AGENDA

MILWAUKIE CITY COUNCIL
FEBRUARY 20, 2007

MILWAUKIE CITY HALL **2000th MEETING**
10722 SE Main Street

REGULAR SESSION – 7:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Milwaukie High School Student of the Month – Danielle Cervantes

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.)*

A. Appoint Val Hubbard to the Park and Recreation Board – Resolution
B. Security System Replacement for Multiple City Facilities -- Resolution
C. Sale of Three Surplus Properties Located at the Corners of Hwy 99E and Jackson and Harrison Streets -- Resolution

4. AUDIENCE PARTICIPATION *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

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. Motion to Consider Continuation of Amendment to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3 (Mike Swanson)

5. PUBLIC HEARING -- *continued*

B. Approval of Measure 37 Request for Waiver of Flag Lot Standards – Land File # M37-06-01 (Ryan Marquardt)

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.)*

Council Reports

7. INFORMATION

Citizens Utility Advisory Board Minutes of December 6, 2006

8. ADJOURNMENT

Public Information

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(i) performance evaluations of public officers and employees. 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.

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING VAL HUBBARD TO THE MILWAUKIE PARK AND RECREATION BOARD.

WHEREAS, a vacancy exists on the Milwaukie Park and Recreation Board; and

WHEREAS, Milwaukie Municipal Code Section 2.12.020 provides for appointment of members of the Milwaukie Park and Recreation Board "by the council;" and

WHEREAS, Val Hubbard possesses the necessary qualifications to serve on the Milwaukie Park and Recreation Board.

Now, therefore, the City of Milwaukie, Oregon resolves as follows:

SECTION 1: That Val Hubbard is appointed to the Milwaukie Park and Recreation Board.

SECTION 2: That her term of appointment shall commence upon adoption of this resolution and shall expire on March 31, 2011.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 20, 2007.

_____
James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan LLP

_____
Pat DuVal, City Recorder

_____
City Attorney

To: Mayor and City Council

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

From: Paul Shirey, Operations Director
Willie Miller, Facilities Manager

Subject: Security System Replacement for Multiple City Facilities

Date: January 16, 2007 for February 20, 2007 City Council Meeting

Action Requested

Authorize the City Manager to sign a purchase order and contract with Selectron totaling $170,000 for building security replacement. Available funding is in the approved Facilities Budget for FY 06/07. $130,000 is budgeted for this project line item number 720-621-7500-0771. Staff is requesting the use of $40,000 from the Facilities budget contingency line item number 720-621-7500-0701 designated for JCB Lunchroom & Restrooms. (The JCB remodel project is currently on-hold pending a citywide facilities needs assessment.)

Background

The purpose of this request is to replace the city's leased security system with a system it will own. This will translate into considerable savings and improved security protection.

The purpose of a quality security system is to protect the city's physical assets and security data. This system will allow the city to customize the system to fit its specific needs. With the ability to control the system "in-house" instead of relying on a vendor at an off-site location, the city will enjoy considerable flexibility in adjusting and modifying the system as the City's needs evolve.

The new system will give users the ability to enter different areas of the City's facilities through an electronic access card. Unlike our current system, this will be

a computer-controlled system administered by our IST and HR departments. The new system will enable us to immediately control access to City facilities through our computer system, which the current system does not allow. The new system can be expanded to support growth and numerous City functions, such as, but not limited to property room control, perimeter access, and photo ID.

Based on a current security lease of $20,000 per year, the new system will pay for itself in just under nine years.

$130,000 will cover about half of City facilities. These facilities are Public Safety Building, Public Works Administration/ Shop Building, Public Works Pole Barn Building, and City Hall Building.

Staff is requesting $40,000 from the Facility budget originally designated as a contingency item under Capital Improvement Project-JCB Lunchroom & Restrooms. The $40,000 will cover 20% of City facilities. This will pay for the Library Building, and monitoring equipment at Lake Oswego's 911 Center. The monitoring is necessary for 24hr/ 7 day-a-week coverage of intrusion alarms and required 24hr/ 7 day-a-week monitoring of the Fire Alarms.

Selectron is the selected vendor. Selectron is a certified government vendor on a previous contract completed with the City of Salem, contract # 012094. Under provisions of Sate law the City is able to "piggyback" on this contract.

The Facility Maintenance Coordinator will manage the project. The work for this project will be completed within 140 days.

A second phase of expenditure and work will be necessary to complete the remaining City facilities. Firm financial estimates have not been developed. The second phase will be included in the budget process for fiscal year 2007/2008 with a request to cover the remaining 30% of the City facilities. The remaining facilities are, the Operations Building, Sign Shop, Records Storage, and the Library Annex House.

Concurrence

Public Works Operations Director, Facility Maintenance Coordinator, the Police Chief, and the Finance Director have concurred with the Community Development Director as to the budget, cost, need, and benefits of the system, including the long term financial benefit of this project.

The IST Director has indicated that the new system will provide us with an audit trail for all employees, visitors, consultants, and contractors entering City

facilities. The IST Director recognizes that the new system is easily managed by the IST department support team.

Fiscal Impact

Facility Maintenance budgeted $130,000 as a capital improvement project for building security replacement in FY 06/07. Since obtaining the first bid nearly two years ago, scope changes and cost increases have increased total cost to $170,000.

The funds for this project are included in the Facility Maintenance budget in the Capital Improvement Projects category. The funds have been approved in the 2006/2007 annual budget.

Work Load Impacts

Facility Maintenance Coordinator will be acting as project manager with technology support from our Information Systems and Technology department.

Alternatives

1. Approve as recommended. This will result in savings to the city over time and enhance flexibility in operating the system to meet city needs.
2. Approve with modifications. Council could choose to implement the new system in additional phases. This may add to total labor and material expense.
3. Deny the request. The City would continue with the current leased system at an annual cost of $20,000 per year.

Attachments

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, CITY OF MILWAUKIE, OREGON AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE ORDER AND CONTRACT TO ACQUIRE A NEW BUILDING SECURITY SYSTEM FOR MULTIPLE CITY BUILDINGS

WHEREAS, the City currently leases its building security systems, and purchase and ownership of a new security system would result in long-term savings for the City; and

WHEREAS, ownership of the security systems would give the City greater control over the security system and greater flexibility in operation of the system; and

WHEREAS, the original estimate from 2005 for a new security system was $130,000; and

WHEREAS, since obtaining the first bid, scope changes and cost increases have increased the total cost to $170,000, and

WHEREAS, the $170,000 proposed for this will cover City Hall, the Public Safety Building, the Public Works Administration/Shop Building, the Public Works Pole Barn Building, the Ledding Library Building, and monitoring equipment and the 911 Center, and

WHEREAS, the FY 2006-07 budget includes $130,000 for Building Security Systems as a Capital Improvement Project within the Facility Maintenance budget'

WHEREAS, an additional $40,000 is requested from the Facility budget originally designated as a contingency item under Capital Improvement Project-JCB Lunchroom and Restrooms; which may be used for Building Security Systems without a budget amendment because it is within the same fund;

NOW, THEREFORE, BE IT RESOLVED, by the City Council, City of Milwaukie, Oregon, that:

Section 1. The City Manager is authorized to sign a purchase order and contract with Selectron, Inc. in the amount of $170,000 for a new building security system to be used as described in the recitals of this resolution.

Section 2. The amount of $40,000 is reallocated from Facility Maintenance, Capital Improvements, (JCB Lunchroom and Restrooms) to Facility Maintenance, Capital Improvements, (Building Security System).

Section 3. This resolution is effective immediately upon passage.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on _____, 2007.

_____
James Bernard, Mayor

ATTEST:

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

_____
Pat DuVal, City Recorder

_____
City Attorney

To: Mayor and City Council

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

From: Paul Shirey, Operations Director

Subject: Authorization to Sell Three Surplus Properties Located at the Corners of Highway 99E and Jackson Street and Harrison Streets

Date: February 6, 2007 for February 20, 2007 City Council Meeting

Action Requested

Authorize the City Manager to negotiate the sale of surplus property located at the corners of McLoughlin Boulevard and SE Jackson and SE Harrison Streets. Negotiation of terms is required first and will be followed by a request to Council for approval of the terms and conditions of each sale.

Background

As part of the McLoughlin Boulevard project, the City used federal funds to acquire property for right-of-way (ROW) at the corners of each city street that intersects with McLoughlin Blvd., between Harrison and Washington. The need for the right-of-way was to change the radius at each corner to allow for safe turning movements by large vehicles. Under terms of the City's agreement with ODOT, who administered the federal funds, the acquired property corners will be conveyed to ODOT for right-of-way purposes.

ODOT conducted appraisals and determined the value of the property based on comparable sales in the vicinity. Each of the properties was appraised based on the highest and best use for current zoning. The appraised value was determined to be $16 per square foot.

At certain locations, more property was acquired than was necessary, such as at the former Texaco lot (with corners at McLoughlin and the north side of Jackson) and the corner at the south side of Harrison (owned by Reliable Credit).

The owners of these two properties (Metro and Reliable Credit) have asked the City to sell back the portion of the corner(s) not needed for right-of-way. Reliable Credit wants to install a monument sign at its corner, and on the former Texaco site the City has agreed the sell surplus portions to Metro per the Town Center Intergovernmental Agreement (IGA)(section _____).

The attached property descriptions and legal maps show property in question at corners of:

- Northwest corner of Harrison and McLoughlin (adjacent owner is Reliable Credit). 240 square feet (s.f.) at $16.00 /s.f.= $3,840 Sale Price
- Southwest corner of Harrison and McLoughlin (adjacent owner is Metro) 18.7 s.f. at $16.00/s.f = $300 Sale Price
- Northwest corner of Jackson and McLoughlin (adjacent owner is Metro) 166 s.f. at $16.00/s/f = $2,656

City Code requires 10-day advance notice of sale of surplus property to surrounding owners within 300-feet. Once the terms of the sale are agreed to, staff is required by Code to return to Council for approval of terms and to close the sale.

Concurrence

ODOT has jurisdiction of McLoughlin Boulevard (Highway 99E) and administered the federal funds for the project. ODOT concurs with the proposed sale of surplus right-of-way.

Fiscal Impact

The City under terms of agreement with ODOT used federal funds to cover 89.73% of the cost of ROW acquisition. ($6,089)

- 89.73%, or $6,089 of the sale proceeds must therefore be repaid to ODOT
- The city would retain 10.27% of the sale proceeds. ($698). These funds would be repaid to the Street Fund.

Work Load Impacts

Minimal workload impact for Operations Director

Alternatives

The City could seek reimbursement from the owners in question for engineering, survey and legal work needed to affect this sale. The cost would be about $1,000 per corner. Staff does not concur with this alternative.

The Council could choose not to proceed with this transaction, however, Reliable Credit would be unable to rebuild the monument sign at this corner, and Metro would likely request a discussion with Council given the City's commitment to this transaction in the town Center IGA.

Attachments

1. Resolution authorizing the City Manager to negotiate the sale of surplus property to Metro and Reliable Credit.
   Exhibit A1- Description and Map at McLoughlin and Jackson Streets (former Texaco lot)
   Exhibit A2- Description and Map at McLoughlin and Harrison Street, south side (former Texaco lot)
   Exhibit B- Description and Map at McLoughlin and Harrison Street, north side (Reliable Credit)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF MILWAUKIE, OREGON DECLARING REMAINING PROPERTY ACQUIRED AS PART OF THE MCLOUGHLIN BOULEVARD IMPROVEMENT PROJECT TO BE SURPLUS AND DIRECTING THE CITY MANAGER OR DESIGNEE TO NEGOTIATE THE TRANSFER OF THE PROPERTY.

WHEREAS, the City acquired fee title to portions of the properties located at 1915 SE Harrison Street and 10700 SE McLoughlin Boulevard (the "Properties") in connection with the McLoughlin Improvement Project from adjacent property owners; and

WHEREAS, the City has no further need or use for remaining portions of the Properties; and

WHEREAS, the properties are substandard undeveloped properties.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, of the `City of Milwaukie, Oregon, that:

Section 1. The properties located at 10700 SE McLoughlin Boulevard, not needed for street improvements, one consisting of approximately 18.7 square feet as shown on “Exhibit A-1”and the other consisting of 166 square feet as shown on "Exhibit A-2", is declared surplus to the City's needs, and negotiations to transfer the property is authorized.

Section 2. The property located at 1915 SE Harrison street, not needed for street improvements, consisting of approximately 240 square feet as shown on "Exhibit B", is declared surplus to the City's needs, and negotiations to transfer the property is authorized.

Section 3. The City Manager is authorized to negotiate the sale of the properties described in Section 2 and shall require payment at least equal on a square foot basis to the price paid by the City for the property.

Section 4. The sale shall be by the procedure set forth in Milwaukie Municipal Code Section 3.15.010.

Section 5. This Resolution takes effect upon its adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on 2007.

This resolution is effective on _____ , 2007.

_____
James Bernard, Mayor

ATTEST:

_____
Pat DuVal, City Recorder

APPROVE AS TO FORM:
Ramis, Crew, Corrigan LLP

_____
City Attorney

Exhibit A-1

Parcel 1 -- Fee

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 8, Block 14, TOWN OF MILWAUKIE, a duly recorded plat in Clackamas County and also being all of that property described as "Parcel 1 -- fee" in that Warranty Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded February 1, 2005 in document Number 2005-009154, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer's center line Station "US 99E" 315+00.00, said station being 872.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07' 00" West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 10° 41' 04" West, 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 8° 07' 00" West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21' 20" West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03' 05" East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35' 56" East, 399.73 feet), 400.00 feet to Engineer's center line Station "US 99E" 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55' 55" East, 198.87 feet to Engineer's center line Station "US 99E" 342+89.61.

The width in feet of said strip of land is as follows:

"US 99E" Station	to "US 99E Station	Width on Easterly Side of Center Line
330+40.00	330+51.80	76.55 in a straight line to 59.80
330+51.80	330+70.00	56.00 in a straight line to 35.70

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

This parcel of land contains 18.7 square feet, more or less.

Exhibit A-1

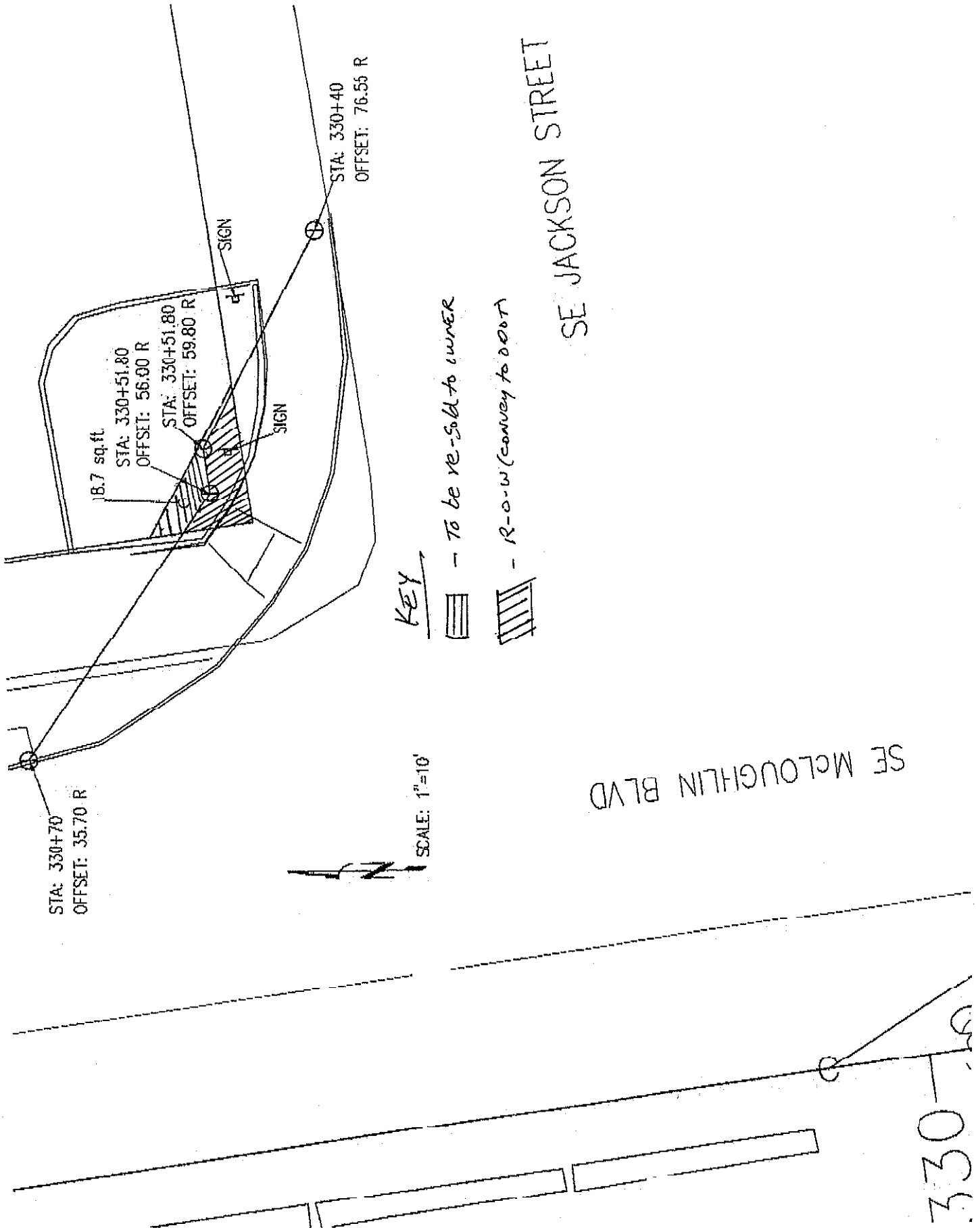

STA: 330+70
OFFSET: 35.70 R
18.7 sq.ft.
STA: 330+51.80
OFFSET: 56.00 R
STA: 330+51.80
OFFSET: 59.80 R
SIGN
SIGN
STA: 330+40
OFFSET: 76.55 R
SCALE: 1"=10'
KEY
- To be re-sold to owner
- R-o-w (convey to ODOT
SE JACKSON STREET
SE McLOUGHLIN BLVD
330+00

Exhibit A - 2

Parcel 1 – Fee

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 5, Block 14, TOWN OF MILWAUKIE, a duly recorded plat in Clackamas County and also being all of that property described in that Warranty Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded February 1, 2005 in document Number 2005-009154, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer's center line Station "US 99E" 315+00.00, said station being 972.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07' 00" West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 10° 41' 04" West 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 8° 07' 00" West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21' 20" West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03' 05" East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35' 56" East, 399.73 feet), 400.00 feet to Engineer's center line Station "US 99E" 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55' 55" East, 198.87 feet to Engineer's center line Station "US 99E" 342+89.61.

The width in feet of said strip of land is as follows:

"US 99E" Station	to "US 99E Station	Width on Easterly Side of Center Line
332+30.07	332+45.35	40.33 in a straight line to 53.76
332+45.35	332+60.00	53.76 in a straight line to 98.52

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

This parcel of land contains 166 square feet, more or less.

Exhibit A-2

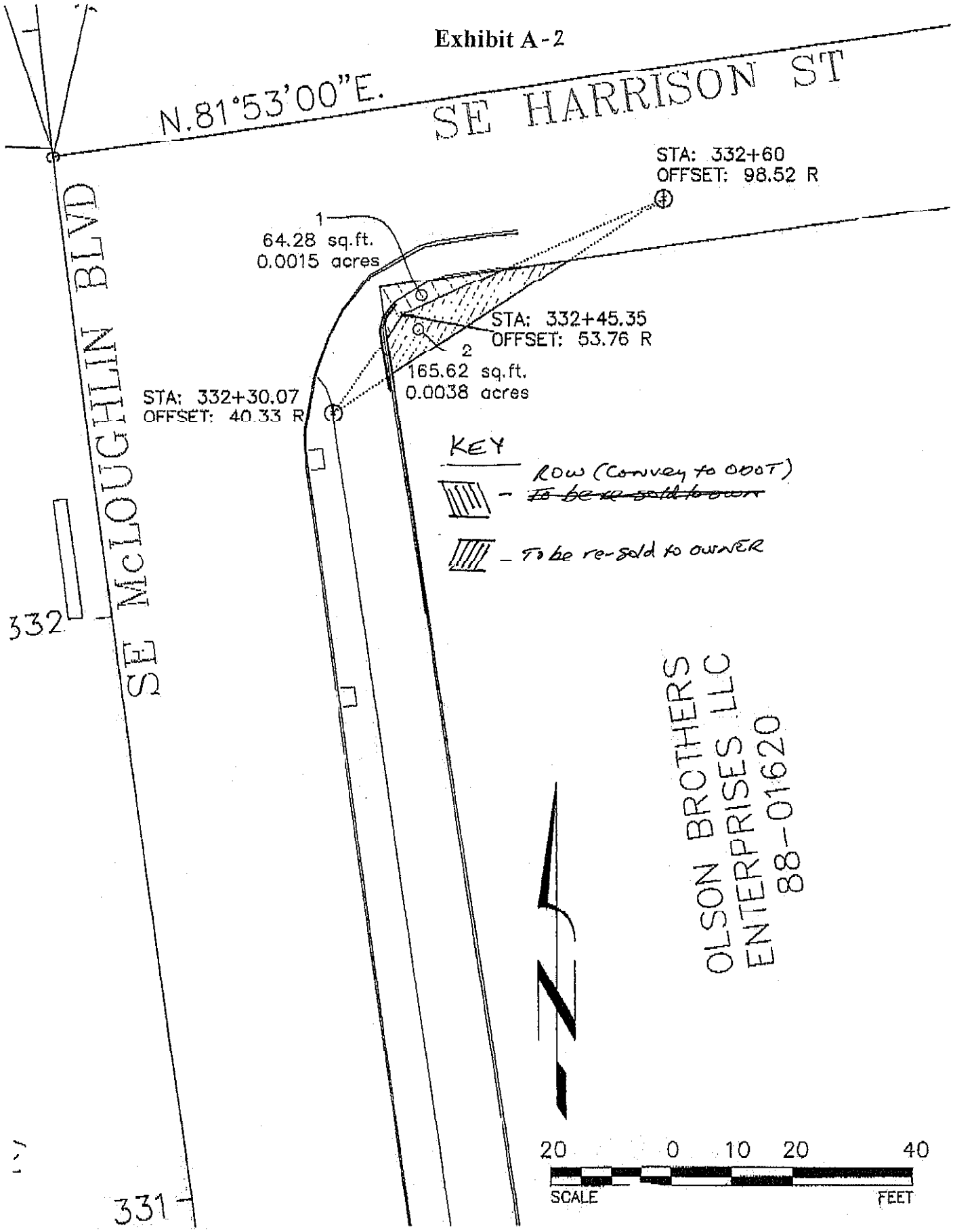

N.81°53'00"E.
SE HARRISON ST
SE McLOUGHLIN BLVD
STA: 332+60
OFFSET: 98.52 R
1
64.28 sq.ft.
0.0015 acres
STA: 332+45.35
OFFSET: 53.76 R
2
165.62 sq.ft.
0.0038 acres
STA: 332+30.07
OFFSET: 40.33 R
KEY
ROW (Convey to ODOT)
~~To be re-sold to own~~
To be re-sold to OWNER
332
331
OLSON BROTHERS
ENTERPRISES LLC
88-0162
20 0 10 20 40
SCALE
FEET

Exhibit B

Parcel 1 – Fee

A parcel of land lying in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M., Clackamas County, Oregon and being a portion of Lot 1, Block 1, LEWELLING PARK, a duly recorded plat in Clackamas County and also being all of that property described in that Deed to the City of Milwaukie, a municipal corporation of the State of Oregon, recorded June 6, 2005 in document Number 2005-051695, Clackamas County Deed Records, EXCEPT that portion of said property included in a strip of land variable in width lying on the Easterly side of the center line of the relocated Pacific Highway East (US 99E), which center line is described as follows:

Beginning at Engineer's center line Station "US 99E" 315+00.00, said station being 972.57 feet South and 98.30 feet East from the Southwest corner of Block 28, TOWN OF MILWAUKIE in the Northeast one-quarter of Section 35, Township 1 South, Range 1 East, W.M.; thence North 8° 07' 00" West, 490.44 feet; thence on a 3274.04 foot radius curve left (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 10° 41' 04" West, 143.41 feet; thence on a 3274.04 foot radius curve to the right (the long chord of which bears North 9° 24' 02" West, 146.72 feet), 146.73 feet; thence North 8° 07' 00" West, 568.72 feet; thence on a spiral curve right (the chord of which bears North 4° 21' 20" West, 643.89 feet), 645.00 feet; thence on a 1637.02 foot radius curve right (the long chord of which bears North 4° 03' 05" East, 50.31 feet), 50.31 feet; thence on a spiral curve right (the chord of which bears North 9° 35' 56" East, 399.73 feet), 400.00 feet to Engineer's center line Station "US 99E" 340+91.34 back = Station 340.90.74 ahead; thence North 11° 55' 55" East, 198.87 feet to Engineer's center line Station "US 99E" 342+89.61.

