ORDINANCE NO. 1892

AN ORDINANCE OF THE CITY OF MILWAUKIE ANNEXING A CERTAIN TRACT OF LAND INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM TERRITORY OF CLACKAMAS COUNTY R.F.P.D. # 1, CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS.

WHEREAS, the City received written consent from a majority of the electors in the territory proposed to be annexed and all the owners of land in the territory proposed to be annexed, as required by ORS 222.125; and

WHEREAS, the tract of land is contiguous to the City and can be served by city services; and

WHEREAS, the City Council dispenses with submitting the question of the proposed annexation to the electors of the City for their approval or rejection as provided for in ORS 222.125; and

WHEREAS, the City Council dispenses with the public hearing as allowed by ORS 222.125, Metro Code 3.09.045 and Milwaukie Municipal Code Section 1504; and

WHEREAS, the tract of land lies within the territory of Clackamas R.F.P.D. # 1; and

WHEREAS, the tract of land lies within the territory of Clackamas River Water; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District for Enhanced Law Enforcement; and

WHEREAS, the tract of land lies within the territory of Clackamas County Service District No. 5 For Street Lights; and

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

WHEREAS, a report was prepared as required by law, and the City Council having considered the report, does hereby favor the annexation of the subject tract of land and withdrawal from the districts based on findings and conclusions attached hereto as Exhibit A; and

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

WHEREAS, subsection E of Section 1504.1 of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan designation in accord with Table 1 in that section;

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

Section 1. The tract of land, described in Exhibit B and depicted on the attached map, is declared to be annexed to the City of Milwaukie.

Section 2. The tract of land annexed by this ordinance and described in Section 1 is withdrawn from Clackamas R.F.P.D. # 1, Clackamas County Enhanced Sheriff's Patrol District, and the Clackamas County Service District No. 5 For Street Lights.

Section 3. The tract of land annexed by this ordinance and described in Section 1 is withdrawn from Clackamas River Water as of July 1, 2002 in accord with ORS 222.465.

Section 4. Upon annexation the tract of land is hereby assigned a City Comprehensive Plan designation of Low Density Residential and a zoning designation of R-10.

Section 4. The findings and conclusions attached as Exhibit A are adopted. The City Recorder shall immediately file a certified copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.050 (g) and ORS 222.005. Except as provided in Section 3 above, 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 8/21/01 and moved to second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council on 8/21/01.

Signed by the Mayor on 8/21/01.

James Bernard, Mayor

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

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

City Attorney

FINDINGS

Based on the study and the public hearing the Commission found:

1. The territory to be annexed contains 1 acre, 1 single family dwelling, a population of 2 and is valued at $200,000.

2. This proposal was processed under the "Expedited Process" allowed under Metro Code 3.09.045 and Milwaukie Municipal Code Section 1504. Under the Metro Code only petitions by 100% of the property owners and more than 50% of the registered voters can be processed as expedited. This proposal met that requirement. Expedited annexations do not require a public hearing. Metro's notice requirements for expedited proposals provide for notice to interested parties 20 days prior to the decision date. That notice was provided.

   The Milwaukie Municipal Code allows expedited proposals to go directly to the City Council for a decision and no hearing. The Code requires notice 20 days prior to all Planning Commission members, any resident within 400 feet of the annexation, to all affected governments and anyone who has requested notice. This notice was provided.

3. The owner of Tax Lot 4701 (see Fig. 2) desires City services to facilitate development of a single family dwelling. The owners of Tax Lot 4700 are fulfilling their contract with the City in which they agreed to annex in exchange for a sewer hook-up. The date of that contract was September 30, 1998.

4. There are no specific criteria for deciding city boundary changes within the state statutes. However, the Legislature has directed Metro to establish criteria which must be used by all cities within the Metro boundary.

   The Metro Code states that a final decision must include findings of fact and conclusions from those findings. The Code requires these findings and conclusions to address the following minimum criteria:

   1. Consistency with directly applicable provisions in ORS 195 agreements or ORS 195 annexation plans. [ORS 195 agreements are agreements between various service providers about who will provide which services where. The agreements are mandated by ORS 195 but none are currently in place. Annexation plans are timelines for annexation which can only be done after all required 195 agreements are in place and which must have been voted on by the City residents and the residents of the area to be annexed.]

