



## FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER  
4755 SW GRIFFITH DRIVE  
BEAVERTON, OR 97005

REGULAR MEETING  
JULY 10, 2006  
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of the Regular Meeting of June 12, 2006

06118 Liquor License: Change of Ownership - Express Mart

06119 A Resolution Expressing the City of Beaverton's Election to Receive Distribution of a Share of Certain Revenues of the State of Oregon for Fiscal Year 2006-2007, Pursuant to ORS 221.770 (Resolution No. 3865)

06120 Traffic Commission Issue No.: TC 593 - Removal of Two-Hour Parking Limit on SW Second Street Near Lombard Avenue

Contract Review Board:

06121 Waiver of Sealed Bidding - Purchase One Four Wheel Drive Front Loader From the State of Washington Price Agreement

06122 Bid Award - Rental of Construction Related Equipment

06123 Contract Renewal Between Chesshir Architecture P.C. and the City of Beaverton for the Storefront Improvement Program

PUBLIC HEARINGS:

06124 APP 2006-0004: Appeal of Town Square Too - Wal-Mart Approval (DR 2005-0068)

## ORDINANCES:

### Second Reading:

- 06114        An Ordinance Amending Provisions of Chapter Seven of the Beaverton City Code Establishing Regulations on Payday Lending. (Ordinance No. 4394)
- 06116        An Ordinance Amending the Comprehensive Plan (Ordinance No. 4187) Land Use Map and the Zoning Map (Ordinance No. 2050) Regarding Three Parcels Identified on Tax Map 2S10600 as Lots 101, 102 and 105. CPA 2005-0006/ZMA 2005-0008; 16655 SW Scholls Ferry Road. (Ordinance No. 4396)
- 06117        TA 2006-0004 (2006 Omnibus). (Ordinance No. 4397)

## EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

## ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.



## FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER  
4755 SW GRIFFITH DRIVE  
BEAVERTON, OR 97005

REGULAR MEETING  
JULY 11, 2006  
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

PUBLIC HEARINGS:

06124            APP 2006-0004: Appeal of Town Square Too - Wal-Mart Approval (DR  
2005-0068) - *Continued from July 10, 2006 Meeting*

EXECUTIVE SESSION:

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## DRAFT

BEAVERTON CITY COUNCIL  
REGULAR MEETING  
JUNE 12, 2006

### CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, June 12, 2006, at 6:38 p.m.

### ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Bruce Dalrymple and Cathy Stanton. Couns. Betty Bode and Dennis Doyle were excused. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Public Works Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop and Deputy City Recorder Catherine Jansen.

### PROCLAMATIONS:

Mayor Drake proclaimed June 14, 2006, Flag Day. He said the City, the Beaverton Elks Club and the Tualatin Hills Parks and Recreation District would be sponsoring a Flag Day Celebration on Saturday, June 17, at 1:00 p.m. in Griffith Park. He said for the past ten years Beaverton had celebrated Flag Day but it was one of the few cities in the country to recognize Flag Day; he invited everyone to attend.

### PRESENTATIONS:

#### 06094 Metro Participation in Purchase of Westgate Theater

Carl Hosticka, Metro Councilor, District 3, said he was there to present a check to the City in the amount of \$2 million, which represented the transfer of funds to continue the transit-oriented development project near the Beaverton Regional Center. He said three years ago Metro awarded Beaverton \$100,000 to study the Regional Center. He said in 2005 funding was approved to continue development of the Center and transit-oriented development; and in December 2005 the City and Metro signed an intergovernmental agreement in which Metro agreed to provide \$2 million towards the purchase of the Westgate Property. He said the area would continue to develop as mixed-use of residential and retail, so people could live, work and play in the same area without having to travel long distances in their automobiles. He presented the \$2 million check from Metro to Mayor Drake. He said the City has undertaken efforts far in advance of the rest of the region and Metro was proud to be partners in that effort.

Hosticka said Metro also completed funding allocations for the Nature in Neighborhood Grant Program. He said as Metro promoted higher density and more development in the Centers, it was realized that people need access to nature. He said Metro funded \$1 million over two years to provide neighborhood and local non-profits groups grants to develop natural areas within the Urban Growth Boundary and within their jurisdictions. He said in May, Metro awarded \$565,000 and some of that went to Beaverton Neighborhood Associations, including a grant for the restoration of Camille Pond and Golden Pond. He said Metro also completed other projects in partnership with the Tualatin Hills Park & Recreation District (THPRD) that serve this area. He said Metro was happy to continue the partnership with the City and was proud to see the results of everyone's efforts.

Mayor Drake thanked Hosticka and the entire Metro Council. He said Beaverton has evolved so quickly over the last 20 years; the population has doubled and the community has become very diverse. He said the citizens do value the mixed-use development downtown and are excited about the redevelopment. He said the citizens also value the partnership the City has with Metro concerning the Greenspaces Program and with the THPRD. He said there were not many people who have not enjoyed the results of these two partnerships and the park amenities that are managed well by the THPRD. He said the City and citizens appreciate these services.

Hosticka said he looked forward to working together on similar projects.

Coun. Stanton referred to the agenda for this meeting and said the Council would be considering the intergovernmental agreement with Metro on the construction excise tax. She said that would provide more grant funds for planning the new areas inside the Urban Growth Boundary.

Coun. Arnold said this week while driving her daughter to the Cedar Hills Cinemas, she realized that she spends 75% of her work and play time in that area. She said she also realized that area was a Regional Center. She said while that area might not look like the typical downtown with skyscrapers, it was now Beaverton's downtown. She said she really appreciated receiving this money to help the City continue its vision for this area.

Hosticka said people think Metro is usually just about regulation but in this case Metro was working to invest in the communities with the redevelopment of downtown and natural areas. He said this provides a higher quality of life for the people. He said Metro also has the Drive Less, Save More Project and he hoped the Councilors were following that in their travels.

Coun. Dalrymple said from having served many years on the THPRD Board of Directors, he always appreciated the great relationship they had with Metro. He said it was good to see the crossover at the City now that he was on the Council.

Mayor Drake thanked Hosticka for the presentation.

06095 Presentation of Shields and Swearing-In of Seven Officers to the Beaverton Police Department

Mayor Drake said in 1993 the City started formally welcoming the new police officers to the community so the citizens could see the officers who would be serving them. He welcomed the new officers to the City family and to the community.

Police Chief Dave Bishop performed the swearing-in ceremony for the following new officers: Derek Bell; Justin Haugen; Benjamin Howard; Rob Jolie; Jered Lutu; Frank Pohle; and Marcus Stanton.

Mayor Drake presented the shields to the new officers.

Bishop welcomed the new officers to the Beaverton Police Department. He said he and the officers appreciated the support of the families and friends who were present.

VISITOR COMMENT PERIOD:

John Addis, Beaverton, said the City has become entangled with religion by allowing a brick engraved with the name Jesus that was placed in front of the City Library. He said this was a violation of the First Amendment of the Constitution, the Establishment Clause; it was illegal and wrong. He said the remedy was to remove the brick or make it illegible. He said the City could remove the brick or defend itself against a law suit that would be costly.

Mayor Drake recalled that Addis spoke with the City Attorney last week. He asked the City Attorney to explain his conversation with Addis.

City Attorney Alan Rappleyea said as part of a fund raiser for the Library, engraved bricks were sold. He said the City policy is that names can be placed on the bricks, along with "In Honor Of" or "In Memory Of." He said Nancy Bader discovered one of the bricks had the name Jesus on it, so she went in the Library and requested a brick In Honor of Horace or Isis. The City said based on the policy the brick was approved. He said it was reported in The Oregonian. He said Addis' concern was that the City was violating the Constitution by establishing religion. He said the City's response was that Jesus was a name, and a common name in the Latino community, and because that one name is included among hundreds of other names, the City was not establishing religion. He said they checked into the background of the brick and the woman who purchased it did want to honor Jesus Christ, but normally the City does not check the intent behind the brick purchases. He said other names that have religious connotations, such as Mary or Thor, would also be allowed.

Rappleyea said the City was between two constitutional principals, the Establishment Clause and freedom of expression. He said the City steers a course between the two and does not attach any religious connotation. He said people are allowed to put what they want on the brick as long as it is limited to a name. He said Addis recommended removing the brick, but if the City did that, it could be sued for impinging on someone's right to freedom of expression. He said he believed the City's policy was defensible and the City had a pre-existing policy that tries not to offend anybody.

Addis said the First Amendment has to do with freedom of speech and the establishment of religion. He said everyone had freedom of speech rights. He said the Establishment Clause was a limit on government free speech. He said this was not a free speech issue; it was an establishment issue and the City would lose.

Mayor Drake said Addis had the right to express his position on this issue. He said this issue was discussed when this policy was established at the Library. He said the idea behind the bricks was to raise funds for the Library and the trust fund. He said this was not to impinge on anyone's freedoms or push anything specific onto anyone. He said if Addis felt compelled to act, he should do so. He said the City was neutral and was not advocating for or against anything of that nature. He said as the policy was established, the City remained neutral and the City was not going to censor what names were placed on the bricks.

Addis said people were within their rights to do that on their private property; the City was not allowed to do that.

Henry Kane, Beaverton, said he was a history buff and very familiar with the intent of the Establishment Clause. He said at that time in history, establishment of religion referred to official churches that were taxpayer supported and sometimes if people did not attend, they were fined. He said there are many instances in everyday life where there is a reference to God, such as on legal currency. He suggested to Addis that he consult a constitutional law expert and he was confident the expert would say this refers to an official church. He said an objection over a common name such as Jesus would not go far. He said if anyone wanted to sue the City he would intervene on the side of the City.

#### COUNCIL ITEMS:

Coun. Stanton said she would be attending a Transportation Symposium tomorrow and she was looking forward to hearing Mayor Drake who was one of the speakers. She said the Good Neighbor Center, a family homeless shelter that the City has supported through its social service funding program, just received a \$6,000 check from the Lake Oswego/ West Linn Welcome Wagon. She said she wanted to point out that other agencies were also supporting the programs that the City supports in its social service funding.

Coun. Arnold said the first Picnic in the Park at Autumn Ridge would be held on June 22, 2006. She invited everyone to come out and meet the Mayor and Councilors, share their concerns and visit with their neighbors.

Coun. Dalrymple congratulated Darwin Barney, a graduate of Southridge High School who now plays baseball for the Oregon State Beavers. He said the Beavers beat Stanford last night and were now headed to the College World Series in Omaha, Nebraska.

#### STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Stanton MOVED, SECONDED by Coun. Arnold, that the Consent Agenda be approved as follows:

- 06096 Liquor License: New Outlet - Sambu
- 06097 Approve Application and Adopt Resolution of Support for Metro Metropolitan Transportation Improvement Program Project Proposals (Resolution No. 3860)
- 06098 Compensation Changes
- 06099 Authorize Intergovernmental Agreement with Metro to Collect and Remit the Metro Construction Excise Tax and Retain an Administrative Fee
- 06100 Development Services Fee Schedule Amendment (Resolution No. 3861)
- 06101 A Resolution Approving Transfer of Appropriation Within the Building Fund to Provide Contracted Plan Review Services (Resolution No. 3862)
- 06102 Authorize Intergovernmental Agreement with Washington County Cooperative Library Services Regarding the Provision of Telephone Reference Service

Contract Review Board:

- 06103 Contract Renewal Between Unlimited Choices, Inc., and the City of Beaverton for the Adapt-a-Home Program
- 06104 Contract Renewal for Intergovernmental Agreement Between the Portland Development Commission (PDC) and the City of Beaverton for the Management of the Citywide Housing Rehabilitation Program

Coun. Stanton said she would continue to stress that the Metro Transportation Improvement Program (MTIP) strengthens the efforts to link transportation expenditures to implementing Metro's priority land uses, which are Regional Centers, Town Centers and industrial areas. She said she thinks the 125th Avenue Extension Project would qualify because it was right between the Town Center of Murray Scholls and the Regional Center of Washington Square. She said she hoped next year that the 125th Avenue Extension Project could go forward with the MTIP.

Question called on the motion. Couns. Arnold, Dalrymple and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

PUBLIC HEARINGS:

- 06105 Appeal of TA 2004-0012 (TC-MU Commercial Use Restriction Amendment)

Community Development Director Joe Grillo read a prepared statement defining the process for the public hearing.

Development Services Manager Steve Sparks reviewed the appeal before the Council. He said the text amendment before the Council was to amend one use limitation of the Town Center Multiple-Use (TC-MU) zoning district. He said the use in question was the limit on individual retail uses to a 50,000 square-foot footprint. He said the applicant had a proposal for a retail development over 50,000 square feet and forwarded a text amendment that would allow an alternative way to meet the Code. He said the text amendment was the subject of the appeal before the Council.

Sparks said the proposed text amendment was to *meet the Code with the 50,000 square foot limitation or exceed that 50,000 square feet with the City entering into a development agreement with that property owner*. He said as a component of the Planning Commission's review, the Commission reviewed a development agreement. He said the Commission's final action was a split vote to recommend approval of the text amendment and a unanimous vote on denial of the development agreement.

Sparks said the only issue before the Council was the text amendment; the development agreement was not under consideration. He said the text amendment would apply to two sites in the City. The first site was the former Progress Quarry now known as Progress Ridge and the second site was on Barnes Road, at the southern edge of the Teufel Nursery site that is currently being redeveloped and will be known as Willamette Ridge. He said currently the text amendment would not apply to any other sites in Beaverton. He said it could potentially apply to other areas if the City were to annex land that is in Washington County that has a Town Center Zone designation, or if in the future an area within the existing city limits is rezoned to a Town Center-Mixed Use District. He said staff recommendation was to reject the appeal and support and acknowledge the Planning Commission's recommendation of approval of the text amendment.

Coun. Arnold asked if development agreements could include more issues than the square footage of a project, such as design aspects.

Sparks said an agreement could include design aspects.

Coun. Arnold asked if the agreements do include design aspects, would they still have to go back through the regular review process before the Planning Commission or Board of Design Review (BDR).

Sparks said the development agreement was authorized as a land-use tool by State statute and it was considered a land use decision. He said the State statute does not provide a detailed process for the agreement but since it was a contract, the ultimate decision authority would be the City Council. He said the Code was silent as to a process for reviewing development agreements. He said staff decided, with the Mayor's approval, to send this development agreement proposal to the Planning Commission to advise the City Council on how to proceed. He said if this text was adopted, there was nothing in the City Code to require that a development agreement go to the Planning Commission or to the BDR. He said it could conceivably go to the Council for a decision, or the Council could refer it to the Planning Commission or the BDR.

Coun. Arnold asked if that meant that during the middle of reviewing a development agreement, the Council might send the agreement to the Planning Commission or BDR for their opinion.

Sparks said that would be up to the Council to decide.

Coun. Arnold asked if there was a not a clear process for the development community to follow. She asked about noticing requirements.

Sparks replied there was no clear process in the Code and that included noticing requirements for development agreements. He said in this case, staff considered it a Type 3 land use application and did the broadest notification of 500 feet. He said under State statute the noticing requirement was 100 feet; all other noticing requirements were the same as the City Code.

Coun. Arnold said that since the City has no process, at a minimum the City would have to follow State statute and notice at 100 feet for meetings that would go back and forth between Council and Planning Commission or BDR.

Sparks said that was correct, but as a matter of practice the City would follow its Type 3 noticing process because it was setup to be done this way.

Coun. Arnold asked if the person submitting the application would pay for the noticing.

Sparks said that was correct; noticing was included in application fees.

Coun. Arnold asked if the Council crafted a development agreement that included design components, what that would mean in terms of going back to the Planning Commission or BDR.

Sparks said the Planning Commission also had these questions regarding how development agreements work. He said a development agreement decides design issues prior to returning to the decision making body for design review or conditional use. He said the City was providing an assurance to the property owner that they could do the project in concept; that gives the property owner or developer a greater level of confidence to proceed through the land use stage. He said this could limit the review of the decision-making body, depending on the conditions in the development agreement. He said the development agreement would have to comply with the Code, unless the agreement waived Code requirements such as parking or setbacks. He said it is possible that a development agreement could tie the hands of the Planning Commission or BDR.

Coun. Arnold asked if a developer would have to present the same evidence to the Planning Commission or BDR.

Sparks said the developer would still present the entire proposal package to the Planning Commission or BDR. He said the proper board would review the proposal to ensure compliance with the Development Code, the Comprehensive Plan and the development agreement. He said this added another review level.

Coun. Arnold said the development agreement could take away some of the discretion currently provided to the Planning Commission and BDR. She asked if the developer would still have to do the traffic studies and tree plans.

Sparks said that was correct. He said there was a minimum content for development agreements as specified by ORS. He said there was no maximum in terms of what was included in a development agreement. He said a lengthy development agreement (50-60 pages) could be submitted that included a detailed site plan. He said that could severely limit the review of the decision-making body.

Sparks said in his experience, development agreements were usually shorter (20 pages) that mostly consist of legal language and the substantive land use sections are three to five pages long. He said property owners and developers are looking for a level of assurance that what they are proposing can be done. He said it could push the Code limits, but they are trying to determine if this is a good project in concept. He said that the agreements do not completely obviate the BDR's or Commission's role in reviewing a land use application, but conceivably it could.

Coun. Dalrymple asked staff to outline the process through which the TC-MU zone was established for these two sites, with specific attention to the Progress Quarry site.

Sparks explained in 1997-98 the City entered into a consulting contract to do a planning study of the Murray Scholls Town Center area. He said that area along Barrows Road/Scholls Ferry Road/Murray Boulevard was designated as a Town Center on the 2040 Growth Concept Map by Metro. He said as part of the City's Title 1 compliance, the City had to implement the Multiple Use zones. He said as part of this two-year study the boundaries were set for the Town Center. He said the Comprehensive Plan and Development Code were amended in late 1998 early 1999, and the development in that area was consistent with the vision developed in that planning process. He said there were several well-attended open houses to review these plans and extensive public involvement. He said the changes were adopted in 1999 with strong public support. He said the Teufel Nursery site was annexed in 2003 and at the time of annexation the Washington County Transit Oriented zone was converted to the most similar zone which was Town Center.

Coun. Dalrymple confirmed with Sparks that these changes came about with a great deal of community involvement. He asked if there had been the same level of community involvement regarding the proposed text amendment.

Sparks replied that the two cases were totally different. He said the notification area for the Town Center study was much larger than the notification area for the text amendment. He said in terms of participation, he thought the text amendment had the same level, if not more involvement than the Town Center. He said the citizens from the Windsor Park neighborhood were very involved during the planning study and through the development application and text amendment.

Coun. Dalrymple asked if there was any other reason for the City to consider a text amendment to the TC-MU designation if not for this application.

Sparks said it was possible for the property owner to have submitted a request for a Zoning Map Amendment. He said he did not think staff would have supported a zone change given the extent of work involved in establishing the current zone. He said there was also a question regarding the City falling out of compliance with Title 1 of the Urban Growth Management Functional Plan. He said he would hesitate to speculate about the zone change possibility. He said while the Planning Commissioners understood the intent of having a firm limit of 50,000 square feet, they felt having the flexibility for a larger footprint was a useful tool in considering development of the Town Center zone. He said that was why they supported the text amendment.

Coun. Dalrymple asked if the Town Center designation could be modified instead of doing a text amendment. He said the modification could be more specific versus less specificity but allowing for a development agreement. He said he was wondering if there was another way to look at this, such as a permitted use, rather than the ambiguous use of a development agreement.

Sparks said there could be amendments to eliminate the use restriction, make the size limitation higher, or allow a size deviation such as ten percent (10%). He said either of these could provide flexibility in building size.

Coun. Dalrymple said in his experience as a developer, development agreements were after-the-fact to ensure that decisions were well documented and agreed to by everyone. He said this proposal was different from what he was used to seeing.

Coun. Stanton confirmed with Sparks that the creation of the TC-MU zone was done as a Comprehensive Plan amendment. She asked if that was city-wide notice.

Sparks said he would have to check to see if it passed the threshold of Ballot Measure 37 (BM 37). He said BM 37 requires that if the change negatively impacts the value of someone's property, notice will be provided city-wide or to the affected area.

Coun. Stanton noted on March 8, 2006, the Commission voted unanimously to have a work session on this text amendment and how it would align with the Development Code. She asked if staff had scheduled the work session.

Sparks said typically work sessions were held at the beginning of the year, so it was anticipated this would be held in January, 2007.

Coun. Stanton noted the Commission also voted unanimously to deny the development agreement, which was not being considered at this meeting. She said she assumed the applicant would appeal the denial of the development agreement.

Sparks replied there was no appeal of the development agreement.

Coun. Stanton asked if the Council was only considering Exhibit A of Land Use Order 1853, which stated: *"the City and the applicant could enter into a development agreement pursuant with State statute which assures the City that the applicant's proposal will be consistent with the purpose for Multiple Use Districts set forth in Code Section 20.20.1 as more specifically applied in the TC-MU District."*

Sparks replied that was correct.

Coun. Stanton asked Sparks to paraphrase Metro's April 6, 2005, letter (page 819 of the record).

Coun. Arnold read the sentence in the third paragraph of the Metro letter that stated *"While the proposed text amendment for the Town Center - Multiple Use zone is not in conflict with Functional Plan Title 6, it appears it may be inconsistent with the Murray Scholls Town Center Master Plan."*

Sparks said in the letter Metro stated it did participate in Beaverton's planning process for the Town Center Master Plan and discussed what the City envisions for Town Centers. He said Metro also acknowledged that Town Centers need a retail anchor that will advance the continued development of the Center to a prosperous stage, complete with retail, employment and residential uses. He said the letter also states there is an opportunity for the City and Metro to work together to achieve a pedestrian-friendly mixed-use development. He said Metro did not make a statement opposing the project.

Coun. Stanton asked if any other jurisdictions had changed their Town Center Code designation to allow for a building larger than 50,000 square feet.

Sparks said each Town Center was different and not all have size limitations. He said the centers have different use restrictions to reflect different context and standards. He said he thought some of the centers would allow buildings larger than 50,000 square feet though he had not specifically researched other cities' codes. He said one example of a change was the Cedar Mill Town Center; it did not have a use restriction but with adoption of the City Code it will have a use restriction.

Coun. Stanton reiterated that this winter a work session would be held with the Planning Commission on this text amendment and how the Development Code could implement the concept of allowing a building up to 90,000 square feet.