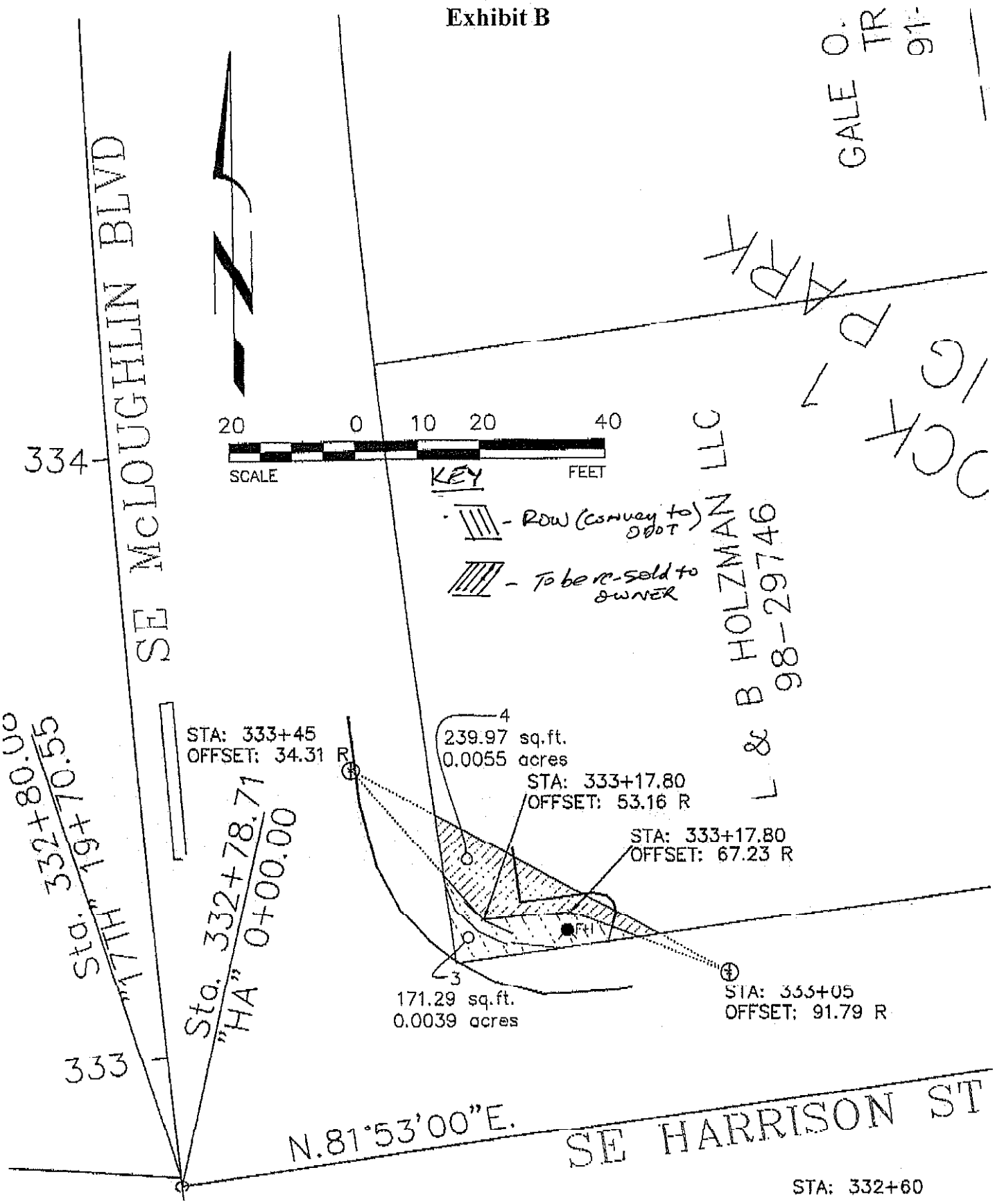
The width in feet of said strip of land is as follows:

"US 99E" Station to	"US 99E Station	Width on Easterly Side of Center Line
333+05.00	333+17.80	91.79 in a straight line to 67.23
333+17.80	333+45.00	53.16 in a straight line to 34.31

Bearings are based on the Oregon Coordinate System of 1983(98), North zone.

This parcel of land contains 240 square feet, more or less.

Exhibit B



SE McLOUGHLIN BLVD
334
333
20 0 10 20 40
SCALE
FEET
KEY
- ROW (convey to ODOT)
- To be re-sold to OWNER
L & B HOLZMAN LLC
98-29746
GALE O. TR
STA: 333+45
OFFSET: 34.31 R
4
239.97 sq.ft.
0.0055 acres
STA: 333+17.80
OFFSET: 53.16 R
STA: 333+17.80
OFFSET: 67.23 R
3
171.29 sq.ft.
0.0039 acres
STA: 333+05
OFFSET: 91.79 R
Sta. 332+80.00
"17TH" 19+70.55
Sta. 332+78.71
"HA" 0+00.00
N.81°53'00"E.
SE HARRISON ST
STA: 332+60

TO: MAYOR AND CITY COUNCIL

FROM: MIKE SWANSON, CITY MANAGER

DATE: FEBRUARY 7, 2007

RE: COUNCIL APPROVAL OF MOTION CONTINUING CONSIDERATION OF AMENDMENT TO MILWAUKIE MUNICIPAL CODE (MMC) SECTIONS 19.321.7 AND 19.321.3

ACTION REQUESTED

The action requested is Council approval of a motion to continue consideration of a Planning Commission recommendation to amend MMC Sections 19.321.7 and 19.321.3 to July 17, 2007.

BACKGROUND

At your June 20, 2006 meeting you considered recommendations from the Planning Commission to amend MMC Sections 19.321, Milwaukie Comprehensive Plan Chapter 4—Recreational Needs Element and Chapter 5—Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element, and MMC Sections 19.321.7 and 19.321.3. (See attached staff memo to Council from Katie Mangle, Planning Director) The first of the proposed Code amendments changed the name of the Community Service Overlay to Community Service Use and clarified the approval procedures and standards. The Comprehensive Plan amendments clearly stated the City's policy that reasonable efforts be made to decommission the Kellogg Wastewater Treatment Plant (Plant). The second of the proposed Code amendments made the Plant a nonconforming use and established a deadline for its removal. All of the amendments had been recommended by the Planning Commission at its May 23, 2006 meeting.

At your June 20, 2006 meeting I recommended that you adopt the Code amendments regarding the Community Service Overlay as well as the Comprehensive Plan amendments. I further recommended that you continue consideration of the amendments to MMC Sections 19.321.7 and 19.321.3 to a date certain in order to facilitate the continued process of the Clackamas Service District No. 1 (CCSD!) Citizen Advisory Council (CAC). The CAC was appointed by the Clackamas County Board of County Commissioners to develop a wastewater strategic plan for CCSD1. The Council took the action I

recommended with the adoption of Ordinance No. 1962 (copy attached), and a motion was made and adopted to continue consideration of the two Code sections until August 15, 2006. On August 15, 2006 I recommended that the matter be continued to October 17, 2006 in light of the fact that the CAC was still working on a recommendation. On that date I once again recommended a continuance to February 20, 2006. The CAC has made its recommendation to the Board of County Commissioners, and the Board has given direction the continues the process of developing a long-range strategic plan. Thus, I again am recommending a continuance of consideration of the Code amendments. The continuance should be to July 17, 2007.

CCSD1 did appeal the City's decision on the Comprehensive Plan amendments in order to preserve its rights to argue goal compliance. The LUBA appeal will be put on hold for a similar time.

The Council may follow the process used in the past and use a motion to continue the recommendation of the Planning Commission to amend MMC sections 19.321.7 and 19.321.3 to its regular meeting on July 17, 2007.

Attachments:

1. Memo dated June 13, 2006 for the June 20, 2006 Hearing from Katie Mangle re Amendments to the Milwaukie Municipal code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)
2. Ordinance 1962 adopted by Council on June 20, 2006

To: Mayor and City Council

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

From: Katie Mangle, Planning Director

Subject: Amendments to the Milwaukie Municipal Code and Comprehensive Plan that address Community Service uses and the Kellogg Creek Wastewater Treatment Plant (ZA-06-01/CPA-06-01)

Date: June 13, 2006 for June 20, 2006 Hearing

Actions Requested

1. **Approval to amend the *Milwaukie Municipal Code Section 19.321 – Community Service Overlay*.** Amendments would change the name to "Community Service Use," clarify the procedures and standards for approving such a use and modernize the language in the code.

2. **Approval to amend the *Comprehensive Plan Chapter 4 - Recreational Needs Element*; *Chapter 5 - Transportation/Public Facilities/Energy Conservation, Public Facilities and Services Element;* and *Milwaukie Municipal Code subsections 19.321.7 and 19.321.3*.** These amendments would clearly state the City's policy to make reasonable efforts to bring about the decommissioning of the Kellogg Creek wastewater treatment plant, make the plant a Nonconforming Use, and set a deadline for removing Nonconforming Community Service Uses.

On May 23, 2006, the Planning Commission held a public hearing on the amendments and unanimously recommended that City Council approve the amendments with revisions as required to ensure flexibility to meet state and federal mandates. The amendments meet the approval criteria set forth in the Milwaukie Municipal Code and Comprehensive Plan. This includes consistency with unamended portions of the Comprehensive Plan, Oregon statewide planning goals, and regional policies (see Attachment 6, Summary of Policy Compliance.

Background on Action 1 – Housekeeping amendments to Community Service Overlay

The Community Service Overlay (CSO) is a land use tool that allows the City to manage the development of uses that provide public benefit. Certain uses, including public and religious institutions, schools, and parks, are allowed in most zoning districts when they meet the

standards for a CSO. CSO approvals are site specific and subject to the development standards of the underlying zone.

The proposed amendments to Milwaukie Municipal Ordinance section 19.321 (see Attachment 2) modify the title, text and structure of the section to improve comprehensibility and clarify standards and procedures for approving Community Service Uses. Most of these revisions fall under the category of "code maintenance," and are not intended to change the policy nor intent of the code. The proposed amendments to Milwaukie Municipal Code Section 19.321 include many revisions to the text. Key changes are intended to accomplish the following:

- Clarify the meaning of the CSO by deleting "Zone" from the section title, and stating that approval of a CSO does not change the underlying zoning of the property.
- Neutralize gender and religious references by substituting "religious institutions" for "Churches", and deleting "fraternal organizations" from the provision allowing a "private club, fraternal organization, lodge, grange."
- Clarify the standards and procedures for reviewing a Community Service Use.
- Clarify the definition of a "minor modification" to an approved Community Service Use, as well as the criteria for approval.
- Apply the same development standards to public, private, and religious institutions, with two exceptions. Religious institutions will still have the ability to include a spire that exceeds height limitations, and will continue to be held to a lower landscaping standard. Applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000.

<u>Background on Action 2 – Amendments to Address the Kellogg Creek Treatment Plant</u>

The City of Milwaukie has long envisioned improvements to the Willamette riverfront that maximize the use and benefits of this city resource. This vision is reflected in the goals of the *Downtown and Riverfront Land Use Framework Plan*, the *Comprehensive Plan*, and was also referenced in the City's August 2005 Intergovernmental Agreement with the Clackamas County Service District #1 to implement the Clearwater Plan.

The Kellogg Creek wastewater treatment plant is located on the riverfront, and the City's long-term goals, as expressed in the *Comprehensive Plan* (Chapter 5, Objective 5, Policy 5), have been to decommission the plant. The *Downtown Land Use Framework Plan* envisions redevelopment of the Kellogg site with uses that are more supportive of downtown and nearby neighborhoods. Thus far, the City's Comprehensive Plan policies have not been effective in achieving the goal of eliminating the social, economic and environmental impacts of the plant.

The proposed amendments are intended to strengthen the City's policy to actively seek alternatives to continued use of the Kellogg Creek plant, limit expansion of the plant, and eliminate the plant's social, economic and environmental impacts.

Comprehensive Plan Amendments

The proposed Comprehensive Plan amendments (see attachment 4) would strengthen the City's policy to "make reasonable efforts to bring about" the decommissioning of the Kellogg Creek Wastewater Treatment Plant. The Comprehensive Plan amendments clearly state the policy to pursue decommissioning of the Kellogg Creek plant while responsibly providing

wastewater treatment service for Milwaukie residents and businesses and continuing to cooperate with the County and other agencies in examining feasible alternatives. In summary, the amendments achieve the following:

- The policy relating to the Kellogg Creek plant site will be revised to state that the City's policy is to "*make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location*."
- The policy relating to contracting with CCSD1 will be revised to refer to "the Kellogg Creek Treatment Plant *or other plant or plants*."
- The policy relating to examination of alternatives for decommissioning the Kellogg Creek plant will be revised to state that the City will "*use best efforts to decommission*" the plant while cooperating with other affected agencies. It requires future City planning efforts to consider a "*regional sewage system and facility other than the Kellogg Creek plant*."

Zoning Code Amendments

The proposed zoning amendments related to major utility facilities (see Attachment 2) implement the policies set forth in the Comprehensive Plan. They are intended to achieve the following:

- Specify that major utility facilities, including sewage treatment plants, are generally not a permitted Community Service Use unless all impacts of such a facility are reduced to that of an allowed CSU (such as a pump station).
- Address Nonconforming Community Service Uses in a new section. This section will allow nonconforming uses to remain in use through 2015. It prohibits expansion, upgrades, or remodeling of the use, except as required to abate nuisances declared by the City or comply with federal or state statutes, regulations or permits.
- Establish a nonconforming major utility fee for nonconforming major utilities that remain in use after December 31, 2015.
- Address the community's desire and the City's goal to decommission the Kellogg Creek plant, cooperate with regional partners, plan for proper sewage treatment service, and maintain public access to the riverfront.

Response to Comments in Opposition

At the May 23, 2006, Planning Commission hearing on the proposed amendments, testimony was submitted for and against the proposal. Mr. Tom Sponsler submitted comments against the amendments on behalf of Clackamas County Sewer District No. 1 (CCSD1) and the cities of Happy Valley and Gladstone. In summary, the comments raised the following points:

Comment: *The amendments are inconsistent with Statewide Planning Goal 2, which requires coordination with other governments.*

> **Response**: The amendments are not inconsistent with Goal 2, because the Comprehensive Plan amendments require coordination with CCSD1 and others in developing alternatives to the continued use of the Kellogg Wastewater Treatment Plant in the future. Furthermore, the City has coordinated with CCSD1 and other affected entities in developing a plan for regional wastewater treatment, and signed an intergovernmental agreement with CCSD1 that provided for regionalized wastewater treatment well before the deadline for removal of the Kellogg Creek Wastewater

Treatment Plant. The City remains committed to regional coordination and this commitment is reflected in the Comprehensive Plan amendments.

Comment : *CCSD1 comments that the proposed code amendments are inconsistent with Statewide Planning Goal 6, which protects water quality, and with Policy 1 of Objective 4 of the Air, Water, and Land Resources Quality Element of Chapter 3 of the Comprehensive Plan.*

Response: The City has modified the proposed code amendments to clarify that modifications to the plant will be permitted when mandated to comply with state or federal safety regulations or permits. The code amendments, as revised, are consistent with Goal 6.

Comment: T*he City's amendments may cause CCSD1 to consider termination of its wholesale agreement with the City.*

Response: The City expects that CCSD1 will abide by the same standard of cooperation as the City, and that the wholesale agreement (or a replacement agreement) will remain in effect for the good of the region, Milwaukie, the environment, and CCSD1 ratepayers. The Comprehensive Plan policies provide for continued cooperation between the City and CCSD1 and a continued contractual relationship; the policy does not compel CCSD1 to consider termination in any way.

Comment: *Deletion of the provision regarding public use of the CCSD1 site is inconsistent with statewide planning goals and several provisions in the Comprehensive Plan.*

Response: The amendment calls for ongoing public access to the property. The zoning for the site includes Downtown Open Space, which will require public access to the river if the site is redeveloped.

Comment: *The amendments remove the commitment to examine feasible alternatives for decommissioning Kellogg.*

Response: The plan amendments explicitly call for examining feasible alternatives that allow a transition from Kellogg to another treatment facility.

Comment: *Alternative methods are not analyzed - the City must have a realistic plan for wastewater treatment.*

Response: The City and CCSD1 have collaborated on a realistic plan for regionalized wastewater treatment that does not involve the Kellogg Creek plant. Such as plan was adopted and then rescinded by CCSD1 in 2005. The City and CCSD1 agreed to a regionalized wastewater treatment plan that provided improved quality and service and ultimately lower rates. That plan remains a viable and better option for wastewater treatment than continued use of the Kellogg Creek plant. CCSD1 staff has conducted extensive analysis of alternative methods for treatment, and the City has participated these analyses.

Comment: *The proposed amendment violates Comprehensive Plan Chapter 5, Objective 5, Policy 1, which provides: "The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant. The City will comply with Federal and State clean water requirements in managing the wastewater treatment system."*

Response: To avoid any confusion, the City is amending this Policy to state that the City will contract for the capacity of the Kellogg Creek Treatment Plant *or other plant or plants*. The Comprehensive Plan provisions continue to require compliance with federal

and state clean water requirements, and the code amendments allow modifications needed to comply with federal and state statutes, regulations and permits. The proposed amendments are not inconsistent with this policy, as amended.

Comment: *The proposed comprehensive plan amendments are not consistent with the criteria for proposed amendments in Chapter 2, Objective 1, Policy 7.*

Response: The following sets out the City's analysis of each of these criteria:

- *Conformance with the Comprehensive Plan, its goals, policies and spirit.*
  The amendments expressly require continued coordination, consistent with other plan policies. They are also consistent with provisions relating to the provision of public facilities and services and the protection of water quality because, while they call for eventual removal of the existing sewage treatment plant, they also call for a cooperative and coordinated effort to provide a better sewage treatment system to replace the aging plant. The policies reinforce the existing policy that the Kellogg Creek Treatment Plant must be decommissioned.

- *Public need for the change*.
  The Kellogg Creek Wastewater Treatment Plant is sited in the Willamette Greenway zone, between the Island Station neighborhood and Milwaukie's revitalizing downtown. The change is needed to enhance the City's riverfront and environment, promote the economic development of the downtown, protect the Island Station residential neighborhood from the foul odors emanating from the plant, and provide a better wastewater treatment system. The Kellogg Creek Treatment Plant is aging and a new plant would provide better and more efficient treatment with fewer environmental impacts through economies of scale. The City and CCSD1 require a treatment plant that does not need substantial changes every few years due to old design and old components.

- *Public need is best satisfied by this particular change.*
  The existing language has not achieved the goal of relocating the treatment plant, and this particular change has been drafted to attempt to achieve results in a timely manner. The continued existence of the Kellogg Treatment Plant and the rescinsion of the regionalized plan that would have decommissioned the plant by CCSD1 demonstrate that a change in policy was needed.

- *The change will not adversely affect the health, safety and welfare of the community.*
  The relocation of sewage treatment from the Kellogg Creek plant to a more modern plant as part of a regional system would promote the health, safety and welfare of the entire North Clackamas County community. It would also provide additional benefits to the local community by removing an odor nuisance that plagues the Island Station residential neighborhood. The proposed amendment makes it clear that the City is to work with Clackamas County, the service district or others parties to develop an alternate site for sewage treatment and a regionalized system.

- *The change is in conformance with applicable Statewide Planning Goals*.
  The amendments are in conformance with applicable statewide planning goals, as described in detail in Attachment 6, Summary of Policy Compliance.

- *The change is consistent with the Metro Growth Management Functional Plan and applicable regional policies.* The findings submitted to and approved by the Planning

Commission address the Metro Growth Management Functional Plan, and Metro staff concur.

An additional regional policy with which the City must comply is the Regional Waste Water Management Plan (RWWMP), adopted by Metro in 1980 and last updated in 1993. The RWWMP requires jurisdictions to coordinate their plans with Metro, especially regarding modification of wastewater treatment facilities. The amendments comply with RWWMP because they do not change the City's role in the wastewater collection system, do not modify the CCSD1 boundary, and emphasize continued coordination with other jurisdictions in planning for future wastewater treatment. That coordination includes coordination with Metro, which has reviewed the City's proposed amendments and does not object to them. In addition, the RWWMP provides neither rules nor guidance for local government but rather describes existing systems. It has been periodically changed after the fact to describe changes that have occurred, such as annexations, changes in boundaries and other actions that affect the system. It does not in any way preclude changes such as those called for by the City's amendments, though it may require amendments as modifications occur in the future.

Comment: *The proposed amendments violate the terms of the City's agreement with CCSD1 for sewage treatment.*

Response: The City knows of no such violation, and these have not been specified by the opponents of the amendments.

Comment: *The proposed amendments would result in a violation of Federal law.*

Response: The City has amended the proposed language to assure that the City would not cause the Kellogg Treatment Plant to violate federal law and the language of Section 19.321.7 expressly allows improvement as needed to comply with all state and federal laws, regulations and permits.

Comment: *The proposed amendment is inconsistent with the adopted City public facilities plan.*

Response: The existing Sewage Facilities Plan has a planning period that ends prior to December 31, 2015. The proposed amendments allow the plant to remain in place to December 31, 2015. The amendments are therefore not inconsistent

Comment: *The City does not have authority to control plant operations.*

Response: The City has statutory authority to control land uses (ORS 197.175). It has the Charter authority to do anything that is not contrary to or preempted by federal or state constitution or law. Land use includes not just structures, but operations. The City has land use and charter authority to assure that operations of facilities are consistent with land use standards.

Comment: *The city has no authority to impose a civil penalty on CCSD1.*

Response: If CCSD1 violates a City ordinance, it must pay the same penalty as any other entity.

Comment: *The City does not have the authority to tax CCSD1 and that the nonconforming major utility fee as stated in the draft ordinance would constitute a tax.*

Response: The City amended the proposed language so that the fee will be set to recover the costs and impacts of the operations of the facility. As such, it is a fee and not a tax. The City of Milwaukie may impose a fee.

Comment: *The proposed nonconforming use fee would take effect immediately, rather than in 2016.*

Response: The language of the provision has been revised to make it clear that the fee would be imposed only after December 31, 2015.