2. Consistency with directly applicable provisions of urban planning area agreements between the annexing entity and a necessary party.

3. Consistency with directly applicable standards for boundary changes contained in Comprehensive land use plans and public facility plans.

4. Consistency with directly applicable standards for boundary changes contained in the Regional framework or any functional plans.

5. Whether the proposed boundary change will promote or not interfere with the timely, orderly and economic provision of public facilities and services.

6. If the boundary change is to Metro, determination by Metro Council that territory should be inside the UGB shall be the primary criteria.

7. Consistency with other applicable criteria for the boundary change in question under state and local law.

The Metro Code also contains a second set of 10 factors which are to be considered where: 1) no ORS 195 agreements have been adopted, and 2) a necessary party is contesting the boundary change. Those 10 factors are not applicable at this time to this annexation because no necessary party has contested the proposed annexation.

5. The *Milwaukie Municipal Code* contains the following 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 of Milwaukie 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;
D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies; and
E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d) and, if applicable, (e).

6. This is a level site containing a few large trees.

7. This territory is inside Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

   The law that requires Metro to adopt criteria for boundary changes specifically states that those criteria shall include " . . . compliance with adopted regional urban growth goals and objectives, functional plans . . . and the regional framework plan of the district [Metro]." The Regional Framework Plan, which includes the regional urban growth goals and objectives, the Growth Management Functional Plan and the Regional Transportation Plan were examined and found not to contain specific criteria applicable to boundary changes.

8. The Metro Code states that the City Council's decision on this boundary change should be ". . . consistent with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans." Thus the applicable plans must be examined for "specific directly applicable standards or criteria.

   The Clackamas County Comprehensive Plan is the applicable plan for this area. The general plan designation for this site is Immediate Urban on the County's Northwest Urban Land Map (Map IV-1). The County's Clackamas County North Urban Area Land Use Plan (Map IV-6) shows the area to be annexed as Low Density Residential. Zoning on the property is R-10, Residential, 10,000 Square Foot Minimum Lot Size.

   Each chapter of the County Plan has been searched for materials concerning annexations. Sections of these elements which speak directly to the issue of annexation have been reviewed to decide whether the current proposal is consistent with them.

   Citizen Involvement is the title of Chapter 2 of the Comprehensive Plan. Policy 6.0 states:

   - *Seek citizen's input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.*

   The combination of statutory and Metro notice requirements on annexations are consistent with this policy. The City Planning Commission and affected units of government including Clackamas County Service District # 1, Clackamas River Water, Clackamas County R.F.P.D. # 1, etc. were notified. Owners of all properties within 400 feet were sent notices.

Chapter 3 of the Clackamas County Comprehensive Plan, *Natural Resources and Energy*, covers the following topics: Water Resources; Agriculture; Forests; Aggregate Resources; Wildlife Habitats and Distinctive Resource Areas; Natural Hazards; Energy Sources and Conservation. All of these topics are covered in broad terms. At no point is there any mention of any specific criteria relating to annexation. Maps are included in the subsections on water (identifying various river conservation areas), aggregate resources and scenic & resource areas. None of these maps show any of these elements on the site to be annexed.

The *Land Use* section of the Plan, Chapter 4, identifies the territory proposed for annexation as *Immediate Urban*.

> *Immediate Urban areas are lands within the Urban Growth Boundaries which meet at least one of the following conditions: (1) Served by public sewer; (2) included within the boundaries of cities or within special districts capable of providing public sewer and planned to be served in the near future; or (3) substantially developed and surrounded by development at urban densities.*

Public Facilities and Services are covered in Chapter 7 of the County Plan. The following policies of this chapter are related to annexation decisions.

POLICIES

* * *

Sanitary Sewage Disposal

* * *

4.0 Insure that sewerage facilities in Clackamas County are developed and maintained by the appropriate sanitary district, county service district or city.

* * *

6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

* * *

7.0 Require the timely and orderly provision of sanitary sewers in all Immediate Urban areas except those identified as Floodplain and other hazard areas.