Sparks said development agreements could apply to anything in the Code though ORS states the agreements cannot be inconsistent with the Code. For example, if office uses were prohibited in a zone, a development agreement could not be used to allow them. He said if the City had development agreements as a tool in the Code, it would specify what the agreements could be used for, such as development or parking standards. He said that would be part of the discussion with the Planning Commission.

Coun. Stanton said she felt approving this text without tying it to any criteria and a development agreement, was putting the cart before the horse. She said she would need to know the parameters before she would approve allowing those parameters to be the model. She said during the hearing she had hoped to hear from the applicant and staff why it would be okay to approve a mechanism that is not constructed as a tool.

Sparks said the Planning Commission struggled with that question. He said the Commission and staff felt that since the development agreement and the Code applied to two property owners in the City, they had a level of comfort in going forward with the text amendment as proposed, using approval criteria consistent with the Multiple Use purpose. He said there could be other approval criteria that would be appropriate for

reviewing a development agreement, but they are not part of this proposed text amendment.

Coun. Stanton asked if the text amendment were approved, would a development agreement materialize without any criteria or would the applicant wait until the City developed criteria before submitting an agreement.

Sparks said if the Council approved the text amendment, 30 days from the date of the second reading of the ordinance the amendment would become effective and any property owner within the TC-MU zoning district could propose a development agreement. He said the only approval criteria would be is it consistent with State statute and have the required procedures been completed. He said in going through that process, the City would have to make a decision that it is consistent with the purpose of Multiple Use District set forth in Code Section 20.20.1. He said this would come to the City Council, unless the Council wanted the Planning Commission to review it first.

Coun. Stanton asked if this would be like starting all over again.

Mayor Drake said if this was approved as recommended, the citizens would have the opportunity to help shape the development. He said if it was not approved, the applicant could still proceed with a development agreement. He said in this way the developer and the neighbors would have the security of knowing what was negotiated and being developed. He said The Round was a great example of a development agreement that set parameters and eventually The Round was developed within the parameters. He noted the development agreement was not before the Council as it was denied by the Commission. He said even if the Council granted the appeal, the developer could return under different parameters with a development agreement. He said this would not make a development agreement go away but it would restrict the maximum size of the footprint of the building.

#### APPLICANT:

Barry Cain, President, Gramor Development, Tualatin, applicant, introduced himself and his attorney Steve Abel. He said the Streets of Tanasbourne was built in a Town Center and in that Center, the Meier & Frank store was 160,000 square feet. He said in this Town Center Fred Meyer was the perfect anchor because there were many grocery stores in that neighborhood but no other retail stores. He said people were driving long distances to other retail stores.

Steve Abel, Stoel Rives LLP, Portland, attorney for the applicant, said they were endorsing the Planning Commission's and staff's recommendations to approve the text amendment. He said this text responds to an existing State statute that allows development agreements. He said he used development agreements in several circumstances in other jurisdictions for projects that were successful for the cities, the developers and the residents. He said the text amendment would allow a developer, through the use of a development agreement, to exceed the 50,000 square foot limitation that exists in the Zoning Code. He said the Planning Commission testimony demonstrated why larger format stores were the only way to succeed in some Town Center locations. He said they believed that was the case in this Town Center. He said in this Town Center, if they were not able to build a larger format store, a series of

50,000 square foot buildings could be built. He said the Council needed to consider if that was more or less intrusive, or if it makes a difference if there is one building versus multiple buildings. He said the Floor Area Ratio requirements of the Town Center demand that square footage; the square footage does not arise from anything other than the Code's demand for minimums in the Town Centers. He said this was a simple amendment that had little to do with anything but responding to the Code and doing it in a way that is consistent with real market conditions and real developers who have a tenant (Fred Meyer) who is willing to build in this location.

Abel said he thought the Planning Commission missed some relevant history of this project. He said the process began two years ago in a series of meetings with the developer, the development team, and the City staff. He said this two-year process involved several meetings with staff where project details were reviewed and many modifications were made to the site plans, elevations, studies, public/open spaces, design and street widths. He said that was in anticipation of using a development agreement and going through this process. He said he thought they were 98% done with that process. He said staff might disagree because there were some elements that were not satisfied with regard to the loading areas behind the building. He said he had every reason to believe that staff had consulted with the appropriate individuals within the City to make determinations about the appropriateness of this particular development.

Abel said after its review, the Planning Commission either made no resolution with respect to the design or the proposal, or it made some resolution (7:0) that was not appealable, so it was not a final decision. He said he was disappointed in the process. He said they worked in good faith with City staff for two years and the Planning Commission reviewed the project. He said to now say that the project cannot be discussed with the Council and the only matter before them was the limited question of the development agreement text amendment was hard to take. He said in many ways there was no process because when they started he believed the text amendment was not needed to do a development agreement in the City; the State statute demands that cities go through the process of development agreements when they are necessary. He asked the Council to make a decision on whether or not the text amendment is appropriate, and immediately begin the process of finishing the approval of this application that has been before City staff constantly for the last two years and give it fair consideration. He said without fair consideration the City has not given Gramor or Fred Meyer their fair day in court and the City has a significant procedural issue.

Mayor Drake asked if the 50,000 square foot limit would not allow a two or three story building with a 50,000 square foot pad, joined with a breezeway or another pad.

Abel said the City would determine what structural elements constitute the square footage and that may depend on the Code and how Floor Area Ratio is calculated. He said there were formulas through which that could be done. He added this comes from the City Code provision that addresses restrictions of uses on 50,000 square feet. He said their original thought was that because it was the kind of complex that Fred Meyer wanted to build, that each one of the uses that constitutes Fred Meyer and its adjoining retail facilities was less than 50,000 square feet.

Mayor Drake asked if a developer could do two 50,000 square foot floors.

Abel said that might not be possible based on the City's interpretation of the Code. He said under the City's interpretation he thought separate 50,000 square foot buildings could be built on that site to add up to the same square footage that was proposed in the Fred Meyer project.

Mayor Drake said the current Raleigh Hills Fred Meyer has two separate buildings. He said if neither of those buildings was over 50,000 square feet, the developer could still do that project under the current Town Center Plan.

Abel agreed that was possible. He said that while two or three 50,000 square foot buildings could be developed, the risk involved in retailing today needs to be considered. He said Fred Meyer did not wish to construct a two-story building. He said retail was a very competitive business and it was hard to have two buildings and have them work the same way as a single building.

Coun. Arnold asked Abel to clarify his comment regarding being able to have a development agreement without this text amendment.

Abel said the State statute states that cities and counties have the ability to enter into development agreements, and has a series of constraints on how the agreement is put together. He said his opinion was that this does not have to be incorporated into the City Code in order give power to the City under that statute.

Coun. Arnold reiterated that in Abel's opinion the City could initiate a development agreement regardless of the Code per State statute.

Abel said that was correct although the City would have to follow State statute regulations. He said the process they entered into with the City was for a limited modification to the Town Center regarding the 50,000 square feet. He said the City's response was that if they wanted to work with the size limit, they would need to use a development agreement so that the developer could show that the purpose for the Town Center was better achieved for that modification. He said the development agreement was customized for the size aspect only.

Coun, Arnold asked if the City Attorney could respond to that statement.

City Attorney Alan Rappleyea said he agreed with Abel that they all worked long and hard on this project. He said the applicant worked hard to address the City's concerns. He said he agreed that the City did not need to implement State law into the Code before the City has a development agreement. He said if the City wants to vary any Code provisions, there has to be a method for doing that. He said a development agreement cannot vary a Code provision. He said the agreement must meet the requirements of the Code and that was what they were trying to do with this text amendment. He said the Code has a 50,000 square foot requirement; they have to either meet the Code standard or do a development agreement. He said there was some flexibility with the development agreement but the agreement cannot violate the provisions of the City Code.

Coun. Arnold asked for further detail as she felt said she was hearing opposite views from Abel and staff.

Abel clarified that the only way to modify the provision for the square foot limitation was to do the development agreement text amendment being requested. He said the issue is does the size limitation make sense or should there be flexibility in the Code to allow an alternative approach if real market conditions demand it.

Coun. Stanton asked Abel if he said that at any time Gramor could bring this forward with a Conditional Use Permit and bypass the text amendment.

Abel said under the City's interpretation of the 50,000 square foot limitation means (that it goes to use and not a series of sub-uses) a conditional use would not allow them to develop the Fred Meyer store or any use larger than 50,000 square feet.

Coun. Stanton said the applicant kept referring to Fred Meyer. She said there was no guaranty that it would be Fred Meyer.

Abel said the development agreement has Fred Meyer as the signatory to the provisions and it is contractually bound.

Coun. Stanton said she read that Fred Meyer would be the record holder through construction. She said as she read it, that meant Fred Meyer or Gramor could sell their spaces to someone else. She asked if that was right.

Abel said Fred Meyer has agreed to open the store. He said from a developer's standpoint that was the only guarantee they ever had on a project; they had no control over what changes occur in the future. He said Gramor had agreed to stay involved for at least two years after construction.

Coun. Dalrymple asked Abel for clarification regarding his point about use and the various uses that make up the component of the store.

Abel read the Code provision that "*individual uses larger than 50,000 square feet are not permitted.*" He stressed it was the use that was restricted not the building size.

Coun. Dalrymple asked if an apparel department, grocery department and a deli department were three separate uses within one building.

Abel said that was an aggressive formulation. He used the example of a garden center that was not an interior department; the question was if that was a separate use for the purposes of the calculations. He said the City's interpretation was that Fred Meyer was a single use and the garden center was part of that single use. He said they could accept this interpretation if they could figure out how to work with it.

Cain said Fred Meyer does not have any department over 50,000 square feet; they were a department store made up of smaller stores owned by the same people.

Coun. Dalrymple asked Sparks if a Safeway store that has several different uses under one roof (grocery, pharmacy) was considered one use.

Sparks replied that was one use.

Coun. Dalrymple asked if the State statute says that the approved use through a development agreement could be three to four times greater than the maximum allowed within the zoning district.

Abel agreed that the State statute does not say that. He said the statute defines the development agreement; states that it is allowed in cities or counties, and it gives cities have the contractual ability to work with a developer, so both sides are certain regarding what is being developed. He said the agreements were excellent tools for both sides.

Coun. Dalrymple said he agreed they were excellent tools but he did not agree with giving too much leeway around the original intent of the zoning district.

Abel responded that that was why the development agreement text amendment was worded as it was; to point back to the purpose for those districts. He asked how someone could build a rational Town Center with the Floor Area Ratio, restricted parking and size limitation. He said they do not believe it would be built.

Coun. Dalrymple said if they felt the Center could not be built, what was their opinion regarding a zoning amendment, so they do not get the cart before the horse.

Abel said when the City first began the process of the Town Center mapping and planning in the late 1990's, Gramor was the developer of the property at Murray Scholls Town Center. He said he thought everyone would agree that was a good development. He said to make that development occur, the property had to be freed from the Town Center and its requirements. He said under the existing Town Center provisions; they do not believe the Murray Scholls Town Center development would have occurred.

Coun. Dalrymple said that was a good response because that was a viable development.

Cain stated, in response to previous comments about uses, that Safeway and Albertson's were grocery stores in their entirety. He said Fred Meyer was a grocery store plus many other department stores, such as hardware, home supplies and sporting goods. He said these were allowed retail uses in the City Code.

Mayor Drake responded that he can shop in all the departments in a Fred Meyer store and pay in one area, so it was still one Fred Meyer store.

Cain agreed and said two years ago they decided not to go through the zone change but instead go through the development agreement process. He said for many months they negotiated the draft development agreement and thought they had an agreement and text amendment everyone liked. He said now they've killed the horse and were left with the cart and he wished the Council could look at the cart because it was beautiful.

RECESS:

Mayor Drake called for a brief recess at 8:21 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 8:32 p.m.

APPELLANTS:

Appellants Sara Yahna and Kim Levine, Beaverton, introduced themselves and thanked the Council for the opportunity to present their concerns about the text amendment. Levine said they would first cover the criteria mentioned in their appeal and then they would elaborate on their concerns about the text amendment.

Sarah Yahna said the first criterion was Criterion 3 - The proposed text amendment is consistent with the provisions of the Metro Urban Growth Functional Plan. She said they were not opposed to retail commercial development at this site and the overall square footage was not an issue for them. She said their concern was that the proposed text amendment would modify the existing TC-MU Code. She noted the City created the Murray Scholls Town Center Master Plan under Title 1 of the Functional Plan. She said one of their concerns under Criterion 3 was that the proposed text amendment may be inconsistent with the Murray Scholls Town Center Master Plan, as noted in Metro's April 6, 2005, letter (in the record). She said in reference to Title 6, the applicant's argument that it is necessary to provide an anchor store is irrelevant because the TC-MU Code currently allows for an anchor store. She said there has been no compelling evidence that an anchor store must be larger than 50,000 square feet. She said there were many Town Centers where the anchor store was 50,000 square feet or smaller. She repeated there was no need for the text amendment because the Code allows for an anchor store to be built on this site at 50,000 square feet or less. She said Criterion 3, Title 12, Protection of Residential Neighborhoods, was not addressed by the applicant in the application. She said they believed the protection of the neighborhoods was in jeopardy due to the increased noise and crime associated with a single store size larger than 50,000 square feet.

Yahna noted Criterion 4 was that the proposed text amendment was consistent with the City's Comprehensive Plan. She said Chapter 2, the Public Involvement Element, was very important to the appellants. She said the text amendment does not provide process and procedures for public involvement. She said the development agreement was too ambiguous and would not provide the public with appropriate understanding. She referred to the Planning Commission Minutes of March 8, 2006, (page 123 of the record) where Chairman Johansen stated that "*Adding the development agreement approach has the potential to add an additional level of complications that could threaten even the most diligent member of the public's ability to understand how to engage them in the process.*" She played a portion of the recording from the Commission's March 8 meeting that she felt better relayed how much discussion, thought and concern there was about the text amendment. She said this was a split decision and there was a great deal of concern (page 129 the record). She said the public cares about this issue; the Neighbors SW Neighborhood Association Committee (NAC) voted unanimously to support the appeal and oppose the proposed text amendment. She said they gathered 68 signatures from Beaverton residents supporting the appeal (in the record). She said there were numerous letters and e-mails supporting the appeal and also over the course of many months relating to this topic (in the record). She said they had high citizen turnout at the Commission hearings.

Yahna referred to Criterion 4, Chapter 3, the Land Use Element, Goal 3.5.1, Policies B, C, D, E, F and H, dealing with making sure the environment is pedestrian friendly. She said they do not feel that a store of this size with associated parking would allow for a pedestrian-friendly environment. She said Goal 3.7.1, Policy A, also relates to having a pedestrian-friendly environment.

Yahna referred to the purpose of a text amendment and said that the intended spirit of how a text amendment should be used must be considered. She said they understood the purpose of a text amendment was not a criterion. She said the text amendment application does not meet any of the reasons stated in the purpose. She read the purpose statement as follows: "*Such amendments may be needed from time to time to reflect changing community conditions, needs and desires, to fulfill regional obligations, and to address changes in the law.*" She said none of the reasons were applicable to the proposed text amendment. She said the purpose of a text amendment was not to satisfy a developer's or property owner's preferences or wants. She stressed the defined purpose has not been met.

Yahna also noted there wasn't a development agreement criterion in the text amendment, as noted by the Council earlier. She agreed with the Council that this was putting the cart before the horse and this was important to the appellants. She said there was nothing that stated there would be minimum variance to the Code, there was no evidence that the development agreement was truly necessary, there was no defined process for public involvement, and the Commission was very concerned about the text amendment and struggled with the vote. She said they believed the only reason the text amendment was being considered was because of the developer's current application. She noted previous comments regarding alternatives, such as changing the zone designation. She said they felt the best alternative solution was to build a Town Center that meets the TC-MU Code. She said they believe that is a viable solution and there are many examples of that in the region. She said because this developer cannot build such a development, or does not have a client that is willing to do so, was not sufficient reason to forego the TC-MU Code. She said this Code was well thought out and well planned, and they believe it could be successfully implemented.

Kim Levine said the community wants a Town Center. She said they have filled the Council Chamber before with neighbors and concerned citizens who care and want to be involved in the process. She said when they heard that potentially they might not be involved in the process, they could not believe that would happen. She said in this instance there was no process for community involvement. She said they signed on for a Town Center and they were excited about that project. She concluded this was not what they got.

#### SUPPORT OF APPEAL

Alton Harvey, Sr., Beaverton, Vice Chair, Neighbors SW NAC, said he was representing the NAC Board. He said the appellants met with the Board several times and expressed their concerns. He said the NAC was not against the project, but they were not clear on what the final size of the development would be and there was no clear understanding of where the developer was headed on this project. He said the Board voted unanimously to support the appeal.

Coun. Arnold said when the developer did the first neighborhood review, the NAC voted to support the project. She asked Harvey why that had changed.

Harvey said when the project was first presented it was very impressive. He said the maximum size of the project was not brought up at that meeting. He said at the next meeting the project size was different, so the NAC wanted to take another look at the development. The NAC went out and canvassed the community to get further input. He said the neighbors all met and reviewed the project with the appellants. He assured Coun. Arnold that the entire neighborhood was considered and included when the project was reviewed.

Walter Gorman, Save Cedar Mill Committee, Portland, said he was President of Community Participation Organization (CPO) No. 1 when the Town Center Plan for Washington County was developed between 1996 and 1997. He said during that time they had many meetings, each of which was attended by 200 to 450 people. He said the County area was not very involved in creating the City's Town Center Plan. He said there is a problem in that the City and the County each have a piece of the Town Center site. He referred to Beaverton Development Code (BDC) 40.185.15.1.C.4 - Compliance With Other Criteria (page 27-28 of the record) and said the applicant failed to provide actual evidence demonstrating compliance with any of the criteria under Section 3 of the Teufel Ordinance.

Gorman reviewed three criteria the application had not met. First, he said, the applicant did not meet the requirement for interaction with other users of the site. He said because this was a split site (Teufel Nursery/Cedar Mill Town Center), it was designed to be a small, community-oriented development of small stores, small restaurants and specialty stores. He said if this text amendment were approved, one side of the Town Center would have no size restrictions and the other side would have a 50,000 square foot limit because it is under the County Code. He said the second criterion that was not met was to provide the public with more certainty regarding future development of the property. He said this would do the opposite because the size would not be known and more uncertainty would be created. He said the third criterion that was not met was the development of a plan that would produce a high degree of urbanism on the property. He said instead the proposed development would produce a high degree of super urbanism. He said a big box store would block out the neighborhood connections, pedestrian connections and access to transit. He said the other criterion that was not met was listed in the record.

Gorman referred to the Comprehensive Plan and noted Goal 3.7.1 requires that Town Centers develop in accordance with the community vision. He said the community vision was developed ten years ago and it was in the Cedar Mill Town Center Plan that was produced by the County in June 1997. He said this was used as a guideline to develop the Cedar Mill Town Center for the coming decade. He said it was developed with the community and was intended that the community would always be involved. He said they did not want a development agreement that isolated the community from the project. He said the applicant and the City failed to consider the Transit Oriented-Retail Commercial Zone that applied to the site when it was within the County's jurisdiction. He said the allowance of big box development contradicts the purpose and requirements of the County's zoning.

Coun. Arnold thanked Gorman for providing the documentation ahead of time so that Council had time to review it. She said it was very clear.

Jason Yahna, Beaverton, said he supports the appeal and opposes the amendment. He said this did not match the spirit of what Gramor was first trying to do.

Brian Boe, Beaverton, said he was frustrated with the ten-year process. He said he was involved from the beginning and there was a great deal of community involvement. He said the project was voted down because the community did not want a big box store. He said the frustration for everyone was that there seemed to be no other alternatives. He said the developer wants to bypass the current system that allows community input and the system was ignored until the end. He said he invited Gramor to a meeting at his home to present the project. He said by then it was too late to help Gramor develop a project that the neighborhood would have supported. He said the community supported development in that area but there were already problems with traffic that would only get worse with a big box development. He said 50,000 square feet was just the footing and he was told it could be a two-story building and a large parking structure.

Boe said the neighborhood was densely populated and very active. He said neighborhood safety would be jeopardized by bypassing the current system. He said he felt they were being bypassed again and he felt the rug had been pulled out from under them, so now they were trying to prevent a disaster. He said he disagreed with the Planning Commission's decision. He said the residents spent a great deal of time on this over the last ten years and were not paid for that time. He said applicant commented on his frustration after working for two years on this project; he noted the applicant was paid for his work. He noted most of the residents of neighborhood signed the petition opposing the project (in the record). He said if Fred Meyer built a 50,000 square foot, two-story store, the community would support them. He suggested the developer be more creative or seek other stores.

Coun. Stanton asked Boe which meetings he attended.

Boe said he attended many meetings including those of the NAC and the Windsor Park Homeowners Association, of which he was once President. He said Windsor Park was the only single-family home development that borders this project. He said they have been involved with this for ten years and the neighborhood does not support the project.

Henry Kane, Beaverton, asked that the record be kept open for seven days after the close of testimony, pursuant to ORS 197.763(6). He said denial of his motion would be prejudicial and he needed seven days to respond to new issues of fact and law that were raised at this meeting. He said CPO No. 4 opposed this development. He said if this was approved, the applicant would get approval for a 151,000 square foot store; that is three times the existing size limit adopted by Council in 1999. He said he needed seven days to list the cases in which the LCDC (Land Conservation and Development Commission) sued public bodies for violating the State land use laws. He said a public body could not use a development agreement to get around its code. He said there was no procedure for public involvement in this proposal and the public should be involved. He said Metro spent thousands of dollars to setup Town Center zoning. He said Metro and LCDC both say this is wrong. He said the people come first.

Mayor Drake asked the City Attorney to comment on Kane's request for an extension.

Rappleyea said the request for an extension was mandatory after the initial evidentiary hearing. He said this issue had several evidentiary hearings before the Planning Commission. He said the idea behind the extension was that if new evidence was presented, an extension was granted to give sufficient time to address the new evidence. He said this was not the initial evidentiary hearing; there were two or three at the Planning Commission. He said if new evidence was brought up an extension could be considered but he did not hear any new evidence. He said Kane requested additional time to provide a list of legal cases. He said Council could extend the hearing if it wished to do so, but it was not required.

Steve Farley, Beaverton, said he supported the appeal and opposed the text amendment. He said most of his points were already covered by several people. He said he was encouraged to see the Council spent a great deal of time reviewing this proposal and had good questions. He said tonight's turnout was a small representation of the many people concerned about this text amendment. He said many feel the current zoning worked fine. He said the proposed changes could have a significant and detrimental effect on the area, especially in relationship to safety. He asked the Council to support the appeal and leave the zoning district as it is. He asked that if additional action is needed, that the developers work within current guidelines and the Code. He said the developers know the Code and are trying to change it to their benefit.

