



FINAL AGENDA

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

REGULAR MEETING
OCTOBER 16, 2006
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

PRESENTATIONS:

- 06184 Presentation on Beaverton School District Measure 34-139 General Obligation Bonds to Construct and Upgrade Schools
- 06185 Presentation on Tualatin Valley Fire and Rescue Measure 34-133 General Obligation Bond Authorization

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

- Minutes of the Regular Meetings of September 18 and October 2, 2006
- 06186 Liquor License: New Outlet - Bias Salon & Spa; 88 Asia Market
- 06187 A Resolution Establishing a Fee for Payday Lender Permits (Resolution No. 3876)
- 06188 Traffic Commission Issue No.:
TC 596 - Stop Control on SW Tierra del Mar Drive at Palmer Way;
TC 597 - Left Turn Prohibition on SW Canyon Lane at Canyon Road;
TC 598 - Speed Limit on SW Valeria View Drive
- 06189 Declaration of Surplus Property at Southwest Corner of SW 153rd Avenue and SW Jenkins Road

- 06190 Authorize Acceptance of FY06 Law Enforcement Terrorism Prevention Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution (Resolution No. 3877)
- 06191 Authorize Acceptance of FY06 State Homeland Security Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution (Resolution No. 3878)
- 06192 Authorize Acceptance of FY06 Citizen Corps Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution (Resolution No. 3879)

PUBLIC HEARINGS:

- 06193 Weil Ballot Measure 37 Claim for Compensation

WORK SESSION:

- 06194 TA 2006-0003 (PUD Text Amendment)

ORDINANCES:

First Reading:

- 06195 TA 2006-0003 (PUD Text Amendment) (Ordinance No. 4409)

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.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Presentation on Beaverton School District Measure 34-139 General Obligation Bonds to Construct and Upgrade Schools

FOR AGENDA OF: 10/16/06 **BILL NO:** 06184

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Mayor

DATE SUBMITTED: 10/10/06

CLEARANCES:

PROCEEDING: Presentation

EXHIBITS:

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

A presentation will be given on the Beaverton School District's Measure 34-139 General Obligation Bonds to construct and upgrade schools.

RECOMMENDED ACTION:

Listen to presentation.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Presentation on Tualatin Valley Fire and
Rescue Measure 34-133 General Obligation
Bond Authorization

FOR AGENDA OF: 10/16/06 **BILL NO:** 06185

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Mayor

DATE SUBMITTED: 10/10/06

CLEARANCES:

PROCEEDING: Presentation

EXHIBITS:

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

A presentation will be given on Tualatin Valley Fire and Rescue's Measure 34-133 General Obligation Bond Authorization.

RECOMMENDED ACTION:

Listen to presentation.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
SEPTEMBER 18, 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 Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, September 18, 2006, at 6:40 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Dennis Doyle and Cathy Stanton. Coun. Bruce Dalrymple was 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 and City Recorder Sue Nelson.

PROCLAMATIONS:

Mayor Drake proclaimed September 17 - 23, 2006, Constitution Week and September 24 - 30, 2006, Race Equality Week

PRESENTATIONS:

06169 Overview of Washington County Public Safety Measure 34-127

Washington County Sheriff Rob Gordon presented an overview of Washington County's Public Safety Levy, Ballot Measure 34-127, that will be on the November 2006 ballot. He said this levy would support the Sheriff's Office, the District Attorney's Office, the Community Corrections Department, the Juvenile Department and 911 Services. He said this was a four-year levy for Fiscal Years 2007-08 through 2010-11. He said the levy was 42 cents per \$1,000 Assessed Valuation (AV) and would generate \$72.9 million over four years. He said that was less than the current levy of 43 cents/\$1,000 AV.

Gordon said the levy would fund 122 full-time employees (51 deputies, six deputy district attorneys, and 11 probation and parole officers), 108 jail beds, and 17% of the Integrated Public Safety Funding. He said the levy also impacts the City; last year 2,596 people who were arrested in Beaverton went through the County's jail system and this year there has been 1,900 so far. He said last year the City's Municipal Court sentenced 1,150 people to the County's jail system and this year 690 have been sentenced to date. He said this resource was definitely part of the City's criminal justice system.

Gordon said the levy would allow the Sheriff's Office to continue operating at the same level as the last four years. He noted the current levy expired on June 30, 2006. He reviewed in detail the results of the last public safety levy (in the record). Major results were: Reduction in forced prisoner releases; Meth labs in the County were reduced from 75 in 2003 to 6 in 2006; Provided shelter for domestic violence victims; Bolstered the Special Weapons, Drug, ID Theft, and Gang Inter-jurisdiction Enforcement Teams; Reduction in property and juvenile crimes; Increased patrols; and Increased prosecution rates.

Gordon said this levy was a priority in the County; it would reduce the existing tax rate and provide more services, including four new positions. He said it is a fiscally sound levy and would strengthen the fight against drugs, ID theft and violent crime. He reviewed the services the levy would support which were the same as the services under the prior levy (noted above). He reviewed data from the Oregon Progress Board that showed the crime rates in Washington County were decreasing while in the rest of the state they were increasing (in the record). He said this indicated that Washington County was a safe place to live and supporting this levy would help to ensure that safety would continue. He urged everyone to support Measure 34-127.

Coun. Bode asked how many beds there were in the shelters for domestic violence victims.

Gordon said he was not sure of the total number but he knew no one had been turned away when they needed help.

Coun. Stanton asked for clarification regarding shelters for domestic violence victims.

Gordon said shelters were provided for domestic violence victims and a host of other people who needed help for a variety of reasons.

Coun. Stanton referred to page 18 which showed crime rates in Washington County and throughout the state. She asked what defined an urban area.

Gordon said he did not know how the State defined an urban area. He confirmed that the rates depicted in the chart were for all of Washington County.

Coun. Doyle asked where the first cuts would be made if the levy failed.

Gordon replied they had not developed a final plan for that. He said since the levy affects several departments, each department would have to identify what services would be cut. He said in the Sheriff's Office 73 positions would be cut.

Coun. Doyle said he hoped they would not have to take steps backward because that would increase the criminal activity in the County. He said he hoped those supporting the Measure would get the word out to the citizens of the services the levy supports and that it is not just about police services.

Gordon said it was important to note that every police chief in Washington County has publicly endorsed this Levy.

Mayor Drake thanked the Sheriff. He said if the levy failed, the reductions that would occur in the Sheriff's Office, District Attorney's Office and other corrections departments would result in the loss of good people and institutional memory; he said it would take a lot longer to rebuild the collective strength of those departments. He said that was why he was supporting the levy; there is a good working partnership in the County and he urged moving forward and not looking back.

Mayor Drake asked for a motion to adopt a resolution supporting the levy.

Coun. Stanton MOVED, SECONDED by Coun. Doyle that Council approve A Resolution Supporting the Washington County Levy Renewal for Maintaining Public Safety Countywide Services, Ballot Measure 34-127 - November 7, 2006.

Coun. Stanton said the salient point in the presentation was that if you are currently paying the 43 cents in your tax bill, you would be paying 42 cents for the same high quality service. She said she was pleased to support this resolution.

Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0) (Resolution No. 3873)

06170 Overview of the Washington County Cooperative Library Services Levy of November 7, 2006, Measure #34-126

Mayor Drake introduced Eva Calcagno, Washington County Cooperative Library Services (WCCLS) Director and Ed House, Beaverton City Library Director.

Calcagno said the WCCLS works in partnership with eight cities, including Beaverton, and two non-profit associations to provide countywide library service. She gave an overview of Ballot Measure 34-126. She said it was a four-year levy for Fiscal Years 2007-08 through 2010-11. She said it was a fixed rate levy of 17 cents per \$1,000 of Assessed Value (AV). She said the total from the levy over four years would be \$29.5 million. She said if this levy passes, it would be the first countywide library levy passed since 1996. She said this levy would fund the libraries of Banks, Beaverton, Cedar Mill, Cornelius, Forest Grove, Garden Home, Hillsboro, North Plains, Sherwood, Tigard, Tualatin and West Slope. She said 85% of the levy funds would support operating costs for these 12 libraries and the remaining 15% would support the central services that link the libraries together (WILnet, courier/sharing services, outreach programs and training for childcare providers).

House explained that in the first year the Beaverton City Library would receive \$1.2 million from the levy.

Calcagno said the levy is being proposed to maintain current local library services, to support literacy programs for children and to purchase books. She said through the levy they were hoping to avoid additional reductions in services and to maintain local library services through Year 2011, including allowing some libraries to restore previously-reduced hours.

House said if the levy passed, hours would be restored at the Beaverton Library; currently the Library is open 49 hours per week and that could increase to 58 hours per week. He said the book budget and several children's programs would be restored.

Calcagno said they estimated that during the term of the levy library checkouts would increase 43%, topping 11.5 million in 2011. She reviewed the literacy programs for children. She said the levy would allow the purchase of books and materials; countywide the library collection is 1.3 million items and the Beaverton Library has 300,000 of those items.

House said the Beaverton Library currently circulates 1.7 million items annually; by Year 2011 it will be around 2.4 million items. He said Beaverton's summer reading program had an increase of 5.3% in the number of students who signed up and the completion rate was over 12%. He said Beaverton has a Library on Wheels van and four mornings per week a staff member visits 70 different types of daycare facilities, providing books, story times and other resources for those daycare providers.

Calcagno said if the library levy does not pass then the individual cities would have to determine what service levels would be reduced. She said it was likely that hours and book purchases would be reduced. She said additional information could be received from the WCCLS Web site at www.WILInet.wccls.lib.or.us or by calling WCCLS at (503) 846-3222.

Mayor Drake thanked them for the presentation. He noted that House was providing factual information on City time; he was not advocating any position.

Coun. Doyle asked if the City Library was able to increase its open hours to 58, how close would that be to the number of hours that it was open before the reduction.

House said the City Library was at 61 hours before the reductions from the May 2004 Levy failure. He said they would be close to the original service hours.

Coun. Doyle said that would be about an 18% increase over the current hours. He said that was significant, since he has heard from many people about the reduction in hours. He said within two years, the City will have used its Contingency Fund for the Library and that would result in additional reduction in hours. He said recent visitors from France were amazed at the services and functionality of the library system. He said he was confident that the citizens would support the levy as many wanted to reinstate library services.

Coun. Bode said she supported Coun. Doyle's comments. She said she is the Council Liaison to the Library Board and that the Board works hard to support the Library. She said 33% of the households have students. She said residents that do not have students also use the Library. She said the Library is a core activity for seniors and it is a community gathering place where people can go and feel welcomed. She spoke on the importance of supporting the Library as it is an essential part of maintaining the community. She asked everyone to support the levy.

Coun. Arnold asked what the hourly cost was to have the Library open.

House said that dividing the total operating cost by the number of hours open would provide that figure. He said he could get that information to her.

Coun. Stanton spoke in support of the Young Adult Room in the Library as a community resource. She said every text book for grades six through 12 in Beaverton School District was available in the Young Adults Room. She said that was a wonderful partnership with the School District to provide that service; for the Library was an asset to the community. She said she was concerned about the cuts that would have to be made if the levy does not pass. She asked citizens to support Measure 34-126.

Mayor Drake asked if the Council would like to support a resolution for the WCCLS levy.

Coun. Doyle MOVED, SECONDED by Coun. Stanton that Council adopt A Resolution Supporting the Washington County Cooperative Library Services Local Option Levy, Measure 34-126, November 7, 2006 ballot. Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0) (Resolution No. 3874)

06171 Presentation from the 2006-2007 Mayor's Youth Advisory Board (MYAB)

Mayor Drake said he started the Mayor's Youth Advisory Board in Year 2000. He said the MYAB Co-Chairs would present the Board's annual work plan.

MYAB Co-Chairs Halah Ilias, Southridge High School and Lulu Xiao, Southridge High School, introduced themselves and distributed MYAB sweatshirts to all the Councilors. They reviewed the projects MYAB would be working on this year, which included producing the brochure *101 Things to Do in Beaverton* and *The Whirlpool* newsletter, setting up MYAB's independent Web site, developing new By-laws, promoting the library levy and conducting the Youth Summit on October 28 at the Library. Ilias explained the Youth Summit would consist of three forums where youth could discuss topics that affect them. The topics for this year's Summit are: School Funding, School Rights, and Green Schools. They will also have a Youth Summit in October. MYAB members who were present were: Madisen Vogel, Elizabeth Eickelberg and Sumaiya Ahmed from Sunset High School; Hannah Kramer, Aloha High School; Mark Munro and Monica Mohan from Southridge High School; Megan McIntire and Prateek Bhide from Westview High School. Xiao introduced Debbie Baidenmann, staff liaison.

Mayor Drake thanked them for the update. He said all schools (public and private) are invited to interview for the Board and students from grade nine through 12 serve on the Board. He said this was the seventh year of the MYAB and there have been some students who have served every year.

Coun. Doyle congratulated the group for all the work they did this summer. He wished them well on the Youth Summit.

VISITOR COMMENT PERIOD:

Pavel Goberman, Beaverton, declared he was a write-in candidate for State Representative in the 28th District against Jeff Barker. He reviewed his political platform.

COUNCIL ITEMS:

Coun. Stanton said the community parade on Saturday (September 16) was fun and it was nice to have the bands in the parade. She thanked Mayor Drake for continuing the tradition of the parade.

STAFF ITEMS:

Finance Director Patrick O'Claire said he distributed the final budget document to the Council, Budget Committee and City departments. He said as part of the audit process, the auditor was sending out the standard disclosure forms to the Council. He said in addition to the disclosure form, there would be a letter with eight questions regarding the Council's understanding of internal controls in the City. He said it was okay to respond "I do not know" if applicable and if the Councilors have any questions they are to call the auditor. He said on Thursday, November 16, 2006, the Supplemental Budget Committee meeting would be held at 6:30 p.m., in the Second Floor Conference Room of City Hall.

CONSENT AGENDA:

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

06172 Liquor License: New Outlet - Richard's

06173 A Resolution Authorizing an Intergovernmental Agreement with Washington County Relating to Transient Room Taxation (Resolution No. 3872)

06174 Authorization to Enter into an Intergovernmental Agreement with Clean Water Services for Sanitary Sewer Rehabilitation in the Sandberg Subdivision

06175 Authorization to Enter into an Intergovernmental Agreement with Clean Water Services for Sanitary Sewer Rehabilitation in the South Central "A" Area

06176 Classification Changes

Contract Review Board:

06177 Authorize the Mayor to Award a Bid for Chiller and Boiler Equipment Procurement for the Beaverton Central Plant Subject to Council Ratification

06178 Authorize the Mayor to Award a Bid for the Installation of a Chiller, Boiler and Related Equipment for the Beaverton Central Plant Subject to Council Ratification

06179 Reject Bid - Wilson Drive Waterline Replacement Project

Coun. Stanton referred to Agenda Bills 06174 and 06175, Intergovernmental Agreements with Clean Water Services (CWS), and said she had asked staff why the agreements were being done after the completion of the work for the Sandberg Subdivision (Agenda Bill 06174). She said the answer she was given was that for Inflow and Infiltration (I&I) projects, CWS likes the work to be done before it enters into an agreement to split the costs. She said that was fine for Agenda Bill 06174 as that project was done; however, the South Central "A" area project in Agenda Bill 06175 was also an I&I project, and the agreement was being signed prior to the work being done. She asked why the difference between the two projects.

Brentano said normally the I&I projects are refunded to the City by CWS after a project is constructed because the full costs are known once construction is complete. He said these projects had been scheduled for a long time and CWS inquired if the City still planned on doing South Central "A". He said the IGA for South Central "A" was being done in advance as a placeholder to alert CWS that the City will do this project this fiscal year and will request that CWS refund the construction costs in the near future.

Coun. Stanton asked if CWS could choose to bump the City, since this was a placeholder.

Brentano said that was correct. He said other jurisdictions had proposed projects and CWS was looking at what projects it could fund if the City chose to not proceed with South Central "A". He said this IGA alerts CWS that the City is proceeding; CWS could then decide what projects to fund in its next budget cycle.

Coun. Arnold said she did not see any amounts in the proposed agreements.

Brentano said during the course of the projects' development, data would be given to CWS to track the costs of the repairs. He said from this data CWS is able to determine what its 50% share of the cost would be. He said when the construction is completed, CWS would get a spreadsheet that shows the total costs, of which they have agreed to pay 50%. He explained in detail the process by which CWS decides which projects it will fund each year. He said as part of the process, CWS has already agreed to projects it will fund and has received preliminary cost figures for the projects. He said these preliminary figures are very close to the final construction costs.

Question called on the motion. Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

ORDINANCES:

Second Reading:

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

06164 TA 2006-0005 Facilities Review Text Amendment (Ordinance No. 4404)

06165 TA 2006-0006 (Lot Line Adjustment/Consolidation) (Ordinance No. 4405)

06166 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located in South Beaverton; CPA 2006-0004/ZMA 2006-0003 (Ordinance No. 4406)

06167 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Two Properties in Northwest Beaverton; CPA 2006-0010/ZMA 2006-0013 (17200 & 17225 NW Corridor Court) (Ordinance No. 4407)

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that the ordinances embodied in Agenda Bills 06164, 06165, 06166, and 06167, now pass. Roll call vote. Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 8:00 p.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this day of , 2006.

Rob Drake, Mayor

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
OCTOBER 2, 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 Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, October 2, 2006, at 6:35 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Bruce S. Dalrymple, Dennis Doyle and Cathy Stanton. Coun. Betty Bode was excused. Also present were City Attorney Alan Rappleyea, Finance Director Patrick O'Claire, Public Works Director Gary Brentano, Human Resources Director Nancy Bates, Police Chief David Bishop and Deputy City Recorder Catherine Jansen.

PROCLAMATIONS:

Mayor Drake proclaimed October 2006 Breast Cancer Awareness Month and National Arts and Humanities Month.

PRESENTATIONS:

06180 Presentation by Sarah Hackett, Metropolitan Area Communications Commission (MACC)

Mayor Drake introduced Sarah Hackett, Metropolitan Area Communications Commission (MACC). He said MACC regulates cable television franchise services in Washington County and Coun. Stanton is the City's delegate to MACC

Coun. Stanton said the U. S. Congress was considering possible changes to the Telecommunications Act of 1996 and she thought Council should be updated on the activities and potential consequences to future franchise fees and regulations.

Sarah Hackett, Policy and Regulatory Affairs Manager, MACC, said MACC represented 14 cities in Washington County and its primary responsibility was cable franchise and telecommunications consulting. She said MACC's mission was broad because cable television and telecommunication industries were currently blending. She said in 1996 there was a massive overhaul of the telecommunications law by the federal government and now, in 2006, another dramatic potential change was being considered.

Hackett said this summer the House passed H.R. 5252, the Communications, Promotion and Enhancement Act of 2006 (COPE) sponsored by Representative Barton. She said it passed by a huge margin, as many believed that there would be no competition in the cable industry without this legislation. She said the results of COPE would be: 1) Cities/counties would lose the authority to franchise cable providers and instead the FCC would grant and renew franchises. 2) Local franchises would switch to a national franchise as soon a national franchisee came into the area. 3) Cities/counties would retain authority to manage right-of-ways (ROW) and easements, but FCC would mediate disputes. 4) Customer service would suffer as local and state consumer protection and customer service standards would be pre-empted by FCC regulations that are less stringent than local standards.

Coun. Arnold asked what type of disputes the FCC would mediate in relation to right of ways and easements.

Hackett explained there were many disputes over construction projects and relocation of lines that were resolved in court. She said with the FCC as mediator, it could take months or years to resolve a disagreement.

Hackett said the customer service standards would be set by the FCC and local authorities could not change the regulations. She said the MACC franchise has strict penalties and large fines for not meeting standards. She said under the FCC standards, the fines would be small. She said COPE does require that nationally franchised providers match existing cable PEG (Public Education and Government) channels. She said 1% of the gross revenues would be provided to support the Public Communications Network (PCN); currently MACC requires 1.6%. She said that would result in a substantial decrease in funds available for PEG and PCN.

Hackett said the Congressional Budget Office acknowledged that COPE contains unfunded mandates. She said the White House supports this legislation though the National Governor's Association opposes the bill because it does not respect local governments' sovereignty and it is a federal intrusion into state affairs.

Hackett said the U.S. Senate took up this cause and the Senate Commerce Committee passed Senate Bill 2686, Advanced Telecommunications and Opportunities Reform Act (ATOR) that is seen as a replacement for the COPE bill. She said the ATOR bill does not nationalize cable franchising but it regulates and requires an expedited local franchising process. She said the bill establishes a 90-day timeline to act on any application from a new service provider or a franchise is automatically granted for 15 years with no PEG/I-Net support.

Mayor Drake said the 90-day timeline sounded like a penalty for not acting fast enough. He noted acting quickly did not always produce the best product; 90 days would not provide adequate time for citizens to review the application and be part of the process.

Hackett agreed. She said there was a request to make it a 90-business-day deadline, but the Senate turned it down. She said there was discussion on what was more important: speed to market or local consideration. She said under the ATOR bill it is no longer a negotiation; the FCC sets the guidelines for the application form and everyone has to comply. She said both the ATOR and COPE bills have problems.

Coun. Stanton asked if the ATOR bill contained a base for the franchise fee percentage.

Hackett said the bill says it can be a maximum of five percent of gross revenues. She said a video provider could propose a lower percentage and that would have to be negotiated. She said that was where the 90-day timeline would apply.

Coun. Stanton asked if an applicant could agree to adding days to that clock. She questioned the quality of the negotiations that have to be conducted in 90-days.

Hackett said the Senate took pride in that it did not take away local franchising. She said there was nothing in the bill that allows negotiation on the timeline. She said a provider may be able to send a letter to the FCC requesting more time, but the goal of the bill was to make the process short, fast and uniform.

Hackett said the ATOR bill did not have a good definition of gross revenues and that could result in cities getting less revenue in compensation for their ROWs. She said the ROW authority in ATOR is close to what currently exists and the FCC would continue to have jurisdiction. She said the bill also allows one percent of gross revenues for PEG/I-Net purposes or the equivalent of what is currently required of your cable operator. She said that meant that MACC's 1.69% could be used instead of the one percent. She said both bills were similar in regard to customer service in that the FCC sets the standards and local modification is not allowed.

Hackett said the Congressional Budget Office evaluated the Senate bill. She said that the bill would add more to federal spending than it would generate in revenue; it would add \$200 million to the federal deficit.

Coun. Arnold asked what costs were covered under federal spending.

Hackett said costs covered regulation of video providers and FCC costs. She said the bill was promoted as a money-maker for the federal government, which it is not. She said the costs are generated by telecommunications services as this bill is intended to rewrite telecommunications law as it applies to wireless, cable and telephone service.

Coun. Stanton questioned if the cities would still get the franchise fees.

Hackett said the cities would still get the 5% franchise fees, but other parts of the bill are weighing it down. She said there was discussion about breaking up the bill to pass the sections that are unopposed. She said the Congressional Budget Office reported that the direct cost to local and state governments would be \$64 million in 2006. She said that is a problem since the federal government has an unfunded mandate law.

Hackett said Senator Smith broached this issue in the Senate and introduced the Video Choice Act of 2005 (S. 1349). He did not confer with Oregon cities and counties, but he was convinced that if a new company wanted to offer video services, if they have authority to be in the ROW (such as a telephone company) they did not need to get a cable franchise. She said that was unprecedented in Oregon as companies are franchised by service. She said Senator Smith also believes that one percent of gross revenues is adequate to fund PEG/I-Net services (compared to 1.69% currently required by MACC).

Hackett said Senator Wyden has become a supporter of Net Neutrality, which is the theory that if the telecommunications laws are not changed, there will be two big providers of telecommunications services and they will control access and speed to customers. She said other companies (Google, Microsoft) have all testified that they are concerned that Comcast, Verizon or AT&T will prioritize other traffic and/or make them pay more to get their traffic out to subscribers. She said they believe that unless the law is changed, future open access is not guaranteed. She said Senator Wyden has threatened a filibuster, which means that Senator Stevens would have to get 60 secure votes to bring this to the floor and limit discussion. She said MACC was able to make a lot of headway with Senator Smith's staff about the value of the communications network, particularly the public safety services.

Hackett said there would be a Lame Duck Session sometime between November 13 to December 22, 2006, to deal with appropriation issues. She said Senator Stevens was working hard to get his bill to the Senate floor but if there is a change in the composition of the House and Senate as result of the election, his bill will be dead. She said if the bill does not make it through this Congressional session, the proposal would probably be resurrected in the January 2007 Congressional session.

Hackett said 13 states had moved franchising from the local level to the state level; nine other states discussed the change but did not pass it. She said in Oregon, Verizon and AT&T were the two companies that had spent the most time and money at Congress and in state legislatures changing these laws. She said if the federal legislation is delayed, the 2007 legislative session will include a proposal from Verizon. She said Verizon's current position is that it does not care if the federal legislation passes as they are getting the franchises they need. She said MACC has been negotiating a franchise with Verizon since January 2006. She said staff hopes to bring the franchise to the MACC Commission in December; if MACC approves the franchise, it would then go to the member jurisdictions for approval.

Coun. Stanton thanked Hackett for the presentation. She said these issues were difficult to understand. She said home rule was very important to her and to the citizens, because if FCC took over franchising authority service would get much worse.

Hackett said there is concern that there could be a cascade affect; if cable franchises are not negotiated at the local level, why should gas or electrical services be locally franchised.

Coun. Doyle said this mirrors what he senses is happening in Washington D.C. and it was interesting to see the interplay of the parties. He thanked Hackett for the update. He said this could have a devastating affect on local governments.

Mayor Drake thanked Hackett for the presentation.

VISITOR COMMENT PERIOD:

Pavel Goberman, Beaverton, said last month he announced his candidacy as write-in candidate for State Representative. He said the Oregon Constitution does not prohibit his participation in candidate's forums. He said he was invited to participate in the candidate's forum put on by the League of Women Voters. He asked that the City invite

him to participate in the candidate's forum for the County and State candidates. He said if the City did not invite him, it would be a violation of his constitutional rights and he may file a lawsuit against the City. He said if the forum was televised and he was not allowed to participate he would file a complaint with the FCC against MACC and Comcast.

City Attorney Alan Rappleyea said the Committee for Citizen Involvement (CCI) coordinates the candidate's forum and decides who to invite to participate. He said the Council does not control that event. He said the CCI invited actual registered candidates to participate and Goberman is not a registered candidate; he is a write-in candidate. He said the CCI's reasoning was that if they invited everyone who is a write-in or potential write-in candidate, there would not be sufficient time for the registered candidates to express their opinion. He said this was not a situation where anyone could speak; it is a structured candidates' debate, with rules and limits. He said the Constitution does not require that everyone be allowed to talk. He said there was no violation of Goberman's Constitutional rights. He said the CCI can set the parameters for its debate.

Dr. Hal Oien, Treasurer, Five Oaks/Triple Creek Neighborhood Association Committee (NAC), said he was representing the NAC Board with a request that the Beaverton's School District's application for the bus barn, that is to be submitted this month, be considered a Type 3 application so that the Council and Mayor can consider this matter. He said it was their understanding that the application would be a Type 2 application which did not allow for Council consideration. He said they offered to help the School District generate funds to cleanup school bus emissions and they have had no response. He said they were trying to fix this problem and were not getting anywhere with the School District. He said the last time the bus barn application was considered the medical community and others weighed in heavily on the issue of air pollution from these buses; these groups would be excluded unless there is a public hearing before the Council. He said his concern was that the students and their parents from this school had little power and political clout to do what is necessary to protect the students. He said the children need a proxy and the NAC felt it was up to the Council and Mayor.

Mayor Drake said the District had not filed an application. He said NAC Chair Dave James appeared a few months ago before Council with a similar request. He said the Community Development Director Joe Grillo distributed a memorandum in response to that request that went to James, the Council and press. He said since Grillo was not present, the City Attorney would respond to this request.

Rappleyea said the Development Code was changed in the last few years to make the application process more efficient and quicker. He said many different land use applications were made Type 2. He said in Type 2 applications, the Community Development Director makes the first determination and that can be appealed to either the Planning Commission or the Board of Design Review. He said the City had not received an application, he said once the application is received, the Community Development Director would determine the application type.

Mayor Drake asked if Grillo believed this would be a Type 2 application based on a neighborhood meeting that is required in advance of submitting an application.

Rappleyea said Grillo was not sure what type of application it would be. He said the last application that was received was a Type 2 but it was later withdrawn.

Coun. Stanton asked if the Council still had the authority to pull up any decision made by a lower body of the City to hear the issue.

Rappleyea said the Council did not have that authority; and to do that, or to have the option to do that, would violate the 120-day rule. He said that provision was removed from all jurisdictions across the state of Oregon.

Coun. Arnold said that was discussed years ago when the Committee for Citizen Involvement considered the proposed Code changes. She explained how that provision made it impossible to meet the time frame for the 120-day rule.

Oien encouraged the Council and Mayor to retain as much authority as they could and not subjugate their authority to people who do not answer to the voters.

Mayor Drake said he and the Council feel strongly about that. He said that was why years ago the City reversed its procedures to remove the hearings officer and send applications to the Planning Commission.

Oien said the air pollution was the risk to the children and they tried to work with the District but received no response. He stressed that the children need a proxy.

Coun. Doyle asked Oien to send a copy of what was submitted to the School District regarding solutions to the air pollution. He said he would like to see it and could pass it on to the Council. He said he could also share information he had with Oien.

Mayor Drake asked that Oien send this information to the City Recorder so all the Council could get the information.

COUNCIL ITEMS:

Coun. Stanton said October was Domestic Violence Awareness Month and on Thursday, October 5, 2006, at the Washington County Courthouse in Hillsboro, at 5:30 p.m. there would be a celebration of survivors and speeches would be given to raise awareness on this topic. She said also on Thursday, from 12:00 to 2:00 p.m. local legislative candidates will discuss affordable housing issues at a forum at City Hall. She said she would be there and she encouraged those who were interested to attend.

STAFF ITEMS:

Finance Director Patrick O'Claire reminded the Council that the auditor's letter and questionnaire, that the auditors distributed to Councilors, is due back to the auditors on October 17, 2006.

CONSENT AGENDA:

Mayor Drake explained that Agenda Bills 06182 and 06183 were being pulled from the agenda because of questions from Couns. Arnold and Stanton, and would not be discussed at this meeting.

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

Minutes of the Regular Meeting of September 11, 2006

06181 Liquor License: New Outlet - Mexicali Express; Thai Flavor

Contract Review Board:

06182 PULLED - A Resolution Relating to Special Procurements and Amending Sections 50-0015 and 47-0700 of the Beaverton Purchasing Code (Resolution No. 3875) (This item was not discussed at the Council meeting.)

Coun. Dalrymple said he had a correction to the September 11, 2006 Minutes on page 12, the fifth paragraph should read "Coun. Dalrymple stressed he was objecting to the path for approval not the density." He said the word traffic should be omitted.

Question called on the motion. Couns. Arnold, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

ORDINANCES:

First Reading:

Rappleyea read the following ordinances for the first time by title only:

06183 PULLED - An Ordinance Amending Comprehensive Plan Chapters 1, 2 and the Glossary (Ordinance No. 4187) Related to CPA 2006-0001 (Ordinance No. 4395) (This item was not discussed at the Council meeting)

EXECUTIVE SESSION:

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that Council move into 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 that pursuant to ORS 192.660(3), it is Council's wish that the items discussed not be disclosed by media representatives or others. Couns. Arnold, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

RECESS:

Mayor Drake called for a recess at 7:41 p.m. to setup for executive session.

RECONVENED:

Mayor Drake reconvened the meeting at 7:53 p.m.

The executive session convened at 7:53 p.m.

The executive session adjourned at 8:06 p.m.

The regular meeting reconvened at 8:06 p.m.

Coun. Stanton MOVED, SECONDED by Coun. Doyle, that the Council authorize the expenditure in the next supplemental budget of \$15,000.00, and incidentals up to another \$1,000.00, to settle the lawsuit of Alliant Systems, Inc., vs. City of Beaverton. Couns. Arnold, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously (4:0)

Coun. Doyle MOVED, SECONDED by Coun. Dalrymple that Council authorize that \$135,000 in additional funds for litigation expenses as discussed in executive session, to be included in the next supplemental budget. Couns. Arnold, Dalrymple, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously (4:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:07 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: 10/16/06 **BILL NO:** 06186

NEW OUTLET

Bias Salon & Spa
12600 SW Crescent St.
Beaverton, OR

88 Asia Market
4265 SW Cedar Hills Blvd.
Beaverton, OR

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: Police 

DATE SUBMITTED: 09/27/06

PROCEEDING: Consent Agenda

EXHIBITS: None

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

Background investigations have been completed and the Chief of Police finds that the applicants have met 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 applications.

INFORMATION FOR CONSIDERATION:

Bias Salon & Spa, LLC is opening a new establishment and has made application for a Limited On-Premises Sales License under the trade name of Bias Salon & Spa. The establishment is a retail salon. It will operate Monday through Saturday from 7:00 a.m. to 7:00 p.m. There will be no entertainment offered. A Limited On-Premises Sales License allows the sale of malt beverages, wine, and cider for consumption at the licensed business, and the sale of kegs of malt beverages to go.

88 Asia Market, Inc., is opening a new establishment and has made application for an Off-Premises Sales License under the trade name of 88 Asia Market. The establishment is a grocery store. It will operate seven days a week from 10:00 a.m. to 8:00 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 applications.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Establishing a Fee for Payday Lender Permits

FOR AGENDA OF: 10-16-06 **BILL NO:** 06187

Mayor's Approval:



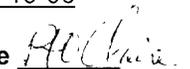
DEPARTMENT OF ORIGIN:

City Attorney 

DATE SUBMITTED:

10-10-06

CLEARANCES:

Finance 

PROCEEDING: Consent Agenda

EXHIBITS: Resolution

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

Council passed Ordinance 4394 in June, 2006, authorizing a program to regulate payday lending practices. The Mayor's Office has approved a set of rules for the program.

INFORMATION FOR CONSIDERATION:

This Resolution establishes an annual fee for payday lending permits. The proposed \$500.00 permit fee is based upon the staff time in setting up the new permit application, monitoring the ten (10) known lenders, preparing and distributing to the payday lenders the required Cancellation of Payday Loan information that the payday lender is required to conspicuously disclose, processing the annual permit renewals, and under the Ordinance's Complaint section, receiving complaints from Borrowers, causing an investigation of the complaint's allegations, reviewing the proposed resolution to the complaint, and if the resolution is not satisfactory to the Mayor, causing an independent investigation and alternative resolution to the complaint.

RECOMMENDED ACTION:

Pass Resolution

RESOLUTION NO. 3876

A RESOLUTION ESTABLISHING A FEE FOR PAYDAY LENDER PERMITS

WHEREAS, Council passed Ordinance 4394 which established a program to regulate the practice of payday lending in Beaverton; and

WHEREAS, the program created under Ordinance 4394 requires a permit to lawfully operate a lending business, and the permit requires payment of a regulatory fee; now, therefore,

BE IT RESOLVED that the fee for a Payday Lender permit shall be \$500 per year, payable annually for the cost of doing business in Beaverton during any part of the year.

BE IT FURTHER RESOLVED that permit fees paid for calendar years 2007 and beyond may be remitted in conjunction with the separate business license fee which already exists under other ordinances and rules

BE IT FURTHER RESOLVED that notwithstanding any other provision of law, this Resolution shall take effect immediately upon its passage by Council and signature of the Mayor.

ADOPTED by the Council this _____ day of _____, 2006.

APPROVED by the Mayor this _____ day of _____, 2006.

AYES: _____

NAYS: _____

ATTEST:

APPROVED:

SUE NELSON, CITY RECORDER

ROB DRAKE, MAYOR

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

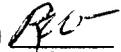
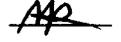
SUBJECT: Traffic Commission Issue No. . .
• TC 596 – Stop Control on SW
Tierra del Mar Drive at Palmer
Way,
• TC 597 – Left Turn Prohibition
on SW Canyon Lane at
Canyon Road,
• TC 598 – Speed Limit on SW
Valeria View Drive

FOR AGENDA OF: 10-16-06 **BILL NO:** 06188

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Public Works 

DATE SUBMITTED: 10-03-06

CLEARANCES: Transportation 
City Attorney 

PROCEEDING: Consent

- EXHIBITS:**
- 1 Vicinity Map
 - 2 City Traffic Engineer's reports on Issues TC 596 - 598
 - 3 Final Written Order on TC 598
 - 4 Written testimony
 - 5 Draft minutes of the meeting of September 7, 2006 (excerpt)

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

On September 7, 2006, the Traffic Commission considered the subject traffic issues. The staff reports are attached as Exhibit 2.

INFORMATION FOR CONSIDERATION:

On consent agenda, the Commission approved staff recommendations on Issues TC 596 and 597.

On Issue TC 598, the Commission voted 4-2 to retain the existing speed limit on Valeria View Drive.

A hearing was held on a proposal to remove parking limits in downtown parking lots. The hearing was continued to the October meeting. This issue will appear on a future Council agenda bill after the Commission makes a formal recommendation.

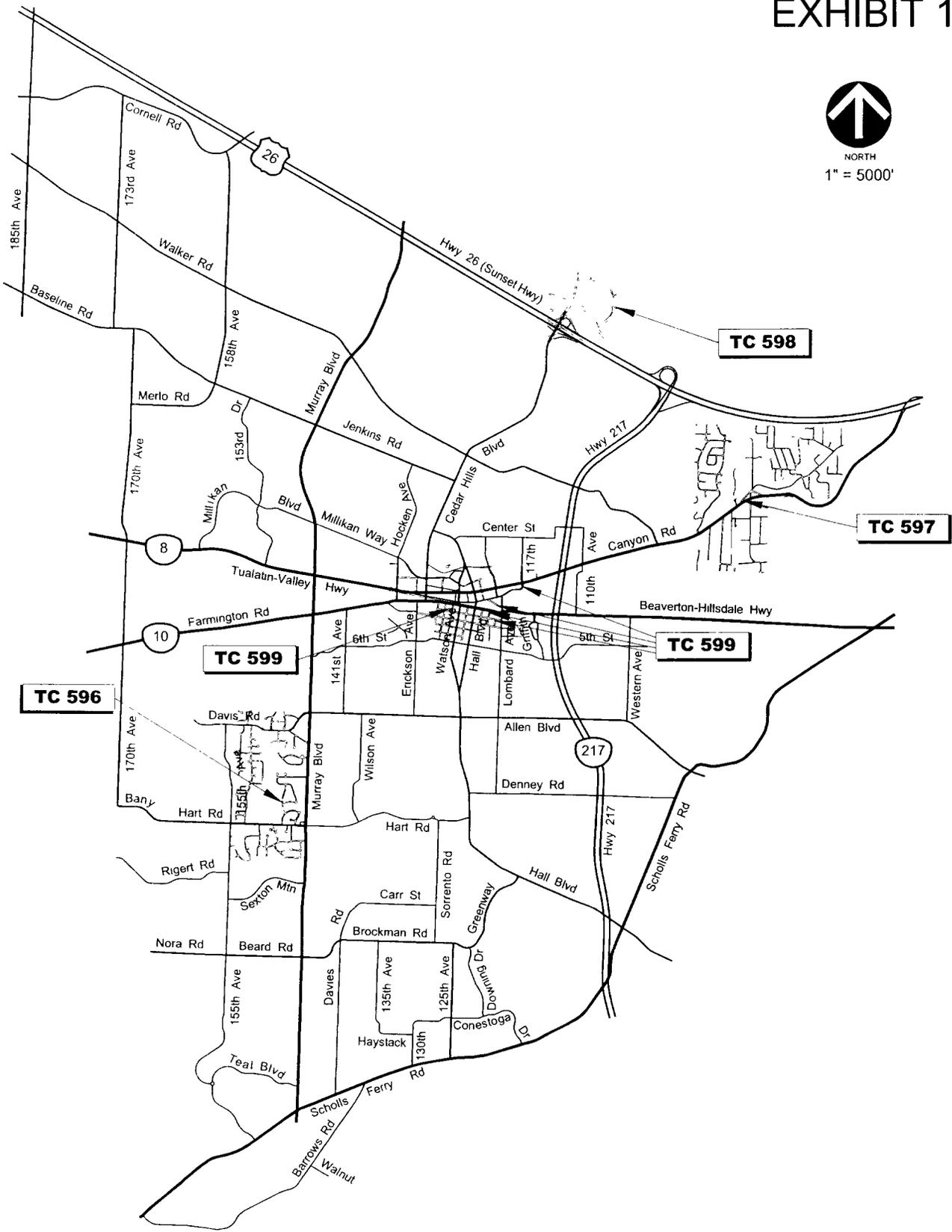
RECOMMENDED ACTION:

Approve the Traffic Commission recommendations on Issues TC 596 -598.

EXHIBIT 1



NORTH
1" = 5000'



Y:\Traffic\Drawings\TC Vicinity Map\VICINITY MAP TC 596-599 9-07.dwg



City Of Beaverton

Vicinity Map for September 2006
TC Issues: 596 - 599

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
TRANSPORTATION SECTION**

Drawn By: JM Date: 8/15/06

Reviewed By: Date:

CITY TRAFFIC ENGINEER'S REPORT

ISSUE NO. TC 596

(Stop Control on SW Tierra del Mar Drive at Palmer Way)

August 15, 2006

Background Information

There are two intersections of Tierra del Mar Drive and Palmer Way. Both are tee intersections. The northerly intersection is controlled by an existing stop sign. Mr. David Paez of SW Tierra del Mar Drive has requested that a stop sign be placed at the southerly intersection to require Tierra del Mar traffic to stop for Palmer traffic.

No crashes have been reported at this intersection during the most recent three-year period for which crash data is available.

Typically stop signs would not be needed at a tee intersection on a low-volume local residential street. However, at the subject intersection, sight distance is quite limited by grading and landscaping on adjoining properties. It is necessary for Tierra del Mar traffic to make a complete stop in order to adequately see traffic on Palmer. Therefore, staff is recommending installation of the requested stop sign.

The Manual on Uniform Traffic Control Devices (MUTCD) indicates that restricted view is one of the reasons to use stop sign control.

Applicable Criteria

Applicable criteria from Beaverton Code 6.02.060A are:

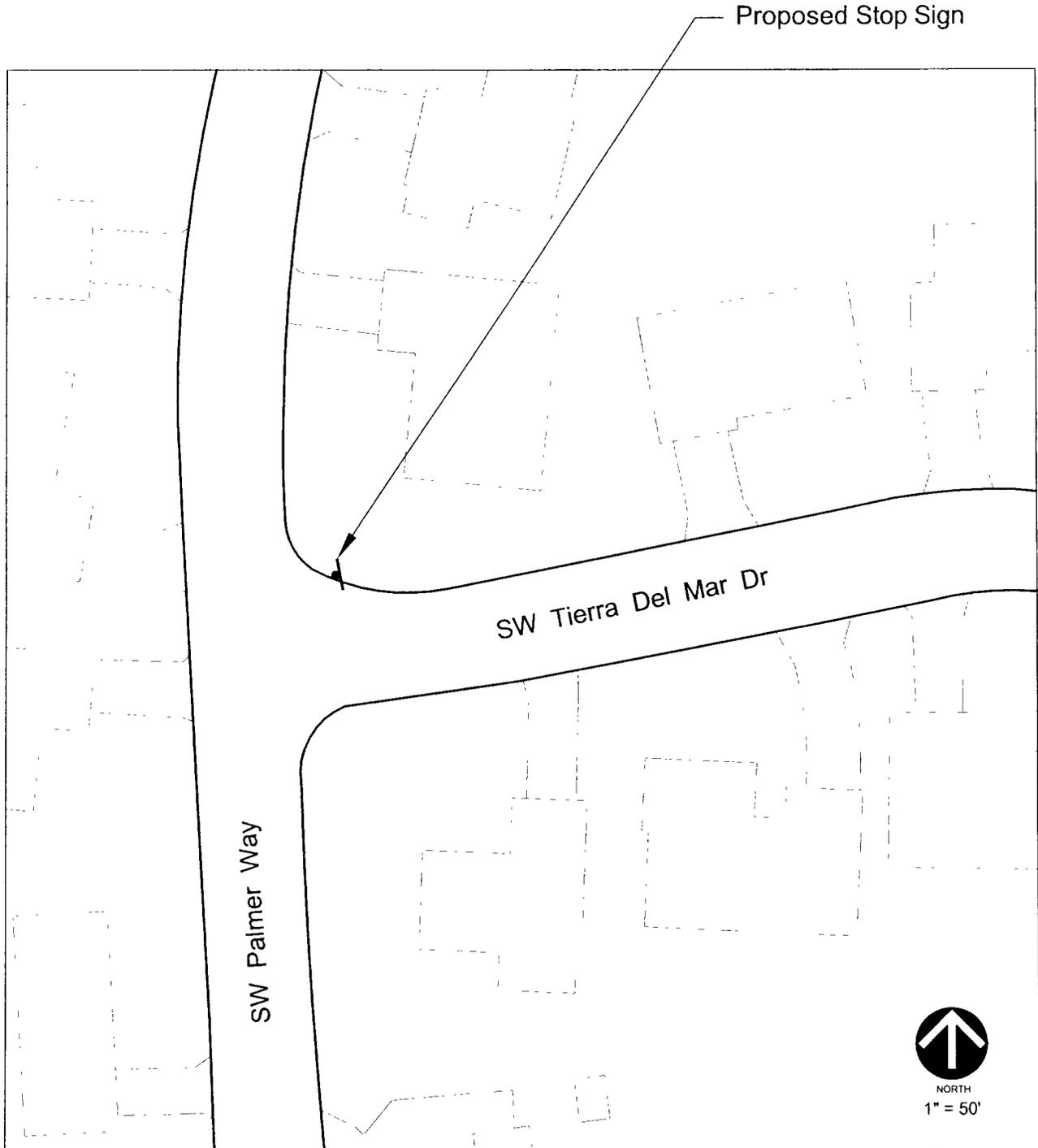
- 1a (provide for safe vehicle, bicycle and pedestrian movements);
- 1g (carry anticipated traffic volumes safely)
- 2 (traffic control to be based on the standards of the MUTCD).

Conclusions:

1. The stop sign will improve safety by assuring that Tierra del Mar traffic stops before entering Palmer, satisfying Criteria 1a and 1g.
2. The subject intersection meets the standards of the MUTCD, satisfying Criterion 2.

Recommendation:

Install a stop sign requiring traffic on SW Tierra del Mar Drive to stop at the southerly intersection with Palmer Way.



Y:\Cad_Services\Drawings\2006\06-86 Stop Control at Tierra del Mar Drive.dwg



City Of Beaverton

Stop Control on SW Tierra del Mar Drive
at Palmer Way

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
TRANSPORTATION SECTION**

Drawn By: JM Date: 8/8/06

Reviewed By: _____ Date: _____

CITY TRAFFIC ENGINEER'S REPORT

ISSUE NO. TC 597

(Left Turn Prohibition on SW Canyon Lane at Canyon Road)

August 15, 2006

Background Information

The West Slope NAC has requested that left turns be prohibited from westbound Canyon Lane onto eastbound Canyon Road at the intersection west of SW 87th Avenue. The NAC is concerned about safety, indicating that sight distance is limited by existing buildings and that there is often a high volume of traffic on Canyon Road traveling at high speed. In addition, the NAC is concerned that, because the left turn is difficult, a vehicle waiting to make the left turn often takes a long time, causing delays to remaining traffic on Canyon Lane. The majority of westbound Canyon Lane traffic turns right at this intersection. There is insufficient street width to mark separate right and left turn lanes.

An alternative route to eastbound Canyon Road is available via 87th Avenue with a traffic signal at Canyon Road. Staff is working on a plan to improve signing in the area to better direct traffic to 87th Avenue when appropriate.

In the most recent three years for which crash data is available, there have been no reported crashes at the intersection of Canyon Road and Canyon Lane.

Applicable Criteria

Applicable criteria from Beaverton Code 6.02.060A are:

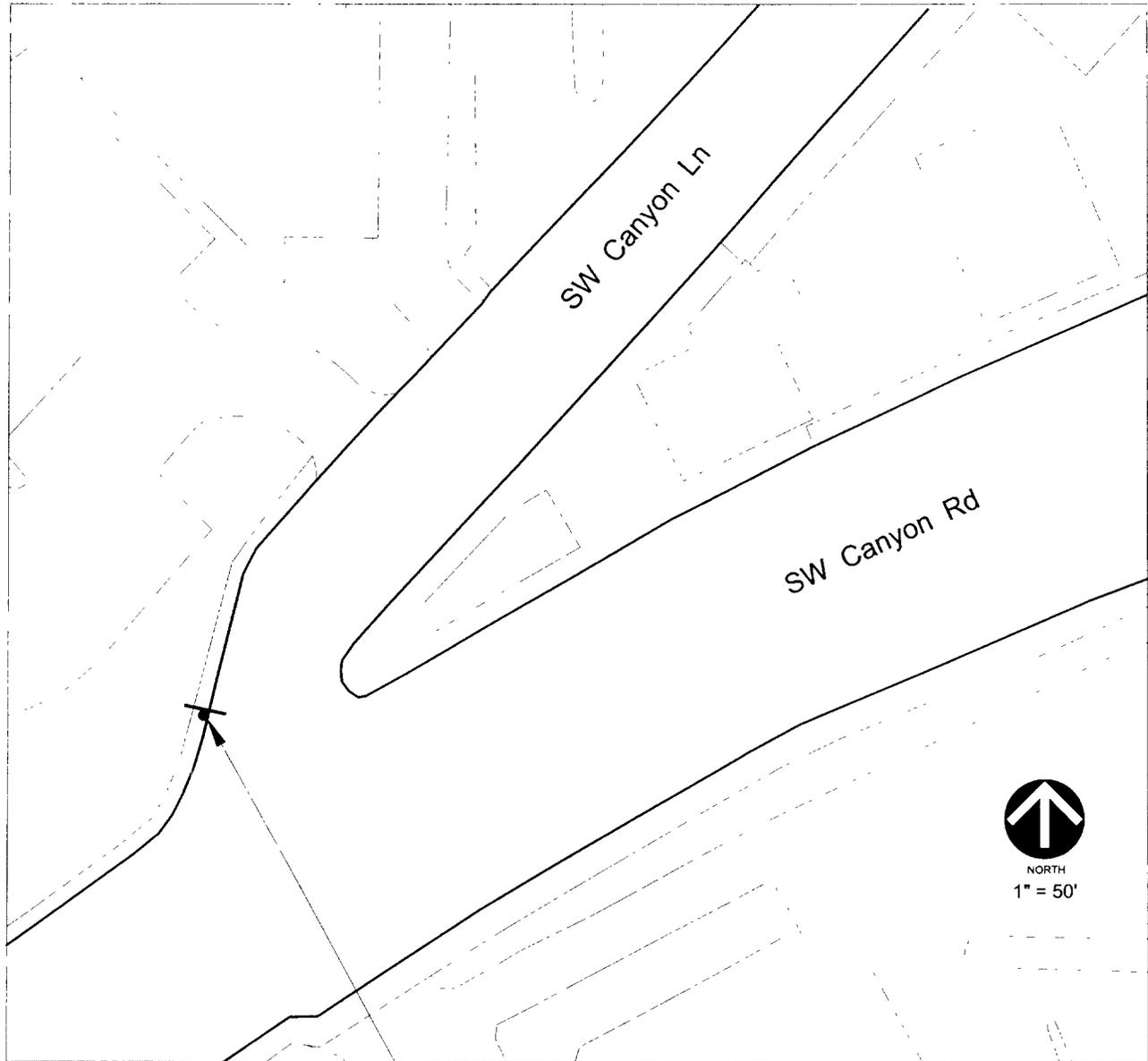
- 1a (provide for safe vehicle, bicycle and pedestrian movements);
- 1g (carry anticipated traffic volumes safely)

Conclusions:

1. While there is no crash history at the intersection, it is a difficult location for a left turn due to restricted sight distance, high speed and volume on Canyon Road and the angle of Canyon Lane with Canyon Road. Due to the sharp angle of the intersection, left-turning drivers may need more time to make the turn and may have difficulty in accurately judging adequacy of gaps in Canyon Road traffic. The nearby route via SW 87th Avenue is convenient and safer. It may improve safety to encourage drivers to use the 87th Avenue route for left turns. For these reasons, prohibition of the left turn is anticipated to improve safety, satisfying Criteria 1a and 1g.
2. Prohibition of the left turn will reduce delays to the predominate right turn movement, satisfying Criterion 1g.

Recommendation:

Prohibit left turns from westbound Canyon Lane onto eastbound Canyon Road at the intersection west of SW 87th Avenue.



Proposed Left Turn Prohibition

Y:\Cad_Services\Drawings\2006\06-87 Left Turn Prohibition on SW Canyon Lane.dwg



City Of Beaverton

Left Turn Prohibition on SW Canyon Lane
at Canyon Road

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
TRANSPORTATION SECTION**

Drawn By: JM Date: 8/8/06

Reviewed By: _____

CITY TRAFFIC ENGINEER'S REPORT

ISSUE NO. TC 598

(Speed Limit on SW Valeria View Drive)

August 15, 2006

Background Information

At the request of the Traffic Commission, staff has reviewed the speed zoning for SW Valeria Drive between Celeste Lane and Barnes Road. The current speed limit is 30 mph, which was established in January 2005. Prior to 2005, the County had posted the street with an interim speed of 30 mph when the street was constructed.

Existing speeds were measured with automated counters on July 26 and 27, 2006. North of Taylor Street the 85th percentile speed was recorded at 32 mph northbound and 34 mph southbound. South of Taylor Street the 85th percentile speed was recorded at 37 mph both northbound and southbound. The 85th percentile speed means that 85 percent of the vehicles were traveling at or below this speed. The 50th percentile speeds were at approximately 28 mph north of Taylor and 33 mph south of Taylor. Traffic volumes were approximately 4500 vehicles per day north of Taylor and 5900 vehicles per day south of Taylor. City records show no reported collisions on Valeria View. Valeria View has sidewalks and marked bike lanes on both sides.

Valeria View is classified as a collector street. The collector designation indicates that the street is intended to serve more than the immediate neighborhood, providing circulation within the City. A traffic report prepared in 1999 for the Peterkort development estimated that the "build-out" volumes will be 6900 vehicles per day north of Taylor and 12,500 vehicles per day south of Taylor. In this case, "build out" means total development of the adjoining properties owned by the Peterkort family. (*Peterkort Development Transportation Master Plan*, May 1999, prepared by Transportation Consulting Group).

In Oregon, speed limits are established by the Oregon Department of Transportation (ODOT). If a speed study is requested from ODOT, it is likely that ODOT would determine that the existing speed limit is appropriate, based on the data shown above. Another option for the City would be to request that the existing speed order be withdrawn by ODOT. Such a request would likely be granted by ODOT. If the speed order is withdrawn, the speed limit would revert to the statutory limit of 25 mph in the residential area.

The 85th percentile speed is typically used as an indicator of the upper limit of speeds for responsible and prudent drivers. Other factors include roadway geometry, sight distance, design speed, land use and amount of direct access. It is not unusual for a street to have 5 mph difference between the 85th percentile and the posted limit. However, very large variance between the posted speed and the 85th percentile speed may result in poor compliance with the posted speed.

Based on the measured 85th percentile speed, the collector street classification, limited driveway and street access, and the geometry of the street, staff is proposing to retain the existing speed limit of 30 mph.

Applicable Criteria

Applicable criteria from Beaverton Code 6.02.060A are:

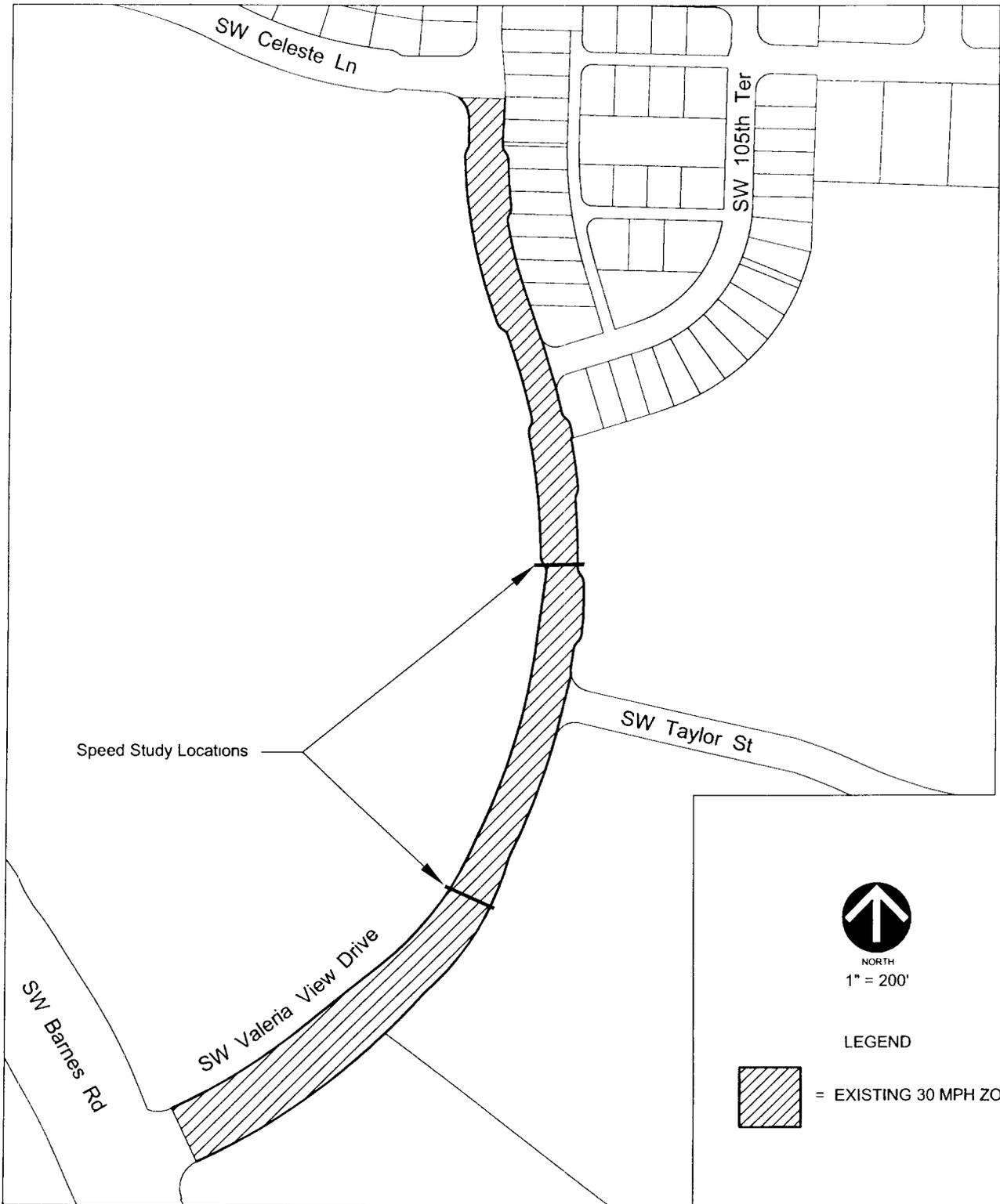
- 1a (provide for safe vehicle, bicycle and pedestrian movements);
- 1b (help ensure orderly and predictable movement of vehicles, bicycles, and pedestrians);
- 1h (comply with Federal and State regulations).

Conclusions:

1. Based on the speed surveys, it appears that a majority of drivers find that a speed near 30 mph is safe and appropriate. Typically vehicle crash rates are lowest when traffic moves at a uniform speed. A speed limit substantially below the perceived safe speed typically leads to frequent violations and may lead to other undesirable behavior (such as passing). Bike lanes and sidewalks exist for pedestrian safety. Therefore, retaining the existing speed limit of 30 mph satisfies Criteria 1a and 1b.
2. The existing speed limit was established by ODOT in 2005 following an ODOT speed study, satisfying Criterion 1h.

Recommendation:

Retain the existing speed limit of 30 mph.



Y:\Cad_Services\Drawings\2006\06-75 Speed Limit on SW Valeria View Drive.dwg



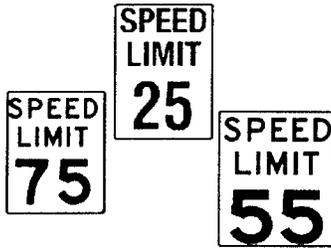
City Of Beaverton

Speed Limit on SW Valeria View Drive

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
TRAN PORTATION SECTION**

Drawn By: JM Date: 8/8/06

Reviewed By: _____ Date: _____



Speed Zoning Information

A Case of Majority Rule

Written by the ITE Staff

EXECUTIVE SUMMARY

What Realistic Speed Limits Do

- Encourage compliance from the majority of drivers;
- Give a clear reminder of reasonable and prudent speeds;
- Provide an effective enforcement tool to the police;
- Minimize public antagonism toward police enforcement, which results from obviously unreasonable regulations; and
- Encourage drivers to travel at the speed where the risk of crash involvement is the lowest.

What Unrealistic Speed Limits Do

- Discourage voluntary compliance;
- Create the perception of "speed traps;"
- Cause public antagonism toward the police;
- Create a bad image for a community in the eyes of tourists; and
- May increase the potential for crashes.

WHY SPEED LIMITS?

Generally, traffic laws that reflect the behavior of the majority of motorists are found to be successful, while laws that arbitrarily restrict the majority of motorists encourage violations, lack public support and usually fail to bring about desirable changes in driving behavior. This is especially true of speed zoning.

Speed zoning is based on several fundamental concepts deeply rooted within the American system of government and law:

- A. Driving behavior is an extension of social attitude and the majority of drivers respond in a safe and reasonable manner as demonstrated by consistently favorable driving records;
- B. The normally careful and competent actions of a reasonable person should be considered appropriate;
- C. Laws are established for the protection of the public and the regulation of unreasonable behavior on the part of individuals, and
- D. Laws cannot be effectively enforced without the consent and voluntary compliance of the public majority.

COMMON MISCONCEPTIONS

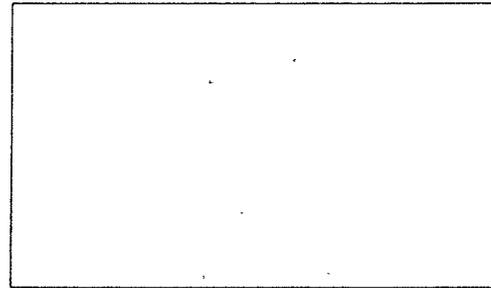
The public normally accepts the concepts noted above. However, when emotionally aroused in a specific instance, the same public will often reject these fundamentals and rely instead on more comfortable and widely-held misconceptions such as:

- A. Reducing the speed limit will slow the speed of traffic;
- B. Reducing speed limits will decrease the number of crashes and increase safety;
- C. Raising the posted speed limit will cause an increase in the speed of traffic;
- D. Any posted speed limit must be safer than an unposted speed limit; and
- E. Drivers will always go 5 mph over the posted speed limit.

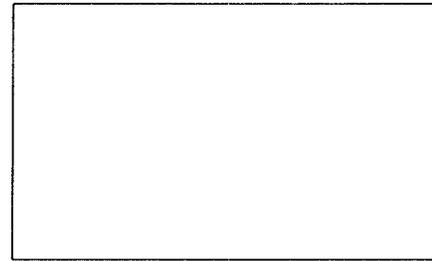
INTENT OF SPEED ZONING

The most widely accepted method by state and local agencies is to set the limit at or below the speed at which 85 percent of the traffic is moving. The 85th percentile speed is how drivers "vote with their feet." Studies have shown crash rates are lowest at around the 85th percentile

speed. Drivers traveling significantly faster OR slower than this speed are at a greater risk for being in a crash. It is not high speeds alone that relate to crash risk; it is the variation of speed within the traffic stream



In fact, on a per mile driven basis, high speed roadways, like interstates, have a lower speeding related fatality rate than low speed roadway. Large variations in speed within the traffic stream create more conflicts and passing maneuvers



HOW SPEED LIMITS ARE ESTABLISHED

According to a Federal Highway Administration study, all states and most local agencies use the 85th percentile speed of free flowing traffic as the basic factor in establishing speed limits.

Radar, laser and other methods are used to collect speed data from random vehicles on a given roadway. This speed is subject to revision based upon such factors as: crash experience, roadway geometrics, parking, pedestrians, curves, adjacent development and engineering judgment. This practice is in accordance with the MUTCD.

In the final analysis, it is the judgment of the traffic engineer that determines which, if any, of the factors in the speed study warrant an adjustment of the 85th percentile speeds. After all variables are considered and a speed limit is established, traffic should flow at a safe and efficient level.

