

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL FEBRUARY 21, 2012

MILWAUKIE CITY HALL  
10722 SE Main Street

2120<sup>th</sup> MEETING

### REGULAR SESSION – 7:00 p.m.

- |   | Page<br>No. |
|---|-------------|
| 1. <b>CALL TO ORDER</b><br>Pledge of Allegiance   |             |
| 2. <b>PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>   |             |
| A. <b>Milwaukie High School Student of the Month</b>  |             |
| 3. <b>CONSENT AGENDA</b> <i>(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.)</i>   | 1           |
| A. <b>City Council Minutes of January 3, 2012 Work Session</b>  | 2           |
| B. <b>City Council Minutes of January 3, 2012 Regular Session</b>   | 6           |
| C. <b>OLCC Application – Wong’s Garden Restaurant, 10820 SE Oak Street, Change of Ownership</b>   | 25          |
| 4. <b>AUDIENCE PARTICIPATION</b> <i>(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.)</i> |             |
| 5. <b>PUBLIC HEARING</b> <i>(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.)</i>   |             |
| A. <b>None scheduled</b>  |             |

<b>6. OTHER BUSINESS</b> <i>(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.)</i>	<b>29</b>
<b>A. File #A-12-01 – Expedited Annexation of 5807 &amp; 5816 SE Firwood Street – Ordinance</b> Staff: Ryan Marquardt, Associate Planner	<b>30</b>
<b>B. Kronberg Park Permit of Entry for Light Rail Construction – Resolution</b> Staff: Kenny Asher, Community Development/Public Works Director	<b>68</b>
<b>C. Revision to Library Expansion Task Force – Resolution</b> Staff: Bill Monahan, City Manager	<b>77</b>
<b>D. Council Reports</b>	
<b>7. INFORMATION</b>	
<b>8. ADJOURNMENT</b>	

**Public Information**

- **Executive Session:** The Milwaukie City Council will meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2)(h) for consultation with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.
- 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.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

# CONSENT AGENDA

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**JANUARY 3, 2012**

**Mayor Ferguson** called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, City Attorney Tim Ramis, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Community Services Director JoAnn Herrigel, IST Director Esther Gartner, Senior Planner Susan Shanks.

Media: Molly Harbarger, *The Oregonian*

**City Manager's Report**

**Mr. Monahan** said Council will consider the communication agreement and discuss the code of conduct at the January 31, 2012 study session.

Council will recognize Starbucks for its support in the Winter Solstice Event during the Regular Session.

**Mr. Monahan** said Mr. Ramis will attend the work session later to discuss correspondence received today and address procedural questions.

**Mr. Monahan** reviewed the upcoming meeting schedule.

**Mayor Ferguson** said he would leave the meeting when conflicts were declared, and Council President Chaimov would preside over the public hearing.

**Community Development and Planning Active Projects**

**Mr. Asher** reported on the South Downtown Implementation and small moves effort for Dogwood Park. He reported on the Kellogg for Coho initiative and said the Army Corp looked at the bridge criteria and felt it met fish passage criteria. The National Marine Fisheries engineers were reviewing those findings, and meetings were being planned for February.

**Ms. Mangle** discussed the Tacoma Station Area Planning, and the City Council agreed staff should schedule a work session. Although the Kellogg Light Rail Bridge was being appealed, staff had started its permit review.

**Clackamas County Fiber Ring**

**Ms. Bankhead, Ms. Herrigel, and Ms. Gartner** were joined by David Soloos, CBII Technical Project Manager.

**Ms. Herrigel** discussed control of the right-of-way that the City Council would see in the future in an agreement. Using the County fiber ring could allow Milwaukie to get off of a contract with Comcast.

**Mr. Soloos** said Clackamas County received an \$8 million dollar federal grant for this project which was seen as a jobs creation effort. The idea of fiber optic was an economic development tool. It was designed to be dark fiber and was not for

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telecommunications. They would not be in competition with any providers. It would be open access fiber so anyone could connect to it. They discussed dedicating some of the fiber to safety and connecting all of the rural agencies. In order to build the ring they need to access the right-of-way and connect anchor sites which included all North Clackamas School District #12 locations. The total project cost was \$11 million, and the grant amount was \$8 million. The County was responsible for \$3 million and it wanted to use the right-of-way for in-kind contribution. The grant was awarded in June of 2010 and is planned to be complete by fall 2013.

**Councilor Chaimov** asked if this was the same project that Oregon City had a problem with, and if so what was the problem?

**Mr. Soloos** replied that it was the same project. The City of Oregon City would like to collect a franchise fee of \$106,000. The project is required to be financially sustainable so it must be incorporated into the user rates. Once they determined the rates they said they could not afford it. He said there was a misunderstanding that the County would be like other providers. They were providing new infrastructure that would provide better services for current providers or possibly new providers but would not be providing the service. That was the area of misunderstanding.

**Councilor Miller** asked if new poles would be installed and if PGE was charging fees for the poles.

**Mr. Soloos** replied that the pole attachment fees would be considered an in-kind donation. They would not have to pay those fees, but they would have to pay permit fees. The system was primarily aerial, and there were a couple of poles needed, but not in Milwaukie.

**Councilor Miller** asked how this was perceived from other providers.

**Mr. Soloos** replied they have several non-disclosure agreements, and the County was working with providers. There was some opposition in the early stages, but they were working closely with the providers and it was going smoothly.

**Councilor Hedges** asked about providers using these new lines. He had concerns about the costs increasing for the residential customers.

**Mr. Soloos** said providers lease fiber from the County, but once they are off the pole they are back in the City, which would be covered by the City's franchise fee, which will not change their rates. They are allowing additional providers to use their fiber by creating redundancy, which did not have a monetary value, but did impact reliability. They were looking for a positive impact of more services, more franchise fees, and more jobs.

**Ms. Herrigel** said she will bring the service level agreement and the right-of-way agreements to the City Council in early February.

**Mr. Monahan** said if we are able to cancel the Comcast contract we will save about \$22,000 a year, but the upfront costs would be approximately \$25,000 to make the connections which was not budgeted.

**Ms. Herrigel** added they would be able to hold the upfront capital costs until next fiscal year.

### **Questions Related to Appeal of Kellogg Bridge Decision**

**Mr. Ramis** provided guidance on written materials received since last week and discussed procedural matters for the upcoming hearing.

Closed record rules with no new facts although applying was a question. The 3 letters he reviewed were predominantly argument; the letter from Ms. Smith did refer to habitat although he was not sure if that was in the record.

**Council President Chaimov** asked if we can make use of facts of common knowledge.

**Mr. Ramis** replied yes. If someone is asking for condition, it had to be rooted in the requirement of the code. The first letter received from Mr. Hammang refers to other arborist reports but only one. The canopy comment was not in the record, and was beyond general knowledge. Also, not in the record, was factual information on the length of time it would take mitigation trees to create an adequate canopy.

**Councilor Miller** discussed ex parte contacts he had made at a recent meeting of the North Clackamas Watershed Council where he represents the City. At the last meeting a discussion about the tree started and he excused himself from the meeting until the discussion was over. He did not know who the people were.

**Mr. Ramis** said an adequate disclosure was to disclose that the Councilor heard certain information and this was what it was. Who said it was of secondary importance.

**Councilor Miller** said it was difficult because things are said at meetings which all the City Councilors attend.

**Councilor Hedges** asked if they can draw conclusions from information in the binder. There are certain things that were said, and he drew certain conclusions.

**Mr. Ramis** replied Council can draw inferences from the evidence and are charged with deciding from conflicting evidence and credibility. Council was required by law where there is a conflict to indicate which side you are going with. The key was to articulate why one witness was more believable. Council was permitted to go with lay person testimony if there were reason to believe they are more credible than an expert. On certain topics LUBA makes it clear that a lay person can be just as credible.

**Council President Chaimov** asked if they could use statutory inferences

**Mr. Ramis** replied statutory inferences did not apply in this case, but they were permitted to apply the same kind of reasoning that a reasonable prudent person would apply in normal business affairs.

**Councilor Hedges** asked if they can apply a condition that would require two more arborist reports, and if one agrees with the arborist in the record then the tree can be cut down. If they did not, then the tree must be saved.

**Mr. Ramis** discussed condition requirements. First it must relate to criteria; second it must be based on evidence in the record; third it cannot impose conditions that would hold up the application. He said the issue was about how much was in the record about the tree.

**Councilor Hedges** said the issue was what was a reasonable amount of money to spend saving an oak tree, which was subjective, so conditions would be difficult to impose.

**Mr. Ramis** said in the end it was whether there was overall budget for it. There is a reasonable and necessary test about which people could disagree. He discussed possible motions and reminded the City Council they needed three votes to take action. Otherwise, the Planning Commission decision stood. Anyone who signed up at the hearing could file an appeal.

**Councilor Hedges** asked Councilor Chaimov how he would conduct the decision-making process.

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**Council President Chaimov** said he would ask Council what they wanted to do.

**Mr. Monahan** said if there was a motion and a vote 2:2 it would not end the hearing; it would end the motion, but they could make another motion. Council can make a tentative decision based on the conditions.

**Mayor Ferguson** adjourned the work session at 6:15 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL REGULAR SESSION  
JANUARY 3, 2012**

Agenda Item: 3.B.  
Meeting Date: 2/21/12

**CALL TO ORDER**

**Mayor Ferguson** called the 2117<sup>th</sup> meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Greg Chaimov, and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, Senior Planner Susan Shanks

Media: Molly Harbarger, The Oregonian

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**

Lewelling Neighborhood District Association member Margaret 'Pepi' Anderson and Art Ball expressed appreciation to the Milwaukie MarketPlace and Oak Grove Starbucks for their generous support of the Winter Solstice Event. Mayor Ferguson presented the Starbucks representatives with framed certificates of appreciation.

**CONSENT AGENDA**

**It was moved by Mayor Ferguson and seconded by Council President Chaimov to adopt consent agenda items A - D and discuss the code of conduct further at the January 31, 2012 study session. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting "aye." [5:0]**

- A. City Council Minutes of November 15, 2011 Work Session;**
- B. Resolution 1-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the First and Third Tuesdays of Each Month as the Regular City Council Meeting Date, Establishing the Times of the Said Meetings, and Repealing Resolution 2-2011;**
- C. Resolution 2-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating The Clackamas Review, The Oregonian, and Daily Journal of Commerce as Papers of Record for the City of Milwaukie; and**
- D. Resolution 3-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, Reaffirming the Mayor/Council Communication Agreement and Repealing Resolution 5-2011.**

**AUDIENCE PARTICIPATION**

**Greg Baartz-Bowman**, Milwaukie. He talked about the great things that happened in the City of Milwaukie in 2011 including the funding for the 17<sup>th</sup> Avenue bike/pedestrian project, shelving of the Sunnybrook extension, and success of Milwaukie Understands Sustainable Transition (MUST) group created by Mark Gamba.

**Les Poole**, Oak Grove. He provided the City Recorder with a DVD of the adoption of the Land Use Final Order. This was a \$1.5 billion project with the last segment having no return on investment. The last segment was ill-conceived, and the Bridge was a beast of a design. He left written copies of his comments for the record.

## **PUBLIC HEARING**

### **A. Appeal of Planning Commission's Decision to Approve the TriMet Kellogg Bridge, Appeal File No. AP-11-01**

**Mayor Ferguson called** the public hearing on the appeal of the Planning Commission's approval of land use applications WG-11-01, DR-11-01, HCA-11-01, and CSU-11-09 for construction of a light rail bridge over Kellogg Lake and McLoughlin Boulevard to order at 7:11 p.m.

The hearing was based on the same evidence on which the Planning Commission made its decision. The City Council heard arguments about how the case would be decided, but those arguments had to rely on the evidence presented to the Planning Commission.

Any persons wishing to speak on issues germane to the appeal were recognized by the City Council to speak. Testimony was limited to the presentation of argument and commentary on the evidence already in the record and did not include new evidence. New evidence presented to the City Council by any party was not considered or relied upon in the Council's decision-making.

Any account of evidence such as facts, photographs, maps, drawing, reports, or personal observations of the site that were not available to the Planning Commission when it made the decision being appealed was not considered by the City Council.

All other testimony that was directed to the applicable approval criteria or other criteria in the Zoning Ordinance and Comprehensive Plan believed to be applicable by the speaker was received and used by the City Council in coming to a decision on the application. Audience demonstrations or other disruptive behavior would not be tolerated. The City Council was there to listen to testimony and come to the best possible decision.

The purpose of this hearing was to consider the appeal filed by Maria Dion Shepard, Jo Anne Bird, and the Milwaukie City Council of the Milwaukie Planning Commission's approval of TriMet's light rail bridge application. The appellants requested that Council reevaluate the evidence and testimony that pertained to the removal of the Oregon white oak in Kronberg Park. The applicable standards to be considered are Zoning Ordinance Section 19.310 (Downtown Zones), Section 19.401 (Willamette Greenway), Section 19.402 (Water Quality Resource), Interim Implementation Memo for Metro Title 13 Habitat Conservation Areas, Section 19.904 (Community Service Use), Section 19.905 (Conditional Use), Section 19.907 (Downtown Design Review), Milwaukie Design Guidelines, Section 19.1001 (General Provisions), Section 19.1006 (Type III Review), Section 19.1010 (Appeals), and Subsection 19.1010.6 (Specific Provisions for Appeal of a Type III Decision).

**Mayor Ferguson reviewed** the order of business.

The applicant has the burden of proving that the application complies with all relevant criteria of the Comprehensive Plan and Zoning Ordinance. The City is in receipt of the appeal which identifies the issues and the reasons for the appeal.

All testimony and evidence was directed toward the applicable substantive criteria. Failure to address a criterion would preclude an appeal based on that criterion. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who testified or signed the City Council Attendance sign-up sheet.

**Mayor Ferguson** reviewed the conduct of the hearing. Presentation times for all speakers were limited. The applicant was limited to 15 minutes, the appellant and representatives of groups were also limited to 15 minutes, and individuals were limited to three minutes. Speakers were asked to confine their remarks to the relevant criteria and to avoid presenting new evidence that the City Council could not consider. Additional documents and evidence provided by any party was not considered or relied upon in the Council's rendering its decision on the appeal. Evidence meant facts, documents, data, or other information offered to demonstrate compliance or noncompliance with the standard believed by the proponent to be relevant to the decision.

#### Site Visits

**Councilor Hedges, Loomis, and Miller** and **Council President Chaimov** had all visited the site.

**Councilor Hedges** attended site based on phone calls from numerous citizens telling him the tree had been fenced off. While there he had spoken with one person

**Council President Chaimov** went to the site after the fencing was installed and confirmed it looked like the photos that had been taken.

**Mayor Ferguson** visited site but did not speak with anyone.

**Councilor Miller** visited the site and confirmed the photos were accurate. He had not spoken with anyone.

**Councilor Loomis** had visited the site many times and had looked at the tree. He had not spoken with anyone.

#### Ex parte contacts or actual or potential conflicts of interest:

**Mayor Ferguson** announced potential conflicts of interest as he worked for the applicant TriMet. He recused himself and turned the meeting over to Council President Chaimov.

**Councilor Hedges** announced he had various discussions with members of the Neighborhood District Association (NDA) leadership regarding conduct of the staff. He considered Ms. Bird a personal friend, but that would not influence his decision. He had spoken with other members of the community who had voiced various opinions on the matter before the City Council. He told them their comments would not influence his decision which would be based on the material before him. He declared no actual or potential conflicts of interest.

**Councilor Miller** said the topic had come up at the North Clackamas Urban Watershed Council meeting that he attended on behalf of the City. He excused himself and left the room during that discussion. He noted he received a letter from former Planning Commission Chair Donald Hammang and had heard a discussion of the matter in general terms, neither pro nor con, at the Lake Road NDA meeting. He declared no actual or potential conflicts of interest. He felt he would make his judgment on the document he read.

**Councilor Loomis** had no ex parte contacts and declared no conflicts of interest.

**Council President Chaimov** had had no ex parte contacts and declared no conflicts of interest.

No member of the audience made any challenge to any Council member's impartiality or ability to participate in the decision. There were no objections to the Council's jurisdiction to consider the matter.

## Staff Presentation and Correspondence Received

**Mr. Ramis** had reviewed three letters and found a vast majority of the content had to do with the argument. Correspondence had been received from Cindy Torgersen Platter, Sarah Smith, and Donald Hammang. There was a reference to the size of tree canopy, a reference another arborist's report, and reference to habitat all of which he thought was beyond the record. He had asked that City Council not consider those new factual insertions.