Recommendation

Amending the Zoning Ordinance and the Comprehensive Plan is a legislative action, which requires the City Council to conduct a hearing and make a decision. Staff recommends that the Council approve the amendments and adopt the findings as outlined in Attachment 1.

Concurrence

The Planning Commission unanimously recommended that the Council approve the amendments. The amendments have been reviewed and approved by the City Manager, City Attorney, Community Development and Public Works Director, and Engineering Director.

Fiscal Impact

None resulting from the proposed amendments. Indirect fiscal impacts may result from the long-term closure or maintenance of the treatment plant. Such impacts include changes to the contracted rates charged for CCSD1 service; fees collected due to nuisances or continued nonconformance of the Kellogg Creek plant past 2015; increases to the value of properties surrounding the plant site. A 2002 study estimated that closure of the plant would nearly double the value of projected new investment in downtown Milwaukie ($103 million with the closure, versus up to $53 million without).[1]

Work Load Impacts

The amendments will reduce workload slightly, as they clarify several procedural and land use issues in the Code. For example, the City currently applies different development standards to religious and non-religious institutions. This often creates confusion on the part of the applicant, and requires more staff time to explain and defend. The amendments will apply the same standards to all non-educational institutions. In addition, applying the same standards to religious and non-religious institutions will protect the City from claims under the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

Alternatives

1. Do not approve the amendments. If the Council does not approve the amendments, the MMC section 19.321 will continue to function as it has in the past; the Kellogg Treatment Plant will not be explicitly addressed in the Code; the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.

[1] Johnson Gardner, LLC. Memorandum Regarding Decommissioning of Kellogg Treatment Facility. January 22, 2002.

2. Approve only one of the two actions - Action 1, the housekeeping amendments to MMC section 19.321. Only approving Action 1 will make the Community Service Use code more effective, but the Kellogg Treatment Plant will not be explicitly addressed in the Code and the County could propose expansion of the Plant through a CSO application process, which the Planning Commission and City Council would be required to consider and potentially approve based on existing code language.

3. Approve only one of the two actions - Action 2, zoning code and Comprehensive Plan amendments that address the Kellogg Creek Wastewater Treatment Plant. Only approving Action 2 would leave the title and remaining sections of the code language unchanged

Attachments

1. Findings in Support of Approval
2. Strikeout version of revisions to zoning ordinance 19.321 Community Service Overlay.
3. Clean version of revisions to zoning ordinance 19.321 Community Service Overlay.
4. Strikeout version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
5. Clean version of revisions to Comprehensive Plan Chapters 3, 4, and 5.
6. Summary of Policy Compliance
7. Minutes from the Planning Commission hearing on May 23, 2006

Attachment 2

ORDINANCE NO. 1962
MILWAUKIE, OREGON

AN ORDINANCE AMENDING PROVISIONS OF THE MILWAUKIE COMPREHENSIVE PLAN RELATING TO WATER RESOURCES, LAND USES, AND PUBLIC FACILITIES AND AMENDING SECTION 19.321 OF THE MUNICIPAL CODE RELATING TO COMMUNITY SERVICE USES

WHEREAS, Chapter 19.321 of the Municipal Code relating to community services has provided a means for allowing uses that benefit the community to be sited throughout the City;

WHEREAS, problems have arisen in applying Chapter 19.321 that demonstrate that revisions to the Chapter are needed to provide clarity for decision makers, City staff, applicants and the public regarding community service uses;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant, owned and operated by Clackamas County Service District No. 1 (CCSD1), has operated for years on Milwaukie's riverfront;

WHEREAS, the Kellogg Creek Wastewater Treatment Plant has provided an essential public service to both citizens of Milwaukie and those within CCSD1, but at the same time has burdened the City with a wastewater treatment plant adjacent to Riverfront Park, the City's downtown, and Island Station neighborhood;

WHEREAS, the goal of Chapter 19.321 has been to allow community service uses when appropriately located, designed, and operated with minimum adverse impacts on neighborhoods;

WHEREAS, major utility facilities, under most circumstances, have adverse impacts far greater than those of community service uses expressly allowed by Chapter 19.321;

WHEREAS, under some circumstances, it may be possible to locate, design, and operate major utility facilities using modern technologies and designs to reduce their impacts so their impacts do not exceed the impacts of typical community service uses;

WHEREAS, the City's Comprehensive Plan has long called for the relocation of the Kellogg Creek Wastewater Treatment Plant to a different location with less impact on the City, while assuring continued treatment of the City's sewage;

WHEREAS, these Comprehensive Plan provisions have not been effective in removing the wastewater treatment plant;

WHEREAS, the City and CCSD1 agreed to a plan for a regionalized wastewater system that would provide improved sewer service, environmental benefits, cost savings, and the removal of the Kellogg Creek Wastewater Treatment Plant, but which was terminated by the Clackamas

County Board of Commissioners;

WHEREAS, the regionalized plan previously agreed to provides a more effective and efficient approach to sewage treatment than the continued operation of the Kellogg Creek Sewage Treatment Plant;

WHEREAS, it is in the public interest to pursue a plan for sewage treatment that is better for the environment and results in long term savings;

WHEREAS, the City will cooperate with CCSD1 and others in either reinstating the proposal for regionalized wastewater treatment or developing a proposal that would have similar benefits;

WHEREAS, having the Kellogg Creek Treatment Plant remain in service indefinitely is expected to adversely impact the environment and the rates for sewage treatment as compared to alternatives that have already been considered by the City and CCSD1, and will have continued adverse impacts on Milwaukie's Riverfront Park, downtown, and the Island Station neighborhood, unless such impacts are expressly mitigated through plant redesign.

WHEREAS, the City Planning Commission has, after a duly noticed public hearing, recommended that the City Council amend Comprehensive Plan provisions relating to the Kellogg Creek Sewage Treatment Plant and has recommended that the Council amend Chapter 19.321 relating to Community Service uses, both to address various identified problems with the Chapter and to address major utility facilities;

WHEREAS, the City Council has held a duly noticed public hearing to consider the Planning Commission's recommendation and has decided to adopt the changes to the Comprehensive Plan and Municipal Code recommended by the Planning Commission other than the Municipal Code provisions relating to major utility facilities, and has decided to alter some of the language and add additional language for clarity and consistency; now therefore

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: The Milwaukie Comprehensive Plan is amended as shown in Exhibit 1, attached hereto and incorporated by this reference.

Section 2: Municipal Code Section 19.321 and cross-references to that section are amended as shown in Exhibit 2, attached hereto and incorporated by this reference.

Section 3: The Findings in Support of Approval included as Attachment 1 to the Staff Report to the Council are adopted as findings in support of this decision. Pages 1 through 7 of the Staff Report to the Council are adopted as additional findings.

Section 4: This ordinance shall take effect 30 days after adoption.

Read the first time on 6/20/06, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the Council on 6/20/06.

Signed by the Mayor on 6/20/06.

James M Bennett
Mayor

ATTEST:

Pat DuVal
Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN, LLP

Gary Firestone
City Attorney

Exhibit 1

Amendments to Milwaukie Comprehensive Plan

Underlined text is to be inserted

Strikeout ~~text~~ is to be deleted

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1

Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (CCSD1) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

~~The City will cooperate with Clackamas Sewer District #1 to encourage the continued public use of portions of the Kellogg Sewage Treatment Plant site.~~ The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant ~~this~~ site ~~in the future~~. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access ~~recreation~~ will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

~~The City will participate in examining feasible alternatives for decommissioning the Kellogg Creek Treatment Plant. The City will pursue a regional approach, working in partnership with special districts in the North Clackamas County area, to assure adequate sewer service to accommodate projected growth in Milwaukie~~.

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

Exhibit 2

Amendments to Milwaukie Municipal Code

Title 19—Zoning Ordinance

Underlined text is to be inserted

~~Strikeout text is to be deleted~~

SECTION 19.321 COMMUNITY SERVICE ~~OVERLAY~~ USE:

19.321 Community Service ~~Overlay Zone~~ Use CS~~O~~U:

19.321.1 Purpose. This section ~~provides for the~~allows development of certain ~~special~~ uses which, because of their public convenience, necessity, and unusual character, may be appropriately located in most zoning districts, but which may be permitted only if appropriate for the specific location for which they are proposed.~~in one district but not another.~~ This section ~~also~~ provides standards and procedures for review ~~and approval~~ of applications for such community uses.~~including utility and recreational facilities.~~ Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. ~~The community service overlay will function as an overlay designation for public and private institutions in most zones and districts.~~ Approval of a CSU does not change the zoning of the property.

19.321.2 Applicability. Any community service use shall be subject to the provisions of this section~~, unless otherwise directed in primary zones~~. Application must be submitted to establish or modify a community service use. Community service uses include certain private and public utilities, institutions, and recreational facilities as listed below:

A. Institutions-Public/Private and Other Public Facilities.

1. Schools, public or private, and their accompanying sports facilities, daycare centers, private kindergartens;

2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station ~~correctional facilities~~, or other similar buildings;

3. Hospital;

4. Cemetery;

5. Nursing or convalescent home;

6. ~~Churches~~Religious institutions;

7. Community meeting building;

8. Temporary or transitional facility;

9. Other similar uses as determined by the planning commission.

B. Utilities.

1. Sewage pumping stations;

2. Water wells, pump stations, reservoirs, and ~~related~~any other facilities used for production, treatment, and distribution of the municipal water supply;

3. Electrical power substations;

4. Repealed by Ord. 1910;

5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;

6. Repealed by Ord. 1910;

7. Repealed by Ord. 1910;

8. Public transit facilities;

9. Passenger terminal;

10. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, ~~fraternal organization~~ lodge, grange;

2. Public and/or privately owned parks ~~including~~ and golf courses;

3. Pedestrian and bicycle trails~~The 40-Mile Loop~~;

4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;

~~4~~5. Other similar uses as determined by the planning commission.

D. Communication Facilities.

1. Telephone switching station;

2. Telephone, microwave facilities;

3. Radio and television transmission facilities, including studios;

4. Wireless communication facilities.

19.321.3. (Reserved for Future Use)

19.321.~~3~~4 Notice Requirements. Except as provided in Section 19.321.~~4~~5C and 19.321.~~12~~14 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection ~~1101.3~~19.1011.3-Minor Quasi-Judicial Review, Community Service ~~Overlay~~ Use.

19.321.~~4~~5 Standards for ~~Authority to Grant or Deny a~~ Community Service Uses.

A. An application for a community service use may be allowed if the following criteria are met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in ~~of~~ the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;

2. Specific standards for the proposed uses as found in subsections 19.321.~~7~~10-19.321.~~10~~14 are met; ~~and~~

3. The hours and levels of operation of the proposed use arecan be adjusted ~~to be~~ reasonably compatible with surrounding uses~~.~~;

4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and

5. The location is appropriate for the type of use proposed.

19.321.6 Procedures for Reviewing a Community Service Use

A. The planning commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the commission finds that the approval standards in 19.321.5 are met, the commission shall approve the designation of the site for community service use. If the commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the planning commission may attach.

B. In permitting a community service use or the modification of an existing one, the City~~planning commission, or the community development director in the case of a minor change,~~ may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;

2. Establishing a special yard, setback, lot area, or other lot dimension;

3. Limiting the height, size, or location of a building or other structure;

4. Designating the size, number, location, and design of vehicle access points;

5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;

6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or

7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

C. The ~~community development~~ planning director may approve minor modifications to an approved community service use~~changes in any development permit~~ pursuant to a type I procedure, provided that such ~~change~~modification:

1. Does not increase the intensity of any use~~, or the density of residential use~~;

2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the ~~specific~~ standards of Title 19;

3. Does not result in ~~significantly affect adjacent property or uses, will not cause any~~ deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties~~nor significantly affect any public facility; and~~

4. Does not ~~affect~~ alter or contravene any conditions specifically placed on the development by the planning commission or city council~~.~~; and

5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

~~D. The planning commission will hold a public hearing on the establishment of the proposed community service use. If the commission finds that the establishment of the community service use is in the general public interest and that the benefits to the public outweigh the possible adverse impacts of the use, then the commission may approve the designation of the site for community service use. If the commission finds otherwise, the application may be denied. This approval will result in the application of the community service overlay designation to a particular piece of land, subject to any conditions the planning commission may attach.~~

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.~~5~~8**
- **19.321.~~6~~9**
- **19.321.~~7~~10**
- **19.321.~~8~~11**

~~19.321.9 Specific Standards for Churches, Convents and Related Facilities.~~

~~A. A church spire may exceed the maximum height limitation.~~

~~B. The lot is of sufficient size to allow all required yards to be equal to at least two-thirds (2/3) of the height of the principal structure.~~

~~C. (Repealed by Ord. 1893)~~

~~D. Fifteen percent (15%) of the total site is to be landscaped.~~

~~E. Off-street parking as per Chapter 19.500.~~

19.321.~~10~~12 Specific Standards for Institutions—Public~~/~~, Private, Religious, and Other Facilities not Covered by Other Standards.

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

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.

D. The height limitation of a zone may be exceeded to a maximum height of fifty (50) feet provided subsection C above is met.

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

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

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

H. A spire on a religious institution may exceed the maximum height limitation. For purposes of this section, "spire" means a small portion of a structure that extends above the rest of the roofline, or a separate structure that is substantially smaller than the main structure and extends above the roofline of the main structure. "Spire" includes but is not limited to ornamental spires, bell towers, other towers, minarets, and other similar structures or projections. The number of spires on a religious institution property is not limited, so long as the spires remain only a small portion of the area of the structures.

I. The minimum landscaping required for religious institutions is the lesser of 15% of the total site area and the percentage required by the underlying zone.

Renumber subsequent subsections as follows:

- **19.321.~~11~~13**
- **19.321.~~12~~14, including self-references and Table within this subsection**

Update all references to "CSO" or "community service overlay" to "CSU" or "community service use" as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**

Exhibit 1

Amendments to Milwaukie Comprehensive Plan

CHAPTER 3, ENVIRONMENTAL AND NATURAL RESOURCES

Air, Water and Land Resources Quality Element, Objective 4, Policy 1
Milwaukie will continue to support and participate in regional planning programs to improve sanitary sewer services in the area. The City will continue to cooperate with Clackamas County Service District #1 (CCSD1) for the collection and treatment of sanitary sewage. Such cooperation shall include cooperation with CCSD1 regarding regionalized wastewater treatment and replacement or major overhaul of the Kellogg Creek Wastewater Treatment plant to eliminate impacts of that plant on the City and the neighborhood.

CHAPTER 4- LAND USE:

Recreational Needs Element, Objective 7 Policy 5

The Downtown and Riverfront Land Use Framework Plan anticipates redevelopment of the Kellogg Wastewater Treatment Plant site. The City will make reasonable efforts to bring about the decommissioning of the Kellogg Wastewater Treatment Plant in an expeditious but orderly fashion that assures proper sewage treatment for Milwaukie citizens while effectuating a transition to treatment at another location. Reasonable efforts may include revising the Zoning Ordinance to make the existing facility a nonconforming use and restricting any modification of the sewage treatment use at that site. Riverfront access will be maintained with any redevelopment of the treatment plant site.

CHAPTER 5 – TRANSPORTATION/PUBLIC FACILITIES/ENERGY CONSERVATION:

Public Facilities and Services Element, Objective 5, Policy 1

The City will continue to cooperate with the Clackamas County Service District No. 1 in contracting for capacity of the Kellogg Creek Treatment Plant or other plant or plants. The City will comply with Federal and State clean water requirements in managing the wastewater collection system.

Public Facilities and Services Element, Objective 5, Policy 5

The City will use best efforts to decommission the Kellogg Creek Wastewater Treatment Plant and will cooperate with the County, county service districts, Metro, other affected cities, and other parties in examining feasible alternatives for sewage disposal in the transition from the Kellogg plant to some other

sewage treatment facility. The existing plant is aging and will continue to need constant expensive upgrades. A new plant with modern technology and design and economies of scale will provide better sewage treatment and environmental protection. The City's preferred alternative is a regionalized system with a single plant serving all of the area currently served by CCSD No. 1, the Tri-City Service District, and the City of Milwaukie. Such a system would provide for better, more environmentally-friendly sewage treatment, and result in economies of scale. While the City believes this is the best solution, the City is committed to cooperate with other governmental entities and work towards a long-range sewage treatment system that is the best for the region. Future sewage and wastewater facility plans, and related planning efforts, shall take into account and plan for a regional sewage system and facility other than the current Kellogg Creek plant.

Exhibit 2

Amendments to Milwaukie Municipal Code
Title 19—Zoning Ordinance

SECTION 19.321 COMMUNITY SERVICE USE:

19.321 Community Service Use CSU:

19.321.1 Purpose. This section allows development of certain uses which, because of their public convenience, necessity, and unusual character, may be appropriately located in most zoning districts, but which may be permitted only if appropriate for the specific location for which they are proposed. This section provides standards and procedures for review of applications for such community uses. Community service uses may be sited in any zone, except where expressly prohibited, if they meet the standards of this section. Approval of a CSU does not change the zoning of the property.

19.321.2 Applicability. Any community service use shall be subject to the provisions of this section. Application must be submitted to establish or modify a community service use. Community service uses include certain private and public utilities, institutions, and recreational facilities as listed below:

A. Institutions-Public/Private and Other Public Facilities.

1. Schools, public or private, and their accompanying sports facilities, daycare centers, private kindergartens;

2. Government office buildings for local, state, or federal government such as a city hall, courthouse, police station, or other similar buildings;

3. Hospital;

4. Cemetery;

5. Nursing or convalescent home;

6. Religious institutions;

7. Community meeting building;

8. Temporary or transitional facility;

9. Other similar uses as determined by the planning commission.

B. Utilities.

1. Sewage pumping stations;

2. Water wells, pump stations, reservoirs, and any other facilities used for production, treatment, and distribution of the municipal water supply;

3. Electrical power substations;

4. Repealed by Ord. 1910;

5. Public works shops, road shops, yards, bus barns, equipment and material storage yards, and other similar uses;

6. Repealed by Ord. 1910;

7. Repealed by Ord. 1910;

8. Public transit facilities;

9. Passenger terminal;

10. Other similar uses as determined by the planning commission.

C. Recreation Facilities-Public or Private.

1. Private club, lodge, grange;

2. Public and/or privately owned parks and golf courses;

3. Pedestrian and bicycle trails;

4. Public or private recreational facilities such as pools, gyms, indoor and outdoor sports courts or fields, and associated facilities;

5. Other similar uses as determined by the planning commission.

D. Communication Facilities.

1. Telephone switching station;

2. Telephone, microwave facilities;

3. Radio and television transmission facilities, including studios;

4. Wireless communication facilities.

19.321.3. (Reserved for Future Use)

19.321.4 Notice Requirements. Except as provided in Section 19.321.5C and 19.321.14 Wireless communication facilities, the planning commission shall hold a public hearing for a community service use request per the procedures outlined in subsection 19.1011.3-Minor Quasi-Judicial Review, Community Service Use.

19.321.5 Standards for Community Service Uses.

A. An application for a community service use may be allowed if the following criteria are met:

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying

zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met;

2. Specific standards for the proposed uses as found in subsections 19.321.10-19.321.14 are met;

3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses;

4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood; and

5. The location is appropriate for the type of use proposed.

19.321.6 Procedures for Reviewing a Community Service Use

A. The planning commission will hold a public hearing on the establishment of, or major modification of, the proposed community service use. If the commission finds that the approval standards in 19.321.5 are met, the commission shall approve the designation of the site for community service use. If the commission finds otherwise, the application shall be denied. An approval allows the use on the specific property for which the application was submitted, subject to any conditions the planning commission may attach.

B. In permitting a community service use or the modification of an existing one, the City may impose suitable conditions which assure compatibility of the use with other uses in the vicinity. These conditions may include but are not limited to:

1. Limiting the manner in which the use is conducted by restricting the time an activity may take place and by minimizing such environmental effects as noise and glare;

2. Establishing a special yard, setback, lot area, or other lot dimension;

3. Limiting the height, size, or location of a building or other structure;

4. Designating the size, number, location, and design of vehicle access points;

5. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way including full street improvements;

6. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area; and/or

7. Limiting or otherwise designating the number, size, location, height and lighting of signs.

C. The planning director may approve minor modifications to an approved community service use pursuant to a type I procedure, provided that such modification:

1. Does not increase the intensity of any use;

2. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19;

3. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties;

4. Does not alter or contravene any conditions specifically placed on the development by the planning commission or city council; and

5. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

19.321.7 (Reserved for Future Use)

Renumber subsequent subsections as follows:

- **19.321.5 becomes 19.321.8**
- **19.321.6 becomes 19.321.9**
- **19.321.7 becomes 19.321.10**
- **19.321.8 becomes 19.321.11**

19.321.12 Specific Standards for Institutions—Public, Private, Religious, and Other Facilities not Covered by Other Standards.

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

B. When located in or adjacent to a residential zone, access should be located on a collector street if practicable. If access is to a local residential street, consideration of a request shall include an analysis of the projected average daily trips to be generated by the proposed use and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the use. Uses which are estimated to generate fewer than twenty (20) trips per day are exempted from this subsection B.

C. When located in a residential zone, lot area shall be sufficient to allow required setbacks that are equal to a minimum of two thirds (2/3) of the height of the principal structure. As the size of the structure increases, the depth of the setback must also increase to provide adequate buffering.

D. The height limitation of a zone may be exceeded to a maximum height of fifty (50) feet provided subsection C above is met.

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

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

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

H. A spire on a religious institution may exceed the maximum height limitation. For purposes of this section, "spire" means a small portion of a structure that extends above the rest of the roofline, or a separate structure that is substantially smaller than the main structure and extends above the roofline of the main structure. "Spire" includes but is not limited to ornamental spires, bell towers, other towers, minarets, and other similar structures or projections. The number of spires on a religious institution property is not limited, so long as the spires remain only a small portion of the area of the structures.

I. The minimum landscaping required for religious institutions is the lesser of 15% of the total site area and the percentage required by the underlying zone.

Renumber subsequent subsections as follows:

- **19.321.11 becomes 19.321.13**
- **19.321.12 becomes 19.321.14, including self-references and Table within this subsection**

Update all references to "CSO" or "community service overlay" to "CSU" or "community service use" as follows:

- **15.32.030.A**
- **19.202**
- **19.505.1**
- **19.507.1**
- **19.1011.3.C**
- **19.1410.4.B.2**
- **19.1504.1 Table 1**

To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenneth Asher, Community Development and Public Works Director
Katie Mangle, Planning Director

From: Ryan Marquardt, Assistant Planner

Subject: Approval of Measure 37 Request for Waiver of Flag Lot Standards (Land Use File # M37-06-01)

Date: February 8, 2007 for February 20, 2007 Regular Session

Action Requested

Approve the Measure 37 claim submitted by Richard L. Ballard ("applicant") for the property located at 11964 SE 37th Avenue ("site") by waiving the flag lot pole width standard.

Background

Voters approved measure 37 as state law in 2004. The law requires governments to compensate property owners if a regulation decreases the value of their property, or to waive such regulation. Milwaukie adopted Section 1.20 of the Municipal Code to implement the state law. A valid Measure 37 claim must demonstrate that the claimant owned the property before a regulation was enacted and that the regulation has decreased the property value.

The applicant submitted a Measure 37 claim on November 3, 2006 (see Attachment 2 - Measure 37 Application, Land Use File # M37-06-01). The claim is for the property at 11964 SE 37th Avenue. The claim requests that the City waive the regulation pertaining to flag lot access pole width (Milwaukie Municipal Code (MMC) 19.426.4) or compensate the applicant for the reduced property value resulting from the regulation.

The applicant acquired an interest in the property on August 27, 1998 when he entered into a contract to purchase the site. The City standards in place when the applicant acquired an interest in the property required a flag lot access pole width of fifteen feet.