8.0 Prohibit subsurface disposal systems within Urban Growth Boundaries except for:

* * *

b. Parcels of ten acres or larger in Future Urbanizable areas inside the Metro Urban Growth Boundary (UGB), . . .

9. As required by LCDC, Milwaukie and the County have an urban growth management agreement (UGMA) by which they coordinate their planning within an area of mutual interest next to the City. The territory to be annexed falls within the Urban Growth Boundary Management Area identified in the Agreement.

Section 6 of Part C of the Agreement states:

> *6. If an annexation to the CITY occurs, the CITY shall assume jurisdiction of COUNTY roads and local access roads that are within or abutting the area annexed. As a condition of jurisdiction transfer for roads not built to CITY street standards on the date of the final decision on the annexation, the COUNTY shall either reimburse the CITY for the actual cost of the overlay or the COUNTY shall install the overlay itself over the width of the then-existing pavement. However, if the width of the pavement is less than twenty (20) feet, the sum shall be calculated for an overlay 20 feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of CITY and COUNTY. Arterial roads will be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads will be negotiated and agreed to by both jurisdictions.*

Generally speaking the Agreement calls for notice to the City of County actions in the area and notice to the County of City actions in the area. The required notice of this proposed annexation was provided to the County.

The agreement requires the City to include the portions of Stanley Avenue adjacent to the territory to be annexed.

10. Chapter 1 of the City Comprehensive Plan, *Citizen Involvement*, calls for encouraging and providing opportunities for citizens to participate in the planning process. Annexations are not specifically identified as an element of the planning process. To the extent annexation can be viewed as related to the planning process, it should be noted that the Planning Commission and all citizens within 400 feet were notified of this proposed annexation.

    Chapter 2 of the Plan covers the *Plan Review And Amendment Process*. This chapter was examined and found not to contain any specific directly applicable standards or criteria for boundary changes.

    The *Environmental And Natural Resources* section of the Comprehensive Plan, Chapter 3, was examined including the maps showing natural hazards, historic resources and natural resource sites. No criteria relating to boundary changes were found in the bulk of this chapter.

    Chapter 4, *Land Use*, was examined and found not to contain criteria, policies, etc. which pertain directly to boundary changes.

    Chapter 5 of the Milwaukie Comprehensive Plan covers *Transportation, Public Facilities and Energy Conservation*. One Goal in the Transportation element is to:

    > Provide a continuous citywide network of safe and convenient walkways that is integrated with other transportation modes.

    The Walkways Master Plan indicates a proposed walkway along Stanley Avenue.

    A second goal in the Transportation element of the Plan is to:

    > Provide a continuous citywide network of safe and convenient bikeways and routes that is integrated with other transportation modes.

    The Bikeways Network Master Plan includes Stanley Avenue in the Proposed Bikeways Network.

    The Streets element contains maps and text which identify Stanley Avenue as a Collector. Collector streets "provide both access and circulation within residential neighborhoods."

    The Public Facilities and Services element of Chapter 5 reiterates the City's intention to be the full service provider to areas within the City's urban growth area.

Chapter 6 is labeled *City Growth And Governmental Relationships*. Objective # 3 of the City Growth Element section of this chapter covers annexation.

> OBJECTIVE # 3 – ANNEXATION
>
> To ensure that City annexation policies conform to urban service and growth management policies
>
> Policies
>
> 1. The City will only support annexation requests from properties within the City's Urban Growth Management boundary.
> 2. The city will deliver services in this area when:
> - The city is able to provide an adequate supply of needed services
> - A majority of residents and property owners within an area to be served desire City services
> 3. The City will require annexation in order to receive or utilize a City service
> 4. All areas encircled (islanded) by City Limit lines will be annexed

Finally the City Code at Section 1504.1 E provides that:

> The City zoning and Comprehensive Plan designation for an expedited annexation request shall be automatically applied based on the existing Clackamas County zoning designation in accordance with Table 1, . . .

Under Table 1 the County's R-10 zoning designation will result in automatic application of the City's Low Density Residential plan designation and R-10 zoning designation.

11. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. The statute was enacted in 1993 but no urban service agreements have yet been adopted in this area of the County.

12. There is an 8 inch City sewer line adjacent to the property in SE Stanley Avenue. The City serves the existing house and a second lateral has been run back to serve the proposed flag lot.

