limit potential negative impacts.

- 1) Increased traffic.

To mitigate traffic impacts, the applicant will improve Kellogg Creek Drive by widening the road and providing a sidewalk along the north side of the roadway. The applicant will provide improvements to the Kellogg Creek/Rusk Road intersection by widening Kellogg Creek drive to 28 feet, constructing a sidewalk along the northern side of the road, and reconfiguring the intersection of Kellogg Creek Drive and Rusk Road (see also Section 1400 Recommended Findings).

- 2) Noise from sound system and ball field use.

To mitigate noise impacts, the applicant revised the proposal to omit the permanent sound system and drafted an amplified sound policy. The MMC 8.08.10 exempts sounds caused by organized sporting events. Applicant believes this applies to all sound (amplified and unamplified) created by organized athletic events. The opponents believe the exemption of sound for organized athletic events only applies to unamplified sound. The code does not specify whether or not amplified sound is exempt from the noise ordinance per MMC 8.08.100. The Planning Commission may interpret the code and condition the application based upon their interpretation.

- 3) Ball field and parking lot lighting impacts to adjacent properties.

MMC Section 321.4 authorizes the Planning Commission to adopt conditions to limit hours and levels of operation. The Commission has adopted a condition requiring the following:

- a) A photometric plan, demonstrating .5 foot-candles at the property line, shall be submitted.
- b) A lighting test shall be conducted between the hours of 9:00 p.m. and 10:30 p.m. to ensure that there is no light trespass from the ball field and parking lot lighting onto adjacent residential properties.
- c) If the lighting test does not demonstrate .5 foot-candles at the property line, measures such as adjusting cut-off lighting

fixtures shall be taken to prevent light trespass onto adjacent properties.

- 4) Public concerns were raised that the proposed plan will create a single-use ball field park.

This is not a Municipal Code issue, but rather a Parks District issue. In response to this concern, the applicant reduced ball field size and reorganized the proposed layout to keep the horse arena and dog run. The soccer field will be relocated. A walking trail around the site, existing picnic facilities, and new playground equipment will accommodate passive recreation.

- 5) Concerns were expressed about impacts to environmental areas.

Two wetlands will be filled to construct a drive and one of the ball fields will be constructed adjacent to another; however, these 2 wetlands are not subject to water quality resource review. Identified water quality resource (WQR) are Mt. Scott Creek, drainage swale bisecting the site, and a wetland located in the northern portion of the site. A 50-foot buffer will be established around all three resources and approximately 57,760 square feet of resource enhancement will be provided.

- 6) Concerns were raised about adequacy of on-site parking.

The proposal includes construction of a ~~230~~196--space parking area, bringing the total on-site parking spaces to ~~352~~318. The proposal will provide 43 spaces per field, which is comparable to similar facilities within the region. The City's traffic consultant, DKS Associates, has reviewed the proposed parking ratio and has advised the city that it is adequate.

As conditioned, benefits to the public exceed potential negative impacts, and the application complies with MMC Section 19.321.4 (D) Public Benefits Test.

8. MMC Section 19.321.10 establishes specific standards for public/private institutions and other facilities not covered by other standards. This section addresses development standards such as setback, height, lighting, noise limitations, and hours and level of operation. The maximum height limitation for all structures under CSO criteria is 50 feet. The applicant's proposal includes lighting poles for the ball fields that are 70 to 80 feet in height. Prior to erecting the lighting poles, the applicant must:
 - a. Revise the application to reduce the lighting poles to 50 feet.
 - b. Apply for a zoning text amendment to permit structures such as lighting poles to exceed the 50-foot height limitation.
 - c. Apply for a variance to exceed the 50-foot height limitation.

As conditioned, the application complies with MMC Section 19.321 Community Service Overlay Criteria.

9. MMC 19.500 – Off-street parking and loading. As conditioned, the application complies with MMC 19.500 Off-Street Parking and Loading.

- a. 19.503.3 Minimum and maximum number of required parking spaces. Community parks are not listed in Table 503.9, which provides minimum and maximum number of required off-street parking spaces; therefore, community parks are classified as unlisted uses.
- b. 19.503.6 states that the Planning Commission shall determine the minimum required parking spaces for all uses not listed in table 503.9. The applicant submitted technical information about the park use, parking demand, and traffic generation. The applicant proposes to provide 43 spaces per field and will construct a ~~230~~ 196-space parking area to accommodate parking demand of the proposed development.

The City's traffic consultant, DKS Associates, reviewed the technical data provided by the applicant and found that the proposed ratio of 43 spaces per field will adequately accommodate parking demands of the proposed development. The Planning Commission approved the proposed ratio of 43 spaces per field. To ensure the parking will function at the site, a condition was adopted requiring the applicant to provide a detailed management plan that includes schedule management, signing, and remote parking management.

- c. 19.502 states that the standards and procedures apply to uses with nonconforming parking and loading facilities, in an attempt to bring them into conformance with current standards when remodeling or a change in use occurs.

The existing parking facilities are nonconforming in regards to landscaping and drainage. The applicant will provide a new ~~230~~ 196-space parking area to accommodate the proposed development. The Commission has approved the applicant's parking ratio of 43 spaces per field; therefore, parking demand for the development is satisfied with the construction of the ~~230~~ 196-space parking lot. Existing parking areas are not needed to accommodate parking for the proposed development; therefore are not required to be brought into conformance with development standards of MMC Section 19.500.

- d. 19.503.2 Shared parking is permitted when required parking cannot be provided on the site, when the shared parking is located within 300 feet of the principal structure or use, and when there is no conflict of use between the two uses. The Planning Commission

approved the applicant's proposed ratio of 43-spaces per field. With the construction of the ~~230~~ 196-space parking area, required parking for the development is provided on-site and shared parking is not required, therefore, the provisions of 19.503.2 are not applicable. The applicant's parking management plan includes use of the Clackamas Christian Center's parking lot to accommodate over-flow parking.

- e. 19.503.4, the applicant is not requesting special exemption from maximum allowable parking standards.
- f. 19.503.5, the site is classified as Zone B.
- g. 19.503.7, the applicant is not requesting a reduction of required parking.
- h. 19.503.8, the applicant is not requesting a modification of minimum and maximum parking.
- i. As conditioned, the application is consistent with MMC 19.503.10 parking space standards.
- j. As conditioned, the new parking facility complies with MMC 19.503.11 paving and striping standards.
- k. The applicant is not proposing to create additional curb cuts into the public right-of-way. The application complies with MMC 19.503.12.
- l. As conditioned, the application complies with MMC 19.503.13 minimum width requirements of drive aisles.
- m. The applicant's proposal provides on site vehicular connections as shown on the development plans and complies with MMC 19.503.14.
- n. MMC 19.503.16 – Drainage Standards. Staff consultant LDC Design Group has reviewed the proposed stormwater management plan and found the calculations presented in the report adequately model stormwater run off preliminary design level analysis. The site plan demonstrates a natural stormwater detention area to the east of Field #1. As conditioned, the application complies with parking area drainage standards.
- o. The applicant has proposed on-site pedestrian walkways through the parking areas that are separate from vehicular circulation and parking. The application complies with MMC 19.503.17 pedestrian access.
- p. MMC 19.503.18 is not applicable, the application does not include a park-and-ride facility.
- q. MMC 503.19 establishes provisions for landscaping and screening. The applicant will provide parking area landscaping as required per

MMC Section 19.503.19. As conditioned the proposal is consistent with MMC Section 19.503.19 – Landscaping.

~~MMC Section 19.503.19(G) authorizes alternative landscaping plans. The applicant has requested to omit 4 landscape islands in the southern portion of the parking area. The omission of the 4 landscape islands results in the loss of approximately 528 square feet of landscaping. The landscaping along the southern property line exceeds the minimum width required by 17 feet creating a total of 4,930 square feet of additional area of landscaping. (This section has been omitted as a result of the revised parking area and the enlarge horse arena access drive. The original plan provided vehicle and horse trailer parking in the parking area, which required the omission of landscaping islands. The revised plan includes a larger access drive to the horse arena, which will accommodate vehicle and horse trailer parking. The revised parking lot complies with landscaping requirements of the off-street parking code.)~~

- r. The applicant submitted a parking plan consistent with MMC 19.503.20.
 - s. MMC Section 19.503.21 off-street parking in residential zones is applicable for residential development, such as construction of residential dwellings and home based businesses. This section is not applicable to the proposed development of a community service use.
 - t. MMC 19.504, off-street loading is not applicable.
 - u. 19.505, bicycle parking requires the applicant to provide on-site bicycle parking. As conditioned the proposal is consistent with MMC Section 19.505.
 - v. MMC 19.506, carpool and vanpool parking is not required.
 - w. MMC 19.507, Structure parking is not proposed or required.
10. MMC Section 19.322 Water Quality Resource Review
- a. The application includes the construction of 2 bio-swales/storm detention facilities, paved ~~and gravel~~ walking trails, repaving of an existing drive, and water quality resource (WQR) area enhancements within the WQR. All other activity will take place outside of the WQR area. All proposed activity within the WQR area is permitted per MMC Section 19.322.7. As conditioned, the application is consistent with MMC 19.322.7 – Activities Permitted Under Minor Quasi-Judicial Review.
 - b. MMC Section 19.322.9 specifies application requirements which include the submission of an alternatives analysis. Only development within the WQR area is subject to the alternatives analysis requirement. The proposed bio-swales are permitted per

Section 19.322.10 (E) provided an equal area to the WQR is replaced. The applicant will replace resource area for the bio-swales at a 1.4 to 1 mitigation ratio. The applicant will also provide enhancements to off-set the walking trails at a 1.4 to 1 ratio. Total enhancements for the bio-swales and walking trails will be approximately 10,320 square feet. Walking trails will localize foot traffic and reduce trampling associated with foot traffic within the WQR areas. As conditioned, the application is consistent with 19.322.9 – Application Materials.