Coun. Arnold responded to Boe that there were many letters from people in the staff report. She clarified for the audience that this was a legislative action and in legislative matters the number of citizen comments can be considered in the decision making process. She said in land use matters only comments that address criteria can be considered and Council cannot consider the volume of opposition in its decision. She said the speakers did a great job in referring to criteria.

Peter Christianson, Beaverton, said he lived in the oldest house in Windsor Court. He said the neighborhood residents feel the social compact and trust has been severely compromised by what has occurred. He said democracy was about participation and getting results when appropriate. He said the developer has said the Town Center cannot work with this size limitation. He said logically that makes no sense. He said the Planning Commission Chair said some of the centers work well and some don't. He said if there were no 180,000 square foot stores then that is not the problem. He suggested the developer look harder. He said if this text amendment passes, there would be no end to exceptions. He said if the Town Center concept makes no sense, do not add a text amendment; change the law.

Joe DeMartino, Beaverton, said he has lived in the Windsor Park neighborhood for 11 years. He said they approved the development presented by the applicant; they were thrilled and excited about the Italian Villa drawing. He said there was not sufficient road infrastructure to support a big box store. He said that was why they were excited about the smaller development that would promote pedestrian and bicycle traffic. He said he would prefer a smaller development to reduce vehicle traffic.

There was no one else who wished to testify.

## REBUTTAL

Cain said he believed the project they developed was the best for that site. He said the appellant stated they were not against the amount of retail required. He said what they were putting on that site was the amount of retail required. He said there was a Floor Area Ratio requirement of .5, that was very high, and initially it was 3.5. He said the appellant said with big box development there was more crime, safety was more of concern, and more parking was required. He said that was not true. He said Fred Meyer was not a big box store; Fred Meyer was a neighborhood department store and it has a two-to-three-mile radius for traffic. He said they met with many neighborhood associations who supported the project, including the Neighbors SW NAC and at that time the NAC voted to support the project. He said they did not meet with the Harlequin Drive group and that group was now opposing the project. He said when they met with this group, their main concerns were the cut-through traffic between Barrows Road and Scholls Ferry Road, the noise and speed on Barrows Road, and their desire for a path around the lake. He said some did not want Fred Meyer. He said all Town Centers have to be considered differently. He said this was a good store for this area, the pedestrian environment was superior to any project they have done, and the amount of traffic would not be any greater if the store was contained in one building versus many smaller buildings.

Coun. Stanton asked Sparks if Fred Meyer falls under retail trade as noted in the Code.

Sparks replied that it did.

Coun. Stanton referred to the use restrictions under Code Section 20.20.30.2.D.d, e and g, and asked if there was anything that allowed individual uses larger than 50,000 square feet to go through the Conditional Use process in a Multiple Use District.

Sparks said under "D," the Code allows more than 50,000 square feet, if it is bounded by streets. He said in this project a building could be larger than 50,000 square feet, provided it is more than one story.

Coun. Stanton asked if the Code allowed a building with a 50,000 square foot footprint that would have breezeways or bridges extending to another building.

Sparks said staff would look at this from a planned perspective; if the total footprint was more than 50,000 square feet, that would not meet the use restriction. He said the footprint would not have to be all foundation.

RECESS:

Mayor Drake called for a brief recess at 9:35 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 9:43 p.m.

Mayor Drake asked if there were any questions for staff or brief comments. He reminded Council that this applies to both town centers.

Coun. Stanton referred to Code 20.20.30.2.D.3.e and asked if the 50,000 square feet was the footprint or an aggregate.

Sparks replied staff has interpreted this Code provision from its inception as a footprint, not an aggregate. He said when the Code was developed in the late 1990's the City and neighborhood were concerned about big box development and the stereotypical development for big box has been one single-story building that sprawls out. He said they were trying to develop ways to be responsive to the property owners demand for an anchor tenant of something more than 50,000 square feet and that was where the grid of public or private streets was developed. He said this would still give the feel of the Town Center that they were trying to develop and they could have more than 50,000 square feet as long as they were confined on a single parcel. He said to allow an anchor tenant that was larger than 50,000 square feet; it would have to be a vertical design. He said he recognized that Code Section D does not have the word footprint; however, that is how this provision has been interpreted. He said if the Council felt that this needs to be clearer, that word could be inserted into that section.

Mayor Drake closed the public hearing.

Coun. Arnold MOVED, SECONDED by Coun. Dalrymple, that the Council rule in favor of the appellant and grant the appeal.

Coun. Arnold commended both the appellant and applicant for outstanding participation throughout the entire process. She said as painful and long as it was, this is what democracy was about. She said she believed that Gramor did do a lot of public involvement work and that they have concerns about whether there is a real need for an anchor store. She said she thought the evidence was mixed on whether or not an anchor store was needed and it could depend on the nature of the Town Center. She said the Planning Commission struggled with that. She said she agreed with what she heard Commissioner Maks say in the recording of the Commission meeting, that a Fred Meyers serves many areas, but if Fred Meyers leaves, what would that building become. She said that was why the issue of assignability was a big concern; if it turned out to be a restaurant, then the traffic would become regional in nature not just neighborhood and the streets are designed for neighborhood traffic. She said she was voting in favor of appellant for three reasons. First, she said she does not see any assurance for a process for public involvement. She said the second reason was that as a minimum in a text amendment, that it go to the party that would hear it. She said the current process serves the City well and as a minimum she would want it going through the first level through the appropriate body, be it the Commission or the BDR. Third, she said she spent a lot of time reviewing the materials and listened to the Commission meeting tapes. She said the Commission struggled with this and it was a split recommendation. She said the Commission finally said they would do something next year to fix this. She said she did not feel it was right to put something out that was only half done; they should be comfortable with the whole process.

Mayor Drake asked if the motion included all of the exhibits presented and the record that was presented in the staff report.

Coun. Arnold replied that it did.

Coun. Dalrymple said it was not his sense that a State statute with use of a development agreement would provide for a use that was three to four times greater than the zone designation would initially provide. He said that was taking interpretation too far. He said it was important that the citizens of Beaverton understand that there has to be a level of trust. He said sometimes that might mean things may not get done as easily as one would desire, but maybe there was a way to work through the process to get everyone where they want to go. He said he thought Gramor was a good developer but in this case he had to support the appeal.

Coun. Stanton said she would support the motion for some of the same reasons. She read quotes from the record regarding the vision and development of town and regional centers. She stressed a text amendment applies to all areas with that designation. She said doing a text amendment for Gramor at Progress Ridge could have unintended consequences in other areas of the community. She said the reasons for doing a text amendment were: 1) To reflect changing community conditions, needs and desires; 2) To fulfill regional obligations; and 3) To address changes in the law. She said this proposal does not meet the reasons for doing text amendments. She said for the vision of the Town Center adopted under the 2040 Plan and based on the reasons for doing a text amendment, she could not support the applicant but would support the appellant and current motion.

Mayor Drake repeated that the motion was to reverse the Planning Commission's decision and grant the Appeal of TA 2004-0012 (TC-MU Commercial Use Restriction Amendment). Question called on the motion. Couns. Arnold, Dalrymple and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

Coun. Stanton said she would like to have a joint work session with the Council and Planning Commission when the Commission studies the text amendment.

06106 Public Hearing on Biggi Investment Partnership Measure 37 Claim (Continued from May 15, 2006 Meeting)

Coun. Dalrymple MOVED, SECONDED by Coun. Stanton, that Council continue the public hearing on the Biggi Investment Partnership Measure 37 Claim to July 17, 2006, at 6:30 p.m. Couns. Arnold, Dalrymple and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

06107 Capital Improvements Plan for Fiscal Years 2006/07 through 2009/10 for Transportation, Water, Sewer and Storm Drain Projects

Coun. Stanton asked if there were any changes to the Capital Improvement Plan since it was considered at the budget hearings.

Project Engineer James Brink replied there were no changes.

Mayor Drake opened the public hearing.

There was no one present who wished to testify.

Mayor Drake closed the public hearing.

Coun. Stanton said two years ago she voted no on the Capital Improvement Plan because she was not happy with the lack of progress on the 125th Avenue Extension Project. She said this year she would support the Plan.

Coun. Stanton MOVED, SECONDED by Coun. Arnold that Council approve the Capital Improvement Plan for Fiscal Years 2006-07 through 2009-19 for Transportation, Water, Sewer and Storm Drain Projects.

Coun. Stanton said that staff does a good job in maintaining diligence and knowing what needs to be done in water, sewer and storm drain facilities. She said she hoped next year with MTIP and other projects, that the City may be able to move faster with the 125th Avenue Extension Project. She said the City should proceed with the Rose Biggi transportation project and the extension of Murray Boulevard onto Barrows Road. She said these were important projects.

Mayor Drake said Coun. Dalrymple had questions earlier today regarding road projects. He said a work session has been scheduled for August and he asked the Public Works Director to address that issue.

Public Works Director Gary Brentano said he asked the City Transportation Engineer to review the Transportation Systems Plan to determine the priority rating system the City should have for future transportation improvements. He said staff would then determine how to best spend the City's resources to address those concerns. He said the intention was to come back to Council on August 14, 2006, to review the staff recommendations and obtain Council input on the rating system and the priority for road improvements throughout the City.

Coun. Dalrymple said he felt it would be important to see if the City could find extra dollars from remaining balances in other accounts. He said he wondered if there were less expensive ways to make progress on transportation needs, such as providing turn lanes to reduce congestion on some streets. He said in August he would be interested to see what other options there are to think outside the box from where the project base has been delineated at this point, to see what more could be done.

Coun. Stanton asked if these would be capacity improvements or maintenance, using the Oregon Department of Transportation's (ODOT) three tiers of preservation, capacity and safety.

Brentano said he thought staff would suggest a rating system that was similar to that but also included other nuances such as connecting economic activity to the infrastructure, and other improvements such as cueing systems and turn lanes. He said they would also review the City's work with the County to deal with the signal timing on Murray Boulevard, which has lead to discussions on other possible low-cost improvements to mitigate the congestion.

There was no further discussion.

Question called on the motion. Couns. Arnold, Dalrymple and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

ORDINANCES:

Second Reading:

Rappleyea read the following ordinance for the second time by title only:

06093 An Ordinance Relating to the Building Code Amending Beaverton Code Section 8.02.015(a) (Ordinance No. 4393)

Coun. Arnold MOVED, SECONDED by Coun. Stanton, that the ordinance embodied in Agenda Bill 06093 now pass. Roll call vote. Couns. Arnold, Dalrymple and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 10:10 p.m.

\_\_\_\_\_  
Catherine Jansen, Deputy City Recorder

APPROVAL:

Approved this     day of     , 2006.

\_\_\_\_\_  
Rob Drake, Mayor

**AGENDA BILL**

Beaverton City Council  
Beaverton, Oregon

**SUBJECT:** LIQUOR LICENSE

**FOR AGENDA OF:** 07/10/06 **BILL NO:** 06118

**CHANGE OF OWNERSHIP**

Express Mart  
2866 SW 153<sup>rd</sup> Drive  
Beaverton, OR

**MAYOR'S APPROVAL:** 

**DEPARTMENT OF ORIGIN:** Police 

**DATE SUBMITTED:** 06/27/06

**PROCEEDING:** Consent Agenda

**EXHIBITS:** None

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$ 0	AMOUNT BUDGETED \$ 0	APPROPRIATION REQUIRED \$ 0
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**HISTORICAL PERSPECTIVE:**

A background investigation has been completed and the Chief of Police finds that the applicant meets the standards and criteria as set forth in B.C. 5.02.240. The City has published in a newspaper of general circulation a notice specifying the liquor license request.

**INFORMATION FOR CONSIDERATION:**

Express Mart, formerly licensed by the OLCC to Ha Alkhatib, is undergoing a change of ownership. Daniela Hales, has made application for an Off-Premises Sales License under the same trade name of Express Mart. The establishment is a convenience store. It will operate Monday through Sunday from 6:00 a.m. to 10:00 p.m. There will be no entertainment offered. An Off-Premises Sales License allows the sale of malt beverages, wine, and cider to go in sealed containers.

**RECOMMENDED ACTION:**

The Chief of Police for the City of Beaverton recommends City Council approval of the OLCC license.

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** A Resolution Expressing the City of Beaverton's Election to Receive Distribution of a Share of Certain Revenues of the State of Oregon for Fiscal Year 2006-2007, Pursuant to ORS 221.770

**FOR AGENDA OF:** 7/10/06 **BILL NO:** 06119

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** Mayor's Office

**DATE SUBMITTED:** 06/15/06

**CLEARANCES:** Finance   
City Attorney 

**PROCEEDING:** CONSENT AGENDA

**EXHIBITS:** Resolution

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$-0-	AMOUNT BUDGETED \$-0-	APPROPRIATION REQUIRED \$-0-
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**HISTORICAL PERSPECTIVE:**

State revenue sharing law requires cities to pass a resolution each year stating that they want to receive state revenue sharing money. The law also requires that cities certify that two public hearings were held. The Budget Committee and the City Council have each held separate public hearings to discuss possible and proposed uses of the funds.

**RECOMMENDED ACTION:**

City Council adopt the resolution expressing the City of Beaverton's election to receive distribution of a share of certain revenues of the State of Oregon for Fiscal Year 2006-2007, pursuant to ORS 221.770

**A RESOLUTION EXPRESSING THE CITY OF BEAVERTON'S ELECTION TO RECEIVE DISTRIBUTION OF A SHARE OF CERTAIN REVENUES OF THE STATE OF OREGON FOR FISCAL YEAR 2006-2007, PURSUANT TO ORS 221.770**

**WHEREAS**, the Oregon State Legislature has adopted a state revenue sharing program; and

**WHEREAS**, the City is required to express its election to receive distribution by enactment of a resolution to be filed with the Executive Department of the State of Oregon not later than July 31, 2006; and

**WHEREAS**, previous to the July 31, 2006 deadline, public hearings must be held before the Budget Committee, and before the City Council, giving citizens an opportunity to comment on the use of State Revenue Sharing monies; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON:**

Section 1. The City of Beaverton, Oregon, hereby elects to receive distribution of the appropriate share of certain revenues of the State of Oregon, which are to be apportioned among and distributed to the cities of the State of Oregon for general purposes for the Fiscal Year 2006-2007.

Section 2. On May 25, 2006, and June 19, 2006, public hearings were held before the Budget Committee of the City of Beaverton and before the City Council, giving an opportunity for citizen comment on the use of State Revenue Sharing monies.

Section 3. A certified copy of this resolution shall be filed by the City Recorder with the Executive Department of the State of Oregon not later than July 31, 2006. Certification by the City Recorder of the dates that public hearings were held on State Revenue Sharing before the Budget Committee of the City of Beaverton and before the City Council shall be sent to the State of Oregon's Intergovernmental Relations Division no later than July 31, 2006.

Adopted by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

AYES \_\_\_\_\_

NAYES \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Sue Nelson, City Recorder

\_\_\_\_\_  
Rob Drake, Mayor

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

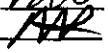
**SUBJECT:** Traffic Commission Issue No :  
TC 593 – Removal of Two-Hour  
Parking Limit on SW Second Street  
Near Lombard Avenue

**FOR AGENDA OF:** 7-10-06 **BILL NO:** 06120

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** Public Works 

**DATE SUBMITTED:** 6-27-06

**CLEARANCES:** Transportation   
City Attorney 

**PROCEEDING:** Consent

- EXHIBITS:**
1. Vicinity Map
  2. City Traffic Engineer's report on Issue TC 593
  3. Final Written Order on TC 593
  4. Written testimony
  5. Draft minutes of the meeting of June 1, 2006 (excerpt)

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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**HISTORICAL PERSPECTIVE:**

On June 1, 2006, the Traffic Commission considered the subject traffic issue. The staff report is attached as Exhibit 2.

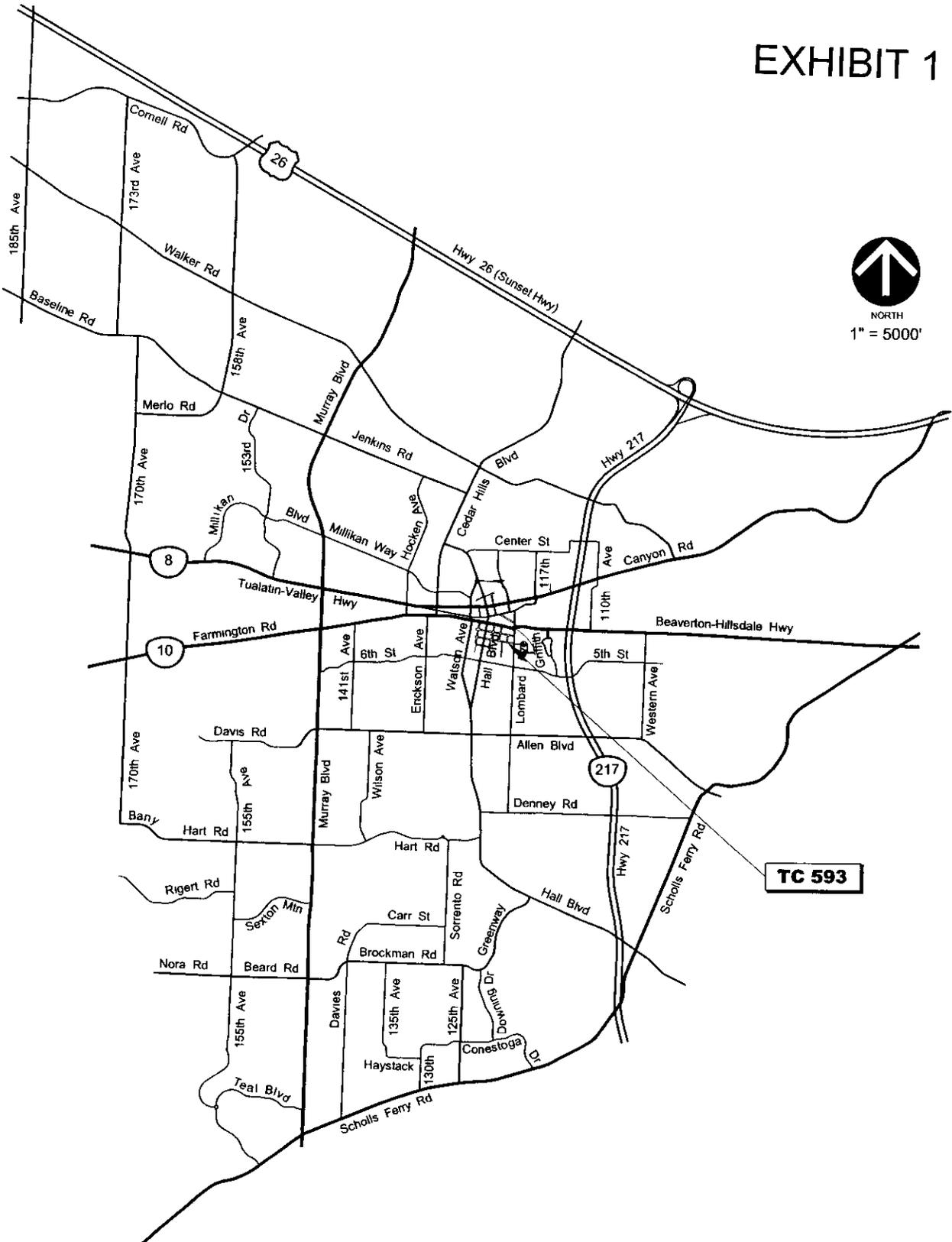
**INFORMATION FOR CONSIDERATION:**

A public hearing was held on Issue TC 593. At the hearing, no one came forth to testify. Following the hearing, the Commission voted to approve the request to remove the existing two-hour parking limit on a portion of SW Second Street.

**RECOMMENDED ACTION:**

Approve the Traffic Commission recommendation on Issue TC 593.

# EXHIBIT 1



Y:\Traffic\Drawings\TC Vicinity Map\VICINITY MAP TC VICINITY MAP TC 593\_6-06.dwg



City Of Beaverton

Vicinity Map for June 2006  
TC Issue: 593

**ENGINEERING DEPARTMENT**  
**TRANSPORTATION DIVISION**

Drawn By: MC Date: 5/23/06

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_

Approved By: \_\_\_\_\_ Date: 001

**CITY TRAFFIC ENGINEER'S REPORT  
ISSUE NO. TC 593**

**Removal of Two-Hour Parking on SW Second Street Near Lombard Avenue**

May 5, 2006

**Background Information**

Currently SW Second Street has a two-hour parking limit between Lombard Avenue and Hall Boulevard. The street is also a permit parking zone. Vehicles with permits are allowed to be parked longer than the two-hour parking limit. Permits are available for downtown residents and employees of downtown businesses. Both the two-hour limit and the permit parking zone have been in place for many years. Parking limits on downtown streets were intended to discourage all-day employee parking and to keep on-street parking available for clients and customers of the downtown businesses. The permit parking was intended to provide exceptions in certain areas to accommodate the needs of downtown residents and employees.

The attached letter from Jay Stanich of the Beaverton Post Office requests that the two-hour limit be removed on a portion of Second Street. In a phone conversation with Mr. Stanich, he indicated that the request is for the south side of SW Second Street between Lombard and Franklin Avenues.

The request would not change the locations where parking is allowed. The street is 41 feet wide, which is adequate for two-way traffic with parking on both sides. Therefore, there are no issues of safety or street capacity. In staff's opinion, the only issue is whether the requested change is equitable to other residents and businesses in the area. The public hearing provides a forum to determine any concerns of the residents and businesses in the area.

**Applicable Criteria**

Applicable criteria from Beaverton Code 6.02.060A are:

- 1d (accommodate the parking needs of residents and businesses in a safe and equitable fashion).

**Other Information**

- Permit parking is available near the post office on SW Second Street, in the City parking lot west of Lombard Avenue between SW First and Second Streets, and in the City parking lot adjacent to Farmington Road west of Betts Avenue. See attached map. Downtown employees, including post office employees, can obtain a parking permit for a fee of \$30 per calendar quarter (equivalent to \$10 per month). Those who display a parking permit can disregard the two-hour limit and park all day in the permit parking areas.
- In June of 2004, in Issue TC 555, the Commission determined that the two-hour parking limit on nearby portions of SW First Street and Betts Avenue should be extended to

include Saturdays. This change was made in response to complaints from nearby businesses that post office employees were taking up all available on-street parking.