The applicant applied for a minor land partition of the site on November 16, 1998. On March 29, 1999, the City granted approval of a preliminary plat for a minor land partition at 11964 SE 37th Avenue. The approved preliminary plat was for a flag lot with a fifteen-foot wide access pole. The applicant did not proceed with recording a final plat, and the approval of the minor land partition lapsed one year after it was granted (see Attachment 3 - Preliminary Plat, MLP-1998-011, which shows the approved partition).

On November 17, 1998, the City of Milwaukie adopted Ordinance 1849, which required a flag lot access pole width of twenty feet. Current City standards, adopted in Ordinance 1907 on August 20, 2002, require a minimum flag lot access pole width of twenty-five feet (see Attachment 4 - Current and Previous Flag Lot Standards). The existing dwelling is situated on the site such that anything wider than a fifteen foot access pole would cause the existing dwelling to fail to meet the required setbacks of the Residential zone R7. The 2002 width standard for the flag lot pole effectively prohibits a partition of the site, as it currently exists.

If the Council approves a Measure 37 claim, it has the option of either waiving a regulation or paying compensation for the reduction in property value. An appraisal submitted by the applicant asserts that the current value of the property is $305,000, and would increase to $420,000 if the lot could be partitioned. This establishes that the 2002 flag pole width regulation does reduce the value of the property.
The waiver would apply only to the width of the access pole for a flag lot. All other minor land partition and development standards would remain in effect (see Attachment 5 - Memo from Planning Department Regarding Minor Land Partition for 11964 SE 37th Avenue).

The Planning Director believes that the applicant has a valid Measure 37 claim because his property value has been reduced by a City regulation enacted after the applicant acquired an interest in the property. The Planning Director recommends that the City waive the existing flag lot pole width regulation to allow a fifteen-foot access pole on this site.

The recommended findings of approval are provided in the attached Final Order (see Attachment 1 - Final Order, Exhibit A, Recommended Findings in Support of Approval).

Concurrence

The City Attorney concurs with the Planning Director's assessment (see Attachment 6 - Memo to City Council from Gary Firestone, City Attorney's Office).

Fiscal Impact

If the City grants the waiver, the City must refund the $1,515 deposit paid by the applicant, as required by MMC Subsection 1.20.100. The City has spent approximately 25 hours of staff time and 5 hours of the City Attorney's time in processing this application. There are no other fiscal impacts to the City.

Work Load Impacts

Waiver of the flag lot access pole width will not directly result in additional workload impacts. Waiving the regulation will likely lead to an application for a minor land partition that will require review by City staff.

Alternatives

The City Council may decide to pay compensation for the reduction in value of the applicant's property. The City Attorney advises that the exact amount owed as compensation has not yet been determined; a compensation amount would have to be decided.

Attachments

1) Final Order
   Exhibit A: Recommended Findings in Support of Approval

2) Measure 37 Application, Land Use File # M37-06-01

3) Preliminary Plat approved in Land Use File # MLP-1998-011

4) Current And Previous Flag Lot Standards
   Exhibit A: Ordinance 1849 flag lot code changes
   Exhibit B: Ordinance 1907 flag lot code changes

5) Memo from Planning Department Regarding Minor Land Partition for 11964 SE 37th Avenue

6) Memo to City Council from Gary Firestone, City Attorney's Office

Attachment 1

BEFORE THE CITY COUNCIL OF THE CITY OF MILWAUKIE

In the Matter of the Measure 37 (ORS 197.352) FINAL ORDER
Claim of Richard L. Ballard for Property
Located at 11964 SE 37th Avenue
File # M37-06-01

This matter came before the Milwaukie City Council on the application of Richard L. Ballard for a waiver of the current standards for the flagpole of a flag lot. The City held a duly noticed public hearing on February 20, 2007 as provided by Milwaukie Municipal Code Chapter 1.20. Having considered all the evidence under the applicable legal standards, the City Council finds and orders as follows:

1. Richard L. Ballard is an owner of the property located at 11964 SE 37th Avenue.

2. Mr. Ballard first acquired an interest in the property on August 27, 1998.

3. As of August 27, 1998, the property could have been partitioned into two lots, with one lot being a flag lot with a 15 foot wide "flagpole" to provide street access. That partition could have been accomplished without affecting the house that is located on the property.

4. On November 17, 1998, the City adopted new standards for flag lots that include a minimum width requirement of 20 feet for the flagpole.

5. The property cannot be partitioned under currently applicable standards while maintaining the existing house in its current location.

6. The market value of the property with the right to partition the property into two lots and maintain the existing house exceeds the market value of the property without the right to partition the property and maintain the existing house.

7. Mr. Ballard is entitled to either compensation or a waiver of restrictions under ORS 197.352.

Based on the findings in Attachment A, the Council hereby waives the application of the 25 foot flagpole width standard of MMC 19.426.4. If Mr. Ballard applies to partition the property, the City shall apply the flagpole width standard of 15 feet that applied at the time Mr. Ballard acquired an interest in the property.

DATED this ___ day of _____, 200_

_____
Mayor

Approved as to form:

_____

City Attorney

Attest:

_____

City Recorder

Attachment 1
Exhibit A

Land Use File # M37-06-01
Findings in Support of Approval

Code sections not addressed are found to be not applicable to the application.

1. Mr. Richard L. Ballard (the applicant) submitted a claim for compensation for reduction in property value for the property at 11964 SE 37th Avenue (the site) to the City of Milwaukie on November 3, 2007.

2. Milwaukie Municipal Code (MMC) Section 1.20.030 outlines submittal requirements for a written demand for compensation. The Council finds that the application submitted by Richard Ballard on November 3, 2006 contains all the information required by this section.

3. MMC Section 1.20.040 requires notice of public hearing for a reduction in property value claim. Notice was sent to the property owner of the subject site, the Lake Road Neighborhood District Association, and property owners within 250 feet of the site on January 31, 2007. The Council finds that the notice requirements of this section are met.

4. MMC Section 1.20.050 requires city staff to prepare a staff report analyzing the claim. The staff report has been reviewed by the appropriate staff members and was mailed to the City Council, applicant, and made available to the public on February 13, 2007. The Council finds that requirements of this section are met.

5. MMC Section 1.20.060 requires the City Council to hold a public hearing on the claim within 150 days of the claim's submittal, and MMC Section 1.20.070 requires that the claimant and any other person have an opportunity to present evidence and argument at the hearing. The City Council held a hearing on February 20, 2007 and the applicant and other persons were provided an opportunity to testify. The City Council finds that the requirements of MMC Sections 1.20.060 and 1.20.070 are met.

6. MMC Section 1.20.080 lists the actions the City Council may take on a claim for compensation. The City Council finds that the claimant acquired an interest in the site on August 27, 1998. On November 17, 1998, the City adopted new standards for flag lots that include a minimum width requirement of 20 feet for the flagpole. As of August 27, 1998, the property could have been partitioned into two lots, with one lot being a flag lot with a 15 foot wide "flagpole" to provide street access. That partition could have been accomplished without affecting the house that is located on the property. The property cannot be partitioned under currently applicable standards while maintaining the existing house in its current location. The market value of the property with the right to partition the property into two lots and maintain the existing house exceeds the market value of the property without the right to partition the property and maintain the existing house.

Based on these findings, the City Council decides to waive the regulation requiring a 25-foot flag lot access pole and apply a 15-foot wide access pole standard to any partition application for the property. The City will also allow a variation to driveway spacing standards. The City Council finds that this action is authorized by MMC 1.20.080.C.

7. MMC Section 1.20.100 requires the claimant to reimburse the City for costs incurred in processing the claim if the claim is invalid. The City Council finds that the claimant has a valid claim, and will refund the $1,515 paid by the claimant when the claim was submitted.

8. The City Council finds that the waiver applies only to the regulation for flag lot access pole width because it is the only regulation that prohibits the applicant from partitioning the property and has been demonstrated to decrease the property value. All other regulations currently in the Milwaukie Municipal Code apply to the property and will be applied to land use applications or development permits submitted by the applicant for this property.

ATTACHMENT 2

CITY OF MILWAUKIE

PLANNING DEPARTMENT
6101 SE JOHNSON CREEK BLVD.
MILWAUKIE, OREGON 97206

PHONE: (503) 786-7630
FAX: (503) 774-8236

Measure 37 Claim for Compensation

CLAIMANT: (Please print or type)

CLAIMANT (current property owner): RICHARD L. BALLARD Phone: 503 659 3688

Address: P.O. Box 22134 Milwaukie, OR Zip: 97269

Date that property was acquired: 8-31-98

Name of family member who acquired property (if different from claimant):

AFFECTED PROPERTY:

Address: 11964 S.E. 37TH AVE Map & Tax Lot(s): 11E36DA04600

Comprehensive Plan Designation: Zoning: R7 Size of property: .47 ACRES

NATURE OF CLAIM:

Regulation(s) alleged to restrict the use of affected property: FLAG LOT POLE WIDTH MINIMUM INCREASED FROM 15' TO 25'

Claimant seeks: ☒ Compensation in the amount of $115,000.00 OR ☒ Waiver of regulation

☐ Suspension of regulation ☐ Modification of regulation

ADDITIONAL INFORMATION (optional):

Please describe how the restriction affects the value of the property (use additional sheets if necessary):

UNABLE TO DIVIDE LOT, THUS, LOSING THE VALUE OF A SEPERATE BUILDING LOT.

Please describe the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation (use additional sheets if necessary):

DUE TO THE POSITION OF THE EXISTING SFR, IT IS NOT POSSIBLE TO MEET THE 25' WIDTH. THERE IS ONLY 22' FROM PROPERTY LINE TO BUILDING, WITH A 5' SETBACK ONLY 17' REMAINS.

Please attach an appraisal showing the difference in property value with and without the regulation. (The City encourages the use of certified or licensed appraisers.)

CONTINUED ON REVERSE

ADDITIONAL INFORMATION (optional) continued:

Please list all persons with an ownership interest in or lien on the property:

Name:	Phone:
Address:	Zip:
Name:	Phone:
Address:	Zip:
Name:	Phone:
Address:	Zip:
Name:	Phone:
Address:	Zip:
Name:	Phone:
Address:	Zip:
Name:	Phone:
Address:	Zip:

PLEASE NOTE: The Land Use Committee (LUC) of your Neighborhood District Association (NDA) will receive a review copy of this application. They may contact you and/or you may wish to contact them:

NDA: LUC Chair: Phone:

ATTEST: I am the property owner. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: RLB Date: 11-3-06

THIS SECTION FOR OFFICE USE ONLY:

File #: M-37-06-01 Fee: $~~NONE~~ ISIS Rcd. by: RWM

Notes:

Date stamp:

RECEIVED

NOV 03 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

11-27-06

FAX TO: RYAN MARQUARDT

RYAN HERE IS THE PROOF OF PURCHASE
DATED AUGUST 27TH 1998
AND A BARGAIN AND SALE DEED
FROM KAREN BALLARD TO MYSELF.
PLEASE CALL IF YOU NEED MORE INFO—

THANKS,
Dick —

TOTAL 5 PAGES.

DICK BALLARD
503 659 3698

RECEIVED
NOV 2 8 2006
CITY OF MILWAUKIE
PLANNING DEPARTMENT

RECEIVED
NOV 2 8 2006
CITY OF MILWAUKIE
PLANNING DEPARTMENT

FORM No. 82—CONTRACT—REAL ESTATE—Seller Pays Entire Brokerage or Commission. [illegible]

CONTRACT—REAL ESTATE

THIS CONTRACT, Made this 27 day of AUGUST, 19 98, between LEWIS J. ROSS, hereinafter called the seller, and RICHARD L. BALLARD, hereinafter called the buyer,

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the seller agrees to sell unto the buyer and the buyer agrees to purchase from the seller all of the following described lands and premises situated in CLACKAMAS County, State of [illegible], to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

for the sum of ONE HUNDRED SIXTY THOUSAND AND NO/100 Dollars ($ 160,000.00), hereinafter called the purchase price, an amount of which FIVE THOUSAND AND NO/100 Dollars ($ 5,000.00) is paid on the execution hereof (the receipt of which is hereby acknowledged by the seller), and the remainder to be paid to the order of the seller at the times and in amounts as follows, to-wit:

THERE SHALL BE NO PAYMENTS DUE EXCEPT FINAL BALANCE OF $155,000.00 WHICH IS DUE UPON BUYER'S COMPLETION OF MINOR LAND PARTITION OR UPON SELLER VACATES PREMISES AND BUYER HAS COMPLETE USE OF PROPERTY.

All of the purchase price may be paid at any time; all of the deferred payments shall bear interest at the rate of -0- per cent per annum from N/A, and N/A is additional to the minimum regular payments above required. NO PRORATES OF TAXES - SELLER SHALL PAY BUYER FOR HIS SHARE OF TAXES FROM 7/1/98 TO POSSESSION AT THE TIME THIS CONTRACT IS PAID IN FULL.

The buyer shall be entitled to possession of the lands on HABOR 1, 19 99, and may retain such possession so long as buyer is not in default under the terms of this contract. The buyer agrees that of all times buyer will keep the premises and the buildings, now or hereafter created thereon, in good condition and repair and will not suffer or permit any waste or strip thereof; that buyer will keep the premises free from construction and all other liens and save the seller harmless therefrom and reimburse seller for all costs and attorney's fees incurred by seller in defending against any such liens; that buyer will pay all taxes hereafter levied against the property, as well as all water rents, public charges and municipal liens which hereafter lawfully may be imposed upon the premises, all prior to delinquency; that buyer will insure and keep insured all buildings now or hereafter created on the premises against loss or damage by fire (with extended coverage) in an amount not less than $ [illegible] in a company or companies satisfactory to the seller, specifically naming the seller as an additional insured, with loss payable first to the seller and then to the buyer as their respective interests may appear and all policies of insurance to be delivered to the seller or some one for the benefit of the seller; that buyer will pay all such taxes, costs, water rents, taxes or charges or to procure and pay for such insurance, the seller may do so and any payment so made shall be added to and become a part of the debt secured by this contract and shall bear interest at the rate aforesaid, without waiver, however, of any right arising to the seller for buyer's default of contract. &c

The described premises are now subject to a contract or a mortgage (the word mortgage as used herein includes within its meaning a trust deed) recorded in the Book, Mortgage, Miscellaneous Records of the aforementioned county in book/reel/volume No. [illegible] on page [illegible], or as fee/file/instrument/microfilm/reception No. 93-00710, (reference to which hereby is made) on which the unpaid principal balance thereof at this time is $ 71,653.24 and no more, with interest paid to AUGUST 1, 19 98, payable in installments of not less than $ [illegible] per MONTH, [illegible] the seller agrees to pay all taxes due and to become due on the contract or mortgage promptly at the times required for the payments and to keep the contract or mortgage free from default; should any of the installments on the contract or mortgage be paid by the seller include taxes or insurance premiums on the premises, the buyer agrees on seller's demand herein to repay to the seller that portion of the installments so paid applicable to taxes and insurance premiums; should the seller fail to pay any such taxes, costs, water rents, taxes or charges or to procure and pay for such insurance, the required by the contract or mortgage to be paid or otherwise perform the contract or mortgage and the buyer shall be entitled to credit for all sums so paid by buyer against the same next to become due on the above purchase price pursuant to the terms of this contract.

The seller agrees that at seller's expense and within 10 days from the date hereof, seller will furnish unto buyer a title insurance policy (marked (In an amount equal to the purchase price) merchantable title in and to the premises in the seller as at subsequent to the date of this agreement, save and except the usual printed exceptions and the building and other restrictions and covenants now of record, if any, and the contract or mortgage. Seller also agrees that when the purchase price is fully paid and upon request and upon surrender of this agreement, seller will deliver a good and sufficient deed conveying the premises in fee simple unto the buyer, buyer's heirs and assigns, free and clear of all encumbrances other than stated herein, permitted or arising by, through or under seller, excepting, however, the easements and restrictions, and the liens, municipal liens, water rents and public charges to accrued by the buyer and further excepting all liens and encumbrances created by the buyer or buyer's assigns.

(Continued on Reverse)

IMPORTANT NOTICE: Delete, by lines out, whichever phrase and whichever warranty [A] or [B] is not applicable. If warranty [A] is applicable and if the seller is a creditor, as such word is defined in the Truth-in-Lending Act and Regulation Z, the seller MUST comply with the Act and Regulation by making required disclosures; for this purpose, use Stevens-Ness Form No. 1319 or equivalent.

LEWIS J. ROSS
11964 SE 37th Ave.
MILWAUKIE, OR 97222
Grantor's Name and Address

RICHARD L. BALLARD
11923 SE MCLOUGHLIN
MILWAUKIE, OR 97222
Grantee's Name and Address

After recording return to (Name, Address, Zip):
RICHARD L. BALLARD
11923 SE MCLOUGHLIN
MILWAUKIE, OR 97222

Until a change is requested all tax statements shall be sent to (Name, Address, Zip):
RICHARD L. BALLARD
11923 SE MCLOUGHLIN
MILWAUKIE, OR 97222

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON, County of ..... } ss.
I certify that the within instrument was received for record on the ..... day of ....., 19..., at ..... o'clock ....M., and recorded in book/reel/volume No. ..... on page ..... and/or as fee/file/instrument/microfilm/reception No. ....., Record of Deeds of said County.
Witness my hand and seal of County affixed.

NAME TITLE
By ....., Deputy

Recorded By TICOR TITLE

C68009

RECEIVED

NOV 2 8 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

And it is understood and agreed between the parties that [illegible] of the expense of this contract, and in case the buyer shall fail to make the payments above required, or any of them, punctually within 30 days of the time limited therefor, or fail to keep any agreement herein contained, then the seller shall have the following rights and options:

(1) To declare this contract cancelled for default and null and void, and to declare the purchaser's rights forfeited and the debt extinguished, and to retain sums previously paid hereunder by the buyer;

(2) To declare the whole unpaid principal balance of the purchase price with the interest thereon at once due and payable; and/or

(3) To foreclose this contract by suit in equity.

In any of such cases, all rights and interest created or then existing in favor of the buyer as against the seller hereunder shall utterly cease and the right to the possession of the premises above described and all other rights acquired by the buyer hereunder shall revert to and revest in the seller without any act of re-entry, or any other act of the seller to be performed and without any right of the buyer of return, reclamation or compensation for moneys paid on account of the purchase of the property as absolutely, fully and perfectly as if this contract and such payments had never been made; and in case of such default all payments therefore made on this contract are to be retained by and belong to the seller as the agreed and reasonable rent of the premises up to the time of such default. And the seller, in case of such default, shall have the right immediately, or at any time thereafter, to enter upon the land aforesaid, without any process of law, and take immediate possession thereof, together with all the improvements and appurtenances thereon or thereto belonging.

The buyer further agrees that failure by the seller at any time to require performance by the buyer of any provision hereof shall in no way affect seller's right hereunder to enforce the same, nor shall any waiver by the seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

** THE SELLER SHALL MAINTAIN EXISTING FIRE INSURANCE POLICY ON PROPERTY.

The true and actual consideration paid for this transfer, stated in terms of dollars, is $ 180,000.00 ... ● However, the actual consideration consists of or includes other property or value given or promised which is part of the whole consideration (indicate which). ●

In case suit or action is instituted to foreclose this contract or to enforce any provision hereof, the losing party in the suit or action agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in the suit or action and if an appeal is taken from any judgment or decree of the trial court, the losing party further promises to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees on such appeal.

In construing this contract, it is understood that the seller or the buyer may be more than one person or a corporation; that if the context so requires, the singular pronoun shall be taken to mean and include the plural and the masculine and the generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but their respective heirs, executors, administrators, personal representatives, successors in interest and assigns as well.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate; if either of the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

LEWIS J. ROSS

RICHARD L. BALLARD

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

* CAUTION: Comply with ORS 93.905 at any time to exercising this remedy.

NOTE—The sentence between the symbols ●, if not applicable, should be deleted. See ORS 93.030.

STATE OF OREGON, County of CLACKAMAS) ss. August 27, 1938.

This instrument was acknowledged before me on August 27, 1938.

by LEWIS J. ROSS AND RICHARD L. BALLARD, 19

This instrument was acknowledged before me on

by

OFFICIAL SEAL
BARBARA KAMENS
NOTARY PUBLIC-OREGON
COMMISSION NO. 404560
MY COMMISSION EXPIRES MAR. 26, 1999

Notary Public for Oregon

My commission expires

ORS 93.635 (1) All instruments contracting to convey fee title to any real property, at a time more than 12 months from the date that the instrument is executed and the parties are bound, shall be acknowledged, in the manner provided for acknowledgment of deeds, by the conveyor of the title to be conveyed. Such instruments, or a memorandum thereof, shall be recorded by the conveyor not later than 15 days after the instrument is executed and the parties are bound thereby.

ORS 93.990 (2) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than $100.

(Description Continued)

RECORDED IN CLACKAMAS COUNTY
JOHN KAUFFMAN, COUNTY CLERK

2001-010639

$31.00

00113456200100106390020029

02/16/2001 01:05:30 PM

D-D Cnt=1 Stn=1 ELIZABETH
$10.00 $11.00 $10.00

After recording return to:
Richard L. Ballard
c/o Stahancyk, Gearing, Rackner & Kent
806 SW Broadway, Suite 200
Portland, OR 97205

Send tax statements to:

Richard L. Ballard
11964 SE 37th Ave.
Milwaukie, OR 97222

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NOV 2 8 2006
CITY OF MILWAUKIE
PLANNING DEPARTMENT

BARGAIN AND SALE DEED

Karen L. Ballard, Grantor, conveys to Richard L. Ballard, Grantee, her entire right, title and interest in the real property commonly known as 11964 SE 37th Avenue, Milwaukie, OR 97222 and more particularly described as follows, subject to all encumbrances of record:

See attached Exhibit A

The true and actual consideration for this conveyance is, stated in terms of dollars: Zero Dollars ($0.00). This transfer is made in accordance with the Stipulated Judgment of Dissolution of Marriage in Clackamas County Circuit Court Case No. DR0004155, Marriage of Karen Ballard and Richard Ballard.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Karen L. Ballard

STATE OF OREGON,)
)
COUNTY OF)

On February 12, 2001, the foregoing instrument was acknowledged before me by Karen L. Ballard.