Council had received the correspondence via email, and **Ms. Shanks** had paper copies available. She read a brief letter into the record from Debby Patten, Lake Road NDA Chair, addressed to Mayor Ferguson indicating the Association's support for saving the ancient Oak tree in Kronberg Park

**Ms. Shanks** provided the staff report on the Portland Milwaukie Light Rail (PMLR) Bridge over Kellogg Lake and McLoughlin Boulevard. After three public hearings the Planning Commission approved five application types on November 22, 2011, and the appeal was filed on December 8, 2011.

She indicated the site on a map and summarized the proposal. It included a jump span over Lake Road, a clear span bridge over Kellogg Lake and Hwy 99E, pedestrian bridge design, Water Quality Resource Area (WQR) and Habitat Conservation Area (HCA), and construction staging in Kronberg Park. She provided a brief overview of the regulations in that area. The Oak tree in question is in the staging area and on the edge of the HCA. The entire site was in the Willamette Greenway. The Planning Commission had to consider the City standards and the 2008 Land Use Final Order (LUFO).

**Mr. Ramis** commented on how the LUFO related to the matter before the City Council. The light rail project was complex in that it was going through a number of jurisdictions, so in view of that the Legislature adopted a law that changed the usual authority in a land use proceeding like this. The effect was to reduce the authority the Council had over decision making for a light rail project. Certain things like the route and station siting cannot be changed. The City Council was allowed to impose reasonable and necessary conditions, but even those were limited. There had to be necessary funds in the project budget, if the condition would significantly delay the project, or if it significantly negatively impacted the operation of the project.

**Ms. Shanks** explained the statute did allow the City Council to review the application against its own standards. There were a number of things the Design and Landmarks Committee and Planning Commission considered in reviewing the application which was composed of five separate applications. There were several applicable approval criteria that did inspire certain approval conditions by the Planning Commission. The Community Service Use (CSU) application considered by the Planning Commission had to do with the temporary staging area in Kronberg Park. A construction staging area in that zone was not an outright permitted use. The Bridge location itself was in the Willamette Greenway, and all new development in this zone and/or alterations to the vegetative buffer along Kellogg Lake were subject to review to ensure that the natural, aesthetic, and recreational qualities of the River were protected. A portion of the Bridge and all of the pedestrian bridge were in the Downtown Office and Open Space Zone. All new construction and most changes to buildings and/or properties in the downtown zones are subject to design review. She indicated the HCA where a certain amount of development was allowed outright, but development did require a review. The application touched many differently regulated areas, so there were a number of associated types of applications.

**Ms. Shanks** provided information on the oak tree which was the specific issue of the appeal. Removal of the tree was part of the application related to construction staging activities. She indicated the boundary of Kronberg Park, the railroad right-of-way, the project construction limits, the proposed construction staging area, and the WQR and HCA areas. The tree was in the middle of the construction staging area and immediately adjacent to the elevated bridge construction itself. The tree was on the outside of the WQR and right on the boundary of the HCA. She understood the appellants' concerns as it was a big, old oak tree that was a community asset with emotional value.

The size and location of the staging area critical to the construction of the bridge was included in the Final Environmental Impact Statement (FEIS). The width of the construction staging area was minimized as much as possible to a width of 50-feet as this was a park. Staff felt use of this as a staging area met applicable approval criteria. The site was physically suited in that it was flat, geotechnically stable, and accessible from major thoroughfare. Staff believed the staging area was appropriately positioned next to the construction site, appropriately sized, and minimized as much as possible to avoid more impacts to the WQR and HCA areas. It can be restored and met all the HCA mitigation standards. The site met the HCA clear and objective standards, and the applicant was able to show it met the mitigation standards. The City hired an arborist who stated the tree was in decline. The Planning Commission did approve this area for construction staging that included removal of the tree. Certain conditions were imposed in order to balance the desire to save the tree and impacts of its removal. TriMet was directed to repurpose the tree by using it to rebuild a future trail through the area or for habitat plus incorporate more oak trees into its mitigation plan.

Staff recommended that the City Council affirm the Planning Commission's decision as it found the applicant was compliant with all applicable approval criteria and development standards and substantial consistency with design standards and imposed specific conditions of approval. She reviewed the decision-making options.

**Councilor Miller** asked why there was only one arborist's opinion on the matter.

**Ms. Shanks** replied that was all time allowed and reviewed the compressed timelines. The initial Planning Commission hearing on both the Bridge and Trolley Trail applications were on November 8, 2011, so there was limited time. On November 17 the oak tree became a point of discussion, and the Planning Commission directed staff to draft possible conditions to require more arborists' reports. Staff found one arborist who was able to go to the site on Monday and report to the Planning Commission on Tuesday. At the special meeting on November 17 the oak became a point of discussion. Staff acted within a compressed timeline to get more information for the Commission.

**Councilor Hedges** said at the November 22 Planning Commission meeting, Chair Batey opened the record so staff could present more information to the Planning Commission which he believed was the arborist's report. He could find nowhere in the record where the Planning Commission asked for an arborist's report.

**Ms. Shanks** replied the Planning Commission had not requested it but did open the record to accept it.

**Mark Hynson**, Certified Arborist, Mason, Bruce, & Girard, Portland. He was asked to look at the tree by Planning staff for the purposes of preserving it and taking conservation and protective measures during construction of the light rail bridge. He provided photos of the tree via PowerPoint. When he approached the tree he noticed a large cavity, about 2-1/2 feet long, in one of the main trunks that indicated potential future failure. It was clearly an old wound that had been there for a long time but was a

point of weakness. There was also evidence of fungal fruiting bodies or mushroom-like growths indicating some moderate to advanced decay. He also noticed the tree had a number of very old damaged limbs with weak attachments that could be dangerous. His main concern had to do with the cavity and decay which likely impacted the tree's structural integrity and holding ability. If the tree were to come apart it would probably do so at the cavity creating an unbalanced tree. Photos showed the sharp branch angles probably resulting from past mechanical or storm damage. He observed that no arborist care had been done on this tree in recent years. He recommended removal of the tree based on his concerns over long-term structural integrity.

**Councilor Miller** asked if this description were not normal for a tree this age. If so, would that not warrant removing all trees of this age and with this level of care?

**Mr. Hynson** replied that it was. It was an issue of risk, and at some point that tree would fail at that location. His point was that there was an elevated risk to the public in a City park and that the tree had not had any professional care.

**Councilor Hedges** noted in his report Mr. Hynson said he had done only a visual observation and did no borings.

**Mr. Hynson** replied that was correct because he felt there were enough visual indications that borings were warranted.

**Councilor Hedges** stated being an arborist was not an exact science and asked if two arborists, like two medical doctors looking at the same patient, could look at the same tree and come to difference conclusions.

**Mr. Hynson** believed that statement was correct.

Applicant Testimony: Leah Robbins, Dave Unsworth, Steve Abel.

**Ms. Robbins** outlined the presentation: overview of the project, overview of the reviews and appeal criterion, and review of information pertaining to the appeals. The Portland to Milwaukie Light Rail Project was a 7.3 mile extension of the system with 10 new stations including Milwaukie/Main Street and Park Avenue. There were park-and-rides at Tacoma Street and Park Avenue. In addition there were multiple bus, bike, and pedestrian connections to transit.

In terms of major timeline benchmarks the FEIS was completed October 2010 and preliminary engineering completed December 2010. Final design would be completed March 2012 with Kellogg Bridge construction beginning in April with operations slated for September 2015. She showed an aerial view of the east segment. Ms. Robbins described the 20-month community engagement process.

**Mr. Unsworth** added that many elements that were discussed in public outreach were incorporated into the design.

**Ms. Robbins** discussed the nine total reviews approved by the Planning Commission with conditions. The land use appeal was based on a CSU related to the tree in Kronberg Park and staging area. She briefly reviewed the CSU approval criteria and stated the appeal was based on the balancing of public benefits versus the negative impacts of the tree removal.

**Mr. Unsworth** indicated the staging area, bridge location, and the Willamette Greenway, WQR, and HCA boundaries on the site. He reviewed mitigation plantings in the WQR area and HCA and noted the Planning Commission imposed the condition that the area have more oak trees.

**Ms. Robbins** went into more detail on the CSU associated with the construction staging area that provided the work space for materials and equipment to get to the columns. A

temporary work bridge would be built over the creek during the in-water work period which was limited. The area adjacent to the structure was minimized but it was needed to bring in the steel tubs. The oak tree was within that staging area. She referenced to two appeals specific to the oak tree and discussed the public benefits that included more transportation, jobs, and downtown economic benefits. Project-related issues had to do with constructability and safety, unavoidable impacts to the tree, and mitigation that exceeded requirements as well as the arborist's determination that the tree was diseased and unsafe. She showed a refined version of material presented to the Planning Commission related to the construction challenges of preserving the oak tree. This material was given to the Planning Commission at its November 17, 2011 presentation although somewhat enhanced for illustrative purposes in terms of color. It would require use of more of Kronberg Park which TriMet had attempted to minimize and would impact the WQR and HCA.

**Ms. Mangle** pointed out in the appeal material where the referenced material was part of the Planning Commission's record.

**Ms. Robbins** referenced a photo of the girder placement for the Interstate Light Rail as a reference. The main point was that the steel tub sections were larger, wider, and heavier than the example photo with the placement area right in the area of the oak tree. The requirements for lifting the tub into place were discussed with the Planning Commission.

In summary the public benefits of the proposed use were greater than the negative impacts. Ms. Robbins provided a comparative analysis of the proposed approach outlined in the application versus the alternative approach and retaining the tree. In terms of safety the proposed approach was consistent with industry practices, posed little or no City liability, minimized the use of Kronberg Park and impacts to WQR and HCA, and was consistent with the project budget. The alternative approach had greater safety and liability risks, impacted the Park, WQR and HCA as well as the tree canopy and tree root system, and added costs to the project. The Planning Commission found the negative impacts were temporary and that the negative benefits associated with the tree's removal were greater than the oak's habitat value alone. All understood the impacts to the tree were meaningful to the community and the conditions required incorporation of oak into the mitigation plan. The oak would be repurposed onsite for use in the pedestrian pathways and/or in Kronberg Park.

**Councilor Miller** observed this was large and difficult process in coming to a decision. He asked if TriMet would agree to extend the timeline on this portion of the project in Kronberg Park to allow a more thorough study.

**Ms. Robbins** replied TriMet was not in position to do so. Time had been spent on the front end of the process with the community where many design revisions were brought to the table. If the timeline were extended, the overall project schedule could be at risk.

**Councilor Miller** asked when TriMet proposed to begin work in Kronberg Park.

**Ms. Robbins** responded work would begin with the notice to proceed, and the earliest would be April.

**Councilor Miller** understood the City of Milwaukie was to contribute \$5 million and that that money could be used to enhance the project in the City. He asked if some of that money be used to preserve that tree.

**Ms. Robbins** noted some of that money would be used to plant more new trees, more than required by code, in the Milwaukie to Park Avenue area. The additional costs related to construction methods as noted in alternative approaches that should be considered.

**Councilor Miller** asked if there were a list of what the \$5 million would pay for in the City of Milwaukie.

**Mr. Unsworth** responded there was a list of elements in the intergovernmental agreement (IGA) that included walls and other elements that the City had asked for and exceeded the \$5 million. This list was available to the public although he did not have it with him at this meeting.

**Councilor Hedges** addressed the safety issue and if TriMet were asked to work around the tree would the project be less safe based on the criteria established by the State of Oregon?

**Ms. Robbins** replied there were State and federal requirements and guidelines regarding construction safety risks. This was discussed at the Planning Commission and mainly had to do with the means and methods to lift the steel tub section over the tree and the addition of larger, heavier equipment that would be in motion versus one static crane. The project would meet all State and federal requirements.

**Mr. Unsworth** added the tree itself was the unknown as it would be pruned.

**Councilor Hedges** said if that were the case then it would not be built at all because there might be an earthquake and told Mr. Unsworth to stick to the facts. Was it not the case in order to meet the required safety level it would be more expensive rather than less safe.

**Ms. Robbins** replied it would be more expensive. There were safety risks with every task on a construction job, and those risks had to be mitigated by the crews on site. Risks did increase as factors were changed.

**Councilor Hedges** noted whatever the risks were the project would be within the parameters of State and federal law.

**Council President Chaimov** referred to the draft minutes of the November 17, 2011 Planning Commission meeting in which there was reference to a memo dated November 17, 2011 from Jeb Doran with several diagrams. It was discussed that TriMet and its consultant did not believe the oak tree could be saved. He asked where that was in the record.

**Ms. Mangle** pointed out its location in the record.

**Ms. Shanks** explained it was a memo to Jeb Doran from Greenworks, and she thought the draft minutes might be in error.

**Council President Chaimov** referred to slide 25 and point #1. He asked for the reference in the record of the constructability and safety aspects of the project that would be compromised by the means employed to preserve the tree.

**Ms. Robbins** referred to page 70 that outlined the revised approach that had two large cranes on the site that would lift the steel tub section over the tree for placement.

**Council President Chaimov** asked what the unavoidable impacts to the tree might be even if extraordinary steps were taken.

**Ms. Robbins** replied there was a risk of compaction in the root protection zone. The tree would need to be limbed for both construction and the permanent location of the bridge.

**Mr. Unsworth** added the truck with the long tub actually had to get out on the work bridge where it was lifted onto the structure. There would still likely be some damage to the tree despite the increased costs and efforts to preserve it.

**Council President Chaimov** did not read the Greenworks memorandum to be saying that even if extraordinary efforts were taken that the tree would be harmed. It was a description of the potential actions that would need to be taken to avoid harming the tree leaving those courses of action up to TriMet.

**Mr. Unsworth** replied that was correct.

Other Testimony in Support of the Application: None

Appellant Testimony: **JoAnne Bird** and **Dion Shepard**.

**Ms. Bird** found herself to be constrained to comply. The material was delivered to her on Christmas Eve late in the afternoon. Since in her testimony of November 17, 2011, in lines 270 and 271 she talked about her husband the engineer and what he said about solving problems. He had written a letter and asked if it were admissible.

**Mr. Ramis** responded Ms. Bird could repeat her testimony where Mr. Bird's opinions were described, but a new document that further enhanced or described them would be new evidence. The applicant did not provide new reports but enhanced existing documents in terms of color. A new letter would probably go past the limitations.

**Ms. Bird** asked her husband if the only way to do it was to lift it over the tree, and he said it was not. He is an engineer and he deals with cranes, and he said "no."

**Council President Chaimov** said she was crossing the line, and that was information the City Council could not consider.

**Ms. Bird** thought there were some problems with the design guidelines, but she would not go through them one by one. She thought it was subjective as to whether the guidelines had been met. She did not believe the guidelines had been met in respect to the tree removal.

**Mr. Ramis** suggested to Ms. Bird that she get as many arguments out as she could during the allotted time. She referred to page 7 of the design review.

**Ms. Bird** referred to page 7 of the design review and building upon environmental assets. It did not mention the existence of a 150-250 year old oak. She did not believe that design criterion was met. Further this was a heritage oak that was not mentioned.

**Council President Chaimov** asked if these were specific grounds the City Council could consider relevant to the appeal.

**Mr. Ramis** replied the City Council can consider Ms. Bird's comments as new arguments not made previously but cannot consider new evidence. If a witness were urging a particular interpretation of the code the City Council could consider the argument.

**Council President Chaimov** understood Ms. Bird to be saying that a different sub-part of the Planning Commission's decision was in error separate and apart from the Community Service Overlay there were design criteria that were not met. Was that an issue the City Council can be undertaking in this proceeding?

**Mr. Ramis** replied "yes." The code did not limit the issue that could be raised on appeal to those mentioned in the grounds for appeal.

**Ms. Bird** discussed the HCA in which one was tasked to avoid, minimize, and mitigate. It seemed like this tree was not even considered for avoiding. She did not believe the environmental impacts had been minimized. If an old growth tree were cut, we would never get back the biodiversity if mitigated with replanting small trees.