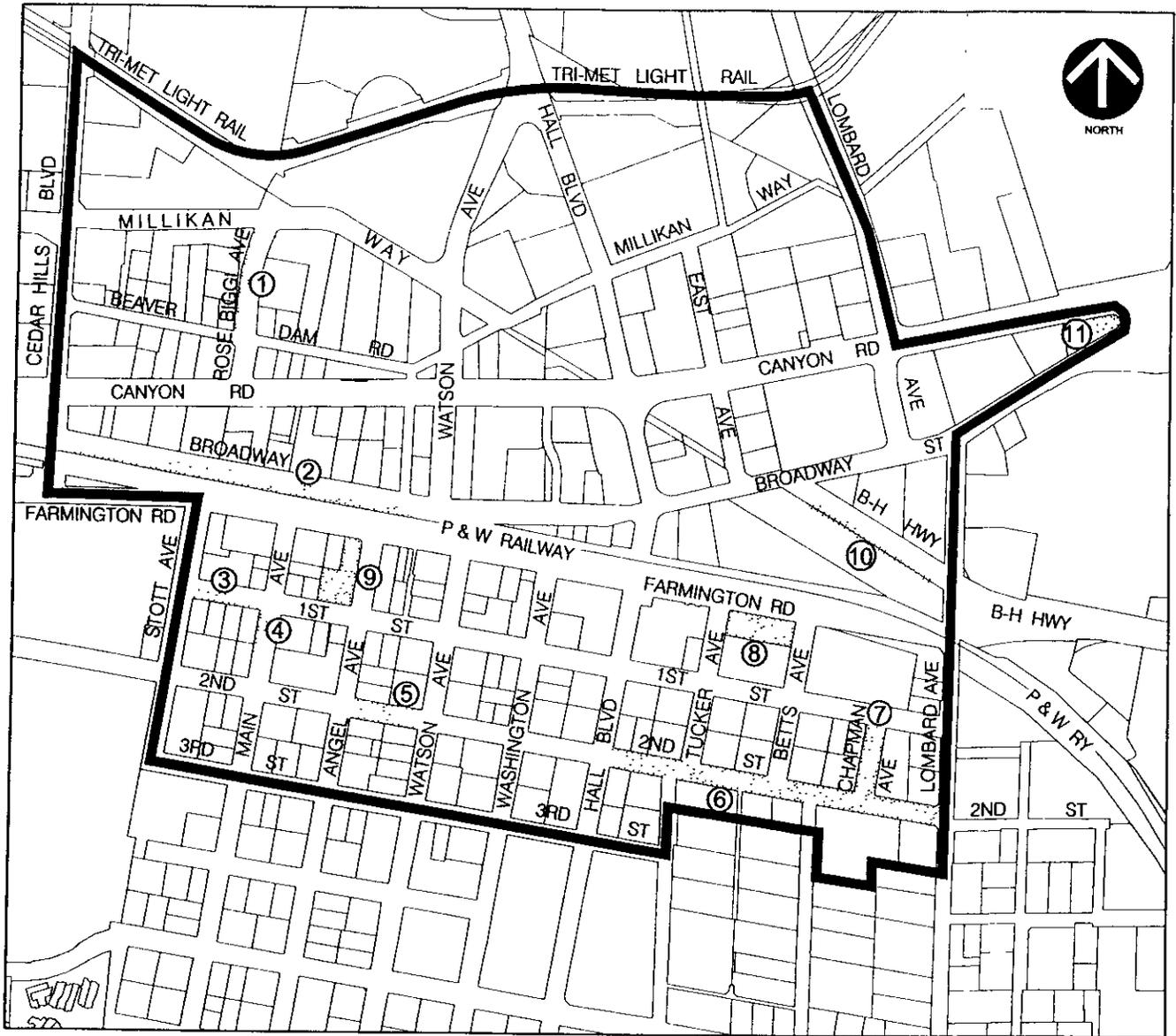
**Conclusions:**

- If residents or businesses indicate a need for short-term on-street parking on Second Street, the request should be denied and the existing parking limits retained in order to comply with Criterion 1d.
- If residents and businesses indicate no objections to all-day parking on Second Street, it can be presumed that Criterion 1d is satisfied and the request should be granted in order to provide additional parking for post office employees

**Recommendation:**

Based on testimony received at the hearing, determine the locations where two-hour parking can be removed.

# BEAVERTON DOWNTOWN PERMIT PARKING DISTRICT



-  BOUNDARY LINE
-  EXISTING PERMIT PARKING LOTS AND STREETS

## PERMIT PARKING STREETS

- ① SW Rose Biggi (west side) between Beaverdam & Millikan
- ② SW Broadway between Watson & Cedar Hills
- ③ SW 1st (south side) between Stott & Main
- ④ SW Main (west side) between 1st & 125 feet south of 1st
- ⑤ SW 2nd between Watson & Angel
- ⑥ SW 2nd between Hall & Lombard

## PERMIT PARKING LOTS

- ⑦ SW Chapman between 1st & 2nd
- ⑧ SW Betts & Farmington
- ⑨ SW Angel & Farmington
- ⑩ B-H Highway between Broadway & Lombard
- ⑪ SW Broadway & Canyon (east of gas station)

## PERMIT ELIGIBILITY

A person who lives or works within the boundaries of the Downtown Permit Parking District is eligible for a parking permit. The permit allows a permit holder to park beyond the posted time limits in the Permit Parking Lots and on the Permit Parking Streets listed here.



**CITY OF BEAVERTON**  
ENGINEERING DEPARTMENT  
TRANSPORTATION DIVISION



RECEIVED

APR - 3 2006

ENGINEERING DEPT.

April 1, 2006

Mr. Randy Wooley  
City of Beaverton Engineering  
PO Box 4755  
Beaverton OR 97005

Re: Parking Ordinance

Mr. Wooley:

I've been informed of a rather peculiar parking ordinance on SW Second Avenue here in Beaverton which indicates a two (2) hour parking restriction in front of a vacant lot. The attached photo indicates the area in question to be void of any residential housing. The homes which were once present have been demolished years previously. Would it be possible to remove these signs so that the personnel in the area (Beaverton Post Office) can park there during normal work hours?

This in contrast to SW Franklin which is in front of residential homes; has no such time-limit or signage (please reference attached photo).

I want to be very careful here not to open Pandora's Box by implementing signage on SW Franklin. This is not my intent. My sole interest is to ask for available parking on SW Second which has little traffic in this area. I'm sure that the people on SW Franklin would be relieved as well for additional parking.

As the saying goes; you never know until you try so I had to ask. Thank you very much for your consideration in this request and taking the time to read my letter.

Sincerely,

Jay Stanich  
Beaverton Post Office 97005

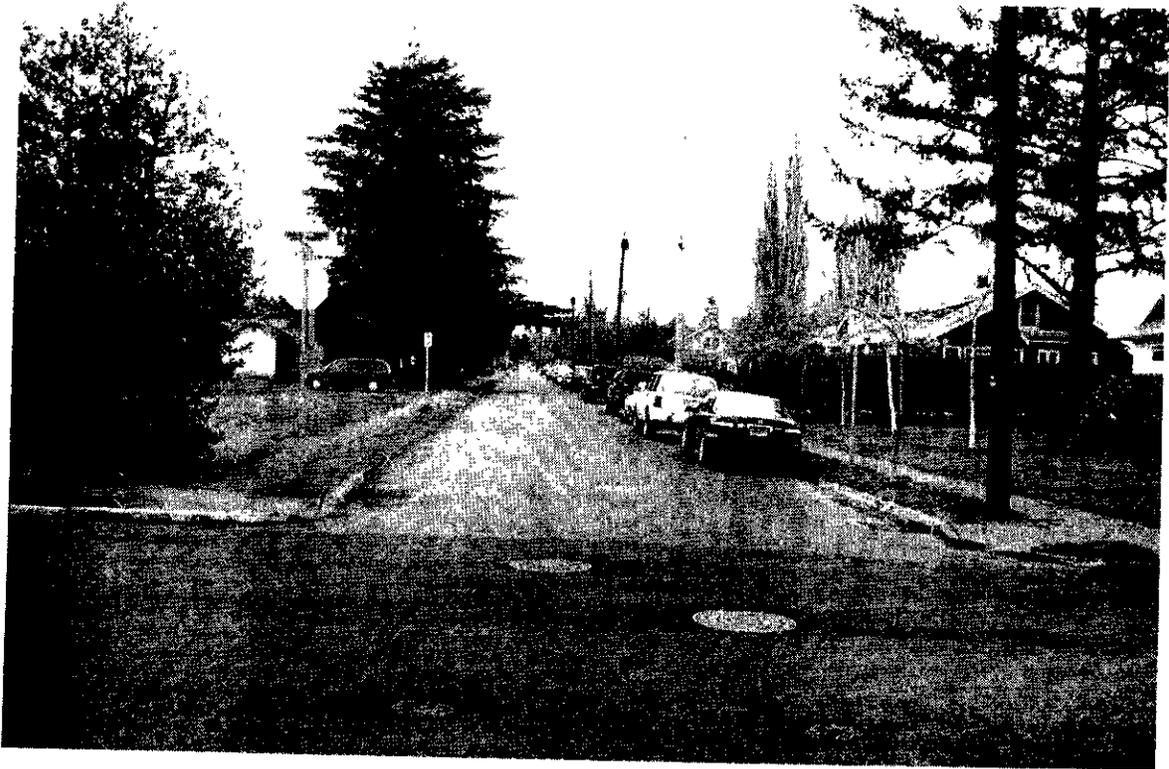
503-646-3198

File: Signage - SW Second 040106

CC: KBA - MOU

005

SW SECOND



SW FRANKLIN

# EXHIBIT 3

## CITY OF BEAVERTON

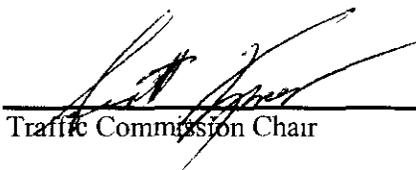
### FINAL WRITTEN ORDER OF THE TRAFFIC COMMISSION

#### REGARDING ISSUE NUMBER TC 593

##### Removal of Two-Hour Parking on SW Second Street Near Lombard Avenue

1. A hearing on the issue was held by the Traffic Commission on June 1, 2006.
2. The following criteria were found by the City Traffic Engineer to be relevant to the issue:
  - 1d (accommodate the parking needs of residents and businesses in a safe and equitable fashion);
3. In making its decision, the Traffic Commission relied upon the following facts from the staff report and public testimony:
  - Removal of the existing two-hour parking limit was requested by the Beaverton Post Office;
  - No testimony was received in opposition to this proposal.
  - Along the south side of SW Second Street between Lombard Avenue and Franklin Avenue, the adjoining properties are vacant.
  - The proposal will not change the areas where parking is allowed.
4. Following the public hearing, the Traffic Commission voted (5 aye, 2 nay) to recommend the following action:
  - Remove the existing two-hour parking limit along the south side of SW Second Street between Lombard Avenue and Franklin Avenue.
5. The Traffic Commission decision was based on the following findings:
  - Based on the lack of opposition to the requested change, the Commission concludes that the existing two-hour limit is not needed to accommodate the parking needs of residents and businesses. Hence, Criterion 1d is satisfied.
6. The decision of the Traffic Commission shall become effective upon formal approval of the City Council.

SIGNED THIS 1<sup>st</sup> DAY OF JUNE 2006

  
\_\_\_\_\_  
Traffic Commission Chair

## EXHIBIT 4

# MEMORANDUM

## Beaverton Police Department



Chief David G. Bishop

DATE: May 19, 2006

TO: Randy Wooley

FROM: Jim Monger

SUBJECT: TC 593

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TC 593. I concur with the recommendation to allow citizen input regarding TC 593 to determine the opinions of business and residential occupants that would possibly be effected by any parking restriction changes on SW 2<sup>nd</sup> between Lombard and Hall.

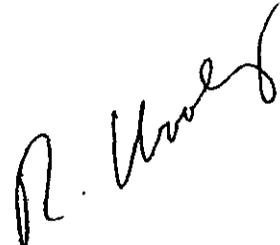
I do have a concern that the petitioner is merely attempting to avoid the permit parking fee for USPS employees. There is amply parking space on SW 2<sup>nd</sup> and the \$30 per quarter seems to be a very reasonable cost for unlimited parking in the otherwise 2 hour parking zones.

**MEMORANDUM**

RECORD COPY

**City of Beaverton**

DATE: May 11, 2006  
TO: Sgt. Jim Monger, Police Chief designee  
Steve Brennan, Operations Director designee  
Jerry Renfro, Tualatin Valley Fire & Rescue  
FROM: Randy Wooley, City Transportation Engineer  
RE: Traffic Commission Issue No. TC 593



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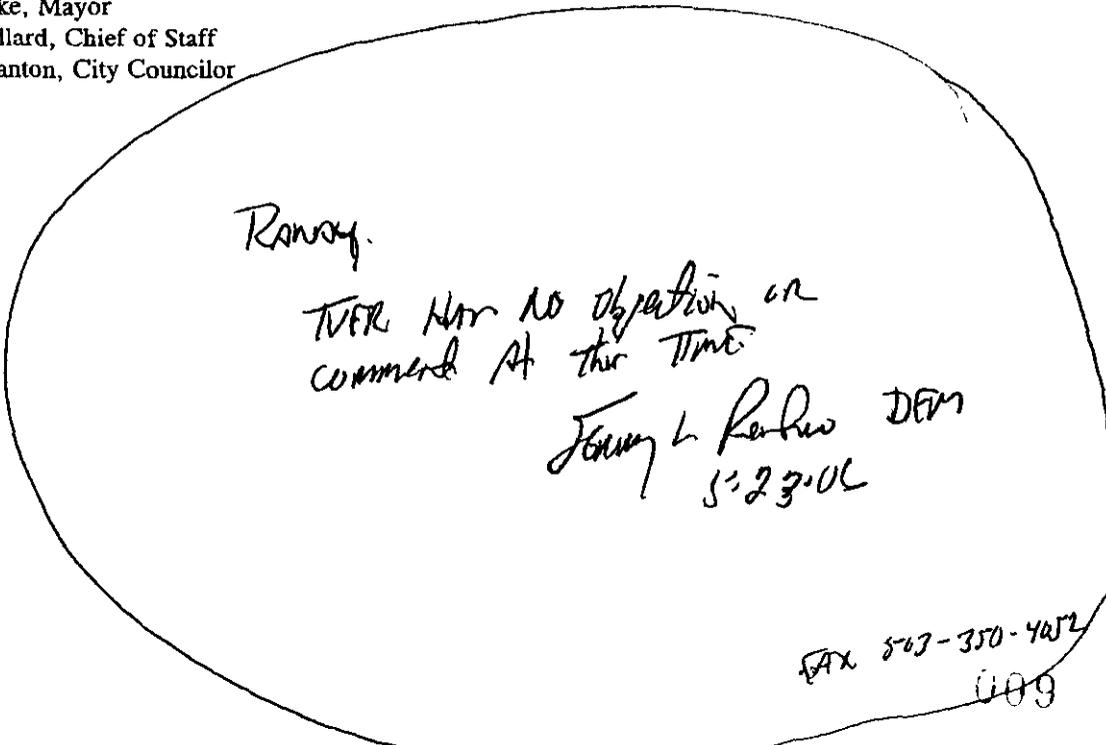
Attached for your review is the City Traffic Engineer's report on Traffic Commission Issue TC 593. Please route any comments you may have to me by May 24, 2006

Thank you.

Attachments: Issue TC 593 (5 pages)

cc.

Rob Drake, Mayor  
Linda Adlard, Chief of Staff  
Cathy Stanton, City Councilor



Randy.  
I've had no objection or  
comment at this time.  
Jerry L. Renfro DEM  
5/23/06

FAX 503-350-4052  
009

# DRAFT

City of Beaverton

## TRAFFIC COMMISSION

Minutes of the June 1, 2006, Meeting

### CALL TO ORDER

Chairman Scott Knees called the meeting to order at 7:00 p.m. in the City of Beaverton Public Works Department, Engineering Division, Conference Rooms at Beaverton City Hall, Beaverton, Oregon.

### ROLL CALL

Traffic Commissioners Scott Knees, Carl Teitelbaum, Bob Sadler, Ramona Crocker, Kim Overhage, Maurice Trouté and Tom Clodfelter constituted a quorum. Alternate Member Tom Wesolowski was in the audience to observe.

City staff included City Traffic Engineer Randy Wooley and Recording Secretary Debra Callender.

— EXCERPT START —

### PUBLIC HEARING

#### **ISSUE TC 593:      REMOVAL OF TWO-HOUR PARKING LIMIT ON SW SECOND STREET NEAR LOMBARD AVENUE**

Chairman Knees opened the public hearing on Issue TC 593.

#### **Staff Report**

Mr. Wooley pointed out a letter from Jay Stanich of the Beaverton Post Office. Mr. Stanich asked to have the two-hour parking limit removed from a portion of SW Second Street so that postal employees could use that area for all-day parking. The City established two-hour parking many years ago throughout downtown Beaverton in order to increase parking space turnover. This was intended to help downtown business customers more easily find a convenient parking spot. The City also established a permit parking exemption in order to keep parking available for downtown employees. This system has been in effect for at least 20 years.

Mr. Wooley said the applicable criteria is No. 1.d. which reads "...to accommodate the parking needs of residents and businesses in a safe and equitable fashion." Staff posted public hearing signs on the street hoping to get public input on this issue. Mr. Wooley said he has received only one citizen inquiry on the posting. The Post Office called today to say they would not have anyone available to testify.

Commissioner Teitelbaum asked who owns the property adjoining the parking area under discussion. He asked what might be constructed on this vacant land.

Mr. Wooley had not investigated who owned the property. He described the zoning as "old town commercial" and said any development would be within that land use description.

Commissioner Teitelbaum asked if the City might eventually build a parking structure on this vacant land.

Mr. Wooley said it is too soon to know where the City's current downtown parking study will lead. It is likely any future parking structure would require land that is more central to downtown businesses.

Commissioner Troute asked if the two-hour parking limit had been set administratively or by a Commission.

Mr. Wooley was unsure how the original decision came about. The decision was made long before the advent of the Traffic Commission. It might have happened during the time of Urban Renewal programs (prior to 1980). During that time, the City established two-hour parking limits in downtown Beaverton because they were concerned about people using downtown as a Park-and-Ride lot for transit buses going into Portland.

Referring to the citizen call that Mr. Wooley received, Chairman Knees asked if that person stated an opinion on the issue.

Mr. Wooley said they were seeking general information about the reasons behind the public notice signs.

Commissioner Crocker asked if staff had observed the congested parking in the Chapman Avenue parking lot located between First and Second Streets.

Mr. Wooley said the Chapman Avenue lot is usually parked full of Post Office employees. That lot is City owned, with a two-hour parking limit, or parking by permit. A second parking lot is located adjacent to the Post Office on Farmington Road at Betts Avenue. This lot is also a City facility and is typically not full. Some Post Office employees have purchased parking permits and they generally use the Chapman lot. Both lots are also open to the public.

Commissioner Crocker asked how many employees work at the Beaverton Post Office.

Mr. Wooley understands there are about 67 employees. He does not know how many employees are on duty at one time.

Commissioner Crocker said she drove through the Chapman lot and counted about 57 parking spaces. She concluded that the employees who want to park on Second Street simply do not want to pay the minimal fee for parking permits. Commissioner Crocker referred to the City permit fee of \$30 for three months as "a dream come true." She pays \$6 per day to park at her workplace.

Chairman Knees asked how many employee parking spaces the Post Office has on their property.

Mr. Wooley said Mr. Stanich told him there are six to eight employee parking spaces on their property. The remaining parking spaces are reserved for postal vehicles.

Chairman Knees noted that the letter from Mr. Stanich did not include his position title. Is he the postmaster or a facility manager?

Mr. Wooley did not know Stanich's title.

Commissioner Overhage asked how the City uses the revenues collected from parking permits.

Mr. Wooley said the law requires that the permit fee be set at a level that is only sufficient to cover management of the permit parking system. This might include printing and issuing the permits and parking enforcement. The City cannot make a profit on the permits.

Commissioner Teitelbaum asked how many permits are out at this time.

Mr. Wooley said he had not asked Finance that question.

Commissioner Teitelbaum said he has never seen a car parked along the south side of SW Second.

Mr. Wooley said that was also his observation.

Commissioner Trouté inquired as to the purpose of the City's Permit Parking District, especially as the funds collected only cover the cost of administering the system.

Mr. Wooley said the purpose is to restrict all-day parking within the permit zones to only downtown employees and downtown residents. This keeps parking

available for customers of downtown businesses. He reiterated that, in the past, the City was concerned about transit riders using downtown Beaverton streets as a place to leave their vehicles all day while they commuted into downtown Portland.

Commissioner Troute said these parking restrictions were especially important when the Beaverton transit center was located by Rose's Restaurant, Chi Chi's and Wells Fargo. In those days, transit parking in downtown Beaverton was a substantial problem.

### **Public Testimony**

The Commission reviewed written testimony submitted for this hearing from Jay Stanich of the Beaverton Post Office, Traffic Sergeant Jim Monger of the Beaverton Police and from Deputy Fire Marshal Jerry Renfro of Tualatin Valley Fire & Rescue. (*On file.*)

Chairman Knees confirmed that no one in the audience was waiting to testify.

### **Staff Comments**

Mr. Wooley said staff had no additional comments.

Chairman Knees asked if staff gets complaints from residents of Franklin Avenue about all-day vehicle parking along that street. Google Earth (on the Internet) shows a string of vehicles parked along Franklin, though none were parked along SW Second. He suspects these vehicles belong to Post Office employees who do not want to purchase parking permits. If the neighbors on Franklin have not objected, the Commission cannot consider their opinion.

Mr. Wooley said Mr. Stanich's letter implies that the vehicles parked on Franklin belong to postal workers. Changing the parking restrictions on Second will bring these vehicles about one-half block closer to the Post Office.

Mr. Wooley said that since there are no neighborhood objections, his recommendation is that the Commission approve the request.

Commissioner Crocker commented that approving this request shows favoritism to one organization. It also sets the precedent of allowing the employees of one organization to avoid paying for parking permits. She asked what would happen if one of the businesses near The Round requested permit-free, on-street parking? She has serious concerns about granting this request.