Cecil A Reniche-Smith
Notary Public - State of Oregon
My Commission Expires: 11/13/2004

OFFICIAL SEAL
CECIL A RENICHE-SMITH
NOTARY PUBLIC-OREGON
COMMISSION NO. 340345
MY COMMISSION EXPIRES NOV 13, 2004

RECEIVED

NOV 2 8 2006

CITY OF MILWAUKIE
PLANNING DEPARTMENT

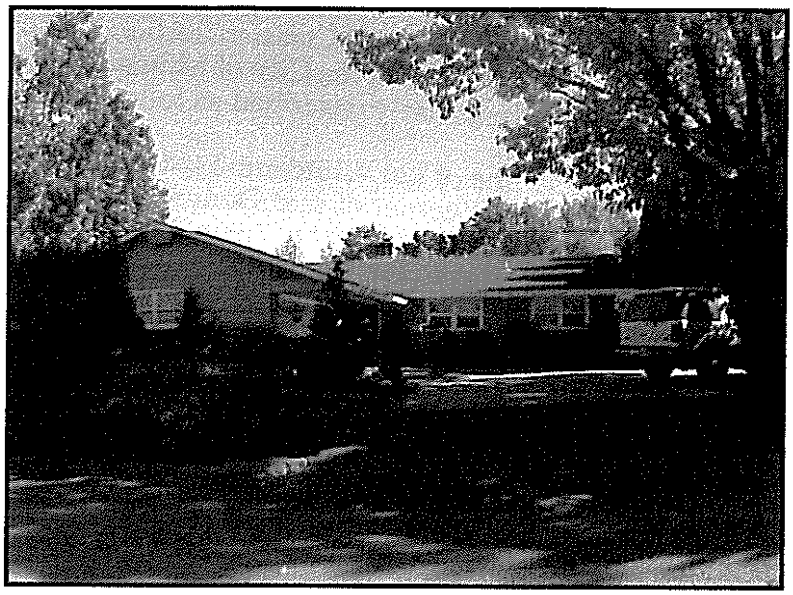
EXHIBIT A

PARCEL 1: A tract of Joseph Kellogg Donation Land Claim in Section 36, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at a point in the Easterly line of Lot Whitcomb Donation Land Claim that is 1147.7 feet Northerly from the Southeast corner of said Donation Land Claim; thence South 69° 16-1/2' East 398.86 feet to a point in the center line of Lake Road; thence North 0° 41-1/2' West 513.7 feet; thence North 89° 00' East 20 feet to the East line of 37th Street; thence North 0° 41' 30" West 229.60 feet to an iron pipe; thence North 47° 44' 30" East 19.42 feet to an iron pipe; thence north 47° 44' 30" East 122.08 feet; thence North 0° 50' 30" East 10.09 feet to an iron pipe and the true point of beginning; thence North 88° 35' 30" East along the North line of tract described in Deed recorded on September 17, 1959 in Deed Book 561 page 258, 100 feet to the Northeast corner of said tract; thence North 1° 24' 30" West 100 feet; thence South 88° 35' 30" West 100 feet, more or less, to the Easterly line of 37th Avenue; thence Southerly along the said Easterly street line, 100.08 feet, more or less, to the point of beginning.

PARCEL 2: A tract of land in the Joseph Kellogg Donation Land Claim in Section 36, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at a point in the Easterly line of the Lot Whitcomb Donation Land Claim that is 1147.7 feet, Northerly from the Southeast corner of said Donation Land Claim; thence South 69° 16' 30" East 398.88 feet along the center line of Lake Road; thence North 0° 41' 30" West 513.7 feet to a two inch iron pipe ten inches below the surface of SE 37th Avenue; thence North 0° 41' 30" West 308.67 feet; thence North 47° 44' 30" East 141.82 feet; thence North 0° 50' 30" East 0.84 feet; thence North 88° 35' 30" East 120.02 feet to and along the North line of that tract conveyed to T.V. Havlicek, Jr., et ux, by Deed recorded September 17, 1959 in Deed Book 561 page 259 Deed Records of Clackamas County, Oregon, to the Northeast corner of said Havlicek tract, being also the Southeast corner of that tract conveyed to Van I. Mumma, et ux, by Deed recorded September 29, 1960 in Deed Book 577 page 672, Deed Records of Clackamas County, Oregon and the true point of beginning; thence North 88° 35' 30" East 105.70 feet to the West line of the tract conveyed to Charles A. Quall by Deed recorded October 14, 1930 in Deed Book 208 page 322, Deed Records of Clackamas County, Oregon; thence North 1° 24' West 100.0 feet along said West line of said Quall tract; thence South 88° 35' 30" West 105.70 feet to the Northeast corner of said Mumma tract; thence South 1° 24' East 100.0 feet to the true point of beginning.



APPRAISAL OF REAL PROPERTY

LOCATED AT:

11964 SE 37th Avenue
Section 36, Township 1S, Range 1E, Quarter DA, TL 04800
Milwaukie, OR 97269

FOR:

Dick Ballard
P.O. Box 22134
Milwaukie, OR 97269

AS OF:

10/9/06

BY:

Linda L. Slocum, #L000461

Uniform Residential Appraisal Report

File # T6-1001

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

SUBJECT

Property Address 11964 SE 37th Avenue | City Milwaukie | State OR | Zip Code 97269
Borrower N/A | Owner of Public Record Richard L. Ballard | County Clackamas
Legal Description Section 36, Township 1S, Range 1E, Quarter DA, TL 04800
Assessor's Parcel # 00031806 | Tax Year 2005 | R.E. Taxes $ 2,414.53
Neighborhood Name N/A | Map Reference 657/A-3 | Census Tract 215.11 Block 1
Occupant [X] Owner [ ] Tenant [ ] Vacant | Special Assessments $ N/A | [ ] PUD HOA $ N/A [ ] per year [ ] per month
Property Rights Appraised [X] Fee Simple [ ] Leasehold [ ] Other (describe)
Assignment Type [ ] Purchase Transaction [ ] Refinance Transaction [X] Other (describe) Measure 37 Filing
Lender/Client Dick Ballard | Address P.O. Box 22134, Milwaukie, OR 97269
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? [ ] Yes [X] No
Report data source(s) used, offering price(s), and date(s). RMLS - No listing of the subject property was found within the last 12 months.

CONTRACT

I [ ] did [ ] did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. N/A

Contract Price $ N/A | Date of Contract N/A | Is the property seller the owner of public record? [ ] Yes [ ] No Data Source(s)
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? [ ] Yes [X] No
If Yes, report the total dollar amount and describe the items to be paid.

NEIGHBORHOOD

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics	One-Unit Housing Trends	One-Unit Housing			Present Land Use %	
Location [ ] Urban [X] Suburban [ ] Rural	Property Values [X] Increasing [ ] Stable [ ] Declining	PRICE	AGE		One-Unit	75 %
Built-Up [X] Over 75% [ ] 25-75% [ ] Under 25%	Demand/Supply [ ] Shortage [X] In Balance [ ] Over Supply	$ (000)	(yrs)		2-4 Unit	%
Growth [ ] Rapid [X] Stable [ ] Slow	Marketing Time [X] Under 3 mths [ ] 3-6 mths [ ] Over 6 mths	135	Low	0	Multi-Family	5 %
Neighborhood Boundaries The neighborhood is the city of Milwaukie, and is generally bounded by city		760	High	110	Commercial	10 %
limits at the north and south, I-205 at the east, and McLoughlin Blvd. at the west.		270	Pred.	30-40	Other	10 %

Neighborhood Description The subject's neighborhood is a suburban area just south of Hwy. 224. Shopping and services are available in the immediate area, and public transportation is available throughout. The neighborhood is within Milwaukie city limits, and all typical utilities are available. Hwy. 224, Mcloughlin Blvd., I-205 and various surface routes provide good commuter access to nearby employment centers.
Market Conditions (including support for the above conclusions) The Milwaukie area has exhibited steady growth over the last decade. The economy is diverse, and unemployment is relatively low. Real estate values continued to appreciate, and values in the immediate area are reported to be rising at about 19.7% annually. Then trend is for continued appreciation in real estate values.

SITE

Dimensions 100.7x201.70' | Area 20,473 Sq.Ft. | Shape Rectangular | View None
Specific Zoning Classification R-7 | Zoning Description Residential (7,000 SF minimum site size)
Zoning Compliance [X] Legal [ ] Legal Nonconforming (Grandfathered Use) [ ] No Zoning [ ] Illegal (describe)
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? [ ] Yes [X] No If No, describe The highest and best use of the site is to partition the property to create a second building lot.

Utilities	Public	Other (describe)		Public	Other (describe)	Off-site Improvements - Type	Public	Private
Electricity	[X]	[ ]	Water	[X]	[ ]	Street Asphalt	[X]	[ ]
Gas	[X]	[ ]	Sanitary Sewer	[X]	[ ]	Alley N/A	[ ]	[ ]

FEMA Special Flood Hazard Area [ ] Yes [X] No | FEMA Flood Zone C | FEMA Map # 4100190001B | FEMA Map Date 6/18/80
Are the utilities and off-site improvements typical for the market area? [X] Yes [ ] No If No, describe
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? [ ] Yes [X] No If Yes, describe
No adverse encroachments or other adverse site conditions were noted.

IMPROVEMENTS

General Description	Foundation	Exterior Description materials/condition	Interior materials/condition
Units [X] One [ ] One with Accessory Unit	[ ] Concrete Slab [X] Crawl Space	Foundation Walls Concrete/Avg	Floors Hdwd/Good
# of Stories 1.0	[ ] Full Basement [ ] Partial Basement	Exterior Walls Cedar Shingle-Good	Walls Drywall-Good
Type [X] Det. [ ] Att. [ ] S-Det./End Unit	Basement Area sq.ft.	Roof Surface Arch Comp-Good	Trim/Finish Wood-Good
[X] Existing [ ] Proposed [ ] Under Const.	Basement Finish %	Gutters & Downspouts Pntd. Metal/Good	Bath Floor Tile-Good
Design (Style) Ranch	[ ] Outside Entry/Exit [ ] Sump Pump	Window Type Wd Dbl Hung/Avg	Bath Wainscot Tile-Good
Year Built 1962	Evidence of [ ] Infestation	Storm Sash/Insulated Yes	Car Storage [ ] None
Effective Age (Yrs) 10	[ ] Dampness [ ] Settlement	Screens Yes	[X] Driveway # of Cars 2+
Attic [ ] None	Heating [X] FWA [ ] HWBB [ ] Radiant	Amenities [ ] Woodstove(s) #	Driveway Surface Concrete
[ ] Drop Stair [ ] Stairs	[ ] Other Fuel Gas	[X] Fireplace(s) # 1 [ ] Fence	[X] Garage # of Cars 2
[ ] Floor [X] Scuttle	Cooling [ ] Central Air Conditioning	[X] Patio/Deck [X] Porch	[ ] Carport # of Cars
[ ] Finished [ ] Heated	[ ] Individual [ ] Other	[ ] Pool [ ] Other Studio/GH	[X] Att. [ ] Det. [ ] Built-in

Appliances [X] Refrigerator [X] Range/Oven [X] Dishwasher [X] Disposal [ ] Microwave [X] Washer/Dryer [ ] Other (describe)
Finished area above grade contains: 6 Rooms 3 Bedrooms 2 Bath(s) 1,268 Square Feet of Gross Living Area Above Grade
Additional features (special energy efficient items, etc.). See attached addenda.

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). The subject is in good overall condition due to recent updating and good maintenance.

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? [ ] Yes [X] No If Yes, describe
The home was in good condition throughout. No items or deferred maintenance were noted.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? [X] Yes [ ] No If No, describe
The home is typical in age, size and style for the area.

Form 1004 — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

Uniform Residential Appraisal Report

File # T6-1001

There are 10 comparable properties currently offered for sale in the subject neighborhood ranging in price from $ 259,900 to $ 329,500

There are 14 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from $ 259,825 to $ 375,000

SALES COMPARISON ANALYSIS

FEATURE	SUBJECT	COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address	11964 SE 37th Avenue Milwaukie, OR 97269	5050 SE Thiessen Road Milwaukie, OR		6655 SE Kern Court Milwaukie, OR		7967 SE Jefferson Street Milwaukie, OR	
Proximity to Subject		1.50 miles SE		1.50 miles SE		2 Miles SE	
Sale Price	$ Refinance		$ 265,000		$ 289,000		$ 308,000
Sale Price/Gross Liv. Area	$ sq.ft.	$ 208.01 sq.ft.		$ 220.44 sq.ft.		$ 218.13 sq.ft.	
Data Source(s)		RMLS/Public Records		RMLS/Public Records		RMLS/Public Records	
Verification Source(s)							
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sales or Financing Concessions		Conventional		Conventional		Conventional	
Date of Sale/Time		7/31/06		8/8/06		9/25/06	
Location	Average	Average		Average		Average	
Leasehold/Fee Simple	Fee	Fee		Fee		Fee	
Site	20,473 Sq.Ft.	12,632 SF	+11,500	11,979 SF	+12,500	10,001 SF	+15,500
View	None	None		None		None	
Design (Style)	Ranch	Ranch		Ranch		Ranch	
Quality of Construction	High Average	High Average		High Average		High Average	
Actual Age	1962/E 10	1966/E 10		1970/E 15		1966/E 10	
Condition	Good	Average	+15,000	Average	+15,000	Good	
Above Grade Room Count (Total / Bdrms. / Baths)	6 / 3 / 2	6 / 3 / 2		6 / 3 / 2		7 / 3 / 2	
Gross Living Area	1,268 sq.ft.	1,274 sq.ft.		1,311 sq.ft.	-1,100	1,412 sq.ft.	-3,600
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	FAU/None	Radiant/None		Radiant/None		FAU/None	
Energy Efficient Items	Storm Wndws	Storm Wndws		Storm Wndws		Thermal Wndws	-2,500
Garage/Carport	2-Car Garage	4-Car Garage	-6,000	2-Car Garage		2-Car Garage	
Porch/Patio/Deck	Cvrd. Patio	Cvrd. Patio		Patio/IG Pool	-8,000	Deck/Wtr Feat.	
Other	Fireplace	Fireplace/2	-1,800	Fireplace/2	-1,800	Fireplace	
	Ext. Landscape	Lndscp/Fenced		Lndscp/Fenced		Ext. Landscape	
	Studio/Grnhse.	None	+5,600	Atrium	+3,000	None	+5,600
Net Adjustment (Total)		☒ + ☐ -	$ 24,300	☒ + ☐ -	$ 19,000	☒ + ☐ -	$ 15,000
Adjusted Sale Price of Comparables		Net 9.2 % Gross 15.1 %	$ 289,300	Net 6.8 % Gross 14.3 %	$ 308,600	Net 4.9 % Gross 8.8 %	$ 323,000

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) RMLS and First American Tax Records

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s)

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer	None Noted	None Noted	8/16/05	3/1/06
Price of Prior Sale/Transfer			$264,000	$221,000
Data Source(s)	Public Records	Public Records	Public Records	Public Records
Effective Date of Data Source(s)	10/9/06	10/9/06	10/9/06	10/9/06

Analysis of prior sale or transfer history of the subject property and comparable sales No pertinent transfers of the subject or comparables was noted.

Summary of Sales Comparison Approach See attached addenda.

Indicated Value by Sales Comparison Approach $ 305,000

RECONCILIATION

Indicated Value by: Sales Comparison Approach $ 305,000 Cost Approach (if developed) $ 307,200 Income Approach (if developed) $

This is a complete summary appraisal report in brief format. The sales comparison approach was given greatest reliance as it best reflects the reactions of buyers and sellers in the market. The Cost Approach and Income Approaches are supportive.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $ 305,000 , as of 10/9/06 , which is the date of inspection and the effective date of this appraisal.

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Uniform Residential Appraisal Report

File # T6-1001

ADDITIONAL COMMENTS

This appraisal is a Complete Summary Appraisal developed in conformance with Standards Rule 1 of the Uniform Standards of Professional Appraisal Practice (USPAP). The Departure Provision has not been invoked. The report is a Summary Report written in conformance with Standards Rule 2-2(b) of USPAP. It is assumed that persons using/interpreting this report are accustomed to the context and terminology of an appraisal report. Where law or policy requires the report to be provided to the borrower, the client is responsible for assisting their client in understanding the report.

This appraiser is not a competent professional pest inspector and cannot certify that the home is free from infestation, nor is the appraiser an exper in hazardous waste or toxic substances. Such determinations must be deferred to competent professional contractors that have been trained in the fields. It is recommended that if the Client or any other party that receives this report has any concerns over such issues, that a competent contractor be consulted.

It is intended that this appraisal conform to Title XI of The Financial Insertions Reform, Recovery & Enforcement Act (FIRREA), the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, and the Codes of Ethics and Standards of Professional Practice of the Appraisal Institute and the American Society of Appraisers.

The appraiser has made reasonable effort to employ the three recognized approaches to value: Cost, Income and Sales Comparison. If any approach was not utilized, the reason for the omission is explained in the report. Because single family residences are less commonly purchased for income producing purposes, the use of the Income Approach will be used under the following conditions: 1) at the specific request of the client for non-owner occupied residences or income producing properties, and 2) when sufficient market evidence exists in the neighborhood to indicate that rental properties or investor purchasers are typical, measurable, and the analysis of the same adds to the appraisal process. If the Income Approach is not used, it is considered to be less indicative and reliable than the Sales Comparison Approach due to lack of sufficient supportable information.

Any personal property involved in this transaction has been excluded from the valuation of the real property. The appliances that meet the test of fixtures, such as built-in range/ovens that are identified in the report as part of the real property are included in the value.

The appraiser has the appropriate knowledge and experience to complete this assignment competently. Qualification of the appraiser will be submitted to the client upon request. No professional assistance was provided to the appraiser by any other person.

The comparables sales have been inspected from the exterior. The photos of the comparables sales utilized in the report are typically taken by the appraiser, however in some instances where the condition of the property has changed since the date of sale ,or the property is not visible from the street, MLS photos may be substituted to provide a better representation of the property.

The Lender/Client of the appraiser is the lender, firm, or party ordering the appraisal report, regardless of who occupies the property, who paid for the appraisal report, or who is the legal owner of the subject property. This appraisal has been prepared for Richard L. Ballard, and is intended for use in filing a Measure 37 claim.

COST APPROACH

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The estimated site value is based upon sales and listings of vacant sites, which have been obtained from RMLS. The details of these sales are retained in the appraiser's workfile and are briefly summarized in this report.

ESTIMATED ☐ REPRODUCTION OR ☒ REPLACEMENT COST NEW	OPINION OF SITE VALUE	=$	200,000
Source of cost data Marshall & Swift	DWELLING 1,268 Sq.Ft. @ $ 89.50	=$	113,486
Quality rating from cost service Effective date of cost data	Sq.Ft. @ $	=$	
Comments on Cost Approach (gross living area calculations, depreciation, etc.)	Covrd & Open Patios, fireplace	=$	7,400
The subject is considered to be average quality construction. The	Garage/Carport 504 Sq.Ft. @ $ 28.50	=$	14,364
estimated replacement cost is based on current building costs in the	Total Estimate of Cost-New	=$	135,250
general Portland area. Depreciation is based upon the age/life method.	Less Physical / Functional / External		
Modest homes in this area bring higher market prices than is indicated by	Depreciation 51,982	=$(	51,982)
cost of construction.	Depreciated Cost of Improvements	=$	83,268
	"As-is" Value of Site Improvements	=$	24,000
Estimated Remaining Economic Life (HUD and VA only) 60-70 Years	INDICATED VALUE BY COST APPROACH	=$	307,268

INCOME

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent $ N/A X Gross Rent Multiplier = $ Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM) N/A

PUD

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☐ No Unit type(s) ☐ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project N/A

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

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This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.

2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.

5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.

6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

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APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.

2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.

3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.

5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.

7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.

8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.

9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.

10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.

11. I have knowledge and experience in appraising this type of property in this market area.

12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.

14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.

15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).

19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

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21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAI

Signatur
Name Linda L. Slocum, #L000461
Compar Triad Appraisal Company, Inc.
Company Address 1521 N. Jantzen Street, #432
Portland, Oregon 97217
Telephone Number (503) 998-0698
Email Address
Date of Signature and Report October 23, 2006
Effective Date of Appraisal 10/9/06
State Certification #
or State License # L000461
or Other (describe) State #
State OR
Expiration Date of Certification or License 1/31/2007

ADDRESS OF PROPERTY APPRAISED
11964 SE 37th Avenue
Milwaukie, OR 97269
APPRAISED VALUE OF SUBJECT PROPERTY $ 305,000

LENDER/CLIENT
Name Dick Ballard
Company Name Dick Ballard
Company Address P.O. Box 22134, Milwaukie, OR 97269
Email Address

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature
Name
Company Name
Company Address
Telephone Number
Email Address
Date of Signature
State Certification #
or State License #
State
Expiration Date of Certification or License

SUBJECT PROPERTY

☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection
☐ Did inspect interior and exterior of subject property
Date of Inspection

COMPARABLE SALES

☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection

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Uniform Residential Appraisal Report

File # T6-1001

SALES COMPARISON ANALYSIS

FEATURE	SUBJECT	COMPARABLE SALE # 4		COMPARABLE SALE # 5		COMPARABLE SALE # 6	
Address	11964 SE 37th Avenue Milwaukie, OR 97269	5930 SE Aldercrest Road Milwaukie, OR		4948 SE Mullan Street Milwaukie, OR		4927 SE Harvey Street Milwaukie, OR	
Proximity to Subject		1.10 miles SE		.90 miles NE		1.00 miles NE	
Sale Price	$ Refinance		$ 268,000		$ 270,000		$ 300,000
Sale Price/Gross Liv. Area	$ sq.ft.	$ 175.39 sq.ft.		$ 183.55 sq.ft.		$ 183.49 sq.ft.	
Data Source(s)		RMLS/Public Records		RMLS/Public Records		RMLS/Public Records	
Verification Source(s)							
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sales or Financing Concessions		Conventional		Conventional		Conventional	
Date of Sale/Time		9/20/06		7/5/06		5/25/06	
Location	Average	Average		Average		Average	
Leasehold/Fee Simple	Fee	Fee		Fee		Fee	
Site	20,473 Sq.Ft.	17,424 SF	+4,500	6,000 SF	+21,500	7,136 SF	+20,000
View	None	None		None		None	
Design (Style)	Ranch	Ranch		Ranch		Ranch	
Quality of Construction	High Average	High Average		High Average		High Average	
Actual Age	1962/E 10	1958/E 12		1963/E 18		1958/E 10	
Condition	Good	Average	+20,000	High Average	+10,000	Good	
Above Grade Room Count (Total / Bdrms. / Baths)	6 / 3 / 2	7 / 3 / 2		6 / 3 / 2		8 / 3 / 1.5	+2,500
Gross Living Area	1,200 sq.ft.	1,520 sq.ft.	-6,500	1,471 sq.ft.	-5,100	1,635 sq.ft.	-9,200
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	FAU/None	FAU/CAC	-3,500	FAU/None		FAU/None	
Energy Efficient Items	Storm Wndws	Thermal Wndws	-2,500	Storm Wndws		Storm Wndws	
Garage/Carport	2-Car Garage	2-Car Garage		2-Car Garage		2-Car Garage	
Porch/Patio/Deck	Cvrd. Patio	Deck/Gazebo		Patio	+1,500	None	+2,500
Other	Fireplace	Fireplace		Fireplace		Fireplace/2	-1,800
	Ext. Landscape	Ext. Landscape		Ext. Landscape		Ext. Landscape	
	Studio/Grnhse.	Shed/Hot Tub	+2,600	None	+5,600	None	+5,600
Net Adjustment (Total)		☒ + ☐ -	$ 14,600	☒ + ☐ -	$ 33,500	☒ + ☐ -	$ 19,600
Adjusted Sale Price of Comparables		Net 5.4 % Gross 14.8 %	$ 282,600	Net 12.4 % Gross 16.2 %	$ 303,500	Net 6.5 % Gross 10.9 %	$ 319,600

SALE HISTORY

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE # 4	COMPARABLE SALE # 5	COMPARABLE SALE # 6
Date of Prior Sale/Transfer	None Noted	None Noted	None Noted	10/3/05
Price of Prior Sale/Transfer				$220,000
Data Source(s)	Public Records	Public Records	Public Records	Public Records
Effective Date of Data Source(s)	10/9/06	10/9/06	10/9/06	10/9/06

Analysis of prior sale or transfer history of the subject property and comparable sales

ANALYSIS/ COMMENTS

Analysis/Comments

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Uniform Residential Appraisal Report

