



## **AGENDA**

### **MILWAUKIE PLANNING COMMISSION Tuesday, October 8, 2013, 6:30 PM**

**MILWAUKIE CITY HALL  
10722 SE MAIN STREET**

**1.0 Call to Order - Procedural Matters**

**2.0 Planning Commission Minutes** – Motion Needed

2.1 May 14, 2013

2.2 May 28, 2013 Joint Session with Design & Landmarks Committee

**3.0 Information Items**

**4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda

**5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse

5.1 Summary: Parking Determination Appeal  
Applicant/Owner: Western Planning/Pendleton Woolen Mills  
Address: 2516 SE Mailwell Dr  
File: AP-13-01  
Staff: Ryan Marquardt

**6.0 Worksession Items**

6.1 Summary: Mural Code Project  
Staff: Ryan Marquardt

6.2 Summary: Land Use Development Review Training  
Staff: Ryan Marquardt

**7.0 Planning Department Other Business/Updates**

**8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.

**9.0 Forecast for Future Meetings:**

October 22, 2013 1. TBD

November 12, 2013 1. Public Hearing: DR-13-05 10400 SE Main St Veterinarian Clinic Design Review  
2. Worksession: Moving Forward Milwaukie project briefing *tentative*

### Milwaukee Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email [planning@ci.milwaukee.or.us](mailto:planning@ci.milwaukee.or.us). Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at [www.cityofmilwaukee.org](http://www.cityofmilwaukee.org)
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at [www.cityofmilwaukee.org](http://www.cityofmilwaukee.org)
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

#### Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

*The City of Milwaukee will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.*

#### Milwaukee Planning Commission:

Lisa Batey, Chair  
Clare Fuchs, Vice Chair  
Scott Barbur  
Sine Bone  
Shaun Lowcock  
Wilda Parks  
Gabe Storm

#### Planning Department Staff:

Steve Butler, Interim Planning Director  
Ryan Marquardt, Senior Planner  
Li Alligood, Associate Planner  
Brett Kelter, Associate Planner  
Alicia Martin, Administrative Specialist II

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, MAY 14, 2013  
6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
Clare Fuchs, Vice Chair  
Scott Barbur  
Sine Bone  
Shaun Lowcock  
Wilda Parks  
Gabe Storm

**STAFF PRESENT**

Stephen C. Butler, Planning Director  
Ryan Marquardt, Senior Planner  
Kari Svanstrom, Associate Planner  
Damien Hall, City Attorney

**1.0 Call to Order – Procedural Matters**

**Chair Batey** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

**2.0 Planning Commission Minutes - None****3.0 Information Items**

**Chair Batey** introduced and welcomed Scott Barbur as the new Planning Commissioner.

**Scott Barbur** noted his background and current law business in Milwaukie.

**Chair Batey** noted the opening of the Milwaukie Farmers Market. She also encouraged citizens to call a hotline to report odors from the Kellogg Treatment Plant.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings**

- 5.1 Summary: Tae Kwon Do Use Determination
- Applicant/Owner: Kimco Realty/PKII Milwaukie Marketplace LLC
- Address: 10840 SE Oak St, Milwaukie Marketplace
- File: CCS-13-01
- Staff: Kari Svanstrom

**Chair Batey** called the public hearing to order and read the conduct of minor quasi-judicial hearing format into the record.

**Kari Svanstrom, Associate Planner**, presented the staff report via PowerPoint. She reviewed the criteria and the allowed uses in the Community Shopping Commercial CCS zone. The proposed use would fall under the Office/School use allowed in the zone. Staff recommended approval with revised findings and conditions.

**Ms. Svanstrom** answered questions from the Commission.

**Bill Brown, Kimo Realty**, applicant, felt that the proposed use was an appropriate fit for daily life routines and was a complimentary community use.

**Sang Yun, USWC TaeKwonDo**, applicant's tenant, described the hopes of the business and potential number of students.

**It was moved by Vice Chair Fuchs and seconded by Commissioner Lowcock to approve the use determination for a taekwondo studio for File CCS-13-01 with the revised findings with corrected reference from MMC 19.104 to MMC 19.201 as noted. The motion passed unanimously.**

## 5.2 Summary: Tacoma Station Area Plan (TSAP)

Applicant: City of Milwaukie

File: CPA-13-01, ZA-13-01

Staff: Ryan Marquardt

**Chair Batey** called the hearing to order and read the conduct of legislative hearing format into the record.

**Ryan Marquardt, Senior Planner**, introduced project consultant Matt Hastie with Angelo Planning Group, and presented the staff report via PowerPoint. Staff was seeking recommendation by the Planning Commission to City Council for adoption of the Tacoma Station Area Plan (TSAP). City Council public hearings were scheduled for June 4 and June 18.

**Mr. Marquardt** reviewed the Executive Summary. He noted that the two application file numbers were because the TSAP was an ancillary document to the Comprehensive Plan, and also involved policy and map amendments involving the M (Manufacturing) Zone and a new overlay for the station area that included land use and design regulations. There would also be a Station Community Plan Boundary ordinance in order to fulfill a Metro Title 6 requirement.

**Mr. Hastie** and **Mr. Marquardt** reviewed the proposed amendments, and their zoning recommendations and policy issues, as follows:

- **M Zone:** new list of classifications for permitted, limited, and conditional use classifications; allowed office and retail use; and landscaping standards.
- **Overlay Zone:** would apply to entire Station Area with subarea-specific provisions for allowed, limited, retail, and residential uses.
- **Nonconforming uses and setbacks:** would be treated the same as elsewhere in the city



- **Zoning recommendations and policy issues for:** height, density, and floor area ratios, per zones; window coverage requirements; parking strategies and ratio requirements; and transit strategies and phasing to encourage transit use;
- **Project implementation:** steps and phasing;
- **Transportation Priority Improvements:** connectivity between Main Street, light rail stations, neighborhoods; and improved crossings.
- **Subareas and Opportunity Sites**

**Mr. Marquardt** noted the current Transportation System Plan (TSP) update and that changes and projects identified within the TSAP would be incorporated into the TSP.

**Mr. Marquardt** reviewed the comments received after the date of the staff report and responses by staff.

**Mr. Marquardt** and **Mr. Hastie** responded to questions from the Commission.

**Chair Batey** called for public testimony.

#### **Neutral**

**Michael Schiess, 2405 SE Clatsop St**, noted Project 11, the pedestrian bridge proposed through his property, was problematic. The area had heavy industrial traffic and posed a high safety risk for cyclists. The project also meant lost privacy for his property. He suggested using pilings in Johnson Creek left from a bridge washed out in the 1996 flood that crossed at the end of Clatsop St into Johnson Creek City Park as a better option for a bridge for both the construction of the bridge as well as cyclist safety and line of site.

**Catherine Stauffer, 2405 SE Clatsop St**, stated she was a cyclist herself and supported improvements to bike accessibility. However, through experience, the proposed area was very hazardous as it was a major industrial area. She also questioned the long term intent and if the City was supportive of industrial lands.

**Peter Stark, 2939 NW Cornell Rd**, represented the Oregon Worsted Company. He was in support of TSAP but was concerned about the modifications to the M Zone. He believed development west of McLoughlin Blvd would be stifled by the proposed M Zone changes to office and retail uses, and noted the proposed changes would make existing business nonconforming. Local businesses could do more if the area was incorporated into the overlay zone.

**Mr. Butler** noted that adding the overlay to the area Mr. Stark suggested would take a lot of extra time and public outreach. The TSAP study area focused around the station area and had not included the west side of McLoughlin Blvd, due primarily to budgetary reasons.

#### **In Opposition**

**Rick Anderson, Anderson Dye Manufacturing, 2524 SE Moores St**, stated Project 5C in Subarea 3A was a proposed bicycle/pedestrian path through their property, noting there was no right-of-way where the path was proposed. He added that one proposed option for parking would remove an automobile repair business and a plastics company, and under the proposed zone changes the businesses would not be allowed to relocate in the area. The estimated cost of the tunnel does not include expenses for land acquisition or damages to existing business. He asked the Commission to reject Project 5C.

**Ken Klunder, Arjae Sheet Metal, 8545 SE McLoughlin Blvd**, referred to Mr. Scheiss' testimony and added his concern of residential zoning for Subarea 2. He was in support of the TSAP, but the proposed residential area was on a dead-end street and he was concerned about industrial traffic congestion and safety.

Staff responded to public testimony.

**Chair Batey** closed the public testimony.

The Planning Commission discussed some key issues, including:

- Agreed that retaining the conditional use option of a sports and entertainment complex in Subarea 3 was beneficial.
- Agreed to lower the priority of the tunnel path project 5C due to the property owner's concerns as well as project cost concerns, but left the project as an option for long term consideration.

**The Commission** agreed to discuss the following issues at the next hearing.

- Proposed bicycle/pedestrian connection and bridge across Johnson Creek near SE 24<sup>th</sup> Ave and SE Clatsop St.
- Should the Manufacturing M Zone modifications be limited to the TSAP area or apply more broadly to other M zone areas in the city?
- Maximum retail size
- Maximum office space

**It was moved by Commissioner Lowcock and seconded by Commissioner Barbur to close public testimony and continue the hearing for CPA-13-01, ZA-13-01, Tacoma Station Area Plan (TSAP), to a date certain of May 28, 2013. The motion passed unanimously.**

**6.0 Worksession Items – None**

**7.0 Planning Department Other Business/Updates**

**Mr. Butler** noted there was a public meeting for the Transportation System Plan (TSP) Update project scheduled for June 3, 2013.

He also noted the Adams Street Connector Project was presented to the Design and Landmarks Committee. The DLC supported the project.

## **8.0 Planning Commission Discussion Items**

### **9.0 Forecast for Future Meetings:**

- |               |  |
|---------------|--|
| May 28 2013   | 1. Joint Session with Design and Landmarks Committee       |
|               | 2. Worksession: PSU Downtown Road Map Project Presentation |
|               | 3. Worksession: Commercial Core Enhancement Program (CCEP) |
|               | project update   |
| June 11, 2013 | 1. Public Hearing: VR-12-05 Nordby Setback Variance        |

Meeting adjourned at approximately 10:03 p.m.

Respectfully submitted,

Alicia Martin, Administrative Specialist II

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Lisa Batey, Chair

**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**DESIGN & LANDMARKS COMMITTEE**  
**JOINT MEETING**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, May 28, 2013**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Scott Barbur  
 Sine Bone  
 Shaun Lowcock  
 Wilda Parks  
 Gabe Storm

**STAFF PRESENT**

Steve Butler, Planning Director  
 Ryan Marquardt, Senior Planner  
 Li Alligood, Associate Planner (DLC Liaison)  
 Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Clare Fuchs, Vice Chair

**DLC MEMBERS PRESENT**

Greg Hemer, Chair  
 Becky Ives  
 Chantelle Gamba

**DLC MEMBERS ABSENT**

None

**1.0 Call to Order – Procedural Matters\***

**Chair Lisa Batey** called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

**DLC Chair Greg Hemer** called the meeting of the Design and Landmarks Committee (DLC) to order.

***Note:** The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.ci.milwaukie.or.us/meetings>.*

**2.0 2.0 Planning Commission and Design and Landmarks Committee Minutes**

2.1 February 23, 2013 (PC)

**Commissioner Wilda Parks** moved to approve the February 23, 2013, Planning Commission minutes as presented. **Commissioner Shaun Lowcock** seconded the motion, which passed unanimously.

2.2 March 6, 2013 (PC)

**DLC Member Becky Ives** moved to approve the March 6, 2013, DLC minutes as

**presented. DLC Member Chantelle Gamba seconded the motion, which passed unanimously.**

### **3.0 Information Items**

**DLC Chair Hemer** noted that the DLC had two vacancies and encouraged community members to apply.

**Steve Butler, Planning Director**, noted upcoming public events:

- The Planning Department would be hosting an open house and workshop to discuss the updates to the Transportation System Plan (TSP) on Monday, June 3, and invited the Commission and Committee members to attend.
- An active transportation workshop had been scheduled for Monday, June 13, at TriMet.

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

### **5.0 Worksession Items**

- 5.1 Summary: Commercial Core Enhancement Program (CCEP) Update  
Staff: Li Alligood

**Li Alligood, Associate Planner**, provided a brief overview of the Commercial Core Enhancement Program (CCEP) and responded to questions related to Milwaukie's inactive Main Street program; the phasing of the CCEP projects; and the geography of central Milwaukie.

- 5.2 Summary: *Fresh Look Milwaukie: Downtown Road Map* Presentation  
Staff: Li Alligood

**Ms. Alligood** introduced ALIGN planning. **Jeffrey Butts, ALIGN planning**, introduced the ALIGN planning team: **Ryan Lemay, Erica Smith, and Iren Taran**

**Mr. Butts** and **Mr. Lemay** provided a project overview via PowerPoint, and the team responded to questions regarding desirable uses in downtown Milwaukie, public outreach methods, how to address signage in downtown, how to engage high school students, and how to further engage community residents.

**Mr. Butler** and **Ms. Alligood** responded to questions about market information and the City's role in economic development.

**The Commission and Committee** commended and thanked the team for their work.

**Chair Hemer** adjourned the DLC meeting at 7:45pm. The DLC members left the meeting.

## 6.0 Public Hearings

### 6.1 Summary: Tacoma Station Area Plan (TSAP)

Applicant/Owner: City of Milwaukie

File: CPA-13-01, ZA-13-01

Staff: Ryan Marquardt

**Chair Batey** called the hearing to order and read the conduct of legislative hearing format into the record. The hearing was continued from May 14, 2013. The public testimony portion of the hearing had been closed, and the Commission had entered deliberation.

**Ryan Marquardt, Senior Planner**, introduced **Serah Breakstone, Angelo Planning Group**.

**Mr. Marquardt** provided a presentation via PowerPoint. He discussed points brought up during the May 14, 2013, public testimony; reviewed the six issues the Commission had identified for further deliberation, which were discussed in the staff report and epacket for the May 14 and May 28 hearings; and identified options for addressing each issue.

**The Commission** returned to deliberations, referring to the six issues listed in the May 14, 2013, staff report, beginning on 6.1 page 2 of the packet, and directed staff to incorporate the following items into the draft plan and code amendments:

1. Recreation/Entertainment Complex in Subarea 3: Proposed approval criteria for a recreation/entertainment complex as described in Attachment 1
2. Transportation Project 5c – Undercrossing through Springwater Trail Berm: Proposed revisions to the Springwater Corridor Trail undercrossing as described in Attachment
3. Transportation Project 11 – Pedestrian Bridge across Johnson Creek at SE 24th Ave: Proposed addition of a potential second pedestrian/bicycle connection across Johnson Creek as described in Attachment 3
4. M zone amendments: The proposed M zone amendments should apply to all M zone properties, both within the north industrial area and the Johnson Creek industrial area
5. Maximum retail size: Reduce the proposed retail maximums from 30,000 sq ft to 20,000 sq ft in Subareas 2 and 3, and require conditional use approval per MMC 19.905 Conditional Uses for retail development between 20,000 sq ft and 30,000 sq ft
6. Office size: Retain proposed maximums for office sizes in Subarea 4

**The Commission** agreed with the proposed approaches to the future street connections and parking standards.

**Mr. Hall** noted that the approval criteria E.1 for a recreation/entertainment complex outlined in red on 6.1 page 7 could be difficult to write findings for, and suggested it be revised to “the recreation/entertainment complex us is not inconsistent with the adopted vision for Subarea 3” or similar language. **The Commission** agreed with Mr. Hall’s proposal and directed staff to incorporate the revisions.