- c. 19.322.9 (I) requires submission of a WQR area mitigation plan addressing adverse impacts and ways in which impacts will be minimized. Adverse impacts may occur during the construction phase of the walking trails and bio-swales. The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities.
11. MMC 19.322.10 – Water Quality Resource Development Standards
- a. Restoration of WQR area

The applicant has submitted a preliminary WQR restoration/enhancement plan. A condition has been adopted requiring submission of a WQR planting plan that demonstrates location, type, and quantity of plant materials to be reviewed by the City's environmental consultant.

The mitigation plan must also address how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation, and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain intact.

As conditioned the proposal is consistent with MMC Section 19.322.10 (A).
 - b. Protection of existing vegetation.

Existing vegetation within the WQR area will not be removed. A condition has been adopted requiring construction fencing around existing vegetation and areas to be preserved. As conditioned, the proposal is consistent with MMC Section 19.322.10 (B).

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.

- c. Removal of existing vegetation shall be replanted.

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.

- d. WQR area shall be marked prior to construction.

The applicant will provide sediment and erosion control and construction fencing around WQR areas prior to commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (D).

- e. Stormwater pretreatment facilities.

The applicant will construct 2 bio-swales within the WQR area. The bio-swales will encroach no more than 25 feet into the required 50-foot buffer. The approximate area of the bio-swales is 4,440 square feet. The applicant will provide approximately 6,250 square feet of WQR enhancements to mitigate the bio-swales.

Staff consultant LDC Design Group reviewed the storm water report and found that placement of water quality facilities in a buffer area is consistent with similar practices around the region. As conditioned, the proposed facilities will be designed to integrate in the WQR area in such a way that the habitat structure will not be negatively impacted.

- f. The applicant is not proposing additions or alterations to existing structures within the WQR area. Section 19.322.10 (F) is not applicable.

- g. Off-site mitigation.

The proposal does not include off-site mitigation. Section 19.322.10 (G) is not applicable.

- h. Site preparation and construction practices.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to commencement of any earth

disturbing activities. As conditioned, the application complies with MMC Section 19.322.10 (H).

- i. Lights shall be placed so that they do not shine directly into the natural resource locations.

Where practicable the types, sizes, and intensities of lights must be placed so that they do not shine directly into the natural resource locations. The applicant has demonstrated the need to provide safe lighting for ball fields. A condition has been adopted requiring the applicant to where practicable limit lighting within the WQR area so that lighting will not shine directly into the natural resource location. As conditioned, the application complies with MMC Section 19.322.10 (I).

- j. Trails must be placed in locations to reduce impacts to WQR areas.

The applicant will install erosion and sediment controls to prevent run off into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (J).

- k. Trees and vegetation must remain and connected along drainage courses.

The applicant will provide approximately 57,760 square feet of enhancements to WQR areas. Existing vegetation will remain. As conditioned, the application complies with MMC Section 19.322.10 (K).

- l. MMC 19.322.10 (I) - Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

Site stormwater will be collected and piped to bio-swales within WQR areas. Staff consultant LDC Design group found that the calculations adequately model the storm water runoff for a preliminary design level analysis and found the post development flows for Basin 1 will be at predevelopment rates and the estimated post development flows for Basin 2 will be released at slightly less than predevelopment flows. The runoff curve number (CN) value affects the rate of post development flows. A slight alteration in the CN value can alter stormwater flows. A condition has been adopted requiring staff review of the final hydrological report. The report shall specifically address the CN value to ensure adequacy.

- m. 19.322.10 (m) - Drainage course crossings.

New drainage course crossings are not proposed. MMC Section 19.322.10 (M) is not applicable.

- n. MMC 19.322.10(N) - Construction must be done in such a manner as to safeguard resources that have not been approved for development.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities. As conditioned the proposal is consistent with 19.322.10(N).

- 12. The applicant submitted a Transportation Plan Review application.

- a. MMC Section 19.1406 requires that any non-residential development adding more than 25 trips per day to an adjacent residential local street requires mitigation of impacts.

The traffic study, prepared by Lancaster Engineering, demonstrates conservative trip generation estimates that the new site will add approximately 400 weekday and 850 weekend daily trips (depending upon activity) and 70 trips during the weekday evening peak hour and weekend peak hour. The trip generation data, as provided by the applicant's amended traffic impact study, is an adequate representation of the proposed park development. The development will increase trips on Kellogg Creek Drive, which is a local street. The applicant will provide improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.
- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of a 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- b. MMC Section 19.1407 ensures that streets, sidewalks, and other transportation facility design elements are safe, convenient, and adequate to accommodate impacts of the new development. Rights-of-way shall be made adequate at time of development, but are moderated by proportional mitigation.

The applicant will provide improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.

- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- c. MMC Section 19.1408.1 requires the submission of a transportation impact analysis (TIA) that demonstrates the impact of development on the surrounding transportation system. The TIA provides a framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts.

A transportation impact analysis was prepared by Lancaster Engineering and submitted by the applicant. The City's traffic consultant, DKS Associates, reviewed the TIA. The data and methodology used in Lancaster's TIA are adequate, based on comparison to standard traffic engineering practices.

- d. 1408.3 (B) requires the applicant to demonstrate proportional impacts to motor vehicle, pedestrian, bicycle, and transit facilities related to the development proposal. The applicant has demonstrated their proportionality of providing improvements to mitigate traffic impacts of the development. The applicant has stated they will pay for and build 100% of the improvements along Kellogg Creek Drive and the intersection of Rusk Road and Kellogg Creek Drive. As conditioned, the application complies with 19.1408.3(B).

- 1) Widening of Kellogg Creek Drive to obtain an overall width of 28 feet. Cost estimate \$90,000. Applicant's proportional share, 24% (\$9,100).
- 2) Constructing a pedestrian walkway along northern portion of Kellogg Creek Drive. Cost estimate \$50,000. Applicant's proportional share, 24% (\$12,000).
- 3) Reconfiguration of Rusk Road/Kellogg Creek Drive intersection to improve safety. Cost estimate \$70,000. Applicant's proportional share 13% (\$9,000).

The applicant's traffic memorandum states that the improvements are planned to be constructed, rather than providing a monetary contribution based upon proportional share.⁷

- e. MMC Section 1409 requires that all streets and necessary rights-of-way shall be dedicated to the public for street purposes in accordance with Table 1409.3.

The North Clackamas Park is located at the end of Kellogg Creek Drive and abuts the road for approximately 58 feet. It is not practicable for the applicant to obtain (purchase) needed right-of-

⁷ Lancaster Engineering Addendum dated April 11, 2005.

way along Kellogg Creek Drive. The applicant will provide improvements within the existing right-of-way.

- f. MMC Section 19.1410 establishes standards for pedestrian facilities. As conditioned, the application complies with 19.1410 – Pedestrian Requirements and Standards.
- g. MMC Section 19.1411 establishes standards for bicycle requirements. As conditioned, the application complies with 19.1411 Bicycle Requirements.
- h. MMC Section 19.1412 – establishes transit requirements and standards. The proposal does not include development of a multifamily, commercial, office, or industrial use; therefore, MMC 19.1412 is not applicable.

13. Flood Hazard Regulations

Staff reviewed the park location and elevation data in conjunction with the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community-Panel #415588 0036A dated August 4, 1987, and the March 1, 2001, revision. The applicant's submitted plans appear to reflect the 1987 FEMA map and do not appear to reflect the 2001 revision of the FEMA maps. The net difference in the two FEMA maps results in a very small section of the 100-year flood boundary (about 100 square feet) is present in the middle of the south side of the park boundary. This is just outside of the ball field #2 area. Staff relies on industry standards based on conclusive evidence, such as the March 1, 2001, FEMA map.

The modification to the FEMA map based on the March 1, 2001, data affects a small portion of the development. MMC 19.18.04.150 (F) requires balanced cut-and-fill for development within the flood plain. The applicant must submit revised cut-and-fill calculations demonstrating balanced cut-and-fill.

MMC 18.04.100 (B) states that proposed structures within the 100-year flood plain will require certification by a professional engineer or architect verifying adequate flood proofing.

As conditioned, the application complies with MMC Title 18, Flood Hazard Regulations.

- 14 Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth-disturbing activities. As conditioned, the application complies with MMC Title 16 – Erosion Control.

15. The City and Clackamas County have an intergovernmental agreement (IGA) stating that the North Clackamas Park shall be maintained and operated by North Clackamas Parks District. Testimony regarding poor maintenance of the park or concerns regarding future maintenance is not

applicable to relevant code criteria and is therefore not part of the decision-making process for the proposed development.

15. The Planning Commission expresses its concern about the use of chemical pesticides and herbicides and encourages the district to avoid their use in a manner that limits adverse and environmental health impacts, and further encourages the Parks District to provide on-site notice when these chemicals are in use.