File # T6-1001

SALES COMPARISON ANALYSIS

FEATURE	SUBJECT	COMPARABLE SALE # 7		COMPARABLE SALE # 8		COMPARABLE SALE # 9	
Address	11964 SE 37th Avenue Milwaukie, OR 97269	4837 SE Ada Lane Milwaukie, OR		12906 SE Where Else Lane Milwaukie, OR		7951 SE Southgate Street Milwaukie, OR	
Proximity to Subject		.50 mile NE		.50 mile SE		2 Miles East	
Sale Price	$ Refinance		$ 259,825		$ 278,500		$ 334,000
Sale Price/Gross Liv. Area	$ sq.ft.	$ 183.23 sq.ft.		$ 178.53 sq.ft.		$ 197.40 sq.ft.	
Data Source(s)		RMLS/Public Records		RMLS/Public Records		RMLS/Public Records	
Verification Source(s)							
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sales or Financing Concessions		VA		Cash		N/A	
Date of Sale/Time		4/11/06		4/21/06		Pending 9/8/06	
Location	Average	Average		Average		Average	
Leasehold/Fee Simple	Fee	Fee		Fee		Fee	
Site	20,473 Sq.Ft.	18,000 SF	+3,000	12,635 SF	+11,500	15,682 SF	+7,500
View	None	None		None		None	
Design (Style)	Ranch	Ranch		Ranch		Ranch	
Quality of Construction	High Average	High Average		High Average		High Average	
Actual Age	1962/E 10	1959/E 15		1964/E 18		1957/E 12	
Condition	Good	Average	+20,000	Average	+20,000	Good	
Above Grade Room Count (Total / Bdrms. / Baths)	6 / 3 / 2	6 / 3 / 2		6 / 3 / 2		7 / 4 / 2	-2,000
Gross Living Area	1,200 sq.ft.	1,416 sq.ft.	-3,600	1,560 sq.ft.	-7,300	1,692 sq.ft.	-10,600
Basement & Finished Rooms Below Grade	None	None		None		None	
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	FAU/None	Radiant/None		FAU/HP	-3,500	FAU/None	
Energy Efficient Items	Storm Wndws	Storm Wndws		Storm Wndws		Storm Wndws	
Garage/Carport	2-Car Garage	2-Car Garage		2-Car Garage		2-Car Garage	
Porch/Patio/Deck	Cvrd. Patio	Cvrd. Patio		Cvrd. Patio		Cvrd. Patio	
Other	Fireplace	Fireplace		Fireplace		Fireplace	
	Ext. Landscape	Lndscp/Fenced		Ext. Landscape		Lndscp/Fenced	
	Studio/Grnhse.	Hot Tub	+3,100	Shop	+3,000	Shed	+5,000
Net Adjustment (Total)		☒ + ☐ -	$ 22,300	☒ + ☐ -	$ 23,700	☐ + ☒ -	$ 100
Adjusted Sale Price of Comparables		Net 8.6 % Gross 11.5 %	$ 282,125	Net 8.5 % Gross 16.3 %	$ 302,200	Net % Gross 7.5 %	$ 333,900

SALE HISTORY

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE # 7	COMPARABLE SALE # 8	COMPARABLE SALE # 9
Date of Prior Sale/Transfer	None Noted	None Noted	None Noted	2/22/06
Price of Prior Sale/Transfer				$254,000
Data Source(s)	Public Records	Public Records	Public Records	Public Records
Effective Date of Data Source(s)	10/9/06	10/9/06	10/9/06	10/9/06

Analysis of prior sale or transfer history of the subject property and comparable sales

ANALYSIS / COMMENTS

Analysis/Comments

Supplemental Addendum

File No. T6-1001

Borrower/Client N/A			
Property Address 11964 SE 37th Ave			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			

• URAR : Intended User/Intended Use

The intended user of this report is the client named on and first page. The intended use is for assistance in filing a Measure 37 claim. No other use is intended or allowed. Measure 37, as provided under ORS chapter 197, states that the owner of private real property is entitle to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces it's fair market value. In lieu of compensation, the measure also provides that the government responsible for the regulation may choose to "remove, modify or not apply" the regulation. The complete text of Measure 37 is attached as an addenda.

• URAR : Improvements - Additional Features

Slate entry floor; hardwood floors throughout living room, dining room and bedrooms; slate floor and backsplash, newer cabinets and stainless steel appliances in kitchen; remodeled baths with tile floors and tile tub/shower wainscots; large irregular shaped partially covered patio at rear of house; extensive professional landscaping; 560 SF detached studio and greenhouse behind house.

• URAR : Sales Comparison Analysis - Summary of Sales Comparison Approach

The subject property is a .47 acre site, currently improved with a single family home and one outbuilding. When the property was acquired on 8/31/98, Milwaukie zoning regulations allowed for partitioning of the site to create a flag lot behind the existing house. The owner had the property surveyed on 6/15/99, and the proposed partition plat is attached as an exhibit to this report. Per the plat map the front parcel would have an area of 10,734 SF, and the rear parcel an area of 9,577 SF. The zoning regulations have subsequently been changed, and it is no long physically possible to partition a second building lot. The original regulations required only a 15' driveway easement, but now require 25'. Due to the placement of the existing house it is now impossible to partition the rear lot, which results in a significant loss in value to the property owner. The purpose of this appraisal is to provide 1) an estimate of value for the house on .47 acres, 2) an estimate of value for the house on the smaller 10,734 SF lot, and 3) an estimate of value of the additional building lot.

We have researched the local market, and obtained sales and listings of properties reasonably similar to the subject. The comparables included represent the most pertinent recent data available in the Milwaukie area. No other comparables more similar in physical characteristics were found. The data have been analyzed, and appropriate adjustments derived and applied to the comparables to provide an indication of market value for the subject. These adjustments are typical for the market, and reflect buyer's reactions to differing amenities. The closed sales provide the most reliable indications of value for the subject, and are given greatest weight in the final value conclusion.

The estimated market value of the subject on the undivided .47 acre site is $305,000. The contributory value of the excess land is estimated at approximately $15,000, and the market value of the home on a 10,734 SF site is $290,000.

The value of the potential building lot was based upon sales of vacant sites in the immediate Milwaukie area. The sales considered most appropriate are briefly summarized as follows:

1. 4003 SE 40th Avenue	4,000 SF	3/21/06	$65,000	$16.25/SF
2. SE Llewelyn Street	5,000 SF	11/30/05	$80,000	$16.00/SF
3. SE 74th & Overland	5,060 SF	3/27/06	$90,000	$17.78/SF
4. 9729 SE Linwood Avenue	12,012 SF	10/7/05	$119,500	$ 9.95/SF
5. 14004 SE Maple Lane	9,152 SF	5/5/06	$124,600	$13.61/SF
6. 4112 SE Lake Road	13,939 SF	6/28/06	$150,000	$10.76/SF
7. 13810 SE Matilda Drive	11,761 SF	1/17/06	$150,000	$12.75/SF
8. 12515 SE Shell Lane	17,860 SF	8/25/06	$175,000	$9.80/SF

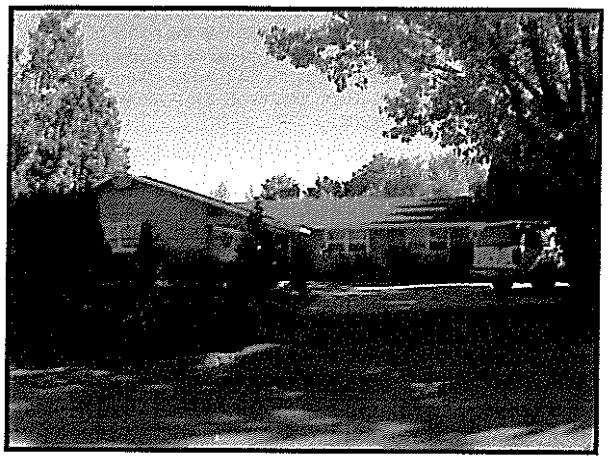
Sale 5 is a flag lot, and provides the most reliable indication of value for the subject's potential building lot. This sale is given greatest weight; the additional sales are supportive. Based upon the data an estimated value of $130,000 is concluded to represent the market value of the potential buildable lot.

Current Value of house, outbldg. & 20,473 SF lot	$305,000
Estimated value of house, outbldg. & 10,734 SF lot	$290,000
Estimated value of 9,577 SF building lot	$130,000
Total Potential Value	$420,000

The Total Potential Value of the property is $420,000 minus the Current Value of $305,000 which indicates a net loss in value to the owner of $115,000.

Subject Photo Page

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			



Subject Front

11964 SE 37th Avenue

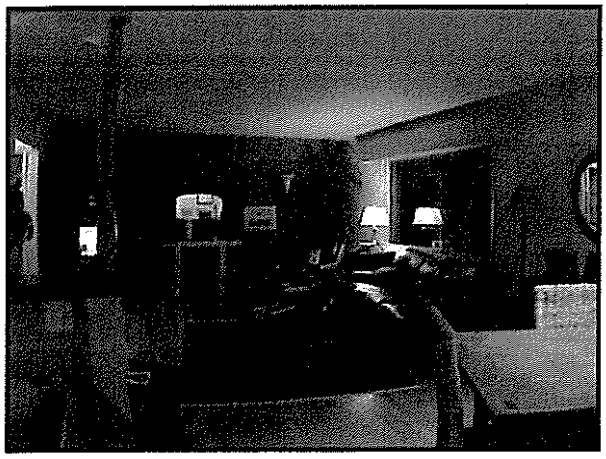
Sales Price	Refinance
Gross Living Area	1,268
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	20,473 Sq.Ft.
Quality	High Average
Age	1962/E 10

Subject Rear

Subject Street

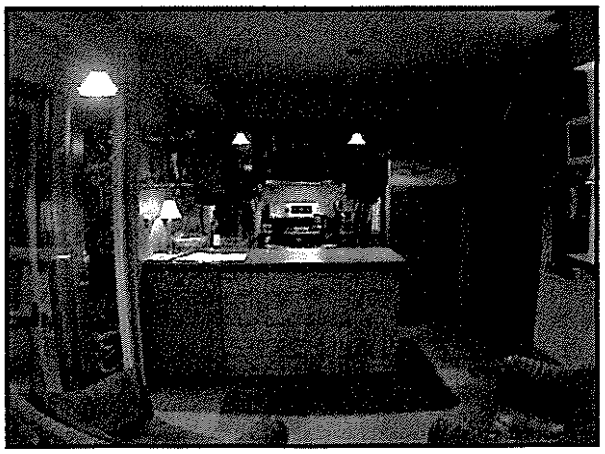
PHOTOGRAPH ADDENDUM

Borrower/Client	N/A						
Property Address	11964 SE 37th Avenue						
City	Milwaukie	County	Clackamas	State	OR	Zip Code	97269
Lender	Dick Ballard						



Living Room

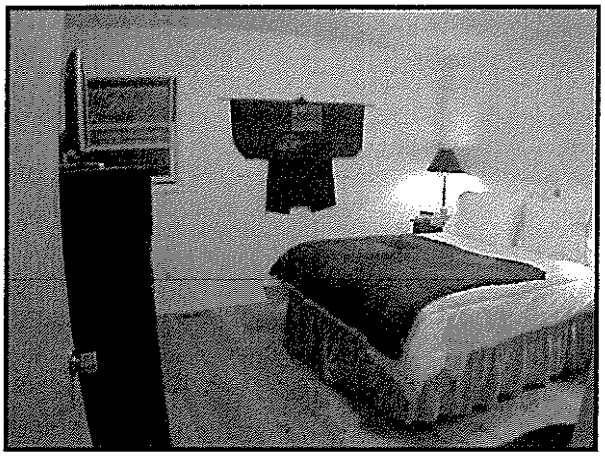
Dining Room



Kitchen

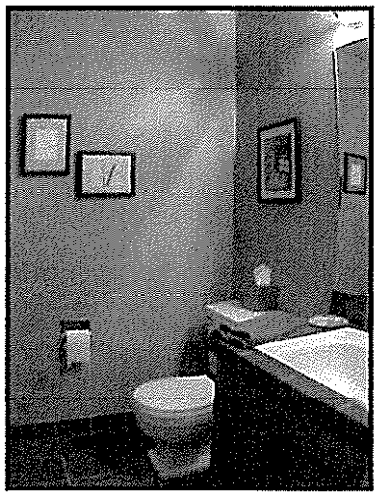
PHOTOGRAPH ADDENDUM

Borrower/Client	N/A						
Property Address	11964 SE 37th Avenue						
City	Milwaukie	County	Clackamas	State	OR	Zip Code	97269
Lender	Dick Ballard						



Master Bedroom

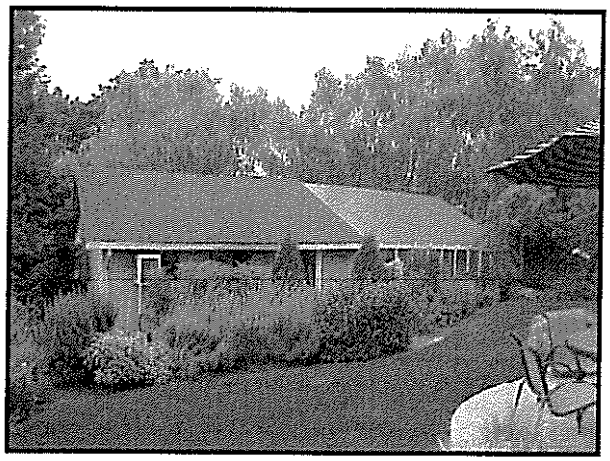
Master Bath



Hall Bath

PHOTOGRAPH ADDENDUM

Borrower/Client	N/A						
Property Address	11964 SE 37th Avenue						
City	Milwaukie	County	Clackamas	State	OR	Zip Code	97269
Lender	Dick Ballard						

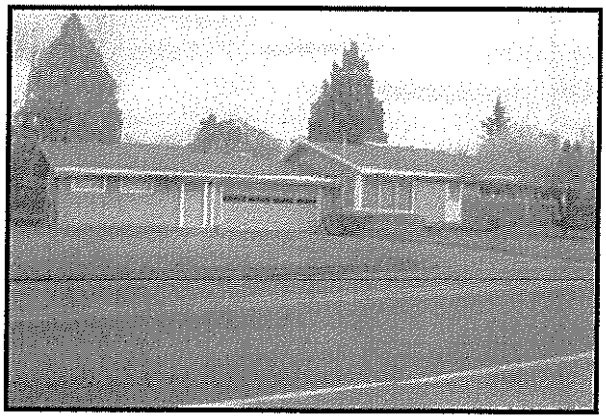


Studio/Greenhouse

Potential Building Lot

Comparable Photo Page

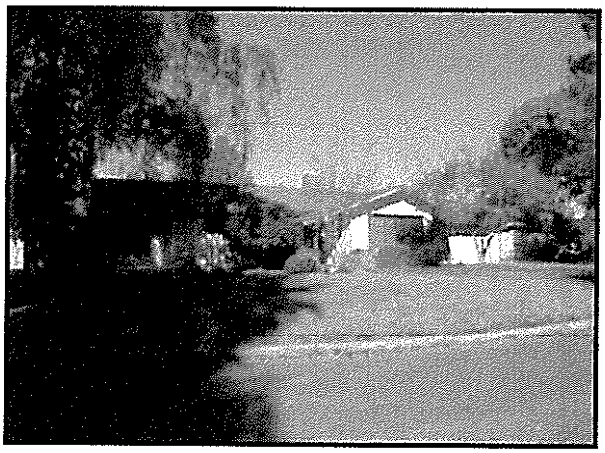
Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			



Comparable 1

5050 SE Thiessen Road

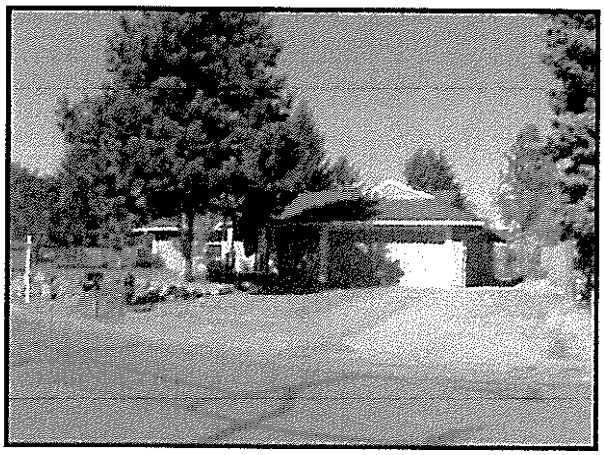
Prox. to Subject	1.50 miles SE
Sale Price	265,000
Gross Living Area	1,274
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	12,632 SF
Quality	High Average
Age	1966/E 10



Comparable 2

6655 SE Kern Court

Prox. to Subject	1.50 miles SE
Sale Price	289,000
Gross Living Area	1,311
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	11,979 SF
Quality	High Average
Age	1970/E 15



Comparable 3

7967 SE Jefferson Street

Prox. to Subject	2 Miles SE
Sale Price	308,000
Gross Living Area	1,412
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	10,001 SF
Quality	High Average
Age	1966/E 10

Comparable Photo Page

Borrower/Client N/A			
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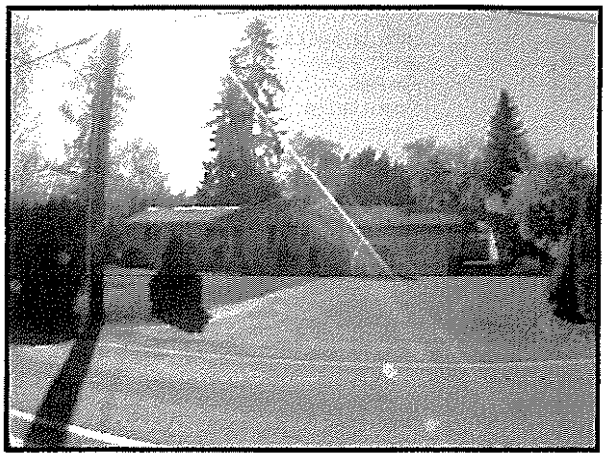
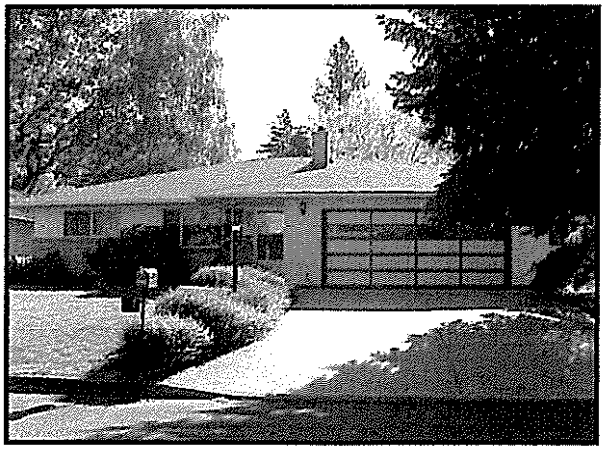


Comparable 4

5930 SE Aldercrest Road

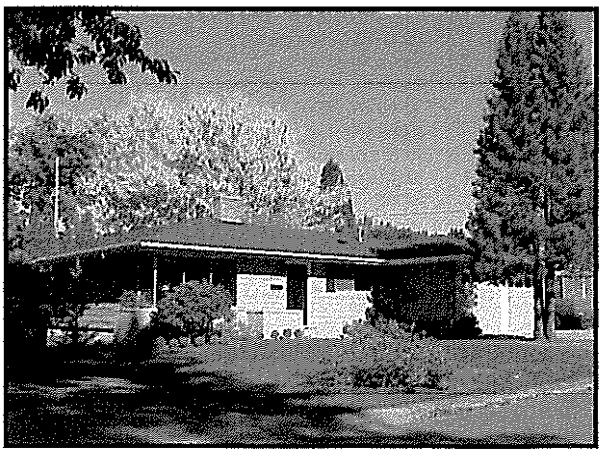
Prox. to Subject	1.10 miles SE
Sale Price	268,000
Gross Living Area	1,528
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	17,424 SF
Quality	High Average
Age	1958/E 12



Comparable 5

4948 SE Mullan Street

Prox. to Subject	.90 miles NE
Sale Price	270,000
Gross Living Area	1,471
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	6,000 SF
Quality	High Average
Age	1963/E 18



Comparable 6

4927 SE Harvey Street

Prox. to Subject	1.00 miles NE
Sale Price	300,000
Gross Living Area	1,635
Total Rooms	8
Total Bedrooms	3
Total Bathrooms	1.5
Location	Average
View	None
Site	7,136 SF
Quality	High Average
Age	1958/E 10

Comparable Photo Page

Borrower/Client N/A			
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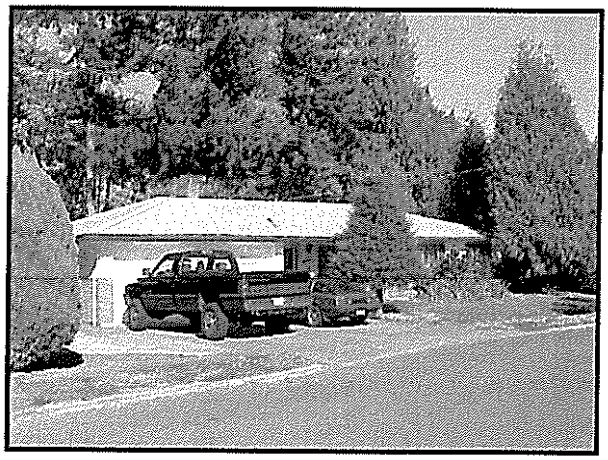
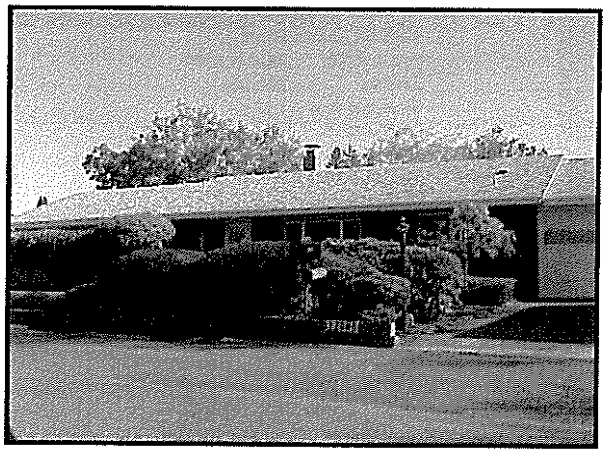
Lender Dick Ballard			



Comparable 7

4837 SE Ada Lane

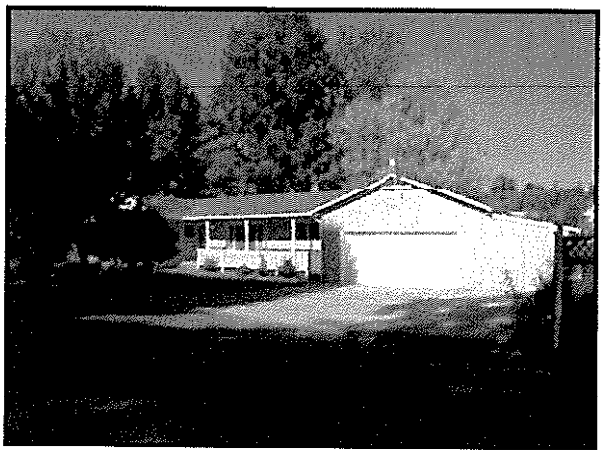
Prox. to Subject	.50 mile NE
Sale Price	259,825
Gross Living Area	1,418
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	18,000 SF
Quality	High Average
Age	1959/E 15



Comparable 8

12906 SE Where Else Lane

Prox. to Subject	.50 mile SE
Sale Price	278,500
Gross Living Area	1,560
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	Average
View	None
Site	12,635 SF
Quality	High Average
Age	1964/E 18