**Ms. Shepard** said the appeal was based on frustration that the Planning Commission did not have time to evaluate all the information because of the pressure put on the

members to meet the 120-day clock. TriMet denied the request to extend the time. When they asked about additional arborists' reports at the end of the November 17 meeting the Commissioners specifically said they did not have enough information to make a decision. She thought many of the Planning Commissioners had concerns about saving the tree and finding out if it was healthy enough to do so. The Commissioners did not get that information based on one arborist's opinion, and she felt it was negligent. Kronberg Park was not developed at this time. There were new plantings at one end of the Park, and the oak tree was the one anchor. The document from Greenworks gave TriMet ample time to find ways to prune the tree and protect the roots and still have a nice tree. Safety and costs were TriMet's excuses to bulldoze the tree. It was the easiest thing for TriMet to do. She wanted to know why rather than putting cranes on either side of the tree the beam had to be lifted over the tree. She was surprised there had not been ample time to discuss alternatives for saving the tree and making the construction site safer. The Planning Commission got the arborist's report, and everything came to a screeching halt. That area did not get the consideration it should have. Kronberg Park was not developed so she thought the construction zone could be expanded. She understood the HCA was already degraded.

**Councilor Miller** stated Ms. Shepard had attended the Planning Commission meetings and asked if, in her estimation, the tree had been given its just consideration in the deliberations.

**Ms. Shepard** believed the tree had been given a lot of discussion but the outcome might have been different if the Planning Commission had had more information on the health of the tree. She thought the Commission was very interested in saving the tree.

**Councilor Hedges** asked if the appellants were satisfied with the mitigation in the event the tree had to be removed.

**Ms. Bird** was proud of the Planning Commission for asking TriMet to put back white oaks which were not in the mitigation plan. In her opinion ten trees were not enough.

**Ms. Shepard** felt the existing oak was far more valuable than the combined mitigation plantings.

#### Testimony of those Opposed to the Application

**Mart Hughes**, Milwaukie. He brought forth errors in the Planning Commission conclusion based on the information it received and offered some suggestions on how the City Council should proceed. He thought the most egregious error had to do with the letter from the Oregon Department of Fish and Wildlife (ODFW) stating the biological value of the tree. That in itself he felt was an egregious error. For that reason he believed it should be sent back to the Planning Commission so that a fair hearing could be made on the value of this tree. He did not believe the record was complete. The second point was there was a rush to get a consultant and no effort to get a second opinion. Mr. Hughes would like to give his opinion on the soundness of that tree, but he cannot. There needed to be a fair hearing on the balance between development and preservation. That evidence was not fully brought out at the Planning Commission level. It would be in the City's best interest to get a full record before any decision process went forward. Based on what the City Council heard at this hearing he believed it could go ahead and overrule the Planning Commission. He recommended putting a \$50,000 guarantee bond on the tree in the event it was damaged or destroyed during construction for mitigation and replacement costs.

**Councilor Miller** asked Mr. Hughes what his credentials were.

**Mr. Hughes** replied he was a conservation biologist working for a civic corporation in the region. His work was to enhance and restore natural areas. He had expert knowledge on oak woodlands and oak communities. He was a practicing ecologist.

**Councilor Hedges** asked if the City Council would be allowed to put a bond on the tree.

**Mr. Ramis** did not know of a specific limitation in the municipal code that would prevent that if the City Council thought it was necessary to comply with the criteria.

**Chantelle Gamba**, Milwaukie, ceded her 3 minutes to Mark Gamba.

**Mark Gamba**, Milwaukie, Planning Commissioner. He thought the time allotted to the Planning Commission on the permits was ridiculously short, and many decisions they wished to discuss or have more information on they were not allowed to have. The Commissioners were clear they wanted opinions of more than one arborist but did not get that. Both he and Scott Churchill refuted the claims of needing an extravagant lift to work around the tree. They were not given an opportunity to have another engineer to back them up. The reason they were planning to have three arborists' reports was because you can get an "expert" to give any opinion you desire. The arborist that did give an opinion had TriMet staff tagging along with him when he examined the tree. This was evidence in the record which staff pointed out during the hearing. He was of the opinion that this City Council and the Planning Commission made an error several months ago when they chose not to allow new evidence. This was a prime example of why. The Planning Commission hearing was rushed and did not get the information it wanted, and the City Council will not get to hear any new information that the Planning Commission had wanted. He strongly suggested beyond this hearing that this particular issue be readdressed. He also suggested the City of Milwaukie desperately needed a tree ordinance. The only value in the HCA from a habitat point of view in that entire piece of land being discussed was that oak tree. When you cut down that tree and plant 10 or 20 little one-inch ones you will still not have that habitat for another 60 – 100 years. This tree was on City property and not in the right-of-way. TriMet was being allowed to use City property in order to construct its bridge. He believed the Planning Commission would have gone in a different direction had it had more information. When asked about the Planning Commission vote, Mr. Gamba replied once the arborist gave his report it was clear there were not enough members who wanted to push for a condition to save the tree. There was no official vote on whether or not to save the tree and was dropped as a condition. The Planning Commission did vote on the overall application, and Mr. Gamba voted for it. Mr. Gamba clarified he was speaking as an individual and not as a Planning Commissioner.

**Councilor Miller** understood Mr. Gamba to say had he had the time to consider all the ramifications of this particular project and removal of the tree that he would have voted differently.

**Mr. Gamba** believed that if the Planning Commission had the time to have all the information it wanted presented that the vote would have gone differently.

**Councilor Hedges** watched the video of the Planning Commission hearing where the arborists' reports were discussed. It was his impression from watching that it was curtailed partly because there were other items on the agenda. Councilor Hedges noted Mr. Gamba was nodding his head that that impression was correct. It was his interpretation from watching the video that staff was trying to impose conditions with which the Planning Commission was not happy.

**Mr. Gamba** did not believe City staff was trying to impose conditions that were either not part of the municipal code or the craziness that surrounds LUBA. City staff was trying to help the Planning Commission keep within the bounds.

**Councilor Hedges** explained it seemed as if the questions being asked stalled the Planning Commission from making a decision on the number of arborists.

**Mr. Gamba** thought staff had foreseen a difficulty in writing a finding and condition that would involve bringing in a pack of arborists and then having those arborists come to some kind of decision and that being the condition. It would have been a difficult condition to write. City staff tried to help by getting one arborist to look at the tree. His concern during the hearing was that there was only one opinion without doing actual tests. It was a best guess and particularly from an arborist that was not an expert in that particular species. He thought the Planning Commission wanted more opinions but was not given the time.

**Councilor Hedges** understood it was not an exact science but an opinion, and that the Commissioners felt one report was not sufficient. Two reports could contradict each other, so a third was desirable.

**Mr. Gamba** replied that was what the Commission was hoping for, but it did not happen.

**Cindy Tyler**, Portland. She had been following this carefully for many months. She loved all trees and had been one of the original Earth Day organizers. Further she had a background in horticulture and for a number of years was one of southern California's premier nursery people. This whole issue revolved around not getting the three arborists' reports that were really needed. She was in favor of saving tree in whatever form necessary. If indeed the report accurately reflected what she saw on the tree with the mushroom growth that would indicate the wood was being honeycombed. At the same time there was new growth at the top eventually that tree was going to fail. If this were a wilderness area she would not want it touched, but this was a public park. She suggested the City Council find a way to craft a condition based on the Council's receipt of an additional arborist's data between now and the end of 120-day clock. The City Council had a moral and legal requirement to provide a safe public park. If that tree failed as she believed it would and as did the arborist who gave the report, then that tree became a hazard in its present form. She recommended sawing it off at 6-inches above ground level and let it sprout from the existing strong root system. It came down to a matter of safety. She had even suggested to the Planning Commission the option of using a helicopter.

**Council President Chaimov** asked how much of Ms. Tyler's testimony could the City Council consider.

**Mr. Ramis** recalled most of her comments had previously, with the exception of sawing off the tree and allowing suckers to grow, been stated in the Planning Commission hearings.

**Dominic Maze**, Portland. He took issue with some of the findings and presumptions in Mr. Hynson's report. He offered to provide his qualifications.

**Mr. Ramis** interjected that if Mr. Maze's intent was to provide expert opinion about the subject that could not be permitted. He could provide argument.

**Mr. Maze** believed the visual observation was lacking, and no disease was named in the report as one might expect. Decay was not uncommon in oak trees particularly as they aged, and they often hollowed out. If this tree were actually 60-years old as he suspected, it survived the 1962 Columbus Day Storm and other wind storms since then. The mushroom-type growths did not indicate disease, and not anyone, even a lay person would assume that to be the case. He asked that this issue be revised and that other arborists were called in to give their opinions. It would not be unexpected for other arborists to give a very different opinion of this particular tree. In natural areas one would not expect trees to be pruned or maintained. One would see wounds in any

tree of this age. His final comment was that the future longevity of all of us was at question, and a 60-year old tree was well within the life span of Oregon white oaks.

**Councilor Miller** asked Mr. Maze his background.

**Mr. Maze** background was biology, conservation, and restoration. He owned his own restoration company and was adjunct faculty in the Oregon State botany department. He currently worked as a biologist for a local regional government. He clarified he was speaking as an individual.

**Susan Shawn**, Oak Grove, Friends of North Clackamas Parks and Friends of Oregon White Oaks. She had six points she wished to bring forward. She recommended and hoped a way could be found around the tree since it was the only thing in the Park. Perhaps a little more space could be carved out. She strongly suggested careful pruning and especially the limb nearest the bridge structure. She wished the City Council would find a way to relook at an alternate way to do the crane lifting. She suggested planting some snowberries under the tree for habitat. This tree held emotional value for many people. The Council needed to think about the ecosystem value of that large tree. It was at least 100 - 150 years old, and the cost to replace the ecosystem service that tree provided would be enormous. She was thinking about water retention and erosion control into the creek which could not happen with cement. She was not impressed by the mitigation plan. Finally she hoped the City Council would find a way to take this particular issue back to the Planning Commission so it can look at more complete information.

**Chris Runyard**, Portland. He challenged both TriMet and the City of Milwaukie to make it all work by building a bridge for light rail and saving the tree. It was an old, very important tree sitting next to Kellogg Creek. With the Kellogg for Coho and the dam's coming out Kellogg will be an entirely different creek. The mitigation was a nice gesture but did not replace one huge oak. Thousands of trees would be planted when the dam was removed. Only about 3% of the oaks remain in this area, so it was important that this one not be removed. It had potential for being a great habitat. There was such a rich ecological condition right here in Milwaukie's front yard. Although there were other trees in the vicinity, this tree was the lone warrior in that Park. This would be a great message from a culture of sustainability plus take people to downtown Portland on light rail. He noted this oak looked like every other white oak he had seen with big fat buds on the limbs. He felt it was a specimen worthy of saving.

**Ms. Mangle** noted Mr. Runyard had made several comments that were not in the record including his observations of habitat, big fat buds, and typical appearance of that species.

**Les Poole**, Oak Grove. Many folks from the neighborhood were very troubled that it was not until the permits were issued that they found out the tree would be sacrificed. Somewhere in the planning process that would have been handled better had the citizens known. Many years ago, probably in the 1950's the Lake was partially filled with materials that were not conducive to growing things. That oak was worth any effort to preserve it.

**Council President Chaimov** asked if the City Council could consider the lack of generative ability of the soil in the Park.

**Mr. Ramis** replied that information was not in the record.

**Scott Churchill**, Milwaukie. He was speaking as an individual although he was a member of the Planning Commission. He felt he had unique capabilities that bore some merit of discussion. He was a licensed architect and has engaged with a number of engineers in his career. He had been able to avoid such obstructions as this tree, and

he did not believe there was legitimacy in safety concerns. The distance and weight of the tubs were well within range of crane work that was not excessive for the condition of the site. He thought the issue really had to do with costs. There has been an outpouring of passion from the community about alignments and proximity to schools and things of that nature. The applicant has taken the approach to bulldoze through another obstacle. He urged the City Council to find an alternative that would save the tree.

**Council President Chaimov** asked staff how much this could be considered and described the limits of consideration to what was discussed at Planning Commission.

**Ms. Shanks** replied to her recollection Mr. Churchill was not offering new information.

**Councilor Hedges** asked Mr. Churchill if he thought it was the case that TriMet would need a larger staging area in order to save the tree.

**Mr. Churchill** would defer his opinion to crane experts. A larger staging area might be of some comfort, but in reality he had seen very tight urban staging areas and felt it could be done.

**Mr. Ramis** said staff believed that comment went beyond the existing record.

**Jean Baker**, Milwaukie. That tree was not ready to go; it was like an old grandfather in our tribe being replaced by a whole pack of children. She had heard nothing concrete on the issue of the tree's health and that it was indeed in jeopardy. She felt the notion of imminent danger might be premature. The benefits of its being cut down were supposed the balance with the loss. The benefits were not specific and almost vague. It seemed like the applicant just wanted to get it out of the way; get job done faster and cheaper. She agreed the matter should be sent back to the Planning Commission for more clarification. The evidence was really only assertions. She urged more time to bring in other experts to get the solid truth.

Neutral Testimony: **Lisa Batey**, Milwaukie. She was Planning Commission member but spoke as an individual. She wanted to clarify a few matters. The timeline was unreasonably short for how much the Commission needed to consider, and TriMet did not allow for an extension of the 120-day clock. The guidelines were objective, and that was why the community had a Design and Landmarks Committee and Planning Commission to make those kinds of decisions. It was said at this meeting that relying on one arborist was negligent, but if it was it was on the Planning Commission as it chose to move forward without three arborists' reports. It was not something staff pushed the Commission to do. The Planning Commission decided to move forward without imposing a condition that there be three arborists' reports. Insofar as there was a perceived failure in only having one arborist's report the Planning Commission should take responsibility for that error. Ms. Shanks was always very responsive when there were questions. Whether the tree stayed or went in about two years, TriMet will do its mitigation plantings. She recommended starting to master plan for Kronberg Park so the City could present a clearer vision to TriMet of what plant communities were desired.

**Council President Chaimov** called for a recess 9:41 p.m. and reconvened the meeting at 9:47 p.m. Staff would begin by providing additional comments on the Council's ability to send the matter back to the Planning Commission and the ability of the applicant to use additional space in Kronberg Park for its processes.

#### Additional Staff Comments

**Ms. Shanks** responded to the first issue about wanting the Planning Commission to reconsider with more information since the City's rules about appeals did not allow the City Council to receive more information. The City was obligated to process

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applications timely, and only the applicant can waive the clock. The City was really close to the end of the timeline, and there was no time left on the clock to send the matter back to Planning Commission. The in-water work period was critical for the applicant. Ms. Shanks addressed the comments about the tree and if the City Council can direct staff to prepare a condition to save the tree or increase the construction area limits. She reviewed the municipal code obligations related to WQR and HCA and locations of these and construction staging areas. There were a number of unknowns and certain associated risks. If the applicant were exempted from doing the required application analysis for any additional impacts that would be a legislative rather than a quasi-judicial action and effectively be a free pass for the applicant. The applicant could be required to submit an application at a later date that the Planning Commission could consider in the future, but this route assumed the Commission would approve the application. It bypassed the normal land use process. In terms of modifying the staging area staff would certainly advise the City Council on the community service use and the protections in place in the WQR and HCA. Certain procedures needed to be followed in order to move the impact to a different location. The tree was in an HCA with two paths the applicant can take. One was a clear and objective path with certain standards such as area of disturbance which in this case was small relative to the entire site. The code outright allowed removal of the tree and required mitigation with the planting of 12 trees and 58 shrubs. The Planning Commission heard it all at one time because all the applications were part of one project. One of the testifiers commented on the ODFW letter which was part of the November 8, 2011 staff report. It cited the value of the oak as habitat and encouraged the City and TriMet to save the tree. The letter went on to provide alternatives but did not say to save the tree at all costs. One of the appellants mentioned design review which was certainly in the City Council's purview to consider. The approval criteria were that the application had to be substantially consistent with the design guidelines. The Design and Landmarks Committee recommended approval based on overall consistency in the whole design package. The findings were objective and could be crafted to support a different perspective.

**Councilor Loomis** understood Planning Commission felt rushed and asked if that was typical.

**Ms. Shanks** replied the land use process had constraints and could be very challenging relative to the public interest and the size of the application. This was a complex project and people felt passionately about certain issues. It was clear some of the Commissioners wanted more information and more time. To a greater or lesser degree that was common to many land use applications. Sometimes the information is imperfect but the decision-making body must come to the best possible decision given the constraints. The bridge application elements could not be separated out given the interconnectedness. She discussed the Trolley Trail application relative to the light rail bridge application.