Conditions of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action. Reference is made to plans submitted with the application submission materials dated February 24, 2005, and March 21, 2005, and revised City Council appeal materials submitted August 2, 2005; technical reports listed in Recommended Findings; and minutes of the Planning Commission's public hearings held April 26, 2005, May 10, 2005, and May 24, 2005. Any inconsistency must comply with the most recently submitted application materials.
2. Grading, erosion control, and plumbing permits shall be obtained prior to commencement of any earth-disturbing activities.
3. An electrical permit shall be obtained from Clackamas County prior to conducting any electrical work on site.
4. Prior to issuance of an erosion control or grading permit, and prior to commencement of any earth-disturbing activity, the applicant shall submit to the City or complete the following:
 - a. A narrative of all actions taken to comply with these conditions of approval.
 - b. A narrative description of all changes made to the plans but not required by these conditions or approval.
 - c. Water quality resource areas shall be flagged and construction fencing shall be installed around all protected areas. Construction fencing shall be inspected by the City and shall remain erected until all activity on the site has been completed.
 - d. Erosion and sediment controls shall be installed around water quality resource areas and shall be inspected by the City.
 - e. The applicant shall submit a revised photometric plan demonstrating .5 foot-candles measured at the south side of the existing tree line along the south property line, Where practicable limit lighting within the WQR area so that lighting will not shine directly into the natural resource location.
 - f. Submit a water quality resource mitigation planting plan that demonstrates plant type, quantity, and location.
 - g. Provide a vegetation and tree preservation plan to ensure that the water quality resource buffer areas and proposed trees to be preserved will not be disturbed during construction. Tree and vegetation preservation measures shall be installed prior to commencement of any earth-disturbing activity. The vegetation and tree preservation measures shall be inspected by the city.

- h. Request and receive approval from U.S. Army Corps of Engineers and DSL to fill the two unmapped wetlands.
 - i. Submit a parking management plan to the satisfaction of the Engineering Planning Director.
 - j. Submit revised cut-and-fill calculations for all development within the 100-year floodplain. The calculations shall reflect the March 2001 FEMA map and shall demonstrate balanced cut-and-fill.
 - k. A final hydrological report shall be submitted to the Engineering Director for review and approval. The report shall specifically address the CN value to ensure accuracy.
 - l. Submit a vegetative mitigation plan that addresses how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain.
 - m. The applicant shall submit for City review a revised hydrological report demonstrating the omission of parking lot stormwater retention. The revised report must also demonstrate that post development stormwater flows do not exceed predevelopment stormwater flows.
5. Prior to erecting lighting poles for the ball fields, the applicant shall complete one of the following:
 - a. Reduce lighting pole height to 50 feet.
 - b. Apply for a variance to increase pole height to exceed the maximum 50-foot height limitation.
 - c. Apply for a zone text amendment to allow structures such as ball field lighting poles to exceed the maximum height limitation of the Community Service Overlay zone, subject to limitations.
6. Prior to commencement of any recreational activity of the proposed development, the applicant shall complete the following:
 - a. The ~~230~~ 196 space parking area shall be constructed and landscaping shall be installed. Staff shall conduct an inspection of the parking area and landscaping.
 - b. Improvements along Kellogg Creek Drive shall be completed. The roadway shall be widened to create two 14-foot travel lanes and intersection improvements to create a 90-degree intersection at Kellogg Creek Drive and Rusk Road per MMC Section 19.1400.

- c. All Water Quality Resource vegetative planting and mitigation shall be completed and inspected by the City.
 - d. Bicycle parking shall be installed per MMC Section 19.505.
7. Building permits are required for all structures including the concession stand, restrooms, bleachers, dugouts, maintenance shed, and picnic shelter. Accessible route is required from the parking lot to all structures (as mentioned above) on the site. At the time of building permit submittal, the applicant shall show sufficient detail (slope, surface materials, striping, etc.) to show compliance with Chapter 11 of the Oregon Structural Specialty Code. The proposed drop-off area must comply with Section 1105 - Passenger Loading Zones.
8. For all proposed structures to be located within the 100-year floodplain, submit certification by a professional engineer or architect verifying adequate flood-proofing (MMC 18.04.100 (B)). All proposed work in the 100-year floodplain will require calculations that demonstrate balanced cut-and-fill (18.04.150 (F)).
9. Per MMC Section 19.322.10(L), stormwater flows shall not exceed predevelopment flows.
10. The applicant must complete the following activities as part of Phase 1 construction. The site cannot be used until all activities listed below have been completed and inspected to the satisfaction of the Planning Director.
 - a. Development of environmental enhancements, including implementing and planting the vegetation plan.
 - b. Construction of public improvements along Kellogg Creek Drive (sidewalk construction, repaving Kellogg Creek Drive, and the realignment of the Kellogg Creek Drive/Rusk Road intersection).
 - c. Construction of the proposed trail/walkway system.
 - d. Construction of the stormwater treatment facilities and bio-swales.
 - e. The Planning Commission has approved a parking ratio of 43 spaces per field and the construction of ~~230~~ 196 space parking area. If the applicant phases the construction of the ball fields, parking must be provided in proportion to the number of fields developed. For example, if three fields are constructed the applicant must provide a 129 space parking area. The remaining parking spaces must be provided when each subsequent field is constructed.

Attachment 2



FRIENDS OF NORTH CLACKAMAS PARK
P.O. Box 220263, Milwaukie, Oregon 97269

RECEIVED

JUL 27 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

July 27, 2005

John Gessner, Planning Director
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Dear John:

This letter appeals the decision of the Milwaukie Planning Commission on new development at North Clackamas Park located at 5440 SE Kellogg Creek Drive to the Milwaukie City Council. The Milwaukie planning case file is CSO 05-02, TPR 05-01, WQR 05-01.

The commission took action on the case on July 12, 2005. Notice of the Planning Commission's final decision in this case was mailed on July 14, 2005.

The appellants in this case are the organization Friends of North Clackamas Park, and its individual members, including but not limited to Eric and Susan Shawn, who reside within sight and sound of the subject property and will be adversely affected by this decision.

We believe there are a number of errors in the final Planning Commission decision, because of incorrect or inadequate information provided to the city, or because of incorrect interpretations of city code. The following issues will be raised during this appeal:

- Incorrect evaluation of public benefits and adverse impacts
- Improper deferral of storm water management plan
- Incorrect definition of 100 year flood plain
- Fill in flood plain requires greater cut volume
- Incorrect identification of site and scope of approval
- Inadequate alternatives analysis for development in Water Quality Resource Area
- No replacement of lost WQRA area
- Feasibility of wetland mitigation not shown
- Feasibility of compliance with ADA access requirement not shown
- Inadequate pedestrian lighting on proposed walkways
- Insufficient restriction on light shining into WQRA
- Non-conforming upgrades for existing site parking
- Noise impacts from amplified system exceed code standards

- Insufficient parking for site use

Finally, the Friends of North Clackamas Park and the Parks District continue to work together on a compromise solution that would satisfy all parties. We sincerely hope that this process will come to fruition by the time of the appeal hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Shawn", followed by a horizontal line extending to the right.

Eric Shawn
Representative, Friends of North Clackamas Park

Attachment 3



**NORTH
CLACKAMAS**
PARKS & RECREATION
DISTRICT

RECEIVED

AUG 2 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

August 1, 2005

Mr. John Gessner, Planning Director
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RECEIVED
AUG 2 2005
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Dear Mr. Gessner:

This letter is intended to provide notice that North Clackamas Parks and Recreation District (NCPRD) desires to join the appeal filed by Eric Shawn and Friends of the North Clackamas Park, et al, and that both parties propose to modify the appeal dated July 27, 2005.

More specifically, the Friends of North Clackamas Park, including but not limited to Eric and Susan Shawn, hereby withdraw complaints enumerated in their appeal dated July 27, 2005. Furthermore, NCPRD and the Friends of North Clackamas Park, et al, wish to offer a "modified concept plan" for North Clackamas Park which fully resolves the concerns previously raised by or on behalf of the Friends of North Clackamas Park and/or Eric and Susan Shawn.

In addition to the "modified concept plan", NCPRD and the Friends of North Clackamas Park, et al, respectfully offer the attached proposed modifications to the Findings and Conditions of the Milwaukie Planning Commission dated July 14, 2005.

The "modified concept plan" and modified Findings and Conditions together offer resolution of all previously raised issues and, if approved, will eliminate the potential of further appeals of this matter by the Friends of North Clackamas Park, Eric and Susan Shawn and NCPRD.

Respectfully submitted,

Charles Ciecko, Director NCPRD

8/1/05
Date

Eric Shawn for Friends of North Clackamas Park

8/1/05
Date

Susan Shawn for Friends of Clackamas Park

8/1/05
Date

www.co.clackamas.or.us/ncprd

Administration Office
1611 SE Sunnybrook Blvd
Clackamas, OR 97015
tel: 503-794-8002
fax: 503-794-8005

Aquatic & Recreation Services
7300 SE Harmony Road
Milwaukie, OR 97222
503-794-8080
fax: 503-794-8085

Milwaukie Center
5440 SE Kellogg Creek Drive
Milwaukie, OR 97222
503-653-8100
fax: 503-794-8016

Parks Maintenance Office
9909 SE 40th Avenue
Milwaukie, OR 97222
503-794-8030
fax: 503-794-8087

*A service district
of Clackamas County*

RECEIVED

AUG 2 2005

CITY OF MILWAUKIE
COMPLIANCE DEPARTMENT

July 14, 2005

File(s): CSO-05-02, TPR-05-01, & WQR-05-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on July 12, 2005.

Applicant(s): North Clackamas Parks and Recreation District
Location(s): 5440 SE Kellogg Creek Drive
Tax Lot(s): 22E06AC00100
Application Type(s): Community Service Overlay
Transportation Plan Review
Water Quality Resource Review
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- 19.301 Residential R-10 Zone
- 19.321 Community Service Overlay
- 19.322 Water Quality Resources
- 19.500 Off-street Parking and Loading
- 1011.3 Minor Quasi Judicial Review
- 19.1400 Transportation Planning, Design Standards, and Procedures

Neighborhood(s): Lake Road



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., July 29, 2005

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 Approval

1. The majority of the proposed development area is located within the southern portion of the site. Application materials submitted February 24, 2005 and revised materials submitted March 21, 2005, describe a proposal to construct the following:

a. Four youth softball/baseball fields.