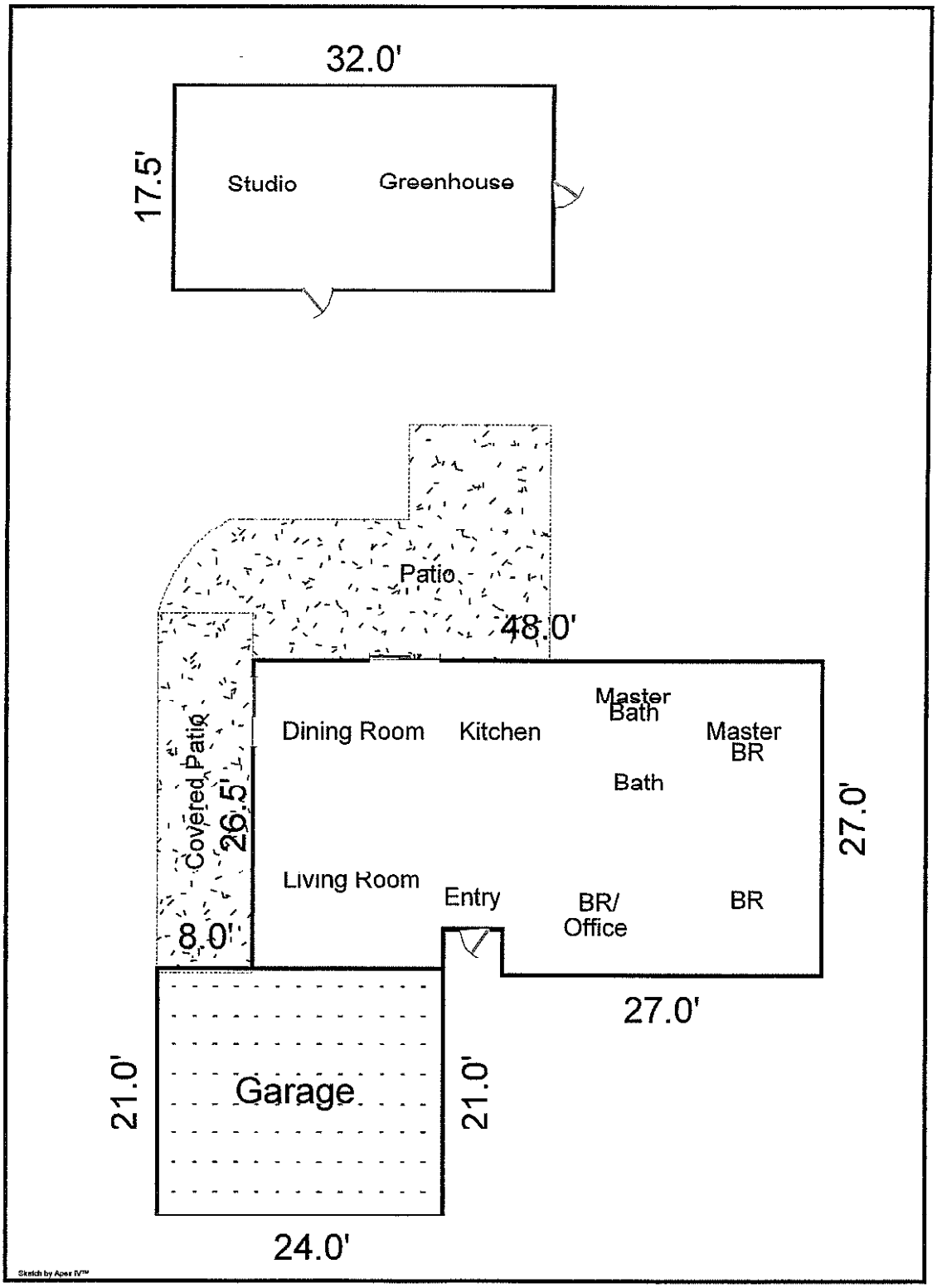
Comparable 9

7951 SE Southgate Street

Prox. to Subject	2 Miles East
Sale Price	334,000
Gross Living Area	1,692
Total Rooms	7
Total Bedrooms	4
Total Bathrooms	2
Location	Average
View	None
Site	15,682 SF
Quality	High Average
Age	1957/E 12

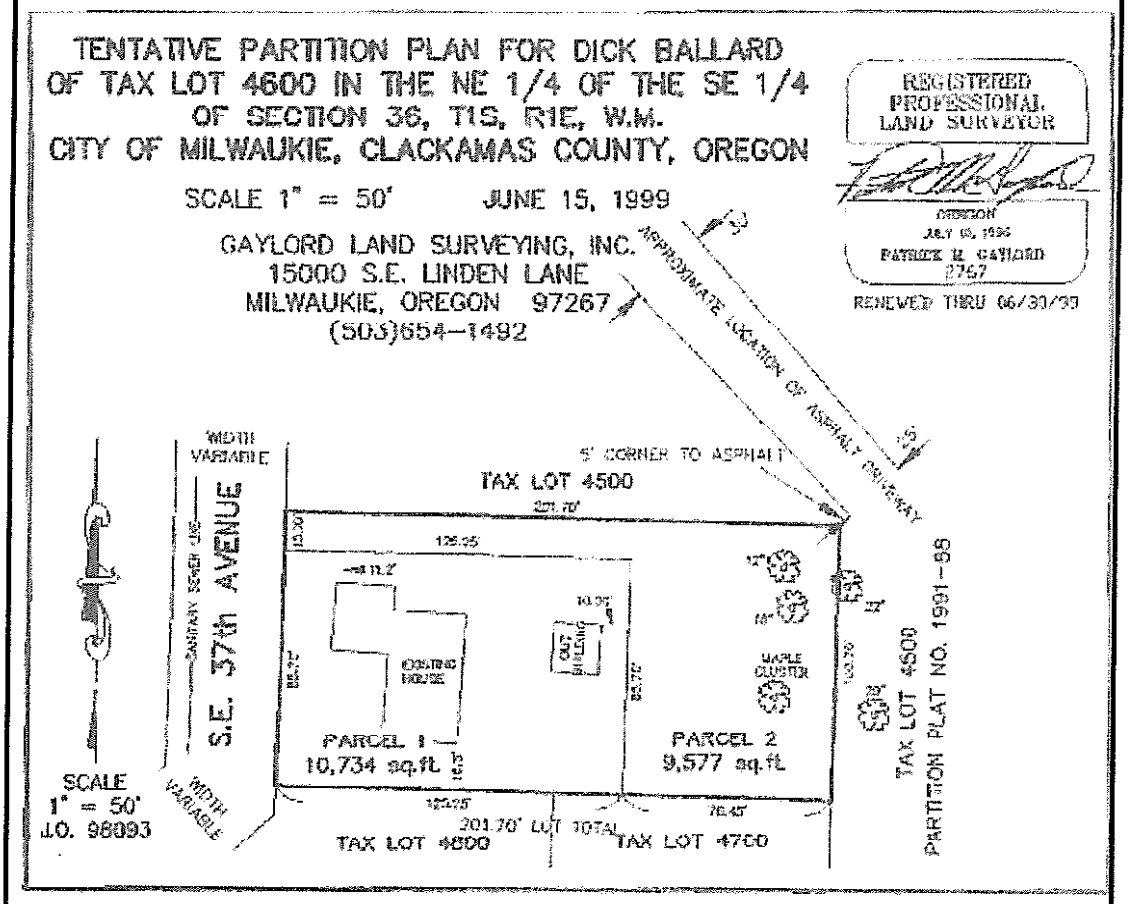
Building Sketch (Page - 1)

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			



Location Map

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			



Location Map

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
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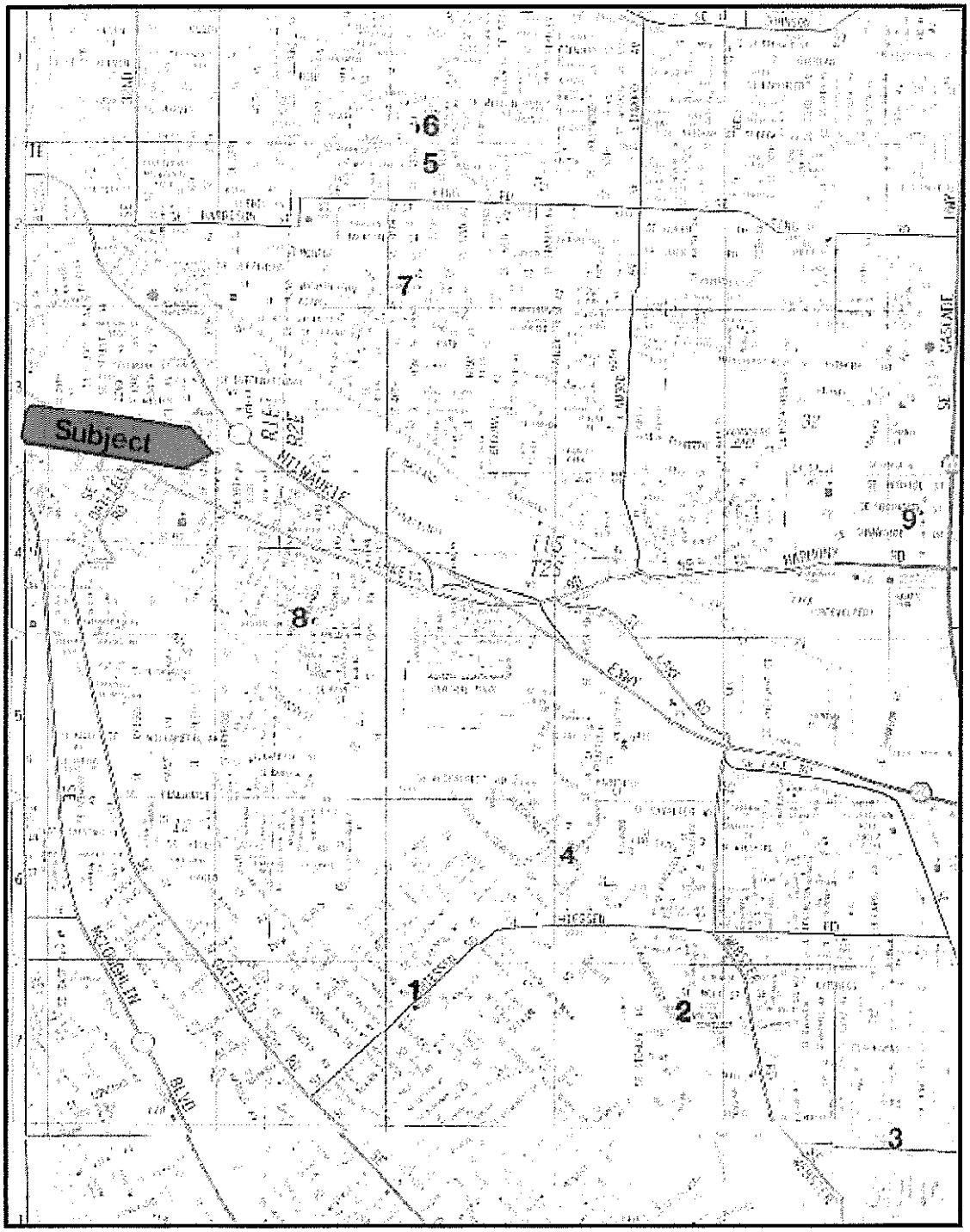


Text of Measure 37

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			

Measure 37
Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

(1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.

(2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act

(3) Subsection (1) of this act shall not apply to land use regulations

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act.

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

(C) To the extent the land use regulation is required to comply with federal law,

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

(4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation

(5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria whichever is later.

(6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reason-ably incurred to collect the compensation

(7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act

Text of Measure 37

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015 (10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (8) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property

(11) Definitions - for purposes of this section

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices

(C) "Owner" is the present owner of the property, or any interest therein

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect

M[illegible]I-PURPOSE SUPPLEMENTAL ADDENDU[illegible]
[illegible] FEDERALLY RELATED TRANSACTIONS

Triad Appraisal Company (503) 690-7414

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			

This Multi-Purpose Supplemental Addendum for Federally Related Transactions was designed to provide the appraiser with a convenient way to comply with the current appraisal standards and requirements of the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC), The Office of Thrift Supervision (OTS), the Resolution Trust Corporation (RTC), and the Federal Reserve.

This Multi-Purpose Supplemental Addendum is for use with any appraisal. Only those statements which have been checked by the appraiser apply to the property being appraised.

☒ PURPOSE & FUNCTION OF APPRAISAL

The purpose of the appraisal is to estimate the market value of the subject property as defined herein. The function of the appraisal is to assist the above-named Lender in evaluating the subject property for lending purposes. This is a federally related transaction.

☒ EXTENT OF APPRAISAL PROCESS

☒ The appraisal is based on the information gathered by the appraiser from public records, other identified sources, inspection of the subject property and neighborhood, and selection of comparable sales within the subject market area. The original source of the comparables is shown in the Data Source section of the market grid along with the source of confirmation, if available. The original source is presented first. The sources and data are considered reliable. When conflicting information was provided, the source deemed most reliable has been used. Data believed to be unreliable was not included in the report nor used as a basis for the value conclusion.

☒ The Reproduction Cost is based on Marshall & Swift cost data supplemented by the appraiser's knowledge of the local market.

☒ Physical depreciation is based on the estimated effective age of the subject property. Functional and/or external depreciation, if present, is specifically addressed in the appraisal report or other addenda. In estimating the site value, the appraiser has relied on personal knowledge of the local market. This knowledge is based on prior and/or current analysis of site sales and/or abstraction of site values from sales of improved properties.

☒ The subject property is located in an area of primarily owner-occupied single family residences and the Income Approach is not considered to be meaningful. For this reason, the Income Approach was not used.

☐ The Estimated Market Rent and Gross Rent Multiplier utilized in the Income Approach are based on the appraiser's knowledge of the subject market area. The rental knowledge is based on prior and/or current rental rate surveys of residential properties. The Gross Rent Multiplier is based on prior and/or current analysis of prices and market rates for residential properties.

☐ For income producing properties, actual rents, vacancies and expenses have been reported and analyzed. They have been used to project future rents, vacancies and expenses.

☒ SUBJECT PROPERTY OFFERING INFORMATION

According to RMLS the subject property:

☒ has not been offered for sale in the past: ☐ 30 days ☐ 1 year ☒ 3 years.

☐ is currently offered for sale for $ _____ .

☐ was offered for sale within the past: ☐ 30 days ☐ 1 year ☐ 3 years for $ _____ .

☐ Offering information was considered in the final reconciliation of value.

☐ Offering information was not considered in the final reconciliation of value.

☐ Offering information was not available. The reasons for unavailability and the steps taken by the appraiser are explained later in this addendum.

☐ SALES HISTORY OF SUBJECT PROPERTY

According to Portland Maps the subject property:

☒ Has not transferred ☐ in the past twelve months. ☐ in the past thirty-six months. ☒ in the past 5 years.

☐ Has transferred ☐ in the past twelve months. ☐ in the past thirty six months. ☐ in the past 5 years.

☐ All prior sales which have occurred in the past are listed below and reconciled to the appraised value, either in the body of the report or in the addenda.

Date	Sales Price	Document #	Seller	Buyer
12/18/98	160,000	121050	Lewis	Ballard

☐ FEMA FLOOD HAZARD DATA

☒ Subject property is not located in a FEMA Special Flood Hazard Area.

☐ Subject property is located in a FEMA Special Flood Hazard Area.

Zone	FEMA Map/Panel #	Map Date	Name of Community
C	4100190001B	6/18/80	Milwaukie

☐ The community does not participate in the National Flood Insurance Program.

☒ The community does participate in the National Flood Insurance Program.

☒ It is covered by a regular program.

☐ It is covered by an emergency program.

Form MPA3 — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

☐ CURRENT SALES CO[illegible]ACT

☒ The subject property is currently not under contract.
☐ The contract and/or escrow instructions were not available for review. The unavailability of the contract is explained later in the addenda section.

☐ The contract and/or escrow instructions were reviewed. The following summarizes the contract:

Contract Date	Amendment Date	Contract Price	Seller

☐ The contract indicated that personal property was not included in the sale.
☐ The contract indicated that personal property was included. It consisted of _____ Estimated contributory value is $ _____.

☒ Personal property was not included in the final value estimate.
☐ Personal property was included in the final value estimate.
☐ The contract indicated no financing concessions or other incentives.
☐ The contract indicated the following concessions or incentives: _____.

☐ If concessions or incentives exist, the comparables were checked for similar concessions and appropriate adjustments were made, if applicable, so that the final value conclusion is in compliance with the Market Value defined herein.

☒ MARKET OVERVIEW

Include an explanation of current market conditions and trends.

3 months is considered a reasonable marketing period for the subject property based on RMLS.

☒ ADDITIONAL CERTIFICATION

The Appraiser certifies and agrees that:

(1) The analyses, opinions and conclusions were developed, and this report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"), except that the Departure Provision of the USPAP does not apply.
(2) Their compensation is not contingent upon the reporting of predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
(3) This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

☒ ADDITIONAL (ENVIRONMENTAL) LIMITING CONDITIONS

The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

☐ ADDITIONAL COMMENTS

☐ APP[illegible] LICENSE/CERTIFICATION

Appraiser's Si[illegible] _____ Effective Date 10/9/06 Date Prepared September 28, 2006
Appraiser's Na[illegible] Linda L. Slocum, #L000461 Phone # (503) 998-0698
State OR ☒ [illegible] ☐ [illegible]rtification # L000461 Tax ID # 93-1131319

☐ CO-SIGNING APPRAISER'S CERTIFICATION

☐ The co-signing appraiser has personally inspected the subject property, both inside and out, and has made an exterior inspection of all comparable sales listed in the report. The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser.
☐ The co-signing appraiser has not personally inspected the interior of the subject property and:
☐ has not inspected the exterior of the subject property and all comparable sales listed in the report.
☐ has inspected the exterior of the subject property and all comparable sales listed in the report.
☐ The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report, including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser with the exception of the certification regarding physical inspections. The above describes the level of inspection performed by the co-signing appraiser.
☐ The co-signing appraiser's level of inspection, involvement in the appraisal process and certification are covered elsewhere in the addenda section of this appraisal.

☐ CO-SIGNING APPRAISER'S SIGNATURE & LICENSE/CERTIFICATION

Co-Signing Appraiser's Signature _____ Effective Date _____ Date Prepared _____
Co-Signing Appraiser's Name (print) _____ Phone # _____
State _____ ☐ License ☐ Certification # _____ Tax ID # _____

Form MPA3 — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

Appraiser's Licenses

Borrower/Client N/A			
Property Address 11964 SE 37th Avenue			
City Milwaukie	County Clackamas	State OR	Zip Code 97269
Lender Dick Ballard			

Appraiser Certification and Licensure Board

State Licensed Appraiser

28 hours of continuing education required for renewal

License No: L000461
Issue Date: 2/2/2005
Expiration Date: 1/31/2007

Linda L Slocum
Triad Appraisal Company INC
1521 N. Jantzen ST #432
Portland OR 97217

R. A. (Bob) Keith, Administrator

STATE OF WASHINGTON

DEPARTMENT OF LICENSING - BUSINESS AND PROFESSIONS DIVISION

THIS CERTIFIES THAT THE PERSON NAMED HEREON IS AUTHORIZED, AS PROVIDED BY LAW, AS A STATE LICENSED REAL ESTATE APPRAISER

LINDA L SLOCUM
1521 N JANTZEN STREET #432
PORTLAND OR 97217

Cert/Lic No.	Issued Date	Expiration Date
1600520	06/29/2006	01/24/2008

Director

ATTACHMENT 3

TENTATIVE PARTITION PLAN FOR DICK BALLARD
OF TAX LOT 4600 IN THE NE 1/4 OF THE SE 1/4
OF SECTION 36, T1S, R1E, W.M.
CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON

SCALE 1" = 50' OCTOBER 22, 1998

GAYLORD LAND SURVEYING, INC.
15000 S.E. LINDEN LANE
MILWAUKIE, OREGON 97267
(503)654-1492

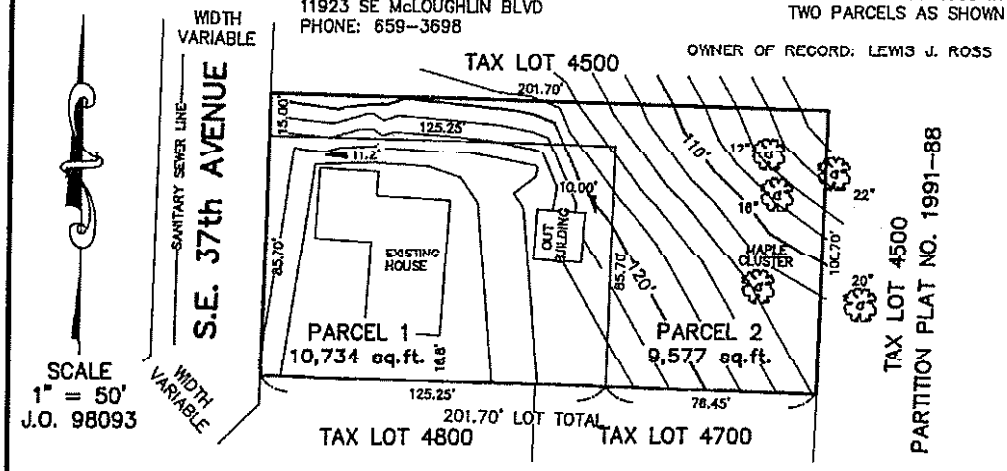
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 10, 1996
PATRICK M. GAYLORD
2767
RENEWED THRU 06/30/99

PREPARED BY:
PATRICK M. GAYLORD, PLS
GAYLORD LAND SURVEYING, INC.

PREPARED FOR:
DICK BALLARD
C/O DICK BALLARD REMODELING, INC.
11923 SE McLOUGHLIN BLVD
PHONE: 659-3698

PROPOSAL: DIVIDE TAX LOT 4600 INTO TWO PARCELS AS SHOWN

OWNER OF RECORD: LEWIS J. ROSS



ATTACHMENT 4

CITY OF MILWAUKIE

To: Mayor and City Council

Through: Katie Mangle, Planning Director

From: Ryan Marquardt, Assistant Planner

Subject: Flag Lot Standards, 1998 - Present

Date: February 8, 2007 for February 20, 2007 Regular Session

Mr. Ballard's Measure 37 claim (File # M37-06-01) is based upon flag lot standards that have become more stringent than when he first acquired an interest in the property at 11964 SE 37th Avenue. The City's standards for flag lots have become more restrictive over time. The purpose of this memo is to outline these changes and how they affect Mr. Ballard's application.

Flag Lot Standards Prior to 1998: Exhibit A shows the underline strikeout changes adopted by Ordinance 1849. The standards that were modified by Ordinance 1849 (i.e., sections that have strikeouts or that are not underlined) were the standards in place when Mr. Ballard acquired interest in his property.

Flag Lot Standards Adopted November 17, 1998: The modified standards in Exhibit A (i.e., the edits) came into the day after Mr. Ballard applied for a minor land partition. The change in access pole width from 15 feet to 20 feet (Section 17.32.040.G) prohibited Mr. Ballard from being able to partition his property.

Flag Lot Standards Adopted August 20, 2002: Exhibit B shows the current standards for flag lots, adopted on August 20, 2002. The current standards require a 25-foot wide access pole and increased setbacks of 30 feet for front and rear yards and 10 feet for side yards.

ATTACHMENT 4

V. B.. //

Exhibit A

CHAPTER 17.32. PARTITIONING

17.32.010. Approval procedure. A parcel of land or contiguous parcels under a single ownership within the city shall not be partitioned into ~~two~~ three or ~~less than four~~ parcels for transfer of ownership or building development so as to conflict with applicable standards for subdivision as set forth in this Section. Such land partitioning, other than subdivision or the creation of a street or way, shall be known as partitioning and shall be approved under the procedure provided in this Chapter.