Members of the Committee:

Rick Staigle, *Chair*
 Andrew O'Brien
 Bruce Ward Jr.
 Dave Wong-Toi
 David Clark
 Dennis Morford
 Kent Collins

Robert Turner
 Steve Taylor
 Steven Jones Jr.
 Jim Hansen
 Kay Fitzpatrick
 Dustin Qualls
 James Cheeks Jr., *ITE Staff*

CITY OF BEAVERTON

FINAL WRITTEN ORDER OF THE TRAFFIC COMMISSION

REGARDING ISSUE NUMBER TC 598

Speed Limit on SW Valeria View Drive

1. A hearing on the issue was held by the Traffic Commission on September 7, 2006.
2. The following criteria were found by the City Traffic Engineer to be relevant to the issue:
 - 1a (provide for safe vehicle, bicycle and pedestrian movements);
 - 1b (help ensure orderly and predictable movement of vehicles, bicycles, and pedestrians);
 - 1h (comply with Federal and State regulations).
3. In making its decision, the Traffic Commission relied upon the following facts from the staff report and public testimony:
 - Existing 85th percentile speeds on SW Valeria View Drive were recorded to be between 30 and 40 mph.
 - The City Traffic Engineer provided evidence that the 85th percentile speed is often used by traffic engineers as an indicator of the appropriate speed limit and that a speed limit near the 85th percentile speed may be the safest speed limit.
 - Valeria View Drive has existing sidewalks and bike lanes.
 - The existing speed limit was established in 2005 by the Oregon Department of Transportation based on speed studies.
 - Valeria View Drive is classified as a collector street.
4. Following the public hearing, the Traffic Commission voted (4 aye, 2 nay) to recommend the following action:
 - Retain the existing speed limit of 30 mph.
5. The Traffic Commission decision was based on the following findings:
 - Based on the speed surveys, it appears that a majority of drivers find that a speed near 30 mph is safe and appropriate. Typically vehicle crash rates are lowest when traffic moves at a uniform speed. A speed limit substantially below the perceived safe speed typically leads to frequent violations and may lead to other undesirable behavior (such as passing). Bike lanes and sidewalks exist for pedestrian safety. Therefore, retaining the existing speed limit of 30 mph satisfies Criteria 1a and 1b.
 - The existing speed limit was established by ODOT in 2005 following an ODOT speed study, satisfying Criterion 1h.
6. The decision of the Traffic Commission shall become effective upon formal approval of the City Council.

SIGNED THIS 7 DAY OF SEPTEMBER 2006



 Traffic Commission Chair

Randy Wooley

From: Renfro, Jerry L. [Jerry.Renfro@tvfr.com]
Sent: Wednesday, August 23, 2006 8:06 AM
To: Randy Wooley
Subject: Comments Regarding Traffic Commission Issues No. 596-599

Randy, thank you once again for allowing TVF&R to comment on these and other issues that may have a direct affect on emergency response! I place a very high value upon our continued close working relationship; as does the TFV&R administrative staff.

Regarding Issues TC 596 through TC 599, the District has no objections or additional comments at this time.

Sincerely,

Jerry L. Renfro DFM

Transportation Systems Manager

Tualatin Valley Fire and Rescue

MEMORANDUM

Beaverton Police Department

DATE: August 29, 2006

TO: Randy Wooley

FROM: Jim Monger

SUBJECT: TC 596

RECORD COPY



Chief David G. Bishop

TC 596. I concur with the recommendation to install a stop sign at the south intersection of SW Tierra Del mar and Palmer Way.

MEMORANDUM

Beaverton Police Department



Chief David G Bishop

DATE: August 29, 2006
TO: Randy Wooley
FROM: Jim Monger
SUBJECT: TC 597

TC 597. I concur with the recommendation to prohibit left turns from westbound Canyon Lane onto eastbound Canyon Road. The use of the intersection of Canyon Road at 87th seems to be a safer option for drivers intending to enter eastbound Canyon Road traffic.

MEMORANDUM

Beaverton Police Department

DATE: August 29, 2006
TO: Randy Wooley
FROM: Jim Monger
SUBJECT: TC 598



Chief David G. Bishop

TC 598. I concur with the recommendation to retain the 30 mph speed limit on SW Valeria View Drive between Celeste Lane and Barnes Road.

City of Beaverton

TRAFFIC COMMISSION

Minutes of the September 7, 2006, Meeting

CALL TO ORDER

Chairman Scott Knees called the meeting to order at 7:00 p.m. in the Forrest C. Soth City Council Chamber at Beaverton City Hall, Beaverton, Oregon.

ROLL CALL

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

City staff included City Traffic Engineer Randy Wooley, Traffic Sergeant Jim Monger and Recording Secretary Debra Callender.

-- EXCERPT BEGINS --

CONSENT ITEMS

Chairman Knees reviewed the consent items, including approval of the draft July 6, 2006, Traffic Commission minutes; **TC 596** "Stop Control on SW Tierra del Mar Drive at Palmer Way;" and **TC 597** "Left Turn Prohibition on SW Canyon Lane at Canyon Road."

Commissioner Overhage **MOVED** and Commissioner Sadler **SECONDED** a **MOTION** to approve the consent agenda as presented.

The **MOTION CARRIED** unanimously, 6:0. Commissioners Clodfelter and Knees abstained from approving the minutes because they were not at the July meeting.

The Commission agreed to switch the hearing order on the agenda. Several people in the audience were waiting to testify on TC 599, so the Commission heard that item first.

PUBLIC HEARING**ISSUE TC 598: SPEED LIMIT ON SW VALERIA VIEW DRIVE**

Chairman Knees opened the public hearing on Issue TC 598.

Staff Report

Mr. Wooley said City staff reviewed the speed zoning on Valeria View Drive at the request of the Traffic Commission. Mr. Wooley referred to a handout provided by the Institute of Transportation Engineers (ITE) that was included in the staff report. This document explains the reasoning that the Oregon Department of Transportation (ODOT) uses to set speed limits in Oregon. Based on this information, staff recommends that the existing 30 mph speed limit remain.

Mr. Wooley said staff received no written testimony from the neighborhood on this issue. Only one person asked a question on this issue and that was a City Councilor who drove by and saw the public notice signs.

Commissioner Troute asked when staff conducted the speed study that is included in the staff report.

Mr. Wooley said staff conducted the study on July 26 and 27, 2006, a Wednesday and Thursday,

Commissioner Troute asked how the data was gathered.

Mr. Wooley said staff used pneumatic road tubes that count both speed and traffic volume.

Public Testimony

The Commission reviewed written testimony submitted for this hearing from Traffic Sergeant Jim Monger of the Beaverton Police and from Deputy Fire Marshal Jerry Renfro of Tualatin Valley Fire & Rescue.

No one testified on this issue.

Staff Comments

There were no additional staff comments.

Chairman Knees closed the public hearing on Issues TC 598.

Commission Deliberation

Commissioner Troute said he lives in this neighborhood and so is very familiar with this issue. He understands that engineering manuals contain guidelines and

specifications that dictate how speeds limits should be set. He believes that safety and common sense should still be part of the decision process.

Commissioner Troute referred to Officer Debolt's comments on this issue at the last meeting. The officer said he was surprised to find that the speed limit was 30 mph. not the statutory 25 mph. The staff report refers to Valeria View as a collector street. He understands that Cedar Hills Boulevard is considered an arterial street, yet Valeria View's speed limit is only five mph less than that on Cedar Hills.

Commissioner Troute said both traffic lanes on Valeria View flow downhill. Both sides of the street are lined with apartments. Residents cross the roadway from west to east to reach the clubhouse and recreation facilities.

Commissioner Troute said that police do not begin enforcing the speed limit until drivers reach 11 mph faster than the posted speed. That means drivers can go 41 mph on Valeria View before police stop them and write a citation.

Noting that none of his neighbors showed up to testify at this hearing, Commissioner Troute said he has observed that people who oppose an issue are more likely to show up at a hearing than those who support the issue. He told the Commission that several of his neighbors expressed positive opinions about lowering the speed limit on Valeria View.

Commissioner Troute said he has a young family and they often walk Valeria View. He believes that the 85th percentile rule is useful in many cases; however, good judgment says it is not appropriate here. He believes the speed on Valeria View should be reduced to a level appropriate for a neighborhood street.

Commissioner Clodfelter asked if Valeria View is considered a collector street.

Mr. Wooley confirmed that it is.

Commissioner Clodfelter asked if Hart Road, between Murray Boulevard and Hall Boulevard, is also a collector street.

Mr. Wooley answered that Hart Road, at that location, is a collector street. West of Murray it is classified as an arterial.

Commissioner Clodfelter noted that Hart Road has a 25 mph speed and numerous speed humps. He asked if all collector streets have 30 mph speed limits.

Mr. Wooley said it could vary because there is a wide range of collector streets. Factors considered when deciding on an appropriate speed limit include street width, street type, sight distance, driveways entering the street, and how adjoining property is being used

Commissioner Crocker said it was only recently that the Commission reviewed the speed limit on Valeria View. She appreciates the comparison to Hart Road.

Because of the particular features of Valeria View and the new multiple-family housing built close to the roadway, she supports Commissioner Troute's viewpoint that the speed should be lowered.

Commissioner Troute said Valeria View begins at the top of one hill then dips to a low point before ascending a second hill. A crosswalk to the clubhouse is located at the low point between hills. Vehicle speed is a safety issue because cars descending the first hill are at maximum speed when they reach the crosswalk at the bottom.

Commissioner Overhage said the 85th percentile speed is the speed at which people "instinctively drive." She doubts that northbound traffic on Valeria View is a much of a problem. She asked Commissioner Troute if he believed most of the problem was southbound, with the exception of rush hour.

Commissioner Troute agreed.

Commissioner Overhage said Valeria View has good sight distance and few driveways. In contrast, Hart Road has many driveways. She said she could vote either way on this issue. She asked what staff would think of setting a speed below the 85th percentile. Would such a change alter drivers' behavior?

Mr. Wooley said results would depend on the amount of police speed enforcement. If there is a lot of police enforcement, the area is likely to become known as a "speed trap," but drivers will eventually drive more slowly. Without enforcement in such a situation, driver speed typically will not change.

Commissioner Overhage asked staff how much police enforcement it would take to ensure drivers limit their speed to 25 mph. Will police have to return every month?

Mr. Wooley said enforcement would need to be frequent to have a lasting impact on driver's behavior. Most neighborhood drivers become used to driving at a particular speed. If they routinely see traffic enforcement, it will help set the new speed in their mind.

Commissioner Troute said cut-through traffic is a significant concern in this neighborhood. He testified before the Commissioner on this neighborhood's cut-through traffic several years ago before he was appointed to the Commission. He also testified on this issue before City Council because Valeria View is located near a location once proposed for a new Wal-Mart store. Cut-through traffic typically flows from Barnes Road onto Valeria View and turns left on Celeste. From there, drivers turn onto Cedar Hills Boulevard. This cut-through route saves drivers from waiting at the intersection of Cedar Hills Boulevard and Barnes Road. Commissioner Troute said drivers regularly roll through the stop sign without stopping.

Commissioner Troute said staff measured the 85th percentile for two days and concluded that the speed limit should remain at 30 mph. He and his neighbors see

cut-through traffic speeding on Valeria View every day. He believes people who live in the neighborhood do not speed through their own neighborhood. The streets are narrow, there is on-street parking, and many children live in the neighborhood.

Commissioner Troute asked staff for the 85th percentile speed on Cedar Hills Boulevard before the City installed photo radar at intersections.

Mr. Wooley said Cedar Hills is a Washington County road so he does not know the data. Beaverton police are responsible for speed enforcement.

Commissioner Troute said the Commissioners might remember how quickly drivers sped down Cedar Hills before photo radar was installed. He said Valeria View is only 5 mph lower in speed than Cedar Hills Boulevard. He said the speed on Valeria View simply does not make sense.

Commissioner Clodfelter said northbound Valeria View seems fine at 30 mph. The southbound hill encourages drivers to brake all the way down the slope. He pointed out the statement in the staff report that says ODOT is likely to retain the 30 mph speed if Beaverton requests an ODOT speed study. Even if the Commission recommends a lower speed, ODOT might disagree.

Chairman Knees asked staff for the street use designation for Sorrento Road.

Mr. Wooley said Sorrento is a collector street.

Chairman Knees said he is "ambivalent" about this issue. For many years, Sorrento has been 25 mph. Sorrento also has a dip in both directions at a low point. Sorrento had regular police speed enforcement to keep drivers at 25 mph, although the street always felt safe when driven at a higher speed. Finally, the City installed traffic calming to lower the speed. He sees no harm in asking ODOT to review the speed on Valeria View.

Commissioner Overhage is also ambivalent. It seems logical that if the speed drops to 25 mph, the neighborhood will soon request traffic calming to slow drivers to the new 25 mph speed limit.

Commissioner Overhage asked about pedestrian traffic on this street.

Commissioner Troute said that parking is on street, although it is set back from the roadway with curb extensions. He said it is a major walkway for pedestrians traveling to and from the shops at the top of the hill and for pedestrians walking to the mass transit station farther down Barnes Road. He added that 400 housing units are still awaiting construction along Valeria View. He believes there are more pedestrians on Valeria View than there are on Cedar Hills.

Mr. Wooley suggested that, if the Commission wants to recommend a 25 mph speed limit, they should avoid asking ODOT for a speed study. Such a study would take six months to one year to complete and is most likely to recommend a

30 mph speed limit. A better choice would be for the Commission to request that ODOT remove the current speed order on Valeria View. The speed would then revert to the statutory residential speed of 25 mph.

Commissioner Sadler asked if Oregon has a law similar to the California law that prohibits police from using radar if a speed is established below the 85th percentile.

Sgt. Monger said Oregon does not have such a law.

Commissioner Overhage asked if police could successfully enforce a 25 mph speed zone on Valeria View.

Sgt. Monger said enforcing a 25 mph speed on Valeria View would be a "challenge." A speed limit change on its own is unlikely to modify drivers' behavior. He does not want residents to think that police have intentionally set up a speed trap. Sgt. Monger noted that cut-through traffic uses both Valeria View and Celeste. Drivers would first encounter a 25 mph speed limit on Valeria View, then turn the corner onto Celeste and encounter a 30 mph speed zone. Inconsistency is always hard to enforce.

Commissioner Trout observed that Celeste does not have the high volume of pedestrian traffic seen on Valeria View and most of the homes are constructed so they do not face the street.

Mr. Wooley clarified that 25 mph signs could be posted if the statutory speed is adopted.

Commissioner Trout **MOVED** to have the City of Beaverton request that ODOT remove the existing speed order on Valeria View Drive.

Commissioner Crocker **SECONDED** the **MOTION**. There was no discussion. The **MOTION FAILED** 2:4. Commissioners Trout and Crocker voted "aye." Commissioners Knees, Sadler, Overhage and Clodfelter voted "nay."

Commissioner Sadler **MOVED** to accept the traffic engineer's recommendation on Issue TC 598 to retain the 30 mph speed limit on Valeria View Drive and to accept the final written order. Commissioner Clodfelter **SECONDED** the **MOTION**.

There was no discussion. The **MOTION CARRIED** 4:2. Commissioners Knees, Sadler, Overhage and Clodfelter voted "aye." Commissioners Trout and Crocker voted "nay."

-- EXCERPT ENDS --

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: DECLARATION OF SURPLUS PROPERTY
AT SOUTHWEST CORNER OF SW 153RD
AVENUE AND SW JENKINS ROAD

FOR AGENDA OF: 10-16-06 **BILL NO:** 06189

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: MAYOR'S OFFICE

DATE SUBMITTED: 09-27-06

CLEARANCES: Eco. Dev *[Signature]*
City Attorney *[Signature]*
Planning *[Signature]*

PROCEEDING: CONSENT AGENDA

EXHIBITS: None

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The parcel is the remnant piece at the corner of 153rd Avenue and Jenkins Road remaining from the alignment of 153rd Avenue built in the course of the St. Mary's LIDS in the mid-1980's. The 1.25 acre property is adjacent to the Reser's Foods Operation's Trailer Maintenance area and abuts the BPA easement to the west, 153rd Avenue to the east and Jenkins Road to the north. The northern portion of the site is in the Cedar Mill Creek flood plain according to FEMA and Metro maps. The southern portion is developable. The property is zoned Light Industrial and is currently vacant. The legal address as listed on the Washington County Map # 1S1080000109.

INFORMATION FOR CONSIDERATION:

ORS 221.725 requires that the Council publish notice of the proposed Declaration of Surplus Property in a newspaper of general circulation and hold a public hearing to consider the "general terms" of any sale in the week after the publication (at least five days must elapse between the date of published notice and the date of hearing). The Council thus should direct staff as to the minimum terms it will accept for the sale of the property. Staff recommends that the property be sold to the first bidder who offers to purchase for cash at or above the price set for the property. A market study appraisal by a licensed MAI appraiser establishes the current market value of the property, using the current zoning to establish the highest and best use, at a minimum of **\$244,000**. The City of Beaverton will control any development approvals for the property. The Council can reserve consent to a sale on other terms or may delegate the approval of terms to the Mayor.

RECOMMENDED ACTION:

Declare the property owned by the City at the SW corner of SW Jenkins Road and SW 153rd Avenue to be surplus, set the minimum terms of sale as a price of not less than **\$244,000** in cash due at closing, direct staff to publish notice as required by the ORS and set a date for the public hearing.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

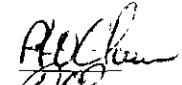
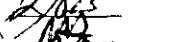
SUBJECT: Authorize Acceptance of FY06 Law Enforcement Terrorism Prevention Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution

FOR AGENDA OF: 10/16/06 **BILL NO:** 06190

Mayor's Approval: 

DEPARTMENT OF ORIGIN: **Emergency Management** 

DATE SUBMITTED: 10/3/06

CLEARANCES: Finance 
Police 
City Attorney 
Mayor's Off. 

PROCEEDING: Consent Agenda

- EXHIBITS:**
1. Specific Purpose Grant Budget Adjustment Resolution
 2. Grant Award Conditions and Certifications
 3. Grant Proposed Budget

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The City of Beaverton has been awarded a Law Enforcement Terrorism Prevention (LETPP) Grant under the State Homeland Security Grant Program. The U.S. Department of Homeland Security, Office for Domestic Preparedness is providing funds to states for enhancing law enforcement capabilities for detecting, deterring, disrupting, and preventing acts of terrorism. The items requested in the grant application are based on a county-wide needs and capability assessment that was developed in accordance with federal requirements, and was part of a consolidated county grant application. The grant is in the amount of \$79,500 on a reimbursement basis, and no matching funds are required. The funds must be used to purchase the equipment identified in the grant application.

INFORMATION FOR CONSIDERATION:

The Law Enforcement Terrorism Protection Program provides funds to local law enforcement agencies to enhance their capabilities to defeat, deter, disrupt, and prevent acts of terrorism. This year's award is for communication equipment including additional 800 MHz radios and a 800 MHz building repeater for Sunset High School.

All of the materials included in the grant request were identified during the countywide needs assessment and were part of a coordinated and consolidated Washington County grant application. Throughout the vulnerability and needs assessment process, an integrated and interoperable approach was taken in the consideration of all the security requirements.

Since the grant funds have been awarded, staff recommends that the corresponding appropriations be established immediately through a transfer resolution. Oregon Budget Law [ORS 294.326(3)] permits the acceptance of specific purpose grants and their associated appropriations through resolution. Attached is a Specific Purpose Grant Budget Adjustment Resolution that establishes the specific purpose grant review and provides the appropriations for the equipment within the Law Enforcement Terrorism Prevention Program under the Mayor's Department Budget.

RECOMMENDED ACTION:

Council authorize the Mayor to sign and accept the \$79,500 grant from the Office of Domestic Preparedness.

**OREGON OFFICE OF HOMELAND SECURITY
CRIMINAL JUSTICE SERVICES DIVISION
LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM CFDA # 97.074**

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	City of Beaverton Homeland Security	GRANT NO:	#06-152
GRANTEE:	City of Beaverton	FY 2006 AWARD:	\$79,500
ADDRESS:	PO Box 4755 Beaverton, OR 97076-4755	AWARD PERIOD:	9/1/06 thru 6/30/08
PROGRAM CONTACT:	Michael Mumaw mumawmj@tvfr.com	TELEPHONE:	(503) 642-0383
		FAX:	(503) 848-8635
FISCAL CONTACT:	J.J. Schulz	TELEPHONE:	(503) 526-2245

BUDGET

REVENUE

Federal Grant Funds \$79,500

TOTAL REVENUE: \$79,500

EXPENDITURES

Interoperable Communications \$79,500

TOTAL EXPENDITURES: \$79,500

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitutes an agreement between the Criminal Justice Services Division (CJSD) of the Oregon Office of Homeland Security and the Grantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Grantee and CJSD. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Grantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to CJSD.

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A The Grantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Grantee receives prior written approval by CJSD to modify the program or budget. CJSD may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by CJSD. Failure of the Grantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B The Grantee agrees that all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from the Office of Grants and Training, United States Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the Office of Grants and Training or the U.S. Department of Homeland Security."
- C The Grantee agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
- D By accepting FY 2006 funds, the Grantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions or will meet these requirements by September 30, 2006. The NIMS Implementation Matrix is available in Appendix G of the FY 2006 Homeland Security Grant Program Guidance and Application Kit at http://www.ojp.usdoj.gov/odp_docs/fy2006hspp.pdf
- E Maintenance, Retention, and Access to Records; Audits.
- 1 Maintenance and Retention of Records. The Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Office of Grants and Training, Office of Grant Operations (OGO) set forth in the January 2006 Financial Management Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Grantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Grantee to obtain a copy of the OGO Financial Management Guide from the Office of Grants and Training and apprise itself of all rules and regulations set forth. A copy is available at http://www.dhs.gov/interweb/assetlibrary/Grants_FinancialManagementGuide.pdf
 - 2 Retention of Equipment Records. Records for equipment shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all equipment and supplies purchased with funds made available under the State Homeland Security Grant Program (SHSGP) shall vest in the Grantee agency that purchased the property, if it provides written certification to CJSD that it will use the property for purposes consistent with the Homeland Security Grant Program.
 - 3 Access to Records. CJSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
 - 4 Audits. If Grantee *expends* \$500,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to CJSD within 30 days of completion. If Grantee *expends* less than \$500,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 11.1 herein.

5. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A 133 are unallowable. If Grantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

F. Funding

1. Matching Funds. **This Grant does not require matching funds.**
2. Supplanting. The Grantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Grantee to fund programs consistent with Homeland Security Grant Program guidelines.

G. Reports. **Failure of the Grantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.**

1. Progress Reports, Initial Strategy Implementation Plan (ISIP), and Biannual Strategy Implementation Report (BSIR). The Grantee agrees to submit two types of semi-annual reports on its progress in meeting each of its agreed upon goals and objectives. One is a narrative progress report that addresses specific information regarding the activities carried out under the FY 2006 Homeland Security Grant Program and how they address identified project specific goals and objectives. Progress reports are due **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008 or whenever Requests for Reimbursement are submitted, whichever comes first.** Narrative reports may be submitted separately or included in the "Project Notes" section of the BSIR.

The second is a set of web based applications that details how funds are linked to one or more projects, which in turn must support specific goals and objectives in the State or Urban Area Homeland Security Strategy. The first report, the Initial Strategy Implementation Plan (ISIP), is due by **August 29, 2006 and will be completed by the Criminal Justice Services Division.**

Biannual Strategy Implementation Reports (BSIR) must be received no later than **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008.** A final BSIR will be due 90 days after the grant award period.

Examples of information to be captured in the ISIP and BSIR include:

- Total dollar amount received from each funding source (e.g., Law Enforcement Terrorism Prevention Program, State Homeland Security Program, Citizen Corps).
- Projects(s) to be accomplished with funds provided during the grant award period.
- State or Urban Area Homeland Security Strategy goal or objective supported by the project(s).
- Amount of funding designated for each discipline from each grant funding source.
- Solution area which expenditures will be made and the amount that will be expended under each solution area from each grant funding source.
- Metric and/or narrative discussion indicating project progress / success.

Any progress report, Initial Strategy Implementation Plan, or Biannual Strategy Implementation Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJSID to extend a progress report requirement past its due date.

2. Financial Reimbursement Reports

- a. In order to receive reimbursement, the Grantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures.** RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. **At a minimum, RFRs must be received no later than January 31, 2007; July 31, 2007; January 31, 2008; and July 31, 2008.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete

- b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
- c. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before **September 1, 2006** or after **June 30, 2008**
- d. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. CJSJ shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.

3. Procurement Standards

- a. Grantees shall follow the same policies and procedures it uses for procurement from its non-Federal funds. Grantees shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards
- b. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$100,000 must receive prior written approval from the Criminal Justice Services Division. Interagency agreements between units of government are excluded from this provision
- c. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to the Criminal Justice Services Division
- d. All non-state procurement transactions shall be conducted in such a manner that provides, to the maximum extent practical, open and free competition. However, should a recipient elect to award a contract without competition, sole source justification may be necessary. Justification must be provided for non-competitive procurement and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Grantees may not proceed with a sole source procurement without prior written approval from the Criminal Justice Services Division

4. Audit Reports Grantee shall provide CJSJ copies of all audit reports pertaining to this Grant Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133.

II Indemnification. The Grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSJ, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Grantee, its officers, employees, subcontractors, or agents under this grant

Grantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this grant

Grantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant

I Copyright and Patents

- 1 Copyright. If this agreement or any program funded by this agreement results in a copyright, the CJSJ and the U.S. Department of Homeland Security reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which Grantee, or its contractor or subcontractor, purchases ownership with grant support.
- 2 Patent. If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Grantee or any of its contractors or subcontractors shall immediately notify CJSJ. The CJSJ will provide the Grantee with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

J No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

K Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **Grantee, By Execution Of This Agreement, Hereby Consents To The In Personam Jurisdiction Of Said Courts**

L Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

M Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

N Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.C (Maintenance, Retention and Access to Records; Audits), Section I.E (Reports); and Section I.F (Indemnification).

O Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

P Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Grantee Compliance and Certifications

- A Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Grantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. Part 69 and 28 C.F.R. Part 67.)
- B Standard Assurances and Certifications Regarding Lobbying. The Anti Lobbying Act, 18 U.S.C. § 1913, was amended to expand significantly the restriction on use of appropriated funding for lobbying. This expansion also makes the anti-lobbying restrictions enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per each individual occurrence of lobbying activity. These restrictions are in addition to the anti-lobbying and lobbying disclosure restrictions imposed by 31 U.S.C. § 1352. The Office of Management and Budget (OMB) is currently in the process of amending the OMB cost circulars and the common rule (codified at 28 C.F.R. part 69 for DOJ grantees) to reflect these modifications. However, in the interest of full disclosure, all applicants must understand that no federally-appropriated funding made available under this grant program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express approval of the U.S. Department of Justice. Any violation of this prohibition is subject to a minimum \$10,000 fine for each occurrence. This prohibition applies to all activity, even if currently allowed within the parameters of the existing OMB circulars.
- C Compliance with Applicable Law. The Grantee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and CJSD in the performance of this agreement, including but not limited to
1. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems, Part 22, Confidentiality of Identifiable Research and Statistical Information, Part 23, Criminal Intelligence Operating Policies, Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act, Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
 2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646)
 3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 97, approved December 31, 1976
 4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 5. National Environmental Policy Act of 1969, 42 USC 4321 et seq
 6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq
 7. Clean Air Act, 42 USC 7401 et seq
 8. Clean Water Act, 33 USC 1368 et seq.
 9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq
 10. Safe Drinking Water Act of 1974, 42 USC 300f et seq
 11. Endangered Species Act of 1973, 16 USC 1531 et seq.
 12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq
 13. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq
 14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
 15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq
 16. Indian Self-Determination Act, 25 USC 450f.
 17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq
 18. Animal Welfare Act of 1970, 7 USC 2131 et seq

19. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq
20. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq

D. Certification of Non discrimination

1. The Grantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Grantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended,
 - b. Title IV of the Civil Rights Act of 1964, as amended,
 - c. Section 504 of the Rehabilitation Act of 1973, as amended,
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972;
 - f. The Age Discrimination Act of 1975;
 - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G,
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Grantee or any of its contractors or subcontractors, the Grantee or any of its contractors or subcontractors will forward a copy of the finding to the Criminal Justice Services Division (CJSD). CJSD will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs

E. Civil Rights Compliance All recipients of federal grant funds are required, and Grantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq (prohibiting discrimination in programs or activities on the basis of race, color, and national origin), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age), and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender)

F. Equal Employment Opportunity Program If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of three percent or more, the Grantee, or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of less than three percent, the Grantee or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to its practices affecting women. The Grantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement. Any Grantee, and any of its contractors or subcontractors, receiving more than \$500,000, either through this agreement or in aggregate grant funds in any fiscal year, shall in addition submit a copy of its equal employment opportunity plan at the same time as the

application submission, with the understanding that the application for funds may not be awarded prior to approval of the Grantee's, or any of its contractors or subcontractors, equal employment opportunity program by the Office for Civil Rights, Office of Justice Programs.

If required to formulate an Equal Employment Opportunity Program (EEOP), the Grantee must maintain a current copy on file which meets the applicable requirements.

- G. Services to Limited English Proficient (LEP) Persons. Recipients of ODP financial assistance are required to comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, please see <http://www.lep.gov>.
- H. National Environmental Policy Act (NEPA), Special Condition for U.S. Department of Justice Grant Programs
1. Prior to obligating grant funds, Grantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Grantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:
 - a. new construction;
 - b. minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain,
 - c. a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and
 - d. implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.
 2. Application of This Special Condition to Grantee's Existing Programs or Activities. For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Office for Domestic Preparedness, agrees to cooperate with the Office for Domestic Preparedness in any preparation by the Office for Domestic Preparedness of a national or program environmental assessment of that funded program or activity.
- I. Certification Regarding Drug Free Workplace Requirements. Grantee certifies that it will provide a drug free workplace by:
1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
 2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Grantee's policy of maintaining a drug free workplace,
 - c. Any available drug counseling, rehabilitation, and employee assistance programs, and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 3. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (a).

4. Notifying the employee that, as a condition of employment under the award, the employee will
 - a. Abide by the terms of the statement, and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction
5. Notifying the Grantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction
6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted
 - a. Taking appropriate personnel action against such an employee, up to and including termination, or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by federal, state, or local health, law enforcement, or other appropriate agency
7. Making a good faith effort to continue to maintain a drug free workplace

III. Suspension or Termination of Funding

The Criminal Justice Services Division may suspend funding in whole or in part, terminate funding, or impose another sanction on a Law Enforcement Terrorism Prevention Program recipient for any of the following reasons:

- A. Failure to comply substantially with the requirements or statutory objectives of the Law Enforcement Terrorism Prevention Program guidelines issued thereunder, or other provisions of federal law
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Project Justification(s)
- C. Failure to adhere to the requirements of the grant award and standard or special conditions
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Criminal Justice Services Division will provide reasonable notice to the Grantee of its intent to impose sanctions and will attempt to resolve the problem informally.

IV. Grantee Representations and Warranties

Grantee represents and warrants to Grantor as follows

- a. Existence and Power Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- b. Authority, No Contravention The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.
- c. Binding Obligation This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- d. Approvals No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

Carmen Merlo, Director
Criminal Justice Services Division
Oregon Office of Homeland Security
4760 Portland Road NE
Salem, OR 97305
(503) 378-4145 ext 545

Date

Signature of Authorized Grantee Official

Date

Name/Title

Signature of Authorized Fiscal Representative of Grantee Agency

Date

CITY OF BEAVERTON
FY 06 HOMELAND SECURITY GRANT
Budget Summary

Exhibit 3

Grant Program: Law Enforcement Terrorism Prevention Program (LETPP)

Items

800 MHz Portable Radios with chargers	20	\$2,500.00	\$50,000.00
800 MHz Repeater, Bldg*	1	\$17,000.00	\$17,000.00
Suitcase Mobile Data Terminal - 800 MHz**	1	\$12,500.00	\$12,500.00

*To be installed in Sunset High School to provide radio coverage throughout all the buildings

**For use in the EOC and on-scene incident command posts

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Authorize Acceptance of FY06 State Homeland Security Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution

FOR AGENDA OF: 10/16/06 **BILL NO:** 06191

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Emergency Management

DATE SUBMITTED: 10/3/06

CLEARANCES: Finance *[Signature]*
City Attorney *[Signature]*
Mayor's Off. *[Signature]*

PROCEEDING: Consent Agenda

- EXHIBITS:**
1. Specific Purpose Grant Budget Adjustment Resolution
 2. Grant Award Conditions and Certifications
 3. Grant Proposed Budget

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The City of Beaverton has been awarded a State Homeland Security Program Grant under the State Homeland Security Grant Program. The U.S. Department of Homeland Security, Office for Domestic Preparedness is providing funds to states for enhancing local capabilities for detecting, deterring, disrupting, and preventing acts of terrorism. The items requested in the grant application are based on a county-wide needs and capability assessment that was developed in accordance with federal requirements, and was part of a consolidated county grant application. The grant is in the amount of \$2,666 on a reimbursement basis, and no matching funds are required. The funds must be used to purchase the equipment identified in the grant application.

INFORMATION FOR CONSIDERATION:

The State Homeland Security Program provides funds to units of local government to enhance their capabilities to respond to natural disasters and terrorist events. This year's award is for purchasing VHF and HF radios for EOC operations.

All of the items included in the grant request were identified during the countywide needs assessment and were part of a coordinated and consolidated Washington County grant application. Throughout the vulnerability and needs assessment process, an integrated and interoperable approach was taken in the consideration of all the security requirements.

Since the grant funds have been awarded, staff recommends that the corresponding appropriations be established immediately through a transfer resolution. Oregon Budget Law [ORS 294.326(3)] permits the acceptance of specific purpose grants and their associated appropriations through resolution. Attached is a Specific Purpose Grant Budget Adjustment Resolution that establishes the specific

purpose grant review and provides the appropriations for the equipment within the Homeland Security Grant Program under the Mayor's Department Budget.

RECOMMENDED ACTION:

Council authorize the Mayor to sign and accept the \$2,666 grant from the Office of Domestic Preparedness.

A RESOLUTION APPROVING THE ACCEPTANCE OF A SPECIFIC PURPOSE GRANT AND THE ASSOCIATED APPROPRIATIONS IN THE GENERAL FUND OF THE CITY DURING THE FY 2006-07 BUDGET YEAR AND APPROVING THE APPROPRIATIONS FOR THE FUND

WHEREAS, the City Council reviews and approves the annual budget; and,

WHEREAS, during the year the Council may authorize the acceptance of specific purpose grant funds and the associated appropriations through a specific purpose grant budget adjustment resolution; and,

WHEREAS, a Specific Purpose Grant entitled "State Homeland Security Program" was awarded in the amount of \$2,666 and the Council desires to appropriate the grant award in the General Fund; now therefore,

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

Section 1. The Finance Director is hereby authorized and instructed to adjust the General Fund's budgets to reflect the award of the specific purpose grant revenue and the associated appropriations under the Homeland Security Grant Program within the Mayor's Department:

General Fund

Revenues:

Grants – Federal	001-03-0000-327	\$ 2,666
------------------	-----------------	----------

Expenditures:

Department Equipment Expense	001-10-0636-304	\$ 2,666
------------------------------	-----------------	----------

Adopted by the Council this _____ day of _____, 2006

Approved by the Mayor this _____ day of _____, 2006

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

OREGON OFFICE OF HOMELAND SECURITY
CRIMINAL JUSTICE SERVICES DIVISION
STATE HOMELAND SECURITY GRANT PROGRAM – CFDA # 97.073

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	City of Beaverton Homeland Security Grant	GRANT NO:	#06-202
GRANTEE:	City of Beaverton	FY 2006 AWARD:	\$2,666
ADDRESS:	PO Box 4755 Beaverton, OR 97076-4755	AWARD PERIOD:	9/1/06 thru 6/30/08
PROGRAM CONTACT:	Michael Mumaw mumawmj@tvfr.com	TELEPHONE:	(503) 642-0383
		FAX:	(503) 848-8635
FISCAL CONTACT:	J.J. Schulz	TELEPHONE:	(503) 526-2245

BUDGET

REVENUE

Federal Grant Funds \$2,666

TOTAL REVENUE: \$2,666

EXPENDITURES

Interoperable Communications \$2,666

TOTAL EXPENDITURES: \$2,666

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitutes an agreement between the Criminal Justice Services Division (CJSD) of the Oregon Office of Homeland Security and the Grantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Grantee and CJSD. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Grantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to CJSD.

2

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A The Grantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Grantee receives prior written approval by CJSD to modify the program or budget. CJSD may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by CJSD. Failure of the Grantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B The Grantee agrees that all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from the Office of Grants and Training, United States Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the Office of Grants and Training or the U.S. Department of Homeland Security."
- C The Grantee agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
- D By accepting FY 2006 funds, the Grantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions or will meet these requirements by September 30, 2006. The NIMS Implementation Matrix is available in Appendix G of the FY 2006 Homeland Security Grant Program Guidance and Application Kit at: <http://www.ojp.usdoj.gov/odp/docs/fy2006hsgp.pdf>
- F Maintenance, Retention, and Access to Records, Audits.
1. Maintenance and Retention of Records The Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Office of Grants and Training, Office of Grant Operations (OGO) set forth in the January 2006 Financial Management Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Grantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Grantee to obtain a copy of the OGO Financial Management Guide from the Office of Grants and Training and apprise itself of all rules and regulations set forth. A copy is available at: http://www.dhs.gov/interweb/assetlibrary/Grants_FinancialManagementGuide.pdf
 2. Retention of Equipment Records Records for equipment shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all equipment and supplies purchased with funds made available under the State Homeland Security Grant Program (SHSGP) shall vest in the Grantee agency that purchased the property, if it provides written certification to CJSD that it will use the property for purposes consistent with the Homeland Security Grant Program.
 3. Access to Records CJSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
 4. Audits If Grantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to CJSD within 30 days of completion. If Grantee expends less than \$500,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section I.F.1 herein.

5. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Grantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

F. Funding

1. Matching Funds. **This Grant does not require matching funds.**
2. Supplanting. The Grantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Grantee to fund programs consistent with Homeland Security Grant Program guidelines.

G. Reports **Failure of the Grantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.**

1. Progress Reports, Initial Strategy Implementation Plan (ISIP), and Biannual Strategy Implementation Report (BSIR). The Grantee agrees to submit two types of semi-annual reports on its progress in meeting each of its agreed upon goals and objectives. One is a narrative progress report that addresses specific information regarding the activities carried out under the FY 2006 Homeland Security Grant Program and how they address identified project specific goals and objectives. Progress reports are due **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008 or whenever Requests for Reimbursement are submitted, whichever comes first.** Narrative reports may be submitted separately or included in the "Project Notes" section of the BSIR.

The second is a set of web-based applications that details how funds are linked to one or more projects, which in turn must support specific goals and objectives in the State or Urban Area Homeland Security Strategy. The first report, the Initial Strategy Implementation Plan (ISIP), is due by **August 29, 2006 and will be completed by the Criminal Justice Services Division**

Biannual Strategy Implementation Reports (BSIR) must be received no later than **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008.** A final BSIR will be due 90 days after the grant award period.

Examples of information to be captured in the ISIP and BSIR include:

- Total dollar amount received from each funding source (e.g., Law Enforcement Terrorism Prevention Program, State Homeland Security Program, Citizen Corps)
- Project(s) to be accomplished with funds provided during the grant award period
- State or Urban Area Homeland Security Strategy goal or objective supported by the project(s)
- Amount of funding designated for each discipline from each grant funding source.
- Solution area which expenditures will be made and the amount that will be expended under each solution area from each grant funding source
- Metric and or narrative discussion indicating project progress / success.

Any progress report, Initial Strategy Implementation Plan, or Biannual Strategy Implementation Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJSO to extend a progress report requirement past its due date.

2. Financial Reimbursement Reports.
 - a. In order to receive reimbursement, the Grantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures**. RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. **At a minimum**, RFRs must be received no later than **January 31, 2007; July 31, 2007; January 31, 2008; and July 31, 2008.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete

- b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred
- c. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before **September 1, 2006 or after June 30, 2008**
- d. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. CJSD shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129

3. Procurement Standards

- a. Grantees shall follow the same policies and procedures it uses for procurement from its non-Federal funds. Grantees shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards
- b. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$100,000 must receive prior written approval from the Criminal Justice Services Division. Interagency agreements between units of government are excluded from this provision.
- c. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to the Criminal Justice Services Division
- d. All non-state procurement transactions shall be conducted in such a manner that provides, to the maximum extent practical, open and free competition. However, should a recipient elect to award a contract without competition, sole source justification may be necessary. Justification must be provided for non-competitive procurement and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Grantees may not proceed with a sole source procurement without prior written approval from the Criminal Justice Services Division

4. Audit Reports. Grantee shall provide CJSD copies of all audit reports pertaining to this Grant Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133.

11 Indemnification. The Grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSD, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Grantee, its officers, employees, subcontractors, or agents under this grant

Grantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this grant.

Grantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

I Copyright and Patents

- 1 Copyright If this agreement or any program funded by this agreement results in a copyright, the CJSJ and the U.S. Department of Homeland Security reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which Grantee, or its contractor or subcontractor, purchases ownership with grant support.
- 2 Patent If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Grantee or any of its contractors or subcontractors shall immediately notify CJSJ. The CJSJ will provide the Grantee with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

J No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

K Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon, provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **Grantee, By Execution Of This Agreement, Hereby Consents To The In Personam Jurisdiction Of Said Courts**

L Notices Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

M Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

N Survival All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.C (Maintenance, Retention and Access to Records; Audits), Section I.E (Reports), and Section I.F (indemnification).

O Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

P Relationship of Parties The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Grantee Compliance and Certifications

- A Debarment, Suspension, Ineligibility and Voluntary Exclusion The Grantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67)
- B Standard Assurances and Certifications Regarding Lobbying The Anti-Lobbying Act, 18 U.S.C. § 1913, was amended to expand significantly the restriction on use of appropriated funding for lobbying. This expansion also makes the anti-lobbying restrictions enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per each individual occurrence of lobbying activity. These restrictions are in addition to the anti lobbying and lobbying disclosure restrictions imposed by 31 U.S.C. § 1352. The Office of Management and Budget (OMB) is currently in the process of amending the OMB cost circulars and the common rule (codified at 28 C.F.R. part 69 for DOJ grantees) to reflect these modifications. However, in the interest of full disclosure, all applicants must understand that no federally-appropriated funding made available under this grant program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express approval of the U.S. Department of Justice. Any violation of this prohibition is subject to a minimum \$10,000 fine for each occurrence. This prohibition applies to all activity, even if currently allowed within the parameters of the existing OMB circulars.
- C Compliance with Applicable Law The Grantee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and CJSD in the performance of this agreement, including but not limited to:
- 1 The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure, Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies, Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act, Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
 - 2 Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
 - 3 Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat. 97, approved December 31, 1976
 - 4 Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 5. National Environmental Policy Act of 1969, 42 USC 4321 et seq
 - 6 Flood Disaster Protection Act of 1973, 42 USC 4001 et seq
 - 7 Clean Air Act, 42 USC 7401 et seq.
 - 8 Clean Water Act, 33 USC 1368 et seq
 - 9 Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq
 - 10 Safe Drinking Water Act of 1974, 42 USC 300f et seq
 - 11 Endangered Species Act of 1973, 16 USC 1531 et seq
 - 12 Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
 - 13 Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq
 - 14 Coastal Zone Management Act of 1972, 16 USC 1451 et seq
 - 15 Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq
 - 16 Indian Self-Determination Act, 25 USC 450f
 - 17 Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
 - 18 Animal Welfare Act of 1970, 7 USC 2131 et seq

- 19 Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq
- 20 Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC. 201 et seq

D. Certification of Non-discrimination

- 1 The Grantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Grantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended,
 - b Title IV of the Civil Rights Act of 1964, as amended,
 - c Section 504 of the Rehabilitation Act of 1973, as amended;
 - d Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e Title IX of the Education Amendments of 1972;
 - f The Age Discrimination Act of 1975,
 - g The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G,
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39
- 2 In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Grantee or any of its contractors or subcontractors, the Grantee or any of its contractors or subcontractors will forward a copy of the finding to the Criminal Justice Services Division (CJSD). CJSD will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

E. Civil Rights Compliance. All recipients of federal grant funds are required, and Grantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age), and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq (prohibiting discrimination in educational programs or activities on the basis of gender)

F. Equal Employment Opportunity Program. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of three percent or more, the Grantee, or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of less than three percent, the Grantee or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to its practices affecting women. The Grantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement. Any Grantee, and any of its contractors or subcontractors, receiving more than \$500,000, either through this agreement or in aggregate grant funds in any fiscal year, shall in addition submit a copy of its equal employment opportunity plan at the same time as the

application submission, with the understanding that the application for funds may not be awarded prior to approval of the Grantee's, or any of its contractors or subcontractors, equal employment opportunity program by the Office for Civil Rights, Office of Justice Programs

If required to formulate an Equal Employment Opportunity Program (EEO), the Grantee must maintain a current copy on file which meets the applicable requirements

- G Services to Limited English Proficient (LEP) Persons Recipients of ODP financial assistance are required to comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, please see <http://www.lep.gov>.
- H National Environmental Policy Act (NEPA), Special Condition for U.S. Department of Justice Grant Programs
- 1 Prior to obligating grant funds, Grantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Grantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:
 - a new construction,
 - b minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain;
 - c a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size, and
 - d implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments
 - 2 Application of This Special Condition to Grantee's Existing Programs or Activities For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Office for Domestic Preparedness, agrees to cooperate with the Office for Domestic Preparedness in any preparation by the Office for Domestic Preparedness of a national or program environmental assessment of that funded program or activity.
- I Certification Regarding Drug Free Workplace Requirements Grantee certifies that it will provide a drug-free workplace by:
- 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition,
 - 2 Establishing a drug free awareness program to inform employees about
 - a The dangers of drug abuse in the workplace;
 - b The Grantee's policy of maintaining a drug-free workplace,
 - c Any available drug counseling, rehabilitation, and employee assistance programs, and
 - d The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace
 3. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (a)

4. Notifying the employee that, as a condition of employment under the award, the employee will
 - a. Abide by the terms of the statement, and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction
5. Notifying the Grantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction
6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by federal, state, or local health, law enforcement, or other appropriate agency
7. Making a good faith effort to continue to maintain a drug-free workplace

III. Suspension or Termination of Funding

The Criminal Justice Services Division may suspend funding in whole or in part, terminate funding, or impose another sanction on a State Homeland Security Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the requirements or statutory objectives of the State Homeland Security Grant Program guidelines issued thereunder, or other provisions of federal law
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Project Justification(s)
- C. Failure to adhere to the requirements of the grant award and standard or special conditions
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Criminal Justice Services Division will provide reasonable notice to the Grantee of its intent to impose sanctions and will attempt to resolve the problem informally.

IV. Grantee Representations and Warranties

Grantee represents and warrants to Grantor as follows.

- A. Existence and Power Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.
- C. Binding Obligation This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- D. Approvals No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

Carmen Merlo, Director
Criminal Justice Services Division
Oregon Office of Homeland Security
4760 Portland Road NE
Salem, OR 97305
(503) 378-4145 ext 545

Date

Signature of Authorized Grantee Official

Date

Name/Title

Signature of Authorized Fiscal Representative of Grantee Agency

Date

CITY OF BEAVERTON
FY 06 HOMELAND SECURITY GRANT
Budget Summary

Exhibit 3

Grant Program: State Homeland Security Program (SHSP)

Items

VHF Radios, Narrow Band	7	\$210.00	\$1,470.00
VHF Radios Extra Batteries	7	\$18.00	\$126.00
VHF Radio Belt Clips	7	\$10.00	\$70.00
HF Amateur Radio with Antenna	1	\$1,000.00	\$1,000.00

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Authorize Acceptance of FY06 Citizen Corps Program Grant Awarded to the City of Beaverton and Approve the Specific Purpose Grant Budget Adjustment Resolution

FOR AGENDA OF: 10/16/06 **BILL NO:** 06192

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Emergency Management *[Signature]*

DATE SUBMITTED: 10/3/06

CLEARANCES: Finance *[Signature]*
City Attorney *[Signature]*
Mayor's Off. *[Signature]*

PROCEEDING: Consent Agenda

- EXHIBITS:**
1. Specific Purpose Grant Budget Adjustment Resolution
 2. Grant Award Conditions and Certifications
 3. Grant Proposed Budget

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

The City of Beaverton has been awarded a Citizen Corps Program Grant under the State Homeland Security Grant Program. The U.S. Department of Homeland Security, Office for Domestic Preparedness is providing funds to states for enhancing local capabilities for detecting, deterring, disrupting, and preventing acts of terrorism. The items requested in the grant application are based on a county-wide needs and capability assessment that was developed in accordance with federal requirements, and was part of a consolidated county grant application. The grant is in the amount of \$6,735 on a reimbursement basis, and no matching funds are required. The funds must be used to purchase the equipment identified in the grant application.

INFORMATION FOR CONSIDERATION:

The Citizen Corps Program provides funds to units of local government to enhance their capabilities to respond to natural disasters and terrorist events. This year's award is for purchasing CERT Team equipment, training supplies, and outreach materials.

All of the items included in the grant request were identified during the countywide needs assessment and were part of a coordinated and consolidated Washington County grant application. Throughout the vulnerability and needs assessment process, an integrated and interoperable approach was taken in the consideration of all the security requirements.

Since the grant funds have been awarded, staff recommends that the corresponding appropriations be established immediately through a transfer resolution. Oregon Budget Law [ORS 294.326(3)] permits the acceptance of specific purpose grants and their associated appropriations through resolution. Attached is a Specific Purpose Grant Budget Adjustment Resolution that establishes the specific

purpose grant review and provides the appropriations for the equipment within the Homeland Security Grant Program under the Mayor's Department Budget.

RECOMMENDED ACTION:

Council authorize the Mayor to sign and accept the \$6,735 grant from the Office of Domestic Preparedness.

OREGON OFFICE OF HOMELAND SECURITY
 CRIMINAL JUSTICE SERVICES DIVISION
 CITIZEN CORPS PROGRAM – CFDA # 97.053

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	Citizen Preparedness	GRANT NO:	#06-102
GRANTEE:	City of Beaverton	FY 2006 AWARD:	\$6,735
ADDRESS:	PO Box 4755 Beaverton, OR 97076-4755	AWARD PERIOD:	9/1/06 thru 6/30/08
PROGRAM CONTACT:	Michael Mumaw mumawmj@tvfr.com	TELEPHONE:	(503) 642-0383
		FAX:	(503) 848-8635
FISCAL CONTACT:	J.J. Schulz	TELEPHONE:	(503) 526-2245

BUDGET

REVENUE

Federal Grant Funds \$6,735

TOTAL REVENUE: \$6,735

EXPENDITURES

Equipment \$1,320
 Planning \$5,000
 Training \$415

TOTAL EXPENDITURES: \$6,735

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitutes an agreement between the Criminal Justice Services Division (CJSD) of the Oregon Office of Homeland Security and the Grantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Grantee and CJSD. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Grantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to CJSD.

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A The Grantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Grantee receives prior written approval by CJSD to modify the program or budget. CJSD may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by CJSD. Failure of the Grantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B The Grantee agrees that all publications created with funding under this grant shall prominently contain the following statement: "This document was prepared under a grant from the Office of Grants and Training, United States Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the Office of Grants and Training or the U.S. Department of Homeland Security."
- C The Grantee agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "Purchased with funds provided by the U.S. Department of Homeland Security."
- D By accepting FY 2006 funds, the Grantee certifies that it has met NIMS compliance activities outlined in the NIMS Implementation Matrix for State, Tribal, or Local Jurisdictions or will meet these requirements by September 30, 2006. The NIMS Implementation Matrix is available in Appendix G of the FY 2006 Homeland Security Grant Program Guidance and Application Kit at: <http://www.ojp.usdoj.gov/odp/docs/fy2006hsgp.pdf>
- E Maintenance, Retention, and Access to Records, Audits.
- Maintenance and Retention of Records. The Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Office of Grants and Training, Office of Grant Operations (OGO) set forth in the January 2006 Financial Management Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Grantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Grantee to obtain a copy of the OGO Financial Management Guide from the Office of Grants and Training and apprise itself of all rules and regulations set forth. A copy is available at: http://www.dhs.gov/interweb/assetlibrary/Grants_FinancialManagementGuide.pdf
 - Retention of Equipment Records. Records for equipment shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of the awarding agency. Title to all equipment and supplies purchased with funds made available under the State Homeland Security Grant Program (SHSGP) shall vest in the Grantee agency that purchased the property, if it provides written certification to CJSD that it will use the property for purposes consistent with the Homeland Security Grant Program.
 - Access to Records. CJSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
 - Audits. If Grantee expends \$500,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to CJSD within 30 days of completion. If Grantee expends less than \$500,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section I.E.1 herein.

5. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A 133 are unallowable. If Grantee did not expend \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.

1. Funding

1. Matching Funds. **This Grant does not require matching funds.**
2. Supplanting. The Grantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Grantee to fund programs consistent with Homeland Security Grant Program guidelines.

G. Reports. **Failure of the Grantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.**

1. Progress Reports, Initial Strategy Implementation Plan (ISIP), and Biannual Strategy Implementation Report (BSIR). The Grantee agrees to submit two types of semi-annual reports on its progress in meeting each of its agreed-upon goals and objectives. One is a narrative progress report that addresses specific information regarding the activities carried out under the FY 2006 Homeland Security Grant Program and how they address identified project-specific goals and objectives. Progress reports are due **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008 or whenever Requests for Reimbursement are submitted, whichever comes first.** Narrative reports may be submitted separately or included in the "Project Notes" section of the BSIR.

The second is a set of web-based applications that details how funds are linked to one or more projects, which in turn must support specific goals and objectives in the State or Urban Area Homeland Security Strategy. The first report, the Initial Strategy Implementation Plan (ISIP), is due by **August 29, 2006 and will be completed by the Criminal Justice Services Division**

Biannual Strategy Implementation Reports (BSIR) must be received no later than **January 15, 2007; July 16, 2007; January 15, 2008; and July 15, 2008.** A final BSIR will be due 90 days after the grant award period.

Examples of information to be captured in the ISIP and BSIR include

- Total dollar amount received from each funding source (e.g., Law Enforcement Terrorism Prevention Program, State Homeland Security Program, Citizen Corps).
- Project(s) to be accomplished with funds provided during the grant award period.
- State or Urban Area Homeland Security Strategy goal or objective supported by the project(s).
- Amount of funding designated for each discipline from each grant funding source.
- Solution area which expenditures will be made and the amount that will be expended under each solution area from each grant funding source.
- Metric and/or narrative discussion indicating project progress / success.

Any progress report, Initial Strategy Implementation Plan, or Biannual Strategy Implementation Report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJS/D to extend a progress report requirement past its due date.

2. Financial Reimbursement Reports

- a. In order to receive reimbursement, the Grantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures.** RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. **At a minimum, RFRs must be received no later than January 31, 2007; July 31, 2007; January 31, 2008; and July 31, 2008.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete

- b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
- c. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before **September 1, 2006 or after June 30, 2008**
- d. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. CJSD shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129

3. Procurement Standards

- a. Grantees shall follow the same policies and procedures it uses for procurement from its non-Federal funds. Grantees shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law and standards
- b. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole source procurements in excess of \$100,000 must receive prior written approval from the Criminal Justice Services Division. Interagency agreements between units of government are excluded from this provision
- c. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to the Criminal Justice Services Division
- d. All non-state procurement transactions shall be conducted in such a manner that provides, to the maximum extent practical, open and free competition. However, should a recipient elect to award a contract without competition, sole source justification may be necessary. Justification must be provided for non-competitive procurement and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Grantees may not proceed with a sole source procurement without prior written approval from the Criminal Justice Services Division

4. Audit Reports Grantee shall provide CJSD copies of all audit reports pertaining to this Grant Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133

11 Indemnification The Grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSD, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Grantee, its officers, employees, subcontractors, or agents under this grant

Grantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this grant.

Grantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant

I Copyright and Patents

- 1 Copyright If this agreement or any program funded by this agreement results in a copyright, the CJSJ and the U.S. Department of Homeland Security reserve a royalty free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which Grantee, or its contractor or subcontractor, purchases ownership with grant support
- 2 Patent If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Grantee or any of its contractors or subcontractors shall immediately notify CJSJ. The CJSJ will provide the Grantee with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines

J. No Implied Waiver, Cumulative Remedies The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law

K. Governing Law, Venue, Consent to Jurisdiction This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon, provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **Grantee, By Execution Of This Agreement, Hereby Consents To The In Personam Jurisdiction Of Said Courts**

L. Notices Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party

M. Successors and Assigns This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor

N. Survival All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I C (Maintenance, Retention and Access to Records; Audits), Section I E (Reports), and Section I H (indemnification)

O. Severability If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

P. Relationship of Parties The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement

II. Grantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion The Grantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.)
- B. Standard Assurances and Certifications Regarding Lobbying The Anti-Lobbying Act, 18 U.S.C. § 1913, was amended to expand significantly the restriction on use of appropriated funding for lobbying. This expansion also makes the anti-lobbying restrictions enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per each individual occurrence of lobbying activity. These restrictions are in addition to the anti-lobbying and lobbying disclosure restrictions imposed by 31 U.S.C. § 1352. The Office of Management and Budget (OMB) is currently in the process of amending the OMB cost circulars and the common rule (codified at 28 C.F.R. part 69 for DOJ grantees) to reflect these modifications. However, in the interest of full disclosure, all applicants must understand that no federally appropriated funding made available under this grant program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express approval of the U.S. Department of Justice. Any violation of this prohibition is subject to a minimum \$10,000 fine for each occurrence. This prohibition applies to all activity, even if currently allowed within the parameters of the existing OMB circulars.
- C. Compliance with Applicable Law The Grantee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and CJSID in the performance of this agreement, including but not limited to:
1. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure, Part 20, Criminal Justice Information Systems, Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies, Part 30, Intergovernmental Review of Department of Justice Programs and Activities, Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act, Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs
 2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646)
 3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat 97, approved December 31, 1976.
 4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 5. National Environmental Policy Act of 1969, 42 USC 4321 et seq
 6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq
 7. Clean Air Act, 42 USC 7401 et seq
 8. Clean Water Act, 33 USC 1368 et seq
 9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq
 10. Safe Drinking Water Act of 1974, 42 USC 300f et seq
 11. Endangered Species Act of 1973, 16 USC 1531 et seq
 12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
 13. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq
 14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq
 15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
 16. Indian Self-Determination Act, 25 USC 450f.
 17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq
 18. Animal Welfare Act of 1970, 7 USC 2131 et seq

- 19 Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 et seq.
- 20 Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 U.S.C. 201 et seq.

D. Certification of Non-discrimination

- 1. The Grantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Grantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
 - b. Title IV of the Civil Rights Act of 1964, as amended,
 - c. Section 504 of the Rehabilitation Act of 1973, as amended,
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972,
 - f. The Age Discrimination Act of 1975,
 - g. The Department of Justice Nondiscrimination Regulations 28 C.F.R. Part 42, Subparts C, D, E, and G;
 - h. The Department of Justice regulations on disability discrimination, 28 C.F.R. Part 35 and Part 39.
- 2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Grantee or any of its contractors or subcontractors, the Grantee or any of its contractors or subcontractors will forward a copy of the finding to the Criminal Justice Services Division (CJSD). CJSD will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

E. Civil Rights Compliance. All recipients of federal grant funds are required, and Grantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability), Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age), and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).

F. Equal Employment Opportunity Program. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of three percent or more, the Grantee, or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of less than three percent, the Grantee or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to its practices affecting women. The Grantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement. Any Grantee, and any of its contractors or subcontractors, receiving more than \$500,000, either through this agreement or in aggregate grant funds in any fiscal year, shall in addition submit a copy of its equal employment opportunity plan at the same time as the

application submission, with the understanding that the application for funds may not be awarded prior to approval of the Grantee's, or any of its contractors or subcontractors, equal employment opportunity program by the Office for Civil Rights, Office of Justice Programs

If required to formulate an Equal Employment Opportunity Program (EEOP), the Grantee must maintain a current copy on file which meets the applicable requirements

- G Services to Limited English Proficient (LEP) Persons. Recipients of ODP financial assistance are required to comply with several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency. To ensure compliance with Title VI, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. For additional information, please see <http://www.lep.gov>
- H National Environmental Policy Act (NEPA), Special Condition for U.S. Department of Justice Grant Programs.
1. Prior to obligating grant funds, Grantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Grantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are
 - a. new construction,
 - b. minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain,
 - c. a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and
 - d. implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.
 2. Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Office for Domestic Preparedness, agrees to cooperate with the Office for Domestic Preparedness in any preparation by the Office for Domestic Preparedness of a national or program environmental assessment of that funded program or activity
- I Certification Regarding Drug Free Workplace Requirements. Grantee certifies that it will provide a drug-free workplace by
1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition,
 2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace,
 - b. The Grantee's policy of maintaining a drug-free workplace,
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace
 3. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (a)

4. Notifying the employee that, as a condition of employment under the award, the employee will
 - a. Abide by the terms of the statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction
5. Notifying the Grantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction
6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by federal, state, or local health, law enforcement, or other appropriate agency
7. Making a good faith effort to continue to maintain a drug free workplace

III. Suspension or Termination of Funding

The Criminal Justice Services Division may suspend funding in whole or in part, terminate funding, or impose another sanction on a Citizen Corps Program recipient for any of the following reasons.

- A. Failure to comply substantially with the requirements or statutory objectives of the Citizen Corps Program guidelines issued thereunder, or other provisions of federal law
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the approved Project Justification(s)
- C. Failure to adhere to the requirements of the grant award and standard or special conditions
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Criminal Justice Services Division will provide reasonable notice to the Grantee of its intent to impose sanctions and will attempt to resolve the problem informally

IV. Grantee Representations and Warranties

Grantee represents and warrants to Grantor as follows:

- A. Existence and Power. Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

Carmen Merlo, Director
Criminal Justice Services Division
Oregon Office of Homeland Security
4760 Portland Road NE
Salem, OR 97305
(503) 378-4145 ext 545

Date

Signature of Authorized Grantee Official

Date

Name/Title

Signature of Authorized Fiscal Representative of Grantee Agency

Date

CITY OF BEAVERTON
FY 06 HOMELAND SECURITY GRANT
Budget Summary

Exhibit 3

Grant Program: Citizen Corps

Items

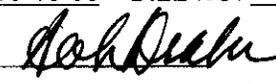
4-person Light Search and Rescue Kit	2	\$420.00	\$840.00
Sked basic stretcher	1	\$480.00	\$480.00
Notebooks for Student Manuals	75		\$415.00
Brochures and CERT promotional items for public education and outreach		\$5,000.00	

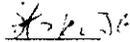
AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Weil Ballot Measure 37 Claim for Compensation

FOR AGENDA OF: 10-16-06 **BILL NO:** 06193

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 10-10-06

CLEARANCES: City Attorney 
Dev Serv. 

PROCEEDING: Public Hearing

EXHIBITS: Staff Report dated 10/10/06 with exhibits 1 through 4

BUDGET IMPACT

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

The amount of compensation claimed by Weil is \$12,000,000 as a result of City zoning regulations affecting the subject properties.

HISTORICAL PERSPECTIVE:

On June 9, 2006, representatives for Weil Enterprises, LLC (Weil) filed a claim for compensation against the City as authorized by Ballot Measure 37. The claim is for \$12,000,000. In the claim, Weil alleges the subject properties have been devalued due to zoning regulations. The claim does not state which specific zoning regulations have devalued the property. The subject properties are located at 11900 and 12000 SW Canyon Road (also known as TLID#s 1S115BA00901 and 1S115BB03600 respectively).

INFORMATION FOR CONSIDERATION:

Attached staff report

RECOMMENDED ACTION:

Deny the claim for compensation and grant the limited waiver of the Development Code as identified in the attached staff report.

Measure 37 Claim 2006-0001

Table of Contents

	Page No.
Staff report dated September 19, 2006 responding to Measure 37 Claim	1 - 11
Exhibit 1 Filed Claim dated June 9, 2006 with exhibits A through D	12 - 86
Exhibit 2 Incomplete letter from Steven A. Sparks, AICP, Development Services Manager	87 - 89
Exhibit 3 Response to incomplete letter dated August 24, 2006 from David Petersen with attachment.	90 - 95
Exhibit 4 Staff identified relevant sections of Ordinance 2050, as amended through Ordinance 3602.	96 - 115
Exhibit 4.1 TC Zoning	97 - 101
Exhibit 4.2 RC-TO Zoning	102 - 115



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON STAFF REPORT AND RECOMMENDATION

TO: Mayor Drake and City Council

STAFF REPORT DATE: Tuesday, October 10, 2006

STAFF: Steven A. Sparks, AICP, Development Services Manager *AS*

SUBJECT: **M37 2006-0001 (Weil Claim)**

REQUEST: Payment of \$12,000,000 to Weil in compensation for the imposition of land use restrictions on the properties located at 11900 and 12000 SW Canyon Road or waiver of the zoning current regulations affecting these same properties.

APPLICANT: **Weil Enterprises, LLC (Weil)**
12000 SW Canyon Road
Beaverton OR 97005

APPLICABLE CRITERIA: Municipal Code Section 2.07.030.D.1-3 (City Council Hearing)

HEARING DATE: Monday, October 18, 2006

RECOMMENDATION: **DENIAL** of the claim for payment, **WAIVER** of Development Code regulations for the affected property.

A. HISTORY

In November 2004, the voters of the State of Oregon passed Ballot Measure 37 which allows property owners to file for claims of compensation against local jurisdictions if that jurisdiction has adopted zoning regulations which has devalued property. Measure 37 provides local jurisdictions an alternative to payment of a claim by allowing a jurisdiction to waive the zoning regulations which have

devalued the property. Measure 37 fails to provide any direction on how to evaluate claims for compensation. The Measure does state that local jurisdictions may establish procedures by which to process any claims, but claimants are under no obligation to follow such procedures.

On November 22, 2004, the Beaverton City Council adopted Ordinance 4333, amending the Municipal Code, which established procedures for the filing, evaluation, and resolution of claims filed pursuant to Measure 37. Attorneys for Weil filed a claim with the City on June 9, 2006. In the claim, Weil states that imposition of City zoning regulations reduces the value of the property by \$12,000,000. Pursuant to Section 2.07.015, staff informed Weil representatives that the materials submitted for the claim were incomplete. On August 24, 2006, Weil representatives amended their materials by submitting some of the additional information requested by staff.