*Chairman Knees closed the public hearing on Issue TC 593.*

### **Commission Deliberation**

Commissioner Teitelbaum remarked that parking for patrons at the Post Office is extremely limited. If postal employees could park farther away from the Post Office, it is likely more spaces will remain open for postal patrons. This would benefit Beaverton citizens in general.

Commissioner Troute is opposed to granting this request. Because the Post Office is located near an edge of the Permit Parking District, these employees have the benefit of being able to park an extra half block away to avoid a parking fee. Other downtown employees, who are more centrally located within the District, have no choice but to pay for a parking permit. He is also concerned about the fairness of postal employees using the free parking on Franklin.

Commissioner Troute said if \$10 per month is really more than postal employees can afford, perhaps they should ask to have parking covered in their contract. He said the long line of cars parking on Franklin is there because Franklin is outside the Parking District. As a matter of fairness, he suggested putting a two-hour parking limit on Franklin as well.

Commissioner Troute asked if the Commission intends to change parking restrictions whenever new development comes along. Since there were no public comments on this issue, he thinks it is prudent for the City to consider what is best for the City, and not just what is best for the Post Office.

Commissioner Clodfelter noted that no one expressed concern about the two-hour parking restrictions on the north side of Second, so that side should remain as it is. Because of the undeveloped nature of the property on the south side of Second, he sees no reason to restrict parking there. When that property is developed, the City will need to review the need for parking restrictions. He believes that, for now, the restriction should be removed.

Commissioner Crocker has heard that the City has been buying parcels of downtown property. Is it possible this vacant land belongs to the City?

Mr. Wooley said he is quite certain the land does not belong to the City.

The Commission recessed for five minutes while the Recording Secretary researched who owned the vacant property on the south side of Second between Lombard and Franklin.

The Recording Secretary returned with the information. Mr. Wooley told the Commission that Robert Burnside of Bend, Oregon, owns the vacant property.

Commissioner Teitelbaum said because it is unknown when the owner will develop his property, it seems reasonable to go ahead and approve the request.

Staff should make the Post Office aware that parking restrictions might be reviewed the vacant property is developed.

Commissioner Crocker noted that people park along this stretch of Second on Saturday during the weekly Farmer's Market.

Commissioner Sadler said he has mixed feelings on how best to resolve this issue. He believes that the function of City government is to serve the people who live and work in Beaverton. Post Office employees will benefit from the removal of this parking restriction so it makes sense to remove it. The fact that no one in the neighborhood showed up to testify against this change also influences his opinion.

Commissioner Troute reiterated that removing this parking restriction at the request of a single group sets a precedent. If we do it for this group, we should also expect to accommodate other groups.

Commissioner Overhage said Beaverton's Permit Parking District seems "antiquated." She pointed out that the area near the MAX Station is congested with commuter parking. It might be time to review the boundaries of the District.

Commissioner Overhage said lifting parking restrictions on Second would likely remove the row of parked vehicles along Franklin. This would improve the quality of life for residents of Franklin. At this point, it appears that no business are inconvenienced by removing the restriction; however, she can still see merit in both sides of the issue.

Chairman Knees said he could go either way with this decision. This section of roadway is essentially unused. When the vacant land is eventually developed, another decision could reinstate the current parking restrictions. If someone could benefit from the parking right now, he is willing to go along with the request and make the parking available.

Commissioner Crocker asked if the Chapman parking lot is available to everyone.

Mr. Wooley said the parking is available for everyone; however, since the postal employees arrive early, the parking spaces often do not turn over during the day.

Commissioner Teitelbaum is not concerned about a precedent. Unlike the area surrounding The Round, Second Street is not a high demand location.

Commissioner Crocker asked if Franklin was permit parking as well.

Mr. Wooley said there are no time limits on Franklin.

Commissioner Troute said convenient parking is already available for postal employees, and the cost per day is less than the price of a cup of coffee.

Commissioner Overhage **MOVED** and Commissioner Teitelbaum **SECONDED** a **MOTION** to recommend approval of Issue TC 593, based on the lack of opposition to the change, and to accept the draft final written order

There was no further discussion.

The **MOTION CARRIED** 5:2. Commissioners Knees, Teitelbaum, Sadler, Clodfelter and Overhage voted "aye." Commissioners Troute and Crocker voted "nay."

— EXCERPT END —

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** Waiver of Sealed Bidding – Purchase  
One Four Wheel Drive Front Loader  
From the State of Washington Price  
Agreement

**FOR AGENDA OF:** 7-10-06 **BILL NO:** 06121

**Mayor's Approval:** *[Signature]*

**DEPARTMENT OF ORIGIN:**  
Public Works/Operations *[Signature]*

**DATE SUBMITTED:** 6-26-06

**CLEARANCES:** Purchasing *[Signature]*  
Finance *[Signature]*  
City Attorney *[Signature]*

**PROCEEDING:** Consent Agenda  
(Contract Review Board)

**EXHIBITS:**

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$120,596	AMOUNT BUDGETED \$125,000*	APPROPRIATION REQUIRED \$
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\*Account Number 513-85-0739-671 Public Works, Storm Drainage Fund Capital Outlay Equipment Account. As part of the FY 2006-07 Budget, the Sewer Fund is contributing ½ of the cost of the equipment through a transfer of funds to the Storm Drain Fund.

**HISTORICAL PERSPECTIVE:**

The FY 2006-07 Budget includes funding to purchase a four wheel drive front loader that will be shared between the Sewer Fund and the Storm Drainage Fund. This purchase utilizes a State of Washington Price Agreement, which is available to Oregon public agencies. The agreement incorporates the low bids from numerous dealerships, which were obtained through a competitive sealed bid process.

**INFORMATION FOR CONSIDERATION:**

The front loader, priced at \$120,596 including delivery, is currently available for immediate purchase from the State of Washington Price Agreement contract #16904 through NC Machinery in Tukwila, Washington. Oregon law ORS 279A.220 and the City's Purchasing BPC 46-0450 rules permit an exemption from competitive solicitation and purchase through an Interstate Cooperative Procurement only if the following conditions are met:

1. If the selection method was substantially equivalent to those set forth in ORS 279B.055;
2. The original contract allows other governmental bodies to use it;
3. The administering contracting agency permits the contractor to extend the terms, conditions and prices to other public agencies;
4. The contracting agency or the cooperative procurement group is listed in the original solicitation; and the solicitation was advertised in Oregon.

Staff finds all of the above conditions have been met.

**RECOMMENDED ACTION:**

Council, acting as Contract Review Board, waive the sealed bidding requirements and authorize the Finance Department to issue a purchase order to NC Machinery, of Tukwila, WA, for purchase of the front loader described above in the amount of \$120,596 from the State of Washington Price Agreement.

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** "Bid Award - Rental of Construction Related Equipment" **FOR AGENDA OF:** 7-10-06 **BILL NO:** 06122

**Mayor's Approval:** *Linda A. Callaway*  
*Mayor Pro Tem*

**DEPARTMENT OF ORIGIN:**  
Public Works/Operations Division *H. Muralt*  
*for Gary B. Entone*

**DATE SUBMITTED:** 6-26-06

**CLEARANCES:** Purchasing *H. Muralt*  
Finance *[Signature]*  
City Attorney *[Signature]*

**PROCEEDING:** Consent Agenda  
(Contract Review Board)

**EXHIBITS:** Bid Summary

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$	AMOUNT BUDGETED \$	APPROPRIATION REQUIRED \$
----------------------------	-----------------------	------------------------------

\*Account Number:

**HISTORICAL PERSPECTIVE:**

The Department of Public Works/Operations Division frequently requires construction equipment that the City does not own for various construction, road repair/maintenance and emergency repair projects. The equipment is usually of a type that the City uses infrequently and is not cost-effective for the City to purchase.

**INFORMATION FOR CONSIDERATION:**

Invitation for bid was advertised in the Portland Daily Journal of Commerce on June 1, 2006. Three bids were received and opened on June 20, 2006 in the Finance Department conference room. To ensure that the specific rental equipment is available for a project when needed, the City is recommending acceptance of all three (3) responsive bids that were submitted. This will allow the Department of Public Works/Operations Division staff to rent equipment on an as-needed basis, from an as-available pool of resources. Each responsible bidder will receive a one (1) year requirements contract with automatic renewals of two (2) additional one-year options to extend. The maximum duration of the contract(s) may not exceed three (3) years. No vendor will be promised minimum or maximum rental orders. When the Operations Division needs to rent equipment for a particular project, they will choose the lowest rental rates on the basis of contract price plus the Division's estimate of the cost of transporting the rental equipment to the project site. The low responsive bids were received from Hertz Equipment Rental of Portland, Oregon, Sunbelt Rentals of Portland, Oregon, and United Rental of Tigard, Oregon.

To determine costs, Division staff provided a list of typical equipment and number of hours needed in the solicitation. Types of equipment include excavators and loaders of various sizes and capacities. Hours of usage vary from 80 to 640, depending on project.

**RECOMMENDED ACTION:**

Council, acting as Contract Review Board, award contracts to Hertz Equipment Rental, Sunbelt Rentals, and United Rental for the rental of construction equipment at various costs as the low bids received.

**BID SUMMARY**

**CITY OF BEAVERTON**

**TO:** Mayor & City Council

**FROM:** Purchasing Division

**SUBJECT:** Bid Opening

Bids were opened on JUNE 20, 2006 at 2:00 PM in the **FINANCE CONFERENCE ROOM**

**For: RENTAL OF CONSTRUCTION RELATED EQUIPMENT REQUIREMENTS CONTRACT**

Witnessed by: KEITH STONE

<b>VENDOR NAME AND CITY, STATE</b>
<b>SUNBELT RENTALS PORTLAND OR</b>
<b>UNITED RENTAL TIGARD OR</b>
<b>HERTZ EQUIPMENT RENTAL PORTLAND OR</b>

The Purchasing process has been confirmed.

Signed: *Larry L Muralt*  
Purchasing Division-Finance Dept.

The above amounts have been checked:  YES  NO

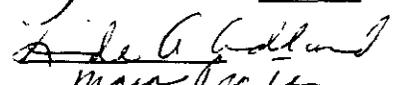
Date: 6-20-06

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

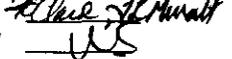
**SUBJECT:** Contract Renewal Between Chesshir  
Architecture P.C. and the City of Beaverton  
for the Storefront Improvement Program

**FOR AGENDA OF:** 07/10/06 **BILL NO:** 06123

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** Mayor's Office

**DATE SUBMITTED:** 06/26/06

**CLEARANCES:** CDBG  
Finance   
City Attorney 

**PROCEEDING:** Consent Agenda  
(Contract Review Board)

**EXHIBITS:**

**BUDGET IMPACT**

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$30,000	BUDGETED \$30,000*	REQUIRED \$0

\*\$30,000 in Account Number 106-10-6013-516 Community Development Block Grant Fund – Business Improvement Expense. The Amount Budgeted represents the appropriation in the proposed FY 2006-2007 Budget that was adopted at the June 19, 2006 Council Meeting.

**HISTORICAL PERSPECTIVE:**

As part of the City's Downtown Storefront Improvement Program, the City entered into a \$30,000 contract with Chesshir Architecture in October, 2005 to assist downtown business owners receiving Storefront Improvement grants. Chesshir Architecture was selected from a group of six firms that submitted responses through a Request for Proposal Process.

Chesshir's architects help businesses with ideas for renovating the building's exterior, as well as with drawings and rough cost estimates to help make informed decisions about the design. They also assist with the City's Design Review process, and with consultations with the State Historic Preservation Office as appropriate.

The City's contract with Chesshir is renewable annually for one-year extensions through 2009-2010 at the City's discretion.

**INFORMATION FOR CONSIDERATION:**

Using Community Development Block Grant (CDBG) funds, the City's Downtown Storefront Improvement Program offers matching grants of up to \$20,000 to assist business owners in the Old Town area (bounded roughly by Canyon Road, Lombard Avenue, 2<sup>nd</sup> Street and Stott Avenue), to improve the exterior of their businesses.

In addition to the grant for renovation, businesses are eligible for architectural and design assistance (up to \$3,450) from Chesshir. The two Chesshir architects primarily involved in the Program bill at \$115/hour and \$75/hour respectively; these rates are unchanged from the beginning of the contract. Business owners may choose to work with another architect they select, but most have opted to work with Chesshir.

In 2005-2006, Chesshir assisted with six projects begun during the year (out of a total of seven), at a total cost so far of just under \$16,000; total architectural work for these projects will likely come to about \$20,000 when projects are complete. The six projects include: Terwilliger Law Office, Beaverton Pharmacy, Beaverton Bakery, Giovanni's restaurant, Fox Engineering, and the former Speed Zone bicycle shop. The quality of Chesshir's work has impressed City staff and program participants alike, and staff recommends renewing the contract for 2006-2007 and providing an additional \$30,000 for the next round of participants in the program.

The original contract was awarded in the amount of \$30,000 and with the additional \$30,000 in funding for FY 2006-07, the total for the contract will exceed the \$50,000 threshold requiring Council approval.

**RECOMMENDED ACTION:**

Council, acting as Contract Review Board, renew the contract for one year with Chesshir Architecture P.C. for architectural and design assistance through the Storefront Improvement Program, for an additional \$30,000 together with any unexpended funds from FY 2005-2006, in a form approved by the City Attorney.

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

**SUBJECT:** APP 2006-0004: Appeal of Town Square Too – Wal Mart Approval (DR 2005-0068)

**FOR AGENDA OF:** 07-10-06 **BILL NO:** 06124

**Mayor's Approval:** *[Signature]*

**DEPARTMENT OF ORIGIN:** CDD *[Signature]*

**DATE SUBMITTED:** 06-30-06

**CLEARANCES:** City Attorney *[Signature]*  
Devel. Services *[Signature]*

**PROCEEDING:** Public Hearing

**EXHIBITS:** **Section 1** – Exhibits regarding the Appeal; 06-09-06 – 06-29-06.  
**Section 2** – Exhibits submitted by staff, applicant and public during the period of BDR hearings; 05-02-06 – 06-01-06.  
**Section 3** – Exhibits submitted by staff and applicant during review period and reviewed as part of BDR staff report; 6-30-05 – 06-01-06.  
**Section 4** – Public testimony submitted 05-16-05– 05-01-06.  
See Table of Contents for complete listing.

**BUDGET IMPACT**

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
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**HISTORICAL PERSPECTIVE:**

The Washington County Community Plan zones this site (Transit Oriented – Retail Commercial, TO-RC), but the property has been annexed to the City of Beaverton. Until such time that the City establishes City zoning, the City is required to review development on the site in accordance with both Washington County Development Code standards and City of Beaverton Development Code standards. After annexation and prior to the subject development application being filed with the City, the property owner and the City agreed to submit an Inter-Governmental Agreement (IGA) to Washington County the effect of which would suspend the application of Beaverton Development Code standards on the subject site and would allow the County to review and process the land use application for the development of the subject site subject to all applicable Washington County Development Code standards. The Washington County Board of Commissioners declined to enter into the proposed IGA and therefore declined to process the Wal Mart applications. Because the County declined to review and process the land use applications for the proposed development, the City conducted the review in accordance with Section 10.40.1 of the City's Development Code. This section of Beaverton's Development Code requires that the City use the County's Code standards unless there are comparable City standards to use in the review. Therefore, the Town Square Too – Wal Mart development has been reviewed according to a combination of City and County Code requirements.

The applicant requests Design Review Three (DR 2005-0068) approval of proposed development on the subject site. The scope of the Design Review application is for a development containing an approximately 152,300 square foot retail building, a 4,265 sq.ft. office/retail building, a 9,200 sq.ft. retail building, pedestrian plaza areas, public and private streets, driveways, parking within open lots and a parking garage, street and traffic signal improvements. The site is approximately 9.3 acres in size. The Loading Determination (LO 2005-0003) has been approved by the BDR and was not appealed. A Tree Plan Two application, (TP 2005-0017), was determined to be unnecessary and staff have recommended that the applicant withdraw the TP application. At the Board of Design Review hearing, the applicant stated for the record that they would be withdrawing the TP application.

**INFORMATION FOR CONSIDERATION:**

The appellant, Save Cedar Mill, has submitted an appeal (APP 2006-0004) objecting to the BDR's approval of the Design Review application. A staff report is prepared in response to the appeal and to the applicant's appeal response, and is attached to this Agenda Bill under Section 1 for consideration.

**RECOMMENDED ACTION:**

Staff recommend that the City Council uphold the Board of Design Review's approval of DR 2005-0068, as summarized in the BDR Land Use Order #1871 dated June 9, 2006, by denying the appeal, APP 2006-0004. Staff further recommend that the City Council direct staff to prepare findings based on the Council's decision and provide the Notice of Decision to all parties on record.

**Table of Contents and Exhibits List**  
**Appeal No. APP 2006-0004**

Appeal of Board of Design Review's Approval of  
 DR2005-0068 (Town Square Too – Wal Mart)

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<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	
Exhibit 2.35	Staff Response to Appeal dated June 29, 2006	13-28
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<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	NONE
<b>Exhibit 4</b>	<b>Submittals by Appellant</b>	
Exhibit 4.1	Appeal of DR2005-0068 by "Save Cedar Mill" (APP2006-0004), dated June 16, 2006	58-126
<b>Exhibit D</b>	<b>Public Written Testimony:</b> June 16 through June 29, 2006	127-162
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<b>SECTION 2</b>	<b>WAL MART EXHIBITS SUBMITTED DURING PERIOD OF BOARD OF DESIGN REVIEW (BDR) HEARINGS</b>	<b>200- 2100</b>
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<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	

	BDR Minutes June 1, 2006	201-216
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	NONE
<b>Exhibit C</b>	<b>Public Written Testimony: May 31 through June 1, 2006</b>	217-226
<b><u>May 26 through May 30, 2006 Index</u></b>		227
<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	NONE
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	
Exhibit 3.15	“Wal-Mart’s Response to Plaza Design and Landscaping Within Extended Submittal Period, dated May 30, 2006.	228-269
<b>Exhibit C</b>	<b>Public Written Testimony: May 26 through May 30, 2006</b>	NONE
<b><u>May 19 through May 25, 2006 Index</u></b>		270
<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	
	BDR Minutes May 25, 2006	271-282
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	
Exhibit 3.14	Wal-Mart’s Written Closing Statement, dated May 25, 2006.	283-308
<b>Exhibit C</b>	<b>Public Written Testimony: May 19 through May 25, 2006</b>	NONE
<b><u>May 12 through May 18, 2006 Index</u></b>		309
<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	NONE
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	
Exhibit 3.13	“Wal-Mart’s Response to Issues and Evidence Within Second Seven-Day Period”, dated May 18, 2006, containing cover letter by Attorney for Wal-Mart, and six (6) tabbed sections containing response to letters of opposition; Tab 2: responses to letters by Robert Bernstein (5/9/06), Tab 3: response to letter by Tom Armstrong (Winterbrook) (5/11/06), Tab 4: response to letter by Lawrence Bates (5/10/06), Tab 5: response to letter by Ty Wyman (Providence-St.Vincent) (5/11/06), Tab 6 Response to letter from James Crawford (5/10/06).	310-375

<b>Exhibit C</b>	<b>Public Written Testimony:</b>	376-427
	May 12 through May 18, 2006	
	<b><u>May 4 through May 11, 2006 Index</u></b>	428-430
<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	
Exhibit 2.25	Cedar Mill Town Center Plan, June 30, 1997, prepared by 10 person Consultant Team for Washington County, ODOT and DLCD. Submitted to BDR May 11, 2006	431-468
Exhibit 2.26	Washington County Ordinance #536, "Ordinance Amending the Cedar Hills-Cedar Mill Community Plan; the Bethany Community Plan, and the Transportation Plan; relating to the Cedar Mill Town Center", dated as filed with the Washington County Clerk, August 2, 2000. Submitted to BDR May 11, 2006	469-492
Exhibit 2.27	Letter by Donald P. Odermott, PE, regarding Wal Mart Development Action, Background Information Dated May 10, 2006 – 1999 Peterkort Transportation Master Plan, with Attachments: (1) 2015 Forecast Volumes and Transportation System Operations technical reports by Kittelson & Associates, December 1995, (2) Peterkort Development Transportation Master Plan, by Transportation Consulting Group, dated May 1999. Submitted to BDR May 11, 2006	493-535
Exhibit 2.28	Memo by Loretta Skurdahl, Sr. Assistant Washington County Counsel and Phil Healy, Senior Planner, subject: 'County Traffic Analysis of Proposed Beaverton Wal-Mart' with regard to matter of Wal Mart traffic analysis and consideration of vehicle trips generated by St. Vincent Hospital, dated May 11, 2006.	536-539
Exhibit 2.29	Memorandum by Randy Wooley, City Traffic Engineer, regarding transportation related questions and concerns raised by Board of Design Review and the Public, dated May 11, 2006	540-553
Exhibit 2.30	Memorandum by Jim Duggan, Development Services Engineer and John Osterberg, Senior Planner, regarding 'Amended Findings; Revised Storm Drainage Report', dated May 11, 2006.	554-556

Exhibit 2.31	Memorandum by John Osterberg, Senior Planner, regarding 'Town Square Too – Wal Mart (DR 2005-0068) Amended Findings', addressing major issues raised by the BDR, dated May 11, 2006.	557-569
Exhibit 2.32	Memorandum by John Osterberg, Senior Planner regarding 'Town Square Too – Wal Mart (DR 2005-0068) Response to BDR Issue and Concerns' noting location in the record of key information addressing BDR issues and concerns, dated May 11, 2006.	570-573
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	
Exhibit 3.7	Storm Drainage Feasibility Study, by PacLand (Scott Franklin PE and Mario de la Rosa), dated May 4, 2006; showing updated/revised storm drainage plan to connect to stormwater system in Barnes Road, supersedes previous plan for discharge of water to private property north of Barnes Road.	574-607
Exhibit 3.8	Letter by Damon W. Reische, Clean Water Services, re: 'Amended Service Provider Letter for the Cedar Hills Retail Center...including Required Off-site Improvements', dated May 9, 2006.	608-611
Exhibit 3.9	Copies of "1,260 postcards with the names of 1,367 local residents indicating support of proposed Wal Mart store at Cedar Hills Boulevard and Barnes Road", dated May 11, 2006.	612-1034
Exhibit 3.10	Site Plan of "Intersection Pedestrian Improvements", (also shown as applicant's Exhibit I-1.0), dated May 11, 2006.	1035
Exhibit 3.11	Memorandum by Michael Swenson PE, Bruce Haldors of Transpo Group, subject: Cedar Hills Wal Mart – Travel Time Impacts, regarding delay and response time at intersections and St. Vincent Hospital emergency service responders, dated May 11, 2006.	1036-1038
Exhibit 3.12	"Wal-Mart's Response to Issues and Evidence Within First Seven-Day Period", dated May 11, 2006, containing letter, text, development site plans, building elevation drawings, and transportation related plan sheets.	1039-1161