    The developers of the new residence would be required to pay a Systems Development Charge of $893.

13. Storm drainage in this area is handled by drywells and storm drainage SDC is $473.

14. This territory is currently within Clackamas County R.F.P. D. # 1. Oregon Revised Statute 222.120 (5) allows the City to specify that the territory be automatically withdrawn from the District upon approval of the annexation.

    Milwaukie provides fire protection via a contract with Clackamas County Rural Fire Protection District No. 1. The City should withdraw the territory from the District so that all property in the City is being served uniformly [via the contract].

15. The territory is currently served by the Clackamas County Sheriff's Department. Subtracting out the sworn officers dedicated to jail and corrections services, the County Sheriff provides approximately .5 officers per thousand population for local law enforcement services.

    The area to be annexed lies within the Clackamas County Service District (CSD) for Enhanced Law Enforcement which provides additional police protection to the area. The combination of the countywide service and the service provided through the Enhanced Law Enforcement CSD results in a total level of service of approximately 1 officer per 1000 population. According to ORS 222.120 (5) the City may provide in its approval ordinance for the automatic withdrawal of the territory from the District upon annexation to the City. If the territory is withdrawn from the District, the District's levy would no longer apply to the property.

    Upon annexation the Milwaukie Police Department will serve the territory. The Milwaukie Police Department has 33 sworn officers which provides a ratio of 1.7 officers per 1,000 population. By ordinance the City must maintain a ratio of at least 1.5 officers per 1,000.

    The City should withdraw the territory from the District so that all property in the City is being served uniformly by City police.

16. Stanley Avenue is a County road with curb and sidewalk along the entire frontage. The driveway approach was constructed wide enough to handle both properties. No additional work is anticipated in the public right-of-way. The transportation SDC for a single-family residence is $1339.80.

17. This territory is within Clackamas County Service District # 5 for Street Lights. In that District only some areas are lighted and if lighted the property owners in the lighted area pay a yearly assessment of $32.50 for lights on existing wood poles or $45 on metal poles. ORS 222.120 (5) would allow the Council to specify in its approval ordinance that the territory be withdrawn from that District. The City of Milwaukie provides street lighting service at no extra charge to City residents. Therefore the property should be withdrawn from the County Service District as allowed by statute.

18. Planning, neighborhood associations, nuisance abatement and other municipal services are also provided by the City and will be available to the territory from the City upon annexation.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the City Council determined:

1. As noted in Finding No. 9, the territory to be annexed is located within the City's Urban Growth Boundary. This is in accord with Approval Criteria "A" in Section 1502.3 of the Milwaukie Municipal Code.

2. The territory to be annexed is contiguous to the existing City limits as required by Approval Criteria "B" of Section 1502.3. This is noted on the Map attached to this order.

3. As explained in the staff report and noted in Finding No. 2 the requirements of the Oregon Revised Statutes for initiation of an annexation are met. This meets the requirement of Approval Criteria "C" of Section 1502.3 of the Milwaukie Municipal Code.

4. Approval Criteria "D" of Section 1502.3 of the Municipal says the proposal should be consistent with Milwaukie Comprehensive Plan Policies. As detailed in Finding No. 10, the Council finds the proposal is consistent with the Plan Policies. It is consistent with: 1) the public involvement aspects of Chapter 1 of the Plan; 2) with the portion of Chapter 3 encouraging public sewers as a way to protect the environment; 3) with the public facilities chapter which encourages availability of municipal services; and 4) with Objective 3 of Chapter 6 which encourages annexation where the City can supply services and/or of areas surrounded by the City.

5. The proposal complies with the applicable criteria of the Metro Code as required by Approval Criteria "E" of Section 1502.3 of the Milwaukie Municipal Code. This compliance is covered in the Conclusions which follow.

6. The Regional Framework Plan was examined and found not to contain any decision-making criteria directly applicable to boundary changes.

7. The Metro Code at 3.09.050(d)(3) calls for consistency between the City's decision and any "directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facilities plans;"

   The Council has reviewed the acknowledged Clackamas County Comprehensive Plan which currently applies to this site and finds approval of this annexation to be consistent with the very few directly applicable standards and criteria in that plan.