**Mr. Marquardt** reviewed the issues and amendments to be included in the motion.

**Commissioner Parks moved to recommend City Council approval of applications CPA-13-01 and ZA-13-01 with the findings and Comprehensive Plan and zoning map amendments from the May 14 and May 28 meetings and as amended and presented in the attachments at the May 28 meeting and as amended at the May 28 meeting by the Planning Commission, specific amendments being for issue 1, amended conditional use approval criteria; for issue 5, for Subareas 2 and 3, a maximum permitted retail square footage of 20,000 square feet, with a conditional use permitted up to 30,000 square feet. Commissioner Sine Bone seconded the motion, which passed unanimously.**

**Mr. Marquardt** noted that City Council hearings were scheduled for June 4 and June 18, 2013. The Council packet would not include the amendments recommended by the Commission at the May 28 meeting.

#### **7.0 Planning Department Other Business/Updates**

**Mr. Butler** passed out updated zoning ordinance pages, and recommended cancellation of the June 11, 2013, public meeting.

**Commissioner Lowcock moved to cancel the June 11 meeting. Commissioner Parks seconded the motion, which passed unanimously.**

#### **8.0 Planning Commission Discussion Items**

##### **9.0 Forecast for Future Meetings: Planning Commission**

- |               |  |
|---------------|--|
| June 11, 2013 | 1. Cancelled   |
| June 25, 2013 | 1. Public Hearing: CPA-13-02 Stormwater Master Plan                      |
|               | 2. Public Hearing: VR-12-05 9925 SE 37 <sup>th</sup> Ave Nordby Variance |

##### **Design and Landmarks Committee**

- |              |              |
|--------------|--------------|
| June 3, 2013 | 1. Cancelled |
| July 1, 2013 | 1. Cancelled |

Meeting adjourned at approximately 9:20 p.m.

Respectfully submitted,

Li Alligood, Associate Planner

CITY OF MILWAUKIE JOINT PLANNING COMMISSION/DESIGN & LANDMARKS COMMITTEE  
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Lisa Batey  
Planning Commission Chair

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Greg Hemer  
DLC Chair





# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Steve Butler, Community Development Director and Interim Planning Director

**From:** Ryan Marquardt, Senior Planner

**Date:** October 2, 2013, for October 8, 2013, Appeal Hearing

**Subject:** File: AP-13-01  
 Applicant: William Horning  
 Owner(s): Annetta Young, Pendleton Woolen Mills  
 Address: 2516 SE Mailwell Drive  
 Legal Description (Map & Taxlot): 11E25CB00100  
 NDA: McLoughlin Industrial

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## ACTION REQUESTED

Uphold the Director Determination in Land Use File #DD-13-04 based on the recommended Findings in Attachment 1. This would uphold the determination in File #DD-13-04 that certain vehicle parking spaces along the SE Mailwell St of 2516 SE Mailwell St are not off-street vehicle parking spaces for the purposes of Milwaukie Municipal Code (MMC) Title 19.

## BACKGROUND INFORMATION

### A. Site and Vicinity

The site is located at 2516 SE Mailwell Drive. The site contains warehouses for the Pendleton Woolen Mills company. The surrounding area consists of industrial and warehouse uses common to the city's north industrial area.

### B. Zoning Designation

The site's base zone is the Tacoma Station Area Manufacturing Zone (M-TSA), and is within Subarea 4 of the Tacoma Station Area Overlay.

**C. Comprehensive Plan Designation**

The Comprehensive Plan Designation of the site is Industrial (I) and is within the Tacoma Station Area Plan area (TSAP).

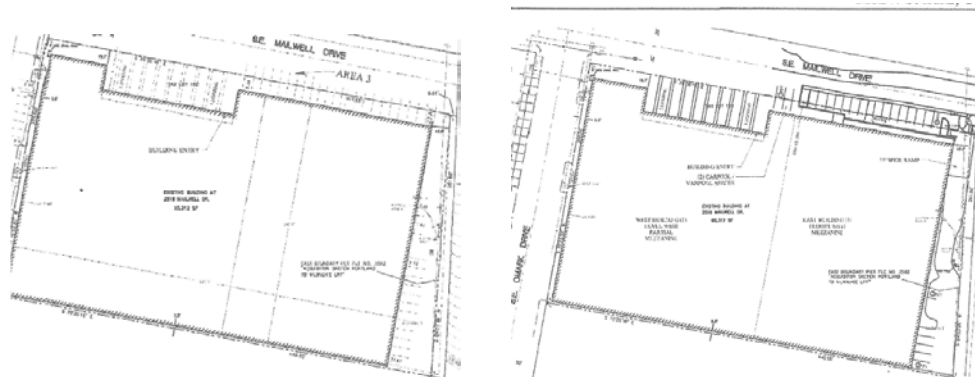
**D. Land Use History**

City permits indicate the only prior land use decision is File #DEV-13-03 and P-13-05. These applications were related to the construction and shared parking agreement for a parking area on railroad right-of-way constructed for use by Pendleton Woolen Mills.

**E. Appeal Background**

The applicant is appealing a decision regarding a Director Determination (File #DD-13-04). See Attachment 2 for the appeal and Attachment 3 for File #DD-13-04.

The issue of vehicle parking at the site arose as a result of construction for the Portland Milwaukie Light Rail (PMLR) line and modifications to the rail crossing at Mailwell Dr. The rail crossing is on the northeast corner of the site. The addition of rails for light rail and resulting grade changes at the intersection resulted in the construction of a retaining wall along the northern boundary of the site. The wall is necessary to support the raised street grade as Mailwell Dr approaches the rail crossing.



*Pendleton property prior to and after changes to PMLR crossing.*

The location of the retaining wall interfered with the location of approximately 15 vehicle parking spaces along the northern side of the building. See upper right corner of the graphics above from the applicant's materials in Attachment 3.B.ii for conditions before and after the right-of-way work. In reconstructing the street, these spaces were shifted further north so the front of the parking space is near the edge of the retaining wall. Other changes resulting from PMLR occurred on the east side of the site that eliminated parking spaces in the railroad right of way that had been used by Pendleton for several years. However, the spaces at issue for this appeal are those located along the northern side of the building to the east of the truck loading bays.

**Request for Director Determination**

On April 3, 2013, Pendleton applied for a Director Determination regarding the status of its off-street parking spaces. The request was, "...that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site

spaces be confirmed as meeting the current code parking and loading requirements for the existing building.”

#### Director Determination

The Director Determination was issued on July 16, 2013. The relevant portion of the determination regarding spaces on the northern side of the building is summarized below. The criteria for a Director Determination are that the nonconforming use or development was permitted under applicable regulations at the time it was established; and the nonconforming use has been legally maintained over time and has not been discontinued or abandoned (MMC 19.904.B.2.a and b).

The history of the parking and loading spaces at the Pendleton Site is:

- A 1968 aerial photograph of the site— loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line. See Attachment 3.A.i.
- A 1977 aerial photograph of the site— no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970. See Attachment 3.A.ii.
- Site plan submitted by the applicant depicting the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 15 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project. See Attachment 3.B.ii.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking.

Portions of these parking areas have been modified from when they were established. The determination of these modifications is that the remaining 15 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all (average of 15-16 lineal ft of an 18 ft stall) of the area of these stalls is now within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

After evaluating the space and number of off-street parking spaces available, the determination found that 54 spaces are required, and the site has 33 available off-street parking spaces. The City does not consider this reduction in the number of available parking spaces to be a violation, as MMC Subsection 19.504.2 allows reductions below minimum code standard when done for public conveyance or use. In this instance, the City considers the construction of the retaining wall that necessitated moving the

nonconforming spaces on Mailwell into the right of way as “equivalent to dedication or conveyance for a public use” (MMC 19.504.2).

## **F. Points of Appeal**

The applicant appealed the Director Determination on July 31, 2013. The key points of the appeal are:

- The applicant assumed that all of the spaces along the north side of the building abutting Mailwell Drive were nonconforming parking spaces that were available for use by Pendleton.
- Pendleton and TriMet agreed to a settlement addressing the impacts of TriMet's work, and the settlement did not include the loss of an additional 15 spaces along Mailwell Drive due to the modifications of these spaces.
- TriMet represented that these 15 spaces could continue to be Pendleton's to use and so these spaces were kept out of the compensation negotiations. The determination changes the previous understanding of the impacts of TriMet's taking and this new position was not compensated for in the TriMet settlement. Further, this puts severe and unacceptable stress on the seasonal high demand for parking at the Pendleton facility.
- The city did not notify Pendleton that they would be losing the nonconforming spaces when they permitted TriMet, under its condemnation authority, to remodel the spaces in front of the Mailwell facility. During all negotiations for the takings of land and construction impacts to the Pendleton Mailwell facility these 15 spaces were represented and assumed to belong to Pendleton's Mailwell facility following TriMet's reconstruction.

The applicant requests that the Planning Commission find that the 15 remodeled spaces continue to be viewed as legally nonconforming off-street parking spaces. This revision to the Planning Director Determination would allow Pendleton to meet the current code requirements for parking for this facility.

## **KEY ISSUES**

### **A. Role of Trimet and City of Milwaukie**

It is important to clarify the roles that Trimet and the City of Milwaukie had in the work along Mailwell Dr. Trimet and its contractors were responsible for the design and construction of the right-of-way work. Coordination with individual property owners regarding impacts to specific properties, including compensation for impacts, was also Trimet's responsibility. The City was only responsible for review and permitting of the right-of-way work.

The PMLR project is unique as a large civil infrastructure project, and it has required close coordination between Trimet and other agencies. Though the division of roles described above is accurate, the City did have involvement with Trimet early in the project about the design of infrastructure improvements and commented on preliminary construction plans.

Despite the City's involvement and awareness of construction plans, the role of assessing and compensating for impacts to individual properties was Trimet's. The City was not a party to such negotiations.

## **B. Request for Determination of Nonconforming Status**

The Planning Department often receives questions where nonconforming development may be altered. Some of these situations are complex and cannot be fully answered without investigation into the development history of the property. In these cases, the Planning Department's position is that the nonconforming issues need to be assessed through a Director Determination.

In the case of the Pendleton building, the City was in communication with the applicant's representative in August 2012 regarding the parking spaces and minimum parking requirements. The applicant asserts that Trimet represented that these spaces would continue to be off-street parking for Pendleton. Staff does not believe that the City ever took a position regarding these parking spaces prior to the decision in File #DD-13-04. Staff's search of the address file for this property and PMLR project files also did not find any documentation that this was communicated to the appellant or Trimet. It should be noted that the appellant's materials also do not document that the City communicated to the appellant or to Trimet that the parking spaces would be counted as off-street parking spaces.

Staff believes that the City did not take a definitive position with regard to the amount of off-street parking spaces for the Pendleton site prior to the decision for File #DD-13-04. The city, appellant, and Trimet all were aware that there were questions about the status of the parking spaces on Mailwell Dr. The City was consistent with past practice in responding to this situation by addressing the matter through a Director Determination once requested by the appellant. If Trimet did assert that the spaces along Mailwell Dr would count as off-street parking for Pendleton, it has not been documented that this assertion was based on information from the City. It appears the issue of adequate compensation to Pendleton by Trimet could have been addressed at the appropriate time if the request for the determination were made before negotiations with Trimet were finalized.

## **C. Determination of Off-Street versus On-street Parking**

The central issue in the determination is whether the vehicle parking spaces in front of the building on Mailwell Dr have been legally maintained as off-street parking. The determination did acknowledge that the spaces were established prior to regulation of off-street parking spaces in Milwaukie. However, the determination also holds that the spaces were not maintained as off-street parking spaces because of their shift further into the right-of-way. Staff acknowledges that this shift is not something over which the applicant had control, but asserts that the nonconformity was not maintained nevertheless.

The appellant's site plans from the Director Determination show that approximately 2.5 – 3 ft (13-16%) of each 18 ft-deep parking space is on the Pendleton site. This contrasts with the configuration prior to the right-of-way work when about 12 ft (66%) of each 18-ft-deep parking space. This type of parking configuration with a space partly on private property and partly in the right-of-way does exist in some areas of the city, but is an anomaly. The Zoning Ordinance does not provide guidance on consideration of these spaces as on or off-street parking. Staff's position in evaluating the pre-PLMR configuration was to consider them as legal off-street parking spaces. The majority of the space was off-street, with the

off-street portion being nonconforming to dimensional standards and buffering standards that were enacted after the parking spaces were first established.

Following the right-of-way changes on Mailwell Dr, staff's evaluation was that a vast majority of any vehicle parked in one of these spaces will be in the right-of-way, which effectively makes the space on-street parking. The Milwaukie Engineering Department staff concurs with this assessment and indicated they would consider these spaces to be on-street spaces. Staff suggests that, in considering this appeal, the Planning Commission evaluates the specifics of this property, and does not need to come to a consensus on a general rule for evaluating similar situations.

## CONCLUSIONS

### Staff recommendation to the Planning Commission is as follows:

Uphold the Director Determination in File #DD\_13-04 regarding the status of off-street parking at the Pendleton site at 2516 SE Mailwell Dr.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Subsection 19.903.4.B.2, Legal Status of a Nonconforming Use or Development

This is an appeal of a land use application reviewed as Type I Review. It requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. The Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

An appeal of a land use decision that received a Type I Review is an unrestricted de novo hearing, allows for the presentation of new evidence, testimony, and argument by any party. The appeal authority shall consider all relevant evidence, testimony, and argument that are provided at the hearing by the appellant or any party. The scope of the hearing shall not be limited to the issues that were raised on appeal. **The standard of review for an unrestricted de novo hearing is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law.** The Commission has the following decision-making options:

- A. Uphold the decision in File #DD-13-04 with the findings in Attachment 1.
- B. Uphold the decision in File #DD-13-04 with modified findings if the Planning Commission determines that the initial decision had findings in error as a matter of fact or law.
- C. Reverse the decision in File #DD-13-04 04 with modified findings, identifying the portions of the initial decision had findings in error as a matter of fact or law.
- D. Continue the hearing. The appellant has provided a waiver to the 120-day clock to allow the city to make its final decision by November 28, 2013. The Planning Commission is the City's final decision making authority for this appeal and must make a decision by this date.

## ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	E- Packet
1. Recommended Findings Upholding Appealed Decision	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Appellant's Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. File #DD-13-04				
a. Notice of Decision	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. 1966 aerial photo	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. 1967 aerial photo	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Ordinance #1183 – Off-street Parking Regulations	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Applicant's Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Narrative	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Parking Studies (Sheets 1 and 2)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iii. Shared Parking Lot Layout	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
iv. Site History	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
v. Property Deeds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
vi. 1975 Milwaukie Zoning Ordinance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. List of Record	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at <http://www.milwaukieoregon.gov/planning/planning-commission-90>.

**Recommended Findings**  
**File #AP-13-04, Appeal of Director Determination File #DD-13-04**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The appellant, Annetta Young for Pendleton Woolen Mills, has appealed a decision issued by the City of Milwaukie Planning Director in Land Use File #DD-13-04. File #DD-13-04 is a Director Determination regarding the status of certain vehicle parking spaces at 2516 SE Mailwell Dr. This site is in the Tacoma Station Area Manufacturing Zone (M-TSA). The land use application file number for the appeal is AP-13-04.
2. The determination sought in File #DD-13-04 was regarding the amount of off-street parking spaces for the site at 2516 SE Mailwell Dr. The notice of decision for File #DD-13-04 was issued on July 16, 2013. The Director Determination held that parking spaces on the eastern side of the building on the site were legal nonconforming off-street parking spaces, loading spaces and some adjacent vehicle parking spaces on the north side of the building were nonconforming off-street parking and loading spaces, and that certain spaces on the northern side of the building that had recently been relocated no longer are considered off-street parking spaces. The Director Determination also analyzed the required number of off-street parking spaces for the current site and the number of legal off-street parking spaces available on the site and through shared parking agreements.
3. The appeal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.1010, Appeals
  - MMC Section 19.903, Code Interpretations and Director Determinations
4. The application has been processed and public notice provided in accordance with MMC Section 19.1010, Appeals. A public hearing was held on October 8, 2013, as required by law.
5. MMC Section 19.1010, Appeals
  - a. MMC 19.1010.1 establishes standards for filing an appeal.
    - (1) MMC 19.1010.1.A. describes the information required for an appeal. The information submitted by the appellant contains the date and case file number of the decision being appealed, documents that the appellant has standing to appeal per MMC 19.1010.4.A as the applicant from the decision being appealed, and identifies the issue in the original decision that the appellant believes was incorrectly identified.
    - (2) MMC 19.1010.1.B requires payment of an application fee at the time of filing, which was submitted by the appellant at the time the appeal was filed.
    - (3) MMC 19.1010.1.C requires the appeal materials to be filed within the 15-day appeal period for the decision being appealed. File #DD-13-04 was issued on July 16, 2013 and its appeal period ended at 5 PM on July 31, 2013. The appellant submitted the information necessary for an appeal on July 31, 2013.