<b>Exhibit C</b>	<b>Public Written Testimony:</b> May 4 through May 11, 2006	1162-1703
<b><u>May 2 through May 3, 2006 BDR Hearings Index</u></b>		1704-1705
<b>Exhibit 2</b>	<b>Submittals by City Staff or other Government agencies</b>	
	BDR Minutes May 2, 2006	1706-1738
	BDR Minutes May 3, 2006	1739-1758
Exhibit 2.21	Memo by John Osterberg, "Amended Conditions of Approval for Emergency Vehicle Access", dated May 2, 2006	1759-1760
Exhibit 2.22	Memo by John K. Dalby, Deputy Fire Marshall II, regarding change of emergency vehicle access to site, dated April 27, 2006, presented to BDR May 2, 2006.	1761-1762
Exhibit 2.23	Letter by Marah Danielson, Development Review Planner ODOT, regarding access designation and requirement for access approval by ODOT, dated May 2, 2006	1763-1764
Exhibit 2.24	(Exhibit file number not used)	1765
<b>Exhibit 3</b>	<b>Submittals by Applicant</b>	
Exhibit 3.3	Letter by Gregory S. Hathaway, (Davis Wright Tremaine LLP), regarding additional testimony time for recognized groups dated April 19, 2006, received April 20, 2006	1766-1767
Exhibit 3.4	Letter by Daniel Boultinghouse, PacLand, regarding revised access to site including two attached drawings.	1768-1770
Exhibit 3.5	Copies described as "postcards of 453 local residents (369 Beaverton residents) indicating support of proposed Wal Mart Store at Cedar Hills Blvd. and Barnes Road, dated May 2, 2006	1771-1965
Exhibit 3.6	Site Plan (24" x36") presented at BDR hearing of May 2, 2006, showing proposed site, building locations, nearby streets, and proposed traffic signal locations.	1966
<b>Exhibit C</b>	<b>Public Written Testimony:</b> May 2 through May 3, 2006	1967-2100

**Page nos. 2101 through 2799 were deliberately not used.**

<b>SECTION 3</b>	<b>WAL MART (DR2005-0068 / LO2005-0003)</b>	<b>2800 -</b>
	<b>BDR STAFF REPORT PACKET</b>	<b>4142</b>
Staff Report Packet Cover Sheet		2800
<b>Exhibit 1</b>	<b>Site Maps and Photos</b>	
Exhibit 1.1	Vicinity Map	2801
Exhibit 1.2	Aerial Photo of Site	2802
<b>Exhibit 2</b>	<b>Materials Submitted by Staff</b>	
	BDR Staff Report Background Facts	2803
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Exhibit 2.1	Executive Summary of Major Concerns Raised in Public Written Testimony and Staff Response	2810-2819
Exhibit 2.2	Staff Report (Attachments A through D)	
	<u><b>Attachment A.1:</b></u> Facilities Review Committee Technical Review and Report	2820-2840
	<u><b>Attachment A.2:</b></u> Washington County Code (Applicable requirements) Conformance Table	2841-2851
	<u><b>Attachment A.3:</b></u> Chapter 60 (Beaverton Development Code) Conformance Table, including Landscape Tree Mitigation Worksheet	2852-2858
	<u><b>Attachment B: Staff Report for LO 2005-0003 (Town Square Too – Wal Mart).</b></u> The applicant requests approval of a Loading Determination	2859-2863
	<u><b>Attachment C: Staff Report for DR 2005-0088 (Town Square Too – Wal Mart).</b></u> The applicant requests approval of a Type 3 Design Review.	2864-2897
	<u><b>Attachment D:</b></u> Recommended BDR Conditions of Approval for all applications	2898-2911
Exhibit 2.3	Washington County ‘A-Engrossed Ordinance No, 483’,(portion) adopted October 28, 1997, establishing in part Transit Oriented Districts. Contains description of intended characteristics of the TO-RC district (p. 2 of 4).	2912-2920

Exhibit 2.4	<b>Washington County Development Code Sections: Article III Sections 375, 377, 380; Article IV Sections 405, 406, 407, 408, 409, 411, 413, 414, 418, 419, 423, 429, 431; Article V Sections 501, 502.</b>	2921-3134
Exhibit 2.5	<b>Washington County Community Plan and Development Code Maps</b> <b>Exhibit 2.5.1</b> Land Use District Map B <b>Exhibit 2.5.2</b> Significant Natural and Cultural Resources <b>Exhibit 2.5.3</b> Protected Natural Resources – Portion of Sunset Transit Center Area <b>Exhibit 2.5.4</b> Map showing Barnes-Peterkort Sub-Area <b>Exhibit 2.5.5</b> Peterkort Property Master Plan Areas <b>Exhibit 2.5.6</b> Peterkort Station Sub-Area <b>Exhibit 2.5.7</b> Areas of Special Concern (ASC.1) <b>Exhibit 2.5.8</b> Parking Maximum Designations <b>Exhibit 2.5.9</b> Major Transit Stops, 300 Foot Buffer and Major Transit Stop Overlay <b>Exhibit 2.5.10</b> Local Street Connectivity <b>Exhibit 2.5.11</b> Special Area Streets, Street Corridor and Arterial Access Designations <b>Exhibit 2.5.12</b> Pedestrian Connectivity areas <b>Exhibit 2.5.13</b> Pedestrian System Designations <b>Exhibit 2.5.14</b> Cedar Mill Town Center Core <b>Exhibit 2.5.15</b> Transportation Functional Classification Map	3135-3150
Exhibit 2.6	<b>Map of Tri-Met bus service and bus stops in the Barnes Road / Cedar Hills Blvd./Albertson’s Store area.</b>	3151-3152
Exhibit 2.7	<b>City Memorandum of Notice of Annexation and Map; Approved by the City of Beaverton (ANX 2004-0013, dated January 14, 2005). Annexation of 139 acres in the area of Barnes Road and Cedar Hills Blvd.</b>	3153-3155
Exhibit 2.8	<b>City letter of Facilities Review Committee’s determination that of Town Square Too – Wal Mart applications <u>incomplete</u>, dated July 27, 2005. Includes attachment by Randy Wooley (City), and attachments by ODOT and Washington County</b>	3156-3177

Exhibit 2.9	<b>Letter by E. Michael Connors, Davis Wright Tremaine LLP, to the City, dated December 23, 2005.</b> Letter references response to City's incompleteness letter, includes request to deem application complete pursuant to ORS 227.178(2)(a, b), and provides first waiver and time extension for City application processing (ORS 227.178(5)).	3178-3180
Exhibit 2.10	<b>Public Notice of Board of Design Review hearing and City review of Town Square Too - Wal Mart applications, mailed March 9, 2006.</b> Includes attached notice map and 3 notice lists comprising total of 1500 individuals providing written testimony on or before March 6, 2006.	3181-3227
Exhibit 2.11	<b>Letter by Phil Healy Senior Planner, including memo by Jinde Zhu PE, Traffic Engineer, Washington County, dated March 3, 2006.</b>	3228-3243
Exhibit 2.12	<b>Letter by Lainie Smith, AICP, Planning &amp; Finance Manager ODOT, dated March 24, 2006</b> (updates and replaces previous letter of March 3, 2006, not in the record).	3244-3255
Exhibit 2.13	<b>Memo by Joseph Auth PE, and Martin Jensvold PE, ODOT, dated March 24, 2006.</b> (updates and replaces previous memo of March 3, 2006, not in the record).	3256-3265
Exhibit 2.14	<b>Letter by John K. Dalby, Deputy Fire Marshal, TVF&amp;R, dated March 23, 2006.</b> (Submitted by TVF&R as Facilities Review comment)	3266-3268
Exhibit 2.15	<b>Letters by Affected Waste Haulers (1) Washington County Drop Box Services, Inc., dated March 24, 2006 (2) Walker Garbage Service dated March 27, 2006.</b>	3269-3271
Exhibit 2.16	<b>Site Plan portion (Sheet C-1.0) by PACLAND showing areas of proposed right-of-way dedication, dated March 27, 2006.</b>	3272-3273
Exhibit 2.17	<b>Letter by Lois Ditmars, VP, J. Peterkort &amp; Co., dated March 28, 2006.</b> Re: intent to dedicate right-of-way for Wal Mart roadway improvements.	3274-3275

- Exhibit 2.18     **City Ordinance 4384, ‘Ordinance Prohibiting Vehicle Camping in Parking Lots Associated with Commercial Structures’.** Approved March 7, 2006, dated as received March 29, 2006.     3276-3278
- Exhibit 2.19     **Sign-In Sheet for Facilities Review Meeting dated April 5, 2006.**     3279-3280
- Exhibit 2.20     **Letter by George and Anastasia Choban, with regard to Wal Mart development and access modification, dated April 5, 2006.** Includes attached Notice of Washington County land use approval, Casefile 04-521-E (dated January 13, 2005), approving gas station, retail, office development on Choban property.     3281-3284

**Exhibit 3     Materials Submitted by Applicant**

- Exhibit 3.1     **Development applications and all written materials submitted for Town Square Too – Wal Mart, revised dated April 20, 2006.** Provided under separate attachment. Older versions of documents have been superseded by the applicant’s submittal of the April 20, 2006 materials. Older documents by the applicant remain on file at the City, but are not provided to the Board of Design Review. Copies are available, subject printing charges, upon request.     3285-4142

Exhibit 3.2     The following documents submitted by the applicant have not been re-submitted to the Board of Design Review as part of the April 20, 2006 materials. Such documents are not printed for review, but are part of the record. Copies are available, subject printing charges, upon request.

**Ex. 3.2.1 Phase 1 Environmental Site Assessment and Business Environmental Risk Evaluation, Proposed Retail Development,** by GeoEngineers, dated February 25, 2004.

**Ex. 3.2.2 Draft Final Report, Geotechnical Engineering Services, Proposed Retail Center Cedar Hills, Oregon,** dated January 10, 2005, by GeoEngineers.

**Ex. 3.2.3 Materials Board – Proposed Wal Mart,** by Perkowitz+Ruth Architects, dated March 4, 2005 (dated as received June 30, 2005). The Materials Board will be presented to the BDR at the public hearing and is available for public inspection. The

Materials Board is the companion document to the Description of Materials & Finishes contained within the applicant's April 20, 2006 submittal.

**Page nos. 4143 through 4999 were deliberately not used as a part of this Agenda Bill**

<b>SECTION 4</b>	<b>WAL MART PUBLIC WRITTEN TESTIMONY</b>	<b>5000 - 8385</b>
Exhibit C	Letters, E-mail and other Correspondences Dated <b>April 25, 2006 through May 1, 2006</b>	5000-5230
Exhibit B	Letters, E-mail and other Correspondences Dated <b>March 7, 2006 through April 24, 2006</b>	5231-6304
	<b>This Page Number Inadvertently Skipped</b>	6305
Exhibit A	Letters, E-mail and other Correspondences Dated <b>June 16, 2005 through March 6, 2006</b>	6306-8385

**Note: For Letters, E-mail, and other Correspondences submitted May 2 through June 1, 2006 see Section 2.**

**For Letters, E-mail, and other Correspondences submitted June 15 through June 29, 2006, see Section 1**



EXHIBIT 1.2 AERIAL PHOTO OF SITE





# MEMORANDUM

## City of Beaverton

### Community Development Department

*"make it happen"*

**To:** Mayor and City Council  
**From:** John Osterberg, Senior Planner  
**Date:** June 29, 2006  
**Subject:** *Appeal of Town Square Too – Wal Mart (APP 2006-0004, DR 2005-0068)*  
*Response to Notice of Appeal and Amended Findings*

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Staff provide this memorandum to the Mayor and City Council which contains responses to the matters raised by the appellant, Jeffrey Kleinman legal representative of "Save Cedar Mill", and provides additional findings in support of the Board of Design Review's approval of the application. Objections raised in the appeal are addressed below in approximately the same order.

#### **I. Introduction.**

No staff comment

#### **II. Traffic and Transportation Related Issues**

Staff have no written comments to make under the objections raised under Item II of the appeal. The appellants have not raised new issues in the appeal refuting staff's recommendations and findings to the Board of Design Review. Transportation staff will be available at the appeal hearing to answer questions or clarify staff's findings with regard to Traffic and Transportation related matters.

#### **III. Design Review Issues**

The appellant states six (6) reasons, shown as bullet-points located on Page 8 of the notice of appeal, why the City's findings with regard to design issues are in error. Mr. Kleinman states that the reasons are set out in the memorandum by Tom Armstrong (Winterbrook Planning) dated April 17, 2006 (appellant's exhibit 4). Staff note that this Armstrong memo was written prior to the applicant's revised building and site designs were submitted to the City on May 11, 2006, (Tab 8 of Exhibit 3.12) and then

further revised in the submittal of May 30, 2006 (Exhibit 3.15). Therefore, the objections by Mr. Kleinman & Mr. Armstrong as to insufficient pedestrian oriented design and architectural quality is not based on the final designs, which focused on building architecture, pedestrian orientation and streetscape design, approved by the Board of Design Review.

Staff will address the six (6) reasons cited by the appellant in order, and assign the points raised with numbers.

**Point 1:** *The BDR failed to recognize the broad discretion the City has to deny or condition the project to assure compliance with the property's "transit-oriented development" designations.*

**Staff Response:**

The proposed development is unique in that the proposal is subject to both Washington County Development Code (WCDC) standards and Beaverton Development Code (BDC) standards. The subject site was annexed to the City on February 11, 2005. For a variety of reasons, the subject site was not rezoned to a City zoning designation immediately after annexation. Those reasons were as follows:

1. The annexation was challenged in Court;
2. The potential for creating a Ballot Measure 37 claim; and
3. The City and property owner offered Washington County an Intergovernmental Agreement to allow Washington County to review and process a land use application based entirely upon the WCDC provisions. The County rejected the offer.

Even if the City elected to proceed with assigning City zoning to the subject site immediately after annexation, the applicant could have easily filed their land use applications before the City zoning could become effective. The situation for review of those applications would be the same as is the current condition. The City had every reason to assume the applicant would file their applications since the applicant had stated to the City during the annexation process that they were ready to file their land use applications immediately after the annexation took effect.

Therefore, for this application, the City is faced with a site which continues to have a Washington County zoning designation, Transit Oriented - Retail Commercial, and is subject to the City's land use review procedures and development standards. This condition is legislated by BDC Section 10.40.1 which reads:

*“Any area annexed to the City shall retain the zoning classification of its former jurisdiction until changed by the City. In the interim period, the City shall enforce the zoning regulations of the former jurisdiction along with any conditions, limitations or restrictions applied by the former jurisdiction as though they were a part of this Code, except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulations in force in the former jurisdiction at the time of annexation.”*

Section 10.40.1 means that the City’s zoning standards in Chapter 20 (Land Uses) do not apply while the subject site retains its Washington County zoning designation. The Section also means that any development proposal would be subject to the City’s applications, procedures, and development standards found in Chapter 60 (Special Requirements). The key phrase in Section 10.40.1 is “. . . *except that the provisions of Chapters 30 through 80 of this Code shall supersede comparable provisions of the zoning regulations in force in the former jurisdiction at the time of annexation.*” The Community Development Director has interpreted this phrase to mean that if the BDC has a code provision for a development standard, that City standard prevails over a WCDC standard. For example, if both the BDC and WCDC have standards regarding the amount of glazing which should face a street, the City’s standard would apply. The City’s zoning provisions would apply even if the County’s standards were more restrictive. The Community Development Director has further interpreted that if the WCDC contained a standard on which the BDC was silent, the WCDC standard would be applicable. For example, if the WCDC contained a development standard regarding weather protection for pedestrians such as awnings or canopies, and the BDC had no comparable standard, the County standard would apply.

To assist the Board of Design Review in understanding which Code provisions were applicable to the subject application, the staff prepared a “crosswalk”, in the form of an analytical chart (Exhibit 3.1; beginning on page 3561) identifying WCDC provisions and BDC provisions. The provisions of the crosswalk were later amended upon additional analysis by staff during project, with comments found in BDR staff report Attachment 2 (Exhibit 2.2 beginning on page 2841). The appellant alleges that staff selected “the weakest criteria” by which the Board would review the application and continues by stating that the Board of Design Review mistakenly relied only on the Code provisions identified by staff. Further, the appellant alleges that the Board “had far more authority and discretion than it recognized or utilized” in evaluating the applicable code standards and rendering a decision on the application.

Much is being made of the argument that the combination of code provisions is confusing and leads to a lessening of regulation, especially with respect to design issues. At the Board's proceedings, the appellant identified other code provisions which they feel were applicable to the subject application. The appellant has identified these provisions in their appeal and have also attached the correspondence to the Board identifying those other provisions.

Staff is in full agreement that the process by which this application is being reviewed is unique. However, staff do not agree that other applicable provisions have been omitted. Staff's position continues to be that the crosswalk contained in the staff report to the Board is complete and identifies all the applicable code provisions including applicable design provisions. Specific to the issue of design provisions, the claim that more stringent County requirements have been omitted is inaccurate and misleading.

Staff have already responded to the omission claims specified in the correspondence submitted to the Board. Staff continues to rely on the staff responses to the Board contained in the record since the appellant has not raised new issues or claims relating to Code provisions. With respect to the appellant's claim being misleading, it is necessary for the Council to understand how the County would have reviewed this development proposal.

The County Code states that the proposal would be a Type 2 application if the proposal follows all of the applicable design standards contained in WCDC Section 431 (Transit Oriented Design Principles, Standards, and Guidelines). If the applicable design standards are not met, then the proposal would be reviewed as a Type 3 application and would be subject to the County's design principles or design standards. The County's procedure for design review is essentially the same as City's. There is no requirement to comply with the design standards in a Type 3 application. Therefore, to assert that there are applicable County design standards not being met by the application is misleading. Furthermore, staff find that the City's design guidelines are the same or more descriptive, with greater direction regarding design aspirations, than the County's design principles for new development.

To be clear about the City's Design Review process, it is important for the Council to understand the difference between the City's design standards and design guidelines. The City's design standards are not development requirements like building height or use restrictions. Design standards are the City's "safe harbor" approach to reviewing design concerns of proposed development of modest scale. An applicant can choose to meet the City's design standards and proceed with a Type 2 application. If an applicant is unable or unwilling to meet the applicable design standards, then the

proposal is subject to a Type 3 application and is subject to the applicable design guidelines. The City's design guidelines are more broadly written than the design standards since the design standards are quantifiable. However, when reviewing a proposal based on the guidelines, the design standards are used to illustrate the desire of the City.

The appellant further states in the appeal, under Point 1, that "the BDR failed to recognize the broad discretion the City has to deny or condition the project to assure compliance with the property's "transit-oriented development" designations." Staff do not agree with this assertion. The Board deliberated at length about the design issues relating to the site's location and zoning designation. The Board recognized that the subject zoning allows by right retail uses in excess of 5,000 square feet. Any argument that the proposed use is not transit oriented is misdirected since the legislative decision to establish uses in the To-RC zone has already taken place years ago. The Board considered the appellant's arguments and those of other persons objecting to the proposal that the proposed design was not transit oriented. The Board concluded that with conditions of approval, the proposal met the minimum requirements of the WCDC and BDC. The appellant has not provided any new evidence in the appeal which demonstrates how the proposal does not comply with the zoning of the site or the applicable code provisions.

**Point 2:** *The building design is not consistent with the Community Plan and the intent, purpose, principles and standards of the Washington County Transit Oriented - Retail Commercial (TO-RC) zoning to encourage development that is supportive of transit and generates a relatively high proportion of trips by transit.*

**Staff Response:**

Intent & Purpose of County Transit Oriented Districts

Mr. Armstrong cites the Intent and Purpose statement of Washington County Code Section 375-1 which states that the intent of the County transit oriented districts is to encourage development that is transit supportive and to limit development to that which, among other elements, generates a relatively high percentage of trips serviceable by transit, and is designed to encourage people to walk, ride a bicycle or use transit for a significant percentage of their trips.

Staff agree that Section 375-1 states that the TO-RC's zone's (in this case) purpose is to encourage transit supportive and pedestrian oriented development. Staff's findings, already contained in the record in Exhibit 2.31, are that:

- (1) The proposed Town Square Too – Wal Mart development is listed by the County Code in Table A of Section 375 as a permitted Type II commercial – retail use as the proposal is retail businesses greater, without limitation, than 5,000 square feet in size. Staff conclude that the County Code prohibits uses in the TO-RC zone that are not transit and pedestrian oriented, and permits those uses outright that are considered transit and pedestrian oriented. Listed uses permitted outright, carry out the Code’s purposes; they are acceptable and no further demonstration of purpose is necessary. Therefore, there is no need for the City to consider the pedestrian or transit trip generation of the use, or the amount of the use that is devoted to retail.
- (2) Mr. Armstrong is mistaken in his reading of the County Code that the zoning and design related requirements under Sections 375 and 431 prohibit, or should be construed to prohibit, a Wal-Mart store or any other large retail use, because the applicant has not submitted evidence regarding pedestrian or transit trip usage by which to gauge suitability. Such evidence is not required of the applicant because the County has already determined that large retail uses can be transit and pedestrian oriented, depending on the design and amenities provided by the development.
- (3) The County’s Intent and Purpose statement is not a criterion for approval. Section 375-4.4 of the County Code states that Type II permitted uses, if they do not meet design standards of Section 431 shall demonstrate compliance with the applicable design principles or standards of County Code Section 431, in addition the limitations listed under Section 375-7. Staff conclude that the Intent and Purpose statement of Sec. 375-1 is not to be used as a requirement or criteria for approval, because the County Code lists other requirements, such as standards and principles (as applicable), under Section 431.

**Point 3:** *The building design does not enhance the visual character of the area, nor does it create a sense of place for this important gateway location as required by the City of Beaverton’s Design Principles.*

**Staff Response:**

Mr. Armstrong raises the matter of the “Cedar Mill Gateway” on page 2, and City of Beaverton Design Principle #1 regarding ‘gateways’ and ‘sense of place’, on pages 3 and 4 of the Winterbrook memo of April 17, 2006 (appellant’s exhibit 4).