**Councilor Miller** asked how the number of 12 replacement trees was determined.

**Ms. Shanks** replied that was the calculation directly from the municipal code and was based on tree caliper and total square footage of disturbance.

**Councilor Miller** asked if it were not customary for the applicant to waive the 120-day clock given these types circumstances.

**Ms. Shanks** replied less complex cases have waived while others have not.

**Councilor Miller** understood the Planning Commission asked for an extension but the applicant had refused.

**Councilor Hedges** asked how the City Council could cut through the bureaucracy to expand the staging area so the tree could stay.

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**Ms. Shanks** discussed the decision-making options. There was no easy way since the code was the code and she outlined certain modifications.

**Ms. Mangle** concurred with Ms. Shanks' comments and noted the roadblocks identified by staff and the City Attorney's office to arrive at a solution that saved the tree.

**Mr. Ramis** added it was possible but not simple. The most straightforward approach would be to amend the code, but that required a 45-day notice to the State and a local hearing process. The other approach would be to create a new application which the City could initiate, but again that would be treating this applicant differently than others.

**Councilor Hedges** heard the citizens asking for a particular action, and if the City Council were being asked for that action that TriMet's path needed to be clear. If the will was there, then a way could be found.

**Ms. Mangle** discussed the schedule implications.

**Council President Chaimov** thanked Ms. Batey and her colleagues on the Planning Commission as well as Ms. Shanks and Ms. Mangle for their professionalism.

#### Applicant's Rebuttal and Final Remarks

**Steve Abel**, Stoel Rives, commented on the legal components. The 120-day rule has been somewhat characterized as an impediment but comes from State statutes and is considered a reasonable amount of time in which to come to these decisions. That clock did not start until an application is deemed complete, so a number of things have to happen. In this case there were briefings and advance work before the clock started. He thought the City Council should also note that there were about 12-hours of testimony before the Planning Commission and significant number of briefings. He appreciated the comments made by the Planning Commissioners, but there was a certain sanctity to the process. The land use process can seem restraining, but when the Planning Commission made its decision, had it not been appealed, was final and binding. He assumed the Planning Commissioners who testified meant they may have had some questions and concerns but did not raise to the level of not taking a vote and coming to a decision. The Planning Commission decision came along with conditions of approval that responded to the very evidence the City Council heard tonight. The important part was to give the Planning Commission decision its weight as the City Council deliberated.

It was important for the City Council to base its decision on the criteria adopted by this City Council some time in the past and judging these applications to make decisions. In this instance there was the balancing test which was subjective which provided the City Council the opportunity to weigh that evidence – the public benefits of the proposed use versus the negative impacts on the neighborhood of removing the tree. The public benefits were broad like a more efficient transit system, reduced automobile use and congestion, increased local jobs, and downtown economic benefits. The sole impact being discussed about impacts to the neighborhood centered on the oak tree. In order to make a finding in this process the City Council had to weigh the balance and determined the tree outweighed the long list of public benefits. Once weighed he felt the balance would go in favor of the benefits of the project. The Planning Commission approved the application, allowed for the tree to be removed, and asked that additional oak trees be planted, and added conditions having to do with reuse of the tree on the site.

Other alternatives had been discussed such as TriMet's waiting for a code amendment or submitting a new application for which there was no certainty or risk protection. Either of these options came with long timeframes. He concluded by saying the record was voluminous because it made sense to combine all of the applications in one

package. That evidentiary package was complete and supported the criteria. It supported the findings made by the Planning Commission, and he believed it affirmed the Planning Commission's decision as it stood.

**Councilor Miller** said if he understood correctly Mr. Abel to say if the tree were saved it would destroy the project and all the public benefits would go by the wayside.

**Mr. Abel** replied the criteria were to weigh the public benefits against the negative impacts on the neighborhood and make a decision as to whether the public benefits were greater than that negative impact.

**Councilor Hedges** asked if the public benefits were there whether the tree stayed or not.

**Mr. Abel** looked at the criteria and did not speculate on what might or might not be.

#### Closure of the Public Hearing

**It was moved by Councilor Hedges and seconded by Councilor Miller to close the public hearing on Appeal File No. AP-11-01. Motion passed with the following vote: Councilors Miller, Hedges, and Loomis and Council President Chaimov voting "aye." [4:0]**

**Council President Chaimov** closed the public hearing at 10:23 p.m.

#### Council Discussion

**Councilor Hedges** said from conversations with the City Attorney there were certain options he would like to take which were not open to him. It was also apparent he had to explain his decision. First he addressed the weighing of the preservation of the tree and the public benefits. The public benefits in the document to the City and Clackamas County would be there whether the City Council stipulated the tree stayed or not. He noted comments made by staff at the November 8 hearing that were not personally known to them. If the Planning Commission had known that they might have put a different weight on it. In that comment there was a reference to the applicant's looking into saving the tree and having an arborist evaluate it. When asked staff said the information came from a verbal comment from TriMet staff, and lead Councilor Hedges to believe there was an arborist's report somewhere in TriMet that the City Council had not seen. At a later time, TriMet testified the tree was healthy and might well be in the arborist's report. If that were the case and had been known to the Planning Commission, the decision might well have been different. The arborist was honest in his testimony that another arborist might come up with a different opinion. This was a discussion that came up at one of the Planning Commission hearings where the three reports were discussed. It was for that reason one person gave his best professional opinion. The next person may well disagree, but with three, which seemed like a reasonable number, there should be consensus. He referred to the Greenworks memo and understood from reading it that pruning the tree would not damage it. Further, Greenworks recommended an arborist's assessment of the tree's health and whether it would survive the work around it. While the applicant said it could not get an arborist in time, City staff found one on short notice. He was thankful City staff did the work it had done. He did not want people to think he was being critical but he did feel there were flaws in the way things were done. If the arborist hired was working for the City's benefit, why was TriMet staff invited to come along and not those who had already made it known they wanted the tree saved? This was not the way it should have been done if they wanted to be open and above board. He suspected the report might have been swayed. Much play had been made by the members of the Planning Commission about the amount of time in which they had to study this. After reviewing all of the meetings, the one thing that stuck in his mind was the discussion of the three arborists.

One thing that worried him was if the City Council if stipulated that the tree be saved the staging area would have to be increased. He proposed to uphold the Planning Commission decision as it applied to the whole application with the following exception. The City would ask for three arborists' reports: one by TriMet, one by appellants, and one mutually agreeable arborist. If the joint opinion of the three was that the tree was savable, TriMet would be asked to work around it. If the three arborists decided the tree was not savable or could not survive the construction instead of the mitigation that the area of the canopy be applied for mitigation. There was a binding contract between the City and TriMet that the Milwaukie owed TriMet \$5 million. Before any money was spent on capital projects the money must be used to mitigate the impacts of light rail on Milwaukie.

**Councilor Loomis** did not hear anything that would make him vote to overturn the Planning Commission's decision. He thought the application met the criteria. There were people on the Planning Commission who were passionate about tree yet made their decision.

**Councilor Miller** agreed with Councilor Hedges. In reading the document, he found a number of issues that concerned him. One of the issues was that the ODFW letter said everything possible should be done to save the tree. In reading the Planning Commission minutes he found that the body felt rushed and not satisfied with what they were getting. It appeared they were rushed to a decision because of the 120-day clock about which he was very disturbed. Normally he thought an applicant to take the time to ensure a good project and make sure the citizens were happy with what they got. In looking at the map of the staging area he saw little reason why it could not be changed. He too felt rushed into making a decision and noted many citizens were not happy. To cut the tree down would be easy; to save it would be hard. In 50 years that oak tree could still be the symbol of the City in that Park. With proper care he saw little reason to cut the tree just to make it easier to have a staging area. He seconded Councilor Hedges' motion.

**Council President Chaimov** understood the motion was to direct staff to work on those conditions so the specific language could be reviewed at the City Council meeting of January 17, 2012 for approval.

**Council President Chaimov** supported Councilor Hedges' suggestion. His own view was somewhat different as he did not see a need for three arborists' report. To the extent to find the tree healthy was already in the record put on by the applicant. The issue as far as he was concerned was not if the tree was healthy but rather its value to the ecosystem. As ODFW pointed out the tree should be preserved unless it proved absolutely impossible. What was in the record was not that it was absolutely impossible to save the oak tree. We have that it would be cheaper and easier, but unfortunately it was not in the record how much cheaper or how much easier. There was no basis to make a determination that it was financially or physically prohibitive to try to preserve the oak tree. With respect to the interpretation of the municipal code, he did not see the Council's role as one of balancing the benefits of an efficient transportation system against an oak tree. If that were the interpretation of the code, whatever project that was proposed that had any public benefit would in almost all circumstances permit the removal of some aspect that was of importance to a neighborhood. As Councilor Hedges pointed out the only way to interpret the municipal code was to determine if conditions could be placed on the approval of the application that would provide for both the protection of the neighborhood and the public benefits that were provided for in the City code.

**Mr. Ramis** felt he had sufficient direction to draft conditions.

Decision by Council

It was moved by Councilor Hedges and seconded by to Councilor Miller to continue the hearing to the regular City Council meeting of January 17, 2012. . Motion passed with the following vote: Councilors Miller, Hedges, and Loomis and Council President Chaimov voting “aye.” [4:0]

**OTHER BUSINESS**

**A. Council Reports**

None at this time.

**ADJOURNMENT**

It was moved by Councilor Hedges and seconded by Councilor Miller to adjourn the meeting. Motion passed with the following vote: Councilors Miller, Hedges, and Loomis and Council President Chaimov voting “aye.” [4:0].

**Council President Chaimov** adjourned the regular session at 10:42 p.m.

Respectfully submitted,

---

Pat DuVal, Recorder



**To:** Mayor Ferguson and Milwaukie City Council  
**Through:** Bill Monahan, City Manager  
**From:** Bob Jordan, Chief of Police  
**Date:** February 2, 2012  
**Subject:** O.L.C.C. Application – Wong’s Garden Restaurant – 10820 SE Oak Street

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Wong’s Garden Restaurant - 10820 SE Oak Street.

**Background:**

We have conducted a background investigation and find no reason to deny the request for liquor license.



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Reset Form

Print Form



Application is being made for:

### LICENSE TYPES

- Full On-Premises Sales (\$402.60/yr)
  - Commercial Establishment
  - Caterer
  - Passenger Carrier
  - Other Public Location
  - Private Club
- Limited On-Premises Sales (\$202.60/yr)
- Off-Premises Sales (\$100/yr)
  - with Fuel Pumps
- Brewery Public House (\$252.60)
- Winery (\$250/yr)
- Other: \_\_\_\_\_

### ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other \_\_\_\_\_

P25478  
L151171

### 90-DAY AUTHORITY

Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

### APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

### CITY AND COUNTY USE ONLY

Date application received: \_\_\_\_\_

The City Council or County Commission:

(name of city or county)

recommends that this license be:

- Granted
- Denied

By: \_\_\_\_\_  
(signature) (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### OLCC USE ONLY

Application Rec'd by: 

Date: 1-23-12

90-day authority:  Yes  No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

- ① Wong's Garden Restaurant, Inc. ③ \_\_\_\_\_
- ② \_\_\_\_\_ ④ \_\_\_\_\_

2. Trade Name (dba): Wong's Garden Restaurant

3. Business Location: 10820 SE Oak Street, Milwaukie, Clackamas, OR 97222  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: Same as above  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-794-2879  
(phone) (fax)

6. Is the business at this location currently licensed by OLCC?  Yes  No

7. If yes to whom: Wong's Garden, Inc. Type of License: Limited On-Premises Sales

8. Former Business Name: Wong's Garden Restaurant

9. Will you have a manager?  Yes  No Name: Fu Quan Huang  
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Milwaukie  
(name of city or county)

11. Contact person for this application: Li Wei : 503-775-2720  
(name) (phone number(s))  
7059 SE Powell Blvd, Portland, OR 97206; 503-774-5338; lilwei@hotmail.com  
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

- ① Yong Zhi Huang Date 1/16/12 ③ \_\_\_\_\_ Date \_\_\_\_\_
- ② \_\_\_\_\_ Date \_\_\_\_\_ ④ \_\_\_\_\_ Date \_\_\_\_\_



OREGON LIQUOR CONTROL COMMISSION  
CORPORATION QUESTIONNAIRE

058142-98 / 1-9-02

Please Print or Type

Corporation Name: WONG'S GARDEN Restaurant INC. Year Incorporated: 2002

Trade Name (dba): WONG'S GARDEN RESTAURANT

Business Location Address: 10820 SE OAK STREET

City: MILWAUKIE ZIP Code: 97222

List Corporate Officers:

YONG ZHI HUANG PRESIDENT

(name) (title)

LI PING CHEN SECRETARY

List Board of Directors:

YONG ZHI HUANG

(name)

LI PING CHEN

List Stockholders: (Note: If any stockholder is another legal entity, that entity may also need to complete another Corporation Questionnaire. See Liquor License Application Guide for more information.)

Stockholders:	Number of Shares Held:	Number of Stock Shares:
<u>YONG ZHI HUANG</u>	<u>50</u>	Issued: <u>100</u>
<u>LI PING CHEN</u>	<u>50</u>	Unissued: <u>0</u>
		Total Shares Authorized to Issue: <u>100</u>

Server Education Designee: FU QUAN HUANG DOB: 07/08/1984

(See Liquor License Application Guide for more information)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Officer's Signature: Yong zhi Huang President Date: 1/6/12  
(name) (title)

1-800-452-OLCC (6522)

www.oregon.gov/olcc

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OREGON LIQUOR CONTROL COMMISSION
BUSINESS INFORMATION

Please Print or Type

Applicant Name: Wong's Garden Restaurant, Inc Phone: 503-794-2879

Trade Name (dba): Wong's Garden Restaurant

Business Location Address: 10820 SE Oak Street

City: Milwaukie ZIP Code: 97222

DAYS AND HOURS OF OPERATION

Business Hours:

Sunday 11:00 AM to 10:00 PM
Monday
Tuesday
Wednesday
Thursday
Friday 11:00 AM to 11:00 PM
Saturday

Outdoor Area Hours:

Sunday to
Monday to
Tuesday to
Wednesday to
Thursday to
Friday to
Saturday to

The outdoor area is used for:

- Food service
Alcohol service
Enclosed, how

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: Yes No If yes, explain:

ENTERTAINMENT

Check all that apply:

- Live Music
Recorded Music
DJ Music
Dancing
Nude Entertainers
Karaoke
Coin-operated Games
Video Lottery Machines
Social Gaming
Pool Tables
Other:

DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday to
Monday to
Tuesday to
Wednesday to
Thursday to
Friday to
Saturday to

SEATING COUNT

Restaurant: 82 Outdoor:
Lounge: Other (explain):
Banquet: Total Seating:

OLCC USE ONLY
Investigator Verified Seating: (Y) (N)
Investigator Initials:
Date:

I understand if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Yong Shi Huang Date: 1/6/12

1-800-452-OLCC (6522)

www.oregon.gov/olcc

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6.  
OTHER BUSINESS



Agenda Item: 6.A.  
Meeting Date: 2/21/12

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Expedited Annexation – 5807 & 5816 SE Firwood St (File #A-12-01)

**Prepared By:** Ryan Marquardt, Associate Planner  
**Dept. Head Approval:** Katie Mangle, Planning Director  
**City Manager Approval:** Bill Monahan, City Manager  
**Reviewed by City Manager:** 2/10/12

### ISSUE BEFORE THE COUNCIL

Approval of expedited annexation for 5807 & 5816 SE Firwood St

### STAFF RECOMMENDATION

Approval

### KEY FACTS & INFORMATION SUMMARY

The two properties are under the same ownership. The septic system at 5807 SE Firwood St began to fail in Fall 2011, necessitating connection to City sewer service and annexation. The owners decided to connect and annex both properties at the same time.

### OTHER ALTERNATIVES CONSIDERED

Council can approve or deny the requested annexation.

### CITY COUNCIL GOALS

n/a

### ATTACHMENT LIST

1. Annexation Ordinance
2. Annexation Site Map
3. Applicant's Annexation Application
4. Applicant's Consent to Annex Form

### FISCAL NOTES

Minimal fiscal impact is expected. It is expected that property taxes received by the City for this property will be roughly offset by the cost of providing services to the property.



