

ORDINANCE NO. 2006

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS 5885 SE HARMONY ROAD INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS RIVER WATER, CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT, AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-09-01).

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

WHEREAS, the City received written consent from a majority of electors and all owners of land in the territory proposed to be annexed as required by ORS 222.170; 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 Planning Commission and City Council held public hearings in accordance with ORS 222.120, Metro Code Section 3.09.050, and Milwaukie Municipal Code Sections 19.1502.1 and 19.1011.4; and

WHEREAS, the City mailed and posted notice of the public hearings in accordance with ORS 222.120, Metro Code Section 3.09.030, and Milwaukie Municipal Code Section 19.1011.4; 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 tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; 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 tract of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A; and

WHEREAS, the City Planning Commission and City Council considered a Comprehensive Plan land use designation change from County General Industrial (GI) to City Industrial (I) and a Municipal Code zone change from County Light Industrial (I2) to City Business Industrial (BI) for the tract of land as a part of the proceeding as provided for in Milwaukie Municipal Code Section 19.1502.1; 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 222.170; and

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

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

Section 1. Findings. Findings of fact in support of the proposed amendment are attached as Exhibit A.

Section 2. The tract of land, described in Exhibit B and depicted on the attached map, is hereby annexed to the City of Milwaukie.

Section 3. The tract of land annexed by this ordinance and described in Section 2 is hereby withdrawn from Clackamas River Water, Clackamas County Service District for Enhanced Law Enforcement, and Clackamas County Service District No. 5 For Street Lights.

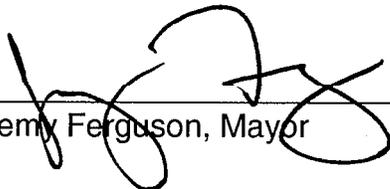
Section 4. The tract of land annexed by this ordinance and described in Section 2 is hereby assigned a Comprehensive Plan land use designation of Industrial (I) and a Municipal Code zoning designation of Business Industrial (BI).

Section 5. The City shall immediately file a certified 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 222.180.1

Read the first time on 9/15/09, and moved to second reading by 5-0 vote of the City Council.

Read the second time and adopted by the City Council on 9/15/09

Signed by the Mayor on 9/15/09

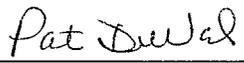


Jeremy Ferguson, Mayor

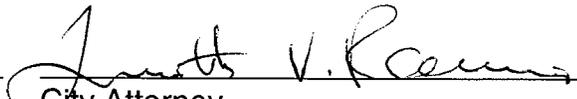
ATTEST:

APPROVED AS TO FORM:

Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

¹ Since this ordinance was enacted after March 31, the effective date of the withdrawal of the tract of land from Clackamas River Water, a domestic water supply district, shall be July 1, 2010 pursuant to ORS Section 222.465.

Exhibit A

Recommended Findings in Support of Approval Case File# A-09-01

1. Through this annexation the City is withdrawing 5885 SE Harmony Rd (Map 1S2E31D; TLID 1600), a 0.53-acre site, from the following districts and service providers:
 - a. Clackamas River Water
 - b. Clackamas County Service District for Enhanced Law Enforcement
 - c. Clackamas County Service District No. 5 for Streetlights
2. Upon annexation of the aforementioned property, the City will amend its Land Use Map (Comprehensive Plan Map 7) and Zoning Map to apply an Industrial land use designation and a Business Industrial (BI) zoning designation to the annexed properties. A BI zoning designation will allow for land use consistency and ease of zoning administration in the area.
3. Upon annexation of the aforementioned property, the City will not amend its land use and zoning maps to annex any portion of Harmony Rd.
4. The application of a BI zoning designation to the aforementioned property will not significantly impact state highway facilities (as determined by ODOT) and will not conflict with Metro's Title 4 Employment designation (as confirmed by Metro).
5. The annexation application has been processed and public notice has been provided in accordance with Milwaukie Municipal Code (MMC) Chapter 19.1500 Boundary Changes, MMC Chapter 19.900 Amendments, MMC Section 19.1011.4 Major Quasi-Judicial Review, Metro Code Chapter 3.09 Local Government Boundary Changes, and Oregon Revised Statutes Chapter 222 City Boundary Changes.
6. The Land Use Map and Zoning Map amendments have been processed and public notice has been provided in accordance with Milwaukie Comprehensive Plan Chapter 2, MMC Chapter 19.900 Amendments, and MMC 19.1011.4 Major Quasi-Judicial Review.
7. The Planning Commission conducted a public hearing on August 25, 2009, and passed a motion recommending that the City Council approve the annexation.
8. The City Council finds that the annexation is in the City and public's best interests as follows:
 - The annexation is consistent with the City's Urban Growth Management Area (UGMA) agreement with the County and the annexation policies and objectives contained in the City's Comprehensive Plan. The intergovernmental agreement with the County and the City's annexation policies aim to provide for the timely