Gateway:

Mr. Armstrong states that the site is a gateway to the Cedar Mill/Cedar Hills community and that the building design does not enhance the visual character of this community, but instead offers bland corporate architecture. There is no land use designation of “gateway” found on any of the County maps of Exhibit 2.5, nor is there any notation of gateway in the Design Review section of the Beaverton Development Code, or the applicable Washington County Development Code. Additionally, the Board of Design Review found the architecture and design to be of sufficient quality and visual interest to meet the applicable design criteria of the City and County.

Mr. Armstrong states that planning objectives for the area envision a transit oriented corridor along Barnes Road between the Cedar Mill Town Center and the Sunset Transit Center area, and that a big box retail use does not fit with that vision. Staff disagree on both counts. First, while staff agree that both the Cedar Mill Town Center (Exhibit 2.5.14) and the Sunset Transit Center/Peterkort Station Sub Area (Exhibit 2.5.6) are intended by the County Development Code to have the highest level of pedestrian and transit oriented development and design features, the Wal Mart site is not located within either of those two areas mapped by the County.

The fact that the County has zoned the Wal Mart site as TO-RC without the Cedar Mill main street related standards, or the Peterkort Station Area special design standards, shows that the County Code does not require that the Wal Mart site have the same high level of pedestrian/transit development and design as the two areas to the west and east, respectively. There is no element of the County maps that would indicate a single highly-transit oriented development corridor along Barnes Road. Overall, County regulations provide the Wal Mart site and other properties in close proximity, a moderate level of pedestrian and transit oriented requirements, and not the highest level required in other locations.

Sense of Place

Tom Armstrong quotes Beaverton Design Review – Design Principle #1, under 60.05.10 of the Development Code, which states:

*Building Design and Orientation. Design buildings that enhance the visual character of the community and take into account the surrounding neighborhoods, provide permanence, and create a sense of place. In residential, commercial and multiple –use districts, design buildings that contribute to a safe, high quality pedestrian-oriented streetscape.*

Staff respond by noting that the Beaverton Design Principles are not criteria for review. The Code, under Section 40.20.15.3.C.4 states that for Design

Review Three applications, the development proposal is subject to the Design Review Guidelines of Section 60.05.35 through 60.05.50. It is these Design Guidelines, in addition to applicable design related requirements Section 375 and 431 of the Washington County code, that were reviewed by the Board of Design Review, and found within the staff report of April 25, 2006, and as supplemented by later memoranda by staff.

If the Council wish to consider Design Principle #1, staff find that the principle is met by the final designs submitted by the project architect, dated May 30, 2006, (Exhibit 3.15) adopted by the Board of Design Review in their oral decision of June 1, 2006. Design Principles are described by Section 60.05.10 of the Beaverton Code as general guidance statements which are implemented by either Design Standards or Design Guidelines. Therefore, by meeting the building and site design related Design Guidelines of Section 60.05.35 through 60.05.50, any of the Design Principles are met, including Principle #1.

**Point 4:** *The Barnes Road frontage is not pedestrian-friendly and does not comply with the City's design guidelines or the intent, purpose and design principles of the County's Transit Oriented zoning designation.*

**Staff Response:**

Mr. Armstrong cites Beaverton Design Guidelines in the Winterbrook memo of April 17, 2006 (appellant's exhibit 4), as not being met. The Design Guidelines cited, have been addressed in the April 25, 2006 BDR staff report and again in Exhibit 2.31, and were found to be met by the Board, are listed below:

Section 60.05.35.1 Building Design and Orientation

- B. Building elevations should be varied and articulated to provide visual interest to pedestrians. Within larger projects, variations in architectural elements such as: building elevations, roof levels, architectural features, and exterior finishes should be provided.*
  
- E. Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, buildings should promote and enhance a comfortable pedestrian scale and orientation.*
  
- F. Building elevations visible from and within 200 feet of an adjacent street or major parking area should be articulated with architectural features such as windows, dormers, off-setting walls, alcoves, balconies or bays, or by other design features that reflect the building's structural*

*system. Undifferentiated blank walls facing a street or major parking area should be avoided.*

Section 60.05.35.6. Building Location and Orientation in Multiple Use and Commercial districts.

- A. Buildings should be oriented and located within close proximity to public streets and public street intersections. The overall impression, particularly on Class 1 Major Pedestrian Routes, should be that architecture is the predominant design element over parking areas and landscaping.*
- B. The design of buildings located at the intersection of two streets should consider the use of a corner entrance to the building.*

Section 60.05.35.7 Building Scale along Major Pedestrian Routes.

- A. Architecture helps define the character and quality of a street. Along Major Pedestrian Routes, low height, single story buildings located at the right-of-way edge are discouraged.*
- B. Building heights at the right-of-way edge should help form a sense of street enclosure, but should not create a sheer wall out of scale with pedestrians. Building heights at the street edge should be no higher than sixty (60) feet without the upper portions of the building being set back from the vertical building line of the lower building stories.*

Section 60.05.35.8 Ground Floor Elevations on Commercial and Multiple Use Buildings.

- A. Excluding residential only development, ground floor building elevations should be pedestrian oriented and provide views into retail, office or lobby space, pedestrian entrances or retail display windows.*
- B. Except those used exclusively for residential use, ground floor elevations that are located on a Major Pedestrian Route, sidewalk, or other space where pedestrians are allowed to walk, should provide weather protection for pedestrians on building elevations.*

60.05.40.6 Street frontages in Multiple Use districts.

- A. Surface parking should occur to the side or rear of buildings and should not occur at the corner of two Major Pedestrian Routes.*
- B. Surface parking areas should not be the predominant design element along Major Pedestrian Routes and should be located on the site to safely and conveniently serve the intended users of the development, without precluding future site intensification.*

60.05.40.7 Sidewalks along streets and primary building elevations in Multiple Use and Commercial districts

- A. *Pedestrian connections designed for high levels of pedestrian activity should be provided along all streets.*
  
- B. *Pedestrian connections should be provided along primary building elevations having building and tenant entrances.*

Staff Response to Design Guidelines Cited by Appellant:

Mr. Armstrong further states “*the building design does nothing to create a comfortable pedestrian streetscape to provide a continuous high quality pedestrian experience along Barnes Road from Cedar Mill to the Sunset Transit Center*”. Staff respond by noting, as described under Point #3 above, that there is no specific pedestrian or transit corridor designated on Barnes Road. This is evidenced by the Pedestrian System Designations Map (Exhibit 2.5.13) of the Cedar Hills-Cedar Mill Community Plan contains designations for pedestrian “focus areas” and pedestrian “trails” and “corridors”, but does not designate anything for Barnes Road in the vicinity of the Wal Mart site. With regard to City designations, the City of Beaverton has not designated any street abutting the site as a Major Pedestrian Route because the site is not yet subject to the City Comprehensive Plan or Development Code.

Mr. Armstrong states that the elevated Wal Mart retail space “*sucks all the life of the street*”, the office space is an “*afterthought*”, and that the Barnes Road pedestrian environment suffers due to poor design of the strip commercial building, and describes the potential for retailers who may not use the entrance doors to Barnes Road. Mr. Armstrong further states that the building placement is weak treatment of the corner and provides “*absolutely zero presence on Cedar Hills Blvd.*”. Mr. Armstrong provides several more opinions alleging the failure of the architecture and design of the buildings and site.

Staff responds by noting that the following design matters have been raised in the appeal: pedestrian scale and orientation, the impression that architecture makes upon pedestrians as viewed from the street, the desirability of a sense of enclosure for pedestrians without excessive building mass pedestrian and building spaces being visually open in feeling. Staff find that these matters are important and are the subject of both City and County design principles and guidelines. However, such matters are by nature, highly discretionary and subject to varied opinions by citizens, design professionals, and public

decision-makers. For instance, what one person may feel is a desirably wide building separation from street traffic, another person may feel that a building may be uncomfortably setback too far from a street. Staff considers that many design opinions are valid, and are acceptable under the broad discretion afforded under City Design Guidelines and County Design Principles or Guidelines, so long as the space for pedestrian usage is properly designed, contains appropriate pedestrian amenities, and is functional for its intended purpose.

Regardless of the possible myriad of opinions about the proposal's design, staff respond by citing the findings of the BDR staff report (Exhibit 2.2), the Staff memorandum to the BDR (Exhibit 2.31), the applicant's revised building and site designs submitted to the City on May 11, 2006, (Tab 8 of Exhibit 3.12) and then further revised in the submittal of May 30, 2006 (Exhibit 3.15), and the BDR's Land Use Order (Exhibit 2.33), which contain findings that all of the City Design Guidelines have been met with regard to building architecture and site design with respect to the necessary level of pedestrian orientation.

**Point 5:** *The Cedar Hills Boulevard frontage is dominated by a surface parking lot and has no pedestrian orientation a required by the City design guidelines.*

**Staff Response:**

Mr. Armstrong acknowledges that Cedar Hills Blvd. and Barnes Road are not designated by the City as Major Pedestrian Routes because the City has not yet applied its planning and zoning designations for this area, but states that because of the Comprehensive Plan definition of the term "major pedestrian route", that definition should lead to the conclusion that Barnes Road and Cedar Hills Blvd. should never-the-less be considered Major Pedestrian Routes during the Wal-Mart land use review.

Appendix 2 of the Beaverton Comprehensive Plan's Glossary of Terms lists the following definition of Major Pedestrian Route: *"Any pedestrian way in a public right-of-way or easement leading to a light rail station or transit stop, that is presently used, or likely to be used, by pedestrians to access public transportation service including light rail or transit stations"*.

Staff find that the purpose of the Comprehensive Plan's glossary of terms is to define the meaning of terminology used in the Plan. The glossary does not in itself establish Plan designations. Staff considers the glossary definition not useful by itself to determine the locations of MPR's, because with such a broad definition, most any sidewalk that might be used by pedestrian to access transit meets the definition. At such time in the future when the City

is ready to establish Comprehensive Plan designations to the area, the City will determine which streets in the area, if any, will be appropriate to receive the Major Pedestrian Route (MPR) designation.

The appellant notes that Figure 12D “Trails and Pedestrian System”, of the County’s 2020 Transportation Plan (attached by the appellant and found under Exhibit C.2.152, and reviewed by staff under Exhibit 2.31), shows a large area in the Cedar Mill and Sunset Transit Center areas as a ‘Pedestrian District’, which includes the proposed Wal Mart site. The City’s Transportation System Plan (TSP) Map also identifies a similar area under the term “RTP Pedestrian District”. Therefore, the two Plans are compatible in this regard. However, the City Plan designation is not yet in effect for the site, and will not be until such time as the applies the City’s Comprehensive Plan to the area. Because the Beaverton Comprehensive Plan does not yet apply, the County Plan designation should be used instead.

Staff conclude that although City and County Transportation Plan Maps identify the Wal Mart site and street frontages as “pedestrian district”, neither of these maps nor the definitions of Major Pedestrian Routes found in the Beaverton Plan, specifically designate either the Cedar Hills Blvd or the Barnes Road street frontages as a Major Pedestrian Route. Again, this is evidenced by the Pedestrian System Designations Map (Exhibit 2.5.13) of the Cedar Hills-Cedar Mill Community Plan which does not designate a pedestrian route, trail or similar, in the vicinity of the Wal Mart site.

With regard to the amount of pedestrian orientation to Cedar Hills Blvd., which the appellant claims to be inadequate, staff considers the applicant’s site building location and orientation to be an appropriate design response because it is likely that at this location, Cedar Hills Blvd. will be less utilized by pedestrians in comparison to Barnes Road. Staff reaches this conclusion because of Cedar Hills Blvd’s freeway orientation along the eastern and southern portion of street frontage where the westbound freeway on-ramp begins. Cedar Hills Blvd. between Barnes Road and Butner Road, (located south of Hwy. 26) is an ODOT facility, not a County Road, and is designated by ODOT (see Exhibit 2.23) as part of the Hwy 26 freeway ramp.

The County Development Code, under the Transit Oriented Design section definitions (Sec. 431-3.7), defines Pedestrian Street as “*any public or private street, but not including freeways, alleys, parking lot access drives and parking lot aisles*”, and that a “*Pedestrian Route*” is *any accessway or greenway defined by Section 408-3, and any pedestrian street*. Therefore, staff concluded during the review of the proposal that requirements with regard to pedestrian streets or routes do not apply to the Cedar Hills Blvd. frontage because as an ODOT freeway ramp, the street is not subject to the

County pedestrian related principle or guidelines and is not subject to City Design Guidelines with regard to pedestrian orientation, as cited by Mr. Armstrong and listed under Point 5, above; Sections 60.05.35.6 A and B, Sections 60.05.35.7 A and B, Section 60.05.35.8.A and B, Section 60.05.40.6.A and B, and Sections 60.05.40.7.A and B.

Staff conclude that the design of the proposed development meets all of the applicable City of Beaverton Design Guidelines, cited by the applicant and as addressed by staff in the findings of the BDR staff report (Exhibit 2.2), the Staff memorandum to the BDR (Exhibit 2.31), the applicant's revised building and site designs submitted to the City on May 11, 2006, (Tab 8 of Exhibit 3.12) and then further revised in the submittal of May 30, 2006 (Exhibit 3.15), and the BDR's Land Use Order (Exhibit 2.33), which contain findings that all of the City Design Guidelines have been met with regard to building architecture and site design with respect to the necessary level of pedestrian orientation.

**Point 6:** *The building design along the private access street fails to integrate the adjacent area to the east by presenting a massive, undifferentiated wall with no sidewalk and minimal landscaping.*

**Staff Response:**

Mr. Armstrong states that the west elevation of the building does not have pedestrian orientation and turns it back on the site, and that a sidewalk should be required to provide pedestrian scale and so meet the building and orientation guidelines below.

Section 60.05.35.1 Building Design and Orientation

- B. Building elevations should be varied and articulated to provide visual interest to pedestrians. Within larger projects, variations in architectural elements such as: building elevations, roof levels, architectural features, and exterior finishes should be provided.*
  
- E. Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, buildings should promote and enhance a comfortable pedestrian scale and orientation.*
  
- F. Building elevations visible from and within 200 feet of an adjacent street or major parking area should be articulated with architectural features such as windows, dormers, off-setting walls, alcoves, balconies or bays, or by other design features that reflect the building's structural system. Undifferentiated blank walls facing a street or major parking area should be avoided.*

Staff respond by citing the findings of the April 25, 2006 staff report (Exhibit 2.2) with regard to supporting the decision for approval by the BDR.

All building walls on all buildings are visible from and within 200 feet of an adjacent street or parking area. The west elevation of the building is broken into two segments; the office building and the main parking garage building elevations. Although the west elevations of the main building have a lesser amount of articulation and visual interest in comparison with other elevation on the main building, the corresponding pedestrian orientation is similarly different, so that the west elevation of the main building garage is appropriate for the low level of pedestrian use expected along the west side of the building. In any case, the west elevation of the main building provides adequate articulation with building openings, with offsetting building wall planes and recesses, covered entry features for autos and the garden center area. There are few windows on the west elevation. However, the west elevation does provide a varied roofline, and bold timber beamed entrance covers and canopies, and large building openings to the parking garage and to recessed wall segments that provide an adequate variety of building wall planes. Therefore, the Board concluded in approving the proposal that the west elevation is not an undifferentiated blank wall.

With the sidewalk located on the west side of the new private street/access drive, there will not be a sidewalk along the building edge, except for a short sidewalk length of approximately 25 feet, that the BDR adopted as part of condition of approval #34, requiring a pedestrian crossing across the western private access drive. The addition of the short stretch of sidewalk will be placed along the west face of the building in order to connect an internal pedestrian route within the garage out to the intersection of SW Choban Lane. In association with other internal pedestrian walkways within the garage, staff find that adequate pedestrian connections will be provided.

In regard to the proposed new private street along the west edge of the site, the applicant does not propose a sidewalk along the east side of the street, so that there would not be a sidewalk along the west building elevation of the parking garage. Sidewalk Guideline B (60.05.40.7.B) above, intends that pedestrian connections be provided for the purpose accommodating expected use by pedestrians to connect to building and tenant entrances.

Staff find that a sidewalk is not necessary along the west side of the structure because from the southeast corner of the signalized intersection of Barnes Road and the new private street, pedestrians intending to access building entrances in the Town Square Too development would find a more convenient travel path a short distance to the east along the combined sidewalk and

pedestrian plaza. If pedestrians wanted to travel to the parking garage from that corner, they would enter the garage near its northwest corner and travel along the internal delineated walkway along the west edge of the aiseways, as shown on Sheet C-1.0.

Staff find that there is no reason for pedestrians to travel along the east side of the private street, along the face of the parking garage, because there are no pedestrian or customer destinations to the south outside Wal Mart site that would not be more easily accessed by the proposed sidewalk along the west side of the private street. Along the east side of the private street, only the proposed Wal Mart parking garage driveways and the truck/loading area driveway are located to the south, prior to reaching the Hwy 26 freeway. These are areas on the site where pedestrians should not be encouraged to walk to, for safety reasons. BDR Condition 34 does not encourage pedestrians to walk along the face of the parking building, but walk only a short distance in order to cross the access drive at the Choban Lane intersection.

To conclude, staff find that the area along the east side of the private street/access drive (the west elevation of the parking garage) contains no building or tenant entrance that is intended for pedestrian use. Suitable alternate pedestrian connection routes to retail, office and parking area destinations, both within and outside of the Town Square Too – Wal Mart development, are provided elsewhere in the design for convenient pedestrian circulation and pedestrian orientation. Therefore, a sidewalk is not necessary or appropriate along the east edge of the private street. Staff conclude that a combination of public sidewalks and private internal walkways, located and designed to encourage desirable pedestrian travel patterns, are proposed and as further conditioned, meets the Design Guidelines.

#### **IV. Improper Deferral of Modification to Washington County Access Spacing Standard**

##### **Staff Response:**

The appellant claims that the BDR decision lacks authority to defer the County approval of access spacing modification to a later time, as found by the BDR under Section 2 of Land Use Order 1871 (Exhibit 2.33). Staff respond by stating that the deferral of the access modification approval by the County is an appropriate and permitted deferral, and is not improperly deferred.

The City of Beaverton Development Code, under Section 60.55.10.1, (below), requires the City to ensure that applicants, as a condition of approval, receive the necessary transportation facility permits from the particular governmental agencies; notably Washington County and ODOT, depending on the jurisdiction of the roadway.

Section 60.55.10.1 of the Beaverton Development Code states:

*“All transportation facilities shall be designed and improved in accordance with the standards of this Code and the Engineering Design Manual and Standard Drawings. In addition, when a development abuts or impacts a transportation facility under the jurisdiction of one or more other governmental agencies, the City shall condition the development to obtain permits required by the other agencies.”*

The findings contained in the page 3 and 4 of Land Use Order 1871 (Exhibit 2.33) summarize the matter satisfactorily, and no additional information is needed by staff with the exception of citing the Development Code requirement above.

With regard to the remainder of the appellant’s objections under Section 4 of the appeal document, staff provide no additional written comments at this time. The appellants have not raised new issues in the appeal to refute staff’s recommendations and findings to the Board of Design Review. Transportation staff will be available at the appeal hearing to answer questions or clarify staff’s findings with regard to Traffic and Transportation related matters.

# MEMORANDUM

**City of Beaverton**  
**Office of the City Recorder**

**To:** Mayor Drake and Councilors  
**From:** Sue Nelson, City Recorder  
**Date:** July 5, 2006  
**Subject:** **Agenda Bill 06124: APP 2006-0004: Appeal  
of Town Square Too - Wal Mart Approval  
(DR 2005-0068)**

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The complete agenda bill and attachments for Agenda Bill 06124 are available for review in the City Recorder's Office on the third floor of Beaverton City Hall, 4755 SW Griffith Drive, Beaverton, OR. The office is open weekdays between 8:00 a.m. and 5:00 p.m. Due to the large volume of the attachments, they were not included with the agenda bill and staff report on the Web site.

If you have any questions regarding this item, please call (503) 526-2650.

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

07/10/06

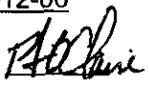
**SUBJECT:** An Ordinance Amending Provisions of Chapter Seven of the Beaverton City Code Establishing Regulations on Payday Lending.

**FOR AGENDA OF:** ~~06-19-06~~ **BILL NO:** 06114

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** City Attorney 

**DATE SUBMITTED:** 06-12-06

**CLEARANCES:** Finance 

**PROCEEDING:** ~~First Reading~~  
Second Reading and Passage

**EXHIBITS:** Ordinance

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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**HISTORICAL PERSPECTIVE:**

The City of Beaverton currently has six payday loan businesses. Citizens have raised concerns that the operation of these businesses are detrimental to the financial security of individuals and families living in the City. Payday loan businesses can have an adverse impact on the most vulnerable members of our society such as the elderly, the poor, and recent immigrants.

**INFORMATION FOR CONSIDERATION:**

Payday loans are short term loans, typically for an initial term of 14 days or less, depending on the date of the borrower's next paycheck. Borrowers are charged a flat fee to obtain a payday loan and these fees amount to annual interest rates which exceed 500%. Usually, borrowers are required to repay the full loan in a single payment at the end of the 14 day term. When borrowers are unable to repay the full loan in a single payment, borrowers can either renew or default on the loan. To renew a loan, borrowers incur another fee, which again may exceed five hundred percent interest per annum. By the end of the state's statutory limit on the number of loan renewals, currently limited to three renewals, borrowers will pay fees that nearly equal the original amount borrowed and may not be able to repay the principal originally borrowed. Both the City of Portland and City of Gresham have adopted ordinances that add to state regulations by allowing borrowers to:

- \*rescind their loans within a 24-hour period
- \*repay at least 25% of their loans before rolling them over or renewing them and
- \*repay their loan via installment plans if they roll over their loan more than three times

Several of the payday loan businesses filed a lawsuit in Multnomah County Circuit Court seeking declaratory judgment that state law preempts cities from adopting such regulations. Recently the Court decided against the industry and that decision was not appealed. Also, the Legislature adopted SB 1105. The operative provisions of this law are different from the provisions of the local government adopted ordinances. SB 1105 capped interest rates at 35% annually, limited fees to \$10 per \$100 borrowed, gave people 31 days to pay off their loan and limited rollover to two. The law will not go into effect until July 2007.