**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager  
Kenneth Asher, Community Development & Public Works Director  
Katie Mangle, Planning Director

**From:** Ryan Marquardt, Associate Planner

**Subject:** File #A-12-01 – Expedited Annexation of 5807 & 5816 SE Firwood St

**Date:** February 15, 2011 for February 21, 2012 Regular Session

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### **ACTION REQUESTED**

Approve application A-12-01, an expedited annexation petition, and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would result in the following actions:

- Annexation of 5807 SE Firwood Street (Tax Map 1S2E30AD Tax Lot 05400) and 5816 SE Firwood Street (Tax Map 1S2E30DA Tax Lot 03200) (the "Annexation Properties") into the City.
- Application of a Low Density (LD) land use designation to the Annexation Properties and a Residential (R-7) zoning designation for 5807 SE Firwood St and a Residential (R-10) zoning designation for 5816 SE Firwood St.
- Amendments to the City's Land Use Map and Zoning Map to reflect the City's new boundary and the Annexation Properties' new land use and zoning designations.
- Withdrawal of the Annexation Properties from the following urban service providers and districts:
  - Clackamas County Service District for Enhanced Law Enforcement
  - Clackamas County Service District No. 5 for Street Lights

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

- **June 2010:** Council approved the first annexation of property in the Northeast Sewer Extension (NESE) Project Area, at 5840 SE Morris St (file #A-10-01). Since then, Council has approved the annexation of 73 additional properties in the NESE area.

- **January 2010:** Council annexed the rights-of-way in the Northeast Sewer Extension (NESE) Project Area making all properties in this area contiguous to the City limits and eligible for annexation (Ordinance 2010).
- **September 2009:** Council initiated annexation of the rights-of-way in the NESE Project Area by resolution (Resolution No. 58-2009).
- **August 2009:** Staff briefed Council on the status of the NESE Project and the need to annex the rights-of-way in this area.
- **July 1990:** Clackamas County Order No 90-726 established an Urban Growth Management Agreement in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. With respect to Dual Interest Area —~~A~~ the agreement states: —~~the~~ City shall assume a lead role in providing urbanizing services.”

## **BACKGROUND**

### **Proposal**

The septic system for the property at 5807 SE Firwood St began to fail in late 2011. This prompted the applicant, Randy Maresh, who owns the annexation properties with Jolie Maresh, to apply for annexation in order to connect to the City’s recently installed sewer system. Both 5807 and 5816 SE Firwood St are under the same ownership, and the owners decided to connect both properties to sewer at the same time and annex them into the city. 5816 SE Firwood St has not had problems with its septic system.

According to the intergovernmental agreement between the City and County regarding the NESE area, the County could not issue a permit to repair or replace the septic system because City sewer service was available. On January 4, 2012, the City authorized an emergency connection to the City’s sewer system, upon submission of an annexation application and a Consent to Annex form. Both properties have connected to the City’s sewer system. The Consent to Annex form obligates the property owner to complete the annexation process. This is necessary so as to avoid extraterritorial provision of City services, which is contrary to City policy. The property owners applied for an expedited annexation to the City in order to fulfill their contractual obligation to annex following the emergency sewer connection earlier this year.

### **Site and Vicinity**

The Annexation Properties are contiguous to the existing City limits as a result of the NESE right-of-way annexation in 2010 and adjacent properties that have been annexed as a result. The Annexation Properties are within the City’s Urban Growth Management Area (UGMA) and the NESE project area. Both of the Annexation Properties are developed with one single-family house, which is outright allowed in the City’s Residential R-10 and R-7 Zones.

### **Annexation Petition**

This is a regular expedited annexation petition (see Attachment 3), and is similar to other expedited annexations approved by City Council in the past 3 years. Any property that is within the UGMA and contiguous to the City limit may apply for an expedited annexation so long as all property owners of the area to be annexed and at least 50% of registered voters within the area to be annexed consent to the annexation.

Clackamas County has certified that these thresholds are met for the Annexation Properties. The expedited annexation process automatically assigns City land use and zoning designations to the Annexation Property based on the existing Clackamas County land use and zoning designations. The existing County land use designation for the Annexation Properties is Low Density Residential (LDR), which would assign the City's Low Density Residential (LD) Comprehensive Plan designation to them upon annexation. The current County zoning designations are Residential R7 for 5807 SE Firwood St and Residential R10 for 5816 SE Firwood St, which would assign City zoning designations of Residential zone R-7 and Residential zone R-10, respectively, upon annexation.

Pursuant to City, regional, and State regulations on expedited annexations, all necessary parties, interested persons, and residents and property owners within 400 feet of the sites were notified of these proceedings. A public hearing is not required for an expedited annexation; however, Council must adopt an ordinance to implement the annexation.

### **Expedited Annexation Approval Criteria**

Expedited annexations must meet the approval criteria of Milwaukie Municipal Code (MMC) Subsection 19.1102.3. Compliance with the applicable criteria is detailed in Attachment 1, Exhibit A.

### **Utilities, Service Providers, and Service Districts**

The City is authorized by ORS Section 222.120 (5) to withdraw the Annexation Properties from non-City service providers and districts upon annexation to the City. This allows for a more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

- **Wastewater:** The Annexation Properties are within the City's sewer service area and served by the City's 8-inch sewer line in Firwood St.
- **Water:** The Annexation Properties are currently served by Clackamas River Water (CRW). Pursuant to the City's IGA with CRW, CRW will continue to serve these properties, and they should not be withdrawn from this district at this time.
- **Storm:** The Annexation Properties are not connected to a public stormwater system. Treatment and management of onsite stormwater will be required when new development occurs.

- Fire: The Annexation Properties are currently served by Clackamas County Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.
- Police: The Annexation Properties are currently served by the Clackamas County Sheriff's Department and is within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the sites. In order to avoid duplication of services, the sites should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
- Street Lights: The Annexation Properties are currently within Clackamas County Service District No. 5 for street lights (the "District"). As of July 1, 2011, an intergovernmental agreement between the City and the District transferred operational responsibility to the City for the street lights and street light payments in the NESE area, though the properties themselves remain in the District until they annex to the City. The Annexation Properties should be withdrawn from the District upon annexation, as the City provides street lighting for properties within the City as part of its package of City services.
- Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the sites upon annexation. The Annexation Properties will continue to receive services and remain within the boundaries of certain regional and County service providers, such as TriMet, North Clackamas School District, Vector Control District, etc.

### **CONCURRENCE**

All City departments, necessary parties, interested persons, and residents and property owners within 400 feet of the Annexation Properties were notified of these annexation proceedings as required by City, regional, and State regulations. The Lewelling Neighborhood District Association and the Southgate Planning Association also received notice of the annexation petition and meeting.

Clackamas River Water (CRW) submitted a written comment on February 3, 2012, stating that they do not object to the proposed annexation. The City did not receive comments from any other necessary parties with objections to the proposed annexation.

### **FISCAL IMPACT**

The annexation will have minimal fiscal impact on the City. Costs of providing governmental services will likely be offset by the collection of property taxes. The total assessed value of 5807 SE Firwood St in 2010 was \$186,100, and the total assessed value of 5816 SE Firwood St in 2010 was \$120,937. Total property tax collections in the range of \$6,000 are anticipated for the Annexation Properties, and the City will receive approximately \$1,250 of this total.

### **WORKLOAD IMPACTS**

Workload impacts will be minimal and will likely include, but are not limited to, the following: utility billing, provision of general governmental services, and the setting up and maintenance of property records.

### **ALTERNATIVES**

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1100 Annexations and Boundary Changes.

The City Council has two decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Deny the application and adopt findings in support of denial. In this case, where the City has already allowed the applicant to connect to the City's sewer system, denial would result in the provision of extraterritorial sewer service to the Annexation Properties, which is counter to City policy.

### **ATTACHMENTS**

1. Annexation Ordinance
  - Exhibit A. Findings in Support of Approval
  - Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Applicant's Annexation Application
4. Applicant's Consent to Annex Form

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING TRACTS OF LAND IDENTIFIED AS 5807 AND 5816 SE FIRWOOD STREET INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACTS FROM THE TERRITORY OF CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS. (FILE #A-12-01).**

**WHEREAS**, the territory proposed for annexation is contiguous to the City's boundary and is within the City's urban growth management area; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation were met by providing written consent from a majority of electors and all owners of land in the territory proposed for annexation; and

**WHEREAS**, the territory proposed for annexation lies within the territory of Clackamas County Service District No. 5 for Street Lights and Clackamas County Service District for Enhanced Law Enforcement; and

**WHEREAS**, the annexation and withdrawals are not contested by any necessary party; and

**WHEREAS**, the annexation will promote the timely, orderly, and economic provision of public facilities and services; and

**WHEREAS**, Table 19.1104.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

**WHEREAS**, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

**WHEREAS**, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tracts of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A;

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

Section 1. The Findings in Support of Approval and attached as Exhibit A are hereby adopted.

Section 2. The tracts of land described and depicted in Exhibit B are hereby annexed to the City of Milwaukie.

Section 3. The tracts of land annexed by this ordinance and described in Section 2 are hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights.

Section 4. The tracts of land annexed by this ordinance and described in Section 2 are hereby assigned a Comprehensive Plan land use designation of Low Density Residential. The tract of land described as 5807 SE Firwood Street is hereby assigned a Municipal Code zoning designation of Residential zone R-7, and the tract of land described as 5816 SE Firwood Street is hereby assigned a Municipal Code zoning designation of Residential zone R-10.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

Document1 (Last revised 09/18/07)

### FINDINGS IN SUPPORT OF APPROVAL

Based on the expedited annexation staff report for 5807 & 5816 SE Firwood Street (the "Annexation Properties"), the Milwaukie City Council finds:

1. The Annexation Properties consist of two tax lot comprising 0.34 acres (Tax Map 1S 2E 30AD Lot 05400 and 1S 2E 30DA Lot 03200). The tax lots are contiguous to the existing city limits on Firwood Street and adjacent properties to the east that are within the City of Milwaukie. The Annexation Properties is also within the City's urban growth management area (UGMA).  
  
The Annexation Properties are developed with a single-family dwelling unit. The surrounding area consists primarily of single-family dwellings.
2. The property owners seek annexation to the City to access City services, namely sewer service. The Annexation Properties were allowed to make an emergency connection to the City's sewer system. Since City policy does not allow extraterritorial connections to City services, the property owners submitted an annexation application and Consent to Annex form prior to making the sewer connection, which obligated them to complete the annexation process.
3. The annexation petition was initiated by Consent of All Owners of Land on January 4, 2012. It meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1102.2.A.1.
4. The annexation petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045, and MMC Section 19.1104.
5. The annexation petition is being processed as an expedited annexation at the request of the property owner. It meets the expedited annexation procedural requirements set forth in MMC Section 19.1104.
6. The expedited annexation process provides for automatic application of City land use and zoning designations to the Annexation Property based on its existing land use designation in the County, which is Residential R7 for 5807 SE Firwood Street and Residential R10 for 5816 SE Firwood Street. Pursuant to MMC Table 19.1104.1.E, the automatic City Comprehensive Plan land use designations for the Annexation Properties are Low Density Residential, and the automatic zoning designations are Residential Zone R-7 for 5807 SE Firwood Street and Residential zone R-10 for 5816 SE Firwood Street.
7. The applicable City approval criteria for expedited annexations are contained in MMC 19.1102.3. They are listed below with findings in italics.
  - A. The subject site must be located within the City's urban growth management area (UGMA);  
  
*The Annexation Properties are within the City's UGMA.*

- B. The subject site must be contiguous to the existing city limits;  
*The Annexation Properties are contiguous to the existing city limits along Firwood Street and adjacent properties to the east of each tax lot.*
- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;  
*The Clackamas County Assessment and Tax Department and Clackamas County Elections Department have verified that that the annexation petition meets the Oregon Revised Statutes requirements for initiation pursuant to the "Consent of All Owners of Land" initiation method, which requires consent by all property owners and a majority of the electors residing at the Annexation Property.*
- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;  
*Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: (1) delivery of City services to annexing areas where the City has adequate services and (2) requiring annexation in order to receive a City service. City sewer service is available to the Annexation Property in Stanley Ave. The property owners are pursuing expedited annexation because the City allowed an emergency connection to the City sewer. As proposed, the annexation is consistent with Milwaukie Comprehensive Plan policies.*
- E. The proposal must comply with the criteria of Metro code Sections 3.09.050(d) and, if applicable, (e).  
*The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding 8.*

8. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045.D of the Metro Code. They are listed below with findings in italics.

- A. Find that the change is consistent with expressly applicable provisions in:
- (1) Any applicable urban service agreement adopted pursuant to ORS 195.205;  
*There are no applicable urban service agreements adopted pursuant to ORS 195 in the area of the proposed annexation. The City, however, has an UGMA agreement with Clackamas County that states that the City will take the lead in providing urban services in the area of the proposed annexation. Pursuant to this agreement, the City recently completed construction of a public sewer system in this area. The proposed annexation is in keeping with the City's policy of requiring properties to annex to the City in order to connect to City services such as the new sewer line.*

(2) Any applicable annexation plan adopted pursuant to ORS 195.205;  
*There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.*

(3) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;  
*There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.*

(4) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;  
*Clackamas County completed a North Clackamas Urban Area Public Facilities Plan in 1989 in compliance with Goal 11 of the Land Conservation and Development Commission for coordination of adequate public facilities and services. The City subsequently adopted this plan as an ancillary Comprehensive Plan document. The plan contains four elements:*

- *Sanitary Sewerage Services*
- *Storm Drainage*
- *Transportation Element*
- *Water Systems*

*The proposed annexation is consistent with the four elements of this plan as follows:*

*Sewer: The City is the identified sewer service provider in the area of the proposed annexation and recently completed construction of a public sewer system that can adequately serve the Annexation Property.*

*Storm: The Annexation Property is not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.*

*Transportation: The City will require public street improvements along the frontage of the Annexation Properties when new development occurs.*

*Water: Clackamas River Water (CRW) is the identified water service provider in this plan. However, the City's more recent UGMA agreement with the County identifies the City as the lead urban service provider in the area of the proposed annexation. The City is in the process of developing a water service master plan for all of the territory within its UGMA and discussing possible service provision changes with CRW. In the meantime, CRW will continue to provide water service to the Annexation Property.*

(5) Any applicable comprehensive plan.

*The proposed annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described on the previous page. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. It does, however, contain the City-County UGMA agreement, which identifies the area of the proposed annexation as being within the City's UGMA. The UGMA agreement requires that the City notify the County of proposed annexations, which the City has done. The agreement also calls for City assumption of jurisdiction of local streets that are adjacent to newly annexed areas. The City has already annexed and taken jurisdiction of the Stanley Ave right-of-way adjacent to the proposed Annexation Property.*

B. Consider whether the boundary change would:

- (1) Promote the timely, orderly and economic provision of public facilities and services;

*The City is the identified urban service provider in the area of the proposed annexation, and the proposed annexation will facilitate the timely, orderly, and economic provision of urban services to the Annexation Property.*

*The City has recently expanded City sewer service into this area via Stanley Ave. The proposed annexation is requested because the City allowed the Annexation Properties to make an emergency connection to the City's new sewer.*

*The area is currently served by CRW, and the City does not propose to duplicate CRW's water system to serve the Annexation Property.*

- (2) Affect the quality and quantity of urban services; and

*The Annexation Properties are tax lots each developed with a single-family residence. Annexation of the site is not expected to affect the quality or quantity of urban services in this area, given the surrounding level of urban development and the existing level of urban service provision in this area.*

- (3) Eliminate or avoid unnecessary duplication of facilities and services.

*The Annexation Properties will be served by the Milwaukie Police Department upon annexation. In order to avoid duplication of law enforcement services, the site will be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement.*

*CRW is the current water service provider in the area of the proposed annexation. Until such time as the existing IGA between the City and CRW is renegotiated, the City does not intend to duplicate CRW's existing water supply system or withdraw private*

*properties being served by CRW from the CRW district. CRW will continue to be the water service provider in this area.*

9. The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

Wastewater: The Annexation Properties are within the City's sewer service area and are served by the City's 8-inch sewer line in Firwood Street.

Water: The Annexation Properties are currently served by CRW through a CRW water line in Stanley Ave. Pursuant to the City's IGA with CRW, the sites should not be withdrawn from this district at this time.

Storm: The Annexation Properties are not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.

Fire: The Annexation Properties are currently served by Clackamas County Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.