17.32.020. Submission of plans. There shall be submitted to the Community Development office, ~~at least fourteen days prior to the Planning Commission meeting at which consideration is desired,~~ four copies of a ~~sketch map~~ site plan ~~eight and one-half inches by~~ eleven inches by seventeen inches, or eighteen inches by twenty-four inches in size with the following information:

A. The date, north point, scale, address, assessor reference number, and legal ~~sufficient~~ description ~~to define the location and boundaries of the parcel to be partitioned and its location. Topography of land within two hundred fifty feet of all boundaries~~;

B. The name and address of the record owner or owners and of the person who prepared the ~~sketch map~~ site plan;

C. The approximate acreage and square feet of the parcel under a single ownership, or if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the minor partitioning;

D. For land adjacent to and within the parcel to be partitioned, the locations, names, and existing widths of all streets, driveways, public safety accesses, ~~and~~ easements, and right-of-ways; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, ~~and~~ power poles and other utilities;

E. The location of existing structures, identifying those to remain in place and those to be removed;

F. The lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes and relationship to existing or proposed streets and utility easements;

G The existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees, topography, and other structures.

H. The applicant shall provide a conceptual plan of complete subdivision or partitioning of the subject property, as well as any adjacent vacant or under-utilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all other options for access, including shared driveways, pedestrian accessways and new street development, have been investigated.

I~~G~~. Such additional information as required by the Planning Director or Planning Commission.

Planning Commission Recommended Partitioning Amendments – 10/13/98

EXHIBIT 3

17.32.030. Administrative approval. Minor partition requests shall be processed according to Section 1011.2 ~~10.05(B)~~ of the Zoning Ordinance, Type II Administrative Review. Should any variance be requested in conjunction with a minor land partition, the request must be processed according to Section 1011.3 of the Zoning Ordinance, Minor Quasi-Judicial Review, as required under Section 17.32.050.

17.32.040. Flag lots. Flag lots may be created by partitioning provided ~~under~~ the following standards are met. ~~conditions:~~ In reviewing a flag lot application, the lot size, lot dimension, setback, lot coverage, minimum vegetation, and height limit requirements of the underlying zone shall be applied. Additionally, specific site development criteria adopted for the Neighborhood District Association in which the site is located shall apply.

A. Future Development: Applicants for flag lot partitioning must show that access by means of a dedicated public street is not possible. In addition, consideration will be given to other inaccessible adjacent or nearby properties for which a jointly dedicated public right-of-way could provide suitable access and avoid other flag lots. Flag lot partitioning shall not preclude the development of surrounding properties. Where there is the potential for future development on adjacent lots with new roadway development, flag lots may be allowed as an interim measure. In this case, Planning Commission review, as specified in sub-section 17.32.050, shall be required and the flag lot(s) must be designed to allow for future street development. Dedication of the future street right-of-way will be required as part of final plat approval.

B. Lot Size: The area of the access easement (flagpole) shall be deducted from the gross acreage of the flag lot. The "flag" or development portion of the lot shall be equal to or greater than the square footage of the underlying zone.

C. Front Yard: The front yard of the flag lot shall be measured from the front lot line. The front lot line is the line that is most parallel and closest to the street, excluding the pole portion of the flag lot. If this standard is not practical due to placement of structures on the subject or adjacent lots, topography, lot configuration, or similar reasons, then the front lot line will be the other property line that abuts the access portion of the flag or easement.

D. Parking: No parking shall be permitted along the access easement (flagpole) portion of any flag lot or within the improved turnaround area for emergency vehicle access.

E. Screening and buffering: A five foot wide visual and noise buffer shall be provided along the property line of the adjacent property that abuts the access for the flag lot. This buffer is intended to protect the affected dwelling(s) located on adjacent parcels and must extend from the rear lot line to the required front yard setback for the adjacent lot. This buffer shall consist of:

1. A minimum five foot high site-obscuring wooden fence or masonry wall; and/or,

Planning Commission Recommended Partitioning Amendments – 10/13/98

2. A vegetative landscape screen consisting of trees and shrubs of sufficient size to provide effective screening within two years of planting. Trees shall be a minimum 2" caliper, and shrubs shall be a minimum of 5 gallons at time of planting. All required vegetation must be maintained and survive for a minimum of two growing seasons.

In addition, the rear and side yards of the development area (flag) shall be screened from adjacent property with a six foot tall wood or masonry fence.

F. Tree Mitigation: All trees 6 inches or greater in diameter, as measured at the lowest limb or 4 feet above the ground, which ever is less, shall be preserved. Where trees are required to be removed for site development, at least one evergreen or deciduous tree, of a species known to grow in the region, shall be planted at an appropriate ratio as mitigation for tree removal. At planting, deciduous trees shall be a minimum of 2" caliper and evergreen trees shall be a minimum of five feet tall. This standard shall control until the City adopts an Urban Forestry Ordinance to supercede this provision.

G~~B~~. Access: For any flag lot, the minimum width of the access strip will be twenty ~~fifteen~~ feet, twelve feet of which must be paved for the full length of the access strip. The entire length of the access strip shall be kept clear of obstructions to access. Access to flag lots shall be consolidated into a single shared driveway wherever practical, including consolidation of the access of the parent lot. These minimum standards may be increased if the ~~Community Development~~ Planning Director determines such is necessary to guarantee adequate and safe access. A paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.

H~~G~~. Where two flag lots will have abutting access strips, the combined width of the two access strips shall not be less than thirty feet. A joint access easement shall be created for the two flag lots, which extends to the deepest lot for the full width of the combined access strips. Within the joint access strip, a common driveway with a ~~minimum~~ maximum paved width of twenty feet shall be provided which extends from the street to the deepest parcel. At the end of the joint access easement, a paved turnaround area, or other requirements intended to provide for emergency accessibility or reduced fire potential, may be required by the Fire Marshal to meet provisions of the Uniform Fire Code. In such a case, turnaround standards, or other requirements of the Fire Marshal, shall be provided by the Fire Marshal.

I~~D~~. Proposed flag lots shall be referred to the Public Works Department and the Fire Marshal's office for review and recommendation or decision on appropriate fire and traffic safety improvements, and other requirements to be provided by the applicant. At a minimum these ~~may~~ shall include recommendations on: vertical clearance for fire equipment; sewer lines and pumps; water meters and lines for adequate flows and pressures; fire hydrants; special post for display of house numbers at street entrance

to access easement; street lights; and assurance of clear vision conditions at access entrance. Additional improvement recommendations such as: paved access driveways constructed to residential street standards; special additional easements for utilities; necessary traffic safety devices, or half-street, curb and sidewalks; may also be required.

J~~E~~. ~~Although discouraged by~~ The Planning Commission, shall discourage development of three or four flag lots in which there are more than two lots in depth from a public street. When requested, such proposals ~~may~~ must be considered by the Planning Commission under the variance procedure. Increased standards for improvements in such cases shall be as determined by the Planning Commission with advice from Public Works and other departments as appropriate.

17.32.050. Planning Commission approval. If the location or type of land has not been defined for routine administrative approval or if the proposed partitioning does not comply with the requirements for routine administrative approval, the ~~sketch map~~ site plan and concept plan shall be submitted to the Planning Commission for determination that the proposal will be compatible with the Comprehensive Plan. The Planning Commission may require dedication of land and easements and may specify conditions or modifications in the ~~sketch~~ site plan and concept plan necessary to carry out the Comprehensive Plan. In no event, however, shall the Planning Commission require greater dedication or conditions than could be required if the parcel were subdivided. If the partitioning provided in the ~~sketch map~~ site plan and concept plan results in complete accomplishment of those parts of the Comprehensive Plan which could be affected by partitioning of the parcel, the Planning Commission shall state on the ~~sketch map~~ concept plan that future partitioning within the area shown on the ~~sketch map~~ concept plan may occur without submission for approval of the Planning Commission. In this case, Administrative Review, pursuant to Zoning Ordinance Section 1011.2, shall be required to complete the future partitioning.

17.32.060. Compliance with subdivision requirements. Full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided into smaller parcels. This provision applies if the parcel of land to be partitioned exceeds two acres and within a year is being partitioned into more than two parcels, any one of which is less than one acre.

17.32.070 Filing of ~~map~~ plan. When a ~~sketch map~~ site plan has been approved, all copies shall be marked with the date and conditions, if any, of approval. ~~Two~~ One copy ~~copies~~ shall be returned to the applicant, and ~~two copies~~ one copy shall be retained by the Planning ~~Commission~~ Director. Submission of the Final Plat for recordation with the Clackamas County Surveyor's Office, shall follow the provisions of Section 17.20.

Planning Commission Recommended Partitioning Amendments – 10/13/98

12. Brick covering at least 40% of the building elevation that is visible from the street.

Chapter 19.425 Flag Lot Design And Development Standards

Sections

19.425.1 Applicability

19.425.2 Development Standards

19.425.3 Variances Prohibited.

19.425.4 Frontage, Accessway, and Driveway Design.

19.425.5 Protection of Adjoining Properties.

19.425.6 Landscape Plan Required.

19.425.1 Applicability

Flag lots in all zones are subject to the development standards of this Chapter.

19.425.2 Development Standards

A. Lot Area Calculation. The areas contained within the accessway or pole portion of the lot shall not be counted towards meeting the minimum lot area requirement.

B. Yard Setbacks for Flag Lots.

1. Front and Rear Yard. The minimum front and rear yard requirement for flag lots is 30 feet.

2. Side Yard. The minimum side yard for principal and accessory structures in flag lots is 10 feet.

19.425.3 Variances Prohibited.

Variances of lot area, lot width, and lot depth standards are prohibited for flag lots.

19.425.4 Frontage, Accessway, and Driveway Design.

A. Flag lots shall have frontage and access on a public street. The minimum width of the accessway and street frontage is 25 feet.

B. Abutting flag lots shall have a combined frontage and accessway of 35 feet. For abutting accessways of two or more flag lots, the accessway of any individual lot shall not be less than 15 feet

C. Driveway Design and Emergency Vehicle Access.

1. Driveways shall be designed and constructed in accordance with standards adopted by the Engineering Director.

2. Driveways serving single flag lots shall have a minimum paved width of 12 feet.

3. Driveways shall be centered within the accessway to minimize impacts on adjoining lots except when otherwise warranted to preserve existing vegetation or meet the intent of this Chapter.

4. A paved turnaround area, or other provisions intended to provide emergency vehicle access and adequate maneuvering area may be required.

5. Driveways serving two flag lots shall be consolidated and have a minimum shared driveway width of 16 feet.

6. The flag lot driveway shall be consolidated with the driveway on the parent lot to the greatest extent practicable. Driveway location and design is subject to clear vision and driveway spacing provisions of Chapter 19.1400-Transportation Planning, Design Standards, and Procedures.

7. Design standards for shared driveways serving more than three lots shall be specified by the Engineering Director after consultation with the Fire Marshal.

8. Parking along any portion of the driveway within the accessway is prohibited unless the driveway is suitably sized to meet the combined needs of parking and emergency access requirements.

19.425.5 Protection of Adjoining Properties.

A. Flag lots must be screened in accordance with this section to minimize potential adverse impacts to abutting properties.

B. Planting and screening must be provided at the time of development. Installation of required screening and planting is required prior to final inspections and occupancy of the site unless a bond or other surety acceptable to the City Attorney is provided. Screening and landscaping shall be installed within 6 months thereafter or the bond will be foreclosed. The property owner shall maintain required screening and planting in good and healthy condition. The requirement to maintain required screening and planting is continuous.

C. Impacts to neighboring lots due to use of the flag lot driveway shall be mitigated to the greatest extent practicable through screening and planting. Continuous screening along the flag lot driveway abutting any neighboring lot that is not part of the parent lot from which the flag lot was created is required as follows.

1. Any combination of dense plantings of trees and shrubs and fencing that will provide continuous sight obstruction for the benefit of adjoining properties within 3 years of planting is allowed.

2. Fencing along an accessway may not be located nearer to the street than the front building line of the house located on lots that abut the flag lot accessway. Dense planting shall be used to provide screening along the accessway in areas where fencing is not permitted.

3. All required screening and planting shall be maintained and preserved to ensure continuous protection against potential adverse impacts to adjoining property owners.

D. Tree Mitigation. All trees six inches or greater in diameter, as measured at the lowest limb or four feet above the ground, whichever is less, shall be preserved. Where trees are required to be removed for site development, at least one evergreen or deciduous tree, of a species known to grow in the region, shall be replanted for each tree removed. At planting, deciduous trees shall be a minimum of two inches caliper and evergreen trees shall be a minimum of five feet tall.

19.425.6 Landscape Plan Required.

A landscaping plan shall be submitted to the Planning Director prior to issuance of a building permit for new construction. The plan shall be drawn to scale and shall accompany development permit applications. The plan shall show the following information:

A. A list of existing vegetation by type, including number, size, and species of trees;

B. details for protections of existing trees;

C. list of existing natural features;

D. location and space of existing and proposed plant materials;

E. list of plant material types by botanical and common names;

F. notation of trees to be removed;

G. size and quantity of plant materials; and

H. Location of structures on adjoining lots, and location of windows, doors and outdoor use areas on lots that adjoin the flag lot driveway.

SECTION 800 NONCONFORMING USES

Section 19.802 Continuation of a nonconforming use.

A nonconforming use may be continued, but shall not be altered unless such alteration is approved by the planning commission after a public hearing in accordance with subsection 19.1011.3, Minor Quasi-Judicial Review, upon a determination that the proposed modifications would result in no more of a detriment to surrounding properties than the existing use. A nonconforming use that is limited to a portion of a property may not be relocated to a different portion of the property on which it is located or to any other property.

19.807 Destruction of Nonconforming Structure or Use

A. If a nonconforming structure is destroyed by any cause to an extent exceeding fifty percent of its real market value a future structure on the site shall conform to this title.

B. If any structure containing a nonconforming use is destroyed by any cause to an extent exceeding fifty percent of its real market value, and is not returned to use within six months by obtaining occupancy approval under applicable building codes, future uses on the site shall conform to this title.

19.809 Determination of Nonconforming Situations

19.809.1 Planning Director's Determination.

The Planning Director shall make a determination regarding the legal status of a nonconforming use, structure, or other applicable zoning requirements in accordance with Section 1011.1 Type I Administrative review. Any nonconformity shall be known as a nonconforming situation for the purpose of this section. Determinations of nonconforming situations shall be made using the following criteria.

A. Proof that the nonconforming situation was permitted under applicable regulations at the time it was established, including:

1. copies of building and/or land use permits issued at the time the use, building, or other condition was established;

2. copies of zoning code provisions and/or maps;

3. demonstration that the situation was established before the applicable development code for the community was adopted; and

B. Proof that the situation has been legally maintained over time. Evidence that the nonconforming situation has been maintained over time including:

1. Utility bills;

2. Income tax records;

3. Business licenses;

4. Listings in telephone, business and Polk directories;

ATTACHMENT 5

CITY OF MILWAUKIE

To: Mayor and City Council

Through: Katie Mangle, Planning Director

From: Ryan Marquardt, Assistant Planner

Subject: M37-06-01 Minor Land Partition Standards

Date: February 8, 2007 for February 20, 2007 Regular Session

The Planning Director recommends that the City Council waive the 25-foot access pole regulation related to Mr. Ballard's property and apply a 15-foot wide access pole for any application for a minor land partition at 11964 SE 37th Avenue. The purpose of this memo is to review the property in terms of the regulations that would apply to such an application. Flag lot pole width is the only regulation that is waived; all other standards and criteria are those in the current land division and zoning titles.

PROPERTY DESCRIPTION

The property description is based on a survey of Mr. Ballard's property at 11964 SE 37th Avenue, dated October 22, 1998. The property is rectangular in shape with a 100.7 feet north to south dimension and a 201.7 feet east to west dimension. The western edge of the property fronts on the SE 37th Avenue right of way. The side yard setbacks for the existing single-family dwelling unit are 26.2 feet on the north side and 16.8 feet on the south side. The front yard setback is approximately 16 feet and was determined to be legally non-conforming in Land Use File # 98-11. The back yard setback is approximately 134 feet. An out building of 17 feet by 16 feet sits approximately 90 feet from the front property line, roughly equidistant between the north and south property lines.

LOT STANDARDS

The following table demonstrates that Mr. Ballard's property can be partitioned into a flag lot in the R7 zone. The minimum lot depth of 80 feet is assumed for the flag lot (Parcel 2). Current flag lot standards dictate that the front lot line for a

flag lot on the property is the western property line. The lot must have a depth of at least 80 feet, as measured between the front and rear property lines. The transportation planning chapter (MMC 19.1400) will also apply to the partition.

Table 1 – Flag Lot Standards

Lot Characteristic	Standard	Parcel 1	Parcel 2 (Flag lot)
Width	60 feet	85.7 feet	100.7 feet
Depth	80 feet	121.7 feet	80 feet
Area	7,000 square feet	10,429.69 square feet	9,881.5 square feet (1)
Street Frontage, parent lot	35 feet	85.7 feet	N/A
Access Pole	15 feet	N/A	15 feet
Front Yard Setback	20 feet	17 feet (2)	N/A(3)
Side Yard Setback	10 feet on one side, 5' on the other side	16.8 feet/11 feet	N/A(3)
Rear Yard Setback	20 feet	~50 feet	N/A(3)
Lot Coverage	Maximum 30% of lot area	19.82%	N/A(3)
Minimum Vegetation	Minimum 30% of lot area	Unknown (4)	N/A(3)
Access Pole	15 feet	N/A	15 feet

Notes:
1 – Includes flagpole area.
2 – Determined to be legally non-conforming
3 – Standards will be applied at time of development. See "Development Standards" below.
4 – Unknown at this time, but it appears the lot has enough area to meet this requirement.

DEVELOPMENT STANDARDS

The development standards applied to Parcel 2 will be the standards currently in place. Staff may need to vary standards to allow a 12 foot wide paved access, rather than the standard 15 feet, and to allow less than 7.5 feet between a driveway and an adjoining property. These variations are due to the reduced width of the flag lot pole. The setbacks that will apply to Parcel 2 are 30 feet for the front and rear yard, and 10 feet for both side yards. If the lot depth is increased to allow for a larger building envelope, the out building on Parcel 1 may have to be moved or removed to maintain a 5 feet setback from the rear property line of Parcel 1.

ATTACHMENT 6

TO: Milwaukie City Council

FROM: Gary Firestone, City Attorney's Office

DATE: November 22, 2006

RE: Ballard Measure 37 Claim

BACKGROUND AND RECOMMENDATION

Richard L. Ballard is the owner of the property located at 11964 SW 37th Avenue.[1] Mr. Ballard first acquired an interest in the property on August 27, 1998. The property is zoned R-7. Mr. Ballard seeks a Measure 37 waiver to allow him to partition the property into two parcels. The property is large enough to be divided, but Mr. Ballard seeks to waive the minimum width requirement for the "flagpole" portion of the flag lot which he seeks to create.

I recommend that the City waive the current minimum flagpole width standard (25') and apply the 15' standard in effect at the time that Mr. Ballard acquired the property.

LEGAL ISSUES AND STANDARDS

Under Measure 37, the initial issue is whether land use regulations have been adopted since the property was acquired by the current owner that restrict the use of the property. The City must then determine whether the market value of the property would be greater without the additional restrictions.

If the City determines that new regulations restrict the use of the property and affect its market value, then the City must decide whether to pay compensation or waive the new regulations.

DISCUSSION

Mr. Ballard acquired an interest in the property on August 27, 1998, by entering into a real estate contract for the purchase of the property. At that time, the minimum width for the flagpole portion of a flag lot was 15 feet. On November 17, 1998, after Mr. Ballard acquired an interest in the property, the City increased the flagpole width standard to 25 feet. Mr. Ballard has had an ownership interest since August 27, 1998, and currently owns fee title to the property.

---

[1] The deed for the property show that the property is owned by Richard L. Ballard and Karen L. Ballard.

An existing house on the property is located so that a 25 foot flagpole cannot be placed on the property and have the property meet setback standards. Under these circumstances, the new regulation restricts the use of the property because it does not allow the property to be divided with the existing house in place, something that could have been done at the time the property was acquired. Indeed, Mr. Ballard did obtain a partition approval under the old standard, but failed to timely record the partition plat.

The next step in the analysis is to determine whether there is a difference in the market value of the property with and without the restriction. Mr. Ballard provided an appraisal by a certified appraiser that appraised the property at $305,000. The appraisal also included an appraisal of the combined value of the two parcels after a partition. The combined value was estimated to be $420,000. Measure 37 requires a comparison of the value of the existing property with and without the restriction. The appraisal at $305,000 satisfies the requirement to determine the present market value with existing restrictions, but the $420,000 does not measure the current value of the property without the restrictions, because it does not measure the value of the property as a unit. Any measure of the current market value of the property without the restriction must take into account that the property has not been partitioned and that there are costs associated with the partition process. Nevertheless, the appraiser's report provides sufficient evidence that the property would be worth more than it currently is if it could be subdivided without affecting the current house on the property.

Under the facts of this case, Mr. Ballard has established that he would be entitled to compensation, but has not established the exact amount of compensation that would be owed. Nevertheless, the information he has provided makes it appear very likely that the amount would be in excess of $50,000.

If the Council agrees that Mr. Ballard has established that there has been a reduction in value because of the change in standards, the City must then decide whether to pay compensation or grant a waiver.

The City lacks the funds to pay compensation for Measure 37 claims. Therefore, if the Council determines that compensation is otherwise payable, we strongly recommend that it waive the regulations that restrict the use of the property and lower its value. In this case, the only waiver that would be required is a waiver of the current standards for minimum flagpole width. If the City grants the waiver, Mr. Ballard must go through the partition process, but the flagpole width standard would be the 15' standard in effect at the time that he first acquired an interest in the property. All other standards would be the standards currently in effect.

CUAB MEETING MINUTES
Wednesday, December 6, 2006
Johnson Creek Facility Conference Room
6101 SE Johnson Creek Blvd.

Members Present
Bob Hatz, Chair
Charles Bird, Vice Chair
Betty Chandler
Ed Miller

Staff Present
Gary Parkin, Engineering Director
Alex Campbell, Resource & Economic Development Specialist

I. CALL TO ORDER

Chair Hatz called the meeting to order at 6:00 p.m.

II. INTRODUCTIONS

Board members introduced themselves to the new Engineering Director. It was noted that there is one open position on the Board.

III. CONSENT AGENDA

November 6, 2006, Minutes were approved without change.

IV. REPORTS

A. Alex Campbell provided a brief update on the latest "fine-tuning" of the Street Surface Maintenance Program (SSMP).

The most significant change was the addition of a fee cap of $250/month. Alex noted that most of the large customers use state highways, and the cap avoids the largest impacts. Other topics discussed were the methodology used to select streets for treatment and utility trench cuts.

V. DISCUSSION

A. Concerning the SSMP

It was decided that the City Council should hear from the CUAB at their December 19, 2006, meeting, where they will be considering the program. A rough draft of a resolution in support of the program was proposed and adopted by a 4-0 vote of the Board. Chair Hatz will plan on attending the meeting along with Vice Chair Bird if his schedule allows. Gary Parkin will draft the resolution and submit for board comments prior to the Council meeting.

VI. MATTERS FROM THE BOARD

None.

VII. OTHER

None.

VIII. INFORMATION SHARING

Work Plan needs to be developed, next meeting.

IX. FUTURE MEETING DATE/AGENDA ITEMS

Wednesday, January 3, 2007 (tentative)

X. ADJOURN

The meeting adjourned at 6:54 p.m.

Bob Hatz, Chair

Gary Parkin, Scribe