B. Subject Properties

The subject properties are located at 11900 and 12000 SW Canyon Road (also known as TLID#s 1S115BA00901 and 1S115B03600 respectively). A vicinity map is attached to this report. The two subject properties are improved with structures. 11900 SW Canyon Road has a building which is occupied by the Burgerville restaurant and 12000 SW Canyon Road has a building which is occupied by Video Only, Tammy's Hobbies, and Fitness Shop.

C. Analysis of Claim for Compensation

In the June 9, 2006 claim for compensation filed by Weil representatives, it asserts that Weil Enterprises, LLC took possession of the properties on April 30, 1997. However, the claim asserts ownership to 1967 and 1969 since the subject properties were owned by Weil Enterprises, LLC or family members. Under ORS 63.239, the property owner is the Limited Liability Corporation (LLC) and not the individual members of the LLC. This statute makes it clear that the members of the LLC are not co-owners of the property. The members merely have an interest in personal property which is distinct from real property under the law. The first section of Measure 37 clarifies that it only applies to "private real property." Thus, under the definition of "owner" in Measure 37, ("the present owner of the property or any interest therein") the LLC is the owner of the property. As a LLC is not a person, it cannot have a family member so the provisions of Measure 37 regarding regulations enacted prior to acquisition by a "family member of the owner" do not apply. The Oregon Tax Court has further defined this interest in an LLC.

"While ORS 63.001(21) defines a member as a person with an ownership interest in an LLC, ORS 63.239 provides that "[a] member is not a co-owner of and has no interest in specific limited

liability company *property*." (Emphasis added.) Thus, while a member has an ownership interest in the entity, he does not own the property of that entity.

An LLC is a separate legal entity. See ORS 63.001(9) (providing that an "entity" includes a limited liability company) and ORS 63.001(17) (defining a limited liability company as a "an entity that is an unincorporated association having one or more members.") Among other privileges, an LLC is entitled to own real and personal property and to operate independently in contracts with other business entities, and may sue or be sued in its own name. ORS 63.077(2). The property held by an LLC may be sold or disposed of only with the consent of a majority of its members. ORS 63.130(4)(d). Therefore, the personal property at issue is formally the property of each LLC. Fox has no title to the property and could not dispose of it without the consent of the membership. Benson Appts LLC v. Douglas County Assessor, 2005 Or Tax Lexis 156 (2005).

Additionally, the Oregon Supreme Court has long espoused the rule that for real property held by corporation that the corporation is "the absolute owner" and that a stockholder, even a sole stockholder, has no greater interest in that real property than any other stockholder in any company. Gratton v. Gratton's Estate, 133 Or 65, 283 P 747 (1929).

Therefore, the claim of zoning regulations enacted since 1967 and 1969 devaluing the subject properties is not valid. The ownership of the subject properties began in 1997. Any compensation or waiver that the City grants need only reach back to April 30, 1997 under section (8) of Measure 37.

On April 30, 1997, the subject properties were zoned TC (Town Center). The applicable Development Code was Ordinance 2050 as amended through Ordinance 3976. Exhibit 4 to this report contains the applicable TC code requirements in effect on April 30, 1997 for the subject properties. Exhibit D of Weil's materials lists seven (7) general code sections for which Weil is claiming compensation. The seven (7) items are Section 20.20.45 (Regional Center - Old Town), Section 20.20.50.E (Site Development Requirements - Regional Centers), Section 20.20.60.E (Supplementary Regulations - Regional Centers), Section 20.20.70 Method for Calculating Minimum Residential Density, Section 20.20.85 (Performance Standards), Chapter 40 (Applications) and Chapter 60 (Special Requirements).

Section 20.20.45 (Regional Center - Old Town)

In November 1999, the subject properties were rezoned from TC (Town Center), a commercial zone, to RC-OT (Regional Center-Old Town) which is a multiple use zone. As to the specific comparison of uses between the TC zone and the RC-OT zone, the 1997 TC zoning lists eight (8) principally permitted uses, four (4) conditional uses, and two (2) prohibited uses. The RC-OT zone contains the same uses with minor variation. The table below lists the uses listed in 1997, if the uses are listed in 2006, and if the uses are subject to use restriction:

Uses	TC	RC-OT	Use Restrictions
Auto, boat, and other vehicle sales	C	C	TC & RC-OT
Churches / Places of worship	P	P/C	TC & RC-OT
Eating and drinking establishments	P	P	TC & RC-OT
Financial institutions	P	P	TC & RC-OT
Major automotive services	X	X	
Minor automotive service	C	P	TC only
Mobile home parks and subdivisions	X	X	
Multi-family dwellings / Attached dwellings	P	P	TC only
Parking as a principle use	C	C	TC only
Parks and playgrounds	P	C	
Retail trade	P	P	TC & RC-OT
Service Businesses	P	P	TC & RC-OT
Single family dwellings	P	P	TC & RC-OT
Social & fraternal organizations	P	P/C	TC & RC-OT
Temporary living quarters	P	C	TC & RC-OT
Transit centers	C	C	TC only

c = conditional p = permitted x = prohibited

The above table does not list all of the uses allowed in the RC-OT. The current RC-OT list of uses is much more expansive and allows many more uses.

In the June 9, 2006 materials submitted by Weil's representatives, there is no reference to what specific code or use restriction is preventing Weil from developing the subject properties in an use preferred by Weil. Without a specific indication of how the City is constraining the use of his property by the zone's use restrictions, staff is unable to ascertain an impact to property value. Nevertheless, staff can support application of the use provisions contained in the 1997 code to the subject properties

Section 20.20.50.E (Site Development Requirements - Regional Centers)

The TC zone did not have many site development requirements in 1997. The following table compares the requirements found in the 1997 Code and the equivalent requirements found in the 2006 Code.

Development Requirement	TC	RC-OT
Building Height	60'	30'
Landscaping	15% of total lot area	0% ¹

The 2006 Code has a few development requirements not in the 1997 Code. For example, the 2006 Code has minimum floor area requirements and minimum residential density requirements for residential only developments.

In response to staff's incomplete letter, representatives for Weil submitted a letter dated August 24, 2006 which identifies that the building height limitation of 30 feet reduces the value of each property by \$6,000,000 for a total of \$12,000,000. This figure is arrived at by assuming that 30,000 square feet of office can be added to each property if a building height of 60 feet were allowed and that the value of added office space is \$200 per square foot. This valuation is the basis of the entire compensation claim and the person providing this estimate calls the valuation figures conservative. In actuality, the offered valuation figures are not realistic. In the central Beaverton market area, valuation figures are much lower than \$200 per square foot. Staff offer two (2) examples. The first uses Washington County Tax Assessor information and the second uses City of Beaverton building permit information to determine value per square foot. The value of the office building located at the southwestern portion of The Round is \$122.93 per square foot. This is a five story, Class A office building, completed in 2001. The value of a two story office building on the northwest corner of TV Highway and SW 153rd completed in 2006 is \$71 per square foot.

Assuming Weil could locate a 10,000 square foot footprint on each parcel and assuming that each building is six levels, the total square footage would be 120,000 square feet of floor area. Using the valuation for The Round, the construction cost for the two (2) buildings would be approximately \$14,750,000. Based on the Weil valuation letter, 20,000 square feet would be retail space and the remaining 100,000 square feet would be office space. Parking for these uses are as follows:

Use	1997 Code	2006 Code
Retail (20K sf)	3.3 / 1K sf	3.0 / 1K sf
Office (100K sf)	3.3 / 1K sf	2.7 / 1K sf
Total Requirement	396 spaces	330 spaces

¹ Landscaping is currently considered through the design review process. Landscaping is not required. If a development proposal pursues a Type 2 approval, the design review standard is 10% of the gross parcel area. If a development proposes less than 10%, the process is a Type 3 approval.

It is physically impossible to locate 330 or 396 parking spaces in a typical surface parking lot on either or both properties with a 10,000 square foot footprint on each parcel. Therefore, structured parking would be necessary to accommodate the required parking. From the literature staff have read and anecdotal evidence provided to staff by developers, construction estimates for structured parking garages range from \$15,000 to \$25,000 a space. Assuming an average of \$20,000 a space, to park a 120,000 square feet of retail/office use would cost approximately \$7,900,000 using the 1997 parking ratio and \$6,600,000 using the 2006 parking ratio. Construction costs for both the buildings and the parking structure would be \$21,350,000 (2006 Code) or \$22,650,000 (1997 Code). To recover construction costs, rent would have to be approximately \$60-\$65 a square foot. Currently, rents for office space in the Beaverton market range from \$15 to \$25 per square foot. One of the most successful office markets west of Portland is the Kruse Way area in Lake Oswego, just east of Interstate 5. Kruse Oaks II is currently marketing at \$30 per square foot.

Staff suggest that the \$12,000,000 in compensation demanded by the Weils has no basis in fact or market reality. The subject properties are currently at their highest capacity given the physical geometry of the subject parcels, the location of the properties, and the availability of surface parking. However, if the Weils demand the site development regulations be waived, staff can support waiving the site development regulations to the April 1997 Code.

Section 20.20.60.E (Supplementary Regulations - Regional Centers)

There are no supplementary regulations which would be applicable to the subject properties. Therefore, there are no code provisions to waive nor are there provisions for which compensation could be paid.

Section 20.20.70 Method for Calculating Minimum Residential Density

Section 20.20.70 is applicable to the Station Area and Station Community zoning districts. This section of the Development Code is not applicable to the subject properties.

Section 20.20.85 (Performance Standards)

There are no performance standards specified in the Code. The section is a placeholder for performance standard text should the City decide to adopt such standards in the future. Therefore, there are no code provisions to waive nor are there provisions for which compensation could be paid.

Chapter 40 (Applications)

In 1997, just as in 2006, any development proposal would be subject to a land use application. Since no proposal for development has been suggested by Weil, it is impossible to determine what type of land use application would be required. Furthermore, if a land use application could be identified, Chapter 40 contains procedural requirements. Procedural requirements are not a limitation on use; therefore, not a devaluation of property.

Chapter 60 (Special Requirements)

Weil has identified Chapter 60 (Special Requirements) as devaluing the subject properties. No specific provision(s) have been identified; therefore, it is impossible for staff to evaluate the validity of the claim for compensation against the provisions contained in Chapter 60. The only zoning regulation identified in the materials submitted by Weil is the building height regulation for the zone. Building heights are not regulated by Chapter 60.

D. Timeliness of Claim

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Staff Finding: The claim was submitted to the City on June 9, 2006. This date is within two years of the effective date of Measure 37. The claim is based on land use regulations enacted or adopted prior to December 2, 2004. Therefore, the claim is timely filed.

E. Claim Evaluation Criteria

Section 2.07.025.D of the Municipal Code specifies how a claim for compensation will be evaluated by the City Council. The criteria are as follows:

The Council shall determine whether the following criteria have been met:

1. The application is complete;

Staff Finding: As identified in the attached letter dated July 25, 2006, staff found the materials submitted by Weil's representatives to be incomplete. Weil's representatives submitted a letter dated August 24, 2006 supplementing the June 9, 2006 claim for compensation. The August 24, 2006 letter did not provide all of the materials requested by staff and requested that the claim be processed based on the evidence submitted on June 9, 2006 and August 24, 2006. The City has not deemed the application complete.

2. The claimant is a qualifying Property Owner under Measure 37 as follows:

a. The subject property is located within the City and is subject to the ordinance or regulation, which is the basis of the application for claim;

Staff Finding: The two (2) subject properties identified as 11900 and 12000 SW Canyon Road (also known as TLID#s 1S115BA00901 and 1S115B03600 respectively) are located within the city limits of the City of Beaverton. The subject properties are subject to Ordinance 2050, the Beaverton Development Code. As such, the subject properties are subject to current code requirements. Staff has addressed the applicability of the claims for each of these requirements in Section C of this report.

b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance;

Staff Finding: Weil has submitted a letter dated August 24, 2006 from Michael Kapnick in which retail and office uses are listed as potential uses of the subject properties. Both retail and office uses are permitted uses in the RC-OT zone. Therefore, staff cannot respond to how the City is restricting a use of the subject properties contrary to the desire of Weil.

c. The City regulation is not required as part of any federal requirement and is not an exempt regulation;

Staff Finding: Weil has identified broad portions of the City's Development Code in the claim for compensation. The City's floodway and floodplain regulations are contained in Chapter 60 of the Development Code which is listed in the Weil claim materials as zoning regulations which have devalued the subject properties. The City's floodway and floodplain regulations are required by the Federal Emergency Management Agency (FEMA) in order for the City to participate in the federal Flood Insurance program and therefore are not compensable under Measure 37.

- d. *The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied;*

Staff Finding: Weil has submitted a “property history report” which shows that Weil, under the title Weil Enterprises, LLC acquired the tax lots on April 30, 1997.

- e. *There is substantial evidence to support the claim of reduction in the fair market value of the subject property;*

Staff Finding: As identified in this report, neither Weil or their representatives have submitted any evidence demonstrating how the City’s Development Code has reduced the value of his properties other than his claim that reduction has occurred. No plans for development of any kind have been submitted as a part of this claim or any other prior development process which demonstrates the City applying any regulation to the subject properties.

- f. *The amount of compensation claimed or determined to be potentially due;*

Staff Finding: Weil has specified a claim of \$12,000,000 in the materials dated August 24, 2006.

- g. *The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest;*

Staff Finding: The Finance Director, in consultation with the City Attorney, have advised staff that there are no funds appropriated to pay this claim. Additionally, they have advised that a grant of a waiver for any regulation that reduces value is advised over paying any claims.

- h. *The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest; and*

Staff Finding: If the Council were to elect to waive the current code and apply the Development Code provisions in effect in April 30, 1997, staff recommend that the provisions concerning floodway and floodplain regulations and CWS regulations cannot be waived as they are federal requirements and designed to protect the public health and safety.

- i. *Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.*

Staff Finding: Staff do not identify any other factors which may be of interest to the property owner or the public.

3. *The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.*

Staff Finding: Staff recommend that Weil has not provided adequate evidence that the cited regulations do in fact reduce the value of their properties. No development plans have been submitted as a part of the claim for compensation nor have any plans been presented to the City in any development review process to which the City could respond to the claim that the subject properties have been devalued by City regulations.

F. Recommendation

Weil and representatives have not provided the City with evidence of how the City has applied or enforced any regulations on the development of either of the two (2) subject properties. Further, Weil has not provided the City with a development proposal which illustrates how the City's regulations would prevent Weil from achieving their development goals for the subject properties. By failing to provide any evidence with sufficient specificity to the City Council, Weil has prevented the Council an opportunity to respond to each issue in a manner anticipated by Measure 37. The claim for \$12,000,000 is entirely based on the letter dated August 24, 2006 prepared by Michael Kapnick of Marcus and Millichap. This is supported by the statement made by Weil's representative David Petersen on page 4 of his letter to staff dated August 24, 2006. The only zoning regulation identified in the Kapnick August 24th letter is the City's building height limit. As documented in staff's analysis of the claim in Section C of this report, the basis for the \$12,000,000 claim is flawed and such a project envisioned in the Kapnick letter is clearly unsupported in Beaverton. Due to the lack of any other evidence submitted by Weil, the City cannot ascertain the factual occurrence of property devaluation or the amount of devaluation as a result of any other zoning regulation. Therefore, based on the facts and findings outlined in this report, staff recommend that the Council deny the request for compensation.

Although there was little evidence of any diminution in value, it is possible that Weil may be able to prove some diminution in value to a circuit court and therefore receive those costs plus a large award of attorney fees. Thus, to avoid these risks, staff recommends that the Council waive the use restrictions of the current Development Code and apply the use restrictions contained in the 1997 Development Code (Ordinance 2050 as amended through Ordinance 3976). This use waiver is in the form of a license as described in BCC 2.07.045 and is non-transferable and is issued to Weil Enterprises, LLC. Furthermore, the waiver

license shall be construed to mean that upon a land use application for a permit by Weil Enterprises, LLC, the City shall waive any land use regulations (as defined by Measure 37 in section (11)(B) as limited by section (3)) that were enacted after April 1997 that the City believes restricts the use of private real property and reduces the value of the property. Except as specifically noted in this paragraph, the claim is denied.

G. Exhibits

1. Filed Claim dated June 9, 2006 with exhibits A through D
2. Incomplete letter from Steven A. Sparks, AICP
3. Letter dated August 24, 2006 from Weil representative David Petersen with attachment.
4. Staff identified relevant sections of Ordinance 2050, as amended through Ordinance 3602.
 - 4.1 TC Zoning
 - 4.2 RC-OT Zoning

EXHIBIT 1

WEIL CLAIM MATERIALS JUNE 9, 2006



CITY OF BEAVERTON
 Community Development Department
 Development Services Division
 4755 SW Griffith Drive
 PO Box 4755
 Beaverton, OR 97076
 Tel (503) 526-2420
 Fax (503) 526-3720
www.ci.beaverton.or.us

OFFICE USE ONLY	
FILE #:	<u>72006-0552</u>
FILE NAME	<u>Weil Measure 37 claim</u>
TYPE: <u>Measure 37</u>	RECEIVED BY: <u>ES</u>
FEE PAID: <u>\$1000.00</u>	CHECK/CASH: <u>247</u>
SUBMITTED: <u>6/9/06</u>	LWI DESIG: <u>NONE</u>
LAND USE DESIG: <u>RC</u>	NAC: <u>Central Beaverton</u>

MEASURE 37 CLAIM FORM

PROPERTY OWNER(S): Attach additional sheet if necessary Check box if Primary Contact

COMPANY: Weil Enterprises, LLC
 ADDRESS: 12000 SW Canyon Road
 (CITY, STATE, ZIP) Beaverton, OR 97005

PHONE: 503-626-2020 FAX: 503-626-0340 E-MAIL: N/A

SIGNATURE: [Signature] CONTACT: Sharon Weil or Dana Hunt
 (Original Signature Required) Sharon Weil

SIGNATURE: [Signature] SIGNATURE: _____
 (Original Signature Required) Dana Hunt (Original Signature Required)

REPRESENTATIVE: Check box if Primary Contact

COMPANY: Tonkon Torp LLP
 ADDRESS: 1600 Pioneer Tower / 888 SW Fifth Avenue
 (CITY, STATE, ZIP) Portland, OR 97204-2099

PHONE: 503-802-2054 FAX: 503-972-3754 E-MAIL: davidp@tonkon.com

SIGNATURE: [Signature] CONTACT: David J. Petersen
 (Original Signature Required)

PROPERTY INFORMATION (REQUIRED)

SITE ADDRESS: 11900 & 12000 SW Canyon Road

CONTIGUOUS SITES UNDER SAME OWNERSHIP:

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT
<u>1S115BA 00901</u>	<u>.36 ac</u>	<u>RC-OT</u>
<u>1S115BB 03600</u>	<u>1.12 ac</u>	<u>RC-OT</u>

ASSESSOR'S MAP & TAX LOT #	LOT SIZE	ZONING DISTRICT
<u>none</u>		

RECEIVED

JUN 09 2006

PRE-APPLICATION DATE: N/A



CITY OF BEAVERTON
 Community Development Department
 Development Services Division
 4755 SW Griffith Drive
 PO Box 4755
 Beaverton, OR. 97076
 Tel: (503) 526-2420
 Fax: (503) 526-3720
www.ci.beaverton.or.us

MEASURE 37 CLAIM FORM

MEASURE 37 CLAIM SUBMITTAL CHECKLIST

Submit two (2) copies of the following information:

- A. The names and street addresses of the record owners of property on the most recent property tax assessment roll and within 500 feet of the subject property (Beaverton Code Section 2.07.015.C.3).
- B. A copy of the land use order in which the City enforced its regulations on an application for a use on the property or a copy of the citation for a violation of a land use regulation for activities on the property. (Beaverton Code Section 2.07.015.C.10).
- C. Title Report and Proof of Ownership issued within 30 days of submittal of the Measure 37 claim. The report must include names of all persons or entities with legal, equitable and secure interest in the property and the dates the ownership were established (Beaverton Code Section 2.07.015.C.4).
- D. Identification of the Regulation for which enforcement has occurred and the claim is being made. Identification must be by number of section the law, rule, ordinance, resolution, goal or other enforceable enactment, or a copy of the regulation for which claim is submitted as contained in Measure 37 Ordinance No. 4333 (Beaverton Code Section 2.07.015.C.5).
- E. Written description addressing the approval criteria, including land use that was applied for and the results of that application (Beaverton Code Section 2.07.015.C.6).
- F. Amount of Claim \$ 2 million (Beaverton Code Section 2.07.015.C.7).
- G. Appraisal Report for subject property showing reduction in the fair market value as defined by Measure 37 Ordinance No. 4333 (Beaverton Code Section 2.07.015.C.7).
- H. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37 (Beaverton Code Section 2.07.015.C.9).
- I. All other documents, information or argument to be relied upon by the claimant in support of the application (Beaverton Code Section 2.07.015.C.11).
- J. Application Fee, as established by the City Council (Beaverton Code Section 2.07.015.C.12). → \$1000.00 DEPOSIT

I have provided all the items required by this one (1) page submittal checklist. I understand that any missing information, omissions or both may result in the application being deemed incomplete, which may lengthen the time required to process the application. The information submitted is true and complete to the best of my knowledge and belief. ~~I hereby waive any claims for regulations not identified herein with this claim.~~

Weil Enterprises, LLC

503-626-2020

Print Name

Telephone Number

Dana Hunt / Sharon Weil

June 9, 2006

Signature
 Dana Hunt / Sharon Weil

Date

Weil Enterprises, LLC
Measure 37 Claim
11900 and 12000 SW Canyon Road, Beaverton

Following is the applicant's response to the Measure 37 Claim Submittal Checklist:

A. Names and Addresses of Owners Within 500 Feet: The required information is attached as Exhibit A.

B. Copy of Land Use and Enforcement Orders: Measure 37 provides that claims based on regulations in existence as of December 2, 2004 must be filed prior to December 2, 2006 or two years after the date the regulation is applied to a land use application, whichever is later. For regulations enacted after December 2, 2004, the application must be filed within two years after the date of enactment or two years after the date an application is filed that is subject to the regulation, whichever is later. ORS 197.352(5).

Since this claim is filed prior to December 2, 2006, it is necessarily filed within two years of December 2, 2004 and within two years of enactment of any regulations enacted after December 2, 2004. Thus, no matter when a regulation subject to this claim was enacted, the applicant cannot be required to first submit an application subject to the regulation and have the regulation enforced against it. Any such requirement in the Beaverton Code, including without limitation the relevant provisions of Beaverton Code Sections 2.07.015(A) and 2.07.015(C)(6), is contrary to law. The applicant has made no such applications nor received any land use orders meeting the requirements of Beaverton Code 2.07.015(A), and cannot be required to do so.

With respect to Beaverton Code 2.07.015(C)(10), which requires copies of any prior enforcement actions taken by any governmental body against the subject properties, there are none.

C. Title Report and Proof of Ownership: A current status of record title report dated as of June 1, 2006, showing title vested in the applicant, is attached as Exhibit B. The title report includes a vesting deed showing the conveyance of the property from Weil Enterprises, a partnership, to the applicant on April 30, 1997. The relevant dates for purposes of this claim, however, are December 16, 1969 for 11900 SW Canyon Road and July 17, 1967 for 12000 SW Canyon Road, since the properties have been owned by the applicant or family members of the applicant since at least those dates, as explained herein.

Robert and Elaine Weil acquired 12000 SW Canyon Road on July 17, 1967, and acquired 11900 SW Canyon Road no later than December 16, 1969. On January 3, 1978, Robert and Elaine conveyed the properties to Weil Properties, a general partnership in which the only partners were Robert and Elaine. In either 1985 or 1986, the Weils were divorced and Elaine withdrew from the partnership, thereby vesting title solely in Robert. See ORS 67.095. On May 19, 1993, Robert conveyed the properties to Weil Enterprises, a general partnership in which the only partners were Robert and his three daughters, Marlene, Dana and Sharon. On September

11, 1996, Weil Enterprises converted to a limited liability company in which the only members were the former partners of Weil Enterprises. A deed to memorialize the conversion was executed April 30, 1997 (see above). Documents reflecting these transactions are attached as Exhibit C, as follows:

Document	Date	Conveyance	Property Affected
Warranty Deed (Book 657, Page 423)	July 17, 1967	Big "C" Stores, Inc. to Robert and Elaine Weil	12000 SW Canyon
Bargain and Sale Deed (Book 766, Page 619)	December 16, 1969	Robert Weil to Elaine Weil (½ interest)	11900 SW Canyon
Bargain and Sale Deed (Book 766, Page 624)	December 16, 1969	Elaine Weil to Robert Weil (½ interest)	11900 SW Canyon
Bargain and Sale Deed (Doc. No. 78-7228)	January 3, 1978	Robert and Elaine Weil to Weil Properties (general partnership)	Both
Bargain and Sale Deed (Doc. No. 93040393)	May 19, 1993	Robert Weil to Weil Enterprises (general partnership)	Both
Real Estate Records Notice (Doc. No. 96088931)	September 11, 1996	Conversion of Weil Enterprises (general partnership) to Weil Enterprises, LLC	Both

Robert Weil is now deceased and the current members of Weil Enterprises, LLC are Dana Hunt (formerly Dana Weil), Sharon Weil, and Dana Hunt and Sharon Weil as trustees of the Marlene D. Weil Trust U/T/A dtd 5/9/95. Thus, members of the Weil family have held all "ownership interests" (as that term is defined in Beaverton Code Section 2.07.010) in the properties since at least December 16, 1969 for 11900 Canyon Road and since at least July 17, 1967 for 12000 Canyon Road. Weil Enterprises, LLC is entitled to relief under Measure 37 for any land use regulations affecting the subject properties enacted since those dates.

D. Identification of Regulations For Which Claim Is Made. Measure 37 does not require the applicant to identify specific regulations to which the claim is addressed. Any such requirement in the Beaverton Code is contrary to law. The applicant's claim is based on all land use regulations that have been made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon). However, without waiving any right to pursue this claim with respect to any other regulations adopted and made applicable to the subject properties after the above dates, the applicant specifically identifies the regulations identified in the attached Exhibit D as subject to this claim.

E. Analysis of Approval Criteria. The approval criteria set forth in Beaverton Code Section 2.07.015(6) and Section 2.07.030(D)(2) and (3) are met, as follows.

2.07.015(6) A written description addressing the approval criteria, including without limitation the impact of each and every city regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and

impacts the value of the property. The claimant shall describe the land use that was applied for and the results of that application.

As explained in part B above, any Measure 37 claim filed prior to December 2, 2006 does not require that an application for a specific land use first be made and rejected. Similarly, the Measure does not require a regulation-by-regulation analysis of the impact of the regulation on the value of the subject properties. Instead, it can safely be assumed that the regulations for which this claim is made, collectively, have reduced the fair market value of the subject properties by an indeterminate but significant amount, a reasonable estimate of which is the amount of the claim stated in Part F.

2.07.030(D)(2) The claimant is a qualifying property owner under Measure 37 as follows:

a. The subject property is located within the city and is subject to the ordinance or regulation, which is the basis of the application for claim.

Both properties are within the city limits. The claim is for all land use regulations made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon), including without limitation those regulations identified in the attached Exhibit D.

b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance.

The applicant does not and is not required under Measure 37 to identify a specific restricted use upon which the claim is based (see part B above). All regulations subject to this claim and made applicable to the subject properties after December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon) restrict the use of the property in comparison to what was permitted on those dates. As explained in part H below, none of the subject regulations are exempt from Measure 37 under the nuisance exception.

c. The City regulation is not required as part of any federal regulation and is not an exempt regulation

See part H below.

d. The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied.

See part C above.

e. There is substantial evidence to support the claim of reduction in the fair market value of the property.

It can safely be assumed that the regulations for which this claim is made, collectively, have reduced the fair market value of the subject properties by an indeterminate but significant amount, a reasonable estimate of which is the amount of the claim stated in Part F.

f. The amount of compensation claimed or determined to be potentially due.

See part F below.

g. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest.

The applicant is not in a position to address this criterion. Without waiving its right to compensation, however, the applicant would accept and in fact prefers a waiver of all regulations made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon), rather than payment of compensation.

h. The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest.

The applicant is not in a position to address this criterion.

i. Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.

The applicant is not in a position to address this criterion.

2.07.030(D)(3) The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.

See response to criterion 2.07.030(D)(2)(e) above.

F. Amount of Claim. The amount of the claim is \$2,000,000. This amount reflects a reasonable estimate of the difference between the current fair market value of the properties and the fair market value of the properties if they were not subject to all land use regulations that have been made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon).

G. Appraisal Report. Measure 37 does not require the submission of an appraisal to support the amount of the claim, and any such requirement in the Beaverton Code is contrary to law. It can safely be assumed that the regulations for which this claim is made, collectively,

have reduced the fair market value of the subject properties by an indeterminate but significant amount, a reasonable estimate of which is the amount of the claim stated in Part F.

II. Statement of Lack of Exemption. Beaverton Code Section 2.07.015(C)(9) requires a statement as to why the regulations subject to this claim are not exempt from Measure 37, as follows:

a Adoption or enforcement of a nuisance.

The Measure does not apply to regulations "restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act." ORS 197.352(3)(A). To the applicant's knowledge, no regulations made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon) were enacted to restrict or prohibit activities commonly and historically recognized as public nuisances under common law. To the extent such regulations exist, and subject to the Measure's requirement to construe this exemption narrowly, the applicant excludes them from its claim.

b Imposition to the extent required, of a regulation to implement a federal requirement.

To the applicant's knowledge, no regulations made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon) were enacted to implement a federal requirement. To the extent such regulations exist, the applicant excludes them from its claim.

c Regulation prohibiting the use of the property for the purpose of selling pornography or performing nude dancing.

To the applicant's knowledge, no regulations made applicable to the subject properties since December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon) prohibit the use of the property for these uses. To the extent such regulations exist, the applicant excludes them from its claim.

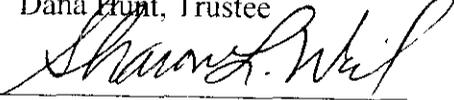
I. All Other Relevant Information. No additional information is provided.

J. Application Fee. The required application fee of \$1,000 is enclosed, without waiver of any right to recover the fee, plus interest, on the grounds that an application fee is not required or permitted under Measure 37, or that the fee is excessive.

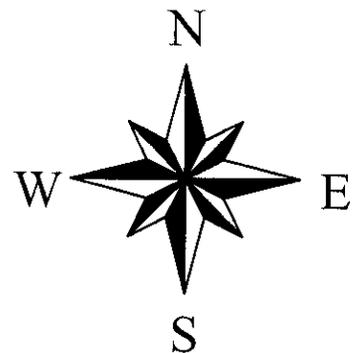
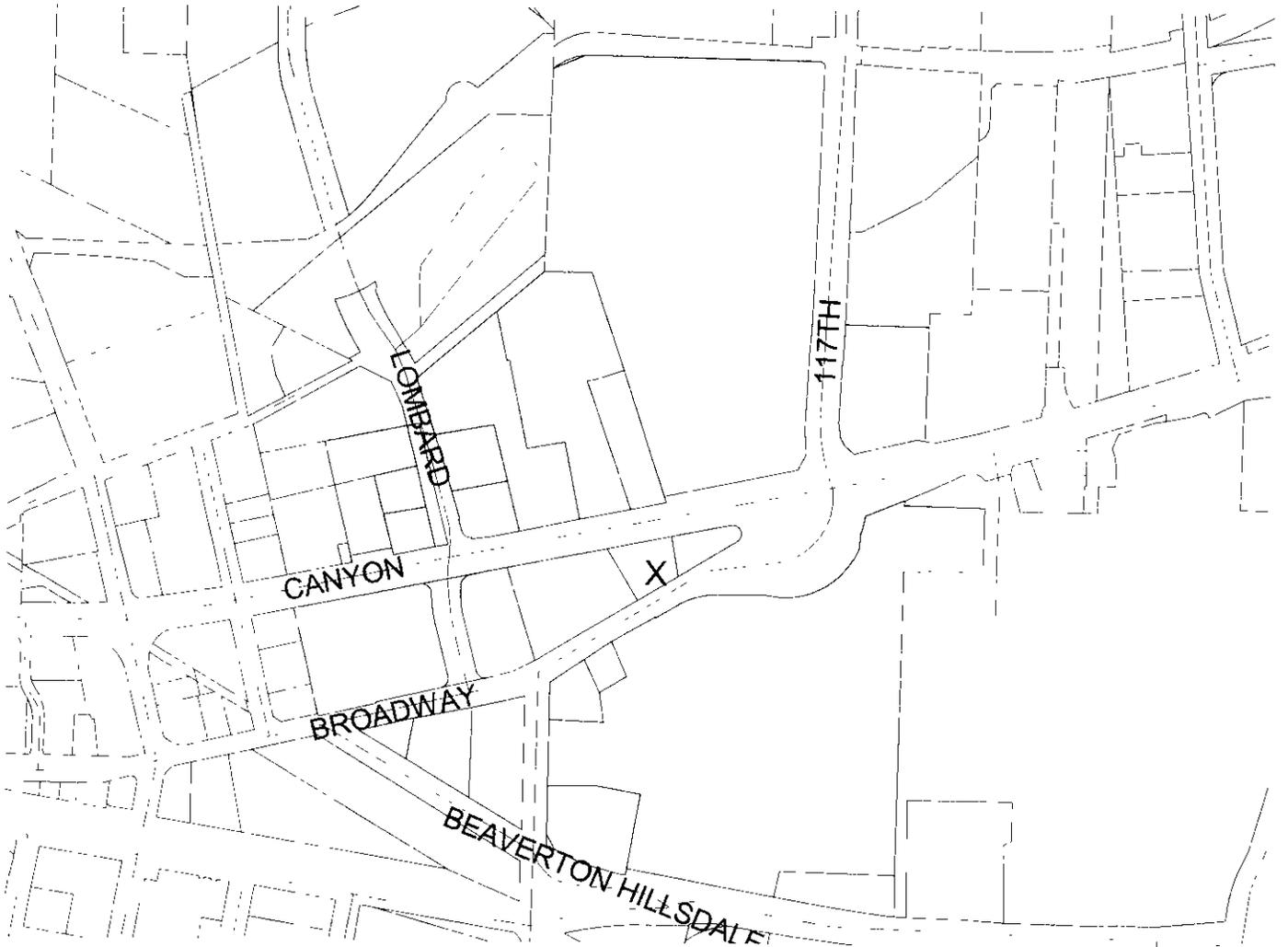
Additional Member of Weil Enterprises, LLC:

Marlene D. Weil Trust U/T/A dtd May 9, 1995

By: 
Dana Hunt, Trustee

By: 
Sharon Weil, Trustee

500' 11900 SW Canyon



1S110CD00900
HARSCH INVESTMENT PROPERTIES LLC
1121 SW SALMON 5TH FLOOR
POR TLAND, OR 97205

1S110CD00790
POLSE BURTON &
PO BOX 1348
SAN LUIS OBISPO, CA 93406

1S110CD01301
P & F PROPERTIES OF THE NW
1440 SW TAYLOR
POR TLAND, OR 97205

1S110CD00702
L & N SECOND LLC
PO BOX 1936
LAKE OSWEGO, OR 97035

1S110CD01300
P & F PROPERTIES OF THE NW
1440 SW TAYLOR
POR TLAND, OR 97205

1S115BB00501
BEAVERTON CITY OF
PO BOX 4755
BEAVERTON, OR 97076

1S115BB00203
P & F PROPERTIES OF THE NW
PO BOX 1539
PASO ROBLES, CA 93447

1S115BB00507
VAL-U INN SHREE RAJ LLC
9520 NE SANDY BLVD
POR TLAND, OR 97205

1S115BB00505
ENGEN ALLEN C
PO BOX 908
KAMIAH, ID 83536

1S115BB00200
PHILLIPS PETROLEUM COMPANY
PO BOX 1539
PASO ROBLES, CA 93447

1S115BA02000
BEAVERTON TOWN SQUARE LLC
11781 SW BVTN-HLSL HWY
BEAVERTON, OR 97005

1S115BB00300
SUN BRUCE & LAURA
1000 SW BROADWAY STE 2150
POR TLAND, OR 97205

1S115BA00900
TEXACO INC
TAX DEPT PO BOX 4369
HOUSTON, TX 77210

1S115BB03600
WEIL ENTERPRISES LLC
12000 SW CANYON RD
BEAVERTON, OR 97005

1S115BB03500
F A RODGERS STOR ES INC
12050 SW CANYON RD
BEAVERTON, OR 97005

1S115BB03201
BEAVERTON CITY OF
PO BOX 4755
BEAVERTON, OR 97076

1S115BB03200
SHADRALL BEAVERTON LP
50 TICE BLVD
WOODCLIFF LAKE, NJ 7677

1S115BA01100
FREECE WARREN W
12050 SW CANYON RD
BEAVERTON, OR 97005

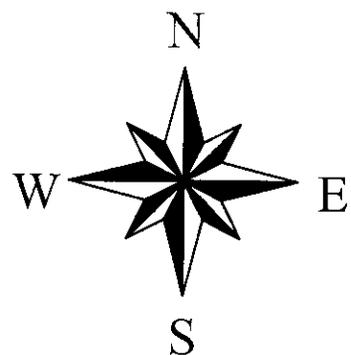
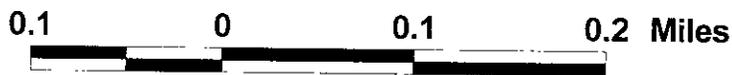
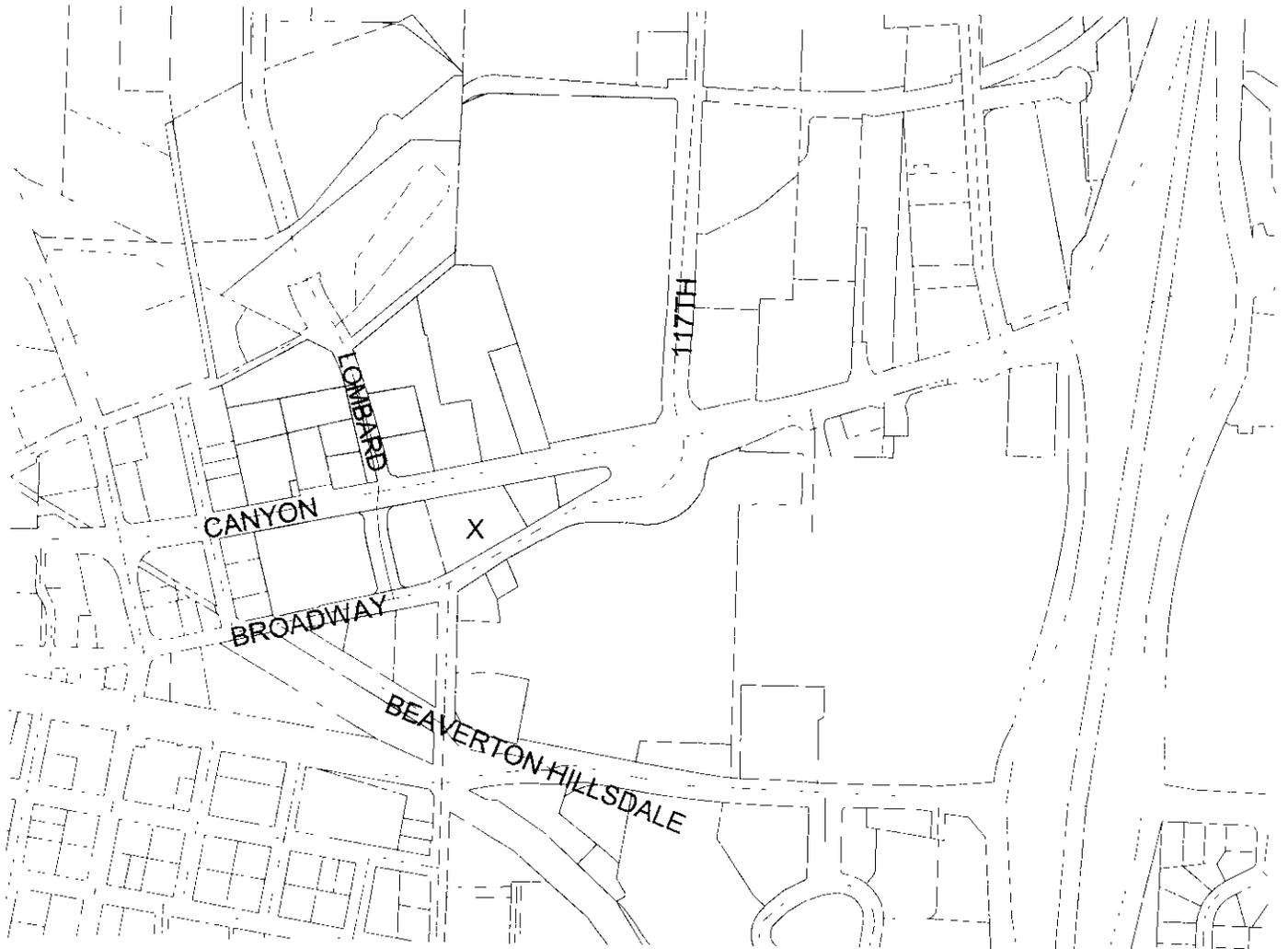
1S115BA01200
LUI WAH AND MAY
900 VIRGINIA STREET
SEATTLE, WA 98101

1S115BB03700
1ST INTERSTATE BANK OF WASHINGTO
PO BOX 4900
SCOTTSDALE, AZ 85261

1S115BB04000
JONES DENNY M TRUSTEE
PO BOX 544
MANZANITA, OR 97130

1S115BA01401
BIRNBACH GERALD MARTIN
520 SW YAMHILL ST STE 600
POR TLAND, OR 97204

500' 12000 SW Canyon



1S110CD00900
HARSCH INVESTMENT PROPERTIES
LLC
1121 SW SALMON 5TH FLOOR
PORTLAND OR, 97205

1S110CD00790
POLSE BURTON &
PO BOX 1348
SAN LUIS OBISPO CA, 93406

1S110CD01301
P & F PROPERTIES OF THE NW
1440 SW TAYLOR
PORTLAND OR, 97205

1S110CD01300
P & F PROPERTIES OF THE NW
1440 SW TAYLOR
PORTLAND OR, 97205

1S115BB00504
FARHOUD YOUSSEF A
7795 SW HILLCREST PL
BEAVERTON OR, 97008

1S115BB00501
BEAVERTON CITY OF
PO BOX 4755
BEAVERTON OR, 97076

1S115BB00203
P & F PROPERTIES OF THE NW
PO BOX 1539
PASO ROBLES CA, 93447

1S115BB00507
VAL-U INN SHREE RAJ LLC
9520 NE SANDY BLVD
PORTLAND OR, 97220

1S115BB00502
DROUGAS GLORIA MAE
9520 NE SANDY BLVD
PORTLAND OR, 97220

1S115BB00505
ENGEN ALLEN C
PO BOX 908
KAMIAH ID, 83536

1S115BB00400
STEINBORN EGON A
21475 NW JACOBSON RD
HILLSBORO OR, 97124

1S115BB00200
PHILLIPS PETROLEUM COMPANY
PO BOX 1539
PASO ROBLES CA, 93447

1S115BB00500
DROUGAS GLORIA MAE
10130 SW ARBORCREST WAY
PORTLAND OR, 97225

1S115BA02000
BEAVERTON TOWN SQUARE LLC
11781 SW BVTN-HLSDL HWY
BEAVERTON OR, 97005

1S115BB00300
SUN BRUCE & LAURA
1000 SW BROADWAY STE 2150
PORTLAND OR, 97205

1S115BA00900
TEXACO INC
TAX DEPT PO BOX 4369
HOUSTON TX, 77210

1S115BA00901
WEIL ENTERPRISES LLC
12000 SW CANYON RD
BEAVERTON OR, 97005

1S115BB00503
DROUGAS GLORIA MAE
9520 NE SANDY BLVD
PORTLAND OR, 97220

1S115BB03500
F A RODGERS STORES INC
12050 SW CANYON RD
BEAVERTON OR, 97005

1S115BB03201
BEAVERTON CITY OF
PO BOX 4755
BEAVERTON OR, 97076

1S115BB03200
SHADRALL BEAVERTON LP
50 TICE BLVD
WOODCLIFF LAKE NJ, 7677

1S115BA01100
FREECE WARREN W
12050 SW CANYON RD
BEAVERTON OR, 97005

1S115BA01200
LUI WAH AND MAY
900 VIRGINIA STREET
SEATTLE WA, 98101

1S115BB03700
1ST INTERSTATE BANK OF
WASHINGTON
PO BOX 4900
SCOTTSDALE AZ, 85261

1S115BB04000
JONES DENNY M TRUSTEE
PO BOX 544
MANZANITA OR, 97130

1S115BB04200
TIME OIL COMPANY
PO BOX 24447 TERMINAL ANNEX
SEATTLE WA, 98124

1S115BB05800
HOLLAND INVESTMENTS INC
PO BOX 25215
PORTLAND OR, 97298

1S115BA01401
BIRNBACH GERALD MARTIN
520 SW YAMHILL ST STE 600
PORTLAND OR, 97204

1S115BA01400
BEAVERTON URBAN RENEWAL
PO BOX 4755
BEAVERTON OR, 97076



Chicago Title Insurance Company of Oregon

® 10135 SE Sunnyside Road, Suite 200
Clackamas, OR 97015
Phone No. (503)653-7300

**FIRST SUPPLEMENTAL
STATUS OF RECORD TITLE**

June 6, 2006

Order No.: 426232

TO: Chicago Title Insurance Company of Oregon
888 SW Fifth Ave. Suite 930
Portland, OR 97204

ATTN.: Malcolm Newkirk

Customer Ref.: Weil Enterprises

Charge: \$200.00

We have searched our Tract Indices as to the following described real property:

See Legal Description Attached Hereto

Vestee: Weil Enterprises L.L.C., an Oregon limited liability company

Dated as of: June 1, 2006 at 08:00 AM

**CHICAGO TITLE INSURANCE COMPANY OF
OREGON**

By: *Lony Schalle*
Authorized Officer

THIS REPORT IS TO BE UTILIZED FOR INFORMATION ONLY. ANY USE OF THIS REPORT AS A BASIS FOR TRANSFERRING, ENCUMBERING OR FORECLOSING THE REAL PROPERTY DESCRIBED WILL REQUIRE PAYMENT IN THE AMOUNT EQUIVALENT TO APPLICABLE TITLE INSURANCE PREMIUM AS REQUIRED BY THE RATING SCHEDULE ON FILE WITH THE OREGON INSURANCE DIVISION.

The liability of Chicago Title Insurance Company of Oregon is limited to the addressee and shall not exceed the fee paid therefor.

Order No.: 426232

Said property is subject to the following on record matters:

1. The premises herein described are within and subject to the statutory powers including the power of assessment of Clean Water Services.
2. City liens, if any, of the City of Beaverton
3. An easement created by instrument, including terms and provisions thereof;
Dated: November 20, 1947
Recorded: January 15, 1948
Book: 282
Page: 48
In Favor Of: State of Oregon, by and through its State Highway Commission
For: Slope easement
Affects: The Northerly portion of Parcel I
4. An easement created by instrument, including terms and provisions thereof;
Dated: September 7, 1966
Recorded: September 14, 1966
Book: 615
Page: 107
In Favor Of: City of Beaverton
For: Sewer
Affects: The Easterly 5 feet of Parcel II
5. An easement created by instrument, including terms and provisions thereof;
Dated: September 1, 1966
Recorded: September 14, 1966
Book: 615
Page: 108
In Favor Of: City of Beaverton
For: Sewer
Affects: The Easterly 5 feet of Parcel II

NOTE: Taxes for the fiscal year 2005-2006, paid in full;
Amount: \$20,321.63
Levy Code: 051-58
Account No.: R116476
Map No.: 1S115BB
Tax Lot No.: 03600
(Affects Parcel I)

NOTE: Taxes for the fiscal year 2005-2006, paid in full;
Amount: \$5,541.28
Levy Code: 051-58
Account No.: R115949
Map No.: 1S115BA
Tax Lot No.: 00901
(Affects Parcel II)

NOTE: Property address is identified as:
12000 SW Canyon Road, Beaverton, Oregon 97005 (Affects Parcel I)

NOTE: Property address is identified as:
11900 SW Canyon Road, Beaverton, Oregon 97005 (Affects Parcel II)

END OF REPORT

9014710056.rdw

Order No.: 426232

ts/grs
June 6, 2006

LEGAL DESCRIPTION:

PARCEL I.

Beginning at a point on the West line of the Wm. Lockerman Donation Land Claim No. 45, in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the Southerly bank of State Highway; thence North 77°08' East along said property line, 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point on the ditch; thence South 31°52' East, 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West, along the Northerly property line of a roadway, 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0°44' East, 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe, South 0°44' East 21.1 feet to the true point of beginning; all in the County of Washington and State of Oregon.

PARCEL II:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77°08' East a distance of 166.1 feet from the intersection of West line of the William Lockerman Donation Land Claim No. 45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described; thence North 77°08' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12°52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, Page 419, recorded February 7, 1955; a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57°05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31°51' West a distance of 141.2 feet to the true point of beginning.



Chicago Title Insurance Company of Oregon

® 10135 SE Sunnyside Road, Suite 200
Clackamas, OR 97015
Phone No: (503)653-7300

STATUS OF RECORD TITLE

May 18, 2006

Order No.: 426232

TO: Chicago Title Insurance Company of Oregon
888 SW Fifth Ave Suite 930
Portland, OR 97204

ATTN.: Malcolm Newkirk

Customer Ref.. Weil Enterprises

Charge: \$200.00

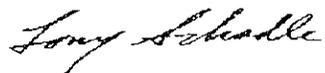
We have searched our Tract Indices as to the following described real property:

See Legal Description Attached Hereto

Vestee: Weil Enterprises L.L.C., an Oregon limited liability company

Dated as of: May 8, 2006 at 08:00 AM

**CHICAGO TITLE INSURANCE COMPANY OF
OREGON**

By: 
Authorized Officer

THIS REPORT IS TO BE UTILIZED FOR INFORMATION ONLY. ANY USE OF THIS REPORT AS A BASIS FOR TRANSFERRING, ENCUMBERING OR FORECLOSING THE REAL PROPERTY DESCRIBED WILL REQUIRE PAYMENT IN THE AMOUNT EQUIVALENT TO APPLICABLE TITLE INSURANCE PREMIUM AS REQUIRED BY THE RATING SCHEDULE ON FILE WITH THE OREGON INSURANCE DIVISION.

The liability of Chicago Title Insurance Company of Oregon is limited to the addressee and shall not exceed the fee paid therefor.

031

Said property is subject to the following on record matters:

1. The premises herein described are within and subject to the statutory powers including the power of assessment of Clean Water Services.
2. City liens, if any, of the City of Beaverton.
3. An easement created by instrument, including terms and provisions thereof;
Dated: November 20, 1947
Recorded: January 15, 1948
Book: 282
Page: 48
In Favor Of: State of Oregon, by and through its State Highway Commission
For: Slope easement
Affects: The Northerly portion of Parcel I
4. An easement created by instrument, including terms and provisions thereof;
Dated: September 7, 1966
Recorded: September 14, 1966
Book: 615
Page: 107
In Favor Of: City of Beaverton
For: Sewer
Affects: The Easterly 5 feet of Parcel II
5. An easement created by instrument, including terms and provisions thereof;
Dated: September 1, 1966
Recorded: September 14, 1966
Book: 615
Page: 108
In Favor Of: City of Beaverton
For: Sewer
Affects: The Easterly 5 feet of Parcel II

NOTE: Taxes for the fiscal year 2005-2006, paid in full;
Amount: \$20,321.63
Levy Code: 051-58
Account No.: R116476
Map No.: 1S115BB
Tax Lot No.: 03600
(Affects Parcel I)

NOTE: Taxes for the fiscal year 2005-2006, paid in full;
Amount: \$5,541.28
Levy Code: 051-58
Account No.: R115949
Map No.: 1S115BA
Tax Lot No.: 00901
(Affects Parcel II)

NOTE: Property address is identified as:
12000 SW Canyon Road, Beaverton, Oregon 97005 (Affects Parcel I)

NOTE: Property address is identified as:
11900 SW Canyon Road, Beaverton, Oregon 97005 (Affects Parcel II)

END OF REPORT

Order No.: 426232

ts/grs

May 18, 2006

LEGAL DESCRIPTION:

PARCEL I:

Beginning at a point on the West line of the Wm. Lockerman Donation Land Claim No. 45, in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the Southerly bank of State Highway; thence North 77°08' East along said property line, 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point on the ditch; thence South 31°52' East, 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West, along the Northerly property line of a roadway, 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0°44' East, 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe, South 0°44' East 21.1 feet to the true point of beginning; all in the County of Washington and State of Oregon.

12000

PARCEL II:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77°08' East a distance of 166.1 feet from the intersection of West line of the William Lockerman Donation Land Claim No. 45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described; thence North 77°08' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12°52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, Page 419, recorded February 7, 1955; a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57°05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31°51' West a distance of 141.2 feet to the true point of beginning.

11900

STATE OF OREGON } 88
County of Washington

I, Jerry F. Henson, Director of Assessment and Taxation and Clatsop County Clerk for said County, do hereby certify that the within instrument has been received and recorded in Book 12, Page 10 of said county.



Doc : 97052762
Rect: 187900 73.00
06/09/1997 04:57:49pm

6/9/97

rest

This document is being rerecorded to reflect the date of execution on document no. 97041039, recorded 05/02/97.

1-13 1-13



5882

NA
WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That WEIL ENTERPRISES, a partnership hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by WEIL ENTERPRISES L.L.C. hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in Washington County, State of Oregon, described as follows, to-wit:

See Exhibit A attached hereto and by this reference incorporated herein.

This deed is recorded to reflect the partnership's change in form to a limited liability company as reflected by that certain Real Estate Records Notice recorded October 3, 1996, as document number 96088931.

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the grantee and grantee's heirs, successors and assigns forever. And grantor hereby covenants to and with grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances except those previously disclosed by Grantor to Grantee.

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

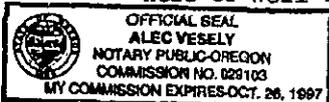
The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 0.00. (The sentence between the symbols \$ and .00, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed, where the context so requires, the singular includes the plural. In Witness Whereof, the grantor has executed this instrument this 30 day of April, 1997.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.830.

WEIL ENTERPRISES, a partnership
By: Dana M. Hunt, Former Managing Partner
By: Sharon Well, Former Managing Partner

STATE OF OREGON, County of WASHINGTON) ss.
This instrument was acknowledged before me on April 30, 1997, by Dana M. Hunt and Sharon Well, both as former managing partners of Weil Enterprises, a partnership.



Notary Public for Oregon
My commission expires 10-26-97

Well Enterprises, a partnership
Grantor's Name and Address
Well Enterprises L.L.C.
Grantee's Name and Address
After recording return to (Name, Address, Zip):
Owen D. Blank
888 SW 5th Avenue, Suite 1600
Portland, OR 97204
Until requested otherwise send all tax statements to (Name, Address, Zip):
Well Enterprises L.L.C.
12000 SW Canyon Road
Beaverton, OR 97005

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON,) ss.
County of)
I certify that the within instrument was received for record on the day of 19, at o'clock M., and recorded in book/roll/volume No. on page and/or as fee/title/instrument/microfilm/reception No. of the Records of said County.
Witness my hand and seal of County affixed.
By NAME TITLE Deputy.

22

OREGON TITLE #8-00 7/6/97

PARCEL 1:

All of Lots 12 and 13, SUNNY HILL, in the County of Washington and State of Oregon.

EXCEPTING THEREFROM that portion thereof described in Deed to Harold O. Stroberger, et ux, recorded in Book 403, Page 314, Deed Records, in the County of Washington and State of Oregon, more particularly described as follows:

A tract of land in Lot 12, SUNNY HILL, in Section 10, Township 1 South, Range 1 West, Willamette Meridian, in the County of Washington and State of Oregon, described as follows, to wit:

Beginning at an iron rod on the North line of Lot 12, SUNNY HILL, which is North 71°24' East 93.30 feet from an iron pipe at the Northwest corner of said Lot 12; thence North 71°24' East 6.30 feet to the Northeast corner of said Lot 12; thence South 0°07' West 226.75 feet to the Southeast corner of said Lot 12; thence South 71°51' West 6.01 feet along the South line of said Lot 12 to an iron rod which is North 71°51' East 93.99 feet from the Southwest corner of said Lot 12; thence North 0°07' East 226.75 feet to the place of beginning.

PARCEL 2:

All of Lot 14, SUNNY HILL, in the County of Washington and State of Oregon.

EXCEPTING THEREFROM that portion Deeded to State Farm Mutual Automobile Insurance Company, an Illinois corporation by Deed recorded August 26, 1982 as Recorder's Fee No. 82021840.

PARCEL 4:

The East half of Lot 10, SUNNY HILL, in the County of Washington and State of Oregon.

Exhibit A, page 1

3 3

4

[REDACTED]

The West half of Lot 10, SUNNY HILL, in the County of Washington and State of Oregon.

AND the East one-half of Lot 11, SUNNY HILL, in the County of Washington and State of Oregon.

Exhibit A, page 2

8 4

4

PARCEL I:

The West one-half of Lot 11, SUNNY HILL, in the County of Washington and State of Oregon.

PARCEL II:

A tract of land in Lot 12, SUNNY HILL, in Section 10, Township 1 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at an iron rod on the North line of Lot 12, SUNNY HILL, which is North 71°24' East 93.30 feet from an iron pipe at the Northwest corner of said Lot 12; thence North 71°24' East 6.30 feet to the Northeast corner of said Lot 12; thence South 0°07' West 226.75 feet to the Southeast corner of said Lot 12; thence South 71°51' West 6.01 feet along the South line of said Lot 12 to an iron rod which is North 71°51' East 93.99 feet from the Southwest corner of said Lot 12; thence North 0°07' East 226.75 feet to the place of beginning.

Exhibit A, page 3

6 5 5

[REDACTED]

Beginning at a point on the North line of Lot 2, Block 8, of HILLSBORO, a duly recorded subdivision in the County of Washington and State of Oregon, 21.4 feet East of the West line of said Lot 2, which point of beginning bears South 66.0 feet and East 196.4 feet from a brass monument at the Southeast corner of the Courthouse Square; thence from the described place of beginning, South, parallel to and 21.4 feet East of the West line of said Lot 2, a distance of 198.0 feet to a point on the South line of said lot; thence East along said South line 44.6 feet to a point; thence North parallel to and 33.0 feet West of the East line of said Lot 2, a distance of 198.0 feet to a point on the North line thereof; thence West 44.6 feet to the place of beginning.

Exhibit A, page 4

7 6 6

[REDACTED]

Lots 6 and 7, Block 7, HILLSBORO, of and in the City of Hillsboro, County of Washington and State of Oregon.

EXCEPT that alley referred to in Parcel No. 4 in Deed recorded February 14, 1978, Recorder's Fee No. 78-7228.

Exhibit A, page 5

8

17

[REDACTED]

The South one-half of Lot 1 and all of Lot 8, Block 7, HILLSBORO, in the County of Washington and State of Oregon.

Exhibit A, page 6

9 8 8

PARCEL 3:

The East 33 feet of Lot 3 of Block 7 in the town (now city) of Hillsboro, as shown upon the duly recorded plat thereof.

TOGETHER WITH all rights vested by virtue of that agreement recorded in Book 163, Page 160, Deed Records. Also all rights conveyed to Emilie Mohr and Jacob Mohr, her former husband, by conveyance recorded in Book 250, Page 343, Deed Records, and subject to all rights conveyed to Cora Wheeler and Hillsboro Commercial Bank by conveyance recorded in Book 162, Page 69, Deed Records, and easement conveyed to West Coast Telephone Company by conveyance recorded in Book 189, Page 485, Deed Records.

PARCEL 4:

The West 56 feet of Lot 2 of Block 7 of the town (now city) of Hillsboro, Oregon, as shown by the duly recorded map and plat thereof, more particularly described as follows, to wit:

Beginning at the Northwest corner of said Lot 2 of Block 7, and running thence South along the West line of said Lot 2, 198 feet to the Southwest corner thereof; thence East along the South boundary of said Lot 2, 56 feet; thence North parallel to the West boundary of said Lot 2, 198 feet, more or less, to the North line of said Lot 2; thence West along the North line of said Lot 2 of Block 7, 56 feet to the place of beginning.

TOGETHER WITH the joint right and privilege together with others of using for the purpose of an alley and driveway the following described real property:

Commencing at a point on the South line of Block 7 of and in the town (now city) of Hillsboro, in the County of Washington and State of Oregon, which point is 99 feet East of the Southwest corner of said Block 7 and running thence North 198 feet; thence East 198 feet; thence South 198 feet; thence West 10 feet; thence North 188 feet; thence West 178 feet; thence South 188 feet; thence West 10 feet to the place of beginning.

Exhibit A, page 7

~~10~~ 9 9

Commencing at the Northwest corner of Lot 3, in Block 7, in the town of Hillsboro, running thence South 198 feet, more or less, to the Southwest corner of said Lot 3 in said Block 7, above named thence East along the South line of said lot numbered 3 in said Block 7 above named 66 feet, thence North parallel with the West line of said Lot 3, in said Block 7 above named 198 feet, more or less, to the South line of Main Street in said City of Hillsboro, County of Washington and State of Oregon, thence West 66 feet to the place of beginning.

Exhibit A, page 8

10

10

H

[REDACTED]

Lot 121, TONGUE'S ADDITION (unrecorded), in the County of Washington and State of Oregon.

Exhibit A, page 9

12

11 11

[REDACTED]

A portion of Lots 4 and 5, Block 7, in the City of Hillsboro, County of Washington and State of Oregon, described as follows:

Beginning at a point on the East line of said Lot 4, North 25 feet from the Southeast corner thereof; thence West parallel to the South line of said lot, 99 feet to the West line thereof; thence South along the West line of Lots 4 and 5, 45 feet; thence East parallel to the South line of Lot 4, 99 feet to the East line of Lot 5; thence North along the East line of Lots 4 and 5, 45 feet to the point of beginning.

Exhibit A, page 10

13

12

12

Parcel 1:

Lot 6, Block 10, PATTISON AND MORGAN'S FIRST ADDITION TO HILLSBORO, in the County of Washington and State of Oregon.

Parcel 2:

A portion of Block 22, HILLSBORO, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the North line of Lot, Block 22, HILLSBORO, which is 120.0 feet East of the Northwest corner of said block; thence East 85.0 feet; thence South 198.0 feet, more or less, to the North line of tract conveyed to John W. Gardner and Hazel Gardner by Deed recorded in Book 155, Page 290, Deed Records of Washington County, Oregon; thence West to the Northwest corner of said Gardner Tract; thence South to the South line of said Lot 2; thence West to the East line of tract conveyed to Elmer Barber by Deed recorded in Book 214, Page 385, said Deed Records; thence North 1.00 foot, more or less, to the Northeast corner of said Barber Tract; thence West 24.78 feet to the Northwest corner of said Barber Tract; thence South 1.00 foot, more or less to said South line of Lot 2; thence West to the Southeast corner of tract conveyed to A. O. Pitman, et al, by Deed recorded in Book 197, Page 246, Deed Records, and thence North 198.0 feet to the place of beginning.

Parcel 3:

Beginning at a point on the West line of the Wm. Lockerman Donation Land Claim No. 45, in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the Southerly bank of State H'ghway; thence North 77°08' East along said property line, 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point in the ditch; thence South 31°52' East, 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West, along the Northerly property line of a roadway, 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0°44' East, 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe, South 0°44' East 21.1 feet to the true point of beginning; all in the County of Washington and State of Oregon.

Parcel 4:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77°08' East, a distance of 166.1 feet from the intersection of West line of the William Lockerman D.L.C. No. 45 and the South line of said Canyon Road, which is the true point of beginning of the area to be described; thence North 77°08' East along said South line of Canyon Road, a distance of 153.1 feet; thence South 12°52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, Page 419, recorded February 7, 1955, a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57°05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31°51' West, a distance of 141.2 feet to the true point of beginning.

Exhibit A, page 11

13 13

6432

WARRANTY DEED

309

6432

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

Done by order of the Grantor's Board of Directors, with its corporate seal attached, this 17th day of July, 1967.



W. T. VIGLITT, INC.
By [Signature] President
By [Signature] Secretary

STATE OF OREGON)
County of Multnomah) ss July 24th 1967.

Personally appeared W. T. Viglitt Jr. and Dorothy Wagner, who being sworn, each for himself and not one for the other, stated that the former is the President, and that the latter is the Secretary of Grantor corporation and that the seal affixed hereto is its seal and that this deed was voluntarily signed and sealed in behalf of the corporation by authority of its Board of Directors.

Before me: [Signature]
Notary Public for Oregon
My commission expires 4/24/70



STATE OF OREGON
County of Multnomah
INDEXED
I, Harold J. [Signature], Secretary of Health and Division of State Records, do hereby certify that the within instrument of writing has been recorded and indexed in the Public Office of said County.
Witness my hand and seal of office.
Harold J. [Signature]
AUG 31 3 14 PM '67

2-Deed

6432
AUG 31 1967

BOOK 657 PAGE 424

1992

2461

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, that ROBERT F. WEIL, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto ELAINE J. WEIL, hereinafter called Grantee, and unto Grantee's heirs, successors and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Washington, State of Oregon, described in Exhibit "A" attached hereto, and by this reference incorporated herein and made a part hereof.