Fields 1 and 3 will each have a 225-foot foul line with a 225-foot radius outfield fence. Field #2 will have a 200- to 210-foot foul line and outfield radius to reduce impacts to the natural resource area and prevent encroachment into a required 50-foot buffer around the WQR area. Field #4 will have a 250-foot foul line and a 280-foot radius. Due to the proposed size all fields will accommodate youth softball and lower levels of youth baseball. Field #4 will accommodate youth baseball for ages up to 13-14 years.

The fields will include the following:

- Full back stops
- Perimeter fencing (6' on fields 1&2; 10' on fields 3 &4)
- Option for foul ball netting
- Maintenance access gates
- Bleachers (mobile 5 rows accommodating 35 persons per field)
- Dugouts
- Bicycle parking and drinking fountains at the inner concourse
- Skinned infields and turf outfields
- Optional electronic scoreboards
- Pole mounted lighting
- Irrigation

b. A drop-off plaza located at the walkway entrance into the 4 fields.

c. Pedestrian concourse with bulletin board and signage between fields with concession and restroom facilities. Additional restroom facilities will be constructed at the East side of the park.

d. An 8-U soccer field (90 feet by 60 feet) to be located in field #4.

e. New 196-space, landscaped parking area that will bring the total on-site parking spaces to 318.¹ The parking area will also accommodate truck and horse-trailer parking.

f. Enhanced pedestrian crossing from the existing parking area (adjacent to Rose Garden) to the Milwaukie Center. The crosswalk will be raised to allow for better delineation of pedestrian areas and to slow vehicles entering and exiting the park.

g. Water quality resource area enhancements. Vegetation will be planted to create and enhance a 50-foot buffer around an existing drainage swale.²

Deleted: Full-size
Deleted: 36
Deleted: 23
Deleted: re
Deleted: near the west end of the site
Deleted: A trail system will connect the soccer field to the parking area and the ball fields.
Deleted: 230
Deleted: 352

¹ The March 21, 2005, Development Plans demonstrate a 233-space parking lot. The applicant indicated at the May 10, 2005, hearing that in order to preserve an existing tree, 3 spaces will need to be removed.

² The drainage swale is identified on the City's water quality resource map.

All enhancement areas will be planted with native plant species and seed mixes as shown on the applicant's site plan and vegetation plan in Attachment 2 Development Plans.

- h. The horse arena will remain; however, its dimensions may be reduced.
 - i. The picnic area near the west end of the site will be enhanced with new picnic tables on concrete pads.
 - j. Construction of maintenance facility shed.
 - k. Other park amenities such as trash receptacles, benches, environmental education "storyboards" and fencing will be provided.
 - l. Tot lot playground structure located in the western portion of the park.
 - m. Improvements to Kellogg Creek Drive that include widening the street and the construction of a sidewalk along the north side of the street. The applicant will also reconstruct the intersection of Kellogg Creek Drive and Rusk Road to increase vehicle safety.
 - n. An eight-to-twelve-foot-wide paved and ADA compliant perimeter trail system.
2. The applicant has submitted the following technical studies:
- a. Traffic Impact Study prepared by Lancaster Engineering, submitted February 24, 2005.
 - b. Two traffic addendums prepared by Lancaster Engineering, submitted April 4, 2005, and April 11, 2005.
 - c. Wetland delineation report prepared by Pacific Habitat Services, submitted February 24, 2005.
 - d. Hydrology Analysis Report prepared by W&H Pacific, submitted April 15, 2005.
 - e. Revised Hydrological Analysis Report prepared by W&H Pacific and submitted May 6, 2005.
3. Applications CSO-05-02, WQR-05-01, and TPR-05-01 have been processed and public notice has been provided in accordance with requirements of Milwaukie Municipal Code Section 19.1011.3 Minor Quasi-Judicial Review. Public hearings were held on April 26, 2005, May 10, 2005, May 24, 2005, June 14, 2005, and July 12, 2005.
4. The North Clackamas Park has a comprehensive plan designation of Public. The proposed development for North Clackamas Park is consistent with the Comprehensive Plan. The plan designates North Clackamas Park as a community park and states that a community park should be as follows:
- a. A large citywide facility.
 - b. Serve a special function.
 - c. Located on arterials or other major routes.
 - d. Have major structured recreational facilities such as lighted baseball and soccer fields.

The Comprehensive Plan also states that the City will strive to develop appropriate facilities, improve access to the existing parks, and enlarge existing parks when feasible.

5. The site is located in the Residential R-10 Zone. Parks are listed as Community Service Overlay uses (CSO) and are permitted in residential zones subject to CSO review and approval. Parks are subject to development standards of MMC Section 19.301 – Residential R-10 Zone and MMC Section 19.321 – Community Service Overlay Zone. The proposal is consistent with MMC Section 19.301-Residential R-10 Zone.

6. MMC Section 19.321.4 (D) Public Benefits Test

The applicant has demonstrated that the proposal is in the interest of the general public and that, as conditioned, benefits to the public outweigh any potential negative impacts.

a. Public Benefits

The applicant identified the following public benefits:

- 1) The horse arena will remain; however, its dimensions may be reduced.
- 2) The large oak tree and knoll, located at the west end of the park will be preserved.
- 3) An 8-U soccer field will be provided.
- 4) Access to adjacent properties will be preserved.
- 5) The North Clackamas Park is the District's largest community park. Community parks are intended to serve the entire community with a variety of recreational uses and are specifically intended to be utilized for sport field purposes.³
- 6) New 196-space parking area that will also accommodate horse trailer parking.
- 7) Improvements to pedestrian crossing will be provided.
- 8) Approximately 57,760 square feet of environmental enhancements and mitigation will be provided, including the establishment of a 50-foot buffer around the drainage swale, as shown in the Development Plans submitted March 21, 2005. Approximately 10,300 square feet of upland oak and ash plantings will be provided adjacent to the vegetative buffer.
- 9) The development will provide needed sports facilities. Currently, the NCPD only provides 3 baseball fields and 3 soccer fields (2 of which are not regular size). Approximately 2,500 youth play organized baseball or softball in the North Clackamas area and there are currently more than 62 youth soccer teams. As population of the area increases, it is anticipated that participation levels in youth sports will also rise, creating the need for additional facilities.
- 10) The proposed project will create new and safe ball fields. It has been noted by users of the current ball fields that the existing condition of the

Deleted: near the loop drive,

Deleted: new full-size

Deleted: 230

³ Milwaukie Comprehensive Plan Objective 5, Policy #4.

fields are unsafe for play due to poor drainage and lack of irrigation. It has been stated by some park users that the existing fields have outlived their lives.

- 11) The proposed fields will provide opportunities for youth sports. Public schools have had to scale back on sports programs due to budget constraints. The ability to provide needed facilities for youth is a key component of providing constructive opportunities for leisure time, promoting a sense of community, development of "team" skills, and a foundation for the development of healthy lifestyles.
- 12) The existing picnic area on the knoll in the western portion of the park will be enhanced.
- 13) A new integrated, accessible trail system will enhance recreational walking, jogging, and environmental learning opportunities for all ages.
- 14) New restroom facilities will replace existing portable restrooms.
- 15) Currently vehicular traffic has unrestricted access to the entire project area. Each year hundreds of vehicles park on turf areas where leaking petroleum products are either absorbed into the soil or washed away into adjacent water resources. The proposed plan creates a parking area that includes oil and sediment traps and a bio-swale system to clean the stormwater.
- 16) The proposal includes the creation of a 50-foot buffer along the drainage swale. Currently the turf extends to the edge of the resource area.
- 17) The applicant notes that the proposed uses are consistent with the intended purpose of a "community park" and collectively provide countless public benefits that include:
 - a. Efficient use of limited land and financial resources.
 - b. Provision of desperately needed facilities that promote constructive use of leisure time and healthy lifestyles.
 - c. Improved player safety, park maintenance, park aesthetics.
 - d. Maintenance/enhancement of existing uses and addition of new recreation opportunities and facilities.
 - e. Improved stormwater and parking management.
 - f. Improved habitat value.
 - g. Improved park security.
- 18) At the April 26, 2005, hearing, the Planning Commission heard testimony about shortage of adequate facilities and the community need for the ball fields.

b. Potential Negative Impacts

The applicant modified the proposed plan, where practicable, to mitigate potential negative impacts. Impacts that were identified during the public meeting process are addressed below. The following demonstrates how the applicant modified the proposal to limit potential negative impacts.

Deleted: and

1) Increased traffic.

To mitigate traffic impacts, the applicant will improve Kellogg Creek Drive by widening the road and providing a sidewalk along the north side of the roadway. The applicant will provide improvements to the Kellogg Creek/Rusk Road intersection by widening Kellogg Creek drive to 28 feet, constructing a sidewalk along the northern side of the road, and reconfiguring the intersection of Kellogg Creek Drive and Rusk Road (see also Section 1400 Recommended Findings).

2) Noise from sound system and ball field use.

To mitigate noise impacts, the applicant revised the proposal to omit the permanent sound system and drafted an amplified sound policy. The MMC 8.08.10 exempts sounds caused by organized sporting events. Applicant believes this applies to all sound (amplified and unamplified) created by organized athletic events. The opponents believe the exemption of sound for organized athletic events only applies to unamplified sound. The code does not specify whether or not amplified sound is exempt from the noise ordinance per MMC 8.08.100. The Planning Commission may interpret the code and condition the application based upon their interpretation.

3) Ball field and parking lot lighting impacts to adjacent properties.