and orderly extension of urban services to the areas identified in the City's UGMA. The annexation property is within the City's UGMA and immediately adjacent to the city limits. The property owner desires to develop the property with an office use and requests a zoning designation that will allow that use. The City currently provides water and sewer service to the site and can continue to adequately serve the annexation property without impacting existing development or restricting future development. The annexation facilitates the efficient use of land and utilities by taking advantage of existing investments in utilities and streets. The City Council finds that the annexation and subsequent extension of urban service is both timely and orderly.

- The annexation will not adversely affect the health, safety, and welfare of the community.
9. The annexation is consistent with the following applicable State, Metro, County, and City policies, agreements, provisions, and regulations:

Milwaukie Municipal Code

Chapter 19.1500 Boundary Changes
Chapter 19.900 Amendments

Milwaukie Comprehensive Plan

Chapter 2 Plan Review and Amendment Process
Chapter 4 Land Use
Chapter 5 Transportation, Public Facilities, and Energy Conservation
Chapter 6 City Growth and Governmental Relationships

Metro Code

Chapter 3.09 Local Government Boundary Changes
Chapter 3.07 Urban Growth Management Functional Plan

Urban Growth Management Area (UGMA) Agreement

Oregon Revised Statutes 2007

Chapter 195 Local Government Planning Coordination

The annexation is consistent with the following applicable State, Metro, County, and City policies, agreements, provisions, and regulations as detailed below:

Milwaukie Municipal Code

Milwaukie Municipal Code (MMC) Section 19.1502.3 states that 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.

The site meets this requirement.

- B. The subject site must be contiguous to the existing city limits.

The site meets this requirement.

- C. The requirements of the Oregon Revised Statutes for initiation of the annexation process must be met.

The application was initiated in accordance with applicable statutes. The petition was initiated by Consent of All Owners of Land since all property owners and a majority of the electors residing at the subject site signed the annexation petition.

- D. The proposal must be consistent with Milwaukie comprehensive plan policies.

The proposal is consistent with the Comprehensive Plan as detailed in Milwaukie Comprehensive Plan section of this document.

- E. The proposal must comply with the criteria of Metro Code Sections 3.09.050(d).

The proposal is consistent with the Metro Code as detailed in Metro Code section of this document.

MMC Section 19.903 states that proposals for zoning map amendments must provide evidence that all requirements of this title relative to the proposed use or uses are satisfied, in addition to addressing the following:

- A. Applicable requirements of Section 19.1003.

The annexation application and associated map amendment requests were made on forms prescribed by the City and were accompanied by appropriate maps and supporting documentation.

- B. Reasons for requesting the zoning map amendment.

The zoning map amendment request is made in conjunction with an annexation petition pursuant to MMC Section 19.1502.1.A, which states that annexation petitions shall include a request for comprehensive plan and zoning designations.

- C. Description of existing site conditions, including but not limited to topography, public facilities and service, natural hazards, natural areas or open space, historic sites, transportation, current uses of the subject site and current zoning of the subject site.

The site is contiguous to the existing city limits and is within the City's urban growth management area (UGMA). It is composed of one property on Harmony Rd. The property is 0.53 acres in size. The site is developed with a single-family residence, which is currently vacant. The site is bounded to the north by properties within the City of Milwaukie and to the south by Harmony Rd. Access to the Site is currently obtained through Harmony Rd.

The City currently provides water and sewer service to the site and would continue to do so after annexation.

The site's existing zoning designation in the County is Light Industrial (I2) and its land use designation is Industrial. The proposed zoning and land use designations upon annexation to the City are Business Industrial (BI) and Industrial, respectively. The site also has a regional Title 4 Employment Area designation. There is no proposal to change that designation at this time.

D. Description of the intended use or uses.

The intended use is an office for a company that handles freight and shipping arrangements for manufacturers and other large-scale shippers.