The purpose of this Deed is to extinguish the tenancy by the entirety heretofore existing and to vest sole ownership in the Grantee herein.

To Have and to Hold the same unto the said Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$10.00.

In construing this Deed the singular includes the plural as the circumstances may require.

Witness Grantor's hand this 16th day of December, 1969.

Robert F. Weil
ROBERT F. WEIL

STATE OF OREGON)
) December 16, 1969
County of Multnomah)

Personally appeared the above named ROBERT F. WEIL and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Lillian Robinson
Notary Public for Oregon
My Commission Expires: 11/28/71



EX 766 ME 619

COPA

132

Arbs 17, 20, 21, 23, 20, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

PARCEL 1:

2461

The East 32 feet of Lot 3 of Block 7 in the town (now City) of Hillsboro, as shown upon the duly recorded plat thereof, together with all rights vested by virtue of that agreement recorded in Book 163, page 160, Deed Records. Also all rights conveyed to Emilia Mohr and Jacob Mohr, her former husband, by conveyance recorded in Book 250, page 343, Deed Records, and subject to all rights conveyed to Cora Wheeler and Hillsboro Commercial Bank by conveyance recorded in Book 162, page 69, Deed Records; and easement conveyed to West Coast Telephone Company by conveyance recorded in Book 189, page 485, Deed Records.

PARCEL 2:

The West 56 feet of Lot 2 of Block 7 of the town (now City) of Hillsboro, Oregon, as shown by the duly recorded map and plat thereof, more particularly described as follows, to-wit: Beginning at the Northwest corner of said Lot 2 of Block 7, and running thence South along the West line of said Lot 2, 198 feet to the Southwest corner thereof; thence East along the South boundary of said Lot 2, 56 feet; thence North parallel to the West boundary of said Lot 2, 198 feet, more or less, to the North line of said Lot 2; thence West along the North line of said Lot 2 of Block 7, 56 feet to the place of beginning; Together with the joint right and privilege together with others of using for the purpose of an alley and driveway the following described real property: Commencing at a point on the South line of Block 7 of and in the town (now City) of Hillsboro, Washington County, Oregon, which point is 99 feet East of the Southwest corner of said Block 7 and running thence North 190 feet; thence East 190 feet; thence South 190 feet; thence West 10 feet; thence North 189 feet; thence West 170 feet; thence South 188 feet; thence West 10 feet to the place of beginning.

PARCEL 3:

Beginning at a point on the West line of the Wm. Lockerman D.L.C. No. 45 in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the Southerly line of State Highway; thence North 77°08' East along said property line 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point in the ditch; thence South 31°52' East 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West along the northerly property line of a roadway 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0°44' East 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe South 0°44' East 21.1 feet to the true point of beginning, all in the County of Washington and State of Oregon.

151-15
132

} 1200
SW Canyon

EXHIBIT "A" BOOK 766 PAGE 620

PARCEL 4:

2461

Lot 56

128

Beginning at the S.E. corner of Lot 56 in Steels Addition to Beaverton as shown on the duly recorded plat thereof, being a point in the center of Tualatin Valley Highway, running thence S. 70 deg. 19' W. 104.3 feet to a point in the center of said Highway; thence E. 17 deg. 37' W. 345.6 feet thence North 191.6 feet; thence East 202.8 feet to the East line of said lot 56, thence South 487.9 feet to the place of beginning, containing 2.00 acres.

PARCEL 5:

Lot 56

127

Beginning in the center of the Canyon Highway 104.3 feet S. 70° 19' W. from the S. E. corner of Lot 56, in Steels Addition to Beaverton as the same appears on the duly recorded plat thereof from which an iron pipe bears N. 17° 37' West 30 feet; running thence in the center of said Highway S. 70° 19' West 77.2 feet to a point in the center of said Highway 30 feet S. 24° E. from an iron pipe; thence N. 24° 00' West 79.0 feet to an iron pipe; thence North 283.2 feet to an iron pipe; thence S. 17° 37' E. 345.6 feet to the place of beginning, containing .4011 of an acre.

PARCEL 6:

Lot 56

120

A tract of land in Lot 56, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, described as follows: Beginning 234.8 feet South, 88° 56' West and 502.1 feet South of Northeast corner of Lot 56, in STEEL'S ADDITION TO BEAVERTON, a plat of record, said beginning being on West line of roadway 32 feet in width, conveyed to the public for road purposes; running thence along the West line of said roadway, South 371.1 feet more or less to center of Main Ditch; thence along center of said ditch North 20° 25' West 218.8 feet to an angle in said ditch; thence along the center of said ditch North 60° 20' West 211.0 feet, more or less, to West line of said Lot 56; thence along West line of said Lot 56, North 0° 15' West 71.7 feet; thence East 257.8 feet to the point of beginning.

PARCEL 7:

Lot 56

121

Beginning 234.8 feet South 88° 56' West and 333.8 feet South of the Northeast corner of Lot 56 in STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, the said beginning point being on the West line of a roadway 32 feet in width, deeded to the public for road purposes; running thence South along the West line of said roadway 168.3 feet; thence West 257.8 feet to the west line of said Lot 56; thence along the West line of said Lot 56, North 0° 15' West 168.3 feet; thence East 258.8 feet to the place of beginning.

PARCEL 8:

Lot 56

122

Beginning at the Northwest corner of Lot 56, STEEL'S ADDITION TO BEAVERTON, from which an iron pipe bears South 0° 15' East 20 feet; thence running North 88° 56' East along the North line of said Lot 56, 130.5 feet to a point 20 feet North of an iron pipe; thence South 333.8 feet to an iron pipe; thence West 128.5 feet to an iron pipe on the West line of said Lot 56; thence North 0° 15' West 333.8 feet to the point of beginning, Washington County, State of Oregon.

EXX 766 ME621

PARCEL 2:

2461

Beginning on the north line of Lot 56 in Steel's Addition to Beaverton, Oregon, as the same appears on the recorded plat thereof, at a point 234.8 feet south 88° 56' West from the N.E. corner of Lot 56, an iron pipe bears south 20 feet; thence thence south 333.8 feet to an iron pipe; thence west 130.5 feet to an iron pipe; thence north 333.8 feet to the north line of said Lot 56, an iron bar bears south 20 feet; thence north 88° 56' east 130.5 feet to the place of beginning.

Lot 56

[23]

PARCEL 10:

Tract of land in Lot 56 of Steel's Addition to Beaverton, Washington County, Oregon, described as follows: Beginning at a point on the Westerly line of said Lot 56, and in the main ditch and South 0° 15' East 573.8 feet from the Northwest corner of Lot 56, and going thence South 0° 18' East 11.54 feet to an iron pipe on the Southerly bank of the ditch; thence continuing South 0° 18' East 400.36 feet to an iron pipe on the proposed Northerly line of the State Highway; thence continuing South 0° 18' East 53.10 feet to a point on center line; thence on center line North 70° 00' East 85.97 feet to a point; thence North 0° 18' West 53.10 feet to an iron pipe on said proposed Northerly highway line; thence continuing North 0° 18' West 100.0 feet to an iron pipe; thence North 70° 00' East 50.0 feet to an iron pipe; thence North 0° 18' West 180.72 feet to an iron pipe on the Southerly line of aforesaid main ditch; thence continuing North 0° 18' West 11.54 feet to a point in the ditch; thence following said ditch North 60° 20' West 147.77 feet to the true point of beginning.

Lot 56

[19]

PARCEL 11:

A tract of land in Lot 56 of STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, beginning at a point in the main ditch which is South 0° 15' East 573.8 feet and South 60° 20' East 147.77 feet from the Northwest corner of said Lot 56, and going thence South 0° 18' East 11.54 feet to an iron pipe on the Southerly bank of the ditch; thence continuing South 0° 18' East 280.72 feet to an iron pipe on the proposed Northerly line of the 100 foot wide highway; thence continuing South 0° 18' East 53.10 feet to a point on the center line; thence on the center line North 70° 06' East 154.23 feet to a point on the culvert and above the afore-mentioned ditch; thence in the ditch North 20° 25' West 50 feet to a point on the proposed Northerly line of the highway and which point bears North 70° 06' East 7.67 feet from an iron pipe; thence from said point in the ditch and following the same North 20° 25' West 233.20 feet to an angle point which bears North 29° 40' East 10 feet from an iron pipe; thence following the ditch North 60° 20' West 55.25 feet to the true point of beginning: EXCEPTION THEREFROM the following described property: Beginning at a point on the center line of the said highway, said point being South 0° 15' East 573.80 feet and South 0° 18' East 465.0 feet and North 70° 06' East 136.0 feet from the Northwest corner of said Lot 56 and running thence North 0° 18' West 53.10 feet to an iron pipe set in the Northwesterly right of way line of said highway, said iron pipe marking the true point of beginning of this description; thence North 0° 18'

Lot 56

[24]

EX 766 ME 622

PARCEL 11 continued: 2461

West 45.61 feet to an iron rod; thence South 19° 54' East 42.97 feet to an iron rod set in the Northwestly right of way line of said highway; thence following said right of way line South 70° 06' West 15.30 feet to the true point of beginning.

PARCEL 12:

A tract of land in Lot 56, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, beginning at a point on the centerline of the State Highway, said point being South 0° 15' East 573.80 feet and South 0° 18' East 465.0 feet and North 70° 06' East 136 feet from the Northwest corner of said Lot 56, and running thence North 0° 18' West 98.71 feet to an iron rod, said iron rod marking the true point of beginning of this description; thence continuing North 0° 18' West 54.39 feet to an iron pipe; thence South 70° 06' West 18.25 feet to an iron rod; thence South 19° 54' East 51.24 feet to the true point of beginning, together with that portion of the road abutting Parcel 11 on the East as vacated December 5, 1962, in Book 476, page 406, which inured to said property upon vacation thereof.

Together with the use for driveway purposes a strip 10 feet in width and 94.21 feet in length over and across certain real property located on the West of the herein described property for use as a driveway, as provided in Deed Book 378, page 627, Deed Records, Washington County, Oregon.

PARCEL 13:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77° 08' East a distance of 166.1 feet from the intersection of West line of the William Lockerman D.L.C. #45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described. Thence North 77° 08' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12° 52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, page 419, recorded February 7, 1955; a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57° 05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31° 51' West a distance of 141.2 feet to the true point of beginning.

PARCEL 14:

The South half of Lot 1 and the North 49 feet of Lot 8, Block 7, HILLSBORO, City of Hillsboro, Washington County, Oregon.

Lot 56

47

Lot 52

1061

11900 SW Canyon

INDEXED

NOV 766 REC 623

STATE OF OREGON
County of Washington
I, _____
County Clerk
do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of said County.
Witness my hand and seal of office
this _____ day of _____
19____

County Clerk

NOV 10 9 18 AM '63

2462
BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS that ELAINE J. WEIL, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto ROBERT F. WEIL, hereinafter called Grantee, and unto Grantee's heirs, successors and assigns an undivided one-half interest in all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Washington, State of Oregon, described in Exhibit "A" attached hereto, and by this reference incorporated herein and made a part hereof.

The purpose of this Deed is to convey an undivided one-half interest to the Grantee as tenant in common with the Grantor.

To Have and to Hold the same unto the said Grantee and Grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$10.00.

In construing this Deed the singular includes the plural as the circumstances may require.

Witness Grantor's hand this 16th day of December, 1969.

Elaine J. Weil
ELAINE J. WEIL

STATE OF OREGON)
) ss.
County of Multnomah)

December 16, 1969

Personally appeared the above named ELAINE J. WEIL and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

William Robinson
Notary Public for Oregon
My Commission Expires: 11/12/71



NOT 766 REC 624

COPA
132

copy of lot 58, 'Stables' add.
Apt 106,

2462

PARCEL 1:

The East 33 feet of Lot 1 of Block 7 in the town (now City) of Hillsboro, as shown upon the duly recorded plat thereof, together with all rights vested by virtue of that agreement recorded in Book 163, page 160, Deed Records. Also all rights conveyed to Emilie Mohr and Jacob Mohr, her former husband, by conveyance recorded in Book 250, page 343, Deed Records, and subject to all rights conveyed to Cora Wheeler and Hillsboro Commercial Bank by conveyance recorded in Book 162, page 59, Deed Records; and easement conveyed to West Coast Telephone Company by conveyance recorded in Book 189, page 485, Deed Records.

PARCEL 2:

The West 56 feet of Lot 2 of Block 7 of the town (now City) of Hillsboro, Oregon, as shown by the duly recorded map and plat thereof, more particularly described as follows, to-wit: Beginning at the Northwest corner of said Lot 2 of Block 7, and running thence South along the West line of said Lot 2, 198 feet to the Southwest corner thereof; thence East along the South boundary of said Lot 2, 56 feet; thence North parallel to the West boundary of said Lot 2, 198 feet, more or less, to the North line of said Lot 2; thence West along the North line of said Lot 2 of Block 7, 56 feet to the place of beginning; Together with the joint right and privilege together with others of using for the purpose of an alley and driveway the following described real property: Commencing at a point on the South line of Block 7 of and in the town (now City) of Hillsboro, Washington County, Oregon, which point is 99 feet East of the Southwest corner of said block 7 and running thence North 198 feet; thence East 198 feet; thence South 198 feet; thence West 10 feet; thence North 188 feet; thence West 178 feet; thence South 188 feet; thence West 10 feet to the place of beginning.

PARCEL 3:

Beginning at a point on the West line of the Wm. Lockerman D.L.C. No. 45 in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the southerly line of State Highway; thence North 77°08' East along said property line 241.35 feet to an iron pipe on the westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point in the ditch; thence South 31°52' East 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West along the northerly property line of a roadway 272.14 feet to an iron pipe on the westerly line of the Lockerman claim; said pipe being also South 0°44' East 275.0 feet from the center line of the State Highway at its point of intersection with the westerly Lockerman claim line; thence from said iron pipe South 0°44' East 21.1 feet to the true point of beginning, all in the County of Washington and State of Oregon.

131-15
132

12000
SW Canyon

EXHIBIT "A" 621 766 43625

5148

2462

PARCEL 4:

Beginning at the S.E. corner of Lot 56 in Steele Addition to Beaverton as shown on the duly recorded plat thereof, being a point in the center of Tualatin Valley Highway, running thence S. 70 deg. 19' W. 104.3 feet to a point in the center of said Highway; thence N. 17 deg. 37' W. 345.6 feet thence North 193.6 feet; thence East 202.8 feet to the East line of said Lot 56, thence South 487.3 feet to the place of beginning, containing 2.00 acres.

Lot 56
21

PARCEL 5:

Beginning in the center of the Canyon Highway 104.3 feet S. 70° 19' W. from the S. E. corner of Lot 56, in Steele Addition to Beaverton as the same appears on the duly recorded plat thereof from which an iron pipe bears N. 17° 37' West 30 feet; running thence in the center of said Highway S. 70° 19' West 77.2 feet to a point in the center of said Highway 30 feet S. 24° E. from an iron pipe; thence N. 24° 00' West 79.0 feet to an iron pipe; thence North 283.2 feet to an iron pipe; thence S. 17° 37' E. 345.6 feet to the place of beginning, containing .4011 of an acre.

Lot 56
21

PARCEL 6:

A tract of land in Lot 56, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, described as follows: Beginning 234.8 feet South, 88° 56' West and 502.1 feet South of Northeast corner of Lot 56, in STEEL'S ADDITION TO BEAVERTON, a plat of record, said beginning being on West line of roadway 32 feet in width, conveyed to the public for road purposes; running thence along the West line of said roadway, South 371.1 feet more or less to center of Main Ditch; thence along center of said ditch North 20° 25' West 218.0 feet to an angle in said ditch; thence along the center of said ditch North 60° 20' West 211.0 feet, more or less, to West line of said Lot 56; thence along West line of said Lot 56, North 0° 15' West 71.7 feet; thence East 257.8 feet to the point of beginning.

Lot 56
21

PARCEL 7:

Beginning 234.8 feet South 88° 56' West and 333.8 feet South of the Northeast corner of Lot 56 in STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, the said beginning point being on the West line of a roadway 32 feet in width, deeded to the public for road purposes; running thence South along the West line of said roadway 168.3 feet; thence West 257.8 feet to the west line of said Lot 56; thence along the West line of said Lot 56, North 0° 15' West 168.3 feet; thence East 258.8 feet to the place of beginning.

Lot 56
21

PARCEL 8:

Beginning at the Northwest corner of Lot 56, STEEL'S ADDITION TO BEAVERTON, from which an iron pipe bears South 0° 15' East 20 feet; thence running North 88° 56' East along the North line of said Lot 56, 130.5 feet to a point 20 feet North of an iron pipe; thence South 333.8 feet to an iron pipe; thence West 128.5 feet to an iron pipe on the West line of said Lot 56; thence North 0° 15' West 333.8 feet to the point of beginning, Washington County, State of Oregon.

Lot 56
22

5785

2462

PARCEL 2:

Beginning on the north line of Lot 56 in Steel's Addition to Beaverton, Oregon, as the same appears on the recorded plat thereof, at a point 234.8 feet south 88° 56' west from the N.E. corner of

Lot 56, an iron pipe bears south 20 feet; running thence south 333.8 feet to an iron pipe; thence west 130.5 feet to an iron pipe; thence north 333.8 feet to the north line of said Lot 56, an iron bar bears south 20 feet; thence north 88° 56' east 130.5 feet to the place of beginning.

LOT 56

23

PARCEL 10:

Tract of land in Lot 56 of Steel's Addition to Beaverton, Washington County, Oregon, described as follows: Beginning at a point on the Westerly line of said Lot 56, and in the main ditch and South 0° 15' East 573.8 feet from the Northwest corner of Lot 56, and going thence South 0° 18' East 11.54 feet to an iron pipe on the Southerly bank of the ditch; thence continuing South 0° 18' East 400.36 feet to an iron pipe on the proposed Northerly line of the State Highway; thence continuing South 0° 18' East 53.10 feet to a point on center line; thence on center line North 70° 00' East 85.97 feet to a point;

thence North 0° 18' West 53.10 feet to an iron pipe on said proposed Northerly highway line; thence continuing North 0° 18' West 100.0 feet to an iron pipe; thence North 70° 00' East 50.0 feet to an iron pipe; thence North 0° 18' West 180.72 feet to an iron pipe on the Southerly line of aforesaid main ditch; thence continuing North 0° 18' West 11.54 feet to a point in the ditch; thence following said ditch North 60° 20' West 147.77 feet to the true point of beginning.

LOT 56

19

PARCEL 11:

A tract of land in Lot 56 of STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, beginning at a point in the main ditch which is South 0° 15' East 573.8 feet and South 60° 20' East 147.77 feet from the Northwest corner of said Lot 56, and going thence South 0° 18' East 11.54 feet to an iron pipe on the Southerly bank of the ditch; thence continuing South 0° 18' East 280.72 feet to an iron pipe on the proposed Northerly line of the 100 foot wide highway; thence continuing South 0° 18' East 53.10 feet to a point on the center line; thence on the centerline North 70° 06' East 154.23 feet to a point on the culvert and above the afore-mentioned ditch; thence in the ditch North 20° 25' West 50 feet to a point on the proposed Northerly line of the highway and which point bears North 70° 06' East 7.67 feet from an iron pipe; thence from said point in the ditch and following the same North 20° 25' West 233.20 feet to an angle point which bears North 29° 40' East 10 feet from an iron pipe; thence following the ditch North 60° 20' West 55.25 feet to the true point of beginning; EXCEPTION THEREFROM the following described property: Beginning at a point on the center line of the said highway, said point being South 0° 15' East 573.80 feet and South 0° 18' East 465.0 feet and North 70° 06' East 136.0 feet from the Northwest corner of said Lot 56 and running thence North 0° 18' West 53.10 feet to an iron pipe set in the Northwesterly right of way line of said highway, said iron pipe marking the true point of beginning of this description; thence North 0° 18'

LOT 56

24

3485

PARCEL 11 continued: 2462

West 45.61 feet to an iron rod; thence South 19° 54' East 42.97 feet to an iron rod set in the Northwestly right of way line of said highway; thence following said right of way line South 70° 06' West 15.30 feet to the true point of beginning.

PARCEL 12:

A tract of land in Lot 56, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, beginning at a point on the centerline of the State Highway, said point being South 0° 15' East 573.80 feet and South 0° 18' East 465.0 feet and North 70° 06' East 136 feet from the Northwest corner of said Lot 56, and running thence North 0° 18' West 98.71 feet to an iron rod, said iron rod marking the true point of beginning of this description; thence continuing North 0° 18' West 54.39 feet to an iron pipe; thence South 70° 06' West 18.25 feet to an iron rod; thence South 19° 54' East 51.24 feet to the true point of beginning, together with that portion of the road abutting Parcel 11 on the East as vacated December 5, 1962, in Book 476, page 406, which inured to said property upon vacation thereof.

Together with the use for driveway purposes a strip 10 feet in width and 94.21 feet in length over and across certain real property located on the West of the herein described property for use as a driveway, as provided in Deed Book 378, page 627, Deed Records, Washington County, Oregon.

PARCEL 13:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, Washington County, Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77° 09' East a distance of 166.1 feet from the intersection of West line of the William Lockerman D.L.C. #45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described. Thence North 77° 09' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12° 52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, page 419, recorded February 7, 1955; a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57° 05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31° 51' West a distance of 141.2 feet to the true point of beginning.

PARCEL 14:

The South half of Lot 1 and the North 49 feet of Lot 8, Block 7, HILLSBORO, City of Hillsboro, Washington County, Oregon.

Lot 56
47

LOT 52
106

11900 SW Canyon

INDEXED

MAR 768 MAR 628

CLERK
of WASHINGTON
County
The County Clerk of Washington County, Oregon, has received the foregoing description of land and has caused the same to be recorded in Book 476, page 406, of the Deed Records of this County, Oregon, on this 14th day of March, 1963.
ROBERT THOMPSON, Deed Clerk of Washington County, Oregon.
D. H. Kanger
MAR 14 9 14 AM '63

3
7
2
10

TITLE INSURANCE COMPANY OF OREGON

78-7228

BARGAIN AND SALE DEED

335294-0

ROBERT P. WEIL and ELAINE J. WEIL, Grantors, hereby convey to WEIL PROPERTIES, a partnership consisting of Robert P. Weil and Elaine J. Weil, all that real property situated in Washington County, Oregon, more particularly described in Exhibit A attached hereto and by this reference incorporated herein.

There is no consideration for this transfer.

January 3, 1978.

Robert P. Weil
ROBERT P. WEIL

Elaine J. Weil
ELAINE J. WEIL

STATE OF OREGON)
County of Multnomah) ss.

On this 3rd day of January, 1978, personally appeared the above named ROBERT P. WEIL and ELAINE J. WEIL, and acknowledged before me that they signed the foregoing instrument as their voluntary act and deed.

Before me:

Kathleen C. Michael
Notary Public for Oregon
My commission expires: 12-4-81

Future tax statements to:
Weil Properties
12000 S. W. Canyon Rd.
Beaverton, Oregon 97005

0274

Parcel 1: The South 149 feet of Lot 8, Block 7, Hillsboro, Washington County, Oregon.

Parcel 2: The South half of Lot 1 and the North 49 feet of Lot 8, Block 7, Hillsboro, Washington County, Oregon.

Parcel 3: The East 11 feet of Lot 3 of Block 7 in the town (now City) of Hillsboro, as shown upon the duly recorded plat thereof, together with all rights vested by virtue of that instrument recorded in Book 161, page 163, Deed Records. Also all rights conveyed to Emilie Mohr and Jacob Mohr, her former husband, by conveyance recorded in Book 250, page 343, Deed Records, and subject to all rights conveyed to Cora Wheeler and Hillsboro Commercial Bank by conveyance recorded in Book 161, page 60, Deed Records, and easement conveyed to West Coast Telephone Company by conveyance recorded in Book 180, page 485, Deed Records.

Parcel 4: The West 56 feet of Lot 2 of Block 7 of the town (now City) of Hillsboro, Oregon, as shown by the duly recorded map and plat thereof, more particularly described as follows, to-wit: Beginning at the Northwest corner of said Lot 2 of Block 7, and running thence South along the West line of said Lot 2, 198 feet to the Southwest corner thereof; thence East along the South boundary of said Lot 2, 56 feet; thence North parallel to the West boundary of said Lot 2, 198 feet, more or less, to the North line of said Lot 2; thence West along the North line of said Lot 2 of Block 7, 56 feet to the place of beginning; together with the joint right and privilege together with others of using for the purpose of an alley and driveway the following described real property: Commencing at a point on the South line of block 7 of and in the town (now City) of Hillsboro, Washington County, Oregon, which point is 29 feet East of the Southwest corner of said Block 7 and running thence North 128 feet; thence East 148 feet; thence South 128 feet; thence West 12 feet; thence North 188 feet; thence West 178 feet; thence South 188 feet; thence West 12 feet to the place of beginning.

Parcel 5: Commencing at the Northwest corner of Lot 3, in Block 7, in the town of Hillsboro, running thence South 198 feet, more or less, to the Southwest corner of said Lot 3 in said block 7 above named thence East along the Southline of said Lot numbered 3 in said Block 7 above named 66 feet; thence North parallel with the West line of said Lot 3, in said Block 7 above named 198 feet; more or less to the South line of Main Street in said City of Hillsboro, Washington County, Oregon, thence West 66 feet to the place of beginning.
Subject to: Rights of the public in and to any portion of the herein described premises lying within the boundaries of roads or highways.

EXHIBIT A

Parcel 6: A portion of Block 22, HILLSBORO, County of Washington, State of Oregon, described as follows:

Beginning at a point on the North line of Lot 2, Block 22, HILLSBORO, which is 220.0 feet east of the Northwest corner of said Block; thence east 85.0 feet; thence South 198.0 feet, more or less, to the North line of tract conveyed to John W. Gardner and Hazel Gardner by deed recorded in Book 153, page 290, Deed Records of Washington County, Oregon; thence west to the Northwest corner of said Gardner tract; thence South to the South line of said Lot 2; thence West to the East line of tract conveyed to Elmer Barber by deed recorded in Book 214, page 383, said deed records; thence North 1.00 foot, more or less, to the Northeast corner of said Barber tract; thence West 24.75 feet to the Northwest corner of said Barber tract; thence South 1.00 foot, more or less, to said South line of Lot 2; thence West to the Southeast corner of tract conveyed to A. O. Pitman, et al. by deed recorded in Book 197, page 266, Deed Records, and thence North 198.0 feet to the place of beginning.

Parcel 7: Beginning at a point on the West line of the Wm. Lockerman D.L.C. No. 45 in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 456.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the southerly line of State Highway; thence North 72°08' East along said property line 141.15 feet to an iron pipe on the westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point in the ditch; thence South 31°52' East 14.1 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West along the northerly property line of a roadway 272.34 feet to an iron pipe on the westerly line of the Lockerman claim; said pipe being also South 0°44' East 775.0 feet from the center line of the State Highway at its point of intersection with the westerly Lockerman claim line; thence from said iron pipe South 0°44' East 21.1 feet to the true point of beginning, all in the County of Washington and State of Oregon.

12000 SW Canyon

Parcel 8: A part of Lot 52, STEEL'S ADDITION to Beaverton, Washington County, Oregon, described as follows:

Beginning at a point on the southerly right of way of Canyon Road, which is North 77°08' East a distance of 166.1 feet from the intersection of West line of the William Lockerman D.L.C. #45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described. Thence North 77°08' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12°52' East on a line westerly of the westerly line of that tract described in lease to the Texas Company, in Book 365, page 419, recorded February 7, 1955; a distance of 94.4 feet to the northerly right of way line of Old Canyon Road; thence South 57°05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31°51' West a distance of 141.2 feet to the true point of beginning.

11900 SW Canyon

900 ft

STATE OF OREGON
County of Washington

deeds
SS

I, Roger Thomsen, Director of Records and Elections and Ex-Officio Recorder of Conveyances for said county, do hereby certify that the within instrument of writing was received and recorded in Book of records

No. _____
of said County

INDEXED

Witness my hand and seal attized,
ROGER THOMSEN, Director of Records & Elections

7228

cc
Deputy

-2-

FEB 14 3 33 PM '78

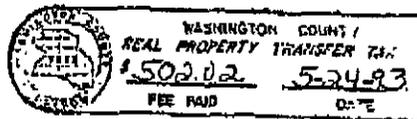
93040393
Washington County

BARGAIN AND SALE DEED

300
200
500

KNOW ALL MEN BY THESE PRESENTS, That ROBERT P. WEIL, hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto WEIL ENTERPRISES hereinafter called grantee, and unto grantee's heirs, successors, and assigns all of that certain real property with the improvements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Washington, State of Oregon, described as follows, to-wit:

See Exhibits A, B, C, D, and E attached hereto and by this reference incorporated herein.



IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ not applicable

However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration (indicate which) (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 19 day of May, 1993, if a corporate grantor, it has caused its name to be signed and its seal affixed by an officer or other person duly authorized to do so by order of its board of directors.

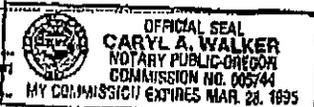
THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT THE PERSON ACQUIRING FEEL TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Robert P. Weil
Robert P. Weil

STATE OF OREGON, County of _____, ss.
This instrument was acknowledged before me on May 19, 1993,
by Robert P. Weil

This instrument was acknowledged before me on _____, 19____,
by _____
as _____
of _____

Caryl A. Walker
Caryl A. Walker
Notary Public for Oregon
My commission expires 3/28/95



Robert P. Weil
Grantor's Name and Address
Well Enterprises
Grantor's Name and Address
After recording return to (Name, Address, Zip):
Owen D. Blank
889 SW 5th Avenue, Suite 1600
Portland, OR 97204
Mail requested information send all four attachments to (Name, Address, Zip):
Well Enterprises
12001 SW Canyon Road
Beaverton, OR 97005

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON, } ss.
County of _____ }
I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/real/volume No. _____ on page _____ or as fee/file/instrument/microfilm/reception No. _____ Record of Deeds of said County.
Witness my hand and seal of County affixed.
NAME _____ TITLE _____
By _____ Deputy

1-6

EXHIBIT A

Lot 6, Block 10 Pattison and Morgan's First Addition to Hillsboro,
Washington County, Oregon

2

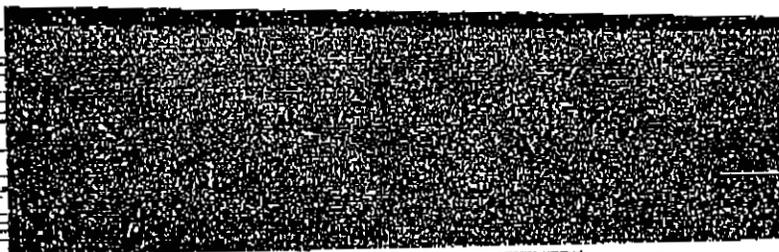


EXHIBIT B

Lot 6, Block 11, Hillsboro, Washington County, Oregon

3



EXHIBIT C

A portion of Block 22, Hillsboro, County of Washington, State of Oregon described as follows:

Beginning at a point on the North line of Lot 2, Block 22, Hillsboro, which is 120.0 feet east of the Northwest corner of said Block; thence east 85.0 feet; thence south 198.0 feet, more or less, to the North line of tract conveyed to John W. Gardner and Hazel Gardner by deed recorded in Book 155, page 290, Deed Records of Washington County, Oregon; thence west to the Northwest corner of said Gardner tract; thence south to the South line of said Lot 2; thence West to the East line of tract conveyed to Elmer Barber by deed recorded in Book 214, page 385, said deed records; thence North 1.00 foot, more or less, to the Northeast corner of said Barber tract; thence West 24.75 feet to the Northwest corner of said Barber tract; thence South 1.00 foot, more or less, to said South line of Lot 2; thence west to the Southeast corner of tract conveyed to A. O. Pitman, et al., by deed recorded in Book 197, page 246, Deed Records, and thence North 198.0 feet to the place of beginning.

4

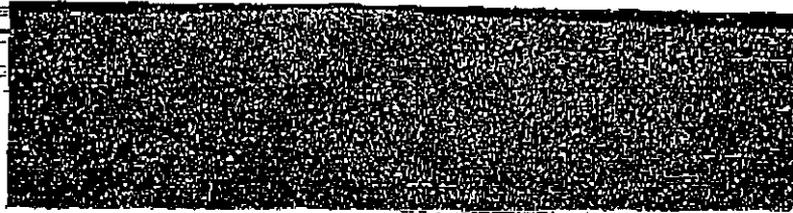


EXHIBIT D

Beginning at a point on the West line of the Wm. Lockerman Donation Land Claim No. 45, in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0° 44' West 656.7 feet from the Southwest corner thereof; and running thence South 75° 19' West 2.0 feet to a point; thence North 18° 39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18° 39' West 233.10 feet to an iron pipe on the Southerly bank of State Highway; thence North 77° 08' East along said property line, 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77° 08' East 6.0 feet to a point in the ditch; thence South 31° 52' East, 141 feet along the center line of said ditch to a point; thence South 57° 05' West 5.66 feet to an iron pipe; thence continuing South 57° 05' West, along the Northerly property line of a roadway, 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0° 44' East, 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe, South 0° 44' East 21.1 feet to the true point of beginning; all in the County of Washington and State of Oregon.

12000
SW Canyon

5

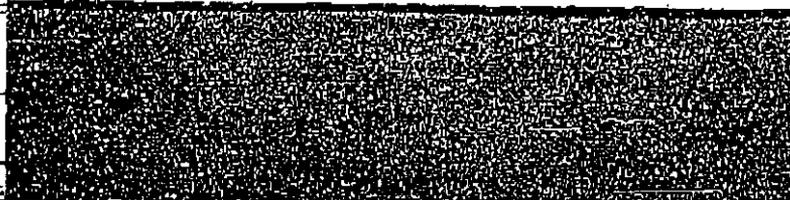


EXHIBIT E

A part of Lot 52, Steel's Addition to Beaverton, Washington County, Oregon, described as follows:

Beginning at a point on the southerly right of way of Canyon Road, which is North 77° 08' East a distance of 165.1 feet from the intersection of West line of the William Lockerman D.L.C. #45, and the South line of said Canyon Road, which is the true point of beginning of the area to be described. Thence North 77° 08' East along said South line of Canyon Road a distance of 153.1 feet; thence South 12° 52' East on a line westerly of the westerly line of that tract described in lease to the Texas Company, in Book 365, page 419, recorded February 7, 1955; a distance of 94.4 feet to the northerly right of way line of Old Canyon Road; thence South 57° 05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31° 51' West a distance of 141.2 feet to the true point of beginning.

11 900
SW Canyon

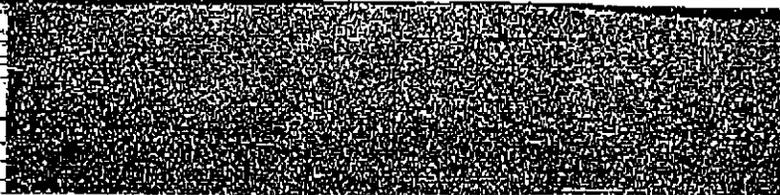
STATE OF OREGON } 53
County of Washington

Jerry R. Hanson, Director of Assessment and Taxation and Ex-Officio Recorder of Conveyances for said county, do hereby certify that the within instrument of writing was received and recorded in Book 6, Records of said county.



Doc : 93040393
Rect: 100571 560.02
05/24/1993 04:34:09PM

6



STATE OF OREGON

County of Washington

99

I, Jerry H. Horton, Director of Assessment and Taxation and Ex-Officio County Clerk for said county, do hereby certify that the within instrument of writing was received and recorded in Book of Records of said county.



Doc : 96088931

Rect: 172971

78.00

10/03/1996 02:21:35pm

1-14

071

70
8
W

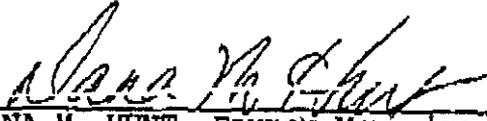
After recording, return to:

Owen D. Blank
1600 Pioneer Tower
888 S. W. Fifth Avenue
Portland, OR 97204

REAL ESTATE RECORDS NOTICE

KNOW ALL YE BY THESE PRESENTS, that effective September 11, 1996, Weil Enterprises, an Oregon partnership, was changed in form to an Oregon limited liability company, the name of which is Weil Enterprises L.L.C. Weil Enterprises L.L.C. owns the real property described on Exhibit A attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, this Notice is being executed by the individuals who previously served as managing partner of Weil Enterprises, an Oregon partnership, and who now serve as the managers of Weil Enterprises L.L.C., an Oregon limited liability company.



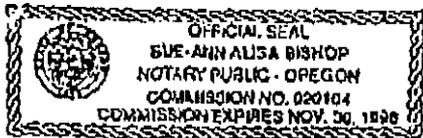
DANA M. HUNT, Former Managing Partner, Weil Enterprises; Manager, Weil Enterprises L.L.C.



SHARON L. WEIL, Former Managing Partner, Weil Enterprises; Manager, Weil Enterprises L.L.C.

STATE OF OREGON)
) ss.
County of Washington)

The foregoing instrument was acknowledged before me this 27th day of September, 1996, by Dana M. Hunt.



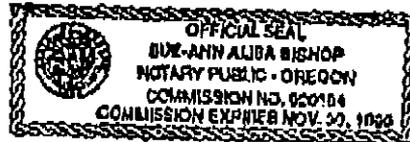
Sue Annalisa Bishop
Notary Public for Oregon
My Commission Expires: 11/30/98

STATE OF OREGON)
) SR.
County of Washington)

The foregoing instrument was acknowledged before me
this 27th day of September, 1996, by Sharon L. Weil.

Suzanne Alida Bishop
Notary Public for Oregon
My Commission Expires: 11/30/96

0148947.Wp
09/10/96 (1:46pm)



PARCEL 1:

All of Lots 12 and 13, SUNNY HILL, in the County of Washington and State of Oregon.

EXCEPTING THEREFROM that portion thereof described in Deed to Harold O. Stroberger, et ux, recorded in Book 403, Page 314, Deed Records, in the County of Washington and State of Oregon, more particularly described as follows:

A tract of land in Lot 12, SUNNY HILL, in Section 10, Township 1 South, Range 1 West, Willamette Meridian, in the County of Washington and State of Oregon, described as follows, to wit:

Beginning at an iron rod on the North line of Lot 12, SUNNY HILL, which is North 71°24' East 93.30 feet from an iron pipe at the Northwest corner of said Lot 12; thence North 71°24' East 6.30 feet to the Northeast corner of said Lot 12; thence South 0°07' West 226.75 feet to the Southeast corner of said Lot 12; thence South 71°51' West 6.01 feet along the South line of said Lot 12 to an iron rod which is North 71°51' East 93.99 feet from the Southwest corner of said Lot 12; thence North 0°07' East 226.75 feet to the place of beginning.

PARCEL 2:

All of Lot 14, SUNNY HILL, in the County of Washington and State of Oregon.

EXCEPTING THEREFROM that portion Deeded to State Farm Mutual Automobile Insurance Company, an Illinois corporation by Deed recorded August 26, 1982 as Recorder's Fee No. 82021840.

PARCEL 4:

The East half of Lot 10, SUNNY HILL, in the County of Washington and State of Oregon.

The West half of Lot 10, SUNNY HILL, in the County of Washington and State of Oregon.

AND the East one-half of Lot 11, SUNNY HILL, in the County of Washington and State of Oregon.

Exhibit A, page 2

5

075

PARCEL I:

The West one-half of Lot 11, SUNNY HILL, in the County of Washington and State of Oregon.

PARCEL II:

A tract of land in Lot 12, SUNNY HILL, in Section 10, Township 1 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at an iron rod on the North line of Lot 12, SUNNY HILL, which is North 71°24' East 93.30 feet from an iron pipe at the Northwest corner of said Lot 12; thence North 71°24' East 6.30 feet to the Northeast corner of said Lot 12; thence South 0°07' West 226.75 feet to the Southeast corner of said Lot 12; thence South 71°51' West 6.01 feet along the South line of said Lot 12 to an iron rod which is North 71°51' East 93.99 feet from the Southwest corner of said Lot 12; thence North 0°07' East 226.75 feet to the place of beginning.

Beginning at a point on the North line of Lot 2, Block 8, of HILLSBORO, a duly recorded subdivision in the County of Washington and State of Oregon, 21.4 feet East of the West line of said Lot 2, which point of beginning bears South 66.0 feet and East 196.4 feet from a brass monument at the Southeast corner of the Courthouse Square; thence from the described place of beginning, South, parallel to and 21.4 feet East of the West line of said Lot 2, a distance of 198.0 feet to a point on the South line of said lot; thence East along said South line 44.6 feet to a point; thence North parallel to and 33.0 feet West of the East line of said Lot 2, a distance of 198.0 feet to a point on the North line thereof; thence West 44.6 feet to the place of beginning.

Lots 6 and 7, Block 7, HILLSBORO, of and in the City of Hillsboro, County of Washington and State of Oregon.

EXCEPT that alley referred to in Parcel No. 4 in Deed recorded February 14, 1978, Recorder's Fee No. 78-7228.

Exhibit A, page 5

8

078

The South one-half of Lot 1 and all of Lot 8, Block 7, HILLSBORO, in the County of Washington and State of Oregon.

Exhibit A, page 6

9

079

PARCEL 3:

The East 33 feet of Lot 3 of Block 7 in the town (now city) of Hillsboro, as shown upon the duly recorded plat thereof.

TOGETHER WITH all rights vested by virtue of that agreement recorded in Book 163, Page 160, Deed Records. Also all rights conveyed to Emilie Mohr and Jacob Mohr, her former husband, by conveyance recorded in Book 250, Page 341, Deed Records, and subject to all rights conveyed to Cora Wheeler and Hillsboro Commercial Bank by conveyance recorded in Book 162, Page 69, Deed Records, and easement conveyed to West Coast Telephone Company by conveyance recorded in Book 189, Page 485, Deed Records.

PARCEL 4:

The West 56 feet of Lot 2 of Block 7 of the town (now city) of Hillsboro, Oregon, as shown by the duly recorded map and plat thereof, more particularly described as follows, to wit:

Beginning at the Northwest corner of said Lot 2 of Block 7, and running thence South along the West line of said Lot 2, 198 feet to the Southwest corner thereof; thence East along the South boundary of said Lot 2, 56 feet; thence North parallel to the West boundary of said Lot 2, 198 feet, more or less, to the North line of said Lot 2; thence West along the North line of said Lot 2 of Block 7, 56 feet to the place of beginning.

TOGETHER WITH the joint right and privilege together with others of using for the purpose of an alley and driveway the following described real property:

Commencing at a point on the South line of Block 7 of and in the town (now city) of Hillsboro, in the County of Washington and State of Oregon, which point is 99 feet East of the Southwest corner of said Block 7 and running thence North 198 feet; thence East 198 feet; thence South 198 feet; thence West 10 feet; thence North 188 feet; thence West 178 feet; thence South 188 feet; thence West 10 feet to the place of beginning.

Commencing at the Northwest corner of Lot 3, in Block 7, in the town of Hillsboro, running thence South 198 feet, more or less, to the Southwest corner of said Lot 3 in said Block 7, above named thence East along the South line of said lot numbered 3 in said Block 7 above named 66 feet; thence North parallel with the West line of said Lot 3, in said Block 7 above named 198 feet, more or less, to the South line of Main Street in said City of Hillsboro, County of Washington and State of Oregon, thence West 66 feet to the place of beginning.

Exhibit A, page 8

//

081

Lot 121, TONGUE'S ADDITION (unrecorded), in the County of Washington and State of Oregon.

Exhibit A, page 9

12

082

A portion of Lots 4 and 5, Block 7, in the City of Hillsboro, County of Washington and State of Oregon, described as follows:

Beginning at a point on the East line of said Lot 4, North 25 feet from the Southeast corner thereof; thence West parallel to the South line of said lot, 99 feet to the West line thereof; thence South along the West line of Lots 4 and 5, 45 feet; thence East parallel to the South line of Lot 4, 99 feet to the East line of Lot 5; thence North along the East line of Lots 4 and 5, 45 feet to the point of beginning.

Parcel 1:

Lot 6, Block 10, PATTISON AND MORGAN'S FIRST ADDITION TO HILLSBORO, in the County of Washington and State of Oregon.

Parcel 2:

A portion of Block 22, HILLSBORO, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the North line of Lot, Block 22, HILLSBORO, which is 120.0 feet East of the Northwest corner of said block; thence East 85.0 feet; thence South 198.0 feet, more or less, to the North line of tract conveyed to John W. Gardner and Hazel Gardner by Deed recorded in Book 155, Page 290, Deed Records of Washington County, Oregon; thence West to the Northwest corner of said Gardner Tract; thence South to the South line of said Lot 2; thence West to the East line of tract conveyed to Elmer Barber by Deed recorded in Book 214, Page 385, said Deed Records; thence North 1.00 foot, more or less, to the Northeast corner of said Barber Tract; thence West 24.75 feet to the Northwest corner of said Barber Tract; thence South 1.00 foot, more or less to said South line of Lot 2; thence West to the Southeast corner of tract conveyed to A. O. Pitman, et al, by Deed recorded in Book 197, Page 246, Deed Records, and thence North 198.0 feet to the place of beginning.

Parcel 3:

Beginning at a point on the West line of the Wm. Lockerman Donation Land Claim No. 45, in Township 1 South, Range 1 West, Willamette Meridian, which point bears North 0°44' West 656.7 feet from the Southwest corner thereof; and running thence South 75°19' West 2.0 feet to a point; thence North 18°39' West 17.78 feet to an iron pipe on the North property line of roadway; thence continuing North 18°39' West 233.10 feet to an iron pipe on the Southerly bank of State Highway; thence North 77°08' East along said property line, 241.35 feet to an iron pipe on the Westerly bank of a drainage ditch; thence continuing North 77°08' East 6.0 feet to a point in the ditch; thence South 31°52' East, 141 feet along the center line of said ditch to a point; thence South 57°05' West 5.66 feet to an iron pipe; thence continuing South 57°05' West, along the Northerly property line of a roadway, 272.34 feet to an iron pipe on the Westerly line of the Lockerman claim; said pipe being also South 0°44' East, 275.0 feet from the center line of the State Highway at its point of intersection with the Westerly Lockerman claim line; thence from said iron pipe, South 0°44' East 21.1 feet to the true point of beginning; all in the County of Washington and State of Oregon.

12000 SW Canyon

Parcel 4:

A part of Lot 52, STEEL'S ADDITION TO BEAVERTON, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the Southerly right of way of Canyon Road, which is North 77°08' East, a distance of 166.1 feet from the intersection of West line of the William Lockerman D.L.C. No. 45 and the South line of said Canyon Road, which is the true point of beginning of the area to be described; thence North 77°08' East along said South line of Canyon Road, a distance of 153.1 feet; thence South 12°52' East on a line Westerly of the Westerly line of that tract described in lease to the Texas Company, in Book 365, Page 419, recorded February 7, 1955, a distance of 94.4 feet to the Northerly right of way line of Old Canyon Road; thence South 57°05' West along said Old Canyon Road, a distance of 114.1 feet; thence North 31°51' West, a distance of 141.2 feet to the true point of beginning.

11900 SW Canyon

EXHIBIT D
BEAVERTON CODE REGULATIONS

Code Section	Title
Section 20.20.45	Regional Center - Old Town: (RC-OT)
Section 20.20.50(E)	Site Development Requirements – Regional Centers
Section 20.20.60(E)	Supplementary Regulations – Regional Centers
Section 20.20.70	Method for Calculating Minimum Residential Density
Section 20.20.85	Performance Standards
Chapter 40	Permits and Applications
Chapter 60	Special Requirements

001541\00120\697681 V001

EXHIBIT 2

INCOMPLETE LETTER



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

July 25, 2006

David Petersen
Tonkon Torp LLP
888 SW 5th Avenue
Portland OR 97204-2099

RE: Weil Measure 37 Claim

Mr. Petersen:

As you have noted in your application materials dated received June 9, 2006, you state that you are claiming compensation on the behalf of your clients, Weil Enterprises LLC, pursuant to Ballot Measure 37. You also state in your letter that your client will not process their claim in accordance with Beaverton Municipal Code Section 2.07.001 through 080 due to your assertion that sections of the City's Code are "contrary to law". This is unfortunate because this information is essential for the City to determine how it should handle this claim. As it stands now, your application is incomplete. We hope that you will reconsider and submit the following necessary information.

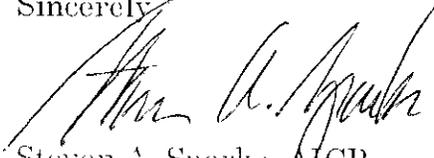
Pursuant to Section 2.07.015, the following information must be submitted to find that the application for a compensation claim is complete:

1. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal or other enforceable enactment or a copy of the regulation for which claim is submitted. Your claim references section titles of the Development Code, but there is no specific reference to any regulation.
2. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.
3. A written description addressing the approval criteria, including the impact of the specific City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the land use that was applied for and the results of that application.

4. A complete list of all interests of encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist.
5. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership, if any.
6. An appraisal of the subject property prepared by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board showing the reduction in the fair market value of the property as that reduction is defined under Measure 37 as described in the City Code.
7. Copies of all appraisals, market studies, economic feasibility studies, development schemes, or environmental assessments related to the property prepared within the 2-year period prior to submittal of the claim.
8. A copy of all enforcement actions taken by any governmental body as regards the Property;

Please submit this information by August 25, 2006. If you chose not to respond by that time, it may result in the scheduling a public hearing before the Beaverton City Council for the purposes of reviewing your claim based only on the very limited information you have provided. The Council may deny the claim because you did not submit a complete application. The lack of this crucial information will make it very difficult for the Council to determine the appropriate response to this claim. Your assistance in helping the City Council make this important decision by providing the above information would be greatly appreciated.

Sincerely,



Steven A. Sparks AICP
Development Services Manager

c Joe Grillo, AICP
Alan Rappleyea, AICP

EXHIBIT 3

8-24-06 LETTER FROM WEIL REPRESENTATIVE



1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440
503 802 2054
FAX 503 972 3754
DavidP@tonkon.com

DAVID J. PETERSEN
ADMITTED TO PRACTICE IN OREGON AND CALIFORNIA

August 24, 2006

RECEIVED
AUG 28 2006
COMMUNITY DEVELOP DEPT

VIA FACSIMILE & FIRST CLASS MAIL

Mr. Steven A. Sparks
Development Services Manager
City of Beaverton
4755 SW Griffith Drive
P. O. Box 4755
Beaverton, OR 97076

Re: Weil Enterprises, LLC Measure 37 Claim filed June 9, 2006

Dear Mr. Sparks

We are in receipt of your incompleteness notice of July 25, 2006 with respect to the above-referenced Measure 37 claim. This letter sets forth the claimant's response.

Initially, you misstate the claimant's position in your first paragraph by saying that the claimant "will not process [its] claim in accordance with Beaverton Municipal Code Section 2.07.001 through 080." The claimant does not dispute the wisdom of an ordinance to govern processing of claims under Measure 37, and has complied with the ordinance to the extent it does not exceed the City's authority under the Measure. However, several individual provisions of the City's ordinance do exceed that authority, as explained in the claim and in this letter.

Following is the claimant's response to each numbered paragraph in your incompleteness notice:

1. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property.

As explained in the claim, Measure 37 does not require the claimant to specify specific regulations to which the claim is addressed. Rather, the claimant is entitled to compensation for, or a waiver of, all land use regulations that reduce the value of the property and which were enacted after the owner or its family member acquired the property.

Consequently, the relevant fact is the date of acquisition, and compensation should be paid for, or a waiver granted of, all land use regulations affecting the value of property enacted after that date.

The claim identifies the relevant dates as December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon). The applicant seeks compensation for, or a waiver of, all land use regulations affecting the value of the property that were enacted after that date. As you can imagine, this encompasses a large majority of the land use regulations currently applicable to the property, including most if not all of the regulations of the Sections and Chapters listed in Exhibit D to the claim.

2. Evidence that the City has enforced on the subject property a regulation for which the claim has been filed.

This requirement is directly contrary to the language of Section 7 of the Measure, which states that a city "may adopt or apply procedures for the processing of claims under this act, but in no event ... shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement or delay" of a Measure 37 claim. Further, Section 5 of the Measure states that:

For claims arising from land use regulations enacted prior to the effective date of this act [December 2, 2004], written demand for compensation shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later.

The second sentence of Section 5 similarly provides that claims based on newly-enacted land use regulations may be filed within two years of enactment, without first having the regulation applied to a land use application.

Evidence that the City has enforced a regulation against the property necessarily first requires an application for a land use permit subject to the regulation. This claim, however, was filed within two years of the date of the act, and therefore under Section 5 no land use application is necessary. If the City cannot require that a land use application first be filed, it necessarily follows that it cannot require evidence of enforcement of a regulation against the property as a prerequisite to a claim.

3. A written description addressing the approval criteria, including the impact of the specific City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the land use that was applied for and the results of that application.

The claim already contains a written analysis of the approval criteria. The claimant cannot be required to analyze the impact of specific City regulations on the property, or to first make a land use application to the City and have the regulations enforced, for the reasons explained above in response to items 1 and 2.

4. A complete list of all interests or encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist.

A current title report was provided with the claim as Exhibit A. The claimant is not aware of, nor has reason to think exist, any title matters not described in the title report. The current tenants of the property are as follows:

11900 SW Canyon – Burgerville
12000 SW Canyon – Video Only, Tammy's Hobbies and Fitness Shop

5. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership, if any.

There are none.

6. An appraisal of the subject property ... showing the reduction in the fair market value of the property as that reduction is defined under Measure 37 as described in the City Code.

Measure 37 does not require an appraisal to demonstrate the reduction in fair market value caused by the challenged regulations, and in fact the vast majority of claims across the state are being filed, processed and decided without appraisals. As Oregonians In Action (the chief sponsor of the measure) notes on its website,¹ an appraisal may be necessary only if the local government intends to pay compensation, or if "there is uncertainty about whether there has been a loss in use and value of the property because of the offending regulations."

As noted above, the relevant dates for purposes of this claim are December 16, 1969 (for 11900 SW Canyon) and July 17, 1967 (for 12000 SW Canyon). It cannot seriously be disputed that the land use regulations made applicable to the property after those dates collectively have caused a substantial reduction in the property's value, compared to its value should those regulations not apply. As noted in the enclosed letter dated August 24, 2006 from a commercial real estate broker experienced with property values in this part of Beaverton, the effect of one regulation alone – building height – has a negative impact on the value of the

¹ <http://measure37.com/measure%2037/faq.htm#14>

property of between \$6 million and \$10 million, even if all the claimant sought to do was build a building twice as high as the current regulation permits. It almost goes without saying that the cumulative negative impact on the value of the property from all land use regulations within the scope of this claim is much higher.

To our knowledge there has not been a single Measure 37 claim anywhere in the state where compensation has been paid rather than a waiver granted, and it seems highly unlikely the City is going to consider payment of compensation in the neighborhood of \$6 million or higher on this claim. Thus, neither of the situations are presented that might justify the need for an appraisal here. The enclosed letter is sufficient evidence to demonstrate that the regulations in question have reduced the fair market value of the property, entitling the claimant to have its claim granted.

Finally, in light of the enclosed letter, the claimant increases the value of its claim stated in part F of its original claim to \$6 million per parcel, for a total claim of \$12 million.

7. Copies of all appraisals, market studies, economic feasibility studies, development schemes, or environmental assessments related to the property prepared within the 2-year period prior to submittal of the claim.

There are none.

8. A copy of all enforcement actions taken by any governmental body as regards the Property.

There are none.

Please process the claim based on the June 9, 2006 claim and this letter. The Measure requires a decision within 180 days of filing the claim. Consequently, we expect a decision will be made no later than December 7, 2006. Thank you for your cooperation.

Best regards,



David J. Petersen

DJP/mmd
Enclosure

cc: Ms. Sharon Weil and Ms. Dana Hunt (via facsimile)

Marcus & Millichap

Real Estate Investment Brokerage Company
of Portland

1800 S.W. First Avenue
Suite 110
Portland, OR 97201
Tel. 503 220 2333
Fax. 503 220 2155

*Offices throughout
the United States*
August 24, 2006

David J. Petersen
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

RE: Property value of 11900 and 12000 SW Canyon Road, Beaverton

Dear Mr. Petersen.

Based on my review of the regulations which limits the use of the above referenced property, I have concluded current land use regulations have a significant negative impact on the property value.

Just an example, current regulations limit the height and therefore the number of stories the current owners could build on their property. As I understand it, with the current regulations in place the owner could not build more than 3 stories of 10,000 square feet per story. The market is very likely to support, as an example, a 6 story office building above ground floor retail. Allowing for an additional 30,000-40,000 square feet of office space (3-4 stories at 10,000 square feet per story) would allow one to end up with a property that is far more valuable than what one could end up with based on current regulations. If one values (conservatively) new office space at \$200-\$250 per square feet, the ultimate loss in value is in \$6,000,000-\$10,000,000 range (\$200*30,000 sq ft on the low end to \$250*40,000 sq ft on the high end).

Please keep in mind that this analysis only considers one land use regulation -- building height -- and that other land use regulations applicable to the property, and which I understand to be the subject of the property owner's Measure 37 claim, are likely to have a similar or greater negative impact on the value of the property.

Please feel free to call me to discuss in greater detail should you have any questions.

Sincerely,


Michael Kapnick
Senior Investment Associate

EXHIBIT 4

RELEVANT ZONING REGULATIONS

EXHIBIT 4.1

46.2 **Town Center District.** TC District and uses shall comply with the following:

A. Permitted Uses:

Unless otherwise prohibited or subject to a conditional use permit, uses are permitted as follows:

1. Retail trade.
2. Services: e.g., personal; business; professional; amusement and recreation; educational (including public and private); equipment rental; and other similar services as determined by the Planning Director. When an interpretation is discretionary, notice shall be provided in accordance with Section 131.1. (ORD 3739)
3. Churches; social and fraternal organizations.
4. Parks and playgrounds.
5. Single or multi-family dwellings.
6. Eating or drinking establishments.
7. Temporary living quarters.
8. Financial institutions.

B. Conditional Uses: (Subject to Section 97)

1. Automotive services, Minor.
2. Auto, boat, motorcycle, and other motor vehicle sales; trailer or mobile home sales/rentals. (ORD 3739)
3. Parking as a principal use.
4. Transit Centers (ORD 3543)

C. Prohibited Uses:

1. Automotive services, Major.
2. Mobile home parks and subdivisions. (ORD 3739)

Town Center District - continued

D. Use Restrictions:

Uses shall be subject to the following (excludes parks and playgrounds): (ORD 3352)

1. Activity is conducted wholly within an enclosed structure, except for outside play areas for day care and school facilities, transit centers and as allowed in items 2 and 3, below. (ORD 3352)
2. Accessory open air sales/display/storage shall be permitted for horticultural and food merchandise only and shall constitute no more than 5% of the gross building floor area of any individual establishment.
3. Accessory open air sales/display/storage shall be permitted for auto, boat and other motor vehicle sales in existence at the time this ordinance is adopted. (ORD 3543).

E. District Requirements:

None established for this district.

[ORD 3975, February 1997]

Section 47 Site Development Requirements.

47.1	<u>Land Area Standards</u>	<u>NS</u>	<u>GC</u>	<u>CS</u>	<u>TC</u>	<u>CV</u>	<u>OC</u>
A.	Minimum Area of New Zoning District [ORD 3975, February 1997]	4 AC	None	None	N/A	1/4 AC	2 AC
B.	Maximum Area of Zoning Districts	12 AC	None	None	N/A	1/2 AC	None
C.	Minimum Lot Area Sq. Ft.	7,000	7,000	7,000	None	7,000	7,000
47.2	<u>Minimum Lot Dimensions</u> in feet:						
A.	Width	70	70	70	None	70	70
B.	Depth	100	100	100	None	100	100
47.3	<u>Minimum Yard Setbacks</u> in feet:						
A.	Front	20	20	20	None	20	20
B.	Side						
	1. Interior	10	10	10	None	10	10
	2. Corner lot	20	20	20	None	20	20
C.	Rear (only if next to a residential zone)	20	20	20	None	20	20
D.	Reduction to setback standards. Under conditions outlined in Section 78, applications may be made for zero side yard setbacks (ORD 3494).						

COMMERCIAL DISTRICTS - NS, GC, CS, TC, CV & OC

	<u>NS</u>	<u>GC</u>	<u>CS</u>	<u>TC</u>	<u>CV</u>	<u>OC</u>
47.4	<u>Maximum Building Height</u> in feet:					
A.	Maximum Height without a Conditional Use Permit					
	25	35	35	See B	30	30
B.	Maximum Height for Sub Areas of the CBD - (TC)					
		<u>Downtown</u>	<u>Transition</u>	<u>Uptown</u>		
		30	60	None		
47.5	<u>Supplementary Regulations:</u> All districts shall be subject to Sections 71 through 84.					
47.6	<u>Off-street parking and loading:</u> The provisions of Sections 85 through 91 shall apply.					
47.7	<u>Landscaping:</u>					
A.	Other than the TC district, not less than 15% of the total lot area shall be landscaped. Within the TC District, landscaping shall be based upon size, scale, proportion and design of the proposed development and its relationship to adjacent development.					
47.8	<u>Other Requirements:</u>					
A.	Where permitted, open air sales/display/storage of merchandise shall be setback at least 20 feet from the front property line. The area shall be designated and subject to Design Review Board approval.					
B.	<u>Motor Vehicle Access.</u> [ORD 3965, October 1996] Access points shall minimize traffic congestion and avoid directing traffic onto local streets through areas zoned R-10, R-7 or R-5 for Residential Single Family uses. If a site can access a minor collector or a street of higher functional classification, one or more additional access points to residential local streets may be allowed. Direct connections to residential local streets may be allowed within 300 feet of an intersection of the local street and a collector or arterial roadway, or where a parcel abuts only residential local streets. If an access point is proposed more than 300 feet from an intersection with a collector or arterial roadway, an exception to this 300 foot standard may be approved by the City, based on an access and					

COMMERCIAL DISTRICTS - NS, GC, CS, TC, CV & OC

circulation report prepared by a registered professional engineer. Whenever feasible, access to the public street system shall serve more than one site, taking into account at a minimum, property ownership, surrounding land uses, and physical characteristics of the area. Reciprocal access easements between adjacent lots may be required.

Sections 48-51 reserved.

EXHIBIT 4.2

20.20.50.

E. REGIONAL CENTERS [ORD 4075; November 1999]

The purpose of the following site development requirements and standards is to support existing and future businesses and development consistent with the intent and purpose of each of the three Regional Center District subareas as set forth in this ordinance [RC-TO: Section 20.20.43; RC-OT: Section 20.20.45; RC-E: Section 20.20.47]

	<u>RC-TO</u>	<u>RC-OT</u>	<u>RC-E</u>
1. Lot Area: (in square feet)			
A. Minimum	none	none	none
B. Maximum	none	none	none
2. Lot Dimensions: (in feet)			
A. Minimum	none	none	none
B. Maximum	none	none	none
3. Yard Setbacks: (in feet)			
A. Front			
1. Minimum	0'	0'	0'
2. Maximum for developments without Residential units on the ground floor:			
a. Fronting on a Major Pedestrian Route	5'	5'	20'
b. Not fronting on a Major Pedestrian Route	10'	10'	20'
3. Maximum for developments with Residential units on the ground floor.	20'	20'	20'
B. Side			
1. Minimum	none	none	none
2. Maximum	none	none	none
C. Rear			
1. Minimum	none	none	none
2. Maximum	none	none	none

Multiple Use Districts: Site Development Requirements
Regional Center (RC)

20.20.50.E.3.

- D. Modification to setback standards. Up to twenty (20) feet additional front yard setback is allowed upon a demonstration that not less than 60% of the additional setback area is used to provide enhanced pedestrian amenities such as plazas, courtyards, benches, street furniture or similar useable pedestrian space. Modifications under this provision may be allowed in addition to other variances and adjustments available under this ordinance.
- E. Maximum setbacks do not apply along street that form a boundary of the Regional Center Districts, unless specifically required and identified in Section 20.20.60. [ORD 4312; June 2004]
- F. Yards abutting single-family residential zones, when not separated by a public street, shall have a minimum setback of twenty (20) feet.
- G. No side or rear yard setbacks are required where side or rear property lines abut a railroad right-of-way or spur track.

[ORD 4332; November 2004]

	<u>RC-TO</u>	<u>RC-OT</u>	<u>RC-E</u>
4. Building Height: (in feet)			
A. Maximum height without an Adjustment or Variance, except as provided by Section 60.50.10 of this Code. [ORD 4224; August 2002]	120'	30'	80'
B. Maximum height with an Adjustment or Variance, except as provided by Section 60.50.10 of this Code. [ORD 4224; August 2002]	200'	60'	200'
C. The height of a stepped or terraced building is the maximum height of any segment of the building.			

Multiple Use Districts: Site Development Requirements
Regional Center (RC)

20.20.50.E.4.

- D. Refer to Section 60.05.15.7 for additional height requirements for structures adjacent to Major Pedestrian Routes. [ORD 4332; November 2004]
- E. The maximum height for wireless communication facilities inclusive of antennas in all regional center zoning districts shall be one hundred (100) feet. The maximum height of at-grade equipment shelters for wireless communication facilities in all multiple-use zoning districts shall be twelve (12) feet. [ORD 4248; April 2003] [ORD 4397; July 2006]

5. Floor Area:

Floor Area is dependent upon whether residential development is involved or not. Residential only development is governed by minimum and maximum densities. Whereas non-residential only development and multiple use development that includes residential floor space, is governed by minimum and maximum Floor Area Ratios. For Multiple Use development, no maximum limitation shall be placed on the number of dwelling units permitted.