   Chapter 2 of the County Comprehensive Plan calls for an emphasis on citizen participation. The Council concludes that the notice given on this proposal makes it compatible with this section of the Plan.

   The *Public Facilities* chapter of the County Plan also contains requirements with which the Council believes this proposal is consistent. By annexing to Milwaukie, which can provide a full range of services, the proposal is also in accord with Policy 13.0 under the subheading Water. This requires ". . . water purveyors to coordinate the extension of water services with other key facilities, i.e., transportation, sanitary sewers and storm drainage facilities . . . "

8. With regard to Metro Code 3.09.050 (d)(2) the Council finds that this proposal is consistent with the Clackamas County - City of Milwaukie UGMA which requires the City to notify the County of any annexation decisions. The Council notes that the record states the County was notified of this proposal.

9. Metro Code 3.09.050(d)(5) states that another criterion to be addressed is "Whether the proposed change will promote or not interfere with the timely, orderly and economic provision of public facilities and services. The Council concludes that the City's services are adequate to serve this area, based on Findings 12-18 and that therefore the proposed change promotes the timely, orderly and economic provision of services.

10. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from Clackamas RFPD #1. To assure that all

property in the City is being served uniformly under the contract the territory should be simultaneously withdrawn from the Fire District.

11. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from the Clackamas County Service District for Enhanced Law Enforcement. Upon annexation the City's police department will be responsible for police services to the annexed territory. To assure uniform service and prevent confusion over jurisdiction, the territory should be simultaneously withdrawn from the Enhanced Law Enforcement District.

12. The City may specify in its annexation Ordinance that the territory will be simultaneously withdrawn from Clackamas County Service District No. 5 for Street Lights. Since the City provides this service the territory should be withdrawn from the District.

13. The City may specify in its annexation Ordinance that the territory will be withdrawn from Clackamas River Water. Since the City can provide this service the area should be withdrawn from that district.

14. The City-County Urban Growth Management Agreement requires the City include adjacent County roads when annexing territory. In setting "the final boundaries of the area to be annexed" as required by ORS 222.125, the City Council hereby determines that the adjacent street right-of-way of Stanley Avenue should be included as noted in the attached legal description and map.

EXHIBIT 'B'

LEAGAL DESCRIPTION

Part of the Southeast one-quarter Section 30, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