The Planning Commission finds that the appellant has satisfied the standards for filing an appeal of File #DD-13-04.
  - b. MMC 19.1010.2 establishes the procedures for an appeal hearing. The Planning Commission is the appeal authority for File #DD-13-04, which was a Type I Review.



On October 8, 2013, the Planning Commission held a hearing per the public hearing procedures in MMC 19.1009. The requirements of this section have been satisfied.

- c. MMC 19.1010.3 establishes the types of hearing for appeals. The file being appealed was a Type I Review. Per MMC 19.1010.4.C specifies that the hearing for this appeal is an unrestricted de novo hearing. The public hearing allowed presentation of new evidence, testimony, and argument by any party. The Planning Commission considered all relevant evidence, testimony, and argument that are provided at the hearing, and did not limit the scope of the hearing to the issues that were raised on appeal. The Planning Commission's standard of review is whether the initial decision in File #DD-13-04 has findings and/or conditions that are in error as a matter of fact or law. The requirements of this section have been satisfied.
- d. MMC 19.1010.4 contains specific provisions for appeal of a Type I decision.
  - (a) MMC 19.1010.4.A establishes that the decision may only be appealed by the applicant or the applicant's representative. The appellant was the applicant for the appealed decision.
  - (b) MMC 19.1010.4.B requires that at least 20 days prior to the appeal hearing, the City shall mail written notice of the appeal hearing to the applicant or the applicant's representative at least 20 days prior to the appeal hearing. The City mailed this required notice on September 18, 2013.
  - (c) MMC 19.1010.4.C requires that the appeal hearing shall be an unrestricted de novo hearing. The public hearing on October 8, 2013 was an unrestricted de novo hearing per MMC 19.1010.3.A.

#### 6. MMC Section 19.903, Code Interpretations and Director Determinations

- a. MMC 19.903.2.B establishes situations for which a Director Determination can be requested. The Planning Commission finds that the request meets the situation described in MMC 19.903.2.B.4; determination for any other situation where a discretionary decision is needed to review the facts of a situation and make determination as to the status, category, allowance, etc. per Titles 14, 17, or 19.
- b. MMC 19.903.3 establishes the review process for Director Determinations. The process for File #DD-13-04 met the process described in this subsection. The current review of the Director Determination is being reviewed under appeal per the procedures in MMC 19.1010.\
- c. MMC 19.903.4.B.2 contains the approval criteria for a Director Determination of the Legal Status of a Nonconforming Use or Development. The criteria in this subsection are MMC 19.903.4.B.2.a: "The nonconforming use or development was permitted under applicable regulations at the time it was established", and MMC 19.903.4.B.2.b: "The nonconforming use has been legally maintained over time and has not been discontinued or abandoned".

A 1968 aerial photograph of the site shows loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line

A 1977 aerial photograph of the site shows no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970.

The site plan submitted by the applicant for File #DD-13-04 shows the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 15 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking areas.

Portions of these parking areas have been modified from when they were established. The determination of these modifications is as follows: The loading spaces and the 3 westernmost vehicle spaces in front of the building have been maintained in the same general configuration as they were we established, and are considered legally maintained.

The parking area on the east side of the building has been modified as a result of the Portland Milwaukie Light Rail project. The 7 spaces (5 perpendicular and 2 parallel) that remain in this area are determined to have been legally maintained.

The remaining 15 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all of the area of these stalls is within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

- d. The Planning Commission affirms the determination of heading #1: "Status of Parking and Loading Spaces along Mailwell Drive and east side of the subject site" from the Notice of Decision for File #DD-13-04 with Finding 6.c. The Planning Commission finds that the only error as a matter of fact in this heading was an identification of 18 spaces that were shifted further into the right of way, when in fact only 15 spaces were affected. The Planning Commission finds no error as a matter of fact or law for heading #2: "Determination that the Off-Street Parking and Loading Spaces meet current requirements" in the same notice of decision.



PLANNING DEPARTMENT  
6101 SE Johnson Creek Blvd  
Milwaukie OR 97206

PHONE: 503-786-7630  
FAX: 503-774-8236  
E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)

# Appeal of Land Use Decision

File #AP- 13 01

## RESPONSIBLE PARTIES:

<b>APPELLANT:</b> Annetta M. Young	<b>Division Manager</b>	<b>Pendleton Woolen Mills</b>
Mailing address: P.O. Box 3030	Portland, OR	Zip: 97208
Phone(s): 503-535-5543	E-mail: Annetta.young@penwool.co	
<b>APPELLANT'S REPRESENTATIVE</b> (if different than above): William F. Horning, Western Planning		
Mailing address: P.O. Box 2392	Lake Oswego, OR	Zip: 97035
Phone(s): 503-294-0222	E-mail: Bill@westernplanning.com	

## APPEAL INFORMATION:

Appeal of File #: DD-13-04	Review Type of Appealed Decision: Type 1	
Site Address: 2516 SE Mailwell Drive	Map & Tax Lot(s): 1S1E2SCB00100	
Comprehensive Plan Designation: Industrial	Zoning: Industrial	Size of property: 2.24 Acres

## STANDING FOR APPEAL (check applicable box):

☒ Applicant or applicant's representative from Type I, II, or III decision

Person or organization adversely affected or aggrieved by Type II decision

☐ Person or organization that participated or provided testimony or evidence on the record for Type III decision. List the date and briefly describe the form of participation, testimony, or evidence:

## BASIS OF APPEAL (briefly describe):

Identify approval criteria or standard that was overlooked, incorrectly interpreted, or incorrectly applied in the land use decision and/or aspect of the proposal that was overlooked or incorrectly evaluated. Appeal of a Type II decision may instead describe the manner in which the appellant is adversely impacted or aggrieved by the decision.

Please see attached narrative by Western Planning Associates, Inc. Dated 7/31/13.

## SIGNATURE:

**ATTEST:** I have standing to appeal the land use decision identified on this application and have provided the necessary items and information for filing an appeal per Milwaukie Municipal Code (MMC) Subsection 19.1010.1. To the best of my knowledge, the information provided within this appeal package is complete and accurate.

Submitted by:

Date: 07/31/13

**IMPORTANT INFORMATION ON REVERSE SIDE**

**APPEAL HEARINGS** (excerpted from MMC Subsections 19.1001.5 and 19.1010.3) :**Appeals of Type I and II decisions:**

Appeals of Type I and II decisions are heard by the Planning Commission. The appeal hearing is an unrestricted de novo hearing, which means that new evidence, testimony, and argument that were not introduced in the original decision can be introduced in the appeal. The standard of review for the Planning Commission is whether the initial decision has findings and/or conditions that are in error as a matter of fact or law. The Planning Commission's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

**Appeals of Type III decisions:**

Appeals of Type III decisions are heard by the City Council. The appeal hearing is an on-the-record de novo hearing, which means that new evidence that was not introduced in the original decision cannot be introduced in the appeal. New testimony is allowed. New argument is also allowed that is based on evidence already in the record and on testimony that is new or already in the record. The standard of review for the City Council is a new evaluation of existing evidence, new and existing testimony, and new and existing arguments. The City Council's decision on the appeal is the City's final decision on the initial land use application per ORS 227.178. Further appeals of the application may be made to the Oregon Land Use Board of Appeals or other court.

**DECISIONS NOT SUBJECT TO LOCAL APPEAL:**

The initial hearing for Type IV and V decisions is held by the Planning Commission. The Planning Commission does not issue a decision on these types of review and, instead, issues a recommendation to the City Council. This recommendation is not a final decision and is not appealable.

The review authority for Type IV and V decisions is the City Council. Since there is no higher authority within the City, the City Council's decisions on these types of reviews are the City's final decision on the land use application. Appeals of these types of applications may be made to the Oregon Land Use Board of Appeals or other court.

Downtown Design Review applications are considered at a public meeting by the Design and Landmarks Committee. The Design and Landmarks Committee does not issue a decision on these types of review and, instead, issues a recommendation to the Planning Commission. This recommendation is not a final decision and is not appealable.

**THIS SECTION FOR OFFICE USE ONLY:**

FILE TYPE	FILE NUMBER	FEE AMOUNT	PERCENT DISCOUNT	DISCOUNT TYPE	DEPOSIT AMOUNT	DATE STAMP
Master file	AP-13-a	\$ 500			\$ —	<b>RECEIVED</b>  <b>JUL 31 2013</b>  CITY OF MILWAUKIE PLANNING DEPARTMENT
Concurrent application files		\$			\$	
		\$			\$	
		\$			\$	
		\$			\$	
SUBTOTALS		\$ 500			\$	
TOTAL AMOUNT RECEIVED: \$ 500			RECEIPT#:			RCDY: RWM
Associated application file #s (appeals, modifications, previous approvals, etc.): 00-13-04						
Neighborhood District Association(s): —						
Notes: <i>waive of 120 clock extended by 90 days</i>						

\*After discount (if any)



**APPEAL NARRATIVE**  
**Planning Director Determination**  
**DD-13-04**  
**Filed July 16, 2013**  
**2516 SE Mailwell Drive**

For: Pendleton Woolen Mills  
 By: Western Planning Associates, Inc.  
 07/31/13

**Documentation of standing for a Type 1 decision (19.1010.4.A):** A Type I decision may only be appealed by the applicant or the applicant's representative. The original application was signed by Annetta Young, Division Manager, Pendleton Woolen Mills, representing the property owner and by William F. Horning, as the applicant's representative. The attached appeal form is signed by the applicant's representative as specified.

**Detailed statement describing the basis of the appeal.**

- a. **For appeal of a Type I or III decision the statement must identify which approval criterion or development standard is believed to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated.**

**Detailed Statement**

The applicant requested a Planning Director interpretation that the residual, post Light Rail, on site and nonconforming parking spaces at Pendleton's Mailwell distribution facility and the additional 23 off site spaces could be combined to meet the city parking quantity standards for the existing 170,874 SF industrial building. Under the current code the city requires Pendleton's building to provide 48-54 spaces. The Directors Determination found, among other things, that 18 of the spaces along Mailwell Drive are no longer considered off-street parking because they have been shifted to be more in the public right of way. The applicant believes this part of the application has been incorrectly evaluated.

The applicant states: "In 2012 TriMet condemned a portion of the east part of this site for construction of the new light rail line serving the Milwaukie area and remodeled and removed a portion of the parking located on the north side of the existing building. The east portion of the property had an on site parking lot for over 37 vehicles, 22 of which were on land leased for parking purposes from the Union Pacific railway. This lease was terminated and additional Pendleton property was taken on this east portion of the site. This taking substantially reduced the number of parking spaces on this area of the site. The revised area can now only provide 7 off street parking spaces. TriMet also reconstructed a portion of the parking on the north side of the building that was impacted by elevating Mailwell Drive at the rail crossing. This lost an additional 3 spaces from the 15 spaces impacted along the north side of the building and moved the existing nonconforming parking a corresponding distance further into the right of way of Mailwell Drive. As part of the compensation for this taking and these site parking impacts TriMet agreed to permit and construct a 23 space parking lot to the northeast of the Pendleton building and secured a lease from Union Pacific in Pendleton's name for use of this new off street parking lot."

At the time the applicant made this application to the Planning Director, it was assumed that all of the spaces along the north side of the building abutting Mailwell Drive were nonconforming parking spaces that were available for use by Pendleton. Within the last year Pendleton and TriMet agreed to a settlement addressing the impacts of TriMet's taking (the loss of 33 parking spaces and some land area). This settlement did not include the loss of an additional 15 spaces along Mailwell Drive due to the remodel of these spaces. The settlement did include the loss of 3 spaces along Mailwell Drive when the remodel resulted in 18 spaces becoming 15 in their final form. TriMet represented that these 15 spaces could continue to be Pendleton's to use and so these spaces were kept out of the compensation negotiations. Since the work was being done by TriMet and they were the party securing the permits Pendleton and its representatives assumed that they had a correct interpretation of the availability of these 15 spaces to Pendleton. Up until the Planning Director's decision that these remodeled spaces were relocated far enough in the right of way that they are no longer nonconforming parking spaces, which can be used and controlled by Pendleton, Pendleton and TriMet were unaware that TriMet's actions had lost an additional 15 spaces. The fact that these spaces continue to be nonconforming to current code and that a portion of these spaces are still on the Pendleton property helped hide this knowledge from the affected parties. Further, the westerly three of the remodeled spaces are no further in the right of way now than where they were before the remodel and have historically been located. The determination decision references "18" remodeled space but in fact the remodel reduced the non conforming 18 to 15 spaces, partly due to the addition of a planter and water quality facility. The Planning Directors Determination changes the previous understanding of the impacts of TriMet's taking and this new position was not compensated for in the TriMet settlement. Further and just as important this puts severe and unacceptable stress on the seasonal high demand for parking at the Pendleton facility.

The recent remodel of the cold storage facility to the west across Omark Drive has added to Pendleton's concern as spaces abutting their building along Omark Drive are now used almost exclusively and completely by the cold storage facility employees, taking this on street parking away from the available inventory.

A Pendleton representative recently participated in Milwaukie's Tacoma Station Area Planning process. To the best of our knowledge Pendleton was the only employer/property owner to participate in the meetings. At several of these meetings Pendleton expressed concerns about the lack of on and off street parking in the current neighborhood and noted that the proposed changes would make the problem worse for employees, employers and property owners.

Worth noting is that with TriMet's recent street improvements to Mailwell Drive including major grade changes, new railroad crossings, new pavement, curbs, retaining walls, sidewalk on the north side and water quality facilities on both sides of the street it is unlikely that this street will be remodeled in the foreseeable future.

In summary, the city did not notify Pendleton that they would be losing the nonconforming spaces when they permitted TriMet, under its condemnation authority, to remodel the spaces in front of the Mailwell facility. TriMet remodeled these spaces for light rail construction and TriMet assumed and during the settlement process they represented that the remodeling of these 18 spaces was work that improved Pendleton's facility. The 18 spaces became 15 and TriMet compensated Pendleton for the loss of these 3 spaces as well as the 30 spaces lost on the east side of the building. During all negotiations for the takings of land and

construction impacts to the Pendleton Mailwell facility these 15 spaces were represented and assumed to belong to Pendleton's Mailwell facility following TriMet's reconstruction.

Pendleton respectfully requests that the Planning Commission assist the applicant in reconciling this unacceptable loss of parking. The applicant would like to have the 15 remodeled spaces continue to be viewed as legally nonconforming spaces. This revision to the Planning Directors Determination would allow Pendleton to meet the current code requirements for parking for this facility through a combination of on site legally nonconforming spaces and the 23 space off site lot that TriMet will be constructing as part of the compensation package to Pendleton.



July 16, 2013

Ms. Annetta M. Young  
Division Manager  
Pendleton Woolen Mills  
PO Box 3030  
Portland, OR 97208

**File: DD-13-04**

**Site: 2516 SE Mailwell Drive**

Ms. Young,

This letter is a Director Determination in response to the application received by the City of Milwaukie on April 3, 2013. The requested determination is as follows:

- 1) "Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces..."
- 2) "Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building."

This Director Determination is issued pursuant to Milwaukie Municipal Code (MMC) Section 19.903, Code Interpretations and Director Determinations.