	<u>RC-TO</u>	<u>RC-OT</u>	<u>RC-E</u>
A. Minimum Floor Area Ratio (FAR) for multiple use or non-residential developments.	0.60	0.35	0.30

Projects may use the Final Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4224; August 2002] [ORD 4332; November 2004]

Multiple Use Districts: Site Development Requirements
Regional Center (RC)

20.20.50.E.5.

- B. To accommodate smaller lot sizes within the RC-TO zone that existed prior to December 9, 1999, the required minimum floor area ratio for multiple use or non-residential developments may be further modified based upon lot dimensions, as follows:

		MINIMUM SITE DEPTH			
MINIMUM SITE WIDTH	SITE	0-120'	121'-139'	140'-175'	176'+
0-100'		0.1	0.2	0.25	0.25
101'-200'		0.1	0.3	0.45	0.45
201'+		0.1	0.45	0.45	0.60

[ORD 4312; June 2004]

Note: When provisions are made off-site for required parking, the permissible FAR shall be governed by 20.20.50.5.A, .B, .C, .D, and .E, regardless of site dimensions.

- | | <u>RC-TO</u> | <u>RC-OT</u> | <u>RC-E</u> |
|--|--------------|------------------------------|-------------|
| C. Maximum Floor Area Ratio (FAR) for multiple use or non-residential developments. [ORD 4259; August 2003] | Unlimited | Unlimited | 1.00 |
| D. Maximum Floor Area Ratio (FAR) for multiple use or non-residential developments with a FPUD or DRBCP. [ORD 4224; August 2002] [ORD 4259; August 2003] [ORD 4332; November 2004] | | Unlimited FAR in RC-E zones. | |
| E. Maximum Floor Area Ratio (FAR) for Multiple Use developments involving Residential Use in RC-E Zone. | | | |

The maximum permitted FAR in the RC-E Zone for a multiple-use project involving residential use shall be determined by the mix of uses and ratio thereof in accordance with the following:

Multiple Use Districts: Site Development Requirements
Regional Center (RC)

20.20.50.E.5.E

% Non-Residential Floor Area	% Residential Floor Area							
	<20	20	30	40	50	60	70	80
20								(1.7)
30							(1.6)	
40						(1.55)		
50					(1.5)			
60				(1.4)				
70			(1.3)					
80		(1.2)						
90	(1.1)							
100	(1.0)							

[ORD 4259; August 2003]

() Represents factor to be multiplied times the maximum permitted FAR for a non-residential, - or non-multiple-use development to determine permitted FAR.

	RC-TO	RC-OT	RC-E
F. Minimum residential density in residential only projects. [ORD 4259; August 2003]	20 units per acre	12 units per acre	N/A

The minimum residential density in residential only projects shall be further restricted based upon lot dimensions, as follows:

MINIMUM SITE WIDTH	MINIMUM SITE DEPTH		
	0-100'	101'-139'	140'+
0-150'	0 DU/Acre	12 DU/Acre	**
151'-200'	10 DU/Acre	24 DU/Acre	**
201'+	10 DU/Acre	**	**

** Governed by standards set forth in 5.F. and G.

Note: When provisions are made off-site for required parking, the permissible density of all lots, regardless of size, shall be governed by 20.20.50.E.5.F and G.

Multiple Use Districts: Site Development Requirements
Regional Center (RC)

20.20.50.E.5.

		<u>RC-TO</u>	<u>RC-OT</u>	<u>RC-E</u>
G.	Maximum residential density in residential only projects.	60 units per acre	40 units per acre	40 units per acre
H.	Permitted Density (Dwelling Units/Acre-Du/Ac) and (Floor Area Ratio-FAR).			
	1. <u>General.</u> Except as otherwise approved through the Final Planned Unit Development process, phased development may be proposed, so long as each phase complies with the minimum density. [ORD 4224; August 2002] [ORD 4332; November 2004]			
	2. Method of Calculating Density and Intensity (FAR). Required minimum densities and FAR shall be calculated on a net acre basis, determined as follows: Gross acreage shall be reduced by:			
	a. Unbuildable land, such as wetlands, protected or regulated natural areas under Section 60.60 (Trees and Vegetation) and 40.90 (Tree Plan), other natural resource areas, drainage areas, or drainage facilities, which is set aside in an unbuildable tract of land or dedicated to the public; and			
	b. Other lands devoted to public or private streets or street right-of-way.			
I.	Lot Consolidation			
	1. In order to discourage development on small lots at densities or intensities that might result in poorly sited and designed structures, require multiple driveways along Major Pedestrian Routes or interfere with pedestrian or vehicular movement, and to encourage consolidation of small lots, the maximum allowable FAR in Non-Residential and Multiple Use projects shall comply with the standards set forth in Section 20.20.50.E.5.E and the allowable density in residential projects with the density standards set forth in Section 20.20.50.E.5.H.			

20.20.50.E.5.I.

2. A twenty (20) percent increase in the allowable FAR or residential density shall be permitted when a corner lot is located on a Major Pedestrian Route, is a lot of record as of December 9, 1999, and is consolidated with one or more adjoining lots to form a new lot with a minimum frontage of 150 feet on a Major Pedestrian Route, provided that where the newly consolidated lot adjoins a mid-block lot fronting on a Major Pedestrian Route and with a fronting lot width of less than 150 feet, a vehicular easement shall be granted to an adjoining mid-block lot to eliminate the need for vehicular access to the mid-block parcel from the Major Pedestrian Route.

J. Planned Unit Development (PUD) Bonus.

A Floor Area Ratio bonus of 0.2 shall be granted to a project submitted as a Final Planned Unit Development (Development Code Section 40.15.15.6). To be eligible for the FAR bonus, a project shall:

1. Have a minimum site area of one and one half acres or comprise a consolidation of four or more lots of record; and
 2. Provide a total area equal to at least twenty percent of the site devoted to outdoor common area(s). This area may include public arcades, decks, or roof surfaces, provided such areas are easily accessible to the public and building tenants, and appropriately landscaped for such uses.
- K. For developments or phases that involve multiple buildings, the floor area ratio may be averaged by totaling the square footage of the buildings divided by the square footage of the net acreage of land within such development or phase.
- L. Separation of buildings is subject to the State Building Code and the Uniform Fire Code. [ORD 4312; June 2004]

20.20.45. Regional Center - Old Town District: RC-OT

1. **Purpose.** The intent for the Regional Center - Old Town (RC-OT) District, which encompasses the City of Beaverton's original downtown, is to maintain the mix of uses, scale of development, and appearance that are characteristic of this historically significant area while supporting existing and future businesses in moving toward and achieving the vision of a Regional Center.
2. **District Standards and Uses.** The Regional Center - Old Town District and uses shall comply with the following:

A. Permitted Uses

Unless otherwise prohibited or subject to a conditional use, the following uses are permitted:

1. Administrative Facilities
2. Automotive Services, Minor
3. Commercial Amusements (subject to Use Restriction a. See also Section 60.50.25.1. and 5.)
4. Commercial Schools
5. Passenger rail tracks and related facilities, such as transit stops, submitted for development after May 21, 2004 [ORD 4295; April 2004]
6. Attached Dwellings [ORD 4224; August 2002]
7. Detached Dwellings: existing [ORD 4224; August 2002]
8. Eating or Drinking Establishments (subject to Use Restriction f.)
9. Home Occupations (See also Section 40.40)
10. Hospitals (See also Section 60.50.25.4.)
11. Manufacturing (subject to Use Restrictions b. and h.)
12. Medical Clinics

20.20.45.2.A.

13. Nursery Schools, Day or Child Care Facilities (see also Section 60.50.25.8.)
14. Offices
15. Places of Worship (subject to Use Restriction b. See also Section 60.50.25.4.)
16. Recreation Facilities (subject to Use Restriction a.)
17. Research Facilities
18. Retail Trade (subject to Use Restrictions c., d., g., and h.)
19. Service (Repair other than auto repair) Businesses (subject to Use Restriction i.)
20. Service Stations
21. Social Organizations (subject to Use Restriction b.)
22. Temporary Uses (See Section 40.80)
23. Utility Transmission Lines (See also Section 60.50.25.11.)
24. Warehousing as an accessory use, not to exceed 25% of the primary use.
25. Collocation of wireless communication facilities on an existing wireless communication facility tower [ORD 4248; April 2003]
26. Installation of wireless communication facilities on streetlights, excluding streetlights on power poles, traffic signal lights, and high voltage power utility poles within public road rights-of-way [ORD 4248; April 2003]
27. Attachment or incorporation of wireless communication facilities to existing or new buildings or structures that are not exclusively used for single-family residential or multi-family residential purposes [ORD 4248; April 2003]

20.20.45.2.A.

28. Temporary wireless communication facilities structures (See also Temporary Structures-Section 40.80) [ORD 4248; April 2003]
29. Installation of one (1) replacement wireless communication facility tower on a parent parcel containing an existing tower supporting one (1) carrier for the purpose of providing collocation opportunity consistent with previous land use approvals [ORD 4248; April 2003]
30. Up to and including two (2) satellite antennas greater than two (2) meters in diameter on one (1) lot [ORD 4248; April 2003]

B. Conditional Uses: (Subject to Section 40.15 or Section 40.96 as applicable)

Unless otherwise prohibited, the following uses may be permitted subject to the approval of a Conditional Use (CU):

1. Commercial Amusements that exceed 20,000 square foot building footprint (subject to Use Restriction a. See also Section 60.50.25.1. and 5.)
2. Detached Dwellings: new [ORD 4224; August 2002]
3. Educational Institutions (See also Section 60.50.25.9.)
4. Live/Work Facilities
5. Manufacturing uses that exceed 10,000 square feet in floor area, abut a Major Pedestrian Route, or both. (Subject to Use Restrictions b. and h.)
6. Parking, as the Principal Use
7. Parks
8. Places of Worship (subject to Use Restriction b. See also Section 60.50.25.4.)
9. Planned Unit Developments

20.20.45.2.B.

10. Public Services
11. Residential Care Facilities
12. Social Organizations
13. Storage Yard (subject to Use Restriction j.)
14. Temporary Living Quarters (subject to Use Restriction k.)
15. Transit Centers
16. Utility Stations or Installations
17. Vehicle Sales, Lease or Rental (subject to Use Restriction e.)
18. Uses which include drive-in, drive-through or drive-up window facilities.
19. Construction of a wireless communication facility tower [ORD 4248; April 2003]
20. More than two (2) satellite antennas greater than two (2) meters in diameter on one (1) lot [ORD 4248; April 2003]
21. Direct-to-home satellite service having antennas greater than one (1) meter in diameter [ORD 4248; April 2003]

C. Prohibited Uses:

The following non-transit supportive uses shall not be established as new uses, nor may existing uses or structures be converted to the following uses in the Regional Center - Old Town District:

1. Automotive Services, Major
2. Bulk retail uses
3. Cemeteries
4. Kennels

20.20.45.2.C.

5. Mobile Homes
6. Mobile or Manufactured Home Parks
7. Mobile or Manufactured Home Subdivisions
8. Recreational Vehicle Parks or Campgrounds
9. Rental Businesses: of construction equipment
10. Salvage Yards
11. Solid Waste Transfer Stations
12. Self Storage Facilities [ORD 4354; June 2005]
13. Truck Stops
14. Warehouses, as the principal use
15. Attachment of a wireless communication facility to existing or new non-residential buildings that does not utilize stealth design [ORD 4248; April 2003]
16. Other similar uses which in the determination of the Director are non-transit supportive and do not meet the intent and purpose of the Old Town (RC-OT) district.

D. Use Restrictions: [ORD 4224; August 2002]

1. Subsections A and B of the Regional Center - Old Town zoning district indicate permitted and conditional uses subject to restrictions. The restrictions are described in this subsection. The letter reference in parenthesis found for each use permitted with restrictions in subsections A and B refer to the restrictions below.
 - a. Except for theaters, a building with a gross ground floor area larger than 20,000 square feet is subject to the approval of a Conditional Use.

20.20.45.2.D.1.

- b. Buildings larger than 10,000 square feet are subject to the approval of a Conditional Use. Regardless of building size, proposed development abutting a Major Pedestrian Route is subject to the approval of a Conditional Use.
- c. Activity is conducted wholly within an enclosed structure.
- d. Accessory open air sales or display related to the principal use may be permitted, provided that the outdoor space devoted to these uses does not occupy an area greater than the equivalent of fifteen percent of the building gross floor area.
- e. All uses established after December 9, 1999 shall be conducted wholly within an enclosed structure. Accessory open air sales or display related to permitted uses in existence on a site at the time this Code is adopted may be expanded on that site.
- f. Accessory outdoor seating related to the primary eating or drinking establishment use may be permitted provided that the outdoor space devoted to this use does not exceed:
 1. an area greater than the equivalent of fifteen percent of the dining, drinking, or both floor area; or
 2. 750 square feet.

If outdoor dining is to exceed either fifteen percent of the dining, drinking, or both floor area or 750 square feet, the additional area in excess of 750 square feet must provide additional parking at a ratio as provided by the appropriate zoning district.

Eating, drinking, or both establishments may combine accessory outdoor seating areas, provided that the outdoor seating area not exceed the total combined allowed area. Such establishments may combine their outdoor seating provided that the accessory outdoor seating does not exceed thirty

20.20.45.2.D.1.

- g. Retail Trade: Permitted uses for building materials, home equipment and improvements, or landscape or nurseries sales shall not occupy more than 15,000 gross square feet of space in an individual building, site or parcel.
- h. Book Binderies shall have a maximum size of 2,000 square feet.
- i. The maximum gross ground floor area for a building involving a single use shall be 10,000 square feet. The maximum square footage for these uses within a multiple use development shall be 25% of the total square footage of the development.
- j. Only as an accessory use to a permitted or conditionally permitted use.
- k. Motel use is a prohibited use.

E. District Requirements.

None identified for this district

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

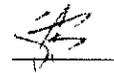
SUBJECT: TA 2006-0003 (PUD Text Amendment)

FOR AGENDA OF: 10/16/06 **BILL NO:** 06194

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 9-11-06

CLEARANCES: Dev. Serv 

PROCEEDING: Planned Unit Development Text
Amendment Work Session

EXHIBITS: Staff Memo with attachments dated
January 26, 2006

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

In preparation for amending the Development Code Planned Unit Development (PUD) code, the Planning Commission conducted three work sessions. The first two work sessions reviewed the City's existing PUD code language. At the third Planning Commission work session, staff presented background information from which to develop new PUD code language. The Planning Commission considered a report from Parametrix, a planning consultant, which reviewed the current Beaverton PUD regulations in comparison to several other Oregon jurisdictions. Parametrix also presented two development plans illustrating alternative development scenarios for an infill site constrained by wetlands, a large stand of Community Trees, and irregular parent parcel lot dimensions. The site used by Parametrix had been previously approved for a PUD development by the Planning Commission, thus the two development plans were presented as a case study demonstrating that there were alternative development scenarios using new PUD regulations that address the concerns of the Planning Commission. Based on the information presented at the Planning Commission, staff was directed to draft new PUD regulations that would foster innovative site plans.

INFORMATION FOR CONSIDERATION:

Attached are background materials presented to the Planning Commission at the work sessions. In addition, please refer to TA 2006-0003 (PUD Amendment) agenda bill for information presented to the Planning Commission at the public hearings conducted to consider the new PUD text.

RECOMMENDED ACTION:

Conduct a work session with staff to understand the background of the proposed PUD text amendment.



MEMORANDUM

"make it happen"

City of Beaverton

Community Development Department

To: Beaverton Planning Commission
From: Colin Cooper, AICP, Senior Planner
Date: January 26, 2006
Subject: Text Amendment for Planned Unit Development (PUD)

At the conclusion of the last PUD work session with the Planning Commission, staff confirmed they would explore methods of promoting innovative design to better implement the PUD purpose statement. Staff agreed to investigate other jurisdictions within Oregon and develop at least two site plans that would illustrate potential alternative approaches to the creation of innovative PUD designs. In order to provide a realistic evaluation of proposed alternatives, staff has contracted with Parametrix planning consultants to produce two site plans that illustrate possible alternative approaches for a site previously approved by the Planning Commission for a PUD development. The case studies provide a good base from which to discuss specific strategies for better implementation for PUD developments within Beaverton. To develop a case study approach, staff chose the Onody PUD because it is typical of many recent residential infill PUD developments the Planning Commission has reviewed that include physical and environmental site constraints.

To create a basis for the review and possible Development Code text amendments, this memo provides a brief description of Planned Unit Developments (PUD) and zoning codes.

Attached to this memo in preparation of our February 1, 2006 work session are the following materials:

1. Beaverton PUD Ordinance Review
2. Original Onody Site Plan
3. Modified Onody Site Plan
4. Alternative Site Plans
 - a) Composite Form Based
 - b) Low Impact Design (LID)
 - c) Composite/Courtyard Study
5. Site Plan Tabulations
6. Site Plan Matrix Descriptions

Planned Unit Developments (PUD)

PUDs are generally used as a zoning tool in conjunction with Euclidian code to create more flexibility for both the property owner and developer to obtain a desired community outcome such as the preservation of common open space. Some communities consider the PUD process analogous to a rezoning or an overlay district to the base zone. Some jurisdictions allow for increased density through the PUD process while most jurisdictions simply allow for a relaxation of site development standards such as lot width and depth and a mixture of detached and attached housing products. Parametrix has provided a review of six PUD ordinances in Oregon with the attached memo that illustrates the variety of approaches.

Types of Zoning

In order to better understand the tools that have been considered in the development of the two alternative site plans, staff is providing a brief overview of several different types of zoning codes commonly used.

Euclidean Zoning Codes

The most traditional zoning code found in communities across the United States including Beaverton is the “Euclidean” code, so named because it is derived from the 1926 US Supreme Court case entitled *Village of Euclid vs. Ambler*. This Supreme Court precedent ruled that the zoning ordinance adopted by the Village of Euclid, Ohio was constitutional and legitimized zoning as a way to control land uses. The most common elements of Euclidean Zoning area:

1. Zoning Districts that specify a category of use (e.g. single-family residential, multi-family residential, commercial, and industrial, etc.).
2. Allowable Uses – Lists of permitted, conditional, and prohibited uses.
3. Dimensional Standards – Common dimensional standards include: building setbacks, building heights, maximum coverages.

Euclidean zoning is often described as proscriptive and thus is losing favor because it is perceived to have less flexibility. With changing economies that are less reliant on heavy industrial uses and a better understanding of the link between zoning and transportation planning communities around the United States are moving away from pure Euclidean zoning codes.

Performance Zoning

Performance zoning in its original form was intended to provide performance standards as opposed to the type of specific standards normally associated with Euclidean zoning. Performance zoning has had successful applications; however, it did not gain widespread adoption because the implementation of performance zoning provided too much discretion. Although it was argued that performance zoning provided a developer or property owner more flexibility, the community was left with greater uncertainty.

Incentive Zoning

This type of zoning code was established to create specific public benefit, such as targeted economic development, greater public open space, or affordable housing as just a few examples.

For example, if a local jurisdiction wanted to encourage more public plazas, a height incentive might be offered that allowed the building to exceed the standard height limit and the maximum floor area standard for the base zone to create an incentive to provide the public plaza. Incentive zoning has not found wide spread use because of the lack of certainty and unwillingness to provide higher densities as incentives for the public amenities.

Design-Oriented Codes

Design-oriented codes are frequently referred to as “New Urbanist” codes as they often derive from neo-traditional planning principles that have been receiving considerable attention for approximately the last 15 years.

- **Traditional Neighborhood Development (TND)**

Generally this type of design oriented zoning has been used in conjunction with new residential subdivisions that include mixed use development. TNDs oriented codes are often written to include specific design typologies or styles. This type of zoning control is most often seen used in newly urbanized areas.

- **Transit-Oriented Development (TOD)**

TOD zones are intended for very specific areas adjacent to transit stations or facilities. The TOD zones, such as those originally adopted in Beaverton, provide for intense mix of uses.

- **Form-Based Codes**

This type of land use planning code allows for more flexibility where the uses become significantly less important than does the form of development. Form based land use codes generally require significant comprehensive community wide approach. Because of this most examples of form-based codes are found in specific districts within cities that have sought to encourage economic development. Some economists consider form based coding as approaching a Market Oriented Planning (MOP) model that enhances economic development. Generally, form-based coding concentrates on three areas of concern: the regulating plan (a plan that describes the specific properties that the code is to apply), building envelope, and architectural and streetscape standards.

Onody Case Study

The Onody PUD is located on 2.69 acres of land zoned R-7 Single Family Residential and is located north of NW Pioneer Road. The site had two significant natural resources in the form of a delineated wetland and a stand of mature Douglas Fir and Cedar trees. The Onody PUD was reviewed under the current PUD standards found in Section 60.35, Planned Unit Developments. The Onody PUD is similar to several recent PUD case files because it reflects a small infill residential development that includes site constraints. It is important as part of the case study review to avoid considering the proximity of this site to the THPRD park. The intent of the case study is to consider what alternative standards and approval criteria might achieve within the property lines of the site.

Parametrix has provided the following descriptions of the assumptions used for the development of the two site plans.

Onody Alternative Site Plans

Parametrix has provided the following descriptions of the assumptions used for the development of the two site plans.

Analysis Framework and Assumptions for the Low Impact Development Site Redesign

The analysis of the Low Impact Development-based code elements was performed assuming existing base zone criteria such as density and parent lot setback requirements while providing opportunities and incentives for Low Impact Development (LID) techniques that reduce the negative effects development can have on the natural environment. Development often results in greater storm water runoff, poor water quality, and the reduction of existing open space and native vegetation. Currently, LID incentives are gaining a greater acceptance in the development community and among many city agencies as a means to improve our built environment and reduce our 'living footprint' on the environment. LID incentives in this study include narrower streets, pervious paving (as soil conditions allow), tree preservation, tree and native planting to increase the urban forest, and water quality and detention techniques that manage runoff closer to individual sources and mimic the natural hydrological process. This approach inherently increases open space and guides development to form clusters of homes surrounded by open space and encourages integrated stormwater (rainwater) management techniques.

This analysis, along with the form-based study, assumed the general minimum and maximum density, parent lot setbacks, and compatibility with surrounding development for the base zone (R-7) would be retained. Additionally, for the purposes of this analysis it was assumed that flexibility for the following elements would be included as part of the PUD application:

- Flexible internal setback
- Percentage of tree preservation
- Internal on-street parking regulations
- Percentage of open space
- Method of surface water treatment
- Street width
- Housing variety (attached housing up to three units without a design review)

Additional assumptions for the analysis included placing high value on the following elements:

- Narrow streets which provide an intimate community feel and reduced impervious surface;
- Site design that clusters homes and preserves open space and existing trees (Oregon landscape);
- Street design that provides access to homes and open space and allows for homes to take advantage of solar access (potential heat and energy source);
- Allowance of a mix of uses that complement each other in footprint;
- Rear yards that open to common areas and path system to adjacent park;
- Architectural style should reflect quality, cost/resource efficiency, and timeless design appropriate for site size and constraints; and

Assumptions during site analysis ranked the following elements with a lower value:

- Non-contiguous open space that is not integrated into the development;
- Non-clustered development of lots (i.e., flag lots);

Analysis Framework and Assumptions for the Composite Form-Based Site Redesign

The analysis of composite form-based code elements was performed using land uses prescribed by the existing base zone with the intent of making recommendations for the enhancement of open space, parking, street presence, landscaping (hard and soft-scaping), building spatial patterns, pedestrian paths, community cohesiveness and connectivity to the park.

The analysis assumed the general minimum and maximum density, parent lot setbacks, and compatibility with surrounding development for the base zone (R-7) would be retained. Additionally, for the purposes of this analysis it was assumed that flexibility for the following elements would be included as part of the PUD application:

- Flexible internal setback
- Percentage of tree preservation
- Internal on-street parking regulations
- Percentage of open space
- Method of surface water treatment
- Street width
- Housing variety (attached housing up to three units without a design review)

Additional assumptions for the analysis included placing high value on the following elements:

- Narrow streets which provide an intimate community feel;
- Site design that presents a sense of order and orientation;
- Street design that balances grid formation with the site's natural impediments;
- Allowance of a mix of uses that complement each other in pattern;
- Minimize the emphasis of garage fronts either by the development of alleys and rear loading garages or requiring greater front garage setbacks than front porch setbacks for residential uses;
- Provision of meaningful art or interactive recreation structures within community open space;
- Providing pedestrian connectivity to adjacent open space or community parks;
- Architectural style should be timeless and appropriate for the site constraints and size;
- Complement neighboring developments with architectural forms; and
- Preservation of mature trees on the site.

Assumptions during site analysis ranked the following elements with a lower value:

- Non-contiguous open space that is not integrated into the development;
- Development of lots that do not follow the form of the development (i.e., flag lots);
- Through lots in which the back lot line faces a public street;

- Provision of non-meaningful water quality and detention facilities;
- Streets that dominate the development, either through size or layout;
- Lack of pedestrian connection to adjacent open spaces or community parks;
- Lack of a sense of entry to the development; and
- Spatial development patterns that do not reflect limited site area.

Conclusions

The alternative site plans demonstrate there are reasonable market based alternatives that can provide superior site designs if different assumptions are used. In preparation for the work session, staff would like the Commission to consider whether to take a “Carrot” or “Stick” approach or a combination of the two for the possible amendments to the PUD standards and approval criteria. Either of the proposed alternative approaches requires the Commission to be comfortable with providing more design oversight to proposed PUDs.

Draft Beaverton PUD Ordinance Review

Prepared for

City of Beaverton
4755 SW Griffith Drive
Beaverton, OR 97005

Prepared by

Parametrix
700 NE Multnomah, Suite 1000
Portland, OR 97232-4110
503-233-2400
www.parametrix.com

CITATION

Parametrix. 2005. Draft Beaverton
PUD Ordinance Review. Prepared by Parametrix,
Portland, Oregon. December 2005.

TABLE OF CONTENTS

1. PURPOSE	1
2. RESEARCH OVERVIEW	1
3. SUMMARY OF PUD ORDINANCES AND SIGNIFICANT ELEMENTS.....	2
4. SITE ANALYSIS APPROACH	3
5. TIMELINE AND EXPECTED OUTCOMES.....	4
6. ORDINANCES CONSULTED.....	5

PAGE LEFT BLANK INTENTIONALLY

1. PURPOSE

The purpose of this report is to review the City of Beaverton Planned Unit Development (PUD) Ordinance (60.35.05), the PUD ordinances of similar communities, and to propose an analysis framework of the implementation of new PUD code elements at a specific Beaverton site that reflects the purpose statement of a PUD.

The ultimate analysis goal is to test potential PUD ordinance revisions against an actual residential site, providing two examples of possible development types. This will enable the project team to determine outcomes and differences that may result from changes to the Beaverton PUD ordinance. While analyzing implementation of the PUD ordinance will result in a plan graphics representing possible code elements, it will not reflect any changes to other code provisions, such as tree plan requirements, variances, or flexible setback requests.

The comparative analysis site will be the Onody site, a 13-lot PUD development approved by the City of Beaverton in 2003 under the current PUD provisions. This relatively small site contains a wetland and is adjacent to a Tualatin Hills Park and Recreation District (THPRD) facility.

2. RESEARCH OVERVIEW

A Parametrix team of two planners and a landscape architect familiar with the Beaverton community and development market reviewed the City of Beaverton's PUD ordinance to assess the effectiveness of the code in promoting innovative development in line with the purpose of the ordinance. As part of this review, the project team also reviewed a sample of approved PUD site plans to analyze current implementation of the Beaverton PUD ordinance.

In addition to the City of Beaverton's PUD ordinance, Parametrix reviewed six PUD ordinances for the Oregon communities of Tigard, Hillsboro, Portland, Fairview, Salem, and Bend. These communities were chosen for review either because of their proximity to the Portland Metropolitan area, or because they represent communities similar in size or character to Beaverton. Although the city of Salem has a population greater than Beaverton, it provides representation from the nearest Oregon metropolitan area within the Willamette Valley outside Metropolitan Portland. The review was limited to Oregon communities because all are subject to the Statewide Planning Goals and State of Oregon land use laws.

The research team reviewed PUD ordinance purpose statements, thresholds, approval criteria, and process for each of the jurisdictions. Specific elements such as open space, minimum lot area, parking, base zone setbacks and incentives for creative design and transportation options were of particular focus (see Matrix). Base zone requirements for each of the communities were not reviewed, however, it was noted whether the PUD alternative was allowed in all base zones.

Each of the PUD ordinances was reviewed for the following elements:

1. PUD threshold
2. Minimum open space requirement.
3. Allowance for reduced parking in residential areas.
4. Requirement of design review. Standards of design review.

5. Allowance of higher densities than the base zone and density bonuses.
6. Requirement of minimum lot size or retention of setback restrictions from the base zone. Are setbacks of the parent parcel held to the base zone?
7. Specific criteria for commercial / industrial PUDs (as different than residential).
8. Specification of a minimum parcel size in order to use the PUD alternative.
9. Two-step process requirements (concept plan, detailed plan).
10. Explicit incentives offered to developers to encourage quality development, green technology, or smart development.
11. Greater flexibility used in rewarding developers for using sustainable building practices or “smart development” techniques?

3. SUMMARY OF PUD ORDINANCES AND SIGNIFICANT ELEMENTS

Each of the reviewed jurisdictions utilizes a wide range of PUD approaches. Nearly all of the ordinance purpose statements included better adaptation to the surrounding neighborhood and protection of natural physical features unique to the site. Like most of these ordinances, Beaverton’s PUD purpose statement stresses creative approaches to enhance and preserve characteristics of surrounding areas, accomplished through technological advances, flexibility in location of infrastructure and structures, preservation of environmentally sensitive features, and flexibility in land uses. Key PUD themes were density, setbacks, thresholds, and open space.

Most of the jurisdictions allow flexibility in greater density allowances relative to amount of open space provided. Some jurisdictions were more prescriptive in granting this flexibility, while others deferred the specific allowances to the discretion of the planning commission.

One jurisdiction limited increased density to the next highest designation of the comprehensive plan. Most jurisdictions restricted minimum PUD density to that required by the base zone. Two jurisdictions, Salem and Bend, restricted maximum density, but did not specifically limit minimum density. Salem required a zone change for greater density than that in the base zone.

Setback flexibility with a restriction on parent parcel setbacks was common. Most jurisdictions held the parent parcel setbacks only perimeter front and rear yards. Height restrictions were relaxed under most PUD ordinances. Hillsboro linked building height flexibility to existing transportation and public facility ability to handle impacts from the increased density and preservation of solar access to adjacent properties.

Thresholds for PUD ordinances were commonly an optional application process limited by base zone, except in the case of one jurisdiction that required a PUD for staged business parks. Bend, maintained a minimum size for the parent parcel with a variable threshold dependent on type of base zone. In this case, the threshold for residential development was held slightly higher at 5 acres.

A significant difference between Beaverton and other jurisdictions was the PUD open space requirements. Like Tigard and Hillsboro, Beaverton requires a percentage of common open space be set for all PUDs. Of these three, Beaverton requires the greatest amount of open space with a graduated requirement from 10 to 20 percent of the subject site depending on

parcel size. Because most developable land parcels within Beaverton are less than 10 acres, it is likely the higher percentage threshold is most commonly used. Like several other jurisdictions, open space does not include right of way, private streets, open space tracts, or environmentally constrained lands. Most ordinances did not exclude buffer areas around environmentally constrained lands and landscape setback areas from being counted as open space.

Beaverton currently has a mandatory requirement for common open space that is much higher than most of the jurisdictions reviewed however, based on review of the sample site plans provided, some of the open spaces developed and approved lack meaningful contribution to the community or the sites. It was apparent that while often the developments met the open space requirements of the PUD ordinance, they ineffectually met the purpose. Open space was often isolated on the site or consisted of several small tracts.

Like many of the other jurisdictions, Beaverton maintains the minimum density requirements of the base zone for developments within a PUD. Beaverton does not have specific requirements for PUDs within commercial or industrial zones, minimum parent parcel size, or specific incentives for types of design elements. Beaverton provides flexibility in the PUD process making the two-stage process optional at the applicant's discretion.

The PUD ordinances reviewed offer varying degrees of flexibility to developers, however most of them failed to create incentives to reach higher levels of innovation in their design. Two jurisdictions, Tigard and Fairview, offered specific density bonuses for elements ranging from common open space, landscaping, plazas, retention of existing vegetation, creation of visual focal points, quality architectural design, innovative housing orientation, mixed housing types, and affordable housing, however, they were not explicit about the types of development techniques they were encouraging. Based on the ordinance review, the Project team believes there are several areas of opportunity within the Beaverton PUD ordinance to explore specific incentives for better development, including the incorporation of Low Impact Development (LID) techniques or variations of form based zoning (see below).

Open space, open space tract size, access to open space, integration with stormwater treatment and impervious surface development, shared parking allowances, mixed-use incentives, relaxed parent lot setbacks and higher PUD thresholds are areas in which clearer incentives may result in better development.

4. SITE ANALYSIS APPROACH

Two site plans will be developed, using the Onody Subdivision as a site base. Both plans will demonstrate two distinct approaches to PUDs as defined in the framework in Task 1.

The first plan will use an incentive/prescriptive approach to encourage development that meets the purpose of the PUD as stated in ORD 4224. The incentives will include LID concepts, using a point based system that thereby may allow development to increase density, reduce parking, and protect resource and cultural areas, and significant community views. Some of the LID concepts could include mandatory mitigation of impervious area footprint using architectural and environmental technologies and methods that take advantage of the natural drainage process found in nature. These methods can be achieved through site planning, hydrology, and Integrated Management Technologies (IMP). Some of these IMP technologies are currently available as options through Clean Water Services (CWS) as part of their stormwater management policies including pervious pavers, rainwater gardens, and green roofs to name a few.

The second site plan will explore the use of a form based code (also referred to as new urbanist codes, smart growth/zoning) that encourages development flexibility by regulating the form of the built environment instead of seeking to control land use and density. The form based approach focuses on a range of desired size, form, and placement of buildings, parking, streets, and open space instead of giving an absolute criteria, form based zoning is usually associated with a diagrammatic regulating plan indicating the development form, for various streets and neighborhoods. For example, a form based code for buildings would provide the minimum and maximum building heights and basic building design criteria related to siting and building elements. Many case studies also indicate that a form code approach streamlines the approval process by making design review the decision making step of the application process. The intent of this approach is to demonstrate an alternative to the incentive and land use defined regulation based system while pursuing the intent of the PUD ordinance.

Both site plans will be at 30 scale hand drawn and rendered in color. Plans will include standard site information such as; property lines, setbacks, building footprints/envelopes, parking, streets, driveways, natural features, and open space. In addition to the basic site information special call outs, dimensioning, and graphic detail will be applied to features that represent new concepts as described in the framework and research in Task I. These may include, and are not limited to, new building configurations, street layout, open space areas, and stormwater management techniques. Site tabulation documenting the building footprint area, impervious area, open space, parking, and LID systems will also be shown on the plans. Plans will not include site engineering, grading, planting, utilities, tree preservation, solar access analysis or lighting. Tree preservation and lighting may be elements that are included in the refinement of the PUD ordinance, however will not be represented the site plans.

5. TIMELINE AND EXPECTED OUTCOMES

The project team proposes a review schedule of 10 days for this framework, which will include two review cycles. The first review will provide comments to this draft to the contractor. The second review will ensure comments from the first review have been appropriately included and will preclude finalization of the framework report.

Site plan analysis will begin after the first review with first submittal of two site plans and a narrative explaining analysis concepts to the City 10 days business days (not including Christmas week) after the finalization of the framework report. A draft memo containing general code recommendations will be submitted to the City five days after City of Beaverton review and comment on the site plans.

A project team member will attend a Planning Commission work session and meeting and a City Council meeting in spring 2006 to discuss the proposed PUD code changes.

6. ORDINANCES CONSULTED

Salem Revised Code

Chapter 121 Planned Unit Development

Bend Zoning Ordinance

Section 30

Fairview Development Code

19.450 Master Planned Developments

Tigard Community Development Code

Chapter 18.350 Planned Developments

Hillsboro Zoning Ordinance, Volume 1

Section 127 Planned Unit Development

Portland City Code and Charter

Title 33.665 Planned Development Review

Beaverton Development Code

Sections 60.35 and 40.15

PAGE LEFT BLANK INTENTIONALLY

ATTACHMENT
Planned Unit Development Ordinance Review Matrix

Planned Unit Development Ordinance Review Matrix

	Threshold / Minimum Parcel Size	Open Space	Parking / Access	Design Review Required?	Density	Lot dimensions / setbacks	Commercial / Industrial	Staged process	Incentives for better development
Beaverton	All zones except RA allowed No minimum parcel size	10 to 20% of net acreage, depending on parcel size Open space excludes sensitive natural areas or landscaping buffers, or setbacks in calculation	<ul style="list-style-type: none"> Flexibility in location. Private streets allowed No reduction in parking specified 	PLD does not trigger a design review	Minimum requirement linked to base zone	<ul style="list-style-type: none"> Modifications allowed except parent parcel setbacks, intersection standards, bldg/fire code compliance, bldg Heights (may be increased 12ft) 	No specific requirements	Yes, 2-stages, optional	Greater density and flexibility may be permitted however, no clear guidelines are present
Tigard	No	<ul style="list-style-type: none"> Open space is calculated per lot and is held to base zone requirements. No common open space requirement If provided as shared open space, requires dedication to the City or held by a corporation or home associate with provisions for maintenance 	<ul style="list-style-type: none"> By exception, may be reduced up to 10% if demand warrants less or public transportation is available, or reduced parking will allow preservation of particular natural features. Common parking lots within planned development allowed as long as each single family lot contains one off-street parking space 	The detailed development plan review addresses issues of site development review, but not design review	Density is governed by the underlying zoning district unless density bonus is granted. See incentives column	<ul style="list-style-type: none"> Dimensions waived Base zone density still required Base zone site coverage still applies Bldg height restrictions waived Side yard setbacks waived except for fire wall Front and rear setbacks of perimeter lots held to parent base zone requirements Front yard setbacks of 8 to 20 ft from garage 	<ul style="list-style-type: none"> Commercial Allowance of 25% of total floor area to be used for multi-family Industrial Only uses allowed outright in underlying zone allowed 	Yes, 3 stages. PD Overlay: PD Concept Plan, PD detailed plan	Yes Up to 10% density bonus given for following elements <ul style="list-style-type: none"> Max of 3% for preservation of common space. Max of 3% for landscaping, plazas, pedestrian pathways, retention of existing vegetation; Max of 3% for creation of visual focal points using existing physical amenities Max of 3% for quality architecture, harmonious use of materials, innovative building orientation or grouping, and/or varied use of housing types

Planned Unit Development Ordinance Review Matrix

	Threshold / Minimum Parcel Size	Open Space	Parking / Access	Design Review Required?	Density	Lot dimensions / setbacks	Commercial / Industrial	Staged process	Incentives for better development
Hillsboro	Only for PDs proposed in commercial or industrial zones	<ul style="list-style-type: none"> 15% of net development area School, commercial, floodplains, wetlands and buffers not included Parking, driveways, open space are included in net development area calculation Homeowner's association required for maintenance Exception to 15% requirement if the overall landscape plan provides for a minimum of 15% of the gross site area to be landscaped 	<ul style="list-style-type: none"> PUD greater than 5 acres require full street connections of no more than 530 feet unless barriers exist Street connectivity encouraged, required to address standards of local street connectivity maps Cul-de-sac designs discouraged Narrow street designs permitted with city engineer approval Driveway length no greater than 4 ft if no driveway parking is provided. No less than 17 ft if driveway parking is provided By exception, may be reduced up to 10% if demand warrants less or public transportation is available, or shared parking is available 	Architectural drawings are reviewed for planned developments except detached single-family and duplex dwelling units	<ul style="list-style-type: none"> Increase in density allowed to next highest designation per comp plan if applicant justifies increased density with burden for justification increasing as proposed density increases Must show how proposed increase is within the plan designation for the site and adverse impacts can be mitigated 	<ul style="list-style-type: none"> Exceptions to base zone requirements granted if no adverse effects to surrounding properties occur, and either the proposal provides a more efficient use of the site, preserves natural features, or provides safer vehicular and pedestrian access to and circulation on-site Parent parcel setbacks apply to perimeter lots Exceptions to bldg. height restrictions of base zone may be given if transportation system can handle the additional traffic from increased density, adequate public facilities exist, proposal complies with aviation regulations, and solar access is maintained adjacent 	<ul style="list-style-type: none"> Only allowed on parcels of 20 acres or greater Sixty percent of the land area is limited to uses permitted in base zoning and comp plan designation 	Yes. Preliminary and Final Development plans required	Greater density and flexibility may be permitted, however, no clear guidelines are present

Planned Unit Development Ordinance Review Matrix

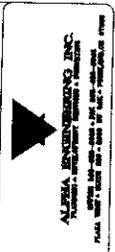
	Threshold / Minimum Parcel Size	Open Space	Parking / Access	Design Review Required?	Density	Lot dimensions / setbacks	Commercial / Industrial	Staged process	Incentives for better development
Portland	No	In the RF through R2.5 zones, attached houses, duplexes, attached duplexes, or multi-dwelling structures, require adequate open space not including vehicle areas. Quantity not specified	If lot dimensions, landscaping or access to parking are modified, design elements for parking and access are required to mitigate visual impacts and provide buffers so the vehicle area and garage are not the dominant visual feature of the dwelling	No, but the PD review incorporates many elements commonly found in a design review process including landscaping standards and parking regulations that preserve views for both the development and surrounding community	<ul style="list-style-type: none"> Minimum density requirements must be met and adjustments are prohibited Minimum density may be met as number of lots or as total number of dwelling units which would allow mixed use cluster development 	<ul style="list-style-type: none"> Height modifications require architectural or landscape features to minimize visual impacts <p>Other modifications are allowed through the PD review if they will better meet approval criteria of PD (visual integration, complementary building scale and style to surrounding development, minimal negative effects on surrounding residential uses, preservation of city scenic resources.</p>	Commercial uses are allowed in residential zones through a PD if the area surrounding the development is deficient in commercial opportunities.	No, although some sites that require a tract or where right-of-way is requested will also require a land division	<ul style="list-style-type: none"> Flexibility Transfer of development may be allowed across zoning if both parcels are within the same PD
Bend	Five acre minimum in residential zones and 4 acres in any other zone	<ul style="list-style-type: none"> Direct access for all units and lots to open space and facilities is required No specific requirement for amount of open space 	<ul style="list-style-type: none"> Public roads held to City standards Provision for private roads with a minimum width of 14 ft is allowed with PD 	No	Maximum density is linked to the base zone for residential development	The PUD must conform with the general plans of the City in terms of location and general development standards	A mobile home may be permitted in a PUD. however, mobile home parks may not be allowed in any commercial or industrial zone	No	No clear incentives

Planned Unit Development Ordinance Review Matrix

	Threshold / Minimum Parcel Size	Open Space	Parking / Access	Design Review Required?	Density	Lot dimensions / setbacks	Commercial / Industrial	Staged process	Incentives for better development
Fairview	No	<ul style="list-style-type: none"> • Maybe be required in exchange for a density bonus • If common open space is proposed, a city dedication or ownership by corporation or home association with provisions for maintenance is required 	Planned developments must conform to underlying land use district requirements for parking and access	No An architectural concept plan may be required	Density of base district applies, however a housing density bonus may be applied to enhance open space, protect sensitive lands, provide unique architectural character Density bonus limited to 25% of the allowable density	<p>Planned developments must conform to underlying land use district requirements except</p> <ul style="list-style-type: none"> • Floor area standards may be increased by 25% if balanced by social or environmental benefits to the community. • Lot area and dimensional standards may not apply • Side yard setbacks waived except for fire wall <p>Front and rear setbacks of perimeter lots held to parent base zone requirements</p>	Applicable to all land use districts	Yes Three step process requires an overlay zone and concept plan prior to a detailed development plan review and preliminary subdivision and/or site design review	<p>Density bonus encourages enhancement of open space, protection of sensitive lands, and unique architectural character Density bonus limited to 25% of the allowable density proportioned to the land area used for</p> <ul style="list-style-type: none"> • Max 10% for open space • 2% for approved streetscape, plazas, pathways, pedestrian amenities, or recreation area development • Max 3% for protection or enhancement of community views • Max 10% for development of affordable housing (prices and rents limited by deed restriction for 5 years)

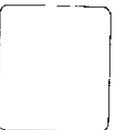
Planned Unit Development Ordinance Review Matrix

	Threshold / Minimum Parcel Size	Open Space	Parking / Access	Design Review Required?	Density	Lot dimensions / setbacks	Commercial / Industrial	Staged process	Incentives for better development
Salem	No	No specific amount is required, however provisions for maintenance are required through a home owners association or deed restriction.	<ul style="list-style-type: none"> • Must conform to the Salem Transportation System Plan and as specified in SRC Chapter 63 • Parking may be provided in uncovered parking areas in appropriate situations instead of a garage or carport if approved by the planning commission • Guest parking spaces are required in some higher density residential zones and may be located within 300 to 500 feet from the dwelling unit 	No.	<ul style="list-style-type: none"> • Maximum density is linked to the base zone for residential development • Dwelling units in a building are not limited in the RA, RS, RD, RM, RH districts under the provisions of the PD 	<ul style="list-style-type: none"> • Setbacks are determined by height of proposed development • Yards adjacent to through streets must be a minimum of 20 ft, except for private streets for which there is no prescribed setback as long as 10 ft is provided if vehicle access is provided 	<ul style="list-style-type: none"> • Planned developments containing less than 150 dwelling units may contain a convenience service area including a newsstand, barbershop, delicatessen, dining rooms, coffee shops, etc • Planned developments containing 150 or more dwelling units may include a limited retail service area for banking facilities, drugstores, coffee shops, etc • The amount of retail shall be directly proportionate to the number of dwelling units within the site 	Yes Tentative Planned Development and Final Planned Development	Mixed uses are allowed through a PD (See commercial , industrial column)



NO.	DATE	REVISION	BY

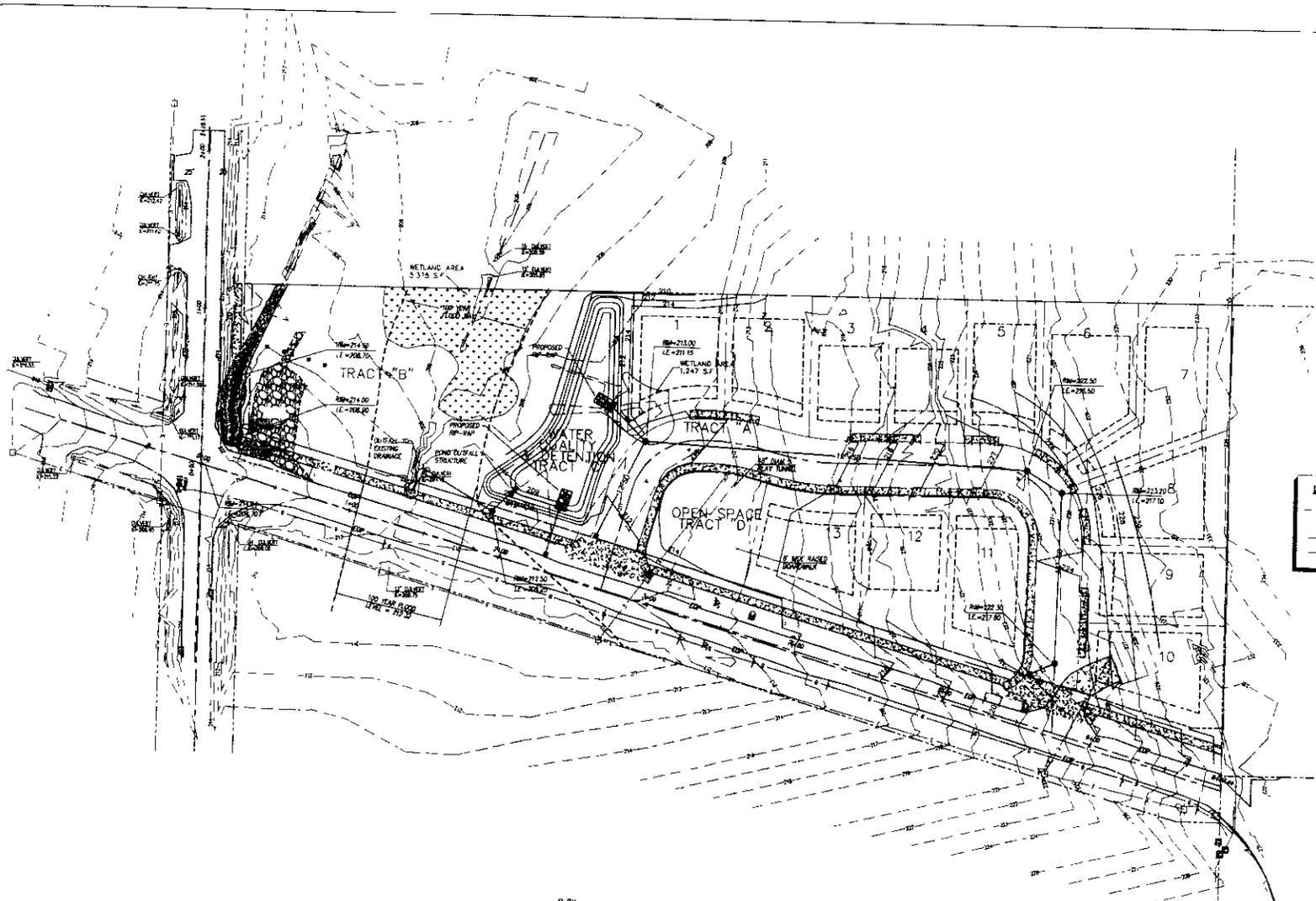
DESIGNED BY: J.M.L.	DATE: 11/17/06
DRAWN BY: J.M.L.	DATE: 11/17/06
CHECKED BY: J.M.L.	DATE: 11/17/06
PROJECT NUMBER: 06-010	SCALE: AS SHOWN
SCALE: AS SHOWN	DATE: 11/17/06



ONODY SUBDIVISION
GRADING AND DRAINAGE PLAN
CITY OF BEAVERTON, OREGON

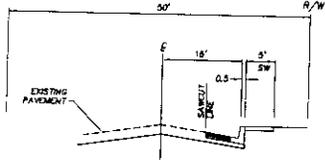
SHEET **5** OF **10**

PROJECT: ONODY
NO: 06-010
TYPE: PLANNING

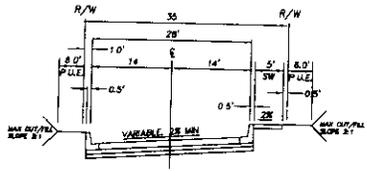


LEGEND

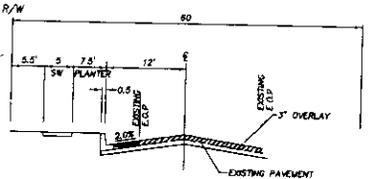
150	5' - 1'-FT CONTOUR
100	5' - 1'-FT CONTOUR
50	1' - 1'-FT CONTOUR
10	1' - 1'-FT CONTOUR



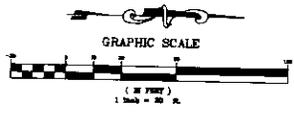
NOTE: SHOWN FOR REFERENCE ONLY
N.W. PIONEER ROAD SECTION
NOT TO SCALE



TRACT A
TYPICAL STREET SECTION
NOT TO SCALE

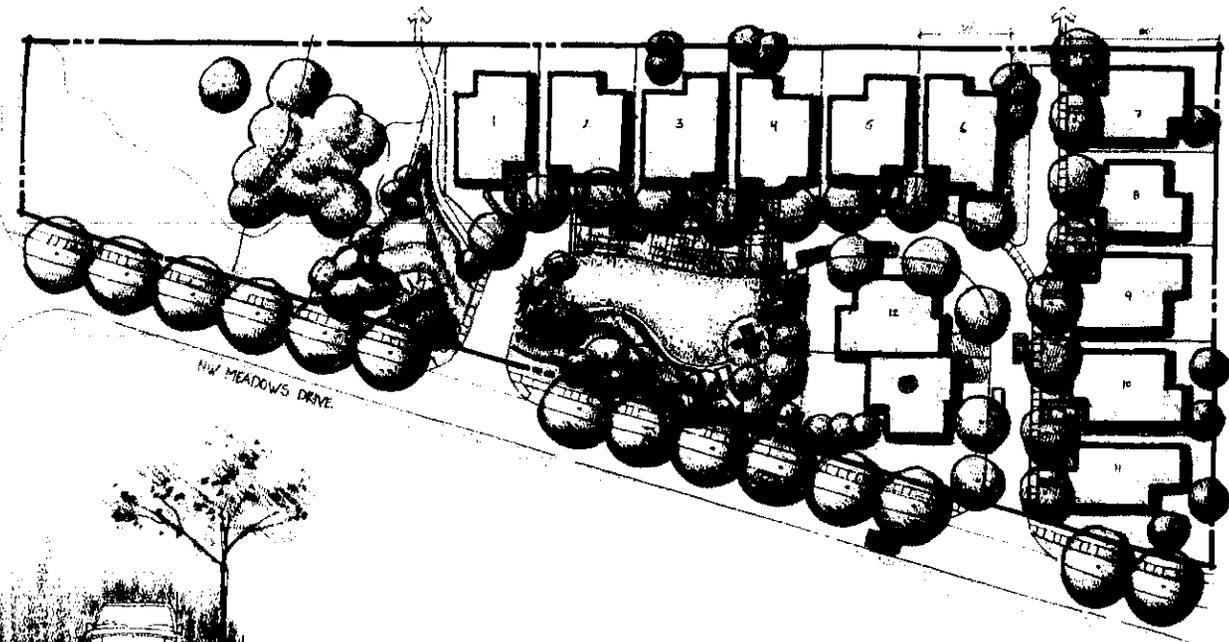


NOTE: SHOWN FOR REFERENCE ONLY
N.W. MEADOW DRIVE SECTION
NOT TO SCALE



PLAN DATE: APRIL 29 2008

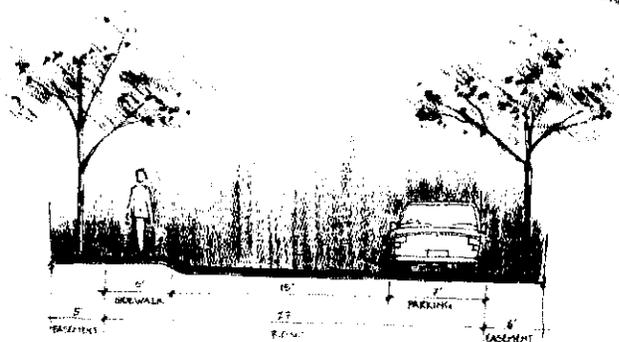
EXISTING PARK



LEGEND

- BUILDING FOOTPRINT
- PROPERTY LINE
- SIDEWALK
- EXISTING TREE TO REMAIN
- TREE TO BE PLANTED
- DETENTION FACILITY
- LAWN / OPEN SPACE
- SPECIAL PAVEMENT SURFACE
- PLAY AREA

INDUSTRIAL (SHEET A)



TYPICAL STREET SECTION

NTS

CITY OF BEAVERTON PID STUDY
 PID STUDY WITH BASIC COST PLAN



Beaverton Composite PUD Site A

Possible Minimum Reqs	Use Components	Possible Site Specific Components	Possible Architectural Components
Lot sizes +/- 25%	R-5	Greater than xx% of tree preservation	Rear loading garages
Contiguous open space	Suburban Infill	Internal pathways (beyond required sidewalks)	Covered porches = 50% of house, not to be less than 6 feet in depth
Maintain parent lot setbacks	Less than 3 acres	Possibility for corner monument or gateway	Front of house > 50% of lot width
Compatibility w/surrounding land uses	within 1/8 mile of public open space	Traffic calming design	Roofs shall be simple and symmetrically pitched, and only in the configuration of gables and hips.
Open space ranking	Significant natural areas	Narrow Streets	Attached housing permitted with SFR massing (Single roof peak with more than one dormer)
		Street furniture	Human scale façade design
		Open space ranking	Entrances oriented to shared courtyards
		Open space with play area and usable lawn.	Shared driveways
		Open space with native trees and pedestrian path system to homes.	Use of a variety of materials and compatible colors
		Pavers in driveway and special paving of surface treatment in front of park areas or/and at project entries.	Total fenestration on front façade shall not exceed 30% of total surface area
			Roofs shall overhang a gable end a minimum of 12"
			Two-story homes average 2400 sf with private lots and off-street parking in driveway
			See Kentland examples

Beaverton PUD Code Study				
<i>By Parametrix</i>		1.25.06		
<i>Site Tabulation</i>		Draft		
Calculations		Existing Site	Composite Form Based Code	Incentive Based Code (Low Impact Development)
Total Site Area		117,000	117,000	117,000
Private Street		15,450	14,150	11,100
Open Space		23,500	43,000*	52900*
Water Quality		7,810	N/A	N/A
Off-Street Parking		2 Per D/U	2 Per D/U	2 Per D/U
On-Street Parking**		Unknown	39	35
Net Area		70,260	59,850	53,000
Minimum Density		8.03 Units	6.84 Units	6.06 Units
Dwelling Units (DU)		13	13 (14 alt. pln.)	14
DU per acre		8	9.5	11.5
Average Lot Size		5,400	4,600	3,800
Impervious Area		44,900	43,950	44,560
Pervious Sidewalk, Path, Driveways				-7585
				36,975

R-7 Base Zone 7,000 sq ft minimum

Note: All calculations are approximate numbers only

* Includes water quality tract and wetland buffers

** Includes Parking on NW Meadows Drive

N/A = Does not apply



Home Builders Association
of Metropolitan Portland



October 5, 2006

Mayor Rob Drake
City Councilors
City of Beaverton
4775 SW Griffith Drive
Beaverton, OR 97005

RE: TA 2006-0003
PUD Text Amendment

Dear Mayor Drake and Councilors:

It is on behalf of the 1400+ member firms of the Home Builders Association of Metro Portland that I submit these comments on the proposed amendments to the city code as it applies to Planned Unit Developments.

I and other members of the HBA have met with city staff and have extensively reviewed the suggest amendments. The HBA is in support of this document as it is being presented to you and feel that it embodies appropriate incentives as well as regulations.

Thank you for the opportunity to provide comment.

Sincerely,

Ernie Platt
Director of Local Government Affairs



AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: TA 2006-0003 (PUD Text Amendment)

FOR AGENDA OF: 10/16/06 **BILL NO:** 06195

Mayor's Approval: *Bob Drake*

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 9-03-06

CLEARANCES: City Attorney *AR*
Dev Serv. *SC*

PROCEEDING: First Reading

- EXHIBITS:**
1. Ordinance
 2. Land Use Order No 1902
 3. Staff Memo dated 09-05-06
 4. Draft PC Minutes dated 08-23-06
 5. Staff memo dated 08-17-06
 6. PC Minutes dated 07-26-06
 7. Staff memo dated 07-21-06
 8. PC Minutes dated 06-14-06
 9. Staff Report dated 06-07-06

BUDGET IMPACT

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

HISTORICAL PERSPECTIVE:

On June 14, 2006, the Planning Commission held the first of three public hearings to consider TA 2006-0003 (PUD Text Amendment) that proposes to amend Development Code Chapter 40 (Applications) Section 40.15.15, Planned Unit Developments; Chapter 60 (Special Regulations) Section 60.35, Planned Unit Developments; and Chapter 90 (Definitions) of the Beaverton Development Code currently effective through Ordinance 4397 (June 2006) The Planning Commission held two more public hearings on July 26, and August 23, 2006 to review and respond to edits and changes to the proposed code. .The intent of the proposed PUD Text Amendment is to adopt text that meets the purpose statement of the PUD, while also creating incentives for land developers to create innovative development. The intent of the proposed text amendment is to protect and improve the livability within Beaverton while maintaining flexibility needed for creative and innovative projects. Following the close of the public hearing on August 26, 2006, the Planning Commission voted 6-1 to recommend approval of the proposed PUD Text Amendment, as memorialized in Land Use Order No. 1902

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is an Ordinance including the proposed text, Land Use Order No. 1902, Council staff memo dated Sept. 5, 2006, staff memos dated July 21 and August 17, 2006 with attachments, Planning Commission meeting minutes, staff report and memos, technical reports, and case study.

RECOMMENDED ACTION:

Staff recommend the City Council approve the recommendation of the Planning Commission for TA 2006-0003 (PUD Text Amendment) as set forth in Land Use Order No. 1902. Staff further recommends the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4409

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE, CHAPTERS:
40, 60, and 90;
TA 2006-0003 (PUD Text Amendment).

WHEREAS, the purpose of the Planned Unit Development (PUD) Text Amendment is to create standards that protect and improve the quality of development in Beaverton and to encourage innovative development through the use of incentive regulations. The PUD Amendment proposes to amend the PUD regulations contained in Chapter 40, Chapter 60, and Chapter 90 Definitions of the Beaverton Development Code; and

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Development Services Division, on May 5, 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 June 14, 2006; and

WHEREAS, the Planning Commission held the first of three public hearings on July 26 and August 23, 2006 and approved the proposed PUD Development Code Text Amendment based upon the criteria, facts, and findings set forth in the staff report dated July 7, 2006, staff memos dated July 21, and August 17, 2006, and as amended at the hearing; and

WHEREAS, on August 23, 2006, the Planning Commission conducted a public hearing for TA 2006-0003 (PUD Text Amendment) at the conclusion of which the Planning Commission voted to recommend the Beaverton City Council adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1902; and

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2006-0003 (PUD Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1902; and

WHEREAS, the City Council adopts as to criteria, facts, and findings, described in Land Use Order No. 1902 dated September 1, 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. 4397, 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 ___ day of _____, 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

1
2 **Section 1:** The Development Code, Ordinance No. 2050, Chapter 40, Applications,
3 **Section 40.15.15.5** shall be amended to read as follows:
4 40.15.15.

5
6 ~~5. Preliminary Planned Unit Development.~~

7
8 A. ~~Threshold.~~ A Preliminary Planned Unit Development (PUD)
9 application is an optional application process which may be chosen by
10 the applicant. A Preliminary PUD application is the first application
11 of a two-step application process with a Final PUD application as the
12 second step. A Preliminary PUD is a plan that generally demonstrates
13 the ultimate development of a project. A Preliminary PUD may be
14 applied to properties within any City zoning district except
15 Residential Agricultural (RA).

16
17 B. ~~Procedure Type.~~ The Type 3 procedure, as described in Section 50.45
18 of this Code, shall apply to an application for Preliminary PUD. The
19 decision making authority is the Planning Commission.

20
21 C. ~~Approval Criteria.~~ In order to approve a Preliminary PUD application,
22 the decision making authority shall make findings of fact based on
23 evidence provided by the applicant demonstrating that all the
24 following criteria are satisfied:

- 25
26 1. ~~The proposal satisfies the threshold requirements for a~~
27 ~~Preliminary PUD application.~~
- 28
29 2. ~~All City application fees related to the application under~~
30 ~~consideration by the decision making authority have been~~
31 ~~submitted.~~
- 32
33 3. ~~The proposal meets the Site Development Requirement for~~
34 ~~setbacks within the applicable zoning district for the perimeter~~
35 ~~of the parent parcel unless the setbacks are approved as an~~
36 ~~Adjustment, Flexible Setback or Variance which shall be~~
37 ~~considered concurrently with the subject proposal.~~
- 38
39 4. ~~The proposal will comply with the applicable policies of the~~
40 ~~Comprehensive Plan.~~
- 41
42 5. ~~The size, dimensions, configuration, and topography of the site~~
43 ~~and natural and man-made features on the site can reasonably~~
44 ~~accommodate the proposal.~~

1 40.15.15.5.C.

2
3 ~~6. The location, size, and functional characteristics of the proposal~~
4 ~~are such that it can be made reasonably compatible with and~~
5 ~~have a minimal impact on livability and appropriate~~
6 ~~development of properties in the surrounding area of the subject~~
7 ~~site.~~

8
9 ~~7. Lessening the Site Development Requirements results in~~
10 ~~benefits to the site, building, and structural design or~~
11 ~~preservation of natural features that could otherwise not be~~
12 ~~achieved.~~

13
14 ~~8. Applications and documents related to the request, which will~~
15 ~~require further City approval, shall be submitted to the City in~~
16 ~~the proper sequence.~~

17
18 ~~D. Submission Requirements. An application for a Preliminary PUD~~
19 ~~shall be made by the owner of the subject property, or the owner's~~
20 ~~authorized agent, on a form provided by the Director and shall be filed~~
21 ~~with the Director. The Preliminary PUD application shall be~~
22 ~~accompanied by the information required by the application form, and~~
23 ~~by Section 50.25 (Application Completeness), and any other~~
24 ~~information identified through a Pre-Application Conference.~~

25
26 ~~E. Conditions of Approval. The decision making authority may impose~~
27 ~~conditions on the approval of a Preliminary PUD application to ensure~~
28 ~~compliance with the approval criteria.~~

29
30 ~~F. Appeal of a Decision. Refer to Section 50.70.~~

31
32 ~~G. Expiration of a Decision. The decision shall expire two (2) years after~~
33 ~~of the date of decision. Refer to Section 50.90.~~

34
35 ~~H. Extension of a Decision. Refer to Section 50.93.~~

36 40.15.15.