MMC Section 321.4 authorizes the Planning Commission to adopt conditions to limit hours and levels of operation. The Commission has adopted a condition requiring the following:

- a) A photometric plan, demonstrating .5 foot-candles at the property line, shall be submitted.
- b) A lighting test shall be conducted between the hours of 9:00 p.m. and 10:30 p.m. to ensure that there is no light trespass from the ball field and parking lot lighting onto adjacent residential properties.
- c) If the lighting test does not demonstrate .5 foot-candles at the property line, measures such as adjusting cut-off lighting fixtures shall be taken to prevent light trespass onto adjacent properties.

4) Public concerns were raised that the proposed plan will create a single-use ball field park.

This is not a Municipal Code issue, but rather a Parks District issue. In response to this concern, the applicant reduced ball field size and reorganized the proposed layout to keep the horse arena and dog run. The soccer field will be relocated. A walking trail around the site, existing picnic facilities, and new playground equipment will accommodate passive recreation.

5) Concerns were expressed about impacts to environmental areas.

Two wetlands will be filled to construct a drive and one of the ball fields will be constructed adjacent to another; however, these 2 wetlands are not subject to water quality resource review. Identified water quality resource (WQR) are Mt. Scott Creek, drainage swale bisecting the site, and a

wetland located in the northern portion of the site. A 50-foot buffer will be established around all three resources and approximately 57,760 square feet of resource enhancement will be provided.

- 6) Concerns were raised about adequacy of on-site parking.

The proposal includes construction of a 196-space parking area, bringing the total on-site parking spaces to 318. The proposal will provide 43 spaces per field, which is comparable to similar facilities within the region. The City's traffic consultant, DKS Associates, has reviewed the proposed parking ratio and has advised the city that it is adequate.

Deleted: 230
Deleted: 352

As conditioned, benefits to the public exceed potential negative impacts, and the application complies with MMC Section 19.321.4 (D) Public Benefits Test.

7. MMC Section 19.321.10 establishes specific standards for public/private institutions and other facilities not covered by other standards. This section addresses development standards such as setback, height, lighting, noise limitations, and hours and level of operation. The maximum height limitation for all structures under CSO criteria is 50 feet. The applicant's proposal includes lighting poles for the ball fields that are 70 to 80 feet in height. Prior to erecting the lighting poles, the applicant must:
- Revise the application to reduce the lighting poles to 50 feet.
 - Apply for a zoning text amendment to permit structures such as lighting poles to exceed the 50-foot height limitation.
 - Apply for a variance to exceed the 50-foot height limitation.

As conditioned, the application complies with MMC Section 19.321 Community Service Overlay Criteria.

8. MMC 19.500 – Off-street parking and loading. As conditioned, the application complies with MMC 19.500 Off-Street Parking and Loading.
- 19.503.3 Minimum and maximum number of required parking spaces. Community parks are not listed in Table 503.9, which provides minimum and maximum number of required off-street parking spaces; therefore, community parks are classified as unlisted uses.
 - 19.503.6 states that the Planning Commission shall determine the minimum required parking spaces for all uses not listed in table 503.9. The applicant submitted technical information about the park use, parking demand, and traffic generation. The applicant proposes to provide 43 spaces per field and will construct a 196-space parking area to accommodate parking demand of the proposed development.

Deleted: 230

The City's traffic consultant, DKS Associates, reviewed the technical data provided by the applicant and found that the proposed ratio of 43 spaces per field will adequately accommodate parking demands of the proposed development. The Planning Commission approved the proposed ratio of 43 spaces per field. To ensure the parking will function at the site, a condition was adopted requiring the applicant to provide a detailed

management plan that includes schedule management, signing, and remote parking management.

- c. 19.502 states that the standards and procedures apply to uses with nonconforming parking and loading facilities, in an attempt to bring them into conformance with current standards when remodeling or a change in use occurs.

The existing parking facilities are nonconforming in regards to landscaping and drainage. The applicant will provide a new 196-space parking area to accommodate the proposed development. The Commission has approved the applicant's parking ratio of 43 spaces per field; therefore, parking demand for the development is satisfied with the construction of the 196-space parking lot. Existing parking areas are not needed to accommodate parking for the proposed development; therefore are not required to be brought into conformance with development standards of MMC Section 19.500.

Deleted: 230

Deleted: 230

- d. 19.503.2 Shared parking is permitted when required parking cannot be provided on the site, when the shared parking is located within 300 feet of the principal structure or use, and when there is no conflict of use between the two uses. The Planning Commission approved the applicant's proposed ratio of 43-spaces per field. With the construction of the 196-space parking area, required parking for the development is provided on-site and shared parking is not required, therefore, the provisions of 19.503.2 are not applicable. The applicant's parking management plan includes use of the Clackamas Christian Center's parking lot to accommodate over-flow parking.
- e. 19.503.4, the applicant is not requesting special exemption from maximum allowable parking standards.
- f. 19.503.5, the site is classified as Zone B.
- g. 19.503.7, the applicant is not requesting a reduction of required parking.
- h. 19.503.8, the applicant is not requesting a modification of minimum and maximum parking.
- i. As conditioned, the application is consistent with MMC 19.503.10 parking space standards.
- j. As conditioned, the new parking facility complies with MMC 19.503.11 paving and striping standards.
- k. The applicant is not proposing to create additional curb cuts into the public right-of-way. The application complies with MMC 19.503.12.
- l. As conditioned, the application complies with MMC 19.503.13 minimum width requirements of drive aisles.
- m. The applicant's proposal provides on site vehicular connections as shown on the development plans and complies with MMC 19.503.14.
- n. MMC 19.503.16 – Drainage Standards. Staff consultant LDC Design Group has reviewed the proposed stormwater management plan and

Deleted: 230

found the calculations presented in the report adequately model stormwater run off preliminary design level analysis. As conditioned, the application complies with parking area drainage standards and includes an additional natural stormwater detention area to the east of Field #1.

- o. The applicant has proposed on-site pedestrian walkways through the parking areas that are separate from vehicular circulation and parking. The application complies with MMC 19.503.17 pedestrian access.
- p. MMC 19.503.18 is not applicable, the application does not include a park-and-ride facility.
- q. MMC 503.19 establishes provisions for landscaping and screening. The applicant will provide parking area landscaping as required per MMC Section 19.503.19. As conditioned the proposal is consistent with MMC Section 19.503.19 – Landscaping.
- j. The applicant submitted a parking plan consistent with MMC 19.503.20.
- s. MMC Section 19.503.21 off-street parking in residential zones is applicable for residential development, such as construction of residential dwellings and home based businesses. This section is not applicable to the proposed development of a community service use.
- t. MMC 19.504, off-street loading is not applicable.
- u. 19.505, bicycle parking requires the applicant to provide on-site bicycle parking. As conditioned the proposal is consistent with MMC Section 19.505.
- v. MMC 19.506, carpool and vanpool parking is not required.
- w. MMC 19.507, Structure parking is not proposed or required.

9. MMC Section 19.322 Water Quality Resource Review

- a. The application includes the construction of 2 bio-swales/storm detention facilities, paved walking trails, repaving of an existing drive, and water quality resource (WQR) area enhancements within the WQR. All other activity will take place outside of the WQR area. All proposed activity within the WQR area is permitted per MMC Section 19.322.7. As conditioned, the application is consistent with MMC 19.322.7 – Activities Permitted Under Minor Quasi-Judicial Review.
- b. MMC Section 19.322.9 specifies application requirements which include the submission of an alternatives analysis. Only development within the WQR area is subject to the alternatives analysis requirement. The proposed bio-swales are permitted per Section 19.322.10 (E) provided an equal area to the WQR is replaced. The applicant will replace resource area for the bio-swales at a 1.4 to 1 mitigation ratio. The applicant will also provide enhancements to off-set the walking trails at a 1.4 to 1 ratio. Total enhancements for the bio-swales and walking trails will be approximately 10,320 square feet. Walking trails will localize foot traffic and reduce trampling associated with foot traffic within the WQR areas.

Deleted: MMC Section 19.503.19(G) authorizes alternative landscaping plans. The applicant has requested to omit 4 landscape islands in the southern portion of the parking area. The omission of the 4 landscape islands results in the loss of approximately 528 square feet of landscaping. The landscaping along the southern property line exceeds the minimum width required by 17 feet creating a total of 4,930 square feet of additional area of landscaping.

Deleted: and gravel

As conditioned, the application is consistent with 19.322.9 – Application Materials.

- c. 19.322.9 (I) requires submission of a WQR area mitigation plan addressing adverse impacts and ways in which impacts will be minimized. Adverse impacts may occur during the construction phase of the walking trails and bio-swales. The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities.
10. MMC 19.322.10 – Water Quality Resource Development Standards
- a. Restoration of WQR area

The applicant has submitted a preliminary WQR restoration/enhancement plan. A condition has been adopted requiring submission of a WQR planting plan that demonstrates location, type, and quantity of plant materials to be reviewed by the City's environmental consultant.

The mitigation plan must also address how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation, and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain intact.

As conditioned the proposal is consistent with MMC Section 19.322.10 (A).
 - b. Protection of existing vegetation.

Existing vegetation within the WQR area will not be removed. A condition has been adopted requiring construction fencing around existing vegetation and areas to be preserved. As conditioned, the proposal is consistent with MMC Section 19.322.10 (B).

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.
 - c. Removal of existing vegetation shall be replanted.

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.
 - d. WQR area shall be marked prior to construction.

The applicant will provide sediment and erosion control and construction fencing around WQR areas prior to commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (D).

e. Stormwater pretreatment facilities.