**RECOMMENDED ACTION:**

~~First Reading~~  
Second Reading and Passage

AN ORDINANCE AMENDING PROVISIONS OF  
CHAPTER SEVEN OF THE BEAVERTON CITY CODE  
ESTABLISHING REGULATIONS ON PAYDAY LENDING

**WHEREAS**, Chapter Seven of the Beaverton Code provides for licensing and regulation of businesses operating in the City of Beaverton as Payday lenders previously have not been subject to regulatory licensing by the City of Beaverton; and,

**WHEREAS**, the Council finds that these businesses should be regulated by the City because certain payday lending practices have proven detrimental to the financial security of individuals and families residing in the City. Payday lending practices often have an unreasonably adverse effect upon the elderly, the economically disadvantaged and other residents of the City. Frequently, taking a payday loan puts borrowers in much worse financial shape than before they took the loan; and,

**WHEREAS**, payday loans are short-term loans, typically for an initial term of 14 days or less, coinciding with the borrower's next paycheck. Borrowers are charged a flat fee to obtain a payday loan. These fees amount to annual interest rates which exceed five hundred percent. Usually, borrowers are required to repay the full loan in a single payment at the end of the 14-day term. When borrowers are unable to repay the full loan in a single payment, borrowers can either renew or default on the loan. To renew a loan, borrowers incur another fee, which again may exceed five hundred percent interest per annum; and,

**WHEREAS**, the purpose of this ordinance is to require licensing for the purpose of regulating certain payday lending practices to minimize the detrimental effects of such practices on the citizens of the City by regulating payday lending practices occurring in the City, consistent with the laws of the State of Oregon; and,

**WHEREAS**, the need for local regulation is critical to protect the short and long-term financial security of working citizens struggling to lift their families out of poverty; now, therefore,

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** Chapter 7, Licenses, Permits and Business Regulations of the Beaverton Code is amended to establish "REGULATIONS ON PAYDAY LENDING," to be added at Sections BC 7.12.005 – 7.12.060, and shall read as follows:

**"7.12.005 Purpose.**

The City finds that, in order to minimize the detrimental effects that certain payday lending practices have on individuals and families, payday lenders should require payment of a portion of the original loan amount prior to the renewal of a payday loan, borrowers should be able to

rescind a payday loan, and borrowers should be able to convert a payday loan into a payment plan. This chapter shall be construed in conformity with the laws and regulations of the State of Oregon.

**7.12.010 Definitions.** For the purpose of this Ordinance, unless the context requires otherwise, the following mean:

**Borrower** - A natural person who receives a payday loan.

**Cancel** - To annul the payday loan agreement and, with respect to the payday loan agreement returning the borrower and the payday lender to their financial condition prior to the origination date of the payday loan.

**Mayor** - The City Mayor or designee.

**Payday Lender** - A lender in the business of making payday loans as defined by state law.

**Payday Loan** - A payday loan as defined by state law.

**Principal** - The original loan proceeds advanced for the benefit of the borrower in a payday loan excluding any fee or interest charge.

**7.12.015 Permits.**

Within 60 days of the effective date of this Ordinance, any Payday Lender operating in the City of Beaverton shall apply for and obtain a permit to operate as a Payday Lender. Permits shall be required for each location a lender operates in the City of Beaverton and shall be renewed annually. The application shall be in a form to be determined by the Mayor. The Mayor shall require the Payday Lender to report its fee schedule in the Payday Lender's permit application. No person shall operate a Payday lending business or loan any funds as a Payday Loan without a current permit to do business issued by the City of Beaverton. The amount of the fee shall be set by Council resolution.

**7.12.020 Administrative Authority.**

A. The Mayor is authorized and directed to enforce all provisions of this Ordinance. The Mayor shall have the power to investigate any and all complaints regarding alleged violations of this Ordinance. The Mayor may delegate any or all authority granted under this Section to a designee.

B. The Mayor is authorized to adopt and enforce rules interpreting and applying this Ordinance. The Mayor shall make written findings of fact and conclusions of law to support all decisions.

C. The City of Beaverton reserves the right to review and/or copy the records of any Payday Lender for purposes of auditing or complaint resolution. Such records shall be made available for inspection during normal business hours within 24 hours of written notice by the Mayor.

**7.12.025 Cancellation of Payday Loan.**

A. A Payday Lender shall cancel a Payday Loan without any charge to the Borrower if prior to the close of the business day following the day on which the Payday Loan originated, the Borrower:

1. Informs the Payday Lender in writing that the Borrower wishes to cancel the Payday Loan and any future payment obligations; and
2. Returns to the Payday Lender the uncashed check or proceeds given to the Borrower by the Payday Lender or cash in an amount equal to the principal amount of the Payday Loan.

B. A Payday Lender shall conspicuously disclose to each Borrower that the right to cancel a Payday Loan as described in this section is available to the Borrower. The Payday Lender shall disclose this requirement to the borrower in a minimum of bold 12 point type.

**7.12.030 Renewals of Payday Loans**

A Payday Lender shall not renew an existing payday loan more than two times.

**7.12.035 Payment of Principal Prior to Payday Loan Renewal.**

A Payday Lender may not renew a Payday Loan unless the Borrower has paid an amount equal to at least twenty-five percent (25%) of the principal of the original Payday Loan, plus interest on the remaining balance of the Payday Loan. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.

**7.12.040 Payment Plan for a Payday Loan.**

A. A Payday Lender and a Borrower may agree to a payment plan for a Payday Loan at any time.

B. A Payday Lender shall disclose to each Borrower that a payment plan described in this section is available to the Borrower after two renewals of the loan. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.

C. After a Payday Loan has been renewed twice, and prior to Payday Lender declaring a default on the Payday Loan, a Payday Lender shall allow a Borrower to convert the Borrower's Payday Loan into a payment plan. Each payment plan shall be in writing and acknowledged by both the Payday Lender and the Borrower.

D. The Payday Lender shall not assess any fee, interest charge or other charge to the Borrower as a result of converting the Payday Loan into a payment plan.

E. The payment plan shall provide for the payment of the total of payments due on the Payday Loan over a period of no fewer than 60 days in three or more payments. The Borrower may pay the total of payments due on the payment plan at any time. The Payday Lender may not assess any penalty, fee or other charge to the Borrower for prepayment of the payment plan.

F. A Payday Lender's violation of the terms of a payment plan entered into with a Borrower under this section constitutes a violation of this Ordinance. If a Payday Lender enters into a payment plan with a Borrower through a third party that is representing the Borrower, the Payday Lender's failure to comply with the terms of that payment plan constitutes a violation of this Ordinance.

**7.12.045 Remedies.**

A. Failure to comply with any part of this Chapter or the administrative rules may be punishable by civil penalties. The Mayor may impose a civil penalty of up to \$1,500.00 for a substantial violation of this Ordinance or the administrative rules. A substantial violation is a violation having an impact on the public, as determined by the Mayor, that informal compliance methods fail to resolve. Each substantial violation may be assessed a separate civil penalty.

B. Civil penalties shall be payable to the City of Beaverton.

C. Civil remedies. Nothing in this Section is intended to prevent any person from pursuing any available legal remedies.

D. No civil penalties shall be assessed within 60 days of the effective date of this Ordinance

**7.12.050 Appeals.**

Any person upon whom a civil penalty has been imposed, or who has been directed by the Mayor to resolve a complaint, may appeal by filing a notice of appeal with the Mayor. The City Council shall consider the appeal.

**7.12.055 Complaints.**

A. The Mayor shall have the authority to investigate any and all complaints alleging violation of this Ordinance or administrative rules.

B. The Mayor may receive complaints from Borrowers by telephone or in writing. Within a reasonable time, the Mayor shall forward the complaint by telephone or in writing to the Payday Lender it concerns for investigation.

C. The Payday Lender shall investigate the allegations of the complaint and report the results of the investigation and the proposed resolution of the complaint to the Mayor by telephone or in writing within two (2) business days from initial contact by the Mayor.

D. If the proposed resolution is satisfactory to the Mayor, the Payday Lender shall proceed to resolve the complaint directly with the Borrower according to the resolution proposed to the Mayor.

E. If the proposed resolution is not satisfactory to the Mayor, the Mayor shall conduct an independent investigation of the alleged complaint and propose an alternative resolution of the complaint. If the Payday Lender accepts the proposed alternative resolution and offers it to the Borrower, the complaint shall be final. If the Payday Lender refuses to accept and implement the proposed alternative resolution it shall be subject to remedies as provided in BC 7.12.030. In the event of imposition of remedies, the Payday Lender may appeal as provided in BC 7.12.035.

**7.12.060 Severability.**

If any provision of this Ordinance, or its application to any person or circumstance is declared invalid or unenforceable the remainder of the Ordinance and its application to other persons and circumstances, other than that which has been held invalid or unenforceable, shall not be affected, and the affected provision of the Ordinance shall be severed.”

First reading this 19<sup>th</sup> day of June \_\_\_\_\_, 2006.

Passed by the Council this \_\_\_ day of \_\_\_\_\_, 2006.

Approved by the Mayor this \_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

APPROVED:

\_\_\_\_\_  
SUE NELSON, City Recorder

\_\_\_\_\_  
ROB DRAKE, Mayor

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

07/10/06

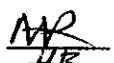
**SUBJECT:** An Ordinance Amending the Comprehensive Plan (Ordinance No. 4187) Land Use Map and the Zoning Map (Ordinance 2050) regarding three parcels identified on tax map 2S10600 as lots 101, 102 and 105.  
CPA 2005-0006/ZMA 2005-0008;  
16655 SW Scholls Ferry Road

**FOR AGENDA OF:** ~~06/19/06~~ **BILL NO:** 06116

**Mayor's Approval:** 

**DEPARTMENT OF ORIGIN:** CDD 

**DATE SUBMITTED:** 06/05/06

**CLEARANCES:** City Attorney   
Planning 

**PROCEEDING:** ~~First Reading~~  
Second Reading and Passage

- EXHIBITS:**
- A. Ordinance and Map
  - B. Planning Commission Final Order No. 1869
  - C. Staff Report dated 3/13/2006

**BUDGET IMPACT**

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

**HISTORICAL PERSPECTIVE:**

The proposal is to give three parcels annexed to the City through Ordinance 4379 City Zoning and Land Use Map designations. The parcels are proposed for redesignation from Washington County FD-20 to City Neighborhood Residential – Medium Density on the Land Use Map and to Residential – 4,000 square feet minimum land area for each principal dwelling unit (R-4) on the Zoning map. The Planning Commission unanimously approved the proposal at the May 24, 2006 meeting. No written or verbal testimony was given before or at the meeting.

**INFORMATION FOR CONSIDERATION:**

CPA200-0006 and ZMA2005-0007 is proposed as an ordinance.

**RECOMMENDED ACTION:**

~~First Reading~~  
Second Reading and Passage

**Ordinance No. 4396**

**AN ORDINANCE AMENDING ORDINANCE NO. 4187, FIGURE III-1, THE COMPREHENSIVE PLAN LAND USE MAP AND ORDINANCE 2050, THE ZONING MAP FOR PROPERTY LOCATED AT 16655 SW SCHOLLS FERRY ROAD; CPA2005-0006/ZMA2005-0008**

**WHEREAS**, This property annexed to the City of Beaverton through Ordinance 4379, thus the City designations are applied to the property by this ordinance from the County's land use designations; and

**WHEREAS**, the Planning Commission held a public hearing on May 24, 2006, to consider CPA2005-0006/ZMA2005-0008, consider comments, and take testimony; and

**WHEREAS**, on May 24, 2006, the Planning Commission recommended approval of the proposed CPA2005-0006/ZMA2005-0008 application based upon the Staff Report dated March 13, 2006, for the May 24, 2006, Public Hearing, that presented the proposed City designations, addressed approval criteria, and made findings that demonstrated that adoption of the proposed ordinance would comply with applicable approval criteria; and

**WHEREAS**, the final order (#1869) was prepared memorializing the Planning Commission's decision and no appeal therefrom has been taken; now, therefore,

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** Ordinance No. 4187, the Comprehensive Plan Land Use Map (Figure III-1) is amended to designate the subject property located at 16655 SW Scholls Ferry Road (shown on tax map 2S10600 as lots 101, 102, and 105) Neighborhood Residential – Medium Density, as shown on Exhibit "A".

**Section 2.** Ordinance No. 2050, the Zoning Map, is amended to designate the same property in Section 1 Residential – 4,000 square feet minimum land area per dwelling unit (R-4).

First reading this 19<sup>th</sup> day of June, 2006.

Passed by the Council this \_\_\_ day of \_\_\_\_\_, 2006.

Approved by the Mayor this \_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

APPROVED:

\_\_\_\_\_  
SUE NELSON, City Recorder

\_\_\_\_\_  
ROB DRAKE, Mayor

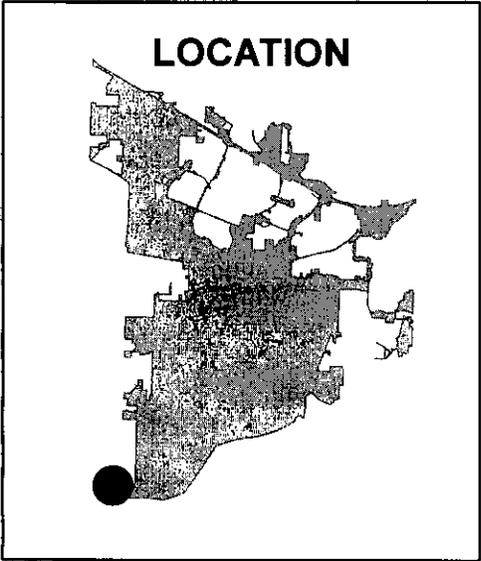
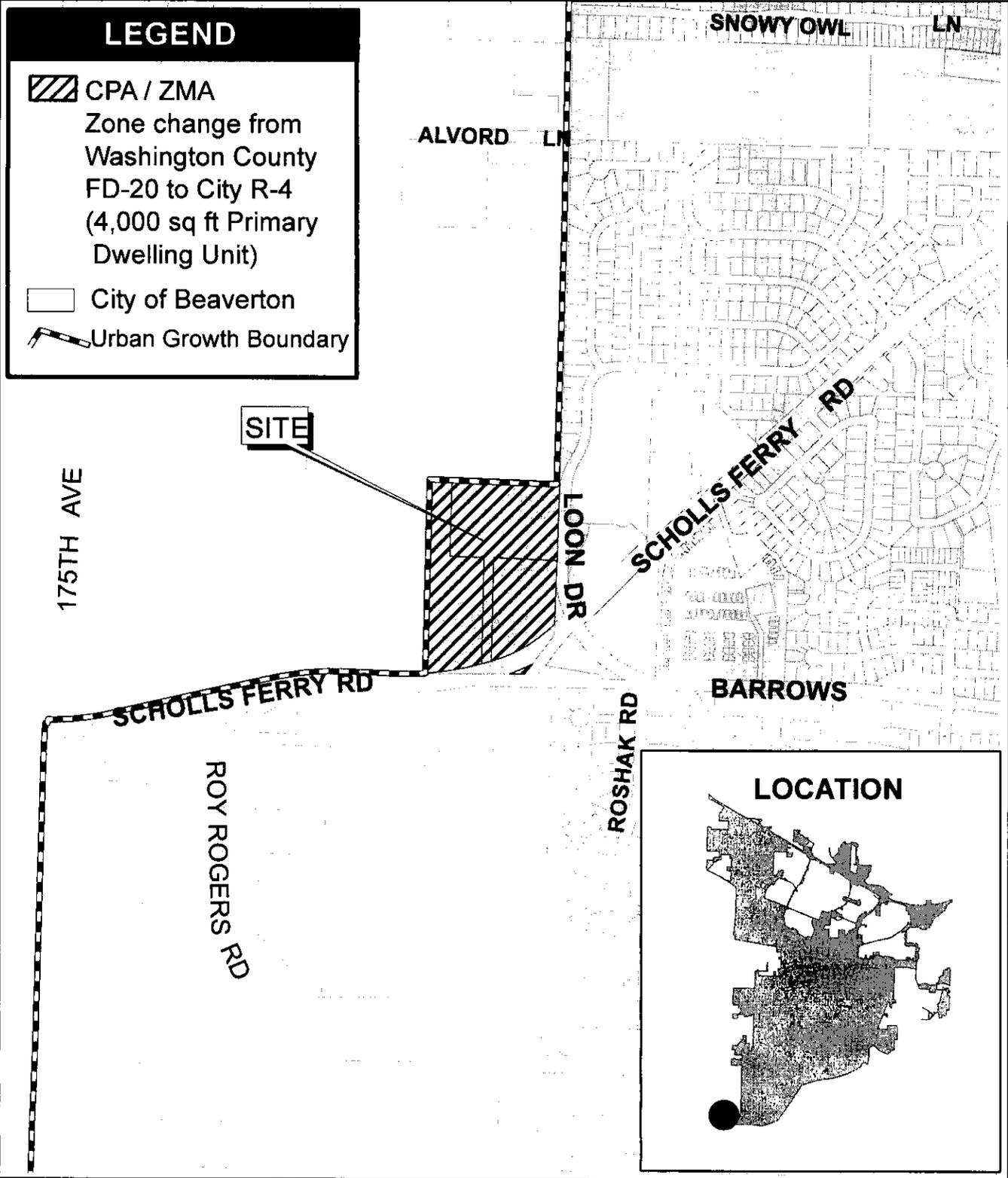
# VICINITY MAP

ORDINANCE  
NO. 4396

# EXHIBIT A

**LEGEND**

-  CPA / ZMA  
Zone change from Washington County FD-20 to City R-4 (4,000 sq ft Primary Dwelling Unit)
-  City of Beaverton
-  Urban Growth Boundary



City of Beaverton

16655 SW SCHOLLS FERRY RD

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

2/22/06

Map #

VARIOUS



Application #

CPA 2005-0007

ZMA 2005-0006

**AGENDA BILL**

**Beaverton City Council  
Beaverton, Oregon**

07/10/06

**SUBJECT:** TA 2006-0004 (2006 Omnibus)

**FOR AGENDA OF:** ~~06-19-06~~ **BILL NO:** 06117

**Mayor's Approval:** *[Signature]*

**DEPARTMENT OF ORIGIN:** CDD *[Signature]*

**DATE SUBMITTED:** 6-08-06

**CLEARANCES:** City Attorney *[Signature]*  
Dev. Serv. *[Signature]*

**PROCEEDING:** ~~First Reading~~  
Second Reading and Passage

- EXHIBITS:**
- 1. Ordinance
  - 2. Land Use Order No. 1870
  - 3. Draft PC Minutes dated 05-31-06
  - 4. Memo dated May 31, 2006
  - 5. Staff Report dated 05-24-06

**BUDGET IMPACT**

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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**HISTORICAL PERSPECTIVE:**

On May 31, 2006, the Planning Commission held a public hearing to consider TA 2006-0004 (2006 Omnibus) that proposes to amend selected sections of the Beaverton Development Code currently effective through Ordinance 4295 (Nov. 2005) to clarify approval criteria, specify the applicability of certain regulations, renumber and reorder certain regulations, relocate certain sections, and remove certain sections. Affected chapters of the Development Code include, Chapter 10 (General Provisions), Chapter 20 (Land Uses), Chapter 40 (Applications), Chapter 50 (Procedures), Chapter 60 (Special Regulations), and Chapter 90 (Definitions). At the recommendation of the Planning Commission the wording of Sections 6, 13, and 18 were slightly modified to improve the intent of each of the sections. Following the close of the public hearing on May 31, 2006, the Planning Commission voted 6-0 (Johansen absent) to recommend approval of the proposed Omnibus Text Amendment, as memorialized in Land Use Order No. 1870.

**INFORMATION FOR CONSIDERATION:**

Attached to this Agenda Bill is an Ordinance including the proposed text, Land Use Order No. 1870, the draft Planning Commission meeting minutes, staff report and memo.

**RECOMMENDED ACTION:**

Staff recommend the City Council approve the recommendation of the Planning Commission for TA 2006-0004 (2006 Omnibus) as set forth in Land Use Order No. 1870. Staff further recommends the Council conduct a ~~First Reading~~ of the attached ordinance.

Second Reading and Passage

ORDINANCE NO. 4397

AN ORDINANCE AMENDING ORDINANCE NO. 2050,  
THE DEVELOPMENT CODE, CHAPTERS:  
10, 20, 40, 50, 60, and 90;  
TA 2006-0004 (2006 Omnibus).

**WHEREAS**, the purpose of the 2006 Omnibus Development Code Text Amendment is to amend selected sections of the Beaverton Development Code currently effective through Ordinance 4382 (November 2005) to clarify approval criteria, specify the applicability of certain regulations, renumber and reorder certain regulations, relocate certain sections, and remove certain sections. Affected chapters of the Development Code include, Chapter 10 (General Provisions), Chapter 20 (Land Uses), Chapter 40 (Applications), Chapter 50 (Procedures), Chapter 60 (Special Regulations), and Chapter 90 (Definitions),

**WHEREAS**, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on May 24, 2006 published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on May 31, 2006; and,

**WHEREAS**, the Planning Commission held a public hearing on May 31, 2006, and approved the proposed 2006 Omnibus Development Code Text Amendment based upon the criteria, facts, and findings set forth in the staff report dated May 31, 2006, staff memo dated May 31, and as amended at the hearing; and

**WHEREAS**, on May 31, 2006, the Planning Commission conducted a public hearing for TA 2006-0004 (2006 Omnibus) at the conclusion of which the Planning Commission voted to recommend to the Beaverton City Council to adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1870; and,

**WHEREAS**, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2006-0004 (2006 Omnibus) following the issuance of the Planning Commission Land Use Order No. 1870; and,

**WHEREAS**, the City Council adopts as to criteria, facts, and findings, described in Land Use Order No. 1870 dated June 8, 2006 and the Planning Commission record, all of which the Council incorporates by this reference and finds to constitute an adequate factual basis for this ordinance; and now therefore,

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** Ordinance No. 2050, effective through Ordinance No. 4295, the Development Code, is amended to read as set out in Exhibit "A" of this Ordinance attached hereto and incorporated herein by this reference.

**Section 2.** All Development Code provisions adopted prior to this Ordinance which are not expressly amended or replaced herein shall remain in full force and effect.

**Section 3. Severance Clause.** The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 19<sup>th</sup> day of June, 2006.

Passed by the Council this     day of \_\_\_\_\_, 2006.

Approved by the Mayor this     day of \_\_\_\_\_, 2006.

ATTEST:

APPROVED:

\_\_\_\_\_  
SUE NELSON, City Recorder

\_\_\_\_\_  
ROB DRAKE, Mayor