37
38 ~~6. Final Planned Unit Development~~

39
40 ~~A. Threshold. A Final Planned Unit Development (PUD) application is~~
41 ~~the second application of a two-step application process with a~~
42 ~~Preliminary PUD as the first step. A Final PUD application may also~~
43 ~~be a one-step application process which is an alternative to the two-~~
44 ~~step process required when an applicant chooses to apply for a~~
45 ~~Preliminary PUD. The option of a one-step or two-step process rests~~
46 ~~with the applicant. The requirements for a Final PUD may be applied~~

EXHIBIT A

1 ~~to properties within any City zoning district except Residential-~~
2 ~~Agricultural.~~

3
4 ~~B. Procedure Type. The Type 3 procedure, as described in Section 50.45~~
5 ~~of this Code, shall apply to an application for Final PUD approval. The~~
6 ~~decision making authority is the Planning Commission.~~

7
8 ~~C. Approval Criteria. In order to approve a Final PUD application, the~~
9 ~~decision making authority shall make findings of fact based on~~
10 ~~evidence provided by the applicant demonstrating that all the~~
11 ~~following criteria are satisfied:~~

12
13 ~~1. The proposal satisfies the threshold requirements for a Final~~
14 ~~PUD application.~~

15
16 ~~2. All City application fees related to the application under~~
17 ~~consideration by the decision making authority have been~~
18 ~~submitted.~~

19
20 ~~3. If a Preliminary PUD has been approved, the Final PUD is filed~~
21 ~~within two (2) years or the Preliminary PUD has received an~~
22 ~~extension approval pursuant to Section 50.93 of this Code.~~

23
24 ~~4. The final PUD complies with the approved Preliminary PUD, if~~
25 ~~any.~~

26
27 ~~5. The proposal meets the Site Development Requirement for~~
28 ~~setbacks within the applicable zoning district for the perimeter~~
29 ~~of the parent parcel unless the setbacks are approved as an~~
30 ~~Adjustment, Flexible Setback or Variance which shall be~~
31 ~~considered concurrently with the subject proposal.~~

32
33 ~~6. The proposal complies with the applicable policies of the~~
34 ~~Comprehensive Plan.~~

35
36 ~~7. The size, dimensions, configuration, and topography of the site~~
37 ~~and natural and man-made features on the site can reasonably~~
38 ~~accommodate the proposal.~~

39
40 ~~8. The location, size, and functional characteristics of the proposal~~
41 ~~are such that it can be made reasonably compatible with and~~
42 ~~have a minimal impact on livability and appropriate~~
43 ~~development of properties in the surrounding area of the subject~~
44 ~~site.~~

45
46 ~~9. The lessening of the Site Development Requirements results in~~
47 ~~benefits to the enhancement of site, building, and structural~~
48 ~~design or preservation of natural features.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

~~10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.~~

~~D. Submission Requirements. An application for a Final PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The Final PUD application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre Application Conference.~~

~~E. Conditions of Approval. The decision making authority may impose conditions on the approval of a Final PUD application to ensure compliance with the approval criteria.~~

~~F. Appeal of a Decision. Refer to Section 50.70.~~

~~G. Expiration of a Decision:~~

~~1. If the application proposes to develop the PUD in a single phase, the decision shall expire two (2) years after the date of decision. Refer to Section 50.90.~~

~~2. If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. However, all PUD phases must commence construction within five (5) years of the date of decision of the Final PUD. Refer to Section 50.90.~~

~~H. Extension of a Decision. Refer to Section 50.93.~~

1 **Proposed Planned Unit Development Code**

2
3 40.15.15.

4
5 **5. Planned Unit Development**

6
7 A. Threshold. A Planned Unit Development is an application process which
8 may be chosen by the applicant when one or more of the following
9 thresholds apply:

- 10
11 1. The Planned Unit Development (PUD) may be applied to Commercial,
12 Industrial, Multiple Use, and Residential properties that are 2 acres or
13 greater in size within any City zoning district except Residential-
14 Agricultural.
- 15
16 2. When a land division of 2 acres or greater in size within any City zoning
17 district except Residential-Agricultural requires collectively more than
18 3 of the following land use applications or combination thereof:
19 a. Minor Adjustment;
20 b. Major Adjustment;
21 c. Flexible Setback; or
22 d. Variance

23
24 B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of
25 this Code, shall apply to an application for PUD approval. The decision
26 making authority is the Planning Commission.

27
28 C. Approval Criteria. In order to approve a PUD application, the Planning
29 Commission shall make findings of fact based on evidence provided by the
30 applicant demonstrating that all the following criteria are satisfied:

- 31
32 1. The proposal satisfies the threshold requirements for a PUD
33 application.
- 34
35 2. All City application fees related to the application under consideration
36 by the decision making authority have been submitted.
- 37
38 3. The proposal meets the Site Development Requirement for setbacks
39 within the applicable zoning district for the perimeter of the parent
40 parcel unless otherwise provided by Section 60.35.03.
- 41
42 4. The proposal complies with the applicable policies of the
43 Comprehensive Plan.
- 44
45 5. The size, dimensions, configuration, and topography of the site and
46 natural and man-made features on the site can reasonably
47 accommodate the proposal.

EXHIBIT A

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28
 - 29
 - 30
 - 31
 - 32
 - 33
 - 34
 - 35
 - 36
 - 37
 - 38
 - 39
 - 40
 - 41
 - 42
 - 43
 - 44
 - 45
 - 46
6. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.
7. The width of proposed lots within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.
8. The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15
9. The proposal provides open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15:
- a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would complement the overall site design and be in the public interest.
 - b. The shape of the open space is such that the length is not more than three (3) times the width the purpose which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would complement the overall site design and be in the public interest.
 - c. The dedicated land(s) is located to reasonably serve all lots for the development, which the dedication is required.
10. If a phased PUD has been approved, development of the future phases of the PUD are filed within two (2) years or the PUD has received an extension approval pursuant to Section 50.93 of this Code.
11. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The PUD application shall be accompanied by the information required by the

EXHIBIT A

1 application form, and by Section 50.25 (Application Completeness), and
2 any other information identified through a Pre-Application Conference.

3
4 E. Conditions of Approval. The decision making authority may impose
5 conditions on the approval of a PUD application to ensure compliance
6 with the approval criteria.

7
8 F. Phasing of the development may be permitted with approval of the
9 Planning Commission. A deed restriction for those areas of the parent
10 parcel in which deferred development will occur shall limit the number of
11 future units developed to an amount consistent with the minimum and
12 maximum density or Floor Area Ratio (FAR) permitted for the overall
13 development.

14
15 G. Appeal of a Decision. Refer to Section 50.70.

16
17 H. Expiration of a Decision.

18
19 1. The PUD decision shall expire five (5) years after the date of decision.
20 Refer to Section 50.90.

21
22 I. Extension of a Decision. Refer to Section 50.93.
23

Section 2: The Development Code, Ordinance No. 2050, Chapter 60, Special Regulations, Section 60.35 shall be amended to read as follows:

60.35. PLANNED UNIT DEVELOPMENT [ORD 4224; August 2002]

60.35.05 Purpose. It is the purpose of these provisions to allow a planned unit development (PUD) in any City zoning district except Residential-Agricultural (R A). Uses or combinations of uses may be developed as a single, integral, functional unit or entity. The planned unit development provisions are intended to encourage more creative approaches for developing land, while enhancing and preserving the value, spirit, character, and integrity of surrounding areas which have developed or are developing under conventional district regulations. This is to be accomplished by:

- 1. Utilizing advances in technology and design.
2. Creating a comprehensive development plan which is equal to or better than that resulting from traditional lot-by-lot land development.
3. Employing design flexibility for locating structures, open spaces, circulation facilities, off-street parking areas, and other improvements.
4. Retaining and protecting special topographic, natural, or environmentally sensitive features on the site.
5. Encouraging innovative design techniques.
6. Utilizing design flexibility afforded by the planned unit development provisions to improve compatibility of the development with surrounding properties and uses.
7. Change from specific site development requirement and combinations of uses is allowable, subject to the provisions of this Code.

60.35.10. Modification of Base Zoning Standards

1. Dimensional Standards

The dimensional standards for the applicable zoning district as listed in Chapter 20 may be modified through approval of a Planned Unit Development, except for the following situations:

- A. Required setbacks shall continue to apply to the parent parcel upon which the proposed PUD will be located.
B. The intersection standards in Section 60.55.50 shall continue to be satisfied.

1 60.35.10.1.

2
3 ~~C. All building setbacks shall continue to meet applicable building and~~
4 ~~fire code requirements.~~

5
6 ~~D. Maximum building height standards may be increased up to twelve~~
7 ~~feet (12') when the applicable building setback distance along the~~
8 ~~perimeter of the parent parcel is increased at a ratio of 1.5 additional~~
9 ~~feet of setback for every foot of building height over the base zone~~
10 ~~standard for building height.~~

11
12 ~~2. Allowed Uses.~~

13
14 ~~A. Except as provided in Section 60.35.10.2.B. below, the uses in a PUD~~
15 ~~shall comply with the permitted and conditional use requirements of~~
16 ~~the base zoning district.~~

17
18 ~~B. Detached and attached dwellings shall be allowed in any PUD~~
19 ~~provided the overall residential density satisfies the applicable~~
20 ~~residential density provisions of this Code.~~

21
22 ~~C. In addition to the accessory uses and structures typical of the uses~~
23 ~~authorized in the subject zoning district in which the PUD is located,~~
24 ~~accessory uses approved as a part of a PUD may include the following:~~

25
26 ~~1. Private park, lake or waterway.~~

27
28 ~~2. Recreation area.~~

29
30 ~~3. Recreation building, clubhouse or social hall.~~

31
32 ~~4. Other accessory use or structure which the decision making~~
33 ~~authority finds is designed to serve primarily the residents of~~
34 ~~the PUD, and is compatible with the neighborhood and to the~~
35 ~~design of the PUD.~~

~~60.35.15 Common Open Space.~~

~~1. A PUD shall be required to provide common open space according to the following rates:~~

~~A. Area equal to at least twenty percent (20%) of the subject site when the site is up to and including 10 acres in size. [ORD 4365; September 2005]~~

~~B. Area equal to at least fifteen percent (15%) of the subject site when the site is more than 10 acres and up to and including 50 acres in size. [ORD 4365; September 2005]~~

~~C. An area equal to at least ten percent (10%) of the subject site when the site is more than 50 acres in size.~~

~~2. Land required to be set aside as setbacks or buffers shall not be included in the calculation of required open space.~~

~~3. Land shown on the final development plan as common open space, and landscaping and/or planting contained therein shall be permanently maintained by and conveyed to one of the following:~~

~~A. An association of owners or tenants, created as a non profit corporation under the laws of the state which shall adopt and impose articles of incorporation and bylaws and adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to the City Attorney as providing for the continuing care of the space. Such an association shall be formed and continued for the purpose of maintaining the common open space and shall provide for City intervention and the imposition of a lien against the entire planned unit development in the event the association fails to perform as required; or~~

~~B. A public agency which agrees to maintain the common open space and any buildings, structures, or other improvements which have been placed on it.~~

1 **60.35 PLANNED UNIT DEVELOPMENT**

2
3 **60.35.05 Purpose**

4 It is the purpose of these provisions to allow a Planned Unit Development (PUD) in any City
5 zoning district except Residential-Agricultural (R-A). Uses or combinations of uses may be
6 developed as a single, integral, functional unit or entity. The PUD provisions are intended to
7 encourage innovation and creative approaches for developing land while enhancing and
8 preserving the value, character, and integrity of surrounding areas which have developed or
9 are developing under conventional district regulations. This is to be accomplished by using
10 the following development and design principles:

- 11
- 12 1. Site design shall use the flexibility afforded by the planned unit development to:
 - 13
 - 14 A. Provide setbacks and buffering through landscape or building design abutting to existing
15 development;
 - 16 B. Cluster buildings to create open space and protect natural resources;
 - 17 C. Provide for active recreation and passive open space;
 - 18 D. Use resource efficient development and building practices that encourage innovative
19 design techniques and construction practices that use energy saving technology; or
 - 20
 - 21 2. Site design shall maximize the opportunities for diversified architecture and outdoor living
22 environments that respond to the existing site context by exploring design flexibility for
23 siting structures, open spaces, circulation facilities, off-street parking areas, streetscapes,
24 resource conservation and creation and other site improvements that facilitate efficient use of
25 land and create a comprehensive development plan which is better than that resulting from
26 traditional subdivision development;
 - 27
 - 28 3. Building architecture including detached residential, shall use innovative design that should
29 consider the context of the existing built and natural environment. Buildings shall be
30 architecturally detailed, and of a size and mass that contribute to a pedestrian-friendly
31 streetscape, and respond to the natural features of the site. Cluster housing, such as
32 Courtyard, Patio, or Cottage development, that groups buildings in areas to maximize open
33 space and preserve significant cultural and natural resources is highly encouraged as are the
34 use of sustainable building materials and practices. The orientation of buildings should
35 promote human scaled and pedestrian friendly environments and maximize solar exposure
36 for passive solar gain;
 - 37
 - 38 4. Open space should provide opportunities for active and/or passive recreation that includes
39 preservation of natural and cultural resources. Good site design shall retain and protect
40 special topographic, natural, and environmentally sensitive features and existing Significant
41 Groves and Historical and Individual trees and understory and use native plant material and
42 sustainable landscape practices.
 - 43
 - 44
 - 45
 - 46

1 **60.35.10 Modification of Base Zoning Standards**

2
3 1. *Permitted Uses*

- 4
5 A. The uses in a PUD shall comply with the permitted and conditional use requirements
6 of the zoning district.
7
8 B. Detached and attached dwellings may be allowed in a PUD provided the overall
9 residential density satisfies the applicable residential density provisions of this Code.
10
11 C. In addition to the accessory uses and structures typical in the zoning district in which
12 the PUD is located, accessory uses approved as a part of a PUD may include, but are
13 not limited to the following:
14
15 1. Private or public park, lake or waterway;
16
17 2. Recreation area;
18
19 3. Recreation building, clubhouse or social hall; or
20
21 4. Other accessory uses or structures which the Planning Commission finds is
22 designed to serve primarily the residents of the PUD, and is compatible with
23 the neighborhood and to the design of the PUD.
24

25 2. *Density and Lot Dimensions*

- 26
27 A. Density and building scale should relate to the surrounding neighborhood
28 development and natural resources by providing massing and architectural
29 compatibility with the surrounding neighborhood.
30
31 B. Density Transfers
32
33 1. A density transfer allows an equal transfer of dwelling units from one
34 portion of the site to another. Density transfers are allowed for the
35 following areas:
36
37 a. Area within a floodplain;
38
39 b. Area over twenty-five (25) percent slope;
40
41 c. Known landslide areas or areas shown to have potential for severe
42 or moderate landslide hazard;
43
44 d. Area in designated resources areas including: significant tree
45 groves, wetlands, riparian corridors, and their associated buffers;
46
47 e. Areas constrained by monitoring wells and similar areas dedicated
48 to remediation of contaminated soils or ground water; and
49

- f. Areas similar to those in a-e above, as approved by the Planning Commission through the PUD process.

C. Single-Family Residential Lot Sizes

- 1. Minimum lot size shall be 50% of the designated base zone.
- 2. Maximum lot size shall be 150% of the designated base zone unless designated for a future phase. When the maximum density for the parent parcel has been achieved or a lot is greater than 150% of the base zoning. An oversized lot(s) shall include a deed restriction to preclude unintended partitioning or subdividing of such lots in accordance with the requirements of the approved PUD.
- 3. Overall lot dimensions within the development plan shall not result in a lesser dwelling unit density than if the property in question were developed as a conventional design subdivision.

D. Lot Coverage

- 1. The following maximum lot coverage standards shall apply to all zones.
 - a. Single-Family Detached Houses – sixty (60) percent of lot area.
 - b. Single-Family Attached (Town homes) or row homes – Seventy (70) percent of lot area.
 - c. Duplexes and two-family attached houses – Sixty (60) percent of lot area.
 - d. Multi-family Housing - Sixty (60) percent of lot area.
- 2. Lot coverage may be increased by up to 10% by meeting the architectural requirements listed in the Development Bonus and Development Incentive Options described in section 60.35.25.

3. *Setbacks*

A. The dimensional standards for the applicable zoning district as listed in Chapter 20 may be modified through approval of a Planned Unit Development, except for the following situations:

1. For proposed lots abutting the perimeter of the property, the required setbacks shall comply with the standard front and rear setbacks of the parent parcel. Where the side yard of the parent parcel abuts existing development the setback for new development shall be no less than fifteen (15) feet. By meeting the Development Bonus and Development Incentive Options in section 60.35.25 the setbacks of proposed perimeter parcels may be reduced by up to ten (10) percent upon approval of the Planning Commission.
2. Where standard modifications would not promote pedestrian or bicycle connection to street; support storm water management; or meet fire and building codes.

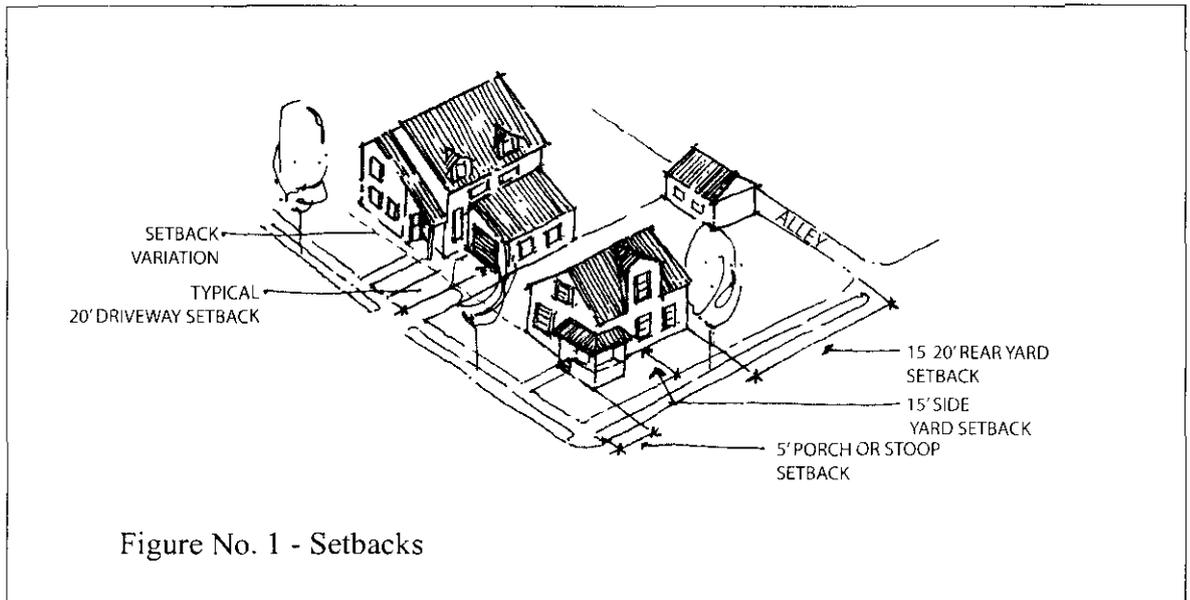
B. *Front Setbacks*

Apply to all residential developments except lots along the perimeter which shall be consistent with Section 60.35.10.3.A.1.

1. Proposed lots with front setbacks modified from the applicable zoning district, and lots adjacent shall have staggered front yard setbacks in order to provide diversity in the lot layout.
2. Front setbacks for a residential structure, excluding garage where the garage door faces the front property line, shall be a minimum of ten (10) feet. Unenclosed porch or building stoop may be within five (5) feet of property line as long as it does not encroach into a public utility easement.
3. All single-family attached and detached garages that face a public or private street shall be setback a minimum of twenty (20) feet from property line. Attached and detached garages shall be recessed a minimum of four (4) feet from the front of the building, not including porches when facing a public or private street. Garages and carports accessed from an alley shall be setback a minimum of five (5) feet from rear building elevation. All other garage and carport entrances must be recessed minimum of two (2) feet when building setback is at least twenty (20) feet

C. *Rear setbacks*

1. Rear setbacks shall be the same as the designated zone for the parent parcel for lots abutting the perimeter of the proposed development excepting alley accessed lots for which rear setbacks may be reduced to 6 feet for alley-accessed lots.



1
2
3
4
5
6
7
8
9
10

D. Side setbacks

1. Except for zero-lot line development, side setbacks shall be a minimum of four (4) feet on interior side yards, and ten (10) feet on street corner lots. All zero-lot line development shall have side yard setbacks of 10 feet on one side of the dwelling unit and no setback required on the opposite side.

60.35.15 Open space

Purpose

Open space shall provide opportunities for active and/or passive recreation and may include existing stands of trees, understory resource areas, and storm water facilities as outlined in this section. Active open space shall allow human activities including recreational and social opportunities such as play fields, playgrounds, swimming pools, plazas and other recreational facilities. Open space may also be passive and include human activities limited to walking, running, and cycling, seating areas and wildlife viewing or natural areas such as a wetland.

1. A Planned Unit Development shall provide baseline open space of an area equal to at least twenty percent (20%) of the subject site.

2. Up to twenty (20) percent of the open space requirement may be dedicated to the following land uses:

A. Water quality facilities that have side slopes of 3:1 or less and do not require fencing per Clean Water Services (CWS) standards;

B. Environmentally sensitive areas including wetlands and any required buffers required by Clean Water Services or other regulatory body.

3. Standards

A. Open space shall be land that is available for the creation of active and/or passive areas, or resource areas that provide visible and accessible open space to the proposed community.

B. Open space shall be easily accessible physically or visually to all members of the planned community via a minimum thirty (30) foot street frontage or access easement;

C. No more than forty (40) percent of the gross land dedicated may have slopes greater than five (5) percent;

D. Open space areas shall have a dedicated meter and underground irrigation system to ensure adequate water supply during establishment period (3-years) and during periods of drought for all newly planted areas. Resource areas are exempt from this criterion.

E. For developments ten (10) acres or greater, at least twenty-five (25) percent of the total required open space area shall be active space or meet the commons criteria in this chapter.

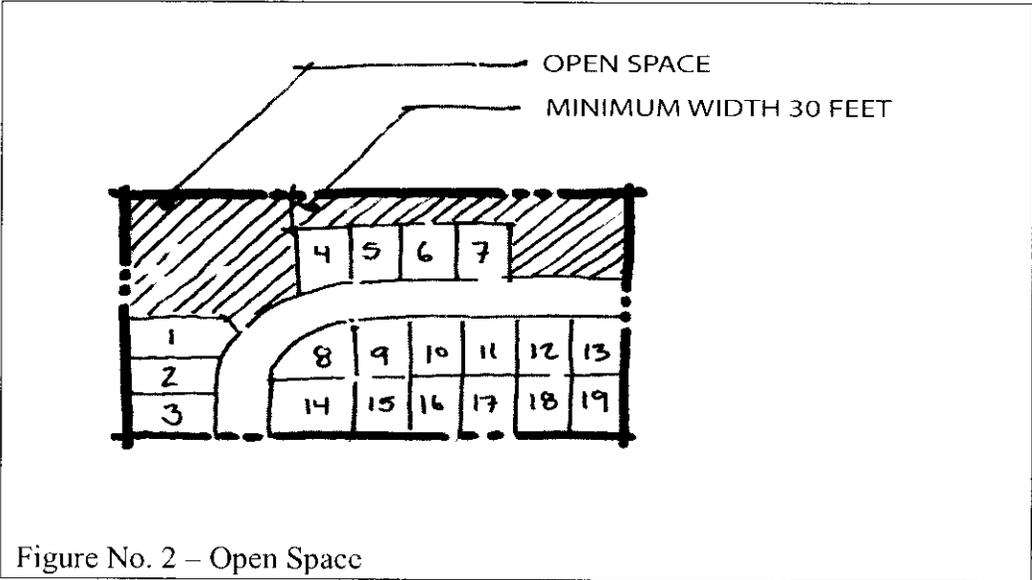
F. For the purpose of this Code, open space does not include:

1. Public or private streets;

EXHIBIT A

1
2
3
4
5
6
7
8

- 2. Surface parking lots or paved areas not designated for active or passive recreation;
- 3. Private lots and buildings; including setbacks, or landscape buffers;
- 4. Vehicular access driveways or maneuvering areas.



9
10
11

Figure No. 2 – Open Space

Commons Area

A “Commons area” within the dedicated open space is required for residential developments that have ten (10) units or more. One designated space shall be provided as an accessible commons area that may be a gathering spot, play area, over look or any other outdoor area given special consideration and may consist of active, passive, or both uses. The Commons area shall be accessible to all lots and meet the following criteria:

1. One hundred fifty (150) square feet for each unit containing 500 or less square feet of gross floor area.
2. Two hundred fifty (250) square feet for each unit containing more than 500 square feet and up to 2000 square feet of gross floor area.
3. Three hundred fifty (350) square feet for each unit containing more than 2000 square feet of gross floor area.
4. A Commons area shall be no smaller than the average minimum lot size and shall have minimum width 40 feet.
5. A Commons area may abut a collector or greater classified street as identified in the City’s adopted Functional Classification Plan, when separated from the street by a constructed barrier, such as a fence or wall, at least three (3) feet in height.
6. One Commons area shall be provided for every fifty (50) units in single-family developments and every one-hundred (100) units for multi-family developments.
7. A Commons shall include physical improvements to enhance the commons area that from the following list, the items chosen must total 500 or more points. Other improvements may be approved by the Planning Commission:

Amenity	Points
A bench or other seating with a pathway or other pedestrian way	100
Water feature	250
Water feature with wading area	300
Picnic Area or outdoor eating facility	150
Playground equipment	200
Combined with a 750 square foot gathering area	350
Tennis and/or sport court (e.g Basketball, Volleyball, Paddle Tennis)	200
A gazebo or similar gathering area	150
An indoor or outdoor swimming with clubhouse	500
Plaza that serve as gathering places with benches	150
Indoor Clubhouse or meeting facility	500
Dedicated Basketball, Volleyball, or other sport use area	200
Other (Improvements not included on this list as approved by the Planning Commission	100-500

1

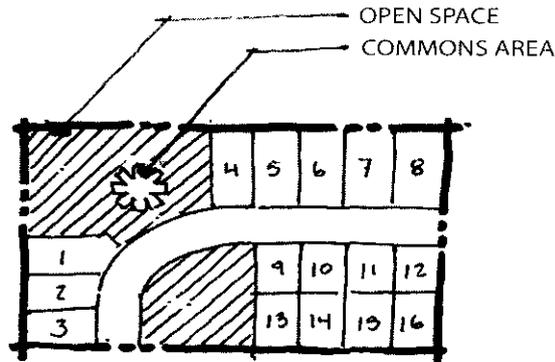


Figure No. 3 – Commons Area

4. *Maintenance and Ownership*

Land shown on the final development plan as common open space, and landscaping and/or planting contained therein shall be permanently maintained by and conveyed to one of the following:

- A. An association of owners or tenants, created as a non-profit corporation under the laws of the state (ORS 94.572) which shall adopt and impose articles of incorporation and bylaws and adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to the City Attorney as providing for the continuing care of the space. Such an association shall be formed and continued for the purpose of maintaining the common open space and shall provide for City intervention and the imposition of a lien against the entire planned unit development in the event the association fails to perform as required; or
- B. A public agency which agrees to maintain the common open space and any buildings, structures, or other improvements which have been placed on it.
- C. Dedicated open space and commons areas shall be protected by Covenants (CC&Rs) or deed restriction to prevent any future commercial, industrial, or residential development.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

60.35.20 Building Architecture

1. *Purpose*

This section applies to development which is not subject to Section 60.05, Design Review, of this code.

The following architectural standards are intended to promote innovative design that considers the context of the existing built and natural environment. Buildings shall be detailed, human-scale, and respond to the natural features of the site. Cluster housing or grouping buildings in areas to maximize open space and preserve significant cultural and natural resources is highly encouraged along with the use of sustainable building materials and practices. Building shall be oriented to the street or other public spaces such as parks, plazas, courtyards and open commons when served by an alley. Building architecture section also offers applicable Development Bonuses and Development Incentive Options in Section 60.35.30

2. *Building Orientation*

Building shall be oriented to the street or other public spaces such as parks, plazas, courtyards and open commons when served by an alley. The orientation of buildings shall promote environments that encourage walking, social interaction, and safety.

- A. Exceptions to this standard may be allowed by the Planning Commission where access, topography, and natural resources prohibit the orientation of buildings to the street or other public open spaces.
- B. In all cases buildings and or private lots shall be served by or have direct access to sidewalks or paths that connect to a private or public street/sidewalk system.
- C. Garages with rear alley access or garages located in the rear of the lot with shared driveways are encouraged.
- D. All buildings shall have their primary entrance to a street or publicly accessible sidewalk where buildings face public parks, common areas or open space.
- E. All primary entrances shall be covered or recessed with a minimum depth of three (3) feet deep and five (5) feet wide.

3. *Building Heights (Need Graphic)*

Buildings shall be to scale with similar types of existing structures on adjacent properties. This can be accomplished by utilizing graduated building heights which offer a transition between single-story residential development and multiple-story residential.

EXHIBIT A

- 1 A. Maximum building height standards may be increased up to twelve feet (12')
2 when the applicable building setback distance along the perimeter of the parent
3 parcel is increased at a ratio of 1.5 additional feet of setback for every foot of
4 building height over the base zone standard for building height.

5
6 4. *Architectural Standards*

7
8 Architectural standards are intended to promote quality design and detail that promote
9 innovation and creativity that allows for a variety of building styles and types. All
10 buildings shall adhere to these standards. Graphics are provided as an example of how
11 standards apply.

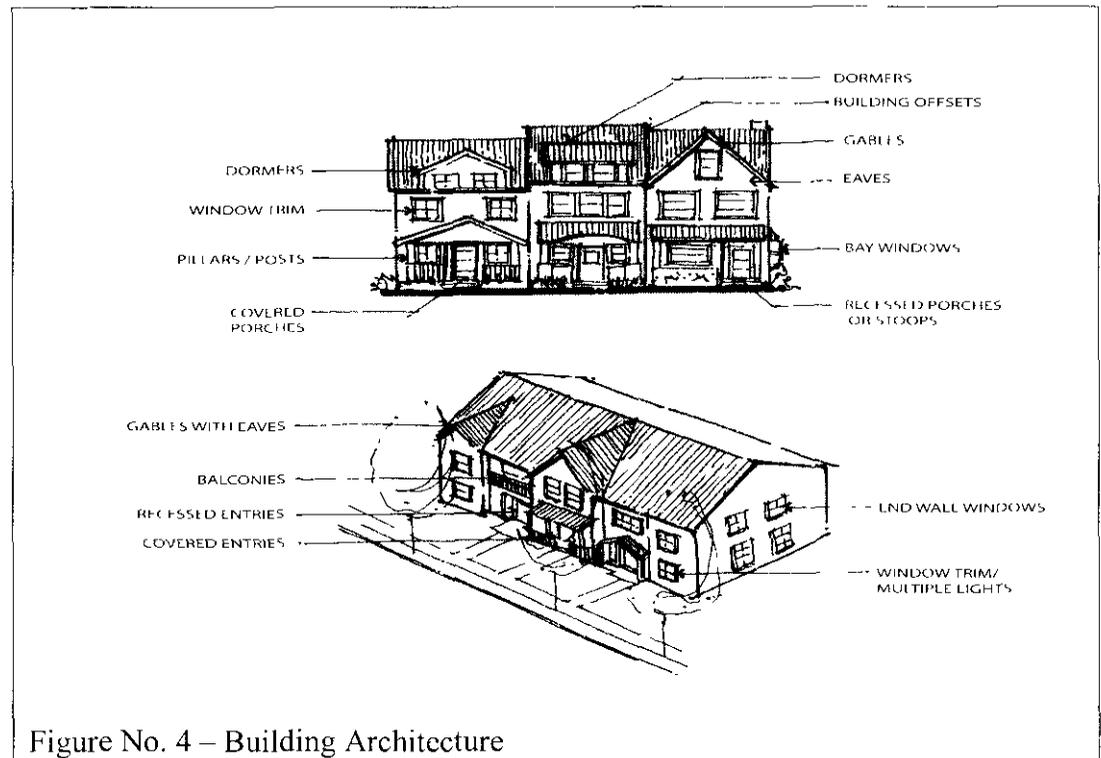
12
13 The following standards apply to all single-family developments proposed through the
14 PUD process.

- 15
16 A. Building scale and massing shall complement surrounding uses by complying
17 with the provisions in this Code and meeting the following criteria for residential
18 development.
- 19
20 B. Attached dwellings shall maintain similar architectural character as detached
21 dwellings when part of the same development.
- 22
23 C. All detached residential structures shall include design elements that provide
24 building articulation, continuity of form and variety. Architecture should avoid
25 long expanses of uninterrupted building surfaces. Buildings shall incorporate at
26 least four (4) of the following elements:
- 27
28 1. Balconies, window reveals, canopies, awnings, and covered patios,
29 porches or entrances;
 - 30
31 2. Offsets in roof elevations of two (2) feet or greater;
 - 32
33 3. Bay windows extending out from the building face that reflect an
34 internal space such as a room or alcove;
 - 35
36 4. Individual windows in upper stories that are approximately the size
37 and proportion of a traditional window;
 - 38
39 5. Staggered windows that do not align with windows on adjacent
40 properties and minimize the impact of windows in living spaces that
41 may infringe on the privacy of adjacent residents;
 - 42
43 6. Windows with trim or molding that appears substantial from the
44 sidewalk;
 - 45

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

7. Windows that are separated from adjacent windows by a vertical element;
8. Windows grouped together to form larger areas of glazing, if individual window units are separated by moldings or jambs;
9. Windows with multiple panes of glass;
10. Window patterns, building articulation and other treatments that help to identify individual residential units in a multi-family building
11. Dormers;
12. Decorative structural accents such as kneebrackets or corbels, widow walks, turrets, hooded windows, pinnacles and pendants, pillars or posts, board and batten, or other architectural vernacular style common to the Pacific Northwest; or
13. An alternative feature approved by the Planning Commission



22
23
24
25
26
27
28
29
30
31
32

2. All building elevations facing a street or public space shall have windows, doors, porches and/or balconies. Front yard building elevations shall have a minimum of fifty (50) percent, and rear facing elevations shall have minimum of thirty (30) percent windows, person doors, porches and/or balconies. Side elevations facing an interior lot line shall have a minimum of fifteen (15) percent windows, person doors, porches and/or balconies. Side elevations facing a public or private street shall have twenty five (25)

percent windows, person doors, porches and/or balconies. Building elevation is measured as the horizontal plane between the lowest plat line and the highest plate line of any full or partial building story containing doors, porches, balconies, terraces and/or windows.

- 3. Alternative building design may reflect modern building form and style. These styles may have less detail or ornamentation but shall have demonstrated successful use of materials and form, and a cohesive architectural style and be approved by the Planning Commission.

60.35.30 Development Bonuses and Development Incentive Options

Purpose

The PUD also offers the applicant additional standards which can be met as incentives to promote more creative and innovative approaches to site design and infrastructure. The Development Incentive Options are not required; an applicant may choose to meet the standard provisions and requirements of the PUD code. The Development Incentive Options are intended to promote a wide variety of creative and sustainable design practices that better integrate site design, building architecture, and open space with the existing built and natural environment and lead to exceptional community building in the City of Beaverton. Development Incentive Options shall also consider the form and function of the physical improvements and their relationship to each other and the existing environment. Development plans that meet selected Development Incentive

Options chosen by the applicant may take advantage of one or both:

- Reduced open space requirements;
- Setback reduction of the parent parcel.

Development Incentive bonuses are described below and quantify the flexibility and options that the developer may use to obtain additional flexibility in open space requirements and setback reductions. Approval of the Development Incentive Options and the additional development flexibility allowed are at the discretion of the Planning Commission. In all cases the total incentives may not reduce open space by more than fifty (50) percent of the open space as required in Section 60.35.15.

The following Development Bonuses and Incentive Options are intended to provide design flexibility.

60.35.40 Allowed Development Bonuses

Site plans that meet selected Development Incentive Options chosen by the applicant may take advantage of one or a combination of the following *Development Bonuses*:

- 1. Decrease open space area requirement by using a combination of Development Incentive Options up to a maximum of fifty (50) percent of that required by the PUD standard open space requirements;
- 2. Reduce front and rear setbacks of parent parcel up to ten (10) percent within the perimeter of the PUD.

60.35.50 Development Incentive Options

1. Open Space Development Incentive Options = Twenty (20) Percent Open Space Reduction

Up to a twenty (20) percent reduction in the required amount of open space as approved by the Planning Commission may be achieved by conforming to the open space options listed below. The Planning Commission may consider other improvements in addition to those listed that offer a similar level of quality and continuity in the proposed open space:

- a. *Active Recreation* – Twenty-five (25) percent of open space (beyond a commons area) is usable for active recreation, such as: play structures, picnic areas, or sports field; or
- b. *View Preservation* – Open space is sited such that a view corridor of a significant natural vista is preserved for the community at large, such as views into Significant Tree Groves or Significant Natural Resource Areas.

2. Architectural Development Incentive Options = Decrease in Open Space, Front and Rear Setbacks

The following architectural incentives that promote sustainable building practices and architectural detail that promotes high quality design and character. A decrease of up to a maximum of twenty (20) percent of the required open space or front and rear setbacks of the parent parcel at the discretion of the Planning Commission, where the applicant’s site plan and proposed architecture meet one of the following incentives:

- A. Develop lots such that 90% meet solar access requirement (60.45.05) for a ten (10) percent decrease in open space.
- B. Install a ‘Greenroof’ or Ecoroof on 100 percent of the roof area of twenty (20) percent of the detached dwellings or 20 percent of the total roof area for attached dwellings, multifamily dwellings, commercial, or industrial buildings for a ten (10) percent decrease in the required open space.

1 D. Up to ten (10) percent reduction in front and rear parent parcel setbacks as
2 approved by the Planning Commission may be achieved by developing cluster housing that
3 preserves and increases open space by twenty (20) percent above baseline requirement.
4

5
6 3. *Affordable Housing Development Incentive Options = Decrease in Open Space*
7

8 Up to a fifty (50) percent reduction in the required amount of open space as approved by
9 the Planning Commission may be achieved by development of ten (10) percent of the units
10 as affordable housing. Up to a sixty (60) percent reduction in the required amount of open
11 space as approved by the Planning Commission may be achieved by development of
12 twenty (20) percent of the units as affordable housing.
13

14 Affordable housing is defined as housing affordable to households earning up to 100
15 percent of the median household income in Washington County, or less as adjusted for
16 family size as determined by the U.S. Department of Housing and Urban Development
17 (HUD). Housing prices and/or rents shall be limited to that level through deed restriction
18 for up to thirty (30) years. Approval of the affordable housing Development Incentive
19 Option shall be subject to a developer identifying and contracting with a public, or private
20 housing agency that will administer the housing affordability guarantee.

1 Section 3: The Development Code, Ordinance No. 2050, Chapter 90, Definitions,
2 Section 40.15.15.5 shall be amended to read as follows:

3
4 **Chapter 90**

5
6
7 **Active Space** - Active space is an area which requires intensive development and
8 often includes playgrounds and ball fields.

9
10 **Cluster Housing** Detached dwelling units located within a Planned Unit
11 Development where detached housing is located in close proximity to each other
12 and share common open space including recreation areas and parking.

13 **Green Roof** A Green Roof consists of vegetation and soil, or a growing
14 medium, planted over a waterproofing membrane. Additional layers, such as a root
15 barrier and drainage and irrigation systems may also be included.

16 **Sustainable Building Practices** - Land preparation, materials selection, life-cycle of the
17 building (construction, operation and maintenance, demolition). Sustainable building includes
18 such practices as redevelopment of inefficiently designed or environmentally damaged sites; job-
19 site recycling of construction materials; native vegetation landscapes; stream and wetland
20 protection and restoration; natural drainage; energy and water efficiency; low toxicity materials;
21 recycled materials; reduced use of land and materials; and design for re-use.

22 **Sustainable Landscape Practices** Landscape maintenance and design that limits the use
23 of herbicides, fertilizers, and pesticides by planting native plants and appropriate ornamentals
24 and uses METRO certified composted mulch to amend soils and mulch plant beds. These
25 practices naturally fertilize the soil and reduce irrigation and fertilizer needs by creating healthy
26 soils. Sustainable landscape practices also include the concept of creating multi-functional
27 landscapes that can serve various purposes. For example an area may be designed to manage
28 runoff, provide screening, wind protection habitat, and serve active open space use.
29

1 **Section 4: The Development Code, Ordinance No. 2050, Chapter 20, Land Uses,**
2 **Section 20.05.25 shall be amended to read as follows:**

3
4
5
6 *****

7 **20.05.25. Urban Medium Density (R4) District [ORD 4047; May 1999]**

8
9 **1. Purpose.** The purpose of this zone is to allow up to one principal and one
10 accessory dwelling per lot of record as permitted uses. In addition, two
11 attached dwellings may be allowed per lot of record subject to a Conditional
12 Use. Three or more attached dwellings may be permitted pursuant to Final
13 Planned Unit Development approval. The R4 district establishes medium
14 urban density residential home sites where a minimum land area of 4,000
15 square feet is available for each principal dwelling unit, and where full urban
16 services are provided. [ORD 4224; August 2002]

17
18 *****

19 **20.05.25**

20
21 **B. Conditional Uses:** (Subject to Section 40.15 or Section 40.96 as applicable)

22
23 *****

24
25 **2. Three or more attached dwellings subject to approval of a Final**
26 **Planned Unit Development. [ORD 4224; August 2002]**

27
28
29
30
31 *****

Section 4: The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.05.25 shall be amended to read as follows:

20.05 Residential Land Use Districts

20.05.25.50. Site Development Standards

20.20.50.A.5.

SA-MU SA-MDR

D. Maximum Floor Area Ratio (FAR) not not
for residential developments specified specified

E. Projects may use the Final Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4332; November 2004]

20.20.50.A.5.

SA-MU SA-MDR

D. Maximum Floor Area Ratio (FAR) not not
for residential developments specified specified

E. Projects may use the Final Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4332;

1 **Section 5: The Development Code, Ordinance No. 2050, Chapter 50, Procedures,**
2 **Section 50. shall be amended to read as follows:**

3
4
5
6
7
8
9
10
11
12
13

50.90. Expiration of a Decision

~~Final Planned Unit Development (40.15.15.6) when there is no phasing to the
development~~

Preliminary Planned Unit Development (40.15.15.5)

**BEFORE THE PLANNING COMMISSION FOR
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF A REQUEST TO AMEND))	ORDER NO 1902
BEAVERTON DEVELOPMENT CODE)	TA2006-0003 RECOMMENDING APPROVAL
CHAPTER 40 (APPLICATIONS) SECTION)	OF PLANNED UNIT DEVELOPMENT TEXT
40.15.15 PLANNED UNIT DEVELOPMENTS.)	AMENDMENT.
CHAPTER 60 (SPECIAL REGULATIONS))	
SECTION 60.35, PLANNED UNIT)	
DEVELOPMENTS; AND CHAPTER 90)	
(DEFINITIONS). CITY OF BEAVERTON,)	
APPLICANT.)	

The matter of TA2006-0003 (2006 Planned Unit Development Text Amendment) was initiated by the City of Beaverton, through the submittal of a text amendment application to the Beaverton Community Development Department.

Pursuant to Ordinance 2050 (Development Code), effective through Ordinance 4265, Section 50.50 (Type 4 Application), the Planning Commission conducted a public hearing on June 14, July 26, and August 23, 2006, and considered oral and written testimony and exhibits for the proposed amendment to the Beaverton Development Code.

TA2006-0003 (Planned Unit Development Text Amendments) proposes to amend Development Code Chapter 40 (Applications) Section 40.15.15, Planned Unit Developments; Chapter 60 (Special Regulations) Section 60.35, Planned Unit Developments; and Chapter 90 (Definitions).

The first public hearing for the proposed PUD Text Amendment was held on June 14, 2006 and included a presentation by staff and consultants that described the framework and concepts of the proposed PUD text. At the hearing, Commissioner Bobadilla discussed the need to clarify the intent of the Housing Affordability Incentive code language.

The Commission also discussed and agreed to change the wording of the first threshold in Section 40.15.15.5.A.1 to include the words “at least” to modify the two-acre minimum acreage threshold for a PUD.

The Commission discussed the intent of open space and that the text should reflect the flexibility for “active and/or passive recreation.” Referring to Section 60.35.05.2, the Commission made the following two language changes: “Site design should maximize the opportunities for diversified architecture and outdoor living environments....” and “ ...create a comprehensive development plan which is better than that resulting from traditional subdivision development...”.

The Commission directed staff to create a more prescriptive setback standard to ensure that when a PUD is proposed that abuts existing development, the impact on livability to the existing neighborhood is minimized. The Commission also directed staff to change the minimum side yard setback from three feet to four feet for lots on the interior of a proposed PUD. This change was based on discussions between the Commission and developers of a recent PUD in Beaverton.

The Commission discussed the merits of the required open space and the changes proposed for open space requirements in the new text. The Commission discussed the possibility of requiring a minimum of 20-percent open space for all proposed PUD’s rather than the current system of allowing for less open space as the size of a parcel increases. The Commission also discussed the “commons area” that is required within the open space area and specifically the merits of the proposed physical amenities required to be developed in association with the commons area. The Commission discussed the need to require the text to provide a more structured approach for selecting amenities for the commons area than simply listing the choices as proposed in the proposed PUD text language. Commissioner Pouge and Stephens noted it is important to provide more direction to developers or they will simply select the least expensive and intensive amenity from the list. Commissioner Stephens used a bench and a gazebo as an example. The Commission directed

staff to establish a hierarchy for selecting commons area amenities. The June 14, 2006 public hearing closed and continued to a date certain July 19, 2006.

A second public hearing scheduled for July 19, 2006 was opened and continued to a date certain July 26, 2006. On July 26, 2006, the Planning Commission opened the public hearing to review changes to the proposed PUD text based on Commission discussion and deliberation from the June 14, 2006 public hearing. Staff presented a memo dated July 21, 2006 that introduced a framework for the Commission to review comments from the Commission, staff, and a focus group of developers and land use consultants. The memo also asked the Commission to reconsider the minimum two-acre threshold based on concerns expressed by the Community Development Department staff and the developer/consultant group. The concerns introduced to the Planning Commission included the lack of available parcels that are two acre or greater in size within the City and the unintended consequences for not providing flexibility for infill development on parcels less than two acres in size that would no longer be eligible for the flexibility provided through the PUD application. The Planning Commission deliberated on the issue of the two-acre minimum and reiterated their support for the two-acre minimum as a way to improve the quality of PUD's. The Commission expressed consensus that by maintaining a two-acre minimum threshold, developers would be required to assemble properties which in turn will lead to more comprehensive PUD development. The Commission expressed support for raising the expectations for PUD development and requiring smaller subdivisions to meet the existing standards of the Development Code. The July 17, 2006 staff memo also introduced a point system for considering commons area amenities required within open space area of a PUD. The Commission deliberated on the proposed point system and asked staff to further refine the system and add discretion that would allow the Commission to review and accept an amenity proposed by a developer that was not on the list.

The Planning Commission held a third and final public hearing on August 23, 2006 to consider minor edits to the proposed PUD code text agreed

to at the July 26, 2006 meeting. The Commission also considered additional changes to the proposed PUD code text included in the staff memo dated August 17, 2006. These changes include the insertion of new language and the deletion of other language (represented with shaded or strike-through text, respectively), which included the following:

Section 40.15.15.5.C.7.

7. The width of proposed lots or staggering of building setbacks within residential developments vary to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.

Section 40.15.15.5.C.9. a & b

9. The proposal provides ~~usable~~ and improved open space that is accessible and usable by persons living nearby. ~~Usable~~ Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.35:
 - a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest and complement the overall site design.
 - b. The shape of the open space is such that the length is not more than three (3) times the width the purpose which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.

The Planning Commission added back the language stricken in an earlier draft that indicates that solar access one of the positive attributes that PUD's should seek to promote.

Section 60.35.05 Purpose

3. Building architecture including detached residential, shall use innovative design that should considers the context of the existing built and natural environment. Buildings shall be architecturally detailed, and of a size and mass that contribute to a pedestrian-friendly streetscape, and respond to the natural features of the site. Cluster housing, such as Courtyard, Patio, or Cottage development, that ~~grouping~~ groups buildings in areas to maximize open space and preserve significant cultural and natural resources is highly encouraged as are the use of sustainable building materials and practices. The orientation of buildings ~~shall~~ should promote human scaled and pedestrian friendly environments ~~that encourage walking, social interaction, and safety by having "eyes on the street or park" whenever possible,~~ and maximize solar exposure for passive solar gain;

Section 50.35.05.4

The Commission proposed language changes for clarity.

4. Open space should provide opportunities for active and/or passive recreation that includes preservation of natural and cultural resources. Good site design shall retain and protect special topographic, natural, and environmentally sensitive features and existing Significant Groves, Historic and Individual trees should be retained and protected. ~~stands of trees and Understory~~ and the use native plant material and sustainable landscape practices are encouraged.

Section 60.35.10.2.A.1

2. Density and Lot Dimensions

- A. Density and building scale shall relate to the surrounding neighborhood development and natural resources.
1. ~~Attached single family units may not exceed four (4) units per structure in the R-10 and R-7 Residential zones and~~ Buildings shall be designed in a manner that provides architectural and massing compatibility with the surrounding neighborhood.

Section 60.35.10.2.C.2

2. Maximum lot size may be 150% of the designated base zone unless designated ~~in the PUD approval~~ for a future phase. When the maximum density for the parent parcel has been achieved or a lot is greater than 150% of the based zoning an oversized lot(s) shall include a deed restriction to preclude unintended partitioning or subdividing of such lots in accordance with the requirements of the approved PUD.

The Commission noted that these three standards could be collapsed because the code no longer provided a distinction between the size of a PUD and the percentage of open space required. All PUD's would be required to provide a minimum of 20-percent open space unless a development incentive is used.

Section 60.35.15.1 A-C

1. A Planned Development shall provide baseline open space of an area equal to at least twenty (20 %) of the subject site.
 - A. ~~Area equal to at least twenty percent (20%) of the subject site, when the site is up to and including 10 acres in size.~~

~~B. Area equal to at least fifteen twenty percent (20%) of the subject site when the site is more than 10 acres and up to and including 50 acres in size.~~

~~C. An area equal to at least ten twenty percent (20%) of the subject site when the site is more than 50 acres in size.~~

Section 60.35.15.2.G.7. – Commons Area

7. A Commons shall include physical improvements to enhance the commons area that from the following list, the items chosen must total 500 or more points. Other improvements may be approved by the Planning Commission:

Amenity	Points
A bench or other seating with a pathway or other pedestrian way	100
Water feature.	250
Water feature with wading area	300
Picnic Area or outdoor eating facility	150
Playground equipment	200
Combined with a 750 square foot gathering area	350
Tennis and/or sport court (e.g. Basketball, Volleyball, Paddle Tennis)	200
A gazebo or similar gathering area	150
An indoor or outdoor swimming with clubhouse	500
Plaza that serve as gathering places with benches	150
Indoor Clubhouse or meeting facility	500
Dedicated Basketball, Volleyball, or other sport use area	200
Other (Improvements not included on this list as approved by the Planning Commission	100-500

Section 60.35.30 – Development Bonuses and Development Incentive Options

The Commission concurred that the verb “choose or chosen” should be used to indicate an applicant’s choice in selecting PUD incentives.

Options chosen selected by the applicant may take advantage of one or a ~~combination~~ both of the following *Development Bonuses*:

Section 60.35.50.3 – Affordable Housing Development Incentive Options

The Commission deliberated on this incentive and agreed that the deed restricting sale of the house as an affordable dwelling should be increased from 15 years to 30 years.

The Planning Commission adopts by reference the following: staff report dated June 7, 2006, staff memorandums dated July 21, 2006 and August 17, 2006, as amended, and the supplemental findings contained herein as to criteria contained in Section 40.85.15.1.C.1-7 applicable to this request contained herein; now, therefore:

IT IS HEREBY ORDERED that pursuant to Section 50.50.1 of the Beaverton Development Code, the Planning Commission **RECOMMENDS APPROVAL** Chapter 40 (Applications) Section 40.15.15, and Planned Unit Developments; Chapter 60 (Special Regulations) Section 60.35, Planned Unit Developments; and Chapter 90 (Definitions) contained within TA2006-0003. The Planning Commission finds that evidence has been provided demonstrating that all of the approval criteria specified in Section 40.85.15.1.C.1-7 are satisfied for the modification to Chapter 40 (Applications) Section 40.15.15, Planned Unit Developments; Chapter 60 (Special Regulations) 60.35, Planned Unit Developments; and Chapter 90 (Definitions) of the Development Code.

Motion **CARRIED** by the following vote:

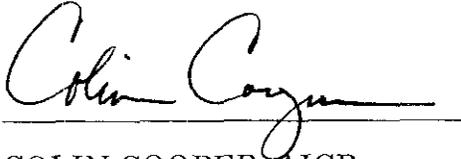
AYES: Maks, Winter, Bobadilla, Pogue, Stephens, and Johansen.
NAYS: Kroger.
ABSTAIN: None.
ABSENT: None.

Dated this _____ day of _____, 2006.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 1902, an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Recorder's Office by no later than 5:00 p.m. on _____, 2006.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

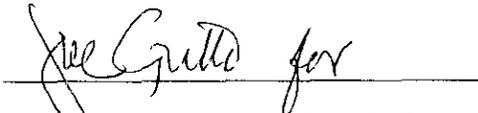


COLIN COOPER, AICP
Senior Planner

APPROVED:



ERIC H. JOHANSEN
Chairman



STEVEN A. SPARKS, AICP
Development Services Manager



MEMORANDUM

City of Beaverton
Community Development Department

"make it happen"

To: Mayor Drake and City Councilors
From: Colin Cooper, AICP, Senior Planner *CC*
Date: September 5, 2006
Subject: Planned Unit Development (TA 2006-0003)

The purpose of this memo is to provide a background for the development of the Planned Unit Development (PUD) Text Amendment (TA 2006-0003).

Text Amendment Background

The Planned Unit Development (PUD) text amendment (TA 2006-0003 PUD Text Amendment) originated from a Planning Commission work session held on February 9, 2005 where staff was requested by the Planning Commission to create an opportunity to review the Planned Unit Development standards adopted as part of the Comprehensive Updates to Chapter 40 and 60 (TA 2001-0001 and 2001-0004) in 2002.

The PUD regulations adopted in 2002 sought to address the inclusion of more open space in PUD's by adopting a specific minimum open space standard, define what areas could be counted towards the minimum open space requirement, and establish that parent parcel setbacks continue to be observed. These issues were addressed in the 2002 Comprehensive Code Update because the majority of PUD's developed in the years preceding the text amendment were being used to simply maximize density on constrained sites rather than create unique or creative developments. Historically the intent of employing PUD regulations has been to either provide a developer flexibility to provide unique residential subdivisions, such as Murrayhill and Highland Hills, or to provide flexibility to respond to constrained sites while still maintaining neighborhood character. Prior to the changes to PUD that were included in the 2002 Comprehensive Code update, the PUD code included a four (4) acre minimum area threshold for the application of a PUD. This threshold was removed in order to provide more flexibility in achieving Metro Urban Growth Management Functional Plan, Title One

Since 2002, the PC has reviewed 14 PUD applications. It is the observation of the Planning Commission that a majority of the PUD projects developed since the removal of the minimum acreage requirement have produced land developments without the desired site plan or design innovation.

Staff Overview of Proposed Planned Unit Text Amendment Development Code

To develop the new PUD text, staff has conducted three work sessions with the Planning Commission to review the existing PUD regulations, discuss possible amendments, and consider potential incentives for fostering innovative PUD development.

The first work session with the Planning Commission was held on May 26, 2005, at which staff reviewed all of the PUD code standards contained in Chapters 40 and 60. The result of the first work session was a list of issues and concerns regarding the existing PUD regulations.

On July 13, 2005, a second work session was held to review the major issues and areas of concern that were articulated by the Planning Commission from the first PUD work session. The intent of this work session was to ensure that staff accurately captured the comments and observations of the Planning Commission.

A third work session took place on February 1, 2006, with Parametrix, a planning consultant, presenting two (2) products to the Planning Commission to help analyze the existing, PUD code and consider possible amendments: 1) Beaverton PUD Ordinance and Framework Review; and, 2) Infill PUD Site Plan Analysis.

The consultant team reviewed six PUD ordinances along with the City's PUD regulations. The six other jurisdictions included the Oregon communities of Tigard, Hillsboro, Portland, Fairview, Salem, and Bend in an effort to find codes that were effectively promoting innovative development in line with the stated areas of concern by the Planning Commission. The consultant team focused their review on Oregon communities because these communities must respond to the same state wide land use planning program and land use laws as the City of Beaverton. The conclusion of the consultants review was that while several of the PUD ordinances of other jurisdictions provided varying degrees of flexibility, they did not create incentives to reach for higher levels of site plan or design innovation.

To consider and analyze possible different approaches to innovative site plan design, staff directed the Parametrix team to analyze a previously approved PUD application as a case study. Staff choose the previously approved Onody PUD (CUP 2003-0031) located in north Beaverton because it reflected many of the issues commonly confronted by developers including, small irregularly shaped lots, natural resources including a delineated wetland, and a mature stand of community trees. Using the case study approach, Parametrix demonstrated both a "Low Impact Design" (LID) and a "Form Based" or architectural standards approach to developing a PUD. The site plans produced by Parametrix demonstrated that by using an incentive approach a PUD could yield at least one additional dwelling unit in each case. By achieving an additional unit the developer is able to create additional needed housing and spread the financial risk of the project. The incentives create a framework in which a developer could create a PUD that benefits the new neighborhood, surrounding neighborhood, and the City. The result of each case study was shared with the Planning Commission at a work session held on February 1, 2006. Each of the case studies demonstrated that reasonable alternatives using architectural and low impact design are feasible when additional flexibility is provided to developers.

The PUD text amendment being forwarded to the Council by the Commission does not include the LID regulations discussed at the February 1, 2006 work session because many of these concepts and techniques are still being reviewed by planners and engineers at the City, County, and Clean Water Services as part of the Tualatin Basin Goal 5 effort. It is

the intention of staff to reintroduce the LID concepts as additional development incentives upon the completion of the Tualatin Basin Goal 5 planning work. The consensus of the Planning Commission is that adding in these LID techniques at a later date will create additional incentives for creative and innovative PUD development.

Conclusions:

The PUD text recommended by the Planning Commission for approval by the City Council includes the following key changes from the existing code:

- 2 Acre minimum size threshold for PUD's in any zone. Currently the PUD code does not contain a minimum area threshold for applying a PUD in any zoning district. The Planning Commission wants to increase the threshold to 2 acres in order to provide enough area to foster creative and innovative site design that includes meaningful open space.
- Establishes standards for the maximum deviation that can be proposed by a PUD. The current code does not address specify a minimum lot area, coverage, or setback dimensions. The proposed text would add standards that set a maximum deviation from the base zone in which the PUD is proposed. Additionally, the proposed text proposes to require a minimum 15 foot setback when a PUD development is proposed adjacent to existing development.
- Specific open space standards that include common areas in addition to active or passive open space development standards. While the current code specifies what areas may and may not be counted towards open space, there is no dimensional standards currently associated with the open space standards which leads to many sliver parcels. The proposed code includes minimum dimensional standards as well as a requirement for specific commons areas.
- Building architecture standards for those buildings not already covered by Design Review standards found in Section 60.05. This is a significant departure from the existing Development Code which does not require the review of single-family structures.
- Development Bonuses and Development Incentive Options:
 - Open Space Development Incentive
 - Architectural/Environment Best Building Practices Incentive
 - Affordable Housing Development Incentive
 - Passive Solar Gain Development Orientation Incentive

In conclusion, it is the recommendation of the Planning Commission that the proposed code will protect and improve the City's livability while providing the flexibility needed to address constrained property and bring to market unique and creative development.

PLANNING COMMISSION MINUTES

August 23, 2006

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

CALL TO ORDER: Chairman Eric Johansen called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL: Present were Chairman Eric Johansen, Planning Commissioners Melissa Bobadilla, Wendy Kroger, Dan Maks, Shannon Pogue, Richard Stephens, and Scott Winter.

Senior Planner Barbara Fryer, AICP, Senior Planner Colin Cooper, AICP, Associate Planner Sambo Kirkman, Associate Planner Liz Jones, Assistant City Attorney Ted Naemura and Recording Secretary Sheila Martin represented staff.

OLD BUSINESS:

CONTINUANCES:

I. TA 2006-0003 – PLANNED UNIT DEVELOPMENT MODIFICATIONS TEXT AMENDMENT

(Continued from July 26, 2006)
A text amendment to Chapter 40 Sections 40.15.15.5 & 6, Chapter 60 Section 60.35.05-15, Chapter 90, Definitions of the Beaverton Development Code currently effective through Ordinance 4248 to create new Planned Unit Development (PUD) Thresholds, Approval Criteria, and Standards. The intent of the proposed amendment is to require more specific thresholds and standards for development of PUDs. Chapter 90, Definitions will be amended with new terms as necessary.

Chair Johansen briefly outlined the hearing procedure and described the applicable approval criteria.

Senior Planner Colin Cooper briefly discussed the history of this text amendment and described the revisions that have been made and

1 options that are available. Referring to Edits page 5, specifically with
2 regard to Threshold No. 2 in response to direction from the
3 Commission, he clarified that any proposed subdivision with more than
4 three of the items on the list would require a PUD. He referred to page
5 13 and clarified issues with regard to oversized lots. He referred to
6 page 7 of the approval criteria and discussed issues with regard to the
7 width of the proposed lots within residential development. He pointed
8 out that he would like to suggest some new language that would
9 involve page 13 under the single-family residential lot sizes,
10 emphasizing that there is no standard for this approval criteria at this
11 time. He noted that he would like to add language that would require
12 that any lots proposed that did not meet the criteria in Section
13 20.05.15.1, which involves the site development requirements in the
14 residential section, specifically a 5,000 square foot lot, would need to
15 vary every fourth lot by a standard of 20%.

16
17 Commissioner Maks discussed problems that might be caused by this
18 requirement to vary every fourth lot by a standard of 20%.

19
20 Observing that there has already been some fairly significant revisions
21 to the Development Code in the last six months, Commissioner Winter
22 expressed his opinion that this issue could easily be addressed at some
23 future point if there is a problem.

24
25 Mr. Cooper described this as a sort of an “anti-monotony” standard
26 that is becoming more and more popular, even within standard
27 subdivisions outside of PUDs throughout the country.

28
29 Observing that he has designed some of these projects, Commissioner
30 Stephens expressed his opinion that this requirement would make
31 these projects more difficult to design.

32
33 Referring to page 14, Mr. Cooper noted that this staggering is already
34 required in the front yard, suggesting that it would be possible to add
35 that the width of the proposed lots or staggering of building setbacks
36 within residential developments must vary to the approval criteria.
37 On question, he determined that he has consensus with regard to this
38 issue.

39
40 Referring to page 12, 2A, under Section 60.35.10, Mr. Cooper noted
41 that he would like to address the issue of the number of units attached.
42 He proposed to double-strike certain words, as follows: “...~~may not~~
43 ~~exceed four units per structure in the R-10 and R-7 zoning districts...~~”
44 and the word “...~~and~~...” He noted that he would also like to double-

1 strike the following: "...~~single-family units~~..", adding that he would
2 like this sentence to read, as follows: "**Attached dwelling units**
3 **shall be designed in a manner that provides architectural and**
4 **massing compatibility with the surrounding neighborhood.**"
5 On question, he determined that he has consensus with regard to this
6 issue.

7
8 Commissioner Maks requested clarification with regard to how
9 massing compatibility would be achieved next to an R-7 zoning district.

10
11 Mr. Cooper provided his ideas for how massing compatibility could
12 work in this zoning district, emphasizing that it would require a great
13 deal of effort. He described several other revisions he had made within
14 the text as well as options that are available.

15
16 Commissioners Maks, Kroger, and Bobadilla both expressed their
17 preference for Option A.

18
19 Referring to page 5, specifically line 12, Commissioner Bobadilla noted
20 that there should be a comma following the words multiple use.
21 Referring to No. 2, with regard to land division, she suggested a
22 comma and insertion of the words "**that is**", adding that the other
23 comma should be inserted after residential agriculture.

24
25 Mr. Naemura pointed out that he generally edits out words such as
26 "that is", emphasizing that these are only extra words.

27
28 Agreeing that this is probably more accurate for lawyers,
29 Commissioner Bobadilla expressed her opinion that these words
30 provide additional clarity for regular people.

31
32 Following a brief discussion, it was determined that this section would
33 be revised, as follows: "...land division **of** two acres or greater..."

34
35 Referring to No. 7 on page 6, Commissioner Bobadilla expressed her
36 opinion that the words "~~so as~~" should be struck out.

37
38 Referring to Nos. 9A and 9B on page 6, Commissioner Kroger noted
39 that in order to be consistent, "...in the public interest." should be
40 struck out in 9B, as it was in 9A.

41
42 Following a discussion, Commissioner Maks suggested that "public
43 interest" should be replaced with "community at large", and it was

1 determined that this section should read, as follows: "...would be in
2 the public interest and complement overall site design."

3
4 Referring to line 29 on page 6, Commissioner Kroger noted that
5 "proportioned" should be changed to "proportional".

6
7 Referring to No. 4 on page 11, Commissioner Bobadilla proposed that
8 lines 40 and 41 be revised to read: "...special topographic, natural, and
9 environmentally sensitive features. Existing significant groves,
10 historic trees, and individual trees should be retained and protected.
11 Understory and the use of native plant material and sustainable
12 landscape practices are encouraged."