The applicant will construct 2 bio-swales within the WQR area. The bio-swales will encroach no more than 25 feet into the required 50-foot buffer. The approximate area of the bio-swales is 4,440 square feet. The applicant will provide approximately 6,250 square feet of WQR enhancements to mitigate the bio-swales.

Staff consultant LDC Design Group reviewed the storm water report and found that placement of water quality facilities in a buffer area is consistent with similar practices around the region. As conditioned, the proposed facilities will be designed to integrate in the WQR area in such a way that the habitat structure will not be negatively impacted.

f. The applicant is not proposing additions or alterations to existing structures within the WQR area. Section 19.322.10 (F) is not applicable.

g. Off-site mitigation.

The proposal does not include off-site mitigation. Section 19.322.10 (G) is not applicable.

h. Site preparation and construction practices.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to commencement of any earth disturbing activities. As conditioned, the application complies with MMC Section 19.322.10 (H).

i. Lights shall be placed so that they do not shine directly into the natural resource locations.

Where practicable the types, sizes, and intensities of lights must be placed so that they do not shine directly into the natural resource locations. The applicant has demonstrated the need to provide safe lighting for ball fields. A condition has been adopted requiring the applicant to where practicable limit lighting within the WQR area so that lighting will not shine directly into the natural resource location. As conditioned, the application complies with MMC Section 19.322.10 (I).

j. Trails must be placed in locations to reduce impacts to WQR areas.

The applicant will install erosion and sediment controls to prevent run off into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to

commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (J).

- k. Trees and vegetation must remain and connected along drainage courses.

The applicant will provide approximately 57,760 square feet of enhancements to WQR areas. Existing vegetation will remain. As conditioned, the application complies with MMC Section 19.322.10 (K).

- l. MMC 19.322.10 (I) - Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

Site stormwater will be collected and piped to bio-swales within WQR areas. Staff consultant LDC Design group found that the calculations adequately model the storm water runoff for a preliminary design level analysis and found the post development flows for Basin 1 will be at predevelopment rates and the estimated post development flows for Basin 2 will be released at slightly less than predevelopment flows. The runoff curve number (CN) value affects the rate of post development flows. A slight alteration in the CN value can alter stormwater flows. A condition has been adopted requiring staff review of the final hydrological report. The report shall specifically address the CN value to ensure adequacy.

- m. 19.322.10 (m) - Drainage course crossings.

New drainage course crossings are not proposed. MMC Section 19.322.10 (M) is not applicable.

- n. MMC 19.322.10(N) - Construction must be done in such a manner as to safeguard resources that have not been approved for development.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities. As conditioned the proposal is consistent with 19.322.10(N).

- 11. The applicant submitted a Transportation Plan Review application.

- a. MMC Section 19.1406 requires that any non-residential development adding more than 25 trips per day to an adjacent residential local street requires mitigation of impacts.

The traffic study, prepared by Lancaster Engineering, demonstrates conservative trip generation estimates that the new site will add approximately 400 weekday and 850 weekend daily trips (depending upon activity) and 70 trips during the weekday evening peak hour and weekend peak hour. The trip generation data, as provided by the applicant's amended traffic impact study, is an adequate representation of the proposed park development. The development will increase trips on Kellogg Creek Drive, which is a local street. The applicant will provide

improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.
- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of a 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- b. MMC Section 19.1407 ensures that streets, sidewalks, and other transportation facility design elements are safe, convenient, and adequate to accommodate impacts of the new development. Rights-of-way shall be made adequate at time of development, but are moderated by proportional mitigation.

The applicant will provide improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.
- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- c. MMC Section 19.1408.1 requires the submission of a transportation impact analysis (TIA) that demonstrates the impact of development on the surrounding transportation system. The TIA provides a framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts.

A transportation impact analysis was prepared by Lancaster Engineering and submitted by the applicant. The City's traffic consultant, DKS Associates, reviewed the TIA. The data and methodology used in Lancaster's TIA are adequate, based on comparison to standard traffic engineering practices.

- d. 1408.3 (B) requires the applicant to demonstrate proportional impacts to motor vehicle, pedestrian, bicycle, and transit facilities related to the development proposal. The applicant has demonstrated their proportionality of providing improvements to mitigate traffic impacts of the development. The applicant has stated they will pay for and build 100% of the improvements along Kellogg Creek Drive and the intersection of Rusk Road and Kellogg Creek Drive. As conditioned, the application complies with 19.1408.3(B).

- 1) Widening of Kellogg Creek Drive to obtain an overall width of 28 feet. Cost estimate \$90,000. Applicant's proportional share, 24% (\$9,100).
- 2) Constructing a pedestrian walkway along northern portion of Kellogg Creek Drive. Cost estimate \$50,000. Applicant's proportional share, 24% (\$12,000).
- 3) Reconfiguration of Rusk Road/Kellogg Creek Drive intersection to improve safety. Cost estimate \$70,000. Applicant's proportional share 13% (\$9,000).

The applicant's traffic memorandum states that the improvements are planned to be constructed, rather than providing a monetary contribution based upon proportional share.⁴

- e. MMC Section 1409 requires that all streets and necessary rights-of-way shall be dedicated to the public for street purposes in accordance with Table 1409.3.

The North Clackamas Park is located at the end of Kellogg Creek Drive and abuts the road for approximately 58 feet. It is not practicable for the applicant to obtain (purchase) needed right-of-way along Kellogg Creek Drive. The applicant will provide improvements within the existing right-of-way.

- f. MMC Section 19.1410 establishes standards for pedestrian facilities. As conditioned, the application complies with 19.1410 – Pedestrian Requirements and Standards.
- g. MMC Section 19.1411 establishes standards for bicycle requirements. As conditioned, the application complies with 19.1411 Bicycle Requirements.
- h. MMC Section 19.1412 – establishes transit requirements and standards. The proposal does not include development of a multifamily, commercial, office, or industrial use; therefore, MMC 19.1412 is not applicable.

12. Flood Hazard Regulations

Staff reviewed the park location and elevation data in conjunction with the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community-Panel #415588 0036A dated August 4, 1987, and the March 1, 2001, revision. The applicant's submitted plans appear to reflect the 1987 FEMA map and do not appear to reflect the 2001 revision of the FEMA maps. The net difference in the two FEMA maps results in a very small section of the 100-year flood boundary (about 100 square feet) is present in the middle of the south side of the park boundary. This is just outside of the ball field #2 area. Staff relies on industry standards based on conclusive evidence, such as the March 1, 2001, FEMA map.

The modification to the FEMA map based on the March 1, 2001, data affects a small portion of the development. MMC 19.18.04.150 (F) requires balanced cut-and-fill for development within the flood plain. The applicant must submit revised cut-and-fill calculations demonstrating balanced cut-and-fill.

MMC 18.04.100 (B) states that proposed structures within the 100-year flood plain will require certification by a professional engineer or architect verifying adequate flood proofing.

As conditioned, the application complies with MMC Title 18, Flood Hazard Regulations.

- 13 Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth-

⁴ Lancaster Engineering Addendum dated April 11, 2005.

disturbing activities. As conditioned, the application complies with MMC Title 16 – Erosion Control.

14. The City and Clackamas County have an intergovernmental agreement (IGA) stating that the North Clackamas Park shall be maintained and operated by North Clackamas Parks District. Testimony regarding poor maintenance of the park or concerns regarding future maintenance is not applicable to relevant code criteria and is therefore not part of the decision-making process for the proposed development.
15. The Planning Commission expresses its concern about the use of chemical pesticides and herbicides and encourages the district to avoid their use in a manner that limits adverse and environmental health impacts, and further encourages the Parks District to provide on-site notice when these chemicals are in use.

Conditions of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action. Reference is made to plans submitted with the application submission materials dated February 24, 2005, and March 21, 2005; technical reports listed in Recommended Findings; and minutes of the Planning Commission's public hearings held April 26, 2005, May 10, 2005, and May 24, 2005. Any inconsistency must comply with the most recently submitted application materials.
2. Grading, erosion control, and plumbing permits shall be obtained prior to commencement of any earth-disturbing activities.
3. An electrical permit shall be obtained from Clackamas County prior to conducting any electrical work on site.
4. Prior to issuance of an erosion control or grading permit, and prior to commencement of any earth-disturbing activity, the applicant shall submit to the City or complete the following:
 - a. A narrative of all actions taken to comply with these conditions of approval.
 - b. A narrative description of all changes made to the plans but not required by these conditions or approval.
 - c. Water quality resource areas shall be flagged and construction fencing shall be installed around all protected areas. Construction fencing shall be inspected by the City and shall remain erected until all activity on the site has been completed.
 - d. Erosion and sediment controls shall be installed around water quality resource areas and shall be inspected by the City.
 - e. The applicant shall submit a revised photometric plan demonstrating .5 foot-candles measured at the south side of the existing tree line along the south property line, Where practicable limit lighting within the WQR area so that lighting will not shine directly into the natural resource location.
 - f. Submit a water quality resource mitigation planting plan that demonstrates plant type, quantity, and location.
 - g. Provide a vegetation and tree preservation plan to ensure that the water quality resource buffer areas and proposed trees to be preserved will not be disturbed during construction. Tree and vegetation preservation measures shall be installed prior to commencement of any earth-disturbing activity. The vegetation and tree preservation measures shall be inspected by the city.
 - h. Request and receive approval from U.S. Army Corps of Engineers and DSL to fill the two unmapped wetlands.
 - i. Submit a parking management plan to the satisfaction of the Planning Director.