E. Identification on a detailed site plan of public facilities both existing and proposed; existing and proposed structures and site development details, including display of setback and other zoning standards compliance information; and an indication of mitigation or other measures proposed for purposes of health, safety or welfare within the community.

The applicant seeks to expand the existing structure on the site. A preliminary site plan was provided with the development proposal application. The applicant's site plan demonstrates that the annexation properties can be developed in accordance with BI zone development standards. Mitigation of development impacts will likely include construction of storm water treatment and management facilities at the time of development.

F. The approval criteria of Section 19.905, which include the following:

1. The proposed amendment must conform to applicable comprehensive plan goals, policies and objectives and be consistent with the provisions of city ordinances, Metro urban growth management functional plan and applicable regional policies.

The proposal is consistent with the Milwaukie Comprehensive Plan, Metro Code, and UGMA agreement as detailed in later sections of this document. The proposal does not conflict with Metro's Title 4 Employment provisions.

2. The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The planning commission and city council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

The potential future development that would ensue as a result of annexation and the application of a BI zone designation will be consistent with the predominant land use pattern in the area. There are no known potential adverse effects associated with either the annexation or a BI zone designation that could not be addressed through the land use or building permit review process at the time of development.

3. The proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations.

No known federal regulations apply to this annexation. The proposed annexation and BI zoning designation will meet or can be determined to reasonably meet applicable State, Metro, and County regulations. ODOT has determined that neither action will significantly impact state highway facilities. Metro has confirmed that neither action will conflict with Metro's Title 4 Employment provisions. The City has determined that the annexation is consistent with its UGMA agreement with the County.

4. The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

The City currently provides water and wastewater service to the annexation property. The existing public facilities can accommodate the anticipated development of the site without restricting future development in the area.

5. The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.1400.

The annexation property is currently zoned for industrial uses in the County. The City has two industrial zones that could be applied to the properties, Business Industrial and Manufacturing. Staff believes that a

Manufacturing zoning designation is not appropriate for the annexation properties due to the absence of any properties zoned Manufacturing in this area. The M zone allows manufacturing uses that generally require several acres of land; offices are allowed when accessory to manufacturing uses. Like the County's I2 zone, the BI zone allows light industry as well as business and professional offices that support industrial uses and can locate on smaller parcels. Both land uses are designated Industrial in the City's Comprehensive Plan.

The applicant's development proposal application triggered a transportation impact study. Street improvements consistent with MMC Chapter 19.1400 will likely be required as a condition of land use approval to mitigate for the proposed development's impacts and to protect the functional classification, capacity, and level of service of Harmony Rd.

Milwaukie Comprehensive Plan

Chapter 2 Plan Review and Amendment Process states that all amendments to the Comprehensive Plan, including map amendments associated with annexations, shall be evaluated based on the following criteria:

A. Conformance with the Comprehensive Plan, its goals, polices, and spirit.

The proposal is consistent with the Milwaukie Comprehensive Plan as detailed throughout this section. Specifically, it is consistent with the following applicable Comprehensive Plan elements:

- *Economic Base and Industrial/Commercial Land Use Element of Chapter 4*
- *Public Facilities and Services Element of Chapter 5*
- *City Growth Element of Chapter 6*

B. Public need for the change.

The annexation property is in the City's UGMA and immediately adjacent to the city limits. Creation of the City's UGMA and development of the UGMA agreement with the County provides for the eventual annexation of UGMA properties into the City for the express purpose of: (1) extending urban services to these properties in an orderly and timely manner, and (2) delivering services to these properties through a single service provider where possible. In keeping with the UGMA agreement, annexation of this property will allow the City to become a single service provider for the site. New zoning and land use map designations are necessary for all annexations pursuant to MMC Section 19.1502.1.A, which states that annexation petitions shall include a request for comprehensive plan and zoning designations. The

annexation property cannot retain its County designations upon annexation to the City.

C. Public need is best satisfied by this particular change.

The Comprehensive Plan supports the adequate supply of industrial land and the provision of urban services to industrial lands.

A BI zoning designation is consistent with the existing zoning and land use pattern in the area and will better protect the functional classification, capacity, and level of service of Harmony Rd than a Manufacturing zoning designation.

D. The change will not adversely affect the health, safety, and welfare of the community.

The proposal will not adversely affect the health, safety, or welfare of the community.

E. The change is in conformance with applicable Statewide Planning Goals.

- Goal 1 requires local governments to establish a land use planning process as a basis for all decisions and actions to ensure a factual basis for such decisions.