1) Status of Parking and Loading Spaces along Mailwell Drive and east side of the subject site

The approval criteria for Director Determinations about nonconforming situations are: The nonconforming use or development was permitted under applicable regulations at the time it was established; and the nonconforming use has been legally maintained over time and has not been discontinued or abandoned (MMC 19.904.B.2.a and b).

The history of the parking and loading spaces is depicted in the following attachments:

- A 1968 aerial photograph of the site (Attachment 1) – loading spaces in front of the western building constructed in 1963 are present; approximately 22 spaces exist to the east of the building in front of an empty lot. The spaces are at or near the property line
- A 1977 aerial photograph of the site (Attachment 2) – no change to the loading spaces; the 22 spaces remain in approximately the same location but are now directly in front of the eastern portion of the building constructed in 1970.
- Site plan submitted by the applicant depicting the site and parking spaces as they existed both before and after commencement of construction for Portland Milwaukie Light Rail. Configuration of spaces prior to construction roughly



matches configuration of 1977 aerial photo. After light rail construction, the loading spaces and 3 of the parking spaces in front of the eastern portion of the building remain in their current configuration. 18 of the spaces in front of the eastern building have been moved northward to accommodate a retaining wall that was installed for the light rail project.

The City of Milwaukie zoning ordinance did not contain standards for quantity and design of off-street parking and loading spaces until Ordinance #1183 (10/17/1968). The configuration of parking and loading spaces that are depicted by the 1968 aerial photograph are found to have been conforming to the zoning standards that existed at the time of development. The construction of the eastern building in 1970 also added a paved parking area to the east of the building. This parking area is found to be in conformance with the applicable design standards from Ordinance #1183 for parking areas (See Attachment 3).

Portions of these parking areas have been modified from when they were established. The determination of these modifications is as follows:

- The loading spaces and the 3 westernmost vehicle spaces in front of the building have been maintained in the same general configuration as they were established, and are considered legally maintained.
- The parking area on the east side of the building has been modified as a result of the Portland Milwaukie Light Rail project. The 7 spaces (5 perpendicular and 2 parallel) that remain in this area are determined to have been legally maintained.
- The remaining 18 vehicle parking spaces along Mailwell Drive that have been shifted northward are no longer considered off-street parking spaces because nearly all of the area of these stalls is within the Mailwell Drive right of way. The second criterion for determination of a nonconforming situation is that the nonconformity has been legally maintained over time. The determination is that these spaces have not been maintained as off-street parking spaces due to the amount of each parking space that is now within the right-of-way.

## 2) Determination that the Off-Street Parking and Loading Spaces meet current requirements

The determination for this question about current requirements deals only with the parking quantity requirements in MMC Section 19.605. The off-street parking and loading spaces are nonconforming with regard to several design and landscaping requirements, such as landscaping and standard prohibiting vehicle backing movements in the right of way.

The current vehicle parking requirements are based on the information provided in the determination request.

Use	Size (sq ft)	Minimum Parking Ratio	Minimum Spaces Required	Maximum Parking Ratio	Maximum Spaces Allowed
Office	1,257	2/1,000 sq ft	3	3.4/1,000 sq ft	4
Production	2,784	1 /1,000 sq ft	2	2 /1,000 sq ft	6
Distribution + Restroom/lunchroom	164,879 + 1,534	0.3 /1,000 sq ft	49	0.4 /1,000 sq ft	67
<b>TOTAL</b>	<b>170,454*</b>		<b>54</b>		<b>77</b>

\*Application states total area as 170,874

With the inclusion of 2 carpool spaces, the minimum requirement is reduced by 10% from 54 spaces to **48 spaces** (MMC 19.605.3.B.4). All that is required to enact this reduction is to clearly sign the spaces as being reserved for carpool/vanpool use.

The number of off-street vehicle spaces for the site is as follows:

Area	Spaces
Spaces along Mailwell Drive	3
Area to the east of the building	7
Parking spaces in Shared Parking Agreement	23
<b>TOTAL</b>	<b>33</b>

The available off-street parking does not meet the minimum vehicle parking quantity requirements in the current zoning regulations. The City does not consider this reduction in the number of available parking spaces to be a violation, as MMC Subsection 19.504.2 allows reductions below minimum code standard when done for public conveyance or use. In this instance, the City considers the construction of the retaining wall that necessitated moving the nonconforming spaces on Mailwell into the right of way as "equivalent to dedication or conveyance for a public use" (MMC 19.504.2).

MMC 19.608 contains standards for off-street loading spaces. The minimum required amount of loading spaces for nonresidential buildings greater than 50,000 sq ft is 2. There are 8 existing off-street loading spaces, and the site is in compliance with the number of loading spaces required by code.

#### Appeal Information

This Director Determination was processed as a Type I Review. Notice of this decision is provided per MMC19.1004.5. The decision may be appealed by **5:00 p.m. on July 31, 2013**, which is 15 days from the date of this decision, following the appeal procedures in MMC 19.1010. The decision will become final as of this date if no appeal is filed.

All materials related to this land use application, including findings and conclusions, are available for review. The materials can be reviewed at the Johnson Creek Facility, 6101 SE Johnson Creek Blvd, Milwaukie, OR 97206. If you should have any questions about any of the information contained in this letter, please contact Ryan Marquardt at 503-786-7658 or [marquardtr@ci.milwaukie.or.us](mailto:marquardtr@ci.milwaukie.or.us).

File #DD-13-04  
July 16, 2013

Page 4

Sincerely,



Stephen C. Butler, FAICP  
Planning Director / Interim Community Development Director

Attachments:

1. 1968 Aerial photograph of 2516 SE Mailwell Dr
2. 1977 Aerial photograph of 2516 SE Mailwell Dr
3. Off-street parking regulations from Milwaukie Ordinance #1183

Copy: Bill Weston, Western Planning Associates, PO Box 2392, Lake Oswego, OR  
97035  
File# DD-13-04







3-30-77

MILWAUKIE-77 5.1 Page 22



10-5.4.120(3)

## Milwaukie Ordinances

10-5.5.010

TABLE 1

<u>Major Street</u>	<u>Distance from Center Line</u>
Harmony Road	40 ft. plus yard requirement in zone
Harrison Street (west of 44th)	40 ft. " " " " "
Harvey Street	30 ft. " " " " "
Home Avenue	30 ft. " " " " "
Johnson Creek Blvd. (east of 45th)	40 ft. " " " " "
Johnson Creek Blvd. (west of 45th)	30 ft. " " " " "
King Road	40 ft. " " " " "
Linwood Avenue	40 ft. " " " " "
Lake Road	30 ft. " " " " "
Logus Road	30 ft. " " " " "
Main Street	30 ft. " " " " "
McLoughlin Boulevard	60 ft. " " " " "
Monroe Street	30 ft. " " " " "
Oak Street	30 ft. " " " " "
Oatfield Road	40 ft. " " " " "
Ochoco Street	30 ft. " " " " "
Railroad Avenue	30 ft. " " " " "
River Road	40 ft. " " " " "
Roswell Avenue	30 ft. " " " " "
Stanley Avenue	30 ft. " " " " "
Washington St. (west of Railroad Ave.)	30 ft. " " " " "
7th Avenue	40 ft. " " " " "
21st Street	30 ft. " " " " "
32nd Street	30 ft. " " " " "
34th Street (south of Washington St.)	30 ft. " " " " "
41st Street	40 ft. " " " " "
42nd Street	40 ft. " " " " "
43rd Street (south of Covell Avenue)	40 ft. " " " " "

Section 4.130. Building Height Limitations, General Exceptions. Projections such as chimneys, spires, domes, elevator shaft housings, towers, aerials, flagpoles and other similar objects not used for human occupancy are not subject to the building height limitations of this ordinance, except as provided in an LF zone.

## ARTICLE 5. OFF-STREET PARKING AND LOADING

Section 5.010. Off-street Parking Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land is changed within any zone in the city, except the C-C zone, off-street parking spaces shall be provided in accordance with the requirements of this Section and Section 5.030 unless greater requirements are otherwise established. If parking space has been provided in connection with an existing use, the parking space shall not be eliminated if it would result in less than is required by this Section. Where square feet are specified, the area measured shall be the gross floor area primary to the functioning of the particular use of property but shall exclude space devoted to off-street parking or loading. Where employees are specified, persons counted shall be those working on the premises,

including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space.

<u>Use</u>	<u>Parking Spaces Required</u>
(1) Residential	
(a) One or two-family dwelling.	Two spaces per dwelling unit, one of which must be covered.
(b) Apartment dwelling	Two spaces per dwelling unit.
(c) Rooming or boarding house, fraternity, motel or tourist court.	One space per guest room or suite, plus one additional space per 2 employees.
(d) Hotel.	One space per two guest rooms or suites, plus one space per two employees.
(e) Trailer court.	Two spaces per trailer or mobile home.
(f) Convalescent, nursing and other health homes and institutions, homes for the aged, children's homes and welfare or correctional institutions.	One space per 3 beds for patients plus one additional space per 2 employees.
(2) Public and Semi-Public Buildings and Uses	
(a) Auditorium or meeting room (other than church or school).	One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each 4 seats or 8 feet of bench length.
(b) Church.	One space per 80 sq. ft. of floor area in the main assembly area or, where seating is fixed to the floor, one space per 4 seats or 8 feet of bench length.
(c) Club, lodge, or association.	Spaces to meet the combined requirements of the uses being conducted such as hotel, restaurant, auditorium, etc.
(d) Hospital.	One and one-half spaces per bed.

10-5.5.010(2)e

Milwaukie Ordinances

10-5.5.010(3)f

- (e) Library. One space per 400 square feet of reading room plus one space per 2 employees.
- (f) Kindergarten, pre-school nursery, equivalent private or parochial schools. Two spaces per teacher.
- (g) Elementary, junior high, or equivalent private or parochial school. One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
- (h) Senior high school, or equivalent private or parochial school. One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
- (i) College, universities, institutions of high learning and equivalent private or parochial schools. One space per 3 seats in classrooms.
- (j) Passenger terminal. One space for each 500 sq.ft. of floor area.
- (k) Post Office. One space for each 50 sq.ft. of patron service floor area plus one space per employee.

## (3) Commercial

- (a) Retail store, except as provided in subsection (b) below. One space for each 200 sq.ft. of gross floor area plus one space per employee.
- (b) Service or repair shop or retail store handling bulky merchandise such as automobiles or furniture. One space for each 600 sq.ft. of gross floor area plus one space per employee.
- (c) Bank or office except medical or dental. One space for each 400 sq.ft. of floor area plus one space per employee.
- (d) Medical or dental offices or clinic. One space per 300 square feet of floor area plus one space per employee.
- (e) Eating or drinking establishment. One space per 200 sq.ft. of floor area plus one space per employee.
- (f) Mortuary. One space per 4 chapel seats or 8 feet of bench length.



## (4) Commercial Recreation

- (a) Amusement Park. One space per 1,000 sq.ft. of patron serving area.
- (b) Billiard or pool hall. One space per table plus one space per employee.
- (c) Bowling alley. Five spaces for each alley plus one space per employee..
- (d) Dance hall, skating rink, or gymnasium. One space per 50 sq.ft. of patron area plus one space per employee..
- (e) Go-kart track. One space per kart plus one space per employee.
- (f) Golf driving range. One space per 10 linear feet of driving line.
- (g) Indoor arena or theater. One space per 4 seats or 8 feet of bench length.
- (h) Miniature golf course. One space per 2 holes plus one space per employee.
- (i) Race track or stadium. One space per 4 seats or 8 feet of bench length.
- (j) Shooting gallery. One space per 500 square feet of floor area plus one space per employee.
- (k) Swimming pool. One space per 50 sq.ft. of pool plus one space per employee.
- (l) Tennis court. One space per court.

## (5) Industrial

- (a) Manufacturing use. One space per employee.
- (b) Storage or wholesale use. One space per employee plus one space per 700 sq.ft. of patron serving area.

Section 5.020. Off-Street Loading Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land changed within any zone in the city, off-street loading spaces shall be provided in accordance with the requirements of this Section and Section 5.030 unless greater requirements are otherwise established.

10-5.5.020(1)

Milwaukie Ordinances

10-5.5.030(5)

(1) Merchandise, Materials, or Supplies -- Buildings or structures to be built or substantially altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths, in accordance with standards adopted by the Planning Commission. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use. Off-street parking areas used to fulfill the requirements of this ordinance shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

(2) Passengers -- A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading passengers shall be located on the site of any school or other public meeting place which is designed to accommodate more than 25 persons at one time.

Section 5.030. Off-Street Parking and Loading, General Provisions. The following general provisions shall govern the application of off-street parking and loading requirements:

(1) Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission based upon the requirements of comparable uses listed.

(2) In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately.

(3) Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the City in the form of deeds, leases or contracts to establish the joint use.

(4) Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located not farther than 200 feet from the building or use they are required to serve, measured in a straight line from the building.

(5) Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials or for the parking of delivery vehicles used in conducting the business or use.

(6) Required parking and loading spaces shall not be located in a required front yard or street side yard except for required off-street parking for one or two-family dwellings.

(7) A plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met shall accompany an application for a building permit.

(8) Design requirements for parking spaces and loading areas shall be as follows:

- (a) Any area used for standing and maneuvering of vehicles shall have paved surfaces drained so as to avoid water standing or flowing onto adjacent properties.
- (b) Except for parking to serve one or two-family residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than 5 nor more than 6 feet in height except where vision clearance is required.
- (c) Parking spaces along the outer boundaries of a lot shall be contained by a curb at least 4 inches high and set back a minimum of  $4\frac{1}{2}$  feet from the property line.
- (d) Artificial lighting which may be provided shall not create or reflect substantial glare in a residential zone or on any adjacent dwelling.
- (e) Parking spaces and aisles for turning and maneuvering of vehicles shall be in accordance with standards adopted by the Planning Commission.
- (f) Groups of 5 or more parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street other than an alley will be required.
- (g) On parking lots having 5 or more parking spaces, such spaces shall be clearly marked in a permanent manner.
- (h) Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate and service traffic

10-5.5.030(8)h

Milwaukie Ordinances

10-5.6.020(3)

to be anticipated. Service drives shall be clearly and permanently marked and defined through use of rails, fences, walls, or other barriers or markers on frontage not occupied by service drives.

- (i) Service drives shall have a minimum clear vision area formed by the intersection of the driveway center line, the street right-of-way line, and a straight line joining said lines through points 20 feet from their intersection.

## ARTICLE 6. CONDITIONAL USES

Section 6.010. Authorization to Grant or Deny Conditional Uses. Conditional uses in this ordinance may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth in Section 6.010 through 6.030. In permitting a conditional use or the modification of a conditional use, the Planning Commission may impose, in addition to standards and requirements expressly specified by the ordinance, any additional conditions which it considers necessary to protect the welfare of the surrounding property and the City as a whole. These requirements may include increasing the required lot size or yard dimensions, limiting the height of buildings, controlling the location and number of off-street parking and loading spaces, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.

Section 6.020. Standards Governing Conditional Uses. A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified in authorizing the conditional use and as otherwise modified as follows:

- (1) Yards. In a residential zone, yard area shall be equal to at least  $\frac{2}{3}$  the height of the principal structure. In any zone, additional yard requirements may be imposed.

- (2) Height Exception. A church or public building may be built to exceed the height limitations of the zone in which it is located to a maximum height of 50 feet, except as provided in an LF zone, if the total floor area of the building does not exceed one and one-half times the area of the site and if the yard dimensions in each case are equal to at least two-thirds of the height of the principal structure.