~~Deleted: Engineering~~

- j. Submit revised cut-and-fill calculations for all development within the 100-year floodplain. The calculations shall reflect the March 2001 FEMA map and shall demonstrate balanced cut-and-fill.
 - k. A final hydrological report shall be submitted to the Engineering Director for review and approval. The report shall specifically address the CN value to ensure accuracy.
 - l. Submit a vegetative mitigation plan that addresses how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain.
 - m. The applicant shall submit for City review a revised hydrological report demonstrating the omission of parking lot stormwater retention. The revised report must also demonstrate that post development stormwater flows do not exceed predevelopment stormwater flows.
5. Prior to erecting lighting poles for the ball fields, the applicant shall complete one of the following:
- a. Reduce lighting pole height to 50 feet.
 - b. Apply for a variance to increase pole height to exceed the maximum 50-foot height limitation.
 - c. Apply for a zone text amendment to allow structures such as ball field lighting poles to exceed the maximum height limitation of the Community Service Overlay zone, subject to limitations.
6. Prior to commencement of any recreational activity of the proposed development, the applicant shall complete the following:
- a. The 196 space parking area shall be constructed and landscaping shall be installed. Staff shall conduct an inspection of the parking area and landscaping.
 - b. Improvements along Kellogg Creek Drive shall be completed. The roadway shall be widened to create two 14-foot travel lanes and intersection improvements to create a 90-degree intersection at Kellogg Creek Drive and Rusk Road per MMC Section 19.1400.
 - c. All Water Quality Resource vegetative planting and mitigation shall be completed and inspected by the City.
 - d. Bicycle parking shall be installed per MMC Section 19.505.
7. Building permits are required for structures including the concession stand, restrooms (2), bleachers, dugouts, maintenance shed, and picnic shelter. Accessible route is required from the parking lot to all structures (as mentioned above) on the site. At the time of building permit submittal, the applicant shall show sufficient detail (slope, surface materials, striping, etc.) to show compliance

Deleted: 230

Deleted: all

with Chapter 11 of the Oregon Structural Specialty Code. The proposed dropoff area must comply with Section 1105 - Passenger Loading Zones.

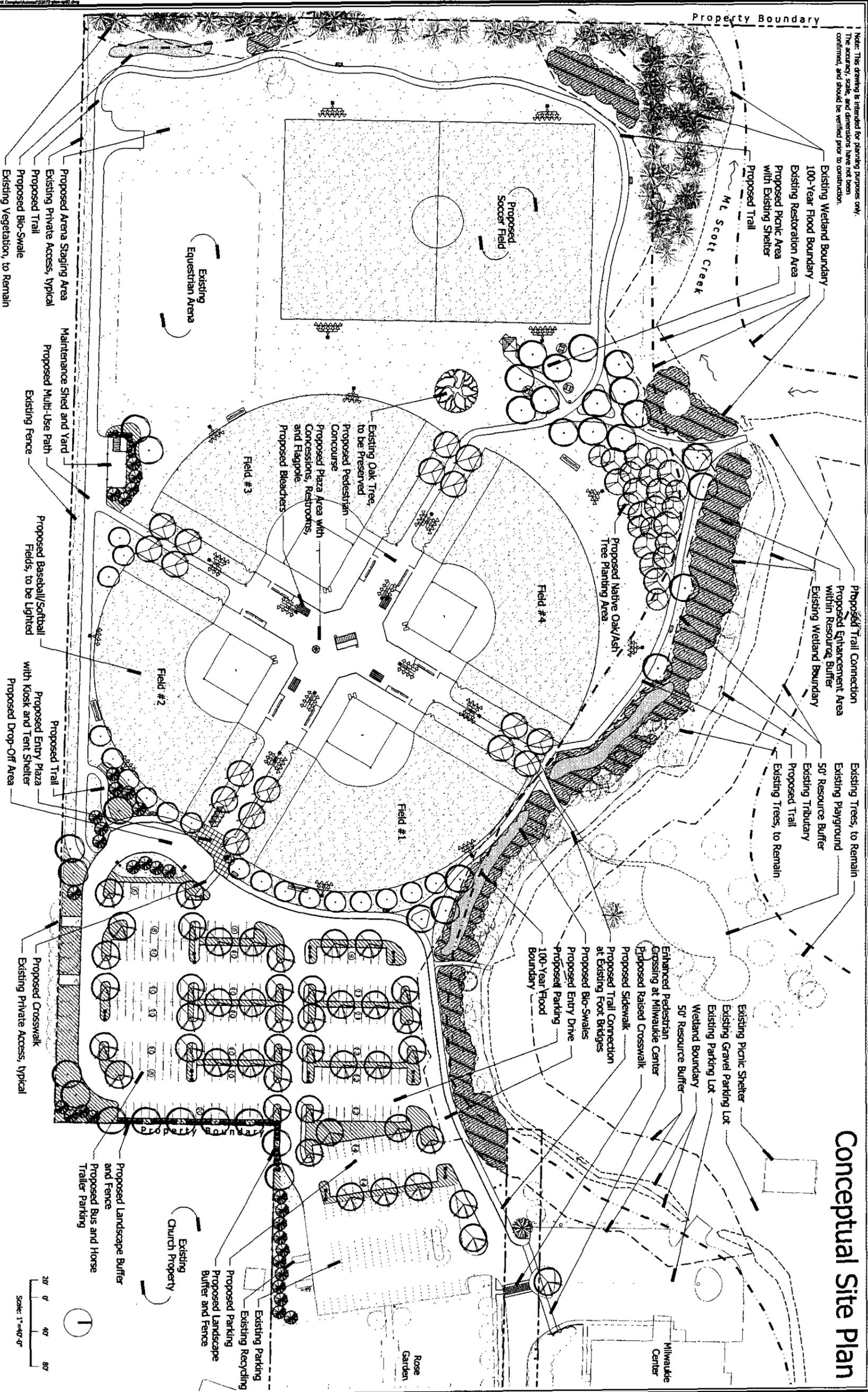
8. For all proposed structures to be located within the 100-year floodplain, submit certification by a professional engineer or architect verifying adequate flood-proofing (MMC 18.04.100 (B)). All proposed work in the 100-year floodplain will require calculations that demonstrate balanced cut-and-fill (18.04.150 (F)).
9. Per MMC Section 19.322.10(L), stormwater flows shall not exceed predevelopment flows.
10. The applicant must complete the following activities as part of Phase 1 construction. The site cannot be used until all activities listed below have been completed and inspected to the satisfaction of the Planning Director.
 - a. Development of environmental enhancements, including implementing and planting the vegetation plan.
 - b. Construction of public improvements along Kellogg Creek Drive (sidewalk construction, repaving Kellogg Creek Drive, and the realignment of the Kellogg Creek Drive/Rusk Road intersection).
 - c. Construction of the proposed trail/walkway system.
 - d. Construction of the stormwater treatment facilities and bio-swales.
 - e. The Planning Commission has approved a parking ratio of 43 spaces per field and the construction of 196 space parking area. If the applicant phases the construction of the ball fields, parking must be provided in proportion to the number of fields developed. For example, if three fields are constructed the applicant must provide a 129 space parking area. The remaining parking spaces must be provided when each subsequent field is constructed.

Deleted: 230

John Gessner
Planning Director

copy: Applicant
Planning Commission
Paul Shirey, Engineering Director
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Ron Schumacher, Deputy Fire Marshal
NDA(s): Lake Road
Interested Persons
File(s): CSO-05-02

THIS PAGE LEFT BLANK INTENTIONALLY



Note: This drawing is intended for planning purposes only. The accuracy, scale, and dimensions have not been confirmed, and should be verified prior to construction.

Conceptual Site Plan

Youth Sports Fields at North Clackamas Community Park

North Clackamas Parks & Recreation District

February 2005





To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Community Development & Public Works
Director

From: John Gessner, Planning Director

Subject: Appeal of Planning Commission Decision

Date: August 5, 2005 for August 16, 2005 Council Hearing

Action Requested

Uphold the Planning Commission's ruling that the appellant's building may contain no more than three dwelling units for zoning purposes.

Background

The key question before the Council is *"Has sufficient evidence been provided to support a ruling that four units are allowed for zoning purposes?"* In its proceedings, the Planning Commission found there was not.

The appellant owns a rental building located at 2540 SE Lark Street. In December of 2001, the structure was declared a dangerous building due to fire, building, and electrical code violations. Consequently, the Milwaukie Building Official ordered the building to be vacated. At this time, the building contained four apartments, which is unusual for a house in a single-family zone. Building code violations sometimes suggest zoning violations. Therefore, the zoning history was examined for an explanation as to whether the four units were legal. At that time, city and county records indicated the building had only three units. Records confirming that the four units were legal could not be found.

In February of 2003, the appellant requested that the City make a finding that 4 dwelling units are allowed. The Planning Director is authorized by Milwaukie Municipal Code to make legal determinations, which may be appealed to the Planning Commission, then to the City Council.¹ The first determination as to the allowed number of units was made on July 9, 2003. The staff ruling found that only three units could be considered legal based on city and county records. The determination was not appealed in accordance with time limits set by city code and the decision remained in effect thereafter. The appeal expired in June; notice of intent to appeal was not received until September.

The appellant made continuing efforts to have the July 9, 2003 staff decision reconsidered. The City accepted the February 28, 2005 request for a ruling that four units are allowed.² On March 8, 2005, staff issued the same determination as was issued in 2003, ruling that only three units are allowed. The property owner appealed that decision to the Planning Commission, which held a public hearing on June 14, 2005 and confirmed the Director's determination. See Attachment 1 for the Director's determination, Commission decision, and appeal.

The City Council hearing is "de novo", meaning that it is not restricted to the record of the Planning Commission's hearing. The appellant did not provide information in support of the appeal to Council other than as contained in the appeal. Accordingly, staff has provided materials presented to the Commission. However, staff and City Attorney are concerned that a substantial amount of information presented by the appellant is not relevant to the key issue of the appeal.