The proposal is consistent with all applicable State, Metro, County, and City policies, agreements, provisions, and regulations as detailed in this document.

- Goal 11 requires development of public facility plans that ensure the orderly and timely provision of public services.

The proposal is consistent with the City's UGMA agreement with the County and the North Clackamas County Public Facilities Plan, which provides a framework for ensuring cost-effective service provision in urbanizing areas.

F. The change is consistent with Metro Growth Management Functional Plan and applicable regional policies.

The proposal is consistent with the Metro Growth Management Functional Plan and applicable regional policies as detailed in the Metro Code section of this document.

Chapter 4's Economic Base and Industrial/Commercial Land Use Element states that the City should support and encourage the development of a broad industrial base in the City. Planning objectives include the following:

- Objective #1 – Economic Development: The City will encourage an increase in the overall economic development activity within the City.

The applicant proposes to annex a 0.53-acre site into the City and to develop the site with an office use consistent with the City's Business Industrial zone. The business will be moving to the site from its current location at 12300 SE Mallard Way Suite 270, further north in Milwaukie's BI zone. The new site would allow the organization to expand beyond its current size.

- Objective #4 – Industrial Land Use: To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry. Properties adjacent to industrial areas will be evaluated against the following criteria when an industrial designation is proposed:

- (a) Those having an historical commitment to industrial use.

The annexation property is presently developed with a single-family residential structure but is zoned for industrial uses in the County. The property is adjacent to the City's Business Industrial zone to the west, north, and east, which is committed to industrial use.

- (b) Access to a regional transportation network, which should include one or more of the following: freeway, major or minor arterial access, or rail service.

The annexation property is in close proximity to Highway 224 and has direct access to Harmony Rd, an arterial road.

- (c) Significant traffic increase shall not result on streets of collector or less status serving low-density residential areas.

Traffic generated by future development on the annexation properties will be distributed to arterial and collector streets including Lake Rd, Harmony Rd, Highway 224, and Linwood Ave.

- (d) Areas with sites large enough to accommodate expansion of individual establishments or serve several establishments within one district.

The annexation property is 0.53 acres in size. This site will allow the organization to expand beyond its current size.

- (e) Compliance with all applicable Plan policies.

The proposal complies with all applicable Comprehensive Plan policies as detailed throughout this section.

The Public Facilities and Services Element of Chapter 5 states that the City should plan, develop, and maintain a timely, orderly, and efficient arrangement of public facilities and services to serve urban development.

As detailed elsewhere in this document, the City can continue to adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area.

The City Growth Element of Chapter 6 of states that the City should establish a consistent framework for providing municipal services to the urbanized, unincorporated area surrounding the City. Planning objectives include the following:

- Objective #1 – Unified System of Governance: To encourage and participate in efforts to define a unified system of government for the northwest urban area of Clackamas County.

As defined in the Milwaukie Comprehensive Plan, a unified system of government is one in which a single entity provides most urban services. Annexation will result in the City becoming the primary urban service provider for the annexation property.

- Objective #2 – Urban Service Area: To establish an area within which the City will participate in planning, coordinating and providing services.

The annexation property is within the City's recognized urban service area as outlined in the City's UGMA agreement with the County.

- Objective # 3 – Annexation: To ensure that City Annexation policies conform to urban service and growth management policies.

As detailed elsewhere in this document, the annexation is consistent with the City's regulations governing annexations pursuant to MMC Chapter 19.1500 Boundary Changes and the City's UGMA agreement with the County.

- Objective # 5 – Economic Balance in Land Use and Service Demand: To maintain an economically advantageous balance of residential, commercial, and industrial land base and land use.

The annexation property is zoned for industrial uses in the County and has a regional Title 4 Employment designation. The City sees no reason to radically alter the property's existing County and regional designations.

- Objective #6 – Cost of Services: To ensure that the cost of urban services provision is paid equitably by all who receive them.

Annexation will ensure that the annexation property pays for the City services it is proposing to use.

- Objective #7 – Extension of Services: To enable the City to maintain and extend adequate service levels as city growth occurs.

As detailed elsewhere in this document, the annexation property desires additional City services to develop, and the City can adequately provide urban services to the annexation property without impacting existing development or restricting future development in the area.