- (3) Access to property; building openings. The City may limit or prohibit vehicle access from a conditional use to a residential street, and it may



# **PLANNING DIRECTOR DETERMINATION APPLICATION**

**Pendleton Woolen Mills**  
**2516 SE Mailwell Drive**  
**Milwaukie, Oregon**

RECEIVED  
APR 03 2013  
CITY OF MILWAUKIE  
PLANNING DEPARTMENT

**WESTERN PLANNING ASSOCIATES**  
**PO BOX 2392**  
**Lake Oswego Oregon 97035**  
**503 294 0222**



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)

# Application for Land Use Action

Master File #: \_\_\_\_\_

Review type\*: ☐ I ☐ II ☐ III ☐ IV ☐ V

## CHECK ALL APPLICATION TYPES

### THAT APPLY:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Amendment to Maps and/or Ordinances:<br><input type="checkbox"/> Comprehensive Plan Text Amendment<br><input type="checkbox"/> Comprehensive Plan Map Amendment<br><input type="checkbox"/> Zoning Text Amendment<br><input type="checkbox"/> Zoning Map Amendment<br><input type="checkbox"/> Code Interpretation<br><input type="checkbox"/> Community Service Use<br><input type="checkbox"/> Conditional Use<br><input type="checkbox"/> Development Review<br><input type="checkbox"/> Director Determination<br><input type="checkbox"/> Downtown Design Review<br><input type="checkbox"/> Extension to Expiring Approval<br><input type="checkbox"/> Historic Resource:<br><input type="checkbox"/> Alteration<br><input type="checkbox"/> Demolition<br><input type="checkbox"/> Status Designation<br><input type="checkbox"/> Status Deletion | <input type="checkbox"/> Land Division:<br><input type="checkbox"/> Final Plat<br><input type="checkbox"/> Lot Consolidation<br><input type="checkbox"/> Partition<br><input type="checkbox"/> Property Line Adjustment<br><input type="checkbox"/> Replat<br><input type="checkbox"/> Subdivision<br><input type="checkbox"/> Miscellaneous:<br><input type="checkbox"/> Barbed Wire Fencing<br><input type="checkbox"/> Bee Colony<br><input type="checkbox"/> Mixed Use Overlay Review<br><input type="checkbox"/> Modification to Existing Approval<br><input type="checkbox"/> Natural Resource Review<br><input type="checkbox"/> Nonconforming Use Alteration<br><input type="checkbox"/> Parking:<br><input type="checkbox"/> Quantity Determination<br><input type="checkbox"/> Quantity Modification<br><input type="checkbox"/> Shared Parking<br><input type="checkbox"/> Structured Parking | <input type="checkbox"/> Planned Development<br><input type="checkbox"/> Residential Dwelling:<br><input type="checkbox"/> Accessory Dwelling Unit<br><input type="checkbox"/> Duplex<br><input type="checkbox"/> Manufactured Dwelling Park<br><input type="checkbox"/> Temporary Dwelling Unit<br><input type="checkbox"/> Sign Review<br><input type="checkbox"/> Transportation Facilities Review<br><input type="checkbox"/> Variance:<br><input type="checkbox"/> Use Exception<br><input type="checkbox"/> Variance<br><input type="checkbox"/> Willamette Greenway Review<br><input type="checkbox"/> Other: _____<br>Use separate application forms for:<br><ul style="list-style-type: none"> <li>• Annexation and/or Boundary Change</li> <li>• Compensation for Reduction in Property Value (Measure 37)</li> <li>• Daily Display Sign</li> <li>• Appeal</li> </ul> |
|---|--|---|

## RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Annetta M. Young, Division Manager  
Pendleton Woolen Mills

Mailing address: P. O. Box 3030 Portland, OR Zip: 97208

Phone(s): 503-535-5543 E-mail: annetta.young@penwool.com

APPLICANT'S REPRESENTATIVE (if different than above): William Horning, Western Planning

Mailing address: P. O. Box 2392 Lake Oswego, OR Zip: 97035

Phone(s): 503-294-0222 E-mail: bill@westernplanning.com

## SITE INFORMATION:

Address: 2516 SE Mailwell Drive Map & Tax Lot(s): 1 - 1E - 25CB, T.L. 100

Comprehensive Plan Designation: Industrial Zoning: M Size of property: 2.24 Acres

## PROPOSAL (describe briefly):

Applicant requests a determination of legal nonconforming parking and loading spaces at this site. Applicant also proposes meeting code required parking based on providing carpool spaces and shared parking (see separate application).

## 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. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: Annetta M. Young

Date: 3-20-13

## IMPORTANT INFORMATION ON REVERSE SIDE

\*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.



**APPLICATION PREPARATION REQUIREMENTS:**

- Five copies of all application materials are required at the time of submittal. Staff will determine how many additional copies are required, if any, once the application has been reviewed for completeness.
- All application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All application materials must be collated, including large format plans or graphics.

**ADDITIONAL INFORMATION:**

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: <http://www.ci.milwaukie.or.us/communityservices/neighborhoods-program>.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) WILLIAM HOBHING, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

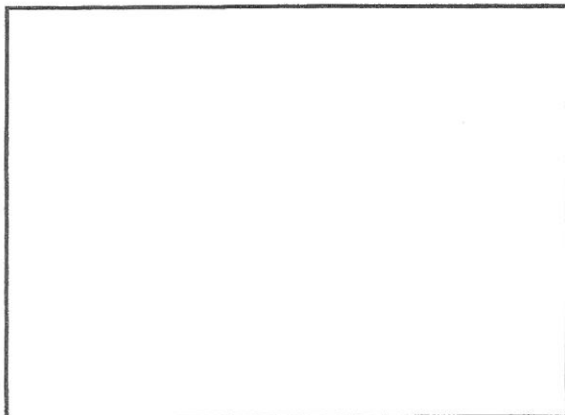
Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: William Hobhing

Date: 4/2/13

**Official Use Only**

Date Received (date stamp below):



Received by: \_\_\_\_\_

**Planning Director Determination  
Legally Nonconforming Site Development**

**Pendleton Woolen Mills  
2516 SE Mailwell Drive  
City of Milwaukie, Oregon**

**Western Planning Associates, Inc  
3/29/13**

**Submittal Requirements**

- 1. All required land use application forms and fees**  
Attached to this application is the city fee and signed application form.
- 2. Proof of Ownership**  
The application is signed by Annetta Young Division Manager for Pendleton Woolen Mills, the property owner.
- 3. Detailed and comprehensive description of the application.**  
Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building.  
See attached application narrative and detailed site plans.
- 4. Detailed statement that demonstrates how the proposal meets all applicable specific approval criteria and all applicable development standards.**  
This application is for an existing building in a manufacturing zone. Off-street parking and loading standards (Chapter 19.600) apply to this application and are discussed in detail in the attached narrative.
- 5. Site Plans**  
Attached are two 24"X36" Site Plans identifying the specific site conditions and standards that are a part of this two application request. Also attached is an 8 1/2"X11" Concept Site Plan for the off site shared parking lot to be developed by TriMet.
- 6. Copy of pre-application conference.**  
A pre-application conference is not required for either of these correlated applications. The applicant met informally with staff on 2/14/13.



## **Planning Director Determination Legally Nonconforming Site Development**

### **Nonconforming Parking and Loading Application Narrative**

#### **Pendleton Woolen Mills**

2516 SE Mailwell Drive  
City of Milwaukie, Oregon

#### **Applicants Request**

Applicant requests that the parking and loading spaces along Mailwell Drive and along the east side of the subject site be recognized as legally nonconforming parking and loading spaces under the Milwaukie code section 19.903 and 19.600. Applicant also proposes the designation of 2 carpool/vanpool spaces. Applicant requests that these spaces when combined with a shared parking application for 23 off site spaces be confirmed as meeting the current code parking and loading requirements for the existing building.

#### **Application Background**

This 2.3 acre industrial site was developed in two phases. The first building was the west building with a footprint of 49,070 SF and it was constructed in 1963-1964. The second phase added a separate contiguous building with a footprint of 41,242 SF in 1969-1970. These buildings were both permitted structures and as such it is assumed they met the required parking and loading standards in place at the time of building permit. These buildings are combined as one structure today and have had intermittent interior remodeling. Portions of the structure are two story and some sections contain mezzanines. The current total square footage is 170,874 SF.

In 2012 TriMet condemned a portion of this site for construction of the new light rail line serving the Milwaukie area and remodeled and removed a portion of the parking located on the north side of the existing building. The east portion of the property had an on site parking lot for over 37 vehicles, 22 of which were on land leased for parking purposes from the Union Pacific railway. This lease was terminated and additional Pendleton property was taken on this east portion of the site. This taking substantially reduced the number of parking spaces on this area of the site. The revised area can now only provide 7 off street parking spaces. TriMet also reconstructed a portion of the parking on the north side of the building that was impacted by elevating Mailwell Drive at the rail crossing. This lost an additional 3 spaces from the 15 spaces impacted along the north side of the building and moved the existing nonconforming parking a corresponding distance further into the right of way of Mailwell Drive. As part of the compensation for this taking and these site parking impacts TriMet agreed to permit and construct a 23 space parking lot to the northeast of the Pendleton building and secured a lease from Union Pacific in Pendleton's name for use of this new off street parking lot.

Due to these impacts to the building, Pendleton would like to confirm that the current parking and loading area along Mailwell Drive and on the east side of the site are legally nonconforming. The applicant is also seeking concurrence that with the designation of two carpool/vanpool spaces and the approval of a shared parking request for the to be constructed off site 23 space parking lot that the building will be in compliance with the parking and loading requirements of the City of Milwaukie.

### **19.903 Code Interpretations and Director Determinations**

**Under section 19.903.2 B2, the Planning Director is authorized to make a determination of the legal status of a nonconforming development. This is identified as a Type I application. Section 19.903.4B2 identifies the Approval Criteria for a Directors determination of legal status of a Nonconforming Development.**

**19.903.4B2 legal Status of Nonconforming Use or Development shall be based on the following criteria:**

**a. The nonconforming use or development was permitted under applicable regulations at the time it was established. Evidence to address this criterion may include the following items:**

**(1) Copies of building and/or land use permits issued at the time the use, structure or site improvement was established.**

The current building is the result of joining together two buildings that were built at different times. The first building was constructed in 1962-1963 and is the westerly structure on the site. While we have not located any official record of the original building permit or the applicable city parking and loading code, this west portion of the building contained the current eight loading berths meeting and exceeding the then required loading standards. The eight loading berths are over 12 feet wide and 40 feet long outside of the existing 60 foot Mailwell Drive right of way. The parking that was provided with this initial phase of construction (49070 SF footprint) is not known as the applicant has only been able to locate structural and floor plans for this first phase, drawn by Perry Percy, Junior Architect for Dan Davis and Company, the builder in 1963. Since the east one half of this site was not initially occupied by a building we assume the then required parking was provided both along the Mailwell Drive frontage and on the east side of the site. In April of 1969 Pendleton took possession of the west building on this site.

Also in 1969 Architect Thomas R. Mackenze designed the east building for the Dan Davis and Company. Pendleton moved ahead in 1969-1970 and built the east building adding an additional 41,242 SF of footprint and approximately 123,726 SF of building area. This brought the building area total to the current 170,874 SF. In 1972 Pendleton took possession of this east building. Since this new easterly structure occupied all but the easterly most +/- 40 feet of the site, it is likely that a

significant portion of the code required minimum parking spaces were accommodated on this east lot area. However, the main and primary entrance to the warehouse is off of Mailwell Drive east of the loading ramps at the approximate center of the building making continued use of the Mailwell Drive parking spots the primary parking area from then until today. Since Pendleton staff increases during the holiday season, it is believed that around 1972 they secured a lease from Union Pacific to utilize a portion of the railroad right of way for additional parking to accommodate their seasonal increase in employees.

**(2) Copies of Zoning Code provisions and/or maps in place at the time the use, structure or improvement was established.**

This site is currently zoned Manufacturing and has been an industrial warehouse and distribution center for Pendleton Woolen Mills since 1965. The first building, constructed in 1963, likely fell under some variation of the 1948 Zoning Code which did not specify any required building setbacks. The Milwaukie city staff has provided the applicant with a copy of the 1975 Article 5 Off-Street Parking and Loading Code (see attachment), which may not have applied to the 1970 east building and likely did not apply to the 1963 west building. In 1975 the site was zoned ML and the 1975 Zoning code did not require any building setbacks. This 1975 code required at the time of building permit that any Industrial storage or wholesale use provide one space per employee plus one space per 700 SF of patron serving area. Pendleton's building does not have any patron serving area as this facility is exclusively a distribution center. The average number of employees during the non peak in 1970 was 55 or fewer. This could have required a maximum of 55 off street parking for spaces, if seasonal workers were included.

As noted above, these spaces were provided by a combination of spaces along the Mailwell Drive frontage (22 spaces) and along the east side of the building (37 spaces). With the estimated 55 workers at the time the second building was built it is likely that the Mailwell nonconforming spaces were being counted. After the second (east) building was built the additional parking was provided by a lease with Union Pacific and this added 23 spaces to the east side lot to accommodate peak seasonal demand bringing the available on site parking total to 59 spaces (37+22). These 59 spaces have been used on site until the 2012 alterations by TriMet due to the construction necessary for the light rail.

Section 5.030 subsection 3 of the 1975 code notes 'that owners of two or more uses, structures...may agree to utilize jointly the same parking and loading spaces when the operation do not overlap' provided the city was supplied with adequate legal evidence to establish joint use. It is possible that this provision was in the pre-1975 code and applied to the Pendleton 1970 east building as all of previously legal loading spaces are a part of the initial west building and the new east building has no loading berths. On the other hand Subsection 6 of the 1975 code notes that the total required parking is not be located in the front or street side yard. While

the current buildings have a minimum 15 foot front yard off of Mailwell Drive this is the result of a restriction of the Omark Industrial Subdivision. The city staff has indicated that in 1975 there were no zoning required building setbacks on this site. The applicant believes that the perpendicular parking spaces off of Mailwell Drive have been used since the original west building was constructed and have therefore predated the 1975 code. Subsection 7 of this 1975 code required that an application for a building permit be accompanied by a plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met. This would indicate that the 12 foot wide by 25 foot deep loading berths were then code legal ( $25' + 15' = 40'$ ). This would also indicate that the required parking was met in the east side yard and through the now nonconforming spaces along Mailwell Drive. Subsection 8 Design Requirements, part c indicated that parking spaces along the outer boundaries of a lot shall be contained by a 4 inch high curb and set back a minimum of 4 1/2 feet from the property line. While this might apply to the new spaces approved after 1975 it would not necessarily have applied to the Mailwell Drive spaces in use from 1965 until 1975. This provision supports the above described sequence of events resulting in the legal nonconforming spaces along Mailwell Drive. Similarly, subsection f, of the 1975 code, talks about requiring groups of 5 or more spaces to be served by a driveway so that no backing movements or other maneuvering within a street will be required. This provision further reinforces the applicant's assertion that the existing and continued use of the Mailwell Drive spaces that did not meet this 1975 code requirement, were already enjoying a nonconforming status by then, and certainly had not become an enforcement issue, requiring the day to day use to be terminated.

**(3) Demonstration that the use, structure or site improvement was established before the applicable development code for the community was adopted.**

The two phases of construction, which were over 47 years and 42 years ago have clearly occurred under previous Milwaukie Zoning codes. While we have been unable to locate the 1965 code it is clear that the 1975 code updated earlier versions and the update would have contained additional and better defined site development standards. Both buildings were constructed prior to 1975 code and at that time parking and loading requirements were more lenient than today's standards.

The applicant knows that building permits for both structures were obtained. Therefore, the buildings and associated site development were legally permitted and as such met or exceeded the applicable parking and loading requirements. Attached in the Appendices is an exhibit from a Phase 1 Environmental Site Assessment report by PBS Engineering and Environmental dated 10/11 that contains a listing of analysis of Historic Aerial Photos that shows that in 1963 the west building was constructed and in 1970 the east building was constructed. It also includes deeds

showing transfer of both of the constructed buildings from the Dan Davis Corporation to Pendleton Woolen Mills.