See the following materials attached:

- Attachment 4 – applicant materials submitted to the Planning Commission at the June 14, 2005 hearing.
- Attachment 5 – June 14, 2005 Commission Staff Report.
- Attachment 6 – Applicant materials prepared for the Planning Commission, received May 19, 2005 (Feb. 28, 2005 Director's Determination Request)
- Attachment 7 – Additional applicant materials received May 19, 2005

¹ See Zoning Ordinance Sections 809, 1001.1, and 1001.4.

² Appeal rights are guaranteed by state law and city code. The appeal process provides oversight of decisions by parties who believe an error was made by the decision-maker. City code specifies time limits and other restrictions on appeals, which are necessary to assure the overall system of local government is orderly and reliable, and to reduce risk to investment and other interests. Staff has no legal discretion to modify rules of the appeal process.

Research conducted in preparation of this report shows telephone accounts (as an indicator of number of units) at the property as follows:³

- 1 account in 1989 and 1990
- 2 accounts in 1991 and 1992
- 1 account in 1994
- 2 accounts in 1995
- 3 accounts in 1996
- 2 accounts in 1997
- 1 account in 1999 through 2001
- 3 accounts in 2003 and 2004
- 4 accounts in 2002
- 1 account in 2005

See Attachment 3 for excerpts from the Cole Directory that substantiates the above. Inconsistencies between the above and information provided by former tenants are noted. In more recent years this may be explained by increased and exclusive use of cell phones for home telephone service.

Additional research identified three former tenants who are willing to sign sworn statements describing their knowledge of the number of dwelling units. These statements were not available at the time this report was prepared, but will be available by the August 16, 2005 hearing.

Key Issues

The following section, which explains the staff recommendation, and Commission decision, is an edited excerpt from the April 12, 2005 Commission staff report, also attached in full:

1. The March 8, 2005 staff determination is based upon the following:
 - a. Milwaukie utility billing records show three historical units of sewer service.
 - b. Clackamas County Assessor records indicate the property has been historically taxed for three dwelling units.⁴
2. The appellant has made the following arguments specific to the number of dwelling units, other argument is provided in the record:
 - a. The previous owner has stated that the building contained four units during his ownership.⁵

³ See attached excerpts from the Cole Directory

⁴ See Attachment 2 for the July 12, 2005 letter from County Assessor, which addresses errors alleged by the appellant.

⁵ Documentation not provided.

- b. Information in support of 4-units as argued by appellant includes the following:
 1. The building was constructed in 1936; no permit records exist.
 2. There have been 4 electric meters on the building since 1960. Photographs from 1976 demonstrate four units.
 3. City billing records are in error.
 4. Telephone and Business Listings of prior tenants do not exist.
 5. The 1997 sales advertisement for the structure indicates 4-units.

Analysis of Key Issues

The only matter in question is whether the property legally contains 4 units based on non-conforming rights. The Commission determined that evidence is insufficient to support a finding in favor of the appellant. The reasoning, as reflected in the staff report presented to the Commission, follows:

1. With 3 units, the property is nonconforming with regards to parking, covered parking, and lot area requirements per dwelling. Staff has deemed that 3 units are allowed based on City and County administrative records, which show the property containing 3 units as far back as 1976. The appellant argues that these records are inaccurate.
2. The appellant has not produced business or personal records from prior owners, or other sources that demonstrate city and county records are inaccurate.
3. The presence of 4 electric meters, by itself, is not sufficient evidence that the four units are legal; the circumstances of their installation may only be inferred. It is not unusual for a multifamily structure to have meters for individual units, and a meter for common utilities like outdoor lighting, heating and air conditioning, and the like. Alternatively, it is possible that the four meters were installed to serve four units. Mr. Hamersly has submitted letters from PGE that indicate service was installed in 1964 and from David G. Allen of Industrial Commercial Electric, that in his opinion the meters date back to the 1960s.

Staff believes that this information, while suggestive, does not discount other compelling evidence, and does not dismiss other explanations as to when the

meters were actually installed, and for what purpose. Meters are typically installed to cover building facilities that are used in common by tenants.

Concurrence

The City Attorney concurs with the Planning Commission decision.

Fiscal Impact

There are no known fiscal impacts associated with this action.

Work Load Impacts

(Not applicable)

Alternatives

The Council must decide this matter no later than August 30, 2005 in accordance with laws that govern how much time cities can take to issue final decisions. The Council decision can be appealed to the State Land Use Board of Appeals. The appellant has the legal ability to waive the time period in which the matter must be decided.

The Council has the following decision-making alternatives:

1. Uphold the Commission's decision.
2. Reverse the Commission's decision and find in favor of the appellant.
3. Remand the matter to the Commission with direction for reconsideration. (This alternative may not be feasible to time limits on decision-making.)

Attachments

1. Commission Decision and Appeal
2. Letter of Clackamas County Assessor, July 12, 2005
3. Cole Directory Excerpts
4. Applicant materials received at the June 14, 2005 Commission hearing
5. June 14, 2005 Staff report
6. Applicant materials prepared for the Planning Commission, received May 19, 2005.
7. Additional applicant materials received May 19, 2005.



To: Mayor and City Council

From: Pat DuVal, City Recorder

Subject: Intergovernmental Agreement with Metro

Date: August 8, 2005

City Manager Mike Swanson is working out the final details of this agreement, and the material will be provided to you as soon as it is available.

PUBLIC SAFETY ADVISORY COMMITTEE MEETING NOTES

July 28, 2005

Present:

Larry Kanzler - Police Chief

Karen Martin – Campbell Neighborhood Association

Ray Bryan – Historic Milwaukie Neighborhood Association

Dolly Macken-Hambright – Linwood Neighborhood Association

Cheryl Ausmann-Moreno – Ardenwald Neighborhood Association

Susanna Pai – Lake Road Neighborhood Association

Gene Covey – Lewelling Neighborhood Association

Julie Wisner

The meeting was called to order at 6:02 p.m.

Karen asked if everyone had reviewed the minutes from the previous meeting. Dolly made a motion to accept the minutes. Cheryl seconded the motion. Passed unanimously.

Signatures on the Communications Agreement – Gene signed it, however, Julie was not prepared to sign it at this time.

Draft version of the Traffic Management Plan – we're waiting for Paul Shirey to get back to the committee with his comments/suggestions/changes. Everyone was provided with a copy of the draft. Julie asked if the new Plan was a re-write meant to replace the engineering document. Karen said it is meant to replace the document. Julie said that there is a NTMP brochure that was meant for lay people. She feels that engineers need a document of their own and lay people need their own. She feels that there should be a brochure for lay people.

Nuisance abatement – Chief said there was a new House Bill regarding the OLCC review process for liquor licenses. The OLCC has turned into more of an administrative type organization as opposed to an enforcement organization. We have a nuisance abatement procedure to deal with establishments or residences that have ongoing police responses/problems. Our computer aided dispatch system shows us how often, when, etc. we respond to certain addresses.

Cheryl said that a lot of citizens are concerned about the proposal to allow movie theaters to sell alcoholic beverages.

Riverfest – it normally costs approximately \$10,000 in overtime to cover the event. This year will be less since it was only a one-day event. Everyone agreed that a one-day event was a good idea.

Julie asked the Chief if he was aware that the Milwaukie Theater had applied for an arcade license – and if those types of establishments add more workload to the police department. The Chief was aware of the application. He feels that it would need to be monitored and it will depend on the clientele and the management/supervision. Julie asked if the committee could give recommendations to the Council regarding the guidelines for management of establishments like this. Everyone agreed that it would be a good idea, however we can't do anything before the license is approved. In six months the committee would like to review the frequency and what types of calls the police department has responded to.

Cheryl said that neighborhood stores are selling roach clips, etc. She said that some citizens would like to prepare a letter to address to the owners stating that they won't shop there if they continue to sell drug paraphernalia. The Chief said that selling the paraphernalia is no longer against the law. Gene asked if Meth was a big problem in Milwaukie. The Chief said that it is. We have no dedicated officer or detective assigned to drug investigation. The Sheriff's Office only has two detectives working drug cases. The national statistic is that 25% of the population is involved in drug activity. Multnomah County tested everyone for drugs who was booked into their jail – 85% of them were positive.

Photo Radar Bill – the Chief advised that the Bill is dead. He will try again next time and have the Oregon Association of Chiefs of Police sponsor the bill. The Chief will be writing a letter to the editor of the Oregonian – the committee members also want to sign it.

Citizen's Academy update – Dolly said everything is ready to go. They haven't received all the applications yet.

Appointment by Governor to DMV Oversight Committee – Chief had a meeting with the Governor two weeks ago regarding DMV security issues/identity theft. RECIC (Regional Economic Crime Investigators Committee) wants to force DMV into providing safeguards to prevent identity theft and regulate/manage their employees. Chief will represent the Oregon Association of Chiefs of Police on the oversight committee. Oklahoma has decreased their identity thefts by approximately 96% by using biometric/fingerprinting system. Ray asked who would have access to the data – the Chief said it would only be accessible to DMV.

The next meeting date conflicts with the Reserve Academy. The Fire Training room at PSB is an option. The committee agreed to meet before the Ardenwald concert.

Ray asked if anyone had heard back from the Council regarding our work plan. The Chief hasn't heard anything – but will follow up.

Ray wanted to say how proud he is of the Police Department and their investigation surrounding the Sanchez homicide. The rest of the committee agreed.

The meeting was adjourned at 7:42 p.m.

The next meeting is scheduled for August 25th, 2005.