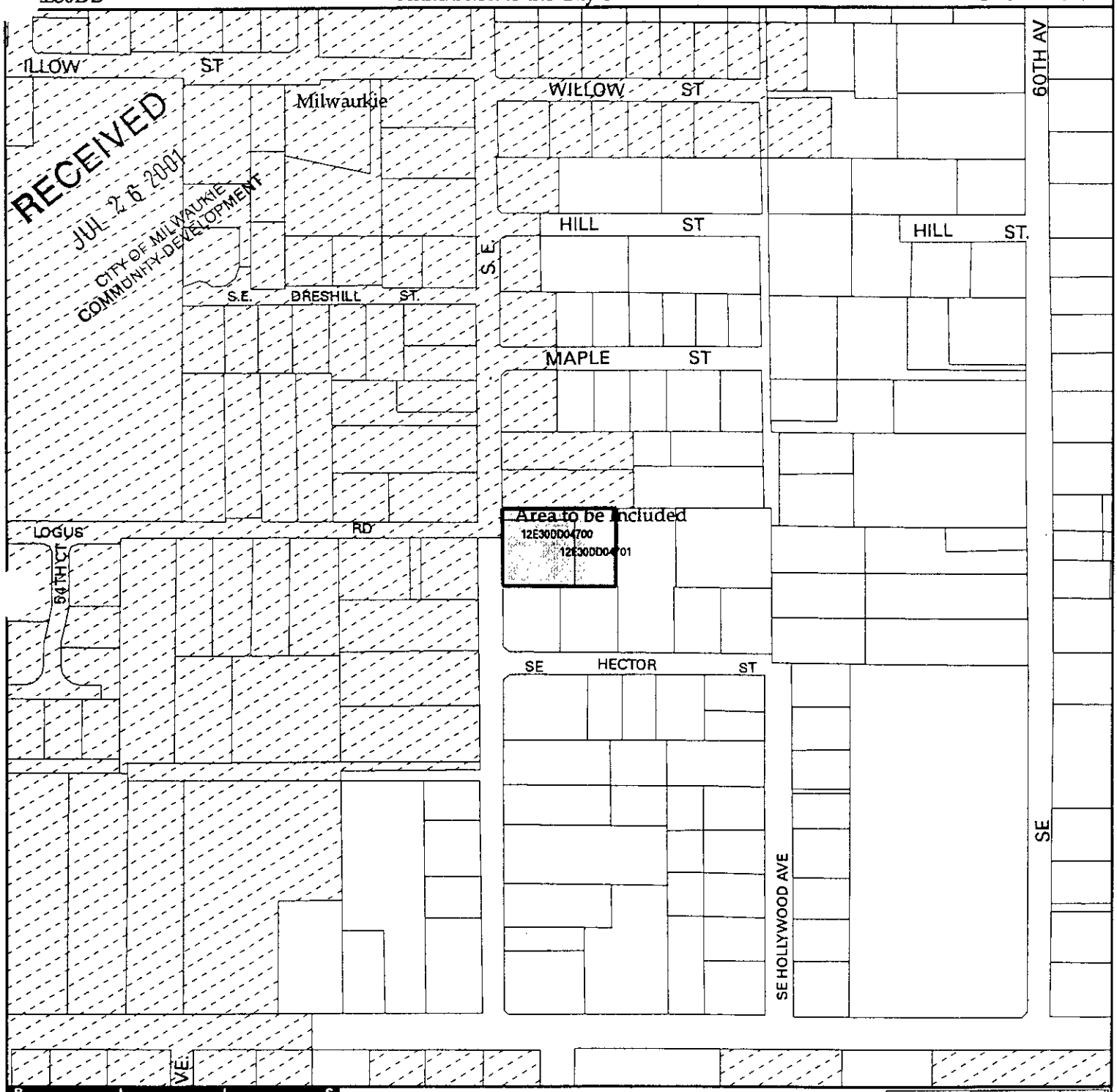
Beginning at a point in the Easterly right of way line of Stanley Avenue 137.50 feet South of the initial point of HOLLYWOOD PARK, said point being the Southwest corner of that tract conveyed to Hilda Keller, et al, by deed recorded in Book 233, Page 160,Clackamas County Deed Records; thence South along said Easterly right of way line 137.5 feet to the Southeast corner of the tract conveyed to James A. Whittaker by Deed recorded in Book 316 Page 6, Clackamas County Deed Records; thence East along the South line of said Whittaker tract 198.6 feet to the Southeast corner of that tract conveyed to Palmer W. Larson, et ux, by Deed recorded in Book 464 Page 615, Clackamas County Deed Records; thence North 0 degrees 58 minuets West along the West line of said Larson tract; 137.5 feet to a point in the South line of said Keller Tract; thence West along said South line 198.6 feet to the point of beginning.

MAY 2001
RECEIVED
CLACKAMAS
COUNTY
ASSESSOR

RECEIVED
MAY 25 2001
CITY OF MILWAUKIE
PLANNING DEPARTMENT

Proposal No. AN-01-02

'E30DD — Annexation to the City of Milwaukie — Clackamas Co.



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JUL 26 2001
CITY OF MILWAUKIE
COMMUNITY DEVELOPMENT

R L I S
REGIONAL LAND INFORMATION SYSTEM

600 NE Grand Ave.
Portland, OR 97232-2736
Voice 503 797-1742
FAX 503 797-1909
Email dro@metro-region.org

METRO

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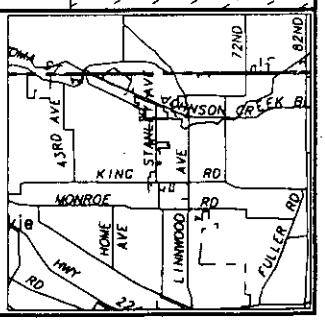
County lines
City
Annexation boundary
Urban Growth Boundary