With the recent changes brought about by the necessity to accommodate the TriMet light rail line along and including a portion of the east side of the site the applicant has now lost sufficient parking to no longer conform to the minimum required number of spaces under today's code. TriMet's work recently included rebuilding the parking in front of the building along Mailwell Drive, partly in the right of way and partly on the subject site. This parking prior to reconstruction was 15 feet deep on site so that the bulk of the spaces were on site. However this had to be modified with TriMet's Mailwell Drive reconstruction due to a grade change at this location forcing the creation of a retaining wall that caused 15 of the Mailwell Drive spaces to encroach further in the right of way (see Sheet 2 of submitted plans).

The applicant asserts that the current loading berths are legally nonconforming and meet the buildings loading berth requirements. The current code requires (19608.2B3) two loading berths for this building and the current building has eight nonconforming loading berths.

Similarly, the current available parking on site and partially in the Mailwell Drive right of way, are by nonconforming status available to meet a portion of the sites parking requirement. The current city parking code requires that this building provide a minimum of 51 spaces, prior to applying any parking credits. The applicant proposes to add two carpool/vanpool spaces (19.605.3B4) and to add 23 off site shared parking spaces (19.605.4B, under a separate but associated application) thereby providing a total of 48 spaces for the existing building. When current code parking requirements are applied to the existing total building square footage (19.605.1,G3 – see Sheet 2) along with the carpool credit the total required spaces for this building is 46.

Pendleton is trying to minimize the damage from this partially compensated taking necessitated by the goals of the larger community. Consequently, the applicant is requesting a Planning Director determination that the site has legal nonconforming status, and that the site through the use of the carpool spaces and shared parking (under separate but associated application) can meet the current code parking and loading requirements for total number of spaces, by acknowledging that some of the spaces are legally nonconforming to current off-street loading and parking requirements and by assuming the shared parking provisions are met (see separate but associated application).



## APPENDIX

Figure One	Parking Study Sheet One (8 1/2"X11" format)
Figure Two	Parking Study Sheet Two (8 1/2"X11" format)
Figure Three	TriMet Concept Layout of to be developed Off Site 23 Space Shared Parking lot
Attachment Four	PBS Engineering Phase I Environmental Site Assessment dated 10/11 excerpt of photo history of site.
Attachment Five	1969 and 1972 Warranty Deeds for constructed west and east buildings
Attachment Six	1975 Milwaukie Zoning Ordinance - Article 5 Off-Street Parking and Loading

# PENDLETON WOOLEN MILLS- MAILWELL

MILWUAKIE, OREGON

## PROJECT TEAM

Applicant: Contact: Michael Denevics Pendleton Woolen Mills	216 SE Mailwell Drive Milwaukie, OR 97122	PH (503) 535-0007 EXT. 12
Planning/Landscape Architecture: Contact: William J. Hornsby, L.A.	Western Planning Associates, Inc. PO BOX 1273 Seaside, OR 97138	PH (503) 298-0222 bill@westernplanning.com
Surveyor: Contact: Andy Paris	Andy Paris & Associates, INC. 10011 Mariner Road, NE Lake Oswego, OR 97035	PH (503) 656-1341

## SHEET INDEX

1. Cover Sheet & Existing Conditions Western Planning Associates, Inc.
2. Parking Study Areas Western Planning Associates, Inc.

## SITE INFORMATION

Site Description: BEING PART OF LOT 6, "OMARK INDUSTRIAL PARK" IN THE SW 1/4 SECTION 25, T.1S, R.1E, W.M., CITY OF MILWUAKIE CLATSOP COUNTY, OREGON

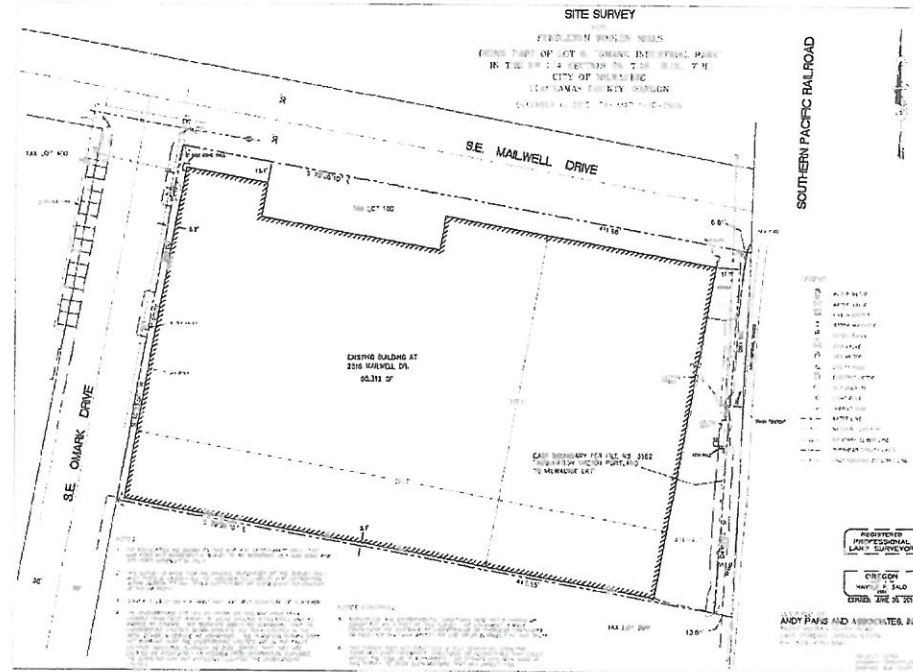
Site Area: 2.24 ACRES

Zoning: M

SHARED  
PARKING SITE



VICINITY MAP



## EXISTING CONDITIONS

Site Survey by Andy Paris & Associates, INC. 12/06/12



Land Planning  
Landscape  
Architecture

PO BOX 1000  
LAKE GERSHON, OR  
97035  
503-291-0222

SCALE: AS SHOWN

DESIGNED BY: WJH  
CHECKED BY: WJH

DATE: FEB 10, 13  
REVISION:

REGISTERED  
190  
WILLIAM J. HORNSBY  
OREGON  
LANDSCAPE ARCHITECT

PENDLETON WOOLEN MILLS  
EXISTING CONDITIONS  
2516 SE MAILWELL DRIVE  
MILWUAKIE, OR

1  
of  
2

# PENDLETON MAILWELL -

MILWUAKIE, OREGON



Land Planning  
Landscape  
Architecture

PO BOX 5192  
LAKE OSWEGO, OR  
97035  
503-694-0222

SCALE: AS SHOWN

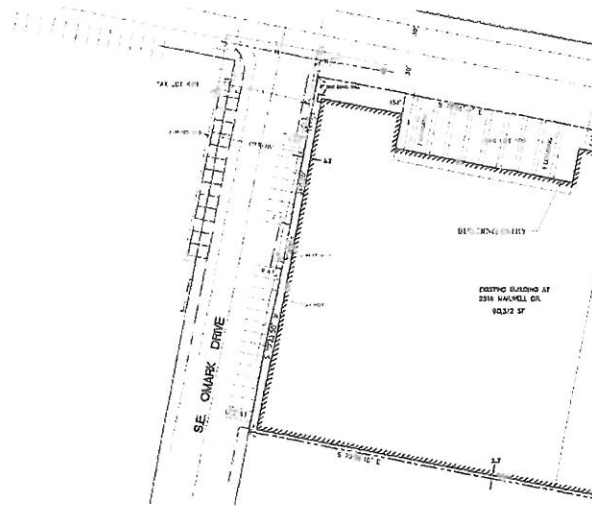
DESIGNED BY: WESTERN  
DRAWN BY: JSM  
CHECKED BY: MJP

DATE: 07-10-13  
REVISED:

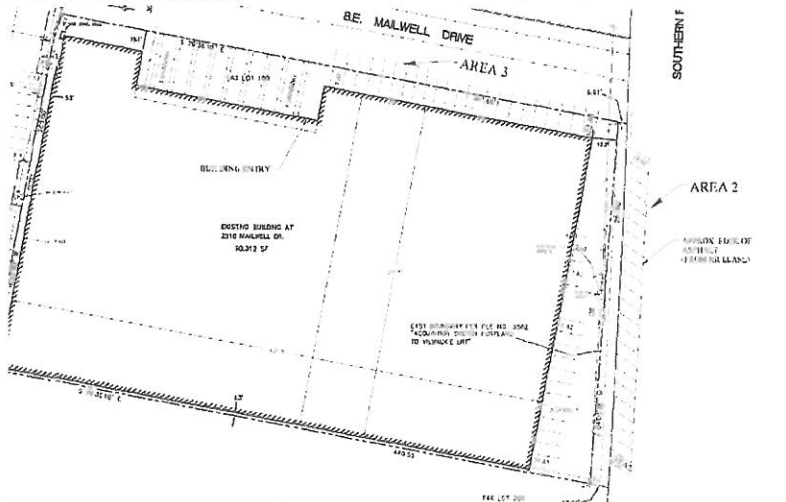
REGISTERED  
190  
WILLIAM F. HORNUNG  
OREGON  
LANDSCAPE ARCHITECT

PENDLETON WOOLEN MILLS  
PARKING STUDY SHEET  
2516 SE MAILWELL DRIVE  
MILWUAKIE, OR

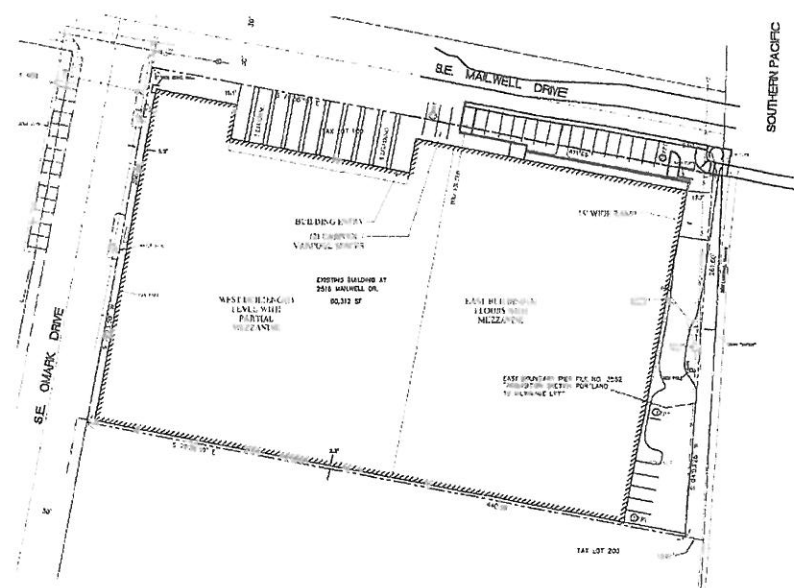
2  
of  
2



AREA 1- ON STREET PARKING OMARK DRIVE  
TOTAL EXISTING SPACES (22)



AREA 2 & 3- PARKING EAST & MAILWELL PARKING & LOADING  
(PRE-TRIMET)  
TOTAL EXISTING SPACES- AREA 2- EAST SIDE (37),  
AREA 3- MAILWELL (22) (8 LOADING BERTHS)



PROPOSED PARKING & LOADING POST TRIMET

AREA 4- TRIMET LOT OFFSITE (23) SPACES (SEE 8 1/2' X 11' ATTACHED TO APPLICATION)

## SQUARE FOOTAGE QUANTITIES

DESCRIPTION	50 FT
Area 1- On Street	19,605.4
Area 2- East Building	1,000
Area 3- Mailwell Drive	1,000
Area 4- New Trimet Lot	1,000
Total	22,605.4

## PARKING SUMMARY

	PRE-TRIMET	POST-TRIMET
AREA 1- OMARK DR (ON STREET*)	(22)	(22)
AREA 2- EAST BUILDING	37	07
AREA 3- MAILWELL DRIVE	22	18
AREA 4- NEW TRIMET LOT	0	23
(SHARED PARKING 19,605.4)		

TOTAL PARKING SPACES 55 48

## LOADING SUMMARY

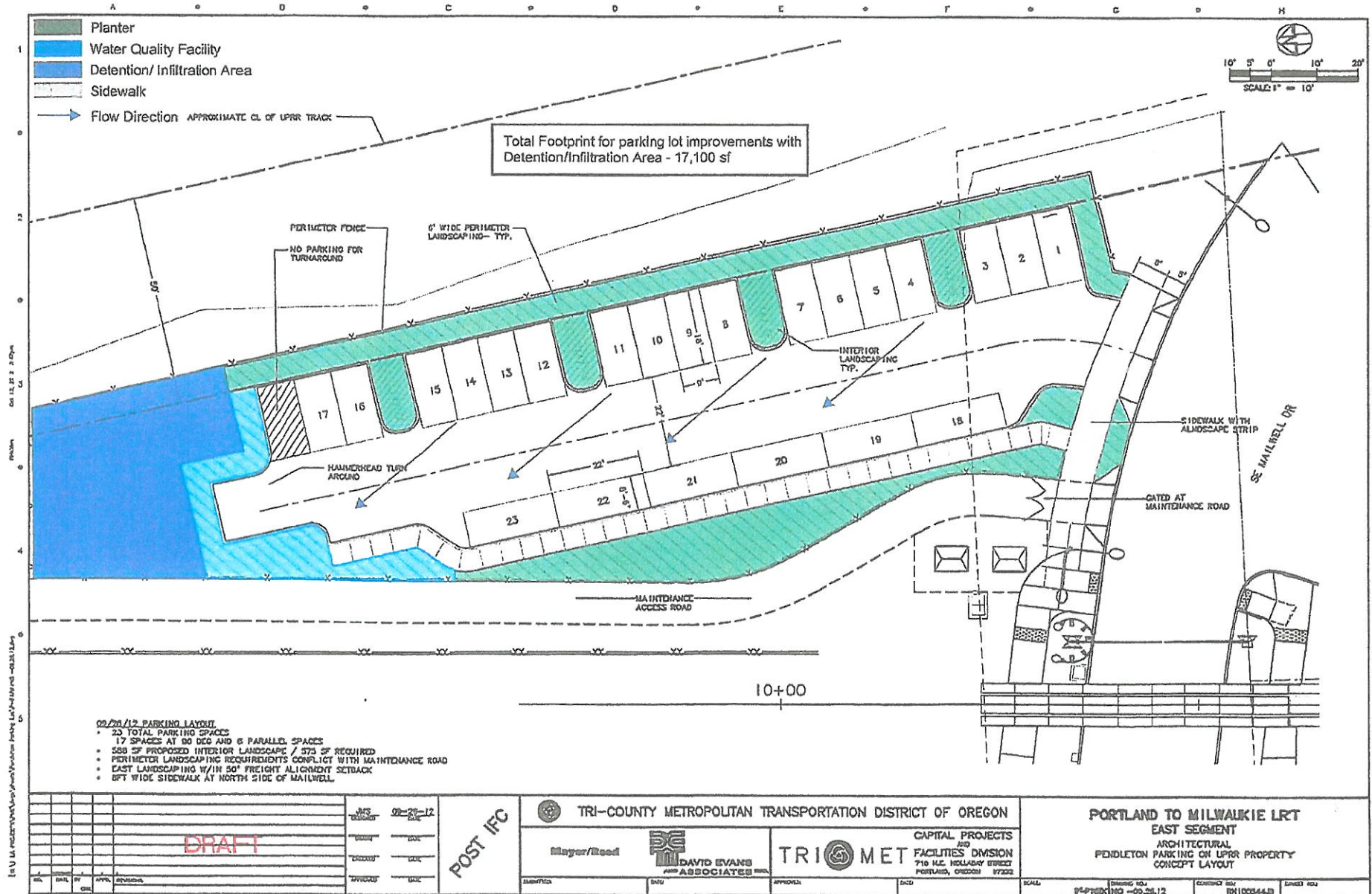
AREA 3- MAILWELL DR 8 8

## MILWUAKIE PARKING & LOADING REQUIREMENTS

LOADING REQUIREMENT 19608.2B3 = 2 SPACES  
MAXIMUM PARKING TABLE 19.605.1G3  
170,874 SF X .4 PER 1000 = 68 SPACES  
MINIMUM PARKING  
170,874 SF X .3 PER 1000 = 51 SPACES  
2 CARPOOL SPACES -5  
(19,605.3B4) 46 REQUIRED

\* OMARK DRIVE ON STREET PARKING REQUESTED BUT NOT  
TOTALLED IN SUMMARY CHART







Engineering +  
Environmental

MLWR-0238

## Phase I Environmental Site Assessment

TriMet File #3582  
Pendleton Woolen Mills  
2516 SE Mailwell Drive  
Milwaukie, Oregon 97222

Prepared for:  
TriMet  
710 NE Holladay Street  
Portland, Oregon 97232

October 2011  
Project No. 20319.008

rec'd 11/11/11

4412 SW Corbett Avenue, Portland, OR 97239  
503.248.1939 Main  
866.727.0140 Fax  
888.248.1939 Toll-Free  
[www.pbsevy.com](http://www.pbsevy.com)

Bend | Boise | Coquille | Eugene | Portland | Seattle | Tri-Cities | Vancouver

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### 3.0 HISTORICAL RECORDS REVIEW

The information is presented as obtained from each source, and should not be considered a cumulative discussion of issues.