Police: The Annexation Properties are currently served by the Clackamas County Sheriff's Department and are within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the sites should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.

Street Lights: The Annexation Properties are currently within Clackamas County Service District No. 5 for Street Lights (the "District"). As of July 1, 2011, an intergovernmental agreement between the City and the District transfers operational responsibility to the City for the street lights and street light payments in the NESE area, though the properties themselves remain in the District until they annex to the City. The Annexation Properties should be withdrawn from the District upon annexation, as the City provides street lighting for properties within the city as part of its package of city services.

Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the sites upon annexation. The Annexation Property will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, etc.

ATTACHMENT 1  
Exhibit B

Annexation to the City Of Milwaukie  
LEGAL DESCRIPTION

Milwaukie Annexation File No. A-12-01

Property Address: 5816 SE Firwood Street, Milwaukie, OR 97222

Tax Lot Description: 1S2E30DA 03200

Legal Description: The West one half of Lot 3, Block 3, HOLLYWOOD PARK, in the County of Clackamas and State of Oregon.

Property Address: 5807 SE Firwood Street, Milwaukie, OR 97222

Tax Lot Description: 1S2E30AD 05400

Legal Description: The West one-half of Lot 14, all Lot 15, and the East one-half of Lot 16, Block 2, HOLLYWOOD PARK, in the County of Clackamas and State of Oregon.

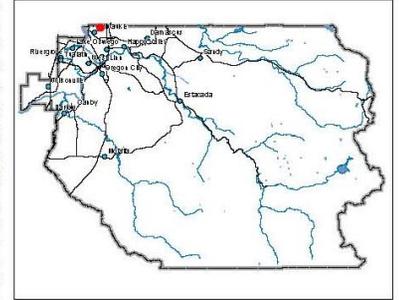
S.E. 1/4 N.E. 1/4 SEC. 30 T. 1S. R. 2E. W.M.  
Clackamas County  
1" = 100'

D. L. C.  
HECTOR CAMPBELL NO. 41

Cancelled Taxlots

- 201
- 202
- 300
- 400
- 500
- 600
- 700
- 800
- 900
- 1200
- 1400
- 1450
- 1800
- 2000
- 2150
- 2600
- 3600
- 6700
- 7701
- 8000
- 8000
- 8900M1

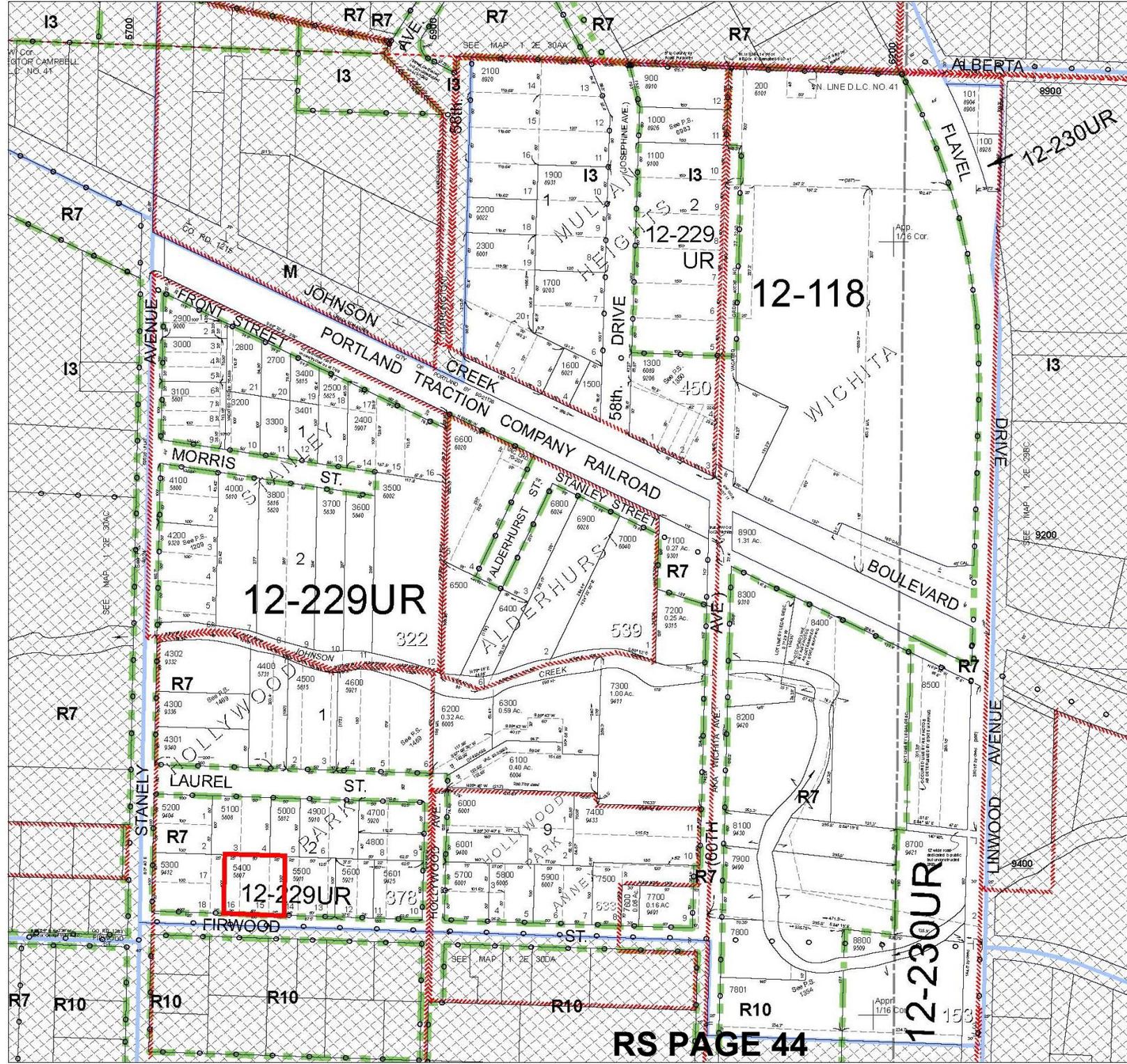
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Comer
- Section Comer
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY



9/30/2010

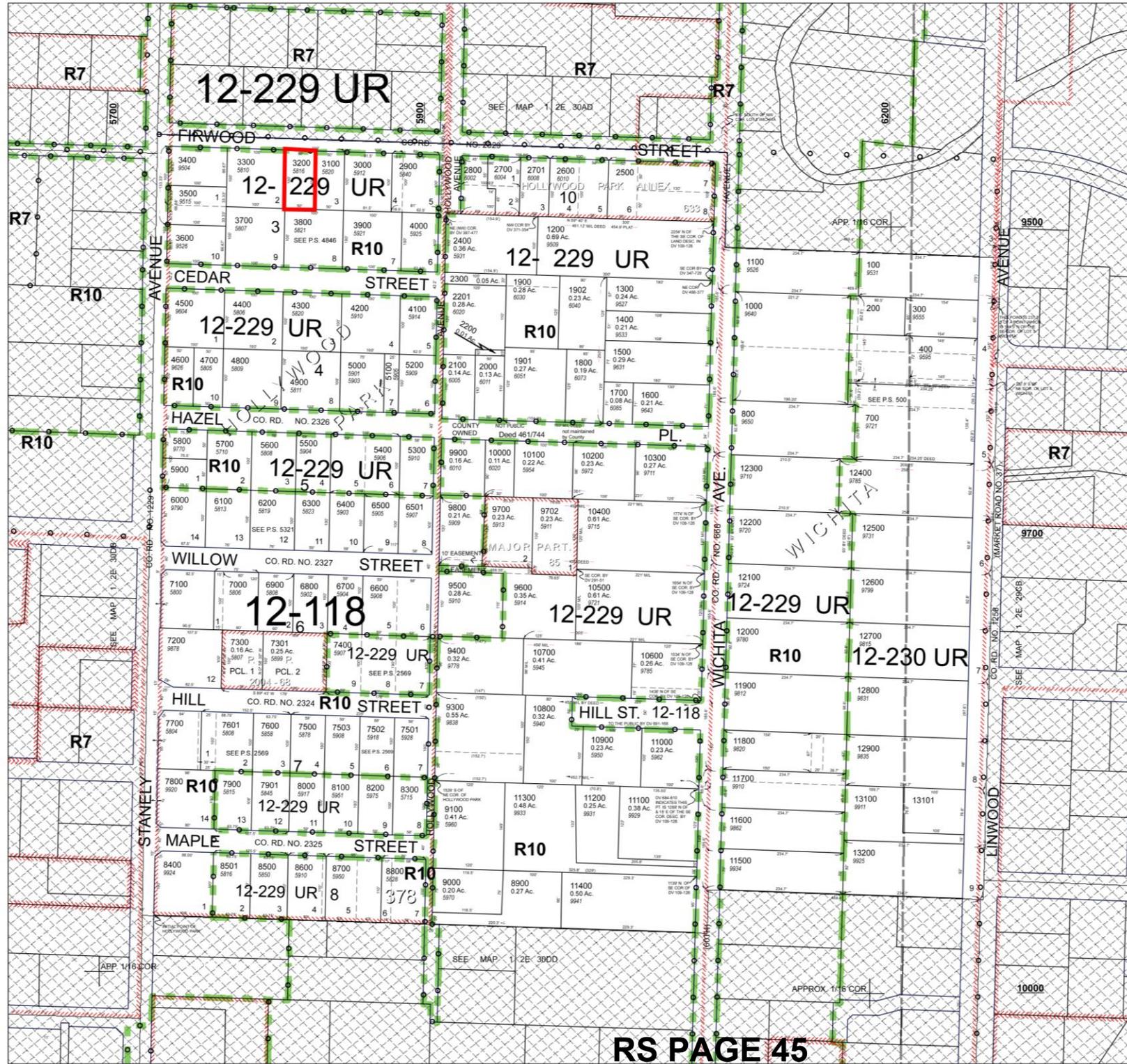


N.E. 1/4 S.E. 1/4 SEC. 30 T.1S. R.2E. W.M.  
Clackamas County  
1" = 100'

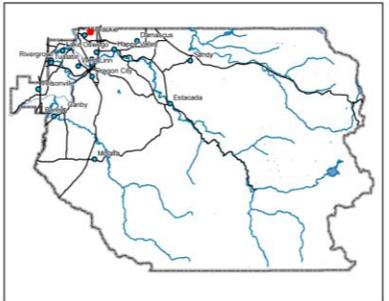
D. L. C.  
HECTOR CAMPBELL NO. 41

Cancelled Taxlots

- 500
- 600
- 701
- 900
- 901
- 7101
- 7201
- 7701
- 7801
- 8401
- 9200
- 9701
- 13000



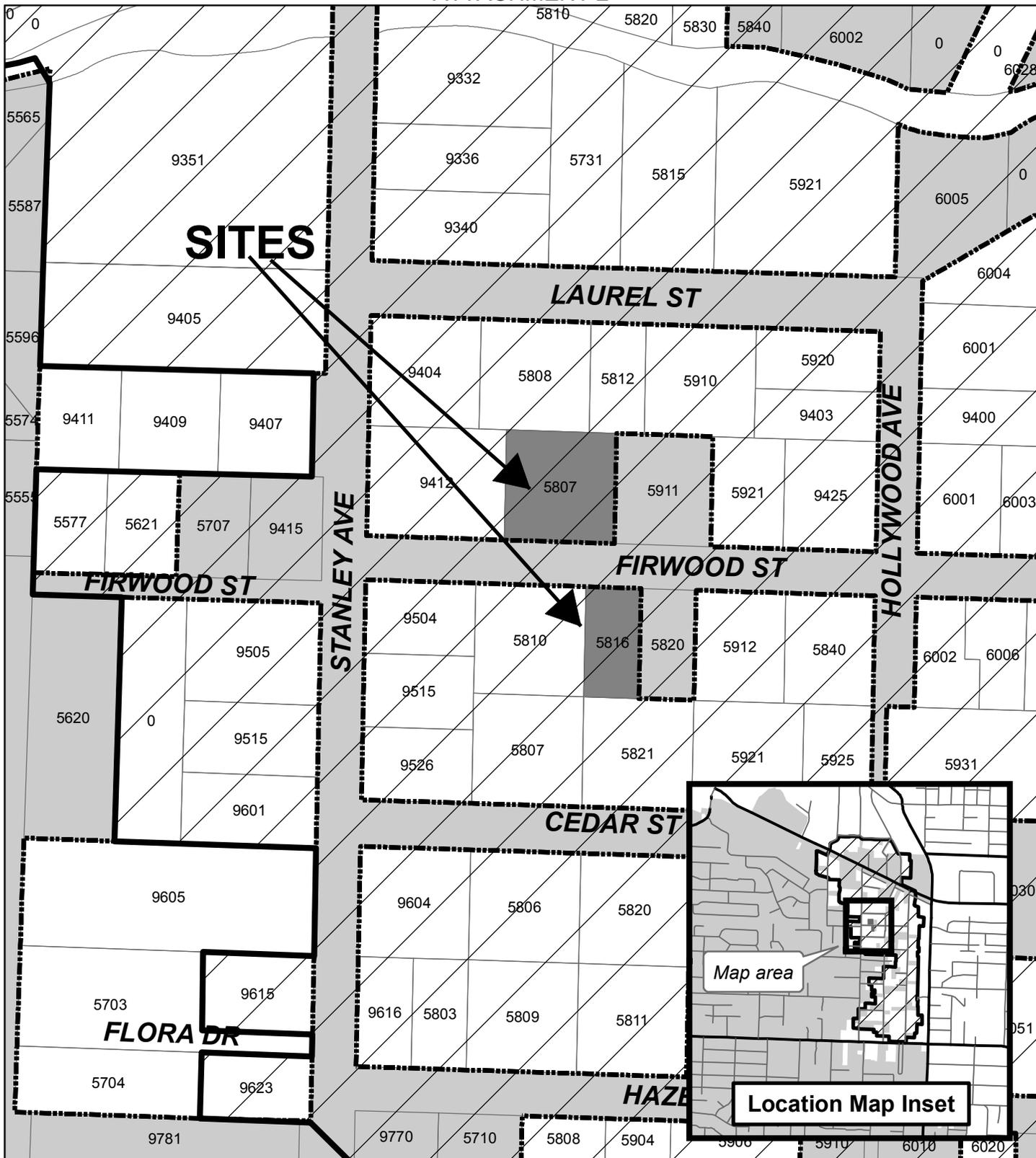
- Parcel Boundary
- - - Private Road ROW
- - - Historical Boundary
- - - Railroad Centerline
- TaxCodeLines
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



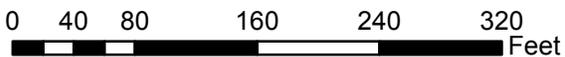
THIS MAP IS FOR ASSESSMENT PURPOSES ONLY



7/28/2010



**Site Map**  
**5807 & 5816 SE Firwood St**  
**(Tax Lot ID1S2E30AD 5400 and**  
**1S2E30DA 3200)**  
**File #A-12-01**



**Legend**

- City Limit
- A-12-01 Sites
- Tax Lots
- NE Sewer Extension Project Boundary



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@ci.milwaukie.or.us](mailto:planning@ci.milwaukie.or.us)  
WEB: [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)

# Expedited Annexation Application

**RESPONSIBLE PARTIES:**

APPLICANT (owner or other eligible applicant): <b>RANDY MARESH</b>	
Mailing address: <b>5816 SE FIRWOOD ST MILWAUKIE OR</b>	Zip: <b>97222</b>
Phone(s): <b>503 319 3789</b>	E-mail:
APPLICANT'S REPRESENTATIVE (if different than above):	
Mailing address: <b>4566 SE AIDERCREST RD MILWAUKIE OR</b>	Zip: <b>97222</b>
Phone(s): <b>503-319 3789</b>	E-mail: <b>RBJMARE@COMCAST.NET</b>

**SITE INFORMATION:**

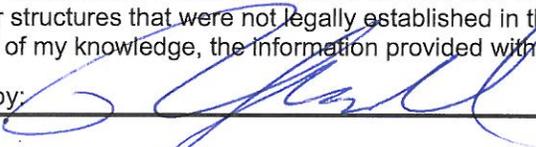
Address(es): <b>5816 SE FIRWOOD ST</b>	Map & Tax Lot(s): <b>12 E 30DA03200</b>	Property size:
Existing County zoning:	Proposed City zoning:	
Existing County land use designation:	Proposed City land use designation:	

**PROPOSAL (describe briefly):**

<b>ANNEXATION TO THE CITY OF MILWAUKIE + HOOK UP TO SEWER</b>
---

**SIGNATURE:**

**ATTEST:** I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. I have attached all owners' and voters' authorizations to submit this application. I understand that uses or structures that were not legally established in the County are not made legal upon annexation to the City. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by:  Date: **12-21-2011**

**THIS SECTION FOR OFFICE USE ONLY:**

File #: <b>A-12-01</b>	Fee: \$ <b>100</b>	Receipt #:	Rcd. by: <b>RVM</b>	Date stamp:
Associated application file #'s: <b>-</b>				<p>RECEIVED</p> <p>JAN 04 2012</p> <p>CITY OF MILWAUKIE PLANNING DEPARTMENT</p>
Neighborhood District Association(s): <b>-</b>				
Notes (include discount if any): <b>Also with 5807 SE Firwood</b>				



610-  
CJC 224038

AFTER RECORDING RETURN TO:  
Marek, Randy & Julie  
5825 SE Sun Meadow Terrace  
AINW. OR 97267

RECORDED IN CLACKAMAS COUNTY  
JOHN KRUPPHAN, COUNTY CLERK 2001-021084

88128133288188218840618818  
\$28.00  
03/23/2001 04:00:00 PM  
D-D Cntwl Sltw10 AMI  
\$9.00 \$11.00 \$18.00

Until a change is requested all tax statements shall be sent to the following address:  
Same As Above

ESCROW No. 4500-41214-KE  
Order No. 224038

BARGAIN AND SALE DEED - STATUTORY FORM  
(INDIVIDUAL OR CORPORATION)

RANDY A. MARESH

O S

Grantor, conveys to RANDY A. MARESH AND JOLIE K. MARESH, HUSBAND AND WIFE

Grantee, the following described real property:

The West one half of Lot 3, Block 3, HOLLYWOOD PARK, in the County of Clackamas and State of Oregon.