13
14 Referring to No. 4 on page 11, Commissioner Kroger questioned
15 whether it is necessary to include the phrase "and/or" in the first
16 sentence, and it was determined that the Commission prefers that this
17 sentence remain as it is.

18
19 Referring to No. 3 on page 11, Commissioner Kroger noted that the
20 following has been struck: "...and maximize solar exposure for passive
21 solar gain..." She expressed her opinion that this sentence should
22 read, as follows: "The orientation of buildings shall promote human-
23 scaled and pedestrian-friendly environments and maximize solar
24 exposure for passive solar gain."

25
26 Observing that this had been struck out several meetings ago, Mr.
27 Cooper advised Commissioner Kroger that he no longer remembers the
28 rationale.

29
30 At the request of Commissioner Kroger, it was determined that the
31 phrase "...and maximize solar exposure for passive solar gain..." would
32 not be struck.

33
34 Referring to Section 1.C of page 12, Commissioner Bobadilla pointed
35 out that because this involves a list, there should be a semi-colon
36 following Nos. 1, 2, and 3, adding that the word "or" should be inserted
37 following the semi-colon on No. 3.

38
39 Referring to line 43 on page 12, Commissioner Kroger requested
40 clarification with regard to the phrase "by right".

41
42 Mr. Cooper pointed out that the entire sentence could be struck, unless
43 the City Attorney has a problem with deleting the words "by right".
44

1 Referring to Section C.2 on page 13, Commissioner Bobadilla
2 questioned whether this involves new added text.

3
4 Mr. Cooper advised Commissioner Bobadilla that this is added text,
5 and suggested that this could be simplified to read “unless designated
6 for a future phase”.

7
8 Commissioner Bobadilla pointed out that this section should reference
9 “an” oversized lot, rather than “a” oversized lot.

10
11 Referring to line 22 on page 14, Commissioner Bobadilla suggested the
12 following correction: “...and multi-family developments ~~excepting~~
13 except lots along the perimeter...”

14
15 Referring to line 6 on page 16, Commissioner Bobadilla pointed out
16 that this also involves a list and that the word “and” after trees should
17 be struck, and that there should also be commas after the words trees
18 and areas.

19 Referring to Section 60.36.15.1.A on page 16, Commissioner Kroger
20 suggested that the following phrase: “...when the site is up to and
21 including 10 acres in size...” be struck, and that Section 60.36.15.1.B
22 and Section 60.36.15.1.C be struck also. She pointed out that Section
23 60.36.15.1.E should be reconsidered as well.

24
25 Referring to No. 4 on page 17, Commissioner Bobadilla noted that the
26 comma is not necessary since the phrase “parking areas” has been
27 struck.

28
29 Referring to line 5 on page 18, Commissioner Bobadilla observed that
30 this involves a list, and that there should be a comma following the
31 word “overlook”. Referring to No. 7 which includes a list of appropriate
32 features, she noted that this should include other features as approved
33 by the Commission, and was told that this would be struck.

34
35 Referring to line 10 on page 20, with regard to cluster housing,
36 Commissioner Bobadilla noted that the comma is unnecessary and
37 that the word “and” should be struck.

38
39 Referring to Section 60.35.20.2.E on page 20, Commissioner Bobadilla
40 suggested that this section be revised, as follows: “Entrances shall be
41 covered or recessed ~~and~~ with a minimum depth of three (3) feet deep
42 and five (5) feet wide.”

1 Referring to Section 4.C on page 21, Commissioner Bobadilla pointed
2 out that this involves a list and that semi-colons are necessary, and
3 that the word “or” should be inserted following the semi-colon on No.
4 12.

5
6 Mr. Cooper explained that while all of these revisions would be
7 included in the Ordinance that is submitted to the City Council, he
8 does not intend to include this within the Land Use Order.

9
10 Referring to Section 4.C.2 on page 22, Commissioner Bobadilla pointed
11 out that the word “windows” is inserted twice on line 30, and noted
12 that one of these words needs to be struck.

13
14 Referring to line 6 on page 23, Commissioner Bobadilla expressed her
15 opinion that there are too many “ands”.

16
17 Commissioner Kroger discussed issues with the purpose statement in
18 Section 60.35.30, and suggested that the last sentence in the first
19 paragraph be revised, as follows: “Development plans that meet
20 selected Development Incentive Options ~~selected~~ chosen by the
21 applicant may take advantage of one or ~~a combination~~ both of the
22 following Development Bonuses...”

23
24 Commissioner Maks expressed his opinion that Commissioner Kroger
25 would be an appropriate replacement for him on the Code Review
26 Advisory Committee (CRAC).

27
28 Referring to the second paragraph of the purpose statement in Section
29 60.35.30, Commissioner Kroger suggested that this section be revised,
30 as follows: “Development Incentive bonuses are described below and
31 quantify the ~~additional flexibility and optional~~ options that the
32 developer may use to obtain additional flexibility in open space
33 requirements and setback reductions.” Following a brief discussion, it
34 was decided that the Commission would like to revise this paragraph,
35 as follows: “Development Incentive bonuses are described below and
36 quantify the ~~additional~~ flexibility and ~~optional~~ options that the
37 developer may use to obtain additional flexibility in open space
38 requirements and setback reductions.”

39
40 Referring to the first paragraph in Section 60.35.40, Commissioner
41 Kroger suggested the following revision: “Site plans that meet selected
42 Development Incentive Options ~~selected~~ chosen by the applicant may
43 take advantage of one or ~~a combination~~ both of the following
44 Development Bonuses...”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Referring to the last sentence of the second paragraph in Section 60.35.30, Commissioner Bobadilla suggested the following revision: "In all cases the total incentives may not reduce open space by more than fifty (50) percent of the open space as required in Section 60.35.15."

Referring to Section 60.35.50.2.B., Commissioner Bobadilla suggested the following revision: "Develop lots ~~such~~ that meet 90% of solar access requirement..."

Commissioner Maks explained that the word "such" should be left in this sentence.

Referring to Section 60.35.50.2.A., Commissioner Kroger requested clarification with regard to why Leadership in Energy and Environmental Design (LEED) had been struck.

Mr. Cooper discussed Commissioner Stephens' explanation of the challenges associated with LEED, emphasizing that this creates a situation that tends to result in failed applications.

On question, Commissioner Bobadilla was informed that affordable housing can allow for up to a 30%, rather than 60, reduction in open space.

Commissioner Kroger expressed concern with the potential for creating an instant ghetto by allowing for no open space for the purpose of packing people into cheap housing.

Mr. Cooper explained that it is not possible to attain affordable housing through only one strategy, adding that this is merely one available strategy.

Commissioner Kroger emphasized that she is not willing to trade open space for affordable housing, adding that issues related to affordable housing should be addressed separately from the PUD.

Referring to line 18 of page 25, Commissioner Bobadilla questioned the necessity of a certain sentence, as follows: "Such households, on average, do not spend more than 30 percent of their income on housing."

1 Observing that this most likely carried over from the Staff Report and
2 addresses the purpose, Mr. Cooper advised Commissioner Bobadilla
3 that he would strike this sentence.
4

5 Chair Johansen suggested that there should be some reference to
6 encourage the concept of affordable housing.
7

8 Referring to line 37 of page 26, Chapter 90 (Definitions), with regard to
9 Sustainable Landscape Practices, Commissioner Bobadilla noted that
10 there should be a comma following the word "example" in the last
11 sentence.
12

13 Referring to line 12 of page 27, Commissioner Bobadilla expressed her
14 opinion that the word "a" should be inserted prior to Planned Unit
15 Development approval.
16

17 Mr. Cooper indicated that he would make this revision.
18

19 Referring to line 36 of page 28, Commissioner Bobadilla expressed her
20 opinion that the word "The" should replace the word "Such".
21

22 Commissioner Maks objected to this revision, and Mr. Cooper
23 suggested that this sentence be left as it is.
24

25 Following a brief discussion with regard to affordable housing,
26 Commissioner Maks noted that the Commission had decided to switch
27 from five to fifteen years at a previous meeting. Commissioner
28 Bobadilla and Mr. Cooper indicated that they had thought that this
29 switch had been to thirty years, and the Commission decided that
30 thirty years would be appropriate.
31

32 Expressing his opinion that affordable housing should be provided in
33 perpetuity, Mr. Cooper indicated that thirty years provides some
34 flexibility.
35

36 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
37 a motion to **APPROVE** TA 2006-0003 – Planned Unit Development
38 Text Amendments, as amended, based upon the findings presented in
39 all Staff Reports and Memorandums, including corrections made this
40 evening.
41

42 Motion **CARRIED** 6:1.
43

1 **AYES:** Maks, Winter, Bobadilla, Pogue, Stephens, and
2 Johansen.
3 **NAYS:** Kroger.
4 **ABSTAIN:** None.
5 **ABSENT:** None.

6
7 **APPROVAL OF MINUTES:**

8
9 Minutes of the meeting of July 26, 2006, submitted. Commissioner
10 Maks **MOVED** and Commissioner Winter **SECONDED** a motion that
11 the minutes be **APPROVED** as submitted

12
13 Motion **CARRIED**, unanimously.

14
15 **MISCELLANEOUS BUSINESS:**

16
17 On question, Mr. Cooper advised Commissioner Kroger that he would
18 check and let her know what the effective date would be for the text
19 amendments.

20
21 The meeting adjourned at 9:50 p.m.



MEMORANDUM
City of Beaverton
Community Development Department

"make it happen"

To: Planning Commissioners
From: Colin Cooper, AICP, Senior Planner *CC*
Date: August 17, 2006
Subject: **PUD Text Amendment Final Draft (TA 2006-0003)**

Please find attached a copy of the Final Draft of the PUD Text for your review and consideration for recommendation of approval. The document that is attached reflects several minor editing changes since the public hearing on July 26, 2006. These changes are outlined below.

Edits that include new text are highlighted and include a double underline. Text edits that include a deletion have a double strike through (~~for example~~).

- 1) Based on the Planning Commission input from July 26, 2006 the minimum acreage requirement for a PUD has been retained at 2 acres.
- 2) Based on additional consideration by the Planning Commission the requirement for a maximum of four units has been removed. Attached structures remain subject to Design Review Standards and Guidelines of Section 60.05, and that there is an existing standard that limits attached dwellings structures to 200 feet. Additionally, there are standards that require building plane off-sets to help different the mass of the structure.
- 3) Based on the last public hearing staff has created three options for the Planning Commission to consider regarding improvements to the common area.

Original Language

7. A Commons shall include at least two (2) of the following, or similar improvements as approved by the Planning Commission:
 - A bench or other seating with a pathway or other pedestrian way;
 - A water feature such as a fountain;
 - A children's play structure;
 - A gazebo;
 - Tennis courts
 - An indoor or outdoor sports court; or
 - An indoor or outdoor swimming and/or wading pool.
 - Plaza

Option A

7. A Commons shall include physical improvements to enhance the commons area that from the following list, the items chosen must total 500 or more points. Other improvements may be approved by the Planning Commission:

Amenity	Points
A bench or other seating with a pathway or other pedestrian way	100
Water feature.	250
Water feature with wading area	300
Picnic Area or outdoor eating facility	150
Playground equipment.	200
Combined with a 750 square foot gathering area.	350
Tennis and/or sport court (e.g. Basketball, Volleyball, Paddle Tennis)	200
A gazebo or similar gathering area.	150
An indoor or outdoor swimming with clubhouse.	500
Plaza that serve as gathering places with benches	150
Indoor Clubhouse or meeting facility	500
Dedicated Basketball, Volleyball, or other sport use area.	200
Other (Improvements not included on this list as approved by the Planning Commission	100-500

Option B

7. A Commons shall include at least two (3) of the following, with two (2) items chosen from Column A and one (1) item from Column B or similar improvements as approved by the Planning Commission:

Column A

- Benches (2 or more) and Pathway
- Water Feature with Wading Area
- Playground Equipment
- Sport Court (Tennis, Basketball)
- Indoor or Outdoor Swimming Pool
- Other Improvement as approved by the Planning Commission

Column B

- Water Feature
- Picnic Area (inclusive of tables and Seating Area and pathway)
- Gazebo or 750 sq. foot plaza with Seating.
- Other Improvement as approved by the Planning Commission

Planned Unit Development Code Update

Staff ask that the Planning Commission to consider the minor edits contained in the document distributed to you and the issues contained in this memo and recommend approval TA 2006-0003 (Planned Unit Development).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

PLANNING COMMISSION MINUTES

July 26, 2006

CALL TO ORDER:

Chairman Eric Johansen called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Eric Johansen, Planning Commissioners Melissa Bobadilla, Dan Maks, Richard Stephens, and Scott Winter. Planning Commissioners Wendy Kroger and Shannon Pogue were excused.

Senior Planner Colin Cooper, AICP, represented staff.

The meeting was called to order by Chairman Johansen, who presented the format for the meeting.

VISITORS:

Chairman Johansen asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Senior Planner Colin Cooper indicated that there were no communications at this time.

OLD BUSINESS:

Chairman Johansen opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

1 CONTINUANCES:

2
3 I. TA 2006-0003 -- PLANNED UNIT DEVELOPMENT
4 MODIFICATIONS TEXT AMENDMENT

5 (Continued from July 19, 2006)

6 A text amendment to Chapter 40, Sections 40.15.15.5 and 6; Chapter
7 60, Section 60.35.05-15; Chapter 90; Definitions of the Beaverton
8 Development Code, currently effective through Ordinance 4248 to
9 create new Planned Unit Development Thresholds, Approval Criteria,
10 and Standards. The intent of the proposed amendment is to require
11 more specific thresholds and standards for development of Planned
12 Unit Developments. Chapter 90, Definitions will be amended with
13 new terms as necessary.

14
15 Chairman Johansen briefly described the applicable approval criteria
16 and outlined the hearing procedure.

17
18 Mr. Cooper summarized the purpose of this text amendment and the
19 process through which these revisions had been developed. He
20 questioned whether the Commission believes there is any merit in
21 creating an exception process for the two-acre minimum currently
22 proposed. Concluding, he offered to respond to questions.

23
24 Observing that every infill site is difficult, Commissioner Maks pointed
25 out that it is rare for a Planned Unit Development (PUD) application
26 to meet an exception.

27
28 Mr. Cooper explained that he does recall preparing several PUD
29 exceptions that had been accepted by the Commission.

30
31 Emphasizing that we are already down to two acres, Commissioner
32 Maks suggested the possibility of tying it somehow to being developed
33 under standard methods (setbacks, etc.) and being unable to meet the
34 minimum density requirements.

35
36 Commissioner Winter expressed his opinion that in order for these
37 developments to meet their financial goals, the smaller the parcels
38 become, the greater the pressure will be to maximize the density.

39
40 Chairman Johansen noted that it is necessary to consider the options
41 for this property that is difficult to develop.

42

1 Mr. Cooper mentioned that there is a section within the Development
2 Code that provides that minimum residential density requirements do
3 not have to be met if a variance or an adjustment is necessary.

4
5 Chairman Johansen pointed out that there appears to be a general
6 consensus with regard to the proposed two acres with no exceptions.

7
8 Mr. Cooper questioned whether the Commission wishes to continue to
9 maintain the four-unit maximum for attached dwellings.

10
11 Observing that many of Polygon's developments involve eight units,
12 Commissioner Maks expressed his opinion that many of these are
13 attractive developments. Noting that four units would constrain
14 flexibility, he questioned whether it is necessary to determine a
15 maximum number of units.

16
17 Mr. Cooper explained that there are numerous architectural options
18 and standards that could address this issue.

19
20 Chairman Johansen expressed concern with creating some criteria
21 that would prevent creating a development that is too massive for a
22 particular site.

23
24 Mr. Cooper and the Commission discussed two possible approaches for
25 prioritizing the development of amenities for common areas, as follows:

- 26
27
 - Create a point score for each amenity
 - Require a selection from a menu with a ranking to be used in a
28 menu system

29
30
31 Mr. Cooper suggested that the Commission e-mail any further
32 questions or comments to him.

33
34 Commissioner Bobadilla mentioned several necessary corrections
35 within the document outlining the proposed amendments.

36
37 The Commission discussed issues pertaining to open space tracts,
38 common space, and recreation within a development, as well as
39 flexibility, affordable housing and quality of life issues.

40
41 Commissioner Maks **MOVED** and Commissioner Stephens
42 **SECONDED** a motion to **CONTINUE** TA 2006-0003 – Planned Unit
43 Development Modifications Text Amendment to a date certain of
44 August 23, 2006.

1 Motion **CARRIED** 5:0.

- 2
- 3 **AYES:** Maks, Stephens, Bobadilla, Winter, and Johansen.
- 4 **NAYS:** None.
- 5 **ABSTAIN:** None.
- 6 **ABSENT:** Kroger and Pogue.
- 7

8 **II. TA 2006-0006 – LOT LINE ADJUSTMENT/CONSOLIDATION**
 9 (Continued from July 19, 2006)

10 The proposed text amendment to the Development Code would add a
 11 new Lot Line Adjustment Application Threshold to Section 40.45.15,
 12 Lot Line Adjustment that requires that when two or more tax lots are
 13 proposed to be consolidated into fewer tax lots a Lot Line
 14 Adjustment/Consolidation application is required.

15
 16 Chairman Johansen briefly described the applicable approval criteria
 17 and outlined the hearing procedure.

18
 19 Mr. Cooper summarized the purpose of this text amendment and why
 20 these revisions had been developed in order to simplify and improve
 21 the existing process. Concluding, he offered to respond to questions.

22
 23 **PUBLIC TESTIMONY:**

24
 25 No member of the public testified with regard to this proposal.

26
 27 The Commissioners agreed that this proposal meets applicable
 28 approval criteria and would improve the existing process.

29
 30 Commissioner Winter **MOVED** and Commissioner Bobadilla
 31 **SECONDED** a motion to **APPROVE** TA 2006-0006 – Lot Line
 32 Adjustment/Consolidation, based upon the facts and findings within
 33 the Staff Report dated July 26, 2006.

34
 35 Motion **CARRIED** 5:0.

- 36
- 37 **AYES:** Winter, Bobadilla, Maks, Stephens, and Johansen.
- 38 **NAYS:** None.
- 39 **ABSTAIN:** None.
- 40 **ABSENT:** Kroger and Pogue.

41
 42 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
 43 a motion to **RECONSIDER** the previous motion.

44

1 Motion **CARRIED** 5:0.

2
3 **AYES:** Maks, Winter, Bobadilla, Stephens, and Johansen.

4 **NAYS:** None.

5 **ABSTAIN:** None.

6 **ABSENT:** Kroger and Pogue.

7
8 Commissioner Winter **MOVED** and Commissioner Bobadilla
9 **SECONDED** a motion to **APPROVE** TA 2006-0006 – Lot Line
10 Adjustment/Consolidation, based upon the facts and findings within
11 the Staff Report dated July 19, 2006.

12
13 Motion **CARRIED** 5:0.

14
15 **AYES:** Winter, Bobadilla, Maks, Stephens, and Johansen.

16 **NAYS:** None.

17 **ABSTAIN:** None.

18 **ABSENT:** Kroger and Pogue.

19
20 **NEW BUSINESS:**

21
22 **PUBLIC HEARINGS:**

23
24 **I. TA 2006-0005 – FACILITIES REVIEW AMENDMENTS**

25 Amendment to various sections of the Beaverton Development Code
26 (BDC) to clarify the Facilities Review Committee process and relocate
27 certain Facilities Review Committee approval criteria to selected
28 applications. Affected chapters of the BDC include Chapter 10
29 (General Provisions), Chapter 40 (Applications), and Chapter 50
30 (Procedures).

31
32 Chairman Johansen briefly described the applicable approval criteria
33 and outlined the hearing procedure.

34
35 Mr. Cooper summarized the purpose of this text amendment and why
36 these revisions had been developed in order to simplify and improve
37 the existing process. Concluding, he offered to respond to questions.

38
39 **PUBLIC TESTIMONY:**

40
41 No member of the public testified with regard to this proposal.

42
43 The Commissioners agreed that this proposal meets applicable
44 approval criteria and would improve the existing process.

1 Commissioner Winter **MOVED** and Commissioner Bobadilla
2 **SECONDED** a motion to **APPROVE** TA 2006-0005 – Facilities
3 Review Amendments, based upon the facts and findings within the
4 Staff Report dated July 19, 2006.

5
6 Motion **CARRIED** 5:0.

7
8 **AYES:** Winter, Stephens, Bobadilla, Maks, and Johansen.
9 **NAYS:** None.
10 **ABSTAIN:** None.
11 **ABSENT:** Kroger and Pogue.

12
13 **MISCELLANEOUS BUSINESS:**

14
15 The meeting adjourned at 8:00 p.m.



MEMORANDUM
City of Beaverton
Community Development Department

"make it happen"

To: Planning Commissioners
From: Colin Cooper, AICP, Senior Planner *CC*
Date: July 21, 2006
Subject: PUD Text Amendment (TA 2006-0003)

Please find attached a copy of the most current draft PUD Text for your review and a copy of the notes taken from the Developers/Consultant Focus Group meeting. The document that is attached reflects changes to the draft PUD text based on discussions with the Planning Commission, Developers/Consultant Focus Group, and planning staff. To assist in the review of changes to the code staff has developed the following format that appears opposite the page being reviewed. Staff is seeking additional input and then will bring a final draft to the Planning Commission in August.

Example:

Section 60.35.05 Planned Unit Development Purpose Statement:

Planning Commission:

Developers/Consultant Focus Group:

Staff Review:

Modification to Code:

There are a few outstanding questions the Planning Commission should consider:

- 1) Does the Planning Commission believe there is any merit in creating an exception process for the 2 acre minimum currently proposed? The Developer/Consultant Focus group felt that there needs to be flexibility and pointed to several jurisdictions where this is the procedure. Staff planners are also somewhat concerned about the possible unintended consequences of not allowing PUD's below 2 acres.

As staff described earlier in the text amendment process the City Code previously had a 4 acre minimum with a process for allowing exceptions so this approach has been used in Beaverton previously.

- 2) Does the Planning Commission wish to continue to maintain the four unit maximum for attached dwellings? Consideration of the maximum of 4 attached units. Both the Developer/Consultant focus group and staff feel this will needlessly constrain design flexibility. The Developer/Consultant group also noted that there will be the potential for additional development costs.

- 3) Two possible approaches could be used for prioritizing the development of amenities for common areas. The first is to create a point score for each amenity (Some combination of 500 points would be needed for developer in this example) and the second is to require a selection from a menu with a ranking to be used in a menu system. Staff encourage Planning Commissioners to rank the amenities and add to the list.

Amenity	Points	Planning Commission Ranking
A bench or other seating with a pathway or other pedestrian way	100	
Water feature.	250	
Water feature with wading area	300	
Picnic or outdoor eating facility	150	
Playground equipment.	200	
Combined with a 500 square foot gathering area.	350	
Tennis and/or sport court	200	
A gazebo or similar gathering area.	150	
An indoor or outdoor swimming with clubhouse.	500	
Plaza that serve as gathering places with benches	150	
Indoor Clubhouse or meeting facility	500	
Dedicated Volleyball or other sport use area.	200	

Issues Outstanding:

- Section 40.15.15.5.C, Approval Criteria, staff is developing language and associated standards that will articulate the issue of monotony within PUD developments.

The Planning Commission should consider the proposed changes to the text and question in this memo and provide final direction to staff prior to preparing and returning the final draft and ordinance for Planning Commission approval in late August, which will be forwarded in turn to the City Council for a September public hearing and having adopted code in place by the end of the year.

Developer/Consultant Focus Group

Thresholds and General Comments:

1. Minimum Density Standards are driving product type.
2. Section 20.05.50 - Good escape clause for developers to use. This section allows for flexibility for not having to do a PUD.
3. The Focus Group suggested softening the 2 acre threshold.
4. Clark County is creating a “beauty contest” for lots under minimum acreage threshold. The Planning Commission makes the decision whether the applicant makes it.
5. Clackamas County/Tigard/Tualatin allows Lot Averaging 80% of the lot size of the abutting or 100 % of abutting.

Open Space Tracts

1. What is the City trying to accomplish with open space? Residents want visual access not always physical access.
2. Hillsboro is going through the same process and is finding Open Space to be problematic in connection to the HOA.
3. City of Sandy is proposing that developers pay a park SDC fee in lieu of Open Space.
4. Example: Hillsboro 800 square feet on private lots (2/3 total) vs. public open space.
5. If a Park Facility is within ¼ mile could the Open Space requirement be reduced? What if it is directly adjacent?
6. Need to remember that if Open Space is put in a tract the setback from an exterior lot line might be counted from the new tract boundary rather than the original parent parcel.
7. If you want to encourage ally’s TND’s, better streetscape, get ride of open space requirement altogether, this is especially true for higher density projects.
8. Consider a system for open space that provides wide open space versus individual open space. It doesn’t make sense to give up 20 percent of a site.
9. There should be an exception for linear park or pedestrian connections that need to be narrower and longer than the standard allow currently. Examples include

dedications of narrow areas adjacent to wetlands or riparian areas. Also the need to provide narrow pedestrian and bicycle connections to existing or planned trails.

10. Consider a process similar to the Engineer Street Design Modification.
11. Consider reducing open space requirement if the street is designed to be a pedestrian boulevard by the addition of wider planting strips and wider sidewalks.
12. Are private facilities the right thing in conjunction with open space? Example provided with a HOA pool.
13. Concern with slope standard regarding open space, an exception should be provided.
14. If a private facility is proposed in conjunction with open space make sure the regulations don't require too much parking, provide a parking exception. The facility is intended for surrounding neighbors so ask them to walk rather than use there car.

Design Standards and Compatibility

1. The PUD standards need to be careful to maintain as much of an outward focus as an inward focus.
2. Lot coverage would be an issue. 50% in the code draft would create a significant amount of private open space. What is the definition of coverage?
3. Don't discourage mixed density products with coverage rules.
4. It is about design.
5. Uniformity in design is not a bad thing. Texture of the streetscape is just as important as the variety of architecture form.
6. Size and shape of the blocks combined with how car parking is treated are more important.
7. Group Suggested a Menu System especially for Architectural Standards.
8. 4 Unit maximum provided general concern. Questions included what are the implications for land division.
9. Group felt that the standard was trying to address issues of building massing and envelope in place of neighborhood compatibility issue. The issue is not architecture, but architecture standards are being used to deal with land use compatibility issues. If you don't want attached product don't allow it or develop better overall architectural standards.

10. Although generally familiar with lot coverage standards the group wonder if the issue of separation was better addressed with setbacks rather than lot coverage.
11. Small things have a big impact on overall PUD design quality. Vehicular parking is huge. If a residential housing is dominated with a driveway where a vehicle is also parked that will be the view people have. Consider consolidating parking areas. Encourage ally loaded garages. Fences can cause a significant impact visually and can visually block what may otherwise be adequate private open space and lead to the sense of crowding.
12. Work more on the front yard setback to create a minimum stagger.
13. Quality of front yard is impacted by location of driveway.
14. Building entrance design standard may be OK; however, it may also cause problems with cluster or cottage or courtyard style development. The standard should reflect these styles of development.
15. Increase percentage of windows and doors with narrow lots and decrease percentage with wider lots.

Development Incentives:

1. Separate sustainability standards from building and site standards.
2. Should a private facility be counted toward community open space or removed from incentive portion of the code?
3. Affordable housing. Need to make sure that this incentive does not run afoul of the State prohibition on Inclusionary Zoning.
4. Like the idea of decoupling housing and real estate through the land trust idea.
5. Not too many comments on solar. Suggest reviewing past PUD's to ensure to see what percentage of lots where solar compliant to check against proposed target of 90 percent.
6. Should add Low Impact Design / Sustainability standards into the mix of incentives.
7. Provide incentives to contribute to Regional Facilities versus continuing to build small private facilities.

List of Developers and Land Use Consultants Invited to Focus Groups:

Attendees in Bold

Development Group	Consultant Group
Rob Henin Trammel Crow Residential	Jerry Offer OTAK
Fred Gast Polygon Northwest	Mimi Doukas WRG Design
Don Guthrie Arbor Custom Homes	Tom O'Connell Alpha Community Development
Jeff Shrope Renaissance Homes	Tom Wright Group McKenzie
David Oringdulph Legend Homes	Frank Angelo Angelo Eaton and Associates
Ernie Platt Home Builders Association of Metropolitan Portland	Hal Kever W&H Pacific
Alan DeHarrport Roundstone Properties	Don Sowieja (Jonathan Konkol - Attended) Myhre Group Architects
Don Morissette Venture Properties	Doug Strickler LanPacific
Matthew Grady, AICP Gramor Development	KJ Won, AICP Land Consultant
Greg Specht Specht Development	Mike Miller MGH and Associates
Mark Perniconi C.E. John Company	

Originally staff intended to have two focus groups, one for developers and one for consultants. However, because of the lack of response from the development community the one representative from that group was added to the consultant group for a single Developers/Consultant Focus group. That meeting was held on July 18, 2006.

1 **Section 1: The Development Code, Ordinance No. 2050, Chapter 40, Applications,**
2 **Section 40.15.15.5 shall be amended to read as follows:**

3 40.15.15.

4
5 ~~5. Preliminary Planned Unit Development.~~

6
7 A. ~~Threshold.~~ A Preliminary Planned Unit Development (PUD)
8 application is an optional application process which may be chosen by
9 the applicant. A Preliminary PUD application is the first application
10 of a two step application process with a Final PUD application as the
11 second step. A Preliminary PUD is a plan that generally demonstrates
12 the ultimate development of a project. A Preliminary PUD may be
13 applied to properties within any City zoning district except
14 Residential-Agricultural (RA).

15
16 B. ~~Procedure Type.~~ The Type 3 procedure, as described in Section 50.45
17 of this Code, shall apply to an application for Preliminary PUD. The
18 decision making authority is the Planning Commission.

19
20 C. ~~Approval Criteria.~~ In order to approve a Preliminary PUD application,
21 the decision making authority shall make findings of fact based on
22 evidence provided by the applicant demonstrating that all the
23 following criteria are satisfied:

- 24
25 1. ~~The proposal satisfies the threshold requirements for a~~
26 ~~Preliminary PUD application.~~
- 27
28 2. ~~All City application fees related to the application under~~
29 ~~consideration by the decision making authority have been~~
30 ~~submitted.~~
- 31
32 3. ~~The proposal meets the Site Development Requirement for~~
33 ~~setbacks within the applicable zoning district for the perimeter~~
34 ~~of the parent parcel unless the setbacks are approved as an~~
35 ~~Adjustment, Flexible Setback or Variance which shall be~~
36 ~~considered concurrently with the subject proposal.~~
- 37
38 4. ~~The proposal will comply with the applicable policies of the~~
39 ~~Comprehensive Plan.~~
- 40
41 5. ~~The size, dimensions, configuration, and topography of the site~~
42 ~~and natural and man-made features on the site can reasonably~~
43 ~~accommodate the proposal.~~

44
45
46
47 40.15.15.5.C.

1 6. ~~The location, size, and functional characteristics of the proposal~~
2 ~~are such that it can be made reasonably compatible with and~~
3 ~~have a minimal impact on livability and appropriate~~
4 ~~development of properties in the surrounding area of the subject~~
5 ~~site.~~

6
7 7. ~~Lessening the Site Development Requirements results in~~
8 ~~benefits to the site, building, and structural design or~~
9 ~~preservation of natural features that could otherwise not be~~
10 ~~achieved.~~

11
12 8. ~~Applications and documents related to the request, which will~~
13 ~~require further City approval, shall be submitted to the City in~~
14 ~~the proper sequence.~~

15
16 D. ~~Submission Requirements.~~ ~~An application for a Preliminary PUD~~
17 ~~shall be made by the owner of the subject property, or the owner's~~
18 ~~authorized agent, on a form provided by the Director and shall be filed~~
19 ~~with the Director. The Preliminary PUD application shall be~~
20 ~~accompanied by the information required by the application form, and~~
21 ~~by Section 50.25 (Application Completeness), and any other~~
22 ~~information identified through a Pre Application Conference.~~

23
24 E. ~~Conditions of Approval.~~ ~~The decision making authority may impose~~
25 ~~conditions on the approval of a Preliminary PUD application to ensure~~
26 ~~compliance with the approval criteria.~~

27
28 F. ~~Appeal of a Decision.~~ ~~Refer to Section 50.70.~~

29
30 G. ~~Expiration of a Decision.~~ ~~The decision shall expire two (2) years after~~
31 ~~of the date of decision. Refer to Section 50.90.~~

32
33 H. ~~Extension of a Decision.~~ ~~Refer to Section 50.93.~~

34 ~~40.15.15.~~

35
36 **6. Final Planned Unit Development**

37
38 A. ~~Threshold.~~ ~~A Final Planned Unit Development (PUD) application is~~
39 ~~the second application of a two-step application process with a~~
40 ~~Preliminary PUD as the first step. A Final PUD application may also~~
41 ~~be a one-step application process which is an alternative to the two-~~
42 ~~step process required when an applicant chooses to apply for a~~
43 ~~Preliminary PUD. The option of a one-step or two-step process rests~~
44 ~~with the applicant. The requirements for a Final PUD may be applied~~
45 ~~to properties within any City zoning district except Residential-~~
46 ~~Agricultural.~~

1 ~~B. Procedure Type. The Type 3 procedure, as described in Section 50.45~~
2 ~~of this Code, shall apply to an application for Final PUD approval. The~~
3 ~~decision making authority is the Planning Commission.~~

4
5 ~~C. Approval Criteria. In order to approve a Final PUD application, the~~
6 ~~decision making authority shall make findings of fact based on~~
7 ~~evidence provided by the applicant demonstrating that all the~~
8 ~~following criteria are satisfied:~~

9
10 ~~1. The proposal satisfies the threshold requirements for a Final~~
11 ~~PUD application.~~

12
13 ~~2. All City application fees related to the application under~~
14 ~~consideration by the decision making authority have been~~
15 ~~submitted.~~

16
17 ~~3. If a Preliminary PUD has been approved, the Final PUD is filed~~
18 ~~within two (2) years or the Preliminary PUD has received an~~
19 ~~extension approval pursuant to Section 50.93 of this Code.~~

20
21 ~~4. The final PUD complies with the approved Preliminary PUD, if~~
22 ~~any.~~

23
24 ~~5. The proposal meets the Site Development Requirement for~~
25 ~~setbacks within the applicable zoning district for the perimeter~~
26 ~~of the parent parcel unless the setbacks are approved as an~~
27 ~~Adjustment, Flexible Setback or Variance which shall be~~
28 ~~considered concurrently with the subject proposal.~~

29 40.15.15.6.C.

30
31 ~~6. The proposal complies with the applicable policies of the~~
32 ~~Comprehensive Plan.~~

33
34 ~~7. The size, dimensions, configuration, and topography of the site~~
35 ~~and natural and man-made features on the site can reasonably~~
36 ~~accommodate the proposal.~~

37
38 ~~8. The location, size, and functional characteristics of the proposal~~
39 ~~are such that it can be made reasonably compatible with and~~
40 ~~have a minimal impact on livability and appropriate~~
41 ~~development of properties in the surrounding area of the subject~~
42 ~~site.~~

43
44 ~~9. The lessening of the Site Development Requirements results in~~
45 ~~benefits to the enhancement of site, building, and structural~~
46 ~~design or preservation of natural features.~~

1 10. ~~Applications and documents related to the request, which will~~
2 ~~require further City approval, shall be submitted to the City in~~
3 ~~the proper sequence.~~

4
5 D. ~~Submission Requirements. An application for a Final PUD shall be~~
6 ~~made by the owner of the subject property, or the owner's authorized~~
7 ~~agent, on a form provided by the Director and shall be filed with the~~
8 ~~Director. The Final PUD application shall be accompanied by the~~
9 ~~information required by the application form, and by Section 50.25~~
10 ~~(Application Completeness), and any other information identified~~
11 ~~through a Pre Application Conference.~~

12
13 E. ~~Conditions of Approval. The decision making authority may impose~~
14 ~~conditions on the approval of a Final PUD application to ensure~~
15 ~~compliance with the approval criteria.~~

16
17 F. ~~Appeal of a Decision. Refer to Section 50.70.~~

18
19 G. ~~Expiration of a Decision.~~

20
21 1. ~~If the application proposes to develop the PUD in a single phase,~~
22 ~~the decision shall expire two (2) years after the date of decision.~~
23 ~~Refer to Section 50.90.~~

24
25 40.15.15.6.G.

26
27 2. ~~If the application proposes to develop the PUD over multiple~~
28 ~~phases, the decision making authority may approve a time~~
29 ~~schedule of not more than five (5) years for the multiple~~
30 ~~development phases. However, all PUD phases must commence~~
31 ~~construction within five (5) years of the date of decision of the~~
32 ~~Final PUD. Refer to Section 50.90.~~

33
34 H. ~~Extension of a Decision. Refer to Section 50.93.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

Section 40.15.15. Thresholds:

Planning Commission: As written the application thresholds made it appear that an applicant had to meet both thresholds the Planning Commission questioned if this was then intent.

Staff Review: Staff raised the same question regarding the thresholds as the Planning Commission.

Modification to Code: A modification to the preamble to the application thresholds that clarifies that if one or both thresholds apply a PUD application is required.

Threshold #1 was also modified to clearly indicate that a residential property may be 2 acres or greater.

Threshold #2 was modified to correct the number of applications that if associated with a Preliminary Subdivision or Partition will require a Planned Unit Development from 2 to 3; this was a scrivener's error.

1 **Proposed Planned Unit Development Code**

2
3 40.15.15.

4
5 **5. Planned Unit Development**

6
7 A. Threshold. A Planned Unit Development is an optional application
8 process which may be chosen by the applicant when one or more of the
9 following thresholds apply:

- 10
11 1. The Planned Unit Development (PUD) may be applied to Commercial,
12 Industrial, Multiple Use of ~~any size~~ and Residential properties that are
13 ~~over~~ 2 acres or greater in size within any City zoning district except
14 Residential-Agricultural.
15
16 2. When a land division requires more than 2 3 of the following land use
17 applications:
18 a. Minor or Major Adjustment
19 b. Flexible Setbacks
20 c. Variance

21
22 B. Procedure Type. The Type 3 procedure, as described in Section 50.45 of
23 this Code, shall apply to an application for PUD approval. The decision
24 making authority is the Planning Commission.

25
26 C. Approval Criteria. In order to approve a PUD application, the Planning
27 Commission shall make findings of fact based on evidence provided by the
28 applicant demonstrating that all the following criteria are satisfied:

- 29
30 1. The proposal satisfies the threshold requirements for a PUD
31 application.
32
33 2. All City application fees related to the application under consideration
34 by the decision making authority have been submitted.
35
36 3. The proposal meets the Site Development Requirement for setbacks
37 within the applicable zoning district for the perimeter of the parent
38 parcel unless otherwise provided by Section 60.35.00.
39
40 4. The proposal complies with the applicable policies of the
41 Comprehensive Plan.
42
43 5. The size, dimensions, configuration, and topography of the site and
44 natural and man-made features on the site can reasonably
45 accommodate the proposal.

1 **Section 40.15.15.5.C Approval Criteria:**

2
3 Planning Commission: Commissioners expressed confusion for Approval Criteria #7.

4
5
6 Developer/Consultant Focus Group: No specific comments.

7
8
9 Staff Review: Staff asked numerous questions regarding the approval criteria. Specific
10 concerns related to the definition or intent of the following words or phrases: “significant
11 benefit,” “functional characteristics,” and “minimal impact.” Staff asked for the Approval
12 Criteria to be tied to specific standards. Staff indicated that Approval Criteria #9.a use of
13 the term public interest was too broad.

14
15 Modification to Code: Section 40.15.15.5.C, Approval Criteria, staff is developing
16 language and associated standards that will articulate the issue of monotony within PUD
17 developments.

18
19 Approval Criteria #9.a, was changed to provide greater clarity.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

6. The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.
 7. The width of proposed lots within residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.
 8. The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.00.
 9. The proposal provides ~~usable~~ and improved open space, accessible and usable by persons living nearby. Usable Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.35:
 - a. The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be ~~in the public interest~~ complement the overall site design.
 - b. The shape of the open space is such that the length is not more than three (3) times the width so as to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest.
 - c. The dedicated land(s) is located so as to reasonably serve all lots for the development, which the dedication is required.
 10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.
- D. Submission Requirements. An application for a PUD shall be made by the owner of the subject property, or the owner's authorized agent, on a form provided by the Director and shall be filed with the Director. The PUD application shall be accompanied by the information required by the application form, and by Section 50.25 (Application Completeness), and any other information identified through a Pre-Application Conference.

1 **Section 40.15.15.5.C Approval Criteria:**

2
3 Planning Commission: No specific comments.

4
5
6 Developer/Consultant Focus Group: No specific comments.

7
8
9
10 Staff Review: Staff noted that the Phasing standard needed to include Floor Area Ratio
11 standards.

12
13
14 Modification to Code: Several small word changes to address issues raised by staff.
15
16

- 1 E. Conditions of Approval. The decision making authority may impose
2 conditions on the approval of a PUD application to ensure compliance
3 with the approval criteria.
4
- 5 F. Phasing of the development ~~shall~~ may be ~~allowed~~ permitted with approval
6 of the Planning Commission. A deed restriction for those areas of the
7 parent parcel in which deferred development will occur shall limit the
8 number of future units developed to an amount consistent with the
9 minimum and maximum density or Floor Area Ratio (FAR) permitted for
10 the overall development.
11
- 12 G. Appeal of a Decision. Refer to Section 50.70.
13
- 14 H. Expiration of a Decision.
15
- 16 1. The PUD decision shall expire five (5) years after the date of decision.
17 Refer to Section 50.90.
18
- 19 I. Extension of a Decision. Refer to Section 50.93.
20

1 **Section 2: The Development Code, Ordinance No. 2050, Chapter 60, Special**
2 **Regulations, Section 60.35 shall be amended to read as follows:**

3
4 **60.35. PLANNED UNIT DEVELOPMENT [ORD 4224; August 2002]**

5
6 ~~**60.35.05 Purpose.** It is the purpose of these provisions to allow a planned unit~~
7 ~~development (PUD) in any City zoning district except Residential-~~
8 ~~Agricultural (R-A). Uses or combinations of uses may be developed as a~~
9 ~~single, integral, functional unit or entity. The planned unit development~~
10 ~~provisions are intended to encourage more creative approaches for developing~~
11 ~~land, while enhancing and preserving the value, spirit, character, and~~
12 ~~integrity of surrounding areas which have developed or are developing under~~
13 ~~conventional district regulations. This is to be accomplished by:~~

- 14
15 1. ~~Utilizing advances in technology and design.~~
- 16
17 2. ~~Creating a comprehensive development plan which is equal to or better than~~
18 ~~that resulting from traditional lot by lot land development.~~
- 19
20 3. ~~Employing design flexibility for locating structures, open spaces, circulation~~
21 ~~facilities, off-street parking areas, and other improvements.~~
- 22
23 4. ~~Retaining and protecting special topographic, natural, or environmentally~~
24 ~~sensitive features on the site.~~
- 25
26 5. ~~Encouraging innovative design techniques.~~
- 27
28 6. ~~Utilizing design flexibility afforded by the planned unit development~~
29 ~~provisions to improve compatibility of the development with surrounding~~
30 ~~properties and uses.~~
- 31
32 7. ~~Change from specific site development requirement and combinations of uses~~
33 ~~is allowable, subject to the provisions of this Code.~~

34
35 ~~**60.35.10. Modification of Base Zoning Standards**~~

36
37 ~~1. Dimensional Standards~~

38
39 ~~The dimensional standards for the applicable zoning district as listed in~~
40 ~~Chapter 20 may be modified through approval of a Planned Unit~~
41 ~~Development, except for the following situations:~~

- 42
43 A. ~~Required setbacks shall continue to apply to the parent parcel upon~~
44 ~~which the proposed PUD will be located.~~
- 45
46 B. ~~The intersection standards in Section 60.55.50 shall continue to be~~
47 ~~satisfied.~~

1 ~~60.35.10.1.~~

- 2
- 3 ~~C. All building setbacks shall continue to meet applicable building and~~
4 ~~fire code requirements.~~
- 5
- 6 ~~D. Maximum building height standards may be increased up to twelve~~
7 ~~feet (12') when the applicable building setback distance along the~~
8 ~~perimeter of the parent parcel is increased at a ratio of 1.5 additional~~
9 ~~feet of setback for every foot of building height over the base zone~~
10 ~~standard for building height.~~

11

12 ~~2. Allowed Uses.~~

- 13
- 14 ~~A. Except as provided in Section 60.35.10.2.B. below, the uses in a PUD~~
15 ~~shall comply with the permitted and conditional use requirements of~~
16 ~~the base zoning district.~~
- 17
- 18 ~~B. Detached and attached dwellings shall be allowed in any PUD~~
19 ~~provided the overall residential density satisfies the applicable~~
20 ~~residential density provisions of this Code.~~
- 21
- 22 ~~C. In addition to the accessory uses and structures typical of the uses~~
23 ~~authorized in the subject zoning district in which the PUD is located,~~
24 ~~accessory uses approved as a part of a PUD may include the following:~~
- 25
- 26 ~~1. Private park, lake or waterway.~~
- 27
- 28 ~~2. Recreation area.~~
- 29
- 30 ~~3. Recreation building, clubhouse or social hall.~~
- 31
- 32 ~~4. Other accessory use or structure which the decision making~~
33 ~~authority finds is designed to serve primarily the residents of~~
34 ~~the PUD, and is compatible with the neighborhood and to the~~
35 ~~design of the PUD.~~
- 36
- 37
- 38
- 39
- 40

1 ~~60.35.15~~ ~~Common Open Space.~~

2
3 1. ~~A PUD shall be required to provide common open space according to the~~
4 ~~following rates:~~

5
6 ~~A. Area equal to at least twenty percent (20%) of the subject site when the~~
7 ~~site is up to and including 10 acres in size. [ORD 4365; September~~
8 ~~2005]~~

9
10 ~~B. Area equal to at least fifteen percent (15%) of the subject site when the~~
11 ~~site is more than 10 acres and up to and including 50 acres in size.~~
12 ~~[ORD 4365; September 2005]~~

13
14 ~~C. An area equal to at least ten percent (10%) of the subject site when the~~
15 ~~site is more than 50 acres in size.~~

16
17 ~~2. Land required to be set aside as setbacks or buffers shall not be included in~~
18 ~~the calculation of required open space.~~

19
20 ~~3. Land shown on the final development plan as common open space, and~~
21 ~~landscaping and/or planting contained therein shall be permanently~~
22 ~~maintained by and conveyed to one of the following:~~

23
24 ~~A. An association of owners or tenants, created as a non-profit corporation~~
25 ~~under the laws of the state which shall adopt and impose articles of~~
26 ~~incorporation and bylaws and adopt and impose a declaration of~~
27 ~~covenants and restrictions on the common open space that is~~
28 ~~acceptable to the City Attorney as providing for the continuing care of~~
29 ~~the space. Such an association shall be formed and continued for the~~
30 ~~purpose of maintaining the common open space and shall provide for~~
31 ~~City intervention and the imposition of a lien against the entire~~
32 ~~planned unit development in the event the association fails to perform~~
33 ~~as required; or~~

34
35 ~~B. A public agency which agrees to maintain the common open space and~~
36 ~~any buildings, structures, or other improvements which have been~~
37 ~~placed on it.~~

1 **Section 60.35.05 Planned Unit Development Purpose Statement:**

2
3 Planning Commission: Planning Commissioners made several word suggestions. The
4 major question related to the concept of cluster housing. There was also concern that the
5 PUD purpose statement had no much broad language that was not directly related to
6 planning issues in Beaverton.

7
8 In two cases Commissioners suggested replacing “shall” with “should.” One Planning
9 Commissioner reminded everyone that the purpose statement is weakened by changing
10 the wording from “should” to “shall”.

11
12 Developer/Consultant Group: Recommend the inclusion of Courtyard, Patio, and Cottage
13 housing to describe cluster housing because this style of development is increasing in
14 popularity.

15
16 Staff Review: Staff made the same observation.

17
18 Modification to Code: Several changes have been made to the language including the
19 removal of language that was overly general and broad. Staff has included
20
21

1 **60.35 PLANNED UNIT DEVELOPMENT**

2
3 **60.35.05 Purpose**

4 It is the purpose of these provisions to allow a Planned Development (PUD) in any City
5 zoning district except Residential-Agricultural (R-A). Uses or combinations of uses may be
6 developed as a single, integral, functional unit or entity. The planned development
7 provisions are intended to encourage innovation and creative approaches for developing land
8 while enhancing and preserving the value, character, and integrity of surrounding areas
9 which have developed or are developing under conventional district regulations. This is to be
10 accomplished by using the following development and design principles:

- 11
- 12 1. Site design shall use the flexibility afforded by the planned development to
- 13
- 14 A. Provide setbacks and buffering through landscape or building design adjacent abutting to
- 15 existing development;
- 16 B. Cluster buildings to create open space and protect natural resources;
- 17 C. Provide for active and passive recreation;
- 18 D. Use resource efficient development and building practices that encourage innovative
- 19 design techniques and construction practices that use energy saving technology; or
- 20
- 21 2. Site design shall maximize the opportunities for diversified architecture and outdoor living
- 22 environments that respond to the existing site context by exploring design flexibility for
- 23 siting structures, open spaces, circulation facilities, off-street parking areas, streetscapes,
- 24 resource conservation and creation and other site improvements that facilitate efficient use of
- 25 land and create a comprehensive development plan which is better than that resulting from
- 26 traditional the subdivision development;
- 27
- 28 3. Building architecture including detached residential, shall use innovative design that should
- 29 considers the context of the existing built and natural environment. Buildings shall be
- 30 architecturally detailed, and of a size and mass that contribute to a pedestrian-friendly
- 31 streetscape, and respond to the natural features of the site. Cluster housing, such as
- 32 Courtyard, Patio, or Cottage development, that grouping groups buildings in areas to
- 33 maximize open space and preserve significant cultural and natural resources is highly
- 34 encouraged as are the use of sustainable building materials and practices. The orientation of
- 35 buildings shall should promote human scaled and pedestrian friendly environments that
- 36 encourage walking, social interaction, and safety by having "eyes on the street or park"
- 37 whenever possible, and maximize solar exposure for passive solar gain;
- 38
- 39 4. Open space should provide opportunities for active and/or passive recreation that includes
- 40 preservation of natural and cultural resources. Good site design shall retain and protect
- 41 special topographic, natural, and environmentally sensitive features and existing Significant
- 42 Groves and Historical and Individual stands of trees and understory and use native plant
- 43 material and sustainable landscape practices.
- 44
- 45 ~~5. Change from specific site development requirement and combinations of uses shall be~~
- 46 ~~allowed, subject to the provisions of this Code.~~
- 47
- 48
- 49

1 **Section 60.35.10 Modification of Base Zoning Standards:**

2
3 **Planning Commission:** Commissioners expressed concern Section 60.35.10.1.C.4, that if
4 an applicant were to be required to wait and receive approval from the Planning
5 Commission it would potentially diminish the creation of accessory uses because the
6 approval of the proposed accessory use is too late in the project approval.
7

8
9 Planning Commissioners also expressed concern with the standard that sets a maximum
10 of 4 attached units as being too restrictive.

11
12 Commissioners suggested that maybe this provision only be applied in the R-10 and R-7
13 zones.
14

15 **Developers/Consultant Focus Group:** The focus group did not address the maximum 4
16 unit attached standard until staff prompted them. The group was generally concerned
17 and felt that the standard was trying to address architectural and use issues in a manner
18 that would create optional cost and unintended consequences.
19

20
21 **Staff Review:** Staff is concerned that the 4 attached unit maximum will create design
22 constraints and potential for other unintended consequences.
23

24
25 **Modification to Code:** The code was modified to state that only development in the R-10
26 and R-7 zones shall be subject to the maximum number of units. This would address the
27 concern the prompted the standard, which was the lack of compatibility with long
28 monotonous row home developments.
29
30
31

1 **60.35.10 Modification of Base Zoning Standards**

2 ~~The following Planned Development baseline standards apply to all single family~~
3 ~~residential attached and detached structures, except for multi family, commercial, or~~
4 ~~industrial.~~

5
6 1. *Permitted Uses*

7
8 A. ~~Except as provided in Section 60.35.10.2.B below and in commercial and industrial~~
9 ~~zone, the uses in a PUD shall comply with the permitted and conditional use~~
10 ~~requirements of the zoning district.~~

11
12 B. Detached and attached dwellings ~~shall~~ may be allowed in any PUD provided the
13 overall residential density satisfies the applicable residential density provisions of this
14 Code.

15
16 C. In addition to the accessory uses and structures typical in the zoning district in which
17 the PUD is located, accessory uses approved as a part of a PUD may include, but are
18 not limited to the following:

19
20 1. Private or public park, lake or waterway.

21
22 2. Recreation area.

23
24 3. Recreation building, clubhouse or social hall.

25
26 4. Other accessory uses or structures which the Planning Commission finds is
27 designed to serve primarily the residents of the PUD, and is compatible with
28 the neighborhood and to the design of the PUD.

29
30 2. *Density and Lot Dimensions*

31
32 A. Density and building scale shall relate to the surrounding neighborhood
33 development and natural resources.

34
35 1. Attached single-family units may not exceed four (4) units per structure in
36 the R-10 and R-7 Residential zones and shall be designed in a manner that
37 provides architectural and massing compatibility with the surrounding
38 neighborhood.

39
40 B. Density Transfers

41
42 1. A density transfer allows an equal transfer of dwelling units from one
43 portion of the site to another. Density transfers are allowed by right for
44 the following areas:

45
46 a. Area within a floodplain and flood plain setback;

47
48 b. Area over twenty-five (25) percent slope;

1 **Section 60.35.10 Modification of Base Zoning Standards:**

2
3 **Planning Commission:** Commissioners expressed concern Section 60.35.10.2.D., Lot
4 Coverage, and specifically asked if by adding lot coverage the code wasn't being too
5 prescriptive.

6
7 Planning Commissioners where concerned with the provision that sets a maximum of 4
8 attached units as being too restrictive. Staff responded that this code proposal was a
9 direct response to Commissioner's earlier concerns regarding too many units in a row.

10
11 Commissioners suggested that maybe this provision only be applied in the R-10 and R-7
12 zones.

13
14 **Developers/Consultant Focus Group:** The focus group did not have any objections to
15 the lot coverage standard and indicated that they where used to this type of approach.
16 The group did indicate that by adding this standard the proposed regulation would create
17 more private open space and that perhaps there should be other trade-offs.

18
19
20 **Staff Review:** Staff also expressed concern regarding lot coverage and thought it may be
21 too restrictive and again cause unintended consequences.

22
23
24 **Modification to Code:** Staff has modeled the lot coverage's and although the standards
25 are prescriptive they only become difficult when a developer has reduced the lot size to the
26 50 percent of the minimum allowed by the zoning district.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

- c. Known landslide areas or areas shown to have potential for severe or moderate landslide hazard;
- d. Area in designated resources areas including: significant tree groves, wetlands, riparian corridors, and their associated buffers;
- e. Areas constrained by monitoring wells and similar areas dedicated to remediation of contaminated soils or ground water; and
- f. Areas similar to those in a-e above, as approved by the Planning Commission through the PUD process.

C. Single-Family Residential Lot Sizes

- 1. Minimum lot size may be 50% of the designated base zone.
- 2. Maximum lot size may be 150% of the designated base zone. Oversized lots shall include a deed restriction to preclude unintended partitioning or subdividing of such lots in accordance with the requirements of the approved PUD.
- 3. Overall lot dimensions within the development plan shall not result in a lesser dwelling unit density than if the property in question were developed as a conventional design subdivision.

D. Lot Coverage

- 1. The following maximum lot coverage standards shall apply to all zones.
 - a. Single-Family Detached Houses -- fifty (50) percent of lot area.
 - b. Single-Family Attached (Town homes) or row homes – Seventy (70) percent of lot area.
 - c. Duplexes and two-family attached houses – Sixty (60) percent of lot area.
 - d. Multi-family Housing - Sixty (60) percent of lot area.
 - e. Neighborhood Commercial Public/Institutional uses – One-hundred (100) percent of lot area.
- 2. Lot coverage may be increased by up to 10% by meeting the architectural requirements listed in the Development Bonus and Development Incentive Options described in section 60.35.25.

1 **Section 60.35.10 Modification of Base Zoning Standards:**
2

3 **Planning Commission:** Commissioners expressed concern that Section 60.35.10.3.A.1,
4 was not addressing ongoing concerns related to setbacks from proposed development and
5 existing neighborhoods.
6

7
8 **Developers/Consultant Focus Group:** The group believed that setbacks were a very
9 useful tool to addressing concerns related to open space and breaking up of massing. The
10 idea of requiring the garage behind the main body of the building was discussed and there
11 was no objection.
12

13
14 **Staff Review:** Staff had numerous comments related to this section of the code. Changes
15 have been made to address the concerns.
16

17
18 **Modification to Code:** Section 60.35.10.3.A.1, Setbacks, has been modified to require
19 that any lots created that abut the perimeter of the lot shall meet the front and rear
20 setback standards of the base zone and that where side yard setbacks exist the setback for
21 new development shall not be less than 15 feet.
22

23 A graphic that illustrates the proposed setbacks has been inserted.
24

1 3. *Setbacks*

2
3 A. The dimensional standards for the applicable zoning district as listed in Chapter 20
4 may be modified through approval of a Planned Development, except for the
5 following situations:

6
7 1. For proposed lots ~~along~~ abutting the perimeter of the property, the required
8 setbacks shall comply with the standard front and rear setbacks of the parent
9 parcel. Where the side yard of the parent parcel abuts existing development the
10 setback for new development shall be no less than fifteen (15) feet. By meeting
11 the Development Bonus and Development Incentive Options in section 60.35.25
12 the setbacks of proposed perimeter parcels may be reduced by up to ten (10)
13 percent upon approval of the Planning Commission.

14
15 2. Where standard modifications would not promote pedestrian or bicycle
16 connection to street; support storm water management; or meet fire and building
17 codes.

18
19 B. Front Setbacks

20
21 Apply to ~~single-family~~ detached dwelling, ~~duplex and triplex~~ attached dwelling, and
22 multi-family developments excepting lots along the perimeter which shall be consistent
23 with Section 60.35.10.3.A.1.

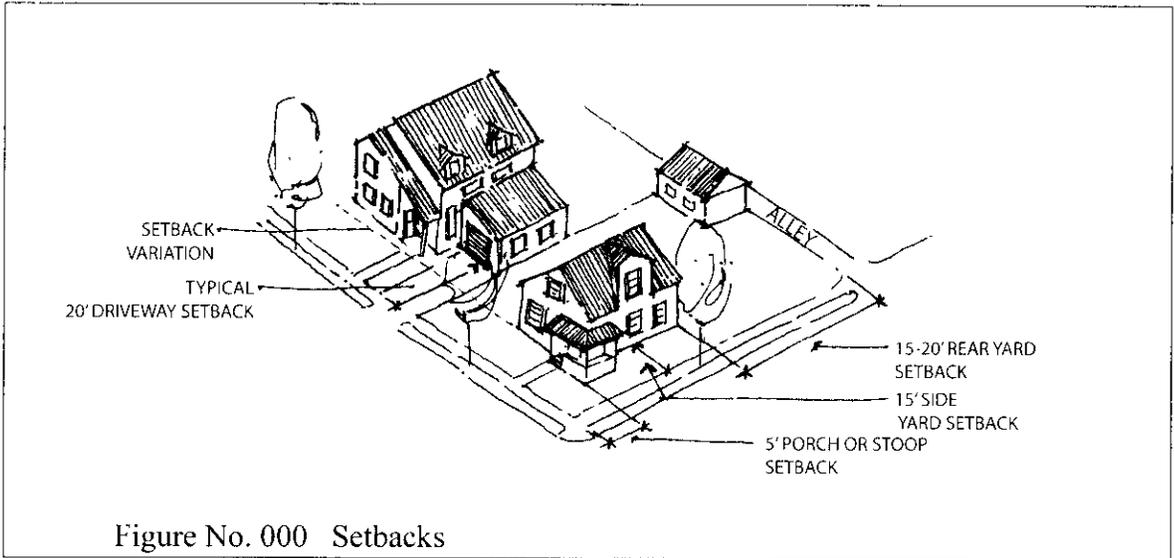
24
25 1. Proposed lots with front setbacks modified from the applicable zoning district,
26 and lots adjacent shall have staggered front yard setbacks in order to ~~promote~~
27 provide diversity in the lot layout.

28
29 2. Front setbacks for a residential structure, excluding garage where the garage door
30 faces the front property line, shall be a minimum of ten (10) feet. Unenclosed
31 porch or building stoop may be within five (5) feet of property line as long as it
32 does not encroach into a public utility easement.

33
34 3. All single-family attached and detached garages shall be setback a minimum of
35 twenty (20) feet from property line and recessed a minimum of four (4) feet from
36 front of building, not including porches when facing a public or private street.
37 Garages and carports accessed from an alley shall be setback a minimum of five
38 (5) feet from rear building elevation. All other garage and carport entrances must
39 be recessed minimum of two (2) feet when building setback is at least twenty (20)
40 feet.

41
42 C. Rear setbacks

43
44 1. Rear setbacks shall be the same as the designated zone for the parent
45 parcel for lots ~~along~~ abutting the perimeter of the proposed development
46 excepting alley accessed lots for which rear setbacks may be reduced to 6
47 feet for alley-accessed lots.



1
2
3

1 **Section 60.35.10. Open Space:**

2
3 **Planning Commission:** Regarding the provision of Open Space Commissioners stated
4 that they felt that larger areas should provide the same 20 percent of Open Space as
5 smaller PUD's. This was especially in light of the fact that the larger sites had more
6 flexibility.
7

8 **Developers/Consultant Focus Group:** The Developer/Consultant Group did raise
9 many issues and concerns regarding opens space. The issues included the possible
10 reduction of open space in relationship to surrounding parks, the possible exceptions for
11 the size standards when open space is adjacent to existing open space or connecting to
12 existing pedestrian and bicycle trails. The idea of eliminating the open space entirely to
13 provide considerably more flexibility was also raised.
14

15
16 **Staff Review:**
17
18
19

20 **Modification to Code:** Section 60.35.10.3.A.1, Side yard setbacks, has been modified to
21 four (4) feet from three (3) feet.
22

23 The Open Space requirement for PUD's between 10 acres and 50 and greater than 50
24 percent have been increased from 15 and 10 percent to 20 percent respectively.
25

1 D. Side setbacks

- 2
- 3 1. Except for zero-lot line development, side setbacks shall be a minimum of
- 4 ~~three~~ four (3 4) feet on interior side yards, and ten (10) feet on street
- 5 corner lots. All zero-lot line development shall have side yard setbacks of
- 6 10 feet on one side of the dwelling unit and no setback required on the
- 7 opposite side.
- 8

9 **60.35.15 Open space**

10

11 **Purpose**

12

13 Open space shall provide opportunities for active and/or passive recreation and may

14 include existing stands of trees and understory resource areas and storm water facilities as

15 outlined in this section. Active open space shall allow human activities including

16 recreational and social opportunities such as play fields, playgrounds, swimming pools,

17 plazas and other recreational facilities. Open space may also be passive and include

18 human activities limited to walking, running, and cycling, seating areas and wildlife

19 viewing or natural areas such as a wetland.

20

- 21 1. A Planned Development shall provide baseline open space according to the
- 22 following rates:
- 23
- 24 A. Area equal to at least twenty percent (20%) of the subject site when the site is
- 25 up to and including 10 acres in size.
- 26
- 27 B. Area equal to at least fifteen percent (~~15%~~ 20%) of the subject site when the
- 28 site is more than 10 acres and up to and including 50 acres in size.
- 29
- 30 C. An area equal to at least ten percent (~~10%~~ 20%) of the subject site when the
- 31 site is more than 50 acres in size.
- 32
- 33 D. A decrease in open space of up to fifty (50) percent may be allowed by
- 34 meeting a combination of the Development Bonus and Development Incentive
- 35 Options in section 60.35.30
- 36
- 37 E. Up to twenty (20) percent of the open space requirement may be dedicated to
- 38 the following land uses:
- 39
- 40 1. Water quality facilities that have side slopes of 3:1 or less and do not
- 41 require fencing per Clean Water Services (CWS) standards;
- 42
- 43 2. Environmentally sensitive areas including wetlands and any required
- 44 ~~environmental~~ buffers required by Clean Water Services or other
- 45 regulatory body.
- 46
- 47
- 48
- 49
- 50

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 60.35.10. Open Space :

Planning Commission: Commissioners expressed concern that vehicular access to water quality areas.

Developers/Consultant Focus Group:

Staff Review:

Modification to Code: Section 60.35.10.3.A.1, a standard that prohibits vehicular access and parking areas for use as open space was added in response to the Planning Commissions.

A graphic illustrating the minimum open space has been inserted.

2. Standards

- A. Open space shall be land that is available for the creation of active and/or passive areas, or resource areas that provide visible and accessible open space to the proposed community.
- B. Open space shall be easily accessible physically or visually to all members of the planned community via a minimum thirty (30) foot street frontage or access easement;
- C. No more than forty (40) percent of the gross land dedicated may have slopes greater than five (5) percent;
- D. Open space areas shall have a dedicated meter and underground irrigation system to ensure adequate water supply during establishment period (3-years) and during periods of drought for all newly planted areas. Resource areas are exempt from this criterion.
- E. For developments ten (10) acres or greater, at least twenty-five (25) percent of the total required open space area shall be active space or meet the commons criteria in this chapter.
- F. For the purpose of this Code, open space does not include:
 - 1. Public or private streets;
 - 2. Surface parking lots or paved areas not designated for active or passive recreation;
 - 3. Private lots and buildings; including setbacks, or landscape buffers;
 - 4. Vehicular access driveways, parking areas, or maneuvering areas.