#### 3.1 Physical Setting Source(s) Topography and Surface Features

The USGS 7.5-minute topographic map (Lake Oswego, Oregon Quadrangle, 1984) for the site indicates the area of the *subject property* is relatively flat at an elevation of approximately 55 feet above mean sea level, with the topography rising to the east. Large buildings are depicted on the *subject property* and the areas west and south, correlating to the warehouse/commercial structures in the area and industrial nature of the general vicinity.

The topographic map indicated that the nearest surface water (Johnson Creek) is located approximately one-quarter mile west from the *subject property*.

#### Soils and Geology

According to the Soil Survey for Clackamas County, Oregon (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>), accessed September 2, 2011, the *subject property* is underlain predominantly by Urban land. In most areas of this complex, the soils have been graded, cut, filled or otherwise disturbed. This complex is present on first terraces above the flood plains at elevations between 50 to 100 feet above mean sea level. Original soils were silt loam, loam, silty clay loam, and gravelly loam and were commonly over stratified sand and gravel at a depth of 4 to 6 feet.

Surface soils are underlain by alternating sands, clays and gravels deposited during Pleistocene catastrophic flood events are present, with sand and gravels of the Troutdale Formation underlying the flood deposits. The sedimentary deposits together reach depths of over 200 feet in the area of the *subject property*. Columbia River Basalts are present at depth. A copy of the soil map is included in Appendix D.

#### Groundwater

Based on nearby monitoring well logs, the shallowest occurrence of groundwater is expected to be at approximately 8 to 15 feet below ground surface (bgs). Based on topography and proximity to the Willamette River, the direction of shallow, unconfined groundwater flow is expected to be towards the west; therefore, properties to the east are considered to be up gradient to the *subject property*.

### 3.2 Historical Use Information

#### Aerial Photographs

Aerial photographs were obtained from the University of Oregon Map Library, and Portlandmaps.com; copies are included in Tab 2. Photograph scales are typically small and detailed information is not generally obtained from the photographs. The photographs are summarized in the table below.



Year	Subject Property	Adjacent Properties
1936	The southeast quadrant of the lot is in agriculture use; the remaining areas appear to be fallow fields	The area to the northeast is wooded; the area to the northwest appears to be fallow fields; the area to the east is occupied by railroad tracks or by unpaved roads; the area to the south is either in agricultural use or fallow; the area to the west appears to be fallow fields
1939	There are no apparent changes to the <i>subject property</i>	No significant changes are noted
1948	The site is occupied by probable war-time housing; at least 14 houses occupy the area adjacent to three curved and paved streets	The areas to the north, west, and south are occupied by probable war-time housing units; the area to the east remains occupied by railroad tracks with the area east of that undeveloped
1956	The structures have been demolished but the streets remain	The areas to the north, west, and south remain occupied by streets but the houses have been demolished; the area to the east is generally unchanged, however the undeveloped portion appears to have been cleared of vegetation
1963	The site is now occupied by a square structure on the west portion; the east portion has some unpaved areas but remains undeveloped	The area to the north and west are now occupied by commercial or industrial structures; the area to the east remains unchanged; the area to the south remains occupied by the paved streets but is vacant
1970	Nearly the entire lot is now occupied by a commercial structure; a small area on the east side appears to be unpaved	The areas to the north, west, and south are now occupied by large commercial or industrial structures; the area to the east is unchanged
1980	The site appears unchanged	The areas to the north, east, and west are unchanged; the area to the south is occupied by a larger commercial or industrial structure
1990	The site appears unchanged	The areas to the north, west, and south are unchanged; the area to the east is now occupied by commercial structures
1998	The site appears unchanged	There are no apparent changes to the surrounding properties
2001	The site appears unchanged	There are no apparent changes to the surrounding properties
2005	The site appears unchanged	There are no apparent changes to the surrounding properties

31

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that DAN DAVIS CORPORATION, a corporation duly organized and existing under the laws of the State of Oregon, hereinafter called Grantor, in consideration of Thirty Thousand (\$30,000.00) Dollars to Grantor paid, does hereby grant, bargain, sell and convey unto PHILLIPSON WOOLLEN MILLS, an Oregon corporation, hereinafter called Grantee and Grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Clackamas and State of Oregon, described as follows, to-wit:

A tract of land in the William Meek D.E.C. Clackamas County, Oregon, more particularly described as follows:

Beginning at the Northwest corner of Lot 6, CHURCH INDUSTRIAL PARK, a recorded plat in said county; thence Southerly along the West line of said Lot 6, 260 feet; thence Easterly and parallel to the Northerly line of said Lot 6, 224.00 feet to the point of beginning of the tract to be described; thence continuing Easterly and parallel to the Northerly line of Lot 6, 224.00 feet; thence Northerly along the East line of Lot 6, 261.83 feet to the Northwest corner of Lot 6; thence Westerly along the North line of Lot 6, 194.27 feet; thence Southerly and parallel to the West line of Lot 6 approximately 260.00 feet to the point of beginning.

TO HAVE AND TO HOLD the above described and granted premises unto the said Grantee and Grantee's successors and assigns forever.

And said Grantor hereby covenants to and with said Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances, save and except:

1. Utility easements as delineated on the recorded plat along the East 20 feet.
2. Set-back provisions as delineated on the recorded plat, 15 feet from Northerly lot line.
3. Mortgage, including the terms and provisions thereof, dated November 1, 1962, recorded November 7, 1962, in Mortgage Book 563, page 411, Mortgage Records of Clackamas County, Oregon, to secure the payment of \$270,000.00, with interest, by Dan Davis Corporation, an Oregon corporation, to New England Mutual Life Insurance Company, a Massachusetts corporation (includes other property). Grantor expressly assumes and agrees to perform all the terms and conditions on the part of the mortgagor under the above described

1-Deed

66 8002

mortgage and to secure as soon as possible a release of the mortgage lien on the property conveyed hereunder.

and that Grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

Done by order of the Grantor's Board of Directors, with its corporate seal attached, this 22 day of April, 1963.

DAN DAVIS CORPORATION

By [Signature] President  
By [Signature] Secretary

State of Oregon

County of Multnomah

April 22nd, 1963

Personally appeared Dan Davis and Joe M. [Name], each for himself, Grant and the other, [Name] is the President and [Name] is the Secretary of the corporation and that the said [Name] and [Name] are duly authorized by the Board of Directors of the corporation by authority of the Board of Directors to execute this deed.

Before me:

Notary Public for Oregon  
My commission expires 11/22/71

The true and actual consideration for this transfer is \$30,000.

PREPARED BY [Name]

By [Signature]

2-Deed

2

WITNESSES OF GRANTOR, { as  
County of Multnomah, Oregon, Clerk, Notary  
Public, State of Oregon, and the County Clerk  
of the County of Multnomah, do hereby certify that  
this deed was voluntarily signed and acknowledged  
and returned to the records of the County of  
Multnomah, Oregon, on this day of April, 1963.

**DEED**  
of and County of  
BOS MAY 6 AM 11 17  
RECORDED OF CONVEYANCE  
CLERK OF COUNTY OF MULTNOMAH, OREGON

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that DAN DAVIS CORPORATION, a corporation duly organized and existing under the laws of the State of Oregon, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto PENDLETON WOOLLEN MILLS, an Oregon corporation, hereinafter called Grantee, and Grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Clackamas and State of Oregon, described as follows, to-wit:

That portion of Lot 6, CHARK INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, described as follows:

BEGINNING at the Northwest corner of said Lot 6; thence Southerly along the West line of said Lot 6, a distance of 260 feet; thence Easterly parallel to the Northerly line of said Lot 6, a distance of 224.0 feet to the Southwest corner of the tract conveyed to Pendleton Woollen Mills by Deed recorded under Recorder's Fee No. 69-8003; thence Northerly along the West line of said Pendleton tract 260.0 feet, more or less, to the Northerly line of said lot; thence Westerly along said Northerly line 224.0 feet to the point of beginning.

TO HAVE AND TO HOLD the same unto the said Grantee and Grantee's assigns and successors forever.

And said Grantor hereby covenants to and with said Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances except:

1. Taxes for the year 1972-73 payable in the amount of \$9,751.26, with \$292.56 discount. Code No. 12-2, Account No. 3011-7-2-6-1, Tax Lot No. 100.
2. City liens, if any, of the City of Milwaukie.
3. Set back provisions as delineated on the recorded plat, 15 feet from the Northerly lot line.

and that Grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

1-Deed

72 35-110

715-665



The true and actual consideration paid for this transfer,  
stated in terms of dollars, is \$235,000.

Done by order of the Grantor's board of directors, with its  
corporate seal affixed, this 17 day of November, 1972.

DAN DAVIS CORPORATION

By *Dan Davis* President

By *Moe M. Tonkon* Secretary

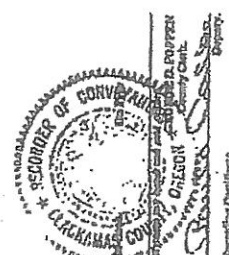
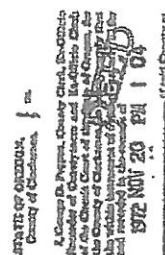
STATE OF OREGON )  
County of Multnomah ) ss

November 17, 1972.

Personally appeared Dan Davis and Moe M. Tonkon, who being  
duly sworn, each for himself and not one for the other, did say that  
the former is the President and that the latter is the Secretary of  
Dan Davis Corporation, a corporation, and that the seal affixed to  
the foregoing instrument is the corporate seal of said corporation  
and that said instrument was signed and sealed in behalf of said  
corporation by authority of its board of directors; and each of  
them acknowledged said instrument to be its voluntary act and  
deed.

Before me:

*Clarence D. Leggett*  
Notary Public for Oregon  
My commission exp: 8-21-73



*2*

2-Deed

72 354410

## ARTICLE 5. OFF-STREET PARKING AND LOADING

Section 5.010. Off-Street Parking Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land is changed within any zone in the City, except the C-C zone, off-street parking spaces shall be provided in accordance with the requirements of this Section and Section 5.030, unless greater requirements are otherwise established. If parking space has been provided in connection with an existing use, the parking space shall not be eliminated if it would result in less than is required by this Section. Where square feet are specified, the area measured shall be the gross floor area primary to the functioning of the particular use of property, but shall exclude space devoted to off-street parking or loading. Where employees are specified, persons counted shall be those working on the premises, including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space.

UsesParking Spaces Required

## 1. Residential

- |   |   |
|---|---|
| a. One or two family dwelling   | Two spaces per dwelling unit, one of which must be covered. Covered space may be eliminated one year after final inspection if two spaces are provided.                     |
| b. Apartment dwelling   | 0 - 24 dwelling units: two spaces per dwelling unit.<br><br>over 24 dwelling units:<br>1.5 spaces - one bedroom<br>1.75 spaces - two bedrooms<br>2 spaces - three bedrooms. |
| c. Rooming or boarding house, fraternity, motel, or tourist court   | One space per guest room or suite, plus one additional space per 2 employees.   |
| d. Hotel  | One space per two guest rooms or suites, plus one space per two employees.  |
| e. Trailer court  | Two spaces per trailer or mobile home.  |
| f. Convalescent, nursing and other health homes and institutions, homes for the aged, children's homes and welfare or correctional institutions | One space per 3 beds for patients plus one additional space per two employees.  |

## 2. Public and Semi-Public Buildings and Uses

- |   |  |
|---|--|
| a. Auditorium or meeting room (other than church or school) | One space for each 60 square feet of floor area in the auditorium or, where seating is fixed to the floor, one space for each 4 seats or 8 feet of bench length. |
| b. Church   | One space per 80 square feet of floor area in the main assembly area or, where seating is  |

10-5 5.010 2 b

Milwaukee Ordinances

10-5.5.010.3.e.

UsesParking Spaces Required

	fixed to the floor, one space per 4 seats or 8 feet of bench length.
c. Club, lodge, or association	Spaces to meet the combined requirements of the uses being conducted such as hotel, restaurant, auditorium, etc.
d. Hospital	One and one-half spaces per bed.
e. Library	One space per 400 square feet of reading room plus one space per two employees.
f. Day care center, kindergarten, equivalent private or parochial school	Two spaces per teacher or staff member.
g. Elementary, junior high, or equivalent private or parochial school	One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
h. Senior high school, or equivalent private or parochial school	One space per employee or one space per 4 seats or 8 feet of bench length in the auditorium or assembly room, whichever is greater.
i. College, universities, institutions of high learning and equivalent private or parochial schools	One space per three seats in classrooms.
j. Passenger terminal	One space for each 500 square feet of floor area.
k. Post office	One space for each 50 square feet of patron service floor area plus one space per employee.
3. Commercial	
a. Retail store, except as provided in subsection "b" below	One space for each 200 square feet of gross floor area plus one space per employee.
b. Service or repair shop or retail store handling bulky merchandise such as automobiles or furniture	One space for each 600 square feet of gross floor area plus one space per employee.
c. Bank or office except medical or dental	One space for each 400 square feet of floor area plus one space per employee.
d. Medical or dental offices or clinics	One space per 300 square feet of floor area plus one space per employee.
e. Eating or drinking establishment	One space per 200 square feet of floor area plus one space per employee.

10-5.5.010.3.f.

Milwaukee Ordinances

10-5.5.020.1.

UsesParking Spaces Required

- |  |   |
|--|---|
| f. Mortuary                              | One space per 4 chapel seats or 8 feet of bench length.                           |
| 4. Commercial Recreation                 |   |
| a. Amusement park                        | One space for each 1,000 square feet of patron serving area.                      |
| b. Billiard or pool hall                 | One space per table plus one space per employee.                                  |
| c. Bowling alley                         | Five spaces for each alley plus one space per employee.                           |
| d. Dance hall, skating rink or gymnasium | One space per 50 square feet of patron area plus one space per employee.          |
| e. Go-kart track                         | One space per kart plus one space per employee.                                   |
| f. Golf driving range                    | One space per 10 linear feet of driving line.                                     |
| g. Indoor arena or theater               | One space per 4 seats or 8 feet of bench length.                                  |
| h. Miniature golf course                 | One space per 2 holes plus one space per employee.                                |
| i. Race track or stadium                 | One space per 4 seats or 8 feet of bench length.                                  |
| j. Shooting gallery                      | One space per 500 square feet of floor area plus one space per employee.          |
| k. Swimming pool                         | One space per 50 square feet of pool plus one space per employee.                 |
| l. Tennis court                          | One space per court.  |
| 5. Industrial                            |   |
| a. Manufacturing use                     | One space per employee.   |
| b. Storage or wholesale use              | One space per employee plus one space per 700 square feet of patron serving area. |

Section 5.020. Off-Street Loading Requirements. At the time a structure is erected or enlarged, or the use of a structure or parcel of land changed, within any zone in the City, off-street loading spaces shall be provided in accordance with the requirements of this Section and Section 5.030, unless greater requirements are otherwise established.