12E30DA 03200

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

The true consideration for this conveyance is \$0.00 BS  
(Here comply with the requirements of ORS 30.010)

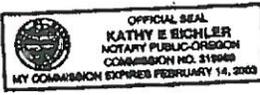
Dated 3/27/2001; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

[Signature]  
RANDY A. MARESH

STATE OF OREGON, County of Clackamas, ss.  
by Randy A. Marek This instrument was acknowledged before me on 3/27, 2001

by \_\_\_\_\_ This instrument was acknowledged before me on \_\_\_\_\_  
of \_\_\_\_\_ ss \_\_\_\_\_

[Signature]  
Notary Public for Oregon  
My commission expires \_\_\_\_\_



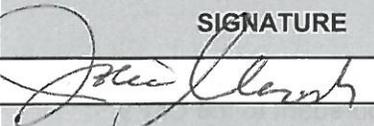
2001-21084



## PETITION SIGNERS

NOTE: This petition may be signed by qualified persons even though they may not know their property description or voter precinct number.

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	RANDY A MARESH	X		X	12-21-2011
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
4566 SE Aldercrest Rd 97222					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Jolie Maresch			✓	12-21-11
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
4566 SE Aldercrest Rd 97222					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Christopher Plam		X		12-21-11
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
5816 SE Firwood St Milwaukie Ave 97222					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

\*PO = Property Owner    RV = Registered Voter    OV = Owner and Registered Voter

**CERTIFICATION OF PROPERTY OWNERSHIP OF  
100% OF LAND AREA**

I hereby certify that the attached petition contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.



Name CRAIG FERRIS  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 12-21-11

<sup>1</sup> Owner means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If a parcel of land has multiple owners, each consenting owner shall be counted as a percentage of their ownership interest in the land. That same percentage shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

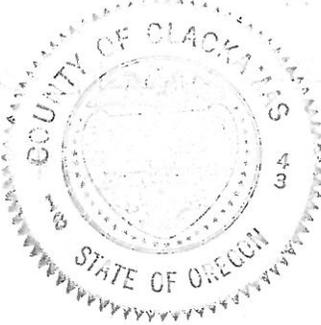
## CERTIFICATION OF LEGAL DESCRIPTION AND MAP

I hereby certify that the description of the territory included within the attached petition (located on Assessor's Map 12E30DA) has been checked by me. It is a true and exact description of the territory under consideration and corresponds to the attached map indicating the territory under consideration.

Name CRAIG FERRIS  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 12-21-11

## CERTIFICATION OF REGISTERED VOTERS

I hereby certify that the attached petition contains the names of at least a majority of the electors registered in the territory proposed for annexation as described in the attached petition.



*Paul Hanes*  
Name PAUL HANES  
Title DEPUTY CLERK  
Department CLERK/ELECTIONS  
County of CLATSOP  
Date 10/24/11

## NOTICE LIST

(This form is NOT the petition)

**LIST THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS AND REGISTERED VOTERS IN THE TERRITORY PROPOSED FOR ANNEXATION.**

	Name of Owner/Voter	Mailing Street Address	Property Address
		Mailing City/State/Zip	Property Description <small>(township, range, ¼ section, and tax lot)</small>
1	RANDY MARESH <i>[Signature]</i>	4566 SE AIDERCREST MILWAUKIE OR 97222	5816 SE FIRWOOD RD MILWAUKIE OR 97222
2	JOIE MARESH <i>[Signature]</i>	SAME	SAME
3			
4			
5			
6			
7			
8			
9			
10			

# EXPEDITED ANNEXATION CODE EXCERPTS (with staff guidance)

## MILWAUKIE MUNICIPAL CODE SECTIONS

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### 19.1104.1 Expedited Process

- A. A petition for any type of minor boundary change may be processed through an expedited process as provided by Metro Code Chapter 3.09.
5. Approval criteria for annexations are found in subsection 19.1102.3.

**19.1102.3 Annexation Approval Criteria.** The city council shall approve or deny an annexation proposal based on findings and conclusions addressing the following criteria.

- A. The subject site must be located within the city urban growth boundary;
- B. The subject site must be contiguous to the existing city limits;
- C. The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met;  
*Staff guidance: ORS 222.111(2) states that a proposal for annexation may be initiated by a petition to the legislative body of the City by the owners of the territory proposed for annexation. Expedited annexation petitions must be by consent of 100% of property owners and by at least 50% of registered voters, if any, within the territory proposed for annexation.*
- D. The proposal must be consistent with Milwaukie comprehensive plan policies;  
*Staff guidance: All applicable portions of the Comprehensive Plan are listed below.*
- E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d) and, if applicable, (e).  
*Staff guidance: Metro revised Chapter 3.09 in January 2008. At that time, Subsection 3.09.050(d) was revised, and Subsection 3.09.050(e) was deleted. All current and applicable portions of the Metro Code are listed below.*

## METRO CODE SECTIONS

---

### 3.09.050 Hearing & Decision Requirements for Decisions Other Than Expedited Decisions.

- (d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Section 3.09.045.  
*Staff guidance: For expedited annexations, City staff, not the applicant, shall describe how the annexation proposal does or does not meet the applicable criteria of Subsections 3.09.045(d) and (e).*

## MILWAUKIE COMPREHENSIVE PLAN

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### Chapter 6: City Growth and Governmental Relationships; City Growth Element

Goal Statement: To identify the City's future planning and service area, establish the respective responsibilities for reviewing and coordinating land use regulations and actions within the area, and determine the most cost-effective means to provide the full range of urban services within the area.

*Staff guidance: The City is required to notify and coordinate with other urban service providers. As a result, the applicant is required to submit a list of current franchise-based and district-based urban service providers and a list of proposed district-based urban service providers. These lists shall include each service provider's name and address.*



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@ci.milwaukie.or.us](mailto:planning@ci.milwaukie.or.us)  
WEB: [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)

# Expedited Annexation Application

## RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant): <b>RANDY MARESH</b>	
Mailing address: <b>5807 SE FIRWOOD ST MILWAUKIE</b>	Zip: <b>97222</b>
Phone(s): <b>503-319-3789</b>	E-mail:
APPLICANT'S REPRESENTATIVE (if different than above):	
Mailing address: <b>4566 SE ADERCREST RD MILWAUKIE</b>	Zip: <b>97222</b>
Phone(s): <b>503-319 3789</b>	E-mail: <b>R3JMAR@COMCAST.NET</b>

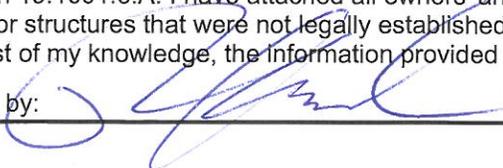
## SITE INFORMATION:

Address(es): <b>5807 SE FIRWOOD ST</b>	Map & Tax Lot(s): <b>12E30AD05400</b>	Property size:
Existing County zoning: <b>Single Family</b>	Proposed City zoning:	
Existing County land use designation: <b>Residential</b>	Proposed City land use designation:	

## PROPOSAL (describe briefly):

<b>Hook up to city sewer (septic failure)</b>
---

## SIGNATURE:

<b>ATTEST:</b> I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. I have attached all owners' and voters' authorizations to submit this application. I understand that uses or structures that were not legally established in the County are not made legal upon annexation to the City. To the best of my knowledge, the information provided within this application package is complete and accurate.	
Submitted by: 	Date: <b>12-21-2011</b>

## THIS SECTION FOR OFFICE USE ONLY:

File #: <b>A-12-01</b>	Fee: \$ <b>100</b>	Receipt #:	Rcd. by: <b>RWM</b>	Date stamp:
Associated application file #'s: <b>-</b>				<b>RECEIVED</b>  <b>JAN 04 2012</b>  CITY OF MILWAUKIE PLANNING DEPARTMENT
Neighborhood District Association(s): <b>-</b>				
Notes (include discount if any): <b>Also w/ 5816 SE Firwood</b>				



5  
RECORDED 2/27

AFTER RECORDING RETURN TO:

Mareh, Randy A. & Jolie K  
5575 S. Sun Meadows Trce  
Medwaukee, OR 97267

Unless a change is requested, all tax statements shall be sent to the following address:  
Same as above

RECORDED IN CLACKAMAS COUNTY  
JOHN KRAUFFMAN, COUNTY CLERK

2001-021082



\$26.00

03/28/2001 04:00:00 PM

D-D Cnt=1 Str=18 PRICE  
85.00 \$11.00 \$18.00

Recrow No. 4500-41213-KE  
Order No. 224036

BARGAIN AND SALE DEED - STATUTORY FORM  
(INDIVIDUAL or CORPORATION)

RANDY MARESH and JOLIE KNEELAND MARESH, as tenants by the entirety

Grantor, conveys to RANDY A. MARESH AND JOLIE K. MARESH, AS TENANTS BY THE ENTIRETY

Grantee, the following described real property:

The West one-half of Lot 14, all Lot 15, and the East one-half of Lot 16, Block 2, HOLLYWOOD PARK, in the County of Clackamas and State of Oregon.

**12E30AD 05400**

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

The true consideration for this conveyance is \$0.00  
(Here comply with the requirements of ORS 93.030).

Dated 3/27/2001, if a corporate grantor, it has caused its name to be signed by \_\_\_\_\_ or its board of directors.

[Signature]  
RANDY MARESH

[Signature]  
JOLIE KNEELAND MARESH

STATE OF OREGON, County of Clackamas, ss.  
This instrument was acknowledged before me on 3/27 2001  
by Randy Mareh & Jolie Kneeland Mareh  
This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_  
of \_\_\_\_\_

[Signature]  
Notary Public for Oregon  
My commission expires \_\_\_\_\_

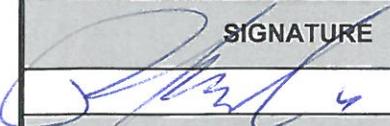


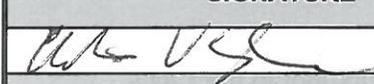
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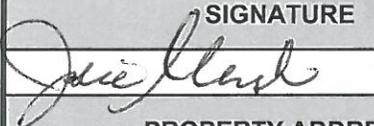


## PETITION SIGNERS

NOTE: This petition may be signed by qualified persons even though they may not know their property description or voter precinct number.

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	RANDY A MARESCH			<input checked="" type="checkbox"/>	12-21-2011
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
4566 SE Aldercrest Rd					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	CHRIS STREIGHT		<input checked="" type="checkbox"/>		12-21-2011
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
5807 SE Firwood St					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
	Jolie Maresch			<input checked="" type="checkbox"/>	12-21-11
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
4546 SE Aldercrest Rd 97222					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

\*PO = Property Owner    RV = Registered Voter    OV = Owner and Registered Voter

**CERTIFICATION OF PROPERTY OWNERSHIP OF  
100% OF LAND AREA**

I hereby certify that the attached petition contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.



Name \_\_\_\_\_

Title \_\_\_\_\_

Department \_\_\_\_\_

County of \_\_\_\_\_

Date \_\_\_\_\_

<sup>1</sup> Owner means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If a parcel of land has multiple owners, each consenting owner shall be counted as a percentage of their ownership interest in the land. That same percentage shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

**CERTIFICATION OF LEGAL DESCRIPTION AND MAP**

I hereby certify that the description of the territory included within the attached petition (located on Assessor's Map 12E30AD) has been checked by me. It is a true and exact description of the territory under consideration and corresponds to the attached map indicating the territory under consideration.



Name CRAIG FERRIS  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 12-21-11

**CERTIFICATION OF REGISTERED VOTERS**

I hereby certify that the attached petition contains the names of at least a majority of the electors registered in the territory proposed for annexation as described in the attached petition.



*Paul Hanes*  
Name PAUL HANES  
Title DEPUTY CLERK  
Department CLERK / ELECTIONS  
County of CLACKAMAS  
Date 11/22/11

**NOTICE LIST**

(This form is NOT the petition)

**LIST THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS AND REGISTERED VOTERS IN THE TERRITORY PROPOSED FOR ANNEXATION.**

	Name of Owner/Voter	Mailing Street Address	Property Address
		Mailing City/State/Zip	Property Description <small>(township, range, ¼ section, and tax lot)</small>
1	RANDY MARESH 	4566 SE AIDERCREST RD	5807 SE FIRWOOD ST
		MILWAUKIE OR 97222	MILWAUKIE OR 97222
2	JOLIE MARESH	SAME	SAME
3	CHRIS STRICHA	5807 SE FIRWOOD ST	SAME
		MILWAUKIE OR 97222	
4			
5			
6			
7			
8			
9			
10			

ATTACHMENT 4

AFTER RECORDING RETURN TO:  
Planning Director  
City of Milwaukie  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206

*This Space For County Recording Use Only*

<b><u>FOR OFFICE USE ONLY</u></b>	
Annexation File No.	<u>A-12-01</u>
Date Received	<u>1/4/12</u>

**CITY OF MILWAUKIE  
CONSENT TO ANNEXATION &  
AGREEMENT NOT TO CONTEST ANNEXATION**

In consideration for the City of Milwaukie for the property described below:

All owners of the property listed below, and their successors and assigns, consent to annex the following described real property into the City of Milwaukie by preparing and signing all relevant annexation documents that the City of Milwaukie desires, including but not limited to a "Petition" for annexation and/or a "Covenant of Waiver of Rights and Remedies," so that the following described real property located in Clackamas County, Oregon, and within the Urban Growth Management Area of the City of Milwaukie, can be annexed into the City of Milwaukie.

All owners of the property listed below further agree that they, their successors and assigns, will not oppose, in any manner, requests or attempts to annex the following described real property into the City of Milwaukie:

**PROPERTY DESCRIPTION**

Street Address: ~~4566 SE ADDERBAST RD~~ 5807 + 5816 SE Firwood

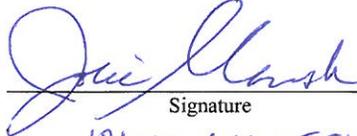
City: MILWAUKIE State: OR Zip Code: 97222

Tax Map ID: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Tax Lot(s) 15 2E 30 PA 3200  
+ 12 SE 30 AP 5400

\*\*\*\*\*

I/WE, THE UNDERSIGNED PROPERTY OWNER(S), AFFIRM BY MY/OUR SIGNATURE(S) THAT THE INFORMATION CONTAINED IN THIS DOCUMENT AND ASSOCIATED SUBMISSIONS IS TRUE AND CORRECT.