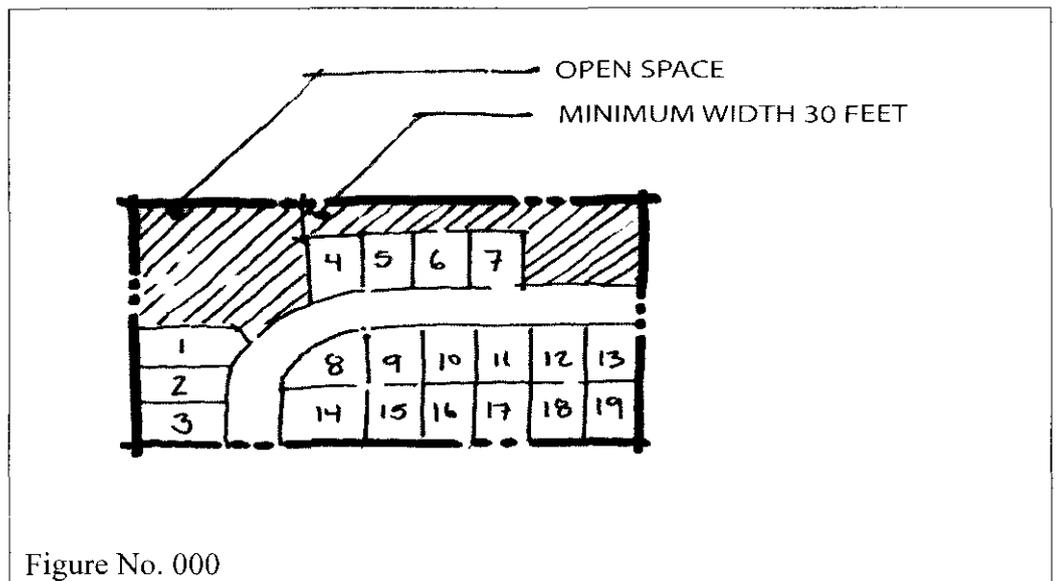


Figure No. 000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 60.35.15. Open Space – Common Area:

Planning Commission: The Planning Commission suggested that the Common Area amenities that the standard requires be prioritized and then categorized in order to ensure that a developer to pick some of the high value amenities. Otherwise the Commission expressed concern that a developer will always chose the least expensive amenity.

Developers/Consultant Focus Group: There was general question about what the intent of the open space is and what distinction needed to be made between private and public amenities.

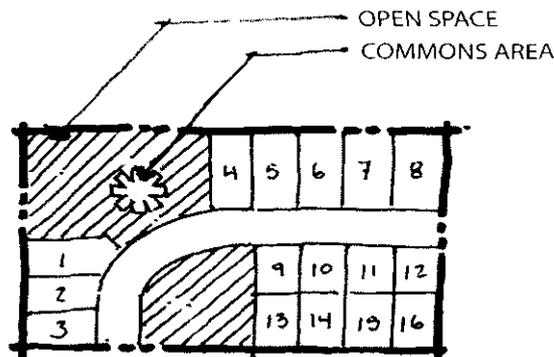
Staff Review: Staff was interested to know if the Planning Commission felt that the use of pocket parks with amenities could deliver the type of livability that is trying to be addressed.

Modification to Code: Staff is seeking Planning Commission direction to prioritize amenities for inclusion in the open space.

1 Commons Area

2
3 A "Commons area" within the dedicated open space is required for residential
4 developments that have ten (10) units or more. One designated space shall be provided
5 as an accessible commons area that may be a gathering spot, play area, over look or any
6 other outdoor area given special consideration and may consist of active, passive, or both
7 uses. The Commons area shall be accessible to all lots and meet the following criteria:
8

- 9
- 10 1. One hundred fifty (150) square feet for each unit containing 500 or less
11 square feet of gross floor area.
 - 12 2. Two hundred fifty (250) square feet for each unit containing more than 500
13 square feet and up to 2000 square feet of gross floor area.
 - 14 3. Three hundred fifty (350) square feet for each unit containing more than
15 2000 square feet of gross floor area.
 - 16 4. A Commons area shall be no smaller than the average minimum lot size and
17 shall have minimum width 40 feet.
 - 18 5. A Commons area may abut a collector or greater classified street as identified
19 in the City's adopted Functional Classification Plan, when separated from the
20 street by a constructed barrier, such as a fence or wall, at least three (3) feet in
21 height.
 - 22 6. One Commons area shall be provided for every fifty (50) units in single-
23 family developments and every one-hundred (100) units for multi-family
24 developments.
 - 25 7. A Commons shall include at least two (2) of the following, or similar
26 improvements as approved by the Planning Commission:
 - 27 ▪ A bench or other seating with a pathway or other pedestrian way;
 - 28 ▪ A water feature such as a fountain;
 - 29 ▪ A children's play structure;
 - 30 ▪ A gazebo;
 - 31 ▪ Tennis courts
 - 32 ▪ An indoor or outdoor sports court; or
 - 33 ▪ An indoor or outdoor swimming and/or wading pool.
 - 34 ▪ Plaza
- 35



36
37 Figure No. 000
38

1 4. *Maintenance and Ownership*

2
3 Land shown on the final development plan as common open space, and landscaping
4 and/or planting contained therein shall be permanently maintained by and conveyed to
5 one of the following:

- 6
7 A. An association of owners or tenants, created as a non-profit corporation under the
8 laws of the state (ORS 94.572) which shall adopt and impose articles of
9 incorporation and bylaws and adopt and impose a declaration of covenants and
10 restrictions on the common open space that is acceptable to the City Attorney as
11 providing for the continuing care of the space. Such an association shall be
12 formed and continued for the purpose of maintaining the common open space and
13 shall provide for City intervention and the imposition of a lien against the entire
14 planned unit development in the event the association fails to perform as required;
15 or
16
17 B. A public agency which agrees to maintain the common open space and any
18 buildings, structures, or other improvements which have been placed on it.
19
20 C. Dedicated open space and commons areas shall be protected by Covenants
21 (CC&Rs) or deed restriction to prevent any future commercial, industrial, or
22 residential development.

1 **Section 635.20 Building Architecture:**

2
3
4 **Planning Commission:** Commission expressed concern regarding the standard requiring
5 building entrances to face a street or publicly accessible sidewalk.
6

7
8
9 **Developers/Consultant Focus Group:** This group felt that it was only important to
10 distinguish that with infill development and the use of cluster housing or courtyard style
11 housing that an entrance will not always face a street. If the standard describes an
12 accessible sidewalk there was no concern.
13

14
15
16 **Staff Review:** No significant comments.
17

18
19
20 **Modification to Code:** Minor word changes.
21
22

1 **60.35.20 Building Architecture**

2
3 1. *Purpose*

4
5 This section applies to development which is not subject to Section 60.05, Design
6 Review, of this code.

7
8 The following architectural standards are intended to promote innovative design that
9 considers the context of the existing built and natural environment. Buildings shall be
10 detailed, human-scale, and respond to the natural features of the site. Cluster housing,
11 grouping buildings and in areas to maximize open space and preserve significant cultural
12 and natural resources is highly encouraged along with the use of sustainable building
13 materials and practices. Building shall be oriented to the street or other public spaces
14 such as parks, plazas, courtyards and open commons when served by an alley. Building
15 architecture section also offers applicable Development Bonuses and Development
16 Incentive Options in Section 60.35.30

17
18
19 2. *Building Orientation*

20
21 Building shall be oriented to the street or other public spaces such as parks, plazas,
22 courtyards and open commons when served by an alley. The orientation of buildings
23 shall promote environments that encourage walking, social interaction, and safety.

- 24
25 A. Exceptions to this standard may be allowed by the Planning Commission where access,
26 topography, and natural resources prohibit the orientation of buildings to the street or
27 other public open spaces.
- 28
29 B. In all cases buildings and or private lots shall be served by or have direct access to
30 sidewalks or paths that connect to a private or public street/sidewalk system.
- 31
32 C. Garages with rear alley access or garages located in the rear of the lot with shared
33 driveways are encouraged.
- 34
35 D. All buildings ~~entrances~~ shall have their primary entrance to a street or publicly accessible
36 sidewalk where buildings face public parks, common areas or open space.
- 37
38 E. All primary ~~E~~entrances shall be covered or recessed and minimum depth of three (3) feet
39 deep and five (5) feet wide.

40
41 3. *Building Heights (Need Graphic)*

42
43 Buildings shall be to scale with similar types of existing structures on adjacent properties.
44 This can be accomplished by utilizing graduated building heights which offer a transition
45 between single-story residential development and multiple-story residential.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Planning Commission: The only comment was regarding C.2

Developers/Consultant Focus Group: No specific comments.

Staff Review:

Modification to Code: Format was changed in 4.C. Bullet points where used have now been numbered.

- 1 A. Maximum building height standards may be increased up to twelve feet (12')
2 when the applicable building setback distance along the perimeter of the parent
3 parcel is increased at a ratio of 1.5 additional feet of setback for every foot of
4 building height over the base zone standard for building height.
5

6
7 4. *Architectural Standards*
8

9 Architectural standards are intended to promote quality design and detail that promote
10 innovation and creativity that allows for a variety of building styles and types. All
11 buildings shall adhere to these standards. Graphics are provided as an example of how
12 standards apply.
13

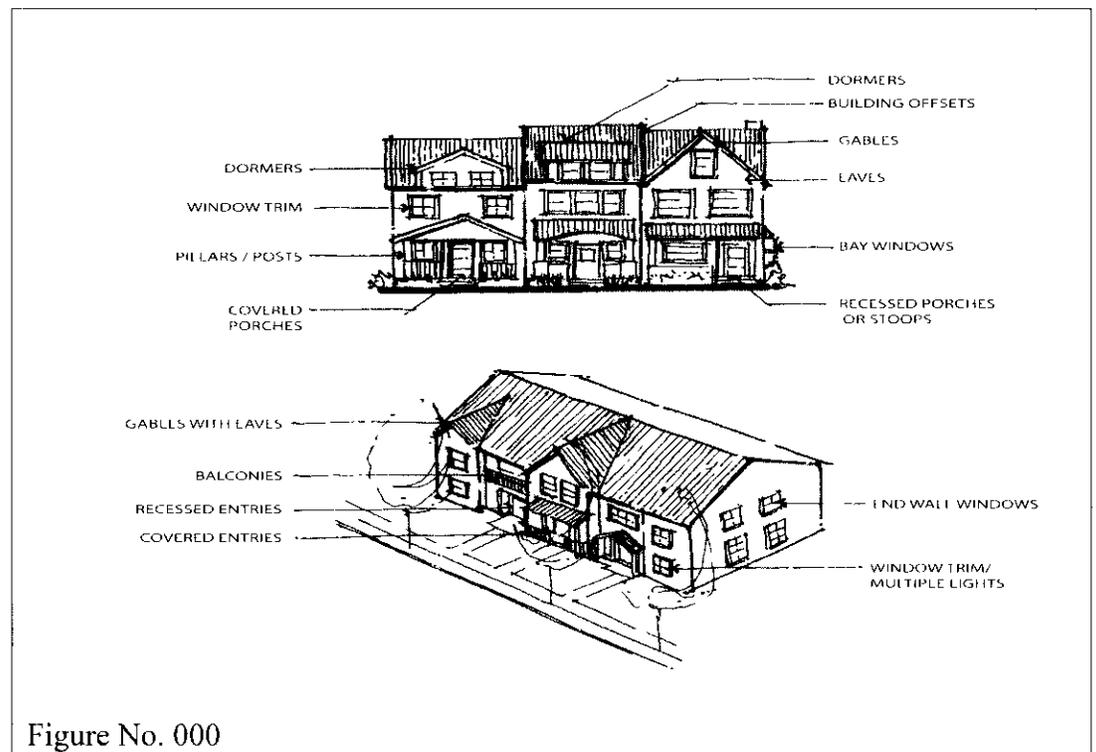
14 The following standards apply to all single-family developments proposed through the
15 PUD process.
16

- 17 A. Building scale and massing shall complement surrounding uses by complying
18 with the provisions in this Code and meeting the following criteria for residential
19 development.
20
- 21 B. Single-Family Attached shall maintain similar architectural character as single-
22 family detached when part of the same development and may not exceed three (3)
23 attached units.
24
- 25 C. All single and multi-family residential buildings shall include design elements
26 that provide building articulation, continuity of form and variety. Architecture
27 should avoid long expanses of uninterrupted building surfaces. Buildings shall
28 incorporate at least three (4) of the following elements:
29
- 30 1. Balconies, window reveals, canopies, awnings, and covered patios,
31 porches or entrances
32
 - 33 2. Offsets in roof elevations of two (2) feet or greater
34
 - 35 3. Bay windows extending out from the building face that reflect an
36 internal space such as a room or alcove
37
 - 38 4. Individual windows in upper stories that are approximately the size
39 and proportion of a traditional window
40
 - 41 5. Staggered windows that do not align with windows on adjacent
42 properties and minimize the impact of windows in living spaces that
43 may infringe on the privacy of adjacent residents.
44
 - 45 6. Windows with trim or molding that appears substantial from the
46 sidewalk
47

1 **Planning Commission:** The Commission expressed some concern regarding the numeric
2 standards for front, side, and rear elevation coverages.
3
4
5
6 **Developers/Consultant Focus Group:** The Developer/Consultant group did not
7 express concern regarding these standards.
8
9
10 **Staff Review:**
11
12
13
14 **Modification to Code:** Architectural Graphic has been inserted into the code to
15 illustrate the standards of Section 60.35.20.4.C.
16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

7. Windows that are separated from adjacent windows by a vertical element
8. Windows grouped together to form larger areas of glazing, if individual window units are separated by moldings or jambs
9. Windows with ~~small~~ multiple panes of glass
10. Window patterns, building articulation and other treatments that help to identify individual residential units in a multi-family building
11. Dormers
12. Decorative structural accents such as kneebrackets or corbels, widow walks, turrets, hooded windows, pinnacles and pendants, pillars or posts, board and batten, or other architectural vernacular style common to the Pacific Northwest.
13. An alternative feature approved by the Planning Commission



22
23
24
25
26
27
28
29
30
31

Figure No. 000

2. All building elevations facing a street or public space shall have windows, doors, porches and/or balconies. Front yard building elevations shall have a minimum of sixty (60) percent, and side and rear facing elevations shall have minimum of thirty (30) percent windows, windows, person doors, porches and/or balconies. Building Elevation is measured as the

1 horizontal plane containing doors, porches, balconies, terraces and/or
2 windows for each full or partial building story.

- 3
4 3. Alternative building design may reflect modern building form and style.
5 These styles may have less detail or ornamentation but shall have
6 demonstrated successful use of materials and form and a cohesive
7 architectural style and be approved by the Planning Commission.
8

9
10 **60.35.30 Development Bonuses and Development Incentive Options**

11
12 **Purpose**

13 The PUD also offers the applicant additional standards which can be met as incentives to
14 promote more creative and innovative approaches to site design and infrastructure. The
15 Development Incentive Options are not required; an applicant may choose to meet the
16 standard provisions and requirements of the PUD code. The Development Incentive
17 Options are intended to promote a wide variety of creative and sustainable design
18 practices that better integrate site design, building architecture, and open space with the
19 existing built and natural environment and lead to exceptional community building in the
20 City of Beaverton. Development Incentive Options shall also consider the form and
21 function of the physical improvements and their relationship to each other and the
22 existing environment. Development plans that meet selected Development Incentive

1
2
3
4
5
6
7
8
9
10
11
12
13
14

Planning Commission:

Developers/Consultant Focus Group:

Staff Review:

Modification to Code:

Options selected by the applicant may take advantage of one or a combination of the following *Development Bonuses*:

- Reduced open space requirements;
- Setback reduction of the parent parcel.

Development Incentive bonuses are described below and quantify the additional flexibility and ~~optional~~ options that the developer may use to obtain additional flexibility in open space requirements and setback reductions. Approval of the Development Incentive Options and the additional development flexibility allowed are at the discretion of the Planning Commission. In all cases the total incentives may not reduce open space more than fifty (50) percent of the open space as required in Section 60.35.15.

The following Development Bonuses and Incentive Options are intended to provide design flexibility.

60.35.40 Allowed Development Bonuses

Site plans that meet selected Development Incentive Options selected by the applicant may take advantage of one or a combination of the following *Development Bonuses*:

1. Decrease open space area requirement by using a combination of Development Incentive Options up to a maximum of fifty (50) percent of that required by the PUD standard open space requirements;
2. Reduce front and rear setbacks of parent parcel up to ten (10) percent within the perimeter of the PUD.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Planning Commission: Based on the direction of the Planning Commission the LEED development incentive is being dropped at this time.

Developers/Consultant Focus Group: Generally supportive of the addition of incentives to create more flexibility.

Staff Review: Staff recommended that changes be made to the View Preservation and Ecoroof incentives to add clarity.

Modification to Code: Clarifications to both the View Preservation and Ecoroof incentives were made. Staff is continuing to work with the Home Builders of Association of Portland and other Energy Agencies in seeking building innovations that can be used for incentives.

1 **60.35.50 Development Incentive Options**

2
3 1. *Open Space Development Incentive Options = Twenty (20) Percent Open Space*
4 *Reduction*

5
6 Up to a twenty (20) percent reduction in the required amount of open space as
7 approved by the Planning Commission may be achieved by conforming to the open
8 space options listed below. The Planning Commission may consider other
9 improvements in addition to those listed that offer a similar level of quality and
10 continuity in the proposed open space:

11
12 a. *Active Recreation* – Twenty-five (25) percent of open space (beyond a
13 commons area) is usable for active recreation, such as: play structures, picnic
14 areas, or sports field; or

15
16 b. *View Preservation* – Open space is sited such that a view corridor of a
17 significant natural vista is preserved for the community, such as views into
18 Significant Tree Groves or Significant Natural Resource Areas.

19
20 2. *Architectural Development Incentive Options = Decrease in Open Space, Front and*
21 *Rear Setbacks*

22
23 The following architectural incentives that promote sustainable building practices
24 and architectural detail that promotes high quality design and character. A
25 decrease of up to a maximum of twenty (20) percent of the required open space or
26 front and rear setbacks of the parent parcel at the discretion of the Planning
27 Commission, where the applicant’s site plan and proposed architecture meet one of
28 the following incentives:

29
30 ~~A. Twenty (20) percent of buildings meet LEED (Leadership in Energy and~~
31 ~~Environmental Design) Bronze rating by the U.S. Green Building Council~~
32 ~~shall allow a decrease of up to a maximum of ten (10) percent of the required~~
33 ~~open space may be allowed. If Forty (40) percent or more of the buildings~~
34 ~~meet LEED Bronze rating, a decrease of up to a maximum of twenty (20)~~
35 ~~percent of the required open space may be allowed. (Removed by~~
36 ~~Planning Commission – Staff will consider other sustainability~~
37 ~~programs such as HBA Earth Advantage ©.)~~

38
39 B. Develop lots such that 90% meet solar access requirement (60.45.05) for a ten
40 (10) percent decrease in open space.

41
42 C. ~~Develop twenty (20) percent of the structures with~~ Install a ‘Greenroof’ or
43 Ecoroof on 100 percent of the roof area of twenty (20) percent of the detached
44 dwellings or 20 percent of the total roof area for attached dwellings,
45 multifamily dwellings, commercial, or industrial buildings ~~construction~~ for a
46 ten (10) percent decrease in the required open space.

1 **Planning Commission:** Commissioners appeared comfortable with the affordable
2 housing incentives. One Commissioner asked how the 5 years affordability guarantee had
3 been derived. Staff responded that it was a place holder value.
4

5
6 **Developers/Consultant Focus Group:** No comments.
7
8
9

10 **Staff Review:** Staff met with several local housing advocates and a member of the Home
11 Builders Association of Portland who all believe that the proposed code incentive is
12 realistic both from the home builder's perspective and from the perspective of
13 administering a guarantee of ongoing affordability of the housing unit. The affordable
14 housing advocates stated that the best practice for affordable housing is to guarantee
15 affordable housing in perpetuity through a housing authority or community land trust;
16 however, short of guaranteeing a unit's affordability in perpetuity a housing unit should
17 be guaranteed for a minimum of 15 years.
18
19
20

21 **Modification to Code:** Based on the recommendations from affordable housing experts
22 staff is continuing to develop a specific model which developers can use if they elect this
23 incentive. In the interim, staff recommends the allowance a reduction for up to fifty (50)
24 percent of the open space and a minimum of 15 years of guaranteed affordability.
25 Affordability will continue to be based on individual or family income no greater than 100
26 percent of the median Washington County household income.
27

1 D. Up to ten (10) percent reduction in front and rear parent parcel setbacks as
2 approved by the Planning Commission may be achieved by developing cluster housing that
3 preserves and increases open space by twenty (20) percent above baseline requirement.

4
5 3. *Affordable Housing Development Incentive Options = Decrease in Open Space*

6
7 Up to a ~~twenty (20)~~ fifty (50) percent reduction in the required amount of open space as
8 approved by the Planning Commission may be achieved by development of ten (10) percent
9 of the units as affordable housing. Up to a thirty (~~3~~ 60) percent reduction in the required
10 amount of open space as approved by the Planning Commission may be achieved by
11 development of twenty (20) percent of the units as affordable housing.

12
13 Affordable housing is defined as housing affordable to households earning ~~80~~ 100 percent
14 of the median household income in Washington County, or less as adjusted for family size
15 as determined by the U.S. Department of Housing and Urban Development (HUD). Such
16 households, on average, do not spend more than 30 percent of their income on housing.
17 Housing prices and/or rents shall be limited to that level through deed restriction for up to
18 ~~five~~ fifteen (15) years. Approval of the affordable housing Development Incentive Option
19 shall be subject to a developer identifying and contracting with a public, or private
20 housing agency that will administer the housing affordability guarantee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Planning Commission: No Comments.

Developers/Consultant Focus Group: No Comments.

Staff Review: Add definition of Lot Coverage.

Modification to Code: Staff added a definition of Lot Coverage to respond to the proposed PUD Code standards.

1 **Section 3: The Development Code, Ordinance No. 2050, Chapter 90, Definitions,**
2 **Section 40.15.15.5 shall be amended to read as follows:**

3
4 **Chapter 90**

5
6
7 **Active Space** - Active space is an area which requires intensive development and
8 often includes playgrounds and ball fields.

9
10
11 **Cluster Housing** Detached dwelling units located within a Planned Unit
12 Development where detached housing is located in close proximity to each other
13 and share common open space including recreation areas and parking.

14
15 **Greenroof** A green roof consists of vegetation and soil, or a growing medium,
16 planted over a waterproofing membrane. Additional layers, such as a root barrier
17 and drainage and irrigation systems may also be included.

18
19 ~~**LEED** Leadership in Energy and Environmental Design. As defined by the Green~~
20 ~~**Building Council.**~~

21
22 **Lot Coverage** The portion of a lot, stated in terms of percentage that is covered by
23 the footprint of a building. Lot Coverage includes accessory structures and covered
24 porches, decks and patio areas, but shall not include open porches, decks, or patio
25 areas.

26 **Sustainable Building Practices** - Land preparation, materials selection, life-cycle of the
27 building (construction, operation and maintenance, demolition). Sustainable building includes
28 such practices as redevelopment of inefficiently designed or environmentally damaged sites; job-
29 site recycling of construction materials; native vegetation landscapes; stream and wetland
30 protection and restoration; natural drainage; energy and water efficiency; low toxicity materials;
31 recycled materials; reduced use of land and materials; and design for re-use.

32 **Sustainable Landscape Practices** Landscape maintenance and design that limits the use
33 of herbicides, fertilizers, and pesticides by planting native plants and appropriate ornamentals
34 and uses METRO certified composted mulch to amend soils and mulch plant beds. These
35 practices naturally fertilize the soil and reduce irrigation and fertilizer needs by creating healthy
36 soils. Sustainable landscape practices also include the concept of creating multi-functional
37 landscapes that can serve various purposes. For example an area may be designed to manage
38 runoff, provide screening, wind protection habitat, and serve active open space use.
39

1 **Section 4: The Development Code, Ordinance No. 2050, Chapter 20, Land Uses,**
2 **Section 20.05.25 shall be amended to read as follows:**

3
4 *****

5
6 **20.05.25. Urban Medium Density (R4) District [ORD 4047; May 1999]**

- 7
8 **1. Purpose.** The purpose of this zone is to allow up to one principal and one
9 accessory dwelling per lot of record as permitted uses. In addition, two
10 attached dwellings may be allowed per lot of record subject to a Conditional
11 Use. Three or more attached dwellings may be permitted pursuant to ~~Final~~
12 Planned Unit Development approval. The R4 district establishes medium
13 urban density residential home sites where a minimum land area of 4,000
14 square feet is available for each principal dwelling unit, and where full urban
15 services are provided. [ORD 4224; August 2002]

16
17 *****

18
19
20 **20.05.25**

- 21
22 **B. Conditional Uses:** (Subject to Section 40.15 or Section 40.96 as applicable)

23
24 *****

- 25
26 **2.** Three or more attached dwellings subject to approval of a ~~Final~~
27 Planned Unit Development. [ORD 4224; August 2002]

28
29
30
31
32 *****

Section 4: The Development Code, Ordinance No. 2050, Chapter 20, Land Uses, Section 20.05.25 shall be amended to read as follows:

20.20.50.A.5.

SA-MU SA-MDR

D. Maximum Floor Area Ratio (FAR) not not
 for residential developments specified specified

E. Projects may use the ~~Final~~ Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4332; November 2004]

20.20.50.A.5.

SA-MU SA-MDR

D. Maximum Floor Area Ratio (FAR) not not
 for residential developments specified specified

E. Projects may use the ~~Final~~ Planned Unit Development or the Design Review Build-Out Concept Plan process to develop a site in phases to achieve the minimum FAR established in this subsection. Such projects must demonstrate in the plans how future development of the site, to the minimum development standards established in this ordinance or greater, can be achieved at ultimate build out of the Planned Unit Development or Design Review Build-Out Concept Plan. The Design Review Build-Out Concept Plan may be used if the only Site Development Requirement being phased, altered, or otherwise varied is the minimum FAR. If any other Site Development Requirement is being phased, altered, or otherwise varied, the Planned Unit Development process is to be used. [ORD 4332;

STAFF COMMUNICATION:

On behalf of Development Services Manager Steven Sparks, Senior Planner Colin Cooper that the City Council had voted unanimously to not accept the recommendation of the Planning Commission with regard to the Text Amendment discussed by Mr. Kane. He clarified that items that Mr. Kane had mentioned were not included in the Staff Report had in fact been included within the first Staff Report and were actually a part of the record, adding that the proposal had also been revised quite substantially.

Mr. Cooper noted that Associate Planner Leigh Crabtree has prepared the Tualatin Basin Goal 5 Implementation Issues Paper No. 2, observing that while she will not be available to discuss any issues at the end of the meeting, she has distributed this document to provide the Commission the opportunity to review it prior to the Work Session that has been scheduled for July.

NEW BUSINESS:

PUBLIC HEARINGS:

- I. **A. ZMA 2006-0005 – BUTLER 3-LOT REZONE**
- B. LD 2006-0001 – BUTLER 3-LOT PARTITION**

The applicant is initiating a Zoning Map Amendment for a 0.51 acre parcel in the Urban Standard Density Residential Zone (R-7), which requires 7,000 square foot minimum lot sizes. The applicant proposes to rezone the property to the Urban Standard Density Residential Zone (R-5), which requires 5,000 square foot minimum lot sizes. The applicant also proposes to divide the subject site into three (3) parcels using R-5 District Standards and Site Development Requirements.

Chairman Johansen pointed out that the applicant has requested a continuance of LD 2006-0001 – Butler 3-Lot Partition.

Commissioner Pogue **MOVED** and Commissioner Stephens **SECONDED** a motion to **CONTINUE** LD 2006-0001 – Butler 3-Lot Partition to a date certain of August 2, 2006.

- AYES:** Pogue, Stephens, Bobadilla, Maks, Winter, and Johansen.
- NAYS:** None.
- ABSTAIN:** None.
- ABSENT:** Kroger.

1 **Motion CARRIED 6:0.**

2
3 Chairman Johansen opened the Public Hearing and read the format
4 for Public Hearings. There were no disqualifications of the Planning
5 Commission members. No one in the audience challenged the right of
6 any Commissioner to hear any of the agenda items, to participate in
7 the hearing or requested that the hearing be postponed to a later date.
8 He asked if there were any ex parte contact, conflict of interest or
9 disqualifications in any of the hearings on the agenda.

10
11 Commissioner Pogue disclosed that while his wife knows the applicant,
12 Brian Butler, this would not affect his ability to participate in a fair
13 and impartial decision with regard to this proposal.

14
15 Commissioners Maks, Winter, Bobadilla, Pogue, and Stephens
16 indicated that they had visited the site and had no contact with any
17 individual(s) with regard to this application.

18
19 Chairman Johansen briefly described the applicable approval criteria
20 and outlined the hearing procedure.

21
22 Associate Planner Laura Kelly presented the Staff Report and
23 summarized the purpose of this zoning map amendment, emphasizing
24 that the associated land division application would be heard at a later
25 time and should not be considered while making a decision with regard
26 to the zoning map amendment.

27
28 Commissioner Maks questioned whether any significant trees or tree
29 groves have been identified on the subject property.

30
31 Ms. Kelly responded that while no significant trees or tree groves have
32 been identified on the subject property, some community trees do exist
33 on this site.

34
35 Observing that the property is located near the corner of SW Cabot
36 and SW 110th Avenue, Commissioner Pogue requested clarification
37 with regard to the zoning at that location.

38
39 Ms. Kelly advised Commissioner Pogue that this area is zoned City R-
40 5.

41
42 Chairman Johansen requested confirmation that the surrounding
43 zoning in this area is described as Washington County R-5, which is
44 basically the equivalent of City R-7.

1 Ms. Kelly clarified that the property to the north and the east is
2 Washington County R-5, adding that the property to the south is City
3 Community Service (CS) and the property to the west is City R-7.
4

5 **APPLICANT:**
6

7 **KARL MAWSON**, representing *Compass Engineering* on behalf of the
8 applicant, Brian Butler, provided a brief history of this project,
9 observing that the applicant is attempting to provide some flexibility
10 with regard to future development. He discussed issues pertaining to
11 setbacks, density, design, and impact. Concluding, he offered to
12 respond to questions.
13

14 **PUBLIC TESTIMONY:**
15

16 **MARIE SELLECK** submitted a letter dated May 14, 2006 in
17 opposition to the proposed rezone and land division, including an
18 attachment entitled *Tree City Benefits*. Observing that she and her
19 husband are the owners of one of the adjacent properties, she pointed
20 out that while they are not opposed to development on this property,
21 they do not approve of three homes on this site. She described her
22 concerns pertaining to traffic, trees, and local wildlife, emphasizing
23 that the neighbors had not been advised of any plans for the
24 development of this property.
25

26 **APPLICANT REBUTTAL:**
27

28 Mr. Mawson explained that the applicant's proposal would not cause a
29 significant impact on the adjacent properties, emphasizing that every
30 effort would be made to create a development that would be compatible
31 with the existing neighborhood. He discussed the protection of several
32 existing trees, observing that the applicant has actually moved the
33 storm easement setback away from the root zones of the trees.
34

35 Commissioner Bobadilla questioned whether the applicant intends to
36 develop the property or sell the lots for development by a purchaser.
37

38 Observing that the applicant would be selling the lots, Mr. Mawson
39 noted that they had met with the potential builder today, adding that
40 they had discussed house plans and designs.
41

42 Ms. Kelly indicated that she had no further comments at this time.
43

1 Chairman Johansen pointed out that some of the findings within the
2 Staff Report, specifically with regard to traffic, had been based upon a
3 3-lot subdivision, and questioned whether these findings would change
4 if additional lots were proposed.

5
6 Ms. Kelly explained that in fact these findings pertaining to traffic had
7 been based upon 4 lots, the maximum number of lots that could
8 potentially be developed, adding that staff had understood that this
9 might not be the final development plan submitted for this property
10 and that four lots could potentially be proposed.

11
12 Chairman Johansen questioned whether a land division or a rezone is
13 subject to requirements for a Neighborhood Meeting.

14
15 Ms. Kelly advised Chairman Johansen that neither land divisions nor
16 rezones require a Neighborhood Meeting.

17
18 Assistant City Attorney Ted Naemura indicated that he had no
19 comments or questions at this time.

20
21 Chairman Johansen closed the Public Hearing.

22
23 Commissioner Bobadilla indicated that while she believes this
24 application meets all applicable approval criteria, she would prefer to
25 hear the comments of her fellow Commissioners prior to making a
26 decision with regard to this proposal.

27
28 Observing that this is a good location for this particular rezone,
29 Commissioner Maks noted that the application meets applicable
30 approval criteria. He emphasized that while none of the trees on this
31 particular site are considered significant, others within the city are
32 and fall under certain guidelines with regard to preservation.

33
34 Commissioner Winter expressed his agreement with regard to
35 Commissioner Maks' comments with regard to the trees, observing
36 that nobody likes to cut down big, beautiful trees and expressed his
37 support of the proposal.

38
39 Commissioner Pogue observed that the application meets applicable
40 approval criteria and expressed his support of the proposal.

41
42 Commissioner Stephens expressed his support of the application.

43

1 Chairman Johansen pointed out that he also supports the application,
 2 adding that he would support a motion for approval.

3
 4 Commissioner Bobadilla observed that she concurs with the comments
 5 of her fellow Commissioners and expressed her support of the
 6 application.

7
 8 Commissioner Pogue **MOVED** and Commissioner Winter
 9 **SECONDED** a motion to **APPROVE** ZMA 2006-0005 – Butler
 10 Rezone, based upon the facts and findings within the Staff Report
 11 dated June 7, 2006.

- 12
 13 **AYES:** Pogue, Winter, Bobadilla, Maks, Stephens, and
 14 Johansen.
 15 **NAYS:** None.
 16 **ABSTAIN:** None.
 17 **ABSENT:** Kroger.

18
 19 Motion **CARRIED** 6:0

20
 21 **OLD BUSINESS:**

22
 23 **CONTINUANCES:**

24
 25 **II. A. TA 2006-0003 – PLANNED UNIT DEVELOPMENT**
 26 **MODIFICATIONS TEXT AMENDMENT**

27 (Continued from June 7, 2006)

28 A text amendment to Chapter 40, Sections 40.15.15.5 and 6; Chapter
 29 60, Section 60.35.05-15; Chapter 90; Definitions of the Beaverton
 30 Development Code, currently effective through Ordinance 4248 to
 31 create new Planned Unit Development Thresholds, Approval Criteria,
 32 and Standards. The intent of the proposed amendment is to require
 33 more specific thresholds and standards for development of Planned
 34 Unit Developments. Chapter 90, Definitions will be amended with
 35 new terms as necessary.

36
 37 Chairman Johansen briefly described the applicable approval criteria
 38 and outlined the hearing procedure.

39
 40 Mr. Cooper introduced two members of the consultant team, Shelly
 41 Holly and Magnus Bernhard, observing that they would like to provide
 42 a simple presentation with regard to the proposed Planned Unit
 43 Development (PUD) text. He summarized the purpose of this text
 44 amendment and the process through which these revisions had been

1 developed and explained that this proposal also has some relevance
2 with regard to the Tualatin Basin Goal 5 Implementation Issues Paper
3 No. 2 distributed by Ms. Crabtree earlier this evening.

4
5 Commissioner Maks suggested the possibility of reconvening with the
6 Code Review Advisory Committee (CRAC) for a period of time to work
7 on this issue.

8
9 Chairman Johansen questioned whether the Committee for Citizen
10 Involvement (CCI) has expressed any interest in this issue.

11
12 Observing that CCI had received a notice, Mr. Cooper noted that he
13 had been contacted by the CCI and that he had forwarded a copy of the
14 proposed PUD Text Amendment to them and is waiting for their
15 response.

16
17 Chairman Johansen advised Mr. Cooper that it would be a good idea to
18 keep in close contact with CCI with regard to this issue.

19
20 Mr. Cooper assured Chairman Johansen that staff always
21 communicates with CCI with regard to any land use action.

22
23 **MAGNUS BERNHART**, representing *Parametrics*, expressed his
24 opinion that Mr. Cooper had adequately addressed the issues, adding
25 that every attempt is being made to develop a Code that will address
26 any concerns of staff and the Commission. He mentioned that several
27 concerns had been discussed at the previous session, and suggested
28 that the proposed amendments be reviewed page by page.

29
30 Referring to the top of page 10 of the Staff Report, Commissioner
31 Bobadilla requested clarification with regard to this unfinished
32 sentence.

33
34 Mr. Cooper advised Commissioner Bobadilla that the sentence should
35 be completed, as follows:

36
37 “...with the Washington County Housing Authority with a
38 percentage of the appreciation going to the **homeowner.**”

39
40 Mr. Cooper explained that staff had worked with Associate Planner
41 Jeff Salvon of the Planning Services Division with regard to issues
42 pertaining to affordable housing, noting that Planning Services
43 Manager Hal Bergsma has also been involved.

44

1 Chairman Johansen pointed out that it might be a good idea to
2 consider the various types of affordable housing that might be
3 necessary and emphasized that different incentives would be targeting
4 the different types and sizes of family groups.

5
6 Observing that the existing text on pages 1 through 4 of 26 has been
7 struck out, Mr. Cooper noted that the proposed text begins on page 5.

8
9 Referring to page 5, Section 40.15.15.5.A.1 with regard to the 2 acres
10 minimum within any City zoning district except Residential-
11 Agricultural, Chairman Johansen observed that this seems to indicate
12 that more than 2 acres are necessary to qualify and suggested that this
13 be revised as follows:

14
15 “...Residential properties that are ~~over~~ at least 2 acres...”

16
17 Commissioner Maks expressed his concern that this same section
18 appears to indicate that a Commercial zone does not have to meet the
19 2 acre minimum.

20
21 Mr. Cooper explained that he had included only Residential because
22 the idea was that a PUD could be applied to a Commercial or
23 Industrial site, and expressed concern with considering any potential
24 consequences.

25
26 Commissioner Maks emphasized that he wants to make certain that
27 the 2 acre minimum is met, observing that a 1 acre Commercial site
28 could easily produce an ugly PUD.

29
30 **SHELLY HOLLY** explained that while 2 acres is relatively small, it is
31 extremely difficult for a developer to find a 10 or 12 acre site.

32
33 Mr. Cooper discussed the various issues pertaining to adjustments and
34 variances within a PUD.

35
36 Referring to No. 9 on page 6 of 26, Commissioner Maks pointed out
37 that he assumes that providing usable and improved open space,
38 accessible and usable by persons living nearby means the persons
39 within the PUD.

40
41 Referring to Section 60.35.05.1.C on page 11 of 26, Commissioner Maks
42 expressed his opinion that the site design shall provide for active
43 and/or passive recreation.

44

1 Referring to Section 60.35.05.2 on page 11 of 26, Commissioner Maks
2 noted that the site design shall "...create a comprehensive
3 development plan which is better than that resulting ~~form~~ from
4 traditional ~~the~~ subdivision development..." Following a brief
5 discussion, he expressed his opinion that the first sentence should be
6 revised, as follows: "Site design ~~shall~~ should maximize the
7 opportunities for diversified architecture and outdoor living
8 environments..."

9
10 Commissioner Maks requested further clarification of the intent of
11 Section 60.35.05.5 on page 11 of 26, which provides for a change from
12 specific site development requirement and combinations of uses,
13 subject to the provisions of this Code.

14
15 Ms. Holly discussed the potential incorporation of small neighborhood
16 commercial opportunities such as those seen in some of the older
17 neighborhoods in Portland, such as commercial on the ground floor and
18 residential on the top floor.

19
20 Commissioner Maks requested clarification with regard to Section
21 60.35.10.2.A.1 on page 12 of 26.

22
23 Mr. Cooper responded that that this partially involves what he
24 referred to as a "placeholder", adding that this is an attempt to develop
25 a structure that defines the design standards.

26
27 Referring to Section 60.35.10.3.A. 1 on page 14 of 26, which states, as
28 follows: "For proposed lots along the perimeter of the property, the
29 required setbacks shall comply with the standard setbacks of the
30 parent parcel," Chairman Johansen discussed the setback situation at
31 the Holland Park PUD.

32
33 Mr. Cooper described the conditioned setbacks that had been approved
34 at the Holland Park PUD, adding that he would work on this section.

35
36 Referring to Section 60.35.10.3.B.3 on page 14 of 26, Commissioner
37 Maks pointed out that he is interested in the comments of the
38 stakeholders with regard to this issue.

39
40 Mr. Cooper advised Commissioner Maks that this involves standards
41 that are fairly common at this time, and discussed the rationale for
42 this section.

43

1 Referring to Section 60.35.10.3.D.1 on page 15 of 26, Commissioner
2 Maks discussed a recent issue and suggested that the minimum be
3 changed from 3 feet to 4 feet.

4
5 Ms. Holly pointed out that a more creative layout may encourage some
6 builders to stagger the houses, which would be more aesthetic and
7 provide greater flexibility to allow for 3 feet. She described a
8 development in Hillsboro with a 3-foot setback, noting that the garages
9 are located in the back and adjacent to the next house.

10
11 Chairman Johansen requested clarification with regard to the open
12 space, specifically concerning reducing the percentages of size for the
13 larger PUDs.

14
15 Observing that this is in the existing Code language, Mr. Cooper
16 explained how these percentages work.

17
18 Chairman Johansen expressed his opinion that it should be easier to
19 create open space on the larger properties.

20
21 Mr. Cooper suggested that the open space requirement could just be
22 20% for all sites.

23
24 Ms. Holly pointed out that the 20% creates more of an incentive for the
25 larger properties, noting that she agrees with Chairman Johansen's
26 observation that they do have more land to work with.

27
28 Referring to Section 60.35.15.1.E on page 15 of 16, Commissioner Maks
29 expressed his opinion that this would not be fair on a site with 60%
30 wetlands, creek and stream.

31
32 Chairman Johansen noted that the site described by Commissioner
33 Maks should be a park.

34
35 Ms. Holly noted that at this time, a PUD allows the developer to
36 deduct the wetland area from the developable area, although the buffer
37 surrounding this area can not be counted as open space, expressing her
38 opinion that this is slightly inconsistent.

39
40 Commissioner Maks noted that this section could be better written.

41
42 Referring to Section 60.35.15.3 on page 16 of 26, Chairman Johansen
43 noted that a "commons area" within the dedicated open space is a new
44 concept.

1 Mr. Cooper advised Chairman Johansen that this “commons area” is
2 actually not a new concept, and explained that this is essentially a
3 concept borrowed from the quantities of multi-family that has been in
4 the Code for years.

5
6 Referring to Section 60.35.15.3.A.7 on page 17 of 26, Commissioner
7 Pogue expressed his concern with what he referred to as a hierarchy of
8 cost and value, observing that a bench and a pathway does not
9 compare in value and/or cost to an indoor pool. He expressed his
10 opinion that the Development Services Manager should have the
11 discretion to revise and/or add to this list, emphasizing that there is no
12 way to provide a complete list. He pointed out that this section should
13 encourage innovation and creativity, noting that alternate choices
14 should be available.

15
16 Referring to Section 60.35.20.2.D on page 18 of 26, which provides that
17 all building entrances shall have their primary entrance to a street or
18 publicly accessible sidewalk where buildings face public parks,
19 common areas or open space, Commissioner Maks suggested the
20 addition of private drives.

21
22 Mr. Cooper pointed out that a public access easement would be
23 required.

24
25 Referring to Section 60.35.20.2.E on page 18 of 26, which provides that
26 entrances shall be covered or recessed and minimum depth of three
27 feet deep and five feet wide, Commissioner Maks noted that some of
28 the townhouses are not very wide and he is interested in how the
29 stakeholders have to feel about this issue.

30
31 Mr. Cooper described efforts at enlivening the Code through graphics,
32 observing that this should be inserted in the next version of the text.

33
34 Commissioner Maks expressed his approval of the fifth bullet in
35 Section 60.35.20.4.C on page 19 of 26, which provides for the
36 incorporation of staggered windows that do not align with windows on
37 adjacent properties and minimize the impact of windows in living
38 spaces that may infringe on the privacy of adjacent residents.

39
40 Referring to Section 60.35.20.4.C.2 on page 20 of 26, Commissioner
41 Maks questioned whether this would improve the appearance of the
42 sides of the 4-unit building.

1 Commissioner Maks expressed his concern with Section 60.35.40.2 on
 2 page 21 of 26 which allows for the reduction of front and rear setbacks
 3 of the parent parcel up to 10% within the perimeter of the PUD.

4
 5 Chairman Johansen noted that he does not agree that it is important
 6 to retain the parent parcel setback within a PUD.

7
 8 Referring to Section 60.35.50.3 on page 23 of 26, providing that
 9 housing practices and/or rents shall be limited to that level through
 10 deed restriction for up to five years, Commissioner Maks questioned
 11 whether this involves some type of formal housing standard.

12
 13 Mr. Cooper assured Commissioner Maks that he would discuss
 14 affordable housing issues with Associate Planner Jeff Salvon.

15
 16 Referring to Section 60.35.50.1 on page 22 of 26 which states that the
 17 Planning Commission may consider other improvements in addition to
 18 those listed that offer a similar level of quality and continuity in the
 19 proposed open space, Commissioner Pogue suggested that this should
 20 be saved under the Architectural Development Incentive Options.

21
 22 Mr. Cooper expressed his appreciation to Ms. Holly and Mr. Bernhard
 23 for their efforts and the Commission for their input, observing that he
 24 would like to continue this hearing until July 19, 2006.

25
 26 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
 27 a motion to **CONTINUE** TA 2006-0003 – Planned Unit Development
 28 Modifications Text Amendment to a date certain of July 19, 2006.

29
 30 Motion **CARRIED** 6:0.

- 31
 32 **AYES:** Maks, Winter, Bobadilla, Pogue, Stephens, and
 33 Johansen.
 34 **NAYS:** None.
 35 **ABSTAIN:** None.
 36 **ABSENT:** Kroger.

37
 38 **MINUTES:**

39
 40 Minutes of the meeting of February 1, 2006, submitted. Commissioner
 41 Maks **MOVED** and Commissioner Winter **SECONDED** a motion that
 42 the minutes be approved as written and distributed.

43
 44 Motion **CARRIED** 6:0.

1
2
3
4
5
6
7
8
9
10

AYES: Maks, Winter, Bobadilla, Pogue, Stephens, and
Johansen.

NAYS: None.

ABSTAIN: None.

ABSENT: Kroger.

MISCELLANEOUS BUSINESS:

The meeting adjourned at 9:05 p.m.



CITY of BEAVERTON

4755 S W Griffith Drive, P O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON STAFF REPORT AND RECOMMENDATION

TO: Planning Commission

STAFF REPORT DATE: Wednesday, June 7, 2006

STAFF: Colin Cooper, AICP, Senior Planner *cc*

SUBJECT: TA 2006-0003 (Planned Unit Development Text Amendments)

REQUEST: Amendment to Chapter 40, Applications, Section 40.15.15, Planned Unit Developments; Chapter 60, Special Regulations, Section 60.35, Planned Unit Developments; and, Chapter 90, Definitions. The text amendment proposes the complete replacement of the existing Planned Unit Development Thresholds, Standards, and Approval Criteria. The purpose of the PUD amendment is to create standards that foster innovative development through the use of incentive regulations.

APPLICANT: City of Beaverton - Development Services Division

AUTHORIZATION: Ordinance 2050 (Development Code), effective through Ordinance 4265)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4265, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, June 14, 2006

RECOMMENDATION: Staff recommend the Planning Commission review and comment on the draft text amendment contained in TA 2006-0003 (Planned Unit Development Text Amendments).

A. Proposed Legislative Text Amendment

The Planned Unit Development (PUD) text amendment stems from a work session held with the Planning Commission on February 9, 2005 where staff agreed to create an opportunity to review the Planned Unit Development standards adopted as part of the Comprehensive Updates to Chapter 40 and 60 (TA 2001-0001 and 2001-0004) in 2002 that became effective on January 1, 2003. At the time the current Planned Unit Development thresholds, standards, and approval criteria were adopted the major concern was that PUD regulations were being used to circumvent land development standards to maximize density on constrained sites, which in turn was producing land developments without site plan or design innovation.

The most significant change to the PUD regulations that occurred with the 2002 text amendment was the adoption of a minimum open space requirement depending on the size of a parcel. The 2002 PUD text amendments also included specific standards for what areas could be counted towards the open space requirement. To help maintain compatibility with surrounding development the 2002 PUD amendment adopted standards that require parent parcel setbacks be maintained.

B. Staff Overview of Proposed Planned Unit Text Amendment Development Code

To develop the new proposed code staff has held three work sessions with the Planning Commission to review the existing PUD regulations, discuss possible amendments, and consider potential incentives for fostering innovative PUD development.

The first work session with the Planning Commission was held on May 26, 2005, at which staff reviewed all of the PUD code standards contained in Chapters 40 and 60. The result of the first work session was a list of issues and concerns regarding the existing PUD regulations.

On July 13, 2005, a second work session was held to review the major issues and areas of concern that were articulated by the Planning Commission from the first PUD work session. The intent of this work session was to ensure that staff accurately captured the comments and observations of the Planning Commission.

A third work session took place on February 1, 2006, with Parametrix a planning consultant participating with the presentation of two products: 1) Beaverton PUD Ordinance and Framework Review; and, 2) Infill PUD Site Plan Analysis.

The consultant team reviewed six PUD ordinances along with the City's PUD regulations. The six other jurisdictions included the Oregon communities of Tigard,

Hillsboro, Portland, Fairview, Salem, and Bend in an effort to find codes that were effectively promoting innovative development in line with the stated areas of concern by the Planning Commission. The consultant team focused their review on Oregon communities because these communities must respond to the same state wide land use planning program and land use laws as the City of Beaverton. The conclusion of the consultants review was that while several of the PUD ordinances of other jurisdictions provided varying degrees of flexibility they did not create incentives to reach for higher levels of innovation.

To consider and analyze possible different approaches staff directed the Parametrix team to use a site plan analysis case study approach. Staff choose the previously approved Onody PUD (CUP 2003-0031) located in north Beaverton because it reflected many of the issues commonly confronted by developers including, small irregularly shaped lot, natural resources including a delineated wetland and a mature stand of community trees. Using the case study approach Parametrix demonstrated both a “Low Impact” Design and a “Form Based” or architectural standards approach to developing a PUD. The site plans produced by Parametrix demonstrated that by using an incentive approach a PUD could yield at least one additional dwelling unit in each case. By achieving an additional unit the developer is able to create additional needed housing and spread the financial risk of the project. The incentives create a framework in which a developer could create a PUD that benefits the new neighborhood, surrounding neighborhood, and the City. The result of each case study was shared with the Planning Commission at a work session held on February 1, 2006. Each of the case studies demonstrated that reasonable alternatives using architectural and low impact design are feasible when additional flexibility is provided to developers.

The proposed PUD text amendment does not include the “Low Impact” regulations discussed at the February 1, 2006, work session because many of these concepts and techniques are still being reviewed by planners and engineers at the City, County, and Unified Sewerage Agency as part of the Tualatin Basin Goal 5 effort. It is staffs intention to reintroduce the Low Impact development concepts at the completion of the Tualatin Basin Goal 5 planning work and that at that time low impact design alternatives can be incorporated into the PUD code standards.

At this time staff is recommending that the Planning Commission consider the attached draft text language that includes the following key changes from the existing code:

- 2 Acre minimum size threshold for residential PUD’s
- Base zone standards that regulate the amount of deviation from the minimum lot size, coverage, dimensions, and setbacks.
- Specific open space standards that include commons area in addition to active or passive open space development standards.

- Building architecture standards for those buildings not already covered by Design Review standards found in Section 60.05.
- Development Bonuses and Development Incentive Options:
 - Open Space Development Incentive
 - Architectural/Environment Best Building Practices Incentive
 - Affordable Housing Development Incentive

C. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2006-0006 (Planned Unit Development Text Amendment):

1. **The proposal satisfies the threshold requirements for a Text Amendment application.**

Response:

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA 2006-0006 (Planned Unit Development Code) proposes to amend Chapter 40, Section 40.15.15.5, Chapter 60, Section 60.35, and Chapter 90, Definitions of the Beaverton Development Code currently effective through Ordinance 4382 (November 2005).

Finding

Therefore, staff find that approval criterion one has been met.

2. **All City application fees related to the application under consideration by the decision-making authority have been submitted.**

Response:

Policy Number 470.001 of the City’s Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City’s General Fund. The Development Services Division, which is a General Fund program, initiated the application.

Finding

Therefore, staff find that approval criterion two is not applicable.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan is comprised of the following titles:

Title 1: Requirements for Housing and Employment Accommodations

Title 2: Regional Parking Policy

Title 3: Water Quality and Flood Management Conservation

Title 4: Retail in Employment and Industrial Areas

Title 5: Neighbor Cities and Rural Reserves

Title 6: Regional Accessibility

Title 7: Affordable Housing

Title 8: Compliance Procedures and

Title 9: Performance Measures

Response:

TA 2006-0006 proposes a substantive update to Section 40.15.15.5, 40.15.15.6, (Preliminary and Final Planned Unit Development) and Section 60.35 (Planned Unit Development Standards) of the Beaverton Development Code to strike the current language including thresholds, standards and approval criteria and replaces it with a performance and incentive oriented standards and approval criteria. The new PUD text does not have any specific effect on the Titles of the Metro Urban Growth Management Functional Plan.

Finding

Therefore, staff find that this approval criterion is not applicable.

4. The proposed text amendment is consistent with the City's Comprehensive Plan.

The Comprehensive Plan policies that are related to the proposed amendments to the Planned Unit Development Text Amendment have been included in the staff report. The proposed text amendments will change the intent of some of the existing Development Code regulations, and therefore; goals and policies of the Comprehensive Plan that staff believe are relevant have been reviewed.. The following policies are addressed:

CHAPTER 2: PUBLIC INVOLVEMENT ELEMENT

Staff suggest that Chapter 2 of the Comprehensive Plan (Public Involvement Element) is relevant to the proposed amendments. Although Chapter 2 of the Comprehensive Plan does not contain discrete policies to which the proposed amendments are applicable, staff suggests that the intent of Chapter 2 is met by the

proposed text amendments, the required public noticing for the proposed amendments, and the requirement for a public hearing process before the Planning Commission as the initial decision-making authority followed by subsequent City Council consideration of the Planning Commission's recommendation. Staff find that the proposed text amendments are consistent with the provisions of the Beaverton Comprehensive Plan. Therefore, staff find that approval criterion four has been met.

CHAPTER 3: LAND USE ELEMENT

3.4 Community Identity

3.4.1 Goal: Provide a policy framework for a community designed to establish a positive identity while enhancing livability.

Policies:

- a) *The City, through its development review process, shall apply urban design standards to guide public and private investment toward creating a positive community identity.*
- b) *The City's urban design standards shall promote creation of public spaces and a good pedestrian environment.*

Response:

The proposed text amendment is in response to a perception that Planned Unit Developments in the past two years have not created the type of development that fosters a positive community identity. The proposed text seeks to increase the base standards and create incentives to produce innovative development that will create a positive community identity. The proposed text does this by increasing the specific requirement for neighborhood compatibility, open space development, architectural standards, and incentives for producing sustainable developments.

3.5.1 Goal: Beaverton mixed use areas that develop in accordance with community vision and consistent with the 2040 Regional Growth Concept Map.

Policies:

- b) *Allow a mix of complementary land use types, which may include housing, retail, offices, small manufacturing or industry, and civic uses to encourage compact neighborhoods with pedestrian oriented streets in order to promote:*
 - *Independence of movement, especially for the young and elderly to*

- enable them to conveniently walk, cycle, or ride transit;*
- *Safety in commercial areas, through round-the-clock presence of people;*
- *Reduction in auto use, especially for shorter trips;*
- *Support for those who work at home, through the nearby services and parks;*
- *A range of housing choices so that people of varying cultural, demographic, and economic circumstances may find places to live.*

- j) *Prior to development on any portion of a property or group of properties under single ownership a Design Review Application, or a Planned Unit Development and Design Review Application, must be submitted and approved. The application(s) must demonstrate consistency with the policies in the underlying land use designation.*
- k) *Allow phased development of property through a Planned Unit Development application. Ensure the phasing plan demonstrates compliance with the minimum housing density and commercial floor area ratio requirements.*

Response:

TA 2006-0006 proposes a substantive update to Section 40.15.15.5, 40.15.15.6, (Preliminary and Final Planned Unit Development) and Section 60.35 (Planned Unit Development Standards) of the Beaverton Development Code to strike the current language including thresholds, standards and approval criteria and replaces it with a performance and incentive oriented standards and approval criteria. The new PUD text continues to allow for a mixture of uses and housing styles that is consistent with Metro’s 2040 Growth Concept Map. The new text continues to allow for phased development.

3.13.1 Goal: Provide for the establishment and maintenance of safe, convenient, attractive and healthful places to live.

Policies:

- a) *Regulate residential development to provide for diverse housing needs by creating opportunities for single and multi-family development of various sizes, types and configurations.*
- b) *Encourage a variety of housing types in residential areas, by permitting or conditionally permitting any housing type (one, two or*

more, family dwellings) within any zoning district so long as the underlying residential density of the zoning district is met. Accessory dwelling units shall not be considered in the calculation of the underlying housing density.

- c) Require Planned Unit Development application procedures for projects proposing two or more families within the Low Density and Standard Density land use designations. Planned Unit Developments encourage flexibility in standards and provide a mechanism for staff to make adequate findings with respect to compatibility in size, scale, and dimension. Exceptions to this requirement are dwellings designed as primary units with an accessory dwelling unit, as specified in the Development Code.*

- h) Foster innovation and variety in design to enhance the visual character of the City's landscape. Innovation in design can include designing infill structures to integrate into existing neighborhoods through compatible scale, similar design features, and similar setbacks.*

Response:

The proposed update to the PUD thresholds, standards, and approval criteria are intended to address Goal 3.13.1 Policies "a-c" and "h" by requiring more site and architectural detail and better integration of open space. The proposed text amendment goes further in creating a series of incentives to foster innovative design and visual character.

Specifically the proposed text creates incentives for: 1) Open Space Development, 2) Architectural Development that include energy best building practices or cluster development that reduce the overall impervious footprint of the development.

CHAPTER 4: HOUSING ELEMENT

4.2.1.1 Goal: Maximize use of buildable residential land in the City.

Policies:

- a) Increase residential capacity in the City to substantially comply with requirements of Title 1 of the Metro Urban Growth Management Functional Plan.

Response:

The proposed amendments to the Planned Unit Development regulations do not change the requirements of an applicant to reach a minimum of 80 percent of the planned density for a parcel rather the proposed regulations continue to provide flexibility to maximize the use of individual sites.

4.2.2.1 Goal: Provide an adequate variety of quality housing types to serve Beaverton's citizenry.

Policies:

a) Allow development of a wide variety of housing types in the City.

Response:

The proposed PUD regulations continue to provide the ability for developers to provide a variety of housing types with a PUD. The proposed update to the PUD standards will simply require enhanced attention to compatibility of surrounding development and more detail for on-site architecture and site plan to provide more visual variety. The new text is intended to create incentives to create alternatives to standard subdivision lot patterns such as cluster, courtyard, and cottage, style housing developments.

4.2.3.2 Goal: Promote the production of new affordable housing units in the City.

Policies:

f) Continue over time to explore various tools and strategies that may serve to encourage the development of affordable housing in Beaverton.

Response:

The proposed PUD text amendments include an incentive for developers to produce affordable housing not previously available in exchange for a reduction in the provision of open space required in a PUD. The text proposes to allow a reduction in required open space to provide an incentive for developers to provide dwelling units that are targeted for owners that meet current City of Beaverton and Washington County affordable housing assistance standards of 100 percent of the median family income. City of Beaverton staff in conjunction with other Portland Metro housing experts have determined that in this housing market it is difficult if not impossible to provide "ownership" housing at income levels less than 100 percent. Affordable dwelling units produced through this program will be conditioned to carry a deed restriction that ownership of the dwelling will remain

with the Washington County Housing Authority or another public entity with a percentage of the appreciation split between the homeowner and the public entity holding the property title.

CHAPTER 7: NATURAL, CULTUARL, HISTORIC, SCENIC, ENERGY, AND GROUNDWATER RESOURCES ELEMENT:

7.1.1 Goal: Balance development rights with natural resource protection.

Policies:

- c) Allow for relaxation of development standards to protect significant natural and historic resources. Such standards may include but are not limited to minimum setbacks, maximum building height, minimum street width, location of bicycle, pedestrian and multi-use paths, etc.

Response:

The purposed substantive update to the PUD standards provide significantly greater clarity for the allowed density transfer from constrained lands such as wetlands and steep sloops that are intended to be preserved in support of natural resource preservation. The PUD standards continue to allow for significant relaxation of setbacks and overall lot development. The proposed PUD text amendment also provides incentives for active recreation and view corridor preservation such that development rights are maintained while enhance natural resources.

7.3.1.1 Goal: Conserve, protect, enhance or restore the functions and values of inventoried Significant Natural Resources.

Policies:

- a) Inventoried natural resources shall be conserved, protected, enhanced or restored:
- to retain the visual and scenic diversity of our community;
 - for their educational and recreational values;
 - to provide habitats for fish and wildlife in our urban area.
- c) Inventoried natural resources shall be incorporated into the landscape design of development projects as part of a site development plan, recognizing them as amenities for residents and employees alike.

- d) The City shall rely on its site development permitting process as the mechanism to balance the needs of development with natural resource protection.

Response:

The proposed substantive update to the City's PUD standards enhance the requirements of a existing regulations to provide a visual and physically integration natural resource into PUD's. The proposed text does this by creating open space standards for integration into the overall development. By requiring better integration into the overall development will enhance the opportunities the existing natural resources will be seen as an amenity to the overall development.

7.5.1 Goal: Development projects and patterns in the City that result in reduced energy consumption.

7.5.2 Goal: Increased use of solar energy and other renewable energy resources in new development in the City.

Policies:

- a) Assist in the conservation of energy by promoting more efficient transportation modes and land use patterns.***
- b) Encourage higher density development where appropriate.***
- c) Continue to update applicable codes and regulations to promote energy conservation.***
- f) Support state and federal legislation that encourages energy saving design and building practices.***
- h) The City shall retain and apply regulations requiring consideration of solar energy options in the development process.***

Response:

The proposed substantive update to the PUD text amendment supports Comprehensive Plan Goal 7.5.2 Policies a,b,c,e and h by providing flexibility for development in all zones of the City. Additionally, the proposed text provides specific incentives for developers to use the Leadership in Energy and Environmental Leadership (LEED) rating system developed by the Green Building Council that is recognized through the United States as the standard bearer for sustainable best practice building practices. The proposed PUD text amendment also offers an incentive to achieve solar access lot orientation for 90 percent of the building lots in residential development.

CHAPTER 9 – ECONOMY ELEMENT

9.2.3.1 Goal: To support a high quality of life for all of Beaverton’s citizens.

Policies:

- a) *To require a high quality of new development within the City to create an attractive environment.*

Response:

The proposed amendment to the PUD regulations is specifically intended to create higher quality development within the City. Based on the nature of infill PUD’s compared with “green field” PUD’s there is a need to create a higher standard of review to ensure that new development will not only be compatible but enhance surrounding development. The proposed amendment requires that residential PUD’s in particular provide additional value both within a proposed development and for surrounding properties. The proposed text requires architectural review of proposed development that is not already required by Development Code Section 60.05, Design Review.

FINDING:

Staff find that the proposed PUD text amendments to Chapter 40, Chapter 60, and Chapter 90 are consistent with this criterion.

5. **The proposed text amendment is consistent with other provisions within the City’s Development Code.**

Response:

The proposed amendments relate to Chapter 20 in so far that Planned Unit Development (PUD) is a Conditional Use in all of the land use zones in Chapter 20. The proposed PUD text amendment proposes to replace the two step PUD process and replace it with a single PUD application that would permit phasing or final development applications. In addition, the proposed PUD text relies upon the existing Design Review standards for structures in all cases where those standards are currently applicable. Staff find that proposed amendments are consistent with the other provisions of the Development Code.

Therefore, staff find, therefore, approval criterion five has been met.

6. **The proposed amendment is consistent with all applicable City ordinance requirements and regulations.**

Response:

The current Development Code and Ordinance No. 4187, which adopted the current Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendments.

Finding:

Therefore, staff find that approval criterion six has been met.

7. **Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.**

Response:

Staff have determined that there are no other applications and documents related to the request that will require further City approval.

Finding:

Therefore, staff find that approval criterion seven has been met.

E. Conformance with Statewide Planning Goals

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, the Statewide Planning Goals are useful to support the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

GOAL ONE - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement, and distribution of information. The proposed text amendments to the Development Code will not

change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One.

GOAL TWO - LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4265). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.

IV. Conclusion and Staff Recommendation

Staff recommend the Planning Commission review and comment on the draft text amendment contained in TA 2006-0003 (Planned Unit Development Text Amendment) at the June 14, 2006, regular Commission hearing. Staff further recommend that the Commission continue the public hearing to a date certain of July 19, 2006, in order to allow staff to further refine after receiving comments from the Planning Commission.

V. Exhibits

Exhibit 1.1 Proposed Text Amendment