1. Merchandise, Materials, or Supplies. Buildings or structures to be built or substantially altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths, in accordance with standards adopted by the Planning Commission. If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use. Off-

10-5.5.020.1.

Milwaukie Ordinances

10-5.5.030.8.b.

street parking areas used to fulfill the requirements of this Ordinance shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs.

2. Passengers. A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading passengers shall be located on the site of any school or other public meeting place which is designed to accommodate more than 25 persons at one time.

Section 5.030: Off-Street Parking and Loading, General Provisions. The following general provisions shall govern the application of off-street parking and loading requirements:

1. Requirements for types of buildings and uses not specifically listed herein shall be determined by the Planning Commission based upon the requirements of comparable uses listed.
2. In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately.
3. Owners of two or more uses, structures, or parcels of land may agree to utilize jointly the same parking and loading spaces when the hours of operation do not overlap, provided that satisfactory legal evidence is presented to the City in the form of deeds, leases or contracts to establish the joint use.
4. Off-street parking spaces for dwellings shall be located on the same lot with the dwelling. Required off-street parking spaces other than for dwellings shall be located not farther than 200 feet from the building or use that they are required to serve, measured in a straight line from the building.
5. Required parking spaces shall be available for the parking of passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for storage of vehicles or materials or for the parking of delivery vehicles used in conducting the business or use.
6. Required parking and loading spaces shall not be located in a required front or street side yard except for required off-street parking for one or two family dwellings.
7. A plan drawn to scale and dimensioned, indicating how the off-street parking and loading requirements are to be met, shall accompany an application for a building permit.
8. Design requirements for parking spaces and loading areas shall be as follows:
  - a. Any area used for standing and maneuvering of vehicles shall have paved surfaces drained so as to avoid water standing or flowing onto adjacent properties.
  - b. Except for parking to serve one or two family residential uses, parking and loading areas adjacent to or within residential zones or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than 5 nor more than 6 feet in height except where vision clearance is required.



- c. Parking spaces along the outer boundaries of a lot shall be contained by a curb at least 4 inches high and set back a minimum of 4½ feet from the property line.
- d. Artificial lighting which may be provided shall not create or reflect substantial glare in a residential zone or on any adjacent dwelling.
- e. Parking spaces and aisles for turning and maneuvering of vehicles shall be in accordance with standards adopted by the Planning Commission.
- f. Groups of 5 or more parking spaces shall be served by a driveway so that no backing movements or other maneuvering within a street other than an alley will be required.
- g. On parking lots having 5 or more parking spaces, such spaces shall be clearly marked in a permanent manner.
- h. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of pedestrians, and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate and service traffic to be anticipated. Service drives shall be clearly and permanently marked and defined through use of rails, fences, walls, or other barriers or markers on frontage not occupied by service drives.
- i. Service drives shall have a minimum clear vision area formed by the intersection of the driveway centerline, the street right-of-way line, and a straight line joining said lines through points 20 feet from their intersection.

#### ARTICLE 6. CONDITIONAL USES

Section 6.010. Authorization to Grant or Deny Conditional Uses. Conditional uses in this Ordinance may be permitted, enlarged, or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth in Section 6.010, through 6.030. In permitting a conditional use or the modification of a conditional use, the Planning Commission may impose, in addition to standards and requirements expressly specified by the Ordinance, any additional conditions which it considers necessary to protect the welfare of the surrounding property and the City as a whole. These requirements may include increasing the required lot size or yard dimensions, limiting the height of buildings, controlling the location and number of off-street parking and loading spaces, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this Ordinance and classified in this Ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.

Section 6.020. Standards Governing Conditional Uses. A conditional use shall comply with the standards of the zone in which it is located, except as these standards have been modified in authorizing the conditional use and as otherwise modified as follows:

- 1. Yards. In a residential zone, yard area shall be equal to at least two-thirds the height of the principal structure. In any zone, additional yard requirements may be imposed.

**List of Record**  
**File #AP-13-01, Appeal of File # DD-13-04**

The following documents are part of the official record for this application as of September 30, 2013.

1. Application for Appeal
  - a. Submittal forms: land use application form(s), proof of ownership, property owner authorization, Submittal Requirements form, fee receipt (received 7/31/13)
  - b. Narrative addressing appeal
2. Notification information for Appeal
  - a. Mailed notice for Planning Commission public hearing on 10/8/13
  - b. Certification of legal notice mailing, with attached mailing list (dated 9/18/13)
  - c. Notice map
  - d. Returned notice envelopes
3. Director's Determination File #DD-13-04
  - a. Submittal forms: land use application form(s), proof of ownership, property owner authorization, Submittal Requirements form, fee receipt (received 4/3/2013)
  - b. Narrative addressing code standards and criteria (received 4/3/2013)
  - c. Plans and drawings and supporting information
    - (1) Parking Studies (Sheets 1 and 2)
    - (2) Shared Parking Lot Layout
    - (3) Proposed site conditions (received )
    - (4) Site History
    - (5) Property Deeds
    - (6) 1975 Milwaukie Zoning Ordinance
  - d. 120-day waiver request (received 7/31/13)
4. Staff Report(s)
  - a. Report for Planning Commission public hearing on 10/8/13
    - (1) Recommended Findings





**To:** Planning Commission  
**Through:** Steve Butler, Planning Director  
**From:** Beth Ragel, Program Coordinator  
 Ryan Marquardt, Senior Planner  
**Date:** October 2, 2013, for October 8, 2013, Worksession  
**Subject:** Code Changes and Review Process for Public Murals

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## **ACTION REQUESTED**

None. This is a briefing for discussion only. This briefing is in anticipation of future amendments to the sign code related to murals. Staff does request direction from the Planning Commission on proposed amendments to Title 14, Sign Ordinance presented in this report.

## **BACKGROUND INFORMATION**

### **A. History of prior actions and discussions**

- **September 2012:** Planning Commission forwarded a recommendation to City Council on a limited amount of amendments to exempt public murals from the sign ordinance.
- **May 2012:** Beth Ragel, Community Services Program Coordinator, briefed the Planning Commission on the proposed permit process for public murals at a work session.
- **April 2012:** Staff briefed City Council on community outreach and reported the results from the mural survey. Council directed staff to continue work on the project, including developing the code language to take to the Planning Commission for review.
- **September 2011:** City Council gave staff the approval to start public outreach and to begin drafting the needed code language.
- **2006:** When the Planning Commission updated the Sign Code in 2006, the difficulty of permitting public murals as signs was acknowledged as a problem yet to solve. At that time, no model was in place that adequately addressed Oregon's free speech laws. As such, public murals fell under sign regulations by default. Since then, Portland has finalized two review and permit processes—one in 2005 and one in

2008. These have not been challenged and have paved the path for other jurisdictions to adopt a similar approach.

#### **B. Prior recommendation on a public mural review process**

In September 2012, the Planning Commission held a public hearing and made a recommendation on amendments to Title 14, Sign Ordinance, that were part of a larger set of amendments to the Milwaukie Municipal Code. The purpose of the set of amendments was to establish the code language needed to allow murals as public art, separate from the regulations of the sign ordinance.

The Planning Commission made a recommendation that City Council approve of the code changes to Title 14. Prior to taking the code amendments to City Council, however, it was suggested by the City Attorney's office that the program could be made more legally defensible. The rationale for this is discussed further on in the report. As a result, staff did not take the code amendments to City Council, and has been revising the proposed approach. Staff is preparing to bring the revised code changes back before the Planning Commission later in 2013 in hopes of City Council adoption in 2014.

#### **C. Structure of proposed 2012 public mural permit process**

The 2012 version of the code changes proposed one discretionary review process and permitting path for murals. An ad hoc mural review committee was proposed to review the mural on set criteria and make a recommendation to the Milwaukie Arts Committee, who would make the final decision. The process would allow approved murals to be placed in commercial and industrial zones and on community service use properties. Broadly, the review criteria suggested at that time included artistic merit, feasibility, context and demonstrated community support.

Since staff was aware that reviewing content is generally problematic—and specifically, that reviewing the content of signs was deemed a violation of Article I, Section 8 of the Oregon constitution—staff also proposed to require a public art easement signed by the property owner. This approach is used by the City of Portland and was suggested by the City of Portland attorney and the Public Art Manager at the Regional Arts and Culture Council (RACC). This easement was determined to be a key feature of the proposed program, as the public art easement would mean the review of the mural would be for the purpose of selecting public art rather than regulating sign content on private property.

#### **D. Structure of currently proposed public mural permit processes**

After further evaluation, staff and the City attorney decided to make modifications to the public mural permitting process. Accordingly, one significant modification is the creation of two mural review and permitting options. One review process would be similar to the 2012 program and would include some public grant funding for the mural as well as a discretionary review process through the Milwaukie Arts Committee. The other review process would be for painted wall sign that would be reviewed by the Planning Department against objective standards.

These two review and permitting options are based on the model pioneered in Portland resulting from legal challenges to the Portland sign code (which had not exempted murals from sign regulations prior). Staff has not discovered any other models in Oregon for permitting murals in a manner that complies, or attempts to comply, with constitutional requirements for content neutrality.

***Key Features of Portland's Two Mural Permitting Programs***

<b>RACC Program—Discretionary Review/Grant Program</b>	<b>BDS Program—Objective Review</b>
<ul style="list-style-type: none"> <li>• Grant funding provided and City acts as patron not just regulator.</li> <li>• Content of mural is reviewed by committee; standards are somewhat subjective.</li> <li>• Public art easement form must be signed by building/property owner.</li> <li>• Compensation to building/property owner is prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• Grant funding is not provided and a permit fee is assessed (about \$200.)</li> <li>• Content of mural is not reviewed and standards are objective.</li> <li>• No public art easement form is required.</li> <li>• Compensation to building/property owner is prohibited.</li> </ul>

As done in Portland, if the discretionary review process included a matching grant program. A grant program has the benefits of:

- Making the city a patron of the arts, which helps to justify the discretionary review of the mural;
- Providing more control over large-scale murals that go up in the public realm; and,
- Leveraging public funds to obtain high-quality murals, since there is a requirement for matching funds equal to or exceeding the city's contribution.

See Attachment 1 for example of mural funding programs implemented in other cities.

Implementing only objective review of murals limits the potential legal challenge but would not provide the same level of discretion over what is allowed. Since the objective review would only look at and regulate physical features and not content, this may mean that murals that are objectionable to the community could be permitted and placed in Milwaukie. Artists and/or property owners may prefer this path if they have funding readily available for their project or if a property owner does not want to sign a public art easement for the placement of the mural. They may also prefer this path if they are willing to do a smaller mural than is allowed through the discretionary process and limit the project to paint and no other medium.

## **E. Original Art Mural / Objective Review process**

The basic structure of the discretionary review process has not changed from the 2012 version (see Background Information, Section B). The original art mural process (also referred to as the objective review process) is new and would affect more sections of Title 14. The Planning Commission will be asked to review and make a recommendation on a larger set of amendments to Title 14 than were presented last year.

The basic elements of the proposed objective review process are as follows:

- A. Creates a new category of signs called “painted wall signs”. Key attributes of painted wall signs are:
- Paint must be applied directly to building wall surface or Pelon material (a common substrate for murals); no vinyl, wood, or other material between the building wall and paint is allowed
  - There cannot be compensation given or received for placement of the sign. An affidavit by the building owner is required.
- B. Eligible properties – properties in commercial, industrial, downtown zones or mixed use commercial zones, and properties with uses containing a community service use. Properties designated as a significant or contributing historic resource are ineligible.
- C. Size/placement regulations – A painted wall sign can comprise 40% of the surface area of a building wall. Non-painted wall signs (cabinet signs, banner signs, signs on wood panel, etc) are a separate type of sign that have their own distinct size regulations (typically 20% of a wall).

Staff requests that the Planning Commission consider these proposed rules for painted wall signs and provide direction to staff about changes to the rules. The proposed rules are an initial draft and can be further refined in preparation for adoption hearings later this year.

## ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	PC Packet	Public Copies	E- Packet
1. Report on Mural Funding / Arts Programming in Other Cities, and Associated Benefits	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

PC Packet = paper materials provided to Planning Commission 7 days prior to the meeting.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

E-Packet = packet materials available online at link to specific PC meeting date.

## Report on Mural Funding / Arts Programming in Other Cities, and Associated Benefits

### *Mural Funding in Other Cities*

#### *City of Beaverton:*

In Beaverton, the City has allocated between \$7,000 and \$10,000 annually for their mural program. Individual murals have ranged from \$3,000 to \$10,000 to create. The City requires a match by the applicant in cash or in-kind donations. Three murals have been installed since 2008. The City has also funded other initiatives such as a sculpture program.

Here are photos of the three murals installed in Beaverton:





*City of Portland:*

In Portland, the Public Art Mural Program managed through the Regional Arts and Culture Council (RACC) provides matching funds up to \$10,000 per approved project. Large scale murals can cost upwards of \$30,000 or more, depending on their complexity, size, location, donations and volunteers, and other factors.

While large scale and complex murals may cost \$30,000 or more, experienced mural artists have been able to install large scale murals in the region for less. Below is a mural that Larry Kangas finished at Parkrose High School. Painted on pelon in his studio and then affixed, the mural wraps around the building. At over 200 feet long, it is the largest mural in the Portland region. The entire out-of-pocket cost came to \$15,000 which was covered by RACC through a "Communities and Schools" grant. (Larry Kangas is the artist that painted the historic mural that was on the side of Chopstick's Express in downtown. He also painted the mural that is behind Bernard's garage. He worked with Milwaukie High School Students to plan and install both. He is interested in working in Milwaukie in the future.)

Here are photos of the Parkrose Horse Mural:





*City of Sandy:*

In 2011 the City of Sandy funded a mural to celebrate its centennial. It is sixty feet long and painted on panels (which includes 24 pieces of composite steel for hanging the work). Painting the mural on panels increased the cost but made the mural moveable should it be necessary to relocate it in the future. The cost was around \$30,000.

Below are photos of the left section and right sections of the mural:



**Typical Mural Budget**

Larry Kangas, one of the region's most prolific and well-known mural artists, has provided the following mural budget examples.



To do this 25' x 35' mural today on a local building

would cost: Design fee.....\$ 1500

Primer and masking....\$ 325

80 hours to paint .....\$ 8000

UV coating (applied) \$ 450

Lift .....\$ 1200

**Total                   \$ 11,475**

**This is assuming that there was no wall prep like scraping and sealing, and that the artist not get involved with the fundraising**







**To:** Planning Commission

**Through:** Steve Butler, Community Development Director & Interim Planning Director

**From:** Ryan Marquardt, Senior Planner

**Date:** October 2, 2013, for October 8, 2013, Worksession

**Subject:** Planning Commission Land Use Training – Development Review

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### **ACTION REQUESTED**

None. This is training for the Planning Commission.

### **BACKGROUND INFORMATION**

The Planning Commission has several new members within the last year. This training will ensure that all Commissioners have a basic understanding of Milwaukie's development review process. This will aid the Commission in making decisions on applications, recommending code changes, and being effective liaisons to the broader community about development in Milwaukie. Several trainings have been held in the past years on the Planning Commission's role in public hearings (ex parte contact, conflict of interest, hearing procedures, etc.). This training will mention the public hearing process, but will not directly address these topics.

Staff will present a brief overview of Milwaukie's development review process at the October 8<sup>th</sup> Planning Commission meeting. The goal of the training is to provide Planning Commission with a broader understanding of the review processes for all types of development within the city. Staff will make a 10 minute presentation and will leave as much time as desired by the Commission for questions and discussion.

The topics to be covered are:

- Zoning overview – zones; types of uses; overlays; common terms
- Milwaukie's Land Use applications – overview, frequently seen applications
- Review types – Type I, II, III and IV – public notifications, review process
- Building permit review – components of permit review; city departments involved; impact fees; public improvement requirements

There are no attachments to this staff report.