Metro Code

The Oregon State Legislature directed Metro to establish boundary change approval criteria to be used by all cities and properties within the regional Urban Growth Boundary (UGB). The City and the proposed annexation properties are within the UGB. To approve a boundary change, the City shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Metro Code Section 3.09.045, which are as follows:

To approve a boundary change, the City shall:

1. Find that the change is consistent with expressly applicable provisions in:
 - A. Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - B. Any applicable annexation plan adopted pursuant to ORS 195.205;
 - C. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
 - D. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - E. Any applicable comprehensive plan.

There are no adopted agreements in place pursuant to ORS 195.065. The Clackamas County Comprehensive Plan was reviewed for applicable policies and provisions related to annexations. Of the few relevant policies and provisions found, all were duplicative of the provisions contained in the UGMA agreement and the policies contained in the Milwaukie Comprehensive Plan,

against which this annexation has already been reviewed. As detailed elsewhere in this document, the annexation is consistent with all other existing applicable planning agreements and plans.

2. Consider whether the boundary change would:
 - A. Promote the timely, orderly and economic provision of public facilities and services;
 - B. Affect the quality and quantity of urban services; and
 - C. Eliminate or avoid unnecessary duplication of facilities or services.

As detailed elsewhere in this document, annexation would promote the timely and orderly provision of public facilities and services to the annexation property. All public facilities and services needed for future development of the annexation property are presently in place, and use of such facilities would not affect service to existing development or restrict future development in the area.

Title 4 of Metro Code Chapter 3.07 Urban Growth Management Functional Plan calls for a strong economic climate. To improve the region's economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial, and Employment Areas.

The annexation property has a Title 4 Employment Area designation. Metro has confirmed that there is no conflict between the property's existing Title 4 designation and a Business Industrial zoning designation because the City's Business Industrial zone is already in compliance with the employment lands section of Title 4.

Urban Growth Management Area (UGMA) Agreement

The City and Clackamas County have an UGMA agreement that provides for the coordination of effective and efficient service delivery in areas of mutual interest that are adjacent to the City. Section C.6 of the Agreement provides the following: Arterial roads shall be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads shall be negotiated and agreed to by both jurisdictions.

The annexation property is located within the UGMA. The UGMA agreement supports the extension of urban services to the property and the establishment of the City as the primary urban service provider.

The annexation property has a frontage on Harmony Rd, which is an arterial road under County jurisdiction. Annexing a portion of it would fragment the County's jurisdiction and complicate capital project planning and maintenance tasks,

resulting in administrative and maintenance inefficiencies. The City is not interested in or required to annex this portion of Harmony Rd at this time.

Oregon Revised Statutes 2007

ORS Chapter 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation, 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.

No urban service agreements have been adopted pursuant to this statute in this area of the County as of yet.

EXHIBIT B

APN: 00097102

Statutory Warranty Deed
- continued

File No.: 7072-1296894 (DWH)
Date: 10/30/2008

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Clackamas, State of Oregon, described as follows:

12E31D 01600

Beginning at the Southeast corner of the J.D. Garrett Donation Land Claim in Township 2 South, Range 2 East of the Willametta Meridian in the County of Clackamas and State of Oregon; thence South 89°50' West along the South line of said claim 837.50 feet; thence North 226.10 feet to the center line of Foster Road and the true point of beginning; thence South 64°53' West along the center line of Foster Road 23.57 feet; thence North 259.91 feet; thence East 126.34 feet South 199.60 feet to the center line of Foster Road; thence South 64°24' West along the center line of Foster Road 116.43 feet to the true point of beginning.

Excepting therefrom that portion lying within the boundaries of SE Harmony Road, including but not limited to the portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by Deed Recorded March 28, 1967 in Book 687, Page 584, Clackamas County Deed Records.

Note: This legal description was created prior to January 1, 2008.



Exhibit "A" to Annexation Petition

MAP

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NO. 2

ZUI
3.17Ac.
12201

C=140
A=20°24'
T=283.65'
560.0'

STANLEY

VO.313

S. S. FIELDS RD. NO. 1438

INTERNATIONAL WAY
BUSINESS

CENTER
BLVD

FOSTER - MILWAUKIE RD.

LAKE ROAD

MR-1

SEE MAP 2 2E 06AA

12900

1230

12-118

SEE MAP 2E 32CC

I-2

MR-1

12-169
I-3

12-51

S.E. COR
JOHN D GARRETT
DLC. 38

MR-1

SEE MAP 2 2E 06AA

12900

1 2E 3ID
BOOK 3

18
39
-2

OF MILWAUKIE
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1504
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1502
1502E1

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