Proposal No. AN-01-02
CITY OF MILWAUKIE
Figure 1

Scale: 1" = 250'
0 200 400



/bd/yadmin/plots/plotjur/begin.aml, plot date: June 05, 2001

Please recycle with colored office grade paper

Proposal No. AN-01-02

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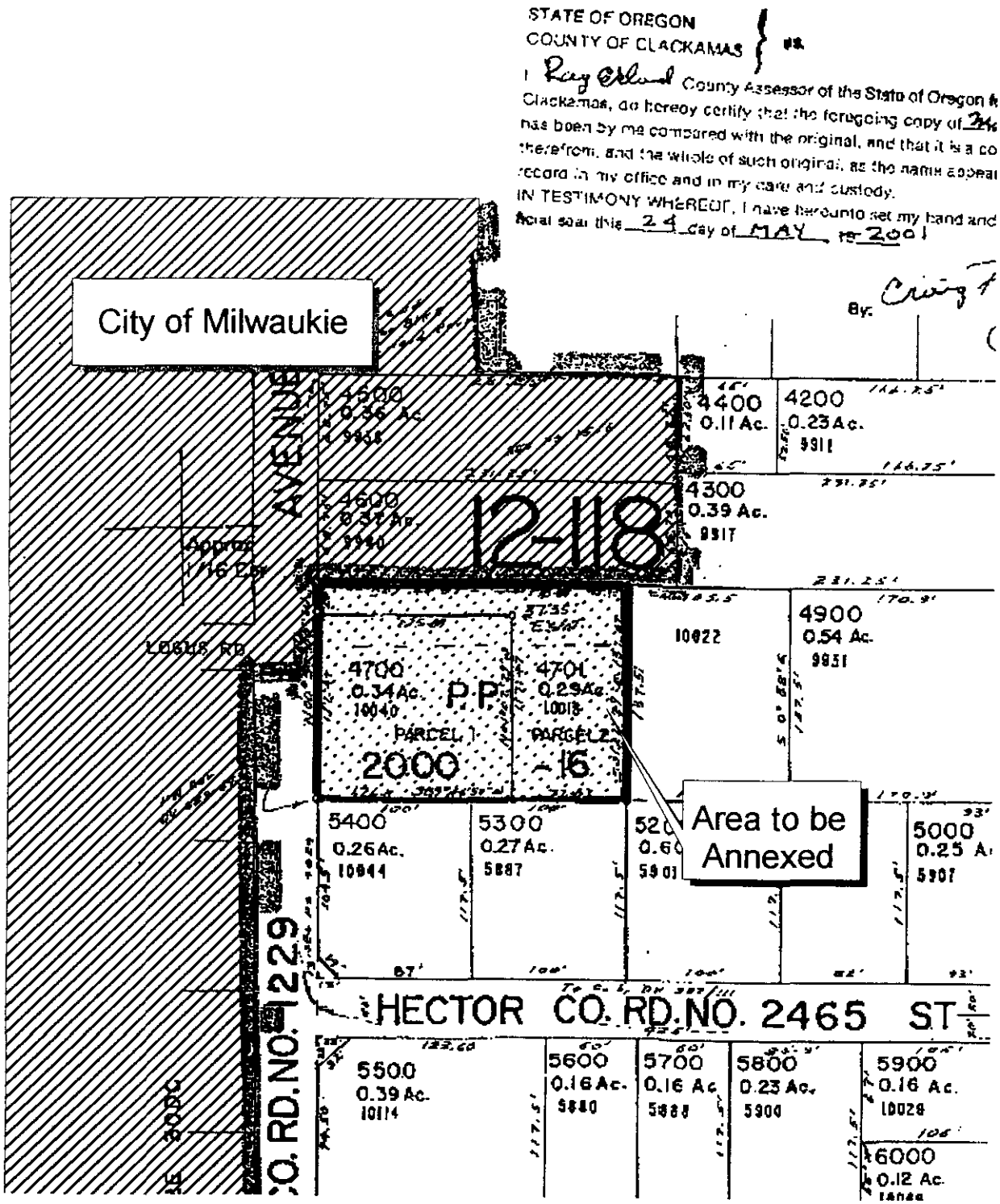
METRO

Annexation to the City of Milwaukie
Clackamas Co.
Map 1S2E30DD



PROPOSAL NO. AN-01-02
CITY OF MILWAUKIE
Figure 2