Property Owner  Date: 12-22-2011  
Signature  
RANDY A MARES L  
Printed Name

Property Owner  Date: 12-22-11  
Signature  
JOLIE MARESH  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

Property Owner \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name



## Marquardt, Ryan

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**From:** r3jmar@comcast.net  
**Sent:** Monday, January 30, 2012 12:52 PM  
**To:** Marquardt, Ryan  
**Subject:** Re: Consent to Annex form

Hi Ryan-

Thanks for your help, we both consent.

Jolie & Randy Maresh

---

**From:** "Ryan Marquardt" <MarquardtR@ci.milwaukie.or.us>  
**To:** r3jmar@comcast.net  
**Sent:** Monday, January 30, 2012 11:18:35 AM  
**Subject:** Consent to Annex form

Randy,

I noticed an error on the consent to annex form that you turned in on 1/4/12. The form lists your address of 4566 SE Aldercrest Rd as the property to which you are giving your consent to annex. Obviously this should have been listed the two properties on Firwood St. I've made the changes on the form, and would like to have acknowledgement from you and Jolie that this change is acceptable. The changes are shown in the attached document.

Could you please let me know that you both agree to this correction on the form?

Thanks,

Ryan Marquardt, AICP  
Associate Planner  
City of Milwaukie  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206  
(p) 503-786-7658  
(f) 503-774-8236  
(e) [MarquardtR@ci.milwaukie.or.us](mailto:MarquardtR@ci.milwaukie.or.us)  
<<SKMBT\_C36012013012120.pdf>>

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**PUBLIC RECORDS LAW DISCLOSURE:** This e-mail is a public record of the City of Milwaukie and is subject to public disclosure unless exempt from disclosure under Oregon Public Records law. This email is subject to the State Retention Schedule.

**MILWAUKIE SUSTAINABILITY:** Please consider the impact on the environment before printing a paper copy of this message.



Agenda Item: 6.B.  
Meeting Date: 2/21/12

## **COUNCIL AGENDA ITEM SUMMARY**

**Issue/Agenda Title:** Kronberg Park Access

**Prepared By:** Kenneth Asher

**Dept. Head Approval:** Kenneth Asher

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### **ISSUES BEFORE THE COUNCIL**

Authorize the City Manager to execute a permit of entry agreement providing TriMet access to city-owned Kronberg Park for construction activities related to the Portland-Milwaukie Light Rail project beginning on March 1, 2012

### **STAFF RECOMMENDATION**

Authorize the City Manager to execute a permit of entry agreement providing TriMet access to city-owned Kronberg Park for construction activities related to the Portland-Milwaukie Light Rail project.

### **KEY FACTS & INFORMATION SUMMARY**

Portland-Milwaukie Light Rail construction is beginning. One of the critical construction paths for the project is the Kellogg Structure, which spans Lake Road, Kellogg Lake, Kronberg Park and McLoughlin Boulevard. This structure will be constructed over several years, and requires in-water work in Kellogg Lake, which can only happen during the months of July, August and September. The light rail construction schedule requires that TriMet be working in Kellogg Lake by July 2012. To make that happen, TriMet needs to gain access to Kronberg Park by March 1<sup>st</sup>.

### **OTHER ALTERNATIVES CONSIDERED**

City Council can direct staff to execute the permit of entry without Council authorization, since Council approval is not a requirement. Council can also reject this agreement, potentially with direction to staff regarding the terms of the agreement. Council can amend the permit of entry if it desires terms other than those described in the document. Staff would seek concurrence from TriMet, if such an alternative were pursued.

### **CITY COUNCIL GOALS**

Not Applicable.

**ATTACHMENT LIST**

1. January 2010 NEPA Letter stating City expectations related to the staging area use
2. Permit of Entry Agreement
3. Resolution

**FISCAL NOTES**

There are no fiscal impacts associated with this action.



**To: Mayor and City Council**

**Through: Bill Monahan, City Manager**

**From: Kenneth Asher, Community Development and Public Works Director**

**Subject: Kronberg Park Permit of Entry for Light Rail Construction**

**Date: February 9 for February 21, 2012 City Council Meeting**

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### **ACTION REQUESTED**

Authorize the City Manager to execute a permit of entry agreement providing TriMet access to city-owned Kronberg Park for construction activities related to the Portland-Milwaukie Light Rail project beginning on March 1, 2012.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

None.

### **BACKGROUND**

Portland-Milwaukie Light Rail construction is beginning. One of the critical construction paths for the project is the Kellogg Structure, which spans Lake Road, Kellogg Lake, Kronberg Park and McLoughlin Boulevard. This structure will be constructed over several years, and requires in-water work in Kellogg Lake, which can only happen during the months of July, August and September. The light rail construction schedule requires that TriMet be working in Kellogg Lake by July 2012. To make that happen, TriMet needs to gain access to Kronberg Park by March 1<sup>st</sup>.

The City owns Kronberg Park and has permitted TriMet use of a portion of the park for temporary construction activities. TriMet has received a Community Service Use (CSU) permit from the city to utilize the westernmost 50 feet of the park for temporary construction staging. No permanent structures would be erected, and TriMet has agreed to return the site to a similar or better condition once construction is completed

(see Attachment 1). The staging area requires access from McLoughlin Blvd. This right-of-way is under ODOT's jurisdiction and required improvements related to the access point would need to be approved by ODOT. Construction impacts relating to noise and lighting will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances. The hours and levels of use of the staging area will vary over time. Construction impacts will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances. The Planning Commission and City Council have previously found that due to the site's location near an undeveloped and relatively unused open space area and adjacency to a freight rail bridge and State highway, the use of this site as a temporary construction staging area will have nominal impacts on surrounding uses.

The Planning Commission and Council have also found that this location is appropriate for construction staging. The area is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact Kronberg Park any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging and has the least impacts to the traveling public and surrounding uses.

In March, TriMet anticipates that its contractor will be mobilizing in the staging area to implement tree protection measures and pre-construction activities. In April, May and June, the contractor will be mobilizing for construction of the Kellogg Bridge foundations and beginning in July, for construction of the Kellogg Lake work-bridge.

Ultimately, TriMet will compensate the City for the use of City property through a Temporary Construction Easement. Negotiations between the City and TriMet for the easement are underway. However, TriMet requires access to the site by March 1, hence the permit-of-entry and the requested action.

The size of the actual staging area is still under review, pending the findings of the arborist report related to preservation of the white oak in Kronberg Park. The permit of entry agreement (Attachment 2) stipulates that TriMet may need to adjust the staging area to work around the oak tree, and that the City will reaffirm its permission of the larger staging area to the FTA if such enlargement occurs. TriMet also acknowledges that it will obtain all required development permits prior to conducting construction activities in the staging area.

## **CONCURRENCE**

TriMet and City legal staffs have collaborated on the permit of entry agreement and concur with this action. Planning, Building, Engineering and Stormwater staff will be reviewing appropriate development permits to ensure that the permit of entry suitably conforms with land use conditions of approval.

## **FISCAL IMPACTS**

There are no fiscal impacts associated with this action. In the near future, a temporary construction easement will be negotiated between TriMet and the City and will provide compensation to the City for the use of the park for light rail construction, effective March 1, 2012 (the start date of the permit of entry).

## **WORK LOAD IMPACTS**

There are no work load impacts associated with this action.

## **ALTERNATIVES**

City Council can direct staff to execute the permit of entry without Council authorization, since Council approval is not a requirement. Council can also reject this agreement, potentially with direction to staff regarding the terms of the agreement. Council can amend the permit of entry if it desires terms other than those described in the document. Staff would seek concurrence from TriMet, if such an alternative were pursued.

## **ATTACHMENTS**

1. January 2010 NEPA Letter stating City expectations related to the staging area use
2. Permit of Entry Agreement
3. Resolution

ATTACHMENT 1



January 28, 2010

Ms. Bridget Wieghart  
Metro  
600 NE Grand  
Portland, OR 97232

Dear Ms. Wieghart:

The City of Milwaukie agrees that a proposed temporary occupancy to allow a construction staging area on a portion of Robert Kronberg Park, as proposed for the Portland Milwaukie Light Rail Project, is acceptable given the following conditions:

- (1) Duration will be temporary, i.e., less than the projected four years that are needed for construction of the overall project, and the City will retain ownership of the land;
- (2) The scope of the work as proposed is minor, involving construction staging on a currently undeveloped portion of the property;
- (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities, features, or attributes of the property, on either a temporary or permanent basis, as the park is currently an open space with no formally designated activities;
- (4) TriMet shall fully restore the areas to be used, returning the property to a condition which is at least as good as that which existed prior to the project.

The City recognizes that specific details of the property agreement between the City and TriMet, including compensation, restoration plans, or other benefits remain to be determined, based on final design and other project development activities following the release of the Final EIS. We look forward to working with TriMet to formalize an agreement to allow the project to use the property during construction.

We also wish to again express our support and preference for the LPA to Park Avenue, as described in the FEIS, which we believe provides the greatest access to downtown Milwaukie, while also having the least permanent impacts to the community, particularly compared to the MOS with a terminus station and park and ride in our downtown area.

We look forward to working with Metro and TriMet as it completes the Final EIS and begins final design and permitting phases for the project.

Sincerely,

Kenny Asher  
Community Development Director

cc: JoAnne Herrigel, City of Milwaukie  
Dave Unsworth, TriMet

**COMMUNITY DEVELOPMENT**  
**BUILDING \* ECONOMIC DEVELOPMENT \* ENGINEERING \* PLANNING**

6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206

P) 503-786-7600 \* F) 503-774-8236

**RS PAGE 73**  
[www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)

## ATTACHMENT 2

Attachment 2 is not available at this time. It will be provided at a later date.

ATTACHMENT 3

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING PERMIT OF ENTRY ON A PORTION OF KRONBERG PARK FOR STAGING ACTIVITIES RELATED TO CONSTRUCTION OF THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT.**

**WHEREAS**, the City and TriMet are partnering to construct the Portland-Milwaukie Light Rail project (“Project”); and

**WHEREAS**, the Project requires that construction of a bridge over Lake Road, Kellogg Lake, Kronberg Park and McLoughlin Boulevard (the “Kellogg Structure”) begin no later than March 1, 2012; and

**WHEREAS**, constructing the Kellogg Structure requires a staging area on City property (Kronberg Park) that will allow light rail contractors to stage bridge construction, build a temporary work bridge in Kellogg Lake and perform in-water work in Kellogg Lake; and

**WHEREAS**, the Planning Commission and City Council have approved a Community Service Use permit (CSU-11-09) allowing TriMet to use the westernmost fifty feet of Kronberg Park for this purpose, subject to conditions; and

**WHEREAS**, TriMet acknowledges and agrees that the final size and extent of the staging area will be adjusted to account for recommendations made by the Certified Arborist evaluating the health of the white oak on the Property, as is required by the condition of approval as provided in CSU-11-09; and

**WHEREAS**, TriMet will compensate the City for use of the property through a to-be-executed Temporary Construction Easement, the terms of which are under negotiation between the City and TriMet; and

**WHEREAS**, a permit of entry agreement will allow TriMet contractors to gain access to the site on March 1, prior to execution of the temporary construction easement, thereby keeping the Portland-Milwaukie project on schedule and avoiding a delay that would either add project expense or reduce project scope and quality.

**NOW, THEREFORE, BE IT RESOLVED** that the City Manager is authorized to execute a permit of entry agreement with TriMet, effective March 1, 2012, providing TriMet and its contractors access to and use of a portion of Kronberg Park for construction activities related to the Portland-Milwaukie Light Rail project.

Introduced and adopted by the City Council on February 21, 2012.

This resolution is effective on February 21, 2012.

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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

---

Pat DuVal, City Recorder

---

City Attorney



Agenda Item: 6.C.  
Meeting Date: 2/21/12

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Revision to Library Expansion Task Force and Appointment of Melissa Perkins

**Prepared By:** Bill Monahan, City Manager

**Reviewed by City Manager:** 2/13/12

### ISSUES BEFORE THE COUNCIL

Shall the City Council revise the Library Expansion task Force and appoint Melissa Perkins to the Task Force?

### STAFF RECOMMENDATION

Staff recommends that the City Council revise the Task Force and appoint Melissa Perkins to the Task Force.

### KEY FACTS & INFORMATION SUMMARY

#### ACTION REQUESTED

The Library Expansion Task Force was created in March, 2011 and continues to carry out its functions. Due to the resignation of one Task Force member and the upcoming completion of service of another member to the Ledding Library Board, the resolution creating the task Force requires modification. In addition, a replacement Task Force member is available to be appointed. Melissa Perkins of the Ledding Library Board has indicated an interest in being appointed to the Task Force.

### CONCURRENCE

The City Library Director concurs.

### OTHER ALTERNATIVES CONSIDERED

Take no action to fill a vacancy on the Task Force and do not extend the opportunity for continued participation by a member of the Ledding Library Board whose term on that board is expiring.

### CITY COUNCIL GOALS

Develop a plan for consideration of Ledding Library expansion options.

### ATTACHMENT LIST

1. Memo from Bill Monahan, February 13, 2012

2. A resolution revising the Library Expansion Task Force.

**FISCAL NOTES**

None.



**To:** Mayor and City Council  
**From:** Bill Monahan, City Manager  
**Subject:** Revision to Library Expansion Task Force  
**Date:** February 13, 2012

---

### **ACTION REQUESTED**

The Library Expansion Task Force continues to carry out its functions. Due to the resignation of one Task Force member and the upcoming completion of service of another member to the Ledding Library Board, the resolution creating the task Force requires modification. In addition, a replacement Task Force member is available to be appointed. Melissa Perkins of the Ledding Library Board has indicated an interest in being appointed to the Task Force.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

March 15, 2011 – the City Council created the Library Expansion task Force and designated the initial eleven members.

### **BACKGROUND**

The City has determined that the needs of the community require that expansion options for the Ledding Library be explored. A task Force was appointed in 2011 that is now involved in several activities needed before a recommendation can be made to the City Council. One Task Force member has resigned. In addition, one member will have his term on the Ledding Library Board expire before the Task Force completes its work. In order to have full membership on the Task Force and to have maximum continuity of membership, an appointment to fill the one vacancy and modification of the membership requirements is needed.

### **CONCURRENCE**

The City Library Director concurs.

### **FISCAL IMPACTS**

None.

### **WORK LOAD IMPACTS**

Council Staff Report – Title of Report  
Page 1 of 2

None.

**ALTERNATIVES**

Take no action to fill a vacancy on the Task Force and do not extend the opportunity for continued participation by a member of the Ledding Library Board whose term on that board is expiring.

**ATTACHMENTS**

1. A resolution revising the Library Expansion Task Force.

# Attachment 1

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING THE LIBRARY EXPANSION TASK FORCE AND APPOINTING MELISSA PERKINS TO THE TASK FORCE.**

**WHEREAS**, on March 15, 2011, the Milwaukie City Council passed Resolution No. 35-2011 creating the Library Expansion task Force; and

**WHEREAS**, the Task Force was appointed and is comprised of representatives from the citizens at large, the neighborhood district associations, the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning Department and Finance department as ex officio members; and

**WHEREAS**, the Task Force has met regularly since June, 23, 2011 and has made significant progress assessing the needs and interests of the community to expand the library; and

**WHEREAS**, the Task force continues to function well and has not had the opportunity to complete its assigned tasks; and

**WHEREAS**, there has been one resignation from the Task Force and one or more additional members could be lost if their terms on City boards, commissions, or committees cease;

**WHEREAS**, the intent of the City Council is to maintain continuity of the task Force so the Task Force can produce the best possible work product and recommendations.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council:

1. Modifies resolution No. 35-2011 to:
  - a. Acknowledge that the Task Force's work will continue until the four tasks stated in Resolution No. 35- 2011 is completed.
  - b. Accept that an appointee who has represented the Ledding Library Board on the Task Force who become term limited and no longer serves on the Ledding Library Board may continue as a member of the Task Force.
  - c. Melissa Perkins, a member of the Ledding Library Board, is appointed to fill a vacancy on the Task Force caused by the resignation of Mark Docken, a member of the Ledding Library Board

Introduced and adopted by the City Council on \_\_\_\_\_ .

This resolution is effective on \_\_\_\_\_ .

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Schrader Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

Document2 (Last revised 09/18/07)